

NM22-0124/1

Dated 9 November 2006

the DUBLIN DOCKLANDS DEVELOPMENT AUTHORITY

DONATEX LIMITED

MEMPAL LIMITED

SHAREHOLDERS AGREEMENT

relating to

BECBAY LIMITED

A & L GOODBODY

North Wall Quay

IFSC

Dublin 1

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THIS AGREEMENT is dated 9 November, 2006 and made between

- (1) the **DUBLIN DOCKLANDS DEVELOPMENT AUTHORITY** of 52-55 Sir John Rogerson's Quay Docklands, Dublin 2 (DDDA, which expression shall include its successors and permitted assigns);
- (2) **DONATEX LIMITED** of Grattan Bridge House, 3 Upper Ormond Quay, Dublin 7 (Donatex, which expression shall include its successors and permitted assigns); and
- (3) **MEMPAL LIMITED** of 8 Raglan Road, Ballsbridge, Dublin 4 (Mempal Limited, which expression shall include its successors and permitted assigns).

RECITALS:

- A. Becbay Limited, whose registered office is at 25/28 North Wall Quay, Dublin 1 (the Company) is a private limited company incorporated in Ireland with registration number 424814 and, as at the date hereof, has an authorised share capital of €2,000,000 divided into 1,000,000 A ordinary shares of €1 each, and 1,000,000 B ordinary shares of €1 each; and an issued share capital of €100 divided into 26 A ordinary shares of €1 each which are issued at par and are fully paid up and held by the DDDA, and 74 B ordinary shares of €1 each, of which 41 are issued at par and fully paid up and held by Donatex and 33 are issued at par and fully paid up and held by Mempal Limited. The A ordinary shares and the B ordinary shares rank pari passu in all respects, save as herein specifically mentioned.
- B. The Company entered into the Tender Commitment on 25 October 2006 and has offered to acquire the Target pursuant to the Transaction Agreement on Acquisition Completion.
- C. At Acquisition Completion the Target will own 100% of the issued share capital of the Subsidiary. The Subsidiary owns the Property.
- D. The parties have entered into this Agreement for the purpose of regulating the future conduct of the business of the Company and its subsidiaries, and for the purpose of regulating their relationship with each other.

IT IS HEREBY AGREED as follows:

1. PRELIMINARY

1.1. In this Agreement and in the Schedules unless the context otherwise requires:

the **1963 Act** means the Companies Act, 1963;

the **1990 Act** means the Companies Act, 1990;

the **2001 Act** means the Company Law Enforcement Act, 2001;

the **Acts** means the Irish Companies Acts 1963 to 2003;

Acquisition Completion Date means the date upon which Acquisition Completion occurs;

Acquisition Completion means completion of the acquisition by the Company of the Target under the Transaction Agreement;

Acting in Concert has the same meaning as in Section 1(13) of the Irish Takeover Panel Act, 1997;

A Directors means the Directors appointed by the A Shareholders in accordance with clause

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4.1;

A Loan Stock has the meaning ascribed thereto in the Subscription Agreement;

A Loan Stock Instrument has the meaning ascribed thereto in the Subscription Agreement;

Articles of Association means the articles of association of the Company which expression shall include such articles of association as amended from time to time in accordance with the terms of this Agreement;

A Shares means A ordinary shares of €1 each in the capital of the Company;

A Shareholders means the holders for the time being of A Shares;

Asset Sale means the completion of any transaction where any person or group of persons Acting in Concert purchases all or substantially all of the business and assets of the Company;

Auditors mean the auditors from time to time of the Company;

Banks means Anglo Irish Bank Corporation p.l.c. [and Bank of Ireland] and such expression shall include any credit institution for the time being providing the Debt Financing;

B Directors means the Directors appointed by the B Shareholders in accordance with clause 4.2;

B Loan Stock has the meaning ascribed thereto in the Subscription Agreement;

B Loan Stock Instrument has the meaning ascribed thereto in the Subscription Agreement;

Board means the Board of Directors for the time being of the Company;

B Shares means B ordinary shares of €1 each in the capital of the Company;

B Shareholders means the holders for the time being of B Shares;

B Shareholder Group means the Donatex Limited Shareholder Group and the Mempal Limited Shareholder Group;

Business Day means a day when banks are open generally for business in Dublin;

Change of Control means the change in ownership or control of a company where:

- (i) ownership means ownership (either alone or together with other affiliates) of more than 50% of the voting capital of, or interests giving the right to vote at general meetings of, or the right to distributions on account of equity of the relevant company; and
- (ii) control means the power (whether through the ownership of voting securities, by contract or otherwise and whether alone or together with other affiliates) to direct the management or policies, or activities, of the relevant company or to appoint or remove (or to direct the appointment or removal of) directors of the relevant company holding a majority of the voting rights exercisable at meetings of its board on all, or substantially all, matters (and controlled shall be construed accordingly);

Competition Acts means the Competition Acts 2002 – 2006;

Competition Authority means the body established under section 10 of the Competition Act 1991 (as amended by the Competition Act 2002);

Completion has the meaning ascribed thereto In the Subscription Agreement;

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Debt Financing means the credit facilities made and/or to be made available by the Banks to the Company by way of the acquisition finance facilities referred to in clauses 2.1.1 and 2.1.2;

Director means a person duly appointed a member of the Board and a Director of the Company for the time being;

Euro and the sign € mean the currency of Ireland;

Group shall mean the Company and each subsidiary for the time being thereof (including, for the avoidance of doubt, the Target and the Subsidiary);

holding company shall have the same meaning attributed to it as in the 1963 Act;

Interim Advances means the aggregate sum of €15,000,000 made available by the Investors to the Company prior to the date hereof for the purposes set out in Recital D of the Subscription Agreement;

Investors means the DDDA, Donatex and Mempal Limited (or any such Shareholders Shareholder Group for so long as such Shareholders Shareholder Group holds not less than 15% of the Shares in aggregate) , and includes a reference to any one or more of them;

Loan Stock means each of the A Loan Stock and the B Loan Stock;

Loan Stock Instruments means each of the A Loan Stock Instrument and the B Loan Stock Instrument;

Masterplan means the master plan adopted by the DDDA pursuant to the 1997 Dublin Docklands Development Authority Act for the Dublin Docklands Area and the Custom House Docks Area (as those areas are defined in that act). The current Masterplan having been adopted by the DDDA in 2003, and any amendments to that plan, and any plans superseding the Masterplan.

Minister means the Minister for Enterprise, Trade and Employment;

Post-Termination Provisions means the provisions in clause 7.8 (Remedies Cumulative), clause 7.9 (Announcements), clause 7.10 (Notices) , clause 7.11 (Governing Law) clause 7.16 (Confidentiality), clause 7.17 (Costs and Expenses) and clause 7.18 (Whole Agreement);;

Property has the meaning ascribed thereto in the Subscription Agreement;

Purchase Price means €411,987,000 being the amount offered by the Company for the Target in the Tender Commitment.

Quarterly Date means such quarterly dates as the Board may agree;

Relevant Business means the acquisition and thereafter the holding, development and exploitation of the Target Group and the Property, together with such ancillary and related activities as the Board may, in accordance with the terms hereof, from time to time determine;

Section 25 means section 25 of the 1997 Dublin Docklands Development Authority Act ;

Section 25 Certificate means a certificate issued by the DDDA under section 25 (7) (a) (ii) of the 1997 Dublin Docklands Development Authority Act, certifying that a development is consistent with the planning scheme approved under Section 25 for the area where the property being so developed is situated;

Security means the security given and to be given by the Group to the Banks in respect of the Debt Financing;

Share means any share for the time being in the capital of the Company and **Shares** shall be

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construed accordingly;

Shareholder means any holder of Shares for the time being in the capital of the Company;

Shareholder Group means in relation to any Shareholder that Shareholder and any subsidiary or holding company of that Shareholder for the time being or any member of the Shareholder's Shareholder Group or any Company controlled by the person who controls a Shareholder, any person to whom the Shares are transferred in accordance with clauses 5.8, 5.9 or 5.10;

Share Sale means the transfer or other disposal (whether through a single transaction or a series of connected transactions) of the legal and/or beneficial interest or title to all of the Shares;

Shareholder Security means such security (if any) as may from time to time be granted by any Shareholder over his Shares and/or Loan Stock for the purpose only of financing his investment in the Company and / or the development of the Property;

Site Development Plan has the meaning ascribed thereto in clause 2.9.1;

Subscription Agreement means the agreement dated the date hereof and entered into between the parties hereto pursuant to which they subscribed for Loan Stock;

subsidiary shall have the same meaning attributed to it as in section 155 of the 1963 Act and all references to "subsidiary", "Subsidiary", "Target" or "subsidiaries" shall, for the avoidance of doubt, be deemed to include each of the Subsidiary and Target;

the **Subsidiary** means South Bank Glass Manufacturing Limited, a private company incorporated in Ireland with registered number 395435 and having its registered office at Southbank Road, Ringsend, Dublin 4, and owned as to 100% by the Target;

Target means South Wharf Public Limited Company, a public limited company incorporated in Ireland with registered number 7446 and having its registered office at Southbank Road, Ringsend, Dublin 4;

Target Group means the Target and the Subsidiary; and **member of the Target Group** shall be construed accordingly;

Tender Commitment means the written tender delivered by the Company to the Target on 2 October 2006 pursuant to whom the Company has offered the Purchase Price for the Target;

Transaction Agreement means the share purchase agreement to be entered into between, inter alia, the Company and the current owners of the Target relating to purchase of the entire issued share capital of the Target;

- 1.2. Save as otherwise provided herein, references to clauses, paragraphs and Schedules are to those contained in this Agreement.
- 1.3. The Schedules form an integral part of this Agreement and reference to this Agreement includes reference thereto.
- 1.4. Headings are inserted for convenience only and do not affect the construction of this Agreement.
- 1.5. Unless the context otherwise requires, words importing the singular include the plural and vice versa, words importing the masculine include the feminine, and words importing persons include corporations.
- 1.6. Reference in this Agreement to writing or similar expressions includes where the context so admits transmission by telecopier or comparable means of communication.

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- 1.7. Unless the context otherwise requires, a word or phrase the definition of which is contained or referred to in the Acts has the meaning thereby attributed to it.
- 1.8. Unless the contrary is clearly stated, references to Acts, statutory instruments and other legislation are to legislation operative in Ireland and to such legislation amended, extended or re-enacted (whether before or after the date hereof) from time to time, and include any legislation of which it is a re-enactment (whether with or without modification) and also include any subordinate legislation made from time to time under that legislation.
- 1.9. Reference to any document includes that document as amended or supplemented from time to time.
- 1.10. A document is in "the agreed form" if it is in the form of a draft agreed between and initialled by or on behalf of the parties hereto on or before the date hereof.
- 1.11. All references in this Agreement to costs, charges or expenses include any value added tax or similar tax charged or chargeable in respect thereof.

2. FUNDING OF THE COMPANY

2.1. Funding:

- 2.1.1. It is anticipated that the Total Acquisition Cost (net of arrangement fees) will be made up as follows:

Purchase Price	€411,987,000
Stamp duty	€12,458,487
Professional Fees	€2,355,000
Total	€426,800,487

and the parties agree that the Company's obligations to meet Total Acquisition Costs will be met, to the extent that they exceed the Debt Financing and Loan Stock, by the Shareholders in proportion to their shareholdings (to the extent that they have not been otherwise agreed or further borrowed by the Company from a bank):

- 2.1.2. The Debt Financing shall be funded by Anglo Irish Bank plc and each of the Investors hereby irrevocably agrees and undertakes to execute such reasonable several guarantee and other security documentation as Anglo Irish Bank plc shall require, to include a right to recover up to € 100,000,000 in aggregate from the Investors in the event that such guarantees were called on, each Investor being obliged to pay his proportionate amount of such € 100,000,000 pro rata to his holding of Shares as at Completion.
- 2.1.3. For the avoidance of doubt, the parties hereto hereby agree that :
- (1) all the bank debt facilities to be put in place to secure the Debt Financing, and any additional bank debt facilities required to finance all Development Funding, to include all guarantee and security arrangements required by the funding banks, requires the prior written approval of each of the Investors;
 - (2) subject to sub clauses 2.1.3 (1) above, and clause 2.1.7 below, the total recourse to the DDDA under the guarantee/security arrangements pursuant to clause 2.1.2 above (or otherwise) shall not exceed € 26,000,000.
- 2.1.4. Each of the Investors acknowledges that no amounts (including the non-refundable deposit of €15,000,000 paid by the Company to the owners of the Target pursuant to the Tender Commitment, (the **Deposit**)) are repayable to the Company under the Transaction Agreement in the event of Acquisition Completion not taking place for

certain reasons as detailed therein.

In the event that Acquisition Completion does not occur because any of the parties hereto (the **Defaulting Party(s)**) breaches, or fails to comply with, or causes the Company, or any other party to breach or to fail to comply with the terms of the Tender Commitment, or the Transaction Agreement such that the Company does not acquire the Target, and therefore forfeits the Deposit, then the Defaulting Party(s) shall, and hereby agrees to indemnify, and keep indemnified the other parties hereto (the **Non-Defaulting Party(s)**) in respect of the loss of the Deposit, and all other loss suffered by the Non-Defaulting Party(s) in consequence of the Defaulting Party's actions as aforesaid. For the avoidance of doubt, in the event that the DDDA is the Defaulting Party then, notwithstanding the forgoing provisions, the DDDA will not be liable to any Non-Defaulting Party to the extent that the DDDA's aggregate liability for all claims under this clause (which, for the avoidance of doubt, includes claims made against the DDDA under clause 2.5 of the Subscription Agreement hereof) would exceed €3,900,000 plus (where the Target is subsequently acquired at a price which is less than €375,000,000 only (the lower acquisition price being hereinafter described as the **Lower Purchase Price**)) that amount as is equal to 26% of the difference between €375,000,000 and the Lower Purchase Price.

- 2.1.5. In the event that Acquisition Completion does not take place by the Latest Target Date and any or all of the Deposit is returned to the Company, the Investors shall procure that the Company, as soon as is practicable after receipt of the Deposit, returns the Interim Advances to the Shareholders, and where not all the Deposit is returned by the Target, that proportionate amount of the Deposit as each such Investor is entitled to.
- 2.1.6. Each of the Investors acknowledges that the Loan Stock and, for the avoidance of doubt, the Shares rank for payment behind and are subordinate to the Debt Financing and each of the Investors hereby agrees to enter into appropriate documentation required by the Banks in advancing the Debt Financing to acknowledge such subordination.
- 2.1.7. Each of the Investors agrees and acknowledges that they will, for so long as they, or any member of their Shareholder Group holds Shares, for the first two years following Completion, fund their pro rata portion of the interest charged by the Banks on the Debt Financing.
- 2.1.8. Each of the Investors agrees and acknowledges that the arrangement fee for the Debt Financing, being € 4,750,000, shall be treated and paid as part of the Debt Financing of the Company.

2.2. **Purchase Price:**

- 2.2.1. The amount payable by the Company for the Target may not be increased above the Purchase Price without the prior written consent of each of the Investors to :
 - (1) any such increase; and
 - (2) the terms of the facility pursuant to which such increased funds are to be made available to the Company, to include, without limitation, provisions as to cost of such additional funds, and the security to be granted to the lending banks to secure such additional funds.
- 2.2.2. The parties hereby agree that in the event that the Company (subject always to Clause 2.2.1(1) and (2) above) is required to increase the amount payable by the Company for the Target above the Purchase Price, (such additional amount being hereinafter described as the **Additional Funding**) then:
 - (1) each of Donatex and Mempal Limited shall have the right, but not the obligation to advance such further amounts to the Company, and/or to arrange such further financing as the Company may require to enable the Company to acquire the Target;

- (2) in the event that both Donatex and Mempal Limited wish to advance such further amounts they shall be entitled to do so pro rata to their shareholding in the Company, or as they may otherwise agree between themselves; and
- (3) the terms of the facility(s) pursuant to which such increased funds are to be made available by the banks to the Company, to include, without limitation, the cost of such additional funds, and the security to be granted to the lending banks to secure such additional funds, and the entry by the Company into such facility(s) shall require the prior approval in writing of each Investor.

For the avoidance of doubt, each of the parties hereto hereby expressly agrees that the DDDA shall not be obliged to contribute any additional amount towards, or to provide any guarantee or additional security in respect of, the Additional Funding.

- 2.3. **DDDA's Liability:** Notwithstanding any other provision of this Agreement and the Subscription Agreement to the contrary (other than and subject to Clause 2.1.3(2) hereof), the parties hereto hereby expressly agree and acknowledge that the total aggregate liability of the DDDA to the other parties hereto, and to all third parties;
 - 2.3.1. for breach of this agreement, and/or the Subscription Agreement and/or the DDDA's obligations hereunder and/or there under (to include pursuant to a claim made against the DDDA for breach of clauses 2.5.6, or 2.10 of the Subscription Agreement, or 2.1.4 hereof or otherwise); and
 - 2.3.2. pursuant to all documentation entered into, or to be entered into by the DDDA, the Company and/or any other party in respect of loans, guarantees and /or all other commitments of whatever nature made, or to be made in relation to the acquisition of the Target and/or the operation of the Company shall not exceed €35,000,000 in aggregate.

3. THE BUSINESS OF THE COMPANY AND SHAREHOLDERS PROTECTIONS

3.1. **Business Rationale:**

The primary objective of the Company is to acquire the Target through a tender process, and thereafter in undertaking the Relevant Business, is to develop, manage and exploit the Property. It is acknowledged that this is to be achieved by:

- 3.1.1. The development of 26% of the Property by a public procurement tender process; and
- 3.1.2. Subject to Clause 3.3.1(13) the development of the balance of the Property by negotiated tender(s).

For the avoidance of doubt, each of the parties agrees that it is not intended that the Company will itself build or construct any part of the Property.

3.2. **Business Covenants:** The Investors shall procure that the Company shall, as and from the date hereof:-

- 3.2.1. carry on the Relevant Business in a businesslike manner and ensure that any expansion or alteration in the Relevant Business is carried on by the Company or a wholly owned subsidiary of the Company;
- 3.2.2. keep each of the Shareholders informed of the progress of its business and that of each of its subsidiaries and furnish each of the Shareholders to such extent and in such form and detail as each of the Shareholders may from time to time reasonably require

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particulars of any matters concerned with and arising out of the activities of the Company (and those of each of its subsidiaries).

- 3.2.3. permit (subject to any applicable data protection legislation) each of the Shareholders (and procure that each of the Shareholders shall be permitted) at all times on reasonable notice and through its duly authorised representative or representatives to enter onto any premises of the Company (and any subsidiary) to examine, inspect, copy, make extracts from all books of account, records, memoranda, correspondence files, papers or other documents and data of the Company (and any subsidiary), to check receipts of any nature and other material of the Company (and any subsidiary) and to co-operate with each of the Shareholders and its respective representatives and furnish it or them reasonable explanations of any matters contained in such books of account records memoranda correspondence files papers or other documents and data in order to assist each of the Shareholders and its representatives completely and fully to understand the same;
- 3.2.4. keep all its property and assets and those of each subsidiary of an insurable nature insured to the full replacement cost thereof at all times with a well established and reputable insurance office or with Lloyds Underwriters against loss or damage by fire, flooding, lightning, aircraft, storm and tempest and other normal risks in accordance with good commercial practice normally insured against by enterprises carrying on a similar business and the Company (and any subsidiary) shall at all times be adequately covered against accidents, public liability (including products liability) employers liability, occupiers liability and other risks normally covered by insurance and nothing shall be done or omitted to be done which would make any policy of insurance void or voidable and shall likewise effect such other insurances as each of the Shareholders may reasonably require;
- 3.2.5. ensure that all rents, rates, taxes, duties and assessments payable by it shall be paid promptly;
- 3.2.6. ensure that all books of account and financial statements of the Company and all subsidiaries are properly prepared on a regular basis in accordance with accounting principles and practices generally accepted in Ireland, consistently applied in respect of each financial period and that such financial statements shall contain a balance sheet giving a true and fair view of the state of affairs on the Company and each subsidiary as at the financial year end to date to which it related and keep and maintain proper books of account in compliance with the Acts and shall comply with all relevant legislation in preparing and maintaining all books of account and financial statements;
- 3.2.7. furnish (subject to applicable data protection legislation) each of the Shareholders by fax, e-mail or in any other written form with all such information, data and documentation as any one or more of them may from time to time request in relation to the Company and all subsidiaries including all documents, data and information given to the Directors and including, without limitation:
- 1) unaudited monthly and quarterly financial and management accounts (i.e. to include profit and loss account, balance sheet and cashflow statements) within 30 days following the end of each Quarterly Date;
 - 2) annual audited financial statements (within 60 days following the end of the annual financial period);
 - 3) annual budget for the following annual financial period (not later than 30 days before the end of the previous annual financial period; and
- 3.2.8. provide directors and officers liability insurance for each of its officers on reasonable commercial terms, including as to duration ,nature and amount of cover.

3.3. Operating Arrangements:

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3.3.1. Following Acquisition Completion the Investors shall procure that:

- (1) The DDDA's design team will be proactively involved in the design of the Site Development Plan for the Property;
- (2) the Investors shall procure that the Company will pay all third-party costs of the ongoing operations of the Group;
- (3) Donatex or its nominee will, subject to the DDDA's rights under clauses 3.3.1 (1) and 3.3.1 (14), provide a package of management services to the Company required to develop and manage the Target Group and the Property. The Investors shall procure that the Company will negotiate and, with the prior approval of each of the other Investors in writing, enter into a management services agreement with Donatex or its nominee as aforesaid for such services on terms approved by the Board and each of the other Investors.
- (4) Each Investor agrees that such of its services, or the services of any member of its Shareholders Group as are agreed to be provided to the Company shall be contributed on a cost plus agreed margin basis. The margin to be agreed by the Board and each of the other Investors].
- (5) the parties will co-operate to structure their arrangements and investment in the Company, and the Target Group itself in a tax-efficient manner, subject to DDDA's obligations not to engage in , or be seen to participate in arrangements that could be considered as aggressive tax planning;
- (6) the DDDA shall seek to implement its Masterplan and seek Section 25 powers in respect of the Property, and the other Investors will use their best endeavours to assist the DDDA to so do;
- (7) the DDDA shall be responsible for addressing community issues arising during the course of the development of the Property on behalf of the Company and the other Investors in accordance with Masterplan objectives;
- (8)
 - (a) The Investors shall procure that the Company shall ensure that all development on the Property shall be in accordance with the policies and objectives set out in the Masterplan 2003 (as may be amended from time to time);
 - (b) If a planning scheme is approved by the Minister for the Environment, Heritage and Local Government (in accordance with Section 25) within 24 months of Completion then the Company, and each of the Investors, shall, subject to such planning scheme being on terms commercially and reasonably acceptable to the Board, ensure that all planning applications for the development of the Property, and any part thereof, shall be by way of Section 25 Certificates only. In the event that the planning scheme is not commercially and reasonably acceptable to the Board the Company shall be entitled to seek planning permission for the development of some or all of the Property from Dublin City Council;
 - (c) Notwithstanding the terms of clause 3.3.1 (8) (b) above, if within 24 months of Completion no planning scheme has been approved by the Minister for the Environment, Heritage and Local Government , the Company will be entitled to seek planning permission for the development of some or all of the Property from Dublin City Council **Provided however**, that if before final determination of the application and grant of planning permission (following, if appropriate, an appeal to An Bord Pleanala), the Minister for the Environment, Heritage and Local Government approves the planning scheme ,then the provisions of sub clause 3.3.1 (8) (b) will apply.

- (9) The Property shall be transferred from South Bank Glass Manufacturing Limited to the Company;
- (10) the parties shall cooperate to ensure that the Company, as and when reasonably necessary, creates a fund of not less than €10,000,000 to be used by the Company, as and when reasonably necessary, to provide support for community facilities (the **Community Fund**), either within the development to be undertaken on the Property, or within the immediate vicinity. Payment out of the proceeds from the Community Fund shall be as directed by the DDDA to meet their obligations to the local community under clause 3.3.1(7) above;
- (11) The Investors shall use all powers of control available to them in relation to the Company and otherwise to ensure that the Company shall, in the event that it acquires the Target, take such steps as are available to it to commence the remediation of the Property within six months of receipt of a Section 25 Certificate, or such other planning permission as may be available, in the absence of an approved planning scheme under sub clause 3.3.1 (8) above – Provided however that the Investors shall procure that the Company shall make application for a planning permission or a Section 25 Certificate, as the case may be, no later than 25th October 2008;
- (12) The Investors shall procure that the Company, in developing and exploiting the Property, shall do so as to 26% of the Property by way of public tender process, and as to the balance of the Property, by way of private tender or tenders for its development;
- (13) The parties hereto hereby expressly agree that Donatex, either itself or, at its option through any member of its Shareholder Group, shall have the right, but not the obligation, to carry out (at its option) all of the development of the 74% of the Property to be developed by negotiated tender.

In the event that any element of the 74% of the Property to be developed by negotiated tender is to be constructed by an Investor, or any subsidiary or affiliate of any such Investor (a **Building Contractor**), then in such circumstances:

- i. the prior written approval of each Investor (other than the **Building Contractor Investor**) will be required to approve the terms, and the execution of each such contract by the Company with the relevant **Building Contractor**; and
 - ii. the Investors shall procure that the Company will procure in favour of each of the Investors a report from an independent quantity surveyor (to be nominated on agreement of the non **Building Contractor Investors** or, failing agreement by an appropriate independent professional body) to confirm to the Investors that the prices payable to the **Building Contractor** under the relevant development agreement are reasonable against the then current rates and prices in the construction industry;
- (14) the DDDA will manage the public procurement competition carried out by the Company for the development of the relevant 26% of the Property to be developed by way of public procurement in accordance with clause 3.3.1(12) above. That public procurement competition, and its management, and the costs associated therewith will be included in the annual budget for the Company, and the DDDA shall be entitled to be paid its costs incurred in carrying out such management role. Before submitting any contract to public procurement competition, the terms of the competition and the assessment criteria for selecting the winner of such competition will be approved by the

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Board prior to such competition commencing, and the DDDA shall apply such criteria in awarding any such contract on behalf of the Company.

- 3.4. **Protective Covenants:** Each of the Shareholders shall procure that the Company from the date hereof shall not (and shall procure that no subsidiary shall) without the prior consent of the Directors appointed by each of the Investors (who at that time hold with their Shareholder Group not less than 15% of the Shares) failing which, without the prior consent in writing of each of the Investors (who at that time hold with their Shareholder Group not less than 15% of the Shares):
- 3.4.1. approve or incur any capital expenditure above €1,000,000 (provided always that no such specific approval shall be required where the specific item of capital expenditure has already been specifically approved by being incorporated within an annual budget for the Group previously adopted by the Board);
 - 3.4.2. approve any business plans for the Company and/or the Group;
 - 3.4.3. approve any annual budget for the Company and/or the Group;
 - 3.4.4. approve any financing or loan agreement or similar arrangements with or for the Company and/or any member of the Group provided however that if the Board determines that the Company requires additional financing in order to achieve the business plan and objectives of the Company the approval of the A Directors or the DDDA shall not be required in relation to the securing of such additional funding only under any provision of sub Clauses 3.4.1, 3.4.2, 3.4.3, this sub clause 3.4.4, sub clause 3.4.7, or the issue any loan capital under sub clause 3.4.5, provided the DDDA shall not be required to fund, provide or guarantee any such additional financing;
 - 3.4.5. (and in such case subject always to the terms of clause 4) create or issue or agree to create or issue any share or loan capital or give or agree to give any option in respect of any share or loan capital or vary the rights or obligations attaching to any share or loan capital or reduce or increase its share capital or consolidate or subdivide any shares in its capital;
 - 3.4.6. approve any employment, management or service contract to be entered into by the Company or any member of the Group (other than those already approved by the adoption of an annual budget or the business plan for the Company and/or the Group);
 - 3.4.7. enter into any contract of whatsoever nature with an annual value in excess of €1,000,000 (provided always that no specific approval for such contract shall be required where the subject matter and terms of such contract have already been specifically approved by the adoption of any business plan, or annual budget for the Company);
 - 3.4.8. transfer or dispose (by means of sale, lease or in any other manner) or agree to transfer or dispose of the whole or a substantial part of the Property or the whole or a substantial part of the undertaking or assets of Group (which for the avoidance of doubt, shall include the share capital of the Target) provided that, the Investors have already agreed the strategy for the 26 % of the Property to be developed pursuant to public tender process in accordance with clause 3.3.1 (12) and 3.3.1(14), the transfer or disposal of up to thirty per cent of the Property in one or a series of transactions shall not require approval under any provision of this Clause 3.4;
 - 3.4.9. approve or pay any dividend or make any distribution from the Company or any subsidiary or make any redemption or purchase of any share in the capital of the Company or any redemption or repayment of any Loan Stock or the payment of any interest thereon provided however that:

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- (1) a refinancing allowing for a return to the Investors of some or all of their investment will not require approval under any provision of this Clause 3.4 if the loan to value ratio following the refinancing is not greater than seventy per cent (provided the DDDA shall not be required to provide security or guarantee any such additional financing); and
- (2) the Shareholders will not unreasonably withhold their consent to the payment of a dividend or other distribution to Shareholders where the Board have approved and the Banks have consented to such payment.

3.4.10. approve of any tax planning and structuring proposed in connection with the establishment, structure and operation of the Company and the acquisition of the Target, and the Property.

3.5. Development Funding:

The parties also hereby agree that in the event that any amounts are required to be incurred by the Company to develop, manage and exploit the Group and the Property after its acquisition (such amounts being hereinafter described as the **Development Funding**) that, subject always to the provisions of clauses 2.1 and 2.2, the DDDA shall not be obliged to provide any guarantee or other security of whatsoever nature in relation to such Development Funding.

3.6. Use of Proceeds:

All proceeds of development, management and sale of the Property (or any part thereof) or any other significant Group assets shall, (less reserves to pay proper costs and expenses, to include all the costs incurred developing the Property), to the extent permitted by law and otherwise to the extent practicable (unless otherwise agreed by all members of the Board) be applied strictly in the following order:

- 3.6.1. Firstly in repayment of the full amount of the Debt Financing paid by the Company as the Purchase Price for the Target, together with interest accrued thereon;
- 3.6.2. Secondly in repayment of certain of the loans made by the Investors to the Company by the repayment and/or redemption of the A Loan Stock pro rata and pari passu as to the amounts due to the holders thereof;
- 3.6.3. Thirdly in repayment of certain of the loans made by each of Donatex and Mempal Limited to the Company by the repayment and/or redemption of the B Loan Stock, and the payment of accrued interest thereon, pro rata and pari passu as to the amounts due to the holders thereof for the period up to redemption;
- 3.6.4. Fourthly in repayment of the full amount of the credit facilities made available by the banks to the Company, and thereafter of the funds advanced by each of Donatex and/or Mempal Limited (as the case may be) to the Company which constituted the Additional Funding paid by the Company for the Target (if any), together with interest accrued thereon, and thereafter;
- 3.6.5. to the holders of the Shares pro rata and pari passu as between them in the proportion in which they hold the Shares.

3.7. New Shareholders: Each of the Shareholders covenants that he shall take all steps within his power and procurement to ensure that:

- 3.7.1. any allottee of Shares who is not already a party to this Agreement enters a Deed of Adherence in the form set out in the **Second Schedule**;
- 3.7.2. any transferee of any Shares or Loan Stock from him who is not already a party to this

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Agreement enters a Deed of Adherence in the form set out in the **Second Schedule**;

3.7.3. any Permitted Transferee under clauses 6.8, 6.9 or 6.10 who is not already a party to this Agreement enters a Deed of Adherence in the form set out in the **Second Schedule**.

3.8. **Planning control:** Each of the Shareholders shall procure that, from the date hereof, before the Company (or any subsidiary) carries out either of the actions detailed in sub clauses 3.9.1 or 3.9.2, it shall have obtained the prior consent of each of the DDDA and Donatex Limited (who at that time (with their Shareholder Group) have not less than 15% of the Shares) to such action:

3.8.1. approval and/or adoption any site development plan for any part of, or all of, the Property (a **Site Development Plan**);or

3.8.2. approval of site master plan architect with architectural variety as a requirement of the brief, provided design is within the approved budget, provided always that the costs payable by the Company to the master plan architect upon his appointment as aforesaid shall be adjusted in accordance with the Irish Consumer Price Index;

4. THE BOARD OF DIRECTORS AND CORPORATE MATTERS

4.1. The holder or holders of a majority of the A Shares for the time being in issue may from time to time appoint any person to be a director or remove from office any director so appointed, provided that not more than two directors may at any time hold office by virtue of such an appointment. A director so appointed will be known as an A director.

4.2. The holders of the B Ordinary Shares for the time being in issue may, between them, from time to time appoint any person to be a director or remove from office any director so appointed, provided that not more than three directors in aggregate may at any time hold office by virtue of appointment by the B Shareholders. A director so appointed will be known as a B director.

4.3. For the purposes of clause 4.1 Paul Maloney and David Higgins shall be deemed appointed as the A Directors as at the date hereof.

4.4. For the purposes of clause 4.2 Bernard McNamara, Derek Quinlan and Chris Hirst shall be deemed appointed as the B Directors as at the date hereof.

4.5. The investors shall procure that the Company shall not pay any expenses of, or remuneration to the Directors.

4.6. The Shareholders shall procure that at least one Board Meeting of the Company shall be held each quarter on such dates as may be determined at the beginning of each year and thereafter modified (if necessary) by the Board. All such Board Meetings shall be convened in accordance with agendas which shall include such items as the Shareholders may request. There shall not be a quorum at a meeting of the Board unless not less than one A Director, and 2 B Directors representing each B Shareholder Group are present in person or by a duly appointed alternate; provided however that if within half-an-hour from the time appointed for the meeting a quorum is not present the meeting will stand adjourned to the same day in the next week, at the same time and place, or to such other day and such other time and place as the Board may determine, and if at the adjourned meeting a quorum is not present within half-an-hour from the time appointed for the meeting the Director or Directors present will be a quorum. Not less than twenty eight days' notice shall be given to each Director of each meeting of the Board (including each adjourned meeting) and (each such notice) shall include an agenda unless, in the case of Board meetings held for non material purposes or technical purposes necessary to implement a Board decision (e.g. the approval of documentation relating to an approved deal),

or Board meetings required to be held urgently, a majority in number of the Directors (to include not less than one A Director, and two B Directors representing each B Shareholder Group) agrees to shorten the notice period and/or dispense with the agenda for a Board meeting. All Board meetings, all meetings of any committee of the Directors and all senior executive meetings of the Company shall be held in Dublin.

- 4.7. A Director may in writing appoint either another Director or any other person (without need for approval by any other director) by notice in writing to the Secretary to be his alternate Director to attend and vote at meetings of the Board on his behalf. For the avoidance of doubt, to the extent that the alternate Director is already a Director in his own right, that alternate shall have his own vote and one for each other Director in respect of whom he is an alternate and may be counted in a quorum in his own right and separately in respect of each Director for whom he is appointed an alternate.
- 4.8. The Investors shall procure that the Company shall furnish to each of its Directors at least 72 hours before the date scheduled for each quarterly meeting of the Board a management report in regard to the current financial affairs of the Group which report shall include up to date management profit and loss accounts, cash flows and balance sheets in respect of the period since the previous meeting of the Board and appropriate budgets and cash flow forecasts and other relevant information.
- 4.9. At a meeting of the Directors, each Director (or his alternate appointed pursuant to clause 4.7) shall be entitled to one (1) vote provided that ; if only one A Director is present, that A Director shall be deemed to have two votes; and if only one Donatex B Director is present, then that Donatex B Director shall be deemed to have two votes. Decisions of the Directors shall be made by simple majority of votes duly cast in favour of such resolution.
- 4.10. The Chairman shall be appointed and replaced from time to time by resolution of the Directors. In the event of an equality of votes, the Chairman shall not have a second or casting vote.
- 4.11. The Investors shall procure that the Company shall hold an annual general meeting in Dublin in each year commencing in 2007 for the purpose of considering the audited financial statements of the Company and for such other purposes as are anticipated by and generally in accordance with the Acts. Such annual general meeting shall be held on not less than 21 clear days notice (as determined in the Acts) and not later than 35 days after the audited financial statements of the Company have been made available to the Directors.
- 4.12. The Investors shall procure that the Company shall adopt Articles of Association consistent with the provisions of this Agreement.

5. FURTHER INVESTMENT AND SHARE CAPITAL

The Investors shall procure that no Shares will be allotted except with the prior consent of each Investor. The following provisions shall apply to all such additional allotments of Shares:

- 5.1. The Shares shall be offered for subscription for cash to the Shareholders in proportion to the numbers of Shares held by them respectively and in all respects on the same terms per Share all Shares offered for allotment to a Shareholder and all Shares allotted to a Shareholder shall be of the same class as those held by the Shareholder and by reference to which the offer or allotment is made;
- 5.2. such offers shall be made by notice to each Shareholder stating the total number of Shares so offered, the number thereof offered to that Shareholder, the price per Share and the date (but not less than 28 days after the date upon which notice is given) by which the offer, if not accepted, will be deemed to have been rejected;
- 5.3. any Shares in respect of which such an offer to a Shareholder is accepted shall be allotted on the basis of such offer and the Shareholder will be obliged to subscribe accordingly;

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- 5.4. if any offer is rejected or deemed to have been rejected, the Shares comprised therein shall be offered for subscription on the same terms to the other Shareholders holding shares of the same class who have accepted the offers made to them under clause 5.2 and so that in the event of competition their entitlements to subscribe will be proportionate to the numbers of such Shares held by them respectively;
- 5.5. if any shares so offered are still not taken up they shall be offered for subscription on the same terms to the other members holding shares of the other class who have accepted the offers made to them under clause 5.2 and so that in the event of competition their entitlements to subscribe will be proportionate to the numbers of such shares held by them respectively;
- 5.6. any Shares so offered which are still not taken up may be allotted by the Directors to such other persons on the same terms as the offers made under clauses 5.2, 5.4 and 5.5 as the Directors may in their discretion determine provided that the Company receives the consideration therefore;
- 5.7. All shares offered for allotment to a member and all shares allotted to a member, whether pursuant to regulations 130 and 131 of the Part I of Table A (relating to bonus issues) or otherwise, shall be of the same class as those held by the member and by reference to which the offer or allotment is made;
- 5.8. the benefit of an offer to allot shares or of the contract arising out of the acceptance thereof cannot be assigned or transferred by the offeree save with the consent of the holders of at least 90 per cent of the Shares of each class for the time being in issue;

and for the purposes of this clause 5, "Shares" shall be deemed to include Loan Stock issued to Shareholders and any other debt issued to Shareholders and any other instruments convertible into share capital of the Company.

6. TRANSFERS OF SHARES

Transfer of Shares

The Investors agree, and shall procure, that the following provisions shall apply to all transfers of Shares:

- 6.1. Except in respect of a transfer made pursuant to clauses 6.8, 6.9 and/or 6.10, a Shareholder (the **Proposing Transferor**) desiring to transfer one or more Shares (or any interest therein) (the **Transfer Shares**) may at any time give notice in writing to the Company (**Transfer Notice**) of his desire to transfer the Transfer Shares and the sale price thereof and other sale terms, as fixed by him. No such notice may relate to shares of more than one class. For the purposes of this clause 6, "Share" shall be deemed to include Loan Stock and any other debt or other instruments convertible into share capital of the Company. For the avoidance of doubt, a Shareholder desiring to transfer some or all of his Shares shall, subject to the other provisions of this Agreement, the Articles and the Loan Stock Instrument for so long as any Loan Stock remains outstanding, also be obliged to transfer with his Shares to the transferee thereof that percentage of his Loan Stock as is equal to the percentage of his Shares to be so transferred to that transferee.
- 6.2. The Directors shall, on behalf of the Proposing Transferor, forthwith offer the Shares comprised in such Transfer Notice for sale to the holders of the Shares and (in the case of any Shares not accepted) again to offerees who shall have accepted offers with a view to seeking among such offerees acceptances for all of such Shares all in accordance with such appropriate procedures as the Directors may determine (but not extending over more than 28 days) with a view to seeking among the holders of the Shares acceptances of all of the offered Shares but, so far as consistent with the foregoing, permitting each holder of the Shares to maintain his pre-existing share of the Company's issued share capital.
- 6.3. If any Transfer Shares so offered are accepted the Proposing Transferor will upon completion

of the foregoing procedures (but subject to clause 6.4) be bound to sell and transfer and the offeree will be bound to purchase and pay for the relevant Transfer Shares at the said sale price and the Directors will not be entitled to decline or refuse to register any such transfer or transfers.

6.4. If some but not all of the Transfer Shares are accepted in accordance with the foregoing procedures, the Proposing Transferor may elect to treat all of the Transfer Shares as not having been accepted.

6.5. (Subject always to each Investors rights under clause 6.14 below), in the case of any Transfer Shares not accepted, or which the Proposing Transferor elects to treat as not accepted under clause 6.4 (**Completion of the Offer Around**), the Proposing Transferor shall indicate to each of the other Shareholders the identity of any proposed transferee of the Transfer Shares (**Proposed Transferee**) together with such reasonable information in relation thereto as any of the other Shareholders may request and, subject thereto, the Proposing Transferor will be entitled within 90 days from the time of Completion of the Offer Around to transfer all (but not some only) of such Transfer Shares to: (a) such person as Shareholders (excluding the Proposing Transferor) between them holding a majority in value of the nominal value of the Shares may in writing nominate and notify to the Proposing Transferor within 30 days from Completion of the Offer Around (**Nominated Third Party**); or (b) if no Nominated Third Party is nominated and approved as aforesaid, to the Proposed Transferee who, unless Shareholders (excluding the Proposing Transferor) between them holding a majority in value of the nominal value of the Shares may in writing otherwise agree, must not be disqualified by law or under the Articles of Association from acting as a Director; and in the case of any such transfer for the same consideration and terms as the price and terms nominated in accordance with clause 6.1 and the Directors will not be entitled to decline or refuse to register such transfer or transfers provided that the Company has been furnished with satisfactory evidence as to the bona fide discharge of the said consideration.

6.6. If any Shareholder

6.6.1. (being a corporate Shareholder) enters into liquidation or receivership or suffers the appointment of an examiner or any Shareholder Security becomes enforceable or suffers any analogous proceeding (not being a voluntary liquidation for the purpose of and followed by a reconstruction or amalgamation while solvent upon such terms as may be approved by all of the Shareholders) or a Change of Control occurs in relation to a Shareholder or the parent company of such Shareholder; or

6.6.2. (being an individual Shareholder) becomes or is adjudged bankrupt in any part of the world or enters into any composition or arrangement with his creditors generally or any Shareholder Security becomes enforceable; or

6.6.3. attempts to deal with or otherwise dispose of any Shares or interest in Shares in the Company otherwise than in accordance with the provisions of this Agreement;

such Shareholder or as the case may be, his personal representatives, if so notified by the Company following a determination by the Directors at any time within a period of one month after the occurrence of any such event, shall be deemed to have given a Transfer Notice in respect of all Shares held by it or him on the date of such notice and the provisions of clause 6.7 shall apply, provided always that no such Transfer Notice shall be deemed to have been given by a Shareholder, or his personal representative, where that Shareholder has granted Shareholder Security over its Shares and nothing in this clause 6.6 shall prevent the holder of any such Shareholder Security from taking a transfer of the Shares subject to such Shareholder Security on the enforcement of its Shareholder Security .

6.7.

6.7.1. Where a Transfer Notice has been deemed to have been given under clause 6.6, the price determined in accordance with the following provisions of this clause shall be deemed to be the price fixed by it or him. The price per Transfer Share will be based on the fair value of the issued share capital for the time being of the Company and shall

include the cost of the relevant proportion of the Transferor's Loan Stock being sold with such Shares in accordance with the provisions of clause 6.1 above and on the basis of the Company as a going concern on an arms length basis as between a willing buyer and a willing seller, ignoring the fact that any Transfer Shares are shares in a private company and represent a minority interest, and shall, in default of agreement to the contrary between the Proposing Transferor and the relevant offerees, be determined by an independent expert (**Independent Expert**) appointed by the Proposing Transferor and the relevant offerees or, in the absence of such joint appointment, by the President for the time being of the Institute of Chartered Accountants in Ireland at the request of any of the Proposing Transferor(s) and the relevant offerees and on the basis of the assumptions set out in this clause 6.7, who shall within thirty (30) days of receiving instructions certify his opinion as to the amount of such fair value (taking account of the open market value of the Property as determined pursuant to clause 6.7.2), such certificate to be issued at the request of the Proposing Transferor or of the relevant offeree and the expense thereof shall be borne equally between the Proposing Transferor(s) on the one hand and the proposed transferee(s) on the other. The fair value referred to in such certificate will be final and binding save in the event of manifest error and in so certifying the independent expert will be deemed to act as expert and not as arbitrator and the laws relating to arbitration will not apply.

6.7.2. Where a Transfer Notice has been deemed to have been given under clause 6.6, the Property shall be valued in accordance with the RICS Appraisal and Valuation Standards Manual (**Red Book**) as the same may be amended from time to time by an appropriate person as determined by the Independent Expert.

6.7.3. Relevant time periods shall be extended if required to determine fair value.

Permitted Transfers

6.8. The Investors shall procure that the Board shall not refuse to register any transfer made pursuant to this clause 6 and each of the Shareholders shall procure that all Directors appointed by him shall approve such transfer.

6.9. Each Shareholder (being a body corporate) shall be entitled to transfer the entire or part of the legal and beneficial interest in all or any part of the Shares held by it to any member for the time being of its Shareholder Group **PROVIDED THAT** in any such event, any such transferee shall first enter into an agreement under or supplemental to this Agreement whereby it undertakes all of the liabilities and responsibilities of the transferring Shareholder under this Agreement and that, on such transferee proposing to cease to be a member of that Shareholder's Group, it shall first re-transfer all its interest in the Shares held by it or on its behalf to the original transferor under this clause or another member of its Shareholder Group or as otherwise may be agreed in writing by the other Shareholders.

6.10. In relation to individual Shareholders (this expression shall include any corporate shareholder which is controlled by an individual and shall permit the transfers referred to below by that corporate shareholder in accordance with Clause 6.10.1 to 6.10.5):

6.10.1. all or part of the Shares of a Shareholder may be transferred free of any rights of pre-emption conferred under the Articles of Association:

- (1) by any individual Shareholder (not being in relation to the Shares concerned a holder thereof as a trustee of any Family Trusts) to a Privileged Relation of such Shareholder; or
- (2) by any such individual Shareholder to trustees to be held upon Family Trusts related to such individual Shareholder;
- (3) by any individual Shareholder to a body corporate controlled by that Shareholder;

6.10.2. where Shares have been issued to trustees of Family Trusts or transferred under this clause 6.10 to trustees of Family Trusts, the trustees and their successors in office may transfer all or any of such Shares:

- (1) to the trustees for the time being of the Family Trust concerned on any change of trustees;
- (2) to the trustees for the time being of any other trusts being Family Trusts in relation to the same individual Shareholder or deceased or former Shareholder pursuant to the terms of such Family Trusts or to any discretion vested in the trustees thereof or any other person; or
- (3) to the relevant Shareholder or former Shareholder or any Privileged Relation of the relevant Shareholder or deceased or former Shareholder who has thereby become entitled to the Shares proposed to be transferred on the total or partial termination of or pursuant to the terms of the Family Trusts concerned or in consequence of the exercise of any such power or discretion as aforesaid;

6.10.3. if and whenever any of the Shares come to be held otherwise than upon Family Trusts, except in circumstances where a transfer thereof is authorised pursuant to clauses 6.10.1 or 6.10.2 to be and is to be made to the person or persons entitled thereto, it shall be the duty of the trustees holding such Shares to notify the Directors in writing that such event has occurred and the trustees shall be bound, if and when required in writing by the Directors so to do, to transfer such Shares back to the relevant former Shareholder;

6.10.4. if a person to whom Shares have been transferred pursuant to clauses 6.10.1 or 6.10.2 shall cease to be a Privileged Relation of the original Shareholder who transferred the shares pursuant to clauses 6.10.1 or 6.10.2, it shall be the duty of such person to notify the Directors in writing that such event has occurred and such person shall be bound, if and when required in writing by the Directors so to do, to transfer its entire holding of Shares back to such Shareholder or to another Privileged Relation of such original Shareholder;

6.10.5. for the purpose of this clause 6.10:

- (1) the expression "**Privileged Relation**" means in relation to an individual member or deceased or former individual member, the husband or wife or the widower or widow of such member and all the children of such member and for the purposes aforesaid a step-child or adopted child or illegitimate child of any person shall be deemed to be his or her child; and
- (2) the expression "**Family Trusts**" means as regards any particular individual member or deceased or former individual member, trusts (whether arising under a settlement, declaration of trust or other instrument by whomsoever or wheresoever made or under a testamentary disposition or on an intestacy) under which no immediate beneficial interest in any of the Shares in question is for the time being vested in any person other than that individual and/or Privileged Relations of that individual; and so that for this purpose a person shall be considered to be beneficiary interested in a Share if such Share or the income thereof is or may become liable to be transferred or paid or applied or appointed to or for the benefit of such person or any voting or other rights attaching thereto are or may become liable to be exercisable by or as directed by such person pursuant to the terms of the relevant trusts or in consequence of an exercise of a power or discretion conferred thereby on any person or persons.

No Transfers except as Permitted

6.11. No Share nor any interest therein shall be transferred, sold or otherwise disposed of save as

provided in this clause 6

- 6.12. Nothing in this clause 6 shall prohibit or restrict the grant by a Shareholder of any Shareholder Security or the transfer of any Share or Loan Stock to the holder for the time being of such Shareholder Security and the Directors shall approve such transfer; provided that for the avoidance of doubt the holder of such Shareholder Security shall be subject to the terms of clause 6 (including clauses 6.1 to 6.5 hereof) with respect to any Shares and Loan Stock acquired by it pursuant to the enforcement of the Shareholder Security.

Disapplication

- 6.13. The provisions of this clause 6 or any of them may be waived in writing in whole or in part in any particular case by all of the parties for the time being to this Agreement.

Exits after 10 years

- 6.14. If, at any time on or after 6 November 2016:

- 6.14.1. Any Investor holding at least 15% of the issued share capital (the **Selling Investor**) has offered all, but not some only, of his Shares to the other Shareholders in accordance with the offer round provisions detailed in clauses 6.1 to 6.4, and any Transfer Shares are not accepted by the other Shareholders then, and unless the Investors decide otherwise, all of the Shareholders shall, on written request from the Selling Investor, use all reasonable endeavours to procure a Share Sale or an Asset Sale as soon as possible thereafter.

Notwithstanding the foregoing, within one month of the date of the written request from the Selling Investor as aforesaid, the Investors shall procure that the Company appoint an appropriate person (the **Advisor**) to procure a Share Sale or an Asset Sale on the best price and terms reasonably obtainable in the market on an arms length (and, in the case of a Share Sale, on a going concern) basis as between a willing buyer and a willing seller.

Each of the parties to this Agreement agrees that he shall co-operate with and assist fully such Adviser who shall have full access to all information of the Group to enable a Share Sale or an Asset Sale to be effected and shall meet with such Adviser and/or any prospective purchaser if required. Subject to applicable law, the fees and expenses of such Adviser will be borne by the Company;

- 6.14.2. The Board of directors shall determine whether to proceed by means of a Share Sale or Asset Sale. If, following the appointment of the Adviser in accordance with clause 6.14.1 a third party (the **Acquirer**) makes an unconditional offer capable of acceptance to purchase all the Shares and effect a Share Sale, or to purchase such of the Groups assets as constitutes an Asset Sale (**Third Party Offer**) then:

- (1) if the Third Party Offer shall include non-cash terms, the Directors shall promptly arrange for the Company's auditors, acting as experts and not as arbitrators, to assign a cash value to such terms within 10 days of being requested so to do by the Directors, and the amount so assigned by them shall be deemed to be included in the Third Party Offer for all purposes of this clause;
- (2) the Board shall notify the Shareholders of the Third Party Offer indicating the price offered for the Shares, or assets of the Group (as the case may be) (**Offer Price**), the identity of the Acquirer and the terms upon which the Acquirer proposes to complete the purchase of the Shares, or assets of the Group (as the case may be);

- 6.14.3. Each of the parties hereto agrees that, in the case of an intended Share Sale, once the Offer Price is acceptable to any Investor holding at least 15% of the issued share capital (a **Selling Investor(s)**) the Shareholders shall sell all of their Shares to the

Acquirer at a price per Share equal to the Offer Price divided by the number of shares in Issue. Each Shareholder shall ensure that their Shares are free from all liens and encumbrances and are not subject to any options. If any of the Shareholders makes default in transferring his Shares pursuant to the provisions of this Clause 6.14.3 within a period of 10 Days (**Defaulting Shareholder**), the Selling Investor(s) will be entitled on behalf of such Defaulting Shareholder to transfer his Shares to the Acquirer and for the purposes of securing his obligations under this clause 6.14.3 each Shareholder hereby irrevocably appoints each director of each Investor from time to time as his attorney to execute, complete and deliver in his name and on his behalf of a transfer of his Shares to the Acquirer and the Board shall on presentation of such transfer duly stamped, cause the name of the Acquirer to be entered in the register of members of the Company as the holder of those Shares. Pending such entry of the name of the Acquirer in the register the attorney shall have full power in the name of such Defaulting Shareholder to appoint a proxy to attend, speak and vote at any meeting of the Company and full power to execute any written resolution on behalf of such Shareholder. The Selling Investor(s) shall procure that the Acquirer will pay to a Defaulting Shareholder the consideration for such Defaulting Shareholder's Shares sold by transferring the consideration to such bank account as may be notified by such Defaulting Shareholder to the Selling Investor(s), and failing such notification by delivering by hand a cheque for the amount payable to such Defaulting Shareholder to the address specified in clause 8.10 or such other address as may be notified to the Selling Investor(s) by such Defaulting Shareholder and on proof that such cheque was delivered by hand, the Selling Investor(s) and the Acquirer shall be deemed to have discharged all moneys due to such Defaulting Shareholder in respect of the sale of his shares in the capital of the Company.

- 6.14.4. Each of the Shareholders hereby agrees that in the event of an Asset Sale that where a Selling Investor(s) and an Acquirer shall agree upon the Offer Price for the groups assets then the Shareholders shall do all things and pass all resolutions necessary or desirable to give effect to such Asset Sale and for the purpose of securing his obligations under this clause 6.14.4 each Shareholder hereby irrevocably appoints each director of each Investor as his attorney with full power to execute all documents and do all things including exercise all votes or other rights as a shareholder in the Company so as to give effect to such Asset Sale. On the Completion of the Asset Sale the Company shall be wound up and the assets of the Company then available for distribution distributed to the members in accordance with the Articles of Association.

General

- 6.15. Where any proposed transfer of Shares is notifiable to the Competition Authority under section 18(1) of the Competition Act, it shall be a condition precedent to such transfer of such Shares that the required clearance is obtained from the Competition Authority, or is deemed to have been obtained through passage of time. Where a notification is made to the Competition Authority as aforesaid, the notification shall be made jointly by the investors, the Company and the relevant transferee of such shares (where the transferee is not an Investor), as and when so required. Where a notification is made to the Competition Authority as aforesaid all the provisions of this clause 6 prescribing time periods within which transfers of the Shares are to be effected shall be extended accordingly;
- 6.16. The Shareholders hereby irrevocably waive all pre-emption rights and/or offer round rights to which they or any of them may be or become entitled under the Articles or otherwise in respect of any transfer of Shares made in compliance with the terms of this clause 6 and agree to procure that all Directors appointed by them shall approve such transfer.
- 6.17. Each of the Shareholders covenant with and undertake to and with each other to use all reasonable endeavours to comply with its obligations pursuant to this clause and to respond to all notices and requests in a prompt and timely manner and to co-operate fully with each other in the administration and operation of these terms.

- 6.18. Each of the Shareholders covenants that other than to grant any Shareholder Security and other than in respect of a transfer of Shares or Loan Stock to the holder of any Shareholder Security as a consequence of the enforcement of the Shareholder Security or a transfer made pursuant to clauses 6.8, 6.9 and/or 6.10 he or she shall not transfer any Share or Loan Stock (or any interest therein) which would give rise to a Transfer Notice under clause 6.1 at any time prior to the second anniversary of Completion.

7. GENERAL MEETINGS

The following provisions shall apply in relation to general meetings:

- 7.1. all parties hereto and all Directors shall be entitled to notice of and attend at all general meetings of the Company;
- 7.2. there shall not be a quorum at a general meeting of the Company unless each of the three Investors are present in person or by proxy PROVIDED THAT if within half an hour from the time appointed for the meeting a quorum as aforesaid is not present, the meeting shall stand adjourned for seven days to the same place and, where all reasonable efforts have been made to contact or otherwise obtain the views of all other Shareholders, then those being present (being not less than two persons) shall, notwithstanding the provisions above, constitute a quorum;
- 7.3. all general meetings of the Company shall take place in Dublin.

8. MISCELLANEOUS PROVISIONS

- 8.1. It is hereby agreed and acknowledged between the parties that (other than the payment of the subscription funds in respect of the Loan Stock, and the parties funding obligations pursuant to clause 2.1) to the extent that any of the Shareholders agrees in this Agreement to procure that any matter or thing is done or undertaken, a Shareholder will be considered to have complied with such obligation to the extent that (a) it votes in favour of all resolutions necessary or desirable to give effect thereto, (b) any Director appointed by him votes in favour of all resolutions necessary or desirable to give effect thereto, (c) that Shareholder and any such Director takes no actions inconsistent therewith, (d) that Shareholder and any Director appointed by him grants any approvals and consents and makes such declarations reasonably necessary or desirable in connection therewith, and (e) generally takes such actions and measures short of incurring personal financial obligations reasonably necessary or desirable in connection therewith.
- 8.2. Each of the Shareholders hereby covenants with each other that he or it shall take all necessary steps, and exercise such voting rights at general meetings of the Company as he may from time to time have in the Company so as to procure (in so far as lies within his power or procurement individually or collectively with others) that the Company and any member of the Board appointed by him shall comply in full with each and all of its obligations under this Agreement.
- 8.3. In the event of any inconsistency between any terms in this Agreement and any matter set out in the Articles of Association including, without limitation, the provisions of clause 6, the terms of this Agreement shall prevail and the Shareholders shall make such amendments as may be necessary to the Articles of Association to permit the Company, its affairs and the transfers permitted by clause 6 to be administered as provided in this Agreement.
- 8.4. Each of the Shareholders agrees that:
- 8.4.1. during the continuance of this Agreement all transactions entered into between any of them or any company controlled by them on the one hand and the Group on the other shall be conducted in good faith and on the basis set out or referred to in this Agreement or, if not provided for in this Agreement as may be agreed by the parties and in the absence of such agreement on an arm's length basis;

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- 8.4.2. each of them shall at all times act in good faith towards the others and shall use all reasonable endeavours to ensure the observance of the terms of this Agreement;
- 8.4.3. no party will seek to increase its profit or reduce its loss at the expense of another; and
- 8.4.4. each of them will do all things or desirable to give effect to the spirit and intention of this Agreement.
- 8.5. This Agreement shall be binding upon and ensure for the benefit of the successors and/or personal representatives of the Shareholders and the Company.
- 8.6. The provisions of this Agreement insofar as the same shall not have been performed at Completion shall remain in full force and effect notwithstanding Completion.
- 8.7. Each of the Shareholders and the Company hereby agrees and undertakes with each other that it will procure that all future subsidiaries of the Company shall take no action inconsistent with the obligations of the Company and that all obligations undertaken by any of them in relation to the Company shall extend to any firm or body corporate which shall in the future become a subsidiary or holding company of the Company.
- 8.8. The provisions of this Agreement, and the rights and remedies of the parties under this Agreement, are cumulative and are without prejudice and in addition to any rights or remedies a party may have at law or in equity. No exercise by a party of any one right or remedy under this Agreement, or at law or in equity, shall (save to the extent, if any, provided expressly in this Agreement, or at law or in equity) operate so as to hinder or prevent the exercise by it of any other such right or remedy.
- 8.9. The Company, and the Shareholders agree that no press release or other announcement of any nature relating to the subject matter of this Agreement shall be made except in accordance with terms which have been first agreed by each Investor.
- 8.10. Any notice to be given or served under this Agreement shall be in writing, addressed to the relevant party and expressed to be a notice under this Agreement and, without prejudice to the validity of another method of service may be delivered, faxed or sent by pre-paid post addressed as follows:

Shareholders: Names and Addresses as at the beginning of this Agreement

The Company: Address at beginning of this Agreement

Attention: Company Secretary

or to such other address as the addressee may have previously substituted by notice. Any such notice or other communication will be deemed to have been duly served or given:

- in the case of delivery, at the time of delivery; or
- in the case of fax, upon receipt of an error free transmission report;
- in the case of posting, 48 hours after posting

provided however that if a notice is not given or served during usual business hours on a Business Day, it will be deemed to be given or served on the next following Business Day.

- 8.11. This Agreement and all relationships created hereby will in all respects be governed by and construed in accordance with the laws of Ireland and, subject always to clause 8.18 below, the parties hereby submit to the non-exclusive jurisdiction of the courts of Ireland.
- 8.12. Each of the parties hereby confirms that it or he has had the opportunity of obtaining independent advice as to the provisions and effect of this Agreement.

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- 8.13. This Agreement shall not be deemed to create any partnership between the parties in relation to the Company or otherwise.
- 8.14. No waiver by any party of any term or provision of this Agreement shall operate as a general waiver thereof.
- 8.15. This agreement 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 counterparts shall together constitute one instrument.
- 8.16. Each of the parties agrees and acknowledges to retain secret and confidential all information, data and documents relating to the business and affairs of the Company and all subsidiaries and each of their respective businesses and assets and not use or disclose any thereof for any other purpose save to the extent required by law (and then only to that extent).
- 8.17. The parties hereby agree that :
- 8.17.1. each party to this Agreement will pay its own costs (including legal, professional and other costs) incurred in preparing this Agreement, up to 25 October 2006; and
- 8.17.2. all costs incurred by the parties after 25 October 2006 including the costs, charges and expenses incurred by the Company and the Investors in connection with the preparation and implementation of this Agreement and the transactions contemplated by it shall be borne by the Company.
- 8.18. This Agreement (together with the Subscription Agreement and any documents to be executed pursuant to the terms of this Agreement) supersede all prior representations, arrangements, understandings and agreements, and sets out the entire, complete and exclusive agreement and understanding between the parties.
- 8.19. The parties agree that in the event of any dispute or difference arising between them in connection with this Agreement then :
- 8.19.1. any such dispute or difference shall be referred to conciliation in accordance with the conciliation procedures published by the Royal Institute of the Architects of Ireland in agreement with the Society of Chartered Surveyors and the Construction Industry Federation. If a settlement of the dispute or difference is not reached under the conciliation procedures, either party may refer the dispute or difference to arbitration in accordance with clause 8.19.2.
- 8.19.2. Subject to clause 8.19.1 any such dispute or difference shall be and is hereby referred to arbitration and the final decision of such person as the parties agree or failing agreement a shall be appointed by the Chairman of the Chartered Institute of Arbitrators – Irish Branch. Any such reference shall be governed by the Arbitration Acts 1954-1998 or any Act amending same.

IN WITNESS whereof this Agreement has been entered into the day and year first herein written.

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FIRST SCHEDULE

Subscriptions

Part I – Loan Stock

<i>Name</i>	<i>Amount of A Loan Stock (€)</i>	<i>Amount of B Loan Stock (€)</i>
DDDA	32,808,520	0
Donatex	51,736,513	6,767,089
Mempal Limited	41,641,584	5,446,681
Total	126,186,617	12,213,770

Part II – Total Holdings

<i>Name</i>	<i>Amount of A Loan Stock (€)</i>	<i>Amount of B Loan Stock (€)</i>	<i>Number of A Shares</i>	<i>Number of B Shares</i>	<i>% of Total Ordinary Shares in Issue</i>
DDDA	32,808,520	0	26 Shares		26%
Donatex	51,736,513	6,767,089		41 Shares	41%
Mempal Limited	41,641,584	5,446,681		33 Shares	33%
Total	126,186,617	12,213,770	26	74	100%

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SECOND SCHEDULE

Form of Deed of Adherence

By this Deed of Adherence • of • intending to become a shareholder of Becbay Limited (**Company**) in respect of • [A]/[B]Shares of €• each in the capital of Company (the Shares) [and €[•] in nominal amount of Loan Stock] hereby agrees with Company and each of its shareholders to comply with and to be bound by all the provisions of the Shareholders Agreement dated • between [•] and [•] (the Agreement) (a copy of which has been delivered to it and which has been initialled and attached hereto for identification) in all respects as if it were a party to such Agreement.

[EXECUTION BY ALL SHAREHOLDERS AND NEW PARTIES]

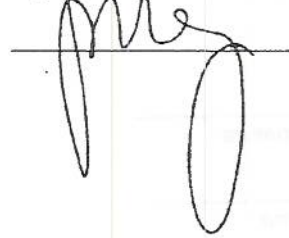
SIGNED ON BEHALF OF
THE DUBLIN DOCKLANDS DEVELOPMENT AUTHORITY
in the presence of


Witness signature

MIDIAM SA KELLY
Witness name

200TH CANAL QUAY, DUBLIN 7
Witness Address

Signature



SIGNED ON BEHALF OF
DONATEX LIMITED
in the presence of

Witness signature

Witness name

Witness Address

Signature

SIGNED ON BEHALF OF
MEMPAL LIMITED
in the presence of

Witness signature

Witness name

Witness Address

Signature

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SIGNED ON BEHALF OF
THE DUBLIN DOCKLANDS DEVELOPMENT AUTHORITY
in the presence of

Signature

Witness signature

Witness name

Witness Address

SIGNED ON BEHALF OF
DONATEX LIMITED
in the presence of

Signature

[Handwritten Signature]

[Handwritten Signature]
Witness signature

WILLIAM SAURELY
Witness name

NORTH WALL QUAY, DUBLIN 1
Witness Address

SIGNED ON BEHALF OF
MEMPAL LIMITED
in the presence of

Signature

Witness signature

Witness name

Witness Address

SIGNED ON BEHALF OF
THE DUBLIN DOCKLANDS DEVELOPMENT AUTHORITY
in the presence of

Signature

Witness signature

Witness name

Witness Address

Signature

SIGNED ON BEHALF OF
DONATEX LIMITED
in the presence of

Witness signature

Witness name

Witness Address

SIGNED ON BEHALF OF
MEMPAL LIMITED
in the presence of

Signature



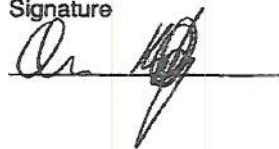
Witness signature

MURIEL SA KELLY

Witness name

NORTH WALL QUAY, DUBLIN 2

Witness Address



Signature

