

DEED OF SERVITUDE



by

[] LIMITED

in favour of

[] LIMITED

[with the consent of

[] LIMITED]

Property: []

Version 6
October 2023



DEED OF SERVITUDE

by

[] **LIMITED**, incorporated under the Companies Acts (Registered Number []) and having its Registered Office at [] ("**Current Burdened Owner**")

in favour of

[] **LIMITED**, incorporated under the Companies Acts (Registered Number []) and having its Registered Office at [] ("**Current Benefited Owner**")

[with consent of

[] **LIMITED**, incorporated under the Companies Acts (Registered Number []) and having its Registered Office at [] as heritable creditor under a standard security by the Current Burdened Owner in its favour dated [] and [recorded in the Division of the General Register of Sasines for the County of [] on [] [registered in the Land Register of Scotland under Title Number [] on [] ("**Consentor**")]

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed:

"**Benefited Owner**" means the Current Benefited Owner and their successors as proprietor of the Benefited Property;

"**Benefited Property**" means ALL and WHOLE [] [, being the property [more particularly described in and disposed by [] [registered in the Land Register of Scotland under Title Number []];

"**Burdened Owner**" means the Current Burdened Owner and their successors as proprietor of the Burdened Property;

"**Burdened Property**" means ALL and WHOLE [] [shown [edged][tinted] [red] on the Plan], being [part and portion of] the property [more particularly described in and disposed by [] [registered in the Land Register of Scotland under Title Number []];

"**Schedule**" means the schedule annexed to this Deed of Servitude; [and]

["**Servitude Area**" means [] shown [edged][tinted] [red] on the Plan, forming part of the Burdened Property;] [and]

["**Servitude Conditions**" means the conditions under which the Servitude Right[s] are to be exercised set out in Part 2 of the Schedule;][and]

"**Servitude Right[s]**" means the servitude right[s] set out in Part 1 of the Schedule.

1.2 Interpretation

In this Deed, unless otherwise specified or the context otherwise requires:

1.2.1 words importing any gender include all other genders;

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

1.2.3 any reference to the whole is to be treated as including reference to any part of the whole;

- 1.2.4 any reference to a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assignees and words importing individuals include corporations and *vice versa*;
- 1.2.5 any reference to a Clause, Schedule or Part of the Schedule is to the relevant Clause, Schedule or Part of the Schedule or to this Deed and reference, in any Part of the Schedule, to a numbered paragraph is a reference to the relevant numbered paragraph in that Part of the Schedule;
- 1.2.6 [any reference to a statute or statutory provision includes any subordinate legislation which is in force from time to time under that statute or statutory provision;
- 1.2.7 any reference to any statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment;]
- 1.2.8 any phrase introduced by the words "including", "include", "in particular" or any similar expression is to be construed as illustrative only and is not to be construed as limiting the generality of any preceding words;
- 1.2.9 where at any one time there are two or more persons included in the expression the "Benefited Owner" or the "Burdened Owner" [or the "Consentor"] obligations contained in this Deed which are expressed to be made by the Benefited Owner and/or the Burdened Owner [and/or the "Consentor"] are binding jointly and severally on them and their respective executors and representatives whomsoever without the necessity of discussing them in their order;
- 1.2.10 [any reference to "reasonable consent" means the prior written consent of the party in question, such consent not to be unreasonably withheld or delayed;]
- 1.2.11 [where a Clause provides that interest is payable and that the sum must be paid within a specified period, no interest will accrue on the sum provided it is paid within that period;]
- 1.2.12 any references to this Deed or to any other document are references to this Deed or to that other document as varied, supplemented, assigned, novated or replaced (in each case other than in breach of the provisions of this Deed) from time to time;
- 1.2.13 any rights reserved to the Benefited Property are exercisable by the Benefited Owner and their tenants, agents, employees, workmen and others authorised by them from time to time;
- 1.2.14 [any action to be performed on a day which is not a Business Day is to be performed on the immediately following Business Day;]
- 1.2.15 [references to writing or written do not include [faxes or] e-mail;]
- 1.2.16 [if the Benefited Owner is a firm or partnership (other than a limited liability partnership):
- (a) the obligations of the Benefited Owner under this Deed are binding jointly and severally on all persons who are or become partners of the firm at any time and their respective executors and representatives whomsoever as well as on the firm and its whole stock, funds, assets and estate without the necessity of discussing them in their order;
 - (b) except in the circumstances set out in Clause 1.2.16(c), the obligations set out in Clause 1.2.16(a) remain in full force and effect even if:
 - (i) the firm or partnership is dissolved;

(ii) any change or changes take place in the firm or partnership whether by the assumption of a new partner or partners or by the retiral, bankruptcy or death of any individual partner; or

(iii) there is a change in the firm name.

(c) if any person, who by virtue of his being a partner, is bound to implement the Benefited Owner's obligations, then on such person ceasing to be a partner the Burdened Owner, on request, will release such person and his representatives from all obligations on the Benefited Owner under this Deed subsequent to the date when such person ceases to be a partner (or, if later, the date of such request) provided that it is established to the Burdened Owner's reasonable satisfaction that any such release does not materially adversely affect the strength of the Benefited Owner's ability to implement its obligations under this Agreement; and]

1.2.17 [where something is to be done "as soon as reasonably practicable" it is to be done without undue delay; and]

1.2.18 if any provision or part of any provision of this Deed is held to be illegal, invalid or unenforceable, that provision or part will apply with such modification as may be necessary to make it legal, valid and enforceable. If modification is not possible, that provision or part will be deemed to be deleted. The legality, validity or enforceability of the remainder of this Deed will not be affected.

1.3 The headings in this Deed are included for convenience only and are to be ignored in construing this Deed.

1.4 The Schedule forms part of this Deed.

2. **GRANT OF SERVITUDE**

[IN CONSIDERATION of the sum of [] (£[]) STERLING paid to the Current Burdened Owner by the Current Benefited Owner,] the Burdened Owner grants the Servitude Right[s] [but subject always to the Servitude Conditions].

3. **[CONSENT**

The Consensor consents to the grant of the Servitude Right[s] [subject to the Servitude Conditions].]

4. **[DATE OF COMMENCEMENT OF SERVITUDE**

The Servitude Right[s] granted by this Deed will be exercisable with effect from [] notwithstanding the date[s] of this Deed.]

5. **[COSTS**

The Current Benefited Owner will pay on demand the legal and surveyors' costs properly incurred by the Current Burdened Owner in connection with the negotiation and completion of this Deed, together with all disbursements incurred by the Current Burdened Owner and [all irrecoverable] Value Added Tax on such costs and disbursements. Such costs and disbursements will include any land and buildings transaction tax payable.]

6. **WARRANTICE**

The Burdened Owner warrantice.

7. **NO LANDS TRIBUNAL APPLICATIONS**

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

of [five] years after the [registration of this Deed in the Land Register of Scotland] [recording of this Deed in the General Register of Sasines]: IN WITNESS WHEREOF

Schedule

This is the Schedule referred to in the foregoing Deed of Servitude by [] in favour of [] [with consent of []]

[NOTE: THE PROVISIONS OF PARTS 1 AND 2 OF THE SCHEDULE ARE MERELY SUGGESTED CLAUSES/WORDING AND ARE, IN SOME CASES, INCOMPLETE. DETAILED CONSIDERATION NEEDS TO BE GIVEN TO EACH CASE.]

Part 1
The Servitude Right[s]

The following servitude right[s] [is][are] imposed on the [Burdened Property][Servitude Area] in favour of the Benefited Property:

[A servitude right of access and egress at all times and for all purposes for pedestrians and vehicles (including heavy vehicles) over and across the [Burdened Property][Servitude Area].]

[A servitude right to lay a pipe not exceeding [] in width under the [Burdened Property][Servitude Area]

[A servitude right of access [over the Burdened Property to the Servitude Area] for the purpose of laying, inspecting, repairing, maintaining, renewing, replacing [] subject to giving to the Burdened Owner at least [] days written notice (except in emergency).]

[OR SPECIFY OTHER SERVITUDES IN QUESTION]

Part 2
The Servitude Conditions

The Servitude Right[s] created by this Deed [is][are] subject to the following Servitude Conditions:

1. [The Benefited Owner will:
 - 1.1 make good on demand all physical damage caused to the [Burdened Property] [Servitude Area] by reason of the exercise of the Servitude Right[s] by the Benefited Owner, to the satisfaction of the Burdened Owner, acting reasonably;
 - 1.2 procure that the Servitude Right[s] [is][are] exercised so as to cause the minimum disturbance, nuisance or annoyance reasonably practicable to the Burdened Owner and their tenants or occupiers, and all other adjoining or neighbouring proprietors, tenants or occupiers; and
 - 1.3 indemnify the Burdened Owner in respect of all claims, demands, expenses, liabilities, actions or others arising in consequence of the exercise of the Servitude Right[s] by the Benefited Owner.]
2. [The Benefited Owner will at all times maintain the [insert relevant ITEMS eg. roads, pipes] in good repair and condition to the satisfaction of the Burdened Owner, acting reasonably.]
3. [The Benefited Owner will pay and discharge all rates and taxes exigible in respect of [

]]
4. [The Benefited Owner and their tenants, agents, employees, workmen and others authorised by them from time to time is prohibited from using, the [Burdened Property] [and the] [Servitude Area] for the purpose of [

].]
5. [The Benefited Owner will pay to the Burdened Owner on demand from time to time a [

]

 share of the costs properly and reasonably incurred by the Burdened Owner in repairing, maintaining, [lighting], renewing and replacing the [Burdened Property] [and the] [Servitude Area]. If the Benefited Owner fails to pay in full any such sum so demanded within fourteen days of the date of demand interest at [

]

 per cent per annum above the base lending rate from time to time of [

]

 will run on the sum or on any outstanding balance from the date of demand until payment in full by the Benefited Owner.]