

BIRMINGHAM CITY COUNCIL
LICENSING SUB-COMMITTEE B

Tuesday 16 January 2024 at 1000
hours as an On-Line Meeting,
Microsoft Teams

A G E N D A

1 NOTICE OF RECORDING/WEBCAST

The Chair to advise/meeting to note that this meeting will be webcast for live or subsequent broadcast via the Council's Public-I microsite, please click this link, <https://birmingham.public-i.tv/core/portal/home> and that members of the press/public may record and take photographs except where there are confidential or exempt items.

2 DECLARATIONS OF INTERESTS

Members are reminded they must declare all relevant pecuniary and other registerable interests arising from any business to be discussed at this meeting.

If a disclosable pecuniary interest is declared a Member must not participate in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If other registerable interests are declared a Member may speak on the matter only if members of the public are allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If it is a 'sensitive interest', Members do not have to disclose the nature of the interest, just that they have an interest.

Information on the Local Government Association's Model Councillor Code of Conduct is set out via <http://bit.ly/3WtGQnN>. This includes, at Appendix 1, an interests flowchart which provides a simple guide to declaring interests at meetings.

3 APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

Attached

4 RE: LICENSING ACT 2003 - REPRESENTATIONS BACK AGAINST
INTERIM STEPS IMPOSED – HNDRX, HOLLOWAY HEAD, BIRMINGHAM,
B1 1QP – LICENSING NUMBER 1952
– AS AMENDED BY THE VIOLENT CRIME REDUCTION ACT 2006 -
APPLICATION FOR EXPEDITED REVIEW OF PREMISES LICENCE:
CONSIDERATION OF INTERIM STEPS

N.B. Application scheduled to be heard at 1000 hours.

Documents submitted:

- A. Representations made by the premises licence holder
- B. Decision of the meeting held on 12 January 2024
- C. Certificate issued by West Midlands Police under Section 53A of the Licensing Act 2003
- D. Application for Review of Licence
- E. Copy of Premises Licence
- F. Location maps

The premises licence holder has made representations back in respect of the interim steps imposed on 12 January 2024 (See Appendix A). A copy of the interim steps decision made by Licensing Sub Committee B on the 12 January 2024 following the application from West Midlands Police for an expedited review of the premises licence in respect of **HNDRX, 89 Holloway Head, Birmingham, B1 1QP** is attached at Appendix B.

The application was accompanied by a certificate signed by a senior member of the force, stating that in their opinion the licensed premises is associated with serious crime and disorder which was made under Section 53A of the Licensing Act 2003 (as amended). (See Appendices C & D).

In accordance with the regulations, the licensing authority has given the premises licence holder and responsible authorities a copy of the application for review and a copy of the certificate.

This hearing has been arranged in order to consider whether it is necessary to take any interim steps in respect of the licence pending the determination of the review.

The Premises Licence is included at item E.

At the hearing the licensing authority must:

- consider whether the interim steps are appropriate for the promotion of the licensing objectives; and
- determine whether to withdraw or modify the steps taken.

When considering the case the licensing authority must take into account:

- the senior officer's certificate that accompanies the application,
- the chief officer's representations (if any); and
- any representations made by the premises licence holder.

There is no right of appeal to a magistrates court against the licensing authority's decision at this stage.

To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chairman are matters of urgency.

From: Dorian Chan
Sent: 14 January 2024 19:44
To: Licensing
Cc: Councillor Diane Donaldson; Councillor Yvonne Mosquito
Subject: RE: Licensing Act 2003 - Section 53A Expedited Review RE: HNDRX (Lic No. 1952), 89 Holloway Head, Birmingham, B1 1QP
Attachments: Business Rates.pdf; Mao Wah Ltd HNDRX Against Decision Notice.pdf; PPT Licensing Act 2003 - Section 53A Expedited Review 11am 12.01.2024.pptx; Final Lease 23 02 2012.pdf

You don't often get email from dorian@kudosmgt.co.uk. [Learn why this is important](#)

Dear Mr David Kennedy, Principle Licensing Officer

Thank you for a copy of the full decision notice.

The Landlord of 89 Holloway Head, Birmingham B1 1QP; Mao Wah Ltd with Premises License 1952 is hereby making the representations against the interim steps taken by the Licensing Authority.

Please find attached herewith:

- The Summary of the grounds that we are relying on
- The document pack that was emailed to Licensing Team the night before the meeting 12.01.2024
- Business Rates correspondence on the property address with BCC
- A copy of the 21 years lease to the tenant; Amari 1 Ltd Company number 07779292 (previously known as Sunset Birmingham Ltd), the lease is registered at Land Registry

Could you advise us on the procedural rules for this representation please?

Kind Regards

Doran Chan

For & On Behalf of Mao Wah Ltd

In Summary

Mao Wah Ltd was only given 1 days' notice for this interim steps meeting. Mao Wah Ltd was unable to seek any licensing legal advice ahead of the meeting or representation on the date of the meeting. The meeting concerns Mao Wah Ltd's corporate reputation, legal representation was paramount as this vindicates the idea of equality before the Law. Mao Wah Ltd did not have access to the Meeting Agenda until 10 minutes before the meeting.

Mao Wah Ltd was excluded majority of the time from the meeting; Mao Wah Ltd was kept in ignorance of the case against itself; Mao Wah was put in a position where it was unable to properly defend itself. Mao Wah Ltd is not certain how many members were actually present throughout the entire meeting.

Mao Wah Ltd has prepared a detailed background information and chronology with regards to the history of the premises to the Licensing team the night before the meeting. Of those that we were aware of present, there was no assurance that the paper work presented by Mao Wah Ltd was actually read by every Sub-Committee member before the meeting.

There was a fundamental error on the WMP Certificate and the WMP application for the review of a premises license Under Section 53A (1)(B) of The Licensing Act 2003 and the WMP. Landlord; Mao Wah Ltd's Premises License 1952 HNDRX has never traded as King VN. It was evidenced that The Sub-Committee has failed to properly cross check with WMP Certificate and Application against the Landlord; Mao Wah Ltd's Premises License 1952 HNDRX, in order to form an opinion whether the "named premises" was associated with the serious crime or serious disorder (4.6 of procedural rules). The Birmingham City Council officers and Sub-committee member did not check with their own Business Rates Department as a special measure, to establish the current occupier/ business trading at the premises.

This error was pointed out by Mao Wah Ltd at the start of the meeting.

The Sub-Committee had made the decision to suspend Mao Wah Ltd's Premises License 1952 HNDRX based on:-

1. What was originally applied on the WMP Certificate and the WMP application without regarding the submissions and arguments put forward by Mao Wah Ltd, and also disregarding the recommendations and suggestions made by WMP during the meeting. WMP had suggested that a suspension was not necessarily vital to guard against the risks of further serious crime. The WMP has full information on the two arrested individuals aged 38 and 35 years of age, and they were not linked to Mao Wah Ltd. WMP was the only fully trained expert in Prevention of Crime in the meeting. However, the Members considered the WMP suggested condition to be nebulous and vague and inadequate.
<https://www.itv.com/news/central/2024-01-13/birmingham-nightclub-shut-down-after-drugs-and-30000-cash-found>
2. The "Belt and Brace Approach". Sub-Committee used this approach as the members felt that it is probably better safe than sorry.
The "Belt and Brace Approach" does not follow the Principle of "Natural Justice" or "The Article 6 Rights to a Fair Trial".
The Members also went against the advice of the WMP as the Guidance issued by the Secretary of State.

We are very upset with this meeting and decision. It would appear that Mao Wah Ltd is being punished for the actions of the tenant which is unjust and discriminatory.

Landlord/ Freeholder

Mao Wah Ltd

Company number: 04671374

Incorporated on: 19 February 2003

Nature of Business: 68209 - Other letting and operating of own or leased real estate

Director: Kin Bong Lam

Persons with Significant Control: Kin Bong Lam

<https://find-and-update.company-information.service.gov.uk/company/04671374>

Premises License Number: 1952

Start Date: 04.07.2012

Premises Details: HNDRX 89 Holloway Head, Birmingham B1 1QP

Tenant/ Leaseholder

Amari 1 Ltd

Company number 07779292

Incorporated on: 19 September 2011

Nature of Business: 93290 - Other amusement and recreation activities not elsewhere classified

Director: Le Hoai Nam

Persons with Significant Control: Le Hoai Nam

<https://find-and-update.company-information.service.gov.uk/company/07779292>

Holloway Club Ltd

Company number: 12123360

Incorporated on: 26 July 2019

Nature of Business: 56301 - Licensed clubs

Director: Le Hoai Nam

Persons with Significant Control: Le Hoai Nam and Miss Thi Van

<https://find-and-update.company-information.service.gov.uk/company/12123360>

Premises License Number: 5426

Start Date: 30.09.2021

Premises Details: Holloway Club King VN 89 Holloway Head, Birmingham B1 1QP

Licensee: Le Hoai Nam

DPS: Miss Thi Van

- ❖ The Premises has been trading under the name of "King VN" since 2021 and as it was on the date of the police raid on 06.01.2024.
- ❖ Mao Wah Ltd is the landlord/ freeholder of 89 Holloway Head, Birmingham B1 1QP.
- ❖ Mao Wah Ltd is the holder of Premises License 1952 HNDRX
- ❖ The premises of 89 Holloway Head, Birmingham B1 1QP has been leased to Amari 1 Ltd with a 21 registered lease since 23.02.2012 (please attached copy of the lease)
- ❖ Le Hoai Nam is the holder of Premises License 5426 Holloway Club King VN
<https://www.birminghammail.co.uk/news/midlands-news/its-like-inside-club-bedroom-21712516>
- ❖ Mao Wah Ltd is also the victim of this incident; the Landlord cannot be held responsible and liable for the actions of its Tenant/ Leaseholder.

Dorian Chan

From: Alex Payne <Alex.Payne@knightsplc.com>
Sent: 16 October 2023 10:52
To: Dorian Chan
Cc: Philip Hyde
Subject: FW: Business Rates - PRN:6006540556 - 89 Holloway Head, Birmingham, B1 1QP

Hi Dorian,

Please see below email from Birmingham Council confirming that the summons has been withdrawn.

Kind regards

Alex Payne
Partner

Knights

T 0121 314 0000
W www.knightsplc.com

Knights

From: Revenues E-Mail Queries <Revenues.e-mail.queries@birmingham.gov.uk>
Sent: Monday, October 16, 2023 7:50 AM
To: Jacob Corr <Jacob.Corr@knightsplc.com>
Subject: RE: Business Rates - PRN:6006540556 - 89 Holloway Head, Birmingham, B1 1QP

Message originated from outside Knights

Dear Jacob,

Further to your email dated 21/9/23 in regards to the above business rates account for your client - Mao Wah Limited formerly Chi Lam Wealth Management Ltd. I can confirm that the Summons has been withdrawn, all costs removed & the account has been deleted. I apologise for any inconvenience caused.

I trust this clarifies the situation. If you have any further queries please do not hesitate to contact us or visit our website: www.birmingham.gov.uk/business-rates.

Yours faithfully

Lisa Sherratt
Revenues Officer

Website: www.birmingham.gov.uk/business-rates
Email Enquiries to: business_rates@birmingham.gov.uk

www.birmingham.gov.uk/ebilling

Knights

Birmingham City Council
Business Rates Department

Dear Sirs

Re Chi Lam Wealth Management – 89 Holloway Head Birmingham

We are Solicitors for Mao Wah Ltd who are the freehold owners of 89 Holloway Head.

This property is leased to Amari 1 Limited by lease dated 23 February 2012.

Chi Lam Wealth Management Ltd were the original freehold owners under the lease however they transferred ownership of the freehold to Mao Wah Ltd in 2017

The property remains occupied by Amari 1 Ltd as tenant under the lease and who are trading from the premises and the party responsible for payment of business rates. All business rates demands and summons should be sent to Amari 1 Ltd.

Both we and our client and previously written to you to explain the position but have not received any response to our correspondence.

Yours faithfully

Knights

Knights

BY EMAIL

Date

9 October 2023

Our Reference

APAY1/MAO7/1

Your Reference

Please ask for

Alex Payne

DDI

Mobile

Email

alex.payne

@knightsplc.com

Knights

Two Chamberlain Square

Birmingham

B3 3AX

T 0121 314 0000

W knightsplc.com

Knights

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DATED 23 February 2012

CHI LAM WEALTH MANAGEMENT LIMITED (1)

And

SUNSET BIRMINGHAM LIMITED (2)

And

(3)

LEASE

relating to
89 Holloway Head
Birmingham
B1 1QP

T.A. Khoo Solicitors
Suite A, 8th Floor
Albany House
Birmingham
B5 4BD

Tel: 0121 666 7088
Fax: 0121 666 6880
Our Ref: ChilLam.2011-115.KK.MNZ

T.A. KHOO SOLICITORS
WE HEREBY CERTIFY
THIS TO BE
A TRUE COPY OF THE ORIGINAL

Man 27/2/12

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PRESCRIBED CLAUSES

LR1. Date of lease

23 February

2012

LR2. Title number(s)

LR2.1 Landlord's title number(s)

WM16053

LR2.2 Other title numbers

LR3. Parties to this lease

Landlord

Chi Lam Wealth Management Limited (CRN 06709720) whose registered office is at Winston Churchill House Ethel Street Birmingham B2 4BG

Tenant Sunset Birmingham Limited (CRN 07779292) whose registered office is at 89 Holloway Head Birmingham B1 1QP

Other parties

Guarantor

LR4. Property

In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.
See the definition of "Property" in *clause 1.1* of this lease.

LR5. Prescribed statements etc.

None.

LR6. Term for which the Property is leased

The term as specified in this lease at clause 1.1 in the definition of "Contractual Term".

LR7. Premium

None.

LR8. Prohibitions or restrictions on disposing of this lease

This lease contains a provision that prohibits or restricts dispositions.

LR9. Rights of acquisition etc.

LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land

None.

LR9.2 Tenant's covenant to (or offer to) surrender this lease

None.

LR9.3 Landlord's contractual rights to acquire this lease

None.

LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property

None.

LR11. Easements

LR11.1 Easements granted by this lease for the benefit of the Property

None.

LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property

The easements as specified in clause 4 of this lease.

LR12. Estate rentcharge burdening the Property

None.

LR13. Application for standard form of restriction

The Parties to this lease apply to enter the following standard form of restriction against title number WM

(Form M) No disposition of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed by the proprietor for the time being of the estate registered under Title Number WM16053 or his Conveyancer that the provisions of Clauses 18-22 hereof have been complied with.

LR14. Declaration of trust where there is more than one person comprising the Tenant

THIS LEASE is dated

23

day of

February

2012

PARTIES

- (1) **Chi Lam Wealth Management Limited** (CRN 06709720) whose registered address is at Winston Churchill House Ethel Street Birmingham B2 4BG
(Landlord)
- (2) **Sunset Birmingham Limited** (CRN 07779292) whose registered office is at 89 Holloway Head Birmingham B1 1QP (Tenant)
- (3) _____
(Guarantor)

AGREED TERM

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation set out in this clause apply to this lease.

Annual Rent: rent at an initial rate of £ + VAT per annum and then as revised pursuant to this lease and any interim rent determined under the 1954 Act.

Contractual Term: a term of Twenty One years (21) from the date hereof

CDM Regulations: the Construction (Design and Management) Regulations 2007.

Default Interest Rate: four percentage points above the Interest Rate.

Insurance Rent: the aggregate in each year of the gross cost of the premium before any discount or commission for the insurance of:

- (a) the Property, other than any plate glass, for its full reinstatement cost (taking inflation of building costs into account) against loss or damage by or in consequence of the Insured Risks, including costs of demolition, site clearance, site protection and shoring-up, professionals' and statutory fees and incidental expenses, the cost of any work which may be required under any law and VAT in respect of all those costs, fees and expenses,

- (b) loss of Annual Rent of the Property for three years, and
- (c) any insurance premium tax payable on the above.

Insured Risks: means fire, explosion, lightning, earthquake, storm, flood, bursting and overflowing of water tanks, apparatus or pipes, impact by aircraft and articles dropped from them, impact by vehicles, riot, civil commotion and any other risks against which the Landlord decides to insure against from time to time and **Insured Risk** means any one of the Insured Risks.

Interest Rate: interest at the base lending rate from time to time of Lloyds TSB Bank PLC, or if that base lending rate stops being used or published then at a comparable commercial rate reasonably determined by the Landlord.

Permitted Use: Club & Bar or any other use as defined within Class A4 of the Town and Country Planning (Use Classes) (Amendment) (England) Order 2005 as at the date this lease is granted

Property: 89 Holloway Head Birmingham B1 1QP shown edged red on the attached plan.

Rent Commencement Date: 23 May 2012

Rent Payment Dates: Quarterly in advance on the usual English Quarter Days.

Reservations: all of the rights excepted, reserved and granted to the Landlord by this lease.

Review Date: upward only on the third anniversary of the date of this Lease.

Service Media: all media for the supply or removal of heat, electricity, gas, water, sewage, energy, telecommunications, data and all other services and utilities and all structures, machinery and equipment ancillary to those media.

Tenant's Works: The works listed in Schedule 1, to be carried out by the Tenant in accordance with clause 27.4 of this Lease.

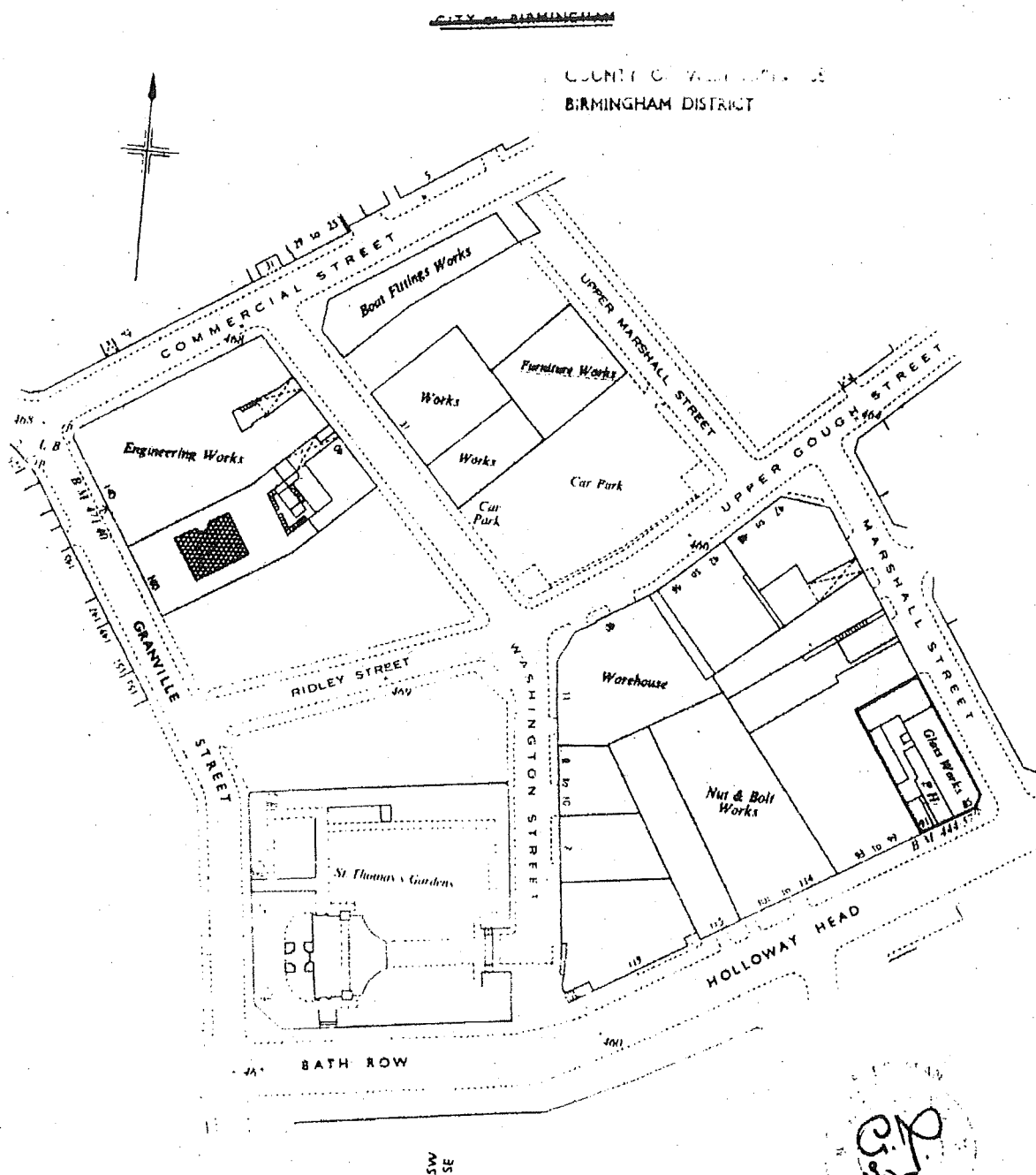
Third Party Rights: all rights, covenants and restrictions affecting the Property including the matters referred to at the date of this lease in the entries numbers 1 and 2 in the charges register of title number WM16053.

VAT: value added tax chargeable under the Value Added Tax Act 1994 or any similar replacement or additional tax.

1954 Act: Landlord and Tenant Act 1954.

- 1.2 A reference to this lease, except a reference to the date of this lease or to the grant of the lease, is a reference to this deed and any deed, licence, consent, approval or other instrument supplemental to it.
- 1.3 A reference to the **Landlord** includes a reference to the person entitled to the immediate reversion to this lease. A reference to the **Tenant** includes a reference to its successors in title and assigns. A reference to a **guarantor**

H.M. LAND REGISTRY		TITLE NUMBER	
		WM 16053	
ORDNANCE SURVEY PLAN REFERENCE	COUNTY	SHEET	NATIONAL GRID
	WARWICKSHIRE		SP 0686
			SECTION
			S
Scale: 1/1250			© Crown copyright 1969.



includes a reference to the guarantor and to any other guarantors of the tenant covenants of this lease including a guarantor who has entered into an authorised guarantee agreement.

- 1.4 In relation to any payment, a reference to a **fair proportion** is to a fair proportion of the total amount payable, determined conclusively (except as to questions of law) by the Landlord.
- 1.5 The expressions **landlord covenant** and **tenant covenant** each has the meaning given to it by the Landlord and Tenant (Covenants) Act 1995.
- 1.6 Unless the context otherwise requires, a reference to the **Property** is to the whole and any part of it.
- 1.7 A reference to the **term** is to the Contractual Term and statutory continuation of this lease.
- 1.8 A reference to the **end of the term** is to the end of the term however it ends.
- 1.9 References to the **consent** of the Landlord are to the consent of the Landlord given in accordance with clause 40.4 and references to the **approval** of the Landlord are to the approval of the Landlord given in accordance with clause 40.5.
- 1.10 A **working day** is any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.
- 1.11 Unless otherwise specified, a reference to a particular law is a reference to it as it is in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under it and all orders, notices, codes of practice and guidance made under it.
- 1.12 A reference to laws in general is to all local, national and directly applicable supra-national laws in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under them and all orders, notices, codes of practice and guidance made under them.
- 1.13 Any obligation in this lease on the Tenant not to do something includes an obligation not to agree to or suffer that thing to be done and an obligation to use best endeavours to prevent that thing being done by another person.

- 1.14 Unless the context otherwise requires, where the words **include(s)** or **including** are used in this lease, they are deemed to have the words "without limitation" following them.
- 1.15 A **person** includes a corporate or unincorporated body.
- 1.16 References to **writing** or **written** do not include email.
- 1.17 Except where a contrary intention appears, a reference to a clause or Schedule, is a reference to a clause of, or Schedule to, this lease and a reference in a Schedule to a paragraph is to a paragraph of that Schedule.
- 1.18 Clause, Schedule and paragraph headings do not affect the interpretation of this lease.

2. GRANT

- 2.1 At the request of the Guarantors the Landlord with full title guarantee lets the Property to the Tenant for the Contractual Term.
- 2.2 The grant is made excepting and reserving to the Landlord the rights set out in clause 4, and subject to the Third Party Rights.
- 2.3 The grant is made with the Tenant paying the following as rent to the Landlord:
- (a) the Annual Rent and all VAT in respect of it (if any);
 - (b) the Insurance Rent; and
 - (c) all interest payable under this lease; and
 - (d) all other sums due under this lease.

3. ANCILLARY RIGHTS

Neither the grant of this lease nor anything in it confers any right over neighbouring property nor is to be taken to show that the Tenant may have any right over neighbouring property, and section 62 of the Law of Property Act 1925 does not apply to this lease.

4. **RIGHTS EXCEPTED AND RESERVED**

4.1 The following rights are excepted and reserved from this lease to the Landlord (the **Reservations**):

- (a) rights of light, air, support and protection to the extent those rights are capable of being enjoyed at any time during the term;
- (b) the right to use and to connect into Service Media at the Property which are in existence at the date of this lease or which are installed or constructed during the period of 80 years from the commencement of the term (and that period is the perpetuity period for the purposes of section 1 of the Perpetuities and Accumulations Act 1964);
- (c) at any time during the term, the full and free right to develop any neighbouring or adjoining property in which the Landlord acquires an interest during the term as the Landlord may think fit;
- (d) the right to erect scaffolding at the Property and attach it to any building or structure on the Property in connection with any of the Reservations;
- (e) the right to build into any boundary wall of the Property in connection with any of the Reservations; and
- (f) the right to re-route any Service Media at or serving the Property;

notwithstanding that the exercise of any of the Reservations or the works carried out pursuant to them result in a reduction in the flow of light or air to the Property or loss of amenity for the Property provided that they do not materially affect the use and enjoyment of the Property for the Permitted Use.

4.2 The Landlord reserves the right to enter the Property:

- (a) to repair, maintain or replace any Service Media or structure relating to any of the Reservations; and
- (b) for any other purpose mentioned in or connected with:
 - (i) this lease;
 - (ii) the Reservations; and
 - (iii) the Landlord's interest in the Property.

4.3 The Reservations may be exercised by the Landlord and by anyone else who is or becomes entitled to exercise them, and by anyone authorised by the Landlord.

4.4 The Tenant shall allow all those entitled to exercise any right to enter the Property, to do so with their workers, contractors, agents and professional advisors, and to enter the Property at any reasonable time (whether or not

during usual business hours) and, except in the case of an emergency, after having given reasonable notice (which need not be in writing) to the Tenant.

- 4.5 No party exercising any of the Reservations, nor its workers, contractors, agents and professional advisors, shall be liable to the Tenant or to any undertenant or other occupier of or person at the Property for any loss, damage, injury, nuisance or inconvenience arising by reason of its exercising any of those Reservations except for:

- (a) physical damage to the Property; or
- (b) any loss, damage, injury, nuisance or inconvenience in relation to which the law prevents the Landlord from excluding liability.

5. THIRD PARTY RIGHTS

- 5.1 The Tenant shall comply with all obligations on the Landlord relating to the Third Party Rights (insofar as those obligations relate to the Property) and shall not do anything (even if otherwise permitted by this lease) that may interfere with any Third Party Right.

- 5.2 The Tenant shall allow the Landlord and any other person authorised by the terms of the Third Party Right to enter the Property in accordance with its terms.

6. THE ANNUAL RENT

- 6.1 The Tenant shall pay the Annual Rent and any VAT in respect of it by quarterly instalments in advance on or before the Rent Payment Dates. The payments shall be made by banker's standing order or by any other method that the Landlord requires at any time by giving notice to the Tenant.

- 6.2 The first instalment of the Annual Rent and any VAT in respect of it shall be made on the Rent Commencement Date and shall be the proportion, calculated on a daily basis, in respect of the period from the Rent Commencement Date until the day before the next Rent Payment Date.

7. REVIEW OF THE ANNUAL RENT

- 7.1 In this clause the **President** is the President for the time being of the Royal Institution of Chartered Surveyors or a person acting on his behalf, and the **Surveyor** is the independent valuer appointed pursuant to clause 7.7.

- 7.2 The amount of Annual Rent shall be reviewed on each Review Date to equal:

- (a) the Annual Rent payable immediately before the relevant Review Date (or which would then be payable but for any abatement or suspension of the Annual Rent or restriction on the right to collect it) or, if greater;
- (b) the open market rent agreed or determined pursuant to this clause.

7.3 The open market rent may be agreed between the Landlord and the Tenant at any time before it is determined by the Surveyor.

7.4 If the open market rent is determined by the Surveyor, it shall be the amount that the Surveyor determines is the best annual rent (exclusive of any VAT) at which the Property could reasonably be expected to be let:

- (a) in the open market;
- (b) at the relevant Review Date;
- (c) on the assumptions listed in clause 7.5; and
- (d) disregarding the matters listed in clause 7.6.

7.5 The assumptions are:

- (a) the Property is available to let in the open market:
 - (i) by a willing lessor to a willing lessee;
 - (ii) as a whole;
 - (iii) with vacant possession;
 - (iv) without a fine or a premium;
 - (v) for a term equal to the unexpired residue of the Contractual Term at the relevant Review Date; and
 - (vi) otherwise on the terms of this lease other than as to the amount of the Annual Rent but including the provisions for review of the Annual Rent;
- (b) the willing lessee has had the benefit of any rent-free or other concession or contribution which would be offered in the open market at the relevant Review Date in relation to fitting out works at the Property;
- (c) the Property may lawfully be used, and is in a physical state to enable it to be lawfully used, by the willing lessee (or any potential undertenant or assignee of the willing lessee) for any purpose permitted by this lease;
- (d) the Landlord and the Tenant have fully complied with their obligations in this lease;

- (e) if the Property, or any means of access to it or any Service Media serving the Property, has been destroyed or damaged, it has been fully restored;
- (f) no work has been carried out on the Property that has diminished its rental value;
- (g) any fixtures, fittings, machinery or equipment supplied to the Property by the Landlord that have been removed by or at the request of the Tenant, or any undertenant or their respective predecessors in title (otherwise than to comply with any law) remain at the Property; and
- (h) the willing lessee and its potential assignees and undertenants shall not be disadvantaged by any actual or potential election to waive exemption from VAT in relation to the Property.

7.6 The matters to be disregarded are:

- (a) any effect on rent of the fact that the Tenant or any authorised undertenant has been in occupation of the Property;
- (b) any goodwill attached to the Property by reason of any business carried out there by the Tenant or by any authorised undertenant or by any of their predecessors in business;
- (c) any effect on rent attributable to any physical improvement to the Property carried out after the date of this lease, by or at the expense of the Tenant or any authorised undertenant with all necessary consents, approvals and authorisations and not pursuant to an obligation to the Landlord (other than an obligation to comply with any law);
- (d) any effect on rent of any obligation on the Tenant to fit out the Property or to reinstate the Property to the condition or design it was in before any alterations or improvements were carried out; and
- (e) any statutory restriction on rents or the right to recover them.
- (f) any effect on ~~asset~~ rent attributable to the ^{asset} rating in any Energy Performance Certificate in respect of the Property

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7.7 The Surveyor shall be an independent valuer who is a Member or Fellow of the Royal Institution of Chartered Surveyors. The Landlord and the Tenant may, by agreement, appoint the Surveyor at any time before either of them applies to the President for the Surveyor to be appointed. Any application to the President may not be made earlier than three months before the relevant Review Date.

7.8 The Surveyor shall act as an expert and not as an arbitrator. The Surveyor shall determine the open market rent and shall have power to determine any

issue involving the interpretation of any provision of this lease, his jurisdiction to determine the matters and issues referred to him or his terms of reference. The Surveyor's decision shall be given in writing, and the Surveyor shall provide reasons for any determination. The Surveyor's written decision on the matters referred to him shall be final and binding in the absence of manifest error or fraud.

- 7.9 The Surveyor shall give the Landlord and the Tenant an opportunity to make written representations to the Surveyor and to make written counter-representations commenting on the representations of the other party to the Surveyor. The parties will provide (or procure that others provide) the Surveyor with such assistance and documents as the Surveyor reasonably requires for the purpose of reaching a decision.
- 7.10 If the Surveyor dies, or becomes unwilling or incapable of acting, or unreasonably delays in making any determination, then either the Landlord or the Tenant may apply to the President to discharge the Surveyor and clause 7.8 shall then apply in relation to the appointment of a replacement.
- 7.11 The fees and expenses of the Surveyor and the cost of the Surveyor's appointment and any counsel's fees, or other fees, reasonably incurred by the Surveyor shall be payable by the Landlord and the Tenant in the proportions that the Surveyor directs (or if the Surveyor makes no direction, then equally). If the Tenant does not pay its part of the Surveyor's fees and expenses within ten working days after demand by the Surveyor, the Landlord may pay that part and the amount it pays shall be a debt of the Tenant due and payable on demand to the Landlord. The Landlord and the Tenant shall otherwise each bear their own costs in connection with the rent review.
- 7.12 If the revised Annual Rent has not been agreed by the Landlord and the Tenant or determined by the Surveyor on or before the relevant Review Date, the Annual Rent payable from that Review Date shall continue at the rate payable immediately before that Review Date. No later than five working days after the revised Annual Rent is agreed or the Surveyor's determination is notified to the Landlord and the Tenant, the Tenant shall pay:
- (a) the shortfall (if any) between the amount that it has paid for the period from the Review Date until the Rent Payment Date following the date of agreement or notification of the revised Annual Rent and the amount that would have been payable had the revised Annual Rent been agreed or determined on or before that Review Date; and
 - (b) interest at the Interest Rate on that shortfall calculated on a daily basis by reference to the Rent Payment Dates on which parts of the shortfall would have been payable if the revised Annual Rent had

been agreed or determined on or before that Review Date and the date payment is received by the Landlord.

- 7.13 Time shall not be of the essence for the purposes of this clause.
- 7.14 If at any time there is a guarantor, the guarantor shall not have any right to participate in the review of the Annual Rent.
- 7.15 As soon as practicable after the amount of the revised Annual Rent has been agreed or determined, a memorandum recording the amount shall be signed by or on behalf of the Landlord and the Tenant and endorsed on or attached to this lease and its counterpart. The Landlord and the Tenant shall each bear their own costs in connection with the memorandum.

8. INSURANCE

- 8.1 Subject to clause 8.2, the Landlord shall keep the Property (other than any plate glass at the Property) insured against loss or damage by the Insured Risks for the sum which the Landlord considers to be its full reinstatement cost (taking inflation of building costs into account). The Landlord shall not be obliged to insure any part of the Property installed by the Tenant, but shall act reasonably in all circumstances with regards to the costs of such insurance.
- 8.2 The Landlord's obligation to insure is subject to:
- (a) any exclusions, limitations, excesses and conditions that may be imposed by the insurers; and
 - (b) insurance being available in the London insurance market on reasonable terms acceptable to the Landlord.
- 8.3 The Tenant shall pay to the Landlord on demand:
- (a) the Insurance Rent;
 - (b) any amount that is deducted or disallowed by the insurers pursuant to any excess provision in the insurance policy; and
 - (c) any costs that the Landlord incurs in obtaining a valuation of the Property for insurance purposes.

If the Landlord insures the Property together with other land, the amount of the Insurance Rent shall be a fair proportion of the total for the Property and the other land.

- 8.4 The Tenant shall:

- (a) give the Landlord notice immediately any matter occurs that any insurer or underwriter may treat as material in deciding whether or on what terms to insure or to continue to insure the Property;
- (b) not do or omit anything as a result of which any policy of insurance of the Property or any neighbouring property may become void or voidable or otherwise prejudiced, or the payment of any policy money may be withheld, nor (unless the Tenant has previously notified the Landlord and has paid any increased or additional premium) anything as a result of which any increased or additional insurance premium may become payable;
- (c) comply at all times with the requirements and recommendations of the insurers relating to the Property;
- (d) give the Landlord immediate notice of the occurrence of any damage or loss relating to the Property arising from an Insured Risk or of any other event that might affect any insurance policy relating to the Property;
- (e) not effect any insurance of the Property (except any plate glass) at the Property, but if it becomes entitled to the benefit of any insurance proceeds in respect of the Property (other than in respect of plate glass) pay those proceeds or cause them to be paid to the Landlord; and
- (f) pay the Landlord an amount equal to any insurance money that the insurers of the Property refuse to pay by reason of any act or omission of the Tenant or any undertenant, their workers, contractors or agents or any person at the Property with the actual or implied authority of any of them.

8.5 The Landlord shall, subject to obtaining all necessary planning and other consents, use all insurance money received (other than for loss of rent) to repair the damage for which the money has been received or (as the case may be) in rebuilding the Property. The Landlord shall not be obliged to:

- (a) provide accommodation identical in layout or design so long as accommodation reasonably equivalent to that previously at the Property is provided; or
- (b) repair or rebuild if the Tenant has failed to pay any of the Insurance Rent; or
- (c) repair or rebuild the Property after a notice has been served pursuant to clause 8.7 or clause 8.8.

8.6 If the Property or the means of access to or egress from it is damaged or destroyed by an Insured Risk so as to be unfit for occupation and use then, unless the policy of insurance of the Property has been vitiated in whole or in

part in consequence of any act or omission of the Tenant, any undertenant or their respective workers, contractors or agents or any other person on the Property with the actual or implied authority of any of them, payment of the Annual Rent, or a fair proportion of it according to the nature and extent of the damage, shall be suspended until the Property or the means of access to it or egress from it has been reinstated and made fit for occupation and use, or until the end of three years from the date of damage or destruction, if sooner.

8.7 If, following damage to or destruction of the Property, the Landlord considers that it is impossible or impractical to reinstate the Property, the Landlord may terminate this lease by giving notice to the Tenant. On giving notice this lease shall determine but this shall be without prejudice to any right or remedy of the Landlord in respect of any breach of the tenant covenants of this lease. Any proceeds of the insurance (other than any insurance for plate glass) shall belong to the Landlord.

8.8 Provided that the Tenant has complied with its obligations in this clause, the Tenant may terminate this lease by giving notice to the Landlord if, following damage or destruction by an Insured Risk, the Property has not been reinstated so as to be fit for occupation and use within three years after the date of damage or destruction. On giving this notice this lease shall determine but this shall be without prejudice to any right or remedy of the Landlord in respect of any breach of the tenant covenants of this lease. Any proceeds of the insurance (other than any insurance for plate glass) shall belong to the Landlord.

9. RATES AND TAXES

9.1 The Tenant shall pay all present and future rates, taxes and other impositions payable in respect of the Property, its use and any works carried out there, other than:

- (a) any taxes payable by the Landlord in connection with any dealing with or disposition of the reversion to this lease; or
- (b) any taxes, other than VAT and insurance premium tax, payable by the Landlord by reason of the receipt of any of the rents due under this lease.

9.2 If any rates, taxes or other impositions are payable in respect of the Property together with other property, the Tenant shall pay a fair proportion of the amount payable.

9.3 The Tenant shall not make any proposal to alter the rateable value of the Property or that value as it appears on any draft rating list, without the approval of the Landlord.

- 9.4 If, after the end of the term, the Landlord loses rating relief (or any similar relief or exemption) because it has been allowed to the Tenant, then the Tenant shall pay the Landlord an amount equal to the relief or exemption that the Landlord has lost.

10. UTILITIES

- 10.1 The Tenant shall pay all costs in connection with the supply and removal of electricity, gas, water, sewage, telecommunications, data and other services and utilities to or from the Property.
- 10.2 If any of those costs are payable in relation to the Property together with other property, the Tenant shall pay a fair proportion of all those costs.
- 10.3 The Tenant shall comply with all laws and with any recommendations of the relevant suppliers relating to the use of those services and utilities.

11. COMMON ITEMS

- 11.1 The Tenant shall pay the Landlord on demand a fair proportion of all costs payable for the maintenance, repair, lighting, cleaning and renewal of all Service Media, structures and other items used or capable of being used by the Property in common with other property.
- 11.2 The Tenant shall comply with all reasonable regulations the Landlord may make from time to time in connection with the use of any of those Service Media, structures or other items.

12. VAT

- 12.1 All sums payable by the Tenant are exclusive of any VAT that may be chargeable. The Tenant shall pay VAT in respect of all taxable supplies made to it in connection with this lease on the due date for making any payment or, if earlier, the date on which that supply is made for VAT purposes.
- 12.2 Every obligation on the Tenant, under or in connection with this lease, to pay the Landlord or any other person any sum by way of a refund or indemnity, shall include an obligation to pay an amount equal to any VAT incurred on that sum by the Landlord or other person, except to the extent that the Landlord or other person obtains credit for such VAT under the Value Added Tax Act 1994.

13. DEFAULT INTEREST AND INTEREST

- 13.1 If any Annual Rent or any other money payable under this lease has not been paid by the date it is due, whether it has been formally demanded or not, the Tenant shall pay the Landlord interest at the Default Interest Rate (both before and after any judgment) on that amount for the period from the due date to and including the date of payment.
- 13.2 If the Landlord does not demand or accept any Annual Rent or other money due or tendered under this lease because the Landlord reasonably believes that the Tenant is in breach of any of the tenant covenants of this lease, then the Tenant shall, when that amount is accepted by the Landlord, also pay interest at the Interest Rate on that amount for the period from the date the amount (or each part of it) became due until the date it is accepted by the Landlord.

14. COSTS

- 14.1 The Tenant shall pay the reasonable costs and expenses of the Landlord including any solicitors' or other professionals' costs and expenses properly and reasonably incurred (both during and after the end of the term) in connection with or purposely incidental to:
- (a) the enforcement of the tenant covenants of this lease;
 - (b) serving any notice in connection with this lease under section 146 or 147 of the Law of Property Act 1925 or taking any proceedings under either of those sections, notwithstanding that forfeiture is avoided otherwise than by relief granted by the court;
 - (c) serving any notice in connection with this lease under section 17 of the Landlord and Tenant (Covenants) Act 1995;
 - (d) the preparation and service of a schedule of dilapidations in connection with this lease if after the expiration of the term only in respect of wants of repair occurring during the term and where served within one months after the expiration of the term; and
 - (e) any consent or approval applied for under this lease, whether or not it is granted (unless the consent or approval is unreasonably withheld by the Landlord in circumstances where the Landlord is not unreasonably to withhold it).
- 14.2 Where the Tenant is obliged to pay or indemnify the Landlord against any solicitors' or other professionals' costs and expenses (whether under this or any other clause of this lease) that obligation extends to those costs and expenses assessed on a full indemnity basis.

15. COMPENSATION ON VACATING

Any right of the Tenant or anyone deriving title under the Tenant to claim compensation from the Landlord on leaving the Property under the Landlord and Tenant Act 1927 or the 1954 Act is excluded, except to the extent that the legislation prevents that right being excluded.

16. NO DEDUCTION, COUNTERCLAIM OR SET-OFF

The Annual Rent and all other money due under this lease are to be paid by the Tenant or any guarantor (as the case may be) without deduction, counterclaim or set-off.

17. REGISTRATION OF THIS LEASE

Promptly following the grant of this lease, the Tenant shall apply to register this lease at HM Land Registry. The Tenant shall ensure that any requisitions raised by HM Land Registry in connection with that application are dealt with promptly and properly. Within one month after completion of the registration, the Tenant shall send the Landlord official copies of its title.

18. ASSIGNMENTS

18.1 The Tenant shall not assign the whole of this lease without the consent of the Landlord, such consent not to be unreasonably withheld or delayed.

18.2 The Tenant shall not assign part only of this lease.

18.3 The Landlord and the Tenant agree that for the purposes of section 19(1A) of the Landlord and Tenant Act 1927 the Landlord may give its consent to an assignment subject to a condition that the assignor (and any former tenant who because of section 11 of the Landlord and Tenant (Covenants) Act 1995 has not been released from the tenant covenants of this lease) enters into an authorised guarantee agreement which:

- (a) is in respect of all the tenant covenants of this lease;
- (b) is in respect of the period beginning with the date the assignee becomes bound by those covenants and ending on the date when the assignee is released from those covenants by virtue of section 5 of the Landlord and Tenant (Covenants) Act 1995;
- (c) imposes principal debtor liability on the assignor (and any former tenant);
- (d) requires (in the event of a disclaimer of liability under this lease) the assignor (or former tenant as the case may be) to enter into a new

tenancy for a term equal to the unexpired residue of the Contractual Term; and

(e) is otherwise in a form reasonably required by the Landlord.

18.4 The Landlord and the Tenant agree that for the purposes of section 19(1A) of the Landlord and Tenant Act 1927 the Landlord may refuse its consent to an assignment if any Annual Rent or other money due under this lease is outstanding.

18.5 Nothing in this clause shall prevent the Landlord from giving consent subject to any other reasonable condition, nor from refusing consent to an assignment in any other circumstance where it is reasonable to do so.

19. UNDERLETTINGS

19.1 The Tenant shall not underlet the whole or part of the Property except in accordance with this clause nor without the consent of the Landlord, such consent not to be unreasonably withheld.

19.2 The Tenant shall not underlet the Property:

- (a) together with any property or any right over property that is not included within this lease;
- (b) at a fine or premium or reverse premium; nor
- (c) allowing any rent free period to the undertenant that exceeds the period as is then usual in the open market in respect of such a letting.

19.3 The Tenant shall not underlet the Property unless, before the underlease is granted, the Tenant has given the Landlord:

- (a) a certified copy of the notice served on the undertenant, as required by section 38A(3)(a) of the 1954 Act, applying to the tenancy to be created by the underlease; and
- (b) a certified copy of the declaration or statutory declaration made by the undertenant in accordance with the requirements of section 38A(3)(b) of the 1954 Act.

19.4 Any underletting by the Tenant shall be by deed and shall include:

- (a) an agreement between the Tenant and the undertenant that the provisions of sections 24 to 28 of the 1954 Act are excluded from applying to the tenancy created by the underlease;
- (b) the reservation of a rent which is not less than the full open market rental value of the Property at the date the Property is underlet and

which is payable at the same times as the Annual Rent under this lease (but this shall not prevent an underlease providing for a rent-free period of a length permitted by clause 19.2(c));

- (c) provisions for the review of rent at the same dates and on the same basis as the review of rent in this lease, unless the term of the underlease does not extend beyond the next Review Date;
- (d) a covenant by the undertenant, enforceable by and expressed to be enforceable by the Landlord (as superior landlord at the date of grant) and its successors in title in their own right, to observe and perform the tenant covenants in the underlease and any document that is supplemental or collateral to it and the tenant covenants in this lease, except the covenants to pay the rents reserved by this lease; and
- (e) provisions requiring the consent of the Landlord to be obtained in respect of any matter for which the consent of the Landlord is required under this lease,

and shall otherwise be consistent with and include tenant covenants no less onerous (other than as to the Annual Rent) than those in this lease and in a form approved by the Landlord, such approval not to be unreasonably withheld.

19.5 In relation to any underlease granted by the Tenant, the Tenant shall:

- (a) not vary the terms of the underlease nor accept a surrender of the underlease without the consent of the Landlord, such consent not to be unreasonably withheld;
- (b) enforce the tenant covenants in the underlease and not waive any of them nor allow any reduction in the rent payable under the underlease; and
- (c) ensure that in relation to any rent review the revised rent is not agreed without the approval of the Landlord, such approval not to be unreasonably withheld or delayed.

20. SHARING OCCUPATION

The Tenant may share occupation of the Property with any company that is a member of the same group (within the meaning of section 42 of the 1954 Act) as the Tenant for as long as that company remains within that group and provided that no relationship of landlord and tenant is established by that arrangement.

21. CHARGING

21.1 The Tenant shall not charge the whole of this lease without the consent of the Landlord, such consent not to be unreasonably withheld or delayed.

21.2 The Tenant shall not charge part only of this lease.

22. PROHIBITION OF OTHER DEALINGS

Except as expressly permitted by this lease, the Tenant shall not assign, underlet, charge, part with or share possession or share occupation of this lease or the Property or assign, part with or share any of the benefits or burdens of this lease, or in any interest derived from it, whether by a virtual assignment or other similar arrangement or hold the lease on trust for any person (except pending registration of a dealing permitted by this lease at HM Land Registry or by reason only of joint legal ownership).

23. REGISTRATION AND NOTIFICATION OF DEALINGS AND OCCUPATION

23.1 In this clause a **Transaction** is:

- (a) any dealing with this lease or the devolution or transmission of, or parting with possession of any interest in it; or
- (b) the creation of any underlease or other interest out of this lease, or out of any interest, underlease derived from it, and any dealing, devolution or transmission of, or parting with possession of any such interest or underlease; or
- (c) the making of any other arrangement for the occupation of the Property.

23.2 In respect of every Transaction that is registrable at HM Land Registry, the Tenant shall promptly following completion of the Transaction apply to register it (or procure that the relevant person so applies). The Tenant shall (or shall procure that) any requisitions raised by HM Land Registry in connection with an application to register a Transaction are dealt with promptly and properly. Within one month of completion of the registration, the Tenant shall send the Landlord official copies of its title (and where applicable of the undertenant's title).

23.3 No later than one month after a Transaction the Tenant shall:

- (a) give the Landlord's solicitors notice of the Transaction;
- (b) deliver two certified copies of any document effecting the Transaction to the Landlord's solicitors; and

(c) pay the Landlord's solicitors a registration fee of £50.00 (plus VAT).

- 23.4 If the Landlord so requests, the Tenant shall promptly supply the Landlord with full details of the occupiers of the Property and the terms upon which they occupy it.

24. CLOSURE OF THE REGISTERED TITLE OF THIS LEASE

If applicable within one month after the end of the term (and notwithstanding that the term has ended), the Tenant shall make an application to close the registered title of this lease and shall ensure that any requisitions raised by HM Land Registry in connection with that application are dealt with promptly and properly; the Tenant shall keep the Landlord informed of the progress and completion of its application.

25. REPAIRS

- 25.1 The Tenant shall keep the Landlords fixtures and fittings in good repair and condition and shall replace from time to time all Landlords fixtures and fittings in the Premises which may be or become beyond repair at any time during or at the expiration of the Term

- 25.2 The Tenant shall not be liable to repair the Property to the extent that any disrepair has been caused by an Insured Risk, unless and to the extent that the policy of insurance of the Property has been vitiated or any insurance proceeds withheld in consequence of any act or omission of the Tenant, any undertenant or their respective workers, contractors or agents or any person on the Property with the actual or implied authority of any of them.

26. DECORATION

- 26.1 The Tenant shall decorate the outside and the inside of the Property every three years and also in the last three months before the end of the term unless such decoration has been completed within the previous 12 months.

- 26.2 All decoration shall be carried out in a good and proper manner using good quality materials that are appropriate to the Property and the Permitted Use and shall include all appropriate preparatory work.

- 26.3 All decoration carried out in the last three months of the term shall also be carried out to the reasonable satisfaction of the Landlord and using materials, designs and colours approved by the Landlord.

- 26.4 The Tenant shall replace the floor coverings at the Property within the three months before the end of the term with new ones of good quality and appropriate to the Property and the Permitted Use.

27. ALTERATIONS

- 27.1 Except in accordance with Clause 28 the Tenant shall not make any external or structural alteration or additions to the Property and shall not make any opening in any boundary structure of the Property.
- 27.2 The Tenant shall not install any Service Media on the exterior of the Property nor alter the route of any Service Media at the Property without the consent of the Landlord, such consent not to be unreasonably withheld or delayed.
- 27.3 The Tenant shall not make any internal, non-structural alteration to the Property without the consent of the Landlord, such consent not to be unreasonably withheld or delayed.
- 27.4 Notwithstanding the provisions of this clause 27, the Tenant shall carry out the Tenant's works during the first six months of this Lease with all due reasonable care and skill and the Landlords hereby consents to the Tenant carrying out the Tenant's Works.

28. SIGNS

- 28.1 In this clause **Signs** include signs, fascia, placards, boards, posters and advertisements.
- 28.2 The Tenant shall not attach any Signs to the exterior of the Property or display any inside the Property so as to be seen from the outside such consent not to be unreasonably withheld or delayed except that the Tenant may attach Signs of a design, size and number and in a position that are appropriate to the Property and the Permitted Use, without the consent of the Landlord, such consent not to be unreasonably withheld.
- 28.3 At the end of the term, the Tenant shall remove any Signs placed by it at the Property and shall make good any damage caused to the Property by that removal.
- 28.4 The Tenant shall allow the Landlord to fix to and keep at the Property any sale or re-letting board as the Landlord reasonably requires.

29. RETURNING THE PROPERTY TO THE LANDLORD

- 29.1 At the end of the term the Tenant shall return the Property to the Landlord in the repair and condition required by this lease.
- 29.2 If the Landlord gives the Tenant notice no later than three months before the end of the term, the Tenant shall remove items it has fixed to the Property, remove any alterations it has made to the Property and make good any damage caused to the Property by that removal.
- 29.3 At the end of the term, the Tenant shall remove from the Property all chattels belonging to or used by it.
- 29.4 The Tenant irrevocably appoints the Landlord to be the Tenant's agent to store or dispose of any chattels or items it has fixed to the Property and which have been left by the Tenant on the Property for more than ten working days after the end of the term. The Landlord shall not be liable to the Tenant by reason of that storage or disposal. The Tenant shall indemnify the Landlord in respect of any claim made by a third party in relation to that storage or disposal.
- 29.5 If the Tenant does not comply with its obligations in this clause, then, without prejudice to any other right or remedy of the Landlord, the Tenant shall pay the Landlord an amount equal to the Annual Rent at the rate reserved immediately before the end of the term for the period that it would reasonably take to put the Property into the condition it would have been in had the Tenant performed its obligations under this clause. The amount shall be a debt due on demand from the Tenant to the Landlord.

30. USE

- 30.1 The Tenant shall not use the Property for any purpose other than the Permitted Use.
- 30.2 The Tenant shall not use the Property for any illegal purpose nor for any purpose or in a manner that would cause loss, damage, injury, nuisance or inconvenience to the Landlord, its other tenants or any other owner or occupier of neighbouring property.
- 30.3 The Tenant shall not overload any structural part of the Property nor any machinery or equipment at the Property nor any Service Media at or serving the Property.

31. COMPLIANCE WITH LAWS

- 31.1 The Tenant shall comply with all laws relating to:
- (a) the Property and the occupation and use of the Property by the Tenant;
 - (b) the use of all Service Media 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 from the Property.
- 31.2 Without prejudice to any obligation on the Tenant to obtain any consent or approval under this lease, the Tenant shall carry out all works that are required under any law to be carried out at the Property whether by the owner or the occupier.
- 31.3 Within five working days after receipt of any notice or other communication affecting the Property (and whether or not served pursuant to any law) the Tenant shall:
- (a) send a copy of the relevant document to the Landlord; and
 - (b) in so far as it relates to the Property 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 require.
- 31.4 The Tenant shall not apply for any planning permission for the Property without the Landlord's consent not to be unreasonably withheld.
- 31.5 The Tenant shall comply with its obligations under the CDM Regulations, including all requirements in relation to the provision and maintenance of a health and safety file. The Tenant shall maintain the health and safety file for the Property in accordance with the CDM Regulations and shall give it to the Landlord at the end of the term.
- 31.6 The Tenant shall supply all information to the Landlord that the Landlord reasonably requires from time to time to comply with the Landlord's obligations under the CDM Regulations.
- 31.7 As soon as the Tenant becomes aware of any defect in the Property, it shall give the Landlord notice of it. The Tenant shall indemnify the Landlord against any liability under the Defective Premises Act 1972 in relation to the Property by reason of any failure of the Tenant to comply with any of the tenant covenants in this lease.

- 31.8 The Tenant shall keep the Property equipped with all fire prevention, detection and fighting machinery and equipment and fire alarms which are required under all relevant laws or required by the insurers of the Property or reasonably recommended by them or reasonably required by the Landlord and shall keep that machinery, equipment and alarms properly maintained and available for inspection and to produce such certification to the Landlord upon each and every anniversary of the term.

32. ENCROACHMENTS, OBSTRUCTIONS AND ACQUISITION OF RIGHTS

- 32.1 The Tenant shall not grant any right or licence over the Property to a third party.
- 32.2 If a third party makes or attempts to make any encroachment over the Property or takes any action by which a right may be acquired over the Property, the Tenant shall:
- (a) immediately give notice to the Landlord; and
 - (b) take all reasonable steps (including any proceedings) the Landlord reasonably requires to prevent or license the continuation of that encroachment or action.
- 32.3 The Tenant shall not obstruct the flow of light or air to the Property or obstruct any means of access to the Property.
- 32.4 The Tenant shall not make any acknowledgement that the flow of light or air to the Property or that the means of access to the Property is enjoyed with the consent of any third party.
- 32.5 If any person takes or threatens to take any action to obstruct the flow of light or air to the Property or obstruct the means of access to the Property, the Tenant shall:
- (a) immediately notify the Landlord; and
 - (b) take all reasonable steps (including proceedings) the Landlord reasonably requires to prevent or secure the removal of the obstruction.

33. REMEDY BREACHES

- 33.1 The Landlord may enter on reasonable prior written notice unless in case of emergency the Property to inspect its condition and state of repair and may give the Tenant a notice of any breach of any of the tenant covenants in this lease relating to the condition or repair of the Property.

- 33.2 If the Tenant has not begun any works needed to remedy that breach within a reasonable period following that notice (or if works are required as a matter of emergency, then immediately) or if the Tenant is not carrying out the works with all due speed, then the Landlord may enter the Property and carry out the works needed.
- 33.3 The costs incurred by the Landlord in carrying out any works pursuant to this clause (and any professional fees and any VAT in respect of those costs) shall be a debt due from the Tenant to the Landlord and payable on written 14 days of demand.
- 33.4 Any action taken by the Landlord pursuant to this clause shall be without prejudice to the Landlord's other rights, including those under clause 37.

34. INDEMNITY

The Tenant shall keep the Landlord indemnified against all expenses, costs, claims, damage and loss (including any diminution in the value of the Landlord's interest in the Property and loss of amenity of the Property) arising from any breach of any tenant covenants in this lease, or any act or omission of the Tenant, any undertenant or their respective workers, contractors or agents or any other person on the Property with the actual or implied authority of any of them.

35. LANDLORD'S COVENANT FOR QUIET ENJOYMENT

The Landlord covenants with the Tenant, that the Tenant shall have quiet enjoyment of the Property without any lawful interruption by the Landlord or any person claiming under the Landlord or by title paramount.

36. GUARANTEE AND INDEMNITY

- 36.1 If any of the events mentioned in clause 37.1(c) occurs in relation to a Guarantor that is a corporation, or if any of the events mentioned in clause 37.1(d) occurs in relation to one or more individuals who is a guarantor or if one or more of those individuals dies or becomes incapable of managing its affairs the Tenant shall, if the Landlord requests, procure that a person of standing acceptable to the Landlord enters into a replacement or additional guarantee and indemnity of the tenant covenants of this lease in the same form as that entered into by the former guarantor.
- 36.2 clause 36.1 shall not apply in the case of a person who is guarantor by reason of having entered into an authorised guarantee agreement.

- 36.3 For so long as any guarantor remains liable to the Landlord, the Tenant shall, if the Landlord requests, procure that that guarantor joins in any consent or approval required under this lease and consents to any variation of the tenant covenants of this lease.

37. CONDITION FOR RE-ENTRY

- 37.1 The Landlord may re-enter the Property (or any part of the Property in the name of the whole) at any time after any of the following occurs:

- (a) any rent is unpaid 21 days after becoming payable whether it has been formally demanded or not;
- (b) any breach of any condition, or tenant covenant, in this lease;
- (c) where the Tenant or any guarantor is a corporation:
 - (i) the taking of any step in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Tenant or guarantor; or
 - (ii) the making of an application for an administration order or the making of an administration order in relation to the Tenant or guarantor; or
 - (iii) the filing at court of the prescribed documents in connection with the appointment of an administrator, or the appointment of an administrator, in any case in relation to the tenant or the guarantor; or
 - (iv) the appointment of a receiver or manager or an administrative receiver in relation to any property or income of the Tenant or guarantor; or
 - (v) the commencement of a voluntary winding-up in respect of the Tenant or guarantor, except a winding-up for the purpose of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies; or
 - (vi) the making of a petition for a winding-up order or a winding-up order in respect of the Tenant or guarantor; or
 - (vii) the striking-off of the Tenant or guarantor from the Register of Companies or the making of an application for the Tenant or the guarantor to be struck-off; or
 - (viii) the Tenant or guarantor otherwise ceasing to exist,
- (d) where the Tenant or any guarantor is an individual:

- (i) the taking of any step in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Tenant or guarantor; or
- (ii) the presentation of a petition for a bankruptcy order or the making of a bankruptcy order against the Tenant or guarantor.

37.2 If the Landlord re-enters the Property (or any part of the Property in the name of the whole) pursuant to this clause, this lease shall immediately end, but without prejudice to any right or remedy of the Landlord in respect of any breach of covenant by the Tenant or any guarantor.

38. LIABILITY

38.1 At any time when the Landlord, the Tenant or a guarantor is more than one person, then in each case those persons shall be jointly and severally liable for their respective obligations arising by virtue of this lease. The Landlord may release or compromise the liability of any one of those persons or grant any time or concession to any one of them without affecting the liability of any other of them.

38.2 The obligations of the Tenant and any guarantor arising by virtue of this lease are owed to the Landlord and the obligations of the Landlord are owed to the Tenant.

38.3 In any case where the facts are or should reasonably be known to the Tenant, the Landlord shall not be liable to the Tenant for any failure of the Landlord to perform any landlord covenant in this lease unless and until the Tenant has given the Landlord notice of the facts that give rise to the failure and the Landlord has not remedied the failure within a reasonable time.

39. ENTIRE AGREEMENT AND EXCLUSION OF REPRESENTATIONS

39.1 This lease constitutes the entire agreement and understanding of the parties relating to the transaction contemplated by the grant of this lease and supersedes any previous agreement between the parties relating to the transaction.

39.2 Each party acknowledges that in entering into this lease neither has relied on, and nor shall have any remedy in respect of, any statement or representation whether made innocently or negligently.

39.3 Nothing in this lease constitutes or shall constitute a representation or warranty that the Property may lawfully be used for any purpose allowed by this lease.

39.4 Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.

40. NOTICES, CONSENTS AND APPROVALS

40.1 Except where this lease specifically states that a notice need not be in writing, or where notice is given in an emergency, any notice given pursuant to this lease shall be in writing.

40.2 A written notice shall be delivered by hand or sent by pre-paid first class post or registered post. A correctly addressed notice sent by pre-paid first class post shall be deemed to have been delivered at the time at which it would have been delivered in the normal course of the post.

40.3 Section 196 of the Law of Property Act 1925 shall otherwise apply to notices given under this lease.

40.4 Where the consent of the Landlord is required under this lease, a consent shall only be valid if it is given by deed, unless:

- (a) it is given in writing and signed by a person duly authorised on behalf or the Landlord; and
- (b) it expressly states that the Landlord waives the requirement for a deed in that particular case.

If a waiver is given, it shall not affect the requirement for a deed for any other consent.

40.5 Where the approval of the Landlord is required under this lease, an approval shall only be valid if it is in writing and signed by or on behalf of the Landlord, unless:

- (a) the approval is being given in a case of emergency; or
- (b) this lease expressly states that the approval need not be in writing.

40.6 If the Landlord gives a consent or approval under this lease, the giving of that consent or approval shall not imply that any consent or approval required from a third party has been obtained, nor shall it obviate the need to obtain any consent or approval from a third party.

41. GOVERNING LAW AND JURISDICTION

- 41.1 This lease and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 41.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this lease or its subject matter or formation (including non-contractual disputes or claims).

42. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not a party to this lease shall not have any rights under or in connection with this lease by virtue of the Contracts (Rights of Third Parties) Act 1999.

43. LANDLORD AND TENANT (COVENANTS) ACT 1995

This lease creates a new tenancy for the purposes of the Landlord and Tenant (Covenants) Act 1995.

SCHEDULE 1

AUTHORISED GUARANTEE AGREEMENT

1. GUARANTEE AND INDEMNITY

1.1 The Guarantor guarantees to the Landlord that the Tenant shall:

- (a) pay the rents reserved by this lease and observe and perform the tenant covenants of this lease and that if the Tenant fails to pay any of those rents or to observe or perform any of those tenant covenants, the Guarantor shall pay or observe and perform them; and
- (b) observe and perform any obligations the Tenant enters into in an authorised guarantee agreement made in respect of this lease (the **Authorised Guarantee Agreement**) and that if the Tenant fails to do so, the Guarantor shall observe and perform those obligations.

1.2 The Guarantor covenants with the Landlord as a separate and independent primary obligation to indemnify the Landlord against any failure by the Tenant:

- (a) to pay any of the rents reserved by this lease or any failure to observe or perform any of the tenant covenants of this lease; and
- (b) to observe or perform any of the obligations the Tenant enters into in the Authorised Guarantee Agreement.

2. GUARANTOR'S LIABILITY

2.1 The liability of the Guarantor under paragraphs 1.1(a) and 1.2(a) shall continue until the end of the term, or until the Tenant is released from the tenant covenants of this lease by virtue of the Landlord and Tenant (Covenants) Act 1995, if earlier.

2.2 The liability of the Guarantor shall not be affected by:

- (a) any time or indulgence granted by the Landlord to the Tenant; or
- (b) any delay or forbearance by the Landlord in enforcing the payment of any of the rents or the observance or performance of any of the tenant covenants of this lease (or the Tenant's obligations under the Authorised Guarantee Agreement) or in making any demand in respect of any of them; or
- (c) any refusal by the Landlord to accept any rent or other payment due under this lease where the Landlord believes that the acceptance of

such rent or payment may prejudice its ability to re-enter the Property; or

- (d) the Landlord exercising any right or remedy against the Tenant for any failure to pay the rents reserved by this lease or to observe or perform the tenant covenants of this lease (or the Tenant's obligations under the Authorised Guarantee Agreement); or
- (e) the Landlord taking any action or refraining from taking any action in connection with any other security held by the Landlord in respect of the Tenant's liability to pay the rents reserved by this lease or observe and perform the tenant covenants of the lease (or the Tenant's obligations under the Authorised Guarantee Agreement) including the release of any such security; or
- (f) a release or compromise of the liability of any one of the persons who is the Guarantor, or the grant of any time or concession to any one of them; or
- (g) any legal limitation or disability on the Tenant or any invalidity or irregularity of any of the tenant covenants of the lease (or the Tenant's obligations under the Authorised Guarantee Agreement) or any unenforceability of any of them against the Tenant; or
- (h) the Tenant being dissolved, or being struck off the register of companies or otherwise ceasing to exist, or, if the Tenant is an individual, by the Tenant dying or becoming incapable of managing its affairs; or
- (i) without prejudice to paragraph 4, the disclaimer of the Tenant's liability under this lease or the forfeiture of this lease; or
- (j) the surrender of part of the Property, except that the Guarantor shall not be under any liability in relation to the surrendered part in respect of any period after the surrender, or

by any other act or omission except an express written release by deed of the Guarantor by the Landlord.

2.3 The liability of each of the persons making up the Guarantor is joint and several.

2.4 Any sum payable by the Guarantor shall be paid without any deduction, set-off or counter-claim against the Landlord or the Tenant.

3. VARIATIONS AND SUPPLEMENTAL DOCUMENTS

3.1 The Guarantor shall, at the request of the Landlord, join in and give its consent to the terms of any consent, approval, variation or other document that may be

entered into by the Tenant in connection with this lease (or the Authorised Guarantee Agreement).

3.2 The Guarantor shall not be released by any variation of the rents reserved by, or the tenant covenants in, this Lease (or the Tenant's obligations under the Authorised Guarantee Agreement) whether or not:

- (a) the variation is material or prejudicial to the Guarantor; or
- (b) the variation is made in any document; or
- (c) the Guarantor has consented, in writing or otherwise, to the variation.

3.3 The liability of the Guarantor shall apply to the rents reserved by and the tenant covenants in this lease (and the Tenant's obligations under the Authorised Guarantee Agreement) as varied except to the extent that the liability of the Guarantor is affected by section 18 of the Landlord and Tenant (Covenants) Act 1995.

4. GUARANTOR TO TAKE A NEW LEASE OR MAKE PAYMENT

4.1 If this lease is forfeited or the liability of the Tenant under this lease is disclaimed and the Landlord gives the Guarantor notice not later than six months after the forfeiture or the Landlord having received notice of the disclaimer, the Guarantor shall enter into a new lease of the Property on the terms set out in paragraph 4.2.

4.2 The rights and obligations under the new lease shall take effect from the date of the forfeiture or disclaimer and the new lease shall:

- (a) be granted subject to the right of any person to have this lease vested in them by the court and to the terms on which any such order may be made and subject to the rights of any third party existing at the date of the grant;
- (b) be for a term that expires at the same date as the end of the Contractual Term of this lease had there been no forfeiture or disclaimer;
- (c) reserve as an initial annual rent an amount equal to the Annual Rent payable under this lease at the date of the forfeiture or disclaimer or which would be payable but for any abatement or suspension of the Annual Rent or restriction on the right to collect it (subject to paragraph 5) and which is subject to review on the same terms and dates provided by this lease; and
- (d) ~~be excluded from sections 24 to 28 of the LTA 1954, and~~

- (e) otherwise be on the same terms as this lease (as varied if there has been any variation).

- 4.3 The Guarantor shall pay the reasonable Landlord's solicitors' costs and disbursements (on a full indemnity basis) and any VAT in respect of them in relation to the new lease and shall execute and deliver to the Landlord a counterpart of the new lease within one month after service of the Landlord's notice.
- 4.4 The grant of a new lease and its acceptance by the Guarantor shall be without prejudice to any other rights which the Landlord may have against the Guarantor or against any other person or in respect of any other security that the Landlord may have in connection with this lease.
- 4.5 The Landlord may, instead of giving the Guarantor notice pursuant to paragraph 4.1 but in the same circumstances and within the same time limit, require the Guarantor to pay an amount equal to six months Annual Rent and the Guarantor shall pay that amount on demand.

5. RENT AT THE DATE OF FORFEITURE OR DISCLAIMER

If at the date of the forfeiture or disclaimer there is a rent review pending under this lease, then the initial annual rent to be reserved by the new lease shall be the greater of:

- (a) the Annual Rent previously payable (or which would have been payable but for any abatement or suspension of the Annual Rent or restriction on the right to collect it) under the lease prior to forfeiture or disclaimer; and
- (b) the open market rent of the Property at the relevant Review Date, as determined by the Landlord before the grant of the new lease.

6. PAYMENTS IN GROSS AND RESTRICTIONS ON THE GUARANTOR

- 6.1 Any payment or dividend that the Landlord receives from the Tenant (or its estate) or any other person in connection with any insolvency proceedings or arrangement involving the Tenant shall be taken and applied as a payment in gross and shall not prejudice the right of the Landlord to recover from the Guarantor to the full extent of the obligations that are the subject of this guarantee and indemnity.
- 6.2 The Guarantor shall not claim in competition with the Landlord in any insolvency proceedings or arrangement of the Tenant in respect of any payment made by the Guarantor pursuant to this guarantee and indemnity. If it otherwise receives any money in such proceedings or arrangement, it shall

hold that money on trust for the Landlord to the extent of its liability to the Landlord.

- 6.3 The Guarantor shall not, without the consent of the Landlord, exercise any right or remedy that it may have (whether against the Tenant or any other person) in respect of any amount paid or other obligation performed by the Guarantor under this guarantee and indemnity unless and until all the obligations of the Guarantor under this guarantee and indemnity have been fully performed.

7. OTHER SECURITIES

- 7.1 The Guarantor warrants that it has not taken and covenants that it shall not take any security from or over the assets of the Tenant in respect of any liability of the Tenant to the Guarantor. If it does take or hold any such security it shall hold it for the benefit of the Landlord.
- 7.2 This guarantee and indemnity is in addition to any other security that the Landlord may at any time hold from the Guarantor or the Tenant or any other person in respect of the liability of the Tenant to pay the rents reserved by this lease and to observe and perform the tenant covenants of this lease. It shall not merge in or be affected by any other security.
- 7.3 The Guarantor shall not be entitled to claim or participate in any other security held by the Landlord in respect of the liability of the Tenant to pay the rents reserved by this lease or to observe and perform the tenant covenants of this lease.

SCHEDULE 2
TENANT'S WORKS

~~[To be confirmed]~~

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a Deed by
**CHI LAM WEALTH MANAGEMENT
LIMITED**

acting by two directors or one director
and a secretary:

Director

Director/Secretary

I

Executed as a Deed by
SUNSET BIRMINGHAM LIMITED

acting by a director

in the presence of:-

Witness signature:

Print name:

Address:

Occupation:

Signed as a Deed by the said
STEFANOS NEOPHYTOU
in the presence of:-

Witness signature:

Print name:

Address:

Occupation:

**BIRMINGHAM CITY COUNCIL****LICENSING SUB COMMITTEE B****FRIDAY 12 JANUARY 2024****HNDRX, 89 HOLLOWAY HEAD, BIRMINGHAM B1 1QP**

That having considered the application made and certificate issued by a Superintendent of West Midlands Police under section 53A of the Licensing Act 2003 for an expedited review of the premises licence held by Mao Wah Limited in respect of HNDRX, 89 Holloway Head, Birmingham B1 1QP, this Sub-Committee hereby determines:

- that the licence be suspended, and
- that Parmjit Singh be removed as the designated premises supervisor pending a review of the licence, such a review to be held within 28 days of receiving the Chief Officer of Police's application.

The Sub-Committee's reasons for imposing the two interim steps are due to the concerns which were expressed by West Midlands Police in relation to matters pertaining to serious crime, which had come to light as outlined in the Superintendent's certificate and application. Those documents were in the Committee Report.

The Sub-Committee determined that the cause of the serious crime originated from a style of management which had been incapable of upholding the licensing objectives. The style of management was the responsibility of the company, as premises licence holder for the premises.

West Midlands Police attended the meeting. A manager representing the licence holder also attended the meeting. The manager confirmed that the name of the venue was as per the name shown on the premises licence. The Sub-Committee noted this.

The meeting was conducted in private session after the Sub-Committee considered an application made by West Midlands Police under regulation 14(2) of the Licensing Act 2003 (Hearings) Regulations 2005. The Police explained that the matter was a live police enquiry regarding a serious crime incident. A Police investigation was ongoing regarding the incident. The Police asked for the proceedings to be conducted in private. The Sub-Committee conducted the meeting in private session.

Members heard the submissions of West Midlands Police, namely that the certificate, which had been issued by a Superintendent under s53A of the Act,

related to an allegation of serious crime which had originated at the premises. The details were as per the documents in the Committee Report, and related to the execution of a search warrant at the venue under s23 of the Misuse of Drugs Act 1971.

The Police summarised the investigation thus far, relating to the discovery of significant quantities of what were suspected to be illegal drugs, and also significant sums of cash, at the site. An offence(s) under the Misuse of Drugs Act 1971 was suspected; the quantities discovered suggested an intent to supply, rather than simple possession.

The Police advised the Sub-Committee that such an offence was classed as a serious crime under s81 of the Regulation of Investigatory Powers Act 2000, as the sentence on conviction was likely to exceed three years. The incident therefore warranted the use of the s53A power, and the matter had been brought before the Sub-Committee for an Expedited Review hearing.

The Police view was that interim steps were required in order to deal with the causes of the serious crime whilst the criminal investigation was under way. It was the advice of the Police that a lack of management control had led to the incident. It was the Police's recommendation that the incident had been so serious, and the risk to the upholding of the crime prevention objective so grave, that specific interim steps were required.

The Police recommended that the correct course was to remove the designated premises supervisor for the reasons given in the Superintendent's certificate and application. This was in the interests of guarding against the risks of further serious crime, pending the full Summary Review hearing in 28 days' time.

The Police did not press the Sub-Committee to suspend the licence, suggesting instead that the conditions could perhaps be modified, such that the premises would not be permitted to trade without the permission of West Midlands Police, pending the full Summary Review hearing in 28 days' time.

The Police stated that the reason that they suggested this course was because the priority was "to safeguard the public by not allowing the premises to trade". The Police confirmed that in the next 28 days they would work with the manager regarding the company's use of its licence.

The licence holder, via the manager who had attended, then addressed the Sub-Committee to explain that there were ongoing issues relating to the lease arrangements at the site. She stated that the licence holder company was not involved with the activities which had been described in the Superintendent's certificate and application.

She endorsed the Police's proposed course, remarking that she did not see that the licence holder company should be punished via a suspension of its licence when it was not responsible for what had been discovered. She further remarked that if the company retained its licence, the venue could be "let to someone else". She

requested that the Sub-Committee impose “more conditions so that no-one can trade using our licence”.

Regarding the other suggestion made by Police relating to the designated premises supervisor, the manager confirmed that she agreed with the Police that the designated premises supervisor should be removed, remarking that she had been endeavouring to do this herself.

Having heard all of the evidence, the Members were mindful of the Guidance issued by the Secretary of State under s182 of the Act, which advised them to only impose those steps which were necessary to guard against the risks of further serious crime. However, the starting point was that the Members were not confident that the company understood its responsibilities as licence holder, and moreover were not satisfied that there was proper management control of the premises.

The Police had suggested that a suspension was not necessarily vital to guard against the risks of further serious crime. Ordinarily, the Sub-Committee would accept the advice of the Police without question, on any and all aspects relating to serious crime, as the Guidance issued by the Secretary of State deemed the Police to be the experts in dealing with crime and disorder.

However, on this occasion, the Sub-Committee considered that the wholly inadequate style of management described was a significant risk to the upholding of the crime prevention objective, especially in relation to illegal drugs in Birmingham.

The Sub-Committee felt strongly that it was not possible to have any trust in the management of the site. The Members felt that they were not prepared to take any risks whatsoever regarding the potential for further serious crime, particularly relating to illegal drugs being found within licensed premises, pending the full Review hearing.

In deliberating, the Sub-Committee determined that there had been a discovery of a matter relating to serious crime, which was being investigated by Police. It was abundantly clear that the operation was not being run in accordance with the licensing objectives. Any instance of illegal drugs finding their way into licensed premises was extremely serious; moreover, on this occasion, significant quantities of illegal drugs had been discovered inside the premises whilst it was trading and open to the public.

The Sub-Committee was not satisfied that the licence holder could be trusted to operate in a manner capable of preventing further serious crime. The Members noted in particular the Police comments regarding the quantities of both illegal drugs and cash found at the site. This was a clear risk to the prevention of crime and disorder objective. All in all, the management style seen at the premises was not at all the standard expected of premises licence holders in Birmingham.

The Police were the experts in crime and disorder, which the Sub-Committee accepted. However, the Police’s advice, namely that a suspension was not necessarily required, was in the eyes of the Members a potential risk to the licensing objectives generally, and to the likelihood of further serious crime in particular. The

Members found themselves unable to take any risks whatsoever regarding public protection where illegal drugs were concerned.

The Sub-Committee considered the other options of modification of the conditions of the licence, and exclusion of the sale of alcohol by retail from the scope of the licence, but did not consider that these would adequately cover the risks, given the seriousness of what had been described in the Superintendent's certificate and application.

Although the Police had recommended that the Sub-Committee should consider adopting a new condition, whereby the licence would remain in place but trading would not be permitted without Police approval, the Sub-Committee was not satisfied that this would adequately cover the risks, or be properly enforceable. The Members considered the suggested condition to be nebulous and vague, and therefore inadequate to cover the risk of further serious crime at the site.

The correct way forward was therefore to suspend the licence pending the full Review hearing, even though this had not been explicitly demanded by the Police. The Sub-Committee considered suspension to be entirely the proper course given what had been described in the certificate and application, and determined that it was both necessary and reasonable to impose the interim step of suspension of the licence to address the immediate problems with the premises, namely the potential for further serious crime.

The Sub-Committee felt that on this occasion, given the quantities of illegal drugs and cash found at the site, a "belt and braces" approach was required to ensure the safety and protection of the public. The amounts discovered were in quantities which suggested a supply operation, and not simple possession; this was a huge risk to the community given that the site was a licensed premises. The Members felt that the protection of the public required an overabundance of caution, and for this reason decided to take the unusual step of imposing a suspension even though the Police had not in fact demanded this step.

Public safety was of paramount importance, and the Members considered that it was a danger to the public for the premises to continue to operate in the manner seen on the night in question. Under the current style of operation, large quantities of illegal drugs and cash had been found inside a licensed venue, and the quantities of both suggested that an intent to supply was likely. The Police had stated that the priority was "to safeguard the public by not allowing the premises to trade"; the Sub-Committee considered that the only way to properly ensure this was to suspend the licence as an interim step pending the full Summary Review hearing.

The Sub-Committee further noted that it was the responsibility of the designated premises supervisor to ensure that alcohol sales were conducted in accordance with the licence. The Sub-Committee therefore determined that the removal of the designated premises supervisor was a very important safety feature. This course had been endorsed by both the Police and the manager representing the licence holder.

The Members considered that Parmjit Singh had fallen far short of the standards expected of any designated premises supervisor, and that the style of operation described in the Superintendent's certificate and application was a very significant risk to the upholding of the licensing objectives in Birmingham. Moreover, there was something of a suggestion that the Parmjit Singh could perhaps be connected to other premises operated by the licence holder company. The Sub-Committee had concerns that there could potentially be links of a type which could undermine the prevention of further serious crime. The designated premises supervisor was therefore removed pending the full Summary Review hearing.

In reaching this decision, the Sub-Committee has given due consideration to the application made and certificate issued by a Superintendent of West Midlands Police, the City Council's Statement of Licensing Policy, the Guidance issued by the Home Office under s182 of the Act, the written submissions made, and the submissions made at the hearing by West Midlands Police and by the manager representing the licence holder company.

All parties are advised that the premises licence holder may make representations against the interim steps taken by the Licensing Authority. On receipt of such representations, the Licensing Authority must hold a hearing within 48 hours excluding non-working days.

All parties are advised that there is no right of appeal to a Magistrates' Court against the Licensing Authority's decision at this stage.

West Midlands Police

CERTIFICATE UNDER SECTION 53A (1)(B) OF THE LICENSING ACT 2003

I hereby certify that in my opinion the premises described below are associated with serious crime and disorder

Premises: HNDRX, trading as King VN

Premise Licence Number: 1952

Premise Licence Holder: Mao Wah Limited

Designated Premise Supervisor: Mr Parmjit Singh

I am a Superintendent in West Midlands Police.

I am giving this certificate because I am of the opinion that the summary review procedure is necessary to ensure the licensing objectives are promoted expeditiously. Given the seriousness of the trigger incident on 6th January 2024, in my opinion immediate steps are required that can best be achieved through the summary review procedures. Other steps available under the Licensing Act 2003, including a standard review application, cannot lead to the imposition of immediately effective steps to promote the licensing objectives and so these are inadequate. I view this application as a proportionate and necessary response to the serious incident at the venue.

On Saturday 6th January 2024 a warrant under s23 Misuse of drugs act was executed at the premises.

The premises were open and trading.

A significant amount of what is suspected to be Class A drugs (which awaits scientific analysis) and loose cash not located in the cash tills or stored for banking, were recovered from within the premises, the scene was one consistent with drug dealing activity.

There is a live ongoing criminal investigation in relation to those persons linked to the premises for offences of possession with intent to supply drugs.

In coming to my opinion, I have had regard to the facts of the incident and current investigation, the track record of the premises, the terms of section 53A of the Licensing Act 2003 and Chapter 12 ("Summary Reviews") of the Guidance issued under section 182 of the Licensing Act 2003 (December 2022 revision)

Signed

 T15upt 4643



PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing the form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary

I - Richard Evans T/Supt 4693

(on behalf of) the chief officer of Police for the West Midlands Police area apply for the review of a premises licence under section 53A of the Licensing Act 2003

1. Premises details: HNDRX, trading as King VN

Postal address of premises,(or if none or not known, ordinance survey map reference or description):

89 Holloway Head

Post Town: **Birmingham**

Post Code (if known): **B1 1QP**

2. Premises Licence details:

Name of premise licence holder (if known):

Mao Wah Limited

Number of premise licence (if known):

1952

3. Certificate under section 53A (1)(B) of the Licensing Act 2003 (Please read guidance note 1)

I confirm that this is a certificate has been given by a senior member of the police force for the police area above that in his/her opinion the above premises are associated with serious crime or serious disorder or both, and the certificate accompanies this application.

(Please tick the box to confirm)



4. Details of association of the above premises with serious crime, serious disorder or both:
(Please read guidance note 2)

On 6th January 2024 a warrant was executed at the premises under s23 of the Misuse of Drugs Act.

In conjunction with a drug detection dog, officers found a quantity of powders at the location believed to be Class A drugs, namely at the premises, both in the flat above the club and in the club itself. The drugs seized in totality were not consistent with simple possession.

A large quantity of cash was also seized by officers which was not located in the cash tills.

This is an ongoing live criminal investigation in relation to possession with intent to supply offences.

"Serious crime" is defined by reference to S.81 of RIPA Act 2000. An offence for which an adult could reasonably be expected to be sentenced to imprisonment for a period of 3 years or more.

Signature of applicant:

Date: 11/01/24

Rank/Capacity: T/Supt 4643

Contact details for matters concerning this application: BW Licensing

Address: Licensing Dept c/o Birmingham West and Central Licensing Dept, Lloyd House, Birmingham

Telephone Number(s): 0121 626 6099

E-mail - bw_licensing@west-midlands.police.uk

Notes for guidance:

1. A certificate of the kind mentioned in the form must accompany the application in order for it to be valid under the terms of the Licensing Act 2003. The certificate must explicitly state the senior officer's opinion that the premises in question are associated with serious crime, serious disorder or both.

Serious crime is defined by reference to section 81 of the Regulation of Investigatory Powers Act 2000. In summary, it means:

- conduct that amounts to one or more criminal offences for which a person who has attained the age of eighteen and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more:or
- conduct that amounts to one or more criminal offences and involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.

Serious Disorder is not defined in legislation, and so bears its ordinary English meaning.

2. Briefly describe the circumstances giving rise to the opinion that the above premises are associated with serious crime, serious disorder or both.

LICENSING ACT 2003PREMISES LICENCE

Premises Licence Number:

1952 / 10

Part 1 - Premises details:

Postal address of premises, or if none, ordnance survey map reference or description	
HNDRX 89 Holloway Head	
Post town:	Post Code:
Birmingham	B1 1QP
Telephone Number:	

Where the licence is time limited the dates

N/A

Licensable activities authorised by the licence

E	Live music
F	Recorded music
G	Performances of dance
L	Late night refreshment
M3	Sale of alcohol by retail (both on & off the premises)

The times the licence authorises the carrying out of licensable activities

Monday - Thursday	10:00	-	03:00	E
	10:00	-	07:00	F ,G ,M3
	23:00	-	05:00	L
Friday - Saturday	10:00	-	07:00	F ,G ,M3
	10:30	-	07:00	E
	23:00	-	05:00	L
Sunday	12:00	-	02:00	E
	12:00	-	07:00	F ,G ,M3
	23:00	-	05:00	L
New Year's Eve - From the end of permitted hours on New Year's Eve to the commencement of hours on the following day				All

The opening hours of the premises

Monday - Saturday	10:00	-	07:30
Sunday	12:00	-	07:30
New Year's Eve - From the end of permitted hours on New Year's Eve to the commencement of hours on the following day.			

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Where the licence authorises supplies of alcohol whether these are on and/or off supplies

On and Off Supplies

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Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence Mao Wah Limited 98 Bristol Road Ethel Street	
Post town: Birmingham	Post Code: B5 7XH
Telephone Number: Not Specified	
Email N/A	

Registered number of holder for example company number or charity number (where applicable) 04671374
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Name, address, telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol Parmjit Singh	
Post town:	Post Code:
Telephone Number: N/A	

Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol	
Licence Number	Issuing Authority BIRMINGHAM CITY COUNCIL

Dated 27/08/2019

SHAID YASSER
Senior Licensing Officer
For Director of Regulation and Enforcement

Annex 1 – Mandatory Conditions

No supply of alcohol may be made under the premises licence (a) at a time when there is no designated premises supervisor in respect of the premises licence, or (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

Every retail sale or supply of alcohol made under this licence must be made or authorised by a person who holds a personal licence.

The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises. In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises— (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to— (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or (ii) drink as much alcohol as possible (whether within a time limit or otherwise); (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective; (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective; (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner; (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).

The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol. The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy. The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either— (a) a holographic mark, or (b) an ultraviolet feature.

The responsible person must ensure that— (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures— (i) beer or cider: ½ pint; (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and (iii) still wine in a glass: 125 ml; (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.”

(1) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price. (2) In this condition:— (a) “permitted price” is the price found by applying the formula $P = D + (D \times V)$, where— (i) P is the permitted price, (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol; (b) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979; (c) “relevant person” means, in relation to premises in respect of which there is in force a premises licence— (i) the holder of the premises licence, (ii) the designated premises supervisor (if any) in respect of such a licence, or (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence; (d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and (e) “value added tax” means value added tax charged in accordance with the Value Added Tax Act 1994. (3) Where

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the permitted price would not be a whole number of pennies, the permitted price shall be taken to be the price rounded up to the nearest penny. (4) Where the permitted price on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax, the permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

Each individual assigned to carrying out a security activity must be licensed by the Security Industry Agency.

Annex 2 – Conditions consistent with operating schedule

2a) General conditions consistent with the operating schedule

The provision of regulated entertainment and late night refreshment to take place indoors only.

The premises will operate in accordance with all relevant legislation.

2b) Conditions consistent with, and to promote the prevention of crime and disorder

The premises will operate in accordance with all relevant legislation which promotes the crime and disorder objective.

The premises will liaise and co-operate with the responsible authorities.

A zero tolerance towards illegal drugs will operate at all times.

Staff will be trained to observe the measures necessary to promote the Crime and Disorder objective.

C.C.T.V. will be fitted to the specifications and locations as specified by West Midlands Police (Licensing Department at Steelhouse Lane).

All images, however recorded, will be stored for a period of 28 days if the system used is a tape system, then all tapes will be replaced every 6 months (which must be documented in the incident book).

C.C.T.V. will be recorded at all times that the premises are open for any licensable activities.

All images held will be made available immediately to any responsible authority on request.

Door staff will be employed at appropriate times during the hours when licensable activities are provided at a ratio of 1:100 plus one reserve.

The DPS shall ensure that any door staff employed at the premises wear and clearly display their SIA registration badge at all times whilst on duty. A record shall be maintained containing the names, addresses, dates of birth and registration numbers of door supervisors. The record shall be made available for inspection upon request by the Police and/or officers of the responsible authorities.

2c) Conditions consistent with, and to promote, public safety

The premises will operate in accordance with all relevant legislation which promotes the Public Safety objective.

Staff will be trained to observe the measures necessary to promote the Public Safety objective.

The existing fire safety precautions will be retained and maintained.

2d) Conditions consistent with, and to promote the prevention of public nuisance

The premises will operate in accordance with all relevant legislation which promotes the Public Nuisance objectives.

Staff will be trained to observe the measures necessary to promote the Prevention of Public Nuisance objective.

The premises will be adequately ventilated to prevent nuisance.

Arrangements will be made for the storage and disposal of refuse which do not cause a nuisance.

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Any noise from the licensable activities provided will be monitored in order to prevent nuisance.

2e) Conditions consistent with, and to promote the protection of children from harm

The premises will operate in accordance with all relevant legislation which promotes the protection of children objective.

A proof of age policy will operate in relation to relevant licensable activities.

Staff will be trained to observe the measures necessary to promote the Protection of Children objective.

Non-alcoholic drinks will be available.

The premises shall adopt the Challenge 25 Scheme and appropriate signage will be placed at the entrance to the premises and adjacent to any bar server. The premises will operate a policy whereby any person attempting to buy alcohol will be asked for photographic ID to prove their age. The only ID that will be accepted is a passport, driving licence with a photograph or an accredited proof of age card bearing the PASS mark hologram.

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Annex 3 – Conditions attached after hearing by licensing authority

3a) General committee conditions

N/A

3b) Committee conditions to promote the prevention of crime and disorder

N/A

3c) Committee conditions to promote public safety

N/A

3d) Committee conditions to promote the prevention of public nuisance

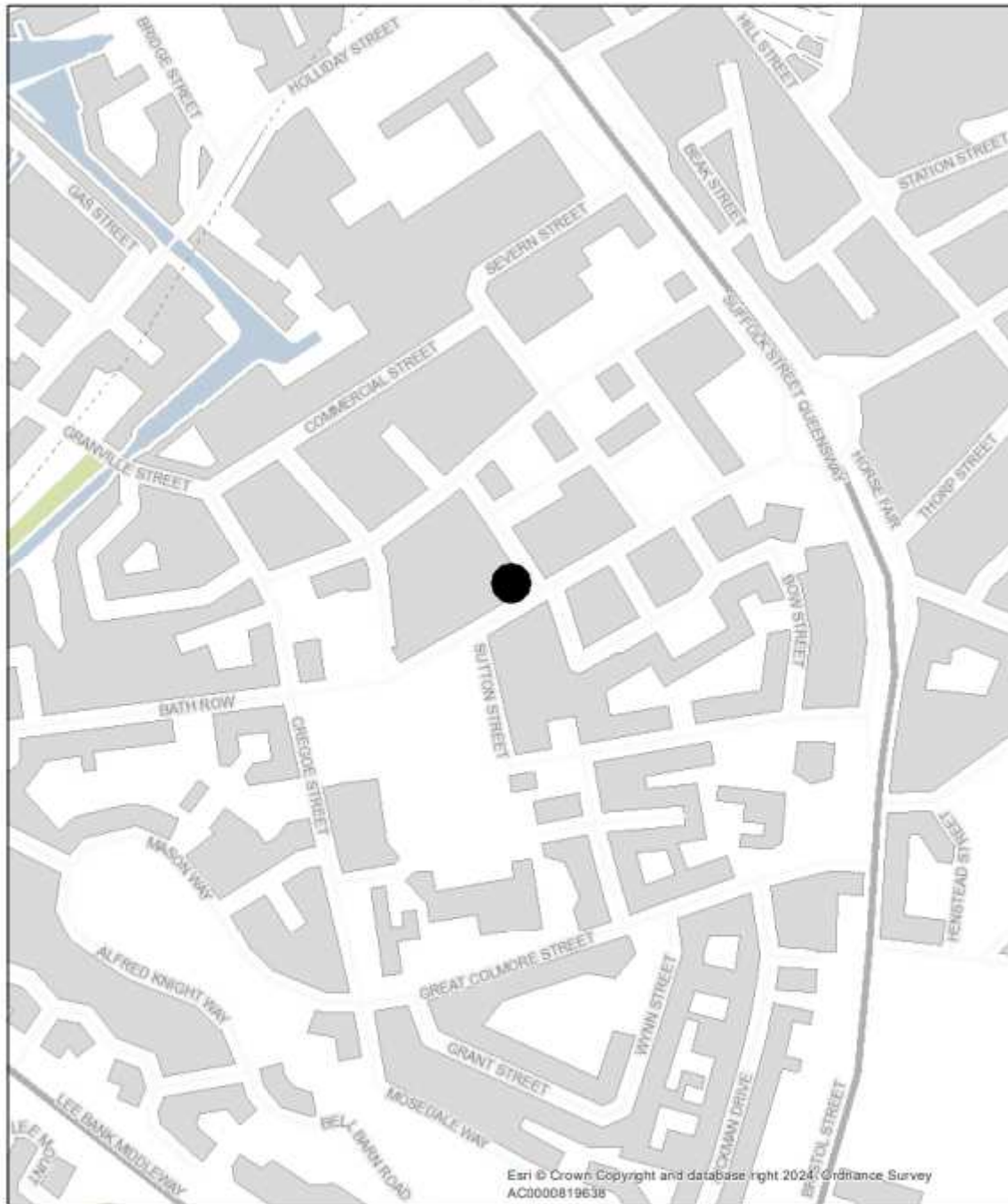
N/A

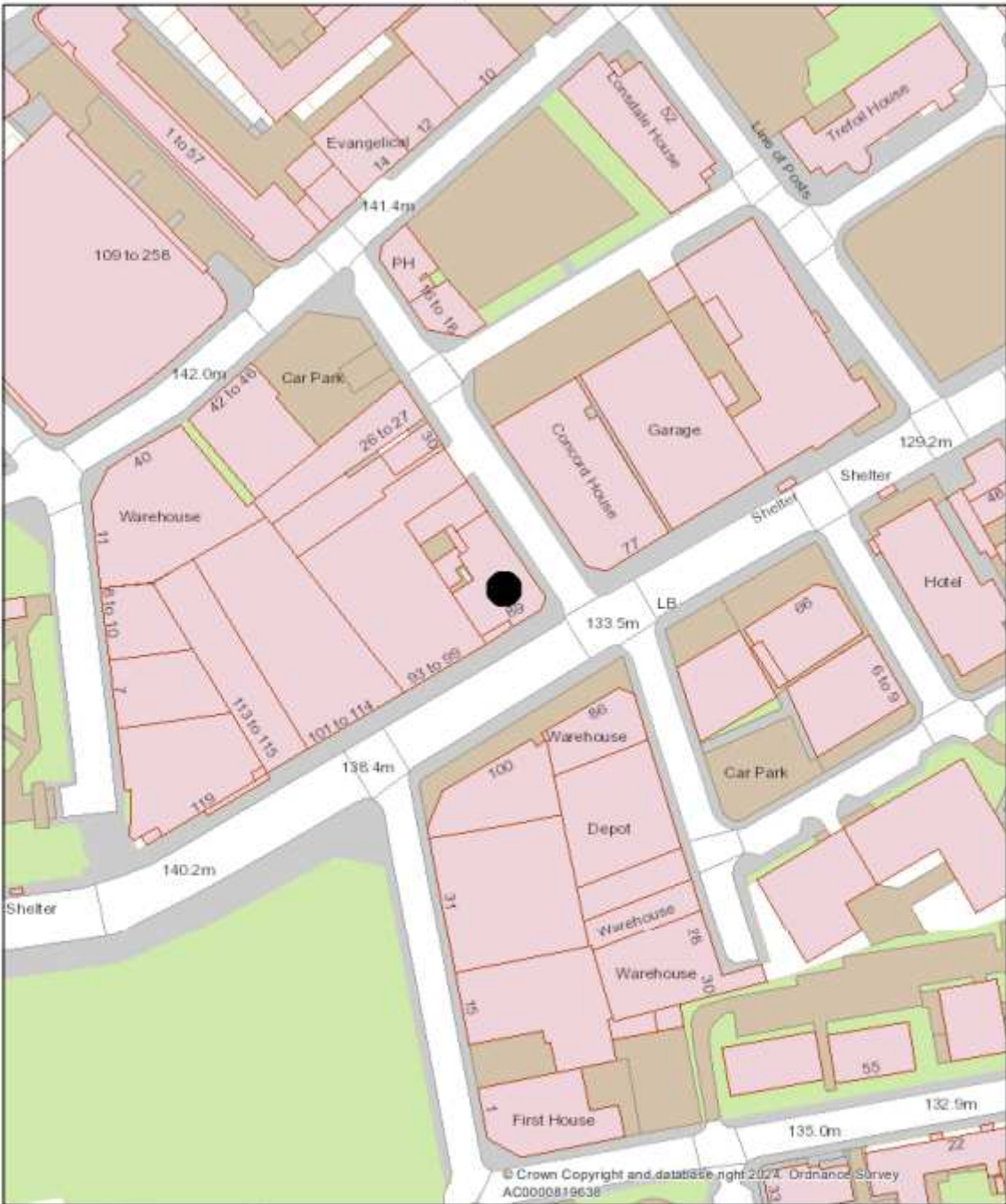
3e) Committee conditions to promote the protection of children from harm

N/A

Annex 4 – Plans

The plan of the premises with reference number **112317-1952/10** which is retained with the public register kept by Birmingham City Council and available free of charge for inspection by appointment only. Please call the Licensing Section on 0121 303 9896 to book an appointment.





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