

IRRITANCY PROTECTION AGREEMENT



[between][among]

[] LIMITED

[and]

[] LIMITED

[and]

[] LIMITED]

Property: []

Version 6
October 2015



IRRITANCY PROTECTION AGREEMENT

[between][among]

(1) [] **LIMITED**, incorporated under the Companies Acts (Registered Number []) and having their registered office at [] ("**Landlords**")

[and]

(2) [] **LIMITED**, incorporated under the Companies Acts (Registered Number []) and having their registered office at [] ("**Subtenants**")

[and]

[(3) [] **LIMITED**, incorporated under the Companies Acts (Registered Number []) and having their registered office at [] ("**Guarantors**")]

WHEREAS:-

(A) The Landlords are the landlords under the Lease granted in respect of [the Property][subjects of which the Property forms part];

(B) The Tenants are the tenants under the Lease and the landlords under the Sublease of the Property;

(C) The Subtenants are the tenants under the Sublease;

(D) The Landlords have agreed to grant a direct lease of the Property to the Subtenants in the circumstances set out in this Agreement;

[(E) The Guarantors are a party to this Agreement for the purpose of confirming their consent to the terms of this Agreement, insofar as such consent may be required, and also to undertake to enter into such documentation as may be required for the purposes of Clauses 3 and 4.]

IT IS AGREED by the Parties as follows:-

1. Definitions and Interpretation

1.1 In this Agreement:

"2012 Act" means the Land Registration etc (Scotland) Act 2012;

"Date of Entry" means the day following the date on which the Lease is irritated or otherwise terminated by the Landlords;

"Guarantee" means the guarantee between [] and [] dated [] and registered in the Books of Council and Session on [];]

"LBTT" means land and buildings transaction tax in terms of the Land and Buildings Transaction Tax (Scotland) Act 2013;

"Lease" means the lease between [] and [] dated [] and registered in the Books of Council and Session on [][and also recorded in the Division of the General Register of Sasines for the County of []on []][and the tenant's [interest in][right to] which is registered in the Land Register of Scotland under Title Number []];

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["New Guarantee" means a guarantee by the Guarantors (or in substitution for them such other guarantor(s) as are acceptable to the Landlords) to the Landlords with effect from the Date of Entry on the same terms *mutatis mutandis* as the Guarantee;]

"New Lease" means a lease from the Landlords to the Subtenants with effect from the Date of Entry on the same terms *mutatis mutandis* as the Sublease for the unexpired Term, except that any works carried out by or on behalf of the Subtenants (or their predecessors as tenants under the Sublease) are to be treated by reference to the date of entry under the Sublease and not to the Date of Entry;

"Parties" means the Landlords [and] the Subtenants [and the Guarantors];

"Property" means ALL and WHOLE [] being the subjects more particularly described in the Sublease;

"Sublease" means the sublease between [the Tenants] and [the Subtenants] dated [] and registered in the Books of Council and Session on [] [and also recorded in the Division of the General Register of Sasines for the County of [] on []] [and the Subtenants' interest in which is registered in the Land Register of Scotland under Title Number []];

"Tenants" means [] Limited, incorporated under the Companies Acts (Registered Number []) and having their registered office at [] and its permitted successors and assignees under the Lease;

"Term" means the term of the Sublease [together with any continuation of it whether by Act of Parliament, tacit relocation or otherwise];

"Working Day" means a day on which clearing banks in [Edinburgh and Glasgow] are open for normal business.

1.2 In this Agreement, unless otherwise specified or the context otherwise requires:

1.2.1 words importing any gender include all other genders;

1.2.2 words importing the singular number only include the plural number and *vice versa*;

1.2.3 where at any one time there are two or more persons included in the expression the "Subtenants" [or "Guarantors"] obligations contained in this Agreement which are expressed to be made by the "Subtenants" [or "Guarantors"] are binding jointly and severally on them and their respective executors and representatives whomsoever without the necessity of discussing them in their order;

1.2.4 in the case where the Subtenants are a firm or partnership:

(a) the obligations of the Subtenants under this Agreement are binding jointly and severally on all persons who are or become partners of the firm at any time and their respective executors and representatives whomsoever as well as on the firm and its whole stock, funds, assets and estate without the necessity of discussing them in their order;

(b) except in the circumstances set out in Clause 1.2.4 (c) the obligations set out in Clause 1.2.4 (a) remain in full force and effect notwithstanding:

(i) the dissolution of the firm or partnership;

(ii) any change or changes which may take place in the firm or partnership whether by the assumption of a new partner or partners or by the retiral, bankruptcy or death of any individual partner; or

(iii) a change in the firm name.

- (c) if any person, who by virtue of his being a partner, is bound to implement the Subtenants' obligations, then on such person ceasing to be a partner (whether by death or retirement or otherwise) the Landlords, on request, will release such person and his representatives from all obligations on the Subtenants under this Agreement subsequent to the date when such person ceases to be a partner (or, if later, the date of such request) provided that it is established to the Landlords' reasonable satisfaction that any such release does not materially prejudicially affect the strength of the Subtenants' financial covenant or their ability to implement their obligations under this Agreement;

1.2.5 words importing persons include corporations and *vice versa*;

1.2.6 references to the Lease or to any other document are references to the Lease or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time;

1.2.7 any reference to a Clause is to the relevant Clause of this Agreement;

1.2.8 unless expressly stated to the contrary in this Agreement, reference to any statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the same, or which has been amended, extended, consolidated or replaced by the same, and will include any orders, legislation, instruments or other subordinate legislation made under the relevant statute or statutory provision;

1.2.9 any phrase introduced by the words "including", "include", "in particular" or any similar expression is illustrative only and is not to be construed as limiting the generality of any preceding words.

1.3 The headings in this Agreement are included for convenience only and are to be ignored in construing this Agreement.

2. **Irritancy protection**

2.1 If the Lease is irritated by the Landlords then:

2.1.1 provided that the Lease was not irritated as a result of an act or omission of the Subtenants or those for whom they are responsible at law, the Landlords will serve a written notice on the Subtenants advising them of the irritancy within [5] Working Days after the date on which the irritancy notice has been served on the Tenants;

2.1.2 the Subtenants will be entitled to require the Landlords to grant to them a New Lease by serving written notice to this effect on the Landlords within [fifteen] Working Days after receipt of the Landlords' notice;

2.2 On receipt of the Subtenants' notice the Landlords and the Subtenants will be bound to enter into the New Lease.

3. **New Lease [and New Guarantee]**

3.1 Within [fifteen] Working Days from and including the date of receipt of the Subtenants' notice, the Landlords will prepare the engrossment of the New Lease [and the New Guarantee].

3.2 [The Landlords will send the engrossed New Guarantee to the Guarantors' solicitors and the Guarantors will execute the New Guarantee and return it to the Landlords' solicitors within [10] Working Days of receipt of the engrossment by the Guarantors' solicitors.]

- 3.3 [The Landlords will execute the New Guarantee within [10] Working Days of receipt of the New Guarantee duly executed by the Guarantors together with evidence of the valid execution of the New Guarantee.]
- 3.4 The Landlords will send the engrossed New Lease to the Subtenants' solicitors and the Subtenants will execute the New Lease and return it to the Landlords' solicitors together with evidence of the valid execution of the New Lease within [10] Working Days of the date of delivery of the engrossment to the Subtenants' solicitors.
- 3.5 The Landlords will execute the New Lease within [10] Working Days of receipt of the New Lease executed by the Subtenants together with evidence of the valid execution of the New Lease.
- 3.6 If the grant of the New Lease is notifiable for LBTT purposes, the Subtenants will submit to Revenue Scotland within [10] Working Days after the effective date of the transaction an LBTT return.
- 3.7 The Subtenants will, not later than 5 Working Days after the date of submission of the LBTT return make payment of the correct amount of any LBTT to Revenue Scotland.
- 3.8 If prior to the issue of an electronic submission receipt for the LBTT return, Revenue Scotland rejects the Subtenants' LBTT return, the Subtenants will without delay (a) provide the Landlords with a copy of any such rejection and other relevant correspondence and (b) correct the application and resubmit it and a remittance for the correct amount of the LBTT to Revenue Scotland.
- 3.9 Within [5] Working Days after receipt from Revenue Scotland, the Subtenants will deliver to the Landlords' solicitors a copy of the electronic submission receipt issued by Revenue Scotland and will confirm that any LBTT has been paid [or that arrangements satisfactory for payment of any LBTT are in place and that payment arrangements have been initiated and will not be cancelled or recalled].
- 3.10 The Landlords will, within [5] Working Days after receipt of the electronic submission receipt, and confirmation of payment from the Subtenants, submit the New Lease [, and the New Guarantee] to the Books of Council and Session for registration for preservation and execution and will obtain [3] extracts of [it][them]. Within [5] Working Days after receipt, the Landlords will deliver one extract of the New Lease [and one extract of the New Guarantee] to the Subtenants.
- 3.11 The Subtenants acknowledge that if they breach the terms of their obligations in this Clause they will indemnify the Landlords in respect of loss suffered by the Landlords by virtue of such breach.
- 3.12 If the New Lease qualifies to be registered in the Land Register of Scotland, the Subtenants will be responsible for dealing with such registration and will:
 - 3.12.1 within [5] Working Days after receipt by the Subtenants of the electronic submission receipt issued by Revenue Scotland submit the New Lease [, and the New Guarantee] to the Books of Council and Session for registration for preservation and execution and will obtain [3] extracts of [it][them], and will deliver [two] of the extracts to the Landlords' solicitors within [5] Working Days after receipt of the extracts;
 - 3.12.2 within [10] Working Days after receipt by the Subtenants provide the Landlords with (a) a copy of the Keeper's email acknowledgement of receipt for the application for the Subtenants' interest and (b) a copy of the Keeper's confirmation that the application has been accepted, with a PDF version of the title sheet showing the Subtenants as registered proprietor of the tenants' right in the New Lease.

- 3.13 From the date of receipt by the Landlords of the Subtenants' notice referred to in Clause 2.2 the Parties will be bound by the terms of the New Lease [and the New Guarantee] as if the New Lease [and New Guarantee] had been executed by the appropriate parties.

4. **[Guarantee**

The Guarantors or any substitute guarantors are bound to enter into the New Guarantee in accordance with Clause 3.2, failing which the Landlords, at their sole discretion, may refuse to grant the New Lease.]

5. **Costs**

- 5.1 The Subtenants will pay within 5 Working Days after written demand the costs and expenses reasonably and properly incurred by the Landlords and their solicitors in connection with:-

5.1.1 the preparation, execution and completion of this Agreement; [and]

5.1.2 the preparation, execution and completion of the New Lease; and

5.1.3 the preparation, execution and completion of the New Guarantee].

- 5.2 The Subtenants will pay within 5 Working Days after written demand the costs of registering this Agreement in the Books of Council and Session and obtaining [3] extracts ([2] for the Landlords and [one] for the Subtenants).

- 5.3 The Subtenants will pay within 5 Working Days after written demand the costs of registering the New Lease [and the New Guarantee] in the Books of Council and Session and, if appropriate, in the Land Register of Scotland and obtaining [3] extracts ([2] for the Landlords and [one] for the Subtenants).

6. **Alienation**

The Landlords undertake to the Subtenants to bind any party to whom the Landlords dispose of their interest in the Lease [insofar as relating to the Property] either:

- 6.1 to enter into an agreement with the Subtenants on the same terms *mutatis mutandis* as the terms of this Agreement including this Clause; or
- 6.2 if the Parties so agree, to take an assignation of the Landlords' interest in this Agreement from the Landlords.

7. **Notices**

- 7.1 Any notice, request or consent under this Agreement will be in writing.
- 7.2 Any notice to the Subtenants will be sufficiently served if sent by recorded delivery post (if the Subtenants are an incorporated body) to their registered office and (if the Subtenants are a person) to his last known address in Great Britain or Northern Ireland or to the Property and (if the Subtenants are a firm) to the firm and any one or more of its partners at the Property and (in any other case) to the Subtenants at the Property.
- 7.3 Any notice to the Landlords (if an incorporated body) will be sufficiently served if sent by recorded delivery post to their head or registered office and (if the Landlords are a person) will be sufficiently served if sent by recorded delivery post to him at his last known address in Great Britain or Northern Ireland.
- 7.4 [Any notice to the Guarantors (if an incorporated body) will be sufficiently served if sent by recorded delivery post to their head or registered office and (if the Guarantors will be a person) will be sufficiently served if sent by recorded delivery post to him at his last known address in Great Britain or Northern Ireland.]

- 7.5 Any notice sent by recorded delivery post will be deemed duly served at the expiry of two days after the day of posting. In proving service it will be sufficient to prove that the envelope containing the notice was duly addressed to the Subtenants or the Landlords [or the Guarantors] (as the case may be) in accordance with this Clause and posted to the place to which it was so addressed.

8. **Consent to registration**

The Parties consent to registration of this Agreement for preservation and execution: IN WITNESS WHEREOF