

**DATED**

**2009**

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- (1) MONMOUTHSHIRE COUNTY COUNCIL
- (2) HENRY BOOT DEVELOPMENTS LIMITED

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## **BUILDING AGREEMENT**

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relating to sale, development and letting of property at  
Abergavenny Cattle Market

Eversheds LLP  
1 Callaghan Square  
Cardiff  
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**Documents attached to this Agreement**

1. Plan of Retained Buildings
2. The Lease
3. Land Registry Entries
4. Warranties
5. Amendments to the Building Contract

6. Appointments
7. Licence
8. Legal Charge 1
9. Legal Charge 2
10. Appraisal Summary
11. Asda Step-In Agreement

## PARTICULARS

**Date**

**Landlord**

MONMOUTHSHIRE COUNTY COUNCIL of County Hall, Cwmbran, NP44 2XH

**Tenant**

HENRY BOOT DEVELOPMENTS LIMITED (registered number 1390361) whose registered office is at Banner Cross Hall, Sheffield S11 9PD

**Agreed Percentage**

Fifty percent

**Completion Date**

the date ten working days after either the Landlord or the Tenant (as appropriate) has given written notice to the other that the last of the Purchase Conditions has been satisfied

**Contract Rate**

4% above the base rate from time to time of Barclays Bank plc or such other clearing bank nominated by the Landlord at any time or, if the clearing banks cease at any time to publish a base lending rate, such comparable rate of interest as the Landlord may reasonably determine.

**Deposit**

£420,000

**Tenant's Solicitors**

Bevan Brittan of 35 Colston Avenue Bristol BS1 4TT (Ref: GWL/32890/31) or such other solicitors as the Tenant may appoint and notify in writing to the Landlord.

**Development**

the construction on the Property of:

- (a) an Asda store having a ground floor Gross Area of 3994.7 square metres and first floor mezzanine of 241.6 square metres and having a Retail Sales Area of not more than 2601.2 square metres in total of which not more than 40% of the Retail Sales Area will be used for non convenience goods sales and of which not less than 60% of the Retail Sales Area will be used for the sale of convenience goods and together with a marshalling area having a Gross Area of 271 square metres;
- (b) surface level car parking for not fewer than 180 cars;

- (c) undercroft parking for not fewer than 170 cars;
- (d) Residential Units along Priory Lane with a Gross Area of not less than 2,252 square metres of which at least 20% of the aggregate number of Residential Units will be Affordable Units which Affordable Units are to be fully fitted out to enable them to be brought into immediate beneficial use and occupation (subject to the provisions of **paragraph 1.4 of Schedule 3**);
- (e) two non food retail units having an aggregate Gross Area of not less than 1,441 square metres;
- (f) diversion of all necessary services including the diversion of the existing culvert;
- (g) all ancillary service areas, access roads, landscaping works and other facilities;
- (h) the demolition of the existing buildings on the Retained Buildings and the construction in its place (using inter alia stone reclaimed in such demolition) of a library which is to have a Gross Area of not less than 871 square metres or at the option of the Landlord a library having a Gross Area of 802 square metres and a two screen cinema with a minimum combined seating capacity for 300 persons;
- (i) a pedestrian linkage running from Lion Street through to Bailey Park with a minimum width of 3.5 metres;
- (j) a parking area for a mobile library;
- (k) such works as are required to facilitate vehicular and pedestrian access to and egress from the Premises to and from the public highway for the purposes of the Development Works including (without prejudice to the generality of the forgoing) the construction of any necessary roundabouts and any necessary road widening and other associated highway works; and
- (l) the carrying out of the Services Works

more particularly described in the Specification.

**Longstop Date**

3 years from the date of this Agreement subject to extension in the circumstances specified in **Schedules 8 and 11**.

**Landlord's Representative**

Charles Russell-Smith of Alder King Property Consultants, Pembroke House, 15 Pembroke Road, Bristol, BS8 3BA or such other surveyor who is a member of the Royal Institution of Chartered Surveyors as the Landlord may appoint and notify in writing to the Tenant.

**Landlord's Solicitors**

Eversheds LLP of 1 Callaghan Square Cardiff CF10 5BT (Ref: 5.JSM.8161) or such other solicitors as the Landlord may appoint and notify in writing to the Tenant.

**Plan**

The plan attached to this Agreement.

**Property**

The freehold property known as The Abergavenny Cattle Market registered at the Land Registry under the Title Number excluding the Retained Buildings.

**Purchase Price**

£8,400,000 (Eight million four hundred thousand pounds) subject to adjustment in accordance with **paragraph 3 of Schedule 3** and the provisions of **Schedule 13**.

**Retained Buildings**

The land and buildings shown for identification edged red on the plan attached to this Agreement and forming part of the land registered at the Land Registry under the Title Number (excluding the Property).

**Title Number**

CYM175117.

**THIS AGREEMENT** is made on the date set out in the Particulars

**BETWEEN**

- (1) the Landlord; and
- (2) The Tenant.

**BACKGROUND**

- (A) The Landlord is the freehold owner of the Property and the Retained Buildings and has agreed to let the Property to the Tenant.
- (B) The Tenant has agreed to accept the grant of a lease of the Property and carry out the Development Works and pay the Additional Consideration to the Landlord on the terms of this Agreement.

**OPERATIVE PROVISIONS**

**1. INTERPRETATION**

1.1 In this Agreement, the following words and expressions have the following meanings:

- “Actual Expenditure”** the actual expenditure incurred in relation to the Items of Expenditure in respect of each Development Category
- “Additional Consideration”** the additional consideration payable to the Landlord by the Tenant in accordance with **Schedule 14**
- “Adverse Matters”** any change in the Development Works or any terms contained in a Planning Permission, Planning Agreement or a Statutory Consent or any other agreement with a third party which would or may:
  - (a) increase the Retail Sales Area of item (a) in the definition of “Development”
  - (b) reduce the Retail Sales Area of item (a) in the definition of “Development” by more than five percent
  - (c) decrease the percentage of convenience goods sales or increase the percentage of non-convenience goods sales referred to in item (a) in the definition of “Development”
  - (d) increase the Gross Area of the foodstore

referred to in item (a) of the definition of “Development”

- (e) alter the Gross Area of any of the individual components listed in items (d), (e) and (h) in the definition of “Development” by more than five per cent;
- (f) if the Development includes the Cinema Works reduce the minimum number of seats in the cinema (which will form part of the Retained Buildings) to less than 300;
- (g) materially alter the external elevation of the buildings or the treatment of the public realm forming part of the Development;
- (h) reduce the number of car parking spaces and/or result in any car parking spaces being above surface level;
- (i) alter the position of the pedestrian access;
- (j) delay the anticipated Date of Practical Completion;
- (k) substantially increase the cost of the Development;
- (l) further restrict the permitted use or uses of the Development; and
- (m) not provide adequate parking for a mobile library.

**“Affordable Units”**

means any low cost market and rented housing (irrespective of tenure exclusive of shared ownership or financial arrangements that will be available to people who cannot afford to occupy houses generally available on the open market) required to be constructed on part of the Development pursuant to the terms of the Planning Agreement

**“AMAL”**

Abergavenny Market Auctioneers Limited

**“Appointment”**

each of the deeds of appointment of the Professional Team to be entered into in

	accordance with <b>paragraphs 2 and 3 of Schedule 2</b>
<b>“Appointment Default”</b>	the rescission of the Building Contract or any Appointment without the express written consent of the Landlord or their determination due to the act or default of the Tenant
<b>“Appraisal Summary”</b>	the appraisal summary attached to this Agreement
<b>“Archaeological Consultant”</b>	such archaeological consultant as the Tenant or the Building Contractor appoints as the Archaeological Consultant for the Development Works in accordance with <b>paragraph 1 of Schedule 2</b>
<b>“Architect”</b>	such architect as the Tenant or the Building Contractor appoints as the Architect for the Development Works in accordance with <b>paragraph 1 of Schedule 2</b>
<b>“Asda Step-In Agreement”</b>	the agreement to be made between (1) the Landlord (2) the Tenant and (3) McLagan in the form of the attached draft
<b>“Associated Company”</b>	has the meaning given to it in section 416 Income and Corporation Taxes Act 1988
<b>“Building Contract”</b>	a single building contract for the carrying out of the Development Works to be entered into in accordance with <b>paragraph 1 of Schedule 2</b>
<b>“Building Contractor”</b>	such building contractor as the Tenant appoints as the building contractor for the purposes of the Development Works in accordance with <b>paragraph 1 of Schedule 2</b>
<b>“CDM Regulations”</b>	The Construction (Design and Management) Regulations 1994
<b>“Certificate of Making Good Defects”</b>	the certificate to be issued in accordance with the Building Contract certifying that all defects in the Development Works relating to the Retained Buildings which are the responsibility of the Building Contractor have been made good in accordance with the terms of the Building Contract
<b>“Certificate of Practical Completion”</b>	the certificate or statement to be issued in accordance with the Building Contract certifying that Practical Completion has taken place

<b>“Certifying Officer”</b>	such project manager as the Tenant or the Building Contractor appoints as the Project Manager for the Development Works in accordance with <b>paragraph 1 of Schedule 2</b>
<b>“Cinema Works”</b>	the works to the Retained Buildings to provide for a combined library and cinema as notified by the Landlord to the Tenant in accordance with <b>paragraph 1.1 of Schedule 3</b>
<b>“Commercial Conditions”</b>	the Standard Commercial Property Conditions (First Edition)
<b>“Commercial Unit”</b>	a lettable unit of accommodation within the Property forming part of the completed Development except the Residential Units
<b>“Date of Actual Completion”</b>	the date on which the grant of the Lease takes place
<b>“Date of Practical Completion”</b>	the date certified in the Certificate of Practical Completion as the date of Practical Completion or otherwise determined as the date of Practical Completion in accordance with the terms of this Agreement
<b>“Deleterious Materials”</b>	<p>any products, substances or materials or any combination of them which at the time of specification are specified as deleterious materials in the Appointments or the Building Contract or which otherwise at the date of this Agreement:</p> <ul style="list-style-type: none"> <li>(a) do not conform with British or European Standards or Codes of Practice or the recommendations of the Building Research Establishment; and</li> <li>(b) are generally known to the building profession to be deleterious to health and safety, the performance or durability of buildings or structures or damaging to the environment in the particular circumstances in which they are specified to be used or are used</li> </ul>
<b>“Defects Liability Period”</b>	the defects liability period under the Building Contract
<b>“Development Account”</b>	the notional account to be maintained by the Tenant for the Development Costs in accordance

with **Schedule 12**

- “Development Category”** each of the five categories of expenditure pursuant to the Building Contract as set out in the left hand column of the attached Appraisal Summary
- “Development Costs”** the Items of Expenditure debited to the Development Account reduced by the Items of Receipt credited to the Development Account
- “Development Pre Conditions”** has the meaning given to it in **clause 3.2**
- “Development Plans”** the plans, drawings, sections, elevations, specifications, priced bills of quantities, engineer’s drawings and calculations and other design and building details for the Development Works to be produced in accordance with **paragraph 1 of Schedule 3**
- “Development Works”** the demolition of the existing buildings on the Property and the carrying out of the Development and includes any works required pursuant to any Planning Agreement
- “Disposal Proceeds”** the total of:
- (a) all premiums or other consideration of whatever nature (but excluding rental income) received or receivable by the Tenant as consideration for the grant of any underlease out of the Lease or any consideration of whatever nature (including premiums but excluding rental income) received or receivable by the Tenant under any agreement to assign the Lease or agreement to grant any such underlease; and
  - (b) all rental income paid under any underlease granted out of the Lease other than: annual open market rent paid one quarter in advance; or in the case of the Residential Units (whether or not Affordable Units) ground rent reserved in advance
- but for the avoidance of doubt an item falling within one paragraph above may not be taken into account in the other paragraph above

<b>“Drainage Consultant”</b>	such drainage consultant as the Tenant or the Building Contractor appoints as the Drainage Consultant for the Development Works in accordance with <b>paragraph 1 of Schedule 2</b>
<b>“Employer’s Agent”</b>	such person as the Tenant appoints as the Employer’s Agent for the purposes of the Building Contract in accordance with <b>paragraph 1 of Schedule 2</b>
<b>“Environmental Consultant”</b>	such environmental consultant as the Tenant or the Building Contractor appoints as the environmental consultant for the Development Works in accordance with <b>paragraph 1 of Schedule 2</b>
<b>“Event of Default”</b>	<p>the occurrence of one or more of the following events:</p> <ul style="list-style-type: none"> <li>(a) the Insolvency of the Tenant;</li> <li>(b) the Tenant commits a material breach of this Agreement and save where prevented from doing so by Force Majeure (unless caused by the Tenant) the Tenant: <ul style="list-style-type: none"> <li>(i) does not begin diligently to remedy that breach within 25 working days of its receipt of written notice from the Landlord or its agents or immediately in case of emergency; and</li> <li>(ii) does not remedy the breach within a reasonable period of time, to be specified in the notice (being not less than 35 working days) to the reasonable satisfaction of the Landlord or its agents</li> </ul> </li> </ul>
<b>“Estimated Expenditure”</b>	the estimated expenditure for each Development Category as shown in the attached Appraisal Summary
<b>“Force Majeure”</b>	<p>any one or more of the following:</p> <ul style="list-style-type: none"> <li>(a) fire</li> <li>(b) storm or other exceptionally adverse</li> </ul>

	weather conditions;
	(c) war, hostilities, rebellion, insurrection, military or usurped power or civil war;
	(d) labour lockouts, strikes or other industrial disputes;
	(e) riot, terrorist action, commotion, disorder;
	(f) decree of government;
	(g) non-availability of labour, materials or equipment; or
	(h) any other causes or circumstances beyond the reasonable control of the Tenant or the Building Contractor
<b>“Gross Area”</b>	gross internal area measured in square metres in accordance with the Code of Measuring Practice (Fifth Edition RICS/ISVA 2001)
<b>“Health and Safety Executive”</b>	the Health and Safety Executive or any successor department or organisation having responsibility for the administration of the CDM Regulations
<b>“Health and Safety Plan”</b>	any health and safety plan to be prepared in respect of the Development Works under regulation 15 of the CDM Regulations
<b>“Highways Consultant”</b>	such highways consultant as the Tenant or the Building Contractor appoints as the Highways Consultant for the Development Works in accordance with <b>paragraph 1 of Schedule 2</b>
<b>“Insolvency”</b>	has the meaning given to it in <b>Schedule 7</b>
<b>“Insured Risks”</b>	subject to insurance being available the risks of: <ul style="list-style-type: none"> <li>(a) fire, subterranean fire, lightning, storm, tempest, flood and explosion;</li> <li>(b) bursting or overflowing of water tanks, apparatus or pipes or the escape of water from any of them;</li> <li>(c) aircraft or other aerial devices or articles dropped or falling from any of them;</li> <li>(d) riot, civil commotion and malicious</li> </ul>

damage; and

- (e) impact, earthquake, heave, landslip, subsidence;

subject to such reasonable conditions as the insurers may impose in respect of the above risks

**“Internal Area”**

the net internal area of the buildings to be constructed on the Property and/or the Retained Buildings pursuant to the Development Works measured in square metres in accordance with the Code of Measuring Practice (Fifth Edition RICS/ISVA 2001)

**“Investor”**

any person approved in writing by the Landlord, such approval not to be unreasonably withheld or delayed, who has entered into an agreement with the Tenant to provide funding to the Tenant for the carrying out of the Development Works, whether or not in addition to purchasing the Property

**“Items of Expenditure”**

the costs of the Development Works detailed in **Part 2 of Schedule 12**

**“Items of Receipt”**

the Items of Receipt detailed in **Part 3 of Schedule 12**

**“Landscape Architect”**

such landscape architect as the Tenant or the Building Contractor appoints as the Landscape Architect for the Development Works in accordance with **paragraph 1 of Schedule 2**

**“Lease”**

a lease of the Property to be granted by the Landlord and accepted by the Tenant in the form of the agreed form of lease attached to this Agreement

**“Legal Charge 1”**

a legal charge over that part of the Tenant’s interest in the Property comprising the Residential Units to secure the Tenant’s development obligations set out in **paragraph 9 of Schedule 6** in the form of the draft legal charge marked “Legal Charge 1” attached to this Agreement which shall subject to the provisions of **clause 13.4** rank as a first legal charge

**“Legal Charge 2”**

a legal charge over the Tenant’s interest in the Property (excluding the Residential Units) to secure the Additional Consideration and payment

of the Purchase Price in the form of the draft legal charge marked “Legal Charge 2” attached to this Agreement which shall subject to the provisions of **clause 13.4** rank as a first legal charge

**“Library Works”**

the works to the Retained Buildings to provide for a library only as notified by the Landlord to the Tenant in accordance with **paragraph 1.1 of Schedule 3**

**“McLagan”**

McLagan Investments Limited of Asda House, Southbank, Great Wilson Street, Leeds LS11 5AD

**“Mechanical and Electrical Services Engineer”**

such mechanical and electrical services engineer as the Tenant or the Building Contractor appoints as the Mechanical and Electrical Services Engineer for the purposes of the Development Works in accordance with **paragraph 1 of Schedule 2**

**“New Leases”**

any leases, licences, tenancy agreements or other occupational agreements granted in respect of any Unit on the Property

**“Onerous Conditions”**

has the meaning given to it in **paragraph 1 of Part 2 of Schedule 8**

**“Outline Specification”**

the outline specification for the Development Works briefly described in **Schedule 4**

**“Payment Date”**

the date falling 10 working days after the Valuation Date

**“Planning Act”**

the Town and Country Planning Act 1990

**“Planning Agreement”**

an agreement or undertaking in respect of and affecting the Property, the Retained Buildings or the Development Works, whether or not also affecting other property, pursuant to:

- (a) section 106 of the Planning Act;
- (b) section 111 Local Government Act 1972;
- (c) sections 38 or 278 Highways Act 1980;
- (d) section 33 Local Government (Miscellaneous Provisions) Act 1981;
- (e) section 104 Water Industry Act 1991 or any other provision of similar intent, within the meaning of the Water Act

1989, with an appropriate authority for the supply of water or the drainage of surface or foul water from the Property; or

- (f) any agreement with an appropriate authority or utility company relating to the passage or transmission of gas, water, electricity, foul or surface water drainage or any of them

**“Planning Consultant”**

such planning consultant as the Tenant or the Building Contractor appoints as the Planning Consultant for the Development Works in accordance with **paragraph 1 of Schedule 2**

**“Planning Period”**

has the meaning given to it in **paragraph 1 of Part 1 of Schedule 8**

**“Planning Permission”**

has the meaning given to it in **paragraph 1 of Part 1 of Schedule 8**

**“Planning Supervisor”**

such planning supervisor as the Tenant appoints to be the Planning Supervisor for the purposes of the CDM Regulations in accordance with **paragraph 1 of Schedule 2**

**“Practical Completion”**

completion of the whole of the Development Works in accordance with the terms of the Building Contract but excludes:

- (a) any landscaping works that it is not possible to complete because of the planting season in which practical completion occurs; and
- (b) the Residential Fitting Out Works

**“Principal Sub-Contractors”**

the sub-contractors appointed or to be appointed by the Building Contractor for the carrying out of the following elements of the Development Works:

- (a) piling and foundations;
- (b) structural steel frame and roof structure;
- (c) floor slabs;
- (d) profiled metal cladding or curtain walling;

- (e) roofing; and
- (f) mechanical and electrical services

together with any other sub-contractors with a material design responsibility for the Development Works

**“Professional Team”**

each of the following:

- (a) the Architect;
- (b) the Employer’s Agent;
- (c) the Environmental Consultant;
- (d) the Mechanical and Electrical Services Engineer;
- (e) the Planning Supervisor;
- (f) the Project Manager if the Tenant chooses to appoint an external project manager;
- (g) the Quantity Surveyor;
- (h) the Structural Engineer;
- (i) the Tenant’s Representative;
- (j) the Drainage Consultant;
- (k) the Planning Consultant;
- (l) the Landscape Architect;
- (m) the Highways Consultant;
- (n) the Archaeological Consultant; and
- (o) the Certifying Officer

**“Programme of Works”**

the Programme of Works to be produced by the Tenant and approved by the Landlord in accordance with **paragraph 2 of Schedule 3**

**“Project Manager”**

such project manager as the Tenant appoints as the Project Manager for the purposes of the Development Works in accordance with **paragraph 1 of Schedule 2**

<b>“Purchase Conditions”</b>	has the meaning given to it in <b>clause 2.2</b>
<b>“Quantity Surveyor”</b>	such quantity surveyor as the Tenant or the Building Contractor appoints as the Quantity Surveyor for the purposes of the Development Works in accordance with <b>paragraph 1 of Schedule 2</b>
<b>“Reinstatement Cost”</b>	the costs, allowing for inflation during the period of reinstatement, of: <ul style="list-style-type: none"> <li>(a) debris removal, demolition, site clearance and complete reinstatement of the Development Works, assuming their total destruction; and</li> <li>(b) all the Professional Team’s design, legal and other professional fees</li> </ul>
<b>“Residential Fitting Out Works”</b>	any works to item (d) of the Development (not comprising the Affordable Units) over and above that required to construct the same to a structural shell finish to enable all of the Affordable Units to be brought into immediate beneficial use and occupation
<b>“Residential Unit”</b>	a residential apartment (which includes flats) and any other part of the Development designed and intended to be let or sold for residential use and their associated car parking spaces
<b>“Retail Sales Area”</b>	the net area of that part of the Store to be constructed on the Property which is to be used for the sale of food, convenience goods and other retail items measured in square feet in accordance with the Code of Measuring Practice (Fifth Edition RICS/ISVA 2001)
<b>“Repeal Condition”</b>	the condition described in <b>Schedule 11</b>
<b>“Satisfactory Planning Permission”</b>	has the meaning given to it in <b>paragraph 1 of Part 1 of Schedule 8</b>
<b>“Services Works”</b>	those parts of the Development Works comprising the installation of: <ul style="list-style-type: none"> <li>(a) electricity, foul and surface water drainage, gas, water, and public telephone services within the Property and/or the Retained Buildings to the public mains;</li> </ul>

	(b) internet, cable and other computer or telecommunications media; and
	(c) all pipes, wires, ducts and other conduits for the passage of such services
<b>“Site Assembly Condition”</b>	the condition described in <b>Schedule 9</b>
<b>“Site Investigation Condition”</b>	the condition described in <b>Schedule 10</b>
<b>“Specialist”</b>	has the meaning given to it in <b>clause 12</b>
<b>“Specification”</b>	the detailed specification of the Development Works to be prepared in accordance with <b>paragraph 1 of Schedule 3</b>
<b>“Statement of Practical Completion”</b>	a statement to be issued by the Certifying Officer pursuant to <b>clause 8 of Schedule 6</b> of this Agreement certifying that the Development Works which relate to the retained Buildings have reached Practical Completion
<b>“Statutory Consents”</b>	any statutory approvals, consents, licences or permissions required from any local or other competent authority to enable the Tenant lawfully to carry out and complete the Development Works or to reinstate them following their damage or destruction
<b>“Statutory Requirements”</b>	all or any of the following: <ul style="list-style-type: none"> <li>(a) any Acts of Parliament and any statutory instruments, rules, orders, regulations, notices, directions, bye-laws and permissions for the time being made under or deriving validity from any Act of Parliament;</li> <li>(b) any European directive or regulations and rules having the force of law in the United Kingdom; and</li> <li>(c) any regulations, orders, bye-laws or codes of practice of any local or statutory authority having jurisdiction over the Development Works</li> </ul>
<b>“Step-In Agreement”</b>	any agreement to be made between (1) the Landlord (2) the Tenant and (3) an Investor providing for the remedying of any Event of Default or complying with the terms of this Agreement on terms reasonably acceptable to the

	Landlord acting reasonably
“Store”	the Asda retail store comprised in the Development
“Structural Engineer”	such structural engineer as the Tenant or the Building Contractor appoints as the Structural Engineer for the purposes of the Development Works in accordance with <b>paragraph 1 of Schedule 2</b>
“Tenant’s Representative”	the person appointed by the Tenant as the Employer’s Agent
“Title Matters”	the agreements, covenants, declarations, easements, exceptions, provisions, reservations, stipulations and other matters referred to in the deeds and documents briefly described in <b>Schedule 1</b>
“Valuation Date”	the date falling 15 months after the Date of Practical Completion where the Landlord has served written notice of such date on the Tenant at least four weeks before such date, or where the Landlord has failed to serve such notice the date falling 30 months after the Date of Practical Completion
“VAT”	Value Added Tax
“VAT Act”	the Value Added Tax Act 1994
“VAT Election”	an election to waive exemption from VAT in respect of the Property within the meaning of paragraph 2 of Schedule 10 to the VAT Act
“Warranties”	collateral warranties to be given by each member of the Professional Team, the Building Contractor, each Principal Sub-Contractor and the Tenant’s Representative in accordance with <b>paragraph 4 of Schedule 2</b>

1.2 In this Agreement the Landlord is acting in its capacity as landowner and any approval or consent required by the Landlord under this Agreement is in its capacity as landowner and without prejudice to any statutory functions of the Landlord.

1.3 In this Agreement:

1.3.1 the clause headings do not affect its interpretation;

- 1.3.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
  - 1.3.3 references to any statute or statutory provision include references to:
    - 1.3.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom; and
    - 1.3.3.2 any subsequent statutes directly or indirectly amending, consolidating, extending, replacing or re-enacting that statute and also include any orders, regulations, instruments or other subordinate legislation made under that statute;
  - 1.3.4 references to the Property include any part of it;
  - 1.3.5 references to the Retained Buildings include any part of it;
  - 1.3.6 “including” means “including, without limitation,”;
  - 1.3.7 “indemnify” means to indemnify against all actions, claims, demands and proceedings taken or made against the party being indemnified and all costs, damages, expenses, liabilities and losses incurred by the party being indemnified; and
  - 1.3.8 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected.
- 1.4 The Particulars form part of this Agreement and words and expressions set out in the Particulars are to be treated as defined terms in this Agreement.
- 1.5 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 1.6 This Agreement is a “development agreement” for the purposes of Article 6 Construction Contracts (England and Wales) Exclusion Order 1998.

## 2. ACQUISITION OF THE PROPERTY

- 2.1 Subject to all of the Purchase Conditions being satisfied on the terms of this Agreement:
- 2.1.1 the Landlord is to grant and the Tenant is to accept the grant of the Lease on the Completion Date for the Purchase Price on the terms set out in Parts 1 and 2 of **Schedule 1**; and
  - 2.1.2 the Tenant is to grant to the Landlord Legal Charge 1 and Legal Charge 2 over the Tenant’s interest in the Property on the Completion Date.
- 2.2 The Purchase Conditions are:

- 2.2.1 the grant of Satisfactory Planning Permission during the Planning Period in accordance with **Schedule 8**;
  - 2.2.2 the exchange in accordance with **Schedule 8** of any Planning Agreement free from Onerous Conditions, which is necessary in order fully to implement a Satisfactory Planning Permission;
  - 2.2.3 the satisfaction of the Site Assembly Condition in accordance with **Schedule 9**;
  - 2.2.4 the receipt of Site Investigation Reports which are free from Adverse Factors in accordance with **Schedule 10**;
  - 2.2.5 the satisfaction of the Repeal Condition in accordance with **Schedule 11**;
  - 2.2.6 the approval of the Programme of Works in accordance with **paragraph 2 of Schedule 3**; and
  - 2.2.7 the approval of the Development Plans and detailed Specification in accordance with **paragraph 1 of Schedule 3**.
- 2.3 The Tenant and the Landlord are to comply with their respective obligations in **Schedules 3, 8, 9, 10 and 11** to procure that the Purchase Conditions are satisfied on the terms of this Agreement.
- 2.4 Without prejudice to **clause 2.3**, the Tenant is to use all reasonable endeavours to satisfy all of the Purchase Conditions (except the Site Assembly Condition and Repeal Condition) as soon as reasonably practicable after the date of this Agreement.
- 2.5 The Tenant is to notify the Landlord in writing within five working days of the Purchase Conditions referred to in sub paragraphs **2.2.1, 2.2.2, and 2.2.4** above being satisfied and thereafter but in any event no later than ten working days prior to the grant of the Lease provide to the Landlord such written evidence as the Landlord reasonably requires that the relevant Purchase Conditions have been satisfied on the terms of this Agreement.
- 2.6 The Landlord is to notify the Tenant in writing within five working days of the Site Assembly Condition and the Repeal Condition having been satisfied and thereafter provide to the Tenant such written evidence that the Site Assembly and Repeal Condition has been satisfied on the terms of this Agreement.
- 2.7 If any of the Purchase Conditions have not been satisfied on or before the Longstop Date, either party may end this Agreement by serving written notice on the other and on the service of such notice this Agreement will determine but without prejudice to any claim that either party may have against the other in respect of any outstanding breaches of the obligations under this Agreement.

### 3. **DEVELOPMENT**

3.1 Subject to all of the Development Pre Conditions being satisfied on the terms of this Agreement the Tenant is to carry out or procure that the Development Works are carried out in accordance with **Schedule 6**.

3.2 The Development Pre Conditions are:

3.2.1 completion of the grant of the Lease in accordance with **Schedule 1**;

3.2.2 compliance with the Pre-Development Obligations set out in **Schedule 5**;  
and

3.2.3 the Building Contracts, Appointments and Warranties being entered into in accordance with **Schedule 2**.

3.3 The Tenant and the Landlord are to comply with their respective obligations in **Schedules 2 and 5** to procure that all of the Development Pre Conditions are satisfied on the terms of this Agreement.

3.4 Once each Development Pre Condition has been satisfied, the Tenant is to provide to the Landlord such written evidence as the Landlord reasonably requires that the relevant Development Pre Condition has been satisfied on the terms of this Agreement.

3.5 The Tenant is to give written notice to the Landlord within five working days of the last of the Development Pre Conditions being satisfied.

3.6 The Tenant covenants with the Landlord that it will not use or permit the Property to be used before the Date of Practical Completion for any purpose other than the carrying out of the Development Works and the fitting out of the buildings intended to be constructed as part of the Development Works and the marketing of the buildings intended to be constructed as part of the Development Works.

3.7 The Tenant covenants with the Landlord that it will not use or permit the Retained Buildings to be used for any purpose other than the carrying out of the Development Works and the fitting out of the buildings intended to be constructed as part of the Development Works and the marketing by the Landlord of the buildings intended to be constructed as part of the Development Works.

### 4. **DEVELOPMENT COSTS**

The Tenant is to maintain the Development Account and record the Items of Expenditure and Items of Receipt in accordance with **Schedule 12**.

### 5. **ADDITIONAL CONSIDERATION**

5.1 The Tenant is to pay the Additional Consideration to the Landlord in accordance with **Schedule 14**.

5.2 The Tenant is to pay the Purchase Price to the Landlord in accordance with **Schedule 13**.

5.3 The Tenant and the Landlord are to comply with their respective obligations in **Schedules 12, 13 and 14**.

5.4 The Tenant is to apply to the Land Registrar on a Form RX1 for a restriction to be entered on to the proprietorship register of the title number of the Tenant's interest in the Property allocated to it by the Land Registry in the following Land Registry standard form:

“No disposition of the registered estate by the proprietor of the registered estate, or the proprietor of any registered charge, is to be registered without a certificate signed by Monmouthshire County Council or its solicitors that the terms of clause 5 of an agreement dated [*date and description of this Agreement*] have been complied with”.

5.5 For the purpose of **clause 5.4** and the restriction to be registered pursuant to it the expression “disposition” does not include the following permitted dispositions:

5.5.1 the grant of an underlease of any Residential Unit;

5.5.2 the grant of any underlease of any Commercial Unit at an open market rent and for a term not exceeding 25 years;

5.5.3 the grant of any underlease of land required for any electricity sub-station or gas governor site in connection with the Services Works or land on which other statutory services have been or are to be constructed; or

5.5.4 the grant of any lease of land which is to be granted to a local authority or other statutory body pursuant to a Planning Agreement;

and upon receipt of the Tenant's written request the Landlord agrees as soon as reasonably possible to provide or procure the provision of a certificate in the form required by **clause 5.4** to enable the registration of a permitted disposition.

## 6. LICENCE TO OCCUPY

6.1 The Landlord shall at the request of the Tenant grant a non-exclusive licence to the persons listed in **clause 6.4** to enter and remain on the Property and the Retained Buildings from and including the date on which the Site Assembly and Repeal Condition is satisfied to and including the Date of Actual Completion for the purposes set out in **clause 6.7**.

6.2 The Landlord grants a non-exclusive licence to the persons listed in **clause 6.4** to enter and remain on the Retained Buildings on and after the Date of Actual Completion for the purposes set out in **clause 6.8**.

6.3 Following the date of this Agreement the Landlord agrees to grant and agrees to use all reasonable endeavours to procure the agreement of AMAL to grant to the Tenant a non-exclusive licence in substantially the form of the attached draft for the purposes set out in the licence.

6.4 The licences in **clause 6.1 and 6.2** are granted to:

6.4.1 The Tenant;

- 6.4.2 the Building Contractor, its sub-contractors, including Principal Sub-Contractors, and their respective agents and employees; and
- 6.4.3 the Professional Team.
- 6.5 The licence in **clause 6.1** permits those exercising the rights to bring upon the Property vehicles, plant, equipment and materials required for purposes set out in **clause 6.7**.
- 6.6 The licence in **clause 6.2** permits those exercising the rights to bring upon the Retained Buildings vehicles, plant, equipment and materials required for the carrying out and completion of the Development Works in accordance with the terms of this Agreement.
- 6.7 The licence granted in **clause 6.1** is granted for the purposes only of:
  - 6.7.1 satisfying any Purchase Conditions and Development Pre Conditions;
  - 6.7.2 carrying out surveys, environmental, soil and other tests, investigations and inspections and measurements;
  - 6.7.3 preparing an environmental impact or other studies.
- 6.8 The Licence granted in **clause 6.2** is granted for the purposes only of carrying out and completing the Development Works on the Retained Buildings and rectifying any defects in them during the Defects Liability Period.
- 6.9 The licences granted in **clauses 6.1 and 6.2** do not confer on the Tenant or any other person any legal or equitable right, title, interest or estate in the Property and/or the Retained Buildings.
- 6.10 The Licence granted in **clause 6.1** ends on the earlier of the following dates:
  - 6.10.1 the date on which this Agreement ends under either **Schedule 8, 9, 10 or 11**; and
  - 6.10.2 the Date of Actual Completion.
- 6.11 The Licence granted in **clause 6.2** ends on the earlier of the following dates:
  - 6.11.1 the date on which this Agreement ends under either **Schedule 8, 9, 10, or 11**;
  - 6.11.2 the date of the Certificate of Making Good Defects; and
  - 6.11.3 the date that the Lease is forfeited pursuant to paragraph 2.3 of the Lease.
- 6.12 When the licence in **clause 6.1** ends then, unless completion of the grant of the Lease has been completed, the Tenant is to procure that the Property is vacated by the persons listed in **clause 6.4** that all vehicles, plant, equipment and materials belonging to them are removed from the Property.

- 6.13 When the licence in **clause 6.2** ends, the Tenant is to procure that the Retained Buildings are vacated by the persons listed in **clause 6.4** and that all vehicles, plant, equipment and materials belonging to them are removed from the Retained Buildings.
- 6.14 The Tenant acknowledges and undertakes with the Landlord:
- 6.14.1 not to carry out the Development Works in such a way as to cause any nuisance, damage, disturbance, annoyance, inconvenience or interference to the Landlord or any other adjoining owners or occupiers and in addition shall not carry out the Development Works other than in a reasonable and orderly manner; and
- 6.14.2 that it enters the Retained Buildings entirely at its own risk.

## 7. **INSURANCE**

- 7.1 It is agreed that the risk of damage to or loss or destruction of the Property and the Retained Buildings, including all buildings, fixtures, fittings, plant and equipment, rests with the Landlord and shall not pass to the Tenant until the date on which the Tenant is given access to the Property and/or the Retained Buildings as appropriate under the licence provisions set out in **clause 6** or otherwise and from such date and until the Building Contractor becomes responsible for the insurance of the Development Works under the Building Contract, the Tenant is to insure the Property to cover debris removal, demolition and site clearance costs and the Retained Buildings in its Reinstatement Cost:
- 7.1.1 in the joint names of the Tenant and the Landlord;
- 7.1.2 against the Insured Risks;
- 7.1.3 with reputable insurance offices in or having a business office in the United Kingdom or through underwriters at Lloyd's; and
- 7.1.4 on reasonable commercial terms and subject only to reasonable excesses, exclusions and conditions of such cover.
- 7.2 The Tenant is to procure that the Building Contractor keeps the Development Works and all unfixed goods and materials insured under the terms of the Building Contract:
- 7.2.1 in their Reinstatement Cost;
- 7.2.2 against the Insured Risks;
- 7.2.3 in the joint names of the Tenant and the Landlord;
- 7.2.4 with reputable insurance offices in or having a business office in the United Kingdom or through underwriters at Lloyd's; and
- 7.2.5 on reasonable commercial terms and subject only to reasonable excesses, exclusions and conditions of such cover.

- 7.3 The Tenant is to use all reasonable endeavours to procure that any exclusion in respect of terrorist activity is removed from the insurance maintained under **clauses 7.1 and 7.2.**
- 7.4 The Tenant is to use all reasonable endeavours to procure that the insurers of the Property and the Retained Buildings under **clause 7.1** and the Development Works under **clause 7.2** undertake with the Landlord not to cancel the insurance without first giving to the Landlord 15 working days' prior written notice of their intention to do so.
- 7.5 The Tenant is to procure that the Landlord is provided with:
- 7.5.1 a copy of the insurance policy maintained under **clauses 7.1 and 7.2** and evidence for the payment of the premium for the insurance;
  - 7.5.2 evidence of its renewal when reasonably requested by the Landlord; and
  - 7.5.3 any endorsements or other amendments to the relevant policies of insurance or of any notification or other correspondence received from the insurers.
- 7.6 If the Property, the Retained Buildings or the Development Works are damaged or destroyed by any of the Insured Risks:
- 7.6.1 The Tenant is to use all reasonable endeavours promptly to obtain the maximum payment of insurance moneys;
  - 7.6.2 The Tenant is to procure that the Building Contractor rebuilds, repairs or otherwise reinstates the Development Works in a good and substantial manner in accordance with the terms of this Agreement and the Building Contract to the reasonable satisfaction of the Landlord;
  - 7.6.3 if the moneys received in respect of such insurance are insufficient for the purpose of rebuilding, repairing or reinstating the Development Works, the Tenant is to make good any deficiency out of its own moneys; and
  - 7.6.4 Practical Completion is not to take place unless and until the rebuilding, repairing and reinstating of the Development Works has been completed.
- 7.7 During the carrying out of the Development Works, the Tenant is to procure that there is maintained public liability insurance against liability to the public and to third parties in such sum as may be prudent being however for not less than £5,000,000 in respect of any one claim.
- 7.8 If the Tenant does not insure or procure all or any of the insurances required by this **clause 7** or fails to produce reasonable evidence that such insurances are in force, the Landlord may itself effect such insurance cover as it may consider prudent and the proper cost of so doing together with the Landlord's management and administrative costs for so doing will be payable by the Tenant to the Landlord on written demand.
- 7.9 For so long as the provisions of this **clause 7** apply the Tenant's obligations in respect of insurance pursuant to the Lease shall be in abeyance.

## 8. LIMITATION OF TENANT'S LIABILITY

8.1 The Tenant is not to be relieved of liability for any breach of its obligations in this Agreement by:

8.1.1 completion of the Lease;

8.1.2 the consent or approval of the Landlord to any matter under this Agreement, whether or not this Agreement expressly requires the consent or approval of the Landlord;

8.1.3 the issue of the Certificate of Practical Completion, the Statement of Practical Completion and/or the Certificate of Making Good Defects or the absence of any objection by the Landlord to them being issued or the terms which the certificates contain;

8.1.4 the making good of defects by the Building Contractor under the terms of the Building Contract;

8.1.5 the right of the Landlord to make a claim against the Building Contractor or members of the Professional Team;

8.1.6 any delay or neglect by the Landlord in enforcing the terms of this Agreement or any time allowed by the Landlord for their performance;

8.1.7 any variation of the terms of this Agreement save where express provision is made for the relief or discharge of such liability;

8.1.8 any legal limitation, immunity, disability, incapacity or other circumstances relating to the Tenant, whether or not known to the Landlord;

8.1.9 anything else which would have released the Tenant whether by the variation of the Tenant's obligations or by the conduct of the parties;

8.1.10 the payment of the Additional Consideration; or

8.1.11 the payment of the Purchase Price.

8.2 Following the later of the issue of the Certificate of Practical Completion, the Statement of Practical Completion, the Certificate of Making Good Defects, the Tenant's compliance with its obligations to the Landlord pursuant to **paragraphs 9 and 10 of Schedule 6** and the delivery of the last of the Warranties to the Landlord in accordance with **paragraphs 4.1 and 4.2 of Schedule 2** of this Agreement, the Landlord will issue a certificate to the Tenant confirming the same and on the issue of that certificate the Tenant will be released from its development obligations contained in **Schedule 6** of this Agreement but for the avoidance of doubt the Tenant will not be relieved of any liability for any continuing or historical breach of such obligations by the issue of the certificate by the Landlord under this clause.

8.3 If the Tenant shall not be released pursuant to **paragraph 8.2** of this Schedule by virtue only of the Tenant being unable to deliver a Warranty from any Principal Sub-Contractor in accordance with **clause 4.2 of Schedule 2** of this Agreement due

to an event of Insolvency having occurred in respect of such Principal Sub-Contractor prior to such Principal Sub-Contractor having delivered a Warranty to the Landlord the release referred to at **paragraph 8.2** of this Schedule shall be effective as if such Warranty had been delivered.

## 9. **TENANT'S INDEMNITY**

9.1 The Tenant is to indemnify the Landlord in respect of any of the following matters arising directly or indirectly in relation to the Development Works, or any operations on the Property and/or the Retained Buildings carried out by the Tenant and any other person under the Tenant's control or the control of the Building Contractor, including the Building Contractor, Professional Team, Principal Sub-Contractors, employees, agents, workmen and invitees of them:

9.1.1 the death of, injury to or accident to any person;

9.1.2 the damage to or loss of any property;

9.1.3 any breach of the Statutory Consents or Statutory Requirements;

9.1.4 the infringement of the rights of any third party caused by the carrying out of the Development Works;

9.1.5 any nuisance or disturbance suffered by any third party caused by the carrying out of the Development Works;

9.1.6 any fine or penalty; and

9.1.7 any other claims brought against the Landlord.

## 10. **VALUE ADDED TAX**

10.1 Any payment for a supply made under this Agreement is exclusive of any VAT chargeable on that payment.

10.2 An obligation under this Agreement to pay money includes an obligation to pay any VAT chargeable on that payment. When a taxable supply is made for the purposes of VAT under this Agreement, a valid VAT invoice is to be issued in respect of that supply by the person making the supply as a pre-condition to the payment of any such VAT.

## 11. **STEP-IN RIGHTS**

11.1 Subject to any Step-In Agreement concluded with an Investor and the terms of the Asda Step-In Agreement, following an Event of Default:

11.1.1 The Tenant is at the written request of the Landlord and for no consideration to assign to the Landlord or as the Landlord otherwise directs the benefit of all or any of the following:

11.1.1.1 the Building Contract and any associated performance bond;

- 11.1.1.2 the Appointments;
  - 11.1.1.3 any other contracts or agreements entered into by the Tenant in relation to the Development;
  - 11.1.1.4 all the Tenant's rights against the Building Contractor, Principal Sub-Contractors and the members of the Professional Team;
  - 11.1.1.5 all warranties whether as to design, materials or otherwise in relation to the Development and any other guarantees and warranties given by the Building Contractor, Professional Team and suppliers and manufacturers in respect of all plant, machinery and apparatus installed as part of the Development; and
  - 11.1.1.6 all rights of copyright vested in the Tenant;
- 11.1.2 Following completion of the assignments in **clause 11.1.1**, the Landlord may but will not be obliged to do so carry out and complete the Development Works at its own cost and expense in accordance with **Schedule 6** whereupon the Tenant will, on Practical Completion pay to the Landlord the total costs incurred by or on behalf of the Landlord in exercising its rights under this **clause 11**;
- 11.1.3 The Tenant is to permit the Landlord, the Building Contractor, its sub-contractors, including Principal Sub-Contractors, and their respective agents and employees and the Professional Team and their respective agents and employees to enter onto and remain on the Property with or without plant, equipment, machinery, workmen and materials in order to enable the Landlord to carry out the Development Works;
- 11.2 The Tenant irrevocably appoints the Landlord by way of security to be the attorney of the Tenant with full power and authority to do all acts and things and execute and deliver in the name of the Tenant all deeds and documents which may be necessary to give effect to the terms of this Agreement.
- 11.3 This **clause 11** will continue to apply after any rescission or determination of this Agreement.
- 11.4 The termination of this Agreement will not prejudice any rights or remedies which that party may have against the other in respect of any outstanding breaches of this Agreement.
12. **DETERMINATION OF DISPUTES**
- 12.1 If any dispute arises between the Tenant and the Landlord relating to or arising out of the terms of this Agreement, the Landlord or the Tenant may give to the other written notice requiring the dispute to be determined under this **clause 12**. The notice is to:
- 12.1.1 propose an appropriate Specialist;

- 12.1.2 state whether the Specialist is to act as an independent expert or an arbitrator, having regard to the terms of this **clause 12**; and
  - 12.1.3 specify the nature and substance of the dispute and the relief sought in relation to the dispute.
- 12.2 For the purposes of this **clause 12** a “Specialist” is a person:
- 12.2.1 qualified to act as an expert or an arbitrator in relation to the dispute;
  - 12.2.2 having not less than ten years’ professional experience; and
  - 12.2.3 having practical experience in relation to developments in the nature of the Development and property in the same locality as the Property and the Retained Buildings.
- 12.3 The recipient of a notice under **clause 12.1** will be deemed to accept the identity of the Specialist and the capacity in which he is to act unless it gives notice in writing to the party serving the notice rejecting one or more of the proposals within five working days of receipt of the notice and on the service of a notice rejecting one or more of the proposals, **clause 12.4** will apply.
- 12.4 Unless the Tenant and the Landlord agree or are deemed to agree the terms for resolving the dispute set out in the notice served under **clause 12.1**:
- 12.4.1 any dispute over the type of Specialist appropriate to resolve the dispute or the capacity in which a Specialist is to act may be referred at the request of the Tenant or the Landlord to the President or next most senior available officer of the Royal Institution of Chartered Surveyors who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination and to determine the capacity in which the Specialist is to act; and
  - 12.4.2 any dispute over the identity of the Specialist is to be referred at the request of the Tenant or the Landlord to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Royal Institution of Chartered Surveyors.
- 12.5 The reference to a Specialist is to be made to him as an expert unless:
- 12.5.1 the dispute is of such a nature that it is not capable of being determined by an expert;
  - 12.5.2 both the Tenant and the Landlord agree, or are deemed to agree, that the Specialist should act as an arbitrator;
  - 12.5.3 this Agreement specifies that the dispute is to be determined by an arbitrator; or

- 12.5.4 **clause 12.6** applies.
- 12.6 If any dispute raises or relates to the same or similar issues as those which have been or are being submitted to independent determination under the Building Contract, the Landlord and the Tenant will endeavour to appoint the same person acting in the same capacity as may be appointed to resolve the dispute under the Building Contract and to have the dispute proceedings under this Agreement and the Building Contract consolidated.
- 12.7 Where a Specialist is to act as an independent expert:
- 12.7.1 The Tenant and the Landlord may make written representations within ten working days of his appointment and will copy the written representations to the other party;
  - 12.7.2 The Tenant and the Landlord are to have a further ten working days to make written comments on each other's representations and will copy the written comments to the other party;
  - 12.7.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
  - 12.7.4 the Specialist is not to take oral representations from the Tenant or the Landlord without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;
  - 12.7.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and
  - 12.7.6 the Specialist is to use all reasonable endeavours to publish his decision within 30 working days of his appointment.
- 12.8 Where a Specialist is to act as an arbitrator:
- 12.8.1 all submissions made or evidence supplied to him are to be in writing unless the parties agree within ten working days of his appointment that this requirement does not apply;
  - 12.8.2 the date of his award will be deemed to be the date on which he serves a copy of the award on the Tenant and the Landlord;
  - 12.8.3 he will not be entitled to order the rectification, setting aside or cancellation of this Agreement or any other deed or document;
  - 12.8.4 he will not be entitled to direct that the recoverable costs of the arbitration, or any part of it, be limited to a specified amount; and
  - 12.8.5 he will not be entitled to require that security be provided in respect of the costs of the arbitration.

12.9 Responsibility for the costs of referring a dispute to a Specialist under this **clause 12**, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

### 13. **DEALINGS**

13.1 Subject to the terms of this **clause 13**, this Agreement is incapable of being assigned, charged, held on trust or in any way being dealt with by the Tenant and the Tenant is not to sell or transfer the shares in the Tenant Company.

13.2 The Tenant may, with the prior written consent of the Landlord, such consent not to be unreasonably withheld or delayed, assign or charge the benefit of this Agreement to an Investor subject to:

13.2.1 the Investor entering into a Step-In Agreement in such form as the Landlord reasonably requires;

13.2.2 the Investor entering into direct covenants with the Landlord:

13.2.2.1 to pay the Purchase Price and the Additional Consideration to the Landlord on the terms of this Agreement;

13.2.2.2 to carry out or procure that the Development Works are carried out in accordance with the terms of this Agreement; and

13.2.2.3 not to use or permit the Property to be used before the Date of Practical Completion for any purpose other than the carrying out of the Development Works and the fitting out of the buildings intended to be constructed as part of the Development Works and the marketing of the buildings intended to be constructed as part of the Development Works;

13.2.3 the Investor entering into a direct covenant with the Landlord to comply with the provisions of this **clause 13** before any further charging of the benefit of this Agreement or the charging of the Property;

13.2.4 the Investor entering into a direct covenant with the Landlord not to assign the benefit of this Agreement or sell, transfer or assign the Property without the consent of the Landlord such consent not to be unreasonably withheld or delayed. The Landlord may impose the following conditions before giving consent to any assignment:

13.2.4.1 that the proposed assignee enters into direct covenants with the Landlord in the same form as set out in **sub-clauses 13.2.2.1, 13.2.2.2 and 13.2.2.3**;

and the Landlord may withhold consent where:

13.2.4.2 the proposed assignee's covenant strength is less than the Tenant's covenant strength assessed at the date of this Agreement; or

- 13.2.4.3 where the proposed assignee's covenant strength is not sufficient to satisfy the Landlord that the assignee will be able to comply with the terms of this Agreement and the Lease;
- 13.2.5 the Investor making an application to the Land Registry on a form RX1 for a restriction to be entered on the title number of the Property allocated to it by the Land Registry in the following Land Registry standard form:
 

“No disposition of the registered estate by the proprietor of the registered estate or the proprietor of any registered charge is to be registered without a certificate signed by Monmouthshire County Council or its solicitors that the provisions of [date and description of this Agreement] have been complied with.”;
- 13.2.6 the Tenant covenanting with the Investor and the Landlord to comply with its obligations in this Agreement notwithstanding its assignment to the Investor;
- 13.2.7 the amount secured by the charge being limited to an amount equal to the Purchase Price and the Estimated Expenditure (as defined in **Schedule 13**)
- 13.3 For the purpose of **clause 13.2.5** and the restriction to be registered pursuant to it the expression “disposition” does not include the following permitted dispositions:
  - 13.3.1 the grant of an underlease of any Residential Unit;
  - 13.3.2 the grant of any underlease of any Commercial Unit at an open market rent and for a term not exceeding 25 years;
  - 13.3.3 the grant of any underlease of land required for any electricity sub-station or gas governor site in connection with the Services Works or land on which other statutory services have been or are to be constructed; or
  - 13.3.4 the grant of any lease of land which is to be granted to a local authority or other statutory body pursuant to a Planning Agreement;

and upon receipt of the Tenant's written request the Landlord agrees as soon as reasonably possible to provide or procure the provision of a certificate in the form required by **clause 13.2.5** to enable the registration of a permitted disposition.
- 13.4 The Tenant may not create any legal or equitable charge over the Property unless:
  - 13.4.1 the legal or equitable charge is being provided to an Investor; and
  - 13.4.2 it obtains the prior written consent of the Landlord, such consent not to be unreasonably withheld or delayed.
- 13.5 If the Tenant wishes to charge the Property to secure funding for the carrying out of the Development Works, subject to the provisions of this **clause 13** being complied with, the Landlord shall enter into a deed of priority or postponement in such form as is acceptable to the Landlord (acting reasonably) in order to provide that Legal

Charge 1 and Legal Charge 2 are effectively postponed behind any such charge granted by the Tenant to such an Investor so that the Investor shall have priority for an amount up to but not exceeding the total of the Purchase Price and the Estimated Expenditure (as defined in **Schedule 13**)

**14. OPENING OF THE STORE**

The Tenant covenants not to open the Store or permit the Store to be opened to the general public for trading until the Date of Practical Completion which for the avoidance of doubt will not occur until practical completion of all the Affordable Units has been achieved which means the construction and fit out of the Affordable Units so as to enable them to be brought into immediate beneficial use and occupation.

**15. GOOD FAITH**

The parties to this Agreement shall at all times be just and true to the other and will act in good faith (including without prejudice to the foregoing) doing all things necessary to give effect to the terms of this Agreement.

**16. EFFECT OF THIS AGREEMENT**

16.1 The parties acknowledge that this Agreement forms the entire agreement between them relating to its subject matter.

16.2 No modification, variation or waiver of any of the terms of this Agreement will be effective unless made in writing and signed by the parties to this Agreement.

16.3 This Agreement does not create and is not in any circumstances to be taken as having created a partnership between the Landlord and the Tenant.

16.4 The Tenant is not and will not at any time hold itself out as the agent of the Landlord for any purposes and under no circumstances will the Tenant have the authority to bind the Landlord or hold itself out to the public, the Building Contractor or any member of the Professional Team as having such authority.

16.5 All contracts and agreements entered into by the Tenant pursuant to this Agreement will be contracts or agreements between the Tenant as principal and the respective third parties and the Landlord will have no obligation or liability under them save where the Landlord expressly joins into such agreements or contracts as a party which imposes on the Landlord obligations or liabilities.

16.6 The Tenant acknowledges that it does not have and will not have any lien over the Property, the Retained Buildings or the Development in respect of payments due to it under this Agreement.

**17. ENFORCEMENT**

17.1 This Agreement is to be governed by and interpreted in accordance with the laws of England and Wales as applicable in Wales.

17.2 The courts of England and Wales are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement.

18. **EXECUTION**

18.1 The Tenant and the Landlord have executed this Agreement as a deed on the date set out in the Particulars.

18.2 Any person who witnesses the sealing of this Agreement is to be treated as having signed this Agreement for the purposes of section 2 Law of Property (Miscellaneous Provisions) Act 1989.

## SCHEDULE 1

### Sale and purchase of the Property

#### PART 1: GENERAL PROVISIONS

##### 1. Agreement for sale

1.1 The Commercial Conditions apply to the sale of the Property so far as they are applicable and are consistent with the express terms of this Agreement but:

1.1.1 Commercial Conditions 1.1.2, 2.3, 3.2, 3.3, 3.4, 4.1, 4.2.1, 5.1, 5.2, 6.8.4 and 8.2.4 do not apply; and

1.1.2 Commercial Condition 6.3.2 reads “Apportionment is to be made with effect from the date of actual completion.”

1.2 The Tenant is to pay the Deposit to the Landlord’s Solicitors as agent on the date of this Agreement.

1.3 The Lease is granted with vacant possession.

1.4 The Tenant is to insure the Property or procure that it is insured in accordance with the provisions of **clause 7**.

##### 2. Title

2.1 The Landlord has deduced title to the Property to the Tenant and the Tenant is not entitled to raise any requisition or objection to the title except in respect of any matters registered against the Title Number after 7th July 2005.

2.2 The Landlord shall grant the Lease with full title guarantee.

##### 3. Title Matters

3.1 The Property is sold subject to and, to the extent that the Landlord is able to transfer them, with the benefit of those of the Title Matters referred to in **Part 2 of this Schedule**.

3.2 The Tenant’s Solicitors have been provided with copies of the Title Matters referred to in **Part 2 of this Schedule** and the Tenant is to be treated as buying the Property with full knowledge of them and will not raise any requisition or objection to them.

3.3 The Property is sold subject to:

3.3.1 the matters contained or referred to in Commercial Condition 3.1.2;

- 3.3.2 any registered local land charges and any matter capable of being registered as a local land charge even if not so registered at the Date of Actual Completion;
- 3.3.3 any notice, order or proposal given or made by a government department or by any public or local authority, statutory undertaker or other competent body or person;
- 3.3.4 all charges, orders, proposals, restrictions, agreements, notices or other matters arising under the town and country planning or highways legislation which affect or relate to the Property and to any orders or regulations made under that or any other legislation;
- 3.3.5 all rates, charges and other outgoings which affect or are charged on the Property except for any mortgage or legal charge relating to money secured on the Property;
- 3.3.6 any unregistered interest that overrides the disposition effected pursuant to this Agreement under Schedules 1, 3 or 12 Land Registration Act 2002;
- 3.3.7 all public or private rights of way and other rights, easements or quasi-easements and way leaves affecting the Property; and
- 3.3.8 all liability to repair and maintain roads, paths, conduits, fences and other like matters or to contribute to the cost of their repair and maintenance.

and the Landlord warrants that it has disclosed to the Tenant full details of all such matters of which the Landlord has actual knowledge.

#### **4. The Lease**

- 4.1 The Lease and its counterpart are to be prepared by the Landlord's Solicitors and an engrossment of the counterpart Lease is to be delivered to the Tenant's Solicitors at least five working days before the Completion Date.
- 4.2 The plans to be attached to the Lease shall reflect the provisions of the Satisfactory Planning Permission granted in response to the Planning Application approved by the Landlord and the Landlord and the Tenant shall in all good faith seek to agree any consequential amendments to the provisions of the Lease or the plans for that document that may properly be required.
- 4.3 Any party that executes the Lease pursuant to a power of attorney is to provide a copy of that power of attorney in English, certified in accordance with section 3 Powers of Attorney Act 1971, to the other parties on the Date of Actual Completion.

#### **5. Land Registry Applications**

- 5.1 The Tenant may protect the benefit of this Agreement at the Land Registry by the registration of an Agreed Notice. The Landlord consents to the registration of an Agreed Notice against the Title Number.

- 5.2 The Tenant is to use all reasonable endeavours to register the Lease at the Land Registry as soon as reasonably practicable after the Date of Actual Completion and, on completion of that registration, is to provide the Landlord with official copies of the title to the Property showing the Tenant registered as proprietor together with any title plan produced or updated by the Land Registry as part of that registration.
- 5.3 As part of the Tenant's application to register the Lease at the Land Registry, the Tenant is to request that the Land Registrar notes the benefit of any easements reserved by the Lease over the Property against the Title Number.

## **PART 2: TITLE MATTERS**

### **6. Register entries**

The matters contained or referred to in the Property and Charges Registers of the Title Number as at 7th July 2005. A copy of the register entries referred to in this **paragraph 6** is attached to this Agreement.

## **SCHEDULE 2**

### **Appointments of Building Contractor and Professional Team**

#### **1. Basis of Appointments**

1.1 If it has not already done so, the Tenant is to:

1.1.1 appoint the Building Contractor;

1.1.2 appoint each member of the Professional Team; and

1.1.3 procure that each Principal Sub-Contractor is appointed by the Building Contractor.

1.2 Before appointing or procuring the appointment of any Building Contractor, Principal Sub-Contractor or member of the Professional Team, the Tenant is to make due enquiry as to their repute, competence and suitability with respect to the Development Works and is to obtain the Landlord's prior written consent to such appointments such consent not to be unreasonably withheld or delayed.

#### **2. Terms of Appointments**

2.1 The Building Contract is to be executed as a deed in the JCT standard form of Building Contract with Contractor's Design 1998 Edition with amendments 1. June 1999 2. January 2000 3. January 2001 and amendments 4. January 2002 and the amendments annexed hereto and the Tenant will not vary the terms of the Building Contract without the consent of the Landlord (such consent not to be unreasonably withheld).

2.2 The Appointments are to be executed in the form of the Appointments annexed hereto and the Tenant will not thereafter vary or permit the Building Contractor to vary the terms of any Appointment or the form of Appointment without the consent of the Landlord (such consent not to be unreasonably withheld or delayed).

2.3 The Building Contract, the Appointments and the Principal Sub-Contracts must permit the Landlord to exercise step-in rights and become the employer of the contracting party following an Event of Default under this Agreement or where this Agreement is otherwise terminated.

2.4 The Appointment of the Project Manager and Quantity Surveyor must include an obligation on each of them to owe the Landlord a duty of care and provide full disclosure.

2.5 The Tenant is to enter into the Building Contract and Appointments (as appropriate) which require the Professional Team and the Building Contractor to maintain professional indemnity insurance throughout the period of the Development and for twelve years after the Date of Practical Completion with reputable insurers as follows:

- 2.5.1 by each member of the Professional Team for at least £5,000,000 in respect of each claim that may be made Provided That in the case of the landscape architect and archaeological consultant such insurance shall be for at least £2,000,000 in respect of each claim that may be made; and
  - 2.5.2 the Building Contractor for at least £10,000,000 in respect of each claim that may be made.
- 2.6 The Tenant is to enter into the Building Contract which requires each Principal Sub-Contractor to maintain throughout the period of the Development and for twelve years after the Date of Practical Completion with reputable insurers, as follows:
- 2.6.1 professional indemnity insurance for at least £5,000,000 in respect of remediation works;
  - 2.6.2 professional indemnity insurance (or product liability insurance, depending upon the design solution) for at least £3,000,000 in respect of piling/ground improvement works;
  - 2.6.3 professional indemnity insurance (or product liability insurance depending upon the design solution) for at least £1,000,000 in respect of mechanical/electrical works;
  - 2.6.4 professional indemnity insurance for at least £2,000,000 or product liability insurance for at least £5,000,000 in respect of structural steelworks;
  - 2.6.5 product liability insurance for at least £2,000,000 in respect of pre-case concrete floors works; and
  - 2.6.6 professional indemnity insurance for at least £1,000,000 or product liability insurance for at least £3,000,000 in respect of curtain walling/cladding/roofing works.
- 2.7 The Tenant is to provide the Landlord with:
- 2.7.1 a copy of each Appointment, Building Contract and Principal Sub-Contract certified as a true copy within five working days of it being entered into; and
  - 2.7.2 approvals by the professional indemnity insurers of the persons appointed by the forms of Building Contract, Appointments, Principal Sub-Contracts and Warranties.
3. **Additional provisions relating to Building Contracts**
- 3.1 Without prejudice to the Tenant's other obligations in this Schedule, before appointing the Building Contractor the Tenant is to:
- 3.1.1 invite sealed tenders from at least three prospective contractors who have been approved in writing by the Landlord such approval not to be unreasonably withheld or delayed;

3.1.2 the invitation to tender shall inter alia require the prospective contractor to

- 4.3.1 the Tenant will deposit with the Landlord on the Date of Practical Completion the sum of £10,000 (ten thousand pounds) for each such warranty that the Tenant is unable to deliver;
  - 4.3.2 the Tenant will use all reasonable endeavours to obtain all such warranties as soon as possible following the Date of Practical Completion;
  - 4.3.3 on the delivery of each warranty executed as a deed to the Landlord, the Landlord will release to the Tenant the sum of £10,000 (ten thousand pounds) held in respect of that warranty under the provisions of **sub-paragraph 4.3.1**; and
  - 4.3.4 in the event that the Tenant has not delivered all or any of the Principal Sub-Contractor warranties within a period of twelve months following the Date of Practical Completion the Landlord will be entitled to the balance of the monies deposited.
- 4.4 The Warranties are to be in the form attached to this Agreement with such amendments as the Landlord may approve, such approval to be subject to the provisions of **paragraph 4.5** and otherwise not to be unreasonably withheld or delayed.
- 4.5 The Landlord will not be obliged to approve any amendments to the terms of the Warranties that:
- 4.5.1 include a net contribution clause; or
  - 4.5.2 include a limitation on liability so that only the costs of making good defects in the Development Works are recoverable.

## 5. **The Tenant's obligations**

- 5.1 The Tenant is to use all reasonable endeavours to procure that:
- 5.1.1 each member of the Professional Team complies with the terms of its Appointment;
  - 5.1.2 the Building Contractor complies with the terms of the Building Contract; and
  - 5.1.3 the Building Contractor and each Principal Sub-Contractor comply with the terms of their Principal Sub-Contracts.

Provided that this obligation shall not render the Tenant liable to the Landlord for any default of the Professional Team, the Building Contractor or the Principal Sub-Contractors where Warranties have been delivered to the Landlord before the Development Works are commenced and provided that the Landlord has approved the appointments of the Building Contractor, the Professional Team and each Principal Sub-Contractor, such approval not to be unreasonably withheld or delayed.

- 5.2 The Tenant is not without the prior written consent of Landlord, such consent not to be unreasonably withheld or delayed to dismiss any member of the Professional

Team, or the Building Contractor, or permit a Principal Sub-Contractor or member of the Professional Team appointed by the Building Contractor to be dismissed save where in the case of the dismissal of a Principal Sub-Contractor failing to allow such dismissal would place the Tenant in breach of its obligations under the Building Contract.

5.3 The Tenant is not to:

5.3.1 waive, release nor estop itself from enforcing or seeking redress for any breach of the Appointments, the Building Contract or the Principal Sub-Contracts; or

5.3.2 do or omit to do any act or thing which would entitle:

5.3.2.1 any member of the Professional Team to treat its Appointment as terminated by breach;

5.3.2.2 the Building Contractor to treat the Building Contract as terminated by breach;

5.3.2.3 a Principal Sub-Contractor to treat a Principal Sub-Contract as terminated by breach; or

5.3.3 receive any commissions, inducements, or pecuniary or other advantages at any time arising from the appointment of the members of the Professional Team, the Building Contractor or any Principal Sub-Contractor.

6. **Appointment Default**

6.1 If there is an Appointment Default, the Tenant is immediately to notify the Landlord in writing of the Appointment Default and the reasons for it.

6.2 Following an Appointment Default:

6.2.1 where the Tenant was responsible for the Appointment, the Tenant is to use all reasonable endeavours to appoint another person on the terms of this Schedule in substitution for the person whose Appointment was terminated; and

6.2.2 where the Building Contractor was a party to the Appointment, the Tenant is to use all reasonable endeavours to procure that the Building Contractor appoints another person on the terms of this Schedule in substitution for the person whose appointment was terminated.

PROVIDED ALWAYS that the Tenant must obtain the prior written consent of the Landlord to such appointments (such consent not to be unreasonably withheld)

## SSCHEDULE 3

### Development Plans and Programme of Works

#### 1. Preparation and approval of Development Plans

- 1.1 Within two months of the date of this Agreement the Landlord is to advise the Tenant of its requirements in relation to either the Library Works or the Cinema Works which will be included in the Specification and Development Plans provided to the Landlord under **paragraph 1.2**.
- 1.2 Within        months of the date of this Agreement the Tenant is to prepare the Specification and the Development Plans (which will include a detailed specification and development plans relating to whichever of the Library Works or the Cinema Works the Landlord required) and provide them to the Landlord for the Landlord's approval PROVIDED THAT if the Landlord has not notified the Tenant of its requirements in relation to the Cinema Works pursuant to **paragraph 1.1** within two months of the date of this Agreement the Specification and Development Plans will only include the Library Works.
- 1.3 The Landlord is not unreasonably to withhold or delay its approval of the Specification and Development Plans where they have been produced in accordance with the Outline Specification and do not contain any Adverse Matters.
- 1.4 The Tenant may by service of written notice to that effect elect to change item d(i) of the definition of the Development to a hotel and six Affordable Units with associated parking PROVIDED THAT the anticipated Market Value (as defined in **Schedule 14**) of item d(i) of the definition of the Development is not reduced.
- 1.5 References to the Specification and Development Plans will include:
  - 1.5.1 all employer's requirements submitted to the Building Contractor under the Building Contract, and the Tenant will not submit the employer's requirements unless and until they have been approved by the Landlord under **paragraph 1.2**; and
  - 1.5.2 all contractor's proposals produced by the Building Contractor under the Building Contract, and the Tenant will not approve the contractor's proposals under the Building Contract unless and until they have been approved by the Landlord under **paragraph 1.2**.
- 1.6 Once approved by the Landlord, no changes to the Specification and Development Plans may be made except in accordance with **paragraph 3 of Schedule 6**.
- 1.7 The Tenant is not to start the Development Works until the Specification and Development Plans have been approved under this Schedule.
- 1.8 No inspection or approval by the Landlord of the Specification and Development Plans is to lessen the obligations of the Tenant, the Building Contractor, any member

of the Professional Team or any Principal Sub-Contractor in relation to the design and construction of the Development, whether under this Agreement or otherwise.

## 2. **Programme of Works**

2.1 Within one month of the date on which the Specification and Development Plans have been approved by the Landlord, the Tenant is to produce and provide the Landlord with a Programme of Works for its approval which approval shall not be unreasonably withheld or delayed giving details of:

2.1.1 the date on which the Development Works will begin; and

2.1.2 the timetable for the carrying out of the Development Works showing the estimated duration of each stage of the Development Works and the date on which it is intended that Practical Completion will be achieved.

2.2 Once approved by the Landlord, the Tenant is not to vary the Programme of Works except in accordance with **paragraph 3 of Schedule 6**.

2.3 The Tenant is not to start the Development Works until the Programme of Works has been approved by the Landlord, such approval not to be unreasonably withheld or delayed.

## 3. **Adjustment of Purchase Price**

3.1 On receipt of the Landlord's requirements in relation to the Cinema Works, the Landlord and the Tenant shall instruct John Lloyd MRICS of Bute Partnership, York Court, 9-11 Schooner Way, Atlantic Wharf, Cardiff CF1 5DZ ("the QS") to calculate the anticipated build cost of such works ("anticipated cost").

3.2 The decision of the QS on the matter referred to him under **paragraph 3.1** is to be final and binding on the Landlord and the Tenant.

3.3 If the anticipated cost calculated by the QS is higher than £, the Landlord will be entitled to instruct the Tenant to proceed with the Library Works only but not to proceed with the Cinema Works provided that the Landlord notifies the Tenant of this decision within two weeks of the date on which the Landlord receives written notification of the anticipated cost and in default of such notification the Development will include the Cinema Works.

3.4 In the event that the Landlord decides not to proceed with the Cinema Works under **paragraph 3.3 of this Schedule** the periods referred to in **paragraph 1.2 of this Schedule** and **paragraphs 3.1 and 3.6.1 of Schedule 8** shall be extended by three months.

3.5 If the anticipated cost is less than £ or if the Landlord decides that it wants to include the Cinema Works in the Development or in default of notification under **paragraph 3.3**, the Purchase Price shall be reduced by 112% of the anticipated cost less £ ("the net cost") and the Appraisal Summary shall be adjusted to show such anticipated cost and increased professional fees as an item of Estimated Expenditure and for the purpose of calculating the price in **Schedule 13**, the

Purchase Price shall be reduced by the net cost and Estimated Expenditure shall be adjusted accordingly.

**SCHEDULE 4**  
**Outline Specification**

## **SCHEDULE 5**

### **Pre-Development Obligations**

#### **1. Statutory Consents**

- 1.1 Within months of satisfaction of the Purchase Conditions the Tenant is to make applications for and use all reasonable endeavours to obtain the Statutory Consents (excluding the application for Planning Permission which application must be made in accordance with the Tenant's obligations in **Schedule 8**) or obtain lawful relaxations or waivers of them in accordance with the Specification.
- 1.2 The Tenant is to keep the Landlord properly informed as to the progress of each application for the Statutory Consents and of all negotiations relating to those applications.
- 1.3 If any of the Statutory Consents are refused, the Tenant is to appeal against the refusal and use all reasonable endeavours to obtain the relevant Statutory Consents.
- 1.4 The Tenant is to provide copies of the Statutory Consents obtained to the Landlord.
- 1.5 The Tenant is to procure that all Statutory Consents obtained remain valid and unrevoked and use all reasonable endeavours to renew any that become invalid or revoked.

## SCHEDULE 6

### Development Obligations

1. **Carrying out the Development Works**
- 1.1 The Tenant is to proceed diligently with and save where prevented by Force Majeure (unless caused by the Tenant) will carry out and complete the Development Works:
  - 1.1.1 in a good, proper and workmanlike manner, free from defects and using good quality and suitable materials; and
  - 1.1.2 in accordance with:
    - 1.1.2.1 the Specification and Development Plans;
    - 1.1.2.2 the Programme of Works;
    - 1.1.2.3 the terms of the Building Contract;
    - 1.1.2.4 the Planning Permission;
    - 1.1.2.5 the Statutory Consents;
    - 1.1.2.6 all Statutory Requirements, including the CDM Regulations;
    - 1.1.2.7 the Health and Safety Plan;
    - 1.1.2.8 the requirements, if any, of the insurers of the Property; and
    - 1.1.2.9 British and European standards and any applicable codes of practice; and
  - 1.1.3 without using or specifying the use of any Deleterious Materials.
- 1.2 Without prejudice to **paragraph 1.1**, the Tenant is to procure that Practical Completion occurs within 2 years after the later of satisfaction of the Purchase Conditions and the Development Pre Conditions.
- 1.3 The Tenant is to procure that:
  - 1.3.1 proper provision is made for the security of the Property and the Retained Buildings during the carrying out of the Development Works and for the protection of any materials, plant and equipment in or on it;
  - 1.3.2 proper precautions are taken for the safety of all persons upon or in the vicinity of the Property and/or the Retained Buildings including maintaining such hoardings, fences, security patrols, safeguards and arrangements of lighting the Development Works as may be either reasonably necessary or desirable in the interest of public safety;

- 1.3.3 the Development Works are carried out in a manner which insofar as is reasonably practicable does not cause any nuisance, annoyance, inconvenience, injury, loss or danger to or interference with the public or any owners or occupiers of adjoining or neighbouring property;
  - 1.3.4 proper provision is made for the support of land, buildings and boundaries adjoining the Property and the Retained Buildings and for the protection of all services benefiting land adjoining or near to the Property and/or the Retained Buildings; and
  - 1.3.5 all surplus material is removed from the Retained Buildings when it is no longer required.
- 1.4 The Tenant is:
- 1.4.1 to procure that the rights and interests of third parties are not infringed by the carrying out of the Development Works;
  - 1.4.2 to comply with any agreements, deeds, documents, rights, easements, exceptions, reservations and covenants, restrictive or otherwise, affecting the Property and the Retained Buildings or the title to them as specified in **Part 2 of Schedule 1**;
  - 1.4.3 not to permit any encroachment or easement to be made or acquired against or over the Property and/or the Retained Buildings save as envisaged by the Development Works (if at all) or otherwise agreed by the Landlord acting reasonably;
  - 1.4.4 to negotiate the terms of agreements with owners and occupiers of neighbouring property for the release of rights of way, light and air or any other legal or equitable rights over the Property and/or the Retained Buildings which would be infringed by the Development or prevent or impede the carrying out of the Development Works;
  - 1.4.5 to apply for and use all reasonable endeavours to obtain any orders which may be required for the temporary stopping-up or temporary diversion of any highways, footpaths or public rights of way to the extent that these may be required to enable the Development Works to be carried out;
  - 1.4.6 to appoint the Planning Supervisor as the planning supervisor and the Building Contractor for the Development Works as the principal contractor for the Development Works in accordance with regulation 6 of the CDM Regulations;
  - 1.4.7 to comply with its obligations as a client under the CDM Regulations;
  - 1.4.8 not to name the Landlord as a client in respect of the Development Works;
  - 1.4.9 procure that the persons appointed under **paragraph 2.1 of Schedule 5** comply with their obligations under the CDM Regulations;

- 1.4.10 procure that designers and contractors for the purposes of the CDM Regulations comply with their obligations in the CDM Regulations; and
  - 1.4.11 in conjunction with the Planning Supervisor procure that:
    - 1.4.11.1 full details of the Development Works are given to the Health and Safety Executive in accordance with regulation 7 of the CDM Regulations; and
    - 1.4.11.2 a Health and Safety Plan is prepared and submitted to the Health and Safety Executive in accordance with regulation 15 of the CDM Regulations.
- 1.5 Where any works are to be carried out pursuant to a Planning Agreement the Tenant is to:
- 1.5.1 carry out the works in accordance with the Planning Agreement and is to indemnify the Landlord against any breach of its terms where the Landlord is a party to the Planning Agreement;
  - 1.5.2 complete the works on or before the Date of Practical Completion unless the Planning Agreement provides otherwise;
  - 1.5.3 following completion of the relevant works, repair, maintain and remedy any defects in them pursuant to the terms of the Planning Agreement; and
  - 1.5.4 use all reasonable endeavours to procure that where the works or any part of them are to be adopted by the local authority, the works are so adopted on the terms of the Planning Agreement.
- 1.6 In carrying out the Services Works:
- 1.6.1 the Tenant shall take such steps as are necessary to divert all pipes, wires, cables or other conduits including the diversion of the existing culvert in accordance with the Specification in, under or over the Property and/or the Retained Buildings or any adjoining or neighbouring property which need to be diverted as a result of the Development;
  - 1.6.2 the Tenant shall negotiate such agreements with statutory undertakers, utilities companies and others as may be required to secure for the Development all services required and the diversion in a satisfactory manner of all services which are located in a position which would interfere with the Development Works; and
  - 1.6.3 the Landlord shall at the request and cost of the Tenant enter into such agreements as referred to in **paragraph 1.6.2** of this Schedule as may be required by the relevant statutory undertaker or utility company provided that to the extent that any such agreement imposes liability on the Landlord, the Tenant is in the Lease, or in any other document which the Landlord may reasonably require to indemnify the Landlord against any breach of the provisions of such agreements by the Tenant or the Tenant's successors in title to the Property.

## 2. **Extensions of time**

2.1 If any extension of time is granted under the Building Contract that does not result from the act, omission or default of the Tenant, the period or periods of time for carrying out and completing the Development Works is to be extended by the extension of time granted to the Building Contractor under the Building Contract.

2.2 If there is any delay in completing the Development Works arising from:

2.2.1 any default of the Building Contractor under the terms of the Building Contract;

2.2.2 the Insolvency of the Building Contractor;

2.2.3 Force Majeure (unless caused by the Tenant), to the extent not covered under **paragraph 2.1**; or

2.2.4 any loss or damage caused by any of the Insured Risks

the period or periods of time for carrying out and completing the Development Works is to be extended by such period as the Landlord's Representative certifies as being reasonable and proper in the light of the reasons for the delay.

2.3 Where the Tenant is entitled to claim an extension of time under both **paragraph 2.1** and **paragraph 2.2**, **paragraph 2.1** will take priority and the Tenant will not be entitled to any additional extension of time under **paragraph 2.2** provided that where the Tenant is entitled to an extension of time then the Programme of Works shall be adjusted accordingly.

## 3. **Variations**

3.1 The Tenant is to notify the Landlord in writing of any changes in the Programme of Works which the Tenant reasonably believes are required. No variations in the Programme of Works will be permitted without the prior written consent of the Landlord, such consent not to be unreasonably withheld or delayed.

3.2 If any of the materials, plant or equipment required for the Development Works cannot be obtained within a reasonable time or at a reasonable cost, the Tenant will be entitled to use alternative materials, plant or equipment in their place so long as the alternative materials, plant or equipment are of no lesser quality than the materials, plant or equipment which they replace.

3.3 The Tenant may make changes to the Specification and Development Plans without consent of the Landlord where the changes are required to comply with Statutory Requirements or are minor changes of a non-structural nature.

3.4 All other changes to the Development Plans and Specifications will require the prior written consent of the Landlord, such consent not to be unreasonably withheld or delayed where the changes do not include or result in Adverse Matters arising.

#### 4. **Inspection by the Landlord**

4.1 During the carrying out of the Development Works, the Landlord and the Landlord's Representative may enter the Property and the Retained Buildings to view the state and progress of the Development Works.

4.2 The Landlord and the Landlord's Representative will:

4.2.1 give reasonable prior notice to the Tenant before exercising these rights unless prior arrangements have been made with the Tenant for regular visits;

4.2.2 exercise the rights at reasonable times and at reasonable intervals;

4.2.3 be accompanied by the Tenant's Representative if the Tenant so requires;

4.2.4 comply with the reasonable requirements of the Building Contractor;

4.2.5 comply with any health and safety requirements in the Health and Safety Plan; and

4.2.6 refer all matters arising to the Tenant and not to the Building Contractor or its agents, workmen or sub-contractors.

4.3 The Tenant is, without the need for any request by the Landlord, to give the Landlord full written details and copies of the results of any inspection of the Development Works or tests to any of the materials used in carrying out the Development Works, in either case, by or on behalf of the Tenant.

4.4 If the Landlord gives written notice to the Tenant that any works or materials are not in accordance with the Specification and Development Plans or are not otherwise to the standard or quality required under this Agreement, the Tenant is promptly to take the appropriate action to remove the defective works or materials and make good the defects as soon as practicable to the reasonable satisfaction of the Landlord. Any notice served under this **paragraph 4.4** is to include proper and detailed reasoning of the complaint or defect referred to but failure to do so will not invalidate the notice.

#### 5. **Site Meetings**

5.1 The Tenant is to hold site meetings not less than once every month and procure that the Building Contractor, the Tenant's Representative, members of the Professional Team and any relevant Principal Sub-Contractors attend such meetings to review or plan progress or deal with any other matter relating to the carrying out of the Development Works.

5.2 The Tenant is to:

5.2.1 give the Landlord not less than five working days' written notice of any site meetings called under **paragraph 5.1** unless it has been agreed that site meetings will be held at regular intervals on dates and at times agreed in advance;

- 5.2.2 permit the Landlord and the Landlord's Representative, if they so desire, to attend and participate in those site meetings;
  - 5.2.3 permit the Landlord and the Landlord's Representative to make representations in connection with the Development Works; and
  - 5.2.4 supply the Landlord and the Landlord's Representative with copies of full minutes of the site meetings, whether or not they attend.
- 5.3 In respect of any representations made by the Landlord or the Landlord's Representative under **paragraph 5.2:**
- 5.3.1 The Tenant is to take proper account of them;
  - 5.3.2 The Tenant is to procure that the members of the Professional Team, the Building Contractor and any Principal Sub-Contractors take proper account of those representations; and
  - 5.3.3 The Tenant is to notify the Landlord and the Landlord's Representative of any observations made by the members of the Professional Team, the Building Contractor or the Principal Sub-Contractors on representations made by the Landlord or the Landlord's Representative.

## 6. **Provision of Information**

- 6.1 The Tenant is:
- 6.1.1 regularly to inform, consult with, report to and liaise with the Landlord and comply with the proper instructions of the Landlord consistent with the provisions of this Agreement;
  - 6.1.2 promptly to supply to the Landlord copies of all written material forthwith after it is received or produced by or on behalf of the Tenant.
- 6.2 The following illustrate, but do not limit, the types of information to be supplied to the Landlord in accordance with **paragraph 6.1:**
- 6.2.1 all plans, drawings, specifications, structural calculations and other material from time to time comprising the Specification and Development Plans;
  - 6.2.2 applications for and correspondence relating to the Statutory Consents and the outcome of such applications;
  - 6.2.3 the Appointments;
  - 6.2.4 Warranties to be provided by the Professional Team, Building Contractor and Principal Sub-Contractors;
  - 6.2.5 the Building Contract, Principal Sub-Contracts and any other sub-contracts;
  - 6.2.6 lists of the Principal Sub-Contractors and any other sub-contractors and suppliers;

- 6.2.7 test certificates and specialist reports and surveys;
- 6.2.8 minutes of all meetings including site meetings, design team meetings, working party or project meetings;
- 6.2.9 requests for variations in the Development Works;
- 6.2.10 all instructions and variation orders given by the Employer's Agent under the Building Contract; and
- 6.2.11 all certificates issued under the Building Contract.

## 7. **Certificate of Practical Completion**

- 7.1 The Tenant is to procure that the Tenant's Representative inspects the Development Works with a view to the issue of the Certificate of Practical Completion in accordance with the terms of the Building Contract. The Tenant is to give the Landlord's Representative not less than ten working days' prior written notice of the date and time, being a working day during the hours of daylight, when the Tenant's Representative will carry out this inspection.
- 7.2 The Landlord and the Landlord's Representative will be entitled to accompany the Tenant's Representative on the inspection of the Development Works and to make representations on the proposal to issue the Certificate of Practical Completion and the Tenant is to procure that the Tenant's Representative takes proper account of any representations made by them.
- 7.3 Subject to **paragraph 7.3**, the Tenant is to serve a copy of the Certificate of Practical Completion on the Landlord and the Landlord's Representative as soon as reasonably practicable after the date of the inspection of the Development Works.
- 7.4 Notwithstanding the issue of the Certificate of Practical Completion, if the Landlord is of the opinion that there are defects or other items of work outstanding in the Development Works relating to the Retained Buildings (other than minor items as referred to below), the Landlord may give notice to that effect to the Tenant within 10 working days of receipt by the Landlord of the Certificate of Practical Completion whereupon the provisions of **paragraph 8 of this Schedule** will apply but in default of the Landlord giving such notice the Statement of Practical Completion shall be deemed to have been issued and the provisions of **paragraph 8 of this Schedule** will have no further effect.

## 8. **Statement of Practical Completion**

- 8.1 The Tenant shall procure that the Certifying Officer shall give to the Landlord's Representative ten (10) working days written notice of the date upon which he intends to issue the Statement of Practical Completion.
- 8.2 By mutually convenient appointment after the giving of the notice referred to in clause 8.1 the Certifying Officer and the Landlord's Representative shall jointly inspect the Retained Buildings and the Development Works so far as they relate to the Retained Buildings and shall jointly prepare a list of defects or other items of work then outstanding which are properly required under the terms of this

Agreement to be carried out before the Statement of Practical Completion can be issued.

- 8.3 If upon such inspection there shall be found to be no defects or other items of work then outstanding (other than minor items as referred to below) the Certifying Officer shall be entitled to issue the Statement of Practical Completion.
- 8.4 If upon the said inspection the Landlord's Representative reasonably considers that there are defects or other items of work properly required to the Retained Buildings under the Building Contract which remain to be carried out and which mean that the issue of the Statement of Practical Completion is not appropriate then the Landlord's Representative shall immediately notify the Certifying Officer of such defects and other items and the Tenant shall procure that the same are remedied to the reasonable satisfaction of the Landlord's Representative without delay and upon completion of the same (which shall only be deemed to have taken place after the Landlord's Representative shall have had an opportunity of making a further inspection or inspections (all such inspections to be carried out within five (5) working days of the Landlord's Representative receiving notification from the Certifying Officer) and provided that the Landlord's Representative is reasonably satisfied that there are no further defects or other items of work properly required as referred to above) the Certifying Officer shall be entitled to issue the Statement of Practical Completion.
- 8.5 Any disputes between the parties as to the issue of the Statement of Practical Completion or remedial works required before such issue shall forthwith be referred to such independent architect as the parties may agree or (in default of agreement within ten (10) working days) as may be appointed at the request of either the Landlord or the Tenant by the President of the Royal Institute of British Architects and the decision of such independent architect (as an expert) shall be given as quickly as possible and shall be binding on the Landlord and the Tenant.
- 8.6 If the said independent architect shall determine that the issue of the Statement of Practical Completion by the Certifying Officer on the date proposed in the notice referred to in clause 8.1 was justified then the Landlord shall be liable to the Tenant on the basis that the Statement of Practical Completion could have been duly issued on the date proposed.
- 8.7 If the said independent architect shall determine that the issue of the Statement of Practical Completion by the Certifying Officer on the date proposed in the notice referred to in clause 8.1 was not justified then the Statement of Practical Completion shall for all purposes of this Agreement be deemed to have been issued on the date the outstanding works the subject of the dispute shall have been actually completed.
- 8.8 Notwithstanding the above provisions the Certifying Officer shall not be precluded from issuing the Statement of Practical Completion only because there are items of a minor nature which do not in themselves prevent the Landlord from commencing and carrying out the fit out of the Retained Buildings and thereafter opening the Retained Buildings for trade and using the Retained Buildings for their intended purpose.

9. **Following Practical Completion**

9.1 As soon as reasonably practicable following Practical Completion, the Tenant is to:

9.1.1 procure that the Building Contractor carries out any further works that are required to make good any defects, omissions and snagging items identified in the Certificate of Practical Completion in accordance with the Building Contract;

9.1.2 carry out and complete in the next planting season any landscaping works which it was not possible to complete by the Date of Practical Completion because of the planting season in which the Date of Practical Completion fell;

9.1.3 procure that all defects in the Development Works for which the Building Contractor is responsible under the Building Contract that arise within the Defects Liability Period are made good in accordance with the terms of the Building Contract; and

9.1.4 not less than one month before the end of the Defects Liability Period, the Tenant is to inspect the Property and the Retained Buildings and prepare a schedule of defects, omissions and snagging items and other faults due to materials or workmanship not being in accordance with the terms of the Building Contract;

9.1.5 serve a copy of the schedule of defects on the Landlord as soon as is reasonably practicable after the inspection under **sub-paragraph 9.1.4**;

9.1.6 include in the schedule of defects any additional defects notified by the Landlord or the Landlord's Representative;

9.1.7 is to procure that the original of the Certificate of Making Good Defects is provided to the Landlord as soon as reasonably practicable after its issue;

9.1.8 prepare and provide the Landlord with the following documents:

9.1.8.1 the Health and Safety File relating to the Retained Buildings;

9.1.8.2 written confirmation that there has been no breach of the terms of the Health and Safety Plan or, if there have been breaches, giving full details of them, the steps taken to remedy those breaches and any claims or prosecutions made or expected to be made in relation to them;

9.1.8.3 three sets of as-built plans of the Retained Buildings;

9.1.8.4 the commissioning reports, test certificates and operating manuals for all plant and machinery installed as part of the Retained Buildings;

9.1.8.5 such confirmation as the Landlord may reasonably require that no Deleterious Materials have been used in the Development;

- 9.1.8.6 any guarantees, indemnities or warranties relating to the Retained Buildings;
- 9.1.8.7 certified copies of the Building Contract; the Appointments and the Principal Sub-Contracts;
- 9.1.8.8 certified copies of the Statutory Consents and the Planning Permission; and
- 9.1.8.9 a certified copy of the Certificate of Practical Completion;
- 9.1.8.10 the Statement of Practical Completion; and
- 9.1.8.11 leave the Retained Buildings in a clean and tidy condition, cleared of all unused building materials, plant and equipment used in the carrying out of the Development Works and temporary structures.

**10. Residential Fit Out Works**

10.1 Notwithstanding the issue of the Certificate of Practical Completion, the Statement of Practical Completion and/or the Certificate of Making Good Defects the Tenant is in accordance with **Schedule 6** to procure that the Residential Units are fully fitted out to enable all of the Residential Units to be brought into immediate beneficial use and occupation within 3 years of the Date of Practical Completion.

10.2 Following a breach of **clause 10.1** by the Tenant and/or the Insolvency of the Tenant:

10.2.1 The Tenant is at the written request of the Landlord and for no consideration to assign to the Landlord or as the Landlord otherwise directs the benefit of all or any of the following so far as they relate to the Residential Units:

- 10.2.1.1 the Building Contract and any Performance Bond;
- 10.2.1.2 the Appointments;
- 10.2.1.3 any other contracts or agreements entered into by the Tenant in relation to the Development;
- 10.2.1.4 all the Tenant's rights against the Building Contractor, Principal Sub-Contractors and the members of the Professional Team;
- 10.2.1.5 all warranties whether as to design, materials or otherwise in relation to the Development and any other guarantees and warranties given by the Building Contractor, Professional Team and suppliers and manufacturers in respect of all plant, machinery and apparatus installed as part of the Development; and
- 10.2.1.6 all rights of copyright vested in the Tenant;

- 10.2.2 Following completion of the assignments in **clause 10.2.1**, the Landlord may but will not be obliged to do so carry out and complete the fit out of the Residential Units at the cost and expense of the Tenant whereupon the Tenant will on completion of the fit out of the Residential Units pay to the Landlord the total costs incurred by or on behalf of the Landlord in exercising its rights under this **clause 10** and in carrying out and completing the fit out of the Residential Units.
- 10.2.3 The Tenant is to permit the Landlord, the Building Contractor, its sub-contractors, including Principal Sub-Contractors, and their respective agents and employees and the Professional Team and their respective agents and employees to enter onto and remain on the Property with or without plant, equipment, machinery, workmen and materials in order to enable the Landlord to carry out the fit out of the Residential Units.
- 10.3 The Tenant irrevocably appoints the Landlord by way of security to be the attorney of the Tenant with full power and authority to do all acts and things and execute and deliver in the name of the Tenant all deeds and documents which may be necessary to give effect to the terms of this Agreement.
- 10.4 This **clause 10** will continue to apply after any rescission or determination of this Agreement.
- 10.5 The termination of this Agreement will not prejudice any rights or remedies which that party may have against the other in respect of any outstanding breaches of this Agreement.

## **SCHEDULE 7**

### **Insolvency Defaults**

#### **1. Defined terms**

1.1 In this Schedule, the following words and expressions have the following meanings:

<b>“1986 Act”</b>	Insolvency Act 1986
<b>“1994 Order”</b>	Insolvent Partnerships Order 1994
<b>“LPA”</b>	Law of Property Act 1925

#### **2. Insolvency Default**

2.1 Insolvency occurs if:

2.1.1 a person is a company and:

2.1.1.1 it enters into a voluntary arrangement under Part I of the 1986 Act or it enters into a scheme of arrangement with its creditors in satisfaction or composition of its debt;

2.1.1.2 an administrator is appointed under Part II of the 1986 Act;

2.1.1.3 a receiver or manager, including an administrative receiver, is appointed whether under Part III of the 1986 Act, under the LPA or otherwise;

2.1.1.4 a resolution to wind-up is passed or a provisional liquidator is appointed or a winding-up order is made under Part IV of the 1986 Act unless for the purpose of a solvent amalgamation or reconstruction of the company;

2.1.1.5 a scheme of arrangement is made under section 425 Companies Act 1985;

2.1.1.6 it changes its status from unlimited to limited; or

2.1.1.7 it is struck off the register of companies or otherwise ceases to exist;

2.1.2 a person is an individual and:

2.1.2.1 an interim order or voluntary arrangement is made under Part VIII of the 1986 Act;

2.1.2.2 a trustee in bankruptcy is appointed or the individual is otherwise declared to be bankrupt;

- 2.1.2.3 the individual enters into a deed of arrangement or composition with his or her creditors;
- 2.1.2.4 a receiver is appointed under the Mental Health Act 1983 or the individual becomes incapable of managing his or her affairs; or
- 2.1.2.5 the individual dies;
- 2.1.3 two or more people are in partnership and:
  - 2.1.3.1 they enter into a voluntary arrangement under Part II of the 1994 Order;
  - 2.1.3.2 an administration order is made under Part III of the 1994 Order; or
  - 2.1.3.3 a winding up order is made under Parts IV or V of the 1994 Order; or
- 2.1.4 a person is incorporated or resident in a jurisdiction outside England and Wales and any event or circumstance occurs which under the laws of that jurisdiction has an analogous or equivalent effect to any of the events in this **paragraph 2.1.**

## SCHEDULE 8

### Planning Conditions

#### PART 1: PLANNING PERMISSION

##### 1. Defined terms

1.1 In this Schedule, the following words and expressions have the following meanings:

**“Acceptable Condition”** any condition or restriction imposed in a Planning Permission or in a covenant contained in or proposed to be included in a Planning Agreement which is the same as or has the same effect as conditions 1-13 inclusive contained in the a planning resolution of the Landlord dated 6th February 2004 ref M19652

**“Appeal”** all or any of the following:

- (a) an application to the local planning authority under section 73 of the Planning Act against the presence of an Onerous Condition in a Planning Permission;
- (b) an application to the National Assembly for Wales under section 73 of the Planning Act following a Planning Refusal by the local planning authority; or
- (c) a Calling-In

**“Calling-In”** a direction by the National Assembly for Wales that a Planning Application be referred to him for determination under section 77 of the Planning Act

**“Challenge Period”** the following periods, each calculated from and including the Permission Date:

- (a) following the grant of Satisfactory Planning Permission by the local planning authority (including after the determination of an application under section 73 of the Planning Act), the period of three months and two weeks; or
- (b) following the grant of Satisfactory

Planning Permission by or on behalf of the National Assembly for Wales, the period of six weeks

<b>“Inspector”</b>	any person appointed by the National Assembly for Wales under the Planning Act to determine appeals made under section 78 of the Planning Act or to determine a Calling-In.
<b>“National Assembly for Wales”</b>	the National Assembly for Wales or any other authority for the time being entitled to exercise the powers given under sections 77, 78 and 79 of the Planning Act
<b>“Onerous Conditions”</b>	has the meaning given to it in <b>Part 2</b> of this Schedule.
<b>“Permission Date”</b>	the date of the Satisfactory Planning Permission which means the date written, printed or stamped on the Planning Permission issued by the local planning authority or the letter or other document issued by the National Assembly for Wales or the Inspector following an Appeal or a Calling-In
<b>“Planning Application”</b>	the initial application made by or on behalf of the Tenant for Planning Permission for the Development and includes any further applications or variations made in accordance with this Schedule
<b>“Planning Counsel”</b>	the planning counsel listed in <b>Part 2</b> of this Schedule
<b>“Planning Decision”</b>	a Planning Refusal or the grant of Planning Permission whether by the local planning authority, the National Assembly for Wales or an Inspector
<b>“Planning Period”</b>	the period of months beginning on the date of satisfaction of the Site Investigation Condition subject to extension in accordance with <b>Part 1</b> of this Schedule
<b>“Planning Permission”</b>	planning permission for the Development granted:  (a) pursuant to a Planning Application; or  (b) by the local planning authority or by the National Assembly for Wales or an Inspector.

**“Planning Proceedings”**

all of any of the following:

- (a) an application made for judicial review by a third party following the grant of a Planning Permission;
- (b) an application for judicial review by the Tenant following a Planning Refusal;
- (c) an application made under section 288 of the Planning Act by a third party following the grant of Planning Permission by the National Assembly for Wales or an Inspector; or
- (d) an application made under section 288 of the Planning Act by the Tenant following a Planning Refusal by the National Assembly for Wales or an Inspector; and
- (e) includes any appeal to a higher court made against a judgement given in a lower court.

**“Planning Refusal”**

any of the following:

- (a) a refusal by the local planning authority to grant planning permission pursuant to a Planning Application;
- (b) a refusal by the local planning authority to vary or remove an Onerous Condition pursuant to an application made by the Tenant under section 73 of the Planning Act;
- (c) a refusal by or on behalf of the National Assembly for Wales to grant planning permission following a Planning Appeal or a Calling-In;
- (d) a failure by the local planning authority to determine the Planning Application within the period required under section 78(2) of the Planning Act; or
- (e) the grant of Planning Permission which is subject to any Onerous Condition or requires a Planning Agreement to be entered into on terms which contain an

## Onerous Condition

### “Satisfactory Planning Permission”

a Planning Permission that does not contain:

- (a) any Onerous Conditions; or
- (b) any conditions or stipulations requiring a Planning Agreement to be entered into on terms that contain any Onerous Condition

## 2. Obtaining Satisfactory Planning Permission

- 2.1 The Tenant is to use all reasonable endeavours to obtain a Satisfactory Planning Permission as soon as reasonably practicable after the date of this Agreement.
- 2.2 Neither the Tenant nor the Landlord are to commence Planning Proceedings following the grant of a Satisfactory Planning Permission.
- 2.3 Following the grant of Satisfactory Planning Permission, the Purchase Conditions will not be satisfied until:
  - 2.3.1 the relevant Challenge Period has expired without Planning Proceedings being commenced; or
  - 2.3.2 if Planning Proceedings are commenced during the Challenge Period, those proceedings are finally disposed of leaving in place a Satisfactory Planning Permission; and
  - 2.3.3 in each case, any Planning Agreement required to implement the terms of a Satisfactory Planning Permission has been completed.
- 2.4 If the Planning Period would otherwise come to an end, the Planning Period is to be extended as follows:
  - 2.4.1 following the grant of Satisfactory Planning Permission, to the day after the Challenge Period expires;
  - 2.4.2 following a Planning Refusal, to the date eight weeks after the date of the Planning Refusal, subject to further extensions under **paragraph 2.4.3**;
  - 2.4.3 if the Tenant makes an Appeal or commences Planning Proceedings in accordance with this Schedule following a Planning Refusal:
    - 2.4.3.1 if the Appeal or Planning Proceedings result in the grant of a Satisfactory Planning Permission, the date following the disposal of the Appeal or Planning Proceedings calculated in accordance with **paragraph 2.4.1**;
    - 2.4.3.2 if the Appeal or Planning Proceedings result in a Planning Refusal, the date following the disposal of the Appeal or

Planning Proceedings calculated in accordance with **paragraph 2.4.2;**

- 2.4.4 if Planning Proceedings are begun by a third party during a Challenge Period, to the date ten working days after all Planning Proceedings have been determined or discontinued; and
  - 2.4.5 if an application is made to Planning Counsel or a Specialist under this Schedule, to the date eight weeks after the Tenant receives written notice of his determination.
- 2.5 If any extension of the Planning Period under this **paragraph 2.4** would otherwise extend beyond the Longstop Date then the Longstop Date will be extended so that it expires on the date being the fourth anniversary of the date of this Agreement.
3. **The Planning Application**
- 3.1 Subject to **paragraph 3.2** within and weeks of the date of this Agreement and prior to submission of the Planning Application the Tenant shall supply a draft of the Planning Application to the Landlord for approval Provided that where the Landlord is in breach of its obligations at **paragraph 1.3 of Schedule 3** the Tenant shall be allowed such extension to the periods referred to in **paragraphs 3.1 and 3.6 of this Schedule** as is equivalent to the Landlord's unreasonable delay.
  - 3.2 If as a result of the Tenant's Site Investigations (as defined in **Schedule 10**) the Tenant has to make material changes to the Specification and Development Plans the Tenant shall be allowed such an extension to the time in which to submit to the Landlord for approval its draft Planning Application as set out in **paragraph 3.1** of this Schedule as is reasonable in the circumstances but which period shall not extend in any event beyond the date falling 9 months after the date of this Agreement and the period referred to in **paragraph 3.6.1** shall be extended by the same period.
  - 3.3 The Tenant must not make any Planning Application until it has been approved in writing by the Landlord such approval not to be unreasonably withheld or delayed.
  - 3.4 Each Planning Application is to be submitted in the sole name of the Tenant.
  - 3.5 The Tenant may submit any Planning Application in duplicate.
  - 3.6 The Tenant:
    - 3.6.1 is to submit a Planning Application to the local planning authority (subject to **paragraph 3.2**) within months of the date of this Agreement provided that the Landlord has not unreasonably withheld or delayed its approval to the Planning Application pursuant to **paragraph 3.3** of this Schedule; and
    - 3.6.2 may agree with the local planning authority any extension to the statutory period not exceeding six months for determining the Planning Application under section 78(2) of the Planning Act.

- 3.7 The Tenant is not to amend any Planning Application made to the local planning authority or withdraw any Planning Application without the consent of the Landlord which consent shall not be unreasonably withheld or delayed.
- 3.8 The Tenant may enter into negotiations or discussions with the local planning authority to facilitate the grant of Planning Permission but will not enter into any Planning Agreement with the local planning authority without the prior written consent of the Landlord, such consent not to be unreasonably withheld or delayed.
- 3.9 The Tenant is to:
- 3.9.1 provide to the Landlord a copy of each Planning Application made to the local planning authority;
  - 3.9.2 keep the Landlord informed at reasonable intervals, but not more than once in each calendar month, of the progress of each Planning Application, amendments made to each Planning Application, each withdrawal of a Planning Application and details of all discussions and negotiations with the local planning authority;
  - 3.9.3 give the Landlord reasonable prior notice of any meetings with the local planning authority and allow the Landlord and its planning consultants to attend those meetings; and
  - 3.9.4 provide the Landlord with copies of all notes, correspondence, documents and minutes of meetings concerning the Planning Application.
- 3.10 The Landlord is to co-operate with the Tenant and use all reasonable endeavours to assist the Tenant to obtain Satisfactory Planning Permission.

#### 4. **Planning Agreements**

- 4.1 The Landlord and the Tenant are to enter into any Planning Agreement required by the local planning authority as a condition of the grant of Satisfactory Planning Permission subject to the following conditions being satisfied:
- 4.1.1 The Tenant is to pay the proper and reasonable legal fees incurred by the Landlord in approving the terms of and entering into the Planning Agreement;
  - 4.1.2 the Planning Agreement does not contain terms which:
    - 4.1.2.1 take effect before the date of the Planning Permission; or
    - 4.1.2.2 are Onerous Conditions; and
- 4.2 To the extent that any Planning Agreement imposes liability on the Landlord, the Tenant is in the Lease, or in any other document which the Landlord may reasonably require, to indemnify the Landlord against any breach of the relevant provisions of that Planning Agreement by the Tenant or the Tenant's successors in title to the Property Provided That this indemnity shall not extend to restrictions on use or

occupation of the Retained Buildings or the activities carried out by the Landlord therein.

## 5. **Planning Decisions**

5.1 The Tenant is to notify the Landlord of each Planning Decision and provide a copy of the Planning Decision to the Landlord not later than ten working days after notice of the Planning Decision has been given to the Tenant.

5.2 If there is a Planning Refusal, the Tenant is to notify the Landlord in writing within four weeks after the date of the Planning Refusal whether it wishes to make an Appeal or commence Planning Proceedings in respect of that Planning Refusal.

5.3 Within twenty working days of receipt of the Planning Permission and any Planning Agreement the Tenant is to notify the Landlord in writing whether it considers that they contain Onerous Conditions which are unacceptable to the Tenant and:

5.3.1 if the Tenant does not do so, the Landlord may serve written notice on the Tenant requiring the Tenant to comply with this **paragraph 5.3**; and

5.3.2 if the Tenant does not respond within two weeks of a notice served under **paragraph 5.3.1**, the Planning Permission and any Planning Agreement, as the case may be, are to be treated as not containing Onerous Conditions.

5.4 If the Tenant serves notice under **paragraph 5.3** that the Planning Permission or any Planning Agreement contains one or more Onerous Conditions the Landlord may serve notice on the Tenant within ten working days of the date of the Tenant's notice, time being of the essence, requiring the question of whether the Planning Permission or the Planning Agreement, as the case may be, contains Onerous Conditions to be determined by a Specialist in accordance with **clause 13**.

5.5 The Tenant may waive its right to object to the terms of the Planning Permission or any Planning Agreement because of the presence of an Onerous Condition by serving written notice to this effect on the Landlord and on the service of notice under this **paragraph 5.8**, the Tenant will lose any right to object to the presence of the specified Onerous Condition in that Planning Permission or Planning Agreement, as the case may be.

## 6. **Appeals and Planning Proceedings**

6.1 Following a Planning Refusal the Tenant is not to Appeal or commence Planning Proceedings except in accordance with this **paragraph 6**;

6.2 If the Planning Refusal arose because of the failure by the local planning authority to determine the Planning Application within the period required under section 78(2) of the Planning Act (taking into account any extensions permitted by the Tenant in accordance with this Schedule), the Tenant may but shall not be obliged to make an Appeal;

6.3 If the Tenant wishes or the Landlord so requests following a Planning Refusal by the local planning authority where the Planning Refusal arose for any other reason other

than a failure to determine the Planning Application under section 78(2) of the Planning Act:

- (a) The Tenant and the Landlord are to instruct Planning Counsel to advise on whether an Appeal or Planning Proceedings would stand a greater than 50% chance of resulting in the grant of a Satisfactory Planning Permission; and
- (b) If Planning Counsel advises that there would be a greater than 50% chance of obtaining Satisfactory Planning Permission on an Appeal or following Planning Proceedings, the Tenant is to Appeal or commence Planning Proceedings depending upon Planning Counsel's advice as to which option maximises the chances of obtaining Satisfactory Planning Permission.

6.4 If the Tenant makes an Appeal or commences Planning Proceedings it is to:

- 6.4.1 do so at its own cost and expense;
- 6.4.2 prosecute the Appeal or Planning Proceedings with all due diligence and in a good and efficient manner;
- 6.4.3 continue the Appeal or Planning Proceedings to their conclusion unless:
  - 6.4.3.1 the Landlord otherwise agrees, such agreement not to be unreasonably withheld or delayed;
  - 6.4.3.2 Satisfactory Planning Permission is obtained; or
  - 6.4.3.3 the Longstop Date occurs.
- 6.4.4 keep the Landlord and its planning consultants informed on the progress of the Appeal or Planning Proceedings including all correspondence, notifications, instructions to and advice of counsel, evidence of expert and other witnesses and the dates of any inquiry, hearing or for the submission of written representations;
- 6.4.5 allow the Landlord and its planning consultants to attend at conferences with counsel and other relevant meetings; and
- 6.4.6 the Tenant shall not be obliged to prosecute an Appeal or Planning Proceedings during 12 months before the occurrence of the Longstop Date

## 7. **References to Planning Counsel**

- 7.1 Where any matter is to be referred to Planning Counsel in accordance with this Schedule, the provisions of this **paragraph 7** are to apply.
- 7.2 Planning Counsel is to be appointed by agreement between the Tenant and the Landlord from the list of Planning Counsel set out in **Part 3**. If none of them are willing or able to be instructed, Planning Counsel is to be such other Queen's Counsel of not less than ten years' calling experienced in town and country planning matters as the Tenant and the Landlord agree to instruct.

- 7.3 If there is any dispute about the appointment of Planning Counsel, either the Tenant or the Landlord may ask the Chairman for the time being of the Bar Council to nominate Planning Counsel who satisfies the criteria set out in **paragraph 7.2** and if he is unable or unwilling to do so, the next senior officer of the Bar Council may make the nomination.
- 7.4 The Tenant and the Landlord are to co-operate with each other by instructing Planning Counsel jointly. Instructions to Planning Counsel are to be prepared by the Tenant and approved by the Landlord, such approval not to be unreasonably withheld or delayed. If there are any points of dispute between the Tenant and the Landlord, the instructions to Planning Counsel are to set out the nature of the dispute and include both the Tenant's and the Landlord's comments on the nature of the dispute.
- 7.5 The decision of Planning Counsel on the matter or matters referred to him is to be final and binding on the Tenant and the Landlord and he is to determine how the costs of the referral and any costs incurred by the Tenant and the Landlord in relation to the matter are to be borne between them.
- 7.6 If a matter is referred to Planning Counsel for determination and Planning Counsel is of the opinion that the matter, or any part of the matter, is not one which Planning Counsel would reasonably be able to determine, Planning Counsel may direct that the matter, or the part of it in question, be referred by the Tenant and the Landlord for determination by a Specialist in accordance with **clause 13**.

## 8. **Termination**

- 8.1 If there is a Planning Refusal which does not arise from a failure by the local planning authority to give notice under Section 78 (2) of the Planning Act (taking into account any extensions of time permitted by the Tenant in accordance with this Schedule) and Planning Counsel advises in writing that an Appeal or Planning Proceedings would not stand a greater than 50% chance of resulting in the grant of a Satisfactory Planning Permission either the Landlord or the Tenant may end this Agreement by serving 4 weeks' written notice on the other provided that where the Tenant shall have submitted another Planning Application to the local planning authority (after having obtained Landlord's approval to the draft Planning Application which approval shall not be unreasonably withheld or delayed) before the expiry of such notice then such notice shall not have effect and this Agreement shall not terminate upon the expiry of such notice.
- 8.2 If Satisfactory Planning Permission has not been obtained during the Planning Period (as extended under **paragraph 2.4**) either the Landlord or the Tenant may end this Agreement by serving notice in writing on the other.

## **PART 2: ONEROUS CONDITIONS**

### 9. **Onerous Conditions**

- 9.1 An Onerous Condition is a condition attached to a Planning Permission or any provision in a Planning Agreement which is not an Acceptable Condition and which, in the reasonable opinion of the Tenant:

1.

5.

6.5

10.

**PART 3: LIST OF PLANNING COUNSEL**

*Include a list of Planning Counsel here.*

Bill Hicks QC

Peter Village QC

Robin Purchas QC

Russell Hains QC

Christopher Katkowski QC

Andrew Tait QC

Tina Corner QC

Anthony Porten QC

## SCHEDULE 9

### Site Assembly Condition

#### 1. Defined Terms

In this Schedule, the following words and expressions have the following meanings:

<b>“Additional Interests”</b>	those parts of the Property which are leased to the tenants of the Occupational Leases together with such other areas as the parties may agree from time to time as being appropriate for inclusion in the Compulsory Purchase Order
<b>“Compulsory Purchase Order”</b>	a Compulsory Purchase Order to be made by the Landlord pursuant to Section 226 of the Planning Act in respect of the Additional Interests
<b>“Occupational Leases”</b>	Occupational Lease 1, Occupational Lease 2 and Occupational Lease 3
<b>“Occupational Lease 1”</b>	a Lease dated 13th June 1988 and made between (1) Monmouth District Council and (2) Abergavenny Market Auctioneers Limited
<b>“Occupational Lease 2”</b>	a Lease dated 14th July 1994 and made between (1) Monmouth Borough Council and (2) Richards (Abergavenny) Limited
<b>“Occupational Lease 3”</b>	a Lease dated 14th July 1994 and made between (1) Monmouth Borough Council and (2) RM Jones

#### 2. Purchase of Additional Interests

- 2.1 The Landlord shall use reasonable endeavours to acquire by agreement the Additional Interests as soon as reasonably practicable after the date of this Agreement on terms reasonably acceptable to the Landlord.
- 2.2 Notwithstanding **clause 2.1** the Landlord agrees that it will make the Compulsory Purchase Order within 28 days of the date of this Agreement.
- 2.3 Following the making of the Compulsory Purchase Order the Landlord will use all reasonable endeavours to obtain confirmation of the Compulsory Purchase Order.
- 2.4 The Landlord will promptly supply the Tenant with:

- 2.4.1 A copy of the Compulsory Purchase Order, a copy of the Statement of Reasons and copies of any other documents which are submitted to the National Assembly for Wales as part of the landlord's application for confirmation of the Compulsory Purchase Order;
  - 2.4.2 Copies of any objections to the Order received by the Landlord;
  - 2.4.3 A copy of the case that the Landlord will present to any public inquiry or responses to any written representations.
- 2.5 The Tenant shall supply the Landlord with appropriate information to enable the Landlord to properly and adequately deal with the confirmation of the Compulsory Purchase Order including supplying witnesses to appear at any public inquiry.
- 2.6 The Landlord is to keep the Tenant informed at reasonable intervals, but not more than once in each calendar month of the progress of the purchase of the Additional Interests and details of relevant discussions and negotiations with the tenants of the Occupational Leases and of the progress of the application for confirmation of the Compulsory Purchase Order and details of all discussions and negotiations with the National Assembly for Wales.
3. **Satisfaction of the Site Assembly Condition**
- 3.1 The Site Assembly Condition will be satisfied on the date on which the Landlord has successfully acquired the last of the Additional Interests whether that acquisition be by private treaty or the making of general vesting declarations and/or the service of notices to treat in respect of those parts of the Property comprised in the Compulsory Purchase Order.
- 3.2 Following the confirmation of the Compulsory Purchase Order, the Landlord shall use its reasonable endeavours to procure the satisfaction of the Site Assembly Condition as soon as reasonably possible following such confirmation.
4. **Waiver**
- Neither party may waive the Site Assembly Condition.

## SCHEDULE 10

### Site Investigation Condition

#### 1. Defined Terms

In this Schedule, the following words and expressions have the following meanings:

“Adverse Factors”	any matters which are revealed by the Site Investigations and which by an objective standard would be unreasonable to a reasonable developer.
“Licence”	a licence made between (1) The Landlord (2) the Tenant and (3) AMAL in the form of the attached draft.
“Site Investigations”	a topographical survey, geotechnical survey and archaeological survey.
“Site Investigation Reports”	the reports prepared by Terra Firma Limited and Scott Wilson Kirkpatrick and Co. Limited pursuant to the Site Investigations.

#### 2. Condition

- 2.1 This Agreement is conditional upon the Tenant receiving Site Investigation Reports which are free from Adverse Factors.

#### 3. Making of the Site Investigations

- 3.1 If it has not already done so, the Tenant shall within 20 working days of the date of the Licence instruct its contractors to carry out the Site Investigations.
- 3.2 The Tenant is to keep the Landlord informed at reasonable intervals of the progress of the Site Investigations.

#### 4. Satisfaction of the Site Investigation Condition

- 4.1 Within five working days of receiving each Site Investigation Report the Tenant is to provide a copy of each Site Investigation Report to the Landlord and is to notify the Landlord in writing whether it considers that any Site Investigation Report contains Adverse Factors. Time is of the essence in relation to this obligation and if notice of any Adverse Factors is not given in accordance with this **paragraph 4.1** the relevant Site Investigation Report is to be treated as being free from any Adverse Factors.
- 4.2 If the Tenant serves notice under **paragraph 4.1** that any of the Site Investigation Reports contain Adverse Factors, the Landlord may serve notice on the Tenant within ten working days of the date of the Tenant’s notice, time being of the essence, requiring the question of whether the relevant Site Investigation Report is satisfactory to be determined by a Specialist in accordance with **clause 12**.

5. **Waiver**

The Tenant alone may waive the Site Investigation Condition by service of written notice on the Landlord to that effect, whereupon the Site Investigation Condition shall be deemed to be satisfied.

## **SCHEDULE 11**

### **Repeal Condition**

#### **1. Defined Terms**

In this Schedule , the following words and expressions have the following meanings:

- “the Acts”** the Abergavenny Improvement Acts 1854-1871.
- “Compulsory Purchase Order”** has the same meaning given to it in **Schedule 9**.
- “Repeal Order”** means an order made by the Secretary of State for Wales pursuant to Section 58 of the Local Government (Wales) Act 1994 or by the National Assembly for Wales pursuant to section 5 of the Local Government Act 2000 to repeal the Acts

#### **2. Purchase of Additional Interests**

- 2.1 Following the making of the Compulsory Purchase Order the Landlord will apply to the National Assembly for Wales for the Repeal Order.
- 2.2 The Landlord will use all reasonable endeavours to obtain the Repeal Order.
- 2.3 The Landlord is to keep the Tenant informed at reasonable intervals, but not more than once in each calendar month of the progress of discussions and negotiations with the National Assembly for Wales.

#### **3. Satisfaction of the Repeal Condition**

The Repeal Condition will be satisfied on the date on which the Repeal Order is effective.

#### **4. Longstop Date**

If the Repeal Order has been made by the Longstop Date but is subject to an application made for judicial review by a third party the Longstop Date shall be extended so that it shall expire on the fourth anniversary of the date of this agreement.

#### **5. Waiver**

Neither party may waive the Repeal Condition.

## **SCHEDULE 12**

### **Development Costs**

#### **PART 1: DEVELOPMENT ACCOUNT**

##### **1. Development Account**

- 1.1 The Tenant is to operate and maintain the Development Account until the later of Valuation Date and the date on which the final account is produced under the Building Contract.
- 1.2 The Tenant is to debit directly to the Development Account all Items of Expenditure paid or incurred by the Tenant in carrying out the Development Works on or before the Valuation Date.
- 1.3 The Tenant is to credit to the Development Account all Items of Receipt.
- 1.4 The Tenant is to submit to the Landlord a statement of the Development Account at monthly intervals showing the total of all Items of Expenditure incurred by or on behalf of the Tenant including the Development Category in which those Items of Expenditure were incurred where relevant and showing the total of all Items of Receipt.
- 1.5 The Tenant is to retain at a place where the Landlord can reasonably inspect them and allow the Landlord and its accountants to have access to and inspect all accounts and other written or computer records or documents which are, or in the reasonable opinion of the Landlord ought to be, maintained for the purpose of recording and verifying all Items of Expenditure, Items of Receipt and Development Costs including:
  - 1.5.1 all VAT and other tax returns and records;
  - 1.5.2 bank records and statements;
  - 1.5.3 copies of invoices, certificates, bills and demands relating to the Development Works and this Agreement; and
  - 1.5.4 copies of the payment certificates issued under the Building Contract.
- 1.6 The Tenant acknowledges to the Landlord that it owes the Landlord a duty of the utmost good faith to maintain full and accurate Development Accounts to enable the Landlord properly and accurately to determine the Development Costs.

##### **2. Treatment of Development Costs**

Development Costs are to be treated in accordance with the following provisions:

- 2.1 No Item of Expenditure counted under one head is to that extent to be counted under another;

- 2.2 Items of Expenditure do not include any costs where the Tenant has incurred those costs as a direct or indirect default of the Tenant, but such expenditure may only be excluded to the extent that it would not have been incurred in the absence of the default;
- 2.3 References to costs include proper and reasonable incidental costs, expenses and fees incurred;
- 2.4 References to fees include proper and reasonable incidental disbursements incurred;
- 2.5 Items of Expenditure are allowed only to the extent that they are reasonably and properly incurred;
- 2.6 Any expenditure or receipts which accrue over or relate to a period are if apportionment is necessary, to be treated as accruing from day to day throughout the period to which they relate and are apportionable in respect of time accordingly; and
- 2.7 Any sum payable or receivable which is due or incurred prior to the Valuation Date, even if not then ascertained or quantified is, if paid or received following the Valuation Date, to be treated as if it were paid or received prior to the Valuation Date.

## **PART 2: ITEMS OF EXPENDITURE**

### **1. Items of Expenditure**

- 1.1 The Items of Expenditure are set out below. Unless expressly stated to the contrary they are exclusive of Value Added Tax.
- 1.2 Items of Expenditure are:
  - 1.2.1 the IP (as defined in **Schedule 13**) together with any sum allowed pursuant to **paragraph 2.4** of **Schedule 13** , stamp duty land tax and Land Registry Fees payable by the Tenant connected with the acquisition of the Property (but excluding penalties or interest consequent upon a submission of a land transaction return or payment of stamp duty land tax out of time will not form part of the Items of Expenditure);
  - 1.2.2 the Tenant's proper and reasonable legal and surveyors' fees and disbursements in relation to the sale and purchase of the Property;
  - 1.2.3 the proper and reasonable costs properly incurred by the Tenant in satisfying the Purchase Conditions;
  - 1.2.4 the proper and reasonable cost of demolition of buildings on the Property and the Retained Buildings, clearing the Property and the Retained Buildings and carrying out the Development Works;
  - 1.2.5 the reasonable and properly incurred fees and disbursements of the Professional Team employed with regard to the carrying out of the Development;

- 1.2.6 the reasonable and proper cost of initially letting the Property which are:
  - 1.2.6.1 the proper and reasonable fees and disbursements of the letting agents;
  - 1.2.6.2 the proper and reasonable legal fees of the Tenant in relation to the negotiation of any agreement for lease and lease to the extent that these are not recovered from the tenant; and
  - 1.2.6.3 any financial incentives or capital contributions made to any lessee whether payable under an agreement for lease, lease or otherwise
- 1.2.7 reasonable and proper legal and surveyors fees, agency commission, advertising and promotional expenses incurred in connection with a sale of the Tenant's interest in the Property;
- 1.2.8 interest (except interest due to the Landlord) at the rate of 1% above the base rate of HSBC Bank plc on monies provided by the Tenant from its own resources or at the rate actually borrowed by the Tenant to fund the Development Costs provided that the borrowing rate is not more than 1.5% above the base rate of HSBC Bank plc;
- 1.2.9 guarantee fees, commitment fees, procurement fees and finance charges in respect of the Development Works;
- 1.2.10 annual and recurring outgoings whether parliamentary, parochial or otherwise paid by the Tenant in respect of the Property and the Retained Buildings;
- 1.2.11 the proper and reasonable costs incurred by the Tenant in complying with its insurance obligations in **clause 7** of this Agreement (but excluding any costs payable by the Tenant towards reinstating the Development Works, the Property and the Retained Buildings if the insurance proceeds are insufficient to cover the costs of reinstatement and any insurance costs which are reimbursed by any tenants on the Property);
- 1.2.12 the reasonable and proper cost of repair, maintenance and upkeep of the Property and the Retained Buildings;
- 1.2.13 value added tax on supplies of goods and services to the extent that it is not recoverable by the Tenant by credit against output tax or repayment by the Commissioners of HM Customs and Excise; and
- 1.2.14 any other item of expenditure reasonably and properly incurred in relation to the Development Works not specifically mentioned in the foregoing items;

1.3 Items of Expenditure exclude:

- 1.3.1 liquidated damages of whatsoever nature actually received by the Tenant in connection with the Property, the Retained Buildings and the Development Works;
- 1.3.2 any sums payable by the Tenant to the Landlord or any third party by way of interest, penalties, damages or compensation or otherwise as a result of any wrongful act or omission by the Tenant or anyone for whom they or any of them are directly or indirectly responsible;
- 1.3.3 any sums of money paid by or recovered from a third party;
- 1.3.4 the Tenant's internal overheads and administrative expenses; and
- 1.3.5 the costs incurred by the Tenant in remedying any breach of this Agreement.

### **PART 3: ITEMS OF RECEIPT**

#### **1. Items of Receipt**

- 1.1 Items of Receipt are any sums equal to any income from or in respect of the Tenant's interest in the Property (other than any Disposal Proceeds) which are received or receivable in respect of a period or on a date prior to the Valuation Date which include but which are not limited to:
  - 1.1.1 all rents, licence fees, capital receipts, mesne profits or other payments received from the use and enjoyment of the Property;
  - 1.1.2 proceeds for the surrender, variation or renewal of a lease or other interest in the Property;
  - 1.1.3 service charges, insurance premiums and outgoings;
  - 1.1.4 the proceeds of any insurance policy taken out by or on behalf of the Tenant in compliance with its insurance obligations in **clause 7** of this Agreement;
  - 1.1.5 any penalties, damages or compensation paid by a third party to the Tenant; and
  - 1.1.6 any VAT recovered or recoverable from HM Revenue and Customs where the corresponding amount of VAT has already been debited to the Development Account as an Item of Expenditure.

## SCHEDULE 13

### Calculation of the Price

#### 1. Calculation of the Price

1.1 The Purchase Price shall be calculated in accordance with the following formula:-

$$PP = IP + E$$

where:

PP = the Purchase Price

IP = the sum of as the same may be adjusted pursuant to the provisions of **paragraph 3 of Schedule 3**

$$E = EE - AE$$

EE = the Estimated Expenditure

AE = the Actual Expenditure

1.2 If AE exceeds EE then E shall equal zero.

1.3 It is agreed between the parties that in calculating the value of E any saving in an individual Development Category will not be used to offset any over expenditure in any other Development Category where the Estimated Expenditure for that Development Category has been exceeded and for the avoidance of doubt the total costs saved in each Development Category will be paid to the Landlord pursuant to the provisions of this Schedule.

1.4 On the Completion Date a sum equal to £ as that sum may be adjusted pursuant to the provisions of **paragraph 3 of Schedule 3** will be paid to the Landlord on account of the Purchase Price.

1.5 On the Date of Practical Completion the Tenant is to provide to the Landlord a full and accurate statement of the Development Account to enable the parties to determine the Actual Expenditure.

1.6 On the Date of Practical Completion the parties shall seek to agree a provisional calculation of the Purchase Price by calculating AE using the statement of the Development Account produced under **paragraph 1.5** except where such information is not available, in which case to the extent that such information is not available, the parties will use such sums provisionally allowed for in respect of each Development Category by the Building Contractor in its original tender for the Building Contract pursuant to **paragraph 3 of Schedule 2** and within 10 working days of such sum being agreed or determined pursuant to **clause 12** the Tenant shall pay any balance due to the Landlord (having been given credit for all sums paid previously).

1.7 The Landlord may require the statement of the Development Account produced under **paragraph 1.5** to be audited by an independent firm of chartered accountants. If such an audit shows that the Items of Expenditure have been overstated by more than 2%, the cost of the audit is to be paid by the Tenant to the Landlord on demand but shall otherwise form an Item of Expenditure.

## 2. **Actual expenditure**

2.1 The Tenant shall procure that the final account prepared by the Building Contractor pursuant to the Building Contract divides all sums due and payable under the Building Contract between the relevant Development Categories so as to enable the Landlord and the Tenant to properly and accurately determine the Actual Expenditure.

2.2 As soon as reasonably practicable after the production of the final account pursuant to the Building Contract the Tenant shall provide to the Landlord a copy of the final account under the Building Contract and a full and accurate final Development Account to enable the Landlord properly and accurately to determine the Purchase Price. The Landlord may require the Development Account produced to be audited by an independent firm of chartered accountants. If such an audit shows that Items of Expenditure have been overstated by more than 2%, the cost of the audit is to be paid by the Tenant to the Landlord on demand but shall otherwise form an Item of Expenditure.

2.3 As soon as reasonably practicable after the final Development Account has been prepared the parties shall consult with each other and use all reasonable endeavours to agree the final calculation of the Purchase Price and in default of agreement the matter may be referred for determination by an arbitrator appointed pursuant to **clause 12** and any underpayment by the Tenant shall be paid to the Landlord or any overpayment by the Tenant shall be reimbursed by the Landlord to the Tenant within 10 working days of such sum being agreed or determined.

2.4 To the extent that, in respect of Development Category 5 of the Appraisal Summary, the Actual Expenditure is less than the Estimated Expenditure due to a variation requested by McLagan pursuant to clause 14 of the Agreement for Lease which affects the interior of the Store a sum equivalent to the amount of the saving paid by the Tenant to McLagan pursuant to the Agreement for Lease shall be added to the Actual Expenditure in calculating the Purchase Price.

## 3. **Audit of the Development Account**

In the event that the Landlord requires the Development Account to be audited pursuant to either **paragraph 1.7 or paragraph 2.2** payment of the balance of the Purchase Price pursuant to either **paragraph 1.6 or paragraph 2.3** is not to be postponed but, if further adjustment of the amount due to the Landlord is required, its payment is to attract interest at 1% below the Contract Rate and if not paid within 10 working days after written notification of the amount is given to the Tenant interest is to be paid at the Contract Rate from the date on which the further adjustment is ascertained on such much of the amount due as remains unpaid thereafter.

4. **Disputes**

4.1 Any dispute over the calculation of the Purchase Price may be referred at the request of either the Landlord or the Tenant to the decision of a Specialist who shall act as an arbitrator in accordance with **clause 12**;

4.2 Any adjustment agreed between the Landlord and the Tenant or determined by the Specialist is to be paid by the Tenant to the Landlord within 10 working days of being agreed or determined and if not so paid the Tenant shall pay interest on such excess at the Contract Rate from the due date until the actual date of payment.

5. **Interest on Late Payments**

Any payment to be made by a party under this Schedule that is not made within the time limits set out in this Schedule is to bear interest at the Contract Rate both after as well as before any judgment, calculated from and including the due date for payment to and including the actual date of payment.

## **SCHEDULE 14**

### **Additional Consideration**

#### **1. Defined Terms**

In this Schedule the following definition has the following meaning:

“Market Value”	the estimated amount for which the Lease should exchange for cash on the Valuation Date between a willing buyer and a willing seller in an arm’s length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion assuming: <ul style="list-style-type: none"><li>(a) there has been a reasonable period prior to the Valuation Date within which to negotiate the sale taking into account the nature of the Property, the relevant interests and the state of the market;</li><li>(b) values remained static throughout that period;</li><li>(c) no account is to be taken of any additional bid by a buyer with a special interest; and</li><li>(d) the Property is free from the terms of this Agreement.</li></ul>
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#### **2. Calculation of the Additional Consideration**

2.1 The Additional Consideration is to be calculated in accordance with the following formula:

$$AC = AP \times ((MV + DP) - (DC + DPR))$$

where:

AC = Additional Consideration

AP = the Agreed Percentage

MV = Market Value

DC = the total amount of the Development Costs as at the Valuation Date

DP = Disposal Proceeds

DPR = the Developer’s Priority Return of 15% of DC

2.2 The Additional Consideration is exclusive of VAT payable on it.

3. **Payment to the Landlord**

3.1 On the Valuation Date and at the request of the Landlord following notification of the Tenant's decision to sell its interest in the Property the Tenant is to provide to the Landlord a full and accurate copy of the Development Account to enable the Landlord properly and accurately to determine the Development Costs.

3.2 The Landlord may require that each Development Account produced under **paragraph 3.1** be audited by an independent firm of chartered accountants. If such an audit shows that Development Costs have been overstated by more than 2%, the cost of the audit is to be paid by the Tenant to the Landlord on demand but shall otherwise form an Item of Expenditure.

3.3 If the Additional Consideration is a positive amount, the Tenant is to pay the Additional Consideration to the Landlord on the Payment Date together with any Value Added Tax payable on it.

4. **Sale of the Property**

4.1 If, at any time prior to the Valuation Date, the Tenant sells or enters into an agreement to sell the Tenant's interest in the Property at arm's length to a bona fide buyer the Additional Consideration will be payable to the Landlord not on the Valuation Date but on completion of the sale in accordance with this **paragraph 4**.

4.2 The Additional Consideration payable under this **paragraph 4** will be calculated by reference to the following formula:

$$AC = AP \times ((SP + DP) - (DC + DPR))$$

where:

AC = Additional Consideration

AP = the Agreed Percentage

SP = the sale price of the Tenant's interest in the Property, exclusive of Value Added Tax

DC = the total amount of the Development Costs as at the date of the sale of the Tenant's interest in the Property

DP = Disposal Proceeds

DPR = the Developer's Priority Return of 15% of DC

4.3 The Tenant agrees that it will notify the Landlord as soon as reasonably practicable following its decision to sell the Tenant's interest in the Property.

4.4 The parties agree that they will jointly appoint an independent chartered surveyor agreed on by the parties and in default of agreement appointed under **clause 12** to

value the Tenant's interest in the Property, being a person having practical experience in relation to developments in the nature of the Development and the Property who will act as an expert and the Tenant agrees that it will not enter into an agreement to sell or sell its interest in the Property until such valuation has been obtained.

- 4.5 The valuation of the independent chartered surveyor will remain valid for four months. If the sale of the Tenant's interest in the Property does not complete within four months of the written valuation and the Tenant still wishes to dispose of its interest the parties will obtain a further valuation and the Tenant agrees that it will not complete the sale until a further valuation has been obtained.
- 4.6 The decision of the independent chartered surveyor on the value of the Tenant's interest in the Property is to be final and binding on the Landlord and the Tenant.
- 4.7 If the Tenant then sells the Property below the valuation of the independent chartered surveyor it is agreed that the Tenant's interest in the Property will be deemed to have been sold at the price valued by the independent chartered surveyor and SP will be the amount of the valuation and not the actual sale price. If the Tenant sells the Property at a price higher than the valuation of the independent chartered surveyor SP will be the actual sale price of the Tenant's interest in the Property.
- 4.8 If the Additional Consideration calculated under **paragraph 4.2** is a positive amount, the Tenant will pay that Additional Consideration to the Landlord together with any Value Added Tax payable on it on the date on which the completion of the sale takes place.

## 5. **Audit**

- 5.1 In the event that the Landlord requires the Development Account to be audited under **paragraph 3.2** payment of the Additional Consideration is not to be postponed but, if further adjustment of the amount due to the Landlord is required, its payment is to attract interest at 1% below the Contract Rate and if not paid within 10 working days after written notification of the amount is given to the Tenant interest is to be paid at the Contract Rate from the date on which the further adjustment is ascertained on such much of the amount due as remains unpaid thereafter.

## 6. **Final Account**

- 6.1 As soon as reasonably practicable after the final account under the Building Contract has been prepared the Tenant shall provide to the Landlord a copy of the final account and a full and accurate final Development Account to enable the Landlord properly and accurately to determine the Development Costs. The Landlord may require the Development Account to be audited by an independent firm of chartered accountants. If such an audit shows that Development Costs have been overstated by more than 2%, the cost of the audit is to be paid by the Tenant to the Landlord on demand but shall otherwise form an Item of Expenditure.

6.2 If the Development Account shows that there has been an overpayment to the Landlord under **paragraph 4.8** then the Landlord will pay back to the Tenant such amount within 10 working days of such sum being agreed or determined.

6.3 If the Development Account shows that there has been an underpayment to the Landlord under **paragraph 4.8** then the Tenant will pay to the Landlord such amount within 10 working days of such sum being agreed or determined.

7. **Interest on Late Payments**

Any payment to be made by a party under this Schedule that is not made within the time limits set out in this Schedule is to bear interest at the Contract Rate both after as well as before any judgment, calculated from and including the due date for payment to and including the actual date of payment.

8. **Determination of disputes**

Any dispute about the calculation of the Additional Consideration or the payment of any sum under **paragraphs 6.2 and 6.3** may be referred by the Landlord or the Tenant to the decision of a Specialist who shall act as an arbitrator in accordance with **clause 12**.

9. **Letting Obligations**

The Tenant is to use all reasonable endeavours to negotiate lettings for each Commercial Unit at the rents reasonably obtainable in the open market at arm's length with bona fide tenants for their own occupation.

**THE COMMON SEAL** of )  
**MONMOUTHSHIRE COUNTY COUNCIL** )  
was hereunto affixed in the presence of: )

**A Member of the Council**

**Authorised Signatory**

**SIGNED** as a deed by )  
**HENRY BOOT DEVELOPMENTS** )  
**LIMITED** acting by a director and its )  
secretary or two directors )

**Director**

**Director / Secretary**