

DEED OF SERVITUDE



by

[] LIMITED

in favour of

[] LIMITED

[with the consent of

[] LIMITED]

Property: []

Version 2
July 2007



DEED OF SERVITUDE by

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

in favour of

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

1. Error! Reference source not found. **DEFINITIONS"** 1 **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Deed:-

"**Benefited Property**" means ALL and WHOLE [];

"**Burdened Property**" means ALL and WHOLE [];

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

"**Servitude Area**" means [] forming part of the Burdened Property;

["**Servitude Condition(s)**" means the conditions under which the Servitude Right(s) [is][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**

Save to the extent that the context or the express provisions of this Deed otherwise requires, in this Deed:-

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 where at any one time there are two or more persons included in the expression "Benefited Owner" or "Burdened Owner" [or "Consentor"] obligations contained in this Deed which

are expressed to be made by the party denoted by the expression in question are binding jointly and severally on them and their respective executors and representatives whomsoever without the necessity of discussing them in their order;

- 1.2.4 words importing individuals include legal persons and *vice versa*;
- 1.2.5 references to this Deed or to any other document are to be construed as reference to this Deed or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time;
- 1.2.6 any reference to a Clause, Schedule or Part of the Schedule is to the relevant Clause, Schedule or Part of the Schedule of or to this Deed;
- 1.2.7 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; and
- 1.2.8 any rights reserved to the Benefited Owner are exercisable by the tenants, agents, employees, workmen and others authorised by them from time to time.

1.3 **Headings**

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

1.4 **Schedule**

The Schedule forms part of this Deed.

2. Error! Reference source not found. **GRANT OF SERVITUDE"** 1 **GRANT OF SERVITUDE**

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

[3. **CONSENT**

The Consensor consents to the grant of the Servitude Right(s) subject to the Servitude Condition(s) (if any).]

4. Error! Reference source not found. **DATE OF ENTRY"** 1 **DATE OF COMMENCEMENT OF SERVITUDE**

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

5. **COSTS**

[The Benefited Owner will pay on demand the legal and surveyors costs properly incurred by the Burdened Owner in connection with the negotiation and completion of this Deed, together with all disbursements incurred by the Burdened Owner and [all irrecoverable] Value Added Tax on such of the foregoing costs and other items as bear it. Such costs and others will include all (if any) stamp duty land tax payable.]

6. Error! Reference source not found. **WARRANTICE"\\ 1 WARRANTICE**

[The Burdened Owner grants 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 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

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 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.]

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

[A servitude right of access to the [Burdened Property] [Servitude Area] for the purpose of laying inspecting, repairing, maintaining, renewing, replacing [] subject to giving to the owner for the time being of the Burdened Property 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 owner for the time being of the Benefited Property will:-
 - 1.1 make good on demand all damage caused to the [Burdened Property] [Servitude Area] by reason of the exercise of the Servitude Right[s] by the owner for the time being of the Benefited Property or their tenants, agents, employees, workmen and others authorised by them from time to time, to the reasonable satisfaction of the owner for the time being of the Burdened Property;
 - 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 owner for the time being of the Burdened Property and their tenants or occupiers, and all other adjoining or neighbouring proprietors, tenants or occupiers; and
 - 1.3 indemnify the owner for the time being of the Burdened Property in respect of all claims, demands, expenses, liabilities, actions or others arising in consequence of the exercise of the Servitude Rights by the owner for the time being of the Benefited Property.]
- [2.] [The owner for the time being of the Benefited Property will at all times maintain the [INSERT RELEVANT ITEMS EG. ROADS, PIPES] in good repair and condition to the reasonable satisfaction of the owner for the time being of the Burdened Property.]
- [3.] [The owner for the time being of the Benefited Property will pay and discharge all rates and taxes exigible in respect of []]
- [4.] [The owner for the time being of the Benefited Property and their tenants, agents, employees, workmen and others authorised by them from time to time is prohibited from using, [the Servient Tenement] [the Servitude Area] for the purpose of [].]
- [5.] [The owner for the time being of the Benefited Property will pay to the owner for the time being of the Burdened Property on demand from time to time a [] share of the costs properly and reasonably incurred by the owner for the time being of the Burdened Property in repairing, maintaining, [lighting], renewing and replacing [the Burdened Property] [the Servitude Area]. If the owner for the time being of the Benefited Property 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 thereon or on any outstanding

balance from the date of demand until payment in full by the owner for the time being of the Benefited Property.]