

SCHEDULE

Marischal Square Aberdeen

Draft Heads of Terms

Leisure

4th April 2017

1. **Property Address:** Unit A1, Marischal Square, Aberdeen
2. **Developer:** Muse Developments Limited
3. **Head Landlord:** Aviva Investors Commercial Assets GP Limited as general partner of and trustee for AVIVA INVESTORS REaLM COMMERCIAL ASSETS LP
4. **Landlord:** Aberdeen City Council
5. **Tenant:** Costa Limited, Houghton Hall Business Park, Whitbread Court, Porz Avenue, Houghton Regis, Dunstable LU5 5XE (Company No: 1270695)
6. **Demise:** Ground Floor : 2,300 sq ft

The gross internal area will be subject to measurement at Taking Over (Practical Completion) in accordance with the RICS Code of Measuring Practice. If the floor area diverges more than +/- 5% from the target area the tenant will have the option to resile from the contract. If the measured area is greater than the target area the rent will not be adjusted upwards. If the measured area is less than the target area but equal to or more than 97% of the target area the rent will not be adjusted downwards. If the measured area is less than the target area by more than 3% of the target area the rent will be adjusted downward to reflect the margin below -3% but the rent will not be less than that reflecting 95% of the target area.
7. **Lease Term:** The premises will be let by way of a full repairing and insuring lease for a period of 15 years from lease commencement. There will be a tenant only break option on the 6th and 11th anniversaries of the lease, the tenant is required to give no less than 6 months prior written notice on their intention to break.
8. **Agreement to Lease:** The Developer and tenant will enter into an Agreement to Lease, to include in agreed forms; a draft lease, a draft licence for works, a draft warranty package and a detailed specification with associated plans.

The tenant will enter into a step in agreement with Aberdeen City Council and Aviva as landlord and head landlord respectively.
9. **Lease Commencement Date:** To be agreed but will be conditional upon Costa receiving their Building Warrant.
10. **Rental:** The annual rental will be £60,000 per annum (£26.00 per sq ft) exclusive of VAT payable quarterly in advance.
11. **Incentives:** The ingoing tenant will receive an incentive package of 9 month's rent free from date of entry.
12. **Rent Review:** The rent review mechanism will be upward only every 5 years to open market based on a unit benefiting from Class 3 consent and based upon a shell unit.

13. External Areas:	<p>The external seating area (plan to follow highlighting this) will be demised to the tenant for so long as the premises are used as a coffee shop, subject to the detailed terms of the lease and management regulations. For the avoidance of doubt the external seating is not to be rentalised.</p> <p>The public realm areas within the development (except in so far as demised to bar/restaurant tenants) will be maintained within the service charge regime.</p>
14. User	A retail coffee shop within Class 3 Consent, or any use within Class 3 of the Town and Country Planning (Use Classes) (Scotland) Order 1997, with landlord's consent not to be unreasonably withheld.
15. Alienation:	<ol style="list-style-type: none"> 1. The identity of the party permitted to occupy the unit in any capacity other than as provided at 2 below requires to be approved by the Head Landlord. 2. Sharing of occupation with group companies is permitted. 3. Partial assignation and partial subletting are not permitted. 4. Assignation and subletting are permitted subject to 1 and 3 above and to the consent of ACC as Landlord, such consent not to be unreasonably withheld.
16. Keep Open:	Costa will not accept any positive covenant to trade.
17. Fitting Out:	The tenant will fit out the property in accordance with the plans and specifications, which have been approved by the landlord in advance, approval not to be unreasonably withheld or delayed.
18. Alterations:	<p>Structural alterations are at the Landlord's discretion. Other alterations require Landlord's consent which is not to be unreasonably withheld. Certain elements of demountable fit out may not require consent.</p> <p>Costa will also be able to update/change their signage/facia, without landlord's consent, if part of a national rebranding programme.</p>
19. Service Charge:	<p>The tenant will be liable for a pro-rata share of the service charge applicable to the building and of the larger development. Estimate to be confirmed.</p> <p>The following will be excluded from the Service Charge:</p> <ul style="list-style-type: none"> • Initial provision of any services or items within the [building / centre] at the date of lease and cost of the actual construction of the Centre • A collection of rents, review of rents and renewal of leases at the [building/centre] (including the lease) and the letting and re-letting of any units in the [building/centre] (including the lease). • The costs of renewal or rebuilding of any items (unless necessary by way of repair). • The costs relating to damage by any insured risks (including act of terrorism whether or not an insured risk) excluding the excess. • The cost of any major refurbishment or improvement (other than by way of repair). • Costs incurred in remedying inherent defects. • Costs incurred in cleaning up hazardous materials.

- Any areas not benefiting the Tenant.

- | | | |
|-----|-------------------------------|---|
| 20. | Building Insurance: | The tenant will be responsible for a pro-rata share of the buildings and loss of rent insurance. |
| 21. | Development Agreement: | The transaction will be subject to a Development Agreement between the Developer and the tenant, which will document an agreed development specification; defects liability; proposed date of taking over; target date and backstop dates; measurement tolerances if applicable; guarantee if applicable and warranties and any other salient information required. |
| 22. | Specification: | <p>To be agreed between respective technical teams although will include the following:-</p> <ul style="list-style-type: none"> • Water – 28 mm mains water supply giving 0.51/sec at 3-bar. • Electricity – minimum 100amp 3 phase supply, providing 70KVA, via a fully separated meter for Costa's sole use. • Drainage – 5 soil vent pipes, to be installed in locations to be agreed • An area for HVAC plant and reasonable route thereto. • An area for external bin store. • A heavy duty raised access floor, ready to immediately receive Costa's flooring. • Full sprinkler coverage and a fire alarm panel interface (if required by statutory authority and/or fire strategy). • Fully glazed elevation(s) and door(s) with entrance to be agreed. • Costa Glazing to be (or similar and approved) : PILKINGTON ACTIV SUNCOOL 6MM/66/33 -, 6mm Pilkington Active coated toughened glass, 16mm argon filled cavity, 6mm Pilkington Suncool 66/33 coated toughened glass. WHAT IS IN PLACE IS APPROVED BY COSTA. • BT/Openreach, in conjunction with the Landlord, are to provide the following:
Agreed external termination point on the building, a telecoms ducting line and connection to the relevant live telecom sub-main located elsewhere on or off the site, access for BT connection team to be allowed / arranged prior to handover to allow the installation of BT DP point, all lines to be tested, proved and unbroken to the point of entry into the building at the pre-agreed location, prior to Costa occupation. • For the avoidance of doubt the tenant shall not be liable to contribute towards the costs of improving the energy efficiency rating of the premises in order to meet the Minimum Energy Efficiency Requirements <p>It is envisaged the unit will be delivered in accordance with Costa's standard shell specification requirements although this will be confirmed by the landlords technical team in due course.</p> |
| 23. | Access: | Costa require access to survey the demised premises within 48 hours of agreement of Heads of Terms. |
| 24. | Collateral Warranties: | There will be a full package of collateral warranties in favour of the tenant, from the design team and the contractor. |
| 25. | Reinstatement: | All tenant alterations, unless otherwise agreed, to be removed and the demise reinstated by the end of the lease term. Specifically excluded is the requirement for the tenant to remove the flooring, walls and ceiling on expiry. |
| 26. | Legal Fees: | Each party will bear their own legal costs incurred in the transaction together with any VAT applicable. For the avoidance of doubt, this will specifically relate to any potential fees in connection with the execution of the contract and also approval of any shop fitting drawings etc by the |

landlords.

- | | | |
|-----|--------------------------------------|--|
| 27. | LBTT & Registration Fees: | The tenant will be responsible for the payment of LBTT, registration fees and VAT, which may be incurred in the transaction. |
| 28. | VAT: | All figures quoted are exclusive of VAT. |
| 29. | Developer's Solicitor: | MacRoberts LLP
Capella
60 York Street
Glasgow
G2 8JX
Contact: [REDACTED]
E: [REDACTED]@macroberts.com
T: 0141 303 1100 |
| 30. | Tenant's Solicitor: | DWF LLP
No.2 Lochrin Square
96 Fountainbridge
Edinburgh
EH3 9QU

Contact: [REDACTED]
E: [REDACTED]@dwf.law
T: 0131 474 2404 |
| 31. | Developer's Agent | CBRE Ltd
Sutherland House
149 St Vincent Street
Glasgow
G2 5NW
Contact: [REDACTED]
E: [REDACTED]@cbre.com
T: 0141 204 7708 |
| 32. | Tenant's Agent | Cushman & Wakefield LLP
One Edinburgh Quay
133 Fountainbridge
Edinburgh
EH3 9QG
Contact: [REDACTED]
E: [REDACTED]@eur.cushwake.com
T: 0131 222 4533 |
| 33. | Confidentiality: | These terms and any future negotiations are to remain confidential between the parties involved and their advisors. |
| 34. | Conditions: | Please note the above Terms are subject to: <ul style="list-style-type: none">• Landlord's Board approval• ACC approval• Missives to be concluded by no later than 6 weeks of landlords issuing legal documentation• Subject to Costa receiving all statutory consents, including building warrant for their fit out.• A long stop date of June 2018 for handover, failing which either party can resile from the contract.• Planning – please provide copy of Class 3 consent• Tenants full board approval. |

35. Disclaimer

In accordance with the terms of the Requirements of Writing (Scotland) Act 1995, this document is neither intended to create nor to be relied upon as creating any contractual relationship or commitment.
