

GILLESPIE MACANDREW

LEGALLY BINDING PROMISE

BY

FLAMINGO LAND LIMITED

TO

THE LOCH LOMOND AND THE TROSSACHS NATIONAL PARK AUTHORITY

Subjects: Land at Pier Road, Ben Lomond Way and Old Luss Road, known as West Riverside and Woodbank House (Lomond Banks), Balloch

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LEGALLY BINDING PROMISE

by

FLAMINGO LAND LIMITED, a company incorporated under the Companies Acts under Registered Number SC052543 and having its Registered Office at The Cross, Uddingston, G71 7ES (hereinafter referred to as “**the Developer**”)

to

LOCH LOMOND & THE TROSSACHS NATIONAL PARK AUTHORITY, constituted under the Loch Lomond and The Trossachs National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2002 and having its principal place of business at Carrochan, Carrochan Road, Balloch G83 8EG (who and whose statutory successors as planning authority for the National Park (as hereinafter defined) are hereinafter referred to as “**the Authority**”)

WHEREAS:

(First) the Authority is the planning authority for the National Park;

(Second) the Developer is seeking Planning Permission (as hereinafter defined) to construct and operate the Development (as hereinafter defined);

(Third) during the course of the statutory consultation exercise carried out by the Developer prior to the submission of the Planning Application in accordance with the provisions of sections 35A, 35B and 35C of the 1997 Act (as hereinafter defined), the Developer consulted with members of the Local Communities (as hereinafter defined) regarding the perceived benefits and disbenefits of the Development (as hereinafter defined);

(Fourth) in response to the said consultation exercise members of the Local Communities raised the Community Issues (as hereinafter defined) with the Developer;

(Fifth) in response to the Community Issues, the Developer adjusted certain aspects of the Development ahead of its submission of the Planning Application to the Authority and undertook to put in place certain

measures, including the giving of this solemn promise, to ensure that, so far as reasonably practicable, if the Authority were to grant the Planning Permission, the Community Issues would be satisfactorily addressed; and

(Sixth) the Developer has now submitted the Planning Application (as hereinafter defined); to the Authority for determination;

NOW, THEREFORE, without prejudice to the Authority's determination of the Planning Application, the Developer, following delivery of this instrument (signed in self-proving form) to the Authority, **PROMISES** and **UNDERTAKES** to the Authority as follows:

1 DEFINITIONS

In this legally binding promise, the following words and phrases shall have the following meanings ascribed to them unless the context otherwise requires: -

"1997 Act" means the Town and Country Planning (Scotland) Act 1997;

"2013 Regulations" means the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013;

"Active" means a community council established in accordance with the provisions of Part IV of the Local Government (Scotland) Act 1973 that (i) is listed on the West Dunbartonshire Council "Community Council" website as an "Active Community Council", (ii) sends the Council information concerning contact information, meeting times and venues and minutes of meetings and (iii) receives weekly information from the Council in terms of regulation 23 of the 2013 Regulations regarding planning applications;

"Active & Sustainable Travel Strategy and Action Plan" means the plan adopted or to be adopted by West Dunbartonshire Council, detailing how the Councils will take action to (i) encourage active travel through walking, wheeling, cycling and public transport and (ii) deploy sustainable alternatives to decarbonise transport for both the public and the Councils or such other plan as may be adopted by the Councils for the purposes promoting sustainable transport initiatives in West Dunbartonshire;

"Circular" means opportunities to re-use, share, lease, repair, refurbish, upcycle or recycle construction materials rather than the application of the traditional "take-make-consume-dispose" of such materials process;

"Community Councils" means (i) Alexandria Community Council, (ii) the Balloch and Haldane Community Council, (iii) Bonhill and Dalmonach Community Council, and (iv) Renton Community Council, all c/o West Dunbartonshire Council, 16 Church Street, Dumbarton, G82 1Q, or such other contact address or addresses

that may be intimated to the Developer directly in writing by any one or more the foregoing Community Councils;

“Community Issues” means the Community Support Issues, the Employment Issues, the Environment Issues, the Social Issues and the Transport Issues, collectively;

“Community Support Issues” means the issues raised by members of the Local Communities concerning the securing of economic benefits for local businesses during the course of the construction and operation of the Development;

“Core Path” means a path providing a means of crossing land within the National Park which is set out in the Core Path Plan;

“Core Path Plan” means the core path plan for the National Park adopted by the Authority to meet the requirements of sections 17 and 18 of the Land Reform (Scotland) Act 1973 as may be reviewed and amended from time to time at the instance of the Authority;

“Core Path Network” means the network of Core Paths that are located in and around the environs of the Land;

“Cyclescheme Benefit” means the employee benefit scheme operated by Cyclescheme Limited that as at the date of delivery of this legally binding promise saves employees between 26 -40% on the actual cost of purchasing a bike and accessories;

“Development” means the construction and operation on the Land of a tourism and leisure-led mixed used development (to be known as “Lomond Banks”), including refurbished tourist information building; up to 60-bedroom apartment hotel; up to 32-bedspace budget hotel, up to 127 no. self-catering holiday lodges; restoration and redevelopment/conversion of Woodbank House and attendant listed structures for up to 21 self-catering holiday apartments (subject to other necessary consents); leisure pool, waterpark, spa, restaurants, hot food cafe and retail areas; craft brewery including pub; visitor reception area and hub building; external activity areas including areas for event and performance, play, picnic and barbeque; monorail; staff service and welfare accommodation; transport infrastructure; associated access and parking; landscaping and utilities infrastructure works;

“Drumkinnon Wood” means the area of ancient woodland located within the Land that is to be the subject of the Woodland Management Plan;

“Employment Issues” means the issues raised by members of the Local Communities concerning the securing of employment opportunities for local people during the course of the construction and operation of the Development;

“Environment Issues” means the issues raised by members of the Local Communities concerning the impact of the Development on the environment and the need to minimise carbon emissions;

“Green Travel Plan” means a plan to identify and promote ways to encourage a range of sustainable, or less environmentally damaging transport modes and having as its principal objective the reduction of single user private car trip rates to and from the Development by staff and members of the public;

“Informal Woodland Paths” means the existing informal paths within the Drumkinnon Wood that are not Core Paths;

“Informal Woodland Paths Network” means the existing network of Informal Woodland Paths within the Drumkinnon Wood that are to be maintained and enhanced by the Developer through the application of the Woodland Management Plan;

“Land” means ALL and WHOLE the subjects at West Riverside, Balloch, West Dunbartonshire to which the Planning Permission (if granted) and this legally binding promise relates;

“Local Communities” means the communities within those areas of West Dunbartonshire that are represented by the Community Councils;

“Local MSP” means Jackie Baillie and her successors as the member of the Scottish Parliament for the constituency of Dumbarton;

“National Park” means the Loch Lomond & the Trossachs National Park within which the Land is located;

“Planning Application” means the application submitted by the Developer to the Authority and allocated reference number 2022/0157/PPP for planning permission in principle to construct and operate the Development;

“Planning Permission” means the formal decision notice issued by the Authority following its determination of the Planning Application intimating the grant of conditional planning permission in principle for the Development;

“Satisfactory” means satisfactory to the Developer from a commercial viability perspective;

“Social Issues” means the issues raised by members of the Local Communities concerning the securing of certain health and social benefits for the Local Communities during the operation of the Development;

“Small to Medium Enterprise” means any organisation that has less than 250 but more than 10 employees;

“Social Value Portal” means the on-line toolkit that allows organisations (using financial and non-financial data) to (i) measure the environmental, social and other activities carried out by organisations during the course of the construction and operation of their individual projects, (ii) measure and manage the contributions that organisations and their supply chains makes to local economies and (iii) report such activities and contributions to relevant stakeholders, all with a view to demonstrating the additional social value that organisations are committed to delivering to the Local Communities through their projects;

“Transport Issues” means the issues raised by members of the Local Communities concerning the impact of the Development on traffic flows in and around Balloch;

“Woodland Management Plan” means a plan for the management of Drumkinnon Wood and the Informal Woodland Paths Network based on the suite of management plan templates drawn up by Forestry & Land Scotland setting out inter alia (i) a clear and concise description of the woodland, (ii) a long-term vision for the woodland, (iii) the objectives for its future betterment and management, (iv) detailed proposals setting out how those objectives are intended to be met over the first 10 years of the Development and (v) a mechanism for regular future reviews of the foregoing;

2 INTERPRETATION

2.1 Reference in this legally binding promise to the Authority shall include their successors as the local planning authority for the area in which the Land is located.

2.2 The words ‘including’ and ‘include’ and words of similar effect shall not be deemed to limit the general effect of the words which preceded them.

2.3 Reference to any agreement, contract, document or deed shall be construed as a reference to it as varied, supplemented or novated;

2.4 Obligations undertaken by the Developer which comprises more than one person shall be deemed to be made by them jointly and severally;

2.5 Words importing persons shall include firms, companies and bodies corporate and *vice versa*;

2.6 Words importing the singular shall be construed as importing the plural and *vice versa*;

2.7 Words importing one gender shall be construed as importing any other gender;

- 2.8 Words denoting an obligation on the Developer to do any act, matter or thing include an obligation to procure that it be done and any words placing the Developer under a restriction include an obligation not to cause, permit or suffer any infringement of that restriction;
- 2.9 Construction of this legally binding promise shall ignore any headings and front sheet (all of which are for reference only);
- 2.10 Reference to a number clause or schedule or paragraph are references to the clause, schedule or paragraph of or to this legally binding promise so numbered; and
- 2.11 Any reference to any legislative provision shall be deemed to include any subsequent re-enactment or amending provision.

3 ESSENTIAL AND SUSPENSIVE CONDITIONS

The undertakings set out in this legally binding promise are essentially and suspensively conditional on (i) a Planning Permission granted by the Authority on terms that are Satisfactory to the Developer and (ii) the subsequent implementation of the Development where the context so admits, either the subsequent (a) construction of the Development (or any material part thereof) commencing (either in a single phase or in phases) in accordance with the terms of the Planning Permission or (b) operation of the Development or any material “standalone” part thereof.

4 WITHOUT PREJUDICE

- 4.1 The undertakings set out in this legally binding promise are made entirely without prejudice to the rights of the Authority under the 1997 Act to make the grant of Planning Permission subject to any planning conditions and/or planning obligations which are intended to regulate and/or restrict the construction and/or future operation of the Development and, as part of that regulation and/or restriction, address the Community Issues or any one or more of them.
- 4.2 In the event that (i) the Authority makes the grant of Planning Permission subject to any such planning conditions and/or planning obligations as aforesaid and the planning conditions and/or planning obligations so imposed relate to issues that are covered in whole or in part by the undertakings set out in this legally binding promise and those related planning conditions and/or planning obligations are:
- (a) more onerous than the terms of the undertakings set out in this legally binding promise, the terms of those related planning conditions and/or planning obligations so imposed shall be deemed to prevail and the Developer, in addition to complying in full with those planning

conditions and/or planning obligations imposed by the Authority, shall comply in full with those more onerous terms; or

(b) less onerous than the terms of the undertakings set out in this legally binding promise, in addition to complying in full with the terms of those related planning conditions and/or planning obligations imposed by the Authority, the Developer shall also comply in full with the more onerous terms of the undertakings set out in this legally binding promise; or

(c) in any way contradictory to the terms of the undertakings set out in this legally binding promise, the terms of those related planning conditions and/or planning obligations imposed by the Authority shall prevail.

5 COMMUNITY ISSUES

To address the Community Issues, as far as reasonably practicable, the Developer promises and undertakes to the Authority as follows:

5.1 The Community Support Issues

- a) The Developer shall work in partnership with local businesses and the Community Councils (so far as they are Active) to support collaborative marketing campaigns to promote the Local Communities and their businesses.
- b) Once the Development or any phase thereof becomes operational, the Developer shall promote those local businesses and services located within the Local Communities, which actively engage with the Development, by including details of those local businesses and services in (i) “welcome packs” prepared for guests using the proposed holiday accommodation and (ii) a discrete section of the Development website.

5.2 The Employment Issues

The Developer shall adopt the Scottish Government’s “Fair Work First” approach making a commitment to adopt the Fair Work First criteria using the Fair Work First guidance, including:

- (i) appropriate channels for an effective voice for employees;
- (ii) investment in workforce training;
- (iii) no use of “zero hour” contracts;
- (iv) tackling the gender pay gap and creating a more diverse and inclusive workplace,
- (v) payment of the real living wage;

- (vi) prioritisation of people from the Local Communities to job opportunities during the construction and operation of the Development wherever reasonably practicable, and
- (vii) making it a requirement of any contract entered into by the Developer with a Small to Medium Enterprise in relation to the construction and/or operation of the Development that that Small to Medium Enterprise makes similar commitments in terms of that Small to Medium Enterprise's own works and employment practices to those set out above.

5.3 The Environment Issues

- a) Prior to the construction of the Development commencing, the Developer and its appointed contractors shall consult with Zero Waste Scotland or similar organisation with a view to applying a more Circular approach to use of construction materials and ways of working.
- b) The Developer shall prepare and thereafter implement a detailed, achievable action-focused plan with the primary objective of making the Development a "net zero" tourist destination by no later than 2035 and deliver copies of that plan to the Authority and the Community Councils.
- c) The Developer shall prepare (following consultation with the Authority, NatureScot and the Community Councils) and thereafter implement a Woodland Management Plan for the protection, maintenance and enhancement of the Drumkinnon Wood and the Informal Woodland Path Network.
- d) The Developer shall ensure throughout the construction and operation of the Development that the Core Path Network shall remain open at all times.
- e) The Developer shall ensure throughout the operation of the Development that the Informal Woodland Path Network shall remain open at all times.

5.4 The Social Issues

- (a) The Developer shall deploy monitoring systems and employ suitably qualified staff to manage any anti-social behaviour within the Development and its immediate environs.
- (b) The Developer shall provide an opportunity for members of the Local Communities to apply for membership of a scheme made available only to persons residing within the Local Communities that allows its members to use all leisure facilities within the Development at a discounted rate;
- (c) The Developer shall work with water sports clubs within the Local Communities to ensure that they have access to appropriate facilities within the Development with a view to encouraging membership of those clubs and promoting water safety on the Loch.

5.5 The Transport Issues

The Developer shall prepare and thereafter implement a Green Travel Plan for the Development and as part of that:

(One) preparation process (a) during the course of the first summer school holiday following the opening of the Development (and for a period of not less than 5 days) carry out a base-line traffic survey in order to establish the number of trips into and from the Development by visitors and employees that are made by private car, (b) specify the maximum achievable percentage reduction in the said private car trip rates that the Developer will seek to achieve by no later than the fifth anniversary of the date of completion of the said base-line survey (c) set out the measures (including a development parking strategy) that it will take in each of the first five years of operation of the Development to achieve the said trip rate reduction target (including (i) the introduction of an electric “hopper” bus to serve the Development, (ii) the investigation of opportunities to provide integrated bus/rail tickets to the Development, (iv) the introduction of Cyclescheme Benefit for all employees, (v) the provision of complimentary rides for resort customers on electric buggies within the Development, (vi) the provision of signage and facilities within the Development for walkers and cyclists, and (vii) such other reasonable measures as may be proposed by the Authority following consultation with West Dunbartonshire Council which are intended to support the objectives of the Active & Sustainable Travel Strategy and Action Plan) and (d) in the event that the said decrease target is not achieved by the said fifth anniversary, the further measures that it would propose to take over the course of the sixth year of operation of the Development to ensure that the said trip rate reduction target is met; and

(Two) implementation process, (a) provide the Authority and the Community Councils that are Active at the relevant time) with a copy of the Green Travel Plan, (b) carry out in each of the first five (or, as the case may be, six) years of operation the relevant measures (or as the case may be, further measures) set down in the plan to ensure that the said trip rate reduction target is met.

5.6 The Social Value Portal

- a) The Developer shall use the Social Value Portal to (i) measure the environmental, social and other activities carried out by the Developer during the course of its construction and operation of the Development, (ii) measure and manage the contributions that the Developer and its supply chain makes to the local economy and (iii) report such activities and contributions to the Authority, the Local MSP and the Community Councils (that are Active at the relevant time), all with a view to demonstrating the additional social value that the Developer is committed to delivering to the Local Communities through the construction and operation of the Development.
- b) On receipt of the report referred to at 5.6 a) (iii) above, the Authority, the Local MSP and/or any one

or more of the relevant Community Councils shall be entitled (but not bound) to write to the Developer with suggestions setting out how the Developer might improve such activities and/or contributions.

- c) The Developer on receipt of any such suggestions shall respond to same in writing within 10 working days of the date of receipt explaining the extent or otherwise to which the Developer (acting reasonably) is prepared to adopt the suggestion in question and giving reasons for any suggestion not taken up.

6 ASSIGNATION

The Developer shall not assign its interest in the Planning Application, the Planning Permission and/or the Development to a third party (natural or legal, including any subsidiary company or parent company of the Developer) unless that third party has first granted the Authority a legally binding promise in self-proving form on the same terms mutatis mutandis as the terms of this legally binding promise.

7 JURISDICTION

This legally binding promise shall be construed in accordance with and governed by the Law of Scotland on promises and the Developer hereby prorogates the jurisdiction of the Court of Session in Scotland.

8 CONSENT TO REGISTRATION

The Developer consents to the registration of this legally binding promise by the Authority in the Books of Councils and Session for preservation and execution: **IN WITNESS WHEREOF:**

SUBSCRIBED for and on behalf of the said Flamingo Land Limited

at

on

by

Print Full Name

Director/Company Secretary

before this witness

Print Full Name

Witness

Address
