

## RETAIL ESTATES NV

Limited liability company, public regulated real estate company under Belgian law

Registered office: Industrielaan 6, 1740 Ternat

RLE of Brussels: 0434.797.847

(the “**Company**”)

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### SPECIAL REPORT OF THE BOARD OF DIRECTORS DRAWN UP IN ACCORDANCE WITH ARTICLE 604 OF THE BELGIAN COMPANIES CODE

#### WITH REGARD TO THE SPECIAL CIRCUMSTANCES IN WHICH THE AUTHORISED CAPITAL CAN BE USED AND THE INTENDED AIMS OF THAT USE

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## 1. INTRODUCTION

This special report is drawn up by the Company’s board of directors (the “**Board of Directors**”) in accordance with article 604 of the Belgian Companies Code.

By resolution of the extraordinary general meeting of shareholders of the Company, adopted on 23 July 2018, the board of directors of the Company (the “**Board of Directors**”) was authorised, during a period of five years starting from the publication of this resolution in the Annexes to the Belgian Official Gazette, to increase the Company’s issued capital in one or more instalments by a maximum amount of (a) EUR 256,225,278.98 for public capital increases by means of cash contributions, providing for the possibility to exercise the preferential subscription right or the priority allocation right by the shareholders of the Company (b) EUR 128,112,639.49 for capital increases within the context of the distribution of an optional dividend, (c) EUR 256,225,278.98 for all other forms of capital increase; on the understanding that within the context of this authorisation, the capital can never be increased to exceed the maximum amount of EUR 256,225,278.98 during the period for which the authorisation was granted. This resolution was published in the Annexes to the Belgian Official Gazette on 6 August 2018, which means that in principle, this authorisation is valid until 6 August 2023.

The Board of Directors has used the authorisation to increase the capital six times since 6 August 2018:

- a first time on 26 September 2018, whereby the capital of Retail Estates was increased with EUR 787,513.64 within the context of a contribution in kind;
- a second time on 1 April 2019, whereby the capital of Retail Estates was increased with EUR 900,015.58 within the context of a contribution in kind;
- a third time on 1 April 2019, whereby the capital of Retail Estates was increased with EUR 630,010.91 within the context of a contribution in kind;
- a fourth time on 24 June 2019, whereby the capital of Retail Estates was increased with EUR 7,584,048.82 within the context of a contribution in kind in relation to the distribution of an optional dividend;

- a fifth time on 26 June 2019, whereby the capital of Retail Estates was increased with EUR 16,875,292.20 within the context of a contribution in kind;
- a sixth time on 22 July 2019, whereby the capital of Retail Estates was increased with EUR 1.187.075.56 within the context of a contribution in kind.

Currently, the available balance of the authorized capital equals:

- a) EUR 256,225,278.98 in the event of public capital increases by means of a contribution in cash, with the possibility for the shareholders of Retail Estates to exercise the preferential subscription right or of the priority allocation right;
- b) EUR 120,528,590.67 in the event of capital increases by means of the distribution of an optional dividend;
- c) EUR 235,845,371.09 in the event of a capital increase other than the capital increases set out in (a) or (b).

This report relates to the proposal to extend the authorisation granted to the Board of Directors to increase the Company's share capital in the context of the authorised capital. This proposed extension does not in any event affect the authorisation granted to the board of directors at the extraordinary general meeting of 23 July 2018, which will remain in full force and effect under the conditions and modalities laid down by the extraordinary general meeting of 23 July 2018 (as amended within the context of the proposed extension). This proposed extension is merely incidental to the existing authorisation and does not replace it.

The Board of Directors will present a number of alternative proposals to the extraordinary general meeting of shareholders of the Company, which will be held on or around Friday 6 December 2019 ("**EGM I**") and, should the attendance quorum not be reached at EGM I, to the extraordinary general meeting of the Company that will be held on or around 23 December 2019 ("**EGM II**"), to extend this existing authorisation in the context of the authorised capital (which will be maintained), in accordance with article 604 of the Belgian Companies Code ("**BCC**"), so that the Company can from now on, in addition to the options already available, also make use of all possibilities provided by the Act of 12 May 2014 on regulated real estate companies (the "**RREC Act**") (including the recently created possibility of a capital increase in cash with cancellation of the preferential subscription right and without granting a priority allocation right under the conditions set out in the RREC Act) and will in the future (as soon as the company will be subject to the new Belgian Code of Companies and Associations ("**BCAC**")) be able to make use of all possibilities offered by the BCAC:

for capital increases by way of cash contributions that do not provide for the possibility to exercise the preferential subscription right or the priority allocation right by the shareholders of Retail Estates,

- i) principally, to grant authorisation, during the remaining period of the authorisation granted by the extraordinary general meeting of 23 July 2018, to increase the share capital in one or more instalments, at any time by a maximum amount equalling 10% of the amount of the capital at the moment on which the resolution for an increase of capital is adopted, if and to the extent that the aggregate amount of the capital increases performed over a period of 12 months in accordance with this paragraph

does not exceed 10% of the amount of the capital at the moment on which the resolution for an increase of capital is adopted;

- ii) if the extraordinary general meeting does not approve the proposal under i), to grant authorisation, during the remaining period of the authorisation granted by the extraordinary general meeting of 23 July 2018, to increase the share capital by a *(total) maximum amount equalling 10% of the amount of the share capital on 23 July 2018, rounded down to the nearest euro cent*, on the understanding that the board of directors will only be allowed to increase the capital in accordance with this item if and to the extent that the aggregate amount of the capital increases performed over a period of 12 months in accordance with this paragraph does not exceed 10% of the amount of the capital at the moment on which the resolution for an increase of capital is adopted;

and on the understanding that the board of directors, under the authorisation granted by the extraordinary general meeting of 23 July 2018, as extended by the extraordinary general meeting that approves this additional authorisation, will in no case be allowed to increase the share capital by more than the legal maximum amount, i.e. the amount of the share capital on 23 July 2018.

For the avoidance of doubt it is specified that, should the extraordinary general meeting fail to adopt the proposal, the existing authorisation granted by the extraordinary general meeting of 23 July 2018 will remain in full force and effect.

In accordance with the stipulations of article 604 BCC, this special report will discuss in detail the special circumstances under which the Board of Directors will be authorised to exercise the additional authorisation within the context of the powers granted under the authorised capital, as well as the aims for which the board of directors can exercise this authorisation.

#### **A. Circumstances under which the authorised capital can be used**

The Board of Directors submits the proposal to the shareholders of Retail Estates to extend the authorisation in the context of the authorised capital for a period of five years from the publication of the resolution of the extraordinary general meeting of 23 July 2018 in the Annexes to the Belgian Official Gazette. The current authorisation in the context of the authorised capital will not be cancelled by this extension.

The circumstances under which the current authorisation in the context of the authorised capital can be exercised were described in the report submitted to the extraordinary general meeting of 23 July 2018 in accordance with art. 604 BCC. This report in accordance with art. 604 BCC is available on the website of Retail Estates: <https://www.retailstates.com/nl/agenda>. The board of directors will also be allowed to exercise the existing authorisation under these circumstances in the future.

If the extraordinary general meeting of Retail Estates adopts the proposal to extend the authorisation in the context of the authorised capital of the board of directors, the latter proposes to modify the conditions under which the (existing and extended) authorisation can be exercised as follows:

- As soon as Retail Estates will be subject to the BCAC, the references to (certain articles of) the BCC must be read as references to (the corresponding articles of) the BCAC and references to the concept of "warrants" must be read as "subscription rights".
- To the extent that the circumstances referred to in the report submitted to the extraordinary general meeting of 23 July 2018 in accordance with the provisions of art. 604 BCC are no longer consistent with the binding provisions of the BCAC, the board of directors will, as from the moment on which the BCAC will become applicable to the Company, no longer be allowed to exercise the existing authorisation under the relevant inconsistent circumstances, without prejudice to the other circumstances under which the existing authorisation can be exercised.
- As soon as the BCAC will become applicable to the Company, the board of directors will be allowed to exercise its authorisation in the context of the authorised capital for the issue of shares without indication of nominal value below the par value of the old shares of the same kind.
- However, as soon as the BCAC will become applicable to the Company, the board of directors will not (or no longer) be allowed to exercise this authorisation for:
  - the issue of shares with multiple voting rights or of securities entitling the issue of or the conversion into shares with multiple voting rights (art. 7:201, 2° BCAC); or
  - the issue of a new kind of securities (art. 7:201, 4° BCAC).
- In addition, the board of directors will in the future no longer have the obligation to deposit any issue premiums requested on the occasion of the capital increase on an unavailable reserve account that will constitute a guarantee for third parties in the same manner as the capital and that, subject to its incorporation into the capital, can only be reduced or cancelled by resolution of the general shareholders' meeting deliberating under the conditions as to quorum and majority required for an amendment to the articles of association. The board of directors will, should the occasion arise, record the issue premiums on one or several separate accounts under the item "equity" on the liabilities' side of the balance sheet. The management body is free to decide to deposit the issue premiums, possibly after deduction of an amount not larger than the costs of the capital increase within the meaning of the applicable IFRS rules, on an unavailable reserve account that will constitute a guarantee for third parties in the same manner as the share capital and that, subject to its incorporation into the capital, can only be reduced or cancelled by resolution of the general shareholders' meeting deliberating under the conditions laid down in the applicable legislation.
- In addition, the above-mentioned restrictions relating to the cancellation or restriction of the preferential subscription right will no longer be applicable if such restrictions are not required by the RREC Act (e.g. in case of a cash contribution in the context of the authorised capital, if the cumulated amount of the capital increases that will take place in accordance with article 26, §1, third section, of the RREC Act over a period of 12 months does not exceed 10% of the amount of the capital at the moment on which the resolution for a capital increase is adopted).

For the avoidance of doubt it is specified that, without prejudice to the application of articles 592 to 598 and 606 BCC (or, in the future, articles 7:188 to 7:193 and 7:201 BCAC), the board of directors can restrict or cancel the preferential subscription right in the context of (direct or indirect) capital increases in cash, even in favour of one or several persons other than staff members of Retail Estates or its subsidiaries, provided that existing shareholders are granted a priority allocation right upon allocation of new securities (if legally required). This priority allocation right must, as the case may be, at least meet

the requirements referred to in article 6.4 of the Company's articles of association. Without prejudice to the application of articles 592 to 598 BCC (or in the future, articles 7:188 to 7:193 BCAC) and articles 595 to 599 BCC (or, in the future, articles 7:190 to 7:194 BCAC) respectively, the above-mentioned restrictions relating to the cancellation or restriction of the preferential subscription right are not applicable (i) in case of a cash contribution in the context of the authorised capital, if the aggregate amount of the capital increases that will take place in accordance with article 26, §1, third section, of the RREC Act over a period of 12 months does not exceed 10% of the amount of the capital at the moment on which the resolution for a capital increase is adopted and (ii) in case of a cash contribution with restriction or cancellation of the preferential subscription right, in addition to a contribution in kind in the context of the distribution of an optional dividend, provided that this is open to all shareholders.

In case of an issue of securities against a contribution in kind, the conditions laid down in article 6.4 of the Company's articles of association must be met (including the possibility to deduct an amount that corresponds to the part of the gross dividend that is not distributed). The special rules relating to capital increases in kind, as laid down in article 6.4. of the Company's articles of association, are in any case not applicable to the contribution of the right to a dividend in the context of the distribution of an optional dividend, provided that this is open to all shareholders.

If the extraordinary general meeting of Retail Estates adopts the proposal to extend the authorisation in the context of the authorised capital of the board of directors, the latter proposes to modify article 6.2 so that the new article 6.2 reads as follows:

#### **"6.2. Authorised capital**

*The Board of Directors is authorised to increase the company's share capital on one or more occasions, up to a maximum amount of:*

*(a) two hundred and fifty-six million two hundred and twenty-five thousand two hundred and seventy-eight euro ninety-eight cents (EUR 256,225,278.98) for public capital increases by means of a cash contribution, providing for the possibility to exercise the preferential subscription right or the priority allocation right by the shareholders of the Company,*

*(b) one hundred and twenty-eight million one hundred and twelve thousand six hundred and thirty-nine euro forty-nine cents (EUR 128,112,639.49) for capital increases within the context of an optional dividend distribution,*

*(c) [[EITHER: at any time, 10% of the amount of the capital at the moment on which the decision to increase the capital is adopted, / OR: (a total of) 10% of the amount of the share capital on the date of the extraordinary general meeting of 23 July 2018, rounded down to the nearest euro cent], for capital increases by cash contributions not providing for the possibility to exercise the preferential subscription right or the priority allocation right by the shareholders of the Company, on the understanding that the board of directors will only be allowed to increase the capital in accordance with this item (c) if and to the extent that the aggregate amount of the capital increases performed over a period of 12 months in accordance with this paragraph does not exceed 10% of the amount of the capital at the moment on which the resolution for a capital increase is adopted.]]<sup>1</sup>*

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<sup>1</sup> This paragraph will only be inserted in the articles of association if the extraordinary general meeting approves one of the alternative proposals.

(d) two hundred and fifty-six million two hundred and twenty-five thousand two hundred and seventy-eight euros and ninety-eight cents (EUR 256,225,278.98) for all other forms of capital increase; on the understanding that within the context of this authorisation, the share capital can never be increased by more than the maximum amount of the share capital on 23 July 2018 during the period for which the authorisation was granted.

This authorisation is conferred on the board of directors for a period of five years as from the publication in the Annexes to the Belgian Official Gazette of the amendment to the articles of association, adopted by the extraordinary shareholders' meeting of 23 July 2018. This authorisation can be renewed. The board of directors shall determine the price, the issue premium and the issue conditions for the new shares, unless these decisions are taken by the shareholders' meeting.

Within the above limits and without prejudice to the mandatory provisions of the applicable legislation, the board of directors can decide to increase the capital by means of contributions in cash or contributions in kind, the conversion of reserves or issue premiums as well as of shareholders' equity under the statutory IFRS annual accounts of the company (prepared in accordance with the application regulations) that qualify for conversion, with or without the issuance of new shares of one or more existing types. The board of directors is also authorised by the shareholders' meeting to issue other securities, including but not limited to (subordinated or non-subordinated) warrants (subscription rights).

Moreover, the board of directors is allowed to restrict or cancel the preferential subscription right granted to the shareholders, including those in favour of one or more persons other than the staff members of the company or of one of its subsidiaries, provided that a priority allocation right is granted to the existing shareholders upon the distribution of new securities (if legally required). This priority allocation right, if any, shall meet the requirements determined by the RREC legislation and article 6.4 of the articles of association.

That right must in any case not be granted in case of a contribution in cash (i) in the context of the distribution of an optional dividend under the conditions provided for by article 6.4 of the articles of association or (ii) in the context of the authorised capital, and the aggregate amount of the capital increases that will take place in accordance with article 26, §1, third section, of the RREC Act over a period of 12 months does not exceed 10% of the amount of the capital at the moment on which the resolution for a capital increase is adopted.

Capital increases by means of a contribution in kind shall be carried out in accordance with the requirements determined by the RREC legislation and article 6.4 of the articles of association. Such contributions can include a right to a dividend in the context of an optional dividend distribution.

Without prejudice to the authorisation granted to the board of directors in accordance with the preceding paragraphs, the board of directors is authorised to proceed to one or more capital increases, in the event of a public takeover bid for all of the company's shares, under the conditions set forth in the applicable company law, provided that the company has received an acknowledgement of the takeover bid from the Financial Services and Markets Authority (FSMA) within a period of three years from the extraordinary shareholders' meeting of 23 July 2018. If applicable, the board of directors must (if legally required) respect the priority allocation right provided for by the RREC legislation. Capital increases carried out by the board of directors pursuant to this authorisation will be deducted from the remaining authorised capital, mentioned in the first paragraph.

If the board of directors requests payment of an issue premium on the occasion of its decision to increase the capital, this issue premium shall be recorded on one or more separate accounts under the item "equity" on the liabilities' side of the balance sheet. The Board of Directors is free to decide to deposit the amount of this premium, possibly after deduction of an amount that does not exceed the costs of the

capital increase within the meaning of the applicable IFRS rules, on an unavailable account, called “issue premium”, that will constitute a guarantee for third parties in the same manner as the share capital and that, subject to its incorporation into the capital, can only be reduced or cancelled by resolution of the general shareholders’ meeting deliberating under the conditions laid down in the applicable legislation.”

## **B. Aims for which the authorised capital can be used**

The aims for which the current authorisation in the context of the authorised capital can be used were described in the report submitted to the extraordinary general meeting of 23 July 2018 in accordance with art. 604 BCC:

*“The purpose of the authorisation granted to the board of directors by the general meeting is, among other things, to allow the board of directors to respond to the quick evolution of the capital markets, the interest rates, the stock market price of the shares of the Company as well as other economic factors, in order to realize quickly and efficiently one or several operations (e.g. the structuring of acquisitions, demergers or mergers, the completion of new funding rounds, reacting to opportunities and all proposals for contributions in cash or in kind, by means of a mixed contribution or by conversion of reserves, including profits carried forward and issue premiums, as well as shareholders’ equity under the statutory IFRS annual accounts of the company that qualify for conversion in capital, etc.) which may or may not require the issue of new securities of the Company. The financial means thus put at the Company’s disposal should enable the Company to strengthen its financial position.*

[...]

*Furthermore, the technique of the authorised capital offers the Board of Directors a degree of flexibility and speed of execution that is required for an optimal management of the Company and further development of its activities and means for action. In certain circumstances, the time-consuming and rigorous procedure of convening an extraordinary general meeting may be incompatible with the fluctuations on the capital markets or specific opportunities that may arise for the Company. This may work to the disadvantage of the Company. In addition, it’s perfectly imaginable that due to the urgent nature or other characteristics of the situation, a capital increase in the context of the authorised capital would serve the company’s interests better than the lengthy procedure for convening an extraordinary general meeting.”*

The board of directors will also be allowed to exercise the existing authorisation in the future for these purposes.

If the extraordinary general meeting of Retail Estates adopts the proposal of the board of directors to extend the authorisation in the context of the authorised capital, the board of directors will be allowed to use the authorised capital, among other things, in the context of an “accelerated bookbuilding” (ABB), a capital increase of which the composition of the order book is spread over a short period of a few hours or a few days using few or no promotional tools, in order to make it possible for the Company to find funding quickly and/or to benefit from special market circumstances. In view of the deadlines, such a

transaction is only possible with use of the authorised capital and cancellation of the preferential subscription right and the priority allocation rights.

However, the possibility to perform an ABB procedure is legally limited at this moment, in the sense that the aggregate amount of the capital increases which, within the context of the provisions of article 26 § 1, third section, of the RREC Act (i.e. with exercise of the authorisation proposed above under item (c)), take place over a period of twelve months (including the ABBs), cannot exceed 10% of the amount of the capital at the moment of the capital increase concerned.

Like before, the board of directors can also specifically exercise the authorisation in the context of the authorised capital if it appears that a capital increase in the short term (e.g. by issue of convertible bonds or warrants (referred to as "subscription rights" under the BCAC)) and, as the case may be, without the possibility for the shareholders of the Company to exercise preferential subscription rights or priority allocation rights (as referred to in the RREC Act), is advisable in the Company's interests.

The board of directors can also use the authorised capital within the context of the Company's remuneration policy, for instance for the allocation of shares, share options or warrants to staff members, directors, managers or consultants of the Company and its subsidiaries, as well as to persons who proved themselves useful for the Company and its subsidiaries within the framework of their professional activity.

The board of directors can also use the authorised capital to remunerate the shareholders in a specific manner, e.g. payment of a dividend in the form of shares, or to offer them an optional dividend.

The board of directors furthermore wishes to clarify that the above-mentioned conditions under which the authorised capital can be used and the above-mentioned purposes of its use are to be interpreted in the broadest sense and that the above-mentioned enumeration of the purposes is not exhaustive.

## **2. CONCLUSION**

The Board of Directors therefore proposes to EGM I or, should the attendance quorum not be reached at EGM I, to EGM II, to extend the authorised capital under the conditions laid down in this special report.



Ternat, 25 October 2019.

On behalf of the board of directors of Retail Estates NV,

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Jan De Nys  
Director

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Kara De Smet  
Director