

**Trust Instrument** entered into today the 22<sup>nd</sup> of March of the year 2024

Of the first part:

Mr Christopher Attard, holder of identity card number 402867M and Mr Pierre Bartolo, holder of identity card number 37765M, who are appearing hereon in the name and on behalf of the company **BEST DEAL PROPERTIES HOLDING P.L.C.**, a public limited liability company duly incorporated under the laws of Malta with registration number letter C 88974 and with registered office situated at 63, J.L. Buildings, Office 5, Luqa Road, Paola PLA 9045, Malta, as duly authorised by virtue of a resolution of the Board of Directors of the aforesaid company, a copy of which is annexed to this Trust Instrument as a document marked with the letter "A" (hereinafter referred to as the "**Issuer**");

Of the second part:

Mr Christopher Attard, holder of identity card number 402867M and Mr Pierre Bartolo, holder of identity card number 37765M, who are appearing hereon in the name and on behalf of **BEST DEAL GHADIRA LIMITED**, a private limited liability company duly incorporated under the laws of Malta with registration number letter C 106260 and having its registered office at 63, J.L. Buildings, Office 5, Luqa Road, Paola PLA 9045, Malta, as duly authorised in virtue of a resolution signed by the Board of Directors of the aforesaid company, a copy of which is annexed to this Trust Instrument as document letter "B" (hereinafter referred to as the "**Security Provider**").

Of the third part:

Dr Arthur Galea Salomone, holder of identity card number 299662M and Dr James Bannister, holder of identity card number 488475M, who are appearing hereon in the name and on behalf of **FINCO TRUST SERVICES LTD**, a limited liability company duly incorporated under the laws of Malta with registration letter C 13078 and registered office at The Bastions Office No. 2, Emsvin Cremona Street, Floriana FRN 1281, Malta, in its capacity of security trustee appointed by means of this Trust Instrument (as this term is defined in below), as duly authorised by virtue of a resolution of the Board of Directors of the aforesaid company, a copy of which is annexed to this Trust Instrument as a document marked with the letter "C" (hereinafter referred to as the "**Security Trustee**").

#### **WHEREAS:**

1. The Issuer proposes to issue the Bonds (as hereinafter defined) and has by Directors' resolution of the 15 December 2023 authorised the issue of Bonds which are to be admitted on the Official List operated by the Malta Stock Exchange pursuant to the Prospectus (as hereinafter defined), which Bonds are to be secured as set out in the Prospectus and in this Trust Instrument.
2. This Trust Instrument relates exclusively to the issue of the Bonds, that is, the secured bonds to be issued by the Issuer in terms of the Prospectus.
3. The security to be constituted for the benefit of the Bondholders (as hereinafter defined) consists of, *inter alia*, property to be acquired by the Security Provider, and the Security Provider shall enter into a guarantee agreement with the Security Trustee whereby the Security Provider shall stand surety, jointly and severally with the Issuer in favour of the Security Trustee and has agreed

to support its joint and several suretyship with a general hypothec over all its present and future assets, as well as a special hypothec over the Ghadira Site (as hereinafter defined), which is the site to be acquired by the Security Provider over which the Ghadira Development (as hereinafter defined) shall be constructed.

4. The security provided pursuant to this Trust Instrument and in terms of the Deed of Hypothec (as hereinafter defined) is for the exclusive benefit of the Bondholders, being the holders of the Bonds from time to time as evidenced by an electronic entry in the Bondholder Register (as hereinafter defined).
5. The Malta Financial Services Authority has approved the Prospectus on 22 March.
6. The Security Trustee is authorised to act as trustee in terms of the Trusts and Trustees Act (Chapter 331 of the Laws of Malta) and has agreed to act as trustee under this Trust Instrument for the benefit of the Bondholders.

**NOW THEREFORE IT IS AGREED AND DECLARED AS FOLLOWS:**

**1 Interpretation**

- 1.1 In this Trust Instrument the following words shall, unless the context otherwise determines, have the same meaning as assigned to them hereunder:

“**2018 Bonds**” means the 4.25% secured bonds due 2024 issued by the Issuer pursuant to a prospectus dated 03 December 2018, of a nominal value of €100 per bond and of an aggregate nominal value of €16,000,000, and having ISIN MT0002121201;

“**2018 Trust Deed**” means the agreement entered into between the Issuer, Best Deal Developments Limited and the Security Trustee dated 11 December 2018;

“**2022 Bonds**” means the 4.75% secured bonds due 2025 - 2027 issued by the Company pursuant to a prospectus dated 09 December 2022, of a nominal value of €100 per bond and of an aggregate nominal value of €15,000,000, and having ISIN MT0002121219;

“**2022 Trust Deed**” means the agreement entered into between the Issuer, Best Deal Estates Limited and the Security Trustee dated 09 November 2022;

“**Act**” means the Trust and Trustees Act (Cap. 331 of the Laws of Malta);

“**Beneficiaries**” means the Bondholders from time to time;

“**Bondholders’ Decision**” means a resolution passed by Bondholders during a Bondholders Meeting holding not less than seventy-five per centum (75%) in nominal value of the Bondholders present at the meeting, or at any adjourned meeting, as the case may be;

“**Bondholder**” means a holder of the Bonds from time to time as evidenced by an electronic entry in the Bondholder Register;

“**Bond Issue Proceeds**” means the net proceeds from the issue of the Bonds deposited by the Registrar into the Collateral Account/s;

“**Bondholders Meeting**” means a meeting of the Bondholders constituted in accordance with Clause 16 of this Trust Instrument;

“**Bonds**” means the secured bonds to be issued by the Issuer in terms of the Prospectus or as the case may be the amount of such Bonds for the time being issued and outstanding;

“**Central Securities Depository**” means the Central Securities Depository of the Malta Stock Exchange being the central registration system for dematerialised financial instruments in Malta;

“**Civil Code**” means the Civil Code (Cap 16 of the Laws of Malta);

“**Collateral Account**” means the bank account or accounts held or to be held by the Security Trustee with a Maltese-licensed credit institution for the purpose, *inter alia*, of depositing and holding the Bond Issue Proceeds until their release in accordance with the Prospectus and, or this Trust Instrument;

“**Deed of Hypothec**” means the deed to be entered into by and between the Security Provider and the Security Trustee whereby the Security Provider will constitute a first ranking general hypothecary guarantee and a first ranking special hypothecary guarantee over Secured Property owned by the Security Provider in favour of the Security Trustee and for the benefit of the Bondholders;

“**Event of Default**” has the same meaning as set out in Clause 12.9 of this Trust Instrument;

“**Existing Bonds**” means each of the 2018 Bonds and the 2022 Bonds;

“**Existing Trust Deeds**” means each of the 2018 Trust Deed and the 2022 Trust Deed;

“**Ghadira Development**” means the construction, development, and finishing, over the Ghadira Site, of a total of 53 apartments, 10 maisonettes, 2 penthouses and 119 garages, as better described in sub-section 6.5.3.2 of the Registration Document and in the Property Valuation Report;

“**Guarantee**” means the agreement to be entered into between the Security Provider, the Issuer and the Security Trustee which forms Annex II of the Securities Note;

“**Interest**” means 5.75% per annum;

“**Interest Payment Date**” means 12 April of each year between and including each of the years 2025 and 2029 provided that if any such day is not a Business Day such Interest Payment Date shall be carried out to the next following day that is a Business Day;

“**Issue Date**” means 24 April 2024;

“**Malta Stock Exchange**” means the Malta Stock Exchange p.l.c. as originally constituted in terms of the Financial Markets Act (Cap. 345 of the Laws of Malta) with company registration number C 42545 and having its registered office at Garrison Chapel, Castille Place, Valletta VLT 1063 Malta;

“**Pledge Agreement**” means the pledge agreement to be entered into by and between the Guarantor and the Security Trustee for the purpose of constituting a pledge on insurance policy proceeds as security for the full nominal value of the Secured Bonds and interest thereon, to be constituted prior to the commencement of works on the Ghadira Site;

“**Principal Amount**” means initially, as at the date of this Trust Instrument, the sum of fifteen million Euro (€15,000,000) representing the par value of the issued Bonds and thereafter the principal amount owing by the Issuer to the Bondholders from time to time under the Bonds representing the par value of the Bonds which have not been previously re-purchased and cancelled by the Issuer or otherwise redeemed;

“**Property Valuer**” means such professional valuer(s) (depending on the nature of the property to be valued) as may be nominated by the Security Provider and approved by the Security Trustee (acting reasonably);

“**Prospectus**” means the prospectus issued by the Issuer on 22 March 2024 for the issuance of the Bonds, a copy of which is attached as **Schedule 1**;

“**Prospectus Regulation**” means Commission Regulation (EU) 2017/1129 of 14 June 2017 of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC, as may be amended and, or supplemented from time to time;

“**Register of Bondholders**” means the register of Bonds held and maintained by the Central Securities Depository on behalf of the Issuer or as may be stipulated by the MSE Bye-Laws from time to time;

“**Registrar**” means M.Z. Investment Services Limited, having company registration number C 23936 and having its registered office at 61, M.Z. House, St. Rita Street, Rabat RBT 1523, Malta;

“**Reserve Account**” means the account held by the Security Trustee as provided in Clause 9 of this Trust Instrument;

“**Secured Property**” or “**Ghadira Site**” means the site located in Mellieha, measuring circa two thousand six hundred and forty-three square metres (2,643 sqm), as better described in the Property Valuation Report, in respect of which from time to time a Security Interest is constituted in favour of the Security Trustee, for the benefit of the Bondholders, for the purposes of securing the Bonds and the obligations of the Issuer and the Security Provider in terms of the Prospectus, the Deed of Hypothec and this Trust Instrument;

“**Security Interest**” means the following security to be constituted in favour of the Security Trustee as reduced from time to time in terms of section 15.4(d) of this Trust Instrument:

- (i) the first ranking general hypothec for the full nominal value of the Secured Bonds and interests thereon over all the present and future property of the Security Provider, to be constituted upon the final deed of sale and acquisition of the Ghadira Site;
- (ii) the first ranking special hypothec for the full nominal value of the Secured Bonds and interests thereon over the Ghadira Site together with all and any immovables constructed or to be developed thereon subject to such reductions as may be made from time to time in terms of this Trust Instrument, to be constituted upon the final deed of sale and acquisition of the Ghadira Site;
- (iii) the Pledge Agreement; and
- (iv) the Guarantee;

“**Trust**” means ‘**The BDP Bond 2027-2029 Trust**’ created by this Trust Instrument;

“**Trust Instrument**” means this trust instrument and any other instrument varying or amending it;

“**Trust Property**” means:

- (a) the Bond Issue Proceeds from such time as they are received by the Security Trustee until such time as these are released by the Security Trustee in accordance with this Trust Instrument;
- (b) the amounts received by the Security Trustee from the sale of each residential unit forming part of the Ghadira Development as set out in Clause 15 and subject to such reductions as may be made from time to time as set out in **Schedule 2** of this Trust Instrument standing to the credit of the Reserve Account (which shall be held by the Security Trustee in trust for the benefit of the Bondholders) other than any amounts required to be paid out to the Issuer upon the redemption and interest payment of the Bonds as set out in Clause 9.3 of this Trust Instrument; and
- (c) any Security Interest from time to time (including the proceeds from the enforcement of any Security Interest) granted to the Security Trustee for the benefit of the Bondholders.

1.2 In this Trust Instrument unless the context requires otherwise:

- (a) capitalised terms defined in the Prospectus shall have the same meaning as this Trust Instrument (unless herein defined);
- (b) reference to any law or legal provision includes a reference to: (i) that law or legal provision as from time to time amended extended or re-enacted or consolidated; and (ii) all legal notices or orders made pursuant to it;

- (c) references to costs, charges and expenses shall unless otherwise provided include any VAT or similar tax charged or chargeable in respect of such costs charges and expenses;
  - (d) words denoting the singular shall include the plural and vice versa;
  - (e) words denoting any gender include all the genders and words denoting persons shall include firms and corporations and vice versa;
- 1.3 Any reference to the Issuer, the Security Provider and, or the Security Trustee includes a reference to its/their duly authorised delegates.
- 1.4 Reference to “Clauses” or “clauses” are to the clauses or sub-clauses of this Trust Instrument.
- 1.5 Clause headings are for convenience only and shall not be considered or affect the construction or interpretation of this Trust Instrument.
- 1.6 In the event of any inconsistency between the provisions of this Trust Instrument and the provisions of the Prospectus, the provisions of this Trust Instrument shall prevail.

## **2 Appointment**

- 2.1 The Issuer hereby appoints the Security Trustee, who accepts, with effect from the date of approval of the Prospectus, to act as trustee of the Trust Property in accordance with this Trust Instrument, the Prospectus and Maltese law.
- 2.2 The Security Trustee’s appointment shall continue until such appointment is renounced by the Security Trustee or otherwise terminated in accordance with the provisions of this Trust Instrument and Article 20 of the Act.
- 2.3 The Security Trustee’s appointment relates exclusively to the security provided pursuant to this Trust Instrument and in terms of the Deed of Hypothec for the exclusive benefit of the Bondholders being the holders of the Bonds from time to time as evidenced by an electronic entry in the Bondholder Register.

## **3 Undertakings**

- 3.1 The Issuer undertakes and binds itself in favour of the Security Trustee:
- (a) to issue the Bonds on or around the Issue Date;
  - (b) to enter into the Guarantee whereby the Issuer shall procure that the Security Provider shall execute the Deed of Hypothec and do all that is necessary to properly constitute, register and perfect the first ranking general hypothec over all the property present and future of the Security Provider and the first ranking special hypothec over the Secured Property within 15 Business Days from the close of the Issue Period; and

- (c) to procure that the Security Provider shall execute a pledge over an insurance policy to be taken out by the Security Provider in relation to the Secured Property.

3.2 The Security Provider undertakes and binds itself in favour of the Security Trustee:

- (a) to constitute itself as surety with the Issuer for the Issuer's obligations in respect of the Bonds in accordance with the Prospectus, particularly the repayment of the Principal Amount and Interest thereupon;
- (b) to grant, in warranty of the proper observance by the Issuer of all the covenants and obligations undertaken by the Issuer towards the Bondholders in terms of the Prospectus and the Bonds and towards the Security Trustee for the benefit of the Beneficiaries in terms of this Trust Instrument and in particular in warranty of its obligations to repay the Principal Amount and Interest thereupon and all other monies due by or recoverable from the Issuer in terms of the Prospectus, the Deed of Hypothec, the Bonds and this Trust Instrument, as well as in warranty of the proper observance of their own obligations in terms of this Trust Instrument, the Prospectus, the Deed of Hypothec and the Bonds towards the Security Trustee for the benefit of the Beneficiaries: (i) the general hypothec over all the assets present and future of the Security Provider and the special hypothec on the Secured Property, and to do all that is necessary in order to register and perfect such first ranking general and special hypothec over the Secured Property within 15 Business Days from the close of the Issue Period; and (ii) the pledge over an insurance policy to be taken out by the security Provider in relation to the Secured Property.

#### 4 Declaration of Trust

- 4.1 Upon receipt of the Bond Issue Proceeds by the Security Trustee, the Bond Issue Proceeds will be held by the Security Trustee on trust for the Bondholders *pari passu* according to the rights and interests held by each Bondholder in the Security Interest as evidenced in the Register of Bondholders until such Bond Issue Proceeds are released to the Issuer in terms of this Trust Instrument.
- 4.2 Subject to the provisions of this Trust Instrument and Maltese Law:
  - (a) Upon creation of the Security Interest, the Security Interest will be held by the Security Trustee, in terms of this Trust Instrument, on trust for the Bondholders *pari passu* according to the rights and interests held by each Bondholder as evidenced in the Register of Bondholders;
  - (b) The Security Trustee shall make additional declarations of trust whenever additional property is received under trust and such declarations of trust shall be on the same terms as stated herein and shall form an integral part hereof.
- 4.3 This Trust is constituted as a security trust for the purposes of Article 2095E of the Civil Code.
- 4.4 The Parties agree that, in terms of and for the purposes of the Act, this Trust shall be treated as being constituted in the context of a commercial transaction. Pursuant to the provisions of Article 21(7) of the Act, each Party agrees that the duties, liabilities, obligations and

responsibilities incumbent upon the Security Trustee shall be limited to those expressly specified in this Trust Instrument;

Provided that nothing in this clause shall permit the Security Trustee to be exonerated from the effects of, or be indemnified for, its own fraud, wilful misconduct, gross negligence or breach of duty.

- 4.5 The trust established under this Trust Instrument is to be known as the “**The BDP Bond 2026-2028 Trust**” or the “**Trust**”.

## **5 Trust Property**

- 5.1 The Trust Property shall consist in: (a) the Bond Issue Proceeds until such time as they are released post-listing of the Bonds in accordance with this Trust Instrument and the Prospectus; and (b) the Security Interest over the Secured Property; and (c) the amounts received by the Security Trustee from the sale of each residential unit forming part of the Ghadira Development (all as defined and set out in Section 1.1 of this Trust Instrument).

- 5.2 The Security Trustee is expected to receive the Bond Issue Proceeds from the Registrar on or before 24 April 2024. The Bond Issue Proceeds shall be deposited in the Collateral Account.

- 5.3 The Bond Issue Proceeds shall be held by the Security Trustee in the Collateral Account pending the fulfilment of the following conditions:

- 5.3.1 Confirmation of title in relation to the Ghadira Site and that such site is free and unencumbered of any security interests;

Provided that this condition may be waived by the Security Trustee.

Provided further that the Security Trustee shall be empowered to take all such measures as it may consider appropriate or necessary to ensure that any portion of the purchase consideration due to the vendors is paid directly to creditors of the sellers who may have registered security interests over the Ghadira Site being purchased by the Security Provider, so as to ensure that the purchase is made as free and unencumbered of any such security interests and to enable the Security Trustee to take the Security Interest over the said property;

- 5.3.2 The Guarantee being entered into by the respective parties;

- 5.3.3 Confirmation of admissibility to trading of the Bonds by the MSE.

- 5.4 Upon the satisfaction of the conditions set out in clause 5.3 above, the Security Trustee shall appear on the deed of purchase and acquisition of the Ghadira Site to:

- 5.4.1 Ensure that the Security Provider obtains legal title to the Ghadira Site;

- 5.4.2 Pay out from the Bond Issue Proceeds circa €8.5 million for the purposes of funding the acquisition of the Ghadira Site, and related costs of acquisition;



5.4.3 Accept the constitution of the following security interest:

(i) a first ranking general hypothec for the full nominal value of the Secured Bonds and interest thereon over all present and future property of the Security Provider;

(ii) a first ranking special hypothec for the full nominal value of the Secured Bonds and interest thereon over the Ghadira Site together with all and any immovables constructed or to be developed thereon;

5.5 Following the acquisition of the Ghadira Site and the commencement by the Security Provider of works thereon, the Security Provider shall take out an insurance policy in relation to the Secured Property and pledge such policy in favour of the Security Trustee by executing the pledge agreement.

5.6 Following the settlement by the Security Trustee of the sums pursuant to Clauses 5.4:

(i) the amount of circa €6.1 million shall be retained by the Security Trustee in the Collateral Account and shall be released in favour of the contractor/s to meet excavation and developments costs, against presentation of invoices and, or contract of works certificates, related to the Ghadira Development upon instruction to the Security Trustee by the Guarantor.

(ii) the amount of €50,000 shall be retained by the Security Trustee (the "Float") for the purpose of having a necessary reserve that may be required to meet expenses that may be incurred by the Security Trustee in the performance of its duties under this Trust Instrument and in particular in the performance of its duties under clause 15.3 of this Trust Instrument and to enforce any of the Security Interests under this Trust Instrument provided that in the event that the Float shall be reduced to below €50,000 the Issuer agrees and undertakes to place the Security Trustee in funds such that the Float shall be maintained at all times at a sum not less than €50,000.

There is no obligation of the Security Trust to ensure that the Collateral Account is interest bearing.

## **6 Beneficiaries**

6.1 The Beneficiaries of the Trust shall be the Bondholders.

6.2 The Register of Bondholders shall be maintained by the Central Securities Depository of the Malta Stock Exchange and shall serve as conclusive evidence of the entitlement of each Beneficiary under this Trust Instrument, and the Security Trustee shall have no obligation to verify the correctness of the Register of Bondholders and is hereby excluded from any liability arising from or in connection with any failure to verify the correctness thereof.

6.3 The beneficial interest of a Beneficiary in the Trust and in the Security Interest shall terminate upon such time as a Beneficiary is no longer registered in the Register of Bondholders or upon

redemption of the principal amount of the Bonds and payment of all interest thereunder as the case may be.

- 6.4 The Issuer hereby agrees to provide the Security Trustee a copy of the Register of Bondholders upon request, as well as full access to the Register of Bondholders thereby providing the Security Trustee with full and unrestricted information in respect thereof. Furthermore, the Issuer hereby undertakes in favour of the Security Trustee that it shall pay all and any charges and levies that may, from time to time, be levied by the Central Securities Depository for the services performed by the same in connection with the Bonds and the Register of Bondholders.
- 6.5 In the event that the Bonds are de-listed from the Malta Stock Exchange or if the Central Securities Depository ceases to maintain the Register of Bondholders for any reason whatsoever, then, without prejudice to any other right or power or discretion of the Security Trustee under this Trust Instrument including any rights of enforcement, the Issuer shall immediately notify the Security Trustee and shall be bound to observe any directions with respect to the keeping of a Register of Bondholders which the Security Trustee in its discretion shall give.

## **7 Trust Instrument Binding on all Beneficiaries**

- 7.1 The terms and conditions of this Trust Instrument shall, upon subscription or purchase of any Bonds, be binding on such subscriber or purchaser of the Bonds, and on each Bondholder from time to time, as a Beneficiary under this Trust as if the Beneficiary had been a party hereto and as if this Trust Instrument contained covenants on the part of each Beneficiary to observe and be bound by all the provisions hereof, and the Security Trustee is hereby authorised to do the things required of it by this Trust Instrument.

## **8 Security Interest**

- 8.1 The Bonds creating and acknowledging the indebtedness of the Issuer to the Bondholders shall be issued directly by the Issuer to the Bondholders pursuant to the Prospectus and shall accordingly create a direct contractual relationship between the Issuer and each Bondholder. The Security Trustee shall, notwithstanding that it is not a Bondholder, be entitled to be registered as the holder of the Security Interest for the benefit of the Bondholders in accordance with the provisions of this Trust Instrument and Article 2095E of the Civil Code (Chapter 16 of the laws of Malta).
- 8.2 The Security Interest is being constituted to secure the Issuer's and the Security Provider's obligation to repay the Principal Amount of the Bonds and all interests thereon and the proper observance by each of the Issuer and each Security Provider of all the covenants and obligations undertaken by them under this Trust Instrument, the Deed of Hypothec and the Prospectus.
- 8.3 The Security Interest over immovable property may rank after lawful causes of preference which may be created by operation of law or general hypothecation customarily granted in warranty of peaceful possession.
- 8.4 The Security Provider undertakes in favour of the Security Trustee, that for as long as any principal or interest under the Bonds or any indebtedness under the Bonds remains outstanding,

not to create or permit to subsist any charge, encumbrance, hypothec (whether general or special), privilege or security interest other than the Security Interest or a Permitted Security Interest (as defined below) to secure any Financial Indebtedness (as defined below) of the Issuer and, or the Security Provider.

For the purposes of this clause:

**“Financial Indebtedness”** means any indebtedness in respect of (A) monies borrowed; (B) any debenture, bond, note, loan stock or other security; (C) any acceptance credit; (D) the acquisition cost of any asset to the extent payable before or after the time of acquisition or possession by the party liable where the advance or deferred payment is arranged primarily as a method of raising finance or financing the acquisition of that asset; (E) leases entered into primarily as a method of raising finance or financing the acquisition of the asset leased; (F) amounts raised under any other transaction having the commercial effect of borrowing or raising of money; (G) any guarantee, indemnity or similar assurance against financial loss of any person;

**“Permitted Security Interest”** means: (i) any security interest arising by operation of law; (ii) any security interest securing any indebtedness of the Issuer and, or Security Provider created for the sole purpose of financing or raising finance for the redemption of the Bonds; (iii) any other security interest (in addition to (i), and (ii) above) securing Financial Indebtedness of the Issuer and, or Security Provider (as the case may be), in an aggregate outstanding amount not exceeding 80% of the difference between the value of the Net Assets of the Security Provider and the aggregate principal amount of Bonds outstanding at the time; PROVIDED THAT any security interest set out in (iii) above shall only be entered into by the Issuer or the Security Provider (as the case may be) after receipt by the Security Trustee of written confirmation from an auditor confirming that such security interest may be created in accordance with the conditions set out in (iii) above. PROVIDED FURTHER THAT the aggregate Permitted Security Interests referred to in (i), (ii) and (iii) above do not result in the Net Assets of the Security Provider being less than the aggregate principal amount of the Bonds still outstanding together with one year’s interest thereon;

- 8.5 Subject to the proviso in clause 8.4, the Security Provider shall neither create nor allow to subsist any further encumbrances over the Secured Property, save as permitted by this Trust Instrument, nor shall the Security Provider transfer ownership and, or any other real right over the Secured Property under any title whatsoever, without the consent of the Security Trustee. For the avoidance of doubt this prohibition shall include the granting of general hypothecation, saving general hypothecation customarily granted in warranty of peaceful possession but shall exclude any general hypothecation given by the Security Provider in which the respective Secured Property is specifically excluded from the aforementioned general hypothecation.

## **9 Reserve Account**

- 9.1 The Security Trustee shall from the sale of each residential unit forming part of the Ghadira Development receive the amounts set out in Clause 15 of this Trust Instrument and shall retain such amounts in an account to be called the **“Reserve Account”** which shall be held by the Security Trustee in trust for the benefit of the Bondholders.

- 9.2 The Security Trustee shall not waive, cancel and, or reduce the effects of the Security Interest (including hypothecary rights) it holds over any residential unit forming part of the Ghadira Development unless it receives the amounts set out in Clause 15 of this Trust Instrument.

PROVIDED THAT the Security Trustee shall at all times be required to cancel, waive and, or reduce the effects of the Security Interest (including hypothecary rights) it holds over one or more garage spaces (to the extent of the garage or garage spaces being transferred).

- 9.3 The Reserve Account shall be utilised for the purpose of meeting the redemption of the Bonds upon redemption and interest payments on the Bonds. Accordingly, the Security Trustee shall, on the date fixed for the redemption of the Bonds, apply the funds in the Reserve Account for the payment to Bondholders of the redemption amount due on the Bonds held by them. Such application shall be made in such manner which is deemed by the Security Trustee in the circumstances to afford appropriate protection to the beneficiaries. Any amounts held by the Security Trustee in the Reserve Account in excess of the amount required to fully and finally pay and discharge the amounts due to Bondholders under the Bond, and any fees, costs and expenses that may be due to the Security Trustee, shall be paid out to the Issuer.
- 9.4 Nothing in the foregoing shall be construed as placing the Security Trustee under any obligation to redeem the Bonds itself or to affect any payment to Bondholders in excess of the amounts standing to the credit of the Reserve Account; or to release the Issuer from its obligation to pay the Bonds on the date fixed for their redemption. The Security Trustee shall only be obliged to apply the funds held in the Reserve Account to the redemption of the Bonds, provided that any shortfall from the amount required for redemption and the amount held in the Reserve Account shall be paid out by the Issuer.
- 9.5 During the term of the Bonds, the Security Trustee shall be empowered to apply part of the funds standing to the credit of the Reserve Account to repurchase the Bonds from the market for cancellation. The funds standing on the credit of the Reserve Account which are not utilised for the re-purchase of the Bonds on the market shall be invested by the Security Trustee, at its discretion, subject to the following restrictions:
- (a) Any amount standing to the credit of the Reserve Account may be held on deposit with a Bank licensed as a credit institution in Malta or any Member State of the European Union, provided that not more than 50 per cent (50%) of any amount standing to the credit of the Reserve Account, from time to time, shall be deposited with the same institution if the amount of the deposit exceeds the sum of €8 million; and/or
  - (b) Any amount standing to the credit of the Reserve Account may be invested in debt securities issued by or guaranteed by the Government of Malta or other member state of the European Union or the EEA; and/or
  - (c) An amount of up to 50 per cent (50%) of the amount standing to the Credit of the Reserve Account may be invested in debt securities admitted to listing and trading on a Regulated market in the European Union, provided that not more than €2 million may be exposed to one or more debt securities issued by the same issuer; and provided that such investment will not expose the Reserve Account to any currency exchange risk.

- 9.6 The Security Trustee may engage any person or partnership duly licensed by the relevant authorities as an investment advisor, to advise it on the Investment of all or any part of the amount standing to the credit of the Reserve Account and it may delegate to such investment advisor the power to manage or invest any part or all of the credit standing to the Reserve Account on such terms as the Security Trustee thinks fit, subject to the provisions of clause 9.5 above; PROVIDED THAT the Security Trustee shall remain responsible for any decision or act exercised by a delegate as if the decision or act was exercised by the Security Trustee itself; PROVIDED FURTHER THAT such delegate shall not be authorised and/ or empowered to exercise any discretion which would otherwise vest in the Security Trustee.
- 9.7 In its management of the Reserve Account pursuant to clauses 9.5 and 9.6, the Security Trustee may accumulate all income (after due payment of tax on investment income as shall be due at law and after payment of fees due to the investment advisor) to the Reserve Account as capital and reinvest it as it deems fit, and shall be entitled to hold such accumulations as an addition to capital.

#### **10. Dividend Distributions**

The Issuer shall not declare or pay a dividend unless the Net Gearing of the Issuer is less than 75%. For the avoidance of any doubt, the Issuer undertakes that until such time as the Existing Bonds are redeemed in full, it shall only declare or pay a dividend in accordance with this clause and with Clause 10 of each Existing Trust Deed.

For the purposes of this Clause 10, “**Net Gearing**” shall mean the total interest-bearing liabilities less cash and cash equivalents less funds standing to the credit of the Reserve Account divided by Total Equity and total interest-bearing liabilities less cash and cash equivalents less funds standing to the credit of the Reserve Account.

“**Total Equity**” means the difference between total assets and total liabilities;

“**Net Assets/Total Assets**” means the difference between total assets and total liabilities divided by total assets.

PROVIDED THAT it shall not be incumbent on the Security Trustee to ascertain the Net Gearing of the Issuer, however at the discretion of the Security Trustee it may seek confirmation in writing from the Issuer that it is not in breach of its undertaking in terms of this Clause.

#### **11. Covenants by the Issuer and the Security Provider**

- 11.1 The Issuer, with the joint and several guarantee of the Security Provider, covenants with the Security Trustee that at all times during the continuance of the Security Interest:
- (a) it will maintain its corporate existence as a company duly organised and existing and in good standing under the laws of Malta;
  - (b) it will maintain its listing of the Bonds on the Malta Stock Exchange;

- (c) it will redeem the Bonds at their nominal value on the Redemption Date or a Designated Early Redemption Date, as applicable, as set out in the Prospectus and punctually pay interest when due;
- (d) it will enter into the necessary deeds for the creation of the Security Interest. The Bond constitutes the general, direct and unconditional obligations of the Issuer secured by the Security Provider. The Bondholders shall in respect of the Bond at all times rank *pari passu* without any priority or preference among themselves, but the Security Interest shall rank with priority or preference over all unsecured indebtedness of the Security Provider, if any;
- (e) it will do all such acts and take such measures as are necessary in order not to allow any Secured Property to perish in whole or in part;

The Issuer shall provide the Security Trustee with an annual report prepared by a Property Valuer in fulfilment of its obligations to annually revalue its immovable property in evidence of the value of the Secured Property which shall be conclusive evidence of the valuation of the Secured Property/Security Interest. The Security Trustee is entitled to rely solely on the valuation determined by the Property Valuer without incurring any liability for so relying;

- (f) it will provide the Security Trustee with an authentic copy of a public deed registered at the Public Registry in accordance with the provisions of article 1996A of the Civil Code (Chapter 16 of the laws of Malta) by which the contractor, engaged by the Security Provider to work on the excavation and shell construction of the Secured Property and having a contract value (or the cumulative value of a series of contracts) above five hundred thousand Euro (€500,000), irrevocably renounces to its right to register a special privilege or special legal hypothec on the Secured Property accorded to it by law in terms of Articles two thousand and ten (2010), sub-section (b) and two thousand and twenty two (2022) of the Civil Code (Chapter 16 of the laws of Malta) or to register or secure any other cause of preference or security on the Secured Property to which it may become entitled in terms of law, by virtue of any claim for outstanding dues for supplies, materials, work or services performed or undertaken by it in connection with the development of the Secured Property. Moreover, the contractor shall covenant that it shall only be allowed to subcontract to other subcontractors on condition that a similar waiver of rights is documented as per above provisions;
- (g) it will insure and keep insured to the full replacement value thereof all such parts of the Secured Property as are of an insurable nature against such risks as in accordance with sound commercial practice are normally insured against by companies carrying on a similar business with one or more insurance companies licensed to transact insurance business in Malta or such other insurance company. All monies received by virtue of any such insurance shall be paid to the Security Trustee to be applied in making good the loss or damage in respect of which the monies were received or in such other manner as the Security Trustee shall approve provided that if the Issuer and, or Security Provider (as applicable) make good the loss or damage in respect of which the monies were received by the Security Trustee, then the Security Trustee shall reimburse the Issuer and, or Security Provider (as applicable) with the monies received;

- (h) it will not sell, transfer or otherwise alienate the Secured Property or part thereof or dispose of any rights therein without the prior written consent of the Security Trustee. For the avoidance of doubt this prohibition shall not include the sale, transfer or other alienation of any garage spaces or the disposal of any rights therein and, or the leasing of the Secured Property or part/s thereof;
- (i) save as is otherwise permitted in terms of this Trust Instrument, it will not do any acts which will result in the reduction or dilution of the value of the Secured Property or any part thereof;
- (j) save as is otherwise permitted in terms of this Trust Instrument, it will not do any acts or take any measures which will result in the extinction, reduction or alienation of the Security Interest or any part thereof or in a reduction of ranking of the Security Interest or part thereof;
- (k) it shall do all such acts as it may consider necessary or desirable, or as may be reasonably required by the Security Trustee, to ensure that during such period that the Bonds are outstanding, the Security Interest shall rank with priority over all other claims of the Security Provider and in the event of a third party claim or any circumstance in which the Security Trustee's right and, or title to the Security Interest and thereby its interest in the Secured Property is or may be prejudiced, the Security Provider shall defend the Security Trustee's right and, or title to the Security Interest;
- (l) it will, within 30 calendar days of perfection of the Security Interest, provide the Security Trustee with an authenticated copy of a public deed registered at the Public Registry (and if applicable at the Land Registry) for each hypothec or other charge comprising the Security Interest over the Secured Property, and shall provide to the Security Trustee, upon its request/s, if any, an authenticated copy of searches at the Public Registry (and if applicable at the Land Registry) as evidence of the continued existence and registration of the Security Interest;
- (m) save as is otherwise permitted in terms of this Trust Instrument, it will not remove or destroy or suffer to be removed or destroyed any part of the Secured Property;
- (n) it will forthwith, on receipt of the same, deliver to the Security Trustee a copy of all orders, directions, notices whatsoever adversely affecting or likely to adversely affect the Security Interest and, or the Secured Property in a material manner;
- (o) it will comply with the requirements of the Development Planning Act (Chapter 552 of the laws of Malta) and any other laws or regulations in force regulating immovable property including *inter alia* all planning, development, building and environmental laws and regulations, in so far as such requirements relate to the Secured Property or any part thereof;
- (p) it will comply with the requirements of the Civil Code (Chapter 16 of the laws of Malta) and any other laws or regulations in force governing and regulating property ownership and, or the creation and maintenance of the Security Interest;

- (q) it will promptly notify the Security Trustee in writing upon the occurrence of any Event of Default as set out in Clause 12 of this Trust Instrument;
- (r) to duly and punctually pay, perform and observe any rates, taxes, stamp duties, covenants and other obligations whatsoever which ought properly to be paid or to be observed or performed by the Issuer or the Security Provider in respect of the Secured Property;
- (s) to carry on and conduct its business in a lawful and proper manner.

PROVIDED that the Issuer undertakes to maintain the corporate existence of the Security Provider as a limited liability company duly organised and existing and in good standing under the laws of Malta.

## **12 Default and Enforcement**

- 12.1 The Security Trustee may at its discretion, and shall if requested to do so upon the request in writing of not less than 75% in value of the Bondholders, by notice in writing to the Issuer and the Security Provider, declare the Bonds to have become immediately due and repayable, if any Event of Default under this clause and, or the Prospectus shall occur;

The Security Trustee shall not be bound to take any proceedings and, or other action pursuant to this Trust Instrument unless directed to do so upon the request in writing of not less than 75% in value of the Bondholders and only if it is indemnified, if it so requires, against all actions, proceedings, claims and demands to which it may thereby render itself liable and against all costs, charges, damages and expenses which it may incur by so doing.

- 12.2 If the Issuer shall fail to pay the principal amount as and when the Bonds are due to be redeemed as provided by the Prospectus, and such failure shall continue for sixty (60) days after written notice thereof shall have been given to the Issuer or at any time after the Bonds shall have become immediately due and repayable, the Security Trustee (to the exclusion of any Beneficiary) may, at its discretion, and shall, if so requested upon the request in writing of not less than 75% in value of the Bondholders, and without further notice, take such proceedings against the Issuer and, or the Security Provider as it may deem fit including for the enforcement of the Security Interest.
- 12.3 The Beneficiaries acknowledge that the Security Trustee shall not be bound to take any steps or institute any proceedings or to take any other action to enforce the security constituted by the Security Interest unless the Security Trustee shall have been indemnified to its satisfaction against all actions, proceedings, claims and demands to which it may thereby render itself liable and all costs, charges, damages and expenses which it may incur by so doing.
- 12.4 The Security Trustee shall not be bound to take any steps to ascertain whether any Event/s of Default or other condition, event or circumstance has occurred or may occur, and, until it shall have actual knowledge or express notice to the contrary, the Security Trustee shall be entitled to assume that no such Event/s of Default or condition, event or other circumstance has happened and that the Issuer and Security Provider are observing and performing all the



obligations, conditions and provisions contained in the Deed of Hypothec, the Prospectus and, or the Trust Instrument.

12.5 In the event of any breach by the Issuer or the Security Provider of any of the covenants, obligations or provisions contained in this Trust Instrument, the Deed of Hypothec and, or the Prospectus due to any fortuitous event of a calamitous nature beyond the control of the Issuer or the Security Provider, then the Security Trustee may, but shall be under no obligation so to do, give the Issuer or Security Provider such period of time to remedy the breach as in its sole opinion may be justified in the circumstances and if in its sole opinion the breach is remediable within the short term and without any adverse impact on the Bondholders. In the circumstances, the Security Trustee shall, if so requested, act on and in accordance with any request in writing of not less than 75% in value of the Bondholders.

12.6 Only the Security Trustee may enforce the provisions of the Trust Instrument and, or the Prospectus and, or the Deed of Hypothec and no Bondholder may take proceedings directly against the Issuer or the Security Provider;

PROVIDED that Bondholders may be entitled to enforce the provisions of the Trust Instrument and, or the Prospectus and/or the Deed of Hypothec if the Security Trustee, having become bound to proceed as above, fails to do so within a period of sixty (60) days after an official intimation requesting it to proceed to enforce pursuant to a request in writing of not less than 75% in value of the Bondholders.

12.7 All monies recovered or received by any of the Bondholders after the occurrence and during the continuance of an Event of Default shall be held on trust for the Security Trustee and be applied by Security Trustee in accordance with Clause 12 of this Trust Instrument.

12.8 The Security Trustee shall be entitled to make deductions and withholdings (on account of taxes or otherwise) from payments to the Bondholders hereunder which it is required by any applicable law to make, and to pay all taxes which may be assessed against it in respect of Bonds and, or the Security Interest in respect of anything done or omitted to be done by it in its capacity as trustee or otherwise by virtue of its capacity as trustee. Neither the Issuer, Security Provider nor the Security Trustee shall be under any obligation to pay any additional amounts in the event of a withholding or deduction required by applicable law.

12.9 Events of Default.

The Security Trustee may in its absolute and uncontrolled discretion, and shall upon the request in writing of not less than 75% in value of the Bondholders, by notice in writing to the Issuer and the Security Provider declare the Bonds to have become immediately due and repayable at their principal amount together with accrued interest, upon the happening of any of the following events ("Events of Default"):

(a) the Issuer fails to punctually effect the payment of interest under the Bonds on an Interest Payment Date and such failure continues for a period of sixty (60) days after written notice thereof by the Security Trustee to the Issuer;

- (b) the Issuer fails to pay the principal amount of a Bond on the date fixed for its redemption and such failure continues for a period of sixty (60) days after written notice thereof by the Security Trustee to the Issuer;
- (c) the Issuer or the Security Provider fails to perform or shall otherwise be in breach of any other obligation contained in the Prospectus, the Deed of Hypothec or this Trust Instrument, and such failure shall continue for sixty (60) days after written notice thereof shall have been given to the Issuer and the Security Provider by the Security Trustee;
- (d) the Issuer or the Security Provider ceases or threatens to cease to carry on its business;
- (e) the Issuer or the Security Provider is unable to pay its debts within the meaning of section 214(5) of the Companies Act (Cap. 386 of the Laws of Malta), or any statutory modification or re-enactment thereof;
- (f) a judicial or provisional administrator is appointed upon the whole or any part of the property of the Issuer or the Security Provider and such appointment is deemed by the Security Trustee to be prejudicial, in its opinion, to the Bondholders;
- (g) an order is made or an effective resolution is passed for winding up of the Issuer or the Security Provider, except for the purpose of a reconstruction, amalgamation or division, the terms of which have been approved in writing by the Security Trustee;
- (h) the Issuer or the Security Provider commit a breach of any of the covenants or provisions contained in the Trust Instrument and the said breach still subsists for sixty (60) days after having been notified by the Security Trustee;
- (i) the security constituted by any hypothec, pledge or charge upon the whole or any part of the undertaking or assets of the Issuer or Security Provider or upon the Secured Property shall become enforceable and steps are taken to enforce the same and the taking of such steps shall be certified in writing by the Security Trustee to be in its opinion prejudicial to the Bondholders;
- (j) any material representation or warranty made by or in respect of the Issuer or the Security Provider is or proves to have been incorrect in any material respect in the sole opinion of the Security Trustee;
- (k) any material indebtedness of the Issuer which is declared as due in terms of an executive title which is final and not subject to appeal is not paid when properly due and payable or any guarantee or indemnity of the Issuer in respect of indebtedness which is declared as due in terms of an executive title which is final and not subject to appeal is not honoured when properly due and called upon; PROVIDED THAT for the purposes of this provision, material indebtedness shall mean an amount exceeding one million five hundred thousand Euro (€1,500,000). The Issuer undertakes to inform the Security Trustee upon the occurrence of any material indebtedness as defined under this article being declared as due in terms of an executive title which is final and not subject to appeal remaining unpaid when properly due and payable;

- (l) the Issuer or Security Provider repudiates, or does or causes or permits to be done any act or thing evidencing an intention to repudiate the Bonds and, or the Trust Instrument;
- (m) the de-listing of the Bonds, save with the consent of not less than 75% in value of the Bondholders; or
- (n) all, or in the sole opinion of the Security Trustee, a material part, of the undertakings, assets, rights, or revenues of or shares or other ownership interests in the Issuer or Security Provider are seized, nationalised, expropriated or compulsorily acquired by or under the authority of any government.

Upon any such declaration being made as aforesaid the said principal monies and interest accrued under the Bonds shall be deemed to have become immediately payable at the time of the event which shall have happened as aforesaid if the Security Trustee so declares in its declaration.

PROVIDED that in the event of any breach by the Issuer or Security Provider of any of the covenants, obligations or provisions herein contained due to any fortuitous event of a calamitous nature beyond the control of the Issuer or Security Provider, then the Security Trustee may, but shall be under no obligation so to do, give the Issuer or Security Provider such period of time to remedy the breach as in its sole opinion may be justified in the circumstances and if in its sole opinion the breach is remediable within the short term and without any adverse impact on the Bondholders. Provided further that in the circumstances contemplated by this proviso, the Security Trustee shall at all times act on and in accordance with any Bondholders' Decision. The Security Trustee shall not be bound to take any steps to ascertain whether any event of default or other condition, event or circumstance has occurred or may occur, and, until it shall have actual knowledge or express notice to the contrary, the Security Trustee shall be entitled to assume that no such event of default or condition, event or other circumstance has happened and that the Issuer and Security Provider are observing and performing all the obligations, conditions and provisions, as applicable, of the Secured Bonds and the Trust Instrument.

### **13. Representations and Warranties**

- 13.1 Each of the Issuer and Security Provider represents and warrants to the Security Trustee (where applicable), that relies on such representations and warranties, that:
- (a) it is duly incorporated and validly existing under the laws of Malta and has the power to carry on its business as it is now being conducted and to hold its property and other assets under legal title;
  - (b) it has the power to execute, deliver, and perform its obligations under this Trust Instrument, the Prospectus and the Deed of Hypothec;
  - (c) all necessary corporate, shareholder and other action has been duly taken to authorise the execution, delivery and performance of the same and no limitation on the powers

of the Issuer and, or Security Provider (as applicable) to borrow or guarantee shall be exceeded as a result of this Trust Instrument, the Prospectus and the Deed of Hypothec:

- (d) this Trust Instrument, the Prospectus and the Deed of Hypothec constitute valid and legally binding obligations of the Issuer and of the Security Provider;
- (e) the execution and performance of the obligations under, and in compliance with the provisions of this Trust Instrument, the Prospectus and the Deed of Hypothec by the Issuer and each Security Provider shall not:
  - (i) contravene any existing applicable law, rule or regulation or any judgement, decree or permit to which Issuer and the Security Provider is subject;
  - (ii) conflict with, or result in any breach of any terms of, or constitute a default under any obligation, bond or other instrument to which the Issuer or the Security Provider is a party or are subject or by which they or any of their property are bound;
  - (iii) contravene any provision of the Issuer's memorandum and articles of association or the memorandum and articles of association of the Security Provider.
- (f) the Security Provider holds good and valid title to the Secured Property;
- (g) other than as may be disclosed in the Prospectus, no litigation, arbitration or administrative proceedings are taking place, pending or, to the knowledge of the officers of the Issuer or Security Provider, threatened against the Issuer or the Security Provider which could have a material adverse effect on the business, assets or financial condition of the Issuer or Security Provider as the case may be;
- (h) as at the date thereof, the Prospectus contains all material information with respect to the Issuer and the Security Provider and all that information contained therein is in every material respect true and accurate and not misleading and that there are no other facts in relation to the Issuer and the Security Provider and their respective businesses and financial position, the omission of which would in the context of issue of the Bonds make any statement in the Prospectus misleading or inaccurate in any material respect.

13.2 The Issuer and the Security Provider further represent and warrant to the Security Trustee, that relies on such representations and warranties, that:

- (a) there has been no material adverse change in the financial position of the Issuer or the Security Provider from their respective dates of incorporation;
- (b) every consent, authorisation, approval or registration with or declaration to, governmental or public bodies or authorities or courts, required by the Issuer and the Security Provider in connection with the execution, validity, enforceability of this Trust Instrument or the performance of their obligations under this Trust Instrument have been obtained or made and are in full force and effect and there has been no default in

the observance of any of the conditions or restrictions, if any, imposed in, or in connection with, any of the same;

- (c) no default mentioned in this Trust Instrument has occurred and, or is continuing.

#### **14. Distributions by the Security Trustee**

14.1 Following the enforcement of the Security Interest, all monies received by the Security Trustee shall be held by the Security Trustee (subject to any prior ranking claims thereon in terms of law) upon trust to apply the same for the following purposes and in the following order of priority in payment of:

- (a) all costs, charges, expenses and liabilities incurred and payments made in or about the exercise of the trust in relation to this Trust Instrument by the Security Trustee including all remuneration payable to the Security Trustee with interest thereon as hereinafter provided and all costs and expenses incurred in relation to the enforcement of the Security Interest;
- (b) the interest owing upon the Bonds *pari passu* and without any preference or priority;
- (c) the principal amount owing upon the Bonds *pari passu* and without any preference of priority; and
- (d) the surplus (if any) shall be paid to the Issuer and, or the Security Provider *pro rata* as determined by the Security Trustee having regard to the Security Interest/s which were enforced;

PROVIDED that if the Security Trustee shall be of the opinion that the Security Interest may prove deficient, payments may be made on account of principal and before the interest or the whole of the interest on the Bonds has been paid, but such alteration in the order of payment of principal and interest shall not prejudice the right of the Beneficiaries to receive the full amount to which they would have been entitled if the primary order of payment had been observed or any less amount which the sum ultimately realised from the Security Interest may be sufficient to pay;

PROVIDED further that before applying the said monies as aforesaid, the Security Trustee is entitled to be satisfied that any documentation, self-certification, or information it requires from the Beneficiaries is provided to its satisfaction in order to allow it to perform its duties in terms of this Trust Instrument and in terms of law;

PROVIDED further that the above will be without prejudice to the Security Trustee's rights of recourse to the Courts for direction, in terms of the relevant provisions of the Act.

14.2 The Security Trustee shall give Beneficiaries at least ten (10) days' notice of every distribution to be made by the Security Trustee to Beneficiaries. The Security Trustee shall withhold payment of any monies due to be distributed to any Beneficiaries, where such distribution would be unlawful. Any monies the payment thereof is for any time withheld by the Security Trustee pursuant to this Clause shall be maintained in the Collateral Account. The amount

which equals the amount of any principal monies for the time being withheld from the person or persons registered or entitled to be registered as Bondholder/s shall not carry interest while such monies are being withheld, save interest, if any, allowed on the account in which such monies are placed. The receipt by the Bondholder or of the first-named of joint Bondholders of any monies paid by the Security Trustee in respect of the Bonds shall be a good discharge to the Security Trustee for those monies.

- 14.3 Other than as provided in this Trust Instrument, all payments and other obligations to the Beneficiaries under the Bonds, or in terms of the Prospectus or the Deed of Hypothec shall be the exclusive obligation of the Issuer and the Security Trustee shall not have, and nothing herein contained shall be construed as creating or otherwise acknowledging, any obligation on the part of the Security Trustee in favour of the Beneficiaries for any payments under the Bonds for the satisfaction of any obligations in terms of the Prospectus or the Deed of Hypothec.

## **15. Powers and Functions of the Security Trustee**

- 15.1 The Security Trustee may, but shall not be bound, unless requested to do so by a Bondholders' Decision passed at a meeting of the Bondholders, enforce or take any step to enforce the covenants in Clause 11, or to take action against the Issuer or the Security Provider whether in terms of Clause 12 or otherwise and (subject to any such request as aforesaid) may waive, on such terms and conditions as it shall at its unfettered discretion deem expedient, any of the covenants and provisions of this Trust Instrument due to be performed and, or observed by the Issuer and, or the Security Provider, provided that such waiver shall have no adverse impact on the interests of the Bondholders.
- 15.2 Save as is expressly provided in this Trust Instrument, the Security Trustee shall not hold all or any of the Security Interest for the benefit of any person who is not a Beneficiary;
- 15.3 Without prejudice to the powers and reliefs conferred on trustees by the applicable law and by this Trust Instrument, the Security Trustee shall have the following powers:
- (a) To discharge its duties under this Trust Instrument at the cost of the Issuer, to employ and pay, at the reasonable cost of the Issuer, in discharge of its duties, any professional or agent to do anything or transact any business to be done or transacted in terms of this Trust Instrument without incurring any liability for any default of such professional or agent, provided that where such cost is unreasonable and exceeds the remuneration expressly agreed to with the Issuer, notice in writing of the estimated costs to be incurred is to be given to the Issuer;
  - (b) To rely on the advice of any lawyer, broker, surveyor, valuer, stockbroker or accountant or other professional person without incurring any liability for so relying notwithstanding that such professional person may have been employed by the Issuer or may otherwise not be disinterested and without incurring liability for any error in the transmission of any such advice or by reason of the same not being authentic;
  - (c) To operate any bank or other account (and may, without being liable for consequent loss, delegate to any person the operation of any bank or other account);

- (a) To file any legal proceedings for the enforcement of the Security Interest notwithstanding that the Security Trustee is not the beneficiary of the obligations under the Bonds including the repayment of principal and the payment of interest due on the Bonds;
- (b) Subject to applicable law, to delegate, whenever it thinks fit, any of its powers under this Trust Instrument to any officer, employee or agent of the Security Trustee.

15.4 In addition, the Security Trustee shall also undertake the following functions:

- (a) The Security Trustee shall be empowered to receive the Bond Issue Proceeds and release such Bond Issue Proceeds in accordance with this Instrument;
- (b) In addition to the notarial deed set out in Clause 5.4, the Security Trustee shall also appear on the notarial deeds for the sale and purchase of residential units forming part of the Ghadira Development (a) for the purpose of collecting the agreed portion of the proceeds from each sale as set out in this Trust Instrument; and (b) subject to Clause 15.4(c) below, for the purpose of cancelling, waiving and/or reducing the effects of the Security Interest over the Secured Property to the extent of the residential unit being transferred;
- (c) The Security Trustee shall receive a pre-determined amount from the sale of each residential unit forming part of the Ghadira Development. For this purpose, the Security Trustee and the Company have agreed the exact amounts that are to be allocated from the Net Balance of Price of each residential unit in respect of the Ghadira Development. A full list of the amounts to be allocated to the Security Trustee for each residential unit is set out in Schedule 2.
- (d) The Security Trustee shall be empowered to cancel, waive and, or reduce the effects of the Security Interest over the Secured Property to the extent of the residential unit being transferred after receiving, for the credit of the Reserve Account, such amounts from the sales proceeds referred to in clause 15.4(c) above, or in the absence of the relevant indication in clause 15.4(b), such amounts in accordance with the provisions hereunder.

Proceeds emanating from the sale of residential units in the Ghadira Development shall be allocated as follows:

- all Payments on Account shall be allocated to the Security Provider for application in meeting the overall development costs of the Ghadira Development;
- the Net Balance of Price shall be allocated in the manner set out in clause 15.4(c) above to the Security Trustee for the benefit of the Reserve Account; and
- the remaining balance of the Net Balance of Price shall be allocated to the Security Provider and shall be applied firstly to meet the overall development costs of the Ghadira Development;

- (e) The Security Trustee shall appear on all notarial deeds of sale and purchase of garage spaces forming part of the Ghadira Development for the purpose of cancelling, waiving and, or reducing the effects of the Security Interest over the Secured Property to the extent of the garage space being transferred. The Security Trustee shall be required to cancel, waive and, or reduce the effects of the Security Interest (including, hypothecary rights) it holds over one or more garage spaces (to the extent of the garage or garage spaces being transferred) against a nil receipt in the Reserve Account.
- 15.5 For the purposes of this Clause 15, the following words shall have the following meanings:
- “**Payment on Account**” means the amount paid by a buyer on account of the purchase consideration of any residential unit which shall not exceed 10% of the gross sales price of that unit; and
- “**Net Balance of Price**” means the outstanding balance of the purchase consideration of a residential unit, after deducting the Payment on Account, sales commissions payable by the Guarantor (and VAT on commissions) and provisional tax or other taxes (whether existing today or in the future), imposts and, or fees payable on or in respect of the full sales price,
- 15.6 All proceeds from the full sale price (net of commission and VAT thereon and provisional tax) of residential units less any amounts to be retained by the Security Trustee in accordance with clause 15.4(c) and clause 15.4(d), are to be retained by or paid to the Security Provider, which proceeds shall first be applied by the Security Provider to meet all costs and expenses incurred in the construction and development of the Ghadira Development.
- 15.7 Without limitation to the generality of clause 15.1, the Security Trustee shall be empowered, at any time and acting in its sole and absolute discretion, to agree amendments with the Issuer and the Security Provider to: (i) the percentage of the gross sales price representing the Payment on Account; and (ii) the pre-determined amount to be allocated from the Net Balance of Price to the Security Trustee (as set out in Schedule 2 hereof) for the benefit of the Reserve Account.
- 15.8 Without prejudice to its rights under this Trust Instrument and for the avoidance of doubt, the Security Trustee:
- (a) shall under no condition be deemed to be responsible for the ongoing commercial operations of the Issuer and, or the Security Provider;
- (b) shall not be obliged to interfere, involve itself, revisit or challenge any of the decisions of the Issuer and, or the Security Provider, except as otherwise expressly required by this Trust Instrument or by law.
- 15.9 The Security Trustee shall be under no obligation to insure any of the Secured Property or any deeds, documents or title, certificates, bonds or other evidence in respect thereof, or to require any other person to maintain such insurance (save as provided in Clause 11.1(g) of this Trust Instrument).
- 15.10 Notwithstanding any other provision of the Trust Instrument to the contrary, the Security Trustee is not obliged to do or omit to do anything if it would or might in its reasonable opinion



constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

- 15.11 The Security Trustee may rely on (a) any representation, notice or documents believed by it to be genuine, correct and appropriately authorised, and (b) any statement made by a director, authorised signatory or employee of the Issuer or the Security Provider regarding any matters which may reasonably be assumed to be within its knowledge or within its power to verify.
- 15.12 The Security Trustee shall not, except as otherwise provided in this Trust Instrument, have any duty, responsibility or liability to any Bondholder, either initially or on a continuing basis: (a) to provide any of the Bondholders with any information with respect to the Issuer or Security Provider, or (b) for any failure of the Issuer and, or Security Provider to perform any of its obligations under and pursuant to this Trust Instrument, the Bonds, the Prospectus or the Deed of Hypothec or any document in connection therewith.
- 15.13 The Security Trustee shall be empowered to comply with all its obligations in terms of applicable laws and regulations, including *inter alia*, its obligations in terms of the Act and the Trusts and Trustees Act (Register of Beneficial Owners) Regulations (S.L. 331.10) and each of the Issuer, the Security Provider and the Bondholders agree to hold the Security Trustee harmless for any action which the Security Trustee may take in the proper discharge of its duties in terms of this Clause.
- 15.14 The Security Trustee shall administer the Trust Property in accordance with the terms of this Trust Instrument and its standard terms and conditions as applicable from time to time.

## **16 Meetings of Beneficiaries (Bondholders)**

- 16.1 The Security Trustee at any time, prior to exercising any power or discretion hereunder may call a meeting of Bondholders in terms of and following the procedure set out in Section 6.16 of the Securities Note. PROVIDED THAT the Security Trustee shall not be liable for any action it may deem necessary to take prior to acting in accordance with this Clause 16.1.
- 16.2 The Security Trustee shall not be bound to act on behalf of the Beneficiaries under this Trust Instrument unless requested to do so upon the request in writing of not less than 75% in value of the Bondholders.
- 16.3 Nothing in this Trust Instrument shall be construed as meaning that the Security Trustee is bound to act in the manner specified in this clause unless so required by this Trust Instrument.

## **17 Release of Security Interest**

- 17.1 Upon the re-purchase and cancellation of all the Bonds or payment on redemption or otherwise, of the principal amount of the Bonds, payment of all interest thereunder and reimbursement of all expenses incurred by, and payment of remuneration due to the Security Trustee under this Trust Instrument, the remaining Security Interest shall be released and the Guarantee, hypothecs, privileges, pledges or other security constituting the Security Interest shall be cancelled and, or terminated accordingly, and the Security Trustee shall be discharged from all liabilities and obligations which it has under this Trust Instrument, the Bonds, and the

documentation regulating the Security Interest; in determining whether, for the purposes of this Trust Instrument, the security period has come to an end, there shall be disregarded the liabilities of the Issuer and the Security Provider in respect of the expenses of the Issuer and the Security Provider in connection with any such release.

- 17.2 The Security Trustee upon the security period coming to an end shall, within fifteen (15) days from the receipt of a notice in writing from the Issuer, cancel the remaining Security Interest granted to it and for this purpose shall appear on and sign the documentation necessary, including but not limited to the relative deeds of cancellation, at the cost of the Issuer.

## **18 Remuneration of Security Trustee**

- 18.1 Throughout the duration of the Trust, the Issuer shall pay to the Security Trustee in respect of its services as trustee, remuneration as may be agreed between the parties from time to time. The Issuer shall in addition pay all reasonable costs, charges and expenses which the Security Trustee shall properly incur in connection with the execution of the trust hereof, the exercise of the powers and discretions hereby vested in it, the enforcement of the Security Interest. The said remuneration shall continue notwithstanding that a provisional administrator shall have been appointed or that the trust hereof shall be in course of administration by or under the direction of the court.

- 18.2 The Security Trustee may pay itself out of the Secured Property all sums owing to it in respect of remuneration costs, charges, expenses or interest or by virtue of any indemnity from the Issuer to which it is entitled hereunder or by law or by virtue of any release or indemnity granted to it and all such sums as aforesaid shall be paid in priority to the claims of the Beneficiaries and shall constitute an additional charge upon the property charged with the Security Interest. For purposes of this clause, the Security Trustee may receive funds from the Issuer at any time, to be placed under its control and to be held upon trust until required to settle sums owing to the Security Trustee.

## **19 Other Business Relationships and Disclosures**

- 19.1 Subject to any mandatory applicable law, neither the Security Trustee nor any of its shareholders, directors, officers, members of the same group of companies as the Security Trustee or any associates, affiliates, agents or delegates shall by reason of its office of Security Trustee or by reason of its fiduciary position, as the case may be, be in any way precluded from entering into or being interested in any contract or financial or other transaction or arrangement with the Issuer or the Security Provider or any person or body corporate associated with the Issuer or a Security Provider including without prejudice to the generality of this provision any contract, transaction or arrangement for the provision of professional services; any lease agreement or any other contract, transaction or arrangement as aforesaid with the Issuer or the Security Provider or any person or body corporate associated with the Issuer or the Security Provider, from accepting or holding any other trusteeship or holding security which secures any other securities issued by the Issuer or the Security Provider or any such person or body corporate including a person or body corporate associated with the Issuer or the Security Provider or any such person or body and shall be entitled to retain and shall not be in any way liable to account for any profit made or fees earned or remuneration or other benefit received thereby or in connection therewith.

19.2 For all intents and purposes at law it is being declared that:

- (a) Finco Treasury Management Limited (C17017) a company which is, inter alia, licensed in terms of the Investment Services Act (Chapter 370 of the Laws of Malta) and which forms part of the group of companies of which the Security Trustee forms part, has been appointed by the Issuer as one of the financial intermediaries for the issue of the Bonds.
- (b) The Security Trustee shall appoint the aforementioned Finco Treasury Management Limited as investment advisor, to advise it on the Investment of all or any part of the amount standing to the credit of the Reserve Account and it may delegate to such investment advisor the power to manage or invest any part or all of the credit standing to the Reserve Account on such terms as the Security Trustee thinks fit as set out in Clause 9.6 above; PROVIDED THAT the Security Trustee shall remain responsible for any decision or act exercised by a delegate as if the decision or act was exercised by the Security Trustee itself; PROVIDED FURTHER THAT such delegate shall not be authorised and/ or empowered to exercise any discretion which would otherwise vest in the Security Trustee.

## 20 Collateral Account/s

Costs and fees in respect of the Collateral Account/s shall be borne by the Issuer. Interest, if any, whether positive or negative on the Bond Issue Proceeds held in a Collateral Account until their release in accordance with the Prospectus and/or this Trust Instrument shall be for the benefit or charge of the Issuer as the case may be.

## 21 Acknowledgement of Security

The execution of this Trust Instrument by the Security Trustee and the publication thereof by means of a reference thereto in the Prospectus shall constitute notice to each of the Beneficiaries.

## 22 Resignation or Removal of Security Trustee

- 22.1 Without prejudice to the provisions of Article 20(2)(a) of the Act, the Security Trustee may resign as security trustee by giving not less than three (3) months' notice in writing to the Issuer without assigning any reason whatsoever.
- 22.2 Without prejudice to the provisions of Article 20 of the Act and Clause 22.3 below, the Bondholders may, following a Bondholders' Decision, remove the Security Trustee by giving at least one (1) months' notice.
- 22.3 The Issuer undertakes that, in the event of the Security Trustee giving notice in terms of Clause 22.1 it will procure a new trustee to be appointed, who shall be duly licensed and authorised to act as trustee in terms of the Act or any laws or regulations in force at the time of such appointment ("Successor Trustee").

The retirement or removal of the Security Trustee shall not become effective until such time as the Successor Trustee is appointed and the Security Interest is transferred to the Successor Trustee. The costs of the transfer of the Security Interest shall be borne by the Issuer except in the case where the Security Trustee resigns for capricious and frivolous reasons. Once a Successor Trustee is appointed, the Security Trustee shall, at the Issuer's cost, make available to the Successor Trustee such documents and records and provide such assistance as the Successor Trustee may reasonably request for the purpose of performing its functions as the security trustee of the Security Interest for the benefit of the Beneficiaries.

- 22.4 Upon appointment of the Successor Trustee all references contained in the Trust Instrument to the Security Trustee shall be deemed to refer to the Successor Trustee.

### **23 Termination**

The Security Trustee shall only be discharged from all liabilities and obligations which it has under this Trust Instrument upon:

- (a) the redemption on maturity of the principal amount of the Bonds as set out in the Prospectus and payment of all interests thereunder and the release and cancellation of the remaining Security Interest; or
- (b) the resignation of the Security Trustee in terms of Clause 22.1, provided that a Successor Trustee has been appointed and the Security Interest has been transferred thereto; or
- (c) the removal of the Security Trustee in terms of Clause 22.2, provided that a Successor Trustee has been appointed and the Security Interest has been transferred thereto;

PROVIDED that this shall be without prejudice to the right to reimbursement of all expenses incurred by, and payment of remuneration due to, the Security Trustee as provided for in this Trust Instrument or any underlying agreement for the period during which it will have acted as Security Trustee.

### **24 Exclusion of Implied Duties**

The Security Trustee shall not have or incur any obligation, duty or responsibility to the Issuer or the Security Provider or to any of the Beneficiaries, as the case may be, except those expressly specified in this Trust Instrument or the Prospectus, and in any mandatory provision of law, to the effect that the Security Trustee has such a duty or responsibility.

### **25 Limitation of Liability and Indemnity**

- 25.1 The Security Trustee (which for the purposes of this Clause shall include each director, officer, employee or delegate thereof) shall not be liable to the Issuer, the Security Provider or any of the Beneficiaries, as the case may be, for any loss or expense attributable to any action taken or omitted to be taken by the Security Trustee, or any person appointed by the Security Trustee under or in connection with this Trust Instrument or the Bonds, the Prospectus, or the Deed of Hypothec unless the loss or expense is shown to have been caused by the fraud, gross negligence or wilful misconduct of the Security Trustee or the person appointed by the Security Trustee; and the Issuer and/or the Security Provider and/or Beneficiaries shall not make any

claims against the Security Trustee or against any person appointed by the Security Trustee in respect of such loss or expense unless the loss or expense is shown to have been caused by fraud, gross negligence or wilful misconduct.

25.2 The Security Trustee (which for the purposes of this Clause shall include each director, officer, employee or delegate thereof) shall be indemnified, jointly and severally, by the Issuer and the Security Provider, and in default of the Issuer and the Security Provider, the Security Trustee shall be indemnified out of the Trust Property:

(a) against any liability incurred by it in defending any proceedings in connection with its duties as Security Trustee, in which judgement is given in its favour or in which it is acquitted; and

(b) against all claims, liabilities, costs, damages and expenses (including legal fees) to which it may be or become subject by reason of its activities as Security Trustee so long as the said activity or circumstance does not involve fraud, wilful misconduct, or gross negligence or breach of duty on the part of the Security Trustee.

25.3 The Security Trustee may purchase and maintain insurance, to the extent and in such a manner in its absolute discretion as it deems appropriate, against any liability that may be asserted or expenses that may be incurred in connection with the activities of the Trust, regardless of whether the Security Trustee has the right to be indemnified out of the Trust Property under the provisions of the Trust Instrument.

25.4 The Issuer and the Security Provider shall jointly and severally indemnify the Security Trustee against all taxes (whether existing today or in the future), duties, (including Duty on Documents in terms of the Duty on Documents and Transfers Act, Chapter 364 of the Laws of Malta, imposts, fees, paid by it in respect of any action taken by, or on behalf of, the Security Trustee to hold the Security Interest and, or to enforce the Issuer's and, or any of the Security Provider's obligations under this Trust Instrument and, or any Deed of Hypothec and, or the Prospectus and, or the Bonds.

## **26 Declaration and Undertaking**

26.1 The Security Trustee hereby declares that it has received a copy of the Prospectus as filed by the Issuer with the Malta Financial Services Authority on 22 March 2024, which is attached hereto as Schedule I.

26.2 The Issuer hereby declares that the above-mentioned copy of the Prospectus has been filed with the Malta Financial Services Authority for final approval. In the event that there are any changes to the above-mentioned copy of the Prospectus, the Issuer undertakes and binds itself to inform the Security Trustee immediately.

## **27 Applicable Law and Jurisdiction**

27.1 This Trust Instrument shall be governed, interpreted and construed in accordance with Maltese law.

27.2 The construction, interpretation and effect of the Trust Instrument shall be subject to the exclusive jurisdiction of the courts of Malta. The Issuer, the Security Trustee, the Security Provider and the Bondholders irrevocably agree that any suit, action or proceedings arising out of or in connection with the construction, interpretation or effect of this Trust Instrument shall be subject to the exclusive jurisdiction of the Courts of Malta.

**SIGNED**

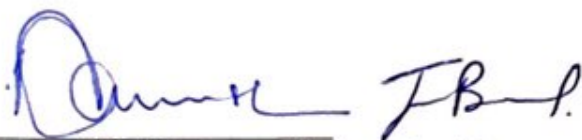
**EXECUTION PAGE TO FOLLOW**



Mr Christopher Attard and Mr Pierre Bartolo  
For and on behalf of  
**Best Deal Properties Holding plc**



Mr Christopher Attard and Mr Pierre Bartolo  
For and on behalf of  
**Best Deal Ghadira Limited**



Dr Arthur Galea Salomone and Dr James Bannister  
For and on behalf of  
**Finco Trust Services Limited**

**Schedule 1 – The Prospectus**



**Schedule 2 – Pre-determined amounts to be allocated to the Security Trustee**

The amounts to be allocated to the Security Trustee from the sales of the residential units forming part of the Ghadira Development shall be calculated in the following manner:

- on the first €10 million sales - contributions equivalent to 25% of selling prices
- on the next €10 million sales - contributions equivalent to 45% of selling prices
- on the third set of €10 million sales - contributions equivalent to 55% of selling prices
- on any remaining sales, contributions equivalent to 64% of selling prices.