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North Whins Deed of Developer Conditions DRAFT

WE, DUNELAND LIMITED a company incorporated under the Companies Acts in Scotland (Registered Number SC174358) and having our Registered Office at The Park, Findhorn Bay, Forres, Moray, heritable proprietors of ALL and WHOLE the subjects known as Duneland, West Whins Development, Findhorn, Moray and others in the County of Moray described in Disposition in our favour recorded in the Division of the General Register of Sasines for the County of Moray on 6/6/1997 CONSIDERING THAT we are about to develop the said subjects and sell or convey the said subjects in separate parts by Dispositions or other conveyances in favour of the purchasers thereof DO HEREBY provide as follows:-

PART I Interpretation

In this deed:-

“**the Developer**” means the said Duneland Limited and their successors as proprietors of the remainder of the Development.

“**the Development**” means the mixed use development of residential and commercial units forming the subjects known as Duneland Limited, North Whins Development shown **delineated in red on the plan annexed and signed as relative hereto**.

“**the dwellinghouse**” means a plot on which a detached, semi-detached or terraced dwellinghouse **a detached dwellinghouse** is to be or has been erected on the Development.

“**the common parts**” means any paths, garden and amenity ground, and communal ancillary accommodation in the Development but excluding **xxx on the said plan**

“**the Proprietor**” means the party or parties in whose favour a Disposition or other conveyance of a dwellinghouse is granted by the Developer and his, her or their successors, executors and assignees whomsoever.

“**the remainder of the Development**” means the Development under exception of all dwellinghouses and other parts disposed by the Developer to the proprietors.

“**Park Planning Group**” means an organisation comprising representatives of the Park Ecovillage as defined by the Deed of Community Conditions recorded in the said Division of the General Register of Sasines.

“**Title Holders’ Association**” means an organisation comprising all owners of any plot in the Park Ecovillage as defined by the Deed of Community Conditions recorded in the said Division of the General Register of Sasines.

“**The 2003 Act**” means the Title Conditions (Scotland) Act 2003

For the purposes of the above definitions the singular includes the plural and any reference to the masculine gender includes the feminine gender.

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PART II Real Burdens

(1) All conditions in this deed are real burdens. The real burdens in clauses (x) to (y) inclusive are imposed on the property as Community Burdens in terms of Section 25 of The 2003 Act and are enforceable by the proprietor for the time being of each dwellinghouse or including any dwellinghouse owned by the Developers but the real burdens shall not take effect with respect to any dwellinghouse until the date of registration in the Land Register of a Disposition of that dwellinghouse in which the real burdens set out in this deed are stated to apply. Section 35 of the 2003 Act shall not apply to any real burdens in this deed.

(1) DWELLINGHOUSES GENERALLY

(a) Conditions

Before beginning the erection of a dwellinghouse a Proprietor must obtain the written approval of us, our nominees, and adhere to such terms conditions and guidelines as we and the local planning and building control authorities may impose and thereafter complete the said dwellinghouse according to said approval and any amendments to said approvals endorsed in writing by us and the said authorities. Thereafter each dwellinghouse shall be held by the proprietor thereof in all time coming subject to the conditions of and real burdens contained in this deed.

The Proprietor shall keep the Developer (or its Assignees) informed of the intended programme of 'works' in respect of all activities which will alter the land or natural environment, including but not limited to necessary site clearance or landscaping as well as physical construction, and grants access to the Developer (or its Assignees) for the purpose of attunement and advance communication with the nature kingdom of any envisaged disruption to their environment.

The Proprietor shall coordinate regularly with the Developer's appointed agent during the construction phase for the purposes of ensuring the spirit & intent of this document is implemented and to coordinate any other matters that may arise throughout the development phase. The Proprietor agrees to cooperate with said agent in respect of all matters that may from time to time be necessary to maintain the peace and proper functioning of the development and broader community.

The Proprietor (or its Assignees) shall deposit its Health & Safety Plan with the Developer's agent, and shall comply with the Developer's own Health & Safety Plan & Policy from time to time in place.

The Proprietor shall notify the Site Manager of all scheduled crane usage and concrete pours.

The Proprietor shall notify the Developer upon legal completion of the Dwellinghouse(s).

The Proprietor is responsible for clearing any remaining plant and materials from the site upon completion of the Dwellinghouse(s)... Where the Proprietor, or any contractor employed by him, has not left the site in good order, the Developer may, without further notice, employ a third party to clear the site and to bill the Proprietor accordingly.

The Developer will attend any final contractor meetings upon the Developer's request to advise any outstanding issues under this Deed.

The Proprietor shall nominate a coordinator or representative who shall be responsible for coordinating with the Developer's agent & fulfilling the terms of this Deed during the development phase.

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The Proprietor indemnifies the Developer for all loss or damage caused to 3rd parties on their site/The Proprietor acknowledges the burden of responsibility for all public liability issues relating to the plot, and general responsibility for everything that happens upon it.

The Proprietor shall comply with the terms of the Traffic Management Agreement between the Developer and Findhorn Foundation, specifically to:

- ! coordinate all construction related vehicles over 7.5 ton with the Findhorn Foundation Park Camp Focaliser **during the months of June, July & August.**
- ! cover the cost of any damage to existing Park roads beyond normal wear and tear expected by such construction traffic.

The Proprietor shall comply with the conditions/terms of the Planning Permission in Principle approval which is in place at the time of their purchase or to which their purchase is subject.

The Developer may give notice to the Proprietor of any Health & Safety risk for which the proprietor is responsible, requiring him to take reasonable action to mitigate the risk in question. Where the Proprietor fails to address the matter in the timeframe given in the notice, and commensurate to the level of risk, the Developer reserves the right to act in the Proprietor's stead and bill him accordingly.

Any and all Detailed Planning applications submitted/obtained by the Proprietor, shall not materially vary the spirit, intent or practical considerations of the existing PPP approval. This shall include, by way of example, but by no means limited to:-

Ridge Height of buildings being restricted to 1.5m above the dune ridge path

- ! ~~Number of dwellings (either as specified or implied for a given plot by the PPP approval or by some other instrument forming part of the sale documentation).~~

-(b) Servitudes

Each dwellinghouse shall have a right of pedestrian access at all times over the common paths and vehicular and pedestrian access over the vehicle access areas serving the parking spaces in the Development and to connect into and thereafter use the communal surface water drainage system.

(c) Maintenance

The proprietor of each dwellinghouse shall be bound to maintain his dwellinghouse (and all parts thereof and the fittings therein) in good order and condition in all time coming and where necessary repair, renew and rebuild the same all at his own expense.

(d) Access for Works

The proprietor of each dwellinghouse shall be bound to permit to access at all reasonable times (upon reasonable prior notice being given except in case of emergency) to and through such dwellinghouse to the ~~xxx~~ Developer and/or the proprietor of any other dwellinghouse and to any tradesmen employed by him or them for the purpose of inspecting and executing any repairs, maintenance or renewal of the common parts or any part thereof or of any of the dwellinghouses or the common parts subject to making good all damage occasioned thereby.

(e) Structural Alterations

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No structural or external alterations (including any alterations to windows or to window frames) shall be made to any dwellinghouse except with the prior consent in writing of us or our assignees and the Park Planning Group.

(g) Signs (and others) Prohibited

There shall not be erected or fixed to or allowed to hang from the outside walls or windows of any dwellinghouse, the walls or roof of the building or the walls or fences of the building any notices, plates, signs, satellite television or other device except with the prior written consent of us or our assignees or the Park Planning Group. There shall not be exposed in any way so as to be visible from the outside of any dwellinghouse any notice, plate, sign or other device except with the prior consent in writing of us or our assignees or Park Planning Group.

(h) Charges on Sale

The Proprietor, and each successor in title, shall pay to Park Ecovillage Trust or its successors in office or nominees the sum of 2% of the sale price of the dwellinghouse (exclusive of Value Added Tax) prior to concluding any sale of the dwellinghouse, for the purpose of. On the sale of a dwellinghouse 2% of the sale price (exclusive of Value Added Tax) shall be paid to Park Ecovillage Trust or its successors in office or nominees to supporting the provision of affordable housing within The Park Ecovillage on a long term basis.

In the event of failure to pay under this clause, liability for the amount shall pass to the new Proprietor, and Park EcoVillage Trust may register a legal charge against the dwellinghouse to secure its interest under this provision.

It is the responsibility of each incoming Proprietor to ensure that its predecessor in title made payment under this provision.

The Land Sales Group shall notify the Park Eco-Village Trust upon the application to them of any new Proprietor.

(2) ANCILLARY BUILDINGS & COMMUNAL GROUND

Any compartments in the Development which are not used exclusively as residences and the common parts shall be used in all time coming as ancillary buildings or amenity ground and access roadways in connection with the dwellinghouses and for no other purposes. No other buildings of any kind whatsoever shall be erected on the common parts save with the prior written consent of us or our assignees or the Park Planning Group. All access roads and paths forming part of the Development shall be kept clear and free from obstruction and shall not be used for the purpose of parking vehicles of any nature whatsoever or the depositing of other objects.

(a) Use of Common Parts

Any changes to the use of the common parts will require the consent of the Park Planning Group.

(b) Parking

The parking of vehicles anywhere in the Development shall be prohibited except in the designated parking spaces as may be available from time to time of taxed, insured and roadworthy domestic vehicles.

(c) Planted areas

All planted areas of the common parts and all grass, plants, shrubs and trees thereon shall be maintained in a neat and tidy condition and all grassed areas and all plants, shrubs and trees in and on the property shall be kept properly tended, mown and maintained at all times. All trees and shrubs growing thereon or which may be planted shall be kept properly staked and strapped as need be to promote their stability and growth.

The proprietors shall be prohibited from lopping, cutting down or damaging any of the trees, shrubs or plants within the development and any such work shall be administered only by the Titleholders Association in the interests of good estate management.

(15) SERVITUDES

We the said Developers and our Assignees shall have a general right of access to all parts of the Development not owned by us and to every part thereof for all purposes connected with the general administration of the Development and the inspection, maintenance, painting, repair and renewal of the common parts and the dwellinghouses and without prejudice to that generality shall have:-

(a) A servitude or other right of access to the Development and each and every part thereof for the construction and installation in, through, over and under the development of any electricity mains or cables, gas supply mains or pipes, water mains and supply pipes, sewage disposal pipes, drainage pipes, channels or outlets or any other service media for the benefit of the Development and/or any adjoining or neighbouring subjects together with all necessary rights to connect into and use all such items for the provision of services to any part of the Development or adjoining or neighbouring subjects.

(b) A servitude or other right of access to the Development and each and every part thereof for the purpose of inspecting any electricity mains and cables, gas supply, mains or pipes, water mains and supply pipes, sewage disposal pipes, drainage pipes, channels or outlets and any other service media therein contained together with all access and other rights necessary to facilitate the repair, replacement, renewal and upgrading of the same and/or making connection to such items for the benefit of any part of the property or adjoining or neighbouring subjects.

(d) the rights reserved and granted to us or our assignees may be exercised by us or our assignees, by tradesmen and contractors employed by us or our assignees and by all other parties authorised by us or our assignees. There is reserved to us or our assignees full power and liberty to grant or retain servitudes and wayleaves over the development in favour of the owners of ground adjoining the property.

(16) DWELLINGHOUSE DEVELOPMENT TIME LIMIT

Where a proprietor has purchased a plot within the Development to erect a dwellinghouse and has failed to obtain a completion certificate from the local authority within the time limit required by the Title Holders Association then the Title Holders Association may grant an extension to the time limit to obtain a completion certificate on such terms and at such cost as the Title Holders Association deems appropriate.

(17) RESERVATIONS

The following reservations shall be deemed to be authorised (so far as is necessary to give effect to them) in terms of Section 33 of The 2003 Act:-

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(a) There is reserved to us as the developers the right to decide before the commencement of the construction of the first dwellinghouse on the Development whether to have installed a biomass heating system and relative infrastructure for the Development to which all Proprietors will be obliged to use and contribute to the cost thereof

(b) There is reserved to us the developers and our assignees the right to impose, vary or discharge in all or in part the reservations, real burdens, Community burdens or others contained in this Deed of Conditions and in the event of us our assignees so doing the proprietors of all the dwellinghouses whether consenting or not shall have no right or title to object thereto.

(17) CONFLICT

In the event of a conflict arising in respect of any clause contained in this Deed of Conditions with a clause in the Deed of Community Conditions the terms of the Deed of Community Conditions will prevail.

(18) LANDS TRIBUNAL

No applications may be made to the Lands Tribunal for Scotland under Sections 90(1)(a)(i) and 91(1) of the 2003 Act in respect of the foregoing Community Burdens, servitudes and other real burdens (including this condition) for a period of five years after the date of registration of this deed in the Land Register: IN WITNESS WHEREOF these presents are subscribed by,
Director of Duneland Limited at Forres on the(date) in the presence of
the witness hereto subscribing:

name of witness.....

address of witness.....

witness signs here.....

Director signs here