

2016

PLANNING OBLIGATION  
BY  
MINUTE OF AGREEMENT UNDER SECTION 75  
OF THE  
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

among

SOUTH LANARKSHIRE COUNCIL  
and  
ROBERTSON HOMES LIMITED  
and  
L. S. SMELLIE & SONS, LIMITED

File Ref: ENPL10657

Planning Ref: EK/15/0046

Head of Legal Services  
Finance & Corporate Resources  
South Lanarkshire Council  
Floor 13  
Council Offices  
Almada Street  
HAMILTON  
ML3 0AA

FAS 2089

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## MINUTE OF AGREEMENT

among

**SOUTH LANARKSHIRE COUNCIL**, established by the Local Government etc (Scotland) Act 1994 and having its principal offices at Council Offices, Almada Street, Hamilton, ML3 0AA (who and whose successors as Planning Authority are hereinafter referred to as "the Council")

and

**ROBERTSON HOMES LIMITED** a Company incorporated in Scotland under the Companies Acts with registered number SC151825 and having its registered office at 10 Perimeter Road, Elgin, Morayshire IV30 6AE (who are hereinafter referred to as "RHL")

and

**L. S. SMELLIE & SONS, LIMITED** a Company incorporated in Scotland under the Companies Acts with registered number SC007954 and having its registered office at Hamilton House, Strathaven Rural Centre, Whiteshawgate, South Lanarkshire ML10 6SY (who as heritable proprietors of the Agreement Subjects are hereinafter referred to as the "Initial Owners")

Considering:-

- (One) that the Council are in terms of Section 1 of the 1997 Act the planning authority for the Agreement Subjects;
- (Two) that the Planning Application has been made to the Council on behalf of RHL and the Initial Owners;
- (Three) that the Council on 7 July 2015 resolved to grant planning permission for the Planning Application subject to various conditions and the entering into of this planning obligation by agreement in terms of Section 75 of the 1997 Act;
- (Four) that the Initial Owners are the heritable proprietors of the Agreement Subjects;

- (Five) that under Section 75 of the 1997 Act a person may enter into an obligation with a planning authority restricting or regulating the development or use of the land either permanently or during such period as may be specified in the instrument by which the obligation is entered into and that this agreement is a relevant instrument for that purpose;
- (Six) that any such instrument may, inter alia, contain such incidental and consequential provisions as appear to the planning authority to be necessary or expedient for the purposes of the agreement and it appears to the Council to be necessary or expedient that this Agreement contains such incidental and consequential provisions; and
- (Seven) that the parties have agreed to enter into such an agreement.

NOW THEREFORE the Council, RHL and the Initial Owners agree as follows:-

#### 1. Definitions

- 1.1 In this Agreement (including the foregoing preamble) where the context so permits the following expressions shall have the following meanings:

|                    |  |
|--------------------|--|
| 1997 Act           | means the Town and Country Planning (Scotland) Act 1997;                                     |
| Agreement          | means this Minute of Agreement together with the Schedule;                                   |
| Agreement Subjects | means the subjects more particularly described in Part 5 of the Schedule;                    |
| Commencement Date  | means the first date on which a Material Operation is carried out on the Agreement Subjects; |
| Consent            | means the Initial Consent and all Further Consents;  |

|                              |  |
|------------------------------|--|
| Council                      | means South Lanarkshire Council, established by the Local Government etc (Scotland) Act 1994 and having its principal offices at Council Offices, Almada Street, Hamilton, ML3 0AA and their statutory successors; |
| Developer                    | means RHL or in substitution therefor, in respect of the whole or part of the Agreement Subjects for which an Undertaking is delivered, a Permitted Developer;   |
| Development                  | means the development on any part or parts of the Agreement Subjects, as set out in the Consent;   |
| Effective Date               | means the last of the dates on which the Agreement is signed;  |
| Financial Payment            | means each monetary payment due and payable to the Council in terms of this Agreement;   |
| Further Consent              | means the planning permission or permissions to be granted pursuant to any Further Planning Application;   |
| Further Planning Application | means any planning applications affecting the Agreement Subjects submitted after the Effective Date and amending the Initial Consent and any Further Consents;   |
| Initial Consent              | means the planning permission to be issued pursuant to the Planning Application;   |

|                        |  |
|------------------------|--|
| Insolvency Event       | <p>means the occurrence in relation to any party bound by this Agreement of any of the following events:</p> <ul style="list-style-type: none"> <li>(a) the party becoming apparently insolvent;</li> <li>(b) the making of an order that they be wound up or the passing of a resolution for voluntary winding up;</li> <li>(c) the appointment of an administrative receiver or receiver and manager in respect of any of their assets and undertakings;</li> <li>(d) the making of any bankruptcy order or order for sequestration;</li> <li>(e) the making of any voluntary arrangement (corporate or individual) for a composition of debts;</li> <li>(f) the appointment of an administrator or the making of an administration order;</li> <li>(g) the party being struck off the Register of Companies;</li> <li>(h) the appointment of a liquidator or</li> <li>(i) any similar event which in the opinion of the Council is of like effect;</li> </ul> |
| Late Payment Procedure | means the procedure set out in Part 2 of the Schedule;   |
| Material Operation     | means an operation in accordance with Section 27(4) of the 1997 Act;   |
| Owner                  | means (i) the Initial Owners and their successors in title to the Agreement Subjects as defined by Section 75 of the 1997 Act but excluding (a) Prior Owners and (b) Ultimate Owners;  |
| Parties                | means the Owner, RHL and the Council ;   |

|                      |  |
|----------------------|--|
| Permitted Developer  | means any party carrying out the Development on the Agreement Subjects or any part thereof who has delivered an Undertaking to the Council;  |
| Planning Application | means the planning application submitted on behalf of RHL and Initial Owners registered on 10 February 2015 and allocated application reference EK/15/0046 by the Council;   |
| Planning Obligations | means the obligations set out in the Schedule Parts 1, 2, 3 and 4;   |
| Prior Owner          | has the meaning ascribed to it in Part 4 of the Schedule;  |
| Procurement          | means the taking of such steps and procedures in relation to the award of public works contracts, public supply contracts and public services contracts as are necessary to comply with and be in accordance with the provisions of (1) the applicable European Union Treaties (2) the applicable Directives of the European Parliament and the Council of the European Union (3) such applicable United Kingdom and Scottish legislation and regulations in force from time to time and (4) the Council's Standing Orders on Contracts applicable at the relevant time; |
| Registration Date    | means the last date of receipt of the Keeper's acknowledgement, which relates to any part of the Agreement Subjects, of the Council's application for registration of this Agreement in the Land Register of Scotland or the recording of this Agreement in the relevant Division of the General Register of Sasines (as appropriate);   |

|                       |  |
|-----------------------|--|
| Residential Unit      | means a single dwelling, of any kind at the Agreement Subjects;  |
| Section 75C Procedure | means the procedure set out in Part 4 of the Schedule;   |
| Schedule              | means the Schedule in 5 Parts annexed and executed as relative hereto;   |
| Ultimate Owner        | means the first purchaser of each Residential Unit and his, her or their respective successors in ownership of that Residential Unit (but excluding the said first purchaser and their successors in respect of any common ownership of any part of the Development which is an amenity area or is landscaped ground);                             |
| Undertaking           | means a unilateral undertaking registered or recorded against the Agreement Subjects or any part or parts thereof in the Land Register of Scotland or the relevant Division of the General Register of Sasines as the case may be, to the effect that the Permitted Developer shall be bound by and shall comply with the terms of this Agreement; |
| Value Added Tax       | means value added tax or any other similar tax replacing the same or in addition thereto at the rate prevailing from time to time; and   |
| Working Day           | means any day, excluding Saturdays, Sundays and the Council public holidays, during which the Scottish clearing banks in Glasgow are open for business.  |

1.2 In this Agreement (unless the context otherwise requires):-

- 1.2.1 The words "including" and "include" and words of similar effect shall not be deemed to limit the general effect of the words which precede them;
- 1.2.2 Reference to any agreement, contract, document or deed shall be construed as a reference to it as varied, supplemented or novated;
- 1.2.3 Obligations undertaken by a party which comprises more than one person shall be deemed to be made by them jointly and severally;
- 1.2.4 Words importing personal shall include firms, companies and bodies corporate and vice versa;
- 1.2.5 Words importing the singular shall be construed as importing the plural and vice versa;
- 1.2.6 Words importing one gender shall be construed as importing any other gender;
- 1.2.7 Words denoting an obligation on a party to do any act, or thing includes an obligation to procure that it be done and any words placing a party under a restriction include an obligation not to cause or permit or suffer any infringement of that restriction;
- 1.2.8 Construction of this Agreement shall ignore any headings and front/backing sheet (each of which is for reference only);
- 1.2.9 Reference to a numbered clause, schedule or paragraph are references to the clause, schedule or paragraph of or to this Agreement so numbered;
- 1.2.10 Any reference to any legislative provision shall be deemed to include any subsequent re-enactment or amending provision; and

1.2.11 Reference to any party shall include the successors in title of that party.

## **2. General Provisions**

2.1 The purpose of this Agreement is to secure a financial contribution towards the provision of (i) an appropriate sum in lieu of on-site play facilities (ii) affordable housing and (iii) educational facilities.

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

2.3 Nothing in this Agreement shall confer regulatory approval for any matter in particular to carry out any building engineering or other operations in, on, over or under the Agreement Subjects.

2.4 No waiver (whether express or implied) by the Council of any breach or default of any other party to this Agreement or their agents, servants or successors (including their assignees) in performing or observing any of the provisions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from subsequently enforcing any such provision or from acting on any subsequent breach thereof.

2.5 If any provision in this Agreement shall in whole or in part be held to be invalid or unenforceable under any enactment or rule of law such provision shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected.

2.6 The Planning Obligations contained in this Agreement are made under Section 75 of the 1997 Act and are planning obligations for the purposes of the 1997 Act.

2.7 RHL and the Initial Owners agree that the Planning Obligations are reasonable, necessary and relevant in respect of the tests and guidance set out in Scottish Government Circular 3/2012 Planning Obligations and Good Neighbour Agreements.

2.8 The Planning Obligations are undertaken by and are binding on the Developer and the Owner and are enforceable by the Council.

2.9 The Section 75C Procedure will apply to the Owner.

2.10 A Prior Owner shall have no continuing liability in terms of the obligations contained in this Agreement, except in the case of any antecedent breach.

### **3. Issue of Consent**

3.1 RHL and Initial Owners agree that the Council will undertake the recording of this Agreement in the relevant Division of the General Register of Sasines.

3.2 RHL shall pay (i) the whole reasonable and properly incurred legal expenses up to a maximum of TWO THOUSAND POUNDS (£2000) Sterling and outlays of the Council in connection with this Agreement and (ii) the recording and/or registration dues in relation to the recording and/or registration thereof together with the cost of obtaining four extracts.

3.3 Subject to payment by RHL of the Council's legal costs and outlays reasonably and properly incurred, the Council will register this Agreement in the Land Register of Scotland and/or record this Agreement in the relevant Division of the General Register of Sasines (as appropriate) against the Agreement Subjects within ten (10) Working Days of the date of receipt of this Agreement by the Council properly and validly executed by RHL and the Initial Owners.

3.4 In the event that the Keeper of the Registers of Scotland rejects the application to register referred to in Clause 3.3 and, that as a result of that rejection, the Council requests RHL and/or the Initial Owners to provide documentation, information or carry out actions of any kind whatsoever to allow the Council to resubmit a fresh application for registration to complete a fully registered and/or recorded Agreement, RHL and/or the Initial Owners will deliver such documentation and information to the Council and carry out such action promptly to allow the Council to resubmit the said fresh application and the issue by the Keeper of the registered and/or recorded Agreement.

- 3.5 In the event that the Council is unable to resubmit the said fresh application by virtue of RHL's and/or the Initial Owners' failure to comply with Clause 3.4 hereof, the Council, acting reasonably, are entitled, but not obliged, to revoke the Consent in terms of Section 65 of the 1997 Act and RHL and/or the Initial Owners both agree that they or either of them will not (i) oppose such revocation in terms of Section 66 of the 1997 Act nor (ii) seek compensation or expenses from the Council.
- 3.6 RHL undertakes and/or the Initial Owners confirm that at the date on which they sign this Agreement they are not subject to or under threat or warning of an Insolvency Event and will not take steps to enter into any voluntary Insolvency arrangements the effect of which will be an Insolvency Event between the date on which they sign this Agreement and date of issue of the Initial Consent.
- 3.7 In the event that the Keeper of the Registers of Scotland rejects the application to register this Agreement by reason of an Insolvency Event, the Council, acting reasonably, are entitled, but not obliged, to revoke the Consent in terms of Section 65 of the 1997 Act and RHL and/or the Initial Owners both agree that they or either of them will not (i) oppose such revocation in terms of Section 66 of the 1997 Act nor (ii) seek compensation or expenses from the Council. RHL and the Initial Owners hereby notify the Council, under section 67 (1) (b) that they do not object to such Revocation Order.
- 3.8 The Council undertake that before taking steps to revoke the Consent in terms of these Clauses, the Council will serve written notice on RHL and Initial Owners of their intention to revoke the Consent and will allow RHL and Initial Owners a reasonable opportunity to comply with the requirements of the Keeper of the Registers of Scotland to enable the Agreement to be registered or recorded.

#### **4. Commencement of Development**

- 4.1 The Developer will not carry out any Material Operations on the Agreement Subjects and the Owner will not permit any Material Operations on the Agreement Subjects prior to the issue of the Initial Consent by the Council.

- 4.2 The Initial Owners, RHL and thereafter each Owner and each Developer will notify the Council in writing of the identity of any party or parties to whom they transfer (i) their title or their interest in the Agreement Subjects and (ii) of their right to develop in terms of the Consent.
- 4.3 Within 28 Working Days of the Commencement Date the Owner will notify the Council in writing of the Commencement Date;
- 4.4 The Council will treat the earliest of the dates notified to them in terms of Clause 4.3 as the Commencement Date and will make this date known on that part of the Council's website which contains information on the Planning Application.

**5. Late Payment**

Unless otherwise agreed in writing with the Council, the Late Payment Procedure will apply to all Financial Payments due and payable in terms of this Agreement.

**6. Procurement**

Where the Council procures or acquires public works, public supply and/or public services in connection with the performance of this Agreement or any part or parts of it, the Parties agree that the Council will do so in accordance with Procurement and in accordance with the provisions of Part 1 of the Local Government in Scotland Act 2003.

**7. Revocation of Initial Consent**

In the event of the Initial Consent being revoked prior to the Commencement Date, then the present obligations shall fall and be deemed pro non scripto from the date of such revocation (without prejudice to the Council's rights and remedies in respect of the antecedent breach of any obligations).

## **8. Entry**

8.1 Notwithstanding any rights the Council may have under the terms of the 1997 Act, the Owner consents to the Council and its statutory successors taking entry to the Agreement Subjects for the sole purpose of remedying any breach of the planning conditions attached to the Consent and/or the Planning Obligations in the event that:-

8.1.1 a breach of the planning conditions attached to the Consent and/or the Planning Obligations has occurred;

8.1.2 a written notice has been served by the Council on the relevant Owner notifying them that a breach has occurred and specifying the steps to be taken in order to remedy the breach and the date by which these steps must be taken (provided always that this notice will be reasonable having regard to the nature of the breach) and the relevant Owner has refused or failed to remedy such a breach; and

8.1.3 There is no extant appeal by the relevant Owner in relation to alleged breach of planning conditions attached to the Consent which is pending determination under Part VI of the 1997 Act.

## **9. Notice**

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

9.1.1 In the cases of a Developer or the Owner to (i) if a company, its Registered or Head office in the United Kingdom or (ii) if an individual, to the last known address in the United Kingdom or (iii) if a partnership, to the partnership and any one or more of the partners thereof at its last known principal places of business in the United Kingdom or (iv) to such other address as may have been notified previously in writing to the Council;

9.1.2 In the case of the Council to the Head of Planning and Building Standards Services, Council Offices, Almada Street, Hamilton, ML3 0AA, or to such other officer and address as the Council may have notified to the Parties;

9.2 In proving service, it shall be sufficient to prove that the envelope containing the notice was duly addressed to the Council or the Developer or the Owner, as the case may be, in accordance with this Clause 9 and posted to the place to which it was so addressed (unless returned through the post).

#### **10. Registration of Agreement**

The Initial Owners and RHL hereby undertake that prior to the registration of these presents in the relevant Division of the General Register of Sasines they shall not convey, dispose of, sell, burden, or lease or otherwise grant any party an interest in their title to the Agreement Subjects or any part thereof except in so far as the same may be specifically agreed in writing by the Council.

#### **11. VAT**

Any sums paid in accordance with the terms of this Agreement shall be exclusive of any Value Added Tax properly payable which shall be payable in addition.

#### **12. Laws of Scotland**

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

#### **13. Duration**

This Agreement will come into effect on the Effective Date and will endure until it is formally discharged either in whole or part in terms of Section 75A of the 1997 Act.

14. Registration

The parties hereto consent to registration hereof for preservation and execution: IN WITNESS WHEREOF these presents typewritten on this and 15 preceding pages together with the Schedule annexed are executed as follows:-

They are subscribed for and on behalf of RHL by:-

GILLIAN SARAH LOUISE SIMPSON, in terms of Power of Attorney granted by RHL dated 28 July 2015

Print name ..... (Director/Company Secretary).

Sign ..... *Gillian S Simpson*

At EDINBURGH on the 23rd day of February 2016

Before this witness:-

Sign ..... *Gerraint Hughes*

Print name GERRAINT HUGHES

Address QUARTER MILE ONE, EDINBURGH

And they are subscribed for and on behalf of the Initial Owners by:-

Print name ANDREW SMELLIE (Director/Company Secretary)

Sign ..... *Andrew Smellie*

At STRATHVALE on the 24th day of FEBRUARY 2016

Before this witness:-

Sign ..... *Robert Jamieson*

Print name ROBERT JAMIESON

Address Hamilton House

Strathvale Rural Centre

Strathvale ML10 6WJ

And they are sealed with the Common Seal of South Lanarkshire Council and are subscribed for and on their behalf by:-

Proper Officer JANE HAZEL LANSON

Sign ..... *Jane Lanson*

At Hamilton on the 29th day of FEBRUARY 2016



This is the Schedule in 5 Parts referred to in the foregoing Minute of Agreement among South Lanarkshire Council, Robertson Homes Limited and L. S. Smellie & Sons, Limited

## **Schedule**

### **Part 1**

#### **The Contribution**

#### **PREAMBLE**

It has been agreed among the Parties that a contribution to assist in the funding of education facilities, community facilities and infrastructure relating to the Development will be paid and that such contribution will be apportioned with regard to the number and type of Residential Units to be constructed on the Agreement Subjects in terms of this Part 1 of the Schedule.

#### **1. Definitions**

In addition to the Definitions in Clause 1 of the Agreement, the following definitions will apply to this Part 1 of the Schedule:-

Annual Payment means the sum calculated by the following formula

$$AP = A \times B,$$

where

AP = Annual Payment

A = the Indexed Unit Payment; and

B = the number of Residential Units on the Relevant Development meeting Completion in the Relevant Year;

Calculation Date means 1st April (unless otherwise agreed in writing with the Council prior to the Commencement Date);

|                              |  |
|------------------------------|--|
| Completion                   | means in respect of each Residential Unit, completion to the standard in respect of which an application for approval of a completion certificate has been granted by the Council; |
| Council's Completion Records | means all documents or records kept by the Council for the purposes of ascertaining and verifying an Owner's Annual Payment;   |
| Owner's Completion Records   | means all documents or records kept by each Developer and/or each Owner for the purposes of ascertaining and verifying their Annual Payment;                                       |
| Expiry Date                  | means the date the last Residential Unit permitted in terms of the Consent reaches Completion;   |
| First Year                   | means the period from and including the Effective Date to and including the next occurring Calculation Date;   |
| Full Year                    | means a consecutive period of 12 months commencing from (but excluding) a Calculation Date to and including the next occurring Calculation Date;                                   |
| Fund                         | means the ledger account set up, or to be set up, by the Council to receive the Financial Payments;  |

|                           |  |
|---------------------------|--|
| Indexation Percentage     | means the percentage increase (but not decrease) in the Index between the Effective Date and the Relevant Calculation Date;  |
| Indexed Unit Payment      | means C plus D<br><br>Where<br>C = Unit Payment<br>D = Unit Payment x Indexation Percentage;   |
| Index                     | means PubSec Index (non housing building) published by or on behalf of HM Government, or if that index ceases to be published or the basis upon which such index is calculated is substantially changed or rebased, such substitute or alternate index most likely to achieve an equivalent result as the parties may agree; |
| Last Year                 | means the period from the Expiry Date back to the immediately preceding Calculation Date;  |
| Payment Date              | means two calendar months after the Relevant Calculation Date;   |
| Relevant Calculation Date | means in respect of (1) the First Year, the Calculation Date falling immediately after the Effective Date (2) a Full Year, the Calculation Date in each Full Year and (3) the Last Year, the Expiry Date;  |

|                      |   |
|----------------------|---|
| Relevant Development | means the Agreement Subjects or each part of the Agreement Subjects in respect of which there is a Developer other than RHL;  |
| Relevant Year        | means the Year prior to the Relevant Calculation Date;  |
| Statement            | means a statement in the form of Annexure 1 of this Part of the Schedule to be provided each Year by each Owner to confirm the number of Residential Units meeting Completion on such Owner's Relevant Development in the Relevant Year, including the plot numbers of those Residential Units and (ii) a note of the Annual Payment that such Owner considers falls due; |
| Unit Payment         | means SEVEN THOUSAND EIGHT HUNDRED AND SEVENTY POUNDS (£7870) STERLING, payable towards the provision of the Works and Services;  |
| Works and Services   | means (i) community facilities play areas and (ii) affordable housing by way of a commuted sum equivalent to up to 25% of the Agreement Subjects' capacity as serviced land and any parts or parts thereof; and (iii) educational facilities;   |
| Year                 | means either (1) the First Year; or (2) a Full Year or (3) the Last Year as the case may be;  |

1. **Annual Payment**

- 1.1 Each Owner and Developer will be jointly and severally liable to pay the Annual Payment for their Relevant Development to the Council on the Payment Date.

2. **Payment Procedure**

- 2.1 The invoicing and payment arrangements for the Annual Payment is as follows:

- i) Each Owner will submit or procure that there is submitted a Statement to the Council within 20 Working Days of the Relevant Calculation Date.
- ii) If the Council agrees that the content of the Statement conforms to the Council's Completion Records, the Council will issue an invoice based on the Statement to the relevant Owner within 10 Working Days of the date of receipt of the Statement;
- iii) If the Council does not agree that the content of the Statement conforms to the Council's Completion Records, the Council will advise the relevant Owner within 10 Working Days of the date of receipt of the Statement and, at the same time, will issue an invoice based on the Council's Completion Records to the relevant Owner;
- iv) If an Owner fails to submit their Statement to the Council within 20 Working Days of the Relevant Calculation Date, the Council will be entitled to issue an invoice based on the Council's Completion Records to that Owner.

- 2.2 Each Owner will maintain the Owner's Completion Records fully and accurately throughout each Year.

- 2.3 If requested by the Council, each Owner will, within 5 Working Days of the date of the request, provide the Council with the Owner's Completion Records relating to the then immediately preceding Year.

3. The Parties agree that the provision of the Works and Services by the Council is necessary for the implementation of the Development.

4. The Council will ensure that each Annual Payment is credited to the Fund and will be entitled to spend such sums from the Fund as they consider appropriate to meet the costs of the Works and Services which the Council at their sole discretion deem required to enable the Development to progress. Where the Council has resolved to

fund the Works and Services to support the Development, the Council will be entitled to recover the whole costs of this funding from the Fund.

5. If in the sole opinion of the Council acting reasonably any Owner or Developer fails or delays to comply with this Part 1 of the Schedule the Council will be entitled to take action in terms of the Cessation Procedure set out in Part 3 of the Schedule.

Annexure 1

Statement

[Addressed to Council]

[ ] Community Growth Area Statement for Year Ending 1st April 20XX

If change of Developer from last Statement (or Effective Date if this is the first Statement),  
date of change [ ]

If change of Owner from last Statement (or Effective Date if this is the first Statement), date  
of change [ ]

**Annual Payment Calculation**

Number of Residential Units meeting Completion from (Effective Date or 2 April 20XY) to 1  
April 20XX

Relevant Unit Payment

Indexation percentage applied

Relevant Unit Payment after indexation

Unit Payment applied [ ]

Annual Payment [ ]

**Payment Details**

Owner/ Developer's Bank Details [ ]

Date Annual Payment scheduled to be paid to Council [ ]

**Residential Unit Addresses and Types**

List

## Schedule

### Part 2

#### Late Payment Procedure

##### 1 Definitions

In addition to the Definitions in Clause 1 of the Agreement, the following definitions will apply to this Part 2 of the Schedule:-

|                     |  |
|---------------------|--|
| Cessation Procedure | means the procedure set out in Part 3 of the Schedule;   |
| Date Paid           | means the date on which the Financial Payment and any interest accrued thereon is paid in full;  |
| Due Date            | means the date on which the Financial Payment is due   |
| Full Payment        | means the Financial Payment or part thereof and any interest accrued thereon;  |
| Interest Rate       | means 4% above the base lending rate of The Royal Bank of Scotland plc applicable at the Due Date and as varied from time to time until the Date Paid. |

2. Interest at the Interest Rate will accrue on all Financial Payments or any part thereof unpaid on the Due Date and will accrue from the Due Date until the Date Paid.
3. In the event that any Full Payment or part thereof is not paid within ten Working Days of the Due Date, the Council will be entitled to apply the Cessation Procedure.

## **Schedule**

### **Part 3**

#### **Cessation Procedure**

##### **1. Definitions**

In addition to the Definitions in Clause 1 of the Agreement of which this Schedule forms part, the following definitions will apply to this Part 3 of the Schedule;-

Cessation Date means a date not earlier than ten Working Days after the date on the Cessation Notice;

Cessation Notice means a written notice in terms of the draft forming Annexure 2 of this Part 3 Schedule;

Cessation Pre- Notice means a written notice in terms of the draft forming Annexure 1 of this Part 3 Schedule;

Operations means the works carried out or to be carried out on the Agreement Subjects by the Developer or the Owner.

2. Without prejudice to the Council's statutory rights of enforcement in terms of the 1997 Act, in the event that an Owner or Developer is in breach of this Agreement or fails to comply with a Planning Obligation the Council will be entitled to serve a Cessation Notice on such Owner and/or Developer specifying the Cessation Date and that such Owner and/or Developer must comply with it in full and cease Operations from the Cessation Date until the Council confirms in writing to such Owner and/or Developer that (i) the breach has been remedied or (ii) the Planning Obligation has been complied with or (iii) the Cessation Notice has been withdrawn.
3. The Council will not serve a Cessation Notice without first serving a Cessation Pre-Notice and allowing the relevant party a reasonable opportunity to remedy the breach of the Planning Obligation.

4. In the event that the Council serves a Cessation Notice and the breach or Planning Obligation referred to in the Cessation Notice is remedied or complied with, the Council will withdraw the Cessation Notice within one Working Day of being satisfied that the breach has been remedied or that the Planning Obligation has been complied with.
5. The Council will have no liability whatsoever for any loss or losses sustained as a result or consequence of or attributable to the service of a Cessation Notice

**Part 3**  
**Annexure 1**

**CESSATION PRE- NOTICE**

[Addressed to Owner/ Developer/  
Dear Sirs,

Subjects at Colinhill, Strathaven

In this Notice the following definitions shall apply:-

|                    |  |
|--------------------|--|
| Addressee          | means [name of Owner/ Developer]   |
| Agreement          | means Section 75 Agreement between the Council and [     ]<br>registered in the Land Register of Scotland and or recorded in<br>the relevant Division of the General Register of Sasines on<br>[             ] |
| Agreement Subjects | means [     ]  |
| Cessation Notice   | has the meaning ascribed to it Part 3 of the Agreement   |
| Council            | means South Lanarkshire Council established under the Local<br>Government etc (Scotland) Act 1994 and having its main office<br>at Council Offices, Almada Street, Hamilton;                                   |
| Operations         | means all works and activities of any kind being carried out on<br>the Agreement Subjects  |

**CONSIDERING THAT**

The Addressee is bound to comply with terms of the Agreement and that in the opinion of the Council the Addressee is in breach of the Agreement or has failed to comply with a Planning Obligation specified in the Agreement as detailed in the Schedule annexed, the Council, in terms of the Agreement, hereby orders and notifies the Addressee to remedy the breach by [date] failing which the Council will be entitled to serve a Cessation Notice no later than [date].

Signed

THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING CESSATION PRE-  
NOTICE DATED [ ] BY SOUTH LANARKSHIRE COUNCIL TO [ ]

The breach or failure to comply with a Planning Obligation to which this Notice relates is:-

[refer to Planning Obligation in the Agreement]

Part 3  
Annexure 2

CESSATION NOTICE

[Addressed to Owner/ Developer]

Dear Sirs,

Subjects at Colinhill, Strathaven

In this Notice the following definitions shall apply:-

|                    |  |
|--------------------|--|
| Addressee          | means [name of Owner/ Developer]   |
| Agreement          | means Section 75 Agreement between the Council and [     ]<br>registered in the Land Register of Scotland and or recorded in<br>the relevant Division of the General Register of Sasines on<br>[     ] |
| Agreement Subjects | means [     ]  |
| Council            | means South Lanarkshire Council established under the Local<br>Government etc (Scotland) Act 1994 and having its main office<br>at Council Offices, Almada Street, Hamilton;                           |
| Operations         | means all works and activities of any kind being carried out on<br>the Agreement Subjects  |

CONSIDERING THAT

The Addressee is bound to comply with terms of the Agreement and that in the opinion of the Council the Addressee is in breach of the Agreement or has failed to comply with a Planning Obligation specified in the Agreement as detailed in the Schedule annexed, the Council, in terms of the Agreement, hereby orders and notifies the Addressee to CEASE Operations on the Agreement Subjects on and from [DATE] until the Council withdraws this Notice in writing.

Signed

THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING CESSATION NOTICE  
DATED [ ] BY SOUTH LANARKSHIRE COUNCIL TO [ ]

The breach or failure to comply with a Planning Obligation to which this Notice relates is:-

[refer to Planning Obligation in the Agreement]

## Schedule

### Part 4

#### Section 75C Procedure

##### 1. Definitions

In addition to the Definitions in Clause 1 of the Agreement of which this Schedule forms part, the following definitions will apply to this Part 4 of the Schedule

|                                  |   |
|----------------------------------|---|
| Section 75C Completion Notice    | means a notice served by an Owner on the Council within 7 days of, and as specified in, the Section 75C Permission;   |
| Section 75C Permission           | means a written notice in terms of the draft forming Annexure 1 of this Part 4 Schedule to be issued by the Council pursuant to a Section 75C Notification;   |
| Section 75C Subjects             | means the whole or part of the Agreement Subjects identified as proposed to be sold in the Section 75C Notification;  |
| Section 75C Notification         | means the written notice by any Owner to the Council that they intend to sell their interest in the whole or part of the Agreement Subjects to a third party which notice shall provide details of the extent of the Agreement Subjects proposed to be sold, the proposed completion date of the sale and the name and address of the proposed purchaser; |
| Initial Section 75C Notification | means a written statement from the Council as to whether the Planning Obligations in this Agreement have been complied with by the Owner as at the date of issue of such Initial Section 75C Notification;  |

Prior Owner means an Owner of any Section 75C Subjects who has served a Section 75C Notification, received a Section 75C Permission to that Section 75C Notification and thereafter served a timeous Section 75C Completion Notice pursuant to that Section 75C Permission in relation to such Section 75C Subjects;

Refusal Notice means the written notice issued by the Council pursuant to the Section 75C Notification that the terms of Section 75C of the 1997 Act shall not be disapplied in respect of the proposed sale by the Owner;

## 2. Disposal

- 2.1 An Owner shall be entitled to request an Initial Section 75C Notification from the Council at any time and the Council shall issue the same within three weeks of the date of receipt of written request for the same.
- 2.2 The Owner shall be entitled to serve a Section 75C Notification on the Council at any time up to four weeks prior to the proposed date of disposal notified in the Section 75C Notification, and the Council shall within three (3) weeks of receipt of the same, issue either the Section 75C Permission or a Refusal Notice.
- 2.3 The Council shall not unreasonably withhold or delay the issue of a Section 75C Permission for the whole of the Agreement Subjects if the Owner has complied in full with the terms of this Agreement in respect of the Agreement Subjects at the date on which the relevant Section 75C Notification is submitted to the Council.
- 2.4 For the avoidance of doubt, the Council shall have absolute discretion as to whether the Council issues a Section 75C Permission or a Refusal Notice in relation to a Section 75C Notification in respect of part or parts of the Agreement Subjects.
- 2.5 Unless otherwise agreed with the Council, the Owner shall pay the whole proper and reasonable legal expenses of the Council in connection with this Part 4 of the Schedule.

**Part 4**  
**Annexure 1**  
**Section 75C Permission**

[Addressed to Applicant of Section 75C Notification]

Dear Sirs,

Sale of Land at [                      ]

In this letter the following definitions shall apply:-

Agreement                      means Section 75 Agreement between the Council and [        ]  
registered in the Land Register of Scotland [or recorded in the  
relevant Division of the General Register of Sasines (as  
appropriate) on [                      ], against the Agreement Subjects:

Agreement Subjects           means [                      ] as [registered in the Land Register of Scotland  
under title Number LAN [                      ] or recorded in the relevant  
Division of the General Register of Sasines (as appropriate);

Completion Notice           means written evidence from Registers of Scotland that the  
New Owner is the registered heritable proprietor of the Section  
75C Subjects from the Disposal Date;

The Council                      means South Lanarkshire Council established under the Local  
Government etc (Scotland) Act 1994 and having our main  
office at Council Offices, Almada Street, Hamilton;

Disposal Date                   means [insert date specified in Section 75 Notification] or such  
earlier date as may be specified in the Completion Notice;

Owner                              means [insert applicant of Section 75C Notification];

New Owner                      means [insert proposed Owner in Section 75C Notification]

Section 75C                      means Section 75 C of the Town and Country Planning  
(Scotland) Act 1997;

Section 75C Notification means the Section 75C Notification annexed and signed as relative hereto;

Section 75C Subjects means [insert details of the whole or if applicable part of the Agreement Subjects identified in the Section 75C Notification;

CONSIDERING THAT the Agreement provides inter alia that Section 75C may be disappplied in certain circumstances with the consent of the Council;

FURTHER CONSIDERING that the Owner has served the Section 75C Notification on the Council and has requested that they are released from any liability under Section 75C relating to the Section 75C Subjects from the Disposal Date;

NOW THEREFORE the Council confirms that on receipt of the Completion Notice within seven (7) days of the Disposal Date, the Owner shall be released from the provisions of Section 75C from and after the Disposal Date, save in respect of any antecedent breach, will have no continuing liability for any obligations relating to the Section 75C Subjects incumbent under the Agreement from the Disposal Date.

Yours faithfully

## Schedule

### Part 5

#### Agreement Subjects

ALL and WHOLE (1) the subjects being areas of land at Colinhill Farm, Strathaven, ML10 6QA registered in the Land Register of Scotland under Title Number LAN97560; and (2) the subjects comprising the area of ground at Colinhill Farm, Strathaven, ML10 6QA registered in the Land Register of Scotland under Title Number LAN216892.

Julia R Simpson (As Attorney) RHL

Arden Frethe LS & Sons

Stuart Lee SLC

