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## Opera Finance (Uni-Invest) B.V.

(incorporated as a private company with limited liability under the laws of the Netherlands)

### €1,008,900,000 Commercial Mortgage Backed Floating Rate Notes 2005 Due 2012

#### Issue price 100 per cent.

Opera Finance (Uni-Invest) B.V. (the **Issuer**) will issue the €656,000,000 Class A Commercial Mortgage Backed Floating Rate Notes 2005 due 2012 (the **Class A Notes**), the €130,100,000 Class B Commercial Mortgage Backed Floating Rate Notes 2005 due 2012 (the **Class B Notes**), the €137,000,000 Class C Commercial Mortgage Backed Floating Rate Notes 2005 due 2012 (the **Class C Notes**) and the €85,800,000 Class D Commercial Mortgage Backed Floating Rate Notes 2005 due 2012 (the **Class D Notes** and, together with the Class A Notes, the Class B Notes and the Class C Notes, the **Notes**) on 17th May, 2005 (or such later date as the Issuer may agree with the Note Arranger and the Joint Bookrunners (each as defined below)) (the **Closing Date**).

The Issuer has applied to Euronext Amsterdam N.V. (**Euronext**) for the Notes to be admitted to the Listing on Eurolist by Euronext Amsterdam. This Offering Circular constitutes a prospectus for the purpose of the Listing and Issuing Rules (Fondsenreglement) of Euronext (the **Listing Rules**).

The 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**), Moody's Investors Service Limited (**Moody's**) and Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. (**S&P**) and, together with Fitch and Moody's, 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 only address the likelihood of timely receipt by any Noteholder 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).

<i>Class</i>	<i>Initial Principal Amount</i>	<i>Margin (per cent.)</i>	<i>Fitch</i>	<i>Anticipated Ratings Moody's</i>	<i>S&amp;P</i>
<b>Class A</b>	€656,000,000	0.23	AAA	Aaa	AAA
<b>Class B</b>	€130,100,000	0.35	AA	NR	AA
<b>Class C</b>	€137,000,000	0.55	A	NR	A
<b>Class D</b>	€85,800,000	0.85	BBB	NR	BBB

Notes will be payable quarterly in arrear in euro on 15 February, 15 May, 15 August and 15 November in each year (subject to adjustment for non-business days) (each an **Interest Payment Date**). The first Interest Payment Date will be the Interest Payment Date falling in August 2005. The interest rate applicable to each Class of Notes from time to time will be determined by reference to the euro interbank offered rate for three month euro deposits (**EURIBOR**, as determined in accordance with Condition 5.3(b)) 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 any other party 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 Offering Circular. Notes of each Class will rank *pari passu* with other Notes of the same Class. Unless previously redeemed in full, the Notes of each Class will mature on the Interest Payment Date falling in February 2012 (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 *Transaction Summary – 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 each initially be represented on issue by a temporary global note in bearer form (each, a **Temporary Global Note**), without interest coupons attached, which will be deposited on or about the Closing Date with a common depository for Euroclear Bank S.A./N.V., as operator of the Euroclear System (**Euroclear**), and Clearstream Banking, société anonyme (**Clearstream, Luxembourg**). Each Temporary Global Note will be exchangeable for interests in a permanent global note (each, a **Permanent Global Note**), without interest coupons attached, not earlier than 40 days after the Closing Date (provided that certification of non-U.S. beneficial ownership has been received). Ownership interests in the Temporary Global Notes and the Permanent Global Notes (together, the **Global Notes**) will be shown on, and transfers thereof will only be effected through, records maintained by Euroclear and Clearstream, Luxembourg and their respective participants. Interests in the Permanent Global Notes will be exchangeable for definitive Notes in bearer form only in certain limited circumstances as set forth therein.

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.

**EUROHYPO**  
Note Arranger

**LEHMAN BROTHERS**  
Joint Bookrunner

**citigroup**  
Joint Bookrunner

The date of this Offering Circular is 12th May, 2005

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, the Borrower, Eurohypo AG (in any capacity), by the Joint Bookrunners, the Servicer, the Special Servicer, the Note Trustee, the Directors, the Paying Agent, the Calculation Agent, the Liquidity Bank, the Senior Hedge Counterparties or the Account Bank or any company in the same group of companies as any of them.

Other than in respect to the information referred to in the following paragraph, the Issuer accepts responsibility for the information contained in this Offering Circular. To the best of the knowledge and belief of the Issuer the information contained in this Offering Circular (other than in respect to the information referred to in the following paragraph) is in accordance with the facts and there are no other facts, the omission of which would, in the context of the issue of the Notes, make any statements herein, whether of fact or opinion, misleading in any material respect. The Issuer accepts responsibility accordingly.

The Borrower is responsible solely for the information contained in the following sections of this Offering Circular: *The Borrower Group* and *Description of the Properties* but not for information contained in any other section and consequently the Borrower does not assume any liability in respect of the information contained in any such other sections. To the best of its knowledge and belief the information contained in the sections referred to in this paragraph is in accordance with the facts and there are no other facts, the omission of which would, in the context of the issue of the Notes, make any statements herein, whether of fact or opinion, misleading in any material respect. The Borrower accepts responsibility accordingly.

This Offering Circular is to be read in conjunction with the articles of association of the Issuer which are deemed to be incorporated herein by reference (see *General Information*). This Offering Circular will be read and construed on the basis that such document is incorporated in and forms part of this Offering Circular.

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 Offering Circular 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 Note Trustee, the Directors, the Paying Agent, the Calculation Agent, the Liquidity Bank, the Senior Hedge Counterparties or the Account Bank or any of their respective affiliates or advisors. Neither the delivery of this Offering Circular 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. None of the Issuer, the Borrower nor any other person has an obligation to update this Offering Circular, except when required by the Listing Rules. Save for obligations of Eurohypo in its capacity as Servicer or Special Servicer (as the case may be), Eurohypo expressly does not undertake to monitor 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.

Neither this Offering Circular nor any part hereof constitutes an offer or an invitation to sell or a solicitation of an offer to buy the Notes in any jurisdiction to any person to whom it is unlawful to make such an offer or solicitation in such jurisdiction. The distribution of this document and the offering of the Notes in certain jurisdictions may be restricted by law.

Neither this Offering Circular nor any other information supplied in connection with the Notes should be considered as a recommendation by Eurohypo or any of the Joint Bookrunners that any recipient of this Offering Circular 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 Euronext of this Offering Circular as a prospectus in accordance with the requirements of the Listing Rules, no action has been or will be taken to permit a public offering of the Notes or the distribution of this Offering Circular in any jurisdiction. The distribution of this Offering Circular and the offering of the Notes in certain jurisdictions may be restricted by law. Persons into whose possession this Offering Circular (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 Offering Circular, see *Subscription and Sale* below.

This Offering Circular 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.

All references in this document to **EUR, euro or €** are to the lawful currency of the member states of the European Union that adopt the single currency in accordance with the treaty establishing the European Community (as amended by the Treaty on European Union).

In connection with this issue, Lehman Brothers International (Europe) (in this capacity, the **Stabilising Manager**) or any person acting for it may over-allot 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, may be discontinued at any time. Such stabilising shall be in compliance with all applicable laws and regulations. In accordance with the rules of Euronext, such stabilising will in any event be discontinued within 30 days after the Closing Date. Stabilisation transactions conducted on Euronext must be conducted on behalf of the Stabilising Manager by a member of Euronext and must be conducted in accordance with all applicable laws and regulations of Euronext and Article 32 (and Annex 6) of the Further Regulation on Market Conduct Supervision of the Securities Trade 2002 (*Nadere Regeling Gedragtoezicht Effectenverkeer 2002*) as amended.

Neither the Joint Bookrunners, the Note Trustee nor any of their respective affiliates has separately verified the information contained herein, and accordingly neither the Joint Bookrunners, the Note Trustee nor any of their respective affiliates makes any representation, recommendation or warranty, express or implied, regarding the accuracy, adequacy, reasonableness or completeness of the information contained herein or in any further information, notice or other document which may at any time be supplied in connection with the Notes or their distribution, or the future performance and adequacy of the Notes, and none of them accepts any responsibility or liability therefore. Neither the Joint Bookrunners, the Note Trustee nor any of their respective affiliates undertakes to review the financial condition or affairs of the Issuer during the life of the arrangements contemplated by this Offering Circular nor to advise any investor or potential investor in the Notes of any information coming to their attention.

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## TRANSACTION SUMMARY

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 Offering Circular. Prospective Noteholders are advised to read carefully, and to rely solely on, the detailed information appearing elsewhere in this Offering Circular 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 Offering Circular, unless otherwise stated. An index of defined terms is set out at the end of this Offering Circular.

### Executive Summary

On 11th February, 2005, Eurohypo (as Senior Security Agent, Senior Facility Agent, Senior Loan Arranger and Initial Lender) entered into a senior secured loan agreement (the **Credit Agreement**) and a mezzanine secured loan agreement (the **Mezzanine Credit Agreement**), in each case, with Uni Invest B.V. (the **Borrower**), Uni-Invest Holding B.V. (**Holdings**) and certain subsidiaries of Holdings which have granted security and guarantees in respect of the Borrower's obligations thereunder (such subsidiaries together with Holdings and the Borrower are referred to as the **Obligors** and Holdings and all of its subsidiaries are referred to as the **Borrower Group**). In addition, the Obligors and Eurohypo entered into a portfolio obligations agreement dated 15th February, 2005 (the **Portfolio Obligations Agreement**) pursuant to which the Obligors are, *inter alia*, bound by certain representations and covenants relating to the Properties, being a portfolio of 321 properties which are all located in the Netherlands (except one, which is located in Belgium) and which are more fully described in *Description of the Properties* below.

On 15th February, 2005, Eurohypo (the **Initial Lender**) lent an aggregate principal amount of €1,017,000,000 (the **Senior Loan**) under the Credit Agreement and €279,500,000 (the **Mezzanine Loan**) under the Mezzanine Credit Agreement to the Borrower. The proceeds of the Senior Loan and the Mezzanine Loan were used to refinance the Borrower's existing indebtedness and to pay the associated costs of such refinancing.

On the Closing Date, Eurohypo will transfer all of its rights and obligations with respect to the Senior Loan to the Issuer in accordance with the terms of a transfer agreement to be entered into between Eurohypo and the Issuer (the **Loan Transfer Agreement**). The Issuer will use the proceeds of the issue of the Notes to acquire the 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 (as described elsewhere in this Offering Circular) to make payments of, *inter alia*, principal and interest due in respect of the Notes.

In order to ensure the valid creation of the security rights under Dutch law in favour of the Senior Security Agent, each of the Obligors have irrevocably and unconditionally undertaken to pay to the Senior Security Agent an amount equal to the amount of each payment obligation of that Obligor to the lenders under the Credit Agreement (the **Lenders**), the Senior Facility Agent, the Senior Loan Arranger and the Senior Hedge Counterparties (together the **Borrower Secured Parties**) on each relevant due date in accordance with the Senior Finance Documents.

Pursuant to various security agreements dated on or about 15th February, 2005, each of the Obligors have granted first ranking security interests over their assets in favour of the Senior Security Agent. This includes first priority mortgages over the Properties and certain other security interests (including pledges of lease receivables and pledges over the shares of members of the Borrower Group) to Eurohypo (in its capacity as Senior Security Agent) in order to secure the Obligors' obligations under the Borrower Parallel Debt. In addition, certain Belgian law security agreements will be re-executed on the Closing Date in order to give effect to the loan transfer arrangements contemplated by the Loan Transfer Agreement. All of these security interests are referred to as the **Loan Security**.



Pursuant to the Loan Transfer Agreement, the rights and obligations of Eurohypo as the Senior Security Agent (and the Senior Facility Agent) will be transferred to the Issuer. Consequently the Issuer will become the sole creditor in respect of the Borrower Parallel Debt and will assume the rights in respect of the Loan Security. See further *Credit Structure – Loan Transfer Agreement*.

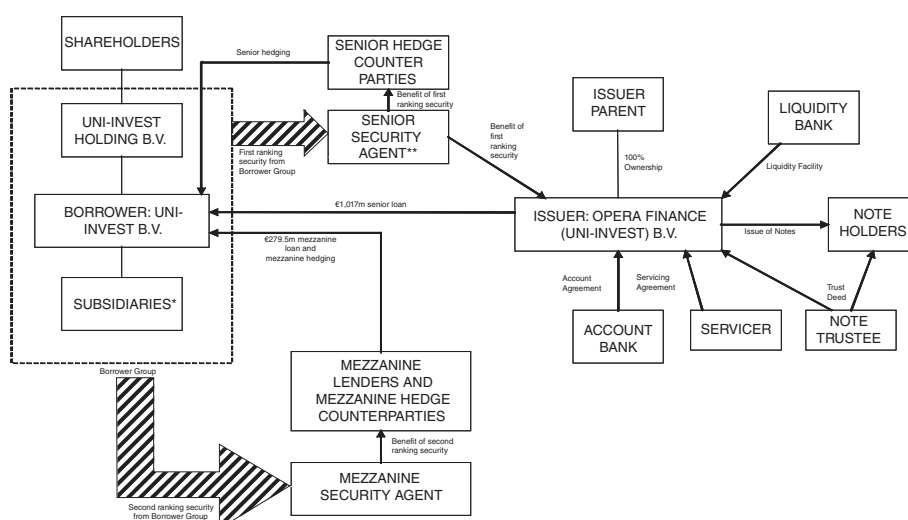
Interest will be payable in respect of the Senior Loan at a floating rate, set on the second TARGET Day prior to each Loan Interest Payment Date, calculated with reference to EURIBOR for three month euro deposits plus a margin. The Borrower has entered into and is required, under the terms of the Credit Agreement, to maintain (subject to certain limits) hedging arrangements (the **Senior Hedging Arrangements**) with a view to ensuring that it will be able to continue to make payments of interest under the Senior Loan notwithstanding variations in the floating rate of interest payable by it. See further *Credit Structure – Hedging obligations* below. The Borrower has also entered into interest rate hedging arrangements in respect of the Mezzanine Loan (the **Mezzanine Hedging Arrangements**).

As security for its obligations under (amongst other things) the Notes, the Issuer will grant first ranking disclosed pledges over all its assets and undertaking (which comprises, primarily, its rights in respect of the Senior Loan, the Loan Security (through the Borrower Parallel Debt) and its bank accounts) in favour of the Note Trustee under the Issuer Security Agreement. In order to ensure the valid creation of the security rights under Dutch law in favour of the Note Trustee, the Issuer will irrevocably and unconditionally undertake to pay to the Note Trustee, as an independent and separate creditor, an amount equal to the aggregate amount due by the Issuer to the Issuer Secured Parties (other than the Note Trustee) under or in connection with the Transaction Documents (see *Credit Structure – Issuer Security – Parallel Debt*). The Issuer Security Agreement will set out the priority of the claims of the Issuer Secured Parties. See further *Credit Structure – Cashflows* below.

The Obligors have also granted second priority security interests over the assets which constitute the Loan Security in favour of Eurohypo (in its capacity as Mezzanine Security Agent). The Senior Loan and the Mezzanine Loan and the security interests granted in respect of the Senior Loan and the Mezzanine Loan are subject to the terms of a priority agreement dated 11th February, 2005 (the **Priority Agreement**). See further *Credit Structure – Priority Agreement*.

### Structure diagram

After the Senior Loan and the Borrower Parallel Debt has been transferred to the Issuer, the structure of the transaction will be as follows.



\* See Appendix B for the full structure of the Borrower Group  
 \*\* The Borrower Parallel Debt (and consequently the Loan Security) will be transferred to the Issuer. The Issuer will therefore hold the Loan Security under that parallel debt arrangement for the other Borrower Secured Parties

## Key Transaction Parties

Issuer:	Opera Finance (Uni-Invest) B.V. (the <b>Issuer</b> ) is incorporated under the laws of the Netherlands as a private company with limited liability ( <i>besloten vennootschap met beperkte aansprakelijkheid</i> ) having its registered offices at Olympic Plaza, Fred Roeskestraat 123, 1076 EE Amsterdam, the Netherlands and registered with the Commercial Register of the Chamber of Commerce of Amsterdam under number 34224771. The entire issued share capital of the Issuer is held by the Issuer Parent.
Issuer Parent:	Stichting Holding Opera Finance (Uni-Invest) (the <b>Issuer Parent</b> ) is established under the laws of the Netherlands as a foundation ( <i>stichting</i> ) having its registered offices at Olympic Plaza, Fred Roeskestraat 123, 1076 EE Amsterdam, the Netherlands and registered with the Commercial Register of the Chamber of Commerce of Amsterdam, under number 34224770. The Issuer Parent holds the entire issued share capital of the Issuer.
Note Trustee:	Stichting Note Trustee Opera Finance (Uni-Invest) (the <b>Note Trustee</b> ) is established under the laws of the Netherlands as a foundation ( <i>stichting</i> ) having its registered offices at Herengracht 420, 1017 BZ, Amsterdam, the Netherlands and will act under the Trust Deed as trustee for the holders of the Notes and under the Issuer Security Agreement as trustee for the Noteholders and the other Issuer Secured Parties.
Directors:	<p>Structured Finance Management (Netherlands) B.V. will be the sole managing director of the Issuer and the Issuer Parent.</p> <p>N.V. Algemeen Nederlands Trustkantoor ANT will be the sole managing director of the Note Trustee and will provide certain corporate administration and secretarial services to it (the <b>Trustee Director</b>) pursuant to the trustee corporate services agreement (the <b>Trustee Corporate Services Agreement</b>).</p>
Corporate Services Provider:	Structured Finance Management (Netherlands) B.V. will provide certain corporate administration and secretarial services to the Issuer and the Issuer Parent (the <b>Corporate Services Provider</b> ) pursuant to the issuer corporate services agreement (the <b>Issuer Corporate Services Agreement</b> ).
Borrower:	Uni-Invest B.V. is incorporated under the laws of the Netherlands as a private company with limited liability ( <i>besloten vennootschap met beperkte aansprakelijkheid</i> ) having its registered offices in Amsterdam, the Netherlands and registered with the Commercial Register of the Chamber of Commerce of Amsterdam under number 34183271.
Holdings:	Uni-Invest Holding B.V. is incorporated under the laws of the Netherlands as a private company with limited liability ( <i>besloten vennootschap met beperkte aansprakelijkheid</i> ) having its registered offices in Amsterdam, the Netherlands



and registered with the Commercial Register of the Chamber of Commerce of Amsterdam under number 33186563.

Shareholders:

99.98 per cent. (rounded down to the nearest two decimal places) of the share capital of Holdings is held by Rembrandt I S.à.r.l, Rembrandt II S.à.r.l, Rembrandt III S.à.r.l, Rembrandt IV S.à.r.l and Rembrandt V S.à.r.l, each of which is a private company incorporated under the laws of Luxembourg with limited liability (the **Shareholders**). The shares of the Shareholders are held by fourteen legal entities (collectively, the **LBREP Funds**). The investors in the LBREP Funds are institutional and private clients of Lehman Brothers Holdings Inc. (**Lehman Brothers**), as well as employees and wholly owned subsidiaries of Lehman Brothers. Each LBREP Fund is managed by a general partner or managing member that is a wholly owned subsidiary of Lehman Brothers, and is required to act in the best interests of the investors in each LBREP Fund. There is no voting agreement or arrangement between the Shareholders, and each of the Shareholders is independent of every other Shareholder. The persons holding the shares of the Shareholders may not continue to hold their interests for the duration of the life of the Notes although this may constitute a Loan Event of Default (see *Credit Structure – Finance Documents – Events of Default*).

Eurohypo:

Eurohypo Aktiengesellschaft, London Branch, whose principal office is at 4th Floor, 90 Long Acre, London WC2E 9RA (**Eurohypo**) will act in various capacities in respect of the transactions described in this Offering Circular. These are:

- (a) as senior facility agent (the **Senior Facility Agent**) under the Credit Agreement and as holder of the Loan Security (the **Senior Security Agent**) pursuant to a parallel debt undertaking for the benefit of the Senior Facility Agent, the Lenders and the Senior Hedge Counterparties (the **Borrower Secured Parties**);
- (b) as facility agent (the **Mezzanine Facility Agent** and together with the Senior Facility Agent, the **Combined Facility Agents**) under the Mezzanine Credit Agreement and as holder of the second ranking security interests (the **Mezzanine Security Agent**) pursuant to a parallel debt undertaking for the benefit of the Mezzanine Facility Agent, the Mezzanine Lenders and the Mezzanine Hedge Counterparties;
- (c) as initial lender of the Senior Loan and as initial lender of the Mezzanine Loan (together with any other person that becomes a lender under the Mezzanine Credit Agreement, the **Mezzanine Lenders**);
- (d) as loan payment agent (the **Loan Payment Agent**) under the Senior Finance Documents;
- (e) as arranger of the Senior Loan (the **Senior Loan Arranger**);

- (f) 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;
- (g) as arranger in respect of the issue of the Notes (the **Note Arranger**); and
- (h) as calculation agent under the Agency Agreement (the **Calculation Agent**).

The rights and obligations of Eurohypo under the Senior Finance Documents in its capacity as Initial Lender, Senior Facility Agent, Senior Security Agent and Loan Payment Agent will be transferred to the Issuer on the Closing Date in accordance with the Loan Transfer Agreement.

Paying Agent: ABN AMRO Bank N.V., will be the paying agent under the Agency Agreement (the **Paying Agent**).

Account Bank: ABN AMRO Bank N.V., will act as account bank for the Issuer under the Account Bank Agreement (in this capacity, the **Account Bank**).

Liquidity Bank: Lloyds TSB Bank plc, will provide the Liquidity Facility to the Issuer under the Liquidity Facility Agreement (in this capacity, the **Liquidity Bank**).

Hedge Counterparties: Eurohypo, whose principal office is at 4th Floor, 90 Long Acre, London WC2E 9RA (in this capacity, the **Senior Hedge Counterparty**) has entered into an interest rate swap agreement with the Borrower in respect of the Borrower's obligations under the Senior Loan. In this document, the term **Senior Hedge Counterparties** includes any other party appointed from time to time pursuant to the Credit Agreement to act as a counterparty under the Senior Hedging Arrangements in respect of the Senior Loan.

Eurohypo, whose principal office is at 4th Floor, 90 Long Acre, London WC2E 9RA (in this capacity, the **Mezzanine Hedge Counterparty**) has entered into an interest rate swap agreement with the Borrower in respect of the Borrower's obligations under the Mezzanine Loan. In this document, the term **Mezzanine Hedge Counterparties** includes any other party appointed from time to time pursuant to the Credit Agreement to act as a counterparty under the Mezzanine Hedging Arrangements in respect of the Mezzanine Loan.

Joint Bookrunners: Citigroup Global Markets Limited whose principal office is at Citigroup Centre, 33 Canada Square, Canary Wharf, London E14 and Lehman Brothers International (Europe) whose principal office is at 25 Bank Street, Canary Wharf, London E14 5LE.

### Key characteristics of the Senior Loan

General: The Senior Loan (through the Borrower Parallel Debt) constitutes full recourse obligations of the Borrower and the

	<p>other Obligors (as guarantors under the Credit Agreement) and is secured by, <i>inter alia</i>, first ranking mortgages over the Properties and first ranking pledges over the lease receivables, the insurance receivables, Senior Hedging Arrangements and bank accounts.</p>
Purpose of the Senior Loan:	<p>The proceeds of the Senior Loan were used to refinance the Borrower's existing indebtedness and to pay the prepayment/breakage costs in relation to such refinancing together with all other associated costs of such refinancing.</p>
Interest rate:	<p>The Senior Loan will bear interest calculated as the sum of EURIBOR (as defined under the Credit Agreement) plus a margin and any mandatory costs. The amount of interest payable on the Senior Loan exceeds the aggregate amount of interest payable in respect of the Notes and all other anticipated costs and expenses of the Issuer.</p>
Interest payments:	<p>Interest under the Senior Loan will be paid quarterly in arrear on 15 February, 15 May, 15 August and 15 November in each year (each, a <b>Loan Interest Payment Date</b>) in respect of successive interest periods (each, a <b>Loan Interest Period</b>).</p>
Repayment of the Senior Loan:	<p>Unless the Borrower has previously repaid the Senior Loan, it will be required to repay all amounts outstanding under the Senior Loan in full on the Loan Interest Payment Date falling in February 2010 (the <b>Loan Maturity Date</b>).</p>
Mandatory prepayment:	<p>If a Lender becomes aware that it is unlawful in any applicable jurisdiction for that Lender to perform any of its obligations under a Senior Finance Document or to fund or maintain its participation in the Senior Loan, after receipt of notification from that Lender, the Borrower must repay or prepay the participation of that Lender in the Senior Loan on the last day of the current Loan Interest Period for the Senior Loan or, if earlier, the date specified by that Lender in its notification, which must not be earlier than the last day of any applicable grace period allowed by law.</p> <p>If a member of the Borrower Group disposes of any Property, an amount of the disposal proceeds will be required to be applied in prepayment of the Senior Loan on the next Loan Interest Payment Date (see <i>Credit Structure – Senior Finance Documents – Disposal of Property</i> for more details).</p>
Voluntary prepayment:	<p>The Borrower may, subject to compliance with the terms of the Senior Finance Documents, prepay the Senior Loan in whole or in part (subject to a minimum of €5,000,000) on a Loan Interest Payment Date provided that the Borrower gives not less than 15 days' prior written notice to the Senior Facility Agent (or such other period agreed by the Senior Facility Agent).</p>
Prepayment as a result of a tax payment or increased cost:	<p>If an Obligor is, or will be, required to pay to a Lender a tax payment or an increased cost in respect of the Senior Loan, the Borrower may, while the requirement continues and provided that no Loan Default is outstanding, give notice to</p>

the Senior Facility Agent that it intends to prepay that Lender's share of the Senior Loan. The date for repayment or prepayment will be the last day of the current Interest Period or, if earlier, the date specified by the Borrower.

If the Senior Loan is refinanced in full prior to 15th February, 2007, the Borrower will be required to pay certain prepayment fees. Prepayment fees will not be payable in any other circumstances.

Representations and warranties:

The representations and warranties which were given by the Obligors under the Senior Finance Documents to Eurohypo (in various capacities) on the date of the relevant Senior Finance Document and the date of drawdown and, subject to certain exceptions, which will be given by the Obligors on each Loan Interest Payment Date, will include, *inter alia*, representations and warranties as follows:

- (a) due incorporation and authorisation;
- (b) no default under the Credit Agreement (a **Loan Event of Default**) is outstanding or will result from the making of the Senior Loan;
- (c) legality, validity and enforceability of, *inter alia*, the Senior Finance Documents;
- (d) ownership and title to the Properties, in each case free from any security interests (other than those set out in the Borrower Security Agreements);
- (e) first priority of the Loan Security;
- (f) the absence of material litigation, arbitration or administrative proceedings; and
- (g) the truthfulness and accuracy of all information supplied by the Obligors to the Senior Loan Arranger, the Initial Lender and the Senior Facility Agent, *inter alia*, in connection with the Credit Agreement and related Senior Finance Documents (the **Senior Finance Documents**) and of all information supplied by the Obligors to the Valuer for the purposes of the Valuation.

Loan Security:

Each Obligor has irrevocably and unconditionally undertaken to pay to the Senior Security Agent an amount equal to the amount of each payment obligation of that Obligor to the Borrower Secured Parties on each relevant due date in accordance with the Senior Finance Documents (the **Borrower Parallel Debt**). The Obligors have entered into various security agreements with Eurohypo (as Senior Security Agent) each dated on or about 15th February, 2005 (the **Borrower Security Agreements**) under which they have granted first priority mortgages over the Properties and certain other first priority security interests (including pledges over the lease receivables (including the rental cashflows in respect of the Properties), the insurance receivables, Senior

Hedging Arrangements, bank accounts and pledges over the shares of members of the Borrower Group) in favour of the Senior Security Agent (as the sole creditor in respect of the Borrower Parallel Debt) as security for the Obligors' obligations in respect of the Borrower Parallel Debt.

Insurance:

Each Obligor will undertake, pursuant to the Senior Finance Documents, to maintain insurance on the Properties on a full reinstatement value basis. The Borrower will also undertake to procure that, *inter alios*, the Senior Security Agent is named as co-insured on all relevant insurance policies.

All insurances required under the Senior Finance Documents must be with an insurance company or underwriter (or a group of insurance companies or underwriters) that:

- (a) has a credit rating of (A) in the case of an insurance company or underwriter, long term instruments with a rating of, or a financial strength rating of or (B) in the case of a group of insurance companies or underwriters, weighted average long term instruments with a rating of, or a financial strength rating of, A (or better) by Fitch and A (or better) by S&P, and to the satisfaction of Moody's for the purposes of the Notes;
- (b) is recommended by Holdings' insurance broker as confirmed in a letter to the Combined Facility Agents and Holdings, such letter to be delivered at least annually; or
- (c) is otherwise acceptable to the Senior Facility Agent (acting reasonably).

See *Credit Structure – Senior Finance Documents – Insurance* for a full description of the required insurance cover.

Governing law:

The Senior Finance Documents (other than the Senior Hedging Arrangements, which are governed by English law, and the English and Belgian law Borrower Security Agreements) are governed by Dutch law.

### Key characteristics of the Properties

Cut-Off Date:

The information provided in relation to the Properties is provided as at 15th February, 2005 unless otherwise stated.

Properties:

The Senior Loan is secured on 321 properties located in the Netherlands (except one property which is located in Belgium) (the **Properties** and each a **Property**). See *Description of the Properties* below.

As at 15th February, 2005, gross rent (inclusive of reversionary income from outstanding rent reviews) was €113,400,000 per annum.

The estimated aggregate rental value of the Properties was €134,100,000 per annum.

Valuation:

DTZ Zadelhoff (the **Valuer**) has determined the market value of the Properties, subject to the existing tenancies, to be, as at 15th February, 2005 (the **Valuation Date**), €1,453,000,000 (the **Valuation**). On the basis of the Valuation, the loan to value ratio of the Senior Loan as at 15th February, 2005 was 70 per cent.

Under the terms of the Credit Agreement, the Senior Facility Agent may request a valuation (at the cost of the Borrower) (a) on demand once within any period of 12 months (provided that the first such valuation may not be requested prior to the expiry of 12 months from the Closing Date) and (b) at any time when either:

- (i) an actual or potential Loan Event of Default (a **Loan Default**) is outstanding; or
- (ii) the Senior Facility Agent (acting reasonably) has reasonable grounds to believe that a Loan Default is likely to occur as a result of the request by the Senior Facility Agent, provided that prior to commencing such a valuation, the Senior Facility Agent has given 10 business days' notice to and has consulted with the Borrower regarding the relevant likely Loan Default, after which consultation the Senior Facility Agent (acting reasonably) still considers that it has such reasonable grounds.

In addition, the Senior Facility Agent may at any time request additional valuations within any period of 12 months in respect of Properties whose aggregate value does not exceed 20 per cent. of the total value of the Properties (in each case, as shown in the most recent valuation at that time). Such additional valuations will be at the cost of the Lenders.

See *Valuation Certificate* below.

## Principal features of the Notes

Notes:

The Notes will comprise:

€656,000,000 Class A Commercial Mortgage Backed Floating Rate Notes 2005 due 2012;

€130,100,000 Class B Commercial Mortgage Backed Floating Rate Notes 2005 due 2012;

€137,000,000 Class C Commercial Mortgage Backed Floating Rate Notes 2005 due 2012; and

€85,800,000 Class D Commercial Mortgage Backed Floating Rate Notes 2005 due 2012.

The Notes will be constituted by a trust deed made between the Issuer and the Note Trustee dated on or before the Closing Date (the **Trust Deed**). The Notes of each Class will



rank *pari passu* and rateably and without any preference among themselves.

Status and priority:

Payments of interest in respect of the Class A Notes will rank ahead of payments of interest in respect of the Class B Notes, the Class C Notes and the Class D Notes. Payments of interest in respect of the Class B Notes will rank ahead of payments of interest in respect of the Class C Notes and the Class D Notes. Payments of interest in respect of the Class C Notes will rank ahead of payments of interest in respect of the Class D Notes.

Prior to foreclosure of the Issuer Security, repayments from the proceeds of a disposal of any Property will be applied as described in Condition 6.2(b).

See *Credit Structure – Cashflows* below.

Form of the Notes:

Each Class of Notes will be represented by a Global Note in bearer form. The Temporary Global Notes and the Permanent Global Notes of each Class will be held by a common depositary for Euroclear and Clearstream, Luxembourg. The Notes will be in denominations of €100,000.

Ratings:

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

<b>Class</b>	<b>Fitch</b>	<b>Moody's</b>	<b>S&amp;P</b>
Class A Notes	AAA	Aaa	AAA
Class B Notes	AA	NR	AA
Class C Notes	A	NR	A
Class D Notes	BBB	NR	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 has been made for the Notes to be admitted to the Listing on Eurolist by Euronext.

Final redemption:

Unless previously redeemed in full, the Notes will mature on the Final Maturity Date.

Redemption of the Notes for other reasons:

The Issuer may (or may be obliged to) redeem all or part of the Notes in certain other circumstances e.g. if the Issuer is required to withhold any amount of any interest payment.

Redemption of the Notes after a disposal of Property:

If the Issuer receives any principal amounts from the Borrower under the Senior Loan as a result of a disposal of a Property, except as described in the next sentence, the Allocated Loan Amount will be applied in redemption of the Notes pro rata with any other such principal amounts received being applied sequentially (i.e. Class A Notes first then Class B Notes etc.). If the aggregate Principal Amount Outstanding of the Notes is less than 25% of the aggregate Principal

Amount Outstanding of the Notes as at the Closing Date then all such principal amounts of the Senior Loan received by the Issuer will be applied sequentially. See Condition 6.2 for more details.

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 the Noteholders of any Class, 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 in issue) (**Further Notes**);
- (b) notes which rank *pari passu* with the Class A Notes, or behind the Class A Notes and ahead of the Class B Notes, or *pari passu* with the Class B Notes, or behind the Class B Notes but ahead of the Class C Notes, or *pari passu* with the Class C Notes, or behind the Class C Notes but ahead of the Class D Notes or *pari passu* with the Class D Notes or behind the Class D Notes (**New Notes**); and
- (c) notes of any Class to replace an existing Class of Notes, but with a lower interest rate (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) is lower than the existing Class of Notes being replaced) (**Replacement Notes**).

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 in issue will not be adversely affected. See further Condition 16 under *Terms and Conditions of the Notes* below.

Interest rates:

Each Class of Notes will initially bear interest calculated as the sum of EURIBOR (as determined in accordance with Condition 5.3) 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 (per cent.)</b>
Class A Notes	0.23
Class B Notes	0.35
Class C Notes	0.55
Class D Notes	0.85

Interest payments:	Interest will be payable on the Notes quarterly in arrear on 15 February, 15 May, 15 August and 15 November in each year, or, if the same is not a Business Day, on the next following Business Day (each, an <b>Interest Payment Date</b> ). <b>Business Day</b> means a day (other than a Saturday or Sunday or a public holiday) on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealings in foreign exchange and foreign currency deposits) in London and Amsterdam and provided that such day is also a day on which the Trans-European Automated Real-Time Gross Settlement European Transfer System ( <b>TARGET</b> ) or any successor thereto is open for the settlement of payments in euro.
Interest Periods:	The first Interest Period will run from (and including) the Closing Date to (but excluding) the first Interest Payment Date and subsequent Interest Periods will run from (and including) an Interest Payment Date to (but excluding) the next Interest Payment Date. The Noteholders will be entitled to receive a payment of interest in accordance with the Priorities of Payments (as described in <i>Credit Structure – Cashflows</i> below).
Issue prices:	<p>The Class A Notes will be issued at 100 per cent. of their aggregate initial Principal Amount Outstanding;</p> <p>The Class B Notes will be issued at 100 per cent. of their aggregate initial Principal Amount Outstanding;</p> <p>The Class C Notes will be issued at 100 per cent. of their aggregate initial Principal Amount Outstanding; and</p> <p>The Class D Notes will be issued at 100 per cent. of their aggregate initial Principal Amount Outstanding.</p>
Withholding tax:	<b>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 <i>Taxation in the Netherlands</i> below.</b>
Security for the Notes:	<p>The Notes will be secured pursuant to a security agreement dated on or before the Closing Date and made between the Issuer, the Issuer Parent, the Note Trustee and certain of the other Issuer Secured Parties (the <b>Issuer Security Agreement</b>).</p> <p>The security interests created under the Issuer Security Agreement will be granted in favour of the Note Trustee as security for the undertaking of the Issuer to pay (by way of parallel debt) amounts owed by the Issuer to the Noteholders, the Receiptholders, the Couponholders, the Paying Agent, the Calculation Agent, the Corporate Services Provider, the Trustee Director, the Servicer, the Special Servicer, the Liquidity Bank, Eurohypo (in respect of the Deferred</p>

Consideration only) and the Account Bank and any other party so designated by the Issuer and the Note Trustee (together with the Note Trustee and any appointee of the Note Trustee, the **Issuer Secured Parties**).

The Issuer has granted the following security interests under or pursuant to the Issuer Security Agreement (the **Issuer Security**):

- (a) a first ranking disclosed pledge of its rights in respect of the Senior Loan;
- (b) a first ranking disclosed pledge of its interest in the Borrower Parallel Debt (and consequently its interest in the Loan Security);
- (c) a first ranking disclosed pledge of its rights under the other Transaction Documents to which it is a party; and
- (d) a first ranking disclosed pledge of its rights to all moneys standing to the credit of the Issuer Accounts.

Prior to foreclosure of the Issuer Security, payments in respect of each Class of Notes will rank in accordance with the Pre-Enforcement Priority of Payments. Upon acceleration of the Notes or foreclosure of the Issuer Security, payments in respect of each Class of Notes will rank in accordance with the Post-Enforcement Priority of Payments. See *Credit Structure – Cashflows*.

Transfer restrictions:

There will be no transfer restrictions in respect of the Notes, subject to applicable laws and regulations (including the selling restrictions set out in *Subscription and Sale* (to the extent relevant)).

Governing law:

The Notes will be governed by Dutch law.

## RISK FACTORS

Set out in this section is a summary of certain issues of which prospective Noteholders should be aware before making a decision whether or not to invest in Notes of any Class. This summary is not intended to be exhaustive. Therefore, prospective Noteholders should also read the detailed information set out elsewhere in this Offering Circular and form their own views before making any investment decision.

### A. Considerations relating to the Notes

#### Liability under the Notes

The Issuer is the only entity which has obligations to pay principal, premium (if any) 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 Note Trustee, the Liquidity Bank, the Servicer, the Special Servicer, the Paying Agent, the Calculation Agent, the Corporate Services Provider and the Account Bank, or by any entity affiliated to any of the foregoing.

#### Limited resources of the Issuer

The Notes will be full recourse obligations of the Issuer. However, the assets of the Issuer will themselves be limited. The ability of the Issuer to meet its obligations under the Notes will be dependent primarily upon the receipt by it of principal, premium (if any) and interest from the Borrower under the Credit Agreement (see further *Considerations relating to the Senior Loan and the Borrower* below) and the receipt of funds (if available to be drawn) under the Liquidity Facility Agreement. Other than the foregoing, and any interest earned by the Issuer in respect of its bank accounts, the Issuer is not expected to have any other funds available to it to meet its obligations under the Notes.

Upon foreclosure of the security for the Notes, the Note Trustee will have recourse only to the Senior Loan and the Issuer's interest in the Borrower Parallel Debt and consequently its interest in the 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 (see *Credit Structure – Liquidity Facility* for further information).

If the security is foreclosed and the proceeds of the foreclosure are insufficient to repay in full all principal and interest and other amounts due under the Notes, then, as the Issuer will not have any other assets, it may be unable to satisfy claims in respect of any such unpaid amounts. Foreclosure of the security by the Note Trustee is the only remedy available to the Noteholders for the purpose of recovering amounts owed under the Notes.

#### Risks inherent to the Notes

By acquiring the Notes, the Noteholders shall be deemed to have knowledge of, understand, accept and be bound by the Conditions. None of the Issuer, the Paying Agent or the Calculation Agent will have any responsibility for the proper performance by Euroclear and/or Clearstream, Luxembourg or its participants of their obligations under their respective rules, operating procedures and calculation methods.

#### Limited Provision of Information

The Issuer will have no obligation to keep any Noteholder or any other person informed as to matters arising in relation to the Borrower, the Notes or the Senior Loan, except for the information provided in the quarterly investor report concerning the Notes which will be made available to,

amongst others, the Issuer, the Note Trustee, the Paying Agent and the Calculation Agent, on or about each Interest Payment Date.

### **Ratings of the Notes**

The ratings assigned to each Class of the Notes by the Rating Agencies are based on the Senior Loan, the Loan Security, the Properties and other relevant structural features of the transaction, including, *inter alia*, the short term and long term unsecured, unguaranteed and unsubordinated debt ratings of the Liquidity Bank and the Senior Hedge Counterparties. These ratings reflect only the views of the Rating Agencies. A rating is not a recommendation to buy, sell or hold securities and may be subject to revision, suspension or withdrawal at any time.

The ratings address the likelihood of full and timely receipt by any of the Noteholders of interest on the Notes and the likelihood of full and timely receipt by any Noteholder of the principal amount of the Notes on 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 judgement of the Rating Agencies, circumstances so warrant. A qualification, downgrade or withdrawal of any of the ratings mentioned above may have an impact upon the market value and/or liquidity of the Notes of any Class.

Credit rating agencies other than Fitch, Moody's 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, Moody's 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 Offering Circular, all references to ratings in this Offering Circular are to ratings assigned by the Rating Agencies (namely Fitch, Moody's and S&P).

### **Ratings confirmations**

Under the Transaction Documents, the Note Trustee may determine whether or not any event, matter or thing is, in its opinion, materially prejudicial to the interests of any Class of Noteholders, or, as the case may be, all the Noteholders, and if the Note Trustee shall certify that any such event, matter or thing is, in its opinion, materially prejudicial, such certificate shall be conclusive and binding upon the Issuer and the Noteholders. In making such a determination, the Note Trustee shall be entitled to take into account, *inter alia*, 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.

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

Application has been made to Euronext for the Notes to be admitted to the Official Segment of the Stock Market of Euronext. 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. 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.



## **Availability of Liquidity Facility**

There is a risk that interest payable in respect of the Senior Loan is not received on time, which could cause temporary liquidity issues to the Issuer. This risk is mitigated in certain circumstances by the 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 a €63,000,000 Liquidity Facility to enable the Issuer to, *inter alia*, make payments of interest in respect of the Notes and certain other senior costs of the Issuer. However, 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 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 further *Credit Structure – Liquidity Facility*, below.

## **Subordination of the Notes – General**

The obligations of the Issuer in respect of the Notes will rank as to payment of interest and principal behind the obligations of the Issuer in respect of certain items set forth in the Priorities of Payments such as any tax payments, audit fees and the costs and expenses of the Corporate Services Provider and the Paying Agent.

## **Subordination of Class B Notes, Class C Notes and Class D Notes**

Prior to acceleration of the Notes, payments of interest in respect of the Class B Notes, Class C Notes and the Class D Notes will be subordinated to payments of interest in respect of the Class A Notes. In addition, payments of interest in respect of the Class D Notes will be subordinated to payments of interest in respect of the Class C Notes and the Class B Notes and payments of interest in respect of the Class C Notes will be subordinated to payments of interest on the Class B Notes.

Prior to acceleration of the Notes and subject to Condition 6.2, payments of principal in respect of the Class B Notes, Class C Notes and the Class D Notes will be subordinated to payments of principal in respect of the Class A Notes. In addition, payments of principal in respect of the Class D Notes will be subordinated to payments of principal in respect of the Class C Notes and the Class B Notes and payments of principal in respect of the Class C Notes will be subordinated to payments of principal on the Class B Notes.

The terms on which the Issuer Security will be held will provide that, upon foreclosure, certain payments (including all amounts payable to the Note Trustee, all amounts due to the Servicer, the Special Servicer, the Corporate Services Provider, the Trustee Director, the Account Bank, the Paying Agent, the Calculation Agent and all payments due to the Liquidity Bank under the Liquidity Facility (other than any Liquidity Subordinated Amount) will be made in priority to all amounts owing to the Noteholders.

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 and all amounts owing to the Class C Noteholders will rank higher in priority to all amounts owing to the Class D Noteholders.

## **Conflict of interests between classes of Noteholders**

The Note Trustee will be required, in performing its duties under the Trust Deed and the Issuer Security Agreement, to have regard to the interests of all the Noteholders together. However, if (in the sole opinion of the Note 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 Note 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 Note Trustee will determine interests viewing the holders of any particular Class of Notes as a whole.

## **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 the 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.

## **Yield and prepayment considerations**

The yield to maturity of the Notes of each Class will depend on, *inter alia*, 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 in respect of such Notes. Such yield may be adversely affected by one or more prepayments in respect of the Senior Loan (and payment thereof to Noteholders).

If any member of the Borrower Group disposes of any Property, the terms of the Credit Agreement require the Borrower to prepay a portion of the Senior Loan. The Issuer will be required to use the proceeds of such prepayment to redeem an amount of the Notes which corresponds to the amount of the Senior Loan prepaid. In addition, the Borrower will have the option to prepay all or any part of the Senior Loan. If the Borrower prepays the Senior Loan in whole or in part, the Issuer will effect a redemption of the Notes in a principal amount which corresponds to the amount of the Senior Loan prepaid.

If, at any time, the aggregate Principal Amount Outstanding under the Notes is less than or equal to 10 per cent. of the aggregate Principal Amount Outstanding of the Notes on the Closing Date, the Issuer has the right (but is not obliged) to redeem all Notes in accordance with Condition 6.9.

## **B. Considerations relating to the Senior Loan and the Borrower**

### **General**

Property investments are subject to varying degrees of risk. Rental revenues and property values are affected by changes in the general economic climate and local conditions such as an oversupply of space, a reduction in demand for commercial properties in an area, competition from other available properties or increased operations costs. Rental revenues and property values are also affected by such factors as political developments, governmental regulations, changes in planning or tax laws, interest rate levels, inflation, the availability of financing and yields of alternative investments. Commercial rental levels and property values are sensitive to such factors which can sometimes result in rapid and substantial decreases in market rental and valuation levels. Any such decline may adversely affect the ability of the Borrower to meet its obligations under the Credit Agreement.

The rental income and value of any property is dependent on factors, including the quality of the location of the property, the accessibility of the property to potential customers and population centres, transportation links and the nature of the surrounding region. In addition, adverse developments in the local, regional and national economies affect spending on the services provided at commercial properties and the cost of operating a property and can have a significant effect on the rental income and value of that property, including through lease defaults, difficulty in attracting replacement tenants for expiring or terminated leases and downward price pressure from a higher vacancy rate. Increased competition in the market of a property through the addition of competing properties nearby or otherwise can adversely impact the rental income and value of that property, even if (and possibly because) the local, regional and national economies are doing well. Furthermore, technological developments can affect the viability of such properties by rendering facilities obsolete or by reducing the size of the work force necessary to perform office tasks, thus reducing demand for space.

### **Borrower's dependence on tenants**

The Borrower relies on rental payments payable by tenants under occupational leases (a) to service the Senior Loan, the Mezzanine Loan and any other debt or obligation it may have outstanding, (b) to pay for maintenance and other operating expenses of the Properties and (c) to fund capital improvements. The Borrower's ability to make payments in respect of the Credit Agreement could be adversely affected if occupancy levels at the Properties were to fall or if a significant number of tenants were unable to meet their obligations under their occupational leases.

In relation to existing leases and any new occupational leases granted by the Borrower after the Closing Date which expire or will permit the related tenant to terminate its occupational lease during the term of the Credit Agreement, there can be no assurance that tenants will renew their respective occupational leases or that new tenants will be found to take up replacement occupational leases. Furthermore, even if such renewals are effected or replacement occupational leases are granted, there can be no assurance that such renewals or replacement occupational leases will be on terms (including rental levels) as favourable to the Borrower as those which exist now or before such termination, nor that the covenant strength of tenants who renew their occupational leases or new tenants who replace them will be the same as or equivalent to, those now existing or existing before such termination. The income of the Borrower Group and the market value of the Properties would be adversely affected if tenants were unable to pay rent or if space was unable to be let out on favourable terms or at all. This may affect the Borrower's payment obligations under the Credit Agreement and ultimately the Issuer's payment obligations under the Notes and may also affect the foreclosure proceeds of the Properties.

In addition, any tenant may, from time to time, experience a downturn in its business, which may weaken its financial condition and result in a failure to make rental payments when due. If a tenant, particularly a significant tenant, were to default in its obligations due, the Borrower Group might experience delays in enforcing its rights and may incur costs and experience delays associated with protecting its investment, including costs incurred in renovating and re-letting the relevant Properties. This may also affect the Borrower's payment obligations under the Credit Agreement.

The ability to attract the appropriate types and number of tenants paying rent levels sufficient to allow the Borrower to make payments due under the Credit Agreement will depend on, *inter alia*, the performance generally of the commercial property market in the Netherlands. Continued global instability (resulting from economic and/or political factors, including the threat of global terrorism) may adversely affect the Dutch economy.

Rental levels, the quality of the building, the amenities and facilities offered, the convenience and location of the Properties, the amount of space available, the transport infrastructure, the parking policy of the (local) government and the age of the building in comparison to the alternatives are all factors which influence tenant demand. There is no guarantee that changes to the infrastructure, demographics, planning regulations and economic circumstances relating to the surrounding areas

on which the Properties depends for its consumer base will not adversely affect the demand for space in the Properties.

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

There is a risk that rental payments due under the occupational leases on or before a 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 a Loan Interest Payment Date and any resultant shortfall is not otherwise compensated for from other resources, there may be insufficient cash available to the Borrower to make payments to the Issuer under the Credit Agreement in full or at all. Such a default by the Borrower may not itself result in a Note Event of Default since the Issuer will have access to other resources as mentioned above (specifically, funds made available under the Liquidity Facility to make certain payments under the Notes as further described in *Credit Structure – Liquidity Facility*). 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.

There is also a risk that a tenant may be entitled to withhold or set-off payments, or to suspend performance of its payment obligations, if the Borrower (or any other member of the Borrower Group) does not comply with its obligations under an occupational lease.

### **Structure of the Borrower Group**

The corporate structure of the Borrower Group is as set out in *Appendix B – Corporate Structure of the Borrower Group*. The Borrower is not a newly incorporated entity and therefore may be exposed to contingent liabilities arising prior to the date of the Senior Loan. The consolidated accounts of the Borrower Group for the financial year ended 31st December, 2004 have been audited by Deloitte Accountants B.V. and Deloitte Accountants B.V. issued an unqualified opinion in respect of such accounts on 7th February, 2005.

The Borrower is reliant on such members of the Borrower Group paying the rental income received by them to it in order to enable it to pay all amounts under the Credit Agreement. As such members of the Borrower Group are subsidiaries of the Borrower, any payments they make to the Borrower must comply with all applicable laws and regulations (including laws and regulations relating to payments out of a company's distributable reserves). There is therefore a risk that if, for instance, a member of the Borrower Group does not have sufficient distributable reserves, it would not be able to make such payments which may affect the Borrower's ability to make payments to the Issuer under the Credit Agreement. The main mitigating factor is that the majority of the Properties are held by the Borrower itself and therefore most of the rental income is received by the Borrower and is not subject to the above analysis. See also *Considerations relating to security – Upstream Security* for risks relating to upstream guarantees and security.

Uni-Invest Beheer B.V. provides services to the Uni-Invest Group in respect of the Properties. In the event of a bankruptcy or the inability of Uni-Invest Beheer B.V. to provide these services, there is no guarantee that an alternative service provider could be engaged. This may have a negative effect on the Borrower's ability to service the Senior Loan.

### **Management of the Properties**

Operating costs in relation to the management of the property in general includes such items as third party management fees, advertising costs, insurance costs, utility costs, real estate partnership membership fees, real estate taxes, costs of service charges on void space, ground rent and personnel costs. There is a risk that fluctuations in such costs could affect the Borrower's ability to make payments under the Credit Agreement.

### **Attracting new occupational tenants**

It is common in the Dutch commercial property market to offer rent-free periods or to provide other incentives in order to attract new tenants. The Borrower Group will be entitled to offer similar incentives during the life of the Notes. There is therefore a risk that by offering such incentives to proposed new tenants that this may affect its ability to make payments under the Credit Agreement or it will not have sufficient resources to pay for such incentive.

### **Competition**

The Dutch property market remains highly competitive. There can be no assurance that the Borrower Group's business will not be adversely affected by competition in the markets in which the Borrower Group operates or that the Borrower Group will be able to improve or maintain its profit margins. In particular, Dutch property companies currently face competition from international fund investors and, to a lesser extent, Dutch property partnerships as well as institutional investors and private investors.

### **Development of the Properties**

The Borrower will have certain discretions as to matters including the design and configuration of the Properties and developments within and outside the Properties. Although the Borrower is experienced in managing property, there can be no assurance that decisions taken by it in the future will not adversely affect the value of or cashflows from the Properties. The Senior Finance Documents provide for mechanisms which are intended to provide oversight of the ongoing operating and capital expenditures of the Borrower Group.

### **Refinancing risk**

Unless repaid previously, the Borrower will be required to repay the Senior Loan on the Loan Maturity Date. The ability of the Borrower to repay the Senior Loan in its entirety on or before the Loan Maturity Date will depend upon the Borrower's ability either to refinance the Senior Loan (and the Mezzanine Loan) or to sell the Properties by that date. The Borrower's ability to achieve this will be affected by a number of factors, including the availability of financing at the time, the amount of the Borrower Group's equity in the Properties, the financial condition of the tenants, the operating history of the Properties, the general economic or local conditions and other factors. None of Eurohypo (in any capacity), the Joint Bookrunners, the Issuer, the Borrower nor any of the Borrower's affiliates or any other person is or will be under any obligation to refinance the Senior Loan and there is no assurance that the aggregate value of the Properties on the Loan Maturity Date will be equal to or exceed the amounts then due under the Senior Loan.

If the Senior Loan could not be refinanced or if the Properties could not be sold for a sufficient amount to enable repayment of the Senior Loan then the Servicer or the Special Servicer (as appropriate) may decide that the ongoing operation of the Properties would be more likely to result in sufficient funds being obtained to enable repayment of the Senior Loan. If the ongoing operation of the Properties were to continue and/or the Properties to be retained beyond the Final Maturity Date then the Issuer might be unable to meet its obligations to repay the Notes in full on that date.

### **Reliance on Valuation Report**

The valuation report (the **Valuation Report**) which is reproduced in the section headed *Valuation Report* below is addressed to, *inter alios*, the Borrower, the Issuer, the Senior Facility Agent, the Mezzanine Facility Agent, the Senior Security Agent, the Note Trustee and the Joint Bookrunners and may only be relied on by each of them as more fully set out therein.

There can be no assurance that the market value of the Properties will continue to be equal to or exceed the Valuation. As the market value of the Properties fluctuates, there is no assurance that the market value will be equal to or greater than the unpaid principal and accrued interest and any



other amounts due under the Credit Agreement and therefore such amounts due under the Notes. 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 Senior Loan and therefore such amounts due under the Notes.

### **Hedging risks**

The Senior Loan bears interest at a floating rate. The income of the Borrower (comprising, primarily, rental income in respect of the Properties) does not vary according to prevailing interest rates. Therefore, in order to protect the Borrower (and, indeed, the Issuer) against the risk that the interest rates payable under the Senior Loan may increase to levels which would be too high, bearing in mind the income of the Borrower Group, the Borrower has entered into and, under the terms of the Credit Agreement, will be required to maintain certain hedging arrangements to hedge against this risk. See further *Credit Structure – Hedging Arrangements* below.

If the Borrower were to default in this obligation, or if a Senior Hedge Counterparty were to default in its obligations to the Borrower, then the Borrower may have insufficient funds to make payments due at that time in respect of the Senior Loan. 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 Senior Hedging Arrangements are terminated, the Borrower may be obliged to make a termination payment to a Senior Hedge Counterparty. The amount of any termination payment will be based on the market value of the terminated Senior Hedging Arrangements based on market quotations of the cost of entering into a transaction with the same terms and conditions that would have the effect of preserving the respective full payment obligations of the parties (or based upon loss in the event that no market quotation can be obtained).

The funds which the Borrower has available to make payments on the Senior Loan (and consequently the funds which the Issuer has available to make payments on the Notes) may be reduced if the Borrower is obliged to make a termination payment to a Senior Hedge Counterparty. However, any termination payment due to a Senior Hedge Counterparty which arises due to (a) a default by a Senior Hedge Counterparty or (b) the failure of a Senior Hedge Counterparty to comply with the requirements under the Senior Hedging Arrangements if its short-term debt obligations ceases to be rated at least “F1” (or better) by Fitch, “P-1” (or better) by Moody’s and “A-1” (or better) by S&P and its long-term debt obligations cease to be rated at least “A1” (or better) by Moody’s and “A” (or better) by Fitch shall not rank in priority to payments due to any Noteholder (but, in relation to (b) only, to the extent that any premium is received by the Borrower from a replacement Senior Hedge Counterparty in relation to a transaction entered into to replace the Senior Hedging Arrangements, a Senior Hedge Counterparty shall rank in priority to payments due to any Noteholder).

The Borrower cannot give any assurance that it will be able to enter into replacement Senior Hedging Arrangements, or that the credit rating of a replacement Senior Hedge Counterparty will be sufficiently high to prevent a downgrading of the then current ratings of the Notes by the Rating Agencies. If no replacement Senior Hedge Counterparty can be found then the interest rate risk will be un-hedged.

The profile of the Senior Hedging Arrangements has been based on the assumption that there will be a minimum level of amortisation of the Senior Loan. If the members of the Borrower Group are not able to sell Properties in order to sufficiently amortise the Senior Loan as anticipated by the profile of the Senior Hedging Arrangements, the Senior Loan may be underhedged. However, the Borrower will be required to enter into new hedging arrangements to cover the unhedged portion of the Senior Loan.

Similar risks exist with respect to the Mezzanine Hedging Arrangements. However, in particular, under the Mezzanine Hedging Arrangements, the Mezzanine Loan is permitted to be underhedged



(provided that the notional is not lower than 85% of the outstanding principal amount of the Mezzanine Loan). This means that part of the Borrower Group's interest cost may vary in line with the prevailing market interest rates which could have an affect on its cashflows.

### **Mezzanine Facility**

The Obligors have also entered into a Mezzanine Facility Agreement. The terms of the Mezzanine Facility Agreement are substantially the same as the Credit Agreement except for the interest margin and the financial covenants (see *Credit Structure – Senior Finance Documents*). The obligations under the Mezzanine Facility Agreement are also secured by second ranking security over the assets which constitute the Loan Security. If any default occurs under the Mezzanine Facility Agreement (e.g. as a result of non-payment, breach of covenant, etc.) the Mezzanine Lenders will in certain circumstances be entitled to instruct the Mezzanine Security Agent to foreclose on its security. As this security has been granted in respect of the same assets secured by the Loan Security, the Senior Security Agent would also be forced to foreclose on the Loan Security if it had not already chosen to do so (i.e. as a result of the equivalent Loan Event of Default contained in the Credit Agreement).

In addition, under the terms of the Senior Finance Documents, waivers, decisions and approvals are required to be taken or given by the Combined Facility Agents. It is therefore possible that the Senior Facility Agent may waive or approve a certain matter but the Mezzanine Facility Agent may not. This may result in a delay in the completion of certain administrative matters under the Senior Finance Documents. However, many of the decisions are only required to be taken by the Senior Facility Agent on its own.

If certain Loan Events of Default occur (e.g. a breach of a Senior Financial Covenant), the Mezzanine Lenders have the right to "cure" that breach by, *inter alia*, making a Cure Loan to the Borrower. No Obligor will be able to assert that the relevant Loan Event of Default has ceased to be outstanding until the date on which that Cure Loan, together with accrued interest on that Cure Loan, has been repaid in accordance with the Senior Finance Documents. However, as between the Lenders and the Mezzanine Lenders, the relevant Loan Event of Default shall be treated as cured which will mean that the Senior Security Agent will be prevented from foreclosing on the Loan Security in those circumstances.

See *Credit Structure – Priority Agreement* for a description of the enforcement (and other) arrangements between the Lenders and the Mezzanine Lenders.

### **Risks relating to conflicts of interest**

Conflicts of interest may arise between the Issuer and Eurohypo because Eurohypo intends to continue actively 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. 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 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. 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 (including the Servicing Standard), 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 the Servicer and the Special Servicer may each acquire Notes, either of them could, at any time, hold any or all of the most junior Class of Notes outstanding from time to time, and may have interests which conflict with the interests of the other holders of the most junior Class of 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.

### **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 Note 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.

## **C. Considerations relating to Dutch Property law**

### **Title to the Properties**

#### *General*

In the Netherlands, the full and beneficial unencumbered ownership of land (*eigendomsrecht*) is the most inclusive right to real property. The legal title to the land includes the legal title to the buildings situated on the land. There are also two types of rights *in rem* that closely resemble ownership. First, a person may have a building right (*zelfstandig opstalrecht*). This does not give that person any ownership right in respect of the land but does give that person full ownership rights (until the expiry date of such building right) in respect of the buildings located on that land. Secondly, a person may also have a leasehold right (*recht van erfpacht*) in respect of land and/or any buildings located on that land. This does not give that person any ownership rights in the land or the buildings on that land itself but it does give that person the right to hold and use the land and the building. It is common for a person to have a leasehold right and a building right so that it also has access and the right to use the land as well as the building.

If a leasehold right or a building right is granted for a fixed period then it will automatically expire at the end of that period. In addition, if a person holds a property subject to a leasehold right or a building right, then that person must comply with the terms and conditions of that leasehold right or building right (as the case may be). Such terms and conditions would include the payment of ground rent. If that person fails to pay the ground rent for two consecutive years or seriously fails in the performance of its other obligations under such terms and conditions, the owner (*eigenaar*) may be entitled to terminate that leasehold right or building right. However, it is common for the ground rent payable in respect of a leasehold right or a building right to be bought off for a specific period of time (e.g. 50 years). If a leasehold right or a building right is terminated, the owner will have the obligation to compensate the leaseholder (*erfpachter*) (and such compensation will automatically be secured by the terms of the mortgage in respect of the relevant Property) unless this obligation to compensate has been explicitly excluded in the relevant agreement. However, the amount of that compensation will, *inter alia*, be determined by the conditions of the leasehold right or building right and may be less than the market value of that leasehold right or building right.

The terms and conditions of a leasehold right or building right may impose limitations on a leaseholder or a holder of a building right in respect of the property. For instance, if a new zoning plan would permit the redevelopment of a property or could otherwise lead to a more profitable

exploitation of a property, a leaseholder or a holder of a building right would not be able to benefit from any increase in the value of the property as a result of the change to such zoning plan if the owner of the property is entitled to refuse to consent to such redevelopment or to impose conditions such as charging a fee or requiring a share of the profit.

Furthermore, the alienation or encumbrance of a leasehold right or a building right may be subject to approval by the owner. However, such approval would not be required in the event of a foreclosure of any security in respect of such property.

#### *Owners' Associations*

A right of ownership, right of leasehold or a building right can be divided into a number of apartment rights (*apartementsrechten*). An apartment right gives the holder of that right a share in the divided estate with the exclusive right to use certain parts of the property and a right to use the communal parts of the property. All of the holders of apartment rights will, by operation of law, form an owners' association (*vereniging van eigenaren*). The holders of apartment rights usually pay a periodic amount to the owners' association as a contribution to, *inter alia*, the costs of maintenance of the communal areas and insurance for the entire building. A holder of an apartment right is entitled to grant security (e.g. a mortgage) in respect of that apartment right. See *Description of the Properties* below for a list of the Properties held in an owners' association.

A potential disadvantage of being a member of an owners' association is that decisions with respect to the entire property e.g. with respect to insurance or structural maintenance and improvements must be taken based on a vote by the members of the owners' association (see further *Insurance – Owners' Associations* below for a discussion in relation to insurance arrangements). Consequently, it is possible that decisions taken by the board of such owners' association may not be the same as if the Borrower Group had direct control of the Property.

#### *Transfer Restrictions*

Under the Municipalities Purchase Preference Act (*Wet voorkeursrecht gemeenten*), in respect of properties so designated by a local municipality, the local municipality will have a right of first refusal to acquire that property in the event an owner of that property wishes to sell. However, this requirement can be waived by the local municipality. Similarly, the terms of a leasehold or a building right may require the owner (*eigenaar*) of a property to give its consent before that property can be transferred to a third party and the terms and conditions of certain lease contracts may give a tenant the right of first refusal to purchase a property in the event the landlord wishes to sell the property. However, if the tenant is not willing to pay the market price for the property the landlord is entitled to sell the property to a third party.

#### *Compulsory purchase*

Under Dutch law, a property may at any time be compulsorily acquired by, *inter alia*, a local or public authority or a governmental department, generally in connection with proposed redevelopment or infrastructure projects. However, if a compulsory purchase order is made in respect of the Properties (or part of the Properties), compensation would be payable on the basis of the open market value of all of the Borrower Group's and the tenants' proprietary interests in the Properties (or part thereof) at the time of the purchase. Following such a purchase the tenants would cease to be obliged to make any further rental payments to the Borrower Group under the relevant occupational leases (or rental payments would be reduced to reflect the compulsory purchase of a part of the Properties if applicable). Such a purchase might also constitute a Loan Event of Default and lead to an acceleration of the Senior Loan. The risk to Noteholders is that the amount received from the proceeds of purchase of the ownership right of the Properties may be less than the amounts required to pay all amounts due under the Senior Finance Documents.

It should also be noted that there is often a delay between the compulsory purchase of a property and the payment of compensation (although interest may be payable from the date upon which the

acquiring authority takes possession of the property), which will largely depend upon the ability of the property owner and the entity acquiring the property to agree on the open market value of the property. Such a delay may, unless the Borrower has other funds available to it, give rise to a Loan Event of Default.

## **Legal framework relating to the leasing of property in the Netherlands**

In general, parties are free to agree to any terms relating to the leasing of property. However, there are several mandatory provisions of law provided in the Dutch Civil Code which apply to occupational lease agreements. First, the provisions regarding general contract law apply. Secondly, the provisions of general lease law apply. Finally, there are also provisions specific to the type of lease agreement, e.g. residential, retail and office, which also apply. The lease agreements relating to the Properties are retail and office lease agreements. These provisions may allow a lease agreement to be terminated or modified which may affect the cashflow derived from the Property or the value of a Property and are described in more detail below.

### *General contract and bankruptcy law*

If a party to a contract (e.g. an occupational lease) believes that circumstances have occurred which are of such a nature that the other party (according to certain criteria regarding reasonableness and fairness) could not expect that contract to continue in its current form, that party may, under the *imprévision* provisions of the Dutch Civil Code, apply to court for a modification of that contract or for that contract to be set aside in whole or in part.

If a lessee is subject to bankruptcy proceedings, the landlord and the bankruptcy trustee of that lessee are (with the consent of the supervisory judge in bankruptcy) entitled to an early termination of the relevant lease agreement subject to a notice period agreed in accordance with common practice. In general, a notice period of three months is generally considered to be sufficient. However, the parties are allowed to agree a different period or termination date.

### *General lease law*

Except as set out below, if a tenant breaches any of its obligations under a lease agreement (including a failure to pay rent), the landlord may not terminate or dissolve that lease agreement without the permission of the Dutch courts. However, if the leased space is completely destroyed, the lease can be dissolved by either party. If the leased space is only partially destroyed, a tenant has the option to dissolve the lease agreement or claim a reduction of the rent.

### *Office space*

There are no statutory minimum lease terms for the lease of office space, nor are there any regulations relating to the amount of rent payable or to rent reviews. However, the Dutch Civil Code does contain mandatory provisions with regard to eviction protection at the end of the lease term (as described below).

A lease agreement will terminate at the end of the agreed term or upon termination by one of the parties in accordance with the lease agreement. In order to oblige a tenant to vacate the leased premises, the tenant must be given a notice of eviction by means of a bailiff's notification or a registered letter. The obligation to vacate is subsequently suspended for two months by law as of the date of eviction stated in the notice of eviction. However, a tenant is not entitled to a suspension of eviction if the lease was terminated by that tenant or if the tenant has expressly agreed to the termination or if the tenant was ordered to evict the leased premises as a result of a breach of its obligations under the lease. If the tenant is entitled to a suspension from eviction, the tenant may within the two month suspension period request the Dutch courts to extend the suspension term. Upon filing of such a request, the obligation to vacate is further suspended after expiry of the initial two month period until a judgment has been given by the Dutch court. The Dutch court can extend

the suspension term for a period of up to one year. Furthermore, the tenant may extend the suspension term twice more i.e. the suspension term may be extended for a maximum period of three years. The request of the tenant for extension of the suspension term will only be granted by the court, if the eviction would be more seriously damaging to the interests of the tenant than to the interests of the landlord. A suspension request will be denied, for example, if the tenant has made improper use of the leased premises or if the tenant has previously agreed to the termination or vacation.

If the eviction is suspended then the (former) tenant is not required to continue to pay rent at the contractual rate; the parties will be required to agree a new rate. If the parties cannot agree on a new rate, the court can determine the rate at the request of one of the parties. There is therefore a risk that in these circumstances the amount of rent received by Borrower will be reduced which may affect its ability to make payments under the Credit Agreement and ultimately the Issuer's ability to make payments under the Notes.

### *Retail space*

The Dutch Civil Code requires a lease in respect of retail space to provide the tenant with a security of tenure for two terms of five years, although these provisions do not apply to a lease agreement which is entered into for a maximum period of two years. After a term of ten years, the lease will be continued for an indefinite period, unless the parties have agreed otherwise. The lease agreement will not terminate just because the fixed term elapses and notice of termination by one of the parties is required. The notification period is at least one year. If a tenant gives notice of termination of the lease agreement at the expiry date of a lease period, the lease agreement will end automatically. However, if the landlord terminates the lease agreement at the expiry of a lease period without the consent of the tenant, the lease agreement will continue until it is terminated by the appropriate Dutch court. If the landlord gives notice of termination at the expiry of the first lease period (if the term of that lease period is less than ten years), the court will terminate the lease if one of the following situations described in the law occurs: (a) the tenant has not conducted its business as a good tenant ought to have or (b) the landlord has an urgent need to use the property itself (which ground for termination cannot be claimed within three years after the landlord became the owner of the property). If the landlord gives notice of termination at the expiry of the first lease period (if the term of that lease period is more than ten years) or at the expiry of any subsequent lease period, the court will terminate the lease agreement upon the occurrence of either of the situations described in (a) or (b) above or if: (i) the landlord's interest in termination of the lease agreement outweighs the interests of the tenant in continuation of the lease agreement, (ii) the use of the property is not according to the current zoning plan and the landlord wants to bring the factual situation in line with the zoning plan or (iii) the tenant does not accept a reasonable offer to enter into a new lease agreement.

The rent will be set for each term. The rent can be adjusted at the end of a lease term or every five years. If the current rent does not correspond with the rent of comparable leased properties in the area, the tenant and/or the lessor may request the court to determine a new rent. However, before the parties address the court they must have appointed an expert on valuation, who will advise the court on the review of the rent. If parties fail to reach an understanding on the appointment of an expert, the court will appoint one. The court can decide that the new rent will be increased gradually over a maximum period of five years.

### *ROZ standard lease agreements*

The Dutch Council for Real Estate Matters (*Raad voor Onroerende Zaken* or *ROZ*) is composed of representatives of parties involved in commercial real estate in the Netherlands and is chaired by an independent chairman. The ROZ publishes standard agreements and corresponding general terms and conditions which are used on a large scale by Dutch property companies. The general terms and conditions have been formulated in favour of the landlord.



The ROZ standard agreements and the corresponding general terms and conditions for retail space (editions 1994 and 2003) and office space (editions 1994, 1996 and 2003) provide an annual rent adjustment on the basis of Consumer Price Index published by the Dutch Central Bureau of Statistics. The rent will not be adjusted if such adjustment would lead to a lower rent than the most recent rent. The adjusted rent will apply even if the lessee is not informed of this separately.

The ROZ standard agreement for office space (edition 1994) and retail space (edition 1994) also provides for an adjustment of the rent to the market rent. To exercise this right, one of the parties must first inform the other party of this by registered letter with confirmation of receipt at least six months before the date on which the reviewed rent will have to take effect. If the parties have not reached an agreement within two months of receiving the notification, the rent will be determined by three experts. The experts will issue their report within six weeks of their appointment being made.

## *VAT*

Under Dutch law, the payments under a lease agreement will become VAT exempt if the relevant lessee is no longer able to deduct 90% or more of its input VAT. Consequently, if a lease becomes VAT exempt, the landlord may be required to repay to the tax authorities the amount of VAT, or part thereof, that it had deducted in relation to the investments in the relevant property. Furthermore, the landlord would no longer be entitled to deduct input VAT incurred in respect of any costs related to the relevant property. This could therefore have an effect on the cashflows of the Obligors. However, in these circumstances, it is common for the terms of the lease (although such a term is not always included in lease documentation) to require the lessee to pay such additional costs of the landlord. In such case the landlord may still have to fund its VAT liability if the VAT compensation payable by the Lessee is spread out over the remaining term of the lease.

## **Existing Occupational Leases**

### *Form of leases*

Occupational tenants under ROZ standard lease agreements are usually prohibited from assigning their rights in respect of the relevant occupational lease without the landlord's consent. However, whilst it may be reasonable for the relevant member of the Borrower Group (as landlord) to refuse consent to assign where the proposed new tenant clearly cannot afford to pay the rent or perform the covenants, there is also a risk that it will be unable to withhold consent even in circumstances where the proposed new tenant will not be of a similar credit quality to that of the existing tenant.

The Borrower Group has given various covenants to occupational tenants. These include covenants to allow the occupational tenants the right to quiet enjoyment of the part of the property leased to them, to perform certain specified obligations and/or to provide certain specific services in relation to the relevant property and other covenants in relation to rent reviews and lease break clauses. These are, except to the extent disclosed in the Lease Report, on terms which are generally given in the Dutch commercial property market. However, there can be no assurance that market practice and/or the demands of prospective tenants over the life of the Notes will not require the relevant member of the Borrower Group (as landlord) to comply with more onerous covenants or that tenant obligations will not significantly diminish to the extent that the value of, or the income derived from, the Properties may be adversely affected. In addition, a breach by the relevant member of the Borrower Group of any of these covenants could give rise to a dispute with the tenant and the tenant may seek to withhold rental payments or terminate the relevant lease.

Occupational leases may contain covenants on the part of the tenant to keep the Properties open and trading during specific hours. Generally, the purpose of such covenants is to ensure that anchor stores in shopping centres and high streets are open and trading, as their closure could affect the footfall of surrounding shops/units, the landlord's ability to let surrounding shops/units and what the landlord can achieve by way of rents on rent review and lease renewal of such



shops/units. Such covenants may not be able to be specifically enforced by a landlord, although a landlord can seek and receive damages for breach of the covenant. There is therefore a risk that if tenants breach these covenants, the footfall may be reduced which could have an effect on the rental income and the value of such Properties.

### *Leasing parameters*

The level of service charges payable by tenants under the occupational leases may differ, but the overall level of service charges payable by all tenants is normally set at a level which is intended to ensure that the landlord recovers from the tenants (taken as a whole) substantially all of the service costs associated with the management and operation of the Properties to the extent that the Borrower itself does not itself make a contribution to those costs. However, there are some items of expenditure which the landlord is not entitled to recover from the tenants, for example, the cost of repairing any defects which were inherent in the Properties at the start of any occupational lease, the cost of any rebuilding (as opposed to repair) work at the Properties and the costs associated with any major improvements or refurbishments of the Properties. Also, to the extent that there is any empty space in any of the Properties, the relevant Obligor will generally experience a shortfall depending on the portion that is empty.

In addition, certain lease agreements in respect of the Properties may be short-term, fully inclusive leases, under which the tenants are required to pay fully inclusive rental payment, which covers, *inter alia*, a service charge element. The tenant must in addition pay a proportion of the relevant Obligor's insurance costs. If service costs were to increase, those tenants who rent units under such fully inclusive leases would not be required to contribute to the higher services costs. However, these fully inclusive leases do not form a large proportion of the aggregate gross rents of the Properties and are, in any case, generally let on short terms. In addition, the tenant must pay water and general rates (or a fair proportion thereof) to the relevant Obligor in addition to the inclusive figures.

### **Condition of the Properties**

The age, construction, quality and design of a particular property may affect its occupancy levels as well as the rents that may be charged for individual leases. The effects of poor construction quality will increase over time in the form of increased maintenance and capital improvements needed to maintain the property. Even good construction will deteriorate over time if the property managers do not schedule and perform adequate maintenance in a timely fashion. If, during the term of the Credit Agreement, competing properties of a similar type are built in the areas where the Properties are located or similar properties in the vicinity of the Properties are substantially updated and refurbished, the value and rental income of such Properties could be reduced. There is therefore a risk that these and other factors may mean that the Properties are not able to generate sufficient income to make full and timely payments on the Senior Loan.

### **Environmental matters**

Certain existing environmental legislation imposes liability for clean-up costs on the owner or occupier of land where the person who caused or knowingly permitted the pollution cannot be found. Even if more than one person may have been responsible for the contamination, each person covered by the relevant environmental laws may be held responsible for all the clean up costs incurred.

Under the Soil Protection Act (*Wet bodembescherming*), anyone with a right to a property, may be ordered to conduct a soil investigation if that person was or is an industrial user of the property. If the contamination is serious, that person may also be ordered to take temporary containment measures. In addition, the owner (*eigenaar*) or leaseholder (*erfpachter*) of a seriously contaminated property or anyone who may have caused that contamination may be ordered to conduct a soil investigation. If the contamination is serious such person may also be ordered to

conduct a clean-up investigation, to clean up the property, to take temporary containment measures or to produce a clean-up plan. The relevant Obligor would therefore be primarily liable for the costs of any cleaning up any such contamination relating to the Properties.

If any environmental liability were to exist in respect of the Properties, neither the Issuer nor the Senior Security Agent should incur responsibility for such liability prior to foreclosure of the Loan Security, unless it could be established that the relevant party had entered into possession of the Properties or could be said to be in control of the Properties. Under Dutch law, a mortgagee is not considered to be an owner or a leaseholder. It is, however, possible that in certain circumstance (for instance, if the contamination is ongoing and the mortgagee exercises a significant degree of control or management over the use of the property) the mortgagee could be considered to be an industrial user and/or polluter. Therefore, the Senior Facility Agent or the Issuer, could become responsible for environmental liabilities in respect of the Properties. The Senior Facility Agent and the Issuer will, however, be indemnified against any such liability under the terms of the Credit Agreement, and amounts due in respect of any such indemnity will be payable in priority to payments to the relevant Lenders (including the Issuer).

The authorities may also conduct the investigation and clean-up operations themselves. The costs may then be recovered from the polluter or from any person(s) unjustifiably enriched (*ongerechtvaardigd verrijkt*) by those measures, to the extent of the enrichment. The government feels that a mortgagee may be enriched by clean-up operations conducted by such an authority. This suggests that it is possible that a mortgagee could be confronted with an unjustifiable enrichment recourse action to the extent that the mortgagee actually profits from the clean-up.

Under general Dutch tort law, the owner of a contaminated property has a duty to take measures to prevent the contamination spreading to any neighbouring land and must clean up any such neighbouring land if the contamination has already spread to it.

In addition, a tenant might be entitled to suspend its obligations to pay the rent to the owner or leaseholder if its quiet enjoyment under the relevant lease is disrupted as a result of the property being contaminated which may have an effect on the Borrower's ability to service the Senior Loan.

If an environmental liability arises in relation to the Properties and is not remedied, or is not capable of being remedied, this may result in an inability to sell the Properties or in a reduction in the price obtained for the Properties resulting in a sale at a loss. In addition, third parties may sue a current or previous owner, occupier or operator of a site for damages and costs resulting from substances emanating from that site, and the presence of substances on the Properties could result in personal injury or similar claims by private claimants.

If any of the Properties have any risk of exposure to asbestos for human beings, the local authority may order the owner to have the asbestos removed in a controlled manner, or to take other action to mitigate the risks. This may involve a certain amount of demolition work, which will also result in additional costs and loss of income for the Borrower.

### **Planning and Zoning Matters**

The Obligors have confirmed that the Properties owned by it have been constructed in accordance with relevant planning legislation and, as far as it is aware, there are no material breaches of planning control in respect of the Properties. In this regard, it should be noted that where tenants are in breach of planning obligations or conditions, they would be required under the terms of their occupational lease to take responsibility for such breach. Failure to comply with planning obligations or conditions could give rise to planning enforcement or other compliance action by the relevant planning authority.

A building permit is required for construction of new buildings and alterations to existing buildings. No permit is required for regular maintenance. Issuance of a building permit requires that the proposed construction complies with the applicable zoning plan, or that an exemption from the

zoning plan has been obtained. Construction works must be in accordance with the requirements and conditions of the permit, which may include the requirement to clean up the property. The municipality may require the owner to alter the property, if the construction violates the conditions of the building permit.

There may be a number of ongoing planning obligations or restrictions relating to certain elements of the Properties.

No due diligence has been carried out with respect to planning and zoning matters but the Borrower will represent, *inter alia*, that it has obtained all planning and zoning authorisations required to carry on its business as it is being conducted at the Closing Date in all material respects and that there are no material breaches of any such planning or zoning authorisations in the Credit Agreement.

## **Insurance**

### *Non-vitiation*

There is a risk that cover under an insurance policy could be cancelled or the policy could be voided as a result of a misrepresentation or non-disclosure of information, a non payment of insurance premium or any other breach of the insurance policy by any of the co-insured parties, including the Borrower. It is common in many jurisdictions to include a provision that the relevant insurance companies would not terminate or void the insurance policy in such circumstances. However, this type of “non-vitiation” provision is not generally available in the Netherlands and it is therefore possible that the general insurance could be voided or terminated. However, the Senior Finance Documents require the Borrower to procure insurance impairment cover in the name of, *inter alios*, the Senior Security Agent to address this situation. Consequently, if the general insurance policy is voided or terminated as a result of a misrepresentation or non-disclosure of information then the Senior Security Agent will be entitled to make a claim under its insurance policy in respect of any loss which would otherwise have been covered by the general insurance policy.

### *Creditworthiness*

The Borrower is relying on the creditworthiness of the insurers providing insurance with respect to the Properties and the continuing availability of insurance to cover the required risks, in respect of neither of which assurances can be made. However, under the terms of the Senior Finance Documents, each Obligor will be required to maintain insurance policies with an insurance company or underwriter that has a credit rating of (a) in the case of an insurance company or underwriter, long term instruments with a rating of, or a financial strength rating of or (b) in the case of a group of insurance companies or underwriters, weighted average long term instruments with a rating of, or a financial strength rating of, A (or better) by Fitch and A (or better) by S&P, and to the satisfaction of Moody’s for the purposes of the Notes, or is recommended by Holdings’ insurance broker as confirmed in a letter to the Combined Facility Agents and Holdings, such letter to be delivered at least annually, or is otherwise acceptable to the Senior Facility Agent (acting reasonably).

If any insurance company is not able to meet its obligations under an insurance policy, e.g. in case it is declared bankrupt or has become subject to emergency regulations, this could result in the amounts payable under that insurance policy either not, or only partly, being available to the relevant Obligor which may have an effect on the Borrower’s ability to make payments under the Credit Agreement and ultimately the Issuer’s ability to make payments under the Notes.

### *Owners’ Associations*

The Borrower is not in a position to negotiate amendments to insurance policies that are jointly entered into by a group of owners of properties collectively. As a result, potentially less favourable

terms included in such policies cannot be renegotiated by the Borrower individually, as the Borrower is not the (sole) policyholder in these situations. See *Description of the Properties* for a list of the Properties that are jointly insured by the Borrower or by an owners' association (*vereniging van eigenaren*) on their behalf.

In addition, the Borrower will not be able to ensure that the Loan Payment Agent is the loss payee in respect of the Properties which are included in these owners' associations. However, the Borrower is the property manager in respect of certain of the buildings in respect of which it is a member of an owners' association. Therefore, the Borrower will receive insurance proceeds in respect of these buildings in its capacity as property manager and such proceeds will therefore be subject to the provisions of the Loan Security.

#### *Due diligence*

No due diligence has been carried out with respect to insurance matters although the Borrower's insurance broker has confirmed to the Eurohypo (as Senior Loan Arranger) that the Borrower's insurance policies comply with the terms of the Senior Finance Documents.

#### *Uninsured losses*

Although the Senior Finance Documents require each Property to be insured at appropriate levels and against the usual risks, there can be no assurance that any loss incurred will be of a type covered by such insurance and will not exceed the limits of such insurance. There are, for instance, certain types of losses (such as losses resulting from war, terrorism, nuclear radiation, radioactive contamination and heave or settling of structures which may be or become either uninsurable or not insurable at economically viable rates or which for other reasons are not covered, or required to be covered, by the required Insurance Policies. The Borrower's ability to repay the Senior Loan (and, consequently, the Issuer's ability to make payments on the Notes) might be affected adversely if such an uninsured or uninsurable loss were to occur. Insurance cover for acts of terrorism is not readily available in the Dutch insurance market and the cost of such insurance on foreign insurance markets is very high. However, insurance companies in the Netherlands have set up the Netherlands Reinsurance Companies for Losses from Terrorism (*Nederlandse Herverzekeringsmaatschappij voor Terrorismeschaden N.V.*) under which insurance companies have agreed to provide insurance cover in respect of terrorist acts. The insurance companies have agreed that the maximum amount available to be paid out in respect of claims relating to acts of terrorism under such insurance cover is one billion euros per year although a claim by any individual policyholder or in respect of any individual insured location may not exceed €75 million per year.

Should an uninsured loss or a loss in excess of insured limits occur at a Property, an Obligor could suffer disruption of income from the Property, potentially for an extended period of time, while remaining responsible for any financial obligations relating to the Property. There is a risk that the Borrower's ability to repay the Senior Loan and, consequently, the Issuer's ability to make payments on the Notes would be adversely affected if such an uninsured or uninsurable loss were to occur.

### **D. Considerations relating to security**

#### **Parallel Debt**

Under Dutch law it is uncertain whether a security right can be validly created in favour of a party which is not the creditor of the claim which the security right purports to secure. Consequently, in order to ensure the valid creation of the security rights in favour of the Note Trustee, the Issuer has in the Issuer Security Agreement, as a separate and independent obligation, by way of parallel debt, undertaken to pay to the Note Trustee amounts equal to the amounts due by it to the Issuer Secured Parties. Similarly, in the Credit Agreement, each Obligor has as a separate and independent obligation, by way of parallel debt, undertaken to pay to the Senior Security Agent

amounts equal to the amounts due by it to the Borrower Secured Parties. The parallel debt arrangements create a claim of the Note Trustee and the Senior Security Agent (respectively) which can be validly secured by a security right such as the security rights established under the Issuer Security Agreement and the Borrower Security Agreements.

### **Upstream Security**

The security and guarantees given by those Obligors which are subsidiaries of the Borrower will constitute upstream security. Under Dutch law, a company is not restricted from giving upstream credit support provided that such company receives commensurate corporate benefit in giving the support. If no corporate benefit is received by that company then any security or guarantees given by that company would be void. Whether there is a corporate benefit is a question of fact based on factors such as the creditworthiness of the Borrower and the Obligors, projected cashflows available to service the debt, the amount of the company's assets compared to the total amount secured, the likelihood of call, ability to draw under the loan agreement, whether other Obligors share ratably in the debt burden etc. To assist in this, it is market practice to ensure that the articles of the company specifically allow the upstream security to be given and for shareholder approval to be obtained and Eurohypo's lawyers have confirmed that this is the case.

In addition, the granting of upstream security and guarantees without corporate benefit may also be a breach of a director's duty to act in the interests of the company. However, the risk of director liability is normally deemed acceptable provided that it is ensured that the directors when considering to grant upstream security take into proper account the factors referred to above.

The main mitigating factor to this is that the majority of the Properties are held by the Borrower itself and therefore the majority of the credit support is not subject to the above analysis. In relation to this, the legal ownership (*juridische eigendom*) to certain Properties is held by subsidiaries of the Borrower and the economic ownership (*economische eigendom*) is held by the Borrower. In relation to security granted in respect of the economic ownership by the Borrower the above analysis will not apply but it will apply to the security granted in respect of the legal title by the relevant subsidiaries. However, in this respect, in considering the corporate benefit, the subsidiaries will be assisted by the fact that the economic value of their assets is already held by the Borrower and they only hold the legal title for the benefit of the Borrower.

### **Limitations in respect of certain Security Interests**

#### *Limitations on security over future receivables*

Under the Borrower Security Agreements, each member of the Borrower Group will pledge all of its present and future receivables. This will include a pledge over all rent receivables and insurance proceeds. However, under Dutch law, there are certain restrictions on the ability to pledge future assets. In particular, if a company is declared bankrupt (*failliet verklaard*) or is granted a moratorium of payments (*surséance van betaling*), certain future assets of that company, including lease receivables, will not form part of the security package but will form part of the bankrupt estate which is available to all creditors. This means that if the secured parties have any remaining claims after the proceeds of their other secured assets have been fully used, such claims will rank *pari passu* with all unsecured claims but behind the costs of bankruptcy and certain preferred claims e.g. tax claims. This is the case even if the amounts are paid into a bank account which is also pledged.

There is some uncertainty as to whether insurance receivables are future assets or not. However, the view of many law firms in the Netherlands is that insurance receivables are not future assets but are current assets which are payable upon the occurrence of certain events (i.e. the insurable events). This means that any insurance proceeds paid to a company (even after it has been declared bankrupt) would form part of the security package. However, the analysis depends on the terms and conditions of the respective insurance policy itself over which receivables security is established and no such analysis has been carried out.



Under Dutch law the risk that an insurance receivable is regarded as a future asset is mitigated because a holder of a right of pledge or mortgage over an asset will by operation of law have a right of pledge and priority over any claims for compensation, including insurance claims, which come in place of that asset. In particular, the Senior Security Agent, as the holder of a first ranking right of mortgage over the Properties will by operation of law have a pledge over any insurance claims in respect of such Properties. Since this security exists by operation of law it will not be subject to the bankruptcy risk of the Obligors. The risk is further mitigated because the Senior Security Agent will be named as a co-insured party and the Loan Payment Agent will be named as sole loss payee (except in relation to the policies relating to third party liability insurances or these policies entered into by joint insured parties or by owners associations – see *Risk Factors – Considerations relating to Dutch Property law – Insurance* above). Since the Senior Security Agent is a secured creditor it will have an insurable interest in the Properties that are insured and therefore an independent claim under the insurance policy towards the insurer which is not subject to the bankruptcy risk of the Obligors.

The above limitations also apply to any movable or immovable property or shares which may be acquired by an Obligor after it is declared bankrupt or is granted a moratorium of payments.

#### *Undisclosed pledges of lease receivables*

The Borrower Security Agreements contain a provision whereby the rent receivable in respect of occupational leases is pledged to the Senior Security Agent. These pledges will be undisclosed pledges i.e. until a Loan Event of Default occurs, the tenants will not be notified about such pledge. The effect of this is that, although the Obligors have covenanted in the Senior Finance Documents not to dispose of assets (such as the rents) to any other party, if an Obligor did pledge its lease receivables to another party in breach of that provision and subsequently gave notice of that pledge to the relevant tenant(s) then the relevant pledgee's claims would have priority over the receivables in question. However, this would constitute a Loan Event of Default entitling the Lenders to accelerate the Senior Loan and foreclose the Loan Security and therefore the Obligors are disincentivised from doing so.

### **Limitations in respect of the foreclosure of Dutch security rights**

#### *Foreclosure of Loan Security by Note Trustee*

The Issuer's rights in the Borrower Parallel Debt and consequently its rights with respect to the Loan Security have been pledged in favour of the Note Trustee (for the benefit of the Issued Secured Parties) under the parallel debt arrangements contained in the Issuer Security Agreement. No statutory provision exists as to whether the Note Trustee will be entitled to foreclose on the Loan Security. The most commonly held view is that security rights, such as the Loan Security, pass by operation of law to the relevant pledgee. However, one Dutch legal commentator takes the contrary view, that such security rights would not pass by operation of law to the relevant pledgee.

#### *Timing of foreclosure*

Under Dutch law, if a company is declared bankrupt (*failliet verklaard*) or is granted a moratorium of payments (*surséance van betaling*), the following time limits may apply:

- (a) a mandatory "cool-off" period of up to a maximum period of four months in respect of either a bankruptcy or a moratorium of payments (i.e. if a bankruptcy immediately follows a moratorium of payments, the maximum period will be eight months), which would delay the exercise of the security rights (although the right to collect any rights and receivables by the security holder would not be delayed or affected by this "cool-off" period); and
- (b) the security holder may be obliged to foreclose its security rights within a reasonable period as determined by the judge-commissioner (*rechter-commissaris*) appointed by the court in



case of bankruptcy of that company. However, if the security holder fails to take any such foreclosure action within a reasonable period of time, the bankruptcy trustee may sell the assets himself in the manner provided for in the Dutch Bankruptcy Code. In this case, the security holder will still be entitled to any proceeds of such foreclosure by preference but only after deduction of general bankruptcy costs and subject to the satisfaction of higher ranking claims of creditors.

The above limitations apply to both the Loan Security and the Issuer Security. The Issuer has been set up as a bankruptcy remote entity which would mean that the above limitations to the rights of pledge granted by it are unlikely to become relevant. Neither the Borrower nor any of the other Obligors have been set up as bankruptcy remote entities and there is therefore a greater bankruptcy risk which would make the above limitations more relevant.

In addition, in respect of the foreclosure procedure of a right of mortgage over real property, the following timing limitations also apply which cannot be waived. Notice of the foreclosure sale will have to be announced to the security provider and any other security holder. This notice has to be sent by a court bailiff, containing the proposed date of the sale, the amount of the outstanding secured obligations and the name of the notary which is organising the sale. There must be a period of 30 days between the proposed date of the sale and the date of the notice. In practice this period will take 6 to 8 weeks. In this period either the security holder or the security provider may request a Dutch preliminary relief judge to approve a private sale of the mortgaged property. If such request is rejected a new date for the public foreclosure sale will have to be set within a period of 14 days.

If there is a dispute in respect of the application of the foreclosure proceeds, delays may occur due to the fact that a statutory procedure for the allocation of such proceeds will have to be followed.

#### *Foreclosure process*

Rights of pledge over rights and receivables can be foreclosed upon under Dutch law by way of collection (*inning*) of the related payment directly from the account debtor.

Rights of pledge over movable property and shares and rights of mortgage must be foreclosed upon by way of a public auction (although a security holder can ask for the approval of the Dutch preliminary relief judge for a private sale to occur). A foreclosure of security rights on rights and receivables by way of a foreclosure sale is also possible but is not very common in the Netherlands.

Subject to the provisions in *Timing of foreclosure* above, there are no legal timing constraints with regard to a public auction. Therefore, such sale can be organised at relatively short notice. However, if a security holder wishes to sell in a private sale, obtaining the consent of the preliminary relief judge could cause a delay.

In respect of rights of pledge over shares in a Dutch B.V. (*besloten vennootschap*), the articles of association of that company will have to contain a mandatory blocking clause in respect of a sale of the shares in its capital. This blocking clause would generally require the consent of the general meeting of shareholders for any transfer. However, a security holder, as provided by statute or in a company's articles of association will have the right to exercise these consent rights on behalf of the general meeting of shareholders. In other cases the articles of association may require the approval of the management or supervisory board of the company for the sale of the shares or, if there are minority shareholders, they may give rights of pre-emption to such minority shareholders to acquire the shares. In either case this would not affect the ability to foreclose on the pledge but it may lead to a delay whilst such matters are resolved.

Although there is broad support in Dutch legal literature that a conditional transfer of voting rights and any approval thereof by the general meeting of shareholders is valid and effective, this is not entirely certain as a result of Sections 2:198 and 2:195 of the Dutch Civil Code and the provision of Dutch law that any such approval granted for the transfer of voting rights is only valid for three

months. There is therefore a risk that if a Loan Event of Default occurs, the Senior Security Agent will not be able to exercise the voting rights of the shares in the capital of the Obligor. To mitigate this risk as much as possible, each Obligor will be obliged to do whatever is required to ensure that the Senior Security Agent will have these voting rights and/or is able to exercise them in those circumstances. In this respect, each Obligor will, *inter alia*, be obliged to grant an irrevocable power of attorney to the Senior Security Agent to exercise the voting rights on behalf of each Obligor in respect of all matters in those circumstances and not to exercise these voting rights in those circumstances itself or, if so elected by the Senior Security Agent in its sole discretion, to only exercise these voting rights in those circumstances in accordance with the Senior Security Agent's instructions. Neither of these arrangements are, however, bankruptcy proof. A power of attorney, whether irrevocable or not, will automatically terminate upon the bankruptcy or moratorium of payments of its grantor and under Dutch bankruptcy law a creditor does not have a claim for specific performance against the bankruptcy trustee (e.g. to oblige the bankruptcy trustee to vote in accordance with somebody else's instructions).

In respect of a foreclosure sale of shares, Dutch securities laws and regulations may also apply.

## **E. Tax considerations**

### **Fiscal unity**

Companies within a group may apply to the tax authorities to be jointly and severally liable for tax. There are basically two types of fiscal unity: a corporate income tax fiscal unity and a VAT fiscal unity. Fiscal unities can pose a problem if a member of the fiscal unity is not part of the Borrower Group because it could lead to cash leakage from the Borrower Group or could result in the tax authorities taking action (e.g. filing winding-up petitions) against a member of the Borrower Group in relation to a liability of a company which is actually not a member of the Borrower Group. In addition, however, even if members of the Borrower Group are also members of the fiscal unity, a problem may arise e.g. if the Borrower is made to carry the tax burden of less solvent Borrower Group companies, this could affect the cash flows available to service the debt. If a person was a member of a fiscal unity then that person will remain liable for any tax due in respect of the period for which it was a member even after it has left the fiscal unity.

Members of the Borrower Group are a part of a fiscal unity. However, all of the participants in such fiscal unity are members of the Borrower Group. In addition, in the event of a foreclosure, the Borrower Secured Parties will rank ahead of the tax authorities although certain taxes and costs applicable to the foreclosure against a particular asset will rank ahead in a bankruptcy.

### **Transfer tax risk**

Upon the disposal of a property, transfer tax (at 6% of the property value) is payable by the purchaser. Companies within the same group which transfer properties to other members of the group may claim an exemption from paying such transfer taxes. However, if such properties are subsequently sold or if the shares of the company which acquired the property are sold within three years after the date of the intra-group transfer, such transfer tax will become payable by that group company. In the Borrower Group, certain internal reorganisations of the Properties have taken place and there is therefore a risk of a transfer tax clawback. This is also mitigated by the fact that in respect of the Borrower Group, the three year period expires in December, 2005 and it would be a Loan Event of Default if, *inter alia*, the Company transfers any shares in the Borrower prior to the expiry of that period.

## **F. General considerations**

### **Reliance on warranties**

Neither the Issuer nor the Note Trustee has independently undertaken or will undertake any investigations, searches or other actions as to the status of the Borrower Group and the Properties

as to the accuracy of the various representations given by the Obligors in respect of the Senior Loan, the Loan Security and related matters. Instead, they will rely on the representations and warranties to be given by the Obligors under the Senior Finance Documents and the due diligence contained in the due diligence reports.

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

On 3rd 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 1st 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).

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

The Basel Committee on Banking Supervision published the text of the new capital accord on 26th 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.

### **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 Offering Circular are based on Dutch and European laws and administrative practice in effect as at the date of this Offering Circular. No assurance can be given as to the impact of any possible change to Dutch or European law 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.

### **G. Other considerations**

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 Offering Circular 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 Finance (Uni-Invest) B.V., was incorporated in the Netherlands on 13th April, 2005 (registered number 34224771), as a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) under the laws of the Netherlands. The registered office of the Issuer is at Olympic Plaza, Fred Roeskestraat 123, 1076 EE Amsterdam, The Netherlands. The Issuer has no subsidiaries.

### Principal Activities

The principal objects of the Issuer are set out in its articles of association and are, *inter alia*, to lend money, to issue bonds and to grant security over its assets for the performance of its obligations. The Issuer was established 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 private limited company under the laws of the Netherlands, the authorisation of the issue of the Notes and of the other documents and matters referred to or contemplated in this Offering Circular 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 acquisition of the Senior Loan, the exercise of related rights and powers and the other activities described in this document. See further Condition 4.1.

Structured Finance Management (Netherlands) B.V. will provide corporate services to the Issuer and the Issuer Parent.

### Sole Managing Director

The sole managing director of the Issuer is Structured Finance Management (Netherlands) B.V. and its business address is Olympic Plaza, Fred Roeskestraat 123, 1076 EE Amsterdam, The Netherlands.

### Capitalisation and Indebtedness

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

	<b>Share Capital</b>
Issued: .....	€18,000
<b>Loan Capital</b>	
Class A Commercial Mortgage Backed Floating Rate Notes 2005 due 2012 ....	€656,000,000
Class B Commercial Mortgage Backed Floating Rate Notes 2005 due 2012 ....	€130,100,000
Class C Commercial Mortgage Backed Floating Rate Notes 2005 due 2012 ....	€137,000,000
Class D Commercial Mortgage Backed Floating Rate Notes 2005 due 2012 ....	€85,800,000
<b>Total capitalisation and indebtedness</b> .....	<b>€1,008,918,000</b>

All of the shares in the Issuer are held by the Issuer Parent.

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 Offering Circular.

## **Accountants' Report**

The following is the text of a report, extracted without material adjustment, received by the Issuer from KPMG Accountants N.V. who have been appointed as auditors and reporting accountants to the Issuer. KPMG Accountants N.V. is an accountancy practice and the registered auditor of the Issuer.

“Opera Finance (Uni-Invest) B.V. (the “Issuer”) was incorporated on 13th April 2005 under number B.V. 1317841 with an issued share capital of €18,000. The Issuer has not yet filed any financial statements.

KPMG Accountants N.V., Amstelveen, 12th May, 2005”

## THE BORROWER GROUP

The Borrower Group is comprised of Uni-Invest Holding B.V., Uni-Invest B.V. and various direct and indirect subsidiaries as set out in the chart in Appendix B.

The corporate structure is largely a legacy of structures typically utilised in the Netherlands property market over the last fifteen years, with the effect that while the Borrower Group comprises 36 companies, only 15 are asset-owning, including the Borrower itself which owns approximately 70% of the Properties by value. The remainder of non-asset-owning companies are dormant and may be wound up in due course.

Uni-Invest N.V. was founded in 1924 as an investment fund and was listed on Euronext (or its predecessors) in Amsterdam from inception until 2003. In late 2002, a consortium of private equity investors led by Lehman Brothers Real Estate Partners acquired the majority of the shares in Uni-Invest N.V. and the company was converted to a private company and de-listed from Euronext early in 2003.

Until 2003, Uni-Invest Holding B.V. was registered under the name Uni-Invest N.V. However, by a Deed of Partition (*akte van splitsing*), dated 19th December, 2002, executed before P.H.N. Quist, civil law notary practising in Amsterdam, part of the assets of Uni-Invest N.V. were acquired under universal title by the Borrower. Subsequently, Uni-Invest N.V. was renamed Uni-Invest Holding B.V.

The Borrower, Uni-Invest B.V., was incorporated in the Netherlands on 20th December, 2002 (registered number 34183271), as a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) under the laws of the Netherlands. The registered office of the Borrower is in Amsterdam. The Borrower is a wholly owned subsidiary of Uni-Invest Holding B.V.

### Principal Activities

The principal objects of the Borrower are set out in its articles of association and are, *inter alia*, to carry on all or any of the businesses of a property holding company and to carry on any other business or activity in connection or conjunction with such business.



## Capitalisation and Indebtedness

The following table sets forth the consolidated capitalisation and indebtedness of the Borrower Group as at 31st December, 2004, which has been extracted without material adjustment from the audited financial statements of the Borrower as at 31st December, 2004 and adjusted financial information setting forth the effect of the Senior Loan and the Mezzanine Loan as if they had taken place as of 31st December 2004:

	Actual 31st December, 2004	Adjusted 31st December, 2004 <sup>1</sup>
Figures in €'000s		
Mortgages .....	1,272,901	1,296,500
Short-term portion long-term debt .....	17,036	0
<b>Total indebtedness .....</b>	<b>1,289,937</b>	<b>1,296,500</b>
Share capital .....	717	717
Share premium reserve .....	4,395	4,395
General reserve .....	321,630	321,630
Result current year .....	21,362	8,127
	<b>348,104</b>	<b>334,869</b>
<b>Total capitalisation and indebtedness .....</b>	<b>1,638,041</b>	<b>1,631,369</b>

1 The adjusted financial information sets out the capitalisation and indebtedness of the Borrower as if the transaction had taken place on 31st December, 2004. In preparing this adjusted financial information, it has been assumed that the proceeds of the transaction have been applied to repay the existing mortgage. During 2005, the Borrower Group has sold ten real estate properties with an aggregate commercial book value of approximately €19.8 million and an aggregate passing rent of approximately €1.8 million. Seven of these properties, with a commercial book value of €10.1 million were sold before 15th February, 2005. These sales resulted in a cash inflow that was used for the redemption of the existing mortgage. The adjusted financial information does not include the effect of these transactions. Furthermore, the interest expenses regarding 2005 which were included in the refinancing are not included in the adjusted financial information.

## Financial Position

Certain key figures relating to the Borrower Group are included in Appendix A to this Offering Circular.

The Borrower Group applies its own valuation method to determine the fair value of its Properties. In reaching this view of value the Borrower Group has taken into account various factors including the external valuations of DTZ. The book value of the Properties as at 31st December, 2004 was €1,616.7 million, representing the Borrower Group's view of fair value. All of the asset sales in 2005 have been at or above book value.

Prior to the date of the Credit Agreement, the Borrower has specifically disclosed certain contingent claims which were the subject of specific investigation by the Borrower and the Loan Arranger prior to advancing the Senior Loan. Contingent litigation claims for two specific instances of litigation were disclosed by the Borrower, with aggregate claims of €17.5 million (plus losses interest and costs). The Borrower believes it has valid defences to these claims and is vigorously defending these claims. Based on facts available to the Borrower, it believes that the likelihood that these claims will be successful is low. Additionally, other contingent risks of a maximum of €14.84 million, arising in relation to six different cases, were disclosed by the Borrower. These cases are unrelated and, in relation to the probability of any one occurring, management believes that these claims will not result in any net outflows and has taken into account a due diligence report of Deloitte Belastingadviseurs B.V. which concluded that there was a probability weighted aggregate risk of €2.97 million.

Except as described above, since 31st December, 2004 there has been (a) no significant change in the financial position or prospects of the Borrower Group and (b) no significant change in the trading or financial position of the Borrower Group.

## DESCRIPTION OF THE PROPERTIES

### General

The Properties owned by the Borrower Group as at 15th February, 2005 (the **Portfolio**) comprised a total of 321 Properties which are all distributed around the Netherlands except for one Property which is located in Belgium. The Portfolio comprises office space (66.9% by value), industrial space (19.5%), retail space (13.4%) and other space (residential, mixed use) (0.2%). The Properties were valued as at 15th February, 2005 by DTZ Zadelhoff in the Netherlands at €1,453,000,000 (the **Mortgage Valuation**). All of the information referred to in this section *Description of the Properties* is based on the Properties owned by the Obligors and the values of such Properties, in each case, as at 15th February, 2005.

However since that date, and in accordance with the business plan to strategically dispose of assets, three Properties have been sold. Details of these Properties are set out below:

Asset Number	Address	Date of Sale	Region	Use	Passing Rent	Gross Consideration	DTZ Valuation
412	Prinsenplein 2-4; Meppel	28/02/2005	North/East	Office	38,982	565,000	535,000
82	Capronilaan 1-13; Schiphol Rijk	01/03/2005	Amsterdam	Office	647,141	8,005,000	7,555,000
243	Nieuwe Markt 63-71; Roosendaal	31/03/2005	South/Centre	Office	196,973	2,625,000	2,265,000
<b>Total</b>					<b>883,096</b>	<b>11,190,000</b>	<b>10,355,000</b>

Note that the total passing rent in relation to these properties equates to approximately 0.8% of the total passing rent as at 15th February, 2005 and the total asset value in relation to these Properties (as per the Mortgage Valuation) is approximately 0.7% of the total Mortgage Valuation.

The Portfolio is diversified geographically throughout the Netherlands (except one Property in Belgium), and although it is heavily weighted in the west of the country, around the Randstad industrial area dominated by the “Big Four” cities of Amsterdam, Rotterdam, The Hague and Utrecht, this is reflective of the high levels of industrial and commercial activity in the West. Approximately 35% of the Properties by value are located in the Big Four cities, with the remainder located in established secondary centres and in smaller regional towns.

The 12 largest Properties account for 20% of the value of the Portfolio, and have an average value of €24,217,083. Across the remaining 80% of the value, represented by 309 Properties, the average value per Property is €3,761,003. The average value per Property across the whole Portfolio is €4,525,717 and a large proportion of the individual Properties (85% by number) are valued at below €8,000,000. The high number of Properties results in a high degree of diversification within the Portfolio by Property type, age and specific location.

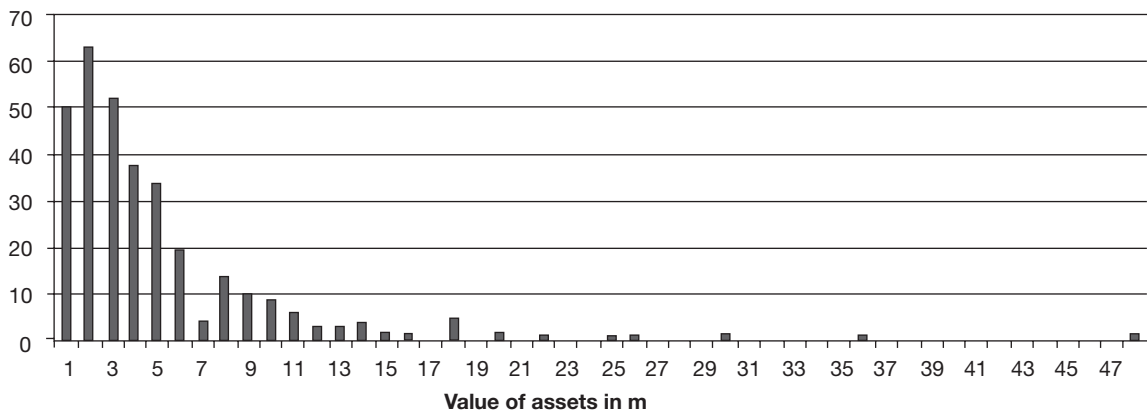
## Largest Twelve Properties by Mortgage Value

Property	City	Area	Property Type	Mortgage Value	% of Total	Passing Rent	% of Total
1 "Magna Plaza", Nieuwezijds Voorburgwal 182	Amsterdam	6,502	Retail	47,280,000	3.3%	2,972,809	2.6%
2 "Vision Park", Oude Apeldoornseweg 41-45	Apeldoorn	46,107	Office	35,760,000	2.5%	3,291,521	2.9%
3 Rivium Boulevard 156-186, Rivium 1e Straat 181-197	Capelle aan de IJssel	20,506	Office	29,825,000	2.1%	1,893,513	1.7%
4 Bezuidenhoutseweg 72-80	Den Haag	4,606	Office	25,265,000	1.7%	1,509,710	1.3%
5 Stadhouderskade 2	Amsterdam	9,324	Office	24,110,000	1.7%	1,866,326	1.6%
6 Binnenhof 1-110	Rotterdam	10,622	Retail	21,345,000	1.5%	1,657,920	1.5%
7 Cacaoweg 20	Amsterdam	34,911	Industrial	19,150,000	1.3%	1,795,027	1.6%
8 Schuttersveld 2-46, 50-56 and 7-9	Enschede	22,316	Retail	17,765,000	1.2%	1,418,193	1.3%
9 Galjoenweg 68	Maastricht	22,712	Industrial	17,660,000	1.2%	1,461,684	1.3%
10 Kobaltweg 60, Reactorweg 101	Utrecht	18,447	Office	17,645,000	1.2%	1,576,029	1.4%
11 Stadhouderskade 1	Amsterdam	3,034	Office	17,510,000	1.2%	-	0.0%
12 Dr. van Zeelandstraat 1	Leidschendam	15,335	Office	17,290,000	1.2%	1,766,032	1.6%
<b>Total</b>		<b>214,423</b>		<b>290,605,000</b>	<b>20.0%</b>	<b>21,208,763</b>	<b>18.7%</b>

## Property Value – Decile Analysis

Number of Assets

Property Value Distribution by Number



## Largest Tenants

Tenant	Moody's Rating*	S&P Rating*	Fitch Rating*	Sector	Passing Rent in €m	Rent as % of Total
1 ING Bank N.V.	Aa2	AA-	AA-	Finance	4,196,923	3.7%
2 RGD	Aaa	AAA	AAA	Government	4,015,540	3.5%
3 Shell	NR	AA	AA+	Oil	3,357,892	3.0%
4 Amsterdam Westpoint V.o.F.	NR	NR	NR	Logistics	1,795,027	1.6%
5 Staat der Nederlanden	Aaa	AAA	AAA	Government	1,773,129	1.6%
6 WE Vastgoed B.V.	NR	NR	NR	Retail	1,576,029	1.4%
7 VVAA Groep B.V.	NR	NR	NR	Health Industry	1,549,169	1.4%
8 Unieveem B.V.	NR	NR	NR	Logistics	1,502,670	1.3%
9 NCR European Logistics Center B.V.	Aaa	NR	NR	Logistics	1,461,684	1.3%
10 Technip Benelux B.V.	NR	BBB+	NR	Engineering	1,429,652	1.3%
<b>Total</b>					<b>22,657,714</b>	<b>20.0%</b>

\* rated entity or subsidiary of rated entity

The Portfolio is also highly diversified from a tenant perspective with approximately 1,158 tenants on 1,537 separate leases. The ten largest tenants by rental income show a high proportion of highly creditworthy and/or government-related tenants.

All of the lease contracts relating to the Properties are based on the ROZ (*raad onroerende zaken*) standard lease, and typically have a term of five plus five years (i.e. ten years total term with the first tenant break option after 5 years), with rents adjusted yearly for inflation but with no other intermediate rent reviews.

## Distribution of the Portfolio by value of the Properties

### Market value per type of Property

The proportion of office Properties in the Portfolio amounts to 66.9%, when measured by value and 56.7% when measured by the number of Properties in the Portfolio. For all other asset classes, the relative weight in the Portfolio measured by the number of Properties is higher than the relative weight by value.

Type	Valuation	%	No. of Assets	%	Average value per Property
Office .....	972,600,000	67%	182	57%	5,343,956
Retail .....	194,570,000	13%	58	18%	3,354,655
Industrial .....	283,205,000	19%	78	24%	3,630,833
Other .....	2,380,000	0%	3	1%	793,333
<b>Total.....</b>	<b>1,452,755,000</b>	<b>100%</b>	<b>321</b>	<b>100%</b>	<b>4,525,717</b>

### Rental value per type of Property

The distribution of the rental value in relation to the type of Properties in the Portfolio mirrors the distribution by market value (DTZ values 2005).

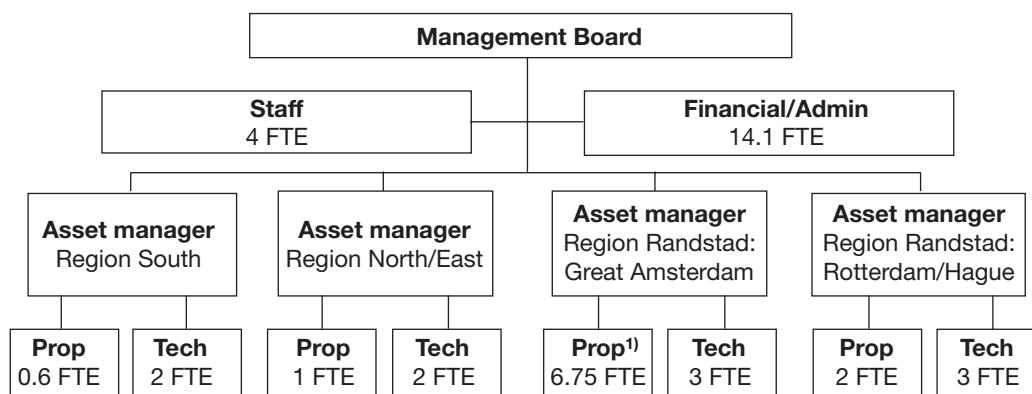
Type	Rental Valuation	%	No. of Assets	%	Average Rental value per Property
Office .....	90,348,854	67%	182	57%	496,422
Retail .....	15,361,886	11%	58	18%	264,860
Industrial .....	28,283,328	21%	78	24%	362,607
Other .....	118,973	0%	3	1%	39,658
<b>Total.....</b>	<b>134,113,043</b>	<b>100%</b>	<b>321</b>	<b>100%</b>	<b>417,798</b>

### Asset management

The Portfolio is managed by four regionally focused asset management teams within Uni-Invest, covering regions identified as Region Amsterdam, Region Rotterdam, Region North/East and Region South. Each asset management team consist of one asset manager, one to three Property manager(s) and one to three technical manager(s). The asset management teams work closely together with focus on the tenant relationships in their Portfolio and on the local market to enable them to increase the renewal rate and to efficiently let vacant space.

Uni-Invest incentivises its asset management teams to sign new rental contracts and achieve an annual renewal rate in their Portfolio above a yearly set threshold level. Length of new leases and rental levels are taken into account in calculating the incentive payment.

The asset management organisation chart is as follows:



1) Region Amsterdam includes 4 Property specific wardens

### Reporting

Each of the four regional head asset managers works with his team to report to the CEO on a weekly basis on new lease contracts, lease renewals, upcoming expiries and progress on current vacancies. On a monthly basis reports are prepared to show maintenance and capex spending within the preset budget. Any deviations from the budget are reported at the asset level on an ongoing basis. Quarterly meetings are held to discuss market trends, quarterly results and key targets for each team, as well as rewarding achievements of the prior quarters.

Every year in November the entire Portfolio is reviewed, asset by asset and tenant by tenant, to set a budget for market rents, lease up projections, maintenance and capex spending, disposition values and optimal sales dates.

*Market value per asset management region*

The regional Portfolios have a similar size and the composition is as follows:

<b>Region</b>	<b>Valuation</b>	<b>%</b>	<b>No. of Properties</b>	<b>%</b>	<b>Average value per Property</b>
Region Amsterdam .....	571,870,000	39%	93	29%	6,149,140
Region Rotterdam .....	373,035,000	26%	78	24%	4,782,500
North/East .....	220,750,000	15%	68	21%	3,246,324
South .....	285,495,000	20%	81	25%	3,524,630
Belgium .....	1,605,000	0%	1	0%	1,605,000
<b>Total.....</b>	<b>1,452,755,000</b>	<b>100%</b>	<b>321</b>	<b>100%</b>	<b>4,525,717</b>

The distribution of the market value per region shows that Amsterdam's share in the Portfolio, when measured by value, is higher than its share when measured by number of Properties. This is the result of a higher average value per Property in this region, which is almost twice the average value per Property in the region North East and South.

*Type of Properties per asset management region*

Within the regions, the sector distribution is reasonably consistent with the overall Portfolio sector distributions.

<b>Region Amsterdam</b>	<b>Valuation</b>	<b>%</b>	<b>No. of Properties</b>	<b>%</b>	<b>Average value per Property</b>
Office .....	403,245,000	71%	70	75%	5,760,643
Retail .....	75,995,000	13%	5	5%	15,199,000
Industrial .....	90,445,000	16%	17	18%	5,320,294
Other .....	2,185,000	0%	1	1%	2,185,000
<b>Total.....</b>	<b>571,870,000</b>	<b>100%</b>	<b>93</b>	<b>100%</b>	<b>6,149,140</b>

<b>Region Rotterdam</b>	<b>Valuation</b>	<b>%</b>	<b>No. of Properties</b>	<b>%</b>	<b>Average value per Property</b>
Office .....	256,905,000	69%	45	58%	5,709,000
Retail .....	34,075,000	9%	7	9%	4,867,857
Industrial .....	81,860,000	22%	24	31%	3,410,833
Other .....	195,000	0%	2	3%	97,500
<b>Total.....</b>	<b>373,035,000</b>	<b>100%</b>	<b>78</b>	<b>100%</b>	<b>4,782,500</b>



<b>Region North/East</b>	<b>Valuation</b>	<b>%</b>	<b>No. of Properties</b>	<b>%</b>	<b>Average value per Property</b>
Office .....	130,885,000	59%	23	34%	5,690,652
Retail .....	42,055,000	19%	24	35%	1,752,292
Industrial .....	47,810,000	22%	21	31%	2,276,667
Other .....	–	0%	0	0%	na
<b>Total</b> .....	<b>220,750,000</b>	<b>100%</b>	<b>68</b>	<b>100%</b>	<b>3,246,324</b>

<b>Region South</b>	<b>Valuation</b>	<b>%</b>	<b>No. of Properties</b>	<b>%</b>	<b>Average value per Property</b>
Office .....	181,565,000	64%	44	54%	4,126,477
Retail .....	40,840,000	14%	21	26%	1,944,762
Industrial .....	63,090,000	22%	16	20%	3,943,125
Other .....	–	0%	0	0%	na
<b>Total</b> .....	<b>285,495,000</b>	<b>100%</b>	<b>81</b>	<b>100%</b>	<b>3,524,630</b>

#### *Rental value per region*

The distribution of the Portfolio per region in terms of rental value, is fairly reflective of the distribution in value. The average rental value per Property in the Region Amsterdam and Rotterdam is significantly higher than in the other regions.

<b>Region</b>	<b>Rental Value</b>	<b>%</b>	<b>No. of Properties</b>	<b>%</b>	<b>Average rental value per Property</b>
Region Amsterdam .....	51,029,696	38%	93	29%	548,706
Region Rotterdam .....	35,733,995	27%	78	24%	458,128
North/East .....	20,349,459	15%	68	21%	299,257
South .....	26,999,894	20%	81	25%	333,332
Belgium .....	–	0%	1	0%	–
<b>Total</b> .....	<b>134,113,043</b>	<b>100%</b>	<b>321</b>	<b>100%</b>	<b>417,798</b>

#### *Vacancy rate per type of Property*

The total vacant area is distributed throughout the whole Portfolio. Office sector shows the largest vacancy rate, both in square metres and rental value.

<b>Type</b>	<b>Vacant area (sq m)</b>	<b>%</b>	<b>Rental Value</b>	<b>%</b>
Office .....	163,132	22.0%	20,757,373	23.0%
Retail .....	18,644	13.3%	1,952,361	12.7%
Industrial.....	92,098	15.4%	4,363,742	15.4%
Other .....	0	0%	0	0.0%
<b>Total / Average</b> .....	<b>273,874</b>	<b>18.5%</b>	<b>27,073,476</b>	<b>20.2%</b>

The vacancy rate, measured in square metres in the office sector is above 20%, although it should be noted that the Portfolio does include Properties in Amsterdam and Rotterdam where vacancy levels are significant across the entire market. The vacancy rate in the retail sector is not representative, as it is skewed by two relatively large vacant Properties (one in Oisterwijk and one in Sluis).

The average vacancy rate, measured by rental value, is around 20.2% for the total Portfolio.

*Vacancy rate per area*

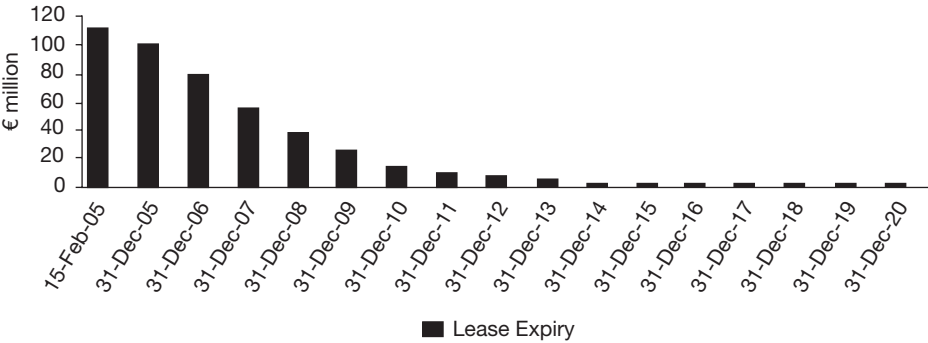
Vacancy rates are highest around the region of Amsterdam and Rotterdam, which have suffered more than most other cities from a combination of oversupply and reduced demand throughout 2003 and 2004. It should be noted that vacancy levels are significant across the entire market in the region of these cities. Vacancy levels in the Region South are again not representative for the Portfolio as it is skewed by the two large vacant Properties mentioned above.

Type	Vacancy rate (Area)	Vacancy rate (rental value)
Region Amsterdam .....	21.6%	26.9%
Region Rotterdam .....	11.8%	11.9%
North/East .....	17.6%	18.1%
South .....	20.8%	16.5%
<b>Total</b> .....	<b>18.5%</b>	<b>20.2%</b>

**Rental contracts**

*Expiry of rental contracts*

Almost a quarter of rental contracts have a first break clause in the year 2006 (24% of rental income). In the Netherlands, leases typically have a five plus five year lease term, which means that the tenant has a first break clause after five years, but the contract will automatically renew for another five year term if the tenant does not exercise it's break clause. Although the typical lease term is five plus five years, the tenant and landlord can agree on varying lease terms. For instance over the last couple of months, the Borrower has been able to agree a number of new ten-year lease contracts, without a break clause or rent review in mid-period.



**Legal title to the Properties**

Members of the Borrower Group own or have rights equivalent to ownership (whether by way of legal ownership (*eigendomsrecht*), leasehold (*recht van erfpacht*) and/or building right (*opstalrecht*)) in respect of 100% of the Properties. The Borrower owns 70.6% (by value) of the Properties and subsidiaries of the Borrower own Properties which represent 29.4% (by value) of the Properties.

Members of the Borrower Group have no further payment obligations in respect of the ground rent in respect of all but 13 of the 64 Properties in respect of which the Borrower Group owns a leasehold right. The total amount of ground rent payable in respect of these 13 Properties is €1.66 million per annum.

In addition, in relation to the following Properties, as at 15 February 2005, the relevant members of the Borrower Group hold apartment rights (*appartementsrecht*) in respect of such Property:

<b>City</b>	<b>Address</b>	<b>Holder of the apartment right</b>
Amsterdam	Helmholtzstraat 61-63	Premag Real Esate CV
Apeldoorn	Nieuwstraat 59-61	Uni-Invest BV
Apeldoorn	Sophiaplein 90-94	Uni-Invest BV
Den Bosch	Churchillaan 123	Uni-Invest BV
Doetinchem	De Veentjes I (1-33)	Uni-Invest BV
Doetinchem	De Veentjes II (2-30) – schouwburgplein	Uni-Invest BV
Dongen	Tramstraat 1,3 en 15	Uni-Invest BV
Eindhoven	De Greide, Kloosterdreef	Uni-Invest BV
Emmen	Wilhelminastraat 78-83	Uni-Invest BV
Eygelshoven	Putstraat 2	Uni-Invest BV
Geldrop	Heuvel 24-25	Uni-Invest BV
Heerlen	Klompstraat 1-9	Uni-Invest BV
Lisse	Heereweg 21, 21A t/m Y (exl. I)	Appartementen Hotel Bos en Duin
Meppel	Prinsenplein 2-4	Uni-Invest BV
Sluis	Nieuwstraat 10	Appartementen Hotel Bos en Duin
Gerpennes and Mouscron (Belgium)	Rue Neuve, Chaussee De Philippeville 182 Rue Neuve, Chaussee De Philippeville 184 Rue des Moulins, Passage St. Paul, lot 2 Rue des Moulins, Passage St. Paul, lot 4 Rue des Moulins, Passage St. Paul, lot 6	Uni-Invest Belgium N.V.

None of the Properties which are held by the Borrower Group under a leasehold right are due to expire prior to the Final Maturity Date.

### **Environmental matters**

As part of the acquisition and de-merger in 2002, the consortium led by Lehman Brothers Real Estate Partners and the lenders of the original acquisition financing commissioned an environmental report (the **Environmental Report**) into the entire estate by Haskoning Nederland B.V (**Haskoning**). The Environmental Report was conducted on all 470 sites then owned by the Borrower Group. In addition, for 128 sites there were detailed reports available at the offices of the Borrower prepared by third parties on the sites. Of the 128 sites for which third party reports were available, the Environmental Report identified two sites where there was potentially serious ground contamination. One of these Properties has since been sold, with the purchaser assuming liability for any remediation work and no potential claims against any member of the Borrower Group and the remaining site was assessed by Haskoning as requiring no remediation. For the remaining sites where no third party reports were available, Haskoning developed a grading system based upon the geographical and geological data and the usage of the site to assess the potential for

contamination and the potential impact of contamination if present. Forty-nine locations were identified as having increased risk and these sites were visited and examined and for ten of these sites further groundwater and soil examinations were recommended, resulting in three sites being identified as having identifiable contamination. Again, in two of these sites, the contamination was not serious and there was no remediation required. At the third site (LB: 178–Lyonstraat Rotterdam) there was existing pollution of the site for which the previous owner remains liable for remediation costs.

## VALUATION CERTIFICATE

Uni-Invest B.V.  
Joan Muyskensweg 22  
1096 CJ Amsterdam

Eurohypo AG London Branch as Arranger, Senior Facility Agent, Mezzanine Facility Agent, Senior Security Agent, Mezzanine Security Agent, Servicer and Special Servicer

90 Long Acre  
Covent Garden  
London WC2E 9RA  
**(Eurohypo)**

Opera Finance (Uni-Invest) B.V. as Issuer  
Olympic Plaza  
Fred Roeskestraat 123  
1076 EE Amsterdam  
The Netherlands

Citigroup Global Markets Limited, as Joint Bookrunner  
Citigroup Centre  
33 Canada Square  
Canary Wharf, London E14 5LB

Lehman Brothers International (Europe), as Joint Bookrunner  
25 Bank Street,  
Canary Wharf, London E14 4QW

Stichting Note Trustee Opera Finance (Uni-Invest) as Note Trustee  
Herengracht 420  
1017 BZ Amsterdam  
The Netherlands

**Valuation of a Portfolio of 321 Industrial, Office, Retail and Residential Properties Located almost exclusively in the Netherlands (the “Properties” or the “Portfolio”) as at 15th February, 2005**

### Introduction

In accordance with your instructions, we have inspected the Properties owned by Uni-Invest B.V (the “Company”) and its property–owning subsidiaries as listed in section 9.1, in order to advise you of our opinion of the market value of the Property as at 15th February, 2005 subject to existing tenancies as at that date. We are of the opinion as at the date of this certificate that, since the date of valuation, there has been no diminution in the value of the Property.

### Inspections

The Properties were inspected during December 2002, January 2003 and January 2005. We were able to inspect all areas of the Properties to which access was requested.

### Compliance with Appraisal and Valuation Standards and the Listing Rules

We confirm that the valuations have been prepared in accordance with the appropriate sections of the Practice Statements (“PS”) and United Kingdom Practice Statements (“UKPS”) contained within the RICS Appraisal and Valuation Standards, 5th Edition (the “Red Book”) which came into effect on 1st May, 2003. The basis of valuation set out in the Red Book is intended to be used principally for the valuation of assets in the UK. However, this basis of valuation is accepted

throughout the European Community as being equally applicable to the valuation of assets in Europe.

The valuations have also been prepared in accordance with the Red Book contained within the European Valuation Standards 2000 (EVS) issued by the European Group of Valuers' Associations (TEGoVA).

### **Status of Valuer and Conflicts of Interest**

We confirm that we have undertaken the valuations acting as an External Valuer, qualified for the purpose of the valuation.

We further confirm that we have had no previous recent involvement with the properties or parties to the transaction, except where we have informed Eurohypo otherwise, and, notwithstanding our previous involvement, the Bank has confirmed that we may proceed with the valuation. We do not therefore consider that any conflict arises in preparing the advice requested.

We confirm that there is currently no fee-earning relationship between DTZ Zadelhoff v.o.f. and the Applicant or the Bank than this valuation instruction. We also confirm that the total annual fee income received from the Bank does not account for more than 5% of the turnover of DTZ Zadelhoff v.o.f.

We understand that there may be other parties involved in this transaction for the purpose of syndication, which have not yet been disclosed to us. We are therefore unable to confirm whether DTZ Zadelhoff v.o.f. has any current, recent or anticipated fee earning involvement with any other parties connected to the transaction. We do however consider this to be very unlikely.

### **Purpose of the Valuation Report**

We understand that this valuation report and Schedule (the "Valuation Report") is required in connection with the listing particulars to be published in accordance with the Listing Rules made under the listing and issuing rules (Fondsenreglement) of Euronext, Amsterdam.

In accordance with UKPS 5.4, we have made certain disclosures in connection with this valuation instruction and our relationship with Uni-Invest Holding B.V or any of relevant its subsidiaries (together the "Borrower Group"). These are set out below.

### **Disclosures Required under the Provisions of UKPS 5.4**

#### *Previous valuations of the Property for the Purpose of the Valuation Report*

The Property has not been valued previously by DTZ Zadelhof for the same purpose as the Purpose of this Valuation Report.

#### *DTZ's relationship with client*

In addition to the matters referred to in item 4 of this Valuation Report, DTZ Zadelhof provides and has provided in the past ad hoc valuation and occupational agency advice to the Borrower Group.

#### *Fee income from the Borrower Group*

DTZ Zadelhoff is a general partnership consisting of partners participating through legal entities with limited liability. In DTZ Zadelhoff's financial year to 30th April, 2004, the proportion of total fees payable by the Borrower Group to the total fee income of the Group was less than five per cent. It is not anticipated that the total fees payable by the Borrower Group will exceed five per cent for the year to April 2005.



## **Basis of Valuation and Net Annual Rent**

### *Market Valuation*

The value of the Properties has been assessed in accordance with the relevant parts of the current RICS Appraisal and Valuation Standards. In particular, we have assessed Market Valuation in accordance with PS 3.2. Under these provisions, the term “Market Valuation” means “The estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm’s-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion”.

In undertaking our valuations on the basis of Market Valuation we have applied the interpretive commentary which has been settled by the International Valuation Standards Committee and which is included in PS 3.2. The RICS considers that the application of the Market Valuation definition provides the same result as “Open Market Valuation”, a basis of value supported by previous editions of the Red Book.

### *Market rent*

We have assessed Market Rent in accordance with Practice Statement 3.4. Under these provisions, “Market Rent” means “The estimated amount for which a property, or space within a property, should lease (let) on the date of valuation between a willing lessor and a willing lessee on appropriate lease terms in an arm’s-length transaction after proper marketing wherein the parties had acted knowledgeably, prudently and without compulsion.”

In undertaking our valuation on the basis of Market Rent we have applied the interpretative commentary which has been settled by the International Valuation Standards Committee (IVSC). The commentary is included in PS 3.4.

### *Taxation and costs*

In no case have we made any adjustment to reflect any liability to taxation that may arise on disposal, nor for any costs associated with disposal incurred by the owner.

No allowance has been made to reflect any liability to repay any government or other grants, taxation allowance or lottery funding that may arise on disposal.

We have made deductions to reflect purchaser’s normal acquisition costs where appropriate.

### *VAT*

All sums mentioned in this report are exclusive of turnover tax (19%), unless stated otherwise.

## **Assumptions and Sources of Information**

In general we have based our desktop valuations on information provided by us in 2003, concerning pictures, environmental information, floor areas and measurement certificates and condition. In 2003 this information on certain assets was provided by Loyens & Loeff and Allen & Overy on legal matters, by Royal Haskoning as to certified floor areas, by Royal Haskoning in respect of environmental matters, by Royal Haskoning as to structural and condition surveys and appropriate costing for work identified. In 2005 no information was provided.

The findings of these reports have been assessed and partly reflected in the individual Market Valuations reported.

Where third party consultants’ reports have not been provided, we have had to make assumptions and have relied on certain sources of information. Where appropriate, the Applicant has confirmed

that our assumptions are correct so far as it is aware. In the event that any of these assumptions prove to be incorrect, then our valuations should be reviewed.

The assumptions are referred to below:

#### *Title reports*

Investigation of the Portfolio was limited to the land registry details. All the relevant documents have been attached to the valuation reports on the basis of their LBREP number. Relevant results have been stated in the Valuation Reports. No title investigations were carried out.

A small number of Properties are not held in the name of Uni-Invest B.V. These concern Properties held in limited partnerships with third parties. We have explicitly assumed in the valuation process that all the Properties are held in the name of Uni-Invest, or that Uni-Invest's legal position is comparable to ownership.

#### *Maintenance, Condition of Structure and Services, Deleterious Materials, Plant and Machinery and Goodwill*

Due regard has been paid to the apparent state of repair and condition of the Properties, but a condition survey has not been undertaken by us, nor have woodwork or other parts of the structure which are covered, unexposed or inaccessible, been inspected. Therefore, we are unable to report that the Properties are structurally sound or care free from any defects. We have assumed the Properties are free from any rot, infestation, adverse toxic chemical treatments, and structural or design defects other than such as may have been mentioned in the body of our reports.

We have not arranged for investigations to be made to determine whether high alumina cement concrete, calcium chloride additive or any other deleterious material have been used in construction or any alterations, and therefore we cannot confirm that the Properties are free from risk in this regard. For the purposes of this valuation, it has been assumed that any investigation would not reveal the presence of such materials in any adverse condition.

No mining, geological or other investigations have been undertaken to certify that the sites are free from any defect as to foundations. Where relevant, we have assumed that the load bearing qualities of the sites of the Properties are sufficient to support the buildings constructed, or to be constructed thereon. We have also assumed that there are no abnormal ground conditions, nor archaeological remains present, which might adversely affect the present or future occupation, development or value of the Properties.

No tests have been carried out as to electrical, electronic, heating, or any other services nor have the drains been tested. However, we have assumed all services to be functioning satisfactorily.

No allowance has been made in this valuation for any items of plant or machinery not forming part of the service installations of the building. We have specifically excluded all items of plant, machinery and equipment installed wholly or primarily in connection with any of the occupants' businesses. We have also excluded furniture and furnishings, fixtures, fittings, vehicles, stock and loose tools. Further, no account has been taken in our valuation of any goodwill that may arise from the present occupation of the Properties.

In undertaking our valuations we have assumed a market investor's approach, whereby calculations are made on the basis of forecast annual maintenance costs and corrective maintenance where necessary, in order to maintain the properties to a reasonable and marketable standard.

It is assumed in our valuations that the building is in a good condition at the date of valuation. The DTZ costs, therefore, pertain to the annual budget required for the maintenance of the building over an infinite period of time. This annual budget incorporates all costs, such as for paintwork, replacement of roofs, lifts and cooling systems, as well as for all electrical, mechanical and heating

systems. Also in the case of a new building, a provision is made in order to finance the required investments over a period of, for example ten years.

Clearly not factored into these budgets, however, are the costs involved in upgrading a building, whether as result of ageing or changing user requirements. Examples include the replacement of single-pane glass by insulating glass, the stripping of a building's cladding, followed by the application of a new glazed wall, the fitting of air-conditioning in order to replace mechanical ventilation, etc. A characteristic feature of these capital expenditure costs is that they result in an explicit improvement of user enjoyment, meaning that a higher rent can be negotiated.

It is also assumed in the valuations that the buildings are in good condition at the date of valuation.

### *Environmental Matters*

In general, our enquiries and inspection have provided no evidence that there is a significant risk of contamination in respect of the Properties. Where our enquiries have led us to suspect that contamination may exist, we have commented thereon within the body of the report under "Environmental aspects" in the section "Description of the appraised property".

Accordingly, with the exception of the properties listed below, we are instructed to assume that no contamination or other adverse environmental matters exist in relation to the Properties sufficient to affect value. Other than as referred to above, we have not made any investigations to establish whether there is any contamination or potential for contamination to the Properties.

The Bank instructed Royal Haskoning in 2003 to advise in respect of environmental factors and contamination. In arriving at our valuation, we have sought to reflect our opinion of the Market Valuation on the basis of the information revealed by Royal Haskoning and provided by the Bank. In 2003, we have been supplied with information by Royal Haskoning for the Properties LBREP 14, 38, 39, 47, 80, 93, 125, 148, 156, 157, 161, 164, 193, 267 and 462. We have made allowances in our valuation for the anticipated costs of treatment of contamination as mentioned in the reports, together with such other allowances as we consider purchasers in the open market would be likely to make, based on the information supplied, as described in each report. We have incorporated Royal Haskoning's conclusions in relation to the Properties in our reports.

We have assumed that the information and opinions we have been given are complete and correct in respect of the Properties and that further investigations would not reveal more information sufficient to affect value. We consider that this assumption is reasonable in the circumstances.

### *Floor areas*

All valuations are based on the LFA (lettable floor area) as provided by the Applicant and its advisers. We received measurement certificates in 2003 undertaken by Royal Haskoning in relation to about one third of the Portfolio assets. We therefore undertook to review all the calculation models in the manner set out below:-

- If the specified m<sup>2</sup> LFA deviates from the certificates of measurements by less than +/- 4%, the calculation models is not adjusted.
- If the specified m<sup>2</sup> LFA deviates from the certificates of measurements by more than +/- 4% on a building by building basis, the calculation model is adjusted on the basis of the certificate of measurements. The difference is calculated across each Property, not by tenant.

The formula: 
$$\frac{\text{LFA as per Uni-Invest specification}}{\text{LFA as per certificate of measurements minus 1 times 100\%}}$$

### *Statutory Requirements and Planning*

With regard to the Portfolio, no verbal or written enquiries have been made of the relevant planning authority in whose area each Property lies as to the possibility of highway improvement proposals, comprehensive development schemes and other ancillary planning matters that could affect property values.

It has been assumed that each building has been constructed in full compliance with valid town planning and building regulations approvals, that where necessary it has the benefit of a current fire certificate, and that each Property is not subject to any outstanding statutory notices as to its construction, use or occupation. No allowance has been made for rights, obligations or liabilities arising under any legislation regarding defective premises and we have assumed that each Property complies with all relevant statutory requirements.

### *Tenure*

We have not undertaken investigations into the financial strength of the tenants. Unless we have become aware by general knowledge, or we have been specifically advised to the contrary, we have assumed that the tenant(s) are financially in a position to meet its/their obligations. Unless otherwise advised, we have also assumed that there are no material arrears of rent or service charges or breaches of covenants, current or anticipated tenant disputes. We have not read copies of the leases or other related documents but have relied on the tenancy summaries contained in the certificate of title for the purposes of our valuation. We confirm that as instructed the valuation has been based upon the tenancy position as at 15th February, 2005.

However, our valuation reflects the type of tenants actually in occupation or responsible for meeting lease commitments, or likely to be in occupation, and the market's general perception of their creditworthiness.

We have also assumed that wherever lease renewals are pending or impending, with anticipated reversionary increases, all notices have been served validly within the appropriate time limits.

### *Current Letting Activity*

As part of the valuation process, DTZ Zadelhoff received details of current letting and marketing activity in relation to the Portfolio. We have based our opinion on the available information. The digital letting details of the Portfolio was based on reference date 4th December, 2004, the hardcopy of the letting details of 27th and 28th December, 2004. Contracts with an indexation between 4 December 2004 and the reference date of the valuation 15 February 2005 have been indexed by DTZ Zadelhoff. Rents with an indexation date before 1st February, 2005 have been increased with an index of 1.0%, after 1st February, 2005 with 1.4%.

REMS is a property management system containing letting details, which is used by the Applicant. REMS Tenancy printouts were received by DTZ Zadelhoff from the Applicant in January 2005 of all tenants of properties in the portfolio. These printouts were arranged by LBREP number with 27th and 28th December, 2004 as the reference date.

These REMS printouts were carefully checked for possible omissions and supplemented by additional documents where necessary. A small number of leases were concluded after the reference date 27th and 28th December, 2004. These leases have nevertheless been incorporated in the valuations. DTZ Zadelhoff v.o.f. does not accept any responsibility for possible omissions in the applied lists of tenants. All available REMS printouts have been attached to the reports to which they apply.

### *Information*

Our opinions of value are based on our inspection of the assets, the information provided by the Bank, the Applicant and their professional advisers, or third parties, (such as letting details and

floor areas, floor plans and/or any certificates of measurements and information on property-related and other charges), and on information provided in writing and verbally by the Land Registry, the municipal and/or provincial authorities concerned.

We have assumed that the information which the Applicant and its professional advisers have supplied to us in respect of the properties is both full and correct.

It follows that we have assumed that details of all material matters likely to affect value, within the collective knowledge of the Applicant and its professional advisers, have been made available to us and that the information is up to date.

#### *Purchaser's Costs*

Transfer tax in The Netherlands is currently fixed at 6% of the purchase price of a asset.

If the property is listed as a 'Rijksmonument' in the sense of the 'Monumentenwet 1988', then transfer of a listed building / monument is exempted from the Dutch 6% transfer tax, in cases where the buyer is a special purpose BV or NV company which has been registered with the tax authorities as a company which preserves and maintains listed buildings / monuments in The Netherlands.

In accordance with information provided by Allen & Overy in 2003, we have taken the above into account for a few Properties and thus assumed that no 6% transfer tax is due.

For the purposes of our valuations, we have assumed that all of the Properties would be sold by way of standard property transactions.

Legal fees on most transactions will vary between 0.01% and 0.70% of the purchase price, depending of the size of the Property.

The value reflects purchaser's transfer tax and cadastral fees. No deduction is made for purchaser's agents or legal fees, which is normal Dutch market practice.

#### *Information*

We have made an assumption that the information the Borrower Group and its professional advisers have supplied to us in respect of the Properties is both full and correct.

It follows that we have made an assumption that details of all matters likely to affect value within their collective knowledge such as prospective lettings, rent reviews, outstanding requirements under legislation and planning decisions have been made available to us and that the information is up to date.

#### **Valuation**

We are of the opinion that the Market Value of the Properties, subject to existing tenancies as at 15th February, 2005 and to the assumptions and comments in this Report and in Appendix 1 was as follows.

**€1,453,000,000**

**(One Billion and Four Hundred and Fifty Three Million Euros)**

#### **Confidentiality and Disclosure**

The contents of this Valuation Report and Schedule may be used only for the purpose of this Valuation Report. Before this Valuation Report, or any part thereof, is reproduced or referred to, in any document, circular or statement, and before its contents, or any part thereof, are disclosed orally or otherwise to a third party, the valuer's written approval as to the form and context of such publication or disclosure must first be obtained.

For the avoidance of doubt such approval is required whether or not DTZ Zadelhof Limited are referred to by name and whether or not the contents of our Valuation Report are combined with others.

Yours faithfully

**ir. Frans Gijsbert van Hoeken MRE MRICS RT**  
**CHARTERED SURVEYOR**  
**DIRECTOR**  
FOR AND ON BEHALF OF  
DTZ ZADELHOFF V.O.F.



## CREDIT STRUCTURE

### A. Origination Process

In connection with the origination of the Senior Loan, Eurohypo (as Senior Loan Arranger) ensured that certain due diligence procedures were undertaken such as would customarily be undertaken by a prudent lender making loans secured on commercial properties of this type, so as to evaluate the Borrower's ability to service its loan obligations and so as to analyse the quality of the Properties. In order to do this, an analysis of the contractual cashflows, tenant covenants and lease terms and the overall quality of the real estate was undertaken by or on behalf of Eurohypo (as Senior Loan Arranger). The property investment experience and expertise of the Borrower were also factors taken into consideration in the lending analysis. A reliance letter in respect of the due diligence reports will be issued in favour of the Issuer and the Note Trustee on the Closing Date which will allow them to rely on the content of such reports.

Certain costs associated with the origination of the Senior Loan will be recovered from the Borrower as part of the margin payable in connection with the Senior Loan. In addition, in certain circumstances (namely if the Obligors dispose of more Properties than anticipated in its business plan), the Borrower will be required to pay an additional fee to ensure that all of these costs are recovered.

### B. Due Diligence

#### ***Title and Other Investigations***

The Issuer and the Note Trustee will benefit from a report on the title to the Properties prepared by Allen & Overy LLP in Amsterdam (the **Title Report**) and a report in relation to the occupational leases prepared by Loyens & Loeff N.V., Dutch lawyers, (the **Lease Report**). The Title Report addressed the title to 50 of the largest Properties, which as at the Valuation Date represented 76.3% of the total value of the Properties. In preparing the Title Report, searches were carried out at the Dutch land registries, the title deeds were reviewed and any restrictive rights or covenants in respect of the Properties were reported on.

The Lease Report was originally prepared in 2003 and has been supplemented by additional lease reviews carried out in February 2005. The leases reviewed relate to tenants who account in aggregate for approximately 60% of the passing rent.

#### ***Environmental and Structural Matters***

The Issuer and the Note Trustee will benefit from a buildings and environmental report prepared in respect of the Properties in 2003 by Royal Haskoning. See *Description of the Properties – Environmental Matters*.

#### ***Capacity of Obligors***

The Issuer and the Note Trustee will benefit from a legal opinion by lawyers acting for Eurohypo given in respect of the Senior Finance Documents that the Obligors were validly incorporated, had sufficient power and capacity to enter into the proposed transaction, whether it was the subject of any bankruptcy proceedings (*faillissement*) or suspension of payments (*surséance van betaling*), and generally that the Obligors had complied with any necessary formalities.

#### ***Registration of Security***

The Issuer and the Note Trustee will benefit from a legal opinion that all necessary registrations in connection with the Loan Security were attended to within all applicable time periods and appropriate notices served (where required by the terms of the Senior Finance Documents).

## **C. Senior Finance Documents**

The principal documentation entered into by the Obligors in relation to the Senior Loan comprises the Credit Agreement, the Portfolio Obligations Agreement, the Borrower Security Agreements, the Senior Hedging Arrangements, the Priority Agreement and certain other side letters (together the **Senior Finance Documents**). All of the Senior Finance Documents are governed by Dutch law other than the Senior Hedging Arrangements (which are governed by English law) and the English and Belgian law governed Borrower Security Agreements. Certain amendments have been made to these documents since the date on which they were entered into and the description of these documents set out below relates to the relevant documents as amended.

### **Credit Agreement and Portfolio Obligations Agreement**

#### ***Conditions precedent***

Prior to making the Senior Loan under the Credit Agreement, the Senior Facility Agent received certain documents as conditions precedent to funding in form and substance satisfactory to it. The documentation included, *inter alia*: constitutional documents and board minutes for the Obligors, a valuation in respect of the Properties, evidence of insurance cover in respect of the Properties and the Senior Security Agent being named as co-insured on any Insurance Policies, security documents (and releases of existing security), all relevant legal opinions and all notices in connection with the pledge of rental income, pledge of bank accounts and pledge of receivables in respect of the Senior Hedging Arrangements and the Mezzanine Hedging Arrangements.

#### ***Interest payments***

Interest under the Senior Loan will be paid quarterly in arrear on the 15th day of February, May, August and November in each year in respect of successive Loan Interest Periods.

The interest rate payable in respect of the Senior Loan is equal to the aggregate of EURIBOR plus a margin and any mandatory costs. The amount of interest payable on the Senior Loan exceeds the aggregate amount of interest payable in respect of the Notes and all other anticipated costs and expenses of the Issuer.

#### ***Repayment and prepayment***

Unless previously repaid, the Senior Loan will be repayable in full on the Interest Payment Date falling in February 2010.

If a Lender becomes aware that it is unlawful in any applicable jurisdiction for that Lender to perform any of its obligations under a Senior Finance Document or to fund or maintain its participation in the Senior Loan, after receipt of notification from that Lender, the Borrower must repay or prepay the participation of that Lender in the Senior Loan on the last day of the current Loan Interest Period for the Senior Loan or, if earlier, the date specified by that Lender in its notification, which must not be earlier than the last day of any applicable grace period allowed by law.

If a member of the Borrower Group disposes of any Property, an amount of the disposal proceeds will be required to be applied in prepayment of the Senior Loan on the next Loan Interest Payment Date (see *Credit Structure – Senior Finance Documents – Disposal of Properties* for more details).

The Borrower may, subject to compliance with the terms of the Senior Finance Documents, prepay the Senior Loan in whole or in part (subject to a minimum of €5,000,000) on a Loan Interest Payment Date provided that the Borrower gives not less than 15 days' prior written notice to the Senior Facility Agent (or such other period agreed by the Senior Facility Agent).

If an Obligor is, or will be, required to pay to a Lender a tax payment (e.g. as a result of the tax gross up/indemnity provisions) or an increased cost in respect of the Senior Loan, the Borrower

may, while the requirement continues and provided that no Loan Default is outstanding, give notice to the Senior Facility Agent that it intends to prepay that Lender's share of the affected Senior Loan. The date for repayment or prepayment will be the last day of the current Loan Interest Period or, if earlier, the date specified by the Borrower.

If the Senior Loan is refinanced in full prior to 15th February, 2007, the Borrower will be required to pay certain prepayment fees. Prepayment fees will not be payable in any other circumstances.

### ***Representations and warranties***

Certain representations and warranties are given by each Obligor (in respect of itself and its subsidiaries) under the Credit Agreement and the Portfolio Obligations Agreement, as of the date of the Credit Agreement, the date of drawdown and (subject to certain exceptions) each Loan Interest Payment Date. These, include, *inter alia*, the following statements:

- (a) each Obligor is duly incorporated as a limited liability company or limited partnership (as the case may be) under the laws of its incorporation and has the power to enter into and perform the Senior Finance Documents and such entry into and performance of the Senior Finance Documents will constitute legal, valid, binding and enforceable obligations of each Obligor (subject to certain qualifications) and not conflict with any applicable law or regulation or with any document binding on it or its constitutional documents;
- (b) no Loan Default is outstanding or will result from the making of the Senior Loan or the execution or performance of any transaction contemplated by the Senior Finance Documents;
- (c) subject to due registration of the Borrower Security Agreements, all authorisations required in connection with entry into, performance, validity and enforceability of the Senior Finance Documents have been obtained or effected and are in full force and effect;
- (d) the relevant Obligors hold the legal title (*juridische eigendom*) or a leasehold right (*erfpachtsrecht*) and/or a building right (*zelfstandig opstalrecht*) in, as the case may be, the Properties, in each case free from any security interests (other than those set out in the Borrower Security Agreements);
- (e) the security conferred by the Borrower Security Agreements constitutes a first priority security interest over the assets referred to in each agreement and its payment obligations under the Senior Finance Documents rank at least *pari passu* with all of its other unsecured payment obligations (other than preferred claims arising from applicable bankruptcy laws);
- (f) except as disclosed prior to the date of the Credit Agreement (see *The Borrower Group – Financial Position* for further information) no litigation, arbitration or administrative proceedings are current or, to the knowledge of the Obligors pending or threatened which, if adversely determined, could reasonably be expected to have a material adverse effect or, in relation to any litigation disclosed in any due diligence report, is in respect of a claim in excess of €100,000;
- (g) all information supplied by the Obligors to the Senior Loan Arranger, the Lenders, the Senior Security Agent and the Senior Facility Agent, *inter alia*, in connection with the Senior Finance Documents was true and accurate in all material respects as at its date and did not omit to supply any information which, if disclosed, would make any other information untrue or misleading in any material respect;
- (h) all information supplied on behalf of any member of the Borrower Group to the Valuer for the purposes of the Valuation was true and accurate in all material respects as at its date and did not omit to supply any information which, if disclosed, would adversely affect the aggregate amount of any Valuation at the time it was prepared;

- (i) the consolidated accounts of the Borrower Group most recently delivered to the Senior Facility Agent have been prepared in accordance with accounting principles and practices generally accepted in the Netherlands and give a true and fair view of (if audited) or fairly represent (if unaudited) the consolidated financial condition of the Borrower Group as at the date to which they were drawn up, and there has been no material adverse change in its financial condition since the date of such accounts;
- (j) no liability may accrue to or become payable by any member of the Borrower Group in connection with any interest in any non-wholly-owned limited partnership of which a member of the Borrower Group is a limited partner (see *Appendix B – Borrower Group Structure Chart* for a list of the limited partnerships (*commanditaire venoostchap* or *CV*); and
- (k) except as disclosed prior to the date of the Credit Agreement (see *The Borrower Group – Financial Position* for further information) it is not overdue in the filing of any tax returns or the payment of any material amount of tax and no member of the Borrower Group has any contingent liabilities.

### **Undertakings**

Each Obligor (on behalf of itself and its subsidiaries) gives various undertakings under the Credit Agreement and the Portfolio Obligations Agreement which take effect so long as any amount is outstanding under the Credit Agreement or any commitment is in place. These undertakings include, *inter alia*, the following:

- (a) to provide the Senior Facility Agent with financial information on an ongoing basis, including audited accounts, as soon as possible at the end of each financial year and an annual business plan and capital expenditure report (the annual business plan and capital expenditure are subject to approval by the Combined Facility Agents);
- (b) to supply the details of any shareholder or creditor documentation;
- (c) to supply details of any litigation, arbitration or administrative proceedings which are current threatened or pending and which might, if adversely determined, be considered to be material;
- (d) to notify the Senior Facility Agent promptly upon becoming aware of any Loan Default;
- (e) to procure that each Obligor's payment obligations under the Senior Finance Documents rank at least *pari passu* with all other present and future unsecured obligations (other than obligations mandatorily preferred by law) and not to create or permit any security interest to arise over any of its assets (other than certain customary exceptions);
- (f) not to enter into any amalgamation, demerger, merger or reconstruction or (other than with the consent of the Lenders or as otherwise expressly permitted under the Senior Finance Documents) acquire any assets or business or make any investments other than (i) non-real estate assets acquired in the ordinary course of its operations or as part of operating expenditure or (ii) the acquisition of the legal title (*juridische eigendom*) to a Property in which the relevant member of the Borrower Group already holds the economic ownership (*economische eigendom*) pursuant to contractual arrangements existing as at the date of the Credit Agreement provided such acquisition may only be funded using amounts standing to the credit of the General Account;
- (g) not to make any loans or provide any other form of credit or to give any guarantee or indemnity to any person (other than as expressly permitted under the Senior Finance Documents and certain customary exceptions);

- (h) not to incur any financial indebtedness (other than indebtedness incurred under the Senior Finance Documents (which shall include any Cure Loans or Hedging Loans) or financial indebtedness which is subordinated pursuant to the Priority Agreement);
- (i) not to enter into any contracts other than the Senior Finance Documents or any contracts entered into in the ordinary course of its operations (subject to certain conditions) or which are otherwise envisaged or expressly permitted under the Senior Finance Documents;
- (j) not to declare or pay any dividend or make any distribution in respect of its shares, other than:
  - (i) any dividend in kind made by Holdings for the purposes of repaying the existing loan owed by Holdings to the Shareholders;
  - (ii) any dividend in kind made by Holdings where Holdings distributes any of the Probus Loan Assets to the Shareholders (or any of them);
  - (iii) any dividend paid in cash by the Borrower provided such dividend may only be funded using amounts standing to the credit of the General Account (and any dividend paid in cash by Holdings using the proceeds of such dividend paid by the Borrower),

and provided that, in each case:

- (A) no Loan Default or, in the case of a dividend under sub-paragraph (ii) or (iii) above using the proceeds of any repayment of a Probus Loan Asset, no Material Loan Default is outstanding at that time; and
  - (B) such dividend is made lawfully and from the freely distributable reserves of Holdings or the Borrower, as the case may be;
- (k) not to carry on any business other than the ownership, disposal and (in the case of Uni-Invest Beheer B.V. only) management of its interests in the Properties and other related activities;
  - (l) to comply with certain customary undertakings regarding the administration of occupational leases and the appointment of managing agents in respect of the Properties;
  - (m) to maintain insurance on the Properties (see *Insurance* below for a detailed description of the insurance arrangements);
  - (n) to ensure that it is in compliance with all environmental laws and environmental approvals applicable to it, where failure to do so might have a material adverse effect on the ability of any Obligor to comply with its obligations under the Senior Finance Documents or might result in any liability for, *inter alios*, the Lenders;
  - (o) except for works which are the result of the application of the proceeds of insurance (see *Insurance* below) or if the Senior Facility Agent has approved the relevant action, not to carry out or allow to be carried out on any part of any Property owned or held by it any construction or development (within the meaning of the applicable planning/zoning laws and being construction or development for which a permit or permission of the local authority is required) (other than as a result of the application of discretionary capex in accordance with the terms of the Credit Agreement) or to make any material change in use of any Property;
  - (p) not to sell, transfer, lease or otherwise dispose of any of its assets (either in a single transaction or in a series of transactions, whether related or not and whether voluntarily or involuntarily), without the consent of the Combined Facility Agents except for (provided no Material Loan Default is outstanding) a disposal of the Probus Loan Assets, a permitted intra-Borrower Group disposal or a disposal of a Property, if the conditions set out in the Senior Finance Documents and summarised in *Disposal of Property* below are met;



- (q) in the case of Holdings only, to ensure that, for each test period, net rental income as a percentage of senior interest costs (the **Senior Interest Cover Percentage**) is at least 125 per cent.

For the purpose of calculating the Senior Interest Cover Percentage, the test period will be each period of 12 months ending on a Loan Interest Payment Date except that:

- (i) the first test period shall be the three month period starting on 15th February, 2005 and ending on the first Loan Interest Payment Date to occur after 15th February, 2005;
- (ii) the second test period shall be the six month period starting on 15th February, 2005 and ending on the second Loan Interest Payment Date to occur after 15th February, 2005; and
- (iii) the third test period shall be the nine month period starting on 15th February, 2005 and ending on the third Loan Interest Payment Date to occur after 15th February, 2005.

In the case of breach of the Senior Interest Cover Percentage test, the Mezzanine Lenders have certain cure rights (see *Priority Agreement – Cure Rights* below).

- (r) in the case of Holdings only, to ensure that the aggregate amount outstanding of the Senior Loan as a percentage of the aggregate value of the Properties determined by reference to the most recent valuation of the Properties by the Valuer (the **Senior LTV**) does not exceed 80 per cent. at any time. The Senior LTV and the Senior Interest Cover Percentage are together referred to as the **Senior Financial Covenants**.

In the case of breach of the Senior LTV, the Borrower and the Mezzanine Lenders have certain cure rights (see *Priority Agreement – Cure Rights* below).

In addition to paragraphs (q) and (r) above, the Mezzanine Credit Agreement contains the following additional covenants given by Holdings:

- (a) to ensure that estimated net rental income as a percentage of estimated total interest costs for the next three months (i.e. interest payable in respect of the Senior Loan and the Mezzanine Loan) (the **Total Interest Cover Percentage**) is at least 110 per cent.; and
- (b) to ensure that the aggregate outstanding amount of the Senior Loan and the Mezzanine Loan as a percentage of the aggregate value of the Properties determined by reference to the most recent valuation of the Properties by the Valuer (the **Total LTV**) does not exceed 95 per cent. at any time. The Total LTV and the Total Interest Cover Percentage are together referred to as the **Mezzanine Financial Covenants**.

### ***Events of default***

The Credit Agreement contains usual events of default entitling the Issuer and any other Lenders (subject in certain cases, to customary grace periods and materiality thresholds) to accelerate the Senior Loan and/or to instruct the Senior Security Agent to foreclose the Loan Security, including, *inter alia*:

- (a) failure to pay on the due date any amount due under the Senior Finance Documents;
- (b) breach of other specified obligations under the Senior Finance Documents;
- (c) any representation or warranty was incorrect in any material respect at the date it was given;
- (d) any other financial indebtedness of any Obligor is not paid when due or within any applicable grace period or is accelerated or placed on demand or the security interests securing such indebtedness become enforceable;



- (e) a member of the Borrower Group is unable to pay its debts or is deemed to be bankrupt or other similar acts or events occur (including, *inter alia*, the commencement of bankruptcy proceedings, the appointment of any bankruptcy trustee or the attachment or sequestration of any asset);
- (f) a member of the Borrower Group ceases or, threatens to cease, to carry on all or a substantial part of its business;
- (g) it is or becomes unlawful for an Obligor to perform any of its obligations under any Senior Finance Documents;
- (h) other than as a result of any matter referred to in any legal qualification contained in any legal opinion delivered pursuant to the Credit Agreement, any of the Borrower Security Agreements do not create the security interests intended to be created by it or the ranking or subordination created or purported to be created by the Priority Agreement is not or is alleged not to be effective;
- (i) any part of any Property is compulsorily purchased or the applicable local authority makes an order for the compulsory purchase of all or any part of any Property and in the opinion of the majority Lenders, taking into account the amount and timing of any compensation payable, the compulsory purchase has or will have a material adverse effect;
- (j) the destruction or damage to the Properties and in the reasonable opinion of the majority Lenders the destruction or damage will have a material adverse effect (taking into account the expected proceeds of the Insurance Policies);
- (k) an event or series of events occurs which, in the opinion of the majority Lenders, is reasonably likely to have a material adverse effect;
- (l) Holdings ceases to be legally and beneficially owned and controlled as to more than 51 per cent. (directly or indirectly) by any of the LBREP Funds and/or affiliates of Lehman Brothers;
- (m) other than where the same would not result in a Loan Event of Default under paragraph (l) above, there is a change of control in relation to any of the LBREP Funds (during any period in which the relevant LBREP Fund retains an indirect interest in Holdings). For these purposes, **control** means the power to direct the management and the policies of the relevant LBREP Fund, whether through ownership of more than 51% of voting capital, by contract or otherwise;
- (n) unless otherwise agreed in writing by the Senior Lenders, any tax losses which would otherwise have been able to be used by any member of the Borrower Group to shelter any profits or gains of that member (or any other member) of the Borrower Group would no longer be available for that purpose as a result of a sale of all or any of the shares in Holdings;
- (o) each Obligor (other than Holdings) ceases to be legally and beneficially owned and controlled (directly or indirectly) as to 100 per cent. by Holdings, other than in the case of Engels-Hollandse Beleggings Trust B.V., Northdoor B.V. and Capa City Realty B.V. (which have minority shareholders or preference shareholders – see *Appendix B – Borrower Group Structure Chart*); or
- (p) certain tax events occur including if:
  - (i) Holdings transfers any shares in the Borrower prior to 27th December, 2005;
  - (ii) Holdings transfers any shares it owns in Walzer or Nevas before 1st July, 2006;
  - (iii) any person at any time holds one third or more of the entire share capital in Holdings; and

- (iv) Holdings and each of its subsidiaries (including, for the avoidance of doubt, Pen Holdings B.V. and Engels Hollandse Beleggings Trust B.V. and their respective subsidiaries and Eekholt Property B.V. but excluding Northdoor B.V. and Northdoor Vastgoed B.V.) do not form a fiscal unity for corporate income tax purposes.

In relation to non-payment and breaches of other obligations, the Credit Agreement includes customary grace periods, but in no instance are these grace periods for periods longer than 21 days.

Upon the occurrence of a Loan Event of Default which has not been remedied within the applicable grace period, the Senior Facility Agent may by notice to the Borrower cancel any outstanding commitments under the Credit Agreement, demand that all or part of the Senior Loan together with accrued interest and all other amounts accrued under the Senior Finance Documents become immediately due and payable, demand that all or part of the Senior Loan become payable on demand and/or apply monies standing to the credit of the Borrower Accounts towards repayment of any amount due to any party under the Senior Finance Documents.

### ***Disposal of Property***

#### *Conditions to disposal*

A Property may be disposed of to a third party (other than as a permitted intra-group disposal) if:

- (a) no Loan Default is outstanding or would occur as a result of the disposal; and
- (b) (unless the Combined Facility Agents agree otherwise) the consideration for the disposal is payable in cash in full at completion; and
- (c) **EITHER:**
- (i) (in the case of the disposal of a single Property), subject to *Disposals with Consent of Combined Facility Agents* below, the gross cash consideration paid or payable in respect of that disposal **minus** the amount of Certified Costs, Certified Disposal Tax Liability and Certified Estimated Aggregate Prepayment Expenses in respect of that disposal (the **Net Disposal Proceeds**) are equal to or exceed both:
- (A) the minimum aggregate amount of the Senior Loan and the Mezzanine Loan required by the terms of the Credit Agreement and the Mezzanine Credit Agreement to be prepaid using such disposal proceeds (the **Aggregate Prepayment Amount** and the amount required to be applied in prepayment of the Senior Loan being the **Senior Release Pricing Amount** and the amount required to be applied in prepayment of the Mezzanine Loan being the **Mezzanine Release Pricing Amount**); and
- (B) the valuation attributable to that Property in the Valuation (unless (X) that valuation in respect of the relevant Property is lower than €5,000,000 and (Y) the aggregate of all such disposals of Properties with such a valuation below €5,000,000 and not otherwise permitted by the Portfolio Obligations Agreement does not exceed €10,000,000 in any period of twelve months starting on the date of the Portfolio Obligations Agreement or an anniversary of the date of Portfolio Obligations Agreement); **OR**
- (ii) (in the case of the disposal of a Property which is being disposed of, whether in a single transaction or as part of a series of transactions, involving any number of Obligors, as part of a “package” together with any other Property), subject to *Disposals with Consent of Combined Facility Agents* below, the aggregate Net Disposal Proceeds of all Properties the subject of the package being disposed of exceed both:

- (A) the aggregate of the valuations attributable to all such Properties in the Valuation; and
- (B) the aggregate of all Aggregate Prepayment Amounts then applicable to those Properties.

A Minor Property may be disposed of if the above conditions are met or the Minor Property is disposed of for consideration (payable in full at completion) where, as a result, the Net Disposal Proceeds are at least equal to the Aggregate Prepayment Amount in respect of that Property, and the gross consideration (minus the Certified Costs) in respect of that disposal is paid directly into the Disposal Proceeds Account on completion of the disposal.

Other than in relation to a disposal of a Minor Property, if a proposed disposal of a Property fulfils the criteria referred to above, an Obligor may dispose of that Property if:

- (a) the contents of the applicable Disposal Certificate have been (in the case of the amount and calculation of the Certified Disposal Tax Liability and Certified Estimated Aggregate Prepayment Expenses) approved and (in each other case) verified by the Senior Facility Agent (such approval and verification being deemed to have been given if no response to the contrary is provided within 10 Business Days of receipt by the Senior Facility Agent of the Disposal Certificate); and
- (b) the Senior Facility Agent is satisfied that the gross proceeds of that disposal, net of an amount not exceeding the amount of Certified Costs in respect of that disposal, immediately on closing of the transaction the subject of the disposal, will be (and are) paid directly into the Disposal Proceeds Account.

#### *Disposal Certificates*

In relation to a disposal of a Property to a third party (other than in relation to a Property with a valuation attributed to it in the Valuation of €2,000,000 or less (a **Minor Property**)), Holdings must, at least 10 Business Days prior to the completion of the disposal, deliver a certificate (a **Disposal Certificate**) to the Combined Facility Agents confirming, *inter alia*, the following details in respect of that disposal:

- (a) the gross consideration for the disposal;
- (b) its good faith estimate of the amount properly incurred, or to be properly incurred, by the relevant Obligor(s) as reasonable costs and expenses in relation to the disposal (the **Certified Costs**);
- (c) its good faith estimate of the amount (if any) of break costs, fees or hedging unwind which would be payable in respect of that disposal on the proposed date for completion of the relevant disposal as a result of using the disposal proceeds to prepay the Senior Loan and the Mezzanine Loan (the **Certified Estimated Aggregate Prepayment Expenses**); and
- (d) the amount of any tax liability (including any deferred tax liability) reasonably believed in good faith by Holdings to arise in respect of the disposal (the **Certified Disposal Tax Liability**).

#### *Disposals with Consent of Combined Facility Agents*

If an Obligor wishes to dispose of a Property where the criteria set out in *Conditions to disposal* above are not met then the consent of the Combined Facility Agents is required. In circumstances where no Loan Default is outstanding at the time of the proposed disposal and the Net Disposal Proceeds of the relevant disposal will be sufficient to ensure that the relevant Senior Release Pricing Amount will be available to be applied in full towards repayment of the Senior Loan but will not be sufficient to ensure that the relevant Mezzanine Release Pricing Amount will be available to

be applied in full towards repayment of the Mezzanine Loan, the Combined Facility Agents' consent will be given if the majority Lenders and the majority Mezzanine Lenders do not object to the disposal. If the majority Lenders do not object within five Business Days, the Senior Facility Agent will be deemed to have consented to such disposal.

However, where the consent to a disposal is requested and the Net Disposal Proceeds of that disposal will not be sufficient to ensure that the Senior Release Pricing Amount will be available to be applied in full towards repayment of Senior Loan, the Senior Facility Agent may only grant consent for the disposal on the instructions of all the Lenders under the Senior Credit Agreement.

#### *Application of Net Disposal Proceeds*

The amount of Net Disposal Proceeds deposited in the Disposal Proceeds Account will be applied in accordance with the provisions described in *Borrower Accounts – Disposal Proceeds Account* below.

### **Insurance**

#### *Scope of Insurances*

Each Obligor shall effect or procure to be effected (the **Insurance Policies**):

- (a) insurance of each Property and the plant and machinery on that Property including improvements on a full reinstatement basis, and including, without limitation, site clearance, professional fees, value added tax, subsidence and not less than three years' loss of rent (unless Holdings can demonstrate to the satisfaction of the Combined Facility Agents that the market norm for the duration of loss of rent insurance is less than three years and that it is not possible to obtain three years' loss of rent insurance at reasonably commercial rates, in which case loss of rent insurance in accordance with the relevant market norm will be acceptable) on all occupational tenancies of that Property, together with (if any) other risks which may be required to be covered for the purposes of maintaining effective Insurance Impairment Cover;
- (b) appropriate third party liability insurances in respect of the obligations or exposure of the Borrower Group to third parties;
- (c) insurance in favour of, *inter alios*, the Senior Security Agent, in form and substance satisfactory to it, relating to the impairment or vitiation of the other insurance policies required to be put in place by the Obligors (the **Insurance Impairment Cover**); and
- (d) such other insurances as a prudent company in the same business as that Obligor would effect.

#### *Form of insurances*

All insurances must be:

- (a) in amount and in form which is acceptable to the Senior Facility Agent or which is otherwise (in the opinion of the Senior Facility Agent) standard or reasonable in the context of the liabilities insured and the local market norms;
- (b) with an insurance company or underwriter which has provided such insurance to the Borrower Group as at the drawdown date or otherwise with an insurance company or underwriter which, as at the date on which such insurance is entered into or on any renewal of the relevant policy:
  - (i) has a credit rating of (A) in the case of an insurance company or underwriter, long term instruments with a rating of, or a financial strength rating of, or (B) in the case of a group of insurance companies or underwriters, weighted average long term

- instruments with a rating of, or a financial strength rating of, A (or better) by Fitch and A (or better) by S&P, and to the satisfaction of Moody's for the purposes of the Notes;
- (ii) is recommended by Holdings's insurance broker as confirmed in a letter to the Combined Facility Agents and Holdings, such letter to be delivered at least annually; or
  - (iii) is otherwise acceptable to the Senior Facility Agent (acting reasonably).

#### *Miscellaneous Provisions*

Each Obligor will procure (amongst other things) that:

- (a) the interest of the Senior Security Agent and the Mezzanine Security Agent is noted on the policy in respect of each insurance, other than any third party liability insurance or any specific policies regarding computers, cars, glass damage, paintings and the like or directors' and officers' liability insurances; and
- (b) the Loan Payment Agent at the time is named as first loss payee or the Senior Security Agent and the Mezzanine Security Agent are named as co-insured (as appropriate) on all such insurance policies other than third party liability insurances (with the Claims Proceeds Account being specified as the account for payment of the relevant insurance proceeds).

If any Obligor fails to comply with any of the provisions of the Portfolio Obligations Agreement relating to insurance, the Senior Security Agent and the Mezzanine Security Agent shall be entitled to effect the insurances concerned and take such other action as the Senior Security Agent and the Mezzanine Security Agent may reasonably consider necessary or desirable to prevent or remedy any breach of the provisions of the Portfolio Obligations Agreement relating to insurance at the expense of the Obligors. In addition, the Borrower shall use reasonable efforts to procure that each insurance policy contains terms providing that it will not, so far as the Borrower and the Borrower Secured Parties are concerned, be cancelled, suspended or invalidated for any reason, including for failure to pay any premium due or any misrepresentation, act or neglect or failure to disclose, or breach of any policy term or condition, without the insurer or insurers first giving to the Combined Facility Agents not less than 30 days' notice in writing and an opportunity to rectify such matter within the notice period.

#### *Application of insurance proceeds*

If either (a) the terms of any occupational lease or insurance policy (or a requirement of an applicable law or regulation) require the proceeds of an insurance claim in respect of a Property to be applied, or (b) (subject to certain conditions) if an Obligor so elects, the relevant Obligor shall apply all monies received or receivable under any Insurance Policy in respect of each Property (other than amounts in respect of loss of rent insurance which must be paid into the Rent Account) towards replacing, restoring or reinstating that Property. Pending such reinstatement all proceeds paid to an Obligor in excess of €100,000 shall be paid into the Claims Proceeds Account and all proceeds paid in an amount equal to or less than €100,000 must be paid into the General Account.

#### *Insurance impairment cover*

The Insurance Impairment Cover must be in a form which satisfies the following criteria:

- (a) it is in the name of each of the Senior Security Agent and the Mezzanine Security Agent as insured parties on behalf of the Borrower Secured Parties and the mezzanine finance parties (respectively) and is capable of assignment or transfer to any replacement or successor agent;
- (b) it covers risk up to an amount of at least €25,000,000 per claim and up to €100,000,000 for any calendar year;



- (c) it must specifically exclude any rights of subrogation or other claims which the insurer under the policy may have against any member of the Borrower Group as a result of a claim being made; and
- (d) it must allow claims to be made under it in the circumstances, and for the relevant amounts, envisaged in the next paragraph.

In circumstances where a claim would have been made under an insurance policy in respect of loss or damage relating to any Property of a member of the Borrower Group under and in accordance with the Senior Finance Documents but, for any of the reasons in respect of which the Insurance Impairment Cover has been put in place, the relevant member of the Borrower Group is not able to make or recover any amount in respect of that claim the Borrower shall apply such proceeds in prepayment, on the date on which any proceeds are received from a claim under the Insurance Impairment Cover, of the Senior Loan and the Mezzanine Loan (in a maximum amount equal to 110% of the Allocated Loan Amounts for the Property in respect of which the claim has been made). However, if at the time when the proceeds of a claim under the Insurance Impairment Cover are received the Senior Facility Agent is satisfied that no Loan Default is outstanding and all insurances required to be in place pursuant to the Senior Finance Documents are in full force and effect and not liable to be vitiated or avoided or may not otherwise be the subject of a successful claim, such proceeds shall be used in reinstatement as described above.

## **Hedging Arrangements**

### ***Hedging obligations***

Under the terms of the Credit Agreement, the Borrower will be required to maintain (subject to the limits described below) interest rate hedging arrangements to protect against the risk that the floating rate of interest payable by the Borrower under the Senior Loan may increase whilst the Borrower's income which comprises, primarily, of rental income in respect of the Properties and which does not vary according to prevailing interest rates, would not increase accordingly.

Pursuant to the Credit Agreement, the Borrower has entered into hedging arrangements in respect of the Senior Loan (the **Senior Hedging Arrangements**) with Eurohypo as the initial Senior Hedge Counterparty. Each Senior Hedge Counterparty under the Credit Agreement must have a requisite rating of "F1" (or better) by Fitch, "P-1" (or better) by Moody's and "A-1" (or better) by S&P for its short-term debt obligations and "A1" (or better) by Moody's and "A" (or better) by Fitch for its long-term debt obligations (the **Hedging Ratings**) or must (a) find a party which satisfies the Hedging Ratings to become co-obligor or guarantor or transfer all its interests in and obligations under the Senior Hedging Arrangements to a party with the Hedging Ratings, (b) transfer collateral to the Borrower in an amount acceptable to the Rating Agencies pursuant to an ISDA credit support annex in respect of its obligations under the Senior Hedging Arrangements or (c) take such other action as required by the Rating Agencies.

In addition, under the terms of the Senior Finance Documents, the Senior Hedging Arrangements must at any time have an aggregate notional amount not less than the aggregate amount of the Senior Loan then outstanding, such that at all times the Borrower's obligations under the Senior Loan will be fully hedged against adverse movements in prevailing interest rates.

If at any time the notional amount of the Senior Hedging Arrangements exceeds the aggregate amount of the Senior Loan then outstanding, the Borrower will reduce the notional amount of the Senior Hedging Arrangements by an amount and in a manner satisfactory to the Senior Facility Agent (acting reasonably) to reflect the aggregate amount of the Senior Loan then outstanding.

Neither the Borrower nor a Senior Hedge Counterparty in respect of any Senior Hedging Arrangements will be entitled (other than in the case of minor or technical amendment or waiver which does not affect the commercial position of any of the parties) to amend or waive the terms of any Senior Hedging Arrangements without the consent of the Senior Facility Agent.



Except as set forth above, neither the Borrower nor a Senior Hedge Counterparty in respect of any Senior Hedging Arrangements will be permitted to terminate or close out any Senior Hedging Arrangements except:

- (a) in case of illegality;
- (b) where the amounts due under the Senior Finance Documents (other than the Senior Hedging Arrangements) have been paid in full or where the Senior Loan has been accelerated;
- (c) in the event of an Additional Termination Event under (and as defined in) the Senior Hedging Arrangements which will arise as a result of the Senior Loan being overhedged; or
- (d) in the case of the Borrower only, as a result of a Senior Hedge Counterparty failing to comply with the provisions of the relevant Senior Hedging Arrangements regarding a Rating Event (as defined below).

If at any time any Senior Hedge Counterparty in respect of the Senior Hedging Arrangements ceases to satisfy the Hedging Ratings specified above and/or following such a cessation experiences a further ratings downgrade specifically described in the Senior Hedging Arrangements (a **Rating Event**), it will be required to take certain measures specified by the relevant Rating Agencies to address any impact of any such Rating Event on the Notes. The required measures will vary depending upon the nature of the Rating Event and will include the relevant Senior Hedge Counterparty:

- (a) transferring collateral to the Borrower;
- (b) transferring all of its rights and obligations with respect to the relevant Senior Hedging Arrangements to a replacement third party; and/or
- (c) procuring a third party to become a co-obligor or guarantor in respect of its obligations under the relevant Senior Hedging Arrangements,

in each case in a manner satisfactory to the relevant Rating Agencies and as described in more detail in the relevant Senior Hedging Arrangements.

The Borrower has entered into similar arrangements with respect to the interest rate risk under the Mezzanine Credit Agreement (the **Mezzanine Hedging Arrangements**).

### ***Hedging Loans***

If the Borrower fails to pay an amount due and payable under any Senior Hedging Arrangements of any periodical payment (not being payments as a result of termination or closing out) and such failure constitutes a Loan Event of Default, the Issuer may, pursuant to the terms of the Credit Agreement, make a loan to the Borrower to enable it to pay that amount (a **Hedging Loan**). A Hedging Loan will be repayable on demand on any Loan Interest Payment Date or at any time on or after the date the Senior Facility Agent by notice to the Borrower cancels any outstanding commitments under the Credit Agreement and/or demands that all or part of the Senior Loan together with accrued interest and all other amounts accrued under the Senior Finance Documents become immediately due and payable and/or demands that all or part of the Senior Loan becomes payable on demand and/or applies any monies standing to the credit of any account of any member of the Borrower Group in or towards repayment of any amount due to the Borrower Secured Parties under the Senior Finance Documents. A Hedging Loan will bear interest at a rate which expresses as a percentage rate per annum the cost to the Issuer of funding that Hedging Loan by making an Income Deficiency Drawing (as defined below) under the Liquidity Facility Agreement.

## D. Loan Security

### Parallel debt

Each Obligor has irrevocably and unconditionally undertaken to pay to the Senior Security Agent, an amount equal to the amount of each payment obligation of that Obligor to the Borrower Secured Parties on each relevant due date in accordance with the Senior Finance Documents (the **Borrower Parallel Debt**). The parallel debt undertaking constitutes a separate and independent obligation of each of the Obligors and constitutes the Senior Security Agent's own separate and independent claim to receive payment of the Borrower Parallel Debt from each of the Obligors. Pursuant to the Loan Transfer Agreement, the Issuer will become the creditor in respect of the Borrower Parallel Debt and will assume the rights in respect of the Loan Security. The Issuer will assume the roles of the Senior Security Agent and the Senior Facility Agent although it will delegate the day to day functions of these roles to the Servicer or the Special Servicer (as the case may be) (see *Loan Transfer Agreement* below). Upon receipt by the Senior Security Agent of any amount in payment of the parallel debt undertaking, the payment obligations of each of the Obligors to the Borrower Secured Parties shall be reduced by an amount equal to the amount so received and vice versa. To the extent that the Senior Security Agent irrevocably receives any amount in payment of the parallel debt undertaking, the Senior Security Agent shall distribute such amount among the Borrower Secured Parties in accordance with the relevant waterfall set out in the Borrower Pre-Material Loan Default Waterfall or the Borrower Post-Material Loan Default Waterfall (as the case may be) (see *Borrower Accounts* below).

### Security Assets

#### *Creation of security*

Under the Borrower Security Agreements, as security for the Borrower Parallel Debt, the Obligors have granted in favour of the Senior Security Agent first ranking mortgages over the Properties and first ranking pledges over, *inter alia*, all bank accounts, the benefit of any insurance policy relating to the Properties, all present and future rights and receivables under the Senior and Mezzanine Hedging Arrangements and each occupational lease in respect of the Properties.

Share pledges have been granted by Uni-Invest Holding B.V, Uni-Invest B.V and every other member of the Borrower Group which is a shareholder, in each case, over the shares in members of the Borrower Group owned by it.

#### *Future assets*

Under Dutch law, the security created under the Borrower Security Agreements will not create a valid and enforceable security interest in respect of certain types of assets acquired after the date of the Borrower Security Agreements. Therefore, the Borrower will be obliged to ensure that additional rights of pledge over any new assets (including any new occupational leases entered into by members of the Borrower Group) are granted on a periodic basis.

#### *Probus Loans*

Holdings owns two loans made to Probus Estates plc (an entity in which it used to have an equity stake) originally made with a principal aggregate amount of approximately €43,000,000 (the **Probus Loan Assets**). Holdings has not granted any security interests in respect of its rights in these loans and will be permitted to freely deal with these assets as set out in and subject to the terms of the Senior Finance Documents.

### Enforceability

The security created by the Borrower Security Agreements will only be enforceable once a Loan Event of Default has occurred and provided that there is a default (*verzuim*) in the performance of

the Obligors' secured liabilities. The Borrower Security Agreements will confer upon the Senior Security Agent a wide range of powers in connection with the sale or disposal of the Properties (including the right to collect (*innen*) receivables).

## **E. Borrower Accounts**

### **General**

The Borrower must maintain the following bank accounts (each a **Control Account**) in the name of the Borrower:

- (a) a deposit account designated the **Rent Account**;
- (b) a current account designated the **General Account**;
- (c) a deposit account designated the **Disposal Proceeds Account**;
- (d) a deposit account designated the **Claims Proceeds Account**;
- (e) a deposit account designated the **Capex Account**;
- (f) a number of deposit accounts designated the **Tax Deposit Account** for each financial year;
- (g) a deposit account designated the **Mezzanine Liquidity Reserve Account**;
- (h) a deposit account designated the **Reserve Account**;
- (i) a deposit account designated the **Cure Loan Deposit Account**; and
- (j) with effect from the date falling on or prior to the execution by the Borrower of any ISDA credit support annex with a Senior Hedge Counterparty, a deposit account designated a **CSA Account** in respect of collateral payments to be made by that Senior Hedge Counterparty pursuant to that ISDA credit support annex.

Each Control Account must be maintained with a bank which has short term instruments with ratings of F1 (or better) by Fitch, P-1 (or better) by Moody's and A-1+ (or better) by S&P and long term instruments with ratings of A (or better) by Fitch, A1 (or better) by Moody's and A+ (or better) by S&P (an **Authorised Entity**). The initial account bank is Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A., Amsterdam Branch. If an account bank ceases to be an Authorised Entity, the Borrower shall procure the transfer of the relevant Control Accounts to a replacement bank which is an Authorised Entity.

The Obligors (other than the Borrower) are also permitted to maintain certain other existing bank accounts (the **Collection Accounts** and together with the Control Accounts, the **Borrower Accounts**) and a deposit account which contains only a nominal sum (less than €100,000) and in respect of which no member of the Borrower Group shall be entitled to deposit any other amounts. No Obligor may, without the prior consent of the Combined Facility Agents, maintain any other bank account.

Pursuant to the Borrower Security Agreements, the Borrower and each relevant Obligor has granted a first ranking disclosed right of pledge in respect of the Control Accounts (other than the Mezzanine Liquidity Reserve Account) and the Collection Accounts in favour of the Senior Security Agent. The banks which hold the Control Accounts and the Collection Accounts have waived all rights of set-off and pledges which they may have under their general banking conditions.

Each member of the Borrower Group must ensure that none of its bank accounts goes in to overdraft.

## Collection Accounts

The Obligors which own Property are permitted to receive rental income in respect of those Properties into the Collection Accounts.

## Rent Account

Each Obligor must ensure that the following amounts are paid into the Rent Account:

- (a) on the tenth day of each month (except that if a Loan Default is outstanding, such payments must be made promptly upon, and in any event within one Business Day of, receipt), all rental income (net of amounts received during that period in respect of service charges or contribution to insurance costs and minus amounts in respect of operating expenditure spent or to be spent by members of the Borrower Group during that period) received into any Collection Account less any amount which is able to be paid into the Capex Account on that date (see section *Capex Account* below);
- (b) any amounts payable to it under the Senior Hedging Arrangements and the Mezzanine Hedging Arrangements (other than any amounts due to be paid into a CSA Account); and
- (c) any amounts of interest received in respect of any Control Account (other than the General Account).

If any payment of any amount referred to above is paid into a bank account other than the Rent Account (or, in the case of amounts of rental income, the appropriate Collection Account), that payment must be paid immediately into the Rent Account.

The Loan Payment Agent shall have sole signing rights in respect of the Rent Account. On each Loan Interest Payment Date, the Loan Payment Agent must, and is irrevocably authorised by the Borrower to, withdraw from, and apply amounts standing to the credit of, the Rent Account, in the following order (the **Borrower Pre-Material Loan Default Waterfall**):

- (a) **first**, towards payment to the Senior Facility Agent, for application in payment pro rata of any unpaid costs, fees and expenses of the administrative parties (being the Senior Facility Agent, the Senior Security Agent and the Senior Loan Arranger) due but unpaid under the Senior Finance Documents;
- (b) **secondly**, in or towards payment *pro rata* of the outstanding amount of any Hedging Loans;
- (c) **thirdly**, towards payment to the Senior Facility Agent, for application in payment pro rata:
  - (i) to the Senior Hedge Counterparties of any amount due but unpaid under the Senior Hedging Arrangements; and
  - (ii) to the Lenders of any accrued interest and fees due but unpaid under the Senior Finance Documents;
- (d) **fourthly**, towards payment pro rata to the relevant creditors for application in or towards payment of any accrued but unpaid interest in respect of any Priority Cure Loan;
- (e) **fifthly**, towards payment to the Mezzanine Facility Agent, for application in payment pro rata of any unpaid costs, fees and expenses of the mezzanine administrative parties due but unpaid under the mezzanine finance documents;
- (f) **sixthly**, towards payment to the Mezzanine Facility Agent, for application in payment pro rata:
  - (i) to the Mezzanine Hedge Counterparties of any amount due but unpaid under the Mezzanine Hedging Arrangements; and

- (ii) to the Mezzanine Lenders of any accrued interest and fees due but unpaid under the mezzanine finance documents;
- (g) **seventhly**, towards payment pro rata to the relevant creditors for application in or towards payment of any accrued but unpaid interest in respect of any Minority Cure Loan;
- (h) **eighthly**, towards payment of an amount not exceeding the aggregate of the amount estimated in the annual business plan to be reserved in respect of tax liabilities on that Loan Interest Payment Date to the relevant Tax Deposit Account;
- (i) **ninthly**, towards payment of an amount equal to the Mezzanine Liquidity Shortfall (if any) into the Mezzanine Liquidity Reserve Account; and
- (j) **lastly**:
  - (i) except if paragraph (ii) below applies, any remaining amounts standing to the credit of the Rent Account shall be applied towards prepayment pro rata of the principal amount of any Priority Cure Loan and then (once each Priority Cure Loan has been repaid in full) the Mezzanine Loan (together with any related prepayment expenses) and then, if the Mezzanine Loan has been repaid in full and a Minority Cure Loan is still outstanding, towards payment to the relevant creditors for application in or towards repayment or prepayment pro rata of the principal amount of that Minority Cure Loan; or
  - (ii) if the Total LTV is less than 80% and the Total Interest Cover Percentage is equal to or greater than 120% and provided no Cure Loan is outstanding, any remaining amount standing to the credit of the Rent Account shall be paid into the General Account.

The order of application of amounts in the Borrower Pre-Material Loan Default Waterfall will be altered if, on the date on which any such amount is due to be withdrawn from the Rent Account, the Senior Interest Cover Percentage is less than or equal to 145%, such that:

- (a) if the Senior Interest Cover Percentage on that date is less than or equal to 135%, then all surplus amounts standing to the credit of the Rent Account after the payments referred to in paragraphs (a) to (c) (inclusive) of the Borrower Pre-Material Loan Default Waterfall have been made shall be applied in the following order:
  - (i) towards payment of an amount not exceeding the amount estimated in the annual business plan to be reserved in respect of tax liabilities on that Loan Interest Payment Date to the relevant Tax Deposit Account;
  - (ii) all remaining amounts standing to the credit of the Rent Account shall be paid into the Reserve Account; and
- (b) if the Senior Interest Cover Percentage is greater than 135% but is less than or equal to 145%, then all surplus amounts standing to the credit of the Rent Account after the payments referred to in paragraphs (a) to (h) (inclusive) above have been made shall be paid into the Reserve Account.

In addition, notwithstanding the Pre-Material Loan Default Waterfall above, if the Senior Facility Agent receives a payment insufficient to discharge all the amounts then due and payable by the Obligors under the Senior Finance Documents, the Senior Facility Agent must apply that payment towards the obligations of the Obligors under the Senior Finance Documents in the following order:

- (a) **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of the administrative parties (as referred to in paragraph (a) of the Pre-Material Loan Default Waterfall) under the Senior Finance Documents;
- (b) **secondly**, in or towards payment pro rata of the outstanding amount of any Hedging Loans;

- (c) **thirdly**, in or towards payment pro rata of any periodical payments (not being payments as a result of termination or closing out) due but unpaid to any Senior Hedge Counterparty under the Senior Hedging Arrangements;
- (d) **fourthly**, in or towards payment pro rata of any accrued interest due but unpaid under the Credit Agreement;
- (e) **fifthly**, in or towards payment pro rata of:
  - (i) any payments (not being payments referred to in sub-paragraph (f) below) as a result of termination or closing out due but unpaid to any Senior Hedge Counterparty under the Senior Hedging Arrangements; and
  - (ii) any principal amount due but unpaid under the Credit Agreement;
- (f) **sixthly**, in or towards payment pro rata of any payments due as a result of termination or closing out arising from:
  - (i) it becoming illegal (other than as a result of the occurrence of an event or circumstance outside the control of the relevant Senior Hedge Counterparty) for any Senior Hedge Counterparty to comply with its obligations under the Senior Hedging Arrangements; or
  - (ii) an event of default relating to any Senior Hedge Counterparty (or a termination event arising from the failure by a Senior Hedge Counterparty to comply with any of its obligations under the Senior Hedging Arrangements),

due but unpaid to that Senior Hedge Counterparty under the Senior Hedging Arrangements; and
- (g) **lastly**, in or towards payment pro rata of any other sum due but unpaid under the Senior Finance Documents.

A similar provision applies to any partial payment made to the Mezzanine Facility Agent.

**Mezzanine Liquidity Shortfall** means, on a Loan Interest Payment Date, the amount (if any) by which the amount of interest payable in respect of the Mezzanine Loan on the next following Loan Interest Payment Date (after taking into account amounts payable or receivable under the Mezzanine Hedging Arrangements) exceeds the balance standing to the credit of the Mezzanine Liquidity Reserve Account.

The Loan Payment Agent is only obliged to make a withdrawal from the Rent Account as described above if no Material Loan Default is outstanding. If a Material Loan Default is outstanding, the terms of the Priority Agreement shall apply (see *Priority Agreement* below).

The Loan Payment Agent may authorise withdrawals at any time from the Rent Account to pay, subject to the terms of the Priority Agreement, any amount due but unpaid (and in respect of which a Loan Event of Default is outstanding) under the Senior Finance Documents.

### **General Account**

The Borrower must ensure that any amount received by it, other than any amount specifically required under this Agreement to be paid into any other Control Account, is paid into the General Account. In addition Holdings shall procure that if any member of the Borrower Group receives any amount in respect of any repayment of any of the Probus Loan Assets, such amounts are paid into the General Account.

Subject to any restriction in the Priority Agreement and if no Loan Default is outstanding, the Borrower may withdraw any amount from the General Account (including, notwithstanding the provisions of the Priority Agreement, for the purpose of repaying or prepaying the Mezzanine Loan



or any Cure Loan provided that if a Priority Cure Loan is outstanding, a Minority Cure Loan may not be repaid until that Priority Cure Loan has been repaid in full).

The Borrower has signing rights in relation to the General Account except that at any time when a Loan Event of Default is outstanding, the Loan Payment Agent may, and is irrevocably authorised by the Borrower to operate the General Account and to withdraw from, and apply amounts standing to the credit of, the General Account in or towards any purpose for which, subject to the terms of the Priority Agreement, moneys in any Control Account may be applied.

### **Disposal Proceeds Account**

Each Obligor shall ensure that the gross proceeds of any disposal of a Property (other than a permitted intra-Borrower Group disposal) which is made in accordance with the Senior Finance Documents, after deduction of an amount not exceeding the Certified Costs in relation to that disposal, are paid directly on completion of that disposal into the Disposal Proceeds Account.

The Loan Payment Agent shall be granted sole signing rights in relation to the Disposal Proceeds Account. On each Loan Interest Payment Date, the Loan Payment Agent must, and is irrevocably authorised by the Borrower to, withdraw from, and apply each amount standing to the credit of, the Disposal Proceeds Account as follows (and in the following order):

- (a) **first**, in or towards payment pro rata of the outstanding amount of any Hedging Loans;
- (b) **secondly**, in payment pro rata as follows:
  - (i) the amount equal to the aggregate of the Senior Release Pricing Amount(s) for each relevant disposal shall be paid to the Senior Facility Agent for application in or towards prepayment of the Senior Loan; and
  - (ii) the amount of any prepayment expenses payable under the Senior Finance Documents as a result of the prepayment referred to in (i) above shall be paid to the Senior Facility Agent for payment to the relevant Borrower Secured Parties in accordance with the Senior Finance Documents;
- (c) **thirdly**, in payment pro rata as follows:
  - (i) the amount equal to the aggregate of the Mezzanine Release Pricing Amount(s) for each relevant disposal shall be paid to the Mezzanine Facility Agent for application in or towards prepayment of the Mezzanine Loan; and
  - (ii) the amount of any prepayment expenses payable under the mezzanine finance documents as a result of the prepayment referred to in (i) above shall be paid to the Mezzanine Facility Agent for payment to the mezzanine finance parties in accordance with the mezzanine finance documents;
- (d) **fourthly**, the amount equal to the aggregate of each relevant Certified Disposal Tax Liability shall be transferred to the relevant Tax Deposit Account;
- (e) **fifthly**, towards payment to the relevant creditors for application in or towards repayment or prepayment pro rata of the principal amount of any Priority Cure Loan (together with any accrued but unpaid interest in respect of that Priority Cure Loan);
- (f) **sixthly**, towards payment of an amount equal to the Mezzanine Liquidity Shortfall (if any) into the Mezzanine Liquidity Reserve Account; and
- (g) **lastly**:
  - (i) if on that date the Total LTV is equal to or higher than 85% or if a Minority Cure Loan is outstanding, the remaining balance standing to the credit of the Disposal Proceeds Account shall be applied in prepayment of the Mezzanine Loan (together with any

related prepayment expenses) and then, if the Mezzanine Loan has been repaid in full and a Minority Cure Loan is still outstanding, towards payment to the relevant creditors for application in or towards repayment or prepayment pro rata of the principal amount of that Minority Cure Loan (together with any accrued but unpaid interest in respect of that Minority Cure Loan) and then any remaining balance standing to the credit of the Disposal Proceeds Account shall be paid into the General Account; or

- (ii) if on that date the Total LTV is lower than 85% and provided no Cure Loan is outstanding, the remaining balance standing to the credit of the Disposal Proceeds Account shall be paid into the General Account.

The Loan Payment Agent is only obliged to make a withdrawal from the Disposal Proceeds Account if no Material Loan Default is outstanding. If a Material Loan Default is outstanding, the terms of the Priority Agreement shall apply (see *Priority Agreement* below).

The Loan Payment Agent may authorise withdrawals at any time from the Disposal Proceeds Account to pay, subject to the terms of the Priority Agreement, any amount due but unpaid (and in respect of which a Loan Event of Default is outstanding) under the Senior Finance Documents.

The Loan Payment Agent may authorise withdrawals from the Disposal Proceeds Account to invest such amount, until the next Loan Interest Payment Date, in Eligible Investments provided that, *inter alia*, no Loan Default is outstanding.

### **Claims Proceeds Account**

The Loan Payment Agent shall be granted sole signing rights in relation to the Claims Proceeds Account.

Holdings shall ensure that all monies received by any member of the Borrower Group under any Insurance Policy (other than any amount which is required to be applied to the General Account (see *Credit Structure – Senior Finance Documents – Insurance – Application of insurance proceeds* above), any amount received in respect of loss of rent or interest on rent (which is required to be paid into the Rent Account) and the proceeds of any third party liability insurance claim) and any amounts received by any member of the Borrower Group as a result of a claim made against any of the providers of any due diligence report are paid directly into the Claims Proceeds Account.

Except if the relevant member of the Borrower Group is required or has elected to use the proceeds of a claim under an Insurance Policy towards reinstating the relevant Property (see *Credit Structure - Senior Finance Documents – Insurance – Application of insurance proceeds* above), on each Loan Interest Payment Date, the Loan Payment Agent must, and is irrevocably authorised by the Borrower to, withdraw from, and apply amounts standing to the credit of, the Claims Proceeds Account in the following order:

- (a) **first**, to the Senior Facility Agent, for application pro rata in or towards:
  - (i) prepayment of the Senior Loan; and
  - (ii) amounts then due and payable as a result of such prepayment by way of early termination costs relating to the Senior Hedging Arrangements;
- (b) **secondly**, to the Mezzanine Facility Agent, for application in or towards payment of amounts then due and payable by way of early termination costs under the Mezzanine Hedging Arrangements as a result of the prepayments referred to below; and
- (c) **thirdly**, to the Mezzanine Facility Agent, for application in or towards prepayment of the Mezzanine Loan in accordance with the Mezzanine Credit Agreement.

The Loan Payment Agent is only obliged to make a withdrawal from the Claims Proceeds Account if no Loan Default is outstanding and the repeating representations under the Senior Finance Documents are correct and will be correct in all material respects immediately after the withdrawal.

The Loan Payment Agent may authorise withdrawals at any time from the Claims Proceeds Account to pay, subject to the terms of the Priority Agreement, any amount due but unpaid (and in respect of which a Loan Event of Default is outstanding) under the Senior Finance Documents.

### **Capex Account**

On the tenth day of each month, amounts will be deposited into the Capex Account based on the Allocated Capex Amount for each relevant month. The maximum amount which may be deposited in any month in the Capex Account is the amount equal to the applicable Allocated Capex Amount for that month. However, if in respect of any month, Holdings makes a request to the Combined Facility Agents (supported by reasonable evidence, if appropriate, of the reasons for the additional Discretionary Capex) to permit additional amounts of Discretionary Capex in excess of the Allocated Capex Amount for that month, the maximum amount which may be deposited in that month may be increased by the relevant amount, subject to the aggregate additional amount in any month not exceeding the amount equal to 10 per cent. of the Allocated Capex Amount for that month.

If the Senior Facility Agent (acting in good faith, based on its reasonable determination of actual and projected cashflows from the Properties) believes that, on the next Loan Interest Payment Date, there will not be sufficient funds standing to the credit of the Rent Account to pay each of the items referred to in paragraphs (a) to (f) (inclusive) of the Borrower Pre-Material Loan Default Waterfall in full, the maximum amount which may be deposited into the Capex Account will be the amount notified to Holdings by the Senior Facility Agent in writing, being the amount (if any) after payment of the amount which the Senior Facility Agent determines is required to ensure that such payments will be paid in full.

Subject to any restriction in the Priority Agreement and to no Loan Default being outstanding, the Borrower may withdraw amounts from the Capex Account for the purpose of applying it towards Discretionary Capex which is permitted under the Senior Finance Documents.

The Borrower has signing rights in relation to the Capex Account except that if a Loan Event of Default is outstanding, the Loan Payment Agent may, and is irrevocably authorised by the Borrower to operate the Capex Account and withdraw from, and apply amounts standing to the credit of, the Capex Account in or towards any purpose for which moneys in any Control Account may be applied.

**Allocated Capex Amount** means, for any month in any financial year, the amount of itemised Discretionary Capex attributed to that month in the capex report for that financial year.

**Discretionary Capex** means capital expenditure voluntarily incurred or to be incurred by members of the Borrower Group in respect of the Properties (other than any defensive capital expenditure).

### **Reserve Account**

The Loan Payment Agent shall be granted sole signing rights in relation to the Reserve Account.

Amounts shall be deposited into the Reserve Account in accordance with the Borrower Pre-Material Loan Default Waterfall.

On each Loan Interest Payment Date, if the Senior Interest Cover Percentage was greater than 145% as at each of the two test dates immediately prior to that Loan Interest Payment Date, the Loan Payment Agent shall withdraw the balance standing to the credit of the Reserve Account and pay that amount into the Rent Account for application in accordance with the Borrower Pre-Material Loan Default Waterfall.

The Loan Payment Agent is only obliged to make a withdrawal from the Reserve Account if no Material Loan Default is outstanding. If a Material Loan Default is outstanding, the terms of the Priority Agreement shall apply (see *Priority Agreement* below).

The Loan Payment Agent may (upon request by the Senior Facility Agent) authorise withdrawals at any time from the Reserve Account to pay, subject to the terms of the Priority Agreement, any amount due but unpaid (and in respect of which a Loan Event of Default is outstanding) under the Senior Finance Documents and if, after the Senior Loan has been accelerated, all amounts payable under the Senior Finance Documents have been paid in full, the Loan Payment Agent may (upon request by the Mezzanine Facility Agent) authorise withdrawals at any time from the Reserve Account to pay, subject to the terms of the Priority Agreement, any amount due but unpaid under the mezzanine finance documents.

### **Other Accounts**

The Borrower may deposit sufficient amounts into the Cure Loan Deposit Account to enable it to meet its obligations under the Credit Agreement with respect to the Senior Interest Cover Percentage and the Senior LTV undertakings. If all Cure Loans have been repaid in full and provided that no Default is outstanding or will occur as a result of such withdrawal, on a Loan Interest Payment Date, the Loan Payment Agent shall (and is irrevocably authorised by the Borrower to) apply amounts standing to the credit of the Cure Loan Deposit Account in accordance with the Borrower Pre-Material Loan Default Waterfall except that after the payments referred to in paragraphs (a) to (i) (inclusive) have been paid in full, any remaining amounts shall be applied in repayment or prepayment of the Mezzanine Loan (together with any related prepayment expenses) and then any remaining balance standing to the credit of the Cure Loan Deposit Account shall be paid into the General Account. The Loan Payment Agent will have sole signing rights over the Cure Loan Deposit Account. In addition, if no Loan Default is outstanding and if requested by the Borrower, amounts may be withdrawn from the Cure Loan Deposit Account to prepay the Cure Loans provided but only if either (a) the amount to be withdrawn was deposited into the Cure Loan Deposit Account using the proceeds of a Cure Loan made following a breach of the Senior Interest Cover Percentage and the Senior Interest Cover Percentage has now been satisfied in respect of the two most recent consecutive test periods or (b) the amount to be withdrawn was deposited into the Cure Loan Deposit Account using the proceeds of a Cure Loan made following a breach of the Senior LTV and the Senior Facility Agent has obtained a valuation of the Properties which demonstrates that the Senior LTV test is satisfied without taking into account the amount on deposit.

Monies received in respect of any ISDA credit support annex entered into in connection with the Senior Hedging Arrangements will be deposited into the CSA Account in the name of the Borrower and dealt with in accordance with the terms of such ISDA credit support annex and the Senior Finance Documents. Upon termination of all transactions in respect of any Senior Hedging Arrangements, the Loan Payment Agent shall pay to the counterparty in respect of such Senior Hedging Arrangements an amount representing any excess collateral standing to the credit of the CSA Account in priority to any other Borrower Secured Party. The Loan Payment Agent will have sole signing rights over the CSA Account.

Amounts shall be deposited into the Mezzanine Liquidity Reserve Account in accordance with the Borrower Pre-Material Loan Default Waterfall. On each Loan Interest Payment Date, the Mezzanine Facility Agent shall (and is irrevocably authorised by the Borrower to) apply amounts standing to the credit of the Mezzanine Liquidity Reserve Account towards payment pro rata to the Mezzanine Lenders of any amount of accrued but unpaid mezzanine interest (including any accrued but unpaid interest payable in respect of any Priority Cure Loan). The Mezzanine Facility Agent shall not make any withdrawal from the Mezzanine Liquidity Reserve Account for any other purpose. If the Total LTV is less than 85% and the Total Interest Cover Percentage is greater than 120% and provided no Loan Default is outstanding, the Mezzanine Facility Agent may, at the request of the Borrower, pay all amounts standing to the credit of the Mezzanine Liquidity Reserve

Account into the General Account. The Mezzanine Facility Agent shall be granted sole signing rights in relation to the Mezzanine Liquidity Reserve Account. The Borrower shall grant security interests under in respect of the Mezzanine Liquidity Reserve Account in favour of the mezzanine finance parties only.

The Borrower will also open and maintain a Tax Deposit Account for each financial year. The Borrower shall be entitled to manage its tax affairs and shall be required to deposit amounts in the Tax Deposit Accounts for the purpose of reserving against any unpaid tax liabilities. Subject to certain conditions, the Borrower will be entitled to withdraw amounts from the Tax Deposit Account other than to pay the relevant tax liabilities if it can show, *inter alia*, that it has sufficient tax losses to be able to shelter any such tax liabilities.

## **F. Priority Agreement**

Pursuant to the terms of the Priority Agreement, the Issuer, Eurohypo (in its capacity as initial mezzanine lender), the Senior Hedge Counterparties and the Senior Facility Agent have established the priorities of payment and subordination between the Senior Loan, the Mezzanine Loan, the Senior Hedging Arrangements and the Mezzanine Hedging Arrangements.

### *Material Loan Defaults*

If a Material Loan Default is outstanding, the Senior Facility Agent or the Senior Security Agent will (or, if applicable will instruct the Loan Payment Agent to), on each Loan Interest Payment Date, or promptly on receipt if any amount in respect of the Senior Loan or the Senior Hedging Arrangements is then due and payable, apply all amounts received in respect of the Senior Finance Documents (including, subject to the rights of any creditor with prior security or any preferential claim, the proceeds of any foreclosure of the Loan Security) in the following order (the **Borrower Post-Material Loan Default Waterfall**):

- (a) **first**, to the Lenders in prepayment pro rata of any Hedging Loans;
- (b) **secondly**, to the Senior Facility Agent for application pro rata against any due but unpaid amount under the Credit Agreement and the Senior Hedging Arrangements;
- (c) **thirdly**, to the Mezzanine Facility Agent for application pro rata against any amount due but unpaid in respect of any Priority Cure Loan (together with any accrued but unpaid interest, fees, costs and expenses in relation to that Priority Cure Loan);
- (d) **fourthly**, to the Mezzanine Facility Agent for application pro rata against any due but unpaid amount of the Mezzanine Loan and the Mezzanine Hedging Arrangements;
- (e) **fifthly**, to the Senior Facility Agent for application pro rata against any due but unpaid amount of any Excess Senior Debt (as defined in the Priority Agreement);
- (f) **sixthly**, to the Mezzanine Facility Agent for application pro rata against any amount due but unpaid in respect of any Minority Cure Loan (together with any accrued but unpaid interest, fees, costs and expenses in relation to that Minority Cure Loan);
- (g) **lastly**, any surplus should be applied to the Obligor or any other person entitled to it.

**Material Loan Default** means a Loan Event of Default which comprises (a) a non-payment of any amount under the Senior Finance Documents, (b) a breach of a Senior Financial Covenant or (c) bankruptcy (or similar proceedings) being taken against an Obligor, but excluding (in relation to (a) and (b)) any such Loan Event of Default if a Cure Loan has been made in an amount necessary to fund in full the relevant unpaid amount or completely remedy the relevant breach of the Senior Financial Covenants, as the case may be.



### *Amendments and waivers*

Under the Priority Agreement, no party may amend or waive any term of, or give any consent under, any Senior Finance Document or any mezzanine finance document in a manner or to an extent which would result in (a) an increase in the amount of any payment under that Senior Finance Document or mezzanine finance document not contemplated by the original terms of the Senior Finance Documents or any mezzanine finance document; (b) any payment being required to be paid earlier or more frequently than originally provided for under that Senior Finance Document or mezzanine finance document; (c) any delay in the making of, or any reduction in, any payment due to any Mezzanine Lender or any Mezzanine Hedging Counterparty; (d) any change to the basis upon which a payment is calculated in accordance with the original provisions of that Senior Finance Document or mezzanine finance document; (e) any Obligor becoming liable to make an additional payment (or increase an existing payment) under any term of that Senior Finance Document or mezzanine finance document; (f) any change to any of the Senior Financial Covenants or the Mezzanine Financial Covenants; (g) a material amendment to or waiver of any provision in a Borrower Security Agreement; or (h) a change to the ranking or subordination achieved or intended to be achieved by the Priority Agreement, unless the amendment or waiver or consent (i) is agreed to by the Lenders, the Senior Hedge Counterparties, the Mezzanine Lenders, the Mezzanine Hedge Counterparties and the Borrower; (ii) constitutes a procedural or administrative change arising in the ordinary course of administration of the relevant facility and is not material; or (iii) constitutes a roll-up or capitalisation of interest, fees or expenses.

Notwithstanding provisions for the consent of the majority Lenders in the Credit Agreement or the Mezzanine Credit Agreement, no such consent will be permitted under the Priority Agreement without the agreement of the majority Lenders and the majority Mezzanine Lenders with respect to, among other things, the creation of any security over any Obligor's assets, any disposals of any Obligor's assets, any mergers or acquisitions by any Obligor, the administration of occupational leases in respect of the Properties or a Loan Event of Default as a result of bankruptcy, material damage to the Property or a material adverse effect on the Obligors' ability to comply with the Senior Finance Documents.

### *Cure rights*

If a Loan Event of Default (other than a bankruptcy default under either the Credit Agreement or the Mezzanine Credit Agreement) which is capable of remedy within the applicable grace period (a **Remediable Default**) is outstanding, the Mezzanine Lenders (acting singly or jointly) shall have the right, but not the obligation, to cure that Remediable Default within the applicable grace period. The Mezzanine Lenders may cure a non-payment Loan Event of Default by making a loan to the Borrower (which the Borrower will use to pay the unpaid amount) or by making the relevant payment on behalf of the Borrower.

In the case of breach of the Senior Interest Cover Percentage test, the Mezzanine Lenders (acting singly or jointly) may, at least five Business Days prior to the relevant test date on which the breach would have occurred either (A) prepay the Senior Loan on behalf of the Borrower in an amount of not less than €1,000,000 to ensure compliance with the Senior Interest Cover Percentage test, and make all other related payments in respect of the Senior Loan and the Senior Hedging Arrangements (including prepayment expenses) which the Borrower would have had to make as a result of such prepayment had the Borrower made the prepayment itself or (B) place a deposit on behalf of the Borrower into the Cure Loan Deposit Account of such an amount that, if the interest which would have accrued on that amount during the relevant test period had been treated as net rental income for the purposes of the Senior Interest Cover Percentage test, Holdings would have been in compliance with that test or (C) if the Senior Interest Cover Percentage is not less than 120 per cent. during the relevant period, deposit into the Cure Loan Deposit Account an amount equal to 200 per cent. of the additional amount of net rental income which would have been required to have been received by the Obligors to ensure that Holdings can comply with its obligations under the Senior Interest Cover Percentage test. In these circumstances, as between the Lenders and



the Mezzanine Lenders that breach of the Senior Interest Cover Percentage will be treated as remedied (but without prejudice to any subsequent breach). Any Cure Loan made for the purposes of funding a deposit referred to in (C) is a **Subsidy Cure Loan**.

In the case of breach of the Senior LTV, the Borrower may make a deposit into the Cure Loan Deposit Account in an amount such that the Senior LTV, as adjusted by reducing the outstanding amount of the Senior Loan by the amount of that deposit, does not exceed the maximum percentage which ensures compliance by the Borrower with the Senior LTV or undertake such other remedy as has been proposed by the Borrower and consented to by the majority Lenders. If the Borrower takes any such action, the breach of the Senior LTV will be treated as having been remedied. If the breach of the Senior LTV has not been remedied by the Borrower, the Mezzanine Lenders (acting singly or jointly) may make a loan to the Borrower which the Borrower will use to fund a payment under the above paragraph.

A **Cure Loan** means any loan made by a Mezzanine Lender to cure a Remediable Default (as described above). Any Cure Loan made by all of the Mezzanine Lenders is a **Priority Cure Loan** and any Cure Loan which is not made by all of the Mezzanine Lenders is a **Minority Cure Loan**. Except as set out below, a Priority Cure Loan shall be made under and shall be subject to the terms the Mezzanine Credit Agreement and a Minority Cure Loan shall be made on terms which are no more onerous than the terms of the Mezzanine Credit Agreement. Any Cure Loan made to the Borrower will be repayable on demand on any Loan Interest Payment Date or on any date falling on or after the date on which the Senior Facility Agent serves any notice of acceleration of the Senior Loan and shall bear interest at the default rate specified in the Mezzanine Credit Agreement. A Priority Cure Loan will benefit from the second ranking security interests granted to the Mezzanine Lenders *pari passu* with the Mezzanine Loan. Any Minority Cure Loan will be and will remain unsecured. Any Cure Loan made by a Mezzanine Lender may only be repaid from moneys standing to the credit of the General Account, from the proceeds of a subordinated loan to the Borrower, from the proceeds of a subscription for shares in the Borrower or otherwise in accordance with the Senior Finance Documents.

There shall be no limitation on the number of times the Mezzanine Lenders may exercise their rights to remedy a Remediable Default under the Senior Finance Documents except that the Mezzanine Lenders shall only have the right to make Subsidy Cure Loans no more than twice in any one 12 month period and on not more than four occasions during the term of the Senior Credit Agreement. In addition, if a second Subsidy Cure Loan is to be made in any 12 month period such Subsidy Cure Loan may only be made if it and the first such Subsidy Cure Loan would be made in respect of two consecutive test periods for which the Senior Interest Cover Percentage is tested.

#### *Option to Purchase*

If a Loan Event of Default which comprises (a) a payment default under the Credit Agreement, (b) a breach of a Senior Financial Covenant or (c) a bankruptcy default (under either the Credit Agreement or the Mezzanine Credit Agreement) is outstanding, the Mezzanine Facility Agent may elect, by notice in writing to the Senior Facility Agent, that any of the Mezzanine Lenders purchase, or arrange for another person to purchase, all of the Senior Loan and the Senior Hedging Arrangements. Each Mezzanine Lender will have the right to participate in that purchase on a pro rata basis or otherwise in a manner agreed by the Mezzanine Lenders who have agreed to participate in that purchase. The purchase must take place not less than 35 nor more than 60 days after the date of the notice from the Mezzanine Facility Agent.

#### *Restrictions on foreclosure*

The Mezzanine Security Agent will not be permitted to foreclose its second ranking security unless (a) the relevant mezzanine event of default is still outstanding at the end of its standstill period (for this purpose, a failure to comply with any of the Mezzanine Financial Covenants will be treated as remedied if the relevant Mezzanine Financial Covenant is complied with on the next occasion on

which it is tested) and the most recent aggregate value of the Properties is at that time greater than 120 per cent. of the aggregate amount outstanding in respect of the Senior Loan and the Senior Hedging Arrangements; (b) payment of the aggregate amount outstanding in respect of the Senior Loan and the Senior Hedging Arrangements has been accelerated under the Credit Agreement or (c) the action is taken against an Obligor which is subject to bankruptcy proceedings (*faillissement*) (or similar proceedings). The Priority Agreement provides for standstill periods of 90 days for any event of default under the Mezzanine Credit Agreement that is a payment default of principal, interest, fees; 120 days for any event of default under the Mezzanine Credit Agreement which is a failure to comply with the Mezzanine Financial Covenants and 150 days for any other event of default under the Mezzanine Credit Agreement, in each case from the date the Senior Facility Agent receives notice of such default from the Mezzanine Facility Agent.

In certain circumstances, the Senior Security Agent will also be prevented, without the consent of the majority Mezzanine Lenders, to take any foreclosure action where the Loan Event of Default in question is (a) a payment default relating solely to the Mezzanine Loan (or any related cross default relating to such non-payment or to any breach of the Mezzanine Financial Covenants) or (b) a non-payment of the Senior Loan or a breach of the undertakings with respect to the Senior Financial Covenants if a Cure Loan has been made in respect of either such Loan Event of Default. However, if the Mezzanine Security Agent takes any foreclosure action in respect of its event of default, then the Senior Security Agent may also take foreclosure action in respect of that event of default.

#### *Assignments and transfers*

Each party to the Priority Agreement will have the right to assign or otherwise transfer any debt owed to it under the Credit Agreement, the Mezzanine Credit Agreement or its rights and obligations under the Senior Finance Documents to any person if the assignment or transfer is permitted under the Credit Agreement or the Mezzanine Credit Agreement (as the case may be) and that person agrees to be bound by the terms of the Priority Agreement by executing and delivering an accession agreement to the Combined Facility Agents. Upon execution and delivery of an accession agreement and the fulfilment of certain other conditions precedent, the transferor will be relieved of all obligations and liabilities under the Senior Finance Documents and such obligations and liabilities will be assumed by the transferee under the accession agreement.

### **G. Issuer Accounts**

#### **Issuer Transaction Account**

Pursuant to a bank account agreement dated on or before the Closing Date (the **Account Bank Agreement**), the Account Bank will open and maintain an account in the name of the Issuer (the **Issuer Transaction Account**).

The Servicer will instruct the Loan Payment Agent to transfer all amounts of principal, fees and interest and other amounts paid by the Borrower in respect of the Senior Loan and in accordance with the provisions of the Servicing Agreement into the Issuer Transaction Account. The Servicer will make all other payments required to be made on behalf of the Issuer from the Issuer Transaction Account in accordance with the Servicing Agreement.

The Account Bank will agree to comply with any direction of the Servicer or the Issuer (prior to foreclosure of the Issuer Security) or the Servicer or Note Trustee (after foreclosure of the Issuer Security) to effect payments from the Issuer Transaction Account if such direction is made in accordance with the mandate governing the account.

#### **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 the Liquidity Stand-By Account in the name of the Issuer (the **Liquidity Stand-by Account** and, together with the Issuer Transaction Account, the **Issuer**

**Accounts**) with the Liquidity Bank or, if the Liquidity Bank ceases to have at least an “F1” rating by Fitch, at least a “P-1” rating by Moody’s and at least an “A-1” rating by S&P for its short-term, unguaranteed, unsecured and unsubordinated debt obligations, any bank which meets such rating criteria.

#### **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 Note Trustee and will, within a reasonable time after having obtained the prior written consent of the Issuer, the Servicer and the Note Trustee and subject to establishing substantially similar arrangements to those contained in the Account Bank Agreement, procure the transfer of the Issuer Transaction Account 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 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.

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 Note 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.

#### **H. Liquidity Facility**

To mitigate the risk that Available Issuer Income (as defined below) will be insufficient to cover certain payments (including any Hedging Loan) due under the Priorities of Payments, the Issuer has entered into a liquidity facility agreement dated on or before the Closing Date (the **Liquidity Facility Agreement**) with the Liquidity Bank and the Note Trustee. Under this agreement, the Liquidity Bank will provide a 364-day committed liquidity facility (the **Liquidity Facility**) to the Issuer which will be renewable with the agreement of the Liquidity Bank 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 principal) to be paid to the Issuer under or in respect of the Senior Loan less the amount of any expected shortfall as notified by the Servicer;
- (b) any interest accrued upon the Issuer Accounts and paid into the Issuer Transaction 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 Transaction Account;
- (c) any amounts received by the Issuer in respect of a sale or transfer of the Senior Loan by the Issuer which are not required to be applied in redemption of the principal amount of the Notes in accordance with Condition 6.5; **less**

- (d) the amount equal to 5% of the fees payable by the Issuer to the Corporate Services Provider under the Issuer Corporate Services Agreement (inclusive of VAT).

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 (j) of the Pre-Enforcement Priority of Payments on the next Interest Payment Date. The Servicer shall also determine whether any Hedging Loan is required to be made by the Issuer to the Borrower. If such amount is insufficient or if the Servicer determines that a Hedging Loan is required to be made, the Servicer will submit a request (on behalf of the Issuer) to make a drawing (an **Income Deficiency Drawing**) under the Liquidity Facility Agreement in an amount equal to the deficiency (an **Income Deficiency**) or the amount of the Hedging Loan required. The proceeds of any Income Deficiency Drawing will be credited to the Issuer Transaction Account and will be applied by the Issuer in making payments on the next following Interest Payment Date in accordance with the relevant Priority of Payments or (in respect of any Income Deficiency Drawing made for the purposes of financing a Hedging Loan) will be lent by the Issuer to the Borrower as a Hedging Loan in accordance with the provisions of the Senior Finance Documents.

The Liquidity Facility Agreement will initially permit drawings to be made by the Issuer of up to an aggregate amount of €63 million (the **Liquidity Facility Commitment**). The Liquidity Facility Commitment will automatically reduce following:

- (a) a partial redemption of the Notes in accordance with Condition 6, in an amount proportionate to the reduction in the aggregate Principal Amount Outstanding of the Notes;
- (b) the occurrence of an Appraisal Reduction Event (as defined below), in an amount proportionate to the Appraisal Reduction Amount; or
- (c) 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,

provided that the Liquidity Facility Commitment shall not, at any time, be less than ten per cent. of the initial Liquidity Facility Commitment.

### **Appraisal Reductions**

Not later than the earliest to occur of:

- (a) the date 120 days after the occurrence of any Loan Event of Default as a result of non-payment; and
- (b) the date 90 days after the occurrence of a Loan Event of Default as a result of the occurrence of any prescribed bankruptcy event of the Borrower,

and, in each case, provided that such Loan Event of Default is continuing, the Servicer is required, under the terms of the Servicing Agreement, to obtain a valuation in respect of the Properties (unless, at the Servicer's discretion, a valuation has been obtained during the immediately preceding 12 months and the Servicer has confirmed that, in its view, neither the Properties nor the relevant property markets have experienced any material change since the date of such previous valuation).

If the 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 relevant valuation, an **Appraisal Reduction Event** will be deemed to have occurred and the amount of Liquidity Facility Commitment will reduce proportionately by reference to any diminution in value of the Properties since the date of the Valuation Report in accordance with the terms of the Servicing Agreement (the **Appraisal Reduction Amount**).

## **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 Liquidity Requisite Rating; or
- (b) the Liquidity Bank refuses to renew the liquidity facility,

then the Issuer will be required to find an alternative Liquidity Bank or 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 maintained with the Liquidity Bank or, if the Liquidity Bank ceases to have the Requisite Rating, any bank which has the Requisite Rating. In the event that the Servicer requests a Liquidity Stand-by Drawing on behalf of the Issuer, the Servicer will be required to ensure that, prior to the expenditure of the proceeds of such drawing as described above, the Issuer invests such funds in Eligible Investments. 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.

If a replacement Liquidity Bank is required as a result of any of the circumstances described in (a) or (b) above, the existing Liquidity Bank shall at its own expense and if so requested by or on behalf of the Issuer, replace or transfer the facility to a new Liquidity Bank.

**Liquidity Requisite Rating** means a rating for the short-term, unguaranteed, unsecured and unsubordinated debt obligations of the Liquidity Bank of at least an “F1” rating (or its equivalent) by Fitch, a “P-1” rating (or its equivalent) by Moody’s or an “A-1” rating (or its equivalent) by S&P.

The Issuer will pay interest on Income Deficiency Drawings at a rate equal to three month 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 month 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 (a) any amounts in respect of 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 commitment provided under the Liquidity Facility Agreement and (b) the amount of any increase in the liquidity facility commitment fee directly attributable to the implementation of the Framework (as permitted under the Liquidity Facility Agreement) but only to the extent that such amounts exceed 0.125 per cent. per annum of the Liquidity Facility Commitment.

**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 Business Day prior to the next Interest Payment Date and the long-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 “A1” by Moody’s and the short-term unsecured, unguaranteed and unsubordinated debt obligations of such entity are rated at least “F1” by Fitch, at least “P-1” by Moody’s and at least “A-1” by S&P or are otherwise acceptable to the Rating Agencies.



## I. Cashflows

### Payments Paid out of the Issuer Transaction Account – Priority Amounts

The Servicer will, prior to the delivery of an Acceleration Notice, out of funds standing to the credit of the Issuer Transaction Account, pay sums due to third parties (other than the Servicer, the Liquidity Bank, the Special Servicer, the Corporate Services Provider, the Trustee Director, the Note Trustee, the Paying Agent, the Calculation Agent or the Account Bank), including the Issuer's liability, if any, to taxation (the **Priority Amounts**), on a date other than an Interest Payment Date under obligations incurred, without breach of obligations under the Transaction Documents, in the course of the Issuer's business.

### Payments Paid out of the Issuer Transaction Account Pre-Enforcement of the Issuer Security

Prior to the delivery of an Acceleration Notice, on each Interest Payment Date, the Servicer shall (and the Issuer and the Note Trustee shall authorise the Servicer to) withdraw an amount equal to the Available Issuer Income and the amount of any Income Deficiency Drawing, each as determined on the preceding Calculation Date, from the Issuer Transaction Account for application (after having paid any Priority Amounts which are due but unpaid on that Interest Payment Date) in the following order of priority (the **Pre-Enforcement 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), all as more fully set out in the Issuer Security Agreement:

- (a) in or towards satisfaction pro rata of any costs, expenses, fees, remuneration and indemnity payments (if any) and any other amounts payable by the Issuer to the Note Trustee (including any amounts payable by the Note Trustee to the Trustee Director under the Trustee Corporate Services Agreement) and any other person appointed by it under the Trust Deed, the Issuer Security Agreement and/or any Transaction Document to which the Note Trustee is a party;
- (b) in or towards satisfaction pro rata of any amounts due and payable by the Issuer on such Interest Payment Date to the Paying Agent and the Calculation Agent under the Agency Agreement;
- (c) in or towards satisfaction pro rata of any amounts due and payable by the Issuer on such 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) (other than any amounts described in paragraph (l) below);
- (d) in or towards satisfaction, pro rata according to amounts then due, of any amounts due and payable by the Issuer on such Interest Payment Date to:
  - (i) the Corporate Services Provider under the Issuer Corporate Services Agreement; and
  - (ii) the Account Bank under the Account Bank Agreement;
- (e) in or towards satisfaction of any amounts due and payable by the Issuer on such Interest Payment Date to the Liquidity Bank under and in accordance with the Liquidity Facility Agreement (other than any Liquidity Subordinated Amounts);
- (f) in or towards payment or discharge of sums due to third parties (other than Priority Amounts) under obligations incurred in the course of the Issuer's business;
- (g) in or towards payment of interest due and interest overdue (and all interest due on such overdue interest) on the Class A Notes;



- (h) in or towards payment of interest due and interest overdue (and all interest due on such overdue interest) on the Class B Notes;
- (i) in or towards payment of interest due and interest overdue (and all interest due on such overdue interest) on the Class C Notes;
- (j) in or towards payment of interest due and interest overdue (and all interest due on such overdue interest) on the Class D Notes;
- (k) in or towards payments of any Liquidity Subordinated Amounts payable to the Liquidity Bank;
- (l) in or towards payment of any amounts payable by the Issuer on such Interest Payment Date to the Special Servicer in respect of the Liquidation Fee or the Workout Fee;
- (m) in or towards payment to Eurohypo in respect of the Deferred Consideration payable on such Interest Payment Date; and
- (n) any surplus to the Issuer.

All amounts of principal receipts in respect of or relating to the Senior Loan received by the Issuer will be applied in accordance with Condition 6.

### **Post-Enforcement Priority of Payments**

Following the delivery of an Acceleration Notice or after the foreclosure of the Issuer Security, the Note Trustee shall (and the Issuer shall authorise the Note Trustee to) withdraw amounts standing to the credit of the Issuer Transaction Account and apply such amounts (together with all other amounts received or recovered by the Note Trustee in connection with the foreclosure of the Issuer Security (other than any amounts standing to the credit of the Liquidity Stand-by Account (if any) which shall be paid directly to the Liquidity Bank)) in accordance with the following order of priority (the **Post-Enforcement Priority of Payments** and, together with the Pre-Enforcement Priority of Payments, the **Priorities of Payment**) (in each case, only if and to the extent that the payments and provisions of a higher priority have been made in full), all as more fully set out in the Issuer Security Agreement:

- (a) in or towards satisfaction pro rata of any costs, expenses, fees, remuneration and indemnity payments (if any) and any other amounts payable by the Issuer to the Note Trustee (including any amounts payable by the Note Trustee to the Trustee Director under the Trustee Corporate Services Agreement) and any person appointed by it under the Trust Deed, the Issuer Security Agreement and/or any Transaction Document to which the Note Trustee is a party;
- (b) in or towards satisfaction pro rata of any amounts due and payable by the Issuer to the Paying Agent and the Calculation Agent 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 Agent or the Calculation Agent pursuant to the Agency Agreement;
- (c) in or towards satisfaction pro rata 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 (o) below);
- (d) in or towards satisfaction, *pro rata* according to the amounts then due, of any amounts due and payable by the Issuer to:

- (i) the Corporate Services Provider under the Issuer Corporate Services Agreement; and
  - (ii) the Account Bank under the Account Bank Agreement;
- (e) in or towards satisfaction 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 and, for the avoidance of doubt, the amount of any Liquidity Stand-by Drawing which has been repaid (or which will be repaid) using amounts standing to the credit of the Liquidity Stand-by Account);
  - (f) in or towards payment of interest due and interest overdue (and all interest due on such overdue interest) on the Class A Notes;
  - (g) in or towards payment of all amounts of principal due or overdue on the Class A Notes and all other amounts due in respect of the Class A Notes;
  - (h) in or towards payment of interest due and interest overdue (and all interest due on such overdue interest) on the Class B Notes;
  - (i) in or towards payment of all amounts of principal due or overdue on the Class B Notes and all other amounts due in respect of the Class B Notes;
  - (j) in or towards payment of interest due and interest overdue (and all interest due on such overdue interest) on the Class C Notes;
  - (k) in or towards payment of all amounts of principal due or overdue on the Class C Notes and all other amounts due in respect of the Class C Notes;
  - (l) in or towards payment of interest due and interest overdue (and all interest due on such overdue interest) on the Class D Notes;
  - (m) in or towards payment of all amounts of principal due or overdue on the Class D Notes and all other amounts due in respect of the Class D Notes;
  - (n) in or towards payment of any Liquidity Subordinated Amounts;
  - (o) 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;
  - (p) in or towards payment to Eurohypo in respect of the Deferred Consideration payable on such Interest Payment Date; and
  - (q) any surplus to the Issuer or other persons entitled thereto.

Upon foreclosure of the Issuer Security, the Note Trustee will have recourse only to the rights of the Issuer in respect of the Senior Loan and the Loan Security and all other assets constituting the Issuer Security. Other than in relation to the Servicing Agreement and the Subscription Agreement for breach of the obligations of Eurohypo set out therein, the Issuer and/or the Note Trustee will have no recourse to Eurohypo. Foreclosure of the Issuer Security shall be the only remedy available for the repayment of the Notes and the payment of accrued interest thereon.

## **J. Issuer Security**

### **Parallel debt**

The Issuer has irrevocably and unconditionally undertaken to pay to the Note Trustee, as an independent and separate creditor, an amount equal to the aggregate amount due (*verschuldigd*) by the Issuer to the Issuer Secured Parties (other than the Note Trustee) (the **Issuer Parallel Debt**) under or in connection with the Transaction Documents to which it is a party. The parallel debt undertaking constitutes a separate and independent obligation of the Issuer and constitutes the

Note Trustee's own separate and independent claim to receive payment of the Issuer Parallel Debt from the Issuer. Upon receipt by the Note Trustee of any amount in payment of the parallel debt undertaking, the payment obligations of the Issuer to the Issuer Secured Parties shall be reduced by an amount equal to the amount so received and vice versa. To the extent that the Note Trustee irrevocably receives any amount in payment of the parallel debt undertaking, the Note Trustee shall distribute such amount among the Issuer Secured Parties in accordance with the relevant Priority of Payments.

### **Security Assets**

Under the Issuer Security Agreement, as security for the Issuer Parallel Debt, the Issuer will grant in favour of the Note Trustee first ranking disclosed pledges over, *inter alia*, the Issuer Transaction Accounts, its interest in the Senior Loan and Borrower Parallel Debt (and consequently its rights with respect to the Loan Security) and all of its present and future rights and receivables under the Transaction Documents to which it is a party.

### **Note Trustee**

Stichting Note Trustee Opera Finance (Uni-Invest) is a foundation (*stichting*) established under the laws of the Netherlands on 13th April, 2005 with registered number 34224768. It has its registered office at Herengracht 420, 1017 BZ, Amsterdam, the Netherlands.

The objects of the Note Trustee are:

- (a) to act as agent and/or trustee on behalf of (i) the holders of notes to be issued by the Issuer; (ii) counterparties of the Issuer in the context of securitisation transactions and other creditors of the Issuer;
- (b) to acquire security rights as agent and/or trustee and/or for itself including security rights granted to it to secure its rights as creditor under the parallel debt of the Issuer towards it as set out in the Issuer Security Agreement;
- (c) to hold, administer and to enforce the security rights mentioned under (b); and
- (d) to perform any and all acts which are related, incidental or which may be conducive to the above.

The sole director of the Note Trustee is N.V. Algemeen Nederlands Trustkantoor ANT.

### **K. Loan Transfer Agreement**

On the Closing Date, the Issuer will enter into a transfer agreement with, *inter alios*, Eurohypo (in its capacities as Initial Lender, Senior Facility Agent, Senior Security Agent and Loan Payment Agent) and the Borrower (the **Loan Transfer Agreement**).

Pursuant to the Loan Transfer Agreement, the Initial Lender will transfer its rights and obligations in respect of the Senior Loan to the Issuer.

Eurohypo in its capacity as the sole creditor in respect of the Borrower Parallel Debt and as Senior Security Agent will also transfer its rights and obligations under the Senior Finance Documents to the Issuer. Consequently, this will mean that the Issuer will become the sole creditor in respect of, and will directly benefit from the undertakings made by the Obligors under, the Borrower Parallel Debt and the Issuer will become the holder of the security rights created by the Loan Security.

The transfer of the rights and obligations referred to above will be transferred by way of a transfer of contract (*contractsoverneming*).

In addition, Eurohypo in its capacity as Senior Facility Agent, the Senior Security Agent and Loan Payment Agent will transfer its rights and obligations under the Senior Finance Documents to the Issuer. The Issuer will therefore become the Senior Security Agent, the Senior Facility Agent and Loan Payment Agent although it will delegate the day to day functions of these roles to the Servicer or the Special Servicer (as the case may be).

The consideration payable by the Issuer to the Initial Lender will be an amount which is equal to the principal amount of the Senior Loan on the Closing Date plus the amount of interest accrued on the Senior Loan since the last Loan Interest Payment Date. Eurohypo will also be paid certain deferred consideration with respect to the sale of the Senior Loan (the **Deferred Consideration**). The amount of the Deferred Consideration shall be the aggregate of the Available Issuer Income on each Interest Payment Date **less** the amount payable on each Interest Payment Date under items (a) to (l) of the Pre-Enforcement Priority of Payments or items (a) to (o) of the Post-Enforcement Priority of Payments (as the case may be) **less** an amount equal to 5% of the fees payable by the Issuer to the Corporate Services Provider under the Issuer Corporate Services Agreement (inclusive of VAT).

## SERVICING

### The Servicer

Each of the Issuer and the Note Trustee will appoint Eurohypo under the terms of a servicing agreement to be dated on or before the Closing Date (the **Servicing Agreement**) as the initial servicer of the Senior Loan and to have responsibility for, *inter alia*, the investment and application of moneys in accordance with the relevant Priority of Payments. 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 and the Note Trustee 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.

The Issuer will also delegate the performance of the functions of the Senior Security Agent, Senior Facility Agent and Loan Payment Agent to the Servicer and the Special Servicer.

### Servicing of the Senior Loan

Servicing procedures will include monitoring compliance with and administering the options available to the Borrower under the terms and conditions of the Senior Finance Documents. 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 judgement) and in accordance with applicable legal and regulatory requirements and shall take all measures it deems necessary or appropriate in its due professional discretion to administer and collect the Senior Loan (i) if the Servicer or the Special Servicer, as the case may be, is Eurohypo, 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 which remain on the books of and beneficially owned by Eurohypo; and in so doing shall exercise the standard of care of a reasonably prudent commercial mortgage lender or (ii) if the Servicer or the Special Servicer, as the case may be, is not Eurohypo, in accordance with the standard of care as is normal and usual in general commercial mortgage servicing activities with respect to comparable mortgage loans for other third-party lenders or for its own account, whichever is higher, and shall, after the occurrence of a Loan Event of Default in respect of the Senior Loan, administer the foreclosure procedures with a view to the maximisation of recoveries of amounts for distribution to the Noteholders (taking into account the likelihood of recovery of amounts due from the Obligor in respect of the Senior Loan, the timing of any such recovery and the costs of recovery) as determined by the Servicer or Special Servicer, as the case may be, in its reasonable judgement (the **Servicing Standard**).

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.

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

The Servicer will give notice to the Special Servicer, the Issuer and the Note 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 Loan Security promptly upon the occurrence of any of the following events:

- (i) 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
- (ii) an Obligor being in breach of any covenant under any of the Senior Finance Documents.

The Servicer or the Special Servicer, as applicable, will promptly give notice to the Issuer, the Note Trustee, 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 **specialy 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) the Issuer, the Note Trustee, the Servicer or the Special Servicer receiving notice of the foreclosure of any Loan Security;
- (c) bankruptcy or similar proceedings being commenced in respect of any Obligor;
- (d) in the Servicer's opinion (acting in accordance with the Servicing Standard) a breach of a material covenant (a covenant being material for the purposes of this paragraph (d) if a breach of it materially impairs or could materially impair the use or the marketability of the Properties or the value of the Loan Security) under any of the Senior Finance Documents 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 days of its occurrence;
- (e) an Obligor notifying the Senior Facility Agent, the Issuer or the Note Trustee 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
- (f) any other Loan Event of Default occurring that, in the good faith and reasonable judgement of the Servicer, materially impairs or could materially impair the use or the marketability of the Properties or the value of the Loan Security.

If the Senior Loan becomes specialy serviced, the Servicer shall cease to be subject to the obligations as Servicer in respect of the Senior Loan under the Servicing Agreement except where otherwise provided.

#### **Arrears and default procedures**

The Servicer will collect or the Servicer or the Special Servicer, as applicable, will instruct the Senior 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 Obligors if a Loan Event of Default occurs. 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 Loan Security, to comply with the procedures for foreclosure of the Senior Loan and the Loan Security of the Servicer or the Special Servicer, as the case may be, current from time to time. If a Loan Event of Default occurs, the Servicer or the Special Servicer, as applicable, will consider based on (amongst others) the nature of that Loan Event of Default, the status of the Obligors and the nature and value of the Properties, what internal reviews and reporting requirements are needed in respect of the Senior Loan, and which foreclosure procedures are appropriate. If it decides it is appropriate (in accordance with the



Servicing Standard), the Servicer or the Special Servicer (as the case may be) may foreclose on the Loan Security on behalf of the Issuer (in its capacity as Senior Security Agent).

### **Amendments to the terms and conditions of the Senior Finance Documents**

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

- (a) the variation or amendment consists of one or more of the following:
  - (i) any release of the Borrower, provided that there is always at least one person who is the Borrower under the Senior Loan (which may be a person to whom the Borrower requests its obligations to be transferred) and the Borrower Parallel Debt is also transferred to such person;
  - (ii) the release of the 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 the Obligors which is acceptable to the Servicer or the Special Servicer acting in accordance with the Servicing Standard; or
  - (iii) 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 Note 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 the Senior Loan beyond the Loan Interest Payment Date falling in February 2010 unless the Servicer or the Special Servicer, as applicable, shall 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 Loan Security will continue to include first ranking mortgages on the interests in the Properties and first ranking pledges in respect of the lease receivables, bank accounts, insurance arrangements and the shares of the members of the Borrower Group;
- (f) notice of any such amendment or variation is given to the Rating Agencies and prior written confirmation shall 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 Senior 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 Note Trustee (acting in accordance with the Trust Deed 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 Senior Facility Agent or an Obligor to vary or amend the terms and conditions of the Senior 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.

## **Ability to purchase the Senior Loan and the Loan Security**

The Issuer and the Note Trustee will, pursuant to the Servicing Agreement, grant the option on any Interest Payment Date (a) to the Servicer to purchase the Senior Loan (in whole but not in part and as long as they are not specially serviced) and (b) to the Special Servicer to purchase the Senior Loan (so long as they are specially serviced) and also, in each case, the Loan Security; provided that on the Loan Interest Payment Date on which the Servicer or the Special Servicer, as the case may be, intends to purchase the Senior Loan and the Loan Security the then principal balance of the Senior Loan would be less than 10 per cent. of the 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 Senior Facility Agent, the Note Trustee and (in the case of notice given by the Special Servicer only) the Servicer not more than 65 nor less than 35 days' written notice of its intention to purchase the Senior Loan and the Loan Security. The purchase price to be paid by the Servicer or the Special Servicer, as the case may be, to the Issuer and/or the Note Trustee (as appropriate) will be an amount equal to the then principal balance of the Senior Loan plus accrued but unpaid interest on the Senior Loan less an amount equal to any principal that has become due and payable pursuant to the Credit Agreement, but which has not been paid which has consequently given rise to a principal deficiency in respect of the Notes. No such notice of the Special Servicer's intention to purchase the Senior Loan shall be valid if the Servicer gives the Issuer, the Senior Facility Agent and the Note Trustee written notice of its intention to purchase the Senior Loan provided that such notice from the Servicer is delivered within 10 days of the date on which the Special Servicer's notice was delivered.

## **Calculation of amounts and payments**

On each Calculation Date (being the fourth Business Day prior to the relevant Interest Payment Date) (the **Calculation Date**), the Servicer will be required to determine the various amounts required to pay interest and principal due on the Notes on the forthcoming 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 Interest Period commencing on such forthcoming Interest Payment Date, request the making of any Income Deficiency Drawings (including Income Deficiency Drawings to fund a Hedging Loan (if appropriate)) on behalf of the Issuer.

On each 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 Servicing Agreement. 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 Borrower, the Servicer will make all payments required to carry out a redemption of Notes pursuant to Condition 6. See further *Terms and Conditions of the Notes*.

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 Interest Payment Date or due to be paid by the Issuer on or prior to the next Interest Payment Date, will be insufficient to make payments set out under paragraphs (a) to (j) of the Pre-Enforcement Priority of Payments, the Servicer will make an Income Deficiency Drawing under the Liquidity Facility. See *Credit Structure – Liquidity Facility* above. Any notice of drawdown in respect of the Liquidity Facility must be delivered at least two Business Days prior to the Interest Payment Date on which the drawing is required.

## **Servicer quarterly report**

Pursuant to the Servicing Agreement, the Servicer will agree to deliver to the Issuer, the Note Trustee, the Special Servicer and the Rating Agencies a report in respect of each Calculation Date in which it will notify the recipients of, *inter alia*, all amounts received in the Issuer Accounts and payments made with respect thereto. The report will contain an 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.

## **Insurance**

The Servicer will monitor the arrangements for insurance which relate to the Senior Loan and the Loan Security and establish and maintain procedures to ensure that all Insurance Policies in respect of the Properties are renewed on a timely basis.

To the extent that the Issuer and/or the Note Trustee has power to do so under an Insurance Policy, the Servicer will, as soon as practicable after becoming aware of any occurrence of any event giving rise to a claim under such policy, prepare and submit such claim on behalf of (and for the benefit of) the Issuer and/or the Note Trustee 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 the Borrower complies with the obligations in respect of insurance in accordance with the terms of the Senior Finance Documents. If the Servicer becomes aware that the Borrower has failed to pay premiums due under any Insurance Policy the Servicer will take such action as the Issuer and/or the Note Trustee shall reasonably direct and in the absence of such direction will, on behalf of the Issuer or the Note Trustee, pay premiums (at the cost of the Borrower) due and payable under that Insurance Policy in order that the cover provided by such policy does not lapse.

Upon receipt of notice that any Insurance Policy has lapsed or that the Properties are otherwise not insured in accordance with the terms of the Senior Finance Documents, the Servicer will, at the cost of the Borrower, to arrange such insurance in accordance with the terms of the Senior Finance Documents.

## **Fees**

The Servicer will be entitled to receive a fee for servicing the Senior Loan. On each Interest Payment Date, the Issuer will pay to the Servicer a servicing fee (the **Servicing Fee**) (inclusive of value added tax) equal to 0.035 per cent. per annum of the principal balance of the Senior loan but only to the extent that the Issuer has sufficient funds to pay such amount as provided in *Credit Structure – Cashflows*. The unpaid balance (if any) will be carried forward until the next succeeding Interest Payment Date and, if not paid before such time, will be payable on the final 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 *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 Properties are sold on foreclosure or the date on which the Senior Loan is designated to be corrected. The Special Servicing Fee will accrue on a daily basis over such period and will be payable on each Interest Payment Date

commencing with the Interest Payment Date following the date on which such period begins and ending on the Interest Payment Date following the end of such period.

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 (c) in the definition of Special Servicing Event such proceedings are terminated;
- (b) with respect to the circumstances described in paragraph (d) in the definition of Special Servicing Event such circumstances cease to exist in the good faith and reasonable judgement of the Special Servicer;
- (c) with respect to the circumstances described in paragraph (e) in the definition of Special Servicing Event an Obligor ceases to claim an inability to pay its debts or to suspend the payment of obligations or the termination of any assignment for the benefit of its creditors; or
- (d) with respect to the circumstances described in paragraph (f) in the definition of Special Servicing Event such default is cured.

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, foreclosure and sale), if any, arising on the sale of the Properties or on or out of the application of any other foreclosure 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 the Workout Fee shall be 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 they were 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 *Credit Structure – Cashflows*.

### **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 Note Trustee and/or by the Issuer (with the consent of the Note 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 on its due date and either (i) such payment is not made within five 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 within a period of 10 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 in any respect and such failure is, in the opinion of the Note Trustee, 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 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 Note Trustee requiring the same to be remedied;
- (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 certain bankruptcy events (including suspension of payments, dissolution or a winding-up) 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 Notes, which are held by, or for the benefit of or on behalf of the Borrower 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.

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 Note 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 Rating Agencies and the Note Trustee.

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 Europe and has entered 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 shall, 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 Note 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.

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 Loan Security to, or at the direction of, the substitute servicer or special servicer and shall take such further action as the substitute servicer or substitute special servicer, as the case may be, shall 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.

### **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) the amendment, waiver or modification of any term of the Senior Finance Documents which affects the amount payable by the Obligors or the time at which any amounts are payable, or any other material term of the Senior Finance Documents; and
- (b) 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 Senior Finance Documents.

Before taking any action in connection with the matters referred to in paragraphs (a) or (b) 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 the Servicing Standard requires it to take immediate action, 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 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 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 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 Senior Loan and, for 60 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.

### **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 Note 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 Note Trustee and the Rating Agencies, delegate or sub-contract the performance of any of its obligations or duties under the Servicing Agreement. This shall not prevent the engagement on a case by case basis by the Servicer or Special Servicer, as applicable, of any lawyer, 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 and the Note Trustee.

**Governing law**

The Servicing Agreement will be governed by Dutch law.

## **LIQUIDITY BANK**

Lloyds TSB Bank plc acting through its corporate office located at Faryner's House, 25 Monument Street, London EC3R 8BQ, will act as the Liquidity Bank under the Liquidity Facility Agreement. Lloyds TSB Bank plc is regulated by the Financial Services Authority. The long term, unsecured, unsubordinated debt obligations of Lloyds TSB Bank plc are rated "AA" by S&P, "AA+" by Fitch and "Aaa" by Moody's and the short term, unsecured, unsubordinated debt obligations of Lloyds TSB Bank plc are rated "A-1+" by S&P "F1+" by Fitch and "P-1" by Moody's.

## ACCOUNT BANK

ABN AMRO Holding N.V. (**ABN Holding**) is incorporated under Dutch law by deed of 30 May 1990 as the holding company of ABN AMRO Bank N.V. ABN Holding's main purpose is to own ABN AMRO Bank N.V. and its subsidiaries. ABN Holding owns 100 per cent. of the shares of the ABN AMRO Bank N.V. and is jointly and severally liable for all liabilities of ABN AMRO Bank N.V. ABN AMRO Bank N.V. is registered in the Commercial Register of Amsterdam under number 33002587. The registered office of ABN AMRO Bank N.V. is at Gustav Mahlerlaan 10, 1082 PP Amsterdam, The Netherlands.

The ABN AMRO group (**ABN AMRO**), which consists of ABN Holding and its subsidiaries, is a prominent international banking group offering a wide range of banking products and financial services on a global basis through its network of more than 3,700 offices and branches in over 60 countries and territories. ABN AMRO is one of the largest banking groups in the world with total consolidated assets of EUR 608.8 billion as at 31 December 2004.

The long-term, unsecured, unsubordinated and unguaranteed debt obligations of ABN Group are currently rated "AA-" by S&P, "Aa3" by Moody's and "AA-" by Fitch. The short-term, unsecured, unsubordinated and unguaranteed debt obligations of ABN AMRO are currently rated "A-1+" by S&P, "P-1" by Moody's and "F1+" by Fitch.

The information in the preceding three paragraphs has been provided solely by ABN AMRO for use in this Offering Circular and ABN AMRO is solely responsible for the accuracy of the preceding three paragraphs. Except for the foregoing Three paragraphs, ABN AMRO Bank N.V. and its affiliates have not been involved in the preparation of, and do not accept responsibility for, this Offering Circular.

## **USE OF PROCEEDS**

The net and gross proceeds from the issue of the Notes will be €1,008,900,000, and this sum will be applied by the Issuer for the purpose of acquiring the Senior Loan from Eurohypo (in its capacity as Initial Lender) on the Closing Date. Fees, commissions and expenses incurred by the Issuer in connection with the issue of the Notes will be met by the Note Arranger and will be reimbursed through the Priority of Payments.

## TERMS AND CONDITIONS OF THE NOTES

*The following is the text of the Terms and Conditions of the Notes which (subject to modification) will be endorsed on each Note in definitive form (if issued):*

The issue of the €656,000,000 Class A Commercial Mortgage Backed Floating Rate Notes 2005 due 2012 (the **Class A Notes**), the €130,100,000 Class B Commercial Mortgage Backed Floating Rate Notes 2005 due 2012 (the **Class B Notes**), the €137,000,000 Class C Commercial Mortgage Backed Floating Rate Notes 2005 due 2012 (the **Class C Notes**) and the €85,800,000 Class D Commercial Mortgage Backed Floating Rate Notes 2005 due 2012 (the **Class D Notes** and, together with the Class A Notes, the Class B Notes and the Class C Notes, the **Notes**) by Opera Finance (Uni-Invest) B.V. (the **Issuer**) was authorised by a resolution of the sole managing director of the Issuer passed on 11th May, 2005.

The Notes are constituted by a trust deed (such trust deed as modified and/or supplemented and/or restated from time to time, the **Trust Deed**) dated 12th May, 2005 made between the Issuer and Stichting Note Trustee Opera Finance (Uni-Invest) (the **Note Trustee**, which expression includes its successors as trustee or any further or other trustee(s) under the Trust Deed as trustee(s) for the holders of the Notes (the **Noteholders**)).

The proceeds of the issue of the Notes will be applied in or towards the acquisition of the loan made to Uni-Invest B.V. (the **Borrower**) on 15th February, 2005 (the **Senior Loan**).

References herein to the Notes shall include reference to any Global Note and any Definitive Notes issued in exchange for a Global Note

The Noteholders and the holders of the Receipts and Coupons (each as defined below) (the **Receiptholders** and **Couponholders** respectively) are subject to and have the benefit of an agency agreement (as amended and/or supplemented from time to time, the **Agency Agreement**) dated the Closing Date between the Issuer, the Note Trustee and ABN AMRO Bank N.V. as paying agent (in such capacity, the **Paying Agent**, which expression includes any successor or alternative paying agent appointed from time to time in respect of the Notes) and as calculation agent (in such capacity, the **Calculation Agent**, which expression includes any successor calculation agent appointed from time to time in connection with the Notes).

The security for the Notes is granted or created pursuant to a security agreement under Dutch law (the **Issuer Security Agreement**, which expression includes such security agreement as from time to time modified in accordance with the provisions therein contained and any deed or other document expressed to be supplemental thereto as from time to time so modified) dated the Closing Date and made between, *inter alios*, the Issuer and the Note Trustee.

The Noteholders, Receiptholders and the Couponholders are entitled to the benefit of, are bound by, and are deemed to have notice of, all the provisions of the Trust Deed, the Agency Agreement and the Issuer Security Agreement applicable to them and all the provisions of the other Transaction Documents (including the Account Bank Agreement, the Servicing Agreement, the Liquidity Facility Agreement, the Credit Agreement, the Corporate Services Agreement, the Borrower Security Agreements and the Master Definitions Schedule (each as defined in the master definitions schedule signed for identification by, *inter alios*, the Issuer and the Note Trustee on or about the Closing Date (the **Master Definitions Schedule**)) applicable to them.

The statements in these Conditions include summaries of, and are subject to, the detailed provisions of the Trust Deed, the Agency Agreement, the Issuer Security Agreement and the other Transaction Documents. Capitalised terms used in these Conditions but not otherwise defined shall have the meanings set out in the Master Definitions Schedule.

As used in these Conditions:

- (a) a reference to a **Class** of Notes, or the respective holders thereof, as applicable, shall be a reference to the Class A Notes, the Class B Notes, the Class C Notes or the Class D Notes (and, unless the context otherwise requires, shall include in each case any Coupons and Receipts appertaining thereto) or the respective Noteholders, Receiptholders and Couponholders and Classes, in a similar context, shall be construed accordingly;
- (b) a reference to **Notes of any Class** shall in these Conditions, unless the context otherwise requires, include any Further Notes (as defined below in Condition 16.1) issued pursuant to Condition 16 and forming a single series with the relevant Class of Notes; and
- (c) **Most Senior Class of Notes** means:
  - (i) the Class A Notes; or
  - (ii) if no Class A Notes are then outstanding (as defined in the Trust Deed), the Class B Notes (if at that time any Class B Notes are then outstanding); or
  - (iii) if no Class A Notes or Class B Notes are then outstanding, the Class C Notes (if at that time any Class C Notes are then outstanding); or
  - (iv) if no Class A Notes, Class B Notes or Class C Notes are then outstanding, the Class D Notes (if at that time any Class D Notes are outstanding).

Copies of the Transaction Documents to which the Note Trustee is a party are available to Noteholders for inspection at the specified office of the Paying Agent and the Issuer.

## 1. GLOBAL NOTES

### 1.1 Temporary Global Notes

- (a) The Notes of each Class will initially be represented by a temporary global note of the relevant Class (each, a **Temporary Global Note**).
- (b) The Temporary Global Notes will be deposited on behalf of the subscribers of the Notes with HSBC Issuer Services Common Depositary Nominee (UK) Limited as common depositary (the **Common Depositary**) for Euroclear Bank S.A./N.V. as operator of the Euroclear System (**Euroclear**) and Clearstream Banking, société anonyme (**Clearstream, Luxembourg**) on the Closing Date. Upon deposit of the Temporary Global Notes, Euroclear or Clearstream, Luxembourg will credit the account of each Accountholder (as defined below) with the principal amount of Notes for which it has subscribed and paid.

### 1.2 Permanent Global Notes

- (a) Interests in each Temporary Global Note will be exchangeable 40 days after the Closing Date (the **Exchange Date**), provided certification of non-U.S. beneficial ownership (**Certification**) by the relevant Noteholders has been received, for interests in a permanent global note of the relevant Class (each, a **Permanent Global Note**) which will also be deposited with the Common Depositary unless the interests in the relevant Permanent Global Note have already been exchanged for Notes in definitive form in which event the interests in such Temporary Global Note may only be exchanged (subject to Certification) for Notes of the relevant Class in definitive form.
- (b) The expression **Global Note** shall be read and construed to mean a Temporary Global Note or a Permanent Global Note as the context may require. On the exchange of each Temporary Global Note for the relevant Permanent Global Note such Permanent Global Note will remain deposited with the Common Depositary.



### 1.3 Form and Title

- (a) Each Global Note shall be issued in bearer form without Receipts, Coupons or Talons (as defined below).
- (b) Title to the Global Notes will pass by delivery (*levering*). Notes represented by a Global Note will be transferable only in accordance with the rules and procedures for the time being of Euroclear or Clearstream, Luxembourg, as appropriate.
- (c) For so long as the Notes of a Class are represented by one or both Global Notes in respect of that Class, the Issuer, the Note Trustee and all other parties may (to the fullest extent permitted by applicable laws) deem and treat each person who is for the time being shown in the records of Euroclear or Clearstream, Luxembourg as the holder of a particular principal amount of such Notes (an **Accountholder**) as the holder of such principal amount of such Notes, in which regard any certificate or other document issued by Euroclear or Clearstream, Luxembourg as to the principal amount of such Notes or interest in such Notes standing to the account of any person shall be conclusive and binding for all purposes save in the case of manifest error (including for the purposes of any quorum requirements of, or the right to demand a poll at, meetings of the Noteholders), other than for the purposes of payment of principal and interest on such Global Notes, the right to which shall be vested, as against the Issuer, the Paying Agent and the Note Trustee, solely in the bearer of the relevant Global Note in accordance with and subject to the terms of the Trust Deed. The expressions **Noteholders** and **holder of Notes** and related expressions shall be construed accordingly.
- (d) In determining whether a particular person is entitled to a particular principal amount of Notes as aforesaid, the Note Trustee may rely on such evidence and/or information and/or certification as it shall, in its absolute discretion, think fit and, if it does so rely, such evidence and/or information and/or certification shall, in the absence of manifest error, be conclusive and binding on all concerned.

## 2. DEFINITIVE NOTES

### 2.1 Issue of Definitive Notes

- (a) A Permanent Global Note will be exchanged free of charge (in whole but not in part) for Notes in definitive bearer form (**Definitive Notes**) only if at any time after the Exchange Date any of the following applies:
  - (i) the Notes become immediately due and payable by reason of accelerated maturity following a Note Event of Default;
  - (ii) both Euroclear and Clearstream, Luxembourg are closed for business for a continuous period of 14 days (other than by reason of holiday, statutory or otherwise) or announce an intention permanently to cease business or do in fact do so and no alternative clearing system satisfactory to the Note Trustee is available; or
  - (iii) as a result of any amendment to, or change in the laws or regulations of the Netherlands or any applicable jurisdiction (or of any political subdivision thereof) or of any authority therein or thereof having power to tax or in the interpretation by a revenue authority or a court of administration of such laws or regulations which becomes effective on or after the Closing Date, the Issuer or any Paying Agent is or will become required to make any deduction or withholding from any payment in respect of the Notes which would not be required were the Notes in definitive form in exchange.

- (b) Any such exchange shall take place no later than 30 days after the occurrence of the relevant event.
- (c) Thereupon, the whole of such Permanent Global Note will be exchanged for Definitive Notes (in the form provided in Condition 2.2(a)), Receipts and Coupons in respect of principal and interest which has not already been paid on such Permanent Global Note as provided in such Permanent Global Note.

## 2.2 Title to and Transfer of Definitive Notes

- (a) Each Definitive Note shall be issued in bearer form, serially numbered, in the denomination of €100,000 with (at the date of issue) principal receipts (**Receipts**) and interest coupons (**Coupons**, which expression includes talons for further Coupons (**Talons**), except where the context otherwise requires) attached.
- (b) Title to the Definitive Notes, Receipts and Coupons will pass by delivery (*levering*).
- (c) The Issuer, the Paying Agent and the Note Trustee may (to the fullest extent permitted by applicable laws) deem and treat the holder of any Definitive Note and the holder of any Receipt and Coupon as the absolute owner for all purposes (whether or not the Definitive Note, the Receipt or the Coupon shall be overdue and notwithstanding any notice of ownership, theft or loss, of any trust or other interest therein or of any writing on the Definitive Note, Receipt or Coupon) and the Issuer, the Note Trustee and the Paying Agent shall not be required to obtain any proof thereof or as to the identity of such holder.

## 3. STATUS, SECURITY AND PRIORITY OF PAYMENTS

### 3.1 Status and relationship between Classes of Notes

- (a) The Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes constitute direct, secured and unconditional obligations of the Issuer and are secured by security interests over the assets of the Issuer (as more particularly described in the Issuer Security Agreement) (the **Issuer Secured Assets**) (such security interests together, the **Issuer Security**). Notes of the same Class rank *pari passu* and rateably without any preference or priority amongst themselves.
- (b) In accordance with the provisions of this Condition 3, the Trust Deed and the Issuer Security Agreement, the Class A Notes will, subject to Condition 6.2, 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 and the Class D 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 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 right of payment of principal and interest in respect of the Class A Notes, the Class B Notes and the Class C Notes.
- (c) In connection with the exercise of the powers, trusts, authorities, duties and discretions vested in it by the Trust Deed and the other Transaction Documents the Note Trustee shall:
  - (i) except where expressly provided otherwise, have regard to the interests of the Class A Noteholders, the Class B Noteholders, the Class C Noteholders and the Class D Noteholders equally provided that if in the opinion of the Note Trustee (1) (for so long as there are any Class A Notes outstanding) there is a conflict

between the interests of the Class A Noteholders, on the one hand and the interests of the Class B Noteholders and/or the Class C Noteholders and/or the Class D Noteholders on the other hand, it shall have regard only to the interests of the Class A Noteholders, (2) (for so long as there are any Class B Notes outstanding) there is a conflict between the interests of the Class B Noteholders and/or the interests of the Class C Noteholders and/or the Class D Noteholders, it shall, subject to (1) above, have regard only to the interests of the Class B Noteholders and (3) (for so long as there are any Class C Notes outstanding) there is a conflict between the interests of the Class C Noteholders, and the interests of the Class D Noteholders, it shall subject to (1) and (2) above, have regard only to the interests of the Class C Noteholders, but so that this proviso shall not apply in the case of powers, trusts, authorities, duties and discretions:

- (A) in relation to which it is expressly stated that they may be exercised by the Note Trustee only if in its opinion the interests of the Noteholders would not be materially prejudiced thereby; or
  - (B) the exercise of which by the Note Trustee relates to any Basic Terms Modification, in which event the Note Trustee may exercise such powers, trusts, authorities, duties and discretions only if it is satisfied that to do so will not be materially prejudicial to the interests of the Noteholders of any Class that will be affected thereby;
- (ii) where it is required to have regard to the interests of the Noteholders (or any Class thereof), it shall have regard to the interests of such Noteholders (or such Class) as a class and in particular, but without prejudice to the generality of the foregoing, shall not be obliged to have regard to the consequences thereof for individual Noteholders resulting from their being for any purpose domiciled or resident in, or otherwise connected with, or subject to, the jurisdiction of any particular territory and the Note Trustee shall not be entitled to require, nor shall any Noteholders be entitled to claim, from the Issuer, the Note Trustee or any other person any indemnification or payment in respect of any tax consequence of any such exercise upon individual Noteholders; and
  - (iii) except where expressly provided otherwise, have regard only to the interests of the Noteholders and shall not be required to have regard to the interests of any other Issuer Secured Party or any other person or to act upon or comply with any direction or request of any other Issuer Secured Party or any other person whilst any amount remains owing to any Noteholder.
- (d) In the event of an issue of Replacement Notes (as defined in Condition 16.2) or New Notes (as defined in Condition 16.3), the provisions of the Trust Deed, these Conditions, the Agency Agreement and the Issuer Security Agreement, including those concerning:
    - (i) the basis on which the Note Trustee will be required to exercise its rights, powers, trusts, authorities, duties and discretions;
    - (ii) the circumstances in which the Note Trustee will become bound to take action, as referred to in Condition 10 or 11;
    - (iii) meetings of Noteholders and the passing of effective Extraordinary Resolutions; and
    - (iv) the order of priority of payments both prior to, and upon, foreclosure of the Issuer Security,

will be modified in such manner as the Note Trustee considers necessary to reflect the issue of such Replacement Notes or, as the case may be, New Notes and the ranking thereof in relation to the Notes. If any New Notes are issued and the Notes are then listed on Euronext Amsterdam N.V. (**Euronext**), the Issuer will immediately advise Euronext accordingly, procure the publication of a notice of the issue in a leading newspaper having general circulation in Amsterdam and, as long as the Notes are listed on the Official Segment of the Stock Market of Euronext, in the English language in the Euronext Amsterdam Daily Official List (*Officiële Prijscourant*) of Euronext, file a new offering circular in respect of the issue of the New Notes with Euronext and make such offering circular and any related agreements available in Amsterdam at the specified office of the Paying Agent.

- (e) As used in these Conditions:

**Issuer Secured Parties** means the Noteholders, the Receiptholders, the Couponholders, the Note Trustee, any appointee of the Note Trustee, the Servicer, the Special Servicer, the Corporate Services Provider, the Trustee Director, the Liquidity Bank, the Account Bank, Eurohypo (in respect of the Deferred Consideration), the Paying Agent, the Calculation Agent and any other party so designated by the Issuer and the Note Trustee.

### 3.2 Issuer Security and Priority of Payments

- (a) The Issuer Security in respect of the Notes, Receipts and Coupons and the payment obligations of the Issuer under the Transaction Documents is set out in the Issuer Security Agreement. The Servicing Agreement and the Issuer Security Agreement contains provisions regulating the priority of application of the Issuer Secured Assets by the Servicer (and proceeds thereof) among the persons entitled thereto prior to the Issuer Security becoming enforceable and the Issuer Security Agreement contains provisions regulating such application by the Note Trustee after the Issuer Security has become enforceable.
- (b) The Issuer Security will become enforceable upon the occurrence of a Note Event of Default in accordance with Condition 10. If the Issuer Security has become enforceable otherwise than by reason of a default in payment of any amount due on the Notes, the Note Trustee will not be entitled to dispose of the assets comprising the Issuer Security or any part thereof unless (i) a sufficient amount would be realised to allow discharge in full of all amounts owing to the Noteholders and any amounts required under the Issuer Security Agreement to be paid *pari passu* with, or in priority to, the Notes, or (ii) the Note Trustee is of the opinion, which will be binding on the Noteholders, reached after considering at any time and from time to time the advice, upon which the Note Trustee will be entitled to rely, of such professional advisers as are selected by the Note Trustee, that the cashflow prospectively receivable by the Issuer will not (or that there is a significant risk that it will not) be sufficient, having regard to any other actual, contingent or prospective liabilities of the Issuer, to discharge in full in due course all amounts owing to the Noteholders and any amounts required under the Issuer Security Agreement to be paid *pari passu* with, or in priority to, the Notes, or (iii) the Note Trustee determines that not to effect such disposal would place the Issuer Security in jeopardy, and, in any event, the Note Trustee has been secured and/or indemnified to its satisfaction.

## 4. COVENANTS

### 4.1 Restrictions

Save with the prior written consent of the Note Trustee or as provided in these Conditions or as permitted by the Transaction Documents, the Issuer shall not so long as any of the Notes remains outstanding:

- (a) **Negative Pledge:** (save for the Issuer Security) create or permit to subsist any mortgage, sub-mortgage, charge, sub-charge, assignment, pledge, lien, hypothecation or other security interest whatsoever, however created or arising (unless arising by operation of law) over any of its property, assets or undertakings (including the Issuer Secured Assets) or any interest, estate, right, title or benefit therein or use, invest or dispose of, including by way of sale or the grant of any security interest of whatsoever nature or otherwise deal with, or agree or attempt or purport to sell or otherwise dispose of (in each case whether by one transaction or a series of transactions) or grant any option or right to acquire any such property, assets or undertaking present or future;
- (b) **Restrictions on Activities:**
  - (i) engage in any activity whatsoever which is not, or is not reasonably incidental to, any of the activities in which the Transaction Documents provide or envisage the Issuer will engage in;
  - (ii) open or have an interest in any account whatsoever with any bank or other financial institution, save where such account or the Issuer's interest therein is immediately charged in favour of the Note Trustee so as to form part of the Issuer Security;
  - (iii) have any subsidiaries;
  - (iv) own or lease any premises or have any employees;
  - (v) amend, supplement or otherwise modify its articles of association; or
  - (vi) issue any further shares;
- (c) **Borrowings:** incur or permit to subsist any other indebtedness in respect of borrowed money whatsoever, except in respect of the Notes, or give any guarantee or indemnity in respect of any indebtedness or of any other obligation of any person;
- (d) **Merger:** consolidate or merge with any other person or convey or transfer its properties or assets substantially as an entirety to any other person;
- (e) **Disposal of Assets:** 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 (including its interest in the Senior Loan and the Loan Security except to the extent requested by the Servicer or the Special Servicer (as the case may be) or if a Loan Event of a Default or a Note Event of Default is outstanding);
- (f) **Assets:** own assets other than those representing its share capital, the funds arising from the issue of the Notes, the property, rights and assets secured by the Issuer Security and associated and ancillary rights and interests thereto, the benefit of the Transaction Documents (including any Hedging Loan made to the Borrower) and any investments and other rights or interests created or acquired thereunder, as all of the same may vary from time to time;

- (g) **Dividends or Distributions:** pay any dividend or make any other distribution to its shareholders or issue any further shares;
- (h) **Other:** cause or permit the validity or effectiveness of any of the Transaction Documents, or the priority of the security interests created thereby, to be amended, terminated, postponed or discharged, or consent to any variation of, or exercise any powers of consent or waiver pursuant to the Trust Deed, the Issuer Security Agreement or any of the other Transaction Documents, or dispose of any part of the Issuer Secured Assets;
- (i) **Dissolution etc.** take any action for its dissolution (*ontbinding*), request the court to grant a suspension of payments (*surséance van betaling*) with respect to it or to declare its bankruptcy (*faillissement*).

In giving any consent to the foregoing, the Note Trustee may require the Issuer to make such modifications or additions to the provisions of any of the Transaction Documents or may impose such other conditions or requirements as the Note Trustee may deem expedient (in its absolute discretion) in the interests of the Noteholders, provided that each of the Rating Agencies has provided written confirmation to the Note Trustee that the then applicable ratings of each Class of Notes then rated thereby will not be adversely affected.

#### 4.2 Servicer

- (a) So long as any of the Notes remains outstanding, the Issuer will 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.
- (b) The Servicing Agreement will provide that (i) the Servicer will not be permitted to terminate its appointment unless a replacement servicer acceptable to the Issuer and the Note Trustee has been appointed and (ii) the appointment of the Servicer may be terminated by the Note 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 thirty Business Days after written notice of such default shall have been served on the Servicer by the Issuer or the Note Trustee.

#### 4.3 Special Servicer

If the Senior Loan has become specially serviced in accordance with the Servicing Agreement, then the Issuer, upon being so instructed by an Extraordinary Resolution (as defined below) of the Class of Noteholders then acting as Controlling Party, will 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.

**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 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.

#### 4.4 Operating Adviser

The Class of Noteholders then acting as Controlling Party may, by an Extraordinary Resolution passed by that class, 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.

### 5. INTEREST

#### 5.1 Period of Accrual

The Notes will bear interest from (and including) the Closing Date. Interest shall cease to accrue on any part of the Principal Amount Outstanding (as defined in Condition 6.4) of any Note from the due date for redemption unless, upon due presentation, payment of principal or any part thereof due is improperly withheld or refused or any other default is made in respect thereof. In such event, interest will continue to accrue as provided in the Trust Deed.

#### 5.2 Interest Payment Dates and Interest Periods

(a) Interest on the Notes is, subject as provided below in relation to the first payment, payable quarterly in arrear on 15th day of February, May, August and November in each year or, if any such day is not a Business Day (as defined below), the next following day that is a Business Day) (each, an **Interest Payment Date**). The first such payment is due on the Interest Payment Date falling in August 2005 in respect of the period from (and including) the Closing Date to (but excluding) that Interest Payment Date.

For the purposes of these Conditions, **Business Day** means a day (other than Saturday or Sunday or a public holiday) on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealings in foreign exchange and foreign currency deposits) in London and Amsterdam provided that such day is also a day on which the Trans-European Automated Real-Time Gross Settlement European Transfer System (**TARGET**) or any successor thereto is open for the settlement of payments in euro.

(b) Each period from (and including) an Interest Payment Date (or the Closing Date, in the case of the first Interest Period) to (but excluding) the next (or, in the case of the first Interest Period, the first) Interest Payment Date is in these Conditions called an **Interest Period**.

#### 5.3 Rates of Interest

(a) The rate of interest payable from time to time (the **Rate of Interest**) and the Interest Payment (as defined below) in respect of each Class of Notes will be determined by the Calculation Agent on the basis of the following provisions:

(i) the Calculation Agent will, at or as soon as practicable after 11.00 a.m. (Central European time) on the day that is two Business Days prior to each Interest Payment Date, and in respect of the first Interest Period, two Business Days prior to the Closing Date (each, an **Interest Determination Date**), determine the Rate of Interest applicable to, and calculate the amount of interest payable on each of the Notes (each payment so calculated, an **Interest Payment**), for

the next Interest Period. The Rate of Interest applicable to the Notes of each Class for any Interest Period will be equal to:

- (A) in the case of the Class A Notes, EURIBOR (as determined in accordance with paragraph (b) below) plus a margin of 0.23 per cent. per annum;
  - (B) in the case of the Class B Notes, EURIBOR (as so determined) plus a margin of 0.35 per cent. per annum;
  - (C) in the case of the Class C Notes, EURIBOR (as so determined) plus a margin of 0.55 per cent. per annum; and
  - (D) in the case of the Class D Notes, EURIBOR (as so determined) plus a margin of 0.85 per cent. per annum.; and
- (ii) the Interest Payment in relation to a Note of a particular Class shall be calculated by applying the Rate of Interest applicable to the Notes of that Class to the Principal Amount Outstanding of each Note of that Class, multiplying the product of such calculation by the actual number of days in the relevant Interest Period divided by 360 and rounding the resultant figure downward to the nearest euro cent (fractions of half a euro cent being rounded upwards).
- (b) For the purposes of determining the Rate of Interest in respect of each Class of Notes under paragraph (a) above, EURIBOR will be determined by the Calculation Agent on the basis of the following provisions:
- (i) on each Interest Determination Date, the Calculation Agent 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 Calculation Agent) (the **EURIBOR Screen Rate**) as at or about 11:00 a.m. (Central European time); or
  - (ii) if, on the relevant Interest Determination Date, the EURIBOR Screen 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 Calculation Agent will request the principal euro-zone office of each of four major banks in the euro-zone interbank market duly appointed for that purpose (the **Reference Banks** provided that, once a Reference Bank has been appointed by the Calculation Agent, that Reference Bank shall not be changed unless and until it ceases to be capable of acting as such) to provide a quotation for the rate at which three month euro deposits are offered by such Reference Banks for the same period as that Interest Period in the euro-zone interbank market at approximately 11:00 a.m. (Central European time) on the relevant Interest Determination Date to prime banks in the euro-zone interbank market.
- If, on any such Interest Determination Date, at least two of the Reference Banks provide such offered quotations to the Calculation Agent, EURIBOR for the relevant Interest Period will be the arithmetic mean (rounded, if necessary, to the fifth decimal place with 0.000005 being rounded upwards) of such quotations as are provided.
- If, on any Interest Determination Date, only one of the Reference Banks provides the Calculation Agent with such an offered quotation, the Calculation

Agent shall consult with the Note Trustee and the Issuer for the purposes of agreeing, one additional bank to provide such a quotation or quotations to the Calculation Agent (which bank is, in the opinion of the Note Trustee, suitable for such purpose) and EURIBOR for the relevant Interest Period will be the arithmetic mean (rounded, if necessary, to the fifth decimal place with 0.000005 being rounded upwards) of the offered quotations of such banks.

If no such bank or banks is or are so agreed or such bank or banks as so agreed does not or do not provide such a quotation or quotations, for the relevant Interest Period will be rate determined by the Calculation Agent on the basis of the arithmetic mean (rounded, if necessary, to the fifth decimal place with 0.000005 being rounded upwards) of the rates quoted by major banks in the euro zone, of which there will be at least two in number selected by the Calculation Agent in consultation with the Note Trustee and the Issuer, at approximately 11:00 a.m. (Central European time) on the relevant Interest Determination Date for three months deposits to leading euro-zone banks.

- (c) There will be no minimum or maximum Rates of Interest.

#### **5.4 Publication of Rates of Interest and Interest Payments**

The Calculation Agent will cause the Rate of Interest and the Interest Payment relating to each Class of Notes for each Interest Period and the Interest Payment Date to be forthwith notified to the Issuer, the Note Trustee, the Servicer, the Paying Agent, the Noteholders, the Corporate Services Provider, the Trustee Director and, for so long as the Notes are listed on Euronext, to the holders of the Notes by an advertisement in the English language in the Euronext Amsterdam Daily Official List of Euronext Amsterdam N.V. (*Officiële Prijscourant*). The Interest Payments and Interest Payment Date so notified may subsequently be amended (or appropriate alternative arrangements made by way of adjustment) without notice in the event of a lengthening or shortening of such Interest Period.

#### **5.5 Determination or Calculation by Note Trustee**

If the Calculation Agent at any time for any reason does not determine the Rates of Interest or calculate an Interest Payment in accordance with Condition 5.3, the Note Trustee shall procure the determination of the Rates of Interest at such rates as, in its absolute discretion (having such regard as it shall think fit to the procedure described in Condition 5.3), it shall deem fair and reasonable in all the circumstances or, as the case may be, the Note Trustee shall calculate the Interest Payment in accordance with Condition 5.3, and each such determination or calculation shall be deemed to have been made by the Calculation Agent.

#### **5.6 Notification to be Final**

All notifications, opinions, determinations, certificates, calculations, quotations and decisions given, expressed, made or obtained for the purposes of this Condition, whether by the Reference Banks (or any of them) or the Calculation Agent or the Note Trustee, shall (in the absence of wilful default, bad faith or manifest error) be binding on the Issuer, the Reference Banks, the Calculation Agent, the Paying Agent, the Note Trustee and all Noteholders and (in the absence as aforesaid) no liability to the Noteholders shall attach to the Issuer, the Reference Banks, the Calculation Agent, the Paying Agent or the Note Trustee in connection with the exercise by them of any of their powers, duties and discretions under this Condition.

#### **5.7 Calculation Agent**

The Issuer will procure that, so long as any of the Notes remain outstanding, there will at all times be a Calculation Agent. The Issuer reserves the right at any time with the prior written

consent of the Note Trustee to terminate the appointment of the Calculation Agent. Notice of any such termination will be given to the Noteholders in accordance with Condition 15. If any person shall be unable or unwilling to continue to act as the Calculation Agent, or if the appointment of the Calculation Agent shall be terminated, the Issuer will, with the written approval of the Note Trustee, appoint a successor Calculation Agent to act as such in its place, provided that neither the resignation nor the removal of the Calculation Agent shall take effect until a successor approved by the Note Trustee has been appointed.

## 6. REDEMPTION

### 6.1 Redemption on Maturity

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 Interest Payment Date which falls in February 2012 (the **Final Maturity Date**).

### 6.2 Mandatory redemption following disposal of property by Borrower

- (a) On each Interest Payment Date, the Issuer shall apply an amount equal to the amount (if any) received by the Issuer on that Interest Payment Date as a repayment or prepayment of the principal amount of the Senior Loan using the proceeds of disposal of a Property by the Borrower in accordance with the Senior Finance Documents (the **Mandatory Redemption Amount**) towards redemption of the Notes. If the Issuer receives any proceeds from the Borrower following a disposal of a Property after a Calculation Date, such proceeds shall not be applied towards redemption of the Notes on the Interest Payment Date immediately following that Calculation Date but such proceeds shall be retained in the Issuer Transaction Account and applied in redemption of the Notes on the next Interest Payment Date.
- (b) The Mandatory Redemption Amount will be applied towards redemption of the Notes as follows:
- (i) until such time as the aggregate Principal Amounts Outstanding in respect of the Notes are less than 25% of the aggregate Principal Amounts Outstanding in respect of the Notes as at the Closing Date:
- (A) an amount equal to the Allocated Loan Amount(s) in respect of the relevant Property(ies) which have been disposed of shall be applied towards redemption of the Notes pro rata to the Principal Amounts Outstanding of each Class of Notes on the relevant Interest Payment Date; and
- (B) the remaining amount of the Mandatory Redemption Amount shall be applied in accordance with paragraphs (a) to (d) of Condition 6.11; and
- (ii) if the aggregate Principal Amounts Outstanding in respect of the Notes are less than 25% of the aggregate Principal Amounts Outstanding in respect of the Notes as at the Closing Date, the Mandatory Redemption Amount shall be applied in accordance with paragraphs (a) to (d) of Condition 6.11.

**Allocated Loan Amount** means, in relation to a Property, the amount which was determined by Eurohypo (in its capacity as the initial Senior Facility Agent) as at the date of the Senior Loan which is required to be applied in prepayment of the Senior Loan following a disposal of that Property.

### 6.3 Redemption for Taxation or Other Reasons

- (a) If the Issuer at any time satisfies the Note Trustee immediately prior to the giving of the notice referred to below that:

- (i) on the occasion of the next Interest Payment Date the Issuer would become subject to tax on its income in more than one jurisdiction or would be required to make any withholding or deduction from any payment of principal or interest in respect of any of the Notes, or the Issuer would suffer any withholding or deduction from any payment in respect of the Senior Loan, for or on account of any present or future tax, duty or charge of whatsoever nature incurred or levied by or on behalf of the Netherlands or any authority thereof or therein; or
- (ii) it has become unlawful in any applicable jurisdiction for the Issuer to perform any of its obligations under a Senior Finance Document or to maintain its participation in the Senior Loan,

then the Issuer shall inform the Note Trustee accordingly and may, in order to avoid the event described, arrange the substitution of a company incorporated in another jurisdiction approved in writing by the Note Trustee in accordance with Condition 12(k).

- (b) If the Issuer is unable to arrange such a substitution which would have the result of avoiding the event described above, then the Issuer shall, having given not less than 10 days' notice (or such shorter notice period as the Note Trustee may agree) to the Noteholders in accordance with Condition 15, redeem all (but not some only) of the Notes at their respective Principal Amounts Outstanding together with accrued interest on the next Interest Payment Date, provided that, prior to giving any such notice, the Issuer shall have satisfied the Note Trustee that it will have the funds, not subject to the interest of any other persons, required to fulfil its obligations hereunder in respect of the Notes and any amounts required under the Servicing Agreement and/or the Issuer Security Agreement to be paid *pari passu* with, or in priority to, the Notes and shall have delivered to the Note Trustee a certificate signed by the managing director of the Issuer stating that the event described above will apply on the occasion of the next Interest Payment Date and cannot be avoided by the Issuer using reasonable endeavours to arrange a substitution as aforesaid and that the Issuer will have the funds referred to above; and the Note 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.

#### **6.4 Mandatory Redemption in Whole or in Part**

If the Issuer receives a notice from the Borrower pursuant to the Credit Agreement that the Borrower intends to prepay all or part of the Senior Loan on or before the next Interest Payment Date, the Issuer will, having given not less than 10 days' notice to the Noteholders in accordance with Condition 15, redeem some or all of a specified Principal Amount Outstanding of the Notes equal to the principal amount of the Senior Loan being prepaid at their respective Principal Amount Outstanding together with accrued interest provided that, prior to giving any such notice, the Issuer shall have satisfied the Note Trustee that it has or will have the funds, not subject to the interest of any other persons, required to fulfil its obligations hereunder in respect of the Notes and any amounts required under the Servicing Agreement and/or the Issuer Security Agreement then to be paid *pari passu* with, or in priority to, the Notes and shall have delivered to the Note Trustee a certificate signed by the managing director of the Issuer stating that the Issuer will have such funds; and the Note Trustee shall accept the certificate as sufficient evidence of the satisfaction of such condition precedent and it shall be conclusive and binding on the Noteholders.

**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.



## **6.5 Redemption – Sale or Transfer of Senior Loan**

If the Mezzanine Lenders elect to purchase the Senior loan pursuant to the Priority Agreement or if the Senior Loan is sold or transferred (in whole or in part) pursuant to the Credit Agreement, the Issuer will, having given not more than 60 nor not less than 30 days' notice to the Note Trustee and the Noteholders in accordance with Condition 15, redeem all (but not some only) of the Notes at their respective Principal Amount Outstanding together with accrued interest on the next Interest Payment Date provided that, prior to giving any such notice, the Issuer shall have satisfied the Note Trustee that it has or will have the funds, not subject to the interest of any other persons, required to fulfil its obligations hereunder in respect of the Notes and any amounts required under the Servicing Agreement and/or the Issuer Security Agreement then to be paid *pari passu* with, or in priority to, the Notes and shall have delivered to the Note Trustee a certificate signed by the managing director of the Issuer stating that the Issuer will have such funds; and the Note Trustee shall accept the certificate as sufficient evidence of satisfaction of such condition precedent and it shall be conclusive and binding on the Noteholders.

## **6.6 Mandatory Redemption – Issue of Replacement Notes**

If Replacement Notes (as defined in Condition 16.2) are to be issued, the Issuer may, having given not more than 60 nor less than 30 days' notice to the Noteholders in accordance with Condition 15, on any Interest Payment Date redeem only the relevant Class or Classes of Notes to be replaced at a price equal to their Principal Amount Outstanding together with accrued interest provided that, prior to giving any such notice, the Issuer shall have satisfied the Note Trustee that it will have the funds, not subject to the interest of any other persons, required to fulfil its obligations hereunder in respect of the Notes and any amounts required under the Servicing Agreement and/or the Issuer Security Agreement then to be paid *pari passu* with, or in priority to, the Notes and shall have delivered to the Note Trustee a certificate signed by the managing director of the Issuer stating that the Issuer will have such funds; and the Note Trustee shall accept the certificate as sufficient evidence of the satisfaction of such condition precedent and it shall be conclusive and binding on the Noteholders.

## **6.7 Redemption – Loan Maturity Date**

The Issuer will give not more than 60 nor less than 30 days' notice to the Note Trustee and Noteholders in accordance with Condition 15 that it will redeem all (but not some only) of the Notes at their respective Principal Amount Outstanding together with accrued interest on the Interest Payment Date falling in February 2010, provided that, prior to giving any such notice, the Issuer shall have satisfied the Note Trustee that it has or will have the funds, not subject to the interest of any other persons, required to fulfil its obligations hereunder in respect of the Notes and any amounts required under the Servicing Agreement and/or the Issuer Security Agreement then to be paid *pari passu* with, or in priority to, the Notes and shall have delivered to the Note Trustee a certificate signed by the sole managing director of the Issuer stating that the Issuer will have such funds; and the Note Trustee shall accept the certificate as sufficient evidence of satisfaction of such condition precedent and it shall be conclusive and binding on the Noteholders.

## **6.8 Redemption – Proceeds of Foreclosure**

Upon receipt by the Issuer of any amount of principal payments received or recovered by or on behalf of the Issuer in respect of the Senior Loan as a result of foreclosure procedures or other actions taken in respect of the Senior Loan, the Issuer will, having given not more than 60 nor less than 30 days' notice to the Note Trustee and Noteholders in accordance with Condition 15, redeem some or all of the Notes at their respective Principal Amount Outstanding together with accrued interest on the next Interest Payment Date, provided that,



prior to giving any such notice, the Issuer shall have satisfied the Note Trustee that it has or will have the funds, not subject to the interest of any other persons, required to fulfil its obligations hereunder in respect of the Notes and any amounts required under the Servicing Agreement and/or the Issuer Security Agreement then to be paid *pari passu* with, or in priority to, the Notes and shall have delivered to the Note Trustee a certificate signed by the sole managing director of the Issuer stating that the Issuer will have such funds; and the Note Trustee shall accept the certificate as sufficient evidence of satisfaction of such condition precedent and it shall be conclusive and binding on the Noteholders.

## **6.9 Clean Up Call**

If, on any Interest Payment Date, the aggregate Principal Amount Outstanding under the Notes is less than or equal to 10 per cent. of the aggregate Principal Amount Outstanding of the Notes on the Closing Date, the Issuer may (but is not obliged), having given not more than 60 nor less than 30 days' notice to the Note Trustee and Noteholders in accordance with Condition 15, redeem all (but not some only) of the Notes at their respective Principal Amount Outstanding together with accrued but unpaid interest on the next Interest Payment Date.

## **6.10 Notice of Redemption**

Any notice referred to in Conditions 6.3 to 6.9 (inclusive) shall be irrevocable and, upon the expiration of such notice, the Issuer shall be bound to redeem the relevant Class of Notes in the amounts specified in these Conditions.

## **6.11 Application of Proceeds**

If the Issuer makes a redemption of Notes under any of Conditions 6.2 to 6.9 (inclusive), then the funds available for any such redemption will be applied as follows:

- (a) first, in redemption of the Class A Notes until the Principal Amount Outstanding of the Class A Notes is reduced to zero;
- (b) then, in redemption of the Class B Notes until the Principal Amount Outstanding of the Class B Notes is reduced to zero;
- (c) then, in redemption of the Class C Notes until the Principal Amount Outstanding of the Class C Notes is reduced to zero; and
- (d) finally, in redemption of the Class D Notes until the Principal Amount Outstanding of the Class D Notes is reduced to zero.

## **6.12 Purchase**

The Issuer shall not purchase Notes.

## **6.13 Cancellation**

All Notes redeemed in full will be cancelled forthwith and may not be reissued.

## **7. PAYMENTS**

- (a) Payments of principal and interest in respect of the Notes will be made in euro against presentation of the relevant Global Notes or Definitive Notes, Receipts and/or Coupons (as the case may be) at the specified office of the Paying Agent. Payments of principal and interest will in each case be made by euro cheque drawn on a bank in Amsterdam and posted in Amsterdam or, at the option of the holder, by transfer to a euro denominated account maintained by the payee with a branch of a bank in Amsterdam. A record of each

payment made, distinguishing between any payment of principal and any payment of interest, will be made on the relevant Global Note by the Paying Agent to which such Global Note was presented for the purpose of making such payment, and such record shall be *prima facie* evidence that the payment in question has been made. Payments of principal and interest in respect of the Notes will be subject in all cases to any fiscal or other laws and regulations applicable thereto and to normal banking practice. Upon the date on which any Definitive Note becomes due and repayable in full, all unmatured Receipts and Coupons appertaining to such Definitive Note (whether or not attached) shall become void and no payment shall be made in respect of such Coupons.

- (b) For so long as the Notes are in global form, each of the persons shown in the records of Euroclear or Clearstream, Luxembourg as being entitled to a particular principal amount of Notes will be entitled to receive any payment so made in respect of those Notes in accordance with the rules and procedures of Euroclear and/or, as the case may be, Clearstream, Luxembourg. None of the persons appearing from time to time in the records of Euroclear or Clearstream, Luxembourg as the holder of a Note of the relevant Class shall have any claim directly against the Issuer or the Note Trustee in respect of payments due on such Note whilst such Note is represented by a Global Note and the Issuer or the Note Trustee, as the case may be, shall be discharged by payment of the relevant amount to the bearer of the relevant Global Note.
- (c) If payment of principal is improperly withheld or refused on or in respect of any Note or part thereof, the interest which continues to accrue in respect of such Note in accordance with Condition 5 and the provisions of the Trust Deed will be paid against presentation of such Note at the specified office of any Paying Agent.
- (d) If the date for payment of any amount in respect of any Note, Receipt or Coupon is not a Payment Day, the holder thereof shall not be entitled to payment until the next following Payment Day and shall not be entitled to further payments of additional amounts by way of interest, principal or otherwise. In this Condition 7(d) the expression **Payment Day** means a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits) in the place of presentation and which is a Business Day.
- (e) If a Paying Agent makes a partial payment in respect of any Note presented to it for payment, such Paying Agent will endorse on the relevant Note a statement indicating the amount and date of such payment.
- (f) The initial Paying Agent and its initial specified office is listed at the end of these Conditions. The Issuer reserves the right, subject to the prior written approval of the Note Trustee, at any time to vary or terminate the appointment of the Paying Agent and to appoint additional or other Paying Agents. For as long as the Notes are listed on Euronext, the Issuer will at all times maintain a Paying Agent with a specified office in Amsterdam. The Issuer undertakes that it will ensure that it maintains a Paying Agent in a Member State of the European Union that is not obliged to withhold or deduct tax pursuant to European Council Directive 2003/48/EC or any other Directive implementing the conclusions of the ECOFIN Council meeting of 26-27 November, 2000 or any law implementing or complying with, or introduced in order to conform to such Directive. The Issuer will cause at least 30 days' notice of any change in or addition to the Paying Agent or their specified offices to be given in accordance with Condition 15.

## 8. PRESCRIPTION

Claims in respect of Notes, Receipts and Coupons shall become void unless made within five years of the appropriate Relevant Date. In this Condition, the **Relevant Date** means the date on which a payment first becomes due or (if the full amount of the moneys payable has not been duly received by the Paying Agent or the Note Trustee on or prior to such date) the date on which notice

that the full amount of such moneys has been received is duly given to the Noteholders in accordance with Condition 15.

## 9. TAXATION

All payments in respect of the Notes will be made without withholding or deduction for, or on account of, any present or future taxes, duties or charges of whatsoever nature unless the Issuer (or any Paying Agent) is required by applicable law to make any payment in respect of the Notes subject to any withholding or deduction for, or on account of, any such taxes, duties or charges. In that event, the Issuer or such Paying Agent (as the case may be) shall make such payment after such withholding or deduction has been made and shall account to the relevant authorities for the amount so required to be withheld or deducted. Neither the Issuer nor any such Paying Agent will be obliged to make any additional payments to Noteholders in respect of any such withholding or deduction.

## 10. EVENTS OF DEFAULT

- (a) The Note Trustee at its absolute discretion may, and if so requested in writing by the holders of not less than 25 per cent. in aggregate of the Principal Amount Outstanding of the Most Senior Class of Notes then outstanding or if so directed by an Extraordinary Resolution (as defined below) of the holders of the Most Senior Class of Notes then outstanding shall, (subject in each case to its being secured and/or indemnified to its satisfaction) give notice in writing (an **Acceleration Notice**) to the Issuer declaring the Notes to be due and repayable (and they shall forthwith become due and repayable) at any time after the happening of any of the following events (each, a **Note Event of Default**):
- (i) default being made for a period of three days in the payment of any principal of, or default is made for a period of five days in the payment of any interest on, any Note when and as the same ought to be paid in accordance with these Conditions; or
  - (ii) breach by the Issuer of any representation or warranty made by it in these Conditions, the Trust Deed or any of the other Transaction Documents to which it is a party and in any such case (except where the Note Trustee certifies that, in its opinion, such breach is incapable of remedy, when no notice will be required), such breach is continuing for a period of 30 days following the service by the Note Trustee on the Issuer of notice in writing requiring the same to be remedied; or
  - (iii) the Issuer failing duly to perform or observe any other obligation, condition or provision binding upon it under these Conditions, the Trust Deed or any of the other Transaction Documents to which it is a party and in any such case (except where the Note Trustee certifies that, in its opinion, such failure is incapable of remedy, when no notice will be required), such failure is continuing for a period of 30 days following the service by the Note Trustee on the Issuer of notice in writing requiring the same to be remedied; or
  - (iv) the Issuer, otherwise than for the purposes of a pre-approved amalgamation or reconstruction as is referred to in sub-paragraph (v) below, ceasing or, through an official action of the board of directors of the Issuer, threatening to cease to carry on business (or a substantial part thereof) or the Issuer being (or being deemed to be) unable to pay its debts as and when they fall due; or
  - (v) an order being made or an effective resolution being passed for the dissolution or winding-up of the Issuer or for the appointment of an administrator (*bewindvoerder*) of the Issuer, except a winding-up for the purposes of or pursuant to an amalgamation or reconstruction the terms of which have previously been approved in writing by an Extraordinary Resolution of the holders of the Most Senior Class of Notes then outstanding; or

- (vi) a conservatory attachment (*conservatoir beslag*) or an executory attachment (*executoriaal beslag*) on any part of the Issuer's assets is made and not discharged or released within a period of 20 days; or
- (vii) the Issuer makes an assignment for the benefit of, or enters into any general assignment (*akkoord*) with its creditors or the Issuer files a petition for a suspension of payments (*surséance van betaling*) or for bankruptcy (*faillissement*) or is declared bankrupt and such proceedings, petition or process (as the case may be) are not discharged or otherwise cease to apply within 15 days,

provided that in the case of each of the events described in sub-paragraphs (ii), (iii) and (iv) above, the Note 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.

- (b) Upon any declaration being made by the Note Trustee in accordance with paragraph (a) above that the Notes are due and repayable each Note shall thereby immediately become due and repayable at its Principal Amount Outstanding together with accrued interest as provided in the Trust Deed and the Issuer Security Agreement subject to the Post-Enforcement Priority of Payments.

## 11. FORECLOSURE

- (a) The Note Trustee may, at its discretion and without notice at any time and from time to time, take such proceedings and/or other action as it may think fit against or in relation to the Issuer to enforce the Issuer's obligations under the Notes or the provisions of any other Transaction Documents, the Notes and Coupons, provided that, subject to paragraph (c) below, foreclosure of the Issuer Security (provided an Acceleration Notice has been delivered pursuant to Condition 10(a)) shall be the only remedy available for the repayment of the Notes and the payment of accrued interest and, at any time after the Issuer Security has become enforceable in accordance with the terms of the Issuer Security Agreement, the Note Trustee may take such steps as it may think fit to foreclose the Issuer Security, but it shall not be bound to take any such proceedings, action or steps (including, but not limited to, the giving of any Acceleration Notice) unless it shall have been directed or requested to do so (a) by an Extraordinary Resolution of the holders of the Most Senior Class of Notes then outstanding or (b) in writing by the holders of at least 25 per cent. in aggregate Principal Amount Outstanding of the Most Senior Class of Notes then outstanding and, in each case, only if the Note Trustee has been secured and/or indemnified to its satisfaction against all actions, proceedings, claims, demands or other liabilities to which it may become liable as a result of taking such action.
- (b) Subject to paragraphs (c) and (d) below, no Noteholder shall be entitled to proceed directly against the Issuer or any other party to the Transaction Documents or to foreclose the Issuer Security unless the Note Trustee, having become bound so to do, fails to do so within a reasonable period and such failure is continuing and provided further that no such action or proceedings may be taken, unless and until (and then only to the extent that) the Issuer has assets sufficient to meet its claim in full having taken into account all other amounts which rank *pari passu* with or in priority to its liabilities to the relevant Noteholder.
- (c) If the Note Trustee has taken foreclosure action under the Issuer Security Agreement and distributed all of the resulting proceeds (including the proceeds of realising the security thereunder), then, to the extent that any amount is still owing to any Noteholder, the obligations of the Issuer in respect of such unpaid amounts shall be extinguished and each Noteholder shall agree to irrevocably waive its rights in respect of such unpaid amounts.

- (d) Neither the Noteholders nor the Note Trustee may take any action with respect to the commencement of any bankruptcy, winding-up, suspension of payments, reorganisation, arrangement, insolvency or liquidation proceeding against the Issuer.

## **12. MEETINGS OF NOTEHOLDERS, MODIFICATION, WAIVER, SUBSTITUTION AND NOTE TRUSTEES DISCRETIONS**

- (a) The Trust Deed contains provisions for convening meetings of Noteholders of any Class to consider any matter affecting their interests, including the sanctioning by Extraordinary Resolution of a modification of these Conditions or the provisions of any of the Transaction Documents or any other documents the rights and benefits of the Issuer in respect of which are comprised in the Issuer Security.
- (b) The quorum at any meeting of the Noteholders of any Class or Classes for passing an Extraordinary Resolution shall be one or more persons holding or representing over two-thirds in aggregate Principal Amount Outstanding of the Notes of the relevant Class or Classes then outstanding or, at any adjourned meeting, one or more persons being or representing the Noteholders of the relevant Class or Classes whatever the aggregate Principal Amount Outstanding of the Notes of the relevant Class or Classes so held or represented except that, at any meeting the business of which includes the sanctioning of a Basic Terms Modification the necessary quorum for passing an Extraordinary Resolution shall be one or more persons holding or representing not less than 75 per cent. or at any adjourned such meeting, not less than 33 per cent. in aggregate Principal Amount Outstanding of the Notes of the relevant Class or Classes for the time being outstanding.
- (c) An Extraordinary Resolution passed at any meeting of the Class A Noteholders shall be binding on all the Class B Noteholders, the Class C Noteholders and the Class D Noteholders, irrespective of its effect upon them except an Extraordinary Resolution to sanction a Basic Terms Modification (as defined below), which shall not take effect unless it shall have been sanctioned by an Extraordinary Resolution of the Class B Noteholders, the Class C Noteholders and the Class D Noteholders or the Note Trustee is of the opinion that it would not be materially prejudicial to the respective interests of the Class B Noteholders, the Class C Noteholders and the Class D Noteholders.
- (d) Without prejudice to paragraph (e) below, an Extraordinary Resolution passed at any meeting of Class B Noteholders (other than a sanctioning Extraordinary Resolution referred to above) shall not be effective unless it shall have been sanctioned by an Extraordinary Resolution of the Class A Noteholders or the Note Trustee is of the opinion that it would not be materially prejudicial to the interests of the Class A Noteholders.
- (e) An Extraordinary Resolution passed at any meeting of Class B Noteholders, which is effective in accordance with paragraph (d), shall be binding on all Class A Noteholders, Class B Noteholders, Class C Noteholders and Class D Noteholders, irrespective of its effect upon them except an Extraordinary Resolution to sanction a Basic Terms Modification, which shall not take effect unless it shall have been sanctioned by an Extraordinary Resolution of the Class C Noteholders and the Class D Noteholders or the Note Trustee is of the opinion that it would not be materially prejudicial to the respective interests of the Class C Noteholders and the Class D Noteholders.
- (f) Without prejudice to paragraph (g) below, an Extraordinary Resolution passed at any meeting of Class C Noteholders (other than a sanctioning Extraordinary Resolution referred to above) shall not be effective unless it shall have been sanctioned by an Extraordinary Resolution of the Class A Noteholders and the Class B Noteholders or the Note Trustee is of the opinion that it would not be materially prejudicial to the respective interests of the Class A Noteholders and the Class B Noteholders.



- (g) An Extraordinary Resolution passed at any meeting of Class C Noteholders, which is effective in accordance with paragraph (f), shall be binding on all Class A Noteholders, Class B Noteholders, Class C Noteholders and Class D Noteholders irrespective of its effect upon them except an Extraordinary Resolution to sanction a Basic Terms Modification, which shall not take effect unless it shall have been sanctioned by an Extraordinary Resolution of the Class D Noteholders or the Note Trustee is of the opinion that it would not be materially prejudicial to the interests of the Class D Noteholders.
- (h) Without prejudice to paragraph (i) below, an Extraordinary Resolution passed at any meeting of Class D Noteholders (other than a sanctioning Extraordinary Resolution referred to above) shall not be effective unless it shall have been sanctioned by an Extraordinary Resolution of the Class A Noteholders, the Class B Noteholders and the Class C Noteholders or the Note Trustee is of the opinion that it would not be materially prejudicial to the respective interests of the Class A Noteholders, the Class B Noteholders and the Class C Noteholders.
- (i) An Extraordinary Resolution passed at any meeting of Class D Noteholders, which is effective in accordance with paragraph (h), shall be binding on all Class A Noteholders, Class B Noteholders, Class C Noteholders and Class D Noteholders.
- (j) As used in these Conditions and the Trust Deed:

**Affiliate** means any company or other entity of which the Borrower is a Subsidiary, any other company or entity which is a Subsidiary of that company or entity and any Subsidiary of the Borrower;

**Basic Terms Modification** means, in respect of a Class of Notes:

- (a) a change in the amount payable or, where applicable, modification of the method of calculating the amount payable or modification of the date of payment or, where applicable, of the method of calculating the date of payment in respect of any principal or interest in respect of such Notes;
- (b) alteration of the currency in which payments under such Notes and the Coupons appertaining thereto are to be made;
- (c) alteration of the majority required to pass an Extraordinary Resolution;
- (d) the sanctioning of any such scheme or proposal in respect of such Notes as is described in paragraph 4.1(i) of Schedule 3 to the Trust Deed (Provisions for Meeting of Noteholders);
- (e) alteration of this definition or the provisos to paragraphs 3.5 and/or 3.8 of Schedule 3 to the Trust Deed (Provisions for Meeting of Noteholders);
- (f) alteration of the Pre-Enforcement Priority of Payments or the Post-Enforcement Priority of Payments; and
- (g) alteration of the Issuer Secured Assets or amendment to any of the documents relating to the Issuer Secured Assets or any other provision of the Issuer Security.

**Extraordinary Resolution** means a resolution passed at a meeting of any Class of Noteholders duly convened and held in accordance with the Trust Deed by a majority consisting of not less than 75 per cent. of the persons voting at that meeting upon a show of hands or if a poll is duly demanded by a majority consisting of not less than three fourths of the votes cast on such poll (and for the purposes of Conditions 4.3 and 4.4, any Notes held by, for the benefit of or on behalf of the Borrower and/or any one or more of its Affiliates will not be included in the quorum for voting purposes); and

**Subsidiary** means an entity of which a person has direct or indirect control or owns directly or indirectly more than 50 per cent. of the voting capital or similar right of ownership and



**control** for this purpose means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise.

- (k) The Note Trustee may agree, without the consent of the Noteholders, Receiptholders or the Couponholders, (i) to any modification of, or to the waiver or authorisation of any breach or proposed breach of, these Conditions, the Trust Deed or any of the other Transaction Documents, which is not, in the opinion of the Note Trustee, materially prejudicial to the interests of the Noteholders or (ii) to any modification of these Conditions or any of the Transaction Documents, which, in the Note Trustee's opinion, is of a formal, minor or technical nature or to correct a manifest error or an error which is, in the opinion of the Note Trustee, proven. The Note Trustee may also, without the consent of the Noteholders, the Receiptholders or the Couponholders, determine that any Note Event of Default shall not, or shall not subject to specified conditions, be treated as such. Any such modification, waiver, authorisation or determination shall be binding on the Noteholders, Receiptholders and the Couponholders and, unless the Note Trustee agrees otherwise, any such modification shall be notified to the Noteholders, the Receiptholders and the Couponholders in accordance with Condition 15 as soon as practicable thereafter.
- (l) The Note Trustee may agree, without the consent of the Noteholders, the Receiptholders or the Couponholders, to the substitution of another body corporate in place of the Issuer as principal debtor under the Trust Deed and the Notes, subject to (i) the Notes being unconditionally and irrevocably guaranteed by the Issuer (unless all or substantially all of the assets of the Issuer are transferred to such body corporate), (ii) such body corporate being a single purpose vehicle and undertaking itself to be bound by provisions corresponding to those set out in these Conditions, (iii) the Note Trustee being satisfied that the interests of the Noteholders will not be materially prejudiced thereby and (iv) certain other conditions set out in the Trust Deed being complied with (including the transfer of the Borrower Parallel Debt to such body corporate and the transfer of the obligations with respect to the undertaking given in respect of the Issuer Parallel Debt). Any such substitution shall be notified to the Noteholders, the Receiptholders and the Couponholders and the Rating Agencies in accordance with Condition 15. In the case of a substitution pursuant to this paragraph (l), the Note Trustee may in its absolute discretion agree, without the consent of the Noteholders, the Receiptholders or the Couponholders, to a change of the laws governing the Notes and/or any of the Transaction Documents provided that such change would not, in the opinion of the Note Trustee, be materially prejudicial to the interests of the Noteholders, the Receiptholders or the Couponholders. No such substitution shall take effect unless it applies to all the Notes then outstanding.

### **13. INDEMNIFICATION AND EXONERATION OF THE NOTE TRUSTEE**

- (a) The Trust Deed and certain of the Transaction Documents contain provisions governing the responsibility (and relief from responsibility) of the Note Trustee and providing for its indemnification in certain circumstances, including provisions relieving it from taking foreclosure proceedings or foreclosing the Issuer Security or taking any other action in relation to the Trust Deed or the other Transaction Documents unless secured and/or indemnified to its satisfaction. The Note Trustee will not be responsible for any loss, expense or liability which may be suffered as a result of any assets comprised in the Issuer Secured Assets, or any deeds or documents of title thereto, being uninsured or inadequately insured or being held by or to the order of Eurohypo or any agent or related company of Eurohypo or by clearing organisations or their operators or by intermediaries such as banks, brokers, depositories, warehousemen or other persons whether or not on behalf of the Note Trustee.
- (b) The Trust Deed contains provisions pursuant to which the Note Trustee or any of its related companies is entitled, *inter alia*, (i) to enter into business transactions with the Issuer and/or any other person who is a party to the Transaction Documents or whose obligations are comprised in the Issuer Secured Assets and/or any of their subsidiary or associated

companies and to act as trustee for the holders of any other securities issued by or relating to the Issuer and/or any other person who is a party to the Transaction Documents or whose obligations are comprised in the Issuer Secured Assets and/or any of their subsidiary or associated companies, (ii) to exercise and enforce its rights, comply with its obligations and perform its duties under or in relation to any such transactions or, as the case may be, any such trusteeship without regard to the interests of the Noteholders (except as specified therein) and (iii) to retain and not be liable to account for any profit made or any other amount or benefit received thereby or in connection therewith.

- (c) The Trust Deed also relieves the Note Trustee of liability for not having made or not having caused to be made on its behalf the searches, investigations and enquiries which a prudent chargee would normally have been likely to make in entering into the Issuer Security Agreement and the Borrower Security Agreements. The Note Trustee has no responsibility in relation to the legality, validity, sufficiency, adequacy and enforceability of the Issuer Security or the Transaction Documents. The Note Trustee will not be obliged to take any action which might result in its incurring personal liabilities unless secured and/or indemnified to its satisfaction or to supervise the performance by the Servicer or Special Servicer (as the case may be) or any other person of their obligations under the Transaction Documents and the Note Trustee shall assume, until it has notice in writing to the contrary, that all such persons are properly performing their duties.
- (d) The Trust Deed and certain of the other Transaction Documents contain other provisions limiting the responsibility, duties and liability of the Note Trustee.
- (e) The Trust Deed contains provisions pursuant to which the Noteholders may by Extraordinary Resolution of the holders of each Class of Notes remove the Note Trustee. The retirement or removal of the Note Trustee will not become effective until a successor trustee is appointed. The Note Trustee is entitled to appoint a successor trustee in the circumstances specified in the Trust Deed.

## **14. REPLACEMENT OF THE NOTES**

### **14.1 Definitive Notes and Coupons**

If a Definitive Note, Receipt, Coupon or Talon is mutilated, defaced, lost, stolen or destroyed, it may be replaced at the specified office of any Paying Agent. Replacement thereof will only be made on payment of such costs as may be incurred in connection therewith and on such terms as to evidence and indemnity as the Issuer and the relevant Paying Agent may reasonably require. If mutilated or defaced, the Definitive Note, Receipt, Coupon or Talon must be surrendered before a new one will be issued.

### **14.2 Global Notes**

If a Global Note is lost, stolen, mutilated, defaced or destroyed, it shall, upon satisfactory evidence of such loss, theft, mutilation, defacement or destruction being given to the Issuer and the Note Trustee, become void and a duly executed and authenticated replacement Global Note will be delivered by the Issuer to the Common Depositary only upon surrender, in the case of mutilation or defacement, of the relevant Global Note. Replacement thereof will only be made upon payment of such costs as may be incurred in connection therewith and on such terms as to evidence and indemnity as the Issuer and the Paying Agent may reasonably require.

## **15. NOTICE TO NOTEHOLDERS**

- (a) Any notice to the Noteholders shall be validly given if published (a) in at least one daily newspaper of wide circulation in the Netherlands and England, or, if all such newspapers shall cease to be published or timely publication therein shall not be practicable, in such

newspaper as the Note Trustee shall approve having a general circulation in Europe and (b) (for so long as the Notes are listed on Euronext and the rules of that exchange so require) in the English language in the Euronext Amsterdam Daily Official List (*Officiële Prijscourant*) of Euronext. 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 Note Trustee shall determine.

- (b) 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 Euronext, Euronext 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.
- (c) A copy of each notice given in accordance with this Condition 15 shall be provided to each of Fitch Ratings Ltd (**Fitch**), Moody's Investors Service Limited (**Moody's**) and Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc. (**S&P**) and, together with Fitch and Moody's, 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.
- (d) The Note Trustee shall be at liberty to sanction some other method of giving notice to the Noteholders or to a Class or category of them 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 Note Trustee shall require.

## 16. FURTHER ISSUES, REPLACEMENT NOTES AND NEW NOTES

### 16.1 Further Issues

The Issuer is at liberty from time to time without the consent of the Noteholders, Receiptholders or Couponholders, but subject always to the provisions of these Conditions and the Trust Deed to create and issue further Notes (the **Further Notes**) in bearer form (or represented by a global note in bearer form) carrying the same terms and conditions in all respects (except in relation to the issue date, the first Interest Period and the first 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:

- (a) 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;
- (b) any Further Notes are assigned the same ratings by the Rating Agencies as are then applicable to the corresponding Class of Notes then outstanding;
- (c) the Rating Agencies confirm that the respective ratings of each Class of Notes at that time outstanding will not be adversely affected as a result of such issue of Further Notes;
- (d) 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;

- (e) 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 Note Trustee and/or the Senior Security Agent by the Issuer and/or the Obligors, respectively, at the date of issue of the Further Notes (if applicable);
- (f) no Loan Event of Default has occurred and is continuing or would occur as a result of such issue of Further Notes;
- (g) the Issuer's liabilities in respect of such Further Notes are hedged to the satisfaction of the Rating Agencies then rating the Notes;
- (h) no Note Event of Default has occurred and is continuing or would occur as a result of such issue of Further Notes; and
- (i) application will be made to list the Further Notes on Euronext, or if the Notes then issued are no longer listed on Euronext, on such exchange, if any, on which the Notes then issued are then listed.

## 16.2 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, Receiptholders or Couponholders, to issue notes (**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 (a) the first Interest Period and (b) 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 6.7 and the conditions to the issue of Further Notes as set out in Condition 16.1(a), (b), (c) and (e) to (i) are met, *mutatis mutandis*, in respect of such issue of Replacement Notes and provided further that, for the purposes of this Condition 16.2, (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 swap 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 (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.

## 16.3 New Notes

The Issuer shall be at liberty, without the consent of the Noteholders, Receiptholders and the Couponholders (but subject always to the provisions of the Trust Deed), 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 (or represented by a global note in bearer form) which may rank *pari passu* with the Class A Notes or after the Class A Notes but ahead of or *pari passu* with the Class B Notes, after the Class B Notes but ahead of or *pari passu* with the Class C Notes or after the Class C Notes but ahead of or *pari passu* with the Class D Notes or after the Class D 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 Condition 16.1(a), and (c) to (i) 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.

#### **16.4 Supplemental trust deeds and security**

Any such Further Notes, Replacement Notes and New Notes will be constituted by a further deed or deeds supplemental to the Trust Deed and have the benefit of the Issuer Security pursuant to the Issuer Security Agreement as described in Condition 3.

#### **17. ADDITIONAL OBLIGATIONS**

For as long as the Notes are listed on the Listing on Eurolist by Euronext Amsterdam, the Issuer shall comply with the provisions set forth in Article 2.1.20 Section a-g of Schedule B of the Listing and Issuing Rules (Fondsenreglement) of Euronext Amsterdam N.V. or any amended form of the said provisions as in force at the date of the issue of the Notes.

#### **18. GOVERNING LAW**

The Trust Deed, the Notes, the Receipts and the Coupons are governed by, and will be construed in accordance with, Dutch law.

## TAXATION IN THE NETHERLANDS

### General

*The following summary describes the principal Netherlands tax consequences of the acquisition, holding, redemption and disposal of Notes, which term, for the purpose of this summary, includes Coupons, Talons and Receipts. This summary does not purport to be a comprehensive description of all Netherlands tax considerations that may be relevant to a decision to acquire, to hold, and to dispose of the Notes. Each prospective Noteholder should consult a professional adviser with respect to the tax consequences of an investment in the Notes. The discussion of certain Netherlands taxes set forth below is included for general information purposes only.*

*This summary is based on the Netherlands tax legislation, published case law, treaties, rules, regulations and similar documentation, in force as of the date of this Offering Circular, without prejudice to any amendments introduced at a later date and implemented with retroactive effect.*

*This summary does not address the Netherlands tax consequences of a Noteholder who holds a substantial interest (aanmerkelijk belang) in the Issuer, within the meaning of Chapter 4 of the Income Tax Act 2001. Generally speaking, a Noteholder holds a substantial interest in the Issuer, if such Noteholder, alone or together with his or her partner (statutory defined term) or certain other related persons, directly or indirectly, holds (i) an interest of 5 per cent or more of the total issued capital of the Issuer or of 5 per cent or more of the issued capital of a certain class of shares of the Issuer, (ii) rights to acquire, directly or indirectly, such interest or (iii) certain profit sharing rights in the Issuer.*

### Withholding Tax

No Netherlands withholding tax is due upon payments on the Notes.

### Corporate Income Tax and Individual Income Tax

#### *Residents of the Netherlands*

If the Noteholder is subject to Netherlands corporate income tax, income derived from the Notes and gains realised upon the redemption and disposal of the Notes are generally taxable in the Netherlands.

If the Noteholder is an individual, resident or deemed to be resident in the Netherlands for Netherlands tax purposes (including the individual Noteholder who has opted to be taxed as a resident of the Netherlands), the income derived from the Notes and the gains realised upon the redemption and disposal of the Notes are taxable at the progressive rates of the Income Tax Act 2001, if:

- (i) the Noteholder has an enterprise or an interest in an enterprise, to which enterprise the Notes are attributable; or
- (ii) such income or gains qualify as “income from miscellaneous activities” (*resultaat uit overige werkzaamheden*) within the meaning of Section 3.4 of the Income Tax Act 2001, which include activities with respect to the Notes that exceed “regular, active portfolio management” (*normaal, actief vermogensbeheer*).

If neither condition (i) nor condition (ii) applies to the individual Noteholder, the actual income derived from the Notes and the actual gains realised with respect to the Notes will not be taxable as such. Instead, such Noteholder will be taxed at a flat rate of 30 per cent. on deemed income from “savings and investments” (*sparen en beleggen*) within the meaning of Chapter 5 of the Income Tax Act 2001. This deemed income amounts to 4 per cent. per annum of the average of the individual’s “yield basis” (*rendementsgrondslag*) within the meaning of article 5.3 of the Income



Tax Act 2001 at the beginning of the calendar year and the individual's yield basis at the end of the calendar year, insofar the average exceeds a certain threshold. The fair market value of the Notes will be included in the individual's yield basis.

#### *Non-residents of the Netherlands*

A Noteholder who is not a resident nor deemed to be a resident of the Netherlands for Netherlands tax purposes (nor, if he or she is an individual, has opted to be taxed as a resident of the Netherlands) is not taxable in respect of income derived from the Notes and gains realised upon the redemption and disposal of the Notes, unless:

- (i) the Noteholder has an enterprise or an interest in an enterprise, that is, in whole or in part, carried on through a permanent establishment or a permanent representative in the Netherlands to which Netherlands permanent establishment or permanent representative the Notes are attributable, or
- (ii) the Noteholder is an individual and such income or gains qualify as "income from miscellaneous activities" (*resultaat uit overige werkzaamheden*) in the Netherlands within the meaning of Section 3.4 of the Income Tax Act 2001, which include activities in the Netherlands with respect to the Notes that exceed "regular, active portfolio management" (*normaal, actief vermogensbeheer*).

### **Gift and Inheritance Taxes**

#### *Residents of the Netherlands*

Generally, gift and inheritance taxes will be due in the Netherlands in respect of the acquisition of Notes by way of a gift by, or on the death of, a Noteholder who is a resident or deemed to be a resident of the Netherlands for the purposes of Netherlands gift and inheritance tax at the time of the gift or his or her death.

An individual of the Netherlands nationality is deemed to be a resident of the Netherlands for the purposes of the Netherlands gift and inheritance tax, if he or she has been resident in the Netherlands at any time during the ten years preceding the gift or his or her death. An individual of any other nationality is deemed to be a resident of the Netherlands for the purposes of the Netherlands gift and inheritance tax only if he or she has been residing in the Netherlands at any time during the twelve months preceding the time of the gift.

#### *Non-residents of the Netherlands*

No gift or inheritance taxes will arise in the Netherlands in respect of the acquisition of Notes by way of gift by, or on the death of, a Noteholder who is neither a resident nor deemed to be a resident of the Netherlands for the purposes of the Netherlands gift and inheritance tax, unless:

- (i) such Noteholder at the time of the gift has or at the time of his or her death had an enterprise or an interest in an enterprise that is or was, in whole or in part, carried on through a permanent establishment or a permanent representative in the Netherlands and to which Netherlands permanent establishment or permanent representative the Notes are or were attributable; or
- (ii) in the case of a gift of the Notes by an individual who at the date of the gift was neither a resident nor deemed to be a resident of the Netherlands, such individual dies within 180 days after the date of the gift, while at the time of his or her death, being a resident or deemed to be a resident of the Netherlands.

### **Other Taxes and Duties**

No Netherlands VAT, capital duty, registration tax, customs duty, transfer tax, stamp duty or any other similar documentary tax or duty, will be due in the Netherlands by a Noteholder in respect of or in connection with the subscription, issue, placement, allotment or delivery of the Notes.

### **EU Savings Directive**

On 3rd June, 2003, the European Council of Economics 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 a date not earlier than 1st 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).

It is expected that a number of third countries and territories including Switzerland will adopt similar measures (a withholding system in the case of Switzerland) with effect from the same date.

## SUBSCRIPTION AND SALE

Citigroup Global Markets Limited and Lehman Brothers International (Europe) (together, the **Joint Bookrunners**), pursuant to a subscription agreement on or prior to the Closing Date (the **Subscription Agreement**), between the Joint Bookrunners, the Issuer and Eurohypo, have agreed, jointly and severally, subject to certain conditions, to subscribe and pay 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 and the Class D 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 certain transactions exempt from the registration requirements of the Securities Act. Each of the Joint Bookrunners has agreed that, except as permitted by the Subscription Agreement, it will not offer, sell or deliver the Notes (a) as part of their distribution at any time or (b) otherwise until 40 days after the later of the commencement of the offering of the Notes and the Closing Date (for the purposes only of this section *Subscription and Sale*, the **Distribution Compliance Period**) within the United States or to, or for the account or benefit of, U.S. Persons and that it will have sent to each distributor, dealer or other person to which it sells Notes during the Distribution Compliance Period a confirmation or other notice setting forth the restrictions on offers and sales of the Notes within the United States or to, or for the account or benefit of, U.S. Persons. Terms used in this paragraph have the meanings given to them by Regulation S of the Securities Act.

In addition, until 40 days after the commencement of the offering of the Notes, an offer or sale of the Notes within the United States by a dealer, whether or not participating in the offering, may violate the registration requirements of the Securities Act.

The Notes are in bearer form and are subject to U.S. tax law requirements and may not be offered, sold or delivered within the United States or its possessions or to a United States person, except in certain transactions permitted by U.S. tax regulations. Terms used in the preceding sentence have the meanings given to them by the U.S. Internal Revenue Code of 1986 and regulations thereunder.

### United Kingdom

Each of the Joint Bookrunners has represented and agreed that:

- (a) 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 business or otherwise in circumstances which have not resulted and will not result in an offer to the public in the United Kingdom within the meaning of the Public Offers of Securities Regulations 1995;

- (b) it has complied and will comply with all applicable provisions of the Financial Services and Markets Act 2000 (**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 or sale of any Notes in circumstances in which section 21(1) of the FSMA does not apply to the Issuer.

## **France**

The Notes have not been offered or sold, directly, or indirectly to the public in the Republic of France and offers and sales of the Notes in France will be made only to qualified investors (*investisseurs qualifiés*) acting for their account as defined in and in accordance with Articles L.411-1 and L.411-2 of the French *Code Monétaire et Financier* and decree no. 98-880 dated 1 October 1998.

In addition, each Joint Bookrunner has represented and agreed that it has not distributed or caused to be distributed and will not distribute or cause to be distributed in the Republic of France this Offering Circular or any other offering material relating to the Notes other than to investors to whom offers and sales of the Notes in France may be made as described above and that this Offering Circular has not been submitted for approval (*Visa*) by the *Autorité des Marchés Financiers* and does not constitute a public offer for sale or subscription of securities in France. The Notes may only be issued or sold, directly or indirectly, to the public in France in accordance with Articles L.412-1 and L.621-8 of the French *Code Monétaire et Financier*.

## **Germany**

The Notes have not been and will not be offered, sold or publicly promoted or advertised in the Federal Republic of Germany other than in compliance with the German Securities Selling Prospectus Act (*Wertpapier-Verkaufsprospektgesetz*) of 13 December 1990, as amended, or any other laws applicable in the Federal Republic of Germany governing the issue, offering and sale of securities and no selling prospectus (*Verkaufsprospekt*) within the meaning of the German Securities Selling Prospectus Act has been or will be registered or published within the Federal Republic of Germany.

## **General**

Except for listing the Notes on the Listing on Eurolist by Euronext Amsterdam, 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 Offering Circular or any other material relating to the Issuer or the Notes in any jurisdiction where action for that purpose is required. This Offering Circular 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 Offering Circular 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 in compliance with applicable law and regulations.

## GENERAL INFORMATION

The issue of the Notes was authorised by resolution of the board of directors of the Issuer passed on 11th May, 2005.

It is expected that listing of the Notes on the Listing on Eurolist by Euronext Amsterdam will take place on or about 17th May, 2005, 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 euro and for delivery on the third working day after the day of the transaction.

The Notes have been accepted for clearance through Euroclear and Clearstream, Luxembourg as follows:

<b>Class of Notes</b>	<b>ISIN Code</b>	<b>Common Code</b>	<b>Fondscore</b>
Class A.....	XS0218487436	021848743	15312
Class B.....	XS0218489135	021848913	15313
Class C .....	XS0218490653	021849065	15314
Class D .....	XS0218492279	021849227	15315

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 Listing on Eurolist by Euronext Amsterdam, the most recently published audited annual accounts of the Issuer from time to time will be available at the specified offices of the Paying Agent in Amsterdam. The Issuer does not publish interim accounts.

The Issuer is not, and has not been, involved in any legal 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.

Since the date of its incorporation, the Issuer has entered into the Subscription Agreement, being a contract entered into other than in its ordinary course of business.

KPMG Accountants N.V., auditors of the Issuer, has given and not withdrawn its written consent to the inclusion of its report and references to its name in the form and context in which they are included.

Deloitte Accountants B.V., auditors of the Borrower, has given and not withdrawn its written consent to the inclusion of its report and references to its name in the form and context in which they are included.

DTZ Zadelhoff has given and not withdrawn its written consent to the inclusion of its report and references to its name in the form and context in which they are included.

Save as disclosed herein, since 13th April, 2005 (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.

The Issuer Security Agreement, the Trust Deed and the Borrower Security Agreements will provide that the Note Trustee and the Senior Security Agent (as applicable) may rely on reports or other information from professional advisors or other experts in accordance with the Issuer Security Agreement, the Trust Deed and the Borrower Security Agreements (as applicable), whether or not such report or other information, engagement letter or other document entered into by the Note Trustee or the Senior Security Agent (as applicable) and the relevant professional advisor or expert in connection therewith contains any limit on the liability of that relevant professional advisor or expert.

Copies of the following documents may be inspected during usual business hours on any week day (excluding Saturdays, Sundays, and public holidays) at the offices of the Issuer at Olympic Plaza, Fred Roeskestraat 123, 1076 EE Amsterdam, The Netherlands and at the specified offices of the Paying Agent in Amsterdam:

- (a) the Articles of Association of the Issuer;
- (b) the Subscription Agreement; and
- (c) the following documents (together with the Subscription Agreement, the **Transaction Documents**):
  - (i) the Trust Deed;
  - (ii) the Credit Agreement;
  - (iii) the Portfolio Obligations Agreement;
  - (iv) the Borrower Security Agreements;
  - (v) the Issuer Security Agreement;
  - (vi) the Servicing Agreement;
  - (vii) the Account Bank Agreement;
  - (viii) the Issuer Corporate Services Agreement;
  - (ix) the Trustee Corporate Services Agreement;
  - (x) the Liquidity Facility Agreement;
  - (xi) the Agency Agreement;
  - (xii) the Master Definitions Schedule; and
  - (xiii) the Loan Transfer Agreement.



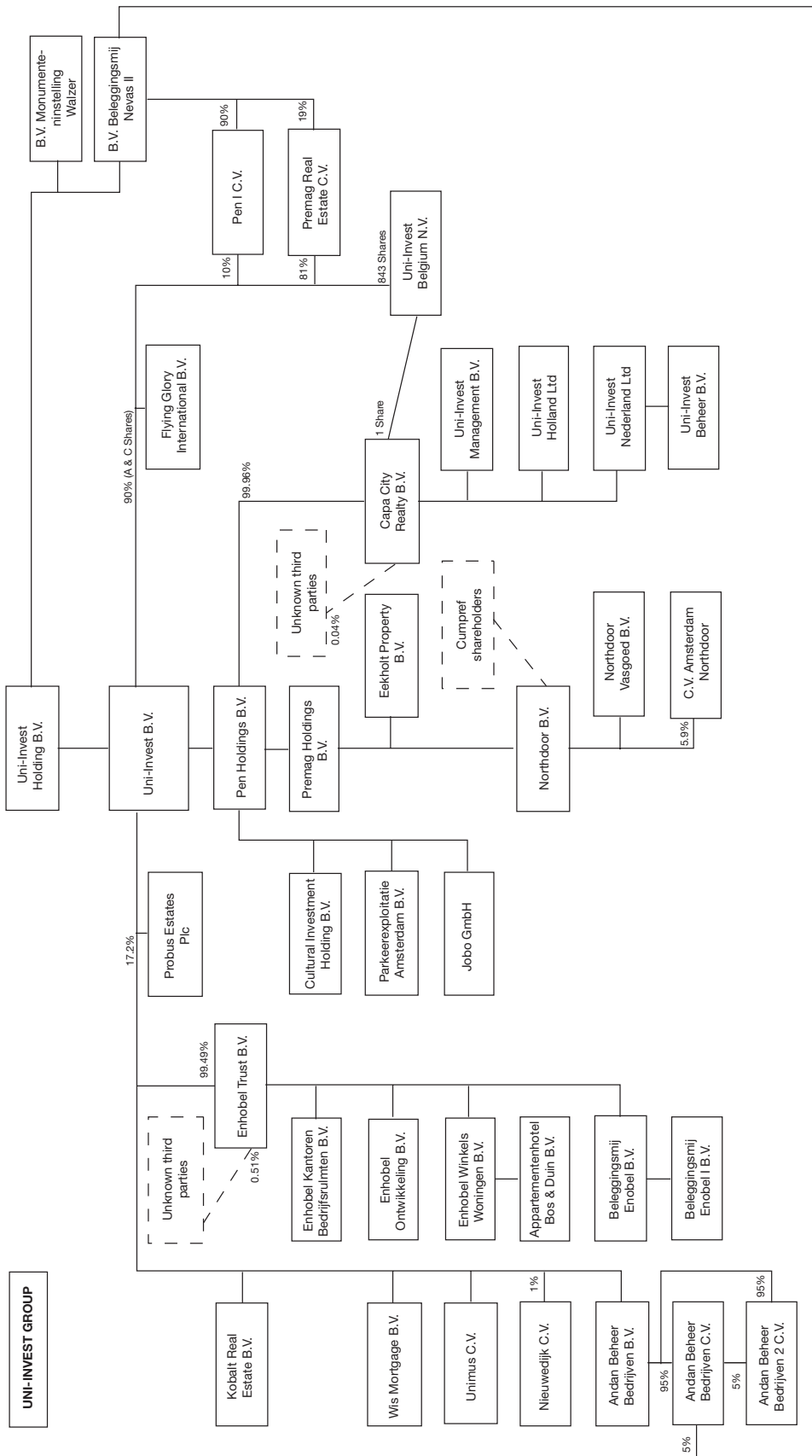
## APPENDIX A

### KEY FIGURES IN RESPECT OF THE BORROWER GROUP

	2004	2003	2002	2001	2000
<b>Results (in EUR 1,000)</b>					
Operating income (excl. operating costs) .....	137,567	146,366	338,268	167,493	191,042
Operating costs .....	17,361	19,194	16,401	12,462	12,612
Management costs .....	6,487	59,892	11,913	6,656	6,800
Cost of debt .....	93,417	65,846	49,274	49,987	49,366
Result after taxes .....	21,362	2,408	252,263	96,376	116,187
<b>Balance sheet information (in EUR 1,000)</b>					
Investments .....	1,643,353	1,850,651	1,954,436	1,818,102	1,563,996
Fixed assets .....	739	893	1,861	1,469	1,598
Receivables .....	37,403	232,653	9,232	20,341	38,965
Cash .....	31,255	72,266	15,021	11,306	6,775
Group equity .....	348,104	530,808	1,067,138	877,864	801,768
Provision for taxes .....	40,425	48,647	20,147	12,959	12,363
Long term debt .....	1,279,487	1,525,915	824,859	871,379	713,285
Short term debt .....	44,734	51,093	68,406	89,016	83,918
Balance sheet total .....	1,712,750	2,156,463	1,980,550	1,851,218	1,611,334
Number of ordinary shares end of financial year .....	71,741,623	71,687,243	69,338,862	66,627,512	61,148,629
<b>Investments in property (in EUR 1,000)</b>					
Offices .....	1,112,841	1,208,723	1,235,687	1,140,355	1,027,277
Retail .....	209,178	284,802	300,019	286,270	289,693
Industrial .....	292,444	340,146	369,087	318,309	197,794
Residential .....	2,200	7,012	7,003	14,680	14,612
Total .....	1,616,663	1,840,683	1,911,796	1,759,614	1,529,376

## APPENDIX B

### BORROWER GROUP STRUCTURE CHART



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