

GILLESPIE MACANDREW

MINUTE OF AGREEMENT

BETWEEN

THE SCOTTISH MINISTERS

AND

FLAMINGO LAND LIMITED

GILLESPIE MACANDREW LLP
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(EDINBURGH – 1)
FAS: 5432

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2023

MINUTE OF AGREEMENT

between

THE SCOTTISH MINISTERS and their successors and assignees (hereinafter referred to as "**the Roads Authority**")

and

FLAMINGO LAND LIMITED, a company incorporated under the Companies Acts under registered number SC052543 and having its registered office at The Cross, Uddingston, Glasgow, G71 7ES (hereinafter referred to as "**the Developer**")

WHEREAS:

- A** the Developer has applied to the Loch Lomond and the Trossachs National Park Authority ("**the Planning Authority**") under reference number 2022/0157/PPP for planning permission in principle ("**the Planning Application**") to construct and operate a mixed use tourism and leisure development on an area of land located at Pier Road, Ben Lomond Way and Old Luss Road, known as West Riverside and Woodbank House, Balloch ("**the Development**");
- B** the Roads Authority is a statutory consultee in relation to the Planning Application;
- C** the Roads Authority, having considered the conclusions drawn in the trunk road junction capacity impact assessments undertaken by the Developer in support of the Planning Application advised the Planning Authority in its consultation response dated 1st July 2022 ("**the Consultation Response**"), that it had no objection to the Development in terms of its potential impact on the local trunk road network, including

the roundabout at the A82 and the A811 known as the “Stoneymollan Roundabout” (“**the Roundabout**”);

D following the publication of the Consultation Response on its public planning register, local residents advised the Planning Authority that on the basis of local knowledge and observation, they remained concerned that any increase in traffic on the A82 during the summer school holiday period of August, would exacerbate the existing problem of queuing and delays on the A82 and A811 approaches to the Roundabout (“**the Queuing Problem**”);

E as part of its statutory responsibility for managing and maintaining the trunk road network, the Roads Authority has been examining a potential solution to alleviate the Queuing Problem and has estimated the cost of delivering such solution to be in the region of ONE HUNDRED AND FIFTEEN THOUSAND POUNDS (£115,000) STERLING (“**the Sum**”);

F the Developer has advised the Planning Authority that notwithstanding the terms of the Consultation Response, it will be prepared, subject to the Planning Application being granted, to enter into an agreement with the Roads Authority in terms of section 48 of the Roads (Scotland) Act 1984 obliging the Developer following the commencement of the Development to contribute the Sum to the Roads Authority for the purpose of assisting the Roads Authority in funding the delivery a potential solution to the Queuing Problem; and

G the Roads Authority, having had regard to the amount of the proposed contribution relative to the estimated cost of delivering a potential solution to the Queuing Problem, has determined that, if the Sum is paid by the Developer, the Roads Authority will carry out the relevant works needed to deliver it.

NOW IT IS AGREED by and between the Developer and the Roads Authority (“**the Parties**”) as follows:

1. The payment of the Sum to the Roads Authority by the Developer is essentially and suspensively conditional on the Planning Application being granted by the Planning Authority or, in the event that it is refused and an appeal against that decision is

subsequently lodged by the Developer in terms of section 47 of the Town and Country Planning (Scotland) Act 1997 (“**the 1997 Act**”), by the Scottish Ministers.

2. The Sum shall be:

- (i) Increased (subject to the aftermentioned cap) by reference to the All-Tender Price Index figures as published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors on a quarterly basis or if that ceases to be published or the basis upon which such index is calculated is substantively changed or rebased, such substitute or alternative index most likely to achieve an equivalent result as the Roads Authority acting reasonably may direct (“**the Index**”) in accordance with the following formula:

$$a = (b \text{ divided by } c) \text{ multiplied by } d$$

where

“a” means the amount to be paid to the Roads Authority by the Developer after the indexation formula has been applied, subject to a cap of TEN THOUSAND POUNDS (£10,000) STERLING;

“b” means the relevant building cost index factor for the Index published in the month immediately preceding the date on which the Sum is due to be paid;

“c” means the relevant building cost index factor for the Index published in the month immediately following the date on which this Agreement is signed by the Roads Authority; and

“d” means the Sum

and

- (ii) following indexation, paid to the Roads Authority in full within 10 working days (being a day which is neither a Saturday or a Sunday nor a public holiday or a

bank holiday in Glasgow or Edinburgh) of the date of service by the Developer on the Planning Authority of a notice of initiation of development in terms of section 27A of the 1997 Act ("**the Section 27A Notice**") with interest at the rate of 4 per centum above the base rate from time to time of the Royal Bank of Scotland plc from the due date until the full amount of the Sum duly indexed is paid in full.

3. The Developer shall deliver a certified true copy of the Section 27A Notice to the Roads Authority on the same day that the principal is sent to the Planning Authority
4. Notwithstanding the provisions of clause 2 (ii) above, the Developer shall be entitled to pay the Sum (duly indexed in accordance with the provisions of clause 2 (i) above save that "a" in the formula shall mean the relevant building cost index factor for the Index published in the month immediately preceding the date on which the Sum is actually paid) to the Roads Authority at any time during the period between the date of issue of the grant of planning permission by the Planning Authority (or, as the case may be, by the Scottish Ministers) and the date of service of the Section 27A Notice.
5. Following its receipt of the Sum (duly indexed as aforesaid) the Roads Authority shall place the relevant amount in a ring-fenced bank account pending it being drawn down and used by the Roads Authority for the purpose specified in clause 6 of this Agreement.
6. The Roads Authority shall be obliged to use the Sum together with any accrued interest thereon for the sole purpose of designing, planning, constructing, and completing an improvement to the Roundabout which in the opinion of the Roads Authority will alleviate the Queuing Problem ("**the Roundabout Works**").
7. The Roads Authority shall be responsible for obtaining all approvals, permissions, consents, licences, registrations and authorisations (whether statutory or otherwise) which are required from time to time for the purposes of carrying out the Roundabout Works whether required in order to comply with any legal requirement or as a result of any rights of any third party.

8. The Roads Authority shall be entitled to complete the Roundabout Works itself or employ or procure others to do so on its behalf.
9. The Roads Authority shall have a period of five (5) years from the date of payment of the Sum in full in which to complete the Roundabout Works failing which any unspent amount (together with any accrued interest thereon) shall be returned to the Developer provided always that in the event of any delay in completion of the Roundabout Works which is attributable to a force majeure event, the period for completion of the Roundabout Works shall be extended by such period as the Roads Authority considers to be reasonable in all the circumstances.
10. The Roads Authority shall advise the Developer in writing of the dates on which the Roundabout Works are commenced and completed.
11. For the purposes of clause 3 of this Agreement, the address of the Roads Authority shall be Transport Scotland, George House, 2nd Floor, 36 North Hanover Street, Glasgow, G1 2AD (marked for the attention of David Thomson).
12. For the purposes of clause 10 of this Agreement, the address of the Developer shall be c/o Gillespie Macandrew LLP, 5 Atholl Crescent, Edinburgh, EH3 8EJ (marked for the attention of Sandy Telfer or Ashley McCann).
13. The Developer shall not assign or otherwise transfer by any means whatsoever its obligations under, or its interest in this Agreement without the prior written consent of the Roads Authority such consent not to be unreasonably withheld or a decision thereon unreasonably delayed.
14. No modification, variation or amendment of any provision in this Agreement shall be effective unless it is in writing and signed by a duly authorised representative of each Party.
15. No waiver of any breach or default under this Agreement or any of the terms hereof shall be effective unless such waiver is given in writing and has been signed by the Party waiving its entitlement.

16. If any term or provision of this Agreement is held to be invalid, illegal or unenforceable in whole or in part under any enactment or rule of law or otherwise such term or provision shall to that extent be deemed not to form part of this Agreement but the validity and enforceability of the remainder of this Agreement shall continue in full force and effect.

17. This Agreement constitutes the entire agreement between the Parties relating to the subject matter of this Agreement and supersedes and extinguishes any prior drafts, undertakings, representations, warranties and arrangements of any nature whatsoever whether in writing or oral relating to such subject matter.

18. This Agreement shall be governed by and interpreted in accordance with Scots law and the Parties submit to the exclusive jurisdiction of the Scottish courts **IN WITNESS WHEREOF** these presents typewritten on this, and the 5 preceding pages, are executed as follows;

SIGNED for and on behalf of **SCOTTISH MINISTERS**

at.....

on.....

Signature.....

Full name

Position

In the presence of

Signature.....

Full name

Address.....

SIGNED for and on behalf of **FLAMINO LAND LIMITED**

at.....

on.....

Signature.....

Full name

Position

In the presence of

Signature.....

Full name

Address.....