

## IMPORTANT NOTICE

**IMPORTANT: You must read the following disclaimer before continuing.** The following disclaimer applies to the attached consent solicitation statement (the “**Consent Solicitation Statement**”), whether received by e-mail or otherwise received as a result of an electronic communication and you are therefore advised to read this disclaimer page carefully before reading, accessing or making any other use of the Consent Solicitation Statement. In accessing the Consent Solicitation Statement, you agree to be bound by the following terms and conditions, including any modifications to them from time to time, each time you receive any information from the Issuer or Kroll Issuer Services Limited (the “**Tabulation Agent**”) as a result of such access.

**THE CONSENT SOLICITATION STATEMENT MAY NOT BE FORWARDED OR DISTRIBUTED TO ANY OTHER PERSON AND MAY NOT BE REPRODUCED IN WHOLE OR IN PART IN ANY MANNER WHATSOEVER. ANY FORWARDING, DISTRIBUTION OR REPRODUCTION OF THE CONSENT SOLICITATION STATEMENT IN WHOLE OR IN PART IS UNAUTHORIZED. FAILURE TO COMPLY WITH THIS DIRECTIVE MAY RESULT IN A VIOLATION OF THE SECURITIES ACT OR THE APPLICABLE LAWS OF OTHER JURISDICTIONS. IF YOU HAVE NOT PROVIDED THE ISSUER WITH THE CONFIRMATION DESCRIBED BELOW OR HAVE GAINED ACCESS TO THE CONSENT SOLICITATION STATEMENT CONTRARY TO ANY OF THE FOREGOING RESTRICTIONS, YOU ARE NOT AUTHORIZED TO PARTICIPATE IN THE CONSENT SOLICITATION DESCRIBED IN THE CONSENT SOLICITATION STATEMENT.**

The distribution of this Consent Solicitation Statement in certain jurisdictions may be restricted by law and regulations, and persons into whose possession this Consent Solicitation Statement comes are required to inform themselves about, and to observe, any such restrictions. Nothing in this Consent Solicitation Statement constitutes or contemplates an offer of, an offer to purchase or the solicitation of an offer to purchase or sell any security in the United States or any other jurisdiction. If you are in any doubt as to the contents of this document or the actions you should take, you are recommended to seek your own financial advice immediately from your stockbroker, bank manager, accountant, tax advisor or independent financial advisor.

**Confirmation of your representation:** You have been sent the Consent Solicitation Statement at your request and on the basis that you have confirmed to the Tabulation Agent, being the sender of the Consent Solicitation Statement, that (i) you are a holder or a beneficial owner of the Notes (as defined in the Consent Solicitation Statement), (ii) you shall not pass the Consent Solicitation Statement to third parties or otherwise make the Consent Solicitation Statement publicly available, (iii) you are not a person to whom it is unlawful to send the Consent Solicitation Statement or make the proposal under applicable laws and/or regulations, (iv) you are not a Sanctions Restricted Person (as defined in the Consent Solicitation Statement) and (v) you consent to delivery by electronic transmission.

The Consent Solicitation Statement has been sent to you in an electronic form. You are reminded that documents transmitted via this medium may be altered or changed during the process of transmission and consequently none of the Issuer, the Tabulation Agent, the Trustee or any person who controls, or is a director, officer, employee or agent, of any of them, or any affiliate of any such person, accepts any liability or responsibility whatsoever in respect of any difference between the Consent Solicitation Statement distributed to you in electronic format and the hard copy version available to you on request from the Tabulation Agent.

You are reminded that the Consent Solicitation Statement has been delivered to you on the basis that you are a person into whose possession the Consent Solicitation Statement may lawfully be delivered in accordance with the laws and regulations of the jurisdiction in which you are located and/or resident and you may not nor are you authorized to deliver the Consent Solicitation Statement to any other person. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail and the attached document is strictly prohibited. If you have received this e-mail in error, please immediately notify the sender by reply e-mail and permanently delete all copies of this e-mail and destroy any printouts of it.

If you have recently sold or otherwise transferred your entire holding(s) of the Notes referred to herein, you should immediately notify the Tabulation Agent.

This Consent Solicitation Statement has not been filed with, or reviewed by, any national or local securities commission or regulatory authority of any jurisdiction, nor has any such commission or authority passed upon the accuracy or adequacy of this Consent Solicitation Statement. Any representation to the contrary may be unlawful and a criminal offence.

**The materials relating to the Consent Solicitation Statement do not constitute, and may not be used in connection with, an offer of, an offer to purchase or the solicitation of an offer to purchase or sell, any securities in any jurisdiction. The distribution of the Consent Solicitation Statement in certain jurisdictions may be restricted by law, and persons into whose possession the Consent Solicitation Statement comes are requested to inform themselves about, and to observe, any such restrictions.**

CONSENT SOLICITATION STATEMENT, dated February 2, 2023.

**THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION.**

The distribution of this Consent Solicitation Statement in certain jurisdictions may be restricted by law and regulations, and persons into whose possession this Consent Solicitation Statement comes are required to inform themselves about, and to observe, any such restrictions. Nothing in this Consent Solicitation Statement constitutes or contemplates an offer of, an offer to purchase or the solicitation of an offer to purchase or sell any security in the United States or any other jurisdiction. If you are in any doubt as to the contents of this document or the actions you should take, you are recommended to seek your own financial advice immediately from your stockbroker, bank manager, accountant, tax advisor or independent financial advisor.



## **ADLER Real Estate Aktiengesellschaft**

Berlin, Germany

(the "Issuer" or "ADLER")

**€300,000,000 2.125% notes due 2024 (ISIN: XS1731858715)**

(the "Notes")

On the terms and subject to the conditions set forth in this consent solicitation statement (as amended or supplemented from time to time, this "**Consent Solicitation Statement**"), ADLER Real Estate Aktiengesellschaft, a stock corporation (*Aktiengesellschaft*) organized under the laws of Germany, hereby solicits the holders of the Notes (the "**Noteholders**") to deliver consents (the "**Consents**") in respect of the proposed amendment of the indenture between, *inter alia*, the Issuer and Deutsche Trustee Company Limited (the "**Trustee**"), dated December 6, 2017 together with the first supplemental indenture, dated January 16, 2020 (the "**Indenture**") (the "**Amendment**")

until 17:00 CET on February 22, 2023 (the "**Expiration Time**")  
(the "**Consent Solicitation**").

The Issuer may, in its sole discretion, amend, terminate or extend the Expiration Time at any time. The Issuer, in its sole discretion, reserves the right to waive any defects, irregularities or delays in connection with deliveries of Consents. No consent fee will be payable in connection with the Consent Solicitation.

As more fully described in this Consent Solicitation Statement, the purpose of the Amendment is to grant security for the benefit of, among others, the Noteholders and amend certain of the terms of the Notes.

On April 27, 2018, the Issuer has issued €300,000,000 3.000% German law governed notes due 2026 (ISIN: XS1713464524) (the "**German Notes**"). The Issuer has launched, concurrently with the announcement of the Consent Solicitation, a separate and concurrent consent solicitation for its German Notes. The consent solicitation for the German Notes is directed solely at qualified investors under applicable laws and/or regulations, including the United States.

If the Amendment becomes effective, each present and future Noteholder will be bound by the Amendment, whether or not such Noteholder consented to the Amendment. See "*The Consent Solicitation – Effectiveness of the Amendment.*" For purposes of this Consent Solicitation Statement, the "Noteholder" of the Notes shall mean the beneficial owner with respect to the Notes.

**NOTEHOLDERS MUST PROVIDE A CONSENT INSTRUCTION BY THE EXPIRATION TIME. FOR DETAILS ON THE PROCEDURES FOR DELIVERING CONSENTS AND THE PREREQUISITES WHICH MUST BE MET BY NOTEHOLDERS FOR PARTICIPATING IN THE CONSENT SOLICITATION, SEE "THE CONSENT SOLICITATION - PROCEDURES FOR DELIVERING CONSENTS."**

**NOTEHOLDERS ARE ADVISED TO CHECK WITH ANY NOMINEE, CUSTODIAN, INTERMEDIARY OR PERSON ACTING IN A SIMILAR CAPACITY FOR THE NOTEHOLDER WHETHER SUCH NOMINEE, CUSTODIAN, INTERMEDIARY OR PERSON ACTING IN A SIMILAR CAPACITY FOR THE NOTEHOLDER WOULD REQUIRE RECEIPT OF INSTRUCTIONS TO PARTICIPATE IN THE CONSENT SOLICITATION BEFORE THE EXPIRATION TIME. THE DEADLINES SET BY EACH CLEARING SYSTEM FOR THE SUBMISSION OF CONSENT INSTRUCTIONS MAY ALSO BE EARLIER THAN THE RELEVANT DEADLINES SPECIFIED IN THIS CONSENT SOLICITATION STATEMENT.**

**THE ISSUER ANTICIPATES THAT, AFTER RECEIPT OF THE REQUISITE CONSENTS PRIOR TO THE EXPIRATION TIME AND SATISFACTION OF THE RELEVANT CONDITIONS, THE ISSUER WILL GIVE NOTICE VIA THE CLEARING SYSTEMS THAT THE REQUISITE CONSENTS HAVE BEEN RECEIVED AND THAT ALL RELEVANT CONDITIONS HAVE BEEN SATISFIED OR WAIVED AND THE TRUSTEE WILL BE REQUESTED BY THE ISSUER TO EXECUTE A SECOND SUPPLEMENTAL INDENTURE UPON RECEIPT OF THE REQUIRED DOCUMENTATION UNDER THE INDENTURE IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE TRUSTEE (THE TIME OF EXECUTION OF THE SECOND SUPPLEMENTAL INDENTURE TO BE THE "EFFECTIVE TIME"). THE PROPOSED AMENDMENT CONTAINED IN THE SECOND SUPPLEMENTAL INDENTURE WILL NOT BECOME OPERATIVE UNTIL THE EFFECTIVENESS CONDITIONS SET FORTH IN THIS CONSENT SOLICITATION STATEMENT HAVE BEEN SATISFIED (OR WAIVED) IN ACCORDANCE WITH THE TERMS OF THE CONSENT SOLICITATION. THE SECOND SUPPLEMENTAL INDENTURE WILL NOT BECOME OPERATIVE IF THE REQUISITE CONSENTS ARE NOT RECEIVED.**

**NOTHING IN THIS CONSENT SOLICITATION STATEMENT CONSTITUTES AN OFFER TO SELL OR A SOLICITATION OF AN OFFER TO PURCHASE ANY SECURITIES.**

*The Tabulation Agent for the Consent Solicitation is*

**Kroll Issuer Services Limited**

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## GENERAL

The Issuer accepts responsibility for the information contained in this Consent Solicitation Statement. To the best of the knowledge and belief of the Issuer (having taken all reasonable care to ensure that such is the case), the information contained in this Consent Solicitation Statement is in accordance with the facts and does not omit anything likely to affect the import of such information. None of the Tabulation Agent, the Trustee or any of their respective directors, officers, employees, affiliates or agents accepts any responsibility for the information contained in this Consent Solicitation Statement, has verified, or assumes any responsibility for the accuracy or completeness of, any of the information concerning the Consent Solicitation, the Amendment, the Issuer, the Notes or the factual statements contained in, or the effect or effectiveness of, this Consent Solicitation Statement or any other documents referred to in this Consent Solicitation Statement or assumes any responsibility for any failure by the Issuer to disclose events that may have occurred and may affect the significance or accuracy of such information or the terms of any amendment to the Consent Solicitation.

None of the Issuer, the Tabulation Agent or the Trustee makes any recommendation as to whether Consents to the Amendment should be given. Recipients of this Consent Solicitation Statement and the accompanying materials should not construe their contents as legal, business, financial, regulatory or tax advice.

The Tabulation Agent is acting exclusively for the Issuer and no one else in connection with the Consent Solicitation. If the Requisite Consents in respect of the Notes are obtained and certified to the Trustee, the Trustee will, at a convenient time as soon as practicable, upon receipt of the required documentation in form and substance reasonably satisfactory to the Trustee, enter into a second supplemental indenture (the “**Second Supplemental Indenture**”) with the Issuer to implement the Amendment.

If the Amendment becomes effective, it will be binding on all Noteholders and their successors and transferees, whether or not such Noteholders consented to the Amendment. See “*Risk Factors Related to the Consent Solicitation.*” The Issuer intends to make a public announcement as soon as reasonably practicable after the Amendment becomes effective. If any of the Relevant Conditions are not satisfied in respect of the Amendment, then the Amendment will not become effective. See “*The Consent Solicitation – Effectiveness of the Amendment.*”

No person has been authorized to give any information or make any representations other than those contained in this Consent Solicitation Statement and, if given or made, such information or representations should not be relied upon as having been authorized by the Issuer. Neither the delivery of this Consent Solicitation Statement, nor any Consents solicited or accepted hereunder, at any time shall, under any circumstances, create any implication that the information set forth herein is correct as of any time subsequent to the date hereof or that there has been no change in the information set forth herein or in the affairs of the Issuer since the date hereof.

Requests for assistance in completing and delivering Consents, Consent Instructions (as defined herein) or documents or requests for additional copies of this Consent Solicitation Statement and other related documents may be directed to the Tabulation Agent at its contact details set forth on the back page of this Consent Solicitation Statement.

For a discussion of factors you should consider before you decide whether to consent to the Amendment, see “*Risk Factors Related to the Consent Solicitation.*”

**UNDER NO CIRCUMSTANCES SHOULD ANY PERSON TENDER OR DELIVER NOTES TO THE ISSUER, THE TABULATION AGENT OR THE TRUSTEE AT ANY TIME.**

This Consent Solicitation Statement does not constitute an offer to sell or a solicitation of an offer to purchase any securities of the Issuer.

The Notes have not been approved or disapproved by the U.S. Securities and Exchange Commission or any state securities commission, nor has the U.S. Securities and Exchange Commission or any state securities commission passed upon the accuracy or adequacy of this Consent Solicitation Statement. Any representation to the contrary is a criminal offense. This Consent Solicitation Statement does not constitute an offer to participate in this Consent Solicitation or an offer of securities in any jurisdiction where such offer is not permitted.

This Consent Solicitation Statement contains forward-looking statements. These forward-looking statements are not guarantees of future performance. Rather, they are based on current views and assumptions and involve known and unknown risks, uncertainties and other factors, many of which are outside the control of the Issuer and are difficult to predict, that may cause actual results or developments to differ materially from any future results or developments expressed or implied by the forward-looking statements.

## DEFINITIONS

<b>2023 Notes</b>	The Issuer's €500,000,000 1.875% notes due April 27, 2023 (ISIN: XS1713464441).
<b>ADLER</b>	ADLER Real Estate Aktiengesellschaft.
<b>Amendment</b>	The proposed amendment of the Indenture described in this Consent Solicitation Statement.
<b>Business Day</b>	A day, other than a Saturday or a Sunday, on which commercial banks and foreign exchange markets settle payments and are open for business in Frankfurt and Luxembourg.
<b>Clearing Systems</b>	Euroclear and Clearstream, Luxembourg.
<b>Clearstream, Luxembourg</b>	Clearstream Banking S.A., Luxembourg.
<b>Consent</b>	The consents delivered by the Noteholders in form of an Electronic Consent Instruction in respect of the Amendment in accordance with the terms hereof. See " <i>Consent Instruction</i> ."
<b>Consent Instruction</b>	The Electronic Consent Instruction to deliver a consent and to block the relevant Notes in the relevant Clearing System, given in such form as is specified by the Clearing Systems from time to time, which Consent Instruction must be delivered through the relevant Clearing System by a Direct Participant in accordance with the procedures of the relevant Clearing System instructing the relevant Clearing System that the Consent in respect of the Notes which are the subject of such Electronic Consent Instruction should be delivered in relation to the Amendment.
<b>Consent Solicitation</b>	The solicitation of the Noteholders to deliver Consents in respect of the Amendment relating to the Indenture.
<b>Consent Solicitation Statement</b>	This consent solicitation statement (as amended or supplemented from time to time).
<b>Custodian</b>	The bank or other financial institution with which the Noteholder maintains a securities account in respect of the Notes.
<b>Direct Participant</b>	Each person who is shown in the records of the Clearing Systems as a Noteholder.
<b>Effective Time</b>	The time and date on which the Second Supplemental Indenture for the Notes is executed by the Issuer and the Trustee.
<b>Euroclear</b>	Euroclear Bank SA/NV, Belgium.
<b>Expiration Time</b>	17:00 CET on February 22, 2023.
<b>Facility 2024</b>	Means an up to €300,000,000 term loan facility to be made available to Adler Group S.A. to fund a shareholder loan with 0% interest to the Issuer to fund the repayment or repurchase (in each case not above par) of the Notes.
<b>Facility ARE</b>	Means an up to €235,000,000 term loan facility to be made available to Adler Group S.A. to fund a shareholder loan with 0% interest to the Issuer to apply the proceeds to fund the repayment of the 2023 Notes.
<b>Indenture</b>	The indenture between, <i>inter alia</i> , the Issuer and the Trustee, dated December 6, 2017, as supplemented by the first supplemental indenture dated January 16, 2020.
<b>Issuer</b>	ADLER Real Estate Aktiengesellschaft.

<b>Noteholders</b>	Holders of the Notes.
<b>Notes</b>	€300,000,000 2.125% notes due 2024 (ISIN: XS1731858715).
<b>Requisite Consents</b>	The consents of the Noteholders of a majority in aggregate principal amount of the Notes then outstanding.
<b>Sanctions Authority</b>	(i) the United States government; (ii) the United Nations; (iii) the European Union (or any of its member states); (iv) the United Kingdom; and (v) any other equivalent governmental or regulatory authority, institution or agency which administers economic, financial or trade sanctions; or (vi) the respective governmental institutions and agencies of any of the foregoing including, without limitation, the Office of Foreign Assets Control of the United States Department of the Treasury, the United States Department of State, the United States Department of Commerce and His Majesty's Treasury.
<b>Sanctions Restricted Person</b>	Each person or entity: <ul style="list-style-type: none"> <li>(i) that is, or that is directly or indirectly owned or controlled by (as such terms are interpreted in the relevant regulations or in any guidance in relation to such regulations), any person or entity on any list of restricted entities, persons or organizations (or equivalent) published by any Sanctions Authority, including without limitation, (i) the most current “Specially Designated Nationals and Blocked Persons” list (which as of the date hereof can be found at: <a href="https://www.treasury.gov/ofac/downloads/sdnlist.pdf">https://www.treasury.gov/ofac/downloads/sdnlist.pdf</a>), (ii) the Foreign Sanctions Evaders List (which as of the date hereof can be found at: <a href="http://www.treasury.gov/ofac/downloads/fse/fselist.pdf">http://www.treasury.gov/ofac/downloads/fse/fselist.pdf</a>) or (iii) the most current “Consolidated list of persons, groups and entities subject to EU financial sanctions” (which as of the date hereof can be found at: <a href="https://webgate.ec.europa.eu/fsd/fsf/">https://webgate.ec.europa.eu/fsd/fsf/</a>); and/or</li> <li>(ii) that is located in or organized under the laws of, or that is the government of, any jurisdiction targeted by the laws, regulations, embargoes or other restrictive measures by or of any Sanctions Authority, or a person that is otherwise the target of such laws, regulations, embargoes or measures.</li> </ul>
<b>Second Supplemental Indenture</b>	The second supplemental indenture to be executed by the Issuer and the Trustee following receipt of the Requisite Consents and following the fulfillment or waiver of the Relevant Conditions.
<b>Securities Act</b>	United States Securities Act of 1933, as amended.
<b>Tabulation Agent</b>	Kroll Issuer Services Limited.
<b>Trustee</b>	Deutsche Trustee Company Limited.

## SUMMARY OF THE CONSENT SOLICITATION

This summary of the Consent Solicitation highlights information contained elsewhere in this Consent Solicitation Statement and does not contain all the information that may be important to Noteholders and it is qualified in its entirety by the remainder of this Consent Solicitation Statement. Noteholders should carefully read this Consent Solicitation Statement in its entirety.

<b>The Consent Solicitation:</b>	On the terms and subject to the conditions set forth in this Consent Solicitation Statement, the Issuer hereby solicits the Consents of the Noteholders in respect of the Amendment relating to the Indenture.
<b>Purpose:</b>	The purpose of the Amendment is to grant security for the benefit of, among others, the Noteholders and amend certain of the terms of the Notes.
<b>Requisite Consents:</b>	Noteholders of at least a majority in aggregate principal amount of the Notes then outstanding must deliver valid Consents to the Amendment.
<b>Relevant Conditions:</b>	<p>The following conditions to the Consent Solicitation must be satisfied in respect of the Amendment:</p> <ul style="list-style-type: none"><li>(i) the receipt of the Requisite Consents prior to the Expiration Time and the delivery to the Trustee of a certification from the Tabulation Agent that the Requisite Consents have been obtained, on which the Trustee may rely without further investigation or verification;</li><li>(ii) the receipt of the requisite consents for the consent solicitation that was launched by the Issuer with respect to the German Notes on or about the date of this Consent Solicitation Statement (the “<b>German Notes Consent Solicitation</b>”);</li><li>(iii) the satisfaction or waiver of all other conditions to the implementation of the amendments to the German Notes under the German Notes Consent Solicitation;</li><li>(iv) the full repayment or discharge of the 2023 Notes and the full or partial funding of Facility ARE;</li><li>(v) the amendment of Adler Group S.A.’s senior unsecured notes’ respective negative pledge covenants to allow the incurrence of ARE Notes Collateral (as defined therein); and</li><li>(vi) the notification by the Issuer to the Noteholders of the satisfaction or waiver of the conditions included in clauses (i) through (v) above via notice distributed by Clearing Systems.</li></ul>
<b>Effectiveness of the Amendment:</b>	The Amendment will only become effective upon (A) all the Relevant Conditions having been satisfied or waived, (B) the Second Supplemental Indenture having been validly executed and delivered by the Issuer and the Trustee and (C) all related documentation in form and substance reasonably satisfactory to the Trustee having been executed and delivered to the Trustee (the “ <b>Effectiveness Conditions</b> ”). If the Amendment becomes effective, it will be binding on all Noteholders and their successors and transferees, whether or not such Noteholders consented to the Amendment. The Issuer intends to make a public announcement once the Amendment has become effective. If any of the Relevant Conditions are not satisfied or waived, then the Second Supplemental Indenture will not be executed and the Amendment will not be effective.
<b>Consent Instruction:</b>	In order to participate in the Consent Solicitation, Noteholders must submit an Electronic Consent Instruction through the Clearing

Systems confirming the name of the Direct Participant and the amount of Notes subject to the Electronic Consent Instruction.

Only Direct Participants may submit Consent Instructions to the relevant Clearing System. Each Noteholder that is not a Direct Participant must arrange for the Direct Participant through which it holds Notes or for the nominee, Custodian, intermediary or person acting in a similar capacity for the Noteholder through which it holds the Notes to arrange for their Direct Participant in Clearstream, Luxembourg or Euroclear to submit a Consent Instruction, as the case may be, on its behalf to the relevant Clearing System prior to the deadline(s) specified by such Clearing System so as to be received by the Tabulation Agent by the Expiration Time.

**No Revocation Rights:**

Any Consent Instructions received by the Tabulation Agent may not be revoked by Noteholders.

**Consent Fee:**

No consent fee is payable in connection with this Consent Solicitation.

**Termination or Modification of the Consent Solicitation:**

Notwithstanding anything to the contrary set forth in this Consent Solicitation Statement, the Issuer reserves the right, in its sole discretion, subject to applicable law and certain contractual restrictions, at any time, to terminate or modify the Consent Solicitation for any reason.

**Assistance and Information:**

Requests for assistance in completing and delivering Consents or any documents related to the Consent Solicitation and requests for additional copies of this Consent Solicitation Statement and other relevant documents may be directed to the Tabulation Agent at its contact details set forth on the back page of this Consent Solicitation Statement. Noteholders may also contact their broker, dealer, commercial bank, Custodian, trust company or other nominee for assistance concerning the Consent Solicitation.

**Tabulation Agent:**

Kroll Issuer Services Limited.

**Ranking**

The Notes will:

- (i) continue to be general senior obligations of the Issuer;
- (ii) continue to rank *pari passu* in right of payment with any existing and future indebtedness of the Issuer that is not expressly subordinated in right of payment to the Notes and the Notes will rank *pari passu* in right of payment with any indebtedness under Facility ARE and Facility 2024;
- (iii) rank senior in right of payment to any existing and future indebtedness of the Issuer that is expressly subordinated in right of payment to the Notes;
- (iv) be effectively subordinated to any existing or future indebtedness or obligation of the Issuer and its subsidiaries that is secured by property and assets that do not secure the Notes or secure the Notes only on a lower priority basis (including any indebtedness under Facility ARE and Facility 2024), to the extent of the value of the property and assets securing such indebtedness; and
- (v) be structurally subordinated to any existing or future indebtedness of the Issuer's subsidiaries, including obligations to trade creditors.

## KEY DATES

Noteholders should take note of the following key dates in connection with the Consent Solicitation. The following summary of key dates is qualified in its entirety by the more detailed information appearing elsewhere in this Consent Solicitation Statement. The dates below are subject to modification in accordance with the terms of the Consent Solicitation:

<b><u>Event</u></b>	<b><u>Calendar Date</u></b>	<b><u>Description of Event</u></b>
<b>Launch Date</b>	February 2, 2023.	Commencement of Consent Solicitation.
<b>Expiration Time</b>	17:00 CET on February 22, 2023, unless extended or earlier terminated by the Issuer in its sole discretion.	The time by which Noteholders must provide a Consent Instruction.
<b>Effective Time</b>	Following receipt of the Requisite Consents, satisfaction or waiver of the Relevant Conditions and the satisfaction of the Effectiveness Conditions.	The time and date on which the Second Supplemental Indenture for the Notes is executed by the Issuer and the Trustee.
<b>Announcement of the effectiveness of the Amendment</b>	Promptly after execution and delivery of the Second Supplemental Indenture by the Issuer and the Trustee.	The time at which the effectiveness of the Amendment is announced by the Issuer.

Noteholders are advised to check with any nominee, Custodian, intermediary or person acting in a similar capacity for the Noteholder whether such nominee, Custodian, intermediary or person acting in a similar capacity for the Noteholder would require receipt of instructions to participate in the Consent Solicitation before the deadlines and within the periods specified in this Consent Solicitation Statement. The deadlines set by each Clearing System for the submission of Consent Instructions may also be earlier than the relevant deadlines specified in this Consent Solicitation Statement.

## **RISK FACTORS RELATED TO THE CONSENT SOLICITATION**

None of the Issuer, the Tabulation Agent, the Trustee or any of their respective directors, officers, employees, agents or affiliates makes any recommendation as to whether a Noteholder should consent to the Amendment and none of the Issuer or its management board has authorized any person to make any such statement. Noteholders are urged to evaluate carefully all information included in this Consent Solicitation Statement, consult with their own legal, investment and tax advisors and make their own decision whether to provide their Consent to the Amendment.

Before making a decision with respect to any Consent Solicitation, Noteholders should carefully consider, in addition to the other information contained in this Consent Solicitation Statement, the following:

***If the Amendment becomes effective, all Notes will be subject to the terms of, and each Noteholder will be bound by, the Amendment.***

If the Amendment becomes effective, all Noteholders will be bound by the Amendment, whether or not such Noteholder consented to the Amendment. Once the Amendment becomes effective, Noteholders that do not deliver Consents will not be entitled to any rights of appraisal or similar rights of dissenters with respect to the Amendment. The Amendment will only become effective upon the satisfaction of the Effectiveness Conditions.

***Notes of Noteholders that deliver Consent Instructions will be blocked from trading through the Clearing Systems until the Expiration Time, and Noteholders will be unable to revoke their Consent Instructions.***

In order to participate in the Consent Solicitation, Noteholders are required to submit a Consent Instruction through the Clearing Systems by no later than the Expiration Time. The Consent Instruction will include a confirmation by the relevant Custodian that the respective Notes are not transferable during the period from the date of the Consent Instruction until the Expiration Time. In the period of time during which Notes are blocked from trading pursuant to the foregoing procedures for participation in the Consent Solicitation, Noteholders may be unable to promptly liquidate their Notes or timely react to adverse trading conditions and could suffer losses as a result of these restrictions on transferability. In addition, any Consent Instructions received by the Tabulation Agent may not be revoked by Noteholders.

***Noteholders will be responsible for assessing the merits of the Consent Solicitation.***

Each Noteholder is responsible for assessing the merits of the Consent Solicitation. Noteholders should consult with their own tax, accounting, financial, legal and other advisers regarding the consequences of participating or electing not to participate in the Consent Solicitation. None of the Issuer, the Tabulation Agent or the Trustee has made or will make any assessment of the merits of the Consent Solicitation or of the impact of the Consent Solicitation on the interests of the Noteholders either as a class or as individuals. None of the Issuer, the Tabulation Agent or the Trustee nor any of their respective affiliates is acting for any Noteholder or will be responsible to any Noteholder for providing any protections which may be afforded for providing advice in relation to the Consent Solicitation.

***Noteholders are responsible for complying with the procedures of the Consent Solicitation.***

Noteholders are solely responsible for complying with all of the procedures for delivering Consents pursuant to the terms of this Consent Solicitation Statement, including submission of Consent Instructions. None of the Issuer, the Tabulation Agent or the Trustee assumes any responsibility for informing Noteholders of any irregularities with respect to any Consents delivered.

***No third-party determination has been or will be obtained that the Consent Solicitation is fair to Noteholders.***

The Issuer has not retained and does not intend to retain any unaffiliated representative to act solely on behalf of the Noteholders for purposes of negotiating the terms of the Consent Solicitation or preparing a report concerning the fairness of the Consent Solicitation. The future value of the Notes following the Consent Solicitation may not equal or exceed the value of the Notes prior to the Consent Solicitation.

***The implementation of the Amendment as proposed by the Consent Solicitation may be delayed or may not occur at all.***

The Issuer is not obligated to complete the Consent Solicitation, which is conditional on, among other things, the receipt of the Requisite Consents and the fulfillment of all Relevant Conditions and Effectiveness Conditions. Even if the Requisite Consents are received and other Relevant Conditions are met, the Amendment may not be implemented on the schedule described in this Consent Solicitation Statement.

***Consent Instructions submitted by Sanctions Restricted Persons will not be accepted.***

A beneficial owner of the Notes who is a Sanctions Restricted Person may not participate in the Consent Solicitation. No Consent Instruction submitted by a Sanctions Restricted Person will be accepted or counted, notwithstanding the purported delivery of a Consent Instruction by it in respect of the Consent Solicitation on or before the Expiration Time.

***The Issuer has reserved certain rights in connection with the Consent Solicitation.***

The Issuer expressly reserves the right, in its sole discretion, at any time to (i) terminate the Consent Solicitation, (ii) waive any of the Relevant Conditions, (iii) extend the Expiration Time or (iv) amend the terms of the Consent Solicitation in any manner.

***No consent fee is payable in connection with this Consent Solicitation.***

The Issuer will not pay a consent fee in connection with this Consent Solicitation and the Noteholders will not earn a fee by consenting to the Amendment.

***The Amendment is subject to the Effectiveness Conditions.***

The Amendment will only become effective upon (A) all the Relevant Conditions having been satisfied or waived, including the full repayment or discharge of the 2023 Notes with the maturity date of April 27, 2023, (B) the Second Supplemental Indenture having been validly executed and delivered by the Issuer and the Trustee and (C) all related documentation in form and substance reasonably satisfactory to the Trustee having been executed and delivered to the Trustee.

***The provision of collateral securing the Notes is subject to provision of such collateral in connection with Facility ARE and Facility 2024.***

The collateral securing the Notes will only be granted to the extent provided under the finance documents relating to Facility ARE and Facility 2024. To the extent collateral will be granted to the security agent to secure Facility ARE and Facility 2024, the Notes will be secured with the same collateral. In case of the enforcement of such collateral, the Notes will only receive any enforcement proceeds following repayment in full of certain costs and expenses, Facility ARE and Facility 2024. Furthermore, the Noteholders do not have a separate and independent right for the Notes to be secured and collateral granted under the finance documents relating to Facility ARE and Facility 2024 may be waived in accordance with the terms of such finance documents, without any consent of the Trustee or the Noteholders being required.

***The Notes will be effectively subordinated to Facility ARE and Facility 2024.***

The Notes will be subject to the terms of the intercreditor agreement, including subject to certain exceptions and turnover provisions. Pursuant to the terms of the intercreditor agreement, claims of first-priority secured creditors, including the creditors under Facility ARE and Facility 2024, will have priority with respect to the collateral over the claims of the Noteholders. The Notes will be effectively subordinated to Facility ARE and Facility 2024 as a result of being secured on a second priority basis to the extent of the value of the property and assets securing Facility ARE and Facility 2024 on a first priority basis. In addition, the Issuer's obligations in respect of the Notes may be released in certain circumstances. See the "Intercreditor Principles" attached as Annex 1 to the "Amendment."

***The value of the collateral may not be sufficient to ensure repayment of the Notes because the holders of Facility ARE and Facility 2024 and any other priority obligations will be paid first from the proceeds from a sale of the collateral.***

The collateral which, pursuant to the security documents and the intercreditor agreement, will secure the obligations of the Issuer under the Notes also secures or will secure obligations under Facility ARE and Facility 2024. The collateral may also secure additional indebtedness to the extent permitted by the Indenture, the intercreditor agreement, Facility ARE and Facility 2024. Pursuant to the terms of the intercreditor agreement, the liens securing the Notes will, *in rem*, rank *pari passu* to Facility ARE and Facility 2024 and other priority secured obligations, but proceeds from a sale of the collateral will be applied first to repay Facility ARE and Facility 2024 and other priority secured obligations before paying any amounts due on the Notes. To the extent that other first-priority security interests, pre-existing liens, liens permitted under the Indenture, Facility ARE and Facility 2024 and other rights encumber the collateral securing the Notes, those parties may have or may exercise rights and remedies with respect to the collateral that could adversely affect the value of the security and the ability of the security agent to realize or foreclose on security. Accordingly, if the Issuer defaults on the Notes, the proceeds from the sale of the collateral may not be sufficient to repay the obligations under the Notes. If the proceeds of any sale of the collateral are not sufficient to repay all amounts due on the Notes, then the Noteholders' claims against the Issuer's remaining assets to repay any amounts still outstanding under the Notes would be unsecured.

No appraisal of the value of the collateral has been made in connection with this Consent Solicitation, and the fair market value of the collateral may be subject to fluctuations based on factors that include, among others, general economic conditions, industry conditions and similar factors. The amount to be received upon the enforcement of the security interests over the collateral or in the event of liquidation would be dependent on numerous factors, including, but not limited to, the ability to readily liquidate the collateral, the timing and the manner of the sale and the availability of buyers, the actual fair market value and the condition of the collateral. The book value of the collateral should not be relied on as a measure of realizable value of such assets. By its nature, some of the assets that comprise the collateral are illiquid and/or may have no readily ascertainable market value such that the value of collateral to other parties may be less than its value to the Issuer. In the event of foreclosure, liquidation, bankruptcy or similar proceeding, the collateral may not be sold in a timely or orderly manner, and the proceeds from any sale or liquidation of this collateral may not be sufficient to repay the obligations under the Notes.

***There are circumstances other than repayment or discharge of the Notes under which the collateral securing the Notes will be released automatically, without the consent of the Noteholders or the consent of the security agent.***

Under various circumstances, the collateral securing the Notes may be released automatically, including upon sales of such collateral to third parties and in accordance with the terms of the intercreditor agreement. Additionally, certain priority creditors of the Issuer and its subsidiaries will receive the proceeds of the enforcement of the collateral in priority to the Noteholders under certain circumstances.

***It may be difficult to realize the value of the collateral securing the Notes.***

The collateral securing the Notes will be subject to any and all exceptions, defects, encumbrances, liens and other imperfections permitted under the Indenture and the intercreditor agreement and accepted by other creditors that have the benefit of first-priority security interests in the collateral securing the Notes from time to time, whether on or after the date the Notes are first issued. The existence of any such exceptions, defects, encumbrances, liens and other imperfections could adversely affect the value of the collateral securing the Notes, as well as the ability of the security agent to realize or foreclose on such collateral. Furthermore, the ranking of security interests can be affected by a variety of factors, including, among others, the timely satisfaction of perfection requirements, statutory liens or characterization under the laws of certain jurisdictions. The security interests granted in favor of the security agent may be subject to practical problems generally associated with the realization of security interests in collateral in certain jurisdictions. For example, under German law, the enforcement of share pledges is subject to certain specific requirements. The security agent may also need to obtain the consent of a third party to enforce a security interest. The Issuer cannot assure Noteholders that the security agent will be able to obtain any such consents. The Issuer also cannot assure the Noteholders that the consents of any third parties will be given when required to facilitate a sale of, or foreclosure on, such assets. Accordingly, the security agent may not have the ability to sell or foreclose upon those assets, and the value of the collateral may significantly decrease.

***Pursuant to the terms of the intercreditor agreement, the creditors that have the benefit of first priority interests in the collateral securing the Notes from time to time will have the initial right to instruct the security agent to take enforcement action and not the Trustee or the Noteholders.***

The intercreditor agreement will provide that the creditors that have the benefit of first priority interests in the collateral securing the Notes from time to time will first have the initial right to instruct the security agent to take enforcement action and not the Trustee or the Noteholders. If the priority creditors or the Trustee propose that enforcement action be taken, the priority creditors and the Trustee, on behalf of the Noteholders, will enter into consultations for a period of 30 days. If, prior to the expiry of the consultation period, no agreement on the taking of enforcement actions is reached, the priority creditors will be entitled to take enforcement action. Only in case the priority creditors do not take any enforcement action during a standstill period of 120 days following the consultation period, the Trustee, on behalf of the Noteholders, will be able to instruct the security agent. As a result, the Noteholders may not be able to enforce the security interests in the collateral securing the Notes in a timely manner and the value of the collateral may decrease during such time periods.

***The security interests in the collateral will be granted to the security agent rather than directly to the Noteholders. The ability of the security agent to enforce certain of the collateral may be restricted by local law.***

The security interests in the collateral that will secure the obligations of the Issuer under the Notes will not be granted directly to the Noteholders but will be granted only in favor of the security agent. The intercreditor agreement will provide that only the security agent has the right to enforce the security documents. As a consequence, Noteholders will not have direct security interests and will not be entitled to take enforcement action in respect of the collateral securing the Notes, except through the security agent.

The security interest over the collateral will secure a so-called “parallel debt” obligation (the “**Parallel Debt Obligation**”) created under the intercreditor agreement in favor of the security agent as well as, or in lieu of, securing the obligations under the Notes directly. The parallel debt is in the same amount and payable at the same time as the obligations of the Issuer under the Notes (the “**Principal Obligations**”), and any payment in respect of the Principal Obligations will discharge the corresponding parallel debt and any payment in respect of the parallel debt will discharge the corresponding Principal Obligations. Although the security agent will have, pursuant to the parallel debt, a claim against the Issuer for the full principal amount of the Notes, the parallel debt structure has not been tested in the German

courts and there is no judicial guidance as to its efficacy or validity. Therefore, the ability of the security agent to enforce the collateral may be restricted, or the parallel debt structure might not be capable of creating a valid security interest on the part of the security agent. In addition, Noteholders bear some risk associated with a possible insolvency or bankruptcy of the security agent, which could, under certain circumstances, result in a delay in enforcement, diminishing value or even loss of the collateral.

***Each security interest will be subject to certain limitations on enforcement and may be limited by applicable law or subject to certain defenses that may limit its validity and enforceability.***

Each security interest granted under a security document will be limited in scope to the value of the relevant assets expressed to be subject to that security interest and enforcement of each security document would be subject to certain generally available defenses.

- These laws and defenses include those that relate to corporate benefit, fraudulent conveyance or transfer, voidable preference, financial assistance, corporate purpose, capital maintenance or similar laws, regulations or defenses affecting the rights of creditors generally. Security interests can be challenged (by the bankruptcy receiver or trustee, in case of bankruptcy of the relevant security provider, or by any of the creditors of such security provider outside bankruptcy), and a court could declare unenforceable against third parties (including the beneficiaries thereof) and/or void, any legal act performed by the security provider (including, without limitation, the granting by it of the security interests granted under the security documents) and, if payment had already been made or enforcement proceeds applied under a security document, require that the recipient (and possibly, subsequent transferees thereof) return the payment to the security provider, if the court found, *inter alia*, that the amount paid or payable or the enforcement proceeds under the relevant security document was in excess of the maximum amount permitted under applicable law;
- the relevant security interest under a security document was incurred with actual intent to hinder, delay or defraud creditors or shareholders of the security provider or, in certain jurisdictions, even when the recipient was simply aware that the security provider was insolvent when it granted the relevant security interest;
- under German law, it cannot be ruled out that the case law of the German Federal Supreme Court (*Bundesgerichtshof*) regarding so-called destructive interference (*existenzvernichtender Eingriff*) (i.e., a situation where a shareholder deprives a German limited liability company of the liquidity necessary for it to meet its own payment obligations) may be applied by courts with respect to the enforcement of a security interest granted by a German (direct or indirect) subsidiary of the Issuer. In such case, the amount of proceeds to be realized in an enforcement process may be reduced, even to zero;
- the security provider did not receive fair consideration or reasonably equivalent value for granting the relevant security interests and the security provider was: (i) insolvent or rendered insolvent because of the relevant security interest; (ii) undercapitalized or became undercapitalized because of the relevant security document; or (iii) intended to incur, or believed that it would incur, indebtedness beyond its ability to pay at maturity; and/or
- the relevant security documents were held to exceed the corporate objects of the security provider or not to be in the best interests or for the corporate benefit of the security provider.

***Noteholders may not be able to recover in civil proceedings for US securities law violations.***

The Issuer and its subsidiaries are organized or incorporated outside the United States, and their business is conducted entirely outside the United States. The directors, managers and/or executive officers of the Issuer are all non-residents of the United States, and substantially all of their assets are located outside the United States. Noteholders may be unable to effect service of process within the United States on these directors, managers and executive officers. In addition, as all of the assets of the Issuer and its respective subsidiaries and those of their directors and executive officers are located outside of the United States, Noteholders may be unable to enforce judgments obtained in the US courts against them. Moreover, in light of decisions of the U.S. Supreme Court, actions of the Issuer may not be subject to the provisions of the federal securities laws of the United States. The United States is not currently bound by a treaty providing for reciprocal recognition and enforcement of judgments, other than arbitral awards, rendered in civil and commercial matters with Germany. There is, therefore, doubt as to the enforceability in Germany of US securities laws in an action to enforce a US judgment in such jurisdictions. In addition, the enforcement in Germany of any judgment obtained in a US court, whether or not predicated solely upon US federal securities laws, will be subject to certain conditions.

## THE AMENDMENT

*Set forth below is a summary of the Amendment for which Consent is being sought pursuant to this Consent Solicitation Statement. Noteholders should carefully consider the factors set forth below as well as the other information set forth in this Consent Solicitation Statement prior to making a Consent. The following statements relating to the Amendment are summaries that do not purport to be complete. Conforming changes reflecting the Amendment will be made to the Indenture. Each capitalized term appearing below that is not defined herein has the meaning assigned to such term in the Indenture.*

### The Amendment

We are requesting an amendment to Articles One, Four, Six, Seven, Nine and Twelve to the Indenture, which, if the Requisite Consents have been received, would be amended to read as follows (amendment in **bold underline** or **~~bold-strikethrough~~**, as applicable):

## ARTICLE ONE DEFINITIONS AND INCORPORATION BY REFERENCE

### Section 1.01 Definitions.

**“2026 Notes” means the German law governed notes issued by the Issuer in an aggregate principal amount of €300,000,000.00 due on April 27, 2026 bearing interest at the rate of 3.000 per cent. per annum.**

**“Collateral” means the assets listed in Annex 2 and any and all assets from time to time in which a security interest has been or will be granted pursuant to any Security Document to secure the obligations under this Indenture and the Notes.**

**“Consolidated Indebtedness” means Indebtedness (for the avoidance of doubt, excluding the PIK Interest) of the Issuer and its Subsidiaries, on a consolidated basis, determined in accordance with IFRS.**

**“Consolidated Secured Indebtedness” means that portion of Consolidated Indebtedness that is secured by a Lien on properties or other assets of the Issuer or any of its Subsidiaries, excluding any Excluded Secured Indebtedness and any such indebtedness for which the release or waiver of the relevant security has been agreed and the effectiveness of which release or waiver is subject only to technical or clerical process, such as entries in public registries or implementation by notaries.**

**“Effective Date” means the date on which the Second Supplemental Indenture for the Notes is executed and delivered by the Issuer and the Trustee.**

**“Excluded Secured Indebtedness” means (a) the Notes, (b) the 2026 Notes, (c) Facility ARE, (d) Facility 2024, (e) payment-in-kind interest on Facility ARE and (f) payment-in-kind interest on Facility 2024 ((e) and (f) together, the “PIK Interest”).**

**“Facility 2024” means an up to €300,000,000 term loan facility made available to Adler Group S.A. to fund a shareholder loan with 0% interest to the Issuer to fund the repayment or repurchase (in each case not above par) of the Notes.**

**“Facility ARE” means an up to €235,000,000 term loan facility made available to Adler Group S.A. to fund a shareholder loan with 0% interest to the Issuer.**

**“Indebtedness” means, without duplication, any indebtedness (excluding Intercompany Indebtedness and, for the avoidance of doubt, the PIK Interest), net of cash and cash equivalents, of the Issuer or any Subsidiary as shown in the Most Recent Published Financial Statements for or in respect of:**

- (a) borrowed money or evidenced by bonds, notes, debentures or similar instruments;
- (b) any reimbursement obligations, in connection with any letters of credit actually issued or any dematerialized equivalent instrument;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, commercial paper, debentures, loan stock or any similar instrument;
- (d) amounts representing the balance deferred and unpaid of the purchase price of any Property or services, except any such balance that constitutes an accrued expense or trade payable;
- (e) any lease of Property by the Issuer or any Subsidiary as lessee that is reflected on the Issuer’s consolidated balance sheet as a capitalized lease in accordance with IFRS (as in effect on the date hereof);

- (f) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (g) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing, but excluding bank guarantee facilities (as amended from time to time) made or to be made available by financial institutions to the Issuer or a Subsidiary under which the Issuer or the respective Subsidiary may request the issue of a bank guarantee or bank guarantees in favor of a person who agrees to purchase a Real Estate Property owned by the Issuer or a Subsidiary;
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above,

in each case whether or not secured by any Lien, to the extent that any such items (other than letters of credit) would appear as a liability on the Issuer's consolidated balance sheet in accordance with IFRS. Indebtedness also includes, to the extent not otherwise included, any obligation by the Issuer or any Subsidiary to be liable for, or to pay, as obligor, guarantor or otherwise (other than for purposes of collection in the ordinary course of business), indebtedness of another Person (other than the Issuer or any Subsidiary) of the type described above. Indebtedness shall also include Indebtedness for borrowed money of a Person other than the Issuer or a Subsidiary that is secured by any Lien on Property, to the extent of the lesser of (i) the amount of indebtedness so secured and (ii) the fair market value of the Property subject to such Lien. Indebtedness shall not include any derivative instruments or any deferred tax liabilities shown in the Most Recent Published Financial Statements. For so long as the ACCENTRO Purchaser has not fully discharged its payment obligations to the Issuer under the ACCENTRO SPA, such portion of the total purchase price under the ACCENTRO SPA that remains outstanding to the Issuer or its Subsidiaries from time to time (including accrued interest thereon) shall be counted as a cash equivalent for purposes of calculating Indebtedness.

**"Intercreditor Agreement" means the intercreditor agreement implementing the Intercreditor Principles to be executed and delivered by, *inter alios*, the Issuer, the Security Agent and the Trustee before the Collateral is granted, as amended or supplemented from time to time.**

**"Intercreditor Principles" means the intercreditor principles as set out in Annex 1.**

**"Net Cash Interest" means all cash interest and other financing charges (but excluding, for the avoidance of doubt, any financing charges related to Facility ARE or Facility 2024) payable in cash accrued to persons who are not members of the Group less the amount of any cash interest and other financing charges payable in cash accrued to be received from persons who are not members of the Group, in each case, excluding any one-off financing charges (excluding without limitation, any one-off fees and/or break costs).**

**"Permitted Lien" means:**

- (a) any Lien of a company existing at the time that such company is merged into, or consolidated with or acquired by, the Issuer or any other member of the Group (as the case may be), provided that such Lien was not created in contemplation of, and the principal amount secured has not increased in contemplation of or since, such merger, consolidation or acquisition;
- (b) any Lien existing on any property or assets prior to the acquisition thereof by the Issuer or any other member of the Group (as the case may be), provided that such Lien was not created in contemplation of, and the principal amount secured has not increased in contemplation of or since, such acquisition;
- (c) any Lien granted by the Issuer or any other member of the Group in connection with a Securitization or Project Financing;
- (d) any Lien outstanding on the Issue Date;
- (e) **any Lien on the Collateral ranking senior or *pari passu* to the Notes securing Facility ARE, Facility 2024 and/or the PIK Interest;**
- (f) **any Lien on the Collateral securing the Notes;**
- (g) **any Lien on the Collateral ranking *pari passu* to the Notes securing the 2026 Notes;**
- (h) **any Lien over assets or properties of Brack Capital Properties N.V. or its Subsidiaries to secure Relevant Indebtedness of Brack Capital Properties N.V. or its Subsidiaries; or**

- (i) any renewal of or substitution for any Lien permitted by any of subparagraphs (a) to ~~(h)~~ **(i)** (inclusive) of this definition, provided that with respect to any such Lien (i) the ~~principal~~ amount secured has not increased and (ii) the Lien has not been extended to any additional assets.

**“Second Supplemental Indenture” means the second supplemental indenture to be executed by the Issuer and the Trustee following receipt of the consent of the Holders of at least a majority in aggregate principal amount of the Notes then outstanding and following the fulfillment or waiver of the relevant conditions.**

**“Security Agent” means Global Loan Agency Services GmbH, Bockenheimer Anlage 46, 60322 Frankfurt am Main, Germany or any affiliate thereof or any successor thereof to be appointed as security agent by the Issuer under the Intercreditor Agreement.**

**“Security Documents” means the security agreements, pledge agreements, collateral assignments, and any other instrument and document executed and delivered pursuant to this Indenture or otherwise or any of the foregoing, as the same may be amended, supplemented or otherwise modified from time to time, creating the security interests in the Collateral as contemplated by this Indenture.**

**“Secured Indebtedness” means that portion of the aggregate principal amount of all outstanding Indebtedness of the Group that is secured by a Lien on properties or other assets of the Group, but excluding any Excluded Secured Indebtedness.**

## **ARTICLE FOUR COVENANTS**

### **Section 4.02. Limitation on Incurrence of Indebtedness.**

The Issuer shall not, and will procure that none of its Subsidiaries shall, after the Issue Date, incur any Indebtedness **(except for Indebtedness for refinancing Indebtedness with an aggregate principal amount that is equal to or less than the aggregate principal amount of the refinanced Indebtedness)** if, immediately after giving effect to the incurrence of such additional Indebtedness and the application of the net proceeds of such incurrence:

### **Section 4.04. Negative Pledge.**

So long as any Note remains outstanding, the Issuer shall not, and shall not permit any of its Subsidiaries to, create or permit to subsist any Lien (other than Permitted Liens) upon, or with respect to, any of its present or future business, undertaking, assets or revenues to secure any Relevant Indebtedness, without at the same time or prior thereto securing the Notes equally and ratably therewith **(such security, the “Additional Collateral”); provided that the Additional Collateral shall be permitted to secure Facility ARE, Facility 2024 and the PIK Interest on a priority basis in accordance with the terms of the Intercreditor Agreement.**

### **Section 4.13 Impairment of Security Interest.**

- (a) **The Issuer shall not, and the Issuer shall not permit any Subsidiary to, take or knowingly or negligently omit to take any action, which action or omission might or would have the result of materially impairing the security interest with respect to the Collateral (it being understood that the incurrence of Liens on the Collateral permitted under this Indenture or the terms of the Intercreditor Agreement shall under no circumstances be deemed to materially impair the security interest with respect to the Collateral) for the benefit of the Trustee and the Holders, and the Issuer shall not, and shall not cause or permit any of its Subsidiaries to, grant to any person other than the Security Agent, for the benefit of the Trustee and the Holders and the other beneficiaries described in the Security Documents and the Intercreditor Agreement, any interest whatsoever in any of the Collateral.**
- (b) **Notwithstanding Section 4.13(a), (i) the Issuer and its Subsidiaries may Incur Liens that are expressly permitted under this Indenture or foreseen under the terms of the Intercreditor Agreement, (ii) the Collateral may be discharged and released in accordance with this Indenture, the applicable Security Documents or the Intercreditor Agreement, (iii) the Issuer and its Subsidiaries may conduct ordinary course activities with respect to the Collateral, (iv) at the request of the Issuer and without the consent of any Holder, the Security Agent may from time to time enter into one or more amendments to the Security Documents or the Intercreditor Agreement to (1) cure any ambiguity, omission, defect or inconsistency therein, (2) provide for Liens on the Collateral in accordance with this Indenture and the terms of the Intercreditor Agreement, (3) add further assets to the Collateral, and (4) make any other change thereto that does not adversely affect the rights of the Holders in any material respect.**

## ARTICLE SIX DEFAULTS AND REMEDIES

Clause (a)(v) of Section 6.01(a). **Events of Default.**

(a) “*Event of Default*,” wherever used herein, means any of the following events:

(v) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness **(but excluding, for the avoidance of doubt, any indebtedness under Facility 2024 and Facility ARE)** for money borrowed by the Issuer or any of its Subsidiaries, whether such Indebtedness or guarantee now exists, or is created after the Issue Date, if that default:

(A) is caused by a failure to pay principal of, or interest or premium, if any, on, such Indebtedness at the Stated Maturity thereof prior to the expiration of the grace period provided in such Indebtedness on the date of such default (a “*Payment Default*”); or

(B) results in the acceleration of such Indebtedness prior to its express maturity,

and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates €15 million or more (or its equivalent in any other currency or currencies); or

### **Section 6.17 Priorities.**

**If the Trustee or the Security Agent collects any money or property pursuant to the terms of this Indenture or the Intercreditor Agreement, it shall pay out the money or property in the order specified in the Intercreditor Agreement. The terms of the Intercreditor Agreement shall, in all respects, govern the administration and enforcement of the Collateral, the distribution of the proceeds from such enforcement and the relationship, among others, between the parties hereto with respect to the Collateral.**

## ARTICLE SEVEN TRUSTEE

Section 7.01. **Duties of Trustee.**

(b) Subject to the provisions of Section 7.01(a), (i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture **and in the Intercreditor Agreement** and no others and no implied covenants or obligations shall be read into this Indenture against the Trustee; and (ii) in the absence of fraud on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. In the case of any such certificates or opinions which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall examine same to determine whether they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein);

The second and sixth paragraph of Section 7.05 **Compensation and Indemnity.**

The Issuer, shall indemnify the Trustee and its officers, directors, employees and agents for, and hold the Trustee and its officers, directors, employees and agents harmless, against any and all loss, liability, costs or expense (including documented attorneys’ fees and expenses) incurred by any of them, without gross negligence, willful default or fraud on their part, arising out of or in connection with **the Intercreditor Agreement, the Security Documents or the administration of this trust and the performance of their duties hereunder (including the documented costs and expenses of enforcing this Indenture, against the Issuer (including this Section 7.05) and defending themselves against any claim, whether asserted by the Issuer, any Holder or any other Person, or liability in connection with the execution and performance of any of their powers and duties hereunder, under the Intercreditor Agreement or the Security Documents, as the case may be)**. The Trustee shall notify the Issuer promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Issuer shall not relieve the Issuer of its obligations hereunder, **under the Intercreditor Agreement or the Security Documents, as the case may be**. The Issuer shall, at the Trustee’s discretion, defend the claim and the Trustee shall cooperate in such defense. Alternatively, the Trustee may at its option have separate counsel of their own choosing and the Issuer shall pay the properly incurred fees and expenses of such counsel. The Issuer need not pay for any settlement made without its consent, which consent may not be unreasonably withheld. The Issuer shall not reimburse any expense or indemnify against any loss, liability, costs or expense incurred by the Trustee through the Trustee’s, own gross negligence, willful default or fraud.

For the avoidance of doubt, the rights, privileges, protections, immunities and benefits given to the Trustee in this Article Seven, including its right to be indemnified, are extended to, and shall be enforceable by the Trustee in each of its capacities hereunder and under the Intercreditor Agreement, by each Paying Agent and any other Person employed by the Trustee to act hereunder.

The fourth paragraph of Section 7.06. **Replacement of Trustee.**

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuer. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture and under the Intercreditor Agreement and shall promptly accede to the Intercreditor Agreement in accordance with its terms. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall as soon as reasonably practicable transfer all property held by it as Trustee to the successor Trustee, *provided* that all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 7.05.

## **ARTICLE NINE** **AMENDMENTS AND WAIVERS**

Section 9.01. **Without Consent of Holders.**

- (a) Notwithstanding Section 9.02 hereof, without the consent of any Holder, the Issuer, the Security Agent and the Trustee, as applicable, to the extent they are parties to the relevant document, may amend or supplement this Indenture, ~~or~~ the Notes, the Security Documents or the Intercreditor Agreement with respect to a Tranche of Notes:
- (i) to cure any ambiguity, defect or inconsistency;
  - (ii) to provide for the assumption of the Issuer's obligations to Holders in the case of a merger or consolidation or sale of all or substantially all of the Issuer's assets, as applicable;
  - (iii) to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the legal rights hereunder of any such Holder in any material respect;
  - (iv) to conform the text of this Indenture, ~~and~~ the Notes and the Security Documents to any provision of the "Description of the Notes" section of the Offering Memorandum to the extent that such provision in such "Description of the Notes" section of the Offering Memorandum was intended to be a verbatim recitation of a provision of this Indenture, the Security Documents and the Notes;
  - (v) to secure the Notes or to release any collateral or lien securing the Notes in accordance with the terms of the Notes;
  - (vi) to add guarantors or co-obligors with respect to the Notes;
  - (vii) to provide for the issuance of Additional Notes in accordance with the limitations set forth in this Indenture as of the Issue Date;
  - (viii) to provide for uncertificated Notes in addition to or in place of certificated Notes (*provided* that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code, or in a manner such that the uncertificated Notes are described in Section 163(f)(2)(B) of the Code); ~~or~~
  - (ix) to evidence and provide the acceptance of the appointment under this Indenture or the Intercreditor Agreement of a successor Trustee ~~under this Indenture or Security Agent pursuant to the requirements thereof or to provide for the accession by the Trustee or Security Agent to this Indenture, the Notes, the Security Documents or the Intercreditor Agreement; or~~
  - (x) in the case of the Security Documents, to mortgage, pledge, hypothecate or grant security interest in favor of the Security Agent for the benefit of the Holders in any property which is required by the Security Documents to be mortgaged, pledged or hypothecated, or in which a security interest is required to be granted to the Security Agent, provided that the granting of such security interest is not prohibited by this Indenture or the Intercreditor Agreement and Section 4.13 is complied with.
- (b) In connection with its entry into any amendment, supplement or waiver, the Issuer shall deliver to the Trustee an Opinion of Counsel and an Officer's Certificate on which the Trustee may rely absolutely; *provided, however*, that the Trustee shall be entitled to request and rely upon further evidence as it deems appropriate,

stating that such amendment, supplement or waiver is permitted under this Indenture and that all conditions precedent to such amendment, supplement or waiver have been satisfied.

**Section 9.02. With Consent of Holders.**

- (b) Unless consented to by the Holders of at least 90% (or, in the case of Section 9.02(b)(x) and (xi), 75%) of the aggregate principal amount of the then outstanding Notes (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, the Notes) an amendment, modification, supplement or waiver of any Security Document, the Intercreditor Agreement, this Indenture or the Notes, including a waiver pursuant to Section 6.04 and an amendment, modification or supplement pursuant to Section 9.01, may not:
- (i) reduce the principal amount of Notes whose Holders must consent to an amendment, supplement or waiver;
  - (ii) reduce the principal of or change the fixed maturity of any Note or alter the provisions with respect to the redemption of the Notes (except as provided in paragraph (a) above with respect to Section 4.05 hereof);
  - (iii) reduce the rate of or change the time for payment of interest, including default interest, on any Note;
  - (iv) impair the right of any Holder to receive payment of principal of and interest on such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Notes in respect thereof;
  - (v) waive a Default or Event of Default in the payment of principal of, or interest, Additional Amounts or premium, if any, on, the Notes (except a rescission of acceleration of the Notes by the Holders of a majority in aggregate principal amount of the then outstanding Notes and a waiver of the Payment Default that resulted from such acceleration);
  - (vi) make any Note payable in money other than that stated in the Notes;
  - (vii) make any change in the provisions of this Indenture relating to waivers of past Defaults or the rights of Holders to receive payments of principal of, or interest, Additional Amounts or premium, if any, on, the Notes;
  - (viii) waive a redemption payment with respect to any Note (except as provided in paragraph (a) above with respect to Section 4.05 hereof); ~~or~~
  - (ix) make any change in the preceding amendment and waiver provisions;
  - (x) release the security interest granted for the benefit of the Holders in the Collateral, other than pursuant to the terms of the Security Document or this Indenture, as applicable, except as permitted by the Intercreditor Agreement; or
  - (xi) except as explicitly permitted by Section 9.01(a), amend any Security Document or the Intercreditor Agreement;

~~provided that, if an amendment, supplement or waiver that may be made with the consent of Holders holding not less than 90% of the then outstanding principal amount of the Notes only affects, or would only affect, Holders of the 2021 Notes or the 2024 Notes, and not Holders of the Notes generally, then the consent of the Holders of 90% of the then outstanding principal amount of 2021 Notes or 2024 Notes, as the case may be, shall be required to make the changes referred to in clauses (i) to (ix) above.~~

Any amendment, supplement or waiver consented to by Holders of at least 90% (or, in the case of Section 9.02(b)(x) and (xi), 75%) of the aggregate principal amount of the then outstanding Notes shall be binding against any non-consenting Holders of the Notes.

The consent of the Holders is not necessary to approve the particular form of any proposed amendment. It is sufficient if such consent approves the substance of the proposed amendment.

**ARTICLE TWELVE**  
**COLLATERAL, SECURITY DOCUMENTS AND THE SECURITY AGENT**

**Section 12.01 Collateral and Security Documents.**

- (a) Subject to the execution and delivery of and pursuant to the terms of Facility ARE, Facility 2024, the Security Documents and the Intercreditor Agreement, the payment obligations of the Issuer under the Notes and this Indenture will benefit from the security set forth in Annex 2 pursuant to the terms of the Intercreditor Agreement.
- (b) The Issuer will promptly after their execution deliver to the Trustee copies of all documents delivered to the Security Agent pursuant to the Security Documents, and the Issuer will, and will cause each of its Subsidiaries to, do or cause to be done all such acts and things as may be necessary or proper, or as may be required by the provisions of the Security Documents, to assure and confirm to the Trustee that the Security Agent holds, for the benefit of the Trustee and the Holders, duly created, enforceable and perfected Liens as contemplated hereby and by the Security Documents, so as to render the same available for the security and benefit of this Indenture and of the Notes secured thereby, according to the intent and purposes herein expressed.
- (c) Neither the Trustee nor the Security Agent nor any of their respective officers, directors, employees, attorneys or agents will be responsible or liable for the existence, genuineness, value or protection of any property securing the Notes, for the legality, enforceability, effectiveness or sufficiency of the Security Documents, for the creation, perfection, priority, sufficiency or protection of any Lien, or for any defect or deficiency as to any such matters, or for any failure to demand, collect, foreclose or realize upon or otherwise enforce any of the Liens or Security Documents or any delay in doing so.
- (d) Each of the Issuer, the Trustee and the Holders agree that the Security Agent shall be the joint creditor (together with the Holders) of each and every obligation of the parties hereto under the Notes and this Indenture, and that accordingly the Security Agent will have its own independent right to demand performance by the Issuer of those obligations, except that such demand shall only be made with the prior written notice to the Trustee and as permitted under the Intercreditor Agreement. However, any discharge of such obligation to the Security Agent, on the one hand, or to the Trustee or the Holders, as applicable, on the other hand, shall, to the same extent, discharge the corresponding obligation owing to the other.
- (e) The Security Agent agrees that it will hold the security interests in the Collateral created under the Security Documents to which it is a party as contemplated by this Indenture and the Intercreditor Agreement, and any and all proceeds thereof, for the benefit of, among others, the Trustee and the Holders, without limiting the Security Agent's rights including under Section 12.02, to act in preservation of the security interest in the Collateral. The Security Agent will, subject to being indemnified and/or secured in accordance with the Intercreditor Agreement, take action or refrain from taking action in connection therewith only as directed by the Trustee, subject to the terms of the Intercreditor Agreement.
- (f) Each Holder shall be deemed (i) to have consented and agreed to the terms of the Security Documents and the Intercreditor Agreement (including, without limitation, the provisions providing for foreclosure and release of the Collateral and authorizing the Security Agent to enter into the Security Documents on its behalf) as the same may be in effect or may be amended from time to time in accordance with its terms and authorizes and directs the Security Agent to enter into the Security Documents and to perform its obligations and exercise its rights thereunder in accordance therewith, (ii) to have authorized the Issuer, the Trustee and the Security Agent, as applicable, to enter into the Security Documents and the Intercreditor Agreement and to be bound thereby and (iii) to have appointed and authorized the Security Agent and the Trustee to give effect to the provisions in the Intercreditor Agreement. Each Holder appoints the Security Agent as its trustee or agent under the Security Documents and authorizes it to act on such Holder's behalf, including by entering into and complying with the provisions of the Intercreditor Agreement. The Trustee hereby acknowledges that the Security Agent is authorized to act under the Security Documents on behalf of the Trustee, with the full authority and powers of the Trustee thereunder. The Security Agent is hereby authorized to exercise such rights, powers and discretions as are specifically delegated to it by the terms of the Security Documents, including the power to enter into the Security Documents, as trustee or agent on behalf of the Holders and the Trustee, together with all rights, powers and discretions as are reasonably incidental thereto or necessary to give effect to the transactions contemplated thereby. The Security Agent shall, however, at all times be entitled to seek directions from the Trustee and shall be obligated to follow those directions if given. The Security Agent hereby accepts its appointment as the trustee and agent of the Holders and the Trustee under the Security Documents, and its authorization to so act on such Holders' and the Trustee's behalf in accordance with and subject to the terms of the Intercreditor Agreement. The claims of Holders will also be subject to the Intercreditor Agreement.

#### Section 12.02. Suits to Protect the Collateral.

Subject to the provisions of the Security Documents and the Intercreditor Agreement, the Security Agent shall have power to institute and to maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Collateral by any acts which may be unlawful or in violation of any of the Security Documents or this Indenture, and such suits and proceedings as the Security Agent, in its sole discretion, may deem expedient to preserve or protect the security interests in the Collateral created under the Security Documents (including power to institute and maintain suits or proceedings to restrain the enforcement of or compliance with any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the Lien on the Collateral or be prejudicial to the interests of the Holders or the Trustee). For the avoidance of doubt, nothing in this Section 12.02 shall create an obligation to take any action by the Security Agent.

#### Section 12.03. Resignation and Replacement of Security Agent.

Any resignation or replacement of, the Security Agent shall be made in accordance with the Intercreditor Agreement.

#### Section 12.04. Amendments.

Subject to the rights and obligations of the Security Agent under the terms of the Intercreditor Agreement and the Security Documents, the Security Agent agrees that it will enter into an amendment to the Intercreditor Agreement or a Security Document, as applicable, authorized pursuant to the Intercreditor Agreement and the Security Documents if the amendment does not adversely affect the rights, duties, liabilities or immunities of the Security Agent.

#### Section 12.05. Release of Liens.

- (a) Subject to the terms of the Intercreditor Agreement, the Security Agent shall be irrevocably authorized to release any security interests in respect of the Collateral (at the cost of the Issuer and without any consent, sanction, authority or further confirmation from any Holder) under any one or more of the following circumstances:
  - (i) in connection with any sale, assignment, transfer, conveyance or other disposition of such property or assets to a person that is not the Issuer or any of the Issuer's Subsidiaries, if such sale or other disposition does not violate Section 5.01 or is otherwise permitted in accordance with this Indenture,
  - (ii) upon instruction of the Trustee to the Security Agent to release such Collateral,
  - (iii) upon a solvent winding up or dissolution of the entity providing or holding such collateral, provided that at the time of dissolution or winding up such entity has substantially no assets,
  - (iv) upon payment in full of principal, interest and all other obligations on the Notes or legal defeasance, covenant defeasance or satisfaction and discharge of the Notes as provided in Article Eight,
  - (v) if the release of such Collateral is expressly permitted by the terms of the Intercreditor Agreement (including upon an enforcement sale),
  - (vi) as described in Article Nine, or
  - (vii) as otherwise permitted in accordance with this Indenture.
- (b) In addition, the security interest created by the Security Documents will be released (i) in accordance with an enforcement action pursuant to the Intercreditor Agreement and (ii) as may be permitted by Section 4.13 (Impairment of Security Interest).
- (c) The Security Agent and the Trustee will take all necessary action reasonably requested in writing by the Issuer to effectuate any release of Collateral securing the Notes, in accordance with the provisions of this Indenture, the Intercreditor Agreement and the relevant Security Document subject to customary protections and indemnifications. Each of the releases set forth above shall be effected by the Security Agent without the consent of the Holders or any action on the part of the Trustee (unless action is required by it to effect such release).
- (d) The Security Agent and the Trustee will agree to any release of the security interest in respect of the Collateral that is in accordance with this Indenture, the Intercreditor Agreement and the relevant Security Document, without requiring any Holder consent or any action on the part of the Trustee. Upon request of the Issuer, upon receipt of an Officer's Certificate stating that all conditions precedent in

respect of such release have been satisfied, the Security Agent shall execute, deliver or acknowledge any necessary or proper instruments of termination, satisfaction or release to evidence the release of Collateral permitted to be released pursuant to this Indenture, the Intercreditor Agreement and the Security Documents. At the request of the Issuer, the Security Agent shall execute and deliver an appropriate instrument evidencing such release (in the form provided by the Issuer).

#### Section 12.06. Compensation and Indemnity.

The Issuer to the extent legally possible, shall pay to the Security Agent from time to time compensation for its services, in accordance with the applicable fee letter, subject to any terms of the Intercreditor Agreement as in effect from time to time which may address the compensation of the Security Agent. The Security Agent's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuer, to the extent legally possible, shall reimburse the Security Agent upon request for all out-of-pocket expenses properly incurred or made by it (as evidenced in an invoice from the Security Agent), including costs of collection, in addition to the compensation for its services. Such expenses shall include the properly incurred compensation and expenses, disbursements and advances of the Security Agent's agents, counsel, accountants and experts. The Issuer shall indemnify the Security Agent and its officers, directors, agents and employers against any and all loss, liability or expense (including properly incurred attorneys' fees) incurred by or in connection with its rights, duties, and obligations under this Indenture, the Intercreditor Agreement or the Security Documents, as the case may be, including the properly incurred costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any such rights, powers or duties. The Security Agent shall notify the Issuer of any claim for which it may seek indemnity promptly upon obtaining actual knowledge thereof; *provided, however*, that any failure so to notify the Issuer shall not relieve the Issuer of its indemnity obligations hereunder, under the Intercreditor Agreement or the Security Documents, as the case may be. The Issuer shall defend the claim and the indemnified party shall provide cooperation at the Issuer's expense in the defense. Notwithstanding the foregoing, such indemnified party may, in its sole discretion, assume the defense of the claim against it and the Issuer shall pay the properly incurred fees and expenses of the indemnified party's defense (as evidenced in an invoice from the Security Agent). Such indemnified parties may have separate counsel of their choosing and the Issuer, to the extent legally possible, shall pay the properly incurred fees and expenses of such counsel (as evidenced in an invoice from the Security Agent). The Issuer need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld. The Issuer need not reimburse any expense or indemnify against any loss, liability or expense incurred by an indemnified party through such party's own willful misconduct, gross negligence or fraud. To secure the Issuer's payment obligations in this Section 12.06, the Security Agent shall, subject to the Intercreditor Agreement, have a lien on the Collateral and the proceeds of the enforcement of the Collateral for all monies payable to it under this Section 12.06. The Issuer's payment obligations pursuant to this Section 12.06 and any lien arising hereunder shall, if any, to the extent legally possible, survive the satisfaction or discharge of this Indenture, any rejection or termination of this Indenture under any bankruptcy law or the resignation or removal of the Security Agent. Without prejudice to any other rights available to the Security Agent under applicable law, when the Security Agent incurs expenses after the occurrence of a Default specified in Section 6.01(a)(vii) or 6.01(a)(viii) with respect to the Issuer, the expenses are intended to constitute expenses of administration under the Bankruptcy Law.

#### Section 12.07. Conflicts.

Each of the Issuer, the Trustee and the Holders acknowledge and agree that the Security Agent is acting as security agent and trustee not just on their behalf but also on behalf of the creditors named in the Intercreditor Agreement and acknowledge and agree that pursuant to the terms of the Intercreditor Agreement, the Security Agent may be required by the terms thereof to act in a manner which may conflict with the interests of the Issuer, the Trustee and the Holders (including the Holders' interests in the Collateral) and that it shall be entitled to do so in accordance with the terms of the Intercreditor Agreement. In the event of any conflict between the Notes or the Intercreditor Agreement, the terms of the Intercreditor Agreement shall apply.

## Annex 1 - Intercreditor Principles

### ADLER Real Estate Aktiengesellschaft Intercreditor Principles<sup>1</sup>

#### Parties to the Intercreditor Agreement

Prior to, or at the time of, the grant of the Transaction Collateral:

- ADLER Real Estate Aktiengesellschaft (the "**Issuer**");
- certain subsidiaries of the Issuer which will provide Transaction Collateral;
- a newly founded orphan SPV financed through the issuance of bonds (the "**Stabilization Lender**") which will provide to Adler Group S.A., *inter alia*:
  - a EUR 235,000,000 term loan facility to fund a shareholder loan by Adler Group S.A. to the Issuer with 0% interest to fund in part the repayment of certain senior unsecured notes issued by the Issuer due 2023 (the "**Facility ARE**"); and
  - a EUR 300,000,000 term loan facility to fund a shareholder loan by Adler Group S.A. to the Issuer with 0% interest to fund the repayment or repurchase of certain senior unsecured notes issued by the Issuer due 2024 (the "**Facility 2024**"),(Facility ARE, Facility 2024 and any payment-in-kind interest accruing thereon together, the "**Stabilization Priority Indebtedness**");
- Global Loan Agency Services GmbH or any of its successors as Security Agent for the Secured Parties (the "**Security Agent**");
- Dentons GmbH Wirtschaftsprüfungsgesellschaft Steuerberatungsgesellschaft, having its seat in Berlin, registered in the commercial register of the Local Court of Charlottenburg under HRB 101036 as common representative (*Gemeinsamer Vertreter*) of the holders of the 2026 Notes (the "**Notes Representative**");
- Deutsche Trustee Company Limited (the "**Notes Trustee**") as notes trustee in respect of the 2024 Notes (as defined below); and
- certain other administrative parties as required,

will enter into an intercreditor agreement (the "**Intercreditor Agreement**").

The Intercreditor Agreement will govern, *inter alia*, the administration and enforcement of the Transaction Collateral and the distribution of the proceeds from such enforcement and the relationship between:

1. the Stabilization Lender and the claims under Stabilization Priority Indebtedness; and
2. the noteholders (the "**Holders**", represented by the Notes Representative or the Notes Trustee, as applicable) of and claims under the following notes issued by the Issuer:
  - the €300,000,000 2.125% Notes due 2024 (ISIN: XS1731858715) (the "**2024 Notes**"); and

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<sup>1</sup> **Note:** Capitalised terms not otherwise defined in this document shall have the meaning given to them in the [Terms & Conditions/Indenture] [of the Notes/governing the Notes].

- the €300,000,000 3.000% Notes due 2026 (ISIN: XS1713464524) (the "**2026 Notes**") and together with the 2024 Notes, the "**Notes**").

By agreeing to the amendments of the terms and conditions or indenture, as applicable, of the Notes, the Notes Representative and the Notes Trustee (including any replacement trustee) are authorized to become party to the Intercreditor Agreement and act on behalf of the Holders and to agree on the final terms of the Intercreditor Agreement. The Holders themselves will not become party to the Intercreditor Agreement and will not acquire any obligations or acquire direct individual rights under the Intercreditor Agreement. Instructions to the Security Agent under the Intercreditor Agreement will be given with respect to each series of Notes by the relevant Notes Representative or Notes Trustee under such series of Notes as set out below.

### **Main Terms of the Intercreditor Agreement**

The following description is a summary of the main provisions which will be contained in the Intercreditor Agreement, which will have to be documented in detail by the parties thereto and which will govern, *inter alia*, the rights and obligations of the parties thereto with respect to the Transaction Collateral. The Intercreditor Agreement will be made available on the investor relations webpage of the Issuer in due course after being executed.

#### Ranking of claims

The payment obligations of the Issuer under the Stabilization Priority Indebtedness and the Notes will rank *pari passu*. However, there will be a difference in treatment between the Secured Parties in relation to the allocation of proceeds from an enforcement of the Transaction Collateral.

#### Transaction Collateral

The Transaction Collateral will consist of the share pledges and land charges set out in Annex [1] and will serve as collateral for (i) the Stabilization Priority Indebtedness and (ii) the Notes (collectively, the "**Secured Instruments**").

#### Creation of Transaction Collateral

The Transaction Collateral will be granted to (i) the Stabilization Lender for its own benefit and (ii) the Security Agent for the benefit of all the creditors under the Secured Instruments, who will not acquire any direct rights thereunder.

The Security Agent will hold and administer the Transaction Collateral granted to it for the benefit of the creditors under the Secured Instruments (where legally required on the basis of a customary parallel debt obligation) as security for their respective claims in accordance with the terms of the Intercreditor Agreement summarized herein.

#### Turnover

Subject to certain exclusions set out therein, the Intercreditor Agreement will provide that if any of the Secured Parties receives or recovers the proceeds of any enforcement of all or part of any Transaction Collateral or any Distressed Disposal other than in accordance with the Payments Waterfall, then it shall:

- in relation to receipts or recoveries not received or recovered by way of set-off, (i) hold an amount of that receipt or recovery equal to the relevant liabilities on trust for the Security Agent and separate from other assets, property or funds; and (ii) promptly pay an amount equal to that receipt or recovery to the Security Agent for application in accordance with the terms of the Intercreditor Agreement; and

- in relation to receipts and recoveries received or recovered by way of set-off, promptly pay an amount equal to that recovery to the Security Agent for application in accordance with the terms of the Intercreditor Agreement.

#### Ranking in case of an enforcement of any of the Transaction Collateral

With respect to the proceeds from any enforcement of the Transaction Collateral, the Intercreditor Agreement will provide that the proceeds from such enforcement will be applied by the Security Agent in the following order (the "**Payments Waterfall**"):

- (a) **first**, ranking equally amongst themselves, any claims of the Notes Representative, the Notes Trustee and the Security Agent from or in connection with providing their services under or in connection with the Notes and the Intercreditor Agreement respectively;
- (b) **second**, ranking equally amongst themselves, all claims under the Stabilization Priority Indebtedness;
- (c) **third**, ranking equally amongst themselves, all claims under the Notes.

#### Instructions / Majority Note Holders

The Intercreditor Agreement will provide that (i) the Stabilization Lender and (ii) the Holders of the Notes acting through the Notes Representative and/or the Notes Trustee respectively shall be the only parties to be entitled to give instructions to the Security Agent with regard to the Transaction Collateral.

The Stabilisation Lender will take all decisions, give instructions and give or deny consents (and, if required, obtain instructions from the holders of any notes issued by it to finance the Stabilisation Debt Liabilities before doing so) to the Security Agent as may be practicable in accordance with applicable law, the Stabilisation Priority Indebtedness documents and the note documents relating to any notes issued by it to finance the Stabilisation Debt Liabilities.

The Holders of all Notes (represented by the Notes Representative and the Notes Trustee respectively) shall give instructions to the Security Agent in line with the voting provisions described below:

- each proposal for a decision, instruction or consent must contain a form that can be voted on with Yes or No;
- each such proposal may only contain instructions for such actions which the Security Agent would, in accordance with the debt documents and applicable law, be permitted to take;
- each such proposal may contain a deadline for voting which shall not be less than 30 days from the date on which the decision, instruction or consent was submitted to the Security Agent (and if any series of Notes has not held a vote or otherwise obtained a decision from the required majority of Holders and informed the Security Agent of the outcome prior to the deadline, or has declared an abstention, such series of Notes may be disregarded when determining the Majority Note Holders (except if no series of Notes has done so prior to the deadline);
- for the avoidance of doubt a vote may be held during the Consultation Period and/or the Standstill Period (each as defined below);

- following the vote or other form of decision by the required majority of Holders, the relevant Notes Representative or Notes Trustee shall, on behalf of all the Holders of that series of Notes, promptly instruct the Security Agent in accordance with the result of the vote;
- a simple majority of all series of Notes based on the outstanding principal amount of each series of Notes (whereby the voting rights for each series of Notes are exercised by the relevant Notes Representative or Notes Trustee) shall decide on the instruction of the Holders of all Notes to the Security Agent (the "**Majority Note Holders**");
- if an equal number of votes has voted Yes and No, no decision has been taken by the Majority Note Holders and the voting process shall be repeated.

#### Enforcement; Consultation Period

The Intercreditor Agreement will provide that neither the Stabilization Lender nor any Holder is entitled to take any independent enforcement action with respect to the Transaction Collateral.

Only the Security Agent will have the right to take enforcement action with respect to the Transaction Collateral. In case of an enforcement event, the Security Agent will only act upon instruction of (i) the Stabilization Lender or (ii) the Majority Note Holders, in each case ((i) and (ii)) under the conditions set out below (the relevant persons, the "**Instructing Group**").

If either the Stabilization Lender or the Notes Representative or Notes Trustee in respect of the Notes wish to issue enforcement instructions, they shall deliver a copy of those proposed enforcement instructions to the Security Agent. Following delivery of the initial enforcement instructions, the Security Agent, the Stabilization Lender and the Notes Representative and Notes Trustee shall enter into a consultation process for a maximum period of 30 days in order to agree on the enforcement process (the "**Consultation Period**").

The observance of the Consultation Period (and consequently, the Standstill Period as defined below) is not required if such observance would result in an impairment of the value of the security interests (including, without limitation, in case of insolvency of the Issuer or any Pledged Entity) (the "**Impairment Cases**"). In such Impairment Cases, the Stabilization Lender is solely entitled to instruct the Security Agent with respect to enforcement actions.

If the Consultation Period lapses without agreement on enforcement steps to be taken, the following applies:

- (a) The Security Agent is instructed solely by the Stabilization Lender.
- (b) If within a period of 120 days following the end of the Consultation Period (the "**Standstill Period**") the Stabilization Lender has not instructed the Security Agent to take specific enforcement action with respect to the Transaction Collateral or if such enforcement action has not been taken, the Majority Note Holders shall be entitled to instruct the Security Agent with respect to the enforcement actions to be taken.

#### Security Enforcement Principles

The Intercreditor Agreement will provide that enforcement instructions must be consistent with the following principles (the "**Security Enforcement Principles**"):

- (a) it shall be the primary and overriding aim of any enforcement of the Transaction Collateral (the "**Transaction Security Interest**") to maximize, so far as is consistent with a prompt and expeditious realization of the value from enforcement, the recovery by the Creditors of the Secured Instruments (the "**Security Enforcement Objective**");

- (b) the Transaction Security Interest will be enforced and other action as to enforcement will be taken such that all proceeds of enforcement are received by the Security Agent in cash for distribution in accordance with the Payments Waterfall, provided in each case that proceeds of an enforcement may be received in any other form than cash if and to the extent creditors under the Secured Instruments, which would otherwise be entitled to receive a cash payment in an equivalent value, agree to receive such other form of proceeds, in particular shares or debt securities;
- (c) any enforcement of Transaction Security Interest must be prompt and expeditious; subject to the other provisions of the Intercreditor Agreement, the time frame for the realization of value from such enforcement or Distressed Disposal will be determined by the Instructing Group, provided that it is consistent with the Security Enforcement Objective;
- (d) on (i) a proposed enforcement of any of the Transaction Security Interest over assets other than shares in a direct or indirect subsidiary of the Issuer (such subsidiary and the Issuer each being a member of the "**ARE Group**") or in case of Distressed Disposal of such assets where the aggregate book value of such assets exceeds EUR 50,000,000 (or its equivalent) or (ii) a proposed enforcement of any of the Transaction Collateral over some or all of the shares in a member of the ARE Group over which security exists, the Security Agent (unless it is incompatible with enforcement proceedings in a relevant jurisdiction) appoints an accounting firm of international standing and reputation, any reputable and independent international investment bank or other reputable and independent professional services firm with experience in restructuring and enforcement or real estate transactions, in each case as selected by the Security Agent acting reasonably and in good faith to opine as expert that the proceeds received from any such enforcement are fair from a financial point of view after taking into account all relevant circumstances (the "**Fairness Opinion**");
- (e) the Fairness Opinion will be conclusive evidence that the Security Enforcement Objective has been met;
- (f) in the event that an enforcement of the Transaction Security Interest is over assets and/or shares referred to in paragraph (d) above and such enforcement is conducted by way of public auction, the holders of the Secured Instruments shall be entitled to participate in such auction on the basis of equal information and access rights as other bidders and financiers in the auction. No enforcement needs to take be made by way of public auction unless required by law.

#### Non-Distressed Disposals: Release of Transaction Collateral

A "**Non-Distressed Disposal**" means the disposal of an asset (i) of a member of the Group or (ii) which is subject to the Transaction Collateral, to a person or persons outside the Group where that disposal is not prohibited by the Secured Instruments (and which is not a Distressed Disposal).

On a Non-Distressed Disposal, the Security Agent will promptly:

- (a) release any Transaction Collateral over any assets which are subject of a Non-Distressed Disposal; and

- (b) where that asset consists of shares in the capital of a member of the Group, release any Transaction Collateral granted by or over that member of the Group,

provided that (i) such disposal is made at fair market value and (ii) in the case of any disposal made while the Stabilization Priority Indebtedness is outstanding the proceeds from all such Non-Distressed Disposal will be applied in accordance with the terms of the Stabilization Priority Indebtedness, unless the Stabilization Lender instructs the Security Agent otherwise.

When making any request for a release pursuant to the above, the Issuer will confirm in a written statement by one of its managing directors to the Security Agent that (i) the relevant disposal or other action is not prohibited by the terms of any Secured Instrument and (ii) the release requested (or relevant action needing the release) is in accordance with (or is not prohibited by) the terms of any Secured Instrument and the Security Agent shall be entitled to rely on that confirmation for all purposes.

#### Distressed Disposals: Release of Transaction Collateral

A "**Distressed Disposal**" means a disposal of any assets subject to the Transaction Collateral which is (i) being effected at the request of the Instructing Group in circumstances where the Transaction Collateral has become enforceable; (ii) being effected by enforcement of the Transaction Collateral; or (iii) being effected, after the occurrence of a distress event, by a Debtor to a person or persons which is, or are, not a member, or members, of the Group.

On a Distressed Disposal, the Security Agent will promptly:

- (a) release any Transaction Collateral over any assets which are subject of the Distressed Disposal; and
- (b) where that asset consists of shares in the capital of a member of the Group, release any Transaction Collateral granted by or over that member of the Group and its Subsidiaries,

provided that (i) the Security Agent shall take reasonable care to obtain fair market price in prevailing market conditions which requirement shall be met in certain specified circumstances including by obtaining the Fairness Opinion and (ii) no Distressed Disposal may be made for consideration in a form other than cash, except in accordance with the Enforcement Principles.

#### Application of Proceeds of a Distressed Disposal

The net proceeds of a Distressed Disposal will be paid to the Security Agent for application in accordance with the Payments Waterfall as if those proceeds were the proceeds of an enforcement.

#### General

The Intercreditor Agreement will contain provisions dealing with:

- (a) permitted payments (including without limitation, the payment of permitted distributions to the extent not prohibited by the terms of the Stabilization Priority Indebtedness or the Notes);
- (b) limitations with respect to changes or amendments to the Finance Documents and with respect to granting of waivers or releases (with amendments in breach of the Intercreditor Agreement leading to such Secured Instrument losing the benefit of the Transaction Collateral);
- (c) customary protections for the Security Agent, the Notes Representative, the Notes Trustee and any other administrative party;

- (d) limitations with respect to the granting and taking of additional security interests;
- (e) waivers or releases in connection with sales of assets and/or (parts) of the members of the Group within and outside of enforcement of security interests; and
- (f) technical issues, including (without limitation) changes to the parties, costs, information undertakings and amendments.

The Intercreditor Agreement will be governed by German or English law.

## Annex 2 – Collateral

### Land charges over certain plots of land and buildings

PropCo	Properties	Existing Encumbrance
8. Ostdeutschland Invest GmbH	Augustin-Sandtner-Str. 42, 43, 44, 45, 46, 16515 Oranienburg	Yes
	Luise-Zietz-Str. 99, 101, 103, 105, 107, 109, 111, 12681 Berlin	No
	Marchwitzastr. 28, 30, 12681 Berlin	No
	Marchwitzastr. 48, 50, 12681 Berlin	No
	Marchwitzastr. 52, 54, 56, 58, 60, 62, 64, 12681 Berlin	No
	Melanchthonstr. 16, 18, 20, 22, 16515 Oranienburg	Yes
ADO 9230 Grundstücks GmbH	Bastianstr. 22, 13357 Berlin	No
ADO 9250 Grundstücks GmbH	Schnackenburgstr. 4, 12159 Berlin	No
	Schnackenburgstr. 12, 13, 14, 15, 16 / Lauterstr. 5, 6, 12159 Berlin	No
ADO 9270 Grundstücks GmbH	Hansastr. 8, 9, 11, 13409 Berlin	No
ADO 9460 Grundstücks GmbH	Ritterlandweg 40, 13409 Berlin	No
ADO 9500 Grundstücks GmbH	Mittelweg 51, 53, 12053 Berlin	No
ADO 9560 Grundstücks GmbH	Tegeler Weg 105, 10589 Berlin	No
AFP III Germany GmbH	Baustraße 34/Lösörter Str. 6	No
	Dahlstraße 54, 47169 Duisburg	No
	Düsseldorfer Straße 295-299, 47053 Duisburg	No
	Harzstraße 9, 42579 Heiligenhaus	No
	Meerkamp 1-61, 2-42 / Farrenbroich 76, 78, 45327 Essen	No
	Mollstraße 9, 58097 Hagen	No
	Rhönstraße 7-17, 42579 Heiligenhaus	No
	Schles. S.64 66/Westfalenstr. 97 99 101, 58636 Iserlohn	No
	Steinhausstr. 107,109, 58099 Hagen	No
	Weseler Straße 157-165, 47169 Duisburg	No
	Wilhelmstr.48, 50, 55, 59 / Mathildenstr.16, 47169 Duisburg	No
Ahava Grundstücks GmbH	Rathenower Str. 22, 10559 Berlin	No
Anafa Grundstücks GmbH	Kolberger Str. 14, 13357 Berlin	No
Badolina Grundstücks GmbH	Ebersstr. 80, 80 a, 10827 Berlin	No
ESTAVIS 6. Wohnen GmbH	Am Hohen Graben, 58097 Hagen	No
	Auf dem Wichterbruch 2, 58135 Hagen	No
	Bergstr. 32, 58095 Hagen	No
	Bergerstraße 152-158, 50321 Brühl	No
	Boeler Str. 40, 58097 Hagen	No
	Friedensstraße 110, 58097 Hagen	No
	Gartenstraße 100, 47798 Krefeld	No

	Geldernsche Straße 77, 47798 Krefeld	No
	Gerber Straße 28, 47798 Krefeld	No
	Gutenbergstraße 17, 58089 Hagen	No
	Hubertusstrasse 144, 47798 Krefeld	No
	Hufelandstraße 1, 58097 Hagen	No
	Hülser Straße 129/131, 47803 Krefeld	No
	Hülser Straße 462, 47803 Krefeld	No
	Lohstrasse 186-188, Nordwall 42-44, 47798 Krefeld	No
	Moerser Strasse 2-4, Ostwall 251, 47798 Krefeld	No
	Neue Linner Str. 40, 47799 Krefeld	No
	Inrather Strasse 566-570, 47803 Krefeld	No
	Selbecker Str. 70, 58091 Hagen	No
	St.-Anton-Straße 99-105, 47798 Krefeld	No
	St.-Anton-Straße 152, 47798 Krefeld	No
	Vennfelder Strasse 37, 47805 Krefeld	No
	Viersener Str. 8.10,12, 47805 Krefeld	No
Magnus Dreizehnte Immobilienbesitz und Verwaltungs GmbH; Magnus Fünfzehnte Immobilienbesitz und Verwaltungs GmbH; Magnus Sechzehnte Immobilienbesitz und Verwaltungs GmbH; ADLER ImmoProjekt Erste GmbH (Schönefeld Nord Residential & Commercial)	Nähe Waltersdorfer Chaussee, 12529 Berlin	
Maya Grundstücks GmbH	Gneisenastr. 22 / Zossener Str. 15, 10961 Berlin	No
MBG Schwelm GmbH	Kaiserstr. 44-48b, Markgrafenstr. 11, Moltkestr.31, 58332 Schwelm	No
Melet Grundstücks GmbH	Allee der Kosmonauten 151, 151 a-h / Fichtelbergstr. 5, 7, 9, 11, 13, 15, 12685 Berlin	Yes
	Mellenseestraße 32, 33, 34, 10319 Berlin	No
	Mellenseestraße 35, 36, 37, 38, 10319 Berlin	No
Resident West GmbH	Brunnenstr. 2a, 40223 Düsseldorf	Yes
	Dreieckstr. 2/2b, 58097 Hagen	Yes
	Eckampstr. 2, Rather Broich 57, 40472 Düsseldorf	Yes
	Frankenweg 26-50, Keltenweg 7, Sachsenring 8, 44867 Bochum	Yes
	Frankfurter Str. 26, 51065 Köln	Yes
	Franklinstr. 60, 40479 Düsseldorf	Yes
	Friedrich-Engels-Allee 296, 42285 Wuppertal	Yes
	Gasse 49, Sonnenwall 62, 47051 Duisburg	Yes
	Geistenstr. 28 40476 Düsseldorf	Yes
	Graf-Adolf-Str. 98, 40210 Düsseldorf	Yes
	Heerstr. 49-57, 47053 Duisburg	Yes
	Heerstr. 68, 40227 Düsseldorf	Yes
	Helmholtzstr. 12, 40215 Düsseldorf	Yes
	Hochstr. 97b, 58095 Hagen	Yes
	Höherweg 61, 40233 Düsseldorf	Yes
	Josefstr. 25, 40227 Düsseldorf	Yes
	Körnerstr. 71, 58095 Hagen	Yes

	Körnerstr. 81 und 83, 58095 Hagen	Yes
	Langerstr. 57, 40233 Düsseldorf	Yes
	Lindenstr. 186, 40233 Düsseldorf	Yes
	Heerstr. 68, 40227 Düsseldorf	Yes
	Lindener Str. 82, 44879 Bochum	Yes
	Mintropstr. 28, 40215 Düsseldorf	Yes
	Neue Fruchtstr. 7,9,11, 47057 Duisburg	Yes
	Oberbilker Allee 266, 40227 Düsseldorf	Yes
	Scheurenstr. 27, 40215 Düsseldorf	Yes
	Suitbertusstr. 95, 40223 Düsseldorf	Yes
	Unterstr. 46, 45359 Essen	Yes
	Wittekindstr. 26, 58097 Hagen	Yes
SEPAT Properties GmbH	Alt Salbke 47, 39122 Magdeburg	No
	Amsdorfstr. 2, 39112 Magdeburg	No
	Ballenstedter Str. 3, 39118 Magdeburg	No
	Burgplatz 5, 51427 Bergisch Gladbach	No
	Fabrikstraße 1, 04600 Altenburg	No
	Frankenberger Str. 110, 09131 Chemnitz	No
	Frankenberger Str. 112, 09131 Chemnitz	No
	Giesensteiner Str. 4, 01819 Berggießhübel	No
	Helmstedter Str. 18, 39112 Magdeburg	No
	Kantstraße 67, 09126 Chemnitz	No
	Leipziger Straße 8, 04720 Döbeln	No
	Lichtwerstraße 1, 04808 Wurzen	No
	Liebstädter Straße 33, 01796 Pirna	No
	Marktplatz 10-12, 39249 Barby	No
	Meltewitzer Straße 14-14b, 04808 Lossatal	No
	Neue Sorge 45, 04600 Altenburg	No
	Oschatzer Straße 19, 21, 04749 Ostrau	No
	Roßweiner Straße 23b, 04720 Döbeln	No
	Sieverstorstr. 1, 15003 Magdeburg	No
	Wettiner Platz 3, 08280 Aue	No
Sharav Grundstücks GmbH	Buddestraße 5 / Veitstraße 1, 1 a, 2, 2 a, 3, 3 a, 13507 Berlin	No
TGA Immobilien Erwerb 10 GmbH	Am Delft 13, 14, 26721 Emden	Yes
	Am Delft 22, 23, 26721 Emden	Yes
	Hansastraße 12/12a, 26723 Emden	Yes
	Liekeweg 19, 21, 23, 26725 Emden	Yes
	Warfenweg 14, 16, 20, 26506 Emden	Yes
Westgrund Holding GmbH	Fr.-Ebert-Str. 36 / W.-Böning-Str. 13, 26954 Nordenham	No
	Sachsenstr. 40, 25954 Nordenham	No
Westgrund Immobilien Beteiligung III. GmbH	Tangermünder Straße 69/Zerbster Straße 2-46, 12627 Berlin	Yes
	Zerbster Str. 48-78, 12627 Berlin	Yes
Wernerwerkdamm 25 Berlin Grundstücks GmbH	Wernerwerkdamm 25 / Ohmstr. 7-9 / Hefnersteig 1-4, 13629 Berlin	No

#### **Pledges over the shares in certain subsidiaries**

- 1) 8. Ostdeutschland Invest GmbH
- 2) ADLER ImmoProjekt Erste GmbH
- 3) ADO 9230 Grundstücks GmbH
- 4) ADO 9250 Grundstücks GmbH
- 5) ADO 9270 Grundstücks GmbH
- 6) ADO 9460 Grundstücks GmbH
- 7) ADO 9500 Grundstücks GmbH
- 8) ADO 9560 Grundstücks GmbH
- 9) ADP Germany GmbH
- 10) AFP III Germany GmbH
- 11) Ahava Grundstücks GmbH
- 12) Alana Properties GmbH
- 13) Anafa Grundstücks GmbH
- 14) Badolina Grundstücks GmbH
- 15) Brack Capital Properties N.V.
- 16) Dritte CM Real Estate
- 17) ESTAVIS 6. Wohnen GmbH
- 18) ESTAVIS 7. Wohnen GmbH
- 19) ICR GmbH
- 20) Magnus IX.Immobilienbesitz und Verwaltungs GmbH
- 21) Magnus Dreizehnte Immobilienbesitz und Verwaltungs GmbH
- 22) Magnus Fünfzehnte Immobilienbesitz und Verwaltungs GmbH
- 23) Magnus Sechzehnte Immobilienbesitz und Verwaltungs GmbH
- 24) Maya Grundstücks GmbH
- 25) MBG Schwelm GmbH
- 26) Melet Grundstücks GmbH
- 27) Münchener Baugesellschaft mbH;
- 28) Resident West GmbH
- 29) RIV Central WA 2 GmbH
- 30) RIV Channel MI 4 GmbH
- 31) RIV Harbour East WA 1 GmbH
- 32) RIV Harbour West MI 1 GmbH
- 33) RIV Square East WA 3 GmbH

- 34) RIV Square West MI 3 GmbH
- 35) SEPAT Properties GmbH
- 36) Sharav Grundstücks GmbH
- 37) Spree Röbellweg 2-10 Verwaltungs GmbH
- 38) TGA Immobilien Erwerb 10 GmbH
- 39) Vierte CM Real Estate
- 40) WBR Wohnungsbau Rheinhausen GmbH
- 41) Wernerwerkdamm 25 Berlin Grundstücks GmbH
- 42) Westgrund Holding GmbH
- 43) Westgrund Immobilien Beteiligung III. GmbH
- 44) Westgrund Immobilien IV. GmbH
- 45) Zweite CM Real Estate

## THE CONSENT SOLICITATION

### General

Each Noteholder shall participate in the Consent Solicitation in accordance with the nominal amount of the Notes held by such Noteholder.

### Requisite Consents

Noteholders of at least a majority in aggregate principal amount of the Notes then outstanding must deliver valid Consents to the Amendment.

### Relevant Conditions

The following Relevant Conditions must be satisfied in respect of the Amendment:

- (i) the receipt of the Requisite Consents prior to the Expiration Time and the delivery to the Trustee of a certification from the Tabulation Agent that the Requisite Consents have been obtained, on which the Trustee may rely on without further investigation or verification;
- (ii) the receipt of the requisite consents for the consent solicitation that was launched by the Issuer with respect to the German Notes on or about the date of this Consent Solicitation Statement (the “**German Notes Consent Solicitation**”);
- (iii) the satisfaction or waiver of all other conditions to the implementation of the amendments to the German Notes under the German Notes Consent Solicitation;
- (iv) the full repayment or discharge of the 2023 Notes and the full or partial funding of Facility ARE;
- (v) the amendment of Adler Group S.A.’s senior unsecured notes’ respective negative pledge covenants to allow the incurrence of ARE Notes Collateral (as defined therein); and
- (vi) the notification by the Issuer to the Noteholders of the satisfaction or waiver of the conditions included in clauses (i) through (v) above via notice distributed by Clearing Systems.

### Effectiveness of the Amendment

The Amendment will only become effective upon (A) all the Relevant Conditions having been satisfied or waived, (B) the Second Supplemental Indenture having been validly executed and delivered by the Issuer and the Trustee and (C) all related documentation in form and substance reasonably satisfactory to the Trustee having been executed and delivered to the Trustee (the “**Effectiveness Conditions**”). If the Amendment becomes effective, it will be binding on all Noteholders and their successors and transferees, whether or not such Noteholders consented to the Amendment. The Issuer intends to make a public announcement once the Amendment has become effective. If any of the Relevant Conditions are not satisfied or waived, then the Second Supplemental Indenture will not be executed and the Amendment will not be effective.

### Termination or Modification of the Consent Solicitation

Notwithstanding anything to the contrary set forth in this Consent Solicitation Statement, the Issuer reserves the right, in its sole discretion, subject to applicable law and certain contractual restrictions, at any time, to terminate or modify the Consent Solicitation for any reason. The Issuer will promptly disclose such termination or modification to the Noteholders.

Without limiting the manner in which the Issuer may choose to make a public announcement of any termination of the Consent Solicitation, the Issuer shall have no obligation to publish, advertise, or otherwise communicate any such public announcement, other than by making a timely announcement to Noteholders and complying with any applicable notice provisions of the Indenture.

### Ranking

The Notes will:

- (i) continue to be general senior obligations of the Issuer;
- (ii) continue to rank *pari passu* in right of payment with any existing and future indebtedness of the Issuer that is not expressly subordinated in right of payment to the Notes and the Notes will rank *pari passu* in right of payment with any indebtedness under Facility ARE and Facility 2024;

- (iii) rank senior in right of payment to any existing and future indebtedness of the Issuer that is expressly subordinated in right of payment to the Notes;
- (iv) be effectively subordinated to any existing or future indebtedness or obligation of the Issuer and its subsidiaries that is secured by property and assets that do not secure the Notes or secure the Notes only on a lower priority basis (including any indebtedness under Facility ARE and Facility 2024), to the extent of the value of the property and assets securing such indebtedness; and
- (v) be structurally subordinated to any existing or future indebtedness of the Issuer's subsidiaries, including obligations to trade creditors.

### **Procedures for Delivering Consents**

Before delivering your Consent to the Amendment, you should read this Consent Solicitation Statement and the procedures set forth herein. The following describes the method that Noteholders wishing to deliver a Consent to the Amendment must follow. There are no other methods for delivering Consents and Noteholders must timely deliver Consents in accordance with the following procedures. Only Noteholders or their duly designated proxies may submit, execute and deliver a Consent.

Noteholders who need assistance with respect to any of the procedures for participating in the Consent Solicitation should contact the Tabulation Agent, the contact details for which are on the last page of this Consent Solicitation Statement.

### ***Consent Instruction***

Consent for the Notes shall be given through the procedures of Euroclear or Clearstream, Luxembourg. Consents delivered with respect to any of the Notes in accordance with the procedures described below will constitute the delivery of a written Consent by such Noteholder with respect to such Notes.

### ***Delivery of Consents***

The delivery of Consents pursuant to the procedures set forth below will constitute a binding agreement between such Noteholder and the Issuer seeking such Consent in accordance with the terms and subject to the Relevant Conditions set forth in this Consent Solicitation Statement.

### ***Electronic Consent Instruction***

To validly deliver Consents by Electronic Consent Instruction (as defined below), a Direct Participant should contact Euroclear or Clearstream, Luxembourg for participation procedures and deadlines regarding the submission of a tested telex, authenticated SWIFT message, a Euclid server or Creation instruction (each an “**Electronic Consent Instruction**”) to authorize the delivery of Consents. Noteholders who wish to provide a Consent and whose Notes are held in the name of a broker, dealer, commercial bank, trust company or other nominee institution must contact such nominee promptly and instruct such nominee to effect the submission of an Electronic Consent Instruction to authorize the delivery of Consents for such Noteholder in accordance with the procedures set out herein.

The valid submission or delivery of an Electronic Consent Instruction in accordance with Euroclear and Clearstream, Luxembourg's procedures shall constitute a written Consent to the Amendment.

For the avoidance of doubt, only Direct Participants can submit an Electronic Consent Instruction. The receipt of such Electronic Consent Instruction by Euroclear or Clearstream, Luxembourg may be acknowledged in accordance with the standard practices of Euroclear or Clearstream, Luxembourg. For the avoidance of doubt, any such acknowledgement does not constitute an acceptance of the Consent by or on behalf of the Issuer.

None of the Issuer, the Trustee, the Tabulation Agent or any of their respective affiliates, officers, directors or employees or any other person will be under any duty to give notification of any defects, irregularities or delays in such Electronic Consent Instruction, nor will any of such entities or persons incur any liability for failure to give such notification.

### ***Procedures for Delivering Consents***

A Noteholder may consent by submitting or requesting the Direct Participant to submit on its behalf, a valid Electronic Consent Instruction to Euroclear or Clearstream, Luxembourg in accordance with the requirements established by the relevant Clearing System. The Electronic Consent Instruction must contain:

- the aggregate principal amount of the Notes with respect to which the Noteholder wishes to deliver a Consent;
- the name of the Direct Participant, the securities account number for Euroclear or Clearstream, Luxembourg in which the Notes are held; and

- the name of the beneficial owner, their email address and telephone number.

All of the information in the Electronic Consent Instruction will be disclosed to the Issuer and the Tabulation Agent.

The Consent by a Noteholder will, on acceptance of the Consent by the Issuer and verification to the Noteholder thereof, constitute a binding agreement between such Noteholder and the Issuer in accordance with the terms, and subject to the conditions, set forth in this Consent Solicitation Statement and in the Electronic Consent Instruction, as the case may be. Such Consent will be binding on the consenting Noteholder upon receipt by Euroclear or Clearstream, Luxembourg of a valid Electronic Consent Instruction in respect of all matters.

The Electronic Consent Instruction by which Noteholders are to effect their Consents will include an authorization to Euroclear or Clearstream, Luxembourg, as the case may be, to block the relevant Notes for which Consents are delivered in the account of the Direct Participant so that no transfers may be effected in relation to such Notes at any time from and including the date on which the Noteholder submits its Electronic Consent Instruction until the earliest of the Expiration Time or the prior termination or withdrawal of the Consent Solicitation by the Issuer.

The deadlines imposed by each of Euroclear and Clearstream, Luxembourg for the submission of Electronic Consent Instructions may be earlier than the deadlines specified in this Consent Solicitation Statement.

**NOTEHOLDERS WHO WISH TO CONSENT ARE REQUIRED TO SUBMIT CONSENT INSTRUCTIONS BY THE EXPIRATION TIME IN ACCORDANCE WITH THE INSTRUCTIONS SET FORTH HEREIN.**

**IN NO EVENT SHOULD A NOTEHOLDER TENDER OR DELIVER CERTIFICATES EVIDENCING SUCH NOTEHOLDER'S NOTES TO THE ISSUER, THE TABULATION AGENT OR THE TRUSTEE AT ANY TIME.**

#### **No Revocation Rights**

Any Consent Instructions received by the Tabulation Agent may not be revoked by Noteholders. See "*Notes of Noteholders that deliver Consent Instructions will be blocked from trading through the Clearing Systems until the Expiration Time, and Noteholders will be unable to revoke their Consent Instructions.*"

#### **No Consent Fee**

The Issuer will not pay a consent fee in connection with this Consent Solicitation and the Noteholders will not earn a fee by consenting to the Amendment.

#### **Tabulation Agent**

The Issuer has retained Kroll Issuer Services Limited to act as the Tabulation Agent in connection with the Consent Solicitation. The Tabulation Agent will answer questions from Noteholders in respect of the Consent Instructions. Questions may be directed to the Tabulation Agent at its contact details set forth on the back cover of the Consent Solicitation Statement.

The Tabulation Agent may contact Noteholders regarding the Consent Solicitation and may, subject to the terms of this Consent Solicitation Statement, request brokerage houses, Custodians, nominees, fiduciaries and others to forward this Consent Solicitation Statement, any notice in relation thereto and related materials to Noteholders. The Issuer has entered into an engagement letter with the Tabulation Agent, which contains certain provisions regarding payment of fees, expense reimbursement and indemnity arrangements relating to the Consent Solicitation.

#### **Fees and Expenses of the Consent Solicitation**

The Issuer will bear the costs of the Consent Solicitation and pay all fees and expenses in connection with the Consent Solicitation, except for any fees and expenses incurred by any individual Noteholder in connection with the Consent Solicitation.

#### **Requests for Assistance**

Requests for assistance in completing and delivering Consents or any documents related to the Consent Solicitation and requests for additional copies of this Consent Solicitation Statement and other relevant documents may be directed to the Tabulation Agent at its contact details set forth on the back page of this Consent Solicitation Statement. Noteholders may also contact their broker, dealer, commercial bank, Custodian, trust company or other nominee for assistance concerning the Consent Solicitation.

#### **Additional Terms of the Consent Solicitation**

- (1) All communications, payments, notices, certificates, or other documents to be delivered to or by a Noteholder will be delivered by or sent to or by it at the Noteholder's own risk. None of the Issuer, the Tabulation Agent or the Trustee shall accept any responsibility for failure of delivery of a notice, communication or any other document.
- (2) All acceptances of delivered Consents shall be deemed to be made on the terms set out in this Consent Solicitation Statement.
- (3) Noteholders are solely responsible for complying with all of the procedures for participating in the Consent Solicitation, including the submission of Consent Instructions to the Tabulation Agent. None of the Issuer or any other person shall be under any duty to give notification of any defects or irregularities in a delivery of Consents, nor shall any of them incur any liability for failure to give such notifications. Such delivery of such Consents may be deemed not to have been made until such irregularities have been cured.
- (4) Without limiting the manner in which the Issuer may choose to make any public announcement, the Issuer shall have no obligation to publish, advertise or otherwise communicate any such public announcement other than by making a timely announcement to Noteholders and complying with any applicable notice provisions of the Indenture.
- (5) Each Noteholder who delivers Consents will have represented that it is not an Affiliate of the Issuer and does not hold the Notes for the account of the Issuer or any of its Affiliates. In accordance with the Indenture, Notes owned by the Issuer or an Affiliate of the Issuer shall be disregarded in determining whether the Noteholders of the required principal amount of Notes have concurred in any direction or consent or any amendment, modification or other change to the Indenture. "**Affiliate**" of the Issuer means any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Issuer. For purposes of this definition, "**control**," as used with respect to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person, whether through the ownership of voting securities, by agreement or otherwise. For purposes of this definition, the terms "**controlling**," "**controlled by**" and "**under common control with**" have correlative meanings.
- (6) The submission of a Consent Instruction to the relevant Clearing System will be deemed to constitute an agreement, acknowledgement, undertaking, representation and warranty by the Noteholder and any Direct Participant submitting such Consent Instruction on such Noteholder's behalf to each of the Issuer, the Tabulation Agent and the Trustee that at the time of submission of the Consent Instruction prior to the Expiration Time:
  - (a) it acknowledges that it has received and reviewed, understands and accepts the terms, conditions, risk factors, offer and distribution restrictions and other considerations set out in the Consent Solicitation Statement and understands that the Noteholder is consenting to the Amendment upon the terms and subject to the conditions set forth in this Consent Solicitation Statement;
  - (b) it acknowledges that the Noteholder consents to the Consent Solicitation as described in this Consent Solicitation Statement and authorizes, directs and requests the execution and delivery by the Trustee of the Second Supplemental Indenture;
  - (c) the Noteholder empowers, authorizes, and requests the Trustee to do all such other things as may be necessary or expedient to carry out and give effect to the Amendment;
  - (d) by submitting a Consent Instruction, it will be deemed to consent, in the case of a Direct Participant, to have such Clearing System provide details concerning its identity to the Tabulation Agent and for the Tabulation Agent to provide such details to the Issuer and the legal advisers;
  - (e) it acknowledges that none of the Issuer, the Tabulation Agent, the Trustee or any of their respective affiliates, directors or employees has given it any information with respect to the Consent Solicitation save as expressly set out in the Consent Solicitation Statement and any notice in relation thereto nor has any of them made any recommendation as to whether to consent to the Amendment and it represents that it has assumed all risks inherent in participating in the Consent Solicitation and has made its own decision with regard to consenting in respect of the Amendment based on any legal, tax or financial advice that it has deemed necessary to seek;
  - (f) it acknowledges that all authority conferred or agreed to be conferred pursuant to these acknowledgements, representations, warranties and undertakings and every obligation of the Noteholder submitting a Consent Instruction in respect of the Amendment shall, to the extent

permitted by applicable law, be binding upon the successors, assigns, heirs, executors, administrators, and legal representatives of the Noteholder submitting a Consent Instruction in respect of the Amendment and shall not be affected by, and shall survive, the death or incapacity of the Noteholder submitting a Consent Instruction in respect of the Amendment, as the case may be;

- (g) it acknowledges that no information has been provided to it by the Issuer, the Tabulation Agent, the Trustee or any of their respective affiliates, directors or employees with regard to the tax consequences to Noteholders arising from the Amendment and hereby acknowledges that it is solely liable for any taxes and similar or related payments imposed on it under the laws of any applicable jurisdiction as a result of its participation in any Consent Solicitation and agrees that it will not and does not have any right of recourse (whether by way of reimbursement, indemnity or otherwise) against the Issuer, the Tabulation Agent, the Trustee or any of their affiliates, directors or employees or any other person in respect of such taxes and payments;
- (h) it acknowledges that (i) it will be paid any cash amounts owed to it (if any) in euro and (ii) such cash amounts will be deposited by or on behalf of the Issuer with the relevant Clearing System in accordance with this Consent Solicitation Statement and that such deposit will be good discharge for the Issuer;
- (i) it has observed the laws of all relevant jurisdictions, obtained all requisite governmental, exchange control or other required consents, complied with all requisite formalities and paid any issue, transfer or other taxes or requisite payments due from it, in each respect, in connection with the Consent Solicitation or submitting a Consent Instruction, in any jurisdiction and that it has not taken or omitted to take any action in breach of these representations or which will or may result in any person acting in breach of the legal or regulatory requirements of any such jurisdiction in connection with the Consent Solicitation or any Consents;
- (j) it has full power and authority to submit a Consent Instruction;
- (k) any Consent Instruction delivered by it in respect of the Amendment is made upon the terms and subject to the conditions set out in this Consent Solicitation Statement. It acknowledges that the submission of a valid Consent Instruction in favor of the Amendment to the relevant Clearing System and/or the Tabulation Agent in accordance with the standard procedures of the relevant Clearing System constitutes its written consent to the Amendment;
- (l) it agrees to ratify and confirm each and every act or thing that may be done or effected by the Issuer, any of its directors or any person nominated by the Issuer in the proper exercise of his or her powers and/or authority hereunder;
- (m) it agrees to do all such acts and things as shall be necessary and execute any additional documents deemed by the Issuer to be desirable, in each case to perfect any of the authorities expressed to be given hereunder;
- (n) it will, upon request, execute and deliver any additional documents and/or do such other things deemed by the Issuer to be necessary or desirable to effect delivery of the Consent Instructions related to such Notes or to evidence such power and authority;
- (o) it is not a person from whom it is unlawful to seek approval of the Amendment, to receive the Consent Solicitation Statement or otherwise to participate in the Consent Solicitation;
- (p) all communications, payments or notices to be delivered to or by a Noteholder will be delivered by or sent to or by it at its own risk;
- (q) the terms and conditions of the Consent Solicitation shall be deemed to be incorporated in, and form a part of, the Consent Instruction which shall be read and construed accordingly and that the information given by or on behalf of such Noteholder in the Consent Instruction is true and will be true in all respects at the time of the Consent Solicitation;
- (r) it holds and will hold, the Notes specified in the Consent Instruction in the account(s) specified in the Consent Instruction;
- (s) it hereby represents, warrants and undertakes that, in accordance with the procedures of Clearstream, Luxembourg or Euroclear, as the case may be, and by the deadline required by Clearstream, Luxembourg or Euroclear, it has irrevocably instructed Clearstream, Luxembourg or

Euroclear, as the case may be to block such Notes with effect on and from the date of the Consent Instruction so that, at any time until the earlier of (i) the date on which the Consent Solicitation is terminated, withdrawn or otherwise not consummated and (ii) the Expiration Time, i.e. February 22, 2023, 17:00 CET, no transfers of such Notes may be effected; and it hereby represents, warrants and undertakes that it has delivered an individual, matching blocking instruction in respect of the relevant Notes specified in the Consent Instruction to Clearstream, Luxembourg or Euroclear as the case may be and has ensured that the relevant blocking instruction can be allocated to such Notes;

- (t) each Consent Instruction is being submitted in compliance with all applicable laws and/or regulations of the jurisdiction in which the Noteholder is located and/or in which it is resident and no registration, approval or filing with any regulatory authority of such jurisdiction is required in connection with each such instruction;
- (u) it is not a Sanctions Restricted Person;
- (v) the Noteholder declares and acknowledges that the Trustee will not be held responsible for, and will hold the Trustee harmless from, any liabilities, losses, damages, costs, charges, expenses and/or consequences suffered or incurred by such Noteholder as a result of any claims (whether or not successful, compromised or settled), actions, demands or proceedings brought against the Trustee and against all losses, liabilities, damages, costs, charges and expenses (including legal fees) which the Trustee may suffer or incur, arising as a result of acts taken by it or pursuant to the terms of the Consent or this Consent Solicitation Statement or signing the Second Supplemental Indenture and giving effect to the Amendment, and the Noteholder further declares that the Trustee has no responsibility for the terms of the Consent or this Consent Solicitation Statement;
- (w) the Noteholder acknowledges that the Notes have been blocked in the securities account to which such Notes are credited in the relevant Clearing System with effect from the time the Direct Participant electronically delivers a Consent and ending on the earlier of (i) the Effective Time, (ii) the termination or withdrawal of the Consent Solicitation by the Issuer and (iii) the Expiration Time;
- (x) the Noteholder does hereby release and forever discharge and hold harmless the Tabulation Agent, the Trustee and their respective employees, officers, directors, affiliates, and agents, predecessors and successors, of and from any and all manner of actions, causes of actions, suits, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, claims and demands whatsoever in law or in equity arising from and relating to the receipt of the Requisite Consents and the execution of the Second Supplemental Indenture to give effect to the Amendment and any transactions contemplated in connection with the Consent and the Consent Solicitation Statement; and
- (y) the Noteholder hereby acknowledges that this Consent Solicitation Statement and the transactions contemplated hereby will not be deemed to be investment advice or a recommendation as to a course of conduct by the Tabulation Agent, the Trustee, or any of their respective directors, officers, employees or agents; the Noteholder further represents that, in delivering a Consent in accordance with the relevant Clearing Systems' procedures, it has made an independent investment decision in consultation with its own agents and professionals.

***If the relevant Noteholder is unable to give any of the representations and warranties described above, such Noteholder should contact the Tabulation Agent.***

- (7) Save as otherwise provided herein, any announcement given to a Noteholder in connection with the Consent Solicitation will be deemed to have been duly given if delivered by the Tabulation Agent for onward transmission through the Clearing Systems. All notices will be given or published in accordance with the Indenture.
- (8) Each Noteholder submitting a Consent Instruction in accordance with its terms shall be deemed to have agreed to indemnify and hold harmless on an after-tax basis, the Issuer, the Tabulation Agent, the Trustee and any of their respective affiliates, directors or employees against all and any losses, costs, claims, liabilities, expenses, charges, actions or demands which any of them may incur or which may be made against any of them as a result of any breach of any of the terms of, or any of the representations, warranties and/or undertakings given pursuant to, such Consent Instruction by such Noteholder.
- (9) None of the Issuer, the Tabulation Agent, the Trustee or any of their respective affiliates, directors or employees makes any recommendation as to whether or not to accept the Consent Solicitation or otherwise to exercise any rights in respect of the Notes. Noteholders must make their own decision with regard to submitting Consent Instructions in respect of the Amendment.

- (10) None of the Issuer, the Tabulation Agent, the Trustee or any of their respective affiliates, directors or employees or any other person will be under any duty to give notification of any defects or irregularities in such Consent Instruction, nor will any of such entities or persons incur any liability for failure to give such notification.
- (11) If any communication (whether electronic or otherwise) addressed to the Tabulation Agent is communicated on behalf of a Noteholder by an attorney-in-fact, Custodian, trustee, administrator, director or officer of a corporation or any other person acting in a fiduciary or representative capacity (other than a Direct Participant in its capacity as such), that fact must be indicated in the communication, and a power of attorney or other form of authority, must be delivered to the Tabulation Agent by the Expiration Time. Failure to submit such evidence as aforesaid may result in rejection of the acceptance. The Tabulation Agent shall not have any responsibility to check the genuineness of any such power of attorney or other form of authority so delivered and may conclusively rely on, and shall be protected in acting in reliance upon, any such power of attorney or other form of authority.
- (12) None of the Issuer, the Tabulation Agent, the Trustee or any of their respective affiliates, directors or employees accepts any responsibility whatsoever for failure of delivery of any Consent Instruction or any other notice or communication or any other action required under these terms.
- (13) If the Amendment becomes effective, it will bind all current Noteholders and any subsequent Noteholders, regardless of whether such Noteholders consented to the Amendment.

## **TAX CONSEQUENCES**

In view of the number of different jurisdictions where tax laws may apply to a Noteholder, this Consent Solicitation Statement does not discuss the tax consequences for Noteholders arising from the Consent Solicitation or the Amendment. Noteholders are urged to consult their own professional advisers regarding the possible tax consequences of these transactions under the laws of the jurisdictions that apply to them, as well as the possible tax consequences of holding the Notes after the effectiveness of the Amendment. Noteholders are liable for their own taxes and have no recourse to the Issuer, the Tabulation Agent or the Trustee with respect to any taxes arising in connection with the Consent Solicitation.

**THE ISSUER**

**ADLER Real Estate Aktiengesellschaft**  
Joachimsthaler Straße  
34  
10719 Berlin  
Germany

**TABULATION AGENT**

**Kroll Issuer Services Limited**

The Shard32 London Bridge Street London SE1 9SG  
United Kingdom

Telephone: +44 207 704 0880  
E-mail: [adler@is.kroll.com](mailto:adler@is.kroll.com)  
Attention: Paul Kamminga / Arlind Bytyqi  
Website: <https://deals.is.kroll.com/adlerconsents>

**TRUSTEE**

**Deutsche Trustee Company Limited**  
Winchester House, 1 Great Winchester Street  
London EC2N 2DB  
United Kingdom

**LEGAL ADVISERS**

*To the Issuer  
as to German and New York law:*  
**White & Case LLP**  
Bockenheimer Landstrasse 20  
60323 Frankfurt am Main  
Germany

*To the Trustee as to New York law:*  
**Baker & McKenzie LLP**  
100 New Bridge Street  
London EC4V 6JA  
United Kingdom