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DLA Piper Scotland LLP
Solicitors
Collins House
Rutland Square
Edinburgh
EH1 2AA

Dear Sirs

West Riverside, Balloch, West Dunbartonshire

On behalf of and as instructed by our clients, the Landlords, we offer to lease to your clients, the Tenants, the Site or (at the Tenants' request) a Phase or Phases of the Site and that on the following terms and conditions:

1. Definitions and interpretation

In this Offer (including the foregoing preamble):

1.1 Definitions

"1997 Act"	means the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc (Scotland) Act 2006 and the Planning (Scotland) Act 2019;
"2012 Act"	means the Land Registration etc (Scotland) Act 2012;
"2013 Regulations"	means the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013;
"2019 Act"	means the Planning (Scotland) Act 2019;
"Advance Notice"	means an advance notice as defined in Section 56 of the 2012 Act;
"Appeal"	means an appeal against a refusal or a deemed refusal of an application for Planning Permission made by the Tenants to the Scottish Ministers under and in terms of section 47 of the 1997 Act;
"Approved Phasing Arrangement"	

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"Completion (Phase)"		means the Date of Entry (Phase) or, if later, the date when the Premium (Phase) is paid and the Lease (Phase) is entered into in terms of the Missives;
"Completion (Site)"		means the Date of Entry (Site) or, if later, the date when the Premium (Site) is paid and the Lease (Site) is entered into in terms of the Missives;
"Coronavirus"		means the disease known as coronavirus disease (COVID – 19) and the virus known as severe acute respiratory syndrome coronavirus 2 (SARS – COV – 2);
"Coronavirus Event"		means an event or delay caused by or arising from or in relation to compliance with the Coronavirus Regulations which prevents or delays performance of obligations hereunder;
"Coronavirus Regulations"		means any Act of Parliament or Act of the Scottish Parliament and any delegated law made under them and any applicable guidance issued by or on behalf of the UK government or Scottish government to prevent or delay the spread of Coronavirus including the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020, or any subsequent statutory amendment, modification or replacement of them or any regulation or designation under the Coronavirus (Scotland) Act 2020 or the Coronavirus (Scotland) (No.2) Act 2020;
"Conclusion Date"		means unless otherwise specified, the first date on which the Missives create a concluded contract;
"Date of Entry	10(5)(e)	" means the date falling 10 Working Days after the latest of (a)

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"Date of Entry	10(5)(e)	means the date falling 10 Working Days after the latest of	10(5)(e)
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"Date of Entry (Phase)"		means any of Date of Entry	10(5)(e)
		as the context shall apply;	10(5)(e)
"Date of Entry	10(5)(e)	means the date falling 10 Working Days after the latest of	10(5)(e)
			10(5)(e)
"Date of Entry (Site)"		means 10 Working Days after the latest of	10(5)(e)
			10(5)(e)
"Date of Entry	10(5)(e)	means the date falling 10 Working Days after the latest of	10(5)(e)
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"Deed of Conditions"		means the Deed of Conditions registered on 7 September 2001 under Title Number DMB25028;	
"Development"		means the development of the Site as a whole or, where the context so admits, the development of each Development Parcel for a tourist, recreation and leisure development with ancillary infrastructure and landscaping all as more particularly described in the PPIP Application;	
"Development Parcel"		means any one of a	10(5)(e)
	10(5)(e)	within the Site	10(5)(e)
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"Disclosed Documents" that are to be capable of being developed on a Stand Alone basis in accordance with the Approved Phasing Arrangement; means the documents and other set out in Part 9 of the Schedule;

"Disclosures" means 10(5)(e)

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"Duly Executed" means executed in accordance with the requirements of Sections 3 and 7 and Schedule 2 or sections 9(B) and 9(C) of the Requirements of Writing (Scotland) Act 1995, or in such other manner as is acceptable to the Landlords; and "Duly Execute" shall be construed accordingly;

"EIA Regulations" means the Environmental Impact Assessment (Scotland) Regulations 2017;

"EIA Scoping Opinion" means the scoping opinion issued by the Planning Authority in response to the EIA Scoping Opinion Request;

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"EIA Scoping Opinion Request" means a request by the Tenants to the Planning Authority for an opinion in terms of Regulation 17 of the EIA Regulations regarding the scope of the matters arising from the

	Development of the Site as a whole that will need to be subjected to a formal environmental impact assessment;
"EIRs"	means the Environmental Information (Scotland) Regulations 2004;
"Encumbrances"	means encumbrances as set out in Section 9 of the 2012 Act;
"Expert"	means the party defined as such in Part 3 of the Schedule;
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"FOISA"	means the Freedom of Information (Scotland) Act 2002, as amended;
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"Interest"	means interest on the sum in question at 4% per annum above the base rate from time to time of The Royal Bank of Scotland plc from the date that such sum is due for payment or, if there is no such date specified, the date of demand for such sum until such sum is paid;
"Justified"	means at the point in time where the same requires to be assessed, that 10(5)(e)
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"Landlords"	means Scottish Enterprise established under the Enterprise and New Towns (Scotland) Act 1990 having their Registered Office at Floor 4, Atrium Court, 50 Waterloo Street, Glasgow, G2 6HQ;
"Landlords' Bank Account"	means Shepherd and Wedderburn Client Account, 10(5)(e) Bank of Scotland, 33 10(5)(e) Old Broad Street, London, PO Box 1000, BX2 1LB or such other UK clearing bank account as the Landlords' Solicitors nominate by written notice to that effect at least three Working Days prior to the Date of Entry;
"Landlords' Solicitors"	means Shepherd and Wedderburn LLP, 1 West Regent Street, Glasgow, G2 1RW (Ref 10(5)(e) or such other firm as the Landlords shall appoint from time to time on giving written notice to the Tenants;

"Larger Site"		means the subjects on the north west side of Balloch Road, Balloch, being the subjects registered in the Land Register of Scotland under Title Number DMB25028;
"LBTT"		means Land and Buildings Transaction Tax under the Land and Buildings Transaction Tax (Scotland) Act 2013;
"Lease"		means Lease (Site) or in substitution Lease (Phase) as the context shall require;
"Lease Completion Details"		means the information required to be agreed between the Parties to finalise the Lease (Phase) or Lease (Site) prior to respectively the relevant Date of Entry (Phase) or Date of Entry (Site) contained within Part 5 of the Schedule;
"Lease (Phase)"		means a lease of a Phase and set out in Part 1 of the Schedule, subject to agreement on and insertion of the Lease Completion Details;
"Lease (Site)"		means lease of the Site and set out in Part 1 of the Schedule, subject to agreement on and insertion of the Lease Completion Details;
"LLTNPA"		means Loch Lomond & The Trossachs National Park Authority;
"Longstop Date (Landlords' Board Approval)"	10(5)(e)	
"Longstop Date (Tenants' Board Approval)"	10(5)(e)	
"Longstop Date (Title)"		
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"Masterplan"		means the document forming 10(5)(e) f the Schedule;
"MSC (Phase) Approval"		
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"MSC (Phase) Approval Application"		
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"MSC (Phase) Approval Application Submission Longstop Date"		
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"MSC (Phase) Approval Longstop Date"

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"MSC (Whole Site) Approval"

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"MSC (Whole Site) Approval Application"

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"MSC (Whole Site) Approval Application Submission Date" means the date the MSC (Whole Site) Approval Application is submitted to the Planning Authority;

"MSC (Whole Site) Approval Application Submission Longstop Date"

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"MSC (Whole Site) Approval Longstop Date"

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"Minute of Variation"

means the minute of variation of the Deed of Conditions Duly Executed between the Requisite Parties in a form approved by the Landlords (acting reasonably and without undue delay) to the effect that

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"Missives"

means the binding contract constituted by this Offer and all formal letters following on it;

"NPA"	means Loch Lomond and The Trossachs National Park Authority an Authority constituted in terms of the National Parks (Scotland) Act 2000 and the Loch Lomond and The Trossachs National Park Authority Designation, Transitional and Consequential Provisions (Scotland) Order 2002 and having its principal offices at National Park Headquarters, Carrochan, 20 Carrochan Road, Balloch, G83 8EG;	
"Permitted"		10(5)(e)
"Phase"	means an individual phase within the Whole Site in terms of the Approved Phasing Arrangement;	
"Phase Commitment Notice"		10(5)(e)
"Phase Drawdown Notice"		10(5)(e)
"Phase Estimated Abnormal Costs"		10(5)(e)
"Phase Market Value"		10(5)(e)
"Phasing"		10(5)(e)
"Phasing Arrangement"		10(5)(e)
"Phasing Detail"		10(5)(e)

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"Phasing Detail Longstop Date"

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"Plan"

means the three plans forming 10(5)(e) of the Schedule;

"Planning Authority"	means in the context of (i) an application for a Planning Permission, the local planning authority for the district in which the Site is located, being the NPA or (ii) an appeal against a refusal of a Planning Permission or a call-in, the Scottish Ministers;
"Planning Permission"	means where the context so admits, either a PPIp, a MSC (Whole Site) Approval or MSC (Phase) Approval;
"PPIp"	means planning permission in principle for the comprehensive development of the Whole Site in accordance with the Development and incorporating a Phasing Arrangement approved by the Landlords granted in terms of Section 59 of the 1997 Act;
"PPIp Application"	means the application for the PPIp to be submitted by the Tenants to the Planning Authority in terms of Regulation 10 of the 2013 Regulations;
"PPIp Application Longstop Date"	means the date by which the Tenants are required to have the PPIp Application submitted to the Planning Authority for determination, 10(5)(e)
"PPIp Application Submission Date"	10(5)(e)
"PPIp Longstop Date"	10(5)(e)

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"Premium 10(5)(e) "	10(5)(e)
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"Premium 10(5)(e)	10(5)(e)
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"Proposed Development"	means a development centred on an aparthotel, budget hostel, 4-star lodges, waterpark and spa facilities, indoor visitor attractions, a monorail, restaurants and microbrewery visitor attraction;
"RACBBL"	means the register of applications by community bodies to buy land held by the Keeper of the Registers of Scotland;
"RCIL"	means the register of community interests in land held by the Keeper of the Registers of Scotland;
"Reasonably"	means in the context of any consideration on the part of the Landlords as regards a written request from the Tenants in terms of Clause 22.8 or in terms of the PPiP Longstop Date definition in either case for an extension to such of the Respective Longstop Dates referred to in Clause 22.8 or to the PPiP Longstop Date as appropriate, that the Landlords will take fair and full cognisance of the factors that have led to delays in the planning process and over which the Tenants or its agents would not be able to exercise any control, including without prejudice to the generality of the foregoing, the impact of Coronavirus and the response times of statutory consultees;
"Relevant Phase"	means the Phase that is the subject of a Phase Drawdown Notice;
"Requisite Parties"	means the parties who depending on title and interest and the subject matter thereof require to execute the Minute of Variation;
"Respective Longstop Date"	means each of Longstop Date (Title), PPiP Application Longstop Date , Longstop Date (Landlords' Board Approval), Longstop Date (Tenants' Board Approval), PPiP Longstop Date, EIA Scoping Opinion Longstop Date, MSC (Whole Site) Approval Application Submission Longstop Date, MSC (Whole

Site) Approval Longstop Date , MSC (Phase) Approval Application Submission Longstop Date, MSC (Phase) Approval Longstop Date, Longstop Date (Minute of Variation), Phasing Detail Longstop Date , Third Party Issues Interim Longstop Date and Third Party Issues Final Longstop Date as the context shall require;

"Retained Areas"

means those areas of land within the Site which are not the subject of any Phase Drawdown Notice and which following the development of the Phase or Phases previously drawn down by the Tenants remain undeveloped and in the ownership of the Landlords;

"Satisfactory"

means in relation to a Planning Permission a decision notice which is free from any planning condition made under section 37 of the 1997 Act and/or any planning obligation made under section 75 of the 1997 Act which in either case (i) 10(5)(e)

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and (ii) 10(5)(e)

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"Schedule"

means the schedule in 10 parts annexed and signed as relative to this Offer;

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"Section 27A Notice"

means a notice of initiation of commencement of development in respect of either the Whole Site or a Relevant Phase;

"Section 59 Direction"

means a direction by the Planning Authority on the application of the Tenants under and in terms of Section 59 of the 1997 Act (and, in the event that Section 32 of the 2019 Act (amending the provisions of Section 41 of the 1997 Act) is in force at the date when the PPIP Application is submitted) extending the period

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"Section 75 Agreement"

means an agreement among the Planning Authority, the Landlords and the Tenants made under and in terms of section 75 of the 1997 Act;

"Sectional
Compatible"

Completion

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10(5)(e) Whilst not exhaustive each of the following is regarded as a single unit of commercial space for the purposes of this definition: (1) aparthotel, (2) budget hostel, (3) any number of lodges with collectively count as a single unit of commercial space, (4) waterpark and spa facilities together as a single unit of commercial space, (5) restaurant and (6) microbrewery visitor attraction;

"Site" means the subjects at West Riverside, Balloch, West Dunbartonshire as shown outlined in blue on the Site Plan, which subjects form part and portion of the Larger Site;

"Site Estimated Abnormal Costs"

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"Site Market Value"

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"Site Plan" means the plan called "Boundary" forming Part 0(5)(e) of the Schedule;

"Stand Alone"

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"Tenants" means Flamingo Land Limited incorporated under the Companies Acts (Registered Number SC052543) and having its registered office at The Cross, Uddingston G71 7ES;

"Tenants' Bank" means the client account of the Tenants' Solicitors;

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to the Landlords on each occasion that the same is required in the Missives providing comfort at the relevant time the same is needed regarding the financial status of the Tenants and save in relation to when the same is required in clause 5.1.1, such letter will consider the scale of the development of the

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"Tenants' Solicitors"	means DLA Piper Scotland LLP, Collins House, Rutland Square, Edinburgh, EH1 2AA;	
"Third Party Issues Final Longstop Date"		10(5)(e)
"Third Party Issues Interim Longstop Date"		10(5)(e)
"Third Party Rights"		10(5)(e)
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"VAT"	means Value Added Tax as provided for in the VAT Act and any tax similar or equivalent to Value Added Tax or performing a similar fiscal function;	
"VAT Act"	means the Value Added Tax Act 1994;	
"VAT Group"	means two or more bodies corporate registered as a group for VAT purposes under Section 43 of the VAT Act;	
"Whole Site"	means the entirety of the Site comprising all the Development Parcels;	
"Whole Site Commitment Notice"	means a written notice served on the Landlords by the Tenants confirming that the Tenants wish to commit to draw down the Whole Site subject to the Tenants acquiring the MSC (Whole Site) Approval;	
"Woodbank Site"	means the area of land located near to the Site which is owned by the Tenants which the Tenants have the sole right to include or exclude from the PPIP Application being the areas of land edged red on Plan 2D;	
"Working Day"	means any day on which clearing banks in Edinburgh, Glasgow and London are open for normal business.	

2. Premium

2.1 Payment

2.1.1 The Premium (Site) or (as appropriate) the relevant Premium (Phase) will be paid plus VAT thereon payable in terms of Clause 3 by the Tenants respectively on the Date of Entry (Site) or the corresponding Date of Entry (Phase) (as appropriate) by instantaneous bank transfer

of cleared funds from the Tenants' Bank to the Landlords' Bank Account in exchange respectively for the Lease (Site) or the relevant Lease (Phase) (as appropriate) and other items to be delivered by the Landlords referred to in clause 10.

2.1.2 A payment not made in accordance with clause 2.1.1 may be refused.

2.1.3 On the issue of the MSC (Whole Site) Approval or any MSC (Phase) Approval or following the exercise of the option by the Landlords in terms of clause 2.1.5 below, the parties will use their respective reasonable endeavours to agree the Site Market Value or the relevant Phase Market Value as soon as reasonably practicable thereafter and failing agreement of the same within one month of the date of the relevant approval or if relevant the exercise of the option in terms of Clause 2.1.5 below, the relevant market value shall be subject to determination by an independent third party valuer agreed or failing which appointed, on the application of either party, by the Chairman or other senior office holder of the RICS (Scottish Branch). The third party's decision shall be final and binding including as to costs of the reference to the RICS and the costs of the third party and failing any determination on costs the same shall be split equally.

2.1.4 The terms of Part 3 of the Schedule shall be binding on the parties to the Missives.

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2.2 **Interest**

If the Premium (Site) or the relevant Premium (Phase) (as appropriate) and any VAT which the Tenants have agreed in terms of clause 3 to pay the Landlords on the Date of Entry (Site) or any Date of Entry (Phase) (as appropriate) or any part of it is not paid to the Landlords on the Date of Entry (Site) or the relevant Date of Entry (Phase) (as appropriate) then, notwithstanding consignment or that the Tenants have not taken entry, the Tenants will pay to the Landlords Interest on the outstanding money.

2.3 **Cancellation of sale**

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2.4 **Receipt of money**

For the purposes of this clause 2, money will not be deemed paid to the Landlords until such time as same day credit on it is available to the holder of the Landlords' Bank Account in accordance with normal banking procedure.

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2.5 Suspension

The provisions of clause 2.2 will not apply for any period of time during which the delay in payment by the Tenants is due to any failure or breach by or on behalf of the Landlords to implement its obligations or duties under the Missives on time and such period of time (if any) shall increase the 10 Working Day period in Clause 2.3 above.

3. VAT

3.1 The Landlords confirm to the Tenants that:

- 3.1.1 it (or the representative member of its VAT Group) is registered for VAT;
- 3.1.2 it (or a person of which the Landlords are, and will at Completion (Site) or Completion (Phase) (as appropriate) be, a relevant associate for the purposes of the VAT Act, Schedule 10, paragraph 2) has exercised pursuant to the VAT Act, Schedule 10, paragraph 2 (or been treated pursuant to the VAT Act, Schedule 10, paragraph 21 as having exercised) an option to tax in respect of the Site or the Phase (as appropriate) and has duly notified that option to HMRC to the extent required in order to make it effective; and
- 3.1.3 it (or such other person referred to in clause 3.1.2) has not revoked, and will not revoke before Completion (Site) or Completion (Phase) (as appropriate) , its option and, where such option is treated as having been exercised as a result of a real estate election having been made, will not prior to Completion (Site) or Completion (Phase) (as appropriate) take any action, or omit to take any action, by virtue of which HMRC could revoke such real estate election.

The Landlords will exhibit evidence to the Tenants, as soon as possible and in any event prior to Completion (Site) or Completion (Phase) (as appropriate) of the matters stated in clauses 3.1.1 and 3.1.2, which will include, if received by the Landlords prior to Completion (Site) or Completion (Phase) (as appropriate), an acknowledgement by HMRC of the notification of such option to tax or, where the option to tax is treated as having been exercised in respect of the Site or Phase (as appropriate) by virtue of the VAT Act, Schedule 10, paragraph 21, an acknowledgement by HMRC of the real estate election made.

3.2 VAT Invoice

VAT will be chargeable on the Premium (Site) or Premium (Phase) (as appropriate) and the Tenants will pay VAT to the Landlords on the Date of Entry (Site) or Date of Entry (Phase) (as appropriate) in accordance with clause 2.1 in exchange for a valid VAT invoice addressed to the Tenants.

4. Suspensive Conditions and

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5. Phases/Entry/Duration/Rent

5.1 The Tenants shall submit to the Landlords

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5.1.2 prior to the Date of Entry (Phase) or Date of Entry (Site);

the Tenants' Bank Comfort Letter dated no more than 3 months prior to the relevant dates in 5.1.1 or 5.1.2 above demonstrating to the Landlords' reasonable satisfaction that in 10(5)(e)

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5.2 In the event that the Tenants have served a Whole Site Commitment Notice timeously in accordance with Clause 22.5.1 confirming that the Tenants intend to take a Lease of the Whole Site, the following shall apply:

5.2.1 Entry and vacant possession of the Site shall be given to the Tenants on the Date of Entry (Site).

5.3 In the event that the Tenants have served a Phase Commitment Notice timeously in accordance with Clause 22.5.1 confirming that the Tenants intend to take Leases of a Phase or Phases, the following shall apply:

5.3.1 Entry and vacant possession of the First Phase shall be given to the Tenants on the Date of Entry 10(5)(e)

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5.4 In the event that the Tenants have served a Phase Commitment Notice which commits the Tenants to take Leases of a Phase or Phases and the Tenants have taken a lease of the First Phase, the Tenants shall be entitled 10(5)(e) by intimation in writing to the Landlords of the relevant Phase Drawdown Notice to take a Lease of the Second Phase, the Third Phase and the Fourth Phase in that order and , 10(5)(e)

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the following shall apply:

5.4.1 Entry and vacant possession of the Second Phase shall be given to the Tenants on the Date of Entry 10(5)(e)

5.4.2 Entry and vacant possession of the Third Phase shall be given to the Tenants on the Date of Entry 10(5)(e) ; and

5.4.3 Entry and vacant possession of the Fourth Phase shall be given to the Tenants on the Date of Entry 10(5)(e)

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6. Each Lease

Each Lease to be entered into between the Landlords and the Tenants will endure for a period of 10(5)(e) t an annual rent of 10(5)(e) nd be in the form of the draft lease contained in Part 1 of the Schedule, which draft sets out the whole remaining terms and conditions of the Lease and will be deemed incorporated into this Offer mutatis mutandis, but incorporating such other additions and modifications as may be necessary to reflect the terms of this Offer and the Missives and the drafting notes in the draft lease and in particular the provisions of Clause 5.5 above and the Lease Completion Details for the Lease in question.

7. Advance Notices

7.1 The Landlords will apply to the Keeper for an Advance Notice for each Lease, in the form adjusted with the Tenants, to be entered on the application record for the larger subjects owned by the Landlords of which the Site forms a part no earlier than 5 Working Days prior to the Date of Entry (Site) and Date of Entry (Phase) (as appropriate). The cost of the Advance Notice for each Lease will be met by the Landlords.

7.2 The Landlords consent to the Tenants applying to the Keeper for Advance Notices for any deeds which the Tenants intend to grant in relation to the Site and the Phase (as appropriate). The cost of any Advance Notices which the Tenants apply for will be met by the Tenants.

7.3

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7.4 If settlement is likely to occur after the Date of Entry (Site) or Date of Entry (Phase) (as appropriate), the Landlords, if requested to do so by the Tenants, will apply for a further Advance Notice for each Lease, in the form adjusted with the Tenants, and the cost of any additional Advance Notices will be met:

7.4.1 by the Landlords, if the delay in settlement is due to any failure or breach by or on behalf of the Landlords to implement their obligations under the Missives on time; or

7.4.2 by the Tenants, if the delay in settlement is due to any failure or breach by or on behalf of the Tenants to implement their obligations under the Missives on time.

7.5 The Landlords' Solicitors will not provide any letter of obligation or undertaking to clear the records of any deed, decree or diligence.

8. Completion of Lease

8.1 The Tenants will ensure that each Lease is Duly Executed by the Tenants, and that a certified copy of the Duly Executed Lease is returned to the Landlords' Solicitors ^{10(5)(e)} after each Completion (Site) or Completion (Phase), together with evidence of the valid execution of the Lease by the Tenants.

8.2 If the transaction contemplated by the Missives is notifiable for LBTT purposes, the Tenants will submit to Revenue Scotland an LBTT Return.

8.3 Within 7 days after receipt by the Tenants of the electronic submission receipt issued by Revenue Scotland, the Tenants will:-

8.3.1 submit each Lease to the Books of Council and Session for registration for preservation and execution and will obtain 3 extracts of it, and will deliver 2 of the extracts to the Landlords' Solicitor for the use of the Landlords within 7 days of receipt of the extracts; and

8.3.2 be responsible for dealing with registration of each Lease in the Land Register and will deliver to the Landlords (i) a copy of the Keeper's acknowledgement of receipt showing the Title Number to be allocated to the Title Sheet for the Tenants' interest within 14 days of receipt of the same and (ii) within 7 days after receipt by the Tenants of a pdf of the Title Sheet in respect of that interest, a copy of the pdf of the Title Sheet, with a colour copy of the Title Plan(s).

9. Tenants' obligations

Subject to the foregoing provisions of this Offer, if for any reason a Lease is not Duly Executed by Completion (Site) or Completion (Phase) (as appropriate), the Landlords and the Tenants agree to be bound by the whole obligations and provisions specified in such Lease during the period from and after Completion (Site) or Completion (Phase) (as appropriate).

10. Settlement

10.1 On the Date of Entry (Site) the Landlords will deliver to the Tenants:

10.1.1 the Lease (Site), Duly Executed by the Landlords;

- 10.1.2 a legal report brought down to a date as near as practicable to the Date of Entry (Site) which report will show:
 - (i) no entries adverse to the Landlords' interest in the Site;
 - (ii) the Advance Notice for the Lease (Site); and
 - (iii) no other Advance Notices other than those submitted by the Tenants and those disclosed to and accepted by the Tenants in writing prior to the Date of Entry (Site);
- 10.1.3 a search in the RCIL and the RACBBL brought down as near as practicable to Completion (Site) showing nothing prejudicial to the ability of the Landlords to grant the Lease (Site);
- 10.1.4 a letter of consent to the grant of the Lease (Site) from any heritable creditor of the Landlords holding a heritable security over the Site and/or if applicable, a letter of non-crystallisation from the holder of any floating charge affecting the Site;
- 10.1.5 valid VAT invoice or invoices addressed to the Tenants in respect of the VAT due on the Premium (Site); and
- 10.1.6 a coal mining report and property enquiry certificate showing no entries adverse to the Proposed Development on the Site;
- 10.2 On any Date of Entry (Phase) the Landlords will deliver to the Tenants:
 - 10.2.1 the Lease (Phase), Duly Executed by the Landlords;
 - 10.2.2 a legal report brought down to a date as near as practicable to the Date of Entry (Phase) which report will show:
 - (i) no entries adverse to the Landlords' interest in the Phase;
 - (ii) the Advance Notice for the Lease (Phase); and
 - (iii) no other Advance Notices other than those submitted by the Tenants and those disclosed to and accepted by the Tenants in writing prior to the Date of Entry (Phase);
 - 10.2.3 a search in the RCIL and the RACBBL brought down as near as practicable to Completion (Phase) showing nothing prejudicial to the ability of the Landlords to grant the Lease (Phase);
 - 10.2.4 a letter of consent to the grant of the Lease (Phase) from any heritable creditor of the Landlords holding a heritable security over the Phase and/or if applicable, a letter of non-crystallisation from the holder of any floating charge affecting the Phase;
 - 10.2.5 valid VAT invoice or invoices addressed to the Tenants in respect of the VAT due on the Premium (Phase);
 - 10.2.6 a coal mining report and property enquiry certificate showing no entries adverse to the Proposed Development or the relevant Phase subject to the Lease (Phase); and
- 10.3 On the Date of Entry ^{10(5)(e)} and only where the requirement for the same has not been waived in writing by both the Parties, a registered extract of the Minute of Variation Duly Executed by the Requisite Parties together with evidence of consent from any heritable creditors to any of the interests thereto will be delivered by the Landlords to the Tenants.

11. Post completion

Provided that each Lease is presented for registration prior to the date of expiry of the Advance Notice registered in relation to such Lease, the updated or newly created Title Sheet for such Lease will contain no exclusion or limitation of warranty in terms of Section 75 of the 2012 Act and will disclose no entry, deed or diligence

(including any charging order under the Buildings (Recovery of Expenses) (Scotland) Act 2014 or any notice of potential liability for costs registered under the Tenements (Scotland) Act 2004 or the Title Conditions (Scotland) Act 2003) prejudicial to the interest of the Tenants other than such as are created by or against the Tenants or have been disclosed to, and accepted in writing by, the Tenants prior to the relevant Date of Entry (Site) or Date of Entry (Phase) (referable to the Lease in question).

12. Environmental

12.1 Definitions

In this Clause 12:

"Contaminated Land Regime"	means the contaminated land regime under Part 2A of the Environmental Protection Act 1990 (as amended from time to time) and any statutory instrument, circular or guidance issued under it;
"Environment"	means any and all organisms (including humans), ecosystems, natural or man-made buildings or structures, and the following media: <ul style="list-style-type: none"> (a) air (including air within buildings or structures, whether above or below ground); (b) water (including surface and ground water and water in wells, boreholes, pipes, sewers and drains); and (c) land (including surface land and sub-surface strata and any land under seabeds or rivers, wetlands or flood plains);
"Environmental Authority"	means any person or legal entity (whether statutory or non-statutory or governmental or non-governmental) having regulatory authority under the Contaminated Land Regime; and
"Hazardous Substances"	means any natural or artificial substance (whether in solid or liquid form or in the form of a gas or vapour and whether alone or in combination with any other substance) capable of causing harm to the Environment and/or harm to the health of living organisms or other interference with the ecological systems of which they form part and/or harm to property and/or in the case of humans, offence caused to any sense.

12.2 Agreement as to Environmental Liabilities

The Tenants and the Landlords agree that from Completion (Site) or Completion (Phase) as appropriate:

- 12.2.1 as between the Tenants and the Landlords, liability for any notice or requirement of any Environmental Authority made pursuant to the Contaminated Land Regime in respect of the Whole Site or where relevant the Phase in question or any Hazardous Substances attributable to the Whole Site or where relevant the Phase in question, will rest with the Tenants to the exclusion of the Landlords; and
- 12.2.2 if any Environmental Authority wishes to recover costs incurred by it in carrying out any investigation, assessment, monitoring, removal, remedial or risk mitigation works under the Contaminated Land Regime in respect of the Whole Site or where relevant the Phase in question or any Hazardous Substances attributable to the Whole Site or where relevant the

Phase in question from either or both of the Tenants and the Landlords then, as between the Tenants and the Landlords, the sole responsibility for the payment of such costs will rest with the Tenants to the exclusion of the Landlords.

The agreements outlined under Clauses 12.2.1 and 12.2.2 are made with the intention that any Environmental Authority serving any notice or seeking to recover any costs should give effect to the agreements pursuant to the Contaminated Land Regime.

The Tenants and the Landlords agree that the appropriate Environmental Authority may be notified in writing of the provisions of Clause 12 if required to give effect to the agreements outlined under Clauses 12.2.1 and 12.2.2.

12.3 **Sold with information**

12.3.1 The Tenants acknowledge to the Landlords that:

- (i) It has carried out its own investigations of the Property for the purposes of ascertaining whether, and if so the extent to which, Hazardous Substances are present in, on, under or over the Whole Site;
- (ii) Such information gathered through those investigations is sufficient to make the Tenants aware of the presence in, on, under or over the Whole Site of any Hazardous Substances referred to in the reports;
- (iii) It relies at its own risk on the contents of any report, plan and other written material and information either disclosed to it or orally communicated to it by or on behalf of the Landlords both as to the condition of the Whole Site and as to the nature and effect of any remedial works which may have been carried out and no warranty is given or representation made by or on behalf of the Landlords in this respect; and
- (iv) It has satisfied itself as to the condition of the Whole Site.

12.3.2 Both parties agree that:

- (i) the Tenants are a large commercial organisation and the Landlords are a large public body;
- (ii) The Tenants have been given permission and adequate opportunity to carry out its own investigations of the Whole Site for the purpose of ascertaining whether, and if so the extent to which, Hazardous Substances are present in, on, under or over the Whole Site;
- (iii) The transfer of the Whole Site or any Phase pursuant to the Missives is an open market arm's length transaction; and
- (iv) The Landlords will not retain any occupational interest in respectively the Whole Site or the relevant Phase following Completion (Site) or Completion (Phase) as applicable.

12.3.3 The acknowledgements in this clause 12.3 are made in order to exclude the Landlords from liability under the Contaminated Land Regime so that the Landlords are not an appropriate person, as defined in it.

13. Access

Access to the Site (to the extent not subject to Third Party Rights) will be given to the Tenants, its surveyors and other professional advisers with machinery, plant and equipment for all reasonable purposes (including examining the Site and intrusive site investigation and ground survey work (all to the extent not subject to a

Third Party Right)) on their giving reasonable notice and subject to them making good any damage caused and subject to the Tenants entering into a licence regulating such works with the Landlords in terms to be agreed between the parties (acting reasonably)); provided that the Tenants will ensure that in doing so they:

- 13.1 comply with the Landlords' reasonable requirements;
- 13.2 exercise reasonable restraint and make good all loss, injury and damage caused to the Site ;
- 13.3 share the results of the same with the Landlords for the purposes of 10(5)(e) and 10(5)(e)
- 13.4 complete such works within 10(5)(e) the Missives.

In the event the Landlords wish to be able to formally rely on the results of any such intrusive site investigation and ground survey, the Landlords shall meet any consequential additional cost to the providers of such results.

14. Frustration

Unless the parties otherwise agree in writing the Missives will remain in full force and effect notwithstanding any damage to or destruction of the Site which may occur.

15. Title

15.1 Encumbrances

So far as the Landlords are aware there are no Encumbrances affecting the Site other than as referred to in the Disclosed Documents or Disclosures. The Tenants have examined the Disclosed Documents and accept that they have satisfied themselves on all matters disclosed in them and on the validity and marketability of the Seller's title to the Site 10(5)(e)

10(5)(e)

15.2 Minerals

The minerals are included in the Leases to the extent to which the Landlords have any right to them.

15.3 Outstanding Disputes

Save as set out in the Disclosures, during the period of the Landlords' ownership of the Site, there have been no disputes which remain outstanding with neighbouring proprietors or third parties about items common to the Site and adjacent premises, access to or from the Site, the title to the Site or similar matters.

15.4 Possession

Save as set out in the Disclosures, the Landlords confirm that they are currently in possession of the Site and have been in possession of the Site openly, peaceably and without judicial interruption for a continuous period of at least one year.

15.5 Community Interests

The provisions of 10(5)(e) of the Schedule will apply.

15.6 Public Access Requirements and Section 32 Agreement

- 15.6.1 The Landlords will be entitled to register a Section 32 Agreement (In terms of Section 32 of the Enterprise and New Towns (Scotland) Act 1990) against the Site or any part or parts

thereof from time to time either before or after Completion (Site) or any Completion (Phase) to provide that: In all time coming the Tenants and their successors and their respective tenants, occupiers and those for whom they are respectively responsible shall allow (and shall do nothing to prevent) general public access to (A) all external areas of the Site on an unrestricted basis and in particular without prejudice to the foregoing generality (1) there shall be no boundaries which prevent or limit such public access; and (2) the John Muir Way and national cycle network routes through the Site (as amended as permitted below) shall be maintained on an unrestricted basis (subject to such alterations to the routes thereof as are permitted in accordance with all necessary consents which the Tenants will require to secure in advance of any amendment including the consent of the landowners and tenants where such varied route is located outwith the Site); and (B) all buildings and facilities on the Site from time to time, which shall be open to the general public for use/access along with residents and/or holidaymakers using other facilities on the Site (save in relation to reasonable areas allocated for staff use only and/or utility infrastructure) (all collectively to be known as the "Public Access Requirements"); The Landlords' consent is required (not to be unreasonably withheld or delayed) where the Tenants can reasonably justify a departure from the general requirement for "(B)" above in the case of a specific building or specific facility which may be reasonably considered to be worthy of exception from the general requirement which general requirement will continue to apply across the remainder of the Site.

- 15.6.2 The Landlords are entitled to reserve an equivalent reservation in clause 15.6.1 above in any lease granted in terms of the Missives.
- 15.6.3 The Tenants shall procure that any planning consent sought by them or on their behalf over the Site or any part thereof shall comply with the Public Access Requirements.

15.7 Qualifications to Vacant Possession

The grant of vacant possession in any Lease (and consequently in the Title Transfer Provisions defined therein) shall be subject to the following and the grant of warrandice in any Leases (and consequently in the Title Transfer Provisions defined therein) shall be excluded, all where relevant in relation to the land included in the relevant Lease:

- 15.7.1 Any subsisting Third Party Rights applicable to the relevant Lease (the Landlords being required to serve notice to terminate such Third Party Rights to the extent (1) it is competent to do so in accordance with termination provisions contained in the relevant document and recognising that such Third Party Rights may not be capable of termination prior to the relevant date of entry and (2) is requested in writing by the Tenants giving the Landlords at least 10 Working Days' notice prior to the date on which the Tenants wish the Landlords to serve notice to terminate) ;
- 15.7.2 The electricity substation leases noted in the Disclosed Documents list;
- 15.7.3 All matters referred to in the Disclosures;

15.8 10(5)(e)

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10(5)(e)

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10(5)(e)

15.9 Co-Operation

The Landlords and the Tenants shall use their respective reasonable endeavours to co-operate with each other (and relevant third parties in the case of signage) in respect of (a) directional signage in and around the Site; and (b) the location of future services and infrastructure across the Site in a manner befitting of a prudent developer.

15.10 Scottish Enterprise as Owner of Land in the Vicinity

The Tenants recognise that the Landlords own and lease out various areas which adjoin or are in the vicinity of the Site and in order to continue to proactively manage its assets at this location the Landlords may undertake development or be asked to consent to development and/or other activities from time to time from third parties who may require access or rights on a temporary basis over unbuilt upon parts of the Site for the purposes of construction works on areas adjoining the Site . The Tenants will act reasonably and without delay in relation to all requests made by the Landlords for themselves or for third parties/potential third parties from time to time it being accepted that consent to any such requests may be subject to such reasonable requirements in relation to safe working as the Tenants may require.

15.11 Disclosures

In relation to the matters referred to in the Disclosures (numbers 1 and 2), the Tenants shall act reasonably in any future dealings with the parties in possession following the acquisition of any Lease in terms hereof. The Landlords will not be required to take any action in relation to the matters disclosed in the Disclosures (numbers 1 and 2) either before or after the grant of any Lease.

15.12

10(5)(e)

15.13 Third Party Rights

The Landlords shall be entitled to grant rights, licences and leases to third parties over the Site or any parts so far as the same has not been the subject of a Lease granted in terms hereof with the consent of the Tenants, such consent not to be unreasonably withheld or delayed.

16. Missives Personal

16.1 In this Clause 16 the reference to the "Tenants" shall refer to the Tenants as defined in Clause 1.1 and in substitution therefor any permitted successor in title to their interest in the Missives from time to time pursuant to sub paragraph (i) of the definition of Permitted Disposal) and the following expressions shall have the following meanings:

"Change of Control"

means any change in Control in relation to the Tenants, and any acquisition (whether by purchase, transfer, renunciation or otherwise) by any person (an "Acquirer") of any interest in any shares in, or other rights or entitlements in relation to, the

Tenants or any party with any right or interest in or in respect of the Tenants if, upon completion of that acquisition, the Acquirer, together with any Connected Person, would hold, or be able to control or influence directly or indirectly the decision-making in respect of, 50 per cent or more of the total voting rights conferred by all of the shares in the capital of the Tenants (provided that a bona fide internal reorganisation of the Tenants shall not be deemed to be a Change of Control), or the right directly or indirectly to appoint and/or dismiss, or otherwise influence or control the activities or voting of, a majority of the directors of the Tenants or of any director or directors having voting rights which may enable them to control or direct the affairs of the Tenants, and includes the entry into any obligation for such Change of Control;

- "Connected Person" means any person or corporation who is connected or associated with the relevant person or corporation in any way and includes (without limitation) the relationships specified in sections 252 to 255 of the Companies Act 2006;
- "Control" shall be interpreted as having the meanings given in both section 450 and section 1124 of the Corporation Tax Act 2010 and the words "Controlled" or "Controlled by" shall be construed accordingly;
- "Permitted Disposal" means:
- (i) any transfer by the Tenants of their interest under these Missives; or
 - (ii) any transaction giving rise to a Change of Control, to or in favour of any person which, directly or indirectly, has Control over, or is Controlled by, the Tenants or which is Controlled by the same person(s) as has ultimate control over the Tenants;
- "person" includes natural persons, companies, bodies corporate, unincorporated associations, trusts and partnerships (in each case wherever the same shall be resident, established or incorporated and whether or not having separate legal personality);

- 16.2 The Tenants will not be entitled to assign, absolutely or in security, or otherwise part with or deal in any way with the rights conferred on them by the Missives (other than pursuant to a Permitted Disposal or as permitted in terms of each Lease once such Leases have come into existence). Landlords' consent (not to be unreasonably withheld or delayed) will be required in advance in respect of any Change of Control other than pursuant to a Permitted Disposal.. The Tenants confirm they are at the date of conclusion of the Missives directly Controlled by Flamingo Land Resorts Limited and indirectly controlled by Gordon Stewart Gibb.
- 16.3 Save in respect of a statutory transfer or reorganisation or in respect of a transfer to an entity wholly owned by the Landlords, the Landlords will not be entitled to assign, absolutely or in security, or otherwise part with or deal in any way with the rights conferred on them by the Missives.

17. 10(5)(e)

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10(5)(e)

19. Consideration of reasonable tenant revisals

The Tenants shall act reasonably in considering any reasonable tenant and/or occupier revisals to the obligations the Landlords are to impose in negotiation the Landlords may have to give effect to the terms of Clauses 17 and 18.

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10(5)(e)

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21. Freedom of Information

- 21.1 All information submitted to the Landlords may need to be disclosed and/or published by the Landlords. Without prejudice to the foregoing generality, the Landlords may disclose information in compliance with FOISA, the EIRs (a "Request for Information"), or any other law, or, as a consequence of judicial order, or order by any court or tribunal with the authority to order disclosure. Further, the Landlords may also disclose all information submitted to them to the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland, in right of the Scottish Administration or the United Kingdom, and their servants or agents. When disclosing any such information, it is recognised and agreed by both parties that the Landlords shall if they see fit disclose such information but are unable to impose any restriction upon the information that it provides. Insofar as the procedure outlined in Clause 21.2 is followed in relation to any Request for Information, all such disclosures by the Landlords shall not be treated as a breach of this Agreement
- 21.2 Subject to Clause 21.1, where the Landlords receive a Request for Information which relates to any information provided by the Tenants (The "Tenants Information"), the parties shall comply with the procedure set out in paragraphs 21.2.1 to 21.2.5:
- 21.2.1 subject to Clause 21.2.4 the Landlords shall, before making any disclosure of the Tenants Information and as soon as reasonably practicable after receiving a written request pursuant to FOISA or the EIRs, notify the Tenants of the receipt of such request and of the nature and extent of the information covered by the request;
- 21.2.2 following notification under Clause 21.2.1 the Tenants may make representations in writing to the Landlords as to whether and on what basis the Tenants Information is covered by any exemption in FOISA or the EIRs and should not therefore be disclosed, including where relevant any representations as to the balance of the public interest in disclosure and non-disclosure. Such representations must be provided to the Landlords no later than five days following the notification under Clause 21.2.1 and any representations received after this time may not be taken into account by the Landlords;
- 21.2.3 the Landlords shall reasonably consider any representations made by the Tenants under Clause 21.2.2 before reaching a decision on whether they shall disclose the Tenants Information. However, the parties acknowledge that in all cases it is for the Landlords (having regard to any codes of practice issued by the Scottish Information Commissioner or the Scottish Ministers respectively) to determine whether they are obliged to disclose the requested Information under FOISA or the EIRs including where the public interest lies in relation to disclosure;
- 21.2.4 notwithstanding Clause 21.2.1, the Landlords do not require to notify the Tenants under Clause 21.2.1 where the Landlords have already decided that they do not intend to disclose the Tenants Information because either (i) FOISA or the EIRs do not apply to the request, or (ii) an exemption under FOISA or the EIRs can be applied to the Tenants Information with the outcome that disclosure is not required, provided that should the Landlords determine at a later date that FOISA or the EIRs do apply to the Tenants Information, the process set out in this Clause 21.2 shall be applied or (iii) such Tenants' Information is publicly available; and

21.2.5 If the Landlords take a decision to disclose the Tenants Information, they shall notify the Tenants of this decision not less than two business days in advance of the disclosure being made.

21.3 The provisions of this Clause 21 (Freedom of Information) shall survive the Conclusion Date of the Missives and any expiry or termination of the Missives.

22. Planning

22.1 10(5)(e)

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22.2 10(5)(e)

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23. Confidentiality

- 23.1 Subject to Clauses 20 and 22.2, the Landlords and the Tenants will not disclose details of the Missives except:
- 23.1.1 with the reasonable consent of the other party;
 - 23.1.2 to the Tenants' and the Landlords' respective agents and professional advisers
 - 23.1.3 to the Tenants' bankers or other providers of finance (and their professional advisers)
 - 23.1.4 where required by law; or
 - 23.1.5 where required to comply with the requirements of the Stock Exchange or any other regulatory or government authority.
- 23.2 All information submitted to the Landlords may need to be disclosed and/or published by the Landlords. Without prejudice to the foregoing generality and particularly the provisions of Clause 21 above, the Landlords may disclose information in compliance with FOISA, the EIRs or any other law, or, as a consequence of judicial order, or order by any court or tribunal with the authority to order disclosure. Further, the Landlords may also disclose all information submitted to them to the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland, in right of the Scottish Administration or the United Kingdom, and their servants or agents. When disclosing any such information, it is recognised and agreed by both parties that the Landlords shall if they see fit disclose such information but are unable to impose any restriction upon the information that it provides. Insofar as the procedure outlined in Clause 21.2 is followed in relation to any Request for Information, all such disclosure by the Landlords shall not be treated as a breach of this Agreement
- 23.3 In this clause 23 "confidential information" means all confidential or proprietary information relating to the business, operations, affairs, customers, clients, suppliers, know-how, technical information, designs, trade secrets, plans or intentions of the disclosing party.
- 23.4 Subject to Clause 23.2, both parties shall:
- 23.4.1 treat and keep all confidential information belonging to the other party as confidential and safeguard it accordingly; and
 - 23.4.2 not disclose any confidential information belonging to the other party to any other person without the prior written consent of the other party, or except to such persons and to such extent as may be necessary for the performance of the Missives or except where disclosure is otherwise expressly permitted by the provisions of the Missives.
- 23.5 Subject to Clause 23.2, the Landlords shall take all reasonable precautions to ensure that all confidential information obtained from the Tenants under or in connection with the Missives:
- 23.5.1 is given only to such of the Landlords' personnel, associates, insurers, insurance brokers, sureties, subcontractors, suppliers and/or professional advisors in connection with the Missives as is strictly necessary for or in connection with the, preparation for and exercise by the Landlords of their rights and carrying out by the Landlords of their obligations under the Missives; and

- 23.5.2 is treated as confidential and not disclosed (without prior approval) or used by any such contractor's personnel, associates, insurers, insurance brokers, sureties, subcontractors, suppliers and/or professional advisors otherwise than for such purposes.
- 23.6 Subject to Clause 23.2, the Landlords further undertake to the Tenants that they shall, within a reasonable time after written demand from the Tenants:
 - 23.6.1 Destroy or return to the Tenants any principal documents containing the Tenants' confidential information (and any and all hard copies, thereof or of any part thereof made by the Landlords) where the same are no longer required to be retained for or in connection with the Missives or the exercise by the Landlords of their rights or compliance with legal or governance obligations.
- 23.7 The provisions of Clause 23 shall not apply to:
 - 23.7.1 any confidential information which was in the lawful possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;
 - 23.7.2 any confidential information which is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the receiving party;
 - 23.7.3 any confidential information which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - 23.7.4 any disclosure pursuant to a statutory, legal, regulatory or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under FOISA or the EIRs pursuant to Clause 23.2;
 - 23.7.5 any registration of confidential information in respect of any property registration required in terms of the Missives;
 - 23.7.6 any disclosure for the purpose of the audit, examination and certification of the Landlords or the Landlords' accounts; or
 - 23.7.7 any disclosure for the purpose of assisting Audit Scotland in any examination of the economy, efficiency and effectiveness with which the Landlords have used their resources or funding made available to them.

24. Tenants' Obligations

- 24.1 The Tenants confirm to the Landlords that the Tenants have and will maintain policies that (i) ensure the Tenants have systems and procedures in place which strictly control, through their purchasing department/buying manager and quantity surveyor, costs and environmental impacts, and take account of whole life costs and whole life values, encouraging participation and interaction with the works where possible and (ii) ensure the Tenants' purchasing department/buying manager and quantity surveyor adhere to guidelines driven by quality and performance; and (iii) ensure that the Tenants carry out performance reviews of services and suppliers on a regular basis.
- 24.2 The Tenants confirm they shall use the processes and reviews referred to in clause 24.1 above when estimating the cost of procuring any works comprising part of the Site Estimated Abnormal Costs;
- 24.3 In light of the Climate Change (Scotland) Act 2009 (as amended and update/replaced from time to time) and to maximise environmental benefit and to minimise environmental harm the Tenants will be required to explain how the relevant development and specifically the whole Site or the Phase in question will endeavour to meet a net zero target when providing information and discussing the Site Estimated Abnormal Costs or the Phase Estimated Abnormal Costs .

- 24.4 The Tenants agree to work in partnership and use all reasonable endeavours to ensure community benefit is secured under the construction and operation phases of the development envisaged in terms of the Missives by (i) building effective local supply chains with local businesses (ii) maximising local jobs and training, (iii) building community links through local stakeholders such as Scottish Enterprise, Skills Development Scotland and the local authority) and the National Park Association and (iv) working with local schools, colleges, universities and skills agencies to ensure training and employment opportunities exist.
- 24.5 The Tenants hereby commit to the "Scottish Business Pledge".

25. Exclusion of Third Party Rights

The Missives do not create any rights in favour of third parties under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce or otherwise invoke any provision of the Missives.

26. Supersession

The provisions of the Missives, including those set out in 10(5)(e), which are not implemented by the granting and delivery of the Leases and others, will remain in full force and effect until the earlier of:

- 26.1 the date when such provisions have been implemented; and
- 26.2 10(5)(e) after the earliest of (1) Date of Entry (Fourth Phase) or Date of Entry (Site) (as appropriate) and (2) date of termination of the Missives except in so far as they are founded on in any court proceedings which have commenced within such 10(5)(e) period.

27. Prior Communings

- 27.1 Any letter forming part of the Missives and any amendment to or variation of the Missives will require to be Duly Executed.
- 27.2 The Missives set out the entire agreement and understanding between the Landlords and the Tenants in relation to the Lease (Site) or Lease of a Phase or Phases and will supersede all previous proposals, agreements and other communications whether written, oral or otherwise relating to it.

28. Time limit for acceptance

This Offer, unless previously withdrawn or amended, is open for written acceptance reaching us here not later than 10(5)(e)

Yours faithfully

11(3A)(a)

....., a Member
for and on behalf of Shepherd and Wedderburn LLP
as agents for Scottish Enterprise

witness

11(3A)(a)

... Name

Address

.....

This is the Schedule referred to in the foregoing offer by Shepherd and Wedderburn LLP, on behalf of Scottish Enterprise, addressed to DLA Piper Scotland LLP, on behalf of Flamingo Land Limited

10(5)(e)



SHEPHERD+ WEDDERBURN

GROUND LEASE
between
Scottish Enterprise
and
Flamingo Land Limited

Subjects: [] hectares at Balloch, Loch Lomond

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LEASE

between

SCOTTISH ENTERPRISE, established under the Enterprise and New Towns (Scotland) Act 1990, having their registered office Floor 4, Atrium Court, 50 Waterloo Street, Glasgow, G2 6HQ, (who and whose successors are hereinafter referred to as the "Landlords");

and

Flamingo Land Limited, a Scottish registered company (Number SC052543) and having its registered office at The Cross, Uddingston, Glasgow, G71 7ES (who and in substitution therefor whose successors and assignees are hereinafter referred to as the "Tenants");

1. Definitions and Interpretations

1.1 In this Lease (including this sub-clause and the Schedule) the following words and expressions shall have the following meanings:-

"Advance Notice"	means an advance notice as defined in section 56 of the 2012 Act;
"Approved Plans"	means the detailed plans and specifications relating to [SC: each Section of] the Development Works approved by the Landlords and contained in Part 5 of the Schedule subject to any permitted variations in terms of Clauses 5.4 and 5.5 of this Lease;
"Base Rate"	means the Base Rate of the Bank of Scotland from time to time or in the case of the said Base Rate ceasing to exist such other equivalent rate as the Landlords (acting reasonably) may determine;
"Building Contract"	means the building contract for the Development Works;
"Building (Scotland) Act 2003"	means the Building (Scotland) Act 2003, as the same may be amended or substituted from time to time and all statutory instruments, rules, orders, notices, directions and regulations made thereunder to include without limitation the Building (Scotland) Regulations 2004 and the Building (Procedure) (Scotland) Regulations 2004;
"Certificate of Practical Completion"	means the certificate of practical completion to be issued under the Building Contract;
[SC: "Certificate of Sectional Completion"	means the certificate of sectional practical completion to be issued under the Building Contract;]
"Completion Certificate"	means a valid completion certificate under Section 17 of the Building (Scotland) Act 2003 in respect of the relevant parts of the Development Works with no continuing requirements;
"Completion Certificate Acceptance"	means a valid acceptance of the Completion Certificate by the Verifier in terms of Section 18

	of the Building (Scotland) Act 2003 with no continuing requirements;
"Condam Regulations"	means the Construction (Design and Management) Regulations 2015 and includes the relevant approved codes of practice and industry guidance from time to time;
"Construction Expert"	means a building surveyor practising in Scotland having not less than 10 years' experience of substantial property development projects such as the Development Works, such surveyor to be jointly appointed by the parties to this Lease, or in the event of failure to agree upon the surveyor by the date falling 10 Working Days after the date of intimation by either party to the other of a dispute to be determined in terms of Clause 5.26 to be nominated by the President of the Scottish Branch of the RICS upon request by either party;
"Coronavirus"	means the disease known as coronavirus disease (COVID – 19) and the virus known as severe acute respiratory syndrome coronavirus 2 (SARS – COV – 2);
"Coronavirus Event"	means an event or delay caused by or arising from or in relation to compliance with the Regulations which prevents or delays commencement or completion of the Development Works;
"Creditor"	means any creditor meeting the requirements of Clause 5.12 in any standard security or floating charge over the Tenants' interest in this Lease which has been notified by the Tenants to the Landlords in writing;
"Date of Entry"	means [insert Date of Entry from the foregoing Offer];
"Date of Practical Completion"	means the date properly certified by the Project Manager by issuing the Certificate of Practical Completion being the date on which the Development Works shall have been practically completed in accordance with the Building Contract;
[SC: "Date of Sectional Completion"	means the date properly certified by the Project Manager by issuing the relevant Certificate of Sectional Completion being the date on which such Section of the Development Works shall have been practically completed in accordance with the Building Contract;]
"Delay Event"	means in relation to the Development Works any circumstances or events by virtue of which the contractor is granted an extension of time in terms of the Building Contract (excluding always all delays and extensions of time attributable to any act, omission or default of the employer thereunder), and any of the following which adversely affects the execution of the Development Works , namely:

- (a) exceptionally adverse weather conditions, flooding, loss or damage or destruction occasioned by any of the risks normally insured against under a normal building contract for works similar to those comprised in the Development Works and/or the risks insured or to be insured against in terms of the Building Contract; civil commotion ; local combination of workmen, strike or lock -out affecting any of the trades employed in the preparation, manufacture or transportation of any of the goods or materials required for the Development Works, the exercise of any statutory power (other than as a consequence of actions or omissions on the part of the Tenants); the inability of the Contractor to secure such labour or goods or materials as are necessary for the proper carrying out of the Development Works;
- (b) any circumstances or events which are beyond the reasonable control of the Tenants (the Tenants being deemed to be in control of any financing required for or in connection with the carrying out of the Development Works) and by virtue of which an extension of time is granted to the contractor in terms of the Building Contract;
- (c) any act, default or omission of the Landlords, the SE Representative or the Landlord's agents, employees or contractors; and
- (d) a Coronavirus Event.

"Development"

means **[NOTE: insert consistent with the foregoing Offer];**

"Development Works"

means the works to construct the Development as detailed in the Approved Plans;

"Development Works Longstop Date"

means the first Working Day falling **[insert agreed date from the foregoing Offer]** after the Date of Entry provided always that if the Development Works are delayed by any Delay Event(s) the foregoing date shall be extended by the period(s) of delay on account thereof;

[SC: "Development Works Section Longstop Date"

means the first Working Day falling [insert agreed dates for each Section of the Development Works with reference to the Sections described in Part 5 of the Schedule] after the Date of Entry provided always that if the relevant Section is delayed by any Delay Event(s) the foregoing relevant date shall be extended by the period(s) of delay on account thereof; For the purposes of this definition, the Delay Event definition shall assume that references therein to the Development Works are read as references to the relevant Section only and nothing else;]

"Disposition"

means the disposition contained in Part 6 of the Schedule;

"Duration"	means the period of 125 years from (and including) the Date of Entry;
"Insolvency Date"	means either the date of appointment of the Insolvency Practitioner or the date of calling up by a Creditor;
"Insolvency Practitioner"	means any receiver , administrator or liquidator appointed in respect of the Tenants;
"Larger Subjects (L)"	means the subjects shown outlined in ^{10(5)(e)} forming part and portion of the subjects registered in the Land Register of Scotland under Title Number DMB25028;
"Larger Subjects (T)"	means the subjects shown outlined in ^{10(5)(e)} forming part and portion of the subjects registered in the Land Register of Scotland under Title Number DMB25028;
"Lease"	means this ground lease;
"Necessary Consents"	means all planning consents required under the Planning Acts, building warrants and all other consents required from any statutory authority, that are required to enable the Development Works to be commenced and completed;
"Premium"	means the sum of [] POUNDS (£[]) STERLING, exclusive of VAT;
"Option Trigger Date"	means the Date of Practical Completion;
"Plan 1"	means the plan of the Subjects contained in Part 7 of the Schedule;
"Plan 2"	means the plan of the Larger Subjects (L) contained in Part 8 of the Schedule;
"Plan 3"	means the plan of the Larger Subjects (T) contained in Part 9 of the Schedule;
"Pertinents"	means the rights in favour of the Tenants described in Part 2B of the Schedule;
"Planning Acts"	means the Town & Country Planning (Scotland) Acts 1947 to 1997, the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, the Planning (Hazardous Substances) (Scotland) Act 1997, the Planning (Consequential Provisions) (Scotland) Act 1997, the Local Government and Planning (Scotland) Act 1982, the Town & Country Planning Act 1984, the Planning and Compensation Act 1991 and any other legislation from time to time in force relating to planning matters;
"Project Manager"	means the party (or any replacement thereof from time to time)) who is respectable, experienced and appropriately qualified for performing the role of employers agent or contract administrator under the Building Contract from time to time;
"Quarter Days"	means 28 February, 28 May, 28 August and 28 November in each year and the expressions

	“Quarter Day” and the relevant “Quarter Day” shall be construed accordingly;
"Regulations"	means any Act of Parliament or Act of the Scottish Parliament and any delegated law made under them and any applicable guidance issued by or on behalf of the UK government or Scottish government to prevent or delay the spread of Coronavirus including the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020, or any subsequent statutory amendment, modification or replacement of them or any regulation or designation under the Coronavirus (Scotland) Act 2020 or the Coronavirus (Scotland) (No.2) Act 2020;
"Reserved Rights"	means the reserved rights in favour of the Landlords described in Part 2A of the Schedule;
[SC: "Section"	means each section of the Development Works as comprises a separate section as described in terms of Schedule Part 5;]
"Schedule"	means the schedule of ten parts annexed and executed as relative hereto;
"SE Representative"	means such party appointed by the Landlords and notified to the Tenants in writing from time to time;
"Specified Rate"	means the rate of 4 per centum per annum above the base rate of the Royal Bank of Scotland plc;
"Subjects"	means the subjects described in Part 1 of the Schedule;
"Title"	means DMB25028;
"Title Transfer Provisions"	means the heritable title transfer provisions set out in Part 3 of the Schedule;
"Validly Executed"	means executed in accordance with the requirements of Section 3 and 7 and Schedule 2 of the Requirements of Writing (Scotland) Act 1995;
"Verifier"	means a verifier as defined under the Building (Scotland) Act 2003;
"Working Day"	means any day other than a Saturday, Sunday or Public Holiday in Glasgow, Edinburgh or London; and
"2012 Act"	means the Land Registration etc (Scotland) Act 2012.

1.2 In this Lease:-

- 1.2.1 Words importing the singular shall include the plural and words importing the masculine gender shall include the feminine gender and *vice versa*. Where there are two or more persons included in the expression "the Tenants", obligations expressed to be undertaken by the Tenants shall be deemed to be undertaken by such persons jointly and severally but not so as to impose any continuing liability on an assignor following a permitted assignation to the tenants' right to this Lease .

The word "person" shall mean an individual, partnership, company, public authority or any other body whatsoever.

- 1.2.2 If the Tenants consist of a firm or partnership the obligations of the Tenants shall be binding jointly and severally not only on all persons who are partners of the firm at the time that this Lease is executed but also on all persons who shall become partners of the firm at any time during the Duration and their respective executors and representatives whomsoever as well as on the firm and its whole assets and such obligations shall subsist notwithstanding any change or changes which may take place in the name of the firm or constitution of the partnership. The retiral, death or outgoing of any individual partner shall not of itself discharge such a partner or his executors from such partner's joint and several liability in terms of this Lease but the Landlords' consent will not be unreasonably withheld to the discharge of any retiring or outgoing partner or the estate of any deceased partner where the remaining partners are demonstrably capable of fulfilling the obligations of the Tenants under this Lease. If the Tenants comprise more than one person the Landlords shall be entitled to discharge any of the persons so comprised without in any way discharging any of the remaining persons so comprised in terms of this Lease.
- 1.2.3 Any reference to a statute or subordinate legislation shall include any modification, extension or re-enactment thereof for the time being in force and shall include all instruments, orders and regulations for the time being made, issued or given thereunder or deriving validity therefrom.
- 1.2.4 Any obligation by the Tenants not to do an act or thing shall be deemed to include an obligation not to agree or suffer or permit such act or thing to be done by any agent, employee, invitee, contractor or other for whom the Tenants are responsible in law.
- 1.2.5 Any obligation by the Landlords not to do an act or thing shall be deemed to include an obligation not to agree or suffer or permit such act or thing to be done by any agent, employee, invitee, contractor or other for whom the Landlords are responsible in law.
- 1.2.6 Any reference to any act, omission or default of the Tenants shall be deemed to include an act, omission or default of their sub-tenants, agents, employees, invitees, contractors, licensees and others for whom they are responsible in law and/or the Tenants or their sub-tenants' respective predecessors in title.
- 1.2.7 The clause, paragraph and schedule headings in this Lease are for reference only and shall not affect the construction or interpretation of this Lease.

2. The Grant

- 2.1 In consideration of the payment of (i) the Premium payable on the Date of Entry and (ii) the Rent plus all Value Added Tax due respectively thereon, the Landlords hereby let to the Tenants the Subjects together with the Pertinents so far as the Landlords can competently grant the same, but under reservation of the Reserved Rights and that for the Duration and on the terms and conditions contained in this Lease. Any access to carry out works in terms of either the Reservations or the Pertinents shall be subject to the terms of a licence to be agreed in advance between the Landlords and the Tenants (both parties acting reasonably and without delay).

3. Rent

- 3.1 The Tenants shall pay to the Landlords rent at the rate of 10(5)(e)
10(5)(e) payable annually in arrears on the anniversary of the Date of Entry in each year throughout the Duration, only if asked.

4. Tenants' Monetary Obligations

The Tenants bind and oblige themselves during the entire Duration:-

- 4.1 To pay the rent from time to time payable in terms of this Lease in accordance with the provisions of Clause 3;
- 4.2 To pay all existing and future rates, taxes, charges, assessments, impositions and outgoings whatsoever (whether payable by the owner or occupier) charged, assessed or imposed on or in respect of the Subjects;
- 4.3 To pay within 14 days of written demand all expenses, costs, charges and fees properly and reasonably incurred by the Landlords in connection with
- (i) the enforcement of or procuring the remedy of any breach of any obligation on the Tenants in terms of this Lease;
 - (ii) in relation to every application for consent and approval made in terms of this Lease, whether such consent or approval is granted or refused in terms of the Lease (save where the Landlords have withheld such consent or approval in breach of this Lease).
- 4.4 To pay to the Landlords or to such other party as the Landlords may direct in accordance with and in the manner provided in the title deeds the proportion applicable to the Subjects of the cost of complying with the terms of the title deeds and/or Land Certificate. 10(5)(e)

10(5)(e)

- 4.5 To pay to the Landlords any Value Added Tax and/or any other tax or charge of a similar nature as shall be properly chargeable in respect of all monies (including rent) undertaken to be paid by the Tenants under this Lease all which monies are for the avoidance of doubt expressed exclusive of Value Added Tax or such other tax as aforesaid; and
- 4.6 Save as expressly otherwise specified in this Lease to pay to the Landlords on demand interest at the Specified Rate on all sums due to the Landlords under this Lease from the due date for payment thereof until the date of actual receipt of payment in full by the Landlords, such interest to be calculated on a daily basis on any balances outstanding.

5. Tenants Non Monetary Obligations

The Tenants bind and oblige themselves throughout the entire duration as follows:-

- 5.1 The Tenants shall use all reasonable endeavours to agree the terms of the Building Contract with the contractor as soon as reasonably practicable after the Date of Entry.
- 5.2 The Tenants will, within 10(5)(e) **as per the foregoing Offer]** months of the Date of Entry (as extended by such period of delay due to a Coronavirus Event preventing commencement within such timescale), commence and thereafter proceed diligently in a good and workmanlike manner with the Development Works in accordance with the Approved Plans and the Necessary Consents;
- 5.3 **[SC: The Tenants undertake to the Landlords to procure that each and every Date of Sectional Completion occurs on or prior to the relevant Development Works Section Longstop Date.]** The Tenants undertake to the Landlords to procure that the Date of Practical Completion occurs on or prior to the Development Works Longstop Date;
- 5.4 The Tenants shall not make any alterations to or deviations from the Approved Plans or use any materials in substitution for those specified therein without the prior written consent of the Landlords which consent shall not be unreasonably withheld or delayed and shall not be required in respect of any internal or non-material external alterations or additions which do not materially alter the Development Works. Upon such consent being given, all such amended drawings, specifications illustrating such alterations or deviations shall be deemed to be incorporated in the Approved Plans. For the avoidance of doubt, in the event of a dispute as to whether any such alteration to or deviation from the Approved Plans or use of materials in

10(5)(e)

substitution as aforesaid materially alters the Development Works then either party may refer the matter to the Construction Expert for determination in terms of Clause 5.26.

- 5.5 Notwithstanding the provisions of Clause 5.4 above, no consent shall be required in the case of the following alterations to the Approved Plans:-
- (i) minor changes or variations of the sort normally instructed on a day to day basis under a building contract for works equivalent or similar to the Development Works; and
 - (ii) internal alterations (including fitting-out works), which are not fundamental to the structural integrity of the building to be constructed on the Subjects;

For the avoidance of doubt, in the event of a dispute as to whether consent is required or not as aforesaid then either party may refer the matter to the Construction Expert for determination in terms of Clause 5.26.

- 5.6 The Tenants accept the Subjects as being in all respects fit for the purposes for which they have been let namely for construction and occupation/use of the Development and to carry out any obligations otherwise incumbent upon the Landlords and/or the owner of the Subjects whether at common law or by statute or otherwise.

- 5.7 To comply at the Tenants' expense with the provisions and requirements of all European Union, United Kingdom and Scottish statutes and subordinate legislation, regulations and directives and any notices and directions issued thereunder (including without prejudice to the foregoing generality, the Planning Acts, the Factories Act 1961, the Offices, Shops and Railway Premises Act 1963, the Fire (Scotland) Act 2005, the Health and Safety at Work Etc Act 1974, the Environmental Protection Act 1990, the Environment Act 1995, the Construction (Design and Management) Regulations 2015 and the Control of Asbestos Regulations 2012) and to comply likewise with all provisions contained in the title deeds relating to the Subjects and all requirements or regulations of any competent authority relating to the Subjects and their use and that whether the said provisions are imposed on the owner or occupier of the Subjects.

- 5.8 Not to use or permit or suffer the Subjects and the buildings to be constructed on the Subjects or any part thereof to be used otherwise than as a tourist , recreation and leisure development with ancillary infrastructure and landscaping and without prejudice to the foregoing, not to:-

- (i) use the Subjects for a noxious, noisy, offensive, dangerous or immoral trade or business or for any purpose which, in the reasonable opinion of the Landlords, may be or may cause a nuisance, noise, disturbance or inconvenience to the Landlords or to any occupier of premises in the neighbourhood;
- (ii) use the Subjects for any purpose which breaches any statutory provision, relevant regulations or the terms of the title deeds for the Subjects;
- (iii) bring on to the Subjects any hazardous, explosive, dangerous or combustible goods or materials without complying with all necessary and applicable statutes;
- (iv) use the Subjects or permit its use for gambling save in respect of gaming machines with stakes and prizes that do not exceed the values and requirements described in Schedule Part 10 (the sums referred to therein being capable of increase in line with the provisions as set by the Gambling Commission) in relation to equivalent categories of machines from time to time.

- 5.9 Not to knowingly pass or allow to pass into the pipes, drains, sewers or other serving the Subjects any polluting agent or noxious or deleterious effluvia or any substance that may cause any obstruction or injury to the said pipes and others or otherwise cause contamination and to employ such plant for treating such effluent before it enters the drains as may be required by any local or public authority and make good and remedy any injury or contamination which occurs to the reasonable satisfaction of the Landlords, and not to permit any smoke, effluvia, vapour or grit to be emitted from the Subjects.

- 5.10 Not to do or permit anything on or in connection with the Subjects or any adjoining subjects which is likely to be a legal nuisance, obstruction or cause of damage to the Landlords or to the owner or occupier of any adjoining or neighbouring property. Without prejudice to the generality

- not to permit motor or other vehicles to obstruct or be parked or otherwise kept in any roads and/or other common areas within or leading to the Subjects.
- 5.11 The Tenants shall not assign or sub let their interest under this Lease in whole or in part save as expressly mentioned below. The Tenants shall be entitled to (a) assign (but only as a whole) their interest in this Lease but only after the Date of Practical Completion or (b) sub let their interest under this Lease in whole but only after the Date of Practical Completion **[SC: or (where such part has a Certificate of Sectional Completion in relation to a Section described in Schedule Part 5) in part]** without the consent of the Landlords but shall as soon as practicable intimate any assignation or sub letting to the Landlords .
- 5.12 The Tenants shall only be entitled to grant a security or securities (whether fixed or floating) over its interest in this Lease (a) without the prior written consent of the Landlords to a bona fide UK clearing bank providing finance in relation to the Development Works subject to the creation of any such fixed security or securities being intimated to the Landlords or (b) with the prior written consent of the Landlords (not to be unreasonably withheld) to a bona fide lender providing finance in relation to the Development Works who does not meet the requirement in Clause 5.12(a). The granting of any other securities is prohibited.
- 5.13 Following the Date of Practical Completion and without prejudice to the requirements of the title deeds, to keep all buildings and other structures on the Subjects fully insured against loss or damage by fire, lightning, flooding, explosion, storm and tempest, impact, aircraft and such other risks as the Tenants may consider appropriate with a reputable insurance company for the full reinstatement value of such buildings and others (including site clearance and professional fees) and to produce to the Landlords on reasonable request evidence that the foregoing obligations have been complied with.
- 5.14 To free, relieve and indemnify the Landlords from and against any liability in respect of any injury to or the death of any person, damage to any property, heritable or movable, any interdict or court action, the infringement, disturbance or destruction of any right, servitude or privilege or otherwise by reason of or arising directly or indirectly out of the repair, state of repair or condition of the Subjects or any buildings or other structures thereon or any alteration or addition or improvement to the same or the use of the Subjects or from any act, omission or default of the Tenants in the implementation and observance of the obligations contained in this Lease from all proper fees, penalties, charges proceedings costs, claims, expenses and demands of whatsoever nature in respect of any such liability or alleged liability or any such act, omission or default, provided the same does not arise through the fault of the Landlords.
- 5.15 The SE Representative shall be entitled at any reasonable time on reasonable prior notice to enter on to the Subjects (but without impeding the progress of the Development Works and without giving any instructions in respect of the Development Works or otherwise and subject to the Landlords making good any damage caused thereby) to inspect the progress of the Development Works, to inspect materials and workmanship and generally to ensure that the Tenants are complying with its obligations under this Clause 5.
- 5.16 The SE Representative shall also be entitled to attend (as an observer only) the monthly design team meetings, and the Tenants shall ensure that the SE Representative is given at least five Working Days' prior written notice of and receives copies of the minutes of all such meetings.
- 5.17 The Tenants shall have due regard to any reasonable comments or representations made by the SE Representative in relation to the implementation of the Development Works in accordance with the terms of this Lease. For the avoidance of doubt the SE Representative shall not give any instructions or directions to any party undertaking the Development Works.
- 5.18 The Tenants shall in relation to the Development Works insure or cause to be insured the Subjects together with the Development Works from time to time from the date of commencement of the Development Works until the Date of Practical Completion against all risks usually covered by a contractor's comprehensive "All Risks" policy. The Tenants will when reasonably required produce to the Landlords evidence of such insurances.
- 5.19 In the event that any of the Development Works are destroyed or damaged by fire or other insured risks at any time before the Date of Practical Completion, then and as often as the same may happen, the Tenants shall procure that the monies paid by virtue of any insurance policy are applied forthwith towards carrying out and completing the Development Works and/or

rebuilding, repairing or otherwise reinstating all damage to the Development Works in accordance with the provisions of this Lease.

- 5.20 In questions between the Tenants and the Landlords, the Tenants shall be "the client" for the purposes of the Condam Regulations and shall prior to the commencement of the Development Works make a declaration in writing to the Health & Safety Executive to the effect that it is the only client for the purposes of the Condam Regulations. Copies of the declaration and any acknowledgement from the Health & Safety Executive shall be supplied to the Landlords upon reasonable request.
- 5.21 The Tenants shall procure that there is given to the SE Representative at least 10 Working Days' notice of the anticipated Date of Practical Completion **[SC: and any anticipated Date of Sectional Completion]** and be given the opportunity to inspect the Development Works or relevant part thereof at or prior to the anticipated Date of Practical Completion **[SC:/ any anticipated Date of Sectional Completion]**.
- 5.22 The Tenants shall deliver to the Landlords a copy of the Certificate of Practical Completion **[SC: and all the Certificates of Sectional Completion]** when issued (which may include a schedule of any works of an unfinished nature which would normally be the subject of a contractor's snagging list (not including any items other than minor snagging items (in each case "the snagging list")). In the event that the Landlords consider that notwithstanding the issue of the Certificate of Practical Completion **[SC: or the relevant Certificate of Sectional Completion]**, the Development Works **[SC: or the relevant Section]** have not been practically completed, then within a further 21 days (counting from the date of delivery of **[SC: (a)]** the Certificate of Practical Completion **[SC: or (b) the relevant Certificate of Sectional Completion]** to the Landlords with reference to this clause of the Lease), the Landlords may refer the matter to the Construction Expert for determination in terms of Clause 5.26. In the event of such a referral, the Development Works **[SC: or the relevant Section]** shall not be deemed to be practically complete in terms of the Lease until the Construction Expert has issued his determination. In the event the Construction Expert determines that the Development Works **[SC: or the relevant Section]** have not been practically completed, the Tenants shall be required to carry out all further works required to practically complete the Development Works **[SC: or the relevant Section]** as specified by the Construction Expert before the Development Works **[SC: or the relevant Section]** are deemed practically complete for the purposes of the Lease. In the event of any dispute as to whether the further works have been practically completed, either party may refer the matter to the Construction Expert for determination in terms of Clause 5.26. The provisions of this clause shall be repeated until the Development Works **[SC: or the relevant Section]** are deemed practically complete for the purposes of the Lease by the Construction Expert (or agreed to be practically complete by the parties).
- 5.23 If the Landlords do not make a reference to the Construction Expert within the 21 day period, then the Landlords shall be deemed to agree that the Development Works **[SC: or the relevant Section]** have been practically completed in accordance with the provisions of the Lease.
- 5.24 For the avoidance of doubt the Landlords shall not be permitted to make a reference to the Construction Expert because of the existence of the snagging list.
- 5.25 The Tenants shall exhibit to the Landlords the Completion Certificate Acceptance issued by the Verifier for the Development Works **[SC: or the relevant Section]** as soon as reasonably practicable after the Date of Practical Completion **[SC: or the relevant Date of Sectional Completion]**.
- 5.26
- 5.26.1 All disputes, differences and questions between the Landlords and the Tenants, concerning, arising out of or connected with the execution or completion of the Development Works **[SC: or any relevant Section]** or any Delay Event shall be referred to the Construction Expert.
- 5.26.2 Any reference made under the provisions of Clause 5.26 may be made by the Landlords or the Tenants provided that they shall first have given the other party not less than 5 Working Days' written notice of their intention to make such reference.
- 5.26.3 The Construction Expert shall be entitled to call on the Landlords or the Tenants to provide such records or other information as they may consider necessary for the

purposes of resolving the dispute in question and the Landlords and the Tenants undertake to provide all such information in their possession or under their control as quickly as reasonably practicable.

- 5.26.4 The Construction Expert appointed to resolve the dispute under this Agreement:-
- (i) shall fully consider all written representations made by or on behalf of the Landlords or the Tenants which are delivered to him within 10 Working Days of his appointment, and shall thereafter give each party a further period of 5 Working Days within which to make further written representations thereon;
 - (ii) may call for such written evidence from the parties and seek such additional legal or expert assistance as they may reasonably require;
 - (iii) shall not accept oral representations from any party without allowing the other party the opportunity to be present and to give evidence and cross-examine each other;
 - (iv) shall have regard to all representations and evidence submitted when making his decision (which shall be in writing) and shall give reason for his decision;
 - (v) shall use all reasonable endeavours to issue his decision (with reasons) within 10(5)(a) Working Days of his appointment (or within such other period as may be agreed by the parties (acting reasonably) at the time of such appointment);

5.27 The decision of the Construction Expert in connection with any dispute shall be final and binding on the Landlords and the Tenants save in the case of manifest and/or demonstrable error.

5.28 The fees and expenses and of the Construction Expert (including the fees of any party nominated by such Construction Expert) shall be payable by the Landlords and the Tenants in such proportions as the Construction Expert shall determine, or in default of such determination such be borne equally.

6. Landlords Warranty and Assurances

6.1 The Landlords warrant that the Tenants may, subject to the Reserved Rights, quietly enjoy the Subjects during the Duration. Nothing contained in this Lease shall however be deemed to constitute any warranty by the Landlords that the Subjects or any part thereof are authorised for use under the Planning Acts or otherwise for any specific purpose or that the Subjects are fit for any of the Tenants' purposes under this Lease.

6.2 The Landlords shall not sell or dispose of or otherwise alienate their interest in the Subjects during the Duration, other than such a sale, disposal or alienation as aforesaid to a statutory successor of the Landlords whom the Landlords shall specifically take bound (in self proving form addressed to the Tenants) to fulfil the Landlords' obligations herein including Clause 9 hereof.

6.3 On reasonable written request by the Tenants and subject to reimbursement of the Landlords reasonable costs within 14 days of written demand, the Landlords shall use their reasonable endeavours to (1) enforce any material breach of any real burdens benefiting the Subjects where such breach is materially detrimental to the Tenants use of the Subjects in terms of this Lease and (2) enforce any rights in terms of the title deed of the Subjects as may be reasonably required by the Tenants in respect of the Subjects.

6.4 The Landlords may not grant any discharge in whole or in part of any real burden or servitude in favour of the Subjects except with the prior written approval of the Tenants (such consent not to be unreasonably withheld or delayed).

6.5 On reasonable written request by the Tenants and subject to reimbursement of the Landlords reasonable costs within 14 days of written demand, the Landlords will where they consider it reasonable in the circumstances use their reasonable endeavours to object to any application by any burdened proprietor for discharge or variation of any real burden or servitude benefiting the Subjects.

6.6 **[DRAFTING NOTE: include any matters arising from clauses 15.6 and/or 15.7 of the foregoing Offer and also to be reflected in the Title Transfer Provisions]**

7. Irritancy

- 7.1 Subject to the provisions of sections 4, 5 and 6 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 if the Tenants shall fail to perform or observe any of the material obligations undertaken by them in this Lease or if the Tenants (being a corporation) shall go into liquidation, (whether compulsory or voluntary) (save for the purpose of amalgamation or reconstruction of a solvent company where such amalgamation or reconstruction has been approved in advance by the Landlords (the Landlords' approval not to be unreasonably withheld or delayed)), or have a winding up order made against them or have a receiver or administrator appointed or if the Tenants (being a company with unlimited liability) apply to limit their liability or in the event that the Tenants or any of them enter into a composition for the benefit of creditors or shall make any arrangement with their creditors, or shall become insolvent or apparently insolvent or have a curator or judicial factor appointed then and in any of these events it shall be in the power of the Landlords by notice to bring this Lease to an end forthwith without any declarator or process of law to that effect and to remove the Tenants from possession of the Subjects, and repossess and enjoy the same as if this Lease had not been granted and that without prejudice to any other remedy of the Landlords in respect of any antecedent breach of any of the Tenants obligations hereunder, and under reservation of all rights and claims competent to the Landlords in terms of this Lease which irritancy is hereby deemed to be pactional and not penal and should not be purgeable at the bar.
- 7.2 In the case of a material breach, non-observance or non-performance by the Tenants which is capable of being remedied, the Landlords shall not exercise any such option of irritancy unless and until they shall first have given written notice to the Tenants and any other Creditor and/or Insolvency Practitioner specifying the breach, non-observance or non-performance and requiring the same to be remedied and intimating their intention to exercise their option of irritancy in the event of the said breach, non-observance or non-performance not being remedied within such period as may be stated in the notice (being such reasonable period of time as the Landlords shall stipulate in the notice which in the case of failure to pay monies due in terms of the Lease shall be a period of not less than twenty one days and in the case of failure to comply with the Tenants' development obligations under Clause 5 shall be a period of not less than **six months** from the date of service of the notice) and the Tenants or any Creditor and/or Insolvency Practitioner shall fail to have remedied the same within the period specified in the notice.
- 7.3 In the event that an Insolvency Practitioner is appointed, the Landlords shall not be entitled to terminate this Lease (provided always that the Insolvency Practitioner or the Creditor shall personally accept in written self-proving form and implement full responsibility for payment of the rents (whether due in respect of a period occurring before, on or after the date of liquidation or administration or receivership as the case may be) and for the performance of all other obligations of the Tenants under this Lease from the date of liquidation or administration or receivership as the case may be to the date of disposal or termination of this Lease including settlement of any arrears of the rents and the performance of any outstanding obligations which may subsist at the date of liquidation, administration or receivership as the case may be and shall if reasonably requested by the Landlords find caution for such payment and performance in an amount acceptable to the Landlords) until they shall first have given the relevant Insolvency Practitioner a further period of time (in addition to those set out in terms of any notice served under Clause 7.2 hereof) to remedy such breach, declaring that where the breach is the failure to pay any sum of money such additional time shall be a period of not less than 20 Working Days from the date of receipt of such notice and where the breach is in respect of any other obligation such time shall be a further period of not less than 6 months from the date of receipt of the notice.
- 7.4 The Landlords shall deal with any request for consent to assign this Lease made by a Creditor or an Insolvency Practitioner in the same manner as if the request had been made by the Tenants.

8. Acceptance of Rent/No Waiver/Rei Interitus

- 8.1 The demand for or acceptance of rent (or other sums) by the Landlords or their agents at any time shall not in any circumstances constitute nor be construed to be a waiver of any of the Tenants' obligations under this Lease nor of the Landlords remedies for breach thereof.
- 8.2 Notwithstanding any rule of law to the contrary this Lease shall not come to an end and shall not be capable of being brought to an end by either the Landlords or the Tenants by reason of damage or destruction of the Subjects or the Development Works but shall continue in full force and effect according to its terms.

9. Title Transfer

- 9.1 At any time following the Option Trigger Date, the Tenants may serve written notice on the Landlords requiring the Landlords to grant a disposition of the Subjects in accordance with the Title Transfer Provisions .
- 9.2 Notwithstanding the foregoing, the Landlords may at any time serve written notice on the Tenants requiring the Tenants to accept a disposition of the Subjects in accordance with the Title Transfer Provisions.
- 9.3 Upon valid service of a notice by either the Tenants or the Landlords under the terms of Clauses 9.1 or 9.2 hereof, both parties will be bound to comply with the terms of the Title Transfer Provisions.
- 9.4 At any time following the Option Trigger Date , the Tenants may serve written notice on the Landlords requiring the Landlords to grant (within one month of written request) an extension of the Duration to 175 years . In the event of the Duration being extended to 175 years , the provisions of Clauses 9.1 , 9.2 and 9.3 shall continue to apply .
- 9.5 The provisions set out in Part 4 of the Schedule shall apply with effect from the Date of Entry.

10. Notices

- 10.1 All notices which require to be given in terms of this Lease shall be in writing and shall be deemed to be sufficiently given if sent by recorded delivery post addressed to:
- (i) in the case of the Tenants, to the Tenants (if a body corporate) at their Registered or Head Office and (if an individual) at his last known address in the United Kingdom and (if a partnership) to the partnership or any one or more of the partners thereof or at such other address as the Tenants may have notified in writing to the Landlords with reference to this Clause;
 - (ii) in the case of the Landlords, to the Head of Property, Scottish Enterprise, Atrium Court, 50 Waterloo Street, Glasgow, G2 6HQ or to such other address as the Landlords may have notified in writing to the Tenants with reference to this Clause.
- 10.2 Any such notice shall be deemed to be to have been served on the first Working Day after the date on which the same was posted. In proving service, it shall be sufficient to prove that the envelope containing the notice was duly addressed to the Landlords or the Tenants, as the case may be, in accordance with this Clause and posted to the place to which it was so addressed.

11. Registration

11.1 The Landlords and Tenants consent to registration hereof for preservation and execution:

IN WITNESS WHEREOF these presents consisting of this and the preceding **[insert]** pages together with the Schedule are executed as follows:

Subscribed for and on behalf of **Scottish Enterprise** by

..... (signature)
Full Name:.....
as Attorney
at.....
on

In the presence of this witness:
Witness' Signature:

.....
Full name of witness:
.....
Address of witness:
.....
.....
.....

Executed on behalf of Flamingo Land Limited by

..... (signature)
Full Name:.....
Director/Company Secretary/Authorised
Signatory*
at.....
on

In the presence of this witness:
Witness' Signature:

.....
Full name of witness:
.....
Address of witness:
.....
.....
.....

* *Please delete as applicable*

This is Schedule referred to in the foregoing Lease between Scottish Enterprise and Flamingo Land Limited relative to []

SCHEDULE

Part 1

The Subjects

ALL and WHOLE the subjects comprising land at [], extending to [] or thereby outlined in **[red]** on the Plan which subjects form part and portion of the subjects registered in the Land Register of Scotland under Title Number [].

**Part 2A
Reserved Rights**

1. There is reserved to the Landlords and their successors as owners of the subjects registered in the Land Register of Scotland under Title Number DMB25028 and to any persons to whom the Landlords and/or their successors may grant such rights (a) (restricted to the Landlords and their successors in relation to the Subjects only) all necessary rights of access over the Subjects for the purposes of inspecting and monitoring the progress of the Development Works but only in accordance with the terms of this Lease; and (b) a servitude right of wayleave in respect of all existing and future service pipes, cables, wires and others (including without prejudice to the foregoing generality all electricity wires and cables) which now or in the future serve or are required to serve the subjects in the Land Register of Scotland under Title Number DMB25028 or any part thereof and are or are to be situated within, over, through or under the Subjects by way of an existing route or routes or such other route or routes as the Landlords or their successors may reasonably require, such other route or routes to be subject to the prior written approval of the Tenants which approval shall not be unreasonably withheld or decision thereon unreasonably delayed (for the avoidance of doubt, the Tenants shall not be unreasonably withholding consent to any route or routes running through the buildings on the Subjects), together with all such necessary rights to lay, maintain, remove, repair or replace or renew the same subject to the Landlords or their successors giving reasonable prior notice, making good all damage caused by the exercise of such rights and exercising the rights in such a way to cause as little inconvenience as reasonably practicable to the occupiers of the Subjects; and (c) a pedestrian and vehicular right of access and egress over all roads and paths now and in the future located on the Subjects for all necessary purposes and notwithstanding any future intensification of use (regardless of any common law requirement to the contrary).
2. The Landlords shall have no liability for the cost of any services and/or infrastructure developed on the Subjects by the Tenants whether at the date of installation or upon the Landlords or those authorised by them connecting into and/or making use of the same. The Landlords shall be entitled to connect into and use all infrastructure and services installed upon the Subjects for the benefit of the Larger Subjects (L) subject to reasonable prior notice and making good all damage caused by the exercise of such rights and exercising the rights in such a way to cause as little inconvenience as reasonably practicable to the occupiers of the Subjects.
3. **[NOTE: The Open Area as defined in the foregoing Offer will need a reserved right of pedestrian and vehicular access thereto in favour of the Landlords and their successors as owners of the Open Area. The Open Area will also require such reserved rights over the Subjects as the Landlords may reasonably require (i) to facilitate development of the Open Area or any part thereof or (ii) in connection with the full use and enjoyment of the Open Area, such rights to be in substantially the same form as those rights conferred by clause 2.1 of the Deed of Conditions (including the conditions expressed at clause 2.3 thereof) and to be subject to consideration in terms of Clause 4.1.4 of the foregoing Offer.]**
4. **[NOTE: The 10(5)(e) as defined in the foregoing Offer will need a reserved right of pedestrian access thereto over such routes as agreed in terms of Clause 22.4.1 and 22.4.2 of the foregoing Offer and will benefit from a vehicular right of access over Pier Road but such vehicular right shall not be extended or construed in any way so as to include a right to park on 10(5)(e) will also require reserved rights over the Subjects in substantially the same form as those rights conferred by clause 2.2 of the Deed of Conditions (including the conditions expressed at clause 2.3 thereof), such rights to be subject to consideration in terms of Clause 4.1.4 of the foregoing Offer.]**

**Part 2B
Pertinents**

1. All necessary rights of rights of wayleave in respect of all existing and future service pipes, cables, wires and others (including without prejudice to the foregoing generality all electricity wires and cables) which now or in the future serve the Larger Subjects (L) or any part thereof and are situated within, over, through or under the Larger Subjects (L) by way of an existing route or routes or such other route or routes as the Tenants or their successors may reasonably require, such other route or routes to be subject to the prior written approval of the Landlords which approval shall not be unreasonably withheld or decision thereon unreasonably delayed (for the avoidance of doubt, the Landlords shall not be unreasonably withholding consent to any route or routes running through the buildings or areas where it is reasonably anticipated that buildings will be located in the future on the Larger Subjects (L)), together with all such necessary rights to connect into existing services within the Larger Subjects (L) and to lay, maintain, remove, repair or replace or renew the future services as aforementioned subject to the Tenants or their successors making good all damage caused by the exercise of such rights and exercising the rights in such a way to cause as little inconvenience as reasonably practicable to the occupiers of the Larger Subjects (L)
2. *[Access for vehicular and pedestrian traffic (including construction vehicles) over all existing roads and footpaths in the Larger Subjects and over Pier Road to the Subjects which will depend on the Phases and Phasing Arrangements referred to in the foregoing Offer]*
3. *[The parties will review the Deed of Conditions to identify what rights are appropriate and capable of being included in the Lease (and if that is different in relation to a lease of the Whole Site or a Phase or between Phases) and that subject to consideration in terms of Clause 4.1.4 of the foregoing Offer.]*

[Note: Notwithstanding 3 above, where the Subjects form part or the whole of the 10(5)(e) (as defined in the Deed of Conditions), the servitude rights which the Landlords benefit from at clause 2 of the Deed of Conditions (which burden the Overall Site to the benefit of th 10(5)(e) will be included as a pertinent right (on a non exclusive basis) to the Tenants subject to the terms of the Deed of Conditions].

Part 3
Title Transfer Provisions

1. The Landlords shall grant the Validly Executed Disposition of the Subjects in favour of the Tenants.
2. The consideration for the grant of the Disposition shall be the sum of 10(5)(e)
3. The date of entry in the Disposition shall be the twentieth Working Day after notice by either the Landlords or the Tenants in accordance with Clause 9 of the foregoing Lease or such earlier date as may be agreed in writing ("Title Transfer Date")
4. The Landlords will apply to the Keeper for an Advance Notice for the Disposition, in the form adjusted with the Tenants, to be entered on the application record for the Subjects no earlier than 5 Working Days prior to the Title Transfer Date. The cost of the Advance Notice for the Disposition will be met by the Landlords.
5. The Landlords consent to the Tenants applying to the Keeper for Advance Notices for any deeds which the Tenants intend to grant in relation to the Subjects. The cost of any Advance Notices which the Tenants apply for will be met by the Tenants.
6. At the Title Transfer Date, the Landlords shall deliver to the Tenants;
 - 6.1 a Legal Report (including a search in the register of inhibitions against the Landlords) brought down as near as practicable to Completion which report will show:
 - 6.1.1 No entries adverse to the Landlords' interest in the Subjects;
 - 6.1.2 The Advance Notice for the Disposition; and
 - 6.1.3 No other Advance Notices other than those submitted by the Tenants.
 - 6.2 A Plans Report (Level 3) confirming that there is no conflict between the extent of the Subjects and any registered cadastral units.
 - 6.3 A search in the register of community interests in land held by the Keeper of the Registers of Scotland and the register of applications by community bodies to buy land held by the Keeper of the Registers of Scotland brought down as near as practicable to the Title Transfer Date showing nothing prejudicial to the ability of the Landlords validly to transfer title to the Subjects to the Tenants.
7. So far as it is competent to do so, the Disposition will contain as rights the Pertinents granted in favour of the Tenants in this Lease and shall reserve the Reserved Rights in favour of the Landlords and others and the Landlords will deliver to the Tenants a Land Register application form in respect of the same, as is necessary. The Tenants shall Validly Execute the Disposition prior to presenting the same for registration in the Land Register of Scotland and will provide the Landlords with a certified true copy of the fully signed Validly Executed Disposition as soon as is reasonably practicable thereafter.
8. The Tenants undertake to pay all Land and Buildings Transaction Tax payable on the transaction involving the Disposition and submit the Disposition for registration in the Land Register of Scotland within 21 days of the Title Transfer Date.
9. Provided that the Disposition is presented for registration prior to the date of expiry of the Advance Notice registered in relation to the Disposition, the updated or newly created Title Sheet for the interest transferred by the Disposition will contain no exclusion or limitation of warranty in terms of Section 75 of the 2012 Act and will disclose no entry, deed or diligence (including any charging order under the Buildings (Recovery of Expenses) (Scotland) Act 2004 or the Title Conditions (Scotland) Act 2003) prejudicial to the interest of the Tenants other than such as are created by or against the Tenants or have been disclosed to and accepted by the Tenants prior to the Title Transfer Date.
10. The Landlords will deliver to the Tenants, on demand from time to time and at the Landlords' expense such documents and evidence as the Keeper may require to enable the Keeper to update or create (as the case may be) the Title Sheet of the Subjects to disclose the Tenants as the registered proprietors of the whole Subjects.

11. The Landlords shall cooperate fully with the Tenants to procure that the Tenants' applications for registration are dealt with by the Keeper as quickly as practicable.
12. The minerals are included in the title only to the extent the Landlords have any right to them.
- 12.1 Definitions
- In Clause 12:
- "Contaminated Land Regime" means the contaminated land regime under Part 2A of the Environmental Protection Act 1990 (as amended from time to time) and any statutory instrument, circular or guidance issued under it.
- "Environment" means any and all organisms (including humans), ecosystems, natural or man-made buildings or structures, and the following media:
- (a) air (including air within buildings or structures, whether above or below ground);
 - (b) water (including surface and ground water and water in wells, boreholes, pipes, sewers and drains); and
 - (c) land (including surface land and sub-surface strata and any land under seabeds or rivers, wetlands or flood plains);
- "Environmental Authority" means any person or legal entity (whether statutory or non-statutory or governmental or non-governmental) having regulatory authority under the Contaminated Land Regime
- "Hazardous Substances" means any natural or artificial substance (whether in solid or liquid form or in the form of a gas or vapour and whether alone or in combination with any other substance) capable of causing harm to the Environment and/or harm to the health of living organisms or other interference with the ecological systems of which they form part and/or harm to property and/or in the case of humans, offence caused to any sense;
- 12.2 Agreement as to Environmental Liabilities
- The Landlords and the Tenants agree that from the Title Transfer Date:
- 12.2.1 as between the Tenants and the Landlords, liability for any notice or requirement of any Environmental Authority made pursuant to the Contaminated Land Regime in respect of the Subjects or any Hazardous Substances attributable to the Subjects, will rest with the Tenants to the exclusion of the Landlords; and
- 12.2.2 if any Environmental Authority wishes to recover costs incurred by it in carrying out any investigation, assessment, monitoring, removal, remedial or risk mitigation works under the Contaminated Land Regime in respect of the Subjects or any Hazardous Substances attributable to the Subjects from either or both of the Tenants and the Landlords then, as between the Tenants and the Landlords, the sole responsibility for the payment of such costs will rest with the Tenants to the exclusion of the Landlords.
- The agreements outlined under Clauses 12.2.1 and 12.2.2 are made with the intention that any Environmental Authority serving any notice or seeking to recover any costs should give effect to the agreements pursuant to the Contaminated Land Regime.
- The Tenants and the Landlords agree that the appropriate Environmental Authority may be notified in writing of the provisions of Clause 12 if required to give effect to the agreements outlined under Clauses 12.2.1 and 12.2.2.
- 12.3 The Tenants will indemnify the Landlords in respect of all and any actions, losses, damages, liabilities, charges, claims, costs and expenses which may be paid, incurred, suffered or sustained by Landlords arising (directly or indirectly) out of or in connection with the presence of any Hazardous Substances in, on or under the Subjects or migrating to or from the Subjects.
13. The provisions set out in Part 4 Community Interests shall apply with effect from the Date of Entry defined in the foregoing Lease.

Part 4
Community interests

In this Part 4 of the Schedule:

"**2003 Act**" means the Land Reform (Scotland) Act 2003;

"**2016 Act**" means the Land Reform (Scotland) Act 2016;

"**Completion**" shall be the date of completion of the Title Transfer;

"**Part 3A Community Body**" means a community body constituted in terms of Section 97D of the 2003 Act;

"**Part 5 Community Body**" means a community body constituted in terms of Section 49 of the 2016 Act;

"**Part 2 Notice**" means any copy application, invitation to make representations or notice in terms of Part 2 of the 2003 Act in respect of the Subjects;

"**Part 3A Notice**" means any copy application, invitation to make representations, notice or written request in terms of Part 3A of the 2003 Act in respect of the Subjects;

"**Part 5 Notice**" means any copy application, invitation to make representations, notice or written request in terms of Part 5 of the 2016 Act in respect of the Subjects;

"**RACBBL**" means the Register of Applications by Community Bodies to Buy Land held by the Keeper of the Registers of Scotland;

"**RCIL**" means the register of community interests in land held by the Keeper of the Registers of Scotland;

"**Title Transfer**" means the sale in terms of Part 3 of the foregoing Schedule;

1. Community Right to Buy under Part 2 of the 2003 Act

1.1 The Landlords have not received any Part 2 Notice.

1.2 If the Landlords receive any Part 2 Notice prior to registration of the Disposition, then the Landlords will immediately:

1.2.1 notify the Tenants; and

1.2.2 exhibit a copy of it to the Tenants.

1.3 If the Landlords receive any Part 2 Notice (whether before, on or after Completion) which relates to an application by a community body to register an interest in the Subjects received by the Scottish Ministers after the Date of Entry, the Landlords will immediately:

1.3.1 exhibit a copy of the Lease and any other information in terms of Section 39A of the 2003 Act to the Scottish Ministers to ensure that the Scottish Ministers decline to consider the application in terms of Section 39(5) of the 2003 Act; and

1.3.2 exhibit evidence to the Tenants of compliance with paragraph 1.3.1.

1.4

10(5)(e)

2. Community Right to Buy Abandoned, Neglected or Detrimental Land under Part 3A of the 2003 Act

No part of the Subjects are abandoned, neglected or detrimental land within the meaning of Part 3A of the 2003 Act and the Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Eligible Land, Regulators and Restrictions on Transfers and Dealing) (Scotland) Regulations 2018.

2.1 If the Subjects or any part of them are abandoned, neglected or detrimental land within the meaning of Part 3A of the 2003 Act and the Community Right to Buy (Abandoned, Neglected

or Detrimental Land) (Eligible Land, Regulators and Restrictions on Transfers and Dealing) (Scotland) Regulations 2018:

- 2.1.1 the Landlords have:
- (i) no knowledge of any proposals to form a Part 3A Community Body in respect of the Subjects or any part of it;
 - (ii) not been approached by any Part 3A Community Body to sell the Subjects or any part of it to the Part 3A Community Body; and
 - (iii) not received any Part 3A Notice; and
- 2.1.2 there is no pending application by a Part 3A Community Body appearing on the RACBBL.
- 2.2 If a pending application by a Part 3A Community Body appears on the RACBBL on or before the Date of Entry, but it does not come to the attention of the Landlords or the Tenants until after the Date of Entry:
- 2.2.1 the Landlords will notify the Tenants in writing within 1 Working Day after receipt of the copy of the Part 3A Notice from the Part 3A Community Body;
- 2.2.2
- 10(5)(e)
- 2.2.3 the Landlords will notify the Tenants in writing within 2 Working Days after receipt of notification from the Scottish Ministers or from the Part 3A Community Body (as appropriate) of any of the matters referred to in paragraphs 2.2.3(i) to 2.2.3(iii) and the Title Transfer Date will be 5 Working Days after receipt by the Tenants of the notice from the Landlords confirming that:
- (i) the Part 3A Community Body has withdrawn the application to which the Part 3A Notice relates;
 - (ii) the Scottish Ministers have received written notice from the Part 3A Community Body that it will not exercise the right to buy the Subjects; or
 - (iii) the Scottish Ministers have decided not to consent to allow the right to buy to proceed.
- 2.3 If a pending application by a Part 3A Community Body appears in the RACBBL after the Date of Entry but before Completion:
- 2.3.1 the Landlords will notify the Tenants in writing within 1 Working Day after receipt of a copy of the Part 3A Notice from the Part 3A Community Body;
- 2.3.2 either party 10(5)(e)
- 10(5)(e)
- 10(5)(e) and
- 2.3.3 if the Tenants do not resale from the Missives in terms of paragraph 2.3.2:
- (i) the Disposition in favour of the Tenants will contain a declaration in terms of Regulation 14 of the Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Eligible Land, Regulators and Restrictions on Transfers and Dealing) (Scotland) Regulations 2018; and
 - (ii) the Landlords will inform the Scottish Ministers that the Subjects have been sold.
- 2.4 If a pending application by a Part 3A Community Body appears in the RACBBL after Completion, the Landlords will, if requested to do so by the Tenants, re-execute the Disposition containing a declaration in terms of Regulation 14 of the Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Eligible Land, Regulators and Restrictions on Transfers and Dealing) (Scotland) Regulations 2018.

- 3. Community Right to Buy to Further Sustainable Development under Part 5 of the 2016 Act**
- 3.1 The Landlords have:
- 3.1.1 no knowledge of any proposals to form a Part 5 Community Body in respect of the Subjects or any part of it;
- 3.1.2 not been approached by any Part 5 Community Body to sell the Subjects or any part of it to the Part 5 Community Body; and
- 3.1.3 not received any Part 5 Notice; and
- 3.2 There is no pending application by a Part 5 Community Body appearing on the RACBBL.
- 3.3 If a pending application by a Part 5 Community Body appears on the RACBBL on or before the Date of Entry, but it does not come to the attention of the Landlords or the Tenants until after the Date of Entry:
- 3.3.1 the Landlords will notify the Tenants in writing within 1 Working Day after receipt of the copy of the Part 5 Notice from the Part 5 Community Body;
- 3.3.2 if Completion has not taken place:
- (i) either party will be entitled to resile from the Title Transfer without penalty on delivery of a written notice to that effect to the other party, not later than 5 Working Days after the date on which the Tenants have received the copy of the Part 5 Notice, time being of the essence; or
- (ii) if neither party resiles from the Title Transfer in terms of paragraph 3.3.2(i):
- (ii)(a) the Title Transfer will be suspended with effect from the date on which the pending application by the Part 5 Community Body appears on the RACBBL; and
- (ii)(b) the Landlords will notify the Tenants that the Title Transfer has been suspended immediately; and
- (ii)(c) if the original Title Transfer Date has passed because the Landlords and the Tenants have been prevented by the Part 5 Notice from taking any further steps to transfer the Subjects, then the provisions of paragraph 3.3.3 will apply.
- 3.3.3 the Landlords will notify the Tenants in writing within 2 Working Days after receipt of notification from the Scottish Ministers or from the Part 5 Community Body (as appropriate) of any of the matters referred to in paragraphs 3.3.3(i) to 3.3.3(iii) and the Title Transfer Date will be 5 Working Days after receipt by the Tenants of the notice from the Landlords confirming that:
- (i) the Part 5 Community Body has withdrawn the application to which the Part 5 Notice relates;
- (ii) the Scottish Ministers have received written notice from the Part 5 Community Body that it will not exercise the right to buy the Subjects; or
- (iii) the Scottish Ministers have decided not to consent to allow the right to buy to proceed.
- 3.4 If a pending application by a Part 5 Community Body appears in the RACBBL after the Date of Entry but before Completion:
- 3.4.1 the Landlords will notify the Tenants in writing within 1 Working Day after receipt of a copy of the Part 5 Notice from the Part 5 Community Body;
- 3.4.2 the Tenants will be entitled to resile from the Title Transfer without penalty on delivery of a written notice to that effect to the Landlords, not later than 5 Working Days after the date on which the Tenants have received the Part 5 Notice in terms of paragraph 3.4.1, time being of the essence; and
- 3.4.3 if the Tenants have not resiled from the Title Transfer in terms of paragraph 3.4.2:
- (i) the Disposition in favour of the Tenants will contain a declaration in terms of Regulation 10 of the Right to Buy Land to Further Sustainable Development (Eligible Land, Specified Types of Area and Restrictions on Transfers, Assignations and Dealing) (Scotland) Regulations 2020; and
- (ii) the Landlords will inform the Scottish Ministers that the Subjects have been sold.
- 3.5 If a pending application by a Part 5 Community Body appears in the RACBBL after Completion, the Landlords will, if requested to do so by the Tenants, re-execute the Disposition containing a declaration in terms of Regulation 10 of the Right to Buy Land to Further Sustainable Development (Eligible Land, Specified Types of Area and Restrictions on Transfers, Assignations and Dealing) (Scotland) Regulations 2020.
- 4. Community Asset Transfer Requirements**

- 4.1 If the Landlords are a relevant authority in terms of section 78 and Schedule 3 of the Community Empowerment (Scotland) Act 2015, the Landlords confirm that they have not received any asset transfer request from a community transfer body in relation to the Subjects.
- 4.2 If the Landlords receive an asset transfer request from a community transfer body at any time before and including Completion, then the Tenants will be entitled to resile from the Title Transfer without penalty on delivery of a written notice to that effect to the Landlords.

Part 5
Approved Plans and Specification

[INSERT APPROVED DEVELOPMENT WORKS PLANS AND SPECIFICATIONS AND WHERE THE SUBJECTS / DEVELOPMENT WORKS ARE SECTIONAL COMPLETION COMPATIBLE IN TERMS OF THE FOREGOING OFFER EACH SECTION SHALL BE LISTED BELOW WITH ITS OWN INDIVIDUAL APPROVED PLANS AND SPECIFICATIONS]

Part 6
Disposition



SHEPHERD+ WEDDERBURN

DISPOSITION (INCORPORATING SECTION 32
AGREEMENT)

by

Scottish Enterprise

in favour of

Flamingo Land Limited

Subjects: [] hectares at Balloch, Loch Lomond

We, SCOTTISH ENTERPRISE, established under the Enterprise and New Towns (Scotland) Act 1990 and having our principal place of business at Atrium Court, 50 Waterloo Street, Glasgow, G2 6HQ ("**Scottish Enterprise**"), IN CONSIDERATION of the sum of 10(5)(e) together with all Value Added Tax properly payable thereon paid by FLAMINGO LAND LIMITED, incorporated under the Companies Acts (Registered Number SC052543) and having their Registered Office at The Cross, Uddingston, Glasgow, G71 7ES (who and whose successors are hereby referred to as "**the Purchaser**"), of which sum we hereby acknowledge receipt, DO HEREBY DISPONE to and in favour of the Purchaser and their successors and assignees whomsoever heritably and irredeemably ALL and WHOLE that plot or area of ground extending to [] hectares (() ha) or thereby at Balloch, Loch Lomond shown outlined in red on the plan annexed and executed relative to this disposition (the "**Plan**") (the "**Property**"), which Property forms part and portion of the subjects registered in the Land Register of Scotland under Title Number DMB25028; together with (One) [DN: insert any Pertinents which relate to the Property as agreed in relation to the correlating ground lease for the Property]; (Two) the whole buildings and other erections on the subjects herein disposed and the heritable plant and equipment, fixtures and fittings therein and thereon; (Three) the parts, privileges and pertinents thereof; and (Four) our whole right, title and interest therein and thereto; BUT ALWAYS WITH AND UNDER (One) the terms of the agreement contained in the schedule annexed and executed relative to this disposition (the "**Schedule**"), which agreement is made between Scottish Enterprise and the Purchaser in terms of Section 32 of the Enterprise and New Towns (Scotland) Act 1990 and which the Purchaser accepts (i) is enforceable by Scottish Enterprise in terms of the Enterprise and New Towns (Scotland) Act 1990; (ii) no application may be made by the Purchaser under Section 90(1)(a)(i) of Title Conditions (Scotland) Act 2003 in respect of the real burdens set in the Schedule hereinafter mentioned; and (iii) the price paid by the Purchaser to Scottish Enterprise reflects the terms of the agreement contained in the Schedule; and (Two) [DN: insert/update as appropriate to refer to (i) any rights reserved by SE, and (ii) the rights created above and how they affect burdened and benefitted properties within the subjects in Title Number DMB25028 as agreed in relation to the corresponding ground lease of the Property] with entry as at [DN: the Title Transfer Date in terms of the Ground Lease];

and we grant warrandice but excluding therefrom

10(5)(e)

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IN WITNESS WHEREOF these presents consisting of

this and the preceding page, together with the Plan and Schedule annexed and executed as relative hereto, are executed as follows:-

Sealed with the Common Seal of **SCOTTISH ENTERPRISE** and signed for and on its behalf by

..... (signature)

..... (full name)

Solicitor and Authorised Signatory

at

on

Subscribed for and on behalf of **FLAMINGO LAND LIMITED** by:

.....
Director / Secretary / Authorised Signatory

.....
Witness

.....
(Full Name)

.....
(Full Name)

at

.....

on

.....
(Address)

This is the Schedule referred to in the foregoing Disposition (incorporating Section 32 Agreement) by Scottish Enterprise in favour of Flamingo Land Limited relative to [] hectares at Balloch, Loch Lomond

SCHEDULE

SECTION 32 AGREEMENT

between

SCOTTISH ENTERPRISE, established under the Enterprise and New Towns (Scotland) Act 1990 and having our principal place of business at Atrium Court, 50 Waterloo Street, Glasgow, G2 6HQ (who and whose successors are hereinafter referred to as "**SE**"); and

FLAMINGO LAND LIMITED, incorporated under the Companies Acts (Registered Number SC052543) and having their Registered Office at The Cross, Uddingston, Glasgow, G71 7ES (who and whose successors are hereinafter referred to as "**the Owner**")

WHEREAS:-

(First) the Owner has purchased from SE, SE's interest in the Property as hereinafter defined;

(Second) it has been agreed in the foregoing Disposition that the Owner and SE will enter into this Section 32 Agreement in terms of Section 32 of the Enterprise and New Towns (Scotland) Act 1990.

THEREFORE IT IS CONTRACTED AND AGREED between SE and the Owner as follows:-

1. Definitions and interpretations

1.1 In this Minute of Agreement, the following words and phrases shall have the meanings given below:-

"Acquisition Price"	means [DN: the Premium in terms of the Ground Lease of the Property] ;
"Agreement"	means this agreement;
"Change of Control"	means any change in Control in relation to the Owner, and any acquisition (whether by purchase, transfer, renunciation or otherwise) by any person (an " Acquirer ") of any interest in any shares in, or other rights or entitlements in relation to, the Owner (or any successor in title to an interest in the Property or any part of it pursuant to a Permitted Disposal) or any party with any right or interest in or in respect of the Owner if, upon completion of that acquisition, the Acquirer, together with any Connected Person, would hold, or be able to control or influence directly or indirectly the decision-making in respect of, 50 per cent or more of the total voting rights conferred by all of the shares in the capital of the Owner (provided that a bona fide internal reorganisation of the Owner shall not be deemed to be a Change of Control), or the right directly or indirectly to appoint and/or dismiss, or otherwise influence or control the activities or voting of, a majority of the directors of the Owner or of any director or directors having voting rights which may enable them to

	control or direct the affairs of the Owner, and includes the entry into any obligation for such Change of Control;
"Clawback Period"	means the period from the Initial Date up to (and including) the Expiry Date;
"Connected Person"	means any person or corporation who is connected or associated with the relevant person or corporation in any way and includes (without limitation) the relationships specified in sections 252 to 255 of the Companies Act 2006;
"Control"	shall be interpreted as having the meanings given in both section 450 and section 1124 of the Corporation Tax Act 2010 and the words "Controlled" or "Controlled by" shall be construed accordingly;
"Disposal"	means the first to occur of any sale, transfer, gift, assignation, conveyance, disposition and/or grant of a lease for a period in excess of 10(5)(e) in respect of the Property (or any part or parts thereof which have not already been the subject of a Disposal) by the Owner (not including an Excluded Disposal) and/or any transaction giving rise to a Change of Control;
"Disposition"	means the foregoing disposition (of which this Agreement forms part) by Scottish Enterprise in favour of Flamingo Land Limited;
"Excluded Disposal"	means any sale, transfer, assignation, conveyance, disposition and/or grant of a lease in respect of any part of the Property by the Owner to statutory undertakers for use as a substation, or any disposal under compulsory purchase ;
"Expiry Date"	means the date fallin 10(5)(e) after the Initial Date;
"Increase in Value"	means the increase in value of the Property upon a Disposal between the Acquisition Price of the Property and the Open Market Value of the Property on such a Disposal as at the Relevant Date; Declaring that where the Increase in Value is to be calculated in respect of a Disposal of less than the whole of the Property, such increase shall be calculated on a fair and equitable basis having regard to the Open Market Value of the part or parts of the Property which are subject to the Disposal and using a fair and equitable apportionment of the Acquisition Price;
"Independent Valuer"	means a suitably experienced chartered surveyor having at least ten years' experience in the valuation of development land and investment properties in Scotland appointed by agreement between SE and the Owner or, failing such agreement, appointed following nomination by the Chairman of the Scottish Branch of the RICS on the request of either party;
"Initial Date"	means [DN: the Date of Practical Completion in terms of the Ground Lease of the Property];
"Net Increase in Value"	means on each occasion the same requires to be calculated, the Increase in Value under deduction of all Reasonable Costs; Declaring that where such figure is negative, the Net Increase in Value shall be zero;
"Open Market Value"	means the higher of (a) the value of the Property (excluding, for the avoidance of doubt, any erections or infrastructure constructed thereon by the Owner and, in the case of a

lease, excluding any effect in value attributable to the existence of such lease), taking into account all planning consents, obligations and agreements, assuming a sale on the open market by a willing seller to a willing purchaser calculated in accordance with the Practice Statement of the Royal Institution of Chartered Surveyors Appraisal and Valuation Manual RIC (the "Red Book"), and (b) the actual disposal price of the Property (excluding, for the avoidance of doubt, any erections or infrastructure constructed thereon by the Owner) including for the purposes of this definition any deferred consideration not payable upon completion of the relevant Disposal;

"Permitted Disposal"	means any Disposal to or in favour of any person which has Control over, or is Controlled by the same person(s) as has ultimate Control over, the Owner;
"person"	includes natural persons, companies, bodies corporate, unincorporated associations, trusts and partnerships (in each case wherever the same shall be resident, established or incorporated and whether or not having separate legal personality);
"Property"	means the Property disposed by and more particularly described in the Disposition;
"Reasonable Costs"	means the reasonable costs properly incurred in relation to the Owner's acquisition of the Property, including Land and Buildings Transaction Tax, planning and building control costs, costs of surveys and all other professional costs and expenses reasonably and properly incurred by the Owner in connection with the acquisition of the Property; Declaring that where any Increase in Value relates to a Disposal of less than the whole of the Property, Reasonable Costs shall be calculated as a fair and equitable proportion of all such costs relative to the part or parts of the Property subject to the Disposal;
"Relevant Date"	means the date of settlement under a Sale Contract for the Property (or any part or parts thereof) or where relevant the effective date of any Change of Control;
"Sale Contract"	means a contract for the Disposal of the Property (or any part or parts thereof) by the Owner; and
"Working Day"	means any day other than a Saturday or a Sunday or a day which is a Bank Holiday in Scotland.

2. Clawback provisions

- 2.1 Throughout the Clawback Period:-
- 2.1.1 On each occasion where a Disposal occurs in relation to the Property (or any part or parts thereof) which is not a Permitted Disposal during the Clawback Period, the Owner will pay to SE^{10(5)(e)} of the Net Increase in Value of the Property (or part thereof) in question (as agreed between the parties hereto, failing which determined by the Independent Valuer). The Owner will not be permitted to complete any Disposal which is not a Permitted Disposal until payment has been received by SE.
 - 2.1.2 The Owner will notify SE as soon as it becomes aware of the reasonable prospect of any Disposal and keep SE up to date on the commercial terms of the same and the anticipated timescales for completion thereof.
 - 2.1.3 Along with any notification given in terms of Clause 2.1.2 the Owner will provide such information as SE reasonably requires in relation to the matter including, if

appropriate, copies of all contracts (or any draft contracts under negotiation) relating to any Disposal.

- 2.1.4 Notification of the final agreed commercial terms of any Disposal shall be provided to SE in writing at least 20 Working Days prior to the anticipated completion of that Disposal together with the Owner's calculations in respect of its estimate of the Net Increase in Value as at the estimated Relevant Date. If SE disagrees with the Owner's estimate of the Net Increase in Value (and/or any of the underlying calculations in relation thereto) SE shall give notice to that effect within 15 Working Days of receipt of the original notice of the final agreed commercial terms of any Disposal from the Owner. If the parties hereto have not agreed the relevant Net Increase in Value within a further 15 Working Days either party may require the matter to be referred for determination by an Independent Valuer in accordance with Clause 3 of this Agreement.
- 2.1.5 If SE does not object to the Owner's estimate of the Net Increase in Value within the said period of 15 Working Days under Clause 2.1.4 it shall be deemed to have accepted the same and the payment due to SE shall be payable in accordance with Clauses 2.1.7 and 2.1.8.
- 2.1.6 All calculations under this Agreement shall exclude Value Added Tax payable on any of the applicable sums.
- 2.1.7 Any sum payable to SE shall be due and payable within 5 Working Days of agreement on determination of a Net Increase in Value (the last of such Working Days being the "payment date").
- 2.1.8 All sums payable by the Owner under this Agreement shall be paid by telegraphic transfer to such United Kingdom bank account as SE may nominate and, failing payment on the payment date, interest shall be payable thereon at a rate four per centum per annum above the base rate from time to time in force of the Bank of Scotland (or such equivalent rate as SE may reasonably substitute) from the payment date until payment.

3. Valuation disputes

- 3.1 If SE objects pursuant to Clause 2.1.4 to the Owner's estimate of any Net Increase in Value and the matter is referred at the instance of either party for determination by an Independent Valuer then the remaining provisions of this Clause 3 shall apply.
- 3.2 The Independent Valuer shall act as an expert and shall be asked to determine the amount of the Net Increase in Value of the Property (or any part or parts thereof), and/or what shall constitute a fair and equitable apportionment of any Increase in Value or any Reasonable Costs in respect of a Disposal of less than the whole of the Property, having regard to the provisions of this Agreement. If so requested by either party, the Independent Valuer shall hold a hearing at which the parties shall be entitled to put forward their valuations, views on costs, fair and equitable apportionments and any supporting evidence and other relevant information.
- 3.3 If the Independent Valuer has not issued his determination within 20 Working Days of his appointment, then either party may request the Chairman of the Scottish Branch of the RICS to nominate a replacement valuer to act as the Independent Valuer, and the remaining provisions of this Clause 3 shall apply to such new appointment.
- 3.4 The costs of the Independent Valuer (and of the said Chairman) shall be borne in such proportions as the Independent Valuer directs and failing any such direction shall be shared equally.
- 3.5 The decision of the Independent Valuer shall be final and binding on the parties save where manifest error can be shown.

4. Good faith

- 4.1 The Owner and SE will act in good faith with one another in relation to the application of the provisions of this Agreement.
- 4.2 The Owner will not structure any Disposal in any manner where the principal purpose is to avoid paying or reduce the Net Increase in Value.

5. Assignment

- 5.1 SE shall be permitted to assign its interest in this Agreement to any body or organisation established to take over the whole or substantially the whole of the assets and liabilities of SE without the need for consent from the Owner. SE shall be obliged to notify the Owner in writing of any such assignment within 15 Working Days of the date of such assignment.
- 5.2 The Owner of the Property from time to time shall be obliged to comply with this Agreement in terms of Clause 7.4 below and shall not otherwise be permitted to assign its interest in this Agreement.

6. Costs

- 6.1 SE and the Owner will pay their own costs in connection with the completion and implementation of this Agreement.

7. Section 32 agreement

- 7.1 SE and the Owner confirm this Agreement is made in terms of Section 32 of the Enterprise and New Towns (Scotland) Act 1990;
- 7.2 No application can be made by the Owner under Section 90(1)(a)(i) of the Title Conditions (Scotland) Act 2002 in respect of the burdens contained in this Agreement;
- 7.3 SE and the Owner agree that the price paid for the Property in the Disposition reflects the terms of this Agreement;
- 7.4 For the avoidance of doubt, the terms of this Agreement shall be binding on all future successors to the Owner's interest in the Property (or any part or parts thereof).

IN WITNESS WHEREOF these presents consisting of this and the preceding four pages are executed as follows:-

Sealed with the Common Seal of **SCOTTISH ENTERPRISE** and signed for and on its behalf by

..... (signature)

..... (full name)

Solicitor and Authorised Signatory

at

on

Subscribed for and on behalf of **FLAMINGO LAND LIMITED** by:

.....
Director / Secretary / Authorised Signatory

.....
Witness

.....
(Full Name)

.....
(Full Name)

at

.....

on

.....
(Address)

Part 7
Lease Plan 1

[INSERT: LEASE PLAN]

Part 8
Lease Plan 2

[INSERT: LEASE PLAN]

Part 9
Lease Plan 3

[INSERT: LEASE PLAN]

Part 10
Permitted Gaming Machines

Category of machine	Maximum stake	Maximum prize
C	£1	£100
D – non-money prize	30p	£8
D – non-money prize (crane grab machines only)	£1	£50
D – money prize	10p	£5
D – combined money and non-money prize	10p	£8 (of which no more than £5 may be a money prize)
D – combined money and non-money prize (coin pusher or penny falls machines only)	20p	£20 (of which no more than £10 may be a money prize)

10(5)(e)

Part 3
Estimated Abnormal Costs

The Landlords and the Tenants will use their respective reasonable endeavours to agree the Site Estimated Abnormal Costs set out below in connection with the Development having regard to clause 24.1, 24.2 and 24.3 of the foregoing offer within a period of one calendar month after the Tenants intimate to the Landlords in writing that they have obtained a Satisfactory Planning Permission, failing which either party may refer the matter for determination by an independent third party in terms of the final paragraph of this Part of the Schedule. The "Site Estimated Abnormal Costs" means the costs to the Tenants which are estimated to arise from the Tenants' Proposed Development of the Site in accordance with the PPIp to the extent they are reasonable, appropriate and can be justified as necessary and are relevant costs over and above normal development costs for a development similar to the Development as a consequence of having to address the following matters in connection with the Development of the Site in terms of the PPIp (but always excluding from such costs any costs arising as a result of the Proposed Development on the Site by the Tenants incurred in relation to any area of land located outwith the Site and which costs are incurred as a consequence of a decision on the part of the Tenants 10(5)(e) and/or such other area of land within the red line boundary of the location plan that accompanied the PPIp Application) namely:

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3. Low Cost Carbon - The Building Standards Technical Handbook 2019: non domestic explains how the Building Regs standards are to be met. The guidance in this Handbook explains how the Scottish Government's energy standards are to be achieved. Section 6 of the 2019 Technical Handbook sets out how "effective measures for the conservation of fuel and power are incorporated in buildings". The standards are intended to achieve an improvement for new non domestic buildings reducing emissions by 43% compared to the previous 2010 standards. The 2019 Technical Handbook will set the benchmark standard for low carbon costs for the Development as at the completion date. If the local planning authority lawfully wishes to apply through the imposition of a planning condition or Section 75 obligation a stricter emissions reduction target than the 43% compared to the previous 2010 standards target set out in the 2019 Technical Handbook then an estimate of the additional costs associated with the achievement of the stricter local planning authority target should be allowed to be taken into account as Site Estimated Abnormal Costs.
4. Utilities/Services – the costs of any diversions, disconnections, or upgrades, sub-stations and any excess connection charges on or off-site to the extent the same are in excess of standard provisions and charges and relate solely to the development requirements of the Site only.
- 5.

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9. Archaeological - the costs of any archaeological survey, reports, watching brief or subsequent works required by a lawful authority in respect of the Site; and
10. Ground Conditions – any costs expended relating to remediation of mineral instability on the Site.
11. Planning Costs means the costs reasonably and properly incurred or to be incurred by the Tenants associated with the provision of any on-site and off-site items, works, land and/or services or other community planning obligations (or as a substitute therefor any financial contribution in the form of a commuted sum) that the Tenants are required to incur to address planning gain (as such expression is normally understood in the development industry) requirements by the planning, roads or other competent authority being requirements which relate to matters which are required as a matter of planning policy in order to comply with the terms of a planning obligation.

Once the Site Estimated Abnormal Costs has been agreed or determined, the parties will use their respective reasonable endeavours to agree the “Phase Estimated Abnormal Costs“ for all Phases of the Development within a month following such agreement/determination failing which either party may refer the matter for determination by an independent third party in terms of the final paragraph of this Part of the Schedule

Any dispute arising between the parties (save as to interpretation which shall be subject to decision of the courts or such other dispute resolution procedure as the parties may agree) under the Missives shall be subject to determination by an independent third party surveyor or other specialist professional acting as expert (not arbiter) agreed upon by the parties or, failing agreement within 7 days of one party giving its nomination to the other, appointed on the application of either party by the Chairman or other senior office holder of the RICS (Scottish Branch) who shall have the power to determine both the type of professional as well as the individual professional; such professional’s decision shall be final and binding including as to costs of the reference to the RICS and the costs of the expert and failing any determination on costs the same shall be split equally.

Part 4
Community interests

In this Part of the Schedule:

"2003 Act"	means the Land Reform (Scotland) Act 2003;
"2016 Act"	means the Land Reform (Scotland) Act 2016;
"Completion"	shall be Completion (Site) or Completion (Phase) as appropriate in the context.
"Date of Entry"	shall be Date of Entry (Site) or Date of Entry (Phase) as appropriate in the context ; and
"Part 3A Community Body"	means a community body constituted in terms of Section 97D of the 2003 Act;
"Part 5 Community Body"	means a community body constituted in terms of Section 49 of the 2016 Act;
"Part 2 Notice"	means any copy application, invitation to make representations or notice in terms of Part 2 of the 2003 Act in respect of the Site;
"Part 3A Notice"	means any copy application, invitation to make representations, notice or written request in terms of Part 3A of the 2003 Act in respect of the Site; and
"Part 5 Notice"	means any copy application, invitation to make representations, notice or written request in terms of Part 5 of the 2016 Act in respect of the Site;

1. **Community Right to Buy under Part 2 of the 2003 Act**
- 1.1 The Landlords have not received any Part 2 Notice.
- 1.2 If the Landlords receive any Part 2 Notice prior to registration of the Lease, then the Landlords will immediately:
 - 1.2.1 notify the Tenants; and
 - 1.2.2 exhibit a copy of it to the Tenants.
- 1.3 If the Landlords receive any Part 2 Notice (whether before, on or after Completion) which relates to an application by a community body to register an interest in the Site received by the Scottish Ministers after the Conclusion Date, the Landlords will immediately:
 - 1.3.1 exhibit a copy of the Missives and any other information in terms of Section 39A of the 2003 Act to the Scottish Ministers to ensure that the Scottish Ministers decline to consider the application in terms of Section 39(5) of the 2003 Act; and
 - 1.3.2 exhibit evidence to the Tenants of compliance with paragraph 1.3.1.
 - 1.3.3

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2. Community Right to Buy Abandoned, Neglected or Detrimental Land under Part 3A of the 2003 Act

No part of the Site is abandoned, neglected or detrimental land within the meaning of Part 3A of the 2003 Act and the Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Eligible Land, Regulators and Restrictions on Transfers and Dealing) (Scotland) Regulations 2018.

2.1 If the Site or any part of it is abandoned, neglected or detrimental land within the meaning of Part 3A of the 2003 Act and the Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Eligible Land, Regulators and Restrictions on Transfers and Dealing) (Scotland) Regulations 2018:

2.1.1 the Landlords have:

- (i) no knowledge of any proposals to form a Part 3A Community Body in respect of the Site or any part of it;
- (ii) not been approached by any Part 3A Community Body to sell the Site or any part of it to the Part 3A Community Body; and
- (iii) not received any Part 3A Notice; and

2.1.2 there is no pending application by a Part 3A Community Body appearing on the RACBBL.

2.2 If a pending application by a Part 3A Community Body appears on the RACBBL on or before the Conclusion Date, but it does not come to the attention of the Landlords or the Tenants until after the Conclusion Date:

2.2.1 the Landlords will notify the Tenants in writing within 1 Working Day after receipt of the copy of the Part 3A Notice from the Part 3A Community Body;

2.2.2

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- (i) the Tenants will 10(5)(e)

10(5)(e)

- (ii) 10(5)(e)

- (ii)(a) 10(5)(e)

- (ii)(b) 10(5)(e)

- (ii)(c) 10(5)(e)

2.2.3 the Landlords will notify the Tenants in writing within 2 Working Days after receipt of notification from the Scottish Ministers or from the Part 3A Community Body (as appropriate) of any of the matters referred to in paragraphs 2.2.3(a) to 2.2.3(c) and the Date of Entry will be 5 Working Days after receipt by the Tenants of the notice from the Landlords confirming that:

- (i) the Part 3A Community Body has withdrawn the application to which the Part 3A Notice relates;
- (ii) the Scottish Ministers have received written notice from the Part 3A Community Body that it will not exercise the right to buy the Site ; or

- (iii) the Scottish Ministers have decided not to consent to allow the right to buy to proceed.
- 2.3 If a pending application by a Part 3A Community Body appears in the RACBBL after the Conclusion Date but before Completion:
 - 2.3.1 the Landlords will notify the Tenants in writing within 1 Working Day after receipt of a copy of the Part 3A Notice from the Part 3A Community Body;
 - 2.3.2 the Tenants will 10(5)(e)
 - 10(5)(e)
 - 2.3.3 if the Tenants do not resile from the Missives in terms of paragraph 2.3.2:
 - (i) the Lease in favour of the Tenants will contain a declaration in terms of Regulation 14 of the Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Eligible Land, Regulators and Restrictions on Transfers and Dealing) (Scotland) Regulations 2018; and
 - (ii) the Landlords will inform Scottish Ministers that the Site has been leased.
- 2.4 If a pending application by a Part 3A Community Body appears in the RACBBL after Completion, the Landlords will, if requested to do so by the Tenants, re-execute the Lease containing a declaration in terms of Regulation 14 of the Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Eligible Land, Regulators and Restrictions on Transfers and Dealing) (Scotland) Regulations 2018.
- 3. **Community Right to Buy to Further Sustainable Development under Part 5 of the 2016 Act**
- 3.1 The Landlords have:
 - 3.1.1 no knowledge of any proposals to form a Part 5 Community Body in respect of the Property or any part of it;
 - 3.1.2 not been approached by any Part 5 Community Body to sell the Property or any part of it to the Part 5 Community Body; and
 - 3.1.3 not received any Part 5 Notice; and
- 3.2 There is no pending application by a Part 5 Community Body appearing on the RACBBL.
- 3.3 If a pending application by a Part 5 Community Body appears on the RACBBL on or before the Conclusion Date, but it does not come to the attention of the Landlords or the Tenants until after the Conclusion Date:
 - 3.3.1 The Landlords will notify the Tenants in writing within 1 Business Day after receipt of the copy of the Part 5 Notice from the Part 5 Community Body;
 - 3.3.2 if Completion has not taken place:
 - (i) either party will be entitled to resile from the Missives without penalty on delivery of a written notice to that effect to the Landlords' Solicitors, not later than 5 Working Days after the date on which the Tenants have received the copy of the Part 5 Notice, time being of the essence; or
 - (ii) if neither party resiles from the Missives in terms of paragraph 3.3.2(i):
 - (ii)(a) the Missives will be suspended with effect from the date on which the pending application by the Part 5 Community Body appears on the RACBBL; and

- (ii)(b) the Landlords will notify the Tenants that the Missives have been suspended immediately; and
 - (ii)(c) if the original Date of Entry has passed because the Landlords and the Tenants have been prevented by the Part 5 Notice from taking any further steps to transfer the Site, then the provisions of paragraph 3.3.3 will apply.
- 3.3.3 the Landlords will notify the Tenants in writing within 2 Working Days after receipt of notification from the Scottish Ministers or from the Part 5 Community Body (as appropriate) of any of the matters referred to in paragraphs 3.3.3(a) to 3.3.3(c) and the Date of Entry will be 5 Working Days after receipt by the Tenants of the notice from the Landlords confirming that:
 - (i) the Part 5 Community Body has withdrawn the application to which the Part 5 Notice relates;
 - (ii) the Scottish Ministers have received written notice from the Part 5 Community Body that it will not exercise the right to buy the Site ; or
 - (iii) the Scottish Ministers have decided not to consent to allow the right to buy to proceed.
- 3.4 If a pending application by a Part 5 Community Body appears in the RACBBL after the Conclusion Date but before Completion:
 - 3.4.1 the Landlords will notify the Tenants in writing within 1 Working Day after receipt of a copy of the Part 5 Notice from the Part 5 Community Body;
 - 3.4.2 the Tenants will be entitled to resile from the Missives without penalty on delivery of a written notice to that effect to Landlords' Solicitors , not later than 5 Working Days after the date on which the Tenants have received the Part 5 Notice in terms of paragraph 3.4.1, time being of the essence; and
 - 3.4.3 if the Tenants have not resiled from the Missives in terms of paragraph 3.4.2:
 - (i) the Lease in favour of the Tenants will contain a declaration in terms of Regulation 10 of the Right to Buy Land to Further Sustainable Development (Eligible Land, Specified Types of Area and Restrictions on Transfers, Assignations and Dealing) (Scotland) Regulations 2020; and
 - (ii) the Landlords will inform Scottish Ministers that the Site has been leased.
- 3.5 If a pending application by a Part 5 Community Body appears in the RACBBL after Completion, the Landlords will, if requested to do so by the Tenants, re-execute the Lease containing a declaration in terms of Regulation 10 of the Right to Buy Land to Further Sustainable Development (Eligible Land, Specified Types of Area and Restrictions on Transfers, Assignations and Dealing) (Scotland) Regulations 2020.
- 4. **Community Asset Transfer Requests**
- 4.1 If the Landlords are is a relevant authority in terms of section 78 and Schedule 3 of the Community Empowerment (Scotland) Act 2015, the Landlords confirms that it has not received any asset transfer request from a community transfer body in relation to the Site .
- 4.2 If the Landlords receive an asset transfer request from a community transfer body at any time before and including Completion, then the Tenants will be entitled to resile from the Missives without penalty on delivery of a written notice to that effect to the Landlords' Solicitors

**Part 5
Lease Completion Details**

Subject to the Criteria (if any) in column 1 below the each Lease will be completed in accordance with the Requirements in column 2 below with disputes being settled in accordance with column 3 below

Criteria (if any)	Requirements to be Agreed	Failure to Agree
<p>If the Lease (Phase) is Sectional Completion Compatible,</p>	<p>The description of each Section of the works and each Development Works Section Longstop Date applicable to each such section and each of the Development Works Section Longstop Dates will be the build period for the Section in question as agreed between the parties acting reasonably; Provided that the last to occur of the Development Works Section Longstop Dates and the Development Works Longstop Date for the First Phase shall be 10(5)(e) from the date of entry under that Lease</p> <p>The parts of the Lease in []'s denoted with "SC" to do with sectional completion will be incorporated with relevant information.</p>	<p>Expert determination in relation to each Development Works Section Longstop Date</p>
<p>If the Lease (Phase) is not Sectional Completion Compatible</p>	<p>The parts of the Lease in []'s denoted with "SC" will be ignored and the Development Works Longstop Date will be the build period for the Phase in question as agreed between the parties acting reasonably; Provided that the Development Works Longstop Date for the First Phase shall be 10(5)(e) from the date of entry under that 10(5)(e)</p>	<p>Expert determination in relation to Development Works Longstop Date</p>
	<p align="center">10(5)(e)</p>	

Criteria (if any)	Requirements to be Agreed	Failure to Agree
	10(5)(e)	
	10(5)(e)	
	Premium will be Premium (Site) or Premium (Phase) as required	
	10(5)(e)	
	Approved Plans which require to be consistent with Clause 22.4 of the foregoing Offer and all other planning permissions procured in terms of the foregoing offer	Expert determination
	Development description to be agreed consistent with the agreed Approved Plans	Expert determination
	10(5)(e)	
To be updated in accordance with the letters to be exchanged in accordance with Clause 4.1.4	Reserved Rights	
To be updated in accordance with the letters to be exchanged in accordance with Clause 4.1.4	Pertinents	

Criteria (if any)	Requirements to be Agreed	Failure to Agree
	10(5)(e)	Expert determination
If the Whole Site is the subject of a Lease (Site)	If required by the Landlords the parties will both acting reasonably agree reasonable interim milestones in respect of progress in completion of the works in the Approved Plans and reasonable long stop dates for each milestone to be achieved mutatis mutandis in terms of clause 5.2 of the Lease (with extension in respect of Delay Events mutatis mutandis as applies in the definition of Development Works Longstop Date).	Expert determination

10(5)(e)

10(5)(e)

10(5)(e)

10(5)(e)

10(5)(e)

10(5)(e)

10(5)(e)

10(5)(e)

**Part 8
Not Used**

**Part 9
Disclosed Documents**

1. Copy Title Sheet DMB80322;
2. 10(5)(e)
3. Copy Lease between Scottish Enterprise and Kilmartin Properties Limited dated 14 and 18 September 2001 and registered in the Books of Council and Session on 18 March 2002;
4. 10(5)(e)
5. 10(5)(e)
6. 10(5)(e)
7. 10(5)(e)
8. 10(5)(e)
9. Copy Lease between Scottish Enterprise, with consent of Merlin Entertainments (Sea Life) Limited, and SP Distribution Limited, registered BCS 25 July 2007;
10. Option to Tax dated 31 October 1995 – Drumkinnon Bay, Balloch;
11. HMRC Acknowledgement dated 15 January 1996 – Drumkinnon Bay, Balloch;
12. Option to Tax dated 17 August 2004 – West Riverside, Balloch;
13. HMRC Acknowledgement dated 5 October 2004 – West Riverside, Balloch;
14. Legal Report dated 11 January 2021;
15. Roads Adoption Plan dated 11 November 2015;
16. Roads Adoption Plan dated 21 January 2021;
17. Roads Adoption Plan dated 3 February 2021;
18. Loch Lomond and The Trossachs National Park Authority Core Paths Map 49A;
19. West Dunbartonshire Council List of Public Roads dated September 2019;
20. 10(5)(e)
21. 10(5)(e)
22. Boundary Plan in respect of property at West Riverside, Balloch dated August 2019 (Drawing No. 524/SED/2019/003.00/B)
23. 10(5)(e)

24.

25.

10(5)(e)

26.

27. Email from 11(3A)(a)
11(3A)(a) t 07:28 on 11 December 2020;

28. Boundary Plan in respect of property at West Riverside, Balloch dated December 2020 (Drawing No. 524/SED/2020/004.03/D)

29. Copy Title Sheet

30. Copy Title Sheet

31. Copy Title Sheet 10(5)(e)

32. Copy Title Sheet

33. Copy Title Sheet

34. Property Enquiry Certificate from First Scottish dated 2 February 2021.

Title Deeds:

1. Copy Title Sheet DMB25028;

2. Copy Section 75 Agreement between West Dunbartonshire Council and Scottish Enterprise, registered 23 October 1998;

3. Copy Disposition (incorporating Section 32 Agreement) by Scottish Enterprise in favour of PMR Property Limited dated 10 and 20 June 2019.

10(5)(e)

The Tenants shall be obliged within 5 Working Days to confirm in writing to the Landlords following the occurrence of the following dates in column 1 and provide the Landlords with copies of documents and others in the corresponding column 2 all within the table below

Dates	Documents to be provided to the Landlords
10(5)(e)	