

MINUTE OF AGREEMENT

between

THE ROWETT RESEARCH INSTITUTE, a company incorporated under the Companies Acts (Registered Number SC037444) and having its Registered Office at Greenburn Road, Bucksburn, Aberdeen

..... (hereinafter referred to as “the Institute”)

and

[*Insert name of second party*], a company incorporated under the Companies Acts (Registered Number [●]) and having its Registered Office at [*Insert registered office*]

..... (hereinafter referred to as “the Company”)

WHEREAS the Institute and the Company have entered into the Missives (as hereinafter defined); and CONSIDERING THAT the Institute and the Company have agreed to enter into these presents pursuant to and in implement of the Missives; THEREFORE the Institute and the Company HAVE AGREED and DO HEREBY AGREE as follows:-

1. DEFINITIONS

1.1 In this Agreement the following definitions shall apply wherever the context so admits:-

1.1.1 “Agreement” means this agreement and the Schedule and Plan and any variations or amendments hereto from time to time applying;

1.1.2 “Clawback” means the sums due and payable by the Company to the Institute in terms of Clause 2 of the Agreement;

- 1.1.3 “Current Planning Permission” means the planning permission for this Site issued by Aberdeen City Council dated [●] reference [●] [*insert details of planning permission granted at Date of Entry*];
- 1.1.4 “Date of Entry” means [*herein insert date of entry from Missives*] (notwithstanding the date or dates hereof);
- 1.1.5 “GIA” means the area calculated in accordance with the definition of Gross Internal Area contained in the Royal Institution of Chartered Surveyors Code of Measuring Practice 5th Edition and expressed in square metres;
- 1.1.6 “Implemented” in relation to any planning permission shall mean that any works by the Company or any proprietor of the Site or any other person on behalf of or deriving right from the Company or such proprietor (other than any proprietor of any completed residential unit) of construction or site clearance or site preparation associated with the development of the Site pursuant to such planning permission have occurred and the “Date of Implementation” in respect of any such planning permission shall be the date upon which any such works are commenced.
- 1.1.7 “Initial GIA” means the initial development allocation of [●] square metres for the Site comprising the total GIA of all residential units for which planning permission has been granted in accordance with the Current Planning Permission;
- 1.1.8 “Initial Development Allocation” means the initial development allocation of [●] residential units for the Site comprising the total number of all residential units for which planning permission has been granted in accordance with the Current Planning Permission;
- 1.1.9 “Institute” means the Institute and its successors and assignees whomsoever;

- 1.1.10 “Missives” means the contract between the Institute and the Company for the sale of the Site (as hereinafter defined) constituted by [●];
- 1.1.11 “Open Market Value” means the best price that could reasonably be expected to be obtained for the Site if sold with vacant possession on the open market following a reasonable period for marketing between a willing buyer and a willing seller;
- 1.1.12 “Period” means the period ending on [*here insert the tenth anniversary of the date of entry*];
- 1.1.13 “Plan” means the plan annexed and executed as relative to the Agreement;
- 1.1.14 “Prescribed Rate” means the rate of interest which is Four *per centum* (4%) *per annum* above the Base Rate of the Bank of Scotland from time to time or above such other rate equivalent thereto which may from time to time be substituted therefor by the Institute;
- 1.1.15 “Price” means [●] POUNDS (£[●]) STERLING (which sum excludes any charge in respect of Value Added Tax) [*here insert price per missives*];
- 1.1.16 “Retail Price Index” means the Index of Retail Prices (all items) published by H M Government, or if such index is no longer published there shall be substituted therefor such similar index as shall replace the Index of Retail Prices (all items) or such similar index as most closely resembles same adjusted where appropriate to produce a just and equitable result.
- 1.1.17 “Schedule” means the schedule annexed and executed as relative to the Agreement;
- 1.1.18 “Site” means the subjects described in the Schedule;
- 1.1.19 “Subsequent Development Allocation” means the total number of residential units of any description allocated for the Site from time to time pursuant to any grant of planning permission for all and each part of the site;

1.1.20 “Subsequent Planning Permission” means any planning permission issued in respect of the Site or any part or parts thereof (other than the Current Planning Permission) whether by way of application(s) by any person for planning permission(s) to the relevant Planning Authority or to the Scottish Ministers (or their successors) on appeal or by way of amendment(s) or variation(s) to the Current Planning Permission or any other Planning Permission obtained by any person.

1.1.21 “Value Added Tax” includes any tax of a similar nature from time to time imposed in substitution for or in addition to value added tax.

1.2 Words importing the singular include the plural and *vice versa*, words importing the masculine gender include the feminine gender and *vice versa* and words importing the neuter include the masculine and feminine genders and *vice versa* and references to any person, where appropriate, include references to any corporation, company, firm, trust or other body.

1.3 A reference to “Clause” is a reference to a clause of the Agreement.

1.4 Headings and recitals shall not affect the interpretation of the Agreement.

2. CLAWBACK

The Company binds and obliges itself and its successors and representatives to pay to the Institute the sum or sums of Clawback falling due for payment in terms of the following provisions:-

2.1 It is acknowledged that the Company has obtained the Current Planning Permission for inter alia a development comprising the Initial Development Allocation and the Initial GIA on the Site.

- 2.2 In the event of there being Implemented at any time any Subsequent Planning Permission which is granted during the Period for the provision or erection of a residential unit or residential units on the Site or any part or parts thereof which results in :-
- 2.2.1 The total GIA of all residential units on the Site for which planning permission has been granted being higher than the Initial GIA; and/or
- 2.2.2 The Subsequent Development Allocation is higher than the Initial Development Allocation;
- and on each such occasion there shall be due and payable by the Company to the Institute a Clawback which shall be the sum representing an amount equal to the higher of:-
- 2.2.3 The sum calculated by application of the formula $A \div B \times C$ where "A" equals the total GIA pursuant to clause 2.2.1, "B" equals the Initial GIA and C equals the Price multiplied by the Multiplier (defined below); and
- 2.2.4 The sum calculated by application of the formula $A \div B \times C$ where "A" equals the Subsequent Development Allocation pursuant to clause 2.2.2, "B" equals the Initial Development Allocation and "C" equals the Price multiplied by the Multiplier (defined below)
- 2.3 The "Multiplier" for the purpose of Clause 2.2 shall mean the figure representing $X \div Y$ where X is the Retail Price Index as at the Date of Implementation of the Subsequent Planning Permission and Y is the Retail Price Index as at the Date of Entry. Declaring that if following application of the foregoing formula the Multiplier shall be less than 1, the Multiplier shall be deemed to be 1.

- 2.4 In the case of more than one Subsequent Planning Permission being Implemented for the same part or parts of the Site the amount of any Clawback paid by the Company attributable to any previous Subsequent Planning Permission shall be deducted from the amount of Clawback to be paid by the Company pursuant to any further Subsequent Planning Permission.
- 2.5 In the event of there being Implemented at any time any Subsequent Planning Permission which is granted during the Period for the provision or erection of a commercial and/or retail and/or any other form of non-residential development on the Site or any part or parts thereof (and on each such occasion) there shall be due and payable by the Company to the Institute a Clawback which shall be the sum equal to the Open Market Value of the Site at the date of Implementation of such Subsequent Planning Permission under deduction of the sum equal to the total of (i) the Price multiplied by the Multiplier (as defined in Clause 2.3) and (ii) the total amount of any Clawback previously paid by the Company pursuant to the provisions of this Agreement.
- 2.6 For the purposes of Clause 2.5, the Open Market Value of the Site affected by any Subsequent Planning Permission in respect of which Clawback is payable in accordance with Clause 2.5 shall, in the absence of agreement between the Institute and the Company within a reasonable period of the relevant Date of Implementation (such period to be no greater than four (4) weeks from the date last-mentioned) be conclusively determined by a Chartered Surveyor being an appropriately experienced surveyor with valuation knowledge of the area in which the Site is situated (acting as an Arbiter and not as an expert) to be agreed upon by the Institute and the Company and in default of such agreement to be appointed by the President for the time being of the Scottish Branch of the Royal Institution of Chartered Surveyors on the application of the Institute or the Company (“the Arbiter”). The determination of the

Arbiter shall be final and binding on the Institute and the Company there being specifically excluded the provisions of Section 3(1) of the Administration of Justice (Scotland) Act 1972. In each case the fees and expenses of the Arbiter so appointed from time to time shall be borne equally by the Institute and the Company unless otherwise determined in each case by the Arbiter and the Institute and the Company shall each otherwise bear their own costs relating thereto. The Arbiter shall conduct the arbitration in accordance with the Arbitration (Scotland) Act 1894.

- 2.7 In the event that no Subsequent Planning Permission is granted on or prior to the date of expiry of the Period the obligation upon the Company to pay Clawback shall lapse and the Agreement shall cease to have effect.
- 2.8 The Company shall intimate the grant of any Subsequent Planning Permission to the Institute in writing within fourteen (14) days from the date of the issue of the written decision notice relative to any such grant of a Subsequent Planning Permission (whether by the relevant Planning Authority or the Reporter for the Scottish Ministers (or their successors) (or the Reporter's successor)).
- 2.9 In the event of any Subsequent Planning Permission being Implemented, the Company shall intimate same to the Institute in writing within seven (7) days from the Date of Implementation.
- 2.10 The Clawback determined in accordance with Clause 2.2 shall be due and payable by the Company to the Institute on the date which is fourteen (14) days after the relevant Date of Implementation.
- 2.11 The Clawback determined in accordance with Clause 2.5 shall be due and payable by the Company to the Institute on the date which is fourteen (14) days after the date upon which the amount of the Clawback is agreed or determined in accordance with the provisions of Clause 2.5.

- 2.12 The amount of any Clawback due by the Company is exclusive of Value Added Tax and where Value Added Tax is chargeable it shall be payable in addition to and simultaneously with payment of the Clawback.
- 2.13 Interest shall be due on the Clawback sums due and payable determined in accordance with this Clause 2 in the event of late or non-payment at the Prescribed Rate from and including the due date for payment of the Clawback as aforesaid until payment of the Clawback in full. The said interest shall include interest as well after as before any decree obtained by the Institute for the Clawback so determined in terms of Clause 2.
- 2.14 All proper and reasonable costs, charges and expenses and monies of the Institute incurred or expended on proceedings for the enforcement of the obligations incumbent upon the Company and its successors and assignees under the Agreement including for obtaining payment of the monies due to the Institute (whether or not such costs, charges, expenses or monies or part thereof would be allowable on a party and party or solicitor and own client taxation by the court) in terms of this Clause 2 may be recoverable from the Company as a debt.

3 INTEREST

Interest on any sum or sums of money due by the Company to the Institute not constituting Clawback shall be due from the date of demand by the Institute or if applicable from the date(s) otherwise stipulated in the Agreement. The said interest charged as aforesaid shall include interest as well after as before any decree obtained by the Institute for the said sum or sums of money or any part thereof.

4 CONTINUING OBLIGATION

The obligations hereby undertaken by the Company shall not be considered as satisfied or discharged by any intermediate payment of the whole or any part of the sums owing as

aforesaid but shall constitute and be a continuing obligation to the Institute notwithstanding any settlement on account or any matter or thing whatsoever and the said obligations shall remain in full force and effect until fully implemented.

5 PLANNING MATTERS

5.1 The Company shall, on demand and without delay, provide the Institute with information relating to the planning position of the Site from time to time as the Institute may require from time to time to assess any Clawback and any other sums due from time to time in terms of the Agreement and to assess the performance by the Company of its obligations under the Agreement and any requirements for consent in terms of the Agreement or all or any of the foregoing.

5.2 In addition, and without prejudice to the generality of clause 5.1, the following specific obligations on the Company shall also apply:-

5.2.1 In relation to Clause 2 the Company shall, without demand and without delay, inform the Institute and keep the Institute generally informed of any applications submitted from time to time by the Company or by any other party of which the Company is aware to the Planning Authority (or on appeal) for any planning permission(s) or amendment(s) to the Current Planning Permission for the Site or any part or parts thereof; and

5.2.2 In relation to Clause 2 the Company shall, without demand and without delay, inform the Institute in writing immediately the Company or any other party of which the Company is aware receives the written grant of planning permission(s) or amendment(s) to the Current Planning Permission for the Site or any part or parts thereof or the Reporter's decision on appeal.

6. COMPANY TO REMAIN LIABLE

The Company shall remain liable for performance of the obligations incumbent upon them under Clause 2 of the Agreement and for all sums due and which may become due including (if applicable) the first Clawback and each and every subsequent Clawback and that irrespective of whether or not the whole or any part or parts (as the case may be) of the Site are sold by the Company or the Company otherwise disposes of its interest in the whole or any part of the Site.

7. NO ALIENATION BY COMPANY

Except with the prior written consent of the Institute, the Company shall not assign its rights and/or obligations under the Agreement;

8. NOTICES

Any notice, demand for payment, intimation or consent or other demand (hereinafter referred to collectively as “notice”) served in terms of the Agreement shall be in writing. Any notice to either party shall be sufficiently served if sent by Recorded Delivery post to that party’s Registered Office. Any notice sent by Recorded Delivery post shall be deemed duly served at the expiry of two (2) days after the day of posting. In proving service it shall be sufficient to prove that the envelope containing the notice was duly addressed to the appropriate party in accordance with this Clause and posted to the place to which it was so addressed.

9. REMEDIES

The rights and remedies available to the Institute under the Agreement are in addition and without prejudice to and not in substitution for all other rights and remedies competent to the Institute by statute or at common law or otherwise.

10. ALIENATION BY INSTITUTE

The Institute may at any time assign its rights as creditor under the Agreement to any person and any such assignee or subsequent assignee shall have the benefit of all obligations by the Company and of all provisions and others contained in the Agreement or implied therein by Act of Parliament or otherwise by law and the said assignee may at any time thereafter exercise all rights and remedies competent or which would have become competent to the Institute under the Agreement or implied therein by Act of Parliament or otherwise by law.

11. COMPANY TO BIND SUCCESSORS

Save in the case of any purchaser of a completed residential unit, the Company shall be obliged and is bound to bind their successors in title to the Site whomsoever to comply with the provisions and terms of the Agreement and shall inform the Institute in writing immediately the Company proposes to deal with its interest in the Site with any third party and shall at the request of the Institute assign or otherwise transfer the obligations incumbent upon it under the Agreement to such person and furthermore shall be obliged and is bound to require such person to which the obligations upon the Company are to be assigned or otherwise transferred to intimate to the Institute in writing immediately that the transaction for such assignation or transfer has been completed upon such completion.

12. OBLIGATIONS VALID

The obligations in the Agreement shall come into full force and effect on the Date of Entry and shall apply irrespective of the date of registration in the Land Register of Scotland of the title of the Site or part or parts thereof in the name of the Company and shall remain in full force and effect unless and until specifically discharged, varied or restricted in writing and the terms of the Agreement shall apply irrespective of whether or not the Company is infert in the Site or any part or parts thereof.

13. CHANGE OF CONTROL

In the event that there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the Company, the Company shall be obliged and is bound to bind any person acquiring such control whomsoever to comply with the provisions and terms of the Agreement and shall inform the Institute in writing immediately of any such change of control at the request of the Institute assign or otherwise transfer the obligations incumbent upon it under the Agreement to such person and furthermore shall be obliged and is bound to require such person to which the obligations upon the Company are to be assigned or otherwise transferred to intimate to the Institute in writing immediately that the transaction for such assignation or transfer has been completed upon such completion.

14 CONSENT TO REGISTRATION

The Institute and the Company consent to the registration hereof and of any certificates hereunder for preservation and execution IN WITNESS WHEREOF this Agreement (comprising this and the preceding [●] pages together with the Plan and the Schedule annexed) is executed as follows:

They are subscribed for and on behalf of The Rowett Research Institute as undernoted:-

	Witness	
_____		_____
Director		
	Full Name	

_____	Address	
Full name (BLOCK CAPITALS)		_____
At		_____

On

They are subscribed for and on behalf of [●] as undernoted:-

	Witness	
_____ Director		_____
	Full Name	_____
_____ Full name (BLOCK CAPITALS)	Address	_____
At		_____
On		_____

This is a Schedule referred to in the foregoing Minute of Agreement between The Rowett Research Institute and [●] in respect of [15.4 Hectares] or thereby at Hopecroft, Bucksburn, Aberdeen

SCHEDULE

ALL and WHOLE that plot or area of ground at Hopecroft, Bucksburn in the County of Aberdeen extending to [Fifteen hectares and four decimal or one-tenth parts of an hectare (15.4Ha)] or thereby shown [●] on the Plan which subjects comprise part and portion of the subjects known as Hope Farm more particularly described in, disposed by and shown outlined in pink on the plans annexed to the Disposition by the Seaton Estates (In Voluntary Liquidation) in favour of The North of Scotland College of Agriculture dated Twenty-ninth August and recorded in the Division of the General Register of Sasines applicable to the County of Aberdeen on Sixth September, both months in the year Nineteen Hundred and Fifty-one and registered or to be registered in the Land Register of Scotland.

MINUTE OF AGREEMENT

Between

THE ROWETT RESEARCH INSTITUTE

And

[●]

Re: [15.4 Hectares] or thereby at Hopecroft, Bucksburn, Aberdeen

PAULL &
WILLIAMSONS



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