



## LEASE AGREEMENT 2017 ONWARDS

for Trot Mooring - Fortrose Bay

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### 1. DEFINITIONS

- "the Landlord" means current elected Commodore, Treasurer and Secretary of Chanonry Sailing Club, The Harbour, St Andrew's Walk, Fortrose and their respective successors in office as Commodore, Treasurer and Secretary who may choose to act through a representative.
- "the Tenant" means the person or persons specified at Part 1 of the Schedule ;
- "the Vessel" means the vessel more particularly specified at Part 2 of the Schedule ;
- "the Commencement Date" means the date specified at part 3 of the Schedule,
- "the Period" means the period commencing on the Commencement Date and ending on termination of the Lease.;
- "the Club" means Chanonry Sailing Club, The Harbour, St Andrew's Walk, Fortrose, IV10 8TP;
- "Club Member" means a person or persons who are over the age of eighteen years old and, at the Commencement Date, fall within one of the following categories of membership of the Club, namely: Honorary Member, Ordinary Member or Family Member (excluding Associate, Junior Members, Temporary Members and Rowing only Members);
- "Trot Mooring" means the mooring equipment comprising a riser chain (or rope) rising vertically from the ground chain forming part of the larger Trots Scheme incorporating a swivel in the riser with a shackle or shackles for attachment of a strop and attached to a mooring buoy by a shackle or shackles;
- "Trot Moorings" means any two or more Trot Mooring;

"Trots Scheme"	means all the Trot Moorings laid down by the Landlord including, for the avoidance of doubt, each Trot Mooring and the ground chain linking same and anchors holding ground chain in place and all other associated equipment;
"the Location"	means such location within the Trot Scheme as is suitable for a vessel of not more than the Maximum Length and the Maximum Displacement as is notified to the Tenant by the Landlord from time to time, specifically declaring that the Location may, at the discretion of the Landlord, vary from each Sailing Season to Sailing Season, always providing that the Trot Mooring is suitable for the Vessel in so far as the maximum length of the Vessel is less than the Maximum Length and the displacement of the Vessel is less than the Maximum Displacement;
"Price"	means the price specified at Part 5 of the Schedule;
" Sailing Season"	means such period as is determined from time to time by the Landlord acting reasonably, taking in to account the local knowledge of the prevailing weather conditions from year to year, as being the Sailing Season;
"Maximum Length"	means the length more particularly specified at Part 4 the Schedule ; for the avoidance of doubt this length includes any protrusions at the stern such as bathing platforms and any protrusions at the bow such as bow sprits etc.
"Maximum Displacement"	means the displacement more particularly specified at Part 4 of the Schedule ;
"Interest Rate"	means 3 per cent above the Base Lending Rate charged from time to time by the Royal Bank of Scotland plc;
"the Schedule"	means the Schedule in 5 parts annexed and subscribed as relative hereto.
"the Annual Maintenance Charge"	means the following costs:  (a) the costs incurred by the Landlord in inspecting and monitoring all the equipment forming part of the Trots Scheme,

(b) fees paid to third parties in connection with the operation of the Trots Scheme including the hire of work boats and dive teams;

(c) the cost of replacing or repairing any components forming part of the equipment forming the Trots Scheme;

"Decommissioning Cost"

means the cost, as estimated by the Landlord acting reasonably and prudently, of decommissioning the Trots Scheme at the end of the Period.

"the/this Lease"

means this lease agreement

## 2. THE GRANT

The Landlord in consideration of the Price grants to the Tenant a right to use the Trot Mooring at the Location to moor the Vessel during each Sailing Season during the Period but that subject to the terms and conditions hereinafter stated .

## 3. THE TENANT'S OBLIGATIONS

The Tenant undertakes:

3.1 to pay the Price on or before the Commencement Date. Interest will be charged at the Interest Rate on any unpaid sum due from the Commencement Date until the date of payment, declaring however that in the event the Price remains unpaid fourteen days after the Commencement Date (time being of the essence) then, notwithstanding the provisions of clause 6 below the Landlord may terminate this Lease forthwith by giving written notice thereof to the Tenant.

3.2 to pay to the Landlord within fourteen days of receipt of written demand

(a) an equitable share of any sums properly payable by the Landlord to the Crown Estates (or such other body who is entitled to charge the Landlord any sum or sums of money in return for permitting the continuing placement of the Trots Scheme on the sea bed) in respect of the Trots Scheme (including any unoccupied Trot Mooring and/or visitors Trot Mooring);

(b) an equitable proportion (as determined by the Landlord acting reasonably) of the Annual Maintenance Charge;

(c) an equitable proportion (as determined by the Landlord acting reasonably) of the Decommissioning Cost (declaring that the Landlord will endeavour to procure that the Decommissioning Cost will be spread so that on an annual basis each Tenant pays an equitable share (as determined by the Landlord acting reasonably) of the estimated Decommissioning Cost based on the likely cost at that time);

3.3 to ensure that the Vessel is insured with a reputable Insurer for all third party risks that a responsible and prudent owner of a similar Vessel would usually insure against to cover the Vessel both on the Mooring Trot, underway, whilst moored or tied up in Fortrose Harbour, during crane in and crane out

and onshore for storage for a minimum sum of £2,000,000.00 (or such higher amount as the Landlord may reasonably require from time to time) and if required by the Landlord, to produce at or prior to the Commencement Date documentary proof of such insurance and the terms thereof;

- 3.4 to provide, at the expense of the Tenant, a strop and pick-up buoy in order to attach the Vessel to the Trot Mooring. The strop and any shackle must be of sufficient strength, quality and durability for use to attach to the Vessel and shall conform to such reasonable standards set down from time to time by the Landlord regarding these issues and must be maintained at all times in such condition at the expense of the Tenant; declaring that in the event that the Landlord (acting reasonably) considers there to be a breach of the terms of this clause, the Landlord may remove the Vessel from the Trot Mooring if it considers the Vessel's presence could cause damage to the Trot Mooring or the Trots Scheme or damage to any adjacent vessels and secure the Vessel in Fortrose Harbour ( or such other place as the Landlord may deem expedient) the Tenant being bound to reimburse to the Landlord on demand all costs reasonably and properly incurred in connection therewith;
- 3.4.1 to ensure that the pick-up buoy is clearly and indelibly marked with the name, length overall (in metres) and maximum metric weight of the Vessel (or Trot where the rating of the strop meets or exceeds the maximum Trot parameters);
- 3.4.2 to ensure that those parts of the Vessel over which and to which the strop is led and attached are suitable for purpose and maintained in good working order;
- 3.4.3 within fourteen days of being notified by the Landlord that the following items are available for collection on the harbour at Fortrose, to collect the foregoing strop and pick-up buoy from the harbour after they have been lifted at the end of the Sailing Season and to return them to the harbour again within fourteen days of being requested to do so by the Landlords ensuring that the strop and pick-up buoy comply with the provisions of clause 3.4 and 3.4.1. In addition, to pay to the Landlord within fourteen days of demand, any extra administrative or actual costs reasonably and properly incurred by the Landlord due, either, wholly or in part, to the failure of the Tenant to comply with the terms of this clause, time being declared to be of the essence. Such extra costs including, but not being restricted to, costs incurred in making good any strop, shackle or pick up buoy which the Landlord, acting reasonably, do not consider fit for purpose or in good and safe working condition; costs incurred in arranging for the collection of the foregoing items from the place they are stored by the Tenant outwith the Sailing Season; extra costs incurred in either cancelling a work boat arranged to reconnect the swivel and mooring buoy to any riser forming part of a Trot Mooring or extra costs incurred in employing a dive team to do so and so forth;
- 3.4.4 not to modify the Trot Mooring in any way without first obtaining the prior written approval of the Landlord (not to be unreasonably withheld or delayed where such modification is necessary to either maintain or improve the Trot Mooring); save in the case of emergency, where, to resolve an unsafe situation, such modifications as the Tenant, acting in good faith, considers reasonable may be made, subject to the Landlord being notified in writing of such modification as soon as possible thereafter;

3.5 not to use the Trot Mooring for any vessel other than the Vessel declaring however:

- (a) that, subject to obtaining the prior written consent of the Landlord (such consent not to be unreasonably withheld or delayed where the length of the substitute vessel is equal to or less than the Maximum Length and the displacement of the substitute vessel is equal to or less than the Maximum Displacement and the type, construction, design and configuration of the substitute vessel are acceptable to the Landlord acting reasonably) the Tenant may, for a period of up to one Sailing Season, permit another Club Member to moor a substitute vessel on the Trot Mooring always provided that such Club Member confirm in writing to the Landlord that he/she/they will comply with the terms of this agreement as if that Club Member were in fact the Tenant;
- (b) where the Tenant has purchased or obtained use of a different vessel to the Vessel and wishes to moor it on the Trot Mooring then, subject to obtaining the prior written consent of the Landlord (such consent not to be unreasonably withheld or delayed where the length of the substitute vessel is equal to or less than the Maximum Length and the displacement of the substitute vessel is equal to or less than the Maximum Displacement and the type, construction, design and configuration of the substitute vessel are acceptable to the Landlord acting reasonably) the Tenant may substitute the substitute vessel for the Vessel;
- (c) where details of the Vessel are not known at the time of entering into this Lease then no vessel shall be permitted to use the Trot Mooring until the Landlord has given its prior written consent (such consent not to be unreasonably withheld or delayed where the length of the vessel is less than the Maximum Length and the displacement of the vessel is less than the Maximum Displacement and the type, construction, design and configuration of the vessel are acceptable to the Landlord acting reasonably);

3.6 not to assign, sell or otherwise dispose of or share possession with the Tenant's interest in this Lease without the prior written consent of the Landlord, such consent not to be unreasonably withheld or delayed in the case where:

- (i) the assignee is a Club Member;
- (ii) the Tenant is not in breach of the terms of this Lease ;
- (iii) where the Vessel is to change then the length of the substitute vessel is equal to or less than the Maximum Length and the Maximum Displacement suitable for the Trot Mooring in question and the Landlord, acting reasonably, approves the type, construction, design and configuration of the substitute vessel and the stop and pick up buoy provided by the assignee; and
- (iv) the Landlord approves and is party to the written assignation agreement and is provided with a copy thereof for its records;

Declaring however that in all cases the Landlord shall be entitled (but not bound) to purchase the interest of the Tenant in this Lease within 6 weeks of the Tenant (or in the case of death of the Tenant, the executor of the Tenant) notifying the Landlord of the details of the proposed assignee and sale price; the price to be paid by the Landlord to be equal to the sale price notified to the Landlord.

- 3.7 to maintain the Vessel on the Trot Mooring in good seaworthy condition to the reasonable satisfaction of the Landlord, declaring that in the event that the Landlord (acting reasonably) considers there to be a breach of the terms of this clause, the Landlord may remove the Vessel from the Trot Mooring if it considers the Vessel's presence could cause damage to the Trot Mooring, the Trots Scheme or damage to any vessels within the Trots Scheme and secure the Vessel in Fortrose Harbour (or such other place as the Landlord may deem expedient) the Tenant being bound to reimburse to the Landlord on demand all costs reasonably and properly incurred in connection therewith.
- 3.8 to inform the Landlord in the event that the Trot Mooring is likely to be vacant and not used by the Vessel for any period in excess of seven days, in which case the Landlord shall be entitled to permit the Trot Mooring, strop and pick up buoy, during any period that it is vacant to be used either as a visitor's Trot Mooring or by any other vessel belonging to another Club Member, provided the Landlord uses reasonable endeavours to ensure that the length of the vessel using same is equal to or less than the Maximum Length and the displacement of the vessel using same is equal to or less than the Maximum Displacement. The Tenant shall use all reasonable endeavours to give the Landlord at least seven days notice of the date upon which the Tenant anticipates that the Vessel will be returning to and intending to use the Trot Mooring.
- 3.9 upon receipt of not less than 14 days notice (or in emergency such lesser period as the Landlord considers reasonable in the circumstances) to remove the Vessel from the Trot Mooring for such period as the Landlord may specify (the Landlord being bound, where the Landlord has been unable to provide a substitute Trot Mooring within the Trot Scheme that the Vessel may use, to use all reasonable endeavours to ensure that such period is as short as is reasonably practicable) so as to enable the Landlord to carry out works to the Trot Mooring or Trots Scheme. Where the Tenant fails to timeously comply herewith (time being declared to be of the essence) it shall be lawful for the Landlord or any person or persons duly authorised by the Landlord to remove the Vessel therefrom and secure the Vessel in Fortrose Harbour (or such other place as the Landlord may deem expedient) the Tenant being bound to reimburse to the Landlord on demand all costs reasonably and properly incurred in connection therewith.
- 3.10 To pay interest to the Landlord on any sums due to the Landlord by the Tenant at the Interest Rate such interest to commence 14 days after written demand.
- 3.11 Not to use the Vessel for any purpose other than a private leisure craft and, without prejudice to the foregoing generality, not to use the Vessel for any commercial purpose other than through written permission of the Landlord.
- 3.12 To ensure that the maximum length of the Vessel does not exceed the Maximum Length;
- 3.13 To ensure that the maximum displacement of the Vessel does not exceed the Maximum Displacement; declaring that in the event there is any dispute as to the actual displacement of the Vessel then, at the discretion of the Landlord, the Landlord may deem that the actual displacement of the Vessel is not the displacement as indicated by the manufacturer of the Vessel but is the displacement as calculated by reference to a reading taken either at crane in or crane out from the load cell fitted to the crane utilised to lift the Vessel in and out of the water plus a factor of 10%.

- 3.14 To comply with such rules and regulations regarding the use and operation of the Mooring Trots and the operation of vessels (including tenders) within the waters comprising the Trots Scheme, Fortrose Harbour and the waters usually utilised by members of the Club for sailing, rowing or other activities of the Club as may be imposed by the Club from time to time as detailed on the Club website or posted in the noticeboard within the clubhouse at Fortrose Harbour or otherwise as notified to the Tenant. Also to comply with all rules and regulations in connection with vessels underway within the Trots Scheme, Fortrose Harbour and the waters usually utilised by members of the Club for sailing, rowing or other activities, including without prejudice to the foregoing generality, those in relation to wildlife and particularly dolphins and porpoises.

#### 4. THE LANDLORD'S OBLIGATIONS

- 4.1 To provide a Trots Scheme of such design and construction as is, in the reasonable opinion of the Landlord, suitable for the purpose;
- 4.2 To use reasonable endeavours to ensure that the equipment comprised in the Trots Scheme is properly maintained and checked and replacement components and parts supplied and fitted in a proper and workmanlike manner, where necessary, it being anticipated that the following works will be carried out each year:
- (a) mooring buoys, swivels, strops, shackles and pick-up buoys will be removed from each Trot Mooring at the end of each Sailing Season and the risers shall be dropped to the sea bed or brought ashore;
  - (b) the mooring buoys and swivels together with the shackle(s) attaching the swivels to the riser chain/mooring buoy will be inspected at the same time as they are removed and replaced /renewed as necessary;
  - (c) the mooring buoys shackles and swivels together with the strops and pick up buoys supplied by the Tenant may, before they are re-attached to each Trot Mooring be given a very cursory inspection by the persons reattaching same (without any liability incumbent upon the Landlord or the persons reattaching same), and at the discretion of the Landlord the persons reattaching same, where, following such cursory inspection it is apparent that an item or items are defective, the Landlord or the persons reattaching same may determine not to reattach the strops and pick-up buoys but simply inform the Tenant what item or items are defective and the Tenant may, at the expense of the Tenant, reattach the strop and pick-up buoy in the water thereafter. The fact that the strops and pick-up buoys are reattached does not in any way imply any warranty on behalf of the Landlord or the persons reattaching same that the strops and pick-up buoys are in good condition and suitable for purpose liability for this wholly resting on the Tenant. Furthermore before using the Trot Mooring the Tenant shall be bound to inspect the connection between the strops, shackles and the riser chain to satisfy themselves as to the condition and fitness for purpose thereof before using same;
  - (d) as and when required, the risers will be checked in a proper and workmanlike manner and repaired/replaced as and when necessary;
  - (e) records will be maintained regarding inspections and other works carried out;

- 4.3 To maintain separate accounts for the Trots Scheme which accounts will contain details of all income and expenditure regarding the Trots Scheme and will be made available for inspection by each Tenant on an annual basis as and when reasonably determined by the Landlord;
- 4.4 To make payment to the Crown Estates (or such other body who is entitled to charge the Landlord any sum or sums of money in return for permitting the continuing placement of the Trots Scheme on the sea bed) of all charges in connection with the Trots Scheme;

## 5. LIABILITY

- 5.1 Neither the Landlord nor the Club shall be held responsible for any damage or injury to the Vessel, the Tenant or any guests or invitees of the Tenant arising out of the use by the Tenant or any guests or invitees of the Tenant of the Trot Mooring; save where such damage or injury arises directly as a result of the failure of the Landlord to comply with the provisions of 4.2 above.
- 5.2 The Tenant shall indemnify and keep indemnified the Landlord and the Club against all damage, damages, losses, costs, expenses, actions, demands, proceedings, claims and liabilities made against or suffered or incurred by the Landlord or the Club arising directly or indirectly out of:
- (a) any act, omission or negligence of the Tenant, or any persons at the Vessel expressly or impliedly with the Tenant's authority, or
  - (b) any breach or non observance by the Tenant of the obligations, conditions or other provisions of this Lease, or
  - (c) the removal of and securing of the Vessel where the Landlord properly exercises the right to do so in terms of this Lease;

In addition, in the event of any obligation binding on the Tenant under or by virtue of this Lease remaining unimplemented at the expiry or earlier termination of this Lease the Tenant shall, in the option of the Landlord either implement such obligation or pay to the Landlord a sum, as determined by the Landlord acting reasonably, equal to the cost of implementing the same.

- 5.3 By his/her/their execution hereof, the Tenant agrees that the Vessel may be moved, secured or made safe by any member of the Club in trying to correct an unsafe situation. The Tenant accepts that neither the Landlord, the Club nor any member of the Club involved in such action shall be liable for any damage caused to or by the Vessel during such reasonable actions, provided that the member or members acted in good faith and within their own competencies as are judged by the Landlord, acting reasonably.

## 6. TERMINATION

- 6.1.1 In the event that the Trots Scheme is, in the opinion of the Landlord acting reasonably, after having taken the appropriate advice, deemed to be uneconomic to maintain, then the Landlord reserves the right to terminate this Lease at the end of any Sailing Season upon giving not less than one month's written notice. Where the Landlord, acting reasonably, determines that for any reason that it is unsafe to continue using the Trots Scheme, then the Landlord shall be entitled to terminate

this Lease by giving not less than one month's written notice save in the case of emergency where the Landlord shall give such notice as is, in the opinion of the Landlord, reasonable in the circumstances. In the event of either of the foregoing happening, the Landlord shall have no liability to the Tenant either by way of refund of Price or any other sums paid to the Landlord by the Tenant. In such circumstances the Tenant will be required to remove the Vessel from the Trot Mooring by such date as is reasonably specified by the Landlord (time being of the essence) failing which it shall be lawful for the Landlord or any person or persons duly authorised by the Landlord to remove the Vessel therefrom and secure the Vessel in Fortrose Harbour (or such other place as the Landlord may deem expedient) the Tenant being bound to reimburse to the Landlord on demand all costs reasonably and properly incurred in connection therewith.

6.1.2 Either the Landlord or the Tenant may terminate the Lease as at 1<sup>st</sup> February in any year by giving not less than 1 months prior notice to the other. Such termination will be without prejudice to either parties rights in respect of any antecedent breach, In the event that such notice is not given the Lease will continue unless otherwise agreed between the parties or terminated in accordance with 6.1.1 or 6.2.

6.2 If at any time during the Period:

- (a) there shall be any breach, non-performance or non-observance by the Tenant of any of the obligations and conditions contained in this Lease, or
- (b) the Tenant (or where there are 2 or more persons comprised the Tenant, then either of them) grants a Trust Deed for Creditors or becomes apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 (or any act amending or in substitution therefore), or
- (c) the Tenant has ceased to be a member of the Club (other than by death) and has not, in terms of clause 3.6 assigned this Lease;
- (d) the Tenant has ceased to be a member of the Club by reason of death and the executors have not, in terms of clause 3.6 assigned this Lease;

then and in any of these cases the Landlord shall be entitled forthwith 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 without the necessity of any declarator, process of removal or other procedure at law, and the Trot Mooring shall thereupon revert to the Landlord and it shall be lawful for the Landlord or any person or persons duly authorised by the Landlord to remove the Vessel therefrom and secure the Vessel in Fortrose Harbour (or such other place as the Landlord may deem expedient) the Tenant being bound to reimburse to the Landlord on demand all costs reasonably and properly incurred in connection therewith, and thereafter use, possess and enjoy the Trot Mooring free of all claims by the Tenant as if this Lease had never been granted, without prejudice to any right of action or remedy of the Landlord in respect of the premature termination of this Lease or of any antecedent breach by the Tenant of any of the conditions contained in this Lease, which irritancy is hereby declared to be pactional and not penal and shall be purgeable at the Bar;

Provided that in the case of a breach which is capable of being remedied, the Landlord shall not be entitled to terminate this Lease as aforesaid unless it shall first have given notice of the breach to the Tenant prescribing a time which in the opinion of the Landlord is reasonable in the circumstances (such circumstances not including the financial position of the Tenant) within which such breach must be remedied and the Tenant shall have failed to remedy the breach within the time prescribed in the notice and declaring that where the breach is the failure to pay any sum of money, a reasonable time shall be a period of not less than fourteen days.

## 7. NOTICE

7.1.1 Any notice to the Tenant shall be in writing (to include email) and shall be sufficiently served if sent by registered post or recorded delivery to, or left addressed to the party concerned at the Tenant's last known address or email in the United Kingdom, and any notice sent by registered post, recorded delivery or email shall be deemed to have been duly served at the expiration of forty-eight hours after the time of posting; in proving service, it shall be sufficient to prove that the envelope containing the notice was duly addressed to the Tenant in accordance with this sub-clause and left at or posted to the place to which it was so addressed or a copy of an email kept on record.

7.1.2 Any notice to the Landlord shall be in writing and shall be sufficiently served if sent by registered post or recorded delivery and also by 1<sup>st</sup> Class Post or email to "The Commodore, Chanonry Sailing Club, The Harbour, Fortrose", and any notice sent by registered post or recorded delivery or email shall be deemed to have been duly served at the expiration of forty-eight hours after the time of posting; in proving service, it shall be sufficient to prove that the envelope containing the notice was duly addressed or email sent in accordance with this sub-clause and posted to the place to which it was so addressed.

## 8. ARBITRATION

In the event of any dispute between the Landlord and the Tenant the matter shall be determined by a suitably qualified and experienced arbiter to be agreed between the parties, or, in the absence of agreement, to be appointed by the Dean or Vice Dean of the faculty of Solicitors for the Highlands and Islands. The parties may make written representations to the arbiter (always being bound to copy same to the other party) and, if permitted by the arbiter, to respond to same. The arbiter may make such other procedures and enquiries as the arbiter thinks fit and the determination of the arbiter shall be final. In the absence of other determination the costs of such arbiter shall be split equally between the parties.

## 9. JURISDICTION

This Lease shall be construed in accordance with the Laws of Scotland.

## 10. CONSENT FOR PRESERVATION AND EXECUTION

The parties hereto consent to the registration hereof for preservation and execution: IN WITNESS WHEREOF these presents and the Schedule annexed are subscribed as follows:

For the Landlord :

DATE.....

PLACE OF SIGNING .....

Current Elected Commodore: ..... Print.....

Current Elected Treasurer: ..... Print.....

Current Elected Secretary: ..... Print.....

Current Landlord representative: ..... Print.....

Before this witness:

..... (Signature of witness)  
..... (Full name of witness)  
..... (Address of witness)  
.....

For the Tenant:

DATE .....

PLACE OF SIGNING.....

Tenant: ..... (Signature of Tenant)

..... (Full name of Tenant)

..... (Address of Tenant)

.....

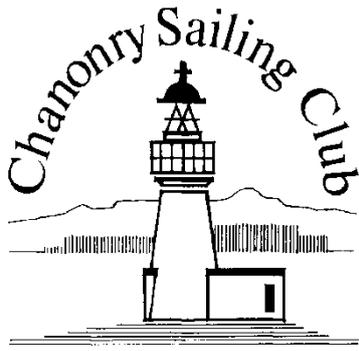
Before this witness:

..... (Signature of witness)

..... (Full name of witness)

..... (Address of witness)

.....



TROT MOORING LEASE

by

CHANONRY SAILING CLUB

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Anderson Shaw & Gilbert  
Solicitors  
20 Church Street  
INVERNESS IV1 1ED  
Tel: 01463 236123

**LP – 4, INVERNESS 1  
DX IN6, INVERNESS**

**FAS No. 0080  
FAS No. 2280**