

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 National Park Authority”)

and

ALISTER DONALD MACKENZIE, residing at Croft Dhu, Newtonmore (“the Applicant”)

and

DONALD MACKENZIE, residing at Strone Cottage, Strone, Newtonmore (“the Proprietor”)

CONSIDERING THAT:

- (i) The National Park Authority 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 Provisions (Scotland) Order 2003 (hereafter referred to as “the Order”) and Section 46 of the Town and Country Planning (Scotland) Act 1997 (hereinafter referred to as “the Act”).
- (ii) The National Park Authority is entitled in terms of the Act to enter into an Agreement with any person interested in their area (in so far as the interest of that person enables him to bind the land) for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be described by the Agreement.
- (iii) The Applicant is the heritable proprietor of ALL and WHOLE subjects at Strone of Glenbanchor, Newtonmore, in the County of Inverness being the subjects more particularly described in, disposed by and delineated in

red on the plan annexed and signed as relative to the Disposition by the Proprietor in favour of the Applicant dated [] and recorded in the Division of the General Register of Sasines for the County of Inverness on [] 2007 (“the Croft House”)

- (iv) The Proprietor is the heritable proprietor of *inter alia* ALL and WHOLE croft land at Croft of Strone of Glenbanchor, Newtonmore, in the County of Inverness extending to 34.025 Hectares or thereby, being the subjects more particularly described (Second) in, disposed by and delineated in green on the plan annexed and signed as relative to the Disposition by the Executors of Michael James Haywood in favour of Mary MacKenzie dated 3, 4 & 21 June and 30 July and recorded in the said Division of the General Register of Sasines on 13 December all 1994 under exception of that piece of land formerly the site of Croft Dhu Steading and part of the Croft Strone of Glenbanchor aforesaid extending to 0.293 Hectares or thereby described in, disposed by and delineated in pink on the plan annexed and signed as relative to the Disposition by Mary Mackenzie in favour of Donald Mackenzie and Mary Mackenzie dated 26 March and recorded in the said Division of the General Register of Sasines on 06 April, both 2000.

- (v) On 1 June 2007 the Applicant became the crofting tenant of the croft at Strone of Glenbanchor extending to one hectare or thereby and shown delineated in red on the plan thereof annexed and signed as relative hereto (“the Croft Land”), which Croft Land forms part and portion of the subjects belonging to the Proprietor described in (iv) above.

- (vii) The Applicant and the Proprietor entered into a Section 75 Agreement with the National Park Authority prior to the release of outline planning permission reference 06/485/CP, which Agreement was registered in the said Division of the General Register of Sasines on [] 2007 (“the Existing Section 75 Agreement”).

- (vii) The Applicant wishes to amend the provisions of the Existing Section 75 Agreement and the National Park Authority has resolved to discharge the Existing Section 75 Agreement and enter into a new Agreement with the Applicant and the Proprietor for the purposes of restricting or regulating the development or use of the Croft House.

- (vii) The Applicant and the Proprietor have agreed to enter into such Agreement with the National Park Authority.

NOW THEREFORE the National Park Authority, the Proprietor and the Applicant DO HEREBY AGREE as follows:

(One) Discharge of Existing Agreement

On entering into this Agreement, the Parties confirm that the Existing Section 75 Agreement is hereby discharged.

(Two) Obligations

Subject to Clause (Three) below, the Applicant for themselves and their successors in title, hereby undertake that the Croft House may only be occupied by someone engaged or last engaged in crofting on the Croft Land and their dependants.

(Three) Clause (Two) above will not apply to a commercial lender in possession when calling up a standard security over the Croft House, provided the Croft House is marketed in the following way by such lender:-

- a. for the first five weeks after the Croft House first comes on the market (“the initial marketing date”) it shall be actively marketed subject to an amended restriction that the Croft House may only be occupied by someone engaged or last engaged in crofting in the Parish of Newtonmore and their dependants.

- b. if no sale has been agreed within five weeks of the initial marketing date, the Croft House shall thereafter be actively marketed for a further five-week period, subject to an amended restriction that the Croft House may only be occupied by someone engaged or last engaged in crofting in the crofting counties (as determined by the Crofters' Commission) within the Cairngorms National Park Area, and their dependants.
- c. if no sale has been agreed within ten weeks of the initial marketing date, the Croft House shall thereafter be actively marketed for a further five-week period, subject to an amended restriction that the Croft House may only be occupied by someone engaged or last engaged in agriculture (as defined in section 277(1) of the Town & Country Planning (Scotland) Act 1997) in the area of Badenoch & Strathspey and their dependants.
- d. if no sale has been agreed within fifteen weeks of the initial marketing date, the Croft House shall thereafter be actively marketed for a further five-week period, subject to an amended restriction that the Croft House may only be occupied by someone engaged or last engaged in agriculture (as defined in section 277(1) of the Town & Country Planning (Scotland) Act 1997) within the Cairngorms National Park Area and their dependants.
- e. if no sale has been agreed within twenty weeks of the initial marketing date, the Croft House can be marketed and sold by the said commercial lender on the open market with no occupancy restriction.

(Four) Provided any commercial lender has complied with the marketing procedure laid out in Clause (Three) above, the National Park Authority will, on request, enter into a formal variation of this Agreement amending Clause (Two) accordingly.

(Five) **Obligations in relation to Disposal of the Property**

The Applicant and the Proprietor, for themselves and their successors in title, undertake that the Croft House shall not be disposed without the Applicant granting an assignation of the crofting tenancy or the Proprietor

granting a disposition of the Croft Land to the purchaser of the Croft House.

For the avoidance of doubt, this Clause (Five) will not apply to a commercial lender in possession when calling up a standard security over the property. In such circumstances, upon any sale by such commercial lender, this Clause (Five) will be treated as *pro non scripto*.

(Six) Obligations in relation to Securities

In the event of any loan secured over the Croft House and any property thereon being called up by the lender, the Proprietor or his successors in title are under an obligation to give written notification to the National Park Authority of this event.

(Seven) Discharge

In the event that the Applicant or their successors cease to be engaged in work on the Croft Land for any reason whatsoever, or in the event of a change to the planning or other circumstances of the Croft House, which appears to the National Park Authority to render any of the conditions, restrictions, obligations and others contained in this Agreement no longer relevant, the National Park Authority shall consider whether the said conditions, restrictions, obligations and others should be modified, varied or discharged.

In considering any such modification, variation or discharge, the parties will be required to act reasonably having regard to said changed circumstances. Any variation shall be effective as from the date of recording of the relevant Deed of Variation in the relative Register of Sasines or Land Register and this Agreement shall be deemed to be amended with effect from such date. The Applicant shall reimburse the National Park Authority in respect of all reasonable legal expenses

incurred by the National Park Authority in connection with such further agreement.

(Eight) Arbitration

Any dispute arising between the parties hereto as to the interpretation or application of this Agreement, or any part of it, shall be referred for the purpose of arbitration to an Arbiter to be mutually agreed by the parties, and failing agreement appointed by the Sheriff Principal of Grampian Highland and the Islands at Aberdeen for the appointment of an Arbiter. The decision of the Arbiter, including any award of expenses, shall be final and binding on the parties, and failing such award the cost of any such arbitration shall be borne equally by the parties.

(Nine) Legal Expenses

The Applicant agrees to reimburse the National Park Authority in respect of all reasonable legal fees and expenses incurred by them in connection with the negotiation, drafting, adjustment, conclusion and registration of this Agreement.

(Ten) 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 shall continue in full force and effect.

(Eleven) Burdens

The terms and conditions of this Agreement are created real burdens upon and affecting the Croft House and binding on the Applicant and their successors as proprietor of the Croft House, and the Proprietor and their successors as proprietor of the Croft Land from time to time and as such

are appointed to be recorded or otherwise to be validly referred to in terms of law in all future conveyances, dispositions and other deeds relating to the Croft House.

(Twelve) Jurisdiction

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

(Thirteen) Consent to Registration

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