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## MORTGAGE AGREEMENT

This Mortgage Agreement (the “Agreement”) has been executed today •, by and between the following parties:

1. •, having its headquarters in •, registered with the Trade Registry under no. •, sole registration number •, fiscal attribute •, duly represented by •, in his/her capacity of •, hereinafter called “Mortgagee”

and

2. •, having its headquarters in •, registered with the Trade Registry under no. •, sole registration number •, fiscal attribute •, duly represented by •, in his/her capacity of •, hereinafter called “Mortgagor”,

each hereinafter called the “Party” and collectively called the “Parties.”

### Preamble

**Whereas**, the Mortgagor has requested from the Mortgagee and the Mortgagee has agreed to grant to the Mortgagor a financing (the “Facility”) amounting up to •<sup>1</sup> in accordance with •<sup>2</sup> no. • dated • (“Facility Agreement”), pursuant to which the Mortgagor has irrevocably and unconditionally undertaken payment obligations towards the Mortgagee;

**Whereas**, by signing the Facility Agreement and this Agreement, the Mortgagor accepted to secure its obligations towards the Mortgagee by creating a [first]\* rank mortgage over certain immovable held in ownership by the Mortgagor;

**Therefore**, taking into consideration the Preamble and the mutual agreements contained in this Agreement, as well as in the Facility Agreement,

The Parties accept and undertake as follows:

### 1. Definitions and Interpretation

1.1 For the purpose of this Agreement, capitalized terms used herein and not otherwise defined shall have the following meanings:

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<sup>1</sup> Insert maximum principal amount of the Facility and the currency of such Facility.

<sup>2</sup> Insert name of Facility Agreement.

“Facility”	has the meaning assigned to it in the Preamble;
“Facility Agreement”	has the meaning assigned to it in the Preamble;
“Immovable”	means the immovable within the ownership of the Mortgagor, comprising a land area located in •, having a surface of •, cadastral number •, together with the building[s] • <sup>3</sup> existing thereon, cadastral number •, registered with the Real Estate Book no. • of locality •, as reflected in the Real Estate Book extract no. •/•, issued by the Real Estate Book Office of • Ordinary Court, and all Immovable by Destination, as defined below, together with all improvements, additions and extensions, as provided in Article 1777 of the Civil Code;
“Immovable by Destination”	any and all items which are attached or fixed to the Immovable or to improvements, additions or extensions to the Immovable including movables that are supposed to be necessary in accordance with the destination and for the good exploitation of the Immovable, including but not limited to •, constructions in course of finalization, etc.;
“Secured Obligations”	means each and every payment obligation, present and future, determined or determinable, undertaken by the Mortgagor towards the Mortgagee, based on the Facility Agreement and this Agreement whether for principal, interest, penalties, fees, etc., as well as all costs, duties, commissions and any other expenses incurred directly or indirectly by granting the Facility and/or by concluding/enforcing this Agreement, and all amounts owed or due at any time or from time to time to the Mortgagee pursuant to or as a result of failure to fulfil or to properly fulfil the obligations undertaken under the Facility Agreement or this Agreement.

1.2 For the purpose of this Agreement:

- (i) Reference to an agreement shall be construed as a reference to such agreement as it may be amended, supplemented, restated, novated or assigned from time to time;
- (ii) Reference to the terms determined in days shall comprise calendar days and for computational reasons both the first and the last day shall be included;

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<sup>3</sup> Insert characteristics of the building(s), including destination.

(iii) In this Agreement, the headings are inserted for convenience of reference only and shall not affect the interpretation of this Agreement;

(iv) Reference to the Parties shall include their successors.

## 2. Object of the Agreement

- 2.1 Pursuant to this Agreement and as an irrevocable and unconditioned security for the fulfilment of the Secured Obligations undertaken by the Mortgagor, the Mortgagor establishes and constitutes in favor of the Mortgagee a [first]\* rank mortgage over the Immovable. According to Article 1721 of the Romanian Civil Code, this Agreement also creates a security right over the all risks insurance regarding the Immovable that the Mortgagor concluded or will conclude for this purpose.
- 2.2 According to the provisions of Article 1777 of the Romanian Civil Code, the mortgage created hereunder shall extend to all improvements, additions and extensions brought to the Immovable since conclusion of this Agreement up to the complete fulfillment of all Secured Obligations. Consequently, this mortgage shall also cover all current and future Immovable by Destination.
- 2.3 The mortgage established over the Immovable shall remain in full force and effect until the performance in full of the Secured Obligations undertaken by the Mortgagor.
- 2.4 Without limitation of the rights of the Mortgagee to receive payment in full of the Secured Obligations, the Parties hereby acknowledge that the amount guaranteed pursuant to this Agreement is •<sup>4</sup> (representing ROL • at the exchange rate communicated by the National Bank of Romania valid on the date of this Agreement of ROL • for one •<sup>5</sup>), which represents the principal amount under the Facility Agreement plus the estimate of the amount of interest, fees and of all other amounts owed or which may become owed under the Facility Agreement.
- 2.5 The amount of the Secured Obligations is denominated in ROL for taxation purposes only (to establish the applicable fees, duties, taxes for the conclusion and registration of this Agreement); at the time of the sale or other disposition of the security created hereunder or any part thereof following the enforcement, if any, by the Mortgagee of its rights hereunder, the ROL equivalent of the Secured Obligations will be calculated for the purpose of Article 1832 of the Romanian Civil Code on the basis of the USD/ROL exchange rate communicated by the National Bank of Romania for the date of any such sale or disposition, or, if the exchange rate does not exist any longer on such date, the

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<sup>4</sup> Insert the currency of the Facility and maximum theoretical payment obligations of the Mortgagor, assuming maximum amount of interest, penalties, fees, etc.

<sup>5</sup> Insert the currency of the Facility.

average rate paid for USD on the Bucharest inter-bank currency market on the date of such sale or disposition.

### 3. Registration of mortgage

- 3.1 The Mortgagor shall promptly register in favor of the Mortgagee the mortgage created hereunder with the Real Estate Book of the Ordinary Court of •.
- 3.2 Registration shall remain in force in compliance with the provisions of the Civil Code and other applicable laws and shall be renewed by the Mortgagor, whenever necessary, pursuant to the same provisions, as to secure fulfillment of Secured Obligations, by a mortgage of [first]\* rank over the Immovable.
- 3.3 The Mortgagor shall also promptly register with the Electronic Archive for Security Interests in Movable Property (the “Archive”) in favor of the Mortgagee, a notice conferring [first]\* rank priority to the security interest created hereunder with respect to all improvements, additions and extensions provided by Article 1777 of the Civil Code, brought to the Immovable, as well as the [first]\* priority security interest with respect to the Immovable by Destination.
- 3.4 The Mortgagor shall bear all costs related to the registrations mentioned above. Within • days from the conclusion of this Agreement, the Mortgagor shall deliver to the Mortgagee satisfactory documentation proving that the registrations mentioned above have been properly effected and that the mortgage created hereunder has [first]\* rank..
- 3.5 Registration of this mortgage shall be renewed by the Mortgagor according to the relevant provisions of the applicable laws whenever necessary as to ensure that the fulfillment of the Secured Obligations is secured at all times until such are completely discharged by a first ranking mortgage over the Immovable.
- 3.6 [Within • days from the date of this Agreement, the Mortgagor shall notify to the National Bank of Romania the conclusion of this Agreement and shall deliver to the Mortgagee evidence satisfactory to it that such formality has been complied with.]<sup>6</sup>

### 4. Continuing security

The mortgage created by this Agreement shall:

- (i) be a continuing encumbrance for the due payment, satisfaction and discharge in full of the Secured Obligations and such encumbrance shall not be considered as satisfied or discharged or prejudiced by any intermediate payment, satisfaction or settlement of any part of the Secured Obligations or any other matter or thing whatsoever; and

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<sup>6</sup> If case.

- (ii) not be prejudiced by any time or indulgence granted to any person, or any abstention or delay by the Mortgagee in perfecting or enforcing any encumbrance, securities, guarantees, or rights or remedies whatsoever.

## **5. Additional Security**

5.1 The mortgage created by this Agreement is in addition to and is not in any way prejudiced or affected by any security, encumbrance, guarantee, indemnity or other right whatsoever now or subsequently held by the Mortgagee for all or any of the Secured Obligations. This Agreement shall not be construed as limiting or in any way precluding the exercise by the Mortgagee of any or all of its rights for the full and due performance of all of the Secured Obligations.

5.2. The powers conferred on the Mortgagee by this Agreement shall be in addition to and not in substitution for the rights conferred to the Mortgagee by law.

## **6. Unconditionality**

The obligations of the Mortgagor under this Agreement are unconditional and shall continue until the discharge in full of the Secured Obligations and will not be affected by any act, omission, or event which, but for this provision, would reduce, release or prejudice any of its obligations under this Agreement or prejudice or diminish those obligations in whole or in part.

## **7. Representations and warranties**

The Mortgagor hereby represents and warrants that both as of the date of this Agreement and until full satisfaction of the Secured Obligations:

- a) It is duly organized and existing under Romanian law and operates in accordance with the Romanian legislation.
- b) It is the sole lawful owner of the Immovable, which is free of any mortgage, pledge, privilege, lien or other similar encumbrance or rights of third parties [other than •], as reflected by the extract of Real Estate Book no. •/• issued by the Real Estate Book Office of • Ordinary Court and no duty levied on the Immovable is outstanding or in dispute, as reflected by the fiscal certificate no. •/• issued by •.
- c) The Immovable belongs to the civil circuit and does not make the object of a dispute pending with a court of law, of an action, investigation or other legal proceedings and the Mortgagor does not have knowledge of any threat from a person or state or local authority to act in this respect nor any person or state or local authority has a claim with respect to the Immovable.
- d) No third party has any option or right of first refusal for total or partial purchase of the Immovable;

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**NESTOR NESTOR DICULESCU KINGSTON PETERSEN**

NEOCITY TOWER, FLOORS 9-12, 237B CALEA DOROBANTILOR, 1ST DISTRICT, 010566, BUCHAREST, ROMANIA  
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- e) It underwent all necessary formalities and obtained all authorizations necessary (including corporate authorizations) for the creation of a [first]\* rank mortgage over the Immovable in favor of the Mortgagee by the terms of this Agreement, the conclusion of this Agreement has been performed in compliance with the provisions of the applicable laws and the constitutive documents of the Mortgagor and the obligations assumed hereunder are valid and enforceable.
- f) [It has concluded and has paid all premiums due with respect to an all-risk insurance policy for the Immovable, including without limitation: fire, floods, acts of God, etc.]<sup>7</sup>

## 8. Covenants

The Mortgagor undertakes the following obligations:

- a) To maintain in force the all-risk insurance policy for the Immovable [to conclude and maintain in force an all-risk insurance policy for the Immovable including without limitation: fire, floods, acts of God, etc.]<sup>8</sup>; to irrevocably and unconditionally assign to the Mortgagee the proceeds representing damages received under the insurance policy, as well as the insurance policy and to notify to the insurance company the assignment of insurance rights related to the mortgaged Immovable within • days following the date of this Agreement, and to annually renew the insurance policy throughout the entire duration of the security interest in the Immovable.
- b) Until the mortgage created hereunder is released, to maintain the Immovable in good condition and to preserve and secure the value of the Immovable and refrain from affecting the rights created in favor of the Mortgagee hereunder and not to sell, rent, exchange, mortgage or otherwise dispose of the Immovable other than upon the written prior approval of the Mortgagee. This prohibition shall be noted upon registering the mortgage created hereunder with the Real Estate Book.
- c) To notify the Mortgagee of any proposed structural changes or of other measures which may decrease the value of the Immovable, including without limitation all the proposals to move, renovate or demolish any part of the physical structures and to refrain from putting into practice any such measures without the written prior consent of the Mortgagee.
- d) To ensure Mortgagee's access to the Immovable for carrying out inspections whenever required by the Mortgagee by prior written notification, and to fully cooperate on any such inspection being understood that the Mortgagee has been granted hereby the right

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<sup>7</sup> If the insurance policy is to be concluded after the execution of the Mortgage Agreement, this statement, modified accordingly, shall be moved to Article 5 "Covenants". See also the footnote below.

<sup>8</sup> To be inserted in case that the insurance policy is to be concluded after the execution of the Mortgage Agreement, in which case, the statement preceding the square parenthesis shall be deleted.

to supervise the existence and preservation condition of the Immovable throughout the validity of this Agreement.

- e) To defend and warrant the Mortgagee's rights hereunder against the claims and requests of any third party and to inform promptly the Mortgagee of any claim or demand of any person in relation to the Immovable.
- f) To promptly pay when due any duties, taxes and charges levied on the Immovable, to promptly fulfil all the other obligations required for securing the registration of the mortgage created hereunder with the Real Estate Book and with the Archive and to obtain a certificate from the competent fiscal authority confirming the payment of all taxes, charges and duties charged for the Immovable and of those charged in connection with the registration of this Agreement and to prove by documents all the above, at any time, on Mortgagee's request.
- g) To fully and promptly pay and/or reimburse all the costs and expenses arising from this Agreement, in connection with or as a consequence of this Agreement, and from conclusion/authentication/registration/erasure and carrying out/enforcement of this Agreement and to pay all the duties (including stamp duties), fees and charges regarding this Agreement and the authentication and registration hereof, and of any necessary/required statements, notices, certificates related to the operations above, as well as those incurred with the release or enforcement of the mortgage created hereunder, it being understood that the mortgage created hereunder shall be granted to the Mortgagee without cost to the Mortgagor and that all duties, debts, deductions, costs or other charges, present or future, arising from this Agreement shall be borne by the Mortgagor.
- h) Upon prior written request of the Mortgagee, to properly and duly prepare and execute, obtain and deliver to the Mortgagee any and all instruments and documents as the Mortgagee may require to enjoy all the benefits under this Agreement and exercise the rights and powers herein.

## **9. Enforcement**

- 9.1 In the event that the Mortgagor fails to properly fulfill any of the Secured Obligations or upon the occurrence of any other event representing, according to the provisions of the Facility Agreement, an event of default or a potential event of default, determining all and any Secured Obligations to become due and payable, the Mortgagee may proceed with the forced execution of the Immovable, without the obligation to send a notice of delay to the Mortgagor and without further demand.
- 9.2 The Mortgagor is entitled to enforce all its rights hereunder and any other rights to which a mortgagee is entitled under the Romanian law as and when it may see fit without being liable for any loss entailed by such enforcement or as a result of the postponement of the enforcement of this Agreement.

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### **NESTOR NESTOR DICULESCU KINGSTON PETERSEN**

## 10. Applicable law

This Agreement is governed by Romanian law.

## 11. Final provisions

11.1 This Agreement represents an enforceable title.

11.2 The Mortgagor shall indemnify the Mortgagee and hold it harmless from any and all claims, charges and lawsuits raised and/or submitted by third parties in respect of or relating to the Immovable, to this Agreement and its enforcement, except to the extent such claim, charge or lawsuit arises out of Mortgagee's gross negligence or willful misconduct.

11.3 If under any applicable law or regulation, and whether pursuant to a judgment or other legal procedure made against the Mortgagor or the liquidation of the Mortgagor or for any other reason, any payment under or in connection with this Agreement is made or is required to be satisfied in a currency other than •<sup>9</sup>, and the amount of such payment actually received by the Mortgagee, when converted into •<sup>10</sup> at the Exchange Rate, falls short of the •<sup>11</sup> amount due under the Facility Agreement, the Mortgagor, as a separate and independent obligation, shall remain liable to the Mortgagee for the payment in full of the amount of such balance. For the purposes of this clause, "Exchange Rate" means the rate at which the Mortgagee is able to purchase •<sup>12</sup> with the currency in which the payment was actually made and shall take into account any premium and other costs of exchange with respect thereto.

11.4 No failure on the part of Mortgagee to exercise, and no delay on its part in exercising any right or remedy under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right or remedy preclude any other or further or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

11.5 In the event that any of the provisions of this Agreement is or becomes thereafter illegal, invalid or unenforceable under the applicable law, the legality, validity and enforceability of such provision under the law as well as of the other provisions of this Agreement shall not be affected or prejudiced by it. The Parties shall use their best efforts in order to perform those acts and/or modifications as are necessary to generate the same legal and/or economic result that was aimed upon the conclusion of this Agreement.

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<sup>9</sup> The currency of the Facility.

<sup>10</sup> Same as above.

<sup>11</sup> Same as above.

<sup>12</sup> Same as above.

11.6 This Agreement comes in force upon its execution and ceases to be valid upon the full performance by the Mortgagor of the Secured Obligations.

11.7 Any correspondence, information or notice sent to the address specified herein shall be deemed validly sent if delivered by hand or by registered mail provided that the Mortgagor does not previously inform the Mortgagee with respect to the change of its name, identity or place of business/residence. Notices, information, and any other correspondence shall be also deemed properly given or made if sent by telefax at the following numbers [in case that a facsimile-generated confirmation statement is retained by the sender and delivered to the recipient upon request]:

To the Mortgagee

Fax: \_\_\_\_\_

Attn.: \_\_\_\_\_

To the Mortgagor

Fax: \_\_\_\_\_

Attn.: \_\_\_\_\_

Concluded in • original counterparts in Romanian language.

For and on behalf of  
**Mortgagee**

\_\_\_\_\_  
Name:

Title:

For and on behalf of  
**Mortgagor**

\_\_\_\_\_  
Name:

Title:

(\* ) Modify as needed in case that the mortgage created hereunder is not a first rank mortgage.

[Authentication by Romanian public notary]

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NESTOR NESTOR DICULESCU KINGSTON PETERSEN

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