

SCHEDULE 19

This is Schedule 19 comprising Development Gains referred to in
the Agreement for the STEPS Project

between

The Board of Inland Revenue (1)

and

The Commissioners of Customs and Excise (2)

and

The Secretary of State for the Environment, Transport and the Regions (3)

and

Mapeley STEPS Contractor Limited (4)

dated

[] 2001

Part 1

Definitions

For the purposes of this Schedule, the following words and phrases shall have the meanings set out below:

- "Actual Disposal" means a disposal (by whatsoever means) of Relevant Interest to a donee at arms' length to the STEPS Contractor, its Associates or any Service Provider;
- "Assessed Value" means the Open Market Value of the Relevant Interest as at the Commencement Date. Such Open Market Value shall be determined by agreement between the Departments and the STEPS Contractor (acting on behalf of itself and the Guarantor (as appropriate)), and in default of agreement within two months of the Disposal Date of the Deemed Disposal Date either the Departments or the STEPS Contractor shall refer the matter directly to a STEPS Adjudicator in accordance with the Disputes Resolution Procedure;
- "Base Value" means the Assessed Value provided that where either the Vacated Property or the interest the subject of the Disposal is part of the Property, the Base Value and the Base Value for the remainder of the Property shall be Base Value for the whole of that Property less such Assessed Value, and provided further that such Base Values shall be indexed in accordance with the provisions of Part 3 of this Schedule;
- "Collateral Asset" means an interest in land which was acquired by the STEPS Contractor or the Guarantor (as the case may be) other than in connection with this Agreement;
- "Date of Vacation" means either the date on which a Vacated Property is vacated by the Departments in accordance with this Agreement or, in respect of the Surplus Properties, 30 March 2001, provided that this date may be on, but not after, the Expiry Date or earlier termination of this Agreement;
- "Deemed Disposal" means in respect of each Vacated Property an assessment of the Open Market Value as at the Deemed Disposal Date (or if prior to the Deemed Disposal Date there has been an Actual Disposal of part of, or an interest in, the Vacated Property, the Deemed Disposal shall be of whatever remains of the Vacated Property);
- "Deemed Disposal Date" means the date 24 months after the Date of Vacation;

"Departments' Percentage"	<p>means:</p> <ul style="list-style-type: none">• 30% of any Development Gain less than £1,000,000;• 40% of the whole of any Development Gain between £1,000,000 and £4,999,999;• 50% of the whole of any Development Gain between £5,000,000 and £9,999,999; and<ul style="list-style-type: none">• 60% of the whole of any Development Gain in excess of £10,000,000 <p>provided that in the case of Further Development Gain, the Departments' Percentage shall be 50% of the Further Development Gain for that Property, and Provided further that the thresholds set out in the bullet points above shall be indexed in accordance with the provisions of Part 3 of this Schedule;</p>
"Development Gain"	<p>means the Disposal Value less the total of the Base Value and any Qualifying Expenditure, and shall not be an Indexed Amount as contemplated by Part 1 of Schedule 15 [<i>Payment Provisions</i>] but shall be indexed in accordance with Part 3 of this Schedule 19;</p>
"Development Gain Credit"	<p>has the meaning given in paragraph 4 of Part 2 of this Schedule;</p>
"Disposal"	<p>means an Actual Disposal but not a Permitted Disposal;</p>
"Disposal Date"	<p>means the date of completion of a Disposal;</p>
"Disposal Value"	<p>means in relation to a Disposal the higher of the amount or value of the consideration (excluding Value Added Tax payable on, or as a result of, such Disposal) received for that Disposal and Open Market Value, or in the case of a Deemed Disposal, the Open Market Value, together in each case with any excess arising in accordance with paragraph 13 of Part 2 of this Schedule;</p>
"Enhanced Permission"	<p>means any planning permission in respect of a Vacated Property obtained between:</p> <ul style="list-style-type: none">(a) the later of the Deemed Disposal Date or the Disposal Date for the relevant Vacated Property; and(b) the Second Valuation Date; <p>which enhances the value of the Vacated Property;</p>
"Further Disposal Value"	<p>mean the Open Market Value of all or any part of, or any interest in, a Vacated Property assessed as at the Second Valuation Date, taking account only of any Enhanced Permission and disregarding any works carried out to the Vacated Property since the assessment of the Development</p>

	Gain other than in the implementation of or obtaining the Enhancing Permission;
"Further Development Gain"	means the Further Disposal Value less the total of the Base Value, Qualifying Expenditure and all Development Gain in respect of the relevant Vacated Property, and shall not be an Indexed Amount as contemplated by Part 1 of Schedule 15 [<i>Payment Provisions</i>] but shall be indexed in accordance with Part 3 of this Schedule 19;
"IPD Index"	means the Investment Property Databank All Property Monthly Capital Growth Index for the United Kingdom, or if such index shall cease to be published, then such other index of property values in the United Kingdom as the Departments shall from time to time reasonably nominate in writing to the STEPS Contractor;
"Open Market Value"	means the price that a property, or any interest in a property, could have achieved on the relevant date on the assumption that there was vacant possession of such property or interest and that it was disposed of at arms' length by a willing seller to a willing purchaser, assessed in accordance with the provisions for assessing open market value of properties in the Red Book;
"Permitted Disposal"	means either: (a) the grant of a lease at an open market rack rent only without a premium; or (b) the grant of any licence, easement, covenant or other right in land which has a capital value assessed on an open market value basis in accordance with the Red Book of less than £10,000;
"Qualifying Expenditure"	means the aggregate (excluding any VAT) of expenditure either actually incurred (in the case of a Disposal or on the Second Valuation Date) or such as would reasonably be incurred (in the case of a Deemed Disposal) by the STEPS Contractor or the Guarantor (as the case may be) after the Commencement Date and prior to the Disposal Date, the Deemed Disposal Date or the Second Valuation Date (as the case may be) in respect of the following categories of expenditure: <ul style="list-style-type: none">• In all cases legal and agents' fees properly and reasonably incurred in achieving the Disposal or Deemed Disposal, or in obtaining Further Development Value, up to a maximum of 2% of the Disposal Value or Further Disposal Value but shall not include any sums which the STEPS Contractor or the Guarantor (as the case may be)

was obliged to expend in order to fulfil its obligations under this Agreement

- In the case of Further Development Gain or any Redevelopment:
 - all costs reasonably and properly incurred in obtaining planning permission (including in providing any planning gain, or in connection with any planning agreements required by the local planning authority or any other relevant authority);
 - the actual costs properly incurred of all infrastructure and highway works necessary for such Redevelopment; and
 - reasonable and appropriate professional fees involved in the Redevelopment including architect, mechanical and electrical engineers, consulting engineers, quantity surveyors and project manager, up to an aggregate maximum of 2% of the Disposal Value;
 - the actual costs properly incurred of the works of Redevelopment;
- In the case only of a Redevelopment, a developer's profit of 10% of the Base Value (indexed as at the Date of Vacation (but not later) in accordance with the provisions of Part 3 of this Schedule) and all other items of Qualifying Expenditure set out above and Provided always that if such Qualifying Expenditure cannot be agreed between the Departments and the STEPS Contractor or the Guarantor (as the case may be), they are to be determined by a STEPS Adjudicator acting and appointed in accordance with the Dispute Resolution Procedures;

"Redevelopment"	Means the redevelopment of substantially the whole of a Vacated Property which is not part of a building and which involves substantial works of demolition and construction, but shall for the avoidance of doubt not include refurbishment of an existing building;
"Relevant Interest"	means the whole, or a part of, or an interest in, a Vacated Property which is the subject of a Disposal or a Deemed Disposal;
"Second Valuation Date"	means, in respect of any Vacated Property in respect of which there has been a Disposal or a Deemed Disposal, subject to paragraph 2 of Part 2 of this Schedule, a date which shall be within five years of the Disposal Date or Deemed Disposal

Date of that Vacated Property, such date to be nominated (if at all) by the Departments at any time during such five year period in writing to the STEPS Contractor;

"Vacated Property"

means the whole or part of a Property which has been vacated by the Departments being:

- (a) the Surplus Properties;
- (b) all or any part of any Property vacated by the Departments in the exercise of their right to vacate Flexible Properties, Intermediate Properties or Core Properties pursuant to clause 21; and
- (c) all or any part of any Property in respect of which the Departments do not exercise their rights under clause 32 to remain in occupation after the expiry or termination of this Agreement.

PART 2

CALCULATION OF DEVELOPMENT GAIN AND FURTHER DEVELOPMENT GAIN

- 1 On the earlier of a Disposal Date and a Deemed Disposal Date, the amount of any Development Gain, and on the Second Valuation Date the amount of any Further Development Gain, in respect of the Relevant Interest shall be determined in accordance with the provisions of this Schedule.
- 2 On or before the Date of Vacation, the Departments will nominate in writing to the STEPS Contractor (on behalf of itself and the Guarantor) whether the Departments wish to levy Further Development Gain upon that Vacated Property, so that if the Departments have failed to make such nomination on or before the Date of Vacation, there shall be no assessment of Further Development Gain in respect of that Vacated Property. In making such nomination, the Departments shall act reasonably having regard to the nature and location of the Vacated Property and the likelihood of any planning permission for a Redevelopment of the Vacated Property being granted.
- 3 As soon as reasonably practicable after the Disposal Date, the Deemed Disposal Date or the Second Valuation Date of any Relevant Interest, the Departments and the STEPS Contractor shall use and the STEPS Contractor shall procure that the Guarantor uses subjective endeavours to agree any amount of Development Gain or any Further Development Gain, as the case may be, and the STEPS Contractor will provide and procure that the Guarantor provides all necessary information to enable such agreement to be reached.
- 4 Whenever a Development Gain or Further Development Gain is realised in respect of a Relevant Interest, the Development Gain Credit for that Relevant Interest shall be calculated as the being the Departments' Percentage of the Development Gain or Further Development Gain, provided that if the Development Gain or Further Development Gain is a negative figure, then the amount of the Development Gain Credit shall be nil. The amount of the Development Gain Credit shall be included in the next Balancing Payment Statement after its determination.
- 5 The STEPS Contractor shall allow, and shall procure that the Guarantor or any purchaser of the whole or part of, or an interest in, a Vacated Property, shall allow the Departments and their advisors access to the Vacated Property for the purpose of:
 - 5.1 calculating the Disposal Value of the remaining part of, or interest in, the Vacated Property on a Deemed Disposal; and
 - 5.2 calculating the Further Disposal Value of the Vacated Property.
- 6 If the Departments and the STEPS Contractor shall not have agreed to the Development Gain or the Further Development Gain for any Relevant Interest within two months of the Disposal Date, the Deemed Disposal Date or the Second Valuation Date (as the case may be) relating to that Relevant Interest, either the Departments or the STEPS Contractor may refer the matter for decision to a STEPS Adjudicator in accordance with the Disputes Resolution Procedure provided that in this case the decision of the STEPS

Adjudicator shall be final and binding on the Parties and there shall be no right to refer the issue to arbitration.

- 7 In respect of each Vacated Property the determination of the Development Gain and the calculation of any Development Gain Credit shall be repeated as often as necessary until the STEPS Contractor or the Guarantor (as the case may be) has disposed of the whole of the Vacated Property or a Deemed Disposal of the remainder has occurred.
- 8 The determination of a Further Development Gain and the calculation of any Development Gain Credit relating to such Further Development Gain will take place notwithstanding the earlier calculation of a Development Gain and any related Development Gain Credit for the Relevant Vacated Property.
- 9 If at the Deemed Disposal Date there is an option for a Disposal of a Relevant Interest which is exercisable after that date but has not yet been exercised, the Deemed Disposal Date shall be extended to the later of the date when the Disposal contemplated by the option shall have been completed and the expiry of the option.
- 10 If at the Deemed Disposal Date there is a conditional contract for a Disposal of a Relevant Interest which is subject to conditions that have yet to be satisfied, the Deemed Disposal Date shall be extended to the later of the date that conditional contract is completed and the date when the contract is determined because the conditions have not been satisfied.
- 11 Within ten Business Days of the Date of Vacation, the Departments and the STEPS Contractor shall, and if appropriate STEPS Contractor shall procure that, if title to the relevant Vacated Property is registered at HM Land Registry an application shall be made to the Chief Land Registrar for a restriction to be placed on the registers of title for that Vacated Property in the following terms:

"Save with the consent of the Registrar, no disposition of all or part of the land in this title shall be registered without the consent in writing of the [Departments]"
- 12 The Departments covenant with the STEPS Contractor and/or the Guarantor (as appropriate) that they will not withhold their consent pursuant to any restriction and pursuant to paragraph 11 above to any disposition if the Departments shall have been notified in writing by the STEPS Contractor and/or the Guarantor (as appropriate) of the details of the disposition so as to enable the Departments to determine whether or not a Development Gain shall have arisen in respect of that property. Following such notification, the Departments will produce a written consent in such form as may be reasonably required by the STEPS Contractor and/or the Guarantor (as appropriate).
- 13 If on a Disposal or Deemed Disposal the Disposal Value for a Relevant Interest is less than it would have been at that date if the STEPS Contractor and the Guarantor (as appropriate) had not previously made a disposal (not being an Actual Disposal or a Permitted Disposal) of any estate or interest in all or part of that Vacated Property, then the difference shall be deemed to form part of the Disposal Value for that Vacated Property where one of the purposes of that previous Disposal was to avoid the realisation of, or less than the amount of, any Development Gain.

- 14 The STEPS Contractor covenants with the Departments that the STEPS Contractor will procure that it, the Guarantor and its purchasers will:
- 14.1 maintain or cause to be maintained all documentation and records necessary for the purposes of this Schedule;
- 14.2 ensure that the Departments and their agents are from time to time given reasonable access at all reasonable times upon prior appointment to the Vacated Property and to the books and records of the STEPS Contractor or the Guarantor (as the case may be) for the purpose of ascertaining the Disposal Value or the Further Disposal Value of the Vacated Property; and
- 14.3 not enter into any agreement or transaction the whole or main purpose of which is to avoid the payment in whole or in part or to reduce the amount of Development Gain or Further Development Gain due to the Departments unless it is shown the same was entered into for bona fide purposes.
- 15 In circumstances where:
- 15.1 a Disposal includes a Collateral Asset; or
- 15.2 the Vacated Property has ceased to exist as a separate interest in land by reason either of surrender to or merger with a Collateral Asset, and there is a disposal of Collateral Asset; or
- 15.3 all or part of the Vacated Property is used for the benefit of a Collateral Asset, but the Vacated Property is not disposed of with such Collateral Asset;
- then the Departments and the STEPS Contractor shall agree and the STEPS Contractor shall procure that (where appropriate) the Guarantor agrees an apportionment of the relevant disposal proceeds between the Vacated Property and the Collateral Asset, which apportionment shall reflect not merely the respective values of the Vacated Property and the Collateral Asset, but also the worth of the Vacated Property in enabling the disposal and/or any redevelopment of the Collateral Asset to take place. For the purposes of this Schedule, where there is no Actual Disposal, there shall be deemed to have been a Disposal of the Vacated Property at the date of such disposal, and the Disposal Value for such Disposal or Actual Disposal shall be the apportionment relating to the Vacated Property agreed by the Departments and the STEPS Contractor or Guarantor in accordance with this paragraph.
- 16 For the avoidance of any doubt, the calculation of any Development Gain or Further Development Gain shall be carried out separately in respect of each Relevant Interest and there shall be no set off of any losses incurred by the STEPS Contractor or the Guarantor against any Development Gain or Further Development Gain.

PART 3

INDEXATION PROVISIONS

- 1 Whenever in accordance with this Schedule, a Development Gain or Further Development Gain is calculated, the Base Value (in the case of a Development Gain, a Further Development Gain or Qualifying Expenditure in the case of a Redevelopment) and the thresholds for the Departments' Percentage (in the case of Development Gain) shall be indexed using the IPD Index in accordance with the following provisions.
- 2 Whenever any such calculation takes place, the Base Value and/or such thresholds will be replaced by the product of the following calculation:

$$\text{Amount}_{\text{new}} = \text{Amount}_{\text{old}} \times \left(\frac{\text{Index}_{\text{new}} - \text{Index}_{\text{old}}}{\text{Index}_{\text{old}}} + 1 \right)$$

where:

Amount_{new} is the Base Value or threshold to be used in the relevant calculation;

Amount_{old} is the Base Value or threshold set out in this Agreement;

Index_{new} is the IPD Index last published prior to the relevant date for the purposes of the calculation, which in the case of Qualifying Expenditure shall be the relevant Date of Vacation, and in all other cases shall be the Disposal Date, Deemed Disposal Date or Second Valuation Date as the case may be; and

Index_{old} is the IPD Index last published prior to the Commencement Date.

- 3 The calculation will be carried out by the STEPS Contractor as soon as reasonably practicable (and in any event within 10 days of the relevant Disposal Date, Deemed Disposal Date or Second Valuation Date, as the case may be) and shall notify the Departments' Representative of the results of the calculations, setting out in reasonable detail the background thereto, including a copy of the IPD Index.
- 4 The Base Values are not Indexed Amounts, and will not be indexed on in accordance with Part 1 of Schedule 15 [*Payment Provisions*].