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DATED

3 October
August 2008



SEQ210

**THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF SOUTHWARK**
as Landlord

EADON LIMITED
as Tenant

**AGREEMENT FOR TRANSFER LEASES
and DEED OF EASEMENT**

in respect of Market Premises and basement premises at
50 New Kent Road Elephant and Castle London SE1

Notice served in respect of
Market Square Lease August 2008
26 September

Statutory Declaration Sworn August 2008
29 September

We hereby certify this to be
a true copy of the original
Berwin Leighton Paisner LLP
Berwin Leighton Paisner LLP
Adelaide House
London Bridge
London EC4R 9HA

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DATED

3 October

2008

PARTIES

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK** at the Town Hall Peckham Road London SE5 8UB (the "Landlord")
- (2) **EADON LIMITED** a company registered in the Isle of Man (IoM company no 117262C) whose registered office is at 18 Athol Street Douglas Isle of Man IM1 1JA (the "Tenant")

BACKGROUND

- (A) The Landlord entered into the First Section 106 Agreement and the Tenant has since acquired the Tenant's Property and is for the purposes of the First Section 106 Agreement the successor in title to Eadon Estates Limited.
- (B) The Landlord and Tenant have entered into the Second Section 106 Agreement.
- (C) The Landlord owns the Property.
- (D) The Tenant will undertake the Main Development on the Tenant's Retained Land and the Development on the Basement Area respectively.
- (E) On the completion of the Basement Area Works as defined in this Agreement, the Tenant will transfer to the Landlord the Blue Land and grant the Landlord the Deed of Easement over the Tenant's Retained Land and simultaneously the Landlord will grant to the Tenant the Basement Lease.
- (F) On completion of the Market Square Works as defined in this Agreement, the Landlord will grant to the Tenant or its nominee the Market Square Lease.
- (G) The Landlord has granted the Eastern and Western Margin Lease to the Tenant.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

"Acceptable Permission" means detailed planning permission for the construction of the Main Development and Development in a form which is based on the application submitted in respect of the Second Planning Permission and which is acceptable to the Tenant in that it does not contain Onerous Conditions in relation to the Main Development or Development as a whole and is free from any condition or stipulation requiring the Tenant to enter into any planning Agreement on terms which would include one or more Onerous Conditions.

"Acquisition Condition" means the registration of the Tenant as proprietor of the leasehold interests in the Eastern Land and Western Land at the Land Registry with title absolute as provided for in Schedule 3, Part 3 (*Acquisition Condition*).

"Additional Land" means the land shaded turquoise on the plan attached at Appendix 2.7.

"Approved Plans" means the Basement Specification and Market Specification.

"Architect" means Tate and Hindle Design Limited or any other person to be appointed as a replacement or substitute for them by the Tenant in accordance with the provisions of this Agreement.

"Authority" means the local planning authority in respect of the Main Development and Development.

"Basement Area" means the area shown coloured red and blue on the plan in Appendix 2.2 comprising the Blue Land and part of the Property.

"Basement Area Works" means the works to provide an area of basement sufficient in depth and form to create a facility for the mutual benefit of the Tenant and its successors in title and occupiers and all others entitled thereto of the Main Development and the Landlord and its successors in title and licensees and all others entitled thereto in accordance with the provisions of this Agreement and the Basement Lease to the Elephant and Castle Shopping Centre and the Walworth Area for access and egress of delivery vehicles from New Kent Road beneath the Main Development, together with the provision of two Breakout Panels (unless as a consequence of any other terms which may be agreed between the parties the Landlord expressly notifies the Tenant in writing that it does not require the Tenant to provide the said Breakout Panels) in accordance with the Basement Specification and Planning Permission.

"Basement Lease" means the lease to be granted by the Landlord to the Tenant in accordance with the provisions of this Agreement substantially in the form of the draft lease at Appendix 3 with such amendments as shall be agreed between the Landlord and Tenant in their absolute discretion.

"Basement Premises" means those premises defined in Schedule 1, Part 1 (*Basement Premises*).

"Basement Specification" means the plans, drawings and specifications relating to the Basement Area Works attached at Appendix 1.1 including, as they are varied from time to time, any variations from and alterations and additions to the revisions of the plans made in accordance with the provisions of this Agreement and for the avoidance of doubt, excluding the Excluded Fit Out Works.

"Blue Land" means that part of the Tenant's Property as shown coloured blue on the plan in Appendix 2.1 or such other area as may from time to time be agreed between the Landlord and Tenant in their absolute discretion.

"Breakout Panels" means two breakout panels to be provided in the western wall of the Basement Area in the position marked A-B and C-D on the plan in Appendix 2.3.

"Building Contract" means the building contract (including one for the whole or any part of the Main Development in conjunction with the whole or any part of the Development) for the carrying out of the Building Works to be entered into by the Tenant and the Building Contractor on the terms of this Agreement.

"Building Contractor" means the building contractor appointed by the Tenant to act and employed in such capacity under the terms of this Agreement or any replacement or substitution of such building contractor from time to time appointed by the Tenant.

"Building Works" means the Basement Area Works and Market Square Works.

"CDM Co-Ordinator" means McBains Cooper Consulting Limited or any other person to be appointed as a replacement or substitute for them by the Tenant in accordance with the provisions of this Agreement.

"CDM Regulations" means the Construction (Design and Management) Regulations 2007.

"Commencement Date" means the date on which a material operation as defined in section 56 of the Town and Country Planning Act 1990 shall be carried out in respect of the Development on the Blue Land and Property but excluding:

- (a) demolition;
- (b) site clearance;
- (c) the provision of infrastructure boreholes permitted by the Town and Country Planning General Development Order 1995 or any amendment or replacement thereof;
- (d) the provision of underground drainage and sewers;
- (e) construction of temporary accesses to facilitate the carrying out of the Development;
- (f) construction of boundary fencing or hoardings;
- (g) ecological or archaeological surveys, investigations or assessments;
- (h) any temporary survey works; and
- (i) works and operations including the creation of foundations to enable any of the foregoing to take place,

as notified to the Landlord by the Tenant in writing and for the purposes of this Agreement and **"Commencement"** shall mean the undertaking of a material operation in accordance with this definition.

"Condition Longstop Date" means the date three years after the date of this Agreement.

"Conditions" means each condition specified in Clause 2 (*Conditions*).

"CRT Agreement" means the Safeguarding Agreement as defined in the Second Section 106 Agreement.

"CRT Condition" means the completion of the CRT Agreement in accordance with the provisions of Schedule 3, Part 4 (*CRT Condition*).

"Default Event" means any or all of the following to occur:

- (a) the Tenant shall have an order made or resolution passed for its winding-up which is not removed within a period of 14 days thereafter;
- (b) the Tenant enters into voluntary winding-up other than for the purposes of re-organisation whilst solvent;
- (c) the appointment of a provisional liquidator to the Tenant;

- (d) presentation of a petition in respect of the Tenant which is not contested within 14 days of presentation or a meeting is convened for the purpose of considering a resolution for winding-up;
- (e) dissolution of the Tenant (whether or not after winding-up);
- (f) if in respect of the Tenant a resolution is passed or any other step is taken by the company or its directors for the appointment of an administrator, or an administrator is appointed, or a petition or application for an administration order is presented in relation to the company;
- (g) if a receiver (which expression shall without prejudice to the generality thereof include an administrative receiver) is appointed over all or any of the assets or of the income arising from all or any of the assets of the Tenant; and/or
- (h) if the Tenant is struck off the Register of Companies or is dissolved or otherwise ceases to exist under the laws of the country or state of its incorporation.

"Deed of Easement" means the deed of easement to be granted by the Tenant to the Landlord over the Tenant's Retained Land substantially in the form of the draft Deed of Easement attached as Appendix 5 together with such amendments as shall be agreed between the Landlord and the Tenant (acting reasonably).

"Deed of New Easement" means a deed of easement as provided for in the Deed of Easement which shall be granted by the Tenant at the request of the Landlord in accordance with the provisions of clause 11 of the Deed of Easement and subject to the conditions stated therein.

"Development" means the project of development of the Blue Land and Property in accordance with the Approved Plans and comprising the Building Works, and a reference to the Development is to the whole or any part of it as the circumstances may require in accordance with the Planning Permission.

"Development Period" means the period during which the Building Works are to be carried out commencing on the Commencement Date and ending on the date of Practical Completion of the Market Square Works and Basement Area Works whichever shall occur last in time.

"Dominant Land" means those parts of the Landlord's freehold or long leasehold land (in respect of which the remaining term is not less than 70 years) wholly within the Elephant and Castle Shopping Centre and Walworth Area which are to have the benefit of the Deed of Easement as notified to the Tenant by the Landlord in accordance with the provisions of Clause 6.4.

"Eastern Land" the land ~~edged red and~~ shaded pink on the Eastern Land Plan attached in Appendix 2.8. 

"Eastern and Western Margin Lease" means the lease of the Eastern Land and Western Land entered into by the Landlord and the Tenant on the same date as this Agreement.

"Elephant and Castle Shopping Centre" has the same meaning as set out in the Basement Lease.

"Employer's Agent" means McBains Cooper Consulting Limited or any other person to be appointed as replacement or substitute for them by the Tenant in accordance with the provisions of this Agreement.

"Excluded Fit Out Works" means those Works set out in Appendix 7.

"First Planning Permission" means the Planning Permissions granted on 21 December 2006 under planning registration numbers 05-AP-1693 (in respect of the Main Development) and 05-AP-1694 (in respect of the Development) as varied or amended from time to time or any approval of detailed matters granted from time to time.

"First Section 106 Agreement" means the Agreement pursuant to section 106 of the Town and Country Planning Act 1990 dated 21 December 2006 entered into between (1) the Landlord (2) Eadon Estates Limited and (3) National Westminster Bank Plc in respect of the First Planning Permission.

"Force Majeure" means any one or more of the following:

- (a) exceptionally inclement weather; or
- (b) loss or damage occasioned by any one or more of fire, lighting, explosion, storm, tempest, flood, earthquake, acts of God, terrorism, aircraft and other aerial devices or articles dropped from them, riot and civil commotion; or
- (c) war and/or the outbreak of hostilities or terrorism actions; or
- (d) any other material cause or event which would entitle the relevant building contractor acting reasonably to extensions of time under the terms of its contract; or
- (e) strike, lock-out or industrial dispute affecting any of the trades employed in connection with the Building Works or any of the trades employed in the preparation, manufacture or transportation of any of the goods or materials required for the Building Works (as the case may be); or
- (f) the carrying out by a local authority or statutory undertaker of work in pursuance of its statutory obligations in relation to the Building Works or failure to carry out such work and delay in obtaining statutory easements or easements by deed required for foul or surface water drainage or other services to assist settlement; or
- (g) delay caused by the investigation of any fossils, antiquities or other objects of interest or value which may be found on the Property; or
- (h) shortage or non-availability of materials or labour provided that the Landlord shall have used all reasonable endeavours to secure an alternative supply or supplier,

provided that such event materially and adversely affects the performance of the terms and provisions of this Agreement and cannot reasonably be avoided or provided against by the Tenant.

"Freehold Transfer" means a transfer of the Blue Land to the Landlord by the Tenant substantially in the form of the draft Freehold Transfer attached in

Appendix 11 with such amendments as may be agreed between the Landlord and Tenant acting reasonably.

"Funding Condition" means the condition set out in Schedule 3, Part 6 (*Funding Condition*).

"Funding Notice" means a notice served by the Tenant on the Landlord pursuant to Schedule 3, Part 6 (*Funding Condition*) paragraph 1(b) confirming that the Tenant has obtained sufficient funding for the Development and Main Development.

"Grant Date" means the date on which the Second Planning Permission is issued in writing by the Authority or the Secretary of State or any other person or body having appropriate jurisdiction and authority to effect such grant.

"Group Company" means a company that is a member of the same group as the Tenant at the relevant date within the meaning of section 42 of the Landlord and Tenant Act 1954.

"Highway Condition" means the requirement of making Road Closure Orders and the completion of the Highways Agreement(s) and any relevant Statutory Agreements as provided for in Schedule 3, Part 5 (*Highway Condition*).

"Highways" means those highways and footpaths shown hatched black shaded red on the plan attached at Appendix 2.6 and shaded turquoise on the plan attached in Appendix 2.7.

"Highways Agreement(s)" means an agreement (or agreements) to be entered into with Transport for London as highways authority pursuant to section 278 of the Highways Act 1980 for the provision of highway works.

"Landlord's Solicitors" means Messrs Herbert Smith LLP, Exchange House, Primrose Street, London EC2A 2HS: (ref 2856/30866547) or such other firm as the Landlord may from time to time appoint.

"Leases" means the Basement Lease and the Market Square Lease.

"Legal Challenge Condition" means the condition as set out in Schedule 3, Part 1 (*Legal Challenge Condition*).

"Longstop Date" means the date 48 months or such other period as may be extended in accordance with Clause 4.1.2(a) to Clause 4.1.2(g) after the Unconditional Date.

"Main Development" means in the Tenant's discretion either:

- (a) the demolition of existing commercial units and construction of a mixed used development comprising of three buildings above a 2/3 storey podium structure. Northern building located on New Kent Road to consist of 15 stories to use as hotel (use class C1). Western building along Elephant Road, to consist of 21 stories to house office use (use class B1) with private and affordable residential units (use class C3) on the upper floors. Southern building comprising of 12 stories with private residential units (use class C3) with cinema, retail and restaurant uses (use classes D2, A1, A3) at podium level and basement car parking, with associated storage facilities together with new landscaping to be erected partly on the

Property and partly on the Tenant's Property in accordance with the First Planning Permission; or

- (b) construction of a new mixed use development comprising of three buildings linked together by a two storey podium incorporating retail and restaurant use across the ground floor (use classes A1/A3), retail/restaurant and cinema use across the first and mezzanine floors (classes A1/A3/D2) and basement car parking with associated storage facilities together with new landscaping to link the proposed Market Square: northern building located on New Kent Road to consist of 18 storeys for use as student accommodation (use class C2) western building along Elephant Road to consist of 23 storeys for use as private residential units (use class C3) on upper floors; southern building comprising of 14 storeys with private residential units (use class C3) in accordance with the Second Planning Permission,

provided that the Tenant must notify the Landlord whether paragraph (a) or (b) shall have effect before the Commencement Date in accordance with Clause 3.1.1.

"Market Premises" means those premises defined in Schedule 1, (*Market Premises*) as varied in accordance with the provisions of this Agreement or as agreed from time to time between the Landlord and Tenant in their absolute discretion.

"Market Specification" means the plans, drawings and specifications relating to the Market Square Works attached at Appendix 1.2 including, as they are varied from time to time, any variations from and alterations and additions to the revisions of the Plans made in accordance with the provisions of this Agreement.

"Market Square" means the open area to be constructed by the Tenant on the Market Square Land.

"Market Square Land" means that land shown coloured yellow on the plan in Appendix 2.4 or such other area as may from time to time be agreed between the Landlord and Tenant in their absolute discretion.

"Market Square Lease" means a lease to be granted by the Landlord to the Tenant or its nominee in accordance with the provisions of this Agreement in the form of the draft lease at Appendix 4.

"Market Store" means the area shown shaded pink on the plan in Appendix 2.5 at lower basement and mezzanine level or pending the grant of the Market Square Lease such other area as may from time to time be agreed between the Landlord and Tenant in their absolute discretion.

"Market Square Works" means works to provide for the Market Square and Market Store in accordance with the Market Specification and Planning Permission.

"Method Statement" means a statement prepared by or on behalf of the Tenant setting out the appropriate timing and methods by which the Tenant intends to commence and execute the Building Works containing the information set out in Clause 3.3.1.

"Onerous Condition" is one which contains an obligation or restriction of any one or more of the following kinds:

- (a) it requires the payment or expenditure of money or other consideration by way of planning gain or on works outside the Tenant's Property, Additional Land, Eastern Land, Western Land or Property which infringe the tests of reasonableness of such obligations from time to time laid down by the Department of the Environment by circular or otherwise;
- (b) it limits the occupation and/or use of the whole or any material part of the Tenant's Property, Additional Land, Eastern Land, Western Land or Property to any designated occupier or class of occupier (by imposing a geographical qualification on proposed occupiers or otherwise);
- (c) it prevents development without the Agreement or co-operation of an independent third party which cannot be obtained on terms at a cost or within a time that is reasonable in the circumstances;
- (d) it restricts hours of trading prohibiting it at any time between 7 am and 2 am daily and/or it restricts to any material extent the sale of any particular goods;
- (e) it would have the effect of increasing by more than 5% the cost of carrying out the Main Development and Development as reasonably estimated by the Tenant in its appraisal of the Main Development and Development; and
- (f) it is unreasonable or unduly restrictive in the circumstances;
- (g) it requires that certain phases of the Main Development and Development are either completed or occupied before others; and
- (h) it requires the non-residential parts of the Main Development to be occupied before the residential part can be,

for the purposes of this Agreement it is recorded that the planning conditions contained in the First Planning Permission, First Section 106 Agreement, Second Planning Permission and Second Section 106 Agreement would not, if included in any Planning Permission, amount to an Onerous Condition.

"Planning Counsel" means any one of the leading planning counsel the Tenant may appoint who is willing to and who is appointed in accordance with this Agreement.

"Planning Permission" means subject to Clause 3.1 (*Contract of the Building Works*) in the Tenant's discretion either the First Planning Permission or the Second Planning Permission respectively as varied or amended from time to time or any approval of detailed matters granted from time to time.

"Practical Completion" means the practical completion of the Basement Area Works and the Market Square Works in accordance with this Agreement and includes where appropriate partial practical completion of a phase or distinct part of the Building Works, and references to the date(s) of Practical Completion are to the date(s) on which the statement(s) of Practical Completion is/are issued by the Employer's Agent in accordance with the provisions of this Agreement in respect of the Basement Area Works and the Market Square Works.

"Premises" means the Basement Premises and Market Premises described in Schedule 1, Part 1 (*Basement Premises*) and Schedule 1, Part 2 (*Market Premises*) respectively.

"Professional Team" means the Architect, CDM Co-Ordinator, Structural Engineer, Services Engineer and Employer's Agent appointed in connection with the Development under the provisions of this Agreement or any one or more of them, and references to a **"member of the Professional Team"** shall be construed accordingly.

"Property" means the Landlord's freehold property registered at the Land Registry under title numbers SGL455623, LN206931, SGL456566 and TGL253362 shown shaded red and hatched blue edged green on the plan in Appendix 2.2.

"Registration Condition" means the registration of the Tenant as proprietor of the Additional Land at the Land Registry with title absolute in accordance with Schedule 3, Part 2 (*Registration Condition*).

"Rent Reference Date" means the date with reference to which the commencement of rent reserved by the Market Square Lease and Basement Lease respectively is calculated being the date ten Working Days after Practical Completion of each of the Basement Area Works and Market Square Works respectively.

"Requisite Consents" means those permissions, consents, approvals, licences, certificates and permits in legally effectual form as may be necessary lawfully to commence, carry out, maintain and complete the Building Works and to use and enjoy the Property and the Premises for the purposes authorised by the Leases.

"Road Closure Orders" means all statutory and regulatory orders required for diversion stopping up or closing of any part of the Highways (whether temporary or permanent) or any Traffic Regulation Orders made under the Road Traffic Regulation Act 1984 which are necessary to permit the works required to carry out the Main Development or Development.

"Second Planning Permission" means the planning permission granted on 28 May 2008 under planning registered numbers 07-AP-1449 (in respect of the Main Development) and 07-AP1448 (in respect of the Development) as varied or amended from time to time or any approval of detailed matters from time to time.

"Second Section 106 Agreement" means the Agreement pursuant to Section 106 of the Town and County Planning Act 1990 dated 23 May 2008 and a supplemental agreement dated 16 July 2008 entered into between (1) The Landlord (2) The Tenant (3) National Westminster Bank Plc in respect of the Second Planning Permission.

"Secretary of State" means the Secretary of State for the Department for Communities and Local Government or other minister or authority for the time being having or entitled to exercise the powers now conferred on that Secretary of State by sections 77, 78 and 79 TCPA and including (where appropriate) an inspector appointed to act on his behalf.

"Services Engineer" means McBains Cooper Consulting Limited or any other person to be appointed as a replacement or substitute for them by the Tenant in accordance with the provisions of this Agreement.

"Standard Conditions" means the Standard Commercial Property Conditions (Second Edition) and **"Standard Condition"** is to be construed accordingly.

"Statutory Agreements" means any Agreement entered into pursuant to any enactment relating to drainage, sewerage, telephone, electrical, gas, cable and

other utilities which may be properly required to facilitate the Main Development or Development and without limiting the generality of the foregoing any Agreement which is:

- (a) expressed to be made pursuant to any of sections 38, 184 and 278 of the Highways Act 1980 and sections 98 and 104 of the Water Industry Act 1991 or any provision to similar intent; or
- (b) made with the local water authority or other appropriate authority in respect of the water supply to, or drainage or discharge of surface water and/or foul water from, the Main Development or Development; or
- (c) made with any competent authority or body relating to other services.

"Structural Engineer" means Waterman Structures Limited or any other person to be appointed as a replacement or substitute for them by the Tenant in accordance with the provisions of this Agreement.

"TCPA" means the Town and Country Planning Act 1990.

"Tenant" means Eadon Limited and includes its successors in title and assigns and includes its successors in title and assigns.

"Tenant's Solicitors" means Berwin Leighton Paisner LLP of Adelaide House, London Bridge, London EC4R 9HA (ref: 24435.2) or such other firm as the Tenant may from time to time appoint.

"Tenant's Property" means the Tenant's freehold property registered at the Land Registry with title number SGL500495 at the date of this Agreement.

"Tenant's Retained Land" means that part of the Tenant's Property retained by the Tenant under title number SGL500495 after the registration of the Freehold Transfer together with the Additional Land, Western Land and Eastern Land.

"Unconditional Date" means the date as at which all of the Conditions have been satisfied or waived in accordance with this Agreement.

"Walworth Commercial Area" has the same meaning as set out in the Basement Lease.

"Western Land" means the land coloured blue ~~and edged red~~ on the western margin plan attached in Appendix 2.8.

"Working Day" means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory bank holiday.

- 1.2 Any obligation on a party to this Agreement to do any act includes an obligation to procure that it is done.
- 1.3 Where the Tenant is placed under a restriction in this Agreement, the restriction includes the obligation on the Tenant not to permit the infringement of the restriction by any person.
- 1.4 The Clause and paragraph headings in this Agreement are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision to which they refer.

- 1.5 Unless the contrary intention appears, references:
- (a) to numbered Clauses and Schedules are references to the relevant Clause in, or Schedule to, this Agreement; and
 - (b) to a numbered paragraph in any Schedule are references to the relevant paragraph in that Schedule.
- 1.6 Words in this Agreement denoting the singular include the plural meaning and vice versa.
- 1.7 References in this Agreement to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force, and references to a statute include statutory Instruments and regulations made pursuant to it.
- 1.8 Words in this Agreement importing one gender include both other genders and may be used interchangeably, and words denoting natural persons, where the context allows, include corporations and vice versa.
- 1.9 When at any time the party of the second part to this Agreement is two or more persons, the expression the "Tenant" includes the plural number and obligations in this Agreement expressed or implied to be made with or by the Tenant are to be treated as made with or by such individuals jointly and severally.

2 CONDITIONS

- 2.1 The carrying out of the Building Works and the subsequent completion of the Freehold Transfer, Leases and Deed of Easement are subject to the satisfaction of the following conditions by the Condition Longstop Date (which the Tenant shall use all reasonable endeavours to obtain):
- (a) the Legal Challenge Condition;
 - (b) the Registration Condition;
 - (c) the Acquisition Condition;
 - (d) the CRT Condition;
 - (e) the Highway Condition; and
 - (f) the Funding Condition.
- 2.2 The provisions for determining whether or not each condition is satisfied are set out in Schedule 3 (*Conditions*).
- 2.3 Provided that this Agreement has not already been duly terminated, each condition may be waived, by notice in writing, to the extent prescribed by the relevant Schedule and if and to the extent so waived shall be deemed to be satisfied on the date of the issue of the written notice incorporating the waiver.
- 2.4 If the Unconditional Date does not occur before the Condition Longstop Date then either party may terminate this Agreement on 20 Working Days' written notice to the other and provided that any Condition outstanding to be fulfilled shall not have been fulfilled or waived as the case may be before the expiry of the 20 Working Days, this Agreement shall terminate but not otherwise.

- 2.5 Each of the parties shall observe and perform their respective obligations and conditions under Schedule 3 (*Conditions*) in respect of the Conditions.
- 2.6 Notwithstanding that this Agreement is conditional the provisions of Clause 2 (*Conditions*), Clause 5 (*Licence to occupy the Property and Premises before the grant of the leases*), Clause 9 (*Alienation of agreement for lease and the Property*), Clause 10 (*Expert determination*), Clause 11 (*Title*), Clause 13 (*Representations*), Clause 14 (*Tenant's default*), Clause 22 (*Exclusion of sections 24-28 of the Landlord and Tenant Act 1954 (the "1954 Act")*), Clause 23 (*Standard Conditions*), Clause 24 (*Termination provision*) and Schedule 3 (*Conditions*) shall apply before the Unconditional Date.

3 AGREEMENT, BUILDING WORKS AND PLANS

3.1 Contract of the Building Works

- 3.1.1 The Tenant in its discretion may implement either the First Planning Permission or the Second Planning Permission and in relation to the Second Planning Permission, the Tenant may (but shall not be obliged to) implement the Second Planning Permission before the expiry of the Challenge Period. The Tenant shall give the Landlord written notice of which Planning Permission it intends to implement on or before the Commencement Date.
- 3.1.2 Subject to the Unconditional Date having occurred and the Tenant being able to obtain all Requisite Consents which it shall use all reasonable endeavours to obtain the Tenant shall use all reasonable endeavours to procure the construction the Building Works on the Property and Blue Land of which the Premises are to form part.

3.2 Agreement between the Parties

Subject to the Unconditional Date having occurred, the Landlord agrees to let the Basement Premises to the Tenant and the Market Premises to the Tenant or its nominee subject to the terms of this Agreement by way of the Market Square Lease and Basement Lease respectively.

3.3 The Approved Plans and Method Statement

- 3.3.1 The Tenant shall within six months of the Unconditional Date prepare and submit to the Landlord (all correspondence in connection with the Approved Plans, the Method Statement and the design content of the Building Works to be marked for the attention of the Landlord's Head of Property) the Method Statement for approval which shall contain the following information:
- (a) details of contact names for the consultants and contractors proposed for the design and carrying out of the Building Works;
 - (b) proposals for the regular liaison co-ordination and co-operation between the Contractor and the Tenant's Professional Team; and
 - (c) details of the order and timing proposed for the carrying out of each part of the Building Works including proposals for deliveries to the Premises of materials and equipment for incorporation or use in the Building Works.

3.3.2

- (a) The Landlord's approval to the Method Statement shall not be unreasonably withheld or delayed. The Tenant may from time to time update or vary the Method Statement subject to obtaining the Landlord's written approval thereto not to be unreasonably withheld or delayed.
- (b) Following the submission of the Method Statement in accordance with Clause 3.3.1 the Landlord shall have 20 Working Days from the date of submission to notify the Tenant whether it approves such Method Statement and if not those aspects in respect of which the Landlord acting reasonably considers that insufficient information has been provided by the Tenant or information which is not consistent with the requirements of Clause 3.3.1(a) to Clause 3.3.1(c) has been provided.
- (c) If the Landlord serves notice that it does not approve the Method Statement the Tenant shall consult with the Landlord and they shall use all reasonable endeavours to agree the matters in dispute in accordance with the provisions of Clause 10 (*Expert determination*) provided that for the purposes of Clause 10.2, the Landlord's notice shall be deemed to be the written request under Clause 10.2.

3.3.3

- (a) The Tenant shall as soon as possible and in any event before six months after the Unconditional Date, prepare and submit to the Landlord for approval (insofar as design content is concerned) detailed designs and specifications for the Building Works for approval (such approval not to be unreasonably withheld or delayed). Such designs and specifications shall be based on and in accordance with the Approved Plans and in such form and manner as complies with the Planning Permission and as to comply with and bring about the grant of the Requisite Consents. The Tenant shall incorporate the Breakout Panels in the detailed design and specifications for the Building Works unless as a consequence of any other terms as may be agreed between the parties the Landlord expressly notifies the Tenant in writing that it does not require the Tenant to provide the Breakout Panels.
- (b) Following the submission of the detailed design and specification in accordance with Clause 3.3.3(a) the Landlord shall have 20 Working Days from the date of submission to notify the Tenant whether it approves such detailed design and specification and if not those aspects relating to the design content of the Building Works in respect of which the Landlord acting reasonably considers that insufficient information has been provided by the Tenant or information which is not consistent with the Approved Plans or Planning Permission has been provided.
- (c) If the Landlord serves notice that it does not approve the detailed design and specification the Tenant shall consult with the Landlord and they shall use all reasonable endeavours to agree the matters in dispute in accordance with the provisions of Clause 10 (*Expert determination*) provided that for the purposes of Clause 10.2, the Landlord's notice pursuant to clause 3.3.3(b) shall be deemed to be the written request under Clause 10.2.
- (d) Once the detailed design and specification has been agreed or determined pursuant to this Clause 3.3.3 then such drawings and specifications shall (together with the documents at Appendix 1 insofar as they are consistent

with the detailed design and specification agreed or determined pursuant to this Clause 3.3.3 form the Approved Plans.

- (e) The Tenant shall from time to time submit to the Landlord such further plans and specifications as and when necessary to obtain approval of the Landlord to the design content of the Building Works. The Landlord shall have 15 Working Days from the date of each submission to notify the Tenant whether it approves the further plans and specifications and if not those aspects relating to design content of the Building Works in respect of which the Landlord acting reasonably considers that insufficient information has been provided by the Tenant or information which is not consistent with the Approved Plans or Planning Application (insofar as relevant) has been provided.
- (f) If the Landlord serves notice pursuant to Clause 3.3.3(e) that it does not approve the further plans or specifications, the Tenant shall consult with the Landlord and they shall use all reasonable endeavours to agree the matters in dispute in accordance with the provisions of Clause 10 (*Expert determination*) provided that for the purposes of Clause 10.2 the Landlord's notice pursuant to Clause 3.3.3(e) shall be deemed to be the written request under Clause 10.2.
- (g) Once the further plans and specifications have been agreed, deemed or determined to be approved pursuant to this Clause 3.3.3 then such plans and specifications shall (together with the documents at Appendix 1 insofar as they are consistent with the further agreed plans and specifications agreed pursuant to this Clause 3.3.3(g)) form the Approved Plans.

3.3.4 If at any time the Tenant (acting reasonably and having complied with its obligations in Clause 3.3 (*The Approved Plans and Method Statement*)) believes that the Landlord is not proceeding with approval either of the Method Statement or the detailed designs and specifications for the Building Works within reasonable time frames such that the carrying out of the Building Works is or may be delayed then the Tenant may serve notice on the Landlord requiring the Landlord to determine the submission within 28 days. If the Landlord shall fail to determine the submission within 28 days then the Tenant may refer the matter to dispute resolution may the expert in accordance with the provisions of Clause 10 (*Expert determination*).

3.3.5 The Tenant will not make any material variation (that is to say, any alteration or addition to, or omission of any thing from the Approved Plans, or the use of any materials in substitution for those specified in the Approved Plans, without the consent of the Landlord (such consent not to be unreasonably withheld)) except as permitted under Clause 3.3.6.

3.3.6 The Tenant may act reasonably and in good faith make variations without such consent if:

- (a) the variations are insubstantial or immaterial and of a routine nature and will not materially adversely affect the Landlord's ability to exercise its rights reserved under the Basement Lease and Market Square Lease; and
- (b) in the case of such a variation involving substitution of materials, then materials substituted are of equivalent or superior standards,

and the Tenant shall notify the Landlord of variations within a reasonable time provided that any matter which would otherwise constitute a variation shall not be

deemed to be a variation to the extent that it is a matter provided for as a result of the detailed design and was not specifically provided for in the Approved Plans.

- 3.3.7 The Tenant will indemnify the Landlord against the Landlord's consultants' fair and reasonable costs and value added tax (to the extent that the same is irrecoverable by the Landlord as stated below) thereon for approving the detailed design and specification for the Building Works and the Method Statement up to the maximum sum of £1,000 plus value added tax (to the extent it is irrecoverable as an input tax credit allowance under section 26 or refund under section 33 of the Value Added Tax Act 1994) in total.

4 THE BUILDING WORKS

- 4.1.1 The Tenant shall give to the Landlord five Working Days' written notice of its intention to Commence the Building Works ("Commencement Notice") provided that the Tenant may (subject to the other provisions of this Agreement) in its sole discretion but shall not be obliged to commence any Building Works before the expiry of the Challenge Period (where the Tenant implements the Second Planning Permission).
- 4.1.2 The Tenant having commenced the Building Works shall use all reasonable endeavours to complete the Building Works within the time frames set out in the Method Statement and in any event shall complete the Building Works before the Longstop Date but the time for completion and the Longstop Date shall be extended by:
- (a) the aggregate of the period for extensions commensurate with those properly allowed to the Building Contractor by the Employer's Agent under the terms of the Building Contract, except to the extent that the delay is attributable to the fault of the Tenant;
 - (b) such period as may be reasonable in respect of other delays beyond the control of the Tenant including, but not limited to, delaying factors occasioned as a result of archaeological investigations and the existence of archeologically material at the Property ground conditions and removal and redirection of services;
 - (c) delays in obtaining the Landlord's approval for any matter where approval is required pursuant to this Agreement and such approval is unreasonably delayed;
 - (d) Force Majeure;
 - (e) delays where any dispute has been referred for determination pursuant to Clause 10 (*Expert determination*) of this Agreement as may be awarded by the expert pursuant to Clause 10.4;
 - (f) delays in obtaining Highway Agreements, Road Closure Orders or Statutory Agreements and Requisite Consents (where the Tenant has waived these Conditions and commenced the Building Works) before such orders, Agreements and consents have been obtained provided that the Tenant has used all reasonable endeavours to comply with its obligations under Clause 3 (*Agreement, Building Works and plans*) and has used all reasonable endeavours to obtain the same, and
 - (g) delays occasioned to the regular carrying out and progress of the Building Works ongoing at that time consequent upon or occasioned by the

Landlord gaining access to the Premises and exercising the rights in schedule 1 part 2 of the Basement Lease from the Early Access Date,

and such extensions shall run consecutively or concurrently as may be fair and reasonable in the circumstances.

4.2 The Tenant will use all reasonable endeavours to procure that the Building Works and Excluded Fit Out Works be carried out:

- (a) in a good and workmanlike manner and in accordance with good building and design practice;
- (b) with good and suitable materials;
- (c) in accordance with the Approved Plans, CDM Regulations, Planning Permission, Method Statement and the Requisite Consents;
- (d) without avoidable delay;
- (e) at its own expense;
- (f) by reputable contractors with sufficient professional indemnity insurance having regard to the nature of their responsibilities and the scope of the works to be undertaken by them;
- (g) in compliance with all statutes and statutory orders and regulations made under or deriving validity from them, and codes of practice of local authorities and competent authorities, affecting the Building Works and/or the Property and the Premises; and
- (h) with due diligence.

4.3 The provisions of Schedule 2 (*The Building Works, insurance, Practical Completion, defects liability and party walls and fences*) apply to the Building Works, Practical Completion, insurance, defects liability and to party walls and fences.

4.4 The Landlord and the Tenant will observe and perform their respective obligations and the conditions in Schedule 2 (*The Building Works, insurance, Practical Completion, defects liability and party walls and fences*).

4.5 The Tenant's obligations in this Agreement and in Schedule 2 (*The Building Works, insurance, Practical Completion, defects liability and party walls and fences*) are personal to, binding and enforceable only against the Tenant being the party named as Tenant in the parties clause to this Agreement and shall not bind any nominee of the Tenant or any party to whom the Tenant assigns the benefit of this Agreement whether as security or otherwise nor any tenant from time to time of the Basement Lease or the Market Square Lease.

4.6 Notwithstanding completion of the Basement Lease, the Tenant shall use all reasonable endeavours to procure that the Excluded Fit-Out Works are practically completed by the earliest of:

- (a) three months after practical completion of the whole of the Main Development; and
- (b) 36 months after the date of completion of the Basement Lease,

both of such dates shall be extended by those circumstances set out in Clause 4.1.2.

5 LICENCE TO OCCUPY THE PROPERTY AND PREMISES BEFORE THE GRANT OF THE LEASES

- 5.1 The Landlord hereby grants the Tenant who is entitled to occupy the Property a licence in order to enter on to the Property, excavate the basement, remove and dispose of the topsoil and subsoil from the Property and to carry out the Building Works. Such licence shall notwithstanding the completion of the Basement Lease continue in relation to that part of the Property and Blue Land occupied by the Market Square Works.
- 5.2 The Tenant is entitled to occupy the Basement Premises and the Tenant or its nominee the Market Premises as licensee' and use them for the purpose authorised by the Basement Lease and Market Square Lease respectively on or after Practical Completion of the Basement Area Works and Market Square Works respectively.
- 5.3 This Agreement does not operate as a lease and until the grant of the Leases occupation of the Basement Premises by the Tenant (or, in respect of the Market Square, by the Tenant or the Tenant's nominee) before the grant of the Leases is to be by way of licence only.
- 5.4 Until the grant of the Leases the parties are liable to observe and perform the same obligations as are imposed by the covenants on their respective parts and the conditions to be contained in the Leases as they become applicable to the Premises and insofar as they are not inconsistent with this Agreement.
- 5.5 Whether or not in occupation of the Premises the Tenant shall pay the Landlord from the date ten Working Days after the date of Practical Completion of each of the Basement Area Works and Market Square Works respectively a licence fee equivalent in all respects (relating to amount and timing manner method and apportionment of payment) to the several rents expressed to be payable from time to time in the relevant Lease together with value added tax thereon as if the relevant Lease had actually been granted for a term commencing on the date of Practical Completion.

6 THE GRANT OF THE LEASES, DEED OF EASEMENT

- 6.1 The Landlord will grant with full title guarantee and the Tenant will accept the grant of the Basement Lease within ten Working Days after the giving of notice by the Tenant to the Landlord of the occurrence of Practical Completion of the Basement Area Works. Immediately prior to completing the Basement Lease the Tenant will complete the Freehold Transfer of the Blue Land to the Landlord and grant the Landlord the Deed of Easement. The Freehold Transfer and grant of Deed of Easement to the Landlord shall be in consideration for the leaseback of the Basement Lease and the grant of the Market Square Lease.
- 6.2 The Tenant shall on or before completion of the Basement Lease, Market Square Lease, Freehold Transfer and the Deed of Easement procure that Land Registry compliant plans are produced.
- 6.3 The Landlord will grant and the Tenant or its nominee shall accept the grant of the Market Square Lease within ten Working Days of the later of:
 - (a) notice by the Tenant to the Landlord of the occurrence of Practical Completion of the Market Square Works; and

- (b) completion of the Freehold Transfer.
- 6.4.1 The Landlord shall within ten Working Days of the giving of notice by the Tenant to the Landlord of the occurrence of Practical Completion of the Basement Area Works identify to the Tenant those portions of land in respect of which the Landlord is the registered proprietor of a freehold interest and long leasehold interest of no less than 70 years at the date of the grant of the Deed of Easement and which are situate wholly within the Walworth Area and/or the Elephant and Castle Shopping Centre which are to have the benefit of the Deed of Easement provided that in respect of any one portion of land so notified the Tenant shall only be obliged to grant the Deed of Easement to the superior land interest. Such Area shall constitute the Dominant Land for the purposes of the Deed of Easement.
- 6.4.2 The Landlord shall, at the same time as notifying the Tenant in accordance with the provisions of Clause 6.4.1, provide the Tenant with official copies (or to the extent that such land is unregistered shall provide evidence of title satisfactory to the Tenant acting reasonably) of the Landlord's registered freehold title or long leasehold title as provided for in Clause 6.4.1.
- 6.5 The Tenant will procure its solicitors to prepare the engrossments of the original and the counterpart of the Market Square Lease and Basement Lease respectively and the Tenant shall procure that its solicitors prepare the engrossments of the original and the counterpart of the Freehold Transfer and Deed of Easement simultaneously with the engrossment of the Basement Lease.
- 6.6 The Landlord will promptly execute the original of the Market Square Lease and the Basement Lease, the Tenant the counterpart of the Basement Lease and the Tenant or its nominee the counterpart of the Market Square Lease respectively preparatory to the grant of the said Leases. The Landlord and the Tenant shall execute their respective parts of the Deed of Easement and Freehold Transfer.
- 6.7 The Tenant will forthwith give to the Landlord notice of the occurrence of Practical Completion of the Market Square Works and the Basement Area Works respectively or where Practical Completion occurs at the same time, of the Building Works as a whole.
- 6.8 The Tenant shall, on or before completion of the Market Square Lease, enter into an agreement with the Landlord pursuant to section 38 of the Highway Act 1980 to make provision for access over the footpaths to be constructed on the Tenant's Property and upon the Eastern Land and Western Land such agreement to provide for access over those areas no earlier than the Access Date as defined in the Eastern and Western Margin Lease.

7 TERMS OF THE LEASES AND DEED OF EASEMENT

The rent, additional rent, term of years, covenants, provisions, conditions and other matters to be granted by and incorporated in the Leases are those set out in the form of draft leases annexed at Appendix 3 and Appendix 4 and the terms of the easement in the Deed of Easement in Appendix 5 and Freehold Transfer in Appendix 8 but the Landlord and Tenant may agree such additions or modifications to the form or the plans to be annexed to the Leases, Deed of Easement and Freehold Transfer as may reasonably be required properly to describe the Premises and easements granted as eventually designed and constructed in accordance with this Agreement, or to describe the Premises as named provided that the parties record that the draft Basement Lease is constituted to reflect development in accordance with the Development pursuant to the Second Planning Permission. If the Tenant implements the First Planning Permission or any variation to either the

First or Second Planning Permission the parties shall effect such amendments as are necessary to reflect the Premises as built and laid out in accordance with the First Planning Permission or any variation to either the First or Second Planning Permission as the parties may agree, or failing agreement as determined by the Expert in accordance with Clause 10.2 provided further that it is specifically agreed between the parties that the extent of the Market Square and Blue Land may change as agreed between the Landlord and Tenant in their absolute discretion.

- 7.1 The term of the Leases is to commence on the date of Practical Completion of the Basement Area Works or Market Square Works respectively.
- 7.2 The liability to pay the yearly rent reserved by the Leases is to commence on the relevant Rent Reference Date.
- 7.3 The Landlord's liability to pay the contribution towards the insurance premiums under the Basement Lease is to commence on the Rent Reference Date.
- 7.4 The Landlord's liability to pay the contribution towards the service charge under the Basement Lease is to commence on the Rent Reference Date.

8 TERMS OF FREEHOLD TRANSFER

8.1 Capital allowances

The Tenant warrants that it has not claimed and undertakes that it will not claim allowances for capital expenditure on the provision of any fixtures at the Blue Land *the Standard Commercial Property Conditions (Second Edition) Part 2, B do not apply to the Freehold Transfer.*

8.2 Title

8.2.1 The evidence of registered title of the Blue Land required is:

- (a) official copies of the items referred to in rules 134(1)(a) and (b) of the Land Registration Rules 2003 and unedited copies or abstracts of the items referred to in rule 135(1)(a) of those rules (except charges and encumbrances registered or protected on the register which are to be discharged or overridden at or prior to completion); and
- (b) such copies, abstracts and evidence (if any) in respect of any subsisting rights and interests appurtenant to the Blue Land as to which the register is not conclusive and of any matters excepted from the effect of registration as the Landlord would have been entitled to if the land had not been registered; Accordingly, Standard Condition 6.1.2 is varied.

8.2.2 The Tenant transfers the Blue Land with full title guarantee; Standard Condition 6.6.2 does not apply.

8.3 Vacant possession

The Freehold Transfer is with vacant possession of those parts of the Blue Land not held subject to the Basement Lease and this Agreement at the time of actual completion.

8.4 Specific matters subject to which the Property is sold

The Landlord or its solicitors have been supplied with official copy entries relating to the title to the Blue Land. The Landlord is to be treated as entering into this Agreement knowing and fully accepting those terms and may not raise any objection to or requisition on them.

8.5 General matters subject to which the Blue Land is transferred

8.5.1 The Tenant transfers the Blue Land free from encumbrances other than as provided for in the Standard Conditions.

8.5.2 Nothing in clause 8.5.1 affects the duty of the Tenant to make disclosure of latent defects in title of which it is aware or of which it has the reasonable means of knowledge.

8.5.3 The Tenant is not required to provide evidence of:

- (a) any liability to repair roads, pavements, paths, ways, sewers, drains, gutters, fences or other like materials; or
- (b) the creation or definition of the apportionment of any liability in Clause 8.5.3(a).

8.6 Misrepresentation

8.6.1 Each party acknowledges to the other that no statement or representation, whether oral or written, previously made to it, or any person concerned on its behalf, by or for the other, its agents or solicitors, has induced it to enter into this Agreement, apart from the written replies of that party's solicitors to written enquiries raised by the other's solicitors.

8.6.2 Liability of either party and any remedy of either party at law, in equity or under statute in respect of such a statement or representation innocently made, or for implied warranty, apart from the written replies of one party's solicitors to written enquiries raised by the other's solicitors, is excluded.

9 ALIENATION OF AGREEMENT FOR LEASE AND THE PROPERTY

9.1 The Tenant shall not be entitled to assign charge or otherwise deal with its interest in this Agreement or agree to do so other than in accordance with the provisions of this Clause 9 (*Alienation of agreement for lease and the Property*).

9.2 The Tenant shall be entitled to assign the benefit of this Agreement or novate the obligations of it with Landlord's consent not to be unreasonably withheld or delayed provided that the Landlord may withhold its consent to an application for a licence to assign or novate where the following conditions are not met which are stated for the purposes of section 19(1A) of the Landlord and Tenant Act 1927:

- (a) the assignee is or will be at the time of the Assignment the owner of the freehold of the Tenant's Property;
- (b) the assignee is a developer of similar financial standing and repute as the Tenant; and
- (c) where this Agreement is novated to the assignee the assignee at the same time as the novation delivers a deed of covenant in a form reasonably

acceptable to the Landlord covenanting to be bound by the provisions of this Agreement.

- 9.3 Notwithstanding the general provisions of Clause 9.1 and Clause 9.2, the Tenant shall be entitled to assign the benefits of this Agreement for Lease and/or novate the obligations to a Group Company without the Landlord's consent, provided that such Group Company:
- (a) is or will be at the time of the assignment the owner of the Tenant's Property; and
 - (b) (in the case of a novation) at the same time as the novation delivers a deed of a covenant in a form reasonably acceptable to the Landlord covenanting to be bound by the provisions of this Agreement.
- 9.4 Before any assignment or the grant of the Market Square Lease to a nominee of the Tenant in accordance with clause 9.7 shall be completed the Tenant shall procure that sections 24-28 of the Landlord and Tenant Act 1954 are validly excluded in relation to the grant of the Market Square Lease and Basement Lease.
- 9.5 The Tenant may charge this Agreement to obtain building finance in respect of the Building Works from any *bona fide* banking institution pension fund bank or similar body.
- 9.6 The Tenant shall give the Landlord notice of any charge of the benefit of this Agreement to a party providing finance to the Tenant within ten Working Days of its completion.
- 9.7 The Tenant may require that the Landlord grant the Market Square Lease to a nominee of the Tenant. The Tenant shall not no later than 15 Working Days prior to completion of the Market Square Lease, give the Landlord written notice of the identify of the Tenant's nominee. In the event that the Tenant provides the Landlord with such notice, the Landlord shall grant the Market Square Lease to the nominee so notified by the Tenant in accordance with the provisions of Clause 6 (*The grant of the Leases, Deed of Easement*) and Clause 7 (*Terms of the Leases and Deed of Easement*) of this Agreement.
- 9.8 The Landlord for itself and its successors in title agrees with the Tenant and its successors and title to comply with the following obligations until completion of the Leases pursuant to this Agreement:
- (a) to give not less than ten Working Days notice to the Tenant of the Landlord's intention to sell or otherwise dispose of the Property;
 - (b) not to assign the benefit of this Agreement or dispose of any estate or interest in all or any part of the Property except to a donee who has first entered into a deed of covenant with the Tenant in such form as the Tenant shall reasonably require to perform the Landlord's obligations under this Agreement and to grant the Leases to the Tenant in accordance with the terms of this Agreement; and
 - (c) not to cause or allow the Property to be further encumbered or create any further tenancy or material interest in respect of it.

10 **EXPERT DETERMINATION**

- 10.1 Without prejudice to the other provisions of this Clause 10 (*Expert determination*), in the event of any dispute arising the Landlord and the Tenant shall endeavour to resolve it amicably but if the parties fail to resolve the dispute amicably, the dispute shall be resolved in accordance with the provisions of this Clause 10 (*Expert determination*) unless either party takes proceedings in any court, public enquiry or other hearing or unless the subject matter of the dispute is such that it also constitutes a dispute under the Second Section 106 Agreement and either party has referred such dispute to an expert under clause 18.3 of the Second Section 106 Agreement in which event the dispute resolution procedures of the Second Section 106 Agreement in clause 18 thereof shall apply.
- 10.2 If any dispute arises in connection with this Agreement, directors or other senior representatives of the Landlord and the Tenant hereto with authority to settle a dispute will within five Working Days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.
- 10.3 In the event that the dispute is not resolved in accordance with Clause 10.2, the parties hereto may refer the dispute to an expert being an independent person who is professionally qualified and has substantial recent experience in respect of the subject matter of the dispute (the "Expert") to be agreed upon between the Landlord and the Tenant or at the request and option of either of them to be nominated at the joint expense by or on behalf of the president for the time being of the Royal Institution of Chartered Surveyors and the Expert shall act as an Expert and not as an arbitrator and the Expert's decision shall be final and binding on the parties (save in the case of manifest error) hereto and his costs shall be within his award or discretion or failing such a determination borne by both parties in equal shares.
- 10.4 The Expert shall be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute from the date of his appointment to act. The Landlord and Tenant further expressly instruct the Expert to include in his decision a statement as to the extension of time (if any) that should be awarded for the completion of the Building Works and the Longstop Date under Clause 4.1.2(e) occasioned by the dispute.
- 10.5 The Expert shall be required to give notice to each of the parties inviting them to submit to him within ten Working Days of such notice, written submissions and supporting material and shall afford to each of the parties an opportunity to make a counter-submissions within a further five Working Days in respect of any such submission and material and his decision shall be given in writing with reasons and in absence of manifest error shall be binding on the parties.
- 10.6 The Expert shall supply the parties copies of all evidence, information and advice which he obtains for the purpose of determining the dispute and the parties shall be entitled to make written representation to the Expert with regard to them within ten Working Days of the parties' respective receipt of such copies.
- 10.7 In the absence of any directions by the Expert as to his costs, they shall be borne equally between the parties and the parties shall bear their own costs.

11 **TITLE**

The evidence of the Landlord's registered title to the Property required is:

- (a) official copies of the register and title plan and unedited copies or abstracts of any documents noted on the register (except charges and incumbrances registered or protected on the register which are to be discharged or overridden at or prior to completion of the Leases); and
- (b) such copies, abstracts and evidence (if any) in respect of any subsisting rights and interests appurtenant to the Premises as to which the register is not conclusive and of any matters excepted from the effect of registration as the Tenant would have been entitled to if the title to the Premises had not been registered.

12 LOCAL LAND CHARGES ETC

The Leases will be granted subject to:

- (a) all local land charges whether registered or not before or after the date hereof and all matters capable of registration as local land charges whether or not actually so registered;
- (b) all notices orders resolutions restrictions Agreements directions and proposals therefore made by any local or other competent authority before or after the date hereof;
- (c) any matters which are (or, where the Landlord's title to the Premises is not registered, would be unregistered interests which override first registration under schedule 1 to the Land Registration Act 2002 and any interest which falls within section 11(4)(c) of the Land Registration Act 2002 and unregistered interests which override registered dispositions under schedule 3 to the Land Registration Act 2002;
- (d) such unregistered interests as may affect the Premises to the extent and so long as they are preserved by the transitional provisions of schedule 12 of the Land Registration Act 2002; and
- (e) all matters contained in or referred to in schedule 2 of the Market Square Lease and schedule 1 part 3 of the Basement Lease.

13 REPRESENTATIONS

It is acknowledged by the Tenant that in relation to this Agreement the Tenant has not acted or relied on any representations made by or on behalf of the Landlord except those made in writing by the Landlord's solicitors in response to written enquiries submitted to the Tenant's solicitors.

14 TENANT'S DEFAULT

14.1 For the purposes of this Agreement the Tenant is to be treated as being in default if:

- (a) it has not remedied in all material respects a substantial breach of obligation under this Agreement after notice from the Landlord allowing it a reasonable time to do so which in all cases shall not be less than two calendar months; or
- (b) if a Default Event has occurred and the Tenant has not within two calendar months thereof set aside or rectified the Default Event.

14.2 If the Tenant is in default under Clause 14.1 the Landlord may subject to first complying with the provisions of Clause 14.3 and Clause 14.4 and after giving the Tenant a further 20 Working Days' notice to do so, assume the responsibility of the Tenant and complete the Building Works and recover from the Tenant the reasonable and proper costs incurred by the Landlord in doing so on demand provided that the Tenant has not before the expiry of the notice in this Clause 14.2 not covenanted to remedy the breach itself in the form of the Deed of Covenant attached at Appendix 6 ("Deed of Covenant") and in such circumstances the following provisions shall apply:

- (a) the Landlord and its agents, servants and workman shall be entitled to enter and remain on the Premises and such other property owned by the Tenant as is reasonably necessary for the purpose of exercising such rights and carrying out and completing the Building Works and the Tenant shall provide all reasonable assistance to the Landlord to enable the Landlord to protect its rights under this Clause 14 (*Tenant's default*) against the Tenant's property;
- (b) the Landlord shall be entitled to give instructions to the Tenant, the Tenant's Building Contractor, Employer's Agent and Professional Team and all other persons who have entered into contracts for the provision of services to be rendered to the Tenant in relation to the Building Works;
- (c) the Landlord shall be entitled to require the Tenant, at the Tenant's cost, to instruct the Tenant's solicitors to hand over full copies of all relevant deeds, documents and papers in their possession, which the Landlord may reasonably require to enable it to complete the Building Works;
- (d) the Tenant shall enter into such deeds of assignment, deeds of novation or other arrangements in respect of the construction documentation entered into by the Tenant in respect of the Building Works as the Landlord may properly require in order to enable the Landlord to complete the Building Works; and
- (e) the Tenant shall reimburse the Landlord for any increased costs incurred as a result of step in.

14.3 If the Tenant has given the Landlord notice of any charge of this Agreement in accordance with Clause 9.6:

- (a) the Landlord may not exercise its rights to enter and complete the Building Works under this Clause 14 unless it has given prior notice to the chargee of the breach of obligation or the condition in respect of which the Landlord claims against the Tenant the right to enter the Property to complete the Building Works ("Step in Notice");
- (b) the Step in Notice is to be of reasonable length (but not less than two calendar months from the date of the Step in Notice) and is to contain sufficient detail of the circumstances to allow the chargee the opportunity to remedy the breach of obligation or the condition of the Tenant;
- (c) the rights of the Landlord in Clause 14.2 and Clause 14.3 are to cease to operate in respect of the breach of obligation or the condition if:
 - (i) in case of breach of obligation, the chargee promptly after receipt of the notice of the Landlord takes steps adequate to remedy the

breach of obligation of the Tenant to the Landlord's reasonable satisfaction; or

- (ii) in case of breach of a condition or Default Event, the chargee or any receiver delivers to the Landlord a Deed of Covenant to become primarily bound by this Agreement in place of the Tenant (with effect from the time that the Tenant is discharged by law or otherwise from rights under this Agreement) and in accordance with its terms to take up the leases or the chargee produces to the Landlord a third party approved by the Landlord in writing (such approval not to be unreasonably withheld or delayed in the case of a third party of similar financial standing to the Tenant as at the date of this Agreement) ready willing and able to take an assignment of this Agreement from the Tenant and execute a Deed of Covenant with the Landlord; and
- (iii) the chargee makes good to the Landlord the costs and expenses caused to the Landlord by the breach of obligation or condition of the Tenant; and

- (d) a chargee to which this Clause 14.3 applies may enforce the rights conferred by it against the Landlord.

14.4 In addition to the provisions of this Clause 14 (*Tenant's default*), where the breach of obligation under Clause 14.1(a) constitutes either a failure on behalf of the Tenant to complete the Building Works by the Longstop Date as provided for in Clause 4.1.2 or complete the Excluded Fit Out Works as provided for in Clause 4.6, the Landlord shall only exercise its rights under Clause 14.2 if as a result of the Tenant's breach of the kind in Clause 14.1(a) the ability of the Landlord to exercise the rights reserved to it under the Basement Lease will be delayed beyond a date on which they will be required to service any part of the Dominant Land,

the Landlord covenanting to provide such reasonable evidence and supporting documentation to prove that the conditions in this Clause 14.4 objectively exist as may reasonably be required by the Tenant.

15 CONTINUATION OF THIS AGREEMENT AFTER GRANT OF THE LEASES

Completion of the grant of the Leases does not discharge liability to perform any outstanding obligation under this Agreement.

16 NOTICES

16.1 Any notice or notification required to be given under this Agreement is to be in writing.

16.2 Notice is to be treated as properly given if compliance is made with the provisions of section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962).

17 VALUE ADDED TAX

17.1 Any consideration or sums paid or given for taxable supplies of goods or services under or in connection with this Agreement is to be treated as exclusive of value added tax. The recipient of any such supply is, in addition to the consideration for the supply, to pay the supplier an amount equal to any value added tax which is chargeable in respect of the supply in question on the later of:

- (a) the day on which the consideration for the supply is given or paid; and
 - (b) production of a proper value added tax invoice.
- 17.2 If value added tax is charged where it properly ought not to have been, the party to this Agreement who is the recipient of that value added tax (the "recipient") is on demand to pay an amount equal to such value added tax and is to issue to the party to this Agreement who paid that value added tax an appropriate credit note.
- 17.3 Where the incorrect charging of value added tax is attributable to a breach of this Agreement by the recipient, then the recipient is to pay interest at a rate equal to 2% over the base rate of Barclays Bank PLC from time to time on the amount payable under Clause 17.2 from the date that the value added tax was paid to the recipient until the date repayment is made under Clause 17.2.
- 17.4 The Landlord and the Tenant acknowledge that:
- (a) the Tenant has opted to tax the Blue Land and the land subject to the Deed of Easement in accordance with Schedule 10 Value Added Tax Act 1994; and
 - (b) their subjective valuation of the total consideration to be given by the Landlord for the Freehold Transfer and grant of the easement under the Deed of Easement is £1.
- 17.5 The parties acknowledge that the Freehold Transfer and the Deed of Easement are together consideration for the grant of the Basement Lease and the Market Square Lease (and vice versa) and that such arrangements constitute a land exchange within section 47 Finance Act 2003 for stamp duty land tax purposes and a barter transaction for value added tax purposes.
- 17.5.1 The parties hereby agree that they believe that the market value of the Freehold Transfer and the Deed of Easement is £1 and that the market value of the Basement Lease and the Market Square Lease is £1 and that this represents their subjective valuation of the total consideration to be given by each to the other in respect for the Freehold Transfer and the Deed of Easement and for the Basement Lease and the Market Square Lease (respectively).
- 17.5.2 The parties agree that they shall make any value added tax or stamp duty land tax (or other tax) filings or returns in accordance with the belief stated in clause 17.5.1 above to the extent permitted by law.
- 17.5.3 In the event that any person (including but not limited to any tax authority) raises any enquiry of a party concerning, or in any way questions or disputes, the value or consideration attributed by the parties to the Freehold Transfer, the Deed of Easement, the Basement Lease or the Market Square Lease, that party shall inform the other party within 10 Working Days of becoming aware of such enquiry, question or dispute and shall use all reasonable endeavours to demonstrate to such person that the market value or consideration for the matter at issue was £1 and not any other amount (save that neither party shall be required to appeal any assessment made to the contrary).
- 17.5.4 The parties shall act reasonably and in good faith in respect of the matters provided for in this clause 17.5 and each hereby agrees to ensure that communications pertaining to any enquiry, question or dispute which might in any way affect the tax position of the other party shall first be sent in draft to that

other party in reasonable time to afford that other party an opportunity of considering the contents of the same and that any reasonable comments from that other party will be incorporated into such communication.

- 17.6 Where the Landlord is entitled under this Agreement to recover from the Tenant the cost of goods and services supplied to the Landlord, but in respect of which the Landlord makes no taxable supply to the Tenant, the Tenant will indemnify the Landlord against so much of the input tax on the cost for which the Landlord is not entitled to credit allowance under section 26, or a refund under section 33 of the Value Added Tax Act 1994.

18 INTEREST

In the event that any sums payable by the Tenant to the Landlord under this Agreement are not paid on the due date the Tenant shall in addition pay on demand to the Landlord interest on such sums at the rate of 3% per annum above either the base rate of National Westminster Bank Plc or such other bank (being for the time being generally recognised as a clearing bank in the London market) as the Landlord may from time to time nominate from the date on which such sum fell due for payment to the date of actual payment (as well after as before any judgment obtained).

19 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 19.1 Unless the right of enforcement is expressly provided, it is not intended that a third party should have the right to enforce a provision of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 19.2 The parties may, by Agreement, rescind or vary this Agreement without the consent of a third party to whom the right of enforcement of any of its terms has been expressly provided.

20 INDEMNITY

- 20.1 The Tenant shall keep the Landlord and all persons deriving title under it indemnified on an after tax basis against all claims, liability and costs sustained or incurred from or incidental to the carrying out of the Building Works in accordance with this Agreement.
- 20.2 References to costs being on "an after tax basis" means that if the payment of that cost pursuant to this Agreement is or will be chargeable to tax (other than VAT) in the hands of the payee (or would be so chargeable but for the availability of a relief), then the payer shall pay such additional amount as will ensure that the total amount received, net of tax chargeable on such amount (or that would be so chargeable but for a relief), is equal to the amount that would otherwise be payable under or pursuant to this Agreement. For the purpose of this Clause 20 tax means income tax or corporation tax under the Income Tax Act 2007 or the Income and Corporation Taxes Act 1988. Reference to costs being on "an after tax basis" shall benefit the London Borough of Southwark as the original party to this Agreement only and shall not benefit its successors in title or assigns.

21 TENANT'S COSTS

- 21.1 The Tenant is to be responsible for payment of:

- (a) stamp duty land tax in respect of this Agreement and of the Basement Lease and the Market Square Lease and the Western and Eastern Margin Lease; and
- (b) all costs of carrying out the Building Works.

22 EXCLUSION OF SECTIONS 24-28 OF THE LANDLORD AND TENANT ACT 1954 (THE "1954 ACT")

22.1 Market Square Lease

In respect of the Market Square Lease, the Landlord served on the Tenant a notice dated *26 September* August 2008 in accordance with section 38A(3)(a) of the 1954 Act, and a [statutory] declaration dated *29 September* August 2008 was made by ~~the Tenant~~ for a person duly authorised by the Tenant, in accordance with paragraph ~~13~~ 4 of schedule 2 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003.

HS LLP

23 STANDARD CONDITIONS

23.1 The Standard Conditions as modified by Clause 23.2 shall apply to this Agreement. In the case of inconsistency between the Standard Conditions and this Agreement, the provisions of this Agreement shall prevail.

23.2 Conditions 1.4 and 2.2 do not apply.

23.3 In condition 1.3.5, "5.00 pm" is substituted for "4.00 pm" and the words "before 5.00 pm" are added after the words "treated as having been received".

23.4 In condition 1.3.6, "5.00 pm" is substituted for "4.00 pm" and the words "(d) by fax if sent before 5.00 pm on a Working Day, the day of dispatch but otherwise the first Working Day after dispatch" are added at the end.

24 TERMINATION PROVISION

24.1 If at any time the Landlord reasonably believes that the Tenant is wilfully neglecting to use reasonable endeavours to procure the occurrence of the Unconditional Date it may serve written notice on the Tenant to that effect.

24.2 If within six months of the date of such notice the Tenant has not provided reasonably sufficient evidence to the Landlord that it is using reasonable endeavours to procure the occurrence of the Unconditional Date the Landlord may refer the matter for determination by an Expert under Clause 10 (*Expert determination*).

24.3 If the Expert determines that the Tenant has wilfully neglected to use reasonable endeavours to procure the occurrence of the Unconditional Date the Landlord may at any time after the date of such determination terminate this Agreement by giving the Tenant written notice to that effect provided that the Tenant shall not be regarded as wilfully neglecting to use reasonable endeavours to procure the occurrence of the conditional date where either:

- (a) delays are occasioned to the fulfilment of the conditions by the Landlord failing or delaying to perform any of its obligations under this Agreement; or
- (b) any other cause of delay which is beyond the Tenant's reasonable control.

25 **LANDLORD'S CONSENT/APPROVAL**

If under any provision of this Agreement the Tenant is required to obtain the Landlord's consent, licence or approval and such consent, licence or approval is not to be unreasonably withheld or delayed by the Landlord the Landlord agrees that it shall act expeditiously in responding to any application for such consent, licence or approval.

26 **REGISTRATION**

- 26.1 (Subject to the Tenant providing a completed Form AN1 in respect of the same) the Landlord will immediately following the date of this Agreement provide to the Tenant evidence of its consent to the application of the Tenant to register an agreed notice of this Agreement on the charges register ~~and the restriction on the proprietorship register~~ of the Landlord's title to the Property, by completion and signature by the Landlord of panel 15 of the Form AN1 provided and will give such assistance as may reasonably and properly be required by the Tenant for the purpose.
- 26.2 The Landlord will co-operate with the Tenant and/or the Tenant's nominee to enable the Tenant to register the Leases at the Land Registry and to become the registered proprietor of the Leases with absolute leasehold title.
- 26.3 (Subject to the Tenant providing a completed Form RX1 in respect of the same) the Landlord will immediately following the date of the completion of the Deed of Easement provide to the Tenant evidence of its consent to the application to register the restriction on the proprietorship register of the Dominant Land by completion by the Landlord of the relevant panel on form RX1 provided and will give such assistance as may reasonably be required by the Tenant for the purpose.

HS LLT

This Deed has been executed as a deed and delivered on the date stated at the beginning of this Deed.

Schedule 1 : Description of the Premises

**Schedule 1
Description of the Premises**

**Part 1
Basement Premises**

As defined as "Premises" in the Basement Lease.

**Part 2
Market Premises**

As defined as "Premises" in the Market Square Lease.

Schedule 2
The Building Works, insurance, Practical Completion, defects liability and party walls and fences

1 The Building Works

- (a) The Tenant is responsible for the appointment and will engage the services (as may be appropriate) of the Professional Team in connection with the Building Works. The Tenant may at any time appoint a replacement or substitute Employer's Agent, Quantity Surveyor or any member of the Professional Team.
- (b) If the Building Contract is or is to be a building contract with contractor design:
 - (i) the duties of the Tenant with respect to the appointment of the members of the Professional Team require the Tenant to procure the relevant appointments by the Building Contractor (excluding the Employer's Agent and CDM Co-Ordinator); and
 - (ii) the Tenant will procure that it is stipulated in the terms of its engagement that the Employer's Agent is to issue the written statements of Practical Completion and the notice of making good of defects, and to fix extensions for time of completion of the Building Works, under the terms of the Building Contract and that, in doing so, the Employer's Agent is to act impartially and independently of the Tenant.
- (c) The Tenant:
 - (i) is responsible for the appointment and employment of the Building Contractor and shall be entitled from time to time to appoint a replacement or substitute Building Contractor. The Tenant is to require as a condition of the employment of the Building Contractor that at all times during the Development Period he is registered for gross payment under section 63(2) of the Finance Act 2004; and
 - (ii) may enter one single building contract or one or more building contracts for the whole or any part of the Main Development and the Development.
- (d) With respect to Requisite Consents for the Building Works:
 - (i) the Tenant will apply for and use all reasonable and proper endeavours to obtain all Requisite Consents from time to time as may be appropriate before and throughout the course of the Building Works; and
 - (ii) if a Requisite Consent is refused, the Tenant will appeal against the refusal or take such other action as may be appropriate in order to proceed with the Building Works.
- (e) The Tenant shall use reasonable endeavours to procure that materials or substances for the time being not approved or not recommended by the current British Standards and codes of practice (so far as they may be applicable to the Building Works) as being of deleterious, unsatisfactory or unsuitable quality are not be used in or in connection with the Building Works.
- (f) The Tenant will keep the Landlord informed of:
 - (i) the progress of the Building Works; and

Schedule 2 : The Building Works, insurance, Practical Completion, defects liability and party walls and fences

- (ii) any material problems or delays affecting the Building Works.
- (g) The Landlord and its professional advisers may by arrangement with the Building Contractor enter the Property in order to inspect and view the state and progress of the Building Works and the materials used, but in doing so the Landlord and his professional advisers may not:
 - (i) impede or obstruct the progress of the Building Works; nor
 - (ii) issue any instructions to the building contractor or any workman employed on the site, but will address any requirement, comment or complaint only to the Tenant.

2 CDM Regulations

The Tenant will elect in writing to be treated as the only client in respect of the Building Works for the purposes of the CDM Regulations and provide a copy of such election to the Landlord and will ensure that the design and execution of the Building Works complies with the CDM Regulations, and, in the course of carrying out these obligations, the Tenant will:

- (a) appoint a CDM Co-Ordinator and a principal contractor in respect of the Building Works and take all steps as are in the circumstances reasonable to ensure that each is provided with the relevant information to enable him to perform his duties under the CDM Regulations;
- (b) allow sufficient time and resources to enable the CDM Co-Ordinator and the principal contractor to comply with their obligations relating to health and safety matters arising from the CDM Regulations and co-operate with them to that end;
- (c) notify the CDM Co-Ordinator and principal contractor of any change in circumstances relating to the Building Works of which it is or ought reasonably to be aware which may affect the health and safety of the persons involved, or likely to become involved, in the Building Works;
- (d) procure that full details of the Building Works are given to the Health and Safety Executive and that a construction phase plan is prepared and submitted to the Health and Safety Executive in accordance with the CDM Regulations; and
- (e) procure and deliver to the Landlord as soon as reasonably practicable after the date of Practical Completion (but no later than two months after that date) a copy of the Health and Safety File prepared, maintained and completed as required by the CDM Regulations and two complete sets of plans for the Building Works as finally built.

3 Insurance

- (a) The Tenant will at all times throughout the course of the Building Works use reasonable endeavours to procure that the Building Contractor insures the relevant structures, for their full reinstatement costs for the time being and unfixed goods and materials in connection with the Building Works for their full reinstatement cost for the time being against the insured risks with an insurer of repute.
- (b) For the purposes of paragraph 3(a), the insured risks include fire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped from

Schedule 2 : The Building Works, insurance, Practical Completion, defects liability and party walls and fences

them, riot and civil commotion and malicious damage. The risks are the ones set out in the relevant insurance provisions of the JCT standard form building contract.

- (c) The Tenant will supply the Landlord with evidence that the insurance is in force and of its renewal, if requested by the Landlord.
- (d) The Tenant will procure that all Building Works that are damaged or destroyed to be reinstated with due diligence, and will apply the proceeds of the policy of insurance towards the reinstatement.
- (e) The interest of the Landlord is to be noted on the policy of insurance.

4 Practical Completion

- (a) If Practical Completion of the Basement Area Works and the Market Square Works take place at different times the Tenant shall on each occasion that the statement of Practical Completion is to be issued in respect of the Basement Area Works and the Market Square Works, give notice (and use its reasonable and proper endeavours to give at least 21 days' notice) to the Landlord and of the pending issue of the statement of Practical Completion, so that the Landlord and its professional advisers may inspect the Basement Area Works or the Market Square Works and consider whether the same have been completed in accordance with the provisions of Schedule 2 (*The Building Works, insurance, Practical Completion, defects liability and party walls and fences*), paragraph 1 (*The Building Works*).
- (b) The Employer's Agent is not to be fettered from issuing the statement of Practical Completion in respect of the Basement Area Works or the Market Square Works at such time as he thinks fit under this Agreement.
- (c) The Landlord may make representations to the Tenant who shall pass the representations on to Employer's Agent as to whether the statement of Practical Completion should be issued at a particular time, or what qualification should be made to the certificate of Practical Completion on its issue.
- (d) If the Landlord (acting reasonably) is of the opinion that the statement of Practical Completion should not have been issued or that the statement has not been properly qualified:
 - (i) the Landlord may notify the Tenant within a reasonable and proper time giving details of the Landlord's objections; and
 - (ii) the Landlord and the Tenant will then endeavour to resolve what if any action should be taken; but
 - (iii) if they cannot or do not do so, the objections not so resolved are to be submitted to the Expert for determination in accordance with Clause 10 (*Expert determination*) of this Agreement provided that this shall not prevent Practical Completion taking place or it being re-opened.
- (e) The Tenant will take whatever action may be required in consequence of the resolution of the objections of the Landlord or the decision of the Expert.
- (f) Nothing in this paragraph 4 (*Practical Completion*) shall prevent the Employer's Agent from simultaneously issuing a statement of Practical Completion in relation to the Building Works as a whole.

5 Defects liability

- (a) The Tenant will use all reasonable endeavours to enforce the defects liability provisions in the Building Contract in relation to the Building Works.
- (b) The Tenant will:
 - (i) inspect the Building Works and prepare a schedule of defects, itemising defects, shrinkages and other faults due to materials or workmanship not in accordance with the Building Contract or to frost occurring before Practical Completion;
 - (ii) immediately deliver a copy of the schedule of defects to the Landlord for the Landlord to consider it, and, if appropriate, to notify additions to the Tenant; and then
 - (iii) deliver the schedule of defects with any reasonable additions notified in the meantime to the Tenant by the Landlord acting reasonably to the Building Contractor within the applicable time limits for doing so under the Building Contract.
- (c) The Tenant will include in its schedule of defects any defects notified to it by the Landlord acting reasonably within the applicable time limits for doing so under the Building Contract.
- (d) The Landlord will allow the Tenant the facilities necessary to enable the schedule of defects to be properly prepared.
- (e) If compliance is made by the Tenant with the provisions of paragraph 5(b) and paragraph 5(c), the Landlord will not be entitled to complain that any item omitted from the schedule of defects has not been dealt with under the defects liability provisions in the Building Contract.
- (f) The Tenant shall not be relieved of liability for any unobserved or unperformed obligation in this Schedule 2 (*The Building Works, insurance, Practical Completion, defects liability and party walls and fences*) by:
 - (i) the issue of the statement of Practical Completion; or
 - (ii) the absence of any objection by the Landlord to the statement of Practical Completion;
 - (iii) the Building Contractor carrying out his obligations with respect to defects liability under the Building Contract; or
 - (iv) the successful prosecution of a claim against the building contractor or any member of the Professional Team.
- (g) The repairing obligations of the Tenant under the Leases is to be relaxed to the extent that works are required to be carried out and are actually carried out by the Building Contractor under the defects liability provisions in the Building Contract.
- (h) The Tenant ceases to be liable and the Landlord shall not make a claim against it for the breach of its obligation under this Agreement and this Schedule 2 (*The Building Works, insurance, Practical Completion, defects liability and party walls and fences*) in respect of Basement Area Works after the expiry of the period of 12 months from the Date of Practical Completion of the Basement Area Works unless

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the Landlord has made a specific claim against the Tenant before the expiry of that period.

- (i) The Tenant ceases to be liable and the Landlord shall not make a claim against it for the breach of its obligation under this Agreement and this Schedule 2 (*The Building Works, insurance, Practical Completion, defects liability and party walls and fences*) in respect of Market Square Works after the expiry of the period of 12 months from the Date of Practical Completion of the Market Square Works unless the Landlord has made a specific claim against the Tenant before the expiry of that period.

6 Party walls and fences

- (a) The Tenant may construct or agree to the construction of any adjoining or adjacent premises which takes into use as party walls or structures the walls of the Premises and Blue Land without incurring liability to the Landlord for compensation.
- (b) Notwithstanding the terms of the Leases or any indications on the plans as to whether or not division walls are party walls or structures:
- (i) the Tenant may vary the Basement Lease and Market Square Lease and the plans as to which of the walls are to belong to the Premises and those for the maintenance of which the Landlord is to be liable jointly with any adjoining or adjacent owner or occupier; and if so
- (ii) the Leases and the plans are to be revised accordingly.

7 Archaeological works

If any fossils, coins, relics or other articles or structures of historical, antiquarian or archaeological interest are found on the Property as between Landlord and Tenant they shall be the property of the Landlord.

Schedule 3 Conditions

Part 1 Legal Challenge Condition

1 Definitions

"Challenge Appeal(s)" means an application or appeal to the High Court or other appropriate forum against a decision or act of the Authority or the Secretary of State made by any third party.

"Challenge Period(s)" means the latest of:

- (a) three months from the Grant Date of the Second Planning Permission by the Authority; or
- (b) six weeks from the Grant Date of the Second Planning Permission by the Secretary of State and of a correction notice under Part 5 of the Planning and Compulsory Purchase Act 2004 (if any).

2 Condition

The Legal challenge condition is that, notwithstanding the grant of the Second Planning Permission:

- (a) no Challenge Appeal is made by a third party in respect of any or all of the grant of the Second Planning Permission or any act of the Authority or the Secretary of State (or other appropriate person or body) in relation to such grant within the Challenge Period applicable to the Second Planning Permission; and
- (b) if any Challenge Appeal is made within the Challenge Period, that (or all) Challenge Appeal(s) being abandoned, lost or finally disposed of leaving in place an Acceptable Permission provided that if the Landlord does not agree that the Tenant is acting reasonably in determining that any Planning Permission is not an Acceptable Permission the matter shall be determined under Clause 10 (*Expert determination*).

3 Procedure

- (a) The Tenant shall not be obliged to defend any Challenge Appeal but if the Tenant does so it shall have the conduct of the Challenge Appeal and be responsible for the engagement of the professional advisers to be involved and their costs.
- (b) The Tenant shall keep the Landlord informed as to the progress of such Challenge Appeal mentioned in paragraph 3(a).
- (c) The Tenant may, but shall not be obliged to, appeal against any decision made on any Challenge Appeal provided that there is a higher court to which such an appeal may be made and the Tenant notifies the Landlord of its intention and commences the appeal within the relevant statutory period.
- (d) Neither party shall pursue or support any Challenge Appeal challenging the Second Planning Permission.
- (e) The Tenant may at any time discontinue the Challenge Appeal.

4 **Waiver**

The Tenant may waive this Condition by notice in writing to the Landlord to that effect in which event the Legal Challenge Condition shall be deemed to be fulfilled.

**Part 2
Registration Condition**

1 **Condition**

The Registration Condition is:

The registration of the Tenant as proprietor of the Additional Land at the land registry with title absolute freehold in respect of that area of the Additional Land adjoining the Tenant's Property and title absolute leasehold in respect of that portion of the Additional Land abutting the land registered under title number LN26309, subject only to those matters registered in the charges register as the Tenant acting reasonably shall find acceptable provided that it shall not be reasonable for the Tenant to object to a matter which would not have a materially detrimental effect to the Main Development.

2 **Procedure**

- (a) The Tenant shall prepare a Road Closure Order in respect of the Additional Land for the permanent stopping-up of the highway over such land and use all reasonable endeavours to progress such Road Closure Order.
- (b) Having obtained the relevant Road Closure Order, the Landlord (in its capacity as registered proprietor of land registered under title number LN26309) and Tenant (in its capacity as registered proprietor of the Tenant's Property) shall jointly apply to the Land Registry for the registration of the Additional Land into their respective names pursuant to the *usque ad medium filum* principle
- (c) The Landlord shall provide the Tenant with all necessary assistance and support in both applying for the Road Closure Order and in applying to the Land Registry under paragraph 2(b) and undertakes to deal with all and any requisitions raised of the Landlord by the Land Registry in connection with the registration of the Additional Land in the names of the Tenant and the Landlord as to their respective entitlements under the *usque ad medium filum* principle and in connection with the registration of the Supplemental Lease.
- (d) Following registration of that part of the Additional Land in the Landlord's name as it is entitled under the provisions of paragraphs 2(b) and 2(c), the Landlord shall grant the Tenant a lease of all of such land in a form substantially the same as the Eastern and Western Margin Lease, with the same rights and uses as benefit the land shaded blue on the plan attached to the Eastern and Western Margin Lease and co-terminus with the same for no further consideration (the "Supplemental Lease"). The Landlord and Tenant shall use all reasonable endeavours to agree the Lease and complete the same as soon as reasonably practicable following the registrations in paragraph 2(b).
- (e) The Tenant shall, as soon as reasonably practicable following completion of the Supplemental Lease, lodge the same at the Land Registry and the Landlord shall, subject to the Tenant providing a completed form AN1, provide the Tenant with evidence of its consent to the application of the Tenant to register the easements reserved in the Supplemental Lease over the Landlord's Property, Market Store and Market Square as defined in the Eastern and Western Margin Lease (insofar as is

applicable). The Landlord shall use all reasonable endeavours to promptly satisfy or to assist the Tenant to satisfy (as applicable) to any requisitions raised by the Land Registry in connection with the Tenant's application for first registration of the Supplemental Lease in the Tenant's name with title absolute.

- (f) On each occasion that the Tenant receives official copy entries of the registered title evidencing that the Tenant is the registered proprietor of all or any part of the Additional Land with freehold title absolute and in respect of the Supplemental Lease, leasehold title absolute, it shall provide the Landlord with copies thereof within ten Working Days of receipt of official copies together with a notice stating whether the Tenant acting reasonably considers that any matters to which that part of the Additional Land is subject are acceptable to the Tenant ("Positive Notice") or unacceptable to the Tenant.

3 Satisfaction

The Registration Condition shall be satisfied on the latest of the following dates:

- (a) the last date of registration of all of the Additional Land in the Tenant's name at the Land Registry (whether leasehold or freehold) with title absolute; and
- (b) the date on which the Tenant has delivered a Positive Notice on the Landlord in respect of all of the Additional Land or the date of the last Positive Notice delivered by the Tenant in respect of all of the constituent parts of the Additional Land.

4 Waiver

The Tenant may waive this Condition by notice in writing to the Landlord to that effect in which event the Registration Condition shall be deemed to be fulfilled.

**Part 3
Acquisition Condition**

1 Condition

- (a) The Acquisition Condition is the completion of registration of the Tenant as proprietor of the leasehold interest in the Western Land and Eastern Land at the Land Registry with title absolute on terms reasonably acceptable to the Tenant provided that it shall not be reasonable for the Tenant to object to a matter which would have a materially detrimental effect to the Main Development.
- (b) The provisions of this Schedule 3 (*Conditions*) are not conditional on any of the other Conditions being fulfilled and shall come into force and effect from the date of this Agreement notwithstanding that the other Conditions have not been fulfilled.

2 Procedure and grant of the Eastern and Western Margin Lease

(a) Completion of Leases

- (i) To the extent that the Landlord and Tenant have not done so simultaneously with the entering of this Agreement, the Landlord shall grant and the Tenant shall accept the Eastern and Western Margin Lease as soon as reasonably practicable after the date of this Agreement but in any event before 20 Working Days after the date of this Agreement ("Completion Date").

- (ii) The Landlord shall procure that the Landlord's solicitors prepare the engrossments of the original and counterpart of the Eastern and Western Margin Lease and send the engrossment counterpart to the Tenant's Solicitors not less than five Working Days before the Eastern and Western Margin Lease is due to be completed in accordance with Schedule 3, Part 3 (*Acquisition Condition*), paragraph 2(a)(i).
- (b) Risk
Damage or destruction of the Western Land or Eastern Land and risk in and to the same pass to the Tenant on the date of completion of the Eastern and Western Margin Lease.
- (c) Price
The price of the Western Land is £1.00 (one pound) (plus VAT if any) (the "**Western Price**") and the Eastern Land £85,000 (eighty-five thousand pounds) (plus VAT if any) (the "**Eastern Price**").
- (d) Title
(i) The evidence of the Landlord's registered title to the Western Land and Eastern Land required is:
(A) official copies of the items referred to in rules 134(1) (a) and (b) of the Land Registration Rules 2003 and unedited copies or abstracts of the items referred to in rule 135(1) of those rules (except charges and encumbrances registered or protected on the register which are to be discharged or overridden at or prior to completion of the Eastern and Western Margin Lease); and
(B) such copies, abstracts and evidence (if any) in respect of any subsisting rights and interests appurtenant to the Western Land and Eastern Land as to which the register is not conclusive and of any matters excepted from the effect of registration as the Tenant would have been entitled to if the title to the Western Land and Eastern Land had not been registered.
(ii) The Tenant is to be deemed to have entered into this Agreement with full notice of the actual condition of the Western Land and Eastern Land, full knowledge of the authorised use of the Western Land and Eastern Land for the purposes of the Planning Acts and is to take the Western Land and Eastern Land as they are.
(iii) (Subject to the Tenant providing a completed Form AN1 in respect of the same) the Landlord is immediately following completion of the Eastern and Western Margin Lease to provide to the Tenant evidence of its consent to the application of the Tenant to register the easements referred to in schedule 1, part 1 of the Eastern and Western Margin Lease as appurtenant to the Premises in accordance with clause 13.3 of the Eastern and Western Margin Lease and at the Tenant's reasonable cost to give such assistance as may reasonably and properly be required by the Tenant for the purpose.
(iv) The Landlord shall use all reasonable endeavours to respond promptly to any requisitions raised by the land registry in connection with the Tenant's

application for first registration of the Eastern and Western Margin Lease in the Tenant's name with title absolute.

(e) **Representations**

It is acknowledged by the Tenant that in relation to this Agreement the Tenant has acted or relied on any representations made by or on behalf of the Landlord except those made in writing by the Landlord's Solicitors in response to written enquiries submitted to the Tenant's Solicitors.

(f) **Continuation of this Agreement after grant of the Eastern and Western Margin Lease.**

Completion of the grant of the Eastern and Western Margin Lease does not discharge liability to perform any outstanding obligation under this Schedule 3, Part 3 (*Acquisition Condition*).

(g) **Registration**

On each occasion that the Tenant receives official copy entries of the registered title evidencing that the Tenant is the registered proprietor of the Eastern and Western Margin Lease with title absolute it shall provide the Landlord with copies thereof within ten Working Days of receipt of such official copy entries.

3 Satisfaction

The Acquisition condition shall be satisfied on the last date on which the Tenant is registered as proprietor of all of the Eastern and Western Margin Lease at the Land registry with title absolute in accordance with paragraph 1(a).

4 Waiver

The Tenant may waive this condition by notice in writing to the Landlord to that effect in which event the Acquisition condition shall be deemed to be fulfilled.

**Part 4
CRT Condition**

1 CRT Condition

The CRT Condition is the completion of the CRT Agreement.

2 Procedure

- (a) The Landlord and Tenant shall both act reasonably and expeditiously in agreeing between themselves and with Transport for London ("TFL") the form of the CRT Agreement.
- (b) Both the Landlord and the Tenant shall instruct the Landlord's Solicitors and Tenant's Solicitors to respond promptly to each other's request in agreeing the CRT Agreement.
- (c) Both the Landlord and Tenant may request reasonable amendments to be made to the form of the CRT Agreement and in particular the Landlord may include provisions enabling it to make a claim under the code of statute and case law relating to land compensation notwithstanding the provisions of paragraph 2.1.5 of

the Safeguarding Works Heads of Terms attached to the Second Section 106 Agreement.

- (d) The parties shall execute and complete the CRT Agreement within ten Working Days of a final form Agreement being reached with TFL and engrossed.

3 Satisfaction

The CRT Condition shall be satisfied on the date that the CRT Agreement is completed in accordance with the provisions of this Schedule 3, Part 4 (*CRT Condition*).

4 Waiver

The Tenant may waive the CRT Condition by notice in writing to the Landlord to that effect in which event the CRT Condition shall be deemed to be fulfilled.

**Part 5
Highway Condition**

1 The Condition

The Highway Condition is the completion of the Highways Agreement with Transport for London together with the publication of a notice of making or confirming each of the Road Closure Orders (including, but not limited to, the Road Closure Order required under Schedule 3, Part 2 (*Registration Condition*) which are necessary for the Main Development and Development to proceed and the completion of all Statutory Agreements.

2 Procedure

- (a) The Tenant shall as soon as is reasonably practicable following the date of this Agreement prepare and agree with the London Borough of Southwark as highway authority and where relevant Transport for London acting in their capacity as Highway Authority a plan showing the extent of highways adopted at the date of this Agreement and which require to be stopped up (whether permanently or temporarily) in order to carry out the Main Development and Development including details of the exact location of the highway boundaries which plan shall be based on the plan annexed in Appendix 2.6 as may amended following registration of the Additional Land in the Tenant's name.
- (b) The Tenant shall provide the Landlord with copies of any plan or amendment plan when it is agreed.
- (c) Once the plan has been agreed the Tenant shall use all reasonable endeavours to obtain all of the Road Closure Orders as soon as reasonably practicable which the Tenant may make and enter into any Highway Agreement which the Tenant may require it to enter into in relation to the Property, Eastern Land or Western Land.
- (d) The Landlord shall support any application for Road Closure Orders.
- (e) The Tenant shall use all reasonable endeavours to negotiate, agree terms for, and enter into the Highways Agreement and into such Statutory Agreements as are necessary for the purposes of the Main Development and Development, each to be in a form reasonably acceptable to the Tenant.

3 Satisfaction

- (a) The Highways Condition shall be satisfied on the later of:
- (i) the date which is six weeks after each date of publication of the notice of making or confirming of each Road Closure Order which is necessary for the Main Development and Development, (so that on that date there are in existence Road Closure Orders in place in respect of each part of the adopted highway required to be stopped up for the purposes of the Main Development and Development, each being free from any legal challenge in respect of the validity of all or any of the Road Closure Orders) unless at that date there appears a legal challenge in existence in relation to any one or more of them in which case it shall be the final date of the last day by which any such proceedings are determined any time for appealing or further appealing have expired leaving in place each Road Closure Order;
 - (ii) the date on which the Highways Agreement(s) has been entered into; and
 - (iii) the date on which the last to be completed of the Statutory Agreements has been entered into, such that on such date all Statutory Agreements necessary for the Main Development and Development have been entered into.
- (b) The Tenant shall give the Landlord written notice of the satisfaction of each of these constituent parts of the Highway Condition.

4 Waiver

This Condition may be waived by the Tenant by notice in writing to the Landlord to that effect in which event the Highway Condition shall be deemed be fulfilled.

**Part 6
Funding Condition**

1 Funding Condition

- (a) The Tenant shall use all reasonable endeavours to obtain sufficient funding from established sources in the market (whether by debt, equity or otherwise) on terms which are commercially acceptable to the Tenant (acting in good faith) to enable the Main Development and the Development to be undertaken in order to satisfy this Funding Condition.
- (b) The Tenant shall as soon as reasonably practicable following the obtaining of funding in accordance with paragraph 1(a) and in any event no later than three months of satisfaction or waiver (where permitted) of all Conditions (other than the Funding Condition) confirm in writing to the Landlord whether or not it has secured sufficient funding in accordance with paragraph 1(a).
- (c) The Funding Condition shall be satisfied upon the receipt by the Landlord of the Funding Notice which confirms that the Tenant has secured sufficient funding in accordance with paragraph 1(a).
- (d) The parties acknowledge that in order to satisfy the Funding Condition the Tenant may need to secure more than one offer of financing and different types of financing for example debt and equity financing.

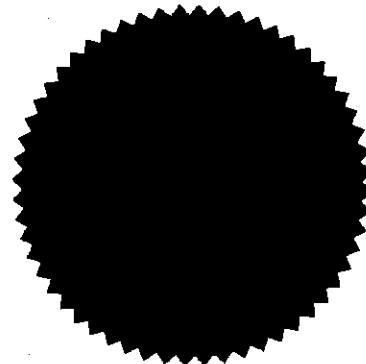
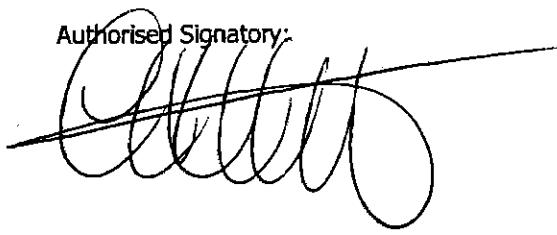
Schedule 3 : Conditions

- (e) The Tenant may waive this condition by notice in writing to the Landlord to that effect in which event the Funding Condition shall be deemed be fulfilled.

EXECUTION PAGE

The Common Seal of **THE MAYOR AND)
BURGESES OF THE LONDON BOROUGH)
OF SOUTHWARK** was hereto affixed in the)
presence of:)

Authorised Signatory:



13293

Appendix 1.1
Approved Plans and Specification - Basement Area Works

Outline Scope of Works for the Basement Box.

External walls and piled perimeter –

The external perimeter of the basement enclosure is comprised of 750mm diameter secant wall piling with an inner wall of waterproofing concrete (zypex additive or similar). The step between upper and lower basement levels will be formed by steel sheet piling. The basement box enclosure extends to the waterproofed slab at ground floor level. The market square lease extends from this level to finished surface of the market square. Refer to plan 4.2 for extent of basement under lease.

Flooring and slabs –

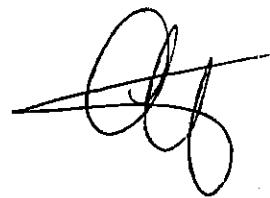
Basement slabs will be constructed in reinforced concrete with a tamped finish. The substructure works will include foul and surface water drainage. Lift pits will be formed from waterproof concrete. All shafts and overruns will be formed from reinforced concrete. Reinforced concrete ramp from Ground level entrance to Lower basement structure and slab to be installed to basic structural level.

Walls / finishes and stairs –

Internal walls to be fair faced blockwork / exposed surface to plant / storage areas. Note no paint finishes have currently been allowed for to the basement perimeter walls. Blockwork or insitu shear walls as necessary. Exposed concrete to slab soffits and stair landings. No ceilings have been allowed for. Exposed concrete to stairwell and stairs to have nosings only with galvanised mild steel balustrading and handrails.

EDF substation / transformer room enclosure walls to be 215mm thick common bond brick walls as per EDF agreement.

Loading Bays and dock platform. Construction of a reinforced concrete deck loading bay together with rc access stairs as necessary.

A handwritten signature in black ink, appearing to read "John Smith".

Appendix 1.2
Market Store and Market Square Approved Plans and Specifications

Outline Scope of Works for the Market square.

Market Square, Market Square Pavillion and open area.

Market Square Pavillion to provide lift and stair access to basement level market storage, escape stair from basement and toilet accommodation for market operators only. Building is to be unheated and naturally ventilated.

Structure / Construction –

Concrete Lift shaft and core with Steel framed Structure and concrete block infill walls.

External Walls –

External Granite tiling to match landscaping on blockwork basewall. Aluminium fascias and louvered ventilation panel over fixed light aluminium glazed front wall and double door.

Roof Finishes –

Standing seam aluminium roof, with folded plane roof and single wall element.

Mech / Electrical Services –

Two WC cubicles with standard contract sanitary ware and electric hand dryers.

One of cubicles to Part M disabled access standards. Drainage routed through basement below.

Oil tube radiators/trace heating to provide frost protection to plumbing.

Wall mounted 1.5KW radiant heaters in each cubicle on push button timed operation

Low energy lighting controlled by light sensor and weekly programmable timer.

Internal Finishes –

Fair faced concrete block walls internal walls, solid core doors paint finish. Dust sealed concrete floors and staircase. Galvanised mild steel hand railing.

Market trader storage –

Internal walls of fair faced concrete block, dust sealed concrete floor, surface mounted fluorescent lighting and power outlets. Zinc coated metal doors and secure locking. Goods Lift installation between market trader access level and all floors of market trader storage.

Market Square hardstanding and benches –

Market square hardstanding finish to be granite sets on subbase over structural slab. Area for safeguarding to have intermediate concrete slab protection to waterproof membrane.

Surface water drainage via linear aco floor gratings interconnected with cast iron pipework run at high level within basement box.



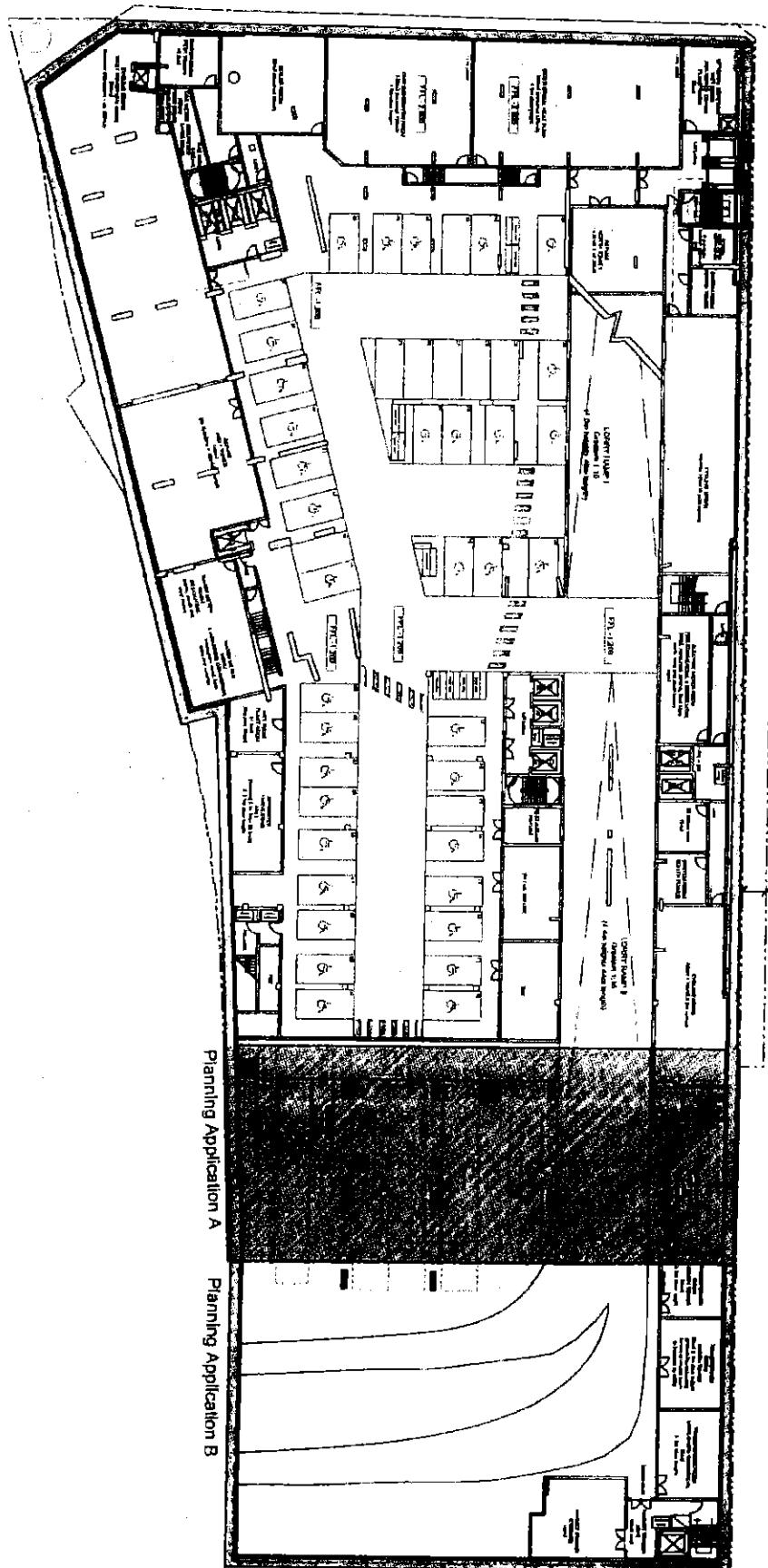
Water supply – watering points for washdown and irrigation to designated Market Square service points.

Electrical / small power – Floor mounted power outlets and external lighting via a combination of column and uplighters. Data connection for market traders is to be via wireless link.

Benches / planters and seating - 3no stone top benches for EDF venting of subground substation. To be constructed of steel / concrete support structure with perimeter louvered fascia and stone top surface. 3 no raised tree planters with integral drainage and cantilevered benches to four sides.

**Appendix 2.1
Freehold Transfer Plan**

**Appendix 2.1
Freehold Transfer**



**AUTHORISED
SIGNATORY**

A handwritten signature is written over the "AUTHORISED SIGNATORY" text.

Elephant Road SE17

**Appendix 2.2
Composite Plan**

Elephant and Castle
Station

5GL353704
(Part of)

N2630
ELEPHANT ROAD

Carey Court

NEW KENT ROAD

PLAN

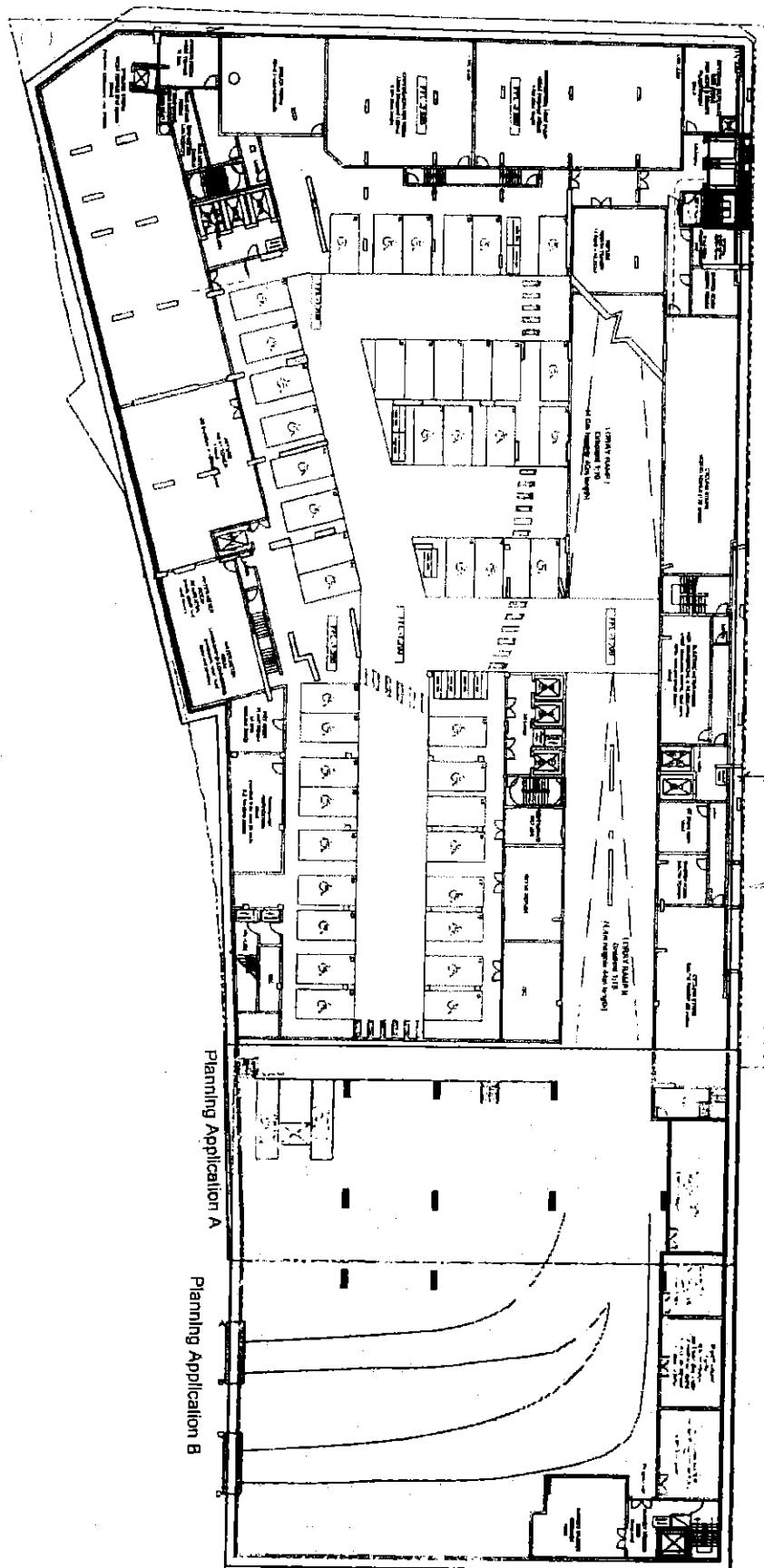
GROUND FLOOR

AUTHORISED
SIGNATORY

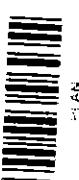
Composite plan

Appendix 2.3
Basement Demise Plan

**Appendix 2.3
Basement
Demise**



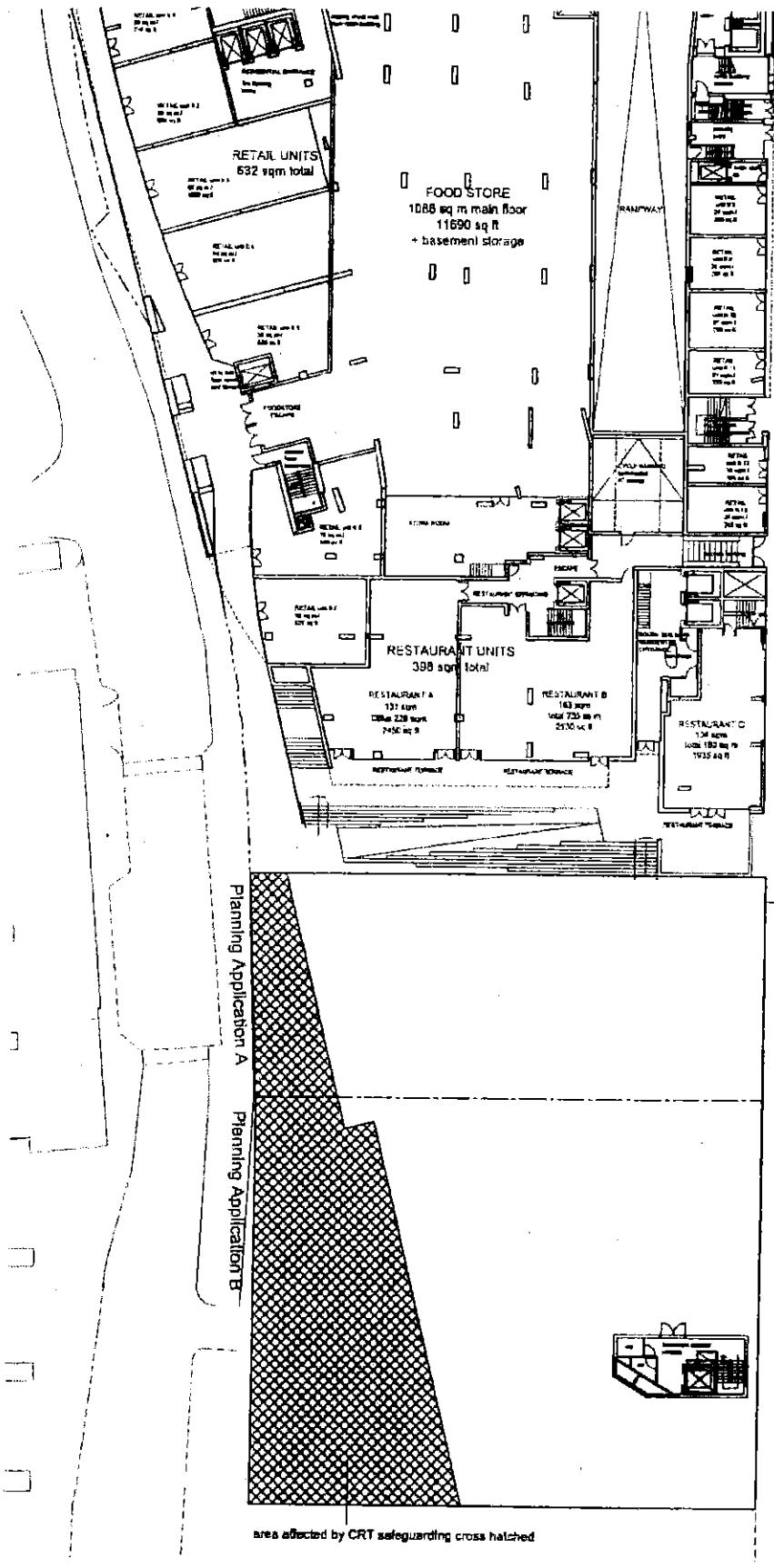
**AUTHORISED
SIGNATORY**



Elephant Road SE17

Appendix 2.4
Market Square Lease Plan

**Appendix 2.4
Market Square
Lease Plan**

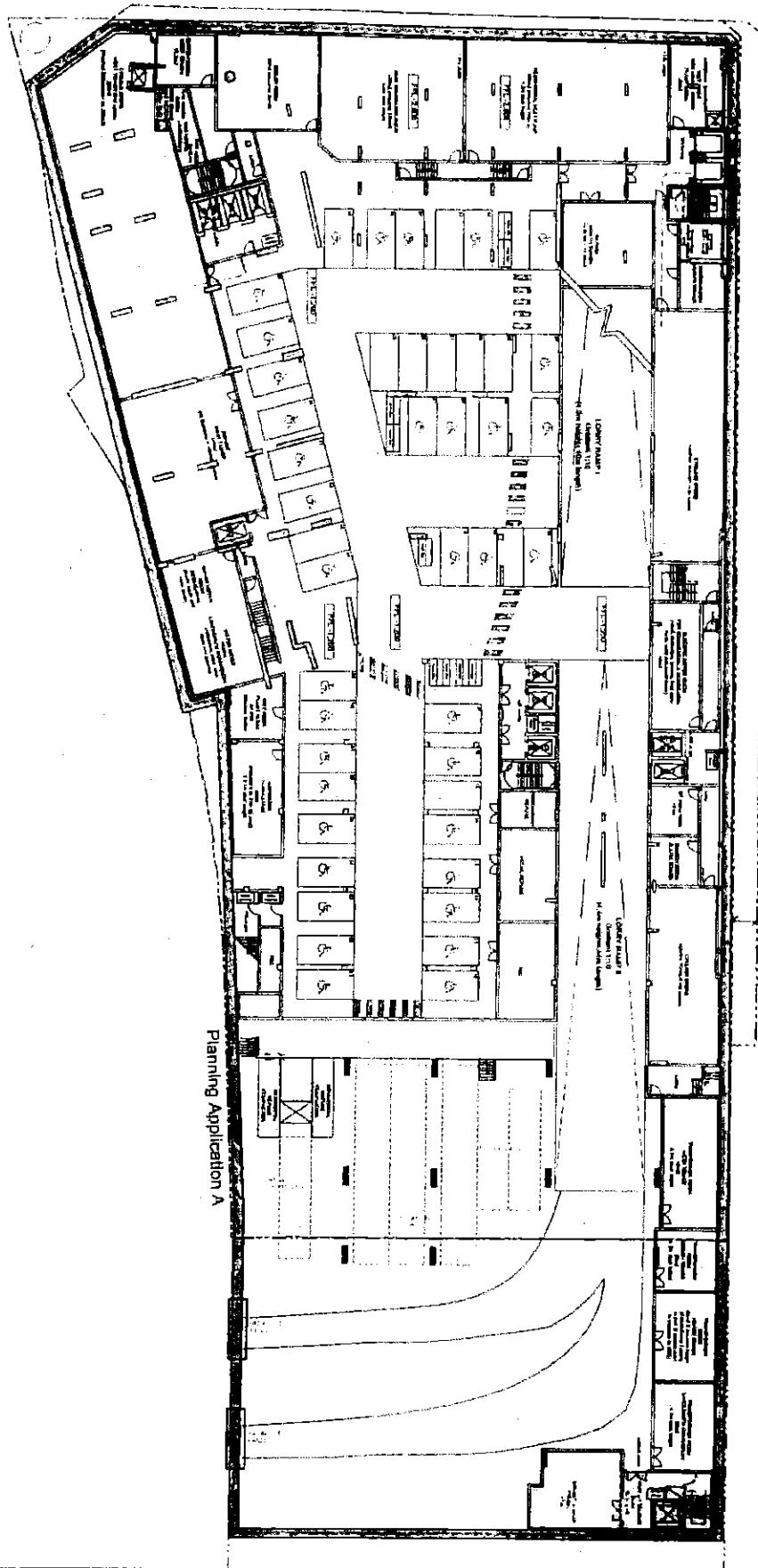


**AUTHORISED
SIGNATORY**



**Appendix 2.5
Market Store Plan**

Appendix 2.5
Market Store

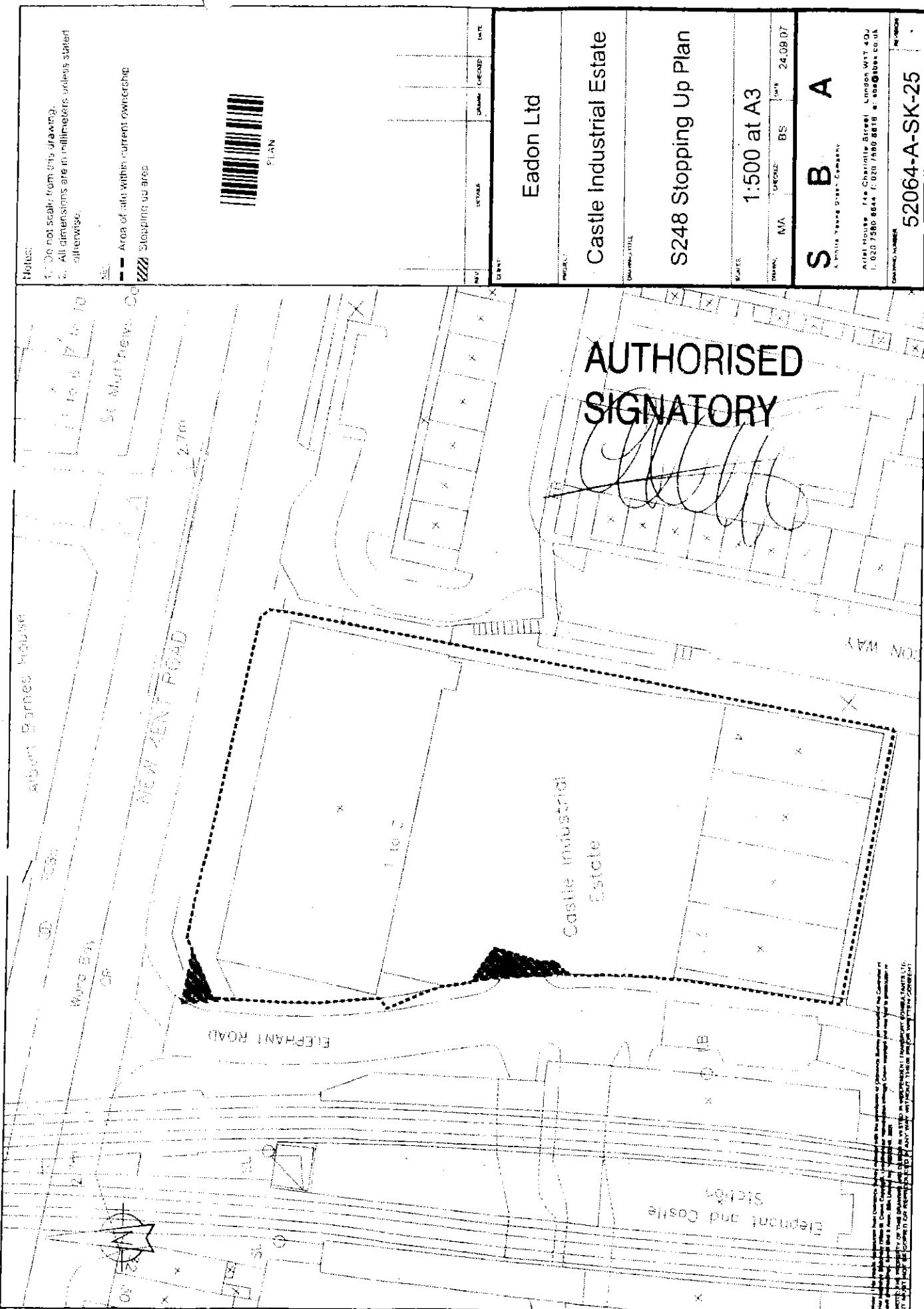


AUTHORISED
SIGNATORY

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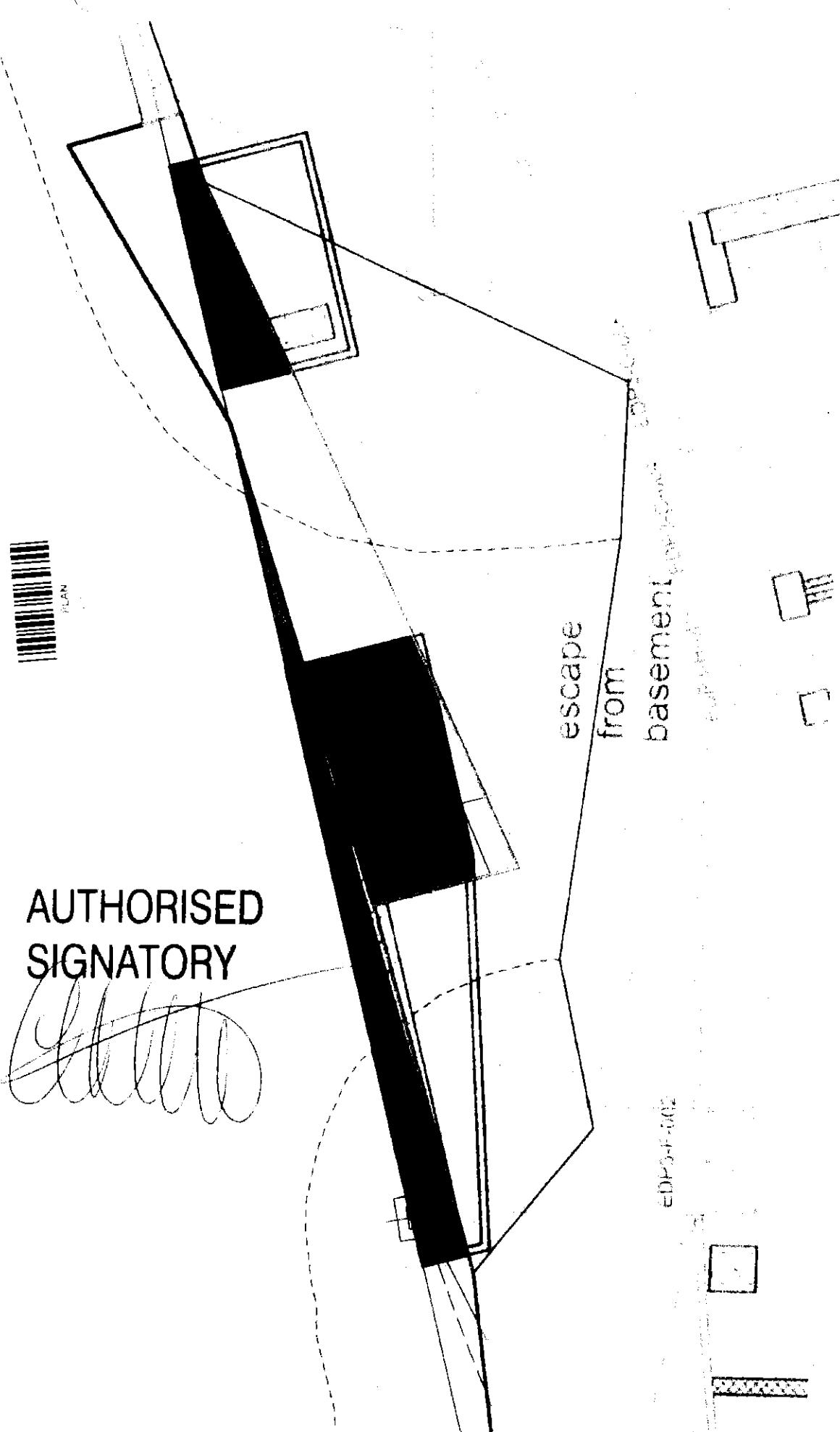


**Appendix 2.6
Stopping up Plan**



Appendix 2.7
Additional Land Plan

APPENDIX 2.7



Appendix 2.8
Eastern and Western Land Plan



PLAN

TITLE.

Lease References
Elephant Road*Southwark*
Council

DRAWING No. LBS_1851 (Layout 2)

DRAWN BY. AGW
Property Division

DATE. 06/07/2008

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ELEPHANT ROAD

NEW KENT ROAD

AUTHORISED
SIGNATORY

FB

FB

Appendix 3
Draft Basement Lease

DATED [•]

**THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF SOUTHWARK
as Landlord**

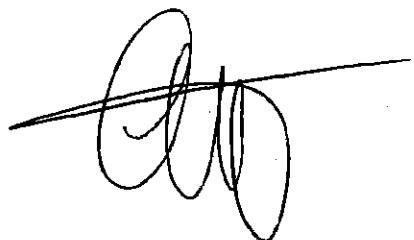
**[EADON LIMITED] [PLAZA DEVELOPMENTS LIMITED] [ASSIGNEE]
as Tenant**

LEASE

relating to basement premises at 50 New
Kent Road, Elephant and Castle, London SE1

*berwin leighton paisner

Berwin Leighton Paisner LLP
Adelaide House London Bridge London EC4R 9HA
tel +44 (0)20 7760 1000 fax +44 (0)20 7760 1111



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| | |
|---------------------------------------|--|
| LR1. Date of Lease | [•] |
| LR2. Title number(s) | LR2.1 Landlord's title number(s) [SGL 455623] [LN 206931] [SGL 456566] [TGL 253362] [Title of Blue Land] Eadon Limited] [TO BE UPDATED PRIOR TO COMPLETION] |
| | LR2.2 Other title numbers Tenant's title to be registered SGL392990; SGL36087; SGL384378; SGL445293; SGL455623; LN26309; SGL253704 |
| LR3. Parties to this Lease | Landlord The Mayor and Burgesses of the London Borough of Southwark of Town Hall Peckham Road London SE5 8UB |
| | Tenant [Eadon Limited] [Plaza Developments Limited] [Assignee] with company no [•] whose registered office is at [•] |
| LR4. Property | In the case of a conflict between this Clause and the remainder of this Lease then, for the purposes of registration, this Clause shall prevail. |
| | As specified in Clause 1.1 "Premises" of this Lease |
| LR5. Prescribed statements etc | LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (Leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003 None |

| | |
|---|--|
| | LR5.2 This Lease is made under, or by reference to, provisions of: |
| | None |
| LR6. Term for which the Property is Leased | [The term as specified in this Lease at Clause 2(c)(i)] |
| LR7. Premium | None |
| LR8. Prohibitions or restrictions on disposing of this Lease | This Lease contains a provision that prohibits or restricts dispositions |
| LR9. Rights of acquisition etc | LR9.1 Tenant's contractual rights to renew this Lease, to acquire the reversion or another Lease of the Property, or to acquire an interest in other land None |
| | LR9.2 Tenant's covenant to (or offer to) surrender this Lease None |
| | LR9.3 Landlord's contractual rights to acquire this Lease None |
| LR10. Restrictive covenants given in this Lease by the Landlord in respect of land other than the Property | Clause 5.3.2, Clause 5.3.9 and Clause 5.3.10 |
| LR11. Easements | LR11.1 Easements granted by this Lease for the benefit of the Property As specified in Schedule 1, Part 1 (<i>Rights enjoyed with demise</i>) |

| | |
|---|---|
| | LR11.2 Easements granted or reserved by this Lease over the Property for the benefit of other property |
| | As specified in Schedule 1, Part 2 (<i>Exceptions and reservations</i>) |
| LR12. Estate rentcharge burdening the Property | None |
| LR13. Application for standard form of restriction | None |
| LR14. Declaration of trust where there is more than one person comprising the Tenant | None |

DATED [•]

PARTIES

- (1) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK of Town Hall Peckham Road London SE5 8UB (the "Landlord")
- (2) [EADON LIMITED] [PLAZA DEVELOPMENTS LIMITED] [ASSIGNEE] (company no [•]) whose registered office is at [•] (the "Tenant") [TO BE FILLED IN PRIOR TO COMPLETION]

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 In this Lease:

"Access Date" means the date provided for in Schedule 1, Part 2 (*Exceptions and reservations*) paragraph 5 (*Rights in relation to Break Out Panels Service Link Panels and Tunnels to the Dominant Land*).

"Accessway" means that part of the Tenant's Adjoining Property at lower basement, upper basement and ground levels shown shaded green on the plans in Appendices 2 and 5 including the ramps, entrance barriers, mechanical and electrical ventilation systems, security controls, internal plaster or other surfaces of loadbearing walls and columns, non-loadbearing walls, flooring, raised floors and floor screeds down the joists or structural parts supporting the flooring, the plaster or surfaces of the ceilings and false ceilings and voids between the ceilings and false ceilings, but excluding the supports and structural supports, joists, beams, columns, timbers, foundations, structural, supporting and loadbearing walls and columns.

"Break Out Panels" means the two breakout panels in the western wall of the Premises in the position marked[A_B, C-D] **OR ALTERNATIVE LOCATION PROVIDED FOR IN THE AGREEMENT FOR LEASE- THE POSITION WILL AT COMPLETION BE KNOWN** on the plan attached in Appendix 2 **[NOTE THAT THIS DEFINITION WILL BE INCORPORATED IF THE LANDLORD HAS NOT SERVED A NOTICE PURSUANT TO THE AGREEMENT FOR LEASE THAT IT DOES NOT REQUIRE THESE BREAK OUT PANELS AND CONSEQUENTIAL AMENDMENTS DELETING REFERENCE TO BREAK-OUT PANELS WILL NEED TO BE MADE]**.

"Commercial Purposes" means access over the Accessway, Service Yard, Communal Loading Bays and use of the Loading Dock for servicing the commercial areas in the Elephant and Castle Shopping Centre or the Walworth Area and specifically excludes the servicing or access to and from any residential accommodation within such areas.

"Communal Loading Bays" means those loading bays shown hatched red on the plan in Appendix 2.

"Deed of Easement" means a deed of easement granted by the Tenant to the Landlord on the same date as this Lease in respect of the Dominant Land.

"Development" means:

- (a) [the mixed use development comprising three buildings above a two to three storey podium structure the northern building being located on New Kent Road to consist of 15 storeys for use as hotel (Use Class C1); the western building along Elephant Road to consist of 21 storeys to house office use (Use Class B1) with private and affordable residential units (Use Class C3); the southern building comprising 12 storeys with private residential units (Use Class C3) and with cinema retail and restaurant uses (Use Classes D2, A1 and A3) at podium level and basement car parking or any other such development as may from time to time be constructed on the Tenant's Adjoining Property;] or
- (b) [mixed use development comprising three buildings linked together by a two-storey podium incorporating retail and restaurant uses across the ground floor (Use Classes A1/A3); retail/restaurant and cinema use across the first and mezzanine floors (Classes A1/A3/D2) and basement car parking with associated storage facilities together with new landscaping to link to the proposed Market Square; north building located on New Kent Road to consist of 18 storeys for use as student accommodation (Use Class C2) western building along Elephant Road to consist of 23 storeys for use as private residential units (Use Class C3) on upper floors; southern building comprising 14 storeys with private residential units (Use Class C3);] and
- (c) any other such development which may from time to time be constructed on the Tenant's Adjoining Property.

[THE DESCRIPTION OF THE DEVELOPMENT WILL BE INSERTED DEPENDENT ON WHICH PLANNING PERMISSION IS IMPLEMENTED IN ACCORDANCE WITH THE AGREEMENT FOR LEASE (1) IF FIRST PLANNING PERMISSION IMPLEMENTED (2) IF SECOND PLANNING PERMISSION IMPLEMENTED. IF FIRST PLANNING PERMISSION IMPLEMENTED FURTHER CONSEQUENTIAL AMENDMENTS WILL BE REQUIRED AS STATED IN THE AGREEMENT FOR LEASE.]

"Development Completion Date" as defined in Schedule 1, Part 2 (*Exceptions and reservations*), paragraph 1 (*Definitions*).

"Dominant Land" means that land belonging to the Landlord which is to have the benefit of the Deed of Easement.

"Enactment" means every act of parliament, directive and regulation and all subordinate legislation which, at any relevant time during the Term, has legal effect in England and Wales.

"Encumbrances" means the restrictions, stipulations, covenants, rights, reservations, provisions and other matters contained, imposed by or referred to in the documents, brief particulars of which are set out in Schedule 1, Part 3 (*Encumbrances*).

"Elephant and Castle Shopping Centre" means those areas adjoining and adjacent to the Premises shown edged green on the plan in Appendix 7.

"Excluded Fit Out Works" means those works set out in Appendix 8.

"Freehold Transfer" means a transfer of land by the Tenant to the Landlord on the same date as and immediately prior to this Lease.

"Goods In Manager" means the manager employed by the Tenant from time to time and notified to the Landlord to oversee the operations of the Service Yard and ensure its smooth operation in accordance with the Servicing Management Plan and includes such alternative goods in manager as may be appointed under Clause 3.15.4.

"Group Company" means a company that is a member of the same Group of the Tenant at the relevant date within the meaning of section 42 of the Landlord and Tenant Act 1954.

"Insured Risks" has the meaning given to it in Schedule 2 (*Insurance provisions*).

"Interest" means interest at the rate of 4% over the base rate of National Westminster Bank Plc from time to time (as well after as before judgment), or such other comparable rate as the Landlord may reasonably designate if the base rate ceases to be published, compounded at quarterly rests on 31 March, 30 June, 30 September and 31 December in each year.

"Landlord" includes all persons from time to time entitled to the immediate reversion to this Lease.

"Landlord's Property" means so much of the landlord's property registered at the Land Registry with title numbers SGL392990; SGL36087; TGL253362; SGL384378; SGL445293; SGL455623; SGL456566; TGL253362; LN206931; LN26309 and SGL253704, as indicated hatched blue on the plan in Appendix 3 but excluding the Market Square and Market Store.

"Lease" means is a reference to this Lease and includes any documents supplemental to this lease.

"Loading Dock" means the loading dock coloured blue on the plan in Appendix 2.

"Market Square" means that area at surface level shown shaded yellow on the plan in Appendix 4.1 partially situated above and extending beyond the Premises to a depth of between 300 and 750 mm shown shaded pink on the plan in Appendix 4.2 including the surfacing thereof and Pipes and Plant exclusively serving the same and all airspace above but excluding the structural waterproof membrane and slab supports and structural supports, joists, beams, columns, timbers, foundations, structural, supporting and loadbearing walls below.

"Market Store" means the access pod at ground level and that area at lower basement and mezzanine levels shown shaded pink on the plan in Appendix 9 or such other area in the Premises from time to time designated as such including:

- (a) the inside and outside of the windows;
- (b) the doors, door frames, equipment, fitments and any glass relating to the doors;
- (c) internal plaster or other surfaces of loadbearing walls and columns;
- (d) non-loadbearing walls completed;
- (e) the flooring, raised floors and floor screeds down to the joists or other structural parts supporting the flooring of the market store;

- (f) the plaster or other surfaces of the ceilings and false ceilings within the Market Store and the voids between the ceilings and false ceilings;
- (g) the Pipes and Plant within and exclusively serving the same;
- (h) machinery and plant situated within the market store; and
- (i) the goods lift, lift shaft and stairs situated within the market store,

and improvements and additions made to, and fixtures, fittings and appurtenances in the market store but excluding the supports and structural supports, structural parts, loadbearing framework, roof, foundations, joists and external and loadbearing walls and the Pipes and machinery and Plant within (but not exclusively serving) the market store.

"Market Square Lease" means a lease of the Market Square and Market Store to be completed by the Landlord and Tenant in accordance with the provisions of an Agreement for Lease dated ~~1st~~ entered into between (1) the Landlord (2) Eadon Limited.

3 October 2008

MS ULP

"Measuring Code" means the latest edition of the Code of Measuring Practice published from time to time by the Royal Institution of Chartered Surveyors and the Incorporated Society of Valuers and Auctioneers.

"Outgoings" means (in relation to the Premises) all non-domestic rates, (including rates for unoccupied property), water rates, water charges and all existing and future rates, taxes, charges, assessments, impositions and outgoings whatsoever (whether parliamentary or local) which are now or may at any time be payable, charged or assessed on property, or the owner or occupier of property, but "taxes" in this context does not include VAT, nor any taxes imposed on the Landlord in respect of the yearly rent reserved by this Lease, or in respect of a disposal of the interest in immediate reversion to this Lease.

"Perpetuity Period" means 80 years from the date of this Lease.

"Pipes" means all pipes sewers drains mains ducts conduits gutters watercourses wires cables communal television aerials and satellite television aerial fibre optics, radio aerials and masts systems channels flues and all other conducting media and includes any fixings and any other ancillary apparatus.

"Plant" means all heating, thermal energy, gas, water, (portable and non-portable) cooling, refrigeration, ventilation, electrical, communication, computer, security, surveillance access control, carbon reduction, recycling renewable energy, cleaning, refuse collection and disposal, fire and health and safety, lighting, generation, transportation, conveyance, extraction and venting, metres, valves, heat exchangers, pumps, plant, apparatus, boilers, lifts, hoists, building maintenance units, escalators, transformers, chillers, generators, converters, the central heating plant, and all and any other apparatus and equipment including any fixings and other ancillary apparatus.

"Planning Acts" means "the consolidating Acts" as defined in the Planning (Consequential Provisions) Act 1990 and any other legislation relating to town and country planning in force from time to time.

"Premises" means all those premises at lower basement and upper basement level shown coloured red on the plan in Appendix 1 and each and every part thereof (including the supports and structural supports and parts, joists, beams,

columns, timbers, foundations and structural supporting and loadbearing walls and framework external walls, lifts, lift shafts, loading and unloading equipment) the Communal Loading Bays, Tenant's Loading Bays, Loading Dock and Service Yard and additions and improvements thereto, fixtures, fittings and appurtenances in and about the Premises and the Pipes and Plant and machinery within and exclusively serving the Premises excluding the Market Square and Market Store but including the structural waterproof membrane and slab.

"Service Corridors" those corridors in and adjacent to the Premises shown hatched pink on the plan attached in Appendix 2.

"Service Link Panels" means two break out panels in the southern wall of the Premises which may in future be constructed by the Landlord subject to the provisions and safeguards in Schedule 1, Part 2 (*Exceptions and reservations*) paragraph 5 (*Rights in relation to Break Out Panels Service Link Panels and Tunnels to the Dominant Land*) and paragraph 6(a).

"Service Yard" means that part of the Premises shaded yellow on the plan in Appendix 2 excluding any part of such part of the Premises as may contain structural columns or the Tenant's Loading Bays.

"Servicing Management Plan" means the management plan attached as Appendix 6 as varied from time to time in accordance with Clause 3.15.2.

"Tenant" includes the Tenant's successors in title and assigns in whom this Lease may for the time being be vested.

"Tenant's Adjoining Property" means that property belonging to the Tenant registered at the Land Registry under title number SGL500495 and indicated shaded yellow on plan 3 and that land registered at the land registry with title number [•] [**TO BE REGISTERED IN EADON'S NAME BEING THE EASTERN AND WESTERN LAND**] shown shaded green and orange on the plan in Appendix 3 and that land registered at the land registry with title number [•] shown shaded turquoise on plan 2.7 to the Agreement for Lease [**PLAN 3 TO BE UPDATED TO INCLUDE THIS ADDITIONAL LAND HERE UNDER PROVISIONS OF THE AGREEMENT FOR LEASE AND TITLE NUMBER TO BE INSERTED HERE**].

"Tenant's Loading Bays" means those loading bays exclusively for the use of the Tenant as are hatched blue and shaded yellow on the plan in Appendix 2 or such other bays from time to time reserved by the Tenant in accordance with this Lease.

"Tenant's Rules and Regulations" means the rules and regulations set out in Schedule 3 (*Tenant's Rules and Regulations*) as varied from time to time.

"Term" means the term of years granted by this Lease.

"Tunnels" either conveyor belt tunnels or tunnels for access by vehicles which may in future be constructed by the Landlord subject to the provisos in Schedule 1, Part 2 (*Exceptions and reservations*) paragraph 5 (*Rights in relation to Break Out Panels Service Link Panels and Tunnels to the Dominant Land*) and paragraph 7(a) from either the Elephant and Castle Shopping centre, beneath the railway viaduct adjacent to Elephant Road to the Break Out Panels in the Premises or from the Walworth Area to the Service Link Panels in the Premises.

"Uninsured Risks" has the meaning given to it in Schedule 2 (*Insurance provisions*).

"Utilities" means electricity, water (including water treatment facilities), foul water and surface drainage, heating, ventilation and air conditioning, smoke and fumes, signals, telecommunications, satellite and data communications and all other utilities.

"VAT" means value added tax as referred to in the Value Added Tax Act 1994 or any tax of a similar nature introduced in substitution or addition to it.

"Walworth Area" means that area adjoining and adjacent to the Premises shown edged purple on the plan in Appendix 7.

"Working Day" means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory bank holiday.

- 1.2 Any obligation on a party to this Lease to do any act includes an obligation to procure that it is done.
- 1.3 Where either the Landlord or the Tenant is placed under a restriction in the Lease, the restriction includes the obligation on the Landlord or Tenant not to permit or allow the infringement of the restriction by any person.
- 1.4 References to liability include, where the context allows, claims, demands, proceedings, damages, losses, costs and expenses.
- 1.5 The Clause and paragraph headings in this Lease are for ease of reference only and are not to be taken into account in the interpretation of any provision to which they refer.
- 1.6 Unless the contrary intention appears, references:
 - (a) to numbered Clauses and Schedules are references to the relevant Clause in, or Schedule to, this Lease; and
 - (b) to a numbered paragraph in any Schedule are references to the relevant paragraph in that Schedule.
- 1.7 Words in this Lease denoting the singular include the plural meaning and vice versa.
- 1.8 References in this Lease to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force, and references to a statute include statutory instruments and regulations made pursuant to it.
- 1.9 Words in this Lease importing one gender include both other genders, and may be used interchangeably, and words denoting natural persons, where the context allows, include corporations and vice versa.
- 1.10 At any time that the party of the second part to this Lease is two or more persons, the expression the "**Tenant**" includes the plural number, and obligations in this Lease expressed or implied to be made with or by the Tenant are to be treated as made with or by such individuals jointly and severally.

2 THE LETTING TERMS

In consideration of the grant of Deed of Easement and the Freehold Transfer and the rent reserved by, and the covenants in, this Lease the Landlord demises to the Tenant:

- (a) all the Premises;
- (b) together with the rights set out in Schedule 1, Part 1 (*Rights enjoyed with demise*); and
- (c) except and reserved to the Landlord the rights set out in Schedule 1, Part 2 (*Exceptions and reservations*):
 - (i) for the term of [999] years commencing on [•] [**TO BE COMPLETED AS PER AGREEMENT FOR LEASE**] subject to the Encumbrances and terminating on [**DATE TO BE THE SAME AS EASTERN MARGIN LEASE TERMINATION DATE IE CO-TERMINUS**]; and
 - (ii) the Tenant paying during the Term the yearly rent of a peppercorn if demanded.

3 TENANT'S COVENANTS

The Tenant covenants with the Landlord as follows.

3.1 **Rent**

To pay the yearly rent of a peppercorn if demanded.

3.2 **Outgoings and contributions**

To pay Outgoings.

3.3 **Utilities**

The Tenant shall pay all charges, including connection and hire charges, relating to the supply of Utilities to the Premises and will comply with all present or future lawful requirements of the suppliers of Utilities to the Premises.

3.4 **Rates and taxes**

From the date hereof, the Tenant shall pay and indemnify the Landlord against all present and future rates, duties and assessments of any nature charged on or payable in respect of the Premises whether payable by the Landlord, owner, occupier or tenant of the Premises and whether of a capital or income, recurring or non-recurring nature except any income or corporation tax imposed on the Landlord in respect of:

- (a) the receipt of rents reserved by this Lease and other amounts covenanted to be paid by the Tenant to the Landlord hereunder; or
- (b) any dealing or disposition by the Landlord with its interest in the Premises.

3.5 Payments relating to the Premises and other property

Where any of the charges payable under Clause 3.3 (*Utilities*) or Clause 3.4 (*Rates and taxes*) relate to other property as well as the Premises, the amount to be paid by the Tenant will be a fair and reasonable proportion (as properly determined by the Landlord (acting reasonably)) of the whole of the amount charged or payable.

3.6 Landlord's costs

The Tenant shall pay to the Landlord, on demand, and on an indemnity basis, the fees, costs and expenses appropriately, properly and reasonably charged, incurred or payable by or on behalf of the other in connection with:

- (a) recovering (or attempting to recover) any arrears of any sums due to the Tenant under this Lease;
- (b) any investigations or reports carried out to determine the nature and extent of any breach by the Tenant of its obligations in this Lease where it is established that the Tenant is in default; and
- (c) any proper steps taken to procure that a breach by the Tenant of its obligations under this Lease is remedied.

3.7 Repair

To repair, maintain and clean the Premises and to put and keep the Premises in repair, maintained and in good clean and tidy condition (damage by Insured and Uninsured Risks excepted where the provisions of Schedule 2 (*Insurance provisions*) paragraph 2 (*Tenant's obligation to insure and reinstate*) apply) and the Tenant shall (subject to the foregoing) keep the Premises clear of rubbish and bins provided that nothing in this Clause 3.7 (*Repair*) shall prohibit the Tenant from using the Service Yard for the purposes of loading and unloading of waste (but not storage of waste) in accordance with the terms of this Lease.

3.8 Alterations

3.8.1 Not to make any material alterations or additions to, or affecting the external structure exterior or internal layout of, the Premises, without the Landlord's prior written consent which shall not be unreasonably withheld or delayed.

3.8.2 The Tenant may make any other alterations or additions to the Premises or fixings to the internal structure of the Premises (including but not limited to the erection, alteration or removal by the Tenant of internal demountable partitioning, and consequential adjustments of ducting, ceiling tiles, light fittings and wiring) without the Landlord's consent provided that such alterations do not materially adversely affect the Landlord's ability to exercise its rights of access reserved in this Lease.

3.8.3 Notwithstanding any other provision of this Lease the Tenant may not make any alteration or addition to the Premises which shall adversely affect the structural integrity of the Market Square.

3.9 Alienation

3.9.1 Not to assign, charge or transfer part only of the Premises.

3.9.2 Not to assign the whole of the Premises demised under this Lease without the consent (such consent not to be unreasonably withheld or delayed) in writing of

the Landlord who shall be entitled (for the purposes of section 19(1A) of the Landlord and Tenant Act 1927) to withhold its consent to an assignment unless the assignee simultaneously takes a grant, transfer or assignment of a freehold or long leasehold interest in and to the Accessway equal to the term remaining under this Lease.

- 3.9.3 The Tenant shall be entitled to assign this Lease to a Group Company without the Landlord's consent provided that such Group Company simultaneously takes a grant of transfer or assignment (or is already the registered proprietor) of a freehold or long leasehold interest in and to the Accessway equal to the term remaining under this Lease.

3.10 User

- 3.10.1 Not without the consent of the Landlord (not to be unreasonably withheld or delayed) to use the Premises otherwise than as initially as a contractor's site until the Development (here meaning the initial development described in paragraph [a] or [b] of the definition of Development) on the Tenant's Adjoining Property and the development of the Market Square and Market Store and the Excluded Fit Out Works have been completed and thereafter as a loading and unloading waste collection (but not storage) and disposal and servicing area for the purposes of servicing the Development and for purposes ancillary to that use (including for the avoidance of doubt the housing of electrical substations and other servicing equipment and associated Pipes and Plant) or any other use for which the Tenant may obtain planning permission provided that any change of use shall not materially adversely affect the Landlord's rights reserved in Schedule 1, Part 2 (*Exceptions and reservations*).

- 3.10.2 The Tenant shall not:

- (a) do anything on the Premises which is illegal;
- (b) do anything on the Premises which would cause an actionable nuisance;
- (c) store dangerous or inflammable materials at the Premises, unless they are:
 - (i) of a type usually kept by persons carrying on the same business as the Tenant (or other occupier) or necessary for the operation of any plant or machinery;
 - (ii) kept in reasonable quantities; and
 - (iii) stored safely and in accordance with any lawful requirements or recommendations of the insurers of the Premises;
- (d) allow waste to accumulate at the Premises and the Tenant shall store refuse awaiting collection in proper containers; and
- (e) cause any material which is deleterious, polluting or dangerous (to person or property) to enter any Adjoining Property.

3.11 Compliance with statutes, etc

To comply with all Enactments and to execute and to do at the expense of the Tenant all such works and things whatever as may now or at any time during the Term be required by any competent authority to be executed or done upon or in respect of the Premises and whether by the owner or occupier thereof also but

without limitation to comply in all respects with the legislation from time to time and in force relating to the use occupation and enjoyment of the Premises or to the health and safety of those therein including that relating to the prevention and detection of fire and means of escape in case of fire and further to comply with the requirements of the relevant inspectorates and of the fire authorities and at all time during the Term to indemnify the Landlord in respect of all such matters and not to do or knowingly permit to be done in or on the Premises any act or thing whereby the Landlord or any superior landlord becomes liable to pay any penalty imposed or to bear the whole or any part of the expenses incurred under such Enactment.

3.12 Compliance with town planning and environmental requirements

To perform and observe the requirements of the Planning Acts and all other statutes and regulations relating to town and country planning and environmental protection applying to the Premises, and to obtain any development or other consent, permit or licence by reason of the development, or manner of use, of or on the Premises by the Tenant.

3.13 Encumbrances

To observe and perform by way of indemnity only the obligations restrictions stipulations and covenants comprising the Encumbrances so far as they relate to the Premises and are capable of being enforced, and to keep the Landlord indemnified against liability for the breach of the obligations and restrictions.

3.14 Insurance

To observe and perform the insurance obligations in Schedule 2 (*Insurance provisions*).

3.15 Servicing Management Plan

3.15.1 On or before the Access Date, the Tenant shall implement the Servicing Management Plan and shall appoint the Goods In Manager to oversee the operation and access over and through the Service Yard and Accessway, the timing and use of the Loading Dock and Communal Loading Bays and to implement the Servicing Management Plan and the provisions of this Lease as to the exercising of the rights reserved and granted.

3.15.2 Either the Tenant or the Landlord (acting reasonably) shall be entitled from time to time (with the consent of the other not to be unreasonably withheld or delayed) to vary the Servicing Management Plan in accordance with the provisions thereof or as may be required by the local planning authority by agreement provided that where the Tenant and Landlord cannot agree on any variation to the servicing management requested by the other party, either party may refer the matter to the Expert for determination in accordance with the provisions of Clause 10 (*Expert determination*).

3.15.3 The Tenant shall be entitled to appoint a replacement or alternative Goods In Manager and shall notify the Landlord thereof.

3.15.4 If at any time the Goods In Manager is not in either the Tenant or Landlord's reasonable opinion diligently implementing and enforcing the Servicing Management Plan, they shall consult with each other (providing relevant supporting evidence to substantiate such opinion) and agree what steps are to be taken to remedy the situation including replacing the Goods In Manager. In the event the parties are unable to agree on any course of remedial action, the matter should be

determined in accordance with the provisions of Clause 10 (*Expert determination*). Where either the parties agree or the Expert determines that the Goods In Manager is to be replaced, the Landlord may nominate a party to be appointed as Goods In Manager and provided that the cost of employing such person is not more than 10% more expensive than the cost (at that time) of employing the Goods In Manager to be replaced by the Tenant, the Tenant (subject to complying with all relevant Enactments) shall employ the party so nominated by the Landlord.

3.15.5 The Tenant shall at all times comply with and use reasonable endeavours to procure that any licensee or person authorised by the Tenant using the Service Yard, Loading Dock and Communal Loading Bays and Tenant's Loading Bays or any other part of the Premises in exercise of all the rights granted pursuant to this Lease complies with the Servicing Management Plan and with all instructions issued by the Goods In Manager and (to the extent that such compliance would not materially adversely affect the Tenant's use of the Premises) with the Tenant's Rules and Regulations.

3.15.6 The Servicing Management Plan is subject to the terms of this Lease and in the event of conflict between the Service Management Plan and this Lease the Lease shall have effect.

3.16 Basement access principles

3.16.1 In exercising the rights reserved to it under this Lease to service the Dominant Land the Landlord shall have priority of access for vehicles passing through the Service Yard over vehicles of the Tenant accessing the Tenant's Loading Bays and Communal Loading Bays and those of the Landlord accessing the Communal Loading Bays.

3.16.2 In respect of use of the Service Yard by either the Tenant for the purpose of accessing the Tenant's Loading Bays or the Landlord and Tenant for accessing the Communal Loading Bays and motor vehicles using the Accessway to access upper levels of the adjoining basement area, then programming of access shall be allocated on a first come, first served basis and neither the Landlord nor the Tenant shall have priority.

3.16.3 In using the Communal Loading Bays the Landlord shall have priority in use over the Tenant.

3.16.4 Clause 3.16.1 to Clause 3.16.3 are subject to the overriding priority of use of the Service Yard and Communal Loading Bays by utilities companies refuse collectors and providers of similar services who shall have priority over the access of the Service Yard and Communal Loading Bays over both the Landlord and the Tenant.

3.17 Yielding Up

At the ending of the Term the Tenant shall:

- (a) quietly yield up the Premises (except lessee's and trade fixtures and fittings which shall at the request of the Landlord but not otherwise be removed prior to the ending of the Term) in a condition consistent with the due performance and observance by the Tenant of its covenants in this Lease;
- (b) remove from the Premises every sign, notice or other notification belonging to the Tenant or any person deriving title under the Tenant; and

- (c) make good all damage caused by the removal of fittings, furniture and effects to the satisfaction of the Landlord.

3.18 Indemnity

- 3.18.1 If the Tenant breaches its obligations in this Lease it is to indemnify the Landlord at all times (both during the Term and after the expiration of the Term) on an after tax basis against all charges, claims, proceedings, liabilities, damages, losses, costs and expenses arising directly or indirectly from the breach.
- 3.18.2 References to costs being on "an after tax basis" means that if the payment of that cost pursuant to this Lease is or will be chargeable to tax (other than VAT) in the hands of the payee (or would be so chargeable but for the availability of a relief), then the payer shall pay such additional amount as will ensure that the total amount received, net of tax chargeable on such amount (or that would be so chargeable but for a relief), is equal to the amount that would otherwise be payable under or pursuant to this Lease. For the purpose of this Clause 3.18.2 tax means income tax or corporation tax under the Income Tax Act 2007 or the Income and Corporation Taxes Act 1988. Reference to costs being on "an after tax basis" shall benefit the London Borough of Southwark as the original party to this Lease only and shall not benefit its successors in title.

3.19 Not to display offensive material

Not in any event to display notices, or posters or advertisements or signs that may cause offence or be contrary to the London Borough of Southwark Equal Opportunities Policy and the Local Authority's decision as to what may cause offence shall be final.

3.20 To observe equal opportunity employment and letting policies

To take all reasonable steps to ensure that in employing with respect to the occupation use or management of the Premises, or in any letting of part or whole of the Premises that no job applicants or employee, or potential undertenants or licensees suffer direct or indirect discrimination or receive less favourable treatment in relation to terms and condition on the grounds of sex race colour nationality ethnic or national origin marital status sexual orientation or religious belief and that applications received by disabled persons having necessary attributes to the job are welcomed and to ensure that the Premises provide access for disabled persons.

3.21 Covenants as to Rights

The Tenant covenants to comply with the obligations and covenants on behalf of the Tenant in Schedule 1 (*Rights, exceptions, reservations and encumbrances*).

4 PROVISOS

The parties agree to the following provisos.

4.1 Accidents

The Landlord shall not be responsible to the Tenant or to any other person for any:

- (a) accident, happening or injury suffered in the Premises; or

- (b) damage to, or loss of, any goods or property sustained in the Premises (whether or not due to failure of any security system for which the Landlord is responsible); or
- (c) act, omission or negligence of any employee of the Landlord in the Premises; or
- (d) any interruption in the exercising of the rights reserved to the Landlord by virtue of any accident, happening or injury suffered to the Premises.

4.2 Notices, consents and approvals

- 4.2.1 Any notice served under or in connection with this Lease is to be in writing and to be treated as properly served if compliance is made with either the provisions of section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962) or section 23 of the Landlord and Tenant Act 1927.
- 4.2.2 Any consent or approval required under this Lease shall be obtained before the act or event to which it applies is carried out or done and shall be effective only if it is in such form and upon such terms as the party giving it properly requires and contains the statement "this is the form of consent or approval required by the Lease pursuant to which it is granted".

5 LANDLORD'S COVENANTS

The Landlord covenants with the Tenant to perform and observe the following landlord covenants.

5.1 Quiet enjoyment

That the Tenant, paying the rents reserved by, and performing the Tenant's covenants in this Lease, may lawfully and peaceably enjoy the Premises throughout the Term without lawful suit, eviction or interruption by the Landlord or by any person lawfully claiming through, under or in trust for the Landlord.

5.2 Insurance provisions

To pay a due proportion of the insurance monies expended by the Tenant in accordance with the provisions of Schedule 2 (*Insurance provisions*) and comply with its obligations and the covenants on behalf of the Landlord set out therein.

5.3 Maintenance of Market Square and Market Store

- 5.3.1 From the date of the grant of the Market Square Lease the Landlord shall put and keep the Market Square and Market Store in a good clean water and wind tight condition and the Market Store in addition in such condition and repair sufficient to make it safe and usable as an escape route for the purposes of the rights granted to the Tenant under of Schedule 1, Part 1 (*Rights enjoyed with demise*) paragraph 1(e) and for the avoidance of doubt, the Landlord shall be responsible for the repair and maintenance of the goods lift in the Market Store.
- 5.3.2 From the date of the grant of the Market Square Lease the Landlord covenants in relation to the Market Store as follows:
 - (a) not to deposit or permit to be deposited any waste rubbish or refuse in the Market Store and in breach thereof the Tenant shall be entitled to enter

the Market Store to remove the said waste or rubbish and recover the cost thereof from the Landlord;

- (b) not to permit anything or suffer anything to be done in or about the Market Store which shall in any way cause or tend to cause annoyance injury damage inconvenience nuisance or disturbance to the Tenant the owners or occupiers of the Development;
- (c) not to use the Market Store or any part thereof for storage of any petrol or other explosive or inflammable oils materials or substances and not to accumulate or leave any rubbish or other offensive material in the Market Store;
- (d) the Landlord shall maintain in prominent positions on such parts of the Market Store notices forbidding smoking or naked lights;
- (e) if necessary the Landlord shall at the expense of the Landlord lay down poison or take other appropriate action at the Market Store to control the spread of vermin on or to the Market Store, the Premises and adjoining or neighbouring land;
- (f) no paint spraying or welding shall be carried out at the Market Store;
- (g) no electrical light electrical apparatus or appliance liable to ignite flammable vapour shall be dangerously near any place where petroleum spirit is kept;
- (h) all practical steps shall be taken to secure that no fire or flame is present and in particular no smoking takes place dangerously near any place where petroleum spirit is kept and in particular no smoking whatsoever shall take place in the Market Store or the access ways leading thereto or in the vicinity thereof; and
- (i) not to use any electrical apparatus in the Market Store unless the same has been properly suppressed so as to avoid interference with radio and television reception in the units in the Development aforesaid.

5.3.3 The Landlord shall on reasonable prior written notice (and in any event notice of not less than seven days except in the case of emergency) permit the Tenant and its employees or agents at all reasonable times to enter onto the Market Square and Market Store to examine their condition accompanied at all times by a representative of the Landlord if so required by the Landlord save, in the case of emergency and further save where the Landlord's representative has failed on three occasions to keep an appointment to accompany the Tenant.

5.3.4 If any material defect in the condition of the Market Square and/or Market Store caused by breach of this Clause 5.3 (*Maintenance of Market Square and Market Store*) for which the Landlord is liable is found on inspection, then, on notice from the Tenant, the Landlord shall execute to the reasonable satisfaction of the Tenant or its surveyors all repairs, works and replacements required within a reasonable period and in any event not less than two months (or sooner in the case of emergency) after receipt of notice.

5.3.5 If the Landlord fails to comply with the notice under Clause 5.3.3 within the period referred to therein, the Tenant may itself or by its work people or agents enter onto the Market Square and Market Store and execute such repairs, works and replacements.

- 5.3.6 The Landlord shall pay the Tenant within seven working days of demand all proper and reasonable expenses plus irrecoverable VAT incurred by the Tenant under Clause 5.3.4 together with Interest thereon.
- 5.3.7 The Landlord shall reimburse the Tenant on demand the cost plus irrecoverable VAT of all Utilities provided to the Market Store and Market Square and where the same are not separately metered, shall pay the Tenant a fair and reasonable proportion of such expenses as determined by the Tenant acting reasonably.
- 5.3.8 The Landlord shall at all times provide sufficient fire extinguishers of the type approved by the Tenant and shall adopt such other precautions as the Tenant, its insurers or any health and safety officer or official may require in relation to the Market Store.
- 5.3.9 The Landlord shall not and shall use all reasonable endeavours to procure that any tenant, occupant or licensee or invitee of the Landlord to the Market Store, shall not at any time gain access to the Premises other than for the specific restricted rights of access in Schedule 1, Part 2 (*Exceptions and reservations*) paragraph 3(b)(ii).
- 5.3.10 While the Market Square is being used as such the Landlord shall not at any time dispose of the Market Store other than at the same time and to the same person as simultaneously takes transfer of the Market Square.
- 5.3.11 The Landlord covenants to comply with the obligations and covenants on behalf of the Landlord set out in Schedule 1 (*Rights, exceptions, reservations and encumbrances*).

5.4 Servicing Management Plan/Rules and Regulations

At all times to comply with and use reasonable endeavours to procure that any licensee or person authorised by the Landlord using the Service Yard, Loading Dock, Communal Loading Bays or any other part of the Service Yard in exercise of all the rights reserved pursuant to this Lease complies with the Servicing Management Plan and with all instructions issued by the Goods In Manager and (to the extent that such compliance would not materially adversely affect the Landlord's use of the Service Yard) with the Tenant's Rules and Regulations.

5.5 Service Charge

The Landlord shall pay the Tenant a fair and reasonable proportion of the cost of maintenance, management, repair and renewal of the Premises plus irrecoverable VAT. The fair and reasonable proportion will be ascertained by having regard to the frequency and volume of usage of the Landlord's rights under Schedule 1, Part 2 (*Exceptions and reservations*) and in the event of dispute either party may refer the dispute for Expert's determination under Clause 10 (*Expert determination*).

6 FORFEITURE

- 6.1 Subject to Clause 6.3 and Clause 6.4 the Landlord may terminate this Lease by re-entering the Premises (or a part of them in the name of the whole) itself or by an authorised agent if there is any breach of Clause 3.9 (*Allienation*).
- 6.2 Re-entry in exercise of the rights in Clause 6.1 does not affect any other right or remedy of the Landlord for breach of covenant or condition by the Tenant occurring before the termination of this Lease.

- 6.3 The Landlord may not exercise the right of re-entry contained in this Lease unless it has first given to the Tenant and any Mortgagee (meaning in this Clause 6.3 a mortgagee or chargee of this Lease notice of whose mortgage or charge has been given to the Landlord) not less than two calendar months' notice (the "notice") of breach requiring breach to be remedied and of the Landlord's intention to re-enter specifying the grounds for doing so.
- 6.4 The right of the Landlord to re-enter the Premises shall be overridden if within the period of two calendar months' from the date of the notice given under Clause 6.3 the Mortgagee:
- 6.4.1 gives notice to the Landlord requiring it not to re-enter the Premises;
 - 6.4.2 provides to the Landlord with a duly executed and completed deed of undertaking in a form reasonably required by the Landlord binding the Mortgagee to assume the obligations of the Tenant under this Lease;
 - 6.4.3 save where the breach is not technically capable of remedy takes substantive steps acceptable to the Landlord acting reasonably towards remedying the relevant breach with reasonable speed; and
 - 6.4.4 pays the Landlord any monies which have become due under this Lease and which are then unpaid,
- and in those circumstances the Landlord will allow the Mortgagee such additional time as may be reasonable to remedy a default of the Tenant but additional time shall not be allowed for the payment of arrears of ascertained sums due under this Lease. The rights of the Mortgagee under the foregoing provisions are in addition to and without prejudice to any rights to claim relief against forfeiture which are accorded to the Tenant and the Mortgagee by law.

7 LANDLORD'S RIGHTS TO REMEDY DEFAULT BY THE TENANT

- 7.1 If the Tenant fails to comply with any of its obligations in this Lease, the Landlord may give the Tenant written notice of that failure, and the Tenant shall:
- (a) immediately in the case of an emergency; and
 - (b) otherwise as soon as practicable,
- begin and then, within a reasonable time, complete remedying that failure.
- 7.2 If the Tenant does not comply with Clause 7.1, the Landlord may enter the Premises and carry out any works or do anything else which may be needed to remedy the Tenant's failure to comply with its obligations under this Lease.
- 7.3 Any costs plus irrecoverable VAT properly incurred by the Landlord by reason of Clause 7.1 will be a debt due from the Tenant to the Landlord and payable within seven Working Days of demand.

8 VAT

- 8.1 Any consideration paid or sums paid or given for taxable supplies of goods or services under or in connection with this Lease is to be treated as exclusive of VAT. The recipient of any such supply is, in addition to the consideration for the supply, to pay the supplier an amount equal to any VAT which is chargeable in respect of the supply in question on the later of:

- (a) the day on which the consideration for the supply is paid or given; and
 - (b) the production of a proper VAT invoice.
- 8.2 If VAT is charged where it properly ought not to have been, the party to this Lease who is the recipient of that VAT (the "**recipient**") is on demand to pay an amount equal to such VAT and is to issue to the party to this Lease who paid the VAT an appropriate credit note.
- 8.3 Where the incorrect charging of VAT is attributable to a breach of this Lease by the recipient then the recipient is to pay interest at a rate equal to 2% over the base rate of Barclays Bank PLC from time to time on the amount payable under Clause 8.2 from the date that the VAT was paid to the recipient until the date repayment is made under Clause 8.2.
- 8.4 Where a party is entitled under this Lease to recover from the other party the cost of goods and services supplied to the other party, but in respect of which the party makes no taxable supply to the other party, to indemnify the party against so much of the input tax on the cost for which the party is not entitled to credit allowance under section 26 or a refund under section 33 of the Value Added Tax Act 1994.

9 OBLIGATIONS IN SCHEDULES TO THIS LEASE

The Landlord and the Tenant mutually covenant to observe and perform their respective obligations and the conditions in the Schedules.

10 EXPERT DETERMINATION

- 10.1 Without prejudice to the other provisions of this Clause 10 (*Expert determination*), (in the event of any dispute arising the Landlord and Tenant shall endeavour to resolve it amicably but if the parties fail to resolve the dispute amicably, the dispute shall be resolved in accordance with the provisions of this Clause 10 (*Expert determination*) unless either party takes proceedings in any court, public enquiry or other hearing.
- 10.2 If any dispute arises in connection with this Lease, directors or other senior representatives of the Landlord and Tenant hereto with authority to settle a dispute will within five Working Days of a written request from one party to the other, meet in good faith effort to resolve the dispute.
- 10.3 In the event that the dispute is not resolved in accordance with Clause 10 (*Expert determination*), the parties hereto may refer the dispute to an expert being an independent person who is professionally qualified and has substantial recent experience in respect of the subject matter of the dispute (the "**Expert**") to be agreed between the Landlord and Tenant or at the request and option of either of them to be nominated at the joint expense by or on behalf of the president for the time being of the Royal Institution of Chartered Surveyors and the Expert shall act as an Expert and not as an arbitrator and the Expert's decision shall (save in the case of manifest error) be final and binding on the parties hereto and his costs shall be within his award or discretion or failing such a determination borne by both parties in equal shares.
- 10.4 The Expert shall be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute from the date of his appointment to act.

- 10.5 The Expert shall be required to give notice to each of the parties inviting them to submit to him within ten Working Days of such notice, written submissions and supporting material and shall afford to each of the parties an opportunity to make a counter-submission within a further five Working Days in respect of any such submission and material and his decision shall be given in writing with reasons and in absence of manifest error shall be binding on the parties.
- 10.6 The Expert shall supply the parties copies of all evidence, information and advice which he obtains for the purpose of determining the dispute and the parties shall be entitled to make written representations to the Expert with regard to them within ten Working Days of the parties' respective receipt of such copies.
- 10.7 In the absence of any directions by the Expert as to his costs, they shall be borne equally between the parties and the parties shall bear their own costs.

11 LEGAL FEES

The Tenant shall pay the Landlord's reasonable and proper legal fees and costs incurred in respect of the grant of this Lease (including any irrecoverable VAT thereon) up to a maximum of £ plus any VAT due on any supply from the Landlord to the Tenant in respect of which such amount is consideration, and disbursements.

12 COVENANT STATUS OF THIS LEASE

This Lease is a new tenancy within the meaning of section 1 of the Landlord and Tenant (Covenants) Act 1995.

13 IMPLIED RIGHTS OF ENFORCEMENT BY THIRD PARTIES EXCLUDED

- 13.1 Unless the right of enforcement is expressly granted, it is not intended that a third party should have the right to enforce a provision of this Lease under the Contracts (Rights of Third Parties) Act 1999.
- 13.2 The parties may rescind or vary this Lease without the consent of a third party to whom an express right to enforce any of its terms has been provided.

14 REGISTRATION OF THIS LEASE

- 14.1 The Landlord will co-operate with the Tenant to enable the Tenant to register this Lease as soon as reasonably possible at the land registry and to become the registered proprietor of the Lease with absolute leasehold title.
- 14.2 The Tenant will subject to the Landlord on completion providing a completed Form AN1 (and a cheque for the requisite fee in respect of the same) submit simultaneously with any application for first registration of the Lease any application to register the easements reserved in Schedule 1, Part 2 (*Exceptions and reservations*) as appurtenant to the Landlord's Property.
- 14.3 The Landlord shall, subject to the Tenant on completion providing a completed form AN1, provide to the Tenant evidence of its consent to the application of the Tenant to register the easements reserved in Schedule 1, Part 1 (*Rights enjoyed with demise*) as appurtenant to the Premises over the Landlord's Property, Market Square and Market Store.

15 **TENANT'S RULES AND REGULATIONS**

The Tenant's Rules and Regulations are those set out in Schedule 3 (*Tenant's Rules and Regulations*) and any other reasonable rules and regulations made by the Tenant from time to time and notified to the Landlord provided that the Tenant's Rules and Regulations and any other such rules and regulations are subject to:

- (a) the terms of this Lease (other than the Tenant's Rules and Regulations) and in the event of conflict between such rules and regulations and the terms of this Lease (other than the Tenant's Rules and Regulations) the terms of this Lease shall have effect; and
- (b) the Service Management Plan and in the event of conflict between such rules and regulations and the Service Management Plan the Service Management Plan shall have effect.

16 **LANDLORD'S CONSENT**

If under any provision of this Lease the Tenant is required to obtain the Landlord's consent, licence or approval, and such consent, licence or approval is not to be unreasonably withheld or delayed by the Landlord, and the Landlord agrees that it shall act expeditiously in responding to any application for such consent, licence or approval.

17 **COUNCIL'S DUTIES AS LOCAL AUTHORITY UNAFFECTED**

For the avoidance of doubt nothing herein contained or implied shall prejudice or affect the Landlord's rights powers duties and obligations where the Landlord is a local authority in the exercise of its functions as a local authority and the rights powers duties and obligations of the Landlord under all public and private statutes bye laws orders and regulations may be as fully and effectually exercised in relation to the Premises as if it was not the owner of the Premises and this Lease had not been executed by it and no compensation will be payable to the Tenant in connection with the grant of this Lease by virtue of any action taken by the Landlord pursuant to its separate duties as a statutory authority. The Landlord does not by the signing of this Lease warrant or represent that the Premises are fit for the permitted use or that the Premises have or will be granted planning permission for such use.

The common seal of
THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF SOUTHWARK
was hereto affixed in the presence of:)

Authorised Signatory

Executed as a deed by
EADON LIMITED
acting by:)

Director

Director/Secretary

Schedule 1
Rights, exceptions, reservations and encumbrances

Part 1
Rights enjoyed with demise

1 Rights enjoyed with demise

Subject where applicable to complying with the provisions of Clause 3.16 (*Basement access principles*) and paragraph 2 (*Conditions relating to exercise of the rights*):

- (a) the free and uninterrupted passage of water, steam, soil, trade effluent and air, gas, electricity and telephone communications from and to any part of the Premises through the Pipes which may at any time during the Term be in under or on the Landlord's Property the Market Square and the Market Store;
- (b) the right to install and connect (subject to reasonable capacity levels not being exceeded) to the Pipes in or on the Landlord's Property the Market Square and the Market Store in the Perpetuity Period, Pipes to serve the Premises over such routes as approved by the Landlord, such approval not to be unreasonably withheld or delayed;
- (c) the right for the Tenant with workmen and all others authorised by it together with plant, machinery and equipment to enter onto the Landlord's Property, the Market Square and the Market Store for the purposes of installing, repairing, maintaining, renewing, replacing or connecting the Pipes;
- (d) the right of support, shelter and protection for the Premises from the Landlord's Property, Market Store and Market Square;
- (e) the right in common with the Landlord and all others so entitled for the Tenant and all persons authorised by it in the case of fire or emergency or where access to and egress from the Premises is damaged or blocked to pass to and from the Premises, over the Landlord's Property the Market Square and the Market Store and to use any staircases, lifts, emergency access routes on the Landlord's Property Market Square and Market Store for such purposes;
- (f) the right of entry for the Tenant with workmen and all others authorised by it together with plant, machinery and equipment onto the Landlord's Property Market Square and Market Store for the purposes of installing, repairing, maintaining, renewing and replacing, cleaning and rebuilding the Premises and the vents referred to in paragraph 1(g);
- (g) the right to take in and expel air, steam and fumes from the Premises over the Market Square and through the Market Store and pod above the Market Store and for that purpose to install and maintain vents in such locations and of such design as approved by the Landlord, such approval not to be unreasonably withheld or delayed, where the location of the vents does not materially restrict the flow of pedestrians across the Market Square and does not adversely affect the visual amenity of the Market Square or the use of the Market Store and provided that the Tenant has provided the Landlord with plans and specifications showing the extent of the venting and works to be carried out in reasonably sufficient detail satisfactory to the Landlord (acting reasonably);
- (h) the right to redevelop the Premises from time to time in whole or in part and to vary the rights reserved to the Landlord in Schedule 1, Part

2 (*Exceptions and reservations*) provided that in doing so the Tenant shall provide either temporary or permanent alternative access to and egress from the Service Yard and shall obtain the Landlord's prior written consent to the variation of such rights (such consent not to be unreasonably withheld or delayed) where such variations to the Landlord's rights are of such a nature that they do not materially adversely inhibit the Landlord from exercising the rights reserved in Schedule 1, Part 2 (*Exceptions and reservations*);

- (i) without derogation from the generality of the right in paragraph 1(b), the right for the Tenant and any utility provider with whom it enters into arrangements to provide electrical supply to the Premises and the Development to install and maintain electric lines and high voltage cables along the route shown by a dark blue line on the plan in Appendix 3 or in such alternate reasonably proximate and convenient location as required by the Landlord acting reasonably on those parts of the Landlord's Property and Market Square not built upon and to that purpose:
 - (i) the right for the Tenant and all those authorised by it together with workmen and plant and equipment to enter upon the Landlord's Property and Market Square to install, lay, inspect, maintain, relay, examine, alter, test, renew, repair, replace, supplement and remove such electric lines and high voltage cables, the vents in paragraph 1(g) and where necessary to break open the Market Square to install, lay, inspect, maintain, examine, alter, test, renew and repair, replace, supplement and remove any electrical substation, equipment and plant installed in the Premises from time to time; and
 - (ii) the right of support and protection for such electric lines and high voltage cables from the Landlord's Property and the Market Square; and
 - (j) the benefit of those rights reserved to the Landlord pursuant to a lease dated *3 October 2008* *HSLU* ~~August~~ 2008 and entered into between (1) Mayor and Burgesses of the London Borough of Southwark and (2) Eadon Limited [EASTERN MARGIN LEASE] insofar as they benefit the Premises.
- 2 Conditions relating to exercise of the rights**
- (a) The exercise of the rights referred to in paragraph 1(b), paragraph 1(c), paragraph 1(f), paragraph 1(g) and paragraph 1(i) are subject to the conditions that:
 - (i) before exercising any such rights, the Tenant is to give not less than five days' written notice (except in the case of emergency where no notice shall be required) specifying the purpose for which entry is required accompanied by drawings specifications and other written details of work (whatever its nature) and the method of undertaking which the Tenant requires to execute on the Landlord's Property Market Square or Market Store and such other information as the Landlord may require;
 - (ii) the Tenant obtains the prior approval of the Landlord to the works to be done to the Landlord's Property Market Square or Market Store (such approval not to be unreasonably withheld);
 - (iii) in carrying out such work, the Tenant is to act with due diligence, cause as little disturbance, damage and inconvenience as possible, and promptly make good all physical damage done to the Landlord's Property Market Store and Market Square to the Landlord's reasonable satisfaction; and

- (iv) the Tenant is to keep the Landlord and all other persons deriving title under it indemnified against all claims, liabilities and costs sustained or incurred from or incidental to the exercise, or purported exercise, of the rights.

Part 2 Exceptions and reservations

1 Definitions

For the purposes of this Schedule 1, Part 2 (*Exceptions and reservations*):

"Development Completion Date" means the last date on which the Tenant has completed all of the works comprising the Development (here meaning the Initial development described in paragraph [a] or [b] of the definition of Development) on the Tenant's Adjoining Property, the Market Square and Market Store and the Excluded Fit Out Works the Tenant covenanting to give the Landlord written notice as soon as reasonably practicable;

"Early Access Date" means notwithstanding that the Development Completion Date has not occurred such earlier date where the Landlord is able to demonstrate Need on or after the date four years from and including the date of this Lease which date shall be subject to any extension of time by the aggregate of the periods for extensions commensurate with those which may be properly allowed under any building contract or building contracts entered into by the Tenant in respect of the works comprising the Development, (here meaning the initial development described in paragraph [a] or [b] of the definition of Development) Market Square, Market Store and Excluded Fit Out Works the Tenant covenanting to give the Landlord written notice as soon as reasonably practicable but at intervals of no more than twice in any year of this Lease of such extensions of time.

"General Conditions" means those general conditions relating to the exercise of the rights in this Schedule 1, Part 2 (*Exceptions and reservations*) as are set out in paragraph 8(b).

"Need" means the Landlord's proven need to commence exercising the rights in this Schedule 1, Part 2 (*Exceptions and reservations*) before the Tenant has fully completed the works comprising the Development, (here meaning the Initial development described in paragraph [a] or [b] of the definition of Development) Market Square, Market Store and Excluded Fit Out Works on account of the fact that as a result of the Tenant's failure to complete such works the ability of the Landlord to exercise the rights reserved to it under this Schedule 1 (*Rights, exceptions, reservations and encumbrances*) will be delayed beyond the date on which they will be required to service any part of the Dominant Land the Landlord covenanting to provide such reasonable evidence and supporting documentation to prove that such conditions objectively exist, as may reasonably be required by the Tenant.

"Works Conditions" shall mean those conditions relating to the exercise of the rights to undertake various works and relocation works in this Schedule 1, Part 2 (*Exceptions and reservations*) as are set out in paragraph 8(a).

2 Exercise of rights

- (a) The general rights set out in paragraph 3 (*General rights*) and those in paragraphs 4 (*Relocation of Market Store*) and 7 (*Rights to extend loading dock and require relocation of Tenant's Loading Bays*) shall be capable of being exercised from the

Development Completion Date (or if applicable the Early Access Date) save for the right in paragraph 3(b)(i) which shall be capable of being exercised from the date of this Lease upon reasonable notice to the Tenant.

- (b) The rights set out in paragraph 5 (*Rights in relation to Break Out Panels Service Link Panels and Tunnels to the Dominant Land*) and paragraph 6 (*Rights to pass through the Service Yard and to use the Communal Loading Bays and Loading Dock*) shall be capable of being exercised after the Access Date.

3 General rights

- (a) Subject to those matters granted in a lease dated 3 October 1 August 2008 and entered into between (1) Mayor and Burgesses of the London Borough of Southwark and (2) Eadon Limited [EASTERN MARGIN LEASE] insofar as they bind the Premises. MS LLP
- (b) Subject to the Landlord complying with the provisions of Clause 3.16 (*Basement access principles*) and the General Conditions:
 - (i) the right for the Landlord and all others authorised by it to enter the Premises to view the state and condition of the Premises and/or to determine whether the Tenant is complying with its obligations in this Lease and to remedy any breach of those obligations; and
 - (ii) the right for the benefit of the Market Store and Market Square to:
 - (A) free uninterrupted access of electricity to and from the Market Square and Market Store from the Premises and the right of access to the Premises for the purposes of taking metre readings from such electrical supply;
 - (B) the free and uninterrupted passage of water, surface water, steam, soil, trade effluent and air gas electricity telephone communications from and to any part of the Market Square and Market Store through the Pipes which may at any time during the Term be in under or on the Premises;
 - (C) the right to install and connect (subject to reasonable capacity levels not being exceeded) to the Pipes in or on Premises;
 - (D) the right to enter on to the Premises not built upon for the purposes of installing, repairing, maintaining, renewing, replacing the Pipes subject in addition to complying with the Works Conditions insofar as applicable;
 - (E) the right of support, shelter and protection for the Market Square and Market Store from the Premises; and
 - (F) the right to enter on to the Premises for the purposes of repairing maintaining renewing replacing cleaning and rebuilding the Market Square and Market Store subject in addition to complying with the Works Conditions.

4 Relocation of Market Store

Subject to the Landlord first complying with the provisions of paragraph 4(a) to paragraph 4(f) and with the provisions of Clause 3.16 (*Basement access principles*) and the General Conditions, the right for the Landlord to require the Tenant, at the

Landlord's reasonable cost, to relocate the Market Store to a reasonable alternative location within the Premises subject:

- (a) to obtaining the Tenant's prior written consent thereto (such consent not to be unreasonably withheld) provided that it shall not be reasonable for the Tenant to withhold consent where the location of the relocated Market Store will not materially adversely affect the beneficial use of the Premises by the Tenant or render it less convenient for the Tenant to service the Development or materially adversely affect the structural integrity of the Premises;
- (b) the Landlord indemnifying (subject to the obligation on the Tenant to use reasonable endeavours to mitigate its loss) and paying the Tenant the reasonable cost of making suitable alternative arrangements for the Tenant's rights of access in Schedule 1, Part 1 (*Rights enjoyed with demise*) paragraph 1 (*Rights enjoyed with demise*) be maintained and in particular the rights the rights in paragraph 1(e); and
- (c) the Landlord indemnifying (subject to the obligation on the Tenant to use reasonable endeavours to mitigate its loss) and paying the Tenant the reasonable cost plus irrecoverable VAT of relocating reinstating removing or replacing at all and any of the Tenant's equipment Pipes and Plant installed in the Market Store or on the Market Square for in the exercise of the rights In Schedule 1, Part 1 (*Rights enjoyed with demise*) paragraph 1(a) and paragraph 1(b) and for the purposes of venting and expelling air steam and fumes from the Premises in exercise of its rights under paragraph 1(g) and paragraph 1(i) or any of the other of the Tenant's equipment Plant Pipes and machinery in the Premises required to be relocated as a result of the relocation of the Market Store;
- (d) the relocated Market Store will be of no greater size than that at the date of this Lease;
- (e) following such relocation, the Landlord and Tenant shall if necessary and at the Landlord's cost (including but not limited to the costs of all legal and professional fees, irrecoverable VAT and any stamp duty land tax consequent thereon, the Landlord and Tenant acting reasonably in the circumstances) enter into any necessary deed of variation of this Lease to reflect the change in the location of the Market Store and the Landlord shall at its own cost cause such deed of variation to be registered against both the Landlord and Tenant's titles at the Land Registry and provide the Tenant with proof of registration; and
- (f) the Landlord shall pay the Tenant all reasonable costs and irrecoverable VAT of undertaking all the works (including the cost of making good any damage caused thereby to the Premises to the tenant's satisfaction) in this paragraph 4 (*Relocation of Market Store*) within 21 days written demand therefore and prior to the Tenant undertaking such works on behalf of the Landlord:
 - (i) the Landlord shall if reasonably required by the Tenant pay to the Tenant in advance the sum reflecting a reasonable estimate of the costs and irrecoverable VAT to be incurred by the Tenant under this paragraph 4 (*Relocation of Market Store*) in advance of the Tenant undertaking such works; and
 - (ii) where the Landlord is not the London Borough of Southwark or its statutory successor in title the Landlord shall at the Tenant's request enter into a deed of indemnity in a form reasonably acceptable to the Tenant and shall provide such additional security for the payment of such costs as may be reasonably requested by the Tenant including the costs plus

irrecoverable VAT of the Tenant in considering any application for consent whether or not consent is granted.

5 Rights in relation to Break Out Panels Service Link Panels and Tunnels to the Dominant Land

- (a) At any time after the Development Completion Date (or if applicable the Early Access Date) has occurred the Landlord may give not less than 30 Working Days' written notice or notices to the Tenant that it wishes to exercise the rights in paragraph 5(c)(ii) and paragraph 6 (*Rights to pass through the Service Yard and to use the Communal Loading Bays and Loading Dock*) for the benefit of the Dominant Land in relation to the Break-Out Panels and/or the Service Link Panels,
- (b) Such notices shall:
- (i) be accompanied by a such evidence and information by drawings, specifications and other written details of the work (whatever its nature), and the method of undertaking the work which the Landlord requires to execute on the Premises in order to break through to the Tunnels or which it requires the Tenant to execute and provide such other information as the Tenant may reasonably require as to the nature and extent of the works;
 - (ii) where at any time that the Landlord has already broken through either Break Out Panels or the Service Link Panels, or where it intends to break out simultaneously both the Break Out Panels and the Service Link Panels, be accompanied by all evidence as is reasonably required by the Tenant as to the volume of additional traffic which will pass through the Service yard and/or use the Communal Loading Bays in sufficient detail as the Tenant may reasonably require to enable the Tenant to assess the Impact of the additional traffic on the flow of traffic through the Service Yard and/or already using the Communal Loading Bays and the Tenant's Loading Bays; and
 - (iii) not be effective unless the information provided for in paragraph 5(b)(ii) demonstrates that the intensification of use of the rights set out in paragraph 6 (*Rights to pass through the Service Yard and to use the Communal Loading Bays and Loading Dock*) consequent upon the breaking out of the Break Out Panels or the Service Link Panels will not materially adversely affect the ability of the Tenant to service the Development on the Tenant's Adjoining Property.

(the "Access Notice/s"); and

- (c)
- (i) having given any Access Notice(s) the Landlord shall obtain the prior written consent of the Tenant for any of the works to be done on the Service Yard of the kind envisaged in paragraph 5(c)(ii)) (such approval not to be unreasonably withheld or delayed where the provisions of paragraph 5(b) have been complied with (and the Tenant shall confirm to the Landlord as soon as reasonably practicable if such provisions have been complied with) and the Access Notice is effective within the meaning of paragraph 5(b)(ii) and in the event of dispute, either party may refer the matter for decision of the Expert in accordance with the provisions of Clause 10 (*Expert determination*); and

- (ii) the Landlord shall, having served an effective Access Notice and subject to complying throughout with the Works Conditions the provisions of Clause 3.16 (*Basement access principles*) and the General Conditions, be entitled to access to the Service Yard on the later of:
 - (A) the date of the expiry of the Access Notice; and
 - (B) the date of the Tenant's approval of the works, or if the matter is referred for determination in accordance with the provisions of paragraph 5(c), the date of the Expert's determination that the works are approved,

(the "Access Date") and to enter on to the Service Yard at times agreed with the Tenant with all necessary equipment and workmen for the purposes of breaking through (but not constructing) the Break Out Panels and/ or Service Link Panels in respect of which the Access Notice relates, to connect to the Tunnels which shall have been constructed by the Landlord to link such of the Dominant Land situate within the Elephant and Castle Shopping Centre or Walworth Area as identified in the Access Notice to the Service Yard via the Tunnels connecting to the Break Out Panel/s and /or Service Link Panel/s.

6 Rights to pass through the Service Yard and to use the Communal Loading Bays and Loading Dock

From the date that the Landlord has completed the break out works under paragraph 5(c)(ii) for the benefit of the Dominant Land and subject to complying with the General Conditions and the provisions of Clause 3.16 (*Basement access principles*) and Clause 5 (*Landlord's covenants*) for the benefit of the Dominant Land:

- (a) the non-exclusive right in common with the Tenant and all others authorised by it for the Landlord and all persons authorised by it to use the Communal Loading Bays for Commercial Purposes;
- (b) the non-exclusive right in common with the Tenant and all others authorised or so entitled by it for the Landlord and all persons authorised by it to pass and repass for Commercial Purposes with vehicles over the Service Yard to and from Communal Loading Bays and the Loading Dock along such route as from time to time designated for such purpose by the Tenant (acting reasonably) under the Servicing Management Plan;
- (c) the non-exclusive right in common with the Tenant and all others authorised by it for the Landlord and all persons authorised by it to use the Loading Dock for Commercial Purposes and in the event of conflict between the use of the Loading Dock between the Landlord and those authorised by it and the Tenant and all others authorised by it, the Tenant shall have priority; and
- (d) the non-exclusive right in common with the Tenant and all others so authorised by it for the Landlord and all persons authorised by it to pass and repass for Commercial Purposes with vehicles and with or without equipment goods and machinery over the Service Yard to and from Break Out Panels and/or (as applicable) Service Link Panels and the Dominant Land along such route as from time to time designated for such purpose under the Servicing Management Plan.

7

Rights to extend the Loading Dock and to require relocation of the Tenant's Loading Bays

Subject to the Landlord first complying with the provisions of this paragraph 7 (*Rights to extend the Loading Dock and to require relocation of the Tenant's Loading Bays*), the provisions of Clause 3.16 (*Basement access principles*) and the General Conditions, the right for the Landlord on not less than 30 Working Days' written notice:

- (a) to require the Tenant (at the Landlord's reasonable cost) to extend the area of Loading Dock within the Premises but not to alter its position; and/or
 - (b) to require the Tenant to relocate the Tenant's Loading Bays to another area within the Premises;
- provided that:
- (c) prior to doing so the Landlord obtains the Tenant's prior written consent thereto (which shall not be unreasonably withheld) provided that in respect of the relocation of the Tenant's Loading Bays it shall not be reasonable for the Tenant to withhold consent if the relocation provides for the Tenant to have the exclusive use of two lorry loading bays of at least the same size as the Tenant's Loading Bays at the date of this Lease and such relocated bays are no less proximate to the Loading Dock and Service Corridors and that following such relocation the Tenant is otherwise able to use the Loading Dock and the Service Corridors no less conveniently;
 - (d) that as little interference to the Tenant's use and enjoyment of the Premises as is reasonably practicable is caused and no interference is caused to the Tenant's use of the Tenant's Loading Bays and the Loading Dock;
 - (e) the Landlord indemnifying and paying to the Tenant the reasonable cost plus irrecoverable VAT of making suitable alternative arrangements for the Tenant's rights of access in Schedule 1, Part 1 (*Rights enjoyed with demise*) paragraph 1 (*Rights enjoyed with demise*) to be maintained;
 - (f) the Landlord indemnifying (subject to an obligation on the Tenant to use reasonable endeavours to mitigate its loss) and paying to the Tenant the reasonable cost plus irrecoverable VAT of relocating reinstating removing or replacing at all and any of the Tenant's equipment Plant Pipes and machinery in the Premises required to be relocated as a result of the relocation of Tenant's Loading Bays or the extension of the Loading Dock;
 - (g) access to and egress from the Tenant's Loading Bays and the Loading Dock are not interrupted but are maintained at all times;
 - (h) that following the works of relocating the Tenant's Loading Bays or extending the Loading Dock, if necessary, the Landlord and Tenant shall at the Landlord's cost (including the costs of all legal and professional fees and any irrecoverable VAT and stamp duty land tax consequent thereon the Landlord and the Tenant acting reasonably in the circumstances) prepare and execute a deed of variation to this Lease to reflect such consequent changes to the rights granted in this Lease and the Landlord shall at its own cost cause such deed variation to be registered against both the Landlord and Tenant's titles at the Land Registry and provide the Tenant with proof of registration; and

- (i) the Landlord shall pay the Tenant all reasonable costs plus irrecoverable VAT of undertaking all the works (including the cost of making good any damage caused thereby to the Premises to the tenant's satisfaction) in this paragraph 7 (*Rights to extend the Loading Dock and to require relocation of the Tenant's Loading Bays*) within 21 days written demand therefor and prior to the Tenant undertaking such works on behalf of the Landlord:

 - (i) the Landlord shall if reasonably required by the Tenant pay to the Tenant in advance the sum reflecting a reasonable estimate of the costs to be incurred by the Tenant under this paragraph 7 (*Rights to extend the Loading Dock and to require relocation of the Tenant's Loading Bays*)in advance of the Tenant undertaking such works; and
 - (ii) where the Landlord is not the London Borough of Southwark or its statutory successor in title the Landlord shall at the Tenant's request enter into a deed of indemnity in a form reasonably acceptable to the Tenant and shall provide such additional security for the payment of such costs as may be reasonably requested by the Tenant Including the costs plus irrecoverable VAT of the Tenant in considering any application for consent whether or not consent is granted.

8 Conditions

(a) Works Conditions

The exercise of the rights referred to in paragraph 5(c)(ii) is subject to the conditions that:

- (i) whilst any works are being carried out by the Landlord, the Landlord will ensure and procure that there is as little interference as is reasonably practicable with the Tenant's use and enjoyment of the Premises and as little interference as is reasonably practicable to the Tenant's use of the Tenant's Loading Bays, the Accessway, the Communal Loading Bays, Service Yard and the Loading Dock shall be caused and shall at all times ensure that full and free access to and egress from the Tenant's Loading Bays and the Loading Dock is maintained and that the Tenant's beneficial use of the Premises and its ability to service the Development is not unreasonably adversely affected;
- (ii) In exercising the rights in paragraph 5 (*Rights in relation to Break Out Panels Service Link Panels and Tunnels to the Dominant Land*), the Landlord is to execute all work carried out to the Premises at its expense, in a good and workmanlike manner, with good and suitable materials, complying with good building practice and in accordance with drawings, specifications and other information submitted to and approved by the Tenant, and in accordance with requisite statutory consents and the requirements of competent authority;
- (iii) the Landlord is to keep the Tenant and all other persons deriving title under it indemnified against all claims, liability and costs plus irrecoverable VAT sustained or incurred from or incidental to the exercise, or purported exercise of the rights the Tenant or such other persons using reasonable endeavours to mitigate their loss;
- (iv) the Landlord is responsible for the costs of installing servicing and maintaining sufficient ventilation systems in the Tunnels and if as a result of the Landlord exercising it rights in paragraph 5 (*Rights in relation to*

Break Out Panels Service Link Panels and Tunnels to the Dominant Land) and paragraph 6 (*Rights to pass through the Service Yard and to use the Communal Loading Bays and Loading Dock*) additional ventilation plant machinery and equipment is required to be provided in the Premises then the Tenant shall install such additional ventilation plant machinery and equipment and the Landlord shall reimburse the Tenant the reasonable and proper costs plus Irrecoverable VAT of providing maintaining repairing renewing and replacing such equipment and the provisions of paragraph 7(h) and paragraph 7(i) shall *mutatis mutandis* apply;

- (v) the Landlord indemnifying and paying the Tenant the reasonable costs plus irrecoverable VAT of making suitable alternative arrangements for the Tenant's rights of access In Schedule 1, Part 1 (*Rights enjoyed with demise*) paragraph 1 (*Rights enjoyed with demise*).
- (vi) the Landlord indemnifying and paying the Tenant the reasonable cost plus irrecoverable VAT of relocating reinstating removing or replacing at all and any of the Tenant's equipment Plant Pipes and machinery in the Premises required to be relocated as a result of the relocation of the breaking through the Break Out Panels or Service Link Panels or making good any damage,

provided that where the Landlord is obliged to indemnify or meet the costs of the Tenant or any other person that person shall notify the Landlord as soon as reasonably practicable of any such costs and provide estimates in advance on the Landlord's reasonable request; and

- (vii) where the Landlord exercises such rights after the Early Access Date it shall in addition carry out of the Landlord's works in such a manner so as to cause as little disturbance, disruption and delay as practicable to the regular carrying out and completion of the works and as little damage to such works which the Tenant may still be in the course of undertaking on the Premises in connection with the Development, (here meaning the initial development described in paragraph [a] or [b] of the definition of Development) Market Square, Market Store and Excluded Fit Out Works and shall make good any damage done to such works to the Tenant's reasonable satisfaction.

(b) General Conditions relating to the exercise of rights of use

The exercise of the rights referred to in paragraph 3 (*General rights*) (save for the right in paragraph 3(b)(i)), paragraph 4 (*Relocation of Market Store*), paragraph 5 (*Rights in relation to Break Out Panels Service Link Panels and Tunnels to the Dominant Land*) paragraph 6 (*Rights to pass through the Service Yard and to use the Communal Loading Bays and Loading Dock*) and paragraph 7 (*Rights to extend the Loading Dock and to require relocation of the Tenant's Loading Bays*) are subject to the conditions that:

- (i) the Tenant shall be entitled at any time to temporarily restrict the exercise of any right where it is necessary in order to enable the Tenant to undertake works to repair, maintain, renew or replace the Premises;
- (ii) the Landlord and all others so entitled shall at all times take all reasonable steps to ensure that minimal interference and interruption as is reasonably practicable is caused to the Tenant's use of the Premises or the servicing of the Development

- (iii) the Landlord and all others so entitled shall not at any time prevent or block the Tenant and those parties authorised by it in having access to and egress from the Tenant's Loading Bays (including as may be relocated in accordance with the provisions of this Lease) or the Loading Dock servicing the Development or the access from the Loading Dock and Tenant's Loading Bays to the Tenant's service corridors and spaces in the Development or to the Service Yard;
- (iv) the rights reserved to the Landlord and all others so entitled shall not include rights through or over those parts of the Service Yard that contains structural columns or the Tenant's Loading Bays;
- (v) the Landlord and all others so entitled will cause as little disturbance, damage and inconvenience as possible to the Tenant in exercising such rights and will properly make good all damage done to the Premises to the Tenant's reasonable satisfaction;
- (vi) the Landlord and all others so entitled shall at all times exercise such rights having due regard to the requirements of the Servicing Management Plan directions and instructions of the Goods In Manager and the Tenant's Rules and Regulations and the Tenant shall have regard to the principles in the Servicing Management Plan in determining any application for consent by the Landlord as well as the basement access principles set out in Clause 3.16 (*Basement access principles*); and
- (vii) wherever the Tenant is required to grant its consent in this Schedule 2 (*Insurance provisions*) the Landlord shall pay for and indemnify the Tenant in respect of all reasonable legal and professional fees in respect of the grant of such consent (whether or not the Tenant does grant such consent);
- (viii) where the Landlord at any time authorises any party on the Dominant Land to exercise its rights under paragraph 6 (*Rights to pass through the Service Yard and to use the Communal Loading Bays and Loading Dock*) it shall notify the Tenant thereof in writing stating the identity of such party; and
- (ix) where the Landlord exercises such rights after the Early Access Date it shall do so in a manner and over such areas as the Tenant may reasonably direct so as to cause as little disturbance, inconvenience and delay as practicable to the regular carrying out and completion of the works or damage to such works which the Tenant may still be in the course of undertaking on the Premises in connection with the Development, (here meaning the initial development described in paragraph [a] or [b] of the definition of Development) Market Square, Market Store and Excluded Fit Out Works and shall make good any damage done to such works to the Tenant's reasonable satisfaction.

Part 3 Encumbrances

Those matters contained in the register of the Landlord's title registered at the Land Registry with title numbers [SGL455623] [LN60931] [SGL456566] [TGL253362] [**TITLE OF BLUE LAND TO BE FILLED IN PRIOR TO COMPLETION OR INSERT DETAILS OF TRANSFER**] [**DETAILS TO BE FILLED IN PRIOR TO COMPLETION**]

| Date | Description of document | Parties |
|------|-------------------------|---------|
|------|-------------------------|---------|

- [•] [Eastern and Western Margin and Supplemental Leases]
- [•] [CRT agreement] [•]
- [•] Market Square Lease [•]
- [•] Section 106 Agreement dated
[FILL IN DATES OF RELEVANT SECTION 106 AGREEMENTS]
- [•] Any Relevant Statutory Agreements/Highways Agreements

[THE PARTIES WILL UPDATE THIS SCHEDULE WITH THE RELEVANT DATES AND PARTIES OF THE DOCUMENTS ABOVE WHICH ARE ENVISAGED UNDER THE AGREEMENT FOR LEASE]

[BLP/HS TO CONSIDER AND UPDATE]

**Schedule 2
Insurance provisions**

1 Insured Risks and other definitions

- (a) "**Insured Risks**" means the risks and other contingencies against which the Premises are required to be, or which may be, insured under this Lease, but subject to any exclusions, limitations and conditions in the policy of insurance.
- (b) Insured Risks shall subject to paragraph 1(c) include (without limitation) fire, lightning, explosion, storm, tempest, flood, bursting and overflowing of water tanks, apparatus or pipes, earthquake, aircraft (but not hostile aircraft) and devices dropped from aircraft, riot and civil commotion, malicious damage, subsidence, heave, landslip, terrorism and such other risks as the Tenant (acting reasonably) may consider it prudent to insure.
- (c) If a risk or contingency itemised, or otherwise included, as an Insured Risk, can no longer be insured in the London Insurance Market, the risk or contingency shall cease to be treated as an Insured Risk from the time that cover is withdrawn until cover again becomes available in the London Insurance Market.
- (d) In this Schedule 2 (*Insurance provisions*):
- (i) references to the Premises include alterations, additions and improvements only if made by or at the expense of the Tenant but do not include landlord's fixtures and fittings;
 - (ii) references to the act or default of the Landlord include the act or default of any person deriving title under or through the Landlord or its or their respective employees, agents and visitors and those authorised by it (except for the Tenant and any person deriving title under or through the Tenant); and
 - (iii) references to "**vitiation by the Landlord**" include any event occurring by the act or default of the Landlord (to be interpreted as in paragraph 1(d)(ii)) as a result of which the insurance monies otherwise payable under the policy of insurance of the Tenant become wholly or partially irrecoverable, and "**vitiate**" and "**vitiated**" have corresponding meanings;
 - (iv) "**Uninsured Risks**" means:
 - (A) any risk which does not fall within the risks specifically identified in the definition of "Insured Risks";
 - (B) any risks, or some aspect of any of them, which would be covered by risks specifically identified in the definition of "Insured Risks" but which:
 - (1) are excluded from doing so for the time being by reason of withdrawal of cover by the insurer which is not otherwise available to be insured on the London Insurance Market;
 - (2) is withdrawn from cover by the Tenant on the grounds that cover cannot be placed on the London Insurance

Market at reasonable commercial rates and on reasonable commercial conditions; or

- (3) is excluded or partially excluded from cover in relevant circumstances by reason of the operation of policy conditions,

but

- (C) an uninsured risk does not become an Uninsured Risk for the purposes of this Lease by reason only of:

- (1) normal exclusions provisions in relation to a level of excess liability;
- (2) rejection by the insurer of liability, or some part of it, due to a vitiation by the Tenant; or
- (3) infringement by the Tenant of the policy conditions for the maintenance of cover.

2 Tenant's obligation to insure and reinstate

- (a) The Tenant will keep the Premises insured with an insurer of repute against Insured Risks and other items referred to in paragraph 1(a) (subject to paragraph 1(c)) for the full cost of reinstatement, subject to such uninsured excess as the insurer may reasonably apply.
- (b) Subject to the provisions of paragraph 2(d) and paragraph 2(e), following damage to or destruction of the Premises by an Insured Risk, the Tenant will diligently apply, or procure the application of, the proceeds of the insurance covering reinstatement and rebuilding costs for those purposes to reinstating the Premises and will make good any deficiency in the proceeds of the insurance out of its own resources.
- (c) Subject to provisions of paragraph 2(d)(i), paragraph 2(d)(iii), paragraph 2(d)(iv) and paragraph 2(e) following damage to or destruction of the Premises by an Uninsured Risk, the Tenant will use all reasonable endeavours to reinstate the Service Yard, Loading Dock and Communal Loading Bays to such a state of repair sufficient to make them safe and usable for the purposes of the rights reserved by the Landlord in Schedule 1, Part 2 (*Exceptions and reservations*), paragraph 6 (*Rights to pass through the Service Yard and to use the Communal Loading Bays and Loading Dock*) and (if the Market Square Lease has not been terminated) the structural waterproof membrane and structural slab and such supports thereto as are sufficient to support the Market Square.
- (d) The obligations of the Tenant in Clause 3.7 (*Repair*) and paragraph 2(b) and paragraph 2(c) do not apply:
 - (i) if the Tenant is unable, after using its reasonable endeavours to do so, to obtain any requisite planning permission or other consents for the reinstatement or rebuilding of the Premises or of a building of similar size, character and amenity; or
 - (ii) in relation to an Insured Risk, if the Tenant's insurance is vitiated by the Landlord unless and until the Landlord has paid all sums due from it under paragraph 5(b); or

- (iii) In relation to an Uninsured Risk the Landlord (whether or not the Access Date has occurred) has not exercised the rights of access reserved to the Landlord in Schedule 1, Part 2 (*Exceptions and reservations*) paragraph 6 (*Rights to pass through the Service Yard and to use the Communal Loading Bays and Loading Dock*) at any point during the ten years immediately preceding the date of damage or destruction provided that such period of ten years shall not start to run until the Access Date; or
 - (iv) the date of the damage or destruction by an Insured or Uninsured Risk is within the last 50 years of the term and as at that date the Landlord is not actually exercising any of its rights of access reserved in Schedule 1, Part 2 (*Exceptions and reservations*) paragraph 6 (*Rights to pass through the Service Yard and to use the Communal Loading Bays and Loading Dock*) whether or not the Access Date has occurred.
- (e) Where the Premises are substantially damaged or destroyed, the Landlord may not object to the reinstatement or rebuilding of the Premises in a form which is not identical to the Premises immediately before the damage or destruction occurred, if the Premises as reinstated or rebuilt are sufficient to make safe and usable the Service Yard, Loading Dock and Communal Loading Bays for the purposes of the rights reserved by the Landlord in Schedule 1, Part 2 (*Exceptions and reservations*) paragraph 6 (*Rights to pass through the Service Yard and to use the Communal Loading Bays and Loading Dock*).
- (f) If the Tenant shall fail to comply at any time with its obligation under paragraph 2(a) the Landlord may effect such insurances in respect of the Premises as it shall deem necessary and shall be entitled to recover the cost of so doing from the Tenant as a rent in arrear.

3 Tenant's obligations in relation to insurance

The Tenant shall within five Working Days provide the Landlord with a copy of its insurance policies (or other evidence of the conditions of insurance) on the Premises, and (at the request of the Landlord) with a receipt for the payment of the last premium or other evidence of renewal and up-to-date details of the amount of cover (in each case) so often as they shall be reasonably requested by the Landlord but in any event no more than once a year.

4 Landlord's liability for insurance premiums

- (a) The Landlord shall pay to the Tenant on demand the due proportion (determined in accordance with paragraph 4(e)) of the insurance premiums incurred by the Tenant.
- (b) Insurance premiums are to include all monies expended, or required to be expended by the Tenant in effecting and maintaining cover against:
- (i) Insured Risks;
 - (ii) such professional fees as may be incurred in connection with rebuilding or reinstatement of the Premises;
 - (iii) the costs of demolition, shoring up, and site clearance works;
 - (iv) employers', third party and public liability risks;
 - (v) VAT liability on such items; and

- (vi) tax charged on the premiums for these insurances.
- (c) The insurance cover may take into account cover for the effects of inflation and escalation of costs and fees.
- (d) The Landlord shall pay to the Tenant the due proportion of the professional fees for insurance valuations of replacement cost carried out at reasonable intervals and is no more than once in every third year.
- (e) The due proportion of the insurance premiums for which the Landlord is liable is to be such proportion of the premiums incurred with respect to the Premises as may properly and fairly be attributed to the Landlord by the Tenant or the Tenant's surveyor, and the apportionment may as appropriate take into account:
 - (i) the different uses to which the various parts of the Premises are put and the degree of special risk associated with those uses;
 - (ii) the cost of complying with requirements of the insurer;
 - (iii) an increase in the insurance premiums or expense of renewal resulting from any act or omission of the Landlord or any person as licensed the Landlord exercising the rights reserved in Schedule 1, Part 2 (*Exceptions and reservations*);
 - (iv) risks and contingencies that apply only to the Landlord or the Tenant; and
 - (v) the frequency, type and volume of usage of the rights reserved in Schedule 1, Part 2 (*Exceptions and reservations*), as a proportion of the total usage of the rights exercised over the Premises by the Landlord and those authorised by it and the Tenant and those authorised by it; and
 - (vi) such other relevant matters as may properly affect the apportionment of insurance premiums between the various tenants and occupiers or users of the Premises,

and the proper decision of the Tenant or the Tenant's surveyor (acting fairly) in making apportionments (except in the case of manifest error) is to be conclusive. In this Schedule 2 (*Insurance provisions*) "due proportion" is to be interpreted accordingly.

- (f) The Tenant may retain any discount on the insurance premiums or commission offered to it by its insurer for its exclusive benefit.

5 Landlord's obligations in relation to insurance cover

- (a) The Landlord will not do anything which may render void or voidable the insurance of the Tenant on the whole or a part of the Premises.
- (b) If the insurance of the Tenant is vitiated by the Landlord, the Landlord shall pay to the Tenant on demand a sum equal to the amount of the insurance monies which has in consequence become properly irrecoverable.
- (c) The Landlord shall provide sufficient fire extinguishers of the type approved by the Tenant and shall adopt such other reasonable precautions against Insured Risks as the Tenant or its insurers may consider appropriate in relation to the Market Store.

- (d) The Landlord may not insure the Premises for any of the Insured Risks in such a manner as would permit the insurer of the Tenant to average the proceeds of insurance or cancel insurance cover.

6 Benefit of insurance proceeds

All insurance proceeds belong to the Tenant.

7 Good faith

The Tenant shall act in good faith, and shall procure that the Tenant's surveyor acts in good faith, towards the Landlord in exercising each of its rights and obligations under this Schedule 2 (*Insurance provisions*).

Schedule 3 Tenant's Rules and Regulations

General Rules

In exercising the rights reserved to the Landlord in this Lease the Landlord shall comply with the following Tenant's Rules and Regulations, subject to the provisions of the Lease.

- 1 Not to do anything in the Premises or Accessway which is not consistent with the use of the Premises, Accessway and the Development as a block of high class flats, student accommodation and retail centre nor to allow anyone else under his control to do so.
- 2 Not to deposit or permit to be deposited any waste rubbish or refuse on the Premises or Accessway.
- 3 Not to stack, store or layout on the Premises or Accessway any item.

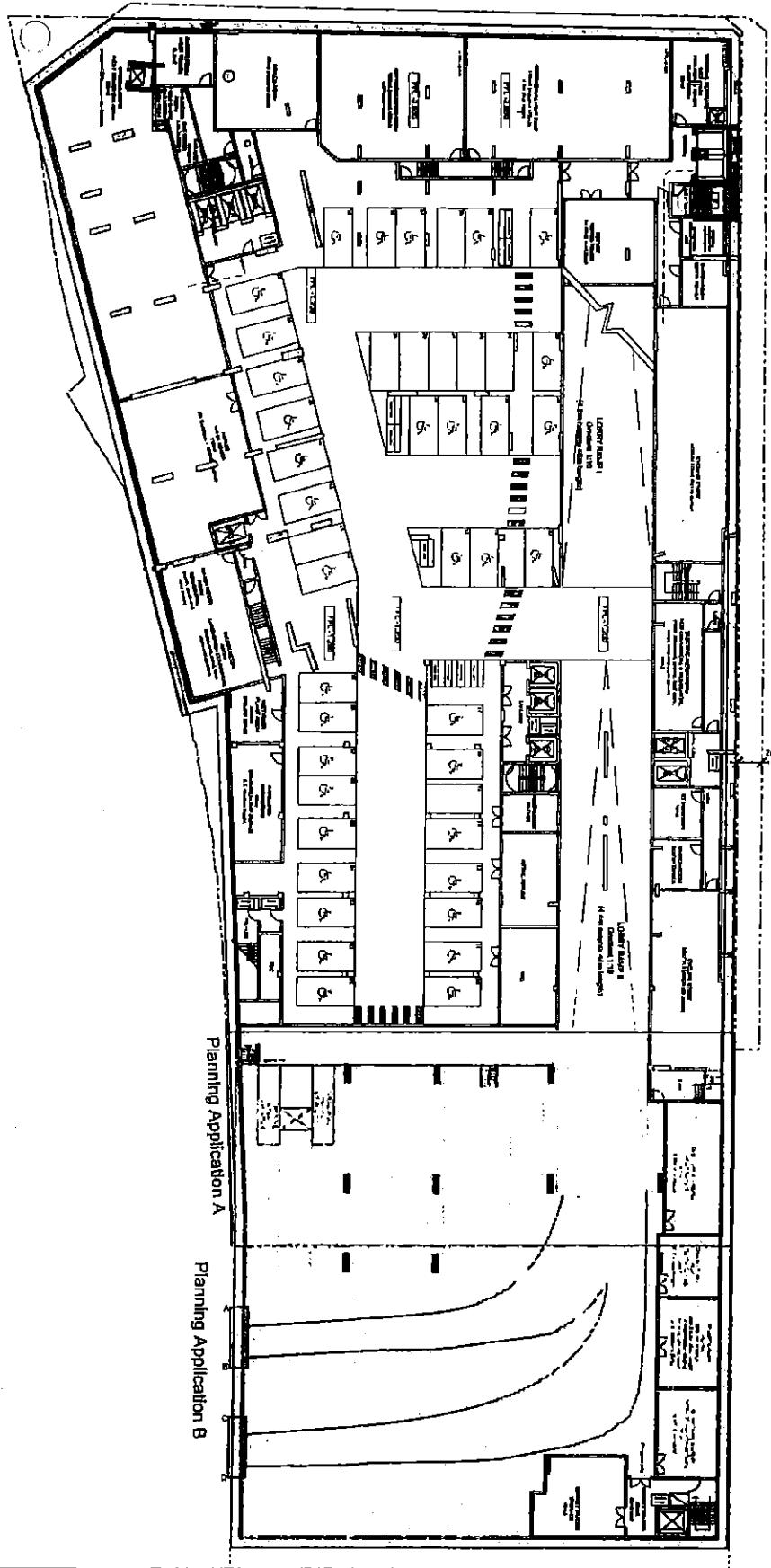
Rules relating to use of Premises and Accessway

- 1 Not to carry on or permit to be carried on in the Premises or Accessway any trade or business whatsoever nor to hold any auction sale thereon.
- 2 Not to affix or exhibit or permit to be affixed or exhibited to or upon any part of the Premises or Accessway any placard poster signboard or any other advertisement whatsoever.
- 3 Not to permit the sounding of motor hooters or klaxons in or about the Premises or Accessway nor to do anything or permit or suffer anything to be done in or about the Premises or Accessway which shall in any way cause or tend to cause annoyance injury damage inconvenience or disturbance to the Tenant the owners or occupiers of the Development or the owners or occupiers of any adjoining or adjacent premises and in particular not to use or obstruct the accessways in such a manner as to impede or interfere with the use and enjoyment thereof by other users of the Premises or Accessway.
- 4 To use the Premises and Accessway as quietly as possible and in particular between the hours of 10.30 pm and 7.30 am and during those hours to take special care to use the Accessway in such manner as to avoid disturbance of or annoyance to the owners or lessees of the units in the Development.
- 5 Not to obstruct the common entrance ways forecourts paths and driveways leading to the Premises or Accessway nor impede the operation of any self-closing door and not to park any vehicle on any of the driveways accessways paths or forecourts leading thereto.
- 6 Not to store on any part on the Premises or Accessway any petrol or other explosive or inflammable oils materials or substances and not to accumulate or leave any rubbish or other offensive material in the Premises or Accessway and not to carry out the repairing of any vehicle upon any of the forecourts or driveways or upon any part of the Premises or Accessway.
- 7 No inflammable dangerous or explosive substance liquid or gas shall be stored or placed upon the Premises or Accessway.

- 8 Nothing shall remain or to be done upon the Premises or Accessway anything which may be or become or grow to be a public or private nuisance or a danger annoyance or disturbance to the Tenant or its undertakenants, access beneficiaries, customers or traders or to neighbouring property or persons.
- 9 There shall not in connection with the use of the Premises or Accessway be obstructed any roads or footpaths adjoining or near to the Premises or Accessway.
- 10 No electrical light electrical apparatus or appliance liable to ignite flammable vapour shall be dangerously near any place where petroleum spirit is kept.
- 11 All practical steps shall be taken to secure that no fire or flame is present and in particular no smoking takes place dangerously near any place where petroleum spirit is kept and In particular no smoking whatsoever shall take place in the Premises or Accessway or the accessways leading thereto or in the vicinity thereof.
- 12 Not to use any electrical apparatus in the Accessway or Premises unless the same has been properly suppressed so as to avoid interference with radio and television reception in the units in the Development aforesaid.
- 13 Not to use the Accessway or Premises driveways and forecourts or other parts of the basement in such manner as to cause annoyance nuisance damage danger or injury to any users thereof nor to damage any of the trees plants or shrubs adjacent to any driveway or forecourt comprised in the Development.
- 14 Such other rules and regulations as shall from time to time be made (either in addition to or by way of variation of or substitution for these rules and regulations or any of them) by the Tenant for the management care and cleanliness of the Premises and Accessway and for securing the safety comfort and convenience of all the occupiers of and visitors of the Premises and Development and any such other rules and regulations as aforesaid shall be deemed to be incorporated herein.

Appendix 1
Demise Plan

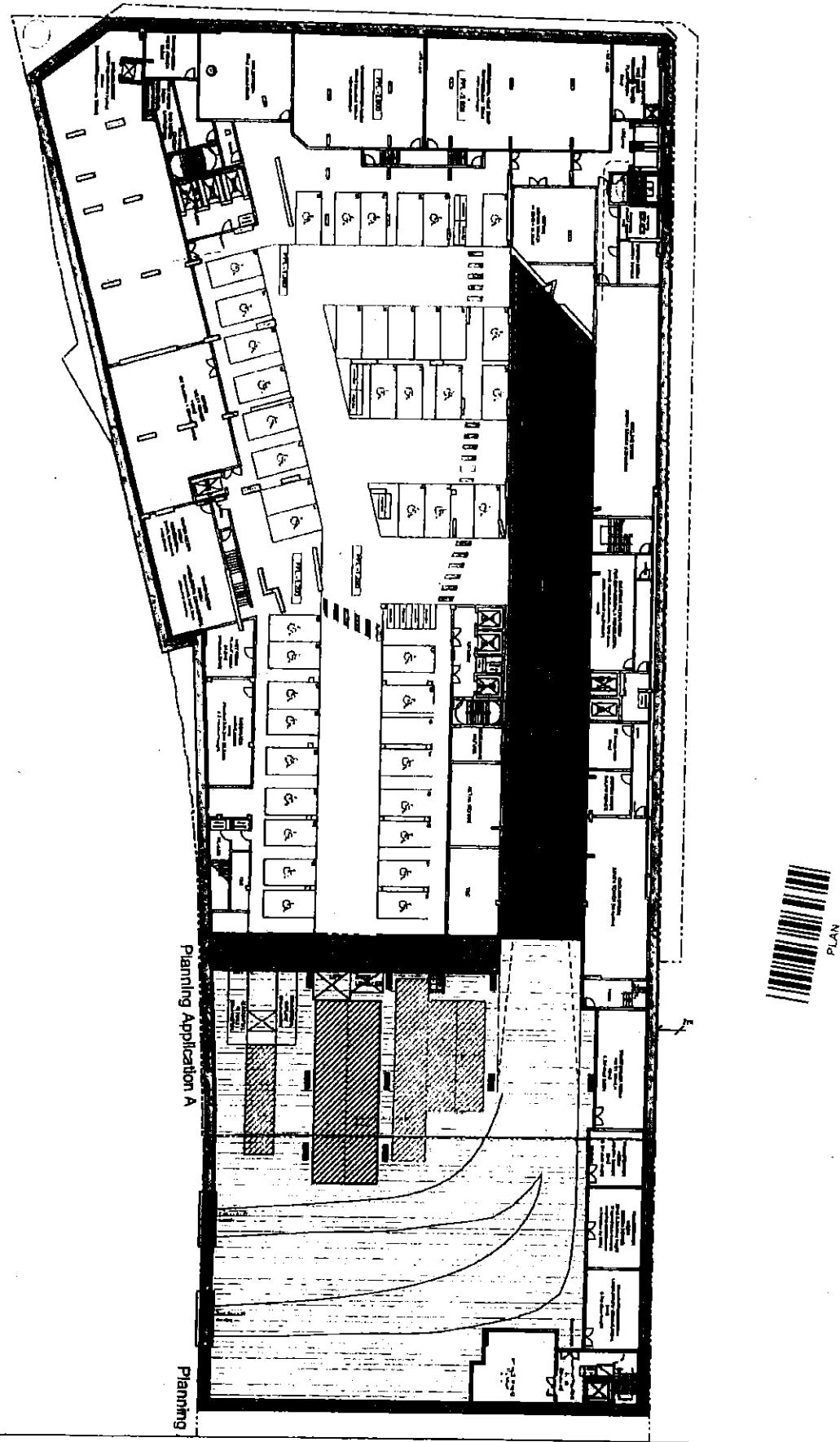
Appendix 1-1



Elephant Road SE17

**Appendix 2
Rights reserved and granted plan**

Appendix 2



Elephant Road SE17

Appendix 3
Tenant's Adjoining Property and Landlord's Property

[TO BE UPDATED TO INCLUDE THE ADDITIONAL LAND ONCE REGISTERED]



PLAN

Forrell Court
ELEPHANT ROAD

Elephant and Castle
Section

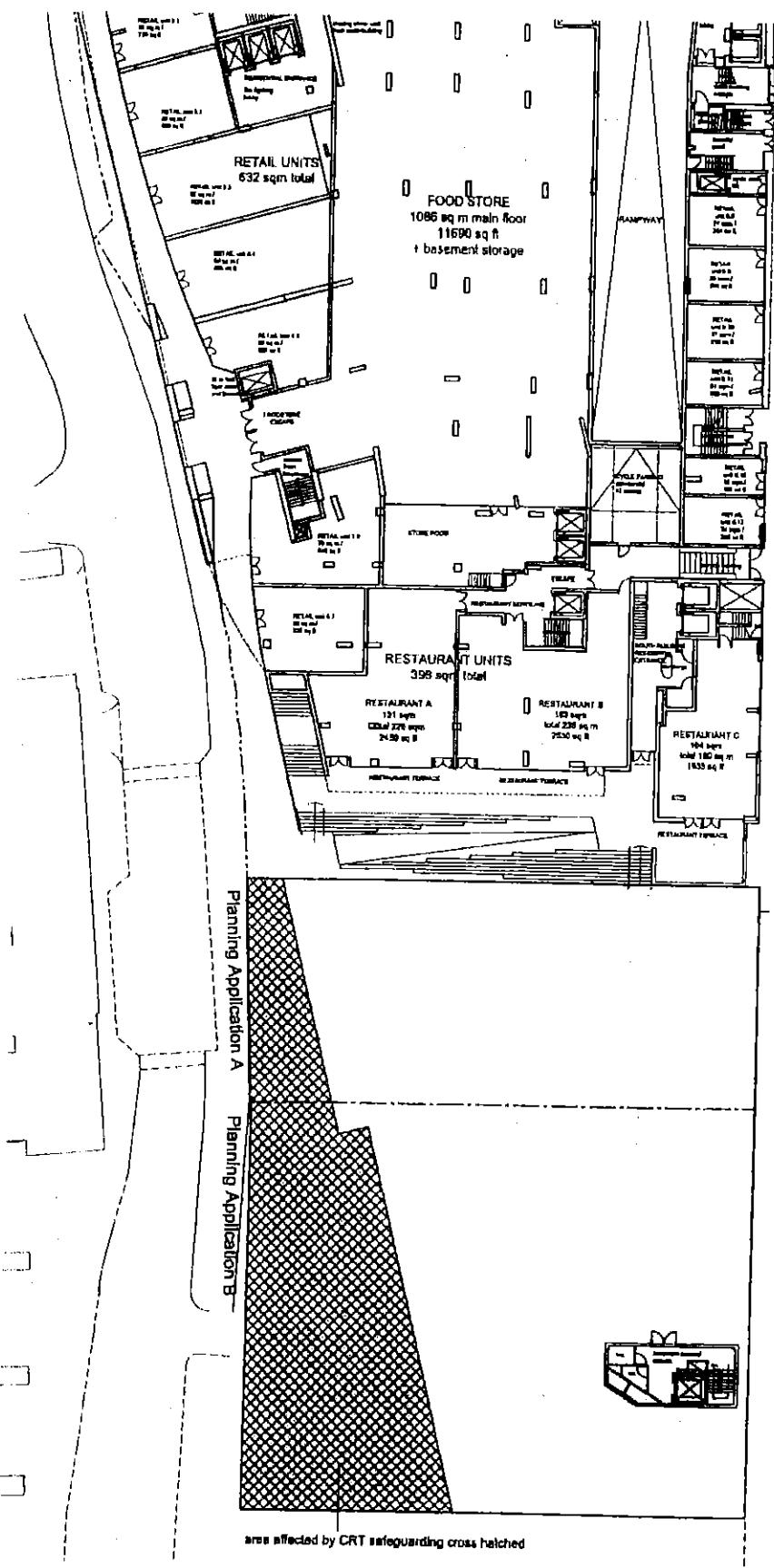


Composite plan

AUTHORISED
SIGNATORY

Appendix 4.1
Market Square Lease plan

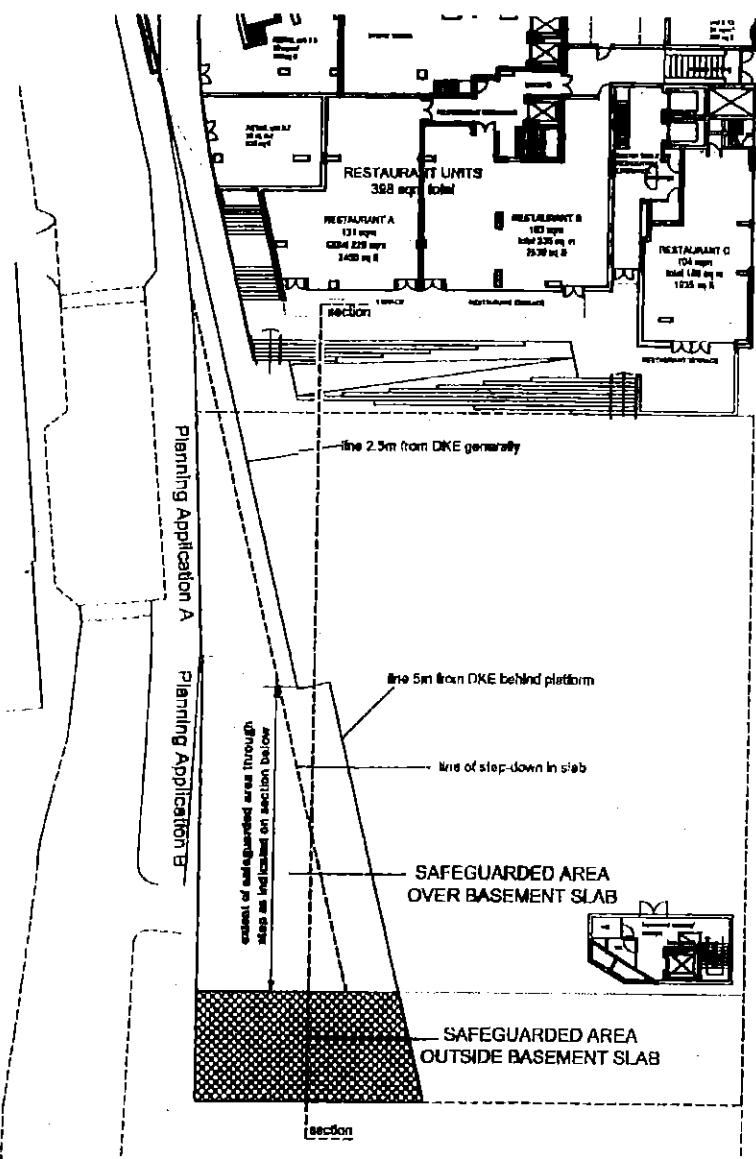
Appendix 4.1
Market Square Plan
(at ground level)



Elephant Road SE17

Appendix 4.2
Market Square sectional plan

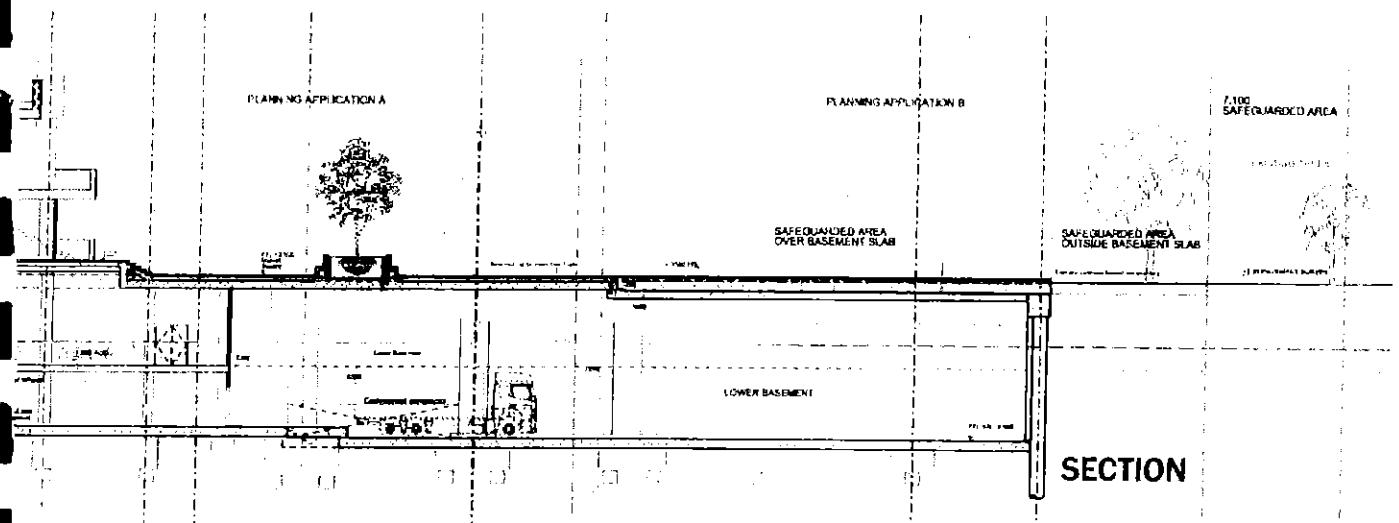
Appendix 4.2
Market Square -
Sectional Plan



PLAN



PLAN



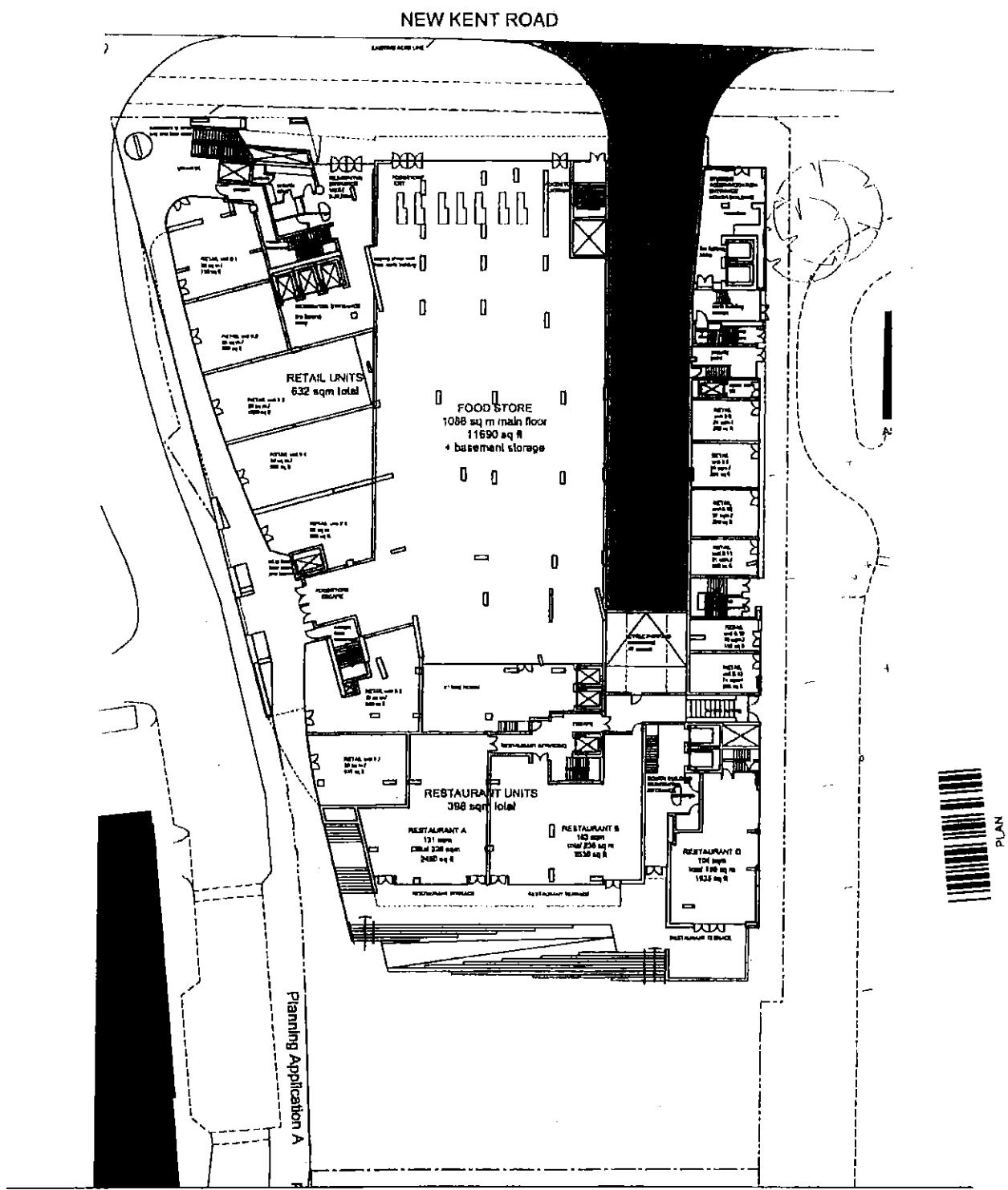
SECTION

Elephant Road SE17

Appendix 5.1

Accessway plan

Annexure 5
Access way
Ground Level

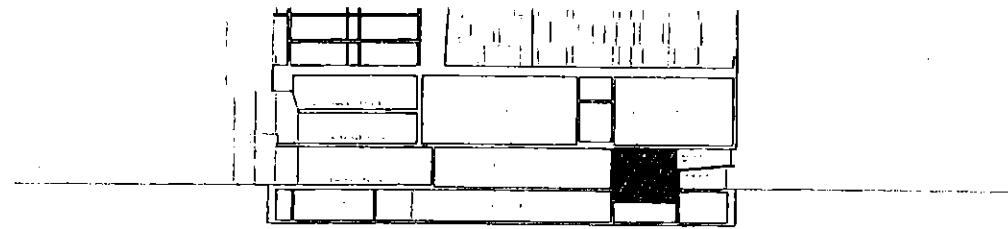


Elephant Road SE17

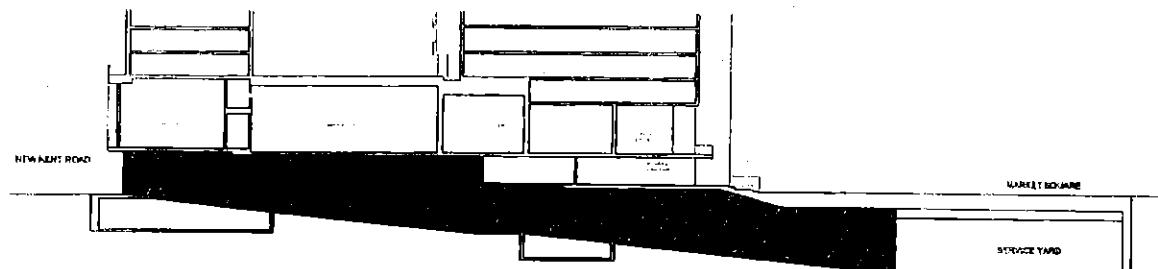
Appendix 5.2

Sectional View

Annexure 5
Accessway_ Sectional view



east-west section



north-south section



PLAN

Appendix 6
Servicing Management Plan

Proposed Mixed Use Development, Elephant Road

Subject: Servicing Management Plan

Introduction

1. This note sets out the basis of the Servicing Management Plan that will be provided at the mixed use development by Eadon Limited at Elephant Road, London.
2. Planning permission has been granted to the development and this Servicing Management Plan is necessary as part of the S106 Agreement associated with the development. In addition, it is a requirement on Eadon Limited, for the benefit of the Reserved rights contained in the lease of the basement to be granted by the Council.

Objectives

3. The Servicing Management Plan will manage deliveries and servicing to the premises in order to ensure the successful operation of the servicing area in order that the potential for vehicle conflicts is avoided.
4. The plan will ensure that the London Borough of Southwark ('Southwark') and Eadon Limited ('Eadon') will have their respective priority for use of the vehicle loading bays, with Southwark having priority over 4 lorry bays (including the refuse bay) and Eadon Limited having the exclusive use of 2 No. lorry bays hatched blue on the attached PKS Architects' Plan in Appendix 2 '**Rights Reserved and Granted**' with neither party being impeded or prevented in the use of their bays and the easement strip is to be kept free from obstruction in accordance with the proposed lease.
5. The Servicing Management Plan will ensure that 2 No. lorry servicing bays are available for the exclusive use of Eadon Limited's, its tenants and authorised parties and that the remaining four servicing bays are available if required for the benefit of the Council's Reserved Rights under the proposed lease.
6. The service yard has been designed to provide a safeguarded route through the western walls of the service yard to allow for the potential opening of servicing routes to other elements of the Elephant Links Regeneration Area including the Elephant and Castle Shopping Centre (currently owned by St Modwen's to the west) for non residential

servicing purposes. The Council will also be provided with access through the southern wall of the service yard subject to the transport capacity being sufficient for this purpose. Access via either the southern and/or western walls or use of the service yard for areas outside the of the Elephant Road site will also be dependant upon the Council having first made the linkages for the transportation of service goods or passage of vehicles to the adjoining designated areas.

7. Vehicles are not to be parked on the access ramp or in the basement except within the designated bays. No residents' cars are to be parked in the Basement Service Yard.

The Servicing arrangement

8. The servicing area is located in the basement of the building and is accessed from New Kent Road as shown in **Appendix 5**.
9. The servicing yard of the development will include:
 - 3 servicing bays of 16.5m length and 3.0m width to accommodate articulated vehicles (of the three bays, one includes a scissor lift lorry loader and one includes a dock leveller).
 - 2 servicing bays of 10m length by 2.5m width to accommmodate medium goods vehicles.
 - A dual use refuse collection / servicing area including two refuse compactors for collection via a skip lorry plus an area for the collection of recyclables including:
 - One servicing bay of 10m length by 2.5m width (available when refuse collection is not taking place).
10. **Table 1** shows the predicted number of deliveries by light, medium and heavy goods vehicles for each of the elements of the building.
11. Overall, the total number of servicing movements would be 48 movements as follows:
 - 27 light goods vehicles per day
 - 17 medium goods vehicles per day
 - four heavy goods vehicles per day.

12. Typically, the average duration of stay would be less than ten minutes, with a small number for longer periods.

Initiatives of the Plan

13. Subject to the provisions of 1.1.1 and 1.1.2 of the basement lease to be granted by the Council, a 'Goods In Manager' will be employed to oversee the operations of the service ramp and yard area and to ensure its smooth operation. The essence of the provisions of the lease referred to above enable either party to require that the Goods In Manager is replaced.
14. In order to meet the objectives of the Servicing Management Plan, the following initiatives will be adopted:
 - (i) The Goods In Manager will issue written/email instructions to all suppliers who book deliveries setting out the delivery procedures to be adopted by them.
 - (ii) Suppliers will be required to pre-book 30 minute delivery slots including details of the type of vehicle that will be used to undertake the delivery and the scale/nature of goods to be supplied. (Although the majority of deliveries would only take 5-10 minutes to undertake, the 30 minute slots would allow for the vagaries of London traffic etc.)
 - (iii) Suppliers will be discouraged from scheduling deliveries during peak periods, although in practice it may not be feasible to restrict HGV movements to/from the site during peak periods. Therefore, it is proposed to limit the number of deliveries to be undertaken by HGVs to a maximum of 1 in each 30 minute slot between 07.30 – 09.30 and 16.00 – 18.00.
 - (iv) Vehicles will not be permitted to enter the basement area unless authorised to do so by the Goods In Manager. Delivery drivers will advise the Goods In Manager of their impending arrival by telephoning him/her approximately 10-15 minutes before their arrival.
 - (v) In the event the Council take up their right to use the service bays the Goods In Manager will make sure that only three of the four bays over which the Council will have priority but not exclusivity in the situation where only shuttle tunnels are constructed, will be booked at any one time and a single bay will be left unoccupied to ensure that, in the worst case, if deliveries overlap, a bay will still be available.

- (vi) Drivers will not be permitted to leave vehicles unattended in the basement.
- (vii) Drivers will be informed that vehicle engines must be switched off whilst goods are being loaded/unloaded (i.e. when their vehicle is stationary).
- (viii) The Goods In Manager will ensure that a storage area is provided for goods in order to maintain the service bay area free from obstruction. Tenants will be aware of the delivery schedule and will be responsible for ensuring that goods are transferred from the storage area to the relevant units as soon as possible. The Goods In Manager will be responsible for the smooth and efficient operation of this element of the "plan".
- (ix) Two bays will be reserved within the upper basement car parking area to accommodate cars and/or small vans associated with longer term servicing activity (e.g. window cleaners, BT engineers etc).

Monitoring and Review of the Plan

- 15. The Goods In Manager will maintain a record of servicing activity, which will include the following information:
 - (i) Day
 - (ii) Date
 - (iii) Delivery Slot(s) booked
 - (iv) Type of vehicle
 - (v) Goods carried
 - (vi) Time of arrival
 - (vii) Time of departure
 - (viii) Any other comments
- 16. The Goods In Manager will constantly monitor/review the success of the Plan and, if considered necessary/appropriate, will propose changes to the Plan to be approved by the Council's Head of Property.
- 17. The Plan will be the subject of a regular review (six months after first occupation and annually thereafter) with the Council's Head of Property. Additionally, if considered

necessary or appropriate by the Council's Head of Property (e.g. as a result of the effects of other developments coming on stream), further reviews will be held within 28 days of a written request by the Council's Head of Property.

Conclusion

18. Overall, the Servicing Management Plan will ensure the successful operation of the basement servicing area on a day to day basis.
19. The Plan will ensure that the likelihood of conflicts with pedestrians will be minimised and that the servicing of the development will not affect the free flow of traffic on New Kent Road. It will also ensure a clear path will be available through to the adjacent St Modwens site should servicing corridors be subsequently constructed.

Examples

20. Examples of the use of the basement
 - (i) First lorry arrives for the Eadon bays – The Goods In Manager allows the lorry access to the bay.
 - (ii) First lorry arrives for the Council bays – The Goods In Manager allows the lorry access to the bay.
 - (iii) Second lorry arrives for the Eadon bays - The Goods In Manager allows the lorry access to the bay.
 - (iv) Second arrives for the Council bays - The Goods In Manager allows the lorry access to the bay.
 - (v) Third lorry arrives for the Eadon bays with none available but with no planned deliveries to the third or fourth Council bays - The Goods In Manager allows the Eadon lorry access to the bay.
 - (vi) Third lorry arrives for the Council bays - The Goods In Manager allows the lorry access to the bay.
 - (vii) Fourth lorry arrives for the Council bays - The Goods In Manager allows the lorry access to the bay.

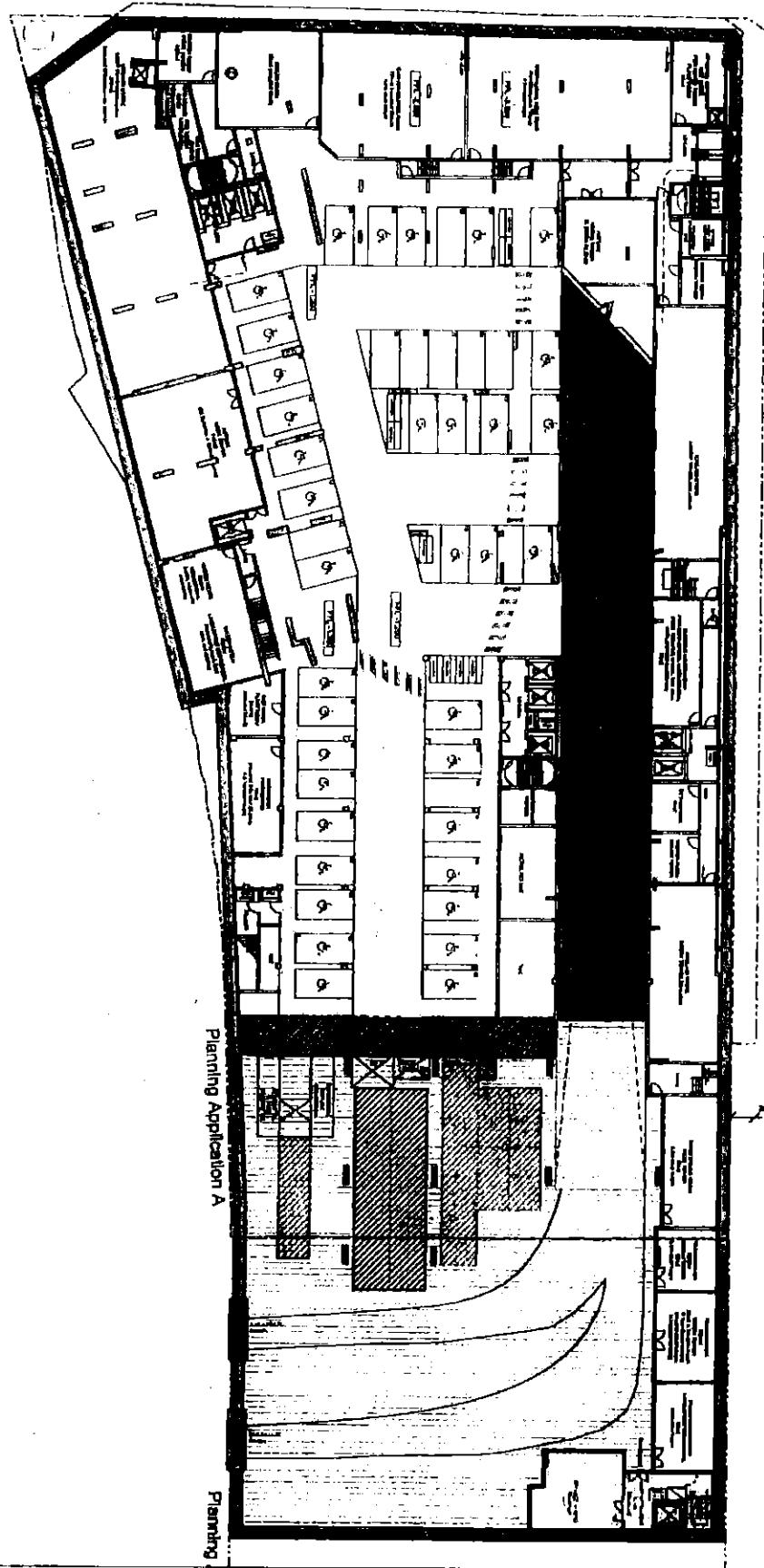
- (viii) Third lorry arrives for the Eadon bays (all Eadon bays occupied) and only one of the Council bays is clear – the lorry has to wait and the Council has priority until its planned deliveries are satisfied or the Eadon lorry moves onto a free Eadon bay.
- (ix) Fourth lorry arrives for the Council bay unannounced and the bay is occupied by an Eadon lorry – the Council lorry has to wait for the Council bay to be released by the Eadon lorry then proceeds on to this bay.
- (x) Fifth lorry arrives for the Council's bays (all Council bays occupied) with an Eadon bay free – the Council has to wait until a Council bay comes free.

Elephant Road, LB Southwark, Servicing Management Plan

Table 1: Loading Bay Requirements - daily movements

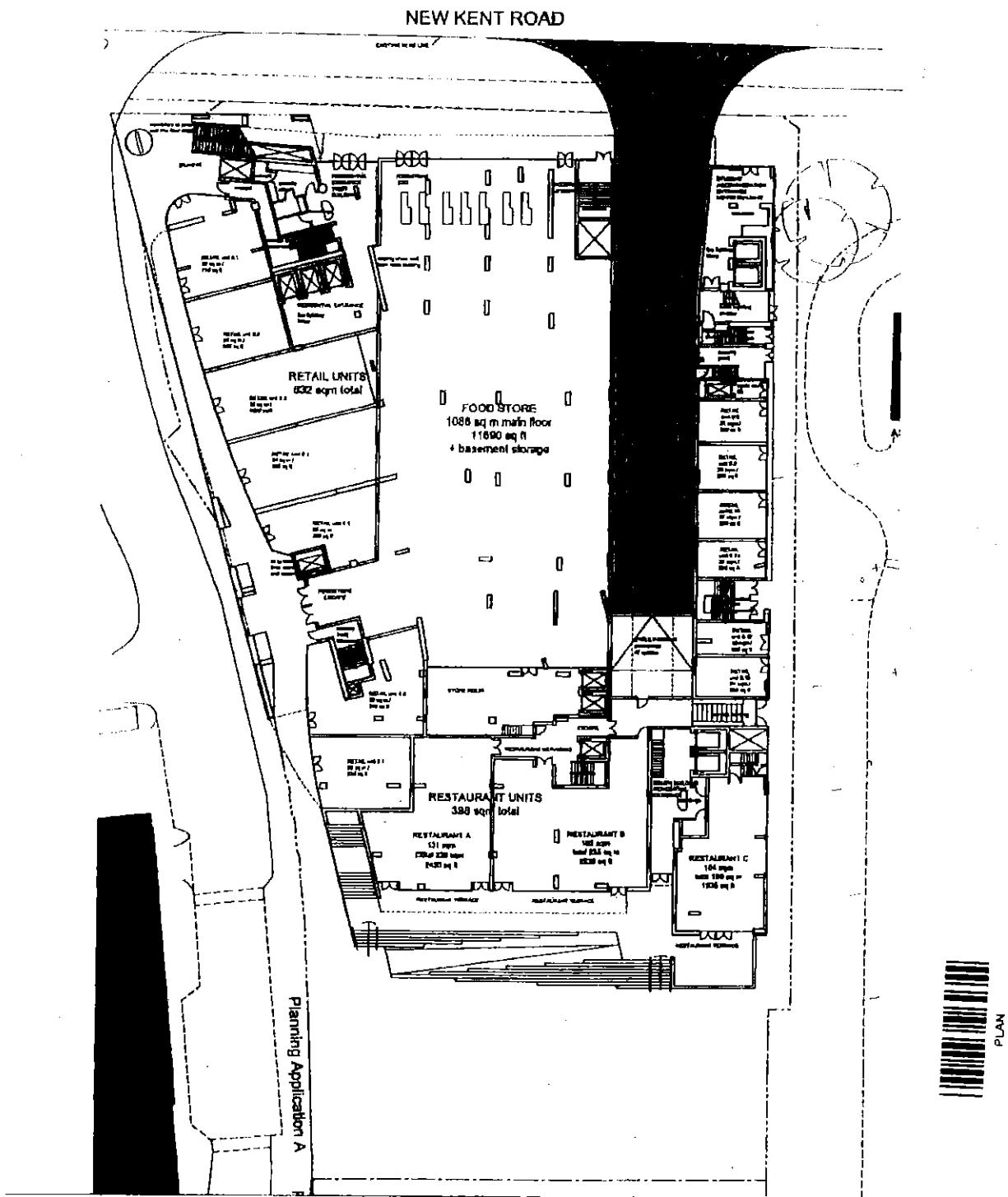
| Land Use | Unit | sqm | Rate | LGV | Rate | MGV | Rate | HGV | Total |
|-----------------------|-------------------------|------|------|-----------|------|-----------|------|----------|-----------|
| Retail | Foodstore | 1116 | n/a | 2 | n/a | 2 | n/a | 3 | 7 |
| | Non-food retail | 1205 | n/a | 2 | n/a | 2 | n/a | 0 | 4 |
| | Sub-Total | 2321 | | 4 | | 4 | | 3 | 11 |
| Restaurant | Unit A | 228 | n/a | 2 | n/a | 1 | n/a | 1 | 4 |
| | Unit B | 254 | n/a | 2 | n/a | 1 | n/a | 0 | 3 |
| | Unit C | 186 | n/a | 2 | n/a | 1 | n/a | 0 | 3 |
| | Sub-Total | 668 | | 6 | | 3 | | 1 | 10 |
| Cinema | seats | 900 | n/a | 2 | n/a | 1 | n/a | 0 | 3 |
| Residential | units | 312 | 0.04 | 12 | 0.02 | 6 | 0.00 | 0 | 19 |
| Student Accommodation | rooms | 275 | 0.01 | 3 | 0.01 | 3 | 0.00 | 0 | 6 |
| Total | Daily deliveries | | | 27 | | 17 | | 4 | 48 |

Appendix 2



Elephant Road SE17

**Annexure 5
Access way
Ground Level**

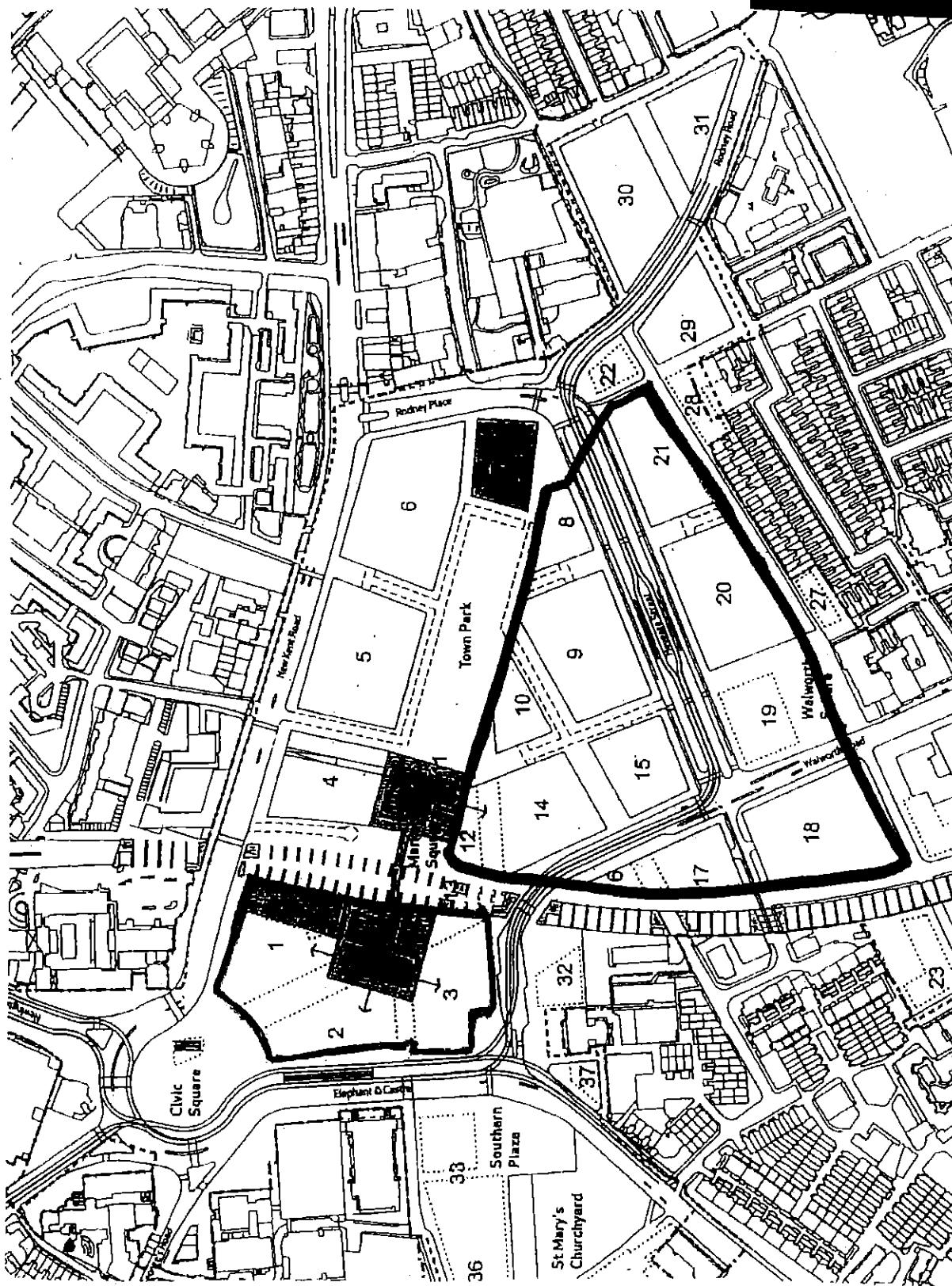


Elephant Road SE17

Appendix 7
Elephant and Castle Shopping Centre and Walworth Area

P K S

AUTHORISED SIGNATORY



Elephant Road

Plan I Projected basement links

Appendix 8
Excluded Fit Out Works

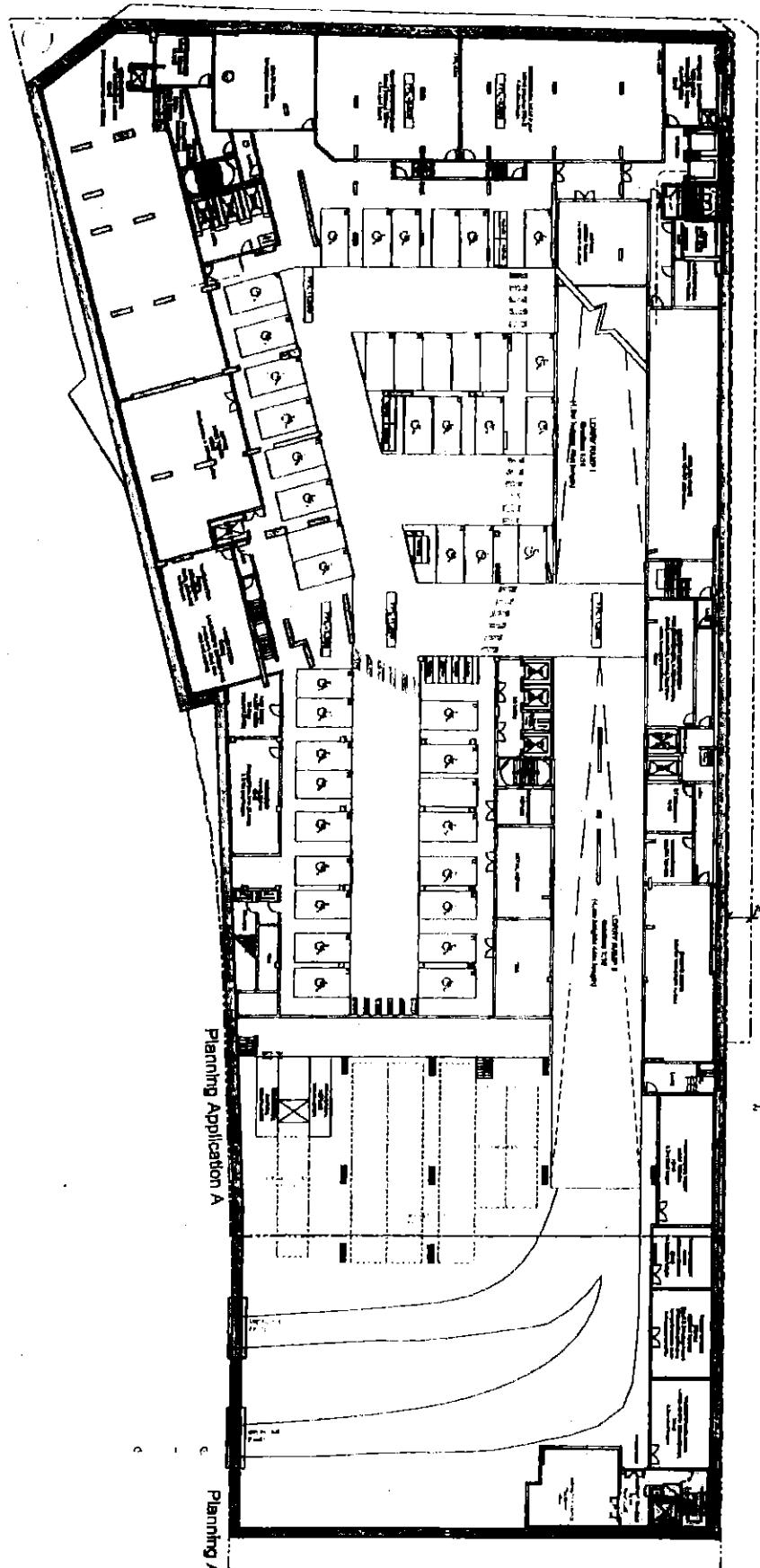
50 New Kent Road

Schedule of Basement Fit-Out Works

1. Lighting, emergency lighting and small power
2. Smoke extract / ventilation systems
3. Secure entrance / barrier system
4. CCTV system
5. Guard rails, Armco car parking barriers and the like
6. Doors
7. Waterproof/weatherproof asphalt or other surface over concrete base and / or painted surface to car and lorry parking bays / line markings
8. Signage
9. Cycle racks
10. Construction of Market Square storage area and lift installation between storage area and Market Square

Appendix 9
Market Store plan

Appendix 9
Market Square Plan



Elephant Road SE17

Appendix 4
Draft Market Square Lease

DATE

200[•]

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK

**[EADON LIMITED/PLAZA DEVELOPMENTS LIMITED/
NOMINEE OF EADON LIMITED/PLAZA DEVELOPMENTS LIMITED]**

LEASE

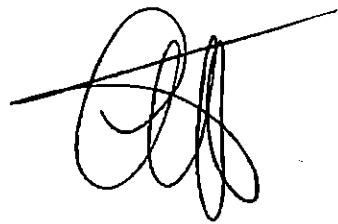
of

The Market Square and Market Store, 50 New Kent Road Elephant and Castle

| | |
|-------------------|------------|
| Term commences | [•] 200[•] |
| Years | 99 years |
| Term Expires | 201[•] |
| Pre-emption Right | 80 years |

*berwin leighton paisner

Berwin Leighton Paisner LLP
Adelaide House London Bridge London EC4R 9HA
tel +44 (0)20 7760 1000 fax +44 (0)20 7760 1111



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| 6 | Servicing Management Plan | |
| 7 | Elephant and Castle Shopping Centre and Walworth Area | |

LAND REGISTRY**Land Registration Act 2002**

| | |
|---------------------------------------|--|
| County and District or London Borough | London Borough of Southwark |
| Title Numbers | SGL 500495 [OTHER TITLE NUMBERS OF DOMINANT LAND TO BE FILLED IN ONCE THE LAND IS IDENTIFIED IN ACCORDANCE WITH [CLAUSE 6.4.1 OF THE AGREEMENT FOR LEASE] |
| Property | The Property as defined herein. |

DATED [•] 2008

PARTIES

- (1) The Grantor
- (2) The Grantee

OPERATIVE PROVISIONS**1 DEFINITIONS AND INTERPRETATION**

1.1 In this Deed:

"Access Date" as defined in the Basement Lease.

"Accessway" means that part of the Property at lower basement, upper basement and ground level shown shaded green on the plans in Appendix 4 Including the ramps, entrance barriers, mechanical and electrical ventilation systems, security controls, internal plaster or other surfaces of the loadbearing walls and columns, non-loadbearing walls, flooring, raised floors and floor screeds down to the joists or structural parts supporting the flooring, the plaster of surfaces of ceilings and false ceilings and voids between the ceilings and false ceilings, but excluding the supports, joists, beams, columns, timbers, foundations, structural, supporting and loadbearing walls and columns.

"Basement Lease" means a lease dated the same date as this Deed entered into between (1) the Grantor (2) the Grantee in respect of the Basement Premises.

"Basement Premises" means all those Premises at lower basement and upper basement level shown coloured red on the plan in Appendix 5 and each and every part thereof (including the supports and structural supports and parts, joists, beams, columns, timbers, foundations and structural supporting and load bearing walls and framework, external walls, lifts, lift shafts, loading and unloading equipment), the Communal Loading Bays, the Tenant's Loading Bay, Loading Dock and Service Yard and additions and improvements thereto, fixtures and fittings and appurtenances in and about the Basement Premises and the Pipes and plant and machinery within and exclusively serving the Basement Premises and including the

structural waterproof membrane and slab and more fully defined in the Basement Lease.

"Basement Rights" means those rights set out in Schedule 4, Part 1 (*Basement Rights*).

"Commercial Purposes" means access over the Accessway for servicing the commercial areas in the Dominant Land and specifically excludes the servicing or access to and from any residential accommodation within such areas.

"Communal Loading Bays" means those loading bays shown hatched red on the plan in Appendix 4.1.

"Deed of New Easement" means a deed granting the Rights of Commercial Access to the Grantee or Nominee under which the Grantee or Nominee covenants to be bound by the conditions, stipulations and obligations (insofar as they relate to the exercise of the benefit of the Rights of Commercial Access) of this Deed substantially in the form attached in Appendix 1 with such amendments as the Grantor may in its discretion agree. **[FORM TO BE AGREED AND ATTACHED AS PER AGREEMENT FOR LEASE CLAUSE 6.5]**

"Development" as defined in the Basement Lease.

"Development Completion Date" means the last date on which the Grantor has completed all of the works comprising the Development (here meaning the initial development described in paragraph [a] or [b] of the definition of Development in the Basement Lease) on the Property, the Market Square and Market Store and the Excluded Fit Out Works the Grantor covenanting to give the Reversioner written notice as soon as reasonably practicable;

"Early Access Date" means notwithstanding that the Development Completion Date has not occurred such earlier date where the Reversioner is able to demonstrate Need on or after the date four years from and Including the date of this Deed which date shall be subject to any extension of time by the aggregate of the periods for extensions commensurate with those which may be properly allowed under any building contract or building contracts entered into by the Grantor in respect of the works comprising the Development, Market Square, Market Store and Excluded Fit Out Works the Grantor covenanting to give the Reversioner written notice as soon as reasonably practicable but at intervals of no more than twice in any year of this Deed of such extensions of time.

"Dominant Land" means [•]. **[TO BE COMPLETED IN ACCORDANCE WITH THE PROVISIONS OF CLAUSE 6.4.1 OF THE AGREEMENT FOR LEASE]**

"Easement Period" means [the term of 999 years commencing on [•]. **[TO BE COMPLETED AS PER AGREEMENT FOR LEASE]** **[AND DETERMINING ON [•]]** **[DATE TO BE THE SAME AS THE BASEMENT LEASE IE CO-TERMINUS WITH BASEMENT LEASE]**]

"Elephant and Castle Shopping Centre" means those areas adjoining and adjacent to the Basement Premises shown edged green on the plan in Appendix 7.

"Encumbrances" means those restrictions, stipulations, covenants, rights, reservations, provisions and other matters contained, imposed by or referred to in the documents, particulars of which are set out in Schedule 2 (*Encumbrances*).

"Excluded Fit Out Works" as defined in the Basement Lease.

"General Conditions" means those conditions set out in Schedule 5, Part 1 (*General Conditions*).

"Goods-In Manager" means the manager employed by the Grantor from time to time and notified to the Grantee to oversee the operations of the Service Yard and to ensure its smooth operation in accordance with the Servicing Management Plan and includes any such alternative goods-in manager as may be appointed under clause 3.15.4 of the Basement Lease.

"Grant Conditions" means those conditions set out in Schedule 5, Part 3 (*Grant Conditions*).

"Grantee" means the Mayor and Burgesses of the London Borough of Southwark of Town Hall, Peckham Road, London SE5 8UB and its successors in title and assigns to the Dominant Land and the Reversioner.

"Grantor" means [•]. [TO BE COMPLETED PRIOR TO COMPLETION OF THIS DEED BEING THE REGISTERED PROPRIETOR OF THE PROPERTY]

"Insured Risks" has the meaning given to it in Schedule 3 (*Insurance provisions*).

"Market Square" as defined in the Basement Lease.

"Market Store" as defined in the Basement Lease.

"Need" as defined in the Basement Lease

"New Dominant Land" means any freehold interest falling within the Elephant and Castle Shopping Centre or Walworth Area only (excluding the Dominant Land).

"Nominee" means a party nominated by the Grantee in accordance with the provisions of Clause 11 (*Grant of Deed of New Easement*) who shall during the Perpetuity Period own the freehold of New Dominant Land within the Elephant and Castle Shopping Centre or Walworth Area only.

"Perpetuity Period" means 80 years from the date of this Deed.

"Pipes" as defined in the Basement Lease.

"Plans" means the plans annexed to this Deed.

"Plant" as defined in the Basement Lease.

"Property" means the land owned by the Grantor and registered at the Land Registry under title number SGL500495.

"Reversioner" means the Mayor and Burgesses of the London Borough of Southwark or its successors in title to the reversion of the Basement Lease.

"Rights of Commercial Access" means the rights set out in Schedule 4, Part 2 (*Rights of Commercial Access*).

"Service Yard" means that part of the Basement Premises shaded yellow on the plan in Appendix 4.1 excluding any part of such area as may contain structural columns or the Tenant's Loading Bays.

"Servicing Management Plan" means the management plan attached as Appendix 6 as varied from time to time in accordance with clause 3.15.2 of the Basement Lease.

"Tenant's Loading Bays" means those loading bays exclusively for the use of the Grantor as are hatched blue and shaded yellow on the plan in Appendix 4.1 or such other bays from time to time for the exclusive use of the Grantor in accordance with the Basement Lease.

"Tenant's Rules and Regulations" means the rules and regulations set out in schedule 3 of the Basement Lease as varied from time to time.

"Tunnels" as defined in the Basement Lease.

"Uninsured Risks" has the meaning given to it in Schedule 3 (*Insurance provisions*).

"VAT" means value added tax as referred to in the Value Added Tax Act 1994 or any tax of a similar nature introduced in addition or substitution to it.

"Walworth Area" means that area adjoining and adjacent to the Basement Premises shown edged purple on the plan in Appendix 7.

"Works Conditions" means those conditions set out in Schedule 5, Part 2 (*Works Conditions*).

- 1.2 This Deed is to be read and construed in conjunction with the Basement Lease and any word and expression herein contained shall have the same meaning, unless the express contrary intention appears, as ascribed thereto in the Basement Lease.

2 EASEMENT

- 2.1 In consideration grant of the Basement Lease and Market Square Lease, the Grantor on its behalf and its successors in title to the Accessway grants with full title guarantee (subject to the Encumbrances) the following rights:

- (a) subject to Clause 2.3 to the Reversioner from the date provided for in Schedule 4, Part 1 (*Basement Rights*) to the intent that it shall benefit the reversion to the Basement Lease and each and every part thereof (as is capable of being benefited thereby), the Basement Rights subject to complying with the General Conditions, the Works Conditions (to the extent relevant) and the provisions of Clause 4 (*Obligations*) and Clause 6 (*Grantee's covenants*); and
 - (b) to the Grantee from the date provided for in Schedule 4, Part 2 (*Rights of Commercial Access*) to the intent that it shall benefit the Dominant Land and each and every part thereof (as is capable of being benefited) the Rights of Commercial Access subject to complying with the General Conditions and the provisions of Clause 4 (*Obligations*) and Clause 6 (*Grantee's covenants*).
- 2.2 Subject to Clause 2.1(a) and Clause 2.1(b) the Basement Rights and Rights of Commercial Access shall have commenced to endure for the Easement Period.
- 2.3 The following right shall be exercisable by the Reversioner at all times throughout the Easement Period subject to the General Conditions:

- (a) the right for the Reversioner and all others authorised by it to pass and repass with or without vehicles to and from the public highway known as New Kent Road over and along the Accessway to and from the Basement Premises for the purposes of viewing the state and condition of the Basement Premises; and/or
- (b) to determine whether the Grantor is complying with its obligations in the Basement Lease and to remedy any breach of those obligations.

3 ALTERATION AND VARIATIONS TO THE ACCESSWAY

It is hereby agreed and declared that the Grantor may, subject to the provisions below at any time in the event of the redevelopment of the Property both temporarily or permanently alter the extent, route or location of the Accessway with the prior written consent of the Grantee which shall not be unreasonably withheld or delayed provided that it is agreed in particular without prejudice to the generality of the foregoing it will not be reasonable for the Grantee to withhold its consent in the circumstances where (by an objective standard) the Basement Rights and Rights of Commercial Access are not materially adversely affected and:

- (a) such alteration is such that the alternative rights are materially no less convenient than those granted by this Deed; and
- (b) in altering and relocating the Accessway, the Grantor does not cause any interruption to the access of the Grantee to the Service Yard and Dominant Land.

4 OBLIGATIONS

The Grantor and Grantee covenant to perform their obligations contained in the Schedules to this Deed.

5 SERVICING MANAGEMENT PLAN

The Grantor shall at all times comply with and use reasonable endeavours to procure that any licensee or person authorised by the Grantor using the Accessway, complies with the Servicing Management Plan and with all instructions issued by the Goods In Manager and (to the extent that such compliance would not materially adversely affect their use of the Basement Premises) with the Tenant's Rules and Regulations.¹

6 GRANTEE'S COVENANTS

The Grantee covenants to the Grantor as follows:

- (a) to pay a due proportion of the insurance monies expended by the Grantor in accordance with the provisions of Schedule 3 (*Insurance provisions*) and comply with its obligations and covenants on behalf of the Grantee set out therein;
- (b) the Grantee shall and shall use all reasonable endeavours to procure that any licensee or person authorised by it in exercise of the rights granted pursuant to this Deed complies at all times with the Servicing Management Plan and with all instructions issued by the Goods-In Manager and (to the extent that such compliance would not materially adversely affect the

Grantee's use of the Accessway) with the Tenant's Rules and Regulations; and

- (c) the Grantee shall pay the Grantor a fair and reasonable proportion of the costs of maintenance, management, repair and renewal of the Accessway. The fair and reasonable proportion will be ascertained by having regard to the frequency and volume of usage of the Accessway by the Grantee and in the event of dispute either party may refer the dispute for expert determination under Clause 8 (*Expert determination*);
- (d) not to deposit or permit to be deposited any waste rubbish or refuse in the Accessway;
- (e) not to permit anything or suffer anything to be done in or about the Accessway which will in any way cause or tend to cause annoyance injury damage inconvenience nuisance or disturbance to the Grantor and the owners or occupiers of the Development on the Property;
- (f) at all times during the exercise of the Basement Rights and/or Rights of Commercial Access, to comply with the provisions of Clause 4 (*Obligations*) and this Clause 6 (*Grantee's covenants*) and the General Conditions and to the extent relevant, the Works Conditions and Rights of Commercial Access, to comply with the provisions of Clause 4 (*Obligations*) and this Clause 6 (*Grantee's covenants*) and the General Conditions; and
- (g) where the Grantee at any time authorises any third party on the Dominant Land to exercise either the Basement Rights or the Rights of Commercial Access it shall notify the Grantor thereof in writing stating the identity of such party.

7 VAT

7.1 Any consideration paid or given for taxable supplies or goods or services under or in connection with this Deed is to be treated as exclusive of VAT. The recipient of any such supply is, in addition to the consideration for the supply, to pay the supplier an amount equal to any VAT which is chargeable in respect of the supply in question on the later of:

- (a) the day on which the consideration for the supply is paid or given; and
- (b) the production of a proper VAT invoice.

7.2 Where a party is entitled under this Deed to recover from the other party the cost of goods and services supplied to the other party, but in respect of which the party makes no taxable supply to the other party, to indemnify the party against so much of the input tax on the cost for which the party is not entitled to credit allowance under section 26 or refund under section 33 of the Value Added Tax Act 1994.

8 EXPERT DETERMINATION

8.1 Without prejudice to the other provisions of this Clause 8, (in the event of any dispute arising the Grantee and Grantor shall endeavour to resolve it amicably but if the parties fail to resolve the dispute amicably, the dispute shall be resolved in accordance with the provisions of this Clause 8 unless either party takes proceedings in any court, public enquiry or other hearing.

- 8.2 If any dispute arises in connection with this Deed, directors or other senior representatives of the Grantee and Grantor hereto with authority to settle a dispute will within five Working Days of a written request from one party to the other, meet in good faith effort to resolve the dispute.
- 8.3 In the event that the dispute is not resolved in accordance with Clause 8 (*Expert determination*), the parties hereto may refer the dispute to an expert being an independent person who is professionally qualified and has substantial recent experience in respect of the subject matter of the dispute (the "Expert") to be agreed between the Grantee and Grantor or at the request and option of either of them to be nominated at the joint expense by or on behalf of the president for the time being of the Royal Institution of Chartered Surveyors and the Expert shall act as an Expert and not as an arbitrator and the Expert's decision shall (save in the case of manifest error) be final and binding on the parties hereto and his costs shall be within his award or discretion or failing such a determination borne by both parties in equal shares.
- 8.4 The Expert shall be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute from the date of his appointment to act.
- 8.5 The Expert shall be required to give notice to each of the parties inviting them to submit to him within ten Working Days of such notice, written submissions and supporting material and shall afford to each of the parties an opportunity to make a counter-submission within a further five Working Days in respect of any such submission and material and his decision shall be given in writing with reasons and in absence of manifest error shall be binding on the parties.
- 8.6 The Expert shall supply the parties copies of all evidence, information and advice which he obtains for the purpose of determining the dispute and the parties shall be entitled to make written representations to the Expert with regard to them within ten Working Days of the parties' respective receipt of such copies.
- 8.7 In the absence of any directions by the Expert as to his costs, they shall be borne equally between the parties and the parties shall bear their own costs.
- 9 BENEFIT OF EASEMENT AND TRANSFER OF DOMINANT LAND AND REVERSION TO THE BASEMENT LEASE**
- 9.1 The rights granted pursuant to this Deed are for the benefit of the Dominant Land and the reversion to the Basement Lease. The Grantee covenants with the Grantor that it will not transfer any part of the Dominant Land or the reversion to the Basement Lease without:
- (a) giving reasonable prior written notice to the Grantor of its successors in title (in this Clause 9 (*Benefit of easement and transfer of Dominant Land and reversion to the Basement Lease*) meaning an assignee or transferee of the Grantee's interest in any part of the Dominant Land or the reversion to the Basement Lease) who shall have the benefit of this Deed and of the Basement Rights and Rights of Commercial Access from time to time; and
 - (b) procuring from the Transferee and delivering to the Grantor a deed of covenant in favour of the Grantor covenanting substantially in the form of the deed of covenant in Appendix 3.

- 9.2 The Grantee shall permit the Grantor to register a notice on the charges register and a restriction on the proprietorship registers of the Dominant Land and reversion to the Basement Lease in the following form:

"no disposition of the registered estate is to be registered by the proprietor of the registered estate without a certificate signed on behalf of the proprietor by the proprietor or its conveyancer that the provisions of Clause 9 of a Deed of Easement dated [•] and made between (1) The Grantor and (2) the Grantee have been complied with."

10 TRANSFER OF THE ACCESSWAY

- 10.1 For the purposes of ensuring that the Reversioner shall be entitled from time to time to enforce the covenants on behalf of the Grantor against successors in title to the Grantor, the Grantor covenants that it shall not transfer the freehold of that part of the Property on which the Accessway is situate, without procuring from the transferee and delivering to the Reversioner a deed of covenant in favour of the Reversioner covenanting substantially in the form of the deed of covenant in Appendix 2.

- 10.2 The Grantor shall permit the Reversioner to register a notice on the charges register and a restriction on the proprietorship register of the freehold title of the part of the Property in which the Accessway is situate in the following form:

"no disposition of the registered estate is to be registered by the proprietor of the registered estate without a certificate signed on behalf of the proprietor by the proprietor or its conveyancer that the provisions of Clause 10 of a Deed of Easement dated [•] and made between (1) the Grantor (2) the Grantee have been complied with."

11 GRANT OF DEED OF NEW EASEMENT

- 11.1 If at any time during the Perpetuity Period after the Access Date the Reversioner wishes any New Dominant Land which does not otherwise at that time have the benefit of the Rights of Commercial Access to have such benefit then following the satisfaction of the Grant Conditions to the Grantee's reasonable satisfaction and subject to the proviso below, the Grantor, Grantee and Nominee shall execute such documents as may be necessary including without limitation (a Deed of New Easement notices and land registry forms) and do all such things as may reasonably be necessary to confer upon any New Dominant Land the benefit of the Rights of Commercial Access for no consideration provided that the Grantor shall not be required to comply with its obligations under this Clause 11 (*Grant of Deed of New Easement*) or grant any Deed of New Easement if it reasonably considers that the volume of additional traffic which would pass through the Accessway and Service Yard following completion of the relevant Deed of New Easement will be such so as to materially adversely affect its ability to service the Development. In the event of any dispute arising under this Clause either party may refer to the matter for expert determination in accordance with Clause 8 (*Expert determination*).

- 11.2 The Reversioner shall or shall procure that the Nominee shall immediately following the date of completion of any Deed of New Easement:

- (a) apply to the Land Registry to cause an entry in relation to any Deed of New Easement to be entered in the Charges Register of the Accessway and the Proprietorship Register of the New Dominant Land; and

- (b) (subject to the Grantor providing a completed forms AN1 and RX1 in respect of the same) provide to the Grantor evidence of its consent to an application to register a notice on the charges register and the restriction on the Proprietorship Register of the New Dominant Land by completion the Grantee or Nominee of Panels [•] on form RX1 and panel 15 on form AN1.

12 REGISTRATION

- 12.1 The Grantor, subject to the Grantee providing a completed Form AN1 in respect of the same, shall provide to the Grantee evidence of its consent to the application by the Grantee to register an agreed notice of this Deed on the Charges Register of the Grantor's Property, by completion and signature by the Grantor of panel 15 of Form AN1 provided.
- 12.2 (Subject to the Grantor providing a completed form RX1 in respect of the same) the Grantee will immediately following the date of completion of this Deed provide to the Grantor evidence of its consent to an application to register the restriction on the Proprietorship Register of the Dominant Land and reversion to the Basement Lease by completion by the Grantee of panel [•] on form RX1 provided and will give such assistance as may reasonably and properly be required by the Grantor for such purpose.
- 12.3 Subject to the Reversioner providing a completed form RX1 in respect of the same the Grantor shall immediately following the date of completion of this Deed provide to the Reversioner evidence of its consent to an application to register the restriction on the proprietorship register of the freehold of the Property on which the Accessway is situate by completion by the Grantor of panel [•] on form RX1.

13 LIMITATION OF EFFECT

Save for the express provisions contained in this Deed, nothing in this Deed shall by operation of law or otherwise operate or be deemed to operate or confer upon the Grantee or any person deriving title under it any easement, quasi-easement, right or privilege whatsoever over and against the Grantor's Property which would or might restrict or prejudicially affect the future use, development, construction, building, alteration, demolition, re-building and redevelopment of the Property.

14 SEVERENCE

The parties agree that in the event that one or more provisions of this Deed being subsequently declared invalid or unenforceable by a court or other binding authority then such invalidity or unenforceability shall not in any way affect the validity or enforceability of any other provisions.

This has been executed as a deed and delivered on the date stated at the beginning of this Deed.

**Schedule 1
The Dominant Land**

**[To be filled in prior to completion in accordance with the provisions of clause
[6.4.1 of the Agreement for Lease]]**

**Schedule 2
Encumbrances**

[Those matters contained in the register of the Property at the Land Registry under title number SGL500495 and the following documents:

| Date | Description | Parties |
|--------------------------|--|--|
| 3 October August 2008 | Eastern and Western Margin Lease | (1) Mayor and Burgesses of the London Borough of Southwark (2) Eadon Limited MS LUL |
| [•] | [Freehold Transfer] | [•] |
| [•] | Basement Lease | [•] |
| [•] | CRT Agreement | [•] |
| [•] | Market Square Lease | [•] |
| [•] | Relevant Section 106 Agreement | [•] |
| [•] | Other relevant Statutory Agreements/Highways Agreement and Road Closure Orders | [•] |

**TO BE UPDATED TO REFLECT THOSE OF THE DOCUMENTS COMPLETED IN
ACCORDANCE WITH THE AGREEMENT FOR LEASE WHICH AFFECT/BENEFIT THE
PROPERTY.]**

**Schedule 3
Insurance provisions**

1 Insured Risks and other definitions

- (a) "**Insured Risks**" means the risks and other contingencies against which the Accessway are required to be, or which may be, insured under this Deed, but subject to any exclusions, limitations and conditions in the policy of insurance.
- (b) Insured Risks shall subject to paragraph 1(c) include (without limitation) fire, lightning, explosion, storm, tempest, flood, bursting and overflowing of water tanks, apparatus or pipes, earthquake, aircraft (but not hostile aircraft) and devices dropped from aircraft, riot and civil commotion, malicious damage, subsidence, heave, landslip, terrorism and such other risks as the Grantor (acting reasonably) may consider it prudent to insure.
- (c) If a risk or contingency itemised, or otherwise included, as an Insured Risk, can no longer be insured in the London Insurance Market, the risk or contingency shall cease to be treated as an Insured Risk from the time that cover is withdrawn until cover again becomes available in the London Insurance Market.
- (d) In this Schedule 3 (*Insurance provisions*):
 - (i) references to the Accessway includes alterations, additions and improvements only if made by or at the expense of the Grantor;
 - (ii) references to the act or default of the Grantee include the act or default of any person deriving title under or through the Grantee or its or their respective employees, agents and visitors and those authorised by it (except for the Grantor and any person deriving title under or through the Grantor); and
 - (iii) references to "**vitiation by the Grantee**" include any event occurring by the act or default of the Grantee (to be interpreted as in paragraph 1(d)(ii)) as a result of which the insurance monies otherwise payable under the policy of insurance of the Grantor become wholly or partially irrecoverable, and "**vitiate**" and "**vitiated**" have corresponding meanings;
 - (iv) "**Uninsured Risks**" means:
 - (A) any risk which does not fall within the risks specifically identified in the definition of "Insured Risks";
 - (B) any risks, or some aspect of any of them, which would be covered by risks specifically identified in the definition of "Insured Risks" but which:
 - (1) (are excluded from doing so for the time being by reason of withdrawal of cover by the insurer which is not otherwise available to be insured on the London Insurance Market;
 - (2) is withdrawn from cover by the Grantor on the grounds that cover cannot be placed on the London Insurance Market at reasonable commercial rates and on reasonable commercial conditions; or

- (3) is excluded or partially excluded from cover in relevant circumstances by reason of the operation of policy conditions,

but:

- (v) an uninsured risk does not become an Uninsured Risk for the purposes of this Lease by reason only of:
- (A) normal exclusions provisions in relation to a level of excess liability;
 - (B) rejection by the insurer of liability, or some part of it, due to a vitiation by the Grantor; or
 - (C) infringement by the Grantor of the policy conditions for the maintenance of cover.

2 **Grantor's obligation to insure and reinstate**

- (a) The Grantor will keep the Accessway insured with an insurer of repute against Insured Risks and other items referred to in paragraph 1(a) (subject to paragraph 1(c)) for the full cost of reinstatement, subject to such uninsured excess as the insurer may reasonably apply.
- (b) Subject to the provisions of paragraph 2(d) and paragraph 2(e), following damage to or destruction of the Accessway by an Insured Risk, the Grantor will diligently apply, or procure the application of, the proceeds of the insurance covering reinstatement and rebuilding costs for those purposes to reinstating the Accessway and will make good any deficiency in the proceeds of the insurance out of its own resources.
- (c) Subject to provisions of paragraph 2(d)(i), paragraph 2(d)(iii), paragraph 2(d)(iv) and paragraph 2(e) following damage to or destruction of the Accessway by an Uninsured Risk, the Grantor will use all reasonable endeavours to reinstate the Accessway to such a state of repair sufficient to make them safe and usable for the purposes of the Basement Rights and Rights of Commercial Access.
- (d) The obligations of the Grantor in paragraph 2(b) and paragraph 2(c) do not apply:
- (i) if the Grantor is unable, after using its reasonable endeavours to do so, to obtain any requisite planning permission or other consents for the reinstatement or rebuilding of the Accessway or of an Accessway of similar size, character and amenity; or
 - (ii) in relation to an Insured Risk, if the Grantor's insurance is vitiated by the Grantee unless and until the Grantee has paid all sums due from it under paragraph 5(b); or
 - (iii) in relation to Uninsured Risks the Grantee (whether or not the Access Date has occurred) has not exercised the Basement Rights or Rights of Commercial Access at any point during the ten years immediately preceding the date of damage or destruction provided that such period of ten years shall not start to run until the Access Date; or
 - (iv) the date of the damage or destruction by an Insured or Uninsured Risk is within the last 50 years of the Easement Period and as at that date the

Grantee is not actually exercising any Basement Rights to Rights of Commercial Access.

- (e) Where the Accessway is substantially damaged or destroyed, the Grantee may not object to the reinstatement or rebuilding of the Accessway in a form which is not identical to the Accessway immediately before the damage or destruction occurred, if the Accessway as reinstated or rebuilt is safe and usable for the purposes of the Basement Rights and Rights of Commercial Access.

3 Grantor's obligations in relation to insurance

The Grantor shall within five Working Days provide the Reversioner with a copy of its insurance policies (or other evidence of the conditions of insurance) on the Premises, and (at the request of the Reversioner) with a receipt for the payment of the last premium or other evidence of renewal and up-to-date details of the amount of cover (in each case) so often as they shall be reasonably requested by the Reversioner but in any event no more than once a year.

4 Grantee's liability for insurance premiums

- (a) The Grantee shall pay to the Grantor on demand the due proportion (determined in accordance with paragraph 4(e)) of the Insurance premiums incurred by the Grantor.
- (b) Insurance premiums are to include all monies expended, or required to be expended by the Grantor in effecting and maintaining cover against:
- (i) Insured Risks;
 - (ii) such professional fees as may be incurred in connection with rebuilding or reinstatement of the Accessway;
 - (iii) the costs of demolition, shoring up, and site clearance works;
 - (iv) employers', third party and public liability risks;
 - (v) value added tax liability on such items; and
 - (vi) tax charged on the premiums for these insurances.
- (c) The Insurance cover may take into account cover for the effects of inflation and escalation of costs and fees.
- (d) The Grantee shall pay to the Grantor the due proportion of the professional fees for insurance valuations of replacement cost carried out at reasonable intervals and is no more than once in every third year.
- (e) The due proportion of the insurance premiums for which the Grantee is liable is to be such proportion of the premiums incurred with respect to the Accessway as may properly and fairly be attributed to the Grantee by the Grantor or the Grantor's surveyor, and the apportionment may as appropriate take into account:
- (i) the different uses to which the various parts of the Accessway are put and the degree of special risk associated with those uses;
 - (ii) the cost of complying with requirements of the insurer;

- (iii) an increase in the insurance premiums or expense of renewal resulting from any act or omission of the Grantee or any person as licensed or authorised by it;
- (iv) risks and contingencies that apply only to the Grantee or the Grantor; and
- (v) the frequency, type and volume of usage of the Basement Rights and Rights of Commercial Access, as a proportion of the total usage of the rights exercised over the Accessway by the Grantee and all those authorised by it and the Grantor and all those authorised by it; and
- (vi) such other relevant matters as may properly affect the apportionment of insurance premiums between the various users of the Accessway,

and the proper decision of the Grantor or the Grantor's surveyor (acting fairly) in making apportionments (except in the case of manifest error) is to be conclusive. In this Schedule 3 (*Insurance provisions*) "due proportion" is to be interpreted accordingly.

- (f) The Grantor may retain any discount on the insurance premiums or commission offered to it by its insurer for its exclusive benefit.

5 Grantee's obligations in relation to insurance cover

- (a) The Grantee will not do anything which may render void or voidable the insurance of the Grantor on the whole or a part of the Accessway.
- (b) If the insurance of the Grantor is vitiated by the Grantee, the Grantee shall pay to the Grantor on demand a sum equal to the amount of the insurance monies which has in consequence become properly irrecoverable.
- (c) The Grantee shall provide sufficient fire extinguishers of the type approved by the Grantor and shall adopt such other reasonable precautions against Insured Risks as the Grantor or its insurers may consider appropriate in relation to the Tunnels constructed to link the Dominant Land and or New Dominant Land to the Basement Premises.
- (d) The Grantee may not insure the Accessway for any of the Insured Risks in such a manner as would permit the insurer of the Grantor to average the proceeds of insurance or cancel insurance cover.

6 Benefit of insurance proceeds

All insurance proceeds belong to the Grantor.

7 Good faith

The Grantor shall act in good faith, and shall procure that the Grantor's surveyor acts in good faith, towards the Grantee in exercising each of its rights and obligations under this paragraph 7 (*Good faith*).

8 Reversioner's right to repair in default

- (a) If the Grantor fails to comply with its obligations under this Schedule 3 (*Insurance provisions*) or otherwise fails to maintain the Accessway in a state of repair sufficient to make it safe and usable as an accessway for the purposes of the easements granted to the Grantee under this Deed, the Reversioner may give the

Grantor reasonable notice being not less than two calendar months' written notice of that failure and the Grantor shall subject to the provisions of this Schedule 3 (*Insurance provisions*):

- (i) immediately in the case of emergency; and
 - (ii) otherwise as soon as practicable following the expiry of the notice begin and then within a reasonable time complete to remedy that failure.
- (b) If the Grantor (not being prevented or otherwise excused from doing so under this Schedule 3 (*Insurance provisions*)) does not comply with paragraph 8(a) within a reasonable time the Reversioner may enter the Accessway and carry out any works or do anything else which may be needed to remedy the Grantor's failure.
- (c) Any costs plus irrecoverable VAT properly incurred by the Reversioner by reason of this paragraph 8 (*Reversioner's right to repair in default*) will be a debt due from the Grantor to the Reversioner and payable within seven working days of written demand.

**Schedule 4
Rights**

**Part 1
Basement Rights**

1 Basement Rights

From the date that the respective rights become exercisable under the Basement Lease the right for the Reversioner as Landlord under the Basement Lease and its successors in title to the reversion to the Basement Lease and all others authorised by it for the time being in common with the Grantor and all others entitled thereto from time to time and authorised by it to pass and repass with or without vehicles to and from the public highway known as New Kent Road over and along the Accessway to and from the Basement Premises for all purposes under the Basement Lease.

**Part 2
Rights of Commercial Access**

1 Rights of Commercial Access

From the date that the Reversioner has completed the break out works under schedule 2 part 2 paragraph 5 of the Basement Lease, the non-exclusive right for the Grantee and its successors in title and occupiers for the time being of the Dominant Land and all persons authorised by it in common with the Grantor and all others authorised by it to pass and repass for Commercial Purposes with vehicles and with or without equipment goods and machinery to and from the public highway known as New Kent Road over and along the Accessway to and from the Service Yard and Dominant Land.

**Schedule 5
Conditions**

**Part 1
General Conditions**

- 1 The exercise of the Basement Rights and Rights of Commercial Access are subject to the conditions that:
 - (a) the Grantor shall be entitled at any time to temporarily restrict the exercise of any right where it is necessary in or to enable the Grantor to undertake works of repair, maintenance, renewal or replacement of the Accessway;
 - (b) the Grantee and all others so entitled shall at all times take reasonable steps to ensure that minimal interference and interruption as is reasonably practicable is caused to the Grantor's use of the Accessway for the servicing of the Development on the Property and shall not cause any obstruction to the Accessway; and
- 2 The Grantee and all others so entitled shall cause as little disturbance, damage and inconvenience as possible to the Grantor in exercising the rights under this Deed, shall use all reasonable endeavours not to cause any damage to the Accessway and will promptly make good all damage done to the Accessway to the Grantor's reasonable satisfaction.
- 3 In exercising the Basement Rights and Rights of Commercial Access under this Deed the following principles shall apply and in the case of conflict between these principles and the Servicing Management Plan, these principles shall take precedence:
 - (a) the Grantee shall have priority of access for vehicles passing along the Accessway to pass through the Service Yard over vehicles of the Grantor accessing the Tenant's Loading Bays and Communal Loading Bays and those of the Grantee accessing the Communal Loading Bays;
 - (b) in respect of the use of the Accessway by either the Grantor for the purposes of accessing the Tenant's Loading Bays or the Grantee or Grantor for accessing the Communal Loading Bays and motor vehicles using the Accessway to access the upper levels of the adjoining basement area on the Development, then programming of access will be allocated on a first come, first served basis and neither the Grantor nor the Grantee shall have priority over the Accessway; and
 - (c) paragraph 3(a) and paragraph 3(b) are subject to the overriding priority of use of the Accessway by utility companies, refuse collectors and providers of similar services serving the Development who shall have priority over the Accessway over both the Grantor and Grantee.

**Part 2
Works Conditions**

The exercise of the Basement Rights is subject to the following conditions.

- 1 The Reversioner is to keep the Grantor and all other persons deriving title under it indemnified against all claims, liabilities and costs sustained or incurred from or incidental to the exercise or purported exercise of the Basement Rights insofar as they relate to passing over the Accessway for the purposes of carrying out works by the Reversioner under the Basement Lease, the Grantor or such other persons using reasonable endeavours to mitigate their loss.
- 2 Where the Reversioner exercises such rights after the Early Access Date it shall in addition use the Accessway in such a manner so as to cause as little disturbance, disruption and delay as practicable to the regular carrying out and completion of the works and as little damage to such works which the Grantor may still be in the course of undertaking on the Accessway and Basement Premises in connection with the Development, Market Square, Market Store and Excluded Fit Out Works and shall make good any damage done to such works to the Grantor's reasonable satisfaction.

Part 3 Grant Conditions

Prior to and in order for the Grantor to consider granting to the Grantee or Nominee a Deed of New Easement the Grantee shall comply with the following conditions.

- 1 The Grantee shall provide the Grantor with official copies of the Grantee's or Nominee's title to so much of the New Dominant Land as is registered and shall provide evidence of title satisfactory to the Grantor (acting reasonably) in respect of so much of the New Dominant Land as is unregistered.
- 2 The Grantee shall provide the Grantor with its reasonable estimate of the volume of additional traffic which will pass through the Accessway following completion of the relevant Deed of Easement.
- 3 The Grantee (in the case of a Deed of New Easement to be granted to the Grantee) or the Nominee (in the case of a Deed of New Easement being granted to a Nominee) shall indemnify the Grantor (so that the Grantor is held harmless against costs but not otherwise) all of its reasonable fees in connection with considering and completing the Deed of New Easement, up to a capped sum of £1,000.00 plus VAT in the first year of the Easement period and thereafter up to the sum of £1,000.00 x ^B/_A plus VAT where:

"A" means the monthly figure shown in the Index in the month immediately preceding the date of this Deed or if none, in the year of the date of this Deed;

"B" means the monthly figure in the Index last published before the Deed of New Easement is completed pursuant to Clause 11 (*Grant of Deed of New Easement*); and

"Index" means the all items retail prices index published by the Office for National Statistics or if such index shall cease to be published such other Index as agreed by the Grantor and Grantee or in the absence of agreement determined by the Expert in accordance with Clause 8 (*Expert determination*),

provided that where the Grantee or any nominee requests the Grantor to consider amendments to the form of Deed of New Easement then the Grantor's costs plus VAT shall not be capped but paid on an indemnity basis.

- 4 The parties agree and acknowledge for the purposes of section 9(2) of the Prescription and Accumulations Act 1964 that the indemnity in paragraph 3 to the Grantor is solely for the purposes of holding the Grantor harmless against the costs it incurs in granting the Deeds of New Easement and is not intended to constitute valuable consideration or to afford any benefit to the Grantor of any kind that will constitute or be construed as constituting valuable consideration for the purposes of section 9(2) it being the express stated intention of the parties that the option granted herein shall fall outside of the provisions of section 9(2) and that section 1 of the 1964 Act shall apply. It is further agreed and acknowledged that if at any time the indemnity to pay the Grantor's costs is held or declared to constitute valuable consideration for the exercise of the option by any competent authority or is contended to be such by the Grantor, Schedule 5, Part 3 (*Grant Conditions*) paragraph 3 and paragraph 4 shall be deemed to be severed from and shall not affect the validity of the option in Clause 11 (*Grant of Deed of New Easement*) nor shall paragraphs 3 and 4 of this Schedule 5 Part 3 be construed in any way so as to render the perpetuity period applicable to the option less than 80 years from the date of this Deed.

EXECUTION PAGE

Signed as a deed by)
[•])
acting by)

Director

Director/Secretary

The common seal of)
THE MAYOR AND BURGESSES OF THE)
LONDON BOROUGH OF SOUTHWARK)
was hereto affixed in the presence of:)

Authorised Signatory

**Appendix 1
Draft form of Deed of New Easement**

DATED [•]

[•]
as Grantor

[•]
as Grantee

DEED OF NEW EASEMENT

in respect of Accessway at 50 New Kent Road,
Elephant and Castle, London SE1

***berwin leighton paisner**

Berwin Leighton Paisner LLP
Adelaide House London Bridge London EC4R 9HA
tel +44 (0)20 7760 1000 fax +44 (0)20 7760 1111

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LAND REGISTRY**Land Registration Act 2002**

| | |
|---------------------------------------|--|
| County and District or London Borough | London Borough of Southwark |
| Title Numbers | SGL 500495 [OTHER TITLE NUMBERS OF DOMINANT LAND TO BE FILLED IN ONCE THE LAND IS IDENTIFIED IN ACCORDANCE WITH [CLAUSE 6.4.1 OF THE AGREEMENT FOR LEASE] |
| Property | The Property as defined herein. |

DATED [•] 2008**PARTIES**

- (1) The Grantor
- (2) The Grantee

OPERATIVE PROVISIONS**1 DEFINITIONS AND INTERPRETATION**

1.1 In this Deed:

"Accessway" means that part of the Property at lower basement, upper basement and ground level shown shaded green on the plans in Appendix 2 including the ramps, entrance barriers, mechanical and electrical ventilation systems, security controls, internal plaster or other surfaces of the loadbearing walls and columns, non-loadbearing walls, flooring, raised floors and floor screeds down to the joists or structural parts supporting the flooring, the plaster of surfaces of ceilings and false ceilings and voids between the ceilings and false ceilings, but excluding the supports, joists, beams, columns, timbers, foundations, structural, supporting and loadbearing walls and columns.

"Basement Lease" means a lease dated the same date as this Deed entered into between (1) the Grantor (2) the Grantee in respect of the Basement Premises.

"Basement Premises" means all those Premises at lower basement and upper basement level shown coloured red on the plan in Appendix 3 and each and every part thereof (including the supports and structural supports and parts, joists, beams, columns, timbers, foundations and structural supporting and load bearing walls and framework, external walls, lifts, lift shafts, loading and unloading equipment), the Communal Loading Bays, the Tenant's Loading Bay, Loading Dock and Service Yard and additions and improvements thereto, fixtures and fittings and appurtenances in and about the Basement Premises and the Pipes and plant and machinery within and exclusively serving the Basement Premises and including the structural waterproof membrane and slab and more fully defined in the Basement Lease.

"Commercial Purposes" means access over the Accessway for servicing the commercial areas in the Dominant Land and specifically excludes the servicing or access to and from any residential accommodation within such areas.

"Communal Loading Bays" means those loading bays shown hatched red on the plan in Appendix 2.1.

"Development" as defined in the Basement Lease.

"Dominant Land" means [•]. [TO BE FILLED IN]

"Easement Period" means [the term of [•] years commencing on [•] [THE DATE HEREOF]. [TO BE COMPLETED AS PER AGREEMENT FOR LEASE] [AND DETERMINING ON [•]] [DATE TO BE THE SAME AS THE BASEMENT LEASE IE CO-TERMINUS WITH BASEMENT LEASE]

"Encumbrances" means those restrictions, stipulations, covenants, rights, reservations, provisions and other matters contained, imposed by or referred to in the documents, particulars of which are set out in Schedule 2 (*Encumbrances*).

"General Conditions" means those conditions set out in Schedule 5 (*General Conditions*).

"Goods In Manager" means the manager employed by the Grantor from time to time and notified to the Grantee to oversee the operations of the Service Yard and to ensure its smooth operation in accordance with the Servicing Management Plan and includes any such alternative goods-in manager as may be appointed under clause 3.15.4 of the Basement Lease.

"Grantee" means [•].

"Grantor" means [•]. [TO BE COMPLETED PRIOR TO COMPLETION OF THIS DEED BEING THE REGISTERED PROPRIETOR OF THE PROPERTY]

"Insured Risks" has the meaning given to it in Schedule 3 (*Insurance provisions*).

"Pipes" as defined in the Basement Lease.

"Plans" means the plans annexed to this Deed.

"Plant" as defined in the Basement Lease.

"Property" means the land owned by the Grantor and registered at the Land Registry under title number SGL500495.

"Reversioner" means the [Mayor and Burgesses of the London Borough of Southwark] or its successors in title to the reversion of the Basement Lease.

"Rights of Commercial Access" means the rights set out in Schedule 4 (*Rights of Commercial Access*).

"Service Yard" means that part of the Basement Premises shaded yellow on the plan in Appendix 2.1 excluding any part of such area as may contain structural columns or the Tenant's Loading Bays.

"Servicing Management Plan" means the management plan attached as Appendix 4 as varied from time to time in accordance with clause 3.15.2 of the Basement Lease.

"Tenant's Loading Bays" means those loading bays exclusively for the use of the Grantor as are hatched blue and shaded yellow on the plan in Appendix 2.1 or such other bays from time to time for the exclusive use of the Grantor in accordance with the Basement Lease.

"Tenant's Rules and Regulations" means the rules and regulations set out in schedule 3 of the Basement Lease as varied from time to time.

"Tunnels" as defined in the Basement Lease.

"Uninsured Risks" has the meaning given to it in Schedule 3 (*Insurance provisions*).

"VAT" means value added tax as referred to in the Value Added Tax Act 1994 or any tax of a similar nature introduced in addition or substitution to it.

1.2 This Deed is to be read and construed in conjunction with the Basement Lease and any word and expression herein contained shall have the same meaning, unless the express contrary intention appears, as ascribed thereto in the Basement Lease.

2 EASEMENT

2.1 The Grantor on its behalf and its successors in title to the Accessway grants to the Grantee with full title guarantee (subject to the Encumbrances) the right from the date provided for in Schedule 4 to the intent that it shall benefit the Dominant Land and each and every part thereof (as is capable of being benefited) the Rights of Commercial Access subject to complying with the General Conditions and the provisions of Clause 4 (*Obligations*) and Clause 6 (*Grantee's covenants*).

2.2 Subject to Clause 2.1 the Rights of Commercial Access shall having commenced endure for the Easement Period.

3 ALTERATION AND VARIATIONS TO THE ACCESSWAY

It is hereby agreed and declared that the Grantor may, subject to the provisions below at any time in the event of the redevelopment of the Property both temporarily or permanently alter the extent, route or location of the Accessway with the prior written consent of the Grantee which shall not be unreasonably withheld or delayed provided that it is agreed in particular without prejudice to the generality of the foregoing it will not be reasonable for the Grantee to withhold its consent in the circumstances where (by an objective standard) the Rights of Commercial Access are not materially adversely affected and:

- (a) such alteration is such that the alternative rights are materially no less convenient than those granted by this Deed; and
- (b) in altering and relocating the Accessway, the Grantor does not cause any interruption to the access of the Grantee to the Service Yard and Dominant Land.

4 OBLIGATIONS

The Grantor and Grantee covenant to perform their obligations contained in the Schedules to this Deed.

5 SERVICING MANAGEMENT PLAN

The Grantor shall at all times comply with and use reasonable endeavours to procure that any licensee or person authorised by the Grantor using the Accessway, complies with the Servicing Management Plan and with all instructions issued by the Goods In Manager and (to the extent that such compliance would not materially adversely affect their use of the Basement Premises) with the Tenant's Rules and Regulations.

6 GRANTEE'S COVENANTS

The Grantee covenants to the Grantor as follows:

- (a) to pay a due proportion of the insurance monies expended by the Grantor in accordance with the provisions of Schedule 3 (*Insurance provisions*) and comply with its obligations and covenants on behalf of the Grantee set out therein;
- (b) the Grantee shall and shall use all reasonable endeavours to procure that any licensee or person authorised by it in exercise of the rights granted pursuant to this Deed complies at all times with the Servicing Management Plan and with all instructions issued by the Goods-In Manager and (to the extent that such compliance would not materially adversely affect the Grantee's use of the Accessway) with the Tenant's Rules and Regulations;
- (c) the Grantee shall pay the Grantor a fair and reasonable proportion of the costs plus irrecoverable VAT of maintenance, management, repair and renewal of the Accessway. The fair and reasonable proportion will be ascertained by having regard to the frequency and volume of usage of the Accessway by the Grantee and in the event of dispute either party may refer the dispute for expert determination under Clause 8 (*Expert determination*);
- (d) not to deposit or permit to be deposited any waste rubbish or refuse in the Accessway;
- (e) not to permit anything or suffer anything to be done in or about the Accessway which will in any way cause or tend to cause annoyance injury damage inconvenience nuisance or disturbance to the Grantor and the owners or occupiers of the Development on the Property;
- (f) at all times during the exercise of the Rights of Commercial Access, to comply with the provisions of Clause 4 (*Obligations*) and this Clause 6 (*Grantee's covenants*) and the General Conditions; and
- (g) where the Grantee at any time authorises any third party on the Dominant Land to exercise the Rights of Commercial Access it shall notify the Grantor thereof in writing stating the identity of such party.

7 **VAT**

- 7.1 Any consideration paid or given for taxable supplies or goods or services under or in connection with this Deed is to be treated as exclusive of VAT. The recipient of any such supply is, in addition to the consideration for the supply, to pay the supplier an amount equal to any VAT which is chargeable in respect of the supply in question on the later of:
- (a) the day on which the consideration for the supply is paid or given; and
 - (b) the production of a proper VAT invoice.

- 7.2 Where a party is entitled under this Deed to recover from the other party the cost of goods and services supplied to the other party, but in respect of which the party makes no taxable supply to the other party, to indemnify the party against so much of the input tax on the cost for which the party is not entitled to credit allowance under section 26 or a refund under section 33 of the Value Added Tax Act 1994.

8 **EXPERT DETERMINATION**

- 8.1 Without prejudice to the other provisions of this Clause 8.1, (in the event of any dispute arising the Grantee and Grantor shall endeavour to resolve it amicably but if the parties fail to resolve the dispute amicably, the dispute shall be resolved in accordance with the provisions of this Clause 8.1 unless either party takes proceedings in any court, public enquiry or other hearing).
- 8.2 If any dispute arises in connection with this Deed, directors or other senior representatives of the Grantee and Grantor hereto with authority to settle a dispute will within five Working Days of a written request from one party to the other, meet in good faith effort to resolve the dispute.
- 8.3 In the event that the dispute is not resolved in accordance with Clause 8 (*Expert determination*), the parties hereto may refer the dispute to an expert being an independent person who is professionally qualified and has substantial recent experience in respect of the subject matter of the dispute for not less than ten years (the "Expert") to be agreed between the Grantee and Grantor or at the request and option of either of them to be nominated at the joint expense by or on behalf of the president for the time being of the Royal Institution of Chartered Surveyors and the Expert shall act as an Expert and not as an arbitrator and the Expert's decision shall (save in the case of manifest error) be final and binding on the parties hereto and his costs shall be within his award or discretion or failing such a determination borne by both parties in equal shares.
- 8.4 The Expert shall be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute from the date of his appointment to act.
- 8.5 The Expert shall be required to give notice to each of the parties inviting them to submit to him within ten Working Days of such notice, written submissions and supporting material and shall afford to each of the parties an opportunity to make a counter-submission within a further five Working Days in respect of any such submission and material and his decision shall be given in writing with reasons and in absence of manifest error shall be binding on the parties.
- 8.6 The Expert shall supply the parties copies of all evidence, information and advice which he obtains for the purpose of determining the dispute and the parties shall

be entitled to make written representations to the Expert with regard to them within ten Working Days of the parties' respective receipt of such copies.

- 8.7 In the absence of any directions by the Expert as to his costs, they shall be borne equally between the parties and the parties shall bear their own costs.

9. BENEFIT OF EASEMENT AND TRANSFER OF DOMINANT LAND AND REVERSION TO THE BASEMENT LEASE

- 9.1 The rights granted pursuant to this Deed are for the benefit of the Dominant Land. The Grantee covenants with the Grantor that it will not transfer any part of the Dominant Land without:

- (a) giving reasonable prior written notice to the Grantor of its successors in title (in this Clause 9 (*Benefit of easement and transfer of Dominant Land and reversion to the Basement Lease*) meaning an assignee or transferee of the Grantee's interest in any part of the Dominant Land) who shall have the benefit of this Deed and of the Rights of Commercial Access from time to time; and
- (b) procuring from the Transferee and delivering to the Grantor a deed of covenant in favour of the Grantor covenanting substantially in the form of the deed of covenant in Appendix 1.

- 9.2 The Grantee shall permit the Grantor to register a notice on the charges register and a restriction on the proprietorship registers of the Dominant Land and reversion to the Basement Lease in the following form:

"no disposition of the registered estate is to be registered by the proprietor of the registered estate without a certificate signed on behalf of the proprietor by the proprietor or its conveyancer that the provisions of Clause 9 of a Deed of Easement dated [●] and made between (1) The Grantor and (2) the Grantee have been complied with."

10 REGISTRATION

- 10.1 The Grantor, subject to the Grantee providing a completed Form AN1 in respect of the same, shall provide to the Grantee evidence of its consent to the application by the Grantee to register an agreed notice of this Deed on the Charges Register of the Grantor's Property, by completion and signature by the Grantor of panel 15 of Form AN1 provided.

- 10.2 (Subject to the Grantor providing a completed form RX1 in respect of the same) the Grantee will immediately following the date of completion of this Deed provide to the Grantor evidence of its consent to an application to register the restriction on the Proprietorship Register of the Dominant Land and reversion to the Basement Lease by completion by the Grantee of the relevant panel on form RX1 provided and will give such assistance as may reasonably and properly be required by the Grantor for such purpose.

11 LIMITATION OF EFFECT

Save for the express provisions contained in this Deed, nothing in this Deed shall by operation of law or otherwise operate or be deemed to operate or confer upon the Grantee or any person deriving title under it any easement, quasi-easement, right or privilege whatsoever over and against the Grantor's Property which would

or might restrict or prejudicially affect the future use, development, construction, building, alteration, demolition, rebuilding and redevelopment of the Property.

This Deed has been executed as a deed and delivered on the date stated at the beginning of this Deed.

**Schedule 1
The Dominant Land**

[DEFINE NEW DOMINANT LAND]

**Schedule 2
Encumbrances**

[Those matters contained in the register of the Property at the Land Registry under title number SGL500495 and the following documents:

| Date | Description | Parties | |
|---------------------------------|--|---|--------|
| <i>3 October</i> August 2008 | Eastern and Western Margin Lease | (1) Mayor and Burgesses of the London Borough of Southwark (2) Eadon Limited | HS LLP |
| [•] | [Freehold Transfer] | [•] | |
| [•] | Basement Lease | [•] | |
| [•] | CRT Agreement | [•] | |
| [•] | Market Square Lease | [•] | |
| [•] | Relevant Section 106 Agreement | [•] | |
| [•] | Other relevant Statutory Agreements/Highways Agreement and Road Closure Orders | [•] | |
| [•] | List all Deeds of Easement granted prior to this Deed | [•] | |

TO BE UPDATED TO REFLECT THOSE OF THE DOCUMENTS COMPLETED IN ACCORDANCE WITH THE AGREEMENT FOR LEASE WHICH AFFECT/BENEFIT THE PROPERTY.]

Schedule 3 Insurance provisions

1 Insured Risks and other definitions

- (a) "**Insured Risks**" means the risks and other contingencies against which the Accessway are required to be, or which may be, insured under this Deed, but subject to any exclusions, limitations and conditions in the policy of insurance.
- (b) Insured Risks shall subject to paragraph 1(c) include (without limitation) fire, lightning, explosion, storm, tempest, flood, bursting and overflowing of water tanks, apparatus or pipes, earthquake, aircraft (but not hostile aircraft) and devices dropped from aircraft, riot and civil commotion, malicious damage, subsidence, heave, landslip, terrorism and such other risks as the Grantor (acting reasonably) may consider it prudent to insure.
- (c) If a risk or contingency itemised, or otherwise included, as an Insured Risk, can no longer be insured in the London Insurance Market, the risk or contingency shall cease to be treated as an Insured Risk from the time that cover is withdrawn until cover again becomes available in the London Insurance Market.
- (d) In this Schedule 3 (*Insurance provisions*):
 - (i) references to the Accessway includes alterations, additions and improvements only if made by or at the expense of the Grantor;
 - (ii) references to the act or default of the Grantee include the act or default of any person deriving title under or through the Grantee or its or their respective employees, agents and visitors and those authorised by it (except for the Grantor and any person deriving title under or through the Grantor); and
 - (iii) references to "**vitiation by the Grantee**" include any event occurring by the act or default of the Grantee (to be interpreted as in paragraph 1(d)(ii)) as a result of which the insurance monies otherwise payable under the policy of Insurance of the Grantor become wholly or partially irrecoverable, and "**vitiate**" and "**vitiated**" have corresponding meanings;
 - (iv) "**Uninsured Risks**" means
 - (A) any risk which does not fall within the risks specifically identified in the definition of "**Insured Risks**";
 - (B) any risks, or some aspect of any of them, which would be covered by risks specifically identified in the definition of "**Insured Risks**" but which:
 - (1) (are excluded from doing so for the time being by reason of withdrawal of cover by the insurer which is not otherwise available to be insured on the London Insurance Market; or
 - (2) is withdrawn from cover by the Grantor on the grounds that cover cannot be placed on the London Insurance Market at reasonable commercial rates and on reasonable commercial conditions; or

- (3) is excluded or partially excluded from cover in relevant circumstances by reason of the operation of policy conditions,

but

- (v) an uninsured risk does not become an Uninsured Risk for the purposes of this Lease by reason only of:
- (A) normal exclusions provisions in relation to a level of excess liability;
 - (B) rejection by the insurer of liability, or some part of it, due to a vitiation by the Grantor; or
 - (C) infringement by the Grantor of the policy conditions for the maintenance of cover.

2 **Grantor's obligation to insure and reinstate**

- (a) The Grantor will keep the Accessway insured with an insurer of repute against Insured Risks and other items referred to in paragraph 1(a) (subject to paragraph 1(c)) for the full cost of reinstatement, subject to such uninsured excess as the insurer may reasonably apply.
- (b) Subject to the provisions of paragraph 2(d) and paragraph 2(e), following damage to or destruction of the Accessway by an Insured Risk, the Grantor will diligently apply, or procure the application of, the proceeds of the insurance covering reinstatement and rebuilding costs for those purposes to reinstating the Accessway and will make good any deficiency in the proceeds of the insurance out of its own resources.
- (c) Subject to provisions of paragraph 2(d)(i), paragraph 2(d)(iii), paragraph 2(d)(iv) and paragraph 2(e) following damage to or destruction of the Accessway by an Uninsured Risk, the Grantor will use all reasonable endeavours to reinstate the Accessway to such a state of repair sufficient to make them safe and usable for the purposes of the Rights of Commercial Access.
- (d) The obligations of the Grantor in paragraph 2(b) and paragraph 2(c) do not apply:
- (i) if the Grantor is unable, after using its reasonable endeavours to do so, to obtain any requisite planning permission or other consents for the reinstatement or rebuilding of the Accessway or of an Accessway of similar size, character and amenity; or
 - (ii) in relation to an Insured Risk, if the Grantor's Insurance is vitiated by the Grantee unless and until the Grantee has paid all sums due from it under paragraph 3(b); or
 - (iii) in relation to Uninsured Risks the Grantee has not exercised the Rights of Commercial Access at any point during the ten years immediately preceding the date of damage or destruction; or
 - (iv) the date of the damage or destruction by an Insured or Uninsured Risk is within the last 50 years of the Easement Period and as at that date the Grantee is not actually exercising the Rights of Commercial Access.
- (e) Where the Accessway is substantially damaged or destroyed, the Grantee may not object to the reinstatement or rebuilding of the Accessway in a form which is not

identical to the Accessway immediately before the damage or destruction occurred, if the Accessway as reinstated or rebuilt is safe and usable for the purposes of the Rights of Commercial Access.

3 Grantee's liability for insurance premiums

- (a) The Grantee shall pay to the Grantor on demand the due proportion (determined in accordance with paragraph 3(e)) of the insurance premiums incurred by the Grantor.
- (b) Insurance premiums are to include all monies expended, or required to be expended by the Grantor in effecting and maintaining cover against:
 - (i) Insured Risks;
 - (ii) such professional fees as may be incurred in connection with rebuilding or reinstatement of the Accessway;
 - (iii) the costs of demolition, shoring up, and site clearance works;
 - (iv) employers', third party and public liability risks;
 - (v) value added tax liability on such items; and
 - (vi) tax charged on the premiums for these insurances.
- (c) The insurance cover may take into account cover for the effects of inflation and escalation of costs and fees.
- (d) The Grantee shall pay to the Grantor the due proportion of the professional fees for insurance valuations of replacement cost carried out at reasonable intervals and is no more than once in every third year.
- (e) The due proportion of the insurance premiums for which the Grantee is liable is to be such proportion of the premiums incurred with respect to the Accessway as may properly and fairly be attributed to the Grantee by the Grantor or the Grantor's surveyor, and the apportionment may as appropriate take into account:
 - (i) the different uses to which various parts of the Accessway are put and the degree of special risk associated with those uses;
 - (ii) the cost of complying with requirements of the insurer;
 - (iii) an increase in the insurance premiums or expense of renewal resulting from any act or omission of the Grantee or any person as licensed or authorised by it;
 - (iv) risks and contingencies that apply only to the Grantee or the Grantor;
 - (v) the frequency, type and volume of usage of the Rights of Commercial Access, as a proportion of the total usage of the rights exercised over the Accessway by the Grantee and all those authorised by it and the Grantor and all those authorised by it; and
 - (vi) such other relevant matters as may properly affect the apportionment of insurance premiums between the various users of the Accessway,

and the proper decision of the Grantor or the Grantor's surveyor (acting fairly) in making apportionments (except in the case of manifest error) is to be conclusive. In this Schedule 3 (*Insurance provisions*) "due proportion" is to be interpreted accordingly.

- (f) The Grantor may retain any discount on the insurance premiums or commission offered to it by its insurer for its exclusive benefit.

4 Grantee's obligations in relation to insurance cover

- (a) The Grantee will not do anything which may render void or voidable the insurance of the Grantor on the whole or a part of the Accessway.
- (b) If the insurance of the Grantor is vitiated by the Grantee, the Grantee shall pay to the Grantor on demand a sum equal to the amount of the insurance monies which has in consequence become properly irrecoverable.
- (c) The Grantee shall provide sufficient fire extinguishers of the type approved by the Grantor and shall adopt such other reasonable precautions against Insured Risks as the Grantor or its insurers may consider appropriate in relation to the Tunnels constructed to link the Dominant Land and or New Dominant Land to the Basement Premises.
- (d) The Grantee may not insure the Accessway for any of the Insured Risks in such a manner as would permit the insurer of the Grantor to average the proceeds of insurance or cancel insurance cover.

5 Benefit of insurance proceeds

All insurance proceeds belong to the Grantor.

6 Good faith

The Grantor shall act in good faith, and shall procure that the Grantor's surveyor acts in good faith, towards the Grantee in exercising each of its rights and obligations under this paragraph 6 (*Good faith*).

Schedule 4
Rights of Commercial Access

From the date that the Reversioner has completed the break out works under paragraph 5 of schedule 2 part 2 of the Basement Lease, the non-exclusive right for the Grantee and its successors in title and occupiers for the time being of the Dominant Land and all persons authorised by it in common with the Grantor and all others authorised by it to pass and repass for Commercial Purposes with vehicles and with or without equipment goods and machinery to and from the public highway known as New Kent Road over and along the Accessway to and from the Service Yard and Dominant Land.

Schedule 5 General Conditions

- 1 The exercise of the Rights of Commercial Access are subject to the conditions that:
 - (a) the Grantor shall be entitled at any time to temporarily restrict the exercise of any right where it is necessary in or to enable the Grantor to undertake works of repair, maintenance, renewal or replacement of the Accessway; and
 - (b) the Grantee and all others so entitled shall at all times take reasonable steps to ensure that minimal interference and interruption as is reasonably practicable is caused to the Grantor's use of the Accessway for the servicing of the Development on the Property and shall not cause any obstruction to the Accessway.
- 2 The Grantee and all others so entitled shall cause as little disturbance, damage and inconvenience as possible to the Grantor in exercising the rights under this Deed, shall use all reasonable endeavours not to cause any damage to the Accessway and will promptly make good all damage done to the Accessway to the Grantor's reasonable satisfaction.
- 3 In exercising the Rights of Commercial Access under this Deed the following principles shall apply and in the case of conflict between these principles and the Servicing Management Plan, these principles shall take precedence:
 - (a) the Grantee shall have priority of access for vehicles passing along the Accessway to pass through the Service Yard over vehicles of the Grantor accessing the Tenant's Loading Bays and Communal Loading Bays and those of the Grantee accessing the Communal Loading Bays;
 - (b) in respect of the use of the Accessway by either the Grantor for the purposes of accessing the Tenant's Loading Bays or the Grantee or Grantor for accessing the Communal Loading Bays and motor vehicles using the Accessway to access the upper levels of the adjoining basement area on the Development, then programming of access will be allocated on a first come, first served basis and neither the Grantor nor the Grantee shall have priority over the Accessway; and
 - (c) paragraph 3(a) and paragraph 3(b) are subject to the overriding priority of use of the Accessway by utility companies, refuse collectors and providers of similar services serving the Development who shall have priority over the Accessway over both the Grantor and Grantee.

Signed as a deed by)
EADON LIMITED)
acting by)

Director

Director/Secretary

Signed as a deed by)
THE MAYOR AND BURGESSES OF THE)
LONDON BOROUGH OF SOUTHWARK)
acting by:)

Authorised Signatory

**Appendix 1
Form of Grantee's Deed of Covenant**

To [the Grantor]

Whereas

- 1 We the undermentioned [transferee] have on the same date as this Deed of Covenant acquired the [Dominant Land] known as [•] as defined in a Deed of Easement dated [•] and entered into between (1) [•] and (a) [•] ("Deed of Easement").
- 2 Pursuant to clause [9] of the Deed of Easement no transfer of the [Dominant Land] is to be registered without procuring that any transferee delivers a deed of covenant to the Grantor in compliance with clause 9 of the Deed of Easement.

Now therefore, we [transferee] in compliance with such requirements hereby covenant in favour of [the Grantor] as follows:

- (a) that from the date of the completion of the transfer of the [Dominant Land] to us we shall observe perform and comply with all of the liabilities, duties and obligations on the part of the Grantee whatsoever under or on connection with the Deed of Easement and will be bound by its terms in all respects as if we had originally been a party to the Deed of Easement in place of the Grantee; and
- (b) that we shall not transfer the [Dominant Land] without complying with the provisions of clause 9 of the Deed of Easement and without procuring that the transferee delivers to the Grantor a deed of covenant substantially in the form of the deed of covenant in Appendix 1 of the Deed of Easement.

Executed and delivered as a deed this [] day of []

[Execution clause]

**Appendix 2
Accessway plans**

1

2

2.1 Accessway Plan- Basement [**SAME AS PLAN IN APPENDIX 4.1 OF MAIN DEED**]

2.2 Accessway Plan- Ramp [**SAME AS PLAN IN APPENDIX 4.2 OF MAIN DEED**]

2.3 Accessway Plan- Sectional View [**SAME AS PLAN APPENDIX 4.3 OF MAIN DEED**]

**Appendix 3
Basement Premises**

3

[THE SAME AS THE PLAN IN APPENDIX 5 OF THE MAIN DEED]

**Appendix 4
Servicing Management Plan**

**[THE SAME AS THE SERVICING MANAGEMENT PLAN IN APPENDIX 6 OF
THE MAIN DEED]**

**Appendix 2
Form of Grantor's Deed of Covenant**

To : [Mayor and Burgesses of the London Borough of Southwark] [the Reversioner from time to time]

Whereas

- 1 We the undermentioned [transferee] have on the same date as this Deed of Covenant acquired the [freehold on which the Accessway is situate] [leasehold comprising the Accessway] (as defined in a Deed of Easement dated [•] and entered into between (1) [•] and (a) [•] ("Deed of Easement").
- 2 Pursuant to the provisions of clause 10 of the Deed of Easement no transfer of the [freehold on which the Accessway is situate] [leasehold interest in the Accessway] is to be registered without procuring that any transferee delivers a deed of covenant to the Reversioner in compliance with clause 10 of the Deed of Easement.

Now therefore, we [transferee] in compliance with such requirements hereby covenant in favour of [the Reversioner] as follows:

- (a) that from the date of the completion of the transfer of [the freehold/leasehold of the Accessway] to us we shall observe perform and comply with all of the liabilities, duties and obligations on the part of the Grantor whatsoever under or in connection with the Deed of Easement and will [subject to the provisions of Clause 10.3 thereof] be bound by its terms in all respects as if we had originally been a party to the Deed of easement in place of the Guarantor; and
- (b) that we shall not transfer [the freehold of that part of the Property on which the Accessway is situate] [the leasehold interest in the Accessway] without complying with the provisions of clause 10 of the Deed of Easement and without procuring that the transferee delivers to the Reversioner a deed of covenant substantially in the form of the deed of covenant in Appendix 2 of the Deed of Easement.

Executed and delivered as a deed this [] day of []

[Execution clause]

**Appendix 3
Form of Grantee's/Reversioner's Deed of Covenant**

To [the Grantor]

Whereas

- 1 We the undermentioned [transferee] have on the same date as this Deed of Covenant acquired the [reversion to the Basement Lease] [Dominant Land] known as [•] as defined in a Deed of Easement dated [•] and entered into between (1) [•] and (a) [•] ("Deed of Easement").
- 2 Pursuant to clause [9] of the Deed of Easement no transfer of the [reversion to the Basement Lease] [Dominant Land] is to be registered without procuring that any transferee delivers a deed of covenant to the Grantor in compliance with clause 9 of the Deed of Easement.

Now therefore, we [transferee] in compliance with such requirements hereby covenant in favour of [the Grantor] as follows:

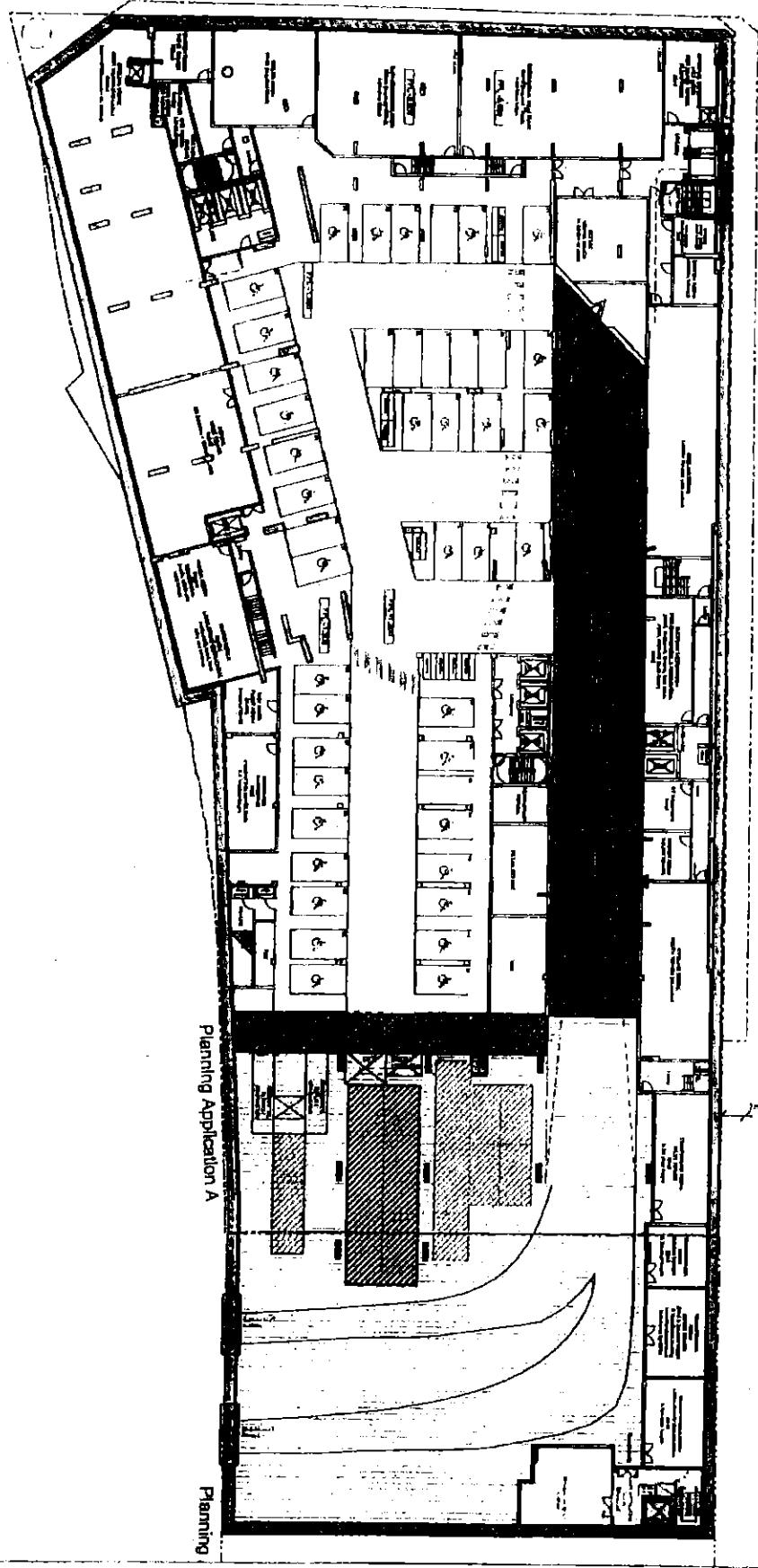
- (a) that from the date of the completion of the transfer of [reversion to the Basement Lease] [Dominant Land] to us we shall observe perform and comply with all of the liabilities, duties and obligations on the part of the Grantee whatsoever under or in connection with the Deed of Easement and will be bound by its terms in all respects as if we had originally been a party to the Deed of Easement in place of the Grantee; and
- (b) that we shall not transfer the [the reversion to the Basement Lease] [Dominant Land] without complying with the provisions of clause 9 of the Deed of Easement and without procuring that the transferee delivers to the Grantor a deed of covenant substantially in the form of the deed of covenant in Appendix 3 of the Deed of Easement.

Executed and delivered as a deed this [] day of []

[Execution clause]

**Appendix 4.1
Accessway plan- Basement**

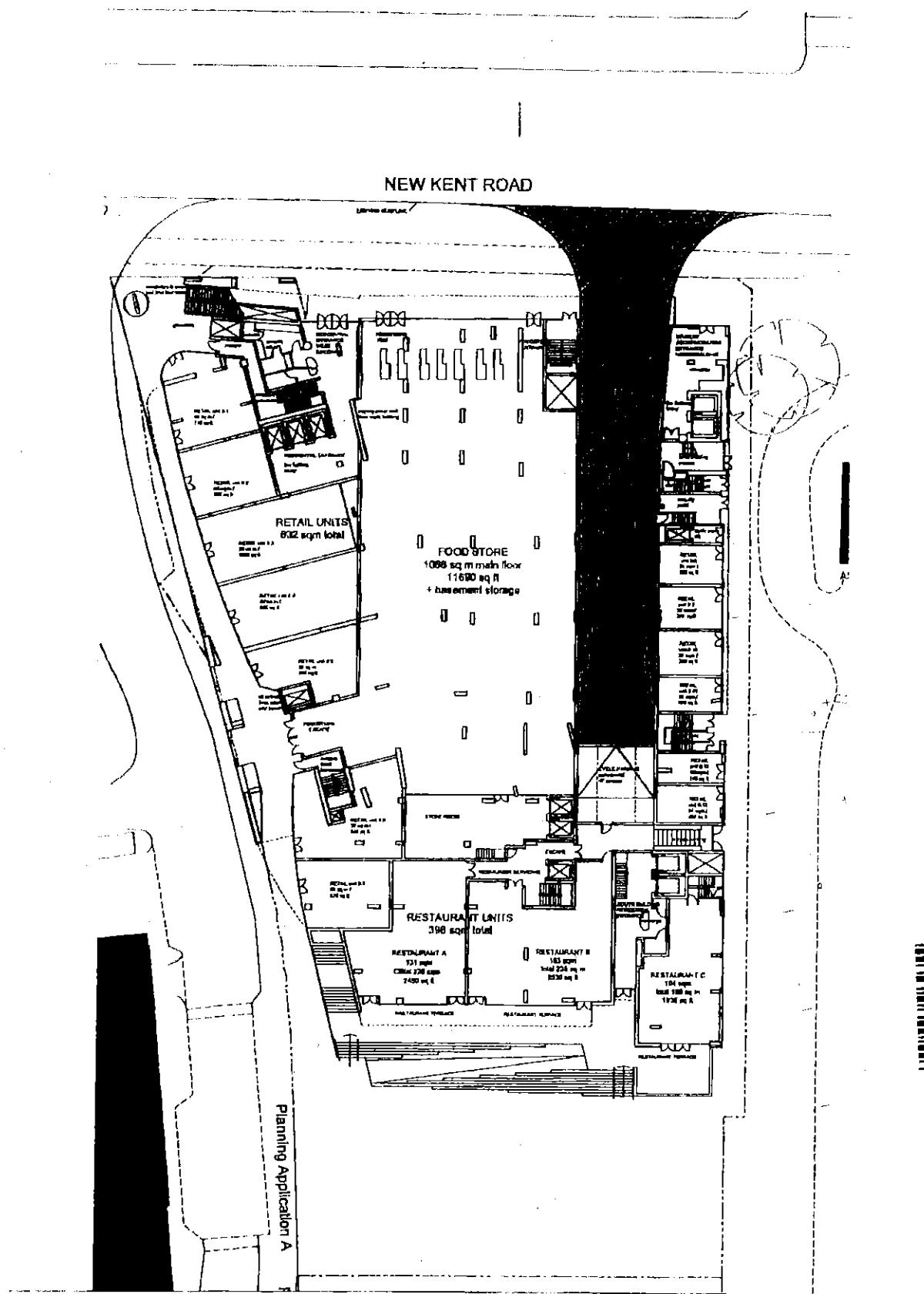
Appendix 4.1



Elephant Road SE17

Appendix 4.2
Accesway Plan- Ramp

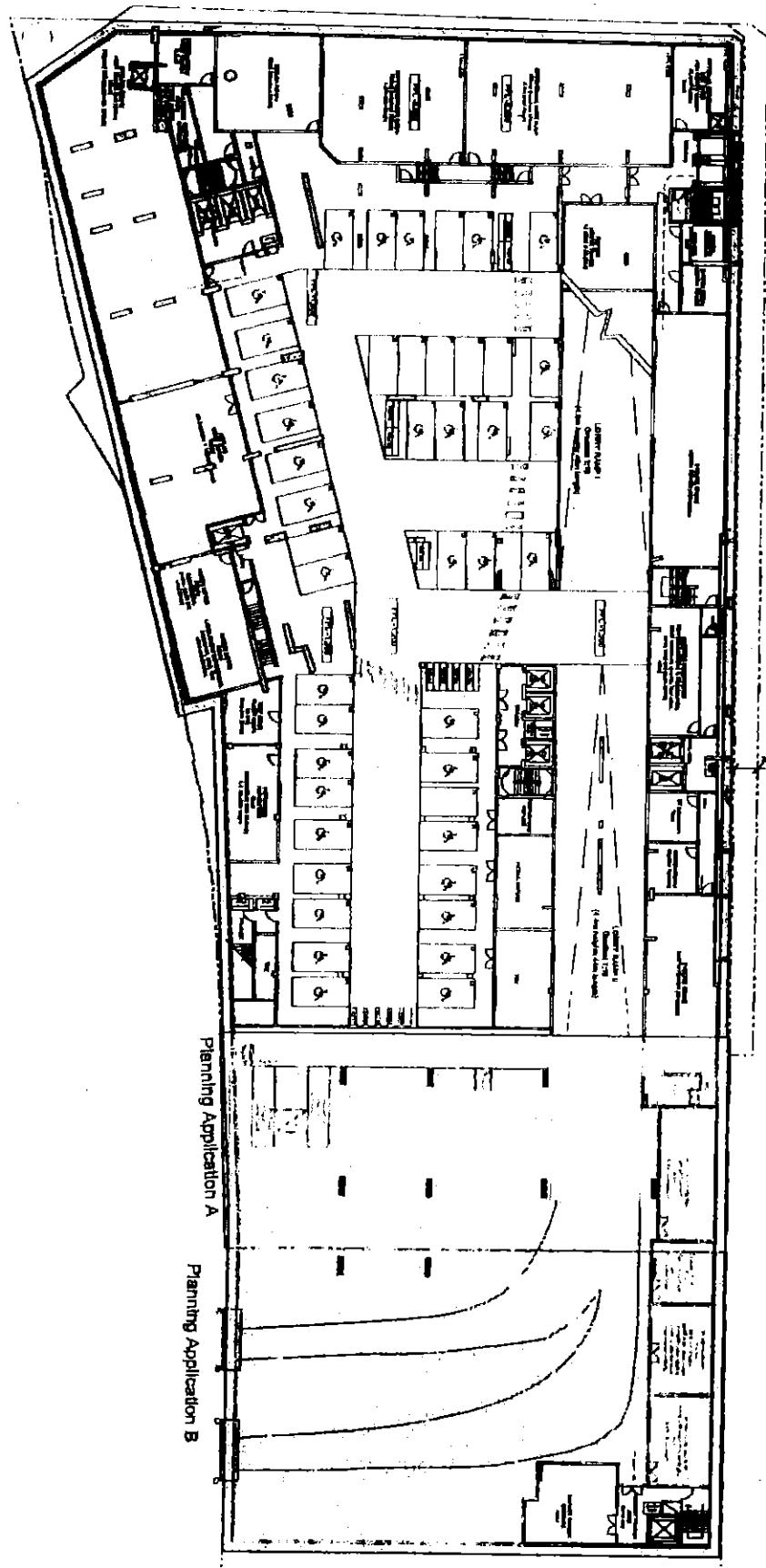
Annexure 4.2
Access way
Ground Level



Elephant Road SE17

**Appendix 5
Basement Premises**

Appendix 5



Elephant Road SE17

**Appendix 6
Servicing Management Plan**

Proposed Mixed Use Development, Elephant Road

Subject: Servicing Management Plan

Introduction

1. This note sets out the basis of the Servicing Management Plan that will be provided at the mixed use development by Eadon Limited at Elephant Road, London.
2. Planning permission has been granted to the development and this Servicing Management Plan is necessary as part of the S106 Agreement associated with the development. In addition, it is a requirement on Eadon Limited, for the benefit of the Reserved rights contained in the lease of the basement to be granted by the Council.

Objectives

3. The Servicing Management Plan will manage deliveries and servicing to the premises in order to ensure the successful operation of the servicing area in order that the potential for vehicle conflicts is avoided.
4. The plan will ensure that the London Borough of Southwark ('Southwark') and Eadon Limited ('Eadon') will have their respective priority for use of the vehicle loading bays, with Southwark having priority over 4 lorry bays (including the refuse bay) and Eadon Limited having the exclusive use of 2 No. lorry bays hatched blue on the attached PKS Architects' Plan in Appendix 2 'Rights Reserved and Granted' with neither party being impeded or prevented in the use of their bays and the easement strip is to be kept free from obstruction in accordance with the proposed lease.
5. The Servicing Management Plan will ensure that 2 No. lorry servicing bays are available for the exclusive use of Eadon Limited's, its tenants and authorised parties and that the remaining four servicing bays are available if required for the benefit of the Council's Reserved Rights under the proposed lease.
6. The service yard has been designed to provide a safeguarded route through the western walls of the service yard to allow for the potential opening of servicing routes to other elements of the Elephant Links Regeneration Area including the Elephant and Castle Shopping Centre (currently owned by St Modwen's to the west) for non residential

servicing purposes. The Council will also be provided with access through the southern wall of the service yard subject to the transport capacity being sufficient for this purpose. Access via either the southern and/or western walls or use of the service yard for areas outside the of the Elephant Road site will also be dependant upon the Council having first made the linkages for the transportation of service goods or passage of vehicles to the adjoining designated areas.

7. Vehicles are not to be parked on the access ramp or in the basement except within the designated bays. No residents' cars are to be parked in the Basement Service Yard.

The Servicing arrangement

8. The servicing area is located in the basement of the building and is accessed from New Kent Road as shown in Appendix 5.
9. The servicing yard of the development will include:
 - 3 servicing bays of 16.5m length and 3.0m width to accommodate articulated vehicles (of the three bays, one includes a scissor lift lorry loader and one includes a dock leveller).
 - 2 servicing bays of 10m length by 2.5m width to accommodate medium goods vehicles.
 - A dual use refuse collection / servicing area including two refuse compactors for collection via a skip lorry plus an area for the collection of recyclables including:
 - One servicing bay of 10m length by 2.5m width (available when refuse collection is not taking place).
10. Table 1 shows the predicted number of deliveries by light, medium and heavy goods vehicles for each of the elements of the building.
11. Overall, the total number of servicing movements would be 48 movements as follows:
 - 27 light goods vehicles per day
 - 17 medium goods vehicles per day
 - four heavy goods vehicles per day.

12. Typically, the average duration of stay would be less than ten minutes, with a small number for longer periods.

Initiatives of the Plan

13. Subject to the provisions of 1.1.1 and 1.1.2 of the basement lease to be granted by the Council, a 'Goods In Manager' will be employed to oversee the operations of the service ramp and yard area and to ensure its smooth operation. The essence of the provisions of the lease referred to above enable either party to require that the Goods In Manager is replaced.
14. In order to meet the objectives of the Servicing Management Plan, the following initiatives will be adopted:
 - (i) The Goods In Manager will issue written/email instructions to all suppliers who book deliveries setting out the delivery procedures to be adopted by them.
 - (ii) Suppliers will be required to pre-book 30 minute delivery slots including details of the type of vehicle that will be used to undertake the delivery and the scale/nature of goods to be supplied. (Although the majority of deliveries would only take 5-10 minutes to undertake, the 30 minute slots would allow for the vagaries of London traffic etc.)
 - (iii) Suppliers will be discouraged from scheduling deliveries during peak periods, although in practice it may not be feasible to restrict HGV movements to/from the site during peak periods. Therefore, it is proposed to limit the number of deliveries to be undertaken by HGVs to a maximum of 1 in each 30 minute slot between 07.30 – 09.30 and 16.00 – 18.00.
 - (iv) Vehicles will not be permitted to enter the basement area unless authorised to do so by the Goods In Manager. Delivery drivers will advise the Goods In Manager of their impending arrival by telephoning him/her approximately 10-15 minutes before their arrival.
 - (v) In the event the Council take up their right to use the service bays the Goods In Manager will make sure that only three of the four bays over which the Council will have priority but not exclusivity in the situation where only shuttle tunnels are constructed, will be booked at any one time and a single bay will be left unoccupied to ensure that, in the worst case, if deliveries overlap, a bay will still be available.

necessary or appropriate by the Council's Head of Property (e.g. as a result of the effects of other developments coming on stream), further reviews will be held within 28 days of a written request by the Council's Head of Property.

Conclusion

18. Overall, the Servicing Management Plan will ensure the successful operation of the basement servicing area on a day to day basis.
19. The Plan will ensure that the likelihood of conflicts with pedestrians will be minimised and that the servicing of the development will not affect the free flow of traffic on New Kent Road. It will also ensure a clear path will be available through to the adjacent St Modwens site should servicing corridors be subsequently constructed.

Examples

20. Examples of the use of the basement
 - (i) First lorry arrives for the Eadon bays – The Goods In Manager allows the lorry access to the bay.
 - (ii) First lorry arrives for the Council bays – The Goods In Manager allows the lorry access to the bay.
 - (iii) Second lorry arrives for the Eadon bays - The Goods In Manager allows the lorry access to the bay.
 - (iv) Second arrives for the Council bays - The Goods In Manager allows the lorry access to the bay.
 - (v) Third lorry arrives for the Eadon bays with none available but with no planned deliveries to the third or fourth Council bays - The Goods In Manager allows the Eadon lorry access to the bay.
 - (vi) Third lorry arrives for the Council bays - The Goods In Manager allows the lorry access to the bay.
 - (vii) Fourth lorry arrives for the Council bays - The Goods In Manager allows the lorry access to the bay.

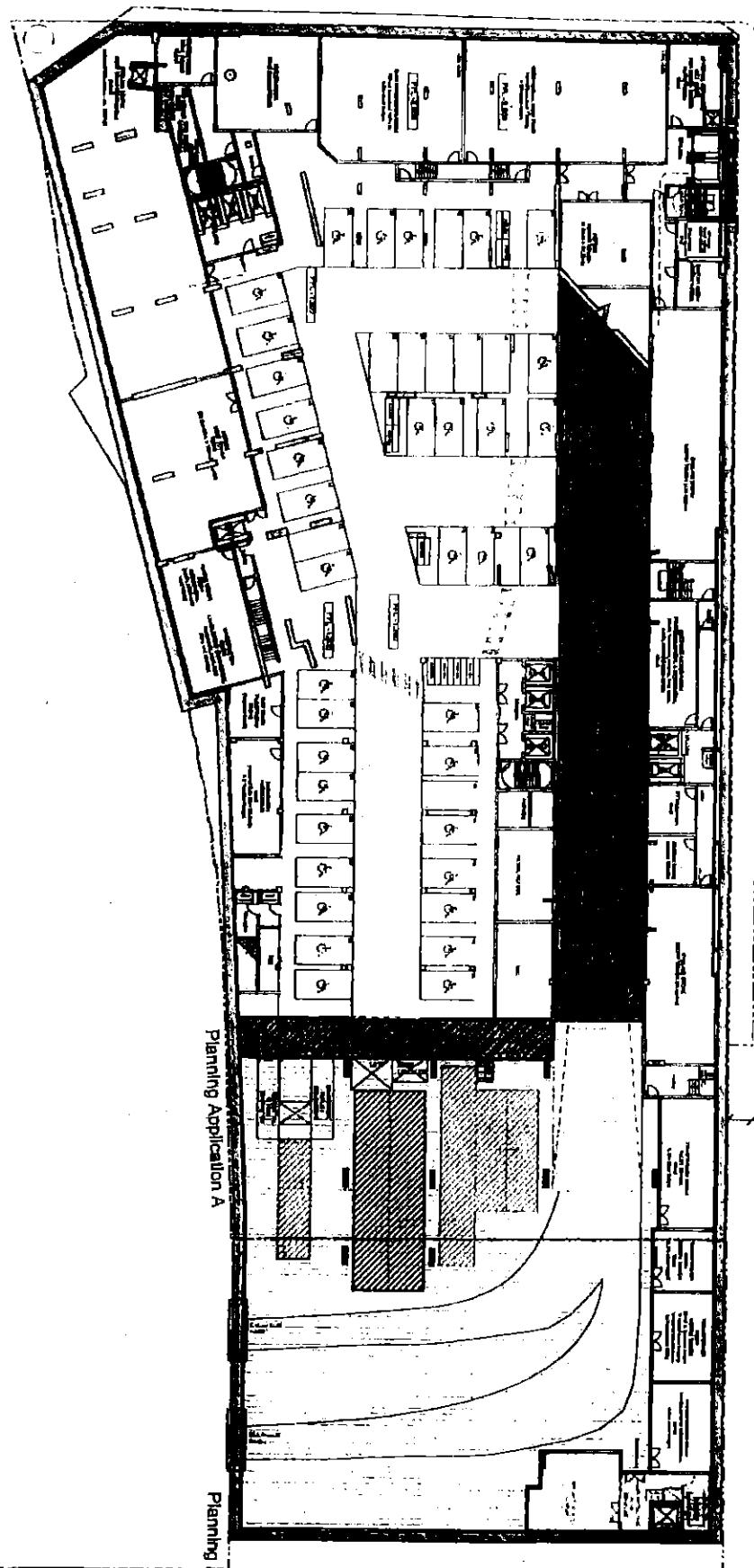
- (viii) Third lorry arrives for the Eadon bays (all Eadon bays occupied) and only one of the Council bays is clear – the lorry has to wait and the Council has priority until its planned deliveries are satisfied or the Eadon lorry moves onto a free Eadon bay.
- (ix) Fourth lorry arrives for the Council bay unannounced and the bay is occupied by an Eadon lorry – the Council lorry has to wait for the Council bay to be released by the Eadon lorry then proceeds on to this bay.
- (x) Fifth lorry arrives for the Council's bays (all Council bays occupied) with an Eadon bay free – the Council has to wait until a Council bay comes free.

Elephant Road, LB Southwark, Servicing Management Plan

Table 1: Loading Bay Requirements - daily movements

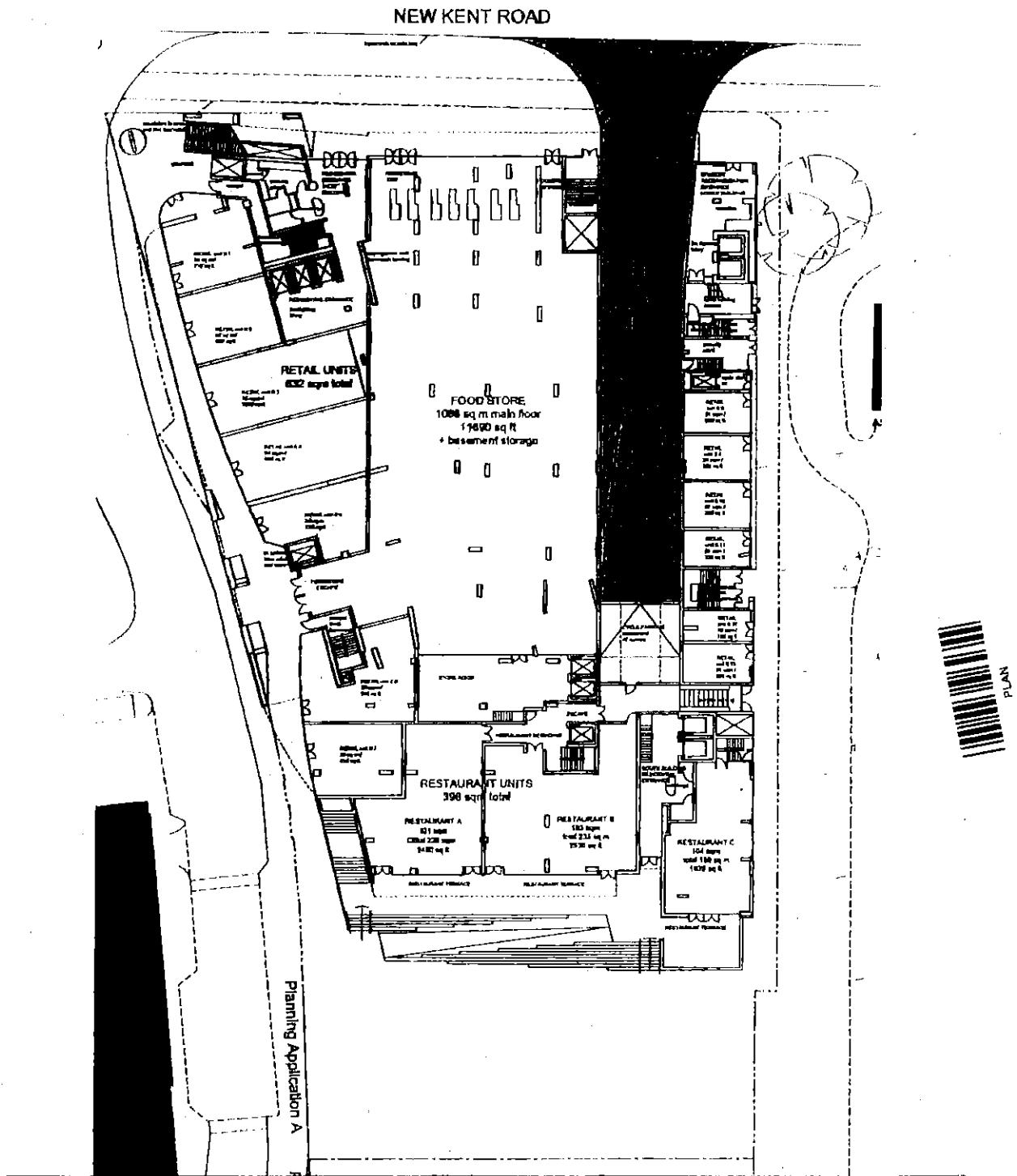
| Land Use | Unit | sqm | Rate | LGV | Rate | MGV | Rate | HGV | Total |
|-----------------------|-------------------------|-------------|------|-----------|------|-----------|------|----------|-----------|
| Retail | Foodstore | 1116 | n/a | 2 | n/a | 2 | n/a | 3 | 7 |
| | Non-food retail | 1205 | n/a | 2 | n/a | 2 | n/a | 0 | 4 |
| | Sub-Total | 2321 | | 4 | | 4 | | 3 | 11 |
| Restaurant | Unit A | 228 | n/a | 2 | n/a | 1 | n/a | 1 | 4 |
| | Unit B | 254 | n/a | 2 | n/a | 1 | n/a | 0 | 3 |
| | Unit C | 186 | n/a | 2 | n/a | 1 | n/a | 0 | 3 |
| | Sub-Total | 668 | | 6 | | 3 | | 1 | 10 |
| Cinema | seats | 900 | n/a | 2 | n/a | 1 | n/a | 0 | 3 |
| Residential | Units | 312 | 0.04 | 12 | 0.02 | 6 | 0.00 | 0 | 19 |
| Student Accommodation | rooms | 275 | 0.01 | 3 | 0.01 | 3 | 0.00 | 0 | 6 |
| Total | Daily deliveries | | | 27 | | 17 | | 4 | 48 |

Appendix 2



Elephant Road SE17

Annexure 5
Access way
Ground Level

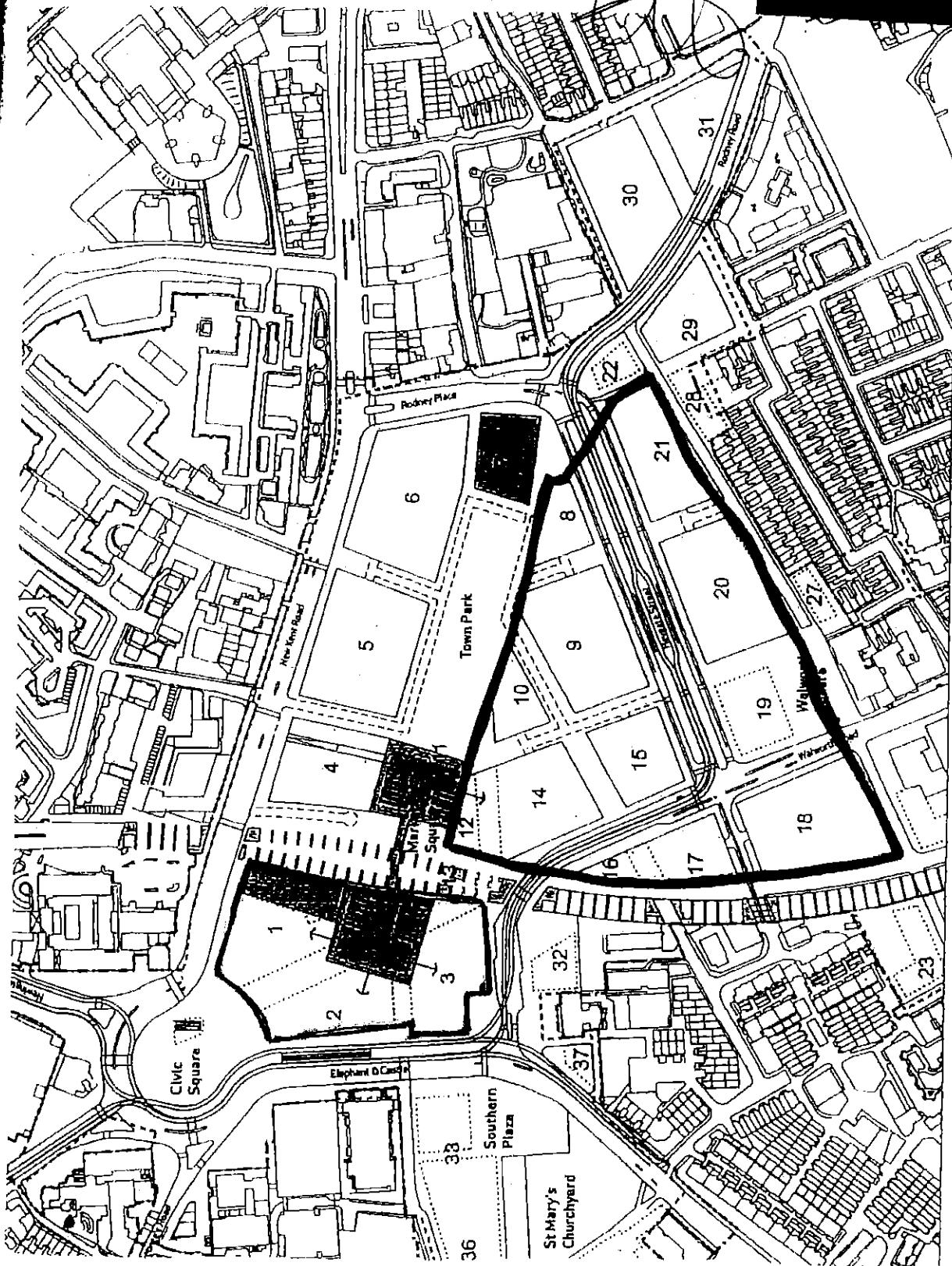


Elephant Road SE17

**Appendix 7
Elephant and Castle Shopping Centre and Walworth Area**

PKS

AUTHORISED SIGNATORY



Plan I Projected basement links
Elephant Road



Appendix 6
Form of Deed of Covenant

To: [London Borough of Southwark]

[[Name and Address of Covenantor: ie Tenant, Bank, Receiver, Third Party approved assignee] covenants with [The Council] to observe and perform the obligations of an Agreement dated [•] and made between (1) The Council (2) Tenant to carry out and complete the building works described in the Agreement provided that the [Covenantor] shall be allowed such extension of any applicable time limits contained in the Agreement as may be reasonable to enable the [Covenantor] to carry out and complete such building works and in default of Agreement between [Covenantor] and [The Council] the question of what is a reasonable extension shall be referred to a single arbitrator under the Arbitration Act 1996 or any statutory modification or replacement of the same.

[If the Covenantor is a Receiver, the Receiver acts as agent for the Tenant and this covenant is given without personal liability on the part of the Receiver.]

In witness of which this Deed has been duly executed.]



Appendix 7
Excluded Fit Out Works

50 New Kent Road

Schedule of Basement Fit-Out Works

1. Lighting, emergency lighting and small power
2. Smoke extract / ventilation systems
3. Secure entrance / barrier system
4. CCTV system
5. Guard rails, Armco car parking barriers and the like
6. Doors
7. Waterproof/weatherproof asphalt or other surface over concrete base and / or painted surface to car and lorry parking bays / line markings
8. Signage
9. Cycle racks
10. Construction of Market Square storage area and lift installation between storage area and Market Square



Appendix 8
Freehold Transfer

Transfer of part
of registered title(s)

Land Registry

TP1

If you need more room than is provided for in a panel, use continuation sheet CS and attach to this form.

1. Stamp Duty

Place "X" in the appropriate box or boxes and complete the appropriate certificate.

It is certified that this instrument falls within category in the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987

It is certified that the transaction effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds the sum of £

It is certified that this is an instrument on which stamp duty is not chargeable by virtue of the provisions of section 92 of the Finance Act 2001

2. Title number(s) out of which the Property is transferred *Leave blank if not yet registered.*

SGL500495

3. Other title number(s) against which matters contained in this transfer are to be registered, if any.
LN26309; SGL36087; LN206931; SGL456566; SGL455623; TGL253362; SGL392990;
SGL384378; SGL445293 and SGL353704. [Title number to be allocated in respect of Additional Land].

4. Property transferred *Insert address, including postcode, or other description of the property transferred. Any physical exclusions, e.g. mines and minerals, should be defined. Any attached plan must be signed by the transferor*

The Property is defined: Place "X" in the appropriate box.

on the attached Plan 1 and shown *State reference e.g. "edged red"*
shaded blue

on the Transferor's filed plan and shown *State reference e.g. "edged and numbered 1 in blue"*

5. Date

6. Transferor *Give full name(s) and company's registered number, if any.*

Eadon Limited registered in the Isle of Man with company number 117262C

7. Transferee for entry on the register *Give full name(s) and company's registered number, if any. For Scottish companies use an SC prefix and for limited liability partnerships use an OC prefix before the registered number, if any. For foreign companies give territory in which incorporated.*

The Mayor and Burgesses of the London Borough of Southwark

Unless otherwise arranged with Land Registry headquarters, a certified copy of the transferee's constitution (in English or Welsh) will be required if it is a body corporate but is not a company registered in England and Wales or Scotland under the Companies Act.

8. Transferee's intended address(es) for service (including postcode) for entry on the register You may give up to three addresses for service one of which must be a postal address but does not have to be within the UK. The other addresses can be any combination of a postal address, a box number at a UK document exchange or an electronic address.

Town Hall, Peckham Road, London SE5 8UB

9. The Transferor transfers the Property to the Transferee.

10. Consideration Place "X" in the appropriate box. State clearly the currency unit if other than sterling. If none of the boxes applies, insert an appropriate memorandum in the additional provisions panel.

The Transferor has received from the Transferee for the Property the sum of *In words and figures.*

Insert other receipt as appropriate

In consideration for the grant of a lease of basement and Market Square

The transfer is not for money or anything which has a monetary value.

11. The Transferor transfers with Place "X" in the appropriate box and add any modifications.

full title guarantee limited title guarantee

12. Declaration of trust Where there is more than one Transferee, place "X" in the appropriate box.

The Transferees are to hold the Property on trust for themselves as joint tenants

The Transferees are to hold the Property on trust for themselves as tenants in common in equal shares

The Transferees are to hold the Property Complete as necessary.

13. Additional provisions

- 1.1 In this Transfer:

Council's Adjoining Land that part of the land owned by the Transferee shown shaded red and hatched blue on Plan 3 which is as to part registered under title numbers LN26309; SGL36087; LN206931; SGL456566; TGL253362; SGL392990; SGL384378; SGL445293; SGL353704; SGL455623

Development [DEFINE BEFORE COMPLETION BEING THE "Main Development" "Excluded Fit-Out Works and Market Square Works" as set out under the Agreement for Lease]

Plans the plans attached to this Transfer marked Plan 1, Plan 2, and Plan 3;

Retained Property the property retained by the Transferor being the remainder of the property comprised in SGL500495;

Conducting Media means all pipes sewers drains mains ducts conduits gutters gullies ducts watercourses wires cables communal television aerials and satellite television aerial fibre optics, radio aerials and masts systems

| | |
|------------------------------|--|
| | channels flues and all other conducting media and includes any fixings and any other ancillary apparatus or any of them |
| <i>Perpetuity Period</i> | the period of 80 years from the date of this Transfer. |
| <i>Additional Land</i> | that land registered in the Transferor's name under title number [•] shown shaded turquoise on Plan 2 |
| <i>Transferor's Property</i> | the Retained Property and Additional Land. |
| 1.2 | The expressions "Transferor" and "Transferee" shall include the successors in title of the Transferor (to all or any part of the Transferor's Property) and of the Transferee (to all or any part of the Property and the Council's Adjoining Land) respectively. Where two or more persons constitute the Transferor or the Transferee all covenants or agreements made by or with them shall be deemed to be made by or with them jointly and severally. |
| 2 | The Property is transferred with full title guarantee in fee simple except and reserved as set out in schedule 1 and with the benefit of the rights granted set out in Schedule 2. |
| 3 | The Parties declare that the operation of SS 62(1) and (2), Law of Property Act 1925 in relation to this transfer are qualified so as not to include any liberties, privileges, easements, rights and advantages over or in respect of the Transferor's Property and no easement or other such right for the enjoyment of the Property and the Transferor's Property is created otherwise than express grant in this transfer. |
| 4 | The Transferee covenants with the Transferor by way of indemnity only to perform the obligations arising from any of the matters noted upon or entered in the registers of the above title number insofar as the Transferor remains bound by them after the date of this Transfer and insofar as they remain in force and affect the Property and to indemnify the Transferor against any liability for future breaches of them. |
| 5 | In consideration of the grant of the rights to the Transferee in this Transfer, the Transferee grants to the Transferor with no title guarantee in fee simple the rights set out in Schedule 3 over the Council's Adjoining Land for the benefit of the Transferor's Property. |
| 6 | In consideration of the grant of the right to the Transferor in this Transfer, the Transferor grants to the Transferee with no title guarantee, in fee simple the right set out at Schedule 4 over the Retained Property for the benefit of the Council's Adjoining Land. |
| 7 | The Transferee covenants with the Transferor as set out in Schedule 5 and where such covenants are restrictive in nature: |
| 7.1 | they shall benefit and annex to the whole and each part of the Transferor's Property; and |
| 7.2 | bind the Property only (and for the avoidance of doubt shall bind no other property of the Transferee); and |
| 7.3 | no person shall be liable on such covenants after it has parted with all interest in the Property. |
| 8. | If under any provision of this Transfer either the Transferee is required to obtain the Transferor's consent, licence or approval or the Transferor is to obtain the Transferee's consent, licence or approval and in both instances such consent, licence or approval is not to be unreasonably withheld or delayed, the Transferor and Transferee as appropriate agree that in each case they shall act expeditiously in responding to any application for consent, licence or approval. |

- 9 (The Transferor and Transferee hereby apply to the Land Registry to register the benefit of the rights granted in Schedule 1, Schedule 2, Schedule 3 and Schedule 4 in the property register of the titles to the Transferor's Property, the Property and the Council's Adjoining Land and against the charges registers of the Transferor's Property, the Property and the Council's Adjoining Land as applicable and the restrictive covenant contained in Schedule 5 on the charges register and schedule of restrictive covenants of the title to the Property.

SCHEDULE 1
(Rights reserved and excepted)

- 1.1 A right of free and uninterrupted passage of water, steam, soil, trade effluent, air, gas, electricity and telephone communications from and to any part of the Transferor's Property through the Conducting Media now or within the Perpetuity Period in, on or under the Property.
- 1.2 A right of installing and connecting (subject to reasonable capacity levels not being exceeded) to the Conducting Media upon the Property not built upon, Conducting Media to serve the Transferor's Property.
- 1.3 A right of entry upon those parts of the Property not built upon for the purpose of installing, repairing, maintaining, renewing, replacing, or connecting Conducting Media subject to the Transferor giving the Transferee reasonable notice of its intention to enter upon the Property and subject to the Transferor causing as little disruption or disturbance to the Transferee and the occupants of the Property as possible and making good any damage caused to the Property to the Transferee's satisfaction.
- 1.4 A right in common with others on foot and with or without vehicles (including but not limited to delivery vehicles) of access to and egress from the Transferor's Property over the roads and footpaths on the Property leading to and from the public highway as may be designated from time to time for this purpose by the Transferee in its sole discretion.
- 1.5 A right of support shelter and protection as enjoyed at the date of this Transfer.
- 1.6 A right in the case of emergency of escape from the Transferor's Property over the Property and any staircases, lifts and fire escapes on the Property.
- 1.7 A right to enter onto those parts of the Property not built upon at any time for the purposes of repairing, maintaining, renewing, cleaning, replacing or rebuilding the buildings erected or to be erected on the Transferor's Property subject to the Transferor giving the Transferee reasonable notice of its intention to enter upon the Property and subject to the Transferor causing as little disruption or disturbance to the Transferee and the occupants of the Property as possible and making good any damage caused to the Property to the Transferee's satisfaction.
- 1.8 A right to install, construct, erect and thereafter maintain footings on or under the Property and to overhang the Property with eaves, drainpipes, gutters and to enter upon the Property for the purposes of installing, inspecting, repairing, maintaining or renewing the same.
- 1.9 The right of light and air over the Property for the benefit of the Transferor's Property.
- 1.10 The right at any time without obtaining consent or making payment of compensation to erect or suffer to be erected on the Transferor's Property any new buildings or other erections and to alter, demolish or redevelop any buildings now standing or hereafter to be erected on any part of the Transferor's Property in any manner whatsoever even if they interfere with the access of light or air to the Property without revoking the consent in paragraph 1.6 of Schedule 2.

SCHEDULE 2
(Rights granted)

From the earlier of: (i) the date that the Development on the Transferor's Property is completed; and (ii) the date three years after the date of this transfer (other than in respect of the rights in paragraphs 1.1, 1.3 in respect of Conducting Media existing at the date of this Transfer (but in relation to 1.3 not for the purposes of connecting), 1.4 and 1.5 which rights may be exercised from the date of this Transfer;

- 1.1 A right of free and uninterrupted passage of water, steam, soil, trade effluent, air, gas, electricity and telephone communications from and to any part of the Property through the Conducting Media now or within the Perpetuity Period in, on or under the Retained Property.
- 1.2 A right of connecting to the Conducting Media (subject to reasonable capacity levels not being exceeded) upon the Retained Property not built upon, Conducting Media to serve the Property.
- 1.3 A right of entry upon these parts of the Retained Property not built upon for the purpose of repairing, maintaining, renewing, replacing or connecting Conducting Media subject to the Transferee giving the Transferor reasonable notice of its intention to enter upon the Retained Property and subject to the Transferee causing as little disruption or disturbance to the Transferor and the occupants of the Retained Property as possible and making good any damage caused to the Retained Property to the Transferor's satisfaction.
- 1.4 The right of support shelter and protection as enjoyed at the date of this Transfer.
- 1.5 The Transferor for itself and its successors in title consents to the access of light and air to and for the benefit of the Property over the Retained Property but so that these rights of light and air are not to become absolute; this consent is revocable at any time by the Transferor or its successors in title.
- 1.6 The right in the case of emergency of escape from the Property over the Transferor's Property and any staircases, lifts and fire escapes on the Transferor's Property designated for such use from time to time by the Transferor in its sole discretion.

SCHEDULE 3
**(Rights granted for the benefit of the Transferor's Property
over the Council's Adjoining Land)**

- 1.1 A right of free and uninterrupted passage of water, steam, soil, trade effluent, air, gas, electricity and telephone communications from and to any part of the Transferor's Property through the Conducting Media now or within the Perpetuity Period in, on or under the Council's Adjoining Land.
- 1.2 A right of installing and connecting to the Conducting Media (subject to reasonable capacity levels not being exceeded) upon the Council's Adjoining Land not built upon, Conducting Media to serve the Transferor's Property over a route designed for such purpose by the Transferee acting reasonably.
- 1.3 A right of entry over a route designated for such purpose by the Transferee acting reasonably upon the Council's Adjoining Land not built upon for the purpose of installing, repairing, maintaining, renewing, replacing or connecting Conducting Media subject to the Transferor giving the Transferee reasonable notice of its intention to enter upon the Council's Adjoining Land and subject to the Transferor causing as little disruption or disturbance to the Transferee and the occupants of the Council's Adjoining Land as possible and making good any damage caused to the Council's Adjoining Land to the Transferee's satisfaction.

- 1.4 A right in the case of emergency to escape from the Transferor's Property over the Council's Adjoining Land and any staircases, lifts and fire escapes on the Council's Adjoining Land.
- 1.5 If at any time during the Perpetuity Period the Transferor's Property has become inaccessible by public highway and the Transferee constructs a road immediately adjacent to the eastern boundary of the Retained Property and the land registered under title number [THIS WILL BE THE EASTERN AND WESTERN MARGIN LEASE LAND] the Transferor shall have a right of way for the benefit of the Transferor's Property at all times with or without vehicles and on foot to and from the Transferor's Property over and along that part of such road adjacent to the eastern boundary of the Retained Property [and the land registered under title number [THIS WILL BE THE EASTERN AND WESTERN MARGIN LEASE LAND] on the Council's Adjoining Land and that part of the Property immediately adjacent to the Transferor's Property for the purposes of:
- (i) access only (in the event that and for so long as the road constructed is not in the Transferee's reasonable opinion appropriate for servicing and delivery); or
 - (ii) access servicing and delivery (in the event that and for so long as the road constructed is in the Transferee's reasonable opinion appropriate for servicing and delivery),
- to the Transferor's Property only over a route specified by the Transferee for such purpose and the party exercising such right making good any damage caused to the Transferee's reasonable satisfaction and contributing a fair and reasonable proportion of the maintenance and upkeep of such route pending adoption as a public highway provided that the parties agree for the avoidance of doubt that the Transferee shall not be under any obligation to construct any such road and provided further that if the Transferee shall decide to construct such road it shall not be under any obligation to construct the road to a standard sufficient for servicing and delivery by the Transferor.
- 1.6 A right to enter, with or without vehicles, for the purposes of repairing, maintaining, renewing and replacing (but not in any case rebuilding) parts but not the whole by way of repair only and where beyond economic repair and cleaning the buildings erected or to be erected on the Transferor's Property onto those parts of the Council's Adjoining Land not built upon which lie within a maximum of 5m from the façade of any buildings on the eastern boundary of the Retained Property, subject to the Transferor giving the Transferee reasonable notice of its intention to enter upon the Council's Adjoining Land and subject to the Transferor causing as little disruption or disturbance to the Transferee and the occupants of the Council's Adjoining Land as possible and making good any damage caused to the Council's Adjoining Land to the Transferee's reasonable satisfaction PROVIDED THAT before exercising such right, the Transferor shall have obtained all necessary statutory and other requisite consents.

SCHEDULE 4 (Rights for the benefit of the Council's Adjoining Land over the Retained Property)

From the earlier of: (i) the date that the Development on the Transferor's Property is completed; and (ii) the date three years after the date of this transfer (other than in respect of the rights in paragraphs 1.1, 1.3 in respect of Conducting Media existing at the date of this Transfer (but in relation to 1.3 not for the purposes of connecting) 1.4 and 1.5 which rights may be exercised from the date of this Transfer:-

- 1.1 a right of free and uninterrupted passage of water, steam, soil, trade effluent, air, gas, electricity and telephone communications from and to any part of the Council's Adjoining Land through the Conducting Media now or within the Perpetuity Period in, on or under the Retained Property;

- 1.2 the right of connecting to the Conducting Media (subject to reasonable capacity levels not being exceeded) installed within the Perpetuity Period upon the Retained Property not built upon, Conducting Media to serve the Council's Adjoining Land over a route designated for such purpose by the Transferor acting reasonably;
- 1.3 a right of entry over route designated for such purpose by the Transferor acting reasonably upon the Retained Property not built upon for the purposes of repairing, maintaining, renewing, replacing or connecting Conducting Media subject to the Transferee giving the Transferor reasonable notice of its intention to enter upon the Retained Property and subject to the Transferee causing as little disruption or disturbance to the Transferor and occupants of the Retained Property as possible and making good any damage caused to the Retained Property to the Transferor's satisfaction.

SCHEDULE 5
(Transferee's Covenants)

- 1 Not to obstruct or otherwise interfere with the access, use quality or quantity of such light and air as is now or shall during the Perpetuity Period be enjoyed by the Transferor's Property and any building from time to time on it.

14. Execution *The Transferor must execute this transfer as a deed using the space below. If there is more than one Transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains Transferee's covenants or declarations or contains an application by the Transferee (e.g. for a restriction), it must also be excuted by the Transferee (all of them, if there is more than one).*

Signed as a deed by **EADON LIMITED** acting by a director and its secretary (*or two directors*)

Sign here

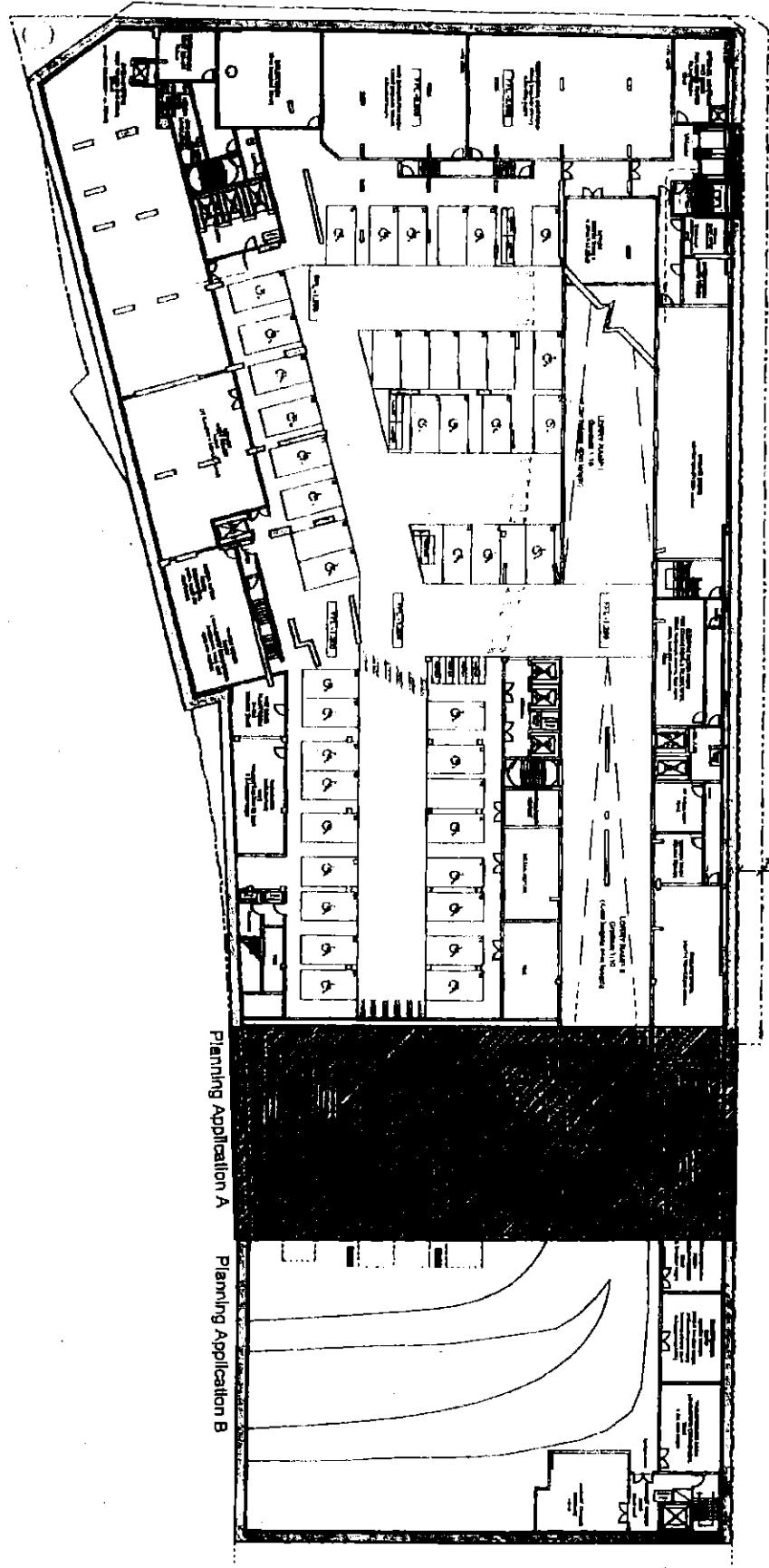
Director

Secretary (*or Director*)

The Common Seal of **THE MAYOR AND
BURGESSES OF THE LONDON
BOROUGH OF SOUTHWARK** was hereto)
affixed in the presence of:)
)

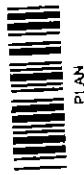
Authorised Signatory:

Appendix Plan 1
Freehold Transfer

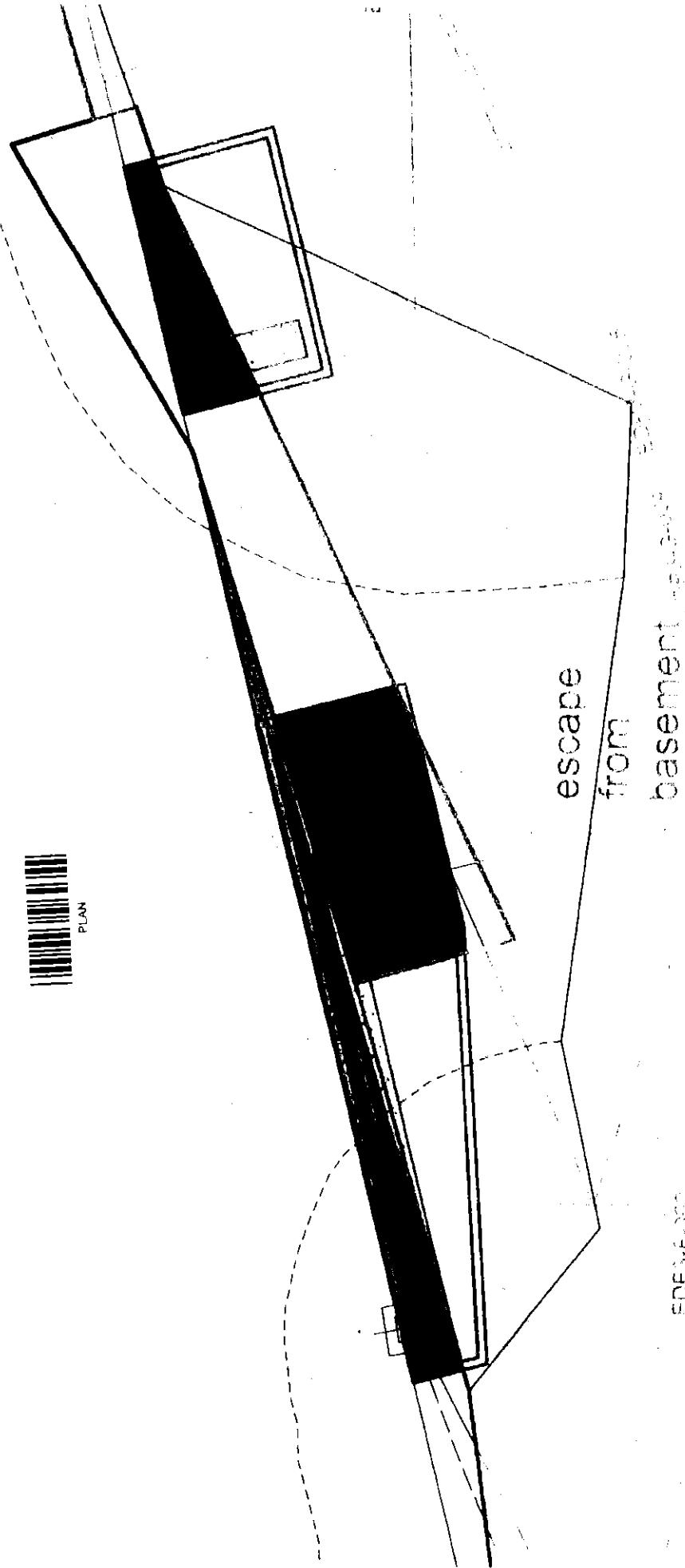


Elephant Road SE17

3



PLAN



escape
from
basement

EDF5-F-2



Elephant and Castle
Station

Forrest Court

ELEPHANT ROAD

N2630
ELEPHANT ROAD

5 GL353704
(Part of)
ELEPHANT ROAD

NEW KENT ROAD

PLAN

AUTHORISED
SIGNATORY

Composite Plan

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- 5.2 Sectional Basement Plan
- 6 Southwark Plan (2007)
- 7 Composite Plan

| | |
|----------------------------|--|
| LR1. Date of lease | [] |
| LR2. Title number(s) | LR2.1 Landlord's title number(s) |
| | <p>SGL455623, LN206931, SGL456566, TGL253362 [LAND TO BE REGISTERED IE LAND TRANSFERRED BY EADON - BLUE LAND IN AGREEMENT FOR LEASE TO BE FILLED IN PRIOR TO COMPLETION]</p> |
| | LR2.2 Other title numbers <p>SGL36087, SGL392990, SGL445293, SGL384378, LN26309, SGL353704</p> |
| LR3. Parties to this lease | Landlord |
| | <p>The Mayor and Burgesses of the London Borough of Southwark of The Town Hall, Peckham Road, London, SE5 8UB</p> |
| | Tenant |
| | <p>[EADON LIMITED/ PLAZA DEVELOPMENTS LIMITED/ NOMINEE OF EADON LIMITED/PLAZA DEVELOPMENTS LIMITED - TO BE FILLED IN PRIOR TO COMPLETION]</p> <p>[of] [(company no) whose registered</p> |

| | |
|---|--|
| | office is at] [] |
| LR4. Property | In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail. |
| | As specified in 4 of the lease particulars and defined in this lease as "the Premises". |
| LR5. Prescribed statements etc | LR5.1 <i>Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003.</i> |
| | None |
| | LR5.2 This lease is made under, or by reference to, provisions of: |
| LR6. Term for which the Property is leased | The term as specified in this lease at 5 of lease particulars |
| LR7. Premium | None |

| | |
|---|--|
| LR8. Prohibitions or restrictions on disposing of this lease | This lease contains a provision that prohibits or restricts dispositions |
| LR9. Rights of acquisition etc | <p>LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land</p> <p>As specified in clause 7 and schedule 5</p> <p>LR9.2 Tenant's covenant to (or offer to) surrender this lease</p> <p>As specified in clause 9</p> <p>LR9.3 Landlord's contractual rights to acquire this lease</p> <p>None</p> |
| LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property | Clause 5.1 |
| LR11. Easements | <p>LR11.1 Easements granted by this lease for the benefit of the Property</p> <p>As specified in schedule 1 part 1 of this lease</p> |

| | |
|---|---|
| | LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property |
| | As specified in schedule 1 part 2 of this lease |
| LR12. Estate rentcharge burdening the Property | None |
| LR13. Application for standard form of restriction | As specified in clause 5.11 |
| LR14. Declaration of trust where there is more than one person comprising the Tenant | None |

PARTICULARS

- 1 **Date** : [•] 200[•]
- 2 **Lease or Underlease** : Lease
- 3 **Parties** :
- (a) **Landlord** : **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK**
of Town Hall Peckham Road London SE5
BUB
- (b) **Tenant** : **[TO BE INSERTED PRIOR TO COMPLETION BEING EADON LIMITED/ PLAZA DEVELOPMENTS/ ASSIGNEE NOMINEE]** (registered in [•] under company no [•]) whose registered office is at [•]
- 4 **Premises** : the Market Square and Market Store including:
- (a) all landlord's fixtures and fittings now or hereafter in or upon the same, including, but not limited to, all electrical and mechanical plant, machinery, equipment and apparatus and the water and sanitary apparatus; and
- (b) all additions, alterations and improvements thereto
- 5 **Term** : 99 years (to be outside the provisions of the Landlord and Tenant Act 1954)
- 6 **Term Commencement Date** : [•] 200[•]

| | |
|---------------------------------|--|
| 7 Rent Commencement Date | : [TO BE COMPLETED AS PER AGREEMENT FOR LEASE BEING TEN WORKING DAYS AFTER PRACTICAL COMPLETION] |
| 8 Prescribed Rate | : 4% per annum above Base Rate |
| 9 Rent | : Basic Rent and Additional Rent |
| 10 Pre-emption Right | : the Tenant's right of pre-emption set out in clause 7 and schedule 5 |
| 11 Base Rate | : the Base Rate for the time being of Barclays Bank Plc, in the event of Base Rate being abolished, such other reasonably comparable rate of interest as the parties shall from time to time agree or (in default of agreement) as may be determined by arbitration in accordance with the Arbitration Acts 1996 |

DATED

PARTIES

- 1 Landlord **THE MAYOR AND BURGESSES OF THE LONDON
BOROUGH OF SOUTHWARK** of Town Hall Peckham
Road London SES 8UB
- 2 Tenant [•] (registered in [•] under company no [•]) whose
registered office is [•] **[TO BE FILLED IN PRIOR TO
COMPLETION]**

OPERATIVE PROVISIONS

1 Definitions and interpretation

- 1.1 In this Lease, unless the context otherwise requires, words and expressions defined in the particulars shall (subject as hereinafter appears) have the meaning ascribed to them therein and the following expressions shall have the following meanings:

Additional Rent the rent provided for in schedule 3 part 2 paragraph 3;

Adjoining Land any land and/or buildings adjoining or neighbouring the Premises belonging to the Landlord shown hatched blue on the Plan in Appendix 7 together with the Basement Premises unless otherwise stated but excluding the Premises;

Basement Destruction Event a destruction of that part of the Basement Premises which supports the Premises including but not limited to the structural waterproof membrane and structural slab or which in any other way frustrates the reinstatement of the Premises or renders reinstatement of the Premises impossible;

Basement Lease the lease of the Basement Premises dated [•] and made between (1) the Landlord and (2) the

Tenant;

Basement Premises

all those premises at lower basement and upper basement level shown coloured red on the plan in Appendix 5 and each and every part thereof (including the supports and structural supports and parts, joists, beams, columns, timbers, foundations and structural supporting and loadbearing walls and framework external walls, lifts, lift shafts, loading and unloading equipment) and additions and improvements thereto, fixtures, fittings and appurtenances in and about the Premises and the Pipes and plant and machinery within and exclusively serving the same, excluding the Market Square and Market Store but including the structural waterproof membrane and slab;

Development

development as defined in section 55 of the Town and Country Planning Act 1990;

Eastern and Western Land

the land demised pursuant to the Eastern and Western Margin Lease;

Eastern and Western Margin Lease

A lease dated *3 October* August 2008 and entered into between (1) Mayor and Burgesses of the London Borough of Southwark and (2) Eadon Limited:

MS LLP

Group Company

means a company that is a member of the same group as the Tenant at the relevant date within the meaning of section 42 of the Landlord and Tenant Act 1954;

Gross External Area

the gross external areas of the Premises measured and calculated in accordance with the RICS Coded Measuring Practice 5th Edition;

Insured Risks

fire, subterranean fire, storm, tempest, flood, earthquake, subsidence, heave, lightning, explosion, impact, aircraft (other than hostile

aircraft) and other aerial devices and articles dropped therefrom, riot, civil commotion and malicious damage, bursting or overflowing of water tanks, apparatus or pipes, impact by road vehicles, terrorism (where available on reasonable commercial terms) and such other proper risks as the Landlord may from time to time reasonably require or the Tenant may reasonably request the Landlord to insure against;

Landlord

the party named as "Landlord" in the particulars, and includes the person for the time being entitled to the reversion immediately expectant on the determination of the Term;

Landlord's Solicitors

Herbert Smith LLP of Exchange House, Primrose Street, London EC2A 2HS (reference 2856/30866547);

Lease

this Lease and any document which is made supplemental hereto, or which is entered into pursuant to or in accordance with the terms hereof;

Market Square

that area at surface level shown shaded yellow on the plan in Appendix 1 partially situated above and extending beyond the Basement Premises to a depth of between 300 and 750 mm shown shaded pink on the plan in Appendix 2 including the surfacing thereof and Plant and Pipes exclusively serving the same and all airspace above but excluding the structural waterproof membrane and slab supports and structural supports, joists, beams, columns, timbers, foundations, structural, supporting and loadbearing walls below;

Market Store

the access pod at ground level and that area at lower basement and mezzanine levels shown

shaded pink on the plan in Appendix 3 including:

- (a) the inside and outside of the windows;
- (b) the doors, door frames, equipment, fittings and any glass relating to the doors;
- (c) internal plaster or other surfaces of loadbearing walls and columns;
- (d) non-loadbearing walls completed;
- (e) the flooring, raised floors and floor screeds down to the joists or other structural parts supporting the flooring of the market store;
- (f) the plaster or other surfaces of the ceilings and false ceilings within the market store and the voids between the ceilings and false ceilings;
- (g) the Pipes and Plant within and exclusively serving the same;
- (h) machinery and plant situated within the market store; and
- (i) the goods lift, lift shaft and stairs situated within the market store,

and improvements and additions made to, and fixtures, fittings and appurtenances in the market store, but excluding the supports and structural supports, structural parts loadbearing framework, roof, foundations, joists and external and loadbearing walls and the Pipes and machinery and Plant within (but not exclusively serving) the market store;

Permitted Underletting

means the underletting of part or parts of the

Premises (but not the whole) at a rent of not less than the Open Market Rate for a term of not more than five years in relation to which the underlessor and underlessee have agreed to exclude the provisions of sections 24 to 28 of the Landlord and Tenant Act 1954 and have before completing the underlease or entering into a contractual obligation to enter into the underletting, duly carried out the requirements of schedules 1 and 2 of the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 rendering their agreement valid which underlease shall not permit the underlessee to assign sublet or otherwise deal with the premises underlet in any way;

Pipes

all pipes sewers drains mains ducts conduits gutters watercourses wires cables communal television aerials and satellite television aerial fibre optics, radio aerials and masts systems channels flues and all other conducting media and includes any fixings and any other ancillary apparatus;

Planning Acts

"the Planning Acts" (as defined in the Town and Country Planning Act 1990) and the Local Government Planning and Land Acts 1980 and any subsequent legislation of a similar nature;

Planning Permission

permissions for use of the Premises as a Market square and store granted under planning reference [05-AP-1693 and 05-AP-1694]; [07-AP-1449] and [07-AP-1448] **[DELETE AS APPROPRIATE DEPENDING ON PERMISSION IMPLEMENTED]** and any amended, varied or additional planning permission granted from time to time in respect of the Premises;

| | |
|----------------------------|--|
| <i>Plant</i> | all heating, thermal energy, gas, water, (portable and non-portable) cooling, refrigeration, ventilation, electrical, communication, computer, security, surveillance access control, carbon reduction, recycling renewable energy, cleaning, refuse collection and disposal, fire and health and safety, lighting, generation, transportation, conveyance, extraction and venting , metres, valves, heat exchangers, pumps, plant, apparatus, boilers, lifts, hoists, building maintenance units, escalators, transformers, chillers, generators, converters, the central heating plant, and all and any other apparatus and equipment including any fixings and other ancillary apparatus; |
| <i>Rent</i> | the Basic Rent and the Additional Rent; |
| <i>Standard Conditions</i> | the conditions in part 1 of the Standard Commercial Property Conditions (Second Edition), and Standard Condition is to be construed accordingly; |
| <i>Tenant</i> | the party named as "Tenant" in the particulars and includes the Tenant's successors in title and assigns and, in the case of an individual, his personal representatives; |
| <i>Term</i> | the term of years stated in the particulars; |
| <i>Utilities</i> | water, soil, steam, air, electricity, radio, television, telegraphic, telephone, telecommunications and other services and supplies of whatsoever nature; and |
| <i>Uninsured Risks</i> | means: |
| | (a) any risk which does not fall within the risks specifically identified in the definition of "Insured Risks"; |

- (b) any risks, or some aspect of any of them, which would be covered by risks specifically identified in the definition of "Insured Risks" but which:
- (i) are excluded from doing so for the time being by reason of withdrawal of cover by the insurer which is not otherwise available to be insured on the London Insurance Market;
 - (ii) is withdrawn from cover by the Tenant on the grounds that cover cannot be placed on the London Insurance Market at reasonably commercial rates and on reasonably commercial conditions; or
 - (iii) is excluded or partially excluded from cover in relevant circumstances by reason of the operation of policy conditions,

but

- (c) an uninsured risk does not become an Uninsured Risk for the purposes of this Lease by reason only of:
- (i) normal exclusions provisions in relation to a level of excess liability;
 - (ii) rejection by the insurer of liability, or some part of it, due to a vitiation by the Tenant; or
 - (iii) infringement by the Tenant of

the policy conditions for the maintenance of cover;

| | |
|--------------------|--|
| <i>VAT</i> | value added tax; |
| <i>VATA</i> | Value Added Tax Act 1994; and |
| <i>Working Day</i> | any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a Statutory Bank Holiday. |

- 1.2 Where two or more persons are included in the expression "the Tenant", the covenants which are expressed to be made by the Tenant shall be deemed to be made by such persons jointly and severally.
- 1.3 Words importing persons shall include firms, companies and corporations and vice versa.
- 1.4 Any covenant by the Tenant not to do any act or thing shall include an obligation not to permit or suffer such act or thing to be done.
- 1.5 References to any right of the Landlord to have access to or entry upon the Premises shall be construed as extending to all persons authorised by the Landlord, including agents, professional advisers, contractors, workmen and others.
- 1.6 Any reference to a statute (whether specifically named or not) shall include any amendment or re-enactment of such statute for the time being in force and all instruments, orders, notices, regulations, directions, bylaws, permissions and plans for the time being made, issued or given thereunder or deriving validity therefrom.
- 1.7 The titles or headings appearing in this Lease are for reference only and shall not affect its construction.
- 1.8 Any reference to a clause or schedule shall mean a clause or schedule of this Lease.

2 Demise and rents

The Landlord hereby demises unto the Tenant the Premises except and reserving the rights mentioned in schedule 1 subject to but (where appropriate) with the benefit of all rights, easements, covenants, restrictions and stipulations of whatsoever nature affecting the Premises including the matters contained or referred to in the deeds and documents listed in schedule 2 to hold the Premises

unto the Tenant from and including the Term Commencement Date for the Term yielding and paying unto the Landlord during the Term:

- 2.1 the Rent from the Rent Commencement Date and the first payment of Additional Rent shall be paid on the first Rent Payment Date after the Term Commencement Date;
- 2.2 on seven days of written demand all proper costs charges and expenses which the Landlord may from time to time suffer or incur in connection with or procuring the remedying of any breach by the Tenant of any of the covenants on the part of the Tenant contained in this Lease.
- 2.3 all sums payable under clause 3.7.

3 Tenant's covenants

The Tenant hereby covenants with the Landlord as follows.

3.1 Rents

To pay the rents reserved by this Lease at the times and in the manner aforesaid.

3.2 Interest on arrears

Without prejudice to any other right, remedy or power herein contained or otherwise available to the Landlord, if any of the rents reserved by this Lease (whether formally demanded or not) or any other sum of money payable to the Landlord by the Tenant under this Lease shall remain unpaid for more than seven days after the date when payment was due, to pay Interest thereon at the Prescribed Rate from and including the date on which payment was due to the date of payment to the Landlord (both before and after any judgment) provided that if the Landlord shall have properly and reasonably declined to accept any such rent so as not to waive any existing breach or alleged breach of covenant, to pay interest thereon at the Prescribed Rate from and including the date on which payment of such rent was due to the date when payment is accepted by the Landlord and, in default of payment, the same shall be recoverable as rent in arrear;

3.3 Outgoings

- 3.3.1 To pay and indemnify the Landlord against all existing and future rates, taxes, duties, charges, assessments, impositions and outgoings whatsoever (whether parliamentary, parochial, local or of any other description and whether or not of a

capital or non-recurring nature or of a wholly novel character) which now are or may at any time during the Term be charged, levied, assessed or imposed upon or payable in respect of the Premises or upon the owner or occupier of them (excluding any tax payable by the Landlord occasioned by any disposition of or dealing with the reversion of this Lease or upon the receipt by the Landlord of the rents payable hereunder) and, in the absence of a direct assessment on the Premises, to pay to the Landlord a fair proportion (to be reasonably determined by the Landlord) of any such outgoings.

- 3.3.2 To pay all charges for electricity, gas (if any) and water used or consumed in the Premises including any connection and hiring charges and meter rents and to perform and observe all present and future regulations and requirements of the electricity, gas and water supply authorities or boards in respect of the supply and consumption of electricity, gas and water on the Premises and to keep the Landlord indemnified against any breach thereof.

3.4 Repairs

- 3.4.1 To repair and keep in good and substantial repair and condition the Premises rebuilding and renewing the same save where and to the extent that the provisions of clause 5.3 or 9.20 apply.
- 3.4.2 To keep all parts of the Premises which are not built upon in a good and clean condition and adequately surfaced.

3.5 Plant and machinery

To keep all plant, machinery, apparatus and equipment forming part of the Landlord's fixtures and fittings in the Premises properly maintained and in good working order and condition.

3.6 Yield up

At the expiration or sooner determination of the Term, quietly to yield up the Premises to the Landlord in good and substantial repair and condition in accordance with the covenants by the Tenant contained in this Lease;

3.7 Common facilities

Subject to the Landlord first obtaining the Tenant's written consent to the works in this clause 3.7 (such consent not to be unreasonably withheld or delayed) to pay and contribute to the Landlord a due proportion (to be fairly and properly

determined by the Landlord) of the costs, charges, fees and expenses properly expended or incurred by the Landlord in repairing, maintaining, decorating, cleansing and lighting and (as and when necessary) altering, reinstating, renewing and rebuilding, as the case may be, any roads, ways, forecourts, passages, pavements, party walls or fences, party structures, Pipes or other conveniences and easements whatsoever which may belong to, or be capable of being used or enjoyed by the Premises in common with any Adjoining Land and, in default of payment, to be recoverable as rent in arrear and any other proper costs and expenses which the Landlord incurs in providing such other services and in carrying out such other works as the Landlord may, in its reasonable discretion, consider desirable or necessary (acting reasonably and in good faith) for the enhancement of the Premises or any part of them or in the interest of good estate management;

3.8 Rights of entry by Landlord

To permit the Landlord with all necessary materials and appliances at all reasonable times upon not less than two Working Days' prior written notice (except in cases of emergency when such notice as can be given shall be given) to enter and remain upon the Premises for any of the following purposes as agent of the Tenant:

- 3.8.1 to view and examine the state and condition of the Premises;
- 3.8.2 to exercise any of the rights excepted and reserved by this Lease; and
- 3.8.3 to remedy any failure by the Tenant to comply with its obligations under this Lease.

3.9 To comply with notices

Whenever the Landlord shall give written notice to the Tenant of any defects, wants of repair or breaches of covenant, the Tenant shall commence and diligently proceed to make good and remedy the breach of covenant and if the Tenant shall fail, within a reasonable period, to commence and then diligently and expeditiously to continue to comply with such notice, the Landlord may enter the Premises and carry out or cause to be carried out all or any of the works referred to in such notice and all proper costs and expenses thereby properly incurred shall be paid by the Tenant to the Landlord on 14 days' written demand.

3.10 Dangerous materials and use of machinery

- 3.10.1 Not to keep in the Premises any article or thing which is or might become dangerous, offensive, combustible, inflammable, radioactive or explosive or which might increase the risk of fire or explosion.
- 3.10.2 Not to keep or operate in the Premises any machinery which shall cause undue vibration or which is likely to cause an actionable nuisance to the owners and occupiers of the Adjoining Land save during the course of carrying out lawful alterations to the Premises.

3.11 Pipes

Not to overload the Pipes in or serving the Premises nor to discharge into any Pipes any oil or grease or any noxious or deleterious effluent or substance whatsoever which may cause an obstruction or might be or become a source of danger, or which might injure the Pipes or the drainage system of the Premises or the Adjoining Land which might contaminate or pollute any water.

3.12 Disposal of refuse

Not to deposit or accumulate on any part of the Premises any trade empties, rubbish or refuse of any kind, other than in proper receptacles, and not to burn any rubbish or refuse on the Premises and to keep all refuse and rubbish in a suitable container or containers on the Premises and if the local authority shall not provide a service or a sufficient service for the collection thereof to dispose of the same through private contractors.

3.13 Obstruction of common areas

- 3.13.1 Not to do anything whereby any road, path, forecourt or other area over which the Tenant may have rights of access or use may be damaged, or the fair use thereof by others may be obstructed in any manner whatsoever subject to essential obstructions only during the course of deliveries and collections from the Premises.
- 3.13.2 To ensure that the Market Square is accessible to the public at all times as may be permitted by the Planning Permission save during times where access to the public is restricted by virtue of the Premises being used for the playing of music, and performances and the display of art and public exhibitions are being held at the Premises.

3.14 Prohibited users

- 3.14.1 Not to use the Premises or any part thereof for any political meeting, nor for any dangerous, noisy, noxious or offensive trade, business or occupation whatsoever, nor for any illegal or immoral purpose, nor for residential or sleeping purposes.
- 3.14.2 Not to use the Premises or any part thereof for gambling, betting, gaming or wagering, or as a betting office, or as a club.

3.15 User

Not without the Landlord's prior written consent (such consent not to be unreasonably withheld or delayed) to use the Market Square or any part thereof other than for a commercial market or for ancillary accommodation and as space for the playing of music and performances and the display of art and public exhibitions and the Market Store for the storage of goods, machinery and equipment in connection with and ancillary to the use of the Market Square.

3.16 Alterations

- 3.16.1 Not to make any alterations or additions to the Premises or to erect any permanent structures or buildings on the Premises (in each case) without obtaining the prior written consent of the Landlord, such consent not to be unreasonably withheld or delayed provided that this clause shall not relate to market stalls and other structures of a non-permanent nature.
- 3.16.2 The Landlord may, as a condition of giving any such consent, require the Tenant to enter into such covenants, as the Landlord shall reasonably require, regarding the execution of any such works and the reinstatement of the Premises at the end or sooner determination of the Term.

3.17 Alienation

- 3.17.1 Not to assign or underlet or otherwise deal with part only of the Premises save as provided in this clause 3.17.
- 3.17.2 Not to assign this Lease without the consent of the Landlord but, subject to the operation of the following provisions of this clause 3.17.2, such consent is not to be unreasonably withheld or delayed:
 - 3.17.2.1 the Landlord may, in addition to reasonable grounds, withhold its consent to an application by the Tenant for licence to assign this

Lease unless (for the purposes of section 19(1A) of the Landlord and Tenant Act 1927) the conditions in this clause 3.17.2.1 are met; that:

- (a) at the time of the assignment, there are no arrears of rent due to the Landlord;
- (b) at the time of assignment, the Tenant enters into an authorised guarantee agreement, the operative provisions of which are in the form required in schedule 4 part 2 where the Landlord is the first named party to this Lease (but not as successors in title, the right being personal to the Mayor and Burgesses of the London Borough of Southwark); and
- (c) the assignee is a bona fide market operating company;

3.17.2.2 on an assignment by the Tenant, the Landlord may require, if it is reasonable to do so, a guarantee of the tenant covenants of the assignee from a guarantor who is reasonably acceptable to the Landlord (the operative provisions of which are in the form required in schedule 4 part 1).

3.17.3 Notwithstanding the provisions of clause 13.7.2, the Tenant shall without the Landlord's consent:

3.17.3.1 be entitled to assign this Lease to Plaza Developments Limited of 18 Athol Street, Douglas, Isle of Man provided that it is a Group Company at the date of the assignment; and

3.17.3.2 be entitled to assign this Lease to any Group Company provided that:

- (a) not less than ten Working Days before it does so it gives notice to the Landlord of such intended assignment;
- (b) where the Landlord is the first named party to this Lease (but not as successors in title, the right being personal to the Mayor and Burgesses of the London Borough of Southwark) if required by notice in writing to the Tenant delivered by the Landlord before the expiry of the ten Working Day period notifying the Tenant that the Landlord acting reasonably requires the Tenant to enter

into an authorised guarantee agreement the operative provisions of which are in the form required in schedule 4, part 2, the Tenant shall deliver to the Landlord with such authorised guarantee agreement at the same time as completing the assignment.

- 3.17.4 Not to underlet the whole or part of the Premises without the consent of the Landlord (such consent not to be unreasonably withheld or delayed) provided that the Tenant may underlet part of the Premises by way of a Permitted Underletting and grant the licences provided for in clause 3.17.8 without consent of the Landlord.
- 3.17.5 Not to underlet the whole of the Premises to a party that is not a bona fide market operating company.
- 3.17.6 On the grant of an underlease of whole, to obtain covenants by deed from the underlessee direct with the Landlord in such form as the Landlord may reasonably require that the underlessee will:
 - 3.17.6.1 not assign or sub-underlet part only of the premises underlet other than by way of a Permitted Underletting;
 - 3.17.6.2 not part with or share possession or occupation of the whole or any part of the premises underlet, nor grant rights to third parties over them except by a permitted assignment or sub-underletting or a Permitted Underletting or a licence in accordance with clause 3.17.8;
 - 3.17.6.3 not assign, or sub-underlet the whole of the premises underlet or permit further sub-underletting of the whole or any part of the premises sub-underlet without obtaining the previous consent of the Landlord under this Lease other than in relation to a Permitted Underletting or a licence in accordance with clause 3.17.8; and
 - 3.17.6.4 provide for the inclusion in any sub-underleases other than any Permitted Underletting or licences in clause 3.17.8 granted out of the underlease (whether immediate or mediate) of covenants to the same effect as those contained in this clause 3.17.6.4 and clause 3.17.7.
- 3.17.7 On the grant of any underlease other than a Permitted Underletting and any licences in accordance with clause 3.17.8:

- 3.17.7.1 not to reserve or take a premium or fine nor give a reverse premium or other such inducement to the underlessee;
 - 3.17.7.2 to include provisions in the underlease to the same effect as those in clause 3.17.2; and
 - 3.17.7.3 to include such underlessee covenants as are not inconsistent with, or do not impair the due performance and observance of, the covenants of the Tenant in this Lease.
- 3.17.8 Notwithstanding the provisions of this clause 3.17 the Tenant or any permitted undertenant shall be permitted to grant Permitted Underlettings or licences for stalls or stands, art and public exhibitions, or for the playing of music or performances on the whole or any part of the Premises for such rents or licence fees and in such manner as may be lawfully taken and done in accordance with the usages and customs of a market, or public display or exhibition facility or in accordance with the Tenant's obligations in part 5 of schedule 3 without the Landlord's consent provided that any licences or leases do not have the benefit of the security of tenure provisions of part II of the Landlord and Tenant Act 1954 and such underlettings are Permitted Underlettings.
- 3.17.9 Not (except by assignment, underletting or Permitted Underletting or licence permitted under this clause) to:
- 3.17.9.1 part with or share possession or occupation of the whole or any part of the Premises; or
 - 3.17.9.2 grant any rights over the Premises to third parties.
- 3.17.10 The preceding provisions of this clause do not apply to any parting with possession or occupation or the sharing of occupation or sub division of the Premises to or with any member of a group of companies of which the Tenant is itself a member with the Landlord's prior consent (not to be unreasonably withheld or delayed) where:
- 3.17.10.1 the interest in the Premises so created is and remains no more than a tenancy at will; and
 - 3.17.10.2 the possession, occupation or sub division are immediately terminated if the Tenant and the relevant member cease for any reason to be members of the same group of companies.

3.18 Registration of dispositions

Within 21 days of every assignment, transfer, assent, underlease of the whole of the Premises, underlease of any part of the Premises assignment of any such underlease, mortgage, charge, whether mediate or immediate, or relating to the Premises or any part thereof other than a Permitted Underletting or licence in accordance with clause 3.17.8 to produce to and leave with the Landlord or its Solicitors a certified copy of the deed, instrument or other document evidencing or effecting such disposition.

3.19 Landlord's costs

To pay and indemnify the Landlord against all proper costs (including without limitation irrecoverable VAT), fees, charges, disbursements and expenses reasonably and properly incurred by the Landlord, including, but not limited to, those payable to solicitors, counsel, architects, surveyors and bailiffs:

- 3.19.1 in relation to or in connection with the preparation and service of a notice under section 146 of the Law of Property Act 1925 and of any proceedings under sections 146 or 147 of that Act (whether or not any right of re-entry or forfeiture has been waived by the Landlord or a notice served under section 146 is complied with by the Tenant or the Tenant has been relieved under the provisions of that Act and notwithstanding forfeiture is avoided otherwise than by relief granted by the Court).
- 3.19.2 in connection with the preparation and service of all notices and schedules relating to wants of repair, whether served during or within six months after the expiration of the Term (but relating in all cases only to such wants of repair that accrued not later than the expiration or sooner determination of the Term).
- 3.19.3 in relation to any application for consent required or made necessary by this Lease (such costs to include reasonable management fees and expenses) whether or not the same is granted (except in cases where the Landlord is obliged not to unreasonably withhold its consent and does so or proffers the same subject to unreasonable conditions), or whether the application be withdrawn.

3.20 Statutory requirements

- 3.20.1 At the Tenant's own expense, to comply in all respects with the provisions of the Offices, Shops and Railway Premises Act 1963, the Fire Precautions Act 1971, the Defective Premises Act 1972 and the Health and Safety at Work etc. Act 1974 and

every other statute now in force or which may hereafter be in force and any other obligations imposed by law relating to the Premises or the user thereof.

- 3.20.2 To execute all works and provide and maintain all arrangements upon or in respect of the Premises or the user thereof, which are directed or required (whether by the landlord, tenant or occupier) by any statute now in force or which may hereafter be in force or the lawful requirements of any government department, local or other competent authority or duly authorised officer or court of competent jurisdiction acting under or in pursuance of any statute and to indemnify and keep the Landlord indemnified against all costs, charges, fees and expenses of or incidental to the execution of any works or the provision or maintenance of any arrangements so directed or required.
- 3.20.3 Not to do or omit to be done in or near the Premises, any act or thing by reason of which the Landlord may, under any statute, incur or have imposed upon it or become liable to pay any penalty, damages, compensation, costs, charges or expenses.

3.21 **Planning Acts**

To comply with the provisions and requirements of the Planning Acts and of any planning permissions relating to or affecting the Premises and to indemnify and keep the Landlord indemnified against all actions, proceedings, claims, demands, losses, costs, expenses, damages and liability whatsoever in respect of any non-compliance.

3.22 **Statutory notices**

Within 14 days of receipt of the same (or sooner if requisite having regard to the requirements of the notice or order in question or the time limits stated therein) to produce to the Landlord a true copy and any further particulars reasonably required by the Landlord of any notice or order or proposal for the same given to the Tenant and relevant to the Premises or the occupier thereof by any government department or local or public authority, and, without delay, to take all necessary steps to comply with the notice or order so far as the same is the responsibility of the Tenant, and, at the request of the Landlord but at the cost of the Tenant, to make or join with the Landlord in making such objection or representation against or in respect of any such notice, order or proposal as the Landlord shall deem expedient.

3.23 Fire precautions and equipment

- 3.23.1 To comply with the requirements and recommendations of the fire authority and the insurers of the Premises in relation to fire precautions affecting the Premises.
- 3.23.2 To keep the Premises supplied and equipped with such fire fighting and extinguishing appliances as shall be required by any statute, the fire authority or the insurers of the Premises and such appliances shall be open to inspection and shall be maintained to the reasonable satisfaction of the Landlord.
- 3.23.3 Not to obstruct the access to or means of working any fire fighting and extinguishing appliances or the means of escape from the Premises in case of fire or other emergency.

3.24 Defective premises

Forthwith upon becoming aware of the same, to give written notice to the Landlord of any defect in the Premises which might give rise to an obligation on the Landlord to do or refrain from doing any act or thing so as to comply with the duty of care imposed on the Landlord pursuant to the Defective Premises Act 1972, and to display and maintain in the Premises all notices which the Landlord may, from time to time, reasonably require to be displayed in relation thereto.

3.25 Encroachments and easements

- 3.25.1 Not save as may be required by law to stop up or obstruct any of the windows or lights belonging to the Premises and not to permit any new window, light, opening, doorway, passage, Conduit or other encroachment or easement to be made or acquired into, upon or over the Premises or any part thereof, and in case any person shall attempt to make or acquire any encroachment or easement whatsoever, to give written notice thereof to the Landlord immediately the same shall come to the notice of the Tenant, and, at the request of the Landlord but at the cost of the Tenant, to adopt such means as may be reasonably required by the Landlord for preventing any such encroachment or the acquisition of any such easement.
- 3.25.2 Not to give to any third party any acknowledgement that the Tenant enjoys the access of light to any of the windows or openings in the Premises by the consent of such third party nor to pay to such third party any sum of money nor to enter into any agreement with such third party for the purpose of inducing or binding such third party to abstain from obstructing the access of light to any windows or

openings and in the event of any of the owners or occupiers of adjacent land or buildings doing or threatening to do anything which obstructs the access of light to any of the said windows or openings to notify the same forthwith to the Landlord and to permit the Landlord to bring such proceedings as it may think fit in the name of and at the cost of the Tenant against any of the owners and/or occupiers of the adjacent land in respect of the obstruction of the access of light to any of the windows or openings in the Premises.

- 3.25.3 Not at any time during the Term to bring any action or make any claim or demand on account of any injury to the Premises in consequence of the erection of any building or the alteration of any building on any land adjacent neighbouring the Premises by the Landlord or for which the Landlord may give its consent pursuant to any power reserved by this Lease or in respect of any easement right or privilege, granted or to be granted by the Landlord for the benefit of any land or building erected or to be erected on any land adjacent neighbouring the Premises and (if required) to concur with the Landlord at its expense in any consent which it may give or any grant which it may make as hereinbefore mentioned.

3.26 Covenants affecting reversion

To perform and observe the agreements, covenants, restrictions and stipulations referred to in the deeds and documents listed in schedule 2, so far as any of the same are still subsisting and capable of taking effect and relate to the Premises.

3.27 Indemnity

To indemnify and keep indemnified the Landlord in respect of any liability arising in any way directly out of:

- 3.27.1 the state of repair or condition of the Premises insofar as the Tenant is liable therefor under the covenants herein contained;
- 3.27.2 any act omission or default of the Tenant or its agents servants or invitees
- 3.27.3 works of repair construction or alteration to the Premises carried out by or on behalf of the Tenant, or any undertenant;
- 3.27.4 the user of the Premises;
- 3.27.5 third party claims which ought to have been covered by insurance effected by the Tenant;

- 3.27.6 the user of vehicles on the Premises by the Tenant or its concessionaires agents servants or invitees;
- 3.27.7 anything now or hereafter attached to or brought onto the Premises by the Tenant its agents servants invitees licensees or visitors;
- 3.27.8 any omission of the Tenant to give written notice to the Landlord of any defect or item requiring repair;
- 3.27.9 any breach (however remote) of any covenant on the part of the Tenant or any condition herein contained.

3.28 Opening hours

To operate the Premises in accordance with the permitted use during such hours as may be permitted by the Planning Permission.

3.29 Not to display offensive material

Not in any event to display notices, or posters or advertisements or signs that may cause offence or be contrary to the London Borough of Southwark Equal Opportunities Policy and the Local Authority's decision as to what may cause offence shall be final

3.30 To observe equal opportunity employment and letting policies

To take all reasonable steps to ensure that in employing with respect to the occupation use or management of the Premises, or in any letting of part or whole of the Premises that no job applicants or employee, or potential undertenants or licensees suffer direct or indirect discrimination or receive less favourable treatment in relation to terms and condition on the grounds of sex race colour nationality ethnic or national origin marital status sexual orientation or religious belief and that applications received by disabled persons having necessary attributes to the job are welcomed and to ensure that the Premises provide access for disabled persons.

3.31 Basement Lease Obligations

To comply with the obligations set out in clause 5.3 of the Basement Lease as though the references in that clause to the "Landlord" were references to the Tenant.

4 **Landlord's covenant**

The Landlord hereby covenants with the Tenant.

Quiet enjoyment

That the Tenant paying the rents reserved by this Lease and performing and observing the covenants on the part of the Tenant herein contained shall and may peaceably hold and enjoy the Premises during the Term without any interruption by the Landlord or any person lawfully claiming through, under, or in trust for it.

5 **Insurance**

5.1 **Tenant to insure**

The Tenant shall insure and keep insured with some reputable publicly quoted insurance company:

5.1.1 the Premises (other than plate glass) against loss or damage by the Insured Risks, subject to such exclusions, excesses and limitations as may be imposed by the insurers in the full reinstatement costs (which amount is to be reasonably determined by the Tenant from time to time) of the Premises including architects', surveyors', and other professional fees (and Value Added Tax thereon) and expenses incidental thereto, the cost of shoring up, demolition and site clearance and similar expenses;

5.1.2 the loss of Gross Revenue as defined in part 3 schedule 3, from time to time payable, or reasonably estimated to be payable under this Lease, (and any Value Added Tax chargeable in respect thereof) for three years or such longer period as the Tenant may, from time to time, reasonably deem to be necessary, having regard to the likely period required for obtaining planning permission and reinstating the Premises.

5.1.3 Explosion of any engineering and electrical plant and machinery to the extent that the same is not covered by clause 5.1.2.

5.2 **Tenant to produce evidence of insurance**

5.2.1 At the request of the Landlord, the Tenant shall (but not more than once in any year) produce to the Landlord a copy of the policy of such insurance and a copy of the receipt for the last premium or (at the Tenant's option) reasonable evidence

from the insurers of the terms of the insurance policy and the fact that the policy is subsisting and in effect.

5.2.2 The Tenant covenants with the Landlord:

- 5.2.2.1 to use reasonable endeavours to procure that a note of the Landlord's interest is endorsed on the policy of insurance;
- 5.2.2.2 to use reasonable endeavours to procure that the insurers waive any rights of subrogation which they may have against the Landlord; and
- 5.2.2.3 to procure that the Landlord is informed of any material change in the ambit quantum or terms of insurance cover of the Premises as soon as practicable.

5.3 Destruction of the Premises

Subject to clause 3.4 and this clause 5.3, if the Premises or any part thereof is destroyed or damaged by any risk:

- 5.3.1 unless payment of the insurance monies shall have been voided or refused in whole or in part by reason of any act or default of the Landlord and the Landlord has not made up the deficit in insurance monies; and
 - 5.3.2 subject to the Tenant being able to obtain any necessary planning permission and all other necessary licences, approvals and consents in respect of which the Tenant shall use its reasonable endeavours to obtain;
- the Tenant shall as soon as reasonably practicable reinstate the Premises so destroyed or damaged substantially as the same were prior to any such destruction or damage (but not so as to provide accommodation identical in layout if it would not be reasonably practical to do so);
- 5.3.3 The Tenant's obligations to reinstate the Premises in accordance with its obligations under clause 5.3 are subject to the extent and for so long as the Landlord and Tenant (acting reasonably) agree that a Basement Destruction Event subsists. If there is any dispute as between the Landlord and Tenant as to whether or not a Basement Destruction Event subsists at any time such dispute shall be resolved in accordance with the provisions of clause 13.

5.4 Payment of insurance monies refused

If the payment of any insurance monies is refused as a result of some act or default of the Landlord or any undertenant or other permitted occupier or any person under its or their control (other than the Tenant or other permitted occupier or person under the Tenant's control) the Landlord shall pay to the Tenant, on demand, the amount so refused with interest thereon at the Prescribed Rate.

5.5 Benefit of other insurances

If the Tenant shall become entitled to the benefit of any insurance on the Premises which is not effected or maintained in pursuance of the obligations herein contained, then the Tenant shall apply all monies received from such insurance (in so far as the same shall extend) in making good the loss or damage in respect of which the same shall have been received.

5.6 Insurance becoming void

Neither the Landlord nor the Tenant shall do or omit to do anything that could cause any policy of insurance in respect of or covering the Premises or the Basement Premises over which the Landlord has reserved rights to become void or voidable wholly or in part nor (unless the relevant party has previously notified the other and agreed to pay the increased premium) anything whereby any abnormal or loaded premium may become payable.

5.7 Requirements of insurers

Both parties shall, at all times, comply with all reasonable and proper requirements and recommendations of the Insurers so far as such requirements and recommendations are known by the relevant parties.

5.8 Notice by Landlord

The Landlord shall give notice to the Tenant forthwith upon becoming aware of the happening of any event or thing which might involve a claim upon the insurance policy relating to the Premises affected by the Tenant.

5.9 Options to determine - Insured Risks

If the Premises or a substantial part of them or access to the Premises are destroyed or damaged by any risk and rebuilding or reinstatement of the Premises or accessway has not been completed by the later of three years after the

occurrence of the damage or the expiry of the period for which loss of Gross Revenue insurance has been obtained, either party may give not less than six months' notice to the other to terminate this Lease and if the building or reinstatement work has not been completed within six months of the giving of the notice, this Lease is to terminate at the expiry of the notice but without affecting any liability arising from a breach of covenant or condition which has occurred before then and any insurance monies shall be shared between the Landlord and Tenant in proportion to the values of their respective interests in this Lease.

5.10 Public liability insurance

The Tenant shall insure the Premises against public liability in an amount and form of policy agreed between the Landlord and Tenant acting reasonably.

5.11 Landlord insurance covenants

- 5.11.1 For so long as the Landlord is the landlord under the Basement Lease it will following a Basement Destruction Event at the written request of the Tenant enforce the repairing and reinstating obligations of the Tenant under the provisions of clause 3.7 and schedule 2 of the Basement Lease against the tenant of the Basement Lease.
- 5.11.2 The Landlord further covenants that it will not transfer its reversionary interest to the Basement Lease separately from its reversionary interest to this Lease without procuring from the transferee a deed of unilateral covenant in favour of the Tenant on the following terms:
 - 5.11.2.1 a covenant on the same terms as that set out in clause 5.11.1; and
 - 5.11.2.2 the transferee shall not transfer its reversionary interest in the Basement Lease separately from its reversionary interest in this Lease without procuring from the party to whom it transfers such interest covenants in favour of the Tenant on the same terms as the covenants set out in this clause 5.11.
- 5.11.3 The Landlord will permit the Tenant to register a notice on the charges register and a restriction on the proprietorship register of the Landlord's reversionary interest in the Basement Lease and this Lease relating to the Landlord's covenants in this clause 5.11 in the following form:

"no disposition of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed on behalf of the proprietor by the proprietor or its coveyancers that the provisions of clause 5.11 of this Lease dated [•] and made between (1) the Landlord and (2) the Tenant have been complied with".

6 **Provisos**

Provided always and it is hereby agreed and declared as follows.

6.1 **Forfeiture**

Without prejudice to any other right, remedy or power herein contained or otherwise available to the Landlord:

- 6.1.1 if any rent is unpaid for 21 days after becoming payable (whether the rent has been demanded or not) or if the Tenant after due notice to remedy the same is in breach of any of the covenants by the Tenant contained in this Lease (which notice shall not be less than two calendar months from the date of the notice) then subject to clauses 6.1.3 and 6.1.4 the Landlord may terminate this Lease by re-entering the Premises (or part of them in the name of the whole) itself or by an authorised agent;
- 6.1.2 re-entry in exercise of the right in clause 6.1.1 does not affect any other right or remedy of the Landlord for breach of a covenant or condition by the Tenant occurring before the termination of this Lease;
- 6.1.3 the Landlord may not exercise the right of re-entry contained in this Lease unless it has first given to the Tenant and any mortgagee (meaning in this clause 6.1.3 a mortgagee or chargee of this Lease notice of whose mortgage or charge has been given to the Landlord) not less than two calendar months' notice (the "notice") of the non-payment or breach requiring the non-payment or breach to be remedied and of the Landlord's intention to re-enter specifying the grounds for doing so; and
- 6.1.4 the right of the Landlord to re-enter the Premises shall be overridden if within the period of two calendar months from the date of the notice given under clause 6.1.3 the mortgagee:
 - 6.1.4.1 gives notice to the Landlord requiring it not to re-enter the Premises;

- 6.1.4.2 provides the Landlord with a duly executed and completed deed of undertaking in a form reasonably required by the Landlord binding the mortgagee to assume the obligations of the Tenant under this Lease;
 - 6.1.4.3 save where the breach is not technically capable of remedy takes substantive steps acceptable to the Landlord acting reasonably towards remedying the relevant breach with reasonable speed; and
 - 6.1.4.4 pays the Landlord any monies which have become due under this Lease and which are then unpaid,

and in those circumstances the Landlord will allow the mortgagee such additional time as may be reasonable to remedy a default of the Tenant but additional time shall not be allowed for the payment of arrears or ascertained sums due under this Lease. The rights of the mortgagee under the foregoing provisions are in addition to and without prejudice to the rights to claim relief against forfeiture which are accorded to the Tenant and the mortgagee by law.

6.2 No implied easements

Nothing herein contained shall impliedly confer upon or grant to the Tenant any easement, right or privilege other than those expressly granted (if any) by this Lease.

6.3 Exclusion of warranty as to user

Nothing contained in this Lease or in any consent granted by the Landlord under this Lease shall imply or warrant that the Premises may be used under the Planning Acts for the purpose herein authorised or any purpose subsequently authorised and the Tenant hereby acknowledges and admits that the Landlord has not given or made at any time any representation or warranty that any such use is or will be or will remain a permitted use under the Planning Acts.

6.4 Representations

The Tenant acknowledges that this Lease has not been entered into in reliance wholly or partly on any statement or representation made by or on behalf of the Landlord, except any such statement or representation that is expressly set out in this Lease or is contained in the written replies to the written enquiries of the Tenant's solicitors made of the Landlord's solicitors prior to the date hereof.

6.5 Covenants relating to adjoining land

Nothing contained in or implied by this Lease shall give the Tenant the benefit of or the right to enforce or to prevent the release or modification of any covenant, agreement or condition entered into by any tenant of the Landlord in respect of any property not comprised in this Lease.

6.6 Notices

- 6.6.1** Any demand or notice required to be made, given to, or served on the Tenant under this Lease shall be duly and validly made, given or served if addressed to the Tenant and delivered personally, or sent by prepaid registered or recorded delivery mail, addressed to its registered office.
- 6.6.2** Any notice required to be given to or served on the Landlord shall be duly and validly given or served if sent by prepaid registered or recorded delivery mail, addressed to the Landlord the address at the front of this document.

6.7 Disputes with adjoining occupiers

Any dispute arising between the Tenant and the tenants or occupiers of any Adjoining Land owned by the Landlord as to any easement, quasi-easement, right, privilege or Conduit in connection with the Premises or the Adjoining Land or as to party or other walls shall be fairly and reasonably determined by the Landlord.

6.8 Resurfacing of Market Square and works to Adjoining Land

If the Landlord determines that as part of a larger area to be resurfaced by the Landlord and in order that the surfacing treatment on the Premises is consistent in level and materials with that on the Adjoining Land (other than the Basement Premises), the Landlord shall be entitled to resurface the Premises provided that:

- 6.8.1** it gives the Tenant reasonable prior written notice thereof; and
- 6.8.2** the materials used are of no less a standard than the Premises surfacing at the date of this Lease; and
- 6.8.3** the Landlord takes all reasonable steps to minimise disruption to the use of the Premises in accordance with clause 3.15; and
- 6.8.4** at all times during the undertaking of the resurfacing works, access to and from the Premises is maintained; and

- 6.8.5 to the extent of the market trading area is materially reduced (including by way of temporary relocation to part of the Adjoining Land (other than the Basement Premises) the provisions of clause 11 shall apply; and
- 6.8.6 the Landlord makes good any damage caused to the Premises to the reasonable satisfaction of the Tenant; and
- 6.8.7 all works undertaken in this clause are at the Landlord's cost.

6.9 Agreement to exclude security of tenure

The Landlord and the Tenant agree to exclude the provisions of sections 24-28 of the Landlord and Tenant Act 1954 in relation to the tenancy created by this Lease.

6.10 Compliance with statutory requirements

It is confirmed that before the Tenant became contractually bound to enter into [this Lease][the Agreement for Lease pursuant to which this Lease has been granted]:

- 6.10.1 the Landlord served notice (the "Landlord's notice") on the Tenant on [*insert date*] in relation to the tenancy created by this Lease in a form complying with the requirements in schedules 1 and 2 of the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 (the "Order"), as the Tenant acknowledges; and
- 6.10.2 on [*insert date*] the Tenant (or a person authorised by it) made a [*declaration*] [*a statutory declaration*] in a form complying with the requirements of schedule 2 of the Order,

and that the parties have duly carried out the requirements of schedule 2 of the Order to render valid the agreement in clause 6.9.

6.11 Registration

- 6.11.1 The Landlord will co-operate with the Tenant to enable the Tenant to register the Lease and the Pre-Emption Right at the Land Registry and to become the registered proprietor of the Lease with absolute leasehold title.
- 6.11.2 (Subject to the Tenant providing a completed Form AN1 in respect of the same) the Landlord will immediately following completion of the Lease provide to the Tenant evidence of its consent to the application of the Tenant to register an agreed notice of the Lease and the Pre-Emption Right on the charges register of

the Landlord's title to the reversion in the Premises by completion and signature by the Landlord of panel 15 of the Form AN1 and panel provided and will give such assistance as may reasonably and properly be required by the Tenant for the purpose.

- 6.11.3 (Subject to the Tenant providing a completed Form RX1 in respect of the same) the Landlord will immediately following the date of this Lease provide to the Tenant evidence of his consent to the application of the Tenant to register the restriction referred to in paragraph 10.1 of schedule 5 part 1 by completion and signature by the Landlord of panel 15 of the Form RX1 provided.
- 6.11.4 (Subject to the Tenant providing a completed Form AN1 in respect of the same) the Landlord will immediately following the date of this Lease provide to the Tenant evidence of his consent to the application of the Tenant to register an agreed notice of the Pre-emption Right on the charges register of the Landlord's reversionary title to the Premises by completion and signature by the Landlord of panel 15 of the Form AN1 provided.
- 6.11.5 (Subject to the Tenant providing a completed Form RX1 in respect of the same) the Landlord will immediately following the date of this Lease provide the Tenant evidence of its consent to an application by the Tenant to register the restriction referred to in clause 5.11 of this Lease by completion and signature of the Landlord of panel 15 of the Form RX1 provided on both the Landlord's reversionary title to this Lease and the Basement Lease.

7 **Pre-emption Right**

The Landlord grants the Tenant the Pre-Emption Right and the parties covenant to perform the respective obligations, conditions and covenants in schedule 5.

8 **Landlord's right to terminate this Lease in the case of redevelopment**

- 8.1 In this clause the following words shall bear the following meanings:

Break Compensation

the break compensation to be paid by the Landlord to the Tenant as agreed between the Landlord and Tenant or as determined in accordance with clause 8.3 being the compensation equal to the capitalised value of 25% of the open market value (determined in accordance with the Red Book) (plus VAT) at

which a hypothetical leasehold interest in the Premises for a term equal to the Term of the Lease remaining at the date of Landlord's Break Notice might be reasonably and properly expected to be sold by private treaty in the open market on the Standard Conditions at the date of the Landlord's Break Notice in clause 8.2.1 but assuming:

- (a) a willing seller;
- (b) a reasonable and proper period within which to negotiate the sale taking into account the nature of the Premises and the state of the market;
- (c) values will remain static throughout that period; and
- (d) the terms of the hypothetical lease are the same as this Lease save that the Landlord's Right to Terminate this Lease in clause 8 and the provisions for Surrender of the CRT Area clause 9 are to be disregarded for the purposes of valuing the hypothetical leasehold interest; and
- (e) the Premises will be freely exposed to the market; and
- (f) no account has to be taken of any additional bid by a purchaser with a special interest;

Break Compensation Period

means the period from and including the seventh anniversary of the Term Commencement Date up to and excluding the twenty first anniversary of the Term Commencement Date;

Break Period

means the period from and including the seventh

anniversary of the Term Commencement Date;

Develop for Alternative Use

means the demolition or reconstruction or redevelopment of the Premises or a substantial part of the Premises for a use other than the permitted use stated in clause 3.15 of this Lease;

Evidence of Settled Intention

means substantial evidence indicating a firm and settled intention not likely to be altered of the kind that the Landlord would be required to establish the ground for opposing an application for a new tenancy under section 30(1)(f) of the Landlord and Tenant Act 1954 of the Landlord to Develop for Alternative Use ("Settled Intention") evidenced by:

- (i) a formal resolution of the Landlord in writing to Develop for Alternative use; and
- (ii) the grant of detailed planning permission to Develop for Alternative Use on conditions that are reasonably capable of being implemented and which are not unlawful; and
- (iii) written evidence and other supporting documentation evidencing how the Landlord intends to implement such permission, obtain funding and procure the Development for Alternative Use;

Red Book

means the RCIS Valuation Standards (Sixth Edition) or such other Edition then current.

- 8.2 The Landlord may terminate this Lease at any time during the Break Period where It has a Settled Intention to Develop for Alternative Use provided that in order for the Landlord's right of termination to be valid:
- 8.2.1 it gives the Tenant not less than six months' written notice to that effect ("Landlord's Break Notice");

- 8.2.2 at the same time as giving the Landlord's Break Notice it provides the Tenant with all Evidence of Its Settled Intention to Develop for Alternative Use to enable the Tenant to ascertain whether the Landlord has the Settled Intention to Develop for Alternative Use;
- 8.2.3 where the Landlord's Break Notice is given during the Break Compensation Period it pays the Tenant the Break Compensation by no later than the date of the expiry of the Landlord's Break Notice in clause 8.2.1 without deduction demand or set-off; and
- 8.2.4 in the event that the Tenant has objected to the Landlord's Break Notice pursuant to clause 8.6 and either that the Expert has determined the matter and found that the Landlord has provided sufficient Evidence of Settled Intention and has a Settled Intention to Develop for Alternative Use or the Tenant has withdrawn its objection in writing prior to any such determination by the Expert.
- 8.3 On the Landlord giving the Landlord's Break Notice the Landlord and Tenant shall endeavour to agree the Break Compensation. If the Landlord and Tenant do not agree the Break Compensation is to be determined by an independent expert appointed by the parties in accordance with the provisions of clause 13:
- 8.3.1 The determination of the Break Consideration by the expert is to be conclusive and to bind the parties.
- 8.4 The right of termination of this Lease granted pursuant to this clause 8 is personal to and operates for the benefit only of the Mayor and Burgesses of the London Borough of Southwark and ceases to operate on any Disposal save that any Master Developer (as defined in schedule 5) who acquires the reversion to this Lease through a Master Disposal shall also have the benefit of and be entitled to operate the right in this clause 8.
- 8.5 The Tenant's right to object to the Landlord's Break Notice.
- 8.5.1 The Tenant has the right to object to the issue of the Landlord's Break Notice if it is not in accordance with a Settled Intention on behalf of the Landlord to Develop for Alternative Use or if the Evidence of Settled Intention is insufficient. In order to make objection to the validity of the Landlord's Break Notice, the Tenant is required to give notice to the Landlord setting out the grounds on which it contends that there is not sufficient evidence of a Settled Intention or Settled Intention within 30 Working Days after receipt of the Landlord's Break Notice. If the Tenant does not so object, then its right of objection to the Landlord's Break Notice on the basis of

- lack of Settled Intention or not sufficient Evidence of Settled Intention and to submit the issue to the determination of an independent expert under clause 8.5.2 8.6.2 will lapse.
- 8.5.2 Following the giving of notice of objection by the Tenant, either party may submit the objection for independent expert determination who will determine whether the Evidence of Settled Intention is sufficient to indicate a Settled Intention or whether there is a Settled Intention on behalf of the Landlord the provisions of clauses 8.3 and 8.3.1 are *mutatis mutandis* to apply.
- 8.5.3 The Landlord's Break Notice shall not terminate this Lease while the objection remains undetermined unless the Tenant waives the objection.
- 8.5.4 The Tenant may (within the 30 Working Day period referred to in clause 8.5.1) add to or change the grounds of objection as further relevant information or explanation is given to it.
- 8.5.5 The Tenant is to be treated as having reasonable and proper cause to object for so long as it is kept without sufficient information reasonably and properly to enable it to assess whether the Landlord has a Settled Intention to Develop for Alternative Use.
- 8.6 On the later of:
- 8.6.1 the expiry of the Landlord's Break Notice; or
- 8.6.2 where the Tenant has pursuant to clause 8.5 objected to the Landlord's Break Notice ten Working Days after the day:
- 8.6.2.1 on which the Expert has determined the matter and found that the Landlord has provided sufficient Evidence of Settled Intention to Develop for Alternative Use; or
- 8.6.2.2 the Tenant has withdrawn its objection in writing prior to any such determination by the Expert,
- this Lease will terminate but without affecting any liability of the parties arising from a breach of covenant or condition which has occurred before then.
- 8.7 The Tenant shall apply to the Land Registry to de-register the Lease at the Land Registry.

Provisions for surrender of CRT Area

[NOTE: THE PROVISIONS OF THIS CLAUSE MAY BE MODIFIED AND UPDATED BEFORE COMPLETION IN LINE WITH THE CRT AGREEMENT ONCE COMPLETED AS PROVIDED FOR IN THE AGREEMENT FOR LEASE BETWEEN THE PARTIES.]

- 9.1 For the purposes of this clause 9 the following words and expressions shall bear the following meanings.

| | |
|------------------------------------|--|
| <i>CRT Area</i> | so much of that area of the Market Square which may be required to be occupied by the CRT in accordance with the CRT Agreement shall be as set out in the TfL Notice which shall not be more than that area and shown cross hatched black on the plan in Appendix 1; |
| <i>CRT</i> | Cross River Tram; |
| <i>CRT Agreement</i> | an agreement dated [•] entered into between (1) the Landlord (2) [•] (3) Transport for London [DETAILS TO BE COMPLETED ONCE CRT AGREEMENT IS COMPLETED] ; |
| <i>Surrender Date</i> | the date which is 28 days from a TfL Notice or such longer date stated therein; |
| <i>TfL Notice</i> | a notice pursuant to clause [•] [TO BE FILLED IN WHEN CRT AGREEMENT FINALISED] of the CRT Agreement served by TfL on either the Landlord and/or the Tenant notifying the Landlord/Tenant that the CRT Area is required for the purposes of CRT; |
| <i>Deed of Surrender</i> | means a deed in the form of the draft attached at Annexure 4; and |
| <i>Actual Surrender Completion</i> | the completion of surrender of part of the Lease in relation to the CRT Area (referred to in the Standard Conditions as "date of actual completion"). |

- 9.2 Following the receipt by either the Landlord or the Tenant of a TfL Notice the Tenant is to surrender and the Landlord is to accept a surrender of part of the Lease in relation to the CRT Area.
- 9.3 The Landlord and Tenant shall both promptly notify each other upon receipt of a TfL Notice.
- 9.4 The surrender under the Deed of Surrender excludes all Tenant's trade fixtures, fittings and equipment but includes any Landlord fixtures fittings and equipment.
- 9.5 Neither the Tenant nor the Landlord are to pay or receive any premium from the other in respect of the Deed of Surrender.
- 9.6 The Tenant shall not be liable for dilapidations pursuant to this Lease in respect of the CRT Area.
- 9.7 Completion is to take place on the Surrender Date at the Landlord's Solicitors' offices or elsewhere as they may reasonably direct. Standard Condition 8.1.1 is varied accordingly.
- 9.8 Completion is to take place by express surrender when the Tenant is to deliver to the Landlord the executed original Deed of Surrender and the Landlord is to accept the surrender of the CRT Area by delivering to the Tenant the executed counterpart Deed of Surrender.
- 9.9 The Tenant surrenders with full title guarantee. Standard Condition 6.6.2 does not apply.
- 9.10 The CRT Area is surrendered with vacant possession subject to the CRT Agreement and all other obligations, covenants and conditions on the registered entries of the CRT Area at the Land Registry. The Landlord is to be treated as entering into this Lease knowing and fully accepting those terms and may not raise any objection to or requisition on them.
- 9.11 The Tenant surrenders the CRT Area free from encumbrances other than:
 - (a) the encumbrances referred to in Standard Condition 3.1.2; and
 - (b) unregistered interests which override registered dispositions under schedule 3 of the Land Registration Act 2002 (where the Lease is unregistered) would override first registration under schedule 1 of the Land Registration Act 2002.

- 9.12 The Deed of Surrender is to be engrossed in duplicate as an original and counterpart by the Landlord and is to be delivered to the Tenant's Solicitors not less than five Working Days prior to the Surrender Date.
- 9.13 The provisions of the Lease relating to insurance are to remain in full force and effect until Surrender Completion.
- 9.14 Standard Conditions 7.1.1, 7.1.2, 7.1.3 and 10.1.3 do not apply.
- 9.15 Up to and including Actual Surrender Completion all rents and other monies due under the Lease remain payable in respect of the CRT Area.
- 9.16 On Actual Surrender Completion the Tenant is to pay to the Landlord the due proportion of any rents and other monies due under the Lease and remaining unpaid at Actual Surrender/Completion attributable to any period up to and including Actual Surrender Completion in respect of the CRT Area.
- 9.17 On Actual Surrender Completion the Landlord is to reimburse to the Tenant the due proportion of any part of the rent reserved by the Lease and paid in advance and attributable to any period following Actual Surrender/Completion in relation to the CRT Area.
- 9.18 Standard Conditions 8.3.2, 8.3.3, 8.3.4(a), 8.3.5, 8.3.6, 8.3.7 and 8.3.8 do not apply.
- 9.19 In making any apportionment under clause 9.16 it is to be assumed that the Tenant is tenant of the CRT Area (and is therefore under an obligation to pay the rents and other monies due under the Lease) until the end of the effective date of apportionment.
- 9.20 The parties acknowledge that with the exception of the covenants by the Tenant for the repair and redecoration of the CRT Area (which shall continue up until the date 12 months before the Deed of Surrender is to be completed but not thereafter) all the obligations, covenants and conditions of the Lease in relation to the CRT Area are to remain in full force and effect until Actual Surrender Completion.
- 9.21 Each party is responsible for its own professional costs relating to the preparation and implementation of this clause 9.
- 9.22 Subject to clause 9.28 below, if the proportion of the Gross External Area of the Premises specified in the TfL Notice to be surrendered under the Deed of Surrender exceeds 25% of the Gross External Area of the Premises at the date of the TfL

- Notice and In the reasonable opinion of the Tenant the operation of a market square at the Premises either would or has become unviable as a result of such surrender then the Tenant may at any time during the period expiring two years after the date of the TfL Notice by giving not less than six months' written notice to the Landlord to that effect, determine this Lease.
- 9.23 If, after the service of a TfL Notice the Tenant is of the reasonable opinion that as a result of the construction of the CRT the use of the Premises as a market square will become unviable due to the Premises having no direct access to a public highway to service the market square the Landlord shall first use reasonable endeavours to offer to the Tenant reasonably sufficient alternative means of access for servicing the market square and if either such access is not provided by the Landlord or if it is provided but notwithstanding the provision of such access in the reasonable opinion of the Tenant acting in good faith notwithstanding the alternative means of access in the Landlord's offer the use of the Premises as a market square will become unviable due to lack of direct access to a public highway then the Tenant may at any time during the period expiring two years after the date of the TfL Notice by giving not less than six months' written notice to the Landlord to that effect, determine this Lease.
- 9.24 If the Tenant duly serves a notice under this clause it shall procure that vacant possession of the Premises will be available on the date on which this Lease is to determine under the notice free of occupation by and of any estate or interest vested in the Tenant or any third party other than TfL under the CRT Agreement.
- 9.25 If a notice is duly served this Lease shall determine on the relevant date of expiry of the notice without prejudice to:
- 9.25.1 any rights or remedies which may have accrued to either party in respect of any breach of any of the covenants or obligations contained in it including obligations under this clause which shall continue to bind the parties; and
- 9.25.2 the continuing obligation of the parties to account to one another on demand for any Additional Rent payment or allowance apportioned up to the date of determination as soon as reasonably possible thereafter.
- 9.26 Time is of the essence of all dates and periods referred to in this clause.
- 9.27 The Landlord will act in good faith to secure a reasonably appropriate level of compensation for the termination of this Lease or for the surrender of the CRT Area from TfL and upon receipt of such compensation by the Landlord it shall be shared

- between the Landlord and the Tenant in proportion to the value of their respective interests in the Premises valued immediately before the TfL Notice was served and paid by the Landlord to the Tenant within 15 Working Days of receipt thereof by the Landlord.
- 9.28 Following the date on which the TfL Notice is received the Landlord shall cooperate with the Tenant and use reasonable endeavours to relocate that part of the Premises which is required to be surrendered under the Deed of Surrender to neighbouring property of the Landlord immediately adjoining the boundary of the Premises (following the surrender) in a location reasonably acceptable to the Tenant and following such relocation the Landlord and Tenant shall if necessary and at the Tenant's cost (the Landlord and Tenant acting reasonably in the circumstances) enter into any necessary deed of variation of this Lease and/or new lease on materially similar terms as this Lease (save as to the definition of "Premises" and other consequential amendments) to reflect the change in the location of the relocated part of the Premises and the parties shall act reasonably and co-operate to ensure that such deed of variation and/or new lease is registered at the Land Registry.
- 9.29 Following the completion of a deed of variation and/or new lease under clause 9.28 the right to determine this Lease granted in clause 9.22 shall no longer be operable by the Tenant.
- 10 Relocation of Market Store**
- Subject to the Landlord first complying with the provisions of this clause 10 the right for the Landlord at the Landlord's cost, to relocate the Market Store to a reasonable alternative location reasonably proximate to the Market Square, subject to:
- 10.1 obtaining the Tenant's prior written consent thereto (such consent not to be unreasonably withheld) PROVIDED THAT it shall not be reasonable for the Tenant to withhold consent where the location of the relocated Market Store will not materially adversely affect the beneficial use of the Premises by the Tenant or not render it less convenient for the Tenant to service the Market Square;
- 10.2 the Landlord indemnifying and paying the Tenant the cost plus irrecoverable VAT of making suitable alternative arrangements for the Tenants rights of access in schedule 1 to be maintained;
- 10.3 the Landlord (subject to an obligation on the Tenant to use reasonable endeavours to mitigate any loss) paying the Tenant the reasonable cost plus irrecoverable VAT

- of relocating reinstating removing or replacing all and any of the Tenants equipment installed in the Market Store or in the Market Square or any of the other of the Tenant's equipment Pipes, Plant and machinery in the Market Store required to be relocated to the extent necessitated by the exercise of the Landlord's rights under this clause 10;
- 10.4 the relocated Market Store will be of no lesser size than that granted at the date of this Lease;
- 10.5 following such relocation, the Landlord and Tenant shall if necessary and at the Landlord's cost (the Landlord and Tenant acting reasonably in the circumstances) enter into any necessary deed of surrender and regrant or variation of this Lease to reflect the change in the location of the Market Store and the Landlord shall at its own cost cause such deed of variation to be registered against both the Landlord and Tenant's titles at the Land Registry and provide the Tenant with proof of registration or where the Tenant elects to do so, pay the Tenant the cost of doing so and shall in addition indemnify the Tenant against all and any irrecoverable VAT and stamp duty land tax or other taxes and impositions arising out of the surrender and regrant or variation;
- 10.6 the Landlord shall pay the Tenant all reasonable costs plus Irrecoverable VAT of undertaking the works in this clause 10 within 21 days of written demand therefor or the Landlord shall, if required by the Tenant, pay to the Tenant in advance a sum reflecting a reasonable estimate of the costs provided for in this clause 10;.
- 10.7 not less than 60 Working Days before the anticipated start date of any relocation works the Landlord is to give the Tenant written notice thereof accompanied by drawings, specifications and other written details of the work (whatever its nature), and the method of undertaking the work which the Landlord requires to execute in relocating the Market Store and provide such other information as the Tenant may reasonably require;
- 10.8 whilst any works are being carried out by the Landlord, the Landlord will procure that there is as little interference as is reasonably practicable with the Tenant's use and enjoyment of the Premises and shall at all times procure that there is as little interference as is reasonably practicable to access to and egress from the Market Square and the Market Store (including the relocated Market Store) and that the Tenant's beneficial use of the Market Square and Market Store (and relocated Market Store) is not in any way adversely affected and is at all times maintained;

- 10.9 before commencing any works the Landlord obtains a prior written consent of the Tenant for any works to be done on the Premises (such approval not to be unreasonably withheld);
- 10.10 In undertaking the relocation works the Landlord is to execute all work at its expense, in a good and workmanlike manner, with good and suitable materials, complying with good building practice and in accordance with drawings, specifications and other information submitted to and approved by the Tenant, and in accordance with requisite statutory consents and the requirements of competent authority;
- 10.11 In carrying out the work, the Landlord is to act with due diligence, cause as little damage as reasonably practicable and make good all damage done to the Premises to the Tenant's reasonable and proper satisfaction;
- 10.12 the Landlord is to keep the Tenant (subject to the Tenant using reasonable endeavours to mitigate its loss) indemnified against all claims, liability and costs plus irrecoverable VAT sustained or incurred from or incidental to the exercise, or purported exercise of the rights in this clause 10; and
- 10.13 the Landlord shall pay for and indemnify the Tenant in respect of all reasonable and proper legal and professional fees in respect of the grant of consent (whether or not the Tenant does grant such consent) and the costs plus irrecoverable VAT of entering into the deed of surrender and regrant or variation required pursuant to the Landlord exercising its rights under this clause 10.

11 Temporary interruption to Market Square

- 11.1 In the event that the Landlord wishes temporarily to enter upon that area of the Market Square hatched red on the plan in Appendix 1 or so much of such area (but no more) as is necessary ("Works Site") to undertake works of excavation, piling and installation of tunnels running from the land to the south of the Market Square and connecting to the Basement ("Works") it shall:
 - 11.1.1 obtain the Tenant's prior written consent thereto not to be unreasonably withheld or delayed;
 - 11.1.2 as a condition to granting its consent the Tenant may require the Landlord:
 - 11.1.2.1 to pay to it a licence fee equal to the Gross Revenue which the Tenant will lose as a result of the interruption to the use and

enjoyment of the Premises as agreed between the Landlord and Tenant or as determined by an expert in accordance with the provisions of part 6 of schedule 3 subject to the Tenant's obligation to take reasonable steps to mitigate such loss (including without limitation relocating stallholders and licensees to alternative sites within the Premises);

- 11.1.2.2 pay to the Tenant all reasonable costs plus VAT incurred by the Tenant in relocating stallholders and licencees and plant and equipment to alternative sites within the Premises and if required by the Tenant, pay the Tenant in advance a sum representing a reasonable estimate of the costs provided for in this clause 11.1.
- 11.2 The period of interruption or occupation of the Works Site by the Landlord is to be no more than three months.
- 11.3 The Landlord and Tenant shall enter into a formal licence which will regulate the times and manner during which the Landlord shall undertake the Works and make adequate provision for other ancillary matters to the Tenant's reasonable satisfaction.
- 11.4 The Landlord shall make good all and any damage caused to the Premises as a result of undertaking the Works in this clause 11 and reinstate the Premises to the condition they were in immediately prior to the undertaking of the Works to the reasonable satisfaction of the Tenant.

12 **Landlord's consent**

If under any provision of this Lease the Tenant is required to obtain the Landlord's consent, licence or approval, and such consent, licence or approval is not to be unreasonably withheld or delayed by the Landlord, the Landlord agrees that it shall act expeditiously in responding to any application for such consent, licence or approval.

13 **Expert determination**

- 13.1 Without prejudice to the other provisions of this clause 13 in the event of any dispute arising the Landlord and the Tenant shall endeavour to resolve it amicably but if the parties fail to resolve the dispute amicably, the dispute shall be resolved in accordance with the provisions of this clause 13 unless either party takes proceedings in any court, public enquiry or other hearing.

- 13.2 If any dispute arises in connection with this Lease, directors or other senior representatives of the Landlord and the Tenant hereto with authority to settle a dispute will within five Working Days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.
- 13.3 In the event that the dispute is not resolved in accordance with clause 13.2, the parties hereto may refer the dispute to an expert being an independent person who is professionally qualified and has substantial recent experience in respect of the subject matter of the dispute (the "Expert") to be agreed upon between the Landlord and the Tenant or at the request and option of either of them to be nominated at the joint expense by or on behalf of the president for the time being of the Royal Institution of Chartered Surveyors and the Expert shall act as an Expert and not as an arbitrator and the Expert's decision shall be final and binding on the parties (save in the case of manifest error) hereto and his costs shall be within his award or discretion or failing such a determination borne by both parties in equal shares.
- 13.4 The Expert shall be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute from the date of his appointment to act.
- 13.5 The Expert shall be required to give notice to each of the parties inviting them to submit to him within ten Working Days of such notice, written submissions and supporting material and shall afford to each of the parties an opportunity to make a counter-submissions within a further five Working Days in respect of any such submission and material and his decision shall be given in writing with reasons and in absence of manifest error shall be binding on the parties.
- 13.6 The Expert shall supply the parties copies of all evidence, information and advice which he obtains for the purpose of determining the dispute and the parties shall be entitled to make written representation to the Expert with regard to them within ten Working Days of the parties' respective receipt of such copies.
- 13.7 In the absence of any directions by the Expert as to his costs, they shall be borne equally between the parties and the parties shall bear their own costs.

14 Council's duties as local authority unaffected

For the avoidance of doubt nothing herein contained or implied shall prejudice or affect the Landlord's rights powers duties and obligations where the Landlord is a

local authority in the exercise of its functions as a local authority and the rights powers duties and obligations of the Landlord under all public and private statutes bye laws orders and regulations may be as fully and effectually exercised in relation on the Premises as if it was not the owner of the Premises and this Lease had not been executed by it and no compensation will be payable to the Tenant in connection with the grant of this Lease by virtue of any action taken by the Landlord pursuant to its separate duties as a statutory authority. The Landlord does not by the signing of this Lease warrant or represent that the Premises are fit for the permitted use or that the Premises have or will be granted planning permission for such use.

15 VAT

- 15.1 Any consideration paid or given for taxable supplies of goods or services under or in connection with this Lease is to be treated as exclusive of VAT. The recipient of any such supply is, in addition to the consideration for the supply, to pay the supplier an amount equal to any VAT which is chargeable in respect of the supply in question on the later of:
- 15.1.1 the day on which the consideration for the supply is paid or given; and
- 15.1.2 the production of a proper VAT invoice.
- 15.2 If VAT is charged where it properly ought not to have been, the party to this Lease who is the recipient of that VAT (the "recipient") is on demand to pay an amount equal to such VAT and is to issue to the party to this Lease who paid the VAT an appropriate credit note.
- 15.3 Where the incorrect charging of VAT is attributable to a breach of this Lease by the recipient then the recipient is to pay interest at a rate equal to 2% over the base rate of Barclays Bank PLC from time to time on the amount payable under clause 15.2 from the date that the VAT was paid to the recipient until the date repayment is made under clause 15.2.
- 15.4 Where a party is entitled under this Lease to recover from the other party the cost of goods and services supplied to the other party, but in respect of which the party makes no taxable supply to the other party, to indemnify the party against so much of the input tax on the cost for which the party is not entitled to credit allowance under section 26 or a refund under section 33 of the Value Added Tax Act 1994.

Delivered as a deed on the date of this document.

Schedule 1
Rights granted and reserved

Part 1
Rights granted

- 1 The free and uninterrupted passage of water, surface water, steam, soil, trade effluent and air gas electricity telephone communications from and to any part of the Premises through the Pipes which may at any time during the Term be in under or on the Adjoining Land.
- 2 The right to install and connect (subject to reasonable capacity levels not being exceeded) to the Pipes in or on Adjoining Land.
- 3 The right to enter on to the Adjoining Land not built upon for the purposes of installing, repairing, maintaining, renewing, replacing and Pipes.
- 4 The right of support shelter and protection for the Premises from the Adjoining Land.
- 5 The right to enter on to the Adjoining Land for the purposes of repairing maintaining renewing replacing cleaning and rebuilding the Premises.
- 6 If at any time during the Term the Premises has become inaccessible by public highway and the Landlord constructs a road immediately adjacent to the eastern boundary of the Premises the Tenant shall have a right of way for the benefit of the Premises at all times with or without vehicles and on foot to and from the Premises over and along that part of such road adjacent to the eastern boundary of the Premises on the Adjoining Land for the purposes of:
 - 6.1 access only (in the event that and for so long as the road constructed is not in the Landlord's reasonable opinion appropriate for servicing and delivery); or
 - 6.2 access servicing and delivery (in the event that and for so long as the road constructed is in the Landlord's reasonable opinion appropriate for servicing and delivery);to the Premises only over a route specified by the Landlord for such purpose and the party exercising such right making good any damage caused to the Landlord's reasonable satisfaction and contributing a fair and reasonable proportion of the maintenance and upkeep of such route pending adoption as a public highway

provided that the parties agree for the avoidance of doubt that the Landlord shall not be under any obligation to construct any such road and provided further that if the Landlord shall decide to construct such road it shall not be under any obligation to construct the road to a standard sufficient for servicing and delivery by the Tenant.

- 7 The benefit of all rights reserved in favour of the Premises over the Basement Premises and Eastern and Western Land as the Landlord may from time to time enjoy subject to complying with any restrictions or conditions to the exercising of such rights reserved pursuant to the "Basement Lease" and the Eastern and Western Margin Leases.
- 8 A right on foot over and along the footpaths from time to time on the Adjoining Land and Eastern and Western Land for the purposes of gaining access to and egress from the Premises.

Part 2

Exceptions and reservations

The following rights and easements are excepted and reserved out of the Premises to the Landlord and the tenants and occupiers of the Adjoining Land and Eastern and Western Land and all other persons authorised by the Landlord or having the like rights and easements

- 1 All rights granted to the tenant of the Basement Premises over the Premises pursuant to schedule 1 part 1 of the Basement Lease.¹
- 2 The right to enter upon the Premises for all or any of the purposes mentioned in this Lease including (without limitation) the exercise of the rights of the Landlord under clause 10.
- 3 A right on foot over the Premises designated from time to time by the Tenant acting reasonably for the purpose of gaining access to and egress from the Adjoining Land over such parts of the Premises designated by the Tenant for such purpose from time to time provided that such rights shall not be exercised at any time when the Tenant is undertaking works of repair (in respect of those parts of the Premises) or when access is restricted to allow for exhibitions and other functions on the Premises.

¹ Note: If the Market Square Lease is granted before the Basement Lease then the rights set out at schedule 1, part 1 of the Basement Lease are to be set out here in full.

- 4 All rights granted to the tenant of the Eastern and Western Land pursuant to the
Eastern and Western Margin Lease.

Schedule 2
Matters to which the Property is subject

The matters contained or referred to in the registers of Title Numbers [*the new landlord's title following the transfer of Blue Land and SGL455623, LN206931, SGL456566, TGL253362*] and those matters:

| Date | Description | Parties |
|------|---|---------|
| [•] | Eastern and Western Margin Lease and [•] [Supplemental Leases] | [•] |
| [•] | CRT Agreement | [•] |
| [•] | Basement Lease | [•] |
| [•] | Section 106 Agreement dated [FILL IN] [•] DATES OF RELEVANT SECTION 106 AGREEMENTS] | [•] |
| [•] | Any relevant Statutory Agreements/Highways Agreement | [•] |

[THE PARTIES WILL UPDATE THIS SCHEDULE WITH THE RELEVANT DATES AND PARTIES OF THE DOCUMENTS ABOVE WHICH ARE ENVISAGED UNDER THE AGREEMENT FOR LEASE]

Schedule 3
Additional Rent obligations and procedures

Part 1
Definitions

In this schedule 3 the following words and expressions shall bear the following meanings:

| | |
|-----------------------------|--|
| <i>Account Records</i> | means all books and other documents or records (including computer tapes discs and other storage systems cash registers tapes bank statements and any tax returns which relate to VAT or any similar or substituted tax) which are or ought reasonably to be kept by the Tenant for the purpose of ascertaining and verifying the Gross Revenue or which are reasonably relevant for such purpose; |
| <i>Basic Rent</i> | the rent reserved in paragraph 2 (<i>Reservation of Basic Rent</i>); |
| <i>Gross Revenue</i> | has the meaning given to it in paragraph 1 (<i>Meaning of "Gross Revenue"</i>); |
| <i>Net Deficiency</i> | the amount by which in any Year Permitted Deductions may exceed Gross Revenue; |
| <i>Net Revenue</i> | the amount by which in any Year the Gross Revenue exceeds the Permitted Deductions; |
| <i>Open Market Rate</i> | has the meaning given to it in paragraph 5 (<i>Meaning of "Open Market Rate"</i>), part 4; |
| <i>Permitted Deductions</i> | has the meaning given to it in paragraph 2 (<i>Permitted Deductions</i>) of part 3 of this schedule 3; |
| <i>Quarter</i> | any of the usual quarters commencing on 25 March, 24 June, 29 September and 25 December in each Year; |
| <i>Rent Payment Dates</i> | 22 January, 22 April, 22 July and 27 October in |

each Year and the final day of the term of this Lease;

Underlease

includes an underlease, agreement for underlease, licence or other arrangement of whatever description, granting or authorising use, possession, occupation or enjoyment of the whole or any part of the Premises including by way of granting licences to market stall operators and Permitted Underleases (but does not include any sub-underlease or remoter interest), and "Underlease" "Underlet" and "Underletting" shall be construed accordingly; and

Year

means a year of the Term calculated from the commencement date of the Term, and "Yearly" shall be construed accordingly.

Part 2

Reservation of rents and liability for Net Deficiency

1 Reservation of Basic Rent

The Basic Rent reserved to the Landlord is the Yearly rent of £100 plus VAT.

2 Reservation of the Additional Rent

The Additional Rent reserved to the Landlord is:

- (i) 25% of the Net Revenue plus VAT for the first five years of the Term; and
- (ii) thereafter 50% of the Net Revenue plus VAT for the rest of the Term.

Part 3

Gross Revenue and Permitted Deductions

1 Meaning of "Gross Revenue"

- 1.1 "Gross Revenue" means all revenues derived by the Tenant or any member of a group of companies of which the Tenant is a member or any person connected with the Tenant from Underleases and any other economic trading activity carried on at the Premises and includes:

- 1.1.1 rents, licence fees or other monies of whatever description by way of income;
 - 1.1.2 loss of rent insurance which the Tenant receives pursuant to clause 5;
 - 1.1.3 damages or other sums in respect of loss of mesne profits;
 - 1.1.4 interest on Gross Revenue received by the Tenant; and
 - 1.1.5 sums for the variation or surrender of an Underlease;
 - 1.1.6 all grants subsidies and fees of a revenue nature paid to the Tenant by national or local government or any public authority in connection with the activities carried on by the Tenant at the Premises;
- but, does not include:
- 1.1.7 revenue to which the Tenant may be entitled but which has not been received or recovered;
 - 1.1.8 contributions or reimbursements to the Tenant of service charges, insurance premiums or outgoings defrayed or to be defrayed by the Tenant in relation to the Premises and which are separately and properly reserved and distinguished from other rent reserved by an Underlease;
 - 1.1.9 VAT, on rents;
 - 1.1.10 costs recovered in the course of pursuing legal remedies with respect to the Premises;
 - 1.1.11 management charges made by the Tenant for the management of the Premises, but only to the extent that they represent fair and competitive charges for the provision of services in and to the Premises in accordance with market practice at the relevant time and the principles of good estate management;
 - 1.1.12 compensation costs and licence fees paid by the Landlord to the Tenant in accordance with the provisions of clause 11 or elsewhere in accordance with the provisions of this Lease; and
 - 1.1.13 compensation received from the Landlord under clause 9.27.
- 1.2 Any receipt which accrues over or relates to a period is to be treated, if apportionment is necessary, as accruing from day to day throughout the period to which it relates, and is apportionable in respect of time accordingly.

- 1.3 Gross Revenue is to be treated as if it were received by the Tenant notwithstanding any assignment, charge or other divestment of income from the Premises made by the Tenant.
- 1.4 References to interest on Gross Revenue are to the net amount of interest after the deduction of tax as may be required by law to be deducted or withheld from payments of interest.

2 Permitted Deductions

- 2.1 Permitted Deductions means the following items of expenditure incurred by or on behalf of the Tenant in respect of the Premises (acting in good faith) which are to be allowed in a Year as deductions from Gross Revenue for that Year:
 - 2.1.1 Basic Rent;
 - 2.1.2 performing and observing the covenants of the Tenant in this Lease and of the Landlord in Underleases;
 - 2.1.3 repair, maintenance, management, insurance contributions (to the extent that it is an obligation to and irrecoverable from the undertenants or licensees) and the provision of services to the Premises and payments made to the Landlord in accordance with clause 3.7;
 - 2.1.4 underletting (save for non-income producing underlettings) including inducement payments to underlessees incidental to effecting Underlettings;
 - 2.1.5 carrying out, agreeing or otherwise determining rent reviews;
 - 2.1.6 promotional and advertising costs in connection with the Underletting of the Premises and trading at the Premises;
 - 2.1.7 enforcing rights and remedies against underlessees and licensees, of defending, preserving and maintaining the rights and respective interests of the Tenant and the Landlord in the Premises; and
 - 2.1.8 interest on monies borrowed, monies required to fund the cost of items of expenditure and any finance charges and arrangement fees; and
 - 2.1.9 such other expenditure of a revenue or capital nature that is required or intended (by an objective standard) to improve the income from the Premises and which is for the benefit of the Landlord and the Tenant jointly.

- 2.2 No item of expenditure counted under one head is to that extent to be counted under another.
- 2.3 Items of expenditure qualifying as Permitted Deductions include reasonable incidental expenses and fees incurred in relation to them, and fees include incidental disbursements.
- 2.4 Expenditure which accrues over or relates to a period is to be treated, if apportionment is necessary, as accruing from day to day throughout the period to which it relates, and is apportionable in respect of time accordingly.
- 2.5 Items of expenditure which would otherwise fall to be treated as a Permitted Deduction in a Year, shall not be so treated to the extent that they are recovered in the same Year from underlessees or any other party.
- 2.6 Items of expenditure are allowable only to the extent that in the circumstances they have been reasonably and properly incurred and are of reasonable and proper amount.
- 2.7 Items of expenditure incurred and attributable to breach of obligation of the Tenant are not to be treated as Permitted Deductions, but only to the extent that they would not have been incurred in the absence of breach.

Part 4

Payment of rent, account, interest, and information

3 Rent payments

- 3.1 The Basic Rent is payable by quarterly instalments in advance on the Rent Payment Dates, the first of such payments (or a proportionate part) being made on the signing of this Lease for the period from the Rent Commencement Date to the next Rent Payment Date.
- 3.2 The Additional Rent (if any) is payable by quarterly payments on the Rent Payment Dates in arrears.
- 3.3 Payment of Additional Rent due on a Rent Payment Date is to be made with respect only to:
 - 3.3.1 Net Revenue received and payable for the Quarter just expired; and

- 3.3.2 any arrears of Gross Revenue from any previous Quarter since recovered by the Tenant with interest in accordance with paragraph 3.1,
- and in either case actually received by the Tenant, or anyone authorised to do so on its behalf, more than seven days before the Rent Payment Date.
- 3.4 Items of expenditure which in the reasonable opinion of the Tenant qualify for allowance as Permitted Deductions in a Year are, for the purpose of calculation and payment of Additional Rent, to be treated on a rolling basis from Quarter to Quarter as follows:
- 3.4.1 such items of expenditure as have accumulated and are outstanding for allowance seven days before the Rent Payment Date are to be deducted from Gross Revenue due for account under paragraph 1.3, but only to the extent that it would not produce a deficit in respect of the Quarter just ended; and
- 3.4.2 any balance that would, if it had been deducted, have caused a deficit is to be carried forward for allowance to the next Rent Payment Date, and so on, until any deficit is eliminated including being carried over into the next Year in accordance with paragraph 2; but
- 3.4.3 items of expenditure, to the extent that they have been allowed against Gross Revenue on previous Rent Payment Dates but which have subsequently been received or recovered by the Tenant, shall be credited accordingly,
- and the time for each such calculation to be made shall be seven days before each Rent Payment Date until final account for the Year is made in accordance with paragraph 2; and
- 3.4.4 the Tenant will, on making a payment of Additional Rent, deliver to the Landlord with respect to the Quarter just expired a summary (the "Turnover Summary") of:
- 3.4.4.1 the Gross Revenue received;
- 3.4.4.2 Gross Revenue outstanding;
- 3.4.4.3 arrears of Gross Revenue from any previous Quarter since recovered and arrears still unrecovered;
- 3.4.4.4 items of expenditure which in the reasonable opinion of the Tenant qualify as Permitted Deductions; and

3.4.4.5 interest due under paragraph 3,

and the Tenant covenants with the Landlord that such certificate will state as accurately as reasonably possible the items listed in this paragraph 1.4.4.

3.5 The first payment of any Additional Rent, or a proportionate part, is to be made on the next Rent Payment Date after the date of this Lease.

3.6 The Basic Rent and Additional Rent are exclusive of any VAT that may be chargeable in respect of them.

4 Yearly account for additional rent or net deficiency

4.1 The Tenant will deliver to the Landlord a statement (the "Turnover Statement") on the Rent Payment Date following the next but one after the end of a Year:

4.1.1 the Turnover Statement is to set out with respect to the Year just ended Gross Revenue received, arrears of Gross Revenue, interest accrued on arrears of Gross Revenue, Permitted Deductions, the Net Revenue, Net Deficiency and any other relevant information with respect to the calculation of Additional Rent for that Year; and

4.1.2 the Turnover Statement is to be certified by an accountant qualified to act as an auditor of a registered company under the Companies Act 1985 and the Tenant covenants with the Landlord that the Turnover Statement will set out the matters contained therein accurately.

4.2 Such sum by way of adjustment to the aggregate amount paid by the Quarterly instalments for the Year as is shown to be necessary by the Turnover Statement is to be paid by the Tenant with such interest as may also be payable in either case, on the Rent Payment Date referred to in paragraph 2.1 or if there is a Net Deficiency, the same will be carried over and offset against the Gross Revenue for the next Year, and so on until the deficit is eliminated.

4.3 In case of disagreement between the Landlord and the Tenant as to the items of expenditure which qualify for allowance as Permitted Deductions, the amount of the Additional Rent, or the basis upon which it has been calculated, or as to interest payable, the issue is to be submitted for expert determination in accordance with clause 13 by which determination they shall be bound.

- 4.4 The provisions of this schedule 3 shall continue to apply notwithstanding that the Term has come to an end but only in respect of the period down to the end of the Term.

5 **Interest**

The Tenant will pay to the Landlord interest at 3% per annum above the base rate of Barclays Bank PLC for the time being and from time to time on the Basic Rent, the amount of the Additional Rent, adjustments, interest added to it in accordance with paragraph 3.1 and other monies, which are payable but not paid by the Tenant within 21 days after a Rent Payment Date, for the period beginning on the relevant Rent Payment Date, and ending on the date of payment of such amount by the Tenant to the Landlord.

6 **Tenant's duty to notify**

The Tenant will on a Quarterly basis and at the same time as submitting the Turnover Summary notify and give the Landlord all material information in relation to:

- 6.1 the grant of Underleases, the rents and licence fees reserved by and the date upon which the Tenant first becomes entitled to recover such rents and licence fees, and the net internal area (measured in accordance with the latest edition of the Code of Measuring Practice published by the Royal Institution of Chartered Surveyors) of the premises Underlet during the Quarter just expired;
- 6.2 the revision of rent or licence fees under an Underlease during the Quarter just expired;
- 6.3 the management charges and service charges from time to time made to underlessees;
- 6.4 the surrender or variation for any reason of an Underlease during the Quarter just expired;
- 6.5 the default of an underlessee with respect to the payment of rent/licence fees, insurance contributions, or service charge during the Quarter just expired.

7 **Meaning of "Open Market Rate"**

"Open Market Rate" means the daily, monthly, quarterly or annual rental or licence value having regard to the best rental or licence values reasonably

obtainable as between a willing landlord/licensor and tenant/licensee (as the case may be) for market stalls, sites or stands or function venues or venues for the display of public art, public exhibitions or the playing of music or performances of comparable accommodation and size and location at the relevant date and on terms as are from time to time standard market practice for the letting or licensing of such space including:

- (a) lettings for a term from one day or more;
- (b) exclusive or inclusive of outgoings, insurance premiums and service charges as the Tenant may from time to time determine in accordance with good management practise.

7.1.2 The Open Market Rate is to be ascertained on the assumptions (if not the fact) that at the relevant time:

- 7.1.2.1 the stalls or function or exhibition venues or stands are available to be let with vacant possession;
 - 7.1.2.2 the underlessee has received and has already enjoyed the full benefit of any concessionary rent, rent free period, or other inducement that a willing landlord might grant or give to a willing tenant in respect of the period for fitting out on such letting with vacant possession;
 - 7.1.2.3 in case the Premises have been destroyed or damaged (or have become inaccessible by reason of damage to the Premises) they have been fully reinstated or rendered accessible;
 - 7.1.2.4 the Market Square is fit for purpose and in a state of full repair, and the covenants of the Tenant and underlessee with respect to them have been fully observed and performed;
 - 7.1.2.5 there is not in operation any statute, order or instrument, regulation or direction which has the effect of regulating or restricting the amount of rent of the premises which might otherwise be payable; and
 - 7.1.2.6 the premises may be used for any of the purposes permitted by the Underlease.
- 7.2 In ascertaining the Open Market Rate, the effect upon it of the following matters are to be disregarded:

- 7.2.1 the occupation of the premises by the Tenant or the underlessee;
 - 7.2.2 any goodwill attaching to the premises by reason of the carrying on at the premises of the business of the Tenant or the underlessee, or the predecessors in title of the Tenant or the underlessee; and
 - 7.2.3 any improvements to the premises made by the underlessee, or the predecessors in title of the underlessee, otherwise than in pursuance of an obligation to the Tenant or to the cost of which the Tenant has or is under an obligation to make a contribution.
- 7.3 In this paragraph, references to "the premises" are to the whole of the Premises or the relevant unit of accommodation, as the circumstances may require.

Part 5 **Tenant's covenants**

1 Underleases

The Tenant covenants with the Landlord with respect to the grant of Underleases not to Underlet otherwise than at a rent equal to the Open Market Rate at the time of the grant of the Underlease.

2 Management of the Premises

The Tenant covenants with the Landlord:

- 2.1 to use all reasonable and proper endeavours to keep the whole of the Premises continuously Underlet; and
- 2.2 to manage the Premises in a good and efficient manner, and in accordance with the principles of good estate management.

3 Enforcement of Underleases

The Tenant covenants with the Landlord:

- 3.1 diligently to enforce the covenants of an underlessee, and the conditions in an Underlease and (if so required by the Landlord) to exercise by way of enforcement the powers of re-entry in the Underlease;
- 3.2 not without the consent of the Landlord to accept any sum or payment in kind by way of commutation of the rent payable by an underlessee; and

- 3.3 duly and punctually to exercise all rights to revise the rent reserved by an Underlease, and to notify the Landlord thereof in accordance with the provisions of paragraph 4 of schedule 3 part 4.

Part 6

Account Records Inspection Audit etc

- 1 The Tenant shall maintain the Account Records fully and accurately throughout the Term.
- 2 The Tenant shall keep safely on the Premises or in such other place reasonably accessible for inspection as the Landlord shall approve (which approval shall not be unreasonably withheld or delayed) the Account Records from time to time relating to the then current and two immediately preceding Years and the Tenant shall make the Account Records relating to such Years available for inspection at all reasonable times and upon reasonable notice by an employee or accountant (duly authorised in writing by the Landlord to make such inspection) of the Landlord.
- 3 The Landlord may at its discretion cause an audit of the Account Records relating to the then current Year or any preceding Year to be made by a professionally qualified accountant appointed by the Landlord and if it is established by such audit that the Gross Revenue for any Turnover Period has been understated by more than 5% then the cost of the audit shall be borne by the Tenant.
- 4 The Landlord shall not disclose the Gross Revenue nor any other information obtained from inspection or audit of the Account Records except to such extent as may be necessary:
 - 4.1 in order to comply with any lawful requirement of any interested authority; or
 - 4.2 for the proper conduct of the Landlord's business.
- 5 If it shall appear from any such inspection or audit or from any other circumstance that any further Additional Rent is payable then such Additional Rent shall be paid by the Tenant within 14 days after a written demand.

Schedule 4
Guarantee provisions

Part 1
Form of guarantee on assignment

1 Guarantee

- 1.1 The Guarantor covenants with the Landlord as primary obligor that the Tenant will pay the rents reserved by, and perform and observe the Tenant's covenants in, this Lease, and the Guarantor will pay and make good to the Landlord on demand any losses, damages, costs, and expenses suffered or incurred by the Landlord if the Tenant fails to do so.
- 1.2 The covenant in paragraph 1.1 remains in force for so long as, and to the extent that, the Tenant is not released by operation of law (otherwise than by disclaimer) from liability for the tenant covenants in this Lease.
- 1.3 The Guarantor also covenants with the Landlord as primary obligor that the Tenant will observe and perform its obligations under any authorised guarantee agreement to be entered into by the Tenant under the terms of this Lease, and will pay and make good to the Landlord on demand any losses, damages, costs and expenses suffered or incurred by the Landlord if the Tenant fails to do so.
- 1.4 For the purposes of this guarantee, references to the "Tenant" are to the assignee of this Lease in relation to whom the guarantee to the Landlord is given, and none other.

2 No waiver or release of liability

The liability of the Guarantor under these provisions will not be affected by:

- 2.1 forbearance, the granting of time or other indulgence of the Landlord;
- 2.2 a variation of this Lease, whether or not made with the consent of the Guarantor, (but subject to section 18 of the Landlord and Tenant (Covenants) Act 1995);
- 2.3 any act which is beyond the powers of the Tenant;
- 2.4 the surrender of part of the Premises, in which event the liability of the Guarantor under this guarantee will continue in respect of that part of the Premises not

surrendered (after making any necessary apportionments under section 140 of the Law of Property Act 1925); and/or

- 2.5 the existence of or dealing with, varying, exchanging or failing to perfect or enforce any rights against the Tenant or of any other rights or security which the Landlord may have or acquire against the Tenant or any other person who is liable in respect of its obligations under the Lease.

3 Guarantor to accept new lease upon re-entry and disclaimer

- 3.1 If this Lease is terminated by re-entry by the Landlord or by disclaimer, the Guarantor will (on notice given by the Landlord within three months after the date of termination) take from the Landlord a lease of the Premises.
- 3.2 The lease to be granted to the Guarantor under paragraph 3.1 is to be on the following terms:
 - 3.2.1 the term is to commence on the date of termination of this Lease and to be equal to the residue of the Term which would have remained unexpired at that date if this Lease had not then been terminated;
 - 3.2.2 the yearly rent is to be the same as would have been payable under this Lease if it had not been terminated and, if a rent review operative from a review date before the grant of the lease had not been completed, the Guarantor will complete the rent review with the Landlord as if it had been the Tenant under this Lease in order to establish the commencing yearly rent under the lease;
 - 3.2.3 the lease is otherwise to be on the same terms and conditions as would have applied under this Lease if it had not been terminated; and
 - 3.2.4 the Guarantor is to succeed to the rights, and assume the liability, of the Tenant under this Lease as if this Lease had not been terminated.

4 Subordination of rights of the Guarantor

- 4.1 The provisions of paragraph 4.1 are to apply unless the Landlord has no subsisting claim against the Tenant for non-payment of rent or for breach of obligation under this Lease.
- 4.2 The Guarantor may not:

- 4.2.1 seek to recover from the Tenant, or any third party whether directly or by way of set-off, lien, counterclaim or otherwise or accept any money or other property or security, or exercise any rights in respect of any sum which may be or become due to the Guarantor on account of the failure by the Tenant to observe and perform the tenant covenants in this Lease;
 - 4.2.2 (in competition with the Landlord) claim, prove or accept any payment in a winding-up, liquidation, bankruptcy, composition with creditors or other form of arrangement on the insolvency of the Tenant, for money owing to the Guarantor by the Tenant; nor
 - 4.2.3 exercise any right or remedy in respect of any amount paid by the Guarantor under this Lease or any liability incurred by the Guarantor in observing, performing or discharging the obligations and covenants of the Tenant.
- 4.3 The Guarantor warrants that it has not taken, and undertakes with the Landlord that it will not without the consent of the Landlord take, any security from the Tenant in respect of this guarantee and, if security is nevertheless taken, it is to be held on trust for the Landlord as security for the respective liabilities of the Guarantor and the Tenant.

Part 2

Form of authorised guarantee agreement

1 Guarantee

- 1.1 The Guarantor covenants with the Landlord as primary obligor that the Tenant will pay the rents reserved by, and perform and observe the Tenant's covenants in, this Lease, and the Guarantor will pay and make good to the Landlord on demand any losses, damages, costs, and expenses suffered or incurred by the Landlord if the Tenant fails to do so.
- 1.2 The covenant in paragraph 1.1 remains in force for so long as, and to the extent that, the Tenant is not released by operation of law (otherwise than by disclaimer) from liability for the tenant covenants in this Lease.
- 1.3 For the purposes of this guarantee, references to the "Tenant" are to the assignee of this Lease in relation to whom the guarantee to the Landlord is given, and none other.

2 **No waiver or release of liability**

The liability of the Guarantor will not be affected by:

- 2.1 forbearance, the granting of time or other indulgence of the Landlord;
- 2.2 a variation of this Lease, whether or not made with the consent of the Guarantor, (but subject to section 18 of the Landlord and Tenant (Covenants) Act 1995);
- 2.3 any act which is beyond the powers of the Tenant;
- 2.4 the surrender of part of the Premises, in which event the liability of the Guarantor under this guarantee will continue in respect of that part of the Premises not surrendered (after making any necessary apportionments under section 140 of the Law of Property Act 1925); and/or
- 2.5 the existence of or dealing with, varying, exchanging or failing to perfect or enforce any rights against the Tenant or of any other rights or security which the Landlord may have or acquire against the Tenant or any other person who is liable in respect of its obligations under the Lease.

3 **Guarantor to accept new lease upon disclaimer**

- 3.1 If this Lease is terminated by disclaimer, the Guarantor will (on notice given by the Landlord within three months after the date of termination) take from the Landlord a lease of the Premises.
- 3.2 The lease to be granted to the Guarantor under paragraph 3.1 is to be on the following terms:
 - 3.2.1 the term is to commence on the date of termination of this Lease and to be equal to the residue of the Term which would have remained unexpired at that date if this Lease had not then been terminated;
 - 3.2.2 the yearly rent is to be the same as would have been payable under this Lease if it had not been terminated and, if a rent review operative from a review date before the grant of the lease had not been completed, the Guarantor will complete the rent review with the Landlord as if it had been the Tenant under this Lease in order to establish the commencing yearly rent under the lease;
 - 3.2.3 the lease is otherwise to be on the same terms and conditions as would have applied under this Lease if it had not been terminated; and

3.2.4 the Guarantor is to succeed to the rights, and assume the liability, of the Tenant under this Lease as if this Lease had not been terminated.

4 Subordination of rights of the Guarantor

4.1 The provisions of paragraph 4.2 are to apply unless the Landlord has no subsisting claim against the Tenant for non-payment of rent or for breach of obligation under this Lease.

4.2 The Guarantor may not:

4.2.1 seek to recover from the Tenant, or any third party whether directly or by way of set-off, lien, counterclaim or otherwise or accept any money or other property or security, or exercise any rights in respect of any sum which may be or become due to the Guarantor on account of the failure by the Tenant to observe and perform the tenant covenants in this Lease;

4.2.2 (in competition with the Landlord) claim, prove or accept any payment in a winding-up, liquidation, bankruptcy, composition with creditors or other form of arrangement on the insolvency of the Tenant, for money owing to the Guarantor by the Tenant; nor

4.2.3 exercise any right or remedy in respect of any amount paid by the Guarantor under this Lease or any liability incurred by the Guarantor in observing, performing or discharging the obligations and covenants of the Tenant.

4.3 The Guarantor warrants that it has not taken, and undertakes with the Landlord that it will not without the consent of the Landlord take, any security from the Tenant in respect of this guarantee and, if security is nevertheless taken, it is to be held on trust for the Landlord as security for the respective liabilities of the Guarantor and the Tenant.

Schedule 5
Pre-emption Right

Part 1
Operative Provisions

1 Definitions and Interpretations

1.1 In this schedule 5 the following words and expressions shall bear the following meaning:

| | |
|---------------------------------|---|
| <i>Additional Consideration</i> | means the value to be attributed to the Personal Conditions by the Landlord in accordance with the provisions of paragraph 3.4 of schedule 5 part 1. |
| <i>Disposal</i> | has the meaning given to it in this schedule 5 paragraph 4 and Dispose has a corresponding meaning; |
| <i>Disposal Period</i> | the period referred to in this schedule 5 part 1 paragraph 7.2 during which the Landlord may make a Disposal on Requisite Terms; |
| <i>Master Developer</i> | means a developer who has been selected by the Landlord to redevelop and perform the functions of master developer in relation to the redevelopment of that land within the London Borough of Southwark shown as "Site 39P" by a broken red line on the plan in Appendix 6 (known as the "Elephant and Castle Regeneration Area") or a Group Company of such developer; |
| <i>Master Disposal</i> | means a Disposal to the Master Developer of the freehold reversion to this Lease or the grant of a long leasehold in reversion to this Lease of a term not less than 250 years from the date of Disposal where the right to receive the rents under this Lease vests solely in the Master Developer. |
| <i>Master Interest</i> | means the land interest created by the Master |

| | |
|------------------------------|---|
| | Disposal. |
| <i>Offer</i> | an offer made by the Landlord to the Tenant under this schedule 5 part 1 paragraph 5.2; |
| <i>Offer Notice</i> | the notice provided for in schedule 5 part 1 paragraph 5.2; |
| <i>Offer Price</i> | the price (which shall be exclusive of VAT, if any) for the Property contained in the Offer; |
| <i>Personal Conditions</i> | means any condition or consideration offered by a party acquiring the freehold interest in the Property after negotiations but before a Disposal which by their nature are incapable of performance by the Tenant by virtue of the fact that they are either personal to such third party its other property holdings or are in any other way unascertainable |
| <i>Pre-emption Right</i> | the right granted by the Landlord to the Tenant in this schedule 5 part 1 paragraph 2; |
| <i>Prescribed Time Limit</i> | the time for acceptance of an Offer set out in this schedule 5 part 1 paragraph 5.2; |
| <i>Property</i> | the property described in this schedule 5 part 2; |
| <i>Qualifying Event</i> | has the meaning given to it by this schedule 5 part 1 paragraph 3.1; |
| <i>Requisite Terms</i> | has the meaning, in relation to a Disposal or Master Disposal, given to it in this schedule part 1 paragraph 7.3; |
| <i>Sale Conditions</i> | the terms of the sale and purchase of the Property set out in this schedule 5 part 3 to the extent that these are not inconsistent with any provisions set out in the Offer Notice (where the Offer Notice is given after the conclusion of negotiations for a Disposal but excluding the Personal Conditions). |

- 1.2 Words and expressions in clause 1 of this Lease shall bear the same meaning in this schedule 5 unless the context dictates otherwise.
- 2 **Grant of Pre-emption Right**
- 2.1 In consideration of the covenants on behalf of the Tenant in this Lease the Landlord grants the Pre-emption Right to the Tenant for a period of 80 years from the date of this Lease.
- 2.2 The Pre-emption Right confers the right on the Tenant to purchase the freehold interest (or as the case may be Master Interest) in the whole of the Property, and is exercisable by the Tenant following the occurrence of a Qualifying Event during the Term.
- 3 **Qualifying Event**
- 3.1 A Qualifying Event occurs at the time that the Landlord makes a decision to Dispose whether it be:
- 3.1.1 by one or more transactions, and, if by more than one, by simultaneous, or a series of, transactions; or
- 3.1.2 before or after negotiations with a party for a Disposal have been concluded.
- 3.2 Where the Landlord makes a decision to Dispose by a series of transactions, the Qualifying Event occurs at the time the decision is made in relation to the first transaction.
- 3.3 The Landlord may not make a Disposal of the Property without first carrying out the procedure in this schedule 5 part 1 paragraph 5, unless it is made on Requisite Terms within the Disposal Period under this schedule part 1 paragraph 7.2.
- 3.4 Where after negotiations with a third party have been concluded and the terms agreed include Personal Conditions, the Landlord shall prior to delivery to the Tenant of the Offer Notice determine the Additional Consideration which will be attributable to the Personal Conditions which will be equal to the difference between:
- 3.4.1 the best price at which the Property may reasonably and properly be expected to be sold by private treaty on the Sale Conditions and Personal Conditions; and

- 3.4.2 the best price at which the Property may reasonably and properly be expected to be sold by private treaty on the Sale Conditions;

Both at the date of the Disposal and both assuming:

- 3.4.3 a willing seller;
- 3.4.4 a reasonable and proper period within which to negotiate the sale taking into account the nature of the Property and the state of the market;
- 3.4.5 values remain static throughout that period;
- 3.4.6 the Property will be freely exposed to the market; and
- 3.4.7 no account will be taken of any additional bid by a purchaser with a special interest.

4 Disposal

- 4.1 Subject to paragraph 4.4 in relation to the Pre-emption Right, a Disposal is:

- 4.1.1 a sale or exchange of the freehold interest; or
- 4.1.2 the grant of a lease, or an agreement for lease, at a premium reserving less than the open market rent of the Property with the intention of realising capital value from the Property,
- 4.1.3 where the Landlord is a company, the sale of shares in the company, to a party other than the Tenant in respect of the whole, or a substantial part, of the Property, whether or not the Disposal is for money or money's worth, and a Disposal includes any arrangement to the same or similar effect as one specified in this paragraph 4.1.

- 4.2 A Disposal is to be treated as taking place when a binding contract for the Disposal is entered into, unless the contract is not completed, or alternatively is not performed as if completed.

- 4.3 In the case of an agreement for lease, it is to be treated as completed at the time that the tenant takes possession of, or the Landlord first becomes entitled to the receipt of the rents and profits from, the whole or part of the Property.

- 4.4 A transfer of the Property or the sale of shares in the company holding the Property between members of a group of which the Landlord is a member where the

Landlord is a corporate entity or the transfer of the Property to a statutory successor in title to the Landlord from time to time or to a public body exercising similar functions to the Landlord or the Master Disposal to the Master Developer is not to be treated as a Disposal if the following conditions are observed:

- 4.4.1 the Landlord and the transferee give notice to the Tenant of the transfer before it is effected; and
- 4.4.2 the transferee undertakes to the Tenant to be bound by this Lease as if it were the Landlord with effect from the time of transfer;

and two companies are to be treated as being members of a group of companies if one is the subsidiary of the other or both are subsidiaries of a third company, and "subsidiary" has the meaning given to it in section 736 of the Companies Act 1985 (as amended).

5 Pre-emption procedure

- 5.1 On the occurrence of a Qualifying Event, the procedure set out in this paragraph 5 is to take place.
- 5.2 The Landlord is to give notice to the Tenant of the occurrence of the Qualifying Event as soon as reasonably practicable after the making of the decision, and the notice is to contain:
 - 5.2.1 the Offer Price; and
 - 5.2.2 where the Offer to sell the Property takes place after the conclusion of negotiations for a Disposal:
 - 5.2.2.1 the other material terms of the Offer and the extent to which they vary the terms of sale and purchase set out in schedule 5 part 3; and
 - 5.2.2.2 details of any deposit payable; and
 - 5.2.2.3 details of any Personal Conditions and the Additional Consideration determined in lieu thereof by the Landlord (if any);
 - 5.2.3 the Offer to sell the Property to the Tenant at the Offer Price and if applicable the Additional Consideration, and otherwise subject to the Sale Conditions, capable of acceptance by the Tenant within the Prescribed Time Limit of 30 Working Days

- after the giving of the notice, and for completion 20 Working Days after acceptance; and
- 5.2.4 where the notice is given after the conclusion of negotiations for a Disposal, the information which is required to be given under paragraph 8, and is to be in the form prescribed in schedule 5 part 4 and duly signed by, or by the duly authorised agent of, the Landlord ("Offer Notice").
- 5.3 The Landlord is not entitled to vary or add to the terms of the Offer, and the Offer is to be irrevocable during the period for acceptance by the Tenant.
- 5.4 The Landlord will use reasonable and proper endeavours to reply to preliminary enquiries raised by the Tenant.
- 6 Exercise of the Pre-emption Right**
- 6.1 The Tenant may, in exercise of the Pre-emption Right, accept the Offer by signing and returning the duplicate or another copy of the Offer to the Landlord and paying the Landlord's Solicitors as stakeholder a deposit (if any) equivalent to that set out in the Offer within the Prescribed Time Limit.
- 6.2 Following the exercise of the Pre-emption Right, the Landlord will sell and the Tenant will buy the freehold interest in the whole of the Property (or if applicable the Master Interest) at the Offer Price (together with Additional Consideration (if applicable)) on the terms of the Sale Conditions.
- 7 Effect of the rejection of the Offer or Master Disposal**
- 7.1 If the Tenant rejects the Offer, or fails to accept the Offer within the Prescribed Time Limit, the following provisions of this paragraph are to operate.
- 7.2 The Landlord may make a Disposal on Requisite Terms at any time within the Disposal Period of 12 months after the rejection or lapse of the Offer and:
- 7.2.1 on the making of such a Disposal the Pre-Emption Right shall be extinguished but:
- 7.2.1.1 until such Disposal, the pre-emption right is to remain in operation against a disposal which would not be on Requisite Terms; and
- 7.2.1.2 if the Seller does not make a Disposal on Requisite Terms within the Disposal Period, the pre-emption right will resume full operation.

- 7.2.2 On completing the Master Disposal the Pre-Emption Right shall not be extinguished but shall continue to bind the freehold reversion to the Master Interest and as a precondition to granting its consent to the Master Disposal under paragraph 10.3 of this part 1 of schedule 5 the Landlord is to procure that the Master Developer enters into a deed of covenant with the Tenant covenancing in the form of this schedule 5 (other than the provisions relating to the Master Disposal, Master Developer and Master Interest) provided that reference therein to "Landlord" shall be to "Master Developer", to "Property" shall be to "Master Interest" and to "freehold interest" shall be to "leasehold interest" where a Master Interest created by the Master Disposal is a leasehold interest.
- 7.3 A Disposal will be on Requisite Terms only if:
- 7.3.1 the VAT exclusive price or value of the consideration for the Disposal, adjusted appropriately where the Disposal is of less than the whole of the Property, is no less than the Offer Price (exclusive of VAT); and
- 7.3.2 the other terms of the Disposal do not reduce the value of the price or consideration in a manner which could be regarded as an exercise principally to defeat the operation of the Pre-emption Right,
- and a Disposal is to be treated as incorporating the terms of any collateral document or transaction on which the Disposal depends or which otherwise materially affects it.
- 7.4 A Disposal to a connected party may be treated as a Disposal on Requisite Terms only if it could not reasonably be regarded as an exercise principally to defeat the operation of the Pre-emption Right, and, in relation to a Disposal, a party is to be treated as connected if that party would be so connected for the purpose under section 839 of the Income and Corporation Taxes Act 1988.
- 7.5 A Master Disposal to the Master Developer shall be on Requisite Terms only if it complies with the requirements of the definition of "Master Disposal" and is to a "Master Developer".
- 8 Notification of the terms of a Disposal**
- 8.1 The Landlord is to notify the Tenant of the details of a Disposal or Master Disposal that it intends to make before entering into a commitment to make it, and to allow reasonable and proper time before doing so for the Tenant to verify that the Disposal or Master Disposal qualifies as being on Requisite Terms, but:

- 8.1.1 for this purpose, a contract for a Disposal or Master Disposal, subject to a condition of agreement with the Tenant or the determination of an independent expert that it would be on Requisite Terms, is not to be treated as a commitment to make the Disposal or Master Disposal until the condition is discharged; and
- 8.1.2 if the condition is discharged, this schedule 5 paragraph 4.2 is then to apply.
- 8.2 If the Landlord has concluded negotiations for the Disposal or Master Disposal before notice has been given under this schedule 5 paragraph 5.2, the details required to be notified in relation to the Disposal or Master Disposal shall be incorporated in that notice.
- 8.3 The Landlord is required to notify the Tenant of all relevant information to enable the Tenant to ascertain whether the Disposal or Master Disposal would be on Requisite Terms, and in the case of a Disposal or Master Disposal :
- 8.3.1 of a substantial part of the Property, the details required to be given are of the value of the whole of the Property by reference to the Disposal of part, with any relevant supporting evidence and measurements of all relevant areas, and, where values of parts of the Property may vary otherwise than in relation to measurement, a supporting valuation;
- 8.3.2 by more than one transaction, details of the value of the whole of the Property by reference to the aggregate of the transactions; or
- 8.3.3 for a consideration which is not wholly for money or money's worth, or which is the grant of a lease or an agreement for lease, a valuation of the consideration and of the Property by reference to the Disposal,
- and to give such other Information as may reasonably and properly be required for the purpose.

9 **The Tenant's right to object to a Disposal**

- 9.1 This paragraph applies to the right of the Tenant to object to a Disposal or Master Disposal as not being on Requisite Terms.
- 9.2 In order to make objection to the Disposal or Master Disposal, the Tenant is required to give notice to the Landlord setting out the grounds of objection within 20 Working Days after receipt of the notification and relevant information under this schedule 5 paragraph 8 but if the Tenant does not so object, then, in relation to the Disposal or Master Disposal , his right of objection to the Disposal or Master

Disposal and to submit the issue to the determination of an independent expert under this schedule 5 paragraph 13 will lapse.

- 9.3 Following the giving of notice of objection by the Tenant, either party may submit the objection for independent expert determination under the provisions of paragraph 13 of this schedule 5.
- 9.4 The Landlord may not make the Disposal or Master Disposal while the objection remains undetermined unless the Tenant waives the objection.
- 9.5 The Tenant may add to or change the grounds of objection as further relevant information or explanation is given to him.
- 9.6 The Tenant is to be treated as having reasonable and proper cause to object for so long as he is kept without sufficient information reasonably and properly to enable him to assess whether the Disposal or Master Disposal would be on Requisite Terms.
- 9.7 The Tenant may not object to an Offer Price.
- 9.8 Nothing in this paragraph 9 deprives a party of any right or remedy against the other to which he may be entitled for a breach of this Lease, but the determination of issues by the independent expert under this schedule 5 paragraph 13 (acting in accordance with this Lease) may not be challenged.

10 **Protection of the Pre-emption Right**

- 10.1 The Landlord will permit the Tenant to register a notice on the charges register and a restriction on the proprietorship register of the Landlord's title to the Property relating to the Pre-emption Right in the following form:

"no disposition of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed on behalf of [the Tenant] of [•] by the proprietor or its conveyancers that the provisions of schedule 5 part 1 paragraph 10.3 of [the Lease dated [•] and made between [the Landlord] (1) and [the Tenant] (2) have been complied with."

- 10.2 If the Pre-emption Right lapses or is extinguished, the Tenant will immediately apply for cancellation of both the restriction referred to in paragraph 8.1 and the notice of the Pre-emption right on the charges register.

10.3 The Tenant will give consent to the registration of a Master Disposal while the restriction remains on the proprietorship register of the Property if the Master Disposal is on Requisite Terms and the Master Developer has complied with the provisions of schedule 5 paragraph 7.2.2.

11 **Right of assignment**

The Pre-emption Right is for the benefit of [NAME OF FIRST TENANT] and a Group Company to whom the Tenant assigns this Lease in accordance with the provisions of clause 3.17.3 and no other person shall exercise this Pre-emption Right.

12 **Creation of encumbrances**

- 12.1 The Landlord may not create any encumbrance over the Premises at any time during the period in paragraph 2.1 without the consent of the Tenant (such consent not to be unreasonably withheld).
- 12.2 Any "encumbrance" includes, without limitation, any easement, restrictive covenant, lease or other right of occupation, use or enjoyment of the whole or part of the Premises.

13 **Disputes over Disposals on Requisite Terms**

In case of dispute over or incidental to whether a Disposal or Master Disposal would be on Requisite Terms, the issue in dispute is to be dealt with by submission to an independent expert to be determined in accordance with the provisions of clause 13.

Part 2

Description of the Property

All the freehold land being part of the land registered under title numbers **[NEW TITLE FOR BLUE LAND TRANSFERRED UNDER AGREEMENT FOR LEASE]**, LN206931, SGL455623, SGL456566 and TGL253362 as shown shaded yellow on the plan in Appendix 1. **[NOTE: TO BE UPDATED BEFORE COMPLETION]**

Part 3
Sale conditions

1 Definitions and interpretation

1.1 For the purposes of this schedule 5 part 3 the following words and expressions shall bear the following meanings:

| | |
|--------------------------|--|
| <i>Actual Completion</i> | completion of the sale and purchase of the Property, whether or not it takes place on the Completion Date (referred to in the Standard Conditions as "the date of actual completion"); |
| <i>CAA</i> | the Capital Allowances Act 2001; |
| <i>Completion Date</i> | 20 Working Days after the Tenant's acceptance pursuant to the provisions of paragraph 5.2.2 of schedule 5 part 1 or such other time as is prescribed by Standard Condition 10.3.5; |
| <i>Completion Time</i> | 1.00 pm; |
| <i>Contract Rate</i> | an interest rate equal to 4% over the base rate of Barclays Bank PLC from time to time; Standard Condition 1.1.1(e) is varied accordingly; |
| <i>Fixtures</i> | items which are fixtures in the Property for the purposes of chapter 14, part 2 CAA; |
| <i>HMRC</i> | HM Revenue & Customs; and |
| <i>Lease</i> | this Lease. |

2 Agreement for sale and purchase

- 2.1 Following the exercise of the Pre-emption Right pursuant to paragraph 6.1 and 6.2 of this schedule 5 part 1, the Landlord is to sell, and the Tenant is to buy, the Property and the provisions of schedule 5 part 3 are to apply.
- 2.2 The interest to be sold is freehold.

- 2.3 The sale includes the Fixtures.
 - 2.4 The risk of damage to or destruction of the Property now passes to the Tenant.
- 3 Capital allowances**
- 3.1 The following provisions of this paragraph 3 apply in respect of the capital expenditure on the provision of the Fixtures; the Standard Commercial Property Conditions (Second Edition) part 2, B do not apply.
 - 3.2 The Landlord warrants that it has not claimed and undertakes that it will not claim allowances for capital expenditure on the provision of the Fixtures.
 - 3.3 The Landlord is to provide to the Tenant such information within its possession as may reasonably be requested by the Tenant to enable the Tenant to determine the amount on which the Tenant may claim industrial buildings allowances under part 3 CAA.
- 4 Completion arrangements**
- 4.1 Completion is to take place on the Completion Date and before the Completion Time at the offices of the Landlord's solicitors, or elsewhere as they may reasonably direct. Standard Condition 8.1.1 is varied accordingly.
 - 4.2 The Tenant is to pay the money due on completion by direct credit to a bank account nominated by the Landlord's solicitors. The money is to be treated as paid to the Landlord at the time that it is received in that bank account.
 - 4.3 If the money due on completion is received after the Completion Time, completion is to be treated for the purposes only of Standard Conditions 8.3 and 9.3 as taking place on the next Working Day as a result of the Tenant's default. Standard Condition 8.1.2 is varied accordingly.
- 5 Title**
- 5.1 The evidence of registered title required is:
 - 5.2 official copies of the items referred to in rules 134(1)(a) and (b) of the Land Registration Rules 2003 and unedited copies or abstracts of the items referred to in rule 135(1)(a) of those rules (except charges and encumbrances registered or protected on the register which are to be discharged or overridden at or prior to completion); and

5.3 such copies, abstracts and evidence (if any) in respect of any subsisting rights and interests appurtenant to the Property as to which the register is not conclusive and of any matters excepted from the effect of registration as the Tenant would have been entitled to if the land had not been registered; Accordingly, Standard Condition 6.1.2 is varied.

5.4 The Landlord sells with full title guarantee; Standard Condition 6.6.2 does not apply.

6 Vacant possession

6.1 Subject to paragraph 8.1 the sale is with vacant possession of those parts of the Property not held subject to the Lease at the time of Actual Completion.

6.2 Apportionment is to be made with effect from the Completion Date; the Completion Date is to be the "apportionment date" for the purposes of applying the relevant provisions of Standard Condition 8.3 and paragraph 22; Standard Conditions 8.3.2 and 9.3.4 do not apply.

7 Specific matters subject to which the Property is sold

7.1 The Property is affected by and sold subject to:

7.1.1 the Lease[s]; and

7.1.2 the matters referred to in schedule 2 and the matters noted upon the property register and entered in the charges register relating to the title to the Property.

7.2 The Tenant or its solicitors have been supplied with official copy entries relating to the title to the Property a copy of the Lease[s] and other documents listed in schedule 2 and paragraph 8 below. The Tenant is to be treated as entering into this Lease knowing and fully accepting those terms and may not raise any objection to or requisition on them.

8 General matters subject to which the Property is sold

8.1 The Landlord is selling the Property free from encumbrances other than:

8.1.1 the encumbrances referred to in Standard Condition 3.1.2 (as varied by paragraph 8.3); and

- 8.1.2 any unregistered interests which fall within any of the paragraphs of schedule 1 of the Land Registration Act 2002 and any interests which fall within section 11(4)(c) of the Land Registration Act 2002.
- any unregistered interests which override registered dispositions under schedule 3 of the Land Registration Act 2002.
- such unregistered interests as may affect the Property to the extent and for so long as they are preserved by the transitional provisions of schedule 12 of the Land Registration Act 2002.
- 8.2 Nothing in paragraph 8.1 affects the duty of the Landlord to make disclosure of latent defects in title of which it is aware or of which it has the reasonable means of knowledge.
- 8.3 With respect to encumbrances subject to which the Property is being sold, Standard Condition 3.1.2(c) is replaced by the following condition:
- "(c) those which the Landlord does not and could not reasonably know about even if discovered before completion"
- 8.4 The Landlord is not required to provide evidence of:
- 8.4.1 any liability to repair roads, pavements, paths, ways, sewers, drains, gutters, fences or other like materials; or
- 8.4.2 the creation or definition of the apportionment of any liability in paragraph 8.4.1.
- 8.5 Standard Condition 3.1.3 does not apply.

9 Transfer and Tenant's covenants

In the transfer of the Property to the Tenant, the Tenant is to covenant to perform the following obligations insofar as the Landlord remains bound by them after the date of the transfer:

- 9.1 obligations arising from any of the matters noted upon the property register or entered in the charges register relating to the title of the Property; and/or
- 9.2 obligations arising under the documents listed in paragraph 7.1; and/or
- 9.3 obligations of Landlord arising under the Lease[s],

and to indemnify the Landlord against any liability for future breaches of any of them.

10 Misrepresentation

- 10.1 The Tenant acknowledges that no statement or representation, whether oral or written, previously made to it, or any person concerned on its behalf, by or for the Landlord, its agents or solicitors, has induced it to enter into this Lease, apart from the written replies of the Landlord's solicitors to written enquiries raised by the Tenant's solicitors.
- 10.2 Liability of the Landlord and any remedy of the Tenant at law, in equity or under statute in respect of such a statement or representation innocently made, or for implied warranty, apart from the written replies of the Landlord's solicitors to written enquiries raised by the Tenant's solicitors, is excluded.

11 Costs

Each party is responsible for its own professional costs relating to the preparation and implementation of this Lease.

12 VAT

- 12.1 Standard Condition 1.4 does not apply.
- 12.2 The Landlord warrants to the Tenant that it has made no election to waive exemption from VAT with respect to the Property with effect from a date prior to this Lease.
- 12.3 Any consideration paid or given for taxable supplies of goods or services under this schedule 5 is to be treated as exclusive of VAT. The recipient of any such supply is, in addition to the consideration for such supply, to pay the supplier an amount equal to any VAT which is chargeable in respect of the supply in question on the later of:
 - 12.3.1 the day on which the consideration for the supply is paid or given; and
 - 12.3.2 the production of a proper VAT invoice.

13 Money laundering regulations

- 13.1 The Landlord and the Landlord's solicitors are not obliged to accept a payment under this Lease unless it is remitted by or drawn on an institution which carries on

activities of the nature listed in regulation 2(2)(a) of The Money Laundering Regulations 2003 (SI 2003 No 3075) and which is covered by the EC Money Laundering Directive (Directive 91/308/EEC on prevention of the use of the financial system for the purposes of money laundering, as amended by Directive 2001/97/EC).

- 13.2 A payment made other than in accordance with the provisions of this paragraph 13 may be rejected as payment not made in accordance with the terms of this Pre-Emption Right.

14 Incorporation of contractual terms

This Lease incorporates the terms expressly agreed by the parties contained in the documents referred to in schedule 2 and paragraph 7.1.

15 Contracts (Rights of Third parties) Act 1999

- 15.1 Unless the right of enforcement is expressly provided, it is not intended that a third party should have the right to enforce provisions of this Lease under the Contracts (Rights of Third parties) Act 1999.
- 15.2 The parties may rescind or vary this Lease without the consent of a third party to whom a right of enforcement has been expressly provided.

16 Standard Conditions

This Lease incorporates the Standard Conditions. In case of conflict between this Lease and the Standard Conditions, this Lease prevails.

17 Treatment of apportionments

- 17.1 Apportionments of income and outgoings are to be made in accordance with Standard Conditions 8.3.1–8.3.5 (inclusive) as varied by paragraph 17.
- 17.2 Standard Condition 8.3.1 is varied so as to include:
- 17.2.1 as income - rents, licence fees and other forms of revenue derived from the use, occupation or enjoyment of the Property by tenants (apart from service charges and insurance premiums recoverable from tenants); and
- 17.2.2 as outgoings - rents, and (to the extent that they are not recoverable from tenants) service charges,

respectively receivable or payable by the Landlord as owner of the interest in the Property agreed to be sold to the Tenant.

17.3 Service charges are to be treated as not being recoverable from a tenant to the extent that there is less than full (or no) entitlement to recovery from the tenant or vacancy of the premises; the amount that is not so recoverable is to be treated as an outgoing and apportioned accordingly.

17.4 The Tenant is not required to account to the Landlord for:

17.4.1 apportioned income; and

17.4.2 arrears of service charges up to the apportionment day,

for which there is entitlement to recovery, and which have become due from a tenant but which have not been paid.

17.5 Apportionment is to be made with effect from Actual Completion; the date of Actual Completion is to be the "apportionment day" for the purpose of applying the relevant provisions of Standard Condition 8.3. Standard Conditions 8.3.2 and 9.3.4 do not apply.

Part 4

Prescribed form of notice

[To [the Tenant]]

and to whom it may concern

In the matter of a Pre-emption Right (the "Pre-emption Right") contained in clause [7] and schedule 5 of a lease dated [•] made between [the Landlord] (1) and [the Tenant] (2) (the "Lease") relating to the Property (as defined in schedule 5 part 2 of this Lease (the "Property").

Take notice that [the Landlord] has made a decision to Dispose of the Property so that a Qualifying Event has now occurred entitling you to exercise the Pre-emption Right under the Lease.

An Offer is now made to you under schedule 5 part 1 paragraph 5 of the Lease on the following terms:

1 The Offer Price is £[•] plus VAT, if any.

- 2 [The Additional Consideration is £[•] plus VAT if any] (being in respect of the following Personal Covenants [•]) which has been calculated by reference to the terms of the Disposal and the Lease. The relevant information to support the calculation of the Additional Consideration is attached.
- 3 [The proposed Disposal is [intended to be effected by more than one transaction] [in respect of part of the Property only], and the Offer Price has been calculated by reference to the terms of the Disposal. The relevant information to support the calculation of the Offer Price is attached.]
- [or]
- [If the Offer is not accepted by you, it is intended to dispose of the Property in accordance with [negotiations which have] [a contract of sale conditional on your not exercising the Pre-emption Right which has] been concluded with a third party. A copy of the terms of the proposed disposal is attached.]
- 4 The conditions of sale (other than Personal Covenants) to the extent that they are inconsistent with the conditions set out in schedule 5 part 3 of the Lease are as follows:-
- 5 This notice constitutes an Offer to you to sell the Property to you at the Offer Price, capable of acceptance by you within 30 Working Days after the giving of this notice, and otherwise on the terms of the Sale Conditions.
- 6 The Sale Conditions as varied to incorporate the provisions set out in paragraph 3 above and terms of the Pre-emption Right in the Lease are incorporated by reference in this Offer.
- 7 The words and expressions designated by initial capital letters which are not defined in this notice are defined in the Pre-emption Right in the Lease and have the same meanings in this Offer.

You may accept this Offer by signing the duplicate of this letter, or another copy of it, in a manner indicating acceptance and giving or sending it to us.

You are referred to the Pre-emption Right in the Lease as to your rights, and the consequences of failure to accept the Offer in time or at all.

Dated [•]

[The Landlord]

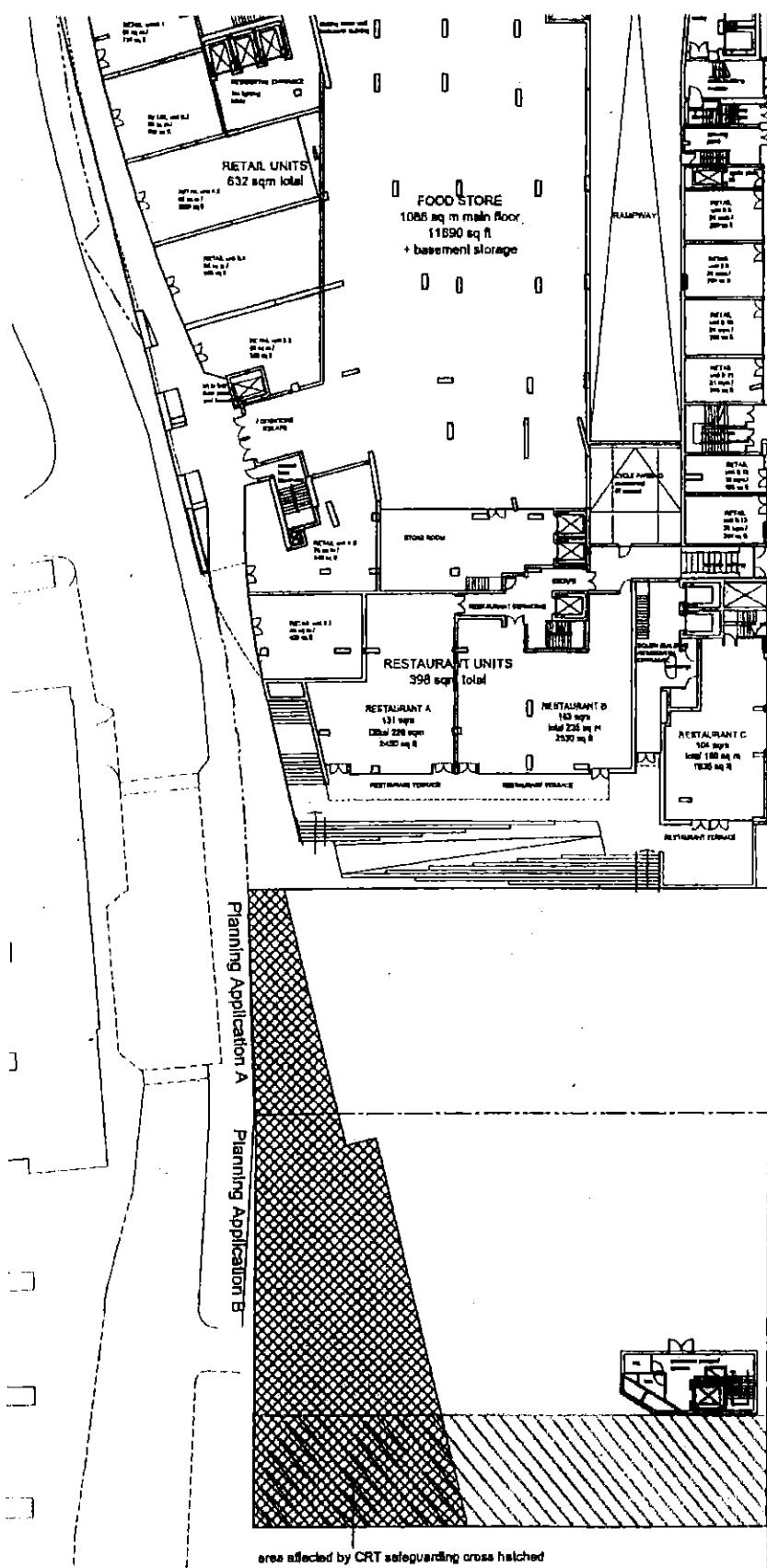
I acknowledge receipt of the notice of which this is the duplicate [a copy], and accept the Offer.

[The Tenant]

Dated [•]]

Appendix 1
Demise Plan - Market Square

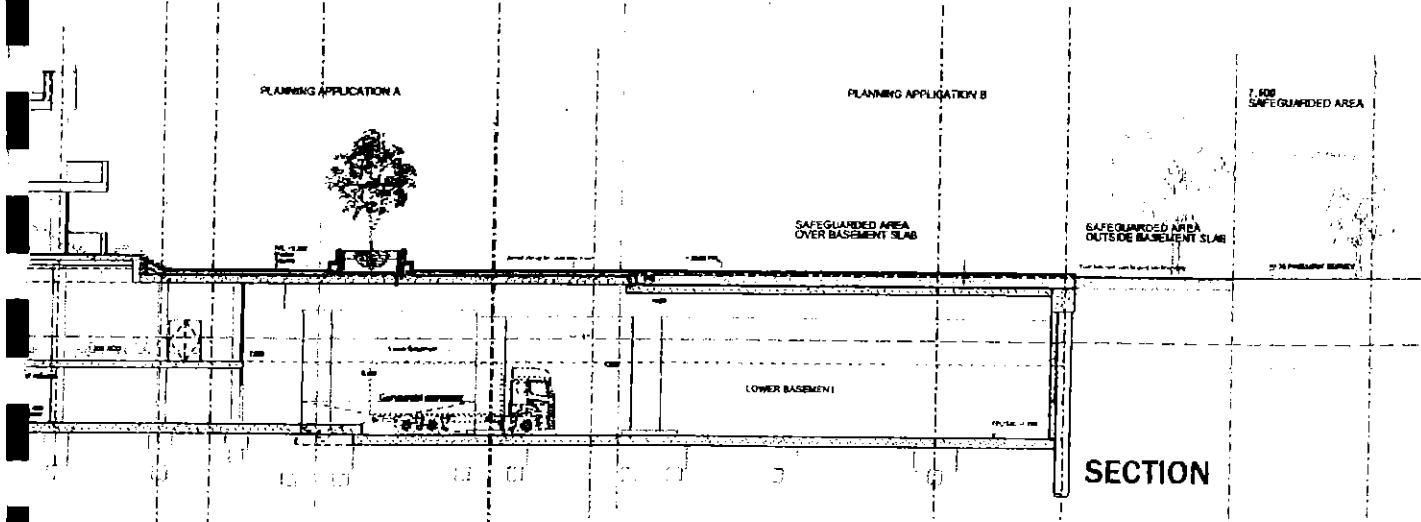
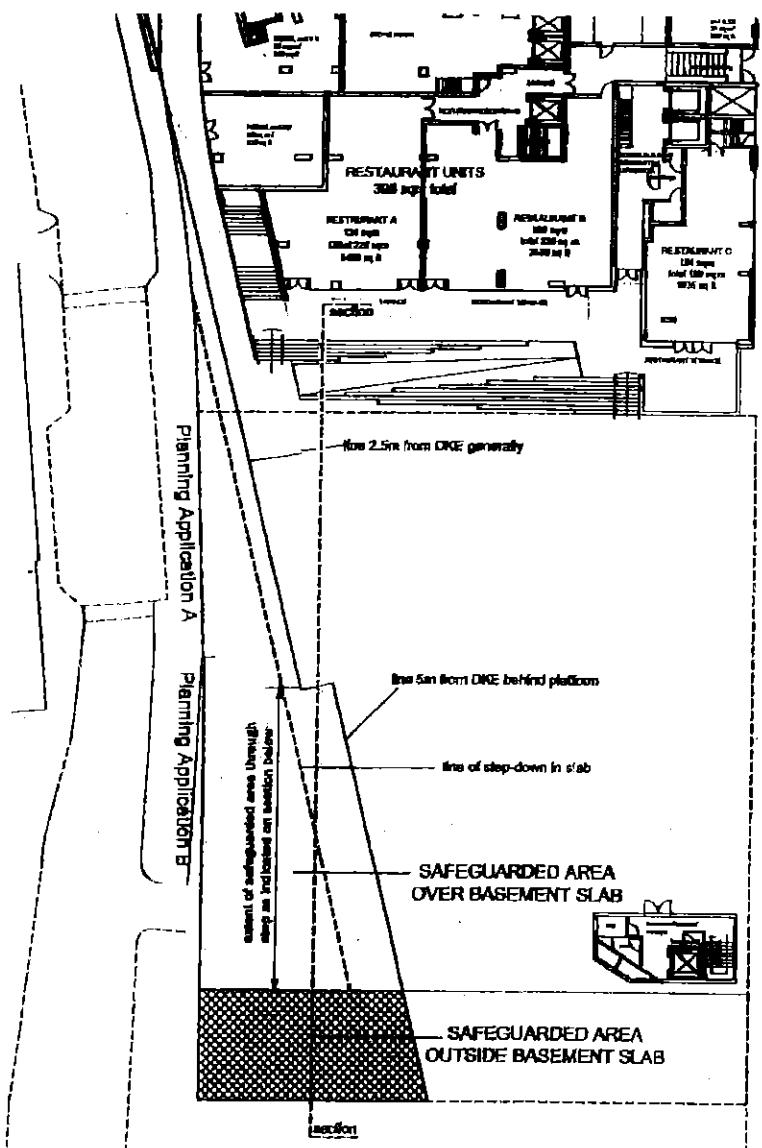
Appendix 1
Market Square
Demise Plan



Elephant Road SE17

Appendix 2
Sectional Plans - Market Square

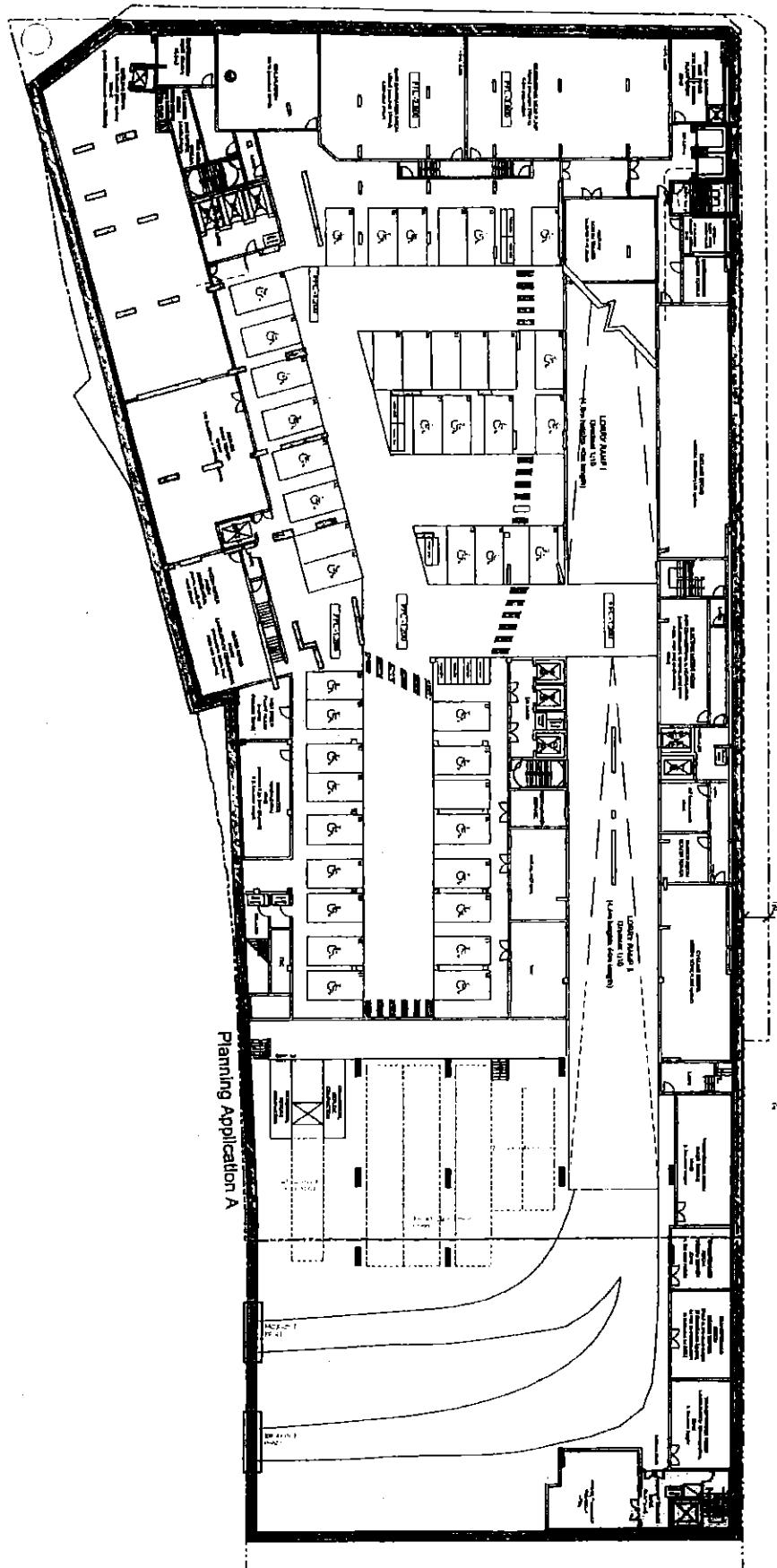
Appendix 2.
Market Square



Elephant Road SE17

Appendix 3
Market Store Plan

Appendix 3.
Market Store



Elephant Road SE17

Appendix 4
Deed of Surrender

DATED [•]

MAYOR AND BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK
as Landlord

[•]
as Tenant

[[•]]
as Guarantor]

SURRENDER OF PART

of a leasehold Premises at Market Square and Market Store
Elephant Road and New Kent Road, Elephant and Castle,
London Borough of Southwark

DATED [•]

PARTIES

- (1) [•] [of] [(company no [•]) whose registered office is at] [•] (the "Landlord")
- (2) [•] [of] [(company no [•]) whose registered office is at] [•] (the "Tenant")
- (3) [[•] [of] [(company no [•]) whose registered office is at] [•] (the "Guarantor")]

BACKGROUND

- (A) This Deed is supplemental to the Lease.
- (B) The reversion immediately expectant upon the term granted by the Lease [is now] [remains] vested in the Landlord.
- (C) The term granted by the Lease [is now] [remains] vested in the Tenant.
- (D) It has been agreed that the Tenant will surrender the term granted by the Lease in respect of the CRT Area to the Landlord in consideration of the release by the Landlord and that the Landlord will accept the surrender in consideration of the release by the Tenant in relation to the CRT Area.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 In this Deed:

"Documents" means the documents listed in schedule 3 (*The Documents*).

"Lease" means the lease and other documents referred to in schedule 2 (*The Lease*).

"Premises" means the Premises described in schedule 1, part 1 (*The Premises*) and demised by the Lease.

"CRT Area" means that part of the Premises described in schedule 1, part 2 (*CRT Area*).

1.2 Where any party to this Deed is more than one person the expressions the "Landlord" and the "Tenant" [and the "Guarantor"] include the plural number and obligations in this Deed expressed or implied to be made with or by any of them are to be treated as made by or with such individuals jointly and severally.

1.3 The Clause and schedule headings in this Deed are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision to which they refer.

1.4 Unless the contrary intention appears, references to numbered Clauses or schedules are references to the relevant Clause in, or schedule to, this Deed.

2

SURRENDER

In consideration of £1 (exclusive of VAT) paid by the Landlord to the Tenant and the release contained in Clause 3.1, the Tenant (with effect from the date of this Deed) with full title guarantee but so that the Tenant shall not be liable under any of the covenants set out in section 4 of the Law of Property (Miscellaneous Provisions) Act 1994 for any subsisting breach of covenant or condition relating to the state and condition of the CRT Area surrenders the CRT Area to the Landlord to the intent that the residue of the term of years granted by the Lease shall merge and be extinguished in the reversion in relation to the CRT Area and subject to but with the benefit of the Documents.

3

RELEASES

- 3.1 The Landlord releases the Tenant [and the Guarantor] absolutely from [its] [their respective] liabilities, covenants and obligations past, present and future under the Lease in relation to the CRT Area.
- 3.2 The Tenant releases the Landlord absolutely from its liabilities, covenants and obligations past, present and future under the Lease in relation to the CRT Area.

4

CONSEQUENTIAL AMENDMENTS

- 4.1 This Deed is to operate as a surrender in part only in relation to the CRT Area and the Lease shall remain in full force and effect in relation to the whole of the Premises excluding the CRT Area.
- 4.2 From the date of this Deed all references in the Lease to "Premises" and "Market Square" shall be deemed to exclude the CRT Area.
- 4.3 From the date of this Deed the provisions of Clause 9 of the Lease shall be deemed to be deleted.

Delivered as a deed on the date of this document.

Schedule 1 : The Premises

**Schedule 1
The Premises**

**Part 1
The Premises**

[THE PREMISES AS DEFINED IN THE LEASE REGISTERED AT THE LAND REGISTRY WITH
TITLE NUMBER] [•]

Schedule 1 : The Premises

Part 2
[CRT Area]

The area shown cross hatched black on the plan in Appendix 1.

**Schedule 2
The Lease**

| Date | Document | parties |
|-------------|-----------------|----------------|
| [•] | [•] | [75 years] |

[COMPLETE DETAILS OF MARKET SQUARE AND STORE LEASE]

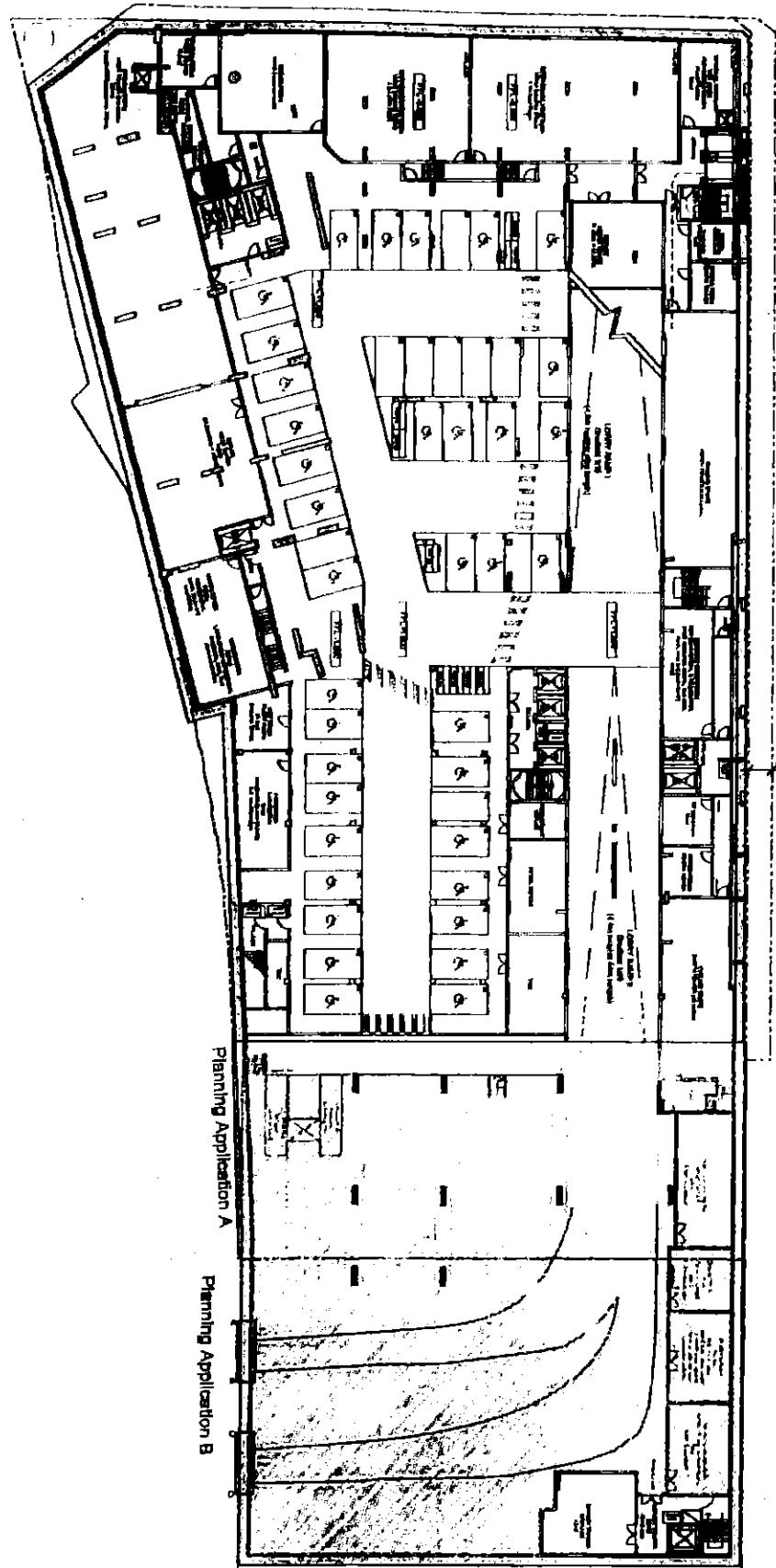
**Schedule 3
The Documents**

| Date | Premises | parties |
|-------------|-------------------------|---|
| [•] | [BASEMENT LEASE] | (1) Mayor and Burgesses of the London Borough of Southwark (2) [Eadon Limited] |
| [•] | [TRANSFER OF BLUE LAND] | (1) [Eadon Limited] (2) Mayor and Burgesses of the London Borough of Southwark |
| [•] | [CRT AGREEMENT] | (1) Mayor and Burgesses of the London Borough of Southwark (2) Transport for London (3) [Eadon Limited] |

Those matters contained in the registers of title number **[FILL IN REGISTERED NUMBER OF THE LEASE]**

**Appendix 5
Basement Plan**

Appendix 5



Elephant Road SE17

Appendix 6

Southwark Plan 2007

Early Housing Sites

- 8P Pocock Street
- 9P Library Street
- 10P Harper Road
(LBS Services)
- 38P Prospect House
- 42P Harper Road
(Symmington House)
- 40P New Kent Road
- 44P Leroy Street
- 50P Brandon Street
- 51P Stead Street
- 52P
- 53P
- 43P Townsend Street
- 58P South Newington
- 54P Welsford Street
- 55P Royal Road

Site 8P

Site 10P

Site 9P

Site 38P

Site 40P

Site 42P

Site 44P

Core Development
Area Site 39P

Site 43P

Site 54P

Site 50P

Sites 51P,

52P, 53P

Site 55P

Site 58P



PLAN

Appendix 7
Composite Plan

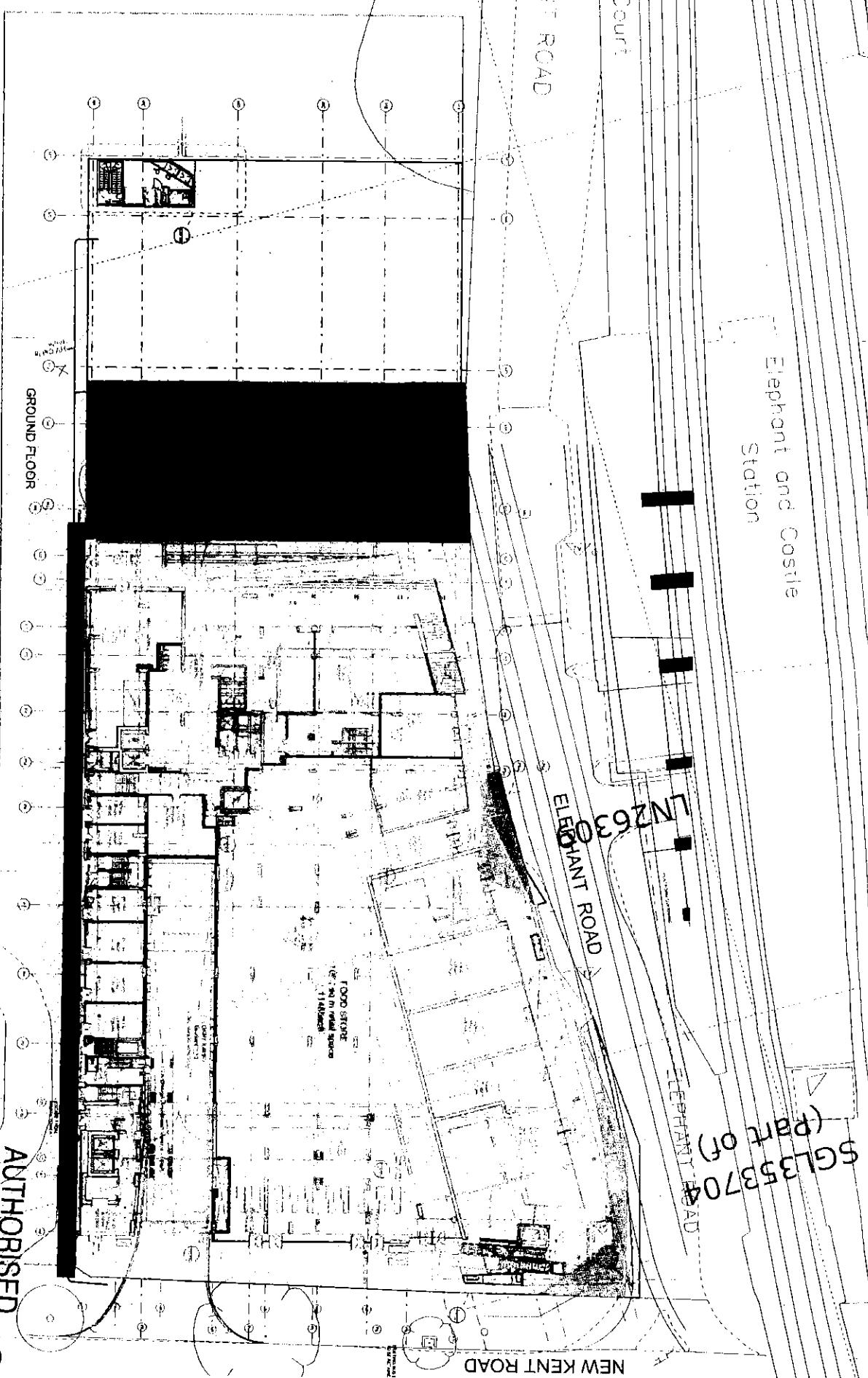
Composite plan

SIGNATORY
AUTHORISED

DEACON WAY



PLAN



The common seal of
THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF SOUTHWARK
was hereto affixed in the presence of:)

Authorised Signatory

Executed as a deed by
[EADON LIMITED/PLAZA)
DEVELOPMENTS LIMITED/NOMINEE)
OF EADON LIMITED/PLAZA)
DEVELOPMENTS LIMITED])
acting by:)

Director

Secretary

Appendix 5
Draft Deed of Easement

DATED [•]

[•]
as Grantor

**THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF SOUTHWARK**
as Grantee

DEED OF EASEMENT

In respect of Accessway at 50 New Kent Road,
Elephant and Castle, London SE1

*berwin leighton paisner

Berwin Leighton Paisner LLP
Adelaide House London Bridge London EC4R 9HA
tel +44 (0)20 7760 1000 fax +44 (0)20 7760 1111

