

[DETAILED PLANNING PERMISSION TEMPLATE] [EXTERNAL]

MINUTE OF AGREEMENT

between

ABERDEEN CITY COUNCIL

and

[]

Subjects: -
Planning Application Reference: []

MINUTE OF AGREEMENT

between

ABERDEEN CITY COUNCIL, constituted by and acting under the Local Government etc. (Scotland) Act 1994 as Planning Authority in terms of the Town and Country Planning (Scotland) Act 1997 ("**the 1997 Act**") and having its principal office at Town House, Broad Street, Aberdeen (who and whose successors as Planning Authority aforesaid are hereinafter referred to as "the Council")

and

[] a company incorporated in Scotland under the Companies Acts (Registered Number []) and having its registered office at [] [or] [] residing at [] (who and whose successors in title to the Development Site are hereinafter referred to as "**the Proprietor**")

and

[], a company incorporated under the Companies Acts (Registered Number []) and having its registered office at [] [or] [] residing at [] (who and whose successors and nominees are hereinafter defined as the "**Developer**" [**NOTE** – Appropriate if Developer is separate party from the Proprietor])

With the consent of

[**insert details of any lender**] a company incorporated in Scotland under the Companies Acts (Registered Number []) and having their registered office at [] ("**the Bank**") [**NOTE** – if letter of consent provided as an alternative this should be included as part of the Schedule – see alternative drafting within Clause 14]

WHEREAS:

- A The Council is the Planning Authority for the Aberdeen City area in terms of Section 1 of the 1997 Act;
- B In terms of Section 75 of the 1997 Act a person may enter into an obligation with a planning authority restricting or regulating the development or use of land either permanently or during such period as may be specified in the instrument by which the obligation is entered into and this Agreement is a relevant instrument for that purpose;

- C The Application was made by the [Proprietor/Developer] [or] **[NOTE – specify third party applicant if applicable]** to the Council for planning permission in terms of Section 32 of the 1997 Act in respect of the Development;
- D The Proprietor is the heritable proprietor of the Development Site;
- E The Developer has entered into a contract with the Proprietor to purchase the Development Site **[NOTE – amend as appropriate]**
- F [The Bank as heritable creditor under a standard security granted in its favour by the Proprietor dated [] and recorded on [] in the [Land Register of Scotland under title number []/in the Division of the General Register of Sasines applicable to Aberdeen] has agreed to consent to the granting of this Agreement;]
- G The [] LDP/SDP/SG [] with reference to Policies [] provides that [NOTE – delete/amend as appropriate to justify any contributions/planning gain sought/other content of agreement]; [and /or]
- H [As a consequence of the Development, the following items of infrastructure require to be provided: **[NOTE - insert details of infrastructure]** in terms of ([] Plan policies []);]
- I The Council resolved to grant planning permission in terms of the Application at its [] committee on [] [or] [the Council's appointed officer in terms of section 43A(1) of the 1997 Act resolved on [] to grant the Application by virtue of the Council's scheme of delegation applicable to development management adopted under the said section 43A(1)], but to withhold the issuing of the Decision Notice until an agreement under Section 75 of the 1997 Act has been concluded for the purposes of restricting or regulating the Development and use of the Development Site.

1 Definitions and interpretation

1.1 In this Agreement (including the foregoing preamble) unless the context requires otherwise the following expressions shall have the following meanings:

1.1.1 **"1997 Act"** means the Town and Country Planning (Scotland) Act 1997 as amended from time to time;

1.1.2 **"Advert"** means an advertisement in each of the property supplements of the Press & Journal and Evening Express newspapers circulating in the Community for two (2) consecutive weeks or as otherwise agreed by the Council and the Proprietor both acting reasonably, intimating that the LCHOU is available for sale to Qualifying Purchasers at either the One Bedroom Unit Price, the Two Bedroom Unit Price, or the Three Bedroom

Unit Price as applicable to the relevant LCHOU, and referring to the Secured Amount;

1.1.3 **"Affordable Housing"** means housing affordable to those people in lower income groups within the Community which the market would not itself provide within that Community;

1.1.4 **"Affordable Housing Contribution"** means the payment by the Proprietor of the sum calculated by application of the following formula:-

$$A = B \times C$$

where:-

A = the amount to be paid

B = the Commuted Sum payable in lieu of provision of an Affordable Housing Unit

C = the number of Affordable Housing Units in respect of which a financial contribution is to be made in lieu of the provision of an Affordable Housing Unit on the Development Site required in terms of this Agreement;] **[NOTE –** the AHC is a total, rather than per unit sum, and so should not form part of the Per Unit payment arrangements under Clause [10]] **[or]**

"Affordable Housing Contribution" means the sum of [] POUNDS (£) Sterling **[NOTE –** formula based definition above may not be necessary where extent of "in lieu" contribution is known]

1.1.5 **"Affordable Housing Land"** means the area(s) of land within the Development Site on which the Affordable Housing Units are to be provided as agreed by the Council;

1.1.6 **"Affordable Housing Market Value"** means the sum applying at the time of the proposed sale which represents a fair value for the Affordable Housing Land and/or Affordable Housing Units in question (as applicable) reflecting its end use as Affordable Housing, as agreed between the Affordable Housing Proprietor and the Council or RSL all parties being required to act reasonably in the negotiations to agree said fair value, and failing agreement the sum assessed by an independent chartered surveyor appointed jointly by the parties (failing which appointed by the Chairperson of the Royal Institute of Chartered Surveyors on the request of either party), the cost of which appointment shall be borne solely by the Affordable Housing Proprietor, and acting as an expert, taking account of the Decision Notice but no account of the fact that the land is Serviced Land;

- 1.1.7 **"Affordable Housing Proprietor"** means the Proprietor to the extent that the same is the heritable proprietor of the Affordable Housing Land or any part thereof, but excluding for this purpose any Subsequent Owner;
- 1.1.8 **"Affordable Housing Provider"** means a body whose function or aim is to provide and manage Affordable Housing, including a housing association or housing company or a trust registered as a RSL or an alternative provider of Affordable Housing nominated by the Proprietor in respect of any Affordable Housing Land, and approved by the Council;
- 1.1.9 **"Affordable Housing Scheme"** means a written scheme which demonstrates how Affordable Housing will be delivered within the Development Site, such scheme to include details of:-
- 1.1.9.1 the number of Open Market Houses;
 - 1.1.9.2 the number and size (including number of bedrooms and net floorspace in metres²) of Affordable Housing Units and proposed Affordable Housing Tenure;
 - 1.1.9.3 the timescale for delivery of the Affordable Housing, and any phasing if relevant;
 - 1.1.9.4 if known, the identity of the proposed Affordable Housing Provider;
 - 1.1.9.5 the proposed location(s) of the Affordable Housing, including a plan thereof; and
 - 1.1.9.6 the Commuted Sum(s), if any, in lieu of provision of Affordable Housing Units.
- 1.1.10 **"Affordable Housing Tenure"** means any one or more of the following categories:
- 1.1.10.1 sale of Affordable Housing Land to an RSL or the Council for provision of Social Rented Affordable Housing Units, Mid-Market Rented Affordable Housing Units, or Shared Ownership;
 - 1.1.10.2 sale of Completed Affordable Housing Units to an RSL or the Council for provision of Social Rented Affordable Housing, Mid-Market Rented Affordable Housing, Shared Equity or Shared Ownership;
 - 1.1.10.3 Low Cost Home Ownership Units; or

- 1.1.10.4 such other scheme for the provision of Affordable Housing on the Development Site which may be agreed with the Council.
- 1.1.11 **"Affordable Housing Units"** means any Housing Unit which is being provided as Affordable Housing and falling within any of the categories of Affordable Housing Tenure;
- 1.1.12 **"Agreement"** means this Minute of Agreement together with the Schedule [and the Plan];
- 1.1.13 **"Application"** means the application made by the [Proprietor/Developer/third party applicant] to the Council identified in the planning register by the number [] for planning permission for the Development in terms of Section 32 of the 1997 Act, including any variations thereof;
- 1.1.14 **"Benchmark Price"** means the One Bedroom Unit Price, Two Bedroom Unit Price, or Three Bedroom Unit Price (as appropriate);
- 1.1.15 **"Bona Fide Third Party Purchaser"** means an individual purchaser in good faith and for value of a single Housing Unit, together with any land and any necessary rights in land incidental to the beneficial use of the Housing Unit, or his successor in title;
- 1.1.16 **"Civil Partner"** means a person in a registered civil partnership in terms of section 85 of the Civil Partnership Act 2004;
- 1.1.17 **"Committed"** means legally committed by way of contract or other binding commitment;
- 1.1.18 **"Community"** means the local government area of Aberdeen;[NOTE – check the use of this definition in individual agreements as the local government area may be too wide depending on the particular obligation]
- 1.1.19 **["Community Facilities Contribution"** means the sum of [] POUNDS (£[]) STERLING as Index Linked;]
- 1.1.20 **"Commuted Sum"** means [(£)] POUNDS [NOTE – insert appropriate figure in force at the time agreement entered into. Note that new SPG is pending.];
- 1.1.21 **"Completion"** means (i) the receipt by the Relevant Person of the notice issued by the Council (if the Council is the relevant verifier) under section 18 of the Building (Scotland) Act 2003, (ii) if the relevant verifier is not the Council, then the receipt by the Council of notification that the relevant

verifier has accepted the particular completion certificate, or (iii) the receipt by the Relevant Person of a temporary certificate issued under section 21 of the said 2003 Act, whichever is the earlier, and Completed shall be construed accordingly;

- 1.1.22 **"Completion Statement"** means a written statement confirming (a) the number and type of Open Market Housing Units and Affordable Housing Units which have been Completed within the relevant Quarter, and (b) the sum total of Per Unit Contributions payable in respect thereof in terms of this Agreement for that Quarter;
- 1.1.23 **["Core Path Contribution"** means the sum of [] POUNDS (£[]) STERLING as Index Linked;]
- 1.1.24 **"Decision Notice"** means the planning permission to be issued by the Council pursuant to the Application, **[NOTE – consider whether the definition should be expanded to include any of the following] [and where the context so admits shall include any variation or renewal thereof, or any planning permission granted under section 42 of the 1997 Act to develop the Development Site without compliance with condition(s) previously attached to planning permission] ;**
- 1.1.25 **"Development"** means **[NOTE – insert description of development]** permitted to be constructed on the Development Site in terms of the Decision Notice;
- 1.1.26 **"Development Commencement Date"** means the date on which a Material Operation is first carried out on the Development Site, which date shall in the event of dispute be determined by the Council acting reasonably; **[NOTE – consider if appropriate to add equivalent definition for Phase Commencement Date and/or Plot Commencement Date]**
- 1.1.27 **"Development Site"** means the subjects described in Part 1 of the Schedule and shown outlined in [] on Plan [];
- 1.1.28 **"Discount Percentage"** means the difference between the One Bedroom Unit Price or the Two Bedroom Unit Price or the Three Bedroom Unit Price as applicable to the LCHOU and the Open Market Value for that Housing Unit as established by the valuations provided in terms of paragraph [2] of the Schedule Part 3, expressed as a percentage reduction of that Open Market Value;
- 1.1.29 **["Education Contribution"]** means [] Pounds (£) Sterling as Index Linked;

- 1.1.30 **"Effective Date"** means the last of the dates on which the Agreement is signed;
- 1.1.31 **["Healthcare Contribution"** means [] Pounds (£) Sterling as Index Linked;]
- 1.1.32 **"Housing Units"** any dwelling (including a dwellinghouse, flat or maisonette) permitted to be constructed on the Development Site pursuant to the Decision Notice, whether or not such dwellings are divided from one another vertically or horizontally, and which term includes Affordable Housing Units;
- 1.1.33 **"Index"** means the All-in Tender Price Index as published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors on a quarterly basis **[NOTE – consider if another index is appropriate/preferred]**, or if that index ceases to be published or the basis upon which such index is calculated is substantially changed or rebased, such substitute or alternative index which, in the view of the Council, is most likely to achieve an equivalent result;
- 1.1.34 **"Index Linked"** means increased in accordance with the following formula:-
- $$\frac{b}{a} \times c$$
- Where: 'a' equals the Index published as at [] **[NOTE – date to be advised by Developer Obs team and then included in instruction sheet to Legal]**, 'b' equals the Index for the calendar month immediately preceding the relevant Payment Date and 'c' equals the relevant sum to be index linked (the term **"Index Linking"** being construed accordingly);
- 1.1.35 **"Insolvency Event"** means the occurrence in relation to any party bound by this Agreement of any of the following events: (a) the party becoming apparently insolvent; (b) the making of an order that they be wound up or the passing of a resolution for voluntary winding up; (c) the appointment of an administrative receiver or receiver and manager in respect of any of their assets and undertakings; (d) the making of any bankruptcy order or order for sequestration; (e) the making of any voluntary arrangement (corporate or individual) for a composition of debts; (f) the appointment of an administrator or the making of an administrative order; (g) the party being struck off the Register of Companies; (h) the appointment of a liquidator; or (i) any similar event which in the opinion of the Council is of like effect;
- 1.1.36 **"Keeper"** means the Keeper of the Land Register of Scotland and/or the General Register of Sasines;

- 1.1.37 **"LCHOU Land"** means an area of land approved by the Council within the Development Site upon which the Affordable Housing Units are to be provided as LCHOU;
- 1.1.38 **"LCHOU Land Proprietor"** means the Proprietor to the extent that the same is the heritable proprietor of the LCHOU Land or any part thereof, but excluding for this purpose any Subsequent Owner;
- 1.1.39 **"LCHOU"** or **"Low Cost Home Ownership Units"** means Affordable Housing Units made available as units for sale to Qualifying Purchasers at the relevant Benchmark Price all in accordance with the terms of [Part 3] of the Schedule;
- 1.1.40 **"Marketing"** means (1) providing the Council with promotional sales particulars in relation to the LCHOU for the Council to pass on to Qualifying Purchasers; (2) having on display in any sales office erected on the Development Site promotional sales particulars on the LCHOU for the duration of the marketing period, and which promotional sales material shall in the case of (1) and (2) refer to the Secured Amount; and (3) placing the Advert, and **"Market"** shall be construed accordingly;
- 1.1.41 **"Masterplan"** means the masterplan forming part [] of the Schedule;
- 1.1.42 **"Material Operation"** means an operation in accordance with Section 27(4) of the 1997 Act;
- 1.1.43 **"Mid-Market Rented Affordable Housing"** means Affordable Housing Units let on short assured tenancies in terms of the Housing (Scotland) Act 1988 (as amended) available at a rent at or below the applicable Local Housing Allowance level in terms of the Housing Benefit Regulations 2006 as amended, and **"Mid-Market Rented Affordable Housing Unit"** shall be construed accordingly [NOTE – to be amended on introduction of the Private Residential Tenancies in 2017];
- 1.1.44 **"Missives"** means an exchange of letters detailing the contractual conditions agreed for the sale and purchase of an LCHOU sold in accordance with Schedule Part 3;
- 1.1.45 **"One Bedroom Unit Price"** means the sum of [NINETY SEVEN THOUSAND AND FIVE HUNDRED AND NINETY POUNDS (£97,590.00)] STERLING; [NOTE –insert appropriate figure in force at time of execution of Agreement]
- 1.1.46 **"Open Market House"** means any Housing Unit which is not Affordable Housing;

- 1.1.47 **"Open Market Value"** means the value of each Housing Unit being the estimated amount for which the property should exchange on the date of valuation between a willing buyer and a willing seller in an arms' length transaction after proper marketing wherein the parties had acted knowledgeably, prudently and without compulsion and which will be determined on the assumption, if not a fact, that each Housing Unit is a private house for sale on the open market with vacant possession and not subject to the conditions within this Agreement (and disregarding any improvements made by any Subsequent Owner) and which shall be established by taking the average valuation from valuation reports from two independent chartered surveyors to be procured by either the Proprietor or Subsequent Owner as appropriate or from the provision of a home report in respect of the relevant Housing Unit by an independent chartered surveyor, which independent chartered surveyor shall in either of the aforementioned cases be approved by the Council and whose fees shall be paid for by the Proprietor or Subsequent Owner as appropriate;
- 1.1.48 **"Payment Day"** means each of 28 February, 28 May, 28 August, and 28 November (or, in any case where that date is not a Working Day, the first Working Day occurring thereafter) in the relevant year;
- 1.1.49 **"Per Unit Contribution"** means the sum total of [NOTE – insert list of all per unit contributions, such as Education Contribution, Community Facilities Contribution etc]
- 1.1.50 **"Phase"** means any one of Phases 1, 2 or 3 [etc]
- 1.1.51 **"Phase 1"** means the first phase of the Development, comprising [] Housing Units to be constructed on that part of the Development Site, shown coloured [] on the Masterplan;
- 1.1.52 **"Phase 2"** means the second phase of the Development, comprising [] Housing Units to be constructed on that part of the Development Site, shown coloured [] on the Masterplan; [NOTE – continue as relevant to reflect correct number of phases]
- 1.1.53 **"Plan []"** means the plan reference [] showing the Development Site, annexed and executed as relative to this Agreement and marked "Plan []" [or] [the plan forming Part [] of the Schedule];
- 1.1.54 **"Prescribed Rate"** means the rate of 4% per annum above the base rate for the time being of The Royal Bank of Scotland plc;
- 1.1.55 **"Qualifying Purchasers"** means those people wishing to purchase an Affordable Housing Unit whose needs are otherwise unable to be met on the

open market, and who are first time buyers or have had a significant change in circumstances, and have an income below the Council's maximum annual household income criteria applicable at the time of placing the Advert, or such other categories of person as the Council considers appropriate from time to time;

- 1.1.56 "**Quarter**" means the period (i) 28 November to 27 February inclusive; (ii) 28 February to 27 May inclusive; (iii) 28 May to 27 August inclusive, or (iv) 28 August to 27 November inclusive, as the context so admits, in any relevant year;
- 1.1.57 "**Reduced Price**" means the Open Market Value applying at the time of any subsequent sale less the Discount Percentage;
- 1.1.58 "**Registered Social Landlord (RSL)**" means a body registered in the register maintained under section 20(1) of the Housing (Scotland) Act 2010 and operating in the Community;
- 1.1.59 "**Relevant Person**" means the person responsible for submitting a completion certificate to the relevant verifier in terms of Section 17 of the Building (Scotland) Act 2003;
- 1.1.60 "**Schedule**" the schedule comprising [] parts annexed and executed as relative to this Agreement;
- 1.1.61 "**Scottish Standard Clauses**" means the Scottish Standard Clauses (Edition 2) specified in the Deed of Declaration by Ross Alexander MacKay dated 14 March and registered in the Books of Council and Session for preservation on 15 March both 2016 or the latest version thereof or equivalent replacement;
- 1.1.62 "**Secured Amount**" means the difference between the Open Market Value and the Reduced Price;
- 1.1.63 "**Serviced Land**" means the Affordable Housing Land after the Affordable Housing Land Proprietor has:
- 1.1.63.1 constructed such roads and footpaths, to base course level, with adjacent footways as are required in the opinion of the Council to connect the boundary of the Affordable Housing Land to the public road network at the location(s) approved by the Council,
 - 1.1.63.2 provided all related infrastructure needed to service the Affordable Housing Land for residential development, including

the Services, from the boundary of the Affordable Housing Land to the mains of the relevant infrastructure networks at the location(s) approved by the Council ,

such servicing to be to the satisfaction of the Council and provided in accordance with plans approved by the Council, and together with the benefit of any servitude rights, including rights of pedestrian and vehicular access and egress to and from the public road network, over the remainder of the Development Site as needed for the purposes of the Development, including its construction;

- 1.1.64 **“Services”** means all necessary foul and surface water sewers, drains, water, gas, electricity, telephone, television or telecommunication supply pipes, wires, cables and/or conduits and other service conducting media and ancillary apparatus which are to be provided for sewage, electricity, telegraphic, telecommunications, gas, water and all other service media installed or to be installed to service inter alia the Open Market Houses;
- 1.1.65 **"Shared Equity"** means Affordable Housing Units made available as units for sale to Qualifying Purchasers where an RSL or the Council as the local Housing Authority or the Affordable Housing Proprietor retains a minority financial share in the units under the terms of a shared equity agreement and the terms **"Shared Equity Affordable Housing"** and **"Shared Equity Affordable Housing Units"** shall be construed accordingly;
- 1.1.66 **"Shared Ownership"** means Affordable Housing Units made available as units for sale to Qualifying Purchasers where an RSL or the Council as the local Housing Authority or the Affordable Housing Proprietors retain a share in the ownership of the units and charge the Qualifying Purchaser an occupancy charge on that share. The terms **"Shared Ownership Affordable Housing"** and **"Shared Ownership Affordable Housing Units"** shall be construed accordingly;
- 1.1.67 **"Social Rented Affordable Housing"** means Affordable Housing Units provided at an affordable rent which are owned, managed, leased or otherwise provided by an RSL or the Council and the terms **"Social Rented Affordable Housing Units"** and **"Social Rented Units"** shall be construed accordingly;
- 1.1.68 **“Standard Security”** means a valid and duly executed standard security in accordance with paragraph [12] of the Schedule Part 3, and in terms acceptable to the Council;

- 1.1.69 **“Statutory Undertaker”** means statutory undertaker as defined by section 214 of the 1997 Act where that statutory undertaker owns land within the Development Site for the purposes of its statutory undertaking as defined within the said section 214 of the 1997 Act, or the heritable proprietor or lessee of any site for an electricity substation, gas governor or metering pillar, contained within the Development Site, but only in its capacity as such heritable proprietor or lessee of that said site;
- 1.1.70 **"Subsequent Owner"** means the person or persons comprising a Qualifying Purchaser who owns a LCHOU from time to time;
- 1.1.71 **"Three Bedroom Unit Price"** means the sum of [ONE HUNDRED AND SIXTY THOUSAND SIX HUNDRED AND FIFTY THREE] POUNDS (£[160,653.00]) STERLING; [NOTE –insert appropriate figure in force at time of execution of Agreement]
- 1.1.72 **“Total Housing Units”** means the total number of Housing Units;
- 1.1.73 **“Transfer”** means any sale, lease, assignation, or other disposition by the Proprietor of their interest in the Development Site, whether in whole or in part;
- 1.1.74 **“Transferee”** means any party or parties to whom a Transfer is made;
- 1.1.75 **"Two Bedroom Unit Price"** means the sum of [ONE HUNDRED AND TWENTY THREE THOUSAND AND SIX HUNDRED] POUNDS (£[123,600.00]) STERLING; [**NOTE** –insert appropriate figure in force at time of execution of Agreement]
- 1.1.76 **“Working Days”** means any day excluding Saturday or Sunday, Scottish statutory holidays and Council local holidays (the latter being days identified as such in the Council's calendar);
- 1.1.77 **"Written Evidence"** means written correspondence in terms satisfactory to the Council from the Affordable Housing Proprietor to an RSL or the Council offering to dispoise the Affordable Housing Land and / or the Affordable Housing Units together with the written replies from the RSL or the Council advising that they are unable or are unwilling to acquire the Affordable Housing Land and / or the Affordable Housing Units at the Affordable Housing Market Value.
- 1.2 In this Agreement (including the Schedule and the Plan) unless the context otherwise requires:-

- 1.2.1 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;
- 1.2.2 words importing the singular number only include the plural number and vice versa;
- 1.2.3 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;
- 1.2.4 the words 'including' and 'include' and words of similar effect shall not be deemed to limit the general effect of the words which preceded them;
- 1.2.5 reference to any agreement, contract, document or deed shall be construed as a reference to it as varied, supplemented or novated;
- 1.2.6 except as otherwise set out in this Agreement, obligations undertaken by a party which comprises more than one person shall be deemed to be undertaken by them jointly and severally;
- 1.2.7 words importing persons shall include firms, companies and bodies corporate and vice versa;
- 1.2.8 words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it be done and any words placing a party under a restriction include an obligation not to cause, permit or suffer any infringement of that restriction;
- 1.2.9 construction of this Agreement shall ignore any headings, contents list and front sheet (all of which are for reference only); and
- 1.2.10 references to a numbered Clause or schedule or paragraph are references to the Clause, schedule or paragraph of or to this Agreement so numbered.

2 General provisions

- 2.1 Nothing in this Agreement shall fetter, prejudice or affect the Council's powers to enforce any specific obligation or term or condition in this Agreement nor shall anything contained in this Agreement fetter, prejudice or affect any provisions, rights, powers, duties and/or obligations of the Council in the exercise of its functions as planning authority for the purposes of the 1997 Act or otherwise as a local authority.

- 2.2 Nothing in this Agreement shall confer regulatory approval for any matter in particular to carry out any building, engineering or other operations in, on, over or under the Development Site.
- 2.3 No waiver (whether express or implied) by the Council of any breach or default of any other party to this Agreement or their agents, servants or successors (including their assignees) in performing or observing any of the provisions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from subsequently enforcing any such provision or from acting on any subsequent breach thereof.
- 2.4 If any provision in this Agreement shall in whole or in part be held to be invalid or unenforceable under any enactment or rule of law such provision shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected.
- 2.5 The obligations contained in this Agreement are made under Section 75 of the 1997 Act and are planning obligations for the purposes of the 1997 Act.
- 2.6 The obligations contained in this Agreement are undertaken by and are binding on the [Developer and the] Proprietor and are enforceable by the Council. **[NOTE - amend parties as appropriate]**
- 2.7 The Agreement shall not be enforceable against any Bona Fide Third Party Purchaser (save in so far as a Bona Fide Third Party Purchaser is a Subsequent Owner for those obligations relating to Affordable Housing imposed on Subsequent Owners in terms of the Schedule Part 3) **[NOTE – include reference to other obligations as appropriate]** or Statutory Undertaker.
- 2.8 Wherever in this Agreement, the decision, approval, consent, opinion or declaration of satisfaction of the Council is required, then, save where expressly provided otherwise, the Council shall act reasonably and expeditiously in respect of the same, save that nothing contained herein shall constrain the proper discharge by the Council of its statutory duties, responsibilities and functions.

3 Decision notice

- 3.1 The Proprietor (unless otherwise agreed with the Council) will undertake to register or record this Agreement against the Development Site in the Land Register of Scotland and/or in the Division of the General Register of Sasines applicable to [Aberdeen][Kincardine] (as appropriate).
- 3.2 The Council shall, following receipt of (i) the Keeper's acknowledgement of receipt of this Agreement for recording or registering (as appropriate) in the General Register of Sasines/Land Register of Scotland, (ii) a Legal Report disclosing the application for

- registration/recording of this Agreement and disclosing no entries prejudicial to the Council's interests; (iii) **[NOTE – where the Proprietor or Developer is a company]** a clear search in the register of charges and company file (including a search to identify the directors and the secretary of the Proprietor and/or the Developer as at the date of signing of this Agreement) from the date of their incorporation or the date of inception of the register (whichever is the later) brought down as near as practicable to the date of signing of this Agreement; and (iv) payment of the Council's fees and expenses pursuant to Clause [] hereof, issue the Decision Notice to the [Proprietor and/or Developer] as soon as reasonably practicable.
- 3.3 In the event that the application to register the Agreement is rejected by the Keeper, the Proprietor will (a) notify the Council immediately, and (b) use reasonable endeavours to (i) resolve the issue which has given rise to the rejection, (ii) resubmit the Agreement without delay for registration in the General Register of Sasines/Land Register of Scotland making any necessary amendments to the application form, (iii) provide the Keeper with any necessary additional information in its possession to allow the Keeper to register the Agreement, and (iv) keep the Council duly informed on progress at all times.
- 3.4 In the event that the Keeper refuses or is unable to register the Agreement by virtue of the Developer's and/or the Proprietor's failure to comply with Clause [3.3] hereof, the Council are entitled, but not obliged, to revoke the Decision Notice in terms of Section 65 of the 1997 Act and the [Developer and/or the] Proprietor both agree that they will not (i) oppose such revocation in terms of Section 66 of the 1997 Act nor (ii) seek compensation or expenses from the Council. The Developer and the Proprietor hereby notify the Council, under section 67 (1) (b) of the 1997 Act that they do not object to such revocation order. **[NOTE – amend as necessary if there is no separate Developer]**
- 3.5 In the event that the Keeper refuses or is unable to issue the registered Agreement by reason of an Insolvency Event, the Council are entitled, but not obliged, to revoke the Decision Notice in terms of Section 65 of the 1997 Act and the Proprietor and/or the Developer both agree that they will not (i) oppose such revocation in terms of Section 66 of the 1997 Act nor (ii) seek compensation or expenses from the Council. The Developer and the Proprietor hereby notify the Council, under section 67 (1) (b) of the 1997 Act that they do not object to such revocation order. **[NOTE – amend as necessary if there is no separate Developer]**
- 3.6 The Council undertakes that before taking steps to revoke the Decision Notice in terms of Clauses [], the Council will serve written notice on the Proprietor of their intention to revoke the Decision Notice and will allow the Proprietor a reasonable opportunity to comply with the requirements of the Keeper to enable the Agreement to be registered or recorded.

3.7 The Proprietor hereby undertakes that prior to the registration/recording of this Agreement in the Land Register of Scotland /the relevant Division of the General Register of Sasines (as appropriate) it shall not convey, dispose of, sell, burden, or lease or otherwise grant any party an interest in their title to the Development Site or any part thereof except in so far as the same may be specifically agreed in writing by the Council.

4 Notifications

4.1 The Proprietor will notify the Council in writing of the Development Commencement Date within ten Working Days thereof.

4.2 The Proprietor will notify the Council in writing of the identity of any Transferee to whom a Transfer is made, save for Transfers to Bona Fide Third Party Purchasers. Such notification shall be given to the Council at least ten (10) Working Days prior to the Transfer occurring.

4.3 On the first Working Day of each Quarter following the Completion of the first Housing Unit to be constructed on the Development Site, the Proprietor shall provide the Council with the Completion Statement for the preceding Quarter.

5 Phasing

5.1 The Proprietor will not carry out or procure the carrying out of any Material Operation in respect of any subsequent Phase until all obligations incumbent upon the Proprietor in respect of the previous Phase have been performed or otherwise met to the Council's satisfaction. [**NOTE** – consider if appropriate for a phased development. May require bespoke drafting to reflect particular circumstances]

6 Affordable Housing

6.1 [Twenty-five per cent (25%)] of the Total Housing Units shall be provided as Affordable Housing.

6.2 It is further agreed that, unless otherwise agreed with the Council in writing, delivery of the Affordable Housing shall be in accordance with the following provisions:-

6.2.1 [Twenty-five per cent (25%)] of the Housing Units within each Phase shall be delivered as Affordable Housing; [**NOTE** –amend as appropriate for phased developments, eg. 25% requirement to apply to each Phase, and no commencement of development within any Phase until Affordable Housing Scheme approved for that Phase]

6.2.2 Prior to the Development Commencement Date, the Proprietor shall submit to the Council for approval an Affordable Housing Scheme. No Material

Operation shall be carried out on the Development Site unless and until the Affordable Housing Scheme is approved in writing by the Council.

- 6.3 The Affordable Housing Units to be provided on the Development Site will be provided in accordance with the Affordable Housing Scheme approved in terms of Clause [6.2.2] of this Agreement and the terms and conditions set out in the part of the Schedule pertaining to the Affordable Housing Tenure identified in the approved Affordable Housing Scheme.

7 Affordable Housing Contribution

- 7.1 [NOTE – unnecessary where full 25% requirement is being met by provision of land or units] [Within [] Working Days of Completion of the []th Housing Unit], the Proprietor shall pay the Affordable Housing Contribution in cleared funds into the bank account nominated by the Council for that purpose. The Council shall utilise the Affordable Housing Contribution for the provision of Affordable Housing in the Community, or facilitating such provision. [NOTE – revise payment trigger as appropriate. If the AHC is a *total* figure and therefore not included within the Per Unit Contribution, then the terms of Clause [10] (Payment of Contributions) will not apply and appropriate provisions, on interest etc, need to be incorporated in this Clause. Alternatively the AHC might be pro-rated across the total number of Housing Units, and included in the Per Unit Contribution]

- 7.2 Clauses [NOTE – insert reference to necessary clauses eg. interest, repayment etc] [10] (Payment of Contributions) shall apply to payment of the Affordable Housing Contribution, but with the necessary modifications.

8 Community Facilities Contribution

- 8.1 The Proprietor shall pay the Community Facilities Contribution to the Council in respect of each Completed Housing Unit in accordance with Clause [10] below. The Council shall utilise the Community Facilities Contribution for the provision of [NOTE – specify facilities, nature, location etc as appropriate], subject to the provisions of Clause [10].

9 Core Path Contribution

- 9.1 The Proprietor shall pay the Core Path Contribution to the Council in respect of each Completed Housing Unit in accordance with Clause [10] below. The Council shall be obliged to utilise the Core Path Contributions for the provision of [NOTE – insert detail as appropriate], subject to the provisions of Clause [10].

10 Payment of Contributions

- 10.1 The Per Unit Contribution shall be paid by the Proprietor to the Council quarterly in arrears in respect of each Completed Housing Unit in the relevant period, in accordance with this Clause [10]:
- 10.2 All such payments shall be paid by the Proprietor in cleared funds into such bank account as is nominated by the Council on the relevant Payment Day, save for the Last Payment (as hereinafter defined) which shall be paid in accordance with Clause 10.5 of this Agreement. For the avoidance of doubt, the Proprietor shall request the bank account details from the Council prior to the relevant Payment Day where these have not otherwise been nominated by the Council.
- 10.3 The first such payment shall be paid by the Proprietor on the first Payment Day occurring after the expiry of nine (9) months from the Development Commencement Date, and shall be a sum equal to the Per Unit Contribution multiplied by the number of Housing Units Completed since the Development Commencement Date.
- 10.4 Each subsequent payment shall be paid by the Proprietor on each subsequent Payment Day and shall be a sum equal to the Per Unit Contribution multiplied by the number of Housing Units Completed within the preceding quarter.
- 10.5 The last such payment due (“the Last Payment”) shall be paid by the Proprietor prior to the carrying out of any Material Operation in respect of the last Housing Unit . The Last Payment shall be a sum equal to:
- 10.5.1 the Per Unit Contribution multiplied by the number of Housing Units Completed within the preceding quarter, plus
- 10.5.2 the Per Unit Contribution in respect of any Housing Unit for which payment under this Clause has not already been made.
- 10.6 In the event of any dispute arising as to the number of Housing Units Completed within any payment period, the matter shall be determined solely by the Council.
- 10.7 In the event that the Proprietor fails to make timeous payment in full of any sum due in terms of this Clause then interest shall be payable to the Council by the Proprietor on the relevant sum or on the balance outstanding from time to time, on demand, at the Prescribed Rate until payment of the relevant sum in full.
- 10.8 Notwithstanding the terms of Clause [10.7] of this Agreement, the entitlement to interest shall not arise in respect of any period of time during which the Proprietor is entitled to withhold payment due to some delay or breach or non-performance on the part of the Council of an obligation of the Council contained in the Agreement.

10.9 The Per Unit Contributions paid to the Council in terms of this Clause [10] will in turn be transferred by the Council into an interest bearing account in the Council's name. The Council will be obliged to utilise the Per Unit Contributions and any interest accrued thereon, for the purposes prescribed in clauses [NOTE – insert reference to individual payment clauses]. Where any part of the Per Unit Contributions has not been so utilised or Committed for such purposes within seven (7) years of receipt by the Council of the Last Payment, the Council will be obliged to repay such part of the Per Unit Contributions which has not been so utilised or Committed to the party who paid the Per Unit Contribution(s) together with the interest duly accrued thereon, within twenty-eight (28) days of receipt of a written request from the said party following the expiry of the said seven (7) year period.

10.10 The Council shall, within one (1) month of a written request from the Proprietor, provide details of the utilisation of the Per Unit Contributions and any interest accrued thereon including the proportions to which the Per Unit Contributions have been utilised, for the purposes prescribed. Declaring that the Proprietor shall only be able to request the details of the utilisation as set out in this Clause once in every twelve (12) month period in the said applicable seven (7) year period, and once such a request for the details of utilisation is made, no subsequent request can be made within the following twelve (12) month period.

10.11 Within ten (10) Working Days of receipt of a request to do so, the Council shall issue to the Proprietor a written receipt for any payment made in terms of Clause 10 of this Agreement, except where a receipt has previously been issued by the Council for the payment in question.

11 Land Transfer and Remediation [NOTE – consider including a land transfer clause setting out detailed conveyancing requirements in cases involving multiple land transfers. Consider remediation requirements if appropriate

12 Disputes

12.1 Any dispute or difference arising between the parties concerning the implementation of this Agreement may, failing agreement, be referred to arbitration by the parties in dispute jointly or individually. Any arbitration commenced under this Clause shall be conducted in accordance with the Arbitration (Scotland) Act 2010 including the schedule (and all mandatory and default rules contained in the schedule) to that Act. The said Act and rules are together referred to in this Clause as "the Arbitration Act". It is further agreed that:

12.1.1 In the case of any referral to arbitration under this Agreement, the parties in dispute may agree the identity of an arbitrator or, in the event that agreement cannot be reached within ten (10) calendar days, the arbitrator shall be appointed by the Chairman for the time being of the Scottish Branch of the

Chartered Institute of Arbitrators. In any event, the arbitrator shall be either a solicitor, or an advocate, or an arbitrator recognised by the Chartered Institute of Arbitrators of not less than 10 years standing.

12.1.2 Without prejudice to and subject to the provisions of the Arbitration Act in respect of any such arbitration, the arbitrator shall:-

12.1.2.1 conduct such arbitration within the terms and spirit of the Arbitration Act;

12.1.2.2 have discretion in terms of the procedure governing the arbitration (such as ordering the parties in dispute to provide written submissions within such time period as he considers appropriate and/or to attend such hearings as he deems necessary) except as specifically provided for in this Clause;

12.1.2.3 deliver his award on any matter referred to him within twenty eight (28) days of concluding any hearings which may have been held in connection with the matter, and in any event deliver his award within six (6) months (or such other period as the parties in dispute may agree) of his appointment as arbitrator;

12.1.2.4 have the power to open up, review, and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement, or where appropriate to order financial compensation to be paid by one of the parties in dispute to the other(s);

12.1.2.5 hold such arbitration in Aberdeen;

12.1.2.6 state his award with reasons and in writing; and

12.1.2.7 have discretion to award part or the whole of the costs of the arbitration against or in favour of one of the parties in dispute.

12.1.3 The seat of arbitration will be Scotland.

13 Notices

13.1 All notices which require to be given in terms of this Agreement shall be in writing and shall be deemed to be sufficiently served if signed by or on behalf of the party issuing the notice and either: (i) delivered personally, or (ii) sent by pre-paid recorded delivery or registered post, to the following address(es) as the case may be:-

- 13.2 In the cases of the Proprietor [and the Developer](i) if a company, its registered or head office in the United Kingdom or (ii) if an individual, to the last known address in the United Kingdom or (iii) if a partnership, to the partnership and any one or more of the partners thereof at its last known principal place of business in the United Kingdom or (iv) to such other address as may have been notified previously in writing to the Council;
- 13.3 In the case of the Council to the Head of Service Planning and Sustainable Development, Marischal College, Broad Street, Aberdeen, or to such other officer and address as the Council may have notified to the Parties;
- 13.4 In proving service, it shall be sufficient to prove that the envelope containing the notice was duly addressed to the Council or the Developer or the Proprietor, as the case may be, in accordance with this Clause 13 and posted to the place to which it was so addressed (unless returned through the post).

14 Consent

- 14.1 The Bank as heritable security holder hereby consents to the terms of this Agreement and to its execution by the Proprietor. [or] [The heritable creditor referred to within the letter of consent contained within part [] of the Schedule thereby consents to the Agreement.]

15 Legal Costs

- 15.1 The Proprietor shall pay the whole reasonable legal expenses and outlays of the Council in connection with this Agreement, including the fees of the Council's external legal advisers, in terms of the undertaking contained in Part [] of the Schedule, and shall be responsible for the recording and/or registration dues in relation to the recording and/or registration of this Agreement together with the cost of obtaining two (2) extracts (one for the Council and one for the Proprietor) of this Agreement.

16 Continuing Liability

- 16.1 Subject to Clause [16.2], notwithstanding the terms of section 75C of the 1997 Act, on ceasing to be heritable proprietor of the Development Site or any part thereof, any such heritable proprietor shall cease to be liable for any obligations contained within this Agreement, save in the case of any antecedent breach.
- 16.2 Clause [16.1] shall be of no effect where the heritable proprietor disposing of his interest in the Development Site is in breach of Clause [4.2 (Notifications)].

17 Duration

17.1 This Agreement will come into effect on the Development Commencement Date save for Clauses [insert reference to standard administrative clauses] which will come into effect on the Effective Date, and will endure until it is formally discharged in terms of Section 75A of the 1997 Act.

18 Governing Law

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

19 Registration

19.1 The parties hereto consent to registration hereof for preservation and execution: IN WITNESS WHEREOF these presents typewritten on this and [] preceding pages together with the Schedule and Plan annexed hereto are executed as follows:-

SCHEDULE

PART 1

The Development Site

ALL and WHOLE the subjects [Please Insert Full Conveyancing Description]

PART 2

Sale of Affordable Housing Land to an RSL or the Council

- 1 The terms of this Schedule Part 2 will apply in the event that the Affordable Housing, or the specific phase of the Affordable Housing as agreed under Clause [6] (Affordable Housing) of this Agreement, is to be provided through the sale of Affordable Housing Land or identified Affordable Housing Units for the provision of Social Rented Affordable Housing, Mid Market Rented Affordable Housing, or Shared Ownership Affordable Housing or Shared Equity Affordable Housing (and in the case of provision by way of Shared Equity it has been agreed that the Scottish Government, the Council or a RSL will retain the minority share in the Housing Units).
- 2 The Affordable Housing Proprietor undertakes to reserve and make available the Affordable Housing Land or identified Affordable Housing Units for purchase by a RSL or the Council for a consideration not exceeding the Affordable Housing Market Value for a period of six (6) months from the dates agreed in terms of the Affordable Housing Scheme to be approved in terms of Clause [6] of this Agreement.
- 3 The Affordable Housing Proprietor shall be obliged to use all reasonable and proper endeavours to enter into a contract of sale with a RSL or the Council within the said six (6) month period. Any conveyance in favour of a RSL or the Council of the Affordable Housing Land will be by way of a disposition containing real burdens with the intention of ensuring that the Affordable Housing Land is developed only for the purposes of the construction of Affordable Housing thereon and is retained as such in perpetuity. For the avoidance of doubt the Affordable Housing Land requires to be conveyed as Serviced Land to the RSL or the Council within three (3) months of the expiry of the six (6) month period referred to in paragraph [2] of this Schedule Part 2.
- 4 The Affordable Housing Proprietor's obligations in terms of Clause [6] of this Agreement to deliver Affordable Housing shall be deemed to have been satisfied, [in respect of the Phase], on the date of sale of the Affordable Housing Land or identified Affordable Housing Units to a RSL or the Council in accordance with the terms of this Agreement. If during, or on the expiry of, the said period of six (6) months referred to in paragraph [2] of this Schedule Part 2, no contract of sale has been concluded in respect of the Affordable Housing Land or the identified Affordable Housing Units with a RSL or the Council, the Affordable Housing Proprietor may provide the Council with Written Evidence that the Affordable Housing Proprietor has used all proper and reasonable endeavours to enter into such a contract of sale and has been unsuccessful. The Council will consider the Written Evidence supplied by the Affordable Housing Proprietor and the Council shall have two (2) months from provision of the Written Evidence to reach a determination that, in its sole opinion, acting reasonably, the Affordable Housing Proprietor did indeed use proper and reasonable endeavours to sell the Affordable Housing Land or the identified Affordable Housing Units in terms of paragraph [3] of this

Schedule Part 2, but were unsuccessful in doing so and in these circumstances shall discharge the obligations on the Affordable Housing Proprietor in terms of this Schedule Part 2 to provide Affordable Housing (in that Phase, if relevant) through the sale of Affordable Housing Land or the identified Housing Units for provision of Social Rented Housing Units, Mid Market Rented Affordable Housing Units, Shared Ownership, Affordable Housing Units or Shared Equity Affordable Housing Units (as applicable) on the condition that the Affordable Housing Proprietor shall, no later than twenty-eight (28) days from the Council's determination, follow the procedures for providing Affordable Housing by way of LCHOUs as more particularly set out in this Schedule Part 3 (but expressly disregarding the obligation on the Affordable Housing Proprietor to offer the units to the Council or RSL contained in paragraph [8] of this Schedule Part 3) and on the provision of written evidence satisfactory to the Council (the Council's satisfaction being established by written notification thereof to the Affordable Housing Proprietor within a period of two (2) months of receipt of the written evidence provided by the Affordable Housing Proprietor or the absence of a written response to the contrary within that two (2) month period) that the Affordable Housing Proprietor has been unable to provide the Affordable Housing by way of LCHOUs in accordance with this Schedule Part 3 despite all reasonable and proper endeavours, the Affordable Housing Proprietor shall pay the Commuted Sum to the Council in respect of each Affordable Housing Unit no longer being provided through the sale of the Affordable Housing Land or the identified Affordable Housing Units for Social Rented Affordable Housing Units, Mid-Market Rented Affordable Housing Units, Shared Ownership Affordable Housing Units or Shared Equity Affordable Housing Units (as applicable) or LCHOUs. Where payable, the Commuted Sum shall be paid by the Affordable Housing Proprietor to the Council within 28 days of the Council's said written notification or the expiry of the last mentioned two (2) month notification period (in the event of no response from the Council).

- 5 If the Council does not respond within the two (2) month period referred to in paragraph [4] of this Schedule Part 2, the Affordable Housing Proprietor shall be entitled to discharge the obligations in terms of this Schedule Part 2 to provide Affordable Housing through the sale of Affordable Housing Land or identified Affordable Housing Units for provision of Social Rented Housing, Mid Market Rented Affordable Housing Units, Shared Ownership Affordable Housing Units or Shared Equity Affordable Housing Units (as applicable), on the condition that the Affordable Housing Proprietor shall, no later than twenty-eight (28) days from expiry of the two (2) month period, follow the procedures for providing Affordable Housing by way of LCHOUs as more particularly set out in this Schedule Part 3 (but expressly disregarding the obligation on the Affordable Housing Proprietor to offer the units to the Council or RSL contained in paragraph [8] of this Schedule Part 3) and on the provision of written evidence satisfactory to the Council (the Council's satisfaction being established by written notification thereof to the Affordable Housing Proprietor within a period of two (2) months of receipt of the written evidence provided by the Affordable Housing Proprietor or the absence of a written response to the contrary within that two (2) month period) that the Affordable Housing

Proprietor has been unable to provide the Affordable Housing by way of LCHOU in accordance with this Schedule Part 3 despite all reasonable and proper endeavours, the Affordable Housing Proprietor shall pay the Commuted Sum to the Council in respect of each Affordable Housing Unit no longer being provided through the sale of the Affordable Housing Land or identified Affordable Housing Units for Social Rented Affordable Housing, Mid-Market Rented Affordable Housing Units, Shared Ownership Affordable Housing Units or Shared Equity Affordable Housing Units (as applicable) or LCHOU. Where payable, the Commuted Sum shall be paid by the Affordable Housing Proprietor to the Council within 28 days of the Council's said written notification or the expiry of the last mentioned two (2) month notification period (in the event of no response from the Council).

- 6 If the Council responds within the two (2) month period referred to in paragraph [4] of this Schedule Part 2 notifying that the Affordable Housing Proprietor did not use proper and reasonable endeavours to sell the Affordable Housing Land or the identified Affordable Housing Units in that Phase, if relevant, the Affordable Housing Proprietor shall for a further period of six (6) months try to sell the Affordable Housing Land or the identified Affordable Housing Units to a RSL or the Council for a consideration not exceeding the Affordable Housing Market Value. On expiry of the said six (6) month period, if a contract for sale of the Affordable Housing Land or the identified Affordable Housing Units has not been agreed between the Affordable Housing Proprietor and a RSL or the Council and the Affordable Housing Proprietor provides Written Evidence to the Council, the Affordable Housing Proprietor shall be entitled to discharge the obligation in terms of this Schedule Part 2 to provide Affordable Housing through the sale of Affordable Housing Land or the identified Affordable Housing Units for provision of Social Rented Housing Units, Mid-Market Rented Affordable Housing Units, Shared Ownership or Shared Equity (as applicable) on the condition that the Affordable Housing Proprietor follow the procedures for providing Affordable Housing by way of LCHOU as more particularly set out in this Schedule Part 3 (but expressly disregarding the obligation on the Affordable Housing Proprietor to offer the units to the Council or RSL contained in paragraph 8 of this Schedule Part 3) and on the provision to the Council of written evidence satisfactory to the Council (the Council's satisfaction being established by written notification thereof to the Affordable Housing Proprietor within a period of two (2) months of receipt of the written evidence provided by the Affordable Housing Proprietor or the absence of a written response to the contrary within that two (2) month period) that the Affordable Housing Proprietor has been unable to provide the Affordable Housing by way of LCHOU, the Affordable Housing Proprietor shall pay the Commuted Sum in respect of each Affordable Housing Unit no longer being provided through the sale of the Affordable Housing Land or the identified Affordable Housing Units for Social Rented Affordable Housing Units Mid-Market Rented Affordable Housing Units, Shared Ownership Affordable Housing Units or Shared Equity Affordable Housing Units (as applicable) or LCHOU no later than twenty-eight (28) days from receipt by the Affordable Housing Proprietor of the Council's said written notification or the expiry of the last

mentioned two (2) month notification period (in the event of no response from the Council).

- 7 On payment of the total Commuted Sums due [in each Phase] under paragraphs 4, 5 or 6 of this Schedule Part 2, the Affordable Housing Proprietor shall be entitled to sell the applicable sections of Affordable Housing Land on the open market for the erection of housing thereon. In the event that payments of the Commuted Sums due in terms of paragraphs 4, 5, or 6 of this Schedule Part 2 are not paid timeously the Council shall be entitled to charge interest on the outstanding sum due at the Prescribed Rate from the due date for payment until the said outstanding sum is paid in full.
- 8 For the avoidance of doubt, the Affordable Housing Proprietor will not be obliged to build the Social Rented Affordable Housing Units, Mid-Market Rented Affordable Housing Units, Shared Ownership Affordable Housing Units, or Shared Equity Affordable Housing Units for a RSL or the Council.
- 9 The allocation of the Social Rented Affordable Housing Units, Mid-Market Rented Affordable Housing Units, Shared Ownership Affordable Housing Units, or Shared Equity Affordable Housing Units shall be in accordance with the RSLs or Council's allocation policy.

PART 3

Low Cost Home Ownership Units (LCHOU)

- 1 The terms of this Schedule Part 3 will apply in the event that the Affordable Housing or the specific phase of the Affordable Housing as agreed under Clause [6] (Affordable Housing) of this Agreement is to be provided through the provision of Low Cost Home Ownership Units.

Determination of Discount

- 2 The LCHOU Land Proprietor shall provide to the Council written evidence of the Open Market Value of the LCHOU's no later than one (1) month prior to the Marketing of the LCHOU's provided that the Marketing of the LCHOU's commences no earlier than six (6) months prior to the Completion of the LCHOU's.
- 3 The valuations required in terms of paragraph [2] of this Schedule Part 3 shall be provided within 14 days of the date of the valuation and the Open Market Value shall determine the Discount Percentage. The LCHOU Land Proprietor shall be solely responsible for the costs of obtaining valuations. The Council shall thereafter determine the Discount Percentage, which Discount Percentage shall be fixed and used to determine the Reduced Price for subsequent sales of the LCHOU.

Marketing and Sale of LCHOU's

- 4 The LCHOU Land Proprietor shall Market the LCHOU's. Following determination of the Discount Percentage in accordance with paragraphs 2 and 3 of this Schedule Part 3, the LCHOU Land Proprietor shall place the Advert at their own expense. The wording of the Advert is to be agreed between the LCHOU Land Proprietor and the Council, both parties acting reasonably, but declaring that the Advert will state that applications will be accepted from Qualifying Purchasers for a period of six (6) weeks from the last date of the Advert. During the six (6) week period, the LCHOU Land Proprietor shall carry out the Marketing at their own expense.
- 5 The Advert will stipulate that the applications shall be returned to the Council by the applicants directly. For the avoidance of doubt, the LCHOU Land Proprietor will not be involved in nor make any judgement over the suitability of the Qualifying Purchasers as this is the sole responsibility of the Council, subject to the proviso that priority will be given to existing tenants of the Council or RSLs in the Community.
- 6 The Council will advise the LCHOU Land Proprietor within one (1) month of the expiry of the six (6) week period referred to in the Advert, of the details and priority ranking of any Qualifying Purchasers. The LCHOU are then to be sold to the Qualifying Purchasers in accordance with such ranking at either the One Bedroom Unit Price, the Two Bedroom Unit Price or the Three Bedroom Unit Price as applicable (the LCHOU Price) depending on the number of bedrooms within the LCHOU in question (i.e, if the LCHOU in question has one bedroom then the One Bedroom Unit Price shall apply).

- 7 As soon as Missives are concluded in respect of each LCHOU, the LCHOU Land Proprietor shall send a copy thereof to the Council. Such concluded Missives shall contain an obligation on the Qualifying Purchaser to grant a Standard Security in favour of the Council for the Secured Amount all in terms of paragraph [12] of this Part 3 of the Schedule. No sale of a LCHOU to a Qualifying Purchaser shall complete until the Qualifying Purchaser has granted a Standard Security in favour of the Council, and delivered the Standard Security to the Council together with a cheque for the registration dues for the registration thereof, and all necessary paperwork to allow registration.
- 8 If no Qualifying Purchasers express an interest in purchasing any one of the LCHOU, within the six week period referred to in paragraph [4] of this Schedule Part 3, the Council shall have the right to elect to purchase any unallocated LCHOU or nominate a RSL to purchase the LCHOU in question from the LCHOU Land Proprietor at the LCHOU Price within four (4) weeks of the expiry of the six (6) week period referred to in paragraph [4], of this Schedule Part 3.
- 9 If the LCHOU Land Proprietor is unable to conclude Missives with any Qualifying Purchasers for whatever reason within a period of six months from the date of the Council providing the priority ranking in terms of paragraph [6] of this Schedule Part 3 having used all reasonable endeavours to do so, the Council shall be entitled to elect to purchase the LCHOU in question or nominate a Registered Social Landlord to purchase the LCHOU in question from the LCHOU Land Proprietor at the LCHOU Price within four weeks of the expiry of the six month period.
- 10 If the LCHOU Land Proprietor:
- 10.1 does not receive notification of the Council having elected to exercise their option to purchase the LCHOU in terms of paragraph 8 of this Schedule Part 3; or
- 10.2 is unable to conclude Missives with Qualifying Purchasers for all or any of the LCHOU within a period of six (6) months from the date of the Council providing the priority ranking in terms of paragraph [6] of this Schedule Part 3, having used all reasonable endeavours to conclude Missives with the Qualifying Purchasers within this six (6) month period and (i) does not receive notification of the Council having elected to exercise their option to purchase the LCHOU in terms of paragraph [9] of this Part 3 of the Schedule, or (ii) the Council elects not to purchase the LCHOU(s) in terms of paragraph 9 of this this Schedule Part 3; or
- 10.3 is unable to conclude Missives with the Council / RSL for all or any of the LCHOU within a period of three (3) months from the date of the Council/RSL electing or nominating as the case may be to purchase the LCHOU in terms of paragraph [8 or 9] of this Schedule Part 3 having used all reasonable endeavours to conclude missives with the Council/RSL within this three (3) month period,

the LCHOU Land Proprietor shall be entitled to sell or let the remaining LCHOU, on the open market at the full market price, provided that they first pay the Commuted Sum in respect of each such LCHOU in accordance with this Schedule Part [3].

- 11 The disposition and/or deed of conditions relating to each of the LCHOU shall contain a burden or condition requiring the Qualifying Purchaser to comply with the terms of paragraphs 12 through to 20 (inclusive) of this Schedule Part 3, so far as it is lawful to impose the same.

Standard Security

- 12 Subsequent Owners will, at the time of purchase of a LCHOU, grant, execute and register a Standard Security (at the Subsequent Owners' own expense) over the relevant LCHOU in favour of the Council for the Secured Amount. The parties acknowledge that any standard security granted in accordance with this paragraph shall be postponed to rank second after any standard security granted by the relevant Subsequent Owner to assist in purchasing the LCHOU.
- 13 The Council shall discharge the standard security in their favour on the subsequent sale or transfer of a LCHOU provided that the Subsequent Owner (being the subsequent Qualifying Purchaser) has provided a standard security under paragraph [12] of this Schedule Part 3. No Subsequent Owner of a LCHOU shall be entitled to borrow and/or grant any standard security(ies) over a LCHOU (other than in favour of the Council) for a sum (or cumulative sum) representing more than the sum equating to the Open Market Value of the LCHOU in question from time to time less the Secured Amount for which the Subsequent Owner in question is liable.
- 14 Each Subsequent Owner shall provide that the LCHOU owned by it shall be occupied only by a Qualifying Purchaser, a spouse, Civil Partner, widow or widower of such a person and/or any dependent relative. Furthermore each LCHOU shall not be let or sublet by the Subsequent Owner without the prior written consent of the Council. This sub-clause shall not apply to a heritable creditor in possession of a LCHOU.
- 15 A heritable creditor shall be entitled to sell a LCHOU on the open market if they exercise any power of sale under a standard security over any LCHOU. Any relevant LCHOU sold in these circumstances shall be discharged from the terms of this agreement.

Subsequent Sales of LCHOU's – Council Nominate a Qualifying Purchaser

- 16 In the event that a Subsequent Owner of a LCHOU, wishes to sell or otherwise dispose of an LCHOU:
- 16.1 they shall require to notify the Council in writing and shall provide the Council with a Home Report, or such other written evidence of the Open Market Value of the LCHOU as may be reasonably requested by the Council, in terms satisfactory to the Council in order to establish the Reduced Price at the time of the proposed sale or disposal, the cost of obtaining which evidence shall be borne by the Subsequent Owner.
- 16.2 The Council shall have a period of four (4) weeks from the date of receipt of the said written evidence of the Open Market Value to be provided in terms of paragraph [16.1] of this Schedule Part 3, to determine and intimate in writing to the Subsequent Owner whether or not they wish to retain the dwellinghouse as a LCHOU.

- 16.3 In the event of the Council intimating in writing timeously that they wish to retain the dwellinghouse as a LCHOU, the Council have a period of ten (10) weeks from the date of receipt of the evidence of the Open Market Value to be provided in terms of paragraph [16.1] of this Schedule Part 3, to nominate a Qualifying Purchaser(s). In the event that the Council provide the Subsequent Owner with more than one Qualifying Purchaser the Council shall advise the Subsequent Owner of the priority ranking of the Qualifying Purchasers and the Subsequent Owner shall thereafter offer the LCHOU for sale in accordance with said ranking.
- 17 In the event of the Council nominating a suitable Qualifying Purchaser pursuant to paragraph [16.3] of this Schedule Part 3, the Subsequent Owner shall use all reasonable endeavours to conclude Missives with the nominated Qualifying Purchaser to purchase the LCHOU for the Reduced Price. The Missives shall be concluded by reference to the Scottish Standard Clauses.

Subsequent Sales of LCHOU – Council Elect to Purchase LCHOU

- 18 In the event that Missives are not concluded with a Qualifying Purchaser within twenty (20) weeks following the date of receipt of the evidence of the Open Market Value to be provided in terms of paragraph [16.1] of this Schedule Part 3, (save to the extent that any failure is attributable to any fault or delay on the part of the Subsequent Owner who is bound to do all that is requisite and necessary (as assessed by the Council) in order to conclude missives), the Subsequent Owner shall advise the Council in writing that the Council shall have the right to purchase the LCHOU in question or nominate a RSL to purchase from the Subsequent Owner by giving written notice to that effect to the Subsequent Owner not later than four (4) weeks from the date of notification from the Subsequent Owner of the failure to conclude Missives and in which event the Council or the RSL shall purchase and the Subsequent Owner shall enter into Missives to sell the LCHOU to the Council or the RSL at the Reduced Price and which Missives shall be concluded by reference to the Scottish Standard Clauses.

Subsequent Sales of LCHOU – Council Do Not Nominate a Qualifying Purchaser or Purchase LCHOU

- 19 Should the Council determine following receipt of the written evidence of the Open Market Value to be provided in terms of paragraph [17.1] of this Schedule Part 3 that (i) they do not wish the dwellinghouse to be retained as an LCHOU, (ii) they are unable to nominate a Qualifying Purchaser and that they do not wish to exercise the right to purchase the LCHOU in question pursuant to paragraph 1[9], or (iii) the sale of an LCHOU to a nominated Qualifying Purchaser will not (or is not likely to) proceed, (the Council being deemed in each case to have made such determination in the absence of timeous written intimation pursuant to paragraphs [17] or [19] of this Schedule Part 3), the Subsequent Owner shall be entitled to sell the LCHOU on the open market without restriction as to price and shall account for and pay upon completion of such sale the Secured Amount to the Council. For the avoidance of doubt, the Open Market Value used to determine the Secured Amount shall be the Open Market Value as evidenced by the documentation to be submitted in terms of paragraph [16.1] of this Schedule Part 3.

Discharge of Subsequent Owner's Obligation

- 20 Upon payment of the Secured Amount due in respect of any LCHOU the obligations incumbent upon the Subsequent Owner pursuant to this agreement in respect of that LCHOU shall be deemed to be satisfied. For the avoidance of doubt, the Secured Amount shall be determined by reference to the Open Market Value applying at the time repayment is due.

PART 4**Payment of Commuted Sums**

- 1 The terms of this Schedule Part 4 will apply in the event that the Affordable Housing Proprietor is required to pay Commuted Sums in terms of this Schedule Parts 2 and/or 3.
- 2 In respect of payment of the Commuted Sums, the Affordable Housing Proprietor agrees that the Prescribed Rate shall be applied from the approved due date for payment of the relevant Commuted Sum until the relevant Commuted Sum payment is paid in full.
- 3 For the avoidance of doubt, payment of the Commuted Sums pursuant to any other Clause of this Agreement or the Schedule shall be as set out in such Clause or Schedule.
- 4 The Council shall use the Commuted Sums for the provision of Affordable Housing in the Community.
- 5 The Commuted Sums to be paid to the Council will in turn be transferred by the Council into an interest bearing account and will be held by them for the prescribed purpose. The Council will be obliged to utilise the Commuted Sums for the purposes prescribed in this Schedule Part 4 within seven (7) years of receipt of payment of the last Commuted Sum paid. On receipt of written notice from the relevant party who paid the Commuted Sums, following expiry of the said seven (7) year period, requesting repayment of any unutilised part of the Commuted Sums, the Council will be obliged to repay such part of the Commuted Sum which has not been so utilised to the relevant party who paid the Commuted Sums, together with the interest duly accrued thereon, within twenty-eight (28) days of receipt of the said written notice. The Council shall, on written request from the relevant party, provide details of the utilisation of the Commuted Sums, including the proportions to which the Commuted Sums have been utilised for the purpose prescribed and once such a request is made, no subsequent request can be made in the following 12 month period.