

LEASE  
between  
THE CROWN ESTATE COMMISSIONERS  
and  
CLYDEPORT LIMITED

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1993  
DMC.PAM

Duration: 99 years from 14 July 1975

Subjects: Seabed ex adverso Hunterston for  
shipping terminal.

DUNCAN M. CLARK, W.S.,  
48 Castle Street,  
Edinburgh  
FAS0208DC

# LEASE

between

THE CROWN ESTATE COMMISSIONERS,  
acting in exercise of the powers of the  
Crown Estate Act 1961 on behalf of the  
Queen's most excellent Majesty (who  
acting as aforesaid and their successors are  
hereinafter called "the Commissioners")  
Of the First Part

and

CLYDEPORT LIMITED, incorporated under  
the Companies Act with registered number  
134759 and having its registered office at  
16 Robertson Street, Glasgow (who and  
whose successors in right of the tenant's  
interest under this Lease are hereinafter  
called "the Tenant") as successor to Clyde  
Port Authority (hereinafter called "CPA")  
under the Clyde Port Authority Scheme  
1991 Confirmation Order 1992 made  
under the provisions of the Ports Act 1991  
Of the Second Part

The Parties have agreed and do hereby agree as follows:-

1. The Commissioners hereby let to the Tenant, but excluding assignments except with the prior written consent of the Commissioners whose consent to an assignment of the whole but not of a part will not be unreasonably withheld or delayed to a respectable assignee demonstrably capable of implementing the tenant's obligations as provided while subject always to the terms of sub-clause 4.13.1 hereof and, if such assignee is a corporate body, provided that it is one which is registered as such under the Companies Acts or under other relevant statute in the United Kingdom, and whose consent to a sub-lease of the whole but not of a part will not be

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unreasonably withheld or delayed ALL and WHOLE that area of land extending to 7.61 acres or 3.09 hectares or thereby being part of the bed of the sea known as the Firth of Clyde lying below Mean Low Water Springs and lying ex adverso Southannan Sands, Hunterston and for registration purposes in the County of Ayr and which area of land (hereinafter called "the subjects of let") is shown delineated and coloured pink on the plan annexed and executed as relative hereto and which area of land is partly occupied by an approachway, berthing jetty or jetty head and a mooring dolphin linked to the jetty head by a walkway (hereinafter referred to as "the Works") which the Tenant has been authorised to construct on the subjects of let and which expression "the subjects of let" shall (unless the context otherwise requires) be held to include the Works and also any Additional Works (as defined in sub-clause 4.1 hereof) where the context so permits.

2. This Lease shall subsist from 14 July 1975 (hereinafter called "the date of entry"), notwithstanding the date or dates hereof (CPA having taken entry to the subjects of let on the date of entry) and having been replaced in occupation and as tenant of the subjects of let by the Tenant on 1 March 1992) to 13 July 2074, provided that it shall be in the option of the Tenant to terminate this Lease at 13 March 2015 or at any subsequent anniversary of that date on giving to the Commissioners not less than 18 months' prior written notice of their intention to do so.
3. This Lease is made excepting and reserving (a) to Her Majesty and Her Successors the whole mines, metals, minerals and fossils in so far as belonging to Her and Them within or under the subjects of let, with full

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3.

power and liberty to Her Majesty and Her Foresaids or any person authorised by Her or Them to search for, work, win, raise, calcine and carry away said mines and others and to do everything necessary for all or any of these purposes, but upon payment always to the Tenant of compensation for all loss or damage howsoever arising, and including consequential loss, which it may sustain from the exercise of the said power as the said loss or damage, if not ascertained by agreement between the parties, shall be ascertained by reference to a single arbiter to be agreed upon between the parties hereto or failing agreement, to be appointed by The Sheriff Principal of North Strathclyde and (b) full and free right for Her Majesty and Her Foresaids and for all persons by Her or Their permission and for all members of the public to exercise all rights to which they may be entitled and all privileges which they may enjoy from and over the subjects of let and adjacent foreshore and seabed, but so that authorised erections or works constructed, placed or installed on the subjects of let shall not be prejudiced or interfered with by this exception and reservation. This Lease with and under the reservations, conditions, provisions and declarations hereinbefore and after written the Commissioners bind themselves to warrant from fact and deed only.

4. The Tenant accepts the subjects of let as being in every way suitable for its intended use thereof, and will have no claim against Her Majesty or Her Successors or the Commissioners in respect of any loss or damage caused by the exercise by others of the public rights hereby reserved, and undertakes:-

4.

4.1 to pay to the Commissioners the

[REDACTED]

[REDACTED] or such larger sum as may be fixed in accordance with the provisions hereinafter contained (hereinafter called "the rent") in advance on [REDACTED] of the first payment on the date of entry, notwithstanding the dates hereof, with interest thereon and on any other money payable to the Commissioners hereunder from the due date of payment until payment [REDACTED]

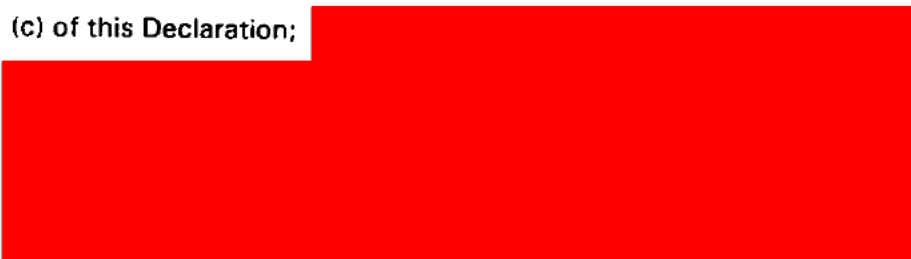
[REDACTED]

Declaring that:-

(a)

[REDACTED]

at the review date, but will not treat the Works, or any Additional Works as hereinafter defined, as part of the subjects of let (that is to say, not treat the Works or Additional Works as belonging to Her Majesty or Her Successors) for the purposes of such review or for the purposes of such review or determination as is aftermentioned at sub (c) of this Declaration;



- (b) the determination and review by the Valuation Office will be made after an opportunity has been afforded to the Tenant to make representations thereanent;
- (c) if the Commissioners consent to a change in use of the subjects of let, or to the erection, placing or installing of any construction other than the Works (hereinafter called "Additional Works") or to Dredging Works at or around the subjects of let, either in creating a deep water access thereto, or for the purpose of deepening the water access to a depth greater than the depth of the area existing at the date of entry or for any other purpose the rent will be reviewed or, at the discretion of the Commissioners, some other form of consideration will be determined as at the date of granting of such consent (or from the date of commencement of change in use or of Additional Works or of Dredging Works if commenced prior to the granting of such consent if the Commissioners decide at their sole discretion to grant

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6.

such consent with retrospective effect). At such review the rent or other consideration subject as aftermentioned will failing agreement between the parties be determined by the Valuation Office acting as aforesaid and any rents so fixed will be not less than the rent exigible prior to the date of granting such consent, or prior to the date of commencement of the change of use or of the Additional Works or dredging works, as the case may be.

4.2 to pay, and so to relieve the Commissioners of, all present and future taxes, rates, assessments and outgoings whatsoever, if any, payable in respect of the subjects of let and of the works thereon and connected therewith;

4.3 not to erect, place or install on the subjects of let any additional works without first obtaining the written consent and approval of the plans and specifications thereof by the Commissioners and not to alter or extend the same at any time without such consent and approval, which consents shall not be unreasonably withheld or delayed but subject always to the terms of Declaration (c) contained in sub-clause 4.1 hereof;

4.4 not to use the subjects of let other than as or for a terminal for the handling of iron ore and coal and other commodities compatible with such use and for all operations normally associated with the proper and usual enjoyment of such use, including without prejudice to the foregoing generality for anything reasonably necessary to deal with an accident, malfunction or emergency. The Tenant shall not be

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entitled to use the subjects of let for any other purpose without the written consent of the Commissioners, whose consent will not be unreasonably withheld or delayed, but subject always to the terms of Declaration (c) contained in sub-clause 4.1 hereof;

4.5 to give notice of completion of any Additional Works, to the Commissioners, and to furnish to the Commissioners plans and specifications of the Works and any Additional Works as completed, all immediately on completion thereof;

4.6 to apply for, and comply with all conditions, directions and restrictions lawfully provided in terms of, all consents, warrants, licences and permits necessary in law in respect of the subjects of let and the Tenant's use thereof and exercise of its rights hereunder and also, so far as relevant and applicable to the subjects of let and the Tenant's use thereof and exercise of its rights hereunder, to comply with all conditions, directions and restrictions lawfully imposed by any planning, coast protection, port or harbour (including the Queen's Harbourmaster), lighthouse, local or other public authority and with legislation generally which is so relevant and applicable.

4.6.1 without prejudice to the foregoing generality to apply for, and comply with all conditions, directions and restrictions lawfully provided in terms of, all necessary consents under,

- Section 34 of the Coast Protection Act 1949,
- the Protection of Wrecks Act 1973,
- the Offshore Petroleum Development (Scotland) Act 1975,



## 8.

- the Petroleum and Submarine Pipelines Act 1975,
- Part II of the Food and Environment Protection Act 1985,
- the Protection of Military Remains Act 1986,
- Section 33 of the Environmental Protection Act 1991,

and any re-enactments, extensions or amendments of any of them;

It is declared, and the parties hereby agree, that neither the grant of this Lease on behalf of Her Majesty, nor anything expressed or implied herein will give or be interpreted to give any freedom or immunity from or relaxation of, the requirements of any legislation, regulation, order or instrument having the force of law in the United Kingdom, now or at any time during the subsistence of this Lease.

## 4.7

at all times during the period of this Lease to keep the subjects of let (including the Works and any Additional Works) well and substantially maintained and in a good and tenantable condition and repair and in a clean and tidy condition all to the reasonable satisfaction of the Commissioners and not to place any materials or to do any other act on the subjects of let which may in the reasonable opinion of the Commissioners or their foresaids be or become a nuisance, annoyance or disturbance.

## 4.8

to permit the Commissioners and any person duly authorised by them from time to time (who shall comply with such reasonable safety requirements as are applicable) at all reasonable times and upon not less than 24 hours' prior written notice save in case of emergency, to enter into and upon and inspect the subjects of let (including the

Works and any Additional Works) and, if any want of repair or defect shall be found or appear therein, on receiving notice to that effect the Tenant will be bound to repair and make good the subjects of let (including the Works and any Additional Works) to the reasonable satisfaction of the Commissioners within such reasonable period of time following receipt of such notice given by the Commissioners as may be determined by the Commissioners having regard to the relevant circumstances.

4.9 to pay to the Commissioners all expenses reasonably and necessarily incurred by the Commissioners or any person duly authorised as aforesaid of and incidental to any inspection of the subjects of let carried out whether for any purpose which would be seen to be appropriate to a landlord acting reasonably in the particular circumstances or of and incidental to the superintendence or supervision of the execution of the repairs and others mentioned in the last preceding clause.

4.10 to pay to the Commissioners all expenses reasonably and necessarily incurred by the Commissioners or any person duly authorised as aforesaid of and incidental to a survey of the subjects of let, preparatory to the Commissioners giving any consent hereby required, or which may be so incurred in removing constructions, buildings or fixtures which have been erected, placed or installed without such consent.

## 10.

- 4.11** to pay to the Commissioners such amount of value added tax at the rate for the time being in force as shall be legally payable in respect of all monies undertaken to be paid by the Tenant under the Lease and in every case in the Lease where the Tenant undertakes to pay an amount of money such amount shall be regarded as being exclusive of all value added tax which may from time to time be legally payable thereon.
- 4.12** not in any way to hinder or obstruct the due exercise and enjoyment of any right or privilege hereby excepted and reserved.
- 4.13.1** without prejudice to Clause 1 hereof, not to assign the Lease quoad the whole or part of the subjects of let except to either the owner of the adjacent lands above the landward boundary of the subjects of let or to the tenants of such lands under a lease capable of subsistence, other than by tacit relocation and with no break option to the landlord, longer than the term expressed in this Lease; Provided always that nothing in this Lease shall prevent the Tenant from parting with or sharing possession of the whole or part of the subjects of let to a company or companies which is or are a subsidiary or holding company of the Tenant or a subsidiary of the Tenant's holding company, provided no tenancy rights are thereby created ("subsidiary" or "holding company" having the meanings ascribed to them by S.736 of the Companies Act 1985).
- 4.13.2** to lodge all assignations and sub-leases of the subjects of let or any part thereof and all confirmations, probates and other instruments

affecting the devolution of this Lease within 3 calendar months after the date thereof with the Commissioners for registration and on demand to pay the usual administration charge therefor.

4.14 at the end of this Lease, however it may be ended, but subject as provided below in sub-clauses 4.14.1 and 4.14.2, to demolish and remove the Works and any Additional Works; and

4.14.1 to restore such extent of the subjects of let as comprises reclaimed land (if any) so as to conform to any detailed arrangements and objectives of reinstatement and plans and specifications submitted to and approved by the planning authority as a condition of the granting of the planning permission relating to the subjects of let (including the Works and any Additional Works) and the use thereof and that within any time limit specified by the planning authority or within such other reasonable period as the Commissioners decide is practicable and all to the reasonable satisfaction of the Commissioners or their foresaids; and

4.14.2 to restore such extent of the subjects of let as comprises (after demolition and removal of the Works and any Additional Works) bed of the sea to its former or proper and safe condition and, without prejudice to that generality and where appropriate, to act in conformity with any stipulations and conditions as to restoration lawfully made and required by any public or local authority and all to the satisfaction of the Commissioners or their foresaids; Declaring, however, that (a) the Tenant will be permitted only to crop the piles,

## 12.

erected in and on the seabed as part of the Works to a depth of 2 metres below the level of the seabed instead of removing the same provided that the Tenant has granted to the Commissioners an indemnity and undertaking in the form contained in the Schedule hereto, and (b) if the Commissioners give written notice not less than 12 months before the expiry of this Lease in terms of Clause 2 hereof or on or within 30 days after the earlier termination of this Lease that the Commissioners wish to take over the Works and any Additional Works in whole or in part, the foregoing provisions of this Clause will not apply pro tanto, and the Tenant will remove itself and its goods and gear from the subjects of let and shall yield up the Works and any Additional Works to the Commissioners well and substantially maintained and in good and tenantable condition and repair in accordance with the Tenant's obligations herein contained all to the satisfaction of the Commissioners and that without right to compensation.

- 4.15 to give immediate notice of, and to indemnify Her Majesty and Her Foresaids and the Commissioners from and against all actions, proceedings, claims, demands, costs and expenses whenever arising in consequence of the exercise by the Tenant of the let hereby granted howsoever said actions, proceedings, claims, demands, costs and expenses may arise (other than as a consequence of any act negligence or omission of the Commissioners) and whether they arise at statute or common law and whether they are related to the

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Commissioners' interest or the Tenant's interest herein, including without prejudice to the foregoing generality all claims arising from interference with the free passage of migratory fish, or from the causing of any nuisance, annoyance or disturbance or the causing of pollution which will adversely affect aquatic or bird life; And the Commissioners will give immediate notice and full particulars to the Tenant of any such claim or others made or threatened against the Commissioners, who will not admit prejudice or compromise such claims without the consent of the Tenant whose consent will not be unreasonably withheld or delayed, and the Tenant may at its own expense, with the consent of the Commissioners defend or contest any such claims.

5.

If at any time while this Lease subsists:-

- (a) the rent or any other payment due hereunder shall be in arrear and unpaid for 1 calendar month from its due date, having been demanded by the Commissioners, or
- (b) there shall be any breach by the Tenant of any of the obligations and conditions contained in this Lease, or
- (c) the Tenant (being an individual or individuals or a partnership or unincorporated body) becomes apparently insolvent or (being a company enters into insolvency) or (being any of these) enters into an arrangement or composition for the benefit of the Tenant's creditors, or shall in any way cease to exist,

then, and in any of the said cases, but subject as hereinafter provided and subject to the rights of any sub-tenant as hereinafter provided, the Commissioners will be entitled forthwith by written notice to terminate this Lease and treat this Lease and all transmissions thereof with all that has followed or can competently follow thereon as void and null and that without the necessity of any declarator, process of removal, or other procedure at law and the subjects of let will thereupon revert to the Commissioners and it will be lawful for the Commissioners or any person duly authorised by the Commissioners in that behalf to enter into possession of the subjects of let or any part thereof in the name of the whole and to uplift rents, eject tenants and occupiers and thereafter to use, possess and enjoy the same free of all claims by the Tenant as if this Lease had never been granted but all such rights are without prejudice to any right of action or remedy of the Commissioners in respect of the premature termination of this Lease or of any antecedent breach by the Tenant of any of the obligations and conditions contained in this Lease which irritancy is hereby declared to be contractual and not penal but any breach of any condition of this Lease in respect of payment of monies to the Commissioners will be purgeable at the Bar;

Provided that (a) the foregoing is subject always to the provisions of Sections 4 and 5 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, (b) in the case of a breach which is capable of being remedied the Commissioners will not be entitled to terminate

## 15.

this Lease as aforesaid unless they will have first given written notice of the breach to the Tenant and to every creditor in any then existing standard security or floating charge (so far as the grant of such standard security or floating charge has been notified to the Commissioners) affecting this Lease prescribing a time which is reasonable in the circumstances (such circumstances not including the financial position of the Tenant) within which such breach must be remedied to the reasonable satisfaction of the Commissioners and the Tenant (or any such creditor) will have failed to remedy the breach within the time prescribed in the notice and declaring that a reasonable time will be a period of not less than 28 days, except in cases of emergency, and (c) in the case of the Tenant going into liquidation or suffering an administrative receiver or an administrator to be appointed the Commissioners will allow the liquidator or administrative receiver or administrator (as the case may be) and any such creditor as aforesaid a period of 1 year in which to dispose of the Tenant's interest in this Lease and will only be entitled to terminate this Lease if the liquidator or administrative receiver or administrator or such creditor as the case may be will have failed to dispose of the Tenant's interest at the end of the said period provided always that the liquidator or administrative receiver or the administrator or such creditor as the case may be will personally accept in probative writing within one month of the date of appointment or of such creditor's entry into possession of the



## 16.

subjects of let and implement full responsibility for payment of the rents (whether due in respect of a period occurring before or after the date of liquidation or receivership or administration or entering into possession as the case may be) and for the performance of all other obligations of the Tenant under this Lease from the date of liquidation or receivership or administration or the date of such creditor's entry into possession as the case may be to the date of disposal or termination of this Lease including settlement of any arrears of the rents and the performance of any outstanding obligations which may subsist at the date of liquidation or receivership or administration or such creditor's entry into possession as the case may be and will if requested by the Commissioners find caution for such payment and performance in an amount acceptable to the Commissioners. And it is hereby declared that the Commissioners will deal with any request for consent to assign this Lease made by such liquidator, administrative receiver, administrator or creditor as the case may be in the same manner as if the request had been made by the Tenant. The provisions relating to a liquidator, administrative receiver or administrator hereinbefore narrated will apply mutatis mutandis to a trustee in sequestration and a trustee under a trust deed for the benefit of creditors if the Tenant is an individual or individuals or a partnership or an unincorporated body.

6. Any notice must be in writing and will be properly given if sent by recorded delivery or registered post, in the case of a notice by the

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Tenant to the office of the Crown Estate Receiver in Edinburgh, and in the case of a notice by or on behalf of the Commissioners to the Tenant to the Tenant's registered office or principal place of business, or last-known place of business; Declaring that all notices will be deemed to be received at the same time of day 2 business days (Saturday, Sunday and public holidays being excluded) after posting and that any omission to send by recorded or registered post will not be pleadable where the notice has received an acknowledgement.

7.

The Tenant will pay for or reimburse to the Commissioners the following costs incurred in connection with the Lease, with any consents or approvals required in terms thereof, and with any extension, variation or amendment thereof:-

- (a) stamp duty;
- (b) the Commissioners' plan and reasonable legal costs;
- (c) the Commissioners' valuation agents' charges in respect of services provided in negotiating the rent payable hereunder and in relation to any review thereof but not including representations made to the Valuation Office, Inland Revenue on any reference thereto;
- (d) 50% of any charges made by the Valuation Office, Inland Revenue in respect of any reference made to it for its determination of the Rent at any stage and of the frequency of review thereof.

18.

If so required by the Commissioners the Tenant will enter into a formal deed without delay to record any such extension, variation or amendment including any change of the Rent and any provision of additional rent or other consideration in terms of the Lease.

8.

The interpretation and meaning of these presents and of any documentation or agreement supplemental hereto, the rights and obligations of the parties and any questions arising at any time between the parties hereunder or thereunder, will be determined in accordance with the law of Scotland, and the parties hereto, if not otherwise subject to the jurisdiction of the Scottish Courts, hereby severally prorogate the non-exclusive jurisdiction of the Scottish Courts hereunder and thereunder.

9.

In these presents where the context so admits words importing singular number include the plural number and words importing the masculine gender include the feminine and neuter and where there are two or more persons included in the expression "the Tenant" the obligations herein expressed or implied to be made by the Tenant are made by such persons jointly and severally.

10. The parties hereto consent to registration hereof for preservation and execution:

IN WITNESS WHEREOF these presents typewritten on this and the eighteen preceding pages are, together with the schedule and plan annexed, subscribed as follows:-

They are in terms of Act of Parliament signed by [REDACTED]

authorised by the Crown Estate Commissioners to act on behalf of a Secretary of the Office of us the said Commissioners at LONDON on the 18th day of OCTOBER 1993 before these witnesses:-

[REDACTED] and [REDACTED], both Secretaries in Government Service, 16 Carlton House Terrace, London, SW1.

~~First Witness~~ ~~Second Witness~~

Signature

Full Name in block capitals

Address

Occupation

[REDACTED]

~~SECRETARY~~ ~~SECRETARY~~

They are subscribed for and on behalf of CLYDEPORT LIMITED at GLASGOW on the 12th day of OCTOBER 1993 by [REDACTED] Director - Property,

and by [REDACTED] Director and Secretary.

[REDACTED]

20.

SCHEDULE

Indemnity to be given in terms of Clause 4.14.2,  
declaration (a) of the foregoing Lease

WE, (name and designation of the Tenant) hereby undertake to indemnify Her Majesty and Her Successors and the Crown Estate Commissioners acting in exercise of the powers of the Crown Estate Act 1961 and their successors (hereinafter called "the Commissioners") from and against all actions, proceedings, claims, demands, costs and expenses whenever and howsoever arising in consequence of the continuing existence of the piles or parts of piles left by us in the bed of the sea within the area of the subjects of let of the Lease by the Commissioners in favour of Clydeport Limited dated the       day of       and the       day of       19       , provided that the Commissioners will give immediate notice and full particulars to us of any such claim or others made or threatened against the Commissioners who shall not admit prejudice or compromise such claims, without our consent, which consent shall not be unreasonably withheld, and we may at our own expense, with the consent of the Commissioners defend or contest any such claims; and we further hereby undertake, if any of the piles at any time in future protrude above seabed level, to re-crop any such piles to a depth of 2 metres below sea level expeditiously after any written request by the Commissioners to re-crop as aforesaid, and that notwithstanding the cause of such protrusion whether it be natural forces or artificial or other forces or operations; and we consent to registration hereof for preservation and execution: IN WITNESS WHEREOF





NS192550



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Area of Terminal shown PINK = 7.61ac (3.09ha)

NS192541

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MLWS Aug 1974

6 SEP 1993

Crown Estate Office  
10 Charlotte Square  
Edinburgh EH2 4DR