

DEED OF CONDITIONS

by

SCOTIA HOMES LIMITED

SUBJECTS: LAND AT DUBFORD, BRIDGE OF DON, ABERDEEN

LAURIE & CO SOLICITORS LLP

DX AB16 ABERDEEN FAS4700

OURREF.FM

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WE, SCOTIA HOMES LIMITED, (Company No. SC141011) Registered Office, 28 Broad Street, Peterhead and BDW TRADING LIMITED (Company No. 03018173) Registered Office, Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville, LE67 1UF heritable proprietors of ALL and WHOLE the Development (as defined below) CONSIDERING that the Developers (as defined below) intend to construct a housing development on the Development and wish to set out title conditions and servitudes which will apply to the Development WE DO HEREBY declare as follows:-

## DEFINITIONS

In this Deed (including the Schedule) the following terms and expressions shall have the meanings respectively set opposite them unless the context otherwise requires:-

**Arbiter:** a single arbiter mutually appointed by agreement among or between the Proprietors or other party concerned in any question, difference or dispute referred to in clause 8 of this Deed or appointed, failing such agreement on the application of any such Proprietor or such other party, by the President of the Law Society of Scotland or any person permitted to make such appointments on his or her behalf;

**association:** has the meaning assigned to it in the Development Management Scheme;

**Block:** means any block of Flats and/or Commercial Units erected on the Development together with the solum thereof and the ground pertaining thereto and the curtilage thereof;

**Block Common Property:** means (a) any part of the Block that is the common property of the owners of two or more Flats; (b) the solum on which the Block is built and any garden ground exclusively pertaining to a Block; (c) its foundations; (d) its external walls but excluding windows serving a Flat; (e) if applicable, its common entrance passageway and stairs and the main door (but excluding the doors for each Unit); (f) its roof, (including any rafter or other structure supporting the roof) and roof void; (g) if it is separated from another building by a gable wall, the part of the gable wall which is within the Block; (h) any wall (not being one falling within the preceding sub paragraph), beam or column which is load bearing; (i) drains, soil and drain water pipes, systems, gutters, rhones, downpipes, conductors and service media solely serving the Block but excluding those that solely serve one Flat (which shall be the property and responsibility of the owner of such Flat); (j) the communal television aerial system and/or satellite dish serving the Block; (k) the bin stores and cycle store pertaining to the Block; (l) the passages, landings and common stair cases of a stair, stair railing, stair and passageway windows, smoke ventilation windows and the decorative finishes applied to the interior of the walls (including stair and passageway windows and window frames therein), roof lights and ceilings, any communal store, communal lighting system, dry risers, stairs and landings, floor coverings, the heating system serving any stair common property and all related apparatus, cables, meters and others and any hatchways leading to the roof; (m) the front entrance steps, if any, and the common entrance doors, vestibules and halls of the stair including any canopies; (n) the lift, if any, within the stair, lift shaft and all related controls, cables and apparatus (including all lift controls, doors and others on the ground floor of a Block giving access to the lift); (o) the communal door entry system or security entrance system (but excluding the handset and cabling or wiring within a Flat; (p) all other parts, pertinents, fixtures or fittings of or in connection with the Block which are used in common by the Proprietors thereof ;

**Boundary features:** boundary walls, feature walls, retaining walls, fences, railings, barriers, hedges and gates, gates, art features, sculptures, gate pillars and posts in so far as comprising part of the Development and not pertaining exclusively to or within the curtilage of an individual Unit or conveyed specifically to the Proprietors of some but not all of the Units in the Development,

**Commercial Sites:** a plot of ground within the Development on which a Commercial Unit is at any time erected or to be erected and the curtilage pertaining thereto, including without prejudice to the foregoing generality any parking area, footpath, Service Strip, Landscaped Area, Visibility Splay or part or parts thereof situated within such curtilage;

**Commercial Unit:** any building to be used for purposes other than as a Dwellinghouse including for this purpose any employment, retail, leisure or commercial use.

**Common Visibility Splay:** those areas of ground required as a visibility splay connected with the Roads situated within or serving the Development;

**Developers:** us, the said Scotia Homes Limited and our successors, in our and their capacity as initial developers of the Development or any part or parts thereof (and to the extent that there is more than one initial developer of the Development "Developer" shall mean any such initial developer of any part of the Development) for so long as the initial developer retains ownership of any part of the Development;

**Development:** ALL and WHOLE the subjects known as and comprising Dubford, Bridge of Don, Aberdeen more particularly described in Part IV of the Schedule;

**Development Common Parts:** all

- (a) roads, pavements, lanes, footpaths and cycleways not taken over or adopted for maintenance by any local or other public authority or statutory undertaker or utility, Common Visibility Splays and Service Strips within the Development;
- (b) Service Media serving the Development generally (save for any branch Service Media exclusively serving one Unit or serving more than one Unit in common);
- (c) Boundary Features;
- (d) external lighting serving the Development in so far as not adopted by the local authority for maintenance;
- (e) Open Ground; and
- (f) other parts which are of common service or common amenity to the whole Development.

**Development Management Scheme:** means the scheme of rules for the management of land set out in Schedule 1 to the Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009, which are set out in full (with variations as applying to the Development) in Part V of the Schedule, as applied to the Development;

Disposition: a disposition or conveyance of any part of the Development by the Developers to another developer, to a Statutory Undertaker, to an individual Proprietor or to the association;

Dwellinghouse: a dwellinghouse (whether detached, semi-detached, ten-aced, flatted or otherwise) and ancillary buildings (including any garage, carport or outhouse) erected within the Development;

Flat: means a flatted dwellinghouse in a Block forming part of the Development and/or a Commercial Unit where any such Block incorporates Commercial Units.

Maintenance: shall include, without limitation, a reference to repair, maintenance, restoration, renewal, upkeep, upholding, inspection, cleaning, painting, and other routine works (including the clearance of snow, slush, ice or the like from the Roads), gardening, landscaping, reinstatement of parts, altering levels and the words "Maintain", "Maintained" and "Maintaining" shall be construed accordingly;

Manager: the Developers or such organisation or person appointed in accordance with rule 7 of the Development Management Scheme;

Mixed Use Plot: a plot of ground within the Development on which a building comprising a Commercial Unit and a Flat or Flats is at any time erected or to be erected and the curtilage pertaining thereto, including without prejudice to the foregoing generality any parking area, footpath, Service Strip, Landscaped Area, Visibility Splay or part or parts thereof situated within such curtilage;

Necessary Consents: all consents and permissions required for the operations proposed (including without prejudice to the foregoing generality all consents and permissions required under and in terms of the Planning Acts);

Open Ground: the communal open space or play or amenity area lying within the Development formed, laid out, landscaped, and where appropriate, built upon by the Developers or their contractors to serve the Development as a whole (not being an area forming part of an individual Unit or any Service Area or any Road) including:-

- (a) any water courses traversing such area;
- (b) play and other equipment, feature walls, other structures or erections and ponds situated thereon;
- (c) any trees, shrubs and flowers planted or to be planted therein; and
- (d) the walls (including retaining walls and feature walls), fences, hedges, railings or gates enclosing such area or any part thereof.

Plan: means the plan docquetted, annexed and executed as relative to, and incorporated in, this Deed;

**Planning Acts:** the Planning Etc. (Scotland) Act 2006, the Town and Country Planning (Scotland) Act 1997, the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, the Planning (Hazardous Substances) (Scotland) Act 1997, the Planning (Consequential Provisions) (Scotland) Act 1997, the Building (Scotland) Acts 1959 and 1970, the Building (Scotland) Act 2003, and any other, future or substitute legislation of a similar purpose or nature;

**Plot:** a plot of ground within the Development on which a Dwellinghouse (including for the avoidance of doubt each Flat) is at any time erected or to be erected and the garden ground and curtilage pertaining thereto, including without prejudice to the foregoing generality any driveway, footpath, Service Strip, Visibility Splay or part or parts thereof situated within such garden ground or curtilage;

**Proprietor:** the owner for the time being of any Dwellinghouse or Commercial Unit (including, for the avoidance of doubt the Developers as initial owner of any Dwellinghouse or Commercial Unit) and where two or more persons own the same includes both or all of them and any obligations hereby imposed on them shall bind them jointly and severally;

**Residual Property:** the Development or any part or parts thereof, under exception of the scheme property or part thereof conveyed to the association pursuant to rule 23.1 of the Development Management Scheme;

**Roads:** all roads, pavements, lanes, footpaths and cycleways within the Development;

**Schedule:** the Schedule (in 7 parts) annexed and executed as relative hereto;

**scheme property:** has the meaning assigned to it in the Development Management Scheme;

**Service Area:** any enclosed, fenced or walled area of ground on which there is situated from time to time any gas governor, electricity transmission equipment, water, drainage or sewage pumping plant and equipment or any other plant and equipment owned by any Statutory Undertaker;

**Service Media:** all drains, sewers, soil pipes, gas supply pipes, water supply pipes, electricity cables and transformers, telephone and television cables, transmitters and connections, ducts, gutters, telephone and fibre optic cables or wires, surface water drainage systems, soakaways, attenuation areas and swales and basins and other conducting media, together with any necessary inspection covers and related plant and equipment or other appliances, within and serving or to serve the Development;

**Service Strip:** any area of ground within the Development used as the route or part of the route for any Service Media

**Statutory Undertaker:** any local or other public authority, statutory undertaker, utility or other relevant person or entity;

**Unit:** any Plot, Mixed Use Plot or Commercial Site located within the Development ;

■ ■

Visibility Splay: either (A) a Common Visibility Splay or (B) any area of ground required as a visibility splay situated within a Unit and identified as such in any Disposition in respect of such Unit;

## 2 INTERPRETATION

2.1 In this Deed (including the Schedule) unless the context otherwise requires:-

2.1.1 words importing the neuter gender only include the masculine and feminine genders; words importing the masculine gender only include the feminine gender and vice versa;

2.1.2 words importing the singular number only include the plural number and vice versa; and

2.1.3 any reference to any particular statute or other law includes any modification, extension, amendment or re-enactment of such statute or other law for the time being in force and all instruments, orders, plans, bye-laws, regulations, permissions and directions for the time being made, issued or given under, or deriving validity from such statute or other law;

2.2 The clause and paragraph headings (whether in this Deed or in the Schedule) are intended to be for guidance only and shall be disregarded in the construction or interpretation of this Deed.

## 3 COMMUNITY BURDENS

All the Units within the Development are declared to be a community. The real burdens set out in Part I of the Schedule are declared to be community burdens and shall be effective in respect of the Units from the date of registration of this Deed in the Land Register of Scotland (provided that nothing in this Deed, including without limitation Part I of the Schedule, shall at any time prevent any development of the Development or the carrying out of construction works on the Development by the Developers).

## 4 SERVITUDES

The servitudes set out in Part II of the Schedule shall have effect from the date of registration of this deed, subject to the provisions of paragraph 6 of Part I of the Schedule

## 5 RESERVATIONS

The reserved rights and servitudes set out in Part III of the Schedule are imposed on each part of the Development, subject to the provisions of paragraph 6 of Part I of the Schedule, for the benefit of the Developers while the Developers remain the owners of any Units within the Development.

## 6 APPLICATION OF DEVELOPMENT MANAGEMENT SCHEME

6.1 The Development Management Scheme will apply to the Development from and including the date of registration of this Deed in the Land Register of Scotland.

- 6.2 The first manager of the association will be the Developers or such party as appointed by the Developers.
- 6.3 The owners' association to which the Development Management Scheme applies will be known as "The Dubford Owners' Association".
- 6.4 For the avoidance of doubt the Manager shall be entitled to:-
- 6.4.1 exercise any of the mutual servitudes referred to in Part II of the Schedule;
- 6.4.2 exercise any of the reservations referred to in paragraphs 1.1 to 1.7 inclusive of Part III of the Schedule.
- 6.5 On the date of registration of any disposition of the scheme property or such part thereof to the association in accordance with rule 23.1 of Part V of the Schedule:-
- 6.5.1 The provisions set out in paragraphs 1 and 2 of Part VI of the Schedule, which are declared to be real burdens, shall apply in respect of the scheme property or such part thereof.
- 6.5.2 The servitudes set out in paragraphs 3 and 4 of Part VI of the Schedule shall have effect.

## **7. NOWARRANTY**

It is not warranted that the Development Common Parts or any part thereof will be taken over by a Statutory Undertaker or conveyed to the association and the Proprietors shall have no claims in respect thereof.

## **8. DISPUTE RESOLUTION BETWEEN DEVELOPERS**

- 8.1 Where the Developers comprise two or more initial developers of the Development, the Developers shall be obliged to use reasonable endeavours to agreement on any matters in relation to the Development and/or the terms of this Deed, which failing the matter may be referred by any of the Developers to an independent solicitor of at least 10 years standing and experienced in the preparation and interpretation of Deeds of Conditions for developments of a scale and nature comparable to the Development (who shall act as an expert) agreed upon between the Developers or, failing agreement, appointed on the application of any of the Developers by or on behalf of the President or senior office bearer for the time being of the Law Society of Scotland. The fees and costs of the expert shall be borne as directed by the expert, failing which they shall be shared equally between the Developers. The decision of the expert shall be final and binding on the Developers, save in the case of manifest error.

## **9. ARBITRATION**

- 9.1 All questions, differences and disputes which may arise among or between any Proprietors and/or the Manager regarding: (a) his or their rights and interests in the Development or in any part



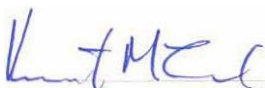
thereof; (b) the necessity of executing any Maintenance, whether common or not, or the liability for the cost of such Maintenance; (c) the reasonableness or expediency of (i) any order, regulation, decision, determination or appointment made at any meeting of the Proprietors (and others who may have an interest in the Development); or (d) any other question so far as depending upon or otherwise arising out of or in respect of this Deed or in any other manner or way shall, failing agreement between or among the Proprietors concerned, be referred (and in any case arising under sub-Clause (c) of clause 8.3 within fourteen days of any such meeting) to the decision of the Arbiter.

- 9.2 Any determination of the Arbiter shall be final and binding in all matters of law, as well as of fact, upon all the Proprietors and others concerned who shall jointly implement and fulfil such determination to each other.
- 9.3 The Arbiter may (a) take skilled advice and order execution or performance of works; (b) apportion the cost of such Maintenance among the Proprietors (and others who in terms of this Deed may be liable for a share of the costs); (c) vary or annul any order, regulation, decision, determination or appointment previously made by a meeting of the Proprietors; and (d) find all or any of the Proprietors and others liable in the expenses of the arbitration and discern accordingly.
- 9.4 The application of Rules 41 and 69 of the Arbitration (Scotland) Act 2010 is excluded.
10. No application may be made to the Lands Tribunal of Scotland under Sections 91 (a) and 91 (I) of the Title Conditions (Scotland) Act 2003 in respect of the servitudes created in this deed and that for a period of five years after registration of this deed in the Land Register of Scotland: IN WITNESS WHEREOF:

these presents typewritten on this and the preceding six pages together with the Schedule in seven parts annexed hereto are executed as follows; they are subscribed for and on behalf of the said Scotia Homes Limited by Dennis Watson Watt, one of their directors at Ellon on 9 January 2014 before this witness Fiona Janet Mitchell, Solicitor, 17 Victoria Street, Aberdeen

they are subscribed for and on behalf of the said BDW Trading Limited at Balmedie on 29 May 2014 by Kenneth William Macleod and Barry James Davidson, both Attorneys and authorised signatories in terms of General Power of Attorney granted by BDW Trading Limited and dated 7 November 2013.

Fiona Mitchell (Witness)



  
 BDW

This and the succeeding 36 pages comprise the Schedule (in seven parts) referred to in the foregoing Deed of Conditions by Scotia Homes Limited relating to subjects at Dubford, Bridge of Don, Aberdeen

## **Schedule**

### **Part 1: Community Burdens**

#### **RESTRICTIONS ON USE**

- 1.1 Other than as built by a Developer, no dwellinghouse or Flat or buildings whether of a pennant, temporary or portable nature shall be erected on a Unit nor shall any extension, alteration, rebuilding or reconstruction in whole or in part be made to any Dwellinghouse or Commercial Unit until all Necessary Consents have been obtained; Further, any such buildings, erections, extensions alterations, rebuilding or reconstruction shall conform in all respects with the terms of the Necessary Consents. All gas or electric installations shall comply with the requirements of the relevant statutory undertaker.
- 1.2 Each Dwellinghouse shall be used and occupied as a private dwellinghouse and shall not be subdivided or occupied by more than one family or group of individuals living together as a family at a time; However, nothing herein contained will be deemed to be a prohibition upon the leasing of any Dwellinghouse, provided that the use of such Dwellinghouse by the occupiers thereof is as a private dwellinghouse or residence in accordance with the provisions of this Deed.
- 1.3 Each Commercial Unit shall be used and occupied in accordance with the Necessary Consents.
- 1.4 No part of any Plot (except a Mixed Use Plot), including any Dwellinghouse, shall be used for the carrying on therein or thereon of any trade, business or profession or for the selling of any goods or wares of any sort whether or not any person occupying the same may have a contractual right to use the same for or in connection with or arising out of any trade, business or profession notwithstanding any rule of law to the contrary unless such use may be deemed incidental or natural to the ordinary residential use of the Dwellinghouse. The provisions of this Condition 1.4 shall not apply to the use by the Developers of any Dwellinghouse as a showhouse for the marketing and sale of the Development or any part thereof.
- 1.5 No shops shall be erected on any Plot (except a Mixed Use Plot), nor shall any Dwellinghouse be used for the sale of any wines or spirits or other excisable liquors nor for the making or manufacturing of any goods for sale.
- 1.6 Nothing shall be done on any Unit which may be deemed a nuisance or occasion disturbance to any other Proprietor.
- 1.7 No board, card, plate (other than a normal door nameplate of reasonable size and style) or advertising notice of any kind shall be placed on any Plot (except a Mixed Use Plot), including any Dwellinghouse (except in connection with the selling or leasing of the Plot). The provisions of this

Condition 1.7 shall not apply to any boards, cards, plates or advertising notices placed or erected by the Developers for the marketing and sale of the Development or any part thereof.

- 1.8 No power-boats, marine craft, caravans, motor homes, commercial vehicles or vehicles other than private motor cars, motor cycles or cycles shall be parked on any Plot or on any other part of the Development save for (i) the short term parking of tradesmen's vehicles in ordinary course of their trade at any Plot and (ii) the short term parking of a power-boat, marine craft, motor home or caravan (except for any power-boat, marine craft, motor home or caravan which is in a poor state of repair or the condition of which otherwise renders it detrimental to the amenity of the area) for no more than twenty eight days in any calendar year for the purpose of cleaning the same and (iii) (in the case of the Commercial Sites only) such private commercial vehicles as are necessary for the operation of any Commercial Unit, and provided always that the said private motor cars, motor cycles, cycles or vehicles (and power-boat, marine craft, motor home or caravan in respect of said short term parking) shall not obstruct or prevent access to any part of the Development.
- 1.9 The parking of vehicles of any nature shall not be permitted in or on any mutual/common access driveway, path, border, garden ground, or amenity area forming part of the Development (including without prejudice to the foregoing generality the Open Ground and any Plot) and all roads, paths and footways must be kept free from obstruction, provided that where there is an exclusive driveway forming part of a Plot this may be used for the parking of private motor cars, motor cycles or cycles only.
- 1.10 The Proprietor of each Service Strip shall be prohibited from erecting or having on the Service Strip or any part thereof any buildings, walls, fences or other structure whether permanent or temporary and shall not alter the level of the Service Strip or, save as aftermentioned, plant any trees, shrubs or plants thereon. Nothing must be done which would be likely to damage any pipes, ducts, cables, or other apparatus within each Service Strip or make access to such apparatus more difficult or expensive.
- 1.11 Except where forming part of a driveway each Service Strip shall be laid out in grass and not hard landscaped. Provided always that the Director (or other senior officer for the time being) of the local roads authority may, on written application from the Proprietor, grant permission for alternative horticultural treatment, with no alteration to line and level, to the surface of the Service Strip in which case the planting shall be restricted to a maximum root depth of 300mm and shall not be laid out in the form of a hedge nor encroach upon a 500mm strip adjacent to the carriageway.
- 1.12 The proprietor of any Visibility Splay shall be prohibited from (a) placing thereon any structure or other item, including without prejudice to the foregoing generality any fence or wall, and (b) re-grading or allowing to grow therein any tree, shrub, hedge or plant of any kind, apart from grass. Provided always that the Director (or other senior officer for the time being) of the local roads authority may, on written application from the proprietor, grant permission for alternative horticultural treatment, with no alteration to the line and level, to the surface of the Visibility Splay in which case the planting shall be restricted to a maximum height of 500mm.
- 1.13 No building or buildings shall be erected over the line of any connecting sewer or drainage pipe or pipes or others or any part thereof without the prior written consent of the Local Authority and

Scottish Water or other service utilities and should such consent be granted, the Proprietors shall be bound to protect or re-lay the said connecting sewer or drainage pipes or others at their sole expense to the satisfaction of the Local Authority and Scottish Water or other service utilities.

- 1.14 Each Proprietor shall be prohibited from using or permitting the use of any carport, garage, parking space or garage space pertaining to his Plot separately therefrom or from using the same for any purpose other than for parking of a private car, motor cycle or cycle. The Proprietor shall be prohibited from using said carport, garage, parking space or garage space pertaining to his Plot for the maintenance of vehicles other than his own private vehicles and the Proprietors shall be prohibited from using any other part of their Plot for maintenance of vehicles other than the cleaning and topping up of fluid levels of their own private vehicles.
- 1.15 No clothes poles, drying lines or rotary clothes dryers shall be erected or used to the front of any Unit (although the Proprietor of a Plot may have a rotary clothes dryer (or clothes poles with drying line) in the rear garden of the Plot concerned) nor shall they be attached to or suspended from any window in any Dwellinghouse or from any part of the exterior walls thereof.
- 1.16 No rubbish bins or any other form of refuse receptacle shall be permitted to be left or deposited on a Unit otherwise than in accordance with the regulations and recommendations of the local authority. Each Proprietor shall be responsible for ensuring that clear access is available by the designated route at all times to permit refuse receptacles to be moved and replaced as may be required for uplift by the local authority or other responsible party;
- 1.17 Each Proprietor, tenant or occupier of a Unit is expressly prohibited from keeping poultry, ducks, pigeons, bees or other non-domestic animals on the Unit and is prohibited from keeping domestic animals which shall prove a nuisance or occasion disturbance to any adjoining Proprietor and no poultry house, kennel or apiary shall be erected on any Unit;
- 1.18 If a Dwellinghouse or Commercial Unit is not connected to a communal aerial or satellite dish then the proprietor thereof may, subject to obtaining all Necessary Consents for the installation of same place a satellite dish on any part of any Dwellinghouse or Commercial Unit provided that (i) it is in the least obtrusive location possible and (ii) any satellite dish installed on a Dwellinghouse is for ordinary domestic use only.
- 1.19 No Proprietor may deposit, or permit to be deposited, refuse upon the Open Ground, or otherwise exercise any rights which he may have in relation to the Open Ground in such a manner as to cause a nuisance or prejudice the amenity of, or of any part of, such Open Ground.
- 1.20 No dog is permitted on the Open Ground unless it is (a) kept on a lead and (b) accompanied by a responsible person. No Proprietor shall allow his dog to foul any part of the Open Ground.
- 1.20 The storage of bicycles within any part of a Block which is not specifically designed for that purpose is prohibited.
- 1.21 The roof space within a Block may be used by the Proprietor (s) of Flats on the top floor of the Block for storage purposes only (except for the storage of refuse or other harmful or dangerous

materials which is expressly prohibited). Each Proprietor shall have the right to retain in the attic or loft any water cistern and pipes or other transmitters existing at the time of completion of the Block. Each Proprietor shall have all necessary rights of access for maintenance, cleaning, and repair of same on giving at least 72 hours' notice to the Proprietors of the Flats on the top floor (except in the case of emergency when immediate access will be given).

- 1.22 The balcony and any roof terrace pertaining to a Flat shall be used for leisure purposes only and cannot at any time be used for the purposes of storage or for the drying of washing.
- 1.23 No sheds, storage boxes, heaters or furniture can be kept on the balcony or roof terrace pertaining to a Flat, other than such items of garden furniture as may reasonably be required by each Proprietor.
- 1.24 The Proprietors are prohibited from dropping the kerb and forming a pavement crossover entrance from the road to a car parking space or garage within a Unit without having first obtained all necessary Planning and other Local Authority consents.
- 1.25 An ancillary building, carport, garage, parking space or garage space cannot be owned or let separately from the Dwellinghouse with which it is associated.
- 1.26 The Open Ground must remain open and unbuilt upon in all time coming.
- 1.27 Nothing may be done on the Open Ground which constitutes a nuisance or occasions disturbance to Proprietors.
- 1.28 Where a driveway forming part of any Unit is adjacent to or connects with any new road or footpath which road or footpath is taken over or adopted, or intended to be taken over or adopted for maintenance by any local or other public authority or Statutory Undertaker or utility, the Proprietor of said Unit shall be obliged to comply with all relevant local authority regulations relating thereto, and in particular, but without prejudice to the foregoing generality:
  - (i) shall not be entitled to make alterations to the driveway surface which would cause surplus water to flow on to said road or footpaths; and
  - (ii) shall not be entitled to increase the width of the driveway nor of the relative pavement crossover without the relevant local authority approval.

## 2 BOUNDARIES

- 2.1 Where any walls (including retaining walls and feature walls), fences, hedges or gates enclosing the Development or any part thereof and separating the Development from other subjects, are erected within or ex adverso a Unit, the Proprietor (s) of that Unit shall free and relieve the Developers of all liability for the Maintenance thereof.
- 2.2 Any walls (including retaining walls and feature walls), fences, hedges, gates or kerbs (a) which form boundary enclosures between adjoining Units, shall be erected to the extent of one half on each Unit and shall be Maintained in good condition and repair in all time coming at the joint expense of the respective Proprietors of such Units; or (b) which form boundary enclosures

separating the Unit from the Development Common Parts, shall be owned exclusively by and Maintained in good condition and repair in all time coming at the sole expense of the Proprietor of such Unit.

- 2.3 No additional boundary enclosures shall be erected nor shall any existing boundary enclosures be added to or increased in height or altered in any way at the front of the Unit. In respect of the remainder of the Unit, additional boundary enclosures may be erected or existing boundary enclosures may be added to or increased and/or altered only if all Necessary Consents have been obtained and such additional or altered enclosures shall be of a similar type, style and construction as those erected within the remainder of the Development.
- 2.4 Any painting, varnishing or staining of any boundary enclosures shall be of uniform colour with that initially provided by the Developers.
- 2.5 Any drystone dyke, feature wall or retaining wall lying either within or on the boundary of a Unit shall be retained as such by the Proprietor (s) of such Unit and Maintained in a good state of repair in all time coming.
- 2.6 Where a Dwellinghouse or Commercial Unit is semi-detached, linked or terraced, the mutual gable between that Dwellinghouse or Commercial Unit (as the case may be) and the adjoining Dwellinghouse or Commercial Unit (as the case may be) shall be Maintained at the joint expense of the adjoining Proprietors.

### **3 MUUNTENANCE**

- 3.1 Each Proprietor shall keep his Dwellinghouse or Commercial Unit (as the case may be) in a good state of Maintenance and take all appropriate steps either by himself or in conjunction with others to prevent damage to the fabric of the same which may prejudice the stability thereof or create a nuisance to other Proprietors or their tenants and, in particular, but without prejudice to the foregoing generality, by the control of vermin, the immediate treatment of dry rot or other form of rot or infestation which may be detected, and the Maintenance of any damage to water or other service pipes or wires; And any Proprietor who fails to take timely and adequate measures to prevent and Maintain such damage or such defects including notification to adjoining Proprietors whose premises may be affected, with a view to safeguarding their Dwellinghouse or Commercial Unit (as the case may be), shall be liable for any damage caused thereby.
- 3.2 The garden ground and curtilage pertaining to any Unit, including without prejudice to the foregoing generality any Service Strip or Visibility Splay falling within such garden ground or curtilage shall (except where occupied by a driveway or parking space) be laid out as garden ground or shrubbery and Maintained as such in a neat and tidy condition in all time coming and vegetables shall not be grown in any ground in front of the Unit nor shall any ground at the front of the Unit be used for the purpose of drying clothes, the storage of items, including, but not limited to, garden furniture and bicycles, or for the erection of any substantial structures, including, but not limited to, sheds, trampolines, swings or climbing frames.

- 3.3 The Proprietor of each Service Strip shall be responsible for the Maintenance of the said Service Strip at all times.
- 3.4 The Proprietor of each Visibility Splay shall be responsible for the Maintenance of same at all times.
- 3.5 Where the Proprietors of two or more Units have a common right of property in any part or portion of the Development which does not comprise Development Common Parts, the Proprietors having such right shall be bound jointly to Maintain in good order and repair such parts or portions in all time coming, each Proprietor paying a just and equitable share of the cost of so doing for each Unit owned by him.
- 3.6 Each Proprietor shall be bound to Maintain in good order all hedges, shrubbery and trees located within or forming the boundary of his Unit including the replacement thereof as and when necessary.
- 3.7 In so far as any Service Media or any part or parts thereof may be used in common by the Proprietors of more than one Unit, each Proprietor so interested therein shall pay one share for each Unit owned by him of the cost of Maintaining same.
- 3.8 In so far as any Service Media or any part or parts thereof may serve only one Unit, the Proprietor of that Unit shall bear the whole cost of Maintaining same.
- 3.9 The Proprietors shall be bound in all time coming to Maintain in a neat and tidy condition and in good order and repair (and, where appropriate, insure) all Development Common Parts whether or not a right in common to the same has been conveyed to the Proprietors and the cost of such Maintenance in terms of this Deed (including the insurance of any play equipment situated on the Open Ground) shall be borne by the Proprietors in equal shares, one share being payable in respect of each Unit owned.
- 3.I0 The Proprietors shall be bound to concur in any application to have the Development Common Parts or any part thereof taken over by the relevant Statutory Undertaker and the obligations for Maintenance of any such items specified herein shall cease only if and when these are taken over for Maintenance purposes by the relevant Statutory Undertaker and insofar as these may not be taken over the said obligations shall remain in force in all time coming.
- 3.11 Each Flat shall be held by the Proprietor thereof in all time coming under the obligation jointly with the other Proprietors of a Flat in the Block of upholding and maintaining in good order and repair and from time to time when necessary renewing and restoring the Block Common Property and of cleaning, repainting and decorating the Block Common Property.
- 3.12 Where, as a consequence of Dwellinghouses or Commercial Units being linked or overhanging in the fashion referred to in paragraph 3.3 of Part II of the Schedule or where it is deemed necessary or desirable by the Developers that surface water or other drainage including gutters and down pipes

be routed from one Unit onto an adjoining Unit and/or the respective Dwellinghouses or Commercial Units thereon, the Proprietor of the benefited property shall be fully responsible for the Maintenance of the gutters, pipes and others so far as solely used in that respect (but otherwise jointly and equally amongst those having right to use or benefited by the same).

- 3.13 Whereas all necessary roads, pavements, footpaths and other utilities serving the Development shall in the first instance be constructed by the Developers to the respective specifications required by the appropriate Local Authority, the same in so far as of common service, shall upon completion to the required specification, be maintained and repaired and, when necessary renewed, at the joint and equal expense of the Proprietors of each of the Units, and that until the same or any of them may be taken over for future maintenance by any public or local authority without implying any duty on the public or local authority or such body or bodies so to do.

#### **4 BLOCK COMMON PROPERTY**

- 4.1 Each Proprietor will be granted a right in common with the Proprietors of the other Flats in the Block in and to the Block Common Property, declaring that the proprietors from time to time of each Flat which has a balcony or roof terrace pertaining thereto shall have the exclusive right to use the balcony or rooftop terrace.
- 4.2 Each Proprietor shall contribute to the whole costs of the management and Maintenance of the Block Common Property of the Block within which his Flat is located on a joint and equal basis with the Proprietors of the other Flats within the same Block.
- 4.3 Any part of the Block Common Property of a Block may be used for the installation thereon and the Maintenance and, if necessary, renewal or repositioning of a communal satellite dish or aerial for service of the Dwellinghouses and/or Commercial Units within that Block. The right to install, Maintain and, if necessary, renew or reposition, said communal satellite dish or aerial shall be exercisable on behalf of the Proprietors of the Block by the Manager.

#### **5 LAND CERTIFICATES**

- 5.1 Each Proprietor shall be bound to make the Land Certificate for his Unit forthcoming to the Developers or the Manager for a reasonable time on necessary occasions when required and that free of expense to the Developers or the Manager.

#### **6 OBLIGATIONS RELATIVE TO EXERCISE OF SERVITUDES**

- 6.1 Each of the servitude rights and reservations specified and contained in Part II and Part III of the Schedule shall be exercised subject always to (i) giving reasonable prior notice (except in the case of emergency when no notice will be required) to the relevant Proprietor or the Developers except when exercising the rights contained in Clause I of Part II of the Schedule and Clause 1.5 of Part III of the Schedule (ii) the party exercising same causing the minimum of disturbance reasonably practicable and (iii) making good all surface and other damage thereby occasioned in exercising same.



6.2 Each Proprietor is prohibited from doing any act which might materially interfere with or render more expensive the exercise of the servitude rights and reservations specified and set out in Part II and Part III of the Schedule including building, planting trees or shrubs or erecting fences or walls over or in close proximity to any Service Media.

6.3 Each Proprietor shall, if required by the Developers or the Manager and within fourteen days of any such request, to sign any Wayleave or Deed of Servitude required in connection with the grant of any of the servitude rights specified and set out in Part III of the Schedule in favour of a Statutory Undertaker.

6.4 Where there is more than one person comprising the Developers the parties comprising the Developers shall act reasonably and in good faith in the exercise of the servitude rights and reservations contained in Part II and Part III of the Schedule having due regard to the interest of and all reasonable representations made by each Developer and each Developer shall consult with any other Developer with regard to the route of the Roads and Service Media insofar as same affects the interest of any other Developer.

## 7 INSURANCE

7.1 Each Proprietor shall be bound to insure their Dwellinghouse or Commercial Unit (as the case may be) against loss by fire and all other risks normally covered by a comprehensive buildings insurance policy with a reputable insurance company of good standing for the full replacement value thereof and in the event of any Dwellinghouse or Commercial Unit (as the case may be) or any part thereof being destroyed or damaged by fire or otherwise the Proprietor of the same shall be bound to restore within two years after such destruction or damage the Dwellinghouse or Commercial Unit (as the case may be) to the value thereof immediately prior to such destruction or damage and the Dwellinghouse or Commercial Unit (as the case may be) shall be re erected or restored so as to be in all respects consistent with the conditions contained herein.

ent in favour of each Unit.

These rights are imposed as servitudes on the Development.

it shall have a right of access for vehicular and pedestrian purposes as appropriate over, across and along the Roads for all usual and necessary purposes.

## 1 ACCESS OVER ROADS

The Proprietors, tenants or occupiers of each Unit shall have a right of access for vehicular and pedestrian purposes as appropriate over, across and along the Roads for all usual and necessary purposes.

Unit shall have a right to use the Service Media for the purpose of Maintaining same.

## 2 SERVICE MEDIA

The Proprietors, tenants and occupiers of each Unit shall have a right to use the Service Media together with a right of access thereto for the purpose of Maintaining same.

adjoining Units or other parts of the Development to the Development Common Parts or to any other parts erected on the boundaries of any Unit or the Development Common Parts shall be subject to the rights of access of the Proprietors.

## 3 MUTUAL ACCESS OVER UNITS

3.1. Each Proprietor shall have a right of access to any part of the Development where necessary for carrying out Maintenance of the property or to any buildings, fences, walls and other structures erected on the Development Common Parts and each Unit and shall have a right of access in favour of the adjoining Proprietors.

of each Unit (including the Developers) and to their employees, contractors, sub-contractors, agents and all others authorised by them the right to erect scaffolding for the purposes of constructing and Maintaining the same on the adjoining Units together with all necessary rights of access for the purpose of erecting and thereafter dismantling the same.

3.2. There is reserved in favour of the Proprietor of each Unit the right to use the scaffolding of his employees, contractors, sub-contractors, agents and all others authorised by them for the purpose of erecting and thereafter dismantling the same on the adjoining Units together with all necessary rights of access for the purpose of erecting and thereafter dismantling the same.

Unit (as the case may be) is constructed in such a way so as to be keyed into and/or derive support from or give support to an adjoining Dwellinghouse or Commercial Unit (as the case may be) or where any Dwellinghouse or Commercial Unit (as the case may be) is constructed in such a way so as to be keyed into and/or derive support from or give support to that part of the roof structure including the barge board or eaves of an adjoining Unit or Dwellinghouse or Commercial Unit (as the case may be) thereon, the Proprietor of such Unit (as the case may be) shall enjoy or be subject to all necessary rights of access over the adjoining Unit (as the case may be) for the purpose of Maintaining same. The Proprietor of the benefited property shall have all necessary rights of access over the adjoining Unit and/or Dwellinghouse or Commercial Unit (as the case may be) for the purpose of Maintaining same (as the case may be).

3.3. Where any Dwellinghouse or Commercial Unit is constructed in such a way so as to be keyed into and/or derive support from or give support to an adjoining Dwellinghouse or Commercial Unit (as the case may be) or where any Dwellinghouse or Commercial Unit (as the case may be) is constructed in such a way so as to be keyed into and/or derive support from or give support to that part of the roof structure including the barge board or eaves of an adjoining Unit or Dwellinghouse or Commercial Unit (as the case may be) thereon, the Proprietor of such Unit (as the case may be) shall enjoy or be subject to all necessary rights of access over the adjoining Unit (as the case may be) for the purpose of Maintaining same. The Proprietor of the benefited property shall have all necessary rights of access over the adjoining Unit and/or Dwellinghouse or Commercial Unit (as the case may be) for the purpose of Maintaining same (as the case may be).

s or Commercial Units (as the case may be) being linked or overhanging in the fashion referred to in paragraph 3.3 of this Part II of the Schedule or where it is so linked or overhanging in the fashion referred to in

3.4. Where, as a consequence of Dwellinghouse or Commercial Unit being linked or overhanging in the fashion referred to in paragraph 3.3 of this Part II of the Schedule or where it is so linked or overhanging in the fashion referred to in

is deemed necessary or desirable by the Developers that surface water or other drainage including gutters and down pipes be routed from one Unit onto an adjoining Unit and/or the respective Dwellinghouses or Commercial Units (as the case may be) thereon, the adjoining Unit and/or Dwellinghouses or Commercial Units (as the case may be) thereon shall be subject to a servitude right for drainage in that connection and the Proprietor of the benefited property shall have a right of access over the adjoining Unit and/or Dwellinghouse or Commercial Unit (as the case may be) thereon for the purposes of Maintenance of any such gutters, pipes and others.

### **Part III: Reservations to Developers and Others**

#### **GENERAL SERVITUDE AND OTHER RIGHTS**

These rights are imposed as servitudes on the Development in favour of each Unit, for the benefit of each Unit in the Development but only insofar as the Developers remain the owners of any such Units within the Development.

- 1.1 the servitude rights to lay such Service Media within or through the Development as they consider appropriate and to make and maintain connections to any existing Service Media together with all necessary servitude rights of access for these purposes and for the purposes of the Maintenance of the same,
- 1.2 in the event of any contravention of the provisions of this Deed relating to the Maintenance of any Visibility Splay, the right to remove any structure, item, tree, shrub or plant within the Visibility Splay with a servitude right of access over the area of ground concerned with all necessary equipment for the purposes of exercising said right,
- 1.3 the right to grant or confer upon any Statutory Undertaker the rights referred to in paragraphs 1.1 and 1.2 of this Part III of the Schedule,
- 1.4 the right to grant or confer upon any Statutory Undertaker the right to undertake:
  - 1.4.1 the laying or Maintenance of public utilities plant on any Service Strip or Service Area,
  - 1.4.2 the Maintenance of the kerbing ex adverso the boundary of a Unit and any other part of the Development, with all necessary rights of access over any part of the Development at all times and without notice for the purpose of Maintaining the said kerbing, and
  - 1.4.3 the clearance of snow, slush, ice or the like from the Roads and at any time without notice the deposit of such snow, slush, ice or the like as also deposits of sand, grit, salt or the like on any Service Strip together with all necessary rights of access to all Service Strips for this purpose; Declaring that the Roads Authority, Statutory Undertaker, or any other party in exercising its statutory right to excavate in any Service Strip will be limited in their liability for reinstatement to the provision of a grass seeded surface to the original line and level,
- 1.5 the servitude rights to construct and take access and egress over the Roads in accordance with all necessary planning permission and road construction consents required relative to same and to make and maintain all necessary connections to same and take access and egress over same together with all necessary servitude rights of access over such parts of the Development as are necessary for these purposes and for the purposes of Maintenance of the same.
- 1.6 to alter the route, level or positioning of, or of any connections leading to, or to realign, any Service Media through any part of the Development including, without limitation, any Service Strip, and for that purpose to alter the route of any Service Media or connections, whether or not associated with

any Service Strip, so as to run through any part of the Development including without limitation the Development Common Parts.

- 1.7 to remove or decommission any, or introduce new or replacement, Service Media serving or to serve any part of the Development.

## 2 **VARIATION TO PLANS**

- 2.1 There is reserved to the Developers the power to make whatever alterations or deviations as they may consider proper upon any plans of the Development or to depart entirely therefrom.

## 3 **RIGHT TO DISPOSE OF PARTS OF DEVELOPMENT**

- 3.1 There is reserved to or conferred upon the Developers at any time prior to disposing same to the association a right to sell, convey or otherwise dispose of any part of the Development for such purposes as the Developers may think fit, including without prejudice to the foregoing generality the right to convey any part of the Open Ground to any other party and that whether or not:

- 3.1.1 such part of the Open Ground has been Maintained at any time by the Proprietors or any of them, or

- 3.1.2 the Proprietors or any of them have at any time contributed to the cost of Maintenance of such part of the Open Ground.

- 3.2 In exercising the right conferred by paragraph 3.1 of this Part III of the Schedule the Developers may exercise any of the reservations or rights specified in paragraph 1 of this Part III of the Schedule.

#### **Part IV: The Development**

(First) ALL and WHOLE the subjects known as Dubford Farm, Bridge of Don, Aberdeen; (Second) ALL and WHOLE that area or piece of ground lying on or towards the south west of the public road known as Shielhill Road, Bridge of Don Aberdeen being the subjects shown outlined in black and coloured pink on the plan annexed and signed as relative to Disposition by Arthur Alistair Davidson in favour of Scotia Homes Limited dated 30<sup>th</sup> September 2013 as said subjects (First) and (Second) are registered in the Land Register of Scotland together under the amalgamated Title Number ABN 110974; and (Third) ALL and WHOLE the subjects at Dubford Farm aforesaid extending to 16.41 acres or thereby and registered in the Land Register of Scotland under Title Number ABN116054.

## **Part V: Development Management Scheme**

### **PART I- INTERPRETATION**

#### **RULE I - INTERPRETATION**

##### **Definitions**

I. In this scheme, unless the context otherwise requires:

"the Act" means the Title Conditions (Scotland) Act 2003;

"advisory committee" means any such committee formed in pursuance of rule 15.1;

"association" means the owners' association of the development established under article 4 of the Development Management Scheme Order;

"block" means a Block (as defined in the foregoing Deed of Conditions);

"block common property" means the Block Common Property as defined in the foregoing Deed of Conditions;

"commercial unit" means a Commercial Unit as defined in the foregoing Deed of Conditions;

"developers" means the Developers as defined in the foregoing Deed of Conditions;

"deed of disapplication" means a deed granted pursuant to section 73 of the Act;

"deed of variation" means a deed of variation or discharge granted pursuant to article 7 or 8 of the Development Management Scheme Order;

"the development" means the Development as defined in the foregoing Deed of Conditions;

"the Development Management Scheme Order" means the Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009;

"dwellinghouse" means a Dwellinghouse as defined in the foregoing Deed of Conditions;

"general meeting" means an annual or other general meeting of the association;

"maintenance" means Maintenance as defined in the foregoing Deed of Conditions;

"manager" means the person appointed to be manager of the association;

"member" means a member of the association in accordance with rule 2.3;

"owner" means a Proprietor (as defined in the foregoing Deed of Conditions);

"regulations" means regulations made under rule 3.6;

"reserve fund" means money held on behalf of the association to meet the cost of long term maintenance, improvement or alteration of scheme property or to meet such other expenses of the association as the association may determine;

"roads" means Roads as defined in the foregoing Deed of Conditions;

"scheme property" means the Development Common Parts as defined in the foregoing Deed of Conditions;

"service charge" means the contribution to association funds payable in accordance with Part 4 of this scheme and includes additional service charge;

"service media" means Service Media as defined in the foregoing Deed of Conditions; and

"unit" means a Unit (as defined in the foregoing Deed of Conditions).

## PART 2 -THE OWNERS' ASSOCIATION

### RULE 2 – ESTABLISHMENT, STATUS ETC.

#### Establishment

2.1 The association is established on the day on which this scheme takes effect.

#### Status

2.2 The association is a body corporate to be known as The Dubford Owners' Association.

#### Members of the association

2.3 The members are the persons who are the current owners of the units and their successors in title to which this scheme applies and has taken effect; and where two or more persons own a unit both (or all) of them are members.

#### Address of association



2.4 The address of the association is that of:

(a) the development; and

(b) the manager,

or either of them.

### RULE 3 – FUNCTION, POWERS AND ENFORCEMENT

#### Function of association

3.1 The function of the association is to manage the development for the benefit of the members.

#### Powers of the association

3.2 The association has, subject to rule 3.3, power to do anything necessary for or in connection with the carrying out of the function mentioned in rule 3.1 and in particular may:

- (a) own, or acquire ownership of, any part of the development;
- (b) carry out maintenance, improvements or alterations to, or demolition of, the scheme property;
- (c) enter into a contract of insurance in respect of the development or any part of it (and for that purpose the association is deemed to have an insurable interest);
- (d) purchase, or otherwise acquire or obtain the use of, moveable property;
- (e) require owners of units to contribute by way of service charge to association funds;
- (f) open and maintain an account with any bank or building society;
- (g) invest any money held by the association;
- (h) borrow money; or
- (i) engage employees or appoint agents.

#### Prohibited activities

3.3 The association shall not have power to:

- (a) acquire land outwith the development;

(b) carry on any trade whether or not for profit; or

(c) make regulations other than in accordance with rule 3.6.

Scheme to be binding

3.4 This scheme is binding on the association, the manager and the members as are any regulations which have taken effect; and a rule, or any such regulation, in the form of an obligation to refrain from doing something is binding on:

(a) a tenant of property affected by the rule or regulation; or

(b) any other person having the use of such property.

Enforcement of scheme

3.5 The association may enforce:

(a) the provisions of this scheme and any regulations which have taken effect; and

(b) any obligation owed by any person to the association.

Regulations

3.6 The association may, at a general meeting:

(a) make regulations as to the use of recreational facilities which are part of the scheme property; and

(b) revoke or amend regulations made under paragraph (a),

but any such regulation, revocation or amendment takes effect only after a copy of it has been delivered or sent to each member.

#### **RULE 4 - THE MANAGER**

Association to have manager

4.1 The association is to have a manager who, subject to any other provision of this scheme, is a person (whether or not a member) appointed by the association at a general meeting.

Power to remove manager

4.2 The association may at a general meeting remove the manager from office before the expiry of that person's term of office.

#### Validity of acts of manager

4.3 Any acts of the manager are valid notwithstanding any defect in that person's appointment.

#### Manager to be agent

4.4 The manager is an agent of the association.

#### Exercise of powers

4.5 Subject to this scheme, any power conferred on the association under or by virtue of this scheme is exercisable by:

- (a) the manager; or
- (b) the association at a general meeting.

#### Duties owed to association and members

4.6 Any duty imposed on the manager under or by virtue of this scheme is owed to the association and to the members.

#### Manager to comply with directions

4.7 The manager must, in so far as it is reasonably practicable to do so, comply with any direction given by the association at a general meeting as respects the exercise by the manager of:

- (a) powers conferred; or
- (b) duties imposed,

on the association or on the manager.

#### Information about management

4.8 Any member may require the manager to allow that member to inspect a copy of any document, other than any correspondence with another member, which relates to the management of the development; and if the document is in the manager's possession or it is reasonably practicable for the manager to obtain a copy of it the manager must comply with the requirement.

Notice to manager on sale etc. of unit

4.9 Any member who sells or otherwise disposes of a unit must, before the date on which the person to whom the unit is to be sold (or otherwise transferred) will be entitled to take entry, send a notice to the manager stating, to the extent to which the information is known by that member:

- (a) the entry date and the name and address of that person;
- (b) the name and address of the solicitor or other agent acting for that person in the acquisition of the unit; and
- (c) an address at which the member may be contacted after that date.

## **RULE 5–EXECUTION OF DOCUMENTS**

Execution of documents by association

5. A document is signed by the association if signed on behalf of the association by:

- (a) the manager; or
- (b) a person nominated for the purpose by the association at a general meeting,

provided that the manager or person acts within actual or ostensible authority to bind the association.

## **RULE 6–WINDING UP**

Commencement of winding up

6.1 The manager must commence the winding up of the association on the day on which this scheme ceases to apply as respects the development.

Distribution of funds

6.2 The manager must, as soon as practicable after the commencement of the winding up, use any association funds to pay any debts of the association; and thereafter must distribute in accordance with this scheme any remaining funds among those who were, on the date when the winding up commenced, owners of units.

Final accounts

6.3 The manager must:

(a) prepare the final accounts of the association showing how the winding up was conducted and the funds were disposed of; and

(b) not later than six months after the commencement of the winding up, send a copy of those accounts to the owner of every unit.

#### Automatic dissolution of association

6.4 Subject to rule 6.5, the association is dissolved at the end of the period of six months beginning with the commencement of the winding up.

#### Delayed dissolution

6.5 At any time before the end of the period of six months mentioned in rule 6.4, the members may determine that the association is to continue for such period as they may specify; and if they so determine it is dissolved at the end of the period so specified.

### PART 3- MANAGEMENT

#### RULE 7 – APPOINTMENT OF MANAGER

##### First manager

7.1 The first manager will be the developers or such party as appointed by the developers and:

- (a) acts as manager until the first annual general meeting is held;
- (b) is entitled to reasonable remuneration; and
- (c) is eligible for reappointment.

##### Appointment of manager

7.2 The association:

- (a) at the first annual general meeting; and
- (b) where the manager's period of office expires or a vacancy occurs, at any subsequent general meeting,

is to appoint a person to be manager on such terms and conditions as the association may decide.

##### Certificate of appointment

7.3 Not later than one month after the date of a general meeting at which a person is appointed to be manager:

- (a) that person; and
- (b) on behalf of the association, a member,

must sign a certificate recording the making, and the period, of the appointment.

#### RULE 8 – DUTIES OF MANAGER

##### Duties of manager

8. The manager must manage the development for the benefit of the members and in particular must:

- (a) from time to time carry out inspections of the scheme property;
- (b) arrange for the carrying out of maintenance to scheme property;
- (c) fix the financial year of the association;
- (d) keep, as respects the association, proper financial records and prepare the accounts of the association for each financial year and send to the owners a full and vouched statement of account (in arrears) of his intromissions or shall make such statement available at his place of business to any owner or any person appointed to act for an owner who wishes to examine same;
- (e) implement any decision made by the association at a general meeting;
- (f) in so far as it is reasonable to do so, enforce:-
  - (i) any obligation owed by any person to the association; and
  - (ii) the provisions of the scheme and of any regulations which have taken effect;
- (g) if there are regulations, keep a copy of them (taking account of revocations and amendments);
- (h) keep a record of the name and address of each member;
- (i) arrange for the insurance of the scheme property;

G) if notice is served on the manager in terms of Clause 4.9 the manager is bound, prior to the stated date of entry, to issue to the Seller a note of the estimated costs outstanding and likely to be due by the Seller up to the date of entry. The manager may over-estimate such sum and that with a view to ensuring that the incoming purchaser shall not, so far as possible, be liable for any historic costs which are outstanding and due by the Seller of the Unit. The purchaser's obligation is to ensure that the manager receives settlement of such sum as is estimated to be due and payable and that from the proceeds of sale which failing the purchaser shall become liable to settle such costs;

(k) if so conferred the power by a majority decision of the association, to grant a specific deed of variation or discharge of a community burden created in this Deed;

(l) accept delivery of the disposition (s) of the scheme property and/or any part thereof by the developers in terms of rule 23.1 and attend to prompt registration thereof in the Land Register of Scotland;

(m) arrange for the maintenance, repair, decoration and other operations in respect of the block common property and to recover the costs thereunder;

(n) arrange a common block insurance policy; in respect of any block

(o) allocate for use by owners of individual units; for use by visitors; or for disabled parking; or as parent and child parking spaces; such car parking spaces within the Development as have not been exclusively disposed to an owner; and

(p) install, maintain, repair and, if necessary, renew or reposition, a communal satellite dish or aerial on any block common property for the service of dwellinghouse and commercial units within that block.

## **RULE 9-CALLING OF GENERAL MEETINGS**

### **First annual general meeting**

9.1 The first annual general meeting must be called by the manager and held not later than twelve months after the day on which, in accordance with rule 2.1, the association is established.

### **Annual general meetings**

9.2 The manager must call an annual general meeting each year; and a meeting so called must be held no more than fifteen months after the date on which the previous annual general meeting was held.

### **Other general meetings**

9.3 The manager may call a general meeting at any time and must call a general meeting if:

- (a) a revised draft budget requires to be considered;
- (b) required to call that meeting by members holding not less than twenty five per cent. of the total number of votes allocated; or
- (c) so required by a majority of the members of the advisory committee.

#### Calling of meeting

9.4 Not later than fourteen days before the date fixed for a general meeting the manager must call the meeting by sending to each member:

- (a) a notice stating:
  - (i) the date and time fixed for the meeting and the place where it is to be held; and
  - (ii) the business to be transacted at the meeting; and
- (b) if the meeting is an annual general meeting, copies of the draft budget and (except in the case of the first annual general meeting) the accounts of the association for the last financial year.

#### Validity of proceedings

9.5 Any inadvertent failure to comply with rule 9.4 as respects any member does not affect the validity of proceedings at a general meeting.

#### Member's right to call meeting in certain circumstances

9.6 Any member may call a general meeting if:

- (a) the manager fails to call a general meeting:
  - (i) in a case where paragraph (b) or (c) of rule 9.3 applies, not later than fourteen days after being required to do so as mentioned in those paragraphs; or
  - (ii) in any other case, in accordance with this scheme; or
- (b) the association does not have a manager.

#### Procedure where member calls meeting



9.7 Where under rule 9.6 a general meeting is called by a member:

- (a) any rule imposing a procedural or other duty on the manager in relation to general meetings (other than the duty imposed by rule 9.4(b)) applies as if it imposed the duty on the member; and
- (b) if there is a manager, the member must send that person a notice stating the date and time fixed for the meeting, the business to be transacted at it and the place where it is to be held.

## RULE 10 – GENERAL MEETINGS: QUORUM

Number required for quorum

10.1 A quorum is members present or represented holding 5 per cent. of the total number of votes allocated.

Quorum necessary for meeting to begin

10.2 A general meeting is not to begin unless there is a quorum; and if there is still no quorum twenty minutes after the time fixed for a general meeting then:

- (a) the meeting is to be postponed until such date, being not less than fourteen nor more than twenty eight days later, as may be specified by the manager (or, if the manager is not present or if there is no manager, by a majority of the members present or represented); and
- (b) the manager (or any member) must send to each member a notice stating the date and time fixed for the postponed meeting and the place where it is to be held.

No quorum at postponed meeting

10.3 A meeting may be postponed only once; and if at a postponed meeting the provisions in rule 10.2 as respects a quorum are not satisfied, then the members who are present or represented are to be deemed a quorum.

Quorum need not be maintained

10.4 If a general meeting has begun, it may continue even if the number of members present or represented ceases to be a quorum.

## RULE II – GENERAL MEETINGS: VOTING

Allocation and exercise of votes

11.1 For the purpose of voting on any proposal at a general meeting one vote is allocated to each unit; and any right to vote is exercisable by the owner of that unit or by someone (not being the manager) nominated in writing by the owner to vote.

Exercise of vote where two or more persons own unit

11.2 If a unit is owned by two or more persons the vote allocated to that unit may be exercised by either (or any) of them; but if those persons disagree as to how the vote should be cast then no vote is counted for that unit.

Decision by majority

11.3 Except where this scheme otherwise provides, a decision is made by the association at a general meeting by majority vote of all the votes cast.

Method of voting

11.4 Voting on any proposal is by show of hands; but the convener may determine that voting on a particular proposal is to be by ballot.

## RULE 12 –GENERAL MEETINGS: FURTHER PROVISIONS

Election of convener

12.1 The members present or represented at a general meeting are to elect one of their number or the manager to be convener of the meeting; and on being so elected the convener is to take charge of the organisation of the business of the meeting.

Additional business

12.2 Any member present or represented at a general meeting may nominate additional business to be transacted at that meeting.

Manager to attend and keep record of business transacted

12.3 Except where unable to do so because of illness or for some other good reason, the manager must attend each general meeting and:

(a) keep a record of the business transacted; and

(b) not later than twenty one days after the date of the meeting, send a copy of the record of business to each member,

and where the manager does not attend the convener is to nominate a person present to carry out the manager's duties under paragraphs (a) and (b) of this rule in respect of the meeting.

## RULE 13 – SPECIAL MAJORITY DECISIONS

Special majority required

13.1 The association may:

- (a) make a payment out of any reserve fund which it has formed; or
- (b) use any money held on behalf of the association to carry out improvements or alterations to, or demolition of, scheme property (not being improvements, alterations or demolition reasonably incidental to maintenance),

but only after the association have, at a general meeting, by majority vote of all the votes allocated, determined to do so.

Consent of owner to be given where not common property

13.2 Where scheme property is not the common property of the members (or not the common property of members who between them own two or more units) a determination under rule 13.1 for the purposes of paragraph (b) of that rule may be implemented only if the owner of the property consents in writing to the improvements, alterations or demolition in question.

## RULE 14 – EMERGENCY WORK

Power to instruct etc.

14.1 Any member may instruct or carry out emergency work.

Reimbursement of member

14.2 The association must reimburse any member who pays for emergency work.

Meaning of 'emergency work'

14.3 "Emergency work" means work which requires to be carried out to scheme property:

- (a) to prevent damage to any part of that or any other property; or
- (b) in the interests of health or safety.

in circumstances in which it is not practicable to consult the manager before carrying out the work.

If the manager and/or the advisory committee determine that the works instructed as emergency work were not in fact emergency work then the proprietor or member instructing such works shall be responsible for the costs thereof.

## RULE 15- ADVISORY COMMITTEE

### Power to elect advisory committee

15.1 The association may at a general meeting elect such number of the members as it may specify to form an advisory committee whose function is to provide the manager with advice relating to the manager's:

- (a) exercise of powers; and
- (b) fulfilment of duties,

under or by virtue of this scheme.

### Manager to consult advisory committee

15.2 Where an advisory committee is formed, the manager is from time to time to seek advice from the committee.

## RULE 16 – VARIATION

### Deeds of variation under article 7

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has been so granted.

### Deeds of variation under article 8 and deeds of disapplication

16.2 The manager may, on behalf of the association, grant a deed of variation under article 8 of  
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association has, at a general meeting, by majority of all the votes allocated, determined to do so.

## RULE 17 – WINDING UP

### Distribution of funds on winding up

17.1. Where the association is wound up, the assets of the association shall be distributed among the members in proportion to the number of shares held by them.

## PART 4- FINANCIAL MATTERS

## RULE 18 – ANNUAL BUDGET

### Duty of manager to prepare annual budget

18.1 Before each annual general meeting the manager must prepare, and submit for consideration at that meeting, a draft budget for the new financial year.

### Content of draft budget

18.2 A draft budget is to set out:

- (a) the total service charge and the date (or dates) on which the service charge will be due for payment;
- (b) an estimate of any other funds which the association is likely to receive and the source of those funds;
- (c) an estimate of the expenditure of the association, and
- (d) the amount (if any) to be deposited in a reserve fund.

### Consideration of draft budget by association

18.3 The association may at a general meeting:

- (a) approve the draft budget subject to such variations as it may specify; or
- (b) reject the budget and direct the manager to prepare a revised draft budget for consideration by the association at a general meeting to be called by the manager and to take place not later than two months after the date of the meeting at which the budget is rejected.

### Rejected budget- payment of service charge

18.4 Where the budget is rejected the service charge exigible under the budget last approved is, until a new budget is approved, to continue to be exigible and is to be due for payment on the anniversary (or anniversaries) of the date (or dates) on which it was originally due for payment.

Revised draft budget

18.5 At a general meeting at which a revised draft budget is considered, the association may approve or reject the budget as mentioned in rule 18.3(a) and (b).

#### RULE 19- SERVICE CHARGE

Amount of service charge

19.1 Except where rules 19.2 and 19.3 apply, the amount of any service charge imposed under this scheme is the same in respect of each unit.

19.2 The association may at a general meeting decide as respects a particular owner and in relation to a particular payment that no service charge (or a service charge of a reduced amount) is payable.

19.3 The service charge imposed may be separated in respect of blocks such that such costs forming part of a service charge attributable exclusively to maintaining the block common property in the development may be charged in addition to the service charge payable by the other proprietors of units within the development and such service charge in respect of the block common property shall be divided among all the units within the block and the service charge for scheme property shall be divided among all the units in the development.

Manager to collect service charge

19.4 When the draft budget has been approved in accordance with this scheme, the manager:

(a) must send to each owner a notice requiring payment, on the date (or dates) specified in the budget, of the amount of the service charge so specified; and

(b) may send to each owner at any time a notice:

(i) requiring payment, on the date (or dates) stated in the notice, of an additional amount of service charge determined under rule 20.1 ; and

(ii) explaining why the additional amount is payable,

and each owner is liable for that amount accordingly.

#### Redistribution of share of costs

19.5 Where an owner is liable for a service charge but the service charge cannot be recovered (for example because the estate of that owner has been sequestrated, or that owner cannot, by reasonable inquiry, be identified or found) then that service charge is to be shared equally among the other owners or, if they so decide, is to be met out of any reserve fund; but that owner remains liable for the service charge.

#### Interest payable on overdue service charge

19.6 Where any service charge (or part of it) remains outstanding not less than twenty eight days after it became due for payment, the manager may send a notice to the owner concerned requiring that person to pay interest on the sum outstanding at such reasonable rate and from such date as the manager may specify in the notice.

#### Interpretation of rule 19

19.7 In rule 19 references to "owner" are references to an owner of a unit.

19.8.1 On taking entry to a unit the owner must pay to the manager an initial deposit on account of service charge which is indicated to be due by the Developer and where the Developer is not the seller, by the manager;

19.8.2 The owner will not be entitled to repayment of the initial deposit when it ceases to become an owner of a unit and the owner shall be obliged to ensure that a sum equal to the initial deposit (under deduction of any sums due by the owner on account of service charge during his period of ownership) has been paid to the owner by the new owner of the unit;

### RULE 20- ADDITIONAL SERVICE CHARGE

#### Additional service charge

20.1 The manager may from time to time determine that an additional service charge, limited as is mentioned in rule 20.2, is payable by the members to enable the association to meet any expenses that are due (or soon to become due) and which could not be met otherwise than out of the reserve fund.

#### Limit on amount of additional service charge

20.2 In any financial year the total amount of any additional service charge determined under rule 20.1 is not to exceed twenty five per cent. of the total service charge for that year as set out in the budget approved by the association; but in calculating that percentage no account is to be taken of

any additional service charge payable in respect of the cost of emergency work (as defined in rule 14.3).

#### Supplementary budget

20.3 If in any financial year the manager considers that any additional service charge exceeding the percentage mentioned in rule 20.2 should be payable, the manager must prepare and submit to the association at a general meeting a draft supplementary budget setting out the amount of the additional service charge and the date (or dates) on which the charge will be due for payment; and rules 18.3, 18.4 and 19.4(a) apply as respects that draft supplementary budget as they apply as respects a draft budget and revised draft budget.

### RULE 21 -FUNDS

#### Association funds

21.1 Any association funds must be:

- (a) held in the name of the association; and
- (b) subject to rule 21.2, deposited by the manager in a bank or building society account.

#### Special treatment of certain funds

21.2 The manager must ensure that any association funds which are likely to be held for some time are:

- (a) deposited in an account which is interest bearing; or
- (b) invested in such other way as the association may at a general meeting decide.

#### Reserve fund

21.3 The manager must ensure that any association funds forming a reserve fund are kept separately from other association funds.

### RULE 22-SENDING

#### Sending

22.1 Where a rule requires that a thing be sent:



(a) to a person it shall suffice, for the purposes of that rule, that the thing be sent to an agent of the person;

(b) to a member and that member cannot by reasonable inquiry be identified or found, it shall suffice, for the purposes of that rule, that the thing be sent to the member's unit addressed to "The Owner" (or using some other such expression, as for example "The Proprietor").

#### Method of sending

22.2 Any reference to a thing being sent shall be construed as a reference to its being:

(a) posted;

(b) delivered; or

(c) transmitted by electronic means.

#### Date of sending

22.3A thing posted shall be taken to be sent on the day of posting; and a thing transmitted by electronic means, to be sent on the day of transmission.

### PART FIVE-SCHEME PROPERTY

23.1 As soon as reasonably practicable following the identification and completion by the developers of any part of the scheme property, the developers shall convey such part of the scheme property as identified and completed to the association for no consideration and the manager shall accept delivery of the disposition in terms of the draft Disposition at Part VII of the Schedule and attend to prompt registration thereof in the Land Register and on the date of conveyance the developers shall provide to the association:-

23.1.1 A validly executed disposition of the relevant part of the scheme property (but always excluding such roads as the developers intend to make available for adoption and also excluding any roads which exclusively serve as access to one or more units and in respect of which rights of property, exclusive or common, are to be conveyed to the owner or owners of said unit or units) in favour of the association;

23.1.2 All documents and evidence that the Keeper may require to enable the Keeper to create a Title Sheet in the name of the association as the registered proprietor of the relevant part of the scheme property without any exclusion of indemnity in terms of Section 12(2) of the Land Registration (Scotland) Act 1979. Such documents will include a plan sufficient to enable the relevant part of the scheme property to be identified on the Ordnance Survey map;

- 23.1.3 If there is a heritable security affecting the relevant part of the scheme property, a valid discharge or deed of restriction releasing the relevant part of the scheme property from that security together with a properly completed and signed application to the Keeper to register that deed in the Land Register.
- 23.1.4 Where the developers have granted a Floating Charge which affects or may affect the relevant part of the scheme property, exhibit a Letter of Non-crystallisation confirming that the Floating Charge has not crystallised and that the creditor consents to the conveyance of the relevant part of the scheme property.
- 23.2 The above provision 23.1 can be repeated by the developers on as many occasions as the developers may deem appropriate throughout the period of the development. Within 12 months of completion of the development (or earlier if required by the developers) the developers may convey the residual part or parts of the scheme property to the association as they deem appropriate and the above provision shall apply *mutatis mutandis* to the said conveyance.
- 23.3 The association shall be obliged to permit any third party, without payment of consideration, to make use of any part of the scheme property so conveyed to form and thereafter maintain any extension to the roads (including forming linkages to existing service media) for which the said party obtains the necessary consents, including, without prejudice to the foregoing generality, Planning Permission and/or Road Construction Consent from the Local Authority and to use and allow the use of the same for the purpose of access to and egress from any land lying adjacent to the development for pedestrians and all manner of vehicles. A provision to this effect shall be included in the disposition in favour of the association.

## **Part VI: Development Common Parts Provisions**

### **REAL BURDENS AFFECTING THE DEVELOPMENT COMMON PARTS**

The following real burdens are imposed on the Development Common Parts in favour of the Residual Property, namely:-

- 1.1 The association shall not use the Development Common Parts for any purpose other than in accordance with the Planning Consent for the Development subject to any variations thereof by way of Necessary Consents obtained.
- 1.2 The association shall be bound to make the Land Certificate for the Development Common Parts forthcoming to the Developers or the Proprietors for a reasonable time on necessary occasions when required and that free of expense to the Developers or the Proprietors; and
- 1.3 The servitude rights set out in paragraph 3 of this Part VI of the Schedule shall be (i) exercised in such manner as to cause the least practicable interference with the use and enjoyment of the Residual Property and (ii) subject to the association being responsible at all times for making good all damage caused to the Residual Property to the extent that such damage arises out of the exercise of said rights.
- 1.4 The servitude rights set out in paragraph 3.2 of this Part VI of the Schedule shall be exercised in accordance with reasonable prior written notice to and consultations with the relevant Proprietors affected by the exercise of such servitude rights.

### **2. REAL BURDENS AFFECTING THE RESIDUAL PROPERTY**

The following real burdens are imposed on the Residual Property in favour of the Development Common Parts:

- 2.1 The servitude rights set out in paragraph 4 of this Part VI of the Schedule shall be exercised in such manner as to cause the least practicable interference with the lawful and permitted activities and operations of the association upon the Development Common Parts.
- 2.2 The servitude rights set out in paragraph 4.1 of this Part VI of the Schedule shall be exercised (i) in accordance with reasonable prior written notice to and consultations with the association and (ii) subject to the party exercising such rights being responsible at all times for making good all damage caused to the Development Common Parts or to any trees, buildings or other structures or property in or upon the Development Common Parts to the extent that such damage arises out of the exercise of said rights.

### **3       SERVITUDES AFFECTING THE RESIDUAL PROPERTY**

The following servitudes are imposed on the Residual Property in favour of the Development Common Parts, namely:-

- 3.1       A servitude right of access to and egress from the Development Common Parts from and to the public road and footpath for pedestrians and all manner of vehicles over and through the Roads.
- 3.2       All necessary servitude rights of pedestrian and vehicular access reasonably required through the Residual Property for the purpose of (i) laying, using and thereafter Maintaining Service Media and (ii) gaining access to any part of the Development Common Parts for any purpose.

### **4       SERVITUDES AND COMMUNITY BURDENS AFFECTING THE DEVELOPMENT COMMON PARTS**

The following servitudes or community burdens are imposed on the Development Common Parts in favour of the Residual Property, namely:-

- 4.1.1     All necessary servitude rights of pedestrian and vehicular access reasonably required through the Development Common Parts for the purpose of (i) laying, using and thereafter Maintaining Service Media and (ii) gaining access to any part of the Residual Property for any purpose.
- 4.1.2     The servitude right or community burden to take access to and to use and enjoy for recreational and amenity purposes the Development Common Parts and all facilities and equipment (including without prejudice to the foregoing generality play areas, play equipment, paths, cycle tracks and woodland) situated thereon from time to time.

The following servitudes are imposed on the Development Common Parts in favour of the Residual Property, for the benefit of the Developers while the Developers remain the owners of any part of the Residual Property.

- 4.2.1     A servitude right to form and thereafter Maintain any extension to the Roads for which the Developers obtain Planning Permission and/or Road Construction Consent from the Local Authority over and across any part of the Development Common Parts;
- 4.2.2     A servitude right to install Service Media within said extension to the Roads, including all necessary rights of access over the Development Common Parts to lay, use and thereafter Maintain said Service Media and a right to connect into all Service Media laid within the Development Common Parts; and

- 4.2.3 A servitude right of access and egress to and from any land lying adjacent to the Development for pedestrians and all manner of vehicles over and through the Roads and the said extension(s) thereto formed in terms of paragraph 4.2.1 above.

## PART VII: Disposition in respect of the scheme property

WE, [the Developer] (the "Seller") registered proprietors of the property hereinafter disposed, FOR NO CONSIDERATION being paid HEREBY DISPONE to the [ details of the owners association to be confirmed] a body corporate established under Article 4 of the Title Conditions (Scotland) Act 2003 (Development Management Scheme Order) 2009 heritably and irredeemably ALL and WHOLE [insert conveyancing description of scheme property being sold by reference to a plan (e.g. that area of piece of ground extending to [ ] hectares or thereby and shown coloured [ ] on the plan annexed and signed as relative to this disposition) (the "Conveyed Property") which Conveyed Property forms part and portion of the property registered in the Land Register of Scotland under Title Number [ ] and Title Number [ ]; TOGETHER WITH (One) the fittings and fixtures therein and thereon; (Two) the whole real burdens, conditions, servitudes, parts, pertinents, rights and privileges, whether common, mutual or otherwise pertaining thereto which are more particularly described in the Deed of Conditions by us the said [ ] dated [ ] and registered in the Land Register of Scotland under the aforesaid Title Numbers; and (Three) our whole, right, title and interest present and future therein and thereto; BUT the Conveyed Property is disposed ALWAYS WITH AND UNDER the following real burden namely, the [ ] association shall be obliged to permit any third party, without payment of consideration, to make use of any part of the Conveyed Property to form and thereafter maintain any extension to the existing roads therein (including forming linkages to existing service media) for which the said party obtains the necessary consents, including, without prejudice to the foregoing generality, Planning Permission and/or Road Construction Consent from the Local Authority and to use and allow the use of the same for the purpose of access to and egress from any land lying adjacent to the development of which the Conveyed property forms part for pedestrians and all manner of vehicles; WITH ENTRY and VACANT POSSESSION as at the [insert date of entry] notwithstanding the date hereof; And the Seller grants warrandice IN WITNESS WHEREOF

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Don

[Signature]  
Amy O'Neill