

1<sup>ST</sup> DECEMBER 2009

DRAFT – DEED OF CONDITIONS

FOR

ELGIN – HAMILTON GARDENS

We, SCOTIA HOMES (NORTH) LIMITED, incorporated under the Companies Acts (Registered Numbered SC189802) and having our Registered Office at Balmacassie, Ellon, Aberdeenshire the registered owners of a one half pro indiviso share, and, in the second place, ROBERTSON HOMES LIMITED, incorporated under the Companies Acts (Registered Numbered SC151825) and having our Registered Office at Ten Perimeter Road, Elgin, Morayshire the registered owners of the remaining one half pro indiviso share of ALL and WHOLE that area or piece of ground at Spynie, Elgin, Morayshire, being the whole subjects registered in the Land Register of Scotland under Title Number MOR8770 (and is hereinafter referred to as "the Scotia/Robertson Subjects") and GRAMPIAN HOUSING ASSOCIATION LIMITED, incorporated under the Industrial and Provident Societies Acts (Number SP1769RS) and having its Registered Office at Huntly House, 74 Huntly Street, Aberdeen, the registered owners of ALL and WHOLE that area or piece of ground at Spynie, Elgin, Morayshire, being the whole subjects registered in the Land Register of Scotland under Title Number MOR9505 (the Scotia/Robertson Subjects and the GHA Subjects being hereinafter referred to as the Development (as defined below) CONSIDERING that we as **Developers (as defined below)** intend to construct a housing development and, if appropriate, associated commercial development on the Development and wish to set out title conditions and servitudes which will apply to the Development NOW THEREFORE WE DO HEREBY declare as follows:-

1. **DEFINITIONS**

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

“Agreement”	means the draft Agreement comprising Schedule Part VI annexed hereto
“Annual Management Charge”	means the just and equitable share applicable to each Plot of the total annual costs incurred by the Factoring Proprietors or a third party appointed by them or the Developers or the Residents Association in effecting the Management Operations, together with reasonable estate management remuneration, insurance premiums and charges (if applicable) (plus all Value Added Tax exigible thereon) for the relevant year, which just and equitable share shall be determined initially by the Developer and thereafter by the Factor or the Residents Association.;
“Block”	means a building or group of attached buildings within the

Development comprising individual Flats and, if relevant, Commercial Buildings, the solum and pertinents of which building or buildings is owned in common by the Proprietors of Flats and Commercial Buildings and in respect of which each Proprietor of a Flat and Commercial Building has a right of common property.

“Block Common Parts”

means those parts of a Block as described in paragraph 1.1 of Part IB of the Schedule

.“Commercial Building”

means any shop, office or other building within the Development whose planning use is not residential.

“Community”

means the community of all Plots within the Development in conformity with Section 26(2) of the Title Conditions (Scotland) Act 2003.

“Developers”

means us, the said Scotia Homes (North) Limited, Robertson Homes Limited and Grampian Housing Association Limited and our

“Disposition”	successors in our capacity as initial developers of the Development or any part or parts thereof;
“Dwellinghouse”	means a disposition or conveyance of any part of the Development by the Developers to another developer or Registered Social Landlord, to Factoring Proprietors, to a Statutory Undertaker or to an individual Proprietor;
“Development”	means a dwellinghouse (whether detached, semi-detached, terraced, a Flat or otherwise) and ancillary buildings (including any garage, carport or outhouse) erected or to be erected within the Development and conveyed by Disposition to a Proprietor;
“Development Common Parts”	means ALL and WHOLE the subjects at <b>Spynie, Elgin, Morayshire</b> being the subjects registered in the Land Register of Scotland under Title Numbers <b>MOR8770 and MOR9505</b> ;
	means all (a) Visibility Splays and Service Strips (so far as not located within a Plot) within the

Development; (b) Service Media serving the Development generally (save for any branch Service Media exclusively serving one Plot or serving more than one Plot in common); (c) boundary walls, feature walls, retaining walls, fences, railings, barriers, hedges and gates, in so far as comprising part of the Development and not pertaining exclusively to or ex adverso a Plot or conveyed specifically to the Proprietors of some but not all of the Plots; (d) external lighting serving the Development; (e) Open Ground; (f) and all other parts or items of common service to the Development; (g) common car parking spaces and accesses thereto and (h) common car parking areas, and accesses thereto which are of common service to the whole Development; Declaring that for the avoidance of doubt Block Common Parts are excluded from this definition.

“Flat”	means a flatted dwellinghouse within a Block.
“Flatted Community”	means that part of the Community comprising a Block within the Development in conformity with Section 26(2) of the Title Conditions (Scotland) Act 2003.
“Factor”	means an established factoring business appointed by the Developers in accordance with paragraph 1 of Part V of the Schedule and thereafter by the Residents Association engaged to maintain the Factoring Ground and the Flatted Community, if any;
“Factoring Ground”	means such parts of the Development Common Parts and/or Block Common Parts as may from time to time be conveyed or be intended to be conveyed by the Developers to a non profit making company to be set up by the Residents Association in terms hereof or to such third party organisation which takes on the responsibility of implementing the Management Operations and

“Factoring Proprietors”

Management and Maintenance Specification for the Factoring Ground whom failing all Plot Proprietors jointly and severally; means the company to be set up by the Residents Association to own the Factoring Ground or such third party which either the Factor or the Developer consider to be capable of implementing the Management Operations in terms of the Management and Maintenance Specification to whom the Factoring Ground is conveyed or, if not so conveyed, the Developers and their respective successors as owners of the Factoring Ground or any part thereof;

“Landscaped Area”

means any area of ground within a Plot identified as such on a plan attached to any Disposition in respect of such Plot;

“Maintenance”

shall include, without limitation, a reference to repair, maintenance, restoration, renewal, upkeep, upholding, inspection, cleaning, painting and other routine works,

gardening, landscaping, reinstatement of parts and altering levels to any part of the Development including Block Common Parts and the words “Maintain” and “Maintaining” shall be construed accordingly;

“Management and Maintenance Specification” means the specification set out in terms of the Agreement comprising **Schedule Part VI** hereof;

“Management Operations” means all works and others comprised in the management and Maintenance of the Flatted Community (if any), the Factoring Ground as amenity woodlands, landscaped open spaces, play areas, sustainable urban drainage system, surface water drainage and attenuation schemes to include wetland areas, pathways, cycle tracks and others in accordance with the Management and Maintenance Specification and generally at all times in accordance with generally prevailing principles of sound silvicultural and/or sound

“Necessary Consents”

residential land management practice (as the case may be); means all consents and permissions required for the operations proposed (including without prejudice to the foregoing generality all consents and permissions required under and in terms of the Planning Acts);

“Open Ground”

means all ground within the Development (so far as not forming part of a Plot, Block, Block Common Parts, Service Area or any Road) together with (a) any water courses traversing the same or drainage attenuation areas; (b) [sustainable urban drainage system; (c) play and other equipment, feature walls, other structures or erections and ponds situated thereon, (d) any trees, shrubs and flowers planted or to be planted therein and (e) the walls (including retaining walls and feature walls), fences, hedges, railings or gates ex adverso same and enclosing the Development or any part thereof and separating the

“Planning Acts”	Development from other subjects unless such boundary feature is bounding and forms part of a Plot;
“Plot”	means the Town and Country Planning (Scotland) Act 1997, the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, the Planning (Hazardous Substances) (Scotland) Act 1997, the Planning (Consequential Provisions) (Scotland) Act 1997, the Building (Scotland) Acts 1959 and 1970, the Building (Scotland) Act 2003 and any other existing, future or substitute legislation of a similar purpose or nature;
	means any area of ground within the Development on which a Dwellinghouse or Commercial Building is erected or is intended to be erected and the garden ground and parking space and/or garage or garage space pertaining thereto if any and in the case of a Flat the Block within which it is located and the curtilage thereof;

“Proprietor”	means the owner for the time being of any Plot within the Development (including, for the avoidance of doubt the Developers as initial owner of any Plot) and where two or more persons own the same it includes both or all of them and any obligations hereby imposed on them shall bind them jointly and severally;
“Residents Association”	means an association of the Proprietors within the Development set up in accordance with <b>Part V of the Schedule</b> ;
“Residual Property”	means the Development or any part or parts thereof, under exception of the Factoring Ground (which is retained within the ownership of the Developers);
“Residual Proprietors”	means the Developers and their successors in title to a Plot as owners of the Residual Property or any part or parts thereof;
“Roads”	means all roads, pavements, footpaths and cycle-ways within the Development (save insofar as comprising part of a Plot or Block);

“Schedule”	means the Schedule (in seven parts) annexed and executed as relative hereto;
“Selling Proprietor”	means a Proprietor and/or heritable creditor in possession, receiver, liquidator, provisional liquidator, administrator or trustees in sequestration of a Proprietor who is involved in the sale of a Plot.
“Service Area”	means any enclosed, fenced or walled area of ground on which there is situated from time to time any gas governor, electricity transmission equipment, water, drainage or sewage pumping plant and equipment or any other plant and equipment owned by any Statutory Undertaker;
“Service Media”	means all drains, sewers, soil pipes, gas supply pipes, mains water supply pipes, mains electric supply cables, telephone and television cables, transmitters and connections, surface water drainage systems, sustainable urban drainage systems, soakaways, attenuation areas and swales, gas

“Service Strip”	infrastructure such as LPG gas tanks together with pipes, cables, meters, stop cocks and all other associated infrastructure (if any) and any pipes, manholes and other infrastructure relating to a ground source heat pump (if any) and other conducting media within and serving or to serve the Development; means any area of ground within the Development (including within a Plot) identified as such on a plan attached to any Disposition in respect of such Plot;
“Statutory Undertaker”	means any local or other public authority, statutory undertaker, utility or other relevant person or entity;
“Visibility Splay”	means any area of ground within a Plot identified as such on a plan attached to any Disposition in respect of such Plot;

## 2. **INTERPRETATION**

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

- 2.1.1 words importing the neuter gender only include the masculine and feminine genders; words importing the masculine gender only include the feminine gender and vice versa;
- 2.1.2 words importing the singular number only include the plural number and vice versa; and
- 2.1.3 any reference to any particular statute or other law includes any modification, extension, amendment or re-enactment of such statute or other law for the time being in force and all instruments, orders, plans, bye-laws, regulations, permissions and directions for the time being made, issued or given under, or deriving validity from such statute or other law;

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

### 3 **COMMUNITY BURDENS**

The real burdens set out in Part IA of the Schedule are declared to be Community Burdens and shall be effective in respect of the Community and the real burdens set out in Part 1B of the Schedule are declared to be Community Burdens and shall be effective only in respect of each Flatted Community from the date of registration of this deed in the Land Register of Scotland provided that nothing in this deed, including without limitation Part I of the Schedule shall at any time prevent any development of the Development or carrying out

of construction works on the Development by the Developers while the Developers remain as Residual Proprietors.

A community burden may be varied or discharged by a deed of variation or discharge under Section 33 of the Title Conditions (Scotland) Act 2003 granted by the Executive Committee of the Residents Association following upon a General Meeting of the Residents Association agreeing to this or by the Manager, if so instructed by the Residents Association following upon a General Meeting of the Association having determined same in accordance with the terms of their constitution.

#### **4 SERVITUDES**

The servitudes set out in Part II of the Schedule shall have effect, subject to the provisions of paragraph 5 of Part IA of the Schedule.

#### **5 RESERVATIONS**

The reserved rights and servitudes set out in Part III of the Schedule are imposed on each part of the Development, subject to the provisions of paragraph 5 of Part IA of the Schedule, for the benefit of (a) the Developers while the Developers remain as Residual Proprietors and thereafter (b) (in the case of paragraphs 1 to 5 inclusive and 9 to 11 inclusive of Part III of the Schedule) the Factor and the Residents Association and (in the case of paragraphs 8 and 9 of Part III of the Schedule) the Proprietors of each Flat and Commercial Building within a Block.

#### **6 FACTOR**

In the event of the Developers conveying the Factoring Ground to the Factoring Proprietors:-

- 6.1 The provisions set out in paragraphs 1 and 2 of Part IV of the Schedule, which are declared to be real burdens, shall apply in respect of such Factoring Ground; and
- 6.2 The servitudes set out in paragraphs 3 and 4 of Part IV of the Schedule shall have effect;  
and that in both cases with effect from the date of registration in the Land Register of Scotland of a Disposition in favour of the Factoring Proprietors in respect of such Factoring Ground subsequent to the date of registration of this Deed in the said Land Register, PROVIDED THAT nothing contained herein shall prevent or restrict the Developers from transferring responsibility for management and Maintenance of part or parts of the Factoring Ground to the Factoring Proprietors in terms hereof prior to the eventual conveyance of the Factoring Ground and in such circumstances from the date of such transfer of responsibility, all Proprietors will be bound to pay the Annual Management Charge applicable to such part or parts of the Factoring Ground and the Factor shall be entitled to enforce the real burdens imposed in terms of paragraph 2 of Part IV of the Schedule.
- 6.3 In the event of the Residents Association being formed and there being no transfer of the Factoring Ground to the Factoring Proprietors, the Proprietors within the Development

shall become liable in terms of the burden set out in paragraph 2.9 of Part IV of the Schedule.

## 7 **MANAGEMENT OF COMMUNITY**

7.1 The provisions set out in Part V of the Schedule shall apply in respect of (a) any part of the Development Common Parts not conveyed or intended to be conveyed to the Factoring Proprietors in accordance with Clause 6 hereof and not subject to a transfer of responsibility for Management Operations to the Factor in accordance with the provisions of Clause 6 hereof and (b) so far as applicable to the Development, the Block Common Parts.

7.2 The provisions set out in Part V of the Schedule being real burdens are declared to be (a) community burdens and shall be effective in respect of the Community and, where appropriate, the Flatted Community from the date of registration of this deed in the Land Register of Scotland and (b) so far as relating to the appointment of the Factor a manager burden effective from the said date of registration of this deed provided that nothing in this deed, including without limitation Part V of the Schedule shall at any time prevent any construction works on the Development by the Developers while the Developers remain Residual Proprietors.

## 8 **NO WARRANTY**

It is not warranted that the Development Common Parts or any part thereof will (a) be taken over by a Statutory Undertaker or (b)

conveyed in whole or part to the Factoring Proprietors , and the Proprietors shall have no claims in respect thereof: IN WITNESS WHEREOF

This and the succeeding [ ] pages comprise the Schedule (in seven parts) referred to in the foregoing Deed of Conditions by Scotia Homes (North) Limited, Robertson Homes Limited and Grampian Housing Association Limited relating to subjects at Spynie, Elgin

## **COMMUNITY BURDENS**

### **PART IA**

#### **1. Restrictions on Use**

- 1.1 Other than as built by the Developers no Dwellinghouse, Commercial Building or other buildings whether of a permanent, temporary or portable nature shall be erected on a Plot nor shall any extension, alteration, rebuilding or reconstruction in whole or in part be made to any Dwellinghouse or Commercial Building until all Necessary Consents have been obtained; Further, any such buildings, erections, extensions, alterations, rebuildings or reconstructions shall conform in all respects with the terms of the said Necessary Consents.
- 1.2 Each Dwellinghouse shall be used and occupied as a private dwellinghouse and shall not be sub-divided or occupied by more than one family or group of individuals living together at a time; However, nothing herein contained will be deemed to be a prohibition upon the leasing of any Dwellinghouse, provided that the use of such Dwellinghouse by the occupiers thereof is as a

private dwellinghouse or residence in accordance with the provisions of this Deed.

- 1.3 No part of any Plot, including any Dwellinghouse (but excluding a Commercial Building where the Necessary Consents for same are obtained by the Developers) shall be used for the carrying on therein or thereon of any trade, business or profession or for the selling of any goods or wares of any sort, whether or not such use may be deemed incidental or natural to the ordinary residential use of the Dwellinghouse or whether any person occupying the same may have a contractual right to use the same for or in connection with or arising out of any trade, business or profession notwithstanding any rule of law to the contrary.
- 1.4 No Dwellinghouse shall be used for the sale of any wines or spirits or other excisable liquors nor for the making or manufacturing of any goods for sale (unless the Necessary Consents for same are obtained by the Developers).
- 1.5 Nothing shall be done on any Plot which may be deemed a nuisance or occasion disturbance to any other Proprietor.
- 1.6 No board, card, plate (other than a normal door nameplate of reasonable size and style) or advertising notice of any kind shall be placed on any Plot including any Dwellinghouse (but excluding Commercial Buildings or a Plot with permitted commercial use) (except in

connection with the selling or leasing of the Plot but in such case no more than one sale board or poster shall be placed within the Development for each Dwellinghouse being offered for sale or lease).

- 1.7 No power boats, marine craft, caravans, commercial vehicles or vehicles other than private motor cars, motor cycles or cycles shall be parked on any Plot or on any other part of the Development (save for the short term parking of tradesmen's vehicles or commercial vehicles in the ordinary course of their trade at any Plot) and provided always that any such private motor cars, motor cycles, cycles or vehicles shall not obstruct or prevent access to any part of the Development and that such private motor cars and motor cycles shall be roadworthy, have a current MOT (if appropriate) and have a current road fund licence, if so required for such vehicle to be used on a public road.
- 1.8 The parking of vehicles of any nature shall not be permitted in or on any mutual/common access driveway, path, border, garden ground, landscaped area or amenity area forming part of the Development (including without prejudice to the foregoing generality any Plot) provided that where there is an exclusive driveway serving a Plot this may be used for the parking of private motor cars, motor cycles or cycles. Commercial vehicles making deliveries to any Commercial Buildings or Plot will be entitled to park within the Development but only for the

duration of such deliveries. Customers visiting Commercial Buildings shall park their vehicles in parking areas reserved only for commercial vehicles and customers of Proprietors of Commercial Buildings which area(s) will be designated. Visitors car parking spaces are reserved solely for use of visitors to the Developments. Car parking spaces allocated for disabled parking within the Development shall be used only by persons having right to use same. Likewise car parking spaces allocated for "Visitors" shall not be used by proprietors or tenants of dwellinghouses within the Development.

- 1.9 If parking spaces are allocated or disposed exclusively to Proprietors within the Development then such Proprietors and their tenants shall only be entitled to park their motor vehicle(s) within such allocated or exclusive space(s) and no others. The Proprietor of any Plot which includes within it a Service Strip shall be prohibited from erecting or having on the Service Strip or any part thereof any buildings, walls, fences or other structure whether permanent or temporary and shall not alter the level of the Service Strip or, save as aforesaid, plant any trees, shrubs or plants thereon.
- 1.10 Except where forming part of a driveway each Service Strip shall be laid out in grass and not hard landscaped, provided always that the Director of the Roads Authority responsible for the Maintenance and safety of public

roads may, on written application from the Proprietor, grant permission for alternative horticultural treatment.

1.11 The Proprietor of any Plot which includes within it a Visibility Splay or a sewer corridor or gas pipeline corridor or any other service provision which restricts building over it or within a certain distance of it shall be prohibited from (a) placing thereon any structure or other item, including without prejudice to the foregoing generality any fence or wall, and (b) re-grading or allowing to grow therein any tree, shrub, hedge or plant of any kind, apart from grass, provided always that with regard to the Visibility Splay the Director of the Roads Authority responsible for the Maintenance and safety of public roads may, on written application from the Proprietor, grant permission for alternative horticultural treatment. A Proprietor or contractor instructed by a Proprietor is prohibited from removing concrete edgings laid by the Developer to delineate a Visibility Splay, sewer corridor or gas pipeline corridor.

1.12 Any vehicle parked in the Development of a category which is prohibited in terms hereof or which is causing an obstruction may be removed (subject where reasonably practical to reasonable notice being given to a Proprietor or legal occupier whom it is known is the owner of such vehicle requesting them to remove such vehicle) by the Developers, for so long as they are Residual Proprietors, or by the Factor and that at the

cost of the Proprietor or occupier who owns such vehicle. Should such Proprietor or other legal occupier of a Plot fail to reimburse the Developer or Factor for such removal costs within fourteen days of receipt of a demand for same then any legal costs involved in pursuing payment of same will be met by contributions made by the other Proprietors within the Development, subject to reimbursement to them less the Developers or Factor's management costs, in the event that settlement is thereafter effected by such liable Proprietor or occupier who is or are in breach of this condition. A Proprietor shall be liable for the actions of any tenant or occupier occupying a Plot as if it was the Proprietor himself who was at fault. In the event of such motor vehicle not belonging to a Proprietor or tenant or occupier within the Development, the Developers or Factor may have such vehicle removed from the Development and the costs thereof will be borne in just and equitable proportion by all the Proprietors within the Development. Maintenance, repair and renewal of all car parking spaces whether exclusive to proprietors of Plots within the Development or otherwise shall be instructed solely by the Factor. The Proprietors or their tenants or occupiers are prohibited from erecting or installing any bollards or barriers on or about a parking space or spaces allocated to them or on or about any visitor car parking spaces.

- 1.13 Each Proprietor shall be prohibited from using or permitting the use of or from selling or letting separate from the Plot any carport, garage, parking space, garage space or basement space pertaining to his Plot or from using the same for any purpose other than for parking of a private car, motor cycle or cycle (declaring that where the permitted use is commercial the owner of the Commercial Building will be entitled to park a commercial vehicle which he uses for his business within an allocated or exclusive space conveyed with the Commercial Building which failing within a parking space allocated for commercial vehicles). The Proprietor shall be prohibited from using said carport, garage, parking space, garage space or basement space pertaining to his Plot or Dwellinghouse for the maintenance of vehicles other than his own private vehicles.
- 1.14 No clothes poles, drying lines or rotary clothes dryers shall be erected to the front of any Plot (although the Proprietor of a Plot may have a rotary clothes dryer (or clothes poles with drying line) in the rear garden of a Plot) nor shall they be attached to or suspended from any window or balcony in any Dwellinghouse or Block or from any part of the exterior walls thereof.
- 1.15 No rubbish bins or any other form of refuse receptacle shall be permitted to be left or deposited on a Plot

otherwise than in accordance with the regulations and recommendations of the Local Authority;

1.16 Each Proprietor, tenant or occupier of a Plot is expressly prohibited from keeping poultry, ducks, pigeons, bees or other non-domestic animals within the Plot and each Proprietor of a Flat is prohibited from keeping domestic animals within a Flat or Block Common Parts whilst a Proprietor of a Dwellinghouse which is not a Flat shall be entitled to keep not more than one dog or cat and shall not be entitled to keep any other domestic animal which shall prove a nuisance or occasion disturbance to any adjoining Proprietor and no poultry house, kennel or apiary shall be erected on any Plot;

1.17 No satellite dishes or similar receiving instrument will be placed on the front elevation of a Dwellinghouse or on an outside wall of a property within which a flat is located.

## 2. Boundaries

2.1 Where any walls (including retaining walls and feature walls), fences, hedges or gates enclosing the Development or any part thereof and separating the Development from other subjects, are erected within or ex adverso a Plot, the Proprietor of that Plot or in the case of a Block all the Proprietors within the Block or the Flatted Community shall free and relieve the Developers of all liability for the Maintenance thereof.

2.2 Any walls, (including retaining walls and feature walls), fences, hedges, gates or kerbs (a) which form boundary enclosures between adjoining Plots, shall be erected to the extent of one half on each Plot and shall be Maintained in good condition and repair in all time coming at the joint expense of the respective adjoining Proprietors. (Declaring that notwithstanding the foregoing in the event of a garden boundary wall forming the outside wall or part thereof of a Dwellinghouse then the boundary shall be the external face of such wall); or (b) which form boundary enclosures separating the Plot from the Development Common Parts or the Block Common Parts, shall be owned exclusively by and Maintained in good condition and repair in all time coming at the sole expense of the Proprietor of such Plot or in the case of a Block all the Proprietors within the Block. No fences or walls of any description whether exclusively owned or mutual shall be erected or permitted in front of the front building line of any Dwellinghouse or Block other than those erected by the Developers.

2.3 No additional boundary enclosures shall be erected nor shall any existing boundary enclosures be added to or increased in height or altered in any way unless all Necessary Consents have been obtained and such additional or altered enclosures shall be of a similar type, style and construction as those erected within the remainder of the Development.

2.4 Any painting, varnishing or staining of any boundary enclosures shall be of uniform colour in conformity with that initially provided by the Developers and thereafter by the Factor or the Residents Association.

2.5 Any drystone dyke, feature wall or retaining wall lying either within or on the boundary of a Plot shall be retained as such by the Proprietor of such Plot and Maintained in a good state of repair in all time coming.

2.6 Where a Dwellinghouse is semi-detached, linked or terraced, the mutual gable between that Dwellinghouse and the adjoining Dwellinghouse shall be Maintained at the joint expense of the adjoining Proprietors.

### 3. Maintenance

3.1 Each Proprietor shall keep his Dwellinghouse and in the case of a Flat, the Block Common Parts in a good state of Maintenance and take all appropriate steps either by himself or in conjunction with others to prevent damage to the fabric of the same which may prejudice the stability thereof or create a nuisance to other Proprietors or their tenants or other occupiers and, in particular, but without prejudice to the foregoing generality, by the control of vermin, the immediate treatment of dry rot or other form of rot or infestation which may be detected, and the Maintenance of any damage to water or other service pipes or wires; And any Proprietor who fails to take timeous and adequate measures to prevent and repair such damage or such defects including notification

to adjoining Proprietors whose premises may be affected, with a view to safeguarding their Plot, Dwellinghouse and/or Block, shall be liable for any damage caused thereby.

- 3.2 The garden ground and curtilage and pertinents pertaining to any Plot, including without prejudice to the foregoing generality any Service Strip or Visibility Splay falling within such garden ground or curtilage shall (except where occupied by a driveway or parking space) be laid out as garden ground or shrubbery and Maintained as such in a neat and tidy condition and kept free from rubbish/refuse in all time coming and shall regularly have weeds removed and all gardens to the front of a Dwellinghouse shall, save for paths and a driveway, be Maintained as ornamental garden ground only. Garden levels near to mutual boundaries must not be altered by Proprietors without the Necessary Consents and the written consent of the adjacent neighbouring Proprietors. No lopping or topping of trees within the Development shall be undertaken unless the Necessary Consents have been obtained for same.
- 3.3 A Proprietor whose Plot incorporates a Service Strip or in the case of a Block all the Proprietors within the Block shall be responsible for the Maintenance of the said Service Strip at all times.
- 3.4 Each Proprietor whose Plot incorporates any Landscaped Area or in the case of a Block all the Proprietors within the Block shall (a) Maintain each such Landscaped Area in a

neat and tidy condition in all time coming, (b) Maintain each such Landscaped Area with mature or at least semi-mature trees, hedging and shrubs to provide effective screening, (c) replace during the next planting season following loss of any planting within any such Landscaped Area which may have died, been lost, damaged, destroyed, removed or fallen with others of a similar size and species, (d) be prohibited from erecting any buildings of any nature whatsoever on any such Landscaped Area, and (e) implement and adhere to any notices or the like issued by the Local Planning authority relating to any such Landscaped Area or trees, hedges and shrubs planted or to be planted thereon.

3.5 The Proprietor of each Visibility Splay or in the case of a Block all the Proprietors within the Block a pertinent of which is affected by a Visibility Splay shall be responsible for the Maintenance of said Visibility Splay at all times.

3.6 Where the Proprietors of two or more Plots have a common right of property in any part or portion of the Development which does not comprise Development Common Parts or Block Common Parts, the Proprietors having such right shall be bound jointly to Maintain in good order and repair such parts or portions in all time coming, each Proprietor paying a pro rata share of the cost of so doing.

3.7 Each Proprietor shall be bound to Maintain in good order all hedges, shrubbery and trees located within or forming the boundary of his Plot and to replace same as and when necessary.

3.8 In so far as any Service Media or any part or parts thereof may be used in common by the Proprietors of more than one Plot each Proprietor so interested therein shall pay a just and equitable proportion share of the cost of Maintaining same as determined by the Manager.

3.9 In so far as any Service Media or any part or parts thereof may serve only one Plot or one Block the Proprietor of that Plot or the Proprietors within such Block shall respectively bear a pro rata share cost of the cost of Maintaining same.

3.10 Subject as aforementioned, the Proprietors shall be bound in all time coming to Maintain all Development Common Parts whether or not a right in common to the same has been conveyed to the Proprietors and the cost of such Maintenance in terms of this Deed shall be borne by the Proprietors who shall pay a just and equitable proportionate share for each Dwellinghouse or Commercial Building owned by them as determined by the Factor or where no Factor has been appointed by the Developers and upon completion of the Development by the Residents Association.

3.11 Where, as a consequence of Dwellinghouses being linked or overhanging in the fashion referred to in paragraph 3.3 of Part II of the Schedule or where it is deemed necessary or desirable by the Developers that surface water or other drainage including gutters and down pipes be routed from one Plot or Block onto an adjoining Plot or Block and/or the respective Dwellinghouses thereon, the Proprietor of the benefited property shall be fully responsible for the

Maintenance of the gutters, pipes and others so far as solely used in that respect (but otherwise jointly and equally amongst those having right to use or benefit by the same).

4. Land Certificates

Each Proprietor shall be bound to make the Land Certificate for his Plot forthcoming to the Developers, the Factor or the Residents Association for a reasonable time on all necessary occasions when required and that free of expense to the Developers, the Factor or the Residents Association.

5. Obligations relative to exercise of Servitudes

- 5.1 Each of the servitude rights and reservations specified and contained in Part II and Part III of the Schedule shall be exercised subject always to the party exercising same making good all surface and other damage thereby occasioned in exercising same.
- 5.2 Each Proprietor is prohibited from doing any act which might materially interfere with or render more expensive the exercise of the servitude rights specified and set out in Part III of the Schedule including building, planting trees or shrubs or erecting fences or walls over or in close proximity to any Service Media.
- 5.3 Each Proprietor shall be bound, if required by the Developers, the Factor or the Residents Association and each Proprietor authorises and is hereby declared to have

granted attorney to the Factor who without the need to narrate their individual names and addresses in any Wayleave or Deed of Servitude aftermentioned shall within fourteen days of any such request sign any Wayleave or Deed of Servitude required in connection with the grant of any of the servitude rights specified and set out in Part III of the Schedule in favour of a Statutory Undertaker.

6. Insurance

Each Proprietor shall (subject to the terms of Clause 2 of Part IB of the Schedule) be bound to insure their Plot against loss by fire and all other risks normally covered by a comprehensive buildings insurance policy to include public liability cover with a reputable insurance company of good standing for the full replacement value thereof and in the event of any Dwellinghouse or any part thereof or any part of the Plot being destroyed or damaged by fire or otherwise the Proprietor of the same shall be bound to restore within one year after such destruction or damage the Plot with the Dwellinghouse erected thereon to the value thereof to the same or similar design and external finish of the Dwellinghouse, Block or Commercial Building immediately prior to such destruction or damage and the Dwellinghouse, Block or Commercial Building shall be re-erected or restored so as to be in all respects consistent with the conditions contained herein.

7. Maintenance Payment

Each individual Proprietor (excepting for the avoidance of doubt the Developers or any other Developer) will make a payment of such sum or sums as may be determined by the Developers, or agreed between the Developers and the Factor at settlement of the purchase of his or her Plot which sum shall be paid as a Deposit and held as a float and paid to the Factor in due course towards inter alia:-

the costs incurred or to be incurred by the Factoring Proprietors or the Factor appointed by them or the Developer in carrying out of the Management Operations and/or Management of the Flatted Community for the purpose of enabling the Factoring Proprietors whom failing the Proprietors always to be in a position to commence the carrying out of the Factor's functions as specified in Part IV of the Schedule;

Declaring for the avoidance of doubt that the said sum or sums are not refundable and the Developers undertake to pay the sum received by them from each Proprietor to the Factor..

**PART 1B**Maintenance of a Block

- 1.1 Proprietors of all Flats and Commercial Buildings within the Block within which a Flat or Commercial Building are located will be liable jointly and in just and equitable proportion (determined by the Factor or by the Residents Association) for the cost of upholding, Maintaining, repairing and, if necessary, renewing (a) the solum of the Block within which the Flat or Commercial Building are located the foundations, the roof, the external walls (including windows serving the common parts of the Block but specifically excluding windows that serve exclusively any individual flat or Commercial Building) and all balconies or terraces of the Block (including any timber decking thereon) and that notwithstanding that such balconies or terraces are the exclusive property of individual Proprietors within the Block and the grounds comprising the curtilage of the Block; (b) the sewers, drains, soil, waste and water supply pipes, gas ventilation and other pipes, rhones, gutters, spouts, downpipes and electric cables, conductors, connections and wiring serving the Block; (c) the television aerials, amplifiers common satellite dish and transmitters therefrom (in so far as in common use); and (d) any bin store(s) or bin store areas, cycle shed(s) or racks or Landscaped Areas serving

the Block and all other things common or mutual to all of the Flats and, where relevant, Commercial Buildings within the Block. The Proprietors of all Flats and Commercial Buildings in the Block but always excluding the Proprietors of self-contained Flats and Commercial Buildings within the Block shall be liable to contribute jointly and in just and equitable proportion (determined by the Factor or by the Residents Association) towards the cost of upholding, Maintaining, repairing and, if necessary, renewing the following parts of the Block (irrespective of whether or not they have a right in common or use the same) all external common stairs, passages and landings, (if any), all external common entrance doors and doorways the lift(s) (if any), all halls and doors including external door parts for doors giving direct access to individual Flats within a Block (declaring firstly that notwithstanding the foregoing a Proprietor may install a letter box, a security peephole, a number or letter and/or nameplate on the external part of a door or door surround serving an individual Flat but subject always to the sizes and materials therefor being first approved by the Factor or the Residents Association and secondly that each individual proprietor will be liable for the replacement cost for the door giving direct access to the Flat) all passages, staircases and stairs, all lifts, lift shafts and associated apparatus, all landings, handrails, skylights, internal walls and ceilings enclosing the halls and landings, all cupboards housing the electricity and gas meters for the

said flats, all hall, stair and landing floor coverings with the nosings and stringers thereof, all stair lighting systems, the store cupboards (if any) reserved for use by only the Factor or Proprietors within a Block, all telephone or other entrance systems (in so far as in common use) and all other things common or mutual to some (but not necessarily all) of the said Flat Proprietors in the Block. The proportions to be contributed by the Proprietors of Flats and where appropriate Commercial Buildings in terms of this clause shall be determined by the Factor or the Residents Association on a just and equitable proportionate basis.

- 1.2 The store cupboards (if any) located within the common halls or stairwells of the Block shall be used exclusively for the storage of items used for the Maintenance of the Block and use of same is reserved exclusively to the Factor or the Proprietor or Proprietors within the Block who are charged with the responsibility of Maintaining the Block. Any roof space above or basement area below any flat does not form part of that flat and may be used solely for access for Maintenance, repair or other works requiring to be carried out by the Factor or the Proprietors within the Block as aforesaid and for no other purpose whatsoever. The lift(s), if any, shall be used by Proprietors only in accordance with the instructions and restrictions located within each lift and for no other purpose whatsoever.
- 1.3 When the Factor whom failing a majority in number of the Proprietors of the Flats in a Block or Blocks consider it

desirable to have any mutual repairs executed to any of the Block Common Parts they shall have the power to order the same to be done and all the Proprietors of the Block whether consentors or not shall be bound to pay their allotted share of the cost thereof. The external paintwork of the Block shall be kept to a uniform colour (as decided initially by the Developers and thereafter by the Factor whether or not the item or items to be painted shall be owned in common or exclusively by the Proprietor of a Flat and such works will require to be instructed and overseen by the Factor .

#### Insurance

- 2.1 Each Proprietor of a Flat or Commercial Building within a Block may be relieved of the insurance obligation contained in Clause 6 of Part IA of the Schedule but only in the event of the Factor or the Residents Association agreeing a Block Insurance Policy for all the Flats and Commercial Buildings within a Block and the Block Common Parts. Said insurance shall cover all common parts and all demolition and professional costs which may be incurred.
- 2.2 The amounts for which such insurances are effected shall be determined from time to time by the Factor or Residents Association with the benefit of such professional advice as the Factor or Residents Association deem prudent. The insurance for the Flats, Commercial Buildings and Block Common Parts shall be effected by way of a common

insurance policy or polices in the name of the Factor or Residents Association for behoof of the Proprietors of the Flats within the Development and, if requested, the interest of the holders of any heritable securities over individual Flats will be noted on the policy (if the insurer is agreeable to same) or intimated to the insurer. In the event of damage to or destruction of the Flats, Commercial Buildings or any of them or any parts of them or the Block Common Parts the proceeds of a claim or claims under the said common policy or policies shall be held in trust by the Factor or the Residents Association and shall be used and applied by the Factor or the Residents Association in or towards the reconstruction, rebuilding or repair of the said Flats, Commercial Buildings and/or the Block Common Parts. The Factor or the Residents Association shall be entitled to recover from the Proprietors of each of the Flats and Commercial Buildings within the Block affected the proportion allocated to each Flat or Commercial Building by the Factor of the premium payable under the said common insurance policy or policies, said proportion to be apportioned at the discretion of the Factor or said Residents Association on a just and equitable basis. Any excess payable will be due and payable by the Proprietor of any Flat or Commercial Building against which a claim is submitted under such insurance policy.

#### Restrictions on Use

- 3.1 The Proprietors, tenants or occupiers of Flats within a Block and any of their invitees are prohibited from storing any items in the common hallways, stairwells and landing areas in a Block or from parking, storing, pushing or lifting bicycles, motor cycles or other large items (with the exception of ordinary furniture) within the Block.
- 3.2 No satellite dishes or similar receiving instrument will be placed on any part of a Block (except a satellite dish or other receiving instrument which services all Flats within a Block) unless the Developers or the Proprietors in the Block have obtained the Necessary Consents for the installation of the same and if such dish is to be attached to a Common Part of the Block, the written consent of all Proprietors within the Block.
- 3.3 If parking spaces within a Flatted Community are not allocated and/or disposed exclusively to the Proprietors of Flats within the Flatted Community then only one occupier of each Flat (whether a Proprietor or otherwise) within the Flatted Community will be entitled to park his or her motor vehicle within the area set out for parking spaces within the Flatted Community (but always excluding the right of a Proprietor to park a vehicle in a space allocated for "Visitor" parking).

## **PART II – MUTUAL SERVITUDES**

### 1. Access over Roads

The Proprietors, tenants or occupiers of each Plot and the Factor and those instructed by them shall have a right of access for vehicular and pedestrian purposes as appropriate over and across the parking spaces and accesses thereto within the Development for all usual and necessary purposes which shall be deemed to include such a right of access over and across any communal access under any pond formed beneath any Block or other building within the Development or part thereof.

### 2. Service Media

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

### 3. Mutual Access over Plots

3.1 Each Proprietor shall have a right of access to adjoining Plots or other parts of the Development where necessary for carrying out Maintenance to common property or to any buildings, fences, walls and others erected on the boundaries of any Plot and each Plot shall be subject to a corresponding right of access in favour of the adjoining Proprietors.

3.2 There is reserved in favour of the Proprietors and the Developers, the Factor and the Residents Association and to their employees, contractors, sub-contractors, agents and all others authorised by them the right to erect scaffolding, if

necessary on any Plots for the purposes of constructing and Maintaining the Dwellinghouse or Block or Commercial Building or walls, fences, kerbing or other structures to be erected on an adjoining Plot together with all necessary rights of access for the purposes of said construction and Maintenance including the erection of scaffolding, using the scaffolding and thereafter dismantling the same and the right to intrude into the airspace of any Plot for such purposes.

3.3 Where any Dwellinghouse or Block or Commercial Building is constructed in such a way so as to be keyed into and/or derive support from or give support to an adjoining Dwellinghouse or Block or Commercial Building or where any Dwellinghouse or Block or Commercial Building is constructed in such a way so that part of the roof structure including the barge board projection (if any) and any guttering or pipework or balcony or other projection overhangs or connects to an adjoining Plot, or Development Common Parts, Block or Dwellinghouse or Block Common Parts or Commercial Building the Proprietor of such Dwellinghouse or any Proprietor within a Block or Commercial Building shall enjoy or be subject to all necessary servitude rights in these respects and the Proprietor of the benefited property shall have all necessary rights of access over the adjoining Plot and/or Dwellinghouse thereon or Block or Commercial Building for the purposes of Maintenance of any linked or keyed in or

overhanging part of his Dwellinghouse or the Block or Commercial Building.

3.4 Where, as a consequence of Dwellinghouses or Blocks or Commercial Building being linked or overhanging in the fashion referred to in paragraph 3.3 of this Part II of the Schedule or where it is deemed necessary or desirable by the Developers, the Factor or the Residents Association that surface water or other drainage including gutters and down pipes be routed from one Plot or Block or Commercial Building onto an adjoining Plot or Block or Commercial Building and/or the respective Dwellinghouses or Commercial Building thereon, the adjoining Plot or Block and/or Dwellinghouses or Commercial Building thereon shall be subject to a servitude right for drainage in that connection and the Proprietor of the benefited property shall have a right of access over the adjoining Plot or Block and/or Dwellinghouse or Commercial Building thereon for the purposes of Maintenance of any such gutters, pipes and others.

**PART III – RESERVATIONS TO DEVELOPERS AND OTHERS**

- 1 Servitude rights to connect into, lay or construct, install and use such Service Media within or through the Development or any buildings thereon as they consider necessary and to make and Maintain connection to any existing Service Media together with all necessary servitude rights of access for these purposes (including the right to break open such of the Development as may from time to time be reasonably necessary to achieve these purposes) and for the purposes of the Maintenance of the same.
- 2 In the event of any contravention of the provisions of this Deed relating to any Visibility Splay, Service Strip pipeline or other corridor, the right to remove any structure, item, tree shrub or plant within the Visibility Splay, Service Strip or other corridor with a servitude right of access over and across the area of ground concerned with all necessary equipment for the purposes of exercising said right.
- 3 The right to grant or confer upon any Statutory Undertaker the rights referred to in paragraphs 1 and 2 of this Part III of the Schedule.
- 4 The right to grant or confer upon any Statutory Undertaker the right to undertake (a) the laying or maintenance of public utilities plant on or within any Service Strip, (b) the maintenance of the kerbing ex adverso the boundary of a Plot and any other part of the Development with all necessary rights of access over any part of the Development at all times and without notice for the purpose of maintaining the said kerbing, (c) the clearance of snow, slush, ice or the like from the Roads and at any time without notice to deposit such snow, slush, ice

or the like and also deposits of sand, grit, salt or the like on any Service Strip together with all necessary rights of access over and across all Service Strips for this purpose; Declaring that the Roads Authority, Statutory Undertaker, or any other party in exercising its statutory right to excavate in any Service Strip will be limited in their liability for reinstatement to the provision of a grass seeded surface to the original line and level.

- 5 In the event of any of the initial planting or laying out of any Landscaped Area not having been completed as at the date of entry to a Plot or Dwellinghouse all necessary servitude rights of access over and through the Plot or Dwellinghouse for the purposes of that planting and laying out of any such Landscaped Area.
- 6 There is reserved to the Developers the power to make whatever alterations or deviations as they may consider proper to any of the plans of the Development or to depart entirely therefrom and the power to alter or modify in whole or in part the real burdens and others herein contained and the Proprietors shall have no right or title to object thereto and shall have no claim in respect thereof.
- 7 There is reserved to the Developers the right to dispose of any part of the Development for such purposes as they may think fit (including without prejudice to the foregoing generality the right to convey any part of the Open Ground to the Factoring Proprietors or any other party and that whether or not (a) such part of the Open Ground has been Maintained at any time by the Proprietors or any of them or (b) the Proprietors or any of them have at any time contributed to the cost of Maintenance of such part of the Open Ground) and the

Proprietors shall have no right or title to object thereto and shall have no claim in respect thereof.

- 8 There is reserved to the Developers all necessary servitudes and wayleaves to lead such Service Media through any part of a Block as may be required with all necessary rights of access thereto for the purposes of Maintenance of the same.
- 9 There is reserved to the Developer a right of access to all parts of a Block, including the roof space (if any) for purposes of Maintenance and all other necessary purposes.
- 10 There is reserved to the Developers the right to grant or confer upon any statutory undertaker or other party or parties the rights referred to in Paragraphs 8 and 9 of this Part III of the Schedule.
- 11 There is reserved to the Developers the right to remove satellite dishes from any Dwellinghouse or Block which have been erected in contravention of the terms of this Deed of Conditions
- 12 There are reserved to the Developers:-
  - (a) the right to convey or allocate one or more car parking spaces within the Development to any of the Proprietors including spaces within or beneath a Block or other building within the Development or part thereof with or without a basement car park and each such parking space shall be deemed to have conveyed with it a heritable and irredeemable servitude right of vehicular and pedestrian access to and egress from such space.
  - (b) The right to convey to Proprietors rights in common to visitor and other communal car parking spaces including such spaces within or beneath a Block or other building within the Development or part thereof with or without a basement car

park and such rights in common to visitor and other communal car parking spaces shall be deemed to have conveyed with them heritable and irredeemable servitude rights of vehicular and pedestrian access to and egress from such spaces.

- 13 All necessary rights to carry out construction and landscaping works on any part of the Development in accordance with the Necessary Consents, including the right to erect scaffolding on any part of the Development for said purposes.
- 14 For the avoidance of doubt, the Developers along with the Proprietors have a right in common to the Roads and a non-exclusive servitude right of pedestrian and vehicular access and egress in all time coming over the Roads in terms of the Deed of Conditions by Robertson Homes Limited and Scotia (North) Limited registered in the Land Register of Scotland under Title Number MOR8770 on 9 July 2008. In addition to this, it is hereby declared that the Developers have a servitude right to connect into and use all or any of the Roads for the purposes of providing access to the Development and to any adjacent subjects for any reason together with the right to grant such rights and servitudes to any other third party.

## **PART IV – FACTOR PROVISIONS**

### 1 Real Burdens affecting the Factoring Ground

The following real burdens are imposed on the Factoring Ground in favour of the Residual Property, namely:-

1.1 The Residents Association in conjunction with the Factoring Proprietors shall see to it that a Factor carries out the Management Operations and save as otherwise permitted herein the Factoring Ground shall not be used for any other purpose provided that:-

- (a) the foregoing obligation shall cease to have effect at such time as the Development shall have ceased substantially to be used as a residential housing development;
- (b) in the event of the Developers having a requirement to recover any portion of the Factoring Ground for any such purpose as may be required and for which the Developers obtain Planning Consent and/or Road Construction Consent from the Local Authority, the foregoing obligation shall cease to have effect in relation to such recovered portion of the Factoring Ground and the Factoring Proprietors shall grant such Dispositions or servitudes as are necessary and requested by the Developers in, over, across or under such portion of the Factoring Ground subject to all damage caused to the remainder of the Factoring Ground being made good to the reasonable satisfaction of the Factoring Proprietors declaring that the last mentioned Dispositions and servitudes shall be for the benefit of the Developers while the Developers remain the owners of any land within the Residual

Property or Roads within the Development; The Factoring Proprietors will grant a first ranking Standard Security over the Factoring Ground in favour of the Developers securing the conditions set out in this part of the Schedule;

(c) notwithstanding the foregoing, the Factoring Proprietors shall be entitled, at all times, to use the Factoring Ground for such purposes as they in their sole discretion consider are necessary or appropriate as being ancillary to the Maintenance and/or management of the Factoring Ground but acting at all times in accordance with generally prevailing principles of sound silvicultural and/or sound residential land management practice (as the case may be);

1.2 The Factoring Proprietors shall be bound to make the Land Certificate for the Factoring Ground forthcoming to the Developers, the Factor or the Residents Association for a reasonable time on necessary occasions when required and that free of expense to the Developers, the Factor or the Residents Association (acting as aforesaid); and

1.3 The servitude rights set out in paragraph 3 of this Part IV of the Schedule shall be (i) exercised in such manner as to cause the least practicable interference with the use and enjoyment of the Residual Property and (ii) subject to the Factoring Proprietors in conjunction with the Residents Association being responsible at all times for making good all damage caused to the Residual Property to the extent that such damage arises out of the exercise of said rights.

The following real burdens are imposed on the Residual Property in favour of the Factoring Ground:-

- 2.1 All Proprietors are hereby taken bound and obliged in all time coming to pay the Annual Management Charge applicable from time to time to each Plot and which sum shall be payable in all time coming (at half yearly intervals determined by the Factor) by the Proprietor of each Plot to the Factor appointed by the Developer or the Residents Association;
- 2.2 Subject to the proviso aftermentioned, the Factor's Management charges for effecting the Management Operations shall not be permitted to increase in any relevant year by a margin or amount which exceeds the relevant increase for that year in the rate of inflation as measured by the UK Index of Retail Prices or such index as may be substituted therefor;
- 2.3 If the Residents Association agree that they wish any amendment to be made to the Management and Maintenance Specification, then the Residents Association will require to agree with the Factor the appropriate variation in the said costs which is appropriate having regard to the proposed variation in the Management and Maintenance Specification and if the Residents Association and the Factor are unable, after a period of three months following intimation of a proposed amendment by the Residents Association to the Factor, to agree upon a

variation of said costs, then the variation shall not take place;

2.4 All Proprietors are hereby bound and obliged not to deposit refuse upon or otherwise exercise any rights which they may have over the Factoring Ground in such a manner as to cause nuisance or prejudice to the Factoring Ground or any part thereof or to prejudice or adversely affect the efficient and economic carrying out by the Factor of any part of the Management Operations. For the avoidance of doubt the whole costs incurred by the Factor in the removal from the Factoring Ground of any refuse or other fly tipping or other costs incurred as a result of such nuisance or prejudice shall be recoverable from the Proprietors in addition to the Annual Management Charge;

2.5 In the event of any Proprietor or Proprietors so liable failing to pay his, her or their proportion of the Annual Management Charge within one month of such payment being demanded the Factor shall (without prejudice to the other rights and remedies of the other Proprietors) be entitled to sue for and to recover the same in its own name from the Proprietor or Proprietors so failing together with all the expenses incurred by the Factor provided always that it shall be in the option of the Factor before or after taking any action to call a meeting of the Proprietors to decide if, and to what extent, such action should be pursued and that in the event of failure to recover such payments and/or the expenses of any action the remaining Proprietors shall be

bound pro rata for their just and equitable proportionate share required to reimburse the Factor for any payment or expenses that the Factor may have incurred, the said remaining Proprietors in that event being entitled to sue for and to recover such reimbursed payment or expenses from the Proprietor or Proprietors so failing.

2.6 Immediately after the conclusion of missives for the sale or other transfer of ownership of any Plot the relevant Proprietor is bound and obliged to provide written notice to the Factor of the full names of the proposed transferee.

2.7 The servitude rights set out in paragraph 4 of this Part IV of the Schedule shall be exercised in such manner as to cause the least practicable interference with the lawful and permitted activities and operations of the Factor upon the Factoring Ground.

2.8 No dog is permitted on the Factoring Ground unless it is (a) kept on a lead; and (b) accompanied by a responsible person. No dog must be allowed to foul any part of the Factoring Ground.

2.9 If for any reason there should be a breach of the terms hereof and no Factor should be appointed to attend to the Maintenance and Management Operations then the Proprietors shall be liable to carry out the Maintenance and Management Operations and to insure the Factoring Ground for all risks.

2.10 The servitude rights set out in part (a) of paragraph 4 of this Part IV of the Schedule shall be exercised (i) in accordance with reasonable prior written notice to and consultations with the Factor and (ii) subject to the party exercising such rights being responsible at all times for making good all damage caused to the Factoring Ground or to any trees, buildings or other structures or property in or upon the Factoring Ground to the extent that such damage arises out of the exercise of said rights.

### 3 Servitudes affecting the Factoring Ground

The following servitudes are imposed on the Factoring Ground in favour of the Residual Property, namely:-

- (a) All necessary servitude rights of pedestrian and vehicular access reasonably required through the Factoring Ground for the purpose of (i) laying, using and thereafter Maintaining Service Media and (ii) gaining access to any part of the Residual Property for any purposes;
- (b) **[The servitude right to take access to, use and enjoy the Factoring Ground and all facilities and equipment (including without prejudice to the foregoing generality play areas, play equipment, paths, cycle tracks and woodland) situated thereon from time to time.]**

**PART V – MANAGEMENT OF COMMUNITY**

1. At any time prior to the date upon which the Developers cease to be the owner of the Residual Property the Developers shall be entitled to appoint a Factor (for an initial period of up to three years and that at any time from the date of registration in the Land Register of this Deed) to manage the Development Common Parts (which expression includes the Factoring Ground) and, if appropriate, the Block Common Parts for the benefit of the Development.
- 2 When appropriate following any of the following of (a) a period of three years after the date of registration in the Land Register of this Deed of Conditions; (b) after the registration of a Disposition by the Developers in favour of a Proprietor of the last Plot to be sold within the Development or (c) the resignation of the Initial Factor appointed by the Developer or (d) the Developers having decided a Factor should be engaged to carry out the Management Operations relating to the Open Ground within a phase or phases of the Development in which all Plots have been sold, then the Developer or not less than 5 of the Proprietors shall call a meeting of all the Proprietors within such phase or phases to be held at such reasonably convenient time and place as shall be determined upon giving not less than twenty-one days clear notice in writing of such meeting to all Proprietors. Said meeting shall be convened for the purpose of forming a Residents Association for the Development. At such meeting one Proprietor of each Plot purchased within the Development shall automatically become a member of such an association and the Residents Association shall be restricted to such Proprietors and their respective successors in title and other Proprietors

of subsequent Phases of the Development. At the said meeting a quorum of those Proprietors and/or mandatories present on behalf of Proprietors (five being a quorum counting one proprietor for each Plot owned) shall establish said Residents Association. Thereafter Proprietors in subsequent phases (if any) of the Development shall automatically become members of the Residents Association upon receipt of written notice from the Factor or the Developers advising that a further phase within the same Development has been completed and the Factor or the Developers will intimate their charges as appropriate to such Proprietors. The Residents Association will set up its own Constitution conform to the Constitution comprising Part VII of this Schedule. The Constitution gives power to the Residents Association to incorporate a company, the sole owner of which shall be the Residents Association, such ownership being represented by three committee members from time to time of the Residents Association holding shares in trust for the Residents Association and such shareholders will also be the Directors of the Company. Upon the sale of a Plot by a shareholder or committee member of the company such committee member on ceasing to be a Proprietor will resign as a Director of the company and sign a Stock Transfer Form disposing of the share held by him in trust for the Residents Association in the Company for no remuneration. The Residents Association will then appoint another of their number as shareholder and Director of the company in place of the outgoing shareholder and Director. The sole object of the company shall be to have ownership of the Factoring Ground. No dividends will be paid by the Company and no payment of any kind whatsoever will be paid to or received by a shareholder. The Residents Association will be bound to

maintain the Company on the Companies Register and to meet all requirements for submitting returns and accounts and that all in terms of the Companies Acts. Said Company will become the Factoring Proprietors and the Developers will transfer title of the Factoring Ground to the Factoring Proprietors within three months of all statutory adoptions for the Development of e.g. roads and pavements having taken place to the satisfaction of the Developer. The Factoring Proprietor will grant a security in favour of the Developer in terms of Clause 1.1(b) of Part IV of this Schedule but the Factoring Proprietor will not otherwise dispose of any part of the Factoring Ground or grant a security in favour of any third party. The Developer, the Residents Association and the new company as Factoring Proprietor following upon the delivery and submission for registration in the Land Register of Scotland of the Disposition of the Factoring Ground or part thereof to the Factoring Proprietors in terms of the style Disposition annexed to the Agreement forming Part VI of this Schedule will forthwith enter into an Agreement in terms of the draft Agreement comprising Schedule Part VI hereof. Prior to the Factoring Ground being conveyed to the company, in the event of a Factor being appointed by the Developer or the Residents Association then an agreement will be entered into between the Residents Association or the Developer and the Factor incorporating the main terms of the Agreement but excluding the Factoring Proprietor who will not become holder of title to the Factoring Ground until completion of the Development. The Residents Association will negotiate and enter into a contract on behalf of the Factoring Proprietors with the Factor. The Company comprising the Factoring Proprietors will be a non trading company with the Factoring Ground as its sole asset. The

Residents Association will, on behalf of the Factoring Proprietors contract, with the Factor for the Management and Maintenance of the Factoring Ground and, if appropriate, the Flatted Community. Thereafter the Factoring Proprietors and the Factor appointed shall undertake the Management and/or Management Operations of the whole of the Factoring Ground and, if appropriate, the Flatted Community and shall impose such additional regulations as may from time to time be deemed necessary to establish the proper conduct of the Factor's functions and all which rules, regulations and decisions made and taken in accordance with the constitution of the Residents Association shall be binding upon all the Proprietors whether consentors or not. The cost of setting up and maintaining such Company shall be a cost which shall be included in the Factors Annual Maintenance Charge. If deemed appropriate, the Residents Association may create separate regulations for the Flatted Community and Commercial Buildings and Dwellinghouses (excluding Flats) within the Development in order to meet the different requirements of the Proprietors within a development comprising mixed housing and other uses.

3. The Factor appointed by the Residents Association shall fulfil its duties in accordance with an agreement or the Agreement entered into with the Residents Association and, when appropriate, the Factoring Proprietors. The Residents Association shall have power to dismiss as well as appoint the Factor, subject to any dismissal being subject to not less than three months notice in writing and falling at an account period end. A final accounting will require to be prepared by the outgoing Factor and all sums held by that Factor will require to be transferred to the Factor thereafter appointed by the Residents Association. In the event of any

Factor appointed by the Residents Association wishing to resign office, such Factor shall be required to give at least three months notice of its intention to resign with the termination date of its appointment falling at an account period end. In each case where a Factor appointed by the Residents Association has ceased to hold office for any reason, the Residents Association shall require to appoint a new Factor which shall comprise an established reputable management or factoring business each appointment to take effect so far as possible immediately following the date of cessation of office of the outgoing Factor.

4. The Factor upon assuming full responsibility for the management of the Development Common Parts and/or where appropriate the Block Common Parts and the Flatted Community from the Developer is hereby empowered to set up and maintain a MAJOR MAINTENANCE Fund (hereinafter referred to as "MMF") to finance major or extraordinary items of expenditure (as opposed to minor or routine items of expenditure) that may arise in relation to Maintenance, repair or renewal of Development Common Parts and/or Block Common Parts and each Proprietor shall contribute such sum as the Factor (acting reasonably) considers to be just and equitable for each Proprietor taking account of each Proprietor's interests. Such sum will accrue for the benefit of each Plot and not the Proprietor thereof. The Proprietors within the Development for their respective interests in the management of same or parts thereof shall contribute such recurring sums to the said MMF as the Factor or Residents Association shall from time to time deem appropriate in order to ensure the adequacy of the fund. The MMF shall be invested in an interest bearing bank account to be held in trust for the benefit of the contributing Proprietors respective interests in the

Development Common Parts and/or Block Common Parts and an annual statement of the MMF account or accounts will be issued by the Factor or the Residents Association to the contributing Proprietors within the Development. The MMF shall be held in a separate account from the float aftermentioned. The MMF is not refundable. Each Proprietor within the Development whom the Residents Association or the Factor consider should make a contribution to the MMF will be bound to make their just and equitable proportionate contribution (as determined by the Factor or Residents Association) when requested and that at the level set by the Factor or Residents Association and each Proprietor to which it is applicable shall require to make regular contributions as determined by the Factor or Residents Association by Standing Order or Direct Debit, whichever is directed by the Factor or Residents Association or otherwise as may be agreed by a Proprietor with the Factor or Residents Association.

4. Routine Maintenance, repair or renewal, cleaning and gardening costs (if any) and (if a block insurance policy is in place in accordance with Clause 2 of Part IB of the Schedule) the cost of insuring Dwellinghouses and Commercial Buildings but only so far as these are located within a Block will be paid in addition to the Factor's management fees and the said contributions to the MMF in accordance with a Statement to be issued by the Factor or Residents Association on a six monthly basis.
5. The Factor or Residents Association may, if they so choose, instruct all or any Proprietors in lieu of settling accounts in arrears on a six monthly basis to pay in advance a monthly contribution by standing order or direct debit and the standing order or direct debit amount may

be requested to be adjusted from time to time by the Factor or Residents Association, acting reasonably.

6. Any dispute, difference or question arising amongst the Proprietors in the Development which cannot be resolved or answered by the Residents Association or the Factor shall be referred to an Arbiter to be appointed by the Residents Association which failing an Arbiter to be appointed at the behest of not less than one half of the Proprietors within the Development or where separate regulations relate only to the Flatted Community by the Sheriff of Grampian Highland and Islands at Aberdeen and the determination of such dispute by said Arbiter howsoever appointed shall be final and binding upon the affected Proprietors with power to the Arbiter to order execution of works and to apportion the cost thereof including the cost of the arbitration as the Arbiter deems just and equitable.
7. All expenses charges and other costs incurred for any work undertaken or services performed or instructed by the Factor in terms of, or in furtherance of, the provisions herein shall be paid for by the Proprietors in the Development on a just and equitable proportionate basis established by the Factor or the Residents Association.
8. The Developers shall pass the sum of any float collected by them to the Factor immediately following settlement of the price for each Plot sold in respect of which a float is requested by the Developer for the Factor. The Factor shall be entitled to retain and to increase the float required from time to time to such amount as the Factor shall determine. The Factor may utilise the float collected by him from time to time to meet any shortfall of payments due to the Factor by a Proprietor who has fallen in arrears. A Purchaser from a Selling Proprietor will require to

ensure the float at the date of purchase is fully paid up by the Selling Proprietor to the Factor together with all other payments due to the Factor.

- 9 The Selling Proprietor is bound to settle the sum requested by the Factor on the date of entry for the sale of their Dwellinghouse which failing the Purchaser will become liable to the Factor therefor.
- 10 A just and equitable proportionate share of all costs and expenses incurred by the Factor shall be collected from each relevant Proprietor within the Development at such intervals as the Factor deems appropriate but in the event of any Proprietor or other occupier who is liable for a share of said costs failing to pay the same within twenty-one days of the same having been demanded in writing by the Factor, the Factor shall be entitled to sue for and recover in his own name from such defaulting Proprietor the share of the said costs payable by them in terms hereof together with all additional expenses (including, for the avoidance of doubt, all legal fees and expenses and the Factor's management charges for pursuing same) together with interest at the rate of five per centum per annum over the base rate of the Bank of England as it shall vary from time to time and that from the date such sum is due until paid. All Proprietors of Plots and Selling Proprietors of a Plot or Plots within the Development in respect of which a Factor has been appointed are hereby bound to advise the Factor immediately a bargain to sell a Plot in the Development has been concluded and to intimate the name and address of the purchaser of such Plot and their legal agent at the date of entry. The Factor will provide a statement to the Selling Proprietor or their legal agents and to the Purchaser or their legal agents showing the sum held in the MMF (if any) to identify the

value of same and all other sums due to or by the Selling Proprietor at the date of entry agreed for the sale of such Plot including any sum due by the Selling Proprietor or his/her predecessor in title where such sum is outstanding and due. The Selling Proprietor of such Plot and their legal agents shall be bound in terms hereof to settle any balance due to the Factor in terms of such statement from the sale proceeds of the Plot on the date of entry for the sale of the Plot which failing the purchaser of the Plot from the Selling Proprietor will be liable to settle same with the Factor notwithstanding the fact that such charges relate to a period prior to the purchaser or the Selling Proprietor occupying or owning such Plot. Any sum due by the Factor to the Proprietor will be paid to the Proprietor on the date of entry such sum to include the float and any sums paid in advance but not funds invested in the MMF. Any Purchaser of a Plot or their legal agent will require to establish from the Factor and pay to the Factor the sum of the float required by the Factor at the date of purchase and any outstanding Management Charges or contributions due to the MMF required at the date of such purchaser taking entry to a Plot all as intimated by the Factor. A statement sent by the Factor to the postal address of each Plot whether the Proprietor resides there or not shall be deemed to have been delivered to the Proprietor provided that the Factor dispatched the statement by post or had the statements hand delivered to each Plot. It is the responsibility of each Proprietor to ensure that all payments due to the Factor are kept up to date. For the avoidance of doubt, if the Factor fails to recover any costs and/or expenses and/or contribution towards his costs from one or more Proprietor he will be entitled to recover such costs and/or expenses incurred in seeking to collect same from the float contributed

by the defaulting Proprietor or Proprietors and after exhaustion of such sum held as a float the Factor may collect the shortfall from the other Proprietors in the Development on a just and equitable proportionate basis as determined by the Factor. Should such sums due by a Proprietor and paid for by the contributions of other Proprietors be recovered at a later date the Factor will account to the other Proprietors who have already settled same in accordance with the share extracted from them under deduction of the Factor's management and other charges incurred for attending to same and such repayment will be credited to such Proprietors in the statement next issued by the Factor. The Factor at its sole discretion will determine whether it is viable to progress court proceedings for recovery of a debt or at what point in such recovery process to withdraw from pursuing such action.

11. The Factor shall be entitled during the continuance of his appointment to exercise the whole rights and powers which may competently be exercised by the Residents Association except the power of the Residents Association to dismiss a Factor in terms of paragraph 3 hereof. Each Proprietor will be relieved of the obligations incumbent upon them in terms of Schedule Part I hereof save in so far as the responsibility for same is within the remit of the contract instructing the Factor. The Developer or the Factor shall provide purchasers with details of the remit to the Factor (if requested). Subsequent Factors will carry out the duties contracted with the Residents Association and a summary of the details of such duties will be issued or details provided of where such listed duties are available for inspection in accordance with details to be distributed by the Factor to the Proprietors along with each annual

statement and to a Selling Proprietor when a Selling Proprietor requests a statement from the Factor in connection with the sale of a Plot.