

7 November 2000

WIND DRIFT LIMITED

SHAFTESBURY REAL ESTATE MANAGEMENT LIMITED

MYCHAND LIMITED

ARCHON/PPM L.L.C.

W9/PPM L.L.C.

CAUSEWAY INTERNATIONAL LIMITED

TIGER FINANCE CORP.

ARCHON GROUP L.P.

WHITEHALL STREET REAL ESTATE LIMITED PARTNERSHIP IX

TRILLIUM INVESTMENTS GP LIMITED

MANISH CHANDE

MARTIN MYERS

TRANSFER AGREEMENT



CERTIFIED A TRUE AND COMPLETE
COPY OF THE ORIGINAL

Freshfields Bruckhaus Deringer

FRESHFIELDS BRUCKHAUS DERINGER
65 Fleet Street
London EC4Y 1HS



FRESHFIELDS BRUCKHAUS DERINGER

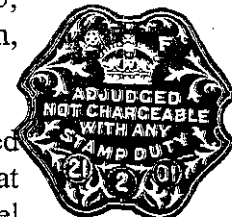
CONTENTS

CLAUSE	PAGE
1. INTERPRETATION	4
2. TRANSFER OF THE SHARES AND CONSIDERATION	6
3. CONDITIONS PRECEDENT	7
4. COMPLETION.....	8
5. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS	12
6. INDEMNITIES	15
7. ENTIRE AGREEMENT	16
8. VARIATION	16
9. ASSIGNMENT.....	17
10. ANNOUNCEMENTS	17
11. COSTS	17
12. SEVERABILITY	17
13. COUNTERPARTS	17
14. WAIVERS	17
15. FURTHER ASSURANCE	18
16. NO RIGHTS UNDER CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	18
17. NOTICES.....	18
18. GUARANTEES	21
19. GOVERNING LAW	22
20. JURISDICTION AND SERVICE OF PROCESS	22
21. ACKNOWLEDGEMENT OF NO INDEBTEDNESS.....	182
22. WRITTEN MEMBERS' RESOLUTION	186

THIS AGREEMENT is made on 7 November 2000

BETWEEN:

- (1) **WIND DRIFT LIMITED**, an international business company incorporated under the laws of the British Virgin Islands, with registered number 292683, whose registered office is at TrustNet Chambers, PO Box 3444, Road Town, Tortola, British Virgin Islands (*Wind Drift*);
- (2) **SHAFTESBURY REAL ESTATE MANAGEMENT LIMITED**, a limited company incorporated under the laws of Jersey, whose registered office is at PO Box 124, Langtry House, La Motte Street, St. Helier, Jersey, Channel Islands (*Shaftesbury*);
- (3) **MYCHAND LIMITED**, a private company limited by shares incorporated under the laws of England and Wales, with registered number 3470901, whose registered office is at 24 Bedford Row, London WC1R 4HA (*Mychand*);
- (4) **ARCHON/PPM L.L.C.**, a limited liability company formed under the laws of the state of Delaware, USA whose registered office is at The Corporation Trust Company, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801, USA (*Archon*);
- (5) **W9/PPM L.L.C.**, a limited liability company formed under the laws of the state of Delaware, USA, whose registered office is at The Corporation Trust Company, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801, USA (*W9*);



together referred to as the *Transferors* and each being a *Transferor*;

- (6) **CAUSEWAY INTERNATIONAL LIMITED**, an international business limited company incorporated under the laws of the British Virgin Islands, with registered number 134138, whose registered office is at PO Box 3444, Columbus Centre Building, Wickhams Cay, Road Town, Tortola, British Virgin Islands (*Causeway*);
- (7) **TIGER FINANCE CORP.**, a company incorporated under the laws of the British Virgin Islands, whose registered office is at Trident Trust Company (BVI) Limited, PO Box 146, Road Town, Tortola, British Virgin Islands (*Tiger Finance*);
- (8) **ARCHON GROUP, LP**, a limited partnership established under the laws of the state of Delaware, USA, whose principal office is at 600E. Las Colinas Boulevard, Suite 400, Irving, Texas, USA (*Archon Group*);
- (9) **WHITEHALL STREET REAL ESTATE LIMITED PARTNERSHIP IX**, a limited liability partnership established under the laws of the state of Delaware, USA, whose principal office is at 85 Broad Street, New York, NY 10004, USA (*Whitehall*);

AS WITNESS this Agreement has been signed on behalf of the Parties the day and year first before written.

SIGNED by)
duly authorised for and on behalf of)
WIND DRIFT LIMITED)

SIGNED by)
duly authorised for and on behalf of)
SHAFTESBURY REAL ESTATE)
MANAGEMENT LIMITED)

SIGNED by)
duly authorised for and on behalf of)
MYCHAND LIMITED)

SIGNED by)
duly authorised for and on behalf of)
ARCHON/PPM L.L.C.)

SIGNED by)
duly authorised for and on behalf of)
W9/PPM L.L.C.)

SIGNED by)
duly authorised for and on behalf of)
CAUSEWAY INTERNATIONAL)
LIMITED)

- (10) **TRILLIUM INVESTMENTS GP LIMITED**, a private company limited by shares incorporated under the laws of England and Wales, with registered number 3487308, whose registered office is at Bastion House, 140 London Wall, London EC2Y 5BN (**TIGP**);
- (11) **MANISH CHANDE** of 36 Park Hill Road, London NW3 2YP; and
- (12) **MARTIN MYERS** of 1 Durham Place, London SW3 4ET.

WHEREAS:

(A) TIGP is the general partner of Trillium Investments Limited Partnership (**TILP**), a limited partnership registered under the Limited Partnerships Act 1907 with registered number LP005664 and formed pursuant to an Agreement of Limited Partnership dated 23 December 1997, as amended and restated and as currently existing pursuant to a Second Amended and Restated Agreement of Limited Partnership dated 27 July 1999 (the **Partnership Agreement**).

(B) Wind Drift, Shaftesbury, Archon and W9 (the **Old Partners**) are each limited partners in TILP and have, respectively, each incorporated wholly-owned subsidiaries as follows:

- (i) Megaworld Technology Limited, an international business company limited by shares and incorporated under the laws of the British Virgin Islands under number 414376 whose registered office is at TrustNet Chambers, P.O. Box 3444, Road Town, Tortola, British Virgin Islands (**WDriftSub**);
- (ii) Shaftesbury Properties Limited, a limited company incorporated under the laws of the Cayman Islands under number CR-105449 whose registered office is at c/o Maples and Calder, Ugland House, P.O. Box 309, George Town, Grand Cayman (**ShaftesburySub**);
- (iii) Archon/PPM CI, a limited company incorporated under the laws of the Cayman Islands under number CR-105448 whose registered office is at c/o Maples and Calder, Ugland House, P.O. Box 309, George Town, Grand Cayman (**ArchonSub**); and
- (iv) W9/PPM CI, a limited company incorporated under the laws of the Cayman Islands under number CR-105447 whose registered office is at c/o Maples and Calder, Ugland House, P.O. Box 309, George Town, Grand Cayman (**W9Sub**),

WDriftSub, ShaftesburySub, ArchonSub and W9Sub together being referred to as the **New Partners** and each being a **New Partner**.

(C) Mychand Central LP Limited, a private company limited by shares incorporated under the laws of England and Wales, with registered number 3487631, whose registered office is at 24 Bedford Row, London WC1R 4HA (**Mychand**

Central) is also a limited partner in TILP (Mychand Central, together with the New Partners being referred to as the *Limited Partners* and each being a *Limited Partner*).

(D) Accordingly, each Transferor holds shares in a Limited Partner as set out in Schedule 1 to this Agreement.

(E) It is proposed that TIGP (acting as general partner of TILP), Shaftesbury, Wind Drift, Mychand Limited, Archon, W9 and Mychand Central will enter into (1) a guaranty in favour of Whitehall (the *Guaranty*); (2) together with Whitehall, a pledge and security agreement (the *Pledge and Security Agreement*) and (3) together with Whitehall and Goldman, Sachs & Co., a securities account control agreement (the *Securities Account Agreement*), each on or about the date of this Agreement, under which each of these entities will grant security in favour of Whitehall over the accounts to be opened with the Goldman Sachs brokerage in New York in the name of TIGP as security for a loan to be advanced from Whitehall to TIGP (as general partner of TILP) pursuant to a promissory demand note to be executed by TIGP (as general partner of TILP) on or about the date of this Deed (the *Promissory Demand Note*) and guarantee the obligation of TIGP (acting as general partner of TILP) to repay the such loan.

(F) It is proposed that each of the Old Partners shall transfer its partnership interests in TILP to its relevant New Partner, pursuant to an assignment of partnership interests to be dated the date of this Agreement (the *Partnership Assignments*).

(G) Accordingly, following completion of such assignments of partnership interests, each of the Limited Partners will be limited partners in TILP.

(H) TIGP currently holds one special preference share or one special share in each of the Old Partners, Mychand Central and the New Partners.

(I) Each of Causeway, Mychand, Tiger Finance and Archon Group owns one special preference share of £1 in the capital of TIGP.

(J) Each Transferor wishes to transfer its shares in the relevant Limited Partner to TIGP in exchange for shares in the capital of TIGP and the Transferors have accordingly agreed to transfer their shares in the Limited Partners to TIGP for the consideration and otherwise upon the terms and subject to the conditions set out in this Agreement.

(K) It is intended that the Transferors enter into a shareholders' agreement (being the Shareholders' Agreement defined below) relating to TIGP, which agreement will become effective on completion of the acquisition of the Limited Partners by TIGP and which will govern the relationship between the Transferors as shareholders in TIGP thereafter.

IT IS AGREED as follows:

INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires, the following terms and expressions shall have the following meanings:

Affiliate means, with respect to any person, (i) any other person that, directly or indirectly, controls, or is controlled by, or is under common control with, such person, (ii) any other person owning or controlling 25 per cent. or more of the outstanding voting securities of such person, (iii) any other person 25 per cent. or more of whose outstanding voting securities are owned or controlled directly or indirectly by such person and (iv) any officer, director, member or partner of such person and any body corporate for which such person acts in any such capacity, and for these purposes, **control**, when used with respect to any person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms **controlling** and **controlled** shall be construed accordingly;

Business Day means a day (excluding Saturdays) on which banks generally are open in London or in New York for the transaction of normal banking business;

Completion means completion of the transfer and acquisition of Shares under this Agreement;

Conditions Precedent means the conditions specified in clause 3.1;

Consideration Shares means, in relation to each Transferor, that number and class of shares in the capital of TIGP which is set against such Transferor's name in Schedule 2;

Costs means liabilities, losses, damages, costs (including legal costs) and expenses (including taxation), in each case of any nature whatsoever;

Final Dividend means, in relation to Mychand Central, the dividend or other distribution to be declared and paid as referred to in clause 3.1;

Group means, in relation to any person, any holding company from time to time of that person, any subsidiary from time to time of that person or of any such holding company and any Affiliate from time to time of that person;

Guarantors means Manish Chande and Martin Myers, each being a **Guarantor**;

holding company and **subsidiary** shall each be construed in accordance with sections 736 and 736A of the Companies Act 1985;

Inter-Company Loan Agreement means the inter-company loan agreement, to be dated the date of this Agreement, between Mychand Central (as lender) and Mychand (as borrower) to establish a loan facility having an aggregate principal amount equal to £1,285,602;

LPMPA means the Law of Property (Miscellaneous Provisions) Act 1994;

Mychand Tax Liabilities means any liability of Mychand Central that would, but for clause 3(a) of the relevant Tax Indemnity, give rise to a valid claim under clause 2.1(a) of that Tax Indemnity;

New TIGP Articles means the articles of association of TIGP in the agreed form as set out in Schedule 3 to be adopted at Completion;

Parties means the parties to this Agreement and **Party** shall be construed accordingly;

Partnership Interest means, in relation to each Limited Partner, the entire interest of such Limited Partner in TILP from time to time and all rights appurtenant thereto, including the cumulative aggregate amount contributed as capital or advanced as a loan under the Partnership Agreement or otherwise to TILP by such Limited Partner and the right of such Limited Partner to any and all benefits as provided in the Partnership Agreement, together with the obligations of such Limited Partner to comply with all the terms and provisions of the Partnership Agreement;

Percentage Interest shall have the meaning given in the Partnership Agreement;

security interest means any security interest of any nature whatsoever including, without limitation, any mortgage, charge, pledge, lien, assignment by way of security or other encumbrance;

Shareholders' Agreement means the shareholders' agreement relating to TIGP between the Transferors, to be dated the date of this Agreement, which agreement will become effective at Completion and a copy of which in the agreed form is set out in Schedule 4;

Shares means, in relation to each Transferor, the number and class of shares set against that Transferor's name in the fourth column of Schedule 1 in the capital of the relevant Limited Partner set against such Transferor's name in the second column of Schedule 1;

Tax Indemnities means the tax indemnities, to be dated the date of this Agreement, copies of which in the agreed form are set out in Schedule 5, each being a **Tax Indemnity**; and

TIGP Members means the holders of shares in the capital of TIGP, being Archon Group, Causeway, Mychand, Tiger Finance and Whitehall.

1.2 In this Agreement, unless the context otherwise requires:

- (a) references to **persons** shall include individuals, companies, corporations, bodies corporate (wherever incorporated), unincorporated associations, trusts and partnerships (wherever formed or established);
- (b) the **headings** are inserted for convenience only and shall not affect the construction of this Agreement;
- (c) references to one **gender** include all genders and references to the **singular** include the plural and vice versa;

- (d) any reference to an *enactment* or statutory provision is a reference to it as it may have been, or may from time to time be, amended, modified, consolidated or re-enacted;
- (e) any reference to a document *in the agreed form* is to the form of the relevant document agreed between the Parties and set out in a Schedule to this Agreement or for the purpose of identification initialled by each of them or on their behalf;
- (f) references to any *English legal term* for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any other legal concept shall, in respect of any jurisdiction other than England, be deemed to include the legal concept which most nearly approximates in that jurisdiction to the English legal term;
- (g) references to *clauses*, *Schedules* and *Recitals* are to clauses of, and schedules and recitals to, this Agreement; and
- (h) Wind Drift Shares, Mychand Central Shares, Shaftesbury Shares, Archon Shares and Whitehall Shares shall bear the respective meanings given thereto in Schedule 1.

1.3 The Schedules and Recitals form part of this Agreement and shall have the same force and effect as if set out in the body of this Agreement and any references to this Agreement shall include the Schedules and Recitals to it.

TRANSFER OF THE SHARES AND CONSIDERATION

2.1 Each Transferor is the legal and beneficial owner of, and has the right to transfer legal and beneficial title to, the Shares set against such Transferor's name in the fourth column of Schedule 1 and each Transferor agrees to transfer to TIGP, and TIGP agrees to acquire and accept the transfer of, such Shares with effect from Completion.

2.2 The Shares shall be transferred by the relevant Transferors free from all security interests, options, equities, claims or other third party rights (including rights of pre-emption) of any nature whatsoever, together with all rights attaching to them including the right to receive in full and retain all dividends and distributions (other than the Final Dividend) declared, paid or made after the date of this Agreement.

2.3 Without prejudice to the generality of clause 2.2, the Mychand Central Shares shall also be transferred by Mychand on the terms that the same covenants shall be deemed to be given by Mychand on Completion in relation to such shares as are implied under Part I of the LPPMA where a disposition is expressed to be made with full title guarantee.

2.4 The total consideration for the transfer of the Shares shall be the allotment by TIGP to the relevant Transferors of the Consideration Shares (in accordance with Schedule 2) credited as fully paid provided however that if the amount equal to the Mychand Tax Liabilities is less than an amount equal to the value of any asset in the

form of (a) cash or (b) an interest-free loan repayable on demand owned unencumbered by Mychand Central immediately following Completion, TIGP shall pay in cash to Mychand an amount equal to such shortfall by way of additional consideration for the transfer of those Mychand Central Shares. The Consideration Shares shall have the respective rights set out in the New TIGP Articles to be adopted at Completion in accordance with clause 4.13 and shall carry the right to receive in full and retain (in accordance with their respective rights) all dividends and other distributions declared, made or paid by TIGP after the date of this Agreement.

2.5 Each of the Transferors hereby waives any and all rights or restrictions conferred on or available to it in respect of the transfer of Shares in accordance with this Agreement, whether arising under the memorandum or articles of association, or equivalent constitutional documents, of the relevant Limited Partner, the Partnership Agreement or otherwise.

CONDITIONS PRECEDENT

3.1 Completion of the transfer of the Shares in accordance with clause 2 shall be conditional upon the following conditions having been fulfilled:

- (a) Mychand Central having declared and paid to Mychand a dividend or other distribution, in either case, in accordance with all applicable laws not exceeding £23,000,000;
- (b) Mychand Central having entered into the Inter-Company Loan Agreement with Mychand;
- (c) Mychand Central having complied with the procedures set out in sections 155-158 of the Companies Act 1985 relating to the giving of financial assistance for the purpose of the acquisition of Shares in Mychand Central and for the purpose of the acquisition of Shares in Mychand Central's holding company, TIGP;
- (d) the transfer of the partnership interests in TILP of each of the Old Partners to the New Partners pursuant to the respective Partnership Assignments; and
- (e) the redemption or removal of the special shares held by TIGP in each of Wind Drift and Shaftesbury and the transfer of the Special Member's interest in each of Archon and W9.

3.2 Each of the Transferors undertakes to use its best endeavours to ensure that the Conditions Precedent are fulfilled, to the satisfaction of TIGP, as soon as reasonably practicable and in any event by 5.30 p.m. (New York time) on 7 November 2000.

3.3 Each of the Conditions Precedent shall be capable of amendment or waiver, in whole or in part only, by TIGP.

3.4 If any of the Conditions Precedent has not been fulfilled (or waived) on or before 5.30 p.m. (New York time) on 8 November 2000, this Agreement (other than clauses 7-14, 16, 17, 18 (but only in respect of any prior breach of this Agreement),

19 and 20) shall automatically terminate and no Party shall have any claim of any nature whatsoever against any other Party under this Agreement (save in respect of its accrued rights arising from any prior breach of this Agreement).

COMPLETION

General

4.1 The transfer and acquisition of the Shares shall be completed immediately following the fulfilment (or waiver) of the last of the Conditions Precedent to be fulfilled (or waived), or on such other date as may be agreed between the Transferors and TIGP.

4.2 The events referred to in the following provisions of this clause 4 shall take place on Completion.

WDriftSub Completion

4.3 Wind Drift shall deliver (or cause to be delivered) to TIGP or its appointed attorney or agent:

- (a) a duly executed transfer into the name of TIGP, or its nominee, in respect of all of the WDriftSub Shares, together with the relative share certificates;
- (b) an acknowledgement and waiver substantially in the agreed form set out in Schedule 6, duly executed by Wind Drift, to the effect that there is no indebtedness owing at Completion from WDriftSub to Wind Drift or any member of its Group;
- (c) a power of attorney substantially in the agreed form set out in Schedule 7 duly executed as a deed by Wind Drift;
- (d) an original deed of tax indemnity in the agreed form set out in part 1 of Schedule 5 duly executed by Wind Drift;
- (e) a copy of a written resolution of the sole director of Wind Drift (certified by a duly appointed officer as true and correct) authorising the execution of, and performance of its obligations under, this Agreement and each other document to which it is a party by Wind Drift;
- (f) all such other documents (including any necessary waivers of pre-emption rights or other consents) as may be required to enable TIGP and/or its nominee to be registered as the holder(s) of all of the WDriftSub Shares.

4.4 Wind Drift shall procure that resolutions of the board of directors of WDriftSub are passed by which the registration of the transfer in respect of all of the WDriftSub Shares referred to in clause 4.3 is approved.

Mychand Central Completion

4.5 Mychand shall deliver (or cause to be delivered) to TIGP or its appointed attorney or agent:

- (a) a duly executed transfer into the name of TIGP, or its nominee, in respect of all of the Mychand Central Shares, together with the relative share certificates;
- (b) an acknowledgement and waiver substantially in the agreed form set out in Schedule 6 duly executed by Mychand to the effect that there is no indebtedness owing at Completion from Mychand Central to Mychand or any member of its Group;
- (c) a power of attorney substantially in the agreed form set out in Schedule 7 duly executed as a deed by Mychand;
- (d) an original deed of tax indemnity in the agreed form set out in part 2 of Schedule 5 duly executed by Mychand;
- (e) a copy of a resolution of the board of directors of Mychand (certified by a duly appointed officer as true and correct) authorising the execution of, and performance of its obligations under, this Agreement and each other document to which it is a party by Mychand;
- (f) a copy of resolutions of the board of directors of Mychand Central (certified by a duly appointed officer as true and correct) in the agreed form, amongst other matters, declaring the Final Dividend in respect of Mychand Central;
- (g) a certified copy of the duly executed Inter-Company Loan Agreement; and
- (h) all such other documents (including any necessary waivers of pre-emption rights or other consents) as may be required to enable TIGP and/or its nominee to be registered as the holder(s) of all of the Mychand Central Shares.

4.6 Mychand shall procure that resolutions of the board of directors of Mychand Central are passed by which the registration (subject to its being duly stamped) of the transfer in respect of all of the Mychand Central Shares referred to in clause 4.5 is approved.

ShaftesburySub Completion

4.7 Shaftesbury shall deliver (or cause to be delivered) to TIGP or its appointed attorney or agent:

- (a) a duly executed transfer into the name of TIGP, or its nominee, in respect of all of the ShaftesburySub Shares;
- (b) an acknowledgement and waiver substantially in the agreed form set out in Schedule 6 duly executed by Shaftesbury to the effect that there is no indebtedness owing at Completion from ShaftesburySub to Shaftesbury or any member of its Group;

- (c) a power of attorney substantially in the agreed form set out in Schedule 7 duly executed as a deed by Shaftesbury;
- (d) an original deed of tax indemnity in the agreed form set out in part 3 of Schedule 5 duly executed by Shaftesbury;
- (e) a copy of a resolution of the board of directors of Shaftesbury (certified by a duly appointed officer as true and correct) authorising the execution of, and performance of its obligations under, this Agreement and each other document to which it is a party by Shaftesbury; and
- (f) all such other documents (including any necessary waivers of pre-emption rights or other consents) as may be required to enable TIGP and/or its nominee to be registered as the holder(s) of all of the ShaftesburySub Shares.

4.8 Shaftesbury shall procure that resolutions of the board of directors of ShaftesburySub are passed by which the registration of the transfer in respect of all of the ShaftesburySub Shares referred to in clause 4.7 is approved.

ArchonSub Completion

4.9 Archon shall deliver (or cause to be delivered) to TIGP or its appointed attorney or agent:

- (a) a duly executed transfer into the name of TIGP, or its nominee, in respect of all of the ArchonSub Shares;
- (b) an acknowledgement and waiver substantially in the agreed form set out in Schedule 6 duly executed by Archon to the effect that there is no indebtedness owing at Completion from ArchonSub to Archon or any member of its Group;
- (c) a power of attorney substantially in the agreed form set out in Schedule 7 duly executed as a deed by Archon;
- (d) an original deed of tax indemnity in the agreed form set out in part 4 of Schedule 5 duly executed by Archon;
- (e) a copy of a written consent of the board of managers of Archon (certified by a duly appointed officer as true and correct) authorising the execution of, and performance of its obligations under, this Agreement and each other document to which it is a party by Archon; and
- (f) all such other documents (including any necessary waivers of pre-emption rights or other consents) as may be required to enable TIGP and/or its nominee to be registered as the holder(s) of all of the ArchonSub Shares.

4.10 Archon shall procure that resolutions of the board of directors of ArchonSub are passed by which the registration of the transfer in respect of all of the ArchonSub Shares referred to in clause 4.9 is approved.

W9Sub Completion

4.11 W9 shall deliver (or cause to be delivered) to TIGP or its appointed attorney or agent:

- (a) a duly executed transfer into the name of TIGP, or its nominee, in respect of the entire W9Sub Shares;
- (b) an acknowledgement and waiver substantially in the agreed form set out in Schedule 6 executed by W9 to the effect that there is no indebtedness owing at Completion from W9Sub to W9 or any member of its Group;
- (c) a power of attorney substantially in the agreed form set out in Schedule 7 duly executed as a deed by W9;
- (d) an original deed of tax indemnity in the agreed form set out in part 5 of Schedule 5 duly executed by W9;
- (e) a copy of a written consent of the board of managers of W9 (certified by a duly appointed officer as true and correct) authorising the execution of, and performance of its obligations under, this Agreement and each other document to which it is a party by W9; and
- (f) all such other documents (including any necessary waivers of pre-emption rights or other consents) as may be required to enable TIGP and/or its nominee to be registered as the holder(s) of all of the W9Sub Shares.

4.12 W9 shall procure that resolutions of the board of directors of W9Sub are passed by which the registration of the transfer in respect of all of the W9Sub Shares referred to in clause 4.11 is approved.

Alteration of TIGP Share Capital and Adoption of New TIGP Articles

4.13 Upon compliance by the Transferors with their respective obligations set out in clauses 4.3 to 4.12, each of the TIGP Members undertakes with each other (with the intention that such undertakings shall be enforceable by TIGP) to procure that written resolution of TIGP in the agreed form as set out in Schedule 8 is adopted to increase and alter the share capital of TIGP and to adopt the New TIGP Articles in substitution for the existing articles of association of TIGP.

Obligations of TIGP at Completion and Shareholders' Agreement

4.14 Upon compliance by the Transferors and Causeway with their respective obligations under this clause 4, TIGP shall:

- (a) in satisfaction of its obligations in relation to the Consideration under clause 2.4, cause:
 - (i) the Consideration Shares to be allotted to the Transferors (in accordance with Schedule 2) credited as fully paid;

- (ii) each of the Transferors' names to be entered in the register of members as the holders of the relevant Consideration Shares allotted to them respectively; and
 - (iii) certificates in respect of the relevant Consideration Shares to be delivered to each of the Transferors; and
- (b) deliver to each of the Transferors a counterpart deed of tax indemnity in the agreed form set out in Schedule 5 duly executed by TIGP.

4.15 The Shareholders' Agreement shall come into full force and effect at Completion.

REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

5.1 Each Party acknowledges to the other Parties that each such other Party has entered into this Agreement in reliance upon the representations and warranties set out in this clause 5.

5.2 Each Party represents and warrants to each of the other Parties that:

- (a) other than in the case of the Guarantors, it is a body corporate duly incorporated (or, in the case of Archon and W9, is a limited liability company duly formed or, in the case of Archon Group LP, is a limited partnership duly formed), validly existing and in good standing (in jurisdictions where such expression is recognised) under the laws of its jurisdiction of incorporation or formation;
- (b) it has full power and authority to enter into this Agreement (and the other agreements entered into by or to be entered into by it in relation to this Agreement, including the Shareholders Agreement and the relevant Partnership Assignment, if any) and to perform its obligations under this Agreement (and such other agreements) and it has obtained all authorisations and all other applicable governmental, statutory, regulatory or other consents, clearances, approvals, licences, waivers or exemptions required to empower it to enter into and to perform its obligations under this Agreement (and the other agreements) and for this Agreement (and such other agreements) to be duly and validly authorised, executed and delivered by it;
- (c) this Agreement and the obligations expressed to be assumed by it under this Agreement are (assuming due authorisation, execution and delivery by the other Parties) legal and valid, binding upon it and enforceable against it; and
- (d) neither the execution and delivery of, nor the performance of its obligations under, this Agreement (or the other agreements as aforesaid) will contravene any provision of (i) any existing law, statute, order, treaty, rule or regulation applicable to it or (ii) its by-laws or other constitutional documents, operating agreement, limited liability company agreement or partnership agreement, as the case may be.

5.3 Each Transferor represents and warrants to TIGP and the other Transferors in the terms of paragraphs (a) to (f) below.

- (a) The Limited Partner in which the Transferor holds Shares (in the case of Mychand Central) or the Transferor (in any other case) is a limited partner in TILP and its Percentage Interest in TILP are as set out in the Partnership Agreement.
- (b) The Limited Partner in which the Transferor holds Shares (in the case of Mychand Central) or the Transferor (in any other case):
 - (i) is the sole legal and beneficial owner of its Partnership Interest;
 - (ii) has not transferred, sold, pledged, assigned, granted any security interest over or in respect of or otherwise disposed of all or any part of its Partnership Interest in TILP; and
 - (iii) has not withdrawn or resigned as a limited partner of TILP or redeemed or requested the redemption of its Partnership Interest.
- (c) Except as a limited partner in TILP, the Limited Partner in which the Transferor holds Shares:
 - (i) has not, since the date of its incorporation or formation (as appropriate), been engaged in any activity or venture or carried on any business of any nature whatsoever; and
 - (ii) does not own or have any interest of any nature whatsoever in any other person or entity.
- (d) The Limited Partner in which the Transferor holds Shares, has no assets (whether tangible or intangible) or liabilities (whether actual, contingent or disputed), in each case, of any nature whatsoever and whenever arising, other than, in the case of Mychand Central only:
 - (i) its Partnership Interest in TILP;
 - (ii) any **tax liability** (as defined in the relevant Tax Indemnity entered into by that Transferor pursuant to clause 4) arising in respect of any profits accruing or circumstances occurring up to Completion to the extent that a successful claim can be made under that relevant Tax Indemnity from that Transferor; and
 - (iii) cash or an interest-free loan repayable to Mychand Central on demand from Mychand.
- (e) The information set out against its name in the third and fifth columns of Schedule 1 in respect of the Limited Partner in which the Transferor holds Shares is true and accurate in all respects.

- (f) The Limited Partner in which the Transferor holds Shares is a body corporate duly incorporated, validly existing and in good standing (in jurisdictions where such expression is recognised) under the laws of its jurisdiction of incorporation or formation.

5.4 Each Transferor represents and warrants to TIGP and the other Transferors that:

- (a) the Shares set against its name in the fourth column of Schedule 1 comprise all of the issued shares in the capital of the relevant Limited Partner set against its name in the second column of Schedule 1 (other than any shares held by TIGP at the date of this Agreement);
- (b) it is the sole legal and beneficial owner of such Shares free from all security interests, options, equities, claims or other third party rights (including, without limitation, rights of pre-emption) of any nature whatsoever; and
- (c) upon completion of the transfer of such Shares to TIGP in accordance with the terms of this Agreement, TIGP shall acquire the full legal and beneficial interest in such Shares free from all security interests, options, equities, claims or other third party rights (including, without limitation, rights of pre-emption) of any nature whatsoever.

5.5 Each Transferor represents, warrants and undertakes to TIGP and the other Transferors that the Limited Partner in which it holds Shares is not, and, in the case of Mychand Central, following declaration and payment of the Final Dividend will not be, unable to pay its debts (within the meaning of section 123(1)(e) or section 123(2) of the Companies Act 1985).

5.6 Mychand undertakes to TIGP and the other Transferors that the Final Dividend to be declared and paid by Mychand Central in which it holds Shares as referred to in clause 3.1 shall be declared and paid in accordance with all applicable laws and will not exceed the amount set out in clause 3.1.

5.7 Mychand represents, warrants and undertakes to TIGP and the other Transferors that Mychand Central has, and following declaration and payment by Mychand Central of the Final Dividend will have, profits available for distribution (within the meaning of section 263 of the Companies Act 1985) at least equal to the amount at which its Partnership Interest is stated in its accounting records.

5.8 The representations and warranties of the Parties in this clause 5 (other than clauses 5.3(a), 5.3(b) and 5.9) shall be deemed to be repeated immediately before Completion with reference to the facts and circumstances then existing.

5.9 Each Transferor represents and warrants immediately before Completion to TIGP and the other Transferors in the terms of paragraphs (a) to (b) below.

- (a) The Limited Partner in which the Transferor holds Shares is a limited partner in TILP and its Percentage Interest in TILP are:

- (i) as set out in the Partnership Agreement in the case of Mychand Central; and
 - (ii) in the case of each New Partner, as set out in the Partnership Agreement against each Old Partner that is a Transferor of that New Partner.
- (b) The Limited Partner in which the Transferor holds Shares:
 - (i) is the sole legal and beneficial owner of its Partnership Interest;
 - (ii) has not transferred, sold, pledged, assigned, granted any security interest over or in respect of or otherwise disposed of all or any part of its Partnership Interest in TILP; and
 - (iii) has not withdrawn or resigned as a limited partner of TILP or redeemed or requested the redemption of its Partnership Interest.

INDEMNITIES

6.1 Each Transferor undertakes (without limiting any other rights of TIGP in any way) that, if there is a breach of any of the representations, warranties or undertakings given by it in clause 5, it shall pay in cash to TIGP (or, if so directed by TIGP, to the Limited Partner in question) on demand a sum equal to the aggregate of:

- (a) the amount which, if received by TIGP or the relevant Limited Partner, would be necessary to put TIGP or that Limited Partner into the financial position which would have existed had there been no breach of the representation, warranty or undertaking in question; and
- (b) all Costs suffered or incurred by TIGP or such Limited Partner, directly or indirectly, as a result of or in connection with such breach of representation, warranty or undertaking.

6.2 If any tax authority brings into charge to tax any sum paid to TIGP under clause 6.1 (including in circumstances where any tax relief is available in respect of such charge to tax), then the relevant Transferor shall pay such additional amount as shall be required to ensure that the total amount paid, less the tax chargeable on such amount (or that would be so chargeable but for such tax relief), is equal to the amount that would otherwise be payable under clause 6.1.

6.3 For the purposes of clause 6.2:

- (a) *tax* includes (without limitation) corporation tax, advance corporation tax, income tax (including income tax or amounts on account of income tax required to be deducted or withheld from or accounted for in respect of any payment), capital gains tax, inheritance tax, value added tax, national insurance contributions, capital duty, stamp duty, stamp duty reserve tax, duties of customs and excise, petroleum revenue tax, rates, all taxes, duties or charges replaced by or replacing any of them, and all other taxes on gross or

net income, profits or gains, distributions, receipts, sales, use, occupation, franchise, value added, and personal property, and all levies, imposts, duties, charges or withholdings in the nature of taxation, and any payment whatsoever which the relevant person may be or become bound to make to any person as a result of the discharge by that person of any tax which the relevant person has failed to discharge, together with all penalties, charges and interest relating to any of the foregoing or to any late or incorrect return in respect of any of them, and regardless of whether any such taxes, levies, duties, imposts, charges, withholdings, penalties and interest are chargeable directly or primarily against or attributable directly or primarily to the relevant person or any other person and of whether any amount in respect of any of them is recoverable from any other person; and

- (b) *tax relief* includes, unless the context otherwise requires, any allowance, credit, deduction, exemption or set-off in respect of any tax or relevant to the computation of any income, profits or gains for the purposes of any tax, or any repayment of or saving of tax (including any repayment supplement or interest in respect of tax).

ENTIRE AGREEMENT

7. This Agreement and the documents referred to in it sets out the entire agreement and understanding between the Parties in respect of the transfer and acquisition of the Shares in the Limited Partners. It is agreed that:

- (a) no Party has entered into this Agreement in reliance upon any representation, warranty or undertaking of any other Party which is not expressly set out or referred to in this Agreement;
- (b) a Party may claim in contract for breach of warranty under this Agreement but shall have no claim or remedy under this Agreement in respect of misrepresentation (whether negligent or otherwise, and whether made prior to, and/or in, this Agreement) or untrue statement made by any other Party; and
- (c) this clause shall not exclude any liability for fraudulent misrepresentation.

VARIATION

8.1 No variation of this Agreement (or of any of the documents referred to in this Agreement) shall be valid unless it is in writing and signed by or on behalf of each of the Parties to it. The expression "variation" shall include any variation, supplement, deletion or replacement however effected.

8.2 Unless expressly agreed, no variation shall constitute a general waiver of any provisions of this Agreement, nor shall it affect any rights, obligations or liabilities under or pursuant to this Agreement which have already accrued up to the date of variation, and the rights and obligations of the Parties under or pursuant to this Agreement shall remain in full force and effect, except and only to the extent that they are so varied.

ASSIGNMENT

9. No Party shall, nor shall it purport to, assign, transfer, charge or otherwise deal with all or any of its rights under this Agreement nor grant, declare, create or dispose of any right or interest in it without the prior written consent of each of the other Parties.

ANNOUNCEMENTS

10. Except as required by law or by any stock exchange or governmental or other regulatory or supervisory body or authority of competent jurisdiction to whose rules the Party (or any Affiliate of the Party) making the announcement or disclosure is subject, whether or not having the force of law, no announcement or circular or disclosure in connection with the existence or subject matter of this Agreement shall be made or issued by or on behalf of any of the Parties without the prior written approval of the other Parties (such approval not to be unreasonably withheld or delayed).

COSTS

11.1 Subject to clause 11.2, each of the Parties shall pay its own Costs incurred in connection with the negotiation, preparation and implementation of this Agreement and the transactions contemplated by it.

11.2 TIGP shall bear all stamp or other documentary or transaction duties and any other transfer taxes arising as a result or in consequence of the transfer by the Transferors to TIGP of the Shares in accordance with this Agreement.

SEVERABILITY

12. If any provision of this Agreement is held to be invalid or unenforceable, then such provision shall (so far as it is invalid or unenforceable) be given no effect and shall be deemed not to be included in this Agreement but without invalidating any of the remaining provisions of this Agreement. The Parties shall then use all reasonable endeavours to replace the invalid or unenforceable provision by a valid and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid or unenforceable provision.

COUNTERPARTS

13. This Agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

WAIVERS

14. No failure or delay by any Party in exercising any right or remedy provided by law under or pursuant to this Agreement shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent

time and no single or partial exercise of any such right or remedy shall preclude any other or further exercise of it or the exercise of any other right or remedy.

FURTHER ASSURANCE

15. Each of the Parties agrees to perform (or procure the performance of) all such further acts and things, and to execute and deliver (or procure the execution and delivery of) all such further documents, as may be required by law or as TIGP may reasonably request, whether on or after Completion, to implement and/or give effect to this Agreement and the transactions contemplated by it and for the purpose of vesting in TIGP sole ownership of each of the Limited Partners.

NO RIGHTS UNDER CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

16. A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

NOTICES

17.1 Any notice or other communication to be given by one Party to any other Party or Parties under, or in connection with, this Agreement shall be in writing and signed by or on behalf of the Party giving it. It shall be served by sending it by fax to the number or numbers set out in clause 17.2, or delivering it by hand, or sending it by pre-paid recorded delivery, special delivery or registered post, to the address or addresses set out in clause 17.2 and in each case marked for the attention of the relevant person or persons set out in clause 17.2 (or as otherwise notified from time to time in accordance with the provisions of this clause 17). Any notice so served by hand, fax or post shall be deemed to have been duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of fax, at the time of transmission; and
- (c) in the case of pre-paid recorded delivery, special delivery or registered post, at 10 a.m. on the second Business Day following the date of posting,

provided that in each case where delivery by hand or by fax occurs after 6 p.m. on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9 a.m. on the next following Business Day. References to time in this clause are to local time in the country of the addressee.

17.2 The addresses and fax numbers of the Parties for the purpose of clause 17.1 are as follows:

Wind Drift and/or Causeway:

Address: 1712 Natwest Tower
1 Matheson Street
Causeway
Hong Kong

Fax: 00 852 2537 8825

For the attention of: Alan Robertson/Ian Hasell

Shaftesbury and/or Tiger Finance:

Address: PO Box 124
Langtry House
40 La Motte Street
St Helier
Jersey
Channel Islands

Fax: 00 44 1534 24668

For the attention of: John Pierce

Mychand:

Address: 24 Bedford Row
London WC1R 4HA

Fax: 00 44 1322 273979

For the attention of: Stephen Corner

Archon:

Address: 600 E. Las Calinas Boulevard
Suite 400
Irving, Texas 75039

Fax: 00 1 972 368 3199

For the attention of: Ron K. Barger, General Counsel

W9:

Address: c/o Goldman, Sachs & Co
85 Broad Street
New York, New York 10004

Fax: 00 1 212 357 5505

For the attention of: Whitehall Chief Financial Officer and Whitehall
General Counsel

with a copy to: Robert M. Schlein
Sullivan & Cromwell
St. Olave's House
9a Ironmonger Lane
London EC2V 8EY

Fax: 00 44 20 7710 6565

Archon Group:

Address: 600 E. Las Calerias Boulevard
Suite 400
Irving, Texas 75039

Fax: 00 1 972 368 3199

For the attention of: Ron K. Barger, General Counsel

Whitehall:

Address: c/o Goldman, Sachs & Co
85 Broad Street
New York, New York 10004

Fax: 00 1 212 357 5505

For the attention of: Whitehall Chief Financial Officer and Whitehall
General Counsel

with a copy to: Robert M. Schlein
Sullivan & Cromwell
St. Olave's House
9a Ironmonger Lane
London EC2V 8EY

Fax: 00 44 207 710 6565

TIGP:

Address: Bastion House
140 London Wall
London EC2Y 5DN

Fax: 00 44 20 7796 5600

For the attention of: Nick Friedlos

with a copy to: David Ereira
Freshfields Bruckhaus Deringer
65 Fleet Street
London EC4Y 1HS

Fax: 00 44 20 7832 7001

17.3 A Party may notify any other Party or Parties in accordance with this clause 17 of a change to its name, relevant addressee, address or fax number for the purposes of this clause 17.

17.4 In proving service it shall be sufficient to prove that the envelope containing such notice was properly addressed and delivered either to the address shown thereon or into the custody of the postal authorities as a pre-paid recorded delivery, special delivery or registered post letter, or that the facsimile transmission was made after obtaining in person or by telephone appropriate evidence of the capacity of the addressee to receive the same, as the case may be.

17.5 All notices under or in connection with this Agreement shall be in the English language or, if in any other language, accompanied by a translation into English. In the event of any conflict between the English text and the text in any other language, the English text shall prevail.

GUARANTEES

18.1(a) In consideration of TIGP entering into this Agreement, each Guarantor unconditionally and irrevocably guarantees as a continuing obligation the proper and punctual performance by Mychand of all its obligations under or pursuant to this Agreement (and any other documents of transfer or otherwise or obligations entered or to be entered into according to the terms of this Agreement, including the relevant Tax Indemnity and the Shareholders' Agreement).

18.1(b) In consideration of Whitehall advancing a loan to TIGP under the terms of the Promissory Demand Note, each Guarantor unconditionally and irrevocably guarantees as a continuing obligation the proper and punctual performance by Mychand and Mychand Central of all their respective obligations under or pursuant to any of the Guaranty, Pledge and Security Agreement or the Securities Account Agreement (together, the *Security Documents*) including, without limitation, by reason of the obligations of either Mychand or Mychand Central being or becoming void, unenforceable or otherwise invalid under any applicable law.

18.2 A Guarantor's liability under this Agreement shall not be discharged or impaired by:

- (a) any amendment to or variation of this Agreement, the Security Documents (or any other document), or any waiver of or departure from any of their terms, or any assignment of any of them or any part of them;

- (b) any release of, or granting of time or other indulgence to, Mychand, Mychand Central or any third party;
- (c) any winding up, dissolution, reconstruction, arrangement or reorganisation, legal limitation, incapacity or lack of corporate power or authority or other circumstances of, or any change in the constitution or corporate identity or loss of corporate identity by, Mychand, Mychand Central or any other person (or any act taken by TIGP or Whitehall in relation to any such event); or
- (d) any other act, event, neglect or omission whatsoever (whether or not known to TIGP or Whitehall or the Guarantor or Mychand or Mychand Central) which would or might (but for this clause) operate to impair or discharge the Guarantor's liability under this clause or any obligation of Mychand or Mychand Central or to afford the Guarantor, Mychand or Mychand Central any legal or equitable defence.

18.3 As a separate, additional continuing and primary obligation, each Guarantor, in consideration of TIGP entering into this Agreement, undertakes to TIGP to indemnify TIGP on demand against any and all claims or Costs suffered or incurred by TIGP as a result of Mychand's failure to observe and perform properly and punctually all its obligations under this Agreement (and any other documents of transfer or otherwise or obligations entered into or to be entered into according to the terms of this Agreement including the relevant Tax Indemnity and the Shareholders' Agreement) including, without limitation, by reason of the obligations of Mychand being or becoming void, unenforceable or otherwise invalid under any applicable law.

18.4 As a separate, additional continuing and primary obligation, each Guarantor, in consideration of Whitehall entering into the Promissory Note, undertakes to TIGP to indemnify TIGP on demand against any and all claims or Costs suffered or incurred by TIGP as a result of the failure of either Mychand or Mychand Central to observe and perform properly and punctually all their respective obligations under the Security Documents (and any other documents of transfer or otherwise or obligations entered into or to be entered into according to the terms of the Security Documents) including, without limitation, by reason of the obligations of Mychand or Mychand Central being or becoming void, unenforceable or otherwise invalid under any applicable law.

GOVERNING LAW

19. This Agreement and the relationship between the Parties shall be governed by, and construed in accordance with, the laws of England and Wales.

JURISDICTION AND SERVICE OF PROCESS

20.1 Each of the Parties agrees that the courts of England and Wales are to have exclusive jurisdiction to settle any dispute (including claims for set-off and counterclaims) which may arise in connection with the creation, validity, effect, interpretation or performance of, or the legal relationships established by, this Agreement or otherwise arising out of or in connection with this Agreement, and for

such purposes irrevocably submit to the jurisdiction of the courts of England and Wales.

20.2 Each of the Parties irrevocably consents to service of process or any other documents in connection with proceedings in any Court by fax, personal services, delivery at any address specified in this Agreement or any other usual address, mail or in any other manner permitted by English law, the law of the place of service or the law of the jurisdiction where proceedings are instituted.

20.3 Each of the Parties (other than TIGP, Mychand, Causeway and the Guarantors) shall at all times maintain an agent for service of process and any other documents in proceedings in England or any other proceedings in connection with this Agreement. In respect of Wind Drift, Shaftesbury, Tiger Finance and Causeway, such agent shall be S.J. Berwin & Co currently of 222 Gray's Inn Road, London WC1X 8HB and any writ, judgment or other notice of legal process shall be sufficiently served on the relevant party if delivered to such agent by hand and marked for the personal attention of the senior litigation partner at that time who shall be addressed by name. In the absence of the senior litigation partner any writ, judgement or other notice of legal process shall be suitably served on the relevant party for the purposes of this clause if delivered to such agent by hand and marked for the personal attention of another litigation partner physically present at the office of such agent. Failure to address any writ, judgement or other notice of legal process to the appropriate litigation partner by name will result in the requirements of this clause 20.3 failing to be satisfied. In respect of Archon Group, Archon, W9 and Whitehall, such agent shall be Goldman Sachs International currently of Peterborough Court, 133 Fleet Street, London EC4A 2BB; and any writ, judgment or other notice of legal process shall be sufficiently served on any Party if delivered to the relevant agent at its address for the time being.

20.4 Each of the Parties (other than TIGP, Mychand, Causeway and the Guarantors) irrevocably undertakes not to revoke the authority of its agent for service of process referred to above and if, for any reason, TIGP requests such Party to do so it shall promptly appoint another such agent with an address in England and advise TIGP. If, following such a request, such Party fails to appoint another agent, TIGP shall be entitled to appoint one on behalf of such Party at the expense of such Party.

SCHEDULE 1

Limited Partners and Interests of the Transferors

<i>Transferor</i>	<i>Limited Partner</i>	<i>Place of Incorporation and Type of Company</i>	<i>Shares held by Transferor</i>	<i>Directors</i>
Wind Drift	WDriftSub	As specified in Recital (B)	1 Class "B" share of US\$1.00 (the <i>Wind Drift Shares</i>)	Manish Chande Martin Myers
Mychand	Mychand Central	Private company limited by shares incorporated in England and Wales under number 3487631	1 ordinary share of £1 (the <i>Mychand Central Shares</i>)	Manish Chande Martin Myers
Shaftesbury	ShaftesburySub	As specified in Recital (B)	1 ordinary share of US\$1.00 (the <i>Shaftesbury Shares</i>)	Manish Chande Martin Myers
Archon	ArchonSub	As specified in Recital (B)	1 ordinary share of US\$1.00 (the <i>Archon Shares</i>)	Martin Myers Paul Obey
W9	W9Sub	As specified in Recital (B)	1 ordinary share of US\$1.00 (the <i>Whitehall Shares</i>)	Martin Myers Paul Obey

SCHEDULE 2

Consideration Shares

<i>Transferor</i>	<i>Number and Class of Consideration Shares</i>
W9	86,490,200 "A" ordinary shares of 1 pence each
Mychand	7,914,292 "B" ordinary shares of 1 pence each
Archon	1,000,000 "C" ordinary shares of 1 pence each
Wind Drift	3,439,282 "D" ordinary shares of 1 pence each
Shaftesbury	1,146,426 "E" ordinary shares of 1 pence each

SCHEDULE 3
New TIGP Articles

A PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

of

TRILLIUM INVESTMENTS GP LIMITED
(Adopted by a written resolution dated November 2000)

(the *Company*)

PRELIMINARY

Table A

1. The regulations in Table A in the Companies (Tables A-F) Regulations 1985 in force at the date of the incorporation of the Company shall not apply to the Company.

Interpretation

2. In these articles, except where the subject or context otherwise requires, the following words and expressions shall bear the meanings respectively set out below:

the Act means the Companies Act 1985 including any modification or re-enactment thereof for the time being in force;

these articles means these articles of association as altered from time to time by special resolution;

the auditors means the auditors for the time being of the Company;

the board means the directors or any of them acting as the board of directors of the Company;

Class A Shares means the A ordinary shares of one pence each in the capital of the Company and any other security of the Company into which such shares may be converted or for which such shares may become exchanged or into which such shares may be reclassified;

Class A Shareholder(s) means the holder or holders for the time being of Class A Shares;

Class B Shares means the B ordinary shares of one pence each in the capital of the Company and any other security of the Company into which such shares may be converted or for which such shares may become exchanged or into which such shares may be reclassified;

Class C Shares means the C ordinary shares of one pence each in the capital of the Company and any other security of the Company into which such shares may be converted or for which such shares may become exchanged or into which such shares may be reclassified;

Class D Shares means the D ordinary shares of one pence each in the capital of the Company and any other security of the Company into which such shares may be converted or for which such shares may become exchanged or into which such shares may be reclassified;

Class E Shares means the E ordinary shares of one pence each in the capital of the Company and any other security of the Company into which such shares may be converted or for which such shares may become exchanged or into which such shares may be reclassified;

clear days means the period excluding the day when a notice is given or deemed to be given and the day for which it is given or on which it is to take effect;

the Companies Acts has the meaning ascribed thereto by section 744 of the Act and any enactment passed after those Acts which may, by virtue of that or any other such enactment, be cited together with those Acts as the "Companies Acts" (with or without the addition of an indication of the date of any such enactment);

Deferred Shares means the non-voting deferred shares of £1 each in the capital of the Company;

director means a director of the Company;

dividend means dividend or bonus;

the holder means, in relation to any shares, the member whose name is entered in the register as the holder of such shares;

member means a member of the Company;

the Memorandum means the memorandum of association of the Company as amended from time to time;

the office means the registered office of the Company;

Ordinary Shares means the ordinary shares of one pence each in the capital of the Company of which there are five classes (the Class A Shares, the Class B Shares, the

Class C Shares, the Class D Shares and the Class E Shares), and *Ordinary Share* shall be construed accordingly;

paid means paid or credited as paid;

the register means the register of members of the Company.

the seal means the common seal of the Company and includes any official seal kept by the Company by virtue of section 39 or 40 of the Act.

the secretary means the secretary of the Company and includes a joint, assistant, deputy or temporary secretary and any other person appointed to perform the duties of the secretary.

the United Kingdom means Great Britain and Northern Ireland.

References to a document being executed include references to its being executed under hand or under seal or by any other method.

References to writing include references to any visible substitute for writing and to anything partly in one form and partly in another form.

Words denoting the singular number include the plural number and vice versa; words denoting the masculine gender include the feminine gender; and words denoting persons include corporations.

Unless expressly defined in these articles, any words or expressions that are defined in the Act (but excluding any statutory modification thereof not in force at the date of adoption of these articles) shall, if not inconsistent with the subject or context, bear the same meaning in these articles.

Subject to the preceding paragraph, references to any provision of any enactment or of any subordinate legislation (as defined by section 21(1) of the Interpretation Act 1978) include any modification or re-enactment of that provision for the time being in force.

Headings and marginal notes are inserted for convenience only and do not affect the construction of these articles.

3. In these articles, (a) powers of delegation shall not, except where expressly provided by the terms of delegation, be restrictively construed but the widest interpretation shall be given thereto; (b) the word "board" in the context of the exercise of any power contained in these articles includes any committee consisting of one or more directors, any director holding executive office and any local or divisional board, manager or agent of the Company to which or, as the case may be, to whom the power in question has been delegated; (c) no power of delegation shall be limited by the existence or, except where expressly provided by the terms of delegation, the exercise of that or any other power of delegation; and (d) except where expressly provided by the terms of delegation, the delegation of a power shall not exclude the concurrent exercise of that power by any other body or person who is for

the time being authorised to exercise it under these articles or under another delegation of the power.

Single Member

4. If at any time and for so long as the Company has a single member, all the provisions of these articles shall (in the absence of any express provision to the contrary) apply with such modifications as may be necessary in relation to a company with a single member.

SHARE CAPITAL

Classes of shares

5. The authorised share capital of the Company upon adoption of these articles is £1,000,004, divided into 86,500,000 Class A Shares, 7,914,292 Class B Shares, 1,000,000 Class C Shares, 3,439,282 Class D Shares, 1,146,426 Class E Shares and four Deferred Shares, each such class having the rights set out herein, all of which are in issue and outstanding.

(A) Ordinary Shares

The rights, restrictions and provisions applicable to the Ordinary Shares are as follows:

(1) Income and Capital

Each class of Ordinary Shares shall be entitled to such dividends, distributions and returns of capital (whether on a liquidation or otherwise) as shall be resolved upon or recommended by the directors and agreed in any written agreement from time to time to which holders of at least 75 per cent. of each class of the outstanding Ordinary Shares are a party.

(2) Voting

All Ordinary Shares shall carry the right to vote on all matters at any general meeting of the Company, in accordance with and subject to the provisions of these articles.

(B) Deferred Shares

The rights, restrictions and provisions applicable to the Deferred Shares are as follows:

(1) Income and Capital

On a winding-up or other return of capital, the Deferred Shares shall entitle the holders of such shares only to payment of the amounts paid up on those shares, after repayment to the holders of the Ordinary Shares of the nominal amount paid up on the Ordinary Shares held by them respectively and the payment of at least £10,000 on each Ordinary Share under Article 5(A)(1).

The Deferred Shares shall not entitle the holders of such shares to receive any dividend or other distribution from the Company.

(2) *Voting*

The Deferred Shares shall not entitle the holders thereof to receive notice of, or to attend, speak or vote at, any general meeting of the Company.

(3) *Transfer*

The Deferred Shares shall not, save as provided below, be transferable.

The Company shall have an irrevocable authority from each holder of the Deferred Shares at any time to do all or any of the following without obtaining the sanction of the holder or holders of the Deferred Shares:

- (a) to appoint any person to execute on behalf of any holder of Deferred Shares a transfer of all or any of those shares and/or an agreement to transfer the same (without making any payment for them) to such person or persons as the Company may determine;
- (b) to purchase all or any of the shares in accordance with the Act without obtaining the consent of the holders of those shares in consideration of the payment to each of the holders whose shares are purchased of an amount equal to £1 in respect of each Deferred Shares then being purchased;
- (c) for the purposes of any such purchase, to appoint any person to execute a contract for the sale of any such shares to the Company on behalf of any holder of Deferred Shares;
- (d) to cancel all or any of the Deferred Shares purchased in accordance with the Act; and
- (e) pending any such transfer, purchase or cancellation, to retain the certificates for all or any of the Deferred Shares.

(4) *Variation of Rights*

The reduction of capital paid up on the Deferred Shares and/or the creation, allotment or issue of further shares in the capital of the Company ranking in priority for payment of a dividend or in respect of capital or which confer on the holders voting rights more favourable than those conferred by the Deferred Shares shall be deemed not to vary the rights attaching to the Deferred Shares.

Shares with special rights

6. Subject to the provisions of the Companies Acts and without prejudice to any rights attached to any existing shares or class of shares, any share may be issued with such rights or restrictions as the Company may by ordinary resolution determine or, subject to and in default of such determination, as the board shall determine.

Redeemable shares

7. Subject to the provisions of the Companies Acts, and without prejudice to any rights attached to any existing shares or class of shares, shares may be issued which are to be redeemed or are to be liable to be redeemed at the option of the Company or the holder on such terms and in such manner as may be provided by these articles.

Section 80 authority

8. In place of all authorities existing at the date of adoption of these articles, the directors are hereby generally and unconditionally authorised pursuant to section 80 of the Act to allot relevant securities (within the meaning of section 80) up to an aggregate nominal amount equal to the authorised share capital of the Company at the date of adoption of these articles for a period expiring (unless previously renewed, varied or revoked by the Company in general meeting) five years after the date of adoption of these articles.

Section 89 exclusion

9. The pre-emption provisions in section 89(1) of the Act and the provisions of subsections 90(1) to 90(6) inclusive of the Act shall not apply to any allotment of the Company's equity securities.

Allotment after expiry

10. Before the expiry of the authority granted by Article 8, the Company may make an offer or agreement which would or might require relevant securities to be allotted after that expiry and the directors may allot relevant securities in pursuance of that offer or agreement as if that authority had not expired.

Residual allotment powers

11. Subject to the provisions of Articles 7, 8, 9 and 10, to the provisions of the Act, to any resolution of the Company in general meeting passed pursuant to those provisions or to any written agreement from time to time to which holders of at least 75 per cent. of each class of the outstanding Ordinary Shares are a party:

- (a) all unissued shares for the time being in the capital of the Company (whether forming part of the original or any increased share capital) shall be at the disposal of the directors; and
- (b) the directors may allot (with or without conferring a right of renunciation), grant options over, or otherwise dispose of them to such persons on such terms and conditions and at such times as they think fit.

Commissions

12. The Company may exercise all powers of paying commissions or brokerage conferred or permitted by the Companies Acts. Subject to the provisions of the Companies Acts, any such commission or brokerage may be satisfied by the payment

of cash or by the allotment of fully or partly paid shares or partly in one way and partly in the other.

Trusts not recognised

13. Except as required by law, no person shall be recognised by the Company as holding any share upon any trust and (except as otherwise provided by these articles or by law) the Company shall not be bound by or recognise any interest in any share (or in any fractional part of a share) except an absolute right to the entirety thereof in the holder.

VARIATION OF RIGHTS

Method of varying rights

14. Subject to the provisions of the Companies Acts, if at any time the capital of the Company is divided into different classes of shares, the rights attached to any class may (unless otherwise provided by the terms of issue of the shares of that class) be varied or abrogated, whether or not the Company is being wound up, either with the consent in writing of the holders of three-quarters in nominal value of the issued shares of that class or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of that class (but not otherwise).

When rights deemed to be varied

15. For the purposes of this Article, unless otherwise expressly provided by the rights attached to any shares or class of shares or in any written agreement from time to time to which the holders of at least 75 per cent. of each class of the outstanding Ordinary Shares are a party, the rights attaching to any class of shares shall be deemed to be varied by the reduction of the capital paid up on those shares (otherwise than by a purchase or redemption by the Company of its own shares) and by the allotment of other shares ranking in priority for payment of a dividend or in respect of capital or which confer on the holders voting rights more favourable than those conferred by such first mentioned shares (in each case, other than an allotment of shares of the same class as any shares in the capital of the Company already at that time in issue), but shall not otherwise be deemed to be varied by the creation or issue of other shares ranking *pari passu* with, or subsequent to, such first mentioned shares or by the purchase or redemption by the Company of any of its own shares.

SHARE CERTIFICATES

Members' rights to certificates

16. Every member, upon becoming the holder of any shares, shall be entitled, without payment, to one certificate for all the shares of each class held by him (and, upon transferring a part of his holding of shares of any class, to a certificate for the balance of such holding) or several certificates each for one or more of his shares upon payment for every certificate after the first of such reasonable sum as the board may from time to time determine. Every certificate shall specify the number, class and distinguishing numbers (if any) of the shares to which it relates and the amount or

respective amounts paid up thereon and, where the Company has adopted a seal, sealed with the seal. The Company shall not be bound to issue more than one certificate for shares held jointly by several persons and delivery of a certificate to one joint holder shall be a sufficient delivery to all of them. Shares of different classes may not be included in the same certificate.

Replacement certificates

17. If a share certificate is defaced, worn out, lost or destroyed, it may be renewed on such terms (if any) as to evidence and indemnity (with or without security) and payment of any exceptional out-of-pocket expenses reasonably incurred by the Company in investigating evidence and preparing the requisite form of indemnity as the board may determine but otherwise free of charge, and (in the case of defacement or wearing out) on delivery up of the old certificate.

LIEN

Company to have lien on shares

18. The Company shall have a first and paramount lien on every share (not being a fully paid share) for all moneys payable to the Company (whether presently or not) in respect of that share. The board may at any time (generally or in particular cases) waive any lien or declare any share to be wholly or in part exempt from the provisions of this Article. The Company's lien on a share shall extend to any amount (including dividends) payable in respect of it.

Enforcement of lien by sale

19. The Company may sell, in such manner as the board determines, any share on which the Company has a lien if a sum in respect of which the lien exists is presently payable and is not paid within fourteen clear days after notice has been given to the holder of the share or to the person entitled to it in consequence of the death or bankruptcy of the holder or otherwise by operation of law, demanding payment and stating that if the notice is not complied with the shares may be sold.

Giving effect to sale

20. To give effect to any such sale the board may authorise some person to execute an instrument of transfer of the shares sold to, or in accordance with the directions of, the purchaser. The transferee shall not be bound to see to the application of the purchase money nor shall his title to the shares be affected by any irregularity in or invalidity of the proceedings in relation to the sale.

Application of proceeds

21. The net proceeds of the sale, after payment of the costs, shall be applied in or towards payment or satisfaction of so much of the sum in respect of which the lien exists as is presently payable, and any residue shall (upon surrender to the Company for cancellation of the certificate for the shares sold and subject to a like lien for any

moneys not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

CALLS ON SHARES

Power to make calls

22. Subject to the terms of allotment, the board may from time to time make calls upon the members in respect of any moneys unpaid on their shares (whether in respect of nominal value or premium) and each member shall (subject to receiving at least fourteen clear days' notice specifying when and where payment is to be made) pay to the Company as required by the notice the amount called on his shares. A call may be required to be paid by instalments. A call may, before receipt by the Company of any sum due thereunder, be revoked in whole or part and the time fixed for payment of a call may be postponed in whole or part as the board may determine. A person upon whom a call is made shall remain liable for calls made upon him notwithstanding the subsequent transfer of the shares in respect whereof the call was made.

Time when call made

23. A call shall be deemed to have been made at the time when the resolution of the board authorising the call was passed.

Liability of joint holders

24. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

Interest payable

25. If a call or any instalment of a call remains unpaid in whole or in part after it has become due and payable the person from whom it is due and payable shall pay interest on the amount unpaid from the day it became due and payable until it is paid at the rate fixed by the terms of allotment of the share or in the notice of the call or, if no rate is fixed, such rate, not exceeding 15 per cent. per annum or, if higher, the appropriate rate (as defined by the Act), as may be determined by the board, but the board may waive payment of such interest wholly or in part.

Deemed calls

26. An amount payable in respect of a share on allotment or at any fixed date, whether in respect of nominal value or premium or as an instalment of a call, shall be deemed to be a call duly made and notified and payable on the date so fixed or in accordance with the terms of the allotment, and if it is not paid the provisions of these articles shall apply as if that amount had become due and payable by virtue of a call duly made and notified.

Differentiation on calls

27. Subject to the terms of allotment, the board may make arrangements on the issue of shares for a difference between the allottees and/or holders in the amounts and times of payment of calls on their shares.

Payment of calls in advance

28. The board may, if it thinks fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him and such payment in advance of calls shall extinguish *pro tanto* the liability upon the shares in respect of which it is made, and may pay upon all or any of the moneys so advanced (until the same would but for such advance become presently payable) interest at such rate not exceeding (unless the Company by ordinary resolution may otherwise direct) 15 per cent. per annum or, if higher, the appropriate rate (as defined in the Act) as may be agreed upon between the board and such member.

FORFEITURE AND SURRENDER

Notice requiring payment of call

29. If a call or any instalment of a call remains unpaid in whole or in part after it has become due and payable, the board may give to the person from whom it is due not less than fourteen clear days' notice in writing requiring payment of the amount unpaid together with any interest which may have accrued and any costs, charges and expenses incurred by the Company by reason of such non-payment. The notice shall name the place where payment is to be made and shall state that if the notice is not complied with the shares in respect of which the call was made will be liable to be forfeited.

Forfeiture for non-compliance

30. If any such notice is not complied with, any share in respect of which it was given may, at any time before the payment required by the notice has been made, be forfeited by a resolution of the board and the forfeiture shall include all dividends or other moneys payable in respect of the forfeited shares and not paid before the forfeiture. When any share has been forfeited, notice of the forfeiture shall be served upon the person who was before the forfeiture the holder of the share, and an entry of such notice having been given and of the forfeiture with the date thereof shall forthwith be made in the register opposite the entry of the share; but no forfeiture shall be invalidated by any omission or neglect to give such notice or to make such entries.

Sale of forfeited shares

31. Subject to the provisions of the Companies Acts, a forfeited share shall be deemed to belong to the Company and may be sold, re-allotted or otherwise disposed of on such terms and in such manner as the board determines, either to the person who was before the forfeiture the holder or to any other person, and at any time before sale, re-allotment or other disposal, the forfeiture may be cancelled on such terms as

the board thinks fit. Where for the purposes of its disposal a forfeited share is to be transferred to any person the board may authorise some person to execute an instrument of transfer of the share to that person. The Company may receive the consideration given for the share on its disposal and may register the transferee as holder of the share.

Liability following forfeiture

32. A person any of whose shares have been forfeited shall cease to be a member in respect of them and shall surrender to the Company for cancellation the certificate for the shares forfeited but shall remain liable to the Company for all moneys which at the date of forfeiture were presently payable by him to the Company in respect of those shares with interest thereon at the rate at which interest was payable on those moneys before the forfeiture or, if no interest was so payable, at such rate, not exceeding 15 per cent. per annum or, if higher, the appropriate rate (as defined in the Act) as the board may determine, from the date of forfeiture until payment, but the board may waive payment wholly or in part or enforce payment without any allowance for the value of the shares at the time of forfeiture or for any consideration received on their disposal.

Surrender

33. The board may accept the surrender of any share which it is in a position to forfeit upon such terms and conditions as may be agreed and, subject to any such terms and conditions, a surrendered share shall be treated as if it had been forfeited.

Extinction of rights

34. The forfeiture of a share shall involve the extinction at the time of forfeiture of all interest in and all claims and demands against the Company in respect of the share and all other rights and liabilities incidental to the share as between the person whose share is forfeited and the Company, except only such of those rights and liabilities as are by these articles expressly saved, or as are by the Companies Acts given or imposed in the case of past members.

Evidence of forfeiture

35. A statutory declaration by a director or the secretary that a share has been duly forfeited or surrendered on a specified date shall be conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share and the declaration shall (subject to the execution of an instrument of transfer if necessary) constitute a good title to the share and the person to whom the share is disposed of shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity in, or invalidity of, the proceedings in reference to the forfeiture, surrender, sale, re-allotment or disposal of the share.

TRANSFER OF SHARES

Form and execution of transfer

36. The instrument of transfer of a share may be in any usual form or in any other form which the board may approve and shall be signed by or on behalf of the transferor and, unless the share is fully paid, by or on behalf of the transferee. An instrument of transfer need not be under seal.

Restrictions on transfer

37. The board shall not register the transfer of any share unless such transfer is made in accordance with the terms of any written agreement to which the holders from time to time of at least 75 per cent. of each class of the outstanding Ordinary Shares are a party (including the shareholder whose share is being transferred) and, subject thereto, the board may refuse to register the transfer of a share to any person whether or not it is fully paid or a share on which the Company has a lien.

Invalid transfers

38. The board may also refuse to register the transfer of a share unless the instrument of transfer:-

- (a) is lodged, duly stamped, at the office or at such other place as the board may appoint accompanied by the certificate for the shares to which it relates and such other evidence as the board may reasonably require to show the right of the transferor to make the transfer;
- (b) is in respect of only one class of shares; and
- (c) is in favour of not more than four transferees.

Notice of refusal to register

39. If the board refuses to register the transfer of a share, it shall within two months after the date on which the instrument of transfer was lodged with the Company send to the transferee notice of the refusal.

Suspension of registration

40. The registration of transfers of shares or of transfers of any class of shares may be suspended at such times and for such periods (not exceeding thirty days in any year) as the board may determine.

No fee payable on registration

41. No fee shall be charged for the registration of any instrument of transfer or other document relating to or affecting the title to any share.

Retention of transfers

42. The Company shall be entitled to retain any instrument of transfer which is registered, but any instrument of transfer which the board refuses to register shall be returned to the person lodging it when notice of the refusal is given.

TRANSMISSION OF SHARES

Transmission

43. If a member dies the survivor or survivors where he was a joint holder and his personal representatives where he was a sole holder or the only survivor of joint holders, shall be the only persons recognised by the Company as having any title to his interest; but nothing herein contained shall release the estate of a deceased member (whether a sole or joint holder) from any liability in respect of any share held by him.

Elections following transmission

44. A person becoming entitled to a share in consequence of the death or bankruptcy of a member or otherwise by operation of law may, upon such evidence being produced as the board may properly require as to his entitlement, elect either to become the holder of the share or to have some person nominated by him registered as the transferee. If he elects to become the holder he shall give notice to the Company to that effect. If he elects to have another person registered, he shall execute an instrument of transfer of the share to that person. All the provisions of these articles relating to the transfer of shares shall apply to any such notice or instrument of transfer as if it were an instrument of transfer executed by the member and the death or bankruptcy of the member or other event giving rise to the transmission had not occurred.

45. The board may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share and if the notice is not complied with within sixty days the board may thereafter withhold payment of all dividends or other moneys payable in respect of the share until the requirements of the notice have been complied with.

Rights of persons entitled by transmission

46. A person becoming entitled to a share in consequence of the death or bankruptcy of a member or otherwise by operation of law shall, upon such evidence being produced as the board may properly require as to his entitlement and subject to the requirements of Article 40, have the same rights in relation to the share as he would have had if he were the holder of the share, and may give a discharge for all dividends and other moneys payable in respect of the share, but he shall not, before being registered as the holder of the share, be entitled in respect of it to receive notice of or to attend or vote at any meeting of the Company or to receive notice of or to attend or vote at any separate meeting of the holders of any class of shares in the Company.

ALTERATION OF SHARE CAPITAL

Alterations permitted by ordinary resolution

47. The Company may by ordinary resolution:
- (a) increase its authorised but unissued share capital by such sum to be divided into shares of such amount as the resolution prescribes;
 - (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
 - (c) subject to the provisions of the Companies Acts, sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the Memorandum and the resolution may determine that, as between the shares resulting from the sub-division, any of them may have any preference or advantage as compared with the others; and
 - (d) cancel shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person and diminish the amount of its share capital by the amount of the shares so cancelled.

New shares subject to these articles

48. All new shares shall be subject to the provisions of these articles with reference to payment of calls, lien, forfeiture, transfer, transmission and otherwise.

Fractions arising

49. Whenever as a result of a consolidation or sub-division of shares any members would become entitled to fractions, the board may settle the matter in any manner it deems fit and in particular may sell shares representing fractions to which any members would otherwise become entitled to any person (including, subject to the provisions of the Companies Acts, the Company) and distribute the net proceeds of sale in due proportion among those members, and the board may authorise some person to execute an instrument of transfer of the shares to, or in accordance with the directions of, the purchaser. The transferee shall not be bound to see to the application of the purchase moneys nor shall his title to the shares be affected by any irregularity in or invalidity of the proceedings in relation to the sale.

Power to reduce capital

50. Subject to the provisions of the Companies Acts, the Company may by special resolution reduce its share capital, any capital redemption reserve and any share premium account in any way.

PURCHASE OF OWN SHARES

Power to purchase own shares

51. Subject to and in accordance with the provisions of the Companies Acts and without prejudice to any relevant special rights attached to any class of shares, the Company may purchase any of its own shares of any class (including redeemable shares) and, if it is a private company, make a payment in respect of the redemption or purchase of its own shares otherwise than out of distributable profits of the company or the proceeds of a fresh issue of shares, at any price (whether at par or above or below par), and so that any shares to be so purchased may be selected in any manner whatsoever. Every contract for the purchase of, or under which the Company may become entitled or obliged to purchase, shares in the Company shall be authorised by such resolution of the Company as may be required by the Companies Acts and by an extraordinary resolution passed at a separate general meeting of the holders of each class of shares (if any) which, at the date on which the contract is authorised by the Company in general meeting, entitle them, either immediately or at any time later on, to convert all or any of the shares of that class held by them into equity share capital of the Company.

GENERAL MEETINGS

Types of general meeting

52. All general meetings of the Company other than annual general meetings shall be called extraordinary general meetings.

Annual general meetings

53. The board shall convene and the Company shall hold general meetings as annual general meetings in accordance with the requirements of the Act.

Class meetings

54. All provisions of these articles relating to general meetings of the Company shall, mutatis mutandis, apply to every separate general meeting of the holders of any class of shares in the capital of the Company, except that:

- (a) the necessary quorum shall be two persons (or, if and so long as there is only one holder of issued shares of the class, one person) holding or representing by proxy at least one-third in nominal value of the issued shares of the class, save that at any adjourned meeting of such holders, one holder present in person or by proxy, whatever the amount of his holding, shall be deemed to constitute a meeting; and
- (b) subject to any rights or restrictions attached to any class of shares, any holder of shares of the class present in person or by proxy may demand a poll; and

- (c) subject to any rights or restrictions attached to any class of shares, each holder of shares of the class shall, on a poll, have one vote in respect of every share of the class held by him.

Convening general meetings

55. Subject to the provisions of Article 53, the board may call general meetings whenever and at such times and places as it shall determine and, on the requisition of members pursuant to the provisions of the Companies Acts, shall forthwith proceed to convene an extraordinary general meeting in accordance with the requirements of the Companies Acts. If there are not within the United Kingdom sufficient directors to call a general meeting, any director or any member of the Company may call a general meeting.

NOTICE OF GENERAL MEETINGS

Period of notice

56. An annual general meeting and an extraordinary general meeting called for the passing of a special resolution or elective resolution shall be called by at least twenty-one clear days' notice. All other extraordinary general meetings shall be called by at least fourteen clear days' notice. However, a general meeting may be called by shorter notice if it is so agreed:

- (a) in the case of an annual general meeting, by all the members entitled to attend and vote thereat; and
- (b) in the case of any other meeting by a majority in number of the members having a right to attend and vote being a majority together holding not less than ninety-five per cent. in nominal value of the shares giving that right or such other majority as has been decided on by elective resolution of the members under the Act.

Provision of notice

57. Subject to the provisions of these articles and to any restrictions imposed on any shares, the notice shall be given to all the members, to all persons entitled to a share in consequence of the death or bankruptcy of a member, to each of the directors, to the auditors for the time being of the Company and if required under the Companies Acts, the former auditors of the Company.

Contents of notice

58. The notice shall specify the time and place of the meeting and shall specify the general nature of the business to be transacted. The notice shall, in the case of an annual general meeting, specify the meeting as such, and, in the case of a meeting to pass a special, extraordinary or elective resolution, specify the intention to propose the resolution as a special, extraordinary, or elective resolution, as the case may be and shall set out the entire resolution.

The notice shall state with reasonable prominence that a member entitled to attend and vote at the meeting being called is entitled to appoint one or more proxies to attend and vote instead of him, and that a proxy need not also be a member.

Accidental omission to give notice

59. The accidental omission to give notice of a meeting to any person entitled to receive the same, or the non-receipt of a notice of meeting by any such person, shall not invalidate the proceedings at that meeting.

PROCEEDINGS AT GENERAL MEETINGS

Quorum

60. No business shall be transacted at any general meeting unless a quorum is present, but the absence of a quorum shall not preclude the choice or appointment of a chairman, which shall not be treated as part of the business of the meeting. Save as otherwise provided by these articles, one person, if and for so long as the Company has only one member entitled to vote upon the business to be transacted, and two persons, if and for so long as the Company has two or more members entitled to vote upon the business to be transacted, each being a member or a proxy for a member or a duly authorised representative of a corporation, shall be a quorum.

If quorum not present

61. If such a quorum is not present within fifteen minutes (or such longer time not exceeding thirty minutes as the chairman of the meeting may decide to wait) from the time appointed for the meeting, or if during a meeting such a quorum ceases to be present, the meeting, if convened on the requisition of members, shall be dissolved, and in any other case shall stand adjourned to such time and place as the chairman of the meeting may determine. If at the adjourned meeting a quorum is not present within fifteen minutes after the time appointed for holding the meeting, the meeting shall be dissolved.

Chairman

62. The chairman, if any, of the board or, in his absence, any deputy chairman of the Company or, in his absence, some other director nominated by the board, shall preside as chairman of the meeting, but if neither the chairman, deputy chairman nor such other director (if any) is present within fifteen minutes after the time appointed for holding the meeting or is not willing to act as chairman, the directors present shall elect one of their number to be chairman. If there is only one director present and willing to act, he shall be chairman. If no director is willing to act as chairman, or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present and entitled to vote shall choose one of their number to be chairman.

Directors entitled to speak

63. A director shall, notwithstanding that he is not a member, be entitled to attend and speak at any general meeting and at any separate meeting of the holders of any class of shares in the Company.

Adjournments

64. The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for thirty days or more or for an indefinite period, at least seven clear days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

Amendments to resolutions

65. If an amendment shall be proposed to any resolution under consideration but shall in good faith be ruled out of order by the chairman of the meeting, the proceedings on the substantive resolution shall not be invalidated by any error in such ruling. With the consent of the chairman of the meeting, an amendment may be withdrawn by its proposer before it is voted upon. In the case of a resolution duly proposed as a special or extraordinary resolution, no amendment thereto (other than a mere clerical amendment to correct a patent error) may in any event be considered or voted upon.

Methods of voting

66. A resolution put to the vote of a general meeting shall be decided on a show of hands unless, before or on the declaration of the result of a vote on the show of hands or on the withdrawal of any other demand for a poll, a poll is duly demanded. Subject to the provisions of the Companies Acts, a poll may be demanded by:

- (a) the chairman of the meeting; or
- (b) at least two members present in person or by proxy having the right to vote at the meeting; or
- (c) any member or members present in person or by proxy representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or
- (d) any member or members present in person or by proxy holding shares conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right,

and a demand by a person as proxy for a member shall be the same as a demand by the member.

Declaration of result

67. Unless a poll is duly demanded a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

Withdrawal of demand for poll

68. The demand for a poll may, before the poll is taken, be withdrawn but only with the consent of the chairman and a demand so withdrawn shall not be taken to have invalidated the result of a show of hands declared before the demand was made. If the demand for a poll is withdrawn, the chairman or any other member entitled may demand a poll.

Conduct of poll

69. A poll shall be taken as the chairman directs and he may appoint scrutineers (who need not be members) and fix a time and place for declaring the result of the poll. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

Chairman's casting vote

70. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman shall not be entitled to a casting vote in addition to any other vote he may have.

When poll to be taken

71. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either forthwith or at such time and place as the chairman directs not being more than thirty days after the poll is demanded. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll was demanded. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.

Notice of poll

72. No notice need be given of a poll not taken forthwith if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In any other case at least seven clear days' notice shall be given specifying the time and place at which the poll is to be taken.

Effectiveness of special and extraordinary resolutions

73. Where for any purpose an ordinary resolution of the Company is required, a special or extraordinary resolution shall also be effective and where for any purpose an extraordinary resolution is required a special resolution shall also be effective.

Resolutions in writing

74. Subject to the provisions of the Companies Acts, a resolution in writing executed by or on behalf of each member who would have been entitled to vote upon it if it had been proposed at a general meeting at which he was present shall be as effectual as if it had been passed at a general meeting properly convened and held and may consist of several instruments in the like form each executed by or on behalf of one or more of the members.

Decisions sole member

of

75.1 If and for so long as the Company has only one member and that member takes any decision which is required to be taken in general meeting or by means of a written resolution, that decision shall be as valid and effectual as if agreed by the Company in general meeting save that this paragraph shall not apply to resolutions passed pursuant to Sections 303 and 391 of the Act.

75.2 Any decision taken by a sole member pursuant to Article 75.1 shall be recorded in writing and delivered by that member to the Company for entry in the Company's minute book.

VOTES OF MEMBERS

Right to vote

76. Subject to any rights or restrictions attached to any shares, on a show of hands every member who is present in person or by proxy shall have one vote and on a poll every member present in person or by proxy shall have one vote for every share of which he is the holder, provided that no resolution shall be deemed passed unless it is voted for by at least one Class A Shareholder or its proxy or duly authorised representative.

Votes of joint holders

77. In the case of joint holders of a share the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders and for this purpose seniority shall be determined by the order in which the names of the holders stand in the register.

Member under incapacity

78. A member in respect of whom an order has been made by any court or official having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder may vote, whether on a show of hands or on a poll, by his

receiver, curator bonis or other person authorised in that behalf appointed by that court or official, and any such receiver, curator bonis or other person may, on a poll, vote by proxy. Evidence to the satisfaction of the board of the authority of the person claiming to exercise the right to vote shall be deposited at the office, or at such other place as is specified in accordance with these articles for the deposit of instruments of proxy, not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in default the right to vote shall not be exercisable.

Calls in arrears

79. No member shall be entitled to vote at any general meeting or at any separate meeting of the holders of any class of shares in the Company, either in person or by proxy, in respect of any share held by him unless all moneys presently payable by him in respect of that share have been paid.

Objection to voting

80. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting or poll at which the vote objected to is tendered, and every vote not disallowed at such meeting shall be valid. Any objection made in due time shall be referred to the chairman whose decision shall be final and conclusive.

Supplementary provisions on voting

81. On a poll votes may be given either personally or by proxy. A member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

PROXIES AND CORPORATE REPRESENTATIVES

Appointment of proxy

82. An instrument appointing a proxy shall be in writing under the hand of the appointing member or his attorney or, if the appointing member is a corporation, either under its common seal or the hand of a duly authorised officer, attorney or other person authorised to sign it.

Form of proxy - standard

83. The instrument appointing a proxy shall be executed by or on behalf of the appointer and shall be in the following form (or in a form as near thereto as circumstances allow or in any other form which is usual or which the directors may approve):

"_____ [PLC/Limited]

I/We, _____, of _____ being a member/members of the above-named company, hereby appoint _____ of _____, or failing him, _____ of _____, as my/our proxy to vote in my/our names[s] and on my/our behalf at the annual/extraordinary general

meeting of the company to be held on _____ 19__, and at any adjournment thereof.

Signed on _____ 19__."

Form of proxy - each way

84. Where it is desired to afford members an opportunity of instructing the proxy how he shall act the instrument appointing a proxy shall be in the following form (or in a form as near thereto as circumstances allow or in any other form which is usual or which the directors may approve):

" _____ [PLC/Limited]

I/We, _____, of _____ being a member/members of the above-named company, hereby appoint _____ of _____, or failing him, _____ of _____, as my/our proxy to vote in my/our names[s] and on my/our behalf at the annual/extraordinary general meeting of the company to be held on _____ 19__, and at any adjournment thereof.

Signed on _____ 19__."

This form is to be used in respect of the resolutions mentioned below as follows:

Resolution No.1 *for*against

Resolution No.2 *for*against.

*Strike out whichever is not desired.

Unless otherwise instructed, the proxy may vote as he thinks fit or abstain from voting.

Signed on _____ 19__."

Voting by appointor

85. Delivery of an instrument appointing a proxy shall not preclude a member from attending and voting in person at the meeting or poll concerned. A member may appoint more than one proxy to attend on the same occasion.

Delivery of form of proxy

86. The instrument appointing a proxy and any power of attorney or other written authority under which it is executed or an office or notarially certified copy or a copy certified in accordance with the Powers of Attorney Act 1971 of such power or written authority shall:

- (a) be deposited at or sent by post or facsimile transmission to the office or at such other place within the United Kingdom as is specified in the notice convening the meeting or in any instrument of proxy sent out by the Company

in relation to the meeting not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or

- (b) in the case of a poll taken more than 48 hours after it is demanded, be deposited or sent by post or facsimile transmission to after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll; or
- (c) where the poll is not taken forthwith but is taken not more than 48 hours after it was demanded, be delivered at the meeting at which the poll was demanded to the chairman or to the secretary or to any director;

and an instrument of proxy which is not deposited or delivered in a manner so permitted shall be invalid. No instrument of proxy shall be valid after the expiration of twelve months from the date stated in it as the date of its execution. When two or more valid but differing instruments of proxy are delivered in respect of the same share for use at the same meeting, the one which was delivered last (regardless of its date or of the date of its execution) shall be treated as replacing and revoking the others as regards that share; if the Company is unable to determine which was delivered last, none of them shall be treated as valid in respect of that share.

Validity of form of proxy

87. The instrument of proxy shall, unless the contrary is stated in it, be deemed to confer authority to vote as the proxy thinks fit on any amendment of a resolution put to the meeting for which the proxy is given and on any resolution put to the meeting, whether or not notice of such resolution was given in the notice of meeting. The instrument of proxy shall, unless the contrary is stated therein, be valid as well for any adjournment of the meeting as for the meeting to which it relates.

Corporate representatives

88. Any corporation or corporation sole which is a member of the Company may (in the case of a corporation, by resolution of its directors or other governing body or by authority to be given under seal or under the hand of an officer duly authorised by it) authorise such person as it thinks fit to act as its representative at any meeting of the Company or at any separate meeting of the holders of any class of shares. A person so authorised shall be entitled to exercise the same power on behalf of the grantor of the authority as the grantor could exercise if it were an individual member of the Company and the grantor shall for the purposes of these articles be deemed to be present in person at any such meeting if a person so authorised is present at it.

Revocation of authority

89. A vote given or poll demanded by proxy or by the duly authorised representative of a corporation shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll unless notice of the determination was received by the Company at the office or at such other place at which the instrument of proxy was duly deposited before the commencement of the

meeting or adjourned meeting at which the vote is given or the poll demanded or (in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll.

NUMBER OF DIRECTORS

Limits on number of directors

90. Unless otherwise determined by ordinary resolution, the number of directors (other than alternate directors) shall not be less than two but shall not be subject to any maximum in number. The directors shall, as at the date of adoption of these articles, consist of nine persons, with six directors being designated by the Class A Shareholder(s) (the *Class A Designees*). The remaining three directors (the *Executive Directors*) shall be Manish Chande, Martin Myers and Nick Friedlos or, subject to any written agreement from time to time to which holders of at least 75 per cent. of each class of the outstanding Ordinary Shares are a party, in place of any such director, such other person as is acceptable to the Class A Shareholder(s) and duly appointed.

APPOINTMENT OF DIRECTORS

91. Subject to any written agreement from time to time to which the holders of at least 75 per cent. of each class of the outstanding Ordinary Shares are a party, the Class A Shareholder(s) shall have exclusive right to appoint or to remove any director and on any such appointment the Class A Shareholder(s) shall notify the Company and the other holders of Ordinary Shares as to whether that director is an Executive Director or a Class A Designee for the purposes of these articles.

92. Subject to the foregoing, if either a Class A Designee or an Executive Director shall cease to be able to serve or shall resign, the Class A Shareholder(s) shall have the right to appoint a replacement director.

93. On exercise of their right to remove or replace, for any reason, at any time, any director, the Class A Shareholders may, subject to any written agreement from time to time to which holders of at least 75 per cent. of each class of the outstanding Ordinary Shares are a party, at their option, decrease the number of directors or appoint another person to fill the seat vacated by any such director. The removal of any director from office shall be without prejudice to any right such director may have under his service contract.

94. No person shall be disqualified from being appointed or reappointed a director, and no director shall be required to vacate that office, by reason only of the fact that he has attained the age of seventy years or any other age nor shall it be necessary by reason of his age to give special notice under the Companies Acts of any resolution for his appointment or reappointment.

No share qualification

95. A director shall not be required to hold any shares of the Company by way of qualification.

ALTERNATE DIRECTORS

Power to appoint alternates

96. Any director (other than an alternate director) may appoint any other director, or any other person willing to act, to be an alternate director and may remove from office an alternate director so appointed by him.

Alternates entitled to receive notice

97. An alternate director shall be entitled to receive notice of all meetings of the board and of all meetings of committees of the board of which his appointor is a member, to attend and vote at any such meeting at which his appointor is not personally present, and generally to perform all the functions of his appointor (except as regards power to appoint an alternate) as a director in his absence.

Alternates representing more than one director

98. A director or any other person (approved by a resolution of the board) may act as alternate director to represent more than one director, and an alternate director shall be entitled at meetings of the board or any committee of the board to one vote for every director whom he represents (and who is not present) in addition to his own vote (if any) as a director, but he shall count as only one for the purpose of determining whether a quorum is present.

Expenses and remuneration of alternates

99. An alternate director may be repaid by the Company such expenses as might properly have been repaid to him if he had been a director but shall not in respect of his services as an alternate director be entitled to receive any remuneration from the Company, except such part (if any) of the remuneration otherwise payable to his appointor as such appointor may by notice in writing to the Company from time to time direct. An alternate director shall be entitled to be indemnified by the Company to the same extent as if he were a director.

Termination of appointment

100. An alternate director shall cease to be an alternate director:

- (a) if his appointor ceases to be a director;
- (b) if his appointor revokes his appointment pursuant to Article 96;
- (c) on the happening of any event which, if he were a director, would cause him to vacate his office as director; or
- (d) if he resigns his office by notice to the Company.

Method of appointment and revocation

101. Any appointment or removal of an alternate director shall be by notice to the Company signed by the director making or revoking the appointment and shall take effect in accordance with the terms of the notice upon receipt of such notice at the office. The notice may be:

- (a) delivered personally to the secretary or to a director other than the director making or revoking the appointment;
- (b) sent by post in a prepaid envelope addressed to the office or to another address designated by the directors for that purpose or by leaving it at the office or such other address; or
- (c) sent by telex, facsimile or electronic mail to a number designated by the directors for that purpose.

The appointment or removal shall take effect when the notice is deemed delivered in accordance with these articles (as the case may be) or on such later date (if any) specified in the notice.

Alternate not an agent of appointor

102. Save as otherwise expressly provided in these articles, an alternate director shall be deemed for all purposes to be a director and, accordingly, except where the context otherwise requires, references to a director shall be deemed to include a reference to an alternate director. An alternate director shall alone be responsible for his own acts and defaults and he shall not be deemed to be the agent of the director appointing him.

POWERS OF THE BOARD

Business to be managed by board

103. Subject to the provisions of the Companies Acts, the Memorandum and these articles, any directions given by special resolution and any written agreement from time to time to which holders of at least 75 per cent. of each class of the outstanding Ordinary Shares are a party, the business of the Company shall be managed by the board which may exercise all the powers of the Company. No alteration of the Memorandum or articles and no such direction shall invalidate any prior act of the board which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this Article shall not be limited by any special power given to the board by these articles and a meeting of the board at which a quorum is present may exercise all powers exercisable by the board.

DELEGATION OF POWERS OF THE BOARD

Committees of the board

104. The board may delegate any of its powers to any committee consisting of one or more directors provided, however, that at least one Class A Designee shall be a

member of such committee and the presence of such Class A Designee (or at least one such Class A Designee if more than one Class A Designee is a member of such committee) shall be required to constitute a quorum and any action taken by such committee shall require the approval of that (or at least one) Class A Designee, subject to written waiver by any Class A Designee of this right, on such terms and for such period as may be specified. Subject to any written agreement from time to time to which holders of any least 75 per cent. of each class of the outstanding Ordinary Shares are a party and any conditions imposed by the directors, the proceedings of any committee with two or more members shall be governed by the provisions of these articles regulating the proceedings of the directors so far as they are capable of applying. Any such delegation shall, in the absence of express provision to the contrary in the terms of delegation, be deemed to include authority to sub-delegate to one or more directors (whether or not acting as a committee) or to any employee or agent of the Company all or any of the powers delegated and may be made subject to such conditions as the board may specify, and may be revoked or altered.

Agents

105. The board may, by power of attorney or otherwise, appoint any person or persons to be the agent or agents of the Company for such purposes, with such powers, authorities and discretions (not exceeding those vested in the board) and on such conditions as the board determines, including authority for the agent or agents to delegate all or any of his or their powers, authorities and discretions, and may revoke or vary such delegation.

Offices including the title "director"

106. The board may appoint any person to any office or employment having a designation or title including the word "director" or attach to any existing office or employment with the Company such a designation or title and may terminate any such appointment or the use of any such designation or title. The inclusion of the word "director" in the designation or title of any such office or employment shall not imply that the holder is a director of the Company, nor shall the holder thereby be empowered in any respect to act as, or be deemed to be, a director of the Company for any of the purposes of these articles.

DISQUALIFICATION AND REMOVAL OF DIRECTORS

Disqualification

107. The office of a director shall be vacated if:

- (a) he ceases to be a director by virtue of any provisions of the Companies Acts or these articles or he becomes prohibited by law from being a director; or
- (b) he becomes bankrupt or makes any arrangement or composition with his creditors generally or shall apply to the court for an interim order under section 253 of the Insolvency Act 1986 in connection with a voluntary arrangement under that Act; or

- (c) he is, or may be, suffering from mental disorder and either:
- (i) he is admitted to hospital in pursuance of an application for admission for treatment under the Mental Health Act 1983 or, in Scotland, an application for admission under the Mental Health (Scotland) Act 1960; or
 - (ii) an order is made by a court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder for his detention or for the appointment of a receiver, curator bonis or other person to exercise powers with respect to his property or affairs; or
- (d) (not being a director holding office as such for a fixed term) he resigns his office by notice to the Company; or
- (e) he shall for more than six consecutive months have been absent without permission of the board from meetings of the board held during that period and his alternate director (if any) shall not during such period have attended in his stead and the board resolves that his office be vacated; or
- (f) he is removed from office by notice given under Article 91; or
- (g) he is removed from office pursuant to the terms of any written agreement between himself and the Company or any written agreement between the holders of at least 75 per cent. of the holders of each class of the outstanding Ordinary Shares.

REMUNERATION OF DIRECTORS

Ordinary remuneration

108. The directors shall be entitled to such remuneration, if any, as the Company may from time to time by ordinary resolution determine.

DIRECTORS' EXPENSES

Directors may be paid expenses

109. The directors may be paid all travelling, hotel, and other expenses properly incurred by them in connection with their attendance at meetings of the board or committees of the board or general meetings or separate meetings of the holders of any class of shares or of debentures of the Company or otherwise in connection with the discharge of their duties.

EXECUTIVE DIRECTORS

Appointment to executive office

110. Subject to the provisions of the Companies Acts, the provisions of these articles and the terms of any written agreement to which the holders of at least 75 per cent. of each class of the outstanding Ordinary Shares are a party, the board may enter

into an agreement or arrangement with any director for his employment by the Company or for the provision by him of any services outside the scope of the ordinary duties of a director. Any such appointment, agreement or arrangement may be made upon such terms, including terms as to remuneration, as the board determines, and any remuneration which is so determined may be in addition to or in lieu of any ordinary remuneration as a director. The board may revoke or vary any such appointment but without prejudice to any rights or claims which the person whose appointment is revoked or varied may have against the Company by reason thereof.

Termination of appointment to executive office

111. Any appointment of a director to an executive office shall terminate if he ceases to be a director but without prejudice to any rights or claims which he may have against the Company by reason of such cessation. A director appointed to an executive office shall not ipso facto cease to be a director if his appointment to such executive office terminates.

Emoluments to be determined by the board

112. The emoluments of any director holding executive office for his services as such shall be determined by the board, and may be of any description, and (without limiting the generality of the foregoing) may include admission to or continuance of membership of any scheme (including any share acquisition scheme) or fund instituted or established or financed or contributed to by the Company for the provision of pensions, life assurance or other benefits for employees or their dependants, or the payment of a pension or other benefits to him or his dependants on or after retirement or death, apart from membership of any such scheme or fund.

DIRECTORS' INTERESTS

Directors may contract with the Company

113. Subject to the provisions of the Companies Acts, and provided that he has disclosed to the board the nature and extent of any material interest of his, a director notwithstanding his office:

- (a) may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise interested;
- (b) may act by himself or his firm in a professional capacity for the Company (otherwise than as auditor) and he or his firm shall be entitled to remuneration for professional services as if he were not a director;
- (c) may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the Company or in which the Company is otherwise interested; and
- (d) shall not, by reason of his office, be accountable to the Company for any benefit which he derives from any such office or employment or from any

such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit.

Notification of interests

114. For the purposes of Article 113:

- (a) a general notice given to the board that a director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the director has an interest in any such transaction of the nature and extent so specified; and
- (b) an interest of which a director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his.

Exercise by Company of voting rights

115. The board may exercise the voting power conferred by the shares in any body corporate held or owned by the Company in such manner in all respects as it thinks fit (including the exercise thereof in favour of any resolution appointing its members or any of them directors of such body corporate, or voting or providing for the payment of remuneration to the directors of such body corporate).

GRATUITIES, PENSIONS AND INSURANCE

Gratuities and pensions

116. The board may (by establishment of or maintenance of schemes or otherwise) provide benefits, whether by the payment of gratuities or pensions or by insurance or otherwise, for any past or present director or employee of the Company or any of its subsidiaries or any body corporate associated with, or any business acquired by, any of them, and for any member of his family (including a spouse and a former spouse) or any person who is or was dependent on him, and may (as well before as after he ceases to hold such office or employment) contribute to any fund and pay premiums for the purchase or provision of any such benefit.

Insurance

117. Without prejudice to the provisions of Article 159, the board shall have the power to purchase and maintain insurance for or for the benefit of any persons who are or were at any time:

- (a) directors, officers, or employees or auditors of the Company, or of any body which is the holding company or in which the Company or such holding company subsidiary has any interest whether direct or indirect or which is in any way allied to or associated with the Company; or

- (b) directors, officers, employees or directors of any subsidiary undertaking of the Company or any such other company, or who are or were at any time trustees of any pension fund or employee share scheme in which employees of the Company or any such other company or subsidiary undertaking are interested, including (without prejudice to the generality of the foregoing) insurance against any liability incurred by such persons in respect of any act or omission in the actual or purported execution or discharge of their duties or in the exercise or purported exercise of their powers or otherwise in relation to their duties, powers or offices in relation to the Company or any such other company, subsidiary undertaking, pension fund or employee share scheme.

Directors not liable to account

118. Without prejudice to the generality of Article 113, no director or former director shall be accountable to the Company or the members for any benefit provided pursuant to Article 116 or 117 and the receipt of any such benefit shall not disqualify any person from being or becoming a director of the Company.

119. Pursuant to Section 719 of the Act, the directors are hereby authorised to make such provision as may seem appropriate for the benefit of any persons employed or formerly employed by the Company or any of its subsidiaries in connection with the cessation or the transfer of the whole or part of the undertaking of the Company or any subsidiary. Any such provision shall be made by a resolution of the directors in accordance with the said section.

PROCEEDINGS OF DIRECTORS

Convening meetings

120. Subject to the provisions of these articles, the board may regulate its proceedings as it thinks fit. A director may, and the secretary at the request of a director shall, call a meeting of the board. Unless otherwise agreed by a majority of the directors, at least seven days' written notice of board meetings shall be given to all directors (unless at least one Class A Designee (or his alternate) approves a shorter notice period), which shall include an agenda setting out in reasonable detail the matters to be discussed at the meeting together with copies of documents to be tabled. Notice, shall be deemed to be properly given to a director if it is given to him personally or by word of mouth or sent in writing to him at his last known address or any other address given by him to the Company for this purpose (whether or not such address is the United Kingdom). Notice of a board meeting shall also be deemed to be properly given to a director if it is sent to him by facsimile transmission to the last number provided by him to the Company for this purpose. Questions arising at a meeting shall be decided by a majority of votes. In the case of an equality of votes, the chairman shall have a second or casting vote. Any director may waive notice of a meeting and any such waiver may be retrospective. In the case that at any board meeting there are fewer Class A Designees than non-Class A Designees, the chairman of the meeting shall have such additional number of votes as is equal to the difference between the number of Class A Designees and non-Class A Designees who are present, in addition to any second or casting vote.

Quorum

121. The quorum for the transaction of the business of the board may be fixed by the board and unless so fixed at any other number shall be two directors, provided that in all cases the presence of at least one Class A Designee shall be required for a quorum to be constituted. A person who holds office only as an alternate director shall, if his appointor is not present, be counted in the quorum. Any director who ceases to be a director at a board meeting may continue to be present and to act as a director and be counted in the quorum until the termination of the board meeting if no director objects.

Powers of directors if number falls below minimum

122. The continuing directors or a sole continuing director may act notwithstanding any vacancies in their number, but, if the number of directors is less than the number fixed as the quorum, the continuing directors or director may act only for the purpose of filling vacancies or of calling a general meeting.

Chairman and deputy chairman

123. The board shall appoint any one of the Class A Designees to be the chairman, and one of the Class A Designees to be the deputy chairman, of the board and may at any time remove either of them from such office. Unless he is unwilling to do so, the director appointed as chairman, or in his stead the director appointed as deputy chairman, shall preside at every meeting of the board at which he is present. If there is no director holding either of those offices, or if neither the chairman nor the deputy chairman is willing to preside or neither of them is present within five minutes after the time appointed for the meeting, the directors present shall appoint any Class A Designee to be chairman of the meeting.

Validity of acts of the board

124. All acts done by a meeting of the board, or of a committee of the board, or by a person acting as a director or alternate director, shall, notwithstanding that it be afterwards discovered that there was a defect in the appointment of any director or any member of the committee or alternate director or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a director or, as the case may be, an alternate director and had been entitled to vote.

Resolutions in writing

125. A resolution in writing signed by all the directors entitled to receive notice of a meeting of the board or of a committee of the board (not being less than the number of directors required to form a quorum of the board) shall be as valid and effectual as if it had been passed at a meeting of the board or (as the case may be) a committee of the board duly convened and held and for this purpose:

- (a) a resolution may consist of several documents to the same effect each signed by one or more directors;
- (b) a resolution signed by an alternate director on behalf of his appointor need not also be signed by his appointor; and
- (c) a resolution signed by a director who has appointed an alternate director need not also be signed by the alternate director in that capacity.

Meetings by telephone, etc.

126. Without prejudice to the first sentence of Article 120, a meeting of the board or of a committee of the board may consist of a conference between directors who are not all in one place, but of whom each is able (directly or by telephonic communication (which shall include video-conferencing)) to speak to each of the others, and to be heard by each of the others simultaneously. A director taking part in such a conference shall be deemed to be present in person at the meeting and shall be entitled to vote or be counted in a quorum accordingly. Such a meeting shall be deemed to take place where the largest group of those participating in the conference is assembled, or, if there is no such group, where the chairman of the meeting then is. The word *meeting* in these articles shall be construed accordingly.

Directors' power to vote on contracts in which they are interested

127. Without prejudice to his obligations of disclosure under the Act and the articles, a director may vote at any meeting of the directors or of a committee of the directors on, and be counted in the quorum present at a meeting in relation to, any resolution concerning a transaction or arrangement with the company or in which the company is interested, or concerning any other matter in which the company is interested, notwithstanding that he is interested in that transaction, arrangement or matter or has in relation to it a duty which conflicts or may conflict with the interests of the company.

Amendment of restrictions on voting

128. The Company may by ordinary resolution suspend or relax to any extent, either generally or in respect of any particular matter, any provision of these articles prohibiting a director from voting at a meeting of the board or of a committee of the board, or ratify any transaction not duly authorised by reason of a contravention of any such provision.

Division of proposals

129. Where proposals are under consideration concerning the appointment (including fixing or varying the terms of appointment) of two or more directors to offices or employments with the Company or any body corporate in which the Company is interested, the proposals may be divided and considered in relation to each director separately and in such cases each of the directors concerned shall be entitled to vote and be counted in the quorum in respect of each resolution.

130. not used

SECRETARY

Appointment and removal of secretary

131. Subject to the provisions of the Companies Acts, the secretary shall be appointed by the board for such term, at such remuneration and upon such conditions as it may think fit; and any secretary so appointed may be removed by the board, but without prejudice to any claim for damages for breach of any contract of service between him and the Company.

MINUTES

Minutes required to be kept

132. The board shall cause minutes to be made in books kept for the purpose:

- (a) of all appointments of officers made by the board; and
- (b) of all proceedings at meetings of the Company, of the holders of any class of shares in the Company, of the board, and of committees of the board, including the names of the directors present at each such meeting.

Any such minutes, if purporting to be signed by the chairman of the meeting to which they relate or of the meeting at which they are read, shall be sufficient evidence without any further proof of the facts therein stated.

THE SEAL

Authority required for use of seal

133. The seal shall only be used by the authority of a resolution of the board or of a committee of the board. The board may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by at least one director and the secretary or by at least two directors.

Official seal for use abroad

134. The company may exercise the powers conferred by section 39 of the Act with regard to having an official seal for use abroad.

Execution of instrument as a deed under hand

135. Where the Act so permits, any instrument signed, with the authority of a resolution of the board or of a committee of the board, by one director and the secretary or by two directors and expressed to be executed by the Company as a deed shall have the same effect as if executed under the seal, provided that no instrument which makes it clear on its face that it is intended by the persons making it to have effect as a deed shall be signed without the authority of the board.

Delivery of deeds

136. A document which is executed by the Company as a deed shall not be deemed to be delivered by the Company solely as a result of its having been executed by the Company.

CERTIFICATION

Certified copies

137. Any director or the secretary or any person appointed by the board for the purpose shall have power to authenticate any documents affecting the constitution of the Company and any resolutions passed by the Company or the holders of any class of shares of the Company or the board or any committee of the board, and any books, records, documents and accounts relating to the business of the Company, and to certify copies thereof or extracts therefrom as true copies or extracts. A document purporting to be a copy of a resolution, or the minutes of or an extract from the minutes of a meeting of the Company or the holders of any class of shares of the Company or of the board or any committee of the board that is certified as aforesaid shall be conclusive evidence in favour of all persons dealing with the Company upon the faith thereof that such resolution has been duly passed or, as the case may be, that such minutes or extract is a true and accurate record of proceedings at a duly constituted meeting.

DIVIDENDS

Declaration of dividends

138. Subject to the provisions of the Companies Acts, the Company may by ordinary resolution declare dividends in accordance with the respective rights of the members, but no dividend shall exceed the amount recommended by the board.

Interim dividends

139. Subject to the provisions of the Companies Acts, the board may declare and pay interim dividends if it appears to the board that they are justified by the profits of the Company available for distribution. If the share capital is divided into different classes, the board may declare and pay interim dividends on shares which confer deferred or non-preferred rights with regard to dividend as well as on shares which confer preferential rights with regard to dividend, but no interim dividend shall be declared or paid on shares carrying deferred or non-preferred rights if, at the time of declaration or payment, any preferential dividend is in arrear. The board may also declare and pay at intervals settled by it any dividend payable at a fixed rate if it appears to the board that the profits available for distribution justify the payment. Provided the board acts in good faith it shall not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the declaration or lawful payment of an interim dividend on any shares having deferred or non-preferred rights.

Apportionment of dividends

140. Except as otherwise provided by the rights attached to shares or as provided by the terms of any written agreement from time to time to which the holders of at least 75 per cent of each class of the outstanding Ordinary Shares are a party, all dividends shall be declared and paid according to the amounts paid up on the shares on which the dividend is paid. Subject as aforesaid, all dividends shall be apportioned and paid proportionately to the amounts paid up on the shares during any portion or portions of the period in respect of which the dividend is paid; but, if any share is issued on terms providing that it shall rank for dividend as from a particular date, that share shall rank for dividend accordingly.

Dividends in specie

141. A general meeting declaring a dividend may, upon the recommendation of the board, by ordinary resolution direct that it shall be satisfied wholly or partly by the distribution of assets, and in particular of paid up shares or debentures of any other body corporate, and, where any difficulty arises in regard to the distribution, the board may settle the same as it thinks fit and in particular may issue fractional certificates or authorise any person to sell and transfer any fractions or disregard fractions altogether, and may fix the value for distribution of any assets and may determine that cash shall be paid to any member upon the footing of the value so fixed in order to adjust the rights of members and may vest any assets in trustees.

Permitted deductions

142. The board may deduct from any dividend or other moneys payable to any member in respect of a share any moneys presently payable by him to the Company in respect of that share.

Procedure for payment

143. Any dividend or other moneys payable in respect of a share may be paid by cheque or warrant sent by post to the registered address of the holder or person entitled or, if two or more persons are the holders of the share or are jointly entitled to it by reason of the death or bankruptcy of the holder or otherwise by operation of law, to the registered address of that one of those persons who is first named in the register or to such person and to such address as the person or persons entitled may in writing direct. Every such cheque or warrant shall be made payable to the order of the person or persons entitled or to such other person as the person or persons entitled may in writing direct and shall be sent at the risk of the person entitled, and payment of the cheque shall be a good discharge to the Company. Any joint holder or other person jointly entitled to a share as aforesaid may give receipts for any dividend or other moneys payable in respect of the share. Any such dividend or other money may also be paid by any other method (including direct debit, bank transfer and dividend warrant) which the board considers appropriate.

Interest not payable

144. No dividend or other moneys payable in respect of a share shall bear interest against the Company unless otherwise provided by the rights attached to the share.

Forfeiture of unclaimed dividends

145. Any dividend which has remained unclaimed for twelve years from the date when it became due for payment shall, if the board so resolves, be forfeited and cease to remain owing by the Company. The payment by the board of any unclaimed dividend or other moneys payable in respect of a share into a separate account shall not constitute the Company a trustee thereof.

CAPITALISATION OF PROFITS AND RESERVES

Power to capitalise

146. The board may with the authority of an ordinary resolution of the Company:

- (a) subject as hereinafter provided, resolve to capitalise any undistributed profits of the Company not required for paying any preferential dividend (whether or not they are available for distribution) or any sum standing to the credit of any reserve or other fund, including the Company's share premium account and capital redemption reserve, if any;
- (b) appropriate the sum resolved to be capitalised to the members or any class of members on the record date specified in the relevant resolution who would have been entitled to it if it were distributed by way of dividend and in the same proportions and apply such sum on their behalf either in or towards paying up the amounts, if any, for the time being unpaid on any shares held by them respectively, or in paying up in full unissued shares, debentures or other obligations of the Company of a nominal amount equal to that sum, and allot the shares, debentures or other obligations credited as fully paid to those members, or as they may direct, in those proportions, or partly in one way and partly in the other; but the share premium account, the capital redemption reserve, and any profits which are not available for distribution may, for the purposes of this Article, only be applied in paying up unissued shares to be allotted to members credited as fully paid;
- (c) make such provision by authorising the sale and transfer to any person of fractions to which any members would become entitled or may issue fractional certificates or may resolve that the distribution be made as nearly as practicable in the correct proportion but not exactly so or may ignore fractions altogether or resolve that cash payments be made to any members in order to adjust the rights of all parties or otherwise as (in each case) the board determines where shares or debentures become, or would otherwise become, distributable under this Article in fractions;
- (d) authorise any person to enter on behalf of all the members concerned into an agreement with the Company providing for either:-

- (i) the allotment to such members respectively, credited as fully paid, of any shares, debentures or other obligations to which they are entitled upon such capitalisation; or
- (ii) the payment up by the Company on behalf of such members (by the application thereto of their respective proportions of the profits resolved to be capitalised) of the amounts, or any part of the amounts, remaining unpaid on their existing shares,

and any agreement made under such authority shall be binding on all such members; and

- (e) generally do all acts and things required to give effect to such resolution as aforesaid.

RECORD DATES

Record dates for dividends, etc.

147. Notwithstanding any other provision of these articles, the Company or the board may fix any date as the record date for any dividend, distribution, allotment or issue, and such record date may be on or at any time before or after any date on which the dividend, distribution, allotment or issue is declared, paid or made.

ACCOUNTS

Rights to inspect records

148. No member shall (as such) have any right of inspecting any accounting records or other book or document of the Company except as conferred by statute or authorised by the board or by ordinary resolution of the Company or order of a court of competent jurisdiction.

Delivery of balance sheets and profit and loss accounts

149. A copy of every balance sheet and profit and loss account (including any documents required by law to be annexed thereto) which is to be laid before the Company in general meeting and of the directors' and auditors' reports shall, at least twenty-one days previously to the meeting, be delivered or sent by post to every member and to every debenture holder of the Company of whose address the Company is aware, and to every other person who is entitled to receive notice of meetings from the Company under the provisions of the Companies Acts or of these articles or, in the case of joint holders of any share or debenture, to one of the joint holders, provided that the requirements of this Article shall be deemed satisfied in relation to any member by sending to such member, where permitted by the Companies Acts and instead of such copies, a summary financial statement derived from the Company's annual accounts and the report of the directors and prepared in the form and containing the information prescribed by the Companies Acts and any regulations made thereunder.

NOTICES

When notice required to be in writing

150. Any notice to be given to or by any person pursuant to these articles shall be in writing except that a notice calling a meeting of the board or a committee of the board shall be in writing, which includes, without limitation, telex, facsimile and electronic mail. A notice may be partly in one form and partly in another.

Method of giving notice

151. The Company may serve or deliver any notice or other document on or to a member:

- (a) personally;
- (b) by sending it by post in a prepaid envelope or by overnight carrier to the member at his registered address or by delivering it by hand to that address; or
- (c) by sending it by telex, facsimile or electronic mail to a number of address supplied to the Company by the member for that purpose.

In the case of joint holders of a share, all notices or other documents shall be served on or delivered to the joint holder whose name stands first in the register in respect of the joint holding and any notice or other document so served or delivered shall be deemed for all purposes sufficient service on or delivery to all the joint holders.

Deemed receipt of notice

152. A member present, either in person or by proxy, at any meeting of the Company or of the holders of any class of shares in the Company shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.

Notice to persons entitled by transmission

153. A notice or other document may be served or delivered by the Company on or to the persons entitled by transmission to a share, whether in consequence of the death or bankruptcy of a member or otherwise by sending or delivering it, in any manner authorised by these articles for the service or delivery of a notice or other document on or to a member, addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt or by any like description at the address, if any, supplied for that purpose by the persons claiming to be so entitled. Until such an address has been supplied, a notice or other document may be served or delivered in any manner in which it might have been served or delivered if the death or bankruptcy or other event giving rise to the transmission had not occurred.

Transferees etc. bound by prior notice

154. Every person who becomes entitled to a share shall be bound by any notice in respect of that share which, before his name is entered in the register, has been duly given to a person from whom he derives his title.

When notices deemed served

155. This Article applies to any notice to be given to or by any person pursuant to these articles. Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be deemed given:

- (a) in the case of a notice delivered to a member at his registered address, at the time of such delivery;
- (b) in the case of a notice delivered by telex, facsimile or electronic mail transmission to a member to a number or address supplied to the Company by the member for that purpose shall be deemed given twelve hours after the time of despatch or at such earlier time as receipt by the Company is acknowledged;
- (c) if sent by first class post from an address in the United Kingdom to another address in the United Kingdom, on the day following that on which the envelope containing it was posted;
- (d) if sent by the equivalent of first class post from an address in another country to another address in that country, on the day following that on which the envelope containing it was posted;
- (e) if sent by airmail from an address in the United Kingdom to an address outside the United Kingdom, or to an address in the United Kingdom from an address outside the United Kingdom, on the third day following that on which the envelope containing it was posted; and
- (f) in the case of a notice delivered by overnight courier, at the time of delivery thereof by the courier company concerned.

WINDING UP

Liquidator may distribute in specie

156. If the Company is wound up, the liquidator may, with the sanction of an extraordinary resolution of the Company and any other sanction required by the Insolvency Act 1986, divide among the members in specie the whole or any part of the assets of the Company and may, for that purpose, value any assets and determine how the division shall be carried out as between the members or different classes of members. The liquidator may, with the like sanction, vest the whole or any part of the assets in trustees upon such trusts for the benefit of the members as he with the like

sanction determines, but no member shall be compelled to accept any assets upon which there is a liability.

Disposal of assets by liquidator

157. The power of sale of a liquidator shall include a power to sell wholly or partially for shares or debentures or other obligations of another body corporate, either then already constituted or about to be constituted for the purpose of carrying out the sale.

INDEMNITY

Indemnity to directors, officers, etc.

158. Subject to the provisions of the Companies Acts but without prejudice to any indemnity to which a director may otherwise be entitled, every director or other officer or auditor of the Company shall be indemnified out of the assets of the Company against all costs, charges, losses, expenses and liabilities incurred by him in the execution or discharge of his duties or the exercise of his powers or otherwise in relation thereto, including (but without limitation) any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour (or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part) or in which he is acquitted or in connection with any application in which relief is granted to him by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company.

SCHEDULE 4

Shareholders' Agreement

THIS AGREEMENT is made on November 2000

BETWEEN:

- (1) **WIND DRIFT LIMITED**, a limited company incorporated under the laws of the British Virgin Islands, whose registered office is at Trust Net Chambers, PO Box 3444, Road Town, Tortola, British Virgin Islands (*Wind Drift*);
- (2) **SHAFTESBURY REAL ESTATE MANAGEMENT LIMITED**, a limited company incorporated under the laws of Jersey, whose registered office is at PO Box 124, Langtry House, La Motte Street, St. Helier, Jersey, Channel Islands (*Shaftesbury*);
- (3) **MYCHAND LIMITED**, a private company limited by shares incorporated under the laws of England and Wales with registered number 3470901, whose registered office is at 24 Bedford Row, London WC1R 4HA (*Mychand*);
- (4) **ARCHON/PPM L.L.C.**, a limited liability company established under the laws of the state of Delaware, USA, whose principal office is at 85 Broad Street, New York, NY 10004, USA (*Archon*);
- (5) **W9/PPM L.L.C.**, a limited liability company established under the laws of the state of Delaware, USA, whose principal office is at 85 Broad Street, New York, NY 10004, USA (*Whitehall*).

WHEREAS:

- (A) The Company was incorporated on 23 December 1997 in England and Wales as a limited liability company whose registered office is at Bastion House, 140 London Wall, London EC2Y 5DN;
- (B) On the Effective Date, the Shareholders hold Shares in the Company of the classes and numbers set out opposite their names in Schedule 1 of this Agreement; and
- (C) The Shareholders are entering into this Agreement to set out the terms governing their relationship as shareholders in the Company.

IT IS AGREED as follows:

INTERPRETATION

Definitions

- 1.1 In this Agreement:

Actual Promote Payments means, as of any date of calculation with respect to Class B Shareholders and/or Class C Shareholders, the amount of £7,956 that shall be deemed to have been paid to the Class B Shareholders on 1 October 1999, and:

- (a) the excess, if any, of:
 - (x) the amount of each distribution that has previously been made to such Shareholder pursuant to this Agreement; over
 - (y) the amount of distributions that would have been made to such Shareholder pursuant to this Agreement if all distributions had been made in accordance with the Shareholders' Percentage Interests in effect at the time of each such distribution;

less

- (b) amounts that have been returned by such Shareholder to the Company pursuant to clause 7.1(d)(i) or clause 7.1(d)(ii) (as applicable);

ADR shall mean alternative dispute resolution;

Affiliate shall mean, with respect to any Person:

- (a) any other Person that directly or indirectly controls or is controlled by or is under common control with such Person;
- (b) any other Person owning or controlling 25% or more of the outstanding voting securities of such Person;
- (c) any other Person 25% or more of whose outstanding voting securities are owned or controlled directly or indirectly by such Person and
- (d) any officer, director, member or partner of such person and any company for which such Person acts in any such capacity.

For purposes of this definition, the term **control**, when used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms **controlling** and **controlled** have meanings correlative to the foregoing;

Agreement shall mean this Shareholders Agreement, as amended or modified from time to time;

Annual Budget shall mean the annual budget for the Trillium Group prepared in respect of each Budget Year by (or at the direction of) the Company pursuant to clause 11.3 and all updates thereto, it being understood that each Subsidiary and the Company shall not have its own Annual Budget;

Available Cash shall mean, with respect to the Company and any fiscal period, the excess, if any, of:

(a) the sum of:

- (i) the amount of all cash receipts of the Company during such fiscal period;
- (ii) any working capital in cash of the Company existing at the start of such fiscal period;
- (iii) any Mychand Fee paid during such fiscal period; and
- (iv) any amount deducted during such fiscal period on account of the £1.5 million reduction in the Class C Shareholders Promote under clause 7.1(b);

less

(b) the sum of:

- (i) all cash amounts paid in such fiscal period on account of expenses and capital expenditures incurred in connection with the Trillium Group's business (including, without limitation, general operating expenses, fees due and payable under any management agreement, taxes, amortization or interest on any debt of the Trillium Group);
- (ii) 100% of the reserves required for the working capital, capital expenditures and future needs of the Trillium Group as set forth in the Annual Budget or such other level of reserves that the Board, in good faith, shall determine is appropriate in accordance with prudent business practices; and
- (iii) any transaction expenses incurred by the parties to this Agreement on any disposal of the Company including any fee payable to Goldman Sachs International.

Where applicable and subject to clause 7.3, *Available Cash* shall also be deemed to include the value of any securities or other Company Assets that the Board elects to distribute, in accordance with clause 7.1, "in kind" to the Shareholders (such value being determined by the Board reasonably and in good faith, as at the time of distribution);

Bankruptcy shall mean, with respect to the affected party:

- (a) the admission by such party that it is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986;
- (b) the making by it of an assignment for the benefit of creditors;
- (c) the filing by it of a petition in bankruptcy or a petition for relief under any Bankruptcy Statute;

- (d) the expiration of thirty (30) days after the filing of an application for the appointment of a receiver, administrator or other similar official for the assets or revenues of such party or an involuntary petition seeking liquidation, reorganisation, arrangement or readjustment of its debts under any Bankruptcy Statute, *provided* that (in either case) the same shall not have been withdrawn, vacated, set aside or stayed within such thirty (30)-day period;
- (e) the imposition of a judicial or statutory lien on all or more than twenty-five percent (25%) of its assets unless such lien is discharged or vacated or the enforcement thereof stayed within thirty (30) days after its effective date; or
- (f) the taking of any corporate action or other steps against that party (other than a winding-up petition, dismissed within thirty (30) days) for the insolvent liquidation, winding-up, dissolution, reorganization or amalgamation of that party;

and **Bankrupt** shall have a correlative meaning;

Bankruptcy Statute shall mean the Insolvency Act 1986 or any bankruptcy, insolvency, reorganization, arrangement, liquidation, readjustment or similar law of any jurisdiction (whether national, federal, state or otherwise) the laws of which apply to the affected party or its assets;

Board means the Company's board of directors;

Book Value shall mean, with respect to any Company Asset, its adjusted basis for United States federal income tax purposes, except that the initial Book Value of any asset contributed by a Shareholder to the Company shall be an amount equal to the fair market value of such asset, as determined by the Company, and such Book Value of any Company Asset shall thereafter be adjusted in a manner consistent with Treasury Regulations Section 1.704-1(b)(2)(iv)(g) for revaluations pursuant to clause 6.1(b) and for the Depreciation taken into account with respect to such asset;

Budget Year shall mean, in respect of the first Budget Year, the period commencing on the 1 April 2000 and ending on 31 March 2001, and in respect of each subsequent Budget Year, the period commencing on the day following the end of the previous Budget Year and ending on the earlier of 31 March of the same year and the date of dissolution of the Company;

Business means the business carried on by the Company, as described in clause 2.1;

Business Day means any day, excluding Saturday or Sunday, on which banks are generally open in London;

Business Plan shall mean with respect to each Budget Year, the Annual Budget in respect of that Budget Year together with the strategic plan (which shall be updated annually) for the Trillium Group prepared by (or at the direction of) the Board and all updates thereto;

Capital Account shall mean, when used in respect of any Shareholder, the capital account maintained for such Shareholder in accordance with clause 6.1, as such Capital Account may be increased or decreased from time to time pursuant to the terms of this Agreement;

Cause shall mean, with respect to any of Wind Drift, Archon, Mychand, and/ or Shaftesbury, that such Person or any Principal or Affiliate of such Person is charged with a criminal offence which progresses to court proceedings (or a similar stage of criminal proceedings under the laws of another jurisdiction, including an "indictment" in the United States) involving actual dishonesty (or an attempt of such dishonesty), becomes Bankrupt or insolvent, is negligent or involved in wilful misconduct with regard to the affairs of the Trillium Group, fails in a material respect to perform its obligations relating to the Trillium Group (including, but not limited to, clause 5.2 and 13) or fails in a material respect to perform its obligations under any other agreement to which Whitehall, any member of the Trillium Group and/or any of their Affiliates are a party or the Transfer of interests in that Shareholder without consent contrary to clause 8.1(b);

Class A Share means a class A Ordinary Share;

Class A Shareholder(s) shall mean the holder or holders of Class A Shares;

Class B Share means a class B Ordinary Share;

Class B Shareholder(s) shall mean the holder or holders of Class B Shares;

Class B Shareholders Promote means the preferential payments to Class B Shareholders pursuant to clauses 7.1(a)(iii)(x) and 7.1(a)(iv)(x);

Class C Share means a class C Ordinary Share;

Class C Shareholder(s) shall mean the holder or holders of Class C Shares;

Class C Shareholders Promote means the preferential payment to Class C Shareholders pursuant to clause 7.1(a)(iv)(y);

Class D Share means a class D Ordinary Share;

Class D Shareholder(s) shall mean the holder or holders of Class D Shares;

Class E Share means a class E Ordinary Share;

Class E Shareholder(s) shall mean the holder or holders of Class E Shares;

Closing Date shall have the meaning set forth in clause 17.9;

Code means the United States Internal Revenue Code of 1986, as amended, or any corresponding provision(s) of succeeding law;

Company Assets mean, with respect to the Company, all right, title and interest of such Company in and to all or any portion of the assets of such Company and its

subsidiaries and any property (real, personal, tangible or intangible) or estate acquired in exchange therefor or in connection therewith;

Company means Trillium Investments GP Limited, an English limited company;

Completion Accounts mean, in respect of a Shareholder, the Completion Accounts (as defined in the Transfer Agreement) for the company sold by that Shareholder to the Company pursuant to the Transfer Agreement;

Confidential Information shall have the meaning set forth in clause 12.1;

Deferred Shares shall have the same meaning as in the New TIGP Articles;

Deemed Distributions mean, in respect of a Shareholder, the amounts set out under that Shareholders' name in the table headed "Deemed Distributions" in Schedule 2 that shall be deemed to have been made on the date specified in the first column opposite that amount;

Depreciation shall mean, with respect to any Fiscal Year, all non-cash deductions allowable under the Code, including deductions attributable to depreciation or cost recovery with respect to Company Assets, including any improvements made thereto and any tangible personal property located therein, or amortisation of the cost of any intangible property or other assets acquired by the Company that have a useful life exceeding one year; *provided that* with respect to any Company Asset whose tax basis differs from its Book Value, Depreciation shall be an amount which bears the same ratio to such Book Value as the depreciation, amortisation or other cost recovery deduction for such period with respect to such asset for federal income tax purposes bears to its adjusted tax basis as of the beginning of such year;

Director means a director of the Company;

distribution means, save where the context otherwise requires, both a dividend or other distribution and the repayment of any Loan;

Effective Date shall mean the date on which this Agreement comes into force in accordance with clause 3;

Executive Director means a Director who under or in accordance with clause 9.2 has been specified as such;

Fair Market Value shall have the meaning set out in clause 17.5;

Fiscal Year shall mean, in respect of the first Fiscal Year, the period commencing on the 1 January 2000 and ending on 31 December 2000, and in respect of each subsequent Fiscal Year, the period commencing on the day following the end of the previous Fiscal Year and ending on the earlier of 31 December of the same year and the date of dissolution of the Company;

Future Loan means, in respect of a Shareholder, any amount advanced by that Shareholder to the Company in accordance with clause 5.3 and not otherwise repaid in accordance with this Agreement;

Initial Investment means, with respect to any Shareholder, the aggregate of:

- (a) the amount specified in the fourth column of Schedule 1 opposite that Shareholders' name; and
- (b) the amount of that Shareholder's Initial Loans;

Initial Loan means, with respect to any Shareholder, the amount advanced by that Shareholder pursuant to clause 5.2;

Institutional Lender means any Affiliate of Whitehall (including The Goldman Sachs Group, Inc., Bridge Street and Stone Street) and/or any one or more of the following other entities, *provided that* for such entity (other than an Affiliate of Whitehall) to qualify as an Institutional Lender hereunder, such entity, together with its majority-owned subsidiaries, must have total assets of at least \$5,000,000,000 and stockholders' equity or net worth of at least \$250,000,000 (or, in either case, the equivalent thereof in a currency other than U.S. dollars) as of the date the loan is made: a savings bank, a savings and loan association, a commercial bank or trust company, an insurance company subject to regulation by any governmental authority or body, a real estate investment trust, a union, governmental or secular employees' welfare, benefit, pension or retirement fund, a pension fund, property unit trust (whether authorised or unauthorised), an investment company or trust, a merchant or investment bank or any other entity generally viewed as an institutional lender in the reasonable opinion of the Board. In each of the foregoing cases, such entity shall be an Institutional Lender if:

- (a) it is acting for itself; or
- (b) it is acting as trustee, as general partner of a partnership, in a fiduciary, management or advisory capacity or, in the case of a bank, as agent bank for any number of lenders, so long as the day-to-day management decisions relating to the loan are either exercised by or recommended by it; or
- (c) if at the time the loan was made it qualified as an Institutional Lender under paragraph (b) of this definition, from such time as it ceases to qualify as an Institutional Lender under that paragraph until such time as it is replaced by an entity which qualifies as an Institutional Lender under that paragraph.

An Institutional Lender that originally qualified as such under paragraph (b) of this definition shall only be cease to be an Institutional Lender for the purposes of this Agreement if it is replaced by another Institutional Lender that does qualify as such within that paragraph;

Interest means the entire interest of a Shareholder in the Company at any particular time and all appurtenant rights thereto, including that Shareholder's Investment and Promote, the right of that Shareholder to any and all benefits (including Shares) to which a Shareholder may be entitled as provided in this Agreement, together with the obligations of that Shareholder to comply with all the terms and provisions of this Agreement

Investment means, with respect to any Shareholder at any time, the aggregate of:

- (a) the issue price of all Ordinary Shares held at that time by that Shareholder; and
- (b) all Loans of that Shareholder that the Company has not at that time repaid;

IRR means, with respect to a Shareholder and as of any date, the total monthly compounded internal rate of return to that Shareholder on its Original Investments and any Future Loan (after the return to that Shareholder of amounts equal to its Original Investment and any Future Loan) taking into account the amount and timing of:

- (a) all Deemed Distributions to that Shareholder; and
- (b) distributions to such Shareholder up to and including such date, but excluding, for purposes of calculating the IRR of Class B Shares and Class C Shares, any amounts received (but not returned) by such Persons as a Promote; and
- (c) the Original Investment and all Future Loans made by such Shareholder up to and including such date.

For purposes of computing such IRR, all Future Loans and all distributions made at any time during any month shall be deemed to be made on the first day of such month;

IRS means the United States Internal Revenue Service and any successor agency or entity thereto;

Loan Call shall have the meaning set forth in clause 5.3(a);

Loan means, with respect to any Shareholder, the aggregate of that Shareholder's Initial Loans and Future Loans, save to the extent that such loans have been repaid to that Shareholder;

Losses shall have the meaning set forth in clause 6.2;

Majority-in-Interest means the Shareholder, or Shareholders collectively, holding more than 50% of the Percentage Interests held by the Shareholders;

Minimum Gain shall mean an amount equal to the excess of the principal amount of debt for which no Shareholder is liable (*non-recourse debt*) over the adjusted basis of the Company Assets which represents the minimum taxable gain that would be recognized by the Company if the non-recourse debt were foreclosed upon and the Company Assets were transferred to the creditor in satisfaction thereof, and which is referred to as "partnership minimum gain" in Treasury Regulations Section 1.704-2(b)(2). A Shareholder's share of Minimum Gain shall be determined pursuant to Treasury Regulations Section 1.704-2;

Mychand Fee means any amount paid by Trillium Group Limited under clause 4.1 of the Mychand Services Agreement between Trillium Group Limited and Mychand Holdings Limited dated 26 July 1999, before or after the Effective Date;

New Shareholder shall have the meaning set forth in clause 5.6;

New TIGP Articles shall mean the articles of association of the Company adopted pursuant to the Transfer Agreement as may be amended from time to time;

Ordinary Share has the meaning set out in the New TIGP Articles (and excludes the Deferred Shares);

Organisational Document shall mean, (i) in the case of a body corporate, its certificate of incorporation and memorandum and articles of association (or similar constitutive documents), and any shareholder agreement, voting trust or similar arrangement applicable to its authorised share capital, (ii) in the case of a partnership, its certificate of limited partnership, partnership agreement, voting trusts or similar arrangements applicable to any of its partnership interests, (iii) in the case of a limited liability company, its certificate of formation, limited liability company agreement or other document affecting the rights of holders of limited liability company interests, or (iv) in the case of any other legal entity, its organisational, constitutive and other documents governing such entity or affecting the rights of holders of equity interests in such entity;

Original Investment means, subject to clause 5.2(d), in respect of a Shareholder, the amount set out in the first column of the table headed "Original Investments" in Schedule 2, which shall be deemed to have been made on the date specified in the second column, in each case opposite his name;

Percentage Interest means, with respect to any Shareholder at any time, the quotient (expressed as a percentage rounded up to the nearest one-hundred thousandth of one percent (0.00001%)) of (i) the aggregate of such Shareholder's Original Investment and Future Loans at that time divided by (ii) the sum of all Shareholders' Original Investments and Future Loans at that time;

Person shall mean any individual, partnership, corporation, limited liability company, trust or other legal entity;

Pledgee shall have the meaning set forth in clause 8.1(c);

Preferred Return shall have the meaning set out in clause 7.1(a);

Project PRIME shall mean the project described in the project agreement relating to the PRIME Project dated 27 March 1998 and between the Secretary of State for Social Security, the Secretary of State for the Environment, Transport and the Regions, Trillium (PRIME) Limited (previously called Partnership Property Management (PRIME) Limited) and Trillium (PRIME) Property GP Limited (previously called PPM (PRIME) Property Limited);

Principal shall mean, with respect to any Person, any other Person that controls such Person or owns a majority of the equity interests of such Person, either directly or indirectly, and, in the case of Mychand, includes Manish Chande and Martin Myers;

Profits shall have the meaning set forth in clause 6.2;

Promote shall mean the Class B Shareholders Promote and/or the Class C Shareholders Promote, as the case may be (and where appropriate, shall mean the Class B Shareholders Promote and the Class C Shareholders Promote collectively) and references to the **return** of a Promote shall be a reference to any action taken pursuant to clause 7.1(d)(i) or clause 7.1(d)(ii);

Proposing Shareholders shall have the meaning set out in clause 8.3;

Purchaser shall have the meaning set out in clause 8.1(c);

Representative of a Shareholder, means the person(s) listed opposite the name of that Shareholder in Schedule 3, until such time, if any, as that Shareholder designates one or more replacement representatives and notifies the other Shareholders of that designation in accordance with clause 9.3(b)

Required Transfer Date shall mean the date on which a Shareholder:

- (a) elects to have its Shares purchased in accordance with clause 9.6; or
- (b) is required to transfer its Shares in accordance with clause 17;

Requisite Class B Shareholders Promote shall mean an amount, as determined from time to time, equal to the sum of:

- (a) twelve percent (12%) of the excess, if any, of the sum of all Deemed Distributions and all distributions made (including Actual Promote Payments) over the amount required to provide each Shareholder with the Preferred Return (but excluding any Deemed Distributions or actual distributions above the amount required to provide each Shareholder with the Second Preferred Return); plus
- (b) twelve percent (12%) of the excess, if any, of the sum of all Deemed Distributions and actual distributions over the amount required to provide each Shareholder with the Second Preferred Return;

Requisite Class C Shareholders Promote shall mean an amount, as determined from time to time, equal to ten percent (10%) of the excess, if any, of the sum of all Deemed Distributions and all distributions made (including Actual Promote Payments) over the amount required to provide each Shareholder with the Second Preferred Return;

Second Preferred Return shall have the meaning set out in clause 7.1(a);

Shareholder-Funded Debt shall mean any non-recourse debt of the Company that is loaned or guaranteed by any Shareholder and/or is treated as Shareholder non-recourse debt with respect to a Shareholder under Treasury Regulations Section 1.704-2(b)(4);

Shareholders mean Wind Drift, Shaftesbury, Mychand, Archon and Whitehall and for so long as such Persons shall be Shareholders, any permitted transferees pursuant

to clause 8 and any Person who acquires Shares in accordance with clause 5.6 in the future (including any New Shareholder);

Subsidiary shall mean any Person at least twenty five percent (25%) owned, directly or indirectly, or controlled, directly or indirectly, by the Company;

Substituted Shareholder shall mean any Person admitted to the Company as a Shareholder pursuant to the provisions of clause 8.5;

Taxes Acts shall have the meaning given to it in the Taxes Management Act 1970;

TILP means Trillium Investments Limited Partnership, a limited partnership registered under the Limited Partnerships Act 1907 with number LP 5664;

Transfer means any transfer, sale, pledge, hypothecation, encumbrance, assignment or other disposition (whether voluntarily, involuntarily, by operation of law or otherwise);

Transfer Agreement shall mean the Transfer Agreement between the Shareholders and the Company dated on or about the date of this Agreement;

Transferee shall have the meaning set out in clause 8.6;

Transferor shall have the meaning set out in clause 8.6;

Treasury Regulations shall mean the regulations promulgated under the Code, as such regulations are in effect on the date hereof;

Trillium Group shall mean the Company together with the Persons directly or indirectly, wholly or partly, owned by the Company (including the Subsidiaries); and

Whitehall Director means a Director who under or in accordance with clause 9.2 has been specified as such.

Terms Generally

1.2 For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (a) the **headings** are inserted for convenience only and shall not affect the construction of this Agreement;
- (b) references to one **gender** include all genders and references to the **singular** include the plural and vice versa;
- (c) any reference to an **enactment** or statutory provision is a reference to it as it may have been, or may from time to time be, amended, modified, consolidated or re-enacted;
- (d) any reference to a document **in the agreed form** is to the form of the relevant document agreed between the Shareholders and set out in a Schedule to this

Agreement or for the purpose of identification initialled by each of them or on their behalf;

- (e) references to any *English legal term* for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any other legal concept shall, in respect of any jurisdiction other than England, be deemed to include the legal concept which most nearly approximates in that jurisdiction to the English legal term;
- (f) references to *clauses*, *Schedules* and *Recitals* are to clauses of, and schedules and recitals to, this Agreement;
- (g) the words herein, hereof and hereunder and other words of similar import refer to this Agreement as a whole and not to any particular article, clause or other subdivision;
- (h) the words including and include and other words of similar import shall be deemed to be followed by the phrase "without limitation";
- (i) all references herein to "\$" shall mean United States dollars; and
- (j) all references herein to "£" shall mean British pounds sterling.

1.3 The Schedules and Recitals form part of this Agreement and shall have the same force and effect as if set out in the body of this Agreement and any references to this Agreement shall include the Schedules and Recitals to it.

Exercise of powers of control

1.4 Where any obligation in this Agreement is expressed to be undertaken or assumed by the Company, that obligation is to be construed as requiring the Shareholders together to exercise their rights and powers of control over the affairs of the Company (whether directly or indirectly) in order to secure performance of the obligation.

1.5 Where any obligation in this Agreement is expressed to be undertaken or assumed by any Shareholder, that obligation is to be construed as requiring the Shareholder concerned to exercise all rights and powers of control over the affairs of any other person which that Shareholder is able to exercise (whether directly or indirectly) in order to secure performance of the obligation.

PURPOSE OF THE COMPANY

Business

2.1 The Shareholders shall procure that the business of the Trillium Group shall be directly or indirectly acquiring, owning, financing, refinancing, managing, maintaining, operating, improving, developing, disposing and selling real property or interests therein or real property related assets (including mortgage loans, secured or

unsecured real property loans to acquire real property or interests therein) and engaging in any and all activities incidental to the foregoing.

2.2 Except as otherwise provided in this Agreement:

- (a) no Shareholder shall have any authority to bind or act for, or assume any obligations or responsibility on behalf of, any other Shareholder; and
- (b) no Shareholder shall have any authority to bind or act for, or assume any obligations or responsibility on behalf of, the Company.

Scope of Business; Other Activities of the Shareholders

2.3 Subject to clause 13, each Shareholder may engage or invest in any other activity or venture or possess any interest therein independently or with others and none of the Shareholders, or any other Person employed by, related to or in any way affiliated with any Shareholder shall have any duty or obligation to disclose or offer to the Company, the Shareholders, or obtain for the benefit of the Company or the Shareholders, any business opportunity, activity or venture or interest therein including, without limitation, any property development. Except in the event of a breach of the limitations set forth in clause 13 none of the Company, the Shareholders, or any Person having any interest in the Company shall have:

- (a) any claim, right or cause of action against any Shareholder or any Person employed by, related to or in any way affiliated with, any Shareholder by reason of any direct or indirect investment or other participation, whether active or passive, in any such business opportunity, activity or venture or interest therein; or
- (b) any right to any such business opportunity, activity or venture or interest therein or the income or profits derived therefrom.

Commercial principles

2.4 The Shareholders shall procure that the business of the Trillium Group shall be conducted in accordance with the then current Business Plan.

EFFECTIVE DATE

3. This Agreement shall come into force on completion of the Transfer Agreement.

REPRESENTATIONS

4.1 Each Shareholder represents, warrants, agrees and acknowledges that:

- (a) it is a corporation, a limited liability company or a partnership, as applicable, duly organised or formed and validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organisation or formation; it has all requisite corporate, limited liability company or partnership power and authority to enter into this Agreement, to acquire and hold its Interest and

to perform its obligations hereunder; and the execution, delivery and performance of this Agreement has been duly authorised by all necessary corporate, limited liability company or partnership action;

- (b) its execution and delivery of this Agreement and the performance of its obligations hereunder will not conflict with, result in a breach of or constitute a default (or any event that, with notice or lapse of time, or both, would constitute a default) or result in the acceleration of any obligation under any of the terms, conditions or provisions of any other agreement or instrument to which it is a party or by which it is bound or to which any of its property or assets are subject, conflict with or violate any of the provisions of its Organisational Documents, or violate any statute or any order, rule or regulation of any court or governmental or regulatory agency, body or official, that would materially and adversely affect the performance of its duties hereunder; and such Shareholder has obtained any consent, approval, authorisation or order of any court or governmental agency or body required for the execution, delivery and performance by such Shareholder of its obligations hereunder;
- (c) there is no action, suit or proceeding pending against such Shareholder or, to its knowledge, threatened in any court or by or before any other governmental agency or instrumentality that would prohibit its entering into or performing its obligations under this Agreement; and
- (d) this Agreement is a binding agreement on such Shareholder and enforceable against such Shareholder in accordance with its terms.

4.2 Each Shareholder represents that it is acquiring its Shares for its own account for investment purposes only and not with a view to the distribution or resale thereof, in whole or in part, and agrees that it will not Transfer all or any part of its Interest, or solicit offers to buy from or otherwise approach or negotiate in respect thereof with any Person or Persons whomsoever, all or any part of its Interest in any manner that would violate or cause any person within the Trillium Group or any other Shareholder to violate any applicable securities laws.

CAPITAL AND FURTHER FINANCE

Shares

5.1(a) On the Effective Date each Shareholder holds the number and class of Shares set opposite his name in Schedule 1 in the columns headed Shares and Deferred Shares.

(b) The Shareholders agree that the Company may, within one calendar year and ~~one Business Day of the Effective Date~~, allot further Ordinary Shares to the Shareholders provided that:

- (i) the Ordinary Shares so allotted shall be of the same class as the Ordinary Shares previously held by that Shareholder;

- (ii) each Shareholder shall be allotted the number of Ordinary Shares of that class that is equal to that Shareholder's Percentage Interest of the aggregate number of Ordinary Shares of all classes allotted at that time under this clause;
 - (iii) the issue price of each Ordinary Share shall be the same but otherwise determined at the discretion of the Company;
 - (iv) payment by a Shareholder for the aggregate price for such Ordinary Shares shall be satisfied by reducing that Shareholder's Loans by that aggregate price;
 - (v) all Ordinary Shares so allotted shall be allotted fully paid; and
 - (vi) the maximum number of Ordinary Shares allotted pursuant to this clause shall not exceed £50 million;
- (c) The Shareholders undertake to each other and to the Company that they shall take whatever steps the Company considers necessary or expedient to give effect to clause 5.1(b).

Initial Loans

- 5.2(a) Each of the Shareholders shall on the Effective Date advance to the Company the amount set opposite its name in Schedule 1 in the column headed "Initial Loan under 5.2(a)". Each Shareholder shall pay such amount in US Dollars at the exchange rate of US\$1.45 equalling £1 to the following account:

Beneficiary Bank:	Chase Manhattan Bank, NA, New York
ABA:	021 000 021
First Beneficiary:	Goldman, Sachs & Company, New York
Account Number:	9301 011 483
Second Beneficiary:	Trillium Investments GP Limited
Account Number:	040-04338-2-01
Contact	Adam Baicher +1 212-902-9940

- (b) Wind Drift shall, no later than the day falling three working days after the Effective Date, advance to the Company the amount of £322,400. Wind Drift shall pay such amount in Sterling to the following account:

Bank:	Barclays Bank PLC
Address:	50 Pall Mall, PO Box 15162, London SW1A 1QB
Account name	Trillium Investments Limited Partnership

Sort Code	20-67-59
Account Number:	80786284

- (c) A failure by a Shareholder to comply with clause 5.2(a) shall entitle the Shareholders who do comply with that clause to require the transfer of that Shareholder's Interest to those Shareholders in proportion to those Shareholders' Percentage Interests for the aggregate consideration of £1.
- (d) Wind Drift shall not be personally liable to advance the amount specified in clause 5.2(b), but if it fails to advance all or any portion of that amount, the amount of its Original Investment shall, for all purposes from the Effective Date, be reduced by an amount equal to £322,400 less any amount that is advanced under that clause (if any).

Future Loans

- 5.3(a) The Shareholders agree that at such time or times as the Board may determine that the Company has insufficient resources to discharge liabilities of the Trillium Group or to fund expenditures and pay expenses incurred or to be incurred in accordance with the Annual Budget or Business Plan and/or the Board determines other amounts are needed by Trillium Group in accordance with prudent business practice, each Shareholder shall on receipt of a notice from the Company (a **Loan Call**) advance the amount set out in that Loan Call to the Company. A Loan Call shall give at least twenty (20) days advance notice before any Future Loans must be advanced by the Shareholders and shall set out the amount of the Future Loans to be advanced by all Shareholders pursuant to that Loan Call and the details of the Company's bank account into which the Future Loans must be paid. The amount of each Future Loan to be advanced by a Shareholder pursuant to a single Loan Call shall be equal to that Shareholder's Percentage Interest multiplied by the aggregate of all Future Loans to be advanced by all Shareholders pursuant to that Loan Call.
- (b) If a Shareholder fails to make a Future Loan pursuant to a Loan call, then each Shareholder's Percentage Interest shall be recalculated (and shall be rounded to the nearest one-hundred thousandth of one percent (0.00001%)) and shall equal a fraction, the numerator of which shall equal that Shareholder's Investment (after giving effect to the amount (if any) of the Future Loan made by that Shareholder pursuant to that Loan Call) and the denominator of which shall equal the Investments of all Shareholders (after giving effect to the Future Loans actually made by all Shareholders pursuant to that Loan Call). For example, if:
 - (i) the Investments (and Percentage Interests) of Whitehall, Mychand, Archon, Wind Drift and Shaftesbury were \$75X (75%), \$10X (10%), \$10X (10%), \$2.5X (2.5%) and \$2.5X (2.5%), respectively,

(ii) the Company issued a Loan Call, requesting in aggregate \$100X of Future Loans to be advanced to the Company (which would be allocated among Whitehall, Mychand, Archon, Wind Drift and Shaftesbury in the following proportions: \$75X, \$10X, \$10X, \$2.5X and \$2.5X, respectively),

(iii) Archon failed to advance the Future Loan specified in that Loan Call; and

(iv) the other Shareholders fully funded their share of the Future Loan,

then the recalculated Percentage Interests of each Shareholder would be as follows: Whitehall, 78.94737% ($\$150X \div \$190X$), Mychand, 10.52632% ($\$20X \div \$190X$); Archon, 5.26316% ($\$10X \div \$190X$); Wind Drift, 2.63158% ($\$5X \div \$190X$); and Shaftesbury, 2.63158% ($\$5X \div \$190X$).

- (c) For the purpose of recalculating the Shareholders' Percentage Interests pursuant to clause 5.3(b) (and for no other purpose), from and after the admission to the Company of a New Shareholder by the Company pursuant to clause 5.6, a "Shareholder's Investment" and the "Shareholders' Investments" (and, correspondingly, each Shareholder's Percentage Interest) shall be calculated with reference to the implied "mark-to-market" value of such Investment and/or Investments (as such value may be reasonably determined by the Company) based on the terms on which such New Shareholder was admitted to the Company (as adjusted, in the Company's reasonable discretion, for any subsequent events and such other factors and considerations that the Company shall deem appropriate).
- (d) Notwithstanding the provisions of this clause 5.3, no Shareholder shall be personally liable to advance any Future Loan.

Loans

- 5.4(a) Except as otherwise provided by this Agreement, no Shareholder shall be entitled to withdraw or receive any interest or other return on, or return of, all or any portion of its Loans, or to receive any Company property (other than cash) in return for its Loans.
- (b) No interest or fees shall be paid or payable by the Company in respect of any Loans.

Limited Liability of Shareholders

5.5 No Shareholder shall be bound by, or be personally liable for, the expenses, liabilities, indebtedness or obligations of the Company.

New Shareholders

5.6 The Board may in its sole discretion from time to time allot and issue new Shares of any class (other than Class A Shares, Class B Shares or Class C Shares) to

any Person (each such Person a *New Shareholder*) on such terms and conditions as the Board shall deem appropriate, including the number of Shares so issued and the Loans to be advanced by that New Shareholder. The issue price of the Shares so issued and any Loans the New Shareholder shall advance shall be taken to be that New Shareholder's Original Investment and Future Loans advanced (in such amount and in such form as agreed by the Board) whereupon Whitehall shall amend Schedules 1 and 2.

UNITED STATES CAPITAL ACCOUNTS

Capital Accounts

- 6.1(a) The Shareholders shall procure that the Company shall maintain a Capital Account for each Shareholder in accordance with United States federal income tax accounting principles.
- (b) The Capital Account of each Shareholder shall be increased by (i) the amount of any cash contributed to the Company (but excluding for this purpose the amount of any Initial Loan), including the amount of any cash subsequently advanced as a Future Loan to the Company by such Shareholders, (ii) the agreed Book Value of any property (net of liabilities encumbering such property) as of the date when contributed to the Company by such Shareholder, (iii) the amount of any Profits allocated to such Shareholder's Capital Account and (iv) such Shareholder's *pro rata* share (determined in the same manner as such Shareholder's share of Profits pursuant to clause 6.2) of income of the Company that is exempt from tax. The Capital Account of each Shareholder shall be decreased by (i) the amount of any Losses allocated to such Shareholder's Capital Account, (ii) the amount of distributions to such Shareholder and (iii) such Shareholder's *pro rata* share (determined in the same manner as such Shareholder's share of Losses pursuant to clause 6.2) of any other expenditures of the Company that are not deductible in computing Profits or Losses and which are not chargeable to a Capital Account. In all respects, the Shareholder's Capital Account shall be determined to the extent permissible in accordance with the detailed capital accounting rules set forth in Treasury Regulations Section 1.704-1(b)(2)(iv) and shall be adjusted upon the occurrence of certain events as provided in Treasury Regulations Section 1.704-1(b)(2)(iv)(f).
- (c) For the purposes of clause 6.1(b), the Book Value of the assets deemed to be contributed to the Company in connection with the transactions described in the Transfer Agreement will be determined as if no distributions had been made by TILP on or about the Effective Date.
- (d) A transferee of all (or a portion) of an Interest shall succeed to the Capital Account (or portion of the Capital Account) attributable to the transferred Share.

Profits and Losses

- 6.2(a) The profits and losses of the Company (*Profits* and *Losses*) shall be the net income or net loss (including capital gains and losses), respectively, of the Company determined for each Fiscal Year in accordance with the accounting method followed for United States federal income tax purposes except that in computing Profits and Losses, all depreciation and cost recovery deductions shall be deemed equal to Depreciation and gains or losses shall be determined by reference to Book Value rather than tax basis.
- (b) Whenever a proportionate part of the Profits or Losses is allocated to a Shareholder's Capital Account, every item of income, gain, loss, deduction or credit entering into the computation of such Profits or Losses or arising from the transactions with respect to which such Profits or Losses were realized shall be credited or charged, as the case may be, to such Shareholder's Capital Account in the same proportion; provided, however, that "recapture income", if any, shall be allocated to the Capital Account of those Shareholders who were allocated the corresponding depreciation deductions.
- (c) If any Shareholder transfers all or any part of its Interest during any Fiscal Year or its Interest is increased or decreased, Profits and Losses attributable to such Interest for such Fiscal Year shall be apportioned between the transferor and transferee or computed as to such Shareholders, as the case may be, ratably on a daily basis, provided in all events that any apportionment described above shall be permissible under the Code and applicable Treasury Regulations thereunder.
- (d) For all purposes, including federal, state and local income tax purposes, Profits shall be allocated each year among all the Shareholders as follows:
- (i) First, *pro rata* among all the Shareholders in proportion to the amounts allocated and previously allocated pursuant to clause 6.2(e)(iv) hereof until the amount allocated and previously allocated pursuant to this clause 6.2(d)(i) equals the amount allocated and previously allocated pursuant to clause 6.2(e)(iv) hereof;
 - (ii) Second, to all the Shareholders in proportion to the amounts distributable and previously distributed pursuant to clause 7.1(a)(ii) hereof (including amounts that would be distributable (x) on a sale or other disposition of all or substantially all of the Company Assets, notwithstanding that such proceeds will be distributed pursuant to clause 16 hereof or (y) if the Company had received and distributed the full amount of cash attributable to the income being allocated in accordance with clause 7.1(a)(ii)) until the amount allocated and previously allocated pursuant to this clause 6.2(d)(ii) (and not reversed by clause 6.2(e)(iii) hereof) equals such distributed or distributable amounts;
 - (iii) Third, (A) 12% to Class B Shareholders (or such lower percentage as reflects the reduction in the Class B Shareholders Promote provided for

in clause 7.1(c)), and (B) the remainder to the Shareholders (including Class B Shareholders and Class C Shareholders), in proportion to the amounts distributable and previously distributed pursuant to clause 7.1(a)(iii) hereof (including amounts that would be distributable (x) on a sale or other disposition of all or substantially all of the Company Assets, notwithstanding that such proceeds will be distributed pursuant to clause 16 hereof or (y) if the Company had received and distributed the full amount of cash attributable to the income being allocated) until the amount allocated and previously allocated pursuant to this clause 6.2(d)(iii) (and not reversed by clause 6.2(e)(ii) hereof) equals such distributed or distributable amounts; and

- (iv) Thereafter, (A) 12% to Class B Shareholders, (B) 10% to Class C Shareholders (or such lower percentage as reflects the reduction in the Class C Shareholders Promote provided for in clause 7.1(b)) and (C) the remainder to all the Shareholders (including Class C Shareholders and Class B Shareholders) *pro rata* in proportion to their Percentage Interests.

- (e) For all purposes, including federal, state and local income tax purposes, Losses shall be allocated each year among all the Shareholders as follows:

- (i) First, *pro rata* among all the Shareholders in proportion to the amounts allocated and previously allocated pursuant to clause 6.2(d) (iv) hereof until the amounts allocated and previously allocated pursuant to this clause 6.2(e)(i) equals the amounts allocated and previously allocated pursuant to clause 6.2(d)(iv) hereof;
- (ii) Second, *pro rata* among all the Shareholders in proportion to the amounts allocated and previously allocated pursuant to clause 6.2(d)(iii) hereof until the amounts allocated and previously allocated pursuant to this clause 6.2(e)(ii) equals the amounts allocated and previously allocated pursuant to clause 6.2(d)(iii) hereof;
- (iii) Third, *pro rata* among all the Shareholders in proportion to the amounts allocated and previously allocated pursuant to clause 6.2(d)(ii) hereof until the amounts allocated and previously allocated pursuant to this clause 6.2(e)(iii) equals the amounts allocated and previously allocated pursuant to clause 6.2(d)(ii) hereof; and
- (iv) Thereafter, *pro rata* among all the Shareholders in proportion to their Percentage Interests.

- (f) Notwithstanding clauses 6.2(d) and (e) hereof,

- (i) For federal income tax purposes but not for purposes of crediting or charging Capital Accounts, depreciation or gain or loss realized by the Company with respect to any property that was contributed to the Company or that was held by the Company at a time when the Book Value of the Company Assets was adjusted shall, in accordance with

Section 704(c) of the Code and Treasury Regulation Section 1.704-1(b)(2)(iv)(d) and (f), be allocated among the Shareholders in a manner which takes into account the differences between the adjusted basis for federal income tax purposes to the Company of its interest in such property and the fair market value of such interest at the time of its contribution or revaluation.

- (ii) If there is a net decrease in the Minimum Gain of the Company during a taxable year (including any Minimum Gain attributable to Shareholder-Funded Debt), each Shareholder at the end of such year shall be allocated, prior to any other allocations required under this clause 7, items of gross income for such year (and, if necessary, for subsequent years) in the amount and proportions described in Treasury Regulation Sections 1.704-2(g) and 1.704-2(i)(4).
- (iii) Notwithstanding the allocations provided for in clauses 6.2(d) and (e), no allocation of an item of loss or deduction shall be made to a Shareholder to the extent such allocation would cause or increase a deficit balance in such Shareholder's Capital Account as of the end of the taxable year to which such allocation relates. If any Shareholder receives an adjustment, allocation or distribution that causes or increases such a deficit balance, taking into account the rules of Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6), such Shareholder shall be allocated (after taking into account any allocations made pursuant to clause 6.2(f)(ii)) items of income and gain in an amount and manner to eliminate the Shareholder's Capital Account deficit attributable to such adjustment, allocation or distribution as quickly as possible. For purposes of this clause 6.2(f)(iii), there shall be excluded from a Shareholder's deficit Capital Account balance at the end of a taxable year of the Company (a) such Shareholder's share, determined in accordance with Section 704(b) of the Code and Treasury Regulation Section 1.704-2(g) of Minimum Gain (provided that in the case of Minimum Gain attributable to Shareholder-Funded Debt, such Minimum Gain shall be allocated to the Shareholder or Shareholders to whom such debt is attributable pursuant to Treasury Regulation Section 1.704-2(i)) and (b) the amount, if any, that such Shareholder is obligated to restore to the Company under Treasury Regulation Section 1.704-1(b)(2)(ii)(c).
- (iv) Notwithstanding the allocations provided for in subsection (i) of this clause 6.2(f) and clauses 6.2(d) and (e), if there is a net increase in Minimum Gain of the Company during a taxable year of the Company that is attributable to Shareholder-Funded Debt then first Depreciation, to the extent the increase in such Minimum Gain is allocable to depreciable property, and then a proportionate part of other deductions and expenditures described in Section 705(a)(2)(B) of the Code, shall be allocated to the lending or guaranteeing Shareholder (and to joint lenders or guarantors in proportion to their relative obligations), provided that the total amount of deductions so allocated for any year

shall not exceed the increase in Minimum Gain attributable to such Shareholder-Funded Debt in such year.

- (v) Any special allocation under clauses (ii), (iii) and (iv) of clause 6.2(f) shall be taken into account in computing subsequent allocations of Profits and Losses of any item thereof pursuant to this clause 6 so that the net amount of any items so allocated and the Profits, Losses and all items thereof allocated to each Shareholder pursuant to this clause 6 shall, to the extent permissible under Sections 704(b) and 514(c)(9) of the Code and the Treasury Regulations promulgated thereunder, be equal to the net amount that would have been allocated to each Shareholder pursuant to this clause 6 if such special allocation had not occurred.
- (vi) The Shareholders intend that the provisions of this clause 6 be interpreted, to the extent permissible under Sections 704(b) and 514(c)(9) of the Code and the Treasury Regulations promulgated thereunder, to produce liquidating distributions pursuant to clause 16.3 hereof that do not differ from the distributions that would have been made had liquidating distributions been controlled by clause 7 hereof. The Company is entitled to make special allocations of income, gain, and loss in connection with the dissolution of the Company, to the extent permissible under Section 704(b) and Section 514(c)(9) of the Code and the Treasury Regulations promulgated thereunder, to effectuate the Shareholders intention set forth in the preceding sentence.

DISTRIBUTIONS

Distributions among Shareholders

7.1(a) Subject to clause 7.1(g), upon the decision of the Board (to the extent permitted by law) distributions of Available Cash shall be made to the Shareholders by the Company within 60 days after the end of each quarter of each Fiscal Year (with respect to such quarter). Any such distribution (quarterly or otherwise) shall be divided amongst the Shareholders in the following order of priority:

- (i) to the Shareholders *pro rata*, until each Shareholder shall have received, taking into account all prior distributions under this clause (a)(i) and Deemed Distributions, an amount equal to the aggregate of that Shareholder's Original Investment and Future Loan previously advanced by such Shareholder to the Company up to and including the date of such distribution;
- (ii) to the Shareholders *pro rata*, until each Shareholder shall have received an IRR of 15% per annum (compounded monthly) (the ***Preferred Return***);
- (iii) thereafter:

(x) 12% to Class B Shareholders *pro rata*; and

(y) 88% to all Shareholders (including Class B Shareholders) *pro rata*;

until every Shareholder shall have received an IRR of 20% per annum (compounded monthly) (the *Second Preferred Return*); and

(iv) thereafter:

(x) 12% to Class B Shareholders *pro rata*;

(y) 10% to Class C Shareholders *pro rata*; and

(z) 78% to all Shareholders (including Class B Shareholders and Class C Shareholders) *pro rata*.

For the purpose of this clause 7.1(a), where any distribution is to be made to all or any Shareholders *pro rata*, that distribution shall be in proportion to those Shareholders' respective Percentage Interests.

Reductions in the Class C Shareholders Promote

- (b) The Class C Shareholders Promote shall be reduced (for the purpose of this clause 7.1(b), the *Reduction*) by an amount equal to the sum of (i) £1.5 million and (ii) all distributions (other than distributions of a capital nature) to Class C Shareholders by Trillium Estates Limited up to and including the date of the distribution of such Class C Shareholders Promote, and the amount of the Reduction shall instead be paid to all of the Shareholders (including Class C Shareholders) *pro rata* (in proportion to their respective Percentage Interests). Neither the Company nor any Shareholder shall have any recourse against Class C Shareholders for the amount set forth in the preceding sentence, except as provided in this clause 7.1(b).

Reductions in the Class B Shareholders Promote

- (c) The Class B Shareholders Promote shall be reduced (for the purpose of this clause 7.1(c), the *Reduction*) by an amount equal to the Mychand Fee up to and including the date of the distribution of such Class B Shareholders Promote, and the amount of the Reduction shall instead be paid to all of the Shareholders (including Class B Shareholders) *pro rata* (in proportion to their respective Percentage Interests). Neither the Company nor any Shareholder shall have any recourse against Class B Shareholders for the recovery of the amount of the Reduction, except as provided in this clause 7.1(c).

Corrections Due to the Timing of Distributions

- (d) Notwithstanding clause 7.1(a):

- (i) if Actual Promote Payments have previously been distributed to Class C Shareholders pursuant to clause 7.1(a) (after giving effect to clause

7.1(b)) and subsequently Future Loans are made and, as a result, the Actual Promote Payments to Class C Shareholders exceed the Requisite Class C Shareholders Promote, then, at the Board's option:

- (A) the Class C Shareholders shall pay a capital contribution to the Company in respect of all or a portion of the amounts previously distributed to them as a Class C Shareholders Promote which shall be distributed to the Shareholders pursuant to clauses (i), (ii), (iii) and (iv) of clause 7.1(a); or
- (B) the Class C Shareholders shall subscribe for and be allotted by the Company Deferred Shares; or
- (C) appropriate adjustments will be made to amounts to be distributed to Class C Shareholders hereunder,

until, in each case, and only to the extent necessary so that, the balance of the Actual Promote Payments (after giving effect to such payments, subscriptions or adjustments) retained by Class C Shareholders does not exceed the Requisite Class C Shareholders Promote as of the date of such payment, subscription or adjustment.

- (ii) If Actual Promote Payments have previously been distributed to Class B Shareholders pursuant to clause 7.1(a) (after giving effect to clause 7.1(c)) and subsequently Future Loans are made and, as a result, the Actual Promote Payments to Class B Shareholders exceed the Requisite Class B Shareholders Promote, then, at the Board's option:

- (A) the Class B Shareholders shall pay a capital contribution to the Company in respect of all or a portion of the amounts previously distributed to them as a Class B Shareholders Promote which shall be distributed to the Shareholders pursuant to clauses (i), (ii), (iii) and (iv) of clause 7.1(a); or
- (B) the Class B Shareholders shall subscribe for and be allotted by the Company, Deferred Shares; or
- (C) appropriate adjustments will be made to amounts to be distributed to Class B Shareholders hereunder,

until, in each case, and only to the extent necessary so that, the balance of the Actual Promote Payments (after giving effect to such payments, subscriptions or adjustments) retained by Class B Shareholders does not exceed the Requisite Class B Shareholders Promote as of the date of such payment, subscription or adjustment.

- (iii) If the Company elects to make any adjustment pursuant to this clause 7.1(d)(i) or 7.1(d)(ii) then the total adjustment needed to be made will be apportioned ratably between Class C Shareholders and Class B Shareholders (*i.e.*, 45.45% to Class C Shareholders and 54.55% to

Class B Shareholders) but only to the extent that each of Class C Shareholders and Class B Shareholders, as applicable, has actually received and retains (and has not returned) a Promote (it being understood, for avoidance of doubt, that if Class C Shareholders have not received and/or does not retain any portion of the Class C Shareholders Promote, the apportionment provisions contained in this sentence shall be deemed inapplicable and Class B Shareholders shall return 100% of the required amount).

- (iv) If a Shareholder is required to make a capital contribution to the Company or subscribe for Deferred Shares, to the extent permissible under Sections 704(b) and 514(c)(9) of the Code and the Treasury Regulations promulgated thereunder, appropriate adjustments shall be made in the allocations to be made pursuant to clause 6.
- (e) Notwithstanding anything in this clause 7.1 to the contrary, the parties intend where permitted by law
 - (i) for the allocations to be made pursuant to clause 6 hereof, as adjusted pursuant to this clause 7, to comply with Sections 704(b) and 514(c)(9) of the Code and the Treasury Regulations promulgated thereunder and
 - (ii) that the entire amount of the Investments be treated as equity for purposes of the Code.

The parties agree to amend this Agreement as directed by the Company, if necessary, to comply with this clause 7.1(e).

Method of Distributing Available Cash

- 7.1(f) Distributions of Available Cash in accordance with clause 7.1(a) shall first be used to repay the Loans advanced by each Shareholder and secondly be by way of dividend or other distribution in respect of each Shareholder's Shares.

Lack of Distributable Profits

- 7.1(g) If all Loans advanced by one Shareholder have been repaid and the Company is for any reason unable to pay a dividend or other distribution of its assets, whether in cash or otherwise, to that Shareholder in respect of its Shares, no distribution under clause 7.1(a) shall be made until the Company is able to pay such a dividend or other distribution.

Distributions from Subsidiaries

- 7.2 Subject to applicable loan covenants, legal restrictions and tax and commercial considerations (as determined by the Board in its sole and absolute discretion), the Company shall take reasonable steps to cause the Subsidiaries to distribute or otherwise pay promptly any excess cash to the Company.

Initial Public Offering

7.3 In the event of any public distribution of shares of the Company or a Subsidiary (whether by sale of existing shares or the issue of new shares), the Shareholders agree that those shares or the proceeds of the disposal of those shares shall be distributed amongst the Shareholders as if that distribution was one of Available Cash distributed in accordance with clause 7.1 and, in the case of a distribution of shares, the amount of that Available Cash being based on the value of such shares at the time of distribution as reasonably determined by the Company.

TRANSFER OF SHARES

Limitations on Transfers

- 8.1(a) No Shareholder shall have the right to Transfer all or any of its Interests or permit such a Transfer or contract to do so, without the prior written consent of each of the Company, Whitehall and Mychand (which consent may be withheld for any reason or no reason) or as otherwise expressly permitted by the provisions of this clause 8. Each Shareholder shall have the right upon twenty (20) Business Days' prior notice to the other Shareholders to Transfer all or any portion of its Interest, without restriction, to its respective Affiliates. In addition, Shareholders may Transfer all or any portion of their Interests, in one or more transactions, pursuant to clauses 8.3 or 8.4 hereof. Any purported Transfer in violation of this clause 8 shall be void *ab initio*, and shall not bind the Company or the Shareholders, and any Shareholder making such purported Transfer shall indemnify and hold the Company and the other Shareholders harmless from and against any federal, state or local income taxes, or transfer taxes, including without limitation, transfer gains taxes, arising as a result of, or caused directly or indirectly by, such purported Transfer. The giving of any consent to a Transfer in any one or more instances shall not limit or waive the need for such consent in any other or subsequent instances.
- (b) If any Person who holds any stock, partnership interest, beneficial interest or other ownership interest in Mychand, Archon, Wind Drift or Shaftesbury or any of their transferees purports, permits or effects a Transfer of such an interest in that Shareholder (whether directly or indirectly and whether voluntarily, involuntarily, by operation of law or otherwise) without the consent of each of the Company, Whitehall and Mychand (which consent may be withheld for any reason or no reason), such a Transfer shall amount to Cause in respect of that Shareholder (and so enable that Shareholder to be removed with Cause pursuant to clause 17).
- (c) Subject to compliance with the remaining provisions of this clause 8, any member of Whitehall may, from time to time and without the consent or approval of any other Shareholder, pledge or otherwise grant a security interest in all or any portion of its Interests in the Company to an Institutional Lender to secure a loan made to it by such Institutional Lender (a *Pledgee*), and such pledged Interests may be transferred by foreclosure, assignment in lieu thereof or other enforcement of such pledge, with any such transferee taking thereby (a *Purchaser*) being entitled to receive any distributions

otherwise payable to the Pledgee; *provided, however*, that no such Pledgee shall become a Shareholder unless and until each Shareholder consents to such admission, which consent may be withheld in the sole and absolute discretion of such Shareholder.

Assignment Binding on Company

8.2 No Transfer of all or any portion of its Interests by a Shareholder permitted to be made under this Agreement shall be binding upon the Company or the other Shareholders unless and until a duplicate original of such assignment or instrument of transfer, duly stamped, executed and acknowledged by the assignor or transferor, has been delivered to the Company, and such written instrument evidences (i) the acceptance by the assignee of all of the terms and provisions of this Agreement, (ii) the assignee's representation that such assignment was made in accordance with all applicable laws and regulations, (iii) the unanimous consent of all of the Shareholders to the Transfer of the relevant Interest unless such consent is otherwise not required pursuant to the express terms hereof (and for the avoidance of doubt a Transfer by a Proposing Shareholder as defined in clause 8.3 and in accordance with that clause and clause 8.4 does not require such unanimous consent), and (iv) the assignee's acceptance and ratification of and agreement to be bound by all actions duly taken pursuant to the terms and provisions of this Agreement by the Company prior to the date such assignee became a Shareholder and, without limiting the generality of the foregoing, the specific ratification and approval of all agreements and other instruments as may have been executed and delivered on behalf of the Company prior to said date and which are in force and effect on said date.

Bring-Along Rights

8.3 In the event that Whitehall and/or its permitted transferees (each a ***Proposing Shareholder***) propose to Transfer all or a portion of their Interests on an arm's-length basis to any Person, the Proposing Shareholders may upon not less than fifteen (15) Business Days' prior notice require all other Shareholders to Transfer the same proportion of each other Shareholders' Interests at the same price and upon the same terms and conditions as for the proposed Transfer by the Proposing Shareholders. Each Shareholder shall use its best efforts to cooperate with any Transfer pursuant to this clause and shall take all necessary and desirable actions in connection with the completion of the Transfer as are reasonably requested by the Proposing Shareholders, including the provision of representations, warranties or indemnifications; *provided that* no Shareholder shall be required to incur any out-of-pocket expenses in connection with such Transfer that are not reimbursed to such Shareholder; and *provided further that* no such Shareholder shall be required to provide representations, warranties or indemnifications in connection with any such Transfer that would result in an aggregate liability in excess of such Shareholder's proceeds from such Transfer. The aggregate consideration received for the Transfer of Interests (net of any expenses of such Transfer) pursuant to this clause 8.3 shall be allocated and distributed to the selling Shareholders in accordance with the allocation provisions of clause 7, except that for purposes of the calculations required by clause 7, each applicable Shareholder's Percentage Interest shall be deemed to be equal to the quotient of (x) the price paid for the Interests sold by such Shareholder *divided by*

(y) the total price paid for all Interests sold by all selling Shareholders. The Shareholders agree that an appropriate portion of the consideration (net of any expenses of such Transfer) received from the Transfer of any Interests pursuant to this clause 8.3 that is allocated and distributed to the selling Shareholders in accordance with clause 7 (as set forth in the preceding sentence) shall be distributed to Class C Shareholders and/or Class B Shareholders in respect of the Class C Shareholders Promote and/or the Class B Shareholders Promote, *provided that* (i) upon distribution of such net consideration to the Shareholders in accordance with clause 7, the transferee of the relevant Interests shall be entitled to receive all distributions in respect of such Shares on a straight *pari-passu* basis with the Shareholders (and such Interests shall be ignored in determining any future Promote) and (ii) if payments in respect of the Class C Shareholders Promote and/or the Class B Shareholders Promote are made as a result of this clause 8.3, Class B Shareholders and/or Class C Shareholders shall not be entitled to receive Promote payments on account of such transaction pursuant to clause 7 if such payment would result in a duplication of payments. If at any time an offer is made to acquire substantially all of the assets of the Company, and such offer must be approved by the Shareholders, each Shareholder shall vote all of its Shares in the Company, in respect of such offer, in the same manner as Whitehall votes its Shares.

Tag-Along Rights

8.4 If a Proposing Shareholder does not intend to exercise its Bring-Along Rights pursuant to clause 8.3 and such Transfer is to a Person that is not an Affiliate of Whitehall, then that Proposing Shareholder shall nonetheless give each other Shareholder not less than fifteen (15) Business Days' prior notice of its proposed Transfer and shall not Transfer all or any portion of its Interest to any Person other than such Proposing Shareholder's Affiliates, unless each other Shareholder is given the opportunity, which it may exercise by giving written notice to the Proposing Shareholder within fifteen (15) Business Days after receipt of the Proposing Shareholder's notice, to Transfer the same proportion of each other Shareholders' Interests at the same price and upon the same terms and conditions as for the proposed Transfer by the Proposing Shareholders. If a transferee has specified that it is willing to purchase in aggregate Interests carrying a particular value, each Shareholder shall have the right to sell to the transferee that portion of its Interest which is in the same proportion to its total Interest as the percentage of Interests being sold by all Shareholders to such transferee bears to the total Interests of all Shareholders that are electing to participate in such sale. If any Shareholder does not elect to sell the portion of its Interest that it is entitled to sell pursuant to this clause, or if the aggregate amount of Interests that the Shareholders are entitled to sell is less than the total amount that the transferee is willing to purchase then the remaining Shareholders shall be entitled to sell additional Interests *pro rata* (as described in the preceding sentence) up to the total amount of Interests owned by each of them to make up the aggregate amount of Interests that the transferee is willing to purchase. The aggregate consideration received from any Transfer pursuant to this clause 8.4 (net of any expenses of such Transfer) shall be allocated among and distributed to the selling Shareholders in accordance with the allocation provisions of clause 7, except that for purposes of the calculations required by clause 7, each applicable Shareholder's Percentage Interest shall be deemed to be equal to the quotient of (x) the price paid for

the Interests sold by such Shareholder *divided by* (y) the price paid for all the Interests sold by all selling Shareholders. The Shareholders agree that, if applicable, an appropriate portion of the net consideration received from the Transfer of Interests pursuant to this clause 8.4 that is allocated and distributed to the selling Shareholders in accordance with clause 7 (as set forth in the preceding sentence) shall be distributed to Class B Shareholders and/or Class C Shareholders in respect of the Class C Shareholders Promote and/or the Class B Shareholders Promote, *provided that* (i) upon distribution of such net consideration to the Shareholders in accordance with clause 8, the transferee of the relevant Interests shall be entitled to receive all distributions in respect of such Interests on a straight *pari-passu* basis with the Shareholders (and no further Promote shall be payable with respect to such Share) and (ii) if payments in respect of the Class C Shareholders Promote and/or the Class B Shareholders Promote are made as a result of this clause 8.4, Class C Shareholders and/or Class B Shareholders shall not be entitled to receive Promote payments on account of such transaction pursuant to clause 7 if such payment would result in a duplication of payments.

Substituted Shareholders

- 8.5(a) Shareholders who assign all their Interests pursuant to an assignment or assignments permitted under this Agreement shall cease to be Shareholders except that, unless and until a Substituted Shareholder (defined below) is admitted in its stead, the assigning Shareholder shall not cease to be a Shareholder and shall retain the rights and powers of a Shareholder hereunder, provided that such assigning Shareholder may, prior to the admission of a Substituted Shareholder, assign its economic interest in its Interest, to the extent otherwise permitted under this clause 8. Any Person who is an assignee of all or any portion of any such Interests of a Shareholder and who has satisfied the requirements of clause 8.2 shall become a ***Substituted Shareholder*** only when (i) the Company has entered such assignee as a Shareholder on the books and records of the Company, which the Shareholders shall procure that the Company does upon satisfaction of such requirements and (ii) such assignee shall have paid all reasonable legal fees and filing costs in connection with the substitution as a Shareholder.
- (b) Any Person who is an assignee of all or any portion of a Shareholder's Interest but who does not become a Substituted Shareholder and desires to make a further assignment of all or any portion of such Interest, shall be subject to all the provisions of this clause 8 to the same extent and in the same manner as any Shareholder desiring to make an assignment of all or any portion of its Interest.

Default of Delivery

- 8.6(a) In the event that any Shareholder or its assignees have (i) the right to acquire all or any of the Interests of another Shareholder or (ii) the right to sell all or any of their Interests to any other Person or to require any such other Shareholder to sell such Interests to any other Person, pursuant to the terms of this Agreement (such selling Shareholder being the ***Transferor*** and the Person

to whom the Transferor is required to transfer such Shares being the *Transferee*), and the Transferor is not present at the closing, or is present but for any reason fails to produce and deliver to the Transferee the instruments representing the Interests being Transferred then the cash purchase price, as and when payable, may be deposited into a special account in the name of the Company at a branch of the Company's bankers and any other consideration permitted or required to be delivered in satisfaction of the purchase price shall be deposited with the Company. Such deposits shall constitute valid and effective payment to the Transferor of the purchase price for the Interests being transferred notwithstanding the fact that the Transferor may have voluntarily attempted to encumber or dispose of any of the Interests contrary to the terms hereof, or that one or more certificates or other evidences of ownership of such Interests may have been delivered to any other Person. From and after the date of such deposits, the purchase and transfer of the Interests shall, to the extent permitted by law, be deemed to have been fully completed and all right, title, benefit and interest of the Transferor in and to all such Interests, both at law and in equity, shall be conclusively deemed to have been transferred and assigned to and become vested in the Transferee and the Transferee will have the right to request that the Company enter the transfer onto its books and records and the Company shall be entitled to so enter the transfer.

- (b) Where the Transferee has made a deposit in accordance with clause 8.6(a), the Transferor shall be entitled to receive the cash purchase price of the Interests deposited with the Company's bankers (together with any interest earned by virtue of such deposit), and to receive any other consideration deposited with the Company, upon delivery to the Company of (i) the certificates or other instruments representing the transfer and (ii) any other document required to be delivered by the Transferor at closing, including, without limitation, the release or discharge of any encumbrance relating to the Interests.

Bankruptcy of a Shareholder

8.7 In the event a Shareholder becomes subject to a Bankruptcy, the trustee or receiver of the estate shall have all the rights of a Shareholder for the purpose of settling or managing the estate and such power as such Shareholder possessed to assign all or any part of the Interests and to join with the assignee thereof in satisfying conditions precedent to such assignee becoming a Substituted Shareholder.

Additional Limitations

8.8 Notwithstanding anything contained in this Agreement, no Transfer of any Interests shall be made, and the Company may prohibit and refuse to accept any such Transfer, and may refuse to register such Transfer on its transfer books, unless (i) registration is not required under the United States Securities Act of 1933, as amended (or any other applicable securities laws of any other jurisdiction), in respect of such Transfer and (ii) such Transfer does not violate any applicable federal or state securities (or any other applicable securities laws of any other jurisdiction), real property syndication, or comparable laws. Whitehall and/or the Company may elect

prior to any Transfer to require an opinion of counsel with respect to the matters described in clauses (i) and (ii).

DIRECTORS AND MANAGEMENT

Supervision by the Board

9.1 The Shareholders shall procure that the Board shall have the full and exclusive right, power, authority and discretion to manage the business and affairs of the Company and (to the extent that a Subsidiary must first obtain the consent of the Board to take an action or that the Company has the right to cause any action to be taken by a Subsidiary) the Subsidiaries and to do all things necessary to carry on the businesses of the Company and the Subsidiaries.

Board of Directors

- 9.2(a) The Board shall consist of Executive Directors and Whitehall Directors. On the Effective Date the Executive Directors shall be Martin Myers, Manish Chande and Nick Friedlos and the Whitehall Directors shall be Brian Griffiths, James Lozier, Barry Volpert, Gavin Wilson, James Garman and Ed Siskind.
- (b) Whitehall shall have the exclusive right to appoint or remove any Director and on any such appointment shall notify the Company and the other Shareholders whether that Director is an Executive Director or a Whitehall Director.

Use of Powers

- 9.3(a) Whenever in this Agreement or elsewhere it is provided that consent is required of, a demand shall be made by, or acts shall be performed at the direction of the Company or the Board, all such consents, demands and acts are to be made, given or performed only if the prior consent of any Whitehall Director has been obtained, who shall be deemed to be vested with the authority of the Company.
- (b) Whenever in this Agreement or elsewhere it is provided that consent is required of, a demand shall be made by, or acts shall be performed by or at the direction of any Shareholder, all such consents, demands and acts are to be made, given or performed upon the consent of any Representative of that Shareholder who shall be deemed to be vested with the authority of the applicable Shareholder, until such time, if any, as such Shareholder, as applicable, designates one or more new representatives and notifies the other parties hereto of such designations.
- (c) If the Board plans to take any action on behalf of the Company, it will, subject to the following sentence, make a good faith attempt to inform the Shareholders of such actions. Notwithstanding the previous sentence, however, the validity of any action taken by the Board shall not be affected or subject to dispute or challenge even if the Board and, or Company fails, for any reason to inform the Shareholders of the actions of the Board.

- (d) Subject to clause 11.2, Shareholders shall have no right to take part in the management of the Business and no Shareholder shall have the power to bind the Company.

Quorum

9.4 The Shareholders shall procure that the quorum for transacting business at any Board meeting shall be two Directors at least one (1) of whom must be a Whitehall Director present when the relevant business is transacted. A Director shall be regarded as present for the purposes of a quorum if represented by an alternate.

Notice and Agenda

9.5 The Shareholders shall procure that at least 14 days written notice shall be given to each Director of any Board meeting unless at least one Whitehall Director (or his alternate) approves a shorter notice period. Any notice shall include an agenda identifying in reasonable detail the matters to be discussed at the meeting together with copies of any relevant papers to be discussed at the meeting. If any matter is not identified in reasonable detail, the Board shall not decide upon it, unless all Directors agree in writing.

Waiver of Rights by Mychand, Archon, Wind Drift and Shaftesbury

9.6 To the fullest extent permitted by law, each of Mychand, Archon, Wind Drift and Shaftesbury waives any rights they may have to (i) consent to, (ii) request appraisal rights with respect to or (iii) otherwise approve, any merger, combination, sale of Company Assets or other similar transaction with respect to the Trillium Group and releases the Company and Whitehall from any claims that Mychand, Archon, Wind Drift or Shaftesbury might have had with respect to such rights had they not been waived; *provided, however*, that the Company shall first inform Mychand and Archon of any proposed merger, combination, sale or other similar transaction and (x) if such transaction is with Whitehall or any of its Affiliates, then each of Mychand, Wind Drift, Shaftesbury and Archon may elect, by delivering a written notice to Whitehall within thirty (30) days after such event to have Whitehall (and/or one or more of its Affiliates) purchase its Interest for Fair Market Value (taking into account the value of such Person's Promote) and (y) if such transaction is with a Person other than Whitehall or any of its Affiliates, such transaction shall be on arm's-length terms.

FINANCIAL MATTERS

Accounting Principles

10. The Shareholders shall procure that the Company shall adopt accounting principles approved by the Board in relation to its financial statements.

INFORMATION AND REPORTING

Accounts

11.1 At all times during the continuance of the Company, the Shareholders shall procure that the Company keep or cause to be kept true and complete books of account in which shall be entered fully and accurately each transaction of the Company. Such books shall be kept on the basis of the Fiscal Year in accordance with the accrual method of accounting, and shall reflect all Company transactions in accordance with generally accepted accounting principles.

Availability of Accounts

11.2 The Shareholders shall procure that all of the books of accounts referred to in clause 11.1, together with an executed copy of this Agreement and the statutory books of the Company and the Organisational Documents of the Subsidiaries, and any amendments thereto, shall at all times be maintained at the Company's registered office or such other location as selected by the Board (notice of which the Shareholders shall procure shall be given to all Shareholders), and, upon reasonable notice to the Company, shall be open to the inspection and examination of any Shareholder or any of its Representatives during reasonable business hours. The complete books of account of the Company's direct and indirect majority-owned subsidiaries (and any limited partnerships and/or trusts under the Company's control (as that term is used in the definition of Affiliate)) shall be, upon reasonable notice to the Company, open to inspection and examination by any Shareholder or any of its Representatives during reasonable business hours.

Annual Reports and Statements; Annual Budgets and Business Plans

- 11.3(a) For each Fiscal Year, the Shareholders shall procure that the Company shall send (or cause to be sent) to each Person who was a Shareholder at any time during such Fiscal Year, by no later than 15 February of the next Fiscal Year, an annual report of the Company including an annual balance sheet, profit and loss statement and a statement of changes in cash flows, and a statement showing distributions to the Shareholders all as prepared in accordance with generally accepted accounting principles in England consistently applied and audited by the Company's independent public accountants, which initially shall be PricewaterhouseCoopers or another accounting firm (as the Company shall decide), and a statement showing the amounts distributed to that Shareholder in accordance with the terms of this Agreement.
- (b) For each quarter, the Shareholders shall procure that the Company shall send (or cause to be sent) to each Person who was a Shareholder at any time during such quarter, within forty-five (45) days after the end of such quarter, quarterly financial statements of the Company including a quarterly balance sheet, profit and loss statement and a statement of changes in cash flows, and a statement showing distributions to the Shareholders in that quarter all as prepared in accordance with generally accepted accounting principles in England consistently applied.

- (c) The Shareholders shall procure that the Company shall send (or cause to be sent) to each Shareholder (i) within twenty-five (25) days after the end of each month of each Fiscal Year a monthly report setting forth such financial and operating information as may be selected by the Company, (ii) by no later than 15 February of each year, completed IRS Schedules K-1, if required, prepared by the Company's accountants and (iii) such other information concerning the Trillium Group and reasonably requested by any Shareholder as is necessary for the preparation of each Shareholder's federal, state and local income or other tax returns. The Shareholders shall procure that the Company shall prepare (or cause to be prepared) for the Trillium Group for the Fiscal Year in question an Annual Budget and a Business Plan. Any Annual Budget or Business Plan may be revised by the Board at any time subsequent to its preparation.
- (d) Upon request by any Person that was but is no longer a Shareholder, the Shareholders shall procure that the Company shall provide to such Person any information that such Person reasonably requests if such information both (i) relates to the Trillium Group during the time that such Person was a Shareholder and (ii) is needed by such Person for legal, tax or regulatory purposes.

Accounting Expenses

11.4 The Shareholders shall procure that all out-of-pocket expenses payable to Persons in connection with the keeping of the books and records of the Company and the preparation of audited or unaudited financial statements and federal, local and other taxes and information returns required to implement the provisions of this Agreement or required by any governmental authority with jurisdiction over the Company shall be borne by the Company as an ordinary expense of its business. The Shareholders shall procure that the Company shall reimburse Whitehall's consultants for the preparation of annual audited financial statements, K-1's, and federal and local tax and information returns.

CONFIDENTIALITY

12.1 Each Shareholder agrees not to disclose or permit the disclosure of any of the terms of this Agreement or of any other confidential, non-public or proprietary information relating to the Trillium Group, the Company Assets or business (collectively, *Confidential Information*), *provided* that such disclosure may be made:

- (a) to any Person who is a member, partner, officer, director or employee of such Shareholder (or its direct or indirect beneficial owners) or counsel to or accountants of any such Person solely for their use, provided that such persons are notified of the Shareholders' confidentiality obligations hereunder;
- (b) with the prior consent of the other Shareholders;
- (c) subject to the next paragraph, pursuant to a subpoena or order issued by a court arbitrator or governmental body, agency or official; and

- (d) to any lender providing financing to the Company or any Subsidiary or any lender that is contemplating the provision of such financing.

12.2 In the event that a Shareholder shall receive a request to disclose any Confidential Information under a subpoena or order, such Shareholder shall (a) promptly notify the other Shareholders thereof, (b) consult with the Company on the advisability of taking steps to resist or narrow such request and (c) if disclosure is required or deemed advisable, cooperate with any of the other Shareholders in any attempt it may make to obtain an order or other assurance that confidential treatment will be accorded the Confidential Information that is disclosed.

12.3 No Shareholder shall issue any press release or other public communication about the formation or existence of the Company without the express written consent of the Company.

NON-COMPETITION

13.1 None of Archon, Mychand, Wind Drift or Shaftesbury shall until the date when Archon, Mychand, Wind Drift or Shaftesbury, as applicable, ceases to be a Shareholder (i) except through their ownership interest in the Company and their respective ownership interests in ventures approved in writing by the Board (which approval may be withheld in its sole discretion), engage in any of the following activities, namely, identifying or soliciting interest in investment opportunities with other Persons in, agreeing to provide management, advisory or consulting services to other Persons in respect of, or investing in, any real property or real property related assets located in the United Kingdom other than those in which Whitehall or any of its Affiliates (as defined in paragraph (a) of the definition of Affiliate) has an interest or (ii) enter into any agreement, arrangement or understanding or engage in any discussions with any employee of the Company or the Subsidiaries with respect to hiring or, directly or indirectly, employing the services of any such employee for a period ending two (2) years after the time at which Archon, Mychand, Wind Drift and/or Shaftesbury, as applicable, ceases to be a Shareholder.

13.2 For so long as Whitehall and its Affiliates retain the ownership of the Majority-in-Interest, none of Archon, Mychand, Wind Drift or Shaftesbury will actively engage in any undertaking that competes with the businesses (a **Competing Business**) as carried out from time to time of the Company or the Subsidiaries (including any business that is carried on outside the United Kingdom), save with the approval in writing of Whitehall (which approval may be withheld in its sole discretion).

13.3 For so long as Whitehall and its Affiliates retain the ownership of the Majority-in-Interest, and an Affiliate or Principal of Mychand supplies services to the Company or its Subsidiaries, none of Mychand, Wind Drift, or Shaftesbury, or any of their respective Principals or Affiliates will actively engage in a **Competing Business** as carried out from time to time of the Company or its Subsidiaries (including any business that is carried on outside the United Kingdom) prior to the time that falls six months after an Affiliate or Principal of Mychand ceases to provide such services, save with the approval in writing of Whitehall (which approval may be withheld in its sole discretion).

13.4 For so long as Whitehall retains the ownership of the Majority-in-Interest, and an Affiliate or Principal of Archon supplies services to the Company or its Subsidiaries, none of Archon or any of its Principals or Affiliates will actively engage in any undertaking that competes with the businesses as carried out from time to time of the Company or its Subsidiaries (including any business that is carried on outside the United Kingdom) prior to the time that falls six months after an Affiliate or Principal of Archon ceases to provide such services, save with the approval in writing of Whitehall (which approval may be withheld in its sole discretion).

13.5 Notwithstanding anything else in this clause 13, Archon will be permitted (i) to provide services to Goldman Sachs International and its Affiliates (as defined in paragraph (a) of the definition of Affiliate) and (ii) to obtain the return of any of its employees that have been seconded to the Company and/or any of its Subsidiaries.

REGULATORY MATTERS

14. The parties shall co-operate with each other to ensure that all information necessary or desirable for making (or responding to any requests for further information following) any notification or filing made in respect of this Agreement, or the transactions contemplated by it, is supplied to the party dealing with such notification and filing and that they are properly, accurately and promptly made.

TAX MATTERS

15. Each party agrees to co-operate, and ensure that its subsidiaries co-operate, to such extent as may be reasonably requested in connection with the making of any returns, claims or elections for taxation purposes:

- (a) by the other party in relation to the taxation affairs of any member (or former member) of its group for any period ending before the Effective Date; or
- (b) by any member of the Trillium Group in relation to the taxation affairs of the Company.

DISSOLUTION AND WINDING UP

Voluntary Winding Up

16.1 The Shareholders agree that they shall vote in favour of any special or extraordinary resolution that the Company be wound up if the Board so proposes and that they shall procure that the Board make such a proposal to the Company's members, upon the first to occur of the following:

- (a) the sale or other disposition of all of the Company Assets and receipt of the final payment of any instalment obligation received as a result of any such sale or disposition;
- (b) at the request of Whitehall; or
- (c) any event that makes it unlawful for the Company's business to be continued.

Powers of Liquidator

- 16.2(a) In the event of the dissolution of the Company pursuant to clause 16.1, the Shareholders agree that, to the extent permitted by law, they shall appoint one or more liquidators selected by Whitehall.
- (b) Upon dissolution of the Company, the liquidator(s) may to the extent permitted by law, in the name of, and for and on behalf of, the Company, prosecute and defend suits, whether civil, criminal or administrative, gradually settle and close the Company's business, dispose of and convey the Company's property, discharge or make reasonable provision for the Company's liabilities, and distribute to the Shareholders in accordance with clause 16.3 any remaining assets of the Company, all without affecting the liability of Shareholders and without imposing liability on any such liquidator. Except as agreed by Whitehall, no Shareholder shall have the right to demand or receive property other than cash upon liquidation, and the Company shall, in any event, have the power to sell Company Assets for cash as necessary to provide for the payment of all Company liabilities.

Distribution of Assets

16.3 Upon the winding up of the Company, any of the Company Assets available for distribution to the Company's members shall be distributed as follows:

- (a) to pay the debts and liabilities of the Company owed to Shareholders (other than Loans); and
- (b) to the Shareholders in accordance with their respective Capital Account balances after allocation of Profits and Losses for the period ending immediately prior to such distribution (and each Shareholder's Capital Account shall be adjusted to reflect the mark-to-market value of the Company Assets upon liquidation).

REMOVAL OF SHAREHOLDERS

Mychand

- 17.1(a) Mychand and/or any transferee of Mychand that is an Affiliate of Mychand (together, for purposes of this clause 17, **Mychand**) may be required to transfer their Interest, with or without Cause, by Whitehall immediately upon written notice. In the case of such a transfer for Cause, the Class B Shareholders Promote shall immediately be terminated without notice or any other action. Notwithstanding the foregoing, (i) Whitehall shall not be permitted to require Mychand to transfer its Interest with Cause more than 3 months after the date on which Whitehall has actual knowledge of the act or event giving rise to such right and (ii) if the right to require Mychand to transfer its Interest with Cause arises as a result of Mychand failing in a material respect to perform its obligations to the Company, Whitehall or any Whitehall Affiliate, then, Whitehall shall not have the right to require Mychand to transfer its Interest until the expiration of thirty (30) days

following notice of such failure to Mychand and the failure by Mychand and/or its Affiliate, as applicable, within such thirty (30)-day period to cure such failure to perform.

- (b) If Mychand is required to transfer its Interest with Cause, Whitehall (and/or one or more of its Affiliates) shall purchase all of Mychand's Interest at 90% of its Fair Market Value (not taking into account the value of the Class B Shareholders Promote, which shall be deemed terminated for all purposes) calculated on the Required Transfer Date, payment to be made within ninety (90) days after the Required Transfer Date.
- (c) If Mychand is required to transfer its Interest without Cause, then Whitehall (and/or one or more of its Affiliates) shall purchase all of Mychand's Interest (including the Class B Shareholders Promote) at 115% of their Fair Market Value (taking into account the value of the Class B Shareholders Promote) calculated on the Required Transfer Date, payment to be made within ninety (90) days after the Required Transfer Date.

Archon

17.2(a) Archon and/or any transferee of Archon that is an Affiliate of Archon (together, for purposes of this clause 17, **Archon**) may be required to transfer their Interest, with or without Cause, by Whitehall immediately upon written notice. In the case of such a transfer for Cause, the Class C Shareholders Promote shall immediately be terminated without notice or any other action. Notwithstanding the foregoing, (i) Whitehall shall not be permitted to require Archon to transfer its Interest with Cause more than 3 months after the date on which Whitehall has actual knowledge of the act or event giving rise to such right and (ii) if the right to require Archon to transfer its Interest with Cause arises as a result of Archon failing in a material respect to perform its obligations to the Company, Whitehall or any Whitehall Affiliate, then, Whitehall shall not have the right to require Archon to transfer its Interest until the expiration of thirty (30) days following notice of such failure to Archon and the failure by Archon and/or its Affiliate, as applicable, within such thirty (30)-day period to cure such failure to perform.

- (b) If Archon is required to transfer its Interest with Cause, Whitehall (and/or one or more of its Affiliates) shall purchase all of Archon's Interest at 90% of its Fair Market Value (not taking into account the value of the Class C Shareholders Promote, which shall be deemed terminated for all purposes) calculated on the Required Transfer Date, payment to be made within ninety (90) days after the Required Transfer Date.
- (c) If Archon is required to transfer its Interest without Cause, then Whitehall (and/or one or more of its Affiliates) shall purchase all of Archon's Interest (including the Class C Shareholders Promote) at 115% of their Fair Market Value (taking into account the value of the Class C Shareholders Promote) calculated on the Required Transfer Date, payment to be made within ninety (90) days after the Required Transfer Date.

Wind Drift

- 17.3(a) Wind Drift and/or any transferee of Wind Drift that is an Affiliate of Wind Drift (together, for purposes of this clause 17, **Wind Drift**) may be required to transfer their Interest, with or without Cause, by Whitehall immediately upon written notice. Notwithstanding the foregoing, (i) Whitehall shall not be permitted to require Wind Drift to transfer its Interest with Cause more than 3 months after the date on which Whitehall has actual knowledge of the act or event giving rise to such right and (ii) if the right to require Wind Drift to transfer its Interest with Cause arises as a result of Wind Drift failing in a material respect to perform its obligations to the Company, Whitehall or any Whitehall Affiliate, then, Whitehall shall not have the right to require Wind Drift to transfer its Interest until the expiration of thirty (30) days following notice of such failure to Wind Drift and the failure by Wind Drift and/or its Affiliate, as applicable, within such thirty (30)-day period to cure such failure to perform.
- (b) If (i) Wind Drift is required to transfer its Interest with Cause or (ii) Whitehall elects to require Wind Drift (with or without Cause) to transfer its Interest at the same time as requiring Mychand to transfer Mychand's Interest with Cause, Whitehall (and/or one or more of its Affiliates) shall purchase all of Wind Drift's Interest at 90% of its Fair Market Value calculated on the Required Transfer Date, payment to be made within ninety (90) days after the Required Transfer Date..
- (c) If Wind Drift is required to transfer its Interest without Cause, then Whitehall (and/or one or more of its Affiliates) shall purchase all of Wind Drift's Interest at 115% of their Fair Market Value calculated on the Required Transfer Date, payment to be made within ninety (90) days after the Required Transfer Date.

Shaftesbury

- 17.4(a) Shaftesbury and/or any transferee of Shaftesbury that is an Affiliate of Shaftesbury (together, for purposes of this clause 17, **Shaftesbury**) may be required to transfer their Interest, with or without Cause, by Whitehall immediately upon written notice. Notwithstanding the foregoing, (i) Whitehall shall not be permitted to require Shaftesbury to transfer its Interest with Cause more than 3 months after the date on which Whitehall has actual knowledge of the act or event giving rise to such right and (ii) if the right to require Shaftesbury to transfer its Interest with Cause arises as a result of Shaftesbury failing in a material respect to perform its obligations to the Company, Whitehall or any Whitehall Affiliate, then, Whitehall shall not have the right to require Shaftesbury to transfer its Interest until the expiration of thirty (30) days following notice of such failure to Shaftesbury and the failure by Shaftesbury and/or its Affiliate, as applicable, within such thirty (30)-day period to cure such failure to perform.
- (b) If (i) Shaftesbury is required to transfer its Interest with Cause or (ii) Whitehall elects to require Shaftesbury (with or without Cause) to transfer its Interest at the same time as requiring Mychand to transfer Mychand's Interest

with Cause, Whitehall (and/or one or more of its Affiliates) shall purchase all of Shaftesbury's Interest at 90% of its Fair Market Value calculated on the Required Transfer Date, payment to be made within ninety (90) days after the Required Transfer Date.

- (c) If Shaftesbury is required to transfer its Interest without Cause, then Whitehall (and/or one or more of its Affiliates) shall purchase all of Shaftesbury's Interest at 115% of its Fair Market Value calculated on the Required Transfer Date, payment to be made within ninety (90) days after the Required Transfer Date.

Fair Market Value

17.5 The term ***Fair Market Value*** shall mean, with respect to the Company:

- (a) the sum of:
 - (i) the value of the cash and marketable securities held directly by the Company; plus
 - (ii) (without duplication of (i)) the value of the business and assets owned directly or indirectly by the Trillium Group (as calculated below and as adjusted on a pro rata basis if the direct or indirect beneficial interest held by the Company in any member of the Trillium Group is less than 100%);
- (b) less the liabilities of the Company, as derived from its latest audited accounts (which accounts shall be adjusted as necessary to reflect all liabilities existing as of the date in respect of which this calculation is made).

The value of the business and assets owned directly or indirectly by the Trillium Group will be determined by calculating the net present value (using a discount rate of twenty percent (20%) per annum, compounded monthly) of the consolidated net income of the Trillium Group (accounting for minority interests) based on the most recent Business Plans for the Company and the Subsidiaries (as approved by Whitehall). In determining Fair Market Value, those contracts that are binding and/or unconditional but have not yet closed shall be included, but in all other respects neither the Company nor any Subsidiary will have any, intangible, franchise or goodwill value attributed to it. Notwithstanding the foregoing:

- (x) in the event of either (i) the removal without Cause of any of Mychand, Archon, Wind Drift or Shaftesbury or (ii) the election by Mychand or Archon pursuant to clause 9.6 to require Whitehall (and/or one or more of its Affiliates) to purchase its Interest, Fair Market Value shall be calculated as of the Required Transfer Date, provided that (1) the valuation shall occur on the day that is one hundred and fifty (150) days after the Required Transfer Date and (2) Fair Market Value shall take into account any contract that has become binding and effective between the Required Transfer Date and the day that is one hundred and twenty (120) days after the Required Transfer Date (and any Investments made in connection therewith) as though each such contract were

in effect on the Required Transfer Date, provided further that the Company has signed such contract, been selected as the preferred bidder or otherwise made substantial progress toward procuring such contract prior to the Required Transfer Date and that completion has occurred with respect to such contract on or before the day that is 120 days after the Required Transfer Date; and/or

- (y) if Mychand is removed without Cause pursuant to clause 17.1(c) and within 12 months from the relevant Required Transfer Date the Company or a Subsidiary completes a public offering of equity securities or the Company sells or otherwise transfers to a third-party all or substantially all of the Company Assets, Fair Market Value shall be recalculated to take into account the valuation of The Trillium Group implied by (and as of the date of) such transaction, and Whitehall shall promptly pay to Mychand the positive difference (if any), or Mychand shall promptly pay to Whitehall (or its designee) the negative difference (if any), as applicable, between such recalculated Fair Market Value and the Fair Market Value determined as of the Required Transfer Date.

17.6 As used in this clause 17:

not taking into account the value of the Promote means that the Interests of Archon or Mychand, as applicable, will be valued based on the Company's Fair Market Value multiplied by the Percentage Interest of Archon or Mychand, as applicable, without regard to any value that such Person's Promote may have had; and

taking into account the value of the Promote means that the Shares of Archon or Mychand, as applicable, will be valued as if the Company Assets were liquidated at Fair Market Value and the proceeds were distributed pursuant to clause 7.1 provided that such phrase shall not imply that any Promote shall actually be due and owing to Archon and/or Mychand.

General

17.7 Nothing herein shall be deemed to limit the liability of each of Archon, Mychand, Wind Drift and/or Shaftesbury to the other Shareholders for damages if it is removed as a Shareholder for Cause, and this clause 17 shall not constitute a waiver of exculpation from claims by, or indemnification from, the Company or the Shareholders with respect to any matter arising prior to such removal.

17.8 Where any of Archon, Mychand, Wind Drift or Shaftesbury is required to transfer its Interest to Whitehall (or its Affiliates), each of Archon, Mychand, Wind Drift or Shaftesbury, as applicable, shall transfer to Whitehall (or its Affiliates) those Interests free and clear of all liens, encumbrances and third party claims.

17.9 Where Archon, Mychand, Wind Drift or Shaftesbury is required to transfer its Interests to Whitehall (and/or one or more of its Affiliates) in accordance with this clause 17 or where either Archon or Mychand elects to transfer its Interest to Whitehall (and/or one or more of its Affiliates) in accordance with clause 9.6, the closing of the sale shall take place on the ninetieth (90th) day after the Required

Transfer Date, unless the parties mutually agree on an earlier closing date (the **Closing Date**). If the Closing Date is not a Business Day then the closing shall be held on the next succeeding Business Day. On the Closing Date, concurrently with the transfer of the Interests of Archon, Mychand, Wind Drift or Shaftesbury, the purchase price shall be paid in pounds sterling and the method of payment shall be, at the seller's option, as applicable, by banker's draft drawn to the order of Archon, Mychand, Wind Drift or Shaftesbury or by wire transfer of the funds to the seller's account. At the closing, if requested by Whitehall, Archon, Mychand, Wind Drift or Shaftesbury, as applicable, shall execute any necessary and appropriate instruments of conveyance, in order to effect the transfer of all of its Interests to be sold. Closing costs and all other charges (except for (i) taxes on capital gains which shall be payable by Archon, Mychand, Wind Drift or Shaftesbury, as applicable, and (ii) any stamp duty and/or stamp duty reserve tax which shall be paid by the Transferee) involved in closing the sale shall be divided *pro rata* between Whitehall on the one hand and Archon, Mychand, Wind Drift and/or Shaftesbury, on the other hand, as applicable, in proportion to their respective Capital Accounts (except each party shall pay its own attorneys' fees and the Company shall pay all title insurance costs, if any); *provided, however*, if Whitehall shall elect, Archon, Mychand, Wind Drift or Shaftesbury, as applicable, shall execute an assignment of its Interests free and clear of all liens, encumbrances and adverse claims, which assignment shall otherwise be in form and substance reasonably satisfactory to Whitehall and such other instruments as Whitehall may reasonably require to assign the seller's Interests (as applicable) to the Person or Persons as Whitehall may designate. In the event that Archon, Mychand, Wind Drift and Shaftesbury, as applicable, shall have created or suffered any unauthorized liens, encumbrances or other adverse interest against its Interests or any Company Assets, Whitehall shall be entitled either (i) to an action for specific performance to compel Archon, Mychand, Wind Drift or Shaftesbury, as applicable, to have such adverse interests removed, in which case the closing shall be adjourned for such purpose, or (ii) at Whitehall's option, to an appropriate offset against the purchase price.

17.10 If the Transferee fails to pay Archon, Mychand, Wind Drift and/or Shaftesbury, the purchase price on the Closing Date, (x) then Archon, Mychand, Wind Drift and/or Shaftesbury, as applicable, shall be entitled to receive, in addition to the purchase price, interest of one-month LIBOR plus one percent (1%) per annum on the unpaid balance of such purchase price until Archon, Mychand, Wind Drift and/or Shaftesbury, as applicable, receives payment of such purchase price and (y) Archon, Mychand, Wind Drift and/or Shaftesbury shall nevertheless convey its Interests to Whitehall or its designee on the Closing Date if Whitehall procures a creditworthy guarantor (or shall have provided such other security reasonably acceptable to Archon, Mychand, Wind Drift and/or Shaftesbury) to ensure due payment of its obligation to pay the purchase price (plus interest thereon at the rate specified in this clause 17.10).

17.11 If Whitehall (or its Affiliates), on the one hand, and Archon, Mychand, Wind Drift and/or Shaftesbury, as applicable, on the other hand, cannot agree on the purchase price to be paid pursuant to this clause 17 and the ADR or arbitration contemplated by clauses 24 or 25 has not yet been completed, then (i) the sale of the Interests of Mychand, Archon, Wind Drift and/or Shaftesbury, as applicable, shall

nevertheless be effected on the Closing Date and (ii) the Fair Market Value of such Interests and any additional interest thereon shall be calculated and paid subsequently in accordance with clause 17.5 and clause 17.10, respectively.

Outgoing Shareholders

- 17.12(a) The provisions of this clause 17.12 shall apply to any Shareholder who ceases to be a Shareholder in accordance with the provisions of this Agreement (an *Outgoing Shareholder*).
- (b) Within ninety (90) days of the date upon which any Shareholder ceases to be a Shareholder (the *Succession Date*), the Shareholders shall procure that the Company shall instruct the Company's accountants to prepare and distribute to each Shareholder as quickly as reasonably practicable a balance sheet as of such Succession Date and a profit and loss statement for the period from the date of the last annual report of the Company (or from the commencement of the Company if no such annual reports have been distributed) to such Succession Date. The costs of preparing and distributing such reports shall be borne by those Shareholders who were Shareholders immediately prior to the applicable Succession Date in accordance with their Percentage Interests and such reports shall be prepared in accordance with clause 11.3 and shall reflect all debts owed by or to the Outgoing Shareholder.
- (c) The Outgoing Shareholder shall execute all documents and do all acts and things as the Company may reasonably request for the purpose of (i) enabling the Company to recover and properly record and document all assets and liabilities of the Company, (ii) appointing a new trustee to hold any Company Assets or (iii) conveying, assigning or transferring to the Company any Company Assets that immediately prior to the Succession Date were vested in the Outgoing Shareholder in trust for the Company.
- (d) The Outgoing Shareholder shall on or before the applicable Succession Date deliver to the Company all Company files, correspondence, documents, papers and records (in whatever form these may be stored) that are in such Outgoing Shareholder's possession and the Outgoing Shareholder shall not retain copies of them, other than to the extent necessary or required for legal or regulatory purposes. Title and copyright in such files, correspondence, documents, papers and records shall vest in the Company.

RIGHTS AND DUTIES OF SHAREHOLDERS

Duties and Obligations of the Company

18.1 In addition to such duties as are described elsewhere in this Agreement, the Shareholders shall procure that the Company shall prepare and deliver (or cause to be prepared and delivered) to each Shareholder a copy of the Business Plan for each Budget Year.

Indemnification.

- 18.2(a) Notwithstanding anything in this Agreement to the contrary, no Shareholder shall be liable, responsible or accountable in damages or otherwise to the Company, any Subsidiary, any third party or to any other Shareholder for (i) any act performed within the scope of the authority conferred on such Shareholder by this Agreement except for (x) the gross negligence or wilful misconduct of such Shareholder in carrying out its obligations hereunder or (y) any act that is in breach of the express terms of this Agreement, (ii) such Shareholder's failure or refusal to perform any act, except those required by the terms of this Agreement, (iii) such Shareholder's performance of, or failure to perform, any act on the reasonable reliance on legal advice to the Company or (iv) the negligence, dishonesty or bad faith of any agent, consultant or broker of the Company selected, engaged or retained in good faith. In any threatened, pending or completed action, suit or proceeding, the Shareholders shall procure that each Shareholder shall be fully protected and indemnified and held harmless by the Company against all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, proceedings, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, reasonable legal fees, costs of investigation, fines, judgments and amounts paid in settlement, and costs actually incurred by such Shareholder in connection with such action, suit or proceeding) by virtue of its status as Shareholder or with respect to any action or omission taken or suffered in good faith, other than liabilities and losses resulting from the gross negligence or wilful misconduct of such Shareholder. The indemnification provided by this clause shall be recoverable only out of the assets of the Company, and no Shareholder shall have any personal liability (or obligation to contribute capital to the Company) on account thereof.
- (b) Each Shareholder shall defend and indemnify the Company and the other Shareholders against, and shall hold it and them harmless from, any damage, loss, liability, or expense, including reasonable legal fees, as and when incurred by the Company or the other Shareholders in connection with or resulting from such indemnifying Shareholder's gross negligence, malfeasance, fraud, breach of the express terms of this Agreement or wilful misconduct.

Compensation of Shareholders and their Affiliates

18.3 No Shareholder, nor any of its Affiliates, shall be entitled to compensation from the Company in connection with any matter that may be undertaken in connection with the fulfilment of its duties and responsibilities hereunder, except as provided in this clause 18.4, or as set forth in a Business Plan.

Goldman Sachs International as Exclusive Financial Advisor

18.4 The Shareholders shall procure that Goldman Sachs International (as well as such Affiliates as it shall designate from time to time) shall be the exclusive financial advisor and investment banker engaged by the Company and the Subsidiaries for all financings, capital transactions, mergers, acquisitions or securities offerings of the

types customarily engaged in by Goldman Sachs International (and/or such Affiliates). In the event that the Company engages Goldman Sachs International and/or its Affiliates to arrange a purchase, sale, financing, refinancing, securitisation or similar transaction in respect of the Company, any Subsidiary and/or any Company Asset (and Goldman Sachs International (and/or such Affiliate) accepts such engagement), Goldman Sachs International and/or such Affiliates shall be entitled to receive from the Company fees and commissions at market rates and customary indemnifications for such services.

DEALING WITH SHAREHOLDERS

19. The fact that a Shareholder, an Affiliate of a Shareholder, or any officer, director, employee, partner, consultant or agent of a Shareholder, is directly or indirectly interested in or connected with any Person employed by the Company to render or perform a service, or from or to whom the Company may buy or sell any property or have other business dealings, shall not prohibit any Shareholder or the Company from employing such Person or from dealing with him or it on customary terms and at competitive rates of compensation, and neither the Company nor any of the other Shareholders shall have any right in or to any income or profits derived therefrom by reason of this Agreement.

USE OF COMPANY ASSETS

20. No Shareholder shall make use of the funds or property of the Company, or assign any rights it may have to specific Company Assets, other than for the business or benefit of the Company.

DEALING WITH TAX AUTHORITIES

21.1 The Shareholders shall procure that the Company will (or will procure that its designee will) (i) supply each Shareholder with the information necessary for it to prepare tax returns in the United Kingdom and supply to the Inland Revenue all such information as may be required under the Taxes Acts or otherwise and (ii) arrange for any necessary tax filings in the United States required to be made on behalf of the Company and be solely responsible for responding to any requests for information or other inquiries regarding the Company from the IRS.

21.2 The Shareholders agree that they will provide the Company with such cooperation and assistance as may be requested by the Board in connection with the filing of any forms necessary to treat the Limited Partners (as defined in the Transfer Agreement) as disregarded entities for United States federal income tax purposes.

AMENDMENTS

22.1 This Agreement, other than clauses 2, 4, 13, 30, 5, 6, 7 (except as permitted in clause 7.1(e)), 8 and 16, may be amended from time to time by Whitehall without the consent of any other Shareholder. Clauses 2, 4, 13, 30, 5, 6, 7 (other than clause 7.1(e) which may be amended by Whitehall in accordance with the preceding sentence), 8 and 16 may be amended by Whitehall with the consent of the other Shareholders. No amendment permitted to be made pursuant to this clause 22 shall

materially reduce the amounts distributable to any Shareholder (in a manner that is not *pro rata* with respect to all Shareholders) unless such Shareholder consents thereto, increase the obligations or liabilities of any Shareholder hereunder, or otherwise materially impair the rights of any Shareholder under this Agreement. No amendment, modification, supplement, discharge or waiver hereof or hereunder shall require the consent of any Person not a party to this Agreement.

22.2 Notwithstanding the provisions of clause 38, the parties to this Agreement may by agreement rescind or vary this Agreement in any way without the consent of the Company.

ADDITIONAL SHAREHOLDERS

23. The Shareholders acknowledge and agree that when the Company allots and issues new Shares to New Shareholders as contemplated by clause 5.7 or Substituted Shareholders become Shareholders pursuant to clause 8.5 and in connection with such admission, Whitehall may amend this Agreement. If this Agreement shall be amended as a result, the amendment to this Agreement shall be signed by Whitehall, by the New Shareholder or by the Substituted Shareholder and the assigning Shareholder, if any. In making any amendments, the Shareholders shall procure that the Company shall prepare and file for recordation such documents and certificates as shall be required to be prepared and filed.

ALTERNATIVE DISPUTE RESOLUTION

24. The parties to this Agreement agree that, with respect to any claims arising out of or related to this Agreement (including any questions regarding its existence, validity or termination) or the memorandum of association of the Company or the New TIGP Articles, each party, their heirs, successors, assignees, employees, officers, directors, affiliates, subsidiaries of the parties, and the stockholders, members and/or partners of the parties shall seek to resolve the dispute amicably by using the procedure set out in the following paragraphs (a) to (f) before pursuing any other remedies available to them.

- (a) The parties shall submit the dispute to a neutral adviser appointed by agreement between the parties to assist them in resolving the dispute. Either party may give written notice to the other describing the nature of the dispute, requiring the dispute to be submitted to such a neutral adviser and proposing the name of a suitable person to be appointed. If no such person is appointed by agreement between the parties within 14 days after such notice is given (or, if no such notice is given, within 28 days after the dispute has arisen) either party may request the Centre for Dispute Resolution to appoint a neutral adviser acceptable to both parties.
- (b) The parties shall, with the assistance of the neutral adviser appointed in accordance with paragraph (a) above, seek to resolve the dispute by using an ADR procedure agreed between the parties or, in default of such agreement, established by the neutral adviser.

- (c) If the parties accept any recommendations made by the neutral adviser or otherwise reach agreement as to the resolution of the dispute, such agreement shall be recorded in writing and signed by the parties (and, if applicable, the neutral adviser), whereupon it shall become binding upon the parties.
- (d) If:
 - (i) the dispute has not been resolved to the satisfaction of both parties within 30 days after the appointment of the neutral adviser; or
 - (ii) either party fails or refuses to agree to or participate in the ADR procedure; or
 - (iii) in any event the dispute is not resolved within 90 days after it has arisen;then the dispute shall be referred to arbitration pursuant to clause 25 below.
- (e) In the event that the dispute is referred to arbitration in accordance with paragraph (d) above:
 - (i) any neutral adviser involved in the ADR procedure shall not take any part in the arbitration, whether as a witness or otherwise, and any recommendations made by him in connection with the ADR procedure shall not be relied upon by either party without the consent of the other party and the neutral adviser; and
 - (ii) neither party shall make use of or rely upon any without prejudice statements or admissions made by the other party in the ADR procedure.
- (f) The costs and fees associated with the ADR procedure shall be borne equally by the parties.

ARBITRATION

25. Subject to clause 24 above, the parties to this Agreement agree that, with respect to any claims arising out of or related to this Agreement (including any question regarding its existence, validity or termination) or the memorandum of association of the Company or the New TIGP Articles, each party, their heirs, successors, assignees, employees, officers, directors, Affiliates, subsidiaries of the parties, and the stockholders, members and/or partners of the parties will irrevocably submit to binding arbitration under the Rules of the London Court of International Arbitration, which rules are deemed to be incorporated by reference into this clause. The seat of the arbitration shall be London, England. The arbitration tribunal shall consist of three arbitrators, with one nominated by the Company and one by Mychand unless the dispute is between two parties, one of whom is Archon, where one shall be nominated by Archon and one by the other party to that dispute, and, in either case, the third shall be nominated by the first two arbitrators jointly (or by the President of the London Court of International Arbitration failing their agreement on the third

arbitrator). The parties to this Agreement hereby express their desire that the third arbitrator should have expertise in valuing assets or that the arbitration tribunal should consult people with such expertise, on any dispute concerning clause 17.5. Any award entered in any such arbitration shall be final and binding and may be entered and enforced in any court of competent jurisdiction. Nothing contained herein shall be construed as preventing any party from instituting legal or equitable action in any jurisdiction against any of the other parties for temporary or similar provisional relief to the full extent permitted under the laws applicable to this Agreement or any such other written agreement between the parties or the performance hereof or thereof or otherwise pending final settlement of any dispute, difference or question by arbitration. Any such provisional relief may be modified or amended in any way by the arbitration panel at any time after its appointment and the parties agree to take all steps necessary to effect such modification or amendment. Each party further agrees to irrevocably waive any objection on the grounds of forum non conveniens to the jurisdiction of the courts of England and Wales.

NON-ASSIGNMENT

26. No Shareholder may, nor may purport to, assign any of its rights or obligations under this Agreement in whole or in part, nor grant, declare, create or dispose of any right or interest in it, (otherwise than pursuant to a Transfer of Interests to a third party in accordance with the terms of this Agreement).

WAIVER OF RIGHTS

27. No waiver by a party of a failure by the other party to perform any provision of this Agreement operates or is to be construed as a waiver in respect of any other failure or be deemed to be a continuing waiver whether of a like or different character.

INVALIDITY

28. If any provision of this Agreement is or is held to be invalid or unenforceable, then so far as it is invalid or unenforceable it has no effect and is deemed not to be included in this Agreement. This shall not invalidate any of the remaining provisions of this Agreement. The parties shall then use all reasonable endeavours to replace the invalid or unenforceable provision by a valid provision the effect of which is as close as possible to the intended effect of the invalid or unenforceable provision.

NO PARTNERSHIP OR AGENCY

29.1 Nothing in this Agreement (or any of the arrangements contemplated by it) shall be deemed to constitute a partnership between the parties nor, save as may be expressly set out in it, constitute either party the agent of the other party for any purpose.

29.2 Unless the parties agree otherwise in writing neither of them shall:

- (a) enter into contracts with third parties as agent for the Company or for another Shareholder; or

- (b) describe itself as such an agent or in any way hold itself out as being such an agent.

ANNOUNCEMENTS

30.1 No formal public announcement or press release in connection with the signature or subject matter of this Agreement shall (subject to clause 30.2) be made or issued by or on behalf of any party or any member of the Trillium Group without the prior written approval of Whitehall (such approval not to be unreasonably withheld or delayed).

30.2 If a party has an obligation to make or issue any announcement required by law or by any stock exchange or by any governmental authority, the relevant party shall give the other party every reasonable opportunity to comment on any announcement or release before it is made or issued (provided that this shall not have the effect of preventing the party making the announcement or release from complying with its legal and/or stock exchange obligations.)

COSTS

31. Each of the parties shall pay its own costs incurred in connection with negotiating, preparing and implementing this Agreement and the transactions contemplated by it.

ENTIRE AGREEMENT

32.1 This Agreement sets out the entire agreement and understanding between the parties with respect to the subject matter of it.

32.2 Neither party has relied on or has been induced to enter into this Agreement in reliance on any representation, warranty or undertaking which is not set out in this Agreement.

32.3 A party may claim in contract for breach of warranty under this Agreement but no party shall be liable to the other for any misrepresentation or untrue statement which is not set out in this Agreement.

32.4 Liability for fraudulent misrepresentation is not excluded by this clause 32.

FURTHER ASSURANCES

33. Each party to this Agreement agrees to execute, acknowledge, deliver, file and record such further certificates, amendments, instruments and documents, and to do all such other acts and things, as may be required by law or as, in the reasonable judgment of the Company, may be necessary or advisable to carry out the intent and purpose of this Agreement.

SUPREMACY OF THIS AGREEMENT

34. If the provisions of this Agreement conflict with the memorandum of association of the Company, the New TIGP Articles or any Organisational Document

of any Shareholder, the provisions of this Agreement shall prevail as between the parties. The parties shall:

- (a) exercise all voting and other rights and powers available to them to give effect to the provisions of this Agreement; and
- (b) (if necessary) ensure any required amendment to the memorandum of association of the Company, the New TIGP Articles or any Organisational Document of any Shareholder.

NOTICES

35.1 Unless otherwise specified in this Agreement, all notices, demands, elections, requests or other formal communications that any party to this Agreement may desire or be required to give hereunder shall be in writing and shall be given by telefax, by hand, by depositing the same in the mails, first class postage prepaid, certified mail, return receipt requested, or by a recognized overnight courier service providing confirmation of delivery, to the addresses set forth in clause 36.1, or at such other address as may be designated by the addressee thereof (which in the case of the Company, shall be designated by the Company) upon written notice to all of the Shareholders and the Company.

35.2 All notices given pursuant to this clause 35.2 shall be deemed to have been given;

- (a) if transmitted by facsimile, upon the sender receiving electronic confirmation from the receiver's facsimile machine;
- (b) if delivered by hand, on the date of delivery or on the date delivery was refused by the addressee; or
- (c) if delivered by mail or by overnight courier, on the date of delivery as established by the return receipt or courier service confirmation (or the date on which the return receipt or courier service confirms that acceptance of delivery was refused by the addressee).

ADDRESS FOR NOTICES

36.1 The addresses and fax numbers of the parties for the purpose of clause 35 are:

(a) **WIND DRIFT LIMITED**

Address: 1712 Natwest Tower
1 Matheson Street
Causeway,
Hong Kong

Fax No: 00 852-2537 8825

For the attention of: Alan Robertson/Ian Hasell

(b) **SHAFTESBURY REAL ESTATE MANAGEMENT LIMITED**

Address: P O Box 124
Langtry House
40 La Motte Street
St Helier
Jersey
Channel Islands

Fax No: 01534 24668

For the attention of: John Pierce

(c) **MYCHAND LIMITED**

Address: 24 Bedford Row
London WCR 4HA
England

Fax No: 01322 287177

For the attention of: Stephen Corner

(d) **ARCHON/PPM L.L.C.**

Address: 600E Las Colinas Blvd
Suite 400
Irving
Texas 75039
USA

Fax No: 001 972 368 2699

For the attention of: General Counsel

(e) **W9/PPM L.L.C.**

Address: c/o Goldman Sachs & Co.
85 Broad Street
New York
New York 10004
USA

Fax No: 001 212 357 5505

For the attention of: Kevin D. Naughton

(f) **TRILLIUM INVESTMENTS GP LIMITED**

Address: c/o Goldman Sachs International
Peterborough Court

133 Fleet Street
London EC4A 2BB

Fax No: 020 7774 4477

For the attention of: Jake Franco

English language

36.2 All notices or formal communications under or in connection with this Agreement shall be in the English language or, if in any other language, accompanied by a translation into English. In the event of any conflict between the English text and the text in any other language, the English text shall prevail.

COUNTERPARTS

37. This Agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

RIGHTS UNDER CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

38. The Company (but no other person who is not a party to this Agreement) shall have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms which are expressed to benefit the Company as those terms may be amended from time to time.

POWER OF ATTORNEY

39.1 Each Shareholder shall execute and deliver to the Company, within five days after the receipt of the Company's request therefor, such further designations, powers of attorney and other instruments as the Company deems necessary or appropriate to carry out the provisions of this Agreement.

39.2 Each of Mychand, Archon, Wind Drift and Shaftesbury irrevocably appoints Whitehall, by way of security for the performance of their respective obligations under clauses 5.2, 8 and 17, its attorney to execute any necessary document required to be executed by it under the provisions of those clauses including any transfer of Shares, Loans or Interests or other documents which may be necessary to transfer title to the Interests required by those clauses.

CONSTRUCTION OF DOCUMENTS

40. The parties hereto acknowledge that they received professional legal advice in connection with the review, negotiation and drafting of this Agreement and that this Agreement shall not be subject to the principle of construing their

GOVERNING LAW

41. This Agreement shall be governed by and construed in accordance with the laws of England and Wales.

SCHEDULE 1

Shares and Initial Loans

Shareholder	Class of Ordinary Share	Number of Ordinary Shares	Aggregate Issue Price of Ordinary Shares	Initial Loans under 5.2(a)	Percentage Interest if Initial Loans advanced in full	Deferred Shares
Whitehall	A	86,500,000	£865,000.00	£85,753,654.02	86.500000%	
Mychand	B	7,914,292	£79,142.92	£22,746,301.73	7.914292%	1
Archon	C	1,000,000	£10,000.00	£11,849,389.35	1.000000%	1
Wind Drift	D	3,439,282	£34,392.82	£3,091,153.23	3.439282%	1
Shaftesbury	E	1,146,426	£11,464.26	£1,137,849.75	1.146426%	1
TOTAL		100,000,000	££1,000,000.00	£124,578,348.09	100%	4

Note: Wind Drift's Percentage Interest in the above table is subject to clause 5.2.

SCHEDULE 2

Original Investments and Deemed Distributions

Original Investment

Shareholder	Original Investment	Date On Which Original Investment Made
Archon	£871,275.14	1 April 1998
Mychand	£6,903,439.21	1 April 1998
Shaftesbury	£1,000,000.00	1 April 1998
Whitehall	£75,451,793.30	1 April 1998
Wind Drift	£3,000,000.00	1 April 1998
Total	£87,226,507.65	

Deemed Distributions

Date	Archon	Mychand	Shaftesbury	Whitehall	Wind Drift	Total
1 October 1988	£92,750.00	£734,050.62	£106,331.03	£8,022,875.00	£318,993.35	£9,275,000.00
1 December 1988	£24,943.83	£197,412.75	£28,596.26	£2,157,641.15	£85,788.84	£2,494,382.83
1 February 1999	£23,080.94	£182,669.28	£26,460.59	£1,996,500.96	£79,381.83	£2,308,093.60
1 April 1999	£13,229.09	£104,698.87	£15,166.18	£1,144,316.08	£45,498.55	£1,322,908.77
1 May 1999	£44,897.38	£355,331.02	£51,471.57	£3,883,623.68	£154,414.70	£4,489,738.35
1 July 1999	£56,225.11	£444,981.96	£64,457.98	£4,863,472.00	£193,373.93	£5,622,510.98
1 October 1999	£835,732.79	£6,614,240.04	£958,084.07	£72,290,886.55	£2,874,335.79	£83,573,279.24
Total	£1,090,859.14	£8,633,384.54	£1,250,567.68	£94,359,315.42	£3,751,786.99	£109,085,913.77

SCHEDULE 3

Representatives of Shareholders

Shareholder	Representatives
Whitehall	Stuart M. Rothenberg Todd A. Williams
Mychand	Manish Chande Martin Myers
Archon	James L. Lozier, Jr.
Wind Drift	Alan Robertson Ian Hasell
Shaftesbury	John Pierce

AS WITNESS this Agreement has been signed by the duly authorised representatives of the parties the day and year first before written.

SIGNED by)
and)
for and on behalf of)
MYCHAND LIMITED)

SIGNED by)
and)
for and on behalf of)
WIND DRIFT LIMITED)

SIGNED by)
and)
for and on behalf of)
SHAFTESBURY REAL ESTATE)
MANAGEMENT LIMITED)

SIGNED by)
and)
for and on behalf of)
ARCHON/PPM L.L.C.)

SIGNED by)
and)
for and on behalf of)
W9/PPM L.L.C.)

SCHEDULE 5

Tax Indemnities

Part 1

DEED OF INDEMNITY

THIS DEED is made on November 2000

BETWEEN:

WIND DRIFT LIMITED, an international business company incorporated under the laws of the British Virgin Islands with registered number 292683, whose registered office is at TrustNet Chambers, PO Box 3444, Road Town, Tortola, British Virgin Islands (the *Covenantor*);

MEGAWORLD TECHNOLOGY LIMITED, an international business company limited by shares incorporated under the laws of the British Virgin Islands, whose registered office is at TrustNet Chambers, PO Box 3444, Road Town, Tortola, British Virgin Islands (the *Company*);

TRILLIUM (PRIME) PROPERTY GP LIMITED, a private company limited by shares incorporated under the laws of England and Wales, with registered number 3424587, whose registered office is at Bastion House, 140 London Wall, London EC2Y 5DN (*PRIME*); and

TRILLIUM INVESTMENTS GP LIMITED, a private company limited by shares incorporated under the laws of England and Wales, with registered number 3487308, whose registered office is at Bastion House, 140 London Wall, London EC2Y 5DN (the *Transferee*).

WHEREAS:

(A) By an agreement (the *Transfer Agreement*) dated the same as the date of this Deed and made between the Covenantor and the Transferee amongst others, the Covenantor agreed to transfer to the Transferee the Shares held by the Covenantor in the Company.

(B) Clause 4.3(d) of the Transfer Agreement provides that the Covenantor will deliver at Completion (as therein defined) a duly executed deed of indemnity in respect of tax in the form of this Deed.

THIS DEED WITNESSES as follows:

INTERPRETATION

1.1 Words and expressions defined in or for the purposes of the Transfer Agreement and the Schedules thereto shall, except where expressly defined in this clause 1 or otherwise herein or where the context otherwise requires, have the same meanings in this Deed.

1.2 The following definitions shall have the following meanings:

Costs means all liabilities, losses, damages, reasonable costs (including legal costs and advisory fees) and reasonable expenses (including an amount in respect of management time) as the context requires, in each case of any nature whatsoever;

event includes (without limitation) the death or the winding up or dissolution of any person or anything analogous to such an occurrence under the laws of any applicable jurisdiction, and any act, transaction or omission whatsoever, and any reference to an event occurring on or before a particular date shall include events which for tax purposes are deemed to have, or are treated or regarded as having, occurred on or before that date;

group relief means:

- (a) relief surrendered or claimed pursuant to Chapter IV of Part X of the Taxes Act;
- (b) advance corporation tax surrendered or claimed pursuant to section 240 of the Taxes Act; and
- (c) any tax refund surrendered or claimed pursuant to section 102 Finance Act 1989;

or such reliefs as are analogous to the reliefs mentioned above under the laws of any jurisdiction;

relief includes, unless the context otherwise requires, any allowance, credit, deduction, exemption or set-off in respect of any tax or relevant to the computation of any income, profits or gains for the purposes of any tax, or any repayment of or saving of tax (including any repayment supplement or interest in respect of tax), and:

- (a) any reference to the **use** or **set off** of relief shall be construed accordingly and shall include use or set off in part; and
- (b) any reference to the **loss** of a relief shall include the absence, non-existence or cancellation of any such relief, or to such relief being available only in a reduced amount;

Retained Group means the Covenantor and any other company or companies (other than the Company, the Transferee or any other member of the Transferee's Group) which either are or become after Completion, or have within the six years ending at Completion been, treated as members of the same group, or otherwise connected or associated in any way with, the Covenantor for any tax purpose;

tax includes, without limitation, (a) taxes on income, profits and gains, and (b) all other taxes, levies, duties, imposts, charges and withholdings of any nature, including any inheritance, excise, property, sales, transfer, franchise and payroll taxes and any national insurance or social security contributions, and any payment whatsoever which the relevant person may be or become bound to make to any person as a result

of the discharge by that person of any tax which the relevant person has failed to discharge, together with all penalties, charges and interest relating to any of the foregoing or to any late or incorrect return in respect of any of them, and regardless of whether such taxes, levies, duties, imposts, charges, withholdings, penalties and interest are chargeable directly or primarily against or attributable directly or primarily to the relevant person or any other person and of whether any amount in respect of them is recoverable from any other person;

tax authority means any taxing or other authority (whether within the United Kingdom or within any other jurisdiction) competent to impose any tax liability;

tax claim means:

- (a) the issue of any notice, demand, assessment or letter by or on behalf of any tax authority or the imposition (or any document referring to the possible imposition) of any withholding of or on account of tax; or
- (b) the preparation or submission of any notice, return, assessment, letter or other document by the Transferee, the Company or any other person,

from which it appears that a tax liability has been incurred by or will be imposed on the Company;

tax liability means a liability of the Company to make or suffer an actual payment of tax (or an amount in respect of tax) and also the use or set off of any Transferee's relief in circumstances where, but for such use or set off, the Company would have had an actual tax liability in respect of which it would have been able to make a claim against the Covenantor under this Deed, and the amount that is to be treated for the purposes of this Deed as a tax liability of the Company shall be determined as follows:

- (a) where the relief that is the subject of the loss or which is used or set off as mentioned in those paragraphs is a deduction from or offset against tax, the tax liability shall be the amount of that relief so lost, used or set off;
- (b) where the relief that is the subject of the loss or which is used or set off as mentioned in those paragraphs is a deduction from or offset against income, profits or gains, the tax liability shall be, in the case of a relief which is used or set off, the amount of tax saved thereby and, in the case of a relief which is lost, the amount of tax which but for such loss would have been saved by virtue of the relief so lost, ignoring for this purpose the effect of reliefs (other than deductions in computing profits for the purpose of tax) arising in respect of an event occurring or period ending after Completion; and
- (c) where the relief that is the subject of the loss or setting off is a repayment of tax, the tax liability shall be the amount of the repayment that would have been obtained but for the loss, use or setting off;

Taxes Act means the Income and Corporation Taxes Act 1988;

Transferee's Group means the Transferee and any other company or companies (other than the Covenantor) which either are or become after Completion, or have within the six years ending at Completion been, treated as members of the same group as, or otherwise connected or associated in any way with, the Transferee for any tax purpose by means of a direct or indirect interest that the Transferee has in such company or companies; and

Transferee's relief means any relief arising in respect of an event occurring or period ending after Completion.

1.3 Any reference to income, profits or gains *earned, accrued or received* on or before a particular date or in respect of a particular period shall include income, profits or gains which for tax purposes are deemed to have been or are treated or regarded as earned, accrued or received on or before that date or in respect of that period.

1.4 Any reference to an *event occurring on or before Completion* shall be deemed to include a series or combination of events the first of which occurred on or before Completion.

1.5 Persons shall be treated as *connected* for the purposes of this Deed if they are connected within the meaning of section 839 of the Taxes Act.

1.6 Any stamp duty which is charged or chargeable on any document executed prior to Completion which is necessary to establish the title of the Company to any asset or in the enforcement or production of which the Company is interested shall be deemed, together with any interest, fines or penalties relating to such stamp duty, to be a liability of the Company to make an actual payment of tax.

1.7 The rule known as the ejusdem generis rule shall not apply and accordingly:

- (a) general words shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things; and
- (b) general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words.

1.8 In this Deed, unless the context otherwise requires, the provisions of clause 1.2 of the Transfer Agreement shall apply, including but not limited to the following:

- (a) references to *persons* includes individuals, companies, corporations, bodies corporate (wherever incorporated), unincorporated associations, trusts and partnerships (wherever formed or established);
- (b) the *headings* are inserted for convenience only and shall not affect the construction of this Deed;

- (c) references to one *gender* include all genders and references to the *singular* include the plural and vice versa;
- (d) any reference to an *enactment* or statutory provision is a reference to it as it may have been, or may from time to time be, amended, modified, consolidated or re-enacted;
- (e) references to any *English legal term* for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any other legal concept is, in respect of any jurisdiction other than England, deemed to include the legal concept or term which most nearly approximates in that jurisdiction to the English legal term; and
- (f) unless otherwise specified, references to clauses are to clauses of this Deed.

INDEMNITY

2.1 The Covenantor hereby covenants with the Transferee (for itself and as trustee for its successors in title) and, as a separate covenant, with the Company to indemnify the Company against (or, if the Transferee so directs, to pay to the Transferee an amount equivalent to):

- (a) any tax liability arising in respect of, by reference to or in consequence of:
 - (i) any income, profits or gains earned, accrued or received on or before Completion; and
 - (ii) any event which occurs or occurred on or before Completion;
- (b) any tax liability which is properly attributable to any member of the Retained Group; and
- (c) any liability to repay to any member of the Retained Group the whole or any part of any payment received for group relief pursuant to any agreement or arrangement entered into by the Company on or before Completion.

2.2 The Covenantor hereby covenants with the Transferee (for itself and as trustee for its successors in title) and, as a separate covenant, with PRIME to indemnify the Transferee and PRIME against (or, if the Transferee so directs, to pay to the Transferee an amount equivalent to) any amount which either the Transferee or PRIME is or has been obliged under section 42A of the Taxes Act or any regulations made thereunder to pay to the Board of the Inland Revenue save to the extent that either the Transferee or PRIME has retained out of sums, either due to the Covenantor or received on behalf of the Covenantor, amounts sufficient to meet any liabilities to make such payments to the Board of the Inland Revenue and it is expressly acknowledged by the Covenantor, the Transferee and PRIME that on or prior to the date of this Deed the sum of £322,400 has, in aggregate, been so retained by the Transferee and/or PRIME.

EXCLUSIONS

3. The indemnity contained in clause 2.1(a) shall not cover any tax liability to the extent that the tax liability was paid or discharged before Completion.

COSTS

4. The indemnity contained in clause 2 of this Deed shall extend to all Costs incurred by the Transferee, PRIME or the Company in connection with a claim under this Deed or in connection with the subject matter of any such claim.

WITHHOLDINGS

5. All sums payable by the Covenantor under this Deed shall be paid free and clear of all deductions or withholdings unless the deduction or withholding is required by law, in which event the Covenantor shall pay such additional amount as shall be required to ensure that the net amount received by the Transferee, PRIME or the Company under this Deed will equal the full amount which would have been received by it had no such deduction or withholding been required to be made.

TAX ON INDEMNITY PAYMENTS

6. If any tax authority brings into charge to tax any sum paid to the Transferee, PRIME or the Company under this Deed (including in circumstances where any relief is available in respect of such charge to tax), then the Covenantor shall pay such additional amount as shall be required to ensure that the total amount paid, less the tax chargeable on such amount (or that would be so chargeable but for such relief), is equal to the amount that would otherwise be payable under this Deed.

NOTIFICATION OF CLAIMS

7. If either the Transferee or the Company becomes aware of any tax claim relevant for the purposes of this Deed, the Transferee or the Company, as the case may be, shall procure that notice of that tax claim is given to the Covenantor as soon as reasonably practicable and shall take advice on the merits of any such tax claim and, if so advised, take whatever steps it considers reasonable to resist such tax claim.

DUE DATE OF PAYMENT AND INTEREST

8.1 Where a claim under this Deed relates to a liability to make or suffer an actual payment or increased payment of tax or an amount in respect thereof or where the Company is under a liability to make a payment of the type referred to in clause 2.1(c) above (in this clause referred to as a *group relief repayment*), the Covenantor shall pay to the Transferee, PRIME or the Company (as the Transferee shall direct) the amount claimed under this Deed in respect thereof on or before the date which is the later of the date ten Business Days after demand is made therefor by or on behalf of the claimant and the fifth Business Day prior to:

- (a) in the case of tax in respect of which there is no provision for payment by instalments, the latest date on which the tax in question can be paid to the

relevant tax authority in order to avoid a liability to interest or penalties accruing;

- (b) in the case of tax in respect of which there is provision for payment by instalments, each date on which an instalment of such tax becomes payable (and so that on each such date an appropriate proportion of the amount claimed shall be paid, such proportion to be notified by the Transferee to the Covenantor at least five Business Days prior to each such date); or
- (c) in the case of a group relief payment, the date on which that group relief repayment is payable to the person demanding the same,

provided that, if the date on which tax to which this clause applies can be recovered is deferred following application to the appropriate authority and the Covenantor indemnifies and secures the Transferee, PRIME or the Company to the reasonable satisfaction of the Transferee against all Costs that are or may be thereby incurred, the date for payment by the Covenantor shall be the earlier of the date on which the tax becomes recoverable by the relevant tax authority (notwithstanding any initial deferral) and such date when the amount of tax is finally and conclusively determined. For this purpose, an amount of tax shall be deemed to be finally determined when, in respect of such amount, an agreement under section 54 of the Taxes Management Act 1970 or any legislative provision corresponding to that section is made, or a decision of a court or tribunal is given or any binding agreement or determination is made from which either no appeal lies or in respect of which no appeal is made within the prescribed time limit.

8.2 Where a claim under this Deed relates to the loss or set off of a repayment of tax, the Covenantor shall pay to the Transferee, PRIME or the Company (as the Transferee shall direct) the amount claimed under this Deed in respect thereof on or before the date which is the later of the date ten Business Days after demand is made therefor by or on behalf of the claimant and the date when such repayment would have been due were it not for such loss or setting off.

8.3 Where a claim under this Deed relates to the loss, use or set off of any relief other than a repayment of tax, the Covenantor shall pay to the Transferee, PRIME or the Company (as the Transferee shall direct) the amount claimed under this Deed in respect thereof on or before the date which is the later of the date ten Business Days after demand is made therefor by or on behalf of the claimant, and:

- (a) in the case of a relief which is used or set off, the date or dates referred to in clause 8.1(a) or (b) that would have applied to the tax saved by the use or set off of the relief if that tax had been payable; or
- (b) in the case of a relief which is lost, the date or dates referred to in clause 8.1(a) or (b) that apply to the tax which but for such loss would have been saved by virtue of such relief, ignoring for this purpose the effect of reliefs (other than deductions in computing profits for the purposes of tax) arising in respect of an event occurring or period ending after Completion.

8.4 Clauses 8.1 to 8.3 shall apply to any additional amount payable under clauses 4, 5 and 6 so that such amount shall be paid on the later of the date ten Business Days after demand is made therefor by or on behalf of the claimant and such other date or dates determined under clauses 8.1 to 8.3 in relation to the tax or relief to which the claim under clause 2 in respect of which such additional amount is due, relates.

8.5 Any sum not paid by the Covenantor on the due date for payment specified in this clause 8 shall bear interest (which shall accrue from day to day after as well as before any judgment for the same) at the rate of 3 per cent. per annum over the base rate of Barclays Bank PLC (or in the absence of such rate at such similar rate as the Transferee shall select) from the due date to and including the day of actual payment of such sum, compounded quarterly. Such interest shall be paid on the demand of the Transferee, PRIME or the Company.

RECOVERY FROM THIRD PARTIES

9.1 If any payment is made by the Covenantor under this Deed in full discharge of a liability which arises under this Deed in respect of a tax liability and the Transferee or the Company subsequently receives from any person other than the Transferee or the Company or any person connected with any of them a payment or relief in respect of the tax liability in question (which payment or relief is received by virtue of a legal right), the Transferee or the Company shall pay to the Covenantor the amount received or the amount that the Transferee or the Company will save by virtue of the receipt of the relief (less the amount of all Costs in obtaining such payment or relief and net of any tax payable on the amount received or that would have been payable but for the use or set off of any relief) to the extent that the payment to the Covenantor does not exceed the payment originally made by the Covenantor (net of any tax suffered thereon), and to the extent that the right to such payment or relief is not prejudiced thereby.

9.2 Where the Transferee or the Company receives a relief as referred to in clause 9.1, a payment shall be made to the Covenantor no later than the date on which the tax that would have been payable but for the relief would have become recoverable by the appropriate tax authority, and shall not be made to the extent that, but for the use of such relief, the Company would have had an actual tax liability in respect of which it would have been able to make a claim against the Covenantor under this Deed.

SECONDARY LIABILITIES

10.1 The Covenantor covenants with the Transferee and, as a separate covenant, with the Company, to pay to the Transferee or the Company (as the Transferee shall direct) an amount equivalent to any tax or any amount on account of tax which the Company or any other member of the Transferee's Group, is required to pay as a result of a failure by any member of the Retained Group to discharge that tax.

10.2 The Transferee covenants with the Covenantor to pay to the Covenantor an amount equivalent to any tax or any amount on account of tax which any member of the Retained Group is required to pay as a result of a failure by the Company or any other member of the Transferee's Group, to discharge that tax.

10.3 The covenants contained in clauses 10.1 and 10.2 shall:

- (a) extend to any Costs incurred in connection with such tax or a claim under clause 10.1 or 10.2 as the case may be;
- (b) (in the case of clause 10.2) not apply to tax to the extent that the Transferee or the Company could claim payment in respect of it under clause 2, except to the extent a payment has been made pursuant to clause 2 and the tax to which it relates was not paid by the Company; and
- (c) not apply to tax which has been recovered under any relevant statutory provision (and the Transferee or the Covenantor as the case may be shall procure that no such recovery is sought to the extent that payment is made hereunder).

10.4 Clauses 7 and 8 (notification of claims and due date for payment) shall apply to the covenants contained in clauses 10.1 and 10.2 as they apply to the covenants contained in clause 2, replacing references to the Covenantor by the Transferee or the Company, as the case may be (and vice versa) where appropriate, and making any other necessary modifications.

ILLEGALITY

11. If at any time any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions hereof nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby. The parties shall use all reasonable endeavours to replace the illegal, invalid or unenforceable provision by a legal, valid and enforceable substitute provision the effect of which is as close as possible to the intended effect of the illegal, invalid or unenforceable provision.

WAIVER

12.1. No delay or omission of the Transferee, PRIME or the Company in exercising any right or power under or pursuant to this Deed shall impair such right or power or be construed as a waiver or variation thereof or preclude its exercise at any subsequent time and no single or partial exercise of any such right or power shall preclude any other or further exercise of it or any other right or power. The rights and remedies of the Transferee, PRIME and the Company provided in this Deed are cumulative, may be exercised as often as such party considers appropriate, and are in addition to its rights and remedies under general law.

12.2 The rights and remedies of the Transferee under this Deed shall not be affected, and the Covenantor's liabilities under this Deed shall not, subject to compliance with the notice requirements in clause 15 of this Deed, be released, discharged or impaired, by the expiry of any limitation period prescribed by law.

ASSIGNMENT

13.1 The Covenantor agrees and acknowledges that each of the Transferee, PRIME and the Company shall be entitled at any time to assign, transfer or charge all or any of its rights under this Deed.

13.2 If the Transferee, PRIME or the Company assigns or transfers or charges any of its rights under this Deed, the Transferee, PRIME or the Company, as the case may be, will notify the Covenantor as soon as practicable after such assignment, transfer or charge together with particulars of the assignee, transferee or chargee.

13.3 The Covenantor shall from time to time upon request from the Transferee, PRIME or the Company execute any agreements or other instruments (including, without limitation, any supplement or amendment to this Deed) which may be required in order to give effect to or perfect any assignment, transfer or charge referred to in clause 13.1.

13.4 The Covenantor shall not nor shall it purport to assign, transfer, charge or otherwise deal with all or any of its rights under this Deed nor grant, declare, create or dispose of any right or interest in it without the prior written consent of the Transferee, such approval not to be unreasonably withheld or delayed.

NO RIGHTS UNDER CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

14. A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

NOTICES

15. Any notice or other communication to be given by one party to any other party or parties under, or in connection with, this Deed shall be given in accordance with clause 17 of the Transfer Agreement as if that clause was set out in full in this Deed and any notice or other communication to be given by one party to the Company shall instead be given to the Transferee in accordance with such clause and marked for the attention of the Company.

GOVERNING LAW

16. This Deed and the relationship between the parties shall be governed by and construed in accordance with the laws of England and Wales.

JURISDICTION AND SERVICE OF PROCESS

Jurisdiction

17.1 Each of the parties agrees that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes (including claims for set-off and counterclaims) which may arise in connection with the creation, validity, effect, interpretation or performance of, or the legal relationships established by, this Deed or

otherwise arising out of or in connection with this Deed and for such purposes irrevocably submit to the jurisdiction of the courts of England and Wales.

Service of process

17.2 The Covenantor irrevocably consents to service of process or any other documents in connection with proceedings in any Court by fax, personal service, delivery at any address specified in this Deed or any other usual address, mail or in any other manner permitted by English law, the law of the place of service or the law of the jurisdiction where proceedings are instituted.

Agent for service of process

17.3 The Covenantor shall at all times maintain an agent for service of process and any other documents in proceedings in England or any other proceedings in connection with this Deed. Such agent shall be S.J. Berwin & Co currently of 222 Gray's Inn Road, London WC1X 8HB and any writ, judgment or other notice of legal process shall be sufficiently served on the Covenantor if delivered to such agent by hand and marked for the personal attention of the senior litigation partner at that time who shall be addressed by name. In the absence of the senior litigation partner any writ, judgement or other notice of legal process shall be suitably served on the Covenantor for the purposes of this clause if delivered to such agent by hand and marked for the personal attention of another litigation partner physically present at the office of such agent. Failure to address any writ, judgement or other notice of legal process to the appropriate litigation partner by name will result in the requirements of this clause 17.3 failing to be satisfied. The Covenantor irrevocably undertakes not to revoke the authority of the above agent and if, for any reason, the Transferee or the Company requests the Covenantor to do so it shall promptly appoint another such agent with an address in England and advise the Transferee and the Company. If, following such a request, the Covenantor fails to appoint another agent, the Transferee or the Company shall be entitled to appoint one on behalf of the Covenantor at the expense of the Covenantor.

COUNTERPARTS

18. This Deed may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which, when executed and delivered, shall be an original, but all the counterparts shall together constitute one and the same instrument.

Duly delivered as a deed on the date inserted on page 1.

EXECUTED as a DEED)	
and DELIVERED by	)	Director
TRILLIUM INVESTMENTS)	
GP LIMITED)	
acting by two Directors/a Director	)	Director/Secretary
and the Secretary)	

EXECUTED as a DEED)
and DELIVERED by) Director
TRILLIUM (PRIME))
PROPERTY GP)
LIMITED)
acting by two Directors/a Director) Director/Secretary
and the Secretary)

EXECUTED and DELIVERED)
as a DEED under the)
COMMON SEAL of)
WIND DRIFT LIMITED in)
the presence of)

acting for and on behalf of HSPS Managers
(BVI) Limited, being the sole Director of
WIND DRIFT LIMITED

EXECUTED and DELIVERED)
as a DEED under the)
COMMON SEAL of)
MEGAWORLD TECHNOLOGY)
LIMITED in the presence of:)

Director:

SCHEDULE 5

Part 2

DEED OF INDEMNITY

THIS DEED is made on November 2000

BETWEEN:

MYCHAND LIMITED, a private company limited by shares incorporated under the laws of England and Wales, with registered number 3470901, whose registered office is at 24 Bedford Row, London WC1R 4HA (the *Covenantor*);

TRILLIUM INVESTMENTS GP LIMITED, a private company limited by shares incorporated under the laws of England and Wales, with registered number 3487308, whose registered office is at Bastion House, 140 London Wall, London EC2Y 5DN (the *Transferee*); and

MYCHAND CENTRAL LP LIMITED, a private company limited by shares incorporated under the laws of England and Wales, with registered number 3487631, whose registered office is at 24 Bedford Row, London WC1R 4HA (the *Company*).

WHEREAS:

(A) By an agreement (the *Transfer Agreement*) dated the same as the date of this Deed and made between the Covenantor and the Transferee amongst others, the Covenantor agreed to transfer to the Transferee the Shares held by the Covenantor in the Company.

(B) Clause 4.5(d) of the Transfer Agreement provides that the Covenantor will deliver at Completion (as therein defined) a duly executed deed of indemnity in respect of tax in the form of this Deed.

THIS DEED WITNESSES as follows:

INTERPRETATION

1.1 Words and expressions defined in or for the purposes of the Transfer Agreement and the Schedules thereto shall, except where expressly defined in this clause 1 or otherwise herein or where the context otherwise requires, have the same meanings in this Deed.

1.2 The following definitions shall have the following meanings:

Alternate Indemnity means the Deed of Indemnity dated 27 July 1999 and agreed between Myles D'Arcy-Irvine, Sir David Davies and the Company;

Costs means all liabilities, losses, damages, reasonable costs (including legal costs and advisory fees) and reasonable expenses (including an amount in respect of management time) as the context requires, in each case of any nature whatsoever;

event includes (without limitation) the death or the winding up or dissolution of any person or anything analogous to such an occurrence under the laws of any applicable jurisdiction, and any act, transaction or omission whatsoever, and any reference to an event occurring on or before a particular date shall include events which for tax purposes are deemed to have, or are treated or regarded as having, occurred on or before that date;

group relief means:

- (a) relief surrendered or claimed pursuant to Chapter IV of Part X of the Taxes Act;
- (b) advance corporation tax surrendered or claimed pursuant to section 240 of the Taxes Act; and
- (c) any tax refund surrendered or claimed pursuant to section 102 Finance Act 1989;

relief includes, unless the context otherwise requires, any allowance, credit, deduction, exemption or set-off in respect of any tax or relevant to the computation of any income, profits or gains for the purposes of any tax, or any repayment of or saving of tax (including any repayment supplement or interest in respect of tax), and:

- (a) any reference to the **use** or **set off** of relief shall be construed accordingly and shall include use or set off in part; and
- (b) any reference to the **loss** of a relief shall include the absence, non-existence or cancellation of any such relief, or to such relief being available only in a reduced amount;

Retained Group means the Covenantor and any other company or companies (other than the Company, the Transferee or any other member of the Transferee's Group) which either are or become after Completion, or have within the six years ending at Completion been, treated as members of the same group, or otherwise connected or associated in any way with, the Covenantor for any tax purpose;

Shadow ACT Regulations means The Corporation Tax (Treatment of Unrelieved Surplus Advance Corporation Tax) Regulations 1999 (S.I. 1999 No. 358);

tax includes (without limitation) corporation tax, advance corporation tax, income tax (including income tax or amounts on account of income tax required to be deducted or withheld from or accounted for in respect of any payment), capital gains tax, inheritance tax, value added tax, national insurance contributions, capital duty, stamp duty, stamp duty reserve tax, duties of customs and excise, petroleum revenue tax, rates, all taxes, duties or charges replaced by or replacing any of them, and all other taxes on gross or net income, profits or gains, distributions, receipts, sales, use, occupation, franchise, value added, and personal property, and all levies, imposts, duties, charges or withholdings in the nature of taxation, and any payment whatsoever which the relevant person may be or become bound to make to any person as a result of the discharge by that person of any tax which the relevant person has failed to

discharge, together with all penalties, charges and interest relating to any of the foregoing or to any late or incorrect return in respect of any of them, and regardless of whether any such taxes, levies, duties, imposts, charges, withholdings, penalties and interest are chargeable directly or primarily against or attributable directly or primarily to the relevant person or any other person and of whether any amount in respect of any of them is recoverable from any other person;

tax authority means any taxing or other authority (whether within the United Kingdom or within any other jurisdiction) competent to impose any tax liability;

tax claim means:

- (a) the issue of any notice, demand, assessment or letter by or on behalf of any tax authority or the imposition (or any document referring to the possible imposition) of any withholding of or on account of tax; or
- (b) the preparation or submission of any notice, return, assessment, letter or other document by the Transferee, the Company or any other person,

from which it appears that a tax liability has been incurred by or will be imposed on the Company;

tax liability means a liability of the Company to make or suffer an actual payment of tax (or an amount in respect of tax) and also the use or set off of any Transferee's relief in circumstances where, but for such use or set off, the Company would have had an actual tax liability in respect of which it would have been able to make a claim against the Covenantor under this Deed, and the amount that is to be treated for the purposes of this Deed as a tax liability of the Company shall be determined as follows:

- (a) where the relief that is the subject of the loss or which is used or set off as mentioned in those paragraphs is a deduction from or offset against tax, the tax liability shall be the amount of that relief so lost, used or set off;
- (b) where the relief that is the subject of the loss or which is used or set off as mentioned in those paragraphs is a deduction from or offset against income, profits or gains, the tax liability shall be, in the case of a relief which is used or set off, the amount of tax saved thereby and, in the case of a relief which is lost, the amount of tax which but for such loss would have been saved by virtue of the relief so lost, ignoring for this purpose the effect of reliefs (other than deductions in computing profits for the purpose of tax) arising in respect of an event occurring or period ending after Completion; and
- (c) where the relief that is the subject of the loss or setting off is a repayment of tax, the tax liability shall be the amount of the repayment that would have been obtained but for the loss, use or setting off;

Taxes Act means the Income and Corporation Taxes Act 1988;

Transferee's Group means the Transferee and any other company or companies (other than the Covenantor) which either are or become after Completion, or have within the six years ending at Completion been, treated as members of the same group as, or otherwise connected or associated in any way with, the Transferee for any tax purpose by means of a direct or indirect interest that the Transferee has in such company or companies; and

Transferee's relief means any relief arising in respect of an event occurring or period ending after Completion.

1.3 Any reference to income, profits or gains **earned, accrued or received** on or before a particular date or in respect of a particular period shall include income, profits or gains which for tax purposes are deemed to have been or are treated or regarded as earned, accrued or received on or before that date or in respect of that period.

1.4 Any reference to an **event occurring on or before Completion** shall be deemed to include a series or combination of events the first of which occurred on or before Completion.

1.5 Persons shall be treated as **connected** for the purposes of this Deed if they are connected within the meaning of section 839 of the Taxes Act.

1.6 Any stamp duty which is charged or chargeable on any document executed prior to Completion which is necessary to establish the title of the Company to any asset or in the enforcement or production of which the Company is interested shall be deemed, together with any interest, fines or penalties relating to such stamp duty, to be a liability of the Company to make an actual payment of tax.

1.7 The rule known as the ejusdem generis rule shall not apply and accordingly:

- (a) general words shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things; and
- (b) general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words.

1.8 In this Deed, unless the context otherwise requires, the provisions of clause 1.2 of the Transfer Agreement shall apply, including but not limited to the following:

- (a) references to **persons** includes individuals, companies, corporations, bodies corporate (wherever incorporated), unincorporated associations, trusts and partnerships (wherever formed or established);
- (b) the **headings** are inserted for convenience only and shall not affect the construction of this Deed;

- (c) references to one *gender* include all genders and references to the *singular* include the plural and vice versa;
- (d) any reference to an *enactment* or statutory provision is a reference to it as it may have been, or may from time to time be, amended, modified, consolidated or re-enacted;
- (e) references to any *English legal term* for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any other legal concept is, in respect of any jurisdiction other than England, deemed to include the legal concept or term which most nearly approximates in that jurisdiction to the English legal term; and
- (f) unless otherwise specified, references to clauses are to clauses of this Deed.

INDEMNITY

2.1 The Covenantor hereby covenants with the Transferee (for itself and as trustee for its successors in title) and, as a separate covenant, with the Company to indemnify the Company against (or, if the Transferee so directs, to pay to the Transferee an amount equivalent to):

- (a) any tax liability arising in respect of, by reference to or in consequence of:
 - (i) any income, profits or gains earned, accrued or received on or before Completion; and
 - (ii) any event which occurs or occurred on or before Completion;
- (b) any tax liability which is properly attributable to any member of the Retained Group;
- (c) any liability to repay to any member of the Retained Group the whole or any part of any payment received for group relief pursuant to any agreement or arrangement entered into by the Company on or before Completion; and
- (d) any tax liability arising in respect of any increase in the assessment to corporation tax of the Company which is attributable to the displacement of any unrelieved surplus ACT (as defined in the Shadow ACT Regulations) incurred in respect of any dividend or other distribution made by the Company prior to 5 April 1999.

2.2 If a tax liability arises for which a claim can be made under the Alternate Indemnity:

- (a) the Company agrees that it will make such a claim for the maximum amount; and
- (b) the Transferee agrees that it will not make a claim in respect of the same tax liability under this clause 2 to the extent that the Company's claim under the Alternate Indemnity is successful.

EXCLUSIONS

3. The indemnity contained in clause 2.1(a) shall not cover any tax liability to the extent that:

- (a) the aggregate of all tax liabilities that, but for this clause 3(a), would give rise to a valid claim under clause 2.1(a), is equal to or less than an amount equal to the value of any asset in the form of (a) cash or (b) interest-free loan repayable on demand owned unencumbered by the Company immediately following Completion; or
- (b) the tax liability was paid or discharged before Completion.

COSTS

4. The indemnity contained in clause 2 of this Deed shall extend to all Costs incurred by the Transferee or the Company in connection with a claim under this Deed or in connection with the subject matter of any such claim.

WITHHOLDINGS

5. All sums payable by the Covenantor under this Deed shall be paid free and clear of all deductions or withholdings unless the deduction or withholding is required by law, in which event the Covenantor shall pay such additional amount as shall be required to ensure that the net amount received by the Transferee or the Company under this Deed will equal the full amount which would have been received by it had no such deduction or withholding been required to be made.

TAX ON INDEMNITY PAYMENTS

6. If any tax authority brings into charge to tax any sum paid to the Transferee or the Company under this Deed (including in circumstances where any relief is available in respect of such charge to tax), then the Covenantor shall pay such additional amount as shall be required to ensure that the total amount paid, less the tax chargeable on such amount (or that would be so chargeable but for such relief), is equal to the amount that would otherwise be payable under this Deed.

NOTIFICATION OF CLAIMS

7. If either the Transferee or the Company becomes aware of any tax claim relevant for the purposes of this Deed, the Transferee or the Company, as the case may be, shall procure that notice of that tax claim is given to the Covenantor as soon as reasonably practicable and shall take advice on the merits of any such tax claim and, if so advised, take whatever steps in considers reasonable to resist such tax claim.

DUE DATE OF PAYMENT AND INTEREST

8.1 Where a claim under this Deed relates to a liability to make or suffer an actual payment or increased payment of tax or an amount in respect thereof or where the Company is under a liability to make a payment of the type referred to in clause 2.1(c)

above (in this clause referred to as a *group relief repayment*), the Covenantor shall pay to the Transferee or the Company (as the Transferee shall direct) the amount claimed under this Deed in respect thereof on or before the date which is the later of the date ten Business Days after demand is made therefor by or on behalf of the claimant and the fifth Business Day prior to:

- (a) in the case of tax in respect of which there is no provision for payment by instalments, the latest date on which the tax in question can be paid to the relevant tax authority in order to avoid a liability to interest or penalties accruing;
- (b) in the case of tax in respect of which there is provision for payment by instalments, each date on which an instalment of such tax becomes payable (and so that on each such date an appropriate proportion of the amount claimed shall be paid, such proportion to be notified by the Transferee to the Covenantor at least five Business Days prior to each such date); or
- (c) in the case of a group relief payment, the date on which that group relief repayment is payable to the person demanding the same,

provided that, if the date on which tax to which this clause applies can be recovered is deferred following application to the appropriate authority and the Covenantor indemnifies and secures the Transferee or the Company to the reasonable satisfaction of the Transferee against all Costs that are or may be thereby incurred, the date for payment by the Covenantor shall be the earlier of the date on which the tax becomes recoverable by the relevant tax authority (notwithstanding any initial deferral) and such date when the amount of tax is finally and conclusively determined. For this purpose, an amount of tax shall be deemed to be finally determined when, in respect of such amount, an agreement under section 54 of the Taxes Management Act 1970 or any legislative provision corresponding to that section is made, or a decision of a court or tribunal is given or any binding agreement or determination is made from which either no appeal lies or in respect of which no appeal is made within the prescribed time limit.

8.2 Where a claim under this Deed relates to the loss or set off of a repayment of tax, the Covenantor shall pay to the Transferee or the Company (as the Transferee shall direct) the amount claimed under this Deed in respect thereof on or before the date which is the later of the date ten Business Days after demand is made therefor by or on behalf of the claimant and the date when such repayment would have been due were it not for such loss or setting off.

8.3 Where a claim under this Deed relates to the loss, use or set off of any relief other than a repayment of tax, the Covenantor shall pay to the Transferee or the Company (as the Transferee shall direct) the amount claimed under this Deed in respect thereof on or before the date which is the later of the date ten Business Days after demand is made therefor by or on behalf of the claimant, and:

- (a) in the case of a relief which is used or set off, the date or dates referred to in clause 8.1(a) or (b) that would have applied to the tax saved by the use or set off of the relief if that tax had been payable; or

- (b) in the case of a relief which is lost, the date or dates referred to in clause 8.1(a) or (b) that apply to the tax which but for such loss would have been saved by virtue of such relief, ignoring for this purpose the effect of reliefs (other than deductions in computing profits for the purposes of tax) arising in respect of an event occurring or period ending after Completion.

8.4 Clauses 8.1 to 8.3 shall apply to any additional amount payable under clauses 4, 5 and 6 so that such amount shall be paid on the later of the date ten Business Days after demand is made therefor by or on behalf of the claimant and such other date or dates determined under clauses 8.1 to 8.3 in relation to the tax or relief to which the claim under clause 2 in respect of which such additional amount is due, relates.

8.5 Any sum not paid by the Covenantor on the due date for payment specified in this clause 8 shall bear interest (which shall accrue from day to day after as well as before any judgment for the same) at the rate of 3 per cent. per annum over the base rate of Barclays Bank PLC (or in the absence of such rate at such similar rate as the Transferee shall select) from the due date to and including the day of actual payment of such sum, compounded quarterly. Such interest shall be paid on the demand of the Transferee or the Company.

RECOVERY FROM THIRD PARTIES

9.1 If any payment is made by the Covenantor under this Deed in full discharge of a liability which arises under this Deed in respect of a tax liability and the Transferee or the Company subsequently receives from any person other than the Transferee or the Company or any person connected with any of them a payment or relief in respect of the tax liability in question (which payment or relief is received by virtue of a legal right), the Transferee or the Company shall pay to the Covenantor the amount received or the amount that the Transferee or the Company will save by virtue of the receipt of the relief (less the amount of all Costs in obtaining such payment or relief and net of any tax payable on the amount received or that would have been payable but for the use or set off of any relief) to the extent that the payment to the Covenantor does not exceed the payment originally made by the Covenantor (net of any tax suffered thereon), and to the extent that the right to such payment or relief is not prejudiced thereby.

9.2 Where the Transferee or the Company receives a relief as referred to in clause 9.1, a payment shall be made to the Covenantor no later than the date on which the tax that would have been payable but for the relief would have become recoverable by the appropriate tax authority, and shall not be made to the extent that, but for the use of such relief, the Company would have had an actual tax liability in respect of which it would have been able to make a claim against the Covenantor under this Deed.

SECONDARY LIABILITIES

10.1 The Covenantor covenants with the Transferee and, as a separate covenant, with the Company, to pay to the Transferee or the Company (as the Transferee shall direct) an amount equivalent to any tax or any amount on account of tax which the

Company or any other member of the Transferee's Group, is required to pay as a result of a failure by any member of the Retained Group to discharge that tax.

10.2 The Transferee covenants with the Covenantor to pay to the Covenantor an amount equivalent to any tax or any amount on account of tax which any member of the Retained Group is required to pay as a result of a failure by the Company or any other member of the Transferee's Group, to discharge that tax.

10.3 The covenants contained in clauses 10.1 and 10.2 shall:

- (a) extend to any Costs incurred in connection with such tax or a claim under clause 10.1 or 10.2 as the case may be;
- (b) (in the case of clause 10.2) not apply to tax to the extent that the Transferee or the Company could claim payment in respect of it under clause 2, except to the extent a payment has been made pursuant to clause 2 and the tax to which it relates was not paid by the Company; and
- (c) not apply to tax which has been recovered under any relevant statutory provision (and the Transferee or the Covenantor as the case may be shall procure that no such recovery is sought to the extent that payment is made hereunder).

10.4 Clauses 7 and 8 (notification of claims and due date for payment) shall apply to the covenants contained in clauses 10.1 and 10.2 as they apply to the covenants contained in clause 2, replacing references to the Covenantor by the Transferee or the Company, as the case may be (and vice versa) where appropriate, and making any other necessary modifications.

ILLEGALITY

11. If at any time any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions hereof nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby. The parties shall use all reasonable endeavours to replace the illegal, invalid or unenforceable provision by a legal, valid and enforceable substitute provision the effect of which is as close as possible to the intended effect of the illegal, invalid or unenforceable provision.

WAIVER

12.1. No delay or omission of the Transferee or the Company in exercising any right or power under or pursuant to this Deed shall impair such right or power or be construed as a waiver or variation thereof or preclude its exercise at any subsequent time and no single or partial exercise of any such right or power shall preclude any other or further exercise of it or any other right or power. The rights and remedies of the Transferee and the Company provided in this Deed are cumulative, may be exercised as often as such party considers appropriate, and are in addition to its rights and remedies under general law.

12.2 The rights and remedies of the Transferee under this Deed shall not be affected, and the Covenantor's liabilities under this Deed shall not, subject to compliance with the notice requirements in clause 15 of this Deed, be released, discharged or impaired, by the expiry of any limitation period prescribed by law.

ASSIGNMENT

13.1 The Covenantor agrees and acknowledges that each of the Transferee and the Company shall be entitled at any time to assign, transfer or charge all or any of its rights under this Deed.

13.2 If the Transferee or the Company assigns or transfers or charges any of its rights under this Deed, the Transferee or the Company, as the case may be, will notify the Covenantor as soon as practicable after such assignment, transfer or charge together with particulars of the assignee, transferee or chargee.

13.3 The Covenantor shall from time to time upon request from the Transferee or the Company execute any agreements or other instruments (including, without limitation, any supplement or amendment to this Deed) which may be required in order to give effect to or perfect any assignment, transfer or charge referred to in clause 13.1.

13.4 The Covenantor shall not nor shall it purport to assign, transfer, charge or otherwise deal with all or any of its rights under this Deed nor grant, declare, create or dispose of any right or interest in it without the prior written consent of the Transferee, such approval not to be unreasonably withheld or delayed.

NO RIGHTS UNDER CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

14. A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

NOTICES

15. Any notice or other communication to be given by one party to any other party or parties under, or in connection with, this Deed shall be given in accordance with clause 17 of the Transfer Agreement as if that clause was set out in full in this Deed and any notice or other communication to be given by one party to the Company shall instead be given to the Transferee in accordance with such clause and marked for the attention of the Company.

GOVERNING LAW

16. This Deed and the relationship between the parties shall be governed by and construed in accordance with the laws of England and Wales.

JURISDICTION AND SERVICE OF PROCESS

Jurisdiction

17.1 Each of the parties agrees that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes (including claims for set-off and counterclaims) which may arise in connection with the creation, validity, effect, interpretation or performance of, or the legal relationships established by, this Deed or otherwise arising out of or in connection with this Deed and for such purposes irrevocably submit to the jurisdiction of the courts of England and Wales.

Service of process

17.2 The Covenantor irrevocably consents to service of process or any other documents in connection with proceedings in any Court by fax, personal service, delivery at any address specified in this Deed or any other usual address, mail or in any other manner permitted by English law, the law of the place of service or the law of the jurisdiction where proceedings are instituted.

COUNTERPARTS

18. This Deed may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which, when executed and delivered, shall be an original, but all the counterparts shall together constitute one and the same instrument.

Duly delivered as a deed on the date inserted on page 1.

EXECUTED as a DEED)	
and DELIVERED by	)	Director
TRILLIUM INVESTMENTS)	
GP LIMITED)	
acting by two)	
Directors/a Director	)	Director/Secretary
and the Secretary)	

EXECUTED as a DEED)	
and DELIVERED by	)	Director
MYCHAND LIMITED)	
acting by two)	
Directors/a Director	)	Director/Secretary
and the Secretary)	

EXECUTED as a DEED)	
and DELIVERED by	)	Director
MYCHAND CENTRAL)	
LP LIMITED)	
acting by two)	
Directors/a Director	)	Director/Secretary
and the Secretary)	

SCHEDULE 5

Part 3

DEED OF INDEMNITY

THIS DEED is made on November 2000

BETWEEN:

SHAFTESBURY REAL ESTATE MANAGEMENT LIMITED, a limited company incorporated under the laws of Jersey whose registered office is at PO Box 124, Langtry House, La Motte Street, St. Helier, Jersey, Channel Islands (the *Covenantor*);

SHAFTESBURY PROPERTIES LIMITED, a limited company incorporated under the laws of the Cayman Islands under number CR-105449 whose registered office is at c/o Maples and Calder, Ugland House, PO Box 309, George Town, Grand Cayman (the *Company*);

TRILLIUM INVESTMENTS GP LIMITED, a private company limited by shares incorporated under the laws of England and Wales, with registered number 3487308, whose registered office is at Bastion House, 140 London Wall, London EC2Y 5DN (the *Transferee*); and

TRILLIUM (PRIME) PROPERTY GP LIMITED, a private company limited by shares incorporated under the laws of England and Wales with registered number 3424587, whose registered office is at Bastion House, 140 London Wall, London EC2Y 5DN (*PRIME*).

WHEREAS:

(A) By an agreement (the *Transfer Agreement*) dated the same as the date of this Deed and made between the Covenantor and the Transferee amongst others, the Covenantor agreed to transfer to the Transferee the Shares held by the Covenantor in the Company.

(B) Clause 4.7(d) of the Transfer Agreement provides that the Covenantor will deliver at Completion (as therein defined) a duly executed deed of indemnity in respect of tax in the form of this Deed.

THIS DEED WITNESSES as follows:

INTERPRETATION

1.1 Words and expressions defined in or for the purposes of the Transfer Agreement and the Schedules thereto shall, except where expressly defined in this clause 1 or otherwise herein or where the context otherwise requires, have the same meanings in this Deed.

1.2 The following definitions shall have the following meanings:

Costs means all liabilities, losses, damages, reasonable costs (including legal costs and advisory fees) and reasonable expenses (including an amount in respect of management time) as the context requires, in each case of any nature whatsoever;

event includes (without limitation) the death or the winding up or dissolution of any person or anything analogous to such an occurrence under the laws of any applicable jurisdiction, and any act, transaction or omission whatsoever, and any reference to an event occurring on or before a particular date shall include events which for tax purposes are deemed to have, or are treated or regarded as having, occurred on or before that date;

group relief means:

- (a) relief surrendered or claimed pursuant to Chapter IV of Part X of the Taxes Act;
- (b) advance corporation tax surrendered or claimed pursuant to section 240 of the Taxes Act; and
- (c) any tax refund surrendered or claimed pursuant to section 102 Finance Act 1989;

or such reliefs as are analogous to the reliefs mentioned above under the laws of any jurisdiction;

relief includes, unless the context otherwise requires, any allowance, credit, deduction, exemption or set-off in respect of any tax or relevant to the computation of any income, profits or gains for the purposes of any tax, or any repayment of or saving of tax (including any repayment supplement or interest in respect of tax), and:

- (a) any reference to the *use* or *set off* of relief shall be construed accordingly and shall include use or set off in part; and
- (b) any reference to the *loss* of a relief shall include the absence, non-existence or cancellation of any such relief, or to such relief being available only in a reduced amount;

Retained Group means the Covenantor and any other company or companies (other than the Company, the Transferee or any other member of the Transferee's Group) which either are or become after Completion, or have within the six years ending at Completion been, treated as members of the same group, or otherwise connected or associated in any way with, the Covenantor for any tax purpose;

tax includes, without limitation, (a) taxes on income, profits and gains, and (b) all other taxes, levies, duties, imposts, charges and withholdings of any nature, including any inheritance, excise, property, sales, transfer, franchise and payroll taxes and any national insurance or social security contributions, and any payment whatsoever which the relevant person may be or become bound to make to any person as a result of the discharge by that person of any tax which the relevant person has failed to discharge, together with all penalties, charges and interest relating to any of the

foregoing or to any late or incorrect return in respect of any of them, and regardless of whether such taxes, levies, duties, imposts, charges, withholdings, penalties and interest are chargeable directly or primarily against or attributable directly or primarily to the relevant person or any other person and of whether any amount in respect of them is recoverable from any other person;

tax authority means any taxing or other authority (whether within the United Kingdom or within any other jurisdiction) competent to impose any tax liability;

tax claim means:

- (a) the issue of any notice, demand, assessment or letter by or on behalf of any tax authority or the imposition (or any document referring to the possible imposition) of any withholding of or on account of tax; or
- (b) the preparation or submission of any notice, return, assessment, letter or other document by the Transferee, the Company or any other person,

from which it appears that a tax liability has been incurred by or will be imposed on the Company;

tax liability means a liability of the Company to make or suffer an actual payment of tax (or an amount in respect of tax) and also the use or set off of any Transferee's relief in circumstances where, but for such use or set off, the Company would have had an actual tax liability in respect of which it would have been able to make a claim against the Covenantor under this Deed, and the amount that is to be treated for the purposes of this Deed as a tax liability of the Company shall be determined as follows:

- (a) where the relief that is the subject of the loss or which is used or set off as mentioned in those paragraphs is a deduction from or offset against tax, the tax liability shall be the amount of that relief so lost, used or set off;
- (b) where the relief that is the subject of the loss or which is used or set off as mentioned in those paragraphs is a deduction from or offset against income, profits or gains, the tax liability shall be, in the case of a relief which is used or set off, the amount of tax saved thereby and, in the case of a relief which is lost, the amount of tax which but for such loss would have been saved by virtue of the relief so lost, ignoring for this purpose the effect of reliefs (other than deductions in computing profits for the purpose of tax) arising in respect of an event occurring or period ending after Completion; and
- (c) where the relief that is the subject of the loss or setting off is a repayment of tax, the tax liability shall be the amount of the repayment that would have been obtained but for the loss, use or setting off;

Taxes Act means the Income and Corporation Taxes Act 1988;

Transferee's Group means the Transferee and any other company or companies (other than the Covenantor) which either are or become after Completion, or have

within the six years ending at Completion been, treated as members of the same group as, or otherwise connected or associated in any way with, the Transferee for any tax purpose by means of a direct or indirect interest that the Transferee has in such company or companies; and

Transferee's relief means any relief arising in respect of an event occurring or period ending after Completion.

1.3 Any reference to income, profits or gains *earned, accrued or received* on or before a particular date or in respect of a particular period shall include income, profits or gains which for tax purposes are deemed to have been or are treated or regarded as earned, accrued or received on or before that date or in respect of that period.

1.4 Any reference to an *event occurring on or before Completion* shall be deemed to include a series or combination of events the first of which occurred on or before Completion.

1.5 Persons shall be treated as *connected* for the purposes of this Deed if they are connected within the meaning of section 839 of the Taxes Act.

1.6 Any stamp duty which is charged or chargeable on any document executed prior to Completion which is necessary to establish the title of the Company to any asset or in the enforcement or production of which the Company is interested shall be deemed, together with any interest, fines or penalties relating to such stamp duty, to be a liability of the Company to make an actual payment of tax.

1.7 The rule known as the ejusdem generis rule shall not apply and accordingly:

- (a) general words shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things; and
- (b) general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words.

1.8 In this Deed, unless the context otherwise requires, the provisions of clause 1.2 of the Transfer Agreement shall apply, including but not limited to the following:

- (a) references to *persons* includes individuals, companies, corporations, bodies corporate (wherever incorporated), unincorporated associations, trusts and partnerships (wherever formed or established);
- (b) the *headings* are inserted for convenience only and shall not affect the construction of this Deed;
- (c) references to one *gender* include all genders and references to the *singular* include the plural and vice versa;

- (d) any reference to an *enactment* or statutory provision is a reference to it as it may have been, or may from time to time be, amended, modified, consolidated or re-enacted;
- (e) references to any *English legal term* for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any other legal concept is, in respect of any jurisdiction other than England, deemed to include the legal concept or term which most nearly approximates in that jurisdiction to the English legal term; and
- (f) unless otherwise specified, references to clauses are to clauses of this Deed.

INDEMNITY

2.1 The Covenantor hereby covenants with the Transferee (for itself and as trustee for its successors in title) and, as a separate covenant, with the Company to indemnify the Company against (or, if the Transferee so directs, to pay to the Transferee an amount equivalent to):

- (a) any tax liability arising in respect of, by reference to or in consequence of:
 - (i) any income, profits or gains earned, accrued or received on or before Completion; and
 - (ii) any event which occurs or occurred on or before Completion;
- (b) any tax liability which is properly attributable to any member of the Retained Group; and
- (c) any liability to repay to any member of the Retained Group the whole or any part of any payment received for group relief pursuant to any agreement or arrangement entered into by the Company on or before Completion.

2.2 The Covenantor hereby covenants with the Transferee (for itself and as trustee for its successors in title) and, as a separate covenant, with PRIME to indemnify the Transferee and PRIME against (or, if the Transferee so directs, to pay to the Transferee an amount equivalent to) any amount which either the Transferee or PRIME is or has been obliged under section 42A of the Taxes Act or any regulations made thereunder to pay to the Board of the Inland Revenue save to the extent that either the Transferee or PRIME has retained out of sums, either due to the Covenantor or received on behalf of the Covenantor, amounts sufficient to meet any liabilities to make such payments to the Board of the Inland Revenue and it is expressly acknowledged by the Covenantor, the Transferee and PRIME that on or prior to the date of this Deed no amount has been so retained by the Transferee and/or PRIME.

EXCLUSIONS

3. The indemnity contained in clause 2.1(a) shall not cover any tax liability to the extent that the tax liability was paid or discharged before Completion.

COSTS

4. The indemnity contained in clause 2 of this Deed shall extend to all Costs incurred by the Transferee, PRIME or the Company in connection with a claim under this Deed or in connection with the subject matter of any such claim.

WITHHOLDINGS

5. All sums payable by the Covenantor under this Deed shall be paid free and clear of all deductions or withholdings unless the deduction or withholding is required by law, in which event the Covenantor shall pay such additional amount as shall be required to ensure that the net amount received by the Transferee, PRIME or the Company under this Deed will equal the full amount which would have been received by it had no such deduction or withholding been required to be made.

TAX ON INDEMNITY PAYMENTS

6. If any tax authority brings into charge to tax any sum paid to the Transferee, PRIME or the Company under this Deed (including in circumstances where any relief is available in respect of such charge to tax), then the Covenantor shall pay such additional amount as shall be required to ensure that the total amount paid, less the tax chargeable on such amount (or that would be so chargeable but for such relief), is equal to the amount that would otherwise be payable under this Deed.

NOTIFICATION OF CLAIMS

7. If either the Transferee or the Company becomes aware of any tax claim relevant for the purposes of this Deed, the Transferee or the Company, as the case may be, shall procure that notice of that tax claim is given to the Covenantor as soon as reasonably practicable and shall take advice on the merits of any such tax claim and, if so advised, take whatever steps it considers reasonable to resist such tax claim.

DUE DATE OF PAYMENT AND INTEREST

8.1 Where a claim under this Deed relates to a liability to make or suffer an actual payment or increased payment of tax or an amount in respect thereof or where the Company is under a liability to make a payment of the type referred to in clause 2.1(c) above (in this clause referred to as a *group relief repayment*), the Covenantor shall pay to the Transferee, PRIME or the Company (as the Transferee shall direct) the amount claimed under this Deed in respect thereof on or before the date which is the later of the date ten Business Days after demand is made therefor by or on behalf of the claimant and the fifth Business Day prior to:

- (a) in the case of tax in respect of which there is no provision for payment by instalments, the latest date on which the tax in question can be paid to the relevant tax authority in order to avoid a liability to interest or penalties accruing;
- (b) in the case of tax in respect of which there is provision for payment by instalments, each date on which an instalment of such tax becomes payable

(and so that on each such date an appropriate proportion of the amount claimed shall be paid, such proportion to be notified by the Transferee to the Covenantor at least five Business Days prior to each such date); or

- (c) in the case of a group relief payment, the date on which that group relief repayment is payable to the person demanding the same,

provided that, if the date on which tax to which this clause applies can be recovered is deferred following application to the appropriate authority and the Covenantor indemnifies and secures the Transferee, PRIME or the Company to the reasonable satisfaction of the Transferee against all Costs that are or may be thereby incurred, the date for payment by the Covenantor shall be the earlier of the date on which the tax becomes recoverable by the relevant tax authority (notwithstanding any initial deferral) and such date when the amount of tax is finally and conclusively determined. For this purpose, an amount of tax shall be deemed to be finally determined when, in respect of such amount, an agreement under section 54 of the Taxes Management Act 1970 or any legislative provision corresponding to that section is made, or a decision of a court or tribunal is given or any binding agreement or determination is made from which either no appeal lies or in respect of which no appeal is made within the prescribed time limit.

8.2 Where a claim under this Deed relates to the loss or set off of a repayment of tax, the Covenantor shall pay to the Transferee, PRIME or the Company (as the Transferee shall direct) the amount claimed under this Deed in respect thereof on or before the date which is the later of the date ten Business Days after demand is made therefor by or on behalf of the claimant and the date when such repayment would have been due were it not for such loss or setting off.

8.3 Where a claim under this Deed relates to the loss, use or set off of any relief other than a repayment of tax, the Covenantor shall pay to the Transferee, PRIME or the Company (as the Transferee shall direct) the amount claimed under this Deed in respect thereof on or before the date which is the later of the date ten Business Days after demand is made therefor by or on behalf of the claimant, and:

- (a) in the case of a relief which is used or set off, the date or dates referred to in clause 8.1(a) or (b) that would have applied to the tax saved by the use or set off of the relief if that tax had been payable; or
- (b) in the case of a relief which is lost, the date or dates referred to in clause 8.1(a) or (b) that apply to the tax which but for such loss would have been saved by virtue of such relief, ignoring for this purpose the effect of reliefs (other than deductions in computing profits for the purposes of tax) arising in respect of an event occurring or period ending after Completion.

8.4 Clauses 8.1 to 8.3 shall apply to any additional amount payable under clauses 4, 5 and 6 so that such amount shall be paid on the later of the date ten Business Days after demand is made therefor by or on behalf of the claimant and such other date or dates determined under clauses 8.1 to 8.3 in relation to the tax or relief to which the claim under clause 2 in respect of which such additional amount is due, relates.

8.5 Any sum not paid by the Covenantor on the due date for payment specified in this clause 8 shall bear interest (which shall accrue from day to day after as well as before any judgment for the same) at the rate of 3 per cent. per annum over the base rate of Barclays Bank PLC (or in the absence of such rate at such similar rate as the Transferee shall select) from the due date to and including the day of actual payment of such sum, compounded quarterly. Such interest shall be paid on the demand of the Transferee, PRIME or the Company.

RECOVERY FROM THIRD PARTIES

9.1 If any payment is made by the Covenantor under this Deed in full discharge of a liability which arises under this Deed in respect of a tax liability and the Transferee or the Company subsequently receives from any person other than the Transferee or the Company or any person connected with any of them a payment or relief in respect of the tax liability in question (which payment or relief is received by virtue of a legal right), the Transferee or the Company shall pay to the Covenantor the amount received or the amount that the Transferee or the Company will save by virtue of the receipt of the relief (less the amount of all Costs in obtaining such payment or relief and net of any tax payable on the amount received or that would have been payable but for the use or set off of any relief) to the extent that the payment to the Covenantor does not exceed the payment originally made by the Covenantor (net of any tax suffered thereon), and to the extent that the right to such payment or relief is not prejudiced thereby.

9.2 Where the Transferee or the Company receives a relief as referred to in clause 9.1, a payment shall be made to the Covenantor no later than the date on which the tax that would have been payable but for the relief would have become recoverable by the appropriate tax authority, and shall not be made to the extent that, but for the use of such relief, the Company would have had an actual tax liability in respect of which it would have been able to make a claim against the Covenantor under this Deed.

SECONDARY LIABILITIES

10.1 The Covenantor covenants with the Transferee and, as a separate covenant, with the Company, to pay to the Transferee or the Company (as the Transferee shall direct) an amount equivalent to any tax or any amount on account of tax which the Company or any other member of the Transferee's Group, is required to pay as a result of a failure by any member of the Retained Group to discharge that tax.

10.2 The Transferee covenants with the Covenantor to pay to the Covenantor an amount equivalent to any tax or any amount on account of tax which any member of the Retained Group is required to pay as a result of a failure by the Company or any other member of the Transferee's Group, to discharge that tax.

10.3 The covenants contained in clauses 10.1 and 10.2 shall:

- (a) extend to any Costs incurred in connection with such tax or a claim under clause 10.1 or 10.2 as the case may be;

- (b) (in the case of clause 10.2) not apply to tax to the extent that the Transferee or the Company could claim payment in respect of it under clause 2, except to the extent a payment has been made pursuant to clause 2 and the tax to which it relates was not paid by the Company; and
- (c) not apply to tax which has been recovered under any relevant statutory provision (and the Transferee or the Covenantor as the case may be shall procure that no such recovery is sought to the extent that payment is made hereunder).

10.4 Clauses 7 and 8 (notification of claims and due date for payment) shall apply to the covenants contained in clauses 10.1 and 10.2 as they apply to the covenants contained in clause 2, replacing references to the Covenantor by the Transferee or the Company, as the case may be (and vice versa) where appropriate, and making any other necessary modifications.

ILLEGALITY

11. If at any time any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions hereof nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby. The parties shall use all reasonable endeavours to replace the illegal, invalid or unenforceable provision by a legal, valid and enforceable substitute provision the effect of which is as close as possible to the intended effect of the illegal, invalid or unenforceable provision.

WAIVER

12.1. No delay or omission of the Transferee, PRIME or the Company in exercising any right or power under or pursuant to this Deed shall impair such right or power or be construed as a waiver or variation thereof or preclude its exercise at any subsequent time and no single or partial exercise of any such right or power shall preclude any other or further exercise of it or any other right or power. The rights and remedies of the Transferee, PRIME and the Company provided in this Deed are cumulative, may be exercised as often as such party considers appropriate, and are in addition to its rights and remedies under general law.

12.2 The rights and remedies of the Transferee under this Deed shall not be affected, and the Covenantor's liabilities under this Deed shall not, subject to compliance with the notice requirements in clause 15 of this Deed, be released, discharged or impaired, by the expiry of any limitation period prescribed by law.

ASSIGNMENT

13.1 The Covenantor agrees and acknowledges that each of the Transferee, PRIME and the Company shall be entitled at any time to assign, transfer or charge all or any of its rights under this Deed.

13.2 If the Transferee, PRIME or the Company assigns or transfers or charges any of its rights under this Deed, the Transferee, PRIME or the Company, as the case may be, will notify the Covenantor as soon as practicable after such assignment, transfer or charge together with particulars of the assignee, transferee or chargee.

13.3 The Covenantor shall from time to time upon request from the Transferee, PRIME or the Company execute any agreements or other instruments (including, without limitation, any supplement or amendment to this Deed) which may be required in order to give effect to or perfect any assignment, transfer or charge referred to in clause 13.1.

13.4 The Covenantor shall not nor shall it purport to assign, transfer, charge or otherwise deal with all or any of its rights under this Deed nor grant, declare, create or dispose of any right or interest in it without the prior written consent of the Transferee, such approval not to be unreasonably withheld or delayed.

NO RIGHTS UNDER CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

14. A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

NOTICES

15. Any notice or other communication to be given by one party to any other party or parties under, or in connection with, this Deed shall be given in accordance with clause 17 of the Transfer Agreement as if that clause was set out in full in this Deed and any notice or other communication to be given by one party to the Company shall instead be given to the Transferee in accordance with such clause and marked for the attention of the Company.

GOVERNING LAW

16. This Deed and the relationship between the parties shall be governed by and construed in accordance with the laws of England and Wales.

JURISDICTION AND SERVICE OF PROCESS

Jurisdiction

17.1 Each of the parties agrees that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes (including claims for set-off and counterclaims) which may arise in connection with the creation, validity, effect, interpretation or performance of, or the legal relationships established by, this Deed or otherwise arising out of or in connection with this Deed and for such purposes irrevocably submit to the jurisdiction of the courts of England and Wales.

Service of process

17.2 The Covenantor irrevocably consents to service of process or any other documents in connection with proceedings in any Court by fax, personal service,

delivery at any address specified in this Deed or any other usual address, mail or in any other manner permitted by English law, the law of the place of service or the law of the jurisdiction where proceedings are instituted.

Agent for service of process

17.3 The Covenantor shall at all times maintain an agent for service of process and any other documents in proceedings in England or any other proceedings in connection with this Deed. Such agent shall be S.J. Berwin & Co currently of 222 Gray's Inn Road, London WC1X 8HB and any writ, judgment or other notice of legal process shall be sufficiently served on the Covenantor if delivered to such agent by hand and marked for the personal attention of the senior litigation partner at that time who shall be addressed by name. In the absence of the senior litigation partner any writ, judgement or other notice of legal process shall be suitably served on the Covenantor for the purposes of this clause if delivered to such agent by hand and marked for the personal attention of another litigation partner physically present at the office of such agent. Failure to address any writ, judgement or other notice of legal process to the appropriate litigation partner by name will result in the requirements of this clause 17.3 failing to be satisfied. The Covenantor irrevocably undertakes not to revoke the authority of the above agent and if, for any reason, the Transferee or the Company requests the Covenantor to do so it shall promptly appoint another such agent with an address in England and advise the Transferee and the Company. If, following such a request, the Covenantor fails to appoint another agent, the Transferee or the Company shall be entitled to appoint one on behalf of the Covenantor at the expense of the Covenantor.

COUNTERPARTS

18. This Deed may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which, when executed and delivered, shall be an original, but all the counterparts shall together constitute one and the same instrument.

Duly delivered as a deed on the date inserted on page 1.

EXECUTED as a DEED)	
and DELIVERED by	)	Director
TRILLIUM INVESTMENTS)	
GP LIMITED acting by two)	
Directors/a Director	)	Director/Secretary
and the Secretary)	

EXECUTED as a DEED)	
and DELIVERED by	)	Director
TRILLIUM (PRIME))	
PROPERTY GP LIMITED)	
acting by two Directors/a Director	)	Director/Secretary
and the Secretary)	

SIGNED as a DEED and DELIVERED)
on behalf of **SHAFTESBURY REAL**)
ESTATE MANAGEMENT LIMITED,)
a company incorporated under the laws of)
Jersey, by)
and)
being person(s) who, in)
accordance with the laws of that territory,)
is/are acting under the authority of)
SHAFTESBURY REAL)
ESTATE MANAGEMENT LIMITED)

EXECUTED as a DEED)
and DELIVERED by)
SHAFTESBURY PROPERTIES)
LIMITED acting by one Director)

SCHEDULE 5

Part 4

DEED OF INDEMNITY

THIS DEED is made on November 2000

BETWEEN:

ARCHON/PPM L.L.C., a limited liability company formed under the laws of the state of Delaware, USA whose registered office is at The Corporation Trust Company, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801, USA (the *Covenantor*);

ARCHON/PPM CI, a limited company incorporated under the laws of the Cayman Islands under number CR-105448 whose registered office is at c/o Maples and Calder, Ugland House, PO Box 309, George Town, Grand Cayman (the *Company*); and

TRILLIUM INVESTMENTS GP LIMITED, a private company limited by shares incorporated under the laws of England and Wales, with registered number 3487308, whose registered office is at Bastion House, 140 London Wall, London EC2Y 5DN (the *Transferee*).

WHEREAS:

(A) By an agreement (the *Transfer Agreement*) dated the same as the date of this Deed and made between the Covenantor and the Transferee amongst others, the Covenantor agreed to transfer to the Transferee the Shares held by the Covenantor in the Company.

(B) Clause 4.9(d) of the Transfer Agreement provides that the Covenantor will deliver at Completion (as therein defined) a duly executed deed of indemnity in respect of tax in the form of this Deed.

THIS DEED WITNESSES as follows:

INTERPRETATION

1.1 Words and expressions defined in or for the purposes of the Transfer Agreement and the Schedules thereto shall, except where expressly defined in this clause 1 or otherwise herein or where the context otherwise requires, have the same meanings in this Deed.

1.2 The following definitions shall have the following meanings:

Costs means all liabilities, losses, damages, reasonable costs (including legal costs and advisory fees) and reasonable expenses (including an amount in respect of management time) as the context requires, in each case of any nature whatsoever;

event includes (without limitation) the death or the winding up or dissolution of any person or anything analogous to such an occurrence under the laws of any applicable jurisdiction, and any act, transaction or omission whatsoever, and any reference to an event occurring on or before a particular date shall include events which for tax purposes are deemed to have, or are treated or regarded as having, occurred on or before that date;

group relief means:

- (a) relief surrendered or claimed pursuant to Chapter IV of Part X of the Taxes Act;
- (b) advance corporation tax surrendered or claimed pursuant to section 240 of the Taxes Act; and
- (c) any tax refund surrendered or claimed pursuant to section 102 Finance Act 1989;

or such reliefs as are analogous to the reliefs mentioned above under the laws of any jurisdiction;

relief includes, unless the context otherwise requires, any allowance, credit, deduction, exemption or set-off in respect of any tax or relevant to the computation of any income, profits or gains for the purposes of any tax, or any repayment of or saving of tax (including any repayment supplement or interest in respect of tax), and:

- (a) any reference to the **use** or **set off** of relief shall be construed accordingly and shall include use or set off in part; and
- (b) any reference to the **loss** of a relief shall include the absence, non-existence or cancellation of any such relief, or to such relief being available only in a reduced amount;

Retained Group means the Covenantor and any other company or companies (other than the Company, the Transferee or any other member of the Transferee's Group) which either are or become after Completion, or have within the six years ending at Completion been, treated as members of the same group, or otherwise connected or associated in any way with, the Covenantor for any tax purpose;

tax includes, without limitation, (a) taxes on income, profits and gains, and (b) all other taxes, levies, duties, imposts, charges and withholdings of any nature, including any inheritance, excise, property, sales, transfer, franchise and payroll taxes and any national insurance or social security contributions, and any payment whatsoever which the relevant person may be or become bound to make to any person as a result of the discharge by that person of any tax which the relevant person has failed to discharge, together with all penalties, charges and interest relating to any of the foregoing or to any late or incorrect return in respect of any of them, and regardless of whether such taxes, levies, duties, imposts, charges, withholdings, penalties and interest are chargeable directly or primarily against or attributable directly or

primarily to the relevant person or any other person and of whether any amount in respect of them is recoverable from any other person;

tax authority means any taxing or other authority (whether within the United Kingdom or within any other jurisdiction) competent to impose any tax liability;

tax claim means:

- (a) the issue of any notice, demand, assessment or letter by or on behalf of any tax authority or the imposition (or any document referring to the possible imposition) of any withholding of or on account of tax; or
- (b) the preparation or submission of any notice, return, assessment, letter or other document by the Transferee, the Company or any other person,

from which it appears that a tax liability has been incurred by or will be imposed on the Company;

tax liability means a liability of the Company to make or suffer an actual payment of tax (or an amount in respect of tax) and also the use or set off of any Transferee's relief in circumstances where, but for such use or set off, the Company would have had an actual tax liability in respect of which it would have been able to make a claim against the Covenantor under this Deed, and the amount that is to be treated for the purposes of this Deed as a tax liability of the Company shall be determined as follows:

- (a) where the relief that is the subject of the loss or which is used or set off as mentioned in those paragraphs is a deduction from or offset against tax, the tax liability shall be the amount of that relief so lost, used or set off;
- (b) where the relief that is the subject of the loss or which is used or set off as mentioned in those paragraphs is a deduction from or offset against income, profits or gains, the tax liability shall be, in the case of a relief which is used or set off, the amount of tax saved thereby and, in the case of a relief which is lost, the amount of tax which but for such loss would have been saved by virtue of the relief so lost, ignoring for this purpose the effect of reliefs (other than deductions in computing profits for the purpose of tax) arising in respect of an event occurring or period ending after Completion; and
- (c) where the relief that is the subject of the loss or setting off is a repayment of tax, the tax liability shall be the amount of the repayment that would have been obtained but for the loss, use or setting off;

Taxes Act means the Income and Corporation Taxes Act 1988;

Transferee's Group means the Transferee and any other company or companies (other than the Covenantor) which either are or become after Completion, or have within the six years ending at Completion been, treated as members of the same group as, or otherwise connected or associated in any way with, the Transferee for any tax

purpose by means of a direct or indirect interest that the Transferee has in such company or companies; and

Transferee's relief means any relief of any member of the Transferee's Group arising in respect of an event occurring or period ending after Completion.

1.3 Any reference to income, profits or gains **earned, accrued or received** on or before a particular date or in respect of a particular period shall include income, profits or gains which for tax purposes are deemed to have been or are treated or regarded as earned, accrued or received on or before that date or in respect of that period.

1.4 Any reference to an **event occurring on or before Completion** shall be deemed to include a series or combination of events the first of which occurred on or before Completion.

1.5 Persons shall be treated as **connected** for the purposes of this Deed if they are connected within the meaning of section 839 of the Taxes Act.

1.6 Any stamp duty which is charged or chargeable on any document executed prior to Completion which is necessary to establish the title of the Company to any asset or in the enforcement or production of which the Company is interested shall be deemed, together with any interest, fines or penalties relating to such stamp duty, to be a liability of the Company to make an actual payment of tax.

1.7 The rule known as the ejusdem generis rule shall not apply and accordingly:

- (a) general words shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things; and
- (b) general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words.

1.8 In this Deed, unless the context otherwise requires, the provisions of clause 1.2 of the Transfer Agreement shall apply, including but not limited to the following:

- (a) references to **persons** includes individuals, companies, corporations, bodies corporate (wherever incorporated), unincorporated associations, trusts and partnerships (wherever formed or established);
- (b) the **headings** are inserted for convenience only and shall not affect the construction of this Deed;
- (c) references to one **gender** include all genders and references to the **singular** include the plural and vice versa;
- (d) any reference to an **enactment** or statutory provision is a reference to it as it may have been, or may from time to time be, amended, modified, consolidated or re-enacted;

- (e) references to any *English legal term* for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any other legal concept is, in respect of any jurisdiction other than England, deemed to include the legal concept or term which most nearly approximates in that jurisdiction to the English legal term; and
- (f) unless otherwise specified, references to clauses are to clauses of this Deed.

INDEMNITY

2. The Covenantor hereby covenants with the Transferee (for itself and as trustee for its successors in title) and, as a separate covenant, with the Company to indemnify the Company against (or, if the Transferee so directs, to pay to the Transferee an amount equivalent to):

- (a) any tax liability arising in respect of, by reference to or in consequence of:
 - (i) any income, profits or gains earned, accrued or received on or before Completion; and
 - (ii) any event which occurs or occurred on or before Completion;
- (b) any tax liability which is properly attributable to any member of the Retained Group; and
- (c) any liability to repay to any member of the Retained Group the whole or any part of any payment received for group relief pursuant to any agreement or arrangement entered into by the Company on or before Completion.

EXCLUSIONS

3. The indemnity contained in clause 2.(a) shall not cover any tax liability to the extent that the tax liability was paid or discharged before Completion.

COSTS

4. The indemnity contained in clause 2 of this Deed shall extend to all Costs incurred by the Transferee or the Company in connection with a claim under this Deed or in connection with the subject matter of any such claim.

WITHHOLDINGS

5. All sums payable by the Covenantor under this Deed shall be paid free and clear of all deductions or withholdings unless the deduction or withholding is required by law, in which event the Covenantor shall pay such additional amount as shall be required to ensure that the net amount received by the Transferee or the Company under this Deed will equal the full amount which would have been received by it had no such deduction or withholding been required to be made.

TAX ON INDEMNITY PAYMENTS

6. If any tax authority brings into charge to tax any sum paid to the Transferee or the Company under this Deed (including in circumstances where any relief is available in respect of such charge to tax), then the Covenantor shall pay such additional amount as shall be required to ensure that the total amount paid, less the tax chargeable on such amount (or that would be so chargeable but for such relief), is equal to the amount that would otherwise be payable under this Deed.

NOTIFICATION OF CLAIMS

7. If either the Transferee or the Company becomes aware of any tax claim relevant for the purposes of this Deed, the Transferee or the Company, as the case may be, shall procure that notice of that tax claim is given to the Covenantor as soon as reasonably practicable and shall take advice on the merits of any such tax claim and, if so advised, take whatever steps in considers reasonable to resist such tax claim.

DUE DATE OF PAYMENT AND INTEREST

8.1 Where a claim under this Deed relates to a liability to make or suffer an actual payment or increased payment of tax or an amount in respect thereof or where the Company is under a liability to make a payment of the type referred to in clause 2.(c) above (in this clause referred to as a *group relief repayment*), the Covenantor shall pay to the Transferee or the Company (as the Transferee shall direct) the amount claimed under this Deed in respect thereof on or before the date which is the later of the date ten Business Days after demand is made therefor by or on behalf of the claimant and the fifth Business Day prior to:

- (a) in the case of tax in respect of which there is no provision for payment by instalments, the latest date on which the tax in question can be paid to the relevant tax authority in order to avoid a liability to interest or penalties accruing;
- (b) in the case of tax in respect of which there is provision for payment by instalments, each date on which an instalment of such tax becomes payable (and so that on each such date an appropriate proportion of the amount claimed shall be paid, such proportion to be notified by the Transferee to the Covenantor at least five Business Days prior to each such date); or
- (c) in the case of a group relief payment, the date on which that group relief repayment is payable to the person demanding the same,

provided that, if the date on which tax to which this clause applies can be recovered is deferred following application to the appropriate authority and the Covenantor indemnifies and secures the Transferee or the Company to the reasonable satisfaction of the Transferee against all Costs that are or may be thereby incurred, the date for payment by the Covenantor shall be the earlier of the date on which the tax becomes recoverable by the relevant tax authority (notwithstanding any initial deferral) and such date when the amount of tax is finally and conclusively determined. For this purpose, an amount of tax shall be deemed to be finally determined when, in respect

of such amount, an agreement under section 54 of the Taxes Management Act 1970 or any legislative provision corresponding to that section is made, or a decision of a court or tribunal is given or any binding agreement or determination is made from which either no appeal lies or in respect of which no appeal is made within the prescribed time limit.

8.2 Where a claim under this Deed relates to the loss or set off of a repayment of tax, the Covenantor shall pay to the Transferee or the Company (as the Transferee shall direct) the amount claimed under this Deed in respect thereof on or before the date which is the later of the date ten Business Days after demand is made therefor by or on behalf of the claimant and the date when such repayment would have been due were it not for such loss or setting off.

8.3 Where a claim under this Deed relates to the loss, use or set off of any relief other than a repayment of tax, the Covenantor shall pay to the Transferee or the Company (as the Transferee shall direct) the amount claimed under this Deed in respect thereof on or before the date which is the later of the date ten Business Days after demand is made therefor by or on behalf of the claimant, and:

- (a) in the case of a relief which is used or set off, the date or dates referred to in clause 8.1(a) or (b) that would have applied to the tax saved by the use or set off of the relief if that tax had been payable; or
- (b) in the case of a relief which is lost, the date or dates referred to in clause 8.1(a) or (b) that apply to the tax which but for such loss would have been saved by virtue of such relief, ignoring for this purpose the effect of reliefs (other than deductions in computing profits for the purposes of tax) arising in respect of an event occurring or period ending after Completion.

8.4 Clauses 8.1 to 8.3 shall apply to any additional amount payable under clauses 4, 5 and 6 so that such amount shall be paid on the later of the date ten Business Days after demand is made therefor by or on behalf of the claimant and such other date or dates determined under clauses 8.1 to 8.3 in relation to the tax or relief to which the claim under clause 2 in respect of which such additional amount is due, relates.

8.5 Any sum not paid by the Covenantor on the due date for payment specified in this clause 8 shall bear interest (which shall accrue from day to day after as well as before any judgment for the same) at the rate of 3 per cent. per annum over the base rate of Barclays Bank PLC (or in the absence of such rate at such similar rate as the Transferee shall select) from the due date to and including the day of actual payment of such sum, compounded quarterly. Such interest shall be paid on the demand of the Transferee or the Company.

RECOVERY FROM THIRD PARTIES

9.1 If any payment is made by the Covenantor under this Deed in full discharge of a liability which arises under this Deed in respect of a tax liability and the Transferee or the Company subsequently receives from any person other than the Transferee or the Company or any person connected with any of them a payment or relief in respect of the tax liability in question (which payment or relief is received by virtue of a legal

right), the Transferee or the Company shall pay to the Covenantor the amount received or the amount that the Transferee or the Company will save by virtue of the receipt of the relief (less the amount of all Costs in obtaining such payment or relief and net of any tax payable on the amount received or that would have been payable but for the use or set off of any relief) to the extent that the payment to the Covenantor does not exceed the payment originally made by the Covenantor (net of any tax suffered thereon), and to the extent that the right to such payment or relief is not prejudiced thereby.

9.2 Where the Transferee or the Company receives a relief as referred to in clause 9.1, a payment shall be made to the Covenantor no later than the date on which the tax that would have been payable but for the relief would have become recoverable by the appropriate tax authority, and shall not be made to the extent that, but for the use of such relief, the Company would have had an actual tax liability in respect of which it would have been able to make a claim against the Covenantor under this Deed.

SECONDARY LIABILITIES

10.1 The Covenantor covenants with the Transferee and, as a separate covenant, with the Company, to pay to the Transferee or the Company (as the Transferee shall direct) an amount equivalent to any tax or any amount on account of tax which the Company or any other member of the Transferee's Group, is required to pay as a result of a failure by any member of the Retained Group to discharge that tax.

10.2 The Transferee covenants with the Covenantor to pay to the Covenantor an amount equivalent to any tax or any amount on account of tax which any member of the Retained Group is required to pay as a result of a failure by the Company or any other member of the Transferee's Group, to discharge that tax.

10.3 The covenants contained in clauses 10.1 and 10.2 shall:

- (a) extend to any Costs incurred in connection with such tax or a claim under clause 10.1 or 10.2 as the case may be;
- (b) (in the case of clause 10.2) not apply to tax to the extent that the Transferee or the Company could claim payment in respect of it under clause 2, except to the extent a payment has been made pursuant to clause 2 and the tax to which it relates was not paid by the Company; and
- (c) not apply to tax which has been recovered under any relevant statutory provision (and the Transferee or the Covenantor as the case may be shall procure that no such recovery is sought to the extent that payment is made hereunder).

10.4 Clauses 7 and 8 (notification of claims and due date for payment) shall apply to the covenants contained in clauses 10.1 and 10.2 as they apply to the covenants contained in clause 2, replacing references to the Covenantor by the Transferee or the Company, as the case may be (and vice versa) where appropriate, and making any other necessary modifications.

ILLEGALITY

11. If at any time any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions hereof nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby. The parties shall use all reasonable endeavours to replace the illegal, invalid or unenforceable provision by a legal, valid and enforceable substitute provision the effect of which is as close as possible to the intended effect of the illegal, invalid or unenforceable provision.

WAIVER

12.1. No delay or omission of the Transferee or the Company in exercising any right or power under or pursuant to this Deed shall impair such right or power or be construed as a waiver or variation thereof or preclude its exercise at any subsequent time and no single or partial exercise of any such right or power shall preclude any other or further exercise of it or any other right or power. The rights and remedies of the Transferee and the Company provided in this Deed are cumulative, may be exercised as often as such party considers appropriate, and are in addition to its rights and remedies under general law.

12.2 The rights and remedies of the Transferee under this Deed shall not be affected, and the Covenantor's liabilities under this Deed shall not, subject to compliance with the notice requirements in clause 15 of this Deed, be released, discharged or impaired, by the expiry of any limitation period prescribed by law.

ASSIGNMENT

13.1 The Covenantor agrees and acknowledges that each of the Transferee and the Company shall be entitled at any time to assign, transfer or charge all or any of its rights under this Deed.

13.2 If the Transferee or the Company assigns or transfers or charges any of its rights under this Deed, the Transferee or the Company, as the case may be, will notify the Covenantor as soon as practicable after such assignment, transfer or charge together with particulars of the assignee, transferee or chargee.

13.3 The Covenantor shall from time to time upon request from the Transferee or the Company execute any agreements or other instruments (including, without limitation, any supplement or amendment to this Deed) which may be required in order to give effect to or perfect any assignment, transfer or charge referred to in clause 13.1.

13.4 The Covenantor shall not nor shall it purport to assign, transfer, charge or otherwise deal with all or any of its rights under this Deed nor grant, declare, create or dispose of any right or interest in it without the prior written consent of the Transferee, such approval not to be unreasonably withheld or delayed.

NO RIGHTS UNDER CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

14. A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

NOTICES

15. Any notice or other communication to be given by one party to any other party or parties under, or in connection with, this Deed shall be given in accordance with clause 17 of the Transfer Agreement as if that clause was set out in full in this Deed and any notice or other communication to be given by one party to the Company shall instead be given to the Transferee in accordance with such clause and marked for the attention of the Company.

GOVERNING LAW

16. This Deed and the relationship between the parties shall be governed by and construed in accordance with the laws of England and Wales.

JURISDICTION AND SERVICE OF PROCESS

Jurisdiction

17.1 Each of the parties agrees that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes (including claims for set-off and counterclaims) which may arise in connection with the creation, validity, effect, interpretation or performance of, or the legal relationships established by, this Deed or otherwise arising out of or in connection with this Deed and for such purposes irrevocably submit to the jurisdiction of the courts of England and Wales.

Service of process

17.2 The Covenantor irrevocably consents to service of process or any other documents in connection with proceedings in any Court by fax, personal service, delivery at any address specified in this Deed or any other usual address, mail or in any other manner permitted by English law, the law of the place of service or the law of the jurisdiction where proceedings are instituted.

Agent for service of process

17.3 The Covenantor shall at all times maintain an agent for service of process and any other documents in proceedings in England or any other proceedings in connection with this Deed. Such agent shall be Goldman Sachs International currently of Peterborough Court, 133 Fleet Street, London EC4A 2BB and any writ, judgment or other notice of legal process shall be sufficiently served on the Covenantor if delivered to such agent at its address for the time being. The Covenantor irrevocably undertakes not to revoke the authority of the above agent and if, for any reason, the Transferee or the Company requests the Covenantor to do so it shall promptly appoint another such agent with an address in England and advise the Transferee and the Company. If, following such a request, the Covenantor fails to

appoint another agent, the Transferee or the Company shall be entitled to appoint one on behalf of the Covenantor at the expense of the Covenantor.

COUNTERPARTS

18. This Deed may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which, when executed and delivered, shall be an original, but all the counterparts shall together constitute one and the same instrument.

Duly delivered as a deed on the date inserted on page 1.

EXECUTED as a DEED)	
and DELIVERED by)	
TRILLIUM INVESTMENTS	)	Director
GP LIMITED)	
acting by two)	
Directors/a Director	)	Director/Secretary
and the Secretary)	

SIGNED as a DEED and DELIVERED)	
on behalf of ARCHON/PPM L.L.C. , a)	
limited liability company formed under the)	
laws of and the state of Delaware, USA,)	
by)	
being a person who, in accordance)	
with the laws of that territory,)	
is acting under the authority of)	
ARCHON/PPM L.L.C.)	

EXECUTED as a DEED)	
and DELIVERED by)	
ARCHON/PPM CI)	
acting by a Director)	

SCHEDULE 5

Part 5

DEED OF INDEMNITY

THIS DEED is made on November 2000

BETWEEN:

W9/PPM L.L.C., a limited liability company formed under the laws of the state of Delaware, USA whose registered office is at The Corporation Trust Company, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801, USA (the *Covenantor*);

W9/PPM CI, a limited company incorporated under the laws of the Cayman Islands under number CR-105447 whose registered office is at c/o Maples and Calder, Ugland House, PO Box 309, George Town, Grand Cayman (the *Company*); and

TRILLIUM INVESTMENTS GP LIMITED, a private company limited by shares incorporated under the laws of England and Wales, with registered number 3487308, whose registered office is at Bastion House, 140 London Wall, London EC2Y 5DN (the *Transferee*).

WHEREAS:

(A) By an agreement (the *Transfer Agreement*) dated the same as the date of this Deed and made between the Covenantor and the Transferee amongst others, the Covenantor agreed to transfer to the Transferee the Shares held by the Covenantor in the Company.

(B) Clause 4.11(d) of the Transfer Agreement provides that the Covenantor will deliver at Completion (as therein defined) a duly executed deed of indemnity in respect of tax in the form of this Deed.

THIS DEED WITNESSES as follows:

INTERPRETATION

1.1 Words and expressions defined in or for the purposes of the Transfer Agreement and the Schedules thereto shall, except where expressly defined in this clause 1 or otherwise herein or where the context otherwise requires, have the same meanings in this Deed.

1.2 The following definitions shall have the following meanings:

Costs means all liabilities, losses, damages, reasonable costs (including legal costs and advisory fees) and reasonable expenses (including an amount in respect of management time) as the context requires, in each case of any nature whatsoever;

event includes (without limitation) the death or the winding up or dissolution of any person or anything analogous to such an occurrence under the laws of any applicable jurisdiction, and any act, transaction or omission whatsoever, and any reference to an event occurring on or before a particular date shall include events which for tax purposes are deemed to have, or are treated or regarded as having, occurred on or before that date;

group relief means:

- (a) relief surrendered or claimed pursuant to Chapter IV of Part X of the Taxes Act;
- (b) advance corporation tax surrendered or claimed pursuant to section 240 of the Taxes Act; and
- (c) any tax refund surrendered or claimed pursuant to section 102 Finance Act 1989;

or such reliefs as are analogous to the reliefs mentioned above under the laws of any jurisdiction;

relief includes, unless the context otherwise requires, any allowance, credit, deduction, exemption or set-off in respect of any tax or relevant to the computation of any income, profits or gains for the purposes of any tax, or any repayment of or saving of tax (including any repayment supplement or interest in respect of tax), and:

- (a) any reference to the *use* or *set off* of relief shall be construed accordingly and shall include use or set off in part; and
- (b) any reference to the *loss* of a relief shall include the absence, non-existence or cancellation of any such relief, or to such relief being available only in a reduced amount;

Retained Group means the Covenantor and any other company or companies (other than the Company, the Transferee or any other member of the Transferee's Group) which either are or become after Completion, or have within the six years ending at Completion been, treated as members of the same group, or otherwise connected or associated in any way with, such Covenantor for any tax purpose;

tax includes, without limitation, (a) taxes on income, profits and gains, and (b) all other taxes, levies, duties, imposts, charges and withholdings of any nature, including any inheritance, excise, property, sales, transfer, franchise and payroll taxes and any national insurance or social security contributions, and any payment whatsoever which the relevant person may be or become bound to make to any person as a result of the discharge by that person of any tax which the relevant person has failed to discharge, together with all penalties, charges and interest relating to any of the foregoing or to any late or incorrect return in respect of any of them, and regardless of whether such taxes, levies, duties, imposts, charges, withholdings, penalties and interest are chargeable directly or primarily against or attributable directly or

primarily to the relevant person or any other person and of whether any amount in respect of them is recoverable from any other person;

tax authority means any taxing or other authority (whether within the United Kingdom or within any other jurisdiction) competent to impose any tax liability;

tax claim means:

- (a) the issue of any notice, demand, assessment or letter by or on behalf of any tax authority or the imposition (or any document referring to the possible imposition) of any withholding of or on account of tax; or
- (b) the preparation or submission of any notice, return, assessment, letter or other document by the Transferee, the Company or any other person,

from which it appears that a tax liability has been incurred by or will be imposed on the Company;

tax liability means a liability of the Company to make or suffer an actual payment of tax (or an amount in respect of tax) and also the use or set off of any Transferee's relief in circumstances where, but for such use or set off, the Company would have had an actual tax liability in respect of which it would have been able to make a claim against the Covenantor under this Deed, and the amount that is to be treated for the purposes of this Deed as a tax liability of the Company shall be determined as follows:

- (a) where the relief that is the subject of the loss or which is used or set off as mentioned in those paragraphs is a deduction from or offset against tax, the tax liability shall be the amount of that relief so lost, used or set off;
- (b) where the relief that is the subject of the loss or which is used or set off as mentioned in those paragraphs is a deduction from or offset against income, profits or gains, the tax liability shall be, in the case of a relief which is used or set off, the amount of tax saved thereby and, in the case of a relief which is lost, the amount of tax which but for such loss would have been saved by virtue of the relief so lost, ignoring for this purpose the effect of reliefs (other than deductions in computing profits for the purpose of tax) arising in respect of an event occurring or period ending after Completion; and
- (c) where the relief that is the subject of the loss or setting off is a repayment of tax, the tax liability shall be the amount of the repayment that would have been obtained but for the loss, use or setting off;

Taxes Act means the Income and Corporation Taxes Act 1988;

Transferee's Group means the Transferee and any other company or companies (other than the Covenantor) which either are or become after Completion, or have within the six years ending at Completion been, treated as members of the same group as, or otherwise connected or associated in any way with, the Transferee for any tax

purpose by means of a direct or indirect interest that the Transferee has in such company or companies; and

Transferee's relief means any relief of any member of the Transferee's Group arising in respect of an event occurring or period ending after Completion.

1.3 Any reference to income, profits or gains **earned, accrued or received** on or before a particular date or in respect of a particular period shall include income, profits or gains which for tax purposes are deemed to have been or are treated or regarded as earned, accrued or received on or before that date or in respect of that period.

1.4 Any reference to an **event occurring on or before Completion** shall be deemed to include a series or combination of events the first of which occurred on or before Completion.

1.5 Persons shall be treated as **connected** for the purposes of this Deed if they are connected within the meaning of section 839 of the Taxes Act.

1.6 Any stamp duty which is charged or chargeable on any document executed prior to Completion which is necessary to establish the title of the Company to any asset or in the enforcement or production of which the Company is interested shall be deemed, together with any interest, fines or penalties relating to such stamp duty, to be a liability of the Company to make an actual payment of tax.

1.7 The rule known as the ejusdem generis rule shall not apply and accordingly:

- (a) general words shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things; and
- (b) general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words.

1.8 In this Deed, unless the context otherwise requires, the provisions of clause 1.2 of the Transfer Agreement shall apply, including but not limited to the following:

- (a) references to **persons** includes individuals, companies, corporations, bodies corporate (wherever incorporated), unincorporated associations, trusts and partnerships (wherever formed or established);
- (b) the **headings** are inserted for convenience only and shall not affect the construction of this Deed;
- (c) references to one **gender** include all genders and references to the **singular** include the plural and vice versa;
- (d) any reference to an **enactment** or statutory provision is a reference to it as it may have been, or may from time to time be, amended, modified, consolidated or re-enacted;

- (e) references to any *English legal term* for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any other legal concept is, in respect of any jurisdiction other than England, deemed to include the legal concept or term which most nearly approximates in that jurisdiction to the English legal term; and
- (f) unless otherwise specified, references to clauses are to clauses of this Deed.

INDEMNITY

2.1 The Covenantor hereby covenants with the Transferee (for itself and as trustee for its successors in title) and, as a separate covenant, with the Company to indemnify the Company against (or, if the Transferee so directs, to pay to the Transferee an amount equivalent to):

- (a) any tax liability arising in respect of, by reference to or in consequence of:
 - (i) any income, profits or gains earned, accrued or received on or before Completion; and
 - (ii) any event which occurs or occurred on or before Completion;
- (b) any tax liability which is properly attributable to any member of the Retained Group; and
- (c) any liability to repay to any member of the Retained Group the whole or any part of any payment received for group relief pursuant to any agreement or arrangement entered into by the Company on or before Completion.

2.2 The Transferee hereby covenants with the Covenantor (for itself and as trustee for its successors in title) to indemnify the Covenantor against a liability of the Covenantor to make or suffer an actual payment of tax (or an amount in respect of tax) with respect to any chargeable gain that has accrued to any member of the Transferee's Group on or after Completion; provided however that where the Covenantor receives a relief in respect of such liability, it shall notify the Transferee of the receipt and use of such relief and shall upon such use pay to the Transferee an amount equal to the tax that would have been payable but for the use of such relief.

EXCLUSIONS AND SET OFF

3.1 The indemnity contained in clause 2.1(a) shall not cover any tax liability to the extent that the tax liability was paid or discharged before Completion.

3.2 To the extent that any amounts are owed and have become due and payable by one party to another party under the terms of this Deed, that other party shall be entitled to set-off such amounts against any payments which have become due and payable by it to that one party under the terms of this Deed.

COSTS

4. The indemnities contained in clause 2 of this Deed shall extend to all Costs incurred by the Transferee, the Covenantor or the Company, as the case may be, in connection with a claim under this Deed or in connection with the subject matter of any such claim.

WITHHOLDINGS

5. All sums payable under this Deed shall be paid free and clear of all deductions or withholdings unless the deduction or withholding is required by law, in which event the payor shall pay such additional amount as shall be required to ensure that the net amount received by the payee under this Deed will equal the full amount which would have been received by it had no such deduction or withholding been required to be made.

TAX ON INDEMNITY PAYMENTS

6. If any tax authority brings into charge to tax any sum paid under this Deed (including in circumstances where any relief is available in respect of such charge to tax), then the payor shall pay such additional amount as shall be required to ensure that the total amount paid, less the tax chargeable on such amount (or that would be so chargeable but for such relief), is equal to the amount that would otherwise be payable under this Deed.

NOTIFICATION OF CLAIMS

7. If a party becomes aware of any tax claim relevant for the purposes of this Deed and in respect of which a claim could be made at that time or some time in the future by that party under this Deed, that party shall procure that notice of that tax claim is given to the other parties as soon as reasonably practicable and shall take advice on the merits of any such tax claim and, if so advised, take whatever steps in considers reasonable to resist such tax claim.

DUE DATE OF PAYMENT AND INTEREST

8.1 Where a claim under this Deed relates to a liability to make or suffer an actual payment or increased payment of tax or an amount in respect thereof or where the Company is under a liability to make a payment of the type referred to in clause 2.1(c) above (in this clause referred to as a *group relief repayment*), the Covenantor shall pay to the Transferee or the Company (as the Transferee shall direct), or the Transferee shall pay to the Covenantor, as the case may be, the amount claimed under this Deed in respect thereof on or before the date which is the later of the date ten Business Days after demand is made therefor by or on behalf of the claimant and the fifth Business Day prior to:

- (a) in the case of tax in respect of which there is no provision for payment by instalments, the latest date on which the tax in question can be paid to the relevant tax authority in order to avoid a liability to interest or penalties accruing;

- (b) in the case of tax in respect of which there is provision for payment by instalments, each date on which an instalment of such tax becomes payable (and so that on each such date an appropriate proportion of the amount claimed shall be paid, such proportion to be notified by the payee to the payor at least five Business Days prior to each such date); or
- (c) in the case of a group relief payment, the date on which that group relief repayment is payable to the person demanding the same,

provided that, if the date on which tax to which this clause applies can be recovered is deferred following application to the appropriate authority and the Covenantor indemnifies and secures the Transferee or the Company to the reasonable satisfaction of the Transferee, or the Transferee indemnifies and secures the Covenantor, as the case may be, against all Costs that are or may be thereby incurred, the date for payment by the payor shall be the earlier of the date on which the tax becomes recoverable by the relevant tax authority (notwithstanding any initial deferral) and such date when the amount of tax is finally and conclusively determined. For this purpose, an amount of tax shall be deemed to be finally determined when, in respect of such amount, an agreement under section 54 of the Taxes Management Act 1970 or any legislative provision corresponding to that section is made, or a decision of a court or tribunal is given or any binding agreement or determination is made from which either no appeal lies or in respect of which no appeal is made within the prescribed time limit.

8.2 Where a claim under this Deed relates to the loss or set off of a repayment of tax, the Covenantor shall pay to the Transferee or the Company (as the Transferee shall direct), or the Transferee shall pay to the Covenantor, as the case may be, the amount claimed under this Deed in respect thereof on or before the date which is the later of the date ten Business Days after demand is made therefor by or on behalf of the claimant and the date when such repayment would have been due were it not for such loss or setting off.

8.3 Where a claim under this Deed relates to the loss, use or set off of any relief other than a repayment of tax, the Covenantor shall pay to the Transferee or the Company (as the Transferee shall direct), or the Transferee shall pay to the Covenantor, as applicable, the amount claimed under this Deed in respect thereof on or before the date which is the later of the date ten Business Days after demand is made therefor by or on behalf of the claimant, and:

- (a) in the case of a relief which is used or set off, the date or dates referred to in clause 8.1(a) or (b) that would have applied to the tax saved by the use or set off of the relief if that tax had been payable; or
- (b) in the case of a relief which is lost, the date or dates referred to in clause 8.1(a) or (b) that apply to the tax which but for such loss would have been saved by virtue of such relief, ignoring for this purpose the effect of reliefs (other than deductions in computing profits for the purposes of tax) arising in respect of an event occurring or period ending after Completion.

8.4 Clauses 8.1 to 8.3 shall apply to any additional amount payable under clauses 4, 5 and 6 so that such amount shall be paid on the later of the date ten Business Days after demand is made therefor by or on behalf of the claimant and such other date or dates determined under clauses 8.1 to 8.3 in relation to the tax or relief to which the claim under clause 2 in respect of which such additional amount is due, relates.

8.5 Any sum not paid on the due date for payment specified in this clause 8 shall bear interest (which shall accrue from day to day after as well as before any judgment for the same) at the rate of 3 per cent. per annum over the base rate of Barclays Bank PLC (or in the absence of such rate at such similar rate as the payee shall select) from the due date to and including the day of actual payment of such sum, compounded quarterly. Such interest shall be paid on the demand of the payee.

RECOVERY FROM THIRD PARTIES

9.1 If any payment is made under this Deed in full discharge of a liability which arises under this Deed in respect of a tax liability and the payee subsequently receives from any person other than the payee or any person connected with the payee a payment or relief in respect of the tax liability in question (which payment or relief is received by virtue of a legal right), the payee shall pay to the payor the amount received or the amount that the payee will save by virtue of the receipt of the relief (less the amount of all Costs in obtaining such payment or relief and net of any tax payable on the amount received or that would have been payable but for the use or set off of any relief) to the extent that the payment to such payor does not exceed the payment originally made by such payor (net of any tax suffered thereon), and to the extent that the right to such payment or relief is not prejudiced thereby.

9.2 Where the payee receives a relief as referred to in clause 9.1, a payment shall be made to the relevant payor no later than the date on which the tax that would have been payable but for the relief would have become recoverable by the appropriate tax authority, and shall not be made to the extent that, but for the use of such relief, the payee or Company, as applicable, would have had an actual tax liability in respect of which it would have been able to make a claim against the payor under this Deed.

SECONDARY LIABILITIES

10.1 The Covenantor covenants with the Transferee and, as a separate covenant, with the Company, to pay to the Transferee or the Company (as the Transferee shall direct) an amount equivalent to any tax or any amount on account of tax which the Company or any other member of the Transferee's Group, is required to pay as a result of a failure by any member of the Retained Group to discharge that tax.

10.2 The Transferee covenants with the Covenantor to pay to the Covenantor an amount equivalent to any tax or any amount on account of tax which any member of the Retained Group is required to pay as a result of a failure by the Company or any other member of the Transferee's Group, to discharge that tax.

10.3 The covenants contained in clauses 10.1 and 10.2 shall:

- (a) extend to any Costs incurred in connection with such tax or a claim under clause 10.1 or 10.2 as the case may be;
- (b) (in the case of clause 10.2) not apply to tax to the extent that the Transferee or the Company could claim payment in respect of it under clause 2, except to the extent a payment has been made pursuant to clause 2 and the tax to which it relates was not paid by the Company; and
- (c) not apply to tax which has been recovered under any relevant statutory provision (and the Transferee or the Covenantor as the case may be shall procure that no such recovery is sought to the extent that payment is made hereunder).

10.4 Clauses 7 and 8 (notification of claims and due date for payment) shall apply to the covenants contained in clauses 10.1 and 10.2 as they apply to the covenants contained in clause 2, replacing references to the Covenantor by the Transferee or the Company, as the case may be (and vice versa) where appropriate, and making any other necessary modifications.

ILLEGALITY

11. If at any time any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions hereof nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby. The parties shall use all reasonable endeavours to replace the illegal, invalid or unenforceable provision by a legal, valid and enforceable substitute provision the effect of which is as close as possible to the intended effect of the illegal, invalid or unenforceable provision.

WAIVER

12.1. No delay or omission of any party in exercising any right or power under or pursuant to this Deed shall impair such right or power or be construed as a waiver or variation thereof or preclude its exercise at any subsequent time and no single or partial exercise of any such right or power shall preclude any other or further exercise of it or any other right or power. The rights and remedies of each party provided in this Deed are cumulative, may be exercised as often as such party considers appropriate, and are in addition to its rights and remedies under general law.

12.2 The rights and remedies of any party under this Deed shall not be affected, and each party's liabilities under this Deed shall not, subject to compliance with the notice requirements in clause 15 of this Deed, be released, discharged or impaired, by the expiry of any limitation period prescribed by law.

ASSIGNMENT

13.1 Each party agrees and acknowledges that each of the other parties shall be entitled at any time to assign, transfer or charge all or any of its rights under this Deed.

13.2 If any party assigns or transfers or charges any of its rights under this Deed, that party will notify the other parties as soon as practicable after such assignment, transfer or charge together with particulars of the assignee, transferee or chargee.

13.3 Each party shall from time to time upon request from any other party execute any agreements or other instruments (including, without limitation, any supplement or amendment to this Deed) which may be required in order to give effect to or perfect any assignment, transfer or charge referred to in clause 13.1.

NO RIGHTS UNDER CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

14. A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

NOTICES

15. Any notice or other communication to be given by one party to any other party or parties under, or in connection with, this Deed shall be given in accordance with clause 17 of the Transfer Agreement as if that clause was set out in full in this Deed and any notice or other communication to be given by one party to the Company shall instead be given to the Transferee in accordance with such clause and marked for the attention of the Company.

GOVERNING LAW

16. This Deed and the relationship between the parties shall be governed by and construed in accordance with the laws of England and Wales.

JURISDICTION AND SERVICE OF PROCESS

Jurisdiction

17.1 Each of the parties agrees that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes (including claims for set-off and counterclaims) which may arise in connection with the creation, validity, effect, interpretation or performance of, or the legal relationships established by, this Deed or otherwise arising out of or in connection with this Deed and for such purposes irrevocably submit to the jurisdiction of the courts of England and Wales.

Service of process

17.2 The Covenantor and the Transferee irrevocably consent to service of process or any other documents in connection with proceedings in any Court by fax, personal service, delivery at any address specified in this Deed or any other usual address, mail or in any other manner permitted by English law, the law of the place of service or the law of the jurisdiction where proceedings are instituted.

Agent for service of process

17.3 The Covenantor shall at all times maintain an agent for service of process and any other documents in proceedings in England or any other proceedings in

connection with this Deed. Such agent shall be Goldman Sachs International currently of Peterborough Court, 133 Fleet Street, London EC4A 2BB and any writ, judgment or other notice of legal process shall be sufficiently served on the Covenantor if delivered to such agent at its address for the time being. The Covenantor irrevocably undertakes not to revoke the authority of the respective agent set out above and if, for any reason, the Transferee or the Company requests the Covenantor to do so it shall promptly appoint another such agent with an address in England and advise the Transferee and the Company. If, following such a request, the Covenantor fails to appoint another agent, the Transferee or the Company shall be entitled to appoint one on behalf of the Covenantor at the expense of the Covenantor.

COUNTERPARTS

18. This Deed may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which, when executed and delivered, shall be an original, but all the counterparts shall together constitute one and the same instrument.

Duly delivered as a deed on the date inserted on page 1.

EXECUTED as a DEED)	
and DELIVERED by	)	Director
TRILLIUM INVESTMENTS)	
GP LIMITED)	
acting by two)	
Directors/a Director	)	Director/Secretary
and the Secretary)	

SIGNED as a DEED and DELIVERED)
on behalf of W9/PPM L.L.C., a limited)
liability company formed under the laws of)
and the state of Delaware, USA,)
by)
being a person who,)
in accordance with the laws of that territory,)
is acting under the authority of)
W9/PPM L.L.C.)

EXECUTED as a DEED)
and DELIVERED by)
W9/PPM CI acting)
by one Director)

SCHEDULE 6

Form of Acknowledgement and Waiver

[On letterhead of relevant Transferor]

To: The Directors
[*Name of relevant Limited Partner*] (the *Company*)
[*Address*]

and: The Directors
Trillium Investments GP Limited (*TIGP*)
Bastion House
140 London Wall
London EC2Y 5DN

Dated: ● November 2000

Dear Sirs

ACKNOWLEDGEMENT OF NO INDEBTEDNESS

We refer to the agreement dated ● November 2000 (the *Transfer Agreement*) between, amongst others, [*Name of relevant Transferor*] and TIGP relating, amongst other matters, to the transfer and acquisition of the entire issued share capital of the Company. Unless the context otherwise requires, terms defined in the Transfer Agreement shall have the same meanings in this Deed.

We hereby acknowledge, agree and confirm, on our own behalf and as agent for and on behalf of each other member of our Group, that there is outstanding no debt, liability, borrowing or indebtedness in the nature of borrowing owing to any member of our Group from the Company or any subsidiary of the Company and, to the extent that any such outstanding debt, liability, borrowing or indebtedness in the nature of borrowing exists or may exist, [*Name of relevant Transferor*], for itself and as agent for and on behalf of each other member of its Group, hereby releases the Company and each of its subsidiaries from any obligation which any such person may have to pay any such outstanding debt, liability, borrowing or indebtedness in the nature of borrowing (or may otherwise have in respect thereof) and agrees to fully indemnify TIGP, the Company and each of its subsidiaries and to hold each of them harmless in respect of the same (and all costs, liabilities and expenses suffered or incurred by TIGP, the Company or any of its subsidiaries, directly or indirectly, as a result of or in connection with any such outstanding debt, liability, borrowing or indebtedness in the nature of borrowing).

This Deed shall be governed by, and construed in accordance with, the laws of England and Wales and [*Name of relevant Transferor*] irrevocably submits to the jurisdiction of the courts of England and Wales in connection herewith.

Duly executed and delivered as a Deed on the date inserted above.

EXECUTED as a DEED by)	
by [<i>Name of relevant Transferor</i>]	)	Director
acting by two Directors/a Director)	
and a Secretary	)	Director/Secretary

OR

EXECUTED as a DEED)	
on behalf of [<i>Name of relevant Transferor</i>],)	
a company incorporated in [<i>Jurisdiction</i>],)	
by _____,)	
being a persons who,)	
in accordance with the laws of that)	
territory, is acting under the)	
authority of that company)	

SCHEDULE 7

Form of Power of Attorney

THIS POWER OF ATTORNEY is made on ● [November] 2000 by [*Name of Transferor*], a [company] incorporated under the laws of [____], of [*Address of Transferor*] (the *Principal*).

WHEREAS by an agreement dated ● ● 2000 (the *Transfer Agreement*) made between, inter alia, the Principal and Trillium Investments GP Limited (the *Attorney*), the Principal has agreed to transfer to the Attorney all of the issued shares in the capital of [*Name of Limited Partner*] (the *Shares*).

NOW THIS DEED WITNESSETH as follows:-

1. Unless the context otherwise requires, terms defined in the Transfer Agreement shall have the same meanings in this Deed.
2. To secure the interest of the Attorney in the Shares, the Principal irrevocably and by way of security appoints the Attorney as its true and lawful attorney with authority on its behalf and in its name or otherwise to exercise all rights, powers and privileges attaching to the Shares or otherwise capable of being exercised by the registered holder of the Shares and for such purpose to do all such acts and things and to execute all such deeds and other documents as the Attorney shall consider necessary or desirable pending registration of the Shares into the name of the Attorney including, without prejudice to the generality of the foregoing, all or any of the following (in each case in such manner and on such terms as the Attorney in its absolute discretion shall think fit):
 - (a) to attend, participate in and direct the exercise of any voting rights attaching to the Shares at any general meeting, class meeting or other meeting at which such rights are capable of being exercised;
 - (b) to approve, complete, or otherwise sign or execute any requisition of any meeting, consent to short notice, proxy, written resolution, consent, agreement or other document capable of being signed by the registered holder of the Shares;
 - (c) to agree to any compromise or arrangement affecting the Shares and to use any lawful means that may appear to the Attorney necessary or desirable in order to safeguard the interests, or enforce the rights, of the registered holder of the Shares; and
 - (d) to sign, endorse or otherwise execute all receipts, dividend and interest warrants, cheques, releases, discharges, reconveyances or other deeds or documents whatsoever that the Attorney may consider necessary or desirable in the circumstances.

3. The Principal hereby undertakes not to exercise any of the rights, powers and privileges attaching to the Shares or otherwise capable of being exercised by the registered holder of the Shares without the consent of the Attorney.

4. The Principal hereby undertakes that the Principal shall:

- (a) hold the Shares upon trust for the Attorney as beneficial owner;
- (b) forthwith account to the Attorney for all dividends, interest, bonuses, distributions or other sums whatsoever paid to the Principal in respect of the Shares; and
- (c) deliver to the Attorney any notice, letter or other document of any nature whatsoever relating to the Shares forthwith upon receipt of the same.

5. All acts done and documents executed or signed by the Attorney or its agent after the date hereof in good faith in the purported exercise of any power conferred by this Power of Attorney shall for all purposes be valid and binding on the Principal and its successors and the Principal undertakes and agrees to ratify all such acts done and documents executed and signed.

6. The Principal unconditionally undertakes to indemnify the Attorney and its successors against all actions, proceedings, claims, costs, expenses and liabilities of every description arising after the date hereof from the exercise or the purported exercise in good faith of any of the powers conferred by this Power of Attorney.

7. This appointment shall terminate when the Shares are registered in the name of the Attorney and is given on the basis that the Attorney shall use its reasonable endeavours to effect such registration as soon as is reasonably practicable.

8. This Deed shall be governed by and construed in accordance with the laws of England and Wales.

IN WITNESS whereof this Power of Attorney has been executed as a Deed the day and year first before written.

EXECUTED as a DEED)
and **DELIVERED by**)
[NAME OF TRANSFEROR] acting by:)

Director

Director/Secretary

SCHEDULE 8

TIGP Written Resolutions

Companies Act 1985
Private Company Limited by Shares

Company No: 3487308

TRILLIUM INVESTMENTS GP LIMITED (the *Company*)

WRITTEN MEMBERS' RESOLUTION

In accordance with section 381A of the Companies Act 1985, **WE**, being all of the members of the Company who at the date of these resolutions would have been entitled to attend and vote at a general meeting of the Company, **HEREBY DECLARE AND AGREE** that the following resolutions shall be as valid and effectual as if they had been passed as special resolutions at a general meeting of the Company duly convened and held, and accordingly **WE RESOLVE**:

1. **THAT** the regulations contained in the document marked "A" and attached hereto be and are hereby adopted as the articles of association of the Company in substitution for, and to the exclusion of, all existing articles of association of the Company.
2. **THAT** the one existing issued ordinary share of £1 in the capital of the Company held by the Company's shareholder Whitehall Street Real Estate Limited Partnership IX and each of the existing 97 authorised but unissued ordinary shares of £1 in the capital of the Company be and are hereby sub-divided into 100 ordinary shares of 1 pence each in the capital of the Company, each of which is hereby converted and redesignated as an A ordinary share of 1 pence in the capital of the Company having the rights and being subject to the restrictions set out in the articles of association of the Company to be adopted pursuant to resolution 1.
3. **THAT** each of the existing issued A preference share of £1, B preference share of £1, C preference share of £1 and D preference share of £1 in the capital of the Company be and are hereby converted and redesignated as deferred shares of £1 each in the capital of the Company having the rights and being subject to the restrictions set out in the articles of association of the Company to be adopted pursuant to resolution 1.
4. **THAT** the authorised share capital of the Company be and is hereby increased from £102 to £1,000,004 by the creation of:
 - (a) 86,490,200 new A ordinary shares of 1 pence each of the Company;
 - (b) 7,914,292 new B ordinary shares of 1 pence each of the Company;
 - (c) 1,000,000 new C ordinary shares of 1 pence each of the Company;

(d) 3,439,282 new D ordinary shares of 1 pence each of the Company;

(e) 1,146,426 new E ordinary shares of 1 pence each of the Company,

such shares having the respective rights and being subject to the respective restrictions set out in the articles of association of the Company to be adopted pursuant to resolution 1.

.....
For and on behalf of
Archon Group L.P.

By: **Archon Gen-Par Inc.**

By: _____
Name:
Title:

Dated: November 2000

.....
For and on behalf of
Causeway International Limited
Dated: November 2000

.....
For and on behalf of
Mychand Limited
Dated: November 2000

.....
For and on behalf of
Tiger Finance Corp.
Dated: November 2000

.....

For and on behalf of

Whitehall Street Real Estate Limited Partnership IX

By: **WH Advisors, L.L.C. IX**

By: _____

Name:

Title:

Dated: November 2000

Note: A copy of these resolutions has been sent to the Company's auditors, PricewaterhouseCoopers, Embankment Place, London, WC2N 6NN, pursuant to section 381B of the Companies Act 1985.

.....

For and on behalf of

TRILLIUM INVESTMENTS GP LIMITED

AS WITNESS this Agreement has been signed on behalf of the Parties the day and year first before written.

SIGNED by
duly authorised for and on behalf of
WIND DRIFT LIMITED

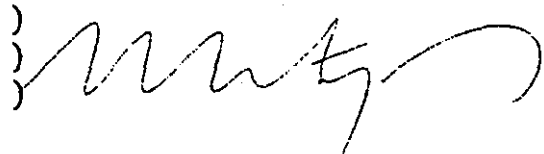
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SIGNED by
duly authorised for and on behalf of
SHAFTESBURY REAL ESTATE
MANAGEMENT LIMITED

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)
)
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SIGNED by
duly authorised for and on behalf of
MYCHAND LIMITED

)
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)



SIGNED by
duly authorised for and on behalf of
ARCHON/PPM L.L.C.

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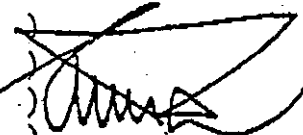
SIGNED by
duly authorised for and on behalf of
W9/PPM L.L.C.


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SIGNED by
duly authorised for and on behalf of
CAUSEWAY INTERNATIONAL
LIMITED

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)

SIGNED by
duly authorised for and on behalf of
SHAFTESBURY REAL ESTATE
MANAGEMENT LIMITED

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) 
) DIRECTOR

)
) 
) LANGTRY SECRETARIES LTD
SECRETARY

SIGNED by
duly authorised for and on behalf of
MYCHAND LIMITED

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SIGNED by
duly authorised for and on behalf of
ARCHON/PPM L.L.C.

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SIGNED by
duly authorised for and on behalf of
W9/PPM L.L.C.


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SIGNED by
duly authorised for and on behalf of
CAUSEWAY INTERNATIONAL
LIMITED

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SIGNED by
duly authorised for and on behalf of
TIGER FINANCE CORP.

)
) 
) DIRECTOR

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) 
) LANGTRY SECRETARIES LTD
SECRETARY

SIGNED by
duly authorised for and on behalf of
ARCHON GROUP LP

)
)
)

By: Archon Gen-Par Inc.

SIGNED by)
duly authorised for and on behalf of)
TIGER FINANCE CORP.)

SIGNED by)
duly authorised for and on behalf of)
ARCHON GROUP LP)

By: Archon Gen-Par Inc.

By:


Name: *[Handwritten Name]*

Title: *[Handwritten Title]*

SIGNED by)
duly authorised for and on behalf of)
WHITEHALL STREET REAL)
ESTATE LIMITED PARTNERSHIP IX)

By: WH Advisors, L.L.C. IX

By:


Name: *[Handwritten Name]*

Title: *[Handwritten Title]*

SIGNED by)
duly authorised for and on behalf of)
TRILLIUM INVESTMENTS GP)
LIMITED)

SIGNED by)
MANISH CHANDE)

SIGNED by)
MARTIN MYERS)

SIGNED by)
duly authorised for and on behalf of)
TIGER FINANCE CORP.)

SIGNED by)
duly authorised for and on behalf of)
ARCHON GROUP LP)

By: Archon Gen-Par Inc.

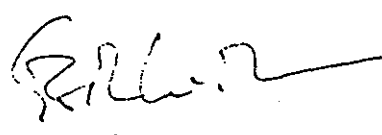
By: _____
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duly authorised for and on behalf of)
WHITEHALL STREET REAL)
ESTATE LIMITED PARTNERSHIP IX)

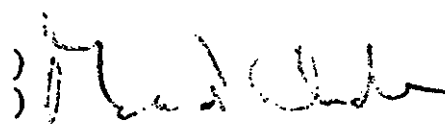
By: WH Advisors, L.L.C. IX

By: _____
Name:
Title:

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TRILLIUM INVESTMENTS GP)
LIMITED)



SIGNED by
MANISH CHANDE



SIGNED by
MARTIN MYERS

