

(...)

SHAREHOLDERS' AGREEMENT

THIS AGREEMENT is made on 17 October 2014

BETWEEN:

- (1) **Orion IV European 1 S.à r.l.**, a private limited liability company (*société à responsabilité limitée*) incorporated and existing under the laws of the Grand Duchy of Luxembourg, having its registered office at 11/13, Boulevard de la Foire, L-1528 Luxembourg, Grand Duchy of Luxembourg, having a share capital of EUR 12,500 and registered with the Luxembourg Trade and Companies' Register under B 160.707 ("**Orion**");
- (2) **Promontoria Holding 80 B.V.**, a company incorporated in the Netherlands (registered no. 58307419 0000), whose registered office is at Oude Utrechtseweg 32, 3743 KN Baarn, The Netherlands ("**Cerberus**"); and
- (3) **Sotogrande LuxCo S.à r.l.**, a private limited liability company (*société à responsabilité limitée*) incorporated and existing under the laws of the Grand Duchy of Luxembourg, having its registered office at 11/13, Boulevard de la Foire, L-1528 Luxembourg, Grand Duchy of Luxembourg, having a share capital of EUR 12,500 and registered with the Luxembourg Trade and Companies' Register under B189084 (the "**Company**"),

(collectively, the "**Parties**").

RECITALS:

- (A) Orion is ultimately owned by the Orion Funds.
- (B) Cerberus is ultimately owned by the Cerberus Funds.
- (C) Orion and Cerberus have agreed to use the Company as a joint venture company for the purpose of acquiring through share purchases and/or a tender offer approximately 97% (subject to the results of the tender offer) of the shares in Sotogrande, S.A. a Spanish company listed on the Bolsa de Madrid ("**Sotogrande**").
- (D) NH Hoteles, S.A. (the "**Seller**") currently owns 97% of the issued share capital in Sotogrande. Pursuant to a sale and purchase agreement between (1) the Company and (2) the Seller, the Company will acquire the majority stake in Sotogrande currently held by the Seller.
- (E) Orion and Cerberus wish to enter into this Agreement for the purpose of recording the terms and conditions of their joint venture and regulating the management of the Company, their relationship with each other and certain aspects of the business and affairs of, and their dealings with, the Company, Sotogrande and other group companies.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires, the following terms have the meanings set out below:

"**Acceptable Buyer**" means a potential purchaser that meets the following criteria:

- (a) is a reputable and institutionally acceptable person;
- (b) has experience and knowledge in the market sector; and
- (c) has the ability to meet any financial commitments outlined in the Business Plan and/or Project Budget.

"**Accounting Policies**" means the accounting policies of the Company as may from time to time be agreed in writing by the Shareholders (such accounting policies to reflect Lux GAAP).

"**Acquisition**" means the acquisition by the Company of the shares in Sotogrande from the Seller.

"**Affiliate**" means, in relation to a specified person, any other person directly or indirectly Controlled by or Controlling, or under direct or indirect common Control with, such specified person.

"**Ancillary Agreements**" means, at any time (to the extent the same are in force at such time), the Shareholder Loan Agreements, the Shortfall Loan Agreements and the Emergency Loan Agreements.

"**Applicable Law**" means all applicable statutes, laws, ordinances, rules and regulations, including any licence, permit or other governmental authorisation, in each case as in effect from time to time.

"**Articles**" means the articles of association of the Company, as may be amended from time to time.

"**Asking Price**" has the meaning given to it in clause 17.1.

"**Auditors**" means the auditors of the Company and any Group Company, as the case may be, from time to time.

"**Benchmark Terms**" has the meaning given to it in clause 17.6.

"**Board**" means the board of managers (*conseil de gérance*) of the Company for the time being and from time to time.

"**Business**" has the meaning set out in clause 2.

"**Business Day**" means any calendar day (other than a Saturday or a Sunday) upon which banks in the Netherlands, Spain and Luxembourg are open for the transaction of normal non-automated banking business.

"**Business Plan**" means the Initial Business Plan, as it may be updated or replaced from time to time in accordance with clause 14.3.3¹.

"**CEDR**" means Centre for Effective Dispute Resolution.

"**Cerberus Funds**" means the investment funds that are Controlled by Cerberus Capital Management, L.P. or its Affiliates.

"**Chair**" has the meaning given to it in clause 4.8.

"**Change of Control**" means:

- (a) in relation to Orion, if the Orion Fund ceases to have either:
 - (i) Control of Orion (including where an additional party gains Control of Orion); or
 - (ii) ownership of more than 50% of the legal and beneficial ownership interests, either direct or indirect, in Orion; and
- (b) in relation to Cerberus, if the Cerberus Funds cease to have either:
 - (i) Control of Cerberus (including where an additional party gains Control of Cerberus); or
 - (ii) ownership of more than 50% of the legal and beneficial ownership interests, either direct or indirect, in Cerberus.

"**Company**" has the meaning given to it in the list of Parties at the beginning of this Agreement.

"**Company Assets**" means the assets of the Company and each Group Company, including the Properties.

¹ **Clauses:**

*14.3.1. Prior to completion of the Acquisition, the Shareholders shall, acting reasonably, agree the reporting information to be provided by the Company (the "**Reporting Information**") to the Shareholders.*

(...)

14.3.3. The Reporting Information shall include a conversion from Lux GAAP to Dutch GAAP and US GAAP, provided that the conversion to US GAAP shall not cost more than EUR 25,000 per annum (exclusive of VAT) for internal purposes only. If the conversion to US GAAP costs more than EUR 25,000 (exclusive of VAT), a Shareholder may opt to fund any additional costs itself for these reports to be produced.

"**Company Interests**" means the Shares, Shareholder Loans and any Shortfall Loans and Emergency Loans held by a Shareholder.

"**Confidential Information**" means all information of a confidential nature relating to the affairs of any Group Company disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by any Group Company to any Shareholder or by one Party to another, whether before or after the date of this Agreement, and including the terms of this Agreement, the Ancillary Agreements and any matter referred to therein.

"**Control**", "**Controlling**" or "**Controlled**" means, in relation to a specified person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such specified person, through the ownership of voting securities or partnership interests (or their equivalent) or by way of economic interest, whether through the right to profits or to assets on a winding-up, or by contract or otherwise.

"**Counter-notice**" has the meaning given to it in clause 10.3.

"**Deadlock**" has the meaning given to it in clause 9.1.

"**Deadlock Notice**" has the meaning given to it in clause 9.1.

"**Debt Financing**" means such finance as any bank or other lending institution may lend to any of the Group Companies at any time in connection with the Properties, but not including any Shareholder Loans, Shortfall Loans or Emergency Loans.

"**Deed of Adherence**" means the deed of adherence to be entered into between the Shareholders, the Company and the transferee in the form agreed between the Shareholders prior to completion of the Acquisition.

"**Disclosee**" means a person to whom a Receiving Party has disclosed Confidential Information.

"**Disputes**" has the meaning given to it in clause 30.2.

"**Distributions**" means all payments made by the Company to the Shareholders in their capacity as Shareholders or as lenders of Shareholder Loans (including dividends and capital distributions pursuant to clause 15 or otherwise, payments on a winding-up and interest payments and payments of principal in respect of the Shareholder Loans).

"**Drag Notice**" has the meaning given to it in clause 18.1.

"**Dutch GAAP**" means the accounting principles set out in Title 2.9 of the Dutch Civil Code applied in accordance with the Directives (*Richtlijnen*) of the Dutch Accounting Standards Board (*Raad voor de Jaarverslaggeving*).

"**Emergency Event**" means:

- (a) circumstances which, in the reasonable opinion of a Shareholder are reasonably likely to result in an imminent default by the Company or a Group

Company of one or more documents governing any Debt Financing, where such default would result in an obligation to repay any of the Debt Financing early; and

- (b) circumstances which, in the reasonable opinion of a Shareholder are reasonably likely to result in the Company or a Group company becoming insolvent.

"Emergency Funding Request" shall have the meaning given to it in clause 13.2².

"Emergency Loan" means a loan from a Shareholder to the Company pursuant to clause 13.3.2³, such loan to be made pursuant to an Emergency Loan Agreement.

"Emergency Loan Agreement" means a loan agreement made in respect of an Emergency Loan between a Shareholder, as lender, and the Company, as borrower, substantially in the form and on the terms of the form of emergency loan agreement agreed between the Shareholders prior to completion of the Acquisition.

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"Event of Default" means:

- (a) the Transfer by a Shareholder of any Company Interests in breach of this Agreement;
- (b) a Change of Control in relation to any Shareholder;
- (c) the material or persistent breach by a Shareholder of any of the other provisions of this Agreement, which breach is not, if capable of remedy, remedied to the reasonable satisfaction of the other Shareholders within thirty (30) calendar days from the service of a written notice by any other Shareholder requiring such remedy; or
- (d) an Insolvency Event in relation to a Shareholder.

"Financial Year" means the period from 1 January to 31 December each year.

"Funding Affiliate" has the meaning given to it in clause 12.6.

"Funding Deadline" has the meaning given to it in clause 12.2.

"Funding Request" has the meaning given to it in clause 12.1.1.

"Group Companies" means the Company and the Subsidiaries.

² *"Emergency Funding Request" means the request from the Board to all of the Shareholders to provide additional financing to the Company, if any Shareholder at any time so requests the Board if, in the reasonable opinion of the Shareholder, additional funds are required by any Group Company in relation to an Emergency Event. Such request shall be issued in writing at the direction of the Board.*

³ *"Emergency Loan" means a loan from a Shareholder to the Company granted in the event that one or more of the Shareholders declines to provide financing pursuant to an Emergency Funding Request, such loan to be made pursuant to an Emergency Loan Agreement*

"Initial Business Plan" means the business plan of the Company in the Agreed Form.

"Initial Project Budget" means the annual budget and cash flow forecast for the first Financial Year of the Company, prepared in accordance with the Accounting Policies and to be agreed between the Shareholders prior to completion of the Acquisition.

"Insolvency Event" means, in relation to a specified person, any of the following:

- (a) an encumbrancer takes possession of, or a trustee is appointed in respect of, all or any material part of the business or assets of the person, or any mortgage or charge, howsoever created or arising, over any of its assets is enforced;
- (b) the person has a receiver, administrative receiver, administrator, compulsory manager, trustee, liquidator or other similar officer over the whole or any material part of its assets or undertaking appointed;
- (c) the person is unable or admits inability to pay its debts as they fall due or has any voluntary arrangement proposed in relation to it or enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Shareholders other than the person) or is granted relief under any bankruptcy or insolvency law or similar law affecting creditors' rights;
- (d) a petition is presented or any corporate action, legal proceedings or other step is taken for the purpose of winding up the person which is not withdrawn within 15 Business Days or which cannot reasonably be shown to be frivolous, vexatious or an abuse of the process of the court or which relates to a claim to which the person has a good defence and which is being contested in good faith by the person;
- (e) an order is made or resolution passed for the winding up of the person or a notice is issued convening a meeting for the purpose of passing any such resolution other than a solvent reorganisation which has the prior written approval of the Shareholders other than the person;
- (f) any petition is presented, notice given or other step is taken for the purpose of the appointment of an administrator of the person or any of the Shareholders, other than the person, reasonably believes that any such petition or other step is imminent or an administration order is made in relation to the person; or
- (g) any act, event or circumstance analogous to any of the aforesaid occurs in any jurisdiction in which the person is incorporated or established.

"Invested Capital" means, in relation to a Shareholder at any time, the aggregate of:

- (a) the total amount subscribed by such Shareholder (or its predecessor in title) for its Shares, whether pursuant to clause 12 or otherwise (including, in each case, any element of premium paid); and
- (b) the total principal outstanding under any Shareholder Loans drawn down from or vested in that Shareholder (and any of its Funding Affiliates who have provided funding in place of such Shareholder pursuant to clause 12.6),

and including any amount deemed to have been invested pursuant to clause 12.2.3. Following the exercise by an Electing Shareholder of its rights under clause 12.4, the amount that should be classed as "Invested Capital" is the amount of "C" under clause 12.4.2.

"**Luxembourg Law**" means the Luxembourg law of 10 August 1915 on commercial companies, as amended.

"**Lux GAAP**" means generally accepted accounting principles in Luxembourg.

"**Majority Shareholder**" means any Shareholder that is not a Minority Shareholder.

"**Majority Shareholder Matter**" means the matters listed in Schedule 3.

"**Manager**" means a manager (*gérant*) of the Company and "**Managers**" shall be construed accordingly.

"**Minority Shareholder**" means a Shareholder whose percentage of Invested Capital held has fallen below 40% of the total Invested Capital;

"**Non-contributing Shareholder**" has the meaning given to it in clause 12.2.

"**Offer Deadline**" has the meaning given to it in clause 17.2.

"**Offer Notice**" has the meaning given to it in clause 10.1.

"**Offer Price**" has the meaning given to it in clause 10.1.

"**Original Sale Notice**" has the meaning given to it in clause 17.3.

"**Orion Funds**" means the investment funds that are Controlled by Orion Capital Managers LLP or its Affiliates.

"**Permitted Transferee**" means, in relation to any Shareholder, an Affiliate of such Shareholder.

"**Proceedings**" has the meaning given to it in clause 30.2.

"**Project Budget**" means the Initial Project Budget, as it may be updated or replaced from time to time in accordance with clause 14.3.3⁴.

"**Property**" means a property held by any Group Company (and "**Properties**" shall mean all such properties).

"**Receiving Shareholder**" has the meaning given to it in clause 10.

"**Receiving Shareholder's Price**" has the meaning given to it in clause 10.2.1.

"**Records and Information**" means all records and information held in paper or electronic format, including all information that the relevant person or any of its

⁴ See footnote 1 above.

Affiliates or members of its Shareholder Group has in its possession or is entitled to have access to.

"Remaining Shareholders" has the meaning given to it in clause 17.1.

"Reserves" means funds set aside or amounts allocated to reserves calculated on a "company-by-company" basis and maintained in amounts which the Board approves as necessary or prudent to provide for the working capital requirements and any obligations (whether existing, future or contingent) of a Group Company and to pursue the objectives of such Group Company. Any distribution of such Reserves by the Company shall be subject to the Luxembourg Law, this Agreement and the Articles.

"Reserved Matter" has the meaning given to it in Schedule 4.

"Sale Acceptance Notice" has the meaning given to it in clause 17.2.1.

"Sale Agreement" means the agreement pursuant to which the Seller agrees to sell and the Company agrees to buy the shares in Sotogrande.

"Sale Expiry Date" has the meaning given to it in clause 17.3.

"Sale Interests" has the meaning given to it in clause 17.1.

"Sale Notice" has the meaning given to it in clause 17.1.

"Sale Period" has the meaning given to it in clause 17.6.

"Sale Terms" has the meaning given to it in clause 17.1.

"Seller" has the meaning given to it in Recital (D).

"Selling Shareholder" has the meaning given to it in clause 17.1.

"Shares" means the shares of the Company and any shares issued in exchange for those shares or by way of conversion or reclassification and any shares representing or deriving from those shares as a result of any increase in or reorganisation or variation of the capital of the Company or any shares issued by the Company from time to time.

"Shareholder" means any person registered in the books of the Company as the holder of a Share for the time being.

"Shareholder Group" means in the case of Orion, the Orion Fund and, in the case of Cerberus, the Cerberus Funds.

"Shareholder Loan" means a loan from a Shareholder or its Funding Affiliates to the Company, other than a Shortfall Loan or an Emergency Loan, made in accordance with the terms of this Agreement and pursuant to a Shareholder Loan Agreement.

"Shareholder Loan Agreement" means a loan agreement in respect of a Shareholder Loan made between a Shareholder or its Funding Affiliates, as lender, and the

Company, as borrower, substantially in the form agreed between the Shareholders prior to completion of the Acquisition.

"**Shortfall Amount**" has the meaning given to it in clause 12.2.1.

"**Shortfall Cure Amount**" has the meaning given to it in 12.3.2.

"**Shortfall Loan**" means a loan from an Electing Shareholder (or its Funding Affiliate) to a Non-contributing Shareholder pursuant to clause 12.2, such loan to be made on the terms specified in Schedule 5.

"**Sotogrande**" has the meaning given to it in Recital (C).

"**Sotogrande Shares**" means the shares in Sotogrande acquired or owned by the Company from time to time.

"**Subsequent Transfer Notice**" has the meaning given to it in clause 17.7.2(a).

"**Subsidiaries**" means each of the subsidiaries of the Company from time to time.

"**Subsidiary Conflict Matter**" has the meaning given to it in clause 5.7.

"**Tag Notice**" has the meaning given to it in clause 18.2.

"**Third Party Buyer**" means a person to whom a Shareholder wishes to transfer its Sale Interests who is not a member of the Shareholder Group of the Selling Shareholder.

"**Third Party Offer**" has the meaning given to it in clause 17.7.2.

"**Transfer**" means, in relation to any Company Interests, (i) any sale, assignment or transfer; (ii) the creation or permitting to subsist of any pledge, mortgage, charge, lien or other security interest or encumbrance; (iii) the creation of any trust or the conferring of any option, right or interest; (iv) the entry into of any agreement, arrangement or understanding in respect of votes or the right to receive dividends or other payments; (v) the renunciation or assignment of any right to subscribe or receive a Share or any legal or beneficial interest in a Share; (vi) any agreement to do any of the foregoing, except an agreement which is conditional on compliance with the terms of this Agreement; or (vii) the transmission by operation of law.

"**Triggering Shareholder**" has the meaning given to it in clause 10.

"**Triggering Shareholder's Price**" has the meaning given to it in clause 10.2.2.

"**US GAAP**" means generally accepted accounting principles in the United States of America.

1.2 Interpretation

In this Agreement, unless the context otherwise requires, a reference to:

- 1.2.1 a document in the "**agreed form**" is a reference to a document in a form approved and for the purposes of identification signed by or on behalf of the Shareholders;
- 1.2.2 a statutory provision includes a reference to:
- (a) the statutory provision as modified or re-enacted or both from time to time (whether before or after the date of this Agreement); and
 - (b) any subordinate legislation made under the statutory provision (whether before or after the date of this Agreement);
- 1.2.3 a "**person**" includes a reference to:
- (a) any general partnership, limited partnership, company, corporation, joint venture, limited liability company, trust, business, co-operative or association; and
 - (b) that person's legal personal representatives or successors and shall also include that person after any change of name;
- 1.2.4 "**agreement**" includes any agreement, contract, undertaking, commitment, custom, arrangement, obligation or liability, whether express or implied or arising by conduct;
- 1.2.5 "**liability**" includes a reference to any liability whether actual or contingent and whether arising in equity, contract or tort (including negligence) or under the Luxembourg Law and the Luxembourg Civil Code and "**liable**" shall be construed accordingly;
- 1.2.6 "**variation**" includes any variation, amendment, modification, addition, omission, restatement and novation of or to anything and includes anything supplemental to it and "**vary**" shall be construed accordingly;
- 1.2.7 "**owner**" or "**ownership**" includes a reference to legal and beneficial owner and to legal and beneficial ownership and to "**own**" shall be construed accordingly;
- 1.2.8 a "**subsidiary**" or "**holding company**" is to be construed in accordance with section 1159 (and Schedule 6) of the Companies Act 2006 and for the purposes of this definition, a person shall be treated as a member of another person if any of that person's subsidiaries is a member of that other person, or if any shares in that other person are held by a person acting on behalf of it or any of its subsidiaries.
- 1.2.9 a "**subsidiary undertaking**" or "**parent undertaking**" is to be construed in accordance with section 1162 (and Schedule 7) of the Companies Act 2006.
- 1.2.10 a "**subsidiary**" and a "**subsidiary undertaking**" shall include any person the shares or ownership interests in which are subject to security and where the legal title to the shares or ownership interests so secured are registered in the name of the secured party or its nominee pursuant to such security.

- 1.2.11 "**this Agreement**" is a reference to the same as from time to time amended, novated, restated or replaced and to any document which amends, novates, restates or replaces this Agreement;
- 1.2.12 documents in agreed form are documents in the form agreed by the parties or on their behalf and initialled by them or on their behalf for identification or otherwise agreed as being in agreed form by the Parties.
- 1.2.13 a clause or Schedule, unless the context otherwise requires, is a reference to a clause of or Schedule to this Agreement;
- 1.2.14 a document is a reference to that document as modified or replaced from time to time;
- 1.2.15 words denoting the singular include the plural and *vice versa*; and
- 1.2.16 words denoting a gender include every gender.

1.3 **Reference to party to include successors in title**

A reference to a Party is a reference to that Party and its successors in title and/or assignees, other than where either:

- 1.3.1 expressly provided otherwise; or
- 1.3.2 the reference is to the specific identity of the relevant Party and not to the defined term set out in the parties clause of this Agreement.

1.4 **Ejusdem generis not to apply**

The *ejusdem generis* principle of construction shall not apply to this Agreement. Accordingly, general words shall not be given a restrictive meaning by reason of their being preceded or followed by words indicating a particular class of acts, matters or things or by examples falling within the general words. Any phrase introduced by the terms "other", "including", "include" and "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.5 **English legal terms**

Any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include what most nearly approximates in that jurisdiction to the English legal term and to any English statute shall be construed so as to include equivalent or analogous laws of any other jurisdiction.

1.6 Schedules

The Schedules form part of this Agreement and shall have the same force and effect as if set out in the body of this Agreement and references to this Agreement include the Schedules.

1.7 Headings

The headings in this Agreement shall not affect the interpretation of this Agreement.

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4. MANAGEMENT APPOINTMENTS

4.1 Responsibility of the Board

4.1.1 The Board shall have responsibility for the supervision, management and operation of the Company and its business save in respect of those matters which are specifically reserved for Shareholders in clause 8.1 or in accordance with Applicable Law.

4.1.2 The Board may delegate any of its roles and responsibilities to its management teams or committees of the Board of any Group Company. Any delegation may be subject to such terms and conditions as the Board may specify and the Board may at any time revoke any delegation in whole or in part, or alter its terms and conditions.

4.2 Appointment and removal of Managers

4.2.1 The Company will be managed by Managers who shall be appointed by the Shareholders in accordance with Applicable Law, the Articles and this Agreement. Unless otherwise agreed by the Shareholders, the maximum number of Managers at all times during the continuance of this Agreement shall be six (6), of whom three (3) shall be appointed by the Shareholders from candidates nominated by each Majority Shareholder. In the event that there is a Minority Shareholder, one (1) Manager shall be appointed by the Shareholders from candidates nominated by such Minority Shareholder. Any committees of the Board shall be comprised of an equal number of members nominated for appointment as manager by each Majority Shareholder and shall include one (1) member nominated for appointment as manager by any Minority Shareholder.

4.2.2 If a Majority Shareholder becomes a Minority Shareholder, it will procure that two (2) of the three (3) Managers appointed by it to the Board shall resign with immediate effect. The Company and the Shareholders shall procure that the vacancies on the Board caused by the resignation of directors appointed by a Minority Shareholder are not filled.

4.2.3 If a Minority Shareholder becomes a Majority Shareholder, the Shareholders shall procure that the nominees of such Majority Shareholder shall be appointed as Managers as soon as reasonably practicable so that each Majority Shareholder shall have three (3) Managers on the Board.

4.3 **Replacement and consultation**

In the event that a Shareholder seeks to replace a Manager nominated for appointment by it, the Shareholders shall:

4.3.1 vote to remove the relevant Manager by a decision of the Shareholders; and

4.3.2 vote to appoint a person as Manager nominated by the relevant Shareholder.

4.4 **Powers of attorney**

4.4.1 To the extent permitted by Applicable Law, each Manager may grant a power of attorney to another Manager (nominated for appointment by the same Shareholder) to represent him and to attend, speak and vote on his behalf at a meeting of the Board or to sign any resolutions of the Managers.

4.4.2 A Manager appointed pursuant to clause 4.4.1 shall be entitled, in the absence of the Manager for whom that alternate manager appears, to:

(a) a separate vote in addition to his or her own vote; and

(b) be counted as part of the quorum of the Board on his or her own account and in respect of the Manager for whom that manager appears pursuant to the power of attorney.

4.5 **Remuneration of Managers**

The Managers shall not be entitled to any remuneration in their capacity as Managers of the Company. The reasonable costs as may be properly incurred by each of the Managers in connection with the discharge of the Manager's duties, including but not limited to those incurred in attending or returning from meetings of the Board shall be reimbursed by the Company.

4.6 **Vacation of office**

At the time of the completion of any sale, assignment, transfer or other disposition of all of the Shares held by a Shareholder, the Shareholder shall procure the resignation of each Manager appointed by it.

4.7 **Indemnity**

Any Shareholder whose nominee vacates office as a Manager under clause 4.6 or under the Articles, shall be responsible for, and shall indemnify and keep indemnified each other Shareholder and the Company on demand against, all losses, liabilities and costs which such other Shareholder or the Company may incur arising out of, or in connection with, any claim by the Manager for wrongful or unfair dismissal or redundancy or other compensation arising out of the Manager's removal or loss of office.

4.8 **Chairman**

The Board may choose from among its members a Chairman. The post of Chairman of the Board shall be held in alternate years by a Manager nominated for appointment by each Majority Shareholder in rotation with a Manager nominated for appointment by Cerberus being the initial Chairman of the Board. The Chairman shall not have a second or casting vote. If the Chairman is not present at any meeting of the Board, the Managers present may appoint any one of their number to act as Chairman for the purposes of the meeting.

5. **BOARD PROCEEDINGS**

5.1 **Convening of Board meetings**

Any Manager may, and the secretary (if any) of the Company at the request of a Manager shall, call a meeting of the Board. Meetings of the Board shall be held at such times as may be determined by the Board and in any event not less than four (4) times annually at such place in Luxembourg as the Board may from time to time determine.

5.2 **Notice of Board meetings**

Written notice of each meeting of the Board shall be given to all Managers and their alternates, if any pursuant to clause 4.4, at least fifteen (15) Business Days days in advance of such meeting, provided that where the Board is required to make a decision in circumstances where the notice periods cannot reasonably be observed, the Managers may waive this requirement by unanimous consent either in writing or at the relevant Board meeting, in person or by their authorised alternate.

5.3 **Quorum at Board meetings**

5.3.1 The Board can only validly debate and take decisions if a majority of the Managers are present or represented by an alternate and a quorum shall only exist at any Board meeting if at least two (2) Managers nominated for appointment by each Majority Shareholder are present or represented by an alternate.

5.3.2 If a quorum is not present at a Board meeting at the time when any business is considered, any Manager may require that the meeting be reconvened. At least five (5) Business Days' notice of the reconvened meeting shall be given unless all the Managers otherwise agree. The quorum requirement shall apply to any reconvened meeting.

5.4 **Voting at Board meetings**

The Board shall decide on matters by simple majority provided that at least one Manager appointed by each Majority Shareholder vote in favour of the matter.

5.5 **Effect of being a Non-contributing Shareholder**

5.5.1 Clause 5.5.2 shall apply to a Non-contributing Shareholder for the period commencing twenty (20) Business Days after the date of the Funding Request unless and until:

- (a) the Non-contributing Shareholder remedies its funding default in full pursuant to clause 12.3.2;
- (b) both principal and accrued interest on the Shortfall Loan are repaid in full to the Electing Shareholder pursuant to clause 15; or
- (c) the Electing Shareholder exercises its right under clause 12.4,

(the "**Suspension Period**")

5.5.2 During the Suspension Period:

- (a) the Non-contributing Shareholder shall procure that two (2) Managers nominated for appointment by the Non-contributing Shareholder shall resign as Manager with immediate effect;
- (b) no resolution of the Board shall be used to unfairly prejudice the Non-contributing Shareholder as compared to the other Shareholder. For the avoidance of doubt, any resolution that affects the Shareholders in proportion to their holding of Company Interests or is otherwise permitted under this Agreement shall not be classed as unfairly prejudicial; and
- (c) save for the extent required under Applicable Law, the consent of the Non-contributing Shareholder shall not be required in relation to any Majority Shareholder Matter, provided that no such resolution shall be used to unfairly prejudice the Non-contributing Shareholder as compared to the other Shareholder. For the avoidance of doubt, any resolution that affects the Shareholders in proportion to their holding of Company Interests or is otherwise permitted under this Agreement shall not be classed as unfairly prejudicial.

5.5.3 If the Suspension Period ends, other than pursuant to clause 5.5.1(c), the Shareholders shall procure that two (2) Managers nominated for appointment by the Shareholder who is no longer subject to the restrictions of the Suspension Period are appointed as Managers.

5.6 **Managers' interests**

5.6.1 Any Manager having an interest in a transaction submitted for approval to the Board conflicting with that of the Company, shall advise the Board thereof and cause a record of his statement to be included in the minutes of the meeting. He may not take part in the deliberations relating to that transaction and shall not be counted in the quorum (nor shall such Manager's presence be required in order to constitute a quorum if it would otherwise be required under this Agreement. For the purpose of this clause 5.6, a Manager is

considered to have a conflicting interest if there exists a conflict of interests between either (a) the Manager and the Company or (b) the Shareholder which nominated the Manager for appointment or any of its Affiliates and the Company (a "**Conflict Matter**").

5.6.2 The Shareholders shall, where a Manager which they have appointed has a conflict of interests, procure that the Manager notifies the Company as soon as reasonably practicable.

5.7 **Managers' interests in relation to a Subsidiary**

Any matter which constitutes a conflict of interests between either (a) a manager/director and a Subsidiary or (b) the Shareholder which nominated the manager/director or any of its Affiliates and a Subsidiary (a "**Subsidiary Conflict Matter**") shall be reserved to the Board and the provisions of Clause 5.6 shall apply as if a reference to the Company was a reference to the relevant Subsidiary.

5.8 **Conflict Matters**

The Parties will work together in good faith to resolve any disputes regarding whether a matter constitutes a Conflict Matter or a Subsidiary Conflict Matter.

5.9 **Participation arrangements**

Any Manager may participate in and vote at Board meetings by means of a conference telephone, a video-conference facility or any other communication equipment which allows all persons participating in the meeting to hear each other. Any Manager so participating in a meeting shall be deemed to be present in person and shall count towards the quorum.

5.10 **Written resolutions**

In case of urgency, a resolution in writing signed by all the Managers entitled to vote on that resolution shall be as valid and effective for all purposes as a resolution passed by the Managers at a meeting duly convened, held and constituted and may consist of one or several documents in the like form each signed by or on behalf of one or more of the Managers concerned.

5.11 **Managers' and officers' liability insurance**

The Shareholders agree to procure that each of the Company and Sotogrande obtains and maintains at all times adequate managers/directors' and officers' liability insurance.

6. **MANAGEMENT OF SOTOGRANDE**

6.1 **Composition of the board**

6.1.1 The Company shall procure that the board of Sotogrande shall be made up of the following people:

- (a) three (3) directors nominated by each Majority Shareholder;

- (b) one (1) independent director; and
 - (c) one (1) executive director.
- 6.1.2 The Shareholders shall act reasonably in agreeing the identity of the independent director appointed to the board of Sotogrande. In default of agreement, the Board shall nominate the independent director.
- 6.1.3 The Shareholders shall agree the initial executive director of Sotogrande no later than ten (10) days prior to completion of the Acquisition. The Shareholders shall act reasonably in agreeing the identity of the executive director appointed to the board of Sotogrande
- 6.1.4 To the extent that Sotogrande remains a Spanish listed company, the Shareholders shall consider the relevant corporate governance principles applicable when managing the affairs of Sotogrande. The Shareholders agree that Sotogrande shall not be bound to comply with all official corporate governance recommendations applicable to public companies in Spain although they will comply with their disclosure obligations in respect of such lack of compliance.

6.2 Quorum

- 6.2.1 The Company shall procure that a quorum shall exist at any board meeting of Sotogrande if at least six (6) directors are present or represented by an alternate director.
- 6.2.2 If a quorum is not present at a board meeting of Sotogrande at the time when any business is considered, the Company shall procure that any director may require that the meeting be reconvened. The chairman of Sotogrande shall provide at least five (5) Business Days' notice of the reconvened meeting unless all the directors otherwise agree. If the chairman of Sotogrande fails to reconvene the board meeting within one (1) month, the board meeting can be reconvened by one third of the directors acting together. The quorum requirement shall apply to any reconvened meeting.

6.3 Effect of becoming a Minority Shareholder

- 6.3.1 If a Majority Shareholder becomes a Minority Shareholder, it will procure that any directors appointed by it to the board of Sotogrande shall resign with effect from the resolution in clause 6.3.2.
- 6.3.2 The Company shall procure that, as soon as reasonably practicable after a Majority Shareholder becomes a Minority Shareholder, the by-laws or other constitutional documents of Sotogrande shall be amended to state that the quorum for any board meeting of Sotogrande shall be three (3) directors. The Company shall procure that the vacancies on the board of Sotogrande caused by the resignation of the directors appointed by a Minority Shareholder are not filled.
- 6.3.3 If a Minority Shareholder becomes a Majority Shareholder, the Company shall procure that the nominees of each Majority Shareholder pursuant to Clause

6.1.1(a) are appointed as directors of Sotogrande as soon as reasonably practicable and that no business of Sotogrande is determined (other than to call a general meeting of the shareholders to appoint the directors) until the additional directors are appointed.

6.3.4 The Company shall procure that, in the event that a Shareholder becomes a Majority Shareholder, the by-laws or other constitutional documents of Sotogrande shall be amended to state that the quorum for any board meeting of Sotogrande shall be six (6) directors.

6.4 Voting at board meetings

The Company shall procure that the board of Sotogrande shall decide on matters by six (6) directors voting in favour of the proposition.

6.5 Chair

The Shareholders shall agree which director shall be the chairman of the board no later than ten (10) days prior to completion of the Acquisition. The Shareholders shall act reasonably in agreeing the identity of the chairman. The chairman shall not have a second or casting vote. If the chairman is not present at any meeting of the board of Sotogrande, the directors present may appoint any one of their number to act as chairman for the purposes of the meeting.

6.6 Convening board meetings

The Company shall procure that the chairman of Sotogrande is under an obligation to call a meeting of the board of Sotogrande at the request of any director of Sotogrande and the independent director has the right to call a meeting of the board of Sotogrande. If the chairman does not call a board meeting of Sotogrande within one (1) month of request, one third of the directors can call a board meeting of Sotogrande.

6.7 Participation arrangements

The Company shall procure that any director may participate in and vote at board meetings of Sotogrande by means of a conference telephone, a video-conference facility or any other communication equipment which allows all persons participating in the meeting to hear each other. Any director so participating in a meeting shall be deemed to be present in person and shall count towards the quorum.

6.8 Written resolutions

The Company shall procure that a resolution in writing signed by all the directors of Sotogrande entitled to vote on that resolution shall be as valid and effective for all purposes as a resolution passed by the directors at a meeting duly convened, held and constituted.

6.9 Majority Shareholder Matters and Reserved Matters

The Shareholders and the Company shall procure that, subject to Applicable Law, no decision shall be made nor action taken by any Group Company to approve any Majority Shareholder Matter, Reserved Matter or Subsidiary Conflict Matter without

first obtaining the consent of the Majority Shareholders, the Shareholders or the Board respectively. The Company and the Shareholders shall procure that all directors of the Group Companies appointed by the Shareholders shall vote in accordance with the decision of the Majority Shareholders, the Shareholders or the Board in respect of any Majority Shareholder Matter, Reserved Matter or Subsidiary Conflict Matter respectively.

7. MANAGEMENT OF SUBSIDIARIES

7.1 Composition of the board

The Company shall procure that the board of each Subsidiary other than Sotogrande shall be made up of three (3) directors nominated by each Majority Shareholder.

7.2 Quorum

7.2.1 Subject to clause 7.3.2, the Company shall procure that a quorum shall exist at any board meeting of each Subsidiary other than Sotogrande if at least four (4) directors are present or represented by an alternate director.

7.2.2 If a quorum is not present at a board meeting at the time when any business is considered, any director may require that the meeting be reconvened. The chairman of the relevant Subsidiary shall provide at least five (5) Business Days' notice of the reconvened meeting unless all the directors otherwise agree. If the chairman fails to reconvene the board meeting within one (1) month (or a period of up to two (2) weeks if permitted by Applicable Law), the board meeting can be reconvened by one third of the directors acting together. The quorum requirement shall apply to any reconvened meeting.

7.3 Effect of becoming a Minority Shareholder

7.3.1 If a Shareholder becomes a Minority Shareholder, it will procure that any directors appointed by it to the board of each Subsidiary shall resign with immediate effect.

7.3.2 The Company shall procure that, in the event that a Shareholder becomes a Minority Shareholder, the by-laws or other constitutional documents of each Subsidiary other than Sotogrande shall be amended to state that the quorum for any board meeting shall be two (2) directors. The Company shall procure that the vacancies on the board of each Subsidiary caused by the resignation of the directors appointed by a Minority Shareholder are not filled.

7.3.3 If a Shareholder becomes a Majority Shareholder, the Company shall procure that the nominees of each Majority Shareholder pursuant to clause 7.1 are appointed as directors of each relevant Subsidiary as soon as reasonably practicable and that no business of the Subsidiary is determined (other than to call a general meeting of the shareholders to appoint the directors) until the additional directors are appointed.

7.3.4 The Company shall procure that, in the event that a Shareholder becomes a Majority Shareholder, the by-laws or other constitutional documents of each

Subsidiary other than Sotogrande shall be amended to state that the quorum for any board meeting shall be four (4) directors.

7.4 Voting at board meetings

The Company shall procure that the board of each Subsidiary other than Sotogrande decide on matters by four (4) directors voting in favour of the proposition.

7.5 Chairman

The Company shall procure that the post of chairman of the board of the Subsidiaries shall be held in alternate years by a director appointed by each Majority Shareholder in rotation with a director appointed by Orion being the initial chairman of the board. The chairman shall not have a second or casting vote. If the chairman is not present at any meeting of the board, the directors present may appoint any one of their number to act as chairman for the purposes of the meeting.

7.6 Other management arrangements

The provisions of Clauses 6.6 to 6.9 shall apply to the board proceedings of each Subsidiary.

7.7 Local laws

The Shareholders agree that, to the extent that these provisions are not permissible for a Subsidiary incorporated in a particular jurisdiction, the Shareholders and the Company shall, acting reasonably, determine a solution that allows the Majority Shareholders to maintain control of the relevant Subsidiary in accordance with the principles contained in accordance with this Clause 7.

8. MATTER REQUIRING SHAREHOLDERS' CONSENT

8.1 Reserved Matters

Subject to Applicable Law, no action which constitutes either a Majority Shareholder Matter or a Reserved Matter shall be taken by any Group Company, whether directly or indirectly, and the Shareholders shall procure that their directors shall not vote in favour of any resolution in respect of any such actions, without the prior written approval of:

8.1.1 in relation to a Majority Shareholder Matter, the Majority Shareholders; and

8.1.2 in relation to a Reserved Matter, all Shareholders.

8.2 Method of approval

Except as otherwise required by Applicable Law, a Shareholder may give its approval under clause 8.1 by any of the following methods:

8.2.1 in writing; or

8.2.2 by a vote in favour of a separate and specific Shareholders' resolution on that matter.

9. DEADLOCK

9.1 Deadlock

If the Majority Shareholders are unable to arrive at a decision on any Majority Shareholder Matter or the Shareholders are unable to arrive at a decision on any Reserved Matter, by reason of disagreement between themselves, a deadlock shall be deemed to have occurred in relation to such matter (a "**Deadlock**"). Whenever a Deadlock is deemed to have occurred any Shareholder may, within ten (10) Business Days of the disagreement that has given rise to the Deadlock, give notice in writing to the other Shareholders (a "**Deadlock Notice**") stating that, in its opinion, a Deadlock exists and identifying the matter in respect of which the Shareholders are deadlocked. Only one Deadlock Notice may be served in respect of any one Deadlock.

9.2 Preparation of memoranda

Within ten (10) Business Days of the date of service of a Deadlock Notice, each Shareholder shall prepare and send to the other Shareholders a memorandum stating its understanding of the Deadlock, its position in relation to the Deadlock, its reasons for taking that position and any proposals it may have for resolving the Deadlock.

9.3 Referral to senior officers

If, within thirty (30) calendar days of delivery of the Deadlock Notice, the Shareholders have failed to resolve the Deadlock, (a) two senior representatives of Cerberus and/or Cerberus Capital Management, L.P. (including at least one managing director of Cerberus) and (b) two senior representatives of Orion (including the chief executive or equivalent officer of Orion) shall be provided with a copy of the Deadlock Notice and copies of all of the memoranda prepared pursuant to clause 9.2 and shall meet in person as soon as reasonably practicable, together with such advisors as either of them thinks necessary or appropriate to discuss the Deadlock and use all reasonable endeavours to resolve it. If the matter is resolved, the Shareholders shall sign a statement setting out the terms of the agreed resolution and shall procure that all relevant actions are taken by the Company to carry out such agreed resolution without delay.

9.4 Mediation

9.4.1 If there has been no resolution by senior officers pursuant to clause 9.3, a Shareholder may refer it to the CEDR for mediation in London in accordance with CEDR Model Mediation Procedure procedures for the time being so far as consistent with this clause.

9.4.2 If the Shareholders are not able to agree on any aspect of the procedures for the mediation, including, without limitation, the identity of the mediator, it shall be decided by CEDR or, in accordance with CEDR's procedures or if CEDR so determines, by the mediator.

9.4.3 The Shareholders intend to co-operate in seeking to resolve any Deadlock but the Shareholders acknowledge that the mediation process is voluntary and either party may withdraw from mediation at any time by giving written notice to the other. For the avoidance of doubt, the mediator's decision in respect of any Deadlock is not to be binding on or enforceable against the parties.

9.5 **Unresolved deadlock**

If the Deadlock has not been resolved within forty five (45) calendar days from the date of delivery of the Deadlock Notice:

9.5.1 if the Deadlock Notice relating thereto was delivered prior to the second anniversary of the date of this Agreement, the proposal which is the subject of the Deadlock shall not proceed; and

9.5.2 if the Deadlock Notice relating thereto was delivered on or after the second anniversary of the date of this Agreement, the procedure described in clause 10 shall apply.

10. **SALE ON DEADLOCK OR DEFAULT**

10.1 **Offer Notice**

10.1.1 If clause 9.5.2 applies, any Shareholder may, at any time within ten (10) Business Days of expiry of the forty five (45) calendar day period referred to in clause 9.5, or

10.1.2 if a Shareholder commits or suffers an Event of Default, the Shareholder who is not in default may at any time within ninety (90) calendar days of an Event of Default,

by notice in writing (the "**Offer Notice**") to the other Shareholder, offer to buy all (but not some only) of the Company Interests of the other Shareholder (including any Shareholder Loans held by a Funding Affiliate) (the "**Receiving Shareholder**") for cash and specifying a total price for the purchase of all of the Company Interests held by both Shareholders (the "**Offer Price**"). Once an Offer Notice is served by a Shareholder (the "**Triggering Shareholder**"), it shall be irrevocable and, if both Shareholders serve an Offer Notice, the first Offer Notice to be deemed served shall be effective.

10.2 **Offer**

The Offer Notice shall be deemed to constitute:

10.2.1 an offer by the Triggering Shareholder to purchase all (but not some only) of the Company Interests of the Receiving Shareholder (including any Shareholder Loans held by a Funding Affiliate) at the sum that the Receiving Shareholder would receive if all of the Company Interests held by both Shareholders (including any Shareholder Loans held by a Funding Affiliate) were sold at the date of the Offer Notice for the Offer Price and the Offer Price was distributed to the Shareholders in accordance with clause 15 (the "**Receiving Shareholder's Price**"); and

10.2.2 an alternative offer by the Triggering Shareholder to sell to the Receiving Shareholder all (but not some only) of the Triggering Shareholder's Company Interests (including any Shareholder Loans held by a Funding Affiliate) at the price that the Triggering Shareholder would receive if all of the Company Interests held by both Shareholders (including any Shareholder Loans held by a Funding Affiliate) were sold at the date of the Offer Notice for the Offer Price and the Offer Price was distributed to the Shareholders in accordance with clause 15 (the "**Triggering Shareholder's Price**").

10.3 **Counter-notice**

Within twenty (20) Business Days of service of the Offer Notice, the Receiving Shareholder may by counter-notice to the Triggering Shareholder (the "**Counter-notice**"), require the Triggering Shareholder (and its Shareholder Group) to sell all (but not some only) of its Company Interests to the Receiving Shareholder (including any Shareholder Loans held by a Funding Affiliate) at the Triggering Shareholder's Price.

10.4 **Meaning of Counter-notice**

Service of the Counter-notice shall constitute an acceptance of the offer referred to in clause 10.2.2 and a rejection of the offer referred to in clause 10.2.1 and the Triggering Shareholder (and its Shareholder Group) shall be bound to sell, and the Receiving Shareholder shall be bound to purchase, the Triggering Shareholder's Company Interests (including any Shareholder Loans held by a Funding Affiliate) subject only to the receipt of the Triggering Shareholder's Price and otherwise in accordance with the terms set out in clause 16.6.

10.5 **No Counter-notice**

If no Counter-notice is served by the Receiving Shareholder under clause 10.3, the Triggering Shareholder shall be bound to purchase, and the Receiving Shareholder (and its Affiliates) shall be bound to sell, the Company Interests of the Receiving Shareholder (including any Shareholder Loans held by a Funding Affiliate) subject only to receipt of payment of the Receiving Shareholder's Price by the Triggering Shareholder and otherwise in accordance with the terms set out at clause 16.6.

10.6 **Completion**

Completion of the sale and purchase contemplated by this clause 10 shall be on a date falling twenty (20) Business Days after the date of the Counter-notice (or if none, thirty (30) Business Days after the date of the Offer Notice), or such other date as the Shareholders may agree, and at such place in Luxembourg as shall be nominated by the transferor.

10.7 **Withdrawal of notice**

No Offer Notice or Counter-notice may be withdrawn except with the written consent of the Shareholder to whom it was given and save as aforesaid shall constitute a binding obligation on the Shareholders to sell and purchase the relevant Company Interests in the manner contemplated by this clause 10.

10.8 **Rights not exclusive**

The provisions of this clause 10 in relation to an Event of Default are in addition to and not in substitution for any other rights and remedies which a Shareholder may have in respect of any default or other breach of this Agreement by another Shareholder.

(...)

12. **SHAREHOLDER FINANCING**

12.1 **Additional financing by Shareholders**

12.1.1 To the extent that the Board has approved financing of the Company by the Shareholders or such a financing is expressly contemplated in the Business Plan that has been approved by the Board, either Shareholder may from time to time direct the Board to request that all of the Shareholders provide such financing if, in the reasonable opinion of the Shareholder, additional funds are required by any Group Company to pay for the relevant approved matter. The Company, at the direction of the Board or a Shareholder, acting reasonably, shall serve notice on each Shareholder (a "**Funding Request**") specifying:

- (a) that it is a Funding Request pursuant to this clause 12;
- (b) the date of the Funding Request;
- (c) the total amount of funding being requested from Shareholders (the "**Aggregate Funding Amount**");
- (d) the addressee Shareholder's proportion of the Aggregate Funding Amount (the "**Individual Funding Amount**"), which shall be the proportion of the Aggregate Funding Amount that its Invested Capital immediately before the making of the Funding Request bears to the aggregate Invested Capital of all the Shareholders immediately before the making of such Funding Request;
- (e) the proportion of the Individual Funding Amount to be provided by way of subscription for Shares and the advance of Shareholder Loans;
- (f) the number of Shares that the addressee Shareholder is to receive in exchange for providing the Individual Funding Amount and the valuation per Share; and
- (g) the date when the Individual Funding Amount is requested to be funded, being not less than ten (10) Business Days from the date of the Funding Request (the "**Funding Deadline**").

12.1.2 Unless the Shareholders agree otherwise, any Funding Request that is issued whilst one Shareholder is a Non-contributing Shareholder shall use a valuation per Share based on the net asset value of the Company calculated based on the latest quarterly accounts of the Company and of Sotogrande and the latest third party real estate appraisal undertaken for Sotogrande's accounts.

- 12.1.3 Each of the Shareholders shall provide the further financing required pursuant to a Funding Request by way of a subscription for Shares and the making of Shareholder Loans in the proportion of debt to equity specified in the Funding Request.

12.2 Failure to provide further finance

If a Shareholder does not provide its proportion of the further finance requested under clause 12.1.1 by the Funding Deadline (any such Shareholder being a "**Non-contributing Shareholder**") then

- 12.2.1 the Company shall notify each of the Shareholders of such failure to fund and of the amount which the Non-contributing Shareholder has failed to provide (the "**Shortfall Amount**");
- 12.2.2 the other Shareholder (provided that it has funded its share of the further finance in accordance with clause 12.1 in full), may elect (but without obligation to do so) by written notice to the Company and the Non-contributing Shareholder, to fund all (but not part only) of the Shortfall Amount (the Shareholder electing to fund the Shortfall Amount being an "**Electing Shareholder**"); and
- 12.2.3 the Electing Shareholder shall provide such further finance by way of a Shortfall Loan. Upon receipt of the Shortfall Loan by the Company, the Non-contributing Shareholder shall be deemed to have funded the Shortfall Amount on the Funding Deadline and shall therefore be issued the relevant Shares and shall be deemed to have advanced the applicable amount of Shareholder Loans in respect of the Shortfall Amount as stated in the Funding Request.

12.3 Terms and Repayment of Shortfall Loans

- 12.3.1 Any Shortfall Loan provided by an Electing Shareholder shall accrue interest in accordance with its terms.
- 12.3.2 At any time while the applicable Shortfall Loans are still outstanding, a Non-contributing Shareholder may remedy its funding default by providing to the Company sufficient funds (a "**Catch-up Contribution**") to repay the outstanding Shortfall Loans (together with all interest accrued but unpaid on it) (the "**Shortfall Cure Amount**"). The Company shall use such amounts to repay on behalf of the Non-contributing Shareholder (and thereby reduce the amount of) any Shortfall Loan (together with all interest accrued but unpaid on it) in accordance with this clause 12.3.
- 12.3.3 Prior to the applicable Shortfall Loan being repaid in full by the Non-contributing Shareholder (together with all interest accrued but unpaid on it), the Company shall (to the extent not already repaid) pay any monies due to the Non-contributing Shareholder pursuant to clause 15, in order to repay the Shortfall Loan (and interest accrued but unpaid on it) on behalf of the Non-contributing Shareholder and the Shareholders hereby agree and acknowledge that the application of such sums due to it in this way shall be deemed to be good receipt by such Non-contributing Shareholder.

12.3.4 Prior to any Shortfall Loan being repaid in full (together with all interest accrued but unpaid on it) and to the extent not already repaid, where the Non-contributing Shareholder would receive any sums as a result of the transfer of its Shares and/or Shareholder Loans then, as a condition of registering the transfer of any Shares, the Non-contributing Shareholder shall apply such amounts (and where the Company receives any such amounts on behalf of the Non-contributing Shareholder, the Company shall apply such amounts on behalf of the Non-contributing Shareholder) in order to repay the Shortfall Loan (and interest accrued but unpaid on it) and the Shareholders hereby agree and acknowledge that the application of such sums due to it by the Company in this way shall be deemed to be good receipt by such Shareholders.

12.3.5 Shortfall Loans shall be repaid in accordance with the following:

- (a) where there is more than one Shortfall Loan outstanding in respect of a Non-contributing Shareholder, any repayment of such Shortfall Loans shall be treated as paid in respect of Shortfall Loans in the order in time when they first arose; and
- (b) interest accrued on any Shortfall Loans shall be paid in priority to principal.

12.3.6 The repayment of a Shortfall Loan (including by any of the above methods) shall not result in an increase of the Invested Capital of the Non-contributing Shareholder (on the basis that the Non-contributing Shareholder was deemed to have invested the relevant amount upon the advance of the Shortfall Loan).

12.4 **Dilution of Non-contributing Shareholder**

12.4.1 At any time on or after the date which is three months after the Funding Deadline but no later than fifteen months, if the Non-contributing Shareholder has not made a Catch-up Contribution of the Shortfall Cure Amount, an Electing Shareholder shall be entitled to elect by giving notice in writing to the Company and the Non-contributing Shareholder to convert its Shortfall Loan (including any accrued and unpaid interest thereon) into the right to receive a portion of the Non-contributing Shareholder's holding of Shares and Shareholder Loans as described in clause 12.4.2.

12.4.2 The dilution of the Non-contributing Shareholder contemplated by clause 12.4.1 shall take effect by way of the mandatory transfer to the Electing Shareholder of a portion of the relevant Non-contributing Shareholder's Shares and Shareholder Loans with the amount of Shares and Shareholder Loans, to be so transferred being calculated as follows:

the amount of the Invested Capital of the Non-contributing Shareholder that is to be transferred to the Electing Shareholder shall be calculated in accordance with the following calculation:

$$C = A \times B$$

where:

A = 125% (or such lower amount as the Electing Shareholder may determine);

B = the total outstanding principal of the Shortfall Loan being converted together with any amounts of accrued but unpaid interest; and

C = the amount of the Invested Capital of the Non-contributing Shareholder to be transferred (which shall not exceed the amount of the Invested Capital held by that Non-contributing Shareholder, including any amounts deemed to have been invested pursuant to clause 12.2.3);

but provided that the Electing Shareholder may, in its sole discretion, elect to reduce A as it determines (but for the avoidance of doubt, this shall not prejudice the deemed repayment in full of the Shortfall Loan, together with all accrued and unpaid interest following the completion of the dilution);

- 12.4.3 The resulting amount of Invested Capital shall be converted into the relevant amount of Shares and Shareholder Loans to be transferred by applying the following formulae:

$$\mathbf{TS = C \times (1 - L\%) / (NAV / NS) \text{ rounded to the upper entire figure}}$$

$$L = L\% \times C$$

Where:

NAV = the net asset value of the Company calculated based on the latest quarterly accounts of the Company and of Sotogrande and the latest third party real estate appraisal undertaken for Sotogrande's accounts.

NS = the number of issued Shares.

TS = the number of shares of the Non-contributing Shareholder to be transferred to the Electing Shareholder.

C = the amount of the Invested Capital of the Non-contributing Shareholder to be transferred as calculated in accordance with clause 12.4.2.

L = the value of Shareholder Loan to be transferred by the Non-contributing Shareholder (expressed in EUR).

L% = the amount of capital contributed by way of Shareholder Loans in proportion to the Invested Capital.

A worked example of the dilution mechanism is an Agreed Form document.

- 12.4.4 The completion date for any transfer pursuant to this clause 12.4 shall be the date falling thirty (30) Business Days after delivery of the notice by the

Electing Shareholder to the Company electing to convert the Shortfall Loan into dilution, such transfers shall be made in accordance with clause 16.6.

12.4.5 Each Shareholder hereby irrevocably appoints the Company by way of security for its compliance with its obligations as a Non-contributing Shareholder pursuant to this clause 12.4, such appointment to take effect if a Non-contributing Shareholder refuses or fails to transfer its Shares or Shareholder Loans in accordance with the provisions of this clause 12.4 or otherwise fails to take any action required under the transfer within the requisite time limits and in such case the Company (acting through one or more Managers appointed by any Shareholder other than the non-Contributing Shareholder) shall execute all such documents and do all such acts or things which are reasonably necessary to transfer the relevant Shares and Shareholder Loans to the relevant Electing Shareholder.

12.4.6 Upon completion of the transfer of the relevant Shares and Shareholder Loans, the relevant Shortfall Loan shall be deemed to repaid in full, together with all accrued but unpaid interest.

12.4.7 For the avoidance of doubt, the transfer of the relevant Shares and Shareholder Loans shall transfer an equivalent amount of Invested Capital from the Non-contributing Shareholder to the Electing Shareholder.

12.5 **No obligation to provide further capital**

Except as otherwise provided in this Agreement or as agreed between the Shareholders, no Shareholder shall be obliged to provide any capital to the Company by way of a subscription for further Shares or by way of loans or subscription for loan stock.

12.6 **Provision of further financing by an Affiliate of a Shareholder**

For the purposes of funding to be provided by a Shareholder in the form of a Shareholder Loan pursuant to a Funding Request or other request or notice issued by the Company under clause 12.1, 12.2 or 13.1, any such Shareholder Loan funding may be provided in whole or in part by an Affiliate of such Shareholder (a "**Funding Affiliate**").

12.7 **No security for Shareholder Loans**

No Shareholder Loans shall be secured, whether on any of the Shares, any of the shares of the Subsidiaries, any Property (or any portion thereof) or otherwise.

12.8 **Shareholders' obligation**

Each Shareholder shall vote in favour of any resolution at a Shareholders' meeting called for such purpose authorising any increase in the share capital of the Company when required in order to accommodate any subscription for Shares made or to be made by a Shareholder under the provisions of clauses 12 or 0.

(...)

16. DEALING IN SHARES

16.1 No dealing

No Shareholder shall do, or agree to do, any of the following during the continuance of this Agreement except with the prior written consent of the other Shareholder or otherwise in accordance with clauses 16 to 18 (inclusive) of this Agreement:

16.1.1 Transfer any Share or any interest in any Share or allow any such event to take place;

16.1.2 Transfer any of the Shareholder Loans made by it (or its Funding Affiliates) or any interest therein or allow any such event to take place; or

16.1.3 enter into any agreement in respect of the votes attached to any Share.

For the purpose of this clause 16.1, a Change of Control of a Shareholder (or of a member of the Shareholder Group of such Shareholder who Controls the Shareholder) shall be deemed to be a Transfer of the Company Interests held by such Shareholder.

16.2 General Transfer restrictions

Other than with the prior written consent of the other Shareholders including to the extent required for the purpose of article 189 of the Luxembourg Law:

16.2.1 subject to clause 16.3, no Shareholder shall make any Transfer of any Company Interests (or any interest in any Company Interests) for a period of two (2) years after the date of this Agreement;

16.2.2 Shares may only be Transferred together with the corresponding portion of Shareholder Loans held by the relevant Shareholder and any Shortfall Loans and Emergency Loans held by such Shareholder (and its Funding Affiliates);

16.2.3 a Shareholder may only Transfer the whole (and not part only) of its Company Interests held by such Shareholder (and its Funding Affiliates); and

16.2.4 Company Interests may only be transferred or issued to an Acceptable Buyer.

16.3 Transfers during initial period

A Shareholder may dispose of all (but not part) of its Company Interests held by such Shareholder (and its Funding Affiliates) to a Permitted Transferee, the Company or a Shareholder at any time subject to compliance with the provisions of this clause.

16.4 Accession agreement and release

16.4.1 Any purchaser or transferee of any Company Interests pursuant to this clause 16 shall (and the transferor Shareholder shall procure that such purchaser or transferee shall), enter into a Deed of Adherence in favour of the other Shareholders undertaking to be bound by the terms of this Agreement and any

relevant Shareholder Loan Agreements, Shortfall Loan Agreements and Emergency Loan Agreements with effect from the date of completion of the transfer of Company Interests to it; and

16.4.2 with effect from the date of completion of any Transfer of Company Interests pursuant to this Agreement the transferring Shareholder shall be released from further liability under this Agreement but without prejudice to any liability accrued prior thereto.

16.5 **Notification and Registration of Transfer**

A Transfer of Shares shall be notified to the Company in compliance with article 190 of the Luxembourg Law and each Shareholder shall procure that the Board only approves for registration a Transfer of Shares carried out in accordance with this Agreement and the Articles.

16.6 **Terms of Transfer**

The Shareholders shall procure that any transfer of Company Interests pursuant to this Agreement shall be made in accordance with the following provisions:

16.6.1 the transferor shall on the relevant completion date deliver or procure the delivery of a duly executed stock transfer form in relation to the relevant Shares accompanied by the relevant documents of title and a duly executed transfer or assignment of any relevant Shareholder Loan and any Shortfall Loan Agreement, together with any power or authority under which such documents have been executed;

16.6.2 the transfer shall be on terms that the Shares are transferred free from all claims, pledges, equities, liens, charges and encumbrances and are transferred with the benefit of all rights attaching to them as at the relevant completion date but without the benefit of any other warranties or representations; and

16.6.3 each party shall do all things and carry out all acts which are reasonably necessary to effect the transfer in accordance with the terms of this Agreement.

16.7 **Change of Control**

Each Shareholder shall immediately give notice in writing to the other Shareholders of any Change of Control of it which occurs during the term of this Agreement.

17. **RIGHT OF FIRST OFFER**

17.1 **Transfer Notice**

Other than a Transfer pursuant to clause 16.3 and always in compliance with the restrictions imposed in clause 16.2, if a Shareholder (the "**Selling Shareholder**") wishes to Transfer its Company Interests (including any Shareholder Loans held by a Funding Affiliate) to a Third Party Buyer (the "**Sale Interests**"), it shall first make a written offer (the "**Sale Notice**") to the other Shareholder (the "**Remaining Shareholder**") for the sale of the Sale Interests, which Sale Notice shall set out the details of the Sale Interests, the proposed price for the Sale Interests (the "**Asking**

Price") and any other terms which the Selling Shareholder is willing to accept (collectively, the "**Sale Terms**").

17.2 **Response to Sale Notice**

The Remaining Shareholder shall, within fifteen (15) Business Days of receipt of the Sale Notice (the "**Offer Deadline**"), either:

17.2.1 serve a written notice on the Selling Shareholder accepting the offer on the Sale Terms (a "**Sale Acceptance Notice**"); or

17.2.2 serve a written notice on the Selling Shareholder declining the offer.

17.3 **Consequences of Sale Notice**

17.3.1 Once a Sale Notice has been served (the "**Original Sale Notice**"), no other Sale Notice may be served by any Shareholder until the date (the "**Sale Expiry Date**") which is the earlier of:

(a) the date of withdrawal of the Original Sale Notice by the Selling Shareholder by written notice to the Remaining Shareholders;

(b) the date of completion of a sale of the Sale Interests that were the subject of the Original Sale Notice to the Remaining Shareholder or to a Third Party Buyer pursuant to this clause 17; and

(c) the date of expiry of the Sale Period.

17.3.2 Once a Sale Notice has been served, the Selling Shareholder may not serve a subsequent Sale Notice until the expiry of a period of three (3) months following the Sale Expiry Date save in accordance with clause 17.6.

17.4 **Transfer pursuant to Acceptance Notice**

When a Sale Acceptance Notice is given by the Remaining Shareholder, the Selling Shareholder shall be obliged to transfer, and such Remaining Shareholder shall be obligated to acquire, the Sale Interests on the Sale Terms and in accordance with clauses 16.6 and 17.5.

17.5 **Closing date**

The closing date for any transfers to be made pursuant to this clause 17 shall be not later than twenty (20) Business Days from the date of receipt of the last Sale Acceptance Notice.

17.6 **No Acceptance Notice**

If the Remaining Shareholder does not serve a Sale Acceptance Notice by the Offer Deadline, the Selling Shareholder shall be free to sell the Sale Interests (but not only a portion thereof) to a Third Party Buyer at a price not less than the Price and otherwise on the same terms as the Sale Terms (together, the "**Benchmark Terms**") for a period of up to six (6) months from the Offer Deadline (the "**Sale Period**").

17.7 No third party sale

17.7.1 If the Selling Shareholder is unable to procure a sale pursuant to clause 17.6 during the Sale Period the offer to sell the Sale Interests set out in the Sale Notice shall be deemed to be withdrawn.

17.7.2 In the event that the Selling Shareholder has received an offer to buy the Sale Interests (but not only a portion thereof) from a Third Party Buyer on terms more favourable to the Third Party Buyer than the Benchmark Terms (a "**Third Party Offer**"), the Selling Shareholder shall be entitled to accept the Third Party Offer provided that:

- (a) at any time during or after the Sale Period, the Selling Shareholder has served a further Sale Notice (the "**Subsequent Sale Notice**") on the Remaining Shareholder setting out the price and the other terms of the Third Party Offer; and
- (b) following the delivery of such Subsequent Sale Notice, the provisions of clauses 17.2 to 17.5 shall have been applied *mutatis mutandis* save that, for the purpose of such application:
 - (i) the "**Offer Deadline**" shall be defined as the date which falls five (5) Business Days after the date of receipt of the Subsequent Sale Notice; and
 - (ii) the "**Sale Terms**" and the "**Asking Price**" shall be defined as the terms and the price of the Third Party Offer as set out in the Subsequent Sale Notice.

18. DRAG AND TAG RIGHTS

18.1 Drag right

If a Selling Shareholder wishes to Transfer all of its Company Interests (including any Shareholder Loans held by a Funding Affiliate) to a Third Party Buyer and has complied with clause 17 in connection with such proposed Transfer, the Selling Shareholder may, by serving a notice (the "**Drag Notice**") on the Remaining Shareholder, require the Remaining Shareholder to sell all its Company Interests to the Third Party Buyer, completion of such sale to take place on the same Business Day as the completion of the sale of the Selling Shareholder's Company Interests to the Third Party Buyer.

18.2 Tag right

If a Selling Shareholder wishes to Transfer all of its Company Interests to a Third Party Buyer and has complied with clause 17 in connection with such proposed Transfer, the Remaining Shareholder may, by serving a notice (a "**Tag Notice**") on the Selling Shareholder, require the Selling Shareholder to procure that the Third Party Buyer purchases all of such Remaining Shareholders' Company Interests, completion of such purchase to take place on the same Business Day as the completion of the sale of the Selling Shareholder's Company Interests to the Third Party Buyer.

18.3 **Consideration for purchase**

The consideration for any sale pursuant to clause 18.1 or 18.2 shall be calculated by taking the total consideration to be paid for all Company Interests and distributing it among the Shareholders in such order of priority as would be applicable on a return of capital under clause 15.1.

19. **PRE-EMPTION RIGHTS ON ISSUE**

Any new Shares or debt or equity securities to be issued (or any interests, grants, options or interest in respect of any Shares or debt or equity securities to be issued) and any Shareholder Loans, shall first be offered by the Company to the Shareholders on a pro rata basis in accordance with the holding of the relevant Shareholders. The offer to the Shareholders shall be open for acceptance for a period of not less than twenty (20) Business Days and shall be accompanied by such information within the Company's possession or control as may be reasonably necessary in order for the Shareholders to evaluate such offer.

20. **SHARES IN SOTOGRANDE**

No Shareholder shall acquire, and each Shareholder shall procure, so far as is reasonably practicable, that none of its Affiliates acquire, any new shares or debt or equity securities (or any interests, grants, options or interest in respect of any Shares or debt or equity securities to be issued) in Sotogrande other than indirectly through its ownership of the Company.

(...)

22. **TERM AND TERMINATION**

22.1 **Termination**

This Agreement may be terminated at any time by the written agreement of the Shareholders and shall terminate automatically without notice on:

22.1.1 the date that all of the Shares are owned by one Shareholder or by Shareholders who are all members of the same Shareholder Group; or

22.1.2 the date that is three months after the disposal by the Company (whether directly or through the sale by another Group Company, and whether through one or more transactions) of the whole of its interest in each Property and the agreement of final accounts relating thereto; or

22.1.3 the date of liquidation or winding-up of the Company; or

22.1.4 the exercise by a Shareholder of its rights under clause 2.2.5,

but without prejudice to any rights accrued in respect of any breach committed prior to the date of such termination.

23. **COMPLIANCE WITH AGREEMENT AND ARTICLES; EXCULPATION**

23.1 **Compliance with Agreement**

Each Shareholder undertakes to the other that:

23.1.1 it shall take all practicable steps, including the exercise of votes it directly or indirectly controls at meetings of the Board and general meetings of each Group Company, to ensure that the terms of this Agreement are complied with and to procure that the Shareholder, the Board and the Company take all actions specified in this Agreement, including but not limited to amending the Company's articles of association to bring them in line with the provisions of this Agreement; and

23.1.2 it shall do all such other acts and things as may be necessary or desirable to implement this Agreement.

(...)

SCHEDULE 3
MAJORITY SHAREHOLDER MATTERS

Each of the following actions shall constitute a "Majority Shareholder Matter" under this Agreement except to the extent that the matter was contemplated in the Business Plan or is required pursuant to the terms of this Agreement:

1. approval of the Business Plan and the Project Budget and any material deviation from an approved budget;
2. any Group Company entering into any agreement which by its terms calls for aggregate payments or receipts by any Group Company in excess of EUR 500,000 over the term of such agreement;
3. any Group Company establishing, modifying or terminating any management incentive plan;
4. incurrence, redemption, repurchase or modification of any indebtedness outstanding other than payment of outstanding indebtedness at maturity pursuant to the terms thereof as in existence as of the closing date of the Transaction by any Group Company;
5. any Group Company paying any dividends or making any distributions;
6. forming, or delegating any authority to, any committee or subset of the board (or equivalent governing body) of any Group Company;
7. any Group Company entering into or modifying of transactions with (i) Affiliates or (ii) Shareholders and Affiliates of Shareholders;
8. any Group Company making any loan or advance to any related person, including, any employee or manager/director, other than in the ordinary course of business up to a maximum amount of EUR 10,000;
9. any Group Company creating or authorizing the creation of any debt security or incurring any indebtedness or incurring liens in excess of EUR 1,000,000;
10. any Group Company hiring, terminating or modifying compensation arrangements of the CEO or any of his direct reports;
11. changes in accounting policy or independent auditors by any Group Company;
12. any Group Company commencing or settling any material litigation or entering into discussions or negotiations with any regulatory authority or settlement of any regulatory action;
13. any Group Company entering into or amending any agreement containing non-compete, standstill or non-solicitation provisions that purport to be binding on the Shareholders or any of their Affiliates;

14. any Group Company entering into any agreement that could reasonably be expected to restrict the Shareholders or any of their Affiliates from investing, purchasing or selling the securities or indebtedness of any person;
15. except to the extent authorised by clause 14.6⁵, any Group Company making any tax elections (including in relation to the residency, structure or status of the Company) or any determinations as to licensing or permits affecting the Shareholders or any of their Affiliates;
16. any Group Company changing its principal business, entering new lines of business, or exiting the current line of business;
17. any other actions falling outside of the ordinary course of business of any Group Company; and
18. any Group Company incurring an obligation to do any of the foregoing.

⁵ ***Clause 14.6 Tax Policy***

Unless otherwise agreed by the Shareholders in writing, the Company shall be treated as a partnership for US federal income tax purposes to the extent permitted under Applicable Law, and the Company shall file any form or return that are required for that purpose. Following approval of the Board, any Manager (or any authorized representative designated by such Manager) will be authorised to execute and file any such form or return.

SCHEDULE 4 RESERVED MATTERS

Each of the following actions shall constitute a "Reserved Matter" under this Agreement except to the extent that the matter was contemplated in the Business Plan or is required pursuant to the terms of this Agreement:

1. a change of Control, merger, consolidation, sale of all or substantially all of its assets, liquidation, dissolution, recapitalisation or reorganisation of any Group Company;
2. any issuance or sale of securities of any Group Company, including in a public offering, delisting from any securities exchange, any going private transaction, or registration as a listed or reporting company (e.g., public debt) of any Group Company;
3. any Group Company entering into joint ventures or partnerships or establishing non-wholly owned subsidiaries;
4. the grant, issuance, repurchase or redemption of equity interests, profits interests or options by any Group Company;
5. reclassifications of capital stock of any Group Company;
6. amending any articles of association, charter, bylaws (or similar organizational document) or equity or debt transaction documents of any Group Company;
7. a change to the nationality of the Company;
8. the declaration or payment of any dividend or the making of any other distribution in respect of the profits, assets or reserves of any Group Company unless the distribution is paid to all Shareholders of the Shares pro rata to their shareholding;
9. any Group Company entering any bankruptcy filing, liquidation, dissolution or winding up or similar action; and
10. any Group Company incurring an obligation to do any of the foregoing.

SCHEDULE 5
SHORTFALL LOAN TERMS

1. Interest accrues on a daily basis at an annual rate of 25% applied to the outstanding amount of the Shortfall Loan and compounds on each of 1 January, 1 April, 1 July and 1 October in each year (the "**Interest**"). Interest shall be calculated on the basis of a year of 365 days and the actual number of days elapsed.
2. Any payment of Interest on a date other than a Business Day shall be deemed to have been made on the following Business Day.