

File Number: AR7-10-



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 and on behalf as aforesaid are hereinafter called "the Commissioners")

Of the First Part

and

[REDACTED] Isle of  
Ulva, Aros, Mull [REDACTED]

(who and whose successors in the right of occupancy under this Lease are hereinafter referred to as "the tenant")

Of the Second Part

The parties DO HEREBY AGREE as follows:-

1. The Commissioners in consideration of the rent and other prestations hereinafter specified and subject as provided in terms of this Lease hereby let to the tenant ALL and WHOLE the subjects described in paragraph 1 of the Schedule (hereinafter called "the Schedule" which expression includes the plan or plans referred to therein and will include or mean, as the case may be, any variation of the Schedule, or new schedule substituted for the Schedule, as well as any new plan or plans substituted for the said plan or plans, and executed in any of these cases by the parties for annexation hereto; and references hereinafter to paragraphs of the Schedule in the event of such variation or substitution of the Schedule will be construed after such variation or substitution as references to the paragraphs in such variation or substitution) (hereinafter called "the Subjects") from the date ("the date of entry") and for the period specified in paragraph 2 of the Schedule notwithstanding the dates hereof; declaring that the Commissioners warrant this Lease from fact and deed only.

2. The subjects are let for the purpose of anchoring equipment as specified in paragraph 4 of the Schedule (hereinafter, including anchors, called "the Equipment") for the rearing and cultivation of the species of shellfish specified in paragraph 3 of the Schedule (hereinafter called "the Shellfish") and if the Subjects do include any area or areas listed under Part 1(b) of the Schedule, then those areas listed under Part 1(b) of the Schedule may be used only to anchor the ancillary equipment listed in Part 4(b) of the Schedule ("the Ancillary Equipment") and for no other purpose.
3. There is excepted and reserved (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, with full power and liberty to Her Majesty and Her Foresaids and to any person authorised by Her or Them to search for, work, win, raise, calcine and carry away the said mines and others and to do everything necessary for all or any of these purposes, subject to compensation being made to the tenant for all loss or damage which the tenant suffers as a result of the exercise of the said power and the amount of such compensation shall, failing agreement, be ascertained by reference to a single arbiter, 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 including without prejudice to the foregoing generality such rights of navigation and fishing as exist, but so that authorised equipment anchored to the Subjects shall not be prejudiced by this exception and reservation.
4. The Commissioners may at any time after the expiry of three months' written notice of their intention to do so resume possession of any part or parts or of the whole of the Subjects, or without the need for 3 months notice as provided in Clause 1 in the case of any part or parts or the whole of those areas listed in Part 1(b) of the Schedule, for any purpose which in the opinion of the Commissioners is of sufficient importance to justify such resumption, and which may without prejudice to that generality, include (One) meeting the statutory requirements of any statutory body or Harbour Authority, and (Two) the provision and enhancement or extension of any structures, navigational

aids, defence requirements, navigation routes and others, but not in the case of subjects listed in Part 1(a) of the Schedule only, for the purpose of letting for cultivation of the Shellfish. Subject as hereinafter provided compensation will be made to the tenant for all loss which the tenant suffers as a result of such resumption but only in respect of the Subject listed in Part 1(a) of the Schedule and the amount of such compensation shall, failing agreement between the Commissioners and the tenant or at the option of either of them after the lapse of 1 month following such resumption, be ascertained by reference to a single arbiter who, failing agreement between the Commissioners and the tenant within 1 month as to who should be appointed, shall be appointed by the Chairman for the time being of the Scottish Branch of the Royal Institution of Chartered Surveyors but provided that such compensation (a) will not exceed the amount of any compensation which the Commissioners receive under statute or otherwise as a consequence of being obliged under statute or in law to resume possession as aforesaid and (b) will be ascertained while taking account of the fact that any appropriate reduction in rent consequent upon such resumption has been or will be determined as hereinafter declared; declaring that the tenant will be entitled to a reduction of rent of such amount which the Valuation Office, Inland Revenue determines to be appropriate, after the tenant has had the opportunity of making representations to that Office, in respect of any material reduction of the value of the Subjects for the purpose provided in Clause 2 hereof and caused by the exercise of the said power of resumption. For the avoidance of doubt no compensation shall be payable for any resumption of any part of the areas or the whole of the areas described in Part 1 (b) of the Schedule.

5. The tenant will pay to the Commissioners the annual rent as provided in paragraph 5 of the Schedule
  - (a) on the date of entry, but only the proportion of the annual rent which corresponds to the proportion which the period (counted in days) from the date of entry to the next following 31st day of December (both days inclusive) bears to the full year, and

- (b) on the 1st day of January (next following the date of entry) and on the first day of January in each year thereafter throughout the duration of this lease, which annual rent will be subject to review as from the 1st day of January 2005 or such later date as the Commissioners may decide and the rent payable and the method and frequency of review thereof under this Lease on and after such date will be determined (failing agreement between the parties) by the Valuation Office, Inland Revenue; declaring that the tenant will have the option to terminate this Lease with effect on the 31st day of December in any year provided that the tenant has given at least 6 months written notice to the Commissioners of the exercise of said option.

5.1 The annual rent shall be paid free from all deductions with interest thereon at 3% above Bank of Scotland Base Rate as such rate may vary from time to time from the due date of payment until payment is made or, at the option of the Commissioners or on any cessation of said Base Rate, at the rates prescribed by Treasury Regulations from time to time under the Land Compensation Acts or under any statutory re-enactments or amendments thereof or substitution therefor or at the rates prescribed under any future statute which in the opinion of the Commissioners shall apply;

6. The tenant hereby undertakes:-

6.1 not to assign this Lease or to sub-let the Subjects in whole or in part.

6.2.1 to pay all present and future rates, taxes and assessments and outgoings whatsoever payable in respect of the Subjects, by whatever party or authority leviable and whether related to the landlord's interest or the tenant's interest herein.

6.2.2 without prejudice to the generality of Clause 6.2.1 hereof to pay all Value Added Tax legally payable on all monies payable by the tenant to the Commissioners in terms of this Lease declaring for the avoidance of doubt that all monies payable by the tenant to the Commissioners in terms of this Lease are expressly declared to be exclusive of Value Added Tax.

- 6.3 to carry out his operations in accordance with the best and most up to date method of marine farming and to use his best endeavours to keep the Shellfish in good health and free of disease at all times.
- 6.4 to implement and observe the conditions (if any) specified in paragraph 6 of the Schedule.
- 6.5 to use his best endeavours to avoid any unnecessary interference with, damage to or destruction of wildlife, flora and fauna and their natural habitat whether on land or at sea; including without prejudice to the foregoing generality to refrain from the use of any chemical, liquid, substance, commodity, treatment, or otherwise which may be proscribed by an authority having the power to do so or which the Commissioners in their sole discretion shall regard as toxic or noxious; declaring further that in the event the tenant or anyone acting as his employee or agent shall be convicted of any offence or commit any act which in the sole opinion of the Commissioners constitutes a breach of the obligations imposed by this clause the Commissioners may terminate this lease with immediate effect by giving written notice to the tenant to that effect but reserving all rights in respect of any breach of the tenants obligations outstanding at the date of such termination.
- 6.6 if oyster beds or mussel scalps naturally exist or form on the Subjects or any part thereof, not to crop the same and to preserve the oysters and mussels.
- 6.7 to submit to the Commissioners for the Commissioners' approval before installing the Equipment or the Ancillary Equipment which is to be fixed or anchored permanently or semi-permanently whether directly or indirectly on the Subjects such plans and/or specifications of the Equipment or the Ancillary Equipment as the Commissioners may require and not to materially install or alter the Equipment without the Commissioners prior written consent, nor to install or use any other or additional equipment without the previous written consent of the Commissioners (and such additional equipment, when installed or used with the said consent of the Commissioners, will be included in the meaning of "the Equipment").

- 6.8 to maintain and keep the Equipment and the Ancillary Equipment in good, safe and substantial repair, order and condition.
- 6.9.1 to keep the Subjects in a clean and tidy condition and to take all reasonable steps to prevent any litter or detritus of any kind arising directly or indirectly from the tenant's operations to be deposited on any neighbouring subjects by whomsoever owned including without prejudice to the foregoing generality the removal of any of the Equipment and the Ancillary Equipment when it is redundant; nor to do or permit any other act whether or not sui generis with the foregoing on the Subjects which may in the sole opinion of the Commissioners be or become a nuisance, annoyance or disturbance.
- 6.9.2 in that the tenant has accepted the Subjects as suitable in all respects for the purposes permitted under this Lease and without prejudice to the terms of clause 6.9.1 hereof the tenant shall at any time during the currency of the Lease when necessary, to prevent injury or damage to any person or property, or at any time on request of the Commissioners during the currency of the Lease and in any event on termination of this Lease however effected take all reasonable steps to prevent any debris, litter or equipment of any description being deposited on or remaining on the Subjects (including for the avoidance of doubt any litter, debris or equipment as may have been present at the date of entry under this Lease as to which the Commissioners grant no warranty, the Tenant being deemed to have made all relevant enquiry) and all at the Tenant's cost and shall not permit anything which is or may be or become a danger to the public or any other party in the opinion of the Commissioners, to remain upon or near the Subjects and generally to ensure that the Subjects are maintained in a clean and safe condition at all times and clear of all rubbish or old or abandoned equipment or matter of any description and are returned to the Commissioners upon termination of the Lease however effected in such condition.
- 6.10 to permit the Commissioners and any person duly authorised by them from time to time and at all reasonable times to enter into and upon and inspect the Subjects and the state and condition thereof and if any want of repair or



defect shall be found or appear in the Equipment or the Ancillary Equipment on receiving notice to that effect the tenant shall be bound to repair and amend the same within the three months of the receipt of such notice.

- 6.11 to pay to the Commissioners all reasonable expenses incurred by the Commissioners and by any person duly authorised as aforesaid of and incidental to any inspection of the Subjects of and incidental to the superintendence or supervision of the execution of the repairs and amendments mentioned in sub-clause 6.10 of this clause.
- 6.12 not in any way to hinder or obstruct the due exercise and enjoyment of any rights or privilege hereby excepted and reserved.
- 6.13 not to do or knowingly suffer to be done on the Subjects any act or thing whatsoever which shall in the sole opinion of the Commissioners in any way interfere with, interrupt, damage or diminish the concurrent rights of the Commissioners or other parties having rights as proprietors, tenants or operators of fishings or as cultivators or rearers of shellfish existing or to be granted in respect of the Subjects wherever said fishings cultivation or rearing may be situated.
- 6.14 not to delay in establishing the said rearing and cultivation and in laying the Equipment after the date of entry (as specified in paragraph 2 of the Schedule); declaring (a) without prejudice to the tenant's obligation not to delay as aforesaid that if the tenant has not established the said rearing and cultivating in a proper and businesslike manner and is not properly stocking and rearing the Shellfish using the Equipment all to the reasonable satisfaction of the Commissioners within two years of the date of entry or (b) that if at any time after having commenced to do so the tenant ceases for a period longer than 12 months without the previous written consent of the Commissioners to rear and cultivate and stock the Shellfish as aforesaid, then the Commissioners, after giving written notice to the tenant requiring the tenant to fulfil his obligations under this sub-clause within such period being not less than twenty-eight days as may be reasonably determined by the Commissioners, in the event of the failure of the tenant so to fulfil his

obligations, shall have the option to terminate this Lease, reserving all rights in respect of any antecedent breach of the terms of this Lease by the tenant.

6.15.1 to obtain the consent of the Scottish Executive under Section 34 of the Coast Protection Act 1949 and any other necessary consents including in particular any necessary planning consent for associated onshore development before initiating development of the Subjects.

6.15.2 The tenant shall not exercise any right to place Equipment or Ancillary Equipment upon the Subjects if they are within the area of responsibility of Shetland Islands Council or Orkney Islands Council unless the tenant has obtained a valid Works Licence under Section 11 of the Zetland County Council Act 1974 or Section 11 of the Orkney County Council Act 1974, as appropriate, permitting them so to do.

6.16.1 to indemnify Her Majesty and Her Successors and the Commissioners now and in all time coming from and against all and any actions, proceedings, claims, demands, costs and expenses in consequence of the exercise by the tenant of the let hereby granted howsoever said actions, proceedings, claims, demands, costs and expenses may arise and whether they arise at statute or common law and whether they are related to the landlord's interest or the tenant's interest herein; declaring expressly that said right of indemnity hereby conferred upon the landlord shall not extend to indemnifying the landlord from the consequences of any negligent act or omission of the landlord which may give rise to any action, proceedings, claim, demand, costs or expenses whether at statute or common law, but declaring that the Commissioners shall have right to contest any such actions, proceedings, claims or demands (howsoever such actions, proceedings, claims or demands may arise) as they in their sole discretion may decide.

6.16.2 To maintain in force Public Liability Insurance in the sum of at least £1,000,000 pounds sterling (which sum shall be increased in each year by the amount by which the General Index of Retail prices published by the Central Statistics Office last published prior to the anniversary of the Date of Entry, has increased over the preceding twelve month period, failing which



Index by such increased amount as the Commissioners shall determine in their reasonable discretion) to include any liability of the Commissioners to pay damages, fines, costs, or other costs of any nature which may be capable of falling directly or indirectly on the Commissioners as a result of or in connection with the Tenants' occupation or use of the Subjects or the placing of equipment or the presence of any old or redundant equipment or structures upon or within the Subjects, and to provide the Commissioners annually or upon request evidence of such insurance and of the payment of the premium therefor.

- 6.17 at the termination of this Lease to leave the Subjects clean and in good condition and without prejudice to the foregoing generality to remove all forms of detritus arising from the Tenant's operations from the seabed and to remove the Equipment (and associated moorings) and the Ancillary Equipment ( and any associated moorings) and any other old or abandoned equipment as debris or rubbish and generally to restore the Subjects to a proper safe and clean condition all to the sole satisfaction of the Commissioners and also to the satisfaction of any statutory or regulating authority.
7. The tenant will be deemed to have satisfied himself that the Subjects are suitable for the said purposes mentioned in Clause 2 hereof and shall have no claim against Her Majesty or Her Successors or the Commissioners or their successors in respect of any loss or damage sustained by the tenant as a result of the exercise by others of the public rights including those of navigation and fishing hereby reserved, or by the exercise of the rights by others of fishing for fish of the salmon kind.
8. If at any time while this Lease subsists:-
  - a) the rent or any part thereof shall be in arrear and unpaid for 28 days, from the due date of payment (whether or not demanded) or from the date of the Commissioners' invoice for rent, whichever is the later.

- b) there shall be any breach by the tenant of any of the obligations and conditions contained in this Lease, or
- c) the tenant has failed to comply timeously with any notice given by the Landlord referring to the terms of this Lease, or
- d) the tenant (being an individual or individuals or a partnership or unincorporated body) becomes apparently insolvent (or being a company) enters into insolvency (which includes suffering the appointment of an administrator or administrative receiver) or goes into liquidation (save for the purpose of amalgamation or reconstruction not involving insolvency and approved by the Commissioners) or (being any of these) enters into an arrangement or composition for the benefit of the tenant's creditors, then and in any of the said cases, the Commissioners shall 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 shall thereupon revert to the Commissioners and it shall be lawful for the Commissioners or any person or persons duly authorised by the Commissioners in that behalf to enter upon possession of the Subjects 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 pactional and not penal and shall not be purgeable at the Bar.

9. All notices hereunder shall be in writing and if sent by post shall be sent by recorded delivery post and shall be deemed to be received at the same time of day 2 business days (Saturday, Sunday and public holidays being excluded) after posting. Notices by or on behalf of the Commissioners to the tenant shall be addressed to the registered office in the case of a corporate

body and in the case of a tenant who is not a corporate body to their address as given herein or to the last known private or business (as the case may be) address and if the tenant is more than one person to such address of any one of these persons.

10. No variations hereof shall be effective unless made in writing executed by the parties.
11. For the avoidance of doubt, it is declared, and the parties hereby agree, that neither the grant of the Lease on behalf of Her Majesty, nor anything expressed or implied herein shall 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.
12. The interpretation and meaning of these presents and of any documentation or agreement supplemental thereto, the rights and obligations of the parties and any questions arising at any time between the parties hereunder or thereunder, shall 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 jurisdiction of the Scottish Courts hereunder and thereunder.
13. 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.

Certificate re prior Agreement of Lease

14. We the parties certify that this Lease is not a lease which gives effect to an agreement for lease as interpreted by the Inland Revenue in

terms of the guidance note dated 30.06.94 referring to Section 240 of the Finance Act 1994.

Registration

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

**IN WITNESS WHEREOF** these presents on this and the eleven preceding pages are together with the schedules on pages thirteen, fourteen and the plan annexed are subscribed in duplicate as follows, videlicet:- by the said [REDACTED] at Oban on the twenty-fifth day of June Two Thousand and Two and witnessed by [REDACTED] Oban, Argyll and also in terms of Act of Parliament by [REDACTED] authorised by the Crown Estate Commissioners to act on behalf of a Secretary of the office of the said Commissioners at Edinburgh on the ninth day of July Two Thousand and Two and witnessed by [REDACTED] a Civil Servant in the Crown Estate, Edinburgh.

[REDACTED] (WITNESSES)

[REDACTED] (WITNESSES)

[REDACTED]

[REDACTED]

THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING LEASE BY THE CROWN ESTATE COMMISSIONERS TO [REDACTED] RELATIVE TO THE SEABED AND FORESHORE AT Soriby Bay and Eilean Reilean, Ulva  
DATED 25 JUNE AND 9 JULY 2002

1.(a) ALL and WHOLE that piece or those pieces of land situated at Soriby Bay and Eilean Reilean, Ulva and for the purpose of registration of writs in the County of Argyll which is or are shown delineated and coloured pink on the plan or plans marked "Fish Farm Plan" annexed and executed as relative hereto.

2. The date of entry as referred to in Clause 1 of the foregoing lease is 1 April 2002 and the period referred to therein is 10 years from the date of entry.

3. The specifications of the species of shellfish referred to in Clause 2 of the foregoing lease is oysters.

4.(a) The specification of the Equipment referred to in Clause 2 of the foregoing lease is:-

Site 1 – up to 396 metres in length of trestles

Site 2 – 1 x 4m trestle

or such alternative equipment as may be permitted by the Commissioners.

[REDACTED] [REDACTED]

4.(b) The Ancillary Equipment (if any):-

5. The amount of annual rent to be paid in terms of Clause 5 of the foregoing lease is:-

1 April 2002 – 31 December 2002 -  $\frac{9}{12} \times £125 = £93.75$

1 January 2003 – 31 December 2003 = £125


and each subsequent 1 January £125 subject to rent review due January 2005.

6. The conditions referred to in sub-Clause 6.4 of the foregoing lease are:-

Installations other than navigation markers should be dark matt grey in colour to reduce the effects on the landscape.

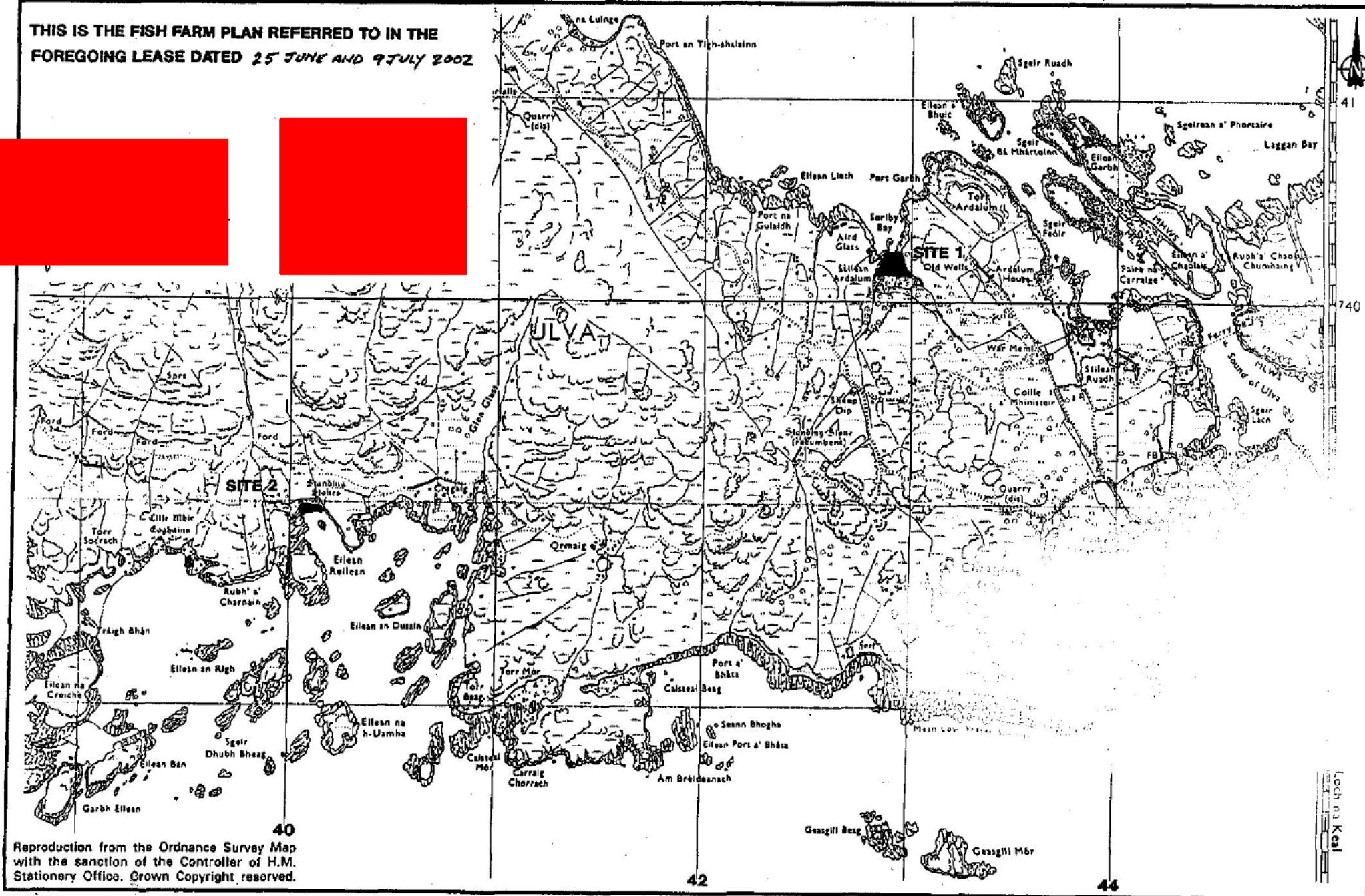
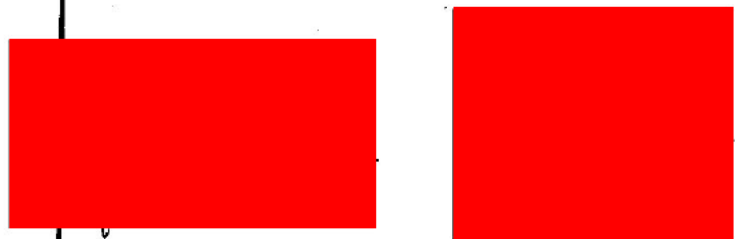
The following conditions apply to the Ancillary Equipment only:-

7. With effect from the date of entry as referred to in Clause 1 of the foregoing lease (notwithstanding the dates hereof) the Tenant renounces (insofar as not already renounced) its whole right and interest in and to the lease granted by the Commissioners in favour of the Tenant dated 14 and 24 June 1992 and Experimental Consent dated 19 February and 7 April 1997.





THIS IS THE FISH FARM PLAN REFERRED TO IN THE  
FOREGOING LEASE DATED 25 JUNE AND 9 JULY 2002



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LEASE

between

THE CROWN ESTATE COMMISSIONERS

and



25 June and 9 July 2002

Period: 10 years

Subjects: 2 areas seabed Soriby Bay and Eilean  
Reilean