

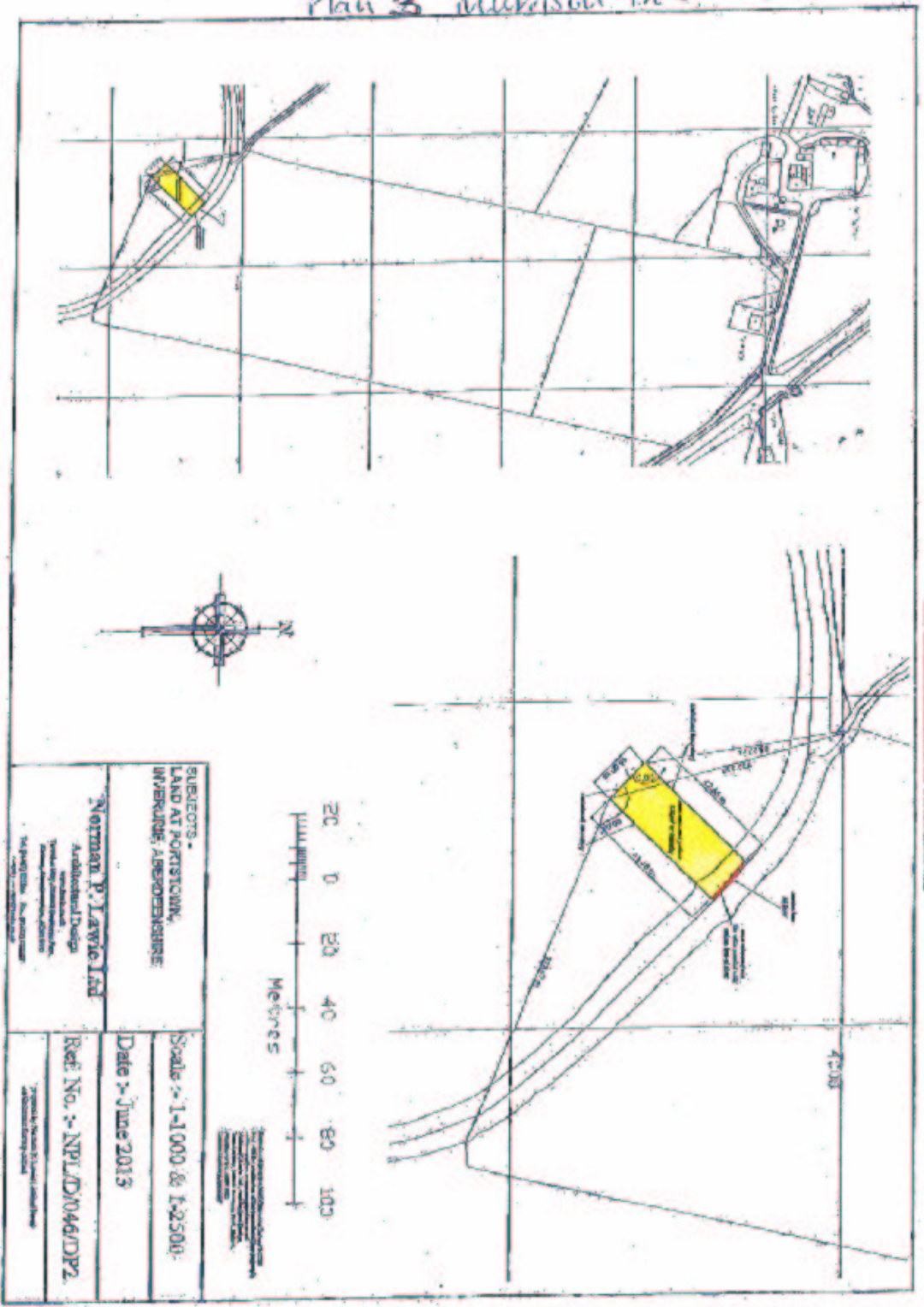


LAND REGISTER OF SCOTLAND	Officer's ID/Date	Title Number
	3569 18/8/2018	ABN137878

SUPPLEMENTARY PLAN 9  
TO THE TITLE PLAN

NOTE: This copy is a reduction  
of the original plan.

*Plan 3 Morrison De S.*



This is Plan 3 referred to in the foregoing Deed of Servitude by the firm of A & C Morrison and others in favour of Malcolm Allan Housebuilders Limited and others.

*Wm Allan & Morrison*  
*Wm A.C. Morrison (Solicitor)*  
*Wm Allan & Morrison*

*Wm Allan & Morrison*  
*Wm Allan & Morrison*

LAND REGISTER  
OF SCOTLAND

Officer's ID/Date

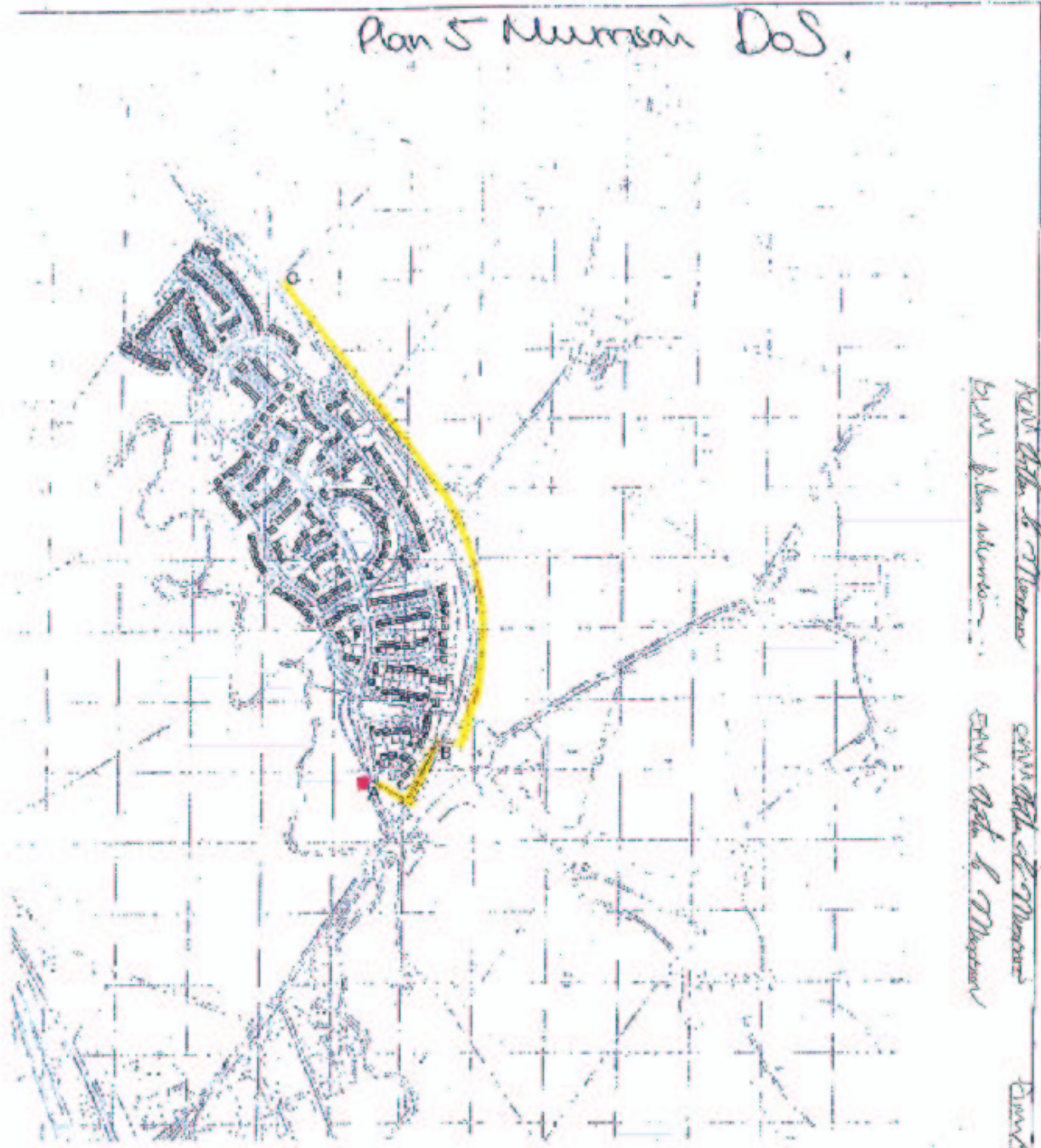
3569  
18/8/2018

Title Number

ABN137878

SUPPLEMENTARY PLAN 8  
TO THE TITLE PLAN

NOTE: This copy is a reduction  
of the original plan.



This is Plan 5 referred to in the foregoing Deed of Servitude by the firm of A.C. Murrain and others  
in favour of Murrain Kivan Householders Limited and others

*AC Murrain & Murrain*  
*BY M. John Anderson*  
*AC Murrain & Murrain*  
*BY A.C. Murrain (Solicitor)*

- Pumping Station
- Proposed Foul Drainage Line
- 6.0m wayleave



**HALLIDAY FRASER MUNRO**  
Solicitors  
100 George Street, Glasgow G2 3JN  
0141 221 4100

**BARRATT**  
HOMES

Uryale, Inverurie  
BARRATT (NORTH) SCOTLAND  
DEED OF SERVITUDE  
Title: 1590/AB  
Date: 20 Sept 2018  
Dgn No: A102/14/00206

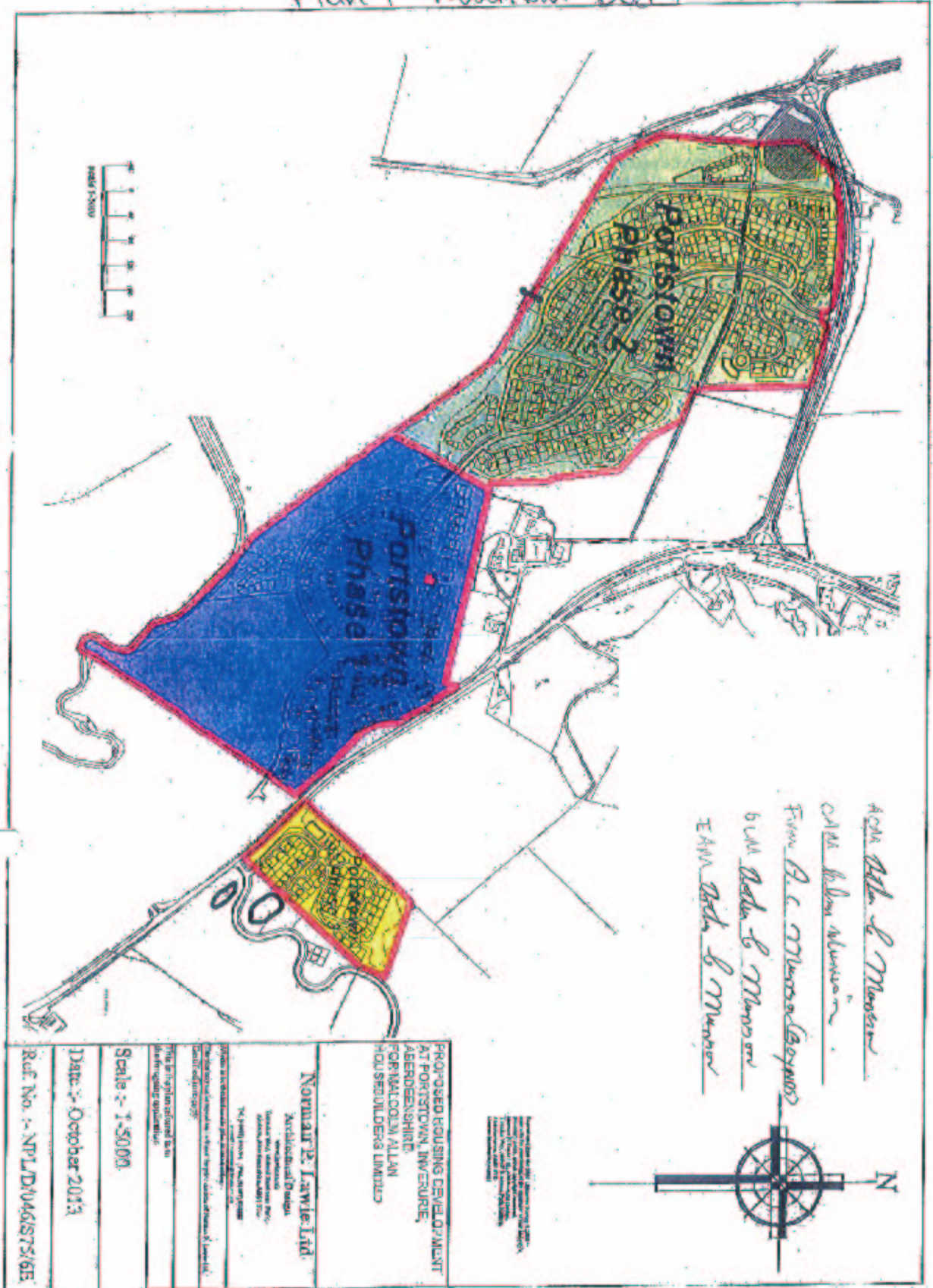


LAND REGISTER OF SCOTLAND	Officer's ID/Date	Title Number
	3569 18/8/2018	ABN137878

SUPPLEMENTARY PLAN 6  
TO THE TITLE PLAN

NOTE: This copy is a reduction  
of the original plan.

Plan 1 Murray D&S



This is Plan 1 referred to in the foregoing Deed of Servitude by the firm of A.C. Morrison and others  
in favour of Malcolm Allan Housing Builders Limited and others

LAND REGISTER  
OF SCOTLAND

Officer's ID/Date

3569  
18/8/2018

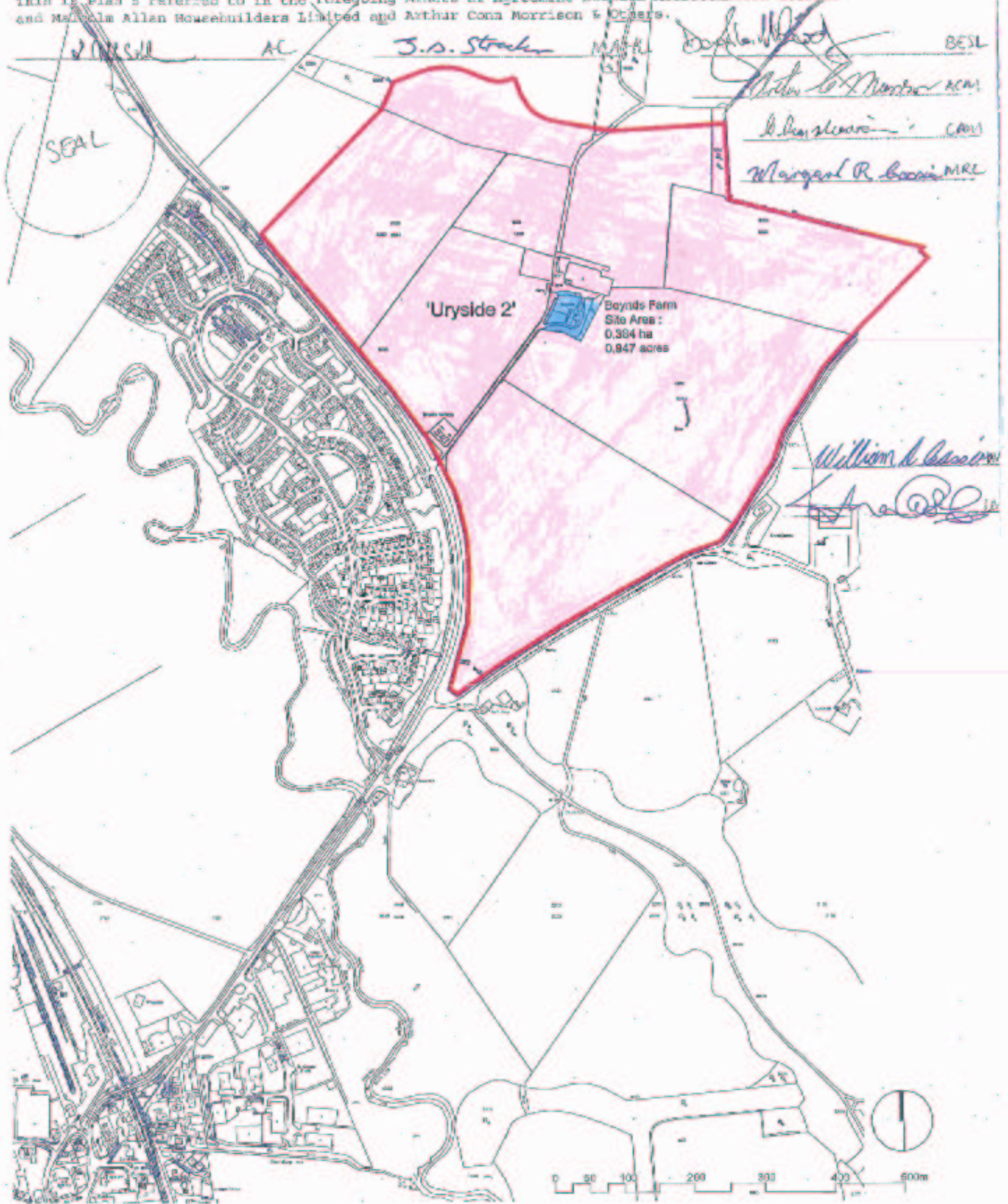
Title Number

ABN137878

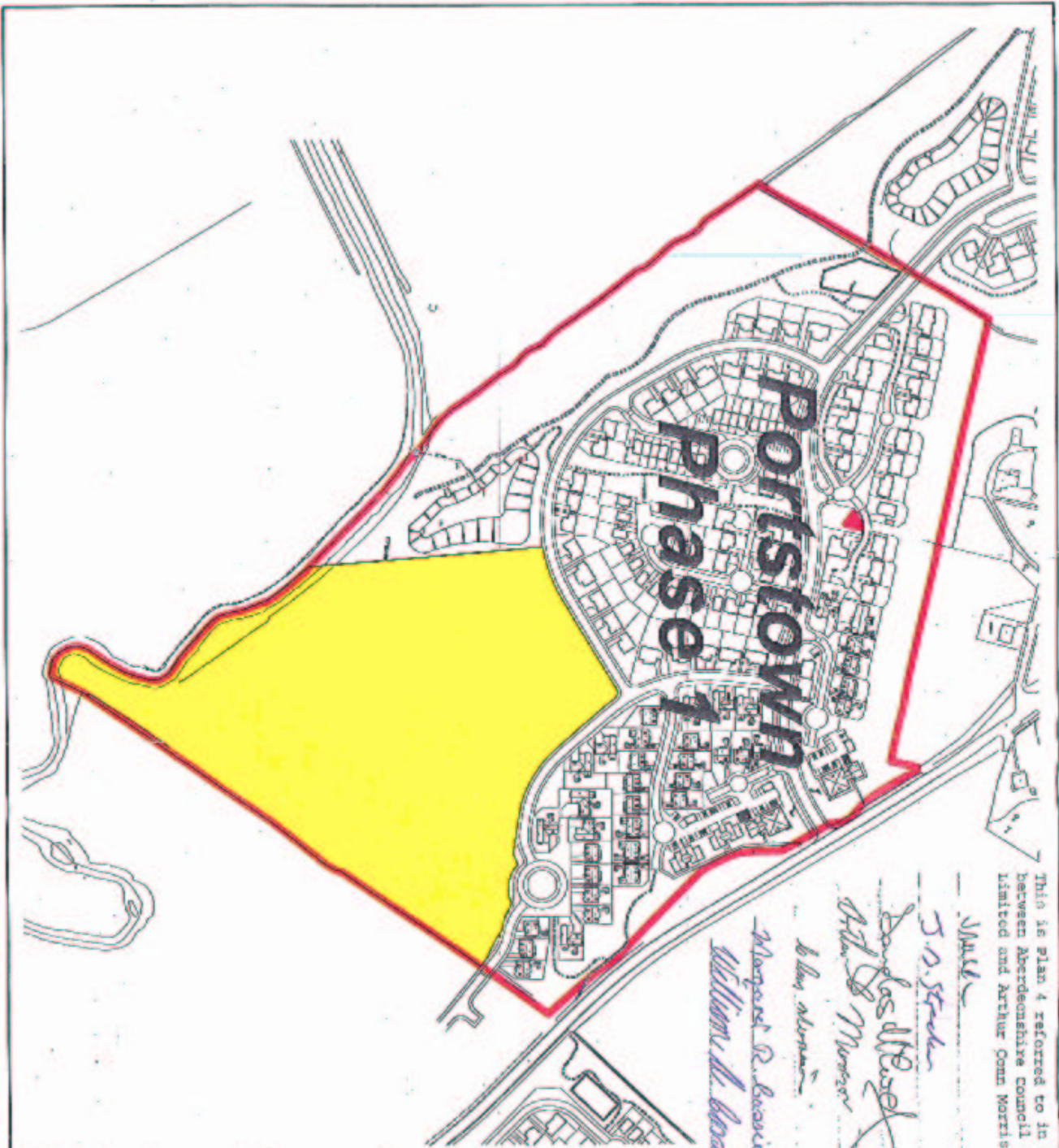
SUPPLEMENTARY PLAN 5  
TO THE TITLE PLAN

NOTE: This copy is a reduction  
of the original plan.

This is Plan 5 referred to in the foregoing Minute of Agreement between Aberdeenshire Council and Malcolm Allan Housebuilders Limited and Arthur Conn Morrison & Others.



LAND REGISTER OF SCOTLAND	Officer's ID/Date	Title	Number
	3569 18/8/2018	ABN137878	



This is plan 4 referred to in the foregoing Minute of Agreement between Aberdeenshire Council and Malcolm Allan Housebuilders Limited and Arthur Gann Morrison & Others.

J.O. Strickland M.A.H.C.  
 Douglas W. Bisset B.S.L.  
 Arthur G. Morrison A.O.M.  
 Alan Morrison C.A.M.  
 Margaret R. Bisset M.B.C.  
 William H. Bisset M.B.C.  
 Margaret M.B.C.

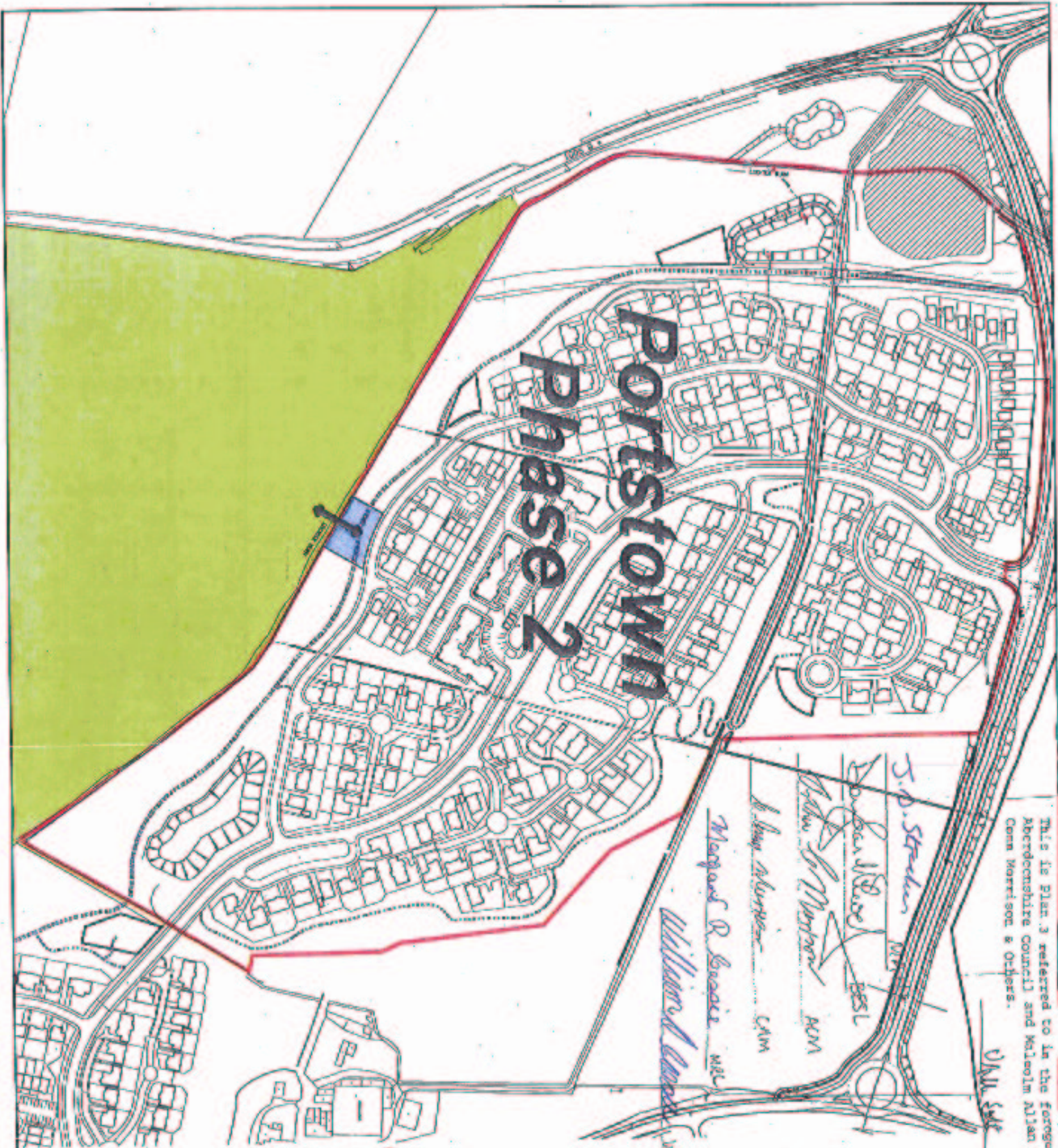
**Portstown Phase 1**

PROPOSED HOUSING DEVELOPMENT  
 AT PORTSTOWN, INVERURIE,  
 ABERDEENSHIRE  
 FOR MALCOLM ALLAN  
 HOUSEBUILDERS LIMITED  
  
**Norman P. Lawrie Ltd**  
 Architectural Design  
 100, Victoria Road  
 Aberdeen, AB9 8JH  
 Tel: 01224 622222  
 Fax: 01224 622223  
 Email: npl@npl.co.uk  
 Website: www.npl.co.uk  
 This is our plan referred to in  
 the foregoing application.  
 Scale :- 1-2500  
 Date :- October 2013  
 Ref. No. :- NPL/D/046/S7



SUPPLEMENTARY PLAN 4  
TO THE TITLE PLAN

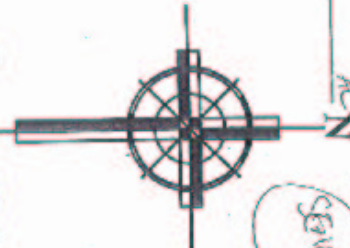
LAND REGISTER OF SCOTLAND	Officer's ID/Date	Title Number
	3569 18/8/2018	ABN137878



This is Plan 3 referred to in the foregoing Minute of Agreement between Aberdeenshire Council and Malcolm Allan Housebuilders Limited and Arthur Conn Morrison & Others.

*S.D. Strachan* *PSL*  
*Malcolm Allan* *PSL*  
*Arthur Morrison* *PSL*  
*Morgan & Son* *MSL*  
*William Allan* *MSL*

**Portstown Phase 2**



**PROPOSED HOUSING DEVELOPMENT AT PORTSTOWN, INVERURIE, ABERDEENSHIRE FOR MALCOLM ALLAN HOUSEBUILDERS LIMITED**

**Norman P. Lawrie Ltd**  
 Architectural Design  
 100, 102, 104, 106, 108, 110, 112, 114, 116, 118, 120, 122, 124, 126, 128, 130, 132, 134, 136, 138, 140, 142, 144, 146, 148, 150, 152, 154, 156, 158, 160, 162, 164, 166, 168, 170, 172, 174, 176, 178, 180, 182, 184, 186, 188, 190, 192, 194, 196, 198, 200, 202, 204, 206, 208, 210, 212, 214, 216, 218, 220, 222, 224, 226, 228, 230, 232, 234, 236, 238, 240, 242, 244, 246, 248, 250, 252, 254, 256, 258, 260, 262, 264, 266, 268, 270, 272, 274, 276, 278, 280, 282, 284, 286, 288, 290, 292, 294, 296, 298, 300, 302, 304, 306, 308, 310, 312, 314, 316, 318, 320, 322, 324, 326, 328, 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, 410, 412, 414, 416, 418, 420, 422, 424, 426, 428, 430, 432, 434, 436, 438, 440, 442, 444, 446, 448, 450, 452, 454, 456, 458, 460, 462, 464, 466, 468, 470, 472, 474, 476, 478, 480, 482, 484, 486, 488, 490, 492, 494, 496, 498, 500, 502, 504, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 528, 530, 532, 534, 536, 538, 540, 542, 544, 546, 548, 550, 552, 554, 556, 558, 560, 562, 564, 566, 568, 570, 572, 574, 576, 578, 580, 582, 584, 586, 588, 590, 592, 594, 596, 598, 600, 602, 604, 606, 608, 610, 612, 614, 616, 618, 620, 622, 624, 626, 628, 630, 632, 634, 636, 638, 640, 642, 644, 646, 648, 650, 652, 654, 656, 658, 660, 662, 664, 666, 668, 670, 672, 674, 676, 678, 680, 682, 684, 686, 688, 690, 692, 694, 696, 698, 700, 702, 704, 706, 708, 710, 712, 714, 716, 718, 720, 722, 724, 726, 728, 730, 732, 734, 736, 738, 740, 742, 744, 746, 748, 750, 752, 754, 756, 758, 760, 762, 764, 766, 768, 770, 772, 774, 776, 778, 780, 782, 784, 786, 788, 790, 792, 794, 796, 798, 800, 802, 804, 806, 808, 810, 812, 814, 816, 818, 820, 822, 824, 826, 828, 830, 832, 834, 836, 838, 840, 842, 844, 846, 848, 850, 852, 854, 856, 858, 860, 862, 864, 866, 868, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, 890, 892, 894, 896, 898, 900, 902, 904, 906, 908, 910, 912, 914, 916, 918, 920, 922, 924, 926, 928, 930, 932, 934, 936, 938, 940, 942, 944, 946, 948, 950, 952, 954, 956, 958, 960, 962, 964, 966, 968, 970, 972, 974, 976, 978, 980, 982, 984, 986, 988, 990, 992, 994, 996, 998, 1000

**Scale :- 1-2500**

**Date :- October 2013**

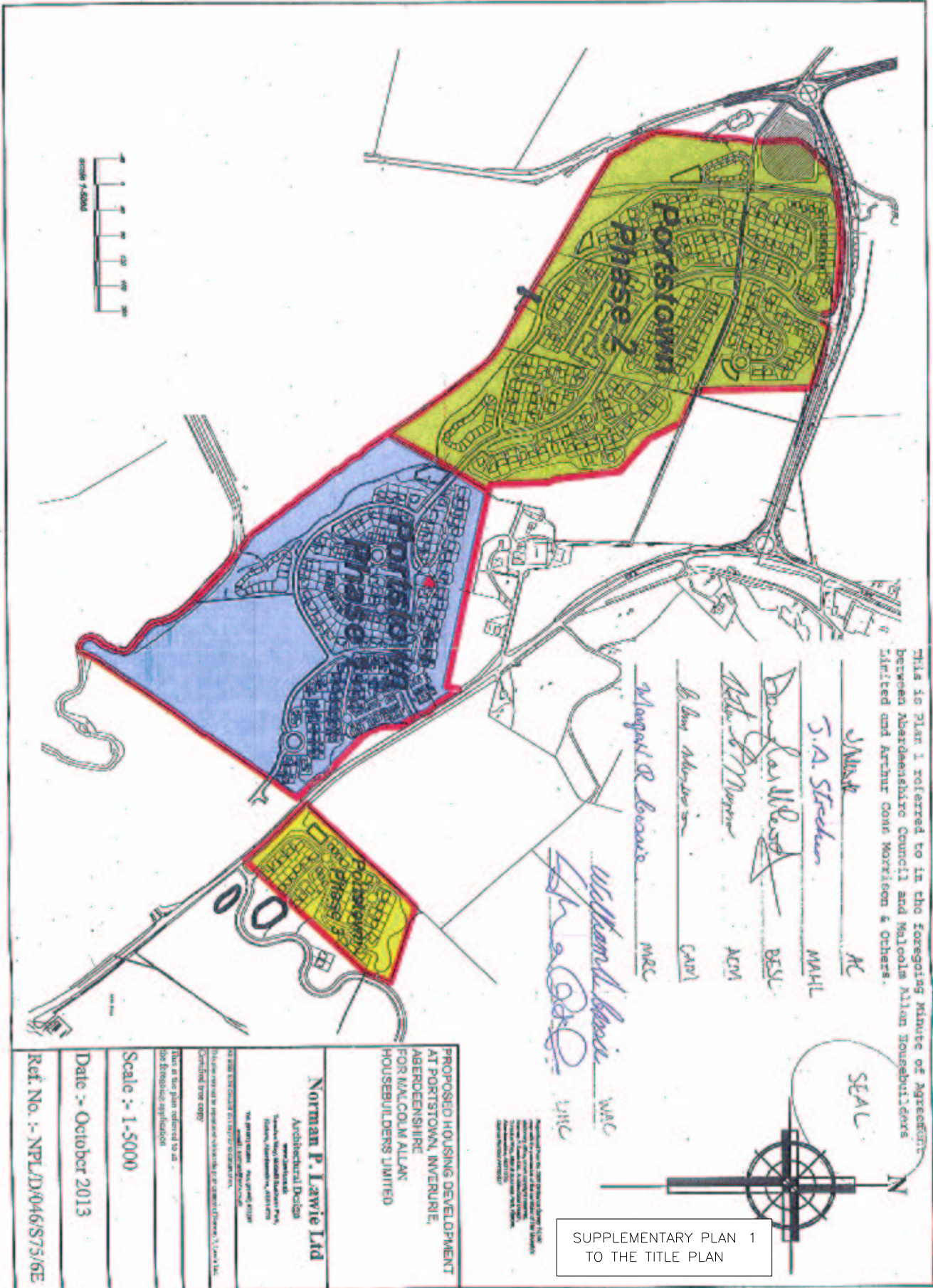
**Ref. No. :- NPL/D/046/S75/2B**

SUPPLEMENTARY PLAN 3 TO THE TITLE PLAN







LAND REGISTER OF SCOTLAND	Officer's ID/Date	Title Number
	3569 18/8/2018	ABN137878

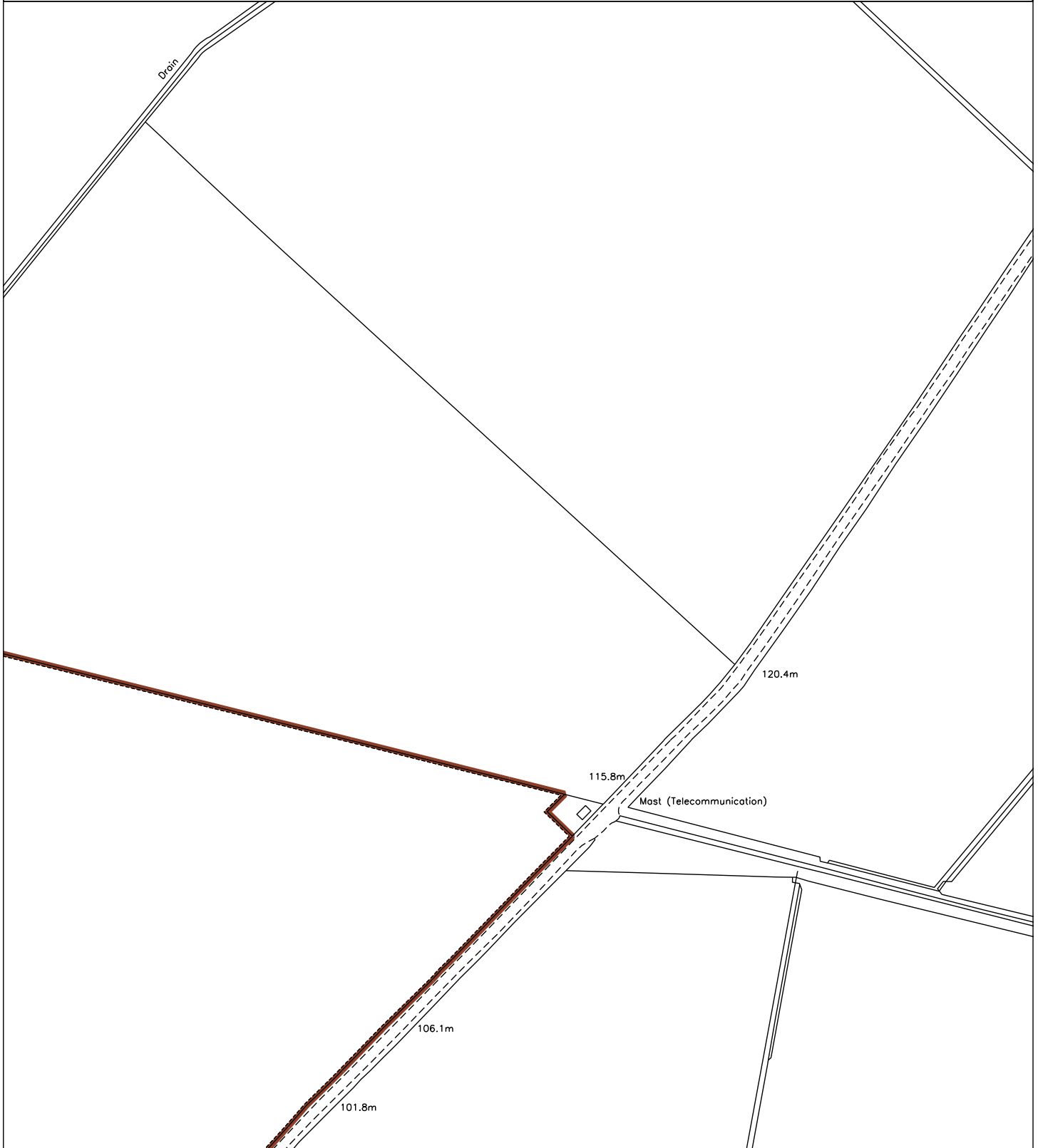




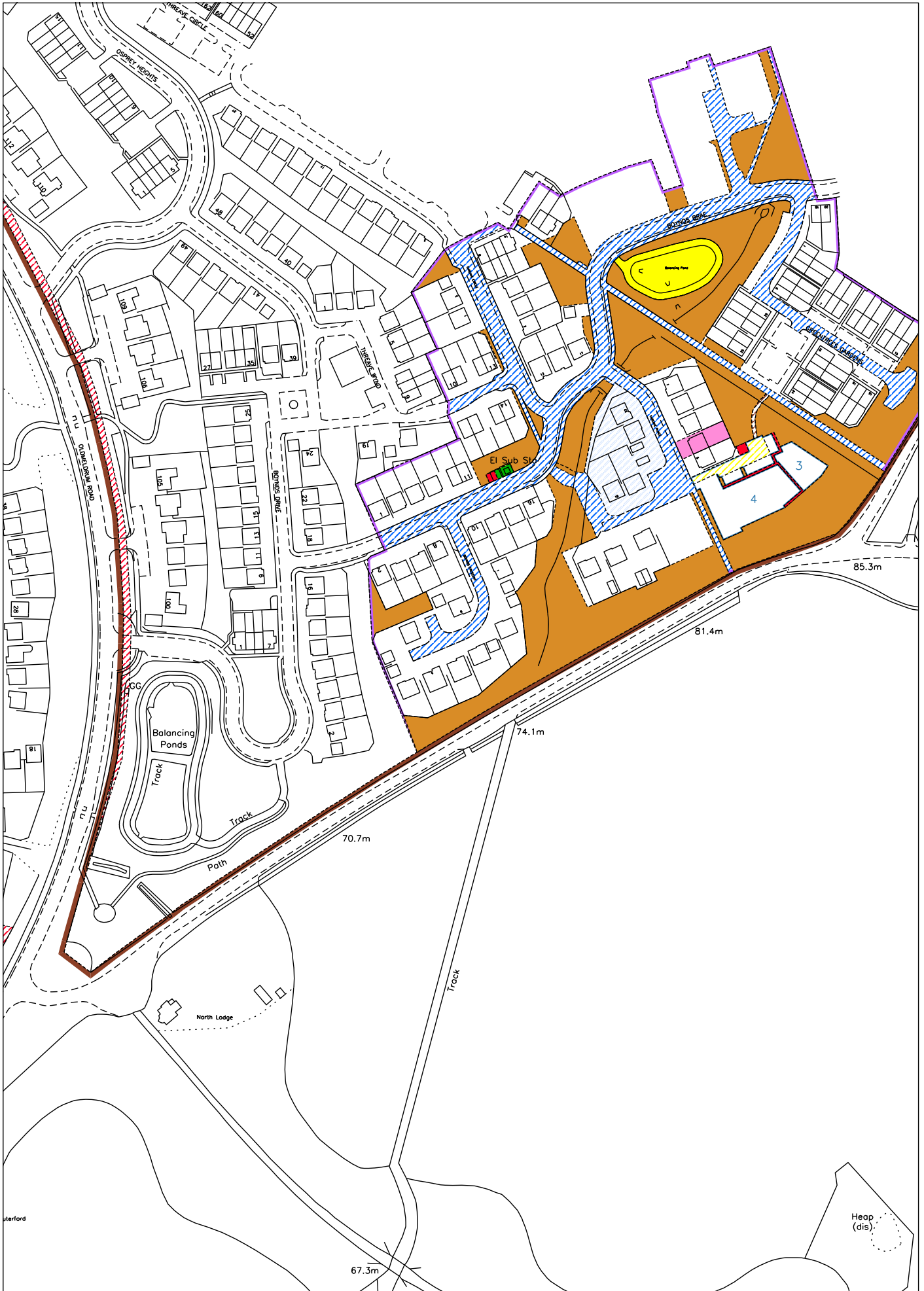


 <b>LAND REGISTER OF SCOTLAND</b>	Officer's ID / Date	TITLE NUMBER
	3569 18/8/2018	<b>ABN137878</b>
	ORDNANCE SURVEY NATIONAL GRID REFERENCE	140m
	NJ7722 NJ7822 NJ7723 NJ7823	Survey Scale 1/2500

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# Title Information: ABN137878

## Search summary

<b>Date/Time of search</b>	02-11-2023 11:24:59
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<b>Transaction number</b>	SCO-16023341
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<b>User Reference</b>	
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**Section A****ABN137878**

## Property

<b>Date of first registration</b>	23-01-2014
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<b>Date title sheet updated to</b>	13-12-2017
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<b>Hectarage Code</b>	0
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<b>Real Right</b>	OWNERSHIP
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**Map Reference**

<b>Title Number</b>	ABN137878
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<b>Cadastral Unit</b>	ABN137878
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**Sasine Search**

<b>Property address</b>	4 THREAVE PLACE, INVERURIE AB516BH
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**Description**

Subjects cadastral unit ABN137878 4 THREAVE PLACE, INVERURIE AB51 6BH tinted pink on the cadastral map; together with (one) a one hundred and eighth pro indiviso share along with the proprietors of the other dwellinghouses in the Development in and to the Mutual Areas; Declaring that the phrases "the Development" and "Mutual Areas" have the meanings ascribed to them in the Deed of Conditions in Entry 6 of the Burdens Section (two) the rights exclusive, common, mutual or otherwise, including servitudes, as specified in the Deeds of Conditions in Entries 5 and 6 of the Burdens Section and (three) the subsisting rights to real burdens specified in the Schedule of Real Burdens below.

## Schedule of Particulars Relative to Subsisting Rights to Real Burdens

<b>Entry No</b>	<b>Benefited Property</b>	<b>Real Burdens</b>	<b>Burdened Property</b>
1	The subjects in this Title and other subjects.	Deed of Conditions by BDW Trading Limited, registered 19 Jun. 2014, in Entry 5 of the Burdens Section.	Subjects at Uryside, Inverurie as specified in the said Deed of Conditions.
2	The subjects in this Title and other subjects.	Deed of Conditions by BDW Trading Limited, registered 23 Oct. 2014, in Entry 6 of the Burdens Section.	Phase 1 at Osprey Heights, Inverurie as specified in the said Deed of Conditions.

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**Section B****ABN137878**

Proprietorship

ALEXANDER JOHN BEGG Flat B, 252 Holburn Street, Aberdeen, AB10 6DD.

<b>Entry number</b>	1
<b>Date of registration</b>	13-12-2017
<b>Date of Entry</b>	07-12-2017
<b>Consideration</b>	£262,995

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**Section C****ABN137878**

## Securities

<b>Entry number</b>	1
<b>Specification</b>	Standard Security by said ALEXANDER JOHN BEGG to LEEDS BUILDING SOCIETY incorporated under the Building Societies Act 1986, Head Office 105 Albion Street, Leeds LS1 5AS.
<b>Date of registration</b>	13-12-2017

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## Section D

**ABN137878**

### Burdens

Number of Burdens: 10

#### **Burden 1**

Disposition by Trustees of William Philip to Alexander Hay Fowler and his heirs and assignees, recorded GRS (Aberdeen) 16 May 1916, of (I) holding known as Boynds and (II) 9.842 acres of ground, part of the Entailed Lands and Estates of Keithhall, Kintore and others, contains the following burdens:

the burden of such rights of way, water privileges and easements or servitudes in favour of other blocks or lots of the said Entailed Lands and Estates or of other Estates or properties as enjoyed by such other blocks, lots, estates or properties.

#### **Burden 2**

Disposition by Trustees for firm of A & C Murrison (Boynds) to Brenda Laing Murrison and another and their executors and assignees, recorded G.R.S. (Aberdeen) 28 June 2013, of the Disposed Property described below, contains inter alia the following real burdens and servitudes:

##### Part 1

##### Definitions and Interpretation

##### 1.1 In this Entry:-

"the Disposed Property" means the farm and lands of Boynds, described to Alexander Hay Fowler, recorded G.R.S (Aberdeen) 16 May 1916 (under exception of (One) 0.402 acre and 0.058 acre, described in Disposition to County Council of County of Aberdeen, recorded 1 Mar. 1960; (Two) 0.11 acre and 4.1 acres, described in Receipt for Compensation &c, recorded 18 Aug. 1967; (Three) subjects registered under Title Number ABN82821; (Four) subjects registered under Title Number ABN82815; and (Five) the area of ground being part of the farm and lands of Boynds extending to 47.24 hectares (said area being hereinafter referred to as "the Retained Property), the subjects in this Title forming part of said Retained Property, it being declared, for the avoidance of doubt, that the 1 metre strip of land surrounding the Retained Property (hereinafter referred to as "the 1 metre strip") forms part of the subjects hereby disposed and does not form any part of the Retained Property;

"the Retained Property Proprietor" means the proprietors from time to time of the Retained Property or any part thereof;

"the Disposed Property Proprietor" means the proprietors from time to time of the Disposed Property and any part thereof;

"Service Media" means all pipes, cables, conduits, sewers, connections others required for the provision of electricity, gas, water, drainage, sewerage, telecommunications and others to serve the Disposed Property and for any development thereof;

### Part 3

#### Servitudes affecting the Retained Property

The following servitudes are imposed on the Retained Property in favour of the Disposed Property:-

1. There is granted in favour of the Disposed Property a heritable and irredeemable servitude right for the Disposed Property Proprietor and its agents, servants, contractors, surveyors, employees and all others of unrestricted access to and egress from the Retained Property for pedestrian and vehicular traffic (including construction vehicles) for all purposes in connection with the current use and/or any future development of the Disposed Property.
2. There is granted in favour of the Disposed Property a heritable and irredeemable servitude right for the Disposed Property Proprietor and its agents, servants, contractors, surveyors, employees and others with or without plant, apparatus and materials to enter upon the Retained Property and to lay therein, connect into, use, inspect, repair, maintain, replace, and renew all Service Media as may be required for the servicing and/or use of the Disposed Property or of any part thereof and any and all buildings or other developments which may be constructed thereon (including all necessary opening up and any alterations to line and levels of such services as may be required from time to time) and including without prejudice to the foregoing generality for the purposes of the supply and use of gas, electricity, sewerage, telecommunications and water and drainage services in connection with the current use and/or any future development of the Disposed Property,
3. There is granted in favour of the Disposed Property a heritable and irredeemable real right of access for the Disposed Property Proprietor and its agents, servants, contractors, surveyors, employees and others with or without plant or apparatus over the Retained Property for surveying purposes before, after and during the carrying out of any works associated with the works of construction and/or installation of the Service Media provided for herein and for the purpose of the repair, maintenance and renewal thereof from time to time.
4. There is granted in favour of the Disposed Property a heritable and irredeemable real right of access for the Disposed Property Proprietor and its agents, servants, contractors, surveyors, employees and others with or without plant or apparatus over the Retained Property for pedestrian and vehicular traffic for the creation and maintenance of roads and footpaths, for the purpose of access and egress for all pedestrian and vehicular purposes connected with the current use and/or any future development of the Disposed Property.

### Burden 3

Minute of Agreement, recorded G.R.S. (Aberdeen) 2 Dec. 2013 between (1) Aberdeenshire Council (who and whose successors as Planning Authority in terms of the Local Government etc (Scotland) Act 1994 are hereinafter referred to as "the Council") (2) Malcolm Allan

Housebuilders Limited, Margaret Rose Cassie, William Andrew Cassie and Lorna Mary Cassie (who and whose successors in the ownership of the various parts of the afterdefined Portstown Land are hereinafter referred to collectively as "the Portstown Land Proprietors") (3) Arthur Conn Murrison and Christian Ann Murrison, as Trustees for the Firm of A & C Murrison (Boyns) (who and whose successors in the ownership of the various parts of the afterdefined Uryside Phase 2 Land are hereinafter referred to collectively as "the Uryside Phase 2 Land Proprietors") (4) Malcolm Allan Housebuilders Limited (hereinafter referred to as "the First Applicant") (5) Barratt East Scotland Limited (hereinafter referred to as "the Second Applicant") and (6) Margaret Rose-Cassie, William Andrew Cassie and Lorna May Cassie (hereinafter referred to as "the Security Holders"), contains agreement between said parties in the following terms:

## BACKGROUND

(A) The Council is the Planning Authority for the Aberdeenshire area in terms of Section 1 of the Act;

(B) The Council as Planning Authority is entitled in terms of Section 75 of the Act to enter into an agreement with any person interested in the land in its district (insofar as the interest of that person enables them to bind the land) for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be prescribed by the agreement;

(C) The First Application was made by the First Applicant to the Council for planning permission in terms of Section 32 of the Act in respect of the development on the Portstown Phase 1 Land;

(D) The Second Application was made by the First Applicant to the Council for planning permission in terms of Section 32 of the Act in respect of development on the Portstown Phase 2 Land;

(E) The Third Application was made by the First Applicant to the Council for planning permission in terms of Section 32 of the Act in respect of the development on the Portstown Phase 3 Land;

(F) The Fourth Application was made by the Second Applicant to the Council for planning permission in terms of Section 32 of the Act in respect of the development on the Uryside Phase 2 Land;

(G) The Portstown Land Proprietors are individually heritable proprietors of parts of the Portstown Land and collectively are heritable proprietors of the whole of the Portstown Land;

(H) The Uryside Phase 2 Land Proprietors are individually heritable proprietors of parts of the Uryside Phase 2 Land and collectively are heritable proprietors of the whole of the Uryside Phase 2 Land;

(I) The Portstown Land Proprietors have granted standard securities over parts of the Portstown Phase 1 Land and Portstown Phase 2 Land in favour of the Security Holders;

(J) The Security Holders for their respective interests under the Security Holders' Security have agreed to consent to the terms of this agreement but without incurring personal liability;

(K) The Second Application and the Fourth Application were refused planning permission by the Council and appeals against the refusals were submitted to the Scottish Ministers. The Scottish Ministers have resolved to grant planning permission in terms of the Second Application and the Fourth Application, but to withhold the issuing of the Decision Letters until an agreement under Section 75 of the Act has been concluded for the purposes of restricting or regulating the development and use of the Portstown Phase 2 Land and the Uryside Phase 2 Land;

(L) The Council has resolved to grant planning permission in terms of the First Application and the Third Application, but to withhold the issuing of the Decision Notices until an agreement under Section 75 of the Act has been concluded for the purposes of restricting or regulating the development and use of the Portstown Phase 1 Land and Portstown Phase 3 Land.

NOW THEREFORE THE PARTIES HAVE AGREED AND DO HEREBY AGREE AS FOLLOWS:-

## 1 DEFINITIONS

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

the Act: the Town and Country Planning (Scotland) Act 1997 as amended;

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

the Affordable Housing Notice: written notice to be given to the Council providing written correspondence between the relevant proprietor and one or more RSLs offering to enter into a contract for the provision of Affordable Housing Units, together with the written replies from the RSL or RSLs advising that they are unable or are unwilling to enter into such a contract;

Affordable Housing Unit: a Housing Unit which is being provided as Affordable Housing in accordance with this agreement;

BDW Trading Limited: a company incorporated under the Companies Acts and registered in England with Company Number 03018173, whose Registered Office is Barratt. House, Cartwright Way, Forest Business Park, Bardonia Hill, Coalville, Leicestershire (formerly known as Barratt Homes Limited, conform to Change of Name Certificate dated 30 November 2007);

the Commercial Land: the land extending to 0.384 hectares within the Uryside Phase 2 Land and shown coloured blue on Plan 5;

the Community: the Inverurie Academy catchment area;

the Commuted Sum: means the sum of TWENTY FIVE THOUSAND POUNDS (£25,000) STERLING per unit as Index Linked;



the Contributions: collectively the Education Contribution, the Roads Contributions, the Signage Contribution and the Footbridge Contribution as Index Linked;

the Decision Notices: the planning consent documents to be issued by the Council in respect of the First Application and the Third Application;

the Decision Letters: the planning consent documents to be issued by the Scottish Ministers in respect of the Second Application and the Fourth Application;

the Development: the erection of one thousand and sixty seven (1067) Housing Units and four commercial units on the Development Site;

the Development Site: collectively the Portstown Phase 1 Land, the Portstown Phase 2 Land, the Portstown Phase 3 Land, all as outlined in red on Plan 1, and the Uryside Phase 2 Land, as outlined in red on Plan 5;

the Development Start Date: the commencement or initiation of development on the Development Site pursuant to the Decision Letters or the Decision Notices in terms of Section 27 of the Act;

the Education Contribution: the sum of SEVEN THOUSAND FOUR HUNDRED AND SIXTY NINE POUNDS (£7,469.00) STERLING as Index Linked;

the First Application: the application made by the First Applicant to the Council identified in the Planning Register by the reference APP/2006/0866 for planning permission for the erection of one hundred and sixty three Housing Units on the Portstown Phase 1 Land in terms of Section 32 of the Act;

the Footbridge Contribution: one half share of the cost of construction of a footbridge over the Lochter Burn at the Footbridge Site or the sum of TEN THOUSAND POUNDS (£10,000) STERLING as Index Linked, whichever is the lesser amount;

the Footbridge Site: the area of land coloured blue on Plan 3;

the Fourth Application: the application made by the Second Applicant to the Council identified in the Planning Register by the reference APP/2009/2542 for planning permission for the erection of six hundred and eleven Housing Units on the Uryside Phase 2 Land in terms of Section 32 of the Act, the refusal of which application was appealed to the Scottish Government, which appeal is identified in the Planning Appeal Register by reference PPA/110/2090;

Housing Unit: any dwelling (including a house, flat or maisonette) permitted to be constructed on the Development Site pursuant to the Decision Letters or the Decision Notices;

Index Linked: multiplied by the higher of (a) one; or (b) the figure produced by dividing RPI<sub>n</sub> by RPI<sub>a</sub> where RPI is the General Index of Retail Prices (All Items) published by the Central Statistical Office (or, if that index ceases to be published, such index of the change of value of money as is generally accepted in its place), RPI<sub>a</sub> is the RPI for January 2013 and RPI<sub>n</sub> is the RPI for the month immediately preceding the due date for payment of the sum of money (or instalment thereof) to be indexed (except that, if, between these dates, there has been any

rebasings or other change of index, RPI shall be the RPI which would have applied for the latter month had such rebasing or other change not taken place);

the Keeper: the Keeper of the Land Register of Scotland and the General Register of Sasines;

Low Cost Home Ownership Units or LCHOU: Affordable Housing Units made available as units for sale to Qualifying Purchasers at the Affordable Prices as appropriate for such an Affordable Housing Unit;

the Neighbouring Land: the area of land coloured green on Plan 3;

Notice of Acceptance of Completion Certificate: the receipt by the Relevant Person of the notice issued by the Council (if the Council are the relevant verifier) under Section 18 of the Building (Scotland) Act 2003, if the verifier is not the Council, then the date the Council receives notification that the relevant verifier has accepted the particular completion certificate;

Plan 1: Drawing No. NPL/D/046/S75/6E, annexed and executed as relative to this agreement;

Plan 2: Drawing No. NPL/D/046/S75/5C, annexed and executed as relative to this agreement;

Plan 3: Drawing No. NPL/D/046/S75/2B, annexed and executed as relative to this agreement;

Plan 4: Drawing No. NPL/D/046/S75/1E, annexed and executed as relative to this agreement;

Plan 5: Drawing No. A4000/ D(-) 01 rev.E, annexed and executed as relative to this agreement;

the Portstown Affordable Housing Land: the areas of land within the Portstown Land shown coloured red and marked A, B, C, D and E on Plan 2 which are to be developed for Affordable Housing;

the Portstown Land: collectively the Portstown Phase 1 Land, the Portstown Phase 2 Land and the Portstown Phase 3 Land;

the Portstown Land Proprietors: collectively the Portstown Phase 1 Land Proprietor, the Portstown Phase 2 Land Proprietor and the Portstown Phase 3 Land Proprietor;

the Portstown Phase 1 Land: the subjects shown coloured blue on Plan 1 and more particularly described as (IN THE FIRST PLACE) the area of ground lying on the west side of the roadway leading from Barravale to Inverurie and extending to seven hectares or thereby; and (IN THE SECOND PLACE) the subjects which form part and portion of the Farms and Lands of Portstown extending to 37.45 hectares (92.54 acres) or thereby described in and show delineated and coloured pink on the plan annexed as relative to the Disposition to John Cassie recorded G.R.S (Aberdeen) 20 May. 1915; BUT EXCEPTING THEREFROM (FIRST) that piece of ground extending to approximately 1.16 acres described in Disposition to Annie Manox Laird or Rae recorded in the said Division of the General Register of Sasines 14 Oct. 1948; (SECOND) those five strips of ground extending in total to 3.991 acres described in and shown delineated and coloured pink and marked four to eight inclusive on the plan annexed as relative to the Disposition to the County Council of the County of Aberdeen recorded in the said Division of the General Register of Sasines on 12 May 1965; (THIRD) that area of ground extending to

37 square metres or thereby described in Disposition to Northeast of Scotland Water Board recorded in the said Division of the General Register of Sasines on 24 May 1973; (FOURTH) the area of ground lying on the west side of the roadway leading from Barravale to Inverurie and extending to 7 hectares or thereby being the subjects registered under Title Number ABN117431, of which the subjects in this Title form part; and (FIFTH) that area or piece of ground extending 3.698 hectares or thereby described in and shown delineated blue on the plan annexed as relative to the Disposition to Malcolm Allan Housebuilders Limited registered 21 April 2008 and which form part of the subjects registered under Title Number ABN97240;

the Portstown Phase 2 Land: that area or piece of land shown coloured green on Plan 1 and more particularly described as (IN THE FIRST PLACE) the subjects which form part and portion of that area or piece of ground extending 3.698 hectares or thereby described in, and shown delineated blue on the plan annexed as relative to the Disposition to Malcolm Allan Housebuilders Limited registered 21 April 2008 and which form part of the subjects registered under Title Number ABN97240; and (IN THE SECOND PLACE) the subjects which form part and portion of the Farms and Lands of Portstown extending to 37.45 hectares (92.54 acres) or thereby described in and shown delineated and coloured pink on the Plan annexed as relative to the Disposition to John Cassie recorded G.R.S (Aberdeen) on the 20 May 1915; BUT EXCEPTING THEREFROM (FIRST) that piece of ground extending to approximately 1.16 acres described in the Disposition to Annie Manox Laird or Rae recorded in the said Division of the General Register of Sasines on the 14 Oct. 1948; (SECOND) those five strips of ground extending in total to 3.991 acres or thereby described in, and shown delineated and coloured pink and marked four to eight inclusive on the plan annexed as relative to the Disposition to the County Council of the County of Aberdeen recorded in the said Division of the General Register of Sasines on 12 May 1965; (THIRD) that area of ground extending to thirty-seven square meters or thereby described in Disposition to the Northeast of Scotland Water Board recorded in the said Division of the General Register of Sasines on 24 May 1973;

the Portstown Phase 3 Land: that area of land shown coloured yellow on Plan 1 comprising the subjects which form part of the Farm and Lands of Boynds described in Disposition to Alexander Hay Fowler recorded G.R.S (Aberdeen) on the 16 May 1916; but under exception of (IN THE FIRST PLACE) (Primo) that piece of ground extending to 0.402 acre or thereby and (Second) those two strips of ground extending in total to 0.058 acre or thereby described (primo) and (second) and delineated and coloured pink and marked "Plots 1, 2 and 3" respectively on the plan annexed as relative to the Disposition to the County Council for the County of Aberdeen recorded in the said Division of the General Register of Sasines on the 1 Mar. 1960 and (IN THE SECOND PLACE) those two pieces of ground respectively extending to eleven hundredth parts of an acre and Four acres and ten hundredth parts of an acre contained in a Receipt for Compensation Undertaking to Execute Conveyance and Grant of Servitude to the said County Council recorded in the said Division of the General Register of Sasines on the 18 Aug. 1967;

the Portstown Phase 1 Land Proprietor: the proprietor of the Portstown Phase 1 Land;

the Portstown Phase 2 Land Proprietor: the proprietor of the Portstown Phase 2 Land;

the Portstown Phase 3 Land Proprietor: the proprietor of the Portstown Phase 3 Land;

Relevant Person: the person responsible for submitting a completion certificate under Section 18 of the Building (Scotland) Act 2003 to the Council;

the Roads Contribution: the sum of ONE THOUSAND EIGHT HUNDRED AND SIXTY SEVEN POUNDS (£1,867) STERLING as Index Linked;

RSL; a Registered Social Landlord registered by the Scottish Ministers in terms of Section 57 of the Housing (Scotland) Act 2001 and operating in the Community;

the Schedule: the schedule aftermentioned;

the School Site: the area within the Portstown Phase 1 Land extending to 5.57 hectares or thereby coloured yellow on Plan 4.

the School Site Contribution: an equitable proportion of the cost of upgrading the water, SUDS, gas, electricity, sewerage and telephone services to the Development Site, as decided by the relevant service installer or as mutually agreed between the Portstown Land Proprietors and the Uryside Phase 2 Land Proprietors and the Council, and the cost of upgrading the sewerage, pumping stations and pumping mains, all to accommodate the usage of the aforementioned services by the community primary school to be erected on the School Site;

the Second Application: the application made by the First Applicant to the Council identified in the Planning Register by the reference APP/2008/4145 for planning permission for the erection of two hundred and fifty three Housing Units and four commercial units on the Portstown Phase 2 Land in terms of Section 32 of the Act, the refusal of which application was appealed to the Scottish Government, which appeal is identified in the Planning Appeal Register by reference PPA/110/2089;

the Security Holders' Security: means the standard security dated 19 August 2005 granted by the said Margaret Rose Cassie and William Andrew Cassie in favour of the said Malcolm Allan Housebuilders Limited over part of the Portstown Phase 2 Land and registered in the Land Register of Scotland under Title Number ABN80849;

Services: (a) such roads and footpaths constructed to base course level with adjacent foot pavements as are need to connect the boundary of the School Site to the existing public road network, and (b) all related infrastructure needed to service the School Site for construction of a community primary school, including the pipes, drains, channels, wires, -cables and conduits needed to ensure the passage of water, sewage, electricity, gas and telephone services to allow the community primary school to be connected thereto; and (c) the benefit of any required servitude rights, including rights of pedestrian and vehicular access and egress to and from the public road network, over the Portstown Phase 1 Land;

the Signage Contribution; the sum of ONE THOUSAND FIVE HUNDRED POUNDS (£1,500) STERLING as Index Linked;

Social Rented Housing Units: means Affordable Housing Units which are provided at an affordable rent by an RSL or the Council to those people in lower income groups within the Community;

the Third Application: the application made by the First Applicant identified in the Planning Register by the reference APP/2010/3002 for planning permission for the erection of forty Housing Units on the Portstown Phase 3 Land in terms of Section 32 of the Act;

the Uryside Phase 2 Land: that area of land at Uryside Farm, Inverurie measuring 44.062 hectares or thereby and coloured pink on Plan 5, of which the Commercial Land forms part, and comprising the subjects which form part of the Farm and Lands of Boynds described in Disposition to Alexander Hay Fowler recorded G.R.S (Aberdeen) 16 May 1916; but under exception of (IN THE FIRST PLACE) (Primo) that piece of ground extending to 0.402 acre and (Second) those two strips of ground extending in total to 0.058 acre or thereby described and disposed (primo) and (second) by and delineated and coloured pink and marked "Plots 1, 2 and 3" respectively on the plan annexed as relative to the Disposition to the County Council for the County of Aberdeen and recorded in the said Division of the General Register of Sasines on the 1 Mar. 1960 and (IN THE SECOND PLACE) those two pieces of ground respectively extending to eleven hundredth parts of an acre and Four acres and ten hundredth parts of an acre contained in a Receipt for Compensation Undertaking to Execute Conveyance and Grant of Servitude to the said County Council recorded in the said Division of the General Register of Sasines on the 18 Aug. 1967; said Uryside Phase 2 Land being the subjects registered under Title Number ABN117431, of which the subjects in this Title form part.

the Uryside Phase 2 Land Proprietors: the proprietor of the Uryside Phase 2 Land.

## 2 INTERPRETATION

2.1 In this agreement (including the Schedule and Plan 1, Plan 2, Plan 3, Plan 4 and Plan 5) unless the context otherwise requires:-

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;

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;

2.1.4 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;

2.1.5 reference to any agreement, contract, document or deed shall be construed as a reference to it as varied, supplemented or novated;

2.1.6 subject to the terms of Clause II.4, obligations undertaken by a party which comprises more than one person shall be deemed to be made by them jointly and severally;

2.1.7 words importing persons shall include firms, companies and bodies corporate and vice versa;

2.1.8 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;

2.1.9 construction of this agreement shall ignore any headings, contents list and front sheet (all of which are for reference only); and

2.1.10 reference to a number Clause or schedule or paragraph are references to the Clause, schedule or paragraph of or to this agreement so numbered.

### 3 ISSUE OF DECISION NOTICES AND COMMENCEMENT DATE

3.1 On the registration of this agreement in the Land Register of Scotland, the Council shall, as soon as reasonably practicable, issue the Decision Notices.

3.2 The Development shall be subject to the conditions, restrictions, obligations, prohibitions and others contained within this agreement until such time, if ever, as any or all of the conditions, restrictions, obligations, prohibitions and others contained within this agreement are implemented, modified or discharged but declaring that other than this Clause and Clauses 1, 2 and 11, the terms of this agreement shall not come into effect until the Development Start

Date.

### AFFORDABLE HOUSING

4.1 Subject to the terms of this Clause, and unless otherwise agreed with the Council, ten percent (10%) of the Housing Units to be constructed on the Uryside Phase 2 Land and ten percent (10%) of the Housing Units to be constructed on the Portstown Land shall be constructed as Affordable Housing Units. The provision of Affordable Housing on the relevant parts of the Development Site shall be in accordance with the following clauses.

#### 4.2 Uryside Phase 2 Land

4.2.1 The Uryside Phase 2 Land Proprietors shall use all proper and reasonable endeavours to enter into a contract with an RSL or with the Council within twenty four (24) months from the Development Start Date for the provision of the relevant number of Affordable Housing Units, as determined by Clause 4.1, within the Uryside Phase 2 Land.

4.2.2 The terms of the sale shall be agreed between the Uryside Phase 2 Land Proprietors and the RSL or the Council, as appropriate, and shall have regard to the type of Affordable Housing to be erected on the Uryside Phase 2 Land. The Affordable Housing may be provided in phases. Any conveyance in favour of the RSL or the Council shall be by way of a disposition resulting in a valid and marketable title being granted in favour of the RSL or the Council, and containing real burdens with the intention of ensuring that the Housing Units, and related land which is being conveyed, are used only for the purposes of Affordable Housing.

4.2.3 If the Affordable Housing is to be provided by an RSL, the Uryside Phase 2 Land Proprietors shall provide the Council for their approval, which approval shall not be unreasonably withheld or delayed, with details, in writing, of the location, mix and proposed

phasing of the Housing Units which are to be provided as Affordable Housing once the terms of the sale have been agreed under Clause 4.2.2.

4.2.4 If, after the expiry of the period of twenty four (24) months referred to in Clause 4.1.2 no contract of sale has been concluded with an RSL or the Council, the Uryside Phase 2 Land Proprietors shall serve the Affordable Housing Notice and, unless otherwise agreed with the Council, ten percent (10%) of the Housing Units to be constructed on the Uryside Phase 2 Land shall be constructed as LCHOUs in accordance with Schedule Part 2 of this agreement. The Uryside Phase 2 Land Proprietors will be required to provide the Council with details, in writing, of the location, mix and proposed phasing of the Housing Units which are to be provided, for the Council's approval, which shall not be unreasonably withheld or delayed.

4.2.5 No more than 550 of the Open Market Houses on the Uryside Phase 2 Land may be occupied, until such time as all of the Affordable Housing Units to be provided in terms of Clause 4.2 have been provided, unless the delay in provision of Affordable Housing Units has been caused by matters outwith the control of the Uryside Phase 2 Land Proprietors which, for example, may relate (but not be restricted to) the availability of funding for the provision of the Affordable Housing.

#### 4.3 Portstown Land

4.3.1 Unless otherwise agreed with the Council, who shall act reasonably, of the ten percent (10%) of the total Housing Units to be provided as Affordable Housing Units within the Portstown Affordable Housing Land, sixty percent (60%) of the Affordable Housing Units shall be provided as Social Rented Housing Units in conjunction with an RSL or the Council, and forty percent (40%) of the Affordable Housing Units shall be provided by the Portstown Land Proprietors as LCHOUs, all in accordance with the following Clauses.

4.3.2 The Portstown Land Proprietors shall use all proper and reasonable endeavours to enter into a contract with an RSL or the Council within twenty four (24) months from the Development Start Date for the provision of sixty percent (60%) of the Affordable Housing Units within the Portstown Affordable Housing Land as Social Rented Housing Units.

4.3.3 The terms of the sale shall be agreed between the Portstown Land Proprietors and the RSL or the Council and shall have regard to the type of Affordable Housing to be erected on the Portstown Affordable Housing Land. The Affordable Housing may be provided in phases. Any conveyance in favour of the RSL or the Council shall be by way of a disposition resulting in a valid and marketable title being granted in favour of the RSL or the Council, and containing real burdens with the intention of ensuring that the Housing Units, and related land which is being conveyed, are used only for the purposes of Social Rented Housing.

4.3.4 If, after the expiry of the period of twenty four (24) months referred to in Clause 4.3.2 above, no contract of sale has been concluded with an RSL or the Council, the Portstown Land Proprietors shall serve the Affordable Housing Notice and shall be entitled to discharge the obligation upon them to provide sixty percent (60%) of the Affordable Housing Units as Social Rented Housing Units in conjunction with an RSL or the Council, provided that they pay the Commuted Sum to the Council in respect of each of the Social Rented Housing Units which were to have been provided, no later than twenty eight (28) days from service of the Affordable Housing Notice.

4.3.5 On payment of the Commuted Sum under Clause 4.3.4, the Portstown Land Proprietors shall be entitled to sell the relevant parts of the Portstown Affordable Housing Land, and any Housing Units erected thereon, on the open market for the erection of, or occupation as, open market housing, free from any obligations in this Clause 4.3.

4.3.6 Forty percent (40%) of the Affordable Housing Units will be provided as LCHOUs on the Portstown Affordable Housing Land in accordance with Part 2 of the Schedule to this Agreement.

4.3.7 No more than 400 of the Open Market Houses on the Portstown Land may be occupied, until such time as all of the Affordable Housing Units to be provided in terms of Clause 4.3 have been provided, unless the delay in provision of Affordable Housing Units has been caused by matters outwith the control of the Portstown Land Proprietors which, for example, may relate (but not be restricted to) the availability of funding for the provision of the Affordable Housing.

## 5 EDUCATION

5.1 The Portstown Phase 1 Land Proprietor shall reserve the School Site for the purposes of the construction of a community primary school thereon. Within twenty-eight (28) days of the later of (1) the Council providing evidence in writing that planning consent has been obtained for the erection of a community primary school on the School Site to serve the Development,

or (2) development commencing on the Development, the Portstown Phase 1 Land Proprietor shall convey the School Site to the Council for nil consideration. The conveyance of the School Site shall result in a valid and marketable title being granted in favour of the Council and be subject to a reservation in favour of the Portstown Phase 1 Land Proprietor of all servitude rights which may be necessary to properly serve the Development: The Council shall be obliged to register their title to the School Site within fourteen (14) days of said conveyance.

5.2 The Portstown Phase 1 Land Proprietor shall provide the Services to the boundary of the School Site within six (6) months of the date of registration of the Council's title to the School Site. The Portstown Phase 1 Land Proprietor shall provide evidence in writing to the Council of the cost of provision of the Services, on an open book basis, within, twenty eight (28) days of the connections being available and the Council shall, within twenty eight (28) days of the costs being provided to them, pay the School Site Service Contribution to the Portstown Phase 1 Land Proprietor who paid for provision of the Services. For the avoidance of doubt the costs of connecting the new community primary school to the Services shall be the responsibility of the Council.

5.3 The Council shall be responsible for the ongoing maintenance of the School Site and shall be entitled to commence development of the community primary school within six years of the registration of their title to the School Site. In the event that development of the community primary school, within the meaning of Section 26 of the Act, has not commenced on the School Site within the aforementioned timescale, the Council shall transfer the School Site to BDW Trading Limited or their successors, for nil consideration and the School Site may thereafter be developed for any purpose, subject to obtaining the appropriate consents

5.4 The Council shall not be entitled to use or permit the School Site to be used for any purpose other than the provision of primary school education, a household waste recycling centre, and



community use. Furthermore, the Council shall not be entitled to sell or otherwise dispose of the School Site to a private enterprise without the prior written consent of the parties who were the heritable proprietors of the School Site at the time of the conveyance under Clause 5.1 above.

5.5 The Uryside Phase 2 Land Proprietors shall pay the Education Contribution to the Council in respect of each Housing Unit erected on the Uryside Phase 2 Land and the Portstown Land Proprietors shall pay the Education Contribution to the Council in respect of each Housing Unit erected on the Portstown Land, both in accordance with the terms of Clause 9 below. The Council shall be obliged to utilise the Education Contributions towards the cost of the community primary school to be erected on the School Site in accordance with Clause 5.3 above.

## 6 ROADS CONTRIBUTION

6.1 The Uryside Phase 2 Land Proprietors shall pay the Roads Contribution to the Council in respect of each Housing Unit erected on the Uryside Phase 2 Land and the Portstown Land Proprietors shall pay the Roads Contribution to the Council in respect of each Housing Unit erected on the Portstown Land, both in accordance with the terms of Clause 9 below. The Council shall be obliged to utilise the Roads Contributions towards the construction of a replacement bridge for the Howford Bridge, over the River Urie, on the Rothienorman Road (B9001), together with any associated improvements to the said Rothienorman Road.

## 7 THE SIGNAGE CONTRIBUTION

7.1 The Uryside Phase 2 Land Proprietors shall pay fifty seven percent (57%) of the Signage Contribution to the Council, in full, within twenty eight (28) days of the Development Start Date.

7.2 The Portstown Land Proprietors shall pay forty three percent (43%) of the Signage Contribution to the Council in full within twenty eight days (28) of the Development Start Date.

7.3 Subject to the terms of Clause 9 below, the Council shall be obliged to utilise the Signage Contribution towards the provision of signage controlling the direction of traffic on the B9170 Market Place.

## 8 RESERVATION OF LAND FOR FOOTBRIDGES

8.1 The Portstown Phase 2 Land Proprietor shall reserve the Footbridge Site for a period of ten (10) years from the Development Start Date for the purposes of construction of a new over Lochter Burn. If within the aforementioned ten (10) years from the Development Start Date the Council provide the Portstown Phase 2 Land Proprietor with written evidence that the proprietor of the Neighbouring Land consents to the construction of the footbridge, the Portstown Phase 2 Land Proprietor shall grant the Council and/or the proprietor of the Neighbouring Land all necessary access rights over the Footbridge Site for the construction of a footbridge by the Council or the proprietor of the Neighbouring Land over Lochter Burn in this location, together with all necessary rights of pedestrian access through the Portstown Phase 2 Land.

8.2 Within twenty eight (28) days of either the Council or the proprietor of the Neighbouring Land obtaining all necessary consents for the construction of the aforementioned footbridge,

and exhibiting certified costs for the proposed construction works, the Portstown Phase 2 Land Proprietors shall pay the Footbridge Contribution to the Council, which Footbridge Contribution shall be utilised by the Council for the construction of the footbridge. The Footbridge Contribution is also subject to the conditions in Clause 9. For the avoidance of doubt, should the footbridge be constructed by the proprietor of the Neighbouring Land, the Council shall transfer the Footbridge Contribution to the proprietor of the Neighbouring Land on commencement of construction of the footbridge.

8.3 The Council will be obliged to adopt the footbridge constructed pursuant to this Clause, together with the pedestrian access routes through the Portstown Phase 2 Land which lead to the footbridge, provided the footbridge and pedestrian access have been built to the relevant adoptable standards and, once adopted, to relieve the Portstown Phase 2 Land Proprietor from any liability arising out of the use of the footbridge and the routes through the Portstown Phase 2 Land by the public.

8.4 Should the Council fail to obtain consent from the proprietor of the Neighbouring Land as required under Clause 8.1, or should the Council and the proprietor of the Neighbouring Land fail to obtain the necessary consents for the construction of the footbridge, within the ten (10) year period set out in Clause 8.1, the obligations on the Portstown Phase 2 Land Proprietor in terms of Clause 8.1 and 8.2 shall be deemed to be discharged. The Portstown Phase 2 Land Proprietor shall thereafter reserve the Footbridge Site for a further period of ten (10) years from the expiry of the ten (10) year period referred to in Clause 8.1 for the purposes of construction of a new footbridge over Lochter Burn. If within the subsequent ten (10) years the Council, provide the Portstown Phase 2 Land Proprietor with written evidence-that the proprietor of the Neighbouring Land consents to the construction of the footbridge, the Portstown Phase 2 Land Proprietor shall grant the Council and/or the proprietor of the Neighbouring Land all necessary access rights over the Footbridge Site for the construction of a footbridge by the Council or the proprietor of the Neighbouring Land over Lochter Burn in this location, together with all necessary rights of pedestrian access through the Portstown Phase 2 Land. For the avoidance of doubt, the Portstown Phase 2 Land Proprietor shall not be required to pay the Footbridge Contribution in these circumstances, but the terms of Clause 8.3 shall apply.

## 9 USE OF THE CONTRIBUTIONS

9.1 In respect of the contributions to be made in terms of Clauses 5 and 6 above it is further agreed that:-

9.1.1 The contributions shall be paid by the Uryside Phase 2 Land Proprietor and the Portstown Land Proprietors, as appropriate, in quarterly instalments based on the number of Housing Units which have been constructed on the Uryside Phase 2 Land or the Portstown Land, respectively, pursuant to the Decision Letters and the Decision Notices during the preceding three (3) month period, as evidenced by the issuing of a Notice of Acceptance of Completion Certificate by the Council or the occupation of the Housing Unit, whichever is the sooner. The first instalment will be calculated nine (9) months from the Development Start Date (which calculation shall be based on the number of Housing Units completed during the preceding nine (9) month period) and further instalments calculated at three (3) monthly intervals thereafter, on the first day of the month concerned. The individual quarterly payments shall fall to be made by the Uryside Phase 2 Land Proprietor or the Portstown Land Proprietors to the Council within twenty-eight (28) days of the date of calculation thereof. Contributions which are not paid within

a further twenty eight (28) days from falling due shall bear interest at four percent (4%) per annum above the Clydesdale Bank plc base rate from the date the Contributions fell due until the date that the relevant Contribution is paid.

9.1.2 The quarterly instalments will continue to be paid by the Uryside Phase 2 Land Proprietor and the Portstown Land Proprietors to the Council until such time as all Housing Units have been completed on the Uryside Phase 2 Land and the Portstown Land and all Contributions have been paid, at which time the Council will grant a discharge of the obligation contained in Clauses 5, 6 and 7.

9.2 The Contributions to be paid by the Uryside Phase 2 Land Proprietor and the Portstown Land Proprietors to the Council as detailed in Clauses 5, 6, 7 and 8 will be held by the Council in interest bearing accounts in their name and will be held by them for the purposes prescribed in this agreement;

9.3 The Council will be obliged to utilise the Contributions for the purposes prescribed in the relevant Clauses within five (5) years of receipt of payment, constituting cleared funds, of the last instalment of the Education Contribution or Roads Contribution, or payment of the Signage Contribution or the Footbridge Contribution, as appropriate, failing which the Council will be obliged to repay such part or parts of the Contributions which has or have not been utilised for the purposes prescribed to the party who paid the relevant Contributions, together with the interest duly accrued thereon, within twenty-eight (28) days of the expiry of the said five (5) year period;

9.4 The Council shall provide such evidence to the Proprietors as may be reasonably required to demonstrate that the Contributions have been used for the purposes prescribed in this agreement and the extent to which they have been so used.

9.5 The Proprietors will be entitled to advertise their involvement in the funding of the education facilities in a manner and location or locations to be agreed between the parties at the appropriate time.

## 10 RESERVATION OF LAND FOR COMMERCIAL CENTRE AT BOYND'S FARM

10.1 The Uryside Phase 2 Land Proprietor shall reserve the Commercial Land for the purposes of the construction of a commercial centre thereon for a period of two (2) years from the Development Start Date. The Uryside Phase 2 Land Proprietor shall market the Commercial Land for sale during the period of reservation. Should the Uryside Phase 2 Land Proprietor be unable to sell or lease the Commercial Land within the aforementioned two (2) year period, they shall exhibit evidence to the Council for the Council's approval, which approval shall not be unreasonably withheld or delayed, of the lack of market interest in the Commercial Land and Council shall discharge the obligation within this Clause and the Uryside Phase 2 Land Proprietor shall be free to develop the Commercial Land for any purpose subject to obtaining the appropriate consents. If the Council's approval is not forthcoming, for a justifiable reason, the Uryside Phase 2 Land Proprietor shall be obliged to market the Commercial Land in accordance with a marketing strategy to be agreed with the Council, such agreement not to be unreasonably withheld or delayed, for a further period of twelve (12) months from the expiry of the/initial period of two (2) years referred to earlier in this Clause.

## 11 GENERAL

11.1 In the event of a change to the planning circumstances of the area which appears to any party to the agreement or to their successors in title to render any of the conditions, restrictions, obligations, prohibitions and others contained in this agreement no longer relevant, the parties or their successors in title shall consider whether the said conditions, restrictions, obligations, prohibitions and others or any of them, should be modified or discharged and, if agreement can be reached, the parties shall record a formal Minute of Variation of this agreement which shall take effect on registration in the Land Register.

11.2 Notwithstanding Clause 11.1 above, any of the heritable proprietors of any part of the Development Site shall be entitled to apply for a discharge or variation of the obligations contained in this agreement under Section 75 of the Act as amended by the terms of the Planning etc (Scotland) Act 2006.

11.3 None of the proprietors of the Development Site shall transfer or assign their rights and obligations under this agreement or dispose of their interests in the Development Site prior to the registration of this agreement in the Land Register.

11.4 It is agreed that on disposal of any part of the Development Site to a subsequent proprietors, the outgoing proprietors shall have no ongoing liability for any obligations in this agreement which relates to the land which has been disposed, save in respect of any antecedent breach of this minute of agreement. For the avoidance of doubt, it is agreed that following disposal of any or all of their respective heritable interests, the outgoing proprietors' as a former proprietors of part of or all of the Development Site, as applicable, shall not be held severally liable with any subsequent proprietors for any of the obligations within this agreement, save in respect of any liability for any antecedent breach of this minute of agreement.

11.5 Any dispute or difference arising between the parties concerning the construction or implementation of this Agreement shall, 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".

11.6 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.

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

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

11.7.2 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;

11.7.3 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;

11.7.4 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);

11.7.5 hold such arbitration in Aberdeenshire;

11.7.6 state his award with reasons and in writing; and

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

11.8 The seat of arbitration will be Scotland.

11.9 Any notice, request, demand, consent or approval required in terms of this agreement shall be made in writing. Any such notice, request, demand, consent or approval given to the Council shall only be validly served if sent by recorded delivery post, or special delivery, to Aberdeenshire Council, Gordon House, Blackhall Road, Inverurie and marked for the attention of Planning & Infrastructure - with the reference "Uryside/Portstown " or any other address intimated by or on behalf of the Council in writing to the Proprietors for the purposes of this Clause.

11.10 Any notice, request, demand, consent or approval given to the Proprietors shall only be validly served if sent by recorded delivery post, or special delivery, to the registered office or home address for the relevant Proprietor or such other address intimated by or on behalf of the Proprietors in writing to the parties hereto for the purposes of this clause.

11.11 No waiver (whether express or implied) by the Council of any breach of 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 enforcing any such provision or from acting on any subsequent breach thereof.

11.12 This Agreement shall be governed and construed in accordance with the Law of Scotland.

11.13 The Security Holders for their interests hereby consent to the provisions of this agreement but without incurring any personal responsibility or liability for the discharge of the terms of this agreement.

11.14 The Portstown Land Proprietors and the Uryside Phase 2 Land Proprietors shall be jointly responsible, for:

11.14.1 payment of the Council's reasonable and properly incurred legal fees in connection ,r with the preparation and completion and enforcement of this agreement, up to a maximum of FIVE THOUSAND POUNDS (£5000.00), and

11.14.2 the costs of registering this agreement in the Land Register of Scotland and /or the General Register of Sasines and the Books of Council and Session, including obtaining two (2) extracts.

## Schedule

### PART 1: DEFINITIONS

1.1 The Definitions set out in Clause 1 of the foregoing Minute of Agreement shall apply to this Schedule. In this Schedule, the following additional terms and expressions shall have the meanings respectively set opposite them unless the context otherwise requires:-

the Affordable Price:

SEVENTY FIVE THOUSAND POUNDS (£75,000) STERLING for a one (1) bedroom house;

SIXTY EIGHT THOUSAND POUNDS (£68,000) STERLING for a one (1) bedroom flat;

NINETY FIVE THOUSAND POUNDS (£95,000) STERLING for a two (2) bedroom house;

EIGHTY THOUSAND POUNDS (£80,000) STERLING for a two bedroom flat;

ONE HUNDRED AND TWENTY THOUSAND POUNDS (£120,000) STERLING for a three (3) bedroom house

ONE HUNDRED and FIFTY THOUSAND POUNDS (£150,000) STERLING for a four (4) bedroom house

all stated prices above to be increased in accordance with AWEI from First January 2013 until the date valuations are provided in terms of Clause 1.1 of Part 2 of this Schedule;

Affordable Housing Unit Contribution; the sum paid by any Subsequent Owner which represents the Staircasing Percentage relative to an individual LCHOU which sum is to be held by the Council in an interest bearing account together with all interest accrued on same in accordance with Part 2 of the Schedule to this agreement;

the Average Weekly Earnings Index or AWEI: the index of average weekly earnings published each month by the Office of National Statistics;

the Criteria: persons who are in the following categories: (i) Council or RSL tenants who currently live in Inverurie; (ii) Council or RSL waiting list applicants who had requested Inverurie as an area in which they wish to be re-housed; (iii) Council or RSL tenants from other areas of

the Community without a local connection to Inverurie; (iv) Council or RSL waiting list applicants from other areas of the Community without a local connection to Inverurie; and (v) other persons deemed by the Council as being appropriate Qualifying Purchasers;

the Initial Discount: the difference between the Affordable Price as applicable to the LCHOU and the Open Market Value for that Housing Unit as established by the valuations provided in terms of Clause 1.1 of the Schedule Part 2, expressed as a percentage reduction of that Open Market Value;

the LCHOU Land: an area of land within the Development Site upon which the Affordable Housing Units are to be provided as LCHOU;

the LCHOU Land Proprietors the Proprietors as and to the extent that the same are the heritable proprietors of the LCHOU Land or any part thereof, but excluding for this purpose any Subsequent Owner;

Open Market House: any dwelling built on the Development Site which is not Affordable Housing;

the Open Market Value: the value of each relevant dwelling in question to be erected on the Development Site 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 these are private houses for sale on the open market with vacant possession and not subject to the conditions within this agreement and the term "Open Market Valuation" shall be construed accordingly;

Qualifying Purchasers: those people nominated by the Council/or where applicable, an RSL operating within the Community, as wishing to purchase an Affordable Housing Unit and who conform with the Criteria;

Reduced Price: means the Open Market Value applying at the time of any sale less the Subsequent Owner's Repayment Amount;

the Retained Discount means the minimum discount which must be retained in the Affordable Housing Unit expressed as a percentage of Open Market Value which cannot be reduced by any Subsequent Owner;

Revised Reduced Price: means the Open Market Value applying at the time of any sale, less the Subsequent Owner's Reduced Repayment Amount;

Staircasing: the process by which Subsequent Owners can reduce the percentage discount they are required to repay on sale of the LCHOU by making payment to the Council of a sum representing a proportion of the Open Market Value of that unit;

Staircasing Percentage: the percentage of the Open Market Value by which a Subsequent Owner can decrease the repayment due on sale;

the Subsequent Owner: the person or persons comprising a Qualifying Purchaser who owns an LCHOU from time to time having purchased it either (a) from the LCHOU Land Proprietors, or (b) from a previous Subsequent Owner in accordance with the terms of Part 2 of this Schedule;

the Subsequent Owner's Repayment Amount: the percentage discount Subsequent Owners are required to pay on sale of the LCHOU being equal to the Initial Discount or the proportion of the Open Market Value of the LCHOU Subsequent Owners are required to repay on sale of the LCHOU, said proportion being calculated by working out the monetary value of the Initial Discount Percentage (as applicable, to the LCHOU in question) and applying at the time repayment is due;

the Subsequent Owner's Reduced Repayment Amount: the percentage discount Subsequent Owners who have already paid the Staircasing Percentage are required to repay on sale of the LCHOU being the Initial Discount minus the Staircasing Percentage or the proportion of the Open Market Value Subsequent Owners who have already paid the Staircasing Percentage are required to repay on sale of the LCHOU, said proportion being calculated by subtracting the applicable Staircasing Percentage from the applicable Initial Discount (as applicable to the LCHOU in question) and applying at the time repayment is due;

## PART 2: LOW COST HOME OWNERSHIP UNITS

In accordance with the terms of Clauses 4.2 and 4.3 of the foregoing Minute of Agreement, in respect of the Affordable Housing Units to be provided as LCHOU the following terms and conditions shall apply and will be validly referred to in any sale of any LCHOU:-

### 1. DETERMINATION OF DISCOUNT

1.1. The LCHOU Land Proprietors shall provide the Council with two (2) independent valuations of (the Open Market Value of the LCHOU, erected or to be erected on the relevant part of the Development Site, prepared by suitably qualified surveyors, which valuations shall be provided within 14 days of the date of valuation. Where the two valuations differ the Open Market Value for the LCHOU shall be determined to be the average of these two valuations. The LCHOU Land Proprietors shall be solely responsible for the costs of obtaining these valuations. The Council shall thereafter determine the Initial Discount applicable to each LCHOU, which Initial Discount shall be fixed and used in subsequent sales of the LCHOU. The Council shall, prior to the commencement of marketing pursuant to Clause 2 of this Schedule Part 2 and in writing, advise the LCHOU Land Proprietors of the level of Staircasing Percentage and Retained Discount applicable to each LCHOU and the relevant proprietors shall be bound to include those percentages in the terms of any sale of a LCHOU.

1.2. Following determination of the Initial Discount, the Staircasing Percentage and the Retained Discount, the LCHOU Land Proprietors shall, in any marketing, information or legal materials intended to be distributed to Qualifying Purchasers, refer to the Subsequent Owner's Repayment Amount and the Subsequent Owner's Reduced Repayment Amount.

### 2. MARKETING.

2.1. The LCHOU Land Proprietors shall, at their sole expense, provide the Council with promotional sale particulars in relation to the LCHOU which details the Affordable Price for the



relevant LCHOU, which particulars the Council shall pass on to Qualifying Purchasers. The LCHOU Land Proprietors shall also advertise the sale of the LCHOU within any sales and marketing office within the relevant part of the Development Site.

2.2. The LCHOU shall be made available to Qualifying Purchasers for a minimum period of six months. This six month period shall run from the date upon which open market valuations are provided to the Council, in terms of Clause 2.1 of this Schedule Part 2, provided that the marketing period shall include a minimum period of three months from the date of completion of the relevant LCHOU. The marketing period set out in this clause does not preclude any agreement by the parties of any longer marketing period and/or the commencement of marketing at any earlier date which extends or is additional to the minimum period specified.

2.3. The LCHOU Land Proprietors shall note down all enquiries from Qualifying Purchasers in a form to be devised with the Council; both parties acting reasonably, and shall pass on all enquiries to the Council as soon as is reasonably practicable on an ongoing basis. For the avoidance of doubt the LCHOU Land Proprietors will not be involved nor make any judgement over the suitability of the Qualifying Purchasers to meet the Criteria as this is the sole responsibility of the Council.

2.4. The Council will advise the LCHOU Land Proprietors within one (1) month of receiving any enquiries, whether the enquirers are Qualifying Purchasers who meet the Criteria and confirm which priority ranking shall apply to the Qualifying Purchasers who have expressed an interest in acquiring an LCHOU to the Council or the LCHOU Land Proprietors, in which priority ranking the LCHOU are to then be sold to Qualifying Purchasers.

2.5 If the LCHOU Land Proprietors on the Uryside Phase2 Land (having used all reasonable endeavours) have been unable to conclude missives with a Qualifying Purchaser in accordance with the conditions of this Clause 2 of this Schedule Part 2 for any of the LCHOU at the Affordable Price within the six (6) month period referred to in Clause 2.2 of this Schedule Part 2, then the LCHOU Land Proprietors shall be entitled to sell the remaining LCHOU on the open market for the full mainstream price, subject to the LCHOU Land Proprietors paying to the Council the Commuted Sum for each relevant LCHOU within twenty-eight (28) days of the sale of that Housing Unit on the open market. Commuted Sums which are not paid within twenty eight (28) days of being due shall bear interest at four percent (4%) per annum above the Clydesdale Bank plc base rate from the date the Commuted Sum fell due until the date of payment.

2.6 If the LCHOU Land Proprietors on the Portstown Land (having used all reasonable endeavours) have been unable to conclude missives with a Qualifying Purchaser' in with the conditions of this Clause 2 of this Schedule Part 2 for any of the LCHOU at the Affordable Price within the six (6) month period referred to in Clause 2.2 of this Schedule Part 2, then the LCHOU Land Proprietors shall offer to sell the LCHOU to the Council or an RSL. The terms of sale shall be agreed between the LCHOU Land Proprietors and the RSL or the Council, as appropriate. Any conveyance in favour of the RSL or the Council shall be by way of a disposition resulting in a valid and marketable title being granted in favour of the RSL or the Council, and containing real burdens with the intention of ensuring that the LCHOU, and related land which is being conveyed, are used only for the purposes of Affordable Housing. Should the RSL or the Council fail to accept the offer to purchase the LCHOU within twenty eight (28) days of receipt, the RSL or the Council will be deemed to have declined the offer, and

then the LCHOU Land Proprietors shall be entitled to sell the remaining LCHOU on the open market for the full mainstream price, subject to the LCHOU Land Proprietors paying to the Council the Commuted Sum for each relevant LCHOU within twenty-eight (28) days of the sale of that Housing Unit on the open market. Commuted Sums which are not paid within twenty eight (28) days of being due shall bear interest at four percent (4%) per annum above the Clydesdale Bank plc base rate from the date the Commuted Sum fell due until the date of payment.

2.7 Upon payment of the Commuted Sum for each or any LCHOU which is sold on the open market pursuant to Clause 2 of this Schedule Part 2, the obligations incumbent upon the LCHOU Land Proprietors pursuant to this agreement shall be deemed to be discharged in respect of that Housing Unit.

2.8 The Council shall be obliged to utilise the Commuted Sums received under the terms of this Clause 2 of this Schedule Part 2 for the purposes of providing Affordable Housing in the Community. The Commuted Sum will be transferred by the Council into an interest bearing account in their name and will be used by them for the purposes prescribed within five (5) years of payment by the LCHOU Land Proprietors of the Commuted Sum for each relevant LCHOU, failing which the Council will be obliged to repay such part of the Commuted Sum which has not been utilised for the purposes prescribed to the relevant party who paid the Commuted Sums together with any interest duly accrued thereon, within twenty-eight (28) days of the expiry of the five (5) year period. The Council shall, on written request from the LCHOU Proprietors, provide details of the said utilisation of the Commuted Sums.

### 3. STANDARD SECURITY

3.1. All purchasers of an LCHOU comprising Subsequent Owners will at the time of purchase grant and execute a Standard Security at their own expense in favour of the Council for the Subsequent Owner's Repayment Amount or the Subsequent Owner's Reduced Repayment Amount as the case may be. Any Standard Security entered into in accordance with this clause shall bind the Subsequent Owners to comply with the terms of Clause 5 of this Schedule Part 2 hereof and shall set out the requirements of those terms within the Standard Security. The parties acknowledge that any Standard Security granted in accordance with this Clause and Clause 5 of this Schedule Part 2 shall be postponed to rank after any standard securities granted by the relevant Subsequent Owner to assist in purchasing the LCHOU.

3.2. The Council shall discharge the Standard Security in their favour on the subsequent sale or transfer of an LCHOU provided that the Subsequent Owner (being the subsequent Qualifying Purchaser) has provided a Standard Security incorporating the terms of Clause 5 of this Schedule Part 2 hereof and on the same terms for the Subsequent Owner's Repayment Amount or the Subsequent Owner's Reduced Repayment Amount as the case may be.

3.3. No Subsequent Owner of an LCHOU shall be entitled to borrow and/or grant any Standard Security over any LCHOU for the sum representing more than the sum representing the Open Market Value of the LCHOU in question from time to time less the Subsequent Owner's Repayment Amount or the Subsequent Owner's Reduced Payment Amount, which the Subsequent Owner in question is liable for, as the case may be.

3.4. A heritable creditor shall be entitled to sell an 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.

#### 4. STAIRCASING

4.1. The Subsequent Owner shall be entitled, at any time from and after the date which is 2 years after the date of entry to the LCHOU in question (when such LCHOU was purchased by such Subsequent Owner), to reduce the liability of the Subsequent Owner to account for and pay the Subsequent Owner's Repayment Amount in terms of this agreement to the sum representing the Subsequent Owner's Reduced Repayment Amount by:-

4.1.1. serving not less than 28 days prior written notice on the Council intimating exercise of the right of the Subsequent Owner to reduce their liability for payment of the Subsequent Owner's Repayment Amount in terms of this Clause 4 of this Schedule Part 2;

4.1.2. providing with such written notice referred to in Clause 4.1.1 of this Schedule Part 2, and at their sole expense, reports from two independent chartered surveyors addressed to the Council and the Subsequent Owner, dated not less than 14 days prior to such written notice, providing the opinion of each surveyor of the Open Market Value of the LCHOU in question (and in the event that such reports provide different valuations, the Open Market Value shall be deemed to be the average of such valuations);

4.1.3. making payment to the Council of the Affordable Housing Unit Contribution within 28 days of the Subsequent Owner providing such written notice to the Council.

4.2. Upon receipt of the payment referred to in Clause 4.1.3 in this Schedule. Part 2 the Council shall provide written confirmation to the Subsequent Owner making such payment of their receipt of same and acknowledgement that for the purposes of this agreement the liability of the Subsequent Owner relative to such LCHOU shall be to account for and make over the sum representing the Subsequent Owner's Reduced Repayment Amount in lieu of the Subsequent Owner's Repayment Amount in accordance with the terms of this Agreement.

4.3. Each payment received by the Council pursuant to this Clause 4 of this Schedule Part 2 shall be held by the Council in a separate ring fenced interest bearing account together with all interest accrued on same.

4.4. The Council may:-

4.4.1. use the Affordable Housing Unit Contribution to facilitate the future provision of the LCHOU in question by a Qualifying Purchaser; or

4.4.2. apply the whole or any part of the Affordable Housing Unit Contribution for any other necessary Affordable Housing purpose within the Community.

#### 5. SALE OF LCHOU

5.1. In the event that a Subsequent Owner of an LCHOU wishes to sell or otherwise dispose of an LCHOU, they shall require to notify the Council in writing and shall provide the Council with

two open market valuations within 14 days of such notification. The Council shall (i) have a period of 3 calendar months from the date of notification from the Subsequent Owner of the desire to sell or dispose, to determine and intimate in writing to the Subsequent Owner whether or not they wish to retain the dwelling as an LCHOU and (ii) in the event of the Council intimating in writing timeously that they wish to retain the dwelling as an LCHOU, have a period of 20 weeks from the date of notification from the Subsequent Owner of the desire to sell or dispose, to procure that their nominated Qualifying Purchaser concludes missives with the Subsequent Owner to purchase the LCHOU in accordance with Clause 5.3 of this Schedule Part 2 below and otherwise on normal commercial terms (the Subsequent Owner being bound to provide all necessary co-operation in this regard and to do everything requisite and necessary reasonably requested by the Council in order to conclude satisfactory missives).

5.2. In the event that (a) the Council do not provide timeous notice that they wish to retain the dwelling in question as an LCHOU within the period of 3 calendar months referred to, or (b) such notice is provided but missives are not concluded with a Qualifying Purchaser within the 20 week period referred to above (save to the extent that any failure is attributable to any fault or delay on the part of the Subsequent Owner), the Council shall have the right to purchase the LCHOU or nominate an RSL to purchase the LCHOU in question from the Subsequent Owner by giving written notice to that effect to the Subsequent Owner not later than 24 weeks from the date of notification from the Subsequent Owner of the desire to sell or dispose by the Subsequent Owner pursuant to Clause 5.1 in this Schedule Part 2 and in which event the Council/RSL shall purchase and the Subsequent Owner shall sell the LCHOU in question on the following terms and conditions:

5.2.1. the purchase price payable by the Council/RSL (as applicable) to the Subsequent Owner shall be:

(a) in the case of the sale of an LCHOU by a Subsequent Owner who is liable to account for and pay the Subsequent Owner's Repayment Amount, the Reduced Price; and

(b) in the case of the sale of an LCHOU by a Subsequent Owner who is liable to account and pay the Subsequent Owner's Reduced Repayment Amount (having exercised the right to reduce the Subsequent Owner's Repayment Amount pursuant to Clause 4 of this Schedule Part 2), the Revised Reduced Price;

5.2.2. the date of entry when vacant possession of the LCHOU in question shall be granted by the Subsequent Owner to the Council/RSL (as appropriate) shall be 4 weeks after the date of written notice issued by the Council;

5.2.3. on the date of entry in exchange for payment of the purchase price calculated in terms of Clause 5.2.1 of this Schedule Part 2, the Subsequent Owner shall:

(a) deliver to the Council/RSL (as appropriate) a valid disposition of the LCHOU in question in favour of the purchaser. The disposition will be formally signed in a self proving manner.

(b) deliver to the Council/RSL (as appropriate) a valid and marketable prescriptive progress of title to the LCHOU in question.

(c) deliver to the Council/RSL (as appropriate) a Form 12 Report over the property by a professional searcher dated not more than 5 working days before the date of entry which discloses nothing prejudicial to the interest of the Subsequent Owner of the LCHOU in question or the valid grant of the disposition in favour of the Council.

(d) deliver to the Council/RSL (as appropriate) all documents and evidence (including a plan or detailed written description of the boundaries of the property sufficient to enable the whole of the LCHOU in question to be identified on the ordnance map) that the Keeper may require to enable the Keeper to issue a Land Certificate in the name of the Council/RSL (as appropriate) as the registered Proprietors of the LCHOU in question without any exclusion of indemnity in terms of Section 12(2) of the Land Registration (Scotland) Act 1979 or otherwise.

(e) if there is a heritable security affecting the LCHOU in question at the date of entry (except any standard security granted by the Subsequent Owner pursuant to Clause 3 of this Schedule Part 2) deliver to the Council/RSL (as appropriate) a formally signed discharge or deed of restriction releasing the LCHOU in question from that security together with a properly completed and signed application to the Keeper to register that discharge with relevant cheque to the Keeper for an amount equal to the fees for registering that deed in the Land Register.

(f) deliver to the Council/RSL (as appropriate) a Letter of Obligation formally signed by the Subsequent Owner's solicitors in the form recommended by the Law Society of Scotland.

5.3 In the event of the Council nominating a suitable Qualifying Purchaser pursuant to Clause 5.1 of this Schedule Part 2, the Subsequent Owner shall sell the LCHOU to the nominated Qualifying Purchaser:-

5.3.1. in the case of the sale of an LCHOU by a Subsequent Owner who is liable to account for and pay the Subsequent Owner's Repayment Amount, at the Reduced Price; or

5.3.2. in the case of the sale of an LCHOU by a Subsequent Owner who is liable to account and pay the Subsequent Owner's Reduced Payment Amount (having exercised the right to reduce the Subsequent Owner's Repayment Amount pursuant to Clause 4 of this Schedule Part 2 hereof), at the Revised Reduced Price;

5.3.3. the date of entry to the Qualifying Purchaser shall be a date not later than 4 weeks from the date of conclusion of the missives between the Subsequent Owner and the Qualifying Purchaser.

5.4 Should the Council determine following receipt of a notice from a Subsequent Owner pursuant to Clause 5.1 of this Schedule Part 2 above that they do not wish the dwellinghouse to be retained as an LCHOU or 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 Clause 5.2 of this Schedule Part 2 (the Council being deemed in each case to have made such determination in the absence of timeous written intimation pursuant to Clause 5.1 or Clause 5.2 of this Schedule Part 2), the Subsequent Owner shall be entitled to sell the LCHOU on the open market at not less than the Open Market Value and shall account for and pay upon completion of such sale the Subsequent Owner's Repayment Amount or the Subsequent Owner's Reduced Repayment Amount as the case may be to the Council. Further declaring that where the Council determine that they do not wish the dwellinghouse to be retained as an LCHOU and that they do not wish

to exercise the right to purchase the LCHOU in question (or are deemed to have so determined as aforesaid) and the payment made to the Council as aforesaid comprises the Subsequent Owner's Reduced Payment Amount, the Council shall account for and pay to the LCHOU Land Proprietors or their nominees one half of the Affordable Housing Unit Contribution for the dwellinghouse in question under deduction of the Commuted Sum, which Commuted Sum and such other remaining amount will be retained and used by the Council for the provision of Affordable Housing in the Community.

5.5 The cost of the valuations to be obtained under this Clause 5 of this Schedule Part 2 either to establish Open Market Value or to verify that such a sale is not less than the Open Market Value will be borne by the Subsequent Owner in question.

Note 1: Copies of Plans 1, 2, 3, 4 and 5 annexed to the said Minute of Agreement are included in this title sheet as supplementary data nos 1, 2, 3, 4 and 5 respectively to the title sheet;

Note 2: The said Minute of Agreement has been varied in terms of the Variations of Minute of Agreement in entries 7 and 8 of this section;

Note 3: the said Minute of Agreement is affected by the terms of the Partial Discharge of Agreement in entry 9 of this Section.

## **Burden 4**

Deed of Servitude, recorded G.R.S. (Aberdeen) 4 Dec. 2013 by (One) Arthur Conn Murrison and Christian Ann Murrison as Trustees for the Firm of A & C Murrison (Boyndes);

(Two) Brenda Laing Murrison and (Three) Eunice Ann Murrison or Pallot (the "Burdened Owner") to (One) Malcolm Allan Housebuilders Limited and (Two) Margaret Rose Cassie, William Andrew Cassie and Lorna Mary Cassie (the "Benefited Owner"), contains inter alia the following servitude rights and conditions:

### 1 Definitions and Interpretation

#### 1.1 Definitions

In this Deed:-

"Benefited Property" means the two areas of land shown outlined red and coloured blue and green on Plan 1;

"Burdened Property" means together the Burdened Property Footbridge, the Burdened Property Boynds and the Burdened Property Services;

"Burdened Property Boynds" means that area of land shown outlined red on Plan 2 and being the subjects registered under Title Number ABN117431, of which the subjects in this Title form part;

"Burdened Property Footbridge" means that one metre strip of land shown coloured red on Plan 3;

"Burdened Property Services" means that one metre strip of land between the points '1' and '2' shown coloured blue on Plan 2;

"Forty Unit Site" means the land at Boynds Farm, Inverurie shown delineated in red and coloured pink on Plan 4;

"Plan 1" means the plan marked 'Plan 1' annexed and executed as relative hereto;

"Plan 2" means the plan marked 'Plan 2' annexed and executed as relative hereto;

"Plan 3" means the plan marked 'Plan 3' annexed and executed as relative hereto;

"Plan 4" means the plan marked 'Plan 4' annexed and executed as relative hereto;

"Plan 5" means the plan marked 'Plan 5' annexed and executed as relative hereto;

"Road" means the access road together with the footpaths and street lighting pertaining thereto constructed or to be constructed on the area of land shown coloured orange and blue on Plan 4 which forms part of the Burdened Property Boynds;

"Schedule" means the schedule aftermentioned;

"Service Media" means all pipes, drains, wires, lines, conduits, ducts, transmitters, cables, sewers, soil pipes, gas supply pipes, mains water supply pipes, mains electric supply cables, telephone and television cables, transmitters and connections, and all other conducting media, services and equipment for the supply of mains water, foul drainage, gas, electricity and telecommunications;

"Servitude Conditions" means the conditions under which the Servitude Rights are to be exercised set out in Part 2 of the Schedule; and

"Servitude Rights" means the servitude rights set out in Part 1 of the Schedule.

## 1.2 Interpretation

Save to the extent that the context or the express provisions of this Deed otherwise requires, in this Deed:-

1.1.1 words importing any gender include all other genders;

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

1.2.2 where at any one time there are two or more persons included in the expression "Benefited Owner" or "Burdened Owner" obligations contained in this Deed which are expressed to be made by the party denoted by the expression in question are binding jointly

and severally on them and their respective executors and representatives whomsoever without the necessity of discussing them in their order;

1.2.3 words importing individuals include legal persons and vice versa;

1.2.4 references to this Deed or to any other document are to be construed as reference to this Deed or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time;

1.2.5 any reference to a Clause, Schedule or Part of the Schedule is to the relevant Clause, Schedule or Part of the Schedule of or to this Deed;

1.2.6 the expression "Burdened Owner" shall include their successors in title to the Burdened Property, and the expression "Benefited Owner" shall include their successors in title to the Benefited Property;

1.2.7 any phrase introduced by the words "including", "include", "in particular" or any similar expression is to be construed as illustrative

only and is not to be construed as limiting the generality of any preceding words; and

1.2.8 any rights reserved to the Benefited Owner are exercisable by the tenants, agents, employees, workmen and others authorised by them from time to time.

No application may be made to the Lands Tribunal for Scotland under section 90(1)(a)(i) of the Title Conditions (Scotland) Act 2003 in respect of the servitudes set out in this Deed for a period of five years after the registration of this Deed in the Land Register of Scotland.

## Schedule

### Part 1

#### The Servitude Rights

The following servitude rights are imposed on the Burdened Property Boynds for the benefit of the Forty Unit Site:

6. A servitude right to construct and thereafter keep in place, maintain, repair and renew the section of the Road coloured orange over and across the Burdened Property Boynds to connect the Forty Unit Site to the public road together with all necessary rights of access (including, where necessary, for construction traffic) for the exercise of same.

7. A servitude right to construct and thereafter keep in place footpaths from the points marked 'A', 'B' and 'C' on Plan 4 to connect the Forty Unit Site to the Burdened Property Boynds and the Road along the routes shown coloured green on Plan 4 together with all necessary rights of access (including, where necessary, construction traffic) for the exercise of same.

8. A servitude right of access and egress at all times and for all purposes for pedestrians and vehicles (including construction vehicles) over and across the Road.



9. A servitude right of pedestrian access and egress at all times for all purposes over and across the footpaths referred to in paragraph 7 situated within the Burdened Property Boynds.

10. A servitude right to install, connect into and keep in place and thereafter maintain, repair and renew all Service Media laid or to be laid within the Road that may be required for the development, connection to or servicing of the Forty Unit Site together with all necessary rights of access (including, where necessary, for construction traffic) for the exercise of same.

The following servitude rights are imposed on the Burdened Property Boynds and the Burdened Property Services for the benefit of the Benefited Property and the 40 Unit Site:

11. A servitude right to install, connect into and keep in place and thereafter maintain, repair and renew all pipes, drains, conduits, ducts, sewers, soil pipes and all other conducting media for the supply of foul drainage laid or to be laid within the Road that may be required for the development, connection to or servicing of the Benefited Property together with all necessary rights of access (including, where necessary, for construction traffic) for the exercise of same.

12. A servitude right to lay pipes and cables over, across and under the Burdened Property Boynds along the route indicated by a blue line and partly coloured yellow on Plan 5 or such other route to be agreed between the Burdened Owner and the Benefited Owner (acting reasonably) for connection into and use of the pumping station located within the Barratt Property and thereafter maintain, repair and renew all such pipes and cables together with all necessary rights of access (including, where necessary, for construction traffic) for the exercise of same.

## Part 2

### The Servitude Conditions

The Servitude Rights created by this Deed are subject to the following Servitude Conditions:-

1 The owner of the Benefited Property and the 40 Unit Site will:-

1.1 make good all damage caused to the Burdened Property by reason of the exercise of the Servitude Rights by the owner of the Benefited Property or their tenants, agents, employees, workmen and others authorised by them from time to time;

1.2 be responsible for obtaining all necessary statutory consents and permissions for the exercise of the Servitude Rights;

1.3 procure that the Servitude Rights are exercised so as to cause the minimum disturbance, nuisance or annoyance reasonably practicable to the owner of the Burdened Property and their tenants or occupiers, and all other adjoining or neighbouring proprietors, tenants or occupiers; and

1.4 indemnify the owner of the Burdened Property in respect of all claims, demands, expenses, liabilities, actions or others arising in consequence of the exercise of the Servitude Rights by the owner of the Benefited Property.

1.5 be responsible for the maintenance, repair, replacement and renewal of the road to be constructed on the Burdened Property Services, the pedestrian footbridge to be constructed on the Burdened Property Footbridge and the Service Media installed by it for the benefit of the Benefited Property and the Forty Unit Site and will pay the cost of such maintenance, repair, replacement and renewal unless or until the same is adopted for maintenance by the local authority.

1.6 with respect to the Burdened Property Boynds be responsible for a fair and equitable share according to user of the costs of maintaining, repairing, replacing or renewing the Road unless or until the same is adopted for maintenance by the local authority.

Note: Copies of the Plans numbered 1, 2, 3, 4 and 5 annexed to the above Deed of Servitude are included in this Title Sheet as Supplementary Data 6, 7, 8, 9 and 10 respectively to the Title Sheet.

## **Burden 5**

Deed of Conditions, registered 19 Jun. 2014, by BDW Trading Limited, sets forth and declares burdens &c in the following terms:

WE, BDW Trading Limited, are about to dispoene parts of the Development Site (as after defined) for development, and FURTHER CONSIDERING that it is therefore necessary to provide for each Site (as after defined) to have rights of access and rights to lay services within the Development Site and for various real burdens and servitudes which will apply to the Development Site NOW THEREFORE WE DO HEREBY with immediate effect from the date of registration of these presents in the Land Register of Scotland, do hereby provide as follows:

### 1 Definitions

#### 1.1 In this deed:-

"the Access Areas" means the roads with relative footpaths, verges, junctions, fire access paths, roundabouts, street lighting, gutters, visibility splays and ancillary landscaping and Service Media as may be constructed or are to be constructed within the Development Site;

"Amenity Area" means the landscaped areas, amenity areas or open land and play areas (and all associated Service Media) as may be constructed or are to be constructed within the Development Site;

"Barratt Site" means the land at Uryside Farm, Inverurie, Aberdeenshire registered in the Land Register of Scotland under Title Number ABN82815;

"Community" has the meaning assigned to it by section 26(2) of the 2003 Act;

"Community Burden" has the meaning assigned to it in accordance with section 25 of the 2003 Act;

"this Deed" means this deed of conditions as amended, varied and/or extended from time to time;

"the Development Site" means those subjects at Uryside, Inverurie, Aberdeenshire edged brown on the cadastral map, being the subjects registered under Title Number ABN117431 ;

"Plot(s)" means each of the plots or areas of ground on which a Unit is constructed within a Site;

"Plot Proprietor(s)" means the proprietor for the time being of any of the Plots and his/her/their successors as proprietor(s) of such Plot and where two or more persons own the same plot, includes both or all of them;

"Pumping Station" means the pumping station tinted mauve on the cadastral map and forming part of the Barratt Site;

"Service Media" means all sewers, drains, services, channels, pipes, wires, cables, aerials, ducting, valves and other conducting media, electricity, telephone, television, telecommunications and security cables (including all conduits, shafts, vents, manholes, inspection chambers, stormcell attenuation structures, pumping equipment, meters and connections, and plant and machinery associated with conducting media) located or to be located in, over or under the Development Site or which run from the Development Site and connect into publicly maintained drains, sewers, mains and other pipes;

"Site" means any part of the Development Site from time to time;

"Site Proprietor" means the heritable proprietor of any Site for the purpose of development of that Site, or any part thereof;

"SUDS Arrangements" means any sustainable urban drainage, treatment and attenuation apparatus including pipes, drains, ponds, swales, manholes, inspection chambers and others constructed or to be constructed on the Development;

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

"Unit" means any (i) dwelling (including, for the avoidance of doubt, any flatted dwelling) together with any car parking space or pro indiviso share therein conveyed or to be conveyed in association with such a dwelling; or (ii) building to be used for purposes other than as a dwelling including for this purpose any employment, retail, leisure or commercial use.

## 2 Interpretation

Save to the extent that the context or the express provisions of this Deed otherwise requires, in this Deed:-

2.1 words importing any gender include all other genders;

2.2 words importing the singular number only include the plural number and vice versa',

2.3 words which import the whole are to be treated as including reference to any part of the whole;

2.4 words importing individuals include legal persons and vice versa;

2.5 references to this Deed or to any other document are to be construed as reference to this Deed or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time;

2.6 any reference to a Clause, Schedule or Part of the Schedule is to the relevant Clause, Schedule or Part of the Schedule of or to this Deed;

2.7 any phrase introduced by the words "including", "include", "in particular" or any similar expression is to be construed as illustrative only and is not to be construed as limiting the generality of any preceding words;

2.8 reference to any statute or statutory provision (including any subordinate legislation)

includes any statute or statutory provision which amends, extends, consolidates or replaces the same, or which has been amended, extended, consolidated or replaced by the same, and includes any orders, legislation, instruments or other subordinate legislation made under the relevant statute or statutory provision;

2.9 any rights conferred on a Site by this Deed may be validly exercised by any person duly authorised by such proprietor including its tenants, agents and tradesmen, but subject to any limitations or restrictions imposed upon such Site Proprietor by this Deed; and

2.10 the word "maintenance" shall include repair, maintenance, restoration, renewal, upkeep, cleaning and painting and the words "maintain" and "maintaining" will be construed accordingly.

### 3 Constitutive Deed

This Deed is a constitutive deed creating real burdens within the meaning of sections 4 and 122(1) of the 2003 Act.

### 4 Real Burdens

4.1 The real burdens set out in Condition 4 which apply to the Development Site as a Community, shall be and are hereby created as Community Burdens by the proprietors of each Site as units in the Community in terms of section 27 of the 2003 Act and are enforceable by and against (a) the Site Proprietors of each Site while the Site Proprietor retains ownership of the Site or any part thereof; and (b) following the development of any Site, the Plot Proprietors of each Plot.

4.2 In carrying out any development or other works upon a Site each Site Proprietor shall:

(a) make good forthwith all damage caused to the remainder of the Development Site by carrying out of said development or other works, to the reasonable satisfaction of the Site Proprietor of the part or parts of the Development Site affected;

(b) carry out such development or other works so as to cause the minimum disturbance, nuisance or annoyance reasonably practicable to any neighbouring or adjacent Site Proprietors, or their tenants, occupiers or invitees;

4.3 Any walls and/or fences forming the boundaries between adjoining Sites are or shall be erected as to one half of the breadth or thickness thereof on each of the adjoining Sites and shall be maintained jointly in all time coming.

4.4 The Site Proprietors or, following the development of any Site, the Plot Proprietors, shall each pay an equitable share of the costs of maintenance, repair, cleaning, repair, rebuilding, reinstating, renewal and insurance of the Amenity Areas or Service Media or Access Areas (as the case may be) until the same are taken over and maintained by the local authority or utility provider or service undertaker (if taken over at all) except (i) in the event of exceptional damage being caused by an individual party, in which case that party shall be solely responsible for the cost of repair, maintenance, replacement, renewal as necessary and (ii) in the event of damage being caused by construction traffic in which case the party responsible for such construction traffic shall be solely liable for the cost of repair, maintenance, replacement, and renewal as necessary..

4.5 The Site Proprietors or, following the development of any Site, the Plot Proprietors, shall each contribute an equitable proportion of the costs of maintaining, cleaning, repairing, renewing, rebuilding, reinstating, upgrading and insuring the SUDS Arrangements until such time as the SUDS Arrangements shall have been adopted for maintenance by a statutory undertaker (if at all) except (i) in the event of exceptional damage being caused by an individual party, in which case that party shall be solely responsible for the cost of repair, maintenance, replacement, renewal as necessary and (ii) in the event of damage being caused by construction traffic in which case the party responsible for such construction traffic shall be solely liable for the cost of repair, maintenance, replacement, and renewal as necessary.

4.6 In relation to the Amenity Area:-

4.6.1 The Amenity Area be maintained in a neat and tidy condition and must remain open and unbuilt upon in all time coming, save for anything erected by the Site Proprietor ancillary to the use of the Amenity Area for amenity and leisure purposes; and

4.6.2 No dog must be allowed to foul any part of the Amenity Area and no dog is permitted on the Amenity unless it is:

(a) kept on a lead; and

(b) accompanied by a responsible person.

## 5 Servitudes

5.1 For the purposes of this Condition 5.1, the benefited property is each Site and the burdened property is the Development Site:-

5.1.1 The following servitudes are imposed on the Development Site in favour of each Site:-

5.1.1.1 a non-exclusive heritable and irredeemable servitude right to connect into, lay, form, construct, install, re-route, use, inspect, maintain, repair and where necessary renew, reinstate, alter, enlarge and increase the specification and capacity of Service Media over, through and across the Development Site as may be reasonably required for the development of the Site or any part thereof and the full use and enjoyment thereof in accordance with the terms of any planning consent and/or any other local authority consents required and obtained in connection with the development and use of a Site together with a right of access over such parts of the Development Site as are reasonably required for such purposes;

5.1.1.2 a non-exclusive heritable and irredeemable servitude right to connect into, lay, form, construct and install, use, inspect, maintain, repair and where necessary renew or reinstate Access Areas within the Development Site as are reasonably required for the development of the Site or any part thereof and the full use and enjoyment thereof in accordance with the planning consent, and any roads construction consent to be obtained (as applicable) and/or any other local authority consents required and obtained in connection with the development or use of a Site together with a right of access over such parts of the Development Site as are reasonably required for such purposes;

5.1.1.3 a non-exclusive heritable and irredeemable servitude right of access and egress in all time coming for pedestrian and vehicular traffic (including construction traffic) along and over the Access Areas within the Development Site (as the same may be formed from time to time) for all necessary purposes;

5.1.1.4 a non-exclusive heritable and irredeemable servitude right to use, inspect, maintain, repair and where necessary renew the Service Media over, through and across the Development Site;

5.1.1.5 a heritable and irredeemable servitude right to use the Amenity Areas within the Development (as the same may be formed from time to time) for amenity and leisure purposes;

5.1.1.6 a servitude right to enter the Development Site with pedestrian and vehicular traffic (including construction traffic) and with workmen, employees, agents, assignees, authorised personnel, contractors, surveyors and others and with or without plant, apparatus and materials to exercise the aforesaid servitude rights together with the right to temporarily place upon such part of the Development Site as may be necessary for the foregoing purposes any such plant, apparatus and materials required to be used in connection with the aforesaid purposes provided that such temporary placement will wherever possible be within the Site owned by the Site Proprietor exercising the relevant servitude rights.

5.1.2 The servitude rights conferred by Conditions 5.1.1.1, 5.1.1.2 and 5.1.1.6 are extinguished in respect of any part of a Site when that part ceases to be owned by the Site Proprietor.

5.1.3 The Site Proprietor may exercise the servitude rights in Conditions 5.1.1.1, 5.1.1.2 and 5.1.1.6 subject always to the following conditions:-

5.1.3.1 the route or routes of the Service Media and route, routes, extent and/or layout of the Access Areas being approved by the Site Proprietor affected by the exercise of such rights, acting reasonably and without delay with rights being reserved to the proprietor of the burdened property to divert or relocate such route if necessary or appropriate, at its own expense

provided always that (i) such re-routing of Service Media shall be within the burdened property or any adopted highway, (ii) the works shall be carried out in accordance with all necessary statutory consents, permissions and requirements and in a good and workmanlike manner; (iii) there shall be no interruption to the services provided to the Site by such Service Media (other than temporary interruption for a period not exceeding 24 hours as may be necessary to effect connection to such Service Media serving the Site, and (iv) the servitude rights contained in Condition 5 shall apply to the route or routes of any such re-routed Service Media serving the Site;

5.1.3.2 the Site Proprietor exercising the rights shall make good as soon as reasonably practicable any damage caused to the Development Site and the buildings and other erections thereon in the exercise thereof to the reasonable satisfaction of the proprietor of the relevant burdened property;

5.1.3.3 such rights shall be exercised at all times so as to cause as little disruption as is reasonably practicable and causing the minimum practicable inconvenience to the Development Site and the proprietor of the relevant burdened property;

5.1.3.4 such rights shall be exercised at the sole cost of the party exercising the rights;

5.1.3.5 such rights shall be exercised in accordance with all necessary consents required and obtained therefor and, where appropriate, the requirements of the relevant service provider or statutory undertaker;

5.1.3.6 the exercise of such rights are prohibited over such part or parts of the Development Site as are or are intended to be sold as individual dwellinghouses or other buildings or to form part of the curtilage of such individual dwellinghouses or other buildings and/or electricity substations or gas governors declaring that where such areas cannot be determined at the time of exercise of the said servitude rights, the said servitude rights shall be exercised along such route or routes as will be agreed by the Site Proprietors or, failing agreement, shall be determined in accordance with the provisions of Condition 6 of this Deed, declaring always, for the avoidance of doubt, that the Site Proprietors shall, once the location of any individual dwellinghouses or other buildings and the curtilage of such individual dwellinghouses and other buildings and/or electricity substations or gas governors is determined, be entitled to re-route the route over which the said servitude rights may be exercised provided that such re-routing is done so as to cause the minimum of disturbance to the exercise of the said servitude rights;

5.1.3.7 the party or parties exercising such rights shall act reasonably and in good faith at all times.

5.1.4 The Site Proprietor and/or the Unit Proprietor may exercise the servitude rights in Conditions 5.1.1.3, 5.1.1.4 and 5.1.1.5 subject always to the following conditions:-

5.1.4.1 the party exercising the rights shall make good as soon as reasonably practicable any damage caused to the Development Site and the buildings and other erections thereon in the exercise thereof to the reasonable satisfaction of the proprietor of the relevant burdened property;

5.1.4.2 such rights shall be exercised at all times so as to cause as little disruption as is reasonably practicable and causing the minimum practicable inconvenience to the Development Site and the proprietor of the relevant burdened property;

5.1.4.3 such rights shall be exercised at the sole cost of the party exercising the rights;

5.1.4.4 such rights shall be exercised in accordance with all necessary consents required and obtained therefor and, where appropriate, the requirements of the relevant service provider or statutory undertaker; and

5.1.4.5 the party or parties exercising such rights shall act reasonably and in good faith at all times.

5.2 For the purposes of this Condition 5.2, the benefited property is each Site and the burdened property is the Barratt Site and the Development Site:-

5.2.1 The following servitude is imposed on the Barratt Site and the Development Site in favour of each Site:-

5.2.1.1 a non-exclusive heritable and irredeemable servitude right to lay pipes and cables across and under the Barratt Site along the route edged mauve on the cadastral map (to the extent that the mauve edge comprises part of the Development Site and part of the Barratt Site) together with a right to connect into and use the Pumping Station located within the Barratt Site and thereafter maintain, repair and renew all such pipes and cables together with all necessary rights of access for the exercise of the same.

5.2.2 The Site Proprietor may exercise the servitude right in Condition 5.2.1.1 subject to the following conditions:-

5.2.2.1 the party exercising the rights shall make good as soon as reasonably practicable any damage caused to the Development Site and the Barratt Site and the buildings and other erections thereon in the exercise thereof to the reasonable satisfaction of the proprietor of the relevant burdened property;

5.2.2.2 such rights shall be exercised at all times so as to cause as little disruption as is reasonably practicable and causing the minimum practicable inconvenience to the Development Site and the Barratt Site and the proprietor of the relevant burdened property;

5.2.2.3 such rights shall be exercised at the sole cost of the party exercising the rights;

5.2.2.4 such rights shall be exercised in accordance with all necessary consents required and obtained therefor and, where appropriate, the requirements of the relevant service provider or statutory undertaker; and

5.2.2.5 the party or parties exercising such rights shall act reasonably and in good faith at all times.

5.2.2.6 The parties exercising such rights shall pay to the proprietor of the relevant burdened property a fair and equitable share of the cost of maintaining, repairing, replacing and renewing



said pipes and cables and Pumping Station unless or until the same is adopted by the local authority.

## 6 Misc

6.1 All questions, disputes, differences and others which may arise amongst the Site Proprietors or any of them shall be referred to an independent expert experienced in property development of the type and in the area in question appointed failing agreement between the relevant parties by the Chairman for the time being of the Scottish Branch of the Royal Institution of Chartered Surveyors and whatever said expert shall determine shall be final and binding in all matters upon all concerned and the relevant parties concerned shall be bound to implement and fulfil to each other the said decisions, findings and decrees of the expert with power to the expert to take skilled advice and order execution or performance of works and to apportion the cost thereof amongst the relevant parties or to vary or annul any such decision, or determination and to find all or any of them liable in expenses of the determination and to discern accordingly.

## 7 Notices

7.1 All notices shall be served in writing.

7.2 A notice sent by registered post or recorded delivery shall be deemed to have been duly served at the expiration of forty eight hours after the time of posting.

7.3 In proving service, it shall be sufficient to prove that the envelope containing the notice was duly addressed to the party concerned in accordance with this Condition 7 and left at or posted to the place to which it is so addressed.

## 8 Lands Tribunal Applications

8.1 No application may be made to the Lands Tribunal for Scotland under section 90(1)(a)(i) and/or section 91(1) of the 2003 Act in respect of the servitudes created in this Deed for a period of five years after the date of registration of this Deed of Conditions in the Land Register of Scotland.

## **Burden 6**

Deed of Conditions, registered 23 Oct. 2014, by BDW Trading Limited, proprietors of the Development, sets forth and declares burdens &c in the following terms:

We, BDW Trading Limited, a company incorporated under the Companies Acts (Registered Number 03018173) and having our Registered Office at Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire, LE67 1UF proprietors of the Development; CONSIDERING that we are about to develop and convey the said Development in separate parts and that we are about to execute Dispositions or other conveyances in favour of the various purchasers hereby provide as follows:-

## PART 1 INTERPRETATION

In this deed -

"Developers" means us the said BDW Trading Limited and our successors as heritable proprietors of the Remainder of the Development;

"Development" means Phase One of our residential housing development at Osprey Heights, Inverurie, Aberdeenshire as shown delineated in red on the Plan and registered in the Land Register of Scotland under Title Number ABN117431, of which the subjects in this Title form part; "Dwellinghouse" means a detached, terraced or semi-detached dwellinghouse situated on a Plot;

"Larger Site" means the subjects registered in the Land Register of Scotland under Title Number ABN117431 under exception of the Development;

"Mutual Areas" means(a) the entrance road, the footpavements, the internal roads, the car-parking spaces (including visitors' car-parking spaces) used in common but not allocated exclusively to any Proprietors and the other hard standing areas (but excluding any entrance road, footpavement, internal roads any other hard standing areas which are prospectively adoptable by the appropriate Local Authority) hatched green on the cadastral map; (b) the landscaped or amenity areas or play areas and any footpaths situated thereon (but excluding any electricity substation, feeder pillar site or gas governor or pressure reduction installation) hatched blue on the cadastral map; (c) the drains, sewers, pipes, cables and connectors which are of common service; and (d) the walls, fences and other boundary enclosures of the Development so far as we have right thereto; and (e) the whole other parts which are used in common by the Proprietors;

"Plan" means the plan marked annexed and executed as relative to this Deed of Conditions a copy of which is included in this Title Sheet as Supplementary Data 11 to the Title Sheet;

"Plot" means an area of ground (being part of the Development), together with any Dwellinghouse or other erections thereon, and any curtilage or garden ground pertaining thereto;

"Proprietor" means the party (or where granted in favour of more than one party, the parties, in which case, any obligations hereby imposed on them shall bind them jointly and severally) in whose favour a Disposition or other conveyance of a Plot or any part thereof is granted as aforesaid and his successors, executors and assignees whomsoever, or in the case of a corporate persona its successors and assignees whomsoever;

"Remainder of the Development" means the Development under exception of the Plots;

"Roads" means the entrance road, the footpavements, the internal roads and the other hard standing areas, being the areas of ground shown coloured pink on the Plan;

"Satellite Dish One" means the satellite dish or similar apparatus provided by the Developer and attached to the gable wall of Plot 60, serving Plots 60-64 inclusive together with any associated cables and relative equipment;

"Satellite Dish Two" means the satellite dish or similar apparatus provided by the Developer attached to the gable wall of Plot 69, serving Plots 65-69 inclusive together with any associated cables and relative equipment.

"Satellite Dish Three" means the satellite dish or similar apparatus provided by the Developer attached to the gable wall of Plot 70, serving Plots 70-74 together with any associated cables and relative equipment.

"Satellite Dish Four" means the satellite dish or similar apparatus provided by the Developer and attached to the gable wall of Plot 461, serving Plots 458-461, inclusive together with any associated cables and relative equipment.

"Satellite Dish Five" means the satellite dish or similar apparatus provided by the Developer attached to the gable wall of Plot 472, serving Plots 471-472 inclusive together with any associated cables and relative equipment.

"Satellite Dish Six" means the satellite dish or similar apparatus provided by the Developer attached to the gable wall of Plot 475, serving Plots 473-475 together with any associated cables and relative equipment.

"Satellite Dish Seven" means the satellite dish or similar apparatus provided by the Developer and attached to the gable wall of Plot 494, serving Plots 494-496, inclusive together with any associated cables and relative equipment.

"Satellite Dish Eight" means the satellite dish or similar apparatus provided by the Developer attached to the gable wall of Plot 531, serving Plots 531-535 inclusive together with any associated cables and relative equipment.

"Satellite Dish Nine" means the satellite dish or similar apparatus provided by the Developer attached to the gable wall of Plot 540, serving Plots 536-540 together with any associated cables and relative equipment

"Satellite Dish Ten" means the satellite dish or similar apparatus provided by the Developer and attached to the gable wall of Plot 552, serving Plots 549-552, inclusive together with any associated cables and relative equipment.

"Satellite Dish Eleven" means the satellite dish or similar apparatus provided by the Developer attached to the gable wall of Plot 556, serving Plots 553-556 inclusive together with any associated cables and relative equipment.

"Shared Access Way" means the hardstanding area hatched blue on the Plan and exclusively serving (1) Plots 555 and 556 inclusive and (2) Plots 557-561 inclusive and Plot 568 which plots form part of Phase Two of the Larger Subjects.

"Shared Driveway One" means the driveway and hardstanding area shown coloured brown on the Plan and exclusively serving Plot numbers 1, 2, 3 and 4 inclusive.

"Shared Driveway Two" means the driveway and hardstanding area shown hatched orange on the Plan and exclusively serving Plot numbers 5, 6, 7 and 8 inclusive.

"Shared Driveway Three" means the driveway and hardstanding area shown coloured yellow on the Plan and exclusively serving Plot numbers 588, 589, 590, 591, 592-and 593 inclusive,

"Shared Driveway Four" means the driveway and hardstanding area shown coloured orange on the Plan and exclusively serving Plot numbers 594, 595, 596 and 597 inclusive.

"Statutory Undertaker" means any local or other public authority supplying utilities or service provider supplying utilities, whether statutory or otherwise, or any other relevant person or entity;

"SUDS Pond" means the sustainable urban drainage system and associated pipework all as shown coloured in purple and hatched black on the Plan;

For the purposes of the above definitions the singular shall include the plural and any reference to the masculine gender shall include the feminine gender.

## PART II REAL BURDENS

The real burdens listed below are imposed on the Development as community burdens and are enforceable by the owner for the time being of each Plot, including any Plot retained by us.

### 1. Restriction on use of Plots

(i) A Plot shall be used solely for the purposes of erection thereon of not more than one Dwellinghouse with relative offices, and if desired, one garage;

(ii) Any alterations or additions made on or to a Dwellinghouse must conform in all respects to all relevant Local Authority, Town and Country Planning or other relevant statutes and current building regulations and must also comply with the terms of the Detailed Planning Permission (or any variation or variations thereof) obtained or implemented by the Developers for the original construction of the Development. While the Developers own any Plot within a one hundred metre radius of a Dwellinghouse to which alterations are proposed, those alterations will require the written consent of the Developers. All gas or electric installations shall comply with the requirements of the relevant Statutory Undertaker;

(iii) Any garage erected on a Plot shall be used as a private garage for the sole use by the Proprietor or the occupant of the Dwellinghouse erected on the same Plot and shall not be let separately therefrom nor used for any commercial or trading purpose;

(iv) Any Dwellinghouse shall be used as a private dwellinghouse only, and for no other purpose whatsoever, and shall never in any way be sub-divided or occupied by more than one family at a time;

(v) Any Plot so far as not occupied by buildings, or by paths and driveways, shall be used as ornamental garden ground in front of the Dwellinghouse erected thereon, and at the side or sides and rear of the Dwellinghouse erected thereon as garden ground or drying area, and for no other purpose whatsoever. Any garden ground or drying area will be maintained in a neat and tidy condition, and kept free of weeds, rubbish and refuse, in all time coming. The level of

garden ground or drying green will not be altered. No washing shall be hung forward of the front building line of the Dwellinghouse;

(vi) No trade, business, manufacturing process or profession can be carried on in a Plot but home working is permitted if incidental only to the use of the Plot as a Dwellinghouse for residential use;

(vii) No board, card, banner, poster, plate or advertising notice of any kind (other than "For Sale" or "For Lease" signs) shall be placed on a Dwellinghouse or other building or buildings on a Plot, the walls or gates surrounding the same or on any other part of a Plot;

(viii) No poultry, ducks, pigeons, rabbits, bees or other livestock shall be kept on a Plot. Domestic animals are permitted within a Plot, provided such animals shall be kept under proper control at all times and do not cause a nuisance to adjoining Proprietors. All dogs shall be kept under control within the Development and shall at no time be allowed to run unfettered within the Development or to foul any part of the Development. There shall be no breeding of dogs, cats or any other animals or birds within a Plot;

(ix) No power boats, marine craft, trailers, caravans or vehicles other than private motor cars and motor cycles shall be parked or stored on a Plot or any part of the Development. The parking or storing of private motor cars or motor cycles on a Plot or on the Development, so as to cause an obstruction, is prohibited. Any vehicle which is deemed to be causing an obstruction will be removed from the Development. All Proprietors within the Development will be liable for the removal costs in equal shares. All vehicles parked within the Development shall be taxed, insured and roadworthy (i.e. hold a current M.O.T. Certificate or equivalent) at all times. No repairs to motor vehicles of any description shall be carried out on any part of the Development other than repairs to the Proprietor's own motor vehicles within the curtilage of their Plot;

(x) No refuse or rubbish of any kind will be left or deposited on any part of the Development otherwise than in accordance with the recommendations of the Local Authority;

(xi) No television or radio antennae or satellite dish or similar apparatus will be erected on a Dwellinghouse or other building within a Plot, or on the walls or gates surrounding same, except from the rear or side of a Dwellinghouse or other building within a Plot, provided the television or radio antennae or satellite dish or similar apparatus (1) is not visible from any of the roadways and footpaths serving the Development, and (2) conforms in all respects to any relevant Local Authority, Town and Country Planning or other relevant statutes and current building regulations; Whereas Satellite Dish One, Satellite Dish Two and Satellite Dish Three, Satellite Dish Four, Satellite Dish Five, Satellite Dish Six, Satellite Dish Seven, Satellite Dish Eight, Satellite Dish Nine, Satellite Dish Ten and Satellite Dish Eleven are communal aerial and satellite dishes provided for the benefit of Plots 60-64 inclusive, 65-69 inclusive, 70-74 inclusive, 458-461 inclusive, 471-472 inclusive, 473-475 inclusive, 494-496 inclusive, 531-535 inclusive, 536-540 inclusive, 549-552 inclusive and 553-556 inclusive, respectively no additional television or radio antennae or satellite dish or similar apparatus will be erected on a dwellinghouse forming part of the aforementioned plots, or on the walls or gates surrounding same by any of the Proprietors of the aforementioned plots.

(xii) Nothing may be done within a Plot which may be deemed a nuisance or occasion disturbance to the other Proprietors in the Development or to their tenants or assignees or any other inhabitant in the neighbourhood;

(xiii) 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 Plot without having first obtained all necessary Planning and other Local Authority consents.

#### (2) A: Maintenance of Dwellinghouses

(i) The Proprietor of each Plot shall maintain his Plot and all buildings thereon in good order and repair in all time coming;

(ii) Where any Dwellinghouse is semi-detached or terraced or where any garage may be semi-detached or terraced the common gable(s) between that Dwellinghouse and/or garage and the adjoining subjects shall be mutual and shall be maintained, repaired and, when necessary, renewed at the joint and equal expense of the adjoining Proprietors in all time coming;

(iii) Where the Proprietors of two or more Plots have a common right of property in any subjects each Proprietor shall be bound to uphold and maintain in good order and repair in all time coming (and in the event of damage or destruction, restore or renew) the said subjects paying one share of the cost of so doing for each Plot owned by him.

#### B: Maintenance of Roads

(i) The Proprietor of each Plot shall contribute in all time coming to the whole costs of the maintenance, repair and where necessary renewal of the Roads on an equitable basis and until such time as any part 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 to do so;

#### (3) Insurance of Dwellinghouses

(i) The Proprietor of each Plot shall be bound to insure his Dwellinghouse and other buildings erected thereon against loss by fire and other usual risks normally covered by a homeowners comprehensive insurance policy (including without prejudice to the foregoing generality damage caused by flooding or escape of water) with an insurance company of good standing for the full reinstatement value thereof;

(ii) Any Dwellinghouse or other building or buildings or any part or parts thereof which are destroyed or damaged, will be restored within one year of the date of such destruction or damage to at least the value thereof immediately prior to such destruction or damage. The whole sums received from the insurance company or companies shall be expended in re-erecting the said Dwellinghouse or other building or buildings or repairing the damage. The Dwellinghouse or other building or buildings shall be re-erected or restored so as to be in all respects consistent with the provisions and conditions herein contained.

#### (4) Boundary walls and fences

- (i) Fences, walls or concrete edgings forming divisions between adjoining Plots are erected as to one-half of the width on each of such adjoining Plots and shall be maintained in good and sufficient repair, and shall be renewed (if necessary) by the adjoining Proprietors, at joint and equal cost of the adjoining Proprietors;
- (ii) Where part of a boundary is formed by the wall of a garage and there is no adjoining garage on the adjoining Plot, the maintenance of such wall shall be the sole responsibility of the Proprietor of the garage;
- (iii) Boundary walls, fences or concrete edgings separating a Plot from any path, pavement, street, road, amenity area, open space or play area within the Development, or a neighbouring property not forming part of the Development shall be erected wholly on the Plot and shall be maintained in good and sufficient repair and when necessary, shall be renewed all at the sole cost of the Proprietor thereof
- (iv) The Proprietors of each Plot shall be jointly and equally bound and obliged to meet the cost of and to free and relieve the Developers of all obligations for the erection (so far as not done by the Developers), maintenance and repair of all boundary enclosures forming part of the Development;
- (v) No alteration or addition shall be made to any fences, walls, concrete edgings or any other form of boundary enclosure without the prior written consent of all parties having an interest therein;
- (vi) Where any parts of the Development (including parts of individual Plots) are designated by the Developers or by the Local Roads Authority as "sight lines" or "visibility splays", no trees, shrubs or other plants shall be permitted thereon, nor shall any fences, walls, any other form of boundary enclosure or other erections of any nature be erected thereon unless the height is below the maximum height permitted from time to time by the said Roads Authority in their regulations governing visibility splays and sight lines;
- (vii) No edging of any kind delineating a sight line, visibility splay or service strip within the Development shall be removed;
- (viii) The said sight lines or visibility splays will be clearly marked on the plans annexed to the title deeds of each Plot affected thereby;
- (ix) No Proprietor shall ever have a claim against the Developers in respect of the maintenance, repair or erection of any fences, walls or concrete edgings.

#### (5) Roads and Services

- (i) 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, and upon completion of the last Dwellinghouse within the Development (as evidenced by the issue of a Certificate of Completion under the Building Acts) be maintained and repaired and, when necessary renewed, at the joint and equal expense of the Proprietors of each of the Plots, 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;

(ii) The main sewer shall be formed on behalf of Scottish Water or other relevant Statutory Undertaker. The Proprietor of a Plot is responsible for the maintenance of the branch pipe or pipes serving his Plot;

(iii) Where any sewer, drain or other service pipe or cable is common to two or more Dwellinghouses or Plots the expense of maintaining or renewing such sewer, drain or other service pipe or cable shall be shared equally by the Proprietors of the said Plots using such common sewer, drain or other service pipe or cable. Where sewer or drainage pipes or others pass from one Plot through another Plot in order to connect up with any common or public sewer, drain or others, the Plot or Plots through which the connecting sewer or drainage pipes or others pass shall be subject to a servitude right and wayleave for such connecting sewer or drainage pipes or others and that in favour of the parties using the same who shall be entitled to access thereto when required for the purpose of inspecting, maintaining, renewing or altering the levels of the same on all necessary occasions but subject always to making good and restoring all damage to the surface of the affected Plot and the buildings thereon occasioned thereby;

(iv) 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;

(v) A "service strip" means a grass verge spanning from the road kerb to the heel kerb under or through which mains pipes, drains, sewers, cables and/or wires are led. Any service strip within a Plot will be clearly marked on the plan attached to the title deed of the relevant Plot. The service strips shall be kept in a neat and tidy condition. Nothing can be planted or allowed to grow on a service strip other than grass seeding or turf. No building or other structure will be erected on a service strip. A service strip must be kept clear of all surface and underground obstructions. Any existing block paviers on a service strip must be left undisturbed. Nothing must be done which would be likely to damage any pipes, ducts, cables or other apparatus within a service strip, or make access to such apparatus more difficult or expensive, or alter the surface level of the service strip;

(vi) A "wayleave" means any area or conduit under or through which mains pipes, drains, sewers, cables, wires and other services are led which is not a service strip. No building or other structure can be erected on a wayleave and no trees shall be planted along the route of a wayleave. Nothing must be done along the route of a wayleave which would be likely to damage any pipes, ducts, cables or other apparatus within the wayleave, or make access to such apparatus more difficult or expensive, or alter the surface level of the wayleave.

## (6) Mutual Areas

(i) Each Proprietor will be granted a right in common to the Mutual Areas;



(ii) Each Proprietor will be bound jointly with every other Proprietor to keep the Mutual Areas in good order and in a neat and tidy condition in all time coming;

(iii) Each Proprietor shall contribute to the whole costs of the management, maintenance, repair and where necessary renewal of the Mutual Areas on a joint and equal basis;

(iv) It is declared that all access roads and ways, pavements, footpaths, ornamental, amenity ground, play areas and other amenity areas within the Development shall be for the mutual use and benefit of all the Proprietors and the Developers;

#### (7) Shared Driveway One

(i) Each proprietor of Plot numbers 1, 2, 3 and 4 inclusive will be granted a right in common to Shared Driveway One;

(ii) Each proprietor of Plot numbers 1,2,3 and 4 inclusive shall contribute to the whole costs of the management, maintenance, repair and where necessary renewal of Shared Driveway One on a joint and equal basis;

(iii) Each proprietor of Plot numbers 1, 2, 3 and 4 inclusive shall be bound jointly with each other to keep Shared Driveway One in good order and in a neat and tidy condition in all time coming.

(iv) Each proprietor of Plot numbers 1, 2, 3 and 4 inclusive shall be bound jointly with each other to keep Shared Driveway One free from obstruction at all times.

#### (8) Shared Driveway Two

(i) Each proprietor of Plot numbers 5, 6, 7 and 8 inclusive will be granted a right in common to Shared Driveway Two;

(ii) Each proprietor of Plot numbers 5, 6, 7 and 8 inclusive shall contribute to the whole costs of the management, maintenance, repair and where necessary renewal of Shared Driveway Two on a joint and equal basis;

(iii) Each proprietor of Plot numbers 5, 6, 7 and 8 inclusive shall be bound jointly with each other to keep Shared Driveway Two in good order and in a neat and tidy condition in all time coming.

(iv) Each proprietor of Plot numbers 5, 6, 7 and 8 inclusive shall be bound jointly with each other to keep Shared Driveway Two free from obstruction at all times.

#### (9) Shared Driveway Three

(i) Each proprietor of Plot numbers 588, 589, 590, 591, 592 and 593 inclusive will be granted a right in common to Shared Driveway Three;

(ii) Each proprietor of Plot numbers 588, 589, 590, 591, 592 and 593 inclusive shall contribute to the whole costs of the management, maintenance, repair and where necessary renewal of

Shared Driveway Three on a joint and equal basis;

(iii) Each proprietor of Plot numbers 588, 589, 590, 591, 592 and 593 inclusive shall be bound jointly with each other to keep Shared Driveway Three in good order and in a neat and tidy condition in all time coming.

(iv) Each proprietor of Plot numbers 588, 589, 590, 591, 592 and 593 inclusive shall be bound jointly with each other to keep Shared Driveway Three free from obstruction at all times.

(10) Shared Driveway Four

(i) Each proprietor of Plot numbers 594, 595, 596 and 597 inclusive will be granted a right in common to Shared Driveway Four;

(ii) Each proprietor of Plot numbers 594, 595, 596 and 597 inclusive shall contribute to the whole costs of the management, maintenance, repair and where necessary renewal of Shared Driveway Four on a joint and equal basis;

(iii) Each proprietor of Plot numbers 594, 595, 596 and 597 inclusive shall be bound jointly with each other to keep Shared Driveway Four in good order and in a neat and tidy condition in all time coming.

(iv) Each proprietor of Plot numbers 594, 595, 596 and 597 inclusive shall be bound jointly with each other to keep Shared Driveway Four free from obstruction at all times.

(11) Shared Access Way

(i) Each proprietor of Plot numbers 555, 556, 557-561 inclusive and Plot 568 will be granted a right in common to the Shared Access Way;

(ii) Each proprietor of Plot numbers 555, 556, 557-561 inclusive and Plot 568 shall contribute to the whole costs of the management, maintenance, repair and where necessary renewal of Shared Access Way on a joint and equal basis;

(iii) Each proprietor of Plot numbers 555, 556, 557-561 inclusive and Plot 568 shall be bound jointly with each other to keep Shared Access Way in good order and in a neat and tidy condition in all time coming.

(7) Maintenance of Mutual Areas

Except where the Manager Burdens in Part IV hereof apply, the Proprietors may make decisions in respect of matters specified in clause (7) (4) (Matters on which decisions may be made) hereof at any meeting called in accordance with this clause;

(1) Meetings

(i) A meeting may be called by (a) the Proprietors of one third of the Plots, or (b) the factor and may be held at such reasonably convenient time and place (but excepting weekends and public holidays) as they or he may determine;

(ii) A meeting is called by sending to each Proprietor, not later than seven days before the day fixed for the meeting, a notice stating:-

- (a) the date and time fixed for the meeting,
- (b) the place where it is to be held, and
- (c) the business to be transacted at the meeting;

(iii) Any inadvertent failure to comply with clause 7(1)(ii) as respects any Proprietor does not affect the validity of proceeding at a meeting;

(iv) A Proprietor may appoint a mandatory to attend the meeting and to vote on his behalf.

## (2) Conduct of meeting

(i) A meeting is not to begin unless there is present or represented a quorum, that is to say, one third of the Proprietors;

(ii) If there is still no quorum thirty minutes after the time fixed for the meeting then:-

(a) the meeting is to be postponed until such time and date (being not less than seven nor more than twenty-eight days later) as may be specified by the factor (or, if the factor is not present, by a majority of the Proprietors present or represented), and

(b) the factor (or the Proprietor) is to send to each Proprietor a notice stating the date and time fixed for the postponed meeting and the place where it is to be held;

(iii) A meeting may be postponed only once and if at a postponed meeting the foregoing provisions as respects a quorum are not satisfied, then the Proprietors who are present or represented are to be deemed a quorum;

(iv) If a meeting has begun, it may continue even if the number of members present or represented ceases to be a quorum;

(v) The Proprietors present or represented are to elect one of their number or the factor to be chairman of the meeting;

(vi) The chairman is to arrange for a person to take minutes of the meeting;

(vii) Any Proprietor present or represented may nominate additional business to be transacted.

## (3) Voting

(i) One vote is allocated to each Plot, and any right to vote is exercisable by the Proprietor of that Plot or his mandatory;

(ii) If a Plot is owned by two or more persons, the vote allocated to that Plot may be exercised by either (or any) of them; but if these persons disagree as to how the vote should be cast then

no vote is to be counted for that Plot;

(iii) A decision is made by majority vote of all the votes cast;

(iv) But where the Developers are Proprietor of any Plot, no decision is made unless it is supported by the vote for that Plot;

(v) A decision on a matter specified in clause (7) (4) (Matters on which decisions may be made) is binding on all the Proprietors and on their successors as Proprietors.

(4) Matters on which decisions may be made

At a meeting the Proprietors may decide:-

(a) to appoint a person as factor on such terms as they may specify;

(b) to confer on the factor the right to exercise such of their powers as they may specify, including;

(i) the power to make a binding decision on the matters mentioned in paragraphs (e) to (h) below, and

(ii) the power to enforce any rule;

(c) to revoke, or vary, the right to exercise such of the powers conferred under paragraphs (b) above as they may specify;

(d) to dismiss the factor;

(e) to order maintenance, repairs, decoration and other operations in respect of the Mutual Areas;

(f) to employ such gardeners, cleaners and other staff as may be required for the maintenance and preservation of the Mutual Areas;

(g) to fix the amount of the monthly maintenance charge, hereinafter referred to;

(h) to fix the amount of the initial deposit, hereinafter referred to;

(j) to modify or revoke any previous decision.

At a meeting the proprietors of Plots 60-64, inclusive, and only those proprietors, may decide:-

(a) to order maintenance, repairs and other operations in respect of Satellite Dish One;

(b) to employ such cleaners and other staff as may be required for the maintenance and preservation of Satellite Dish One.

At a meeting the proprietors of Plots 65-69 and only those proprietors, may decide:-

(a) to order maintenance, repairs and other operations in respect of Satellite Dish Two;

(b) to employ such cleaners and other staff as may be required for the maintenance and preservation of Satellite Dish Two.

At a meeting the proprietors of Plots 70-74, inclusive, and only those proprietors, may decide:-

(a) to order maintenance, repairs and other operations in respect of Satellite Dish Three;

(b) to employ such cleaners and other staff as may be required for the maintenance and preservation of Satellite Dish Three.

At a meeting the proprietors of Plots 459-461 and only those proprietors, may decide:-

(a) to order maintenance, repairs and other operations in respect of Satellite Dish Four;

(b) to employ such cleaners and other staff as may be required for the maintenance and preservation of Satellite Dish Four.

At a meeting the proprietors of Plots 471-472, inclusive, and only those proprietors, may decide:-

(a) to order maintenance, repairs and other operations in respect of Satellite Dish Five;

(b) to employ such cleaners and other staff as may be required for the maintenance and preservation of Satellite Dish Five

At a meeting the proprietors of Plots 473-475, inclusive, and only those proprietors, may decide:-

(a) to order maintenance, repairs and other operations in respect of Satellite Dish Six;

(b) to employ such cleaners and other staff as may be required for the maintenance and preservation of Satellite Dish Six.

At a meeting the proprietors of Plots 494-496 and only those proprietors, may decide:-

(a) to order maintenance, repairs and other operations in respect of Satellite Dish Seven;

(b) to employ such cleaners and other staff as may be required for the maintenance and preservation of Satellite Dish Seven.

At a meeting the proprietors of Plots 531-535, inclusive, and only those proprietors, may decide:-

(a) to order maintenance, repairs and other operations in respect of Satellite Dish Eight;

(b) to employ such cleaners and other staff as may be required for the maintenance and preservation of Satellite Dish Eight.

At a meeting the proprietors of Plots 536-540, inclusive, and only those proprietors, may decide:-

- (a) to order maintenance, repairs and other operations in respect of Satellite Dish Nine;
- (b) to employ such cleaners and other staff as may be required for the maintenance and preservation of Satellite Dish Nine.

At a meeting the proprietors of Plots 549-552, inclusive, and only those proprietors, may decide:-

- (a) to order maintenance, repairs and other operations in respect of Satellite Dish Ten;
- (b) to employ such cleaners and other staff as may be required for the maintenance and preservation of Satellite Dish Ten.

At a meeting the proprietors of Plots 553-556, inclusive, and only those proprietors, may decide:-

- (a) to order maintenance, repairs and other operations in respect of Satellite Dish Eleven;
- (b) to employ such cleaners and other staff as may be required for the maintenance and preservation of Satellite Dish Eleven.

#### (5) Liability for costs

(i) Maintenance and other costs arising out of a binding decision on a matter specified in clause (7) (4) (Matters on which decisions may be made) hereof are shared equally among the Plots, and each Proprietor is liable accordingly; save for maintenance and other costs incurred in connection with Satellite Dish One, Satellite Dish Two, Satellite Dish Three, Satellite Dish Four, Satellite Dish Five, Satellite Dish Six, Satellite Dish Seven, Satellite Dish Eight, Satellite Dish Nine, Satellite Dish Ten and Satellite Dish Eleven which shall be shared equally among Plots 60-64 inclusive, Plots 65-69 inclusive, Plots 70-74 inclusive, Plots 458-461 inclusive, Plots 471-472 inclusive, Plots 473-475 inclusive, Plots 494-496 inclusive, Plots 531-535 inclusive, Plots 536-540 inclusive, Plots 549-552 inclusive and Plots 553-556 inclusive respectively;

(ii) The factor can recover unpaid costs on behalf of the Proprietors and may do so in his own name;

(iii) Where a cost cannot be recovered from a Proprietor for some reason such as that:-

- (a) the estate of that Proprietor has been sequestrated, or
- (b) that Proprietor cannot, by reasonable inquiry, be identified or found, then that share must be paid by the other proprietors equally.

#### (6) Monthly maintenance charge

- (i) On the first day of each month, or such other date as may be agreed with the factor, each Proprietor must pay to the factor (or to a person nominated for that purpose) the monthly maintenance charge fixed in accordance with clause (7) (4) (g) above;
- (ii) In the event of a Proprietor not making payment within one month of such payment being demanded, such Proprietor shall be liable to pay interest on the outstanding maintenance charge at a rate equivalent to Five per cent per annum above the base lending rate of the Bank of Scotland from the date of demand until payment in full;
- (iii) The monthly maintenance charge is an advance payment in respect of a Proprietor's liability under clause (7) (5) (Liability for costs) hereof;
- (iv) Where, in any year the monthly maintenance charge exceeds a Proprietor's liability under clause (7) (5) (Liability for costs) hereof, the excess is to be retained as an advance payment for liability in subsequent years;
- (v) If requested to do so by any Proprietor in writing, the factor must within two months of a written request make available:- (a) at a meeting of the Proprietors, or (b) if the Proprietor so requests, at the factor's place of business, a full vouched statement of account of his intromissions in respect of the preceding twelve months;
- (vi) All sums held by the factor in respect of the Development (whether by virtue of this or any other clause) are held by him in trust for the Proprietors.

#### (7) Initial deposit

- (i) On taking entry to a Plot, a Proprietor must pay to either (a) the factor, (b) a person nominated for that purpose, or (c) in a case where Part IV applies, the Developers, if so required, an initial deposit;
- (ii) The initial deposit is the sum of TWO HUNDRED AND FIFTY POUNDS (£250.00) STERLING or such other sum as may be fixed in accordance with clause (7) (4) (h) hereof;
- (iii) On ceasing to be Proprietor of a Plot a person is entitled to repayment of the initial deposit:- (a) without interest, and (b) under deduction of any sums due by that person under clause (7) (5) (Liability for Costs), but no payment is due until the initial deposit has been paid by the new Proprietor of the Plot.

#### (8) Factor

- (i) Whereas the initial factor shall be appointed by the Developers in their capacity as Manager in accordance with Part IV hereof, the initial factor's appointment shall continue until the factor shall either be dismissed in accordance with Clause (7)(4)(d) hereof by the Manager or Proprietors or the factor has resigned.

#### (B)

The real burden listed below is imposed on the Plots as a community burden and is enforceable by the Developer and also by and against the owner for the time being of each Plot

within the Development, including any Plot retained by us:-

#### 1. Maintenance of Shared Access Way

(i) Each Proprietor of Plots 555, 556, 557-561 inclusive and Plot 568 will be bound jointly with each other to keep the Shared Access Way in good order and in a neat and tidy condition in all time coming;

(ii) Each Proprietor of 555, 556, 557-561 inclusive and Plot 568 shall contribute to the whole costs of the management, maintenance, repair and where necessary renewal of the Shared Access Way on a joint and equal basis.

(C) The real burden listed below is imposed on the proprietor of Plot 60, as a real burden and is enforceable by and against the proprietors of Plots 60-64 inclusive.

#### 1. Maintenance of Satellite Dish One

(i) In the absence of the appointment of a Manager in terms of Part IV hereof or a factor or person(s) appointed in term of clause (7) hereof, the proprietors of Plot 60 shall be responsible for the maintenance, repair, renewal and replacement of Satellite Dish One.

(ii) In the event of the proprietor of Plot 60 failing to maintain, repair, renew or replace Satellite Dish One, the proprietors of Plots 60-64 inclusive or any Manager appointed in terms of Part IV hereof or any factor or person(s) appointed in terms of clause (7) hereof may maintain, repair, renew or replace Satellite Dish One, with necessary access rights as required, subject to repayment of any damage caused as a result thereof.

(D)

The real burden listed below is imposed on the proprietors of Plots 60-64, inclusive as a real burden and is enforceable by and against the proprietors of Plots 60-64, inclusive.

#### 1. Liability for Costs of Maintenance of Satellite Dish One

(i) The costs of maintenance, repair, renewal and replacement of Satellite Dish One are to be borne equally between the proprietors of Plots 60-64 inclusive and shall be recoverable by the party bearing the cost, including the factor, Manager or person(s) appointed in terms of clause (7) hereof if the context so permits, and shall be recoverable against the remaining proprietors of Plots 60-64 inclusive.

(E)

The real burden listed below is imposed on the proprietor of Plot 69, as a real burden and is enforceable by and against the proprietors of Plots 65-69 inclusive.

#### 1. Maintenance of Satellite Dish Two

(i) In the absence of the appointment of a Manager in terms of Part IV hereof or a factor or person(s) appointed in term of clause (7) hereof, the proprietors of Plot 69 shall be responsible



for the maintenance, repair, renewal and replacement of Satellite Dish Two.

(ii) In the event of the proprietor of Plot 69 failing to maintain, repair, renew or replace Satellite Dish Two, the proprietors of Plots 65-69 inclusive or any Manager appointed in terms of Part IV hereof or any factor or person(s) appointed in terms of clause (7) hereof may maintain, repair, renew or replace Satellite Dish Two, with necessary access rights as required, subject to repayment of any damage caused as a result thereof.

(F)

The real burden listed below is imposed on the proprietors of Plots 65-69, inclusive as a real burden and is enforceable by and against the proprietors of Plots 65-69, inclusive.

#### 1. Liability for Costs of Maintenance of Satellite Dish Two

(i) The costs of maintenance, repair, renewal and replacement of Satellite Dish Two are to be borne equally between the proprietors of Plots 65-69 inclusive and shall be recoverable by the party bearing the cost, including the factor, Manager or person(s) appointed in terms of clause (7) hereof if the context so permits and shall be recoverable against the remaining proprietors of Plots 65-69 inclusive.

(G)

The real burden listed below is imposed on the proprietor of Plot 70, as a real burden and is enforceable by the proprietor of Plots 70-74 inclusive.

#### 1. Maintenance of Satellite Dish Three

(i) In the absence of the appointment of a Manager in terms of Part IV hereof or a factor or person(s) appointed in term of clause (7) hereof, the proprietor of Plot 70 shall be responsible for the maintenance, repair, renewal and replacement of Satellite Dish Three.

(ii) In the event of the proprietor of Plot 70 failing to maintain, repair, renew or replace Satellite Dish Three, the proprietors of Plots 70-74 or any Manager appointed in terms of Part IV hereof or any factor or person(s) appointed in terms of clause (7) hereof may maintain, repair, renew or replace Satellite Dish Three, with necessary access rights as required, subject to repayment of any damage caused as a result thereof.

(H)

The real burden listed below is imposed on the proprietors of Plots 70-74 inclusive as a real burden and is enforceable by and against the proprietors of Plots 70-74 inclusive.

#### 1. Liability for Costs of Maintenance of Satellite Dish Three

(iii) The costs of maintenance, repair, renewal and replacement of Satellite Dish Four are to be borne equally between the proprietors of Plots 70-74 inclusive and shall be recoverable by the party bearing the cost, including the factor, Manager or person(s) appointed in terms of clause

(7) hereof if the context so permits and shall be recoverable against the remaining proprietors of Plots 70-74 inclusive.

(I)

The real burden listed below is imposed on the proprietor of Plot 461, as a real burden and is enforceable by and against the proprietors of Plots 458-461 inclusive.

#### 1. Maintenance of Satellite Dish Four

(iv) In the absence of the appointment of a Manager in terms of Part IV hereof or a factor or person(s) appointed in term of clause (7) hereof, the proprietors of Plot 461 shall be responsible for the maintenance, repair, renewal and replacement of Satellite Dish Four.

(v) In the event of the proprietor of Plot 461 failing to maintain, repair, renew or replace Satellite Dish Five, the proprietors of Plots 458-461 inclusive or any Manager appointed in terms of Part IV hereof or any factor or person(s) appointed in terms of clause (7) hereof may maintain, repair, renew or replace Satellite Dish Four, with necessary access rights as required, subject to repayment of any damage caused as a result thereof.

(J)

The real burden listed below is imposed on the proprietors of Plots 458-461, inclusive as a real burden and is enforceable by and against the proprietors of Plots 458-461, inclusive.

#### 1. Liability for Costs of Maintenance of Satellite Dish Four

(ii) The costs of maintenance, repair, renewal and replacement of Satellite Dish Four are to be borne equally between the proprietors of Plots 458-461 inclusive and shall be recoverable by the party bearing the cost, including the factor, Manager or person(s) appointed in terms of clause (7) hereof if the context so permits, and shall be recoverable against the remaining proprietors of Plots 458-461 inclusive.

(K)

The real burden listed below is imposed on the proprietor of Plot 472, as a real burden and is enforceable by and against the proprietors of Plots 471-472 inclusive.

#### 1. Maintenance of Satellite Dish Five

(i) In the absence of the appointment of a Manager in terms of Part IV hereof or a factor or person(s) appointed in term of clause (7) hereof, the proprietors of Plot 472 shall be responsible for the maintenance, repair, renewal and replacement of Satellite Dish Five.

(ii) In the event of the proprietor of Plot 472 failing to maintain, repair, renew or replace Satellite Dish Five, the proprietor of Plots 471 or any Manager appointed in terms of Part IV hereof or any factor or person(s) appointed in terms of clause (7) hereof may maintain, repair, renew or replace Satellite Dish Five, with necessary access rights as required, subject to repayment of any damage caused as a result thereof.

(L)

The real burden listed below is imposed on the proprietors of Plots 471-472, inclusive as a real burden and is enforceable by and against the proprietors of Plots 471-472, inclusive.

1. Liability for Costs of Maintenance of Satellite Dish Five

(iii) The costs of maintenance, repair, renewal and replacement of Satellite Dish Five are to be borne equally between the proprietors of Plots 471-472 inclusive and shall be recoverable by the party bearing the cost, including the factor, Manager or person(s) appointed in terms of clause (7) hereof if the context so permits and shall be recoverable against the remaining proprietors of Plots 471-472 inclusive.

(M)

The real burden listed below is imposed on the proprietor of Plot 475, as a real burden and is enforceable by and against the proprietors of Plots 473-475 inclusive.

1. Maintenance of Satellite Dish Six

(iii) In the absence of the appointment of a Manager in terms of Part IV hereof or a factor or person(s) appointed in term of clause (7) hereof, the proprietors of Plot 475 shall be responsible for the maintenance, repair, renewal and replacement of Satellite Dish Six.

(iv) In the event of the proprietor of Plot 475 failing to maintain, repair, renew or replace Satellite Dish Six, the proprietors of Plots 473-475 inclusive or any Manager appointed in terms of Part IV hereof or any factor or person(s) appointed in terms of clause (7) hereof may maintain, repair, renew or replace Satellite Dish Six, with necessary access rights as required, subject to repayment of any damage caused as a result thereof.

(N)

The real burden listed below is imposed on the proprietors of Plots 473-475, inclusive as a real burden and is enforceable by and against the proprietors of Plots 473-475, inclusive.

1. Liability for Costs of Maintenance of Satellite Dish Six

(iii) The costs of maintenance, repair, renewal and replacement of Satellite Dish Seven are to be borne equally between the proprietors of Plots 473-475 inclusive and shall be recoverable by the party bearing the cost, including the factor, Manager or person(s) appointed in terms of clause (7) hereof if the context so permits, and shall be recoverable against the remaining proprietors of Plots 473-475 inclusive.

(O)

The real burden listed below is imposed on the proprietor of Plot 494, as a real burden and is enforceable

by the proprietor of Plots 494-496 inclusive

### 1. Maintenance of Satellite Dish Seven

(iii) In the absence of the appointment of a Manager in terms of Part IV hereof or a factor or person(s) appointed in term of clause (7) hereof, the proprietor of Plot 494 shall be responsible for the maintenance, repair, renewal and replacement of Satellite Dish Seven.

(iv) In the event of the proprietor of Plot 494 failing to maintain, repair, renew or replace Satellite Dish Seven, the proprietors of Plots 494-496 or any Manager appointed in terms of Part IV hereof or any factor or person(s) appointed in terms of clause (7) hereof may maintain, repair, renew or replace Satellite Dish Seven, with necessary access rights as required, subject to repayment of any damage caused as a result thereof.

(P)

The real burden listed below is imposed on the proprietors of Plots 494-496 inclusive as a real burden and is enforceable by and against the proprietors of Plots 494-496 inclusive.

### 1. Liability for Costs of Maintenance of Satellite Dish Seven

(iv) The costs of maintenance, repair, renewal and replacement of Satellite Dish Eight are to be borne equally between the proprietors of Plots 494-496 inclusive and shall be recoverable by the party bearing the cost, including the factor, Manager or person(s) appointed in terms of clause (7) hereof if the context so permits, and shall be recoverable against the remaining proprietors of Plots 494-496 inclusive.

(Q)

The real burden listed below is imposed on the proprietor of Plot 531, as a real burden and is enforceable by and against the proprietors of Plots 531-535 inclusive.

### 1. Maintenance of Satellite Dish Eight

(iii) In the absence of the appointment of a Manager in terms of Part IV hereof or a factor or person(s) appointed in term of clause (7) hereof, the proprietors of Plot 531 shall be responsible for the maintenance, repair, renewal and replacement of Satellite Dish Eight.

(iv) In the event of the proprietor of Plot 531 failing to maintain, repair, renew or replace Satellite Dish Nine, the proprietors of Plots 531-535 inclusive or any Manager appointed in terms of Part IV hereof or any factor or person(s) appointed in terms of clause (7) hereof may maintain, repair, renew or replace Satellite Dish Eight, with necessary access rights as required, subject to repayment of any damage caused as a result thereof.

(R)

The real burden listed below is imposed on the proprietors of Plots 531-535, inclusive as a real burden and is enforceable by and against the proprietors of Plots 531-535, inclusive.

### 1. Liability for Costs of Maintenance of Satellite Dish Eight

(iv) The costs of maintenance, repair, renewal and replacement of Satellite Dish Eight are to be borne equally between the proprietors of Plots 531-535 inclusive and shall be recoverable by the party bearing the cost, including the factor, Manager or person(s) appointed in terms of clause (7) hereof if the context so permits, and shall be recoverable against the remaining proprietors of Plots 531-535 inclusive.

(S)

The real burden listed below is imposed on the proprietor of Plot 540, as a real burden and is enforceable by and against the proprietors of Plots 536-540 inclusive.

#### 1. Maintenance of Satellite Dish Nine

(i) In the absence of the appointment of a Manager in terms of Part IV hereof or a factor or person(s) appointed in term of clause (7) hereof, the proprietors of Plot 540 shall be responsible for the maintenance, repair, renewal and replacement of Satellite Dish Nine.

(ii) In the event of the proprietor of Plot 540 failing to maintain, repair, renew or replace Satellite Dish Nine, the proprietors of Plots 536-540 inclusive or any Manager appointed in terms of Part IV hereof or any factor or person(s) appointed in terms of clause (7) hereof may maintain, repair, renew or replace Satellite Dish Nine, with necessary access rights as required, subject to repayment of any damage caused as a result thereof.

(T) The real burden listed below is imposed on the proprietors of Plots 536-540, inclusive as a real burden and is enforceable by and against the proprietors of Plots 536-540, inclusive.

#### 1. Liability for Costs of Maintenance of Satellite Dish Nine

(v) The costs of maintenance, repair, renewal and replacement of Satellite Dish Nine are to be borne equally between the proprietors of Plots 536-540 inclusive and shall be recoverable by the party bearing the cost, including the factor, Manager or person(s) appointed in terms of clause (7) hereof if the context so permits, and shall be recoverable against the remaining proprietors of Plots 536-540 inclusive.

(U)

The real burden listed below is imposed on the proprietor of Plot 552, as a real burden and is enforceable by and against the proprietors of Plots 549-552 inclusive.

#### 1. Maintenance of Satellite Dish Ten

(v) In the absence of the appointment of a Manager in terms of Part IV hereof or a factor or person(s) appointed in term of clause (7) hereof, the proprietors of Plot 552 shall be responsible for the maintenance, repair, renewal and replacement of Satellite Dish Ten.

(vi) In the event of the proprietor of Plot 552 failing to maintain, repair, renew or replace Satellite Dish Ten, the proprietors of Plots 549-552 inclusive or any Manager appointed in terms of Part IV hereof or any factor or person(s) appointed in terms of clause (7) hereof may maintain,

repair, renew or replace Satellite Dish Ten, with necessary access rights as required, subject to repayment of any damage caused as a result thereof.

(V) The real burden listed below is imposed on the proprietors of Plots 549-552, inclusive as a real burden and is enforceable by and against the proprietors of 549-552, inclusive.

#### 1. Liability for Costs of Maintenance of Satellite Dish Ten

(v) The costs of maintenance, repair, renewal and replacement of Satellite Dish Ten are to be borne equally between the proprietors of Plots 549-552 inclusive and shall be recoverable by the party bearing the cost, including the factor, Manager or person(s) appointed in terms of clause (7) hereof if the context so permits, and shall be recoverable against the remaining proprietors of Plots 549-552 inclusive.

(W)

The real burden listed below is imposed on the proprietor of Plot 556, as a real burden and is enforceable by and against the proprietors of Plots 553-556 inclusive.

#### 1. Maintenance of Satellite Dish Eleven

(i) In the absence of the appointment of a Manager in terms of Part IV hereof or a factor or person(s) appointed in term of clause (7) hereof, the proprietors of Plot 556 shall be responsible for the maintenance, repair, renewal and replacement of Satellite Dish Eleven.

(ii) In the event of the proprietor of Plot 556 failing to maintain, repair, renew or replace Satellite Dish Ten, the proprietors of Plots 553-556 inclusive or any Manager appointed in terms of Part IV hereof or any factor or person(s) appointed in terms of clause (7) hereof may maintain, repair, renew or replace Satellite Dish Eleven, with necessary access rights as required, subject to repayment of any damage caused as a result thereof.

(X)

The real burden listed below is imposed on the proprietors of Plots 553-556, inclusive as a real burden and is enforceable by and against the proprietors of 553-556, inclusive.

#### 1. Liability for Costs of Maintenance of Satellite Dish Eleven

(vi) The costs of maintenance, repair, renewal and replacement of Satellite Dish Eleven are to be borne equally between the proprietors of Plots 553-556 inclusive and shall be recoverable by the party bearing the cost, including the factor, Manager or person(s) appointed in terms of clause (7) hereof if the context so permits, and shall be recoverable against the remaining proprietors of Plots 553-556 inclusive.

### PART III SERVITUDES

#### A: Community Servitudes

#### Benefited and burdened properties

(i) The rights in this clause are imposed as servitudes on the Development in favour of each Plot.

#### Use of roads

(iii) There is a right of access for pedestrian and vehicular traffic over all roads, footpaths, parking spaces and lanes within the Development.

#### Access for repairs

(iii) For the purpose of inspecting, cleaning, repairing and renewing:-

(a) any building, wall, fence or other structure erected on; or

(b) the drains, sewers, electric cables, gas and water mains, and other pipes, cables

and enclosed units serving;

a Plot there is a right of access over, and use of any other Plot.

This includes a right to erect scaffolding, if required, but only where (a) it is reasonably necessary for the purpose in question; and (b) reasonable notice has been given (except in case of emergency).

#### B: Development servitudes

##### Benefited and burdened properties

(i) The rights in this clause are imposed as servitudes on the Development in favour of:-

(a) the Benefited Property, that is to say, in favour of:-

i. each Plot as the context so permits; and

ii the Detention Basin and any electricity sub-stations, feeder pillar sites or gas governors or pressure reduction installations, within the Development; and

(b) any Statutory Undertaker.

##### Service media

(ii) There is a right to lead pipes, drains, cables, wires or other enclosed units over or under the Development for sewage, electricity, gas, water and all other necessary purposes.

(iii) This includes a right:-

(a) to install, construct and lay drains, sewers, electric cables, gas and water mains, and other pipes, cables and enclosed units.

(b) to connect into such drains, sewers, electric cables, gas and water mains, and other pipes, cables and enclosed units as already exist or are installed by virtue of paragraph (a), and

(c) to carry out all necessary acts of inspection, maintenance upgrade and renewal.

Together with all necessary rights of access as may be required in connection with the exercise of these rights.

(iv) the Developers reserve the right to grant or confer upon any Statutory Undertaker the rights referred to in paragraphs B(iii) of this Part III of the Deed of Conditions

#### Use of Roads

(v) There is a right of access for pedestrian and vehicular traffic (including construction traffic) over all roads, footpaths, parking spaces and lanes within the Development.

(vi) This includes a right to form, construct, re-design, and re-align the roads, footpaths, parking spaces and lanes; Declaring that this right may not be exercised by the proprietors of any electricity sub-stations or gas governors within the Development.

#### Extent and duration

(vii) The rights conferred by this clause may be exercised in respect of any current or future development of the Benefited Property (including development for housing).

(viii) Except for the right mentioned in Clause (ii) and (iii) (Service media), the rights conferred by this clause are extinguished in respect of any Plot of the Benefited Property when that Plot ceases to be owned by the Developers.

#### C: Building servitudes

##### Benefited and burdened properties

(i) The rights in this clause are imposed as servitudes on each Plot in favour of the Development.

##### Access for construction

(ii) There is a right of access for the purposes of the erection of a Dwellinghouse or other structure including walls, fences, roads, pavements and landscaping on any other Plot.

(iii) This includes a right:-

(a) to erect and dismantle scaffolding;

(b) to move or remove part or parts of any wall or fence,

(c) to intrude into the airspace of any Plot.



### Re-positioning of fences

(iv) There is a right to re-position any boundary wall or fence so as to accord with the title plans.

### Access to service strips, visibility splays and wayleaves

(v) There is a right of access to all services strips, visibility splays and wayleaves including a right to inspect, maintain, renew and re-establish same with a right of relief against the Proprietor of such service strips, visibility splays and wayleaves where same have to be re-established.

### D: Access to Satellite Dish One

The proprietors from time to time of Plots 61-64, inclusive, and the Development, together with any Manager appointed in terms of Part IV hereof or any factor or person(s) appointed in terms of clause (7) hereof, as the context so permits, shall have a heritable and irredeemable servitude right;

- i) To connect into, use, inspect, maintain, repair, renew and where necessary replace Satellite Dish One.
- ii) Of access over Plot 60, in so far as is necessary, for the purposes of connection into, use, inspection, maintenance, repairing, renewing and where necessary replacement of Satellite Dish One

### E: Access to Satellite Dish Two

The proprietors from time to time of Plots 65-68, inclusive, and the Development, together with any Manager appointed in terms of Part IV hereof or any factor or person(s) appointed in terms of clause (7) hereof, as the context so permits, shall have a heritable and irredeemable servitude right;

- i) To connect into, use, inspect, maintain, repair, renew and where necessary replace Satellite Dish Two.
- ii) Of access over Plot 69, in so far as is necessary, for the purposes of connection into, use, inspection, maintenance, repairing, renewing and where necessary replacement of Satellite Dish Two.

### F: Access to Satellite Dish Three

The proprietors from time to time of Plot 71-73 inclusive and the Development, together with any Manager appointed in terms of Part IV hereof or any factor or person(s) appointed in terms of clause (7) hereof, as the context so permits, shall have a heritable and irredeemable servitude right;.

- i) To connect into, use, inspect, maintain, repair, renew and where necessary replace Satellite Dish Three.

ii) Of access over Plot 70, in so far as is necessary, for the purposes of connection into, use, inspection, maintenance, repairing, renewing and where necessary replacement of Satellite Dish Three.

#### G: Access to Satellite Dish Four

The proprietors from time to time of Plots 458-460 inclusive, and the Development, together with any Manager appointed in terms of Part IV hereof or any factor or person(s) appointed in terms of clause (7) hereof, as the context so permits, shall have a heritable and irredeemable servitude right;

iii) To connect into, use, inspect, maintain, repair, renew and where necessary replace Satellite Dish Four.

iv) Of access over Plot 461, in so far as is necessary, for the purposes of connection into, use, inspection, maintenance, repairing, renewing and where necessary replacement of Satellite Dish Four

#### H: Access to Satellite Dish Five

The proprietors from time to time of Plot 471 and the Development, together with any Manager appointed in terms of Part IV hereof or any factor or person(s) appointed in terms of clause (7) hereof, as the context so permits, shall have a heritable and irredeemable servitude right;

iii) To connect into, use, inspect, maintain, repair, renew and where necessary replace Satellite Dish Five.

iv) Of access over Plot 472 in so far as is necessary, for the purposes of connection into, use, inspection, maintenance, repairing, renewing and where necessary replacement of Satellite Dish Five.

#### I: Access to Satellite Dish Six

The proprietors from time to time of Plot 473-474 inclusive and the Development, together with any Manager appointed in terms of Part IV hereof or any factor or person(s) appointed in terms of clause (7) hereof, as the context so permits, shall have a heritable and irredeemable servitude right;.

iii) To connect into, use, inspect, maintain, repair, renew and where necessary replace Satellite Dish Six.

iv) Of access over Plot 475, in so far as is necessary, for the purposes of connection into, use, inspection, maintenance, repairing, renewing and where necessary replacement of Satellite Dish Six.

#### J: Access to Satellite Dish Seven

The proprietors from time to time of Plots 495-496, inclusive, and the Development, together with any Manager appointed in terms of Part IV hereof or any factor or person(s) appointed in

terms of clause (7) hereof, as the context so permits, shall have a heritable and irredeemable servitude right;

v) To connect into, use, inspect, maintain, repair, renew and where necessary replace Satellite Dish Seven.

vi) Of access over Plot 494, in so far as is necessary, for the purposes of connection into, use, inspection, maintenance, repairing, renewing and where necessary replacement of Satellite Dish Seven

K: Access to Satellite Dish Eight

The proprietors from time to time of Plots 532-535, inclusive, and the Development, together with any Manager appointed in terms of Part IV hereof or any factor or person(s) appointed in terms of clause (7) hereof, as the context so permits, shall have a heritable and irredeemable servitude right;

v) To connect into, use, inspect, maintain, repair, renew and where necessary replace Satellite Dish Eight.

vi) Of access over Plot 531, in so far as is necessary, for the purposes of connection into, use, inspection, maintenance, repairing, renewing and where necessary replacement of Satellite Dish Eight.

L: Access to Satellite Dish Nine

The proprietors from time to time of Plots 536-539 inclusive and the Development, together with any Manager appointed in terms of Part IV hereof or any factor or person(s) appointed in terms of clause (7) hereof, as the context so permits, shall have a heritable and irredeemable servitude right;.

v) To connect into, use, inspect, maintain, repair, renew and where necessary replace Satellite Dish Nine.

vi) Of access over Plot 540, in so far as is necessary, for the purposes of connection into, use, inspection, maintenance, repairing, renewing and where necessary replacement of Satellite Dish Nine.

M: Access to Satellite Dish Ten

The proprietors from time to time of Plots 549-551, inclusive, and the Development, together with any Manager appointed in terms of Part IV hereof or any factor or person(s) appointed in terms of clause (7) hereof, as the context so permits, shall have a heritable and irredeemable servitude right;

vii) To connect into, use, inspect, maintain, repair, renew and where necessary replace Satellite Dish Ten.

viii) Of access over Plot 552, in so far as is necessary, for the purposes of connection into, use, inspection, maintenance, repairing, renewing and where necessary replacement of Satellite Dish Ten.

N: Access to Satellite Dish Eleven

The proprietors from time to time of Plots 553-555, inclusive, and the Development, together with any Manager appointed in terms of Part IV hereof or any factor or person(s) appointed in terms of clause (7) hereof, as the context so permits, shall have a heritable and irredeemable servitude right;

vii) To connect into, use, inspect, maintain, repair, renew and where necessary replace Satellite Dish Eleven.

viii) Of access over Plot 556, in so far as is necessary, for the purposes of connection into, use, inspection, maintenance, repairing, renewing and where necessary replacement of Satellite Dish Eleven.

O: Grant of Servitudes

Benefited and burdened properties

(i) The following burden is imposed as a real burden upon each Plot in favour of the Development.

(ii) In the event that any Statutory Undertaker shall require the Developers to grant a deed of servitude or wayleave in their favour in connection with Development, the proprietor of each Plot shall be bound to enter into such deed of servitude or wayleave as may be acceptable to the Statutory Undertaker, acting reasonably.

P: Manner of exercise of rights

In the exercise of the rights conferred by this Part, disturbance and inconvenience must be kept to a minimum, and all damage must be made good.

#### PART IV MANAGER BURDENS

The Development is subject to the following Manager Burdens in favour of the Developers, who for the avoidance of doubt, are hereby appointed as Manager in terms of Section 63 of the Title Conditions (Scotland) Act 2003:

(i) These Manager Burdens will apply:

(a) for the period of five years beginning with the date on which this Deed is registered in the Land Register of Scotland; or

(b) for the period during which the Developers are proprietors of one Plot or part of the Development;

whichever is the shorter;

(ii) The Manager will make decisions in respect of the matters specified in Clause (7) (4) (Matters on which decisions may be made) and any such decision is binding on each Proprietor and their successors as Proprietors;

(iii) For the avoidance of doubt, the Developers shall be entitled to assign their appointment as Manager to their successors as proprietors of the Remainder of the Development.

(iv) Without prejudice to the foregoing the Developers may appoint the initial factor for the Development for a period of up to two years.

Note 1: If the subjects in this Title are affected by a service strip, it will be shown by a brown hatch on the cadastral map.

Note 2: If the subjects in this Title are affected by sight lines they will be shown by broken blue lines on the cadastral map.

Note 3: If the subjects in this Title are affected by a visibility splay, it will be shown by a blue hatch on the cadastral map.

## **Burden 7**

Minute of Variation of Agreement, registered 4 May 2016, between (1) Aberdeenshire Council (who and whose successors as Planning Authority are hereinafter referred to as "the Council"), (2) Malcolm Allan Housebuilders Limited (who and whose successors in title to the Portstown Phase 1 Land, Portstown Phase 2 Land and Portstown Phase 3 Land hereinafter referred to in the Agreement (as hereinafter defined) are hereinafter referred to as "Malcolm Allan"), (3) BDW Trading Limited (who and whose successors in title to part of the Uryside Phase 2 Land hereinafter referred to in the Agreement (as hereinafter defined) are hereinafter referred to as "Barratt") and (4) Taylor Wimpey UK Limited (who and whose successors in title to part of the Uryside Phase 2 Land hereinafter referred to in the Agreement (as hereinafter defined) are hereinafter referred to as "Taylor Wimpey"), varies the Minute of Agreement in Entry 3 as follows:

### **BACKGROUND**

(A) The Council, Malcolm Allan, Barratt and Others entered into an agreement in terms of Section 75 of the Town and Country Planning (Scotland) Act 1997 (hereinafter referred to as "the Act"), which Agreement was registered 2 Dec. 2013 (hereinafter referred to as "the Agreement") for the purposes of restricting or regulating the Development (as defined in the Agreement) or use of the Development Site (as defined in the Agreement);

(B) Development on the Development Site has commenced pursuant to the Applications (as defined in the Agreement);

(C) Subsequent to the recording and registration of the Agreement, Barratt acquired part of the Uryside Phase 2 Land as referred to in the Agreement and which part is registered under Title

Number ABN117431 and Taylor Wimpey acquired that remaining part of the Uryside Phase 2 Land as referred to in the Agreement and which remaining part is registered under Title Number ABN118975;

(D) Barratt and Taylor Wimpey have submitted the Further Applications (as hereinafter defined) to the Council in respect of development of parts of the Uryside Phase 2 Land;

(E) The parties hereto anticipate that Future Applications (as hereinafter defined) may also be made in respect of the Development;

(F) The Council has resolved to grant planning permission in terms of the Further Applications but to withhold the issuing of the Further Decision Notices (as hereinafter defined) until the Agreement has been varied to make appropriate reference to the Further Applications and any Future Applications.

NOW THEREFORE THE COUNCIL, MALCOLM ALLAN, BARRATT, AND TAYLOR WIMPEY HAVE AGREED AND DO HEREBY AGREE AS FOLLOWS:

## 1 ISSUE OF THE FURTHER DECISION NOTICES

1.1 The Council shall forthwith, upon receiving the Keeper's written acknowledgement of this Minute of Variation for registration in the General Register of Sasines and the Land Register, issue the Further Decision Notices.

## 2 VARIATION OF THE AGREEMENT

2.1 The terms of the Agreement shall be amended as follows:

2.1.1 The following definitions shall be inserted alphabetically into Clause 1:

a) "Future Application(s): such other application(s) for planning permission, planning permission in principle or approval of matters specified in condition which may be made in respect of the Development;"

b) "Future Decision Notice(s): such planning consent document(s) as may be issued by the Council in respect of any Future Application(s);"

c) "Further Applications: the applications made by Barratt to the Council and identified in the Planning Register by the numbers 2014/0081 for the erection of 48 dwellinghouses (change of the house types), 2014/1614 for the erection of 38 dwellinghouses (change of house types) 2014/1496 for the erection of 38 dwellinghouses (change of house types) 2014/3132 for the erection of 44 dwellinghouses and 2015/1213 for the erection of 64 dwellinghouses and the applications made by Taylor Wimpey to the Council and identified in the Planning Register by the numbers 2014/1374 for the erection of 44 dwellinghouses (change of house types) and 2014/1375 for the erection of 44 dwellinghouses (change of house types) all within the Development Site;

d) "Further Decision Notices: the planning consent documents to be issued by the Council in respect of the Further Applications;"

7.1.1 The following definitions in Clause 1 shall be amended:

In the definition of "Housing Unit" after the words "Decision Notices" there shall be inserted ", the Further Decision Notices or any Future Decision Notices".

7.1.2 Clause 9.1.1 shall be amended as follows

7.1.3 After the word "Decision Notices" in the fifth line of sub-clause 5.1.1 there shall be inserted ", the Further Decision Notices or any Future Decision Notices".

## 8 FURTHER VARIATIONS OF THE AGREEMENT

8.1 The parties hereto confirm that, in the event of any Future Application(s) being made which if granted, would permit the development of more than one thousand and sixty-seven (1067) Housing Units on the Development Site, the Council shall be entitled to review:

8.1.1 the Contributions (as defined in the Agreement) which is payable in respect of such additional Housing Units over and above the one thousand and sixty-seven (1067) permitted as part of the Development on the Development Site; and

the level of Affordable Housing (as defined in the Agreement) which requires to be provided as part of the development of more than one thousand and sixty-seven (1067) Housing Units on the Development Site.

3.2 The parties shall enter into a formal minute of variation of the Agreement to document any changes to the level of Contributions or Affordable Housing which are agreed pursuant to clause 3.1 above, which minute of variation shall be registered in the Land Register of Scotland prior to the release of the relevant planning consent document(s) in respect of the Future Application(s) which triggered the said review.

## CONTINUING EFFECT OF AGREEMENT

4.1 Save as varied by this Minute of Variation, the parties confirm the terms of the Agreement.

## **Burden 8**

Minute of Variation of Agreement, registered 7 Aug 2017, by (1) ABERDEENSHIRE COUNCIL (who and whose successors as Planning Authority aforesaid are hereinafter referred to as the Council) and (2) BDW Trading Limited (who and whose successors in title to the Development Site is hereinafter referred to as the Second Applicant)

Each "a Party" and together "the Parties"

## WHEREAS:

(A) The Council entered into an agreement with Malcolm Allan Housebuilders Limited, Arthur Conn Murrison and others in terms of the Town and Country Planning (Scotland) Act 1997, which agreement was dated 12, 15, 22, 26 and 27 November, 2013, and recorded in the

General Register of Sasines and the Land Register of Scotland under Title Numbers ABN80849 and ABN97240 and registered in the Books of Council and Session on 2 December 2013 (hereinafter referred to as the Agreement) for the purposes of restricting or regulating the Development (as defined in the Agreement) or use of the Development Site (as defined in the Agreement);

(B) Development on the Development Site has commenced pursuant to the Applications (as defined in the Agreement);

(C) Subsequent to the recording of the Agreement, part of the Uryside Phase 2 Land as referred to in the Agreement was acquired by the Second Applicant and which land is registered in the Land Register of Scotland under Title Number ABN117431;

(D) The Council then entered into a further agreement with the said Malcolm Allan Housebuilders Limited, the Second Applicant and Taylor Wimpey UK Limited, which agreement was dated 18 and 24 March and 11 and 15 April, all months in the year 2016, and recorded in the General Register of Sasines and Land Register of Scotland on 4 May, 2016, (hereinafter referred to as the First Variation) for the purpose of varying the terms of the Agreement to make appropriate reference to the Further Applications and any Future Application(s) (as defined in the First Variation) as applicable to the Development;

(E) The terms of Clause 8.1 of the First Variation states that the Council shall be entitled to review the Contributions (as defined in the Agreement) and the level of Affordable Housing (as defined in the Agreement) which require to be provided as part of the Development in the event that any Future Application(s) would permit more than one thousand and sixty-seven (1067) Housing Units (as defined in the Agreement) on the Development Site;

(F) The Second Applicant has made an application to the Council for planning permission for the erection of 25 dwellinghouses on the Development Site (hereinafter referred to, and later defined, as the 2016 Application) and which application proposes an additional 9 dwellinghouses on Uryside Phase 2 Land (as defined in the Agreement) t; increasing the permitted number of Housing Units approved on the Development Site;

(G) The Council has assessed the Contributions and Affordable Housing which is required to be provided under the 2016 Application;

(H) The Council has resolved to grant planning permission in terms of the 2016 Application but to withhold issuing the 2016 Decision Notice (as later defined) until the Agreement has been further varied to make appropriate reference to the 2016 Application and incorporate the Contributions and Affordable Housing provisions referred to in (G) above.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:-

1. The Council shall issue the 2016 Decision Notice to the Applicant upon receipt of the Keepers Acknowledgment of these presents registered in the Land Register of Scotland and an updated Legal Report brought down to a date as near as practicable to the date of submission of registration and which report shall not disclose any entries which are adverse to the Applicant's interest in the Development Site and which would preclude them from binding their



interest in the Development Site for the purpose of restricting or regulating the Development Site in terms of this agreement.

2. The following new defined terms shall be inserted in alphabetical order to Clause 1 of the Agreement:-

2.1 the 2016 Affordable Housing Contribution: means the sum of SIX HUNDRED AND NINETY FOUR POUNDS AND FORTY FOUR PENCE (£694.44) STERLING, per Housing Unit as Index Linked;

2.2 the 2016 Application: means the application made by the Applicant to the Council in terms of Section 32 of the Act for planning permission for the erection of 25 dwellinghouses (change of house type and layout) and which application can be identified in the planning register under planning application reference number APP/2016/1027;

2.3 the 2016 Decision Notice: means the planning consent document(s) to be issued by the Council in respect of the 2016 Application;

2.4 the 2016 Community Halls Contribution: means the sum of EIGHT HUNDRED AND TEN POUNDS AND SEVENTY EIGHT PENCE (£810.78) STERLING, per Housing Unit as Index Linked;

2.5 the 2016 Contributions: means the total per Housing Unit of the 2016 Affordable Housing Contribution, the 2016 Community Halls Contribution, the 2016 Healthcare Contribution, the 2016 Primary Education Contribution, the 2016 Secondary Education Contribution, and the 2016 Sports and Recreation Contribution, equating to THIRTEEN THOUSAND TWO HUNDRED AND THIRTY SIX POUNDS AND THIRTY THREE PENCE (£13,236.33) STERLING;

2.6 the 2016 Healthcare Contribution: means the sum of ONE THOUSAND POUNDS (£1000.00) STERLING, per Housing Unit as Index Linked;

2.7 the 2016 Primary Education Contribution: means the sum of SEVEN THOUSAND FOUR HUNDRED AND THIRTY SEVEN POUNDS AND SEVENTY EIGHT PENCE (£7437.78) STERLING, per Housing Unit as Index Linked;

2.8 the 2016 Secondary Education Contribution: means the sum of TWO THOUSAND SEVEN HUNDRED AND NINETY EIGHT POUNDS AND THIRTY THREE PENCE (£2798.33) STERLING, per Housing Unit as Index Linked;

2.9 the 2016 Sports and Recreation Contribution: means the sum of FOUR HUNDRED AND NINETY FIVE POUNDS (£495.00) STERLING, per Housing Unit as Index Linked;

2.10 Contribution Instalment: means the sum corresponding to the total of the 2016 Contributions due in accordance with Clause 8A;

3. The following defined terms shall be amended as follows:-

3.1 Development Start Date: after the words "or the Decision Notices" where they appear in the second line of the definition the words "or the 2016 Decision Notice" shall be inserted;

3.2 Index Linked: where the definition of Index Linked ends there shall be inserted the words or in relation to the 2016 Contributions, multiplied by multiplied by the higher of (a) one; or (b) the figure produced by dividing RPI<sub>n</sub> by RPI<sub>a</sub> where RPI is the General Index of Retail Prices (All Items) published by the Central Statistical Office (or, if that index ceases to be published, such index of the change of value of money as is generally accepted in its place), RPI<sub>a</sub> is the RPI for 1 January, 2018, and RPI<sub>n</sub> is the RPI for the month immediately preceding the Completion Date for the relevant Housing Unit for which the Contribution Instalment is due in terms of condition 6 (except that, if, between these dates, there has been any rebasing or other change of index, RPI<sub>n</sub> shall be the RPI which would have applied for the latter month had such rebasing or other change not taken place);

3.3 Housing Unit: after the words or any Future Decision Notices where they have been inserted into definition by virtue of the First Variation the words and the 2016 Decision Notice" shall be inserted;

3.4 the Schedule: where in definition the words comprising two parts appear, these shall be delete and replaced with the words comprising three parts;

4. Within Clause 4 of the Agreement (Affordable Housing), a new sub-clause 4.2.6 shall be inserted as follows:-

4.2.6 It is acknowledged by the Second Applicant that there is a requirement to provide twenty five per cent (25%) of the Development pursuant to the 2016 Decision Notice on the Uryside Phase 2 Land as Affordable Housing.

4.2.6.1 This equates to the Second Applicant having to deliver two (2) Affordable Housing Units on the Uryside Phase 2 Land on the Development Site pursuant to the 2016 Decision Notice which units shall be erected (i) as Low Cost Shared Equity Units (LCSEUs) and where the two (2) LCSEUs shall consist of one (1) x three (3) bed Housing Unit on Plot 542; and one (1) x three (3) bed Housing Unit on Plot 541; or (ii) in accordance with such other Affordable Housing scheme as may be agreed in writing between the Council and the Second Applicant.

4.2.6.2 The Second Applicant shall not be entitled to sell or rent more than fourteen (14) of the Open Market Houses until the Affordable Housing to be provided as part of the Development pursuant to the 2016 Decision Notice on the Uryside Phase 2 Land in terms of this Clause 4.2.6 has been provided unless the delay in provision of Affordable Housing has been caused by matters outwith the control of the Second Applicant, which for example may relate (but are not restricted to) the availability of funding for the provision of the Affordable Housing.

5. Immediately after the conclusion of Clause 8 of the Agreement a new Clause 8A shall be inserted as follows:-

## 8A. THE 2016 CONTRIBUTIONS

### 8A.1 The 2016 Affordable Housing Contribution

The Second Applicant shall pay the 2016 Affordable Housing Contribution to the Council in accordance with the terms of Clause 9A below. The Council shall be obliged to utilise the 2016 Affordable Housing Contribution for the purposes of providing Affordable Housing within the Community.

#### 8A.2 the 2016 Community Halls Contribution

The Second Applicant shall pay the 2016 Community Halls Contribution to the Council in accordance with the terms of Clause 9A below. The Council shall be obliged to utilise the 2016 Community Halls Contribution for the purpose of funding additional community hall provision in Inverurie or for such other community facilities for which the Council is able to demonstrate reasonable justification and which will serve the residents of the Development.

#### 8A.3 The 2016 Healthcare Contribution

The Second Applicant shall pay the 2016 Healthcare Contribution to the Council in accordance with the terms of Clause 9A below. The Council shall be obliged to utilise the 2016 Healthcare Contribution for the purpose of funding a replacement health centre within Inverurie or such other NHS medical facilities which will serve the residents of the Development.

#### 8A.4 The 2016 Primary Education Contribution

The Second Applicant shall pay the 2016 Primary Education Contribution to the Council in accordance with the terms of Clause 9A below. The Council shall be obliged to utilise the 2016 Primary Education Contribution for the purpose of addressing capacity issues at Inverurie Market Place primary school or such other primary educational facilities for which the Council is able to demonstrate reasonable justification and which will serve the residents of the Development.

#### 8A.5 The 2016 Secondary Education Contribution

The Second Applicant shall pay to the Council the 2016 Secondary Education Contribution to the Council in accordance with the terms of Clause 9A below. The Council shall be obliged to utilise the 2016 Secondary Education Contribution for the purpose of addressing capacity issues at Inverurie Academy through the provision of a new secondary school in Inverurie or such other educational facilities for which the Council is able to demonstrate reasonable justification and which will serve the residents of the Development.

#### 8A.6 The 2016 Sports and Recreation Contribution

The Second Applicant shall pay to the Council the 2016 Sports and Recreation Contribution to the Council in accordance with the terms of Clause 9A below. The Council shall be obliged to utilise the 2016 Sports and Recreation Contribution for the purpose of providing playing fields, sports pitches and associated facilities at Uryside, Inverurie, or such other sports and recreational facilities, such as indoor or outdoor sports facilities, for which the Council is able to demonstrate reasonable justification and which will serve the residents of the Development.

7. Immediately after the conclusion of Clause 9 within the Agreement there shall be inserted a new Clause 9A as follows:-

## 9A. PAYMENT AND USE OF THE 2016 CONTRIBUTIONS

### 9A.1 Calculation of Payment

9A.1.1 Within one (1) month of the Development Start Date, the Second Applicant shall notify the Development Start Date to the Developer Obligations team of the Council.

9A.1.2 From six (6) months from the Development Start Date, the Second Applicant shall provide monthly notifications by the first working day of each month to the Councils Developer Obligations team of the Completion Date for each Housing Unit on the Development Site pursuant to the 2016 Decision Notice. If there are no completions then the Applicant shall not be obliged to intimate this fact to the Council.

9A.1.3 In the event that the Second Applicant fails to provide such notification in accordance with Clause 9A.1.2, then the Council shall be entitled to apply additional indexation to the Contribution Instalment from the period they should have received the notification of completion until the actual date of receipt of notification.

9A.1.4 The Contribution Instalment shall be paid by the Second Applicant in quarterly payments based on the number of Housing Units which have reached their Completion Date pursuant to the 2016 Decision Notice during the preceding three (3) month period.

9A.1.5 The first payment will be calculated nine (9) months after the Development Start Date and which payment calculation shall be based on the number of Housing Units completed during the preceding nine (9) month period.

9A.1.6 Further payments shall be calculated at three (3) monthly intervals thereafter, on the first day of the month concerned.

9A.1.7 The individual quarterly payments of the Contribution Instalment shall fall to be made by the Second Applicant to the Council within fourteen (14) days of the date of receipt of an invoice from the Council for the Contribution Instalment.

### 9A.2. Late Payment

Any Contribution Instalment which are not paid within fourteen (14) days of being due shall bear interest at four per cent (4%) above the Clydesdale Bank plc base rate as at the date the Contribution Instalments fell due until the relevant Contribution Instalment is paid.

### 9A.3 Cessation of Impact of Development

In event of the 2016 Contributions or Contribution Instalment continuing to be outstanding after the aforementioned fourteen (14) day period in accordance with Clause 9A.2, then the Second Applicant undertakes unequivocally upon being notified to do so by the Council, to arrange at their cost and convenience, for all works on the Development pursuant to the 2016 Decision Notice to cease until such time as the relevant payment and interest is paid.

### 9A.4 Confirmation of Compliance with Contributions Obligation

The Contribution Instalments will continue to be paid by the Second Applicant to the Council until such time as all Housing Units pursuant to the 2016 Decision Notice have been completed on the Development Site, at which time the Council will, if requested to do so by the Second Applicant, grant a discharge of this obligation.

#### 9A.5 Interest on Contributions

The Contribution Instalments to be paid by the Second Applicant to the Council as detailed in this Clause 9A, will be transferred by the Council into an interest bearing account in the Councils name on receipt of the Contribution Instalments. The Contributions will be used by the Council for the purposes prescribed in Clause 8A as appropriate to the particular contribution.

#### 9A.6 Timescale for the Use of Contributions

The Council will be obliged to have spent the 2016 Contributions for the prescribed purposes within five (5) years of receipt of payment of cleared funds in the Councils bank account of the last of the 2016 Contributions, or the last Contribution Instalment, paid by the Second Applicant.

#### 9A.7 Repayment of Contributions

If the Council fails to spend the 2016 Contributions within the timescales narrated within Clause 9A.6 it will be obliged, upon receipt of a written request, to repay to the Applicant or the party who paid the 2016 Contributions such part or parts of any of the 2016 Contributions, which has or have not been spent for the prescribed purposes together with the interest duly accrued thereon, within twenty-eight (28) days of receipt of a written request.

#### 9A.8 Request for Information

9A.8.1 Within twenty-eight (28) days of a receipt of a written request the Council will provide such evidence to the Second Applicant as may be reasonably required to demonstrate that the Contributions have been used for the purposes prescribed in this Agreement and the extent to which they have been so used.

9A.8.2 The Second Applicant shall only be able to request the details of the utilisation of the Contributions as set out in this Clause 9A.8.1, once in every twelve (12) month period and once such a request for the details of expenditure is made, no subsequent request can be made within the following twelve (12) month period.

8. The Schedule as annexed and executed as relative to this agreement govern the delivery of Affordable Housing required in terms of Clause 4 of this agreement.

9. In all other respects the terms and conditions of the Agreement (as varied by the First Variation) shall remain extant and valid.

10. This agreement shall be governed and construed in accordance with the law of Scotland.

11. The Parties consent to the registration of this agreement for preservation and execution.

12. The Applicant shall reimburse the Council in respect of its reasonable legal expenses of FIVE HUNDRED POUNDS (£500.00) STERLING in connection with the preparation and conclusion of this agreement.

THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING MINUTE OF VARIATION OF AGREEMENT BETWEEN ABERDEENSHIRE COUNCIL AND BDW TRADING LIMITED IN TERMS OF SECTION 75 OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997.

### Terms and Conditions of LCSE Scheme Provision

Where, in accordance with the terms of Clause 4 of the foregoing Minute of Variation, LCSEUs are to be provided on the LCSE Land, and the following terms and conditions shall apply and will be validly referred to in any sale of any LCSE:-

#### 1. DEFINITIONS

In this Schedule the following additional terms and expressions shall have the meanings respectively set opposite them unless the context otherwise requires:

the Affordable Housing Commuted Sum: the higher of (i) the sum of TWENTY FIVE THOUSAND POUNDS (£25,000.00) STERLING as Index Linked or (ii) the sum prevailing in accordance with the Councils housing policy at the time the Commuted sum is calculated being the sum payable in lieu of provision of an Affordable Housing Unit;

Average Weekly Earnings Index or AWEI: the index of average weekly earnings published each month by the Office of National Statistics;

Affordable Price: the higher of (i) the sum of (a) ONE HUNDRED AND TEN THOUSAND POUNDS (£110,000.00) STERLING for a two (2) bed Housing Unit; and (b) ONE HUNDRED AND THIRTY THOUSAND POUNDS (£130,000.00) for a three (3) bed Housing Unit, which sum shall be increased in accordance with AWEI from 1 January, 2018, until the date valuations are provided in terms of Part 3 of the Schedule; or (ii) the Affordable Prices as published by the Council at the time of the determination of the Councils Equity Proportion in accordance with Clause 2 of this Schedule;

Criteria: persons who are in the following categories: (i) Council or RSL tenants who currently live in Inverurie (ii) Council or RSL waiting list applicants who had requested Inverurie as an area in which they wish to be re-housed or have a local connection to; (iii) Council or RSL tenants from other areas of the Community without a local connection to Inverurie; (iv) Council or RSL waiting list applicants from other areas of the Community without a local connection to Inverurie; and (v) other persons deemed by the Council as being appropriate Qualifying Purchasers;

Council's Equity Proportion: the difference between the Affordable Price for the LCSEU and the Open Market Value as established by the valuations provided in terms of Clause 2.1 of this Schedule expressed as a percentage reduction of that Open Market Value;

Deemed Open Market Value: the open market value of the Property as determined by the Valuer making the Open Market Value Assumptions and having regard to such other matters as they may, in their professional judgement, deem appropriate;

Encumbrance: means a standard security; any inhibition, adjudication or other matter which may competently be registered in the personal registers; or any other encumbrance which may affect the LCSEU including without prejudice any order relating to property transfer or confiscation;

LCSEU Land: the land within the Development Site upon which the LCSEU are to be provided;

LCSEU Land Proprietor: the Proprietor as and to the extent that the same is the heritable proprietor of the LCSEU Land or any part thereof;

□Low Cost Shared Equity Units□ or □LCSEU□: Affordable Housing made available as units for sale to Qualifying Purchasers at a percentage equivalent to the Councils Equity Proportion below the Deemed Open Market Value for such Affordable Housing;

New Security: means any standard security over the Property or any part thereof other than the Standard Security;

Open Market Sale: a sale of the whole of the Property on the open market to a third party in circumstances where the Council, acting reasonably, are and remain satisfied that (i) the Shared Equity Owner has taken all reasonable steps to ensure that the price at which the Property is to be sold is the best that can be reasonably obtained which will include, without prejudice, being satisfied with the nature and level of advertising, the Home Report (means the documents referred to in the Housing (Scotland) Act 2006 (Prescribed Documents) Regulations 2008), the marketing of the Property and the terms of sale; and (iii) the sum offered by the third party has not been adversely affected by any of the Open Market Value Assumptions not being the case in fact;

Open Market Value Assumptions: the following assumptions:

1. that the Property is being sold by a willing seller to a willing purchaser on the open market on an arm's length basis;
2. that vacant possession of the Property is available;
3. that the LCSE Proprietor or Shared Equity Owner has duly complied with, performed and discharged all of the obligations incumbent upon him/her in terms of this Agreement;
4. that the Shared Equity Owner has complied with the obligations incumbent upon him/her in terms of the Standard Security;
5. that there is no Encumbrance affecting the Property;
6. that any increase in value arising from any additions or improvements carried out to the Property is to be included in the Deemed Open Market Value; and

7. that any diminution in value arising from adaptations which have been carried out to meet the needs of a disabled person is to be disregarded from the open market value.

Open Market Value: the value of each relevant dwelling in question to be erected on the Development Site 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 arm's 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 these are private houses for sale on the open market with vacant possession and not subject to the conditions within this Agreement and which value shall be established in terms of this Schedule Part 3 and the term Open Market Valuation shall be construed accordingly;

Payment Event: any one or more of the following events:

1. any transfer or transmission of the Property or part of the LCSEU whether by sale or gift or succession or in any other way to a third party other than a Spouse or Qualifying Purchaser;
2. the failure on the part of a Spouse to assume the obligations of the Shared Equity Owner in terms satisfactory to the Council within six (6) months of the transfer or transmission of the LCSEU or part of the LCSEU to the Spouse whether by sale or gift or succession or in any other way;
3. where the Shared Equity Owner is one individual and dies without a surviving Spouse or the LCSEU does not pass to any such surviving Spouse, the death of the Shared Equity Owner;
4. where the Shared Equity Owner comprises more than one person, the death of the survivor of such persons;
5. the Shared Equity Owner or any Spouse of the Shared Equity Owner ceasing to use the LCSEU as his/her only place of residence or renting the LCSEU or allowing it to be occupied by a third party without the prior written consent of the Council;
6. the Shared Equity Owner or any Spouse of the Shared Equity Owner granting a New Security without first obtaining the written consent of the Council;
7. any security holders calling up their security or the security holders or any other party exercising any other process of law which would affect the LCSEU;
8. any default under the Standard Security; or
9. it is established to the reasonable satisfaction of the Council that the Shared Equity Owner has provided or permitted the provision of false or misleading information to the Council in connection with the granting or transmission of their agreement to purchase a LCSEU from the Council or Qualifying Purchaser.

Qualifying Purchasers: those people wishing to purchase an LCSEU who fulfil the Criteria;

Reduction Notice: a notice in writing from the Shared Equity Owner specifying that they wish to reduce the Councils Equity Proportion to the New Equity Proportion and at their sole expense,



such Reduction Notice shall include reports from two independent chartered surveyors addressed to both the Council and the Shared Equity Owner dated not less than fourteen (14) days prior to such Reduction Notice providing the opinion of each surveyor of the Deemed Open Market Value (and in the event that such reports provide different valuations, the Deemed Open Market Value shall be deemed to be the average of such valuations).

Registered Social Landlord or RSL: such independent housing organisations operating within Aberdeenshire and which are registered with the Scottish Housing Regulator in terms of the Housing (Scotland) Act 2001;

Shared Equity Owner: Qualifying Purchaser/s who have/has acquired a LCSEU;

Sale Notice: a notice in writing from the Shared Equity Owner confirming they wish to sell the LCSEU and, at their sole expense, such Sale Notice shall include reports from two independent chartered surveyors addressed to both the Council and the Shared Equity Owner dated not less than fourteen (14) days prior to such Sale Notice providing the opinion of each surveyor of the Deemed Open Market Value (and in the event that such reports provide different valuations, the Deemed Open Market Value shall be deemed to be the average of such two valuations). The cost of such valuations shall be borne by the Shared Equity Owner;

Standard Security: a standard security to be granted by the by the Shared Equity Owner in favour of the Council for the Shared Equity Owners obligations in terms of this Agreement

The New Equity Proportion: the minimum share of the equity which is retained in the LCSEU by the Council expressed as a percentage of the Open Market Value;

Valuer: either the independent valuers as narrated in the Sale Notice or Reduction Notice or the District Valuer of HM Revenue and Customs for the district in which the LCSEU is situated or if otherwise agreed between the Parties such other professionally qualified valuer as the Council or the Shared Equity Owner may agree.

## 2. MARKETING AND SALE OF LCSEU BY LCSE LAND PROPRIETOR

### Determination of Initial Discount

2.1 The LCSE Land Proprietor shall provide to the Council two (2) independent valuations of the Open Market Value of the LCSEs by suitably qualified surveyors, which valuations shall be provided within twenty-eight (28) days of the date of the valuation. Where the two (2) valuations differ the Open Market Value for the units shall be determined to be the average of these two (2) valuations. The LCSE Land Proprietor shall be solely responsible for the costs of obtaining the valuations.

2.2 The Council shall thereafter determine the Councils Equity Proportion for the LCSEUs, relative to the size of the LCSEU, which Councils Equity Proportion shall be fixed (subject to term of Clause 5, Staircasing, of the Schedule to this Agreement) and used in subsequent sales of the LCSEU.

2.3 The Council shall, prior to the commencement of marketing pursuant to Clause 3 of this Schedule and in writing, advise the LCSE Land Proprietor of the level of Councils Equity

Proportion and New Equity Proportion applicable to each LCSEU and the LCSEU Land Proprietor shall be bound to include those percentages in the terms of any sale of a LCSEU.

2.4 Following determination of the Councils Equity Proportion and New Equity Proportion the LCSE Land Proprietor shall incorporate these in any marketing information or legal materials intended to be distributed to Qualifying Purchasers.

### 3. MARKETING

3.1 The LCSE Land Proprietor shall, at their sole expense, provide the Council with promotional sales particulars in relation to the LCSEUs for the Council to pass on to Qualifying Purchasers.

3.2 The promotional sales particulars offering for sale the LCSEUs shall be made available to Qualifying Purchasers for a minimum period of six (6) months and confirm that the LCSEU's are to be sold at the Affordable Prices.

3.2.1 This six (6) month period shall run from the date the promotional sales particulars are intimated to the Council by the LCSE Land Proprietor, the date of completion of the LCSEU or the date fourteen days from the date upon which open market valuations are provided to the Council, whichever is the later. The marketing period set out in this Clause does not preclude any agreement by the parties of any longer marketing period and/or the commencement of marketing at any earlier date which extends or is additional to the minimum period specified.

3.3 The LCSEU Land Proprietor shall note down all enquiries in respect of LCSEUs in a form to be agreed with the Council, both parties acting reasonably, and shall pass on all enquiries to the Council as soon as is reasonably practicable on an ongoing basis. For the avoidance of doubt, the LCSE Land Proprietor will not be involved nor make any judgement over the suitability of the enquirer as this is the sole responsibility of the Council.

3.4 If the LCSE Land Proprietor (having used all reasonable endeavours) has been unable to conclude missives with a Qualifying Purchaser in accordance with the conditions of this Clause 3 of this Schedule for any of the LCSEUs at the Affordable Prices within the six (6) month period referred to in Clause 3.2 of this Schedule, then either:-

3.4.1 the unsold LCSEU shall be offered to the Council or an RSL nominated by the Council for purchase at the relevant Affordable Price, and if accepted by the Council or RSL then such acquisition will be in accordance with Clause 6; or

3.4.2 should the Council or RSL fail to accept the offer referred to in Clause 3.4.1 of this Schedule within two (2) months of receipt, the Council or RSL shall be deemed to have declined the offer and the LCSE Land Proprietor shall be entitled but not bound to sell the remaining LCSEUs on the open market, subject to the LCSE Land Proprietor paying to the Council the Affordable Housing Commuted Sum for each relevant LCSEU within twenty- eight (28) days of the sale of that unit on the open market.

3.5 Any Affordable Housing Commuted Sum which is not paid within fourteen (14) days of being due in accordance with Clause 3.4.2 due shall bear interest at four per cent (4%) above the Clydesdale Bank pic base rate as at the date the Affordable Housing Commuted Sum fell due until the Affordable Housing Commuted Sum is paid.

3.6 Upon payment of the Affordable Housing Commuted Sum for each or any LCSEU which is sold on the open market pursuant to this Clause 3 of this Schedule, the obligations incumbent upon the LCSE Land Proprietor pursuant to this Agreement shall be deemed to be discharged in respect of that unit.

3.7 The Council shall be obliged to utilise the Affordable Housing Commuted Sum payable in terms of Clause 3.4.2 of this Schedule for the purposes of providing Affordable Housing in the Community. The Affordable Housing Commuted Sum will be used by the Council for the purposes prescribed within five (5) years of payment constituting cleared funds by the LCSE Land Proprietor of the last instalment of the Affordable Housing Commuted Sum, failing which the Council will be obliged to repay such part of the Affordable Housing Commuted Sum which has not been utilised for the purposes prescribed to the relevant party who paid the Affordable Housing Commuted Sum together with any interest duly accrued thereon, within twenty-eight (28) days of the expiry of the said five (5) year period. The Council shall, on written request from the LCSE Proprietor, provide details of the said utilisation of the Affordable Housing Commuted Sum.

#### 4. LCSEU PURCHASERS

##### 4.1 Standard Security and Borrowings

All purchasers of a LCSEU comprising Shared Equity Owners will, at the time of purchase, grant and execute a standard security at their own expense in favour of the Council to bind the Shared Equity Owner to comply with the terms of this Clause 4 of this Schedule and shall set out the requirements of those terms within the standard security and any accompanying agreement

##### 4.2 Ranking

4.2.1 The parties acknowledge that any standard security granted in accordance with this Clause shall be postponed to rank after any standard securities granted by any Shared Equity Owner to assist in purchasing the LCSEU.

4.2.2 The Council shall discharge the standard security in their favour on the subsequent sale or transfer of an LCSEU provided that the LCSEU owner (being the subsequent Qualifying Purchaser) has provided a standard security incorporating the terms of Clause 4 & 5 of this Schedule hereof.

4.3 No Subsequent Owner of an LCSEU shall be entitled to borrow and/or grant any standard security over an LCSEU for the sum representing more than the sum equating to the Deemed Open Market Value of the LCSEU in question from time to time less the Councils Equity Proportion New Equity Proportion for which the Subsequent Owner in question is liable.

4.4 Each Subsequent Owner shall provide that the LCHOU owned by it shall be occupied by a Qualifying Purchaser, a widow or widower of such a person and any dependant relative. Furthermore each LCHOU shall not be let or sublet by the Subsequent Owner without the consent of the Council. This sub-clause shall not apply to a heritable creditor in possession of an LCHOU.

4.5 A heritable creditor shall be entitled to sell an 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.

4.6 Upon payment of the Subsequent Owners Repayment Amount or the Subsequent Owners Reduced Repayment Amount, as the case may be, the obligations incumbent upon the outgoing LCHOU Land Proprietor or Subsequent Owner of that LCHOU pursuant to this Agreement, shall be deemed discharged in respect of that LCHOU.

## 5. STAIRCASING

5.1 At any time from and after the date which is two (2) years after the date of acquisition of the LCSEU by the initial Shared Equity Owner, the Shared Equity Owner will be entitled to reduce the Councils Equity Proportion to the Councils New Equity Proportion as set out in this Clause 5 provided always that:-

5.1.2 the Shared Equity Owner shall only be entitled to exercise a right to reduce the Councils Equity Proportion in terms of this Clause 5.1 on one (1) occasion and if they/he/she shall have complied with, performed and discharged all of the obligations incumbent upon him/her in terms of this Agreement; and

5.1.2 the Councils Equity Proportion expressed as a percentage of the LCSEU after the Shared Equity Owner exercises their right shall be a minimum of the New Equity Proportion.

5.2 For the avoidance of doubt, the Councils Equity Proportion cannot be reduced so as to be less than the New Equity Proportion. For example, if the Councils Equity Proportion is 30% and the New Equity Proportion is 20% the Councils Equity Proportion can only ever be reduced to 20%.

5.3 To exercise their right to reduce the Councils Equity Proportion to the Councils New Equity Proportion, the Shared Equity Owner shall serve on the Council the Reduction Notice.

5.4 Provided payment by the Shared Equity Owner of the amount necessary to reduce the Council's Equity Proportion in terms of Clause 5.1 is effected within three (3) months of such Reduction Notice to the Council, the Shared Equity Owner may reduce the Councils Equity Proportion to the New Equity Proportion. The amount due to the Council by the Shared Equity Owner in terms of this Clause 5.4 shall be calculated in accordance with the following formula:

$A \times B$

where:

A = the difference between the Councils Equity Proportion at the date of the Reduction Notice and the New Proportion; and

B = the Deemed Open Market Value in the Reduction Notice.

5.4.1 For example, if the Deemed Open Market Value of the LCSEU at the date of the Reduction Notice was £120,000; the Councils Equity Proportion at the date of the Reduction

Notice was 30% and the New Equity Proportion was 20%; the amount due to the Council would be:-

$$£120,000 \times (30\% - 20\%) = £120,000 \times 10\% = £12,000.$$

5.5 Each payment received by the Council pursuant to this Clause 5 shall be held by the Council in an interest bearing account in their name. The Council may use the payment to facilitate the future provision of the LCSEU as a LCSEU in accordance with this Agreement or apply the whole or any part of the payment for delivery of Affordable Housing within the Community.

5.6 Upon payment by the Shared Equity Owner, the Shared Equity Owner and the Council shall forthwith execute a memorandum detailing the payment and confirmation that the New Equity Proportion will be applicable.

## 6. AFFORDABLE HOUSING IN PERPETUITY AND THE COUNCIL'S RIGHT OF PRE-EMPTION

6.1 In the event of the Shared Equity Owner deciding to sell or otherwise dispose of the LCSEU or the occurrence of a Payment Event, the Shared Equity Owner shall in the first instance serve a Sale Notice on the Council or in event of a Payment Event the Council shall be entitled to instruct the Valuer and the Council or their nominees shall have the option of purchasing the LCSEU.

6.2 The price to be paid in terms of Clause 6.1 shall be calculated in accordance with the following formula:

$$A \times (100 - B) \%$$

where:

A = the Deemed Open Market Value figure in the Sale Notice; and

B = the Council's Equity Proportion or New Equity Proportion.

6.2.1 For the avoidance of doubt, the Shared Equity Owner shall only be entitled to sell or otherwise dispose of the whole of the LCSEU and not only part thereof and the other terms and conditions of the sale shall be such as the Council shall, acting reasonably, so determine.

6.2.2 As an example, if at the time when the option becomes exercisable under Clause 6.1, the price determined by the Valuer is now £120,000 and the Council's Equity Proportion is 20%, the amount to be paid by the Council or their nominees will be:-

$$£120,000 \times (100 - 20) \% = 120,000 \times 80\% = £96,000$$

6.3. The Council's right of pre-emption in terms of this Clause 6 shall be exercised by the Council as follows:

6.3.1 the Council shall have a period of two (2) months from the date of the Sale Notice in which to determine and intimate in writing to the Shared Equity Owner whether or not they wish to retain the LCSEU as a LCSEU; and

6.3.2 in the event of the Council intimating in writing timeously that they wish to retain the LCSEU they shall have a period of six (6) months from the date of the Sale Notice in which to procure that a nominated Qualifying Purchaser concludes missives with the Shared Equity Owner to purchase the LCSEU in accordance with this Clause 6.3 and otherwise on normal commercial terms (the Shared Equity Owner) being bound to provide all necessary co-operation in this regard and to do everything requisite and necessary as reasonably requested by the Council in order to conclude satisfactory missives).

6.3.2.1 For example, if the Sale Notice was served on 1 February then the Council would have until 1 April to advise the Shared Equity Owner whether or not they wished to retain the LCSEU as an LCSEU, albeit they can advise this at any time prior to that date and would have until 1 August (6 months) to find a Qualifying Purchaser to conclude missives for the purchase of the LCSEU and entry would be no later than one month from then or by the 1 of September.

6.4 In the event that either:(a) the Council do not provide timeous notice intimating that they wish to retain the LCSEU as an LCSEU within the period of two (2) months referred to in Clause 6.3.1 or (b) such notice is provided but missives are not concluded with a Qualifying Purchaser within the six (6) month period referred to in Clause 6.3.2 (save to the extent that any failure is attributable to any fault or delay on the part of the Shared Equity Owner) then the Council, or a Registered Social Landlord nominated by the Council, shall have the right to purchase the LCSEU from the Shared Equity Owner by giving written notice to that effect to the Shared Equity Owner, not later than six (6) months from the Sale Notice pursuant to Clause 6.1 in which event the Council or nominated RSL shall purchase and the Shared Equity Owner shall sell the LCSEU on the following terms and conditions:

6.4.1 the purchase price payable by the Council or nominated RSL to the Shared equity Owner shall be as outlined in Clause 6.2;

6.4.2 the date of entry when vacant possession of the LCSEU shall be granted by the Shared Equity Owner to the Council or nominated RSL shall be one (1) month after the date of written notice issued by the Council or nominated RSL to the effect that they intend to purchase the LCSEU;

6.4.3 on the date of entry, in exchange for payment of the purchase price as calculated in accordance with Clause 6.2, the Shared Equity Owner shall:

(a) deliver to the Council or nominated RSL a valid disposition of the LCSEU in favour of them as the purchaser. The disposition will be formally signed in a self-proving manner;

(b) deliver to the Council or nominated RSL a valid and marketable prescriptive progress of title to the LCSEU;

(c) deliver to the Council or nominated RSL a Legal Report over the LCSEU by a professional searcher dated not more than five (5) working days prior to the date of entry which discloses

nothing prejudicial to the interest of the Shared Equity Owner as owner of the LCSEU or the valid grant of the disposition in favour of the Council or RSL;

(d) deliver to the Council or nominated RSL all documents and evidence (including a plan or detailed written description of the boundaries of the LCSEU sufficient to enable the whole of the LCSEU to be identified on the cadastral map) that the Keeper may require to enable the Keeper to create or update (as the case maybe) the Title Sheet to disclose the Council or nominated RSL as the registered proprietor of the LCSEU without any exclusion or limitation of warranty in terms of Section 75 of the Land Registration etc (Scotland) Act 2012 or otherwise;

(e) if there is a heritable security affecting the LCSEU at the date of entry (except any standard security granted by the Shared Equity Owner pursuant to Clause 4 of this Schedule) deliver to the Council or nominated RSL a formally signed discharge or deed of restriction releasing the LCSEU from that security together with a properly completed and signed application to the Keeper to register that discharge or deed of restriction with relevant cheque to the Keeper for an amount equal to the fees for registering that deed in the Land Register; and

(f) The Shared Equity Owner will apply to the Keeper for an Advance Notice for the disposition, in the form Adjusted with the Council to be entered on the application record for the Affordable Housing Unit no earlier than five (5) working days prior to the Date of Entry. The cost of the Advance Notice for the Disposition will be met by the Shared Equity Owner.

6.5 In the event of the Council nominating a suitable Qualifying Purchaser pursuant to Clause 6.3.2, the Shared Equity Owner shall sell the LCSEU to the nominated Qualifying Purchaser on the following terms and conditions:

(a) the purchase price payable by the Qualifying Purchaser to the Shared Equity Owner shall be in accordance with Clause 6.2;

(b) the date of entry to the Qualifying Purchaser shall be a date not later than one (1) month from the date of conclusion of the missives between the Shared Equity Owner and the Qualifying Purchaser; and

(c) the sale terms of Clauses 6.3 and 6.4 shall be incorporated and apply to the Qualifying Purchaser as if they applied to Council or RSL.

6.6 Should the Council determine that, following receipt of a Sale Notice from a Shared Equity Owner pursuant to Clause 6.1 of this Agreement, they (a) do not wish to use the LCSEU as an LCSEU, or are unable to nominate a Qualifying Purchaser, (b) that they do not wish to exercise the right to purchase the LCSEU pursuant to Clause 6.3.1 of this Agreement, and (c) that they do not wish to nominate a RSL to exercise the right to purchase the LCSEU in question pursuant to Clause 6.4 (the Council being deemed in each case to have made such determination in the absence of timeous written intimation pursuant to Clause 6.1 or Clause 6.3), the Shared Equity Owner shall be entitled to sell the LCSEU as an Open Market Sale at not less than the Deemed Open Market Value and shall account for and pay upon the day of completion of such sale the Councils Equity Proportion as the case may be to the Council in return for a discharge of the Standard Security.

## Burden 9

Minute of Partial Discharge of Section 75 Agreement, registered 8 Nov 2017, by Aberdeenshire 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 (as amended) and having its principal office at Woodhill House, Westburn Road, Aberdeen, AB16 5GB (who and whose successors as Planning Authority aforesaid are hereinafter referred to as the Council)

CONSIDERING THAT the Council entered into an agreement under Section 75 of the Town and Country Planning Act (Scotland) 1997 with Malcolm Allan House Builders and Arthur Conn Murrison and others concerning the subjects at Uryside and Portstown, Inverurie, and which agreement was dated 12, 15, 22, 26 and 27 November, 2013, and recorded in the General Register of Sasines and the Land Register of Scotland under Title Numbers ABN80849 and ABN97240 and registered in the Books of Council and Session on 2 December, 2013, and which agreement was varied by (i) a Minute of Variation between the Council and BDW Trading Limited and which minute was dated 18 and 24 March and 11 and 15 April, 2016, and recorded in the General Register of Sasines and Land Register of Scotland on 4 May, 2016 (hereinafter referred to as the Agreement); AND CONSIDERING THAT subsequent to the recording and registration of the Agreement, BDW Trading Limited (hereinafter referred to as the Proprietor) acquired part of the Uryside Phase 2 Land (as defined in the Agreement) and which subjects are now registered in the Land Register of Scotland under Title Number ABN117431 (hereinafter referred to as the Barratt Land); AND ALSO CONSIDERING THAT the Council and the Proprietor entered into a Minute of Variation in respect of the Barratt Land and which minute is dated 20 and 25 July, 2017 and registered in the Land Register of Scotland on 7 August, 2017; AND FURTHER CONSIDERING THAT Clause 10 of the Agreement requires that the Commercial Land (as defined in the Agreement) is to be reserved for the time period set out in that clause for the purpose of the construction of a commercial centre thereon and which Commercial Land is shown delineated in red on the plan annexed and executed as relative hereto (hereinafter referred to as the Discharge Subjects); and ALSO CONSIDERING THAT the Proprietor has exhibited evidence to the Council in compliance with that planning obligation to the extent that it has been unable to sell or lease the Commercial Land due to a lack of sufficient market interest; and THEREFORE on consideration of that evidence the Council has advised the Proprietor that it is agreeable to partially discharging the Agreement in accordance with the terms of the said Clause 10 in respect of the Discharge Subjects and the Council DOES HEREBY PARTIALLY DISCHARGE the Agreement in respect of the Discharge Subjects.

Note: the Discharge Subjects are hatched mauve on the cadastral map.

## Burden 10

Explanatory Note:

The descriptions of the burdened and benefited properties in any deed registered in terms of sections 4 and 75 of the Title Conditions (Scotland) Act 2003 in this Title Sheet are correct as at the stated date of registration of such deed. This is notwithstanding any additional information that may have been disclosed by the Keeper in respect of those properties.



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