

Model S.75 Agreement –

City of Edinburgh Council 2010

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Introduction

This document has been prepared as the City of Edinburgh Council's 'model legal agreement' under Section 75 of the Town and Country Planning (Scotland) Act 1997. It is provided as an aid in the preparation of legal agreements when required in connection with planning applications.

The clauses contained in Section 2 - Operative Clauses, represent the preferred terms in which the Council will seek to enter into Section 75 agreements in relation to the Council's policies that involve developer contributions. These policies are as follows;

- Affordable Housing;
- Developer Contributions for Investment in Schools;
- Tram Developer Contribution Guideline; and,
- Transport Requirements: Developer Contributions.

Further notes on the way in which these policies are implemented via agreements are provided alongside each of the model clauses. These policies can be accessed in full using the Council's website.

Planning Circular 1/10: Planning Agreements sets out Scottish Government policy on the use of agreements made under Section 75 of the Town and Country Planning (Scotland) Act 1997. This model Section 75 Agreement takes into account the policy tests and principles set out in the Circular.

The provisions in this document are not exhaustive. They do not cover all of the circumstances in which contributions will be sought or other requirements that may be placed upon developers. It would not be possible to achieve this and instead it is considered more useful to identify the standard provisions that apply in most instances. It is accepted that the clauses provided will need to be amended to suit individual circumstances for example; in connection with large developments the Council will usually be willing to phase large contributions. A Section 69 Agreement under the Local Government (Scotland) Act 1973 may be acceptable provided

payments are made at the point of signing and before the release of planning permission.

It is hoped that this document will be a useful tool in facilitating discussions on developer contributions and streamlining the process. It is intended as a means of making this aspect of the planning process, clearer to all parties involved.

Section 1 – Title Page and Preamble

MINUTE OF AGREEMENT

between

THE CITY OF EDINBURGH COUNCIL, the Local Authority for the said City in terms of the Local Government etc. (Scotland) Act 1994, and having its principal office at City Chambers, High Street, Edinburgh (who and whose successors as the Planning Authority and Roads Authority respectively are hereinafter referred to as "the Council")

and

(ENTER COMPANY NAME) a Company incorporated under the Companies Acts, Company Number (enter company number) and having its Registered Office at (enter address)

or

(ENTER RSL NAME) registered under the Industrial and Provident Societies Acts (Registered Number enter), a Scottish Charity (Registered Number enter) and having its Registered Office at (enter address)

(who with their respective successors in ownership of the Agreement Subjects as hereinafter defined are hereinafter referred to as "the Proprietors")

CONSIDERING (One) that the Council is the planning authority for the City of Edinburgh in terms of Section 1 of the Town and Country Planning (Scotland) Act 1997 (hereinafter referred to as "the 1997 Act");

(Two) that the Council is the roads authority for the City of Edinburgh in terms of Section 151 of The Roads (Scotland) Act 1984 (as said Section 151 is amended by Section 180 and Paragraph 135(10) of Schedule 13 to the Local Government etc. (Scotland) Act 1994);

(Three) that the Council as planning authority is entitled in terms of Section 75 of the 1997 Act, to enter into an agreement with any person interested in land in its district (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 prescribed by the agreement;

(Four) that the Proprietors are heritable proprietors of the Agreement Subjects as hereinafter defined;

(Five) that the Proprietors have applied to the Council for planning permission under the 1997 Act for the Development as hereinafter defined and the Council has resolved to grant said permission subject inter alia to an Agreement under Section 75 of the 1997 Act being entered into in the terms after-mentioned.

NOW THEREFORE the parties hereto have agreed and do hereby agree as follows:-

Section 2 – Definitions

- "the Act" means the Town and Country Planning (Scotland) Act 1997;
- "Affordable Housing Contracts" means:
- (a) a contract or contracts for sale by the Proprietors of land within or forming part of the Agreement Subjects for the purposes of constructing Affordable Housing Units; or
 - (b) a contract or contracts entered into by the Proprietors for sale or lease of Affordable Housing Units to persons in housing need; or
 - (c) such other contract or contracts as may be agreed by the Council for the purposes of providing Affordable Housing Units;
- "Affordable Housing Subjects" means that area or piece of ground forming part of the Agreement Subjects and shown hatched in black on the Plan, or a site to be agreed by the Council and the Proprietors capable of accommodating the Affordable Housing Units;
- "Affordable Housing Unit" means a residential unit which is social rented housing, mid rent housing, shared equity housing, shared ownership housing, discount low cost sale, housing without subsidy or other format of affordable housing tenure which is agreed by the Council as meeting the requirements of persons in housing need and which unit is constructed to Lifetime Homes Standard as defined in the Council's

document “New Build Target Standards – A Practice Note on Design Quality in New Affordable Housing Development”, provided that, in the event that the agreed form of affordable housing units do not attract public funds in respect of their provision, the Council may waive or vary the requirement that such units be constructed to Lifetime Homes Standard;

"the Agreement Subjects" means ALL and WHOLE land at [insert address here], Edinburgh, registered in the Land Register of Scotland under Title Number [insert number here]; (or enter Sasines Conveyancing description here)

"the Application" means the application for planning permission registered by the Council on [enter date] under the Council's reference (enter planning application reference) for the Development;

“Bus Stop Improvements Contribution” means the sum of (enter amount in words) POUNDS (£enter amount) STERLING;

“City Car Club Contribution” means the sum of (enter amount in words) POUNDS (£enter amount) STERLING;

“Commencement Date” means the date on which the Development is initiated by the carrying out of any Material Operation;

“Commutated Sum for Affordable Housing” means the sum of [insert number here] POUNDS (£[insert]) STERLING to be applied by the Council for the provision of Affordable Housing Units;

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| “Completion of Construction” | means the issuing of a Notice of Acceptance of Completion Certificate by the Building Standards Department of the Council; |
| "the Development" | means the development consisting of [enter description of proposed development here] on the Agreement Subjects in terms of the Permission; |
| “Discount Low Cost Sale” | means a residential unit sold at a percentage discount of its open market value for households to persons in housing need; |
| “Education Contribution” | means the sum of (enter amount) POUNDS (£ enter amount) STERLING towards alleviating accommodation pressures at School, Edinburgh. |
| “Housing without subsidy” | means non-subsidised Affordable Housing Units with conditions attached to the missives to maintain the units as Affordable Housing Units to subsequent purchasers, such purchasers being persons in housing need; |
| "Index" | means the All-in Tender Price Index firm figures as published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors on a monthly basis, or if that ceases to be published or the basis upon which such index is calculated is substantially changed or rebased, such substitute or alternative index most likely to achieve an equivalent result as the parties may agree or, in the absence of agreement, as shall be determined pursuant to Clause (arbitration) of this Agreement; |
| “Indexed” | means increased in accordance with the following |

formula:-

$$\frac{b \times c}{a}$$

Where: *a* equals the All-in Tender Price Index published as at the final date of signing of this Agreement, *b* equals the Index as at the date of payment of the relevant sum to be indexed, and *c* equals the relevant sum to be Indexed;

“Material Operation” has the meaning given in section 27 of the Act. For the avoidance of doubt, this definition excludes any material operation undertaken in terms of any valid planning permission granted before the date of the Permission;

“mid rent housing” means housing with rents set at a level higher than social rented housing, but lower than market rent levels to meet the requirements of persons in housing need, such rent levels to be agreed with the Council, acting reasonably having regard to other schemes in Edinburgh;

“Off-site Affordable Housing Subjects Site” means the lands/area known as (enter name of subjects) and registered in the Land Register of Scotland under Title Number (enter title number) or....that area or piece of ground referred to as “Off-site Location” on the plan annexed and signed as relative hereto which area of ground forms part and portion of ALL and WHOLE (enter conveyancing description here);

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| “Open Market Housing” | means the Residential units comprised in the Total Housing Units which are not Affordable Housing Units; |
| "the Permission" | means the planning permission for the Development subject to the conditions set out in the report on the Application to the Council's Development Quality Sub-Committee held on [enter date]; |
| “persons in housing need” | means persons with identified housing needs that would not be met by the normal operation of the housing market in terms of criteria set by the Council from time to time for low cost home ownership housing, mid rent housing and social rented housing or such other type of affordable housing units that may be agreed by the Council to constitute affordable housing tenure; |
| “Plan” | means the plan annexed and signed as relative hereto; |
| “Registered Social Landlord” | means a landlord registered under Section 57 of the Housing (Scotland) Act 2001 or their subsidiary; |
| “residential unit” | means any property within the Agreement Subjects constructed and designed for residential use of any sort and 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; |

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| “Road and Junction Improvements Contribution” | means the sum of (enter amount in words) POUNDS (£enter amount) STERLING |
| “Safer Routes to School Contribution” | means the sum of (enter amount in words) POUNDS (£enter amount) STERLING; |
| “shared equity housing ” | means the individual owner of a residential unit whilst bearing to own a 100% share of a residential unit owns a part agreed share with the remaining share secured to a registered social landlord or Scottish Ministers or other such landlord or body as may be approved by the Council; |
| “shared ownership housing” | means the individual owner purchases part of the residential unit, with the remaining share of the residential unit remaining in the ownership by a Registered Social Landlord. The individual owner pays rent for the share of the residential unit retained by the Registered Social Landlord. The Registered Social Landlord benefits from any equity gain when the house is sold; |
| “social rented housing” | means property provided at an affordable rent owned, managed, leased or otherwise provided by a Registered Social Landlord (or such other body as maybe approved by the Council) to meet the requirements of persons in housing need; |
| “Temporary TRO” | means an order allowing for the Roads Authority/Council to temporarily restrict or prohibit the use of a road, or any part of a road, by vehicles |

or pedestrians; where works are being or are proposed to be carried out on or near the road and there is a likelihood of danger to the public or of serious damage to the highway.

“Temporary TRO Contribution” means the sum of (enter amount) POUNDS (£ enter amount) STERLING ;

“Total Housing Units” means the total number of residential units which are permitted to be constructed on the Agreement Subjects in terms of the Planning Permission;

“Tram Contribution” means the sum of (enter amount) POUNDS (£ enter amount) STERLING;

“Tram Project” means the proposals to construct and operate tram lines in Edinburgh including the provision of tram vehicles, tram stops, and all associated infrastructure, plant and equipment, as authorised by the Edinburgh Tram (Line One) Act 2006 and the Edinburgh Tram (Line Two) Act 2006 as may be amended from time to time;

“Transferring Party” means a Proprietors whom has used all reasonable endeavours to transfer the Affordable Housing and to enter into any other Affordable Housing Contracts, and whom elects to transfer the ownership of the Affordable Housing Subjects to the Council for nil consideration;

“Transport Contribution” means the sum of (enter amount) POUNDS (£ enter amount) STERLING towards public

transport infrastructure improvements in the vicinity of the Development;

“Transport Improvement Works” means works to be carried out by the Proprietors in the vicinity of the Development, specifically (enter details of works to be carried out to local transport infrastructure here);

“TRO Contribution” means the sum of (enter amount) POUNDS (£ enter amount) STERLING;

Section 3 – Operative Clauses

3.1 AFFORDABLE HOUSING

The requirement for affordable housing will be assessed through the application process. The Council's guideline, Affordable Housing Policy is a key document in this respect. The usual arrangement between CEC and a Private Developer is that land for 25% of the residential units will be passed on to a Registered Social Landlord at nil value, before 30% of the market units have been completed. The Registered Social Landlord will normally then develop the affordable housing land. There are circumstances in which commuted sums and off-site provision will be acceptable. As a result clauses reflecting these arrangements are also provided.

3.1.1. On-site Affordable Housing Clause

- (a) Twenty-five percent of the Total Housing Units shall be Affordable Housing Units, which units shall be constructed on the Affordable Housing Subjects;
- (b) The Proprietors will agree the following details with the Council before the Commencement Date:-
 - (i) the type of affordable housing tenure for the Affordable Housing Units;
 - (ii) the location(s) of the Affordable Housing Subjects if not already agreed between the Council and the Proprietors;
 - (iii) the design standards to which the Affordable Housing Units are to be built, which standards shall be agreed with the Council's Housing Department (Services for Communities) and shall not be deemed to have been agreed by virtue of the grant of the Planning Permission or any other approval granted by the Council's Head of Planning and Strategy;
 - (iv) the type of Affordable Housing Contracts by which the

Affordable Housing Units are to be leased, sold or otherwise made available to persons in housing need whether by transfer of land or completed units to the Council, to a Registered Social Landlord or otherwise;

- c) The details agreed in Sub-clause (b) shall be implemented by the Proprietors to the satisfaction of the Council but may be varied by agreement of the Proprietors and the Council both acting reasonably at all times.
- d) The Proprietors shall use all reasonable endeavours to enter into Affordable Housing Contracts with the Council, or a third party nominated by the Council, prior to the completion of construction of twenty-five per cent of the Market Housing.
- e) The Proprietors shall use all reasonable endeavours to transfer the Affordable Housing Subjects to the Council or to a third party nominated by the Council, prior to the completion of construction of thirty per cent of the Market Housing.
- f) In the event that the Proprietors have been unable to enter into any other Affordable Housing Contracts in accordance with Clause 3.1.1 (d) prior to the completion of construction of twenty-five per cent of the Market Units, the Proprietors shall give notice to that effect to the Council and shall with any such notice provide the Council with evidence demonstrating that they have used all reasonable endeavours to transfer the Affordable Housing and to enter into any other Affordable Housing Contracts. If, following receipt of the said notice, the Council (being bound to act reasonably) confirms that it is satisfied that the Proprietors have used all reasonable endeavours as aforesaid, then the provisions of Clause 3.1.1 (d) shall cease to apply and in that event the Proprietors shall continue to use all reasonable endeavours to transfer the Affordable Housing Subjects to the

Council, or to a Registered Social Landlord or to enter into any other Affordable Housing Contracts; provided always that no more than thirty per cent of the Market Units shall be permitted to reach completion of construction until such time as the Proprietors have entered into any other Affordable Housing Contract.

- g) If, following receipt of the said notice in accordance with clause 3.1.1 (f), the Council (being bound to act reasonably) confirms that it is satisfied that the Proprietors have used all reasonable endeavours as aforesaid, then the Proprietors shall have the option to transfer the Affordable Housing Subjects to the Council for no consideration. In the event that the Council cannot within 60 months of the exercise of such option enter into Affordable Housing Contracts to provide Affordable Housing Units or transfer them to a Registered Social Landlord the Council shall at the request of the party from whom the Council obtained ownership of the Affordable Housing Subjects (“the Transferring Party”) transfer the Affordable Housing Subjects back to that Transferring Party who shall be able to market them for the purposes of Market Housing.
- h) In the event that the Proprietors exercises the option referred to in Clause 3.1.1(g) the Transferring Party shall be bound to grant the Council or the third party nominated by the Council, as the case may be, a valid marketable title to the Affordable Housing Subjects.
- i) The terms of the conveyance of the Affordable Housing Subjects shall be agreed prior to the delivery thereof among the Council and the Proprietors and the third party nominated by the Council, as the case may be, declaring that the said conveyance shall contain the Proprietors’ absolute warrandice insofar as relating to the Affordable Housing Subjects and may, at the option of the Proprietors, contain a condition providing that the Affordable Housing Subjects shall be used only for the provision of Affordable Housing Units.

- j) On the delivery of the duly executed conveyance of the Affordable Housing Subjects to the Council, or the third party nominated by the Council, the limits on the occupation of Affordable Housing Units contained in clause 3.1 shall cease to apply.

N.B. For sites which are 100% RSL-owned the following sentence is to be inserted at Clause 3.1.1 (b)

3.1.1 (b) The following clauses (b) to (j) inclusive shall only apply if the said Agreement Subjects are sold to a party other than a Registered Social Landlord as defined by the Housing (Scotland) Act 2001 as amended.

3.1.2 Commuted Sum for Affordable Housing

- (a) The Proprietors will pay to the Council the Commuted Sum for Affordable Housing before the Commencement Date.
- (b) On the delivery of the payment of the Commuted Sum to the Council by the Transferring Party, the limits on the Affordable Housing Subjects contained in clause 3.1 shall cease to apply.
- (c). In the event of the Commuted Sum for Affordable Housing not being utilised in full by the Council within ten years of the date of payment to the Council (or if phased payments the date of the last payment) for the provision of Affordable Housing Units the such contribution or the unused part thereof, as appropriate, shall be refunded to the Transferring Party following a written request from the Transferring Party for repayment.

N.B. Where larger residential developments are proposed the Council may negotiate the payment of the Commuted Sum for Affordable Housing by way of instalments linked to phasing.

3.1.3 Offsite Affordable Housing

- (a) The Proprietors will submit detailed proposals (or the Council and the Proprietors will reach an agreement regarding the terms and conditions that an offsite location must meet, in line with policy requirements) for the off-site provision of the Affordable Housing Subjects. The Proprietors will submit details of the Off-site Affordable Housing Subjects site where they are to be located to be approved by the Head of Services for Communities.

- (b) Following receipt of the said approval, the Proprietors will deliver to the Council, or to a Registered Social Landlord approved by the Council, the whole title and interest in the Off-site Affordable Housing Subjects Site for nil consideration prior to the Commencement of Development on the Agreement Subjects.

- (c) On the delivery of the duly executed conveyance of whole title and interest of the Off-site Affordable Housing Subjects Site to the Council, or the third party nominated by the Council, the limits on the Affordable Housing Subjects contained in Clause 3.1 shall cease to apply.

3.2 EDUCATION

The requirement for a contribution towards school infrastructure will be assessed through the application process. The Council's guideline, Developer Contributions for Investment in Schools is a key document in this assessment and identifies the circumstances in which contributions will be sought. The clauses below set out the way in which contributions should be delivered. In relation to large developments phased payments may be acceptable and will be paid at appropriate points in the construction programme. Education contributions should be indexed to the date of payment.

3.2.1 Education Contribution Clause

- (a) Prior to the Commencement Date/occupation of any residential unit (delete as appropriate), the Proprietors shall pay to the Council the Education Contribution Indexed.

- (b) In the event of the Education Contribution paid under Clause (2.1(a)) hereof not being utilised in full by the Council within [five/ten] (delete as appropriate) years of the date of payment to the Council then such contribution or the unused part thereof, as appropriate, together with any interest that has accrued thereon, shall be refunded to the Proprietors following a written request from the Proprietors for repayment.

N.B. The decision as to whether the Council will hold the money for ten years or five years will be dependent upon the programme for delivery of school infrastructure and the need to identify further funding.

3.3 TRAM

The requirement for a contribution towards the tram project will be assessed through the application process. The Council's Tram Developer Contributions guideline is a key document in this assessment and identifies a number of contributions which may be sought. The clauses below set out the way in which contributions should be delivered. In relation to large developments phased payments may be acceptable and will be paid at appropriate points in the construction programme.

3.3.1 Tram Contribution Clause

- (a) Prior to the Commencement Date, the Proprietors shall pay to the Council the Tram Contribution Indexed to the date of payment, which Tram Contribution shall be applied towards the Tram Project. In the event that the Council decides not to proceed with the Tram Project or if the Tram Project has not commenced within ten years of the date of payment of the Tram Contribution, the Council shall be entitled to use the Tram Contribution for the provision of alternative public transport improvements serving the Development.
- (b) The Council shall on receipt of the Tram Contribution pay the Tram Contribution into a separate account held by the Council, which Tram Contribution shall be invested so as to earn the best rate of interest that can reasonably be obtained by the Council.
- (c) In the event of the Tram Contribution not being utilised by the Council by 31 December 2020 then the Tram Contribution, together with any interest that has accrued thereon, shall be refunded to the Proprietors following receipt of a written request from the Proprietors for repayment.

3.4 TRANSPORT

The requirement for a contribution towards transport infrastructure will be assessed through the application process. The Council's guideline, Transport Requirements: Developer Contributions is a key document in this assessment and identifies a number of contributions which may be sought. The clauses below set out the way in which contributions should be delivered. In most cases it is preferable for the developer to carry out the necessary works although in some cases the payment of a financial contribution will be acceptable. In relation to large developments phased payments may be acceptable and will be paid at appropriate points in the construction programme.

3.4.1 Transport Infrastructure Works Clause

Prior to first occupation of the development/first day of trading/the Commencement Date(delete as appropriate) the Proprietors will carry out and complete the Transport Improvement Works to the satisfaction of the Head of Planning

3.4.2 City Car Club Contribution

- (a) The Proprietors shall pay the City Car Club Contribution to the Council, which sum shall be applied by the Council towards the Edinburgh City Car Club to fund the provision of a City Car Club vehicle to be located within the vicinity of the Development and associated costs.

- (b) The Contribution shall be payable in full prior to [first occupation of the Development/the Commencement Date] (delete as appropriate).

3.4.3 Road and Junction Improvements Contribution

The Proprietors shall prior to the Commencement Date pay to the Council the Road and Junction Improvements Contribution to be applied by the Council towards the upgrading of the (enter details) Road/ (enter details) Road signalised junction.

3.4.4 Bus Stop Improvements

Prior to the Commencement Date the Proprietors shall pay the Bus Stop Improvements Contribution to the Council, and the Council will apply the contribution towards bus stop improvements and in particular the part cost of a new bus shelter in the vicinity of the Development.

3.4.5 Safer Routes to School

- (a) Prior to the Commencement Date The Proprietors shall pay the Safer Routes to School Contribution to the Council, and the Council will apply the contribution towards the Council's Safer Routes to School programme for improvements to cycling and walking routes to (enter name) School/Academy.

3.4.6 Vehicle and Pedestrian Movements

Prior to the Commencement Date the Proprietors shall pay to the Council the Transport Contribution Indexed, from the last date of signing of this Agreement which Contribution shall be applied by the Council towards improvements to vehicular and pedestrian movements at (enter location address), Edinburgh and the surrounding road network.

3.4.7 Temporary TRO and TRO Provision

Prior to the Commencement Date, the Proprietors shall pay to the Council the TRO Contribution, which Contribution shall be applied by the Council towards the promotion of a Traffic Regulation Order for the purpose of [introducing loading and waiting restrictions/the re-determination of a road/the installation of a traffic management system](delete as appropriate) on/at (delete as appropriate) (enter location address), Edinburgh; or

Prior to the Commencement Date, the Proprietors shall pay to the Council the Temporary TRO Contribution, which Contribution shall be applied by the Council towards the promotion of a Temporary Traffic Regulation Order for the purpose of [introducing loading and waiting restrictions/the re-determination of a road/the installation of a traffic management system](delete as appropriate) on a temporary basis on/at (delete as appropriate) (enter location address), Edinburgh.

3.4.8 Standard Clause for Re-payment of Developer Contributions

In the event of (One) the Planning Permission being refused, revoked or in any way falling; or (Two) the Contribution not being utilised, or fully utilised, by the Council within five/ten years of the Payment Date, then following a written request from the Proprietors, the Contribution or the unused part thereof, together with any interest that has accrued thereon, as appropriate, shall be refunded to the Proprietors.

3.4.9 Travel Plans

[Within three months of commencement of demolition works in implementation of the Development/Prior to use being taken up/Prior to first occupation of/Prior to the Commencement Date] (delete as appropriate), the Developer shall submit a draft Travel Plan in respect of the Agreement Subjects (“the Plan”) to the Council for approval. The Council shall have a period of not exceeding six months from its receipt of the Plan to approve or reject the same (with written reasons therefor). In the event

of the rejection of the Plan by the Council, either party shall have the right to require that the matter is referred to an arbiter in terms of Clause (enter number of arbitration clause). Following approval or determination of the Travel Plan, the Proprietors shall (or shall procure that any person holding a lease of the Development or any part thereof from time to time) shall (i) publicise the Travel Plan appropriately to the satisfaction of the Council, acting reasonably; and (ii) implement the terms of the Travel Plan within six months of [the first occupation of/the first use of the development] (delete as appropriate).

Section 4 – General Clauses

4.1 DISCHARGE

If so requested in writing by the Proprietors, the Council agrees to grant a partial or full Discharge of the Proprietors' obligations (enter here a reference to the clauses which contain the Proprietors' obligations) under this Agreement on due performance by the Proprietors of their obligations hereunder. Further in the event of the Planning Permission granted pursuant to this Agreement being revoked or in any way falling these presents shall fall and be deemed pro non scripto and the Council shall grant a Discharge of this Agreement. The Proprietors shall be responsible for the Council's reasonable legal expenses and outlays properly incurred in the negotiation, drafting, preparation, completion and registration of any Discharge hereto.

4.2 VARIATION

Without prejudice to Clause (refer to Discharge clause) hereof in the event of the parties hereto agreeing to a variation of the terms hereof the Council shall grant a Discharge of this Agreement and the parties shall contemporaneously enter into a fresh agreement in terms identical to the terms of this Agreement subject only to any variations as may be agreed between the parties hereto. The Proprietors shall be responsible for the Council's reasonable legal expenses and outlays properly incurred in the negotiation, drafting, preparation, completion and registration of any Discharge or variation hereto.

4.3 ASSIGNATION

The Proprietors shall not transfer or assign their rights and obligations under this Agreement or dispose of their interests in the Agreement Subjects prior to the recording of this Agreement in the Land Register of Scotland.

4.4 ARBITRATION

Any dispute of any kind which may arise between the parties hereto and their successors regarding this Agreement shall be referred, on the application of any party, to the decision of an Arbitrator seated in Scotland to be mutually agreed by the parties and failing agreement appointed by the Sheriff Principal of Lothian and Borders at Edinburgh. The decision of such Arbitrator, including any award of expenses, shall be final and binding on the parties subject to the provisions of the Arbitration (Scotland) Act 2010 and failing such award the cost of any such arbitration shall be borne equally between the parties.

4.5 ENFORCEABILITY

This Agreement is made pursuant to Section 75 of the 1997 Act and it is agreed by the Council and the Proprietors that the obligations undertaken by the Proprietors in this Agreement shall be enforceable at the instance of the Council as planning and roads authority against the Proprietors and persons deriving title to the Agreement Subjects or any part thereof from the Proprietors.

4.6 REGISTRATION

The parties consent to registration hereof for preservation and execution..7

EXPENSES

The Proprietors shall meet the Council's reasonable legal expenses and outlays properly incurred in the negotiation, drafting, preparation, completion and registration of this Agreement, to include the provision of two Extracts of the Agreement for the Council's own use: IN WITNESS WHEREOF

MINUTE OF AGREEMENT

under Section 75 of the Town and
Country Planning (Scotland) Act
1997

between

THE CITY OF EDINBURGH
COUNCIL

and

Subjects:- , Edinburgh

FAS: 1245

Alastair Maclean
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Corporate Services
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