2012/04491 CML

2012/04491

DATED THE 7th DAY OF January 2013

MINISTER FOR THE ENVIRONMENT, COMMUNITY AND LOCAL GOVERNMENT

One Part

AND

MAYO COUNTY COUNCIL

FORESHORE LEASE

ROSMONEY PIER, CLEW BAY, COUNTY MAYO

Eileen Creedon,
Chief State Solicitor,
Osmond House,
Little Ship Street,
Dublin 8.
File ref.: 2012/04491

PROPERTY REGISTRATION AUTHORITY

LEASE dated the 7th day of January 2013

1. Definitions

The definitions contained in the Tenth Schedule shall apply to this Lease and to the several schedules hereto.

2. Interpretation

The interpretation section contained in the Ninth Schedule shall apply to the construction of this Lease and the several schedules hereto.

3. Recitals

3.1. The Lessee has applied to the Minister for a Foreshore Lease to enter into, use and occupy the Leasehold Area for the purpose of constructing the Development.

3.2. The Minister in exercise of the power conferred on him by section 2(1) of the Foreshore Act, 1933 has agreed to grant a Foreshore Lease to the Lessee on the terms and conditions set out in this deed.

4. Operative Part

The Minister in exercise of the powers vested in him by section 2(1) of the Foreshore Act 1933 and in consideration of the sum of [redacted] (the receipt of which is hereby acknowledged) and the rents herein reserved (including the increases or decreases thereof which may arise under the Eighth Schedule hereto) and the covenants on the part of the

Registered in the Registry of Deeds (Dublin) on 20th June 2013
Serial No: 20130033084

Lessee hereinafter contained, with the consent of the Minister for Public Expenditure and Reform, **HEREBY DEMISES** unto the Lessee **ALL THAT AND THOSE** the Leasehold Area **TOGETHER WITH** the rights and easements specified in the Second Schedule **EXCEPTING AND RESERVING** unto the Minister the Airspace and the rights and easements specified in the Third Schedule **TO HOLD** the Leasehold Area unto the Lessee from and including the Term Commencement Date for the Term **SUBJECT TO** all rights, easements, privileges, covenants, restrictions and stipulations of whatsoever nature affecting the Leasehold Area and also **SUBJECT TO** the provisos set out in the Seventh Schedule hereto **YIELDING AND PAYING** unto the Minister during the Term:

4.1 Yearly and proportionately for any fraction of a year the Initial Rent and, from and including each Rent Review Date (as defined in the Eighth Schedule), such yearly rent as becomes payable under the Eighth Schedule, and in every case the same is to be paid in the manner notified from time to time by the Minister without any deduction by equal half yearly payments in advance on the Half Yearly Gale Days;

4.2 Any other sum recoverable by the Minister as costs or expenses under this Lease, the same to be paid on demand.

AND the Lessee hereby **COVENANTS** with the Minister to perform and observe the covenants, conditions and stipulations set out in the Fourth and Sixth Schedules hereto to the intent that the burden of those covenants shall run with and bind the Leasehold Area and every part thereof and that the benefit thereof may be annexed to the Adjoining Property and every part thereof.

AND the Minister hereby **COVENANTS** with the Lessee to perform and observe the covenants, conditions and stipulations set out in the Fifth Schedule hereto to the intent that the burden of those covenants shall run with and bind the Leasehold Area and every part thereof and that the benefit thereof may be annexed to the Adjoining Property and every part thereof.

The address of the Lessee in the State for service of notices and its description is: Aras an Chontae, The Mall, Castlebar, County Mayo, local authority.

The Minister **HEREBY ASSENTS** to the registration of this Lease as a burden on the property comprised in Folio [ ] of the Register of Freeholders County Dublin.

IT IS HEREBY CERTIFIED that section 53 (lease combined with building agreement for dwellinghouse/apartment) of the Stamp Duties Consolidation Act, 1999 does not apply to this instrument due to the fact that the Leasehold Area comprises Foreshore.

IT IS HEREBY FURTHER CERTIFIED that the consideration (other than rent) for the Lease is wholly attributable to property which is not residential property and that the transaction effected by this instrument does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value, of the consideration (other than rent) which is attributable to the property which is not residential property exceeds €20,000.00.

IT IS HEREBY FURTHER CERTIFIED that the Family Home Protection Act 1976, Family Law Act 1981, the Judicial Separation and Family Law Reform Act, 1989, the Family Law Act, 1995, the Family Law (Divorce) Act, 1996, and the Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010, do not affect the Leasehold Area.

IN WITNESS whereof a person so authorised by the Minister under section 15(1) of the Ministers and Secretaries Act, 1924 has hereunto subscribed his name and the Lessee has hereunto affixed his seal the day and year first herein **WRITTEN.**

FIRST SCHEDULE

The Leasehold Area

ALL THAT AND THOSE that part of the Foreshore comprising 0.0256 hectares, together with any buildings, works or other structures to be hereafter constructed thereon to include the Development (save and except the Airspace), situate at Rosmoney Pier, Clew Bay, County Mayo shown outlined in red on the map annexed hereto.

SECOND SCHEDULE

Rights and Easements

5. The following rights and easements (to the extent only that the Minister is entitled to make such a grant) are hereby granted to the Lessee to be enjoyed by the Lessee in conjunction with the Minister and all other persons authorised by the Minister or having like rights and easements:-

5.1 Subject to temporary interruption for repair, alteration or replacement or interruptions outside the control of the Minister, the free and uninterrupted passage and running of the Utilities to and from the Leasehold Area through the Conduits which are now, or may at any time be in, under or passing through or over the Leasehold Area;

5.2 The right to enter the Airspace temporarily and for the sole purpose of carrying out the Development, and any works or repairs for which the Lessee is liable under this Lease.

THIRD SCHEDULE

Exceptions and Reservations

6. The following rights and easements are excepted and reserved out of the Leasehold Area and Airspace to the Minister and all other persons authorised by the Minister or having the like rights and easements:

6.1 The full, free and uninterrupted passage and running of the Utilities through the Conduits which are now, or may at any time be in, on, under, or passing through or over the Leasehold Area and Airspace;

6.2 All mines and minerals on or under the surface of the Leasehold Area together with the right to get and take such mines or minerals;

6.3 The right at all reasonable times and upon reasonable prior notice (except in the case of emergency) to enter the Leasehold Area, Airspace and all buildings and structures erected on the Airspace with or without construction workers or equipment if necessary in order to:-

6.3.1 view and examine the state and condition of the Leasehold Area and Airspace and to carry out any necessary works, repairs or installations deemed necessary by the Minister to any part of the Leasehold Area, buildings and structures erected on the Airspace and the Adjoining Property;

6.3.2 inspect, cleanse, maintain, repair, connect, remove, lay, renew, relay, re-route, replace, alter or execute any works whatsoever to or in connection with the Conduits and any other services;

6.3.3 remove, at the cost of the Lessee, and abate all buildings, works or materials which may have become dilapidated or abandoned or which may have been constructed without the consent or approval hereby required or which may, in the opinion of the

Minister, be injurious to navigation, the Airspace or buildings and structures erected on the Airspace, the Adjoining Property or the public interest;

6.3.4 restore the Leasehold Area and all buildings and structures erected on the Airspace (if any) to the former or proper condition thereof;

6.3.5 erect or construct any buildings or works which in the opinion of the Minister may be required for the purposes of navigation, the use or otherwise of the Airspace, the Adjoining Property or the public interest;

6.4. The right to the exclusive use and occupation of the Airspace which right shall include a right to (but not limited to):-

6.4.1 access to and egress from the Airspace and all buildings and structures erected on the Airspace with or without construction workers, machinery or equipment in, on or through the Leasehold Area;

6.4.2 construct in, under or over the Leasehold Area or any part thereof new Utilities to serve the Airspace, making good any damage which may be caused by such exercise but not being responsible for any temporary inconvenience;

6.4.3 construct buildings and structures in or on the Airspace, making good any damage which may be caused by such exercise but not being responsible for any temporary inconvenience;

6.4.4 use so much of the Leasehold Area as is reasonably required by the Minister from time to time to exercise his rights pursuant to clause 6.4;

6.4.5 all horizontal, vertical and lateral support, shelter and protection for the Airspace and all buildings and structures erected on the Airspace from the Leasehold Area.

FOURTH SCHEDULE

Covenants of the Lessee

7. The Lessee throughout the Term **HEREBY COVENANTS** with the Minister as follows:-

7.1 Construction of the Development

7.1.1 To construct the Development within five years of the Term Commencement Date in accordance with the Plans to the Minister's satisfaction;

7.1.2 Not to commence any works associated with the construction of the Development, without the prior written consent of the Minister **PROVIDED ALWAYS** that the Minister shall not be obliged to grant such consent unless and until the Lessee has obtained and provided to the Minister copies of all necessary consents, permissions, permits, licenses and authorizations in respect of the Development;

7.1.3 To ensure that adequate warning notices, fencing or other appropriate security and safety measures are in place at all works and structures during the construction of the Development;

7.1.4 Not to undertake any works in the Leasehold Area that do not comply with the Plans applicable at the date that the Development is constructed;

7.1.5 Not to breach any of the Site Specific Conditions;

7.1.6 To immediately notify the Minister if at any stage the Lessee becomes aware that the Development or any other works within

the Leasehold Area do not comply with the Plans that were applicable at the date that the Development was constructed or such works were performed (unless the Lessee was first notified by the Minister);

7.1.7 At all times to maintain appropriate resources to ensure the proper exercise of all rights and the performance of all obligations in connection with this Lease including:

7.1.7.1 ensuring that all necessary competent persons are engaged to carry out any works, activities, or operations pursuant to this Lease;

7.1.7.2 using suitable machinery and equipment which is in good repair and condition and maintained to proper safety standards;

7.1.8 To comply in all respects with the provisions, as appropriate, of the Planning Acts, the Building Control Act, the Construction Regulations, the Public Health Acts and Environmental Laws regarding the Development and to carry out any related works in a good and workmanlike manner to the satisfaction of the Minister;

7.1.9 To obtain and comply with all grants of planning permission, fire safety certificates and Environmental Licences required for the construction and operation of the Development, at the cost of the Lessee;

7.1.10 Not to implement any grant of planning permission before it and all required fire safety certificates and Environmental Licences have been produced to and approved in writing by the Minister **PROVIDED THAT** the Minister may refuse to approve such grants of planning permission, fire safety

certificates or Environmental Licences on the grounds that any condition contained in them or anything omitted from them or the period referred to in them, would in the opinion of the Minister be or be likely to be, prejudicial to the Minister's interest in the Leasehold Area;

7.1.11 To furnish to the Minister a certified copy of every grant or refusal of planning permission, fire safety certificate and Environmental Licence required in relation to the Development and opinions of compliance or (as the case may be) exemption regarding the Planning Acts and Building Regulations in the form recommended or published from time to time by the Royal Institute of the Architects of Ireland or the Institute of Engineers in Ireland;

7.1.12 In the event of the Development or the construction thereof not conforming to the grants of planning permission, fire safety certificate or Environmental Licences procured in respect thereof, to carry out such alterations or amendments as shall be necessary to comply therewith. However, in the event of it becoming impossible to comply with the grants of planning permission, fire safety certificate, or Environmental Licences procured, to restore the Leasehold Area to its former condition to the satisfaction of the Minister;

7.1.13 At the written request of the Minister, but at the cost of the Lessee, to make or join with the Minister in making such objections or representations against or in respect of any such notice, order or for a proposal for a notice as the Minister may require

PROVIDED ALWAYS that the Plans and/or Site Specific Conditions may be amended from time to time either by agreement between the Minister and the Lessee or alternatively, by notice in writing, from the Minister to the Lessee, if

the Minister reasonably considers it necessary to do so for reasons of public safety, protection of the Environment or the Development presents an obstruction to navigation or fishing, subject in all cases to whatever covenants, conditions and/or undertakings the Minister may deem necessary to be given on the part of the Lessee.

7.2 Analysis of Leasehold Area

If considered necessary by the Minister, to carry out an analysis and monitoring of the Leasehold Area and waters within the immediate vicinity of the Leasehold Area and to pay to the Minister all expenses incurred by the Minister to carry out such analysis and monitoring;

7.3 Abatement

To permit the Minister at any time to enter into and remove from the Leasehold Area and abate all buildings, works or materials which may have become dilapidated or abandoned or which may have been constructed without the consent required under this Lease or applicable Law, or which may in the opinion of the Minister be injurious to navigation, the Adjoining Property or the public interest and to restore the Leasehold Area to its former or proper condition and to erect or construct any building or works which in the opinion of the Minister may be required for the purposes of navigation, the Adjoining Property or the public interest.

7.4 Adjoining Property

To use so much of the Adjoining Property as is reasonably required by the Lessee from time to time to exercise his rights pursuant to Clause 7.1 provided the prior written consent of the Minister is obtained by the Lessee;

7.5 Rent

To pay the Initial Rent or revised rent reserved by this Lease in the manner specified in Clause 4.1 without any deduction, set-off or counterclaim whatsoever, whether demanded or not;

7.6 Outgoings

7.6.1 To pay and indemnify the Minister against all Outgoings.

7.6.2 To perform and observe all present and future regulations and requirements of each of the Utility supply authorities in respect of the supply and consumption of Utilities in or on the Leasehold Area.

7.7 Repairs

7.7.1 To repair the Leasehold Area (to include alterations thereto) and to keep same in a good and proper state of repair and condition, to the satisfaction of the Minister, and to keep the Leasehold Area free from all defects to include but not limited to defects injurious to navigation, buildings and structures erected on the Airspace, the Adjoining Property or the public interest, and as often as may be necessary, to rebuild, reinstate, renew or replace the Leasehold Area to include alterations thereto;

7.7.2 To maintain, repair and keep in good working order and condition, and as often as may be necessary, to renew and replace with articles of a similar kind and quality all Plant and Conduits (if any) in, upon, over or under the Leasehold Area and to repair any damage caused to the Leasehold Area by the breakdown, misuse of, or failure to repair such Plant and Conduits and to indemnify the Minister against any loss or liability resulting therefrom.

7.8 Cleaning and Maintenance

To keep all parts of the Leasehold Area clean and tidy;

7.9 Yielding Up

At the expiration or sooner determination of the Term, to quietly yield up the Leasehold Area having:-

7.9.1 complied with all the Lessee's covenants contained in the Lease;

7.9.2 if so required by the Minister, but not otherwise, removed all alterations or additions made to the Leasehold Area by the Lessee, together with any Lessee's fixtures, fittings, furniture and effects and restored the Leasehold Area to its original prevailing condition causing no damage to the buildings and structures erected on the Airspace (if any);

7.10 Right of Entry

To permit the Minister and with all necessary materials and appliances at all reasonable times upon reasonable prior notice (except in cases of emergency where no notice shall be required) to enter and remain upon the Leasehold Area and all buildings and structures erected on the Airspace (if any) for any of the following purposes:-

7.10.1 to view and examine the state and condition of the Leasehold Area, the buildings and structures erected on the Airspace and to take schedules or inventories of the Minister's fixtures and fittings;

7.10.2 to exercise any of the rights excepted and reserved by the Lease and to carry out any obligations arising thereunder;

7.10.3 to establish whether the covenants and conditions of the Lease have been complied with;

7.10.4 for any other purpose connected with the interest of the Minister in the Leasehold Area, the Airspace and/or Adjoining Property, including but not limited to, valuing or disposing of the interest under the Lease.

7.11 Compliance with notices

Upon written notice being given by the Minister to the Lessee of any breach of covenant:-

7.11.1 to make good and remedy within thirty (30) days of such notice, or sooner if required in the notice, the breach to the reasonable satisfaction of the Minister;

7.11.2 if the Lessee fails within thirty (30) days of such notice, or as soon as reasonably possible in the case of emergency, to commence and then diligently and expeditiously to continue and comply with such notice, to permit the Minister to enter the Leasehold Area and carry out all or any of the works or other steps necessary for compliance with the notice and in default of payment of the cost of such works, same shall be recoverable by the Minister from the Lessee.

7.12 Operation of Leasehold Area

7.12.1 Not to engage in any activity in or on the Leasehold Area which may result in:-

7.12.1.1 an increase in the risk of contamination, pollution, or overloading in, on or to the Leasehold Area or any part thereof, the Airspace or buildings and structures erected on the Airspace, the Adjoining Property, Foreshore and/or waters in, on, under or surrounding any of the foregoing;

7.12.1.2 damage and disturbance to the Environment, fisheries and all other maritime activities;

7.12.1.3 the creation of any loss, damage, injury, nuisance, inconvenience, annoyance, danger, disturbance or damage to the Minister, affecting the enjoyment of the Airspace or buildings and structures erected on the Airspace, Adjoining Property or the value or character of the Leasehold Area;

7.12.1.4 the obstruction of or interference with the rights of owners or occupiers of the Adjoining Property;

7.12.1.5 the interference with or malfunctioning of any fire and safety equipment or appliances installed in the Leasehold Area;

7.12.1.6 the Minister incurring liability or expense under any statutory provision relating thereto;

7.12.1.7 injury to or interfere unreasonably with fishing, navigation, the Airspace, the Adjoining Property, approved scientific research or the public interest, save where the prior written consent of the Minister has been obtained;

7.12.1.8 waste, spoil or destruction to the Leasehold Area or Airspace or buildings and structures erected on the Airspace.

7.12.2 The Lessee throughout the Term **HEREBY COVENANTS** with the Minister:

7.12.2.1 not to erect, place or display on the Leasehold Area any sign or other item whatsoever without obtaining the prior written consent of the Minister, which consent shall not be unreasonably refused.

7.12.2.2 not to bring any article, machine, apparatus or thing onto the Leasehold Area which is offensive, unduly combustible or inflammable, radioactive or explosive or which may unduly increase the risk of fire or explosion, save with the Minister's prior written consent, which consent shall not be unreasonably refused.

7.12.2.3 not to allow to pass into the Conduits serving the Leasehold Area or Airspace any noxious or deleterious effluent or other substance which will cause an obstruction or injure the said Conduits and in the event of such obstruction or injury, to make good as soon as practicable at the cost of the Lessee all damage to the satisfaction of the Minister.

7.13 User

7.13.1 Not without the prior written consent of the Minister, to use the Leasehold Area except for the Permitted User nor to make any application for planning permission, a fire safety certificate, Environmental Licences or other relevant consents with regard to any change of user or other development relating to the Leasehold Area without first giving notice in writing to the Minister of the intention to make such application **PROVIDED ALWAYS** that it shall be reasonable for the Minister to refuse his consent on the grounds that the change of use sought would not be in keeping with the overall development of the Foreshore, reclaimed Foreshore or Airspace;

7.13.2 To pay the reasonable costs of the Minister in furnishing any consent under Clause 7.13.1;

7.13.3 Not to use the Leasehold Area for any public meeting, public exhibition or entertainment nor for any dangerous, noisy or noxious or offensive trade, business or occupation whatsoever or for any illegal or immoral purpose, nor permit any sale by auction nor for sleeping or residential purposes;

7.13.4 At all times, to comply with all requirements of the relevant local authority in connection with the user of the Leasehold Area.

7.14 Alterations

7.14.1 Not, without the prior written consent of the Minister, to erect any new building or structure or to engage in works on, or to make any addition or alteration to the Leasehold Area save for those works specified in the Plans (insofar as the Plans relate to the original Development) and agreed in writing between the Minister and the Lessee **PROVIDED ALWAYS** that the Lessee shall be responsible for all reasonable costs properly incurred by the Minister in giving such consent which sum shall be payable within fourteen (14) days of demand by the Lessee to the Minister;

7.14.2 The Lessee hereby agrees and acknowledges that the Minister may as a condition of giving consent under Clause 7.14.1, require the Lessee to enter into covenants and/or undertakings concerning the carrying out and insurance of the additions and alterations to the Leasehold Area and to enter into a formal Licence for Alterations relating to such additions or alterations, if requested by the Minister;

7.14.3 Where the prior written consent of the Minister has been granted for alterations to the Leasehold Area, not to carry out such alterations without the prior written approval by the Minister of the Plans (insofar as the Plans relate to the alterations).

7.14.4 To ensure that adequate warning notices, fencing or other appropriate security and safety measures are in place at all works and structures during construction of the said additions and alterations;

7.14.5 To comply in all respects with the provisions, as appropriate, of the Planning Acts, the Building Control Act, the Construction Regulations and Environmental Laws and to carry out any additions

and alterations in a good and workmanlike manner to the satisfaction of the Minister;

7.14.6 To obtain and comply with all grants of planning permission, fire safety certificates and Environmental Licences required for the construction and operation of the additions and alterations, at the cost of the Lessee;

7.14.7 Not to implement any grant of planning permission before it and all required fire safety certificates and Environmental Licences have been produced to and approved in writing by the Minister **PROVIDED THAT** the Minister may refuse to approve such grants of planning permission, fire safety certificates or Environmental Licences on the grounds that any condition contained in them or anything omitted from them or the period referred to in them, would in the opinion of the Minister be or be likely to be, prejudicial to the Minister's interest in the Leasehold Area or Airspace;

7.14.8 To furnish to the Minister a certified copy of every grant or refusal of planning permission, fire safety certificate and Environmental Licence required in relation to any additions and alterations to the Leasehold Area and opinions of compliance or (as the case may be) exemption regarding the Planning Acts and Building Regulations in the form recommended or published from time to time by the Royal Institute of the Architects of Ireland or the Institute of Engineers of Ireland;

7.14.9 At the written request of the Minister, but at the cost of the Lessee, to make or join with the Minister in making such objections or representations against or in respect of any such notice, order or for a proposal for a notice as the Minister may require;

7.14.10 On notice in writing by the Minister, forthwith to pull down and remove any building, erection, alteration or addition erected, placed or made in breach of the foregoing covenants and if any portion of the Leasehold Area has been altered, pulled down or removed in breach of the foregoing covenants upon such request in writing as herein provided, forthwith to amend, restore, replace or rebuild the Leasehold Area in accordance with the Plans applicable at that time.

7.15 Alienation

7.15.1 Not to assign, sublet, part with or share possession of or otherwise alienate the entirety of the Leasehold Area without the prior written consent of the Minister;

7.15.2 Not under any circumstances to assign, sublet, part with or share the possession, use or occupation of or otherwise alienate part only of the Leasehold Area;

7.15.3 The Lessee in seeking consent to any proposed alienation shall apply in writing to the Minister and shall provide all information concerning the proposed alienation as the Minister may require;

7.15.4 Without prejudice to any other grounds on which the Minister may be entitled to withhold his consent, it shall be deemed a reasonable ground to withhold the Minister's consent where:-

7.15.4.1 the Lessee is in breach of any of the Lessee's covenants and conditions contained in this Lease, or

7.15.4.2 the proposed assignee, sub-lessee or disponee intends to alter the Permitted User or any part thereof in a manner which would be prohibited under the provisions of clause 7.13, or

7.15.4.3 The proposed assignee, sub-lessee or disponee does not intend to occupy the Leasehold Area;

7.15.5 In considering whether or not to grant consent under Clause 7.15.1, the Minister may:

7.15.5.1 take account of the creditworthiness, relevant experience and technical capabilities of the intended assignee or sub-lessee and any other relevant matters, having regard to the rights and obligations of the Lessee under this Lease; and

7.15.5.2 require the proposed assignee or sub-lessee to enter into a supplemental indenture with the Minister in a form acceptable to the Minister;

7.15.5.3 impose such conditions as are necessary in all the circumstances.

7.15.6 The Lessee shall pay the reasonable costs of the Minister in connection with the furnishing of any consent under Clause 7.15.1;

7.15.7 In the case of a sub-lease, the sub-lease shall be of the entirety of the Leasehold Area and the sub-lessee shall, if required by the Minister, enter into a direct covenant with the Minister to perform and observe all the covenants (other than for payment of rent and any other sums hereby reserved) and conditions herein contained, and every sub-lease shall also be subject to the following conditions:-

7.15.7.1 a covenant on the part of the sub-lessee not to assign, sublet, part with or share possession of or otherwise alienate the whole or part of the Leasehold Area;

7.15.7.2 covenants and conditions in the same terms as nearly as circumstances permit as those contained in this Lease;

7.15.7.3 a covenant by the sub-lessee (which the Lessee hereby covenants to enforce) prohibiting the sub-lessee from doing or suffering any act or thing upon or in relation to the Leasehold Area inconsistent with, or in breach of, the provisions of this Lease;

7.15.7.4 a provision giving the Minister a right of re-entry on breach of any covenant by the sub-lessee;

7.15.7.5 To enforce at the Lessee's own expense, the performance and observance by any sub-lessee of the covenants, provisions and conditions of the sub-lease and not, at any time, either expressly or by implication, to waive any breach of same or vary the terms, conditions or provisions of any sub-lease;

7.15.7.6 Not to vary the terms of any permitted sub-lease without the prior written consent of the Minister;

7.15.7.7 Within twenty-one (21) days of every alienation, (including lodgement of the relevant document or instrument as security) of the Leasehold Area, to furnish to the Minister's Solicitors, a certified copy of the document evidencing or effecting such alienation duly stamped and registered (if applicable), and to pay to the Minister's Solicitors their reasonable costs in connection with same;

7.15.7.8 For the purposes of this clause, alienation includes any change in the Control of the Lessee (where the Lessee is a company).

7.16 Minister's Costs

To pay and indemnify the Minister against all reasonable costs and expenses properly incurred by the Minister in relation to:

7.16.1 the preparation and service of any notice and of any proceedings under the 1860 Act or the 1881 Act;

7.16.2 the preparation and service of any notice and schedule relating to disrepair;

7.16.3 the recovery or attempted recovery of arrears of rent or other sums payable under this Lease;

7.16.4 procuring the remedying of any breach of covenant by the Lessee;

7.16.5 any application for consent required under the terms of this Lease whether such consent is granted or is refused with reasonable cause;

7.16.6 the clearance or repair of the Utilities and Conduits in or serving the Leasehold Area and Airspace where they have been blocked or damaged by any act, neglect, default or omission of the Lessee;

7.16.7 any other action taken at the request of or caused by the Lessee.

7.17 Statutory Requirements

7.17.1 At the Lessee's own expense, to comply in all respects in relation to the Leasehold Area with:-

7.17.1.1 all obligations and requirements arising from or under the Law and/or Environmental Laws;

7.17.1.2 any reasonable demand by the Minister for production of plans, documents and other evidence which the Minister may require in order to satisfy himself that the provisions of this Lease have been or will be complied with.

7.17.2. Upon receipt of any notice or order relating to the Leasehold Area or the occupier thereof or of any proposal for the same served or given under the Planning Acts, the Building Control Act, the Construction Regulations, Environmental Laws, Environmental Matters, the Public Health Acts or any statutory provisions forthwith:-

7.17.2.1 to furnish the Minister with a true copy thereof and any further particulars required by the Minister;

7.17.2.2 to take all necessary steps to comply with the notice or order, at the cost of the Lessee;

7.17.2.3 at the written request of the Minister but at the cost of the Lessee, to make or join with the Minister in making such objections or representations against or in respect of any such notice, order or proposal as the Minister may reasonably require.

7.18 Encroachments and Easements

7.18.1 Not to obstruct any rights of way to which the Leasehold Area is subject;

7.18.2 Not to permit any new easement, encroachment, or any other third party rights to be made or enjoyed over or in respect of the Leasehold Area or buildings and structures erected on the Airspace or to acknowledge the said easements, encroachments or third party rights or to grant any such rights;

7.18.3 As soon as the Lessee is aware of any attempt to claim or exercise such third party rights, forthwith to give written notice thereof to the Minister and, at the request of the Minister, to take such steps as may be required by the Minister to prevent their acquisition or otherwise deal with them.

7.19 Indemnity

To keep the Minister, the State, and their officers, servants, visitors, agents and employees fully indemnified (as well as after the expiration of the Term by effluxion of time or otherwise as during its continuance) from and against all or any actions, proceedings, claims, demands, losses, costs, fees, expenses, damages, penalties and other liabilities arising directly or indirectly from:

7.19.1 breach by the Lessee of any of the provisions of this Lease;

7.19.2 the state of repair or condition of the Leasehold Area;

7.19.3 the existence of any additions, articles or alterations in, on or to the Leasehold Area or from the state of repair or condition of any such additions, articles or alterations;

7.19.4 the user or enjoyment of the Leasehold Area;

7.19.5 any work carried out or in the course of being carried out to the Leasehold Area by the Lessee, his servants, agents or sub-lessees or any other person with its actual or implied authority or from anything now or hereafter attached to or projecting from the Leasehold Area;

7.19.6 any act, neglect or default of the Lessee or any person on the Leasehold Area with his actual or implied authority or consent;

7.19.7 the execution of any works or the provision or maintenance of any arrangements so directed or required by any Law;

7.19.8 any contravention of the Planning Acts, the Building Control Act, Construction Regulations, Environmental Laws and/or the Public Health Acts and from any applications for planning permission, commencement notices, fire safety certificates, Environmental Licences and works and actions taken in pursuance thereof;

7.19.9 any contravention of the Local Government (Water Pollution) Act, 1977 as amended by the Local Government (Water Pollution)(Amendment) Act, 1990;

7.19.10 any other cause whatsoever arising out of the Development and/or Leasehold Area;

7.20 Stamp Duty and Value Added Tax

7.20.1 To stamp and register (if applicable) the Lease and counterpart thereof as soon as practicable after the execution thereof and to furnish the counterpart duly stamped and registered to the Chief State Solicitor on behalf of the Lessee within six months of the date of execution of the Lease.

7.20.2 To pay any V.A.T. arising from the grant of this Lease or termination or surrender of it or on the rents reserved by it or other payments becoming due hereunder (if any).

7.21 Insurance

Without prejudice to the Lessee's liability to indemnify the Minister (and others as specified in clause 7.19) in accordance with the provisions of Clause 7.19:-

7.21.1 To insure and keep insured, in an insurance office licensed to operate in the State or which has received official authorisation to operate in the State in accordance with Article 6 of Directive 73/239/EEC in the joint names of the Minister and the Lessee in the full reinstatement cost thereof (to be determined from time to time by the Minister or his surveyor and including an inflationary factor) the Leasehold Area and all buildings thereon and the fixtures and fittings therein (if any) against loss or damage by the Insured Risks, including demolition and site clearance expenses, architects' and other fees and taxes in relation to the reinstatement of the Leasehold Area, such policy to include a non-invalidation clause acceptable to the Minister.

7.21.2 To effect and keep in force a public liability insurance policy of indemnity in the joint names of the Minister and Lessee in an insurance office licensed to operate in the State with a limit of €12,700,000.00 (twelve million, seven hundred thousand euro)(or such increased amount as the Minister may from time to time determine) in respect of any one claim for any damage, loss or injury which may occur to any property (not being the property of the Minister or the Lessee) or to any person by or arising out of the admission of any person to the Leasehold Area, and to extend such policy so that the Minister is indemnified by the insurers in the same manner as the Lessee.

7.21.3 To effect and keep in force an employer's liability insurance policy and to extend such policy so that the Minister is indemnified by the insurers in the same manner as the Lessee in respect of all actions, costs, proceedings, losses, damages, or claims for personal injuries by employees of the Lessee.

7.21.4 In the event that the Leasehold Area or the Development or any part thereof, shall be destroyed or damaged by fire or any of the Insured Risks, then and as often as shall happen, to lay out all monies

received in respect of such insurance as aforesaid as soon as practicable in or upon rebuilding, repairing or reinstating the Leasehold Area in a good and substantial manner and in the event that such monies shall be insufficient for the said purpose, to make good the deficiency.

7.21.5 Whenever required to do so by the Minister, to produce to the Minister for inspection the said policy or policies together with the latest receipt of the premium paid for renewal of the said policy or policies together with evidence of waiver of subrogation rights against the Minister by the Lessee's insurers, and to comply with all conditions pertaining to any such policy or policies.

7.21.6 Such joint policy or policies to contain a non-vitiation clause whereby subject to the terms, conditions, limitations of the policy or policies, any non-disclosure, mistake or misrepresentation of a material fact by the Lessee gives sufficient reason for the insurer to prove the insurance policy to be void, the Minister will not be denied the protection of the policy.

7.21.7 Not to do or omit to do anything which might cause any policy of insurance relating to the Leasehold Area, buildings and structures erected on the Airspace or any Adjoining Property owned by the Minister to become void or voidable, wholly or in part, nor (unless the Lessee has previously notified the Minister and the Lessee has agreed to pay the increased premium) to do anything whereby any abnormal or loaded premium may become payable.

7.21.8 To immediately notify the Minister in writing of the making of any claim under any policy of insurance and to provide the Minister with all information in relation to any such claim.

7.21.9 To ensure that any contractors engaged in connection with activities in the Leasehold Area or otherwise in connection with

this Lease have appropriate insurance and that all copies of such insurance policies shall be provided to the Minister as soon as is reasonably practicable.

7.22 Payment and Invoicing

To make all payments by cheque, bank draft, money order, or electronic transfer, delivered on or before the due date for payment, to the Minister's address for service pursuant to Clause 10.7.2 or such other address notified to the Lessee by the Minister in writing, such payments to be made in full, and without deduction or set-off.

7.23 Investigations, Inspections and Enquiries

7.23.1 To use the Lessee's best endeavours to co-operate fully and provide all reasonable assistance in relation to any investigation, inspection or enquiry conducted by the Minister in connection with this Lease, such investigation to be at the discretion of the Minister;

7.23.2 The Lessee acknowledges and agrees that, unless the contrary intention is expressed, any investigation, inspection or enquiry undertaken pursuant to this Lease:

7.23.2.1 is without prejudice to the Lessee's rights and obligations under this Lease or at Law and does not amount to a waiver of any such rights or relieve the Lessee from any such obligations; and

7.23.2.2 does not amount to an acknowledgement by the Minister, or any officer, servant or agent of the Minister, that the Lessee has complied with this Lease or Law in relation to any matters to which the investigation, inspection or enquiry relates.

7.24 Representation and Warranties (*if Lessee is a company*)

7.24.1 The Lessee represents and warrants to the Minister that:

7.24.1.1 the Lessee is duly incorporated and organised under the laws of its place of incorporation;

7.24.1.2 the Lessee has the corporate capacity and authorisation (internal and external) to enter into and perform the terms of the Lease;

7.24.1.3 the representative executing this Lease on behalf of the Lessee is duly authorised in that behalf.

7.24.2 This Lease expressly excludes any warranty, condition or other undertaking implied at law or by custom and supersedes all previous agreements and understandings between the parties, other than as expressly provided for in this Lease.

FIFTH SCHEDULE

Covenants of the Minister

8. Subject to the Lessee paying the rents reserved by this Lease and performing and observing the covenants on the part of the Lessee herein contained, the Minister **HEREBY COVENANTS** with the Lessee as follows:-

8.1 Quiet Enjoyment

To permit the Lessee, provided he pays the rent and other sums reserved by this Lease and complies with the provisions of this Lease, peaceably to hold and enjoy the Leasehold Area during the Term without any interruption by the Minister or any person lawfully claiming through, under or in trust for the Minister.

8.2 Exercise of Rights

In exercising any of the Minister's rights of entry or other rights in relation to the Leasehold Area and Airspace-

8.2.1 to take all reasonable steps to ensure that as little damage is done to the Leasehold Area and as little inconvenience is caused to its occupiers as is reasonably practicable;

8.2.2 to make good without delay any damage which may be caused by such exercise but not being responsible for any temporary inconvenience caused.

SIXTH SCHEDULE

Site Specific Conditions

9. The Lessee throughout the Term **HEREBY COVENANTS** with the Minister as follows:-

1. The Lessee shall use that part of the Foreshore the subject matter of this licence for the purposes as outlined in the application and for no other purposes whatsoever.

2. The Lessee shall notify the Department of the Environment, Community and Local Government at least 14 days prior to the commencement of the works.

3. Prior to the commencement of the works the Lessee shall liaise with the Western River Basin Director, Inland Fisheries Ireland, and agree the methodology and timing of the works.

4. Within 2 months of completion of the works the Lessee shall provide, to the Department of the Environment, Community and Local Government, a statement by a Chartered Engineer certifying that the works have been completed in accordance with the details approved by the Minister

5. The Lessee shall adopt appropriate methods of operation in order to ensure that no spillages of hydrocarbons, cement or other hazardous substance occur to the Foreshore during the course of the works.

6. The Lessee shall ensure that during the course of the works the site is secured from unauthorised public access or encroachment by means of suitable barriers and signage.

7. All works shall be carried out in accordance with relevant Health and Safety legislation.

8. All vessels and floating plant to be used in the works shall have appropriate certification from the Marine Survey Office.

9. On completion of the works all temporary plant and floating plant shall be removed from the foreshore and the foreshore reinstated to its original condition to the satisfaction of the Department of the Environment, Community and Local Government.

10. During the course of the works the Lessee shall implement in full all the mitigation measures as set out in Section 4 of the Appropriate Assessment Screening document dated September 2011.

11. The Lessee shall arrange for the publication of a local marine notice. This local marine notice shall give a general description of operations and approximate dates of commencement and completion. An advertisement in a locally read newspaper shall suffice.

12. In order for charts and nautical publications to the updated the Lessee shall inform the British Admiralty Hydrographic Office at Taunton, UK of the location and nature of the works.

13. The pontoon shall be suitably illuminated at all times.

14. The Lessee shall apply to the Commissioners of Irish Lights for sanction of new aids to navigation and / or alteration to existing aids to navigation.

SEVENTH SCHEDULE

Provisos

10. **PROVIDED ALWAYS** that it is hereby agreed and declared as follows:-

10.1 **Forfeiture**

Without prejudice to any other right, remedy or power herein contained or otherwise available to the Minister, if:-

10.1.1 the whole or any part of the rent or other sums reserved by this Lease is unpaid for fourteen days after becoming payable (whether formally demanded or not) or;

10.1.2 there is a breach, non-performance or non-observance of any of the Lessee's covenants (including a covenant for payment of rent, royalty, or other money), conditions or agreements contained herein, applicable Law and/or Environmental Laws; or

10.1.3 if the Lessee (being a body corporate) has a winding-up petition presented against it or passes a winding up resolution (other than in connection with a member's voluntary winding up for the purposes of amalgamation or reconstruction which has the prior written approval of the Minister) or resolves to present its own winding up petition or is wound up (whether in Ireland or elsewhere) or a receiver, manager or liquidator (provisional or otherwise) is appointed in respect of the Leasehold Area or any part of it or of the Lessee; or if the Lessee presents a petition for the appointment of an examiner or if the Lessee enters into a scheme of arrangement or composition with or for the benefit of creditors generally or suffers any distress, execution,

sequestration, attachment or similar process to be levied on the Leasehold Area, or

10.1.4 if the Lessee (being an individual or if more than one individual, then any one of them) commits an act of bankruptcy or has a bankruptcy summons or a bankruptcy petition presented against him or is adjudged bankrupt (whether in Ireland or elsewhere) or suffers any distress, execution, sequestration, attachment or similar process to be levied on the Leasehold Area or enters into a scheme of arrangement or composition with or for the benefit of his creditors or has a receiving order made against him or makes an application to any court for an order under the Bankruptcy Act, 1988 or;

10.1.5 the Lessee otherwise ceases to exist, or

10.1.6 where, in respect of the application for this Lease, material information has been wilfully withheld from the Minister by the Lessee or material information provided to the Minister by the Lessee is false or misleading in any material particular, or

10.1.7 the Lessee, being a company, shall be struck off the Register in the Companies Registration Office in the Republic of Ireland, or if the Lessee is incorporated outside the Republic of Ireland, struck off within the jurisdiction in which the Lessee was incorporated, or

10.1.8 any of the Representations and Warranties in respect of the Lessee are not true and correct in any material respect, or at any stage during the Term, any of the Representations and Warranties in respect of the Lessee cease to be true and correct in any material respect;

THEN, and in any such case, the Minister may at any time thereafter or any person or persons authorised by the Minister, re-enter the Leasehold Area or any part of it in the name of the whole and thereupon the Term absolutely ceases and determines without any liability on the part of the Minister to

compensate the Lessee for any monies expended by the Lessee concerning any works already carried out by the Lessee in the Leasehold Area whether in respect of labour costs, materials, professional fees, insurance or otherwise, howsoever incurred by the Lessee arising out of or incidental to the works already carried out by the Lessee, and also without prejudice to any rights or remedies which may then have accrued to the Minister against the Lessee in respect of any antecedent breach of any of the covenants or conditions contained in this Lease. For the purposes of this provision, the Lessee acknowledges that the Minister may take such reasonable steps as may be necessary to effect such re-entry so as to minimise such losses as may be incurred by the Minister.

10.2 No Implied Easements

Nothing in this Lease shall impliedly confer upon or grant to the Lessee any easement, right or privilege other than those expressly granted by it (if any).

10.3 Exclusion of Warranty

Nothing contained in this Lease or in any consent granted or approval given by the Minister under it implies or warrants that the Leasehold Area may be used under the Planning Acts for the purpose herein authorised or any purpose subsequently authorised and the Lessee hereby acknowledges that the Minister has not given or made, at any time, any representation or warranty that any such use is or will be or will remain a permitted use under the Planning Acts.

10.4 Covenants relating to Adjoining Property

Nothing contained in or implied by this Lease shall give to the Lessee the benefit of or the right to enforce or to prevent the release or modification of any covenant, agreement or condition, entered into by any lessee of the Minister in respect of the Airspace or Adjoining Property.

10.5 Effect of Waiver

Each of the Lessee's covenants shall remain in full force both at law and in equity notwithstanding that the Minister, his servants or agents may have appeared to have waived or released temporarily such covenant.

10.6 No Liability

The Minister shall not be responsible to the Lessee, its servants, agents, invitees or visitors for any injury, death, damage, destruction or financial or consequential loss whether to persons or property due to the state and condition of the Leasehold Area or any part thereof, buildings and structures erected on the Airspace, or due to any act or default of any agent, servant, workman or other person authorised by the Minister to enter on the Leasehold Area, the Airspace or buildings and structures erected on the Airspace or using all or any of the foregoing with the consent of the Minister.

10.7 Notices

10.7.1 Any demand or notice required to be made, given to, or served on the Lessee under this Lease is duly and validly made, given or served if addressed to the Lessee (or if the Lessee comprises more than one person, then to any of them) and delivered personally, or sent by prepaid registered, recorded delivery, or ordinary mail, or sent by telex or telegraphic facsimile transmission addressed (in the case of a company) to its registered office or (whether a company or individual) to its last known address, or to the Leasehold Area, and the Lessee covenants to inform the Minister of any change of its registered office or address within five days of such change.

10.7.2 Any notice required to be given or served on the Minister is duly and validly given or served if sent by pre-paid registered or recorded delivery mail, addressed to the Minister at the Department of the Environment, Community and Local Government, Customs House,

in the City of Dublin or such other address as may from time to time be notified to the Lessee.

10.7.3 Any such written notice shall be deemed to have been given when posted at the expiration of three working days after the envelope properly addressed and containing the notice, was put in the post.

10.8 Governing Law

10.8.1 This Lease shall be governed and construed in accordance with the laws of Ireland.

10.8.2 The Minister and the Lessee hereby submit irrevocably to the non-exclusive jurisdiction of the courts of the Republic of Ireland.

EIGHTH SCHEDULE

Rent Reviews

11. Definitions

11.1 In this schedule, the following expressions shall have the following meanings:

(a) **"Open Market Rent"** means the yearly open market rent without any deductions whatsoever at which the Leasehold Area might reasonably be expected to be let as a whole on the open market with vacant possession at the Relevant Review Date by a willing landlord to a willing tenant (which expression "willing tenant" shall for the avoidance of doubt include the Tenant) and without any premium or any other consideration for the grant of it for a term equal to the length of the Term remaining unexpired at the Relevant Review Date or a period of fifteen years from the Relevant Review Date whichever is the longer and otherwise on the same terms and conditions and subject to the same covenants and provisions contained in this Lease (other than the amount of the rent payable hereunder but including provisions for the review of rent in the same form as this Lease at similar intervals):

(i) assuming:

(A) that the Leasehold Area is at the Relevant Review Date fit, ready and available for immediate occupation by the willing tenant so that they are immediately capable of being used by the willing tenant for all purposes required by the willing tenant that would be permitted under this Lease, and in calculating the Open Market Rent it shall be assumed that the willing tenant has enjoyed whatever rent concessions are being offered in the open market for fitting out purposes and that all Utilities and

other facilities necessary for such occupation are connected to and immediately available for use at the Leasehold Area;

(B) that no work has been carried out to the Leasehold Area by the Lessee, any sub-lessee or their respective predecessors in title during the Term, which has diminished the rental value of the Leasehold Area;

(C) that if the Leasehold Area or any part it has been destroyed or damaged it has been fully rebuilt and reinstated;

(D) that the Leasehold Area is in a good state of repair and decorative condition;

(E) that all the covenants on the part of the Minister and the Lessee contained in this Lease have been fully performed and observed;

(F) that the Leasehold Area may be used for [any of the purposes permitted by this Lease or any licence granted pursuant to it];

(ii) but disregarding:

(A) any effect on rent of the fact that the Lessee, any permitted sub-lessee or their respective predecessors in title have been in occupation of the Leasehold Area or any part of it;

(B) any goodwill attaching to the Leasehold Area by reason of the business then carried on at the Leasehold Area by the Lessee, any permitted sub-lessee or their respective predecessors in title;

(C) any effect on the rental value of the Leasehold Area attributable to the existence at the Relevant Review Date of any works executed by and at the expense of the Lessee (or any party lawfully occupying the Leasehold Area under the Lessee) with the consent of all relevant persons where required in on or to the Leasehold Area [other than in pursuance of an obligation under this Lease or any agreement therefore];

(b) **"the President"** means the President for the time being of the Society of Chartered Surveyors and includes any duly appointed deputy of the President or any person authorised by the President to make appointments on his behalf;

(c) **"Review Dates"** means first day of the sixth year and of every fifth year thereafter during the Term calculated from the Term Commencement Date and "Relevant Review Date" shall be construed accordingly;

(d) **"Reviewed Rent"** means the rent agreed or determined in accordance with the provisions of this schedule.

(e) **"Rent Restrictions"** means restrictions imposed by any statute in force on a Review Date or on the date on which any increased rent is ascertained in accordance with this schedule which operate to impose any limitation, whether in time or amount, on the collection, review or increase in the rent reserved by clause 4.1 of this Lease; and

(f) **"the Surveyor"** means an independent chartered surveyor who is experienced in the valuation or leasing of property similar to the Leasehold Area and is acquainted with the market in the area in which the Leasehold Area is located, appointed from time to time to determine the Open Market Rent pursuant to the provisions of this schedule.

11.2 **IT IS HEREBY AGREED** between the Lessor and the Lessee as follows:-

11.2.1 Agreement or determination of the Reviewed Rent

The Open Market Rent at any Review Date may be agreed in writing at any time between the Minister and the Lessee but if, for any reason, they have not so agreed by the Relevant Review Date then the Minister may by notice in writing to the Lessee require the Open Market Rent to be determined by the Surveyor.

11.2.2 Appointment of Surveyor

If the Minister has required the Open Market Rent to be determined by the Surveyor, then in default of agreement between the Minister and the Lessee on the appointment of the Surveyor, the Surveyor shall be appointed by the President on the written application of the Minister to the President.

11.2.3 Functions of the Surveyor

The Surveyor shall:

(a) determine the Open Market Rent in accordance with the terms of this schedule;

(b) at the option of the Minister, act either as an arbitrator in accordance with the Arbitration Act 2010 or as an expert, such option to be exercised by the Minister by giving written notice to the President at the time of the Minister's written application to the President but if no written notice is given by the Minister as aforesaid, then the Surveyor shall act as an arbitrator;

(c) if acting as an expert invite the Minister and the Lessee to submit to him, within such time limits (not being less than 15 working days) as he shall consider appropriate, a valuation accompanied if desired, by a statement

of reasons and such representations as to the amount of the Open Market Rent with such supporting evidence as they may respectively wish;

(d) be entitled to have access to the Leasehold Area for the purposes of inspecting and examining it as often as he may require; and

(e) within sixty (60) days of his appointment, or within such extended period as the Minister and the Lessee shall jointly agree in writing, give to each of them written notice of the amount of the Open Market Rent as determined by him.

11.2.4 Fees of Surveyor

The fees and expenses of the Surveyor (if acting as an expert) and the party responsible for paying him shall be determined by the Surveyor (but this shall not preclude the Surveyor from notifying both parties of his total fees and expenses notwithstanding the non-publication at that time of his decision) and failing such determination of the party responsible for paying him, such fees and expenses of the Surveyor together with the costs of his nomination shall be payable by the Minister and the Lessee who shall each bear their own costs, fees and expenses. Without prejudice to the foregoing, both the Minister and the Lessee shall each be entitled to pay the entire fees and expenses due to the Surveyor and thereafter recover as a simple contract debt the amount (if any) due from the party who failed or refused to pay same.

11.2.5 Appointment of new Surveyor

If the Surveyor fails to give notice of his determination within the time aforesaid, or if he relinquishes his appointment, dies, is unwilling to act, or becomes incapable of acting, of if he is removed from office by court order, or if for any other reason he is unable or unsuited (whether because of bias or otherwise) to act, then either party may request the President to discharge the Surveyor (if necessary) and appoint another surveyor as substitute to act in the same capacity. The procedures set out in this schedule shall apply as though the substitution

were an appointment de novo, and such procedures may be repeated as many times as necessary.

11.2.6 Interim payments pending determination

If by the Relevant Review Date the amount of the Reviewed Rent has not been agreed or determined as aforesaid (the date of agreement or determination being the "**Determination Date**"), then:

(a) in respect of the period ("**the Interim Period**") beginning with the Relevant Review Date and ending on the day before the Quarterly Gale Day following the Determination Date, the Lessee shall pay to the Minister rent at the yearly rate payable immediately before the Relevant Review Date, and

(b) within seven days of the Determination Date:

(i) the Lessee shall pay to the Minister on demand as arrears of rent the amount (if any) by which the rent reviewed in accordance with this schedule exceeds the rent actually paid during the Interim Period (apportioned on a daily basis) together with:

(A) interest on that amount at the Base Rate from the Relevant Review Date to the due date for payment of that amount and thereafter, and

(B) interest on that amount at the Prescribed Rate until the date of actual payment.

(ii) the Minister shall refund to the Lessee on demand the amount (if any) by which the rent reviewed in accordance with this schedule is less than the rent actually paid during the Interim Period (apportioned on a daily basis) together with:

(A) interest on that amount at the Base Rate from the Relevant Review Date to the due date for payment of that amount, and

(B) interest on that amount at the Prescribed Rate until the date of actual payment.

11.2.7 Rent Restrictions

On each and every occasion during the Term that Rent Restrictions shall be in force, then and in each and every case:

(a) the operation of the provisions herein for review of the rent shall be postponed to take effect on the first date or dates thereafter upon which such operation may occur; and

(b) the collection of any increase or increases in the rent shall be postponed to take effect on the first date or dates thereafter that such increase or increases may be collected and/or retained in whole or in part and on as many occasions as shall be required to ensure the collection of the whole increase;

AND until the Rent Retrictions shall be relaxed either partially or wholly the rent reserved by this Lease (which if previously reviewed shall be the rent payable under this Lease immediately prior to the imposition of the Rent Restrictions) shall (subject always to any provision to the contrary appearing in the Rent Restrictions) be the maximum rent from time to time payable hereunder.

11.2.8 Memoranda of Reviewed Rent

(a) As soon as the amount of any Reviewed Rent has been agreed or determined a memorandum of such Reviewed Rent shall be prepared by the Minister or his Solicitors and shall be signed by or on behalf of the Minister and the Lessee.

(b) The Lessee shall be responsible for and shall pay to the Minister the stamp duty (if any) payable on such memoranda and any counterparts, but the parties shall each bear their own costs in respect of the preparation and execution of such memoranda and any counterparts.

11.2.9 Time not of the essence

For the purpose of this schedule, time shall not be of the essence.

NINTH SCHEDULE

Interpretation

12. The following shall apply to the construction of this Lease and the several schedules hereto:-

12.1 Where two or more persons are included in the expression "the Minister" or "the Lessee", such expressions include all or either or any of such persons and the covenants which are expressed to be made by the Minister, or the Lessee shall be deemed to be made by or with such persons jointly and severally.

12.2 Unless the context otherwise requires-

12.2.1 words importing a person include any firm, corporation sole, unincorporated association or corporate body and vice versa;

12.2.2 any reference to the masculine gender includes reference to the feminine and neuter gender and any reference to the neuter gender includes the masculine and feminine genders;

12.2.3 any reference to the singular includes reference to the plural.

12.3 Any covenant by the Lessee not to do any act or thing includes an obligation not to permit or suffer such act or thing to be done and any references to any act, neglect, default or omission of the Lessee shall be deemed to include any act, neglect, default or omission of the Lessee or the sub-lessees, servants, agents, licensees or invitees of the Lessee or any person under its or their control.

12.4 References to any right of the Minister to have access to or entry upon the Leasehold Area or buildings and structures erected on the Airspace shall be construed as extending to all persons lawfully authorised by the Minister including agents, nominees, officials, contractors, workmen, professional

advisers, prospective purchasers of any interest of the Minister in the Leasehold Area, the Airspace or in the Adjoining Property and others, provided that such persons have given reasonable notice (except in the case of an emergency).

12.5 Any reference to a Law (whether specifically named or not) or to any sections or sub-sections in a Law includes any amendments or re-enactments thereof for the time being in force and all statutory instruments, orders, notices, regulations, directions, bye-laws, certificates, permissions and plans for the time being made, issued or given there-under or deriving validity therefrom.

12.6 Clause or schedule headings are inserted for convenience only and do not affect the construction or interpretation of this Lease.

12.7 Any reference to a clause, sub-clause or schedule means a clause, sub-clause or schedule of this Lease.

12.8 If any term or provision in this Lease is held to be illegal, invalid, or unenforceable in whole or in part, such term or provision shall be deemed not to form part of this Lease but the enforceability of the remainder of this Lease is not affected.

12.9 References to "month" or "months" mean a calendar month or months.

TENTH SCHEDULE

Definitions Section

13. In this Lease, unless the context otherwise requires:-

13.1 **"Adjoining Property"** means any Foreshore, land and/or buildings adjoining or neighbouring the Leasehold Area but for the avoidance of doubt, does not include the Airspace;

13.2 **"Airspace"** means the airspace above the Leasehold Area as outlined on the Plan annexed hereto but shall not include the upper surface of the Leasehold Area.

13.3 **"Building Control Act"** means the Building Control Act, 1990;

13.4 **"Conduits"** means all sewers, drains, soakways, pipes, gullies, gutters, ducts, mains, watercourses, channels, subways, wires, cables, shafts, flues and other transmission or conducting media and installations (including all fixings, covers, cowls, louvres and other ancillary apparatus) of whatsoever nature or kind or any of them;

13.5 **"Construction Regulations"** means the Safety, Health and Welfare at Work (Construction) Regulations, 1995;

13.6 **"Control"** has the same meaning as in Section 432 of the Taxes Consolidation Act, 1997;

13.7 **"Development"** means the construction and operation of the driving of steel piles for the purpose of retaining the 2 no. floating pontoons, which shall be linked to the existing pier by a pedestrian ramp. Prior to installation of the piles to carry out bed leveling in the leasehold area

around the footprint of the pontoons to ensure the pontoons can lie safely in the sea bed at low water. The repair works relate to areas of potential undermining to the base of the pier and replacement of an existing damaged ladder as specified in the Plans;

13.8 **"Environment"** includes any Foreshore, reclaimed Foreshore, land (including without limitation soil, surface land and subsurface strata, sea bed or river bed and any natural or man made structures), any inland waters, surface waters, ground waters and water in pipes, drains or other conduits and air (including without limitation air within buildings and other natural or man made structures above or below ground);

13.9 **"Environmental Laws"** means all laws (whether criminal, civil or administrative) including common law, statutes, regulations, statutory instruments, directives, bye-laws, orders, codes and judgements having the force of law in Ireland concerning Environmental Matters and protection of the Environment including without limitation the Air Pollution Act, 1987, the Dangerous Substances Act, 1972, the Litter Act, 1982, the Waste Management Act, 1996, the Environmental Protection Agency Acts, 1992 to 2007, the Protection of the Environment Act, 2003 and all regulations, bye-laws, orders and codes made thereunder;

13.10 **"Environmental Licences"** means any permit, licence, approval, consent, registration or other authorisation required by or pursuant to any applicable Environmental Laws or relating to Environmental Matters;

13.11 **"Environmental Matters"** means any matter arising out of, relating to or resulting from pollution, contamination, protection of the Environment, human health or safety, health and safety of animal and plant life, sanitation and any matters relating to emissions, discharges,

releases or threatened releases of hazardous materials into the Environment;

13.12 **"Euro"** means the single currency of participating member states of the European Union or such replacement equivalent currency thereof;

13.13 **"Foreshore"** is defined in the same manner as in section 1 of the Foreshore Act as amended by section 60 of the Maritime Safety Act, 2005;

13.14 **"Foreshore Act"** means the Foreshore Act 1933;

13.15 **"Foreshore Acts"** mean the Foreshore Acts 1933 to 2011;

13.16 **"Foreshore Lease"** means a lease granted by the Minister pursuant to section 2 (1) of the Foreshore Act;

13.17 **"Half Yearly Gale Day"** means the first day of January and first day of July in every year of the Term;

13.18 **"Initial Rent"** means one Euro (€1.00) per annum;

13.19 **"Insured Risks"** means any or all of the following risks: fire (including subterranean fire), storm, tempest, flood, earthquake, lightning, explosion, impact, riot, civil commotion, aircraft, labour disturbance and malicious damage, bursting or overflowing of water tanks, apparatus or pipes and such other risks as the Minister may in his absolute discretion from time to time determine;

13.20 **"Law"** means any Act of the Oireachtas, regulation, Statutory Instrument, European Union obligation, direction of a regulatory or other competent authority, condition of any consent, authorisation, lease or other permission granted by any regulatory or other competent

authority and any decision of a court of competent jurisdiction, but does not include this Lease;

13.21 **"Lease"** means this deed and any schedule to it, as may be amended by supplemental indenture from time to time or which is entered into pursuant to or in accordance with the terms hereof;

13.22 **"Leasehold Area"** means that part of the Foreshore more particularly described in the First Schedule of this Lease shown outlined in red on the map annexed hereto, together with the Development thereon (save and except the Airspace);

13.23 **"Lessee"** means Mayo County Council, Aras and Chontae, The Mall, Castlebar, County Mayo including its successors and permitted assigns where the context so requires or admits and also includes the party for the time being entitled to the Lessee's interest created by this Lease;

13.24 **"Minister"** means the Minister for the Environment, Community and Local Government including his successors and assigns where the context so requires or admits and also includes the party for the time being entitled to the reversion immediately expectant on the determination of the Term;

13.25 **"Outgoings"** means all rates, taxes, duties, charges, assessments, impositions and costs (including emergency service charges) of any description including the cost of any work which the Minister may have to do to facilitate the carrying out of the Development or any act or thing hereby authorised by this Lease (whether or not of a capital or non-recurring nature) which may at any time during the Term be payable in respect of the Leasehold Area and the Utilities enjoyed in connection therewith including any insurance excesses or other sums not recoverable by the Lessee (unless due to its own neglect or default) and any connection and hiring charges and meter rates concerning the Utilities;

13.26 **"Permitted User"** means the construction and operation of the driving of steel piles for the purpose of retaining the 2 no. floating pontoons, which shall be linked to the existing pier by a pedestrian ramp. Prior to installation of the piles to carry out bed leveling in the leasehold area around the footprint of the pontoons to ensure the pontoons can lie safely in the sea bed at low water. The repair works relate to areas of potential undermining to the base of the pier and replacement of an existing damaged ladder as specified in the Plans;

13.27 **"Plans"** mean the plans and drawings in the custody of and approved in writing by the Minister as may be amended from time to time pursuant to Clause 7.1. For the avoidance of doubt, the Plans shall also include the plans and drawings approved in writing by the Minister in respect of any alterations, improvements or additions to the Leasehold Area;

13.28 **"Planning Acts"** mean the Planning and Development Acts 2000-2010;

13.29 **"Plant"** means any lifts, lift machinery, central heating and air conditioning systems, sprinkler system, boilers, and other electrical and mechanical machinery, equipment, and apparatus of whatsoever nature or kind and wherever installed in the Leasehold Area (if any);

13.30 **"Public Health Acts"** means the Local Government (Sanitary Services) Act, 1878 to 2001;

13.31 **"Representations and Warranties"** mean the representations and warranties given by the Lessee to the Minister pursuant to Clause 7.24;

13.32 **"Site Specific Conditions"** mean the specifications approved by the Minister set out in the Sixth Schedule hereto as may be amended from time to time pursuant to Clause 7.1;

13.33 **"Term"** means 35 (thirty five) years;

13.34 **"Term Commencement Date"** means the 1st day of December 2012

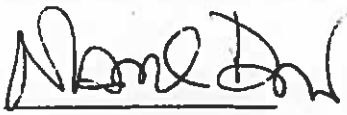
13.35 **"Utilities"** means water, soil, steam, air, gas, electricity, radio, television, telegraphic, telephonic, computer linking, electronic and other communications, oil and heating fuels and other services of whatsoever nature;

13.36 **"the 1860 Act"** and **"the 1881 Act"** mean respectively the Landlord and Tenant Law Amendment Act, Ireland, 1860 and the Conveyancing Act, 1881;

13.37 **"V.A.T."** means value added tax as applied under the Value Added Tax Act 1972, as amended, or any similar tax substituted for it.

PRESENT WHEN THE OFFICIAL SEAL OF THE MINISTER FOR THE ENVIRONMENT, COMMUNITY AND LOCAL GOVERNMENT WAS AFFIXED HERETO:-

Louise Roche
Executive Officer
Personnel Department
Department of Environment,
Community + Local Government
Custom House
Dublin 1



A person authorised by section 15(1) of the Ministers and Secretaries Act, 1924 to authenticate the seal of the said Minister.

PRESENT when the **COMMON SEAL**)
of **MAYO COUNTY COUNCIL** was affixed hereto)
)
)
John Gordon)
County Secretary)
Mayo County Council)
Aras an Chontae
Castlebar
County Mayo

DATED THE 7th DAY OF January 2013

THE MINISTER FOR THE ENVIRONMENT, COMMUNITY AND LOCAL GOVERNMENT

One Part

-AND-

MAYO COUNTY COUNCIL

Other Part

FORESHORE LEASE

ROSMONEY PIER, CLEW BAY, COUNTY MAYO

Land Registration Authority
28 JUN 2013
Dublin

Eileen Creedon,
Chief State Solicitor,
Osmond House,
Little Ship Street,
Dublin 8.
File ref: 2012/04491

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