

# EXECUTIVE COUNCIL

## CONFIDENTIAL

**Title:** Stanley Sports Association: Application To Vary Existing Lease Of Stanley Racecourse

**Paper Number:** 80/18

**Date:** 27 June 2018

**Responsible Director:** Attorney General

**Report Author:** Crown Counsel

**Portfolio Holder:** MLA Barry Elsby

**Reason for paper:** This Paper Is Submitted To Executive Council:  
For Decision

**Publication:** Yes with redactions as highlighted in grey.

**Not Recommended:**

*Under Executive Council Standing Order 23(2), Executive Council must have regard to the categories of exempt information in Schedule 3 to the Committees (Public Access) Ordinance when determining if information should be withheld*

*The categories which are potentially relevant to this paper are:*

*Paragraph 9: Information about others' financial and business affairs*

**Previous papers:** Lands Committee 6<sup>th</sup> December 2017

**List of Documents:** Lease Plan  
Existing Lease (Schedule 1)

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### 1. Recommendations

Honourable Members are recommended to:

- (a) APPROVE the principle of the variation of Crown Lease 444 to the Stanley Sports Association, for a term in excess of 99 years and at £1 per annum, of Stanley Racecourse, whose location is shown, edged red upon the lease plan at Schedule 1.

- (b) DELEGATE to the Attorney General the power to approve the terms of the variation of the lease in consultation with the Portfolio Holder, provided that the grant of any lease variation shall be conditional upon the matters outlined in this Report.

## **2. Additional Budgetary Implications**

- 2.1 None
- 2.2 NB the property is an asset of FIG but doesn't appear on the fixed asset register. It is a site of significant potential but has no value ascribed to it and no rental yield.

## **3. Executive Summary**

- 3.1 This paper is brought to Executive Council as it relates to a lease of Government land. It is outside the scope of the delegation to Lands Committee because the land is of strategic importance and considered to exceed £10,000 in value.
- 3.2 The purpose of this report is to seek the authority of Executive Council to the principle of the variation of a lease of Stanley Racecourse, for a term in excess of 99 years, at a rent of £1 per annum if demanded.
- 3.3 The Crown owns the freehold interest in Stanley Racecourse. Stanley Sports Association ('the Association') has formally leased the area from the Falkland Islands Government since 1981 (although use extends much further back). The current Crown Lease 444 was granted on 23<sup>rd</sup> April 2008 for 15 years. It entitles them to continue to occupy and use the area for a further 6 years expiring in 2023 – by which time they will have held the lease for 42 consecutive years. This leasehold arrangement has been at a rate of '£1 per annum if demanded' – a variation on the 'peppercorn rent', as the Association continues to organise the traditional races and mini sports, as well as multiple (more recently introduced) community events, and do so as a non-profit organisation, continually re-investing.
- 3.4 In December 2017, the Association approached the Crown advising that they wished to extend the existing lease term. The Association has commenced a programme of refurbishment and intends to replace some structures in the area as finances permit. The terms and conditions of the current lease permit the proposed works however, with only 6 years remaining on the lease, the lack of tenure is likely to have an impact on the ability to make repairs, refurbishments or renewals, when there is every possibility that the Association may not see a return on their investment. The Association intends to invest in the future of horse racing in the Falklands, to revive the sport and to ensure the community side of race meetings and the racecourse grounds are protected. Additionally, having carried out their functions (in terms of formal leases) for almost half a century, the Association wishes to ensure that future generations are not prevented from continuing these traditions and seeks security for both finances and future by requesting a 99-year lease. By safeguarding this green space in Stanley and securing the area for the long term also ensures infrastructure decisions can be made without the Association taking a the risk of losing the site in 2023.
- 3.5 When Crown Lease 444 was issued in 2008 for a period of fifteen years, it included two stipulations: that the Association must at its own expense relocate the stables from their

current location in the north-east corner, to the south-east side of the course by November 2012 (**REDACTED**); and that one acre to the north east of the property would be discounted from the lease as of January 2013, as the land would be required by the Public Works Department for extensions to the road network (although no resumption of this land has taken place to date).

- 3.6 The Association has since been advised that the one acre plot would no longer be required by the Department of Public Works and the Association therefore request that it remains incorporated within their lease. The Director of Public Works has advised that there may in future be a requirement to use a small portion of the entire northern edge of the area currently leased in order to create a road. However, the reservation of land for the highways improvements can be addressed by way of a resumption clause within the lease. The resumption clause will allow the Crown to take back land out of the proposed Lease on notice to the Association.
- 3.7 In relation to the stables, the Committee is advised that it is the intention of the Association to relocate these on the leased premises when finances permit, and permission is therefore sought to vary the lease to reflect a necessary delay. The Association already has FIG funding through the 2016 subvention which the Association earmarked for maintenance and a new toilet block. There has been ongoing work to repair and repaint grandstands, stable stalls and fences, and the Association has plans for a new toilet block but have not yet applied for planning permission.
- 3.8 Finally, the applicant seeks to remove a clause preventing other animals from accessing the area, in order that dog trials may take place during community events, and also so that throughout the rest of the year, dog-walkers may visit the area (with the Stanley Sports Association providing limitations where necessary).
- 3.9 FIG previously supported the Association, and indeed it was through the FIG land swap agreement with FIC that the racecourse was originally protected. The Association would like to see this commitment further recognised through a long term decision to extend the lease for 99 years to allow the Association and the community the opportunity to invest in its future.
- 3.10 The alignment of terms of the existing lease arrangements would ensure that the proposed extended lease would continue to be accessible to the public for recreational purposes, as is currently the case with the existing racecourse.

#### **4. Background and Links to Islands Plan and Directorate Business Plan/s**

- 4.1 The decision complements the aim of this Assembly to improve accessibility to community and cultural facilities and invest in cultural experiences that enrich the community.
- 4.2 The grant of a an extended lease is intended to contribute to the aspiration of preserving and celebrating the Falkland Islands heritage and way of life and enabling everyone to participate in cultural, leisure and sporting activities as detailed in the Islands Plan.

## **5. Options and Reasons for Recommending Relevant Option**

- 5.1 Option 1: Do nothing. Permit the current lease to continue and expire in 2023 when both parties can review the position;
- 5.2 Option 2: Vary the existing lease for a term of 99 years and at £1 per annum if demanded, subject to the Association obtaining sufficient funding to facilitate and deliver public toilet provision within the grounds of the Racecourse in a reasonable time period and to delegate to the Attorney General the oversight of the variation of the existing lease.
- 5.3 Option 3: Vary the existing lease but subject to different conditions to be determined at the meeting.

## **6. Resource Implications**

### 6.1 Financial Implications

- 6.1.1 The letting of this property to the Association and its refurbishment by them would promote wider community use and access to a Racecourse. It is a strategic site. Granting a long-term interest in this site to the Association will encourage the Association to invest and enhance the Racecourse, as the declining lease length would act increasingly as a barrier to investment.
- 6.1.2 Given the proposal for a £1 per annum rent, there would not be new revenue income generated for the FIG in the foreseeable future.
- 6.1.3 The FIG subvention funding approved by the Budget Select Committee supports the Association's plans to relocate and refurbish the toilet blocks.

### 6.2 Human Resource Implications

None

### 6.3 Other Resource Implications

None

## **7. Legal Implications**

- 7.1 The terms of the new lease will be fixed for a further 99 years, save for the changes set out in this report and by agreement. To avoid affecting a surrender of the original lease and a re-grant of a new lease, the Crown and the Association can enter into a reversionary lease which will take effect at the end of the term of the existing lease, granting future rights to the Association for the possession of the property. On expiry of the existing lease the parties' landlord and tenant relationship will move seamlessly to be governed by the reversionary lease. The reversionary lease can incorporate the alteration to the duration of the current lease, by increasing the lease term and any updating that is needed. This will leave them free to pursue their respective interests rather than deal with the uncertainties of a lease renewal.

- 7.2 There are limited risks to the Crown arising from the options in the report. If the recommendation to approve does not proceed, the existing lease will continue to run until 2023. However, not proceeding could affect the long term viability of the Racecourse and put at risk the improvement of the site.
- 7.3 Should Members accept the above position and agree with the matters referred within this report, it is recommended that the Attorney-General be authorised to restore the existing lease length for a further 99 years on the terms of the existing lease as amended pursuant to this report and any other measures to bring the lease documentation up to date as agreed between the parties.
- 7.4 This report does not introduce a new policy, function or strategy or recommend a fundamental change to the allocation of the property or an existing policy, function or strategy.
- 7.5 There are no crime and disorder concerns. There are no new licensing or other implications identified.

## **8. Environmental & Sustainability Implications**

8.1 None

## **9. Significant Risks**

9.1 None

## **10. Consultation**

10.1 None

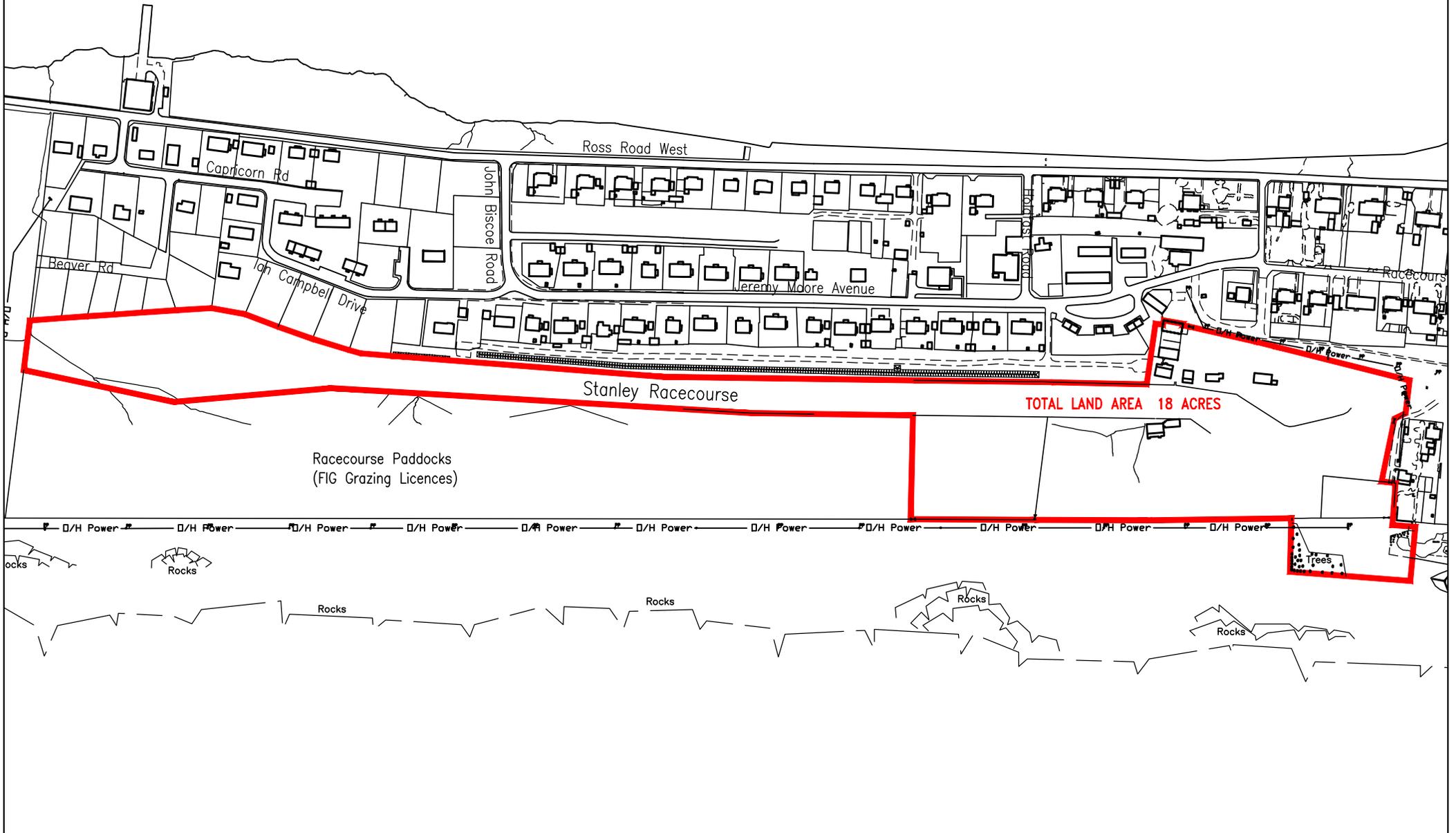
## **11. Communication**

11.1 None

## **Schedule 1**

Copy of Crown Lease 444

STANLEY HARBOUR



THE FALKLAND ISLANDS

CROWN LEASE

NUMBER 444

*Falkland*  
CERTIFIED A  
TRUE COPY

**THIS LEASE** is made and executed as a deed on the 23 day of April 2008 in pursuance of the Land Ordinance **BETWEEN ALAN EDDEN HUCKLE** Governor of the Falkland Islands pursuant to section 67 of Schedule 1 to the Falkland Islands Constitution Order 1985 on behalf and in the name of Her Majesty **ELIZABETH II** by the Grace of God of the United Kingdom and Northern Ireland and of Her other Realms and Territories Queen Head of the Commonwealth Defender of the Faith (hereinafter referred to as "the Crown") of the one part **AND STANLEY SPORTS ASSOCIATION LIMITED** a company incorporated in the Falkland Islands under the provisions of the Companies and Private Partnerships Association with registered number 8324 and having its registered office at Racecourse Committee Hut, Stanley Racecourse, Stanley (hereinafter referred to as "the Tenant") of the other part

**WHEREAS**

- (1) The Crown is the owner absolute of that area of land situate in the town of Stanley on East Falkland Island known as Stanley Racecourse extending to 18 acres or thereby which area of land is shown for the purposes of identification only delineated and partly hatched and partly cross-hatched on drawing 08/04 annexed hereto (hereinafter referred to as "the Premises")
- (2) The Tenant has requested a lease of the Premises, and the Crown has agreed to grant a lease on the terms hereinafter contained

**NOW THEREFORE IT IS AGREED** as follows:-

**1. Demise**

The Crown lets and demises to the Tenant the Premises together with the rights specified in the First Schedule annexed hereto Excepting and Reserving to the Crown the rights specified in the Second Schedule annexed hereto To Hold the Premises to the Tenant for the Term of fifteen years from 1 January 2008 Subject To all rights easements privileges restrictions covenants and stipulations of whatever nature affecting the Premises Yielding and Paying to the Crown the rent of £1 per annum if demanded.

## 2. The Tenant's Covenants

CERTIFIED A  
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The Tenant hereby covenants with the Crown as follows:-

- 2.1 To pay to the suppliers and to indemnify the Crown against all charges for water, electricity, gas, heating fuel, telephone supply, refuse collection and all or any other services consumed or used at or in relation to the Premises (including meter rents).
- 2.2 Within six months of the commencement of this Lease, to the extent that they do not already exist, to erect fences upon the boundaries of the Premises, which fences once erected become the property of the Crown and are to be left in place and are not to be removed by the Tenant upon expiry or earlier termination of this Lease.
- 2.3 To keep all internal and boundary fences and gates fully stockproof.
- 2.4 To keep the Premises and every building and structure erected thereon in good and tenable repair and in a clean and tidy condition.
- 2.5 To keep the foul and surface water drains unobstructed and in full working order.
- 2.6 Not to deposit or permit to be deposited upon the Premises (except in covered waste receptacles or inside any building erected on the Premises) any waste, rubbish, refuse, materials, equipment, machinery, containers, crates, cartons, boxes or any other item which is or might become untidy, unclean, unsightly or in any way detrimental to the Premises or the neighbourhood generally.
- 2.7 Not to bring onto or store on the Premises any plant, caravans, ISO containers, portacabins or similar structures without the prior written consent of the Crown.
- 2.8 Not to park (except in designated parking areas while the Premises are in use as a Race Course or for events of the kind permitted by clause 2.11 of this Lease) or store on the Premises any motor vehicles without the prior written consent of the Crown.
- 2.9 To maintain any tracks forming part of the Premises, and to take all reasonable measures to prevent the Premises from becoming churned up by vehicular traffic.
- 2.10 To use the Premises principally as a Race Course, and for purposes ancillary thereto including the stabling and grazing of horses, and for the avoidance of doubt the stabling and grazing of horses is permitted throughout the year and not only during Race meetings.
- 2.11 At the Tenant's option to use the Premises for outdoor fetes, concerts, and sporting activities (excluding motorised sports), and to use the Race Course Bar erected on the Premises for dances and other indoor entertainments.

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THIS COPY

- 2.12 Not to use the Premises or any building erected thereon for any purpose whatsoever other than those uses permitted by clauses 2.10 and 2.11 of this Lease except with the prior written consent of the Crown.
- 2.13 Not to use the Premises or any building erected thereon for residential purposes.
- 2.14 Not to keep nor bring onto the Premises any animal (except horses or sheep).
- 2.15 Not to make any structural alterations or additions to any buildings erected on the Premises and not to erect other buildings or structures on the Premises without the prior written consent of the Crown. The erection of any permitted alterations, additions, new buildings or structures must comply with all relevant planning, building, fire and environmental health Ordinances, rules and regulations in force at the time the work is carried out.
- 2.16 At the Tenant's own expense to execute all works and provide and maintain all arrangements upon or in respect of the Premises or the use to which the Premises are put that are required in order to comply with the requirements of any Ordinance (already or in the future to be passed) including without prejudice to the foregoing generality any planning, building, fire safety or environmental health provision or the requirement of any government department, other public or competent authority or court of competent jurisdiction regardless of whether such requirements are imposed on the owner, the tenant or the occupier.
- 2.17 Not to do in or near the Premises any act or thing by reason of which the Crown may under any Ordinance or regulation incur, have imposed upon it or become liable to pay any penalty, damages, compensation, costs, charges or expenses.
- 2.18 To be responsible for and to keep the Crown fully indemnified against all damages, losses, costs, expenses, actions, demands, proceedings, claims and liabilities made against or suffered or incurred by the Crown arising directly or indirectly out of any act, omission or negligence of the Tenant or any persons at the Premises expressly or impliedly with the Tenant's authority or any breach or non-observance by the Tenant of the covenants, conditions or other provisions of this Lease.
- 2.19 At all times during the currency of this Lease to maintain a fully comprehensive policy of insurance for public liability claims in respect of the Premises and the Tenant's occupation thereof. There shall be no limit on the number of claims which may be made on the policy of insurance in any one year. The amount insured shall be no less than £2 million per claim (or such other sum as the Crown acting reasonably may require). The Tenant shall arrange the policy with a reputable insurance office and will pay the insurance premiums in respect thereof timeously and will exhibit to the Crown upon demand the relevant policy of insurance and evidence that the premiums have been paid.

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- 2.20 To take all reasonable steps to prevent the making of any encroachment upon or the acquisition of any easement in relation to the Premises and to notify the Crown immediately if any attempt is made to encroach or acquire an easement.
- 2.21 Not to assign, sublet or charge the Premises and not to hold on trust for another or part with the possession of the whole or any part of the Premises or permit another to occupy the whole or any part of the Premises.
- 2.22 At the expiration of the Term or on the date of termination of this tenancy howsoever determined to yield up to the Crown the Premises and any buildings erected thereon now or during the Term of this Lease in good and tenantable repair and in accordance with the terms of this Lease; to give up all keys of the Premises and any buildings erected thereon to the Crown; and to remove all signs, equipment and machinery erected by the Tenant in upon or near the Premises and immediately to make good any damage caused by such removal.

### 3. Future Development

- 3.1 The Tenant covenants with the Crown that no later than 30 November 2012 and at its own expense it will relocate to the south-east corner of the Premises the stable buildings owned by the Tenant which stable buildings are currently erected on the north side of the Premises immediately adjacent to Jeremy Moore Avenue East.
- 3.2 The Tenant and the Crown hereby agree that with effect from 1 January 2013 the definition of the Premises for the purposes of this Lease shall be amended as follows:-  
  
“That area of land situate in the town of Stanley on East Falkland Island known as Stanley Racecourse extending to 17 acres or thereby which area of land is shown for the purposes of identification only delineated and hatched on drawing 08/04 annexed hereto”
- 3.3 And the Tenant and the Crown agree that from 1 January 2013 the provisions of this Lease remain in full force and effect in relation to the Premises as redefined in accordance with clause 3.2 of this Lease, and the Tenant acknowledges that from that date it has no right to enter upon or use for any purpose whatsoever the area of land extending to 1 acre of thereby shown delineated and cross-hatched on drawing 08/04 annexed hereto.

### 4. The Landlord's Covenants

The Crown covenants with the Tenant to permit the Tenant peaceably and quietly to hold and enjoy the Premises without any interruption or disturbance from or by the Crown or any person claiming under or in trust for the Crown.

## 5. The Landlord's Right of Re-Entry



If and whenever during the Term:-

- (a) the Tenant gives the Crown three months' written notice of termination of this Lease; or
- (b) there is a breach by the Tenant of any covenant or other term of this Lease or any document supplemental to this Lease which is not remedied within three months of written notice given to the Tenant by the Crown requiring the Tenant to remedy the breach; or
- (c) the Tenant is wound-up or struck off the Register of Companies or has a receiver or administrator appointed

the Crown may re-enter the Premises at any time (and even if any previous right of re-entry has been waived) and then the Term shall absolutely cease but without prejudice to any rights or remedies which may have accrued to the Crown against the Tenant in respect of any breach of covenant or other term of this Lease (including the breach in respect of which the re-entry is made).

## 6. Provisos

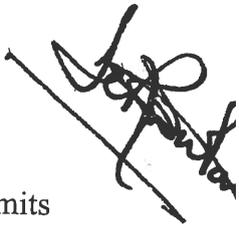
- 6.1 Nothing in this Lease or in any consent granted by the Crown under this Lease shall imply or warrant that the Premises are fit for the use to which the Tenant proposes to put them or that the Premises may lawfully be used under the Planning Ordinance for the purpose authorised in this Lease.
- 6.2 This Lease embodies the entire understanding of the parties relating to the Premises and to all the matters dealt with by any of the provisions of this Lease.
- 6.3 Any covenant by the Tenant not to do an act or thing shall be deemed to include an obligation to use reasonable endeavours not to permit or suffer such act or thing to be done by another person.

## 7. Notices

Any notice or document to be served in accordance with the provisions of this Lease shall be sufficiently served on a party if sent by post or facsimile transmission to (in the case of the Crown) the Secretariat, Stanley and (in the case of the Tenant) to the Tenant's registered office. Service shall be deemed to be made on the third working day after posting or the first working day after faxing.

**8. Definitions**

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The expressions "the Crown" and "the Tenant" wherever the context so admits include the person for the time being entitled to the reversion immediately expectant on the determination of the Term and the Tenant's successors in title respectively.

**IN WITNESS WHEREOF** these presents are executed as a deed and the Governor has hereunto set his hand and caused the Public Seal of the Falkland Islands to be hereunto affixed and they are signed on behalf of the Tenant all on the day and year first before written

Signed by the said )  
**ALAN EDDEN HUCKLE** )  
Governor of the Falkland Islands )  
as witness the Public Seal )



Signed on behalf of the Tenant by

Director ..... *Turner* .....

Full Name ... *Elaine Turner* .....

and

Director ..... *OW* .....

Full Name *OWEN WILLIAM SUMMERS* .....

## First Schedule

### Rights Granted to the Tenant

1. The rights of passage and the running of water, sewerage, electricity, telephone and other services from and to the Premises through the pipes or other service channels in under or upon the adjoining and neighbouring land of the Crown and to make connection with such pipes and service channels for the purpose of exercising the said rights together with where necessary the right to enter upon such adjoining or neighbouring land with or without workmen at all reasonable times upon reasonable notice except in case of emergency for the purpose of maintaining and effecting repairs to the said services PROVIDED that the Tenant makes good any damage or disruption made to adjoining or neighbouring land when exercising these rights.

2. The right to enter upon adjoining and neighbouring land of the Crown with or without workmen at all reasonable times upon reasonable notice except in case of emergency for the purpose of maintaining and effecting repairs to the buildings erected on the Premises and the boundary walls and fences thereof PROVIDED that the Tenant makes good any damage or disruption made to adjoining or neighbouring land when exercising these rights.

## Second Schedule

### Rights Reserved to the Crown

1. The right to enter the Premises at all reasonable times and upon reasonable notice except in case of emergency to exercise any of the rights granted to the Crown in this Lease.

2. The right to resume up to one twentieth part of the Premises without payment of any compensation whatsoever for the purpose of making roads, canals, bridges, paths or other public purposes as defined in Section 7 of Schedule 1 to the Falkland Islands Constitution Order 1985 provided that no such resumption shall be made of any land on which buildings are erected or of any land in use for the more convenient occupation of such buildings.

3. All mines and minerals of whatsoever nature lying in under or upon the Premises together with full right and liberty at all times with or without agents and workmen to enter upon all or any part of the Premises and to search for work win get make merchantable and carry away the said mines and minerals without payment of any compensation whatsoever.

4. To use for reasonable purposes in common with all others entitled so to do such service conduits including cables wires pipes sewers and drains as there may be in on over or under the Premises together with where necessary the right to enter upon the Premises with or without workmen at all reasonable times upon reasonable notice

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except in case of emergency for the purpose of inspecting, maintaining, repairing and when necessary renewing the said service conduits PROVIDED that the Crown makes good any damage caused to the Premises during the exercise of these rights.

5. The right to lay through the Premises along a route chosen by the Crown acting reasonably all such services as may be required for the future development of neighbouring or adjoining property now or in the future belonging to the Crown, with a right of passage for such services and also with the right to make connection with existing services in the Premises for the purpose of exercising the said rights and together also with where necessary the right to enter upon the Premises at all reasonable times and upon reasonable notice to the Tenant except in case of emergency for the purpose of inspecting, maintaining, repairing and when necessary renewing the said services PROVIDED that the Crown makes good any damage caused to the Premises during the exercise of these rights.
6. The right to enter the Premises with or without workmen at all reasonable times upon reasonable notice except in case of emergency for the purpose of inspecting, maintaining, repairing and when necessary renewing the Premises or neighbouring or adjoining property belonging to the Crown or the boundary walls and fences thereof PROVIDED that the Crown makes good any damage caused to the Premises during the exercise of these rights.
7. Any right of light or air over any land retained by the Crown which is adjacent to or neighbouring on the Premises.
8. A right of support for any land (including roads footpaths and highways) retained by the Crown which is adjacent to or neighbouring on the Premises.
9. The right to enter upon the Premises at any time whatsoever with or without notice, or to authorise any person whatsoever to enter upon the Premises, for the purposes of checking and disposal of suspicious objects and unexploded ordnance.