On behalf of AGPS BondCo PLC
Andrea Trozzi
Third Witness Statement
Exhibit AT3
24 March 2023

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

IN THE MATTER OF AGPS BONDCO PLC

– AND –

IN THE MATTER OF THE COMPANIES ACT 2006

THIRD WITNESS STATEMENT OF ANDREA TROZZI

I, **ANDREA TROZZI**, of 16 Eastcheap, London, United Kingdom, EC3M 1BD, **WILL SAY AS FOLLOWS**:

I INTRODUCTION

1 I am, and have been since its incorporation on 23 December 2022, a director of AGPS BondCo Plc., with company number 14556926 and registered office at 16 Eastcheap, London, United Kingdom, EC3M 1BD (the "**Plan Company**").

2 I make this witness statement on behalf of the Plan Company in support of its proposed restructuring plan under Part 26A of the Companies Act 2006 (the "**Plan**" or the "**Restructuring Plan**"). I am duly authorised to do so by a resolution of the board of

directors of the Plan Company (see **[AT1/1**]. This (third) witness statement supplements my first witness statement dated 20 February 2023 (the "**First Statement**") and second witness statement dated 23 March 2023 (the "**Second Statement**") in these proceedings and should be read together with my First and Second Statements.

3 My professional experience is set out in full at paragraph 7 of my First Statement and paragraph 3 of my Second Statement.

4 I confirm that this witness statement has been prepared with assistance from solicitors at White & Case, counsel for the Plan Company, via email, telephone and videoconference calls. In this witness statement, I occasionally refer to advice received from legal and financial advisers to explain the source of my belief on certain matters. In doing so, I do not intend to (and do not) waive any privilege in respect of such advice.

5 Insofar as the facts and matters set out in this statement are within my own knowledge, they are true. Insofar as they are not within my own knowledge, they are true to the best of my information and belief.

6 There is produced to me and exhibited to this witness statement a bundle of documents marked as Exhibit "**AT3**", to which I refer in this witness statement. References in this witness statement to "**[AT3/X]**" are references to that exhibit where "**X**" is a reference to the page number.

7 Capitalised terms used in this witness statement shall, unless otherwise defined, have the meanings given to them in the First or Second Statement, or the Explanatory Statement.

8 I have reviewed the expert report of Ms. Lisa Rickelton, dated 18 March 2023 ("**Rickelton 1**"). Ms. Rickelton concludes at paragraph 4.24 of her report that, were the Restructuring Plan to go ahead and solvent asset sales realise proceeds in the amount estimated by Mr. Christoph Gerlinger in his report dated 18 March 2023 ("**Gerlinger 1**") (the "**Gerlinger Valuations**"), then the 2029 SUN Holders would not recover any principal on their SUNs and their recovery would be limited to recovery of PIK interest. In this statement, I describe certain factual aspects of the Plan which are relevant to assessing Ms. Rickelton's opinion.

9 The Plan Company disputes Gerlinger 1 and has adduced evidence confirming the accuracy of the valuations relied on by BCG in the Comparator Report (the witness statements of Michael Schlatterer and Dr. Peter Stark, dated 24 March 2023). The Plan Company has also adduced evidence supporting BCG's view in the Comparator Report as the level of discount that is likely to apply to sales in insolvency (the report of Frank Gunther ("**Gunther 1**")). Therefore, the Plan Company considers that, if the Restructuring Plan is implemented, the outcome for Plan Creditors will be along the lines estimated in the Explanatory Statement.

10 In any event, as I explain below and considering the conclusions of Mr. Ruediger Wolf in his report ("**Wolf 1**"), if the Gerlinger Valuations prove to be correct, then, in general terms, by operation of the Release Price Mechanism (defined below) no or no material disposals of properties would be made by the Group and, when the LTV Covenant (defined below) comes to be tested in Q4 2024, it would be breached. This would have the consequences that: (i) all (or a sufficient majority) of the outstanding SUNs would likely be accelerated; (ii) the security granted to the SUN Holders through the Restructuring would become enforceable; and (iii) the security would likely be enforced in such a way that the SUN Holders could become the indirect owners of the remaining properties which would then be sold without an insolvency discount and the net proceeds distributed to them rateably (*i.e.*, in a controlled enforcement), resulting in a better outcome for the SUN Holders than set out in Rickelton 1 and in the Relevant Alternative. I also note that recoveries under the relevant alternative as set out in Rickelton 1 of 56.1 percent are based on a 5 percent insolvency discount. These recoveries would be substantially lower if one applied the insolvency discount of 25% observed in Gunther 1.

11 In this statement, I also address Ms. Rickelton's characterisation of SteerCo's motivations for supporting the Plan and refer to recent correspondence from the SteerCo's advisors which responds to Ms. Rickelton's opinion in this regard.

12 My statement addresses these issues in the following order:

(a) the impact of the creditor protections introduced by the Plan (**Section II**);

(b) the implications of the Group's asset and debt structure on the Plan Creditors' ability to claim against disposals in insolvency proceedings (**Section 45**);

(c) Rickelton 1's criticisms of the SteerCo's motivations for and benefits derived from the Plan (**Section IV**); and

(d) Conclusion (**Section V**).

II THE IMPACT OF THE CREDITOR PROTECTIONS INTRODUCED BY THE PLAN

13 Rickelton 1 adopts the Gerlinger Valuations but then assumes that, if the Restructuring Plan is adopted, the Group would implement a solvent wind-down (of all assets with significant disposals in Q4 2024 and Q4 2026), which would result in the 2029 SUN Holders receiving no return on the principal amounts due to them under the 2029 SUNs. Ms. Rickelton does acknowledge the possibility that the Group would be required to commence insolvency proceedings at a much earlier date, at paragraph 4.15 of Rickelton 1, but she does not go on to model that outcome. What she says at paragraph 4.15 is that:

> "*The outcomes below are illustrated based on the full impact of the shortfall impairing the 2029 Notes because of the maturity profile of the SUNs and the new capital structure following a sanction of the Restructuring Plan. If at a future date the directors of Parent were to become aware that the anticipated sale proceeds were insufficient to meet all remaining creditors at that time, a subsequent restructuring or an insolvency may arise. Therefore, the impact may be suffered more equally amongst the remaining creditors at that time*."

14 Ms. Rickelton gives the reason why she does not consider this further, at paragraph 4.15: "*the outcome of such a scenario is unknown and so for present purposes we have to assume that temporal order of the maturities of the SUNs is followed*".

15 The approach that Ms. Rickelton has taken ignores key protections afforded to Plan Creditors under the Restructuring Plan. These protections mean that the extreme outcome under the Restructuring Plan as set out in Rickelton 1 is not, in fact, a possible outcome or

a fair way to present the Restructuring Plan. The key protections which are built into the Restructuring to guard against the outcome for which Ms. Rickelton contends, and which protect the interests of the later dated SUN Holders, are: (i) the Release Price Mechanism (defined below, which I deal with in sub-section A); (ii) the loan-to-value ratio covenant (the "**LTV Covenant**"); and (iii) the new security structure (I deal with (ii) and (iii) in sub-section B).

A. Release Price Mechanism

16 Clause 19.6(iii) of the New Money Facilities Agreement (which is included at Appendix 7 to the Explanatory Statement, **[AT2/1025]**) prevents the disposal of: yielding assets at a discount in excess of 20 per cent.; and development assets at a discount in excess of 30 per cent., of the GAV as of Q2 2022 (the "**Release Price Mechanism**").

17 As one would expect, given the significant holdings of later dated SUNs by some SteerCo members (which I refer to below), the Release Price Mechanism was a key negotiation topic among the SteerCo, and I do not expect that the members who insisted on this protection would easily give it up. The fact the SteerCo (as below, a diverse group of creditors in terms of their holdings across all six series and commercial interests) agreed to this mechanism (and the LTV Covenant, see below) on the basis of the CBRE and NAI Apollo valuations implies that they considered these valuations to be good evidence of fair market value for the assets.

18 I am advised by PJT that, if the Gerlinger Valuations were to be accurate, the Release Price Mechanism would prevent the Group from making all but two of the forecast disposals in the period up to and including 31 December 2024 on the disposal dates envisaged in the Comparator Report and mirrored by Ms. Rickelton, since the values that Mr Gerlinger ascribes to the Group's yielding assets, and the majority of its development assets, would result in discounts in excess of those permitted as compared with the GAV as of Q2 2022 by these dates.

19 PJT has produced the slides I exhibit at **[AT3/58]** which illustrate this. On the first slide, the green bar shows sale proceeds projected in the Comparator Report for yielding assets

on the assumed sale dates, and the red bar shows those assumed by Ms. Rickelton and Mr. Gerlinger. The dashed black line shows the Release Price Mechanism, which the Gerlinger Valuations are illustrated as falling below on the assumed sale dates. The second slide shows the Release Price Mechanism infringement in the final column of the table (Release Price Mechanism infringement for all but two out of 28 developments).

20 Pursuant to clause 32.1(a) of the New Money Facilities Agreement, the Release Price Mechanism can be waived by Majority Lenders (as defined thereunder, but essentially lender(s) whose commitments represent more than $66^2/_3$ per cent. of the total commitments). However, initially, there will only be one Lender under the agreement (the company set up by the New Money Providers for this purpose, the "**Lender SPV**"). Pursuant to the New Money Term Sheet, the Lender SPV will exercise voting rights based on the instructions of holders of New Money Notes holding at least a simple majority of the New Money Notes.

21 There is no obvious reason why lenders under the agreement (*i.e.*, New Money Providers), let alone a majority, would agree to waive this provision except in limited circumstances where the individual asset's circumstances justify a higher discount and the lenders (which, as I explain below, include holders of later-dated SUNs) conclude as a result that such waiver is consistent with their commercial interests. First, New Money Providers have bought into the New Money Funding based on their belief that the German real estate market will recover.

22 Second, waiver of the Release Price Mechanism would threaten their own recoveries as creditors of the Group. Several New Money Providers have material holdings in the later dated SUNs[1], such that it would not be rational for them to waive the Release Price Mechanism to allow assets to be sold at steep discounts and applied towards the New Money, and thereby reduce the pool of assets available in any subsequent liquidation for the remaining SUNs.

1 **[AT3/4]**.

23 Indeed, the SUN Holders holding: (i) the second largest amount of 2029 SUNs; and (ii) the largest amount of 2027 SUNs, are both members of the SteerCo (and therefore New Money Providers).[2]

24 Therefore, since the Group would not be able to achieve disposals of yielding assets and development assets before 31 December 2024 if the Gerlinger Valuations are correct (save for the two development assets shown in PJT's relevant table **[AT3/59]**) on the disposal dates assumed, Plan Creditors would have available to them substantially or entirely the same pool of assets as available in the Relevant Alternative, save that they would have had the benefit of avoiding fire sales in 2023 (as well as orderly financing of near-term maturities of Adler RE and capex needs relating to the development assets of Consus), allowing sales in improved market conditions from 2024 or 2025 onwards (see, Comparator Report, page 29 **[AT2/881]**) and following a controlled security enforcement (rather than in an insolvency) as described below.

25 Even if alternative sale dates were assumed, were the directors of the Parent Company to authorise sales of assets at such steep discounts with the prospect of a breach of the LTV Covenant on the horizon (see next subsection), I understand this could be a serious breach of their duties under Luxembourg law (or, indeed, German law, if the Group's COMI was found to be in Germany, as is considered on page 55 of the Comparator Report **[AT2/907]**).

B. LuxCo enforcement for breach of LTV Covenant

26 I described the LTV Covenant at paragraph 71(d)(i) of my First Report, and it is described in detail in the Explanatory Statement at pages 72, 84 and 100. The LTV Covenant is among the Proposed Amendments, appearing at clause 11(3) of the amended SUNs, annexed to the Explanatory Statement **[AT2/800]**. The New Money Facilities Agreement (see Appendix 7 of the Explanatory Statement, page 61, **[AT2/957]**) will also contain a substantially identical maintenance loan-to-value ratio covenant at clause 18 (unless differentiated below, I shall refer to both covenants as '*the LTV Covenant*').

2 **[AT3/9]**.

27 Under the LTV Covenant (clause 11(3) of the amended SUNs), the Parent Guarantor undertakes to ensure that the "Maintenance Loan-to-Value Ratio"[3] will not exceed 87.5 per cent. on the covenant testing dates, being 31 December 2024, 31 March 2025, 30 June 2025, 30 September 2025 and 31 December 2025, and 85 per cent. on each quarterly covenant testing date thereafter. The definition of "Total Assets" (which is built into the Maintenance Loan-to-Value Ratio) is:

> "…*the value of the consolidated total assets of the Parent Guarantor and the Subsidiaries, as such amount appears, or would appear, on a consolidated balance sheet of the Parent Guarantor prepared in accordance with IFRS, provided that „Total Assets" shall include the proceeds of the Financial Indebtedness to be incurred*"

28 Assuming the Gerlinger Valuations reflected fair value for the assets, then those valuations would be incorporated into the Parent Company's consolidated balance sheet in accordance with IFRS, which would lower the "value" denominator in the LTV ratio.

29 Under clause 10(6) of the amended SUNs, the Plan Company and the Parent Company shall be required to deliver to the Notes Representative (as defined thereunder) within five business days of becoming aware of the same, written notice (in the form of an "**Officer's Certificate**") of any events which could constitute an Event of Default (as defined thereunder), their status, and what action the issuer and the Parent Company is taking or proposes to take in respect thereof. Once the SUN Holders receive such notice, any SUN Holder will be entitled to deliver notices to the Paying Agent demanding performance of such obligation. Pursuant to clause 10(1)(g) of the amended SUNs, this begins a 40 day 'grace period' for the Group to 'cure' any such breach (which, for a breach of the LTV Covenant would, in practice, likely require an injection of equity).

30 Failing this, an Event of Default would occur following expiry of the 'grace period', which would enable the SUN Holders to accelerate any series of the SUNs (which acceleration would cross-default each of the other series) and direct the Security Agent to exercise its

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3 The amended SUNs define "*Maintenance Loan-to-Value Ratio*", broadly, as the ratio of the net financial indebtedness of the Parent Guarantor subsidiaries and the Group's total assets less cash and cash equivalents **[AT2/310]**.

rights under the Intercreditor Agreement and the security documents with respect to the transaction security.

31 Since, pursuant to clause 11(3) of the amended SUNs, the first covenant testing date is 31 December 2024, the LTV Covenant will be tested for the first time, by reference to the outstanding debt and the asset values as at 31 December 2024. Such test will be based on the Group's consolidated financial statements (which, as above, are required to take into account the best available information as to asset values – assumed to be the Gerlinger Valuations here). Under clause 11(2) of the amended SUNs, the Parent Company must deliver its consolidated (audited or unaudited, as applicable) financial statements within 120 days of the end of each financial year, and within 60 days from the end of each financial quarter (such dates being the relevant testing dates for the purpose of the LTV Covenant).

32 As described by Mr Wolf, were the Gerlinger Valuations to prove to be correct, the LTV ratio of the Group's assets would be higher than 87.5 per cent. when first tested on 31 December 2024.

33 As set out in paragraphs 24 and 25 above, the Parent Company and Plan Company would be required to report such a breach within five business days of becoming aware of the same. The timing for this is not clear-cut, but the very latest this could occur would be five business days after 30 April 2025, being the date by which the audited financial statements for the period ending 31 December 2025 must be published (and arguably this would be earlier, when the Plan Company first becomes aware of the breach). Following the 40-day 'grace period' outlined above, the SUN Holders would therefore be entitled to exercise their rights to enforce the transaction security.

34 The New Money Facilities Agreement LTV Covenant is tested in a similar manner. The first testing date thereunder will also be 31 December 2024. Under the New Money Facilities Agreement, the Parent Company must supply within 90 days of each covenant testing date a statement setting out the "Total Assets" less cash and the total net debt of the Group (in each case, as set out in the definition of "Loan-to-Value Ratio"). Since the first covenant testing date is 31 December 2024, this compliance certificate must be delivered by 31 March 2025 at the latest. Once the compliance certificate is delivered, if this shows

a breach of the LTV Covenant, then there will be an immediate Event of Default which is continuing. As a result of such Event of Default, the Agent under the New Money Facilities Agreement could, and would have to if so directed by the Majority Lenders (*i.e.* the Lending SPV), *inter alia*, declare all outstanding Loans (and all other amounts accrued or outstanding) under the New Money Facilities Agreement due and payable and direct the Security Agent to enforce the transaction security. Therefore, such acceleration could occur in Q1 2025 depending upon the timing of delivery of the compliance certificate or in April 2025 at the latest. The SUNs also contain a cross-default provision which would be triggered by a default under the New Money Facilities Agreement.

35 Upon an acceleration of the Loans under the New Money Facilities Agreement and/or the SUNs, the transaction security would become enforceable in accordance with the terms of the relevant security documents and the Intercreditor Agreement).

36 Pursuant to the Intercreditor Agreement, the Security Agent may take enforcement action in respect of the transaction security (*i.e.*, including the Luxembourg Share Pledge) where instructed by the requisite group of creditors (the "**Instructing Group**") and where such enforcement would be in accordance with certain customary principles, as detailed in the relevant security documents and the Intercreditor Agreement. The enforcement principles to be adopted under the Intercreditor Agreement are aimed at maximising, to the extent consistent with a prompt and expeditious realisation of value, the value realised from enforcement.

37 The Instructing Group comprises either the Lender SPV (representing a greater than 50 per cent. majority of the commitments under the New Money Facilities Agreement) or the Notes Representative acting on the instructions of the majority eligible noteholders (being those noteholders holding together at least 50 per cent. of the total outstanding principal amount of the SUNs at such time). To the extent that either the Lender SPV group or the Notes Representative issues instructions to the Security Agent to enforce the transaction security, such instruction would be forwarded to the respective other group and this begins a 30-day consultation period between the two groups (which such period may be waived by agreement, or dispensed with in certain circumstances (including in case of an

insolvency of the relevant debtor)). At the end of such period, if no agreement has been reached as to the manner of enforcement, then the instructions provided by the noteholders will prevail. In this way, the SUN Holders (*i.e.* including the 2029 SUN Holders) essentially control the enforcement process. Assuming the full consultation period were used, this would put the earliest date for enforcement at the end of April 2025 / beginning of May 2025.

38 I described the security structure under the Plan at paragraphs 132 to 135 of my First Statement. I have also exhibited a chart which shows the security structure under the Plan at **[AT3/3].** In summary, the Parent Company will incorporate, and transfer all shares in Adler RE, Consus and certain other subsidiaries directly held by the Parent Company (except for 10.1 per cent. of the shares in Adler RE, Consus and each direct subsidiary of the Parent Company, which will continue to be held by the Parent Company) to Adler Group Intermediate Holding (the "**PropCo-Contribution**" described in in Part 4, Section 8 of the Explanatory Statement **[AT2/100]**). Next, Adler Group Intermediate Holding will contribute all shares in the subsidiaries received in the context of the PropCo-Contribution to the three "**Collateral LuxCos**", sitting below Adler Group Intermediate Holding, by way of a capital increase against contributions in kind.

39 Following the asset transfer and contribution, all shares in Intermediate LuxCo and the three LuxCo Companies shall be pledged to secure the New Money Facilities, the SUNs, the Convertible Notes and the SSDs (the "**Luxembourg Share Pledges**"). The share pledges would be enforceable as described under paragraph 36 et seq. above). I understand that Luxembourg is considered to be a creditor-friendly jurisdiction for taking enforcement action of this kind.

40 The Luxembourg Share Pledge provides for various rights and remedies which become exercisable upon the occurrence of an Event of Default which is continuing, including appropriation and a power of sale in favour of the Security Agent. In the absence of a willing third party purchaser, it seems reasonable to assume that the Instructing Group would require the Security Agent to appropriate or sell the share(s) subject to the Luxembourg Share Pledge to an SPV established by a group of the secured creditors

(including the Plan Creditors, assuming they remained holders of the SUNs), such that the secured creditors would assume control of the Group.

41 Pursuant to the enforcement principles, any appropriation or distressed disposal of the shares would (unless carried out pursuant to a public auction, for which there is no requirement in Luxembourg) require the Security Agent to appoint a financial advisor to provide an opinion that the 'proceeds' from such shares (effectively the value received, being the value of the Group) was fair taking into account all the relevant circumstances. This is essentially an exercise in valuing the Group, having discounted the amount of any debt which will be released prior to, or simultaneously with, the appropriation or sale. The precise mechanism for effecting such a 'credit bid' would depend upon structuring and tax considerations.

42 Having assumed control of the Group, the result of such enforcement would be that the Group's assets would be held by a Plan Creditor-owned SPV, a solvent entity. It would then be a matter for the Plan Creditors to decide what to do with the underlying assets. One would expect the Plan Creditors to act rationally so as to maximise their recoveries. The Plan Creditors will be able to continue operating the business, possibly with additional investment or recapitalisation, in the interests of either delivering the Group's business plan or alternatively finding a third-party buyer for the business, so as to access a near-term cash recovery for all of the Plan Creditors still holding SUNs. Plan Creditors would also be able to avoid the deep discounts to asset values which would arise in insolvency proceedings, which is dealt with in more detail in Gunther 1 in Section 5.

43 Through the operation of these protections, any series of SUNs maturing in 2025 to 2029 would be able to precipitate an enforcement and ensure that they receive equal treatment thereafter (save that the 2024 SUNs would have priority over the other SUNs). It would not be the case, therefore, that there would only be minimal recoveries for the 2029 SUNs.

44 In addition, the security under the Plan allows Plan Creditors to enforce their debt under the SUNs against assets, ranking ahead of any valid shareholder or unsecured claims, which would not be the case if the Plan is not implemented.

45 Figure 19 in Rickelton 1 shows the total recoveries received by SUN Holders estimated as €2,533m. This estimated recovery illustrates adjustments made by Ms. Rickelton to the estimates provided by BCG, by replacing the valuations of CBRE and NAI Apollo with Gerlinger Valuations.

46 In Figure 19, estimated Plan Creditor recoveries are applied to each SUN series sequentially by maturity, first to the 2024 Notes and then through each series to the 2029 Notes. This approach is in line with paragraph 4.5 of Rickelton 1:

> '*…due to the fact that the maturity of the 2029 Notes is last in time, every Euro of reduction in value would reduce the recovery to the 2029 Notes by a Euro*.'

47 As set out above, this temporal allocation of expected recoveries does not take into account the contractual framework agreed between the parties to the Plan. Specifically, as a result of the operation of the Release Price Mechanism and LTV Covenant (and considering also the relevant directors' duties), this estimated outcome cannot arise. Instead, should valuations follow the expectations of Mr Gerlinger, the recoveries of Plan Creditors (other than holders of 2024 SUNs) would effectively be equalised, as a default would arise under the SUNs as a result of a breach of the LTV Covenant, providing Plan Creditors with the option to pursue a controlled enforcement of their security as described above.

48 The table prepared by PJT at **[AT3/60]** illustrates the estimated outcome for holders of 2029 SUNs in the scenario I have described above, using the assumptions adopted by Ms. Rickelton in Figure 19 of Rickelton 1. With the LTV Covenant factored into the analysis, the estimated recovery for 2029 SUN Holders increases to 74.6 per cent. This is based on the same forecast €2,533m of total recoveries to Plan Creditors estimated by Ms. Rickelton, using the Gerlinger Valuations.

49 Since this estimated recovery of 74.6 per cent. compares directly with the 56.1 per cent. estimated recovery in the Relevant Alternative shown in Figure 28 of Rickelton 1, it can be seen that the 'no worse off' test in relation to the Plan is passed, even on the basis of the financial forecasts and valuation evidence put forward by Ms. Rickelton and Mr. Gerlinger.

50 In preparing this analysis, PJT were assisted by certain documents provided by Ms. Rickelton's team via Akin Gump on 22 and 23 March 2024, which I exhibit to this statement.[4]

III IMPLICATIONS OF GROUP'S DEBT AND ASSET STRUCTURE ON DISPOSALS IN INSOLVENCY

51 At paragraph 14 of my First Statement, I outlined the real estate assets held by the Group. The Comparator Report includes at pages 17 to 22 information about how assets are held in the Group [**AT2/869]**. As can be seen in this section of the Comparator Report, assets are held by numerous downstream companies. For instance, the table on page 18 of the Comparator Report shows Portfolios 1 to 5 comprising 161 entities. Therefore, the reality of the Group's asset structure does not support the assumption that 100 per cent. of disposals in an insolvency would take place at Parent Company level.

52 In Section II.B of my First Statement, I gave an overview of the debt structure of the Group. At paragraph 19, I stated that the total interest-bearing external debt of the Group amounted to approximately €6,100,000,000, as at September 2022. The Plan Company's liability to Plan Creditors under the SUNs (and the Parent Company's liability to them under the Parent Company Guarantees) represents only a proportion of this debt. The balance of this figure is made up of debts owed by the Parent Company, Adler RE, Consus and other entities within the Group (and does not simply sit at Parent Company level).

53 Therefore, in a Group-wide insolvency, where creditors of the Parent Company do not have direct claims against the given subsidiary from which assets are being realised, the proceeds of such disposals could not go directly to the creditors of the Parent Company. The SUNs are not secured against the assets of the Group. Instead, SUN Holders will only make recoveries from asset disposals at subsidiary-level to the extent the Parent Company receives a shareholder distribution from downstream companies in the Group in the course of their own insolvency proceedings.

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4 Chain of emails between Akin Gump and White & Case, regarding information requested from FTI, 22 to 23 March 2023 **[AT3/16]**; FTI spreadsheets provided by Akin Gump dated 22 and 23 March 2024 **[AT3/25].**

54 In contrast, if the Plan becomes effective, the Plan Creditors will have security over the Group's assets at one single point. The Plan Creditors can therefore pursue an orderly enforcement (and disposal) process not at asset level but at the level of an intermediate holding company, with certainty that they will get recovery, with the benefit of a stable platform and without the taint of insolvency, which: on Mr. Gerlinger's evidence, would attract a discount of 5 per cent.; and, on Mr. Gunther's, between 15 and 40 per cent. In this context, I note Mr. Gunther's conclusion that a sale of an asset by a seller which has acquired that asset pursuant to the enforcement of security through a "bidco" structure (as is adopted in the Plan) does not attract the discount that which is generally seen where the seller is insolvent (see Gunther 1, Section 8).

IV STEERCO'S INTERESTS

55 On 24 February 2023, Milbank, solicitors for the SteerCo, wrote to White & Case to articulate its response to certain conclusions Ms. Rickelton has made in Section 6 of her report about the SteerCo members' motivations for supporting the Plan. With its letter, Milbank enclosed a table of information regarding its members' holdings in the SUNs. I exhibit the letter and its enclosure at **[AT3/9]**.

56 The Milbank letter undermines Ms. Rickelton's suggestion that the SteerCo is a single group with unified interests. Milbank has highlighted that, at least:

(a) two members of the SteerCo hold more in terms of face value in the later dated SUNs (*i.e.*, the November 2026 SUNs, the 2027 SUNs and the 2029 SUNs) than they do in the earlier dated SUNs (*i.e.*, the 2024 SUNs, 2025 SUNs and January 2026 SUNs);

(b) one member of the SteerCo holds more in terms of face value in the 2029 SUNs than it does in the 2024 SUNs, the Adler RE 2023 SUNs and the Adler RE 2024 SUNs combined;

(c) one member of the SteerCo has no, or nominal, holdings in the Adler RE 2023 SUNs and Adler RE 2024 SUNs; and

(d) three members of the SteerCo hold more in terms of face value of SUNs that are "*primed*" by the prior ranking security given to the 2023 Converts and the 2024 SUNs than they do in those tranches.

57 Milbank has also responded in its letter to Ms. Rickelton's assertions about the returns the SteerCo is due to receive under the Plan from the New Money Funding. Ms. Rickelton's opinions seem to overlook the fact that the New Money Funding, and the economic returns associated with it, have been made available to all Plan Creditors, the only exception to this being the Backstop Fee. Indeed, as Milbank notes, the offer to participate in the New Money Funding remains open to Plan Creditors.

58 I described the Backstop Fee in my First Statement, in particular at paragraphs 106 to 112 and the justification for this being offered only to the SteerCo (*i.e.*, to compensate the SteerCo members for assuming risk and setting aside capital in case of a short fall between commitments by New Money Providers and the full amount of the New Money Funding).

59 In this section, it may also assist the Court if I expand on the commercial justification for conferring priority on the 2024 SUNs, the Convertible Notes and the SSDs under the new Intecreditor Agreement, since this responds to Ms. Rickelton's criticisms as to the benefits SteerCo stands to gain from the Plan. I touched on this at paragraph 134 of my First Statement. In addition to those observations, I note:

(a) the 2024 SUNs are given priority in the security structure because they currently have priority as regards timing of their repayment claim and are being asked to partially waive this timing priority by extending the maturity date of their notes. The prior ranking security shall compensate them for that concession. They are the only creditors which actually make a concession (except for extending the audit covenant);

(b) the SSDs and the Convertible Notes benefit from negative pledge undertakings. Therefore, the granting of the security for the 2024 SUNs is, pursuant to the negative pledge provisions contained in the SSD and Convertible Notes, only permissible if the SSDs and the Convertible Notes get the same security package

on a pari passu basis. Both, the SSDs and the Convertible Notes would otherwise mature in 2023 and, therefore, also currently have priority as regards timing of their repayment claim; and

(c) specifically with regard to the SSDs, the Parent Company has guaranteed €25.5m of the SSDs (as described at paragraph 27 of my First Statement). Further, the SSDs are structurally senior to the SUNs since they are issued by ADO Lux, a subsidiary of the Parent Company, to which significant intra-group receivables are owed (whereas SUN Holders have no claim against ADO Lux, only against the Plan Company and the Parent Company).

60 In response to Ms. Rickelton's criticisms on this topic, it may also be worth me expanding on the explanation I gave in my First Statement of the rationale for the proposed applications of the New Money Funding. The application of the New Money Funding is set out in the purpose clause of the New Money Facilities Agreement**.**

61 First, the New Money Funding will be used to fund the repayment Adler RE 2023 SUNs. As BCG has demonstrated at page 81 of the Comparator Report **[AT2/933]**, in the Relevant Alternative, the Adler RE 2023 SUNs would be repaid in full. As such, there is a clear imperative to ensure that the Adler RE 2023 SUNs are repaid in full if the Plan becomes effective. Ms. Rickelton does not dispute that the Adler RE 2023 SUNs will be paid in full.

62 Further, Adler RE is currently, substantially a 'locked box'. The Adler RE creditors are, in relation to the portfolio held by Adler RE, structurally senior to the SUN Holders. Adler RE has a portfolio which may well enable it to repay the Group's imminently maturing debt (the Adler RE 2023 and 2024 SUNs) in full if it accepts steep discounts. However, this is neither in the best interest of Adler RE's shareholders, nor in the best interest of SUN Holders.

63 Next, the New Money Funding will be applied to pay the fees associated with the Plan. I described the fees and the rationale for them at length in my First Statement, in particular, at paragraphs 138 to 147. As Milbank has noted, the only fee which is available to SteerCo

members only is the Backstop Fee (and there is a clear commercial rationale for that, see above). I exhibited to my First Statement a table setting out these fees in the context of comparable fees in the market. This shows that the fees in this case represent a fair bargain for the services they are compensating, at least insofar as they are typical of what equivalent fee providers have received (and therefore expect) in the market.

64 The next application of funds is toward ordinary course capex requirements of Consus or certain property-owning subsidiaries of Consus (as set out at page 65 of the Comparator Report [**AT2/917**]). This is to maintain the minimum level of construction activity necessary to avoid material deterioration to assets and to uphold relevant building permits (and therefore to maintain current GAV). Funding of capex is also required to continue construction and meet contractual obligations on projects where the buyers have provided payment in advance. In the Relevant Alternative, these objectives would not be realised. After this, the funds are applied toward the repayment of the Adler RE 2024 SUNs. The rationale above (for repayment of the Adler RE 2023 SUNs) applies since the factors above (*e.g.,* maturity ahead of the SUNs) also applies here.

V CONCLUSION

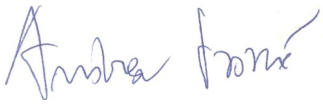
65 It remains my view that the Restructuring Plan is in the best interests of the Plan Creditors and other stakeholders. I am not aware of any matters that might call into question the fairness of the Restructuring Plan or the validity of the Plan Meetings and their results, as confirmed in the Chair's Report, **[AT2/2024]**.

66 I therefore respectfully request that the Court make an order in the form of the draft order filed on 23 March 2023 **[AT2/2041]**.

Statement of Truth

I believe the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed:



Andrea Trozzi

24 March 2023