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This prospectus has been sent to you in an electronic form. You are reminded that documents transmitted via this medium may be altered or changed during the process of electronic transmission and consequently none of Opera Germany (No. 2) p.l.c., Eurohypo AG, Commerzbank AG or UBS Limited (nor any person who controls it nor any director, officer, employee nor agent of it or affiliate of any such person) accepts any liability or responsibility whatsoever in respect of any difference between the prospectus distributed to you in electronic format and the hard copy version available to you on request from Commerzbank AG or UBS Limited.



Opera Germany (No. 2) p.l.c.

(Incorporated with limited liability in Ireland under company registration number 430655)

## €560,000,000 Commercial Mortgage Backed Floating Rate Notes due October 2014

Opera Germany (No. 2) p.l.c. (the "Issuer") will issue the €374,500,000 Class A Commercial Mortgage Backed Floating Rate Notes due October 2014 (the "Class A Notes"), the €46,800,000 Class B Commercial Mortgage Backed Floating Rate Notes due October 2014 (the "Class B Notes"), the €65,600,000 Class C Commercial Mortgage Backed Floating Rate Notes due October 2014 (the "Class C Notes"), the €63,700,000 Class D Commercial Mortgage Backed Floating Rate Notes due October 2014 (the "Class D Notes") and the €9,400,000 Class E Commercial Mortgage Backed Floating Rate Notes due October 2014 (the "Class E Notes" and, together with the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes, the "Notes" and each such class, a "Class") on 20 December 2006 (or such later date as the Issuer may agree with the Note Arranger and the Joint Bookrunners (each as defined below)) (the "Closing Date").

Application has been made to the Irish Financial Services Regulatory Authority (the "Financial Regulator in Ireland"), as competent authority under Directive 2003/71/EC, for this prospectus to be approved. The Issuer has applied to The Irish Stock Exchange Limited (the "Irish Stock Exchange") for the Notes to be admitted to the Official List of the Irish Stock Exchange and to trading on its regulated market. This prospectus (the "Prospectus") constitutes a prospectus for the purposes of Article 5.4 of the Directive 2003/71/EC (the "Prospectus Directive") in respect of asset backed securities within the meaning of Article 2(5) of the Commission Regulation (EC) no. 809/2004 of 29 April 2004.

The Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes are expected, on issue, to be assigned the relevant ratings set out opposite the relevant Class in the table below by Fitch Ratings Ltd. ("Fitch") and Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. ("S&P" and, together with Fitch, the "Rating Agencies"). A security rating is not a recommendation to buy, sell or hold securities and may be subject to revision, suspension or withdrawal at any time by one or more of the assigning rating organisations. The ratings from the Rating Agencies address the likelihood of full and timely receipt by any of the Noteholders of interest on the Notes and the likelihood of receipt by any Noteholder of principal of the Notes by the Final Maturity Date (as defined below).

Class	Initial Principal Amount (in €)	Margin (per cent.)	Fitch	S&P
Class A	374,500,000	0.22 per cent.	AAA	AAA
Class B	46,800,000	0.30 per cent.	AA	AA
Class C	65,600,000	0.47 per cent.	A	A
Class D	63,700,000	0.85 per cent.	BBB	BBB
Class E	9,400,000	1.05 per cent.	BBB-	BBB-

Interest on the Notes will be payable quarterly in arrear in euro on 20 January, 20 April, 20 July and 20 October in each year (subject to adjustment for non-business days) (each, a "Note Interest Payment Date"). The first Note Interest Payment Date will be the Note Interest Payment Date falling in April 2007. The interest rate applicable to each Class of Notes from time to time will be determined by reference to the rate offered in the euro-zone interbank market for three month euro deposits (or, in respect of the first interest period the rate equal to the sum of the rate offered in the euro-zone interbank market for four month deposits) ("EURIBOR", as determined in accordance with Condition 4(e) of the Notes (EURIBOR) plus the relevant Margin. Each Margin will be as set out in the table above.

**If any withholding or deduction for or on account of tax is applicable to the Notes, payment of interest on, and principal in respect of, the Notes will be made subject to such withholding or deduction. In such circumstances, neither the Issuer nor the Note Arranger, the Joint Bookrunners, the Listing Agent, the Principal Paying Agent, the Irish Paying Agent, the Trustee, the Mortgagee, the Liquidity Bank, the Account Bank, the Originator, the Servicer, the Special Servicer, the Corporate Services Provider, the Issuer Swap Counterparty nor any other party to the Transaction Documents will be obliged to pay any additional amounts as a consequence.**

All Notes will be secured by the same security, subject to the priorities described in this Prospectus. Notes of each Class will rank *pari passu* with other Notes of the same Class. Unless previously redeemed in full, the Notes are expected to be redeemed in full at their Principal Amount Outstanding together with accrued interest on the Note Interest Payment Date falling in October 2011 (the "Expected Maturity Date"). In any event, the maturity date of the Notes may not be later than the Note Interest Payment Date falling in October 2014 (the "Final Maturity Date"). The Notes will be subject to mandatory redemption before such date in the specific circumstances and subject to the conditions more fully set out under "OUTLINE OF TRANSACTION - Principal features of the Notes".

The Notes have not been, and will not be, registered under the United States Securities Act of 1933, as amended (the "Securities Act"), and are subject to U.S. tax law requirements. The Notes are being offered by the Issuer only to persons who are not U.S. Persons (as defined in Regulation S under the Securities Act ("Regulation S")) in offshore transactions in reliance on Regulation S (or otherwise pursuant to transactions exempt from the registration requirements of the Securities Act) and in accordance with applicable laws.

The Notes of each Class will be issued in new global note form and will each initially be represented on issue by a temporary global note in bearer form (each, a "Temporary Global Note"), without interest coupons attached. Each Temporary Global Note will be exchangeable, as described herein, for a permanent global note in bearer form which is recorded in the records of Euroclear and Clearstream Luxembourg (each, a "Permanent Global Note" and, together with the Temporary Global Notes, the "Global Notes" and each, a "Global Note") without interest coupons attached, not earlier than 40 calendar days and not later than 180 calendar days after the Closing Date (provided that certification of non-U.S. beneficial ownership has been received). The Global Notes will be deposited with a common safekeeper (the "Common Safekeeper") appointed by the operator of Euroclear System ("Euroclear") and Clearstream Banking, *société anonyme* ("Clearstream Luxembourg") on or before the Closing Date. The Common Safekeeper will hold the Global Notes in custody for Euroclear and Clearstream Luxembourg. The Notes, issued in new global note form and represented by the Global Notes may be transferred in book-entry form only. The Notes will be issued in denominations of €100,000. Definitive Notes will not be issued.

The Notes are intended to be held in a manner which will allow Eurosystem eligibility. This simply means that the Notes are intended upon issue to be deposited with one of Euroclear or Clearstream Luxembourg as Common Safekeeper and does not necessarily mean that the Notes will be recognised as eligible collateral for Eurosystem monetary policy and intra-day credit operations by the Eurosystem either upon issue or at any or all times during their life. Such recognition will depend upon satisfaction of the Eurosystem eligibility criteria.

See "RISK FACTORS" for a discussion of certain factors which should be considered by prospective investors in connection with an investment in any of the Notes.

The proceeds of the Notes will be applied by the Issuer towards the purchase of the Senior Loan and the Related Loan Security from the Originator.

**EUROHYPO**  
Note Arranger

**Commerzbank AG**  
Joint Bookrunner

**UBS Investment Bank**  
Joint Bookrunner

The date of this Prospectus is 19 December 2006

## IMPORTANT NOTICE

THE NOTES AND INTEREST THEREON WILL BE OBLIGATIONS OF THE ISSUER ONLY. THE NOTES WILL NOT BE OBLIGATIONS OR RESPONSIBILITIES OF, NOR WILL THEY BE GUARANTEED BY, EUROHYPO AG ("**EUROHYPO**") (IN ANY CAPACITY), BY THE JOINT BOOKRUNNERS, THE SERVICER, THE SPECIAL SERVICER, THE TRUSTEE, THE MORTGAGEE, THE CORPORATE SERVICES PROVIDER, THE SHARE TRUSTEE, THE PAYING AGENTS, THE AGENT BANK, THE LIQUIDITY BANK, THE ISSUER SWAP COUNTERPARTY OR THE ACCOUNT BANK OR ANY COMPANY IN THE SAME GROUP OF COMPANIES AS ANY OF THEM.

**The Issuer accepts responsibility for the information contained in this Prospectus. To the best of the knowledge and belief of the Issuer the information contained in this Prospectus is in accordance with the facts and does not omit anything likely to affect the import of such information.**

No person is or has been authorised to give any information or to make any representation in connection with the issue and sale of the Notes other than those contained in this Prospectus and, if given or made, such information or representation must not be relied upon as having been authorised by or on behalf of the Issuer, Eurohypo (in any capacity), the Joint Bookrunners, the Servicer, the Special Servicer, the Issuer Swap Counterparty, the Trustee, the Mortgagee, the Corporate Services Provider, the Share Trustee, the Paying Agents, the Agent Bank, the Liquidity Bank, the Hedge Counterparties or the Account Bank or any of their respective affiliates or advisors. Neither the delivery of this Prospectus nor any sale, allotment or solicitation made in connection with the offering of the Notes shall, under any circumstances, create any implication or constitute a representation that there has been no change in the affairs of the Issuer or in any of the information contained herein since the date of this document or that the information contained in this document is correct as of any time subsequent to its date. Save for obligations of Eurohypo in its capacity as Servicer, Eurohypo expressly does not undertake to review the Senior Loan or the Properties during the life of the Notes or to advise any investor in the Notes of any information coming to its attention.

The Note Arranger and the Joint Bookrunners have not independently verified the information contained herein. Accordingly, no representation, warranty or undertaking, whether express or implied, is made and no responsibility is accepted by the Note Arranger and/or the Joint Bookrunners with respect to the accuracy or completeness of this Prospectus or any further information supplied in connection herewith. The Note Arranger and/or the Joint Bookrunners accept no liability in relation to this Prospectus or its distribution or with regard to other information supplied by the Issuer herein, save for the mandatory provisions of law.

Neither this Prospectus nor any other information supplied in connection with the Notes should be considered as a recommendation by Eurohypo or either of the Joint Bookrunners that any recipient of this Prospectus should purchase any Notes. Each investor contemplating purchasing any Notes should make its own independent investigation and appraisal of the creditworthiness of the Issuer.

Other than the approval by the Financial Regulator in Ireland of this Prospectus in accordance with the requirements of the Prospectus Directive and relevant implementing measures in Ireland, application having been made for the Notes to be admitted to the Official List of the Irish Stock Exchange and to trading on the regulated market of the Irish Stock Exchange and the delivery of a copy of this Prospectus to the Registrar for Companies in Ireland for registration in accordance with the regulations implementing the Prospectus Directive in Ireland, no action has been or will be taken to permit a public offering of the Notes or the distribution of this Prospectus in any jurisdiction where action for that purpose is required.

The distribution of this Prospectus and the offering of the Notes in certain jurisdictions may be restricted by law. Persons into whose possession this Prospectus (or any part hereof) comes are required by the Issuer and the Joint Bookrunners to inform themselves about and to observe any such restrictions. For a further description of certain restrictions on offers and sales of the Notes and distribution of this Prospectus, see "SUBSCRIPTION AND SALE" below.

All references in this document to "euro", "Euro" or "€" are to the currency introduced at the commencement of the third stage of European economic and monetary union pursuant to the Treaty establishing the European Community, as amended by the Treaty on the European Union, as

amended by the Treaty of Amsterdam.

This Prospectus does not constitute an offer of, or an invitation by or on behalf of, the Issuer or the Joint Bookrunners or any of them to subscribe for or purchase any of the Notes.

**An investment in the Notes is only suitable for financially sophisticated investors who are capable of evaluating the merits and risks of such investment and who have sufficient resources to be able to bear any losses which may result from such investment.**

**It should be remembered that the price of securities and the income from them can go down as well as up.**

**In connection with this issue, Commerzbank AG (in this capacity, the "Stabilising Manager") or any person acting for it may over-allot (provided that the aggregate principal amount of Notes allotted does not exceed 105 per cent. of the aggregate principal amount of the Notes) or effect transactions with a view to supporting the market price of the Notes at a level higher than that which might otherwise prevail for a limited period after the issue date. However, there is no obligation on the Stabilising Manager or any of its agents to do this. Such stabilising, if commenced, shall be in accordance with applicable laws, may be discontinued at any time, and must be brought to an end no later than on the 30<sup>th</sup> calendar day after the date on which the Issuer received the proceeds of the issue or the 60<sup>th</sup> calendar day following the allotment of the Notes whichever is the earlier. These activities may result in a price of the Notes higher than that which would otherwise prevail, at the risk that the price might be kept at an artificial level over too long a period.**

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## OUTLINE OF TRANSACTION

*The information in this section does not purport to be complete and is qualified in its entirety by reference to the detailed information appearing elsewhere in this Prospectus. Prospective Noteholders are advised to read carefully, and to rely solely on, the detailed information appearing elsewhere in this Prospectus in making any decision whether or not to invest in any Notes.*

*Capitalised terms used, but not defined, in this section can be found elsewhere in this Prospectus, unless otherwise stated. An index of defined terms is set out at the end of this Prospectus.*

### I. General Overview

The transaction comprises the securitisation of a senior loan under a term facility originated by Eurohypo in its capacity as "**Originator**". The Issuer will use the proceeds of the issuance of the Notes to purchase from Eurohypo such senior loan. The Issuer will use receipts of principal and interest in respect of the senior loan, together with certain other funds available to it to make payments of, among other things, principal and interest due in respect of the Notes.

### II. Executive Outline

On 13 September 2006 (the "**Credit Agreement Signing Date**"), Eurohypo made available to Kö Galerie Düsseldorf GmbH & Co. KG ("**Kö KG**"), Opern Passage GmbH & Co. KG ("**OP KG**"), Rhein-Ruhr-Zentrum GmbH & Co. KG ("**RRZ KG**") and Schwanenmarkt GmbH & Co. KG ("**SM KG**"), each a limited liability partnership (*Kommanditgesellschaft*) formed under the laws of the Federal Republic of Germany (together the "**Borrowers**", and each, a "**Borrower**") euro term loan facilities in the aggregate amount of €710,000,000 (the "**Facilities**") comprising a senior facility of €560,000,000 (the "**Facility A-1**"), a junior facility of €106,000,000 (the "**Facility A-2**") and a cap-ex facility of €44,000,000 (the "**Facility B**") under a German law governed credit agreement, as amended and restated from time to time (the "**Credit Agreement**"). On 15 September 2006 (the "**Loan Origination Date**"), Eurohypo (in its capacity as Originator) has advanced the full principal amount of Facility A-1 and Facility A-2 available under the Credit Agreement to the Borrowers.

The amounts drawn under Facility A-1 is referred to as the "**Senior Loan**"; the amounts drawn under Facility A-2 as the "**Junior Loan**"; and the amounts drawn under Facility B is referred to as the "**CapEx Loan**" (the Senior Loan, the Junior Loan and the CapEx Loan together, the "**Loans**").

The proceeds of the Senior Loan and the Junior Loan have been applied towards financing part of the cost of the acquisition of the Properties and to cover all associated transaction costs, fees and expenses (including any value added tax on such costs, fees and expenses).

The proceeds of any CapEx Loan will be applied for refurbishment and maintenance of the Properties by each Borrower. Pursuant to the Credit Agreement, Facility B is available for drawdown for a period of 36 months following the initial drawdown under the Facilities. As of the date hereof, the amount drawn under Facility B is nil.

The obligations of the Borrowers under the Finance Documents are secured by the security created under the German Security Documents and the Deed of Assignment (together the "**Loan Security Documents**").

Kö KG has granted a first priority joint land charge (*Gesamtgrundschuld*) over the Kö-Galerie property in Düsseldorf (the "**Kö-Galerie Property**"), OP KG has granted a first priority joint land charge over the Opernpassagen property in Köln (the "**Opernpassagen Property**"), RRZ KG has granted a first priority joint land charge over the Rhein-Ruhr-Zentrum property in Mülheim a.d.R (the "**RRZ Property**") and SM KG has granted a first priority joint land charge over the Schwanenmarkt property in Krefeld (the "**Schwanenmarkt Property**"). The Kö-Galerie Property, the Opernpassagen Property, the RRZ Property and the Schwanenmarkt Property are together referred to as the "**Properties**" and each as a "**Property**").

Moreover, each Borrower has granted certain other security interests (including but not limited to security over its rental income claims, its insurance claims and its accounts (collectively, the "**Loan**

**Security**") to Eurohypo (in its capacity as Originator and Security Agent).

The obligations of the Borrowers under the Finance Documents constitute joint and several obligations (*gesamtschuldnerische Haftung*) of each Borrower for the obligations of all of the other Borrowers. Failure of any Borrower to fulfill these obligations does not release the other Borrowers from their obligations under the Finance Documents.

The Borrowers are special purpose companies, whose activities are and will be limited to ownership and management of their respective assets and related activities, as further described under "THE BORROWERS AND THE PARTNERS" below. Property management services will be provided by the Managing Agent in respect of each Property pursuant to Property Management Agreements (*Geschäftsbesorgungsverträge*) between each Borrower and the Managing Agent.

Interest is payable under the Junior Loan and the Senior Loan at a rate of interest equal to 5.022 per cent. per annum with respect to Loans granted to Kö KG or RRZ KG and equal to the lower of the Swap Fixed Rate and 5.40 per cent. per annum with respect to Loans granted to OP KG or SM KG, provided that, as long as a Swap Termination Trigger Event has not occurred, the interest will be payable at a floating rate, fixed on each Loan Interest Payment Date for the following Loan Interest Period, calculated with reference to EURIBOR for three month euro deposits plus a separate margin and mandatory costs (if any). Interest is payable under the CapEx Loan at a rate of interest equal to the Swap Fixed Rate, provided that, as long as a Swap Termination Trigger Event has not occurred, the interest rate will be payable at a floating rate, fixed on each Loan Interest Payment Date for the following Loan Interest Period, calculated with reference to EURIBOR for three month euro deposits plus a separate margin and mandatory costs (if any). "**Swap Termination Trigger Event**" means the termination of any Hedging Arrangement in accordance with its terms (unless substitute Hedging Arrangements are in place which have been approved in writing by the Security Agent), provided that such termination has not been caused by an event of default relating to the relevant Hedge Counterparty. "**Swap Fixed Rate**" means the fixed rate per annum determined upon the occurrence of a Swap Termination Trigger Event by the Facility Agent on the basis of the mid-market rate on the Reuters <ICAPEURO> screen (or any successor thereof) as of 11:00 Central European Time ("**CET**") on the Swap Termination Trigger Event for the period beginning on the Swap Termination Trigger Event and ending on the Final Maturity Date plus a separate margin and mandatory cost (if any). Each of RRZ KG and Kö KG (and in certain circumstances OP KG and SM KG) is required, under the terms of the Credit Agreement, to maintain (subject to certain limits) hedging arrangements with a view to ensuring that each of them will be able to continue to make payments of interest under the Facilities notwithstanding variations in the floating rate of interest payable by it. The Issuer has entered into a contingent hedging arrangement with a hedge counterparty (the "**Issuer Swap Counterparty**") with a view to ensuring that the Issuer will be able to continue to make payments of interest under the Notes if the Borrower level hedging arrangements terminate e.g. because of insolvency proceedings being instituted against the assets of any of the Borrowers.

On or about the Closing Date, Eurohypo (in its capacity as Originator and Security Agent), the Trustee and the Issuer will enter into a loan sale and transfer agreement (the "**Loan Sale Agreement**") according to which the Originator will sell and transfer to the Issuer, and the Issuer will purchase and accept such transfer from the Originator, against payment of the Initial Purchase Price all claims, rights and interest in, to and under the Senior Loan together with the Related Loan Security (except the Mortgage which has been assigned by the Originator to the Mortgagee pursuant to a mortgage assignment agreement which has been executed on 15 December 2006 (the "**Mortgage Assignment**")) whereas the transfer will become effective upon registration of the transfer with the relevant land registers.

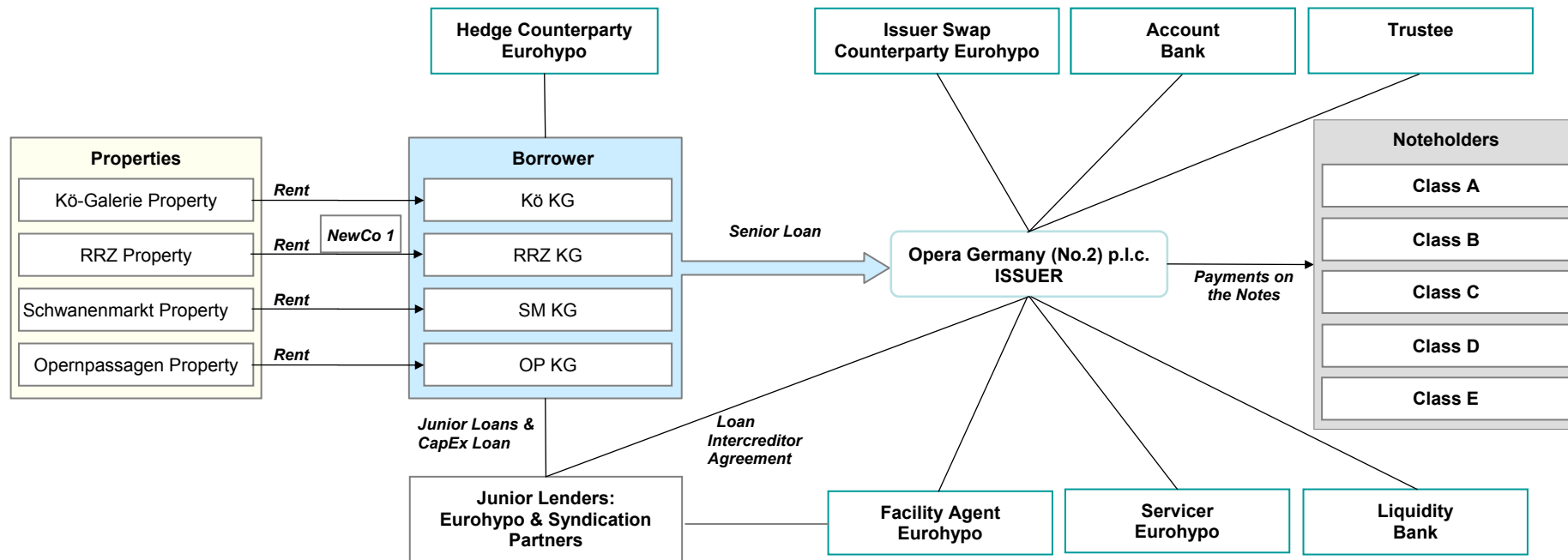
The Loan Sale Agreement will be governed by German law.

As security for its obligations under (among other things) the Notes, the Issuer will grant security interests over the German Loan Security to the Trustee under the Issuer Trust Agreement under German law, whereas the Mortgage will be directly transferred by the Originator to the Mortgagee. Furthermore, the Issuer will grant a security interest over all its assets governed by English law in favour of the Trustee under the Issuer Deed of Charge and Assignment. The Trustee will hold the benefit of the security on trust (*treuhänderisch*) for the benefit of itself, the Noteholders and the other Issuer Secured Creditors, and the Mortgagee will hold the Mortgage pursuant to the Mortgage Trust Deed to the instructions of the Trustee and, following the satisfaction of the conditions for release or

retransfer of the security pursuant to the Issuer Trust Agreement, to the instructions of the Security Agent. The Issuer Trust Agreement will determine the priority of claims of the Issuer Secured Creditors.



### III. Structure Diagram



#### IV. Key Transaction Parties

**Issuer:** Opera Germany (No. 2) p.l.c. (the "**Issuer**") is a public company incorporated in Ireland with limited liability. The Issuer's company registration number is 430655. The registered office is at 25-26 Windsor Place, Lower Pembroke Street, Dublin 2. The entire issued share capital of the Issuer is held by or on behalf of the Share Trustee and its nominees.

#### **The Borrowers:**

**Kö KG:** Kö Galerie Düsseldorf GmbH & Co. KG is a limited partnership formed on 23 May 2006 under the laws of Germany, registered in the commercial register of the local court of Düsseldorf under registration number HR A 18883 ("**Kö KG**"). Kö KG acts as a Borrower under the Credit Agreement. The registered office is at Königsallee 58-62, D-40212 Düsseldorf, Germany.

**OP KG:** Opern Passage GmbH & Co. KG is a limited partnership formed on 23 May 2006 under the laws of Germany, registered in the commercial register of the local court of Düsseldorf under registration number HR A 19038 ("**OP KG**"). OP KG acts as a Borrower under the Credit Agreement. The registered office is at Königsallee 58-62, D-40212 Düsseldorf, Germany.

**RRZ KG:** Rhein-Ruhr-Zentrum GmbH & Co. KG is a limited partnership formed on 26 May 2006 under the laws of Germany, registered in the commercial register of the local court of Düsseldorf under registration number HR A 19043 ("**RRZ KG**"). RRZ KG acts as a Borrower under the Credit Agreement. The registered office is at Königsallee 58-62, D-40212 Düsseldorf, Germany.

**SM KG:** Schwanenmarkt GmbH & Co. KG is a limited partnership formed on 26 May 2006 under the laws of Germany, registered in the commercial register of the local court of Düsseldorf under registration number HR A 18962 ("**SM KG**"). SM KG acts as a Borrower under the Credit Agreement. The registered office is at Königsallee 58-62, D-40212 Düsseldorf, Germany.

**Limited Partner:** The entire issued share capital of each Borrower is held by Gustav Beteiligungs G.m.b.H as limited partner (formerly PANTA 56. Grundstücksgesellschaft m.b.H.) (the "**Limited Partner**").

Gustav Beteiligungs G.m.b.H is owned by GB Immobilien G.m.b.H.

**General Partner:** General partner of each of the Borrowers without capital contribution is Gustav Management GmbH (formerly PANTA 58. Grundstücksgesellschaft m.b.H.) (the "**General Partner**").

87.5 per cent. of the shares in Gustav Management GmbH are held by ML Dutch BV and 12.5 per cent. of the shares in Gustav Management GmbH are held by Gustav Beteiligungs G.m.b.H. All shares in Gustav Beteiligungs G.m.b.H are held by GB Immobilien G.m.b.H.

The General Partner and the Limited Partner are together referred to as "**Partners**".

**NewCo1:** Kö Galerie Betriebsgesellschaft eins mbH ("**NewCo1**") entered into a head lease agreement (the "**Head Lease Agreement**") with RRZ KG by which NewCo1 leases the respective Property from RRZ KG. NewCo1 in turn subleases the Property to third parties.

NewCo1 and the Borrowers are together referred to as the "**Obligors**".

**Managing Agent:** Gustav Geschäftsbesorgungs GmbH (formerly PANTA Neunundfünfzigste Grundstücksgesellschaft m.b.H.) (the "**Managing Agent**") provides certain property management services to each Borrower under property

management agreements, each dated 12 September 2006 (each a "**Property Management Agreement**").

All shares in the Managing Agent are held by GB Immobilien G.m.b.H.

**Eurohypo:**

Eurohypo Aktiengesellschaft, whose principal office is at Helfmann-Park 5, 65760 Eschborn, Germany, registered in the commercial register of Frankfurt am Main under registration number HRB 45701 ("**Eurohypo**") will act in various capacities in respect of the transactions described in this Prospectus. These are:

- (a) As original lender under the Credit Agreement (the "**Originator**") with respect to Facility A-1 (in this capacity the "**Senior Lender**"), with respect to Facility A-2 (in this capacity the "**Junior Lender**") and with respect to Facility B (in this capacity the "**CapEx Lender**"). The Originator and any person that may follow the Originator in such capacity are together referred to as the "**Lender**";
- (b) as facility agent under the Credit Agreement (the "**Facility Agent**");
- (c) as security agent under the Credit Agreement (the "**Security Agent**");
- (d) as senior hedge counterparty (a "**Senior Hedge Counterparty**") under hedging arrangements with respect to the Senior Loan with each of Kö KG and RRZ KG (each a "**Senior Hedging Agreement**" and together with any other hedging arrangements with respect to the Senior Loan in accordance with the hedging strategy agreed on under the terms of the Credit Agreement, the "**Senior Hedging Arrangements**") and as junior hedge counterparty (a "**Junior Hedge Counterparty**") under hedging arrangements with respect to the Junior Loan with each of Kö KG and RRZ KG (each a "**Junior Hedging Agreement**" and together with any other hedging arrangements with respect to the Junior Loan in accordance with the hedging strategy agreed on under the terms of the Credit Agreement, the "**Junior Hedging Arrangements**", and together with the Senior Hedging Arrangements, the "**Hedging Arrangements**");
- (c) as mandated arranger under the Credit Agreement (the "**Loan Arranger**");
- (d) acting through its London office (the "**London Branch**") and, under certain conditions through its offices located in Germany, as servicer (the "**Servicer**") and, if required, special servicer (the "**Special Servicer**"), on behalf of the Issuer, of the Senior Loan pursuant to the Servicing Agreement;
- (e) as arranger in respect of the issue of the Notes (the "**Note Arranger**"); and
- (f) as issuer swap counterparty (the "**Issuer Swap Counterparty**") pursuant to two Issuer Swap Agreements providing for (i) a contingent hedge arrangement (the "**Contingent Issuer Swap Agreement**") becoming effective if the Senior Hedging Arrangements of any Borrower terminate and (ii) an interest hedge arrangement (the "**Interest Issuer Swap Agreement**") in order to hedge against the potential interest rate mismatches between the floating rate interest payments received by the Issuer under the Senior Loan and the floating rate interest payment obligations of the Issuer under the Notes resulting from different determination dates being applicable to determine EURIBOR as the base rate for calculating the interest rates in respect of (aa) the Senior Loan and (bb) the Notes.

<b>Trustee and Mortgagee:</b>	<p>HSBC Trustee (C.I.) Limited, 1 Grenville Street, St. Helier, Jersey JE4 9PF (the "<b>Trustee</b>"), will hold or, as the case may be, administer for the benefit of itself and the other Issuer Secured Creditors the security granted by the Issuer (except for the Mortgage) under a German law governed trust agreement (the "<b>Issuer Trust Agreement</b>") to be entered into on or about the Closing Date between the Trustee, the Originator, the Security Agent, the Issuer and the Mortgagee.</p> <p>HSBC Bank plc (the "<b>Mortgagee</b>") will hold the Mortgage, transferred to it by the Originator pursuant to the Mortgage Assignment, to the instructions of the Trustee and, following the satisfaction of the conditions for release or retransfer pursuant to Clause 10 of the Issuer Trust Agreement, to the instructions of the Security Agent pursuant to the Mortgage Trust Deed.</p>
<b>Principal Paying Agent and Agent Bank:</b>	<p>HSBC Bank plc, 8 Canada Square, London E14 5HQ, United Kingdom, will be principal paying agent and agent bank under the Agency Agreement (in these capacities, the "<b>Principal Paying Agent</b>" and the "<b>Agent Bank</b>").</p>
<b>Irish Paying Agent:</b>	<p>HSBC Institutional Trust Services (Ireland) Limited, HSBC House, Harcourt Centre, Harcourt Street, Dublin 2, Ireland, will act as paying agent in Ireland under the Agency Agreement (the "<b>Irish Paying Agent</b>"). The Irish Paying Agent, the Principal Paying Agent and any other paying agent(s) which may be appointed pursuant to the Agency Agreement are together referred to as the "<b>Paying Agents</b>".</p>
<b>Account Bank:</b>	<p>HSBC Bank plc, 8 Canada Square, London E14 5HQ, United Kingdom, will act as account bank for the Issuer under the Account Bank Agreement (in this capacity, the "<b>Account Bank</b>").</p>
<b>Liquidity Bank:</b>	<p>Danske Bank A/S, acting through its London branch located at 75 King William Street, London EC4N 7DT, will provide the Liquidity Facility to the Issuer under the Liquidity Facility Agreement (in this capacity, the "<b>Liquidity Bank</b>").</p>
<b>Corporate Services Provider:</b>	<p>Structured Finance Management (Ireland) Limited (the "<b>Corporate Services Provider</b>") will provide certain corporate administration and secretarial services to the Issuer under a corporate services agreement (the "<b>Corporate Services Agreement</b>").</p>
<b>Share Trustee:</b>	<p>SFM Corporate Services Limited, 35 Great St. Helen's, London EC3A 6AP, England (the "<b>Share Trustee</b>") will hold its interest in the shares of the Issuer on trust for charitable purposes under the terms of a share trust deed dated 7 December 2006 2006 (the "<b>Share Trust Agreement</b>").</p>

## V. Key characteristics of the Loans

**The Facilities:** The Facilities constitute full recourse secured obligations of the Borrowers. The following section contains an outline of the features of the loan documents relating to the Facilities. For a more detailed description of each Facility, see "OUTLINE OF THE LOAN DOCUMENTS" below. On or about the Closing Date, the Issuer will acquire all claims, rights and interests in, to and under the Senior Loan together with the Loan Security relating thereto (the "**Related Loan Security**").

The Senior Loan and the Junior Loan were originated on 15 September 2006 (the "**Loan Origination Date**"). As of the date of this Preliminary Prospectus, the outstanding principal amount of these Facilities was €666,000,000. The Credit Agreement contains an obligation of the Originator to make a further advance to the Borrowers under Facility B. The Facility B can be drawn at any time for a period of 36 months following the initial drawdown under the Facilities (provided the respective conditions precedent are fulfilled). The Junior Loan and the CapEx Loan do not form part of the transaction.

**Purpose of the Facilities:** The proceeds of the Senior Loan and the Junior Loan have been applied towards financing part of the cost of the acquisition of the Properties and to cover all associated transaction costs, fees and expenses (including any value added tax on such costs, fees and expenses).

The proceeds of the CapEx Loan will be applied for refurbishment and maintenance of the Properties by each Borrower.

**Interest rate:** Interest is payable under the Senior Loan and the Junior Loan at a rate of interest equal to 5.022 per cent. per annum with respect to Loans granted to Kö KG or RRZ KG and equal to the lower of the Swap Fixed Rate and 5.40 per cent. per annum with respect to Loans granted to OP KG or SM KG, provided that, as long as a Swap Termination Trigger Event has not occurred, the interest will be payable at a floating rate, fixed two Loan Business Days prior to each Loan Interest Payment Date for the following Loan Interest Period, calculated with reference to EURIBOR for three month euro deposits plus a separate margin and mandatory cost (if any). Interest is payable under the CapEx Loan at a rate of interest equal to the Swap Fixed Rate, provided that, as long as a Swap Termination Trigger Event has not occurred, the interest rate will be payable at a floating rate, fixed two Loan Business Days prior to each Loan Interest Payment Date for the following Loan Interest Period, calculated with reference to EURIBOR for three month euro deposits plus a separate margin and mandatory cost (if any).

**Interest payments:** Interest under the Loans is payable quarterly in arrear on 15 January, 15 April, 15 July and 15 October in each year with the first interest payment date being 15 January 2007 (subject to adjustment for non-business days, each, a "**Loan Interest Payment Date**") in respect of successive interest periods (each, a "**Loan Interest Period**").

The General Partner and Merrill Lynch & Co., Inc. (together, the "**Loan Interest Shortfall Guarantors**") have each issued a loan interest shortfall guarantee (each a "**Loan Interest Shortfall Guarantee**" and, together, the "**Loan Interest Shortfall Guarantees**"), respectively, by which each guarantees to the Facility Agent to cover any Loan Interest Shortfall by way of cash funding in an amount of up to €10,500,000 as regards Merrill Lynch & Co., Inc. and €1,500,000 as regards the General Partner in favour of Eurohypo Aktiengesellschaft. A "**Loan Interest Shortfall**" arises if a Borrower fails to make any interest payment under the Credit Agreement when due and payable.

**Fees:** Each Borrower is obliged to pay to the Facility Agent under the Credit Agreement a commitment fee. The amount thereof depends on the undrawn available amount of each Facility (the "**Commitment Fee**").

On each Loan Interest Payment Date, the Borrowers are obliged to pay an agency fee jointly to the Facility Agent and Security Agent under the Credit Agreement for their own account (the "**Agency Fee**").

Upon a Borrower prepaying the Loans in full or in part at any time prior to the Loan Maturity Date, under certain conditions, the relevant Borrower has to pay a prepayment fee ("**Prepayment Fee**").

**Scheduled Repayments:** Subject to prepayments as described below, all amounts outstanding under the Loans must be repaid on the Loan Interest Payment Date immediately following the fifth anniversary of the Loan Origination Date (the "**Loan Maturity Date**").

**Mandatory prepayments:** Prior to the Loan Maturity Date, the Borrowers will, following a period of 36 months after the date of initial drawdown under the Facilities be required to prepay an amount of the Facilities in an amount available for such purpose on the Rent Accounts on each Loan Interest Payment Date.

Prior to the Loan Maturity Date, the Borrowers will, on the Loan Interest Payment Date immediately following a period of 36 months after the date of initial drawdown under the Facilities be required, to prepay an amount of the Loans equal to the amount credited on the Reserve Account until the Release Threshold has been met.

"**Release Threshold**" means (a) ICR is equal to or exceeds 150 per cent. and (b) LTV is equal to or lower than 80 per cent.

It will not be a Loan Event of Default if any Borrower does not have the funds available to make any amortisation payments set out above.

If it becomes unlawful in any jurisdiction for a Lender to perform any of its obligations under a Finance Document or to fund or maintain its share in the Loans, the Borrowers must repay the share of that Lender in the Loans (subject to the terms of the Credit Agreement).

In case of a disposal of a Property, the relevant Borrower must apply the aggregate amount of the relevant Release Price, any Prepayment Fee, break costs, amounts payable to any Senior Hedge Counterparty or (if applicable) Junior Hedge Counterparty and, in case of a disposal after 36 months following the initial drawdown under the Facilities, all amounts standing to the credit of the Reserve Account of the relevant Borrower to the repayment of the part of the Loan made to the relevant Borrower in accordance with the Credit Agreement.

According to the Credit Agreement, in case of a rescission of the acquisition of the Schwanenmarkt Property by SM KG or the Opernpassagen Property by OP KG, a mandatory repayment has to be made as if the respective property had been disposed of. However, in case of a rescission of the acquisition of the Kö-Galerie Property by Kö KG or RRZ Property by RRZ KG, the Lender may declare the outstanding part of the Loans, together with accrued interest, break costs and all other amounts accrued under the Finance Documents, to be immediately due and payable.

In case of certain changes of direct or indirect ownership or control with respect to any Borrower, each Lender may declare the outstanding part of the Loans, together with accrued interest, break costs and all other amounts accrued under the Finance Documents, to be immediately due and payable.

**"Release Price"** means, with respect to the Schwanenmarkt Property 105 per cent. of the respective allocated loan amount, with respect to the Opernpassagen Property 105 per cent. of the respective allocated loan amount, with respect to the Kö-Galerie Property 115 per cent. of the allocated loan amount if LTV is above 85 per cent. or 110 per cent. of the allocated loan amount if LTV is below or equal to 85 per cent., with respect to RRZ Property 115 per cent. of the allocated loan amount if LTV is above 85 per cent. or 110 per cent. if LTV is below or equal to 85 per cent.

**Voluntary prepayment:** Each Borrower will be entitled to prepay its part of the Loans on any Loan Interest Payment Date in full or in part at the option of such Borrower (subject to a minimum aggregate amount of €10,000,000 and an integral multiple of €1,000,000 in excess thereof) at any time upon giving at least 7 Loan Business Days' prior notice (if the intended prepayment is in an aggregate amount of below €50,000,000) or at least 15 Loan Business Days' prior notice (in all other cases).

On the date of each voluntary prepayment, the relevant Borrower is obliged to pay to the Facility Agent any related break costs and any Prepayment Fee. The relevant Borrower is also obliged to pay to the Senior Hedge Counterparty and (if applicable) the Junior Hedge Counterparty any termination costs relating to any Hedging Arrangement.

A **"Loan Business Day"** means a TARGET Day (other than a Saturday or a Sunday) on which banks are open for general business in Frankfurt am Main, Germany.

**Allocation of principal prepayments:** All prepayments received will be applied *pari passu* and *pro rata* between (A) and (B) as follows:

- (A) (i) *first, pari passu* and *pro rata*, (aa) towards the repayment of the Senior Loan and (bb) to the Senior Hedge Counterparty any amounts which are due but unpaid under the Senior Hedging Arrangements as a result of termination or closing out;
- (ii) *second, pari passu* and *pro rata* towards (aa) the repayment of the Junior Loan and (bb) to the Junior Hedge Counterparty (if applicable), any amounts which are due but unpaid under any Junior Hedging Arrangements as a result of termination or closing out; and

(B) towards the repayment of the CapEx Loan,

provided that any principal repayment post-enforcement will be applied between the Loans as follows:

- (i) *first, pari passu* and *pro rata*, (aa) towards the repayment of the Senior Loan and (bb) to the Senior Hedge Counterparty any amounts which are due but unpaid under the Senior Hedging Arrangements as a result of termination or closing out;
- (ii) *second*, towards the repayment of the CapEx Loan;
- (iii) *third, pari passu* and *pro rata* towards (aa) the repayment of the Junior Loan and (bb) to the Junior Hedge Counterparty (if applicable), any amounts which are due but unpaid under any Junior Hedging Arrangements as a result of termination or closing out.

**Representations and warranties:** The representations and warranties given by each Borrower under the Credit Agreement, at the Credit Agreement Signing Date and (subject to certain exceptions) the date of each drawdown include, among other things, the following:

- (a) due incorporation and authorisation;

- (b) no default under the Credit Agreement or any other transaction document referred to in the Credit Agreement (a "**Loan Event of Default**") is outstanding or will likely result from the execution or the performance of any transaction contemplated by the Credit Agreement or any other transaction document referred to in the Credit Agreement;
- (c) legality, validity and enforceability of the Credit Agreement and any other transaction document referred to in the Credit Agreement (including the Loan Security Documents) subject to any general principles of law limiting its obligations;
- (d) to the knowledge of such Borrower, no circumstance that would hinder such Borrower to become the full and exclusive owner of the respective Property and all assets over which a security interest is to be created pursuant to the Loan Security Documents, in each case free from any security interests and other encumbrances (other than those referred to in the Credit Agreement);
- (e) the absence of material litigation, arbitration or administrative proceedings which could reasonably be likely 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 Finance Documents or which, if adversely determined, are likely to have a material adverse effect;
- (f) the truthfulness, accuracy and completeness in all material respects of all written information supplied by the relevant Borrower to the relevant Finance Party under the Credit Agreement, among others, in connection with the Credit Agreement and certain related agreements and documents (the "**Finance Documents**"); and
- (g) no business other than the activities consistent with the Finance Documents.

**Loan Security:**

The obligations of each Borrower under the Finance Documents are secured by the Loan Security, which includes but is not limited to

- (a) a joint land charge (*Gesamtgrundschuld*) in respect of the Properties together with the assumption of personal liability (*Übernahme der persönlichen Haftung*) by each Borrower and a submission to an immediate enforcement (*Unterwerfung unter die sofortige Zwangsvollstreckung*) and all other rights and claims arising under the notarial deeds creating the land charge as well as a security purpose agreement (*Sicherungszweckerklärung*) entered into by the each Borrower and the Security Agent regarding the land charge;
- (b) a first ranking assignment for security purposes of all rental income in relation to each Property;
- (c) a first ranking pledge over all accounts of the Borrowers;
- (d) a first ranking assignment for security purposes of all the rights and claims arising under the insurances relating to each Property;
- (e) a first ranking pledge over all limited partnership interests in the Borrowers and all shares in NewCo1;
- (f) a first ranking assignment for security purposes of all the Borrowers' rights and claims under the Management Agreements;
- (g) a first ranking assignment for security purposes of all the Borrowers' rights and claims arising under the agreement for the acquisition of the Properties (the "**Acquisition Agreement**");



- (h) loan interest shortfall guarantees issued (i) by Merrill Lynch & Co. Inc., in an amount of up to €10,500,000 and (ii) by Gustav Beteiligungs G.m.b.H. in an amount of up to €1,500,000 which are to be drawn if any of the Borrowers fails to make interest payments due and payable under the Credit Agreement;
- (i) an English law governed security assignment of any present and future claims under the Hedging Arrangements.

**Insurance:**

Each Borrower has undertaken to procure that each Managing Agent maintains professional indemnity insurance with respect to damage to persons (*Personenschäden*), damage to property and for financial losses.

Each Borrower has undertaken to ensure that at all times from the Credit Agreement Signing Date, insurance of its Property and the plant and machinery on its Property (including fixtures and improvements) on a full reinstatement basis is in force in an amount, form, and with an insurance company or underwriters which satisfies the requirements stipulated in the Credit Agreement. Each Borrower has also taken out insurance against acts of terrorism as at the date hereof.

Each Borrower has undertaken to ensure that at all times from the Credit Agreement Signing Date, third party liability insurance, insurance against public law liabilities and not less than two years' loss of rent on all occupational tenancies of each Property is in force in an amount, form, and with an insurance company or underwriters which satisfies the requirements stipulated in the Credit Agreement.

Each Borrower has further undertaken to ensure that the Security Agent on behalf of the Lenders is named as co-insured on all insurance policies and is named as first loss payee. This undertaking does not apply in respect of third party liability insurance and public law liability insurance. Each insurance must contain a lender protection clause requiring the insurer to give notice to the Security Agent before terminating the relevant insurance.

All insurances required under the Credit Agreement must be in an amount and form acceptable to the Facility Agent (acting reasonably) and with an insurance company or underwriter (in the case of a group of insurance companies or a group of underwriters, on a weighted average rating basis) that has been assigned the relevant requisite rating which is defined as a long term unsecured debt rating of at least A by Fitch and A by S&P. As these requirements were not entirely fulfilled on the Credit Agreement Signing Date, each Borrower has undertaken to use its best endeavours to comply therewith by 1 January 2007, and will be obliged to comply therewith by the tenth Loan Business Day following such date. In the interim existing insurance at the time of acquisition has been supplemented with additional insurance to meet the scope of required insurance. In case that any Borrower is not registered on such date in the land register as owner with respect to the relevant Property, such Borrower and the Security Agent on behalf of the Lenders may mutually agree upon a later date with respect to such Property. Failing to comply with this obligation triggers, under certain circumstances, a Loan Event of Default.

**Loan Intercreditor Agreement:**

On or about the Closing Date, *inter alios*, the Senior Lender, the Junior Lender and the CapEx Lender will enter into an intercreditor agreement (the "**Loan Intercreditor Agreement**") which will govern the subordination and ranking of rights, claims and interest in, to and under the Finance Documents.

**Governing Law:**

The Credit Agreement is governed by German Law.

**VI. Key characteristics of the Loan Sale Agreement**

**Sale of the Senior Loan and the Related Loan Security:**

On or about the Closing Date, the Issuer, Eurohypo and the Trustee will enter into a loan sale agreement (the "**Loan Sale Agreement**") pursuant to which Eurohypo in its capacity as Originator will sell to the Issuer, and the Issuer will purchase from Eurohypo, the Senior Loan together with the Related Loan Security against payment of the Initial Purchase Price.

The transfer of the Senior Loan will be effected by way of an assignment from Eurohypo (in its capacity as Originator and Security Agent) to the Issuer under the Loan Sale Agreement. The transfer of the Related Loan Security will be effected under the Loan Sale Agreement by way of (i) an assignment of the security rights under the German Security Documents and (ii) an assignment of the security rights under the Issuer Deed of Charge and Assignment, in each case, except for the Mortgage, from the Security Agent to the Issuer.

With respect to the Mortgage, the Loan Sale Agreement will provide that the transfer of the Mortgage will be effected in favour of the Mortgagee by way of a separate mortgage assignment agreement, which has been executed on 15 December 2006 (the "**Mortgage Assignment**") and subsequent registration of such transfer with the competent land registers.

The Issuer will fund the purchase of the Senior Loan from the Originator by utilising the proceeds of the issuance of the Notes.

As of the Closing Date, the Issuer will be Senior Lender and Eurohypo will remain the Junior Lender (to the extent it has not syndicated the Junior Loan) and the CapEx Lender.

**Purchase Price:**

As consideration for the sale and transfer of the Senior Loan and the Related Loan Security the Issuer will, on the Closing Date, pay to the Originator a purchase price in an amount equal to the outstanding principal amount of the Senior Loan as of the Closing Date (the "**Initial Purchase Price**") (which is expected to be €560,000,000).

On the first Loan Interest Payment Date following the Closing Date, the Issuer will be obliged to repay any Pre-Closing Proceeds to the Originator.

"**Pre-Closing Proceeds**" means, with respect to the Senior Loan, interest accrued but unpaid for the period between (and including) 15 September 2006 and (but excluding) the Closing Date.

**Recourse to the Originator:**

If a material breach of certain representations and warranties given by the Originator under the Loan Sale Agreement occurs and such breach is not capable of remedy or, if capable of remedy, has not been remedied within the time specified in the Loan Sale Agreement, the Issuer or, as the case may be, the Trustee, will have a claim against the Originator for any losses incurred in connection with, or as a result of, such breach. The Issuer or, as the case may be, the Trustee, will not have such a claim if the Originator exercises its alternative option to repurchase the Senior Loan.

**Governing Law:**

The Loan Sale Agreement will be governed by German law except for the assignment of the security interests under the Deed of Assignment which will be governed by English law.

## VII. Key characteristics of the Properties

**Properties:** The Loans are secured on the four following Properties located in North-Rhine Westphalia, Germany:

- (a) The Kö-Galerie Property, which is located in Düsseldorf;
- (b) the RRZ Property, which is located in Mülheim a. d. Ruhr;
- (c) the Schwanenmarkt Property, which is located in Krefeld; and
- (d) the Opernpassagen Property, which is located in Cologne.

**Valuation:** A valuation (the "**Valuation**") has been carried out by Cushman & Wakefield, located at Westhafenplatz 6, 60327 Frankfurt am Main. The Valuation is dated 30 April 2006 (the "**Valuation Date**").

The Valuer has determined the market value of the Properties as at the Valuation Date to be €748,900,000. As at the Valuation Date, the estimated rental value ("**ERV**") for the Properties was €44,148,048 per annum and the annual passing rent ("**APR**") for the Properties was €40,093,875. The initial LTV is 88.9 per cent.

The Kö-Galerie Property has a market value of €303,400,000 is predominantly used for retail and office purposes and provides a lettable area of approximately 53,427sqm. Its ERV is €17,532,938 and the Annual Passing Rent equals €15,393,810.

The RRZ Property is a shopping-centre in Mülheim an der Ruhr and is mainly used for retail but also comprises leisure facilities. The lettable area amounts to 70,021sqm and shows a market value of €307,600,000 as at Valuation Date. The Property's APR equals €16,552,001 and has an ERV of €17,605,853.

The Schwanenmarkt Property is a retail centre located in the centre of Krefeld, which also includes residential space. The Schwanenmarkt Property has a market value of €60,700,000 and provides for a lettable area of 22,406sqm and has an ERV of €3,827,572 and an APR amounting to €3,674,018 as at the Valuation Date.

The Opernpassagen Property has a market value of €77,200,000 and predominantly used for retail, office and parking. The lettable area equals 20,064sqm, excluding the 576 parking spaces. The Opernpassagen Property has an ERV of approximately €5,181,686 and an APR amounting to €4,474,045 as at the Valuation Date.

The Borrowers' business plan shows a total capital investment of some €59 million. This includes capital expenditure on the two major Properties as well as deferred maintenance for all four Properties in the long term.

See "DESCRIPTION OF THE PROPERTIES".

**Updated Valuation:** Under the terms of the Credit Agreement, the Facility Agent will have the right to call for a new valuation of any Property at any time at the cost of the Lenders. The updated valuation has to be paid by the Borrowers, if a Loan Event of Default is outstanding or, if the Facility Agent (acting reasonably) believes a Loan Event of Default is likely to occur as a result of an updated valuation, or annually from the date of the initial drawdown under the Facilities (at the option of the Facility Agent). See "DESCRIPTION OF THE PROPERTIES" below.

### VIII. Principal features of the Notes

**Notes:**

The Notes will comprise:

- (a) €374,500,000 Class A Commercial Mortgage Backed Floating Rate Notes due October 2014;
- (b) €46,800,000 Class B Commercial Mortgage Backed Floating Rate Notes due October 2014;
- (c) €65,600,000 Class C Commercial Mortgage Backed Floating Rate Notes due October 2014;
- (d) €63,700,000 Class D Commercial Mortgage Backed Floating Rate Notes due October 2014, and
- (e) €9,400,000 Class E Commercial Mortgage Backed Floating Rate Notes due October 2014.

The Notes of each Class will rank *pari passu* and rateably and without any preference among themselves.

**Status and priority:**

After service of an Acceleration Notice, the Class A Notes will rank in priority to all other Classes of Notes in point of security and as to the payment of principal and interest, the Class B Notes will be subordinated in point of security and as to right of payment of principal and interest in respect of the Class A Notes but will rank in priority to the Class C Notes, the Class D Notes and the Class E Notes in point of security and as to the payment of principal and interest, the Class C Notes will be subordinated in point of security and as to right of payment of principal and interest in respect of the Class A Notes and the Class B Notes but will rank in priority to the Class D Notes and the Class E Notes in point of security and as to right of payment of principal and interest, the Class D Notes will be subordinated in point of security and as to the payment of principal and interest in respect of the Class A Notes, the Class B Notes and the Class C Notes but will rank in priority to the Class E Notes in point of security and as to right of payment of principal and interest and the Class E Notes will be subordinated in point of security and as to the payment of principal and interest in respect of the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes.

See "ISSUER ACCOUNTS AND CREDIT STRUCTURE – Priorities of Payments" below.

**Form of the Notes:**

Each Class of Notes will be in bearer form. The Temporary Global Notes and the Permanent Global Notes of each Class will be held by a common safekeeper for Euroclear and Clearstream Luxembourg. The Notes will be issued in new global note form and in denominations of €100,000 each.

Definitive Notes will not be issued.

**Ratings:**

It is expected that the Notes will, on issue, be assigned the following ratings:

<b>Class</b>	<b>Fitch</b>	<b>S&amp;P</b>
Class A Notes	AAA	AAA
Class B Notes	AA	AA
Class C Notes	A	A
Class D Notes	BBB	BBB
Class E Notes	BBB-	BBB-

A security rating is not a recommendation to buy, sell or hold securities and may be subject to revision, suspension or withdrawal at any time by one or more of the assigning rating organisations.

**Listing:** Application will be made to the Financial Regulator in Ireland, as competent authority under the Prospectus Directive, for the prospectus to be approved for the purposes of the Prospectus Directive. Application will be made to the Irish Stock Exchange for the Notes to be admitted to the Official List of the Irish Stock Exchange and to trading on its regulated market.

**Final redemption:** Unless previously redeemed in full, the Notes are expected to be redeemed in full at their Principal Amount Outstanding together with accrued interest on the Note Interest Payment Date falling in October 2011 (the "**Expected Maturity Date**") and are due for redemption on the Note Interest Payment Date falling in October 2014 (the "**Final Maturity Date**").

**Optional redemption in full** The Notes will be subject to redemption in full, but not in part, at the option of the Issuer in certain circumstances:

- (a) the Issuer certifies to the Trustee that by virtue of a change in tax law from that in effect on the Closing Date (A) the Issuer will be obliged to make any withholding or deduction from payments in respect of the Notes; or (B) any amount payable by any of the Obligors in relation to the Senior Loan is reduced or ceases to be receivable (whether or not actually received), subject to the requirements of Condition 6(c) of the Notes (*Optional Redemption for Taxation or other Reasons*);
- (b) if the aggregate of the Principal Amount Outstanding of all of the Notes then outstanding is less than 10 per cent. of the Principal Amount Outstanding of all of the Notes issued on the Closing Date and the Originator, the Servicer or the Special Servicer, respectively, exercises its option, subject to the requirements of Condition 6(d) of the Notes (*Redemption upon Exercise of Option*); or
- (c) if Replacement Notes are to be issued pursuant to Condition 17(b) of the Notes (*Replacement Notes*).

In any such case, the Issuer or, as applicable, the Originator, the Servicer or the Special Servicer must certify to the Trustee that it will have sufficient funds available to it on the relevant Note Interest Payment Date to discharge all of the Issuer's liabilities in respect of the Notes and any amounts payable under the Servicing Agreement and/or the Issuer Trust Agreement then to be paid in priority to, or *pari passu* with, the Notes on such Note Interest Payment Date, all in accordance with Condition 6 of the Notes (*Redemption*).

**"Principal Amount Outstanding"** means in respect of any Note at any time the principal amount thereof as at the Closing Date as reduced by any payment of principal to the holder of the Note up to (and including) that time.

**Mandatory redemption in whole or in part:** Prior to service of an Acceleration Notice, the Notes will be subject to mandatory redemption in whole or in part on each Note Interest Payment Date pursuant to Condition 6(b) of the Notes (*Mandatory Redemption from Available Principal Amounts*) by applying the Available Principal Amounts towards redemption of the Notes sequentially in the order of seniority of the Classes of Notes, provided that:

- (i) the Available Principal Amounts received prior to the scheduled Loan Maturity Date due to mandatory prepayments of the Senior Loan due to the disposal of any Property and prior to the enforcement of the Loan Security and/or the claims under the Finance Documents will be applied to the Notes as follows:

- (a) *first*, in an amount equal to the Senior Allocated Loan Amount of the relevant Property pro rata to each Class of Notes, and
- (b) *second*, any amount of the Release Price which is in excess of the Senior Allocated Loan Amount of the relevant property towards repayment of the Notes sequentially in the order of seniority of the Classes of Notes,

and provided further that:

(ii) Available Principal Amounts received prior to the scheduled Loan Maturity Date due to voluntary prepayments of the Senior Loan in an amount of less than €50,000,000 (provided there is no release of security) will be applied to the Notes as follows:

- (a) *first, pro rata* in or towards repayment of any principal of the Class E Notes until the Class E Notes have been redeemed in full;
- (b) *second, pro rata* in or towards repayment of any principal of the Class D Notes until the Class D Notes have been redeemed in full;
- (c) *third, pro rata* in or towards repayment of any principal of the Class C Notes until the Class C Notes have been redeemed in full;
- (d) *fourth, pro rata* in or towards repayment of any principal of the Class B Notes until the Class B Notes have been redeemed in full; and
- (e) *fifth, pro rata* in or towards repayment of any principal of the Class A Notes,

each mandatory redemption in accordance with the terms and conditions of the Notes ("**Terms and Conditions**").

See "TERMS AND CONDITIONS OF THE NOTES" and "ISSUER ACCOUNTS AND CREDIT STRUCTURE".

Upon service of an Acceleration Notice, the Trustee or its appointee is required to apply all amounts (if any) received in respect of the Senior Loan in accordance with the Post-Acceleration Priority of Payments pursuant to the Issuer Trust Agreement.

**No purchase of Notes by the Issuer:** The Issuer will not be permitted to purchase Notes.

**Further Notes, New Notes and Replacement Notes:** The Issuer will be entitled, without the consent of any Noteholders, to issue further debt securities, as follows:

- (a) notes which are consolidated and form a single series with, an existing Class of Notes (including any New Notes or Replacement Notes then issued) ("**Further Notes**");
- (b) notes which rank *pari passu* with the Class A Notes, or junior to the Class A Notes and senior to the Class B Notes, or *pari passu* with the Class B Notes, or junior to the Class B Notes but senior to the Class C Notes, or *pari passu* with the Class C Notes, or junior to the Class C Notes but senior to the Class D Notes, or *pari passu* with the Class D Notes, or junior to the Class D Notes but senior to the Class E Notes, or *pari passu* with the Class E Notes, or junior to the Class E Notes ("**New Notes**"); and
- (c) notes of any class to replace an existing Class of Notes, but with an interest rate equal to or (if fixed rate Notes are to be issued in replacement for floating rate Notes or *vice versa*, a swap rate which (taking into account the relevant margin) lower than the existing Class of Notes being replaced ("**Replacement Notes**").

Pursuant to the relevant Priority of Payments, interest on junior Classes of Notes will be payable prior to any scheduled, mandatory or optional principal redemption. Any issue of Further Notes, New Notes or

Replacement Notes will be subject to the satisfaction of certain conditions precedent. These will include a condition that the Rating Agencies confirm that the then current ratings of each Class of Notes already issued will not be adversely affected. See "TERMS AND CONDITIONS OF THE NOTES".

**Interest rates:**

Each Class of Notes will initially bear interest calculated as the sum of EURIBOR (as determined in accordance with Condition 4(d) of the Notes (*Interest on the Notes*) plus the relevant Margin. The interest rate margin applicable to each Class of Notes will be as follows (each, a "**Margin**"):

<b>Class</b>	<b>Margin</b> (per cent.)
Class A Notes	0.22 per cent.
Class B Notes	0.30 per cent.
Class C Notes	0.47 per cent.
Class D Notes	0.85 per cent.
Class E Notes	1.05 per cent.

**Interest payments:**

Interest will be payable on the Notes quarterly in arrear on 20 January, 20 April, 20 July and 20 October in each year with the first Note Interest Payment Date being 20 April 2007, or, if such date is not a Note Business Day, the next Note Business Day immediately following such date unless it would thereby fall into the next calendar month, in which case the immediately preceding Note Business Day (each, an "**Note Interest Payment Date**"). "**Note Business Day**" means a TARGET Day (other than a Saturday or a Sunday) on which banks are open for general business in London and Frankfurt am Main, Germany, whereas "**TARGET Day**" means a day on which the Trans-European Automated Real-time Gross Settlement Express Transfer Payment system is open for the settlement of payment in euro.

**Note Interest Periods:**

The first Note Interest Period will run from (and including) the Closing Date to (but excluding) the first Note Interest Payment Date and subsequent Note Interest Periods will run from (and including) a Note Interest Payment Date to (but excluding) the next Note Interest Payment Date (each a "**Note Interest Period**"). The Noteholders will be entitled to receive a payment of interest only in so far as payment is in accordance with the relevant Priority of Payments. Any interest not paid on the Notes (other than interest due on the Class A Notes) when due will be paid only to the extent that there are funds available on a subsequent Note Interest Payment Date in accordance with the relevant Priority of Payments.

**Issue prices:**

The Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes will be issued at 100 per cent. of their aggregate initial Principal Amount Outstanding.

**Withholding tax:**

**If any withholding or deduction for or on account of any tax is imposed in respect of payments under the Notes, the Issuer will make payments subject to such withholding or deduction and neither the Issuer nor any other entity will be required to gross-up or otherwise pay additional amounts in respect thereof. See "TAXATION".**

**Security for the Notes:** The Notes will be secured pursuant to (a) an issuer security trust agreement (the "**Issuer Trust Agreement**") under German law made between the Issuer, the Originator, the Security Agent, the Trustee and the Mortgagee and dated on or about the Closing Date pursuant to which the Issuer will grant security in favour of the Trustee over, *inter alia*, the Senior Loan and German Loan Security (except for the Mortgage), (b) a German law governed mortgage assignment agreement between the Originator and the Mortgagee pursuant to which the Originator has assigned the Mortgage to the Mortgagee (the "**Mortgage Assignment**") (the transfer becoming effective upon registration of such assignment with the relevant land register) and (c) an English law governed deed of charge and assignment dated on or about the Closing Date and made between the Issuer and the Trustee pursuant to which the Issuer grants security over its English assets (the "**Issuer Deed of Charge and Assignment**" and, together with the Mortgage Assignment and the Issuer Trust Agreement, the "**Issuer Security Documents**").

The Trustee will hold the security granted under the Issuer Security Documents for the benefit of itself, any receiver and any other appointee of the Trusted Parties, the Noteholders, the Paying Agents, the Agent Bank, the Corporate Services Provider, the Servicer, the Special Servicer, the Liquidity Bank, the Note Arranger, the Issuer Swap Counterparty, the Account Bank (together, the "**Issuer Secured Creditors**"), and the Mortgagee will hold the Mortgage pursuant to a trust arrangement to the instructions of the Trustee, and, following the satisfaction of the conditions for release or retransfer pursuant to Clause 10 of the Issuer Trust Agreement, to the instructions of the Security Agent (such trust arrangement being the "**Mortgage Trust Deed**").

The Issuer will grant the following first ranking security interests under or pursuant to the Issuer Security Documents (the "**Issuer Security**"):

- (a) an assignment for security purposes of its rights in respect of the Senior Loan;
- (b) a security interest in its interest in the Related Loan Security (including without limitation the Mortgage which will be transferred by the Originator to the Mortgagee pursuant to the Mortgage Assignment);
- (c) an assignment for security purposes of its rights and claims under the other Transaction Documents to which it is a party;
- (d) a security interest in its claims against the Trusted Parties;
- (e) a security interest in its rights to all monies standing to the credit of the Issuer Accounts; and
- (f) a security interest in its interest in any Eligible Investments made by it or on its behalf.

For the avoidance of doubt, the Issuer Capital Proceeds Account and the amounts or claims representing the share capital proceeds of the Issuer (paid-up, uncalled or contingent) and any interest thereon will not form part of the Issuer Security (the "**Excepted Assets**").

**Issuer Intercreditor Agreement:**

The Issuer, the Trustee and the other Issuer Secured Creditors (other than the Noteholders) will enter into an intercreditor agreement (the "**Issuer Intercreditor Agreement**") pursuant to which, *inter alia*, the Issuer Secured Creditors will acknowledge the Priorities of Payments.



**Governing law:**

The Notes and the other Transaction Documents will be governed by German law except for the Issuer Swap Agreement, the Liquidity Facility Agreement, the Account Bank Agreement, the Agency Agreement and the Issuer Deed of Charge and Assignment as well as an English law collateral transfer clause contained in the Loan Sale Agreement which will be governed by English Law.

## RISK FACTORS

*Set out in this section is an outline of certain issues of which prospective Noteholders should be aware before making a decision whether or not to invest in Notes of any Class. The following statements are not intended to be exhaustive. Therefore, prospective Noteholders should read also the detailed information set out elsewhere in this Prospectus and form their own views and consult their own professional advisors before making any investment decision. In addition, investors should be aware that the risks described may combine and thus modify one another.*

### **I. Considerations relating to the Notes**

#### **1. Liability under the Notes**

The Issuer is the only entity which has obligations to pay principal and interest in respect of the Notes. The Notes will not be obligations or responsibilities of, or guaranteed by, any other entity, including (but not limited to) Eurohypo (in any capacity), the Joint Bookrunners, the Trustee, the Mortgagee, the Share Trustee, the Liquidity Bank, the Servicer, the Special Servicer, the Paying Agents, the Agent Bank, the Corporate Services Provider, the Issuer Swap Counterparty and the Account Bank, or by any entity affiliated to any of the foregoing.

#### **2. Limited resources of the Issuer**

The Notes will be limited recourse obligations of the Issuer. The ability of the Issuer to meet its obligations under the Notes will be dependent upon the receipt by it in full of (a) principal and interest from the Obligors under the Senior Loan and (b) certain indemnity payments (if any) payable by the Originator, (c) payments (if any) due from the Issuer Swap Counterparty, (d) interest income on the Issuer Accounts and (e) the receipt of funds (if available to be drawn) under the Liquidity Facility Agreement. Other than the foregoing, the Issuer is not expected to have any other funds available to it to meet its obligations under the Notes.

Upon enforcement of the Issuer Security, the Trustee will, in practice, have recourse only to the Senior Loan and the Issuer's interest in the Related Loan Security and to any other assets of the Issuer then in existence as described in this document. It should be noted that, in certain limited circumstances, the Issuer will not be able to make any further drawings under the Liquidity Facility Agreement.

#### **3. Ratings of the Notes**

The ratings assigned to each Class of Notes by the Rating Agencies are based on the Senior Loan, the Related Loan Security, the Valuation of each Property and other relevant structural features of the transaction, including, among other things, the short term and long term unsecured, unguaranteed and unsubordinated debt ratings of the Liquidity Bank and the Issuer Swap Counterparty. These ratings reflect only the views of the Rating Agencies.

The ratings address the likelihood of full and timely receipt by any of the Noteholders of interest on the Notes and the likelihood of receipt by any Noteholder of principal of the Notes by the Final Maturity Date. There can be no assurance that any such ratings will continue for any period of time or that they will not be reviewed, revised, suspended or withdrawn entirely by any of the Rating Agencies as a result of changes in or unavailability of information or if, in the judgment of the Rating Agencies, circumstances so warrant. A qualification, downgrade or withdrawal of any of the ratings mentioned above may impact upon the market value and/or liquidity of the Notes of any Class.

Credit rating agencies other than Fitch and S&P could seek to rate the Notes (or any Class of them) without having been requested to do so by the Issuer, and if such unsolicited ratings are lower than the comparable ratings assigned to the Notes by Fitch and S&P, those unsolicited ratings could have an adverse effect on the market value and/or liquidity of the Notes of any Class. In this Prospectus, all references to ratings in this Prospectus are to ratings assigned by the Rating Agencies (namely Fitch and S&P).

#### **4. Ratings confirmations**

Under the Transaction Documents, the Trustee may determine whether or not any event, matter or thing is, in its opinion, materially prejudicial to the interests of Noteholders of any class (each, a "**Class of Noteholders**"), or, as the case may be, all the Noteholders, and if the Trustee will certify that any such event, matter or thing is, in its opinion, materially prejudicial, such certificate will be conclusive and binding upon the Issuer and the Noteholders. In making such a determination, the Trustee will be entitled to take into account, among other things, any confirmation by the Rating Agencies (if available) that the then current rating of the Notes of the relevant Class would or, as the case may be, would not, be adversely affected by such event, matter or thing.

However, it should be noted that the decision as to whether or not to reconfirm any particular rating may be made on the basis of a variety of factors and no assurance can be given that any such reconfirmation will not be given in circumstances where the relevant proposed matter would materially adversely affect the interests of Noteholders of a particular Class. The Rating Agencies, in assigning credit ratings, do not comment upon the interests of holders of securities (such as the Notes). In addition, no assurance can be given that the Rating Agencies will provide any such reconfirmation.

#### **5. Absence of secondary market; limited liquidity**

Application has been made to the Irish Stock Exchange for the Notes to be admitted to the regulated market of the Irish Stock Exchange and to trading on its regulated market. There is not, at present, a secondary market for the Notes. There can be no assurance that a secondary market in the Notes will develop or, if it does develop, that it will provide Noteholders with liquidity of investment, or that it will continue for the life of the Notes. In addition, the market value of certain of the Notes may fluctuate with changes in prevailing rates of interest and/or credit spreads. Consequently, any sale of Notes by Noteholders in any secondary market which may develop may be at a discount to the original purchase price of those Notes.

#### **6. Availability of Liquidity Facility**

Under the Liquidity Facility Agreement, the Liquidity Bank will, under and in accordance with the terms of the Liquidity Facility Agreement, make available to the Issuer the €40,000,000 Liquidity Facility to enable the Issuer to make payments of interest in respect of the Notes and certain other senior amounts. In certain circumstances after the enforcement of the Senior Loan, the Liquidity Facility may cease to be available to make note interest payments in respect of certain Classes of Notes. See "ISSUER ACCOUNTS AND CREDIT STRUCTURE – Liquidity Facility". The Liquidity Facility will not be available to the Issuer to enable it to make any payment of principal payable in respect of the Notes of any Class.

The initial Liquidity Facility Agreement will expire 364 calendar days after the Closing Date, although it is extendable. The Liquidity Bank is not obliged to extend or renew the Liquidity Facility at its expiry, but if it does not renew or extend the Liquidity Facility on request then the Issuer may, subject to certain terms, be required to make a Liquidity Stand-by Drawing and place the proceeds of that drawing on deposit in the Liquidity Stand-by Account. See "ISSUER ACCOUNTS AND CREDIT STRUCTURE – Liquidity Facility".

#### **7. Subordination of Class B Notes, Class C Notes, Class D Notes and Class E Notes**

After acceleration of the Notes, payments of principal and interest in respect of the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes will be subordinated to payments of principal and interest in respect of the Class A Notes. In addition, payments of principal and interest in respect of the Class C Notes, the Class D Notes and the Class E Notes will be subordinated to payments of principal and interest in respect of the Class B Notes. Further, payments of principal and interest in respect of the Class D Notes and the Class E Notes will be subordinated to payments of principal and interest in respect of the Class C Notes and payment of principal and interest in respect of the Class E Notes will be subordinated to payments of principal and interest in respect of the Class D Notes.

If, on any Note Interest Payment Date when there are Class A Notes outstanding, the Issuer has insufficient funds to make payment in full of interest due on the Class B Notes and/or the Class C Notes and/or the Class D Notes and/or the Class E Notes, then the Issuer will be entitled (under

Condition 4(j) of the Notes (*Deferral of Interest Payments*) to defer payment of that amount until the following Note Interest Payment Date. If there are no Class A Notes then outstanding (but there are Class B Notes outstanding), the Issuer will be entitled to defer payments of interest in respect of the Class C Notes, the Class D Notes and the Class E Notes. If there are no Class A Notes or Class B Notes outstanding (but there are Class C Notes outstanding) the Issuer will be entitled to defer payments of interest in respect of the Class D Notes and the Class E Notes. If there are no Class A Notes, Class B Notes or Class C Notes outstanding (but there are Class D Notes outstanding) the Issuer will be entitled to defer payments of interest in respect of the Class E Notes only. In all of these circumstances there will be no Note Event of Default.

The terms on which the Issuer Security will be held will provide that, upon enforcement, certain payments (including all amounts payable to any receiver and the Trustee, all amounts due to the Servicer, the Special Servicer, the Corporate Services Provider, the Account Bank, the Paying Agents, the Agent Bank, the Issuer Swap Counterparty (other than Subordinated Swap Amounts) and all payments due to the Liquidity Bank under the Liquidity Facility Agreement (other than in respect of Liquidity Subordinated Amounts) will be made in priority to payments in respect of interest and principal (where appropriate) on the Class A Notes. Upon acceleration of the Notes, all amounts owing to the Class A Noteholders will rank higher in priority to all amounts owing to the Class B Noteholders, all amounts owing to the Class B Noteholders will rank higher in priority to all amounts owing to the Class C Noteholders, all amounts owing to the Class C Noteholders will rank higher in priority to all amounts owing to the Class D Noteholders, and all amounts owing to the Class D Noteholders will rank higher in priority to all amounts owing to the Class E Noteholders.

#### **8. Conflict of interests**

The Trustee will be required, in performing its duties as trustee under the Issuer Trust Agreement, to have regard to the interests of all the Noteholders together. However, if (in the sole opinion of the Trustee) there is conflict between the interests of the holders of one or more Classes of Notes and the interests of the holders of one or more other Classes of Notes, then the Trustee will be required in certain circumstances to have regard only to the interests of the holders of the Most Senior Class of Notes then outstanding. For these purposes, the interests of individual Noteholders will be disregarded and the Trustee will determine interests viewing the holders of any particular Class of Notes as a whole.

Conflicts of interest may arise between the Issuer and Eurohypo, firstly, because Eurohypo is the Originator under the Credit Agreement and, secondly, because Eurohypo intends to actively continue to finance real estate-related assets in the ordinary course of its business. During the course of its business activities, Eurohypo may operate, service, acquire or sell properties, or finance loans secured by properties, which are in the same markets as the properties included in a portfolio. In such cases, the interests of Eurohypo may differ from, and compete with, the interests of the Issuer and decisions made with respect to those assets may adversely affect the value of the properties included in a portfolio and therefore the ability to make payments under the Notes.

There will be no restrictions on either the Servicer or the Special Servicer preventing them from acquiring Notes or servicing loans for third parties, including loans similar to the Senior Loan. The properties securing any such loans may be in the same market as the properties included in the portfolio. Consequently, personnel of the Servicer or the Special Servicer, as the case may be, may perform services on behalf of the Issuer with respect to the Senior Loan at the same time as they are performing services on behalf of other persons with respect to similar loans. Despite the requirement on each of the Servicer and the Special Servicer to perform their respective servicing obligations in accordance with the terms of the Servicing Agreement, such other servicing obligations may pose inherent conflicts for the Servicer or the Special Servicer.

The Servicing Agreement will require the Servicer and the Special Servicer to service the Senior Loan in accordance with the Servicing Standard. Certain discretions are given to the Servicer and the Special Servicer in determining how and in what manner to proceed in relation to the Senior Loan. Further, as Eurohypo may acquire Notes, it could, at any time, hold any or all of the most junior Class of Notes outstanding from time to time, and the holder of that class may have interests which conflict with the interests of the holder of the Notes, or more senior Classes of Notes. However, the Servicer and the Special Servicer will be required under the Servicing Agreement to act in the best interests of all of the Noteholders.

Affiliates of the Managing Agent may own or manage properties other than the Properties, including competing properties. Accordingly, the Managing Agent and the Borrowers may experience conflicts of interest in the management of the Properties. Although this potential for conflicts of interest exists, the property managers have agreed to act in accordance with the standard set out in the respective duty of care agreement.

#### **9. *Withholding or deduction under the Notes***

In the event that a withholding or deduction for or on account of any taxes are imposed by law, or otherwise applicable, in respect of amounts payable under the Notes, neither the Issuer nor any Paying Agent or any other entity is obliged to gross up or otherwise compensate Noteholders for the lesser amounts which the Noteholders will receive as a result of the imposition of such withholding or deduction. The imposition of such withholding or deduction would oblige the Issuer to redeem the Notes at their then Principal Amount Outstanding (plus accrued interest) thereby shortening the average lives of the Notes.

#### **10. *Yield and prepayment considerations***

The yield to maturity of the Notes of each Class will depend on, among other things, the amount and timing of receipt by the Issuer of amounts of principal in respect of the Senior Loan (and payment thereof to Noteholders) and the purchase price paid by the holders of the Notes. Such yield may be adversely affected by one or more prepayments in respect of the Senior Loan (and payment thereof to Noteholders).

#### **11. *Swap Counterparty Risk***

The Senior Loan bears interest at a fixed rate, provided that, as long as a Swap Termination Trigger Event has not occurred, the interest will be payable at a floating rate based on EURIBOR which is determined on each of the Loan Interest Payment Dates, whereas the Notes will bear interest at a floating rate based on EURIBOR which is determined on each Interest Determination Date which will not be the same day as each of the Loan Interest Payment Dates, exposing the Issuer to potential base rate risk in respect of payment obligations under the Notes. The Issuer Swap Agreement will be entered into in order to hedge against the potential interest rate mismatches between the floating rate interest payments received by the Issuer under the Senior Loan and the floating rate interest payment obligations of the Issuer under the Notes resulting from different determination dates being applicable to determine EURIBOR as the base rate for calculating the interest rates in respect of (i) the Senior Loan and (ii) the Notes.

The income of the Borrowers (which is comprised, primarily, of rental income in respect of commercial properties) does not vary according to prevailing interest rates. The Loans bear interest at a floating rate exposing the Borrowers to a potential interest rate risk in respect of their payment obligations under the Loans.

Pursuant to the terms of the Finance Documents, RRZ KG and Kö KG have entered into, and are required to maintain, interest rate hedging arrangements to hedge their interest rate exposure with respect to their parts in the Loans until the Final Maturity Date. The Senior Hedging Agreements, agreed upon by RRZ KG and Kö KG and the Senior Hedge Counterparty on 4 August 2006 cover the drawn amount of RRZ KG and Kö KG under their respective parts in the Senior Loan. Under the Senior Hedging Agreements, RRZ KG and Kö KG periodically pay an amount representing a fixed percentage of the Senior Loan to the Senior Hedge Counterparty in return for an amount representing the relevant part of the Senior Loan multiplied by the floating rate of interest at the relevant time. Accordingly, any drawn amount of RRZ KG and/or Kö KG under the Junior Loan is hedged pursuant to the Junior Hedging Agreement.

Pursuant to the terms of the Finance Documents, with respect to OP KG and SM KG hedging will not be required during a period of up to 12 month from the Loan Origination Date as long as the interest swap rate for the term running from any given point in time that any such Loan is outstanding until 12 months after the later of the anticipated sale of Schwanenmarkt Property and the Opernpassagen Property as contemplated in the borrowers' business plan (or if such disposals have not been made during such period, until the Final Maturity Date) does not exceed 4.25 per cent.

If a Borrower were to default in its obligation under the relevant Hedging Arrangement, or if the Senior Hedge Counterparty or, if applicable, the Junior Hedge Counterparty defaults in respect of its respective obligations under the Hedging Arrangements, the relevant Borrower might have insufficient funds to make payments due at that time in respect of its part in the Loans. In these circumstances, the Issuer may not have sufficient funds to make payments in full on the Notes and Noteholders could, accordingly, suffer a loss.

If the Facility Agent is notified that the Senior Hedging Arrangement is terminated with respect to the relevant Borrower, such Borrower is no longer entitled to elect to pay interest at a floating rate based on EURIBOR. The Issuer has entered into a contingent hedging arrangement with the Issuer Swap Counterparty with a view to ensuring that the Issuer will be able to continue to make payments of interest under the Notes if any Senior Hedging Arrangement terminates.

In the event of the insolvency of the Issuer Swap Counterparty, the Issuer will be treated as an unsecured general creditor of the Issuer Swap Counterparty. Consequently, the Issuer will be subject to the credit risk of the Issuer Swap Counterparty. Likewise, in the event of the insolvency of the Senior Hedge Counterparty, the relevant Borrower will lose protection against the interest rate exposure under the Senior Loan. The provisions of the Senior Hedging Arrangements and the Issuer Swap Agreements require the Senior Hedge Counterparty and the Issuer Swap Counterparty, respectively, to have a certain minimum rating and to take certain remedial measures should the rating of the Senior Hedge Counterparty or, if applicable, the Issuer Swap Counterparty fall below such minimum rating.

The Issuer Swap Counterparty will be entitled, in certain circumstances to terminate the Issuer Swap Agreement. Noteholders may suffer a loss if the Issuer Swap Agreement is terminated and the Issuer, as a result of such termination, does not receive sufficient funds to make a payment to the Noteholders as a result of the early termination. See "ISSUER SWAP AGREEMENT".

## **12. Risks Relating to Servicing**

In the circumstances described under "SERVICING", the Servicer and/or the Special Servicer may cease to act as such under the Servicing Agreement. Although the Servicing Agreement provides that the termination of the appointment of the Servicer or the Special Servicer may not take effect until such time as a satisfactory successor has been appointed, this will not prevent the Servicer and/or the Special Servicer from terminating its respective appointment for good cause (*aus wichtigem Grund*) with immediate effect. Further, there can be no assurance that a successor could be found who would be willing to service the Senior Loan at a commercially reasonable fee, or at all.

## **13. Appointment of substitute Servicer**

Prior to or contemporaneously with any termination of the appointment of the Servicer, it would first be necessary for the Issuer to appoint a substitute Servicer approved by the Trustee. The ability of any substitute Servicer to administer the Senior Loan successfully would depend on the information and records then available to it. There is no guarantee that a substitute Servicer could be found who would be willing to administer the Senior Loan at a commercially reasonable fee, or at all, on the terms of the Servicing Agreement (even though the Servicing Agreement will provide for the fees payable to a substitute Servicer to be consistent with those payable generally at that time for the provision of commercial mortgage administration services). The fees and expenses of a substitute Servicer would be payable in priority to payments due under the Notes.

## **II. Considerations relating to the Properties**

### **1. Aspects of Real Estate Lending**

Real estate property values and net operating income can be affected by various factors, including the volatility of property revenue and the relevant property's operating leverage, which generally refers to (i) the percentage of total property operating expenses in relation to total property revenue, (ii) the breakdown of property operating expenses between those that are fixed and those that vary with revenue, and (iii) the level of capital expenditure required to maintain the property and retain or

replace tenants. Even if the current net operating income is sufficient to cover debt service, there can be no assurance that this will continue to be the case in the future.

The net operating income and market value of the Properties may be adversely affected by a number of factors, including, but not limited to, national, regional and local economic conditions (which may be adversely affected by business closures or slowdowns and other factors), local property market conditions, access to public transportation and major roads, the willingness and ability of the Borrowers to provide capable management and adequate maintenance of the retail properties, retroactive changes to building or similar regulations and increases in operating expenses. In addition, other factors may adversely affect the Properties' value without affecting the current net operating income, including changes in governmental regulations, fiscal policy and planning or tax laws, potential environmental legislation or liabilities or other legal liabilities, supply and demand of buildings and the availability of refinancing.

Even good construction will deteriorate over time if adequate maintenance is not scheduled and performed in a timely fashion. If, during the term of the Senior Loan, competing properties of a similar type are built in the areas where the Properties are located or similar properties in the vicinity of the encumbered Properties are substantially updated and refurbished, the value and net operating income of the Properties could be reduced.

The quality of a building's existing tenants and property manager, the attractiveness of the building and the surrounding area to prospective tenants and, if based on commercial leases, the customers or clients of the respective tenants, access to public transportation and major roads and the public perception of safety in the surrounding neighbourhood also contribute to such competition.

The Properties may not readily be convertible to an alternative use if the Properties were to become unprofitable due to competition, age of the improvements, decreased demand, regulatory changes or other factors. The conversion of commercial and residential properties to alternate uses generally requires substantial capital expenditure. Thus, if the operation of the Properties becomes unprofitable such that the Borrowers become unable to meet their obligations under the Loans, the liquidation value of the Properties may be substantially less, relative to the amount owing on the Loans, than would be the case if the Properties were readily adaptable to other uses.

## **2. *Geographic Concentration; the Economy of the Federal Republic of Germany***

The Properties are concentrated in North-Rhine Westfalia and, as such, the performance of the Properties will be dependent upon the strength of the local economy of such part of the Federal Republic of Germany and of the German economy generally.

A decline in the commercial property market, in the financial condition of a major tenant or a general decline in the local, regional or national economy will tend to have a more immediate effect on the net operating income of properties with short-term revenue sources, such as the Properties, and may lead to higher rates of delinquency or defaults under the occupational leases of the Properties. This could adversely affect the Borrowers' ability to meet their obligations under the Credit Agreement and, in turn, have an impact on the Issuer's ability to make payments on the Notes.

As the Issuer only holds one Senior Loan, losses on the Senior Loan will have a substantial adverse effect on the ability of the Issuer to make payments under the Notes. In addition, the concentration of the Properties in the geographic area of the western part of the Federal Republic of Germany may increase the risk that adverse economic or other developments or a natural disaster affecting such region could increase the frequency and severity of losses on the Senior Loan. Details of the location of the various Properties are set out in "DESCRIPTION OF THE PROPERTIES".

## **3. *Competition***

Retailing in Germany is highly competitive, with shopping centres representing only a small proportion of the overall retail market and competing against other sectors such as town centres, retail parks and superstores.

The principal factors affecting a Property's ability to attract and retain tenants include the quality of the building, the amenities and facilities offered, the convenience and location of a Property, the amount of

space available to be let, the identity and nature of its tenants and the transport infrastructure (including availability and cost of parking) in comparison to competing areas. In addition, the Properties may in the future be affected by internet shopping, although it is expected that the range of leisure and food related activities offered by the Properties should not be materially adversely affected by an increase in internet shopping.

#### **4. Late payment or non-payment of rent**

There is a risk that rental payments due from any of the Borrowers' tenants on or before the relevant Loan Interest Payment Date will not be paid on the due date or not paid at all. If any payment of rent is not received on or prior to the immediately following Loan Interest Payment Date and any resultant shortfall is not otherwise compensated for from other resources, there may be insufficient cash available to the Borrowers to make payments to the Issuer under the Senior Loan. Such a default by the Borrowers may not of itself result in a Note Event of Default since the Issuer will have access to other resources (specifically, funds made available under the Liquidity Facility Agreement to make certain payments under the Notes). However, no assurance can be given that such resources will, in all cases and in all circumstances, be sufficient to cover any such shortfall and that a Note Event of Default will not occur as a result of the late payment of rent.

#### **5. Risks Relating to Tenants and Occupational Leases**

The net operating income from the Properties may be reduced, and the Borrowers' ability to repay the Loans impaired, as a result of, *inter alia*, an increase in vacancy rates, which may occur from time to time, a decline in market rental rates as occupational leases are renewed or entered into with new tenants, an increase in operating expenses of the Properties, non-payment or late payment of amounts due by the tenants under their occupational leases, and/or an increase in capital expenditures needed to maintain the Properties. There can be no assurance that tenants will renew leases upon expiration. The income from, and the market value of, the Properties would be adversely affected if space of the Properties could not be re-let. The age, construction, quality and design of the Properties may affect their occupancy levels as well as the rents that may be charged for individual leases. Over time, there may be a requirement for increased maintenance costs and necessary capital improvements in order to maintain the Properties and to attract and satisfy major tenants. No assurance can be given that tenants of the Properties will continue making payments under their occupational leases or that any such tenants will not become insolvent or become subject to insolvency proceedings in the future or, if any such tenants become subject to insolvency proceedings, that they will continue to make rental payments. Any tenant may, from time to time, experience a downturn in its business, which may weaken its financial condition and result in a reduction or failure to make rental payments when due. If a tenant defaults on its obligations under its occupational lease, the Borrowers will have to enforce their rights as lessors. Such enforcement is most likely to result in a payment delay and in substantial costs to be incurred by the relevant Borrower, including costs incurred in renovating and reletting the Properties.

#### **6. Terms of the Occupational Leases**

Some of the Occupational Leases will expire prior to the Expected Maturity Date (see also "*Written Form Requirement*") below. In addition, some Occupational Leases may terminate earlier than anticipated if the relevant tenant surrenders its Occupational Lease or defaults in the performance of its obligations. Further, Occupational Leases contain break clauses which, if exercised, will lead to a termination of the relevant Occupational Lease. As such, the Borrower will have to either seek to renew such tenancies or find new occupational tenants for the vacated premises.

"**Occupational Lease**" means any lease or other right of occupation or right to receive rent to which a Property may at any time be subject, or any other document designated as such by the Facility Agent and the Obligors' agent under the Credit Agreement.

Some of the current occupational leases and licences in respect of the Properties make provision for an element of rent to be calculated on the basis of the occupational tenant's turnover. However, the turnover component has not been taken into account when calculating the Annual Passing Rent, with the exception of the Occupational Leases regarding the parking garage of the Kö-Galerie Property and the Schwanenmarkt Property. Because this element of rental income is dependent upon the trading performance of the relevant occupational tenants, there can be no assurance that the full turnover rent



will become payable. Occupational Leases entered into in the future are likely to contain provisions for such turnover rents. Accordingly, there can be no assurance that a Borrower's rental receipts from such occupational tenants will remain at previous levels and be of a sufficient amount on an ongoing basis to enable a Borrower to meet its obligations under its Credit Agreement. See further "DESCRIPTION OF THE PROPERTIES".

Pursuant to the relevant Property Management Agreement, the Managing Agent has agreed to assist the Borrowers in the process of marketing vacant premises at the Properties and negotiating new leases or Occupational Lease renewals. In addition, under the terms of the Credit Agreement, subject to certain exceptions, no duration of any Occupational Lease may be amended, no rent adjustments (except for rent increases) may be agreed upon, no material amendment to an Occupation Lease may be agreed upon, no surrender or forfeiture proceedings in respect of any Property may be commenced, no consent to any assignment of any tenant's interest under any Occupational Lease may be given, no claim or acceptance of any claim that any Occupational Lease is frustrated, repudiated or otherwise terminated (unless validly claimed by the tenant) may be given without the consent of the Facility Agent, subject to certain thresholds as specified under the Credit Agreement.

There can be no assurance that leases on terms (including rent payable and covenants of the landlord) equivalent to those applicable to the Occupational Leases in place on the Closing Date will be obtainable in the future, that market practice will not have changed or that the circumstances of prospective tenants will not make some or all of such provisions inappropriate. In addition, although the Managing Agent is experienced in such matters, there can be no assurance that it will be able to find tenants of comparable quality for any vacated premises or be capable of negotiating Occupational Leases on equivalent lease terms. Further, the discretion as to the matters described above may result in a diminution in the quality of the tenants of the Properties or the terms of their Occupational Leases over the term of the Notes.

#### **7. *Written Form Requirement***

German statutory law and relevant case law provide for strict requirements of written form for lease agreements. In general, all parts of the agreement (including supplemental agreements) have to be attached to each other. A review with respect to a sample of the lease agreements revealed evidence of breaches of the written form requirement in certain cases. A number of the sample showed insufficiencies of some degree in respect of the written form requirement. However, it is difficult to establish on the face of the lease agreements whether the written form requirement has been complied with. If a lease agreement lacks written form, it is not invalid, but is deemed to be entered into for an indefinite period of time (instead of the term agreed by the parties). As a consequence, the lease can be terminated after one (1) year and thereafter at the end of a quarter with six (6) months notice.

#### **8. *Borrowers Liability to Provide Services***

Some parts of the Properties are not intended to be let to tenants and comprise areas such as service ways and other communal areas which are used by tenants and visitors collectively, rather than being attributable to one particular unit or tenant ("**Common Parts**"). Subject to certain exceptions, the majority of the Occupational Leases contain a provision for the relevant tenant to make a contribution towards the cost of maintaining the Common Parts calculated with reference, *inter alia*, to the size of the premises demised by the relevant Occupational Lease. The contribution forms part of the service charge payable to each of the Borrowers (in addition to the principal rent) in accordance with the terms of the relevant Occupational Lease.

The liability of each of the Borrowers to provide the relevant services, however, is generally not conditional upon all such contributions being made and consequently any failure by any tenant to pay the service charge contribution on the relevant due date or at all would oblige each of the Borrowers to provide for the shortfall from its own monies. Each of the Borrowers would (subject to certain exceptions) also need to pay from its own monies service charge contributions in respect of any vacant units, which would reduce amounts available to make payments on the Notes.

#### **9. *Risks relating to Property Management Agreements***

The net cash flow realised from and/or the residual value of the Properties may be affected by

management decisions. The Managing Agent has broad decision-making rights under the Property Management Agreements. In particular, each property manager is, subject to certain general restrictions, responsible for finding and selecting new tenants on the expiry of existing tenancies (and their replacements) and for negotiating the terms of the tenancies with such tenants. While the Managing Agent is experienced in managing retail property and in particular, the Properties, there can be no assurance that their decisions or those of a future property manager will not adversely affect the value and/or cashflows of the Properties. There can be no assurance that, were a property manager to resign or its appointment be terminated, a suitable replacement service provider could be found in a timely manner, and engaged on terms acceptable to the Facility Agent.

Affiliates of the Managing Agent may own or manage properties other than the Properties, including competing properties. Accordingly, the Managing Agent and the Borrowers may experience conflicts of interest in the management of the Properties. Although this potential for conflicts of interest exists, the property managers have agreed to act in accordance with the standard set out in the respective duty of care agreement.

#### **10. The Rights of the Tenants**

Pursuant to the terms of the Occupational Leases, each Borrower is under an obligation, *inter alia*, to allow each tenant quiet enjoyment of the premises that are leased to it and to provide services in respect of the common parts of the Properties, irrespective of whether certain parts of the relevant Properties are unlet. In such circumstances, the relevant Borrower would have to meet any shortfall in recovering the costs of the services or risk that the related tenants would exercise their right of set-off, if any. Under German law, if any of the Borrowers defaults on its obligations under an Occupational Lease, a tenant could exercise a right of set-off against such Borrower or have the right to reduce the rent due.

Subject to certain exceptions, the majority of the Occupational Leases of the Properties permit the relevant tenants to set-off amounts due to them from each of the Borrowers against rent payable under their respective Occupational Leases if the claim is undisputed or if the tenant has obtained a prior court ruling allowing for such set-off. In certain circumstances, tenants may have the right to abate rent. The most significant liabilities of the Borrowers to such tenants will relate to their obligation as landlords to apply service charge payments towards the upkeep of the Properties and to ensure that the tenants have the use of the premises granted to them under their Occupational Leases. The property managers have entered into duty of care agreements with the Facility Agent under which they agree to perform their obligations under the relevant Property Management Agreements with regard to the interest of, *inter alios*, the Finance Parties.

#### **11. Limitations of Valuations**

In general, valuations represent the analysis and opinion of qualified valuers and are not guarantees of present or future value. One valuer may reach a different conclusion than the conclusion in relation to a property that would be reached if a different valuer were appraising such property. Moreover, valuations seek to establish the amount that a typically motivated buyer would pay a typically motivated seller and, in certain cases, may have taken into consideration the purchase price paid by the existing property owner. There can be no assurance that the market value of the Properties will continue to equal or exceed the valuation contained in the respective valuation. If the market value of the Properties fluctuates, there can be no assurance that the market value will be equal to or greater than the unpaid principal and accrued interest on the Facilities and any other amounts due under the Senior Loan. If the Properties are sold following a Loan Event of Default, there can be no assurance that the net proceeds of such sale will be sufficient to pay in full all amounts due under the Credit Agreement.

#### **12. Insurance**

The Borrowers have covenanted in the Credit Agreements to have the Properties and plant and machinery thereon (including fixtures and improvements) adequately insured and that the insurance has been concluded on a full reinstatement basis. The Borrowers have also covenanted to maintain third party liability insurance, public law liabilities insurance and not less than two years' loss of rent insurance. The Credit Agreement provides that the Facility Agent is to be named as the co-insured under the insurance policies to be maintained by the relevant Borrower in respect of its Property. Each

Borrower has also taken out insurance against acts of terrorism as at the date hereof.

Following any damage to or destruction of all or part of the Properties, subject to certain exceptions, the Borrowers are contractually obliged pursuant to the terms of the Occupational Leases to rebuild, replace or restore the relevant damaged Properties. According to German law, a tenant is entitled to terminate a lease for good cause if the premises are destroyed. It is uncertain, however, whether an exclusion of such statutory right is, or could be, effectively included in the lease contracts.

If a claim under an insurance policy is made but the relevant insurer under that policy fails to make or delays a payment in respect of that claim, this could prejudice the ability of the Borrower to make payments under the Loans, which would in turn prejudice the ability of the Issuer to make payments in respect of the Notes. Under the terms of the Credit Agreement, the relevant Borrower will be required to maintain the insurance policies with an insurance company or underwriter (in the case of a group of insurance companies or a group of underwriters, on a weighted average rating basis) that has a long term unsecured debt rating of at least A by Fitch and A by S&P. As these requirements were not entirely fulfilled on the Credit Agreement Signing Date, each Borrower has undertaken to use its best endeavours to comply therewith by 1 January 2007, and will be obliged to comply therewith by the tenth Loan Business Day following such date. In the interim existing insurance at the time of acquisition has been supplemented with additional insurance to meet the scope of required insurance. In case that any Borrower is not registered on such date in the land register as owner with respect to the relevant Property, such Borrower and the Security Agent on behalf of the Lenders may mutually agree upon a later date with respect to such Property.

Certain types of risks and losses (such as losses resulting from war, nuclear radiation, radioactive contamination and heaving or settling of structures) may be or become either uninsurable or not economically insurable or may not be covered by the required insurance policies. Other risks might become uninsurable (or not economically insurable) in the future. If an uninsured or uninsurable loss were to occur, the Borrowers might not have sufficient funds to repay in full all amounts owing under or in respect of the Credit Agreement.

### **13. Environmental risks**

Under current German law, the rules on rehabilitating contaminated sites are contained primarily in the Federal Soil Protection Act (*Bundesbodenschutzgesetz*). The class of persons under a duty of rehabilitation in respect of a particular property is wide and includes (a) any person who caused harmful change to the soil (*Handlungsstörer*) and such person's universal successor (*Gesamtrechtsnachfolger*); (b) the owner of the property (*Zustandsstörer*) and, under certain conditions, the former owner; and (c) the party exercising actual control over the property. Any of these persons can be held liable by the competent public authorities for investigation measures, clean-up work or clean-up costs.

The selection of the person responsible for investigation measures, clean-up work or clean-up costs in respect of a property is in principle a matter for the discretion of the public authority. The relevant authority, in selecting the responsible person, must be guided by the greatest possible effectiveness of the resulting work. An obligation to investigate or clean up a site relies upon the relevant authority issuing an order. If no voluntary action is taken the authority is empowered to compel the execution of measures subject to the aforementioned order.

In general, any mortgagee under any mortgage over contaminated property is not liable for costs attached to investigations or the cleaning up of a property prior to enforcement of such mortgage. Moreover under current German law, a mortgagee does not take possession of a property upon enforcement of a mortgage and it is generally considered unlikely that a mortgagee would incur any liability. However, if the public authority has cleaned up the property instead of the Borrowers and has unpaid expenses, such expenses, in enforcement, might rank ahead of the Issuer's claim.

Any environmental surveys, monitoring, clean up or decontamination costs, if imposed on the Borrowers, could affect their ability to service their obligations under the Credit Agreement. When such measures or their costs are imposed on a tenant this might affect its ability to pay rents to the Borrowers, thereby affecting the Borrowers' ability to service their obligations under the Facilities. It might also adversely affect the value of the Properties and consequently the Loan Security granted by the Borrowers.

Furthermore, a tenant might be entitled to suspend or reduce its obligations to pay the rent if its quiet enjoyment under an Occupational Lease is disrupted as a consequence of contaminated property. This may affect the Borrowers' ability to service their obligations under the Credit Agreement.

#### **14. Mining risks**

With respect to the RRZ Property, there is the risk that the buildings on such Property might get damaged as the result of mining activities which were conducted beneath the RRZ Property in earlier times. A waiver of certain rights potentially arising against the mining companies as a result of those damages is registered in the respective land registers. Therefore, the RRZ Borrower may suffer a loss if such damages should materialise and may in this case no longer be able to pay the amounts due under the Senior Loan. Also, the value of the RRZ Property may be significantly lower in this case than as assessed in the current valuation report.

#### **15. Monument protection**

With respect to the Kö Galerie Property, even though its buildings are not protected under monument protection law, changes of the buildings have to be discussed with the City of Düsseldorf due to the fact that the buildings on Königsallee which are adjacent to the Kö Galerie Property, are protected as monuments.

#### **16. Repairing obligations**

Under German civil law, landlords have the obligation to maintain the entire leased premises (including structure, roof and exterior) in proper letting condition. The costs related to such obligations cannot always be recovered from tenants (or insurances) in full and would have to be paid by the Borrowers from the net rental income in priority to payments under the Loans.

#### **17. German planning and zoning law**

Because of the area the RRZ Property is located in, it is unlikely that the City of Mülheim would grant permission to any expansion of the mall located on the RRZ Property, in particular if an increase of retail space is intended.

#### **18. Expropriation**

In the Federal Republic of Germany, property may be expropriated (*enteignet*) in connection with the fulfilment of public tasks, such as redevelopment or infrastructure projects. An expropriation must be based on a specific aim and must be indispensable for the general public welfare (*Allgemeinwohl*). In connection with an expropriation (*Enteignung*), adequate compensation, which should be equal to the market value, must be paid to the owner of the property. Generally, the compensation will be paid in money; however, in some cases the owner can be provided with alternative property or securities as compensation.

In the event of an expropriation of any of the Properties, tenants would cease to be obliged to make any further rental payments to the Borrowers and/or assignees of the rent receivables under the relevant leases. The risk for Noteholders is that either the amount received by way of compensation for the expropriation of the Properties or any other compensation may be less than the relevant principal amount outstanding under the Senior Loan. In the event of an expropriation of any of the relevant Properties, the amount of the compensation could lead to a shortfall in funds available to meet the payments due under the Notes, and consequently the Noteholders may suffer a loss.

The Issuer is not aware of any expropriation notice having been issued by any public entity relating to the Properties.

#### **19. Further aspects with regard to the Properties**

The Senior Loan is secured by, *inter alia*, the Mortgage. In general, mortgage lending secured by a mortgage on commercial properties is generally viewed as exposing a lender to a greater risk of loss than mortgage lending with security taken over residential properties since the repayment of loans

secured by income-producing properties is typically dependent upon the successful operation of the related property. If the cash flow from the Properties is reduced (for example, if leases are not obtained or renewed or if tenants default in their obligations under the occupational leases), the Borrowers' ability to repay the Loans may be impaired.

The income from and market value of an office property are, in addition to the general aspects mentioned above, subject to further risks, such as the ability to offer certain amenities to tenants, including sophisticated building systems (such as fibre-optic cables, satellite communications or other base building technological features) which all affect the ability of such property to compete against other office properties in the area in attracting and retaining tenants.

### **III. Considerations relating to the Borrowers**

#### **1. Sufficiency of Assets**

Any one or more of the factors described below could have an adverse effect on the net operating income derived from, or generated by, the Properties. This could in turn cause any of the Borrowers to default under the Credit Agreement or may impact on the ability of any of the Borrowers either to refinance the Loans at maturity or sell any of the Properties in order to repay the Loans and could ultimately have an adverse effect on the liquidation value of the Properties following a Loan Event of Default.

The ability of the Issuer to meet its obligations under the Notes will be dependent upon the receipt by it of funds from the Borrowers under the Finance Documents, the receipt of interest from the Issuer Accounts and payments by the Liquidity Bank under the Liquidity Facility Agreement, payments by the Issuer Swap Counterparty under the Issuer Swap Agreement. Other than the foregoing, the Issuer will not have any other funds available to it to meet its obligations under the Notes and its obligations ranking in priority to, or *pari passu* with, the Notes. Following the transfer of the Senior Loan to the Issuer, the Issuer's recourse under the Senior Loan is generally limited to the Borrowers and their respective assets, including the Properties and the other Loan Security.

Unless repaid previously, a Borrower will be required to repay the Loans on the Loan Maturity Date. The ability of a Borrower to repay its share in the Loans in its entirety on the Loan Maturity Date will depend upon, among other things, its ability to find a lender willing to lend to such Borrower (secured against the respective Property) sufficient funds to enable repayment of the Loans. If the Borrower cannot find such a lender then a Borrower might be forced into selling its Property in circumstances which may not be advantageous in order to repay its share in the Loans.

The business activities of each of the Borrowers are restricted in the Credit Agreement to owning and managing of their interest in the Properties and activities reasonably incidental thereto, see "THE BORROWERS" below. Consequently, the ability of each of the Borrowers to make payments under the Facilities prior to maturity and, therefore, the ability of the Issuer to make payments on the Notes prior to the Final Maturity Date, is dependent on the sufficiency of the net operating income of the Properties.

Following a Loan Event of Default under the Credit Agreement, enforcement of the Loan Security may not be immediate, resulting in a potentially significant delay in the Issuer's recovery of amounts owed by the Borrowers under the accelerated Loans. In the event of an enforcement of the Loan Security after the institution of insolvency proceedings with respect to any of the Borrowers, additional considerations need to be taken into account.

#### **2. Limitations of Representations and Warranties Delivered by the Originator**

None of the Issuer, the Trustee or the Joint Bookrunners is obliged to undertake, has undertaken or will undertake any investigations, searches or other actions as to the Borrowers', the General Partners' or the Limited Partners' status, and each will rely instead solely on the warranties given by the Borrowers in respect of such matters in the Credit Agreement. See "OUTLINE OF LOAN DOCUMENTS".

The sole remedy of each of the Issuer and the Trustee against the Originator in respect of any breach

of warranty relating to the Loan Sale Agreement (if either the breach is material and is not capable of remedy or is capable of remedy and is not remedied within the specified time) will be a claim for losses incurred by the Issuer or the Trustee in connection with or as a result of any such breach of warranty.

#### **IV. Considerations relating to the Credit Agreement and the Loan Security**

##### **1. Limited Payment History**

The Senior Loan was originated on the Loan Origination Date. As such, the Senior Loan does not have a long standing payment history (if any) and, although the Originator had, when granting the Facilities, applied the standards and the diligence of a prudent lender, there can be no assurance that required payments will be made or, if made, will be made on a timely basis. As of the date of this Prospectus, the Borrowers have not made any payment under the Credit Agreement as the first Loan Interest Payment Date is on 15 January 2007.

##### **2. Repayment of the Loans**

The principal amounts of the Loans will be required to be partially prepaid following a 36 months period from the initial drawdown under the Facilities on each relevant Loan Interest Payment Date after payment of certain other senior ranking liabilities (which include scheduled payments of interest thereon). There can be no assurance that each of the Borrowers will have funds available to make such prepayments.

##### **3. Repayment at Loan Maturity Date**

Unless previously repaid, the Loans are subject to repayment in full upon the relevant Loan Maturity Date. Repayment by the Issuer of the Principal Amount Outstanding on the Notes at the Final Maturity Date will be dependent upon the receipt of principal under the Senior Loan on or before relevant Loan Maturity Date. The ability of the Borrowers to repay the Loans will depend, *inter alia*, on their ability to refinance the Loans or sell their Properties and use the sale proceeds to repay the Loans. Accordingly, the ability of the Issuer to repay the Notes in full on or before the Final Maturity Date will depend significantly on the ability of the Borrowers to refinance the Loans or sell Properties.

Failure by any of the Borrowers to refinance the Loans or to sell the Properties on or prior to the Loan Maturity Date may result in such Borrower defaulting on the Senior Loan. In the event of such a default, the Noteholders, or the holders of certain Classes of Notes, may receive by way of principal repayment an amount less than the then Principal Amount Outstanding on their Notes and the Issuer may be unable to pay in full interest due on the Notes. See also "*Sufficiency of Assets*" above.

##### **4. Prepayment**

The Borrowers are obliged to prepay the Facilities (in whole or in part) in certain circumstances. In addition, the Borrowers have the option to prepay (a) all or part of the Facilities at any time upon giving prior notice, or (b) the affected part of the Facilities on the occurrence of certain tax events or the incurrence by the Lenders of any increased costs in connection with the Facilities. These events are beyond the control of the Issuer and may result in the Notes being prepaid earlier than anticipated.

##### **5. Excessive Security**

Pursuant to the excessive security rules of German law, security which is excessive at the relevant origination date (*anfängliche Übersicherung*) will result in the relevant collateral arrangement being void. In the event of subsequent excessive security (*nachträgliche Übersicherung*), any portion of the collateral considered to be excessive would, at the request of the Borrower, have to be released. However, the remainder of the collateral will not be affected. Pursuant to the relevant court precedents, the liquidation value that can be expected to be realised in insolvency proceedings against the collateral provider would be relevant in determining if excessive security exists. No assurance can be given as to how a competent court would view the security structure of this transaction, in particular with regard to the Loan Security provided for in respect of the obligations of the Borrowers under the Credit Agreement. However, the collateral granted pursuant to the German Security Documents should not be deemed to be excessive, in each case, as the collateral is sized

according to the value of the Facilities plus interest as well as anticipated costs and fees (including, *inter alia*, anticipated enforcement costs), which is in line with commercial lending practices in the Federal Republic of Germany and is based on expected foreclosure proceeds.

## **6. Limited share pledges**

The limited partnership interests in the Borrowers, but not the general partnership interests, have been pledged to the Security Agent. As the General Partner has certain control rights with respect to the Borrowers, this could affect the ability of the Security Agent to control the Borrowers upon any exercise of its rights under the pledge of the limited partnership interests.

## **V. GENERAL LEGAL ASPECTS**

### **1. Insolvency Law**

Under German insolvency law, a creditor who is secured by the assignment of receivables by way of security will have a preferential right to such receivables (*Absonderungsrecht*) if insolvency proceedings are opened in respect of its debtor. Enforcement of such preferential right is subject to the provisions set forth in the German Insolvency Code (*Insolvenzordnung*). In particular, the secured creditor may not enforce its security interest itself with respect to movables in possession of the insolvency administrator and receivables (*Forderungen*) that have been assigned by way of security. Instead, the insolvency administrator appointed in respect of the estate of the debtor will be entitled to enforcement. The insolvency administrator is obliged to transfer the proceeds from such enforcement to the creditor. He may, however, deduct from the enforcement proceedings fees which may amount to up to 4 per cent. plus up to 5 per cent. (and in certain cases more than 5 per cent.) of the enforcement proceeds.

Accordingly, the Issuer would have to share in the costs of any insolvency proceedings in respect of the Originator in the Federal Republic of Germany, reducing the amount of money available to repay the Notes, if the sale and assignment of the Senior Loan by the Originator to the Issuer were to be regarded as a secured lending rather than a receivables sale. The Issuer has been advised, however, that the transfer of the Senior Loan would not be construed as an assignment by way of security. Therefore, the Senior Loan would not form part of the insolvency estate of the Originator and the Issuer would have a right to segregation (*Aussonderungsrecht*) of the Senior Loan from the estate of the Originator in the event of its insolvency and, consequently, the cost sharing provisions described above would not apply with respect thereto.

If insolvency proceedings are instituted in respect of any of the Borrowers in the Federal Republic of Germany, the Issuer as holder of the Loan Security will have a right to preferential satisfaction (*abgesonderte Befriedigung*) in respect of the Loan Security, to the extent that the Loan Security comprises moveable objects in possession of the insolvency administrator and/or receivables that have been assigned to the creditor by way of security. In that case, the cost sharing provisions will apply.

Pursuant to Section 103 of the German Insolvency Code (*Insolvenzordnung*) if a mutual contract was not, or was not completely, fulfilled by both parties at the time of the institution of insolvency, the insolvency administrator has an election right regarding the termination or fulfilment of such a mutual contract. There is some legal uncertainty whether this provision also applies to fully disbursed loan contracts. If this were to be the case, the insolvency administrator of the lender would have an election right regarding the termination or continuation of the loan and, consequently, payments under the loan which arise for time periods after the beginning of the insolvency proceedings could only be demanded by the insolvency administrator of the lender for the benefit of the insolvency estate of the lender. In addition, if the insolvency administrator elected to terminate the loan, the borrower would be entitled to damage claims, which he could set off against the repayment claim of the insolvency administrator or, following the assignment of the repayment claim, the assignee, thereby reducing the payments of the borrowers to the assignee.

The majority view among legal commentators is that Section 103 of the German Insolvency Code (*Insolvenzordnung*) should not apply to fully disbursed loans, such as the Senior Loan. Consequently, the commencement of insolvency proceedings in respect of the Originator would not have adverse

legal consequences on the expected cash flows under the Senior Loan which are required to make payment under the Notes. With respect to CapEx Loan, the Issuer has been advised that, although this Facility, on the Closing Date, has not yet been fully disbursed, the Senior Loan and the related cash flows should not be adversely affected by the commencement of insolvency proceedings with respect to the Originator.

A security assignment of future lease claims for the time following the opening of insolvency proceedings will, pursuant to Section 110 of the German Insolvency Code, only be valid to the extent that the rental claims for the month in which insolvency proceedings are formally opened, or earlier rental claims, are concerned. However, if insolvency proceedings are opened after the 15<sup>th</sup> day of the month, the security assignment will also be valid for the month following the opening of such insolvency proceedings.

As far as agreements qualify as service agreements (*Dienstleistungsverhältnisse*), agency agreements (*Geschäftsbesorgungsverträge*) or mandates (*Vollmacht*), under Section 113 of the German Insolvency Code (*Insolvenzordnung*), the insolvency administrator of the principal is entitled to terminate service agreements, agency agreements and mandates which would, according to Section 115 and 116 of the German Insolvency Code, extinguish with the opening of insolvency proceedings against the principal by operation of law. A number of the Transaction Documents contain mandates or agency provisions which would be affected by the application of these provisions in an insolvency of the principal thereunder.

## **2. Enforcement of a mortgage under German law**

Under German law, the enforcement of a mortgage will be carried out in accordance with the German Compulsory Auction and Compulsory Administration of Immoveable Property Act (*Zwangsversteigerungs- und Zwangsverwaltungsgesetz*) ("**ZVG**"). The ZVG provides for two different types of enforcement of a mortgage:

- (a) compulsory sale of the relevant Properties; and/or
- (b) compulsory administration of the relevant Properties.

In the case of a compulsory sale, the court will effect a public auction of the relevant Property. The organisation of such auction and the sale of the Property therein may take a considerable amount of time (likely to be more than one year and, depending upon the workload of the court, possibly significantly longer, especially if an insolvency administrator requests a suspension of the sale). If the highest bid at the auction is not at least 70 per cent. of the market value of the Property estimated by the court, any person who has an interest in the outcome of the decision (*Berechtigte*) and is a person ranking behind the most senior enforcing creditor with claims that would not be fully satisfied after the distribution of the proceeds, may require the court not to sell the Property to the relevant bidder. The enforcing creditor may oppose such request by providing prima facie evidence that the non-acceptance of the bid would cause the creditor an unreasonable disadvantage. In no event may the court dispose of the Property if the highest bid in the auction does not reach 50 per cent. of the estimated value of the Property. If a second auction is necessary because the highest bid in the first auction was too low, the highest bid in such further auction does not need to meet any threshold with regard to the estimated value of the Property. The leases relating to the Property will continue during the enforcement procedure. Only the acquiror of the Property has a right to terminate all or any of the leases, provided that contractual or statutory termination rights are applicable.

Under the Mortgage, each Borrower has agreed to an immediate enforcement for the same amount as the Mortgage. Accordingly, the Issuer or, upon enforcement of the Issuer Security, the Trustee, may attach any other asset of the relevant Borrower without having to obtain an executory title by way of court proceedings.

If the Mortgage is enforced and all or a part of the Properties is sold, the net proceeds of sale (after payment of enforcement costs and expenses payable in connection therewith) will be applied in or towards satisfaction of any amounts due under the Finance Documents.

In a compulsory administration (*Zwangsverwaltung*), which can be started immediately after attachment (*Beschlagnahme*) of the relevant Property, the court will appoint an administrator for the



relevant Property (*Zwangsverwalter*) to administer such Property on behalf of the enforcing creditors. The administrator alone is entitled to receive all income generated from such Property, including all rental and insurance claims. The right of the administrator to collect rents takes priority over all other rights to the rental stream. The administrator, subject to the supervision of the court, is required to pass any collections to the enforcing creditors after deducting ongoing costs and enforcement costs calculated in accordance with the Compulsory Administrator Act (*Zwangsvollstreckungsordnung*) which came into force on 4 January 2004.

### **3. Ranking**

The proceeds of a compulsory sale or a compulsory administration will be used to pay the claims by allocating them to eight classes. Creditors whose claims fall within a certain class will only be paid upon satisfaction in full of the claims falling within higher classes, i.e. a creditor in Class 6 will only be satisfied after all creditors in Classes 1 to 5 have been satisfied.

In a compulsory sale of a Property (following an enforcement of the Mortgage by compulsory sale), the Issuer, or following the enforcement of the Issuer Security, the Trustee, will generally rank in Class 4.

Classes 1 to 3 consist of typical procedural and public claims resulting from the costs of the proceedings, certain costs relating to agricultural and forestry properties (if any), certain costs incurred in the compulsory administration proceedings and public charges such as development contributions and real property taxes (only for ongoing claims and arrears for the last two years), etc. Such claims always have priority over the claims of the creditor enforcing payment.

Class 4 consists of claims resulting from rights relating to the property (for example a mortgage), but only to the extent they have not become ineffective *vis-à-vis* the enforcing creditor as a consequence of the attachment of the property, including all claims resulting from such amounts which are payable for a gradual repayment of a debt as an extra charge on the interest payments. Claims resulting from periodic charges (for example, interest, extra charges, administrative costs, annuities) are in this Class only for ongoing claims and arrears for the last two years.

Therefore, creditors falling into Classes 1 to 3 (if any) must be fully satisfied out of the proceeds of the compulsory sale or compulsory administration before amounts can be paid to satisfy the relevant Borrower's secured obligations under the Finance Documents.

In the event of a compulsory administration the same rule applies. However, in such case, prior to distributing (in the above order) the proceeds resulting from the usage of the property, the costs of administration and enforcement proceedings will be deducted. Pursuant to Section 155 (2) ZVG, in the event of a compulsory administration only current periodic charges will rank in Class 4. Arrears and principal will rank in Class 5.

The right to satisfy claims secured by a mortgage also includes the re-disbursal of costs triggered by the termination of a mortgage (but does not include costs for acceleration of the claims) and the legal costs. In principle, the claims within each class rank *pari passu* amongst themselves. However, satisfaction of the claims in the Classes 4, 6 and 8 will occur in the order in which such claims rank amongst themselves. The claims ranking in Class 5 will be satisfied in accordance with the order in which the property has been attached. Any claim will be satisfied in the following order: (i) costs, (ii) periodic charges and other additional charges, (iii) principal.

### **4. Rights ranking in Class 4**

The rights relating to a property in Class 4 are such rights which are registered in the land register relating to the relevant property. A creditor secured by a mortgage forms part of Class 4. In the case of a compulsory sale, it will be satisfied in Class 4, to the extent its claim is covered by the nominal value of the relevant mortgage plus interest for the last two years. Depending on the due dates for interest up to three years of interest may effectively be covered. In the case of a compulsory administration, the rules explained above apply. If the creditor secured by the relevant mortgage applies for a compulsory sale of the property, all rights ranking prior to such creditor will continue to be registered after a compulsory sale, whilst all rights ranking below the creditor will be deleted and satisfied with their claims from the enforcement proceeds after deduction of the creditor's claims secured by the relevant mortgage.

## **5. Assignability of the Senior Loan**

As a general rule under German law, receivables are assignable unless their assignment is excluded either by mutual agreement or by the nature of the receivables to be assigned. Any assignment of a receivable which contravenes a contractually agreed restriction on assignment will be invalid. However, under Section 354a of the German Commercial Code (*Handelsgesetzbuch*) the assignment of claims for the payment of money arising under loans that constitute business transactions for both parties (including the borrower) within the meaning of the German Commercial Code will be valid notwithstanding an agreement prohibiting such assignment. Except as stated below under the heading "Banking Secrecy", there is no published court precedent stating that receivables arising out of consumer credit contracts or other credit contracts are not assignable either generally or in a refinancing transaction or an asset-backed securitisation. Pursuant to the Loan Sale Agreement, the Originator has warranted to the Issuer that the Credit Agreement under which the Senior Loan has been generated is based on individually negotiated terms. Such terms entitle the Originator to transfer its rights under the Credit Agreement to a third party for refinancing purposes. Further, pursuant to the Loan Sale Agreement, the Originator has warranted to the Issuer that the provisions of the Credit Agreements are valid and that the assignment of the Senior Loan to the Issuer is not prohibited.

The assignment of the Senior Loan and the assignment and transfer of the Loan Security has been disclosed to the Borrowers in accordance with the provisions of the Loan Sale Agreement. Therefore, following the notification none of the Borrowers may undertake payment with discharging effect to the Originator or enter into any other transaction with regard to the Senior Loan which will have a binding effect on the Issuer and the Trustee.

However, a Borrower may raise defences against the Issuer and the Trustee (arising from its relationship with the Originator) which are existing at the time of the assignment of the Senior Loan. In particular, a Borrower would be entitled to set-off against the Issuer and the Trustee any claims against the Originator that were in existence at the time of the assignment of the Senior Loan. To mitigate the risk of defences being raised by the Borrowers, the assignment and transfer of the Senior Loan and the Loan Security has been disclosed to the Borrowers in accordance with the provisions of the Loan Sale Agreement and the Originator has warranted that it is not aware that any Borrower has asserted any lien, right of recession, counterclaim, set-off, right to contest or defence against it in relation to the Credit Agreement.

In addition, the Loan Sale Agreement provides that in the event that a Borrower sets off amounts due to it by the Originator against the Senior Loan and, as a consequence of such set-off, the Issuer does not receive the amount it would have received in respect of the Senior Loan without such set-off, the Originator will pay to the Issuer an amount equal to the difference between the amount which the Issuer would have received in respect of the Senior Loan without the set-off and the amount actually received by the Issuer in respect of the Senior Loan. No recourse can be had against the Originator and Noteholders must rely on payments made by the Originator to make up any shortfall.

## **6. Frustration**

The German Civil Code (*Bürgerliches Gesetzbuch*) contains a provision which stipulates that a party to a contract (e.g. a lease contract) may under certain circumstances claim that there has been an unforeseen modification of the circumstances based on which such contract had been entered into. Such an unforeseen modification of circumstances must be of the nature that the parties to a specific contract would not have entered into such contract or would only have entered into such contract with another content if they had foreseen such modified circumstances. If, according to criteria of reasonableness and fairness, legal risk allocation and other contractual circumstances, adherence to the contract would be unreasonable for a party thereto or the substantial concept which form the basis of the contract were wrong, such party may claim that the contract must be modified. If such modification of the contract is impossible or unreasonable, then this party may terminate the contract.

Any such termination right exercised following an unsuccessful attempt to modify the contract by the parties or upon court decision following such unsuccessful attempt lies beyond the control of the relevant other party and may result in an early termination of such contract and consequently a loss of cash flow generated thereby.

## **7. Banking Secrecy**

On 25 May 2004, the Higher Court (*Oberlandesgericht*) in Frankfurt am Main rendered a ruling with respect to the enforcement of collateral securing non-performing loan receivables. In that case, the loan receivables and related collateral had been acquired from the insolvency administrator of a German credit institution. When the borrower (who did not qualify as a merchant) failed to repay the loan amount under the loan agreement, the purchaser commenced enforcement action with respect to the collateral. Even though it was undisputed among the parties that the borrower did not repay the loan amount, it was disputed that the borrower was actually in default because he had raised objections against the validity of the loan agreement. While litigation between the borrower and the insolvency administrator regarding the validity of the loan agreement was pending before another court, the borrower successfully sought a prohibitory injunction against the enforcement of the collateral by the purchaser.

In its ruling, the court took the view that the bank secrecy duties that are embedded in the banking relationship create an implied restriction on the assignability of loan receivables pursuant to Section 399 of the German Civil Code. The court also stated that, where the loan agreement qualifies as a business transaction (*Handelsgeschäft*) within the meaning of Section 343 of the German Commercial Code (*Handelsgesetzbuch*) for both the borrower and the bank (see "*Assignability of the Senior Loan*"), Section 354a of the German Commercial Code would allow the valid assignment of a monetary claim resulting from such business transaction despite a contractual restriction on assignment agreed between the parties. Banking secrecy rules were held to be binding even on an insolvency administrator of a bank such that the insolvency administrator may not realise the loan receivables by sale and assignment to third parties. Further, it was considered irrelevant that the German Financial Services Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*) had been informed of, and had not objected to, the assignment of the loan receivables in that case. The court challenged the view taken by the majority of legal commentators that a breach of the banking secrecy duty by the bank does not invalidate the assignment but may only give rise to damage claims against the assignor. Most legal commentators have strongly rejected the reasoning of the court.

The Issuer has been advised that the aforementioned court ruling should not apply to the assignment of the Senior Loan by the Originator to the Issuer. First of all, all Borrowers have given their express consent to the disclosure of all Borrower-related data to the Issuer, the Servicers, the Trustee and any other person involved in a securitisation transaction. Secondly, the Issuer could rely on Section 354a of the German Commercial Code, since the Credit Agreement qualifies as a business transaction for both the Originator and the Borrowers and, accordingly, the assignment of the Senior Loan would be valid, even if one were to follow the reasoning of the Higher Court in Frankfurt am Main.

Further, the Issuer has been advised that the principle of bank secrecy does not, contrary to the view of the Higher Court, constitute a contractual restriction on the assignability of loan receivables. Under general principles of German law, a contractual claim is generally freely assignable. To restrict its assignability, the parties can agree on a restriction on assignment. A restriction on assignment can be agreed by express consent by the parties. The general business conditions of the Originator do not state that assignments are prohibited. In addition, a restriction on assignment can also be agreed by implied consent, if both parties have an interest in such restriction. To construe an implied prohibition on assignment, which is clearly not in the interest of the Originator, would not be in line with the German rules on interpretation of contracts. This view is supported by recent (appeal) court decisions and by the vast majority of German legal commentators.

## **8. Transfer of the Mortgage**

The Mortgage is an immediately enforceable uncertificated first-ranking unitary mortgage (*sofort vollstreckbare erstrangige Gesamtbuchgrundschuld*). The creation of the Mortgage becomes effective only upon its registration in the relevant land register (*Grundbuch*) and its priority results from the registered rank itself. As of the date of this Prospectus, the registration of the Mortgage with respect to RRZ Property has been filed for but has not been performed by the land register. However, the Originator has received a notarial confirmation (*Notarbestätigung*) with respect to RRZ Property which confirms the filing for registration and that there were, at the time of such filing, no prior ranking rights (other than those assumed by the Borrowers pursuant to the terms of the Acquisition Agreement and other than those with respect to which the notary confirms the receipt of deletion consents

(*Löschungsbewilligungen*) which the notary has confirmed to file with the relevant land register).

Also, the transfer of the Mortgage by the Originator to the Mortgagee becomes effective only upon the registration of such transfer in the relevant land register. As of the Closing Date, the transfer of the Mortgage to the Mortgagee will be agreed upon, and the registration of such transfer with the respective land registers will be applied for and thereupon the Mortgagee and the Originator will receive a notarial confirmation (*Notarbestätigung*) that the registrations have been duly applied for. Upon such application being duly made, the Issuer would be protected even if insolvency proceedings against the Originator should be instituted after such application having been duly made but before the registration of the transfer being effected.

#### **9. Restriction on Enforcement of Upstream and Cross-Stream Security**

German law provides for strict rules on the maintenance of share capital of German corporations or, in the case of limited partnerships (*KGs*) with the general partner (*Komplementär*) being a limited liability company (*GmbH*), the share capital of the general partner. Generally, the entire assets of a corporation must be protected and maintained for the corporation's creditors and cannot be distributed to its shareholders. Distributions to shareholders or transactions having the equivalent effect of a distribution to shareholders or affiliated companies (such as guarantees for the obligations of a shareholder (upstream) or any of its subsidiaries (cross-stream)) must not result in the redemption of the registered share capital of the security provider. Although, according to the leading doctrine, the rules on the maintenance of share capital do not affect the validity of the creation of the security, they might adversely affect the enforceability of such security, if and to the extent that the security is subject to a contractual limitation on enforcement.

Certain of the German Security Documents contain limitation provisions preventing the enforcement of the relevant collateral to the extent that such enforcement were to have the economic effect of a redemption of the registered share capital of the collateral grantor or its general partner. Consequently, the enforcement of such could be restricted. However, these limitation provisions do not restrict the cross-collateralisation on the Borrower level.

#### **10. Equitable Subordination**

Under German law, if at the time when a loan advance is made or when repayment claims under an existing loan are not accelerated (when permitted), the capitalisation of the borrower (being a limited liability company (*GmbH*) or a limited partnership (*KG*) where none of the general partners is a natural person) is inadequate (the "**crisis of the company**" (*Krise der Gesellschaft*)) and the lender has or has acquired rights in shares or a partnership interest in the borrower (directly or indirectly), the repayment claims of such lender against the borrower will be subordinated by operation of law. The German Federal Supreme Court (*Bundesgerichtshof*) has applied this rule, *inter alia*, to situations which did not involve shareholders but creditors secured by a pledge over the shares in a limited liability company (*Gesellschaft mit beschränkter Haftung*) if such creditors have been granted rights that are comparable to shareholder rights. If the Issuer were regarded as having a quasi-shareholder position, a German court could come to the conclusion that the making of the non-acceleration of the Senior Loan in a crisis of the relevant Borrower would result in the subordination of the repayment claim in respect of such debt.

### **VI. GERMAN TAX CONSIDERATIONS RELATED TO THE BORROWERS**

#### **1. Real property tax (*Grundsteuer*)**

Each Borrower is liable for ongoing real property tax on its real property. However, in general, the real property tax due is recoverable from the tenants under the terms of their leases, as the real property tax is part of the costs which can be allocated to the tenants according to special provisions. However, there is a minor risk that the real property tax allocated to the tenants can not be fully recovered due to, *inter alia*, vacancy or non-payment of amounts due by the tenants.

#### **2. Corporate income tax (*Körperschaftsteuer*)**

The income of the Borrowers from the Properties is subject to German corporate income tax on the level of its corporate partners only. The corporate income tax rate currently amounts to 26.375 per

cent. (including solidarity surcharge (*Solidaritätszuschlag*)). Interest paid by the Borrowers under the Facilities should be tax-deductible business expenses. However, interest deductions may be limited under German thin capitalisation rules due to back-to-back financing arrangements. The scope of "**back-to-back financing**" which is subject to non-deductibility is not entirely clear under German tax law and the present view is based on certain tax decrees issued by the German tax authorities, which, in principle, could be withdrawn by the German tax authorities.

### **3. Trade tax (*Gewerbesteuer*)**

The Borrowers' income is, in principle, subject to German trade tax. Since the German trade tax is a local tax, the German trade tax rates differ from municipality to municipality in a range of 10 per cent. to 20 per cent. Limitations on interest deduction due to the German thin capitalisation rules apply for trade tax purposes as well. Further, for German trade tax purposes only 50 per cent. of interest payable on long-term debt, like mortgage loans, can be deducted from the income. However, for enterprises with income predominately from leasing and letting of real property, an exemption from trade tax is available under certain circumstances. If an enterprise qualifies for this exemption only the income from leasing or letting but not the income from other qualifying sources is German trade tax exempt. The sale of Properties, shares in a Borrower or other activities (such as leasing or letting of fixtures) of the Borrowers could have the consequences that the exemption will be denied. Currently, the Borrowers do not qualify for such exemption and consequently, their income (increased as set out above by 50 per cent. of certain payments under long-term debt) is subject to trade tax.

The Borrowers are financed by Merrill Lynch Luxembourg Holdings S.à.r.l. by way of profit participation loans which are structured in order to be qualified as debt for tax purposes. The debt qualification is supported by the non-participation of Merrill Lynch Luxembourg Holdings S.à.r.l. in the liquidation proceeds of the Borrowers, the limitation to a maximum profit participation of 25 per cent. of the internal rate of return and a maximum term of less than 30 years. Qualifying as debt, the payment of interest under the profit participation loan should be deductible for corporate income tax purposes and, potentially as to 50 per cent. for trade tax. If, contrary to expectation, the profit participation loan was regarded as equity, the amounts payable thereunder would not be tax deductible at all (neither for corporate income tax nor for trade tax purposes).

### **4. Real Estate Transfer Tax (*Gründerwerbsteuer, "RETT"*)**

RETT is levied (i) on any sale of a property; or (ii) if there is a direct or indirect change of the partners in a partnership owning real estate in Germany of 95 per cent. or more if the change is effected within a period of five (5) years or (iii) in case of a direct or indirect unification in the hands of a shareholder of 95 per cent. or more in a company or partnership which owns real estate in Germany.

### **5. German Value Added Tax (*Umsatzsteuer, VAT*)**

A recovery of input-VAT on services received from other entities is possible only if and to the extent that the Borrowers provide services that are subject to German VAT. Section 15a of the German Value Added Tax Act (*Umsatzsteuergesetz*) stipulates a scheme to correct or amend German input-VAT on services received if the German VAT treatment of services performed changes within a ten (10) year period. Corrections arising from circumstances in the past or in the future may increase or reduce the amount of deductible VAT.

## **VII. RISKS RELATED TO THE ISSUER**

### **1. Insolvency of the Issuer**

The Issuer is structured to be an insolvency-remote vehicle. Each of the Transaction Documents to which the Issuer is party is subject to limited recourse provisions and non-petition covenants in favour of the Issuer. The Issuer has granted security over all of its assets pursuant to the Issuer Security Documents. Notwithstanding the foregoing, there is always a risk that the Issuer could become subject to insolvency proceedings, particularly because the Issuer is dependant on cash-flows from the Borrowers, the receipt of which is subject to the risks discussed above; the Issuer is insolvency-remote, not insolvency-proof.

The Issuer has its registered office in Ireland. As a result, there is a rebuttable presumption that its center of main interest is in Ireland and, consequently, it is likely that any insolvency proceedings applicable to it would be governed by Irish law.

## **2. Preferred Creditors under Irish Law and Fixed Charges**

Under Irish law, in an insolvency of the Issuer, the claims of certain preferential creditors (including the Irish Revenue Commissioners for certain unpaid taxes) will rank in priority to claims of unsecured creditors and claims secured by floating charges. In addition, when applying the proceeds of assets subject to fixed security which may have been realised in the course of a liquidation or receivership, the claims of a limited category of preferential creditors will take priority over the claims of creditors holding the relevant fixed security. These preferred claims include the remuneration, costs and expenses properly incurred by any examiner of the company (which may include any borrowings made by an examiner to fund the company's requirements for the duration of his appointment) which have been approved by the Irish courts and certain capital gains tax liabilities.

The holder of a fixed security over the book debts (which would include the Senior Loan acquired by the Issuer) of an Irish tax resident company such as the Issuer may be required by the Irish Revenue Commissioners, by notice in writing from the Irish Revenue Commissioners, to pay to them sums equivalent to those which the holder received in payment of debts due to it by the company. Where the holder of the security has given notice to the Irish Revenue Commissions of the creation of the security within 21 calendar days of its creation, the holder's liability is limited to the amount of certain outstanding Irish tax liabilities of the company (including liabilities in respect of value added tax) arising after the issuance of the Irish Revenue Commissions' notice to the holder of fixed security.

The Irish Revenue Commissioners may also attach any debt due to an Irish tax resident company by another person in order to discharge any liabilities of the company in respect of outstanding tax whether the liabilities are due on its own account or as an agent or trustee. The scope of this right of the Irish Revenue Commissioners has not yet been considered by the Irish courts and it may override the rights of holders of security (whether fixed or floating) over the debt in question.

In relation to the disposal of assets of any Irish tax resident company which are subject to security, a person entitled to the benefit of the security may be liable for tax in relation to any capital gains made by the company on a disposal of those assets on exercise of the security.

## **3. Examinership**

An examiner may be appointed to an Irish company in circumstances where it is unable, or likely to be unable, to pay its debts. One of the effects of such an appointment is that during the period of appointment, there is a prohibition on the taking of enforcement action by any creditors of the company.

## **4. The introduction of International Financial Reporting Standards**

The Irish tax position of the Issuer depends to a significant extent on the accounting treatments applicable to it. The accounts of the Issuer are required to comply with International Financial Reporting Standards ("IFRS") or with generally accepted accounting principles in Ireland ("Irish GAAP") which has been substantially aligned with IFRS. Companies such as the Issuer might, under either IFRS or Irish GAAP, be forced to recognise in their accounts movements in the fair value of assets that could result in profits or losses for accounting purposes which bear little relationship to the company's actual cash position. These movements in value would generally have been brought into the charge to tax (if not specifically relieved) as a company's tax liability on such assets broadly follows the accounting treatment. However, the taxable profits of a qualifying company within the meaning of Section 110 of the Taxes Consolidation Act 1997 of Ireland, as amended ("TCA 1997") (and it is expected that the Issuer will be such a qualifying company), may be based on the profits that would have arisen under Irish GAAP as it existed at 31st December, 2004 provided that such profit amount, if not otherwise included in the Issuers audited financial statements, is identified in a note to the audited financial statements of the company. It is possible to elect out of this treatment but such an election, if made, is irrevocable. If such an election is made, then taxable profits or losses could arise to the Issuer as a result of the application of IFRS or current Irish GAAP that are not contemplated in the cashflows for the transaction and as such may have a negative effect on the Issuer and its ability to

make payments to Noteholders. The Issuer has covenanted that, if its cashflows would thereby be adversely affected, no such election will be made and that, if not otherwise included in its audited financial statements, it shall procure that a note of profits as calculated under Irish GAAP as it existed at 31st December, 2004 will be included in its audited financial statements.

### **5. Taxation of the Issuer**

See "TAXATION" below.

## **VIII. OTHER ISSUES**

### **1. European Union Directive on the Taxation of Savings Income**

On 3 June, 2003, the European Council of Economic and Finance Ministers adopted a Directive on the taxation of savings income. Under the Directive Member States will (if equivalent measures have been introduced by certain non-EU countries) be required, from 1 July, 2005, to provide to the tax authorities of another Member State details of payments of interest (or similar income) paid by a person within its jurisdiction to an individual resident in that other Member State. However, for a transitional period, Belgium, Luxembourg and Austria will instead be required (unless during that period they elect otherwise) to operate a withholding system in relation to such payments (the ending of such transitional period being dependent upon the conclusion of certain other agreements relating to information exchange with certain other countries).

### **2. Possible introduction of a Flat Tax (*Abgeltungssteuer*) on Investment Income and Private Capital Gains**

According to Ministry of Finance press releases, the German coalition government has reached agreement on the introduction of a flat tax (*Abgeltungssteuer*) on investment income and private capital gains as elements of a corporate income tax reform.

The flat tax would be levied by German withholding agents as a withholding tax, *inter alia*, on interest income, dividends and capital gains from the disposal of securities held as non-business assets, irrespective of any holding period. Payment of the flat tax would satisfy any income tax liability of the investor in respect of such investment income or private capital gains. The envisaged tax would be levied at a rate of 25 per cent. (plus 5.5 per cent. solidarity surcharge thereon and, if applicable, church tax) of the relevant gross income. However, taxpayers would be able to apply for a tax assessment on the basis of net taxable income. According to the press releases, the flat tax would take effect from 1 January 2009 but would only be imposed on capital gains from assets acquired after 31 December 2008.

As of the date of this Prospectus, no draft bill has been presented. It remains unclear whether and in which form the envisaged legislative changes will become effective.

### **3. Proposals for Corporate Tax Reform**

According to Ministry of Finance press releases, the German coalition government has reached agreement on certain elements of corporate tax reform, including a decrease of the corporate income tax rate from 25 per cent. to 15 per cent. (in each case plus 5.5 per cent. solidarity surcharge thereon) such that the aggregate nominal income tax burden for corporations (corporate income tax and trade tax) would decrease to below 30 per cent. The tax reform package would enter into force on 1 January 2008 and would also contain certain revenue raisers:

For purposes of corporate income tax, debt financing of companies would be limited by an anti interest-stripping rule (*Zinsschranke*). Net interest expenses exceeding Euro 1 million would only be deductible to an extent of 30 per cent. of current year net earnings before interest. Non-deductible interest expense would be carried forward and would generally be deductible in subsequent fiscal years, subject to limitations similar to those applicable in the current year.

For purposes of trade tax, the addition of 50 per cent. of interest on long term debt would be replaced by an addition to the tax base of 25 per cent. of all interest payments and certain other interest

components, such as those contained in rental and lease payments, in excess of €100,000.

As of the date of this Prospectus it remains unclear whether and in which form the envisaged legislative changes will become effective.

#### **4. Implementation of Basel II risk-weighted asset framework**

The Basel Committee on Banking Supervision published the text of the new capital accord on 26 June, 2004 under the title *Basel II: International Convergence of Capital Management and Capital Standards: a Revised Framework* (the "**Framework**"). This Framework will serve as the basis for national rule-making and approval processes to continue and for banking organisations to complete their preparations for implementation of the new Framework. The committee confirmed that it is currently intended that the various approaches under the Framework will be implemented in stages, some from year-end 2006; the most advanced at year-end 2007. If implemented in accordance with its current form, the Framework could affect risk weighting of the Notes in respect of certain investors if those investors are subject to the new Framework (or any legislative implementation thereof) following its implementation. Consequently, investors should consult their own advisers as to the consequences to and effect on them of the proposed implementation of the new Framework. No predictions can be made as to the precise effects of potential changes which might result if the Framework were adopted in its current form.

#### **5. Change of law**

The structure of the issue of the Notes, the ratings which are to be assigned to them and the related transactions described in this Prospectus are based on German, Irish, English and European laws and administrative practice in effect as at the date of this Prospectus. No assurance can be given as to the impact of any possible change to German law, Irish law, English law or the law of the European Union or administrative practice after the date of this document, nor can any assurance be given as to whether any such change could adversely affect the ability of the Issuer to make payments under the Notes.

*The Issuer believes that the risks described above are the principal risks inherent in the transaction for the Noteholders, but the inability of the Issuer to pay interest, principal or other amounts on or in connection with the Notes may occur for other reasons. The Issuer does not represent that the above statements regarding the risks of holding the Notes are exhaustive. Although the Issuer believes that the various structural elements described in this Prospectus may mitigate some of these risks for Noteholders, there can be no assurance that these elements will be sufficient to ensure payment to Noteholders of interest, principal or any other amounts on or in connection with the Notes on a timely basis or at all.*



## THE ISSUER

The Issuer, Opera Germany (No.2) plc, was incorporated in Ireland on 1 December 2006, (registration number 430655), as a public company with limited liability under the laws of Ireland for an unlimited duration. The registered office of the Issuer is at 25-26 Windsor Place, Lower Pembroke Street, Dublin 2. The Issuer has no subsidiaries.

### I. Principal Activities

The principal objects of the Issuer are set out in clause 3 of its memorandum of association and are, among other things, to lend money and give credit, secured and unsecured, to borrow or raise money and secure the payment of money, and to grant security over its property for the performance of its obligations or the payment of money. The Issuer was established as a special purpose entity for the limited purposes of the issue of the Notes, the acquisition of the Senior Loan and certain related transactions described elsewhere in this document.

The Issuer has not commenced operations and has not engaged, since its incorporation, in any activities other than those incidental to its incorporation and registration as a public limited company under the laws of Ireland, the authorisation of the issue of the Notes and of the other documents and matters referred to or contemplated in this Prospectus and matters which are incidental or ancillary to the foregoing.

The activities of the Issuer will be restricted by the Conditions and will be limited to the issue of the Notes, the making of the Senior Loan, the exercise of related rights and powers and the other activities described in this document. See Condition 3(a) of the Notes (*Restrictions*).

### II. Directors and Secretary

The directors of the Issuer and their respective business addresses and other principal activities are:

<b>Name</b>	<b>Business Address</b>	<b>Principal Activities</b>
Karen McCrave	25-26 Windsor Place, Lower Pembroke Street, Dublin 2, Ireland	Directors of special purpose companies
Frank Heffernan	25-26 Windsor Place, Lower Pembroke Street, Dublin 2, Ireland	Directors of special purpose companies

The company secretary of the Issuer is Structured Finance Management (Ireland) Limited, a company incorporated in Ireland, registration number 331206 whose business address is 25-26 Windsor Place, Lower Pembroke Street, Dublin 2, Ireland.

### III. Capitalisation and Indebtedness

The capitalisation and indebtedness of the Issuer as at the date of this Prospectus, adjusted to take account of the issue of the Notes as at the Closing Date, is as follows:

<b>Authorised Share Capital</b>	<b>Issued Share Capital</b>	<b>Value of each Share</b>	<b>Numbered Shares</b>	<b>Paid Up Share Capital</b>
<b>(€)</b>	<b>(€)</b>	<b>(€)</b>	<b>Paid Up as to 0.25</b>	<b>Capital (€)</b>
40,000.00	10,000.00	1.00	40,000.00	10,000.00

40,000 of the issued shares (being 40,000 shares of €1.00 each, each of which is paid up as to 0.25 per cent.) in the Issuer are held by the Share Trustee and its nominees. The Share Trustee will

hold its interest in the shares of the Issuer on trust for charitable purposes under the terms of the Share Trust Deed.

#### *Loan Capital*

Class A Commercial Mortgage Backed Floating Rate Notes due October 2014	€374,500,000
Class B Commercial Mortgage Backed Floating Rate Notes due October 2014	€46,800,000
Class C Commercial Mortgage Backed Floating Rate Notes due October 2014	€65,600,000
Class D Commercial Mortgage Backed Floating Rate Notes due October 2014	€63,700,000
Class E Commercial Mortgage Backed Floating Rate Notes due October 2014	€9,400,000
Total Loan Capital	€560,000,000

Except as set out above, the Issuer has no outstanding loan capital, borrowings, indebtedness or contingent liabilities and the Issuer has not created any mortgages or charges nor has it given any guarantees as at the date of this Prospectus.

#### **IV. Financial Information**

None of the Joint Bookrunners, the Note Arranger, anybody associated with any of the Joint Bookrunners or the Note Arranger owns directly or indirectly any of the share capital of the Issuer. No person has been granted the right to subscribe for shares in the share capital of the Issuer.

The Issuer will publish annual reports and accounts. As at the date of this Prospectus no financial statements of the Issuer have been drawn up and audited for any period since its incorporation. Reports and accounts published by the Issuer will, when published, be available for inspection during normal office working hours at the specified office of the Irish Paying Agent.

The Issuer has appointed KPMG of 1 Stokes Place, St. Stephen's Green, Dublin 2, Ireland, as its auditors. KPMG is a member of the institute of chartered accountants in Ireland.

#### **V. Financial Year**

The financial year of the Issuer ends on 31 December of each year.

#### **VI. Accounts**

The Issuer will prepare annual audited and non-consolidated accounts. The first annual audited accounts will be prepared in respect of the period to end on 31 December 2007.

## THE ORIGINATOR

Eurohypo AG ("**Eurohypo**") resulted from a merger between Deutsche Hypo Deutsche Hypothekenbank Frankfurt-Hamburg AG, Eurohypo AG Europäische Hypothekenbank der Deutschen Bank and Rheinhyp Rheinische Hypothekenbank AG, which took place in 2002. The registered office of the Originator is Helfmann-Park 5, 65760 Eschborn, Federal Republic of Germany. The majority shareholder of Eurohypo is Commerzbank Aktiengesellschaft. As reflected in the company name, Europe is the key business region for Eurohypo. A strong presence is also maintained in the North American property markets, where Eurohypo holds a top five position in real estate banking.

Eurohypo is a financial institution with mixed-bank status in possession of a full banking license, focussing on real estate business, public sector financing, and refinancing. Financing and consultancy in the field of commercial real estate, combined with real estate investment banking services oriented towards the capital market, form the core of Eurohypo's business model.

In Eurohypo's home market of Federal Republic of Germany, the aim is to maintain and build on its market leading position.

- Corporate banking is the core of the bank's business model in Federal Republic of Germany.
- Retail banking is an important component.
- Credit and capital market expertise are also closely interlinked in the field of public sector finance, the second strong pillar of Eurohypo's business model in Federal Republic of Germany.
- in the field of refinancing, as a benchmark issuer, Eurohypo is a leading issuer of (global) jumbo mortgage bonds. It is also a major issuer of CMBS bonds through its Opera programme.

Central to Eurohypo's core competencies is a modern risk management system. Active portfolio management is a key element of its strategic orientation. Eurohypo adheres to a consistent buy-and-sell strategy, which includes placing loans in the capital market by means of securitisation and syndication.

## THE BORROWERS AND THE PARTNERS

Borrower	Property	Allocated Loan Amount ("Allocated Loan Amount") (in mill. €)	Allocated Loan Amount relating to the Senior Loan (in mill. €)	Allocated Loan Amount relating to the Junior Loan (in mill. €)	Allocated Loan Amount relating to the CapEx Loan (in mill. €)
Kö KG	Kö Galerie, Düsseldorf	281.0	226.9	43.1	11.0
RRZ KG	Rhein-Ruhr Zentrum, Mülheim a.d.R.	306.0	230.0	43.0	33.0
OP KG	Opernpassagen, Köln	67.0	57.7	9.3	0.0
SM KG	Schwanenmarkt, Krefeld	56.0	45.4	10.6	0.0
<b>Total Loan Amount (in mill. €)</b>		<b>710.0</b>	<b>560.0</b>	<b>106.0</b>	<b>44.0</b>

The loan amount of the Senior Loan allocated to each Property, hereinafter the "**Senior Allocated Loan Amount**".

Kö Galerie Düsseldorf GmbH & Co. KG ("**Kö KG**") (formerly Kommanditgesellschaft PANTA Siebenundfünfzigste Grundstücksgesellschaft m.b.H. & Co. KG) is formed in Germany on 23 May 2006 and registered with the commercial register in Düsseldorf under registration number HRA 18883 as a limited partnership (*Kommanditgesellschaft*). The registered office of Kö KG is in Düsseldorf. The address of Kö KG is Königsallee 58-62, D-40212 Düsseldorf, Germany.

Opern Passage GmbH & Co. KG ("**OP KG**") (formerly Kommanditgesellschaft PANTA Sechsendfünfzigste Grundstücksgesellschaft m.b.H. & Co. KG) is formed in Germany on 23 May 2006 and registered with the commercial register in Düsseldorf under registration number HRA 19038) as a limited partnership (*Kommanditgesellschaft*). The registered office of OP KG is in Düsseldorf. The address of OP KG is Königsallee 58-62, D-40212 Düsseldorf, Germany.

Rhein-Ruhr-Zentrum GmbH & Co. KG ("**RRZ KG**") (formerly Kommanditgesellschaft PANTA Neunundfünfzigste Grundstücksgesellschaft m.b.H. & Co. KG) is formed in Germany on 26 May 2006 and registered with the commercial register in Düsseldorf under registration number HRA 19043) as a limited partnership (*Kommanditgesellschaft*). The registered office of RRZ KG is in Düsseldorf. The address of RRZ KG is Königsallee 58-62, D-40212 Düsseldorf, Germany.

Schwanenmarkt GmbH & Co. KG ("**SM KG**") (formerly Kommanditgesellschaft PANTA Achtundfünfzigste Grundstücksgesellschaft m.b.H. & Co. KG) is formed in Germany on 26 May 2006 and registered with the commercial register in Düsseldorf under registration number HRA 18962 as a limited partnership (*Kommanditgesellschaft*). The registered office of SM KG is in Düsseldorf. The address of SM KG is Königsallee 58-62, D-40212 Düsseldorf, Germany.

The general partner of each Borrower without capital contribution is Gustav Management GmbH (formerly PANTA 58. Grundstücksgesellschaft m.b.H.), registered under registration number HRB 54832 with the commercial register at the local court of Düsseldorf (the "**General Partner**") which is liable for the debts and obligations of each Borrower. The General Partner is a limited liability company incorporated under German law, whose registered office is at Düsseldorf, Federal Republic of Germany. The General Partner has two shareholders: ML Dutch BV which holds 87.5 per cent. of the shares and Gustav Beteiligungs G.m.b.H which holds 12.5 per cent. of the shares in the General Partner. The management of each Borrower is carried out by the General Partner, who is solely authorised to represent each Borrower.

The limited partner of each Borrower is Gustav Beteiligungs G.m.b.H. (formerly PANTA 56. Grundstücksgesellschaft m.b.H.) with a 100 per cent. participation in each Borrowers' share capital, registered under registration number HRB 97276 with the commercial register at the local court of Hamburg (the "**Limited Partner**"). The Limited Partner is liable for the debts and obligations of the

Borrowers only up to the amount of its fixed contribution. The Limited Partner is a limited liability company incorporated under German law.

The Borrowers have no subsidiaries of their own.

#### **I. Principal Activities**

The principal objects of the Borrowers pursuant to their respective articles of association are, among other things, the acquisition, management, disposal and realisation of real property, real estate and rights equivalent to real property, and the use of real property and premises owned by the partnership by way of rent or lease and to carry on any other business or activity in connection or conjunction with such business.

#### **II. Contribution of the Partners**

The General Partner does not have a capital contribution in the Borrowers. According to the partnership agreement of each Borrower as last amended on 12 September 2006, the fixed contribution of the Limited Partner in each Borrower amounts to €100,000 and is paid up in full.

#### **III. Financial Year**

The current financial year of each Borrower commenced will end on 31 December 2006.

#### **IV. Legal and Arbitration Proceeding**

To the extent the Issuer is aware, the Borrowers have not been involved in any legal, governmental or arbitration proceedings (including any such proceedings which are pending or threatened of which the Issuer is aware) which may have, or have had, since the date of incorporation, a significant effect on the Borrowers' financial position.

#### **V. Statutory Auditors**

The statutory auditors of each Borrower are Müller Gick Krieger & Partner which is a firm of chartered accountants (*Wirtschaftsprüfungsgesellschaft*) and which are members of the *Wirtschaftsprüferkammer, Körperschaft des öffentlichen Rechts* (public law formed chamber of accountants) and of the *Institut der Wirtschaftsprüfer in Deutschland e.V.* (private law formed institute of public accountants).

#### **VI. Financial Information**

The unaudited opening balance sheets for 2006 of the Borrowers is as follows:

##### ***OP KG dated 23 May***

Assets	Liabilities
outstanding contributions	limited partnership contribution:
€25,000	€25,000

***Kö KG dated 23 May***

Assets

outstanding contributions  
€25,000

Liabilities

limited partnership contribution:  
€25,000

***SM KG dated 26 May***

Assets

outstanding contributions  
€25,000

Liabilities

limited partnership contribution:  
€25,000

***RRZ KG dated 26 May***

Assets

outstanding contributions  
€25,000

Liabilities

limited partnership contribution:  
€25,000

**VII. Accountants' Report**

No annual statutory financial statements of the Borrowers have been drawn up and audited for a period since their incorporation.

## DESCRIPTION OF THE PROPERTIES

### 1. Introduction

The portfolio held by the Borrowers comprises the following four properties (each, a "**Property**" and together, the "**Properties**") located in Germany:

- (a) the Kö-Galerie Property located at Königsallee 58-62, 40212 Düsseldorf;
- (b) the RRZ Property, Humboldttring 13, 45472 Mülheim a.d. Ruhr;
- (c) the Schwanenmarkt Property, Hochstrasse 114, 47798 Krefeld; and
- (d) the Opernpassagen Property, Schwertnergasse 1, 59667 Cologne.

The Properties have a total floor area of 165,919sqm with 372 commercial tenants and 195 residential units.

The Valuation conducted by Cushman & Wakefield (the Valuer) as at 30 April 2006 (the "**Valuation Date**") valued the Properties at €748,900,000 with an annual passing rent (the "**Annual Passing Rent**" or "**APR**") of €40,093,875 and an estimated rental value (the "**Estimated Rental Value**" or "**ERV**") of €44,148,048 per annum. Following planned capex works, the Valuer estimates a market value of €820,500,000.

For the purpose of this section and more generally for purposes of information contained in this Prospectus, all valuations, amounts and percentages referred to in this Prospectus have been calculated as at the Valuation Date unless indicated otherwise.

### 2. Properties Outline

The Properties are four shopping centres located in the state of North-Rhine Westfalia. The two larger properties are the Kö-Galerie Property and the RRZ Property representing 40.5 per cent. and 41 per cent. of the portfolio by market value each. The Properties' average vacancy rate is 5.6 per cent.

<i>Property</i>	<i>Market value (€)</i>	<i>Market value (per cent.)</i>	<i>APR (€)</i>	<i>ERV (€)</i>	<i>Net lettable area (sqm)</i>
Kö-Galerie Property	303,400,000	40.5	15,393,810	17,532,938	53,427
RRZ Property	307,600,000	41.1	16,552,001	17,605,853	70,021
Schwanenmarkt Property	60,700,000	8.1	3,674,018	3,827,572	22,406
Opernpassagen Property	77,200,000	10.3	4,474,045	5,181,686	20,064
<b>TOTAL</b>	<b>748,900,000</b>	<b>100.0</b>	<b>40,093,875*</b>	<b>44,148,048*</b>	<b>165,919*</b>

Cushman & Wakefield has determined a market value of €748,900,000 as at August 2006. Since the Borrower has extensive restructuring and refurbishment plans, the Valuer was instructed to carry out a "As-If" completed scenario market valuation as well. The "As-If" completed scenario market value equals to €820,500,000 and summarises the value of the individual properties, assuming that the conceptual changes planned by the Borrower had taken place, the renovation budget had been spent and no maintenance backlog is applicable.

\* Numbers are rounded to nearest Euro.

<b>Property</b>	<b>As-If market value</b>	<b>Increase to market value (per cent.)</b>
Kö-Galerie Property	315,700,000	4.1
RRZ Property	361,600,000	17.6
Schwanenmarkt Property	63,400,000	4.4
Opernpassagen Property	79,800,000	3.4
<b>TOTAL</b>	<b>820,500,000</b>	<b>9.6</b>

a) *Outline of Leases*

The top ten tenants contribute 29.6 per cent. of Annual Passing Rent, and the largest tenant represents 5.0 per cent. of the aggregate portfolio Annual Passing Rent.

<b>Tenant Name</b>	<b>APR (€)</b>	<b>Lettable area (sqm)</b>	<b>Cumulative APR (per cent.)</b>	<b>WA lease expiry</b>	<b>Usage</b>
Mc Kinsey	2,012,427	9,130	5.0	31/08/09	Office
Apcoa	1,570,000	0	8.9	31/12/09	Parking
H&M	1,224,888	4,954	12.0	30/10/11	Retail
KÖ GmbH	1,200,938	0	15.0	31/12/06	Parking
P & C	1,122,098	5,687	17.8	30/06/08	Retail
GRS	1,096,548	9,017	20.5	31/12/10	Office
CinemaxX	1,085,000	7,900	23.2	08/12/23	Leisure
Boecker	861,882	5,528	25.4	30/06/08	Retail
Jil Sander AG	858,972	996	27.5	30/04/11	Retail
Douglas	847,932	2,606	29.6	30/05/11	Retail
Other	28,213,190	120,101	100.0		
<b>TOTAL</b>	<b>40,093,875</b>	<b>165,919</b>			

b) *Outline of Lease Expiry Analysis*

The lease expiry analysis in this property description section is based on a cut-off date of 30 September 2006.

Approximately a quarter of the leases expire or have break options within the next two years, which will facilitate space and tenant management in preparation for and the execution of the planned renovation works.

<b>Years</b>	<b>Up to 30/09/08</b>	<b>Up to 30/09/11</b>	<b>Up to 30/09/14</b>	<b>From 30/09/14 onwards</b>	<b>TOTAL</b>
<b><u>Tenant break not exercised</u></b>					
APR expiring (€)	9,273,133	15,570,618	8,413,895	6,836,229	<b>40,093,875</b>
per cent. of total APR	23.1	38.8	21.0	17.1	<b>100.0</b>
Space expiring (sqm)	32,230	67,892	28,210	28,185	<b>156,517</b>
per cent. of total space	19.4	40.9	17.0	17.0	<b>94.3</b>
<b><u>Tenant break exercised</u></b>					
APR expiring (€)	11,874,716	17,014,909	6,930,492	4,273,758	<b>40,093,875</b>
per cent. of total APR	29.6	42.4	17.3	10.7	<b>100.0</b>
Space expiring (sqm)	40,767	70,822	24,377	20,551	<b>156,517</b>
per cent. of total space	24.6	42.7	14.7	12.3	<b>94.3</b>



<b>Property</b>	<b>WA term to next break option</b>	<b>WA term to lease expiry</b>
Kö-Galerie Property	3.5	3.9
RRZ Property	5.3	6.4
Schwanenmarkt Property	3.7	4.5
Opernpassagen Property	2.7	3.5
<b>TOTAL</b>	<b>4.2</b>	<b>4.9</b>

### c) Outline of Tenant Industry

The industry mix is typical for shopping centres but includes also a significant financial sector contribution reflecting the office tenancies in the Kö-Galerie Property and Opernpassagen Property.

<b>Tenant Industry</b>	<b>APR (€)</b>	<b>APR (per cent.)</b>	<b>Lettable area (sqm)</b>	<b>Lettable area (per cent.)</b>
Fashion	13,141,319	32.8	36,869	22.2
Finance, Consulting & Admin.	6,531,435	16.3	31,554	19.0
Property Mgmt.	3,283,652	8.2	1,850	1.1
Catering	3,169,564	7.9	14,568	8.8
Life Style <sup>1</sup>	3,002,201	7.5	9,217	5.6
Wellness & Beauty	2,420,146	6.0	6,513	3.9
Other <sup>2</sup>	2,416,118	6.0	8,134	4.8
Leisure	1,832,426	4.6	19,873	12.0
Sports	1,330,017	3.3	5,582	3.4
Food & Groceries	1,186,989	3.0	5,816	3.5
Electrical Goods	1,135,608	2.8	4,572	2.8
Residential	644,400	1.6	12,155	7.3
Vacant	0	0.0	9,216	5.6
<b>TOTAL</b>	<b>40,093,875</b>	<b>100.0</b>	<b>165,919</b>	<b>100.0</b>

<sup>1</sup>including art galleries, gift shops, interior design, travel agents, flower shops, book shops

<sup>2</sup>including dry cleaning, news agent and one petrol station

The tenant industry "property management" includes leases regarding parking garages amounting to €3,118,938 or 95 per cent. of this sector.

### d) Outline of Property Type

<b>Usage (per cent. of APR)</b>	<b>Kö – Galerie Property</b>	<b>RRZ Property</b>	<b>Schwanenmarkt Property</b>	<b>Opernpassagen Property</b>	<b>TOTAL</b>
Retail	45.1	79.3	71.3	36.6	<b>60.7</b>
Office	39.7	0.0	2.2	24.2	<b>18.2</b>
Parking	10.2	0.0	9.5	26.8	<b>7.8</b>
Restaurant	1.6	8.8	0.0	6.3	<b>4.9</b>
Leisure	1.5	8.0	0.0	0.0	<b>3.9</b>
Residential	0.0	0.0	17.0	0.0	<b>1.6</b>
Storage	1.0	2.0	0.0	1.6	<b>1.4</b>
Other	0.1	1.9	0.0	4.5	<b>1.2</b>
Health	0.8	0.0	0.0	0.0	<b>0.3</b>
<b>TOTAL</b>	<b>38.3</b>	<b>41.3</b>	<b>9.2</b>	<b>11.2</b>	<b>100.0</b>

## A. Kö-Galerie Property

The Kö-Galerie Property has a market value of €303.4 million and is occupied by 132 tenants. The Annual Passing Rent equals €15,393,810 and the Estimated Rental Vale amounts to €17,532,938. The Property has a vacancy rate of 12.1 per cent., representing 11.3 per cent. of the ERV of the Property. The weighted average term to lease expiry of the Property is in 3.9 years. The weighted average term to next break option is in 3.5 years.

### Description

The Property consists of three sections, Königsallee 58 is built around 1920 and acquired and

integrated in 1998. Königsallee 60 is built in 1986, with an additional floor added in 1990 and Königsallee 62 is constructed in 2001/2002.

The Property comprises four underground and eight upper floors. The shopping centre is divided in three trading levels. The Kö-Galerie Property comprises 30,020sqm office space, 20,391sqm retail, restaurant and leisure and 2,444sqm storage space. There are 871 underground parking spaces in the building.

### **Location and Catchment Area**

The shopping centre is located on the renowned and highly frequented Königsallee in the city centre of Düsseldorf. With approximately 573,000 inhabitants Düsseldorf is Germany's ninth largest city and represents one of its five most important office markets and business service centres with a diversified economic structure, based on telecommunications, banking, insurance and trade.

The Kö-Galerie Property is an integrated centre. The micro location is appropriate for retail use both by pedestrian shoppers and for car based shopping due to the neighbouring car parking facilities in Steinstrasse and Gruenstrasse.

The catchment area within a 30 minute drive-time radius has 1.8 million inhabitants. Within 15 minutes it has 500,000 and within five minutes 72,000 inhabitants.

### **Competition**

The Kö-Galerie Property is neighboured by the themed shopping centre Sevens and several luxury retailers. Together with the Kö-Galerie Property there are five shopping centres above 10,000sqm in Düsseldorf. The total shopping centre space amounts to some 80,000sqm. With the exception of one, all schemes are located in the city centre

### **Lease Information**

#### *a) Outline of the Kö-Galerie Property Leases*

The Kö-Galerie Property is predominately used for retail and office purposes, where 24.2 per cent. of the top ten leases represent office space by Annual Passing Rent. There is high tenant diversity with the largest office tenant representing 13.1 per cent. and the largest retail tenant 5.6 per cent. of the portfolio by Annual Passing Rent.

<b>Tenant Name</b>	<b>APR (€)</b>	<b>Lettable area (sqm)</b>	<b>Cumulative APR (per cent.)</b>	<b>WA lease expiry</b>	<b>WA next break option</b>	<b>Usage</b>
Mc Kinsey	2,012,427	9,130	13.1	31/08/09	-	Office
Apcoa	1,570,000	0	23.3	31/12/09	-	Parking
Jil Sander AG	858,972	996	28.9	30/04/11	-	Retail
Commerzbank	536,886	1,423	32.3	31/10/11	-	Office
P. Dussmann	437,367	2,109	35.2	05/01/08	-	Office
Nationalbank	381,480	1,451	37.7	31/12/14	-	Office
Frankonia Jagd	351,806	1,606	39.9	30/09/06	-	Retail
Mizuho Corporate	342,006	1,244	42.2	31/12/06	-	Office
Gino's	312,468	1,330	44.2	30/04/11	-	Retail
Bally	288,000	563	46.1	15/02/14	15/02/09	Retail
Other	8,302,398	33,575	100.0			
<b>TOTAL</b>	<b>15,393,810</b>	<b>53,427</b>				

*b) Lease Expiry Analysis*

The lease expiry ratio prior to September 2008 correlates with the borrower's business plan which foresees a new tenant mix once the property has been refurbished.

<b>Years</b>	<b>Up to 30/09/08</b>	<b>Up to 30/09/11</b>	<b>Up to 30/09/14</b>	<b>From 30/09/14 onwards</b>	<b>TOTAL</b>
<b><u>Tenant break not exercised</u></b>					
<i>APR expiring (€)</i>	3,605,148	8,028,204	2,003,679	1,756,779	<b>15,393,810</b>
<i>per cent. of total APR</i>	23.4	52.2	13.0	11.4	<b>100.0</b>
<i>Space expiring (sqm)</i>	14,395	23,651	4,645	4,324	<b>47,015</b>
<i>per cent. of total space</i>	26.9	44.3	8.7	8.1	<b>88.0</b>
<b><u>Tenant break exercised</u></b>					
<i>APR expiring (€)</i>	4,040,614	8,553,151	1,521,821	1,278,224	<b>15,393,810</b>
<i>per cent. of total APR</i>	26.2	55.6	9.9	8.3	<b>100.0</b>
<i>Space expiring (sqm)</i>	15,916	24,322	3,561	3,216	<b>47,015</b>
<i>per cent. of total space</i>	29.8	45.5	6.7	6.0	<b>88.0</b>

*c) Tenant Industry Analysis*

The Finance, Consulting & Administrative Sector represents the largest tenant industry, including McKinsey, Commerzbank, P. Dussmann, National Bank and Mizuho Corporate. The tenant industry categorised as Fashion includes tenants such as Jil Sander, Bally, Yello Pilot, Etienne Aigner, Duet/Gant, Hestermann, Louis Vuitton.

<b>Tenant Industry</b>	<b>APR (€)</b>	<b>APR (per cent.)</b>	<b>Lettable area (sqm)</b>	<b>Lettable area (per cent.)</b>
Finance, Consulting & Admin.	5,417,932	35.2	22,530	42.2
Fashion	4,363,805	28.3	6,833	12.8
Property Mgmt.	1,711,722	11.1	1,063	2.0
Other <sup>3</sup>	814,468	5.3	2,560	4.7
Sports	780,730	5.1	3,767	7.1
Catering	761,707	4.9	3,831	7.2
Wellness & Beauty	623,899	4.1	1,503	2.8
Life Style <sup>4</sup>	570,659	3.7	2,413	4.5
Food & Groceries	322,488	2.1	2,041	3.8
Leisure	18,000	0.1	350	0.7
Residential	8,400	0.1	62	0.1
Vacant	0	0.0	6,473	12.1
<b>TOTAL</b>	<b>15,393,810</b>	<b>100.0</b>	<b>53,426</b>	<b>100.0</b>

<sup>3</sup> including dry cleaning, news agent

<sup>4</sup> including art galleries, gift shops, interior design, travel agents, flower shops, book shops

As at Valuation Date, 12.1 per cent. of the Property's lettable area was vacant.

**Capital Expenditure**

The business plan provided by the Borrowers dated 14 July 06 foresees that Kö-Galerie Property will undergo substantial refurbishment work over the next two years, with a total capital expenditure amounting to some €11.6 million. The refurbishment will configure space, improve circulation between floors and update the shopping centres partly outdated facilities.

## **B. RRZ Property**

The RRZ Property has a market value of €307.6 million and is occupied by 163 tenants. The Property has a vacancy rate of 0.6 per cent., representing 0.7 per cent. of the ERV of the Property. The weighted average term to lease expiry of the Property is 6.4 years. The weighted average term to next break option is 5.3 years.

### ***Description***

The Property was originally built in the early 1970s with several extensions in the last eight years. It comprises two retailing levels and one parking level on top. In 1997 an additional parking garage was added to increase the number of parking spaces to some 5,500. In 1998 the gastronomy and leisure part was added and in 2001 the floor space was extended with the Young Fashion Mall.

The RRZ Property comprises a total lettable area of 70,021sqm, consisting of a retail and restaurant part of 53,310sqm, 3,333sqm storage and 13,009sqm entertainment space.

The main tenant of the entertainment space is CinemaxX, representing with 7,900sqm 6.6 per cent. of the Annual Passing Rent of the RRZ Property.

A waiver regarding mining damage is entered in the land register. According to the mining memorandum by Arup and further investigations neither structural nor architectural design is considered as being sensitive to settlement.

### ***Location and Catchment Area***

The shopping centre is located in a residential area of Mülheim an der Ruhr, a city of 170,000 inhabitants located in the Ruhr region (*Ruhrgebiet*) between Duisburg and Essen, approximately 30km north-east of Düsseldorf. The city is connected to the surrounding conurbation via the A40 motorway (*Ruhrschnellweg*).

The location of the RRZ Property is highly accessible from Mülheim and surrounding cities and the shopping centre benefits from its own motorway exit. Its central location in the conurbation results in a catchment area of 2.2 million people within a 30 minutes drive. Within 15 minutes drive the population account for some 324,000.

### ***Competition***

In recent years the RRZ Property has been subject to increasing competition, primarily through the development of Germany's largest shopping centre CentrO Oberhausen, which opened in 1996 and is located a 15 minutes' drive from the RRZ Property. Furthermore, the city centre of Essen is located 5km away from the RRZ Property and also represents a main shopping location in the region.

The comparatively high level of competition is mitigated by the high population density in the Ruhr region. CentrO and Forum City were both opened in the past ten years and the RRZ Property, as a well established and very accessible shopping centre, stood its ground.

## Lease Information

### a) Outline of the RRZ Property Leases

Peek & Cloppenburg is the Property's largest tenant contributing 6.8 per cent. of Annual Passing Rent to this shopping centre. CinemaxX is second with a share of 6.6 per cent. of the Property's APR. The top ten tenants generate 35.7 per cent. of the Annual Passing Rent.

<b>Tenant Name</b>	<b>APR (€)</b>	<b>Lettable area (sqm)</b>	<b>Cumulative APR (per cent.)</b>	<b>WA lease expiry</b>	<b>WA next break option</b>	<b>Usage</b>
P&C	1,122,098	5,687	6.8	30/06/08	-	Retail
CinemaxX	1,085,000	7,900	13.3	08/12/23	-	Leisure
Boecker	861,882	5,528	18.5	30/06/08	-	Retail
H&M	481,244	2,054	21.4	31/01/12	-	Retail
Saturn	475,396	2,999	24.3	31/05/14	-	Retail
Douglas	427,839	1,678	26.9	06/06/11	-	Retail
S.Oliver	405,229	1,243	29.4	12/11/10	-	Retail
Birken	370,380	4,024	31.6	31/08/16	-	Leisure
Hema	360,786	1,580	33.8	30/09/12	-	Retail
Roland Schuhe	327,253	710	35.7	31/05/20	31/05/14	Retail
<i>Other</i>	10,634,894	36,618	100.0			
<b>TOTAL</b>	<b>16,552,001</b>	<b>70,021</b>				

### b) Lease Expiry Analysis

The lease expiry profile has a consistently decreasing profile, the longest term to lease expiry is represented by CinemaxX, the second largest tenant in this Property.

<b>Years</b>	<b>Up to 30/09/08</b>	<b>Up to 30/09/11</b>	<b>Up to 30/09/14</b>	<b>From 30/09/14 onwards</b>	<b>TOTAL</b>
<b><u>Tenant break not exercised</u></b>					
<i>APR expiring (€)</i>	3,343,535	3,532,577	5,384,526	4,291,363	<b>16,552,001</b>
<i>per cent. of total APR</i>	20.2	21.3	32.6	25.9	<b>100.0</b>
<i>Space expiring (sqm)</i>	14,810	13,306	20,357	21,238	<b>69,711</b>
<i>per cent. of total space</i>	21.2	19.0	29.1	30.3	<b>99.6</b>
<b><u>Tenant break exercised</u></b>					
<i>APR expiring (€)</i>	4,790,392	4,168,168	4,789,887	2,803,554	<b>16,552,001</b>
<i>per cent. of total APR</i>	28.9	25.3	28.9	16.9	<b>100.0</b>
<i>Space expiring (sqm)</i>	19,803	14,677	18,424	16,807	<b>69,711</b>
<i>per cent. of total space</i>	28.3	21.0	26.3	24.0	<b>99.6</b>

### c) Tenant Industry Analysis

The RRZ Property shows a well-diversified tenant mix with a total of 163 tenants. The Industry split of this Property can be regarded as typical for an out of town shopping centre.

<i>Tenant Industry</i>	<i>APR (€)</i>	<i>APR (per cent.)</i>	<i>Lettable area (sqm)</i>	<i>Lettable area (per cent.)</i>
Fashion	7,342,450	44.4	24,687	35.3
Catering	1,813,364	11.0	8,283	11.8
Life Style <sup>6</sup>	1,774,430	10.7	4,672	6.7
Leisure	1,700,348	10.3	17,033	24.3
Wellness & Beauty	1,095,352	6.6	3,527	5.0
Other <sup>7</sup>	960,379	5.6	3,247	4.7
Electrical Goods	892,573	5.4	3,870	5.5
Food & Groceries	589,424	3.6	2,784	4.0
Sports	373,616	2.3	1,266	1.8
Finance, Consulting & Admin.	10,065	0.1	2	0.0
Vacant	0	0.0	420	0.6
Property Mgmt.	0	0.0	230	0.3
<b>TOTAL</b>	<b>16,552,001</b>	<b>100.0</b>	<b>70,021</b>	<b>100.0</b>

<sup>6</sup> including art galleries, gift shops, interior design, travel agents, flower shops, book shops

<sup>7</sup> including dry cleaning, news agents and one petrol station

0.6 per cent. of the Property's lettable area was vacant as at the Valuation Date.

### Capital Expenditure

According to the business plan provided by the Borrowers dated 14 July 2006, the RRZ Property will undergo substantial refurbishment and restructuring work over various phases in the next three years, with the total capital expenditure amounting to some €33.3 million.

### C. Schwanenmarkt Property

The Schwanenmarkt Property has a market value of €60.7 million and is occupied by 50 commercial tenants. The weighted average term to lease expiry of the Property is 4.5 years. The weighted average term to next break option is 3.7 years. The Property was fully let as at the Valuation Date.

#### Description

The subject Property was originally built in 1973/ 1975 and generally refurbished in 1999 and 2001. The Schwanenmarkt Property comprises one retail floor. On top of this there are up to ten floors with some 195 residential units representing 17.0 per cent. of the Property's Annual Passing Rent.

The Schwanenmarkt Property has a lettable area of 22,406sqm comprising 11,950sqm of residential area and 9,572sqm retail space. The Property benefits from 710 parking spaces on two underground floors and one ground floor parking garage.

Main tenants include Hennes & Mauritz with 20.2 per cent., Parkbetriebe P.Gathen with 9.5 per cent. and Deutsche Telekom representing 3.3 per cent. of the Property's Annual Passing Rent.

#### Location and Catchment Area

Krefeld has some 239,000 inhabitants and is located southwest of the Ruhr region close to the Dutch border and 25km from Düsseldorf. Krefeld has good motorway access and the local economy benefits from its proximity to the financial and service centre of Düsseldorf.

The Schwanenmarkt Property is located in the city centre of Krefeld in the northern part of the prime shopping street Hochstrasse between the intersections with Schwanenmarkt and Poststrasse, which is a highly frequented pedestrian area. The Property links the top-end of the prime retail pitch

Hochstrasse (Poststrasse) to the mid-market retail pitch of Hochstrasse (Schwanenmarkt) via the Schwanenmarkt Property shopping centre arcade.

The subject Property's catchment area within a 30 minute drive time accounts for approximately 1.2 million people, within a 15 minute drive some 241,000 people and some 23,570 people within a drive time of five minutes.

### Competition

Schwanenmarkt benefits from Krefeld's role of a neighbourhood location for the entire region, serving the immediate neighbourhood for daily needs and regular shopping.

There is comparatively low competition to the Schwanenmarkt Property: There is one further shopping centre, Hansa Zentrum, located a few hundred metres south of the subject Property. Düsseldorf is the nearest city, but should not be regarded as direct competition as it is located some 25km from the city centre of Krefeld.

### Lease Information

#### a) Outline of the Schwanenmarkt Property Leases

Hennes & Mauritz generates 20.2 per cent. of the Annual Passing Rent occupying 12.9 per cent. of the lettable area. Parkbetriebe P. Gathen generates 9.5 per cent. and the remaining tenants provide significantly smaller contributions to the the Property's rental income, with the third largest tenant generating approximately 3 per cent. of the APR.

<b>Tenant Name</b>	<b>APR (€)</b>	<b>Lettable area (sqm)</b>	<b>Cumulative APR (per cent.)</b>	<b>WA lease expiry</b>	<b>WA next break option</b>	<b>Usage</b>
H&M	743,643	2,900	20.2	31/08/11	-	Retail
Parkbetriebe P. Gathen	348,000	0	29.7	31/12/07	-	Parking
Dt. Telekom	122,219	240	33.0	31/12/08	-	Retail
Plozzer/ Luccini	98,016	317	35.7	30/06/17	-	Retail
Schmidt&Görgens	97,560	542	38.4	12/11/14	31/12/06	Retail
Weltbild Plus	93,769	218	40.9	30/06/09	-	Retail
Essanelle	91,846	119	43.4	03/02/11	-	Retail
Douglas	88,965	305	45.8	31/01/11	31/01/07	Retail
Heinemann	76,694	608	47.9	31/08/11	-	Retail
Bao Anh	69,520	161	49.8	31/03/14	-	Retail
Other	1,843,786	16,996	100.0			
<b>TOTAL</b>	<b>3,674,018</b>	<b>22,406</b>				

#### b) Lease Expiry Analysis

This is a stabilised property, but there is some concentration of lease expiries resulting from co-terminus of ten year leases put in place following the refurbishment in 2001.

<b>Years</b>	<b>Up to 30/09/08</b>	<b>Up to 30/09/11</b>	<b>Up to 30/09/14</b>	<b>From 30/09/14 onwards</b>	<b>TOTAL</b>
<b><u>Tenant break not exercised</u></b>					
APR expiring (€)	793,901	2,040,998	396,343	442,776	<b>3,674,018</b>
per cent. of total APR	21.5	55.6	10.8	12.1	<b>100.0</b>
Space expiring (sqm)	1,653	17,735	1,056	1,962	<b>22,406</b>
per cent. of total space	7.3	79.2	4.7	8.8	<b>100</b>
<b><u>Tenant break exercised</u></b>					
APR expiring (€)	1,056,906	2,172,882	331,814	112,416	<b>3,674,018</b>
per cent. of total APR	28.8	59.1	9.0	3.1	<b>100.0</b>
Space expiring (sqm)	2,753	18,348	969	336	<b>22,406</b>
per cent. of total space	12.3	81.9	4.3	1.5	<b>100</b>

### c) Tenant Industry Analysis

There is a good mix of tenants, with fashion retailer Hennes & Mauritz being its anchor tenant. The 195 residential units represent 54 per cent. of the lettable area and 17 per cent. of rent.

<b>Tenant Industry</b>	<b>APR (€)</b>	<b>APR (per cent.)</b>	<b>Lettable area (sqm)</b>	<b>Lettable area (per cent.)</b>
Fashion	1,190,262	32.4	4,729	21.1
Residential	636,000	17.3	12,093	54.0
Property Mgmt.	361,976	9.9	121	0.5
Wellness & Beauty	351,462	9.6	759	3.4
Other <sup>9</sup>	246,283	6.7	1,007	4.5
Catering	225,377	6.1	760	3.4
Electrical Goods	203,255	5.5	634	2.8
Life Style <sup>10</sup>	201,748	5.5	686	3.1
Food & Groceries	155,675	4.2	744	3.3
Sports	95,090	2.6	267	1.2
Finance, Consulting & Admin.	6,890	0.2	5	0.0
Leisure	0	0.0	601	2.7
<b>TOTAL</b>	<b>3,674,018</b>	<b>100.0</b>	<b>22,406</b>	<b>100.0</b>

<sup>9</sup> including dry cleaning and news agent

<sup>10</sup> including art galleries, gift shops, interior design, travel agents, flower shops, book shops

The Property is fully let as of the Valuation Date.

### Capital Expenditure

The property was extensively refurbished in 2001. The business plan provided by the Borrowers dated 14 July 2006 addresses deferred maintenance and includes the sale of this Property in the short-to-medium term.

### D. Opernpassagen Property

The Opernpassagen Property has a market value of €77.2 million representing 10.3 per cent. of the portfolio and is occupied by 46 tenants. The Property has a vacancy rate of 11.6 per cent., representing 8.5 per cent. of the ERV of the Property. The weighted average term to lease expiry of the Property equals 3.5 years. The weighted average term to the next break option is 2.7 years.

#### Description

The building permits of the Opernpassagen Property date from 1963. Since then the Property has been subject to various refurbishments and expansions. It comprises a five-story office building, with retail units on the ground floor and part of the first basement. The total lettable area amount to 20,064sqm, comprising 8,603sqm of office space and 2,482sqm of storage. Retail space and restaurant is at 7,256sqm. The Opernpassagen Property has 576 parking spaces above the retail floors, spread on three parking levels. 26.8 per cent. of the Property's Annual Passing Rent stems from proceeds of the car park, Annual Passing Rent of the GRS (office space) accounts for 24.5 per cent.

#### Location and Catchment Area

Cologne has about 970,000 inhabitants and is the fourth largest city in Germany as well as the largest in North-Rhine Westphalia. The city has very good accessibility via an extensive network of motorways in the Rhein-Ruhr region and an ICE high speed train connection link to national and international transportation networks

Opernpassagen is located in the city centre of Cologne and benefits from the immediate walking distance (five minutes) to prime pitch pedestrian area of Schildergasse and Hohe Strasse.

The population within the catchment area are approximately 1.95 million people within a 30 minutes' drive-time and some 681,000 within a 15 minutes' drive time. 83,000 people are reached within a drive time of five minutes.



## Competition

There are seven shopping centres of over 10,000sqm in Cologne of which three are located in the city centre. Neumarkt Galerie is the largest of these with 16,000sqm, followed by DuMont Carre (15,400sqm) and Collonaden Hauptbahnhof (13,800sqm). Together with the large scale out of town shopping centre Huerth-Park which opened in 1977 (150 shops with a lettable area of 62,000sqm), the total shopping centre space amounts to approximately 215,000sqm. Situated on the western fringes is the Rhein-Centre with approximately 36,000sqm. Köln Arkaden opened in 2005 and comprises 27,000sqm. It is located on the right of the river Rhine in the eastern part of Cologne.

Although all of these centres have a good tenant and sector mix, the Valuer regards major competition coming from the chain retailers on the prime pitches. The Valuer considers that the agglomeration effects of the city centre chain retailers are much higher than the competition itself. The fact that the Opernpassagen Property is an integrated centre rather than a solitaire supports this.

## Lease Information

### a) Outline of the Opernpassagen Property Leases

Kö GmbH generates 26.8 per cent. of total rent. GRS generates 24.5 per cent. of total rent and occupies 44.9 per cent. of the lettable area, they occupy 100 per cent. of this Property's office space. The remaining top eight retail tenants contribute a comparatively low amount to the Annual Passing Rent which totals 20.4 per cent. of the total rental income.

<b>Tenant Name</b>	<b>APR (€)</b>	<b>Lettable area (sqm)</b>	<b>Cumulative APR (per cent.)</b>	<b>WA lease expiry</b>	<b>WA next break option</b>	<b>Usage</b>
KÖ GmbH	1,200,938	0	26.8	31/12/06		Parking
GRS	1,096,548	9,017	51.4	31/12/10	-	Office
Douglas	170,577	340	55.2	09/10/12	10/10/09*	Retail
C. Bechstein	152,448	742	58.6	31/10/12	-	Retail
Polster Richter	131,913	497	61.5	30/11/10	-	Retail
Hr. Durek	114,077	1,888	64.1	30/09/10	-	Leisure
Hohmann	103,409	542	66.4	13/10/12	-	Retail
Leonardo	82,500	125	68.2	18/11/14	19/11/07	Retail
Fr. Fenner-Weihrauch	80,164	169	70.0	30/11/10	-	Retail
Fr. Schneider	78,700	264	71.8	24/04/11	-	Retail
<b>Other</b>	<b>1,262,771</b>	<b>6,480</b>	<b>100.0</b>			
<b>TOTAL</b>	<b>4,474,045</b>	<b>20,064</b>				

\*Break Option Date of the retail space of Douglas

### b) Lease Expiry Analysis

<b>Years</b>	<b>Up to 30/09/2008</b>	<b>Up to 30/09/2011</b>	<b>Up to 30/09/2014</b>	<b>From 30/09/2014 onwards</b>	<b>TOTAL</b>
<b><u>Tenant break not exercised</u></b>					
APR expiring (€)	1,530,546	1,968,840	629,348	345,311	<b>4,474,045</b>
per cent. of total APR	34.2	44.0	14.1	7.7	<b>100.0</b>
Space expiring (sqm)	1,373	13,199	2,152	661	<b>17,385</b>
per cent. of total space	6.8	65.8	10.7	3.3	<b>86.6</b>
<b><u>Tenant break exercised</u></b>					
APR expiring (€)	1,986,804	2,120,707	286,970	79,564	<b>4,474,045</b>
per cent. of total APR	44.4	47.4	6.4	1.8	<b>100.0</b>
Space expiring (sqm)	2,295	13,475	1,423	192	<b>17,385</b>
per cent. of total space	11.3	67.2	7.1	1.0	<b>86.6</b>

c) *Tenant Industry Analysis*

The largest contribution by Annual Passing Rent represents the parking facilities. These are managed by the Borrower's property manager, Kö GmbH and provide for 26.8 per cent. of the Property's Annual Passing Rent. Together with GRS, they represent 51.4 per cent. of the rent, with a variety of different tenant categories occupying the remainder. The vacancy rate is 11.6 per cent. as of Valuation Date.

<i>Tenant Industry</i>	<i>APR (€)</i>	<i>APR (per cent.)</i>	<i>Lettable area (sqm)</i>	<i>Lettable area (per cent.)</i>
Property Mgmt.	1,209,953	27.0	436	2.2
Finance & Consulting & Admin.	1,096,548	24.5	9,017	44.9
Life Style <sup>12</sup>	455,364	10.2	1,446	7.2
Other <sup>13</sup>	394,989	8.8	1,321	6.7
Catering	369,116	8.3	1,694	8.4
Wellness & Beauty	349,433	7.8	724	3.6
Fashion	244,803	5.5	619	3.1
Food & Groceries	119,402	2.7	247	1.2
Leisure	114,077	2.5	1,888	9.4
Sports	80,580	1.8	281	1.4
Electrical Goods	39,780	0.9	68	0.3
Vacant	0	0.0	2,323	11.6
<b>TOTAL</b>	<b>4.474.045</b>	<b>100.0</b>	<b>20,064</b>	<b>100.0</b>

<sup>12</sup> including art galleries, gift shops, interior design, travel agents, flower shops, book shops

<sup>13</sup> including dry cleaning, news agent

**Capital Expenditure**

The business plan provided by the Borrowers dated 14 July 2006 addresses deferred maintenance and the sale of the Property in the short to medium term.

## OUTLINE OF THE LOAN DOCUMENTS

### 1. GENERAL

The Issuer's assets will, upon the Closing Date, consist primarily of a senior mortgage loan (as more specifically described below), secured by a Mortgage on Properties located in Düsseldorf, Cologne, Krefeld and Mülheim a.d. Ruhr. See "DESCRIPTION OF THE PROPERTIES".

The Credit Agreement contains the types of representations and warranties and undertakings on the part of the Borrowers that a reasonably prudent lender making loans secured on commercial properties and, as the case may be, on residential properties of this type would customarily require.

In connection with the origination of the Facilities, Eurohypo undertook certain due diligence procedures such as would customarily be undertaken by a prudent lender making loans secured on commercial and residential properties of this type, so as to evaluate the Borrowers' ability to service their obligations under the Facilities and so as to analyse the quality of the Properties. In order to do this, an analysis of the contractual cashflows, occupational tenant covenants and lease terms and the overall quality of the real estate was undertaken by or on behalf of Eurohypo. Risk was assessed by stressing the cashflows derived from underlying tenants and the risks associated with refinancing the amount due upon the maturity of the Facilities. The property investment experience and expertise of the Borrowers' sponsors were also factors taken into consideration in the lending analysis.

### 2. LEGAL DUE DILIGENCE

Eurohypo ensured that the Borrowers' counsel was instructed to prepare a legal due diligence report on, among other things, title and encumbrances with respect to all Properties and on the principal lease terms of all Properties. The reports address the following legal aspects where relevant and/or material:

- (a) a review of title (*Grundbuch*);
- (b) identity of registered title and let property;
- (c) confirmation of the Borrowers' ownership or of a notarial confirmation that the registration of the Borrowers' ownership will be registered with the land register;
- (d) legal searches;
- (e) encumbrances under private law and public law easements;
- (f) analysis of cadastral plans and property boundaries;
- (g) review of a sample of lease agreements; and
- (h) steps required to register the Mortgage for Eurohypo and/or cancel the Mortgage for third parties, as applicable at the Loan Origination Date.

A final draft legal due diligence report with respect to the Facilities was prepared on 26 June 2006 (the "**Draft Due Diligence Report**") by Freshfields Bruckhaus Deringer.

In addition, a technical due diligence report, a survey report and a tax and financial due diligence report were prepared.

### 3. OUTLINE OF THE CREDIT AGREEMENT AND OBLIGOR ACCOUNTS

#### a) Outline of Principal Terms of the Credit Agreement

##### aa) *Loan Amount, Drawdown and Further Advances*

Under the Credit Agreement, Eurohypo (in its capacity, *inter alios*, as the "**Lender**") has made available to the Borrowers Facilities in the amount of €710,000,000; split into the following:

- (a) the Facility A-1 in the amount of €560,000,000;
- (b) the Facility A-2 in the amount of €106,000,000; and
- (c) the Facility B in the amount of €44,000,000,

(together the "**Facilities**").

The amounts drawn under Facility A-1 is referred to as the "**Senior Loan**"; the amounts drawn under Facility A-2 as the "**Junior Loan**"; and the amounts drawn under Facility B are referred to as the "**CapEx Loan**" (the Senior Loan, the Junior Loan and the CapEx Loan together, the "**Loans**").

The amounts drawn under Facility B may not exceed the lower of (i) €44,000,000 and (ii) 80 per cent. of the CapEx Costs. Any amount drawn under Facility B may not cause the aggregate amounts under the Facilities to exceed €710,000,000. No amount may be drawn under Facility B in order to fund any CapEx Phase if the aggregate initial amount of the CapEx Loan made to fund the relevant CapEx Phase would exceed 80 per cent. of the aggregate costs shown in the borrowers' business plan for the relevant CapEx Phase (a "**Permitted Amount**"), *provided that*, in relation to any Property, to the extent that the actual costs for a specific CapEx Phase are lower than those envisaged in the borrowers' business plan for that particular CapEx Phase and the relevant Borrower draws an amount (the "**Borrowed Amount**") lower than the Permitted Amount for the relevant CapEx Phase, the relevant Borrower is permitted to increase the aggregate amount of any subsequent drawing under Facility B for such Property by an amount up to the difference between the Borrowed Amount and the Permitted Amount determined in respect of such Property and *provided further that* no amount may be drawn under Facility B in order to fund any CapEx Phase of any Property if the aggregate initial amount of the CapEx Loan made to fund the CapEx Costs of the relevant Property would thereby exceed 80 per cent. of the aggregate CapEx Costs shown in the borrowers' business plan for the relevant Property.

"**CapEx Costs**" means the costs (including fees payable to ECE Projektmanagement G.m.b.H. & Co. KG) related to (i) the Refurbishment CapEx Works and (ii) the Deferred Maintenance CapEx Works, each as evidenced in the borrowers' business plan, "**Refurbishment CapEx Works**" means those works with respect to a CapEx Phase which relate to refurbishment capital expenditures only as identified in the borrowers' business plan; "**Deferred Maintenance CapEx Works**" means those works with respect to a CapEx Phase which relate to deferred maintenance capital expenditures only as identified in the borrowers' business plan; and "**CapEx Phase**" means each discrete capital expenditure work phase for the relevant Property which represents a physically separate part of the overall capital expenditure work for that Property as evidenced in the borrowers' business plan.

As of the date of this Prospectus, the aggregate principal amount outstanding under the Senior Loan and the Junior Loan was €666,000,000. No amount has been drawn down under Facility B, hence, no CapEx Loan is outstanding.

The Credit Agreement does not provide for reborrowing of any amounts repaid or prepaid by the Borrowers.

#### *bb) Interest*

Interest accrues on each of the Loans from (and including) a Loan Interest Payment Date up to (but excluding) the succeeding Loan Interest Payment Date (each a "**Loan Interest Period**"). Interest under the Loans is paid quarterly in arrear on 15 January, 15 April, 15 July and 15 October in each year, with the first Loan Interest Payment Day being 15 January 2007, all subject to adjustment for non-business days.

Interest is payable under the Junior Loan and the Senior Loan at a rate of interest equal to 5.022 per cent. per annum with respect to Loans granted to Kö KG or RRZ KG and equal to the lower of the Swap Fixed Rate and 5.40 per cent. per annum with respect to Loans granted to OP KG or SM KG,

provided that, as long as a Swap Termination Trigger Event has not occurred, the interest will be payable at a floating rate, fixed two Loan Business Days prior to each Loan Interest Payment Date for the following Loan Interest Period, calculated with reference to EURIBOR for three month euro deposits plus a separate margin and mandatory cost (if any). Interest is payable under the CapEx Loan at a rate of interest equal to the Swap Fixed Rate, provided that as long as a Swap Termination Trigger Event has not occurred, the interest rate will be payable at a floating rate, fixed two Loan Business Days prior to each Loan Interest Payment Date for the following Loan Interest Period, calculated with reference to EURIBOR for three month euro deposits plus a separate margin and mandatory cost (if any).

*cc) Scheduled Repayments*

The Loans will be repayable in full on the Loan Maturity Date (subject to mandatory prepayment, see "Mandatory Prepayment" below).

*dd) Voluntary Prepayments*

Under the Credit Agreement, each Borrower will be entitled to prepay the Loans:

- (a) at its option, either Loans granted to the relevant Borrower and/or other Borrowers on any Loan Interest Payment Date in whole or in part by giving not less than 7 Loan Business Days (if prepayment is to be made in an aggregate amount below €50,000,000) or 15 Loan Business Days (in all other cases) prior notice to the Facility Agent;
- (b) if any of the Borrowers is, or will be, required to gross up or reimburse any payments to the Lender under the Credit Agreement in respect of certain taxes, increased costs or mandatory costs related to the Lender.

On the day of any voluntary prepayment of the Loans, the relevant Borrower will be obliged to pay any due Prepayment Fee, termination costs relating to Hedging Arrangements, break costs and other similar costs arising from the prepayment.

*ee) Prepayment Fee*

For certain prepayments each Borrower will be obliged to pay a Prepayment Fee as follows:

- (a) 0.80 per cent. of the amount prepaid or cancelled, provided that the prepayment occurs prior to 13 September 2007;
- (b) 0.50 per cent. of the amount prepaid or cancelled, provided that the prepayment occurs on or after 13 September 2007 but prior to 13 September 2008;
- (c) 0.30 per cent. of the amount prepaid or cancelled, provided that the prepayment occurs on or after 13 September 2008 but prior to 13 September 2009;
- (d) 0.05 per cent. of the amount prepaid or cancelled, provided that the prepayment occurs on or after 13 September 2009 but prior to 13 September 2010; and
- (e) no fee will be payable thereafter.

Upfront Fee, Commitment Fee and Prepayment Fee are paid pursuant to fee letters (the "**Fee Letters**" or each a "**Fee Letter**"). The Fee Letters are governed by German law except for the Fee Letter providing for the Prepayment Fee which is governed by English law.

*ff) Mandatory Prepayments*

The Loans are repayable in instalments on each Loan Interest Payment Date, following a period of 36 months after the Loan Origination Date, in an amount available for such purpose.

Prior to the Loan Maturity Date, the Borrowers will, following a period of 36 months after the date of initial drawdown under the Facilities be required, on each Loan Interest Payment Date, to prepay an

amount of the Loans in an amount available for such purpose on the Rent Accounts and, until the Release Threshold has been met, in the amount credited to the Reserve Account pursuant to the order of priorities set out in the Credit Agreement.

**"Release Threshold"** means (a) ICR is equal to or exceeds 150 per cent. and (b) LTV is equal to or lower than 80 per cent.

Prior to the Loan Maturity Date, the Borrowers will, on the Loan Interest Payment Date immediately following a period of 36 months after the date of initial drawdown under the Facilities be required, to prepay an amount of the Loans equal to the amount credited on the Reserve Account.

It will not be a Loan Event of Default if any Borrower does not have the funds available to make any amortisation payments set out above.

Under the Credit Agreement the Borrowers will be obliged to prepay a Lender's share in the Loans if it becomes unlawful in any jurisdiction for such Lender to perform any of its obligations under a Finance Document, or to fund or maintain its share in the Loans.

In case of a disposal of a Property, the relevant Borrower must apply the aggregate amount of the Release Price, any Prepayment Fee, break costs, amounts payable to the Hedge Counterparty and, in case of a disposal after 36 months following the Loan Origination Date, all amounts standing to the credit of the Reserve Account of the relevant Borrower to the repayment of the Loans made to the relevant Borrower in accordance with the Credit Agreement.

**"Release Price"** means, with respect to the disposal of any Property, the following percentage rates multiplied with the allocated loan amount for such Property: (i) 105 per cent. with respect to the Schwanenmarkt Property, (ii) 105 per cent. with respect to the Opernpassagen Property, (iii) 115 per cent., if LTV is above 85 per cent. and 110 per cent. if LTV is below or equal to 85 per cent. with respect to the Kö-Galerie Property and (iv) 115 per cent. if LTV is above 85 per cent. and 110 per cent. if LTV is below or equal to 85 per cent. with respect to the RRZ Property.

In case of a rescission of the agreement by which the SM KG Property or the OP KG Property has been acquired, an amount as if the respective Property has been disposed of (see above) has to be effected. In case of a rescission of the agreement by which Kö KG Property or RRZ KG Property has been acquired, each Lender may by notice declare the outstanding Loans, together with accrued interest, break costs and all other amounts accrued under the Finance Documents, to be immediately due and payable, each in accordance with the Credit Agreement.

In case of a certain changes of direct or indirect ownership or control (i.e. majority of voting rights or ability to otherwise direct, indirectly or directly, the affairs) in any Borrower each Lender may by notice declare the outstanding Loans together with accrued interest, break costs and all other amounts accrued under the Finance Documents, to be immediately due and payable.

#### *gg) Representations and Warranties*

The Credit Agreement contains representations and warranties of the Obligors that a reasonably prudent lender making loans secured on commercial properties of this type would customarily require including, but not limited to, representations as to the due incorporation, existence and authorisations of the Borrowers, the valid execution of the Finance Documents, the creation of security interests in respect of the Loan Security, the maintenance of insurance coverage for the Property, the absence of (i) a Loan Event of Default, (ii) any material adverse change with regard to the financial status of the Borrowers and (iii) any deduction or withholding on account of any taxes with respect to payments made under the Credit Agreement, and the accuracy of the information furnished to the Lender.

#### *hh) Undertakings*

The undertakings given by each of the Obligor under the Credit Agreement, at the Credit Agreement Signing Date, include those undertakings that a reasonably prudent lender making loans secured on commercial properties of this type would require, in particular, but not limited to the following:

- (a) Each Obligor must supply to the Facility Agent in sufficient copies for all the Lenders its audited annual financial statements as well as consolidated (if applicable) financial statements for each of its financial years and its quarterly financial statements for each of its financial quarters.
- (b) Except as provided in the Credit Agreement, no Obligor may, either in a single transaction or in a series of transactions and whether related or not, dispose of all or any part of its assets, except with the consent of the Facility Agent or, in case of certain assets, such as obsolete assets or cash in accordance with the provisions of the Credit Agreement.
- (c) No Obligor may incur any Financial Indebtedness except for any Financial Indebtedness incurred under the Finance Documents; or any subordinated loan made by shareholder of the Borrowers.

**"Financial Indebtedness"** means any indebtedness for or in respect of: (a) moneys borrowed; (b) any acceptance credit; (c) any bond, note or other similar instrument; (d) any agreement treated as a finance or capital lease in accordance with generally accepted accounting principles applicable to a Borrower; (e) receivables sold or discounted (otherwise than to the extent sold on a non-recourse basis); (f) moneys owing in respect of any interest rate swap or cross-currency swap or foreign currency forward sale or purchase contract or other form of interest currency hedging or speculative futures transaction, other than transactions where the liable entity has no indebtedness or financial obligation other than an initial transaction premium or fee payable, but only to the extent such fee has been paid, and in each case the net mark to market value of the derivative transaction will be taken into account; (g) any liability or indemnity obligation in respect of any guarantee, indemnity, bond, letter of credit or any other instrument issued by a bank or financial institution; (h) any amount of any liability under an agreement granting a hereditary building right in respect of a property; (i) any actual or contingent liability in respect of a guarantee, indemnity or similar assurance for any item referred to in paragraphs (a) to (h) above.

- (d) No Obligor may give any guarantee or indemnity to or for the benefit of any person in respect of any obligation of any other person or enter into any document under which an Obligor assumes any liability of any other person other than under the Finance Documents.
- (e) No Obligor may carry on any business other than the ownership and management of its interests in the Properties and activities reasonably incidental thereto.
- (f) No Obligor may make any acquisition or investment other than any asset reasonably acquired made in the ordinary course of its business in connection with the ownership, management and development of the Property except as otherwise permitted in the Credit Agreement.
- (g) No Obligor may enter into any contracts other than the Transaction Documents, and any other contract than any contract expressly allowed under the Credit Agreement.
- (h) No Obligor may declare or pay any dividend or make any other distribution in respect of any of its shares or repay or redeem any of its share capital, save if no Default is outstanding, from funds standing to the credit of the General Account. No Obligor may issue any further shares or alter any rights attaching to its issued shares.
- (i) Each Obligor must prepare separate tax returns as far as it is obliged to do so and pay taxes due and payable by it, (taking into account all permitted due date extensions) unless payment of those taxes is being contested in good faith and, if appropriate, adequate reserves are being made for those taxes. No Obligor may change its residence for tax purposes without consultation of the Facility Agent unless such change does not have material effects.
- (j) Each Borrower must not and will ensure that the Managing Agent does not without the prior written consent of the Facility Agent, amend the duration of any Occupational Lease, agree to any rent adjustments (except for rent increases), agree to other material amendments to an Occupational Lease, commence any surrender or forfeiture proceedings in respect of any Property, consent to any assignment of any tenant's interest under any Occupational Lease or claim or accept any claim than any occupational lease is frustrated, repudiated or otherwise terminated (unless validly claimed by a tenant), in each case unless the Occupational Lease

represents less than 5 per cent. of net rental income of the relevant Property or if such action is in accordance with the borrowers' business plan as of the Credit Agreement Signing Date. Each Borrower must deliver to the Facility Agent a copy of any lease which has been concluded by the Borrower in relation to a Property with an annual rent in excess of €50,000, or which has been requested by the Facility Agent.

- (k) The Borrowers must not appoint any Managing Agent without the prior consent of, and on terms approved by, the Facility Agent acting reasonably. Each Managing Agent must be a reputable firm of property managing agents. A property management agreement may not be amended without the prior written consent of the Facility Agent, acting reasonably.
- (l) Each Borrower must procure that each Managing Agent maintains professional indemnity insurance with a cover (*Deckungssumme*) per each occurrence (*je Versicherungsfall*) of not less than (aa) with respect to each of Kö KG Property and RRZ KG Property, €25,000,000 for damage to persons (*Personenschäden*), €10,000,000 for damage to property (*Sachschäden*) (without fire and explosion damage), €50,000,000 for damage to property (*Sachschäden*) caused by fire and explosion and €3,000,000 for financial losses (*Vermögensschäden*) and (bb) with respect to each of OP KG Property and SM KG Property, €15,000,000 for damage to persons (*Personenschäden*), €5,000,000 for damage to property (*Sachschäden*) (without fire and explosion damage), €15,000,000 for damage to property (*Sachschäden*) caused by fire and explosion and €1,000,000 for financial losses (*Vermögensschäden*); in each case the aggregate cover for all claims under the respective insurance within an insurance year has to be available for damage to property and to persons with the simple amount as specified above, and for financial losses with the double amount specified above.
- (m) Each Borrower must ensure that at all times (i) insurance of its Property and the plant and machinery on its Property (including fixtures and improvements) are insured on a full reinstatement basis together with a further amount equal to not less than 10 per cent. thereof to cover site clearance costs, professional fees, and value added tax on such costs, provided that such further amount may not exceed €26,000,000 in respect of each of Kö KG Property and RRZ KG Property, unless the Facility Agent requires in its sole discretion an increase up to 10 per cent. of the respective full reinstatement cost for Kö KG Property and/or RRZ KG Property, (ii) third party liability insurance and (iii) insurance against public law liabilities and not less than two years' loss of rent on all occupational tenancies of each Property is in force in an amount, form, and with an insurance company or underwriters which satisfies the requirements stipulated in the Credit Agreement. Each Borrower has also taken out insurance against acts of terrorism as at the date hereof.
- (n) All insurances must be in an amount and form acceptable to the Facility Agent (acting reasonably) and with an insurance company or underwriter that has been assigned the relevant requisite rating which is defined as a long term unsecured debt rating of at least A by Fitch and A by S&P. In case these undertakings have not been fulfilled on the Credit Agreement Signing Date each Borrower must use its best endeavours to comply therewith by 1 January 2007, and is obliged to comply therewith by the 10th Loan Business Day following such date. In case that the relevant Borrower is not registered on such date in the land register as owner with respect to the relevant Property, the relevant Borrower and the Security Agent on behalf of the Lenders may mutually agree upon a later date with respect to the respective Property.
- (o) Each Borrower must also ensure that the Security Agent on behalf of the Lenders is named as co-insured on all insurance policies and is named as first loss payee. This undertaking does not apply in respect of third party liability insurance and public law liability insurance. Each Borrowers must also ensure that each insurance contains a lender protection clause requiring the insurer to give notice to the Security Agent before terminating the relevant insurance. In case these undertakings have not been fulfilled on Credit Agreement Signing Date each Borrower must use its best endeavours to comply therewith by 1 January 2007, and is obliged to comply therewith by the 10th Loan Business Day following such date. In case that the relevant Borrower is not registered on such date in the land register as owner with respect to the relevant Property, the relevant Borrower and the Security Agent on behalf of the Lenders may mutually agree upon a later date with respect to the respective Property.



- (p) The Borrowers are obliged to procure that on each Loan Interest Payment Date, the ICR is equal to or above 110 per cent.
- (q) The Borrowers are obliged to procure that the LTV does not exceed 92.5 per cent. at any time.

The undertakings described under (p) and (q) above, are referred to as "**Financial Covenants**".

"**ICR**" or interest coverage ratio means on each Loan Interest Payment Date, projected net rental income of the Borrowers as a percentage of projected annual interest costs under the Facility (excluding principal payments) for the following twelve months at that time.

"**LTV**" means the ratio of (i) the aggregate outstanding amounts of the Loans less the aggregate of the amounts standing to the credit of the CapEx Accounts to (ii) the market value determined in the last recent valuation.

ii) *Loan Events of Default*

The Credit Agreement sets out events of default that are customary for the lending business and following the occurrence of which the Mortgage or other Loan Security for the repayment of the Facilities may be enforced. Subject to any applicable grace periods, thresholds and materiality the specified events include: non-payment of sums due under the Credit Agreement, breach of any representations and warranties and breach of any covenants or any other provision of the Credit Agreement, insolvency of, or the occurrence of any insolvency-related event in respect of any Obligor, illegality, cross-default, initiation of enforcement proceedings with regard to assets of, and cessation of business by, any of the Obligors, change of ownership of the Obligor, certain disposals of the Properties, compulsory purchase of any of the Properties, failure by any of the Borrowers to create security in favour of the Lenders and material adverse change. All such events are referred to as the "**Loan Events of Default**". In particular, it constitutes a Loan Event of Default if a Financial Covenant is breached unless such breach is remedied to the satisfaction of the Facility Agent within 10 Loan Business Days of the earlier of the Facility Agent giving notice of such breach and the Borrowers becoming aware of such breach. Such breach can be remedied (i) with respect to a breach of the ICR covenant by the Borrowers (a) effecting a partial prepayment of the Loans from funds available for such purpose to the Borrowers or (b) depositing a sum of cash with the Facility Agent the interest of which will be treated as gross rental income or (c) depositing a sum of cash with the Facility Agent that is equivalent to the shortfall in the net rental income required to comply with the ICR covenant and (ii) with respect to a breach of the LTV covenant by the Borrowers (a) effecting a partial prepayment of the Loans from funds available for such purpose to the Borrowers or (b) by depositing a sum of cash with the Facility Agent that is the equivalent to the calculated shortfall.

c) **Loan Security**

aa) *German Security Documents*

The obligations of the Obligors under the Finance Documents are secured (the "**German Loan Security**") pursuant to the following security agreements governed by German law (the "**German Security Documents**") and entered into on or about the Credit Agreement Signing Date:

- (a) a notarial deed creating the joint mortgage (*Gesamtgrundschuld*) over all Properties (the "**Mortgage Deed**") together with the assumption of personal liability (*Übernahme der persönlichen Haftung*) by each Borrower and a submission to an immediate enforcement (*Unterwerfung unter die sofortige Zwangsvollstreckung*) and all other rights and claims arising under the Mortgage Deed as well as a security purpose agreement (*Sicherungszweckerklärung*) entered into by the each Borrower and the Security Agent regarding the Mortgage (the "**Security Purpose Agreement**");
- (b) first ranking account pledges, granted by each of the Obligors in respect of all its rights in, to and under its Accounts (including any present and future credit balances standing to the credit of its Accounts) (the "**Accounts Pledge Agreement**");
- (c) assignments by way of security (*Sicherungsabtretungen*) granted by each of the Obligors, as relevant (the "**Assignment Agreement**") over:

- (A) any and all, present and future, claims arising under the lease agreements relating to the Properties;
  - (B) any and all, present and future, claims arising under any insurance agreements relating to the Properties;
  - (C) any and all, present and future, claims of each Borrower arising under a property management agreement entered into with respect to Properties;
  - (D) any and all present and future, actual or contingent rights and claims of the Borrowers arising under or in connection with the Acquisition Agreement including, but not limited to, any warranty claims (*Gewährleistungsansprüche*), claims for reduction of the purchase price (*Minderung*), rights to rescission (*Rücktritt*) and restitution claims against the respective seller(s);
  - (E) any and all present or future, actual or contingent rights and claims of RRZ KG arising under or in connection with the Head Lease Agreement;
- (d) a first ranking share and interest pledge agreement over all the shares in NewCo1 and over all limited partnership interests in the Borrowers, respectively (the "**Share and Interest Pledge Agreement**");
  - (e) a comfort letter issued by GB Immobilien G.m.b.H according to which GB Immobilien G.m.b.H undertakes to ensure that the Managing Agent has sufficient means to fulfill its obligations under the Property Management Agreements (the "**Comfort Letter**");
  - (f) subordination agreements between Merrill Lynch Luxembourg Holdings Sarl, GB Immobilien G.m.b.H. and Tinfoil B.V., respectively (each a "**Subordinated Creditor**") and Eurohypo pursuant to which the respective Subordinated Creditor subordinates its claim in relation to cash fundings and other shareholder indebtedness to the claims of the Lender (the "**Subordination Agreements**");
  - (g) loan interest shortfall guarantees, issued by the General Partner and Merrill Lynch & Co., Inc (the "**Loan Interest Shortfall Guarantors**"), respectively, by which each guarantees to the Facility Agent to cover any Loan Interest Shortfall by way of cash funding in an amount of up to €10,500,000 as regards Merrill Lynch & Co., Inc. and €1,500,000 as regards the General Partner (the "**Loan Interest Shortfall Guarantees**"). A "**Loan Interest Shortfall**" arises if a Borrower fails to make any interest payment under the Credit Agreement when due and payable;
  - (h) an intercreditor agreement between the Security Agent, ECE Projektmanagement G.m.b.H. & Co. KG and Merrill Lynch Luxembourg Holdings Sarl in respect of claims relating to the tax and financial due diligence report issued by Deloitte & Touche GmbH Wirtschaftsprüfungsgesellschaft (the "**Deloitte Intercreditor Agreement**");
  - (i) a shareholder undertaking agreement between the Facility Agent and the Partners pursuant to which the Partners undertake, in case of a disposal of shares in a Borrower to pay the Release Price in respect of the Property owned by such Borrower towards the payment of the amounts owed by such Borrower under the Finance Documents (the "**Shareholder Undertaking Agreement**").

*bb) Hedging Arrangement; Deed of Assignment*

Pursuant to the terms of the Credit Agreement, RRZ KG and Kö KG have entered into, and are required to maintain, interest rate hedging arrangements (the "**Hedging Arrangements**") governed by English law to fully hedge their interest rate exposure under the Credit Agreement. The Hedging Agreements are documented under a 1992 ISDA Master Agreement (Multicurrency – Cross-Border) and a schedule (the "**ISDA Master Agreement**"), as published by the International Swaps and Derivatives Association, Inc ("**ISDA**").

Under the Hedging Agreements, fixed rate payments will be due from RRZ KG and Kö KG and payments calculated by reference to a floating rate based on three-months EURIBOR will be due from the Hedge Counterparty to RRZ KG and Kö KG. The respective payments will be netted.

The obligations of the Borrowers are further secured pursuant to a deed of assignment between Kö KG, RRZ KG and the Security Agent dated 6 October 2006 (the "**Deed of Assignment**") pursuant to which each of RRZ KG and Kö KG assigns to the Security Agent any present and future claims arising from the Hedging Agreements governed by English law. The Deed of Assignment and the German Security Documents are together referred to as "**Loan Security Documents**" and the security created thereby is together referred to as the "**Loan Security**".

**d) Obligor Accounts**

The Borrowers have each opened with Deutsche Bank the following bank accounts in the name of each of the Borrowers: the Rent Accounts, the General Accounts, the Reserve Account, the Disposal Proceeds Account, the CapEx Account, the Shareholder Payment Account, a CSA Account only upon request and the Interest Payment Support Account. NewCo1 must maintain a Rent Account and a General Account. All accounts are together referred to as the "**Accounts**" and each of them as an "**Obligor Account**". The Obligor Accounts are pledged by the Obligors to the Security Agent under the Accounts Pledge Agreement. None of the Borrowers may, without the prior consent of the Facility Agent, maintain any other bank account. Each of the Obligors may not effect any payments from the Accounts (with the exception of the General Account and the Shareholder Payment Account) unless explicitly permitted in the Credit Agreement.

*aa) Rent Accounts*

Each Obligor will ensure that the aggregate of all amounts paid or payable to or for the account of the Borrowers or NewCo 1 (excluding any payments paid or payable under the Head Lease Agreement) in connection with the letting or other occupation of all or any part of a Property and other receipts arising from the Properties (excluding the disposal thereof) and all other revenues and any amounts payable to it under the Hedging Arrangements are credited to the relevant Rent Account (together the "**Rent Accounts**").

Prior to the enforcement of the Loan Security and prior to an acceleration of the Loans, on each Loan Interest Payment Date any and all amounts standing to the credit of each Borrower's Rent Account will be applied in an order of priority as set out in the Credit Agreement, which is amended between the Lenders in respect of the split of debt between the Junior Lenders pursuant to the Loan Intercreditor Agreement as follows (provided that all obligations of the same order may only be discharged after the discharge in full of all obligations of a higher order) (the "**Loan Waterfall**"):

- (a) *first*, to the relevant General Account, an amount equal to (aa) the Permitted Operating Costs and value added tax on the Gross Rental Income of the relevant Borrower having become due and payable since the immediately preceding Loan Interest Payment Date minus (bb) any payments made in respect thereof;
- (b) *second*, to the Facility Agent and to the Security Agent, all of the Facility Agents' and the Security Agents' fees, costs and expenses due and payable by the relevant Borrower under the Finance Documents;
- (c) *third*, to the Senior Hedge Counterparty, all scheduled payments (not being payments as a result of termination or closing out payable pursuant to paragraphs (e)(A)(i) and (f) below) due and payable by the relevant Borrower under the Senior Hedging Arrangements;
- (d) *fourth, pro rata and pari passu* as between (A) and (B):
  - (A) (i) *first*, to the Senior Lender, any accrued interest under the Senior Loan as well as fees and costs (other than pursuant to (b) above) due and payable by the relevant Borrower under the Finance Documents;
  - (ii) *second*, to the Junior A-2/B Lenders, towards interest on and the repayment of the principal of any Cure Payments made by a Junior A-2/B Lender;

- (iii) *third, pro rata and pari passu*, to the Junior A-2/B Lender, the appropriate share of the Facility A-2/B in the accrued interest under the Junior Loan due and payable by the relevant Borrower under the Finance Documents (as determined by the Facility Agent), and to the Junior Hedge Counterparty with regard to Facility A-2/B, all scheduled payments (not being payments as a result of termination or closing out payable pursuant to paragraphs (e)(A)(ii) and (g) below) due and payable by the relevant Borrower under the Junior Hedging Arrangements;
  - (iv) *fourth*, to the Junior A-2/C Lenders, towards interest on and the repayment of the principal of any Cure Payments made by a Junior A-2/C Lender;
  - (v) *fifth, pro rata and pari passu*, to the Junior A-2/C Lender, the appropriate share of the Facility A-2/C in the accrued interest under the Junior Loan due and payable by the relevant Borrower under the Finance Documents (as determined by the Facility Agent), and to the Junior Hedge Counterparty with regard to Facility A-2/C, all scheduled payments (not being payments as a result of termination or closing out payable pursuant to paragraphs (e)(A)(iii) and (g) below) due and payable by the relevant Borrower under the Junior Hedging Arrangements; and
- (B) to the CapEx Lender, any accrued interest amounts under the CapEx Loan due and payable by the relevant Borrower under the Finance Documents and any Excess Spread;
- (e) *fifth, pro rata and pari passu* as between (A) and (B) (provided that the proportional redemption amounts in respect of each Loan will be calculated on the basis of the aggregate outstanding amount of the Loans under such Facility):
  - (A)
    - (i) *first, pro rata and pari passu*, (aa) on the Loan Interest Payment Dates subsequent to the period of 36 months following the Loan Origination Date only, to the Senior Lender, towards the repayment of the principal of the Senior Loan made to the relevant Borrower and (bb) to the Senior Hedge Counterparty, any payments (not being payments referred to in subparagraph (f) below) due and payable by the relevant Borrower as a result of termination or closing out due but unpaid under the Senior Hedging Arrangements;
    - (ii) *second, pro rata and pari passu*, (aa) on the Loan Interest Payment Dates subsequent to the period of 36 months following the Loan Origination Date only, to the Junior A-2/B Lender, towards the repayment of the principal of the Junior Loan made to the relevant Borrower under Facility A-2/B, and (bb) to the Junior Hedge Counterparty with regard to Facility A-2/B, any payments (not being payments referred to in subparagraph (g) below) due and payable by the relevant Borrower as a result of termination or closing out due but unpaid under the Junior Hedging Arrangements with regard to Facility A-2/B;
    - (iii) *third, pro rata and pari passu*, (aa) on the Loan Interest Payment Dates subsequent to the period of 36 months following the Loan Origination Date only, to the Junior A-2/C Lender, towards the repayment of the principal of the Junior Loan made to the relevant Borrower under Facility A-2/C, and (bb) to the Junior Hedge Counterparty with regard to Facility A-2/C, any payments (not being payments referred to in subparagraph (g) below) due and payable by the relevant Borrower as a result of termination or closing out due but unpaid under the Junior Hedging Arrangements with regard to Facility A-2/C; and
  - (B) on the Loan Interest Payment Dates subsequent to the period of 36 months following the Loan Origination Date only, to the CapEx Lender, towards the repayment of the CapEx Loan to the relevant Borrower;
- (f) *sixth*, to any termination payments under the Senior Hedging Arrangements of the relevant Borrower arising from:

- (A) it becoming illegal for the relevant Senior Hedge Counterparty to comply with its obligations under the applicable Senior Hedging Arrangements;
  - (B) an event of default relating to the relevant Senior Hedge Counterparty; or
  - (C) any Rating Event Termination Event affecting the relevant Senior Hedge Counterparty;
- (g) *seventh*, to any termination payments under the Junior Hedging Arrangements of the relevant Borrower arising from:
- (A) it becoming illegal for the relevant Junior Hedge Counterparty to comply with its obligations under the applicable Junior Hedging Arrangements; or
  - (B) an event of default relating to the relevant Junior Hedge Counterparty;
- (h) *eighth*, only during the period of 36 months following the Loan Origination Date, to the relevant Reserve Account;
- (i) *ninth*, any other amounts due and payable by the relevant Borrower under the Finance Documents; and
- (j) *tenth*, any surplus to the relevant General Account.

If the credit on the Rent Account of a Borrower is insufficient to discharge the obligations of any of the above orders, the other Borrowers and NewCo1 are obliged in an amount equal to such shortfall to discharge such obligations from the credit on their respective Rent Accounts, such payment to be made on a *pari passu* basis with the payment obligations of such Borrowers of the same order in the priority of payments set out above.

If a Material Senior Loan Default has occurred and remains outstanding and has not been cured by appropriate Cure Payments, but before acceleration of the Loans pursuant to acceleration of the Facilities all amounts standing to the credit of the Rent Accounts will be applied in accordance with Loan Waterfall except that the repayment of the principal of the Junior Loan made under Facility A-2/B in accordance with paragraph (e)(A)(ii)(aa) above, and the repayment of the principal of the Junior Loan made under Facility A-2/C in accordance with paragraph (e)(A)(iii)(aa) above, shall be applied to the Senior Lender that has experienced the Material Senior Default in accordance with paragraph (e)(A)(i)(aa) above.

If a Material Junior A-2/B Loan Default has occurred and remains outstanding and has not been cured by appropriate Cure Payments, but before acceleration of the Loans pursuant to acceleration of the Facilities all amounts standing to the credit of the Rent Accounts will be applied in accordance with Loan Waterfall except that the repayment of the principal of the Junior Loan made under Facility A-2/C in accordance with paragraph (e)(A)(iii)(aa) above, shall be applied to the Junior A-2/B Lender that has experienced the Material Junior A-2/B Default in accordance with paragraph (e)(A)(ii)(aa) above.

**"Cure Payments"** means, subject to and in accordance with the terms of the Loan Intercreditor Agreement, the payments by any Junior A-2/C Lender or, as relevant, Junior A-2/B Lender to cure or remedy a Remediable Default.

**"Excess Spread"** means, at any time, the amount equal to the aggregate interest due and payable under the Facilities for the relevant Loan Interest Period pursuant to the terms of the Credit Agreement, *minus* the aggregate interest due and payable for such Loan Interest Period to the Lenders calculated by applying the interest rates for each Facility pursuant to the terms of the Loan Intercreditor Agreement.

**"Facility A-2/B"** means a share of €57,842,500 in Facility A-2.

**"Facility A-2/C"** means a share of €48,157,500 in Facility A-2.

**"Grace Period"** means the period beginning on the date of the occurrence of a Remediable Default and ending, (a) in the case of the occurrence of any Remediable Default in relation to Facility A-1, after delivery of a notification from the Facility Agent or the Security Agent to the Junior Representative of the occurrence of a Remediable Default (i) 10 Loan Business Days if a Remedy Notice has been served by any Junior A-2/C Lenders within 5 Loan Business Days after delivery of the default notification, or (ii) if no Remedy Notice has been served by a Junior A-2/C Lender within 5 Loan Business Days after delivery of the Default Notification, 15 Loan Business Days if a Remedy Notice has been served by one or more Junior A-2/B Lenders within 10 Loan Business Days after delivery of the default notification; and (b) in the case of the occurrence of any Remediable Default in relation to Junior A-2/B, after delivery of a default notification from the Facility Agent or the Security Agent to the Junior A-2/C Representative, 10 Loan Business Days if a Remedy Notice has been served by one or more Junior A-2/C Lenders within 5 Loan Business Days after delivery of the default notification.

**"Gross Rental Income"** means the aggregate of all amounts paid or payable to or for the account of a Borrower or NewCo1 (excluding any payments paid or payable under the Head Lease Agreement) in connection with the letting or other occupation of all or any part of a Property.

**"Junior A-2/B Debt Discharge Date"** means the date on which all the Junior A-2/B Debt has been (a) unconditionally and irrevocably paid and discharged in full and all commitments under the Credit Agreement with respect to Facility A-2/B have been cancelled; or (b) in the case of Junior A-2/B Debt under a Junior Hedging Arrangement, novated by the relevant Junior Hedge Counterparty to a person other than a Junior A-2/B Creditor.

**"Junior A-2/B ICR"** means, on any Loan Interest Payment Date, the ratio (as determined by the Facility Agent), expressed as a percentage, of (i) the projected net rental income to (ii) those portions of the projected annual interest costs which relate to aggregate interest payments and fees, costs or other payments (excluding principal repayments) relating to the Senior Debt, the Junior A-2/B Debt, the Senior Hedging Arrangements and the Junior Hedging Arrangements with regard to Facility A-2/B.

**"Junior A-2/B Lender"** means a Junior Lender with regard to Facility A-2/B.

**"Junior A-2/B LTV Ratio"** means the ratio (as determined by the Facility Agent), expressed as a percentage, of (i) the aggregate outstanding principal amounts of the Senior Loan, the CapEx Loan and the Junior A-2/B Loan to (ii) the market value from the most recent valuation.

**"Junior A-2/C Lender"** means a Junior Lender with regard to Facility A-2/C.

**"Junior A-2/C Representative"** means the Junior A-2/C Lender which the Majority Junior A-2/C Lenders select as Junior A-2/C Representative.

**"Junior Representative"** means the Junior Lender which the Majority Junior Lenders select as Junior Representative.

**"Loan Insolvency Default"** means, with respect to the Credit Agreement, that (a) an Obligor is, or is deemed for the purposes of any law to be, over-indebted (*überschuldet*), unable to pay its debts as they fall due (*zahlungsunfähig*), commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of its indebtedness or, for any of the reasons set out in Sections 17 to 19 (inclusive) of the German Insolvency Code (*Insolvenzordnung*), files for insolvency (*Antrag auf Eröffnung eines Insolvenzverfahrens*); or (b) the management (*Geschäftsführung*) of an Obligor is required by law to file for insolvency; or (c) the competent court takes any of the actions set out in Sections 21 or 26 of the German Insolvency Code or the competent court institutes insolvency proceedings against an Obligor (*Eröffnung des Insolvenzverfahrens*); or (d) any other event occurs which has an equivalent or analogous effect under applicable laws of any jurisdiction.

**"Loan Non-payment Default"** means, with respect to the Credit Agreement, that an Obligor does not pay on the due date any amount payable by it under the Finance Documents in the manner required under the Finance Documents unless the non-payment is remedied within 3 Loan Business Days of the earlier of the Facility Agent giving a notice to the Obligors' agent and the relevant Obligor becoming aware of the non-payment

**"Majority CapEx Lenders"** means, at any time, CapEx Lenders (a) whose participations in the Loans made under the Facility B and then outstanding aggregate more than 66 2/3 per cent. of the Loans made under the Facility B then outstanding; or (b) if there is no Loan made under the Facility B then outstanding, whose commitments with regard to Facility B then aggregate more than 66 2/3 per cent. of the total commitments with regard to Facility B; or (c) if there is no Loan made under the Facility B then outstanding and the total commitments with regard to have been reduced to nil, whose commitments with regard to Facility B aggregated more than 66 2/3 per cent. of the total commitments with regard to Facility B immediately before the reduction.

**"Majority Junior A-2/B Lenders"** means, at any time, Junior A-2/B Lenders (a) whose participations in the Loans made under the Facility A-2/B and then outstanding aggregate more than 66 2/3 per cent. of the Loans made under the Facility A-2/B then outstanding; or (b) if there is no Loan made under the Facility A-2/B then outstanding, whose commitments with regard to Facility A-2/B then aggregate more than 66 2/3 per cent. of the total commitments with regard to Facility A-2/B; or (c) if there is no Loan made under the Facility A-2/B then outstanding and the total commitments with regard to have been reduced to nil, whose commitments with regard to Facility A-2/B aggregated more than 66 2/3 per cent. of the total commitments with regard to Facility A-2/B immediately before the reduction.

**"Majority Junior A-2/C Lenders"** means, at any time, Junior A-2/C Lenders (a) whose participations in the Loans made under the Facility A-2/C and then outstanding aggregate more than 66 2/3 per cent. of the Loans made under the Facility A-2/C then outstanding; or (b) if there is no Loan made under the Facility A-2/C then outstanding, whose commitments with regard to Facility A-2/C then aggregate more than 66 2/3 per cent. of the total commitments with regard to Facility A-2/C; or (c) if there is no Loan made under the Facility A-2/C then outstanding and the total commitments with regard to have been reduced to nil, whose commitments with regard to Facility A-2/C aggregated more than 66 2/3 per cent. of the total commitments with regard to Facility A-2/C immediately before the reduction.

**"Majority Junior Lenders"** means, prior to (and including) the Junior A-2/B Debt Discharge Date, the Majority Junior A-2/B Lenders and the Majority Junior A-2/C Lenders acting together; and, after the Junior A-2/B Debt Discharge Date, the Majority Junior A-2/C Lenders.

**"Material Junior A-2/B Loan Default"** means a Loan Event of Default under (a) a Loan Non-payment Default occurs under the Credit Agreement if the relevant amount is due to a Junior A-2/B Creditor; (b) the Junior A-2/B ICR is below 110 per cent. or the Junior A-2/B LTV Ratio is above 92.5 per cent.; or (c) a Loan Insolvency Default occurs under the Credit Agreement with respect to any Obligor.

**"Material Senior Loan Default"** means a Loan Event of Default if (a) a Loan Non-payment Default occurs under the Credit Agreement if the relevant amount is due to a Senior Creditor; (b) the Senior ICR is below 110 per cent. or the Senior LTV Ratio is above 92.5 per cent.; or (c) a Loan Insolvency Default occurs under the Credit Agreement with respect to any Obligor.

**"Permitted Operating Costs"** means reasonable operating and administrative costs incurred by a Borrower with respect to itself and a Property owned by it.

**"Rating Event Termination Event"** means, with respect to each of the Hedging Arrangements, any occurrence of an additional termination event (as provided in the relevant Hedging Arrangements) following failure by the relevant Hedge Counterparty to take any of the required measures specified in the relevant Hedging Arrangements in relation to a relevant rating event affecting such Hedge Counterparty.

**"Remediable Default"** means the occurrence of any Loan Event of Default (except a Loan Insolvency Default) for so long as it is continuing which is capable of remedy within the Grace Period.

**"Remedy Notice"** means a notice stating that one or more Facility A-2/C Lenders or one or more Facility A-2/B Lenders, as relevant, wish to remedy a Remediable Default.

**"Senior ICR"** means, on any Loan Interest Payment Date, the ratio (as determined by the Facility Agent), expressed as a percentage, of (i) the projected net rental income to (ii) those portions of the projected annual interest costs which relate to aggregate interest payments and fees, costs or other

payments (excluding principal repayments) relating to the Senior Debt and the Senior Hedging Arrangements.

**"Senior LTV Ratio"** means the ratio (as determined by the Facility Agent), expressed as a percentage, of (i) the aggregate outstanding principal amounts of the Senior Loan to (ii) the market value from the most recent valuation.

*bb) General Accounts*

Each of the Borrowers and NewCo1 has opened a current account (each a **"General Account"** and, together, the **"General Accounts"**). Provided that no Loan Event of Default is outstanding or would be reasonably likely to occur as a result of a withdrawal and subject to any restriction in the relevant Loan Security Document, each Borrower and NewCo 1 may exercise its rights and powers to its General Account. The General Account will be credited, *inter alia*, by cash fundings or payments under shareholder loans, net proceeds arising from an utilisation of a Facility or payments from the Rent Account.

*cc) Reserve Accounts*

Each of the Borrowers has opened a reserve account (each a **"Reserve Account"** and, together, the **"Reserve Accounts"**). The Reserve Account is, *inter alia*, credited by payments from the Rent Account. On the 10th Loan Business Day prior to each Loan Interest Payment Date during the period of 36 months following the Loan Origination Date, each Borrower will transfer the balance of its Reserve Account to the Interest Payment Support Account.

The credit on the Reserve Account of each Borrower will be applied in full by the relevant Borrower (subject to the approval of the Security Agent upon receipt of evidence satisfactory to it) towards the prepayment of the Loans granted to the relevant Borrower and related hedge termination costs applied in an order of priority as set out in the Credit Agreement, which is amended between the Lenders in respect of the split of debt between the Junior Lenders, in accordance with item (e) of the Loan Waterfall, and in case of a discharge in full, *pro rata* to the other Facilities in the order of priorities set out above until the Release Threshold has been met, in which case any remaining amount will be transferred to the relevant General Account.

**"Release Threshold"** means (a) an ICR is equal or exceeds 150 per cent. and (b) LTV is equal or lower than 80 per cent.

*dd) Disposal Proceeds Accounts*

Net disposal proceeds received by a Borrower as a result of a disposal of its Property must be credited to the relevant Borrower's disposal proceeds account (each a **"Disposal Proceeds Account"** and, together, the **"Disposal Proceeds Accounts"**). After the application of funds credited on the Rent Account on each Loan Interest Payment Date (or such earlier date as the Obligors' Agent under the Credit Agreement may specify in accordance with the terms of the Credit Agreement), the relevant Borrower is obliged to withdraw from, and apply amounts standing to the credit of the relevant Disposal Proceeds Account (subject to the approval of the Security Agent upon receipt of evidence satisfactory to it) in an order of priority as set out in the Credit Agreement, which is amended between the Lenders in respect of the split of debt between the Junior Lenders pursuant to the Loan Intercreditor Agreement as follows:

- (a) *first*, to the Facility Agent for the account of the relevant Finance Parties of any accrued interest, break costs and fees due from the relevant Borrower but unpaid under the Finance Documents;
- (b) *second, pro rata and pari passu* as between (A) and (B), an amount equal to the release price in respect of the Property disposed of by the relevant Borrower plus any amounts due from the relevant Borrower as a result of termination or closing out under all its Hedging Arrangements as follows:
  - (A) (i) *first, pro rata and pari passu*, (aa) to the Senior Lender towards the repayment of the Senior Loan and (bb) to the Senior Hedge Counterparty,



any payments as a result of termination or closing out due but unpaid by the relevant Borrower under all Senior Hedging Arrangements;

- (ii) *second, pro rata and pari passu*, (aa) to the Junior A-2/B Lenders towards the repayment of the Junior Loan made under Facility A-2/B, and (bb) to any Junior Hedge Counterparty with regard to Facility A-2/B, any payments as a result of termination or closing out due but unpaid by the relevant Borrower under all Junior Hedging Arrangements with regard to Facility A-2/B;
- (iii) *third, pro rata and pari passu*, (aa) to the Junior A-2/C Lenders towards the repayment of the Junior Loan made under Facility A-2/C, and (bb) to any Junior Hedge Counterparty with regard to Facility A-2/C, any payments as a result of termination or closing out due but unpaid by the relevant Borrower under all Junior Hedging Arrangements with regard to Facility A-2/C;

(B) to the CapEx Lender towards the repayment of the CapEx Loan;

(c) *third*, any Prepayment Fee

(d) *fourth*, (aa) any surplus from a disposal of the Schwanenmarkt Property or the Opernpassagen Property to the relevant CapEx Account or the relevant General Account, depending on the status of the refurbishment measures relating to the respective Property and (bb) any surplus from a disposal of the Kö-Galerie Property or the RRZ Property to the relevant General Account.

**"Finance Parties"** means a Lender, the Loan Arranger, the Facility Agent, the Security Agent and the Hedge Counterparty, and their successors and assigns.

**"Obligors' Agent"** means Gustav Management GmbH (formerly PANTA Achtundfünfzigste Grundstücksgesellschaft m.b.H.), a limited liability company incorporated under the laws of Germany and registered in the commercial register of Düsseldorf under the registration number HRB 54832.

ee) *CapEx Account*

Prior to the completion of refurbishment measures as described in the borrowers' business plan approved by the Facility Agent, each Borrower must ensure that any excess disposal proceeds which are not required for refurbishment measures will be paid into each of the capex accounts (each a **"CapEx Account"** and, together, the **"CapEx Accounts"**).

Any credit on a CapEx Account has to be applied by the relevant Borrower (subject to the approval of the Security Agent upon receipt of evidence satisfactory to it) (aa) towards the payment of the refurbishment measures of any Borrower prior to making any drawdown under Facility B, provided that such Borrower meets the further condition precedents for further Facility utilisations or (bb) at the option of the relevant Borrower, towards the voluntary prepayment of the Loans.

Upon the completion of the refurbishment measures, any credit on the relevant CapEx Account has to be transferred to the relevant General Account, subject to the condition that the financial covenants of the relevant Borrower are being complied with.

ff) *Shareholder Payment Account*

Payments which are contributed to the relevant Borrowers joint reserve account pursuant to its respective partnership agreement will be credited to the shareholder payment account (each a **"Shareholder Payment Account"** and, together, the **"Shareholder Payment Accounts"**). Provided that no Loan Event of Default would arise as a result therefrom, each Borrower may make payments out of its Shareholder Payment Account (from funds received from its shareholders or their affiliates which are not to be credited on any other Account of the relevant Borrower) based on a partner's resolution of its partners authorising such distribution without further consent or approval from any of the Parties to the Finance Documents.

*gg) Interest Payment Support Account*

On each Loan Interest Payment Date during the period of 36 months following the Loan Origination Date, to the extent there are insufficient amounts credited to a Rent Account in order to make certain senior payments, any credit on the interest payment support account (each an "**Interest Payment Support Account**" and, together, the "**Interest Payment Accounts**") of the relevant Borrower will be transferred by the Borrower (subject to the approval of the Security Agent upon receipt of evidence satisfactory to it) to such Rent Account (and in case that such credit is insufficient, any credit on the other Rent Accounts or the other Interest Payment Support Accounts *pro rata*) to the extent required to cover such shortfall.

*hh) CSA Accounts*

The Borrowers may only withdraw, transfer or dispose of any funds on deposit in the CSA Account (each a "**CSA Account**" and, together, the "**CSA Accounts**") with the prior written consent of the Security Agent, which must be given if no Loan Event of Default is outstanding and failure to do so would cause the Borrower to breach the terms of the relevant credit support annex entered into by a Borrower and a Hedge Counterparty in connection with a Hedging Arrangement.

Each Borrower has to ensure that any amount paid to it by a Hedge Counterparty under any credit support annex entered into by a Borrower and a Hedge Counterparty in connection with a Hedging Arrangement is paid into its CSA Account.

Subject to the above, each Borrower may withdraw from, and apply amounts standing to the credit of, its CSA Account:

- (a) on any date on which an amount is due from the relevant Borrower to the relevant Hedge Counterparty under the relevant credit support annex:
  - (A) to the relevant Hedge Counterparty to the extent that such amount is not netted against any amount payable by the relevant Hedge Counterparty to the relevant Borrower under the relevant Hedging Arrangements; and
  - (B) to the Rent Account to the extent that such amount is netted against any amount payable by the relevant Hedge Counterparty to the Borrower under the relevant Hedging Arrangements; and
- (b) following the termination of all transactions in respect of a Hedging Arrangement with a Hedge Counterparty, by paying the relevant Over Collateralised Amount to that Hedge Counterparty.

**"Over Collateralised Amount"** means, with respect to a Hedge Counterparty, an amount equal to the lowest of:

- (a) the net close-out amount due from the relevant Borrower to that Hedge Counterparty under a Hedging Arrangement following the termination of all transactions in respect of such Hedging Arrangement as a result of the occurrence of an event of default or a termination event under such Hedging Arrangement, if any, and otherwise zero;
- (b) the respective credit support balance in relation to such Hedge Counterparty and such Hedging Arrangement, if any, and otherwise zero; and
- (c) the amount standing to the credit of the relevant CSA Account in respect of such Hedge Counterparty and such Hedging Arrangement.

*ii) Post-enforcement payments*

Upon the acceleration of the Loans and/or enforcement of the Loan Security and/or the claims under the Finance Documents, any payments will be applied in an order of priorities set out in the Credit Agreement, which is amended between the Lenders in respect of the split of debt between the Junior Lenders pursuant to the Loan Intercreditor Agreement as follows (the "**Enforcement Waterfall**" and, together with the Loan Waterfall (as amended pursuant to a Material Senior Loan Default or a Material

Junior A-2/B Loan Default), the "**Waterfalls**") (provided that all obligations of the same order will be discharged on a *pro rata* basis and the obligations of any order will only be discharged after the discharge in full of all obligations of a higher order):

- (a) *first*, any necessary costs and expenses required to maintain the Properties as determined by the Facility Agent in its sole discretion;
- (b) *second*, to the Facility Agent and to the Security Agent, all of the Facility Agents' and the Security Agents' fees, costs and expenses due and payable by the Borrowers under the Finance Documents;
- (c) *third*, to the Senior Hedge Counterparty, all scheduled payments (not being payments as a result of termination or closing out) due and payable by the Borrowers under the Senior Hedging Arrangements;
- (d) *fourth*, to the Senior Lender, any accrued interest under the Senior Loan as well as fees and costs (other than pursuant to (b) above) due and payable by the Borrowers under the Finance Documents;
- (e) *fifth, pro rata and pari passu* as between (A) and (B):
  - (A) to the Senior Lender, towards the repayment of principal in respect of the Senior Loan; and
  - (B) to the Senior Hedge Counterparty, any payments (not being payments referred to in subparagraph (f) below) as a result of termination or closing out due but unpaid under the Senior Hedging Arrangements;
- (f) *sixth*, to any termination payments under the Senior Hedging Arrangements of the Borrowers arising from:
  - (A) it becoming illegal for a Senior Hedge Counterparty to comply with its obligations under the applicable Senior Hedging Arrangements;
  - (B) an event of default relating to the relevant Senior Hedge Counterparty; or
  - (C) any Rating Event Termination Event affecting the relevant Senior Hedge Counterparty;
- (g) *seventh*, to the CapEx Lender, any accrued interest due and payable by the Borrowers and the repayment of principal in respect of the CapEx Loan and Excess Spread (if any);
- (h) *eight*, to the Junior A-2/B Lenders, towards interest on and the repayment of the principal of any Cure Payments made by a Junior A-2/B Lender;
- (i) *ninth, pro rata and pari passu* as between (A) and (B):
  - (A) to the Junior A-2/B Lender, any accrued interest due and payable by the Borrowers in respect of the Junior Loan under Facility A-2/B; and
  - (B) to the relevant Junior Hedge Counterparty with regard to Facility A-2/B, all scheduled payments (not being payments as a result of termination or closing out) due and payable by the Borrowers under the relevant Junior Hedging Arrangements;
- (j) *tenth, pro rata and pari passu* as between (A) and (B):
  - (A) to the Junior A-2/B Lender, towards the repayment of principal in respect of the Junior Loan under the Facility A-2/B; and
  - (B) to the relevant Junior Hedge Counterparty with regard to Facility A-2/B, any payments (not being payments referred to in subparagraph (n) below) as a result of termination or closing out due but unpaid under the relevant Junior Hedging Arrangements;

- (k) *eleventh*, to the Junior A-2/C Lenders, towards interest on and the repayment of the principal of any Cure Payments made by a Junior A-2/C Lender;
- (l) *twelfth*, *pro rata* and *pari passu* as between (A) and (B):
  - (A) to the Junior A-2/C Lender, any accrued interest due and payable by the Borrowers in respect of the Junior Loan under Facility A-2/C; and
  - (B) to the relevant Junior Hedge Counterparty with regard to Facility A-2/C, all scheduled payments (not being payments as a result of termination or closing out) due and payable by the Borrowers under the relevant Junior Hedging Arrangements;
- (m) *thirteenth*, *pro rata* and *pari passu* as between (A) and (B):
  - (A) to the Junior A-2/C Lender, towards the repayment of principal in respect of the Junior Loan under the Facility A-2/C; and
  - (B) to the relevant Junior Hedge Counterparty with regard to Facility A-2/C, any payments (not being payments referred to in subparagraph (n) below) as a result of termination or closing out due but unpaid under the relevant Junior Hedging Arrangements;
- (n) *fourteenth*, to any termination payments under the Junior Hedging Arrangements of the relevant Borrower arising from:
  - (A) it becoming illegal for the relevant Junior Hedge Counterparty to comply with its obligations under the applicable Junior Hedging Arrangements; or
  - (B) an event of default relating to the relevant Junior Hedge Counterparty; and
- (o) *fifteenth*, any other amounts due and payable by the Borrowers under the Finance Documents.

**f) Governing Law**

The Credit Agreement and the German Security Documents are governed by German law, the Hedging Agreements and the Deed of Assignment are governed by English law.

**g) Loan Intercreditor Agreement**

On or about the Closing Date, the Senior Lender, the Junior Lender and the CapEx Lender, the other Finance Parties, the Facility Agent and the Security Agent will enter into an intercreditor agreement (the "**Loan Intercreditor Agreement**"), pursuant to which, *inter alia*, the subordination of certain creditors of the Borrowers and the orders of priorities will be agreed.

**A. Amendments and Waivers**

Under the terms of the Loan Intercreditor Agreement, no party thereto will be permitted to amend or waive any term of, or give any consent under, the Finance Documents in a manner that would, *inter alia*, result in: (a) an increase in the amount of any payment under the Finance Documents not contemplated by the original terms of the Finance Documents; (b) any payment being required to be paid earlier or more frequently than originally provided for under the Finance Documents; (c) any delay or reduction in payment to a Junior Creditor or a CapEx Creditor; (d) any change in the calculation of payments under the Finance Documents; (e) a Obligor becoming liable to make any additional payments or increase an existing payment; (f) any amendment to the clauses of the Credit Agreement which relate to the Waterfalls; (g) any amendment to the clauses of the Credit Agreement which relate to the financial covenants of the Borrowers; (h) a material amendment or waiver to the Security Documents; or (h) any change to the ranking or subordination achieved by the Loan Intercreditor Agreement unless the amendment or waiver or consent (i) is agreed to by all Senior Creditors, Junior Creditors and CapEx Creditors, or (ii) constitutes a procedural or administrative change arising in the ordinary course of administration of the relevant facility and is not material.

**"Junior Creditor"** means (i) in respect of Facility A-2/B, a Junior A-2/B Lender, a Junior Hedge Counterparty with regard to Facility A-2/B, and any other Finance Party with regard to Facility A-2/B (each, a **"Junior A-2/B Creditor"**), and (ii) in respect of Facility A-2/C, a Junior A-2/C Lender, a Junior Hedge Counterparty with regard to Facility A-2/C, and any other Finance Party with regard to Facility A-2/C (each, a **"Junior A-2/C Creditor"**).

**"Junior Debt"** means all Liabilities payable or owing by any Obligor to a Junior Creditor under or in connection with the Finance Documents (if owing to a Junior A-2/B Creditor, a **"Junior A-2/B Debt"**; if owing to a Junior A-2/C Creditor, a **"Junior A-2/C Debt"**).

**"CapEx Creditor"** means a CapEx Lender and any other Finance Party with regard to Facility B.

**"CapEx Debt"** means all Liabilities payable or owing by any Obligor to a CapEx Creditor under or in connection with the Finance Documents.

**"Senior Creditor"** means the Senior Lender, a Senior Hedge Counterparty, and any other Finance Party with regard to Facility A-1.

**"Senior Debt"** means all Liabilities payable or owing by any Obligor to a Senior Creditor under or in connection with the Finance Documents.

Under the terms of the Loan Intercreditor Agreement, any party thereto may only amend or waive a term of a Finance Document to which it is a party, or give its consent or approval under a term of any Finance Document providing for that consent or approval, if the amendment or waiver is made or the consent or approval is given, in accordance with that Finance Document and if (a) prior to (and including) the Senior Debt Discharge Date, the Senior Lender agrees; or (b) after the Senior Debt Discharge Date, the Majority Junior Lenders and the Majority CapEx Lenders agree; or (c) such consent or approval is a procedural, administrative or other change arising in the ordinary course of administration of the relevant facility and is not material; or (d) in the case of a consent or approval, the the party concerned considers that it would be in breach of the terms of the relevant Finance Document if it failed to give its consent or approval; provided always that as between the Senior Creditors, the Junior Creditors, the CapEx Creditors and the Obligors, the Obligors are entitled to rely on any amendment, waiver or approval given to them or either of them in accordance with each relevant Document pursuant to which it is given.

**"Senior Debt Discharge Date"** means the date on which all the Senior Debt has been (a) unconditionally and irrevocably paid and discharged in full and all commitments under the Credit Agreement with respect to Facility A-1 have been cancelled; or (b) in the case of Senior Debt under a Senior Hedging Arrangement, novated by the relevant Senior Hedge Counterparty to a person other than a Senior Creditor.

Any waiver or consent granted by or on behalf of the Senior Lender prior to (and including) the Senior Debt Discharge Date in respect of any Finance Document will also be deemed to have been given by the Majority Junior Lenders and the Majority CapEx Lenders, if (a) any transaction or circumstances would, in the absence of that waiver or consent, conflict with any term of, or constitute a default under, any Finance Document; and (b) the matter being waived or consented to has not had and is not reasonably likely to have a material adverse effect and either relates solely to formal, minor or technical matters in the day to day operation of the relevant facility or is to correct a manifest error.

#### *B. Junior Cure Rights*

If a Remediable Default has occurred, subject to the restrictions set forth in the Loan Intercreditor Agreement, the Junior Lenders may (at their absolute discretion without any obligation whatsoever), (i) make a payment directly to the relevant Priority Lenders to pay that amount, or remedy that breach, in relation to which the Remediable Default has occurred (**"Cure Cash Payments"**); or (ii) put funds on deposit into any relevant Reserve Account (**"Cure Reserve Payments"**).

**"Priority Lender"** means at any time (a) prior to (and including) the Senior Debt Discharge Date, (i) in relation to the Junior Lenders, the Senior Lender, and (ii) in relation to the Junior A-2/C Lenders, the Senior Lender and a Junior A-2/B Lender; (b) after the Senior Debt Discharge Date but prior to (and

including) the Junior A-2/B Debt Discharge Date, in relation to the Junior A-2/C Lenders, a Junior A-2/B Lender.

In the case of Cure Reserve Payments made with respect to a Remediable Default in relation to the Senior Loan, the relevant Junior Lenders will deposit into the relevant Reserve Account (i) an amount such that any proceeds of investment of such amount are sufficient to ensure that the ICR with respect to the Senior Loan is equal to or above 110 per cent.; (ii) an amount that is sufficient to ensure that the LTV with respect to the Senior Loan is equal to or below 92.5 per cent.; or (iii) if the ICR with respect to the Senior Loan is between 105 per cent. (inclusive) and 110 per cent. (exclusive), an amount equal to 200 per cent. of the projected net rental income shortfall required to meet the 110 per cent. financial covenant level. In the case of Cure Reserve Payments made with respect to a Remediable Default in relation to Facility A-2/B, the relevant Junior Lenders will deposit into the relevant Reserve Account (i) an amount such that any proceeds of investment of such amount are sufficient to ensure that the ICR with respect to the Junior Loan under Facility A-2/B is equal to or above 110 per cent.; (ii) an amount that is sufficient to ensure that the LTV with respect to the Junior Loan under Facility A-2/B is equal to or below 92.5 per cent.; or (iii) if the ICR with respect to the Junior Loan under Facility A-2/B is between 105 per cent. (inclusive) and 110 per cent. (exclusive), an amount equal to 200 per cent. of the projected net rental income shortfall required to meet the 110 per cent. financial covenant level.

If after three consecutive Interest Periods, the relevant financial trigger (the calculation of which shall exclude any amount standing to the credit of the Reserve Account into which the Cure Reserve Payments have been deposited) is complied with, then the Cure Reserve Payments shall be repaid to the relevant Junior Lenders that had provided such Cure Reserve Payments.

If after three consecutive Interest Periods, the relevant financial trigger (the calculation of which shall exclude any amount standing to the credit of the Reserve Account into which the Cure Reserve Payments have been deposited) is not complied with, then the Cure Reserve Payment shall be applied towards payment of the relevant Priority Lenders which had experienced the Remediable Default in relation to which the Cash Reserve Payments had been made.

Pursuant to the Loan Intercreditor Agreement the right to make Cure Reserve Payments by way of crediting to any relevant Reserve Account an amount equal to 200 per cent. of the projected net rental income shortfall is limited to only (i) two times in any 12 month period; and (ii) in relation to a Remediable Default with respect to the Senior Loan to four (4) occasions during the term of the Senior Loan and in relation to a Remediable Default with respect to the Junior Loan under Facility A-2/B four (4) occasions during the term of the Junior Loan under Facility A-2/B, respectively.

#### *C. Option to Purchase*

If a Event of Default has occurred and is continuing, subject to the terms set forth in the Loan Intercreditor Agreement, the Junior Lenders may elect to purchase, or arrange for another party to purchase by notice to the Security Agent (i) in the case of a Junior A-2/C Lender all of the Senior Debt, the Junior A-2/B Debt and the CapEx Debt, or (ii) in the case of a Junior A-2/B Lender all of the Senior Debt and the CapEx Debt (in each case, the "**Purchased Debt**"). Any transfer will only take effect against payment in full of (i) an amount determined by the Security Agent (acting reasonably) to be equal to the Purchased Debt outstanding as at the date the amount is received; together with (ii) any amount certified by any relevant Creditor under the Purchased Debt as necessary to compensate it for any breakage costs (including, for the avoidance of doubt, any breakage costs incurred as a result of terminating any hedging arrangement) and any funding costs (including, for the avoidance of doubt, any accrued interest) incurred by it pursuant to the terms of the relevant Finance Documents; together with (iii) to the extent not covered by (i) and (ii), any and all other amounts certified by a Senior Creditor and/or a CapEx Creditor and/or (as applicable) a Junior A-2/B Creditor as necessary to compensate it for any further costs incurred by it as a result of the transfer.

#### *D. Enforcement*

Under the terms of the Loan Intercreditor Agreement, the Subordinate Creditors will be prevented from taking enforcement action unless:

- (a) in the case of a Junior A-2/B Lender seeking enforcement action, (A) (i) the Loan Event of Default is still outstanding at the end of a period of 90 from the occurrences of such Loan

Event of Default (in each case, the "**Standstill Period**"), (ii) the market value of the Properties determined is greater than 120 per cent. of the aggregate of the Senior Debt and the CapEx Debt, and (iii) the enforcement action is not prevented otherwise under the terms of the Loan Intercreditor Agreement (as set out below), or (B) the Senior Creditors have taken enforcement action with respect to the Senior Debt; or

- (b) in the case of a Junior A-2/C Lender seeking enforcement action, (A) (i) the Loan Event of Default is still outstanding at the end of the Standstill Period, (ii) the market value of the Properties determined is greater than 120 per cent. of the aggregate of the Senior Debt and the CapEx Debt and greater than 115 per cent. of the aggregate of the Senior Debt, the CapEx Debt and the Junior A-2/B Debt, and (iii) the enforcement action is not prevented otherwise under the terms of the Loan Intercreditor Agreement (as set out below), or (B) the Senior Creditors have taken enforcement action with respect to the Senior Debt.

**"Subordinate Creditor"** means (a) in relation to a Senior Creditor, any Junior Creditor and a CapEx Creditor; and (b) in relation to a Junior A-2/B Creditor, any Junior A-2/C Creditor.

Irrespective of paragraphs (a) and (b) above, the Security Agent shall not take enforcement action with respect to a Loan Event of Default if (i) the relevant Loan Event of Default affects a Junior A-2/B Lender and the Majority Junior A-2/B Lenders have not consented to such enforcement action; (ii) the relevant Loan Event of Default affects a Junior A-2/C Lender and the Majority Junior A-2/C Lenders have not consented to such Enforcement Action; (iii) the relevant Loan Event of Default affects a CapEx Lender and the Majority CapEx Lenders have not consented to such Enforcement Action; or (iv) the relevant Event of Default is a Loan Non-payment Default and the relevant amount due to a Finance Party has been paid to that Finance Party as a Cure Payment and the Lenders who made that Cure Payment have not consented to such Enforcement Action. The Security Agent shall consult with the Creditors prior to enforcing the Security unless it is of the opinion that the delay caused by such consultation would prejudice any Senior Creditor, Junior Creditor or CapEx Creditor.

#### *E. Assignments*

No Senior Creditor, Junior Creditor or CapEx Creditor may assign or transfer any of its debt or any of its rights and obligations under any Finance Document unless the assignment or transfer is allowed under the terms of the relevant Finance Document and that person agrees to be bound by the terms of the Loan Intercreditor Agreement as a Senior Creditor, a Junior Creditor or a CapEx Creditor (as applicable) by executing and delivering to the Security Agent an accession agreement and certain conditions precedent.

## THE LOAN SALE AGREEMENT

*The following sets out an outline of certain terms of the Loan Sale Agreement and should be read in conjunction with, and is qualified by reference to, the more detailed information appearing elsewhere in this document and the detailed provisions of the Loan Sale Agreement, to which prospective investors must refer for detailed information.*

On or about the Closing Date, the Originator, the Issuer and the Trustee will enter into the Loan Sale Agreement pursuant to which the Originator will sell and assign the Senior Loan and the Related Loan Security to the Issuer. The Issuer will purchase, and accept the assignment of, the Senior Loan and the Related Loan Security.

With respect to the Mortgage, the Loan Sale Agreement will provide that the Issuer instructs the Originator and the Originator accepts such instruction to transfer the Mortgage to the Mortgagee, to the effect that the Originator may only fulfil its obligation to transfer the Mortgage by transferring the Mortgage to the Mortgagee. The Originator has assigned the Mortgage pursuant to the Mortgage Assignment which has been entered into on 15 December 2006 (whereas the transfer will become effective upon registration of such assignment with the relevant land registers). The Mortgagee will hold the Mortgage pursuant to the Mortgage Trust Deed and the Issuer Trust Agreement to the instructions of the Trustee, and, following the satisfaction of the conditions for retransfer or release pursuant to Clause 10 of the Issuer Trust Agreement, to the instructions of the Security Agent. The transfer of the Mortgage will take effect upon registration of the transfer of the Mortgage in the respective land registers.

Under the Loan Sale Agreement, the Originator will make certain representations and warranties with respect to the Senior Loan and the Related Loan Security. The Originator will be obliged to indemnify the Issuer and/or the Trustee for any losses incurred by them due to a material breach of the representations and warranties with respect to the Senior Loan or the Related Loan Security if such breach is not capable of remedy or, if capable of remedy, has not been remedied within the time specified in the Loan Sale Agreement.

As an alternative to the indemnification, the Originator may, but is not obliged to, exercise its option to repurchase the Senior Loan and the Related Loan Security. There can be no assurance that, in the event that the Originator is obliged to indemnify the Issuer, it will be able to do so or, as the case may be, that it will exercise its option to repurchase the Senior Loan and the Related Loan Security. The Originator will not have any obligations with respect to the Notes other than in respect of the representations, warranties and covenants made by the Originator pursuant to the Loan Sale Agreement.

### **I. Assignment of the Senior Loan**

The transfer of the Senior Loan from the Originator to the Issuer will be effected by way of a German law assignment. The Issuer will give written notice to each of the Borrowers of the assignment of the Senior Loan to the Issuer.

### **II. Transfer of the Related Loan Security**

The Mortgage will be transferred by the Originator by way of the German law governed Mortgage Assignment to the Mortgagee and a subsequent registration of such transfer with the competent land registers.

Apart from the Mortgage (which has been assigned pursuant to the Mortgage Assignment as of 15 December 2006 whereas the transfer will become effective upon registration in the relevant land registers), the Originator will assign and transfer the Related Loan Security with effect as of the Closing Date to the Issuer. The transfer of the Related Loan Security (other than the Mortgage) will be effected as follows:



- (a) The Security Agent will assign the security rights under the German Security Documents (except for the Mortgage) to the Issuer.
- (b) Any non-accessory (*nicht-akzessorische*) security interests (including, but not limited to, any security rights created by way of a security assignment) will be transferred to the Issuer by way of an assignment. This will, in particular, include the security interests over:
  - (A) any and all, present and future, claims of the Borrowers arising under any insurance agreements with respect to the Properties;
  - (B) any and all, present and future, claims of the Borrowers against the tenants of the Properties arising under the lease agreements related to such Properties;
  - (C) any and all, present and future, claims arising under the Acquisition Agreement;
  - (D) any and all, present and future, claims arising under any Property Management Agreements in relation to any of the Properties; and
  - (E) the Loan Interest Shortfall Guarantees.
- (c) The Security Agent will further assign the claims arising from the Deed of Assignment to the Issuer by an English law governed assignment agreement.

### III. Initial Purchase Price, Deferred Purchase Price and Release of Purchase Price

As consideration for the sale and transfer of the Senior Loan and the Related Loan Security the Issuer will, on the Closing Date, pay to the Originator a purchase price in an amount equal to the outstanding principal amount of the Senior Loan as of the Closing Date (the "**Initial Purchase Price**") (which is expected to be €560,000,000).

On each Note Interest Payment Date following the Closing Date, the Issuer will, subject to the relevant Priority of Payments, pay to the Originator the Deferred Purchase Price.

"**Deferred Purchase Price**" means, as at each Note Interest Payment Date, an amount, if any, equal to the positive difference between (i) the amount of the Available Issuer Income standing to the credit of the Issuer Income Account on the immediately preceding Calculation Date and (ii) the sum of (1) the aggregate of the amounts applied in accordance with items (a) through (p) of the Income Priority of Payments or the items (a) through (s) of the Post-Acceleration Priority of Payments, as applicable, and (2) the Issuer Profit.

"**Issuer Profit**" means, on each Note Interest Payment Date, an amount equal to 0.01 per cent. per annum of the Available Issuer Income received by the Issuer during the period commencing on the second immediately preceding Calculation Date (inclusive) and ending on the immediately preceding Calculation Date (exclusive), to be paid on such date into the Issuer Capital Proceeds Account.

### IV. Pre-Closing Proceeds

The Originator and the Issuer agree that the Senior Loan and the Related Loan Security will be sold and transferred to the Issuer (except for the Mortgage which will be transferred to the Mortgagee) on the Closing Date and as of such date the Issuer will be entitled to all proceeds of the Senior Loan, including, without limitation, interest.

With respect to the Senior Loan, interest accrued but unpaid for the period between (and including) 15 September 2006 and (but excluding) the Closing Date (the "**Pre-Closing Proceeds**") will be paid by the Issuer to the Originator on the first Loan Interest Payment Date following the Closing Date.

### V. Enquiries and Investigations

Neither the Issuer nor the Trustee has made (or will make) any of the enquiries, searches or investigations which a prudent purchaser would normally make in relation to the purchase of the Senior Loan. In addition, neither the Issuer nor the Trustee has made (or will make) any enquiry,

search or investigation at any time in relation to compliance by the Originator, the Servicer or any other person with respect to the provisions of the Loan Sale Agreement, the Servicing Agreement, the Related Loan Security Documents or in relation to any applicable laws or the execution, legality, validity, perfection, adequacy or enforceability of the Senior Loan or the Related Loan Security.

In relation to all of the foregoing matters concerning the Senior Loan, the Related Loan Security and the circumstances in which the Facilities were made available to the Borrowers prior to the transfer of the Senior Loan to the Issuer, the Issuer and the Trustee will rely entirely on the representations and warranties to be given by the Originator to the Issuer and the Trustee which are contained in the Loan Sale Agreement.

## **VI. Representations and Warranties under the Loan Sale Agreement**

The representations and warranties made by the Originator under the Loan Sale Agreement as of the Closing Date will include, without limitation (but subject to disclosure in the Loan Sale Agreement), statements to the following effect:

- (a) The Senior Loan carries a right to repayment of principal in an aggregate amount not less than the Initial Purchase Price paid by the Issuer.
- (b) Interest is accruing on the Senior Loan at such a rate as may be determined in accordance with the provisions of the Credit Agreement.
- (c) Pursuant to the terms of the Senior Loan, none of the Borrowers is entitled to exercise any right of set-off (except to the extent permitted by law or unless the counterclaim is undisputed or conclusively determined by a court decision of competent jurisdiction) against the Originator in respect of any amount that is payable under the Senior Loan.
- (d) The Originator has, since the creation of the Senior Loan, kept full and proper accounts, books and records showing clearly all transactions, payments, receipts, proceedings and notices relating to the Senior Loan and which are complete and accurate in all material respects. All such accounts, books and records are up to date and are held by, or to the order of, the Originator.
- (e) The Properties constitute investment properties let predominantly for commercial purposes.
- (f) The Borrowers will have (following the registration which has been applied for with the relevant land register) good and unrestricted title to the Properties free from any encumbrances (other than as disclosed in the purchase agreement relating to the Properties entered into by the Borrowers) which would materially adversely affect such title or the value for the mortgage purposes set out in the valuation (including any encumbrances contained in the lease documents relevant to the Properties) save for the Mortgage. Any encumbrances have been taken into account for the valuation.
- (g) The Originator is not aware (from any information received by it in the course of administering the Senior Loan without further inquiry) of any circumstances giving rise to a material reduction in the value of the Properties since the Valuation Date of the Senior Loan other than market forces affecting the values of the properties comparable to the Properties in the area where the Properties are located.
- (h) The Senior Loan constitutes valid and binding obligations of, and is enforceable against, the Borrowers, subject to general principles of law limiting the same as addressed in the legal opinions relating thereto.
- (i) The Mortgage is (to the extent the Mortgage has not been registered following the registration which has been applied for with the relevant land register will be) a legal, valid and enforceable and subsisting first priority uncertificated land charge (*erstrangige Gesamtbuchgrundschuld*) on the Properties and is, to the extent the Mortgage has not been registered, protected pursuant to Section 878 of the German Civil Code.

- (j) As at the Closing Date, the Originator was (to the extent the Mortgage has not been registered following the registration which has been applied for with the relevant land register will be) the sole legal owner of the Mortgage, any necessary registrations or applications thereto have been duly performed and the Mortgage was free and clear of all encumbrances (other than those to which the Properties are subject), claims and equities (including without limitation, rights of set-off or counterclaim).
- (k) The right, title and interest of the Originator in the Senior Loan and the interest in the Related Loan Security may be assigned pursuant to the Finance Documents.
- (l) Prior to making the initial advance under the Senior Loan, (a) no express recommendation was received by the Originator from a qualified surveyor or valuer on the basis of the market value to carry out any environmental audit, survey or report of the Property which was not pursued, and (b) the results of any such environmental audit, survey or report which was procured by the Originator would, as at that date, have been acceptable to a reasonably prudent lender of money secured on commercial property and have been taken into account in the initial valuation.
- (m) Neither the Originator nor (so far as the Originator is aware) any of the Borrowers has received written notice that any insurance policy is about to lapse on account of failure by the relevant entity maintaining such insurance to pay the relevant premiums.
- (n) The Originator has not received written notice and the Originator is not aware of (without having made any specific enquiries) the insolvency, liquidation, administration or dissolution made against any of the Borrowers or any of the Partners.
- (o) Prior to the origination of the Senior Loan, the Originator undertook all due diligence that a prudent commercial lender would undertake to establish and confirm that each of the Borrowers has not engaged, since the date of its formation or incorporation, in any activity other than those incidental to its formation or incorporation or to the ownership, management and development of its respective interest in the Properties (and other ancillary matters that would reasonably be considered to be in the ordinary course of business for an owner of a property similar to the Properties) and in the Borrowers and entering into the Senior Loan, the Mortgage and the other Related Loan Security.
- (p) The Mortgage is (or upon registration in the land register, will be) first ranking in section III (*Abteilung III*) of the respective land registers relating to the Properties.
- (q) Since the date of origination of the Senior Loan, no amount of principal or interest due from the Borrowers has been at any time overdue.
- (r) The Originator is not aware of any material default, material breach or material violation under the Senior Loan, the Mortgage or the other Related Loan Security which has not been remedied, cured or waived (but only in a case where a reasonably prudent lender of money secured on commercial property would grant such a waiver).
- (s) The Originator has performed in all material aspects all of its obligations under or in connection with the Senior Loan and so far as the Originator is aware none of the Borrowers has taken or has threatened to take any action against the Originator for any material failure on the part of the Originator under the Senior Loan or the Related Loan Security to perform any such obligations.
- (t) The Originator is not aware of any litigation or claim calling into question in any material way the rights of the Originator with respect to the Senior Loan or the Related Loan Security.
- (u) The Mortgage qualifies (or upon registration will qualify) as first-ranking uncertificated land charge (*erstrangige Buchgrundschuld*).
- (v) The Originator has not made use of the option to treat any of its turnovers related to the Senior Loan Receivables and the Related Loan Security for German value added tax purposes as taxable according to Section 9 of the German Value Added Tax Act (*Umsatzsteuergesetz*).

The Loan Sale Agreement contains a warranty from the Originator to the Issuer and the Trustee to the effect that, as at that date, all information supplied by the Originator to the Issuer and the Trustee in the Loan Sale Agreement and the other Transaction Documents is, in its view, true, complete and accurate in all material respects. Such warranty also covers information relating to the Mortgage.

#### **VII. Remedies**

If at any time after the Closing Date (i) any of the representations and warranties given by the Originator under the Loan Sale Agreement proves to be untrue or incorrect in any material respect; or (ii) the Originator defaults in the performance of any of its covenants or obligations contained in the Loan Sale Agreement, then, unless an appropriate remedy to the satisfaction of the Trustee and the Rating Agencies is found and implemented within a period of 30 calendar days, the Originator will compensate on demand the Issuer for any and all losses, costs, claims, expenses and damages. The amount of such compensation will not exceed the amount which would need to be paid by the Originator to the Issuer if the Originator exercised its right to re-purchase the Senior Loan as set out in the following paragraph.

#### **VIII. Originator's Right to Repurchase**

If the Issuer makes a demand for a compensation of any loss accrued due to a material breach of the Originator's representations and warranties or its covenants under the Loan Sale Agreement, the Originator will as an alternative to indemnification have the option to repurchase the Senior Loan and the Related Loan Security. The consideration to be paid by the Originator to the Issuer will be an amount, in aggregate, equal to the total principal balance of the Senior Loan then outstanding plus any such accrued but unpaid interest thereon and provided further that the purchase price to be paid will be sufficient to pay all amounts due in respect of the Notes after payment has been made to all creditors who rank in priority to the Noteholders. Following the repurchase of the Senior Loan and the Related Loan Security, the Originator will not have any further liability or obligation to compensate the Issuer with respect to the Senior Loan.

The Originator may also re-purchase the Senior Loan and the Related Loan Security from the Issuer and the Trustee on any Note Interest Payment Date, subject to the following conditions:

- (a) on the Note Interest Payment Date on which the Originator intends to re-purchase the Senior Loan and the Related Loan Security, the then Principal Amount Outstanding of the Notes would be less than 10 per cent. of the Principal Amount Outstanding of the Notes on the Closing Date and the purchase price for the Senior Loan and the Related Loan Security would be sufficient to pay amounts due in respect of the Notes after payment has been made to all creditors of the Issuer who rank in priority to the Notes;
- (b) the Originator gives the Issuer, the Facility Agent, the Security Agent, the Trustee and the Servicer not more than 50 nor less than 25 calendar days' written notice of the Originator's intention to purchase the Senior Loan and the Related Loan Security; and
- (c) if the Servicer or the Special Servicer, as the case may be, has given the Issuer, the Facility Agent, the Security Agent, the Originator and the Trustee written notice of its intention to purchase the Senior Loan and the Related Loan Security pursuant to the Servicing Agreement, the notice from the Originator is delivered within 10 calendar days of the date on which the Servicer's or Special Servicer's notice, as the case may be, was delivered upon which any notice delivered by the Servicer or the Special Servicer, as the case may be, will lapse.

## ISSUER ACCOUNTS AND CREDIT STRUCTURE

### I. Issuer Accounts

#### 1) Issuer Transaction Accounts

Pursuant to a bank account agreement dated on or about the Closing Date (the "**Account Bank Agreement**"), the Account Bank will open and maintain:

- (a) an account into which, *inter alia*, all amounts of interest and other amounts (other than principal) received in connection with the Senior Loan and the Related Loan Security, any proceeds under any Income Deficiency Drawings and other proceeds under the Transaction Documents are required to be paid (the "**Issuer Income Account**"); and
- (b) an account into which all amounts of principal received in connection with the Loan or its Related Loan Security are required to be paid (the "**Issuer Principal Account**" and, together with the Issuer Income Account and any other accounts maintained by the Issuer, with the exception of the Issuer Capital Proceeds Account, in which the Issuer may at any time acquire any right, title, interest or benefit in accordance with the terms of the Transaction Documents from time to time, the "**Issuer Transaction Accounts**").

The Servicer will be responsible, pursuant to the terms of the Servicing Agreement, for ensuring that the amounts received in connection with the Senior Loan or the Related Loan Security are paid into the relevant Issuer Transaction Accounts. Payments out of the Issuer Transaction Accounts will be made in accordance with the provisions of the Issuer Deed of Charge and Assignment and the Issuer Trust Agreement.

#### 2) Issuer Capital Proceeds Account

The share capital proceeds of the Issuer will also be deposited in a segregated account of the Issuer established with Allied Irish Bank for the sole purpose of holding the proceeds of the Issuer's share capital, payments representing the Issuer Profit and interest thereon (if any) (the "**Issuer Capital Proceeds Account**").

#### 3) Liquidity Stand-by Account

Any Liquidity Stand-by Drawing which the Issuer may make from the Liquidity Bank (see "*Liquidity Facility*" below) will be credited to an account (which will be established only if required) in the name of the Issuer (the "**Liquidity Stand-by Account**" and, together with the Issuer Transaction Accounts, the "**Issuer Accounts**") with the Liquidity Bank or, if the Liquidity Bank ceases to have at least an "F1" rating by Fitch and at least an "A-1+" rating by S&P for its short-term, unguaranteed, unsecured and unsubordinated debt obligations (the "**Requisite Rating**"), any bank which has the Requisite Rating.

#### 4) Priorities of Payments

Prior to the enforcement of the Issuer Security, funds standing to the credit of the Issuer Income Account (other than the proceeds of any Income Deficiency Drawing) and, if such funds are not sufficient then the funds standing to the credit of the Issuer Principal Account, may be applied towards payment of sums due to third parties (other than the Servicer, the Liquidity Bank, the Special Servicer, the Corporate Services Provider, the Trustee, the Mortgagee, the Paying Agents, the Agent Bank or the Account Bank), including the Issuer's liability, if any, to taxation, to on-pay any Pre-Closing Proceeds and to on-pay actual receipts of the Issuer under interest claims which constitute Yield Enhancement (the "**Priority Amounts**"), on any Note Business Day when due and payable under obligations incurred without breach of obligations under the Transaction Documents in the course of the Issuer's business. Funds standing to the credit of the Issuer Principal Account and proceeds under any Income Deficiency Drawing may not be applied to the payment of any Yield Enhancement.

"**Yield Enhancement**" means any interest claims of the Senior Lender arising in accordance with the terms of the Credit Agreement and assigned to the Junior Lenders or the CapEx Lenders pursuant to the terms of the Loan Intercreditor Agreement.

a) Income Priority of Payments

Prior to the enforcement of the Issuer Security, on each Note Interest Payment Date, all amounts standing to the credit of the Issuer Income Account (after the payment of any Priority Amounts) will be applied from in the following order of priority (the "**Income Priority of Payments**") (in each case only if and to the extent that the payments and provisions of a higher priority have been made in full):

- (a) *firstly*, in or towards payment, *pro rata* and *pari passu*, of any costs, expenses, fees, remuneration and indemnity payments (if any) and any other amounts payable by the Issuer to the Trusted Parties and any other person appointed by it under the Issuer Trust Agreement and/or any Transaction Document to which either of the Trustee or the Mortgagee is a party;
- (b) *second*, in or towards payment, *pro rata* and *pari passu*, of any amounts due and payable by the Issuer on such Note Interest Payment Date to the Paying Agents and the Agent Bank under the Agency Agreement;
- (c) *third*, in or towards payment, *pro rata* and *pari passu*, of any amounts due and payable by the Issuer on such Note Interest Payment Date to the Servicer in respect of the Servicing Fee and any other amounts due to the Servicer pursuant to the Servicing Agreement (including any substitute servicer appointed in accordance therewith) and the Special Servicer in respect of the Special Servicing Fee and any other amounts due to the Special Servicer pursuant to the Servicing Agreement (including any substitute special servicer appointed in accordance therewith);
- (d) *fourth*, in or towards payment, *pro rata* and *pari passu*, of any amounts due and payable by the Issuer on such Note Interest Payment Date to:
  - (i) the Corporate Services Provider under the Corporate Services Agreement; and
  - (ii) the Account Bank under the Account Bank Agreement;
- (e) *fifth*, in or towards payment of any amounts due and payable by the Issuer on such Note Interest Payment Date to the Liquidity Bank under and in accordance with the Liquidity Facility Agreement (other than any Liquidity Subordinated Amounts);
- (f) *sixth*, in or towards payment of any amounts due and payable by the Issuer to the Issuer Swap Counterparty in accordance with the Issuer Swap Agreement (other than the Subordinated Swap Amounts);
- (g) *seventh*, in or towards payment or discharge, *pro rata* and *pari passu*, of sums due to third parties (other than Priority Amounts) under obligations incurred in the course of the Issuer's business;
- (h) *eighth*, *pro rata* in or towards payment of interest due and interest overdue on the Class A Notes;
- (i) *ninth*, *pro rata* in or towards payment of interest due and interest overdue on the Class B Notes;
- (j) *tenth*, *pro rata* in or towards payment of interest due and interest overdue on the Class C Notes;
- (k) *eleventh*, *pro rata* in or towards payment of interest due and interest overdue on the Class D Notes;
- (l) *twelfth*, *pro rata* in or towards payment of interest due and interest overdue on the Class E Notes;

- (m) *thirteenth*, in or towards payments of any Liquidity Subordinated Amounts payable to the Liquidity Bank;
- (n) *fourteenth*, in or towards payment of any Subordinated Swap Amount payable to the Issuer Swap Counterparty;
- (o) *fifteenth*, in or towards payment of an amount to the Issuer Principal Account equal to the amount of the Available Principal Amounts previously applied by the Issuer towards the payment of Priority Amounts and/or investment into Eligible Investments;
- (p) *sixteenth*, in or towards payment, *pro rata* and *pari passu*, of any amounts payable by the Issuer on such Note Interest Payment Date to the Special Servicer in respect of the Liquidation Fee or the Workout Fee;
- (q) *seventeenth*, in or towards payment of any Deferred Purchase Price payable to the Originator; and
- (r) *eighteenth*, any surplus to the Issuer.

b) Principal Priority of Payments

Unless previously redeemed in full, the Notes are subject to mandatory redemption in part on each Note Interest Payment Date by applying an amount equal to the Available Principal Amounts to the Notes *pro rata* in accordance with Condition 6 of the Notes (*Redemption*).

c) Post-Acceleration Priority of Payments

Following acceleration of the Notes, the Trustee will be required to apply all funds received or recovered by it in accordance with the following order of priority (the "**Post-Acceleration Priority of Payments**") (in each case, only if and to the extent that the payments and provisions of a higher priority have been made in full):

- (a) *firstly*, in or towards payment, *pro rata* and *pari passu*, of any costs, expenses, fees, remuneration and indemnity payments (if any) and any other amounts payable by the Issuer to the Trused Parties and any other person appointed by it under the Issuer Trust Agreement and/or any Transaction Document to which the Trustee or the Mortgagee is a party (including, but not limited to, the appointment of a receiver under the Issuer Deed of Charge and Assignment);
- (b) *second*, in or towards payment, *pro rata* and *pari passu*, of any amounts due and payable by the Issuer to the Paying Agents and the Agent Bank in respect of amounts properly paid by such persons to the Noteholders and not paid by the Issuer under the Agency Agreement together with any other amounts due to the Paying Agents or the Agent Bank pursuant to the Agency Agreement;
- (c) *third*, in or towards payment, *pro rata* and *pari passu*, of any amounts due and payable by the Issuer to the Servicer in respect of the Servicing Fee and any other amounts due to the Servicer pursuant to the Servicing Agreement (including any substitute servicer appointed in accordance therewith) and the Special Servicer in respect of the Special Servicing Fee and any other amounts due to the Special Servicer pursuant to the Servicing Agreement (including any substitute special servicer appointed in accordance therewith) (other than any amounts described in paragraph (r) below);
- (d) *fourth*, in or towards payment, *pro rata* and *pari passu*, of any amounts due and payable by the Issuer to the Corporate Services Provider under the Corporate Services Agreement and the Account Bank under the Account Bank Agreement;
- (e) *fifth*, in or towards payment of any amounts due and payable by the Issuer to the Liquidity Bank under and in accordance with the Liquidity Facility Agreement (other than any Liquidity Subordinated Amounts);

- (f) *sixth*, in or towards payment of any amounts due and payable by the Issuer to the Issuer Swap Counterparty in accordance with the Issuer Swap Agreement (other than the Subordinated Swap Amounts);
- (g) *seventh, pro rata* in or towards payment of interest due and interest overdue on the Class A Notes;
- (h) *eighth, pro rata* in or towards payment of all amounts of principal due or overdue on the Class A Notes and all other amounts (excluding interest) due in respect of the Class A Notes;
- (i) *ninth, pro rata* in or towards payment of interest due and interest overdue on the Class B Notes;
- (j) *tenth, pro rata* in or towards payment of all amounts of principal due or overdue on the Class B Notes and all other amounts (excluding interest) due in respect of the Class B Notes;
- (k) *eleventh, pro rata* in or towards payment of interest due and interest overdue on the Class C Notes;
- (l) *twelfth, pro rata* in or towards payment of all amounts of principal due or overdue on the Class C Notes and all other amounts (excluding interest) due in respect of the Class C Notes;
- (m) *thirteenth, pro rata* in or towards payment of interest due and interest overdue on the Class D Notes;
- (n) *fourteenth, pro rata* in or towards payment of all amounts of principal due or overdue on the Class D Notes and all other amounts (excluding interest) due in respect of the Class D Notes;
- (o) *fifteenth, pro rata* in or towards payment of interest due and interest overdue on the Class E Notes;
- (p) *sixteenth, pro rata* in or towards payment of all amounts of principal due or overdue on the Class E Notes and all other amounts (excluding interest) due in respect of the Class E Notes;
- (q) *seventeenth*, in or towards payment of any Liquidity Subordinated Amounts;
- (r) *eighteenth*, in or towards payment of any Subordinated Swap Amounts;
- (s) *nineteenth*, in or towards payment of any amounts payable by the Issuer to the Special Servicer in respect of the Liquidation Fee or the Workout Fee; and
- (t) *twentieth*, in or towards payment of any Deferred Purchase Price payable to the Originator.

## II. Liquidity Facility

To mitigate the risk that Available Issuer Income (as defined below) will be insufficient and there will be an Income Deficiency (as defined below), the Issuer will enter into a liquidity facility agreement dated on or about the Closing Date (the "**Liquidity Facility Agreement**") with the Liquidity Bank and the Trustee. Under this agreement, the Liquidity Bank will provide a 364-day committed liquidity facility to



the Issuer which will be available for drawdown after the Closing Date and will be renewable with the agreement of the Liquidity Bank on a 364-day basis until the Final Maturity Date. Investors should note that the purpose of the Liquidity Facility Agreement will be to provide liquidity, not credit support, and that the Liquidity Bank will be entitled to receive interest and repayments of principal on drawings made under the Liquidity Facility Agreement in priority to payments to be made to Noteholders (which would ultimately reduce the amount available for distribution to Noteholders).

"**Available Issuer Income**" will comprise:

- (a) all monies (other than Available Principal Amounts and Pre-Closing Proceeds) received by the Issuer under or in respect of the Senior Loan, including any Prepayment Fees, cancellation fees and break costs; and
- (b) any interest accrued on amounts standing to the credit of the Issuer Accounts and paid into the Issuer Income Account together with the yield element of the proceeds of any Eligible Investments made by or on behalf of the Issuer out of amounts standing to the credit of the Issuer Accounts and paid into the Issuer Income Account; and
- (c) any other amounts received by the Issuer under the Transaction Documents (other than the Available Principal Amounts, any Income Deficiency Loans and any Liquidity Standby Loans).

"**Eligible Investments**" means (a) euro denominated government securities or (b) euro demand or time deposits, certificates of deposit, money market funds and short-term debt obligations (including commercial paper); provided that in all cases such investments will mature at least one Note Business Day prior to the next Note Interest Payment Date and the short-term unsecured, unguaranteed and unsubordinated debt obligations of the issuing or guaranteeing entity or the entity with which the demand or time deposits are made (being a bank or licensed EU credit institution) are rated at least "F1+" by Fitch and at least "A-1+" by S&P or are otherwise acceptable to the Rating Agencies and, where such investments will mature in three months or more, the Rating Agencies have affirmed that the proposed investments would not adversely affect the then current ratings of the Notes.

On each Calculation Date, the Servicer will determine whether Available Issuer Income will be sufficient to make the payments set out under paragraphs (a) to (l) of the Income Priority of Payments on the next Note Interest Payment Date.

If the Available Issuer Income is insufficient to make such payments, the Servicer will make a drawing (an "**Income Deficiency Drawing**") under the Liquidity Facility Agreement in an amount equal to the deficiency (an "**Income Deficiency**") or, if less, the Liquidity Facility Commitment. The proceeds of any Income Deficiency Drawing will be credited to the Issuer Income Account and will be applied by the Issuer in making payments in accordance with the Income Priority of Payments (excluding, for the avoidance of doubt, payment of any Yield Enhancement) on the immediately following Note Interest Payment Date.

No Income Deficiency Drawing can be made on a Note Interest Payment Date if on such Note Interest Payment Date, the Notes are redeemed in full or the Senior Loan has been repaid in full.

The Liquidity Facility Agreement will initially permit drawings to be made by the Issuer of up to an aggregate amount of €40 million (the "**Liquidity Facility Commitment**"). The Liquidity Facility Commitment will automatically reduce on any Note Interest Payment Date following:

- (a) a partial redemption of the Notes in accordance with Condition 6 of the Notes (*Redemption*) by an amount proportionate to the amount of the partial redemption;
- (b) the occurrence of an Appraisal Reduction Event (as defined below), by an amount proportionate to the Appraisal Reduction Event; or
- (c) upon the request of the Issuer and the receipt of confirmation from the Rating Agencies that the proposed reduction in the amount of the Liquidity Facility Commitment will not adversely affect the then current ratings of the Notes.

All payments due to the Liquidity Bank under the Liquidity Facility Agreement (other than in respect of

the Liquidity Subordinated Amounts) will rank in priority to payments of interest and principal on the Notes.

1) *Appraisal Reduction Events*

Not later than the earliest to occur of:

- (a) the date 120 calendar days after the occurrence of any Loan Event of Default with respect to the Senior Loan as a result of non-payment; and
- (b) the date 90 calendar days after the occurrence of a Loan Event of Default with respect to the Senior Loan as a result of the occurrence of any prescribed insolvency event of any of the Borrowers in respect of the Credit Agreement,

and, in each case, provided that such Loan Event of Default with respect to the Senior Loan is continuing, the Servicer is required, under the terms of the Servicing Agreement, to obtain a valuation in respect of the relevant Property (unless, at the Servicer's discretion, a valuation has been obtained during the immediately preceding 12 months and the Servicer is of the opinion (without any liability on its part) that neither the relevant Property nor its relevant property markets have experienced any material change since the date of such previous valuation).

If the aggregate principal amount of the Senior Loan then outstanding (together with any unpaid interest) exceeds the sum of 90 per cent. of the appraisal value of the Properties as determined by the most recent valuation, an "**Appraisal Reduction Event**" will be deemed to have occurred and the amount of Liquidity Facility Commitment will reduce proportionately on the Note Interest Payment Date on or immediately following the Appraisal Reduction Event by reference to any diminution in value of the Properties since the date of the previous valuation report conducted in accordance with the terms of the Servicing Agreement. As a result of such reduction, the availability of the Liquidity Facility to the holders of the most junior Class of Notes outstanding at that time will be reduced by the amount of the reduction of the Liquidity Facility Commitment. There is no assurance that upon the occurrence of an Appraisal Reduction Event the Liquidity Facility will not be reduced to zero.

2) *Liquidity Stand-by Drawings*

The Liquidity Facility Agreement will provide that if at any time:

- (a) the rating of the short-term unsecured, unsubordinated and unguaranteed debt obligations of the Liquidity Bank falls below the Requisite Rating; or
- (b) the Liquidity Bank refuses to renew the Liquidity Facility and does not, following a request from the Issuer, at its own expense replace or transfer the liquidity facility to a new liquidity bank,

then the Issuer will require the Liquidity Bank to pay an amount equal to its undrawn commitment under the Liquidity Facility Agreement (a "**Liquidity Stand-by Drawing**") into the Liquidity Stand-by Account. Amounts standing to the credit of the Liquidity Stand-by Account will be available to the Issuer for the purposes of making deemed Income Deficiency Drawings as described above, and otherwise in the circumstances provided in the Liquidity Facility Agreement.

3) *Repayment of drawings*

The Issuer will pay interest on Income Deficiency Drawings at a rate equal to three months EURIBOR plus a specified margin. However, Liquidity Stand-by Drawings will bear interest at a separate rate which will be calculated by reference to the liquidity facility commitment fee and interest earned on the Liquidity Stand-by Account. In addition, if the Issuer makes a deemed Income Deficiency Drawing by withdrawing funds from the Liquidity Stand-by Account, then this drawing will bear interest at three months EURIBOR plus a specified margin as with ordinary Income Deficiency Drawings.

All payments due to the Liquidity Bank under the Liquidity Facility Agreement (other than in respect of any Liquidity Subordinated Amounts) will rank in priority to payments of interest and principal on the Notes. "**Liquidity Subordinated Amounts**" are any amounts in respect of any increased costs, mandatory costs and tax gross up amounts payable to the Liquidity Bank to the extent that such

amounts exceed 0.125 per cent. per annum of the Liquidity Facility Commitment.

#### **IV. Issuer Swap Agreements**

*The following sets out an outline of Issuer Swap Agreements and should be read in conjunction with, and is qualified by reference to, the more detailed information appearing elsewhere in this Prospectus and the detailed provisions of the Issuer Swap Agreements, to which prospective investors must refer for detailed information.*

##### **1. Issuer Swap Agreements**

On or about the Closing Date, the Issuer will enter into interest rate swap transactions with the Issuer Swap Counterparty (each an "**Issuer Swap Agreement**") each documented under a 1992 ISDA Master Agreement (Multicurrency-Cross-Border) (each an "**ISDA Master Agreement**"), as published by the International Swaps and Derivatives Association, Inc. ("**ISDA**") and evidenced by a swap confirmation which will supplement, amend, form part of and be subject to such ISDA Master Agreement.

The Issuer Swap Agreements will serve the following purposes:

###### **a) The Interest Issuer Swap Agreement**

The "**Interest Issuer Swap Agreement**" will be agreed upon in order to hedge against the potential interest rate mismatches between the floating rate interest payments received by the Issuer under the Senior Loan and the floating rate interest payment obligations of the Issuer under the Notes resulting from different determination dates being applicable to determine EURIBOR as the base rate for calculating the interest rates in respect of (i) the Senior Loan and (ii) the Notes.

###### **b) The Contingent Issuer Swap Agreement**

The Senior Loan provides for the relevant Borrower to pay a floating rate of interest based on EURIBOR plus a margin prior to a Swap Termination Trigger Event. As the Borrowers primarily rely on fixed payments under the lease agreements to meet the payment obligations under the Loans, RRZ KG and Kö KG have hedged their exposure to a rise in EURIBOR by entering into amortising interest rate swap transactions with Eurohypo (in such capacity the "**Senior Hedge Counterparty**") whereby the respective Borrower makes payments based on a fixed interest rate to the Senior Hedge Counterparty and receives payments based on EURIBOR from the Senior Hedge Counterparty (each a "**Senior Hedging Arrangement**").

Following the occurrence of a Swap Termination Trigger Event, a fixed rate interest payment or the Swap Fixed Rate, as applicable, will be payable under the Senior Loan. On or about the Closing Date, therefore, the Issuer will enter into an interest rate swap that mirrors the terms of the respective Senior Hedging Arrangement as well as the other Hedging Arrangements with the Issuer Swap Counterparty (the "**Contingent Issuer Swap Agreement**"). The Contingent Issuer Swap Agreement will be activated in order to hedge the Issuer against rises in EURIBOR in respect of its floating rate payment under the Notes while it only receives a fixed rate in respect of the Senior Loan following a Senior Hedge Termination Trigger Event.

##### **2. Notional Amount**

The notional of the relevant Issuer Swap Agreement will amortise in line with the expected amortisation profile of the Senior Loan and the Notes or correspondingly in accordance with any early redemption under the Senior Loan. If the Senior Loan is redeemed (and subsequently the Notes) prior to the expected amortisation or in an amount higher than the respective scheduled repayment amounts, the Issuer could be obliged to pay to the Issuer Swap Counterparty a compensation amount in accordance with the unwind provision of the relevant Issuer Swap Agreement.

### 3. Termination

The relevant Issuer Swap Agreement may be terminated (i) if an Acceleration Notice is served pursuant to Condition 9 of the Notes (*Note Events of Default*); or (ii) if the Notes are redeemed in full pursuant to Condition 6 of the Notes (*Redemption*); or (iii) if any steps are taken by the Trustee to enforce the Issuer Security; or (iv) if the Issuer Swap Counterparty does not comply with Rating Agency provisions.

If any of the Issuer Swap Agreement is terminated in whole, either the Issuer Swap Counterparty or the Issuer, as the case may be, may be required to pay an amount to the other party as a result of such termination. Any such payment by the Issuer will be made in accordance with the relevant Priority of Payments.

Noteholders may suffer a loss if an Issuer Swap Agreement is terminated and the Issuer, as a result of such termination, does not receive sufficient funds to make a payment to the Noteholders as a result of the early termination.

### 4. Gross-up

In the event that the Issuer is required to withhold or deduct an amount in respect of tax from payments due from it to the Issuer Swap Counterparty, the Issuer will not be required pursuant to the terms of the Issuer Swap Agreement to pay the Issuer Swap Counterparty such amounts as would have been required to ensure that the Issuer Swap Counterparty received the same amounts that it would have received had such withholding or deduction not been made. If such withholding or deduction is a withholding or deduction which will or would be or become the subject of any tax credit, allowance, set-off, repayment or refund to the Issuer Swap Counterparty, the Issuer and the Issuer Swap Counterparty are obliged to use all reasonable efforts to reach an agreement to mitigate the incidence of tax on the Issuer Swap Counterparty.

In the event that the Issuer Swap Counterparty is required to withhold or deduct an amount in respect of tax from payments due from it to the Issuer, the Issuer Swap Counterparty will be required pursuant to the terms of the Issuer Swap Agreement to pay to the Issuer such additional amounts as are required to ensure that the Issuer receives the same amounts that it would have received had such withholding or deduction not been made or, if such withholding or deduction is a withholding or deduction which will or would be or become the subject of any tax credit, allowance, set-off, repayment or refund to the Issuer Swap Counterparty, the Issuer and the Issuer Swap Counterparty are obliged to use all reasonable efforts to reach an agreement to mitigate the incidence of tax on the Issuer Swap Counterparty. However, the Issuer Swap Counterparty would in such circumstance be entitled to terminate the respective Issuer Swap Agreement.

### 5. Rating downgrade

The unsecured, unsubordinated and unguaranteed short-term debt obligations of the Issuer Swap Counterparty are currently rated "A-2" by S&P and "F-1" by Fitch and the unsecured, unsubordinated and unguaranteed long-term debt obligations of the Issuer Swap Counterparty are currently rated "A" by Fitch and "A-" by S&P.

If the unsecured, unsubordinated and unguaranteed short-term debt obligations of the Issuer Swap Counterparty are not rated at least "A-1" by S&P or "F-1" by Fitch or if the unsecured, unsubordinated and unguaranteed long-term debt obligations of the Issuer Swap Counterparty are not rated at least "A" by Fitch or S&P (collectively, the "**Minimum Swap Counterparty Rating**") or cease to be assigned any such other ratings as are otherwise acceptable to the Rating Agencies, then the Issuer Swap Counterparty will, in accordance with the relevant Issuer Swap Agreement, be required to take certain remedial measures which may include:

- (a) putting in place an appropriate mark-to-market collateral agreement, which may be based on the credit support documentation published by ISDA and which relates to collateral in the form of cash and/or securities;
- (b) transferring and assigning, in accordance with an Issuer Swap Agreement, its rights and obligations under an Issuer Swap Agreement to an entity acceptable to the Rating Agencies;

- (c) procuring another entity acceptable to the Rating Agencies and the Trustee to become co-obligor or guarantor in respect of its obligations under an Issuer Swap Agreement; or
- (d) taking such other action as it may agree with the relevant Rating Agency.

If the Issuer Swap Counterparty does not take the measures described in (a) to (d) within 30 calendar days of such downgrade or withdrawal, the Issuer will be entitled to terminate an Issuer Swap Agreement.

## **6. Governing law**

The Issuer Swap Agreements will be governed by English Law.

## THE SERVICING AGREEMENT

### I. The Servicer

Each of the Issuer, the Trustee and the Mortgagee will appoint Eurohypo, acting through its office at 4th Floor, 90 Long Acre, London WC2E 9RA, United Kingdom (the "**London Branch**"), under the terms of a servicing agreement to be dated on or about the Closing Date (the "**Servicing Agreement**") as the initial servicer of the Senior Loan and to have responsibility for, among other things, the investment and application of moneys in accordance with the relevant Priority of Payments under the Issuer Trust Agreement. The Servicer will perform the day-to-day servicing of the Senior Loan and will continue to service other commercial mortgage loans in addition to the Senior Loan.

Each of the Issuer, the Trustee and the Mortgagee will appoint the Servicer to be its agent to provide certain cash management services in relation to the Issuer Accounts as more particularly described below.

### II. Servicing of the Senior Loan

Servicing procedures will include monitoring compliance with and administering the options available to the Borrowers under the terms and conditions of the Credit Agreement. The Servicer and (where applicable) the Special Servicer will agree to service the Senior Loan in the best interests of and for the benefit of all of the Noteholders (as determined by the Servicer or the Special Servicer, as the case may be, in its good faith and reasonable judgment) and in accordance with applicable law and regulatory requirements and is obliged to take all measures it deems necessary or appropriate in its due professional discretion to administer and collect, or instruct the Facility Agent to collect, the Senior Loan provided that it acts (a) if the Servicer or the Special Servicer, as the case may be, is Eurohypo, London Branch, in accordance with Eurohypo's usual administrative policies and procedures from time to time and in the same manner as Eurohypo services commercial mortgage loans beneficially owned by Eurohypo which are secured on commercial property and in so doing has to exercise the standard of care of a reasonably prudent lender of loans secured on commercial property; or (b) to the extent that the Servicer or the Special Servicer, as the case may be, is not Eurohypo, London Branch, in accordance with the standard of care customarily observed by third party commercial mortgage loan servicers or the standard of care which it usually observes in servicing commercial mortgage loans for its own account, whichever is higher, and, in either case, after the occurrence of a Loan Event of Default in respect of the Senior Loan and in connection with the administration of enforcement procedures with a view to the maximisation of timely recoveries of funds available for distribution to the Noteholders (taking into account the likelihood of recovery of amounts due in respect of the Senior Loan, the timing of recoveries and the costs of recovery) as determined by the Servicer or Special Servicer, as the case may be, in its reasonable judgment (the "**Servicing Standard**").

The Servicer shall instruct the Security Agent to obtain an updated valuation of the Properties annually in accordance with the provisions of the Credit Agreement.

Following the service of an Acceleration Notice, each of the Servicer and the Special Servicer will act in accordance with the directions of the Trustee in the performance of its obligations and discretions under the Servicing Agreement.

Each of the Servicer and the Special Servicer may become the owner or otherwise hold an interest in the Notes with the same rights as each would have if it were not the Servicer or Special Servicer, as the case may be. Any such interest of the Servicer or the Special Servicer in the Notes will not be taken into account by any person when evaluating whether actions of the Servicer or the Special Servicer were consistent with the Servicing Standard.

### III. Consultation with, and appointment of, the Special Servicer

The Servicer will give notice to the Special Servicer and the Trustee and will consult with the Special Servicer in relation to the future servicing or exercise of rights in respect of the Senior Loan and/or the Related Loan Security promptly upon the occurrence of any of the following events:

- (a) a payment default with regards to any payment due on the maturity of the Senior Loan (not

taking into account any extensions to its maturity permitted under the Servicing Agreement); or

- (b) other than any payment default specified in paragraph (a) above, any scheduled payment due and payable in respect of the Senior Loan being delinquent for up to and including 45 calendar days past its due date; or
- (c) a Borrower being in breach of any covenant (other than a material covenant) under the Credit Agreement (a covenant being material for the purposes of this paragraph (c) if a breach of it materially impairs or could materially impair the use or the marketability of any relevant Property or the value thereof as security for the Senior Loan).

The Servicer or the Special Servicer, as applicable, will promptly give notice to the Issuer, the Trustee, the Mortgagee, the Rating Agencies and the Special Servicer (where applicable) of the occurrence of any Special Servicing Event in respect of the Senior Loan. Upon the delivery of such notice, the Special Servicer will automatically assume all of its duties, obligations and powers under the Servicing Agreement and the Senior Loan will become "**specially serviced**".

"**Special Servicing Event**" means each of the following events:

- (a) a payment default occurring with regards to any payment due on the maturity of the Senior Loan (taking into account any extensions to its maturity permitted under the Servicing Agreement);
- (b) other than any payment default specified in paragraph (a) above, a scheduled payment due and payable in respect of the Senior Loan being delinquent for more than 45 calendar days past its due date;
- (c) the Issuer, the Trustee, the Mortgagee, the Servicer or the Special Servicer receiving notice of the enforcement of the Related Loan Security or any part thereof;
- (d) insolvency or bankruptcy proceedings being commenced in respect of a Borrower;
- (e) in the Servicer's opinion a breach of a material covenant (as defined in paragraph (c) above) under the Credit Agreement occurring or, to the knowledge of the Servicer, being likely to occur, and in the Servicer's opinion such breach is not likely to be cured within 30 calendar days of its occurrence;
- (f) a Borrower notifying the Facility Agent in writing of its inability to pay its debts generally as they become due, its entering into an assignment for the benefit of its creditors or its voluntary suspension of payment of its obligations; or
- (g) any other Loan Event of Default occurring that, in the good faith and reasonable judgment of the Servicer, materially impairs or could materially impair the use or the marketability of a Property or the value thereof as security for the Senior Loan.

On the appointment of the Special Servicer in respect of the Senior Loan, the Servicer will cease to be subject to the obligations as Servicer in respect of the Senior Loan under the Servicing Agreement except where otherwise provided.

#### **IV. Arrears and default procedures**

The Servicer will collect or the Servicer or the Special Servicer, as applicable, will instruct the Facility Agent to collect all payments due under or in connection with the Senior Loan. The Servicer will initially be responsible for the supervision and monitoring of payments falling due in respect of the Senior Loan. The Servicer and, as applicable, the Special Servicer will be required to use all reasonable endeavours to recover amounts due from the relevant Borrower should it default. Each of the Servicer and the Special Servicer will agree, in relation to any default under or in connection with the Senior Loan and the Related Loan Security, to comply with the procedures for enforcement of the Senior Loan and the Related Loan Security of the Servicer or the Special Servicer, as the case may be, current from time to time. In the event of a default in respect of the Senior Loan, the Servicer or the Special Servicer, as applicable, will consider based on (amongst others) the nature of the default, the status of the relevant Borrower and the nature and value of its Property, what internal reviews and

reporting requirements are needed in respect of the Senior Loan, and which enforcement procedures are appropriate. Such procedures for enforcement include the giving of instructions to the Facility Agent as to how to enforce the security held by it.

#### **V. Amendments to the terms and conditions of the Finance Documents**

The Servicer or the Special Servicer, as applicable, on behalf of the Issuer, the Trustee and the Mortgagee, may (but will not be obliged to) agree in accordance with the Servicing Standard to any request by the Facility Agent or the relevant Borrower, as applicable, to vary or amend the terms and conditions of the Finance Documents provided that:

- (a) the variation or amendment consists of one or more of the following:
  - (A) any release of a Borrower, provided that there is always at least one person who is a Borrower under the Senior Loan (which may be a person to whom the Borrower requests its obligation to be transferred or novated);
  - (B) the release of the Related Loan Security or any part thereof which may, at the option of the Servicer or the Special Servicer, as applicable, be on the basis that alternative security is provided by any of the Borrowers which is acceptable to the Servicer or the Special Servicer acting in accordance with the Servicing Standard; or
  - (C) any other variation or amendment which would be acceptable to a reasonably prudent commercial mortgage lender acting in accordance with the Servicing Standard;
- (b) no Acceleration Notice has been given by the Trustee which remains in effect at the date on which the relevant variation or amendment is agreed;
- (c) the Issuer will not be required to make a further advance including, without limitation, any deferral of interest because of the relevant variation or amendment;
- (d) the effect of such variation or amendment would not be to extend the final maturity date of any part of the Senior Loan beyond October 2014 unless the Servicer or the Special Servicer, as applicable, will have first received written confirmation from each of the Rating Agencies that the then current ratings of the Notes will not be adversely affected by such extension;
- (e) the Related Loan Security will continue to include a first ranking legal and beneficial mortgage, where relevant on the interests in a Property;
- (f) notice of any such amendment or variation is given to the Rating Agencies and prior written confirmation will have been received by the Servicer or the Special Servicer, as applicable, from each of the Rating Agencies that any variation or amendment to any of the terms and conditions of the Finance Documents that is likely, in the reasonable determination of the Servicer or the Special Servicer, as the case may be, to have a material adverse effect on the Noteholders (it being agreed that a reduction in the interest rate or principal balance of the Senior Loan or any waiver or postponement of the same is likely to have such effect) will not result in the then current ratings of any of the Notes being adversely affected; and
- (g) if Eurohypo is not the Special Servicer, notice of any such amendment or variation is given to the Special Servicer.

With the prior written consent of the Trustee (acting in accordance with the Issuer Trust Agreement and having regard to the interests of the Noteholders), the Servicer or the Special Servicer, as applicable, may (but will not be obliged to) agree to any request by the Facility Agent or the relevant Borrower to vary or amend the terms and conditions of the Finance Documents where any of the above conditions (other than the conditions specified in paragraphs (d), (f) and (g) above) are not satisfied in respect of the relevant variation or amendment.



## **VI. Ability to purchase the Senior Loan and the Related Loan Security**

The Issuer, the Trustee and the Mortgagee will, pursuant to the Servicing Agreement, grant the option on any Note Interest Payment Date (a) to the Servicer to purchase all (but not only part of) the Senior Loan (as long as it is not specially serviced) and (b) to the Special Servicer to purchase the Senior Loan (so long as it is specially serviced) and also, in each case, the Related Loan Security; provided that on the Note Interest Payment Date on which the Servicer or the Special Servicer, as the case may be, intends to purchase the Senior Loan and the Related Loan Security the then principal balance of the Senior Loan would be less than 10 per cent. of its principal balance as at the Closing Date, and provided further that the purchase price to be paid will be sufficient to pay all amounts due in respect of the Notes after payment has been made to all creditors who rank in priority to Noteholders.

The Servicer or the Special Servicer, as the case may be, must give the Issuer, the Facility Agent, the Trustee, the Mortgagee and (in the case of notice given by the Special Servicer only) the Servicer not more than 50 nor less than 20 calendar days' written notice of its intention to purchase the Senior Loan and the Related Loan Security. No such notice of the Special Servicer's intention to purchase the Senior Loan will be valid if the Servicer gives the Issuer, the Facility Agent, the Trustee and the Mortgagee written notice of its intention to purchase the Senior Loan provided that such notice from the Servicer is delivered within 10 calendar days of the date on which the Special Servicer's notice was delivered.

## **VII. Calculation of amounts and payments**

On each "**Calculation Date**" (being the second Note Business Day prior to the relevant Note Interest Payment Date), the Servicer will be required to determine the various amounts required to pay interest and principal due on the Notes on the forthcoming Note Interest Payment Date and all other amounts then payable by the Issuer, and the amounts expected to be available to make such payments. In addition, the Servicer will calculate the Principal Amount Outstanding for each Class of Notes for the Note Interest Period commencing on such forthcoming Note Interest Payment Date, request the making of any Income Deficiency Drawings on behalf of the Issuer and notify each Borrower of the amount of the securitisation fee and any additional fee (if any) due and payable by it.

On each Note Interest Payment Date, the Servicer will determine and pay on behalf of the Issuer out of Available Issuer Income and receipts of scheduled principal in respect of the Senior Loan determined by the Servicer to be available for such purposes as described above, each of the payments required to be paid pursuant to and in the priority set forth in the relevant Priority of Payment. In addition, the Servicer will, from time to time, pay on behalf of the Issuer all Priority Amounts required to be paid by the Issuer, as determined by the Servicer.

Subject to receipt of funds from the Borrowers, the Servicer will make all payments required to carry out a redemption of Notes pursuant to Condition 6 of the Notes (*Redemption*), in each case according to the provisions of the relevant Priority of Payments.

If the Servicer, acting on the basis of information provided to it determines, on any Calculation Date, that the amount of Available Issuer Income, less any Priority Amounts paid since the immediately preceding Note Interest Payment Date or due to be paid by the Issuer prior to the next Note Interest Payment Date, will be insufficient to make payments set out under paragraphs (a) to (l) of the Income Priority of Payments, the Servicer will make an Income Deficiency Drawing subject to, and in accordance with, the terms of the Liquidity Facility Agreement. See "ISSUER ACCOUNTS AND CREDIT STRUCTURE – Liquidity Facility" above.

## **VIII. Servicer quarterly report**

Pursuant to the Servicing Agreement, the Servicer will agree to deliver to the Issuer, the Trustee, the Mortgagee, the Special Servicer and the Rating Agencies a report on each Calculation Date in which it will notify the recipients of, among other things, all amounts received in the Issuer Accounts and payments made with respect thereto. The report will contain the monthly arrears report and will also include qualitative and quantitative information on the Senior Loan, including details of any material changes that may affect credit quality and the details of any delegation of any of the Servicer's and/or Special Servicer's obligations or duties.

## **IX. Insurance**

The Servicer will procure that the Facility Agent monitors the arrangements for insurance which relate to the Senior Loan and the Related Loan Security and establishes and maintains procedures to ensure that all buildings insurance policies in respect of the Properties are renewed on a timely basis. To the extent that the Issuer and/or the Trustee and/or the Mortgagee has power to do so under a policy of buildings insurance, the Servicer will, as soon as practicable after becoming aware of any occurrence of any event giving rise to a claim under such policy, procure that the Facility Agent prepares and submits such claim on behalf of the Issuer and/or the Trustee and/or the Mortgagee in accordance with the terms and conditions of such policy and complies with any requirements of the relevant insurer.

The Servicer will use reasonable endeavours to procure that each Borrower complies with the obligations in respect of the insurances in accordance with the terms of the Credit Agreement. If the Servicer becomes aware that a Borrower has failed to pay premiums due under any insurance policy, the Servicer will instruct the Facility Agent to take such action as the Issuer and/or the Trustee will reasonably direct and in the absence of such direction will, on behalf of the Issuer or the Trustee or the Mortgagee, instruct the Facility Agent to pay premiums due and payable under any policy of buildings insurance in order that the cover provided by such policy does not lapse.

Upon receipt of notice that any policy of buildings insurance has lapsed or that a Property is otherwise not insured against fire and other perils (including subsidence) under a comprehensive buildings insurance policy or similar policy in accordance with the terms of the Credit Agreement, the Servicer will, or will instruct the Facility Agent, at the cost of the Issuer, to arrange such insurance in accordance with the terms of its Credit Agreement.

## **X. Fees**

The Servicer will be entitled to receive a fee for servicing the Senior Loan. On each Note Interest Payment Date the Issuer will pay to the Servicer a servicing fee (the "**Servicing Fee**") equal to 0.025 per cent. per annum of the aggregate of the Principal Amount Outstanding on that date (inclusive of value added tax) but only to the extent that the Issuer has sufficient funds to pay such amount as provided in the relevant Priority of Payment. The unpaid balance (if any) will be carried forward until the next succeeding Note Interest Payment Date and, if not paid before such time, will be payable on the final Note Interest Payment Date of the latest maturing Class of Notes or on the earlier redemption in full of the Notes by the Issuer. The Servicing Agreement will also provide for the Servicer to be reimbursed for all reasonable out-of-pocket expenses and charges properly incurred by the Servicer in the performance of its services under the Servicing Agreement.

Pursuant to the Servicing Agreement, if the Senior Loan is designated to be specially serviced, the Issuer will be required to pay to the Special Servicer a fee (the "**Special Servicing Fee**") (exclusive of value added tax) equal to 0.25 per cent. per annum of the principal balance of the Senior Loan then outstanding but only to the extent that the Issuer has sufficient funds to pay such amount as provided in "ISSUER ACCOUNTS AND CREDIT STRUCTURE – *Cashflows*" for a period commencing on the date the Senior Loan is designated to be specially serviced and ending on the date the Property is sold on enforcement or the date on which the Senior Loan is designated to be corrected.

The Senior Loan will be designated to be corrected if any of the following occurs with respect to the circumstances identified as having caused the Senior Loan to be designated specially serviced and the Senior Loan has been transferred back to the control of the Servicer (and provided that no other Special Servicing Event then exists with respect to the Senior Loan):

- (a) with respect to the circumstances described in paragraphs (b) and (h) in the definition of Special Servicing Event the relevant Borrower has made two consecutive timely quarterly payments in full;
- (b) with respect to the circumstances described in paragraphs (c) and (d) in the definition of Special Servicing Event such proceedings are terminated;
- (c) with respect to the circumstances described in paragraph (e) in the definition of Special

Servicing Event such circumstances cease to exist in the good faith and reasonable judgment of the Special Servicer;

- (d) with respect to the circumstances described in paragraph (f) in the definition of Special Servicing Event the relevant Borrower ceases to claim an inability to pay its debts or suspend the payment of obligations or the termination of any assignment for the benefit of its creditors; or
- (e) with respect to the circumstances described in paragraph (g) in the definition of Special Servicing Event such default is cured.

The Special Servicing Fee will accrue on a daily basis over such period and will be payable on each Note Interest Payment Date commencing with the Note Interest Payment Date following the date on which such period begins and ending on the Note Interest Payment Date following the end of such period.

In addition to the Special Servicing Fee, the Special Servicer will be entitled to a fee (the "**Liquidation Fee**") (exclusive of value added tax) in respect of the Senior Loan equal to an amount of 1.00 per cent. of the proceeds (net of all costs and expenses incurred as a result of the default of the Senior Loan, enforcement and sale), if any, arising on the sale of a Property or on or out of the application of any other enforcement procedures or other actions taken by the Special Servicer in respect of the Senior Loan.

In addition to the Special Servicing Fee and the Liquidation Fee (if any) in respect of the Senior Loan, the Special Servicer will be entitled to receive a fee (the "**Workout Fee**") in consideration of providing services in relation to the Senior Loan when it is designated to be corrected. When the Senior Loan is designated to be corrected, the VAT-exclusive amount of Workout Fee is equal to 1.00 per cent. of each collection of principal and interest received on the Senior Loan (but only, in relation to collections of principal, if and to the extent that such principal received reduces the amount of principal outstanding under the Senior Loan to below the amount of principal outstanding under the Senior Loan at the date it was first designated to be corrected) for so long as it continues to be designated corrected. The Workout Fee with respect to the Senior Loan will cease to be payable if the Senior Loan is no longer designated to be corrected, but the Workout Fee will become payable if and when the Senior Loan is again designated to be corrected.

The Liquidation Fee and the Workout Fee will only be payable to the extent that the Issuer has sufficient funds to pay such amount as provided in "ISSUER ACCOUNTS AND CREDIT STRUCTURE – Cashflows".

#### **XI. Removal or resignation of the Servicer or the Special Servicer**

The appointment of the Servicer or the Special Servicer, as applicable, may be terminated by the Trustee and/or by the Issuer (with the consent of the Trustee) and/or the Mortgagee (with the consent of the Trustee) upon written notice to the Servicer or the Special Servicer, as the case may be, on the occurrence of certain events (each a "**Servicing Termination Event**"), including if:

- (a) the Servicer or the Special Servicer, as applicable, fails to pay or to procure the payment of any amount required to be paid under the Transaction Documents to which the Servicer or the Special Servicer is party (as the case may be) on its due date by it and either (i) such payment is not made within 5 Note Business Days of such time or (ii) if the Servicer's or the Special Servicer's failure to make such payment was due to inadvertent error, such failure is not remedied for a period of 10 Note Business Days after the Servicer or the Special Servicer becomes aware of such error;
- (b) subject as provided further in the Transaction Documents, the Servicer or the Special Servicer, as applicable, fails to comply with any of its covenants and obligations under the Servicing Agreement which in the opinion of the Trustee is materially prejudicial to the interests of the holders of the Notes and such failure either is not remediable or is not remedied for a period of 30 Note Business Days after the earlier of the Servicer or the Special Servicer, as the case may be, becoming aware of such default and delivery of a written notice of such default being served on the Servicer or the Special Servicer, as applicable, by the Issuer or the Trustee or the Mortgagee;

- (c) at any time the Servicer or the Special Servicer, as applicable, fails to obtain or maintain the necessary licences or regulatory approvals enabling it to continue servicing the Senior Loan; or
- (d) the occurrence of an insolvency event in relation to the Servicer or the Special Servicer.

In addition, if the Senior Loan has been designated to be specially serviced and the Issuer is so instructed by the Controlling Party, the Issuer will terminate the appointment of the person then acting as Special Servicer and, subject to certain conditions, appoint a qualified successor thereto (such successor to pay any costs incurred by the Issuer in relation to the replacement of the Special Servicer).

**"Controlling Party"** means, at any time:

- (a) the holders of the most junior Class of Notes then having a Principal Amount Outstanding (as defined below) greater than 25 per cent. of its original aggregate Principal Amount Outstanding on the Closing Date; or
- (b) if no Class of Notes then has a Principal Amount Outstanding greater than 25 per cent. of its original aggregate Principal Amount Outstanding on the Closing Date, the holders of the then most junior Class of Notes,

excluding, in each case, any Class of Notes, the entire Principal Amount Outstanding of which is held by, or for the benefit of or on behalf of the Borrower and/or or any one or more of its affiliates (the **"Excluded Class"**).

In the event that the Excluded Class would be (but for the preceding paragraph) determined to be the Controlling Party, the Class of Notes ranking immediately in priority in point of security to the Excluded Class and satisfying the test above will be the Controlling Party.

The right of the Servicer or, as the case may be, the Special Servicer to resign from its office for good cause (*aus wichtigem Grund*) will remain unaffected.

Prior to or contemporaneously with any termination of the appointment of the Servicer or the Special Servicer, it would first be necessary for the Issuer to appoint a substitute servicer or special servicer approved by the Trustee.

In addition, subject to the fulfilment of certain conditions including, without limitation, that a substitute servicer or special servicer has been appointed, the Servicer or Special Servicer may voluntarily resign by giving not less than three months' notice of termination to the Issuer, the Facility Agent, the Trustee and the Mortgagee.

Any such substitute servicer or special servicer (whether appointed upon a termination of the appointment of, or the resignation of, the Servicer or Special Servicer, as the case may be) will be required to, if possible, have experience servicing loans secured on commercial mortgage properties in the Federal Republic of Germany and will enter into an agreement on substantially the same terms in all material aspects as the Servicing Agreement, taking into account also what is standard for such agreements in similar transactions at the time. Under the terms of the Servicing Agreement, the appointment of a substitute servicer or special servicer will be subject to the Rating Agencies confirming that the appointment will not adversely affect the then current ratings (if any) of any Class of the Notes unless otherwise agreed by Extraordinary Resolutions of each Class of Noteholders. Any costs incurred by the Issuer as a result of appointing any such substitute servicer or special servicer will, save as specified above, be paid by the Servicer or Special Servicer (as the case may be) whose appointment is being terminated. The fee payable to any such substitute servicer or special servicer should not, without the prior written consent of the Trustee, exceed the amount payable to the Servicer or Special Servicer pursuant to the Servicing Agreement and in any event should not exceed the rate then customarily payable to providers of commercial mortgage loan servicing services.

Forthwith upon termination of the appointment of, or the resignation of, the Servicer or Special Servicer, the Servicer or Special Servicer (as the case may be) must deliver any documents and all books of account and other records maintained by the Servicer or Special Servicer relating to the

Senior Loan and/or the Related Loan Security to, or at the direction of, the substitute servicer or substitute special servicer and is obliged to take such further action as the substitute servicer or substitute special servicer, as the case may be, will reasonably request to enable the substitute servicer or the substitute special servicer, as the case may be, to perform the services due to be performed by the Servicer or the Special Servicer under the Servicing Agreement.

## **XII. Appointment of the Operating Adviser**

The Controlling Party may elect to appoint an operating adviser (the "**Operating Adviser**") to represent its interests and to advise the Special Servicer about the following matters in relation to the Senior Loan:

- (a) appointment of a receiver or similar actions to be taken in relation to the specially serviced Senior Loan;
- (b) the amendment, waiver or modification of any term of the Finance Documents relating to the specially serviced Senior Loan which affects the amount payable by the relevant Borrower or the time at which any amounts are payable, or any other material term of the relevant Finance Documents; and
- (c) the release of any part of the Loan Security, or the acceptance of substitute or additional Loan Security other than in accordance with the terms of the Credit Agreement.

Before taking any action in connection with the matters referred to in paragraphs (a) to (c) above, the Special Servicer must notify the Operating Adviser of its intentions and must take due account of the advice and representations of the Operating Adviser, although if the Special Servicer determines that immediate action is necessary to protect the interests of the Noteholders, the Special Servicer may take whatever action it considers necessary without waiting for the Operating Adviser's response. If the Special Servicer does take such action and the Operating Adviser objects in writing to the actions so taken within 10 Note Business Days after being notified of the action and provided with all reasonably requested information, the Special Servicer must take due account of the advice and representations of the Operating Adviser regarding any further steps the Operating Adviser considers should be taken in the interests of the Controlling Party. The Operating Adviser will be considered to have approved any action taken by the Special Servicer without the prior approval of the Operating Adviser if it does not object within 10 Note Business Days. Furthermore, the Special Servicer will not be obliged to obtain the approval of the Operating Adviser for any actions to be taken with respect to the specially serviced Senior Loan if the Special Servicer has notified the Operating Adviser in writing of the actions that the Special Servicer proposes to take with respect to the specially serviced Senior Loan and, for 60 calendar days following the first such notice, the Operating Adviser has objected to all of those proposed actions and has failed to suggest any alternative actions that the Special Servicer considers to be in accordance with the Servicing Standard.

## **XIII. Delegation by the Servicer and Special Servicer**

The Servicer or the Special Servicer, as applicable, may, in some circumstances including with the prior written consent of the Trustee and, in the case of the Servicer, with the prior written consent of the Special Servicer (where the Special Servicer is not Eurohypo), and after giving written notice to the Trustee and the Rating Agencies, delegate or subcontract the performance of any of its obligations or duties under the Servicing Agreement. This will not prevent the engagement on a case by case basis by the Servicer or Special Servicer, as applicable, of any solicitor, valuer, surveyor, estate agent, property management agent or other professional adviser in respect of services normally provided by such persons in connection with the performance by the Servicer or the Special Servicer, as applicable, of any of its respective functions or exercise of its power under the Servicing Agreement. Upon the appointment of any such delegate or subcontractor the Servicer or the Special Servicer, as the case may be, will nevertheless remain responsible for the performance of those duties to the Issuer, the Trustee and the Mortgagee.

## **XIV. Performance of Services by the Servicer's and Special Servicer's German offices**

Under the terms of the Servicing Agreement it is provided that the duties of the Servicer and (where applicable) the Special Servicer are performed by its London Branch (in this Section XIV the "**Master**

**Servicer**"). Activities of any of the German offices of the Servicer and (where applicable) the Special Servicer (in this Section XIV the "**Sub Servicer**") are restricted. Each of the Servicer and the Special Servicer covenants with and undertakes to each of the Issuer and the Trustee with respect to itself that

- (i) the Sub Servicer prepares drafts of the reports of the Master Servicer in accordance with, and subject to the directions of the Master Servicer;
- (ii) the Sub Servicer prepares drafts of the payment instructions in respect of payments to the Principal Paying Agent as well as drawdown and extension requests under the Liquidity Facility Agreement, in each case in accordance with, and subject to the directions of the Master Servicer;
- (iii) other than pursuant to (i) and (ii) above, the Sub Servicer acts only on an occasional basis (*gelegentlich*) and only as directed by, and solely in the name and for the account of, the Master Servicer;
- (iv) when acting, the Sub Servicer does not enter into any transactions (*gibt keine rechtsgeschäftlichen Erklärungen ab*) on behalf of the Servicer or the Special Servicer (as applicable) and does not independently make any decisions and does not exercise any discretions;
- (v) the actions taken by the Sub Servicer are of a solely supportive nature for the exclusive benefit of the Master Servicer in the performance of the Servicer's or the Special Servicer's (as applicable) obligations under the Servicing Agreement and any other Transaction Document;
- (vi) records or any other documents or information are only kept and maintained with the Sub Servicer if and to the extent required to perform the Sub Servicer's duties under the Servicing Agreement; and
- (vii) the Sub Servicer does not act as an agent of any kind on behalf of the Issuer or the Trustee;

provided that any such delegation made pursuant to the foregoing will be limited to preparatory and ancillary tasks subject to the directions of the Master Servicer, which will in particular make all management decisions required in connection with the services to be performed pursuant to the Servicing Agreement.

## **XV. Governing law**

The Servicing Agreement will be governed by German law.

## THE TRUSTEE AND THE MORTGAGEE

HSBC Trustee (C.I.) Limited will be appointed as the Trustee to the Issuer pursuant to the Issuer Trust Agreement and will act in such capacity through its office at 1 Grenville Street, St. Helier, Jersey JE4 9PF. HSBC Trustee (C.I.) Limited is registered under registration number 2535.

HSBC (C.I.) Trustee Limited provides trustee services within the HSBC group. HSBC Bank plc and its subsidiaries form a UK-based group providing a comprehensive range of banking and related financial services.

HSBC Bank plc and its subsidiaries form a UK-based group providing a comprehensive range of banking and related financial services.

HSBC Bank plc (formerly Midland Bank plc) was formed in England in 1836 and subsequently incorporated as a limited company in 1880. In 1923, the company adopted the name of Midland Bank Limited which it held until 1982 when it re-registered and changed its name to Midland Bank plc.

During the year ended 31 December 1992, Midland Bank plc became a wholly owned subsidiary undertaking of HSBC Holdings plc, whose Group Head Office is at 8 Canada Square, London E14 5HQ. HSBC Bank plc adopted its current name, changing from Midland Bank plc, in the year ended 31 December 1999.

The HSBC Group is one of the largest banking and financial services organisations in the world, with around 9,500 offices in 76 countries and territories in five geographical regions: Europe; Hong Kong ; the rest of Asia-Pacific, including the Middle East and Africa; North America and South America. Its total assets at 30 June 2006 were US\$1,738 billion. HSBC Bank plc is the HSBC Group's principal operating subsidiary undertaking in Europe. Shares in HSBC Holdings plc are listed on the London, Hong Kong, New York, Paris and Bermuda stock exchanges. The shares are traded on the New York stock exchange in the form of American depositary receipts.

The short-term unsecured obligations of HSBC Bank plc are currently rated A-1+ by S&P, P-1 by Moody's Investors Service, Inc. and any successor to its rating business ("**Moody's**") and F1+ by Fitch and the long-term obligations of HSBC Bank plc are currently rated AA by S&P, Aa2 by Moody's, and AA by Fitch.

HSBC is regulated pursuant to the Financial Services and Markets Act 2000 and is an authorised institution supervised by the Financial Services Authority. HSBC Bank plc's principal place of business in the United Kingdom is 8 Canada Square, London E14 5HQ.

## THE ACCOUNT BANK

### I. Account Bank and the Issuer Accounts

HSBC Bank plc will be appointed as Account Bank pursuant to the terms of the Account Bank Agreement. The Account Bank will open and maintain the Issuer Transaction Accounts in the name of the Issuer. The Account Bank will agree to comply with any direction of the Servicer or the Issuer (prior to enforcement of the Issuer Security) or the Servicer or Trustee (after enforcement of the Issuer Security) to effect payments from the Issuer Transaction Accounts if such direction is made in accordance with the mandate governing the respective account.

### II. Termination of appointment of the Account Bank

The Account Bank Agreement will require that the Account Bank be, except in certain limited circumstances, a bank which is an Authorised Entity. If it ceases to be an Authorised Entity, the Account Bank will be required to give written notice of such event to the Issuer, the Servicer and the Trustee and will, within a reasonable time after having obtained the prior written consent of the Issuer, the Servicer and the Trustee (such consent not to be unreasonable withheld or delayed) and subject to establishing substantially similar arrangements to those contained in the Account Bank Agreement, procure the transfer of the Issuer Transaction Accounts and each other account of the Issuer held with the Account Bank to another bank which is an Authorised Entity. The Account Bank will be required to use all reasonable efforts to ensure that such a transfer will take place within 30 calendar days of its ceasing to be an Authorised Entity. If, however, at the time when a transfer of such account or accounts would otherwise have to be made, there is no other bank which is an Authorised Entity or if no Authorised Entity agrees to such a transfer, the accounts will not be required to be transferred until such time as there is a bank which is an Authorised Entity or an Authorised Entity which so agrees, as the case may be.

An "**Authorised Entity**" is an entity the short-term unsecured, unguaranteed and unsubordinated debt obligations of which are rated at least at the Account Bank Required Ratings or, if at the relevant time there is no such entity, any entity approved in writing by the Trustee.

"**Account Bank Required Ratings**" means an "F1" rating (or its equivalent) by Fitch and an "A-1+" rating (or its equivalent) by S&P for its short-term, unguaranteed, unsecured and unsubordinated debt obligations.

If, other than in the circumstances specified above, the Servicer wishes the bank or branch at which any account of the Issuer is maintained to be changed, the Servicer will be required to obtain the prior written consent of the Issuer and the Trustee, in the case of the Issuer such consent not to be unreasonably withheld, and the transfer of such account will be subject to the same directions and arrangements as are provided for above.



## LIQUIDITY BANK

Danske Bank A/S was founded in 1871 and has, through the years, merged with a number of financial institutions. Danske Bank is a commercial bank with limited liability and carries on business under the Danish Financial Business Act, Consolidation Act No. 286 of 4 April 2006, as amended.

The registered office of Danske Bank is at Holmens Kanal 2-12, DK-1092 Copenhagen K, Denmark; the telephone number is +45 33 44 00 00; CVR-nr. 61 12 62 28 - København.

The Danske Bank group provides a wide range of banking, mortgage and insurance products as well as other financial services, and is the largest financial institution in Denmark - and one of the largest in the Nordic region - measured by total assets.

The total assets of the consolidated group were DKK 2,432 billion (USD 384.6 billion) at the end of 2005.

Shareholders' equity was DKK 75 billion (USD 11.9 billion) at the end of 2005. Shareholders' equity was DKK 70 billion (USD 11.4 billion) at the end of the first quarter of 2006. The change in group equity since the end of 2005 primarily reflects the dividend payment in March 2006 and the recognition of the net profit for the period.

Current credit ratings of Danske Bank A/S are as follows: Moody's: P-1 (short-term) and Aa1 (long-term), S&P: A-1+ (short-term) and AA- (long-term), Fitch: F1+ (short-term) and AA- (long-term).

## **THE CORPORATE SERVICES PROVIDER**

Structured Finance Management (Ireland) Limited, 25-26 Windsor Place, Lower Pembroke Street, Dublin 2, Ireland will be appointed to act as Corporate Services Provider pursuant to the terms of the Corporate Services Agreement.

### **1. Responsibilities of the Corporate Services Provider**

The Corporate Services Provider will be responsible for the corporate administration of the Issuer and certain incidental matters. The services to be provided by the Corporate Services Provider will include, *inter alia*, nominating of directors of the Issuer, convening of the shareholders meeting and providing any related services, providing general administrative services, assisting the Issuer and its auditors in filing accounts, tax filings, and any other relevant statutory filings, and providing services related to this transaction and arranging for the execution of the Transaction Documents.

### **2. Termination of the appointment of the Corporate Services Provider**

The Corporate Services Agreement will provide for termination of the agreement by either of the parties by no less than three (3) months' prior written notice. In certain events, the appointment of the Corporate Services Provider can be terminated any time. Such events will include termination by the affected party due to, *inter alia*, a material breach of the Corporate Services Agreement which is not remedied within 30 calendar days or insolvency of the Corporate Services Provider. Any termination of the Corporate Services Agreement will not take effect until a substitute Corporate Services Provider has been appointed.

### **ESTIMATED AVERAGE LIVES OF THE NOTES AND ASSUMPTIONS**

The average lives of the Notes cannot be predicted because the Senior Loan will be prepayable and a number of other relevant factors are unknown.

Calculations of possible average lives of the Notes can be made based on certain assumptions. For example, based on the assumptions that:

- (a) The Senior Loan does not default, is not prepaid (in whole or in part), is not enforced and no loss arises;
- (b) there is no cash sweep amortisation;
- (c) no Property is disposed of; and
- (d) the Closing Date is 20 December 2006,

then the approximate percentage of the initial principal amount outstanding of the Notes on each Note Interest Payment Date and the approximate average lives of the Notes would be 4.8 years.

## TERMS AND CONDITIONS OF THE NOTES

The terms and conditions are set out below. Appendix A to the Terms and Conditions is set out under "CERTAIN DEFINITIONS". Appendix B to the Terms and Conditions is set out under "THE MAIN PROVISIONS OF THE ISSUER TRUST AGREEMENT". Appendix A and Appendix B form an integral part of the Terms and Conditions.

The payment of principal of, and interest on, the Notes is, *inter alia*, conditional upon the performance of the Borrowers under the Senior Loan, as described herein. Holders of the Notes will be exposed to credit risks of the Senior Loan and the respective Borrowers thereunder to the full extent of their investment in the Notes. There is no certainty that the holder of any Note will receive the full principal amount of the Note or interest thereon. The obligations of the Issuer to pay principal of, and interest on, the Notes could be reduced to zero as a result of losses in respect of the Senior Loan.

The Notes are direct, secured and limited recourse obligations of the Issuer. The Issuer's ability to satisfy its payment obligations under the Notes and its operating and administrative expenses will be wholly dependent upon receipt by it in full of (a) payments of principal and interest and other amounts payable under the Senior Loan, (b) any indemnities payable by the Originator, (c) any payments due from the Issuer Swap Counterparty under the Issuer Swap Agreements, (d) any interest income on the Issuer Accounts, (e) any proceeds from the realisation of the Issuer Security, and (f) any payments under the Transaction Documents in accordance with the terms thereof, as available on any relevant Note Interest Payment Date (excluding any VAT portion) according to the relevant Priority of Payments. The Issuer shall have no other funds available to meet its obligations under the Notes. The Notes shall not give rise to any payment obligation in excess of the foregoing and recourse shall be limited accordingly.

The Notes are obligations solely of the Issuer. The Notes do not represent an interest in, or constitute a liability or other obligation of the Note Arranger, the Joint Bookrunners, the Listing Agent, the Principal Paying Agent, the Agent Bank, the Irish Paying Agent, the Trustee, the Mortgagee, the Liquidity Bank, the Account Bank, the Originator, the Servicer, the Special Servicer, the Corporate Services Provider, the Issuer Swap Counterparty or any other party to the Transaction Documents. The Notes are not, and will not be, insured or guaranteed by the Note Arranger, the Joint Bookrunners, the Listing Agent, the Irish Paying Agent, the Agent Bank, the Principal Paying Agent, the Trustee, the Mortgagee, the Liquidity Bank, the Account Bank, the Originator, the Servicer, the Special Servicer, the Corporate Services Provider, the Issuer Swap Counterparty or any other party to the Transaction Documents and none of the foregoing assumes, or will assume, any liability or obligation to the Noteholders if the Issuer fails to make any payment due in respect of the Notes.

Any United States person who holds this obligation shall be subject to limitations under the United States income tax laws, including the limitations provided in Sections 165(j) and 1287(a) of the U.S. Internal Revenue Code of 1986.

### 1. Form, Denomination and Transfer

#### (a) Issue of Notes

Opera Germany (No. 2) p.l.c. (the "**Issuer**") shall issue notes in new global note form in an aggregate principal balance of €560,000,000 consisting of the following Classes:

- (i) €374,500,000 Class A Commercial Mortgage Backed Floating Rate Notes due October 2014 (the "**Class A Notes**");
- (ii) €46,800,000 Class B Commercial Mortgage Backed Floating Rate Notes due October 2014 (the "**Class B Notes**");
- (iii) €65,600,000 Class C Commercial Mortgage Backed Floating Rate Notes due October 2014 (the "**Class C Notes**");

- (iv) €63,700,000 Class D Commercial Mortgage Backed Floating Rate Notes due October 2014 (the "**Class D Notes**"); and
- (v) €9,400,000 Class E Commercial Mortgage Backed Floating Rate Notes due October 2014 (the "**Class E Notes**").

**(b) Exchange**

The Notes of each Class shall be in bearer form in the denomination of €100,000 each and shall be initially represented by a temporary global note without coupons in the initial principal balance of €374,500,000 for the Class A Notes, €46,800,000 for the Class B Notes, €65,600,000 for the Class C Notes, €63,700,000 for the Class D Notes and €9,400,000 for the Class E Notes (each, a "**Temporary Global Note**").

Each Temporary Global Note shall be exchangeable not earlier than the date (the "**Exchange Date**") which is 40 calendar days after the Closing Date but no later than 180 calendar days after the Closing Date, provided certification of non-U.S. economic ownership in respect of the relevant Noteholders has been received, for interests in a permanent global note representing the same Class of Notes, without coupons (each, a "**Permanent Global Note**", and the expression "**Global Notes**" and "**Global Note**" meaning, respectively, (i) all of the Temporary Global Notes and the Permanent Global Notes, or the Temporary Global Note and the Permanent Global Note of a particular Class, or (ii) any of the Temporary Global Notes or the Permanent Global Notes, as the context may require), which are recorded in the records of the ICSDs. Interest and principal payments on Notes represented by a Temporary Global Note shall be made only after delivery of such certification by the relevant participants to the ICSDs, as relevant, and by an ICSD to the Principal Paying Agent of such certification. A separate certification shall be required in respect of each such interest payment. Any such certification received on or after the day which is 40 calendar days after the Closing Date shall be treated as a request to exchange such Temporary Global Note.

On the exchange of the Temporary Global Note for the Permanent Global Note of the relevant Class, the Temporary Global Note shall be cancelled. The Temporary Global Note and the Permanent Global Note shall (i) each be signed manually by two duly authorised officers of the Issuer, (ii) each be authenticated by a duly authorised officer of the Principal Paying Agent or by such other person as the Principal Paying Agent may appoint for such purpose with the consent of the Issuer and (iii) each be effectuated by the Common Safekeeper.

Definitive notes shall not be issued.

**(c) Common Safekeeper**

The Global Notes shall be deposited with an entity appointed as common safekeeper (the "**Common Safekeeper**") by the ICSDs until all obligations of the Issuer under the Notes have been satisfied. The Global Notes represent the Notes kept in custody for financial institutions that are accountholders of Clearstream Luxembourg or Euroclear.

The nominal amount of the Notes represented by the Global Note shall be the aggregate amount from time to time entered in the records of both ICSDs. Absent errors, the records of the ICSDs (which expression means the records that each ICSD holds for its customers which reflect the amount of such customer's interest in the Notes) shall be conclusive evidence of the nominal amount of Notes represented by the Global Note and, for these purposes, a statement issued by an ICSD stating the nominal amount of Notes so represented at any time shall be conclusive evidence of the records of the relevant ICSD at that time.

On any redemption or payment of an instalment or interest being made in respect of, or purchase and cancellation of, any of the Notes represented by the Global Note the Issuer shall procure that details of any redemption, payment or purchase and cancellation (as the case may be) in respect of the Global Note shall be entered *pro rata* in the records of the ICSDs and, upon any such entry being made, the nominal amount of the Notes recorded in the records of the ICSDs and represented by the Global Note shall be reduced by the aggregate nominal amount of the Notes so redeemed or purchased and cancelled or by the aggregate amount of such instalment so paid.

**(d) Transfer**

The Noteholders shall be entitled to co-ownership participations in the respective Global Note. Transfer of any Note shall require appropriate entries in the relevant securities account.

**(e) Holder**

The Issuer, the Trustee and the Paying Agents may, to the fullest extent permitted by law, treat the holder of any Note appertaining thereto as its absolute owner for all purposes (whether or not payment under such Note is overdue and notwithstanding any notice of ownership or writing thereon or any notice of previous loss or theft thereof) for any purposes, including payment and no person will be liable for so treating such holder.

**(f) Agency Agreement**

In connection with the issuance of the Notes, the Issuer has entered into an agency agreement dated on or about the Closing Date (the "**Agency Agreement**") between the Issuer, the Trustee, HSBC Bank plc as principal paying agent (the "**Principal Paying Agent**") and HSBC Institutional Trust Services (Ireland) Limited as the Irish paying agent (the "**Irish Paying Agent**" and, together with the Principal Paying Agent, the "**Paying Agents**" and each a "**Paying Agent**").

**2. Status, Relationship between the Notes and Trustee**

**(a) Status**

The Notes of each Class constitute direct, secured and unconditional limited recourse obligations of the Issuer and rank *pari passu* and *pro rata* without any preference or priority among Notes of the same Class.

**(b) Subordination**

In accordance with, and subject to, the provisions of Conditions 4, 6 and 9 and the Issuer Trust Agreement, (i) payments of interest on the Class B Notes are subordinated to, *inter alia*, payments of interest on the Class A Notes, (ii) payments of interest on the Class C Notes are subordinated to, *inter alia*, payments of interest on the Class A Notes and the Class B Notes, (iii) payments of interest on the Class D Notes are subordinated to, *inter alia*, payments of interest on the Class A Notes, the Class B Notes and the Class C Notes, and (iv) payments of interest on the Class E Notes are subordinated to, *inter alia*, payments of interest on the Class A Notes, the Class B Notes, the Class C Notes, and the Class D Notes.

In accordance with, and subject to, the provisions of Conditions 4, 6 and 9 and the Issuer Trust Agreement, (i) payments of principal of the Class B Notes are subordinated to, *inter alia*, payments of principal of the Class A Notes, (ii) payments of principal of the Class C Notes are subordinated to, *inter alia*, payments of principal of the Class A Notes and the Class B Notes, (iii) payments of principal of the Class D Notes are subordinated to, *inter alia*, payments of principal of the Class A Notes, the Class B Notes and the Class C Notes, and (iv) payments of principal of the Class E Notes are subordinated to, *inter alia*, payments of principal of the Class A Notes, the Class B Notes, the Class C Notes, and the Class D Notes.

Prior to the service by the Trustee of an Acceleration Notice pursuant to Condition 9, payments of interest in respect of each Class of Notes shall rank ahead of payments of principal in respect of each Class of Notes.

**(c) Issuer Security**

The security for the obligations of the Issuer towards the Noteholders, the Principal Paying Agent, the Irish Paying Agent, the Trustee, the Mortgagee, the Liquidity Bank, the Account Bank, the Servicer, the Special Servicer, the Agent Bank, the Corporate Services Provider, the Note Arranger and the Issuer Swap Counterparty (the "**Issuer Secured Creditors**") shall be created pursuant to, and on the

terms set out in, the Issuer Security Documents (the "**Issuer Security**") including the Issuer Trust Agreement, the Mortgage Assignment and the Issuer Deed of Charge and Assignment. The Issuer Security shall include security over:

- (i) all rights in, to and under the Senior Loan purchased by the Issuer under, and in accordance with, the Loan Sale Agreement;
- (ii) the Related Loan Security and all claims and rights relating thereto, including without limitation the Mortgage (which shall be transferred by the Originator to the Mortgagee pursuant to the Mortgage Assignment), by way of security assignment (*Sicherungsabtretung*) or, as appropriate, by way of pledge (*Pfandrecht*);
- (iii) all (present and future) claims and rights the Issuer may have under any of the other Transaction Documents. To the extent such claims and rights are governed by German law, security will be created by way of German law governed security documents and, to the extent such claims are governed by English law, security will be created by way of an English law assignment;
- (iv) all (present and future) claims and rights in relation to any amounts standing to the credit of the Issuer Accounts by way of charge and assignment;
- (v) its interest in any Eligible Investments made by it or on its behalf; and
- (vi) the claims of the Issuer against the Trusted Parties by way of pledge.

Pursuant to the Issuer Trust Agreement, the Trustee shall hold the Issuer Security (other than the Mortgage) for the benefit of itself and the other Issuer Secured Creditors. Pursuant to the Mortgage Trust Deed and the Issuer Trust Agreement, the Mortgagee shall hold the Mortgage transferred to it by the Originator to the instructions of the Trustee, and, following the satisfaction of the conditions for release or retransfer pursuant to Clause 10 of the Issuer Trust Agreement, to the instructions of the Security Agent.

**(d) Issuer Security Documents**

The Notes are subject to, and have the benefit of, the Issuer Trust Agreement and the Issuer Deed of Charge and Assignment. As long as any Notes are outstanding, the Issuer shall ensure that at all times a mortgagee and a security trustee is appointed who meets the requirements of, and has undertaken substantially the same functions and obligations as, the Trustee pursuant to the Notes, including the Conditions of the Notes, and the Issuer Trust Agreement. The Issuer Trust Agreement is attached as Appendix 2 to these Conditions and forms an integral part hereof. The Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes, and the Class E Notes will be secured (indirectly) by the Issuer Security. The Class A Notes shall rank in priority to the Class B Notes, the Class C Notes, the Class D Notes, and the Class E Notes. The Class B Notes shall rank in priority to the Class C Notes, the Class D Notes, and the Class E Notes. The Class C Notes shall rank in priority to the Class D Notes and the Class E Notes. The Class D Notes shall rank in priority to the Class E Notes.

The Trustee shall perform such functions, exercise such rights and fulfil such obligations as are specified in the Issuer Trust Agreement. The Issuer Trust Agreement contains provisions requiring the Trustee to have regard to the interests of the Class A Noteholders, the Class B Noteholders, the Class C Noteholders, the Class D Noteholders and the Class E Noteholders, as regards all powers, trust, authorities, duties and discretions of the Trustee (except where expressly provided otherwise) but requiring the Trustee in any such case to have regard only to the interests of the Class A Noteholders if, in the Trustee's opinion, there is a conflict between the interests of the Class A Noteholders on the one hand and the Class B Noteholders, the Class C Noteholders, the Class D Noteholders and the Class E Noteholders on the other hand and, if no Class A Notes are outstanding, to have regard only to the interests of the Class B Noteholders if, in the Trustee's opinion, there is a conflict between the interests of the Class B Noteholders on the one hand and the Class C Noteholders, the Class D Noteholders and the Class E Noteholders on the other hand and, if no Class B Notes are outstanding,

to have regard only to the interests of the Class C Noteholders if, in the Trustee's opinion, there is a conflict between the interests of the Class C Noteholders on the one hand and the Class D Noteholders and the Class E Noteholders on the other hand and, if no Class C Notes are outstanding, to have regard only to the interests of the Class D Noteholders if, in the Trustee's opinion, there is a conflict between the interests of the Class D Noteholders on the one hand and the Class E Noteholders. In addition, the Trustee shall have regard to the interests of the Issuer Secured Creditors (other than the Noteholders), provided that in case of a conflict of interest between the other Issuer Secured Creditors (other than the Noteholders) the Post-Acceleration Priority of Payments set forth in the Issuer Trust Agreement determines which interest of which other Issuer Secured Creditor prevails.

### **3. Covenants of the Issuer**

#### **(a) Restrictions**

So long as any of the Notes remain outstanding, the Issuer shall carry out its business in accordance with the requirements of Irish law and shall not, except to the extent permitted by the Transaction Documents (as defined in Appendix 1) or under these Conditions or with the prior written consent of the Trustee:

- (i) carry out any business or own any assets other than as described in the Prospectus dated 19 December 2006 relating to the issue of the Notes and as contemplated in the Transaction Documents;
- (ii) incur any indebtedness in respect of borrowed money whatsoever or give any guarantee or indemnity in respect of any indebtedness, except as contemplated in the Transaction Documents;
- (iii) create or promise to create any mortgage, charge, pledge, lien or other encumbrances and whatsoever over any of its assets, or use, invest, sell, transfer or otherwise dispose of any part of its assets, except as contemplated in the Transaction Documents;
- (iv) consolidate or merge with any other person or convey or transfer its assets substantially or as an entirety to one or more persons;
- (v) permit the validity or effectiveness of the Issuer Security Documents, or the priority of the security created thereby or pursuant thereto to be amended, terminated, postponed or discharged, or permit any person whose obligations form part of such security rights to be released from such obligations except as contemplated in the Transaction Documents;
- (vi) have any employees or premises or have any subsidiary or subsidiary undertaking or own any real estate;
- (vii) transfer, sell, lend, part with or otherwise dispose of, or deal with, or grant any option or present or future right to acquire any of its assets or undertaking or any interest, estate, right, title or benefit therein;
- (viii) pay any dividend or make any other distributions to its shareholders in excess of the Issuer Profit (per annum) or issue any further shares;
- (ix) open or maintain any bank account other than the Issuer Accounts, unless all rights in relation to such account will have been pledged to the Trustee as provided in Condition 2(c)(iv) hereof;
- (x) hold shares in any entity;
- (xi) prejudice its status as a qualifying company within the meaning of Section 110 TCA 1997 of Ireland and if its cashflows would thereby be affected adversely, not make an election pursuant to subsection (6)(b) of that section and, if not otherwise included in its audited financial statements, the Issuer shall procure that a note of profits calculated under Irish GAAP as it existed at 31 December 2004 will be included in its audited financial statements; or



- (xii) apply to become part of any group for the purpose of Section 8 of the Value Added Tax Act, 1972 of Ireland with any other company or group of companies, or any such act, regulation, order, statutory instrument or directive which may from time to time re-enact, replace, amend, modify, vary, codify, consolidate or repeal the Value Added Tax Act, 1972 of Ireland.

**(b) Servicer**

- (i) So long as any of the Notes remains outstanding, the Issuer shall procure that there will at all times be a Servicer for the servicing of the Senior Loan and the performance of the other administrative duties set out in the Servicing Agreement.
- (ii) The Servicing Agreement shall provide that (1) the Servicer will not be permitted to terminate its appointment unless a replacement servicer acceptable to the Issuer and the Trustee has been appointed and (2) the appointment of the Servicer may be terminated by the Trustee and/or the Issuer (with the consent of the Trustee) if, *inter alia*, the Servicer defaults in any material respect in the observance and performance of any obligation imposed on it under the Servicing Agreement, which default is not remedied within 30 Note Business Days after written notice of such default shall have been served on the Servicer by the Issuer or the Trustee, as the case may be.
- (iii) The right of the Servicer or, as the case may be, the Special Servicer to resign from its office for good cause (*aus wichtigem Grund*) shall remain unaffected.

**(c) Special Servicer**

If the Senior Loan has become specially serviced in accordance with the Servicing Agreement and the Issuer is so instructed by the Controlling Party, then the Issuer shall exercise its rights under the Servicing Agreement to appoint a substitute or successor special servicer in respect of the Senior Loan subject to the conditions of the Servicing Agreement.

**(d) Operating Adviser**

The Class of Noteholders then acting as Controlling Party may appoint an adviser (the "**Operating Adviser**") with whom the Servicer or Special Servicer, as the case may be, will be required to liaise in accordance with the Servicing Agreement.

**4. Interest**

**(a) Period of Accrual**

Each of the Notes shall bear interest on its Principal Amount Outstanding from and including the Closing Date. Each Note (or, in the case of the redemption of a part of a Note only, that part only of such Note) shall cease to bear interest from its due date for redemption unless, upon due presentation payment of the relevant amount of principal or any part thereof is improperly withheld or refused. In such event, interest will continue to accrue on such amount (before and after any judgment) at the default rate established by law, unless the sum of the applicable Rate of Interest and 2 per cent. per annum (such sum, the "**Default Rate**") is higher than the default rate of interest established by law, in which case the Default Rate shall apply in respect of such Note up to but excluding the date on which, on presentation of such Note, payment in full of the relevant amount of principal is made or (if earlier) the 7<sup>th</sup> day after notice is duly given by the Principal Paying Agent to the holder thereof (in accordance with Condition 13 hereof) that upon presentation thereof, such payments will be made, provided that upon such presentation payment is in fact made. Whenever it is necessary to compute an amount of interest in respect of any Note for any period, such interest shall be calculated on the basis of actual calendar days elapsed in the Note Interest Period divided by 360 calendar days.

**(b) Note Interest Shortfall**

Accrued interest not paid on any Note Interest Payment Date and not deferred pursuant to Condition 4(j) related to the Note Interest Period in which it accrued or on which it was due shall be an "**Note Interest Shortfall**" with respect to the relevant Note. A Note Interest Shortfall shall become due and payable by the Issuer on the next Note Interest Payment Date and on any following Note Interest

Payment Date until it is reduced to zero. Interest shall not accrue on Note Interest Shortfalls at any time.

**(c) Note Interest Periods and Note Interest Payment Dates**

Interest on the Notes shall be payable by reference to successive quarterly interest periods (each, an "**Note Interest Period**") and will be payable quarterly in arrear in euro in respect of the Principal Amount Outstanding of each of the Notes, respectively, on 20 January, 20 April, 20 July and 20 October of each year, or, if such day is not a Note Business Day, the next Note Business Day immediately following such date unless thereby fall into the next calendar month, in which case the immediately preceding Note Business Day (each such day being an "**Note Interest Payment Date**"). A "**Note Business Day**" means a day (other than a Saturday or a Sunday) on which banks are open for business in Frankfurt and London, provided that such day is also a day on which the Trans-European Automated Real-Time Gross Settlement Express Transfer (**TARGET System**) or any successor thereto is operating credit or transfer instructions in respect of payments in euro.

The first Note Interest Period will commence on (and including) the Closing Date and will end on (but excluding) the first Note Interest Payment Date falling in April 2007 and each subsequent Note Interest Period will commence on (and including) an Note Interest Payment Date and will end on (but excluding) the immediately following Note Interest Payment Date.

**(d) Interest on the Notes**

- (i) Interest on the Notes for each Note Interest Period from the Closing Date will accrue at an annual rate equal to the sum of the Euro Interbank Offered Rate for three month deposits ("**EURIBOR**") (or, in respect of the first Note Interest Period, the rate equal to the sum of the Euro Interbank Offered Rate for four month deposits), rounded, if necessary, to the 3rd decimal place with 0.0005 being rounded upwards plus the relevant Margin.
- (ii) The interest rate margin applicable to each Class of the Notes will be as follows (the "**Margin**"):

<b>Class</b>	<b>Margin (per cent.)</b>
Class A Notes	0.22 per cent.
Class B Notes	0.30 per cent.
Class C Notes	0.47 per cent.
Class D Notes	0.85 per cent.
Class E Notes	1.05 per cent.

**(e) EURIBOR**

For the purpose of Condition 4(d) EURIBOR will be determined as follows:

- (i) the Agent Bank shall obtain for each Note Interest Period the rate equal to the sum of EURIBOR for three month deposits in euro. The Agent Bank shall use the EURIBOR rate as determined and published jointly by the European Banking Federation and ACI - The Financial Market Association and which appears for information purposes on the Telerate Page 248 (or, if not available, any other display page on any screen service maintained by any registered information vendor (including, without limitation, the Reuters Monitor Money Rate Service, the Dow Jones Telerate Service and the Bloomberg Service) for the display of the EURIBOR rate selected by the Agent Bank) as at or about 10:00 a.m. (London Time) on the day that is two Note Business Days preceding the first day of each Note Interest Period (each, an "**Interest Determination Date**"); or
- (ii) if, on the relevant Interest Determination Date, such EURIBOR rate is not determined and published jointly by the European Banking Association and ACI - The Financial Market Association, or if it is not otherwise reasonably practicable to calculate the rate under (i) above, the Agent Bank will:
  - (1) request the principal Euro-zone office of each of four major banks in the Euro-zone

interbank market (the "**Reference Banks**") to provide a quotation for the rate at which three month euro deposits are offered by it in the Euro-zone interbank market at approximately 10:00 a.m. (London Time) on the relevant Interest Determination Date to prime banks in the Euro-zone interbank market in an amount that is representative for a single transaction at that time; and determine the arithmetic mean (rounded, if necessary, to the third decimal place with 0.0005 being rounded upwards) of such quotation as is provided; or

- (2) if fewer than two such quotations are provided as requested, the Agent Bank will determine the arithmetic mean (rounded, if necessary, to the third decimal place with 0.0005 being rounded upwards) of the rates quoted by major banks, of which there will be at least two in number, in the Euro-zone, selected by the Agent Bank, at approximately 10:00 a.m. (London Time) on the relevant Interest Determination Date for one month deposits to leading Euro-zone banks in an amount that is representative for a single transaction in that market at that time,

and EURIBOR for such Note Interest Period shall be the rate per annum equal to the Euro-interbank offered rate for euro deposits as determined in accordance with this Condition 4(e), provided that if the Agent Bank is unable to determine EURIBOR in accordance with the above provisions in relation to any Note Interest Period, EURIBOR applicable to the relevant Class of Notes during such Note Interest Period shall be EURIBOR last determined in relation thereto.

**(f) Determination of Interest and Calculation of the Interest Amount**

The Agent Bank shall, as soon as practicable after 10:00 a.m. (London Time) on each relevant Interest Determination Date, determine the rates of interest referred to in Conditions 4(d) and 4(e) above for each relevant Class of Notes (the "**Rate of Interest**") and calculate the amount of interest payable on each of the Notes for the following Note Interest Period (the "**Interest Amount**") by applying the relevant Rate of Interest to the principal amount outstanding of the relevant Class of Notes. The determination of the relevant Rate of Interest and the Interest Amount by the Agent Bank shall (in the absence of manifest error) be final and binding on all parties.

**(g) Notification of the Rate of Interest and the Interest Amount**

The Agent Bank shall cause the relevant Rate of Interest and the relevant Interest Amount and the Note Interest Payment Date applicable to each relevant Class of Notes to be promptly notified to the Issuer, the Trustee, the Principal Paying Agent, the Irish Paying Agent, the Corporate Services Provider, the Irish Stock Exchange for so long as the Notes are listed on the Irish Stock Exchange and to the holders of such Class of Notes in accordance with Condition 13. The Interest Amount and Note Interest Payment Date so published may subsequently be amended (or appropriate alternative arrangements made by way of adjustment) without notice in the event of an extension or shortening of the Note Interest Period.

**(h) Determination or Calculation by Trustee**

If the Agent Bank at any time for any reason does not determine the relevant Rate of Interest or fails to calculate the relevant Interest Amount in accordance with Condition 4(f) above, the Trustee shall procure the determination of the relevant Rate of Interest at such rate as, in its absolute discretion (having such regard as it shall think fit to the procedure described in Condition 4(f) above), it shall deem fair and reasonable under the circumstances, or, as the case may be, the Trustee shall calculate the Interest Amount in accordance with Condition 4(f) above, and each such determination or calculation will be final and binding on all parties.

**(i) Reference Banks and Agent Bank**

The Issuer shall procure that, as long as any of the Notes remains outstanding, there shall be at all times four Reference Banks and an Agent Bank. The Issuer has, subject to prior written consent of the Trustee, the right to terminate the appointment of the Agent Bank or of any Reference Bank by giving at least 90 calendar days' notice in writing to that effect. Notice of any such termination shall be given to the holders of the relevant Class of Notes in accordance with Condition 13 hereof. If any person will be unable or unwilling to continue to act as a Reference Bank or the Agent Bank (as the case may be)

or if the appointment of any Reference Bank or the Agent Bank will be terminated, the Issuer shall, with the prior written consent of the Trustee, appoint a successor Reference Bank or Agent Bank (as the case may be) to act in its place, provided that neither the resignation nor removal of the Agent Bank shall take effect until a successor approved in writing by the Trustee has been appointed.

**(j) Deferral of Interest Payments**

- (i) Interest on the Notes is payable subject to, and in accordance with, the order of priorities set out in either the Income Priority of Payments or the Post-Acceleration Priority of Payments. If, on any Note Interest Payment Date, the Issuer has insufficient funds to make payment in full of all amounts of interest (including any Deferred Interest) payable in respect of the Class B Notes and/or the Class C Notes and/or the Class D Notes and/or the Class E Notes after having paid or provided for items of higher priority, then:
- (1) the Issuer shall be entitled (unless there are then no Class A Notes outstanding) to defer, to the next Note Interest Payment Date, the payment of interest in respect of the Class B Notes:
    - (A) if it then defers all payments of interest then due (but for the provisions of this paragraph (A)) in respect of the Class C Notes, the Class D Notes and the Class E Notes; and
    - (B) to the extent only of any insufficiency of funds after having paid or provided for all amounts specified as having a higher priority than interest payable in respect of the Class B Notes; and
  - (2) the Issuer shall be entitled (unless there are then no Class A Notes and/or Class B Notes outstanding) to defer, to the next Note Interest Payment Date, the payment of interest in respect of the Class C Notes:
    - (A) if it then defers all payments of interest then due (but for the provisions of this paragraph (A)) in respect of the Class D Notes and/or the Class E Notes; and
    - (B) to the extent only of any insufficiency of funds after having paid or provided for all amounts specified as having a higher priority than interest payable in respect of the Class C Notes; and
  - (3) the Issuer shall be entitled (unless there are then no Class A Notes and/or Class B Notes and/or Class C Notes outstanding) to defer, to the next Note Interest Payment Date, the payment of interest in respect of the Class D Notes:
    - (A) if it then defers all payments of interest then due (but for the provisions of this paragraph (A)) in respect of the Class E Notes; and
    - (B) to the extent only of any insufficiency of funds after having paid or provided for all amounts specified as having a higher priority than interest payable in respect of the Class D Notes; and
  - (4) the Issuer shall be entitled (unless there are then no Class A Notes and/or Class B Notes and/or Class C Notes and/or Class D Notes outstanding) to defer, to the next Note Interest Payment Date, the payment of interest in respect of the Class E Notes to the extent only of any insufficiency of funds after having paid or provided for all amounts specified as having a higher priority than interest payable in respect of the Class E Notes.
- (ii) Any amount of interest (including any Deferred Interest arising on the immediately preceding Note Interest Payment Date) on the Class B Notes and/or the Class C Notes and/or the Class D Notes and/or the Class E Notes which is not due and payable on an Note Interest Payment Date as a result of the provisions of this Condition 4(j) is the "**Class B Deferred Interest**", the "**Class C Deferred Interest**", the "**Class D Deferred Interest**" and the "**Class E Deferred Interest**", respectively and, together, the "**Deferred Interest**" arising on any such Note Interest Payment Date. Any Deferred Interest is payable on the next Note Interest Payment Date unless

and to the extent that this Condition 4(j) applies.

- (iii) As soon as practicable after becoming aware that any part of a payment of interest on the Class B Notes and/or the Class C Notes and/or the Class D Notes and/or the Class E Notes will be deferred or that a payment previously deferred will be made in accordance with this Condition 4(j) the Issuer shall give notice thereof to the Class B Noteholders and/or the Class C Noteholders and/or the Class D Noteholders and/or the Class E Noteholders in accordance with Condition 13. Any deferral of interest in accordance with this Condition 4(j) shall not constitute a Note Event of Default. The provisions of this Condition 4(j) shall cease to apply on the Final Maturity Date, at which time all Deferred Interest and accrued interest thereon shall become due and payable.

## 5. Payment

### (a) Payments

Payments of principal and interest in respect of the Notes shall be made by the Issuer to the Principal Paying Agent for payment by the Principal Paying Agent to the Noteholders on the Note Interest Payment Date to, or to the order of, the ICSDs, as relevant, for credit to the relevant participants in the ICSDs for subsequent transfer to the Noteholders. All payments shall be subject to any fiscal laws or other laws and regulations applicable in the place of payment.

### (b) Final Maturity

On the Final Maturity Date, or on such earlier date on which the Notes become due and payable, payment in respect of the Notes shall be made only against presentation of the relevant Global Note at the specified office of the Principal Paying Agent.

### (c) Discharge

All payments made by the Principal Paying Agent on behalf of the Issuer to, or to the order of, the ICSDs, as relevant, shall discharge the liability of the Issuer under the Notes to the extents of the sums so paid. Any failure to make the entries in the records of the ICSDs referred to in Condition 1 (c) shall not affect the discharge referred to in the preceding sentence.

### (d) Payment Business Days

If the relevant Note Interest Payment Date is not a day on which banks are open for business in the place of presentation of the relevant Note (for the purposes of this Condition a "**local business day**"), the holder thereof shall not be entitled to payment until the next following such day, or to any interest or other payment in respect of such delay, provided that in the case of payment by transfer to a Euro account as referred to above, the Principal Paying Agent and the Irish Paying Agent shall not be obliged to credit such account until the local business day immediately following the day on which banks are open for business. The name of the Principal Paying Agent and the address of its office are set out below.

## 6. Redemption

### (a) Final redemption

Save to the extent otherwise redeemed or cancelled in accordance with this Condition 6, the Issuer shall redeem the Notes of each Class at their respective Principal Amounts Outstanding plus interest accrued and unpaid on the Note Interest Payment Date in October 2014 (the "**Final Maturity Date**") by applying all amounts credited to the Issuer Principal Account to the Notes as follows:

- (a) *first, pro rata* in or towards repayment of any principal of the Class A Notes until the Class A Notes have been redeemed in full;
- (b) *second, pro rata* in or towards repayment of any principal of the Class B Notes until the Class B

Notes have been redeemed in full;

- (c) *third, pro rata* in or towards repayment of any principal of the Class C Notes until the Class C Notes have been redeemed in full;
- (d) *fourth, pro rata* in or towards repayment of any principal of the Class D Notes until the Class D Notes have been redeemed in full; and
- (e) *fifth, pro rata* in or towards repayment of any principal of the Class E Notes.

Without prejudice to Condition 9, the Issuer shall not redeem Notes in whole or in part prior to the Final Maturity Date except as provided in this Condition 6.

**(b) Mandatory Redemption from Available Principal Amounts**

Unless previously redeemed in full, the Notes are subject to mandatory redemption in part on each Note Interest Payment Date by applying an amount equal to the Available Principal Amounts to the Notes as follows:

- (a) *first, pro rata* in or towards repayment of any principal of the Class A Notes until the Class A Notes have been redeemed in full;
- (b) *second, pro rata* in or towards repayment of any principal of the Class B Notes until the Class B Notes have been redeemed in full;
- (c) *third, pro rata* in or towards repayment of any principal of the Class C Notes until the Class C Notes have been redeemed in full;
- (d) *fourth, pro rata* in or towards repayment of any principal of the Class D Notes until the Class D Notes have been redeemed in full; and
- (e) *fifth, pro rata* in or towards repayment of any principal of the Class E Notes;

provided that Available Principal Amounts received prior to the scheduled Loan Maturity Date due to mandatory prepayments of the Senior Loan due to the disposal of any Property and prior to the enforcement of the Loan Security and/or the claims under the Finance Documents will be applied

- (a) *first*, an amount equal to the Senior Allocated Loan Amount of the relevant Property *pro rata* to each Class of Notes;
- (b) *second*, any amount of the Release Price which is in excess of the Senior Allocated Loan Amount of the relevant Property will be applied:
  - (i) *first, pro rata* in or towards repayment of any principal of the Class A Notes until the Class A Notes have been redeemed in full;
  - (ii) *second, pro rata* in or towards repayment of any principal of the Class B Notes until the Class B Notes have been redeemed in full;
  - (iii) *third, pro rata* in or towards repayment of any principal of the Class C Notes until the Class C Notes have been redeemed in full;
  - (iv) *fourth, pro rata* in or towards repayment of any principal of the Class D Notes until the Class D Notes have been redeemed in full; and
  - (v) *fifth, pro rata* in or towards repayment of any principal of the Class E Notes;

and, provided further that Available Principal Amounts received prior to the scheduled Loan Maturity Date due to voluntary prepayments of the Senior Loan in an amount of less than €50 million (provided there is not release of security) will be applied to the Notes as follows:

- (a) *first, pro rata* in or towards repayment of any principal of the Class E Notes; until the Class E Notes have been redeemed in full;
- (b) *second, pro rata* in or towards repayment of any principal of the Class D Notes until the Class D Notes have been redeemed in full;
- (c) *third, pro rata* in or towards repayment of any principal of the Class C Notes until the Class C Notes have been redeemed in full;
- (d) *fourth, pro rata* in or towards repayment of any principal of the Class B Notes until the Class B Notes have been redeemed in full; and
- (e) *fifth, pro rata* in or towards repayment of any principal of the Class A Notes.

**"Available Principal Amounts"** means, as at any Calculation Date, an amount equal to the aggregate of:

- (a) amounts of principal received in respect of the Senior Loan prior to the scheduled Loan Maturity Date due to any mandatory prepayment or voluntary prepayment made by any of the Borrowers;
- (b) amounts of any scheduled repayments of principal in respect of the Senior Loan;
- (c) amounts of any principal payments received or recovered by or on behalf of the Issuer in respect of the Senior Loan and the Related Loan Security as a result of enforcement procedures or other actions taken in respect of the Senior Loan and the Related Loan Security;
- (d) amounts transferred from the Issuer Income Account as a repayment of funds applied previously from the Issuer Principal Account towards the payment of any Priority Amounts; and
- (e) amounts transferred from the Issuer Income Account as a repayment of funds applied previously from the Issuer Principal Account towards any Eligible Investments.

**"Senior Allocated Loan Amount"** means, in respect of a Property, the amount of the Senior Loan which is allocated to that Property and identified in the table below.

<b>Borrower</b>	<b>Property</b>	<b>Senior Allocated Loan Amount (in mill. €)</b>
Kö Galerie Düsseldorf GmbH & Co. KG	Kö Galerie, Düsseldorf	226.9
Rhein-Ruhr-Zentrum GmbH & Co. KG	Rhein-Ruhr-Zentrum, Mülheim/Ruhr	230.0
Opern Passage GmbH & Co. KG	Opernpassagen, Köln	57.7
Schwanenmarkt GmbH & Co. KG	Schwanenmarkt, Krefeld	45.4

**(c) Optional Redemption for Tax or other Reason**

If the Issuer at any time certifies to the Trustee immediately prior to giving the notice referred to below that either (i) by virtue of a change in the tax law of the Federal Republic of Germany or any other jurisdiction (or the application or official interpretation thereof) from that in effect on the Closing Date, on the next Note Interest Payment Date the Issuer or any Paying Agent on its behalf would be required to deduct or withhold from any payment of principal or interest in respect of any Note (other than where the relevant holder or beneficial owner has some connection with the relevant jurisdiction other than the holding of Notes and other than in respect of default interest), any amount for or on account of any present or future taxes, duties, assessments or governmental charges of whatever nature imposed, levied, collected, withheld or assessed by the relevant jurisdiction (or any political subdivision thereof or authority thereof or therein having power to tax) and such requirement cannot be avoided by the Issuer taking reasonable measures available to it, or (ii) if any amount payable by any of the Borrowers in relation to the Senior Loan is reduced or ceases to be receivable (whether or not actually received) by the Issuer during the Note Interest Period preceding the next Note Interest Payment Date and, in any such case, the Issuer may, but is not obliged to, having given not more than

50 nor less than 20 calendar days' notice (or such other shorter period as the Trustee may agree) to the Noteholders in accordance with Condition 13, redeem all but not part of the Notes at their respective Principal Amount Outstanding together with accrued interest on the next Note Interest Payment Date, provided that, prior to giving any such notice, the Issuer shall have certified to the Trustee that it will have the necessary funds, not subject to the interest of any other persons, required to fulfill its obligations hereunder in respect of the Notes and any amounts required under the Issuer Trust Agreement to be paid in priority to, or *pari passu* with, the Notes and shall have delivered to the Trustee a certificate signed by two directors of the Issuer stating that the event described above has occurred or will apply (as the case may be) on the occasion of the next Note Interest Payment Date and that the Issuer will have funds referred to above; and the Trustee shall accept the certificate as sufficient evidence of the satisfaction of the conditions precedent set out above and it shall be conclusive and binding on the Noteholders.

**(d) Redemption upon Exercise of Option**

- (i) Subject to applicable law, each of the Originator, the Servicer and the Special Servicer is hereby granted an option pursuant to which it may, at its discretion, purchase the Senior Loan on any Note Interest Payment Date provided that: (i) written notice is given by the Originator, the Servicer or the Special Servicer, as applicable, to the Issuer, to the Trustee and to the Noteholders in accordance with Condition 13 not more than 50 nor less than 20 calendar days' prior to such purchase, (ii) that as of the Calculation Date relating to such Note Interest Payment Date, no Acceleration Notice in relation to the Notes has been served, (iii) that the Originator, the Servicer or the Special Servicer (or their respective assigns) as applicable, has, prior to giving such notice, certified to the Trustee that it will have the necessary funds to pay all amounts due in respect of the Notes after payment has been made to all creditors who rank in priority to Noteholders, which certificate shall be conclusive and binding, and (iv) the then Principal Amount Outstanding of the Notes is less than 10 per cent. of the Principal Amount Outstanding of the Notes as at the Closing Date.
- (ii) Upon receipt of such amounts from the Originator, the Servicer or Special Servicer, as the case may be, the Issuer will be required to redeem on such Note Interest Payment Date all of the Notes in an amount equal to the then Principal Amount Outstanding of each Class of Notes plus interest accrued and unpaid on such Class of Notes.

**(e) Redemption for Replacement Notes**

If Replacement Notes (as defined in Condition 17(b)) are to be issued, the Issuer may, having given not more than 50 nor less than 20 calendar days' notice to the Noteholders in accordance with Condition 13, on the applicable Note Interest Payment Date redeem only the relevant Class or Classes of Notes to be replaced at a price equal to the Principal Amount Outstanding together with accrued interest provided that, prior to giving any such notice, the Issuer shall have satisfied the Trustee that it will have the funds, not subject to the interest of any other person, required to fulfil its obligations hereunder in respect of the Notes and any amounts required under the Servicing Agreement and/or the Issuer Trust Agreement then to be paid *pari passu* with, or in priority to, the Notes and shall have delivered to the Trustee a certificate signed by two directors of the Issuer stating that the Issuer will have such funds; and the Trustee shall (in the absence of manifest error) accept the certificate as sufficient evidence of the satisfaction of such condition precedent and it shall be conclusive and binding on the Noteholders.

**(f) Notice of Redemption**

Any such notice as is referred to in Condition 6(c) through 6(e) above shall be irrevocable and, upon the expiration of such notice, the Issuer shall be bound to redeem the Notes of the relevant Class in the amounts specified in these Conditions.

**(g) Purchase**

The Issuer shall not purchase Notes.



## (h) Cancellation

All Notes redeemed in full will be cancelled forthwith and may not be reissued.

## 7. Taxation

All payments of, or in respect of, principal of and interest on the Notes will be made without withholding of, or deduction for, or on account of any present or future taxes, duties, assessments or charges of whatsoever nature imposed or levied by or on behalf of Ireland or the Federal Republic of Germany, any authority therein or thereof having power to tax, unless the withholding or deduction of such taxes, duties, assessments or charges is required by law. In that event, the Issuer will make the required withholding or deduction of such taxes, duties, assessments or charges for the account of the Noteholders and will have no obligation to pay any additional amounts to such Noteholders. In particular, but without limitation, no additional amounts shall be payable in respect of any Note presented for payment where such withholding or deduction is imposed on a payment to an individual and is required to be made pursuant to any European Union Directive on the taxation of savings that was adopted on 3 June 2003 or any law implementing or complying with, or introduced in order to conform to, such directive.

## 8. Prescription / Presentation

The presentation period provided in Section 801 para 1, sentence 1 of the German Civil Code (*Bürgerliches Gesetzbuch*) is reduced to ten (10) years for the Notes.

The period for prescription for Notes presented for payment during the presentation period shall be three (3) years beginning at the end of the relevant presentation period.

## 9. Note Events of Default

- (a) Following the occurrence of a Note Event of Default, the Trustee at its discretion may, and following receipt of written instructions by (i) the holders of at least 25 per cent. in the aggregate Principal Amount Outstanding of the most senior Class of Notes then outstanding or (ii) the holders of at least 25 per cent. of the Notes of each Class calculated on a Class by Class basis (the "**Instructing Majority**") and provided that the Trustee is indemnified to its satisfaction, shall deliver an acceleration notice (the "**Acceleration Notice**") to the Issuer declaring the Notes to be immediately due and payable and specifying the occurrence of the relevant Note Event of Default. Any written instruction by a Noteholder shall be made by means of a written declaration delivered by hand or registered mail (*Einschreiben Rückschein*) to the specified office of the Principal Paying Agent who shall forward any written request immediately upon receipt to the Trustee.
- (b) The occurrence of any of the following events shall constitute a "**Note Event of Default**":
  - (i) default is made for a period of 3 calendar days or more in the payment of any principal of, or default is made for a period of 5 calendar days or more in the payment of any interest on, any Note when and as the same ought to be paid in accordance with these Conditions provided that a deferral of interest in accordance with Condition 4(i) shall not constitute a default in the payment of such interest for the purposes of this Condition 9(b)(i); or
  - (ii) breach by the Issuer of any representation or warranty made by it in these Conditions, the Issuer Trust Agreement or any of the other Transaction Documents to which it is a party and in any such case (except where the Trustee certifies that, in its opinion, such breach is incapable of remedy, when no notice will be required), such breach continuing for a period of 30 calendar days following the service by the Trustee on the Issuer of notice in writing requiring the same to be remedied; or
  - (iii) the Issuer failing to duly perform or observe any other obligation, condition or provision

binding upon it under these Conditions, the Issuer Trust Agreement or any of the other Transaction Documents to which it is a party and in any such case (except where the Trustee certifies that, in its opinion, such failure is incapable of remedy, when no notice will be required), such failure continuing for a period of 30 calendar days following the service by the Trustee on the Issuer of notice in writing requiring the same to be remedied; or

- (iv) the Issuer, otherwise than for the purpose of such a pre-approved amalgamation or reconstruction as is referred to in subparagraph (v) below, ceases or, through an official action of the directors of the Issuer, threatens to cease to carry on business (or a substantial part thereof); or
- (v) an order being made or an effective resolution being passed for the liquidation of the Issuer, except a liquidation for the purposes of or pursuant to an amalgamation or reconstruction the terms of which have previously been approved in writing by the Trustee having been so instructed by the Instructing Majority; or
- (vi) the Issuer is, or is deemed for the purposes of any applicable law to be, unable to pay its debts as they fall due, overindebted, in a state of impending illiquidity or otherwise insolvent, the managing directors of the Issuer are required by law to file for insolvency or the Issuer admits its inability to pay its debts as they fall due; or
- (vii) proceedings being initiated against the Issuer under any applicable liquidation, insolvency, composition, reorganisation or other similar laws (including, but not limited to, application to a court for an insolvency administration order, appointment of an insolvency administrator, or an insolvency administration order being granted, the appointment of an insolvency administrator taking effect or the refusal of a court to institute insolvency proceedings for lack of assets, in each case in relation to the Issuer, or an attachment or execution or other process being levied or enforced upon or sued out against the whole or any substantial part of the undertaking or assets of the Issuer, and such proceedings, distress, execution or process (as the case may be) (unless initiated by the Issuer) not being discharged or not otherwise ceasing to apply within 15 calendar days, or the Issuer initiating or consenting to judicial proceedings relating to itself under any applicable liquidation, insolvency, composition, reorganisation or other similar laws or making a conveyance or assignment for the benefit of its creditors generally,

provided that in the case of each of the events described in subparagraphs (ii) and (iii) of this paragraph (b), the Trustee shall have certified to the Issuer that such event is, in its opinion, materially prejudicial to the interests of the holders of the most senior Class of Notes outstanding.

- (c) Upon any declaration being made by the Trustee in accordance with Condition 9(a) above that the Notes are due and payable each Note shall thereby immediately become due and payable at its Principal Amount Outstanding together with accrued interest as provided in the Issuer Trust Agreement subject to the Post-Acceleration Priority of Payments.

## **10. Enforcement**

- (a) At any time after the Notes of any Class become due and payable as a result of the delivery of an Acceleration Notice, the Trustee may, at its discretion and without further notice, take such steps and/or institute such proceedings as it may think fit to enforce the terms of the Issuer Trust Agreement, the other Issuer Security Documents, and the Notes.
- (b) No Issuer Secured Creditor (other than the Trustee) has any independent power to (i) enforce any Issuer Security, (ii) exercise any rights, remedies, discretion or powers in relation to the Issuer Security or under or pursuant to the Issuer Security Documents, (iii) grant any consents or releases under or pursuant to the Loan Security Documents or (iv) otherwise have direct recourse to the Issuer Security, provided that the Instructing Majority shall be entitled to deliver an Acceleration Notice to the Issuer and to enforce the Issuer Security in accordance with the provisions of the Issuer Trust Agreement in the event the Trustee fails, after having been so

instructed, to deliver an Acceleration Notice to the Issuer or otherwise fails to enforce the Issuer Security (in each case within a reasonable period of time following notice of such failure by the Instructing Majority) and such failure continues. In addition, no Issuer Secured Creditor is entitled to require the Trustee to take any action or proceedings under or in relation to any of the Issuer Security Documents or to exercise any of the rights or powers of discretion conferred on it by the Issuer Security Documents.

- (c) The Noteholders and the Trustee may not institute against, or join any person in instituting against, the Issuer any bankruptcy, winding-up, reorganisation, arrangement, insolvency or liquidation proceedings until the expiry of a period of at least one (1) year after the latest maturing Note is paid in full. The Noteholders accept and agree that the only remedy of the Trustee against the Issuer after any of the Notes have become due and payable pursuant to Condition 9 is to enforce the Issuer Security.

## **11. Indemnification of the Trustee**

The Issuer Trust Agreement contains provisions for the indemnification of the Trustee in the circumstances set out therein and for its relief from responsibility. The Trustee is entitled to enter into commercial transactions with the Issuer and/or any other party to the Transaction Documents without accounting for any profit resulting from such transaction.

## **12. Paying Agents and Agent Bank**

### **(a) Specified Offices**

The Principal Paying Agent, the Irish Paying Agent and the Agent Bank and their respective offices are:

Principal Paying Agent:

HSBC Bank plc  
8 Canada Square  
London E14 5HQ  
United Kingdom

Irish Paying Agent:

HSBC Institutional Trust Services (Ireland)  
Limited  
HSBC House  
Harcourt Centre  
Harcourt Street  
Dublin 2  
Ireland

Agent Bank:

HSBC Bank plc  
8 Canada Square  
London E14 5HQ  
United Kingdom

### **(b) Variation or Termination of Appointment**

The Issuer reserves the right at any time to vary or terminate (by giving not less than 30 calendar days notice) the appointment of the Principal Paying Agent or the Irish Paying Agent and to appoint additional or other paying agents provided that no paying agent located in the United States of America will be appointed and that the Issuer will at all times maintain a paying agent having a specified office in the European Union for as long as the Notes are listed on the Irish Stock Exchange.

Without prejudice to the right to terminate its appointment for good cause (*aus wichtigem Grund*) each of the Agent Bank and the Paying Agents may resign its appointment hereunder at any time by giving to the Issuer not less than 30 calendar days notice to that effect, provided that the Issuer has appointed a successor Agent Bank, a successor Paying Agent to perform the respective functions

assigned to any of them. Notice of any termination or appointment of a Paying Agent and of any changes in the specified offices of the Paying Agent will be given to the Noteholders in accordance with Condition 13 hereof.

Upon the effectiveness of the appointment of any successor Paying Agent or Agent Bank pursuant to this Condition, the Paying Agent or Agent Bank so superseded shall cease to be a Paying Agent or, as the case may be, an Agent Bank hereunder. Prior to the effectiveness of such appointment, the incumbent Paying Agent or Agent Bank shall hold all moneys deposited with it or held by it hereunder in respect of the Notes to the order of the respective successor Paying Agent or, as the case may be, a successor Agent Bank. Upon its resignation or removal becoming effective in respect of the Notes, the incumbent Paying Agent or Agent Bank shall forthwith transfer to the successor Paying Agent or, as the case may be, successor Agent Bank all records and documents in relation to the Notes held by it.

**(c) Agents of the Issuer**

In acting hereunder and in connection with the Notes, the Paying Agents and the Agent Bank shall act solely as agents of the Issuer and do not assume any obligations towards or relationship of agency or trust for or with the Noteholders, and shall not have any obligation towards the Noteholders except that all funds held by any Paying Agent for payments under the Notes shall be held exclusively for the benefit of and for payment to the Noteholders, but need not be segregated from other funds, except as required by law or as set forth in these Conditions, and shall be applied as set forth in these Conditions. The Agents shall be released from the restrictions set out in Section 181 German Civil Code (*Bürgerliches Gesetzbuch*).

**(d) Determinations Binding**

All certificates, communications, opinions, determinations, calculations, quotations and decisions given, expressed, made or obtained for the purposes of the Conditions of the Notes by the Trustee shall (in the absence of manifest error) be binding on the Issuer, the Agents and the Noteholders and shall be made in accordance with Section 317 of the German Civil Code (*Bürgerliches Gesetzbuch*) in its reasonable discretion (*billiges Ermessen*).

**(e) Liability of Agents**

None of the Agents shall have any liability in respect of any error or omission or subsequent correction made in the calculation or publication of any amount in relation to the Notes, unless caused by negligence or by not following the standard of care of a prudent merchant (*mit der Sorgfalt eines ordentlichen Kaufmanns*).

**13. Notices**

Any notice to the Noteholders shall be validly given if published (a) in one leading London daily newspaper (which is expected to be the *Financial Times*) and (b) (for so long as the Notes are listed on the Irish Stock Exchange and the rules of that exchange so require) in a leading English language newspaper having general circulation in Dublin (which is expected to be *The Irish Times*) or, if either such newspaper shall cease to be published or timely publication therein shall not be practicable, in the opinion of the Trustee, in another appropriate newspaper or newspapers as the Trustee shall approve having a general circulation in London or Dublin (as appropriate) previously approved in writing by the Trustee. Any such notice published in a newspaper as aforesaid shall be deemed to have been given on the date of such publication or, if published more than once or on different dates, on the first date on which publication shall have been made in the newspaper or newspapers in which publication is required. If publication is not practicable in any such newspaper as is mentioned above, notice will be valid if given in such other manner, and shall be deemed to have been given on such date, as the Trustee shall determine.

Whilst the Notes are represented by Global Notes notices to Noteholders may be given by delivery of the relevant notice to Clearstream Luxembourg and/or Euroclear for communication by them to Noteholders rather than by notification as required above provided that so long as the Notes are listed on the Irish Stock Exchange, the Irish Stock Exchange so agrees. Any notice delivered to Clearstream

Luxembourg and/or Euroclear as aforesaid shall be deemed to have been given on the third day after the day of such delivery.

A copy of each notice given in accordance with this Condition 13 shall be provided to each of Fitch Ratings Ltd ("**Fitch**") and Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc. ("**S&P**" and, together with Fitch, the "**Rating Agencies**", which reference in these Conditions shall include any additional or replacement rating agency appointed by the Issuer to provide a credit rating in respect of the Notes or any Class thereof). For the avoidance of doubt, and unless the context otherwise requires, all references to rating and ratings in these Conditions shall be deemed to be references to the ratings assigned by the Rating Agencies.

The Trustee shall be at liberty to sanction some other method of giving notice to the Noteholders or to a Class of Notes if, in its opinion, such other method is reasonable having regard to market practice then prevailing and to the requirements of the stock exchange on which the Notes are then listed and provided that notice of such other method is given to the Noteholders in such manner as the Trustee shall require.

#### **14. Replacements of Notes**

If any of the Global Notes is lost, stolen, damaged or destroyed, it may be replaced by the Issuer upon payment by the claimant of the costs arising in connection therewith. As a condition of replacement, the Issuer may require the fulfilment of certain conditions, the provisions of proof regarding the existence of indemnification and/or the provision of adequate collateral. In the event of any of the Global Notes being damaged, such Global Note shall be surrendered before a replacement is issued. If any Global Note is lost or destroyed, the foregoing shall not limit any right to file a petition for the annulment of such Global Note pursuant to the provisions of the laws of the Federal Republic of Germany.

#### **15. Substitution of the Issuer**

##### **(a) Substitution**

If the Issuer:

- (i) would be required by law to withhold or account for tax in respect of payments due under the Notes;
- (ii) as a result of a change in tax law or the publication of administrative decrees of the tax authorities or case law regarding the application or interpretation of already existing statutory provisions taking effect after the Closing Date, would be required to account for or pay any taxes, increase any tax payments or such change of law would result in increase of the Issuer's taxable base; or
- (iii) would receive net of tax any payment, so that it would be unable to make payment of the full amount due in respect of the Notes,

the Issuer may, without the consent of the Noteholders substitute for the Issuer any company as principal debtor in respect of all obligations arising from or in connection with the Notes (the "**Substitute Debtor**") provided that:

- (i) the Substitute Debtor assumes all obligations of the Issuer in respect of the Notes and the Transaction Documents;
- (ii) the Issuer and the Substitute Debtor have obtained all necessary authorisations and may transfer to the Paying Agents in the currency required hereunder and without being obligated to deduct or withhold any taxes or other duties of whatever nature levied by the country in which the Substitute Debtor has its domicile or tax residence, all amounts required for the fulfilment of the payment obligations arising under the Notes;

- (iii) there shall have been delivered to the Trustee an opinion or opinions of lawyers of recognised standing to the effect that subparagraphs (i) and (ii) above have been satisfied; and
- (iv) the Rating Agencies confirm that there would be no adverse change to the credit rating assigned to the Notes by the Rating Agencies.

**(b) Notice**

Notice of any such substitution shall be given in accordance with Condition 13. The Trustee shall be notified of any such substitution no later than 30 calendar days prior to such substitution.

**(c) Change of References**

In the event of any such substitution, any reference in these Conditions to the Issuer shall from then on be deemed to refer to the Substitute Debtor and any reference to the jurisdiction of incorporation and/or the country in which the Issuer is domiciled or resident for taxation purposes shall from then on be deemed to refer to the jurisdiction of incorporation and/or (as relevant) the country of domicile or residence for taxation purposes of the Substitute Debtor.

**16. Limited Recourse**

- (a) The Notes are direct, secured and limited recourse obligations of the Issuer. The Issuer's ability to satisfy its payment obligations under the Notes and its operating and administrative expenses will be wholly dependent upon receipt by it in full of (i) payments of principal and interest and other amounts payable under the Senior Loan, (ii) any indemnities payable by the Originator, (iii) any payments due from the Issuer Swap Counterparty under the Issuer Swap Agreements, (iv) any interest income on the Issuer Accounts, (v) any proceeds from the realisation of the Issuer Security, and (vi) any payments under the Transaction Documents in accordance with the terms thereof, as available on any relevant Note Interest Payment Date (excluding any VAT portion) according to the relevant Priority of Payments. The Notes shall not give rise to any payment obligation in excess of the foregoing and recourse shall be limited accordingly.
- (b) The Issuer shall hold all monies paid to it in the Issuer Accounts. Furthermore, the Issuer shall exercise all of its rights under the Transaction Documents with the due care of a prudent businessman such that obligations under the Notes may be performed to the fullest extent possible.
- (c) To the extent that the Issuer's assets, or the proceeds of realisation thereof, after payment of all claims ranking in priority to the Notes, prove ultimately insufficient to satisfy the claims of all Noteholders in full, then any shortfall arising shall be extinguished and neither any Noteholder nor the Trustee shall have any further claims against the Issuer. Such assets and proceeds shall be deemed to be "ultimately insufficient" at such time as no further assets are available and no further proceeds can be realised therefrom to satisfy any outstanding claim of the Noteholders, and neither assets nor proceeds shall be so available thereafter.

**17. Further Issues, Replacement Notes and New Notes**

**(a) Further Issues**

The Issuer is at liberty from time to time without the consent of the Noteholders, but subject always to the provisions of these Conditions to create and issue further Notes (the "**Further Notes**") in bearer form carrying the same terms and conditions in all respects (except in relation to the issue date, the first Note Interest Period and the first Note Interest Payment Date) as, and so that the same shall be consolidated and form a single series and rank *pari passu* with, the relevant Class of Notes, provided that:

- (i) the aggregate principal amount of all Further Notes to be issued on such date is in a minimum amount of €5,000,000 and integral multiples thereafter of €1,000,000;

- (ii) any Further Notes are assigned the same ratings by the Rating Agencies as are then applicable to the corresponding Class of Notes then outstanding;
- (iii) the Rating Agencies confirm that the ratings of each Class of Notes at that time outstanding will not be adversely affected as a result of such issue of Further Notes;
- (iv) an amount equal to the aggregate principal amount of such Further Notes will be on-lent by the Issuer pursuant to the provisions of the Credit Agreement(s);
- (v) such encumbrances necessary to maintain the then current ratings referred to in (c) above or to obtain the necessary ratings for the Further Notes are given in favour of the Trustee, the Loan Facility Agent, and/or the Issuer by the relevant Borrower(s) at the date of issue of the Further Notes (if applicable);
- (vi) no Loan Event of Default has occurred and is continuing or would occur as a result of such issue of Further Notes;
- (vii) the Issuer's liabilities in respect of such Further Notes are hedged to the satisfaction of the Rating Agencies then rating the Notes;
- (viii) no Note Event of Default has occurred and is continuing or would occur as a result of such issue of Further Notes; and
- (ix) application will be made to list the Further Notes on the Irish Stock Exchange, or if the Notes then issued are no longer listed on the Irish Stock Exchange, on such exchange, if any, on which the Notes then issued are then listed.

**(b) Replacement Notes**

The Issuer will also be entitled (but not obliged) at its option from time to time on any date, without the consent of the Noteholders, to issue notes (the "**Replacement Notes**"), each class of which shall be required to have the same terms and conditions in all respects as the Class of Notes which it replaces except in relation to (aa) the first Note Interest Period and (bb) the rate of interest applicable to such Replacement Notes which must be a rate of interest equal to or lower than the rate of interest applicable to the Class of Notes being replaced, and shall on issue be in a principal amount which in aggregate does not exceed the aggregate Principal Amount Outstanding of the Class of Notes which it replaces, provided that the Class or Classes of Notes to be replaced are redeemed in full in accordance with Condition 6(e) and the conditions to the issue of Further Notes as set out in Condition 17(a)(i), (ii), (iii) and (v) to (ix) are met, mutatis mutandis, in respect of such issue of Replacement Notes (as if references therein to Further Notes were to Replacement Notes) and provided further that, for the purposes of this Condition 17(b), (i) where interest in respect of the Replacement Notes or the Class of Notes being replaced is payable on a fixed rate basis, the rate of interest applicable to the Replacement Notes or, as the case may be, the Class of Notes being replaced shall be deemed to be the floating rate payable by the Issuer under any interest rate exchange agreement entered into by the Issuer in relation to the Replacement Notes or, as the case may be, the Class of Notes being replaced; and (ii) where the Replacement Notes or the Class of Notes being replaced have the benefit of a financial guarantee or similar arrangement (in this Condition 17, a "**Financial Guarantee**"), the guarantee fee and any other amounts payable to the provider of the Financial Guarantee, other than any such amounts the payment of which is subordinated to payments in respect of all of the Notes, (expressed as a percentage rate per annum on the principal amount of the Replacement Notes or, as the case may be, the Class of Notes being replaced) shall be added to the rate of interest applicable to the Replacement Notes or, as the case may be, the Class of Notes being replaced.

**(c) New Notes**

The Issuer shall be at liberty, without the consent of the Noteholders (but subject always to the provisions of the Conditions), to raise further funds from time to time and on any date by the creation and issue of new notes (the "**New Notes**") in bearer form which rank *pari passu* with the Class A Notes, or junior to the Class A Notes and senior to the Class B Notes, or *pari passu* with the Class B Notes, or junior to the Class B Notes but senior to the Class C Notes, or *pari passu* with the Class C

Notes, or junior to the Class C Notes but senior to the Class D Notes or *pari passu* with the Class D Notes or junior to the Class D Notes but senior to the Class E Notes or *pari passu* with the Class E Notes or junior to the Class E Notes and which do not form a single series with any Class of the Notes and which may have a Financial Guarantee provided that the conditions to the issue of Further Notes as set out in Conditions 17(a)(i) and (iii) to (ix) are met, *mutatis mutandis*, in respect of the issue of such New Notes as if reference therein to Further Notes were references to New Notes.

**(d) Security**

Any such Further Notes, Replacement Notes and New Notes will have the benefit of the Issuer Security pursuant to the Issuer Security Documents as described in Condition 2(c).

**18. Miscellaneous**

**(a) Governing Law**

The Notes, as to form and content, and all rights and obligations of the Noteholders, the Issuer and the Agents shall in all respects be governed by, and construed in accordance with, German law.

**(b) Place of Performance**

Place of performance shall be Frankfurt am Main, Federal Republic of Germany.

**(c) Jurisdiction**

The non-exclusive place of jurisdiction for any action or other legal proceedings ("**Proceedings**") arising out of or in connection with the Notes shall be the District Court (*Landgericht*) in Frankfurt am Main. The Issuer hereby submits to the jurisdiction of such court. The German courts shall have exclusive jurisdiction over the annulment of the Global Notes in the event of their loss or destruction.

**(d) Severability**

Should any of the provisions hereof be or become invalid in whole or in part, the other provisions shall remain in force.

**(e) Service of Process Agent**

With regard to any Proceedings in connection with the Notes brought against the Issuer in a court of the Federal Republic of Germany, the Issuer appoints SFM Structured Finance Management (Deutschland) GmbH, Eysseneckstraße 4, 60322 Frankfurt am Main, Germany as its agent for service of process. The Issuer shall maintain an agent for service of process in the Federal Republic of Germany as long as any Notes are outstanding.

**19. Additional obligations**

For as long as the Notes are listed on the Irish Stock Exchange, the Issuer shall comply with the provisions of the Irish Stock Exchange or any amended form of the said provisions as in force at the date of the issue of the Notes.



## CERTAIN DEFINITIONS

**"Acceleration Notice"** means an acceleration notice served by the Trustee to the Issuer following the occurrence of a Note Event of Default as referred to in Condition 9 of the Notes.

**"Account Bank"** means HSBC Bank plc, acting through its office at 8 Canada Square, London E14 5HQ, United Kingdom.

**"Account Bank Agreement"** means a bank agreement entered into by the Issuer, the Account Bank, the Servicer and the Trustee on or about the Closing Date.

**"Acquisition Agreement"** means the Projekt Gustav Kaufvertrag entered into between, *inter alios*, the Borrowers as purchasers and the sellers named therein, notarial deed no. 1934/2006 dated 14/15 July 2006 of the notary Dr. Norbert Zimmermann in Düsseldorf.

**"Agency Agreement"** means the agency agreement entered into by the Issuer, the Paying Agents, the Agent Bank and the Trustee dated on or about the Closing Date.

**"Agent Bank"** means HSBC Bank plc, acting through its office at 8 Canada Square, London E14 5HQ, United Kingdom, in its capacity as agent bank under the Agency Agreement and its successor(s).

**"Agents"** means the Principal Paying Agent, the Irish Paying Agent and the Agent Bank.

**"Available Issuer Income"** means:

- (a) all monies (other than Available Principal Amounts and Pre-Closing Proceeds) received by the Issuer under or in respect of the Senior Loan, including any Prepayment Fees, cancellation fees and break costs;
- (b) any interest accrued on amounts standing to the credit of the Issuer Accounts and paid into the Issuer Income Account together with the yield element of the proceeds of any Eligible Investments made by or on behalf of the Issuer out of amounts standing to the credit of the Issuer Accounts and paid into the Issuer Income Account; and
- (c) any other amounts received by the Issuer under the Transaction Documents (other than the Available Principal Amounts, any Income Deficiency Loans and any Liquidity Stand-by Loans).

**"Available Principal Amounts"** means, as at any Calculation Date, an amount equal to the aggregate of:

- (a) amounts of principal received in respect of the Senior Loan prior to the scheduled Loan Maturity Date due to any mandatory prepayment or voluntary prepayment made by any of the Borrowers;
- (b) amounts of any scheduled repayments of principal in respect of the Senior Loan;
- (c) amounts of any principal payments received or recovered by or on behalf of the Issuer in respect of the Senior Loan and the Related Loan Security as a result of enforcement procedures or other actions taken in respect of the Senior Loan and the Related Loan Security;
- (d) amounts transferred from the Issuer Income Account as a repayment of funds applied previously from the Issuer Principal Account towards the payment of any Priority Amounts; and
- (e) amounts transferred from the Issuer Income Account as a repayment of funds applied previously from the Issuer Principal Account towards any Eligible Investments.

**"Borrowers"** (and each of them, a **"Borrower"**) means (i) the Kö KG, (ii) the OP KG, (iii) the SM KG, and (iv) the RRZ KG.

**"Borrowers Hedging Strategy"** means the hedging strategy in respect of the Properties agreed with the Facility Agent which shall comprise the following: Loans with respect to the RRZ Property and the Kö-Galerie Property will be fully hedged by the relevant Borrower (by way of a swap) until the Final Maturity Date. Loans with respect to the Schwanenmarkt Property and the Opernpassagen Property will not require hedging during a period of up to 12 months from the Loan Origination Date as long as the interest swap rate for the term running from any given point in time that any such loan is outstanding until 12 months after the later of the anticipated sale of the Schwanenmarkt Property and the Opernpassagen Property as contemplated in the borrowers' business plan (or if such disposals have not been made during such period, until the Final Maturity Date) does not exceed 4.25 per cent.

**"Calculation Date"** means the second Note Business Day preceding each Note Interest Payment Date.

**"CapEx Lender"** means Eurohypo AG in its capacity as the lender under Facility B subject to the terms and in accordance with the Credit Agreement, and any successor thereof.

**"Class"** means either the Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes or the Class E Notes.

**"Class A Noteholders"** means the holders of any Class A Notes.

**"Class A Notes"** means the €374,500,000 Class A Commercial Mortgage Backed Floating Rate Notes due October 2014.

**"Class B Deferred Interest"** means any amount of interest, including any deferred interest arising on the immediately preceding Interest Payment Date and accrued interest thereon, on the Class B Notes which is not due and payable on an Interest Payment Date as a result of the provisions of Condition 4(j) of the Notes.

**"Class B Noteholders"** means the holders of any Class B Notes.

**"Class B Notes"** means the €46,800,000 Class B Commercial Mortgage Backed Floating Rate Notes due October 2014.

**"Class C Deferred Interest"** means any amount of interest, including any deferred interest arising on the immediately preceding Interest Payment Date and accrued interest thereon, on the Class C Notes which is not due and payable on an Interest Payment Date as a result of the provisions of Condition 4(j) of the Notes.

**"Class C Noteholders"** means the holders of any Class C Notes.

**"Class C Notes"** means the €65,600,000 Class C Commercial Mortgage Backed Floating Rate Notes due October 2014.

**"Class D Deferred Interest"** means any amount of interest, including any deferred interest arising on the immediately preceding Interest Payment Date and accrued interest thereon, on the Class D Notes which is not due and payable on an Interest Payment Date as a result of the provisions of Condition 4(j) of the Notes.

**"Class D Noteholders"** means the holders of any Class D Notes.

**"Class D Notes"** means the €63,700,000 Class D Commercial Mortgage Backed Floating Rate Notes due October 2014.

**"Class E Deferred Interest"** means any amount of interest, including any deferred interest arising on the immediately preceding Interest Payment Date and accrued interest thereon, on the Class E Notes which is not due and payable on an Interest Payment Date as a result of the provisions of Condition 4(j) of the Notes.

**"Class E Noteholders"** means the holders of any Class E Notes.

**"Class E Notes"** means the €9,400,000 Class E Commercial Mortgage Backed Floating Rate Notes due October 2014.

**"Class of Notes"** means any of the Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes, as applicable.

**"Clearstream Luxembourg"** means Clearstream Banking, *société anonyme*.

**"Closing Date"** means 20 December 2006 (or such later date as may be agreed between the Issuer and the Note Arranger).

**"Common Safekeeper"** has the meaning ascribed thereto in Condition 1(c) of the Notes.

**"Conditions of the Notes"** or **"Conditions"** (and each of them, a **"Condition"**) means the terms and conditions endorsed on any Class of Notes in the form set out under *"Terms and Conditions of the Notes"* in the Prospectus.

**"Contingent Issuer Swap Agreement"** means an interest rate swap transaction entered into between the Issuer and the Issuer Swap Counterparty, which will be activated following a Senior Hedge Termination Trigger Event.

**"Contracts"** (and each of them, a **"Contract"**) means, for the purposes of the Issuer Deed of Charge and Assignment:

- (a) the Account Bank Agreement;
- (b) the Agency Agreement;
- (c) the Loan Sale Agreement (to the extent governed by English law);
- (d) the Issuer Swap Agreements;
- (e) the Liquidity Facility Agreement; and
- (f) the Subscription Agreement.

**"Controlling Party"** means, at any time:

- (a) the holders of the most junior Class of Notes then having a Principal Amount Outstanding (as defined below) greater than 25 per cent. of its original aggregate Principal Amount Outstanding on the Closing Date; or
- (b) if no Class of Notes then has a Principal Amount Outstanding greater than 25 per cent. of its original aggregate Principal Amount Outstanding on the Closing Date, the holders of the then most junior Class of Notes,

excluding, in each case, the Excluded Class.

In the event that the Excluded Class would be (but for the preceding paragraph) determined to be the Controlling Party, the Class of Notes ranking immediately in priority in point of security to the Excluded Class and satisfying the test above shall be the Controlling Party.

**"Corporate Services Agreement"** means the corporate services agreement dated on or about the Closing Date among the Issuer, the Corporate Services Provider and the Trustee.

**"Corporate Services Provider"** means Structured Finance Management (Ireland) Limited, in its capacity as Corporate Services Provider to the Issuer under the Corporate Services Agreement or its successor or successors.

**"Credit Agreement"** means the credit agreement dated 13 September 2006 and entered into between, *inter alios*, the Borrowers and the Originator, pursuant to which the Originator made available to the Borrowers the Facilities, as amended and restated from time to time.

**"Deed of Assignment"** means an English law governed deed of assignment with respect to all rights, title and interest in, to and under the Hedging Agreements.

**"Default Rate"** means the sum of the applicable Rate of Interest and 2 per cent. per annum.

**"Deferred Interest"** means, collectively, the Class B Deferred Interest, Class C Deferred Interest, Class D Deferred Interest and Class E Deferred Interest arising on any Note Interest Payment Date.

**"Deferred Purchase Price"** means, as at each Note Interest Payment Date, an amount, if any, equal to the positive difference between (i) the amount of the Available Issuer Income standing to the credit of the Issuer Income Account on the immediately preceding Calculation Date and (ii) the sum of (1) the aggregate of the amounts applied in accordance with items (a) through (p) of the Income Priority of Payments or the items (a) through (s) of the Post-Acceleration Priority of Payments, as applicable, and (2) the Issuer Profit.

**"Eligible Investments"** means (a) euro denominated government securities, or (b) euro demand or time deposits, certificates of deposit, money market funds and short-term debt obligations (including commercial paper); provided that in all cases such investments will mature at least one Note Business Day prior to the next Note Interest Payment Date and the short-term unsecured, unguaranteed and unsubordinated debt obligations of the issuing or guaranteeing entity or the entity with which the demand or time deposits are made (being a bank or licensed EU credit institution) are rated at least "F1+" by Fitch and at least "A-1+" by S&P or are otherwise acceptable to the Rating Agencies and, where such investments will mature in three months or more, the Rating Agencies have affirmed that the proposed investments would not adversely affect the then current ratings of the Notes.

**"EURIBOR"** means the rate per annum equal to the Euro-interbank offered rate for euro deposits determined as follows:

- (a) the Agent Bank will obtain for each Interest Period the rate equal to the sum of EURIBOR for three month deposits in euro. The Agent Bank shall use the EURIBOR rate as determined and published jointly by the European Banking Federation and ACI - The Financial Market Association and which appears for information purposes on the Telerate Page 248 (or, if not available, any other display page on any screen service maintained by any registered information vendor (including, without limitation, the Reuters Monitor Money Rate Service, the Dow Jones Telerate Service and the Bloomberg Service) for the display of the EURIBOR rate selected by the Agent Bank) as at or about 10:00 a.m. (London Time) on the Interest Determination Date; or
- (b) if, on the relevant Interest Determination Date, such EURIBOR rate is not determined and published jointly by the European Banking Association and ACI - The Financial Market Association, or if it is not otherwise reasonably practicable to calculate the rate under (i) above, the Agent Bank will:
  - (i) request the principal Euro-zone office of each of four major banks in the Eurozone interbank market (the **"Reference Banks"**) to provide a quotation for the rate at which three month euro deposits are offered by it in the Euro-zone interbank market at approximately 10:00 a.m. (London Time) on the relevant Interest Determination Date to prime banks in the Euro-zone interbank market in an amount that is representative for a single transaction at that time; and determine the arithmetic mean (rounded, if necessary, to the third decimal place with 0.0005 being rounded upwards) of such quotation as is provided; or
  - (ii) if fewer than two such quotations are provided as requested, the Agent Bank will determine the arithmetic mean (rounded, if necessary, to the third decimal place with 0.0005 being rounded upwards) of the rates quoted by major banks, of which there will be at least two in number, in the Euro-zone, selected by the Agent Bank, at approximately 10:00 a.m. (London Time) on the relevant Interest Determination Date

for one month deposits to leading Eurozone banks in an amount that is representative for a single transaction in that market at that time,

and EURIBOR for such Interest Period will be the rate per annum equal to the Euro-interbank offered rate for euro deposits as determined in accordance with this definition, provided that if the Agent Bank is unable to determine EURIBOR in accordance with the above provisions in relation to any Interest Period, EURIBOR applicable to the relevant Class of Notes during such Interest Period will be EURIBOR last determined in relation thereto.

"**Euro**", "**euro**" and "**€**" means the currency of the member states of the European Union that adopt a single currency in accordance with the treaty establishing the European Communities, as amended by the Treaty on the European Union.

"**Euroclear**" means Euroclear Bank S.A./N.V. or its successors, as Operator of Euroclear System.

"**Eurohypo AG**" means Eurohypo Aktiengesellschaft with its principal office at Helfmann-Park 5, 65760 Eschborn, Germany.

"**Eurohypo AG, London Branch**" means Eurohypo Aktiengesellschaft acting through its registered office at 4th Floor, 90 Long Acre, London WC2E 9RA, United Kingdom.

"**Exchange Date**" means the date for exchange of the Temporary Global Note in Permanent Global Notes at least 40 calendar days (but no later than 180 calendar days) after the Closing Date.

"**Excepted Assets**" means the Issuer Capital Proceeds Account and the amounts or claims representing the share capital proceeds of the Issuer (paid-up, uncalled or contingent) and any interest thereon.

"**Excluded Class**" means, if any, any Class of Notes the entire Principal Amount Outstanding of which is held by, or for the benefit of or on behalf of the Borrowers and/or any one or more of its affiliates.

"**Facilities**" and each a "**Facility**" means the euro term loan facilities in the aggregate amount of €710,000,000 made available under the Credit Agreement, comprising of (i) an A-1 facility of €560,000,000 (the "**Facility A-1**"), (ii) an A-2 facility of €106,000,000 (the "**Facility A-2**"), and (iii) a B facility of €44,000,000 (the "**Facility B**").

"**Facility Agent**" means Eurohypo AG in its capacity as the facility agent with respect to the Credit Agreement, and any successor thereof.

"**Final Maturity Date**" means the Interest Payment Date falling in October 2014.

"**Finance Documents**" (and each of them, a "**Finance Document**") means the Credit Agreement and certain related agreements and documents.

"**Financial Guarantee**" has the meaning ascribed thereto in Condition 17(b) of the Notes.

"**Fitch**" means Fitch Ratings Ltd.

"**Further Notes**" has the meaning ascribed thereto in Condition 17(a) of the Notes.

"**General Partner**" means Gustav Management GmbH (formerly PANTA 58. Grundstücksgesellschaft m.b.H.).

"**German Security Documents**" means each of the following:

- (a) a notarial deed creating the joint mortgage (*Gesamtgrundschuld*) over all Properties (the "**Mortgage Deed**") together with the assumption of personal liability (*Übernahme der persönlichen Haftung*) by each Borrower and a submission to an immediate enforcement (*Unterwerfung unter die sofortige Zwangsvollstreckung*) and all other rights and claims arising under the Mortgage Deed as well as a security purpose agreement (*Sicherungszweckerklärung*) entered into by the each Borrower and the Security Agent regarding the Mortgage (the

**"Security Purpose Agreement");**

- (b) first ranking account pledges, granted by each of the Obligors in respect of all its rights in, to and under its Accounts (including any present and future credit balances standing to the credit of its Accounts) (the **"Accounts Pledge Agreement"**);
- (c) assignments by way of security (*Sicherungsabtretungen*) granted by each of the Obligors, as relevant (the **"Assignment Agreement"**) over:
  - (A) any and all, present and future, claims arising under the lease agreements relating to the Properties;
  - (B) any and all, present and future, claims arising under any insurance agreements relating to the Properties;
  - (C) any and all, present and future, claims of each Borrower arising under a property management agreement entered into with respect to Properties;
  - (D) any and all present and future, actual or contingent rights and claims of the Borrowers arising under or in connection with the Acquisition Agreement including, but not limited to, any warranty claims (*Gewährleistungsansprüche*), claims for reduction of the purchase price (*Minderung*), rights to rescission (*Rücktritt*) and restitution claims against the respective seller(s);
  - (E) any and all present or future, actual or contingent rights and claims of RRZ KG arising under or in connection with the Head Lease Agreement;
- (d) a first ranking share and interest pledge agreement over all the shares in NewCo1 and over all limited partnership interests in the Borrowers, respectively (the **"Share and Interest Pledge Agreement"**);
- (e) a comfort letter issued by GB Immobilien G.m.b.H according to which GB Immobilien G.m.b.H undertakes to ensure that the Managing Agent has sufficient means to fulfill its obligations under the Property Management Agreements (the **"Comfort Letter"**);
- (f) subordination agreements between Merrill Lynch Luxembourg Holdings Sarl, GB Immobilien G.m.b.H. and Tinfoil B.V., respectively (each a **"Subordinated Creditor"**) and Eurohypo pursuant to which the respective Subordinated Creditor subordinates its claim in relation to cash fundings and other shareholder indebtedness to the claims of the Lender (the **"Subordination Agreements"**);
- (g) loan interest shortfall guarantees, issued by the General Partner and Merrill Lynch & Co., Inc (the **"Loan Interest Shortfall Guarantors"**), respectively, by which each guarantees to the Facility Agent to cover any Loan Interest Shortfall by way of cash funding in an amount of up to €10,500,000 as regards Merrill Lynch & Co., Inc. and €1,500,000 as regards the General Partner (the **"Loan Interest Shortfall Guarantees"**). A **"Loan Interest Shortfall"** arises if a Borrower fails to make any interest payment under the Credit Agreement when due and payable;
- (h) an intercreditor agreement between the Security Agent, ECE Projektmanagement G.m.b.H. & Co. KG and Merrill Lynch Luxembourg Holdings Sarl in respect of claims relating to the tax and financial due diligence report issued by Deloitte & Touche GmbH Wirtschaftsprüfungsgesellschaft (the **"Deloitte Intercreditor Agreement"**);
- (i) a shareholder undertaking agreement between the Facility Agent and the Partners pursuant to which the Partners undertake, in case of a disposal of shares in a Borrower to pay the Release Price in respect of the Property owned by such Borrower towards the payment of the amounts owed by such Borrower under the Finance Documents (the **"Shareholder Undertaking Agreement"**).

**"Global Notes"** means (i) all of the Temporary Global Notes and the Permanent Global Notes, or the Temporary Global Note and the Permanent Global Note of a particular Class or (ii) any of the Temporary Global Notes or the Permanent Global Notes, as the context may require.

**"Hedge Counterparty"** means each of the Senior Hedge Counterparty and the Junior Hedge Counterparty (or any other relevant hedge counterparty under a Hedging Arrangement).

**"Hedging Agreements"** (and each of them, a **"Hedging Agreement"**) means each of the Senior Hedging Agreements and the Junior Hedging Agreements.

**"Hedging Arrangements"** (and each of them, a **"Hedging Arrangement"**) means any hedging arrangements (including, for the avoidance of doubt, the Hedging Agreements) entered into by a Borrower and a Hedge Counterparty in accordance with the Borrowers Hedging Strategy.

**"Income Deficiency"** means the amount by which the Available Issuer Income is insufficient to meet payments due under items (a) to (I) of the Income Priority of Payments.

**"Income Deficiency Drawing"** means a drawing made due to an Income Deficiency pursuant to and in accordance with the Liquidity Facility Agreement.

**"Income Deficiency Loan"** means a loan made pursuant to the Liquidity Facility Agreement which is made as a result of an Income Deficiency Drawing.

**"Income Priority of Payments"** means the Issuer income priority of payments set out in Clause 9.2 of the Issuer Trust Agreement.

**"Initial Purchase Price"** means the consideration for the sale and transfer of the Senior Loan and the Related Loan Security in an amount equal to the outstanding principal amount of the Senior Loan as of the Closing Date.

**"Instructing Majority"** means, at any time, (i) the holders of at least 25 per cent. in the aggregate Principal Amount Outstanding of the most senior Class of Notes then outstanding or (ii) the holders of at least 25 per cent. of the Notes of each Class calculated on a Class by Class basis.

**"Interest Amount"** means the amount of interest payable on each Class of Notes.

**"Interest Determination Date"** means the day that is two (2) Note Business Days preceding the first day of each Note Interest Period.

**"Interest Issuer Swap Agreement"** means an interest rate swap transaction entered into on or about the Closing Date between the Issuer and the Issuer Swap Counterparty in order to hedge against the potential interest rate mismatches between the floating rate interest payments received by the Issuer under the Senior Loan and the floating rate interest payment obligations of the Issuer under the Notes resulting from different determination dates being applicable to determine EURIBOR as the base rate for calculating the interest rates in respect of (i) the Senior Loan and (ii) the Notes.

**"Interest Payment Date"** means (i) in relation to the Senior Loan, a Loan Interest Payment Date, and (ii) in relation to the Notes, a Note Interest Payment Date.

**"Interest Period"** means (i) in relation to the Senior Loan, a Loan Interest Period, and (ii) in relation to the Notes, a Note Interest Period.

**"International Central Securities Depository"** or **"ICSD"** shall mean each of the operator of Euroclear System and Clearstream Banking, *société anonyme*.

**"Irish Paying Agent"** means HSBC Institutional Trust Services (Ireland) Limited, acting through its office at HSBC House, Harcourt Centre, Harcourt Street, Dublin 2, Ireland, in its capacity as Irish paying agent under the Agency Agreement.

**"Irish Stock Exchange"** means The Irish Stock Exchange Limited whose registered address is 28 Anglesea Street, Dublin 2, Ireland.

**"Issuer"** means Opera Germany (No. 2) p.l.c., a public limited company incorporated under the laws of Ireland on 1 December 2006 and registered under the registration number 430655.

**"Issuer Accounts"** means the Issuer Transaction Accounts and any Liquidity Stand-by Account, each an **"Issuer Account"**.

**"Issuer Capital Proceeds Account"** means a segregated account of the Issuer established with Allied Irish Bank for the sole purpose of holding the proceeds of the Issuer's share capital, payments representing the Issuer Profit and interest thereon (if any).

**"Issuer Deed of Charge and Assignment"** means a deed of charge and assignment entered into by the Issuer and the Trustee on or about the Closing Date pursuant to which the Issuer creates security in favour of the Trustee for itself and the benefit of the other Issuer Secured Creditors over its rights, title, interest in, to and under the Contracts, all sums of money to which the Issuer is or may be entitled and that are from time to time standing to the credit of the Issuer Accounts, and any Eligible Investments from time to time held by or on behalf of the Issuer to the extent governed by English law and any other assets (other than the Excepted Assets) governed by English law in which the Issuer may at any time acquire any right, title, interest or benefit.

**"Issuer - ICSDs Agreement"** means the agreement entered into by the Issuer, Clearstream Luxembourg and Euroclear dated on or about the Closing Date.

**"Issuer Income Account"** means the account opened and maintained by the Account Bank in accordance with the provisions of the Account Bank Agreement in the name of the Issuer, into which, *inter alia*, all amounts of Available Issuer Income and any Income Deficiency Loan will be transferred.

**"Issuer Intercreditor Agreement"** means the intercreditor agreement dated on or about the Closing Date and entered into between, *inter alios*, the Issuer, the Trustee and the Issuer Secured Creditors (except for the Noteholders).

**"Issuer Principal Account"** means the account opened and maintained by the Account Bank in accordance with the provisions of the Account Bank Agreement in the name of the Issuer, into which all amounts of Available Principal Amounts will be transferred.

**"Issuer Profit"** means, on each Note Interest Payment Date, an amount equal to 0.01 per cent. per annum of the Available Issuer Income received by the Issuer during the period commencing on the second immediately preceding Calculation Date (inclusive) and ending on the immediately preceding Calculation Date (exclusive), to be paid on such date into the Issuer Capital Proceeds Account.

**"Issuer Secured Creditors"** means the Noteholders, the Trustee, the Mortgagee, the Servicer, the Special Servicer, the Corporate Services Provider, the Principal Paying Agent, Irish Paying Agent, the Agent Bank, the Liquidity Bank, the Note Arranger, the Account Bank and the Issuer Swap Counterparty.

**"Issuer Security"** means the first ranking security created by the Issuer in favour of the Trustee for itself and the benefit of the other Issuer Secured Creditors over:

- (a) all rights in, to and under the Senior Loan;
- (b) the Related Loan Security and all claims and rights relating thereto (including without limitation the Mortgage which is transferred by the Originator to the Mortgagee pursuant to the Mortgage Assignment and which is held by the Mortgagee pursuant to the Mortgage Trust Deed);
- (c) all (present and future) claims and rights the Issuer may have under any Transaction Documents;
- (d) the Issuer's claims against the Trusted Parties;
- (e) all (present and future) claims and rights in relation to any amounts standing to the credit of the Issuer Accounts; and



(f) its interest in any Eligible Investments made by it or on its behalf.

**"Issuer Security Documents"** means each of the Issuer Trust Agreement, the Mortgage Assignment and the Issuer Deed of Charge and Assignment.

**"Issuer Swap Agreements"** (and each of them an **"Issuer Swap Agreement"**) means the Interest Issuer Swap Agreement and the Contingent Issuer Swap Agreement.

**"Issuer Swap Counterparty"** means Eurohypo AG, in its capacity as Issuer Swap Counterparty under the Issuer Swap Agreements.

**"Issuer Transaction Accounts"** means the Issuer Income Account, the Issuer Principal Account and any other bank account maintained by the Issuer, with the exception of the Issuer Capital Proceeds Account, in which the Issuer may at any time acquire any right, title, interest or benefit in accordance with the terms of the Transaction Documents from time to time.

**"Issuer Trust Agreement"** means the trust agreement dated on or about the Closing Date and entered into between the Issuer, the Originator, the Security Agent, the Trustee and the Mortgagee, as the same may be amended or restated from time to time.

**"Joint Bookrunners"** means each of Commerzbank AG and UBS Limited.

**"Junior Hedge Counterparty"** means Eurohypo AG.

**"Junior Hedging Agreements"** (and each of them a **"Junior Hedging Agreement"**) means each of the Junior Hedging Arrangements dated 4 August 2006 and entered into between the Junior Hedge Counterparty and Kö KG and RRZ KG, respectively.

**"Junior Hedging Arrangements"** (and each of them a **"Junior Hedging Arrangement"**) means any hedging arrangements (including, for the avoidance of doubt, the Junior Hedging Agreements) in respect of the Junior Loan to be entered into between any of the Borrowers and the Junior Hedge Counterparty (or any other relevant hedge counterparty) in accordance with the Borrowers Hedging Strategy.

**"Junior Lender"** means Eurohypo AG in its capacity as the lender under Facility A-2 subject to the terms and in accordance with the Credit Agreement, and any successor thereof.

**"Junior Loan"** means the claims and rights under each loan made under Facility A-2 granted to the Borrowers by the Originator in its capacity as the Junior Lender pursuant to the Credit Agreement.

**"Kö-Galerie Property"** means a property located in the city of Düsseldorf, Germany, over which the Kö KG has granted a first priority joint land charge to secure the obligations of the Borrowers under the Credit Agreement.

**"Kö KG"** means Kö Galerie Düsseldorf GmbH & Co. KG.

**"Limited Partner"** means Gustav Beteiligungs G.m.b.H as limited partner (formerly PANTA 56. Grundstücksgesellschaft m.b.H.).

**"Liquidation Fee"** means a fee (exclusive of value added tax) the Special Servicer will be entitled to in respect of the Senior Loan equal to an amount of 1.00 per cent. of the proceeds (net of all costs and expenses incurred as a result of the default of the Senior Loan, enforcement and sale), if any, arising on the sale of a Property or on or out of the application of any other enforcement procedures or other actions taken by the Special Servicer in respect of the Senior Loan.

**"Liquidity Bank"** means Danske Bank A/S, acting through its London branch located at 75 King William Street, London EC4N 7DT, in its capacity as liquidity facility provider under the Liquidity Facility Agreement.

**"Liquidity Facility Agreement"** means the 364 day term liquidity facility agreement to be entered into by the Issuer, the Liquidity Bank and the Trustee on or about the Closing Date.

**"Liquidity Facility Commitment"** means the initially permitted drawings of up to an aggregate amount of €40,000,000 to be made by the Issuer pursuant to the Liquidity Facility Agreement, as such may be reduced from time to time in accordance with the terms of the Liquidity Facility Agreement.

**"Liquidity Stand-by Account"** means the Issuer Account with the Liquidity Bank (which will be established only if required pursuant to the terms of the Liquidity Facility Agreement).

**"Liquidity Subordinated Amounts"** means any amounts in respect of any increased costs, mandatory costs and tax gross up amounts payable to the Liquidity Bank to the extent that such amounts exceed 0.125 per cent. per annum of the Liquidity Facility Commitment.

**"Listing Agent"** means J & E Davy.

**"Loan Business Day"** means a TARGET Day (other than a Saturday or a Sunday) on which banks are open for general business in Frankfurt am Main, Germany.

**"Loan Intercreditor Agreement"** means the agreement to be entered on or about the Closing Date, between, *inter alios*, the Senior Lender, the Junior Lender and the CapEx Lender which will govern the subordination and ranking of rights, claims and interest in, to and under the Finance Documents.

**"Loan Interest Payment Date"** means 15 January, 15 April, 15 July and 15 October of each year, with the first interest payment date being 15 January 2007, or, if such date is not a Loan Business Day, the next Loan Business Day immediately following such date unless it would thereby fall into the next calendar month, in which case the immediately preceding Loan Business Day.

**"Loan Interest Period"** means the successive quarterly interest periods which will commence on (and including) a Loan Interest Payment Date and end on (but excluding) the next succeeding Loan Interest Payment Date.

**"Loan Maturity Date"** means the Loan Interest Payment Date immediately following the fifth anniversary of the Loan Origination Date

**"Loan Origination Date"** means 15 September 2006.

**"Loan Sale Agreement"** means a loan sale agreement entered into between the Originator and the Issuer on or about the Closing Date pursuant to which the Issuer purchases from the Originator the Senior Loan together with the Related Loan Security.

**"Loan Security"** means the security created under the Loan Security Documents.

**"Loan Security Documents"** means the German Security Documents and the Deed of Assignment.

**"local business day"** means, for the purposes of Condition 5(d) of the Notes a day on which banks are open for business in the place of presentation of the relevant Note.

**"London Time"** means the official time in London, Great Britain.

**"Margin"** means an interest rate margin applicable to each Class of Notes.

**"Master Definitions Schedule"** means the master definitions schedule dated on or about the Closing Date and signed, *inter alios*, by the Issuer, the Originator and the Trustee.

**"Mortgage"** means the first priority joint land charge (*erstrangige Gesamtgrundschuld*) to secure the obligations of the Borrowers under the Credit Agreement.

**"Mortgage Trust Deed"** means a deed to be entered into between the Trustee, the Security Agent and the Mortgagee on or about the Closing Date pursuant to which the Mortgagee holds the Mortgage to the instructions of the Trustee and, following the satisfaction of the conditions for release or

retransfer of the security pursuant to the Issuer Trust Agreement, to the instructions of the Security Agent.

**"Mortgage Assignment"** means the German law governed assignment agreement with respect to the Mortgage, executed on 15 December 2006, pursuant to which the Originator transfers the Mortgage to the Mortgagee.

**"NewCo1"** means Kö Galerie Betriebsgesellschaft eins mbH.

**"New Notes"** has the meaning ascribed thereto in Condition 17(c) of the Notes.

**"Note Arranger"** means Eurohypo AG.

**"Note Business Day"** means a TARGET Day (other than a Saturday or a Sunday) on which banks are open for general business in London and Frankfurt am Main, Germany.

**"Note Event of Default"** means any of the events of default set forth in Condition 9 of the Notes.

**"Note Interest Payment Date"** means 20 January, 20 April, 20 July and 20 October of each year, with the first note interest payment date falling in April 2007, or, if such date is not a Note Business Day, the next Note Business Day immediately following such date unless it would thereby fall into the next calendar month, in which case the immediately preceding Note Business Day.

**"Note Interest Period"** means the successive quarterly interest periods in which interest on the Notes will be payable, which will commence on (and including) a Note Interest Payment Date and end on (but excluding) the next succeeding Note Interest Payment Date, except for the first Note Interest Period, which will commence on (and including) the Closing Date and end on (but excluding) the first Interest Payment Date falling in April 2007.

**"Note Interest Shortfall"** has the meaning ascribed thereto in Condition 4(b) of the Notes.

**"Noteholders"** means the holders of any Class of Notes.

**"Notes"** means the Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes.

**"Obligors"** (and each of them, an **"Obligor"**) means the Borrowers and NewCo1.

**"OP KG"** means Opfern Passage GmbH & Co. KG.

**"Operating Adviser"** means the adviser appointed by the Controlling Party in accordance with Condition 3(d) of the Notes.

**"Opfernpassagen Property"** means a property located in the city of Cologne, Germany, over which the OP KG has granted a first priority joint land charge to secure the obligations of the Borrowers under the Credit Agreement.

**"Originator"** means Eurohypo AG.

**"Paying Agents"** (and each of them, a **"Paying Agent"**) means the Principal Paying Agent and the Irish Paying Agent.

**"Permanent Global Notes"** means the permanent global note of each Class of Notes.

**"Post-Acceleration Priority of Payments"** means the priority of payments as set out in Clause 22.1 of the Issuer Trust Agreement.

**"Pre-Closing Proceeds"** means, with respect to the Senior Loan, any accrued but unpaid interest for the period between (and including) 15 September 2006 and (but excluding) the Closing Date.

**"Principal Amount Outstanding"** means in respect of any Note at any time, the principal amount thereof as at the Closing Date as reduced by any payment of principal to the holder of the Note up to (and including) that time.

**"Principal Paying Agent"** means HSBC Bank plc, acting through its offices at 8 Canada Square, London E14 5HQ, United Kingdom, in its capacity as principal paying agent under the Agency Agreement.

**"Principal Priority of Payments"** means the pre-acceleration principal priority of payments set out in Clause 9.3 of the Issuer Trust Agreement.

**"Priority Amounts"** has the meaning ascribed to such term in Clause 9.1 of the Issuer Trust Agreement.

**"Priority of Payments"** means each of the Income Priority of Payments, the Principal Priority of Payments and the Post-Acceleration Priority of Payments, and together, the **"Priorities of Payments"**).

**"Proceedings"** has the meaning ascribed thereto in Condition 18(c) of the Notes.

**"Properties"** (and each of them, a **"Property"**) means the Kö-Galerie Property, the Opernpassagen Property, the RRZ Property, and the Schwanenmarkt Property.

**"Prospectus"** means the prospectus of the Issuer dated 19 December 2006 with respect to the Notes.

**"Rate of Interest"** has the meaning ascribed thereto in Condition 4 of the Notes.

**"Rating Agencies"** (and each of them, a **"Rating Agency"**), means S&P and Fitch.

**"Rating Event Termination Event"** means, with respect to each of the Hedging Arrangements, any occurrence of an additional termination event (as provided in the relevant Hedging Arrangement) following failure by the relevant Hedge Counterparty to take any of the required measures specified in the relevant Hedging Arrangement in relation to a relevant rating event affecting such Hedge Counterparty.

**"Reference Bank"** means each of four major banks (together, the **"Reference Banks"**) in the Euro-zone interbank market as referred to in Condition 4 of the Notes.

**"Related Loan Security"** means the Loan Security relating to the Senior Loan.

**"Replacement Notes"** has the meaning ascribed thereto in Condition 17(b) of the Notes.

**"RRZ KG"** means Rhein-Ruhr-Zentrum GmbH & Co. KG.

**"RRZ Property"** means a property located in the city of Mülheim an der Ruhr, Germany, over which the RRZ KG has granted a first priority joint land charge to secure the obligations of the Borrowers under the Credit Agreement.

**"S&P"** means Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc.

**"Schwanenmarkt Property"** means a property located in the city of Krefeld, Germany, over which the SM KG has granted a first priority joint land charge to secure the obligations of the Borrowers under the Credit Agreement.

**"Security Agent"** means Eurohypo AG in its capacity as a security agent in respect of each of the Credit Agreement.

**"Seller"** means Eurohypo AG in such capacity under the Loan Sale Agreement.

**"Senior Allocated Loan Amount"** has the meaning ascribed thereto in Condition 6(b) of the Notes.

**"Senior Hedge Counterparty"** means Eurohypo AG.

**"Senior Hedge Termination Trigger Event"** means the termination of any of the Senior Hedging Arrangements in accordance with its terms.

**"Senior Hedging Agreements"** (and each of them a **"Senior Hedging Agreement"**) means each of the Senior Hedging Arrangements dated 4 August 2006 and entered into between the Senior Hedge Counterparty and Kö KG and RRZ KG, respectively.

**"Senior Hedging Arrangements"** (and each of them a **"Senior Hedging Arrangement"**) means any hedging arrangements (including, for the avoidance of doubt, the Senior Hedging Agreements) in respect of the Senior Loan to be entered into between any of the Borrowers and the Senior Hedge Counterparty (or any other relevant hedge counterparty) in accordance with the Borrowers Hedging Strategy.

**"Senior Lender"** means until (but excluding) the Closing Date, Eurohypo AG in its capacity as the senior lender under the Credit Agreement, and from (and including) the Closing Date, the Issuer.

**"Senior Loan"** means the claims and rights under each loan made under Facility A-1 granted to the Borrowers pursuant to the Credit Agreement.

**"Servicer"** means Eurohypo AG, London Branch, in its capacity as the servicer under the Servicing Agreement.

**"Servicing Agreement"** means the servicing agreement dated on or about the Closing Date between, *inter alios*, the Issuer, the Servicer, the Special Servicer and the Trustee.

**"Servicing Fee"** means the fee that the Issuer will pay on each Note Interest Payment Date to the Servicer, equal to 0.025 per cent. per annum (inclusive of value added tax) of the aggregate Principal Amount Outstanding on that date

**"Share Trust Agreement"** means a share trust agreement dated 7 December 2006 pursuant to which SFM Corporate Services Limited, 35 Great St. Helen's, London EC3A 6AP, England (the **"Share Trustee"**) will hold its interest in the shares of the Issuer on trust for charitable purposes.

**"SM KG"** means Schwanenmarkt GmbH & Co KG.

**"Special Servicer"** means Eurohypo AG, London Branch, in its capacity as the special servicer under the Servicing Agreement.

**"Special Servicing Fee"** means the fee that the Issuer will be required to pay to the Special Servicer pursuant to the Servicing Agreement, if the Senior Loan is designated to be specially serviced, equal to 0.25 per cent. per annum (exclusive of value added tax) of the principal balance of the Senior Loan then outstanding.

**"Subordinated Swap Amount"** means any and all amounts due and payable to the Issuer Swap Counterparty under the Issuer Swap Agreements following an early termination of the Issuer Swap Agreements as a result of an event of default under the Issuer Swap Agreements in respect of which the Issuer Swap Counterparty is the defaulting party.

**"Subscription Agreement"** means a subscription agreement for the Notes dated on or about the date of the Prospectus between, *inter alios*, the Issuer, Eurohypo and the Joint Bookrunners.

**"Substitute Debtor"** means any company that substitutes the Issuer as principal debtor in respect of all obligations arising in connection with the Notes in accordance with Condition 15 of the Notes.

**"TARGET System"** means the Trans-European Automated Real-Time Gross Settlement Express Transfer System, or any successor thereto.

**"Temporary Global Notes"** means a temporary global notes without coupons to be issued in respect of each Class of Notes in the initial principal balance of €374,500,000 for the Class A Notes,

€46,800,000 for the Class B Notes, €65,600,000 for the Class C Notes, €63,700,000 for the Class D Notes and €9,400,000 for the Class E Notes.

**"Transaction Documents"** means the Prospectus, the Loan Sale Agreement, the Issuer Trust Agreement, the Issuer Deed of Charge and Assignment, the Mortgage Assignment, the Mortgage Trust Deed, the Issuer Intercreditor Agreement, the Loan Intercreditor Agreement, the Servicing Agreement, the Corporate Services Agreement, the Share Trust Agreement, the Notes, the Agency Agreement, the Issuer - ICSDs Agreement, the Issuer Swap Agreements, the Liquidity Facility Schedule and the Account Bank Agreement, the Subscription Agreement, the Master Definitions Schedule and any other documents relating to the transaction envisaged in the above mentioned documents.

**"Trustee"** means HSBC Trustee (C.I.) Limited in its capacity as security trustee under the Issuer Trust Agreement.

**"Trustee Claim"** means a separate claim of the Trustee pursuant to Clause 4.2 of the Issuer Trust Agreement.

**"Workout Fee"** means a fee in respect of the Senior Loan, in addition to the Special Servicing Fee and the Liquidation Fee (if any), that the Special Servicer will be entitled to receive in consideration of providing services in relation to the Senior Loan when it is designated to be corrected.

**"Yield Enhancement"** means any interest claims of the Senior Lender arising in accordance with the terms of the Credit Agreement and assigned to the Junior Lenders or the CapEx Lenders pursuant to the terms of the Loan Intercreditor Agreement.

## THE MAIN PROVISIONS OF THE ISSUER TRUST AGREEMENT

The following sets out the main provisions of the Issuer Trust Agreement. The full text of the Issuer Trust Agreement (excluding any Schedules thereto) constitutes Appendix B to the Terms and Conditions and forms an integral part of the Terms and Conditions. The text of the recitals and Clause 1 (*Definitions and Construction*) of the Issuer Trust Agreement as well as all attachments have been omitted from the following.

### 2. Duties of the Trustee and the Mortgagee

- 2.1 This Agreement sets out the general rights and obligations of the Trustee and the Mortgagee (together the "**Trusted Parties**"), and each of them, a "**Trusted Party**") which govern the performance of their functions under this Agreement. The Trusted Parties shall perform the activities and services set out in this Agreement or contemplated to be performed by them pursuant to the terms of any other Transaction Document to which the Trusted Parties are a party. Unless otherwise stated herein or in the Transaction Documents to which the Trusted Parties are a party, the Trusted Parties are not obliged to supervise the discharge by the Issuer of its payment and other obligations arising from the Notes or any other relevant Transaction Document or to carry out duties which are the responsibility of the Issuer or any other party.
- 2.2 The Originator has assigned to the Mortgagee the Mortgage by way of German law governed assignment agreement dated 15 December 2006 (the "**Mortgage Assignment**") (whereas the transfer will become effective upon registration of such assignment with the relevant land register). The Mortgagee shall hold the Mortgage transferred to it by the Originator pursuant to Mortgage Trust Deed to the instructions of the Trustee. The Mortgagee shall not enforce any right or claim arising from the Mortgage or make any use of such right or claim or enforce or make use of any right arising under this Agreement other than upon the instructions by the Trustee, if not otherwise provided for in this Agreement.

### 3. Position of the Trusted Parties in Relation to the Issuer Secured Creditors

- 3.1 The Trustee shall acquire and hold the security granted under this Agreement and the other Issuer Security Documents, and exercise its rights (other than its rights under Clauses 27 (*Reimbursement of Expenses*) to 30 (*Resignation*) of this Agreement which are for their own benefit only) and discharge its duties under the Transaction Documents as a trustee (*Treuhänder*) for the benefit of, subject to Clause 5.2, itself and the other Issuer Secured Creditors. The Mortgagee shall exercise its rights (other than its rights under Clauses 27 (*Reimbursement of Expenses*) to 30 (*Resignation*) of this Agreement which are for their own benefit only) and discharge its duties under the Transaction Documents, and shall hold the Mortgage pursuant to the Mortgage Trust Deed to the instructions of the Trustee and, following the satisfaction of the conditions for release or retransfer of the security pursuant to Clause 10, to the instructions of the Security Agent. Without prejudice to the Post-Acceleration Priority of Payments pursuant to Clause 22, the Trusted Parties shall exercise their duties under this Agreement with regard to the most senior Class of Notes then outstanding, in particular (i) as long as any of the Class A Notes are outstanding, only to the interests of the Class A Noteholders, (ii) if no Class A Notes are outstanding, only to the interests of the Class B Noteholders, (iii) if no Class A Notes and no Class B Notes are outstanding, only to the interests of the Class C Noteholders, (iv) if no Class A Notes, no Class B Notes and no Class C Notes are outstanding, only to the interests of the Class D Noteholders, (v) if no Class A Notes, no Class B Notes, no Class C Notes and no Class D Notes are outstanding, only to the interests of the Class E Noteholders, and (vi) if no Notes remain outstanding, only to the interests of the other Issuer Secured Creditors ranking highest in the Post-Acceleration Priority of Payments to whom any amounts are owed.
- 3.2 In exercising their duties under this Agreement, the Trusted Parties (i) shall have regard to the interests of the Class A Noteholders, the Class B Noteholders, the Class C Noteholders, the Class D Noteholders and the Class E Noteholders, each as a Class and in accordance with the Conditions of the Notes and (ii) shall not have regard to the consequences of such

exercise for individual Noteholders. The Trusted Parties shall not be entitled to require, nor shall any Noteholder be entitled to claim from the Issuer any indemnification or payment in respect of any tax or other consequence of any such exercise upon such individual Noteholder. In addition, the Trusted Parties shall have regard to the interests of the other Issuer Secured Creditors, provided that in case of a conflict of interest between the Issuer Secured Creditors the priorities of payments set forth in Clause 9 (*Pre-Acceleration Priority of Payments*) and Clause 22 (*Post-Acceleration Priority of Payments*) of this Agreement shall determine which interests of which Issuer Secured Creditor prevails.

- 3.3 This Agreement constitutes a genuine contract for the benefit of third parties (*echter Vertrag zugunsten Dritter*) pursuant to Section 328 subsection 1 of the German Civil Code (*Bürgerliches Gesetzbuch*) in respect of the obligations of the Trusted Parties contained herein to act (in the case of the Trustee as trustee (*Treuhänder*)) for the benefit of present and future Issuer Secured Creditors. The rights of the Issuer pursuant to Clause 4.2 (*Trustee Claim*) in the event of an enforcement of the Trustee Claim shall remain unaffected.

#### 4. Position of the Trusted Parties in Relation to the Issuer

##### 4.1 Trusted Parties as Issuer Secured Creditor/Insolvency of the Trusted Parties

With respect to their own claims against the Issuer under this Agreement or otherwise, in particular with respect to any fees, and with respect to the Trustee Claim (as set out below in Clause 4.2) the Trusted Parties shall, in addition to the other Issuer Secured Creditors, be a secured party (*Sicherungsnehmer*) with respect to the Issuer Security (as defined in Clause 7 (*Security Purpose*)).

To the extent that the Assigned Security (as defined in Clause 5.1 below) and the Mortgage will be transferred to the Trusted Parties for security purposes, in accordance with Clause 5 (*Transfer for Security Purposes of the Assigned Security*) with respect to the Trustee or in accordance with the Mortgage Assignment with respect to the Mortgagee, in the event of insolvency proceedings being commenced in respect of any of the Trusted Parties, any Security held by the Trusted Parties shall be transferred by the respective Trusted Party to the relevant New Trusted Party appointed in accordance with this Agreement.

The Issuer hereby undertakes to assign any claim for segregation (*Aussonderung*) it may have in an insolvency of either Trusted Party with respect to this Agreement and the Issuer Security to the relevant New Trusted Party appointed in accordance with this Agreement for the purposes set out herein.

##### 4.2 Trustee Claim

- (a) The Issuer hereby grants the Trustee a separate claim (the "**Trustee Claim**"), entitling the Trustee to demand from the Issuer:
- (i) that any present or future, actual or contingent obligation of the Issuer in relation to any Noteholder under any Note be fulfilled; and
  - (ii) that any present or future, actual or contingent obligation of the Issuer in relation to any Issuer Secured Creditor under any other Transaction Document to which the Issuer is a party be fulfilled.
- (b) The obligation of the Issuer to make payments to the relevant Issuer Secured Creditor shall remain unaffected by the provisions of paragraph (a) above. The Trustee Claim may be enforced separately from the Issuer Secured Creditor's claim in respect of the same payment obligation of the Issuer. The Trustee agrees with the Issuer to pay any sums received from the Issuer pursuant to this Clause 4.2 to the relevant Issuer Secured Creditors in accordance with the Post-Acceleration Priority of Payments (as such term is defined in Clause 22 (*Post-Acceleration Priority of Payments*)) following the delivery of an Acceleration Notice; the relevant Issuer Secured Obligations (as defined in Clause 7.1 below) shall only be deemed fulfilled when the payment due has



been made by the Trustee upon receipt of sums from the Issuer to the relevant Issuer Secured Creditor.

#### 4.3 Special Servicer

If the Senior Loan has become specially serviced in accordance with the Servicing Agreement, then the Trustee and the Issuer, upon the Issuer being so instructed by the Controlling Party and the Trustee being informed thereof by the Issuer, the Issuer shall exercise its right under the Servicing Agreement to appoint a substitute or successor special servicer in respect of the Senior Loan subject to the conditions of the Servicing Agreement.

**"Controlling Party"** means, at any time:

- (a) the holders of the most junior Class of Notes then having a Principal Amount Outstanding greater than 25 per cent. of its original aggregate Principal Amount Outstanding on the Closing Date; or
- (b) if no Class of Notes then has a Principal Amount Outstanding greater than 25 per cent. of its original aggregate Principal Amount Outstanding on the Closing Date, the holders of the then most junior Class of Notes,

excluding, in each case, any Class of Notes the entire Principal Amount Outstanding of which is held by, or for the benefit of or on behalf of the Borrowers and/or any one or more of its affiliates (the **"Excluded Class"**).

In the event that the Excluded Class would be (but for the preceding paragraph) determined to be the Controlling Party, the Class of Notes ranking immediately in priority in point of security to the Excluded Class and satisfying the test above will be the Controlling Party.

### 5. Transfer for Security Purposes of the Assigned Security

5.1 The Issuer hereby assigns and transfers as security the following rights and claims governed by German law (including any contingent rights (*Anwartschaftsrechte*) to such rights and claims) (together, the **"Assigned Security"**) to the Trustee for the security purposes set out in Clause 7 (*Security Purpose*):

- (a) all present and future rights, claims and interests which the Issuer is now or may hereafter become entitled to, from or in relation to the Senior Loan together with any Related Loan Security and all rights, claims and interests relating thereto except for the Mortgage which shall be transferred by the Originator to the Mortgagee pursuant to the Mortgage Assignment;
- (b) all present and future rights, claims and interests which the Issuer is now or may hereafter become entitled to from or in relation to the Originator and/or any other party pursuant to or in respect of the Loan Sale Agreement (to the extent governed by German law);
- (c) all present and future rights, claims and interests, which the Issuer is now or may hereafter become entitled to from or in relation to the Servicer, the Special Servicer and/or any other party pursuant to or in respect of the Servicing Agreement;
- (d) all present and future rights, claims and interests which the Issuer is now or may hereafter become entitled to from or in relation to any of the counterparties pursuant to or in respect of the Issuer Intercreditor Agreement;
- (e) all present and future rights, claims and interests which the Issuer is now or may hereafter become entitled to under any other Transaction Documents (to the extent governed by German law),

in each case of (a) to (e) above including any and all related non-ancillary (*selbständige*) and ancillary (*unselbständige*) rights to determine unilaterally legal relationships (*Gestaltungs-*

*rechte*), including any termination rights (*Kündigungsrechte*) and rights to challenge the agreements (*Anfechtungsrechte*).

The Issuer hereby covenants in favour of the Trustee that it will assign and/or transfer any future assets received by it as security for any of the foregoing or otherwise in connection with the Transaction Documents, in particular such assets which it receives from any of its counterparties in relation to any of the Transaction Documents as collateral for the obligations of such counterparty towards the Issuer, to the Trustee. The Issuer will perform such covenant in accordance with the provisions of this Agreement.

- 5.2 The Trustee hereby accepts the assignment and the transfer of the Assigned Security thereto and the covenants of the Issuer hereunder and shall hold the Assigned Security on trust for the benefit of itself and the other Issuer Secured Creditors. The Mortgagee shall hold the Mortgage pursuant to the Mortgage Trust Deed to the instructions of the Trustee, and, following the satisfaction of the conditions for release or retransfer pursuant to Clause 10, to the instructions of the Security Agent.
- 5.3 The existing Assigned Security shall be transferred to the Trustee on the date on which this Agreement becomes effective, and any future Assigned Security shall be directly transferred to the Trustee on the date on which such Assigned Security arises, and in each case at the earliest at the time at which the Issuer has acquired the rights and claims of which the Assigned Security consists.
- 5.4 The Issuer undertakes to assign and transfer to the Trustee, on the terms and conditions and for the purposes set out herein, any rights and claims under any future Transaction Documents or further agreements relating to the Transaction Documents upon execution of such documents.
- 5.5 To the extent that title to the Assigned Security cannot be transferred by mere agreement between the Issuer and the Trustee as effected in the foregoing Clauses 5.1 through 5.4, the Issuer and the Trustee agree that:
- (a) any notice to be given in order to effect transfer of title in the Assigned Security shall immediately be given by the Issuer in such form as the Trustee requires and the Issuer hereby agrees that if it fails to give such notice, the Trustee is hereby irrevocably authorised to give such notice on behalf of the Issuer; and
  - (b) any other thing to be done or form or registration to be effected to perfect a first priority security interest in the Assigned Security for the Trustee in favour of itself and the other Issuer Secured Creditors shall be immediately done and effected by the Issuer at its own costs.
- 5.6 With respect to the Account Bank Agreement pursuant to which an express or implied current account relationship (*echtes oder unechtes Kontokorrentverhältnis*) exists or is later established between the Issuer and any third party, the Issuer hereby assigns to the Trustee (without prejudice to the generality of the provisions in Clause 5.1) the right to receive a periodic account statement and the right to receive payment of present or future balances and the right to demand the drawing of a balance (including a final net balance determined upon the institution of any insolvency proceedings in respect of the assets of the Issuer), as well as the right to terminate the current account relationship and the right to receive payment of the closing net balance upon termination. The Issuer shall notify the Trustee of any future current account relationship it enters into in accordance with the Transaction Documents.
- 5.7 The Issuer shall notify all parties to the Transaction Documents assigned pursuant to this Clause 5 (such notice to be substantially in the form of Schedule 2 (*Form of Notification of Assignment*)), that the rights and claims of the Issuer which constitute the Assigned Security and which have arisen under contracts and agreements between the Issuer and the parties to such Transaction Documents and which are owed by such parties, are assigned to the Trustee and that the Issuer is entitled to continue to exercise and collect such rights and claims only in accordance with the provisions of and subject to the restrictions contained in this Agreement. Upon notification of the occurrence of a Note Event of Default to any party to

the Transaction Documents by the Trustee, the Trustee shall be entitled to exercise the rights of the Issuer under the Transaction Documents referred to in Clause 5.1(a) to (i), including, without limitation, the right to give instructions to each such party pursuant to the relevant Transaction Document. Each such party will be bound by instructions of the Trustee given pursuant to the relevant Transaction Document upon execution and delivery of the acknowledgement of assignment (substantially in the form of Schedule 2 (*Form of Notification of Assignment*)) to the Issuer and the Trustee.

- 5.8 The Issuer shall create security for the benefit of the Issuer Secured Creditors in its rights under the Issuer Swap Agreement, the Loan Sale Agreement (to the extent governed by English law), the Account Bank Agreement, the Agency Agreement, the Liquidity Facility Agreement, and the Issuer Accounts pursuant to the Issuer Deed of Charge and Assignment in accordance with the laws of England and Wales.
- 5.9 The Mortgagee shall hold the Mortgage for itself to the instructions of the Trustee (on behalf of the Issuer Secured Creditors).
- 5.10 Prior to the full and final satisfaction of the Issuer Secured Obligations (as defined in Clause 7.1 below) the Junior Lenders, the CapEx Lenders and the Security Agent shall:
- (a) not dispose of any rights it may have in respect of the Mortgage;
  - (b) not accelerate or enforce any of the Junior Loan or the CapEx Loan save as otherwise permitted pursuant to the terms of the Loan Intercreditor Agreement; and
  - (c) co-operate with the Issuer or its representatives in connection with the enforcement of the Mortgage and the other Related Loan Security.

## 6. Pledge

- 6.1 The Issuer hereby pledges (*Verpfändung*) to the Trustee all its present and future claims against the Trusted Parties arising under this Agreement.
- 6.2 The Trustee hereby accepts the pledge.
- 6.3 The Issuer hereby gives notice to the Trusted Parties of such pledge and the Trusted Parties hereby confirm receipt of such notice. The Trusted Parties are under no obligation to enforce any claims of the Issuer against the Trusted Parties pledged to the Trustee pursuant to this Clause 6.

## 7. Security Purpose

The transfer for security purposes of rights and claims pursuant to Clause 5 (*Transfer for Security Purposes of the Assigned Security*), pursuant to the Mortgage Assignment and the pledge under Clause 6 (*Pledge*) (the Assigned Security together with the pledge and the Mortgage held by the Mortgagee are referred to herein as the "**Security**", and together with the security interest established under the Issuer Deed of Charge and Assignment, the "**Issuer Security**") serve to secure the Trustee Claim.

In addition, the transfer for security purposes of the Security is made for the purpose of securing the due payment and performance by the Issuer of any and all obligations (present and future, actual and contingent) which are (or are expressed to be) or become owing by the Issuer to the Noteholders under the Notes and the other Issuer Secured Creditors or any of them (including any future Issuer Secured Creditor following a transfer or assignment, accession, assumption of contract (*Vertragsübernahme*) or novation of certain rights and obligations in accordance with the relevant provisions of the relevant current or future Transaction Documents) under or in connection with any of the Transaction Documents, as each may be amended, novated, supplemented or extended from time to time (the "**Issuer Secured Obligations**"), and which Issuer Secured Obligations shall, for the avoidance of doubt, include, without limitation, (i) any fees to be paid by the Issuer to any Issuer Secured Creditor in connection with the Transaction Documents irrespective of whether such fees are

agreed or determined in the Transaction Documents or in any fee arrangement relating thereto, (ii) any obligations incurred by the Issuer on, as a consequence of or after the opening of any insolvency proceedings and (iii) any potential obligations on the grounds of any invalidity or unenforceability of any of the Transaction Documents, in particular claims on the grounds of unjustified enrichment (*ungerechtfertigte Bereicherung*).

## **8. Collection Authorisation, Further Transfer**

### **8.1 Collection Authorisation**

- (a) The Issuer shall be authorised (*ermächtigt*) to collect or, have collected in the ordinary course of business or otherwise exercise or deal with (which term shall, for the avoidance of doubt, include the enforcement of any security by the Security Agent) the rights transferred for security purposes under Clause 5 (*Transfer for Security Purposes of the Assigned Security*), the Mortgage transferred pursuant to the Mortgage Assignment and the rights pledged pursuant to Clause 6 (*Pledge*) and shall be authorised to grant a sub-authority to the Servicer and the Special Servicer, as applicable, or, with the consent of the Trustee, to any other third party the Trustee thinks fit to exercise the rights conferred on the Issuer pursuant to this paragraph (a).
- (b) The authority and consents provided in paragraph (a) above, are deemed to be granted only to the extent that all obligations of the Issuer are fulfilled in accordance with Condition 6 of the Notes and the requirements under this Agreement.
- (c) The authority and consents contained in paragraph (a) may be revoked by the Trustee on behalf of itself and the Mortgagee if, in the Trustee's opinion, such revocation is necessary in order to avoid an adverse effect on the Issuer Security or their value which the Trustee considers material, and the Trustee gives notice thereof to the Issuer. The authority and consents contained in paragraph (a) shall automatically terminate upon the delivery of an Acceleration Notice to the Issuer.

### **8.2 Transfer Authorisation**

The Trustee shall be authorised to transfer the Assigned Security in the event that the Trustee is replaced and the Issuer Security is to be transferred to the New Trustee pursuant to Clause 30.1 (*Resignation*) and Clause 32.1 (*Transfer of Issuer Security*). The Mortgagee shall be authorised to transfer the Mortgage in the event that the Mortgagee is replaced and the Issuer Security is to be transferred to the New Trustee pursuant to Clause 30.1 (*Resignation*) and Clause 32.1 (*Transfer of Issuer Security*).

### **8.3 Retained Amount**

The Issuer shall be entitled to retain an amount of up to the Issuer Profit in each calendar year for its free disposal from the Security.

### **8.4 Transfer of the Related Loan Security**

Following the occurrence of a Loan Event of Default but in the absence of a Note Event of Default, the Issuer shall, for purposes of enforcing the Related Loan Security, be entitled to request (i) from the Mortgagee the release and the retransfer of the Mortgage and the respective granting of the necessary approval (*Bewilligung*) for due registration with the land registers and (ii) from the Trustee the release and, if applicable, the retransfer of the other Related Loan Security in both cases to itself or, at the Issuer's direction, to the Security Agent or to any third party appointed in connection with the enforcement of the Loan Security. The Originator herewith consents to any retransfer of the Related Loan Security to the Issuer and the Mortgagee undertakes to promptly, upon request by the Issuer, transfer the Mortgage to the Issuer or to its order and to procure for the necessary registration thereof with the competent land registers. The costs of any such transfer shall be borne by the Trustee and/or the Mortgagee (for the avoidance of doubt, subject to Clause 28) and shall constitute an expense to be reimbursed pursuant to item (a) of the relevant Priority of Payments.

## 9. Pre-Acceleration Priority of Payments

### 9.1 Priority Amounts

Prior to the enforcement of the Issuer Security, funds standing to the credit of the Issuer Income Account (other than the proceeds of any Income Deficiency Drawing) and, if such funds are not sufficient then the funds standing to the credit of the Issuer Principal Account, may be applied towards payment of sums due to third parties (other than the Servicer, the Liquidity Bank, the Special Servicer, the Corporate Services Provider, the Trustee, the Mortgagee, the Paying Agents, the Agent Bank or the Account Bank), including the Issuer's liability, if any, to taxation, to on-pay any Pre-Closing Proceeds and to on-pay actual receipts of the Issuer under interest claims which constitute Yield Enhancement (the "**Priority Amounts**"), on any Note Business Day when due and payable under obligations incurred without breach of obligations under the Transaction Documents in the course of the Issuer's business. Funds standing to the credit of the Issuer Principal Account and proceeds under any Income Deficiency Drawing may not be applied to the payment of any Yield Enhancement.

### 9.2 Income Priority of Payments

Prior to the enforcement of the Issuer Security, on each Note Interest Payment Date, all amounts standing to the credit of the Issuer Income Account (after the payment of any Priority Amounts) shall be applied from in the following order of priority (the "**Income Priority of Payments**") (in each case only if and to the extent that the payments and provisions of a higher priority have been made in full):

- (a) *firstly*, in or towards payment, *pro rata* and *pari passu*, of any costs, expenses, fees, remuneration and indemnity payments (if any) and any other amounts payable by the Issuer to the Trusted Parties and any other person appointed by it under the Issuer Trust Agreement and/or any Transaction Document to which either of the Trustee or the Mortgagee is a party;
- (b) *second*, in or towards payment, *pro rata* and *pari passu*, of any amounts due and payable by the Issuer on such Note Interest Payment Date to the Paying Agents and the Agent Bank under the Agency Agreement;
- (c) *third*, in or towards payment, *pro rata* and *pari passu*, of any amounts due and payable by the Issuer on such Note Interest Payment Date to the Servicer in respect of the Servicing Fee and any other amounts due to the Servicer pursuant to the Servicing Agreement (including any substitute servicer appointed in accordance therewith) and the Special Servicer in respect of the Special Servicing Fee and any other amounts due to the Special Servicer pursuant to the Servicing Agreement (including any substitute special servicer appointed in accordance therewith);
- (d) *fourth*, in or towards payment, *pro rata* and *pari passu*, of any amounts due and payable by the Issuer on such Note Interest Payment Date to:
  - (i) the Corporate Services Provider under the Corporate Services Agreement; and
  - (ii) the Account Bank under the Account Bank Agreement;
- (e) *fifth*, in or towards payment of any amounts due and payable by the Issuer on such Note Interest Payment Date to the Liquidity Bank under and in accordance with the Liquidity Facility Agreement (other than any Liquidity Subordinated Amounts);
- (f) *sixth*, in or towards payment of any amounts due and payable by the Issuer to the Issuer Swap Counterparty in accordance with the Issuer Swap Agreement (other than the Subordinated Swap Amounts);

- (g) *seventh*, in or towards payment or discharge, *pro rata* and *pari passu*, of sums due to third parties (other than Priority Amounts) under obligations incurred in the course of the Issuer's business;
- (h) *eighth, pro rata* in or towards payment of interest due and interest overdue on the Class A Notes;
- (i) *ninth, pro rata* in or towards payment of interest due and interest overdue on the Class B Notes;
- (j) *tenth, pro rata* in or towards payment of interest due and interest overdue on the Class C Notes;
- (k) *eleventh, pro rata* in or towards payment of interest due and interest overdue on the Class D Notes;
- (l) *twelfth, pro rata* in or towards payment of interest due and interest overdue on the Class E Notes;
- (m) *thirteenth*, in or towards payments of any Liquidity Subordinated Amounts payable to the Liquidity Bank;
- (n) *fourteenth*, in or towards payment of any Subordinated Swap Amount payable to the Issuer Swap Counterparty;
- (o) *fifteenth*, in or towards payment of an amount to the Issuer Principal Account equal to the amount of the Available Principal Amounts previously applied by the Issuer towards the payment of Priority Amounts and/or investment into Eligible Investments;
- (p) *sixteenth*, in or towards payment, *pro rata* and *pari passu*, of any amounts payable by the Issuer on such Note Interest Payment Date to the Special Servicer in respect of the Liquidation Fee or the Workout Fee;
- (q) *seventeenth*, in or towards payment of any Deferred Purchase Price payable to the Originator; and
- (r) *eighteenth*, any surplus to the Issuer.

### 9.3 Principal Priority of Payments

Unless previously redeemed in full, the Notes are subject to mandatory redemption in part pursuant to Condition 6(b) of the Notes on each Note Interest Payment Date by applying an amount equal to the Available Principal Amounts to the Notes as follows (the "**Principal Priority of Payments**"):

- (a) *firstly, pro rata* in or towards repayment of any principal of the Class A Notes until the Class A Notes have been redeemed in full;
- (b) *second, pro rata* in or towards repayment of any principal of the Class B Notes until the Class B Notes have been redeemed in full;
- (c) *third, pro rata* in or towards repayment of any principal of the Class C Notes until the Class C Notes have been redeemed in full;
- (d) *fourth, pro rata* in or towards repayment of any principal of the Class D Notes until the Class D Notes have been redeemed in full; and
- (e) *fifth, pro rata* in or towards repayment of any principal of the Class E Notes.

### 9.4 On the date on which the Notes are redeemed in full, any amount standing to the credit of the Issuer Principal Account following the redemption of the Notes in full shall be transferred to the

Issuer Income Account for payment in accordance with the Income Priority of Payments or, if applicable, the Post-Acceleration Priority of Payments.

## **10. Release of Security, Retransfer of the Mortgage**

- 10.1 Upon the full and final discharge of the Issuer Secured Obligations and the Trustee Claim and to the extent the Security has not been previously released pursuant to this Agreement, and in particular pursuant to Clause 10.2, the Trusted Parties shall, at the Issuer's cost and expense, promptly release and, to the extent applicable, transfer to the Issuer or to the Issuer's order the Issuer Security transferred to them under this Agreement, under the Mortgage Assignment and the other Issuer Security Documents.
- 10.2 With respect to the Senior Loan, the Trusted Parties shall, upon the date on which all obligations under, and in relation to, the Senior Loan have been finally and unconditionally discharged in full (each a "**Discharge Date**"), transfer the relevant non-accessory security rights to the Issuer (or to its order) and shall do all steps necessary to effect such retransfer.. The costs of any such transfer shall be borne by the Trustee and/or the Mortgagee (for the avoidance of doubt, subject to Clause 28) and shall constitute an expense to be reimbursed pursuant to item (a) of the relevant Priority of Payments.
- 10.3 Upon the discharge of all or any part of the Issuer Secured Obligations and the Trustee Claim any accessory security rights will, in the amount being discharged, cease to exist by operation of law.

## **11. Representations of the Issuer with Respect to Issuer Security, Covenants**

- 11.1 The Issuer hereby represents, covenants and warrants with the Trustee by way of an independent guarantee undertaking (*selbständiges Garantieverprechen*) according to Section 311 of the German Civil Code (*Bürgerliches Gesetzbuch*) that it has (and will have, insofar as future rights and claims are concerned) full and unaffected title to the Issuer Security and any related security thereto which is assigned or pledged hereby (for the avoidance of doubt, excluding the Mortgage) or pursuant to the other Issuer Security Documents and that such Issuer Security and such related security is (and will be insofar as future rights and claims are concerned) free and clear from any encumbrances and adverse rights and claims of any third parties, always subject only to the rights and encumbrances created under this Agreement and the other Issuer Security Documents.
- 11.2 The Issuer shall be liable (without prejudice to Clause 46 (*Conditions Precedent*)) to pay damages (*Schadenersatz wegen Nichterfüllung*) in the event that any Issuer Security purported to be transferred for security purposes in accordance with the Issuer Security Documents proves to be invalid or if the transfer itself proves to be invalid.
- 11.3 The Issuer hereby covenants with the Trustee to notify the Trustee of the issue of any Notes within 10 Note Business Days from the date of issue thereof by way of notice in substantially the form set out in Schedule 1(*Form of Identification Notice*).

## **12. Representations and Warranties of the Trusted Parties**

- 12.1 Each Trusted Party hereby represents to the Issuer that it has the legal capacity and is in a position to perform its duties and obligations hereunder in accordance with the provisions of this Agreement and the other Transaction Documents to which it is a party and that, at the time of concluding this Agreement, a reason for terminating this Agreement pursuant to Clause 30 (*Resignation*) or Clause 31 (*Replacement of the Trusted Parties*) has neither occurred nor, to the best of its knowledge, is foreseeable.
- 12.2 It is hereby agreed (without prejudice to the other provisions of this Agreement, and in particular Clause 31 (*Replacement of the Trusted Parties*) and Clause 32.1 (*Transfer of Issuer Security*) hereof) that, in the event that any grounds for terminating this Agreement pursuant to Clause 30 (*Resignation*) or Clause 31 (*Replacement of the Trustee*) exist or come into existence, or if a Trusted Party does not possess any authorisation or licence which is required for the performance of its duties and obligations hereunder, the respective Trusted

Party shall, without undue delay remedy any such grounds, use reasonable endeavours to obtain such authorisations and licences without undue delay, and any other obligations of the respective Trusted Party and the other provisions of this Agreement shall not be affected by the respective Trusted Party failing to remedy such grounds or to have obtained such authorisations or licences.

### **13. Receipt and Custody of Documents, Notices**

13.1 The Trusted Parties shall each take delivery of and keep in safe custody the documents which are delivered to it under the Transaction Documents and shall:

- (a) keep such documents for one year after the termination of this Agreement; or
- (b) forward the documents to the New Trusted Party if a Trusted Party is replaced in accordance with Clause 31 (*Replacement of the Trusted Party*) and Clause 32 (*Transfer of Issuer Security*) hereof.

13.2 In the event that a Trusted Party becomes aware of any variations in writing of the Transaction Documents, it shall immediately give notice thereof to the Rating Agencies.

### **14. Consent of the Trustee**

If the Issuer requests that the Trustee grants its consent pursuant to Clause 37 (*Actions of the Issuer requiring Consent*) hereof, the Trustee may grant or withhold the requested consent at its discretion taking into account what the Trustee believes to be the interests of the Issuer Secured Creditors and whether the Rating Agencies have confirmed that such action would not negatively affect or result in a downgrading or withdrawal of the rating of any Note.

### **15. Breach of Obligations by the Issuer**

15.1 If the Trustee in the course of its activities obtains knowledge that the existence or the value of the Issuer Security is at risk due to any failure of the Issuer to properly discharge its obligations under this Agreement or the other Transaction Documents to which it is a party, or, in case the Mortgagee has obtained such knowledge, the Trustee has been informed by the Mortgagee of such knowledge, which shall be performed by the Mortgagee without undue delay, the Trustee shall, at its discretion, take or initiate all actions which in the opinion of the Trustee are desirable or expedient to avert such risk. To the extent that the Issuer, in the opinion of the Trustee, does not duly discharge its obligations pursuant to Clause 32 (*Replacement of the Trusted Parties*) in respect of the Issuer Security, the Trustee shall in particular be authorised and obliged to exercise all rights arising under the relevant Transaction Documents on behalf of the Issuer.

15.2 The Trustee shall only be obliged to intervene in accordance with Clause 15.1 if, and to the extent that, it is satisfied that itself and the Mortgagee will be fully indemnified (either by reimbursement of costs, its ranking under the relevant Priority of Payments or in any other way it deems appropriate) against all costs and expenses resulting from its activities (including fees for retaining counsel, banks, auditors or other experts as well as the expenses of retaining third parties to perform certain duties) and against all liabilities (except for liabilities which arise from its own negligence), obligations and attempts to bring any action in or outside court. Clause 33 (*Standard of Care for Liability*) shall remain unaffected.

15.3 Notwithstanding Clause 15.1, the Trustee and the Mortgagee shall have no obligation and shall not be liable to ensure the adequacy, perfection or preservation of the Issuer Security or the value thereof.

### **16. Further Obligations**

16.1 The Trustee and the Mortgagee shall perform the tasks and obligations under the other Transaction Documents to which they are a party in accordance with this Agreement.



16.2 The Trustee shall, unless otherwise provided for under this Agreement, decide on any consents or approvals to be given by it pursuant to the other Transaction Documents in its reasonable discretion in accordance with this Agreement (in particular Clause 34 (*General*) hereof).

#### 17. Power of Attorney

The Issuer hereby grants the Trustee power of attorney, waiving the restrictions of Section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*) and any similar restrictions under the laws of any other countries, with the right to grant substitute power of attorney, to act in the name of the Issuer with respect to all rights of the Issuer arising under the Transaction Documents to which it is a party (except for the rights *vis-à-vis* the Trustee). Such power of attorney shall be irrevocable. It shall expire as soon as a New Trustee has been appointed pursuant to Clause 30 (*Resignation*) and Clause 31 (*Replacement of the Trusted Parties*) and the Issuer has issued a power of attorney to such New Trustee having the same contents as the power of attorney previously granted in accordance with the provisions of this Clause 17. The Trustee shall only act under this power of attorney in relation to the exercise of its rights and obligations under this Agreement.

#### 18. Enforcement of Security

##### 18.1 Note Event of Default

The Issuer Security may be subject to enforcement upon the occurrence of a Note Event of Default. The Trustee shall promptly, upon obtaining knowledge of a Note Event of Default, give notice thereof to the Noteholders and the Rating Agencies. The Trustee shall be entitled to assume, in the absence of notice provided to it by another party, that no Note Event of Default has occurred and is continuing.

##### 18.2 Enforcement of Issuer Security

Upon becoming aware of the occurrence of a Note Event of Default, the Trustee:

- (a) may deliver an acceleration notice (the "**Acceleration Notice**") to the Issuer specifying the occurrence of the relevant Note Event of Default and, if applicable, the date determined by the Trustee as being the date on which such Note Event of Default first occurred and enforce or cause enforcement of the Issuer Security in a manner determined at its reasonable discretion; or
- (b) shall deliver an Acceleration Notice to the Issuer specifying the occurrence of the relevant Note Event of Default and, if applicable, the date determined by the Trustee as being the date on which such Note Event of Default first occurred and enforce or cause enforcement of the Issuer Security following receipt of written instructions by (i) the holders of at least 25 per cent. in the aggregate Principal Amount Outstanding of the most Senior Class of the Notes then outstanding or (ii) the holders of at least 25 per cent. of the Notes of each Class calculated on a Class by Class basis (the "**Instructing Majority**").

In the event that the Trustee fails, after having been instructed in accordance with paragraph (b) above, to deliver an Acceleration Notice to the Issuer or otherwise fails to enforce the Issuer Security (in each case, within a reasonable period of time following notice of such failure by the Instructing Majority) the Instructing Majority shall be entitled to deliver an Acceleration Notice to the Issuer and to enforce the Issuer Security in accordance with this Agreement and the other Issuer Security Documents. No Issuer Secured Creditor is entitled to require the Trustee to take any action or proceedings under or in relation to this Agreement and the other Issuer Security Documents or to exercise any of the rights or powers of discretion conferred on the Trustee by this Agreement and the other Issuer Security Documents.

## 19. Payments upon Occurrence of a Note Event of Default

Upon the occurrence of a Note Event of Default:

- (a) the Issuer Security may be exercised, collected, claimed and enforced exclusively by the Trustee; it shall be at the sole discretion of the Trustee how such enforcement shall be effected. The Mortgagee undertakes to perform any advise given pursuant to this Agreement by the Trustee with respect to the enforcement of the Mortgage;
- (b) the Trustee shall deposit the proceeds of any enforcement which it receives in any of the Issuer Accounts, or, in the event that the Trustee has opened an operating account in its own name, such account. The Mortgagee shall deposit such proceeds to the Issuer Accounts, or in the event that the Trustee has opened an operating account in its own name, to such account, at the direction of the Trustee;
- (c) payments on the obligations of the Issuer may not be made as long as, in the opinion of the Trustee, there is a risk that such payment will jeopardise the fulfilment of any later maturing obligation of the Issuer ranking with senior priority pursuant to and in accordance with the Post-Acceleration Priority of Payments, as applicable;
- (d) the Trustee shall make payments out of the proceeds of any enforcement of Issuer Security in accordance with Clause 22 (*Post-Acceleration Priority of Payments*); and
- (e) after all Issuer Secured Obligations have been satisfied in full, the Trustee shall pay out any remaining amounts to the Issuer.

## 20. Continuing Duties

Without affecting general applicable law with respect to any continuing effect of any other provisions of this Agreement, it is hereby agreed that Clauses 13 to 17 shall continue to apply after the occurrence of a Note Event of Default.

## 21. Issuer Accounts

- 21.1 The Issuer Accounts of the Issuer set up and maintained pursuant to the Account Bank Agreement, the Liquidity Agreement and this Agreement shall be used for receipt of amounts relating to the Transaction Documents and for the fulfilment of the payment obligations of the Issuer.
- 21.2 The Issuer shall ensure that all payments made to the Issuer be made by way of a bank transfer to or deposit in the Issuer Accounts. Should any amounts payable to the Issuer be paid in any way other than by deposit or bank transfer to the Issuer Accounts, the Issuer shall promptly credit such amounts to the Issuer Accounts. Clause 9 (*Pre-Acceleration Priority of Payments*) and Clause 22 (*Post-Acceleration Priority of Payments*) shall remain unaffected.
- 21.3 The Issuer shall not open any new bank account in addition to or as a replacement of any Issuer Account or the Issuer Capital Proceeds Account, unless it has pledged any and all rights relating thereto to the Trustee in accordance with this Agreement, and only after having obtained the consent of the Trustee in accordance with this Agreement. Upon notification to the Servicer by the Trustee in respect of the occurrence a Note Event of Default, the Trustee shall be entitled to exercise the rights of the Issuer under the Servicing Agreement assigned to the Trustee in accordance with this Agreement, including, without limitation, the right to give instructions to the Servicer pursuant to the Servicing Agreement.

## 22. Post-Acceleration Priority of Payments

- 22.1 Following acceleration of the Notes, the Trustee will be required to apply all funds received or recovered by it in accordance with the following order of priority (the "**Post-Acceleration Priority of Payments**") (in each case, only if and to the extent that the payments and provisions of a higher priority have been made in full):

- (a) *firstly*, in or towards payment, *pro rata* and *pari passu*, of any costs, expenses, fees, remuneration and indemnity payments (if any) and any other amounts payable by the Issuer to the Trusted Parties and any other person appointed by it under the Issuer Trust Agreement and/or any Transaction Document to which the Trustee or the Mortgagee is a party (including, but not limited to, the appointment of a receiver under the Issuer Deed of Charge and Assignment);
- (b) *second*, in or towards payment, *pro rata* and *pari passu*, of any amounts due and payable by the Issuer to the Paying Agents and the Agent Bank in respect of amounts properly paid by such persons to the Noteholders and not paid by the Issuer under the Agency Agreement together with any other amounts due to the Paying Agents or the Agent Bank pursuant to the Agency Agreement;
- (c) *third*, in or towards payment, *pro rata* and *pari passu*, of any amounts due and payable by the Issuer to the Servicer in respect of the Servicing Fee and any other amounts due to the Servicer pursuant to the Servicing Agreement (including any substitute servicer appointed in accordance therewith) and the Special Servicer in respect of the Special Servicing Fee and any other amounts due to the Special Servicer pursuant to the Servicing Agreement (including any substitute special servicer appointed in accordance therewith) (other than any amounts described in paragraph (r) below);
- (d) *fourth*, in or towards payment, *pro rata* and *pari passu*, of any amounts due and payable by the Issuer to the Corporate Services Provider under the Corporate Services Agreement and the Account Bank under the Account Bank Agreement;
- (e) *fifth*, in or towards payment of any amounts due and payable by the Issuer to the Liquidity Bank under and in accordance with the Liquidity Facility Agreement (other than any Liquidity Subordinated Amounts);
- (f) *sixth*, in or towards payment of any amounts due and payable by the Issuer to the Issuer Swap Counterparty in accordance with the Issuer Swap Agreement (other than the Subordinated Swap Amounts);
- (g) *seventh*, *pro rata* in or towards payment of interest due and interest overdue on the Class A Notes;
- (h) *eighth*, *pro rata* in or towards payment of all amounts of principal due or overdue on the Class A Notes and all other amounts (excluding interest) due in respect of the Class A Notes;
- (i) *ninth*, *pro rata* in or towards payment of interest due and interest overdue on the Class B Notes;
- (j) *tenth*, *pro rata* in or towards payment of all amounts of principal due or overdue on the Class B Notes and all other amounts (excluding interest) due in respect of the Class B Notes;
- (k) *eleventh*, *pro rata* in or towards payment of interest due and interest overdue on the Class C Notes;
- (l) *twelfth*, *pro rata* in or towards payment of all amounts of principal due or overdue on the Class C Notes and all other amounts (excluding interest) due in respect of the Class C Notes;
- (m) *thirteenth*, *pro rata* in or towards payment of interest due and interest overdue on the Class D Notes;
- (n) *fourteenth*, *pro rata* in or towards payment of all amounts of principal due or overdue on the Class D Notes and all other amounts (excluding interest) due in respect of the Class D Notes;

- (o) *fifteenth, pro rata* in or towards payment of interest due and interest overdue on the Class E Notes;
- (p) *sixteenth, pro rata* in or towards payment of all amounts of principal due or overdue on the Class E Notes and all other amounts (excluding interest) due in respect of the Class E Notes;
- (q) *seventeenth*, in or towards payment of any Liquidity Subordinated Amounts;
- (r) *eighteenth*, in or towards payment of any Subordinated Swap Amounts;
- (s) *nineteenth*, in or towards payment of any amounts payable by the Issuer to the Special Servicer in respect of the Liquidation Fee or the Workout Fee; and
- (t) *twentieth*, in or towards payment of any Deferred Purchase Price payable to the Originator.

Upon enforcement of the Issuer Security, the Trustee shall have recourse only to the rights of the Issuer in respect of the Senior Loan and the Related Loan Security and all other assets constituting the Issuer Security.

- 22.2 After the service of an Acceleration Notice, all amounts standing to the credit of the Liquidity Stand-by Account and those Eligible Investments purchased from monies standing to the credit of the Liquidity Stand-by Account shall be applied in or towards repayment of any Liquidity Stand-by Drawings under the Liquidity Facility Agreement. Amounts standing to the credit of the Liquidity Stand-by Account will not be available to the Issuer or any of the Issuer Secured Creditors (other than the Liquidity Bank) at any time after the service of an Acceleration Notice.

### **23. Relation to Third Parties**

- 23.1 In relation to the Issuer Security, the Post-Acceleration Priority of Payments shall, subject to applicable law, be binding on all creditors of the Issuer, provided that in relation to any other assets of the Issuer, the Post-Acceleration Priority of Payments shall only apply internally between the Issuer, the Trusted Parties and the other Issuer Secured Creditors. In third party relationships, the rights of the Trusted Parties and the other Issuer Secured Creditors shall have equal rank to those of third party creditors of the Issuer.
- 23.2 The Post-Acceleration Priority of Payments shall also apply if the Secured Obligations are transferred to third parties by way of assignment, subrogation into a contract or otherwise. Prior to such transfer, such third parties shall accede to the Issuer Intercreditor Agreement.

### **24. Retaining Third Parties**

- 24.1 In individual instances, the Trusted Parties may, at market prices (if appropriate, after obtaining several offers), retain the services of a suitable law firm, accounting firm or credit institution or seek information and advice from legal counsel, financial consultants, banks and other experts in Germany, or elsewhere (and irrespective of whether such persons are already retained by the Issuer, the Trusted Parties or any other Issuer Secured Creditor, or any other person involved in the transactions in connection with the Transaction Documents), to assist it in performing the duties assigned to it under this Agreement, by delegating the entire or partial performance of the following duties:
- (a) enforcement of the Issuer Security pursuant to the Issuer Security Documents;
  - (b) the settlement of payments under Clause 19 (*Payments upon Occurrence of a Note Event of Default*) and ;
  - (c) any other duty of the Trusted Parties under this Agreement if the delegation of the entire or partial performance of such duty is not, in the discretion of the Trustee,

subject to Clause 3.1, materially prejudicial to the interests of the Issuer Secured Creditors.

Any fees, costs, charges and expenses, indemnity claims and any other amounts payable by the Trusted Parties to such third parties or advisers shall be reimbursed by the Issuer.

- 24.2 Subject to Clause 33 (*Standard of Care for Liability*), the Trusted Parties may rely on such third parties and any information and advice obtained therefrom without having to make its own investigations. The Trusted Parties shall not be liable for any wilful misconduct or negligence of such persons (*Vorsatz und Fahrlässigkeit*).
- 24.3 The Trusted Parties shall be liable for any damages or losses caused by it relying on such third parties or acting in reliance on information or advice of such advisers only in accordance with Clause 33 (*Standard of Care for Liability*).
- 24.4 The Trusted Parties may sub-contract or delegate the performance of some (but not all) of any of the obligations other than those referred to in Clause 24.1 provided that the respective Trusted Party shall not thereby be released or discharged from and shall remain responsible for the performance of such obligations and the performance or non-performance, and the manner of performance, of any sub-contractor or delegate of any of such delegated obligations shall not affect the respective Trusted Party's obligations. Any breach in the performance of the delegated obligations by such sub-contractor or delegate shall not be treated as a breach of obligation by the respective Trusted Party pursuant to Section 278 of the German Civil Code (*Bürgerliches Gesetzbuch*); however, the respective Trusted Party shall remain liable for diligently selecting and supervising such sub-contractors and delegates in accordance with Clause 33 (*Standard of Care for Liability*) hereof.
- 24.5 The respective Trusted Party shall promptly notify in writing the Rating Agencies of every retainer of a third party made pursuant to this Clause 24 (*Retaining Third Parties*) (such notice to include the name of the third party).

## **25. Representations and Warranties of the Issuer**

The Issuer hereby represents and warrants by way of an independent guarantee undertaking (*selbständiges Garantieverprechen*) according to Section 311 of the German Civil Code (*Bürgerliches Gesetzbuch*) that, at the date hereof:

- (a) it is a company duly incorporated under the laws of Ireland with power to enter into this Agreement and each other document and agreement relating hereto, to issue the Notes and to exercise its rights and perform its obligations hereunder and thereunder and all corporate and other action required to authorise the execution of and the performance by the Issuer of its obligations hereunder and thereunder has been duly taken;
- (b) it is a company which is managed and administered from Ireland, it maintains its actual place of business in Ireland and takes its decisions and board resolutions in Ireland; it is a tax resident of Ireland and it has no fixed place of business elsewhere;
- (c) under the laws of Ireland in force at the date hereof, it will not be required to make any deduction or withholding from any payment it may make under this Agreement or any other document or agreement relating thereto to which it is expressed to be a party;
- (d) in any proceedings taken in Germany in relation to all or any of this Agreement and each other document and agreement relating hereto it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process;
- (e) the choice of the laws of Germany or any other relevant law as the governing law of this Agreement and any such other documents and agreements relating hereto, and any judgment obtained in Germany or in any other relevant country will be recognised in Ireland;

- (f) all acts, conditions and things required to be done, fulfilled and performed in order (i) to enable it lawfully to enter into, exercise its rights under and perform and comply with the obligations expressed to be assumed by it in this Agreement and each other document and agreement relating hereto and (ii) to ensure that the obligations expressed to be assumed by it herein and therein are legal, valid and binding have been done, fulfilled and performed;
- (g) under the laws of Ireland in force at the date hereof, it is not necessary that any of this Agreement or any other document or agreement relating hereto (other than the Issuer Security Documents, details of which need to be filed with the Irish Companies Registration) be filed, recorded or enrolled with any court or other authority in Ireland or that any stamp, registration or similar tax be paid on or in relation to any of this Agreement and each other document and agreement relating hereto;
- (h) under the laws of Ireland in force at the date hereof the obligations expressed to be assumed by it in this Agreement and each other document and agreement relating hereto are (assuming that such obligations are legal and valid under German law or any other relevant governing law) legal and valid obligations binding on it in accordance with the terms hereof and thereof save as the same may be limited by the bankruptcy, insolvency, examinership or other similar laws of general application;
- (i) it has not taken any corporate action nor have any other steps been taken or legal proceedings been started or (to the best of its knowledge and belief) threatened against it for its winding-up, dissolution or re-organisation or for the appointment of an insolvency administrator, liquidator, examiner, sequestrator or similar officer of it or of any or all of its assets or revenues and it is not unable to pay its debts when they fall due;
- (j) no action or administrative proceeding of or before any court or agency has been started or (to the best of its knowledge and belief) threatened as to which, in its judgment there is a likelihood of an adverse judgment which would have a material adverse effect on its business or financial condition or on its ability to perform its obligations under any of this Agreement or the other documents and agreements relating hereto;
- (k) save for the Issuer Security Documents it has not created any encumbrance over all or any of its present or future revenues or assets and the execution of this Agreement and each other document and agreement relating hereto and the exercise by it of its rights and performance of its obligations hereunder and thereunder will not result in the existence of nor oblige it to create any encumbrance over all or any of its present or future revenues or assets except as provided therein;
- (l) the execution of this Agreement and each other document and agreement relating hereto and the exercise by it of its rights and performance of its obligations hereunder and thereunder do not constitute and will not result in any breach of any agreement or treaty to which it is a party or which is binding upon it;
- (m) the execution of this Agreement and each other document and agreement relating hereto constitute, and the exercise of its rights and performance of its obligations hereunder and thereunder will constitute, private and commercial acts done and performed for private and commercial purposes;
- (n) no Note Event of Default has occurred and is continuing; and
- (o) its obligations hereunder were entered into on arm's length commercial terms.

**26. Fees**

The Issuer shall pay each of the Trusted Party a fee as separately agreed upon between the Issuer and the respective Trusted Party in a fee letter dated on or about the date hereof.

## **27. Reimbursement of Expenses**

In addition to the remuneration of the respective Trusted Party, the Issuer shall pay all reasonable out-of-pocket costs, charges and expenses (including, without limitation, legal and travelling expenses and fees and expenses of its agents, delegates and advisors) which the respective Trusted Party properly incurs in relation to the negotiation, preparation and execution of this Agreement and the other Transaction Documents, any action taken by it under or in relation to this Agreement or any of the other Transaction Documents or any amendment, renewals or waivers made in accordance with the Transaction Documents in respect hereof.

## **28. Right to Indemnification**

28.1 The Issuer shall indemnify the respective Trusted Party in respect of all proceedings (including claims and liabilities in respect of taxes other than on the respective Trusted Party's own overall net profits, income or gains and subject to Clause 29.2), losses, claims and demands and all costs, charges, expenses, and liabilities to which the respective Trusted Party (or any third party pursuant to Clause 24 (*Retaining Third Parties*)) may be or become liable or which may be incurred by the respective Trusted Party (or any such third party) in respect of anything done or omitted in relation to this Agreement and any of the other Transaction Documents, unless such costs and expenses are incurred by the respective Trusted Party due to a breach of the duty of care provided for in Clause 33 (*Standard of Care for Liability*).

For the avoidance of doubt, it is hereby agreed that any indemnities shall be owed by the Issuer and that each Trusted Party has no right of indemnification against the Issuer Secured Creditors hereunder unless it has received instruction from the Instructing Majority in accordance with Clause 18.2.

28.2 A Trusted Party shall not be bound to take any action under or in connection with this Agreement or any other Transaction Document or any document executed pursuant to any of them including, without limitation, forming any opinion or employing any agent, unless in all cases, it is fully indemnified (including under the relevant Priority of Payments), and is satisfied that the Issuer will be able to honour any indemnity in accordance with the relevant Priority of Payments, against all liabilities, proceedings, claims and demands to which it may be or become liable and all costs, charges and expenses which may be incurred by it in connection with them for which purpose the respective Trusted Party may require payment in advance of such liabilities being incurred of an amount which it considers (without prejudice to any further demand) sufficient to indemnify it or security satisfactory to it.

28.3 Each Trusted Party shall be entitled to enter into any commercial transaction with any party to any Transaction Document, including, without limitation, the Issuer, without having to account for any profit resulting from such commercial transaction.

## **29. Taxes**

29.1 The Issuer shall bear all stamp duties, transfer taxes and other similar taxes, duties or charges which are imposed on or in connection with (i) the creation of, holding of, or enforcement of the Issuer Security, (ii) any action taken by each Trusted Party pursuant to the terms and conditions of the Notes or the other Transaction Documents, and (iii) the issue of the Notes or the conclusion of Transaction Documents.

29.2 All payments of fees and reimbursements of expenses to the respective Trusted Party shall include any turnover taxes, value added taxes or similar taxes, other than taxes on the Trusted Party's net profits, overall income or gains, which are imposed in the future on the services of the Trustee.

## **30. Resignation**

30.1 Resignation

Each Trusted Party may resign from its office as Trustee or as Mortgagee, as applicable at any time by giving two months prior written notice, provided that upon or prior to the last Note Business Day of such notice period

- (i) with respect to the Trustee, a reputable accounting firm or financial institution which is experienced in the business of trusteeship in the context of securitisations of assets originated in Germany and which has obtained any required authorisations and licences, or
- (ii) with respect to the Mortgagee, a credit institution qualifying as credit institution pursuant to Art. 1 of EC Directive 2000/12/EC and which has obtained any required authorisations and licences

(for the purposes of this Clause, in each case an "**eligible institution**") has been appointed by the Issuer as successor (the "**New Trusted Party**") and such appointee assumes all rights and obligations arising from this Agreement and the other Issuer Security Documents and which has been furnished with all authorities and powers that have been granted to the Trustee or the Mortgagee, as relevant. The respective Trusted Party shall promptly notify in advance and in writing the Issuer and the Rating Agencies of its intention of resignation. The Issuer shall, upon receipt of the written notice of resignation referred to in the first sentence of this Clause 30.1, promptly appoint an eligible institution as New Trusted Party. The Trustee or the Mortgagee, as relevant, shall have the right (but no obligation) to nominate a New Trusted Party for appointment by the Issuer. The Issuer shall have the right to veto any nomination of a New Trusted Party by the resigning Trusted Party if such New Trusted Party is not an eligible institution or if any other eligible institution has been appointed by the Issuer to be the New Trusted Party and has accepted such appointment. The proposed appointment of the New Trusted Party shall further be subject to Clause 30.2 (*Effects of Resignation*) and Clause 32.4 (*Notification to and Confirmation by the Rating Agencies; Publications*) below.

### 30.2 Effects of Resignation

Any termination of the appointment of a Trusted Party shall not become effective unless (i) the Issuer has been liquidated and the proceeds of liquidation distributed to the Noteholders and the other Issuer Secured Creditors in accordance with this Agreement or, if earlier, no obligations under the Notes and the other Secured Obligations are outstanding, or (ii) a respective New Trusted Party has been appointed and has accepted such trusteeship (subject to Clause 32.4 (*Notification to and Confirmation by the Rating Agencies; Publications*)).

### 30.3 Continuation of Rights and Obligations

Notwithstanding a termination pursuant to Clause 30.1 (*Resignation*), the rights and obligations of the respective Trusted Party shall continue until the appointment of the respective New Trusted Party has become effective and the assets and rights have been assigned to it pursuant to Clause 32.1 (*Transfer of Issuer Security*). None of the provisions of this Clause 30 (*Resignation*) shall affect the right of the respective Trusted Party to resign from its office for good cause (*aus wichtigem Grund*) with immediate effect.

## 31. Replacement of the Trusted Parties

The Issuer shall be authorised and obliged to replace the Trustee with a reputable accounting firm or financial institution (which is experienced in the business of transaction trusteeship in securitisation transactions and which has obtained any required authorisations and licences) or the Mortgagee with a credit institution qualifying as credit institution pursuant to Art. 1 of EC Directive 2000/12/EC and which has obtained any required authorisations and licences, if (a) the Issuer has been so instructed in writing by (i) the Instructing Majority or (ii) if no Notes remain outstanding, any Issuer Secured Creditor (other than any Noteholder) or Issuer Secured Creditors (other than any Noteholders) representing at least twenty five (25) per cent. of the amount outstanding to all Issuer Secured Creditors (other than any Noteholders), unless Issuer Secured Creditors representing at least fifty (50) per cent. of all Issuer Secured Creditors (other than any Noteholders) to which any amounts are owed instruct the Issuer not to replace the respective Trusted Party or (b) the respective Trusted Party fails to comply with



its obligations under Clause 12.2. Any replacement of a Trusted Party shall be notified by the Issuer to the Rating Agencies by giving not less than 30 calendar days notice.

## **32. Transfer of Issuer Security**

### **32.1 Transfer of Issuer Security**

In the case of a replacement of a Trusted Party pursuant to Clause 30 (*Resignation*) or Clause 31 (*Replacement of the Trustee*), the respective Trusted Party shall forthwith transfer its Issuer Security and other assets and other rights it holds as fiduciary (*Treuhänder*) or otherwise under any Issuer Security Document, as well as its Trustee Claim under Clause 4 and the Pledges to the New Trustee and/or the New Mortgagee, as applicable. Without prejudice to this obligation, the Issuer shall hereby be irrevocably authorised to effect such transfer on behalf of the respective Trusted Party as set out in the first sentence and is for that purpose exempted from the restrictions under Section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*) and any similar provisions contained in the laws of any other country.

### **32.2 Assumption of Obligations**

In the event of a replacement of a Trusted Party pursuant to Clause 30 (*Resignation*) or Clause 31 (*Replacement of the Trustee*), the respective Trusted Party shall reach an agreement with the New Trusted Party that the New Trusted Party assumes the obligations of the Trusted Party's obligations under each Issuer Security Document.

### **32.3 Costs**

The costs incurred in connection with replacing a Trusted Party pursuant to Clause 30 (*Resignation*) or Clause 31 (*Replacement of the Trustee*) shall be borne by the Issuer. If such replacement is due to the conduct of the Trusted Party constituting good cause (*wichtiger Grund*) for termination, the Issuer shall be entitled, without prejudice to any additional rights, to claim damages from the respective Trusted Party in the amount of such costs.

### **32.4 Notification to and Confirmation by the Rating Agencies; Publications**

The appointment of a New Trusted Party in accordance with Clause 30 (*Resignation*) or Clause 31 (*Replacement of the Trustee*) shall be notified by the Issuer to the Rating Agencies and shall be subject to the confirmation from each Rating Agency that such appointment would not result in the then current rating of the Notes being downgraded or withdrawn. Following such confirmation from each Rating Agency, the appointment of the New Trusted Party shall take effect and shall be published without delay in accordance with the Conditions of the Notes or, if this is not possible, in any other appropriate way.

### **32.5 Accounting**

The Trustee shall be obliged to account to the New Trustee for its activities under or with respect to each Issuer Security Document.

## **33. Standard of Care for Liability**

Each Trusted Party shall be liable for any breach of its obligations under this Agreement only if it fails to meet the standard of care of a prudent businessman (*Sorgfalt eines ordentlichen Kaufmanns*).

## **34. General**

### **34.1 A Trusted Party shall not be liable for (i) any action or failure to act of the Issuer or of other parties to the Transaction Documents, (ii) the Transaction Documents (including any security interest created thereunder) not being legal, valid, binding or enforceable, or for the fairness of the provisions of the Transaction Documents and (iii) a loss of documents related to the Issuer Security not attributable to the negligence of the respective Trusted Party.**

- 34.2 Each Trusted Party may call for and shall be at liberty to accept a certificate signed by any two directors of the Issuer as sufficient evidence of any fact or matter or the expediency of any transaction or thing, and to treat such a certificate to the effect that any particular dealing or transaction or step or thing is, in the opinion of the persons so certifying, expedient or proper as sufficient evidence that it is expedient or proper, and each Trusted Party shall not be bound in any such case to call for further evidence or be responsible for any loss or liability that may be caused by acting on any such certificate.
- 34.3 Each Trusted Party shall (save as otherwise expressly provided herein) as regards all the powers, authorities and discretions vested in it by or pursuant to any Transaction Document (including this Agreement) to which it is a party or conferred upon the respective Trusted Party by operation of law (the exercise of which, as between the respective Trusted Party and the Issuer Secured Creditors, shall be conclusive and binding on the Issuer Secured Creditors) have discretion as to the exercise or non-exercise thereof and, provided it shall not have acted in violation of its standard of care as set out in Clause 35 (*Undertakings of the Issuer in relation to the Issuer Security*), the respective Trusted Party shall not be responsible for any loss, costs, damages, expenses or inconvenience that may result from the exercise or non-exercise thereof.
- 34.4 The Trustee, as between itself and the Issuer Secured Creditors, shall have full power to determine all questions and doubts arising in relation to any of the provisions of any Transaction Document and every such determination, whether made upon a question actually raised or implied in the acts or proceedings of the Trustee, shall be conclusive and shall bind the Trustee, the Mortgagee and the Issuer Secured Creditors. In particular, the Trustee may determine whether or not any event described in this Agreement is, in its opinion, materially prejudicial to the interests of Issuer Secured Creditors and if the Trustee shall certify that any such event is, in its opinion, materially prejudicial, such certificate shall be conclusive and binding upon the Issuer and the relevant Issuer Secured Creditors.
- 34.5 The Trustee may determine whether or not a default in the performance by the Issuer of any obligation under the provisions of any Transaction Document is capable of remedy and, if the Trustee shall certify that any such default is, in its opinion, not capable of remedy, such certificate shall be conclusive and binding upon the Issuer and the Issuer Secured Creditors.
- 34.6 Any consent given by the Trustee for the purposes of any Transaction Document may be given on such terms and subject to such conditions (if any) as the Trustee thinks fit in its discretion and, notwithstanding anything to the contrary contained in any Transaction Document may be given retrospectively. If a consent or approval of the Trustee is not to be given pursuant to the Conditions, this Agreement or any other Transaction Document unless the Rating Agencies have confirmed that the relevant action subject of the consent or approval would not negatively affect or result in a downgrading or withdrawal of the then current rating of any Note, the Trustee shall seek such confirmation from the Rating Agencies without undue delay.
- 34.7 A Trusted Party shall not be responsible for recitals, statements, warranties or representations of any party (other than those relating to or provided by it) contained in any Transaction Document or other document entered into in connection therewith and may rely on the accuracy and correctness thereof (absent actual knowledge to the contrary) and shall not be responsible for the execution, legality, effectiveness, adequacy, genuineness, validity or enforceability or admissibility in evidence of any such agreement or other document or security thereby constituted or evidenced. Each Trusted Party may accept without enquiry, requisition or objection such title as the Issuer may have to the Issuer Security or any part thereof from time to time and shall not be bound to investigate or make any enquiry into the title of the Issuer to the Issuer Security or any part thereof from time to time.
- 34.8 A Trusted Party shall not be liable for any error of judgement made in good faith by any officer or employee of the Trusted Party assigned by it to administer its corporate trust matters unless such officer or employee has failed to observe the standard of care provided for in Clause 33 (*Standard of Care for Liability*).

- 34.9 No provision of this Agreement shall require a Trusted Party to do anything which may be illegal or contrary to applicable law or regulation or expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties, or in the exercise of any of its rights or powers or otherwise in connection with any Transaction Document (including, without limitation, forming any opinion or employing any legal, financial or other adviser), if it determines in its reasonable discretion that repayment of such funds or adequate indemnity against such risk or liability is not assured to it.
- 34.10 A Trusted Party shall not be responsible for the genuineness, validity, effectiveness or suitability of any Transaction Documents or any other documents entered into in connection therewith or any other document or any obligation or rights created or purported to be created thereby or pursuant thereto or any security or the priority thereof constituted or purported to be constituted thereby or pursuant thereto, nor shall it be responsible or liable to any person because of any invalidity of any provision of such documents or the unenforceability thereof, whether arising from statute, law or decisions of any court and (without prejudice to the generality of the foregoing) a Trusted Party shall not have any responsibility for or have any duty to make any investigation in respect of or in any way be liable whatsoever for:
- (a) the nature, status, creditworthiness or solvency of the Issuer or any other person or entity who has at any time provided any security or support whether by way of guarantee, charge or otherwise in respect of any advance made to the Issuer;
  - (b) the execution, legality, validity, adequacy, admissibility in evidence or enforceability of any Transaction Document or any other document entered into in connection therewith;
  - (c) the scope or accuracy of any representations, warranties or statements made by or on behalf of the Issuer or any other person or entity who has at any time provided any Transaction Document or in any document entered into in connection therewith;
  - (d) the performance or observance by the Issuer or any other person of any provisions or stipulations relating to Notes or contained in any other Transaction Document or in any document entered into in connection therewith or the fulfilment or satisfaction of any conditions contained therein or relating thereto or as to the existence or occurrence at any time of any default, event of default or similar event contained therein or any waiver or consent which has at any time been granted in relation to any of the foregoing;
  - (e) the existence, accuracy or sufficiency of any legal or other opinions, searches, reports, certificates, valuations or investigations delivered or obtained or required to be delivered or obtained at any time in connection with the Transaction Documents;
  - (f) the failure by the Issuer to obtain or comply with any licence, consent or other authority in connection with the Issuer Security or the Transaction Documents or the failure to effect or procure registration of or to give notice to any person in relation to or otherwise protect the security created or purported to be created by or pursuant to any of the Issuer Security or the Transaction Documents or other documents entered into in connection therewith; or
  - (g) any accounts, books, records or files maintained by the Issuer or any other person in respect of any of the Issuer Security or the Transaction Documents.
- 34.11 Each Trusted Party may, in the absence of actual knowledge to the contrary, assume without enquiry that the Issuer and each of the other parties to the Transaction Documents is duly performing and observing all of the provisions of those documents binding on or relating to it and that no event has happened which constitutes a Note Event of Default.
- 34.12 Each Trusted Party may rely on reports, other information engagement letter or other document from professional advisers or other experts whether or not such report, other information, engagement letter or other document entered into by the Trustee and the relevant

person in connection thereto contains any monetary or other limit as to the liability of the relevant professional adviser or expert.

34.13 Each Trusted Party may agree, if it becomes necessary or desirable in connection with this Agreement, on the conversion of any sum from one currency to another on such rate or rates, method and date for the determination of such rate of exchange, as the Trusted Party thinks fit in its discretion and any rate, method and date so determined shall be binding on the Issuer and the other parties to this Agreement.

34.14 For the avoidance of doubt, each Trusted Party shall be entitled to actively enter into any amalgamation, demerger, merger or corporate reconstruction (including in particular any German law accrual) or universal succession.

### **35. Undertakings of the Issuer in Relation to the Issuer Security**

The Issuer hereby undertakes *vis-à-vis* the Trusted Parties:

- (a) not to sell, transfer or otherwise dispose of the Issuer Security and to refrain from all actions and omissions to act (excluding, for the avoidance of doubt, the collection and enforcement of the Issuer Security in the ordinary course of business or otherwise dealing with the Issuer Security in accordance with the Transaction Documents) which may result in a significant (*wesentlichen*) decrease in the aggregate value or in a loss of the Issuer Security;
- (b) to promptly notify the Trustee in the event of becoming aware that the rights of the Trusted Parties in the Issuer Security are impaired or jeopardised by way of an attachment or other actions of third parties, by sending a copy of the attachment or transfer order or of any other document on which the enforcement claim of the third party is based and which it has received, as well as all further documents available to it which are required or useful to enable the Trusted Parties to file proceedings and take other actions in defence of its rights. In addition, the Issuer shall promptly inform the attachment creditor and other third parties in writing of the rights of the Trustee in the Issuer Security; and
- (c) to permit the Trusted Parties or its representatives to inspect its books and records at any time during usual business hours for purposes of verifying and enforcing the Issuer Security, to give any information necessary for such purpose, and to make the relevant records available for inspection.

### **36. Other Undertakings of the Issuer**

The Issuer undertakes:

- (a) to promptly notify each Trusted Party and the Rating Agencies in writing if circumstances occur which constitute a Note Event of Default;
- (b) to give each Trusted Party at any time such other information available to it which the respective Trusted Party may reasonably demand for the purpose of performing its duties under the Transaction Documents;
- (c) to send to each Trusted Party one copy of any balance sheet, any profit and loss accounts, any schedule on the origin and the allocation of funds, any report or notice or any other memorandum sent out by the Issuer to its shareholders either at the time of the mailing of those documents to the shareholders or as soon as possible thereafter;
- (d) to send or have sent to each Trusted Party a copy of any notice given to the Noteholders in accordance with the terms and conditions of the Notes immediately, or at the latest, on the day of the publication of such notice;

- (e) to ensure that the Principal Paying Agent, the Irish Paying Agent and the Servicer notify each Trusted Party and the Rating Agencies immediately if they do not receive the monies needed to discharge in full any obligation to pay or repay the full or partial principal or interest amounts due to the Noteholders and/ or the Notes on any Interest Payment Date;
- (f) to notify each Trusted Party of any written amendment to any Transaction Document under which rights of a Trusted Party arise and to which the Trusted Party is not a party;
- (g) to have always two (2) independent directors. For the purpose of this undertaking "**independent director**" means a duly appointed director of the Issuer who, at the time of the appointment is not, and has not been at any time during the preceding five (5) years (i) a direct or indirect legal or beneficial owner in the Issuer or any of its affiliates (excluding *de minimis* ownership interests), (ii) a creditor, supplier, employee, officer, director, family member, manager or contractor of such entity or its affiliates (in particular including the Originator, the Trustee, the Mortgagee, the Liquidity Bank or any other Issuer Secured Creditor other than the Corporate Services Provider, or (iii) a person who controls (whether directly or indirectly, or otherwise) the Issuer or its affiliates or any creditor, supplier, employee, officer, manager or contractor of the Issuer or its affiliates (excluding directorships in affiliates in the framework of corporate services for other special purpose entities);
- (h) at all times, to have accounts that are separate from any other party to the Transaction Documents;
- (i) not to commingle its assets with the assets of any other party to the Transaction Documents;
- (j) to conduct its business in its own name;
- (k) to comply with all applicable corporate requirements and the formalities required by its constitutional documents;
- (l) not to acquire any obligations of its shareholders;
- (m) to pay its debts out of own funds; and
- (n) not to enter into any profit and loss or domination agreements (*Beherrschungs- oder Gewinnabführungsverträge*).

### **37. Actions of the Issuer Requiring Consent**

So long as any part of the Notes remains outstanding, the Issuer shall not be entitled, without the prior written approval of the Trustee (such approval shall not be given unless the Rating Agencies have confirmed that such action would not negatively affect or result in a downgrading or withdrawal of the rating of any Note) or unless required by applicable law, to engage in any business or any other activities other than:

- (a) the performance of its obligations under the Notes and the other Transaction Documents to which it is a party and under any other agreements which have been entered into in connection with the issue of the Notes or the other Transaction Documents;
- (b) the enforcement of its rights;
- (c) the performance of any acts which are necessary or desirable in connection with (i) or (ii) above; and
- (d) the execution of all further documents and undertaking of all other actions, at any time and to the extent permitted by law, which, in the opinion of the Trustee, are necessary

or desirable having regard to the interests of the Noteholders in order to ensure that the terms and conditions of the Notes are always valid.

**38. Variations, Remedies and Waivers**

- 38.1 No variation of this Agreement shall be effective unless it is in writing, unless expressly provided otherwise. Waivers of this requirement as to form shall also be made in writing. Any requirement of a written form (*Schriftformerfordernis*) agreed between the parties to this Agreement shall not prevent the parties from making a reference to any other agreement or document which is not attached as such to this Agreement. The Issuer and the Trustee shall immediately inform the Rating Agencies in writing of any variation of this Agreement.
- 38.2 The terms of this Agreement may be changed, amended or otherwise modified without the consent of the Noteholders or any other person, provided that such change, amendment or modification shall not, as evidenced by a legal opinion of counsel from an international law firm of recognised standing appointed by the Issuer and delivered to the Trustee, materially and adversely affect the interests of the Trusted Parties, the Noteholders, the Liquidity Bank, the Agents or the Issuer Swap Counterparty and provided further that if any of the amendments relate to the amount, the currency or the timing of the cashflow received by the Issuer under the Senior Loan, the application of such cashflow by the Issuer, or the ranking of the Issuer Swap Counterparty in the relevant Priority of Payment, then the consent of the Issuer Swap Counterparty will be required. In addition, any amendment which materially and adversely affects the interests of the Issuer, the Trusted Parties, the Liquidity Bank, the Agents or the Issuer Swap Counterparty shall require the consent of the party that is materially and adversely affected.
- 38.3 Prior to the execution of any change, amendment or modification to this Agreement, each Trusted Party shall be entitled to receive and conclusively rely upon an opinion of counsel addressed to the Trusted Party stating that the execution of such change, amendment or modification is authorised or permitted by this Agreement and that all conditions precedent to the execution and delivery of such amendment have been satisfied.
- 38.4 No failure to exercise, nor any delay in exercising, on the part of any party hereto, any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy.
- 38.5 The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law or any other Transaction Document.

**39. Notices**

- 39.1 In writing

Any communication in connection with this Agreement shall be in writing and, unless otherwise stated, may be given in person, by post or by fax. Unless it is agreed to the contrary, any consent or agreement required under this Agreement must be given in writing.

- 39.2 Addresses

- (a) Except as provided below, the contact details of each party for all communications in connection with this Agreement are those notified by that party for this purpose to each Trusted Party on or before the date it becomes a party.
- (b) Any party may change its contact details by giving 5 Note Business Days' notice to each Trusted Party or (in the case of the Trusted Parties) to the other parties.
- (c) Where a party nominates a particular department or officer to receive a notice, a notice will not be effective if it fails to specify that department or officer.

### 39.3 Effectiveness

- (a) Except as provided below, any notice in connection with this Agreement shall be deemed to be given as follows:
  - (i) if delivered in person, at the time of the delivery;
  - (ii) if posted, 5 calendar days after being deposited in the post, postage prepaid, in a correctly addressed envelope; and
  - (iii) if by fax, when received in legible form.
- (b) A communication given under paragraph (a) above but received on a non-working day or after business hours in the place of receipt shall only be deemed to be given on the next working day in that place.
- (c) A communication to a Trusted Party shall only be effective on actual receipt by it.

### 40. Language

40.1 Any notice given in connection with this Agreement shall be in English.

40.2 Any other document provided in connection with this Agreement shall be:

- (a) in the English language; or
- (b) (unless the Trustee otherwise agrees) accompanied by a certified English translation. In this case, the English translation prevails unless the document is a statutory or other official document.

### 41. Entire Agreement

This Agreement sets out the entire agreement and understanding between the Parties in respect of the subject matter of the agreements contained in this Agreement.

### 42. Severability

If a provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction that shall not affect the legality, validity or enforceability of any other provision of this Agreement and the legality, validity or enforceability in other jurisdictions of that or of any other provision of this Agreement. Any illegal, invalid or unenforceable provision shall have the effect of a provision that would be valid, the purpose of which conforms to the first mentioned provision to such an extent that it must be assumed that such provision would have been included in this Agreement if the first mentioned provision had been omitted in view of its illegality, invalidity or unenforceability.

### 43. Counterparts

This Agreement may be executed in one or more counterparts.

### 44. No Liability and no Right to Petition and Limitation on Payments

44.1 No recourse under any obligation, covenant, or agreement of the Issuer contained in this agreement shall be held against any shareholder, officer, agent or director of the Issuer as such, by the enforcement of any obligation or by any proceeding, by virtue of any statute or otherwise, it being expressly agreed and understood that this Agreement is a corporate obligation of the Issuer and no liability shall attach to or be incurred by the shareholders, officers, agents or directors of the Issuer as such, or any of them, under or by reason of any of the obligations, covenants or agreements of the Issuer contained in this Agreement, or implied therefrom, and that any and all personal liability for breaches by the Issuer of any of such obligations, covenants or agreements, either at law or by statute or constitution, of every such

shareholder, officer, agent or director is hereby expressly waived by the other parties hereto as a condition of and consideration for the execution of this Agreement. The aforementioned limitations shall not release or restrict any liabilities that may arise in case of wilful misconduct of a shareholder, officer, agent or director of the Issuer.

- 44.2 Each party hereby agrees with the other parties that they shall not (otherwise than as contemplated in this Agreement), until the expiration of a period of one year and one day after all outstanding amounts under the last maturing Note issued by the Issuer have been paid:
- (a) take any corporate action or other steps or legal proceedings for the winding-up, dissolution or re-organisation or for the appointment of a receiver, administrator, administrative receiver, trustee in bankruptcy, liquidator, sequestrator or similar officer regarding some or all of the revenues and assets of the Issuer, or
  - (b) have any right to take any steps for the purpose of obtaining payment of any amounts payable to it under this Agreement by the Issuer and shall not until such time take any steps to recover any debt or liabilities of any nature whatsoever owing to it by the Issuer.
- 44.3 Notwithstanding any provision contained in any Issuer Security Document to the contrary, the Issuer shall not, and shall not be obligated to, pay any amount pursuant to this Issuer Trust Agreement unless the Issuer has received funds which may be used to make such payment in accordance with the Income Priority of Payments and, following acceleration of the Notes, the Post-Acceleration Priority of Payments.

#### **45. Law and Jurisdiction**

- 45.1 This Agreement is governed by, and shall be construed in accordance with, German law.
- 45.2 Each of the parties hereto irrevocably agrees that the courts of Frankfurt am Main shall have exclusive jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Agreement and, for such purposes, irrevocably submits to the jurisdiction of such courts.
- 45.3 The restrictions set forth in Section 181 German Civil Code (*Bürgerliches Gesetzbuch*) shall not apply to any party hereto in respect of its powers, authorisations, rights and obligations hereunder.

#### **46. Condition Precedent**

The parties hereto hereby agree that this Agreement and the rights and obligations hereunder shall only become effective upon fulfilment of the condition precedent (*aufschiebende Bedingung*) that on or about the Closing Date, the Issuer has issued the Notes.



## TAXATION

### General

The following is a general discussion of certain German and Irish tax consequences of the acquisition and ownership of Notes. This discussion does not purport to be a comprehensive description of all tax considerations which may be relevant to a decision to purchase Notes. In particular, this discussion does not consider any specific facts or circumstances that may apply to a particular purchaser. This outline is based on the laws of Germany and Ireland currently in force and as applied on the date of this Prospectus, which are subject to change, possibly also with retroactive or retrospective effect.

PROSPECTIVE PURCHASERS OF NOTES ARE ADVISED TO CONSULT THEIR OWN TAX ADVISORS AS TO THE TAX CONSEQUENCES OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF NOTES AND THE RECEIPT OF INTEREST THEREON, INCLUDING THE EFFECT OF ANY STATE OR LOCAL TAXES, UNDER THE TAX LAWS OF GERMANY AND EACH COUNTRY OF WHICH THEY ARE RESIDENTS OR CITIZENS.

### *Taxation in Germany*

#### *Tax Residents*

Payments of interest on the Notes to persons or entities who are tax residents in Germany (*i.e.*, persons or entities whose residence, habitual abode, statutory seat, or place of effective management and control is located in Germany) are subject to German personal or corporate income tax (*Körperschaftsteuer*) (plus solidarity surcharge (*Solidaritätszuschlag*) at a rate of 5.5 per cent. thereon). Such interest payments may also be subject to trade tax (*Gewerbesteuer*) if the Notes form part of the property of a German trade or business. Accrued Interest paid upon the acquisition of a Note may give rise to negative income if the Note is held as a non-business asset.

Upon the disposition of a Note carrying interest a holder of the Note will also have to include in his taxable income any consideration invoiced separately for such portion of the interest of the current interest payment period which is attributable to the period up to the disposition of the Note ("**Accrued Interest**"). Accrued Interest paid upon the acquisition of the Notes may be declared as negative income if the Note is held as a non-business asset. If for the determination of the issue price of the Note the redemption amount is reduced by a discount or if the redemption amount is increased as compared with the issue price of the Note (as, for example, in the case of a discounted Note or a Note with accrued interest added), the difference between the redemption amount and the issue price of the Note ("**Original Issue Discount**") realised when a Note held as a non-business asset is redeemed to its initial subscriber will be taxable investment income, however, only if the Original Issue Discount exceeds certain thresholds; in such case, the Note qualifies as a financial innovation under German tax law.

If the Note qualifies as a financial innovation (*Finanzinnovation*) (including, among other things, zero coupon Notes or other discounted Notes or Notes with accrued interest added as well as floating rate Notes) and is assigned or disposed of while outstanding or redeemed at maturity, such portion of the proceeds from the disposition of the Note or of the redemption amount of the Note which corresponds with the yield to maturity of the Note attributable to the period over which the holder has held such Note, minus interest, including Accrued Interest, already taken into account, will be subject to income tax (plus solidarity surcharge thereon), provided the holder of the Note is an individual. The yield to maturity is determined by taking into account the Original Issue Discount. If the Notes do not have a predetermined yield to maturity (e.g. in the case of floating rate Notes) or the holder does not give proof thereof, the difference between the proceeds from the disposition, assignment or redemption and the issue or purchase price of the Note is subject to income tax (plus solidarity surcharge thereon) in the year of the disposition, assignment, or redemption of the Note. Where a Note forms part of the property of a German trade or business, in each fiscal year the yield to maturity of the Note to the extent attributable to such period has to be taken into account as interest income by the initial subscriber of the Note and is subject to personal or corporate income tax (plus solidarity surcharge thereon) and may also be subject to trade tax.

Capital gains from the disposition of Notes, other than income described in the preceding paragraph,

are only taxable to a German tax-resident individual if the Notes are disposed of within one year after their acquisition or form part of the property of a German trade or business. In the latter case the capital gains may also be subject to trade tax. Capital gains derived by German-resident corporate holders of Notes will be subject to corporate income tax (plus solidarity surcharge thereon) and trade tax, even if the Notes do not qualify as financial innovations. Losses incurred upon the sale or redemption of the Notes may give rise to negative income

If the Notes are held in a custodial account which the Noteholder maintains with a German branch of a German or non-German bank or financial services institution (the "**Disbursing Agent**") a 30 per cent. withholding tax on interest payments (*Zinsabschlag*), plus 5.5 per cent. solidarity surcharge on such tax, will be levied, resulting in a total tax charge of 31.65 per cent. of the gross interest payment. Withholding tax is also imposed on Accrued Interest. If the Notes qualify as financial innovations, as explained above, withholding tax at the aforementioned rate will also be withheld from the difference between the proceeds from the disposition, assignment or redemption and the issue or purchase price of the Notes if the Note has been kept in a custodial account with such Disbursing Agent since the time of issuance or acquisition, respectively. If the Notes have been transferred into the custodial account of the Disbursing Agent only after such point in time, withholding tax at the aforementioned rate will be levied on a lump-sum basis on 30 per cent. of the proceeds from the disposition, assignment or redemption of the Notes.

In computing the tax to be withheld the Disbursing Agent may deduct from the basis of the withholding tax any Accrued Interest paid by the holder of a Note to the Disbursing Agent during the same calendar year. In general, no withholding tax will be levied if the holder of a Note is an individual (i) whose Note does not form part of the property of a German trade or business nor gives rise to income from the letting and leasing of property, and (ii) who has filed a withholding exemption certificate (*Freistellungsauftrag*) with the Disbursing Agent but only to the extent the interest income derived from the Note together with other investment income does not exceed the maximum exemption amount shown on the withholding exemption certificate. Similarly, no withholding tax will be deducted if the holder of the Note has submitted to the Disbursing Agent a certificate of non-assessment (*Nichtveranlagungsbescheinigung*) issued by the relevant local tax office.

The Issuer is not obliged to compensate any tax amounts withheld (see also Terms and Conditions of the Notes). Withholding tax and the solidarity surcharge thereon are, however, credited as prepayments against the German personal or corporate income tax and the solidarity surcharge liability of the German resident. Amounts overwithheld will entitle the holder of a Note to a refund, based on an assessment to tax.

### **Non-Residents**

Interest, including Accrued Interest and (in the case of financial innovations) Original Issue Discount, and capital gains are not subject to German taxation, unless (i) the Notes form part of the business property of a permanent establishment, including a permanent representative, or a fixed base maintained in Germany by the holder of a Note or (ii) the interest income otherwise constitutes German source income. If the nonresident of Germany is subject to German taxation with income from the Notes, a tax regime similar to that explained above applies; capital gains from the disposition of Notes are, however, only taxable in the case of (i).

Non-residents of Germany are, in general, exempt from German withholding tax on interest and the solidarity surcharge thereon. However, where the interest is subject to German taxation as set forth in the preceding paragraph and the Notes are held in a custodial account with a Disbursing Agent, withholding tax is levied as explained above at "Tax Residents".

The Issuer is not obliged to compensate any tax amounts withheld (see also Condition 7 of the Terms and Conditions of the Notes).

### **Inheritance or Gift Tax**

No inheritance or gift taxes with respect to any Note will arise under the laws of Germany, if, in the case of inheritance tax, neither the descendant nor the beneficiary, or, in the case of gift tax, neither the donor nor the donee, is a resident of Germany and such Note is not attributable to a German trade or business for which a permanent establishment is maintained, or a permanent representative has

been appointed, in Germany. Exceptions from this rule apply to certain German expatriates.

### **Possible Introduction of a Flat Tax (*Abgeltungssteuer*) on Investment Income and Private Capital Gains**

According to Ministry of Finance press releases, the German coalition government has reached agreement on the introduction of a flat tax (*Abgeltungssteuer*) on investment income and private capital gains as elements of a corporate income tax reform.

The flat tax would be levied by German withholding agents as a withholding tax, *inter alia*, on interest income, dividends and capital gains from the disposal of securities held as non-business assets, irrespective of any holding period. Payment of the flat tax would satisfy any income tax liability of the investor in respect of such investment income or private capital gains. The envisaged tax would be levied at a rate of 25 per cent. (plus 5.5 per cent. solidarity surcharge thereon and, if applicable, church tax) of the relevant gross income. However, taxpayers would be able to apply for a tax assessment on the basis of net taxable income. According to the press releases, the flat tax would take effect from 1 January 2009 but would only be imposed on capital gains from assets acquired after 31 December 2008.

As of the date of this Prospectus, no draft bill has been presented. It remains unclear whether and in which form the envisaged legislative changes will become effective.

### **Other Taxes**

No stamp, issue, registration or similar taxes or duties will be payable in Germany in connection with the issuance, delivery or execution of the Notes. Currently, net assets tax is not levied in the Germany.

### **EU Savings Tax Directive**

On June 3, 2003 the Council of the European Union approved a directive regarding the taxation of savings income in the form of interest payments (the "**EU Savings Tax Directive**"). Accordingly, each EU Member State must require paying agents (within the meaning of such directive) established within its territory to provide to the competent authority of this state details of the payment of interest made to any individual resident in another EU Member State as the beneficial owner of the interest. The competent authority of the EU Member State of the paying agent (within the meaning of the EU Savings Tax Directive) is then required to communicate this information to the competent authority of the EU Member State of which the beneficial owner of the interest is a resident.

For a transitional period, Austria, Belgium and Luxembourg may opt instead to withhold tax from interest payments within the meaning of the EU Savings Tax Directive at a rate of 15 per cent. for the first three years from application of the provisions of such directive, of 20 per cent. for the subsequent three years, and of 35 per cent. from the seventh year after application of the provisions of such directive.

In conformity with the prerequisites for the application of the EU Savings Tax Directive, Switzerland, Liechtenstein, San Marino, Monaco and Andorra have confirmed that from July 1, 2005 they will apply measures equivalent to those contained in such directive, in accordance with agreements entered into by them with the European Community. It has also been confirmed that certain dependent or associated territories (the Channel Islands, the Isle of Man and certain dependent or associated territories in the Caribbean) will apply from that same date an automatic exchange of information or, during the transitional period described above, a withholding tax in the described manner. Consequently, the Council of the European Union noted that the conditions have been met to enable the provisions of the EU Savings Tax Directive to enter into force as from July 1, 2005.

By legislative regulations dated January 26, 2004 the German Federal Government enacted the provisions for implementing the EU Savings Tax Directive into German law. These provisions apply as from July 1, 2005.

Holders who are individuals should note that the Issuer will not pay additional in respect of any withholding tax imposed as a result of the EU Savings Tax Directive.

## German Taxation of the Issuer

### *Corporate Income and Trade Tax*

The income and gains derived by the Issuer would only be subject to German tax if the Issuer has its place of effective management and control or maintains a permanent establishment, or appoints a permanent representative, for its business in Germany. It is expected that the Issuer will not be treated as having its place of effective management and control, as maintaining a permanent establishment or as having appointed a permanent representative in Germany.

Given the absence of any legislation, court decisions or other official guidelines specifically addressing the income tax treatment of securitisation transactions in Germany, it may be the case that a German tax authority, administrative authority or court could take the view that the activities carried out by the Servicer, the Special Servicer or the Trustee under the Servicing Agreement or any other person acting on behalf of the Issuer considered each or in their totality constitute a permanent representative (*ständiger Vertreter*) of the Issuer in Germany in respect of the transactions under the Agreements and that consequently a portion of the Issuer's net income derived in a given tax year, as computed under German tax principles, is subject to German corporate income tax (plus solidarity tax thereon). German tax principles would, however, permit the Issuer in computing taxable income subject to corporate income tax, to deduct all expenses economically connected with the gross receipts derived in a given assessment period. In any event, a possible exposure of the Issuer to corporate income tax would likely be small as the relevant annual expenses of the Issuer attributable to Germany will likely reduce annual net income to close to zero. In particular, interest payable on the Notes would be fully deductible.

Based upon past experience that did not, however, to the knowledge of the Issuer give rise to published court jurisprudence involving securitisation transactions, the German tax authorities could take the view that, due to the decisions to be made and activities to be carried out by the Servicer, the Special Servicer or the Trustee under the Servicing Agreement, the Issuer has a permanent establishment or place of effective management and control (*Betriebsstätte* or *Ort der Geschäftsleitung*) in Germany and is, as a consequence, subject to German corporate income tax (plus solidarity tax thereon) and trade tax even though the Servicer, the Special Servicer and the Trustee is a company having its residency in Germany but acting on behalf of the Issuer by its UK office. With respect to the assessment of trade tax on the business profits derived by the Issuer, the Issuer can demonstrate to the satisfaction of the tax authorities that it has no business premises and office facilities at its disposal in Germany from which the business activities of the Issuer are conducted. Furthermore, the Issuer could demonstrate to the satisfaction of the tax authorities that the management of the Issuer's day-to-day business is actually carried out outside of Germany and cannot be treated as carried out in Germany. The Issuer therefore should be viewed as maintaining a permanent establishment outside Germany to which, based upon arm's length standards, the indebtedness under the Notes and the interest payable thereon should be attributable. Such view would be supported by a decision of the BFH (dated 12 February 2004 – IV R 29/02). The court found that for purposes of determining where an entity's place of effective management and control is located that is engaged in leasing activities a functional approach is warranted. According to the BFH procuring the funding of an asset acquisition outweighs the day-to-day business decisions taken with respect to the acquisition of the assets themselves. No additional guidance is available on this point. However, given the importance of the business decisions taken by the Issuer relative to the business activities performed by the Servicer, the Special Servicer or the Trustee, the court ruling gives additional weight to the arguments explained above. If, contrary to such expectations, the tax authorities were to take the position that the requirements of a non-German permanent establishment to which such indebtedness and interest may be attributed are not met and that the Issuer is effectively managed and controlled in Germany, trade tax will, in principle, arise with respect to taxable income of the Issuer attributable to its German permanent establishment. In that case, pursuant to Section 8 no. 1 of the German Trade Tax Act (*GewStG – Gewerbesteuergesetz*) only half of the interest payable on long-term indebtedness would generally be deductible from the trade tax base. However, the Issuer would be able to rely on Section 19 of the German Regulations for the Implementation of the Trade Tax Act (*GewStDV - Gewerbesteuerdurchführungsverordnung*). Section 19 contains a special rule for the computation of long-term indebtedness incurred by financial institutions by limiting long-term debt to the value of certain fixed assets. Under revised Section 19(3) *GewStDV*, this special rule would also be applicable to the Issuer as an entity that is engaged in the

issuing of debentures for the purpose of funding solely the acquisition of bank-originated payment claims. Based on Section 19(3) GewStDV the Issuer's trade tax base would likely not be different from its corporate income tax base.

If the Issuer were held as having a German permanent establishment, the exposure of the Issuer to corporate tax would be small as the relevant expenses of the Issuer attributable to Germany would reduce the net income close to zero. In particular, interest payable on the Notes would be deductible for corporate tax purpose. The obligation of the Issuer to pay interest and principal under the Notes is not dependent upon whether the Issuer incurs any revenues or profits in the future. The Issuer has rather entered into a legally binding paying obligation *vis-à-vis* the Noteholders. Although the amount of the payments to be made under the Notes depends upon the development of certain receivables, the underlying payment obligation itself is, in a legal sense, not conditional upon the Issuer having incurred any revenues or profits. The fact that the right to payment of interest and principal of the Class E Notes is subordinated and that the Notes of all Classes are given only limited recourse to the underlying receivables should not change this analysis. The subordination of claims and the agreement of a limited recourse are legal concepts which are, in economic terms, not comparable to the dependency of a claim upon certain revenues or profits of an issuer and which should, therefore, not give rise to an application of Section 5 (2a) EStG. At least with respect to the subordination of claims, this view is supported by a recent decision of the Federal Fiscal Court (*Bundesfinanzhof – "BFH"* dated November 10, 2005 – IV-R-13/04) which explicitly stated that even a so-called "qualified subordination" (*qualifizierter Rücktritt*), according to which a creditor basically ranks *pari passu* with the shareholders of company, would not, by itself and in each and any event, trigger the applicability of Section 5 (2a) EStG. The German revenue has commented on this court decision in a Circular issued by the German Ministry of Finance (*Bundesfinanzministerium – "BMF"*) on September 8, 2006 (IV-B2-S2133 – 10/06) by confirming the view that neither the simple, nor the qualified subordination would trigger the applicability of Section 5 (2a) EStG. Based thereon even in the case of an insolvency remote entity there seems to be a rather remote risk only that claims may lead to an applicability of Section 5 (2a) EStG.

Further, if any event relevant in respect of the measurement of the assets purchased by the Issuer and attributable to the Issuer's German permanent establishment might occur the Issuer would be held to depreciate the respective asset in its accounts. Even though the obligations of the Issuer under the Notes shall, finally, be limited to any amount received under the assets and a release from its obligations will be obtained correspondingly, a timing difference may arise as between the time of the depreciation of the asset and the release from the obligations against the Noteholders. To the extent that such events will occur during different fiscal periods of the Issuer, the Issuer will not be entitled to fully offset the capital gain arising from the release against the loss carry forward resulting from the depreciation of the assets pursuant to the German provisions on the limitation of the set off of a gain exceeding the amount of € 1 million against a loss carry forward on 60 per cent. of the gain (*Mindestbesteuerung*).

### **Proposals for Corporate Tax Reform**

According to Ministry of Finance press releases, the German coalition government has reached agreement on certain elements of corporate tax reform, including a decrease of the corporate income tax rate from 25 per cent. to 15 per cent. (in each case plus 5.5 per cent. solidarity surcharge thereon) such that the aggregate nominal income tax burden for corporations (corporate income tax and trade tax) would decrease to below 30 per cent. The tax reform package would enter into force on 1 January 2008 and would also contain certain revenue raisers:

For purposes of corporate income tax, debt financing of companies would be limited by an anti interest-stripping rule (*Zinsschranke*). Net interest expenses exceeding Euro 1 million would only be deductible to an extent of 30 per cent. of current year net earnings before interest. Non-deductible interest expense would be carried forward and would generally be deductible in subsequent fiscal years, subject to limitations similar to those applicable in the current year.

For purposes of trade tax, the addition of 50 per cent. of interest on long term debt would be replaced by an addition to the tax base of 25 per cent. of all interest payments and certain other interest components, such as those contained in rental and lease payments, in excess of Euro 100,000.

As of the date of this Prospectus it remains unclear whether and in which form the envisaged

legislative changes will become effective.

### **Application of the German Investment Tax Act**

It is expected that a German resident Noteholder will not be viewed as having acquired in substance units of a foreign investment fund, i.e. an asset that represents units in respect of a portfolio of assets within the meaning of the German Investment Act (*Investmentgesetz*).

### **VAT**

The servicing activities performed by the Originator should not be subject to German value added tax (*Umsatzsteuer*). In its decision (C-305/01) of 26 June 2003 (Finanzamt Groß-Gerau gegen MKG-Krafffahrzeuge-Factoring GmbH), the European Court of Justice ("**ECJ**") ruled on the treatment for value added tax purposes of a "true" factoring activity (*echtes Factoring*).

Based on Section 3a (3) and (4) German VAT Act ("**UStG**") there are valid arguments for treating the Issuer as an entrepreneur. Such status of the purchaser of receivables the collection of which continues to be performed by the seller in its own name but for the account of the purchaser is confirmed in Section 18 para 8 sent. 5 UStR (*Umsatzsteuerrichtlinien*, "**UStR**"). Consequently, if one were to treat the Originator as rendering services not for its own account but for the account of the Issuer, the place of supply for these services rendered on the basis of the Servicing Agreement would be at the *situs* of the recipient of the services, i.e., in Ireland. Therefore, the services would not be subject to German value added tax. Further, the UStR goes on to say in Section 18 para 9 sent. 4 that the seller of a receivable is not viewed as making VATable supplies to its purchaser if the seller retains the collection right and acts in its own interest. If the collection activity is based upon a separate agreement the activities of the seller constitute services ancillary to the exempt supply of the receivable itself and therefore remains exempt from VAT. If the tax administration were to take a different position the VAT on the services supplied by any of the German Parties would be owed by the Originator.

The Issuer should not be liable for any value added tax on services rendered by the Issuer to the Originator on the basis of the aforementioned decision. Different from the matter underlying these court rulings, the Issuer does not perform factoring services including the services of collecting receivables itself. Instead such services continue to be rendered by the Originator on the basis of the Receivables Purchase Agreement and the Servicing Agreement with the Issuer. This view is confirmed in Section 18 para 8 sent. 5 UStR, making specific reference to ABS transactions.

If, against expectations, a German tax authority were to take the view that the activities of the Issuer should be treated in the same way as the services rendered by a factoring company, any consideration allocable to the services rendered by the Issuer to the Originator would be subject to German value added tax and would not be tax exempt. Since the Issuer is located outside of Germany, does not make supplies out of a German fixed place of business and should not, by reason of the activities carried out by the Originator under the Receivables Purchase Agreement and the Servicing Agreement acting on behalf of the Issuer, be treated for purposes of the reverse-charge rule under Section 13b UStG as maintaining its place of effective management and control in Germany, the tax would be owed by the Originator.

### **Taxation in Ireland**

**The following is an outline based on the laws and practices currently in force in Ireland regarding the tax position of investors beneficially owning their Notes and should be treated with appropriate caution. Particular rules may apply to certain classes of taxpayers holding Notes. The outline does not constitute tax or legal advice and the comments below are of a general nature only. Prospective investors in the Notes should consult their professional advisers on the tax implications of the purchase, holding, redemption or sale of the Notes and the receipt of interest thereon under the laws of their country of residence, citizenship or domicile.**

### **Corporation Tax**

In general, Irish companies must pay corporation tax on their income at the rate of 12.5 per cent. in relation to trading income and at the rate of 25 per cent. in relation to income that is not income from a trade. However, Section 110 TCA 1997 provides for different treatment in relation to qualifying companies. It is expected that the Issuer will be a qualifying company for this purpose. A qualifying company for this purpose means a company:

- (a) which is resident in Ireland;
- (b) which either acquires qualifying assets from a person, holds, manages, or both holds and manages qualifying assets as a result of an arrangement with another person, or has entered into a legally enforceable arrangement with another person which itself constitutes a qualifying asset;
- (c) which carries on in Ireland a business of holding qualifying assets or managing qualifying assets or both;
- (d) which, apart from activities ancillary to that business, carries on no other activities; and
- (e) which has notified an authorised officer of the Revenue Commissioners in the prescribed format that it intends to be such a qualifying company;

provided that the market value of all qualifying assets held, managed or both held and managed by the company or the market value of all qualifying assets in respect of which the company has entered into legally enforceable arrangements is not less than €10,000,000 on the day on which the qualifying assets are first acquired, first held, or a legally enforceable arrangement in respect of the qualifying assets is entered into (which is itself a qualifying asset),

but a company shall not be a qualifying company if any transaction is carried out by it otherwise than by way of a bargain made at arm's length apart from where that transaction is the payment of consideration for the use of principal (other than where that consideration is paid to certain companies within the charge of Irish corporation tax as part of a scheme of tax avoidance).

A qualifying asset is a financial asset or an interest in a financial asset (such as a Loan).

If a company is a qualifying company for the purpose of Section 110 TCA 1997, then profits arising from its activities shall be chargeable to corporation tax under Case III of Schedule D (which is applicable to non-trading income) at a rate of 25 per cent. However, for that purpose those profits shall be computed in accordance with the provisions applicable to Case I of that Schedule (which is applicable to trading income). On this basis and on the basis that the interest on the Notes is either:

- a) not dependant on the results of the Issuer's business nor in excess of an arm's length rate; or
- b) is not paid to certain companies within the charge of Irish corporation tax as part of a scheme of tax avoidance,

then the interest in respect of the Notes will be deductible in determining the taxable profits of the Issuer.

### **Withholding Tax**

In general, tax at the standard rate of income tax (currently 20 per cent.), is required to be withheld from payments of Irish source interest. However, an exemption from withholding on interest payments exists under Section 64 TCA 1997 for certain interest bearing securities ("**quoted Eurobonds**") issued by a body corporate (such as the Issuer) which are quoted on a recognised stock exchange (which would include the Irish Stock Exchange).

Any interest paid on such quoted Eurobonds can be paid free of withholding tax provided:

1. the person by or through whom the payment is made is not in Ireland; or

2. the payment is made by or through a person in Ireland, and either:
  - 2.1 the quoted Eurobond is held in a clearing system recognised by the Revenue Commissioners of Ireland (Euroclear and Clearstream Luxembourg are so recognised), or
  - 2.2 the person who is the beneficial owner of the quoted Eurobond and who is beneficially entitled to the interest is not resident in Ireland and has made a declaration to this effect to a relevant person (such as an Irish paying agent) in the prescribed form.

So long as the Notes are quoted on a recognised stock exchange and are held in Euroclear and/or Clearstream Luxembourg, interest on the Notes can be paid by the Issuer and any paying agent acting on behalf of the Issuer without any withholding or deduction for or on account of Irish income tax regardless of where the Noteholder is resident.

Separately, Section 246 TCA 1997 ("**Section 246**") provides certain exemptions from this general obligation to withhold tax. Section 246 provides an exemption in respect of interest payments made by a qualifying company within the meaning of Section 110 TCA 1997 to a person resident in a relevant territory except where that person is a company and the interest is paid to the company in connection with a trade or business carried on in Ireland by that company through a branch or agency. Also Section 246 provides an exemption in respect of interest payments made by a company in the ordinary course of business carried on by it to a company resident in a relevant territory except where the interest is paid to the company in connection with a trade or business carried on in Ireland by that company through a branch or agency. A relevant territory for this purpose is a Member State of the European Communities, other than Ireland, or not being such a Member State, a territory with which Ireland has entered into a double tax treaty that is in effect. As of the date hereof, Ireland has entered into a double tax treaty with each of Australia, Austria, Belgium, Bulgaria, Canada, China, Chile (signed but not yet in effect), Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Israel, India, Italy, Japan, Korea (Rep. of), Latvia, Lithuania, Luxembourg, Malaysia, Mexico, the Netherlands, New Zealand, Norway, Pakistan, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, United Kingdom, U.S.A. and Zambia. New treaties with Argentina, Egypt, Kuwait, Malta, Morocco, Tunisia, Turkey, Ukraine and Vietnam are in the course of being negotiated.

Irish tax will be required to be withheld at the standard rate from interest on any quoted Eurobond, where such interest is realised or collected by an agent in Ireland on behalf of any Noteholder who is Irish resident. This is unless the beneficial owner of the Note that is entitled to the interest is not resident in Ireland and makes a declaration in the required form. This is provided that such interest is not deemed, under the provisions of Irish tax legislation, to be the income of another person that is resident in Ireland.

### ***Taxation of Noteholders***

Notwithstanding that a Noteholder may receive interest on the Notes free of withholding tax, the Noteholder may still be liable to pay Irish income tax. Interest paid on the Notes may have an Irish source and therefore be within the charge to Irish income tax and levies. Ireland operates a self assessment system in respect of income tax and any person, including a person who is neither resident nor ordinarily resident in Ireland, with Irish source income comes within its scope.

However, interest on the Notes will be exempt from Irish income tax if the recipient of the interest is resident in a relevant territory provided either (i) the Notes are quoted Eurobonds and are exempt from withholding tax as set out above (ii) in the event of the Notes not being or ceasing to be quoted Eurobonds exempt from withholding tax, if the Issuer is a qualifying company within the meaning of Section 110 TCA 1997, or (iii) if the Issuer has ceased to be a qualifying company, the recipient of the interest is a company.

Notwithstanding these exemptions from income tax, a corporate recipient that carries on a trade in Ireland through a branch or agency in respect of which the Notes are held or attributed, may have a liability to Irish corporation tax on the interest.



Interest on the Notes which does not fall within the above exemptions may be within the charge to Irish income tax to the extent that a double tax treaty does not exempt the interest.

If the above exemption does not apply there is a long standing unpublished practice of the Revenue Commissioners of Ireland whereby no action will be taken to pursue any liability to such Irish tax in respect of persons who are regarded as not being resident in Ireland except where such persons:

- (a) are chargeable in the name of a person (including a trustee) or in the name of an agent or branch in Ireland having the management or control of the interest; or
- (b) seek to claim relief and/or repayment of tax deducted at source in respect of taxed income from Irish sources; or
- (c) are chargeable to Irish corporation tax on the income of an Irish branch or agency or to income tax on the profits of a trade carried on in Ireland to which the interest is attributable.

There can be no assurance that the Revenue Commissioners of Ireland will continue to apply this practice in the case of the holders of Notes and, as mentioned above, there is a statutory obligation to account for Irish tax on a self-assessment basis and there is no requirement for the Revenue Commissioners of Ireland to issue or raise an assessment.

### ***Capital Gains Tax***

A holder of Notes will be subject to Irish tax on capital gains on a disposal of Notes unless such holder is neither resident nor ordinarily resident in Ireland and does not carry on a trade in Ireland through a branch or agency or permanent establishment to which or to whom the Notes are attributable.

### ***Capital Acquisitions Tax***

A gift or inheritance comprising of Notes will be within the charge to capital acquisitions tax if either (i) the donor or the donee/successor in relation to the gift or inheritance is resident or ordinarily resident in Ireland (or, in certain circumstances, if the donor is domiciled in Ireland irrespective of his residence or that of the donee/successor) or (ii) if the Notes are regarded as property situate in Ireland. Bearer notes are generally regarded as situated where they are physically located at any particular time, but the Notes may be regarded as situated in Ireland regardless of their physical location as they secure a debt due by an Irish resident debtor and they may be secured over Irish property. Accordingly, if such Notes are comprised in a gift or inheritance, the gift or inheritance may be within the charge to tax regardless of the residence status of the donor or the donee/successor.

For the purposes of capital acquisitions tax, under current legislation a non-Irish domiciled person will not be treated as resident or ordinarily resident in Ireland for the purposes of the applicable legislation except where the person has been resident in Ireland for the purposes of Irish tax for the 5 consecutive years of assessment immediately preceding the year of assessment in which the date of the gift or inheritance falls.

### ***Stamp Duty***

If the Issuer is a qualifying company within the meaning of Section 110 TCA 1997, as amended, (and it is expected that the Issuer will be such a qualifying company) no Irish stamp duty will be payable on either the issue or transfer of the Notes, provided that the money raised by the issue of the Notes is used in the course of the Issuer's business.

### ***EU Savings Directive***

On 3rd June, 2003, the European Council of Economics and Finance Ministers adopted a the European Union Council Directive 2003/48/EC on the taxation of savings income ("**EU Directive**"). The Directive has been enacted into Irish legislation. Where any person in the course of a business or profession carried on in Ireland makes an interest payment to, or secures an interest payment for the immediate benefit of, the beneficial owner of that interest, where that beneficial owner is an individual, that person must, in accordance with the methods prescribed in the legislation, establish the identity

and residence of that beneficial owner. Where such a person makes such a payment to a "residual entity" then that interest payment is a "*deemed interest payment*" of the "*residual entity*" for the purpose of this legislation. A "*residual entity*", in relation to "deemed interest payments", must, in accordance with the methods prescribed in the legislation, establish the identity and residence of the beneficial owners of the interest payments received that are comprised in the "*deemed interest payments*".

"*Residual entity*" means a person or undertaking established in Ireland or in another Member State or in an "associated territory" to which an interest payment is made for the benefit of a beneficial owner that is an individual, unless that person or undertaking is within the charge to corporation tax or a tax corresponding to corporation tax, or it has, in the prescribed format for the purposes of this legislation, elected to be treated in the same manner as an undertaking for collective investment in transferable securities within the meaning of the UCITS Directive 85/611/EEC, or it is such an entity or it is an equivalent entity established in an "*associated territory*", or it is a legal person (not being an individual) other than certain Finnish or Swedish legal persons that are excluded from the exemption from this definition in the Directive.

Procedures relating to the reporting of details of payments of interest (or similar income) made by any person in the course of a business or profession carried on in Ireland, to beneficial owners that are individuals or to residual entities resident in another Member State or an "*associated territory*" and procedures relating to the reporting of details of deemed interest payments made by residual entities where the beneficial owner is an individual resident in another Member State or an "*associated territory*", apply in Ireland. For the purposes of these paragraphs "*associated territory*" means Aruba, The Netherlands Antilles, Jersey, Gibraltar, Guernsey, the Isle of Man, Anguilla, the British Virgin Islands, the Cayman Islands, Andorra, Liechtenstein, Monaco, San Marino, the Swiss Confederation, Montserrat and the Turks and Caicos Islands.

## SUBSCRIPTION AND SALE

The Commerzbank AG whose registered office is at Kaiserplatz 1, 60261 Frankfurt, Germany and UBS Limited whose registered office is at 1 Finsbury Avenue, London EC2M 2PP (together, the "**Joint Bookrunners**"), pursuant to a subscription agreement dated on or about the date of the Prospectus (the "**Subscription Agreement**"), between, *inter alios*, the Joint Bookrunners, the Issuer and Eurohypo, have agreed, jointly and severally, subject to certain conditions, to subscribe and pay, or procure subscription and payment, for the Class A Notes at 100 per cent. of the initial principal amount of such Notes, the Class B Notes at 100 per cent. of the initial principal amount of such Notes, the Class C Notes at 100 per cent. of the initial principal amount of such Notes, the Class D Notes at 100 per cent. of the initial principal amount of such Notes and the Class E Notes at 100 per cent. of the initial principal amount of such Notes.

The Issuer has agreed to reimburse or procure the reimbursement of the Joint Bookrunners for certain of their expenses in connection with the issue of the Notes. The Subscription Agreement is subject to a number of conditions and may be terminated by the Joint Bookrunners in certain circumstances prior to payment to the Issuer. The Issuer has agreed to indemnify the Joint Bookrunners against certain liabilities in connection with the offer and sale of the Notes.

### United States of America

Each of the Joint Bookrunners has represented and agreed with the Issuer that the Notes have not been and will not be registered under the United States Securities Act of 1933, as amended (the "**Securities Act**"), and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. Persons except in accordance with Regulation S under the Securities Act or pursuant to an exemption from the registration requirements of the Securities Act. Each of the Joint Bookrunners has represented and agreed that it has offered and sold the Notes, and will offer and sell the Notes (i) as part of its distribution at any time and (ii) otherwise until 40 calendar days after the completion of the distribution of all the Notes only in accordance with Rule 903 of the Regulation S under the Securities Act. Neither any of the Joint Bookrunners, its respective affiliates nor any persons acting on its or their behalf have engaged or will engage in any directed selling efforts with respect to the Notes, and it and they have complied and will comply with the offering restrictions requirements of Regulation S under the Securities Act. At or prior to confirmation of sale of Notes, it will have sent to each distributor, dealer or person receiving a selling concession, fee or other remuneration that purchases Notes from it during the restricted period a confirmation or notice to substantially the following effect:

"The Securities covered hereby have not been registered under the U.S. Securities Act of 1933, as amended (the "**Securities Act**") and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons (i) as part of their distribution at any time or (ii) otherwise until 40 calendar days after the completion of the distribution of the Securities as determined and certified by the Joint Bookrunners, except in either case in accordance with Regulation S under the Securities Act. Terms used above have the meaning given to them in Regulation S under the Securities Act."

Terms used in this paragraph have the meaning given to them by Regulation S under the Securities Act.

Further, each of the Joint Bookrunners has represented and agreed that:

- (a) except to the extent permitted under U.S. Treas. Reg. Section 1.163-5 (c)(2)(i)(D) (the "**TEFRA D Rules**"), (i) it has not offered or sold, and during the restricted period will not offer or sell, directly or indirectly, Notes in bearer form to a person who is within the United States or its possessions or to a United States person, and (ii) it has not delivered and will not deliver, directly or indirectly, within the United States or its possessions definitive Notes in bearer form that are sold during the restricted period;
- (b) it has and throughout the restricted period will have in effect procedures reasonably designed to ensure that its employees or agents who are directly engaged in selling Notes in bearer form are aware that such Notes may not be offered or sold during the restricted period to a person

who is within the United States or its possessions or to a United States person, except as permitted by the TEFRA D Rules;

- (c) if it was considered a United States person, that it is acquiring the Notes for purposes of resale in connection with their original issuance and agrees that if it retains Notes in bearer form for its own account, it will only do so in accordance with the requirements of U.S. Treas. Reg. Section 1.63-5 (c)(2)(i)(D)(6); and
- (d) with respect to each affiliate that acquires from it Notes in bearer form for the purpose of offering or selling such Notes during the restricted period that it will either (i) repeat and confirm the representations and agreements contained in sub-clauses (a), (b) and (c); or (ii) obtain from such affiliate for the benefit of the Issuer the representations and agreements contained in sub-clauses (a), (b) and (c).

Terms used in in sub-clauses (a), (b), (c) and (d) above have the meanings given to them by the U.S. Internal Revenue Code and regulations thereunder, including the TEFRA D Rules.

### **European Economic Area**

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a "**Relevant Member State**"), each of the Joint Bookrunners has represented and agreed that with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the "**Relevant Implementation Date**") it has not made and will not make an offer of the Notes to the public in that Relevant Member State, except that it may, with effect from and including the Relevant Implementation Date, make an offer of Notes to the public in that Relevant Member State:

- (a) in the period beginning on the date of publication of a prospectus in relation to those Notes which has been approved by the competent authority in that Relevant Member State in accordance with the Prospectus Directive or, where appropriate, published in another Member State and notified to the competent authority in that Relevant Member State in accordance with Article 18 of the Prospectus Directive and ending on the date which is 12 months after the date of such publication;
- (b) at any time to legal entities which are authorised or regulated to operate in the financial markets or, if not so authorised or regulated, whose corporate purpose is solely to invest in securities;
- (c) at any time to any legal entity which has two or more of (1) an average of at least 250 employees during the last financial year; (2) a total balance sheet of more than €43,000,000 and (3) an annual turnover of more than €50,000,000, as shown in the last annual or consolidated accounts; or
- (d) at any time in any other circumstances which do not require the publication by the Issuer of a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression an "offer of Notes to the public" in relation to any Notes in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the Notes to be offered so as to enable an investor to decide to purchase or subscribe the Notes, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State and the expression "**Prospectus Directive**" means Directive 2003/71/EC and includes any relevant implementing measure in each Relevant Member State.

### **Italy**

The offering of the Notes has not been cleared by CONSOB (the Italian Securities Exchange Commission) pursuant to Italian securities legislation and, accordingly, no Notes may be offered, sold or delivered, nor may copies of the Prospectus or of any other document relating to the Notes be distributed in the Republic of Italy, except:

- (a) to professional investors ("**operatori qualificati**"), as defined in Article 31, second paragraph, of

CONSOB Regulation No. 11522 of July 1, 1998, as amended; or

- (b) in circumstances which are exempted from the rules on solicitation of investments pursuant to Article 100 of Legislative Decree No. 58 of February 24, 1998 (the "**Financial Services Act**") and Article 33, first paragraph, of CONSOB Regulation No. 11971 of May 14, 1999, as amended.

Each Joint Bookrunner represents and agrees that any offer, sale or delivery of Notes or distribution of the Prospectus or any other documents relating to the Notes in the Republic of Italy under (a) or (b) above must be:

- (i) made by an investment firm, bank or financial intermediary permitted to conduct such activities in the Republic of Italy in accordance with the Financial Services Act and Legislative Decree No. 385 of September 1, 1993 (the "**Banking Act**");
- (ii) in compliance with Article 129 of the Banking Act and the implementing guidelines of the Bank of Italy pursuant to which the issue or the offer of securities in the Republic of Italy may need to be preceded and followed by an appropriate notice to be filed with the Bank of Italy depending, *inter alia*, on the aggregate value of the securities issued or offered in the Republic of Italy and their characteristics; and
- (iii) in compliance with any other applicable laws and regulations.

#### **United Kingdom**

Each of the Joint Bookrunners has represented and agreed that:

- (a) (i) it is a person whose ordinary activities involve it in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of its business and (ii) it has not offered or sold and, prior to the expiry of the period of six months from the Closing Date, will not offer or sell any Notes to persons in the United Kingdom except to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses or who is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses where the issue of the Notes would otherwise constitute a contravention of Section 19 of the Financial Services and Markets Act 2000 (the "**FSMA**");
- (b) it has complied and will comply with all applicable provisions of the FSMA, with respect to anything done by it in relation to the Notes in, from or otherwise involving the United Kingdom; and
- (c) it has only communicated or caused to be communicated and will only communicate or cause to be communicated any invitation or inducement to engage in investment activity (within the meaning of Section 21 of the FSMA) received by it in connection with the issue of any Notes in circumstances in which Section 21(1) of the FSMA does not apply to the Issuer.

#### **The Netherlands**

The Issuer must verify that all Dutch Resident (as defined below) purchasers of Notes (including rights representing an interest in a Global Note) issued by it directly to such purchasers on or before the Closing Date or issued by it in circumstances where it is reasonably able to identify the Dutch Resident holders thereof (other than the relevant Joint Bookrunner) on or before the Closing Date as Professional Market Parties (as defined below) and shall agree (or procure the relevant Joint Bookrunner agrees) with each such purchaser that any Notes acquired by it may not be offered, sold, transferred or delivered by any such purchaser, except in accordance with the restrictions referred to in paragraph 2 below.

Each of the Joint Bookrunners has represented and agreed that this Prospectus may not be distributed and the Notes (including rights representing an interest in any Global Note) may not be offered, sold, transferred or delivered as part of their initial distribution or at any time thereafter, directly or indirectly, to individuals or legal entities who or which are established, domiciled or have their

residence in The Netherlands ("**Dutch Residents**") other than to the following entities (referred to as "**Professional Market Parties**" or "**PMPs**") provided they acquire the Notes for their own account and trade or invest in securities in the conduct of a business or profession:

- (a) banks, insurance companies, securities firms, collective investment institutions or pension funds that are supervised or licensed under Dutch law;
- (b) banks or securities firms licensed or supervised in a European Economic Area member state (other than The Netherlands) and registered with the Dutch Central Bank (*De Nederlandsche Bank N.V.* ("**DNB**") or the Dutch Authority for the Financial Markets (*Stichting Autoriteit Financiële Markten*) and acting through a branch office in The Netherlands;
- (c) Netherlands collective investment institutions which offer their shares or participations exclusively to professional investors and are not required to be supervised or licensed under Dutch law;
- (d) the Dutch government (*de Staat der Nederlanden*), DNB, Dutch regional, local or other decentralised governmental institutions, international treaty organisations and international organisations;
- (e) Netherlands enterprises or entities with total assets of at least EUR 500,000,000 (or the equivalent thereof in another currency) according to their balance sheet at the end of the financial year preceding the date they purchase or acquire the Notes;
- (f) enterprises, entities or national persons with a net assets (*eigen vermogen*) of at least EUR10,000,000 (or the equivalent thereof in another currency) according to their balance sheet at the end of the financial year preceding the date they purchase or acquire the Notes and who or which have been active in the financial markets on average twice a months over a period of at least two consecutive years preceding such date;
- (g) Netherlands subsidiaries of the entities referred to under (a) above provided such subsidiaries are subject to prudential supervision;
- (h) Netherlands enterprises or entities that have a credit rating from an approved rating agency or whose securities have such a rating; and
- (i) such other Netherlands entities designated by the competent Netherlands authorities after the date hereof by any amendment of the applicable regulations.

All Notes (whether or not offered to Dutch Residents) shall bear the following legend:

"THIS NOTE (OR ANY INTEREST HEREIN) MAY NOT BE SOLD, TRANSFERRED OR DELIVERED TO INDIVIDUALS OR LEGAL ENTITIES WHO ARE ESTABLISHED, DOMICILED OR HAVE THEIR RESIDENCE IN THE NETHERLANDS (**DUTCH RESIDENTS**) OTHER THAN TO PROFESSIONAL MARKET PARTIES (**PMPs**) WITHIN THE MEANING OF THE EXEMPTION REGULATION UNDER THE DUTCH ACT ON THE SUPERVISION OF CREDIT INSTITUTIONS 1992 (AS AMENDED).

EACH DUTCH RESIDENT BY PURCHASING THIS NOTE (OR ANY INTEREST HEREIN), WILL BE DEEMED TO HAVE REPRESENTED AND AGREED FOR THE BENEFIT OF THE ISSUER THAT IT IS A PMP AND IS ACQUIRING THIS NOTE (OR ANY INTEREST THEREIN) FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER PMP.

EACH HOLDER OF THIS NOTE (OR ANY INTEREST HEREIN), BY PURCHASING SUCH NOTE (OR ANY SUCH INTEREST), WILL BE DEEMED TO HAVE REPRESENTED AND AGREED FOR THE BENEFIT OF THE ISSUER THAT (1) SUCH NOTE (OR ANY INTEREST THEREIN) MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED TO ANY DUTCH RESIDENTS OTHER THAN TO A PMP ACQUIRING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER PMP AND THAT (2) THE HOLDER WILL PROVIDE NOTICE OF THE TRANSFER RESTRICTIONS DESCRIBED HEREIN TO ANY SUBSEQUENT TRANSFEREE."

## France

Each of the Issuer and the Joint Bookrunners has represented and agreed that Notes have not been offered or sold and will not be offered or sold, directly or indirectly, to the public in France, and that it has not distributed and will not distribute or cause to be distributed to the public in France the Prospectus or any other offering material relating to the Notes. Nevertheless, the Notes can be offered or sold and the Prospectus or any amendment, supplement or replacement thereto or any material relating to the Notes may be distributed or caused to be distributed to any French Qualified Investor (*investisseur qualifié*) as defined by articles L.411-2-II and D.411-1 to D.411-3 of the French Monetary and Financial Code (*Code Monétaire et Financier*) and in compliance with all relevant regulations issued from time to time by the French financial market authority (*i.e. Autorité des Marchés Financiers*).

Investors in France are informed that:

- (i) neither the offer and sale of the Notes nor the Prospectus have been submitted for clearance to the French financial market authority (*Autorité des Marchés Financiers*);
- (ii) investors or entities described in article L.411-2-II-4° of the French Monetary and Financial Code (*Code Monétaire et Financier*) can only acquire Notes for their own account and in accordance with the provisions of articles D.411-1, D.411-2, D.734-1, D.744-1, D.754-1 and D.764-1 of the French Monetary and Financial Code (*Code Monétaire et Financier*); and

the direct and indirect distribution or sale to the public of the Notes acquired by them can only be made in compliance with articles L.411-1, L.411-2, L.412-1 and L.621-8 to L.621-8-3 of the French Monetary and Financial Code (*Code Monétaire et Financier*).

## Ireland

Each of the Joint Bookrunners has represented and agreed that

- (a) it has not offered and will not offer or sell any Notes other than in compliance with the provisions of the Market Abuse (Directive 2003/6/EC) Regulations 2005 of Ireland, the Prospectus Directive and implementing measures in Ireland and the Companies Acts 1963 to 2005 of Ireland.
- (b) in connection with offers or sales of Notes, it has only issued or passed on, and will only issue or pass on, in Ireland or elsewhere, any document received by it in connection with the issue of Notes to persons who are persons to whom the document may otherwise lawfully be issued or passed on; and
- (c) it has complied and will comply with all applicable provisions of the Investment Intermediaries Acts, 1995 to 2000 of Ireland with respect to anything done by it in relation to the Notes or operating in, or otherwise involving, Ireland and, in the case of a Joint Bookrunner acting under and within the terms of an authorisation to do so for the purposes of EU Council Directive 93/22/EEC of 10 May, 1993, it has complied with any codes of conduct made under the Investment Intermediaries Acts, 1995 to 2000 of Ireland and, in the case of a Joint Bookrunner acting within the terms of an authorisation granted to it for the purposes of EU Council Directive 2000/12/EC of 20 March, 2000, it has complied with any codes of conduct or practice made under Section 117(1) of the Central Bank Act, 1989 of Ireland.

## General

Other than the approval by the Financial Regulator in Ireland of this Prospectus as a prospectus in accordance with the requirements of the Prospectus Directive and relevant implementing measures in Ireland, application having been made for the Notes to be admitted to the Official List of the Irish Stock Exchange and to trading on the regulated market of the Irish Stock Exchange and the delivery of a copy of this Prospectus to the Registrar for Companies in Ireland for registration in accordance with the regulations implementing the Prospectus Directive in Ireland, no action is being taken in any

jurisdiction that would or is intended to permit a public offering of the Notes, or the possession, circulation or distribution of this Prospectus or any other material relating to the Issuer or the Notes in any jurisdiction where action for that purpose is required. This Prospectus does not constitute, and may not be used for the purpose of, an offer or solicitation in or from any jurisdiction where such an offer or solicitation is not authorised.

Accordingly, the Notes may not be offered or sold, directly or indirectly, and neither this Prospectus nor any other offering material or advertisement in connection with the Notes may be distributed or published in or from any country or jurisdiction, except under circumstances that will result in compliance with any applicable rules and regulations of any such country or jurisdiction.

Each of the Joint Bookrunners has undertaken not to offer or sell any of the Notes, or to distribute this document or any other material relating to the Notes, in or from any jurisdiction except under circumstances that will result to the best knowledge and belief of such Joint Bookrunner result in compliance with applicable laws and regulations thereof and that will not impose any obligations on the Issuer except as set out in the Subscription Agreement.



## GENERAL INFORMATION

1. The issue of the Notes was authorised by resolution of the board of directors of the Issuer passed on 1 December 2006.
2. It is expected that listing of the Notes on the Official List of the Irish Stock Exchange will be granted on or about 19 December 2006, subject only to the issue of the Global Notes. The listing of the Notes will be cancelled if the Global Notes are not issued. Transactions will normally be effected for settlement in sterling and for delivery on the third working day after the day of the transaction.
3. On 11 December 2006 the Issuer was granted a certificate under section 6 of the Companies (Amendment) Act, 1983 entitling it to do business and to borrow.
4. The Notes have been accepted for clearance through Euroclear and Clearstream Luxembourg as follows:

	<b>Common Code</b>	<b>ISIN</b>
Class A	027849270	XS0278492706
Class B	027849300	XS0278493001
Class C	027849326	XS0278493266
Class D	027849334	XS0278493340
Class E	027849342	XS0278493423

The estimated total expenses related to the admission to trading are €5,532.40.

5. The net and gross proceeds from the issue of the Notes will be approximately €560,000,000, and this sum will be applied by the Issuer towards the purchase of the Senior Loan from the Originator on the Closing Date pursuant to the Loan Sale Agreement.
6. No statutory or non-statutory accounts in respect of any financial year of the Issuer have been prepared. So long as the Notes are listed on the Official List of the Irish Stock Exchange, the most recently published audited annual accounts of the Issuer from time to time will be available at the specified offices of the Irish Paying Agent in Dublin. The Issuer does not publish interim accounts.
7. The Issuer is not, and has not been, engaged in any governmental, litigation or arbitration proceedings (including any such proceedings which are pending or threatened of which the Issuer is aware) which may have, or have had, since the date of its incorporation, a significant effect on the Issuer's financial position.
8. Since the date of its incorporation, the Issuer has not entered into any contract other than in its ordinary course of business.
9. Cushman & Wakefield (the "**Valuer**") has given and not withdrawn its written consent to the issue of this Prospectus and references to its name in the form and context in which they are included and has authorised the contents of that part of this Prospectus for the purposes of Section 45 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 of Ireland (as amended).
10. Save as disclosed herein, since 1 December 2006 (being the date of incorporation of the Issuer), there has been (a) no material adverse change in the financial position or prospects of the Issuer and (b) no significant change in the trading or financial position of the Issuer.
11. The Issuer Trust Agreement will provide that the Trustee may rely on reports or other information from professional advisors or other experts, whether or not such report or other information, engagement letter or other document entered into by the Trustee and the relevant professional advisor or expert in connection therewith contains any limit on the liability of that relevant professional advisor or expert.

## DOCUMENTS ON DISPLAY

Copies of the following documents may be physically inspected during usual business hours on any week day (excluding Saturdays, Sundays, and public holidays) at the offices of the Issuer at 25-26 Windsor Place, Lower Pembroke Street, Dublin 2 and at the specified offices of the Irish Paying Agent in Dublin for the life of this Prospectus:

- (a) the Memorandum and Articles of Association of the Issuer;
- (b) the partnership agreements of the Kö KG and the RRZ KG
- (c) the opening balance sheets of each Borrower;
- (d) the resolution of the board of directors of the Issuer approving the issue of the Notes;
- (e) all notices given to the Noteholders pursuant to the Terms and Conditions;
- (f) the Subscription Agreement referred to in this Prospectus;
- (g) the Prospectus and the following documents referred to in this Prospectus:
  - (i) the Loan Sale Agreement;
  - (ii) the following Loan Security Documents:
    - (1) the Mortgage Deed;
    - (2) the Security Purpose Agreement;
    - (3) the Accounts Pledge Agreement;
    - (4) the Assignment Agreement;
    - (5) the Share and Interest Pledge Agreement;
    - (6) the Comfort Letter;
    - (7) the Subordination Agreement between Merrill Lynch Luxembourg Holdings Sarl and Eurohypo;
    - (8) the Subordination Agreement between between GB Immobilien G.m.b.H. and Eurohypo;
    - (9) the Subordination Agreement between Tinfoil B.V. and Eurohypo;
    - (10) the Loan Interest Shortfall Guarantees by the General Partner;
    - (11) the Loan Interest Shortfall Guarantee by Merrill Lynch & Co., Inc;
    - (12) the Deloitte Intercreditor Agreement;
    - (13) Shareholder Undertaking Agreement; and
    - (14) the Deed of Assignment;
  - (iii) the Loan Intercreditor Agreement;
  - (iv) the following Issuer Security Documents
    - (1) Issuer Trust Agreement;
    - (2) the Mortgage Assignment;
    - (3) the Issuer Deed of Charge and Assignment;
  - (v) the Mortgage Trust Deed;
  - (vi) the Issuer Intercreditor Agreement;
  - (vii) the Servicing Agreement;
  - (viii) the Corporate Services Agreement;

- (ix) the Share Trust Agreement;
  - (x) the Notes;
  - (xi) the Agency Agreement;
  - (xii) the Issuer - ICSDs Agreement;
  - (xiii) the Interest Issuer Swap Agreement;
  - (xiv) the Contingent Issuer Swap Agreement
  - (xv) the Liquidity Facility Agreement;
  - (xvi) the Account Bank Agreement; and
  - (xvii) the Master Definitions Schedule;
- (h) a copy of the consent of Cushman & Wakefield to the issue of the Prospectus and references to its name in the form and context in which the Valuer is included and the authorisation of the contents of that part of the Prospectus for the purposes of Section 45 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 of Ireland (as amended).

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