



other provision of this Lease damage or destruction caused by any negligent act, omission or default on the part of the Landlord or those for whom the Landlord is responsible in law;

- 27.1.2 The obligations of the Tenant under Clause 6.1.1 above are subject to the proviso that provided and for so long as construction works for the Proposed Development have commenced and are continuing on the Site the obligations of the Tenant in relation to repair and maintenance of the Property shall be limited to ensuring that the Buildings (except and to the extent that the same are to be demolished pursuant to the carrying out of the Proposed Development) are suitably protected and maintained in a structurally sound condition and that any damage to them is made good without delay either by the carrying out of the Proposed Development or by the Tenant effecting the repair of such Buildings all as may be necessary to render the same wind and watertight and free from structural damage, and the provisions of Clause 6.2 shall be construed accordingly.

27.2 Notices to repair

- 27.2.1 The Landlord may at any time and from time to time after the Date of Entry give the Tenant written notice of any material breach of any of the obligations of the Tenant under this Lease relating to the condition or repair of the Property;

- 27.2.2 The Tenant must complete the works needed to remedy the breach specified in a notice given under and in accordance with Clause 6.2.1 as soon as practicable and in any event within such reasonable period of time (which shall not be less than three (3) months) as shall be stated in any such notice and having regard also, in relation to the length of such period, to the principles of good estate management, the progress of the Proposed Development and the nature and extent of the want of repair in question.

- 27.2.3 If the Tenant fails to comply with any such notice within the period of time stated therein, it shall be lawful (but not obligatory) for the Landlord (without prejudice to the rights of irritancy hereinafter contained) to enter upon the Property to make good the same at the proper cost of the Tenant which proper cost shall be repaid by the Tenant to the Landlord within ten (10) Working Days of a written demand accompanied by appropriate vouchers evidencing the cost in question together with all solicitors and surveyors charges and other expenses which may be properly and reasonably incurred by the Landlord in connection therewith together with interest thereon at the Prescribed Rate from the due date for payment thereof in each case until the date of payment to the Landlord.

28 Decoration and cleaning

28.1 Interior decoration

For so long as an Hotel Operation is being carried on in the Property, the Tenant must keep the inside of the Buildings and the New Build Additions regularly decorated to the standards commensurate with such Hotel Operation and if at any time and from time to time a Hotel Operation is not being carried out the Tenant must keep the inside of the Buildings and the New Build Additions decorated to standards commensurate with their use at that time.

28.2 Keeping the Property clean and tidy

The Tenant must keep the external parts of the Property in a clean and tidy condition and clear of all rubbish.

28.3 Not to harm drains

The Tenant must not permit or allow to pass into the Shared Service Media or into any other sewers, drains or watercourse serving the Buildings or the Property any noxious or deleterious effluent or any other substance which might cause any such obstruction in or injury to the said sewers, drains or watercourses and in the event of any pollution damage



or obstruction or injury having been permitted or caused forthwith to make good the same to the reasonable satisfaction of the Landlord.

29 Alterations

29.1 External or structural

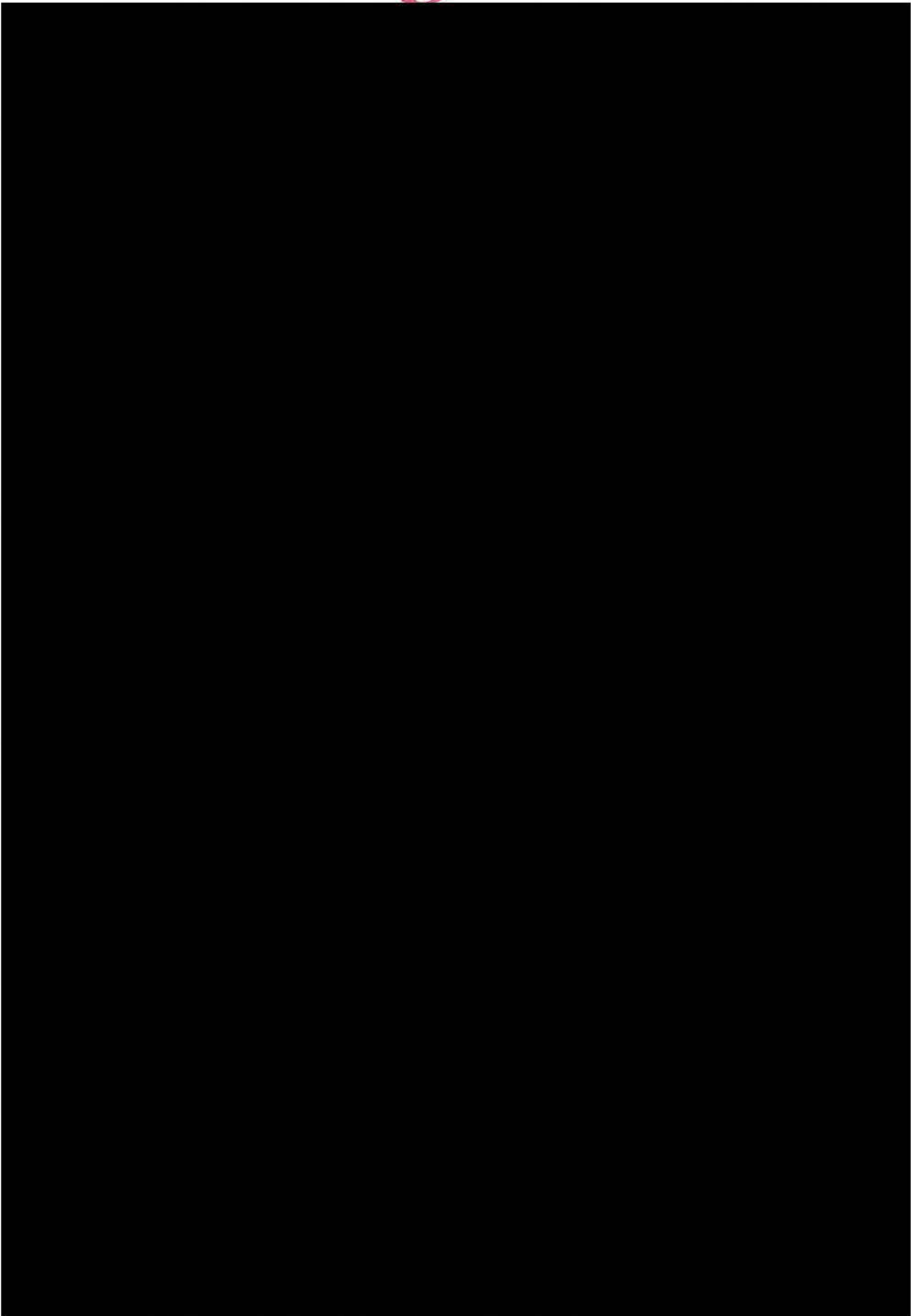
- 29.1.1 The Tenant may make external alterations and/or structural alterations or external additions to the Property provided always that the Tenant has obtained and has exhibited to the Landlord all approvals requisite at the time under the Planning Acts together with and all other necessary consents under any other statute or regulation governing the carrying out of works of alteration or development in or to the Property ("**Statutory Approvals**") and also provided that the Tenant shall have first given full details of such alterations or additions to the Landlord and obtained the approval in writing of the Landlord which approval shall not be unreasonably withheld or delayed;

29.2 Internal or non-structural

The Tenant may carry out or permit from time to time any internal or non-structural alteration to or within the Property provided that the Tenant has first obtained all requisite Statutory Approvals and carries out such alteration or addition in strict compliance with the same.

29.3 Proposed Development permitted

For the avoidance of doubt nothing in this Clause 8 shall operate to restrict or prevent the carrying out of the Proposed Development in accordance with Statutory Approvals.





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34 Intimation of dealing with Tenant's interest

No later than one month after a Transaction the Tenant must:

- (a) give the Landlord notice of the Transaction;
- (b) deliver two extracts or certified copies of any document effecting the Transaction to the Landlord; and
- (c) deliver a copy of any EPC issued as a result of the Transaction.

35 compliance with laws

35.1 Statutory requirements

35.1.1 The Tenant must comply with all laws (including but without prejudice to the generality of the foregoing the Offices, Shops and Railway Premises Act 1963, the Factories Act 1961, the Fire Precautions Act 1971, the Health and Safety at Work etc Act 1974, the Control of Pollution Act 1974 and the Environmental Protection Act 1990) relating to:

- (a) the Property and the occupation and use of the Property by the Tenant;



- (b) the use of all service media plant and machinery and equipment at or serving the Property;
 - (c) any works carried out at the Property; and
 - (d) all materials kept at or disposed of from the Property.
- 35.1.2 Without prejudice to any obligation on the Tenant to obtain any consent or approval under this Lease, the Tenant must carry out all works that are required under any law to be carried out at the Property, whether by the owner or the occupier, at the Tenant's own expense.
- 35.1.3 Within ten (10) Working Days after receipt of any notice or other communication affecting the Property under or in respect of which the Landlord has legal liability as owner of the property the Tenant must:
- (a) send a copy of the relevant document to the Landlord; and
 - (b) take all steps necessary to comply with the notice or other communication and take any other action in connection with it as the Landlord may reasonably require.
- 35.2 CDM Regulations
- 35.2.1 Where the proper performance of the Tenant's obligations under this Lease requires the Tenant to comply with the CDM Regulations the Tenant:
- (a) elects to be the sole client in respect of the works, for the purposes of the CDM Regulations;
 - (b) must procure that the CDM co-ordinator properly notifies the Health and Safety Executive and must forward a copy of the notification to the Landlord within three Working Days of it being sent to the Health and Safety Executive where the proposed works are notifiable in terms of the CDM Regulations;
 - (c) must review and update the health and safety file (as defined in the CDM Regulations) properly in accordance with the CDM Regulations;
 - (d) must provide the Landlord with a full and complete copy of the health and safety file for the Property;
 - (e) must ensure that copyright licences are obtained so that all the material in the health and safety file may be copied and used freely by the Landlord for its own purposes in relation to the Property; and
 - (f) must deliver the health and safety file for the Property to the Landlord at the end of the Term.
- 35.3 Planning
- In relation to the Planning Acts so far as and to the extent that the same apply to the Property and its use from time to time by the Tenant.
- 35.3.1 at all times during the Term of this Lease to comply in all respects with the Planning Acts and to keep the Landlord indemnified in respect thereof;
- 35.3.2 not to make any application for planning permission (except an application or applications for or in relation to the Proposed Development or any permitted variation of the same), nor give any notice to any authority of an intention to commence any development (other than the Proposed Development) without the previous written consent of the Landlord which consent shall not be unreasonably withheld or delayed.



- 35.3.3 not to implement any planning permission until the conditions attaching thereto have been submitted to and approved in writing by the Landlord, such approval not to be unreasonably withheld or delayed;
- 35.3.4 unless the Landlord shall otherwise direct, to carry out before the termination of this Lease (howsoever the same may be determined) any works stipulated to be carried out to the Property by a date subsequent to the expiration or sooner determination of this Lease as a condition of any planning permission granted to the Tenant and the commencement of implementation of which has occurred prior to the expiration or sooner determination of this Lease;
- 35.3.5 as soon as reasonably practicable after receiving any enforcement notice, order or proposals in relation to the Property from any competent authority under or by virtue of the Planning Acts to send a copy to the Landlord;
- 35.3.6 if reasonably called upon so to do to produce to the Landlord all plans, documents and other evidence as the Landlord may reasonably require in order to satisfy itself that the provisions of this Clause have been complied with;
- 35.3.7 Not without the consent of the Landlord, such consent not to be unreasonably withheld to serve any notice under Part V of the Town and Country Planning (Scotland) Act 1997

35.4 Fire regulations

The Tenant must provide the Landlord after request having reasonably been made with a copy of the fire risk assessment which it prepares for the Property and the records that it keeps in accordance with the current fire regulations within ten (10) Working Days of written demand.

36 Tenant's other obligations

36.1 Servitudes

36.1.1 The Tenant must not grant any servitudes over the Property.

36.1.2 If any third party makes or attempts to make any legal encroachment over the Property or takes any action by which a servitude right may be acquired over the Property the Tenant must:

- (a) immediately notify the Landlord in writing;
- (b) take all reasonable steps (including any proceedings the Landlord reasonably requires) to prevent the continuation of that encroachment or action.

36.1.3 If any person takes or threatens to take any action to obstruct the flow of light or air to the Property or to obstruct the means of access to or egress from the Property the Tenant must:

- (a) immediately notify the Landlord in writing; and
- (b) take all reasonable steps (including any proceedings the Landlord reasonably requires) to prevent or secure the removal of the obstruction.

36.2 To inform Landlord of defects

The Tenant must inform the Landlord without delay in writing, of any defect in the Property which might on a reasonable view be considered to give rise to a duty imposed by the title deeds, common law or statute on the Landlord in favour of any person and of any



destruction or material damage to the Property by any of the Insured Risks in each case as soon as practicable after the same comes to the notice of the Tenant.

36.3 To observe title conditions

The Tenant must observe and perform the agreements, obligations, real burdens, conditions and others in force at the Date of Entry and as contained or referred to in the title deeds and in any Planning Agreement and keep the Landlord indemnified against all actions, proceedings, costs, claims and demands in any way relating to these documents.

36.4 Energy Performance Certificates

If and to the extent only that at any time the Landlord is or becomes bound to comply with the Energy Performance (Scotland) Regulations 2008 in relation the Property:-

36.4.1 the Tenant must co-operate with the Landlord at that time and as far as is reasonably necessary to allow the Landlord to obtain an EPC for the Property including providing the Landlord with copies of any plans or other information held by the Tenant that would assist in obtaining an EPC.

36.4.2 the Tenant must allow any energy assessor appointed by the Landlord to prepare an EPC for the Property such access to the Property as is reasonably necessary to prepare the EPC.

37 Entry by the Landlord and others

Subject to the provisos below the Tenant must allow the Landlord, and its agents to enter the Property at all reasonable times on the Landlord giving reasonable notice to the Tenant for any reasonable purpose that the Landlord may reasonably require having regard to the terms of this Lease and the Landlord's ownership of the Property PROVIDED ALWAYS (a) that the Landlord must give not less than seven (7) days notice to the Tenant prior to the exercising the foregoing right (except in a case of emergency when no notice is required) (b) that the Landlord must use reasonable endeavours to minimise any disruption or damage that may be caused as a consequence and (c) the Landlord must make good at its sole cost and as soon as practicably possible all damage caused by the Landlord or its agents or those for whom they are responsible at law as a consequence.

38 To remedy breaches of the sub-tenants

In the event of a material breach or non-performance by any sub-tenant, licensee or other occupier of the Property of any of the obligations, conditions, agreements and provisions contained or referred to in this Lease the observance or performance of which is incumbent upon the Tenant, forthwith upon discovering the same to take and institute at its own expense all necessary steps and proceedings to remedy of such breach, non-performance or non-observance without prejudice however to the Landlord's right to irritate this Lease on account of such breach, non-performance or non-observance.

39 To remove

39.1 Tenant to return Property

At the end of the Term the Tenant must return the Property to the Landlord in the state of repair and condition hereinafter provided for in Clause 18.2. Provided that if at such expiration or sooner determination of the Lease the Property is not in the state of repair and condition specified in Clause 18.2 then the Tenant shall carry out at its entire cost the works



necessary to put the Property into such repair and condition in terms of the obligations contained in Clause 18.2.

39.2 Standard of Repair

For the purposes of Clause 18.1 but subject to the proviso below the required state of repair and condition of the Property is that:

- (a) the external parts of the Buildings shall be in good and tenable condition and structurally sound;
 - (b) the interior of the Buildings shall be in a clean and tenable condition, with all damage caused by the removal of the Tenant's fixtures and fittings made good to the reasonable satisfaction of the Landlord;
 - (c) the New Build Additions shall (at the Tenant's sole discretion) either be demolished or left on the Property in a good and tenable condition commensurate with their age and structurally sound;
 - (d) the Service Media within the exterior parts of the Buildings (but not those within the interior) must be in good working order and capable of use;
 - (e) any Service Media in the interior of the Buildings and associated plant and equipment must either be stripped out or isolated and made safe and to the extent they are not stripped out and/or isolated and made safe must be in good working order subject to the Tenant making good any damage caused in stripping out or isolating and making safe the same.
- (b) PROVIDED THAT the Landlord shall be entitled to give notice to the Tenant, which must be given not later than six (6) months prior to the expiry of the Term, to require the Tenant to leave in the Property any Service Media and plant and equipment which is still in working order.

39.3 Removal by Tenant of fixtures and fittings

39.3.1 For the avoidance of doubt and subject to the proviso to Clause 18.2 above the Tenant may at its discretion elect either to:

- (a) remove all and any fixtures and fittings, tenants fixtures and fittings and/or plant and equipment and/or moveable items installed within the Property during the Term and belonging to the Tenant or;
- (b) leave all or any of such fixtures, fittings and others in situ, provided that the same are in working order and in a useable condition.

39.4 Landlords remedy in event of Default by Tenant

If the Tenant defaults in carrying out the works specified in Clause 18.1, the Landlord shall be entitled to carry out such works at the entire cost of the Tenant and for that purpose to enter the Property and carry out or procure the carrying out of all works required to put the Property into the required state of repair as set out in Clause 18.2 and the proper costs including all properly incurred consequential fees incurred by the Landlord and VAT shall be paid by the Tenant to the Landlord within ten (10) Working Days of a written demand accompanied by appropriate vouchers evidencing the costs in question.



39.5 Obligations to survive termination

This Clause 18 will continue to be binding on the parties even after the end of the Term until the terms of this Clause 18 have been complied with.

40 Insurance

40.1 Tenant to insure

40.1.1 From and after the Date of Entry the Tenant shall insure (or shall in respect of the period prior to the Completion Date procure that its contractor insures) the Property under a policy of insurance effected with the Insurers in the joint names of the Tenant and the Landlord and such other parties as the Tenant may require against the Insured Risks from time to time subject to such insurance being generally available in the UK for the Property and subject also to such excesses, exclusions or limitations as the Insurers may impose or require for the full reinstatement value and including costs of demolition, site clearance, site protection and shoring-up, professionals' and statutory fees and incidental expenses, the costs of any work which may be required under any law and VAT in respect of all those costs, fees and expenses thereof.

40.1.2 The Tenant will exhibit the insurance policy and the receipt for the current year's premium to the Landlord on request (but not more often than once in any period of twelve months) and shall pay promptly all of the premiums and other costs payable from time to time to keep the insurance in place and shall notify the Landlord of any changes in the normal commercial risks covered by the said insurance policy.

40.2 Landlord not to duplicate insurance

The Landlord must not insure the Property against the Insured Risks nor in any other way duplicate the insurance maintained by the Tenant under this Lease.

40.3 Public liability

The Tenant must insure the Property against property owners and public liability for such reasonable amount as may be agreed with the Landlord from time to time, to be not less than £10,000,000 per claim.

40.4 Application of insurance monies

40.4.1 In the event of the Buildings and other structures on the Site becoming destroyed or damaged by an Insured Risk the Tenant, subject to obtaining all necessary planning permissions and other consents, will use all insurance monies received to repair the damage (as the case may be) in rebuilding the Buildings and other structures on the Site or (as the case may be) completing the Proposed Development. The Tenant is not obliged to repair or rebuild the Buildings or other structures in the circumstances set out in Clause 40.4.3.

40.4.2 If Clause 19.4.1 applies, and subject to Clause 19.4.3 and Clause 19.4.4, any shortfall between the costs of repairing the damage and rebuilding the Buildings and other structures and the insurance monies will be made up by the Tenant out of its own monies.

40.4.3 If the Buildings and other structures on the Site are destroyed or damaged by any of the Insured Risks to the extent that it is no longer possible to carry on the Permitted Use, and

- (a) any competent authority lawfully refuses permission or otherwise lawfully prevents the rebuilding, restoration, repair or reinstatement of the relevant damage to or destruction of the Buildings and other structures on the Site and all appeal procedures are exhausted or are no longer competent; or



- (b) the Tenant gives notice to the Landlord stating that the Tenant considers that it is impossible or impractical to reinstate the relevant damage to or destruction of the Buildings and other structures on the Site, and the Landlord (who shall be bound to act reasonably) agrees

the Landlord or the Tenant may at any time thereafter terminate this Lease (but without prejudice the Tenant's obligations under Clause 19.4.4) with immediate effect by giving written notice to the other Party.

40.4.4 In the circumstances set out in Clause 40.4.3 (but subject always to the provisions of Clause 19.6 being complied with):

- (a) as soon as practicable after service of notice served in accordance with Clause 19.4.3, the Tenant shall make safe any Buildings remaining on the Site in accordance with all relevant statutory requirements to the Landlord's reasonable satisfaction
- (b) any proceeds of the insurance effected by the Tenant will be utilised first paying the costs including fees and other costs for obtaining any necessary statutory consents incurred in accordance with the provisions of Clause 19.4.4(a) of making any Buildings remaining on the Site safe, and then the surplus of such proceeds above such costs will be divided as soon as possible between the Landlord and the Tenant pro rata according to the values of their respective interests in the Property and this Lease as at the time when such destruction occurs, but so that the minimum amount attributable to the Tenant's interest will be whichever is the higher of (a) the Tenant's investment in the Property including the costs (including consequential fees, finance costs and interest) paid or incurred by it in acquiring the Site and in the carrying out of the Proposed Development and (b) the open market value of the Property subject to and with the benefit of this Lease at the time immediately prior to the date of such destruction but for the avoidance of doubt in no circumstance shall the minimum amount payable to the Tenant attributable to their interest exceed the amount of such surplus.
- (c) this Lease will be terminated at the date of the Landlord's or Tenants notice without prejudice to any right of action or remedy of the Landlord in respect of any previous breach of any of the obligations by the Tenant contained in this Lease.

40.5 *Rei Interitus* not to apply

40.5.1 Except as provided in Clause 40.4.3 and in Clause 40.5.2 this Lease will not be terminated by reason of any damage to or destruction of the Property or any part thereof but will remain in full force and effect and last for the Term.

40.5.2 Unless Clause 19.4.3 applies if the Property or any part thereof is destroyed or damaged by any of the Insured Risks but the works necessary to repair or reinstate the same have not commenced within a period of three (3) years from the date of such damage or destruction and are not progressing in a regular manner either Party may terminate this Lease by giving not less than one (1) month's notice to that effect to the other Party after the expiry of such period PROVIDED THAT:

- (a) a notice by the Landlord under this Clause will not be effective during and for so long as the works of reinstatement are delayed or suspended by delays in obtaining any necessary statutory consents, permissions or approvals (in a case where the Tenant itself has applied for and is pursuing the same with reasonable diligence) or for any other reason not attributable to the act, neglect or default of the Tenant or which is a reason otherwise outwith the Tenant's control;
- (b) subject to (a) above) the date of termination of this Lease will be the date of service of the notice;



- (c) any proceeds of the insurance effected by the Tenant will be divided as soon as possible between the Landlord and the Tenant pro rata to the values of their respective interests in the Property and this Lease at the time of such destruction; and
- (d) this Lease will be terminated at the date of the Landlord's or Tenants notice without prejudice to any right of action or remedy of the Landlord in respect of any previous breach of any of the obligations by the Tenant contained in this Lease.

40.6 Irrecoverable insurance monies

If:

- (a) the Property or any part thereof is destroyed or damaged by any of the Insured Risks; and
- (b) the insurance money under any insurance policy is insufficient or is otherwise wholly or partly irrecoverable in consequence of any act or omission of the Tenant or the Tenant's subtenant(s) or other permitted occupier or their employees, agents, invitees or licensees or any other person in the Property with the actual or implied authority of any of them

then the Tenant must pay out of its own resources a sum equal to the whole or (as the case may require) the irrecoverable portion of the cost (including professional and other fees) of completely rebuilding and reinstating or making safe the Buildings or the relevant part of them in accordance with Clause 19.4.

40.7 Works required by Insurers

The Tenant must carry out any works required by the Insurers for the better protection of the Property in strict accordance with the directions of the Insurers and comply in all respects with the reasonable terms and conditions of any insurance policy maintained in respect of the Building affecting the Property or the Permitted Use.

41 Irritancy

41.1 Material Monetary Breach

- 41.1.1 Subject to the whole provisions of this Clause In the event of a Material Monetary Breach the Landlord may not terminate or seek to terminate the Lease without first having given notice to the Tenant to each sub –tenant of whom the Landlord is aware by virtue of having been notified of a Transaction to each Creditor and to each Bank or other lender of debt finance otherwise secured over this Lease, (each of whose interest in this Lease has been notified to the Landlord) ("**the Interested Persons**"):

- (a) requiring payment of the outstanding sum together with interest at the Prescribed Rate within the period of twenty (20) Working Days immediately following the date of service of the notice; and
- (b) stating that failure to pay within that period will result in the Lease being terminated.

- 41.1.2 if the Tenant or any Interested Person fails to comply with a notice properly given under Clause 20.1.1 the Landlord may, at any time afterwards by giving further notice to the Tenant and the Interested Persons as is required under the Law Reform (Miscellaneous) Provisions (Scotland) Act 1985 ("**the Act**"), take such steps as the Landlord is entitled to under the Act to bring this Lease to an end but declaring always and it is hereby agreed by the Landlord that any Material Monetary Breach is capable of being purgeable at the bar by