

Minute of Agreement

among

Cairngorms National Park Authority

The Highland Council

The Highland Health Board Endowment Trustees

An Camas Mor LLP

J & J Grant Farming Limited

John Peter Grant

and

James Patrick Grant

with consent of

HSBC Bank plc

and

HSBC Private Bank (UK) Limited

Subjects: An Camas Mor

Ref: LEEM/DB - 333595

Minute of Agreement

between

Cairngorms National Park Authority, established by and acting under the National Parks (Scotland) Act 2000 and the Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003 as Planning Authority in terms of Article 7(3) of the 2003 Order and Section 46 of the Town and Country Planning (Scotland) Act 1997 and having a place of business at Albert Memorial Hall, Station Square, Ballater (“**the CNPA**”)

and

The Highland Council, constituted under the Local Government etc (Scotland) Act 1994 and having its Principal Office at Council Offices, Glenurquhart Road, Inverness IV3 5NX 9who and whose statutory successors as the local authority for the Local Government area of Highland are hereinafter referred to as “**the Council**”)

and

Highland Health Board as Endowment Trustees constituted under the National Health Service (Scotland) Act 1978 and constituted as Endowment Trustees with power to hold and administer property on trust pursuant to Section 83 thereof and having their principal office at Assynt House, Beechwood Park, Inverness IV2 3BW (who and whose successors and hereinafter referred to as “**Highland Health Board Endowment Trustees**”)

and

An Camas Mor LLP, a Limited Liability Partnership (SO301015) with their Registered Office at Rothiemurchus Estate Office, Aviemore, Inverness-shire PH22 1QH (who and whose successors are hereinafter referred to as “**the Developer**”)

and

J & J Grant Farming LLP, a Limited Liability Partnership (SO302179) with their Registered Office at Rothiemurchus Estate Office, Aviemore, Inverness-shire PH22 1QH (who and whose successors and assignees in right, title and interest to the JJGF Land hereinafter defined or to any part or parts thereof are hereinafter referred to as “**JJGF**”)

and

John Peter Grant of Rothiemurchus residing at The Doune of Rothiemurchus, Aviemore PH22 1QP (who and whose successors and assignees in right, title and interest to the John Grant Land hereinafter defined or to any part or parts thereof is hereinafter referred to as “**John Grant**”)

and

John Peter Grant of Rothiemurchus residing at The Doune of Rothiemurchus, Aviemore PH22 1QP (who and whose successors and assignees in right, title and interest to the JPG Land hereinafter defined or to any part or parts thereof is hereinafter referred to as “**JPG**”)

and

James Patrick Grant younger of Rothiemurchus residing at Drumintoul Lodge, Rothiemurchus, Aviemore PH22 1QU (who and whose successors and assignees in right, title and interest to the James Grant Land hereinafter defined or to any part or parts thereof is hereinafter referred to as “**James Grant**”)

with consent of

HSBC Bank plc incorporated under the Companies Acts (Company Number 00014259) and having its Registered Office at 8 Canada Square, London E14 5HQ (hereinafter referred to as “**HSBC**”)

and

HSBC Private Bank (UK) Limited incorporated under the Companies Acts (Company Number 00499482) and having its Registered Office at 8 Canada Square, London E14 5HQ (hereinafter referred to as “**the Private Bank**”)

CONSIDERING THAT:

1. The CNPA has responsibility for determining planning applications within the National Park area in terms of Article 7 of the Cairngorms National Park Designation, Transitional and Consequential Provision (Scotland) Order 2003 (hereinafter referred to as “the Order”) and Section 46 of the Town and Country Planning (Scotland) Act 1997 (hereinafter referred to as “the Act”);
2. The CNPA is entitled in terms of inter alia Section 75 of the Act to enter into a planning obligation with any person in respect of land within the area of the Cairngorms National Park for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be specified;
3. The Council is the Roads Authority for their area in terms of the Roads (Scotland) Act 1984 and Education Authority for their area in terms of the Education (Scotland) Act 1980;
4. The Highland Health Board Endowment Trustees are the Endowment Trustees of Highland Health Board;
5. The Developer has submitted the Planning Application;
6. JJGF is the heritable proprietor of ALL and WHOLE that area of land shown partially delineated in red and partially delineated by a broken blue line on Plan 1 and being the subjects registered in the Land Register of Scotland under Title Number INV6023 , (hereinafter referred to as “the JJGF Land”);
7. John Grant is the heritable proprietor of ALL and WHOLE (First) those two areas of land both shown hatched and partially delineated in red and partially delineated by a broken blue line on Plan 1, (Second) that area of land shown delineated in red on Plan 2, (Third) that area of land shown delineated in red on Plan 3, (Fourth) that area of land connecting the eastmost of the two areas of land referred to at (First) and the land referred to at (Third) shown by a broken red line on Plan 6, and all forming part and portion of ALL and WHOLE the subjects described in Disposition by Robert Withington Pearson and Another as Trustees thereinmentioned in favour of John Peter Grant, Younger of

Rothiemurchus recorded GRS Inverness 20 July 1976 (hereinafter referred to as “the John Grant Land”);

8. JPG is the heritable proprietor of ALL and Whole (First) those three areas of land shown delineated in red and respectively named “2. Lowland Heath”, “4 Lowland Heath” and “5 Lowland Heath” on Plan 4.2, forming part and portion of (a) the subjects described in Disposition by Robert Withington Pearson and Another as Trustees thereinmentioned in favour of John Peter Grant, Younger of Rothiemurchus recorded GRS Inverness 20 July 1976 and (b) the subjects described in Disposition by Granville Charles Gomer, Marquess of Huntly and Others as Trustees thereinmentioned in favour of John Peter Grant of Rothiemurchus recorded GRS Inverness 18 February 1998, (Second) that area of land shown delineated in red and named “6. Wet woodland” on Plan 4.3 and (Third) that area of land shown delineated in red and named “7. Heathland” on Plan 4.4 which subjects (Second) and (Third) form part and portion of the subjects described in the said Disposition by Robert Withington Pearson and Another as Trustees thereinmentioned in favour of John Peter Grant, Younger of Rothiemurchus recorded GRS Inverness 20 July 1976 (hereinafter referred to as “the JPG Land”);
9. James Grant is the heritable proprietor of ALL and WHOLE (First) those two areas of land shown delineated in blue and named “1. Lowland heath” and “3. Lowland heath” on Plan 4.1 and forming part and portion of ALL and WHOLE the subjects described in Disposition by Robert Withington Pearson and Another as Trustees thereinmentioned with consent thereinmentioned in favour of Andrew Robert Fowell Buxton and Others as Trustees thereinmentioned recorded GRS Inverness 28 March 1985 and (Second) that area of land shown delineated in blue and named “8. Montane pine woodland” on Plan 4.5 being ALL and WHOLE that area of land at Rothiemurchus shown delineated in blue on Plan 4.5 annexed and signed as relative hereto and forming part and portion of the subjects described in Disposition by John Peter Grant of Rothiemurchus in favour of James Patrick Grant recorded GRS Inverness 12 February 1998 (hereinafter referred to as “the James Grant Land”);
10. The CNPA has resolved to grant Planning Permission in Principle for the Development subject to certain conditions (as detailed in Part 1 of the Schedule) and has requested that certain other matters pertaining to the Development be restricted or regulated and that the Council, Highland Health Board Endowment Trustees, the Developer, JJGF, John Grant, JPG and James Grant enter into an obligation in accordance with the provisions of Section 75 of the Town and Country Planning (Scotland) Act 1997.
11. The Developer, the Council, Highland Health Board Endowment Trustees, JJGF, John Grant, JPG and James Grant have agreed to enter into such obligation with the CNPA as evidenced by their execution hereof.

NOW THEREFORE the CNPA, the Council, Highland Health Board Endowment Trustees, the Developer, JJGF, John Grant, JPG and James Grant, with the consents of HSBC for its interest in terms of a Standard Security registered in the Land Register of Scotland under title number INV6023 on 4 May 2009 and of the Private Bank for its interest in terms of a Standard Security by John Peter Grant and recorded in the Division of the General Register of Sasines applicable to the County of Inverness on 7 December 2007, both as is evidenced by their respective execution hereof

DO HEREBY AGREE as follows:

1 Definitions

In this agreement and Part 2 of the Schedule expressions shall have the meanings

respectively assigned to them in the Parties' designations or recitals above and those below:

"Affordable Housing" means any one or more of the categories of provision of housing specified in the Affordable Housing SPG and such other categories of provision as may be agreed between the CNPA and the Council from time to time;

"Affordable Housing Brief" means the brief to be submitted by JJGF and the Developer and approved by the CNPA in consultation with the Council for each phase of the Development, and any subsequent amendment required as a consequence of any application for approval of Matters Specified in Conditions;

"Affordable Housing Contributions" means the sum of £25,000 Index Linked per Affordable Housing Unit payable by JJGF and the Developer to the Council in lieu of the provision of Affordable Housing in accordance with Clauses 4 and 5 hereof;

"Affordable Housing Deficit" means the circumstance pertaining at any Affordable Housing Reconciliation Date when the total number of Affordable Housing Units within the Development either completed, or under construction, or for which there are otherwise concluded contracts between JJGF or the Developer and Affordable Housing Providers for future delivery, comprise less than 25 % of the total number of Residential Units either Completed or under construction within the Development at any such date;

"Affordable Housing Policy" means the policy relating to Affordable Housing contained in the CNPA's Local Plan and the Affordable Housing SPG as at the last date of execution of this Agreement;

"Affordable Housing Provider" means any person or group of persons, a company registered under the Companies Acts or Registered Social Landlord which enters into a contract with JJGF or the Developer to provide, manage and/or maintain the Affordable Housing Units;

"Affordable Housing Provision" means the provision of Affordable Housing, in accordance with the Affordable Housing Brief and the Masterplan and MSC Approvals;

"Affordable Housing SPG" means the Affordable Housing Supplementary Planning Guidance (2011) a copy of which forms Part 3 of the Schedule;

"Affordable Housing Unit" means an individual Residential Unit required to meet the level of Affordable Housing Provision;

"Affordable Housing Reconciliation Date" means the date of Completion of the 301st Residential Unit or the fourth anniversary of the date of Commencement (whichever is the earlier) and thereafter the date of Completion of each subsequent group of 200 Residential Units or the fourth anniversary of the previous Affordable Housing Reconciliation Date whichever is the earlier. In the event that the final group comprises less than 200 Residential Units the Final Affordable Housing Reconciliation Date will be the fourth anniversary of the most recent Affordable Housing Reconciliation Date;

"An Camas Mor Primary School" means the new primary school to be delivered within the Primary School Site in accordance with the provisions of Clause 8 hereof;

"Application Site" means ALL and WHOLE that plot or area of ground at An Camas Mor,

Rothiemurchus, Inverness-shire, shown delineated in red on Plan 1 and comprising (a) part and portion of the subjects described in Disposition by Robert Withington Pearson and Another as Trustees thereinmentioned in favour of John Peter Grant, Younger of Rothiemurchus recorded GRS Inverness 20 July 1976 and (b) the subjects registered in the Land Register of Scotland under Title Number INV6023;¹

“**Approval**” in the context of the Masterplan and MSCs means the approval by the CNPA of the Masterplan and MSC applications;

“**Aviemore Countryside Park**” means the park to be established on the land shown delineated in red on Plan 2;

“**Base Date**” means in respect of the Contribution the First day of January Two thousand and thirteen;

“**the Bridge**” means the single span foot and cycle bridge to be constructed over the River Spey linking the Development and the Aviemore Countryside Park to Aviemore to be provided by such body as may be approved by the CNPA;

“**the Bridge Contribution**” means the sum of £2632 Index Linked in respect of each Completed Market Residential Unit up to a maximum amount of £1,000,000 payable by JJGF in terms of Clause 14;

“**the Bridge Subjects**” means the area of land delineated in red on Plan 3 or such adjusted area as may be subsequently agreed in writing by the CNPA in terms of Clause 13.4;

“**Commencement**” means as the context so admits the commencement of the Development or any relevant Residential Unit, component part or phase of the Development as a consequence of the carrying out of a material operation as defined by Section 27(4) of the 1997 Act on the Application Site, but will exclude the carrying out of any archaeological survey or investigation works, site clearance, site and soil investigations, and provision of the construction route (the extent of said construction access route being shown coloured blue on Plan 8);

“**Community Facility**” means those facilities comprising a minimum of a two court sports hall, meeting room, kitchen, toilets and one multi use games area;

“**Community Facility Contribution**” means the sum of £1500 Index Linked in respect of each completed Residential Unit within the Development toward the provision of the Community Facility;

“**Compensatory Habitat Management Scheme**” means the scheme and subsequent updates to be approved by the CNPA after submission in terms of Clause 17 which details the habitat management measures to be undertaken on the Compensatory Habitat Subjects;

“**Compensatory Habitat Subjects**” means the eight areas of land lying outwith the Application Site and shown (1) delineated in red and marked as 2, 4, 5, 6 and 7 on Plan 4 and (2) delineated in blue and marked as 1, 3 and 8 on Plan 4 and also shown delineated in red and blue on the larger scale Plan 4.1, Plan 4.2, Plan 4.3, Plan 4.4 and Plan 4.5;

¹ Cross refer to footnote 1.

“Completion/Completed” means the issue of the Completion Certificate in respect of the relevant Residential Unit or other component part of the Development as appropriate;

“Completion Certificate” means a valid completion certificate issued to the Highland Council in accordance with section 17 of the Buildings (Scotland) Act 2003;

“Completion of the Development” means the issue of the Completion Certificate in respect of the final Residential Unit in terms of the approved MSCs;

“Contribution” means, as the context so admits, each of the Affordable Housing Contribution, the Bridge Contribution, the Community Facility Contribution, the Healthcare Contribution, the Primary Education Contribution, the Roads Contribution and the Secondary Education Contribution Index Linked and payable in terms of this agreement, and “Contributions” will be construed accordingly;

“Deferred Contributions” means every Contribution attributable to each of the first 300 Completed Residential Units payment of which has been deferred in terms of Clauses 7.1.1, 8.3, 10.1, 14.3 and 15.1 and “Deferred Contribution” will be construed accordingly;

“Deferred Unit Contribution” means the sum calculated in accordance with the provisions of Clause 7.1.5 hereof Index Linked from the date of completion of the Final Statement until the relevant Reconciliation Date;

“the Development” means the development of the Application Site in accordance with the Planning Permission and any subsequent approvals of Matters Specified in Conditions (or any variation thereof approved by the CNPA);

“Education Authority” means the Council and their statutory successors acting in terms of the Education (Scotland) Act 1980;

“Foot/Cycle Link” means the footpath and cycle link to be constructed generally along the line shown coloured red on Plan 6 and linking the Bridge to the B970 Coylum Bridge to Nethy Bridge road;

“Flatted Unit” means a separate and self-contained set of premises whether or not on the same floor and forming part of a building from some other part of which it is divided horizontally;

“Heads of Terms” means the Heads of Terms for Lease of the Aviemore Countryside Park forming Part 2 of the Schedule;

“Healthcare” means the provision of any of the following either solely or in combination:- (a) general medical services under the National Health Service (Scotland) Act 1978; (b) functions in terms of the powers of the Highland Health Board Endowment Trustees under the National Health Service (Scotland) Act 1978; (c) dental, pharmaceutical, ophthalmic, podiatry, physiotherapy, speech and language therapy, community and mental health services, health promotion or general healthcare services under the National Health Service (Scotland) Act 1978; (d) social care services; and e) of equipment and of vehicles in association with any or all of the foregoing;

“Healthcare Contribution” means the sum of £1886 Index Linked in respect of each

Completed Market Residential Unit up to a maximum of £975,000, “Healthcare Contributions” to be construed as meaning portions of the total Healthcare Contribution;

“**Healthcare Site**” means an area of land with all necessary Services, service supplies and connections including vehicular access extending to a maximum of one acre lying within the area shown coloured pink on Plan 7 unless otherwise varied or agreed in writing with CNPA and the Highland Health;

“**Highland Health Board**” means Highland Health Board constituted under the National Health Service (Scotland) Act 1978 of Assynt House, Beechwood Park, Inverness IV2 3BW or their successors as Health Authority for the area;

“**House Unit**” means any Residential Unit, which is not a Flatted Unit;

“**Housing Authority**” means the Council and their statutory successors acting in terms of the Housing (Scotland) Act 2001;

“**Index Linked**” means the figure reflecting the increase in the Contribution from the Base Date until the actual date of payment of such Contribution resulting from the application of the Consumer Prices Index published by the Office of National Statistics, or in the event that the said Index will be suspended or superseded, any replacement thereof or equivalent thereto, payable in terms of Clauses 6, 8, 9, 10, 14 and 15 hereof;

“**Interest**” means interest at the rate of 4 % above the base rate of the Bank of Scotland plc or if such rate is no longer published or in existence such alternative rate of interest as is or would have been reasonably equivalent thereto which has accrued on any Contributions received by the CNPA, the Council or The Highland Health Board Endowment Trustees, as the case may be, in terms of this agreement;

“**Market Flatted Unit**” means a Flatted Market Residential Unit;

“**Market Residential Unit**” means any property that is part of the Development designed and constructed or to be constructed for residential use and which will be liable to pay Council Tax which term may apply individually or to a group of such units whether divided from one another either vertically or horizontally and excludes the Affordable Housing Provision;

“**Masterplan**” means the masterplans to be approved by the CNPA as part of the Masterplan Approval;

“**Masterplan Approval**” means the planning permission to be issued by the CNPA subsequent to an application for approval of the matters specified in conditions [3 and 4] of Part 1 of the Schedule;

“**Matters Specified in Conditions**” means applications for approval of matters specified in conditions included in the Planning Permission or Masterplan Approval;

“**MSC**” means Matters Specified in Conditions;

“**Plan 1**” means the plan marked Plan 1 annexed and signed as relative to this agreement, “**Plan 2**” means the plan so marked and signed and references to other numbered plans shall be interpreted accordingly;

“**Planning Application**” means the application registered by the Council under

Planning Reference number 09/00114/OUTBS for Development of a new community (1500 houses; associated business, community facilities and provision of infrastructure) within the Application Site shown delineated on Plan 1 and called in by the CNPA in terms of its powers under Article 7(3) of the Order and section 46 of the Act and allocated CNPA planning reference number 09/155/CP;

“Planning Permission” means the decision notice in respect of the Planning Application (including the conditions detailed in Part 1 of the Schedule) to be issued by the CNPA following execution and registration of this Agreement in the Land Register of Scotland and the General Register of Sasines as appropriate;

“Primary Education Contribution” means the sum of £1598 Index Linked in respect of each Completed Market Residential Unit that is not a Flatted Unit and the sum of £206 Index Linked in respect of each Completed Market Flatted Unit towards Primary Education Provision;

“Primary Education Facility” means the provision of additional temporary classroom facilities at the existing Aviemore Primary School and the delivery of An Camas Mor Primary School;

“Primary School Site” means those areas of land not exceeding 8 acres in total with all necessary Services, service supplies and connections comprising (1) an area of 3 acres or thereby in extent to accommodate the An Camas Mor Primary School, (2) an area of 5 or thereby acres in extent for the provision of playing fields serving the same and, in the event that the 2 areas are not contiguous, a footpath between them;

“Reconciliation Date” means the date of Completion of the 50th Residential Unit or the first anniversary of the date of Commencement (whichever is the earlier) and thereafter the date of Completion of each subsequent group of 50 Residential Units or the first anniversary of the previous Reconciliation Date whichever is the earlier. In the event that the final group comprises less than 50 Residential Units the final Reconciliation Date will be the date of Completion of the final Residential Unit or the first anniversary of the date of the most recent Reconciliation Date, whichever is the earlier;

“Reconciliation Period” means as the context so admits the period from the date of Commencement to the first Affordable Housing Reconciliation Date or Reconciliation Date and the period between each subsequent Affordable Housing Reconciliation Date or Reconciliation Date as appropriate;

“Registered Social Landlord” means a landlord registered under Section 57 of the Housing (Scotland) Act 2001;

“Residential Unit” means any property that is part of the Development designed and constructed or to be constructed for residential use of any sort and which is liable to pay Council Tax, which term may apply individually or to a group of such units whether divided from one another either vertically or horizontally and which term also includes the Affordable Housing Units;

“Roads Authority” means the Council and their statutory successors acting in terms of the Roads (Scotland) Act 1984.

“Roads Contribution” means the sum of £120 Index Linked in respect of each Completed Residential Unit payable to the Council in respect of the provision and

enhancement of traffic and transport facilities required directly or indirectly to benefit the Development up to a maximum of £180,000;

“Secondary Education Contribution” means the sum of £825 Index Linked in respect of each Completed Market Residential House Unit and £52 Index Linked in respect of each Completed Market Residential Flatted Unit;

“Schedule” means the schedule comprising 3 Parts annexed and signed as relative to this agreement;

“Services” means mains water, sewerage, surface water drainage, electricity, telecoms with the necessary capacity and to the specifications and provided to the standards for adoption of the relevant utility provider and as adopted for maintenance or as intended to be adopted for maintenance and as tested and certified ready for connection;

“Ultimate Owner” means, in relation to any Completed Residential Unit, the first purchaser of any such Completed Residential Unit and its successors in ownership.

2 Issue of Planning Permission

The CNPA will issue the Planning Permission forthwith on receipt of confirmation by the CNPA or their solicitors of both a receipted Form 4 and Keeper’s Acknowledgement in respect of the registration and recording of this Agreement in the Land Register of Scotland and Register of Sasines.

3 Effective Date

This Agreement will not come into effect until the date on which the CNPA issues the Planning Permission, except for Clause 2 which will come into effect on the date of registration/recording of this Agreement in the Land Register of Scotland/Register of Sasines.

4 Affordable Housing

4.1 As part of the Masterplan approval, the Developer will prepare and submit an Affordable Housing Brief to the CNPA for approval. The Affordable Housing Brief will outline the proposed delivery of Affordable Housing over the period of development and recognise that the percentage, house size, type and tenure of Affordable Housing to be provided over the period will be contingent on housing need and completion rates among other factors.

4.2 JJGF will deliver the Affordable Housing Provision in the course of construction of the Development. The total number of Affordable Housing Units at Completion of the Development will be a minimum of Twenty five percent and a maximum of Forty percent of the total number of Residential Units subject to an economic return in terms of the Affordable Housing SPG. Each MSC Approval will detail the Affordable Housing Units and number of Market Residential Units to be delivered as part of that phase of the Development. In considering the MSC applications relating to residential development the CNPA will consult with the Council and take into account the most recent Local Housing Market Needs and Demand Assessment and the Affordable Housing Completions all in accordance with good practice.

5 Reconciliation of Affordable Housing

- 5.1 On each Affordable Housing Reconciliation Date the CNPA in consultation with the Council will compare the total number of Completed Residential Units and the Completed Affordable Housing Units achieved in the relevant Reconciliation Period against the Affordable Housing Provision.
- 5.2 On completion of the comparison the CNPA will serve a Notice on JJGF to the effect that:
- 5.2.1 the Affordable Housing Completions comply with the Affordable Housing Brief; or
 - 5.2.2 the Affordable Housing Completions do not comply with the Affordable Housing Brief and specify either:
 - 5.2.2.1 the minimum number of Affordable Housing Units to be completed in the subsequent Reconciliation Period to secure subsequent compliance with the Affordable Housing Brief, or
 - 5.2.2.2 in the event that there is an Affordable Housing Deficit, the level of Affordable Housing Contribution payable to address that deficit and the Residential Units to which such Affordable Housing Contribution shall relate.
- 5.3 Following receipt of a Notice in terms of Clause 5.2.2.1 JJGF will be obliged to complete not less than the minimum number of Affordable Housing Units in accordance with the Notice not later than the Affordable Housing Reconciliation Date next following.
- 5.4 Following receipt of a Notice in terms of Clause 5.2.2.2 JJGF will be obliged to pay the Affordable Housing Contribution to the Council not later than the date specified in said last-mentioned Notice, being a date not earlier than Twenty-eight days from the date of service of the same.
- 5.5 Following payment of the Affordable Housing Contribution specified in a Notice in terms of Clause 5.2.2.2 hereof JJGF will be entitled but not obliged to market as Market Residential Units those Residential Units comprising the deficit identified in the Notice. In such an event JJGF will notify the CNPA/the Council of such sales in order that such Residential Units may be taken into account at the subsequent Affordable Housing Reconciliation Date.
- 5.6 In the event that payment of any Affordable Housing Contribution has fallen due in terms of this Clause 5 at a stage when less than 300 Residential Units have been completed within the Development (i) no further construction works may be undertaken or commenced on any Residential Units beyond those already under construction at the date of service of the Notice by CNPA under Clause 5.2.2.2 hereof, and (ii) no occupancy shall be permitted on the completion of those Residential Units already under construction at the date of service of the said Notice, until the said Affordable Housing Contribution has been paid to CNPA; and
- 5.7 In the event that payment of any Affordable Housing Contribution has fallen due in terms of this Clause 5 at any stage when more than 300 Residential Units have been

completed within the Development (i) construction works may only be undertaken or commenced on a further fifty Residential Units beyond the total number of Residential Units already under construction at the date of service of the Notice under Clause 5.2.2.2 hereof, and (ii) no occupancy of such further fifty Residential Units shall be permitted, until the said Affordable Housing Contribution has been paid to CNPA.

6 Application of Affordable Housing Contributions

6.1 All Affordable Housing Contributions received from JJGF will be:

- 6.1.1 transferred by CNPA to the Council forthwith on receipt,
- 6.1.2 held in a Council bank account but will be allocated a code which relates solely to the Affordable Housing Contributions and will be accounted for under that separate code in the Council's Accounts, and
- 6.1.3 identified within the Council's Strategic Housing Investment Plan or such other Capital Plan operable by the Council from time to time for the recording of Affordable Housing Contributions or commuted sum payments, and will be applied by the Council, or committed in terms of inclusion in a Capital Programme on or before 31 December in the calendar year seven years after the date of receipt by CNPA for the purposes of providing Affordable Housing within the catchment area of Kingussie High School, failing which the relevant Affordable Housing Contribution and Interest will be repaid to JJGF within one month after said date of 31 December in the relevant year subject to service of notice in accordance with Clause 16.1.

7 Reconciliation and Payment of Other Contributions

7.1 The following shall apply in relation to the reconciliation of Contributions which are neither Affordable Housing Contributions nor Healthcare Contributions:

- 7.1.1 On each Reconciliation Date occurring prior to the date of completion of 300 Residential Units within the Development the CNPA in consultation with the Council and JJGF will determine the total number of Residential Unit Completions in the course of the relevant Reconciliation Period. Within a period of 10 working days of the relevant Reconciliation Date the CNPA will issue a statement detailing the total of all Contributions, other than the Affordable Housing Contributions, payable in terms of Clauses 8.3, 10.1 14.3 and 15.1 and specifying the fact that such Contributions are Deferred Contributions in terms of this agreement.
- 7.1.2 On each Reconciliation Date following the date of completion of 300 Residential Units within the Development the CNPA in consultation with the Council will determine the total number of Residential Unit Completions in the course of that Reconciliation Period. The CNPA will issue an invoice detailing the total of all Contributions, including the Deferred Unit Contributions calculated in terms hereof, payable in respect of Residential Unit Completions occurring during the relevant Reconciliation Period and the date on which those Contributions are payable.
- 7.1.3 JJGF will make payment of the amounts due on or before the dates specified in the invoice issued under Clause 7.1.2 hereof.

7.1.4 In the event that payment of any Contribution has fallen due in terms of this Clause at any stage when more than 300 Residential Units have been completed within the Development (i) construction works may only be undertaken or commenced on a further fifty Residential Units beyond the total number of Residential Units already under construction at the date of issue of an Invoice in terms of Clause 7.2 hereof, and (ii) no occupancy of such further fifty Residential Units shall be permitted, until the Contributions specified in the said Invoice have been paid to CNPA.

7.1.5 Following the Completion of 300 Residential Units within the Development, CNPA shall prepare a final statement of the total sum of Deferred Contributions due and payable by JJGF as at the date of Completion of the 300th Residential Unit and shall give written Notice to JJGF and to the Council of the same. The total sum specified within the final statement shall be divided by 500 and the resulting figure shall become the Deferred Unit Contribution. A Deferred Unit Contribution shall be payable by JJGF to CNPA in respect of each of the next 500 Residential Unit Completions within the Development to the effect that the final Deferred Unit Contribution shall be paid by JJGF no later than the date of Completion of the 800th Residential Unit and the Invoice issued at the Reconciliation Date following the Completion of the last-mentioned Residential Unit shall include the amount of the final payment of Deferred Unit Contributions.

7.2 Healthcare Contributions

7.2.1 On each Reconciliation Date following the date of completion of 800 Residential Units within the Development the CNPA in consultation with the Council and the Highland Health Board Endowment Trustees will determine the total number of Residential Unit Completions in the course of that Reconciliation Period. The CNPA will issue an invoice detailing the total of all Healthcare Contributions payable in respect of Residential Unit Completions occurring during the relevant Reconciliation Period and the date on which those Contributions are payable.

7.2.2 JJGF will make payment of the Healthcare Contribution specified in every invoice issued under Clause 7.2.1 on or before the due date.

8 Education Facility and Contributions

8.1 The Developer will identify and agree the location of the Primary School Site with JJGF, the CNPA and the Education Authority prior to submission of the first detailed planning application or MSC application following Completion of the 201st Residential Unit. The Primary School Site will be reserved for the purpose of construction of a primary school and will be used for no other purpose except in conjunction with the Community Facility in accordance with Clause 10 unless the first anniversary of the completion of the 1400th Residential Unit has passed without provision of a Primary School.

8.2 JJGF will convey title to the Primary School Site at nil consideration and on demand to the Education Authority and subject to each party bearing their own expenses and outlays and delivery of a Disposition conveying a valid title of the Primary School Site to the Education Authority, free of all encumbrances and without any burdens or restrictions prejudicial to the development and use of the Primary School Site for that purpose (and for

no other purposes whatsoever), and including all necessary heritable and irredeemable servitude rights of access and wayleave to enable development and use of the site as aforesaid; Provided that (a) the Primary School Site shall be used as a site for a primary school, incorporating, where appropriate, nursery education and community facilities and for no other purposes whatsoever which proviso shall be created as a burden on the title to the Primary School Site enforceable by the heritable proprietors from time to time of such area of ground as may be identified by JJGF as the benefited property.

- 8.3 JJGF shall initially be liable for the Primary Education Contributions and the Secondary Education Contributions as Deferred Unit Contributions and for deferred payment thereof all in terms of Clause 7. Thereafter JJGF shall make payment of the Primary Education Contributions and the Secondary Education Contributions periodically at the Reconciliation Dates following on the Completion of 300 houses.
- 8.4 The Primary Education Contribution will be utilised by the Education Authority for the purposes of providing the Primary Education Facility subject to the following:
- 8.4.1 the payments in respect of the first 500 Completed Residential Units may be utilised in the provision of temporary units at the existing Aviemore Primary School;
- 8.4.2 the payments in respect of the remaining Completed Residential Units will be utilised in the construction of a primary school at An Camas Mor only and shall not be utilised for the purposes of constructing or forming any temporary primary school accommodation or other form of extension to the existing Aviemore Primary School except with such written consent as may be given by the CNPA on completion of the review referred to herein.. CNPA and the Education Authority will review and consider the need for the provision of a primary school at An Camas Mor on the Completion of 750 Residential Units and again, if required, on the Completion of 1000 Residential Units and finally, if required, on Completion of 1250 Residential Units and take into account the pupil generation arising from the Development.
- 8.5 JJGF will construct and complete the Community Facility before Completion of the 750th Residential Unit.
- 8.6 The Secondary Education Contribution will be utilised in the provision of additional education facilities at Kingussie High School or, in the event that the catchment area of Kingussie High School is altered, such other secondary school as includes the Development in its catchment area.
- 8.7 The Primary Education Contributions and Secondary Education Contributions received by the Education Authority will be:
- 8.7.1 held in a Council bank account but will be allocated separate codes which relate solely to the Primary Education Contributions and to the Secondary Education Contributions as appropriate and the respective Contributions and will be accounted for under the applicable separate code in the Council's Accounts. In the event that funds remain in the Council bank account on the 20th anniversary of the last date of payment by JJGF then those remaining funds and Interest will be repaid by the Education Authority to JJGF within one month after the said twentieth anniversary of the last date of payment subject to service of notice in accordance with Clause 16.1.

- 8.8 The parties acknowledge and agree that the Primary Education Contribution and Secondary Education Contribution payable in terms of this agreement apply solely to the Development and may not be utilised in the calculation of other education contributions payable in respect of any other development.
- 8.9 The Education Authority acknowledges by its execution of these presents that, in the event that the parties hereto identify the need for the provision of the An Camas Mor Primary School, the Council shall deliver the same to a design standard and scale then operated by the Council as Education Authority for provision of the type necessary to meet the primary educational needs deriving from the Development and such adjoining area or areas as will then lie within the catchment area of such new school and including facilities for shared community use including a Community Facility.

9 Healthcare Facilities and Healthcare Contribution

- 9.1 The Developer will identify and agree the location of the Healthcare Site in consultation with JJGF, CNPA and the Highland Health Board Endowment Trustees as part of the Masterplan Approval.
- 9.2 It shall be at the sole and absolute discretion of Highland Health Board Endowment Trustees at any time following the Completion of the 300th Residential Unit whether or not to decide to take a conveyance of the title to the Healthcare Site and then either in their own name or in the name of nominees. In the event of Highland Health Board Endowment Trustees deciding to take a conveyance of the title to the Healthcare Site and that either in their own name or in the name of nominees the Healthcare Site will be reserved for the provision of premises to be used solely for the purposes of Healthcare to be determined by the Highland Health Board Endowment Trustees.
- 9.3 JJGF will convey the title to the Healthcare Site to the Highland Health Board Endowment Trustees or their nominees at nil consideration or at a consideration of £1 sterling in the sole and absolute discretion of the Highland Health Board Endowment Trustees and that within a reasonable period not exceeding twenty eight days after the date of receipt by JJGF of a written request from the Highland Health Board Endowment Trustees for the conveyance of the title.
- 9.4 In the transaction for the conveyance of the title (i) each party shall bear their own expenses and outlays; (ii) there shall be delivered to the Highland Health Board Endowment Trustees a Disposition conveying a valid title to the Healthcare Site (including the minerals) to the Highland Health Board Endowment Trustees or their nominees, along with a prescriptive progress of title conveying a title free of (a) all encumbrances and diligences; (b) any burdens or restrictions prejudicial to the development and use of the Healthcare Site for that purpose; provided that the Healthcare Site shall be used as a site for Healthcare facility and for no other purposes whatsoever which proviso shall be created as a burden on the title to the Healthcare Site enforceable by the heritable proprietors from time to time of such area of ground as may be identified by JJGF as the benefited property); (iii) there shall be included in the Disposition to the Highland Health Board Endowment Trustees or their nominees (a) the grant of all necessary heritable and irredeemable servitude rights of access and all necessary heritable and irredeemable servitude rights for wayleave and tolerance for the Services over the Development and any other servitude rights as may be required all to enable development and use of the Healthcare Site as aforesaid; and (b) the obligation on the grantor of the Disposition to provide the Services by the date of entry stated in the Disposition and maintain the same until adopted for maintenance by the utility

provider or local roads authority as the case may be with an associated obligation to apply for and obtain such adoption as soon as practicable after the date of entry.

- 9.5 For the avoidance of any doubt, the above option for the Highland Health Board Endowment Trustees to take a conveyance of the title to the Healthcare Site (either in their name or in the name of their nominees) shall be in addition to the obligation on JJGF under this agreement to make payment of the Healthcare Contribution and the entitlement of the Highland Health Board Endowment Trustees to the receipt of the Healthcare Contribution;
- 9.6 JJGF shall be liable for the Healthcare Contribution payable in terms of this agreement.
- 9.7 The Healthcare Contribution received by the Highland Health Board Endowment Trustees will be utilised at the option of the Highland Health Board Endowment Trustees in the provision of a Healthcare facility and/or Healthcare at the Healthcare Site.
- 9.8 All Healthcare Contributions received by CNPA from JJGF will be transferred by CNPA to the Highland Health Board Endowment Trustees forthwith on receipt. The Highland Health Board Endowment Trustees will accept and receive the Healthcare Contributions at their discretion. The Healthcare Contributions received by the Highland Health Board Endowment Trustees will be separately identified within the funds held by the Highland Health Board Endowment Trustees until expended. In the event that the Healthcare Contribution has not been fully utilised before the seventh anniversary of the date of the last payment then the remaining funds and Interest will be repaid by the Highland Health Board Endowment Trustees to JJGF within one month after the said seventh anniversary of the date of the last payment subject to the service of notice in accordance with Clause 16.1.

10 Provision of Community Facility and Community Facility Contributions

- 10.1 JJGF shall initially be liable for the Community Facility Contributions as Deferred Unit Contributions and for deferred payment thereof all in terms of Clause 7. Thereafter JJGF shall make payment of the Community Facility Contributions periodically at the Reconciliation Dates following on the completion of 300 Residential Units.
- 10.2 JJGF will identify and agree the location of each component part of the Community Facility with CNPA, in consultation with the Education Authority, prior to submission of each application for MSC.
- 10.3 The location of all or part of the Community Facility may be within the Primary School Site in which case the design of the relevant parts of the Community Facility will be agreed with the Planning Authority in consultation with the Education Authority. All or part of the Community Facility may be provided initially as part of commercial premises within the Development subject to agreement with CNPA.
- 10.4 Prior to Completion of the 750th Residential Unit JJGF will construct and complete such elements of Community Facility as are achievable having regard to the funds available . The elements to be provided at such interim stage will be subject to agreement with CNPA in consultation with the Education Authority. Thereafter JJGF will complete the Community Facility before completion of the 1200th Residential Unit.
- 10.5 At completion of the Community Facility, or partial completion in terms of this agreement, JJGF will allow the Education Authority use of such of the Community

Facility as may be reasonably required in conjunction with An Camas Mor Primary School. In the event that all or any part of the Community Facility is shared with An Camas Mor Primary School, then the Education Authority may utilise part of the Primary Education Contribution in relation to the provision of said shared facilities.

- 10.6 The rates at which any part of the Community Facility is let to the public shall be the same or less than the rates which would be imposed by the Council or other similar body for an equivalent facility and each part of the Community Facility shall be made available for use by the public at reasonable times, comparable to facilities provided by the Council or other similar body
- 10.7 The Community Facility Contributions received by the CNPA will be held in a separate interest bearing bank account.
- 10.8 The CNPA will permit JJGF to draw down such sums from said bank account the basis of phased payments directly related to the stage achieved in the Completion of the Community Facility or, in the event that the facilities are provided prior to the Deferred Unit Contributions being made, then a sum equivalent to the level of facilities already provided will be deducted from the total Deferred Unit Contributions which would otherwise be payable. For the avoidance of doubt no sums may be drawn down in advance of the Community Facility in advance of Completion or completed to a stage approved by CNPA.
- 10.9 In the event that funds remain in the bank account referred to above following Completion of the Community Facility, then those remaining funds together with all Interest will be repaid by the CNPA to JJGF within one month after the said Completion subject to the service of notice in accordance with Clause 16.1.

11 Serviced Sites

JJGF will procure that Services are laid to the boundary of each of the Sites to be conveyed in terms of Clauses 8 and 9 at no cost to the Education Authority or the Highland Health Board Endowment Trustees.

12 Aviemore Countryside Park

- 12.1 John Grant will:
- 12.1.1 grant all necessary heritable and irredeemable rights of access from the Development to the Bridge to all parties as may be considered necessary by the CNPA including those required for the purposes of construction and subsequent maintenance of the Aviemore Countryside Park, the Bridge and the Foot/Cycle Link ;
- 12.1.2 prior to Commencement of Development, enter into an agreement to grant a lease in accordance with the Heads of Terms with CNPA or a community or other body representing the residents of Aviemore, Rothiemurchus and the development at An Camas Mor;
- 12.1.3 on or before the date of Completion of construction of the Bridge or Completion of the 201st Residential Unit, whichever is the earlier, grant a lease in accordance with the Heads of Terms of the Aviemore Countryside Park land to CNPA or a community body or other body representing the residents of

Aviemore, Rothiemurchus and the development at An Camas Mor

- 12.1.4 permit the public all necessary rights of public access by means of the Foot/Cycle Link to and from the Development to the Bridge by means of the Aviemore Countryside Park with effect from Completion of the Bridge.
- 12.2 JJGF will construct or procure the construction of the Foot/Cycle Link on or before the date of completion of construction of the Bridge or Completion of the 201st Residential Unit, whichever is the earlier
- 12.3 JJGF, the Developer and John Grant will use their best endeavours to assist the community body nominated by CNPA in terms of this clause to secure the delivery and completion of Aviemore Countryside Park no later than two years after the date of payment of the final Bridge Contribution.

13 The Bridge

- 13.1 All parties including JJGF and the Developer recognise that;
 - 13.1.1 detailed consultation, design and assessment work for the Bridge has yet to be undertaken and completed and that a separate application for planning permission for the Bridge will require to be submitted,
 - 13.1.2 the CNPA will determine the identity of the legal entity which will secure provision, delivery, construction and completion of the Bridge, and
 - 13.1.3 it is desirable that the Bridge is completed as soon as possible and, in any event, within two years of the date of payment of the final Bridge Contribution;
- 13.2 JJGF and the Developer will use their best endeavours to support the CNPA and the legal entity determined by CNPA in terms of this clause in the provision, development, construction and completion of the Bridge.
- 13.3 JJGF and John Grant will grant all necessary heritable and irredeemable servitude rights of access over the Application Site to CNPA or such other body as the CNPA may nominate as may be considered necessary by CNPA for the purposes of constructing and thereafter maintaining the Bridge in all time coming.
- 13.4 John Grant will convey title to CNPA or such other body as the CNPA may nominate of the Bridge Subjects within 28 days of the date of receipt of a written request by JJGF .

14 Bridge Contribution

- 14.1 John Grant agrees that, should it prove on completion of consultation, design and assessment work, that construction of the footing, foundation, wing wall, abutment or other component of the Bridge cannot be reasonably achieved within the Bridge Subjects, then the area of the Bridge Subjects will be amended such that adequate land is available for construction of the foregoing and other components of the Bridge.
- 14.2 JJGF will make the first payment of the Bridge Contribution to the CNPA before Completion of the 301st Residential Unit and the final payment of the Bridge Contribution before completion of the 801st Residential Unit.

- 14.3 JJGF shall initially be liable for the Bridge Contributions as Deferred Unit Contributions and for deferred payment thereof all in terms of Clause 7. Thereafter JJGF shall make payment of the Bridge Contributions periodically at the Reconciliation Dates following on the Completion of 500 Residential Units.
- 14.4 The Parties agree that
- 14.4.1 the Bridge Contribution payments received by CNPA will be retained in a separate interest bearing account in the name of CNPA
- 14.4.2 the initial Bridge Payments up to a maximum sum of EIGHT HUNDRED THOUSAND POUNDS £800,000 STERLING will be utilised for the purpose of enabling, developing, providing and constructing the Bridge
- 14.4.3 the balance of the Bridge Contribution being a maximum sum of TWO HUNDRED THOUSAND POUNDS (£200,000) STERLING will be utilised for the purposes of the future maintenance of Bridge and will be retained by CNPA or other body nominated by CNPA in all time coming solely for the said purpose subject to no sums having been repaid in accordance with the terms of Clause 14.4.5.
- 14.4.4 In the event that construction of the Bridge has not been commenced on or before the twentieth anniversary of Commencement then the entire amount of the Bridge Contribution received from JJGF together with Interest will be repaid to JJGF within one month after the twentieth anniversary of Commencement subject to service of notice in accordance with Clause 16.1.
- 14.4.5 In the event that the costs of enabling, developing, providing and constructing the Bridge amount in total to less than EIGHT HUNDRED THOUSAND POUNDS (£800,000) STERLING then JJGF will be entitled to receive a partial refund of the Bridge Contributions equal to the difference (if any) between EIGHT HUNDRED THOUSAND POUNDS £800,000 STERLING (or the total amount of the Bridge Contributions, which ever is the lesser) and the total amount of the costs of enabling, developing, providing and constructing the Bridge together with all Interest accrued thereon, which refund will be paid within one month after Completion of the Bridge subject to service of notice in accordance with Clause 16.1.

15 Roads and Roads Contribution

- 15.1 JJGF will make the first payment of the Roads Contribution to the Roads Authority before Completion of the 301st Residential Unit and will be liable for the Roads Contribution as Deferred Unit Contributions and make payment thereof in terms of Clause 7.1.
- 15.2 The Roads Authority will utilise the Roads Contributions for the purposes of mitigation measures on Grampian Road, Aviemore and the improvement of Dalfaber Drive and Grampian Road, Aviemore;
- 15.3 The Roads Contribution received by the Roads Authority will be held in a Council bank account but will be allocated a code which relates solely to the Roads Contribution and will be accounted for under that separate code.

- 15.4 JJGF shall initially be liable for the Roads Contributions as Deferred Unit Contributions and for deferred payment thereof all in terms of Clause 7. Thereafter JJGF shall make payment of the Roads Contributions at the Reconciliation Dates following on the Completion of the subsequent 500 Residential Units.
- 15.5 In the event that funds remain in such bank account[s] on the seventh anniversary of the last date of payment by JJGF then those remaining funds together with all Interest accrued thereon will be repaid by the Roads Authority to JJGF within one month after the said seventh anniversary of the last date of payment subject to service of notice in accordance with Clause 16.1.
- 15.6 JJGF will procure the provision of a new road on land owned by JJGF and John Grant to lead to the Development from the B970 Aviemore to Coylumbridge road. The construction of the road will be completed to an adoptable standard before the completion of the 201st Residential Unit or such later stage of the Development as may be agreed in writing following consultation with TEC Services and the approval of CNPA.

16 Repayment of Contributions

- 16.1 In the event that JJGF becomes entitled to the repayment of any Contribution or part thereof in terms of this agreement, JJGF will serve notice on the relevant party at least two calendar months in advance of the date on which the repayment is anticipated to become payable, failing which the date on which repayment becomes payable shall be the date falling two calendar months after the date on which such notice is served by JJGF.

17 Compensatory Habitat

- 17.1.1 JJGF with assistance from the Developer will be obliged to submit the Compensatory Habitat Management Scheme to the CNPA for approval before Commencement and thereafter JJGF, JPG and James Grant with assistance from the Developer will be obliged to implement the approved Compensatory Habitat Management Scheme within the respective Compensatory Habitat Subjects;
- 17.1.2 JJGF will be obliged to submit an update of the Compensatory Habitat Management Scheme to CNPA with each MSC for approval and thereafter JJGF, JPG and James Grant will be obliged to implement the approved and updated Compensatory Habitat Management Scheme within the respective Compensatory Habitat Subjects;
- 17.1.3 CNPA will monitor and review the implementation of the Compensatory Habitat Management Scheme and JJGF at the request of CNPA will submit an update to the Compensatory Habitat Management Scheme for approval and thereafter JJGF, JPG and James Grant will be obliged to implement the approved and updated Compensatory Habitat Management Scheme within the respective Compensatory Habitat Subjects;
- 17.2 The Compensatory Habitat will extend over the eight areas located at An Camas Mor, Creag a'Chalamain in the lower Lairig Ghru, the River Druie and Ord Ban respectively all as shown delineated in red and blue on Plan 4 and will be utilised to replace areas lost as a result of the Development.

- 17.3 The purpose of the Compensatory Habitat Management Scheme is to (1) replace wet woodland lost by the River Druie in 3 hectares of grazing land close by; and to (2) replace lost heathland in 20 hectares at Ord Ban (3) maintain lowland heath areas at An Camas Mor and Guislich over 6.5 hectares and (4) ensure the return to open montane pine woodland of up to 76 hectares of moorland at Creag a'Chalamain in the lower Lairig Ghru.

18 Prohibition against Alienation prior to Registration

- 18.1 JJGF will not at any time before recording or registration of this Agreement in the Registers of Scotland and Land Register of Scotland convey dispose of, sublet or otherwise grant to any other party an interest in their title to the JJGF Land or any part thereof, or enter into any Missives or Agreement to part with ownership or possession of any part of the JJGF Land whether by way of sale, lease, licence to occupy or any other arrangement affecting the JJGF Land and confirm by their execution hereof that with the exception of the existing Standard Security granted to HSBC they have not granted, nor will they grant a Standard Security over the whole or any part of the JJGF Land.
- 18.2 John Grant will not at any time before recording or registration of this Agreement in the Registers of Scotland and Land Register of Scotland convey dispose of, sublet or otherwise grant to any other party an interest in his title to the John Grant Land or any part thereof, or enter into any Missives or Agreement to part with ownership or possession of any part of the John Grant Land whether by way of sale, lease, licence to occupy or any other arrangement affecting the John Grant Land and confirms by his execution hereof that with the exception of the existing Standard Security granted to the Private Bank he has not granted, nor will he grant a Standard Security over the whole or any part of the John Grant Land.
- 18.3 JPG will not at any time before recording or registration of this Agreement in the Registers of Scotland and Land Register of Scotland convey dispose of, sublet or otherwise grant to any other party an interest in the JPG Land or any part thereof, or enter into any Missives or Agreement to part with ownership or possession of any part of the JPG Land whether by way of sale, lease, licence to occupy or any other arrangement affecting the JPG Land and confirms by his execution hereof that with the exception of the existing Standard Security granted to the Private Bank he has not granted, nor will he grant a Standard Security over the whole or any part of the JPG Land.
- 18.4 James Grant will not at any time before recording or registration of this Agreement in the Registers of Scotland and Land Register of Scotland convey dispose of, sublet or otherwise grant to any other party an interest in the James Grant Land or any part thereof, or enter into any Missives or Agreement to part with ownership or possession of any part of the James Grant Land whether by way of sale, lease, licence to occupy or any other arrangement affecting the James Grant Land and confirms by his execution hereof that he has not granted, nor will he grant a Standard Security over the whole or any part of the James Grant Land.
- 18.5 While this agreement remains in force JJGF, John Grant, the Developer, JPG and James Grant will serve notice on CNPA of all changes in ownership within one calendar month of such change occurring.

19 Discharge and Modifications

- 19.1 In the event that the Planning Permission is revoked or in any way falls prior to commencement of development in terms of Section 27 of the Act, then these presents will fall and be deemed *pro non scripto* and the planning, authority will subject to compliance with Section 75A of the Act grant a Discharge of this Agreement.
- 19.2 In the event of change to the planning or other circumstances of the Subjects which appears to any party to the Agreement or to their successors in title to render any of the conditions, restrictions, obligations and others contained in this Agreement no longer relevant or requiring amendment, the parties or their successors in title will consider whether the said conditions, restrictions, obligations and others should be modified, varied or discharged subject to compliance with Section 75A of the Act.
- 19.3 Where it is considered by any party that the change in circumstances are such that this Agreement requires to be varied or modified then all relevant parties will co-operate in completing (1) the negotiation and subsequent registration of a replacement agreement simultaneously with the registration of a discharge of this agreement or (2) the negotiation and registration of a variation of this agreement.
- 19.4 The Parties agree subject to compliance with Section 75A of the Act that in the event of determination of an application for modification of this Section 75 Agreement or obligation the parties to the relevant Minute of Variation will include only those parties affected by such modification.

20 Arbitration

Any dispute or difference arising between the parties hereto as to the interpretation or application of this Agreement, or any part of it shall be settled by arbitration before an arbitrator selected and appointed by mutual agreement of the parties, and failing agreement appointed by the Sheriff Principal of Grampian Highlands and Islands and conducted in accordance with the Scottish Short Form Arbitration Rules produced by the Scottish branch of the Chartered Institute of Arbitrators in force at the time of the appointment of the arbitrator. The seat of the arbitration shall be Scotland. Without prejudice to the foregoing generality, the parties hereto agree that, in the event of any dispute or difference arising, the relevant parties will attend a meeting and use all reasonable endeavours to try to resolve the matter in dispute, prior to a referral by any party to an arbitrator.

21 Legal Expenses

- 21.1 JJGF, will be liable to the CNPA and to the Council for their whole reasonable legal expenses (including VAT) up to a maximum of [] and [£800] respectively in connection with:
- 21.1.1 the drafting, negotiating, adjustment, conclusion, execution and registration of this Agreement;
- 21.1.2 any modification or discharge of this Agreement, including any Stamp Duty Land Tax, if any, payable thereon and the registration dues thereof and the dues of obtaining three Books of Council and Session extracts, one of which will be for the exclusive use of the CNPA.

22 Validity of Provisions

Each of the provisions of this Agreement is agreed independently of the others and in the event that any of them are held to be or become invalid or unenforceable for any reason then the remaining provisions will continue in full force and effect.

23 Interpretation

23.1 In this Agreement:

- 23.1.1 Words importing one gender will be construed as importing any other gender.
- 23.1.2 Words importing the singular will be construed as importing the plural and *vice versa*.
- 23.1.3 Words importing personal will include firms, companies and corporations and *vice versa*.
- 23.1.4 Where any party comprises more than one person, the obligations and liabilities of that party under this Agreement will be joint and several obligations and liabilities of these persons.
- 23.1.5 References to any Act of Parliament will include any modification, extension or re-enactment thereof for the time being in force and will include all Instruments, orders, notices, plans, regulations, bye-laws, permissions and directions for the time being made, issued or given thereunder or deriving validity therefrom.
- 23.1.6 References to any party will, where the context so requires, include references to the successors in title.

24 Notices

- 24.1 Any notice to be served in terms of this agreement shall be in writing;
- 24.2 Any notice shall be sufficiently served if sent by recorded delivery post to: an incorporated body to its Registered Office; an individual to his last known address in Great Britain or Northern Ireland; the CNPA at the CNPA's principal office; the Highland Health Board Endowment Trustees addressed to the Director of Finance of Highland Health Board or such other office holder or office holders of Highland Health Board as may be intimated in writing from time to time at Assynt House, Beechwood Park, Inverness IV2 3BW or such other address or addresses as may be intimated in writing from time to time; Any notice sent by recorded delivery post shall be deemed duly served at the expiry of two days after the date of posting (time being of the essence);
- 24.3 In proving service it shall be sufficient to prove that the envelope containing the notice was duly addressed in accordance with this Clause and posted to the place to which it was so addressed.

25 Enforceability

- 25.1 These presents will be enforceable by the CNPA or their statutory successors as

Planning Authority and by the Council and the Highland Health Board Endowment Trustees against the Developer, JJGF and John Grant, as appropriate, and persons deriving title or any part thereof from the Developer, JJGF and John Grant respectively but declaring that this Agreement will not be enforceable against any Ultimate Owner. For the avoidance of doubt, it is hereby agreed that JPG, James Grant and their successors will only be liable for the performance of the obligations set out in Clause 17 of this Agreement and they will have no liability in respect of any of the other obligations contained herein.

- 25.2 There will be no continuing liability in respect of this Agreement and the current respective proprietors of the interests held by JJGF, John Grant, JPG and James Grant will not be liable for any breach of their respective obligation in terms of the provisions of this Agreement occurring after they have disposed of their respective interests in the Subjects or Compensatory Habitat Subjects, save in respect of any antecedent breach. For the avoidance of doubt, Section 75C of the Act will not apply to this Agreement.
- 25.3 It is expressly stated without prejudice to the enforceability of the remaining provisions that the Council as Education Authority shall not be obliged to deliver the Community Facility which shall remain as an obligation on JJGF in terms of Clause 8 unless the Council/Education Authority elects in terms of Clause 8 to provide the Community Facility.
- 25.4 It is expressly stated without prejudice to the enforceability of the remaining provisions that the Council shall not be obliged to deliver the Bridge referred to in Clause 13.

26 Jurisdiction

The Agreement will be governed and construed in accordance with the laws of Scotland.

27 Consent to Registration

The parties hereto consent to registration hereof for preservation and execution as well as for publication: IN WITNESS WHEREOF

Schedule
Part 1
Conditions

Part 2
Heads of Terms

Part 3
Affordable Housing SPG

DRAFT