

16/25265

**Books of Council and Session**

**Extract Registered 23 Jun 2016**

LEASE

AVIVA LIFE & PENSIONS UK LIMITED  
COSTA LIMITED



**Registers  
of Scotland**

**deed extract**

**Registers of Scotland**

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16/25265

AT EDINBURGH the Twenty Third day of June Two thousand and sixteen the Deed hereinafter reproduced was presented for registration in the Books of the Lords of Council and Session for preservation and execution and is registered in the said Books as follows:-

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## LEASE

### BETWEEN:

- (1) **AVIVA LIFE & PENSIONS UK LIMITED**, incorporated under the Companies Acts (Registered Number 03253947 and having their Registered Office at Aviva, Wellington Row; York, North Yorkshire, YO90 1WR (hereinafter called the "**Landlords**" which expression shall where the context so admits include all persons deriving title from them); and
- (2) **COSTA LIMITED**, incorporated under the Companies Acts (Registered Number 01270695 and having their Registered Office at Whitbread Court, Houghton Hall Business Park, Porz Avenue, Dunstable, Bedfordshire, LU5 5XE (hereinafter called the "**Tenants**" which expression shall where the context so admits include in substitution therefor all persons deriving title from them).

### NOW IT IS CONTRACTED AND AGREED as follows:

#### 1. DEFINITIONS

- 1.1 In this Lease (including the Schedule), the following words and expressions shall, unless the context requires otherwise, have the following meanings:

**"Acts"** means any act of Parliament and any delegated law made under an act or any code of practice;

**"Base Interest Rate"** means the Base Rate of the Bank of Scotland or of such other clearing Bank as the Landlords acting reasonably may nominate from time to time or, if such Base Rate cannot be determined, such other similar rate as the Landlords may reasonably specify from time to time;

**"Common Rights"** means the rights set out in part 1B of the Schedule;

**"Common Subjects"** means the common subjects of the building of which the Premises form part as defined in the Deed of Conditions;

**"Costa Group Company"** means a holding company of, or a subsidiary of a holding company of, the said Costa Limited (as the terms "subsidiary" and "holding company" are defined in Section 1159 of the Companies Act 2006);

**"Date of Expiry"** means the date of expiry or sooner determination of this Lease;

**"Deed of Conditions"** means the Deed of Conditions by CIN Properties Limited recorded in the General Register of Sasines for the County of Angus on 10 October 1984;

**"Energy Performance Certificate"** means a certificate which complies with regulation 6 of the EPB Regulations;

**"Environmental Authority"** means any person or legal entity (whether statutory or non-statutory or governmental or non-governmental) having regulatory authority under Environmental Law and/or any court of law or tribunal or any other judicial or quasi-judicial body;

**"Environmental Law"** means all laws, regulations, directives, statutes, subordinate legislation, rules of common law and generally all international, EU, national and local laws and all judgments, orders, instructions, decisions, guidance awards, codes of practice and other lawful statements of any Environmental Authority applying from time to time in relation to the Common Parts in respect of pollution of or protection of the Environment or the production,

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processing, treatment, storage, transport or disposal of Hazardous Substances, in each case insofar as having the force of law;

**"EPB Regulations"** means The Energy Performance of Buildings (Scotland) Regulations 2008;

**"Existing Contamination"** means the presence in, on, under or over the Premises of any Hazardous Substance, at or prior to the date of entry under this Lease and/or the migration or other escape of any Hazardous Substance from the Premises at any time whether before, on or after the date of entry under this Lease but excluding any such migration or escape arising directly out of the actions of the Tenant or those for whom they are legally responsible during the term of this Lease;

**"Hazardous Substances"** means any substance, liquid, solid, gas, vapour or other matter of whatsoever nature which is an actual or likely cause of, or which is capable of causing, harm or damage to human health or any other part of the Environment and/or which is from time to time regulated or controlled by any Environment Law, including without limitation any waste;

**"Insurance Reinstatement Value"** means the costs likely to be incurred from time to time in reinstating the Premises and the Landlords' interest in the Common Subjects in accordance with this Lease, as determined by the Landlords acting reasonably, having regard to all relevant factors including the cost of obtaining all necessary planning and other consents, all professional and legal fees and other expenses and the cost of hoarding, other temporary works, shoring up and propping, demolishing, site clearance and removal of debris and, as appropriate, all related VAT;

**"Insured Risks"** means the risks of loss, damage or destruction (subject to reasonable availability of cover as determined from time to time by the Landlords acting reasonably, and to such normal commercial exclusions and limitations as may be imposed from time to time by the Insurer) by fire, lightning, terrorism, explosion, aircraft and articles dropped from them, riot, civil commotion, malicious damage, storm, tempest, flood, earthquake, bursting or overflowing of water tanks, apparatus and pipes, impact by any vehicle and such other normal commercial insurances and risks as the Landlords may acting reasonably consider appropriate to insure from time to time;

**"Insurer"** means such insurance office or underwriters of repute as may be selected by the Landlords from time to time;

**"Lease"** means this Lease as varied or modified from time to time;

**"Open Market Rent"** means the full yearly rent (at the rate following the expiry of such rent free period of occupation as would be granted in the market at the time in respect of the period of time reasonably required for fitting-out) for which the Premises if vacant might be expected to be let, without premium, as one entity by a willing landlord to a willing tenant on the open market at and from the Review Date in question for a period of ten years on terms similar in all respects to those in this Lease (save as to the amount of rent and excluding the rent free period contained in this Lease but including provision for a rent review cycle or pattern being a continuation of that herein contained) and on the following assumptions (if not fact) namely (1) that the Tenants have complied in all respects with all their obligations under this Lease, (2) that the hypothetical willing tenant is able to reclaim/recover, in full, all (if any) VAT chargeable on the rent and other monies payable by the Tenants in terms of this Lease, (3) that the Premises and Common Subjects are fit for immediate occupation and use for the purposes of commencing the tenants' fitting out works and (4) if any damage has not been fully restored at the Review Date in question, that such damage had not occurred, there being disregarded

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however (a) any goodwill attached to the Premises in so far as attributable to the Tenants' business or of any sub-tenant or other permitted occupier; (b) any work carried out to the Premises which has diminished their rental value save where carried out in pursuance of an obligation to the Landlords under this Lease and (c) the effect on rent of all improvements carried out, with the prior approval of the Landlords where required, by the Tenants or any other permitted occupiers at their own cost provided such improvements are not in implement of a Tenants' obligation under this Lease (it being acknowledged that the Tenant's fit out works are not carried out in implement of a Tenant's obligation under this lease (declaring that any obligation to the Landlords under any Licence for Works shall not be regarded as an obligation for the purposes of this provision) and any effect on rent of the tenant's initial fitting out works; (e) the occupation of the Premises by the Tenant or of any Sub-Tenant or any other permitted occupier and (f) the rent free period contained in this Lease;

**"Planning Acts"** means all Acts for the time being in force relating to the use, development and/or occupation of land and buildings;

**"Plan 1"** means Plan 1 annexed and executed as relative hereto;

**"Plan 2"** means Plan 2 annexed and executed as relative hereto;

**"Premises"** means the subjects described in part 1A of the Schedule and each and every part of them;

**"Quarter Day"** means 25 March, 24 June, 29 September and 25 December;

**"Requisite Notice"** means prior written notice of not less than 48 hours, save where for the purpose of carrying out works when seven days' prior written notice shall be given;

**"Reserved Rights"** means the rights reserved to the Landlords and others authorised by them, as set out in part 1C of the Schedule;

**"Review Date"** means 16 May in each of the years 2021 and 2026;

**"Review Surveyor"** means an independent chartered surveyor (with not less than ten years' continuous experience immediately before the date of his appointment in the letting and valuation of subjects comparable to the Premises in the area in which they are situated) to be appointed by written agreement between the Landlords and the Tenants or, in default of such agreement, to be nominated by the RICS Chairman on the application of either the Landlords or the Tenants;

**"RICS Chairman"** means the Chairman (or senior office holder) for the time being of the Scottish Branch of the Royal Institution of Chartered Surveyors as constituted, re-constituted, formed or re-formed from time to time;

**"Schedule"** means the Schedule annexed and executed as relative hereto;

**"Term"** means the period for which this Lease is granted together with any continuation thereof (whether by tacit relocation, under any Acts or for any other reason);

**"Uninsured Risks"**: any Insured Risk to the extent that loss or damage caused in whole or in part by them is not insured against by the Landlords or not insured against in full because (1) insurance is no longer available in the London insurance market on reasonable commercial terms or against which the Landlords no longer effects insurance or (2) insurance is only available subject to a condition, exclusion or limitation (other than any excess); but excluding where such risks are not Insured Risks as a result of cover being unavailable due to the act,

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neglect, default or omission of the Tenants or those for whom the Tenants are legally responsible;

"VAT" means Value Added Tax as referred to in the Value Added Tax Act 1994 or any tax of a similar nature which may be substituted for or levied in addition to it.

## **2. INTERPRETATION**

In this Lease (including the Schedule), unless there be something in the subject or context inconsistent therewith:

- 2.1 Words and expressions (including defined words and expressions) importing one gender only include both other genders; words importing persons include corporations and *vice versa*;
- 2.2 Words and expressions (including as above) importing the singular number only shall include the plural number and *vice versa*; where there are two or more persons included in the expression the "Tenants" obligations in this Lease which are expressed to be made by the Tenants shall be binding jointly and severally on them and their respective executors and representatives whomsoever without the necessity of discussing them in their order. But nothing herein shall impose any joint and several liability on a party with its assignee for the implement of the Tenants' obligations in regard to the period following the date of completion of a permitted assignment of the Tenants' interest hereunder by that party;
- 2.3 Where the Tenants are a partnership, the Tenants' obligations shall be binding jointly and severally on all persons who are or become partners at any time while the partnership are the Tenants or remain liable hereunder and their respective executors and representatives whomsoever as well as on the partnership and its whole stock, funds, assets and estate, without the necessity of discussing them in their order, and such obligations shall subsist and remain in full force and effect notwithstanding any change or changes which may take place in or in the name of the partnership whether by the assumption of a new partner or partners, by the retiral, bankruptcy or death of any individual partner or otherwise: However if any person, who by virtue of his being a partner, is bound to implement the Tenants' obligations, then on such person ceasing to be a partner, whether by death or retirement or otherwise, the Landlords shall on request, release such person and his or her representatives from all obligations arising on the Tenants hereunder subsequent to the date when such person ceases to be a partner (or, if later, the date of such request) provided it is established, to the Landlords' satisfaction (acting reasonably), that any such release does not prejudicially affect the Tenants' ability to implement their obligations under this Lease;
- 2.4 Any reference to an Act of Parliament shall include any modification, extension or re-enactment thereof for the time being in force and shall also include all instruments, rules, orders, plans, regulations, permissions, notices and directions for the time being made, issued or given thereunder or deriving validity therefrom;
- 2.5 Where the Tenants are to pay an amount of money, such amount shall be regarded as being exclusive of any VAT which may from time to time be legally payable thereon and the obligation on the Tenants shall extend to an obligation to pay any such VAT but that in exchange for a valid VAT invoice addressed to the Tenants;
- 2.6 An obligation on the Tenants not to do (or omit) any act or thing also operates as an obligation not to permit or suffer it to be done (or omitted) and to use reasonable endeavours to prevent (or, as the case may be, to require) it being done;



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- 2.7 Any right of (or obligation to permit) the Landlords to enter the Premises will entitle the Landlords and those reasonably authorised by them to enter and remain on the Premises for the purposes for which they are entering with or without workmen and/or equipment in accordance with the terms of this Lease;
- 2.8 References to a numbered clause or Sub-clause are to the relevant clause or Sub-clause in the main body of this Lease while references, in any part of the Schedule, to a numbered paragraph are references to the relevant numbered paragraph in that part of the Schedule, unless the context requires otherwise;
- 2.9 Any phrase introduced by the words "including", "include", "in particular" or any similar expression shall be construed as illustrative only and shall not be construed as limiting the generality of any preceding words; and
- 2.10 The Index to this Lease and the clause and paragraph headings in this Lease are inserted for convenience of reference only and shall not affect its construction.
- 3. PREMISES LET**
- 3.1 The Landlords, in consideration of the rent and other provisions hereinafter contained, hereby let to the Tenants the Premises together with the Common Rights but under reservation of the Reserved Rights and the Tenants hereby accept the Premises, the Common Subjects (together with all other subjects of which they are part and/or over which any rights are granted in terms hereof), as being in good, substantial and tenantable condition and repair at the commencement of the Term and in all respects fit for the purpose for which they are let.
- 4. PERIOD OF LEASE**
- 4.1 The duration of this Lease shall be for the period from and after 16 May 2016 (which is declared to be the Tenants' date of entry hereunder notwithstanding the dates hereof) to 15 May 2031.
- 4.2 Notwithstanding the foregoing clause 4.1, the Tenants shall be entitled to terminate this Lease on 16 May 2022 and 16 May 2027 (each a "Break Date") on giving the Landlords not less than 6 months' prior written notice to that effect. Provided that such termination shall be without prejudice to all rights and claims of the Landlords against the Tenants (and vice versa) in respect of any antecedent breach by the other of their obligations under this Lease. Provided always that notwithstanding the foregoing, in circumstances where the Tenants exercise its right to terminate this Lease as at a Break Date, the Tenants shall be entitled in the case of the last payment of rent due prior to the Break Date in question to pay the Landlords a proportionate part of the rent (calculated on a daily basis) for the period from the date that such rent payment fell due up to (and including) the Break Date in question and in the event that the Tenants shall have paid to the Landlords any sums in respect of the rent in respect of any period after the Break Date in question, in circumstances where the Tenants validly exercises its rights under this Clause to terminate the Lease, the relevant proportionate part of such sums (calculated on a daily basis) for the period after the Break Date in question shall be repaid to the Tenants within 14 days after the Break Date in question.
- 5. RENT AND PAYMENT OF RENT**
- 5.1 The annual rent payable by the Tenants to the Landlords shall be the annual rent specified or referred to in part 2 of the Schedule and shall be paid by the Tenants to the Landlords in accordance with the provisions and others contained or referred to in such part 2.

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## **6. INSURANCE**

- 6.1 The Landlords and the Tenants bind and oblige themselves to observe and perform throughout the Term the insurance provisions specified or referred to in part 3 of the Schedule.

## **7. TENANTS' OTHER OBLIGATIONS**

- 7.1 The Tenants bind and oblige themselves to observe and perform throughout the Term the conditions, obligations and others specified or referred to in part 4 of the Schedule.

## **8. WARRANTY AND LANDLORDS' OBLIGATIONS**

- 8.1 Subject to the reservations, conditions and others herein contained or referred to, the Landlords warrant this Lease to the Tenants at all hands and against all mortals.
- 8.2 Subject to the Tenants paying the common costs under paragraph 1.4 of Part 4 of the Schedule, the Landlords undertake to fulfil their obligations as a heritable proprietor under the Deed of Conditions (insofar as they relate to the Common Subjects) and to enforce the obligations on the part of the other relevant proprietors in terms of the Deed of Conditions generally and in particular to take such reasonable and proper action in respect thereof as the Tenants may from time to time reasonably require (but in the event that the Tenants require any such action they ~~shall be responsible for reimbursing the proper and reasonable costs thereby incurred by the~~ Landlords to the extent these are not recoverable from the other proprietors).

## **9. IRRITANCY**

- 9.1 If the said annual rent or any part is unpaid and in arrears for more than twenty one days after the due date for payment (whether demanded or not) or if there is any other breach of any of the Tenants' other obligations under this Lease or under any deed or document entered into by or on behalf of the Landlords and the Tenants with reference to this Lease or if a Liquidator (other than for reconstruction or amalgamation) or Receiver or Administrator of the Tenants is appointed or, in the case of the Tenants not being a corporation, if the Tenants shall become apparently insolvent or sign a trust deed for their creditors, then and in any such case the Landlords shall be entitled at any time thereafter by notice in writing to bring this Lease to an end forthwith and to enter the Premises and to uplift rents, eject tenants and occupiers and thereafter use, possess and enjoy the same free of all claims by the Tenants as if this Lease had never been granted but without prejudice and reserving to the Landlords their right of action in respect of any antecedent breach of the Tenants' obligations herein contained: Provided that:
- 9.2 the Landlords shall not terminate this Lease on account of a breach which is capable of being remedied (albeit late), unless and until they shall first have given notice to the Tenants (with a copy to any heritable creditor holding a subsisting fixed charge over this Lease which has been approved by and notified to the Landlords) calling for the breach to be remedied and the Tenants (or any such creditor) shall have failed to remedy the same within such reasonable period of time as shall be prescribed in the notice which, in the case of any monetary payment, may be a period of fourteen days only; and
- 9.3 the Landlords shall not, subject to the aftermentioned proviso, terminate this Lease, on the grounds of the Tenants having a Liquidator or Receiver or Administrator appointed, unless and until they shall have allowed the Liquidator or the Receiver or the Administrator (as the case may be) or any such heritable creditor a period of six months in which to dispose of the Tenants' interest in this Lease and only then if the Liquidator, Receiver or Administrator (as the case may be) or any such creditor shall have failed to dispose of the Tenants' interest at the end



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of such period: Provided Always that the Liquidator, Receiver or Administrator (as the case may be) or any such creditor must have, within twenty one days of the date of the relevant appointment, granted and delivered to the Landlords a valid self-proving undertaking personally accepting full responsibility for payment of rent (whether due before or after the appointment) and for the performance of all the Tenants' obligations under this Lease to the date of disposal or termination, including settlement of all arrears of rent and the performance of all outstanding obligations which may subsist at the date of relevant appointment.

## **10. NO WAIVER**

- 10.1 No demand for and/or acceptance of rent (or any other monies due by the Tenants) by the Landlords or their agents shall constitute or be construed to mean a waiver of (i) any of the Tenants' obligations or of the Landlords' remedies on breach or (ii) the Landlords' right to review the rent payable hereunder.

## **11. NO COMPENSATION AT EXPIRY**

- 11.1 The Tenants waive and discharge all and any rights which they have or might hereafter come to have to claim compensation from the Landlords at or about the Date of Expiry.

## **12. ABANDONED PROPERTY**

- 12.1 If fourteen days after the Date of Expiry any moveable property belonging to or in the control of the Tenants remains in or on the Premises, the Landlords may, as agents for the Tenants (and the Landlords are hereby appointed by the Tenants to act in that behalf), remove, store and/or sell or otherwise dispose of all such property.
- 12.2 The Tenants shall indemnify the Landlords, on demand, against all proper costs and expenses which they incur under clause 12.1 and against any claim made against the Landlords by any third party whose property has been disposed of under clause 12.1 in the *bona fide* mistaken belief (which shall be presumed unless the contrary be proved) that such property belongs to the Tenants.
- 12.3 The Landlords shall account to the Tenants for the net proceeds of any such sale or disposal of all such property (less all sums due to the Landlords in terms of this Lease) in so far as properly due to the Tenants. If, the Landlords having made reasonable efforts are unable to locate the Tenants, such net proceeds may be retained by the Landlords as their own property unless the Tenants claim them within six months after the Date of Expiry.

## **13. EXCLUSIONS**

- 13.1 The parties hereto agree that there is expressly excluded from the letting hereby effected any warranty, whether contained herein or otherwise implied by the Common Law, by the Landlords either (i) that the Premises are authorised for use under the Planning Acts for any specific purpose or (ii) as to the suitability or fitness for purpose of any buildings and other works whether comprised within the Premises or otherwise.

## **14. ENVIRONMENTAL GOOD PRACTICE**

- 14.1 The Landlords and the Tenants agree to co-operate with each other in providing such information as either party shall reasonably require relating to energy and water usage in the Premises and the Common Subjects and the Tenants further agree to co-operate with the Landlords in respect of such reasonable initiatives as the Landlords may wish to implement

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relating to energy saving and the promotion of environmental good practice in the Premises and Common Subjects provided always that this shall not oblige the Tenants (a) to change any of their fit out items or (b) to incur any costs.

## **15. NOTICES ETC**

- 15.1 Any notice, request, consent or approval under this Lease must be in writing.
- 15.2 Any notice to the Tenants shall be sufficiently served if sent by Recorded Delivery Post (if the Tenants shall be a body incorporated in the United Kingdom) to their Registered Office and (if the Tenants shall be an individual) to his last known address in the United Kingdom or to the Premises and (if the Tenants shall be a partnership) to the partnership and any one or more of the partners at the Premises and (in any other case) to the Tenants at the Premises.
- 15.3 Any notice to the Landlords (if a body incorporated in the United Kingdom) shall be sufficiently served if sent by Recorded Delivery Post to their Registered Office and (in any other case) shall be sufficiently served if sent by Recorded Delivery Post to the Landlords at their last known principal address in the United Kingdom.
- 15.4 Any notice sent by Recorded Delivery Post shall be deemed duly served two days after the day of posting. In proving service it shall be sufficient to prove that the envelope containing the notice was duly addressed to the Tenants or the Landlords ~~(as the case may be)~~ in accordance with this clause and posted to the place to which it was so addressed.
- 15.5 For so long as the Tenant is the said Costa Limited or any Costa Group Company a copy of all such notices shall be sent marked for the attention of Simon Boyd, Gerald Eve LLP, 72 Welbeck Street, London W1G 0AY and by recorded delivery post as aforesaid or such other address as may be notified to the Landlord in writing.

## **16. DATA PROTECTION**

- 16.1 In so far as the Data Protection Act 1998 applies to any personal data, held by or on behalf of the Landlords, relating to the Tenants or any party deriving right from them, which data is hereinafter called "**Relevant Data**", the following provisions of this clause shall apply.
- 16.2 The Landlords shall be entitled to use all Relevant Data for the purposes of their business including, without limitation, for the collection of rents and other due sums, for the management of the Premises, for mortgaging and disposing of or otherwise dealing with their interest therein.
- 16.3 In the course of so using Relevant Data the Landlords shall be entitled to disclose or transmit the same anywhere in the European Economic Area to their employees, agents, service providers, advisers, contractors, banks or other funders and purchasers (prospective or otherwise), guarantors of the Tenants (prospective or otherwise) and to such others as may be required by law or in connection with legal proceedings.
- 16.4 The Tenants **CONSENT** to the use of the Relevant Data and to the disclosure or transmission of the same as provided for in clause 16.2 and 16.3 above.

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## 17. CONSENT TO REGISTRATION

17.1 The parties hereto consent to registration hereof and of all Memoranda by or on behalf of the parties hereto and of all determinations and decrees of any arbiter appointed under this Lease for preservation and execution: **IN WITNESS WHEREOF** these presents typewritten on this and the 8 preceding pages are, together with the Schedule and Plan 1 and Plan 2, executed as follows:

They are signed on behalf of the Landlords

at AVIVA LEGAL SERVICES, SURREY STREET,  
NORWICH

on 3<sup>rd</sup> JUNE 2016

by ANDREW MATTHEWS \*

AUTHORISED SIGNATORY

before, as witness

LINDA RAUER \*\*

ADMINISTRATIVE ASSISTANT

AVIVA LEGAL SERVICES

SURREY STREET

NORWICH

NR16 1AG



For and on behalf of the Landlords



Witness

They are signed on behalf of the Tenants

at EDINBURGH

on 15.06.16 2016

by TAM M.D. INNES MCHANDY \*

ATTORNEY FOR COXA LIMITED

before, as witness

JULIE GORRIE \*\*

NO2 LOCHWIN SQUARE, 96

FOUNTAIN BRIDGE, EDINBURGH



For and on behalf of the Tenants



Witness

\* Here insert in block capitals name and capacity, i.e. Director or Secretary or Authorised Signatory or Attorney

\*\* Here insert in block capitals full name and address of witness



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**This is the Schedule referred to in the foregoing Lease between  
Aviva Life & Pensions UK Limited and Costa Limited.**

## **PART 1A DESCRIPTION OF THE PREMISES**

The Premises comprise the retail shop unit on the ground and first floor known generally as One/Three Murraygate, Dundee shown within the boundaries outlined red on Plan 1 and Plan 2 which shall include:

- (a) the inside facings and surface of floors, walls and ceilings including screed and plaster
- (b) window frames and window glazing
- (c) door frames and doors
- (d) shop front
- (e) internal non-structural walls
- (f) the Landlords' fixtures and fittings
- (g) all service media exclusively serving the Premises.

But shall exclude the Tenants' trade fittings and fixtures and anything forming part of the Common Subjects.

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## **PART 1B COMMON AND EXCLUSIVE RIGHTS**

The Tenants shall have a right in common with the Landlords and all other persons deriving right from them in and to so far as may be necessary for the proper enjoyment of the Premises:

1. The free and uninterrupted passage of water, soil and electricity and other services (if any) in, over and along the conducting media which now or may hereafter serve the Premises.
2. The right of egress from the Premises in the event of emergency only by the stairway and passageway shown hatched in green and hatched in blue on Plan 1 and Plan 2.
3. So far as the Landlords can competently grant the same a right of entry to the remainder of the Common Subjects for the purposes of inspection, maintenance, repair and where necessary replacement of any conducting media for water, soil, electricity and other services serving the Premises in so far as passing through the remainder of the Common Subjects, or where otherwise required to permit the Tenants to perform the obligations incumbent on them under this Lease, and that at reasonable times and (except in case of emergency) by prior written notice to the occupier and during business hours, declaring that the Tenants shall exercise such rights in a reasonable manner so as to cause as little inconvenience to the occupier(s) of the remainder of the building of which the Premises form part as is practicable in the circumstances, and the Tenants shall make good all damage occasioned to other parts of the Common Subjects and any additions, improvements or alterations thereto or fittings and fixtures therein, all to the reasonable satisfaction of the occupier (declaring for the avoidance of doubt, that in this clause "occupier" shall include the Landlords).

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## **PART 1C RESERVED RIGHTS**

There are reserved to the Landlords and all other persons deriving right from them:

1. The free and uninterrupted passage of water, soil, electricity and other services (if any) through, over and along the conducting media which now or may hereafter pass through, in or under the Premises.
2. The right to lead through and/or fix in or upon the Premises such conducting media as may in the reasonable opinion of the Landlords or their managing agents be necessary or desirable for the use and/or enjoyment of the building or any part thereof.
3. The right at any time to alter or otherwise deal with any other part of the building of which the Premises form part (other than the Premises and said emergency egress stairway and passageway) and any adjacent or neighbouring subjects and to underpin or shore up the Premises or any part thereof and the right to enter on the Premises for all or any of the such purposes where such access is the only practicable method of achieving the Landlords' purpose.
4. The right if necessary to erect temporary scaffolding for the purpose of renewing, maintaining, repairing or decorating the exterior or any other part of the building of which the Premises form ~~part or of any adjacent or neighbouring subjects notwithstanding that such scaffolding may~~ temporarily interfere with access to or enjoyment and use of the Premises or any part thereof but only where not practicably avoidable and subject to such scaffolding being in place for as short a period as is possible provided always that such scaffolding shall not (save in the case of emergency) be erected in November, December, January, June.

Provided always that the Landlords and others for whom the Landlords are legally responsible or are authorised by the Landlords shall be bound to give to the Tenants Requisite Notice of their intention to exercise such rights and to exercise such rights at such reasonable times as are agreed between the parties (both acting reasonably). The Landlords shall also be bound whilst exercising the foregoing rights reserved (i) to cause the minimum practicable interference to the Tenants and their permitted occupiers and their business carried on from the Premises; (ii) to make good as soon as reasonably practicable to the satisfaction of the Tenants (acting reasonably) and their foresaids any damage occasioned thereby to the Premises, the Tenants' fixtures and fittings, stock (to the extent that the Tenants have taken reasonable precautions to protect the same), and/or plant and equipment; and (iii) not to materially adversely affect or interfere with the Tenants' and their permitted occupiers' beneficial occupation and use of the Premises; and (iv) in so far as relating to the erection of scaffolding or others whatsoever in or in the areas adjoining or adjacent to the Premises, exercise the same in so far as reasonably practicable (a) after reasonable prior notification in writing to the Tenants of the location of items to be installed or notices or scaffolding or others whatsoever (b) so as to cause the least reasonably practicable inconvenience and interruption to the enjoyment and use of the Premises (c) in so far as reasonable practicable in such a manner as not to obscure or obstruct the entrances to the Premises and (d) in the case of the erection of scaffolding, on the express condition that the Landlords shall erect such directional or other notices as the Tenants may reasonably require on or adjacent to such scaffolding.



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## **PART 2**

### **RENT**

#### **1. AMOUNT OF RENT**

- 1.1 The annual rent payable under this Lease shall be the sum of NINETY THOUSAND POUNDS (£90,000) Sterling (exclusive of all, if any, VAT chargeable thereon) or such increased sum (exclusive as aforesaid) as may be substituted therefor as hereinafter provided.

#### **2. PAYMENT OF RENT**

- 2.1 Such annual rent shall be paid by the Tenants to the Landlords, without any deduction (save as permitted hereunder or required by law), throughout the Term by (except for the first payment) equal quarterly payments in advance at the four Quarter Days in each year. The first of such payments shall be due and payable on the date occurring six months after the date of entry under this Lease and shall be a proportionate payment for the period from that date until the first Quarter Day following (the first six months of the Term being accordingly rent free) and the next payment shall be due and payable at such Quarter Day for the next quarter and so forth quarterly thereafter during the Term.
- 2.2 Each rent payment shall be made by Banker's Standing Order in favour of such Bank Account as the Landlords may direct in writing (and the Tenants shall accordingly forthwith complete and deliver to the Landlords all Bank instructions provided by the Landlords for that purpose) or in such other manner as the Landlords may, from time to time acting reasonably, direct in writing. The Tenants shall not, without prior consent of the Landlords (such consent not to be unreasonably withheld or delayed), vary, amend or cancel any Bank instructions completed by them in terms hereof.

#### **3. RENT REVIEW**

##### **3.1 Basis of Review**

As from each Review Date, the annual rent for the time being payable under this Lease in respect of the Premises shall be the greater of:

- 3.1.1 the annual rent payable in the period immediately before the Review Date in question, disregarding any abatement in terms of paragraph 3.2 of part 3 of the Schedule; and
- 3.1.2 an amount equal to the Open Market Rent at the Review Date in question.

##### **3.2 Procedure**

- 3.2.1 If the reviewed rent has not been agreed by the Review Date in question, the Review Surveyor may at any time thereafter be appointed to determine the Open Market Rent at the Review Date in question; he shall act as an expert and not as an arbitrator in such determination and his decision shall be final and binding on the parties to this Lease.
- 3.2.2 Within one month of the date of his appointment, the Landlords and the Tenants shall each be entitled to submit to the Review Surveyor a Submission (which may include written valuations, statements and other evidence relating to or supporting their assessment of the Open Market Rent) in which event they shall, at the same time, deliver a copy to the other party.

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- 3.2.3 Within two months of the date of his appointment, the Landlords and the Tenants shall each be entitled to submit to the Review Surveyor a Counter-Submission (which shall be restricted to dealing with points raised by the other party's Submission) and supporting evidence in which event they shall, at the same time, deliver a copy to the other party.
- 3.2.4 The Review Surveyor shall, if requested by notice from one party (a copy of which shall be served on the other party) received within ten weeks of the date of his appointment, hold a hearing at which both parties may be heard and, if present, cross-examined and that at such time or times and such place or places as the Review Surveyor shall appoint for that purpose.
- 3.2.5 If, the Review Surveyor shall die or become incapacitated before he has issued his decision on the Open Market Rent or if, for any other reason, his decision is not issued to the Landlords and the Tenants within eight months from the date of his appointment then, unless the Landlords and the Tenants agree otherwise in writing, such appointment shall, for the purposes of this part of the Schedule, forthwith fall and cease to be of any effect and it shall be deemed never to have been made so that the Open Market Rent at the Review Date in question may thereafter, in terms hereof, be determined by another Review Surveyor agreed on or appointed under this Lease.
- 3.2.6 The fees and costs of each Review Surveyor shall be borne by the Landlords and the Tenants in such shares as he shall direct and, failing any such direction, they shall be borne equally: However, either the Landlords or the Tenants may, in the first instance, pay such fees and costs to the Review Surveyor if they so wish subject to recovery, to be paid within 14 days of written demand, from the other party of such, if any, part of such fees and costs as are the other party's responsibility.

## **3.3 Late Review: Interim Payments**

If the Open Market Rent has not been agreed or determined on or before the Review Date in question, then (but subject to paragraph 3.2 of part 3 of the Schedule):

- 3.3.1 in respect of the interval beginning with the Review Date in question and ending on the first Quarter Day following the date on which the reviewed rent is agreed or determined, the annual rent payable by the Tenants shall be provisionally fixed as a sum equal to the annual rent referred to in paragraph 3.1.1; and
- 3.3.2 if the amount of the annual rent, ascertained in accordance with paragraphs 3.1 and 3.2, payable for such interval differs from the amount provisionally paid for such interval under paragraph 3.3.1 the matter shall forthwith at the expiry of such interval be settled by a single payment by the Tenants to the Landlords comprising the aggregate of (1) the difference between the last two mentioned amounts and (2) a further sum equal to gross interest on the component sums included in such difference at the Base Interest Rate at the Review Date in question from the date or dates on which such component sums would have been payable if the Open Market Rent had been agreed or determined before the Review Date in question to the expiry of such interval; interest shall run on such single payment from the expiry of the interval until the same is paid in terms of paragraph 3 of part 4 of the Schedule.

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## 3.4 **Rent Freeze**

If on any Review Date there shall be in force any enactment (which expression includes any Acts now or hereafter in force) which restricts, interferes with, alters or modifies the Landlords' right to obtain a review of the annual rent in terms hereof, then the Landlords shall be entitled on each occasion that any such enactment is removed, relaxed or modified to serve a notice on the Tenants, and the annual rent payable under this Lease from the date of service of such notice shall be reviewed at such date and determined in like manner as if it were a Review Date as hereinbefore provided: declaring however that the provisions of this paragraph 3.4 are without prejudice to the Landlords' rights to review the annual rent on any subsequent Review Date; and provided always that notwithstanding the foregoing provisions of this clause 3.4 the Landlords shall not be entitled to recover a greater amount of rent than they would have been able to recover had such Act of Parliament or other not been in force.

## 3.5 **Review Memoranda**

Forthwith after the annual rent is increased from time to time in accordance with the foregoing provisions, the Landlords and the Tenants shall execute, in self-proving manner, an appropriate Memorandum specifying the new increased annual rent. The cost of registering the Memorandum specifying the new increased annual rent in the Books of Council and Session and of obtaining three extracts (two for the Landlords) shall be paid by the Tenants.

## 4. **RETENTION**

The Tenants agree that (save where expressly permitted under this Lease or required by law) they shall not for any reason or at any time make any retention of rent.



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## **PART 3 INSURANCE**

### **1. TENANTS' OBLIGATIONS**

The Tenants undertake to the Landlords:

#### **1.1 To Pay Premiums etc**

To pay to the Landlords on demand a sum equal to:

- 1.1.1 all proper premiums paid by the Landlords in respect of the insurances effected under paragraph 2.1 (or, if the Premises are insured along with other subjects, a fair proportion of the total premiums paid by the Landlords as fixed by the Landlords or the Insurer from time to time);
- 1.1.2 all proper premiums paid by the Landlords in connection with the insurance of the Landlords against public liability risks in respect of the Premises for such reasonable sum as the Landlords may select from time to time;
- 1.1.3 all proper and reasonable costs paid by the Landlords in connection with the valuation of the Premises for insurance purposes but, unless following alterations, not more frequently than once in every three years;
- 1.1.4 any proper increase in the rate of premium and all expenses properly incurred by the Landlords in or about any renewal of a policy of insurance effected on the Premises or under this Lease rendered necessary by any act or omission of the Tenants and/or occupants of the Premises;
- 1.1.5 (if the Premises are damaged or destroyed by any of the Insured Risks) any normal commercial uninsured excess to which any such policy of insurance may be subject; and
- 1.1.6 (if the Premises are damaged or destroyed by any of the Insured Risks and the insurance monies payable under any such policy of insurance are wholly or partially irrecoverable by reason solely or in part of any act or default of the Tenants or of any person for whom the Tenants are liable in law or any of their respective agents, employees or licensees) the irrecoverable insurance monies.

#### **1.2 Not to Endanger Insurance**

Not to do or omit anything which may cause any policy of insurance effected by the Landlords on the Premises or under this Lease to be restricted or to become void or voidable wholly or in part.

#### **1.3 Other Insurances**

Not to insure the Premises against any of the Insured Risks but, if at any time the Tenants shall be entitled to the benefit of any insurance on the Premises which is not effected in terms of this Lease, to apply all monies received by virtue of such insurance in making good the loss or damage in respect of which the same shall have been paid.

#### **1.4 To Notify Damage**

To notify the Landlords as soon as reasonably practicable in writing of any damage to or destruction of the Premises, whether by the Insured Risks or otherwise.

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## **1.5 Glass etc Insurance**

Save to the extent the same may be covered by the Landlords' insurances in terms of paragraph 2.1.1, to insure and keep insured in the name of the Tenants all glass in the Premises and all (if any) plant, machinery and other works installed/constructed by the Tenants within or upon the Premises against fire, breakage and all other usual risks in their full reinstatement value for the time being with some Insurance Office of repute approved in writing by the Landlords (such approval not to be unreasonably withheld or delayed) and, upon written request to produce to the Landlords the policy or policies for such insurance and evidence of payment of the last premium. Without prejudice to the Tenants' obligations under paragraphs 4 and 5 of part 4 of the Schedule, to cause all monies received by virtue of such insurance to be laid out in reinstating the damage as soon as possible, all to the satisfaction of the Landlords (acting reasonably).

## **1.6 Non-Occupation**

Without prejudice to any other provision of this Lease, not to leave the Premises continuously unoccupied for more than twenty one days without notifying the Landlords and providing such security arrangements as the Landlords (acting reasonably) and/or the Insurer may reasonably require in order to protect the Premises from vandalism, theft, damage or unlawful occupation.

## **1.7 Removal of Tenants' Fittings on Damage**

If the Premises are damaged or destroyed by any of the Insured Risks so as to render them unfit for occupation or use then, if so reasonably required by the Landlords having regard to their reinstatement obligations, to remove as soon as reasonably practicable from the Premises all tenants' fixtures and fittings and other property belonging to the Tenants or to any third party but subject to the Landlords paying to the Tenants any element of the insurance monies which relate to such operations.

## **2. LANDLORDS' OBLIGATIONS**

### **2.1 To Insure**

The Landlords undertake to insure and keep insured throughout the Term:

2.1.1 the Premises (which term, for the purposes of paragraphs 2 and 3 only, shall not include any glass or, save to the extent that the Landlords elect, by notice to the Tenants, from time to time that they shall insure the same in terms of this paragraph, any plant or machinery or other works installed/ constructed by the Tenants) and all permitted additions and alterations and the Landlords' interest in the Common Subjects against loss or damage by the Insured Risks with the Insurer for the Insurance Reinstatement Value; and

2.1.2 against loss of rent payable under this Lease from time to time, taking full account of VAT and the Landlords' reasonable estimate of the effect of any review of rent under this Lease, for such period (being not less than three years) as is reasonably required by the Landlords from time to time having regard to the likely period required for reinstatement in the event of both partial and total destruction of the Premises and the Common Subjects;

except to the extent that any such insurance shall be vitiated by an act or default of the Tenants (or of any person for whom the Tenants are liable in law or of any of their respective agents, employees or licensees) and subject always to such excesses, exclusions or limitations as the

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Insurer may require and which are normal in the UK insurance market for commercial properties such as the Premises. The Landlords shall use their reasonable endeavours to procure that the premiums for such insurance are competitive within the UK insurance market throughout the Term.

## **2.2 Reinstatement of Damage**

If and whenever during the Term:

- 2.2.1 the Premises or any of the Common Subjects on which the Premises depend for access, support, or any other necessary purposes are damaged or destroyed by any of the Insured Risks; and
- 2.2.2 the Tenants have paid to the Landlords all sums payable conform to paragraphs 1.1.5 and 1.1.6;

The Landlords shall, take such steps as may be requisite and proper to obtain as soon as reasonably practicable and that in terms acceptable to the Landlords (who shall act reasonably in that regard) any planning permissions or other permits and consents that may be required to enable the Landlords to rebuild and reinstate the Premises and such parts of the Common Subjects, and shall, as soon as all such requisite permissions and others have been obtained in acceptable terms as aforesaid, the Landlords shall be obliged to spend and lay out all monies received in respect of the insurances effected under paragraph 2.1.1, together with all sums received conform to paragraphs 1.1.5 and 1.1.6, in rebuilding or reinstating as soon as reasonably practicable the Premises and such parts of the Common Subjects so destroyed or damaged with such variations as may be necessary or in the Landlords' opinion (acting reasonably) desirable having regard to statutory provisions, byelaws and regulations then in force and all such permissions, permits and consents and also to building standards then prevailing to the intent that the Premises when rebuilt or reinstated shall conform to practice then current and shall afford to the Tenants a substantially comparable area to that contained in the Premises and substantially comparable facilities as at the date of damage or destruction, making up any difference between the cost of rebuilding and reinstating and the monies so received out of the Landlords' own money. In arranging for any such rebuilding or reinstatement, the Landlords shall use reasonable endeavours to procure that the Tenants shall obtain the benefit of such collateral warranties and other rights from the contractors and consultants engaged by the Landlords so as to afford the Tenants such rights in respect of the design and construction of the works as the Tenants might reasonably have or have expected to have obtained had the Tenants (and not the Landlords) instructed the said rebuilding or reinstatement. The Landlords shall also procure that the Premises as reinstated after damage or destruction by any of the Insured Risks or Uninsured Risks shall, so far as practicable taking into account any relevant statutory requirements, be substantially no less commodious or suitable for the use permitted under this Lease than the Premises were as existing prior to such damage or destruction.

## **2.3 To Exhibit Policies etc**

The Landlords undertake in relation to the policies of insurance to be effected by the Landlords under this Lease:

- 2.3.1 to produce to the Tenants, on reasonable request, a copy of such policies and the last premium renewal receipt or, at the Landlords' option, reasonable evidence of the terms of such policies and the fact that the last premiums have been paid;



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- 2.3.2 in the event of the Landlords arranging a new policy or if there shall be a material change in the terms of and cover under any existing policy, to notify the Tenants in writing as soon as reasonably practicable;
- 2.3.3 to use their reasonable endeavours to procure that the interest of the Tenants is noted or endorsed on such policies, either specifically or generally; and
- 2.3.4 to use reasonable endeavours to procure that the Insurers from time to time waive their subrogation rights against the Tenants.

## **2.4 Damage by Uninsured Risks**

If the Premises or any of the Common Subjects on which the Premises depend for access, support or any other necessary purposes are destroyed or damaged by an Uninsured Risk so as to make the whole of the Premises or a substantial part of them unfit for occupation and use for the use permitted by this Lease or inaccessible then:-

- 2.4.1 within twelve months of the destruction or damage in question the Landlords shall give written notice to the Tenants ("the Election Notice") stating whether or not the Landlords proposes to rebuild or reinstate the Premises;
- 2.4.2 if the Election Notice states that the Landlords do propose to rebuild or reinstate the ~~Premises then for all the purposes of this Lease the destruction or damage shall be~~ deemed to have been caused by an Insured Risk in respect of which the full insurance monies are recoverable by the Landlords under the policy or policies of insurance, save that such rebuilding or reinstatement shall not include any works appertaining to the Tenants' fitting out works or fixtures and fittings;
- 2.4.3 if the Election Notice states that the Landlords do not propose to rebuild or reinstate the Premises or if the Election Notice is not served within the period of twelve months referred to in clause 2.4.1 (a) then this Lease will determine with immediate effect but without prejudice to the claim of either party for any earlier breach of this Lease by the other;
- 2.4.4 The provisions of this clause 2.4 shall not apply where the damage or destruction was caused by an act or omission of the Tenants which caused a previously Insured Risk to become an Uninsured Risk.

## **3. GENERAL**

### **3.1 Tenancy to Continue**

Subject to paragraphs 3.2 and 3.3, this Lease shall not terminate as a result of damage to or destruction of the Premises or any other property, whether by an Insured Risk or otherwise, but this Lease shall continue in full force and effect and the rent and other sums payable by the Tenants under this Lease shall continue to be payable in full.

### **3.2 Rent Abatement**

- 3.2.1 If the Premises or any of the Common Subjects upon which the Premises depend for access support or any other necessary purpose are damaged or destroyed by any of the Insured Risks or Uninsured Risks so that they become unfit for occupation or incapable of full beneficial occupation and use then, save to the extent in the case of damage or destruction by the Insured Risks that the Landlords' loss of rent insurance has been vitiated by the act, neglect, default or omission of the Tenants (or of any

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person for whom the Tenants are liable in law or any of their respective agents, employees or licensees) and the Tenants have not made good the same in terms of paragraph 1.1.6, the rent payable under this Lease or a fair proportion according to the nature and extent of the damage shall be abated and cease to be payable until the Premises and/or the Common Subjects or the damaged part are reinstated in terms of this Lease so as to become fully fit for occupation and use for the Tenant's permitted use hereunder or until the expiry of the period for which loss of rent insurance has been effected under paragraph 2.1.2, whichever is the shorter. Any rent paid by the Tenants in advance and relating to a period after the damage or destruction and during which the rent shall be suspended in whole, shall be repaid to the Tenants within 14 days of such damage or destruction.

- 3.2.2 If there is any dispute as to the amount or extent of any such abatement, the matter shall be determined by an independent arbiter (who shall require to be experienced in loss of rent insurance claims) mutually chosen, or failing agreement, appointed, on application by the Tenants by the RICS Chairman, provided however that pending the determination of any such arbiter the Landlords' decision on the matter shall be binding on the Tenants.

## **3.3 Termination if not Reinstated**

If the whole or a substantial part of the Premises or the Common Subjects (upon which the Premises depend for access, support or any other necessary purpose) are destroyed or damaged by any of the Insured Risks (which for the purposes of this clause shall include Uninsured Risks) then, if the insured damage shall not have been made good in terms hereof within 3 years of the date of such damage or destruction the period for which loss of rent insurance has been effected by the Landlords, the Landlords or, provided they shall have first paid any monies due under paragraphs 1.1.5 and 1.1.6 the Tenants may, at any time prior to completion of the reinstatement under paragraph 2.2, terminate this Lease forthwith by giving notice to that effect to the other, and on the service of such notice this Lease shall at once cease and determine and the Tenants shall forthwith give to the Landlords vacant possession of the Premises but such termination shall not prejudice any claims competent to the Landlords against the Tenants or *vice versa* arising prior to the service of such notice or in respect of any prior breach of any of the parties' respective obligations under this Lease. Further, on any such termination, the whole of the monies payable under the insurances effected by the Landlords in terms of this Lease shall be paid to them for their own absolute use and benefit.

## **PART 4 TENANT'S OTHER OBLIGATIONS**

### **1. PAYMENT OF OUTGOINGS**

#### **1.1 Rates etc**

To pay, when due, all rates, taxes, duties, levies, charges, assessments, impositions and outgoings whatsoever (whether parliamentary, local or otherwise and whether or not of a capital or non-recurring nature) which are now or may at any time during the Term be taxed, assessed, charged or imposed on the Premises or on the owner or occupier in respect thereof except (i) feuduties and other ground burdens and rents payable in respect of the Landlords' interest in the Premises and (ii) but subject to paragraph 2, tax payable by the Landlords in respect of the grant of this Lease, the receipt of rent and other monies thereunder or any dealing or deemed dealing with their interest in the Premises.

#### **1.2 Public Utilities**

To pay, when properly due, all charges for services 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 relevant suppliers.

#### **1.3 Ground Burdens**

To pay to the Landlords, when due, all feuduties, ground annuals, standard charge, stipend, gardens assessments and other ground burdens (including any monies in respect of the compulsory redemption of the foregoing) payable in respect of the Landlords' interest in the Premises.

#### **1.4 Common Costs**

To pay to the Landlords, when due, such proper proportion (if any) attributable to the Premises as the Landlords are liable to pay of the costs of making, laying, repairing, maintaining, insuring, lighting, securing, renewing, rebuilding and cleansing all ways, drains, pipes, walls, fences and other items which may belong to or be used for the Premises in common with other subjects near or adjoining thereto, including all payments due by the Landlords under the Deed of Conditions, and the Tenants shall not be obliged to contribute to any categories of the foregoing costs which are excluded from the Tenants' obligations in terms of paragraph 4.4 of Part 5 of the Schedule which paragraph shall apply to the Common Subjects and this paragraph *mutatis mutandis*.

### **2. VAT**

2.1 To pay to the Landlords, on written demand, such VAT (at the rate for the time being in force) as shall be payable on goods and services supplied to the Tenants by or on behalf of the Landlords or otherwise on any monies undertaken to be paid by the Tenants under this Lease but that only in exchange for a valid VAT invoice addressed to the Tenants.

2.2 To indemnify and keep indemnified the Landlords, on demand, against any VAT paid or payable by the Landlords in respect of any costs or other sums which the Landlords are entitled to recover from the Tenants under the terms of this Lease except to the extent that the Landlords are entitled to obtain credit for such VAT as allowable input tax: For the avoidance of doubt, the Landlords shall not be under any duty to exercise any option or right conferred by the legislation relating to VAT so as to reduce any liability of the Tenants under this paragraph.

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## 3. INTEREST

To pay, on demand, to the Landlords interest at 4% *per annum* above the Base Interest Rate on all monies due by the Tenants under or by virtue of this Lease if the same are not paid, in the case of rent, on the due date and, in all other cases, within fourteen days after the due date, running such interest, in both cases, from the due date for payment during the non-payment of the same (both before and after any judgement).

## 4. REPAIR

- 4.1 To maintain and repair the Premises so that they are at all times in good and tenantable condition in every respect and (whenever reasonably necessary for the purpose of ensuring that they are kept at all times in such condition) to renew, replace and rebuild the Premises all to the satisfaction of the Landlords (acting reasonably), which obligations shall include an obligation to carry out all appropriate works, whether an ordinary or extraordinary repair or otherwise, and that irrespective of the age or state of dilapidation of the Premises or the cause of damage, deterioration or destruction and so far as practicable all such maintenance, repair, renewal, replacement and rebuilding is to be carried out using good quality materials.
- 4.2 Save where the responsibility of the local or other authority, at all times to keep the whole drainage system of and serving the Premises (so far as not comprising the Common Subjects) in efficient working order and condition and forthwith to make good, to the reasonable satisfaction of the Landlords, any obstruction of or damage to the same.
- 4.3 At all times to keep the Premises in a clean and tidy condition and clear of rubbish, all to the reasonable satisfaction of the Landlords, and, in particular to clean both sides of all windows as often as occasion shall require and at least once in every month.
- 4.4 The Tenants shall not be liable for implementing the obligations under paragraphs 4, 5 and 6 or any other provisions of this Lease (nor shall the Tenants be liable to contribute towards any expenditure incurred in respect of the Common Subjects or to carry out any obligation in respect of the Common Subjects):-
- 4.4.1 to the extent that such obligations are the responsibility of the Landlords under part 3 of the Schedule.
- 4.4.2 to the extent that any such deterioration, damage or destruction necessitating such a repair, renewal, rebuilding or reinstatement as aforesaid is caused by an Uninsured Risk.
- 4.4.3 to the extent that any damage or destruction results from any neglect or default of the Landlords or those for whom they are legally responsible, any such damage referred to in this paragraph 4.4.3 being the responsibility of the Landlords who shall make the same good as soon as reasonably practicable.

## 5. PLANT AND MACHINERY

- 5.1 Without prejudice to paragraph 4, to keep all plant, apparatus and machinery in the Premises (including all lighting, heating, ventilation, security and drainage systems, all water supply and gas installations, all fire fighting equipment and all related wiring, pipes and other conducting media) in good working order, repair and condition to the satisfaction of the Landlords (acting reasonably) and, from time to time, when necessary for the foregoing purposes to replace the same with suitable articles or equipment of similar and modern kind, all to the satisfaction of the Landlords (acting reasonably).



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- 5.2 If reasonably required by the Landlords, to employ reputable contractors, to be approved by the Landlords acting reasonably, for the regular inspection, maintenance and renewal of such plant, apparatus and machinery and, on request, to deliver to the Landlords a copy of all current maintenance contracts and evidence that they are still in force.

## **6. DECORATION**

- 6.1 In every third year of the Term, in the case of external decoration, and in every fifth year of the Term, in the case of internal decoration, and also, in both cases, in the last six months of this Lease (howsoever determined) unless carried out in the preceding 12 months, all to the satisfaction of the Landlords (acting reasonably) to prepare and paint or otherwise decorate in a proper and workmanlike manner all parts of the Premises as have previously been so painted or decorated (with at least two coats of good quality paint or other suitable medium) and, at like times in like manner, to prepare, clean and treat in a suitable manner so as to maintain the same in good condition, all other internal surfaces of the Premises not required to be painted or decorated and to clean all tiles and similar washable surfaces: Provided Always that the tints, colours and patterns of all such painting and decoration shall, at all times, in the case of external works, and in the last six months of this Lease, in the case of internal works, be previously approved by the Landlords, which approval shall not be unreasonably withheld or delayed provided always that no such approval shall be required where such decoration is in the Tenants' normal corporate colours.

## **7. TO HEAT AND VENTILATE**

To keep the buildings upon the Premises heated and aired in such a manner and to such extent as will prevent them (including any fittings and fixtures and other property of the Landlords) from deteriorating or being damaged owing to lack of heating and/or ventilation.

## **8. REMOVING AT EXPIRY**

- 8.1 At the Date of Expiry and subject to the Tenants carrying out, to the satisfaction of the Landlords (acting reasonably) all restoration works called for by the Landlords in terms of paragraph 12 to surrender to the Landlords the Premises together with all additions and improvements made thereto and all fixtures (other than trade or tenant's fixtures affixed by the Tenants or any sub-tenant which shall be removed by the Tenants) in or upon the Premises and that in such state and condition as shall in all respects be consistent with a full and due performance by the Tenants of their obligations under this Lease using good quality materials.
- 8.2 Without prejudice to the foregoing:
- 8.2.1 To remove from the Premises every moulding, sign, name or other identification of the name or business of the Tenants or other occupiers.
- 8.2.2 To repair and make good to the satisfaction of the Landlords (acting reasonably) all damage including damage to paint work caused by the removal of trade or tenant's fixtures and such mouldings, signs and others.
- 8.3 If at the expiration of the Term, the Premises are not in the state of repair and decoration in which they should be having regard to the Tenant's obligations in this Lease, the Tenants shall pay to the Landlords on demand;

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- 8.3.1 the sums properly incurred by the Landlords in carrying out the works required to put the Premises into the state of repair and decoration in which they should have been had the Tenants complied with the terms of this Lease; and
- 8.3.2 the rent at the rate prevailing at the expiration of the Term which the Landlords can, on the balance of probabilities, prove to have lost as a result of the Tenants' failure to comply that would have been payable under this Lease if the Term had been extended for such period as is reasonably necessary to put the Premises into the state of repair and decoration in which they should have been.
- 8.4 At the Date of Expiry the Tenants shall provide the Landlords with all relevant documentation, files, reports and certificates and other information required to be obtained and/or maintained by the Tenants under the provisions and requirements of any statute, statutory instrument, enactment or bye-law or any notice, order or direction of any statutory, public, local or other competent authority in relation to the Premises or the use or occupation of the Premises or any works or alterations carried out to the Premises.
- 9. **TO PERMIT LANDLORDS TO ENTER**
- 9.1 To permit the Landlords on Requisite Notice to the Tenants (except in an emergency when no such notice is required), to enter the Premises:
  - 9.1.1 to examine their state of repair and condition;
  - 9.1.2 to exercise any of the rights excepted and reserved by this Lease and to comply with their obligations under this Lease or any superior lease;
  - 9.1.3 to take inventories of the fixtures and things to be surrendered at the expiry of the Term;
  - 9.1.4 for all purposes necessary to obtain an Energy Performance Certificate; and
  - 9.1.5 for any other purpose connected with the Landlords' interest in the Premises.
  - 9.1.6 Declaring that in the exercise of the foregoing rights and the Reserved Rights and any further rights reserved to the Landlords or any other person in terms of the Lease the following conditions shall apply:-
    - (a) all physical damage to the Premises, the Tenants' fittings and fixtures and stock caused by reason of or resulting from the exercise of the aforesaid rights shall be made good by the Landlords (to the extent that the Tenants have taken reasonable precautions to protect the same);
    - (b) save in the case of emergency all of the aforesaid rights shall be exercised in such a manner as will cause the minimum possible disruption and inconvenience to the Tenants, its customers and the business carried on by the Tenants from the Premises in accordance with the provisions of the Lease and the Landlords shall use reasonable endeavours to access the Premises out with normal trading hours;
    - (c) save in the case of emergency the persons exercising such rights will comply with any reasonable requirements of the Tenants in respect of security including where reasonably possible and save in the case of emergency any requirement that an employee of the Tenants accompany the person exercising such right;

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- (d) save in the case of emergency where pursuant to any such right entry is being or is to be taken to the Premises in order to carry out works to any part of the larger subjects of which the Premises form part such right shall not be exercised unless such works cannot otherwise be reasonably and economically and practicably carried out from another part of such larger subjects or without taking entry to the Premises

- 9.2 Within forty two days (or within such greater or lesser timescale as the Landlords (acting reasonably) may specify having regard to the nature and circumstances of the required works, but disregarding circumstances personal to the Tenants) after notice in writing to the Tenants of any defects in the due implement by the Tenants of their obligations under this Lease shall have been given to the Tenants, to commence and thereafter proceed diligently to make good the same according to such notice and the provisions in that behalf contained in this Lease.
- 9.3 In case the Tenants shall make default in so complying with any such notice (and without prejudice to paragraph 10), to permit the Landlords after giving the Tenants 3 working days' prior written notice of their intention so to do to enter upon the Premises and make good said defects (or any of them) and all expenses which they properly and reasonably incur thereby shall be paid by the Tenants to the Landlords on written demand.

## **10. TO PERMIT OTHERS TO ENTER**

To permit the owners, tenants or occupiers of any neighbouring property (including the Landlords) on Requisite Notice to the Tenants (except in an emergency) to enter upon the Premises for the purposes of inspecting and executing works to or upon such neighbouring property: Provided Always that (but without prejudice to paragraph 22.1) (i) the right to enter to carry out works shall not be exercised unless such works cannot otherwise be carried out in a commercially practicable and economic manner and (ii) those taking access shall use reasonable endeavours to minimise disruption and shall make good to the reasonable satisfaction of the Tenants, all damage to the Premises thereby occasioned and provided (i) all persons exercising such rights shall comply with the reasonable safety and security requirements of the Tenants and (ii) the terms of paragraph 9 shall otherwise apply to such rights of access.

## **11. FACILITIES TO RELET/SELL**

To afford the Landlords all reasonable facilities for the purposes of selling the Premises and, during the last six months of the Term, for the purposes of letting the same, including in both cases right to erect on the Premises "For Sale" or "To Let" Boards and access to the Premises by the Landlords or others having written authority from the Landlords: Provided Always such Boards do not obscure the windows or fascia signs of the Premises and such rights are exercised in such a manner to minimise any disruption to the Tenants' business and the Landlords being obliged to make good any damage resulting from the Landlords' exercise of the foregoing rights to the Tenants' reasonable satisfaction.

## **12. ALTERATIONS**

- 12.1 Not to alter the Common Subjects or the structure of the Premises.
- 12.2 Not without the consent of the Landlords (such consent not to be unreasonably withheld or delayed) to carry out external non-structural alterations to the Premises. Notwithstanding the foregoing the Tenants shall be entitled without the consent of the Landlords to carry out internal non-structural alterations to the Premises, provided details (including plans and other

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information which the Landlords reasonably require) are provided to the Landlords prior to carrying out such works.

- 12.3 Whilst the Tenants remain Costa Limited or a Costa Group Company the Tenants will be entitled to carry out alterations or amendments to the shop front/fascia of the Premises and/or the Tenants' signage without the need for consent from the Landlords provided that (i) the said alterations or amendments are not structural; and (ii) any such alterations are undertaken in the most recent corporate branding of the said Costa Limited or Costa Group Company and the Tenants shall be responsible for securing all necessary consents.
- 12.4 At least seven days prior to the commencement of any works consented to or authorised under this paragraph 12, (i) to deliver to the Landlords a certified true copy of all necessary planning permissions, building warrants and other permits or consents together with supporting drawings and papers and (ii) to notify the Landlords and the Insurer of the intended commencement date.
- 12.5 To notify the Landlords and the Insurer as soon as reasonably practicable following completion of any such works of the date of completion and to advise the Landlords as to the cost/value of such works for insurance purposes; thereafter, to use all reasonable endeavours to obtain the requisite Local Authority Completion Certificate as soon as practicable and, on receipt, to deliver a certified true copy to the Landlords.
- 12.6 At or immediately prior to the Date of Expiry to remove all alterations or other works carried out in terms of this paragraph 12 (except to the extent that may be required otherwise by the Landlords), and to restore and make good the Premises to the condition and design which existed before the relevant alterations were carried out, all to the Landlords' satisfaction (acting reasonably).
- 12.7 All alterations or additions carried out in terms of this Paragraph 12 shall be carried out using good quality materials.
- 13. SIGNS ETC**
- 13.1 Not, without the consent of the Landlords (which consent shall not be unreasonably withheld or delayed) to paint, write, place, attach, affix or exhibit any figure or letter, or any pole, flag signboard, advertisement, inscription, placard or sign which is visible from outwith the buildings comprised in the Premises.
- 13.2 Whilst the Tenants remain Costa Limited or a Costa Group Company the Tenants will be entitled to carry out alterations or amendments to the shop front/fascia of the Premises and/or the Tenants' signage without the need for consent from the Landlords provided that (i) the said alterations or amendments are not structural; and (ii) any such alterations are undertaken in the most recent corporate branding of the said Costa Limited or Costa Group Company and the Tenants shall be responsible for securing all necessary consents.
- 14. SHOP FRONT, SIGNS ETC:**
- 14.1 To keep the shop front, windows, entrances and all other parts of the Premises visible from the outside dressed and attractively laid out in a suitable manner appropriate to the permitted user, all to the Landlords' satisfaction (acting reasonably).
- 14.2 Not, without the consent of the Landlords (which consent shall not be unreasonably withheld or delayed) to paint, write, place, attach, affix or exhibit any figure or letter, or any pole, flag signboard, advertisement, inscription, placard or sign which is visible from outwith the buildings comprised in the Premises.



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- 14.3 There is excepted from paragraph 14.1:
- 14.3.1 normal price tickets attached to and relating to goods/services for sale in the display area of the Premises (but not on the shop front or any other glazed area);
  - 14.3.2 any sign or notice required to be displayed by law provided it is in a position approved by the Landlords (such approval not to be unreasonably withheld or delayed); and
  - 14.3.3 trade placards, posters or advertisements of a temporary and not excessive nature which are usual for the conduct of the then permitted user provided that not more than 20% of the total glazed area of the shop front shall be thereby obscured.

Whilst the Tenants remain Costa Limited or a Costa Group Company the Tenants will be entitled to carry out alterations or amendments to the shop front/fascia of the Premises and/or the Tenants' signage without the need for consent from the Landlords provided (i) the said alterations or amendments are not structural; and (ii) that any such alterations are undertaken in the most recent corporate branding of the said Costa Limited or Costa Group Company and the Tenants shall be responsible for securing all necessary consents.

## **15. PERMITTED USER:**

Not to use the Premises other than for a use as a retail Coffee Shop within Class 1 and/or Class 3 of the Schedule to the Town and Country Planning (Use Classes) (Scotland) Order 1997 for the sale of food and drinks for consumption on or off the Premises together with the sale of coffee beans and related merchandising with ancillary facilities for computer internet access and the sale of associated coffee related goods and accessories or for such other use or uses or such other use as may from time to time be approved in writing by the Landlords (such approval not to be unreasonably withheld or delayed for any other purpose within said Class 1).

## **16. PROHIBITED USES:**

- 16.1 Not at any time to use the Premises for any public exhibition or entertainment or for any sale by auction or for any illegal purpose or for betting or gaming or for any noisy, noxious, dangerous or offensive trade, manufacture or business.
- 16.2 Not at any time to use the Premises as a private dwellinghouse or part thereof and not at any time to permit or allow any person to sleep in the Premises.
- 16.3 Not to hang, place, deposit or expose outside any part of the buildings comprised in the Premises any goods, articles or things for sale.
- 16.4 Not to leave any packing cases, goods or materials for an unreasonable time outside such buildings.
- 16.5 Not to keep any animal, bird or fish at any time in or upon the Premises.
- 16.6 Generally not to do upon or in connection with the Premises anything which is a nuisance or cause of damage to the Landlords or to any adjoining or neighbouring property or its owner or occupier.
- 16.7 Not to do or bring in or upon the Premises anything which may put thereon any weight or impose strain in excess of that which the Premises are calculated to bear with due margin for safety.
- 16.8 Not to overload the electrical circuits and installations in and serving the Premises.

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## **17. OBSTRUCTIONS AND ENCROACHMENT:**

- 17.1 Not to obstruct any access to or exit from the Premises or any of the doors, windows or ventilators belonging to the Premises.
- 17.2 Not to knowingly permit any new encroachment or servitude to be made into or acquired against or over the Premises.
- 17.3 In case any encroachment or servitude shall be attempted to be made or acquired by any person, to give notice to the Landlords immediately it shall come to the attention of the Tenants and at the request the Landlords and at the joint cost of the Landlords and the Tenants to do all such things as may be proper for preventing any new encroachment or servitude being made or acquired.

## **18. POLLUTION:**

Generally to prevent any polluting agent (including any pungent or obnoxious waste or oil, grease, dust or other deleterious matter or gas) from escaping out of the Premises except where the polluting agent in question shall have been treated in such a manner as the Landlords, acting reasonably, may approve in writing from time to time and, in particular, not to allow any polluting agent, unless so treated, to enter the sewers, drains or watercourses serving the Premises or any open running water or any adjoining or neighbouring property or the atmosphere.

PROVIDED THAT notwithstanding any other provisions of this Lease it is acknowledged and agreed between the Landlords and the Tenants that:

- (a) the Tenants will have no liability under the terms of this Lease (including without limitation any repairing obligation, statutory requirement or liability to contribute towards common costs) or otherwise in respect of any Existing Contamination.
- (b) the Tenants are not required by any of the covenants of this Lease or otherwise under this Lease to carry out any works to make good, rectify, remove, treat or make harmless any Existing Contamination or to pay the costs of doing so.
- (c) Should there be a statutory requirement for the Landlords to carry out any works to the Premises and / or the Building the arising from Existing Contamination the Tenants will co-operate fully with the Landlords in providing access for such purposes.

## **19. STATUTORY REQUIREMENTS:**

### **19.1 General**

Save to the extent the same is expressly excluded from the Tenants' obligations under this Lease or is comprised within the Landlords' obligations under this Lease, to comply with all Acts and legal requirements relating to the Premises, the use of them and the use of anything in them, whether the requirements are imposed on the Landlords, the Tenants, the occupier or any other person and at all times to keep the Landlords indemnified against all claims, demands and liability in respect thereof.

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## **19.2 CDM Regulations**

Without prejudice to paragraph 19.1, to comply with and ensure compliance with the Construction (Design & Management) Regulations 2015 and/or any additional or replacement regulations to similar effect throughout the Term and to ensure that any Health and Safety File required in respect of the Premises in terms of such Regulations is prepared, reviewed and updated in accordance with such Regulations. To copy to the Landlords all information on the relevant Health and Safety File as it is produced and forthwith, at any time on demand, to produce to the Landlords the relevant Health and Safety File for the Premises, for inspection and, at the expiry of the Term, for retention.

## **19.3 Fire and Insurer's Requirements**

To comply promptly with all the requirements of the Local Authority and the Fire and Rescue Authority and with the proper requirements and recommendations of the Insurer in regard to the Premises or the installation, maintenance, operation and testing of fire sprinkler and fire alarm systems and other appliances serving the same.

## **19.4 No Obstruction**

Not to obstruct the access to any fire fighting and extinguishing appliances or the means of escape from the Premises.

## **19.5 Dangerous Substances**

Not to store or bring on to the Premises any article, substance or liquid of a specially combustible, inflammable or explosive nature except in such quantities as may be appropriate to the permitted user and then only in such manner as shall comply with all relevant statutory requirements.

## **19.6 To Provide Evidence**

If and when called upon so to do, to produce to the Landlords all such plans, documents and other evidence as the Landlords (acting reasonably) may require in order to satisfy themselves that the foregoing provisions of this paragraph 19 have been complied with in all respects.

## **19.7 Transmission of Notices**

In so far as the same may affect the Premises or the Landlords' interest therein, as soon as reasonably practicable on receipt to give to the Landlords a certified true copy of all notices, permissions, orders or proposals for a notice or order given or issued to the Tenants by or on behalf of any Government Department or local or public authority or statutory body under or by virtue of any statutory power, including in this context the Planning Acts, and, if required by the Landlords (acting reasonably), to make or join in making such objections or representations in respect of any such notice, order or proposal as the Landlords (acting reasonably) may require.

## **20. ENERGY PERFORMANCE CERTIFICATE**

20.1 The Tenants shall allow the Landlords and anyone authorised by them to have access to all documentation, data and information in the Tenants' possession or under their control that is reasonably required in order to:

20.1.1 prepare an Energy Performance Certificate for the Premises; and

20.1.2 comply with any duty imposed upon the Landlords under the EPB Regulations.

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- 20.2 The Tenants shall provide free of charge to the Landlords a copy of any Energy Performance Certificate that the Tenants obtain or commission in respect of the Premises (together with copies of all ancillary documents and information and the reference number for such Energy Performance Certificate within 14 days of the Tenants obtaining such EPC in pursuance of its statutory obligations).

## **21. APPLICATIONS FOR PLANNING PERMISSION ETC**

- 21.1 In the event of permission from any Planning Authority being necessary for any works to be carried out by the Tenants or any change of use of the Premises or for any other purpose, not, without having obtained the Landlords' consent to the making of the application (such consent not to be unreasonably withheld or delayed) and that in addition to any such consent as may be required in terms of paragraphs 12, 13 and 14 to make or lodge any application for any such permission.
- 21.2 Subject to paragraph 21.1, to apply to the Planning Authority and such other bodies as may be requisite for all permissions, warrants licences and consents which may be required in connection with all such works, change of use or other purpose and to give notice to the Landlords of the grant or refusal (as the case may be) of all such permissions, warrants, licences and consents immediately on receipt.
- 21.3 If the said Planning Authority or other body agree to grant the desired permission, warrant, licence or consent only with modifications or subject to conditions, not to accept such modifications or conditions without the consent of the Landlords (such consent not to be unreasonably withheld or delayed) and to give the Landlords forthwith full particulars of such modifications or conditions and, if such modifications or conditions shall in the opinion of the Landlords (acting reasonably), be undesirable then the Tenants shall withdraw their application or take such other forms of action as the Landlords may reasonably require in order to have such modifications or conditions removed.
- 21.4 Unless the Landlords otherwise direct, to carry out and complete before the Date of Expiry any works stipulated to be carried out to the Premises by a date subsequent to the Date of Expiry as a condition of any such permission, warrant, licence or consent granted for any development begun during the Term.

## **22. TITLE MATTERS**

### **22.1 Real Burdens**

Save to the extent that the same requires some action which is either expressly excluded from the Tenants' responsibility under this Lease or is contained within the Landlords' obligations hereunder, to perform and observe all the real liens, burdens, conditions, restrictions, servitudes, agreements or others howsoever constituted affecting the Premises (including for the avoidance of doubt the real liens, burdens, conditions, restrictions, servitudes, agreements or others contained in the Deed of Conditions) and to free, relieve and indemnify the Landlords of, from and against all actions, costs, claims and demands which may arise or be occasioned in respect of any breach by the Tenants (or those deriving right from them) of any such real liens, burdens, conditions, restrictions, servitudes, agreements or others.

### **22.2 To Accept Decision re Servitudes**

To comply with the decision of the Landlords (who shall act reasonably in the matter) with regard to any dispute arising between the Tenants and the Landlords' tenants or the owners or



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occupiers of adjoining or neighbouring property as to the nature and extent of any servitude, right or privilege in favour of or affecting the Premises or the adjoining or neighbouring property.

## 23. ALIENATION

- 23.1 Not to assign, charge by way of fixed charge, sub-let or otherwise in any way or for any purpose deal with the Tenants' interest in or part with or share possession or occupation of part only of the Premises.
- 23.2 Not to assign, charge by way of fixed charge, sub-let or otherwise in any way or for any purpose deal with the Tenants' interest in or part with or share possession or occupation of the whole of the Premises without the consent of the Landlords, which consent will not be unreasonably withheld or delayed in the case of a respectable and responsible assignee, chargee or sub-tenant of sound financial standing but provided always (i) that there shall not be more than one fixed charge over the Tenants' interest at any one time; and (ii) there shall be no arrears of rent.
- 23.3 To procure that every permitted sub-lease under this paragraph 23 and shall be granted, subject to the Tenants' obligations under part 4 the Schedule, the whole conditions of this part of the Schedule and such other conditions as the Landlords (acting reasonably) shall approve or require in writing, in consideration for a full market rent with reviews coinciding with those under this Lease (all grassums, premiums and fines and lump sum commutations of rent being prohibited but provided always that any incentives or rent free periods which are usual in the market at the time of the grant of such sub-letting shall be permitted) and shall contain:
- 23.3.1 an unqualified undertaking by the sub-tenant not to assign, under-lease, charge by way of fixed charge or otherwise in any way or for any purpose deal with the sub-tenant's interest in part only of the subjects thereby leased, and
- 23.3.2 an undertaking on the part of the sub-tenant that the sub-tenant shall not assign, under-lease, charge by way of fixed charge or otherwise in any way or for any purpose deal with the sub-tenant's interest in the whole of the subjects thereby leased without previously obtaining the written consent of the Landlords under this Lease (such consent not to be unreasonably withheld or delayed) and a provision that any permitted under-lease granted out of such sub-lease whether mediate or immediate shall contain similar provisions.
- 23.4 Not, without the consent of the Landlords (not to be unreasonably withheld or delayed), at any time to vary or agree to vary in any respect whatsoever the terms of any permitted sub-lease but provided always that the Tenant shall not require any consent from the Landlords either to irritate any Sub-Lease or to accept a surrender of the same.
- 23.5 Not at any time to release or waive any obligation in a permitted sub-lease and (but without prejudice to the Landlords' rights on breach) to enforce the performance of the sub-tenant's obligations thereunder.
- 23.6 So long as the said Costa Limited or a Costa Group Company remain the Tenant under this Lease and subject to the terms of paragraph 23.3 and providing notice to the Landlords prior to the date of entry under the sub-lease, the Tenants will be entitled to sub-let the Premises in whole to a franchisee of the Tenants and that without the requirement for Landlords' consent.
- 23.7 Notwithstanding the foregoing provisions of this paragraph 23, the Tenants will be entitled to allow the occupation of the whole or any part of the Premises by any company which is a (i) subsidiary or holding company of the Tenants or a subsidiary of such holding company (as the

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terms "subsidiary" and "holding company" are defined in section 1159 of the Companies Act 2006); or (ii) a franchisee; or (iii) a concessionaires provided that:

- 23.7.1 such subsidiary or holding company, franchisee or concessionaire will not acquire any tenancy rights or other occupancy rights which may be binding on the Landlords;
  - 23.7.2 such occupancy arrangements will terminate automatically in the event of the relevant subsidiary or holding company ceasing to be so related to the Tenants;
  - 23.7.3 prior to any such occupation being taken up and also as soon as reasonably practicable on any variation or termination of any such arrangements; the Tenants shall give notice to the Landlords, including details of the relevant companies, franchisees or concessionaires and, save on termination, of the areas which they shall be occupying; and
  - 23.7.4 the Tenants shall be responsible for and shall indemnify the Landlords, on demand, against all loss or liability arising from the acts or omissions of any such subsidiary or holding company, franchisee or concessionaires or those for whom they are responsible in law.
- 23.8 Any payment of rent and performance of other Tenants' obligations by any such company, franchisee or concessionaire as mentioned in paragraph 23.6 shall be deemed to have been effected by it as agents for and on behalf of the Tenants and may be accepted by the Landlords as such.

## **24. TO EXHIBIT DEEDS**

Subject to paragraph 23, within two months of granting an assignation of or fixed charge over this Lease or of entering into any sub-lease or of the completion of any agreement or deed dealing with the Tenants' (or any sub or under-tenants') interest in the Premises to deliver two certified copies or extracts of the same to the Landlords for their retention.

## **25. TO INDEMNIFY LANDLORDS**

Save to the extent that (i) the same results from a breach by the Landlords or their obligations under this Lease or any negligent act or omission by the Landlords or others for whom the Landlords are responsible; (ii) the Landlords are covered by the insurances effected in terms of part 3 of the Schedule; (iii) the same results from damage by an Uninsured Risk (which foregoing provisos shall apply to all instances in this Lease where the Tenants undertake to indemnify the Landlords), to indemnify and keep indemnified the Landlords from liability in respect of any injury to or the death of any person, damage to any property, heritable or moveable, any interdict or Court action, the infringement, disturbance or destruction of any right, servitude or privilege or otherwise by reason of or arising directly or indirectly out of the repair, state of repair, condition, or any alteration to or to the use hereinbefore permitted of the Premises or from any failure or omission by the Tenants in the implement and observance of the obligations on their part under this Lease and from all proceedings, costs, claims and demands of whatsoever nature in respect of any such liability or alleged liability. Provided that in respect of this paragraph and any other provision of this Lease where the Tenants are obliged to indemnify the Landlords in respect of any matter the Landlords shall (a) advise the Tenants as soon as reasonably practicable of any relevant claims or proceedings which may give rise to any liability on the part of the Tenants under such indemnity and keep the Tenants advised as to all material steps and proceedings and shall have due regard to any reasonable representations made by the Tenants in respect of the same, including, without limitation, any representations

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over the possible settlement or compromise of such claims or proceedings and (b) take all reasonable steps to mitigate the Landlords' loss.

## 26. TO PAY COSTS

Forthwith on demand to pay and accordingly free and relieve the Landlords of all properly and reasonably incurred Surveyors' and Solicitors' fees and all other professional charges, expenses and outlays incurred by the Landlords in connection with or incidental to:

- 26.1 any application to the Landlords for consent or approval in terms of this Lease;
- 26.2 securing the performance of or compliance with any of the Tenants' obligations under this Lease (including, without limitation, the properly and reasonably incurred costs and expenses properly incurred in connection with the preparation and service of all notices and all Court proceedings instituted and the costs and expenses of all messengers-at-arms and sheriff officers);
- 26.3 the supervision of or carrying out of any necessary works to items common to the Premises and subjects near or adjoining thereto in terms of this Lease; and
- 26.4 any Schedule of Dilapidations which the Landlords may serve at any time during the Term.

*A. Miller*

*Extracted*

And the said Lords grant Warrant for lawful execution hereon.  
UK - 208763431.16 3349872292-1

EXTRACTED by me having commission to that effect from the  
Keeper of the Registers of Scotland.

*58*

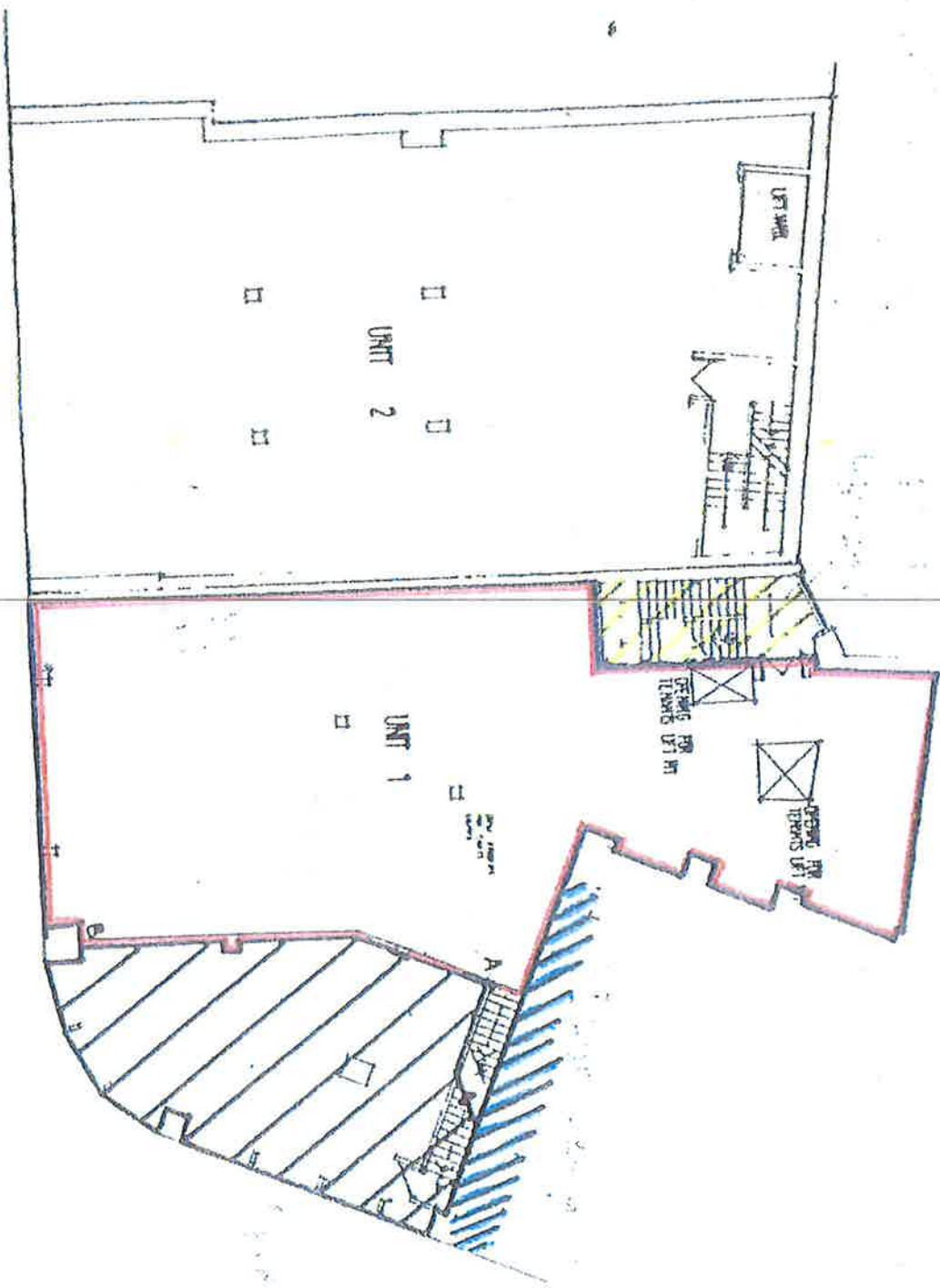
*34*

A. Matter

John W. Alden



This is Plan 2 referred to in the foregoing Lease  
between Aviva Life & Pensions UK Limited and  
Costa Limited



A. Hutton  
Subscribed