

**DATED 22-11-2018**

**LOAN NOTE INSTRUMENT**

**PROJECT 0217 3.8MIL 5 YEARS**

constituting

Up to £3800000 average 10% Fixed Rate Convertible Secured Loan Notes 2023

**DOLPHIN CAPITAL 80. PROJEKT GMBH & CO. KG**

THIS INSTRUMENT is dated 22-11-2018

## **PARTY**

Dolphin Capital 80. Projekt GmbH & Co. KG limited partnership under German Law registered in the local court of Hannover with registered seat of business in Kolkwiesen 68, 30851 Langenhagen, Hanover, Germany ("the **Company**").

## **BACKGROUND**

The Company has, by resolution of its board of directors resolved to create up to a maximum nominal amount of £3800000 average 10% fixed rate Secured Convertible Loan Notes 2023, to be constituted in the manner set out below.

## **AGREED TERMS**

### **1. DEFINITIONS AND INTERPRETATION**

1.1 The definitions and rules of interpretation in this clause apply in this instrument.

**"Application Form"** the form of application to subscribe for the Notes, in a form approved by the Company;

**"Business Day"** any day, other than a Saturday or Sunday or English bank holiday;

**"Conditions"** the conditions set out in Schedule 2 as from time to time amended and **"Condition"** shall be construed accordingly;

**"Conversion"** has the meaning given in Schedule 6;

**"Conversion Price"** has the meaning given in Schedule 6;

**"Conversion Shares"** has the meaning given in Schedule 6;

**"Directors"** the board of directors of the Company for the time being; **"Event of Default"** any of those events specified in clause 9;

**"Group"** at any time, the Company, any subsidiary or holding company of the Company and any subsidiary of any such holding company, from time to time (and member of the Group shall be construed accordingly);

**"Notary"** means Jan Rosentreter, or a substitute German law notary, who shall register the title of the Company to the Security;

**"Noteholder"** each person for the time being entered in the Register as a holder of any Notes;

**"Notes"** up to £3800000 average 10% fixed rate Secured Convertible Loan Notes 2023 constituted by this instrument or, as the case may be, the amount of such loan notes for the time being issued and outstanding;

**"Offer Funds"** the monies sent to the Notary together with the Offer Letter in respect of the Notes being subscribed for under the Offer Letter;

**"Offer Letter"** a letter from the Company to a potential Noteholder dealing with the mechanics for subscription of the Notes which the potential Noteholder completes and returns to the Company specifying the amount of Notes they wish

to subscribe for. It also confirms that the subscription monies will be returned by the Company if the Notes are not issued within 14 days;

**“Property”** Project as detailed in appendix A

**“Register”** the register of Noteholders (provisions relating to which are set out in clause 8);

**“Repayment Date”** means the later of 22-11-2023, being 5 years from the date on which this Instrument is executed or the date falling 5 years from the date of issue of the certificate for the Notes to the relevant Noteholder (being the date appearing on such certificate, in the absence of manifest error);

**“Security”** a land charge, held by the Security Trustee on the terms of Schedule 5;

**“Security Trustee”** Ladon Intertrust Treuhandgesellschaft mbH, or the Notary, who (in each case) is appointed as security trustee for the Noteholders on the terms of the Security Trust Agreement;

**“Security Trustee Agreement”** the agreement to be entered into between the Noteholders and the Security Trustee in the form set out in Schedule 5;

**“Shares”** the shares in the capital of the Company;

**“Special Resolution”** a resolution passed at a meeting of the Noteholders duly convened and held in accordance with the provisions of this instrument and carried by a majority consisting of not less than 75% of the persons voting at such meeting upon a show of hands or, if a poll is demanded, by a majority consisting of not less than 75% of the votes given on such poll.

1.2 Any reference in this instrument to:

1.2.1 the **assets** of any person shall be construed as a reference to all or any part of its business, undertaking, property, assets, revenues (including any right to receive revenues) and uncalled capital;

1.2.1 an **encumbrance** shall be construed as a reference to a mortgage, charge, assignment, pledge, lien (save as arising in the ordinary course of business), hypothecation, right of set-off (save as arising under the general law for the protection of certain classes of creditors) or trust arrangement for the purpose of and having a similar effect to the granting of security, or other security interest of any kind;

1.2.2 **indebtedness** shall be construed as a reference to any obligation for the payment or repayment of money, whether as principal or as surety and whether present or future, actual or contingent;

1.2.3 this **instrument** or to any other instrument, agreement or document shall, unless the context otherwise requires, be construed as reference to this instrument or such other instrument, agreement or document as the

same may from time to time be amended, varied, supplemented or novated, in each case, in accordance with its terms;

- 1.2.4 a **month** shall be construed as a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month save that, where any such period would otherwise end on a day which is not a Business Day, it shall end on the next Business Day, unless that day falls in the calendar month succeeding that in which it would otherwise have ended, in which case it shall end on the preceding Business Day provided that, if a period starts on the last Business Day in a calendar month or if there is no numerically corresponding day in the month in which that period ends, that period shall end on the last Business Day in that later month;
  - 1.2.5 a **person** shall be construed as a reference to any individual, firm, company or other body corporate, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) and, respectively, wherever incorporated or established;
  - 1.2.6 **repayment** includes redemption and vice versa and the words **repay, redeem, repayable, redeemed** and **repaid** shall be construed accordingly;
  - 1.2.7 a **subsidiary** of any person shall be construed as a reference to any person which is, at any time, a subsidiary within the meaning of section 1159 of the Companies Act 2006 of that first-mentioned person;
  - 1.2.8 **tax** shall be construed so as to include any present and future tax, levy, impost, deduction, withholding, duty or other charge of a similar nature (including, without limitation, any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same);
  - 1.2.9 the **winding-up, dissolution** or **administration** of a person shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such person is incorporated or of any jurisdiction in which such person carries on business; and
  - 1.2.10 **£** denotes the lawful currency of the United Kingdom.
- 1.3 References to any statute or statutory provision shall include references to such statute or statutory provision as in force at the date of this instrument and as subsequently re-enacted or consolidated and shall include references to any statute or statutory provision of which it is a re-enactment or consolidation.
  - 1.4 References to any statute or statutory provision which is not applicable to the Company because the Company is subject to the statutes and laws of a different jurisdiction shall be deemed to substituted by and refer to any statute or statutory provision under the laws of the jurisdiction of the Company which is analogous to or has a substantially similar effect.

- 1.5 In construing this instrument general words introduced by the word **other** shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things and general words followed by the word **including** shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words.
- 1.6 All the provisions of this instrument are severable and distinct from one another and the illegality, invalidity or unenforceability of any provision of this instrument under the law of any jurisdiction shall not affect its validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision.
- 1.7 References to the Notes include references to all and/or any of the Notes.
- 1.8 The headings in this instrument are inserted for convenience only and shall not affect construction or interpretation and references to a clause, schedule, condition or paragraph are (unless otherwise stated) to a clause or schedule in this instrument and to a condition or a paragraph of the relevant schedule, respectively.

## **2. AMOUNT OF NOTES**

The principal amount of the Notes is limited to £3800000

## **3. DESCRIPTION OF NOTES**

The Notes shall be known as 3800000 average 10% fixed rate Secured Convertible Loan Notes 2023 and shall be issued in integral multiples of £10,000 by the Company or such other amount as expressly agreed by the Company

## **4. STATUS OF NOTES**

- 4.1 The whole of the Notes when issued shall rank as a secured obligation of the Company for the due and punctual payment of the principal and interest in respect of them and performance of all the obligations of the Company with respect to them. (so far as not converted under schedule 6).
- 4.2 The Notes when issued shall rank *pari passu* equally and rateably without discrimination or preference among themselves.

## **5. REPAYMENT OF NOTES**

- 5.1 When the Notes become payable in accordance with the provisions of this instrument, the Company shall pay to the Noteholders the full principal amount of the Notes to be repaid together with any accrued interest on such Notes (less any interest already paid and tax which the Company is required by law to deduct or withhold from such payment) up to and including the date of payment.
- 5.2 All payments under this instrument, whether of principal, interest or otherwise, shall be made by the Company to the Noteholders entitled to such payments as provided in paragraph 5 of Schedule 3.
- 5.3 Where any payment to a Noteholder, whether of principal, interest or otherwise, is due in accordance with the terms of this instrument on a day which is not a Business Day, payment shall take place on the next succeeding Business Day. If that next succeeding Business Day is in the month following the month in which payment would otherwise be made, payment shall take place on the immediately preceding Business Day.

## **6. INTEREST ON NOTES**

Until the Notes are repaid by the Company or converted into Conversion Shares in accordance with the provisions of this instrument, interest shall accrue and be paid on the principal amount of the Notes which are outstanding at the rate and in the manner set out in the Conditions.

## **7. CERTIFICATES**

- 7.1 Following receipt by or on behalf of the Company of:
  - 7.1.1 a signed Offer Letter; and
  - 7.1.2 the Offer Funds to the escrow account or account of the Security Trustee as specified in the Application Form; and
  - 7.1.3 a signed Application Form,a certificate (as described below) shall be issued to the Noteholder on the date which the Security is registered.
- 7.2 Each certificate for Notes shall:
  - 7.2.1 bear a denoting number;
  - 7.2.2 be issued to a Noteholder as a deed, substantially in the form set out in Schedule 1; and
  - 7.2.3 have the Conditions endorsed on it.

- 7.3 Each Noteholder shall be entitled to receive without charge one certificate for the Notes registered in his name.
- 7.4 The Company shall not be bound to register more than four persons as the joint holders of any Notes and, in the case of Notes held jointly by several persons, the Company shall not be bound to issue more than one certificate. Delivery of a certificate to the person who is first named in the Register as Noteholder shall be sufficient delivery to all joint holders of the Notes in respect of which such certificate has been delivered.
- 7.5 When a Noteholder redeems part only of his Notes, the old certificate shall be cancelled and a new certificate for the balance of such Notes shall be issued without charge.

## **8. REGISTER**

- 8.1 The Company shall, at all times, keep a Register at its registered office (or at such other place as the Company may from time to time have appointed for the purpose and have notified to the Noteholders).
- 8.2 The Register shall contain the following details:
- 8.2.1 the names and addresses of the Noteholders for the time being;
  - 8.2.2 the principal amount of the Notes held by each Noteholder;
  - 8.2.3 the date at which the name of each Noteholder is entered in respect of the Notes registered in his name;
  - 8.2.4 the date of issue of each Note.
- 8.3 Any change of name or address by any Noteholder which is notified to the Company at its registered office address above shall be entered in the Register.
- 8.4 Any Noteholder may on reasonable notice request a copy of the Register.

## **9. DEFAULT**

The following are Events of Default:

- 9.1.1 **“Non-payment”**: The Company fails to pay any principal or interest on any of the Notes within 10 Business Days after the due date for payment thereof;
- 9.1.2 **“Breach of undertaking”**: The Company fails duly to perform or comply with any obligation (other than an obligation to pay principal or interest in respect of the Notes) expressed to be assumed by it in this instrument

and such failure continues for 10 Business Days after written notice has been given by any Noteholder requiring remedy thereof;

- 9.1.3 **“Insolvency”**: The Company or any member of the Group is (or is, or could be, deemed by law or a court to be) insolvent or unable to pay its debts (as defined in section 123 of the Insolvency Act 1986) or in § 17 para 2 of the German Insolvency Ordinance (*Insolvenzordnung*)), stops, suspends or threatens to stop or suspend payment of all or any material part of its indebtedness or commences negotiations with any one or more of its creditors with a view to the general readjustment or re-scheduling of all or any material part of its indebtedness or makes a general assignment for the benefit of, or composition with, its creditors (or any class of its creditors) or a moratorium is agreed or declared in respect of, or affecting, all or a material part of its indebtedness;
- 9.1.4 **“Enforcement proceedings”**: A distress, attachment, execution or other legal process is levied, enforced or sued out on or against all or any part of the assets of the Company or any member of the Group and is not discharged or stayed within 21 days;
- 9.1.5 **“Winding-up”**: The Company takes any corporate action or other steps are taken or legal or other proceedings are started for its winding-up, dissolution or re-organisation (other than for the purposes of a bona fide, solvent scheme of reconstruction or amalgamation previously approved by Special Resolution) or for the appointment of a receiver, administrator, administrative receiver, liquidator, trustee or similar officer of it or of any or all of its assets;
- 9.1.6 **“Analogous proceedings”**: Anything analogous to or having a substantially similar effect to any of the events specified in clause 9.1.3 to clause 9.1.5 inclusive shall occur under the laws of any applicable jurisdiction;
- 9.1.7 **“Encumbrance enforceable”**: Any encumbrance on or over the assets of the Company or any member of the Group becomes enforceable and any step (including the taking of possession or the appointment of a receiver, manager or similar person) is taken to enforce that encumbrance;
- 9.1.8 **“Cessation of business”**: The Company or any member of the Group ceases to carry on the business it carries on at the date of this instrument or a substantial part thereof; and
- 9.1.9 **“Illegality”**: It is or becomes or will become unlawful for the Company to perform or comply with any of its obligations under this instrument, or any such obligation is not or ceases to be legal, valid and binding.

## 10. ACCELERATION



If, at any time and for any reason, any Event of Default has occurred and is not remedied or waived, the Noteholders may by Special Resolution or by written notice to the Company from Noteholders holding more than 75% in nominal value of the Notes then issued and outstanding, at any time while such Event of Default remains unremedied and has not been waived by a Special Resolution, direct that the principal amount of all Notes, all unpaid accrued interest and any other sum then payable on such Notes shall become due and payable immediately. If the Noteholders give such a direction under this clause, then the principal amount of all Notes, all unpaid accrued interest and any other sum then payable on such Notes (in each case less any applicable taxes) shall be immediately due and payable by the Company and the Company shall immediately pay or repay such amounts to the Noteholders.

## **11. SECURITY**

11.1 The Notes will be secured by the Security which shall be held by the Security Trustee as security for the Noteholders, and may be dealt with in accordance with the provisions of Schedule 5.

11.2 The Security Trustee shall be subject to the conditions set out in the Security Trust Agreement.

## **12. NO SET-OFF**

Payments of principal and interest under this instrument shall be paid by the Company to the Noteholders without any deduction or withholding (whether in respect of any set-off, counterclaim, duties, taxes or otherwise whatsoever) unless the deduction or withholding is required by law.

## **13. MEETINGS OF NOTEHOLDERS**

The provisions for meetings of the Noteholders set out in Schedule 4 shall be deemed to be incorporated in this instrument and shall be binding on the Company and the Noteholders and on all persons claiming through or under them respectively.

## **14. NO TRANSFER**

The Notes will not be capable of being transferred by the Noteholder, save as provided by the Conditions. The Obligation to repay the principal and interest due under the Notes may be transferred by written notice given to the Noteholder by the Company, provided that either equivalent security (in value, as determined by an independent valuer) is also in place in favour of the Noteholders or a Conversion Notice has been served under Schedule 6, prior to or at the same time as the assignment of obligations. The Notes shall not be capable of being dealt in or on any stock exchange in the United Kingdom or elsewhere and no

application has been or shall be made to any stock exchange for permission to deal in or for an official or other quotation for the Notes.

## **15. ENFORCEMENT**

- 15.1 From and after the date of this instrument and so long as any amount is payable by the Company in respect of the Notes, the Company undertakes that it shall duly perform and observe the obligations on its part contained in this instrument.
- 15.2 The Notes shall be held subject to and with the benefit of the provisions of this instrument, the Conditions and the schedules (all of which shall be deemed to be incorporated in this instrument). All such provisions shall be binding on the Company and the Noteholders and all persons claiming through or under them respectively, and shall ensure for the benefit of all Noteholders.
- 15.3 Each Noteholder shall be entitled to sue for the performance and observance of the provisions of this instrument so far as his holding of Notes is concerned. No other person shall have any right to enforce any term or condition of this instrument under the Contracts (Rights of Third Parties) Act 1999.

## **16. MODIFICATION**

The provisions of this instrument and the Conditions and the rights of the Noteholders may from time to time be modified, abrogated or compromised in any respect (including in any manner set out in paragraph 16.1 of Schedule 4) with the sanction of a Special Resolution and with the consent of the Company.

## **17. DATA PROTECTION**

- 17.1 The Company will comply with all applicable requirements of the Data Protection Legislation. This Clause is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. For these purposes, Data Protection Legislation means: the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the GDPR and any other directly applicable European Union regulation relating to privacy, and GDPR means: General Data Protection Regulation ((EU) 2016/679).
- 17.2 The Company will use any personal information a Noteholder provides to:
- 17.2.1 Process applications to become a Noteholder;
  - 17.2.2 Administer and deal with any queries from Noteholders and other interested parties in respect of the Notes;
  - 17.2.3 Process payments in respect of the Notes; and
  - 17.2.4 Inform Noteholders about similar products or services that the Company and members of its group, and potentially (where consent has been given) other

providers of similar products and services, but any Noteholder may stop receiving these at any time by contacting us.

- 17.3 Further details of how we will process personal information are set out in our Privacy Policy, which is available at:

<http://www.uk.dtintroducers.com/resources/content/files/Privacy%20Policy%20-%20May%202018.pdf>

## **18. GOVERNING LAW AND JURISDICTION**

- 17.1 This instrument and the Notes and any dispute or claim arising out of or in connection with any of them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the law of England and Wales.
- 17.2 The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this instrument or any Note or their subject matter or formation (including non-contractual disputes or claims).

This instrument has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

## **Schedule 1 Form of note**

**Certificate No. [NUMBER]**

**Date of Issue**

**Amount £3800000**

**Dolphin Capital 80. Projekt GmbH & Co. KG**

**£3800000 average 10% FIXED RATE**  
**SECURED CONVERTIBLE LOAN NOTES 2023**

Created and issued pursuant to a resolution of the board of directors of the Company passed on 22-11-2018.

**THIS IS TO CERTIFY THAT** [NAME OF NOTEHOLDER] is the registered holder of ( ) of the £3800000 average 10% fixed rate Secured Convertible Loan Notes 2023 constituted by an instrument entered into by the Company on 22-11-2018 (“**Instrument**”). Such Notes are issued with the benefit of and subject to the provisions contained in the Instrument and the Conditions endorsed hereon.

1. The Notes are repayable in accordance with Condition 1.
2. Any change of address of the Noteholder(s) must be notified in writing signed by the Noteholder(s) to the Company at its registered office from time to time.
3. The Notes are not transferable but are convertible, in accordance with the terms of the Conditions and the Instrument.
4. Words and expressions defined in the Instrument shall bear the same meaning in this Certificate and in the Conditions endorsed hereon.
5. The Notes and any dispute or claim arising out of or in connection with any of them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the law of England and Wales.
6. This Certificate has been executed as a deed and is delivered and takes effect on its date of issue stated at the beginning of it.

Executed as a deed by Dolphin Capital .80 Projekt GmbH & Co. KG

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Name: Charles Smethurst

Title: Duly authorised for and on behalf of the managing director of its general partner (Komplementär) DT Projektholding GmbH

## **Schedule 2 The Conditions**

### **1. REPAYMENT**

On the Repayment Date, the Company shall repay the principal amount of Notes then outstanding to the Noteholders, together with accrued and unpaid interest (less any interest already paid and tax required by law to be deducted or withheld from such payment) accrued on the Notes up to (and including) the date of such repayment by the Company.

### **2. VOLUNTARY EARLY REPAYMENT**

- 2.1 The Company may at any time, by giving a Noteholder (or the Noteholders as a group) not less than 5 days written notice, repay (so far as not converted into Shares in accordance with these Conditions) the principal amount of all or a portion of the Notes (such portion being the amount of £10,000 or integral multiples thereof) on the date specified in such notice or may at any time and in any portion, Convert the Notes in accordance with Schedule 6 (which shall constitute a redemption of such Notes).
- 2.2 The Company shall also, unless otherwise agreed with the relevant Noteholder(s) pay to the Noteholders all unpaid interest accrued on the Notes to be redeemed up to and including the date of such redemption (in each case less any taxes required by law to be deducted or withheld from such payments).
- 2.3 Any payment made under the provisions of Condition 2.1 shall be treated as reducing the amount of the repayments under Condition 1 proportionately, or, if otherwise agreed with the relevant Noteholder(s), in such amount as is agreed.
- 2.4 Any redemption of the Notes under the provisions of Condition 2.1 which is made to the Noteholders as a group shall be made pro rata to the holdings of all Noteholders.

### **3. CANCELLATION**

All Notes repaid, prepaid or purchased by the Company shall be cancelled and the Company shall not be entitled to re-issue the same.

#### **4. PAYMENT OF INTEREST**

##### **4.1 OPTION A**

Until the Notes are repaid or converted into Conversion Shares in accordance with Schedule 6, interest on the principal amount of the Notes outstanding from time to time shall accrue at the rate of average 10% per annum at the end of each half-year term. The Company shall pay pay accrued interest in cash, in arrears on a 6 monthly basis to the persons who were registered as Noteholders at the close of business on the relevant Repayment Date.

##### **Option B**

Until the Notes are repaid or converted into Conversion Shares in accordance with Schedule 6, interest on the principal amount of the Notes outstanding from time to time shall accrue at the rate of 10% per annum(non compounded) at the end of each year. An additional 10% bonus will be paid at the end of the five year term bringing the total return received by the client to 60%. The Company shall pay accrued interest in cash, in arrears to the persons who were registered as Noteholders at the close of business on the relevant Repayment Date.

Interest shall be calculated on the basis of the actual number of days elapsed in the relevant period and a 365 day year.

The option applicable to a given Noteholder shall be the option specified on that Noteholder's Application Form.

4.2 If the Company becomes in default of its obligation to pay any amount of principal on any Note outstanding on maturity when such amount is due in accordance with clause 9 of this Instrument, interest at the rate applicable under these Conditions plus 1% per annum shall accrue on the unpaid amount from the due date until the date of payment. To avoid doubt, if and to the extent that payment is made within any applicable grace period stated within clause 9 of this Instrument, interest at the additional rate will not accrue.

4.3 If the Company becomes in default of its obligation to pay any amount of interest on any Note outstanding prior to maturity when such amount is due in accordance with clause 9 of this Instrument, interest shall continue to accrue at the rate applicable under Condition 4.1 from the due date until the date of payment.

4.4 Interest on any Notes repaid by the Company shall cease to accrue as from the date of such repayment. Conversion of the Notes into Conversion Shares shall be deemed to constitute repayment of the Notes.

## **5. DEALINGS**

The Notes shall not be capable of being dealt in or on any stock exchange in the United Kingdom or elsewhere and no application has been or shall be made to any stock exchange for permission to deal in or for an official or other quotation for the Notes. The Notes may be converted into Conversion Shares in accordance with Schedule 6.

## **6. NOTICES**

Any Noteholder described in the Register as being at an address outside the United Kingdom but who shall from time to time give to the Company an address within the United Kingdom at which any notice may be served upon him shall be entitled to have notice served on him at such address. Save as otherwise provided in this Condition 6, no Noteholder other than a Noteholder described in the Register as being at an address within the United Kingdom shall be entitled to receive any notice.

## **7. PURPOSE**

The Company shall only use sums received on the issue of the Notes for the purposes of purchasing and developing the Property, including all purchase, building and development related costs together with all marketing costs associated with the development of the Property.



## **Schedule 3 Provisions as to registration and other matters**

### **1. RECOGNITION OF NOTEHOLDER AS ABSOLUTE OWNER**

The Company shall recognise as absolute owner the registered holder of any Notes. The Company shall not (except as ordered by a court of competent jurisdiction) be bound to take notice or see to the execution of any trust (whether express, implied or constructive) to which any Notes may be subject. The receipt of the registered holder for the time being of any Notes or, in the case of joint registered holders, the receipt of any of them, for the principal payable in respect of such Notes and for the interest from time to time accruing due in respect of such Notes or for any other moneys payable in respect of such Notes shall be a good discharge to the Company notwithstanding any notice it may have (whether express or otherwise) of the right, title, interest or claim of any other person to or in such Notes, interest or moneys. The Company shall not be bound to enter any notice of any express, implied or constructive trust on the Register in respect of any Notes.

### **2. NON TRANSFERABILITY OF NOTES**

Subject to this paragraph 2, and paragraph 3 below, the Notes are not transferable in whole or part. The Notes issued to a Noteholder may be transferred in accordance with this Instrument by written notice given by the Company to any company in the Company's group, or to a company which is listed on a recognised stock exchange (including, but not limited to, the main market of the London Stock Exchange plc). On any such transfer of Notes, the security in favour of the Noteholder concerned shall remain in force in favour of the Noteholders, or shall be substituted for alternative security over similar property assets (such security to have no lower value than the original security granted and held immediately prior to such transfer).

### **3. RECOGNITION OF PERSONAL REPRESENTATIVES AND TRUSTEES**

The executors or administrators of a deceased Noteholder (not being one of several joint registered holders) and in the case of the death of one or more of several joint registered holders the survivor or survivors of such joint registered holders, shall be the only person or persons recognised by the Company as having any title to such Notes. In the event of a change in trustees, or a transfer from trustees to the beneficial owners, the Company shall register the transfer against delivery of instructions from the trustees or beneficial owner(s) accompanied by the original loan note certificate.

### **4. TRANSMISSION OF NOTES**

Any person who becomes entitled to any of the Notes as a result of the death or bankruptcy of any Noteholder, or of any other event giving rise to the transmission of such Notes by operation of law may, upon producing such evidence that he sustains

the character in respect of which he proposes to act under this Condition or of his title as the Directors shall think sufficient, be registered himself as the holder of such Notes or, subject to the preceding Conditions as to transfer, may transfer such Notes. The Company may retain any payments paid upon any such

Notes which any person under this provision is entitled to, until such person is registered as the holder of such Notes or has duly transferred the Notes.

## **5. PAYMENT OF INTEREST AND PRINCIPAL**

- 5.1 The payments of principal, interest or other sums payable in respect of the Notes may be paid by electronic transfer in immediately available cleared funds on the due date for payment, to the account specified for the purpose by the Noteholder or joint Noteholders in writing to the Company, or by cheque, warrant or bankers' draft.
- 5.2 Every such cheque, warrant or bankers' draft shall be sent on the due date for payment and may be sent through the post at the risk of the registered Noteholder or joint registered holders. Payment of the cheque, warrant or bankers' draft shall be a good discharge to the Company.
- 5.3 All payments of principal, interest or other moneys to be made by the Company shall be made after any deductions or withholdings for or on account of any present or future taxes required to be deducted or withheld from such payments.

## **6. RECEIPT OF JOINT HOLDERS**

- 6.2 If several persons are entered in the register as joint registered holders of any notes then notwithstanding paragraph 6.2 below and without prejudice to the provisions of paragraph 5 the receipt of any one of such persons for any interest or principal or other moneys payable in respect of such notes shall be as effective a discharge to the company as if the person signing such receipt were the sole registered holder of such notes.
- 6.3 If a discretionary trust manager (or SIPP Trustee) is one of the persons entered in the register as one of the joint registered holders of any notes then only the receipt of all joint registered holders for any interest or principal or other moneys payable in respect of such notes shall be effective in order to discharge the loan notes.

## **7. REPLACEMENT OF CERTIFICATES**

If the Certificate for any Notes is lost, defaced or destroyed it may be renewed on such terms (if any) as to evidence and indemnity as the Directors may require. In the case of defacement the defaced Certificate shall be surrendered before the new Certificate is issued.

## **8. NOTICE TO NOTEHOLDERS**

Any notice or other document (including Certificates for Notes) may be given or sent to any Noteholder by sending the same by post in a prepaid, first-class letter addressed to such Noteholder at his registered address in the United Kingdom or (if he has no registered address within the United Kingdom) to the address (if any) within the United Kingdom supplied by him to the Company for the giving of notice to him. In the case of joint registered holders of any Notes a notice given to the Noteholder whose name stands first in the Register in respect of such Notes shall be sufficient notice to all joint holders. Notice may be given to the persons entitled to any Notes as a result of the death or bankruptcy of any Noteholder by sending the same by post in a prepaid, first-class envelope addressed to them by name or by the title of the representative or trustees of such Noteholder at the address (if any) in the United Kingdom supplied for the purpose by such persons or (until such address is supplied) by giving notice in the manner in which it would have been given if the death or bankruptcy had not occurred.

#### **9. NOTICE TO THE COMPANY**

Any notice or other document (including Certificates for Notes) may be given or sent to the Company by sending the same by recorded post in a prepaid, first-class letter addressed to the Company at its registered office for the time being.

#### **10. SERVICE OF NOTICES**

Any notice, communication or document sent by recorded post shall be deemed to have been delivered or received on the second Business Day following the day on which it was posted. In proving such delivery or receipt it shall be sufficient to prove that the relevant notice, communication or document was properly addressed, stamped and posted (by airmail, if to another country) in the United Kingdom.

## **Schedule 4 Provisions for meetings of the Noteholders**

### **1. CALLING OF MEETINGS**

The Company may at any time and shall upon the request in writing signed by any registered holder of the Notes for the time being outstanding convene a meeting of the Noteholders to be held at such place as the Company shall determine.

### **2. NOTICE OF MEETINGS**

At least 14 clear days' notice specifying the place, day and hour of the meeting shall be given to the Noteholders of any meeting of Noteholders in the manner provided in Schedule 3. Any such notice shall specify the general nature of the business to be transacted at the meeting thereby convened but, except in the case of a resolution to be proposed as a Special Resolution, it shall not be necessary to specify the terms of any resolutions to be proposed. The omission to give notice to any Noteholder shall invalidate any resolution passed at any such meeting.

### **3. CHAIRMAN OF MEETINGS**

A person nominated by the Company shall be entitled to take the chair at any such meeting and if no such nomination is made, or if at any meeting the person nominated shall not be present within 15 minutes after the time appointed for holding the meeting, the Noteholders present shall choose one of their number to be Chairman. The Directors and the Secretary and legal advisers of the Company and any other person authorised in that behalf by the Directors may attend at any such meeting.

### **4. QUORUM AT MEETINGS**

At any such meeting convened for any purpose, other than the passing of a Special Resolution, a person or persons holding or representing by proxy one-tenth in nominal value of the Notes for the time being outstanding shall form a quorum for the transaction of business. At any meeting convened for the purpose of passing a Special Resolution persons (at least two in number) holding or representing by proxy a clear majority in nominal value of the Notes for the time being outstanding shall form a quorum. No business (other than the choosing of a Chairman) shall be transacted at any meeting unless the requisite quorum is present at the commencement of the meeting.

**5. ABSENCE OF QUORUM**

If within 30 minutes from the time appointed for any meeting of the Noteholders a quorum is not present the meeting shall, if convened upon the requisition of the Noteholders, be dissolved. In any other case it shall stand adjourned to such day and time (being not less than 14 days and not more than 42 days thereafter) and to such place as may be appointed by the Chairman.

**6. ADJOURNMENT OF MEETINGS**

The Chairman may with the consent of (and shall if directed by) any such meeting adjourn the same from time to time and from place to place. No business shall be transacted at any adjourned meeting other than business which might lawfully have been transacted at the meeting from which the adjournment took place.

**7. NOTICE OF ADJOURNED MEETINGS**

Notice of any adjourned meeting at which a Special Resolution is to be submitted shall be given in the manner provided for in the instrument. Such notice shall state that two Noteholders present in person or by proxy and entitled to vote at the adjourned meeting whatever the principal amount of the Notes held by them shall form a quorum.

**8. RESOLUTION ON SHOW OF HANDS**

Every question submitted to a meeting of Noteholders shall be decided in the first instance by a show of hands. In case of an equality of votes the Chairman shall not have a casting vote.

**9. DEMAND FOR POLL**

At any meeting of Noteholders, unless (before or on the declaration of the result of the show of hands) a poll is demanded by the Chairman or by one or more Noteholders present in person or by proxy, a declaration by the Chairman that a resolution has been carried or carried by a particular majority or lost or not carried by any particular majority shall be conclusive evidence of the fact.

**10. MANNER OF TAKING POLL**

If at any such meeting a poll is so demanded it shall be taken in such manner as the Chairman may direct. The result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn.

## **11. TIME FOR TAKING POLL**

Any poll demanded at any such meeting shall be taken at the meeting without adjournment. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.

## **12. PERSONS ENTITLED TO VOTE**

The registered holders of any of the Notes or, in the case of joint holders, any one of them shall be entitled to vote in respect thereof either in person or by proxy and in the latter case as if such joint holder were solely entitled to such Notes. If more than one of such joint holders be present at any meeting either personally or by proxy the vote of the senior who tenders a vote (seniority being determined by the order in which the joint holders are named in the Register) shall be accepted to the exclusion of the votes of the other joint holders.

## **13. INSTRUMENT APPOINTING PROXY**

Every instrument appointing a proxy shall be in writing, signed by the appointor or his attorney or, in the case of a corporation, under its common seal, or signed by its attorney or a duly authorised officer and shall be in such form as the Directors may approve. Such instrument of proxy shall, unless the contrary is stated thereon, be valid both for an adjournment of the meeting and for the meeting to which it relates and need not be witnessed. A person appointed to act as a proxy need not be a Noteholder.

## **14. DEPOSIT OF INSTRUMENT APPOINTING PROXY**

The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified or office copy of such power or authority shall be deposited with the Company at the address where the Register is maintained for the time being (as referred to in clause 8.1 of the instrument) or at such other place as may be specified in the notice convening the meeting before the time appointed for holding the meeting or adjourned meeting or the taking of a poll at which the person named in such instrument proposes to vote and in default the instrument of proxy shall not be treated as valid. A vote given in accordance with the terms of an instrument appointing a proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the instrument of proxy or of the authority under which the instrument of proxy is given or transfer of the Notes in respect of which it is given unless previous intimation in writing of such death, insanity, revocation or transfer shall have been received by the Company at the address where the Register is maintained for the time being (as referred to in clause 8.1 of the

instrument). No instrument appointing a proxy shall be valid after the expiration of 12 months from the date named in it as the date of its execution.

## **15. VOTES**

On a show of hands every Noteholder who (being an individual) is present in person or by proxy or (being a corporation) is present by a representative (not being himself a Noteholder) or by proxy shall have one vote (provided that a proxy appointed by more than one member should only have one vote or, where the proxy has been instructed by one or more of those members to vote for the resolution and by one or more other of those members to vote against it, such proxy shall have one vote for and one vote against the resolution). On a poll every Noteholder shall have one vote for every £1 in nominal amount of the Notes of which he is the holder. A Noteholder (or a proxy or representative of a Noteholder) entitled to more than one vote on a poll need not use all his votes or cast all the votes he uses in the same way.

## **16. POWER OF MEETINGS OF NOTEHOLDERS**

16.1 In addition to any other powers it may have, a meeting of the Noteholders may, by Special Resolution:

16.1.1 sanction any compromise or arrangement proposed to be made between the Company and the Noteholders;

16.1.2 sanction any abrogation, modification or compromise or any arrangement in respect of the rights of the Noteholders against the Company or its property whether such rights shall arise under this instrument or otherwise;

16.1.3 sanction any scheme for the reconstruction of the Company or for the amalgamation of the Company with any other company;

16.1.4 sanction any scheme or proposal for the sale or exchange of the Notes for, or the conversion of the Notes into, cash or shares, stock, debentures, debenture stock or other obligations or securities of the Company or any other company formed or to be formed, and for the appointment of a person with power on behalf of the Noteholders to execute an instrument of transfer of the Notes held by them in favour of the person to or with whom the Notes are to be sold or exchanged (as the case may be);

16.1.5 assent to any modification or abrogation of the provisions contained in this instrument which shall be proposed by the Company and authorise the Company to execute an instrument supplemental to the instrument embodying any such modification or abrogation; and

16.1.6 give any authority or sanction which under the provisions of this instrument is required to be given by Special Resolution.



- 16.2 No resolution shall be effective which would increase any obligation of the Company under this instrument or postpone the due date for payment of any principal or interest in respect of any Note without the consent of the Company.

**17. SPECIAL RESOLUTION BINDING ON ALL NOTEHOLDERS**

A Special Resolution, passed at a meeting of Noteholders duly convened and held in accordance with the provisions of this schedule, shall be binding on all the Noteholders whether or not present at such meeting and each of the Noteholders shall be bound to give effect to such Special Resolution accordingly. The passing of any such resolution shall be conclusive evidence that the circumstances justify the passing of such Special Resolution.

**18. RESOLUTIONS IN WRITING**

A resolution in writing signed by the holders of at least 75% in nominal value of the Notes for the time being outstanding who are for the time being entitled to receive notice of meetings in accordance with the provisions contained in the instrument shall for all purposes be as valid and effectual as a Special Resolution. Such resolution in writing may be contained in one document or in several documents in like form each signed by one or more of the Noteholders.

**19. MINUTES OF MEETINGS**

Minutes of all resolutions and proceedings at every such meeting of the Noteholders shall be made and duly entered in books to be from time to time provided for that purpose by the Company. Any minutes which purport to be signed by the Chairman of the meeting at which such resolutions were passed or proceedings held or by the Chairman of the next succeeding meeting of the Noteholders shall be conclusive evidence of the matters contained in such minutes. Unless the contrary is proved, every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly convened and held and all resolutions passed at such meetings to have been duly passed.

## Schedule 5

## Security Trustee Agreement

Between and among

Investors as outlined in Appendix B (the **Partners**) acting as a simple Partnership under German law (*Gesellschaft bürgerlichen Rechts*).

hereinafter referred to as **Beneficiary**, this definition shall include the singular and plural alike,

and

Ladon Intertrust Treuhandgesellschaft mbH

Marchandstr. 27, 12247 Berlin, Germany

represented by its managing director, Daniel Weber

hereinafter referred to as **Security Trustee**,

Zwischen

Den in Anhang B genannten Investoren (**Partner**), handelnd in Gesellschaft bürgerlichen Rechts,

nachfolgend auch **Treugeber** genannt; diese Definition trifft auf den Singular und den Plural gleichermaßen zu.

und

Ladon Intertrust Treuhandgesellschaft mbH

Marchandstr. 27, 12247 Berlin, Germany

vertreten durch den alleinvertretungsberechtigten Geschäftsführer Herrn Daniel Weber

Nachfolgend auch **Sicherheitentreuhänder** genannt.

### Preliminary Remarks

The Security Trustee – a German Limited Company, GmbH – will hold in its own name a first ranking land charge (the **Security**) on the Property specified in Appendix A (the **Property**). The Security Trustee will hold the Security on behalf of the Beneficiary consisting of all investors as outlined in Appendix B (the **Partners**) acting as a simple Partnership under German law (*Gesellschaft bürgerlichen Rechts*) (the **Beneficiary**). The Security Trustee is not a member of the Beneficiary.

A Security Trustee Agreement shall come into effect when the Beneficiary's representative receives confirmation in text form from the Security Trustee that accepts the Security Trustee Conditions as outlined below.

Each Partner hereby dispenses with receiving notice of admission of further Partners to the Beneficiary, § 151 of the German Civil Code (*Bürgerliches Gesetzbuch*).

A Security Trustee Agreement shall come into effect when the Beneficiary's representative receives written confirmation from the Security Trustee that accepts the Security Trustee Conditions as outlined below.

The Security Trustee will hold the Security on

### Vorbemerkung

Der **Sicherheitentreuhänder** – eine Gesellschaft mit beschränkter Haftung, GmbH – wird in eigenem Namen eine erstrangige Grundsschuld (die **Sicherheit**) auf der im Anhang A bezeichneten Liegenschaft (die **Liegenschaft**) halten. Der Sicherheitentreuhänder ist die Sicherheit für die in Anhang B genannten Investoren (die **Partner**) – handelnd in Gesellschaft bürgerlichen Rechts – als **Treugeber** halten. Der Sicherheitentreuhänder ist nicht Mitglied des Treugebers.

Diese Sicherheitentreuhändervereinbarung tritt in Kraft, sobald der Vertreter des Treugebers die Bestätigung des Sicherheitentreuhänders in Textform erhalten hat, nach welcher dieser Sicherheiten Treuhänderbedingungen wie nachstehend annimmt.

Jeder Partner verzichtet gemäß § 151 BGB auf die Mitteilung des Beitritts weiterer Partner zu dem Treugeber.

Diese Sicherheitentreuhändervereinbarung tritt in Kraft, sobald der Vertreter des Treugebers die schriftliche Bestätigung des Sicherheitentreuhänders erhalten hat, nach welcher dieser Sicherheiten Treuhänderbedingungen wie nachstehend annimmt.

Der Sicherheitentreuhänder wird die Sicherheit für

behalf of the Beneficiary as collateral for an investment of the Beneficiary in a German Property development (the **Project**) under the following Security Trustee Conditions:

### **§ 1 Purpose of Trust**

The objective and purpose of the Security Trustee Conditions are to facilitate the creation and administration of a security for investments made under a Loan Agreement between the Partners, the Project Manager (**Dolphin Capital GmbH**) and the Borrower. These Security Trustee Conditions stipulate the legal rights and obligations between the Security Trustee and the Beneficiary.

### **§ 2 Trust Relationship**

The Security Trustee will act dutifully for the Beneficiary. In this capacity, the Security Trustee will hold the Security in its own name on behalf of the Beneficiary until the Security is fully deleted from the land register.

### **§ 3 Rights and Duties of the Security Trustee**

- (1) The Security Trustee shall hold the Security on behalf of the Beneficiary as described in § 2.
- (2) The Security Trustee shall report to the Beneficiary's representative regularly on the establishment and administration of the Security including its deletion.
- (3) The Security Trustee shall accept instructions from the Beneficiary only through the Beneficiary's representative.
- (4) The Security Trustee shall be entitled to release the Security in whole or in part at its own discretion, including without limitation if and as far as the Security Trustee is presented with a legally binding and effective sales contract for the Property or parts of it.
- (5) Under these Security Trustee conditions, the Security Trustee is neither entitled nor obliged to enforce the Security against the Property or to initiate further measures to capitalise the Security. Such action shall be deemed additional measures of the Security Trustee and shall require a separate written undertaking on behalf of the Security Trustee and the Beneficiary.
- (6) The Security Trustee is not obliged to arrange for other securities for the Beneficiary's investment.

den Treugeber als Sicherheit für eine Investition der Treugeber in eine Immobilienentwicklung in Deutschland (das **Projekt**) zu den folgenden Sicherheitentreuhänderbedingungen halten:

### **§ 1 Zweck der Treuhand**

Ziel und Zweck dieser Sicherheitentreuhänderbedingungen ist es, die Bestellung und Verwaltung einer Sicherheit für die Investitionen des Treugebers gemäß dem Darlehensvertrag zwischen dem Treugeber, indem Projektentwickler und dem Darlehensnehmer zu ermöglichen. Diese Sicherheitentreuhänderbedingungen regeln die Rechte und Pflichten zwischen dem Sicherheitentreuhänder und dem Treugeber.

### **§ 2 Treuhandverhältnis**

Der Sicherheitentreuhänder wird pflichtgemäß für den Treugeber handeln. In dieser Rolle wird der Sicherheitentreuhänder die Sicherheit im eigenen Namen für den Treugeber halten, bis die Sicherheit vollständig aus dem Grundbuch gelöscht ist.

### **§ 3 Rechte und Pflichten des Sicherheitentreuhänders**

- (1) Der Sicherheitentreuhänder hat die Sicherheit für den Treugeber wie in § 2 beschrieben zu halten.
- (2) Der Sicherheitentreuhänder hat den bevollmächtigten Vertreter des Treugebers regelmäßig über die Bestellung und Verwaltung der Sicherheit sowie deren Löschung zu unterrichten.
- (3) Der Sicherheitentreuhänder darf Weisungen des Treugebers nur von dessen bevollmächtigtem Vertreter entgegennehmen.
- (4) Der Sicherheitentreuhänder ist ermächtigt, die Löschung der Sicherheit ganz oder teilweise nach eigenem Ermessen zu veranlassen, insbesondere wenn und soweit dem Sicherheitentreuhänder ein wirksamer und vollziehbarer Kaufvertrag über die Liegenschaft oder Teile hiervon vorgelegt wird.
- (5) Nach diesen Sicherheitentreuhänderbedingungen ist der Sicherheitentreuhänder weder berechtigt noch verpflichtet, die Sicherheit zu vollstrecken oder sonstige Maßnahmen zu ergreifen, um die Sicherheit zu kapitalisieren. Derartige zusätzliche Dienstleistungen bedürfen einer separaten Beauftragung durch den Treugeber und Annahme durch den Sicherheitentreuhänder.
- (6) Der Sicherheitentreuhänder ist nicht verpflichtet weitergehende Sicherheiten für die Investitionen des Treugebers zu errichten.

#### **§ 4 Rights and Duties of the Beneficiary**

(1) The Beneficiary shall be entitled to information from the Security Trustee through the Beneficiary's representative. Such claim to information shall include all actions taken by the Security Trustee towards holding and administering the Security on behalf of the Beneficiary including the value of the Security as well as any additional measures taken as to the instructions from the Beneficiary.

(2) The Beneficiary shall be required to support the Security Trustee in all matters serving the purpose of the trust.

#### **§ 5 Beneficiary's Representative**

(1) The Beneficiary shall name a representative to accept correspondence from the Security Trustee. The representative shall be named by a 75% majority of the Partners.

(2) The first representative for the Beneficiary shall be

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33-35 Daws Lane

London

NW7 4SD

(3) All and any correspondence sent to and received by the Beneficiary's representative shall be deemed to be received by the Beneficiary.

(4) All and any correspondence sent by the Beneficiary's representative and received by the Security Trustee shall be deemed to be correspondence from the Beneficiary to the Security Trustee.

#### **§ 6 Remuneration**

(1) The Security Trustee shall receive remuneration of 1% of the Security's face value plus German VAT (currently 19%) for the holding and administration of the Security as described in § 3 (1-4).

(2) Additional measures as described in § 3 (5) shall be remunerated with further flat fee of 1% of the Security's face value plus German VAT (currently 19%).

(3) The remuneration shall be borne in the first instance by the Project Manager. However, the

#### **§ 4 Rechte und Pflichten des Treugebers**

(1) Der Treugeber ist berechtigt, über seinen bevollmächtigten Vertreter vom dem Sicherheitentreuhänder sämtliche relevanten Informationen zu erhalten. Dieser Anspruch betrifft insbesondere Information über sämtliche Tätigkeiten im Zusammenhang mit der Bestellung und der Verwaltung der Sicherheit sowie deren Nennwert aber auch über zusätzliche Dienstleistungen, welche vom Treugeber beauftragt worden.

(2) Der Treugeber ist verpflichtet, den Sicherheitentreuhänder in allen Belangen zu unterstützen, welche dem Zweck des Treuhandverhältnisses dienen.

#### **§ 5 bevollmächtigter Vertreter des Treugebers**

(1) der Treugeber hat einen bevollmächtigten Vertreter zu benennen, welcher Erklärungen des Sicherheitentreuhänders für den Treugeber entgegennimmt.

(2) Der erste bevollmächtigte Vertreter des Treugebers ist

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(3) sämtliche Korrespondenz, welche an den bevollmächtigten Vertreter gerichtet und von diesen empfangen wird gilt als bei dem Treugeber zugegangen

(4) sämtliche Korrespondenz, welche von den bevollmächtigten Vertreter an den Sicherheitentreuhänder gerichtet und von jenem empfangen wird, gilt als unmittelbare Korrespondenz des Treugebers.

#### **§ 6 Honorar**

(1) der Sicherheitentreuhänder erhält für seine Tätigkeit ein Honorar von 1 % des Nennwerts der Sicherheit zuzüglich Umsatzsteuer (derzeit 19 %) für das Halten und die Verwaltung der Sicherheit wie beschrieben in § 3 (1 - 4).

(2) Zusätzliche Dienstleistungen wie beschrieben in § 3 (5) werden mit einem weiteren Honorar von 1 % des Nennwerts der Sicherheit zuzüglich Umsatzsteuer (derzeit 19 %) entlohnt.

(3) Schuldner der Honorarforderung ist zunächst der Projektentwickler. Der Treugeber und der

Project Manager and the Beneficiary are jointly and severally liable for the remuneration.

## **§ 7 Correspondence**

All correspondence to the Beneficiary shall be made to the Beneficiary's representative. For the purpose of the Security Trustee Conditions, any correspondence shall be in text form, i.e. written letter, fax or e-mail.

## **§ 8 Contract Period**

- (1) The trust relationship starts with the entry into force of a Security Trustee Agreement.
- (2) The trust relationship ends with deletion of the Security on the Property.

## **§ 9 Termination**

- (1) The Security Trustee and the Beneficiary shall each retain the right to terminate the Security Trustee Agreement for compelling reasons (§ 314 of the German Civil Code).
- (2) In abrogation from the stipulation above § 7 any notice of termination shall require the written form.

## **§ 10 Rules for the Beneficiary's Management, Representation, Decision Making and Internal Proceedings**

- (1) The Beneficiary's Representative shall be charged with management and representation of the Beneficiary.
- (2) The Partners in the Beneficiary can make decisions on behalf of the Beneficiary by majority vote. A vote shall be permissible only if at least 70% of the Partners participate in the vote. Each decision shall require a majority of 75% of the cast votes.
- (3) The Partners shall be required to disclose to the Beneficiary's representative any changes in address or other contact details. The Beneficiary's Representative will forward such changes promptly to the Security Trustee.
- (4) In case of a Partner's death the Beneficiary shall continue to exist among the remaining Partners and the deceased Partner's heirs. The Beneficiary's Representative shall make decisions on behalf of the deceased until such time as the heirs are conclusively determined.

## **§ 11 Final provisions**

Projektentwickler haften jedoch für die Erfüllung der Honorarforderung als Gesamtschuldner.

## **§ 7 Korrespondenz**

Sämtliche Korrespondenz an den Treugeber ist an den bevollmächtigten Vertreter des Treugebers zu richten. Im Rahmen dieser Sicherheiten Treuhänderbedingungen sämtliche Korrespondenz in Textform zu halten, d.h. Brief, Fax oder E-Mail.

## **§ 8 Vertragslaufzeit**

- (1) Das Treuhandverhältnis entsteht mit Inkrafttreten dieses Treuhandvertrages.
- (2) Das Treueverhältnis endet mit Löschung der Sicherheit aus dem Grundbuch.

## **§ 9 Kündigung**

- (1) Der Sicherheitentreuhänder und der Treugeber sind jeweils berechtigt, die Sicherheitentreuhandvereinbarung aus wichtigem Grund (§ 314 BGB) zu kündigen.
- (2) In Abweichung von der Formregelung in § 7 Bedarf die Kündigungserklärung der Schriftform.

## **§ 10 Regeln zur Vertretung, Geschäftsführung, Willensbildung und internen Organisation des Treugebers**

- (1) Die Geschäftsführung des Treuhänders einschließlich des Rechts zur Vertretung des Treuhänders obliegt dem bevollmächtigten Vertreter.
- (2) Die Partner entscheiden zur Willensbildung des Treugebers mit der Mehrheit der abgegebenen Stimmen. Eine Abstimmung ist zulässig, wenn mindestens 70% der Partner an der Abstimmung teilnehmen. Jede Entscheidung bedarf einer Mehrheit von 75% der abgegebenen Stimmen.
- (3) Die Partner sind verpflichtet, dem bevollmächtigten Vertreter Änderungen ihrer Anschrift oder sonstiger Kontaktdaten mitzuteilen. Der bevollmächtigte Vertreter wird seinerseits solche Änderungen unverzüglich dem Sicherheitentreuhänder mitteilen.
- (4) Im Todesfall eines Partners wird die Gesellschaft bürgerlichen Rechts mit dessen Rechtsnachfolgern fortgesetzt. Bis zum endgültigen Nachweis der Rechtsnachfolger trifft der bevollmächtigte Vertreter Entscheidungen für den verstorbenen Partner.

## **§ 11 Schlussbestimmungen**

(1) These Security Trustee Conditions (STC) embody all terms and conditions agreed upon between the Parties. The STC shall not be ordered, changed supplemented or amended in any aspect, unless such authorisation, change, supplement or amendment shall be expressly agreed in textform by the Parties. This also applies to the stipulation of the textform form above.

(2) The STC shall be governed by the laws of the Federal Republic of Germany (excluding the Convention on Contracts for the International Sale of Goods).

(3) The STC are translated into the English language. No legal terms used in the STC shall be construed to refer to the laws of [the United Kingdom / Ireland] or any Anglo-American legal system. Therefore, the Parties agree that legal terms used in English language shall be interpreted exclusively according to their German meaning. In case of divergence between the English and German versions of these STC, the German version shall prevail.

(4) If any provision of the STC is held to be illegal, invalid or unenforceable in whole or part, the STC shall continue as to its other provisions and the remainder of the ineffective provision. In such case, the Parties shall agree to a valued provision best matching the intended result. The same shall apply for any gap in the wording.

(5) The Beneficiary is not domiciled in Germany. Therefore, the Parties agree that for all and any disputes resulting from the STC, the appropriate forum shall be Berlin. The above shall apply also to disputes regarding the effect and validity of the STC. The choice of forum shall apply furthermore to any legal successors to the Parties and shall be altered only by a written agreement.

(1) Diese Sicherheitentreuhänderbedingungen (STB) umfassen sämtliche Vereinbarungen zwischen den Parteien. Mündliche Nebenabreden sind nicht getroffen. Jede Änderung dieser Vereinbarung bedarf der Textform. Dies gilt auch für die Abänderung des Textformerfordernisses

(2) Die STB unterliegen dem Recht der Bundesrepublik Deutschland unter Ausschluss des UN Kaufrechts.

(3) Die STB sind in die englische Sprache übersetzt. Juristische Termini der englischen Version beziehen sich nicht auf das Recht des einigen Königreichs/Irlands oder einer anderen angloamerikanischen Rechtsordnung. Daher kommen die Parteien über einen, dass Juristische Termine ausschließlich nach ihrem deutschen Bedeutungsgehalt interpretiert werden sollen. Wenn und soweit die deutsche und die englische Version dieser STB voneinander abweichen, genießt die deutsche Version voran.

(4) Sollten einzelne Bestimmungen dieser STB ganz oder teilweise unwirksam oder undurchführbar sein, berührt dies die übrigen Regelungen der STB nicht. Anstelle der unwirksamen oder undurchführbaren Bestimmungen tritt diejenige rechtlich zulässige Bestimmung, wie dem Willen der Parteien am nächsten kommt. Entsprechendes gilt im Falle einer Lücke im Vertragstext.

(5) Der Treugeber hat keinen ordentlichen Gerichtsstand in Deutschland. Daher bestimmen die Parteien für sämtliche Streitigkeiten im Zusammenhang mit oder als Resultat aus diesen STB Berlin als Gerichtsstand. Das betrifft auch Streitigkeiten über die Wirksamkeit dieses Vertrages. Die Bestimmung des Gerichtsstands gilt auch für Rechtsnachfolger der Parteien und darf nur schriftlich geändert werden.

## Schedule 6 Conversion

### 1. CONVERSION

1.1 The Company may at any time issue a written notice to the Noteholders (or any of them) (a “**Conversion Notice**”) stating that their holdings of Notes are to be converted into shares (“**Conversion**”) in either the Company, or a company listed on a recognised stock exchange within the European Union or the United Kingdom (“**Conversion Shares**”).

1.2 Subject to paragraph 1.3 and paragraph 1.5 of this Schedule, all outstanding Notes which are subject to a Conversion Notice shall automatically convert into fully paid Conversion Shares at a rate equal to the value of the outstanding debt due to the relevant Noteholder whose Notes are converted (in the case of conversion into listed securities, valued at the price per Conversion Share calculated as the arithmetic mean between the last quoted bid and ask price of the Conversion Shares on such day immediately preceding the Conversion Date on which the Conversion Shares have been traded on the stock exchange of their primary listing. In case the Conversion Shares are quoted in a currency other than Euro, the Share Price shall be calculated in Euro based on the conversion rate published on the website of the European Central Bank ([https://www.ecb.europa.eu/stats/policy\\_and\\_exchange\\_rates/euro\\_reference\\_exchange\\_rates/html/index.en.html](https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/index.en.html).) on the date the price is calculated. (the “**Conversion Price**”) on the date specified or calculated or determined in accordance with in the Conversion Notice.

1.3 The Company may serve a Conversion Notice at any time. When a Conversion is proposed, the Company shall endeavour to give Noteholders not less than 20 Business Days' prior written notice of the proposed Conversion specifying (to the best of its knowledge) the terms and prospective date of the Conversion.

1.4 If the Company has given notice to Noteholders of a proposed Conversion (as required by paragraph 1.3), and it becomes apparent to the Company that the Conversion is not after all to take effect, the Company shall give notice to the Noteholders to that effect, which shall revoke the original Conversion Notice.

1.5 The service of a Conversion Notice shall be subject only to the Conversion taking place. If the Conversion does not take place within 60 Business Days of the date of the Conversion Notice, then the Conversion Notice shall automatically be deemed to have been revoked and the Company shall give Noteholders further written notice of any subsequent proposed Conversion to which the provisions of this paragraph 1 of this Schedule shall then apply.

## **2. PROCEDURES ON CONVERSION**

2.1 On the date of Conversion (the “**Conversion Date**”), the Directors shall procure the conversion of the principal amount of the Notes and the then-accrued but unpaid interest into such number of new fully paid Conversion Shares at such price as is set out in paragraph 1.3 of this Schedule subject to any adjustment as set out in any Conversion Notice (and subject to paragraph 2.5) in accordance with the following provisions of paragraph 2.2 to paragraph 2.5 (inclusive).

2.2 Conversion of the Notes shall be effected by the Company redeeming the relevant Notes on the Conversion Date and applying the proceeds of redemption in paying up the respective Conversion Shares. Each Noteholder whose Notes are being converted shall be deemed to irrevocably authorise and instruct the Company to immediately (and without receipt of the same) apply the redemption moneys payable to that Noteholder in subscribing for Conversion Shares on Conversion of the Notes.

2.3 Conversion Shares subscribed for on conversion of the Notes shall be issued and allotted by the Company on the Conversion Date credited as fully paid and the certificates for such Conversion Shares shall be despatched to the persons entitled to them at their own risk or credited to the Noteholder’s CREST account if such Conversion Shares are to be held in dematerialised form. In the absence of an express direction by the Noteholder, the securities will be held in certificated form.

2.4 The Conversion Shares shall be credited as fully paid and rank *pari passu* with the shares of the same class in issue on the Conversion Date and shall carry the right to receive all dividends and other distributions declared after the Conversion Date.

2.5 The entitlement of each Noteholder to a fraction of a Conversion Share shall be rounded to the nearest whole number of Conversion Shares which result from the conversion of the Notes.





Executed as a deed by Dolphin Capital

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.80 Projekt GmbH & Co. KG by Charles  
Smethurst, duly authorised for and  
on behalf of the managing director  
of its general partner (Komplementär)  
DT Projektholding GmbH