

DATE

2010

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**HASTINGS BOROUGH COUNCIL**

**-to-**

**GALLERIUM ESTABLISHMENT**

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**LEASE**

**-OF-**

**Land at The Stade, Rock-a-Nore, Hastings, East Sussex**

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**LR1. Date of lease**

**LR2. Title number(s)**

**LR2.1 Landlord's title number(s)**

HT6185

**LR2.2 Other title numbers**

**LR3. Parties to this lease**

**Landlord**

Hastings Borough Council of Town Hall, Queens Road, Hastings, East Sussex  
TN34 1QR

**Tenant**

Gallerium Establishment of Heiligkreuz 6, P O Box 129, FL-9490 Vaduz,  
Liechtenstein whose address for service in the United Kingdom is 22 Fitzroy  
Square, London W1T 6EN

**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.**

The Premises as specified in Clause 1.13

**LR5. Prescribed statements etc**

None

**LR6. Term for which the Property is leased**

The term as specified in this lease at Clause 1.16 ('The Term')

**LR7. Premium**

None

**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  
See Clause 7.8
- LR9.2** Tenant's covenant to (or offer to) surrender this lease  
See Clause 4.10
- LR9.3** Landlord's contractual rights to acquire this lease  
See Clause 4.10
- 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  
See Schedule 1 Part 2
- LR11.2** Easements granted or reserved by this lease over the Property for the benefit of other property  
See Schedule 1 Part 1
- LR12.** Estate rentcharge burdening the Property  
None
- LR13.** Application for standard form of restriction  
None

**LEASE**

HM LAND REGISTRY

LAND REGISTRATION ACT 2002

Administrative area	East Sussex: Hastings
Title number out of which lease is granted	HT6185
Property let	Land at The Stade, Rock-a-Nore, Hastings, East Sussex

**THIS LEASE** is made the ..... day of .....2010   **BETWEEN:**

- (1)       **Hastings Borough Council** of Town Hall, Queens Road, Hastings, East Sussex TN34 1QR ('the Landlord'); and
  
- (2)       **Gallerium Establishment** an independent legal entity registered in Liechtenstein of Heiligkreuz 6, P O Box 129, FL-9490 Vaduz, Liechtenstein and whose address for service in the United Kingdom is 22 Fitzroy Square, London W1T 6EN ('the Tenant').

**NOW THIS DEED WITNESSES** as follows:

**1.     DEFINITIONS AND INTERPRETATION**

For all purposes of this Lease the terms defined in this Clause have the meanings specified.

- 1.1   **'Affordable Fee'** means subject to the approval of HM Revenue & Customs an admission fee or fees chargeable to the public at large for access to the facilities and/or exhibitions within the Building and which shall be set at a level:-
  - 1.1.1 which encourages visitor numbers to the Building; and
  - 1.1.2 following comparison with any admission fees charged for and by similar exhibitions and facilities within the United Kingdom which are open to the public at large; and

- 1.1.3 which enables the Tenant to meet its aims and objectives of enhancing the reputation of the facilities and exhibitions within the Building; and
- 1.1.4 which promotes the Landlord and Tenant's joint aim of promoting the prosperity and well-being of Hastings as a whole; and
- 1.1.5 which shall initially be set at a level between £2.00 being the initial admission charge for the inhabitants of the Borough of Hastings and an upper level of £5.00 for general admission.

**1.2 'The Building'**

'The Building' means the building or buildings to be erected on the Premises in the course of the Works and includes any building or any other structure at any time erected on the Premises during the Term.

**1.3 'The Certificate Date'**

'The Certificate Date' means the date on which the Landlord or the Surveyor serves the Certificate of Ready for Use or the date the Works are deemed to be satisfactorily completed in accordance with the provisions of Clause 14 of Schedule 3.

**1.4 "Competent Authority"**

"Competent Authority" means a government department any local regulatory public or other authority the fire officer or a court of competent jurisdiction.

**1.5 'The Conduits'**

'The Conduits' means the pipes, sewers, drains, mains, ducts, conduits, gutters, watercourses, wires, cables, laser optical fibres, data or impulse transmission, communication or reception systems, channels, flues and all other conducting media--including any fixings, louvres, cowls and any other ancillary apparatus--that are in, on, over or under the Premises.

**1.6 'The Insured Risks'**

'The Insured Risks' means the risks of loss or damage by fire, storm, tempest, earthquake, lightning, explosion, riot, civil commotion, malicious damage, impact by vehicles, by aircraft and articles dropped from aircraft (other than war risks) flood damage and bursting and overflowing of water pipes and tanks and/or any other risks, whether or not in the nature of the foregoing, that the Tenant acting reasonably from time to time decides to insure against.

**1.7 'The Interest Rate'**

'The Interest Rate' means the rate of 4% a year above the base lending rate of HSBC Bank plc or such other bank being a member of the British Bankers Association as the Landlord may from time to time nominate in writing.

**1.8 'The 1954 Act'**

'The 1954 Act' means the Landlord and Tenant Act 1954 and all statutes, regulations and orders included by virtue of Clause 2.13.

**1.9 'The 1995 Act'**

'The 1995 Act' means the Landlord and Tenant (Covenants) Act 1995 and all statutes, regulations and orders included by virtue of Clause 2.13.

**1.10 'The Permitted Use'**

'The Permitted Use' means:-

(a) an art gallery or art and education centre; or

(b) use for a charitable purpose which could be provided or supported by Hastings Borough Council

and which is open, at no more than the Affordable Fee, to the inhabitants of the Borough of Hastings and to the public at large PROVIDED THAT if the Permitted Use falls within sub paragraph (a), and subject to Clause 4.25.2, the Tenant may hold events exclusively for private invitees.

**1.11 'The Plan'**

'The Plan' means the plan annexed to this Lease.

**1.12 'The Planning Acts'**

'The Planning Acts' means the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004 and all statutes, regulations and orders included by virtue of Clause 2.13.

**1.13 'The Premises'**

'The Premises' means all that property known as Land at The Stade, Rock-a-Nore, Hastings, East Sussex shown edged red on the Plan and each and every part thereof together with the appurtenances thereto belonging and the Works and (without limitation) all other developments and redevelopments of the land and buildings comprised in such property from time to time during the Term and all additions, alterations and improvements thereto which may be carried out during the Term and including all Landlord's fixtures and fittings, plant, machinery, and equipment now or hereafter in or about the same.

**1.14 "The Rent"**

'The Rent' means a peppercorn per annum.

**1.15 'The Surveyor'**

'The Surveyor' means the Landlord's estate manager or such other suitably qualified professional person or firm appointed by the Landlord to perform any of the functions of the surveyor under this Lease (which may be an employee of the Landlord).

**1.16 'The Term'**

'The Term' means 99 years from the date hereof and any period of holding-over or extension or continuance of the Term by statute or common law.

**1.17 'VAT'**

'VAT' means value added tax or any other tax of a similar nature and unless otherwise expressly stated all references to rents or other sums payable by the Tenant are exclusive of VAT.

**1.18 'Working Day'**

'Working Day' means a day when the United Kingdom clearing banks are open for business in the City of London.

**1.19 'The Works'**

'The Works' means the works briefly described in Schedule 2, to be carried out on the Premises by the Tenant in accordance with the terms of this Lease.

**1.20 'The Works Commencement Date'**

'The Works Commencement Date' means the date being six months from the date hereof.

**1.21 'The Works Completion Date'**

'The Works Completion Date' means the date twenty four months from the date of commencement of the Works or such later date as is agreed by the Landlord in writing or determined pursuant to the terms of Schedule 3 of this Lease.

**2 INTERPRETATION**

**2.1 Gender and number**

Words importing one gender include all other genders; words importing the singular include the plural and vice versa.

**2.2 Headings**

The clause, paragraph and schedule headings and the table of contents do not form part of this document and are not to be taken into account in its construction or interpretation.

**2.3 Interpretation of 'consent' and 'approved'**

References to 'consent of the Landlord' or words to similar effect are references to a prior written consent signed by or on behalf of the Landlord and references to the need for anything to be 'approved by the Landlord' or words to similar effect are references to the need for a prior written approval by or on behalf of the Landlord.

**2.4 Interpretation of 'the Landlord'**

The expression 'the Landlord' includes the person or persons from time to time entitled to possession of the Premises when this Lease comes to an end.

**2.5 Interpretation of 'the last year of the Term' and 'the end of the Term'**

References to 'the last year of the Term' are references to the actual last year of the Term howsoever it determines, and references to the 'end of the Term' are references to the end of the Term whensoever and howsoever it determines.

## **2.6 Interpretation of 'this Lease'**

Unless expressly stated to the contrary, the expression 'this Lease' includes any document supplemental to or collateral with this document or entered into in accordance with this document.

## **2.7 Interest**

References to 'interest' are references to interest payable during the period from the date on which the payment is due to the date of payment, both before and after any judgment, at the Interest Rate then prevailing or, should the base rate referred to in Clause 1.7 cease to exist, at another rate of interest closely comparable with the Interest Rate to be agreed between the parties or in default of agreement to be determined by a chartered accountant appointed by agreement between the parties, or in default of agreement nominated by the President of the Institute of Chartered Accountants in England and Wales, acting as an expert and not as an arbitrator.

## **2.8 Joint and several liability**

Where any party to this Lease for the time being comprises two or more persons, obligations expressed or implied to be made by or with that party are deemed to be made by or with the persons comprising that party jointly and severally.

## **2.9 Losses**

References to 'losses' are references to liabilities, damages or losses, awards of damages or compensation, penalties, costs, disbursements and expenses properly arising from any claim, demand, action or proceedings.

## **2.10 Obligation not to permit or suffer**

Any covenant by the Tenant not to do anything includes an obligation not to permit or suffer that thing to be done by another person where the Tenant is aware that the thing is being done.

## **2.11 References to clauses, paragraphs and schedules**

Any reference in this document to a clause, paragraph or schedule without further designation is to be construed as a reference to the clause, paragraph or schedule to this document so numbered.

## **2.12 References to rights of access**

References to any right of the Landlord to have access to the Premises are to be construed as extending to all persons authorised in writing by the Landlord including agents, professional advisers, contractors, workmen and others.

## **2.13 References to statutes**

Unless expressly stated to the contrary, any references to a specific statute include any statutory extension or modification, amendment or re-enactment of that statute and any regulations or orders made under it, and any general reference to a statute includes any regulations or orders made under that statute.

## **2.14 Terms from the 1995 Act**



Where the expressions 'landlord covenants' or 'tenant covenants' are used in this Lease they are to have the same meaning as is given by the 1995 Act Section 28(1).

### **3 DEMISE**

The Landlord with full title guarantee lets the Premises to the Tenant, excepting and reserving to the Landlord the rights specified in Schedule 1 Part 1 and together with the rights specified in Schedule 1 Part 2 to hold the Premises to the Tenant for the Term subject to the rights easements, privileges, restrictions, covenants and stipulations affecting the Premises contained or referred to in Schedule 4 yielding and paying to the Landlord the Rent.

### **4 THE TENANT'S COVENANTS**

The Tenant covenants with the Landlord to observe and perform the requirements of this Clause 4.

#### **4.1 The Works**

4.1.1 The Tenant will commence the Works as soon as practicable after the date of this Lease and in any event by no later than the Works Commencement Date.

4.1.2 The Tenant will complete the Works in accordance with the provisions of Schedule 3 by the Works Completion Date.

#### **4.2 Rent**

The Tenant must pay the Rent if demanded.

#### **4.3 Outgoings and VAT**

The Tenant must pay, and must indemnify the Landlord against:-

4.3.1 all rates, taxes, assessments, duties, charges, impositions and outgoings that are now or may at any time during the Term be charged, assessed or imposed upon the Premises or on the owner or occupier of them, excluding any payable by the Landlord occasioned by receipt of the Rent or by any disposition of or dealing with this Lease or ownership of any interest reversionary to the interest created by it;

4.3.2 all VAT that may from time to time be charged on sums payable by the Tenant under this Lease subject to receipt of a valid VAT invoice addressed to the Tenant; and

4.3.3 all VAT incurred in relation to any costs that the Tenant is obliged to pay or in respect of which it is required to indemnify the Landlord under the terms of this Lease, save where such VAT is recoverable or available for set-off by the Landlord as input tax.

#### **4.4 Insurance**

4.4.1 With effect from the Certificate Date, to insure the Premises (except Tenants' fixtures and fittings which the Tenant may insure at its discretion) at all times during the Term against loss or damage by the Insured Risks with some insurance office or underwriters of repute upon the usual terms and conditions of such insurance office or underwriters in the full reinstatement cost thereof (together with an allowance for inflation and architects' surveyors' and other professional fees and demolition and clearance expenses in such amounts as the Landlord shall from time to time

reasonably determine) with the Landlord's interest in the Premises noted in any such policy of insurance.

- 4.4.2 In case of damage to or destruction of the Premises by any of the Insured Risks to use all reasonable endeavours to reinstate and make good the Premises with such variations as may be necessary or desirable having regard to statutory provisions bye-laws and regulations then in force and any planning permission for such works and also to building standards then prevailing and otherwise with the approval of or consent of the Landlord where required under the Lease and in the case of any shortfall in the insurance monies received (whether as a result of under insurance or otherwise) to make up any shortfall out of the Tenant's own monies.
- 4.4.3 To produce to the Landlord or its agents within one month of demand (but not more than once a year) proper evidence of the policy or provisions of the insurance with the Landlord's interest noted thereon and proper evidence of payment of the relevant premium.
- 4.4.4 To comply with all requirements made by any Competent Authority and/or the insurers with regard to fire health safety or otherwise.
- 4.4.5 As often as the Premises or any part thereof shall be destroyed or damaged forthwith to notify the Landlord in writing stating whether and to what extent such destruction or damage was brought about directly or indirectly by any of the Insured Risks.
- 4.4.6 If the rebuilding or reinstatement of the Premises or any part thereof shall be frustrated the insurance monies relating to such buildings or part in respect of which frustration occurs shall be apportioned equitably according to the value of the respective interests between the Landlord and the Tenant (and in assessing the value of the Tenant's interest no regard shall be had to any interests deriving out of the Tenant's interest).
- 4.4.7 If for any reason the Premises shall not be rebuilt or reinstated as they were immediately prior to the date of the relevant destruction or damage by the third anniversary of the date of destruction or damage then either the Landlord or the Tenant may thereafter determine the Term by giving not less than two months' written notice to the other party and upon expiry of such notice the Term will forthwith cease but without prejudice to the claim of either party for any earlier breach of covenant by the other PROVIDED THAT the Tenant shall not be entitled to determine the Term where the reason for the failure to rebuild or reinstate is the fault or omission of the Tenant AND upon cesser of the Term by notice hereunder the insurance monies shall be divided between the Landlord and the Tenant as provided in Clause 4.4.6 above.
- 4.4.8 If the Tenant shall at any time fail to insure or keep the Premises insured as aforesaid the Landlord may do all things necessary to effect and maintain such insurance and any monies properly expended by the Landlord for that purpose (including, but without limitation, management costs) shall be repayable by the Tenant to the Landlord on demand and be recoverable forthwith by action or distress as rent in arrears.

#### **4.5 Repair, cleaning and decoration**

#### **4.5.1 Repair of the Premises**

After the Certificate Date the Tenant must repair the Premises and keep them in good condition and repair, except for damage caused by fair wear and tear or by one or more of the Insured Risks save to the extent that the insurance money is irrecoverable due to any act or default of the Tenant or anyone at the Premises expressly or by implication with its authority and under its control.

#### **4.5.2 Cleaning and tidying**

The Tenant must keep the Premises clean and tidy and clear of all rubbish.

#### **4.5.3 The Open Land**

##### **4.5.3.1 Care of the Open Land**

After the Certificate Date the Tenant must keep any part of the Premises that is not built on (**'the Open Land'**) adequately surfaced, in good condition and free from weeds and must keep all landscaped areas properly cultivated.

##### **4.5.3.2 Storage on the Open Land**

The Tenant must not store anything on the Open Land after the Certificate Date or bring anything onto it that is or might become untidy, unclean, unsightly or in any way detrimental to the Premises or the area generally.

##### **4.5.3.3 Rubbish on the Open Land**

The Tenant must not deposit any waste, rubbish or refuse on the Open Land after the Certificate Date.

##### **4.5.3.4 Vehicles on the Open Land**

The Tenant must not keep or store any caravan or movable dwelling on the Open Land after the Certificate Date.

#### **4.5.4 Care of abutting land**

The Tenant must not cause any land, roads or pavements abutting the Premises to be untidy or dirty and in particular, but without prejudice to the generality of the foregoing, must not deposit refuse or other materials on them.

#### **4.5.5 Decoration**

The Tenant must keep the outside and inside of the Premises in good decorative order.

### **4.6 Waste and alterations**

#### **4.6.1 Waste, additions and alterations**

After the Certificate Date the Tenant must not demolish and/or construct any new buildings upon the Premises except as permitted by the provisions of this Clause 4.6.

#### **4.6.2 Pre-conditions for alterations**

After the Certificate Date the Tenant must not make alterations to the Premises unless it first obtains and complies with the necessary consents of the Competent Authority.

#### **4.6.3 Preconditions for demolition and construction of new buildings**

After the Certificate Date the Tenant must not demolish and/or construct any new buildings upon the Premises unless it first:-

- 4.6.3.1 obtains and complies with any necessary consents of the Competent Authority;
- 4.6.3.2 makes an application to the Landlord for consent, supported by drawings and where appropriate a specification in duplicate;
- 4.6.3.3 pays the reasonable and proper fees of the Landlord and its respective professional advisers;
- 4.6.3.4 enters into any covenants the Landlord requires as to the execution of the alterations; and
- 4.6.3.5 obtains the consent of the Landlord, whose consent may not be unreasonably withheld or delayed.

In the case of any works of a substantial nature, the Landlord may require the Tenant to provide, before starting the works, reasonable evidence that it has the financial resources to complete the works.

#### **4.6.4 *Connection to the Conduits***

Except in the course of the Works, the Tenant must not make any connection with the Conduits which serve the Premises together with other land owned by the Landlord otherwise than in accordance with plans and specifications approved by the Landlord, whose approval may not be unreasonably withheld or delayed, and subject to consent to make the connection having previously been obtained from the Competent Authority, undertaker or supplier.

#### **4.7 *Aerials***

The Tenant must not erect any pole or mast on the Premises after the Certificate Date, whether in connection with telecommunications or otherwise.

#### **4.8 *Statutory obligations***

##### **4.8.1 *General provision***

The Tenant must comply in all respects with the requirements of any statutes, and any other obligations so applicable imposed by law or by any byelaws, applicable to the Premises or the trade or business for the time being carried on there.

##### **4.8.2 *Particular obligations***

###### **4.8.2.1 *Works required by statute, department or authority***

Without prejudice to the generality of Clause 4.8.1, the Tenant must execute all works and provide and maintain all arrangements on or in respect of the Premises or the use to which they are being put that are required in order to comply with the requirements of any statute already or in the future to be passed, or the requirements of the Competent Authority, regardless of whether such requirements are imposed on the owner, the occupier, or any other person.

###### **4.8.2.2 *Acts causing losses***

Without prejudice to the generality of Clause 4.8.1, the Tenant must not do in or near the Premises anything by reason of which the Landlord may incur any losses under any statute.

#### **4.9 Entry to inspect and notice to repair**

##### **4.9.1 Entry and notice**

After the Certificate Date the Tenant must permit the Landlord on reasonable notice during normal business hours except in emergency:-

- 4.9.1.1 to enter the Premises to ascertain whether or not the covenants and conditions of this Lease have been observed and performed,
- 4.9.1.2 to view the state of repair and condition of the Premises, and to open up floors and other parts of the Premises where that is necessary in order to do so, and
- 4.9.1.3 to give to the Tenant, or notwithstanding Clause 7.4 leave on the Premises, a notice (**'a Notice to Repair'**) specifying the works required to remedy any breach of the Tenant's obligations in this Lease as to the repair and condition of the Premises,

PROVIDED THAT any opening up must be made good by and at the cost of the Landlord if it reveals no breach of the terms of this Lease and the Landlord shall not cause any nuisance or disturbance or cause any unnecessary damage to the Premises in the exercise of such rights.

##### **4.9.2 Works to be carried out**

The Tenant must carry out the works specified in a Notice to Repair immediately, including making good any opening up that revealed a breach of the terms of this Lease.

##### **4.9.3 Landlord's power in default**

If within 1 month of the service of a Notice to Repair the Tenant has not started to execute the work referred to in that notice or is not proceeding diligently with it, or if the Tenant fails to finish the work within 2 months the Tenant must permit the Landlord to enter the Premises to execute the outstanding work, and must within 28 days of a written demand pay to the Landlord the cost of so doing and all expenses incurred by the Landlord, including legal costs and surveyor's fees.

#### **4.10 Alienation**

In this Clause 4.10-

4.10.1 "**Premium**" means the amount or value of the consideration for a surrender of this Lease to the Landlord by the Tenant and shall be the value attributable to the Buildings at the date of the Tenant's Offer referred to in Clause 4.10.3 below;

4.10.2 "**Disposal**" means either:-

- 4.10.2.1 an assignment of the whole of the Premises by the Tenant; or
- 4.10.2.2 an underletting of the whole of the Premises for a term equal to or greater than 15 years.

- 4.10.3 Prior to any Disposal the Tenant shall give written notice to the Landlord of its desire to dispose of the Premises together with full and accurate particulars of the proposed asking terms including the amount of any premium and/or rent and simultaneously shall make a written offer to the Landlord to surrender this Lease with vacant possession on the first Working Day after the expiration of the period of three months after the date of the offer at the Premium or such earlier date as shall subsequently be agreed between the parties (**"the Tenant's Offer"**).
- 4.10.4 In the case of the assignment of the whole, the Tenant's Offer shall include the premium agreed for the assignment and which shall be split to show the amount or value (exclusive of VAT) attributed to the Buildings and the amount or value (exclusive of VAT) of the land forming the Premises.
- 4.10.5 In the case of an underletting of the whole of the Premises for a term equal to or greater than 15 years, the Tenant's Offer shall include a valuation of the Buildings and a valuation of the land forming the Premises prepared by a surveyor with at least 10 years post-qualification experience and experience of valuing buildings and land similar to the Premises.
- 4.10.6 If the Landlord wishes to accept the Tenant's Offer the Landlord shall:-
- 4.10.6.1 within fifteen Working Days of receiving the Tenant's Offer serve on the Tenant a notice (**"the Section 38A Notice"**) in accordance with sections 38A(4) of the 1954 Act as amended by article 22 of the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 (**"the Order"**); and
- 4.10.6.2 within ten Working Days of the Landlord serving the Section 38A Notice or within five Working Days of receiving from the Tenant a statutory declaration in accordance with Clause 4 of schedule 4 to the Order (whichever is the later) serve on the Tenant written acceptance of the Tenant's Offer (**"the Landlord's Acceptance"**).
- 4.10.7 If the Landlord shall accept the Tenant's Offer the following conditions of sale shall apply:-
- 4.10.7.1 the estate and interest of the Tenant in the Premises shall be surrendered by the Tenant with full title guarantee subject to the Standard Commercial Property Conditions current at the date of the Tenant's Offer so far as they are applicable to and not inconsistent with or varied (expressly or impliedly) by these conditions of sale provided that no deposit shall be payable by the Landlord;
- 4.10.7.2 the surrender shall be completed on the first Working Day after the expiration of the period of three months after the date of the Tenant's Offer or on such earlier date as may be agreed between the parties in writing;
- 4.10.7.3 the surrender shall be on the footing that the tenant knows of no overriding interest affecting the Tenant's estate and interest in the Premises other than those disclosed in the Tenant's Offer and those apparent on inspection;

4.10.7.4 completion of the surrender shall not prejudice the rights of the Landlord in respect of arrears of rent or the rights of either party in respect of any antecedent breach of covenant or default under this Lease.

***4.10.8 Alienation prohibited***

The Tenant must not hold the Premises on trust for another. The Tenant must not part with possession of the Premises or any part of the Premises or permit another to occupy them or any part of them except pursuant to a transaction permitted by and effected in accordance with the provisions of this Lease.

***4.11 Assignment, subletting and charging of part***

Save as permitted under Clause 4.12 to 4.13 the Tenant must not assign underlet or charge part only of the Premises.

***4.12 Assignment or charge of the whole before and charge of the whole after the Certificate Date***

**4.12.1 Assignment, charge or underletting of the whole before the Certificate Date**

The Tenant must not assign, charge or underlet the whole or any part of the Premises before the Certificate Date.

**4.12.2 Charge of the whole after the Certificate Date**

On or after the Certificate Date, the Tenant must not charge the whole of the Premises without the consent of the Landlord which may not be unreasonably withheld or delayed.

***4.12.3 Assignment of the whole after the Certificate Date***

On or after the Certificate Date, and subject to Clause 4.10 and subject to Clause 4.12.5, the Tenant must not assign the whole of the Premises without the consent of the Landlord, whose consent may not be unreasonably withheld or delayed.

***4.12.4 Conditions precedent for assignment of the whole***

4.12.4.1 Not (save by way of an assignment of the whole of the Premises in accordance with the provisions of this Clause 4.12 and subject to the expiry of the period referred to in Clause 4.10.6) to assign the whole of the Premises or any part thereof.

4.12.4.2 Not at any time during the Term to assign the whole of the Premises (a) unless the Tenant has first made the Tenant's Offer and the Landlord has not served the Section 38A Notice and the Landlord's Acceptance within the period specified in Clauses 4.10.6.1 and 4.10.6.2 (b) outside the period of eight months from the date of service of the Tenant's Offer (c) for a consideration less than the Premium specified in the Tenant Offer to the party which shall have made the offer the details of which were provided to the Landlord and on terms no less beneficial to the Tenant than the terms of such offer and (d) without having obtained within three months prior thereto the consent in writing of the Landlord (which consent shall not be unreasonably withheld or delayed) to assign the whole of the Premises provided that the Landlord shall

be entitled (for the purposes of section 19(1A) of the Landlord and Tenant Act 1927:-

- 4.12.4.2.1 to withhold its consent in any of the circumstances set out in Clause 4.12.4.4; and
- 4.12.4.2.2 to impose all or any of the matters set out in Clause 4.12.5 as a condition of granting its consent.
- 4.12.4.3 The provisos to Clause 4.12.4.2 shall operate without prejudice to the right of the Landlord to withhold such consent on any other ground or grounds where such withholding of consent would be reasonable or to impose any further condition or conditions upon the grant of consent where the imposition of such condition or conditions would be reasonable.
- 4.12.4.4 The circumstances referred to in Clause 4.12.4.2.1 are as follows:-
  - 4.12.4.4.1 where in the reasonable opinion of the Landlord the Assignee together with any surety is not of sufficient financial standing to enable it to comply with the tenant's covenants in this Lease throughout the residue of the Term;
  - 4.12.4.4.2 where the Assignee is not (in the case of corporation) registered or (in any other case) resident in the United Kingdom of Great Britain and Northern Ireland except where it is resident or registered in a country or member of the European Union or European Free Trade Association or any other country which has reciprocal judgement enforcement procedures with that of the United Kingdom of Great Britain and Northern Ireland;
- 4.12.5 The conditions referred to in Clause 4.12.4.2.2 are as follows:-
  - 4.12.5.1 where reasonably required by the Landlord the execution and delivery to the Landlord prior to the assignment in question of a deed of guarantee being an authorised guarantee agreement within section 16 of the 1995 Act in favour of the Landlord for the purpose of the guaranteeing the covenants of the Assignee;
  - 4.12.5.2 the payment to the Landlord of all rents which have fallen due and have been properly demanded under this Lease prior to the date of the assignment to the Assignee and which are not in dispute; and
  - 4.12.5.3 if so reasonably required by the Landlord the execution and delivery to the Landlord prior to the assignment in question by a surety or sureties (but not more than two) reasonably acceptable to the Landlord of a deed of guarantee guaranteeing the covenants of the Assignee.

### **4.13 Underletting**

- 4.13.1 Not to underlet the whole of the Premises for a term equal to or greater than 15 years
  - (a) unless the Tenant has first made the Tenant's Offer and the Landlord has not served the Section 38A Notice and the Landlord's Acceptance within the period specified in Clauses 4.10.6.1 and 4.10.6.2
  - (b) outside the period of eight months from the date of service of the Tenant's offer
  - (c) on terms different to those as set out in the Tenant's Offer
  - (d) unless the undertenant has entered into a deed of covenant in such form as the Landlord reasonably requires with the Landlord under which the



undertenant covenants with the Landlord to comply with the Tenant's covenants in this Lease.

4.13.2 Not to underlet the whole or any part of the Premises for a term less than 15 years unless the undertenant has, prior to such underletting commencing, entered into a deed of covenant in the same form as provided in Clause 4.13.1 above in so far as the obligations relate to the part of the Premises that are subject to the underletting.

4.13.3 Notwithstanding the aforementioned provisions of this Clause 4.13 the Tenant may, without consent, underlet the whole or any part of the Premises to any group company (as defined by section 42 of the 1954 Act) provided such company remains a group company of the Tenant.

#### **4.13.4 Licences**

The Tenant may grant licences to individuals or organisations to occupy part of the Premises to provide services complementary to the Permitted Use provided that no relationship of landlord and tenant is created. The consent of the Landlord is not required for the grant of these licences.

#### **4.13.5 Registration of permitted dealings**

Within 28 days of any assignment, or charge or any transmission or other devolution relating to the Premises, the Tenant must produce a certified copy of any relevant document for registration with the Landlord's solicitor, and must pay the Landlord's solicitor's reasonable charges for registration.

### **4.14 Nuisance and residential restrictions**

#### **4.14.1 Nuisance**

The Tenant must not do anything on the Premises, or allow anything to remain on them that may be or become or cause a nuisance, or, injury or damage to the Landlord or its tenants or the owners or occupiers of adjacent or neighbouring premises.

#### **4.14.2 Costs of applications, notices and recovery of arrears**

The Tenant must pay to the Landlord all reasonable and proper costs, fees, charges, disbursements and expenses including, without prejudice to the generality of the above, those payable to counsel, solicitors, surveyors and bailiffs properly and reasonably incurred by the Landlord in relation to or incidental to:-

4.14.2.1 every application made by the Tenant for a consent or licence required by the provisions of this Lease, whether it is granted or lawfully refused or offered subject to any lawful qualification or condition or the application is withdrawn unless the refusal, qualification or condition is unlawful, whether because it is unreasonable or otherwise,

4.14.2.2 the reasonable and proper contemplation, preparation and service of a notice under the Law of Property Act 1925 Section 146, or by reason or the reasonable and proper contemplation of proceedings under Sections 146 or 147 of that Act, even if forfeiture is avoided otherwise than by relief granted by the court,

- 4.14.2.3 the recovery or attempted recovery of arrears of rent or other sums due under this Lease, and
- 4.14.2.4 any steps taken in contemplation of or in connection with the preparation and service of a schedule of dilapidations during or after the end of the Term.

#### **4.15 Planning and development**

##### ***4.15.1 Compliance with the Planning Acts***

The Tenant must observe and comply with the provisions and requirements of the Planning Acts affecting the Premises and their use, and must indemnify the Landlord, and keep him indemnified, both during the Term and following the end of it, against all losses in respect of any contravention of those Acts.

##### ***4.15.2 Permissions and notices***

The Tenant must at its expense obtain any planning permissions and serve any notices that may be required to carry out any development on or at the Premises by the Tenant after the Certificate Date.

##### ***4.15.3 Charges and levies***

Subject only to any statutory direction to the contrary, the Tenant must pay and satisfy any charge or levy that may be imposed under the Planning Acts in respect of the carrying out or maintenance of any development by the Tenant on or at the Premises after the Certificate Date.

##### ***4.15.4 Pre-conditions for development***

Notwithstanding any consent that may be granted by the Landlord under this Lease, the Tenant must not at any time after the Certificate Date carry out any development on or at the Premises until any necessary notices under the Planning Acts have been served and any necessary permissions under the Planning Acts have been obtained.

##### ***4.15.5 Completion of development***

Where a condition of any planning permission granted for development begun before the end of the Term requires works to be carried out to the Premises by a date after the end of the Term, the Tenant must, unless the Landlord agrees otherwise, finish those works before the end of the Term.

#### **4.16 Plans, documents and information**

##### ***4.16.1 Evidence of compliance with this Lease***

If reasonably so requested, the Tenant must produce to the Landlord or the Surveyor any plans, documents and other evidence the Landlord reasonably requires to satisfy himself that the provisions of this Lease have been complied with.

#### **4.17 Indemnities**

The Tenant must keep the Landlord fully indemnified against all losses arising directly or indirectly out of any act, omission or negligence of the Tenant, or any persons at the Premises expressly or impliedly with its authority and under the Tenant's control, or any breach or non-observance by the Tenant of the covenants,

conditions or other provisions of this Lease or any of the matters to which this demise is subject.

#### **4.18 Obstruction and encroachment**

##### **4.18.1 Encroachments**

The Tenant must take all reasonable steps to prevent the construction of any new window, light, opening, doorway, path, passage, pipe or the making of any encroachment or the acquisition of any easement in relation to the Premises and must notify the Landlord immediately if any such thing is constructed, encroachment is made or easement acquired, or if any attempt is made to construct such a thing, encroach or acquire an easement. At the request of the Landlord the Tenant must adopt such means as are reasonably required to prevent the construction of such a thing, the making of any encroachment or the acquisition of any easement.

#### **4.19 Yielding up**

At the end of the Term howsoever determined the Tenant must yield up the Premises with vacant possession, decorated and repaired in accordance with and in the condition required by the provisions of this Lease, give up all keys of the Premises to the Landlord, remove tenant's fixtures and fittings if requested to do so by the Landlord, and remove all signs erected by the Tenant or any of its predecessors in title in, on or near the Premises, immediately to make good any damage caused by their removal.

#### **4.20 Interest on arrears**

The Tenant must pay interest on any of the sums due under this Lease that are not paid within 14 days of the date due, whether formally demanded or not. Nothing in this Clause entitles the Tenant to withhold or delay any payment of the sums due under this Lease or affects the rights of the Landlord in relation to any non-payment.

#### **4.21 Statutory notices**

The Tenant must give full particulars to the Landlord of any notice, direction, order or proposal relating to the Premises made, given or issued to the Tenant by any Competent Authority within 7 days of receipt, and if so requested by the Landlord must produce it to the Landlord. The Tenant must without delay take all necessary steps to comply with the notice, direction or order. At the request of the Landlord, but at its own cost, the Tenant must make or join with the Landlord in making any objection or representation the Landlord deems expedient against or in respect of any notice, direction, order or proposal.

#### **4.22 Keyholders**

The Tenant must ensure that at all times the Landlord has written notice of the name, home address and home telephone number of at least 2 keyholders of the Premises.

#### **4.23 Defective premises**

The Tenant must give notice to the Landlord of any defect in the Premises that might give rise to an obligation on the Landlord to do or refrain from doing anything in

order to comply with the provisions of this Lease or the duty of care imposed on the Landlord, whether pursuant to the Defective Premises Act 1972 or otherwise, and must at all times display and maintain any notices the Landlord from time to time reasonably requires him to display at the Premises.

#### **4.24 Exercise of the Landlord's rights**

The Tenant must permit the Landlord to exercise any of the rights granted to him by virtue of the provisions of this Lease at all times during the Term without interruption or interference.

#### **4.25 The Permitted Use and Keep Open**

4.25.1 The Tenant must not at any time on or after the Certificate Date use the Premises other than for the Permitted Use.

4.25.2 The Tenant must keep parts of the Premises, particularly the art galleries and ancillaries, open and available for enjoyment by the public (subject to payment of an admission fee not exceeding the Affordable Fee) every day during the Term save:

4.25.2.1 Christmas Day and seasonal breaks agreed with Hastings Borough Council (each party to act reasonably in respect of such agreement);

4.25.2.2 where closure is requisite for:

4.25.2.2.1 works of maintenance, repair, decoration or alterations to be undertaken at the Premises including demolition and reconstruction of any building upon the Premises; or

4.25.2.2.2 removing, rehanging, installing or setting up works of art for exhibition or similar gallery activities; or

4.25.2.3 where such opening is not possible due to unforeseen circumstances or circumstances beyond the reasonable control of the Tenant including acts of God and other events of force majeure.

#### **4.26 Charges for Admission**

4.26.1 The Tenant must provide the inhabitants of the Borough of Hastings with reduced admission fees to the facilities and for exhibitions within the Building and which shall be below the level then set for the Affordable Fee.

4.26.2 Prior to any increase in the fee or fees for admission to the facilities and for exhibitions within the Building that may be necessary due to any or all of the following circumstances:-

4.26.2.1. in order to comply with a requirement of HM Revenue & Customs; and/or

4.26.2.2 rises in the rate of inflation;

the Tenant must consult with the Landlord and take into account any reasonable representations made by the Landlord in respect of such increase PROVIDED THAT any new fee or fees for admission to the facilities and for exhibitions within the Building must still be an Affordable Fee.

## 5 QUIET ENJOYMENT

- 5.1 The Landlord covenants with the Tenant to permit the Tenant peaceably and quietly to hold and enjoy the Premises without any interruption or disturbance from or by the Landlord or any person claiming under or in trust for him.

## 6 FORFEITURE

- 6.1 If and whenever after the Certificate Date the Tenant commits a material breach of any covenant or other term of this Lease the Landlord may at any time re-enter the Premises or any part of them in the name of the whole, even if any previous right of re-entry has been waived and thereupon the Term is to cease absolutely but without prejudice to any rights or remedies that may have accrued to the Landlord against the Tenant in respect of any breach of covenant or other term of this Lease, including the breach in respect of which the re-entry is made.

- 6.2 If and whenever after the Certificate Date:-

- 6.2.1 the Tenant, being an individual, becomes subject to a bankruptcy; or
- 6.2.2 the Tenant, being a company, enters into liquidation whether compulsory or voluntary--but not if the liquidation is for amalgamation or reconstruction of a solvent company--or enters into administration or has a receiver appointed over all or any part of its assets; or
- 6.2.3 the Tenant enters into or makes a proposal to enter into any voluntary arrangement pursuant to the Insolvency Act 1986 or any other arrangement or composition for the benefit of its creditors

the Landlord shall have three months from the date it receives notice of the circumstances in either Clause 6.2.1, 6.2.2, or 6.2.3 above to serve notice on the Tenant ("**the Landlord's Notice**") requiring the Tenant to surrender this Lease for a premium being the open market value of the Buildings as at the date of the Landlord's Notice as calculated by a surveyor with at least 10 years post-qualification experience and experience of valuing buildings and land similar to the Premises it being agreed that the value of the land forming the Premises will be a peppercorn.

- 6.3 The conditions of sale as set out in Clause 4.10.7 of this Lease shall apply to the completion of the surrender.

## 7 MISCELLANEOUS

### 7.1 Exclusion of warranty as to use

- 7.1.1 Nothing in this Lease or in any consent granted by the Landlord under this Lease is to imply or warrant that the Premises may lawfully be used under the Planning Acts for the Permitted Use.

### 7.2 Exclusion of third party rights

- 7.2.1 Nothing in this Lease is intended to confer any benefit on any person who is not a party to it.

### 7.3 Representations

7.3.1 The Tenant acknowledges that this Lease has not been entered into in reliance wholly or partly on any statement or representation made by or on behalf of the Landlord, except any such information statement or representation expressly set out in this Lease or made by the Landlord's solicitors to the Tenant's solicitors in connection with the grant of this Lease.

## **7.4 Notices**

### **7.4.1 Form and service of notices**

A notice under this Lease must be in writing and, unless the receiving party or its authorised agent acknowledges receipt, is valid if, and only if:-

7.4.1.1 it is given by hand, sent by registered post or recorded delivery, or sent by fax provided a confirmatory copy is given by hand or sent by registered post or recorded delivery on the same day, and

7.4.1.2 it is served:-

7.4.1.2.1 where the receiving party is a company incorporated within Great Britain, at the registered office,

7.4.1.2.2 where the receiving party is the Tenant, and the Tenant is not such a company, at the Premises, and

7.4.1.2.3 where the receiving party is the Landlord and the Landlord is not such a company, at the Landlord's address shown in this Lease or at any address specified in a notice given by the Landlord to the Tenant.

### **7.4.2 Deemed delivery**

#### **7.4.2.1 By registered post or recorded delivery**

Unless it is returned through the Royal Mail undelivered, a notice sent by registered post or recorded delivery is to be treated as served on the third working day after posting whenever and whether or not it is received.

#### **7.4.2.2 By fax**

A notice sent by fax is to be treated as served on the day upon which it is sent, or the next working day where the fax is sent after 1600 hours or on a day that is not a working day, whenever and whether or not it or the confirmatory copy is received unless the confirmatory copy is returned through the Post Office undelivered.

### **7.4.3 Joint recipients**

If the receiving party consists of more than one person a notice to one of them is notice to all.

## **7.5 Landlord's powers as a local authority**

7.5.1 Nothing expressed or implied in this Lease affects or limits the powers, duties and obligations of the Landlord in the exercise of its functions as a local government authority or local planning authority.

7.5.2 Nothing done by the Landlord in the proper exercise of its rights, powers, duties and obligations in the exercise of its functions as a local government authority or local

planning authority is to place it in breach of any obligation undertaken by the Landlord with the Tenant under this Lease.

#### **7.6 No restriction on retained lands**

Nothing herein contained or implied shall impose or be deemed to impose any restriction on the use of any land or give the Tenant the benefit of or the right to enforce or to have enforced or permit the release or modification of any covenant agreement or condition entered into by a purchaser from or by any tenant or occupier of the Landlord in respect of property not comprised in the Premises or to prevent or restrict in any way the development of any land not comprised in the Premises.

#### **7.7 Landlord's Break Clause**

The Landlord may determine this Lease in the event that the Tenant is in default of Clauses 4.1.1 or 4.1.2 of this Lease by giving not less than three months' written notice to that effect to the Tenant and this Lease shall determine immediately on expiry of such provided that the Tenant remains in default of Clauses 4.1.1. or 4.1.2 and the Tenant shall provide vacant possession of the Premises but without prejudice to any rights either party may have against the other for any antecedent breach PROVIDED ALWAYS that this Clause shall cease to apply after the date that the Works have been completed in accordance with Schedule 3 and the Certificate Date has passed.

#### **7.8 Option to Renew**

7.8.1 If the Tenant wishes to take a further lease of the Premises from the end of the Term, and at any time after the end of the ninety fifth year of the Term gives the Landlord not less than 6 months' notice before the expiry of the Term of that wish, then, the Landlord must grant to the Tenant a further lease of the Premises for a term of ninety nine years commencing on and including the day following the last ay of the Term, on the same terms and conditions as this Lease except as to the Rent and this option for a further Lease.

7.8.2 The initial rent reserved by the further lease is to be the yearly rent at which the land forming the Premises might reasonably be expected to be let on the open market at the date of the further lease but disregarding any rent that may be payable for the Buildings upon the Premises at that time and the rent payable under the further lease is to be reviewed every ten years during the term of the further lease.

#### **7.9 Disputes**

7.9.1 If at any time hereafter any dispute doubt or question shall arise between the Landlord and the Tenant touching the construction meaning or effect of terms and conditions of this Lease (with the exception of the provisions of Schedule 3 of this Lease) or their respective rights and liabilities under this Lease or otherwise in relation to the Premises every such dispute doubt or question shall (except where otherwise expressly provided) be referred to arbitration within the meaning of the Arbitration Act 1996 in manner following:-

7.9.1.1 disputes on the construction or interpretation of this Lease shall be referred to Conveyancing Counsel to be appointed by agreement of the parties or failing

agreement within seven days to be appointed by the President for the time being of the Law Society;

7.9.1.2disputes on matters other than the construction or interpretation of this Lease shall be referred to a surveyor to be appointed by agreement of the parties or failing agreement within seven days to be appointed by the President for the time being of the Royal Institution of Chartered Surveyors; and

7.9.1.3disputes as to whether a dispute falls within Clause 7.9.1.1 or Clause 7.9.1.2 shall be referred to Conveyancing Counsel appointed in accordance with the provision Clause 7.9.1.1 above.

## **7.10 New lease**

7.10.1 This Lease is a new tenancy for the purposes of the 1995 Act Section 1.

**IN WITNESS** whereof the parties to this Lease have caused their respective Common Seals to be hereunto affixed the day and year first before written.



## SCHEDULE 1 PART 1: THE RIGHTS RESERVED

1. The right to exercise any of the rights granted to the Landlord elsewhere in this Lease.
2. The right of support and protection for the adjoining land owned by the Landlord at the date of this Lease from the Premises.
3. A right to enter on giving reasonable written notice (except in the case of emergency) on the Premises with vehicles (on unbuilt parts only) or without vehicles workmen or necessary equipment for the purpose of any operation or thing connected with the cleansing maintenance alteration repair replacement and renewal of the adjoining land owned by the Landlord at the date of this Lease and/or any Conduits serving the same and/or any building from time to time thereon **PROVIDED THAT** the Landlord or those persons authorized by it cause as little damage and disturbance as reasonably possible and make good any damage caused to the Premises as soon as reasonably practicable thereafter to the Tenant's reasonable satisfaction.

## SCHEDULE 1 PART 2: THE RIGHTS GRANTED

1. A right of way with or without vehicles at all times over the accessway between the Premises and Rock-A-Nore shown coloured orange on the Plan **PROVIDED THAT** the Landlord shall be permitted to temporarily suspend the right of way during the course of work of repair or maintenance that may be required to the accessway from time to time during the Term subject always to the Landlord making an alternative right of way available during the period of such suspension and making the period of suspension for as minimum a period as reasonably practicable.
2. A right to lay, retain and maintain conduits and to pass through such conduits in over or under the area shown green on the Plan;
3. A right to use and drain into the soakaways located on the adjoining land owned by the Landlord at the date of this Lease;
4. A right to enter on giving reasonable written notice (except in the case of emergency) and with the Landlord's consent as to the time and date of such entry (except in the case of emergency) (such consent not to be unreasonably withheld or delayed) on the adjoining land owned by the Landlord at the date of this Lease with or without vehicles workmen or necessary equipment for the purpose of any operation or thing connected with the cleansing maintenance alteration repair replacement and renewal of the Premises and any building from time to time thereon **PROVIDED THAT** the Tenant or those persons authorized by it cause as little damage and disturbance as reasonably possible and make good any damage caused to the adjoining land owned by the Landlord as soon as reasonably practicable thereafter

## **SCHEDULE 2: THE WORKS**

### SCHEDULE 3: PROVISIONS RELATING TO THE WORKS

IN this Schedule the following expressions (where the context so admits) shall have the following meanings:

Adjoining Owners means all owners and occupiers of any Adjoining Property;

Adjoining Property means any premises abutting or near to the Premises and includes all roads footpaths walls (including retaining walls) fences buildings and any other structures as well as all pipes wires cables and other apparatus on such premises;

Adverse Rights means all (if any) rights of light and air and other rights and easements whatever (including any rights and easements in respect of the Apparatus) and all (if any) other restrictions enjoyed over the Premises by any Adjoining Property;

Apparatus means all (if any) Conduits and other apparatus on the Premises serving any Adjoining Property or belonging to or used for the purposes of the undertaking of any statutory undertaker;

Approvals means the Planning Permission and all other approvals, consents, permissions, licences and certificates of any local or other competent authority, which may, from time to time, be necessary to enable the Tenant lawfully to commence and carry out the Works (and if the Works are destroyed or damaged to reinstate the same) and, where any such documents are varied, relaxed or waived with the consent of

the Landlord pursuant to the provisions of this Lease such documents as so varied, relaxed or waived;

**Architect** shall mean HAT Projects Limited or such other person firm or company as may be appointed by the Tenant from time to time to be the architect for the purpose of carrying out the Development;

**Certificate of Ready for Use** means the certificate issued by the Landlord pursuant to Clause 14.4.1 of this Schedule;

**Consents** means, in relation to any Adverse Rights or Apparatus which would or might be interfered with by the carrying out of the Works, for which agreement is required to undertake the Works the written agreement of all of the Adjoining Owners and of other persons entitled to or interested in any of the Adverse Rights or (as the case may be) the written consent of the relevant undertaker either to the carrying out of the Works, notwithstanding such interference, or to the removal or diversion (whether temporarily or permanently) of the Apparatus or any of the Adverse Rights and, where such agreement or consent is varied with the consent of the Landlord pursuant to this Lease, such agreement or consent as varied;

**Contractors Warranty** means a deed of warranty from the Works Contractor materially in the form attached in schedule 5 with such reasonable amendments as approved by the Landlord acting reasonably;

**Defects Notice** means a notice, served by the Landlord and/or the Surveyor pursuant to Clause 14.4.2 of this

Schedule specifying the Relevant Defect in the Works and the Remedial Measures to cure them;

#### Delaying Factors

means a delay which the Tenant having used its reasonable endeavours is not able to prevent caused by one or more of the factors below:-

- exceptionally adverse weather conditions;
- civil commotion;
- the exercise, after the date of this Lease, by the United Kingdom Government, of any statutory power, which directly affects the execution of the Works by restricting the availability or use of labour, which is essential to the proper carrying out of the Works or preventing the Tenant or the Works Contractor from or delaying the Tenant or the Works Contractor in, securing such goods or materials or such fuel or energy as is essential to the proper carrying out of the Works;
- the carrying out by a local authority or statutory undertaker of work in pursuance of its statutory obligations in relation to the Works or the failure to carry out such work;
- the destruction of or damage to the Works by any of the Insured Risks in respect of which the Tenant has complied with its obligations under Clause 16 of this Schedule;
- non-availability of any labour, goods or materials required for any of the Works by reason of any circumstances beyond the control of the Tenant and the Works Contractor, which were not foreseeable at the date of this Lease;

and any which were not foreseeable at the date of this Lease;

Development	shall mean the construction of an art gallery on the Premises together with the associated services and utilities, landscaping and car parking in accordance with the Planning Permission;
Documents	means all documents relating to and required for the Works including, without limitation, plans, drawings, specifications, elevations, sections, calculations, bills of quantities, guarantees, operating manuals, methods of construction, programmes, surveys and other data and, where such documents are varied or modified in accordance with this Lease those documents as so varied or modified;
Planning Permission	shall mean the planning permission (Ref:HS/FA/09/00576) granted by the Local Planning Authority on 16 December 2009 granting permission to build the Development on the Premises;
Practical Completion	means the date specified in the Certificate of Ready for Use;
Professional Team	means any quantity surveyor, structural engineer, mechanical and electrical services engineer and other professional advisers, who are, from time to time, appointed by the Tenant or by the Works Contractor in connection with the Works;
Ready for Use	means that the Development has reached Practical Completion and is sufficiently renovated, re-furnished equipped, fitted out, tested, commissioned, that all certificates, approvals and consents are in place (including fire certificates if applicable) such that in all respects the Development is ready to be occupied by members of the public;

Relevant Defect	means any one or more defects in the Works, which are specified in a Defects Notice under the provisions of this Lease;
Remedial Measures	means the measures, specified in a Defects Notice, required to cure the defects specified in such notice;
Works Contract	means any contract for the carrying out of the Works to be entered into by the Tenant with the Works Contractor;
Works Contractor	means any contractor employed by the Tenant in connection with the Works including, for the avoidance of doubt, the principal building contractor.

1. As soon as reasonably practicable (but in any event not later than the Works Commencement Date) at the Tenant's own cost to commence the Works and (subject as hereinafter provided) thereafter diligently to carry out the Works upon the Premises so that Practical Completion of the Works is no later than the Works Completion Date.

## 2. DESIGN

- 2.1 In the event that such matters have not been carried out by the date of this Lease, as soon as reasonably practicable following the date of this Lease the Tenant shall submit the detailed design of the Development and a development programme to the Landlord. The detailed design shall satisfy in all respects all the conditions of the Planning Permission. The design shall be submitted to the Landlord for its agreement which shall not be unreasonably withheld or delayed but shall be unconnected with and not fettered by the Landlord's role as a planning authority. Once agreed by the Landlord the detailed design shall be known as the "Design". The Tenant may not materially amend or vary the Design without the Landlord's written consent but shall draw to the Landlord's attention any matter connected with the Design which, if unaltered, would render the Development defective or not in accordance with the Planning Permission or this Lease.

## 3 APPROVALS

- 3.1 The Tenant shall:-



- 3.1.1 obtain all Approvals, which are, from time to time, necessary for the Development;
- 3.1.2 procure that none of the Approvals are revoked and that all Approvals continue in full force and effect;
- 3.1.3 not, without the consent of the Surveyor apply for or agree to any material variation, relaxation or waiver of any Approval (whether obtained before or after the date of this Lease) or of any condition attached to any such Approval.

#### **4 CONSENTS OF ADJOINING OWNERS**

- 4.1 If the Works cannot be carried out without interfering with an Adverse Right or with any Apparatus, the Tenant shall obtain as soon as practicable all necessary Consents and shall pay such compensation as may be required for the giving of any such Consent.
- 4.2 The Tenant will not do or permit or suffer to be done on the Premises in carrying out the Works anything which might:-
  - 4.2.1 be or become a danger or nuisance to any Adjoining Owners or to members of the public generally;
  - 4.2.2 cause damage to any Adjoining Property or to any Apparatus; or
  - 4.2.3 (unless permitted by a Consent, and then only in accordance with the terms of that Consent) interfere with any Adverse Rights or Apparatus
  - 4.2.4 and the Tenant shall at its own expense, in carrying out the Works take all necessary measures and precautions to avoid any such danger, nuisance, damage or interference.

**PROVIDED FURTHER THAT** if the Tenant shall cause or suffer or permit to be caused any damage to any Adjoining Property it shall make good such damage immediately

#### **5 DOCUMENTS**

- 5.1 The Tenant shall prepare or cause to be prepared the Documents in such form and manner as are likely to obtain the grant of the Approvals and to comply with and bring about the grant of the Consents before and throughout the course of the carrying out of the Works.

#### **6 WORKS CONTRACTOR**

- 6.1.1 The Tenant shall:-
  - 6.1.2 be responsible for the selection and employment of the Works Contractor
  - 6.1.3 enter into a Works Contract, subject to obtaining the Approvals, Consents and otherwise as provided in this Lease with the Works Contractor;
  - 6.1.4 The Tenant shall at its own expense procure that there shall be delivered to the Landlord, as soon as practicable after execution of the Works Contract and in any

event within three months of such execution, a Contractor's Warranty executed by the Works Contractor;

- 6.1.5 If the Works Contract determines, the Tenant shall not enter into any other contract with any person for the carrying out of the Works, unless there has first been delivered to the Landlord a Contractor's Warranty duly executed by such person.

## **7 PROFESSIONAL TEAM**

- 7.1.1 The Tenant shall be responsible for the appointment of a Professional Team either directly or as sub-consultants to the Works Contractor.

- 7.1.2 The Tenant shall ensure that the Professional Team are suitably reputable and competent to carry out the services for which they are appointed.

## **8 MATERIALS**

- 8.1 If the Tenant is unable, despite using all reasonable endeavours to obtain any of the materials referred to in the Documents (and/or the Works Contract) or if they shall not be procurable within a reasonable time to substitute for them alternative materials of no lesser quality.

- 8.2 Notwithstanding anything to the contrary contained or implied elsewhere in this Lease, the Tenant shall not use, on or in connection with the Works, any materials:-

- 8.2.1 which are not approved or not recommended by or otherwise not in accordance with the current British Standards Specifications and Codes of Practice or in accordance with good building practice, (so far as they may be applicable to the Works); or

- 8.2.2 which are or are generally known to be of deleterious, hazardous, unsatisfactory, unsuitable, unhealthy, harmful or unsafe quality to the integrity of the buildings.

## **9 RISK**

The Tenant shall take the Premises in its condition at the date hereof and shall execute all necessary demolition, site clearance, sealing of public and private drains and Conduits.

## **10 CARRYING OUT THE WORKS**

- 10.1 The Tenant shall procure that all necessary Approvals and Consents have been obtained prior to the commencement of the Works.

- 10.2 The Tenant shall use all reasonable endeavours to carry out and execute the Works or procure that the Works are carried out:-
- 10.2.1 in a good and workmanlike manner and in accordance with good building practice;
  - 10.2.2 with good and suitable materials;
  - 10.2.3 in accordance with the Design, the Documents the Works Contract and the Approvals and Consents;
  - 10.2.4 in compliance with the Planning Permission and other obligations under the Planning Acts and other statutory provisions applicable to the Works;
  - 10.2.5 in compliance with all orders and regulations made under or deriving validity from them and any requirements and codes of practice of local authorities and competent authorities affecting the Works and/or the Premises;
  - 10.2.6 without infringement of any rights, reservations, covenants, restrictions, stipulations or other encumbrances binding on or affecting the Premises;
  - 10.2.7 with all due diligence and expediency; and
  - 10.2.8 otherwise in accordance with this Lease such that the Development shall be Ready for Use by the Works Completion Date.
- 10.3 The Tenant shall use all reasonable endeavours to procure that until the Certificate Date:-
- 10.3.1 the Premises are at all times secured as fully as may reasonably be practicable against unauthorised entry (including, without limitation, against unauthorised entry by children);
  - 10.3.2 no advertisements, posters, placards or signs be affixed to or displayed from or on the boundaries of the Premises (other than those giving the names of the Tenant and the roles played by the Works Contractor, the Landlord and the Professional Team and/or advertising the proposed use of the Premises after the Certificate Date) without the consent of the Landlord:-.
  - 10.3.3 no earth, clay, gravel, sand or other minerals be removed from the Premises, otherwise than may be necessary to enable the Works to be carried out;
  - 10.3.4 unauthorised structures or materials are removed from the Premises;
  - 10.3.5 the Premises be kept tidy and properly cleared of surplus materials, rubble, rubbish or waste and no goods or materials be deposited or stored on the Premises, which are not required within a reasonable time for the carrying out of the Works;
  - 10.3.6 proper provision be made for the support and use of any land, walls, structures, buildings, roads and footpaths upon, adjacent or near to the Premises and which are affected by the Works;
  - 10.3.7 all Conduits not required for servicing the Development, within or outside the Premises, are properly sealed, disconnected, stopped-up, diverted or removed, as necessary; proper protection, support and shelter is provided for all Conduits

facilitating the Development and that all requisite measures are taken to ensure that such Conduits are not damaged;

- 10.3.8 all necessary measures and precautions are taken to protect the Works from damage by the Insured Risks;
- 10.3.9 if applicable hoardings be erected around the Premises in a secure manner and all reasonable safety and other measures be taken to prevent damage and injury and that there be kept to a minimum nuisance, inconvenience, disturbance, interference or damage to owners and occupiers of neighbouring properties, (including, without limitation, of Adjoining Property) and members of the public;
- 10.3.10 good efficient and well maintained plant and equipment be used for the carrying out of the Works;
- 10.3.11 wheel cleansing equipment for construction and other vehicles accessing the Premises is installed and used whenever necessary;
- 10.3.12 proper arrangements be made with the supply authorities for the provision of water, gas, electricity, telephone and other services required for the carrying out of the Works;
- 10.3.13 unsatisfactory or unsuitable materials be replaced and defective workmanship remedied, whether or not at the instance of the Landlord or its professional advisers;
- 10.3.14 buildings, structures and retaining walls near to the Premises are not damaged by the Works Contractor;
- 10.3.15 any roads and accessways near to the Premises are not obstructed or damaged and that any such obstruction is removed immediately or any such damage made good immediately;
- 10.3.16 any roads near to the Premises are kept clear of mud, materials and debris and that they are cleansed of such mud, materials and debris resulting from the Works daily or otherwise as often as may be necessary or required by the Landlord;
- 10.3.17 ground water is not pumped on to any roads near to the Premises;
- 10.3.18 the Works are properly supervised at all times;
- 10.3.19 any building operation which may cause excessive noise or disturbance is only carried out between the hours of 8:00 a.m. to 6:00 p.m. Monday to Friday and only at the weekend on prior agreement with the Landlord or during such other hours as may be permitted by the Planning Permission;
- 10.3.20 the Works and the Premises are maintained in good repair and condition;
- 10.3.21 no crane is erected or placed on the Premises without first submitting a written application to the Landlord for such purpose, accompanied by a general arrangement plan showing its proposed siting and the relevant radii of its gibs and without first obtaining the Landlord's approval of such application and, if such approval is granted, ensuring that evidence of satisfactory public indemnity insurance of the crane operator or licensee is produced to the Landlord prior to operation of such crane and that the crane is positioned in such a manner that should a jib collapse, it will not fall on a public highway or road near to the Premises;

- 10.3.22 at Practical Completion the Premises be left in full repair and in good condition cleared of all unused building materials, plant and equipment used in the Works and temporary structures;
- 10.3.23 during the carrying out of the Works the Premises are not used or occupied for any purpose other than for carrying out of the Works; and
- 10.3.24 the Landlord be notified immediately if any articles of value or of historic or prehistoric interest are discovered in the course of carrying out the Works and so that (subject to the rights of the Crown or any other party properly claiming rights) the Landlord shall have the sole property in such articles and they shall be dealt with as the Landlord shall direct.
- 10.4 The Tenant shall promptly notify the Landlord of any notices received by the Tenant, (whether from any local or other competent authority or from any of the Adjoining Owners) relating in any way to the Works and to supply a copy of every such notice to the Landlord within five Working Days of receipt of the same.
- 10.5 The Tenant shall keep the Landlord and its professional advisers reasonably informed of:-
- 10.5.1 material measures taken and stages reached by the Tenant in performing its obligations;
- 10.5.2 the progress of the Works; and
- 10.5.3 material problems or delays affecting the Works
- and shall supply promptly to the Landlord and the Surveyor copies of all minutes and other written records of site and other relevant meetings, of reports given by the Professional Team and of all relevant certificates, (whether or not the Landlord and/or the Surveyor attend each site or other relevant meetings).

## **11 REVIEW OF THE WORKS**

- 11.1. The Tenant shall procure that:-
- 11.1.1. the Surveyor is given a monthly update of the progress of the Works; and
- 11.1.2. the Surveyor may at any reasonable time by prior appointment enter upon the Premises accompanied by a representative of the Tenant and having regard to the restrictions at the Premises due to the ongoing works in order to view the state and progress of the Works but the Surveyor shall not, in the exercise of their rights under this subclause, unnecessarily or unreasonably interfere with the carrying out of the Works
- 11.2 If the Surveyor considers that any Works have not been or are not being carried out in accordance with this Lease and at any time, serve on the Tenant and on the Architect a notice specifying the Relevant Defects in the Works the Tenant shall immediately upon service of such notice, at its own expense ensure all Remedial Measures are taken.

- 11.3 If the Remedial Measures shall not have commenced within fifteen Working Days after service of a Defects Notice or if the Tenant otherwise fails diligently to carry out and complete the same the Landlord may (but without prejudice to any other right or remedy of the Landlord in respect of such failure) itself carry out and complete the Remedial Works or cause the same to be carried out and completed and all costs and expenses incurred by the Landlord in so doing will be repaid by the Tenant to the Landlord on demand with Interest.

PROVIDED ALWAYS that no test or inspection of the Works by the Surveyor or any failure or omission by the Surveyor to serve a Defects Notice will, in any way, affect or lessen the obligations of the Tenant under this Lease.

## 12 INDEMNITY

- 12.1 The Tenant shall indemnify the Landlord against all liability whatever in respect of loss of life, personal injury or loss of or damage to property, however caused, arising out of or attributable to any breach by the Tenant of any provision of this Schedule or to any negligent or otherwise wrongful act or default of the Tenant in connection with the carrying out of the Works or otherwise.

## 13 DELAY IN COMPLETING THE WORKS

- 13.1 If on one or more occasions, the carrying out of the Works is delayed and the delay is notified in writing to the Landlord and to the Surveyor by the Architect, as being in the Architect's reasonable opinion attributable to any Delaying Factor, then on each such occasion and subject to Clause 13.2 below, the Tenant will be allowed such extension of time for carrying out the Works as shall be certified by the Architect and agreed by the Surveyor as being fair and reasonable in the circumstances. In such circumstances the Works Completion Date shall be amended accordingly. The Tenant shall not under any circumstances be entitled to any loss, expense, compensation or other prolongation costs from the Landlord as a result of any delay whether a Delaying Factor or otherwise. For the avoidance of doubt the Tenant shall not be entitled to extensions of time for any reason other than a Delaying Factor or other than may have been agreed by the Landlord acting in its absolute discretion.
- 13.2 The Landlord and the Tenant shall use all reasonable endeavours to mitigate the effect of any Delaying Factor.

## 14 COMPLETION OF THE WORKS

The Tenant shall complete the Works in accordance with this Lease and such that the Development is Ready for Use by the Works Completion Date.

- 14.1 When the Works are complete and the Development is, in the reasonable opinion of the Tenant and the Architect, Ready For Use the Architect shall issue a certificate to the Landlord stating the same (**the "Tenant's Certificate"**).

- 14.2 In determining whether the Works are Ready For Use, the Landlord will have due regard to, (but will not be bound by), whether the following conditions shall have been fulfilled, namely that:-
- 14.2.1 the Architect has given the Landlord and the Surveyor not less than ten Working Days notice of the date on which it intends to issue the Tenant's Certificate;
- 14.2.2 the Architect has had due regard to all representations made to it by the Landlord and the Surveyor before the date of intended issue by the Architect of the Tenant's Certificate; and
- 14.2.3 a copy of the Tenant's Certificate has been supplied to the Landlord and the Surveyor within three Working Days of the date of its issue.
- 14.3 Within twenty Working Days of actually receiving the Tenant's Certificate under Clause 14.3 above, the Landlord or the Surveyor shall serve on the Tenant:-
- 14.3.1 a notice that it or they are satisfied that the Development is Ready for Use in accordance with this Lease ("**the Certificate of Ready for Use**"); or
- 14.3.2 a notice that it or they are not so satisfied that the Development is Ready for Use and specifying the Relevant Defects and the Remedial Measures.
- 14.4 If the Landlord or the Surveyor shall fail to serve any notice whatever on the Tenant in accordance with Clause 14.3 then the Landlord and the Surveyor shall be deemed to be satisfied that the Works have been completed in accordance with this Lease.
- 14.5 If the Landlord or the Surveyor serves a Defects Notice, pursuant to Clause 14.3.2, then the Tenant shall as soon as practicable and with all due diligence complete the Works and remedy any defects in compliance with the Defects Notice issued under Clause 14.3.2 and on completion of the same it shall reissue its Tenant's Certificate and the provisions of Clauses 14.1 – 14.5 shall be repeated as often as necessary.
- 14.6 On the termination of this Lease for whatever reason prior to the date of Practical Completion the Landlord shall have the right to require the Tenant to assign (insofar as it lawfully can) to the Landlord or to whom it shall direct all the benefit and interest of the Tenant in any Works Contract and agreements with the Professional Team and any sub-contract, guarantees, warranties and ancillary contracts or licences which the Tenant may have entered into in respect of the Development and the Tenant shall use all reasonable endeavours to provide the assignee with privity of contract with such parties or contractors to enable the Landlord to procure the completion of the Development but without prejudice to any other rights of action that the Landlord may have against the Tenant and provided that the Landlord shall be at liberty:-
- 14.6.1 to cause or procure the completion of the Development with such person or persons and in such manner as the Landlord shall see fit; and
- 14.6.2 to require the Tenant at the Landlord's request and cost to join in any actions or proceedings brought by the Landlord in respect of the same.

14.7 On termination of this Lease for whatever reason prior to the date of Practical Completion the Tenant shall procure, insofar as it lawfully can, that copyright in the Documents shall be assigned to and thereafter vest in the Landlord.

## **15 LIMITATION OF THE TENANT'S LIABILITY**

15.1.1 The Tenant will not be relieved of liability for breach of its obligations under this Schedule by:-

15.1.2 the issue of the Tenant's Certificate or the Certificate of Ready for Use;

15.1.3 the absence of objection by the Landlord and/or the Surveyor to the issuing of any certificate;

15.1.4 the performance by the Works Contractors of their obligations with respect to defects liability under the Works Contract; or

15.1.5 the successful prosecution of a claim against the Works Contractors or any member of the Professional Team.

15.2 The agreement, consent, certification or approval by the Landlord or the Surveyor or any appointee of the Landlord to any matter where:-

15.2.1 this Lease provides that such must be sought or obtained; and/or

15.2.2 the Tenant seeks such agreement voluntarily

shall not under any circumstances limit, diminish, obviate or reduce the Tenant's obligation and liability to design and construct the Development in accordance with this Lease.

15.3 Further, and for the avoidance of doubt, in the event that the Landlord, the Surveyor or any person appointed by the Landlord provides any assistance, proffers an opinion or gives advice to the Tenant the same shall not diminish or limit the Tenant's obligations under this Lease and in particular shall not detract from the Tenant's obligations under the terms of this Lease.

## **16 INSURANCE**

From the date of commencement of the Works until the Certificate Date the Tenant shall insure or cause to be insured in accordance with terms of insurance approved by the Landlord (such approval not to be unreasonably withheld).

## **17 DISPUTES**

17.1 In the event that the Tenant and the Landlord are in dispute as to whether:-

17.1.1 the Development is Ready for Use; or

17.1.2 a Delaying Factor has occurred; or

17.1.3 a Defects Notice should properly have been served; or



- 17.1.4 the time by which the Works Completion Date should be extended as a result of a Delaying Factor; or
- 17.1.5 the Remedial Measures or time specified in a Defects Notice are appropriate in the circumstances; or
- 17.1.6 the non-approval or refusal by the Landlord of any application by the Tenant for approval to any matter was reasonable in the circumstances

then the parties shall use their reasonable endeavours to resolve the matter amicably between them. For the purposes of this Clause all reasonable endeavours shall include (but shall not be limited to) the attendance by the parties and their professional advisers at meetings, the escalation of the dispute to Chief Officers of the respective organisations and producing documents reasonably requested by the other party.

- 17.2 If the dispute remains unresolved the matter shall be referred to an independent person acting as expert and the decision of such an independent person shall be final and binding. The expert shall be appointed at the parties' joint expense and shall have been qualified in respect of the general subject matter of the dispute or difference for not less than ten years and shall be a specialist in relation to such subject matter and if the parties are unable to agree the identity or professional qualification of the expert an application may be made by either party to the president for the time being of the Royal Institution of Chartered Surveyors for a referral. The expert shall be bound to make his decision within 3 weeks of a referral to him and shall take into account in reaching his decision any documents produced by either party, all the circumstances surrounding the dispute, any oral and/or written representations and submissions of the Parties and/or a site visit if he considers the same would assist.

#### **SCHEDULE 4: THE SUBJECTIONS**

This Demise is subject to any restrictions stipulations and covenants (so far as they relate to the Premises and are still subsisting and capable of taking effect) contained to or referred to in the registers of Title Number HT6185.

**SCHEDULE 5**

*Form*

*of*

*Contractor's*

*warranty*



**THE COMMON SEAL** of )  
**HASTINGS BOROUGH COUNCIL** was )  
hereunto affixed in the presence of:- )

Authorised Signatory

SIGNED as a DEED on behalf of )  
**GALLERIUM ESTABLISHMENT** )  
a company incorporated in Liechtenstein )  
by )  
being a person who, in accordance with the )  
laws of that territory, is acting under the )  
authority of the company )

Authorised Signatory