
Report to Planning Committee

Date of Meeting: 13 March 2025

Subject: Dollar Expansion Planning Applications:

18/00283/PPP - Mixed Use Development Comprising Residential, Employment, Commercial and Community Uses, Sports Hall, Sports Pitches And Running Track, Including Associated Landscaping And Supporting Infrastructure On Agricultural Land And Playing Fields - Land South Of Dollar (Known as Dollar South)

19/00018/PPP - Mixed Use Development With Supporting Infrastructure Comprising Residential, Retail (Convenience) With Associated Parking, Open Space, Landscaping, Drainage, and Accesses from the A91 (Muckhart Road) – Land South and East of Dollar (Known as Dollar East)

Conclusion of Section 75 Agreements

Report by: Grant Baxter, Planning & Building Standards Team Leader

1.0 Purpose

- 1.1. To advise the Committee of conclusion of the Section 75 Agreements for the two adjoining planning applications to expand Dollar to the south and east (18/00283/PPP & 19/00018/PPP), following the decisions of the Committee to approve both applications for Planning Permission in Principle (PPP) subject to officers concluding a Section 75 Agreement (Planning Obligations) between the Council and the applicants, as set out in draft Heads of Terms and detailed Matters to be Specified in Conditions (MSC), at its meeting on 8th February 2022.
- 1.2. To advise the Committee that Planning Permission in Principle (PPP) will be issued for each application upon signing and registration of the Section 75 Agreements for that application.

2.0 Recommendations

- 2.1. The report is for information only.

3.0 Considerations

- 3.1. At its meeting of 8th February 2022, the Planning Committee decided to approve two applications for Planning Permission in Principle (PPP) for the expansion of Dollar to the south and east, (ref: 18/00283/PPP & 19/00018/PPP) on land allocated as Proposals H47 of the Clackmannanshire Local Development Plan, adopted 2015. Approval was subject to officers concluding Section 75 Agreement (Planning Obligations) between the Council and each applicant as set out in Heads of Terms and Matters Specified in Conditions (MSCs), appended to each report.
- 3.2. The MSCs as appended to the reports on 8th February 2022 remain unchanged, and Section 75 Agreements (Planning Obligations) for both developments have now been concluded in accordance with the Planning Committee's minuted decisions from 8th February 2022. These are now ready for signing and registration.
- 3.3. The Reports, draft MSCs and Heads of Terms of the Section 75 Agreements for both applications that were approved at the meeting on 8th February 2022, and the minuted decisions from that meeting, are Background Papers to this report. The finalised versions of the Section 75 Agreements for both applications are attached as Appendices to this report.
- 3.4. The assessment of the applications took account of the terms of the adopted development plan; the Clackmannanshire Local Development Plan, 2015, the detailed input from key internal and external consultees and extensive consultation with Dollar Community Development Trust (DCDT) and Dollar Community Council (DCT). Once PPP has been issued for both applications, the next stages of the planning process will be the submission and assessment of MSC applications, which will require to be submitted in accordance with the PPPs and themselves will be subject to publicity and consultation processes.
- 3.5. The length of time between the Council's decision on the applications and conclusion of the Agreements has been longer than anticipated. This is due in part to the challenges of bringing forward two separate but connected legal agreements with different developers on these adjoining sites to ensure each development individually, and both collectively, deliver the necessary infrastructure required for the local community as approved by the Planning Committee, all in accordance with Scottish Government policy and guidance on Planning Obligations.
- 3.6. An example of the challenges in this regard was in reaching agreement on apportionment and phasing of each traffic impact element. These required to be detailed to ensure they were equitable, based on the individual and cumulative impacts of the developments, delivered at the appropriate phase in development, and not delayed if one of the developments fell behind schedule. The Council appointed an independent transport consultant, agreed and funded by both developers, to inform this process. The recommendations of this consultant allowed the terms of both Agreements to be concluded to all parties' satisfaction.
- 3.7. The Table 1, below summarises each point of the minuted decisions on both application and the agreed status on each point.

Table 1 – Dollar South (18/00283/PPP) and Dollar East (19/00018/PPP)
Minuted Decisions and Current Status

Minuted Decision 08/02/2022	Current Status
<p><i>The Committee APPROVED the application for Planning Permission in Principle (PPP) subject to officers concluding a Section 75 Agreement (Planning Obligations) between the Council and the applicant as set out in draft Heads of Terms in Appendix 1 to this report, and a set of detailed Matters to be Specified in Conditions (MSC), as set out in Appendix 2 to the report.</i></p>	<p>Section 75 Agreements (Planning Obligations) between the Council and the applicants as set out in draft Heads of Terms in Appendix 1 have now been concluded and are ready to be signed and registered.</p> <p>Matters to be Specified in Conditions (MSC) remain as set out in the Appendices to the reports of 08/02/2022, and will be issued as part of the Planning Permission in Principle (PPP).</p>
<p><i>Affordable Housing</i></p>	<p>The Section 75 Agreements require that a minimum of 25% of the total housing units shall be affordable housing units.</p>
<p><i>That the Committee, while recognising that Dollar South/Dollar East (sic) is an individual application, expressed the wish that the two applicants (Planning Application ref: 18/00283/PPP and Planning Application ref: 19/00018/PPP) work together with guidance from the Committee that development is restricted to 350 houses plus or minus 10% across both applications.</i></p> <p><i>The Committee provided guidance that the Dollar South development (Ref. 18/00283/PPP), should be restricted to 200 houses plus or minus 10 units.*</i></p> <p><i>The Committee provided guidance that the Dollar South and East development (Ref. 19/00018/PPP), should be restricted to 170 houses plus or minus 10 units.*</i></p> <p><i>*These clauses are quotes separately in each minuted decision, and shown together above</i></p>	<p>The applicants have worked together and with council officers to conclude both Section 75 Agreements.</p> <p>Guidance has been provided to both developers on the house number restrictions minuted in the Committee's decisions. As this is only guidance it cannot form part of the Section 75 Agreements or planning decision on the PPP, however house numbers in each development will be controlled by the Council insofar as they will require to be approved as part of determination of Approval of Matters Specified in Conditions (MSC) applications.</p>

<p><i>The Committee agreed to add the undernoted issues to the Appendix, either through a condition or legal agreement:</i></p>	<p>-</p>
<p><i>1. Pedestrian bridge over the Dollar burn – developer contribution to be sought</i></p> <p><i>2. Community fund - confirmation of £500 per unit to be sought</i></p> <p><i>3. Traffic impact</i></p>	<p>This is covered the Section 75 Agreement (see “Traffic Impact” below)</p> <p>The Section 75 Agreement includes provision for a sum of £500 per Residential Unit within the Developments towards the cost of streetscape and public realm enhancements within Dollar. It is anticipated that how these funds are spent will be subject to consultation with Dollar Community Council and Dollar Community Development Trust.</p> <p>There has been considerable work involved in agreeing apportionment of the transport improvement items between the two developers and the phasing of delivery, to coincide with milestones in the implementation of both developments. This is now set out in both Section 75 Agreements. The full list of transport interventions to be delivered by both developments is set out below. All elements are still subject to detailed design, and minor drafting amendments have still to be concluded in relation to the Active Travel Link associated with Dollar East although the principle of delivery has been agreed with the Developer. The detailed designs would form part of future MSC stages and be subject to necessary consent by the Council as Roads Authority, where necessary:</p> <ul style="list-style-type: none"> • Active Travel Bridge over Dollar Burn; • A91/Park Place Junction Improvement; • Park Place Improvements; • Devon Way Lighting Scheme;

	<ul style="list-style-type: none">• Devon Road/Bridge St Junction Improvements;• Ramshorn Junction Safety Improvements;• Bridge Street Improvements;• Lover's Loan Road Widening;• Gateway Feature – Devon Road;• Devon Way (East Portion) Upgrade;• Muckhart Road Improvements;• Gateway Feature – Muckhart Road; and• Active Travel Link: Dollar East-Lovers Loan
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<p><i>4. Education contribution to both the primary and nursery provision</i></p>	<p>The Section 75 Agreements secure an Education Contribution of £7,039 (Indexed) per Residential Unit within each Development towards the expansion of Strathdevon Primary School and Strathdevon Nursery. Phasing of payments will ensure the funds are available to the Council to extend the school in a timeous manner, to accommodate the pupil numbers from the new housing.</p> <p>For Strathdevon Primary School:</p> <ul style="list-style-type: none"> (i) 4 classrooms, 60m² each (ii) secondary hall or expansion, 180 - 200m² (iii) kitchen / servery expansion, 50m² (iv) 10 WCs, 40m² in total (v) circulation allowance of 20%_m, up to 106m²; <p>For Strathdevon Nursery:</p> <ul style="list-style-type: none"> (i) nursery classroom area of 46m² (ii) 2 WCs, 8m² in total
<p><i>5. Community land transfer – in relation to potential discussions around the Section 75 agreement</i></p>	<p>This does not form part of the Section 75 Agreement as it does not involve the transfer of Council land. The transfer of land from one or more of the applicant /land owner parties to Dollar Community Development Trust, is understood to be undertaken by separate agreement between the relevant parties.</p>
<p><i>6. A plan to be put in place for constructive dialogue with Forth Valley Health Board.</i></p>	<p>The Section 75 Agreement requires contribution of £1,115 per house towards the cost of additional primary healthcare provision serving the Development, as advised by NHS Forth Valley. Arrangements for how the sum will be used will form part of ongoing dialogue with NHS Forth Valley, both directly on the Dollar development as it progresses and through wider consultation arrangements related to the Local Development Plan.</p>

4.0 Summary

- 4.1. On 8th February 2022 the Planning Committee voted to approve two applications for Planning Permission in Principle to extend Dollar to the south and east (18/00283/PPP & 19/00018/PPP) on the site of Proposal H47 of the Clackmannanshire Local Development Plan, 2015 (LDP). In doing so, the Committee approved a set of draft Matters to be Specified in Conditions (MSCs) and Heads of Terms of Section 75 Agreements (Planning Obligations) for both developments.
- 4.2. Council officers have worked with the developers individually and collectively to ensure the terms of the Planning Committee's decisions, which reflect detailed input from all relevant consultees and community representatives, have been fully incorporated into both Agreements. Subject to agreement of minor drafting amendments to the Section 75 for Dollar East relating to the design of the Active Travel link, the Section 75 Agreements have now been concluded for each development in accordance with the Committee's decisions.

5.0 Sustainability Implications

- 5.1. The decisions of the Planning Committee on these applications facilitate implementation of Proposal H47 of the LDP for the expansion of Dollar.

6.0 Resource Implications

6.1 *Financial Details*

- 6.2 The full financial implications of the recommendations are set out in the report. This includes a reference to full life cycle costs where appropriate. Yes
- 6.3 Finance have been consulted and have agreed the financial implications as set out in the report. Yes

7.0 Exempt Reports

- 7.1 Is this report exempt? Yes (please detail the reasons for exemption below) No

8.0 Declarations

The recommendations contained within this report support or implement our Corporate Priorities and Council Policies.

(1) **Our Priorities** (Please double click on the check box)

- Clackmannanshire will be attractive to businesses & people and ensure fair opportunities for all
- Our families; children and young people will have the best possible start in life
- Women and girls will be confident and aspirational, and achieve their full potential
- Our communities will be resilient and empowered so that they can thrive and flourish

(2) **Council Policies** (Please detail)

Clackmannanshire Local Development Plan, adopted 2015

9.0 Equalities Impact

- 9.1 Have you undertaken the required equalities impact assessment to ensure that no groups are adversely affected by the recommendations?
Yes No

10.0 Legality

- 10.1 It has been confirmed that in adopting the recommendations contained in this report, the Council is acting within its legal powers. Yes

11.0 Appendices

- 11.1 Please list any appendices attached to this report. If there are no appendices, please state "none".
1. Finalised Section 75 Agreements for Dollar South
 2. Finalised Section 75 Agreements for Dollar East

12.0 Background Papers

- 12.1 Have you used other documents to compile your report? (All documents must be kept available by the author for public inspection for four years from the date of meeting at which the report is considered)
Yes (please list the documents below) No

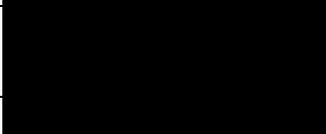
Reports to Planning Committee of 8th January 2022 by Grant Baxter, Principal Planner:

1. Covering Report – Dollar Planning Applications
2. Planning Application Report Ref 18/00283/PPP – Dollar South
3. Planning Application Report Ref 19/00018/PPP – Dollar East
4. Minute of Planning Committee held on 8 January 2022 – confirmed at meeting of Planning Committee on 17 March 2022

Author

NAME	DESIGNATION	TEL NO / EXTENSION
Grant Baxter	Planning & Building Standards Team Leader	2615

Approved by

NAME	DESIGNATION	SIGNATURE
Grant Baxter	Planning & Building Standards Team Leader	

MINUTE OF AGREEMENT

Among

CLACKMANNANSHIRE COUNCIL

And

KATHERINE LAKE STEWART

And

THE GOVERNORS OF DOLLAR ACADEMY TRUST

**PLANNING OBLIGATION BY
MINUTE OF AGREEMENT**

**Subjects: Land South of
Dollar, Clackmannanshire**

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PLANNING OBLIGATION

BY MINUTE OF AGREEMENT

BETWEEN

- (1) **CLACKMANNANSHIRE COUNCIL**, the Local Authority for Clackmannanshire in terms of the Local Government etc. (Scotland) Act 1994, and having its principal office at Kilncraigs, Greenside Street, Alloa, Clackmannanshire FK10 1EB (who and whose successors as the Planning Authority and Roads Authority respectively are hereinafter referred to as the "**Council**");

and
- (2) **KATHERINE LAKE STEWART**, residing at The Manor House, Church Lane, Freckenham, Suffolk, IP28 8JF (who, and whose successors in substitution therefor, as heritable proprietors of the First Agreement Subjects as hereinafter defined are hereinafter referred to as the "**First Proprietors**")

and
- (3) **THE GOVERNORS OF DOLLAR ACADEMY TRUST**, 23 West Burnside, Dollar, Clackmannanshire, FK14 7DX, a registered charity and registered under Charity Number SC 009888 (who, and whose successors in substitution therefor, as heritable proprietors of the Second Agreement Subjects as hereinafter defined are hereinafter referred to as the "**Second Proprietors** ")

WHEREAS:

- (A) the Council is the planning authority for Clackmannanshire in terms of Section 1 of the 1997 Act;
- (B) the Council is the roads authority for Clackmannanshire 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);
- (C) the Council is the education authority for Clackmannanshire in terms of section 135 of the Education (Scotland) Act 1980;
- (D) the First Proprietors and the Second Proprietors are entitled in terms of Section 75 of the 1997 Act, by agreement with the Council, in respect of land in the district of the Council as planning authority, to enter into an obligation restricting or regulating the development or use of the land, either permanently or during such period as may be prescribed by the agreement;
- (E) the First Proprietors and the Second Proprietors have applied to the Council for planning permission under the 1997 Act for the Development 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.
- (F) In relation to the Transport Infrastructure Works, it is acknowledged and agreed that the methods for cost-sharing, equalisation and any step-in rights between the Dollar

Developments are the subject of a separate commercial agreement between those parties and are not covered within this Agreement.

NOW THEREFORE the Council, the First Proprietors and the Second Proprietors have agreed and do hereby agree as follows:-

1 DEFINITIONS

1.1 In this Agreement, including the preamble, the following words have the meanings ascribed to them as follows:

1997 Act means the Town and Country Planning (Scotland) Act 1997, as amended;

A91/Park Place Junction Improvement means, subject to the approval process in clause 6.3, installation of a raised table with coloured surfacing and long lead-in ramps, covering the junctions of the A91 with Park Place and East Burnside and renewal of anti-skid surfacing on approach to existing zebra crossing to include re-proving of zebra crossing in its current location within the new surfaced area;

Access Rights means any required access rights for all relevant purposes relating to the proposed end use of the Affordable Housing Subjects as are needed to ensure that a valid and marketable heritable or, as the case may be, leasehold title is granted, including without prejudice to the foregoing generality, connection rights and any rights of access over such parts of the remainder of the Agreement Subjects as may be needed for the purposes of inspecting, maintaining and renewing the Services;

Active Travel Bridge over Dollar Burn means, subject to the approval process in clause 6.3, replacement of the existing bridge over the Dollar Burn at Park Place with a new wider bridge (minimum 3m width);

Active Travel Link: Dollar East-Lovers Loan means provision of footpath link along the southside of the Kelly Burn, linking Dollar East development to Lover's Loan to be provided by the Proprietors of the Dollar East Development in accordance with the Dollar East Section 75 Agreement;

Affordable Housing means housing which is occupied subject to an Affordable Housing Tenure and marketed for sale or rent to persons who are in Housing Need and have an income that is insufficient to have that need met in the open market;

Affordable Housing Commuted Sum means such sum calculated in accordance with Clauses 3.9 and 3.10;

Affordable Housing Contract means

- (a) a contract for the sale by the Proprietors of the Affordable Housing Subjects duly Serviced with the benefit of the Access Rights to an Affordable Housing Provider for the purpose of constructing and marketing Affordable Housing Units to persons in Housing Need, or
- (b) such other contract or contracts to secure the delivery of Affordable Housing as the Council on the application of the Proprietors and acting reasonably may approve;

Affordable Housing Provider means a body approved by the Council whose function or aim is to provide and manage Affordable Housing, including a housing association or associations or a housing company or companies or a trust or trusts registered as a Registered Social Landlord or an alternative affordable housing provider nominated by the Proprietors in respect of the Affordable Housing Subjects;

Affordable Housing Scheme means a written scheme demonstrating how Affordable Housing will be delivered, marketed and retained on the Affordable Housing Subjects as part of the Development, such scheme to include details of (i) the proposed location of Affordable Housing Subjects, (ii) the category of Affordable Housing Tenure, (iii) the design standards to which the Affordable Housing Units are to be built, (iv), the type of Affordable Housing Contract by which the Affordable Housing Units will be made available and (v) the proposed Retention Scheme;

Affordable Housing Subjects means that area or piece of ground forming part of the Agreement Subjects on which the Affordable Housing is to be located as identified in the Approved Affordable Housing Scheme to be submitted to the Council in terms of Clause 3;

Affordable Housing Tenure means any one of the following categories of Affordable Housing tenure: Social Rent; Mid-Market; Shared Equity; and any other format of affordable housing tenure which is agreed in writing with the Council as meeting the requirements of the Priority Client Group;

Affordable Housing Unit means any Residential Unit that is to be occupied subject to an Affordable Housing Tenure;

Agreement means this agreement granted in accordance with the terms of Section 75 of the 1997 Act;

Agreement Subjects means the First Agreement Subjects and the Second Agreement Subjects;

AH Delivery Period has the meaning ascribed to it in Clause 3.7;

Application means the application for planning permission registered by the Council under the reference 18/00283/PPP for the Development;

Approved Affordable Housing Scheme means an Affordable Housing Scheme approved by the Council in writing in accordance with Clause 3, including, on the written request of the Proprietors, any amendment thereto subsequently approved in writing by the Council;

Approved Design Brief and Design Code means a Design Brief and Design Code that informs all phases of development and ensures appropriate design standards are retained throughout approved by the Council in writing in accordance with Clause 10, including, on the written request of the Proprietors, any amendment thereto subsequently approved in writing by the Council;

Bona Fide Third Party Purchaser means an individual purchaser (and his, her or their successors in title) who has purchased in good faith, and for value one of the individual Residential Units and pro indiviso share of common parts pertaining thereto at the Development erected pursuant to the Planning Permission;

Bridge Street Improvements means, subject to the approval process in clause 6.3, provision of new pedestrian crossing point on Bridge Street and Public Transport upgrades of existing bus shelters along Bridge Street;

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

Community Fund Contribution means the sum of FIVE HUNDRED POUNDS (£500) STERLING Indexed per Residential Unit within the Development towards the cost of streetscape and public realm enhancements within Dollar;

Completion of Construction means,

(1) in respect of any Residential Unit, the earlier of the date on which the Council's Building Standards Department as the Verifier, as defined by Section 7 of the Building (Scotland) Act 2003 (the 2003 Act)

(a) gives written intimation to the Proprietors that they have approved the Completion Certificate, in terms of Section 18 of the 2003 Act, in respect of that Residential Unit; or

(b) gives written intimation to the Proprietors that they have approved a Certificate of Temporary Habitation, in terms of Section 21 of the 2003 Act, in respect of that Residential Unit;

(2) in respect of the New Sports Pitches, the date on which the same is constructed to a stage where it is capable of being made available for use,

and

(3) in respect of Strathdevon Primary School and Strathdevon Nursery, the date on which [],

and the term **Completed** shall be construed accordingly;

Corrective Works means works identified by the Council which are deemed necessary to ensure that they are built in accordance with the agreed Transport Infrastructure Works and to an acceptable adoptable standard;

Corrective Works Notice means a notice served by the Council containing a schedule of Corrective Works;

Design Brief and Design Code means a document prepared by the Proprietors that informs all phases of development and ensures appropriate design standards are retained throughout the Development;

Development means the mixed use development comprising residential, employment, commercial and community uses, sports hall, sports pitches and running track, including associated landscaping and supporting infrastructure on agricultural land and playing fields on the Agreement Subjects in accordance with the terms of the Planning Permission;

Devon Road/Bridge Street Junction Improvements means, subject to the approval process in clause 6.3, extending footway on corners of the A91 Bridge Street / Devon Road junction to reduce A91 to 6.0 metres wide; relocating "Give Way" line forward to improve junction

visibility; and installation new pedestrian crossing point to east, full details of which are to be agreed in accordance with clause 6.3;

Devon Way (East Portion) Upgrade means provision of new street lighting and 3m wide shared path on Devon Way from Dollar Burn crossing point east to Lovers Loan to be provided by the Proprietors of the Dollar East Development in accordance with the Dollar East Section 75 Agreement;

Devon Way Lighting Scheme means, subject to the approval process in clause 6.3, provision of new street lighting on Devon Way to adoptable standard, from Devon Road (B913) east to Dollar Burn crossing point;

Disposal Contract means the grant of a disposition or other conveyance in respect of the Agreement Subjects or any part thereof (other than in respect of an individual Residential Unit to a proprietor or proprietors for occupation as a private dwellinghouse), or any contract or assignment therefor or thereof;

District Valuer means a district valuer for Clackmannanshire employed by the District Valuer Services section of Her Majesty's Revenue and Customs Valuation Office Agency;

Dollar Community Development Trust means Dollar Community Development Trust, a Company limited by guarantee (Company Number SC563463) and having its registered office at The Hive, Park Place, Dollar, FK14 7AA;

Dollar Developments means together the Dollar East Development and the Dollar South Development;

Dollar Developments' Plans means the Dollar South Development Plan and the Dollar East Development Plan, both annexed and executed as relative hereto, showing the indicative Phases relevant to the Transport Infrastructure Works as detailed in the Schedule;

Dollar East Development means the erection of mixed-use development with supporting infrastructure comprising residential retail (convenience) with associated parking, open space, landscaping, drainage, and accesses from the A91 (Muckhart Road) in terms of the planning permission in principle to be granted by the Council under reference 19/00018/PPP;

Dollar East Section 75 Agreement means the Section 75 Agreement to be entered into by the Proprietors of the Dollar East Development;

Draft Affordable Housing Scheme means a draft of the proposed Affordable Housing Scheme submitted by the Proprietors to the Council for approval as part of the First MSC Approval Application;

Education Unit Contribution means the Education Contribution multiplied by the Total Housing Units;

Education Contribution means the sum of SEVEN THOUSAND AND THIRTY-NINE POUNDS (£7,039) STERLING Indexed per Residential Unit within the Development towards the expansion of Strathdevon Primary School and Strathdevon Nursery, 17 Park Place, Dollar, Clackmannanshire FK14 7AA serving the Development being the sum calculated based on a maximum of 385 Residential Units on the Dollar Developments;

Existing Sports Pitches means the sports pitches at Newfield which are to be replaced by the New Sports Pitches;

Expansion of Strathdevon Primary School and Strathdevon Nursery means the works to be funded by the Proprietors and the proprietors of the Dollar East Development through the Education Contribution and undertaken by the Council to mitigate the impact of the Dollar Developments comprising:

(a) For Strathdevon Primary School:

- (i) 4 classrooms, 60m² each
- (ii) secondary hall or expansion, 180 - 200m²
- (iii) kitchen / servery expansion, 50m²
- (iv) 10 WCs, 40m² in total
- (v) circulation allowance of 20%, up to 106m²;

(b) For Strathdevon Nursery:

- (i) nursery classroom area of 46m²
- (ii) 2 WCs, 8m² in total

Expert means an expert who, insofar as possible, has been professionally qualified for at least 10 years in the field in which the Dispute arises;

First Agreement Subjects means ALL and WHOLE the subjects shown outlined in red on the Plan insofar as forming part and portion of ALL and WHOLE the land at Devon Road and Dollarfield, Dollar, Clackmannanshire registered in the Land Register of Scotland under Title Number CLK646 ;

First MSC Approval means the approval by the Council of the First MSC Approval Application;

First MSC Approval Application means the first application for approval any matters specified in a condition of the Planning Permission and submitted to the Council;

Fully Completed means that the Transport Infrastructure Works are constructed and completed to the Council's satisfaction and at a standard necessary for adoption by the Council as local roads authority;

Fully Completed Date means the date on which the Council confirm to the Proprietors that the Transport Infrastructure Works are Fully Completed;

Gateway Feature – Devon Road means, subject to the approval process in clause 6.3, the introduction of appropriate traffic management measures on Devon Road to reduce traffic speed upon entry to the extended village, relocation of the 30mph speed limit and signage on Devon Road as appropriate, and Public Transport upgrades of existing bus shelters along Devon Road;

Gateway Feature – Muckhart Road means provision of Gateway entrance feature to village on eastern approach along A91 / Muckhart Road by the Proprietors of the Dollar East Development in accordance with the Dollar East Section 75 Agreement;

Guarantee means a bond or financial guarantee to be provided by the Proprietors to the Council in respect of the Transport Infrastructure Works Dollar South in terms of Clause 6.4 of this Agreement;

Health Board means a board constituted either:

- (a) by order under section 2(1)(a) of the National Health Service (Scotland) Act 1978; or
- (b) under the Public Bodies (Joint Working) (Scotland) Act 2014;

Healthcare Contribution means the Healthcare Unit Contribution multiplied by the Total Housing Units;

Healthcare Unit Contribution means the sum of ONE THOUSAND ONE HUNDRED AND FIFTEEN POUNDS (£1,115) STERLING Indexed per Residential Unit within the Development, or such lower amount as may be agreed with the Health Board in accordance with the provisions of Clause 5, towards the cost of additional primary healthcare provision serving the Development;

Housing Need means households that lack their own housing or are living in housing which is inadequate or unsuitable, who are unlikely to be able to meet their needs in the housing market without some assistance and who are likely to earn below the income threshold set by the Council based on incomes across the Clackmannanshire area;

Implementation and Phasing Plan means a plan setting out the phasing of the Development and the connected arrangements to ensure construction of housing and delivery of required contributions/ the provision of infrastructure to coincide with that housing and as agreed by the Council further to the operation of Clause 9 in terms of the MSC Approvals;

Index means the All-in Tender Price Index figures as published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors on a quarterly 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 19;

Indexed means increased in accordance with the following formula

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

Where:

- a* equals the Index published for the month following the date of signing of this Agreement by the Council, or with regard to the Education Contribution only, September 2021;
- b* equals the Index published in the month immediately preceding the date of payment of the relevant sum to be Indexed; and
- c* equals the relevant sum to be Indexed;

Insolvency Event means the occurrence in relation to any party bound by this Agreement of any of the following events: (a) the party becoming apparently insolvent; (b) the making of an

order that they be wound up or the passing of a resolution for voluntary winding up; (c) the appointment of an administrative receiver or receiver and manager in respect of any of their assets and undertakings; (d) the making of any bankruptcy order or order for sequestration; (e) the making of any voluntary arrangement (corporate or individual) for a composition of debts; (f) the application for, or the appointment of, an administrator or the making of an administrative order; (g) the party being struck off the Register of Companies; (h) the appointment of a liquidator; (i) the possession of any of the party's property under the terms of a floating charge; or (j) any similar event which in the opinion of the Council is of like effect;

Inspection Request Notice means a notice served on the Council by the Proprietor together with a written report and photographic evidence confirming that the Works are built in accordance with the Transport Infrastructure Works and to an acceptable adoptable standard;

Interest means 4 per cent per annum above the base rate of interest payable from time to time by the Royal Bank of Scotland plc;

Keeper means the Keeper of the Registers of Scotland as defined in Section 113 of the Land Registration etc (Scotland) Act 2012;

Longstop Date means the date falling ten months from the date on which the final payment of the Education Contribution in terms of Clause 4.3 is received by the Council from the Dollar Developments;

Lover's Loan Road Widening means, subject to the approval process in clause 6.3, the widening of Lovers Loan from Park Place to the access junction for Newfield to agreed standard to incorporate footpath provision on land in control of Clackmannanshire Council to allow access to Newfield;

Maintenance and Aftercare Standard means the standard of maintenance and aftercare to be applied by the Proprietors to the whole or any part of the Transport Infrastructure Works for the Maintenance and Aftercare Period before it will be considered suitable for adoption for future maintenance and aftercare by the Council such standard to be in accordance with the relevant Council policy on adoption standard applicable at the date when the said Transport Infrastructure Works are Substantially Completed and the Maintenance and Aftercare Period is due to commence;

Maintenance and Aftercare Period means the period from the date when the whole or any part of the Transport Infrastructure Works are Substantially Completed until the Fully Completed Date or such shorter period as may be agreed in writing by the Council acting reasonably on the application of the Proprietors;

Material Operation means a material operation in accordance with Section 27 of the 1997 Act but excepting always any operation carried out for the purpose of (a) constructing boundary fences or hoarding or (b) survey investigations to establish the extent of any ground contamination or (c) archaeological surveys or investigations or (d) landscaping and/or planting works and all engineering works associated with site clearance for such works;

Mid-Market means housing with rents set at a level higher than Social Rent, but lower than market rent levels to meet the requirements of the Priority Client Group, such rent levels to be agreed with the Council, acting reasonably, having regard to other schemes in Clackmannanshire;

MSC Approval means the approval by the Council in terms of any MSC Approval Application;

MSC Approval Application means the application for discharge, approval, consent or agreement of any matters specified in a condition of the Planning Permission and submitted to the Council;

Muckhart Road Improvements means provision of new crossings and bus stops, street lighting and a section of new footway to be provided by the Proprietors of the Dollar East Development in accordance with the Dollar East Section 75 Agreement

New Sports Campus means the proposed new Sports Campus to be constructed by the Proprietors as part of the Development;

New Sports Pitches means the proposed new sports pitches to replace the Existing Sports Pitches within the New Sports Campus

Occupation means the occupation of any Residential Unit by any person for residential use but does not include occupation by personnel engaged in construction, fitting out or decoration, or occupation for marketing or display or occupation in relation to security operations, and "Occupied" shall be construed accordingly;

Open Market Housing Units means the Residential Units comprised in the Total Housing Units which are not Affordable Housing Units;

Operational means the earliest date on which the New Sports Campus, in addition to the replacement of the two existing pitches at Newfield, opens and commences operations as a sports campus;

Park Place Improvements means, subject to the approval process in clause 6.3,

(i) the designation of that length of Park Place from its Bridge Street junction south and east to Lovers Loan as a "School Exclusion Zone" between the hours of 8.30am - 9.15am and 2.45pm - 3.30pm, Monday to Friday during school terms, with exemption (details to be set out in Council Road Order) for access for residents and to the medical centre and community hub.

(ii) a new footway to be provided along west side of Park Place to provide better connection to the bridge over Dollar Burn, which footway should achieve 2.5m width subject to technical constraints and assessment of impact on tree roots;

Phase means a phase of the Development as identified in the Implementation and Phasing Plan;

Planning Permission means the planning permission in principle for the Development subject to the conditions set out in the report on the Application to the Council's Planning Committee held on 8 February 2022;

Plan means the plan annexed and signed as relative hereto;

Priority Client Group means persons in Housing Need as determined in accordance with the objects of the Affordable Housing Provider, failing which such other income, geographic and other eligibility criteria as may be set by the Council from time to time for the purchase or rent of Affordable Housing;

Proprietors means the First Proprietors and the Second Proprietors and their successors in substitution therefor as heritable proprietors of any part of the Agreement Subjects;

Proprietors of the Dollar East Development means Nicholas Ian John Herrick Poett, residing at Harviestoun, Dollar, Clackmannanshire and his successors in substitution therefor as the heritable proprietor of the Dollar East Development;

Public Art means the provision of public art within the Development in accordance with Supplementary Guidance (SG1 – Developer Contributions) of the Clackmannanshire Local Development Plan 2015;

Public Art Contribution means the Public Art Unit Contribution multiplied by the Total Housing Units;

Public Art Unit Contribution means the sum of TWO HUNDRED AND FIFTY POUNDS (£250) STERLING Indexed per Residential Unit within the Development towards the cost of providing public art within Dollar;

Public Art Strategy means the strategy for delivery of Public Art to be agreed with the Council in terms of Clause 7.1;

Ramshorn Junction Safety Improvements means, subject to the approval process in clause 6.3, provision of one new map-type advance approach sign for southbound traffic, approximately 240 metres north of Devon Road junction and enhanced junction radii at B9140 and B913 junctions with A977;

Registered Social Landlord means a landlord registered under Section 20 of the Housing (Scotland) Act 2010 or its subsidiary;

Relevant Milestone means the first date on which any of the following occur in respect of a Residential Unit

- (a) Completion of Construction for that Residential Unit or
- (b) that the Residential Unit is Occupied or
- (c) settlement actually occurs in terms of the first sale transaction for that Residential Unit;

Residential Unit means any property within the Agreement Subjects constructed as part of the Development which is 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;

Retention Scheme means a scheme demonstrating how the Proprietors propose to deliver a mechanism for ensuring that the heritable proprietors and their successors and assignees whomsoever of the Affordable Housing Subjects and/or Affordable Housing Units shall not permit or allow (a) the Affordable Housing Subjects to be used other than for the purposes of providing Affordable Housing Units and (b) the Affordable Housing Units to be Occupied as a residence except by a Priority Client Group;

Schedule means the schedule annexed and signed as relative to this Agreement;

Second Agreement Subjects means ALL and WHOLE the subjects at Newfield, Dollar, Clackmannanshire registered in the Land Register of Scotland under Title Number CLK17683;

Services means (a) such roads and footpaths constructed to the standard necessary for adoption by the Council as local roads authority as are needed to connect the boundary of the relevant area of the Affordable Housing Subjects to the public road network and (b) all related infrastructure reasonably needed to service the Affordable Housing Subjects including the pipes, drains, channels, wires, cables and conduits needed to ensure the passage of water, electricity, gas, communications and other services from the boundary of the Affordable Housing Subjects to the mains of the relevant infrastructure networks including the public water and public waste water networks, together with the benefit of any required access rights for all relevant purposes relating to the said proposed end use, including, without prejudice to the foregoing generality, connection rights and any rights of access over such parts of the remainder of the Agreement Subjects as may be needed for the purpose of maintenance, inspection and renewal of the aforesaid service media and the word **Servicing** and **Serviced** shall be construed accordingly;

Shared Equity means that 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;

Substantially Completed means written confirmation issued by the Council that the works have been substantially completed but not completed and built in accordance with the relevant Council policy on adoption standard applicable at the date to the satisfaction of the Council as roads authority under the Roads (Scotland) Act 1984;

Social Rent means property provided at an affordable rent that is owned, managed, leased or otherwise provided by a Registered Social Landlord (or such other body as may be approved by the Council) to meet the requirements of persons in Housing Need and let through a Scottish Secure Tenancy;

Total Housing Units means the total number of Residential Units (up to a maximum of 200) which are permitted to be constructed on the Agreement Subjects in terms of the Planning Permission and any MSC Approval;

Transferring Party means the Proprietors who elect to transfer the ownership of the Affordable Housing Subjects to the Council, or third party nominated by the Council, for nil consideration, having first used all reasonable endeavours to enter into an Affordable Housing Contract;

Transport Infrastructure Works means the list of Transport Interventions set out in the Schedule attributable to the Dollar Developments

Transport Intervention means each of the works set out in the Schedule, being:

- (a) Active Travel Bridge over Dollar Burn;
- (b) A91/Park Place Junction Improvement;
- (c) Park Place Improvements;
- (d) Devon Way Lighting Scheme;
- (e) Devon Road/Bridge St Junction Improvements;
- (f) Ramshorn Junction Safety Improvements;

- (g) Bridge Street Improvements;
- (h) Lover's Loan Road Widening;
- (i) Gateway Feature – Devon Road;
- (j) Devon Way (East Portion) Upgrade;
- (k) Muckhart Road Improvements;
- (l) Gateway Feature – Muckhart Road; and
- (m) Active Travel Link: Dollar East-Lovers Loan

Works means either one of or all together the Transport Infrastructure Works and/or Corrective Works;

Working Days means all days of the week excluding

- (n) Saturday & Sunday; and
- (o) all statutory holidays in Scotland; and
- (p) all national public holidays in Scotland; and
- (q) all Clackmannanshire local public holidays;

Written Evidence means inter alia, letters or other correspondence from the Proprietors offering to dispoene the Affordable Housing Units to an Affordable Housing Provider together with the written replies advising that they have been unable or unwilling to acquire the Affordable Housing Units or confirmation from the Relevant Proprietor that no replies have been received from the Affordable Housing Provider in response to their aforementioned letters of correspondence.

2 INTERPRETATION

- 2.1 References to any party shall, except where expressly stated to the contrary, include the successors in title of that party and those deriving title through that party and, in the case of the Council, the successors in title to its functions as local planning authority.
- 2.2 Words importing the singular shall include the plural and vice versa.
- 2.3 The construction of this Agreement shall ignore headings and the front sheet (all of which are for reference only).
- 2.4 Any reference to any statutory provision shall be deemed to include any subsequent re-enactment or amending provision.
- 2.5 An undertaking in this Agreement to do something includes an undertaking to procure that it be done.
- 2.6 An undertaking in this Agreement not to do something includes an undertaking not to allow it to be done.

- 2.7 Subject to Clause 14.3, where two or more persons undertake in terms of this Agreement to do something the undertaking in question may be enforced against all of them jointly or against each of them individually.
- 2.8 If any provision in this Agreement is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Agreement shall be unaffected.
- 2.9 If any provision in this Agreement shall, in whole or in part, be held to be invalid or unenforceable under any enactment or rule of law such provision shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected.
- 2.10 If any provision of this Agreement is held in any proceedings to be a provision which cannot competently be included or enforced in an agreement entered into under section 75 of the 1997 Act, such provision shall be enforceable to the same extent and effect as if this Agreement was an agreement in common form amongst the parties.

3 AFFORDABLE HOUSING

- 3.1 A minimum of Twenty-five percent of the Total Housing Units shall be Affordable Housing Units, which units shall be provided on the Affordable Housing Subjects in accordance with the Approved Affordable Housing Scheme and Occupied in perpetuity subject to an Affordable Housing Tenure.
- 3.2 As part of the First MSC Approval Application submitted in respect of the Development, a Draft Affordable Housing Scheme shall be submitted to the Council for approval in writing. The details agreed in accordance with the Approved Affordable Housing Scheme shall be implemented by the Proprietors to the satisfaction of the Council (acting reasonably) but may be varied by the written agreement of the Proprietors and the Council, both acting reasonably at all times.
- 3.3 The terms of Clauses 3.1 and 3.2 shall apply *mutatis mutandis* in respect of each Phase, it being acknowledged by the parties that the Draft Affordable Housing Scheme in terms of Clause 3.2 will include all Phases, and the number of Affordable Housing Units in a Phase may be more or less than 25%, subject always to the overriding provisions of Clause 3.1. For all Phases not included within the Draft Affordable Housing Scheme, the obligations in respect of Affordable Housing contained within this Clause 3 shall be on a Phase by Phase basis.
- 3.4 The Proprietors shall use all reasonable endeavours to enter into Affordable Housing Contracts with an Affordable Housing Provider prior to the date on which 25% of the Open Market Housing Units reach a Relevant Milestone.
- 3.5 In the event that the Proprietors enter into an Affordable Housing Contract other than that set out in sub-clause (a) in the definition of Affordable Housing Contract, the Proprietors shall ensure that prior to the date on which fifty (50) Open Market Housing Units reach a Relevant Milestone the Affordable Housing Subjects are transferred to the Affordable Housing Provider. No more than fifty (50) of the Open Market Housing Units shall be Occupied until the terms of this Clause are fulfilled to the satisfaction of the Council (acting reasonably).
- 3.6 In the event that the Proprietors have been unable to enter into any Affordable Housing Contracts in accordance with Clauses 3.4 or 3.5, the Proprietors shall give notice to that effect to the Council and shall, with any such notice, provide the Council with Written Evidence demonstrating that they have used reasonable endeavours to enter into such Affordable Housing Contracts. If, following receipt of the said notice, the Council confirms that it is

satisfied that the Proprietors have used all reasonable endeavours as aforesaid, then the Proprietors shall within 60 Working Days transfer the Affordable Housing Subjects, with the benefit of Access Rights and Services, to the Council or an Affordable Housing Provider nominated by the Council for no consideration. The Proprietors as the Transferring Party shall grant the Affordable Housing Provider or the Council, as the case may be, a valid marketable title to the Affordable Housing Subjects. The terms of the conveyance of the Affordable Housing Subjects in terms of Clause 3.6 shall be agreed prior to the delivery thereof declaring that the said conveyance shall contain the Transferring Party's absolute warrandice insofar as relating to the Affordable Housing Subjects and may at the option of the Transferring Party, contain a condition providing that for the initial 60 months following the transfer the Affordable Housing Subjects shall only be used for the provision of Affordable Housing Units. On the delivery of the duly executed conveyance of the Affordable Housing Subjects by the Transferring Party to the Affordable Housing Provider or the Council, the terms of this Clause 3, with regard to the provision of Affordable Housing by the Proprietors, and restrictions on the Occupation of Open Market Housing Units, shall cease to apply.

- 3.7 In the event that within 60 months of the Affordable Housing Subjects being transferred in accordance with Clause 3.6 ("**AH Delivery Period**") the Affordable Housing Provider or the Council, as appropriate, having used reasonable endeavours, have not delivered any Affordable Housing Units on the Affordable Housing Subjects or, in the case of the Council, has not entered into Affordable Housing Contracts to provide Affordable Housing Units or transfer to a Registered Social Landlord, the Affordable Housing Provider or the Council, as the case may be, shall on receipt of a request by written notice from the Transferring Party, provided it is received within 60 Working Date of the end of the AH Delivery Period, transfer the Affordable Housing Subjects back to the Transferring Party, for no consideration and subject to the provisions of Clause 3.8 to 3.13, who shall be able to market them for the purpose of Open Market Housing Units.

- 3.8 In the event that the Affordable Housing Subjects are conveyed back to the Transferring Party in accordance with Clause 3.7 the following shall apply:-
- (a) The Transferring Party shall pay to the Council the Affordable Housing Commuted Sum; and
 - (b) Payment of the Affordable Housing Commuted Sum shall discharge the Transferring Party of any requirement to provide Affordable Housing Units or Affordable Housing Subjects under this Clause 3.
- 3.9 The Affordable Housing Commuted Sum shall be equivalent to the value of the Affordable Housing Subjects as determined by the District Valuer determined in accordance with the RICS Valuation Global Standards, UK National Supplement (Red Book) with specific reference to the 2nd Edition Practice Standards 2016 on the valuation of land for affordable housing, Section 7 Comparison method (acting reasonably and properly). In making his determination, the District Valuer shall adhere to and take account of the following:
- (a) The District Valuer shall assume that the Affordable Housing Subjects shall be used for Affordable Housing Units only and in perpetuity;
 - (b) The District Valuer shall assume that no more than the number of Affordable Housing Units equivalent to twenty five percent of the Total Housing Units may be Completed on the Affordable Housing Subjects;
 - (c) That the Affordable Housing Subjects comply with the terms of Clause 3.6, including having those Access Rights and Services referred to in Clause 3.6 and the costs incurred in Servicing the land;
 - (d) Any other representations timeously made by the Transferring Party and the Council, the timeous making of which shall be at the discretion of the District Valuer (acting reasonably).
- 3.10 Instruction of the District Valuer to carry out the calculation of the Affordable Housing Commuted Sum in accordance with 3.9 shall be on the condition that the Transferring Party shall be responsible for the reasonable and properly incurred fees of the District Valuer.
- 3.11 Where the Affordable Housing Commuted Sum falls due, the Transferring Party shall pay the Affordable Housing Commuted Sum to the Council in two equal instalments as follows:
- (a) The first Affordable Housing Commuted Sum instalment shall be paid within twenty eight (28) days of the date on which the District Valuer issues his final decision on the value of the Affordable Housing Commuted Sum; and
 - (b) The second Affordable Housing Commuted Sum instalment shall be paid on the first anniversary of the date of payment of the first Affordable Housing Commuted Sum instalment.
- 3.12 Payment of the Affordable Housing Commuted Sum shall be subject to the following condition:
- (a) The Council shall use the Affordable Housing Commuted Sum for the purpose of providing Affordable Housing Units in the Clackmannanshire local government area and for no other purpose.

- 3.13 The Council shall ensure that the Affordable Housing Commuted Sum is separately identified by the Council in the accounts of the Council.

4 EDUCATION CONTRIBUTION

- 4.1 Subject to clause 4.7, no more than 100 Residential Units across the Dollar Developments shall be Occupied until the Expansion of Strathdevon Primary School and Strathdevon Nursery has been Completed by the Council.

- 4.2 The Proprietors and the Council agree that the share of the 100 Residential Units across the Dollar Developments that are permitted to be Occupied in terms of Clause 4.1 shall be apportioned as follows:

- (a) Up to 52 Residential Units may be Occupied on the Development; and
- (b) Up to 48 Residential Units may be Occupied on the Dollar East Development;

prior to the Completion of Construction of the Expansion of the Strathdevon Primary School and Strathdevon Nursery, unless the Longstop Date has passed without the Expansion of Strathdevon Primary School and Strathdevon Nursery having Completed, in which case the provisions of Clause 4.7 shall apply.

- 4.3 The Proprietors shall pay to the Council the Education Contribution in two equal instalments as follows:-

- (a) On or before the first Occupation on the Development; and
- (b) On or before 50% of the proportionate amount of Residential Units, as calculated in Clause 4.3 are Occupied across the Development.

- 4.4 In the event that the Education Contribution is not paid timeously, or any part thereof, Interest shall be payable thereon (by the Proprietors to the Council) from the due date for payment until payment of the relevant sum in full.

- 4.5 The Council shall on receipt of the Education Contribution, or part thereof, pay it into an interest-bearing account held by the Council.

- 4.6 The Council shall utilise the Education Contribution towards the Expansion of Strathdevon Primary School and Strathdevon Nursery. The Expansion of Strathdevon Primary School and Strathdevon Nursery shall be delivered and Completed by the Council.

- 4.7 If the Expansion of Strathdevon Primary School and Strathdevon Nursery has not been Completed by the Council by the Longstop Date, the Proprietor shall be authorised to allow further Occupation to take place beyond the restriction imposed by Clause 4.1 and 4.2(a), but only in the event the total Education Contribution has been paid in full by the Dollar Developments in terms of Clause 4.3.

- 4.8 In the event of the Education Contribution paid under Clause 4.3 hereof not being utilised in full by the Council within fifteen (15) years of the date of receipt of the last payment of the Education Contribution then such contribution or the unused part thereof, as appropriate, together with any interest that has accrued thereon, shall be refunded to the Proprietors who paid it in terms of Clause 4.4 within 25 Working Days of a written request from the said Proprietors for repayment.

5 HEALTHCARE CONTRIBUTION

- 5.1 Prior to the Completion of Construction of 50% of the Total Housing Units, the Proprietors shall pay to the Council the Healthcare Contribution Indexed
- 5.2 In the event that the Healthcare Contribution, is not paid timeously in terms of Clause 5.1, Interest shall be payable thereon (by the Proprietors to the Council) from the due date for payment until payment of the relevant sum in full.
- 5.3 The Council shall on receipt of the Healthcare Contribution, or part thereof, pay it into an interest bearing account being held by the Council.
- 5.4 The Council shall utilise the Healthcare Contribution only towards additional primary healthcare provision within Dollar, Clackmannanshire.
- 5.5 The Council may, once it has identified how to apply the Healthcare Contribution in accordance with Clause 5.3, transfer the Healthcare Contribution to the Health Board(s) that is/are responsible for the area in which the healthcare improvements are to be made. In the event the Council transfer all or part of the Healthcare Contribution to a Health Board then the Council shall procure that the said Health Board shall apply the Healthcare Infrastructure Contribution in accordance with Clause 5.4 towards the healthcare infrastructure improvements identified by the Council and for no other purpose. For the avoidance of doubt, any such transfer by the Council shall be made strictly on the basis that, in the event that the Health Board has not utilised in full the part of the Healthcare Contribution transferred to them within fifteen (15) years of the date of receipt of payment by the Council of the Healthcare Contribution from the Proprietors (or if phased payments the date of receipt of the last payment), then such contribution or the unused part thereof, as appropriate, together with any interest that has accrued thereon, shall be refunded to the Council within 25 Working Days.
- 5.6 In the event of the Healthcare Contribution not being utilised in full by the Council or the Health Board within 15 years of the date of receipt of payment by the Council (or if phased payments the date of receipt of the last payment), then such contribution or the unused part thereof, as appropriate, together with any interest that has accrued thereon, shall be refunded to the Proprietors who paid it in terms of Clause 5.3 within 25 Working Days of a written request from the Proprietors for repayment.
- 5.7 Notwithstanding the foregoing, the Proprietors will be entitled to include within any MSC Approval Application proposals for the provision of healthcare facilities within the Development and, in the event that such healthcare facilities are provided within the Development without any direct capital cost to the Health Board then the Proprietors' obligation to pay the Healthcare Contribution will be deemed to have been implemented in full and without the need to pay the Healthcare Contribution in terms of this Clause 5.

6 TRANSPORT INFRASTRUCTURE WORKS

- 6.1 It has been agreed between the Proprietors and the Council, together with the Proprietors of the Dollar East Development, that the Transport Infrastructure Works shall be delivered by the Proprietors and the Proprietors of the Dollar East Development in accordance with the attached Schedule and the phasing / areas as shown on the Dollar Developments' Plans. The Schedule sets out:
- (a) the proportionate share of each of the Transport Infrastructure Works attributable to each of the Dollar Developments,

- (b) the party responsible for their delivery, and
- (c) the trigger/s for their completion and linked restrictions on Occupations pending such completion, where these are not set out below.

6.2 For the avoidance of doubt, the Proprietors shall be solely responsible for the delivery of:

- (a) Active Travel Bridge over Dollar Burn;
- (b) A91/Park Place Junction Improvement;
- (c) Park Place Improvements;
- (d) Devon Way Lighting Scheme;
- (e) Devon Road / Bridge Street Improvements;
- (f) Ramshorn Junction Safety Improvements;
- (g) Bridge Street Improvements;
- (h) Lovers Loan Road Widening; and
- (i) Gateway Feature – Devon Road

together the "Transport Infrastructure Works Dollar South"

6.3 Prior to the Commencement Date the Proprietors shall agree in writing with the Council, acting in its aforesaid capacity as roads authority for Clackmannanshire, the scope, design and specification of the Transport Infrastructure Works Dollar South, as well as the estimated total costs of carrying out the works.

6.4 No Development shall commence until a Guarantee in favour of the Council has been submitted for the written approval of the Council and that such Guarantee has been approved and is in place. Such Guarantee must, unless otherwise approved in writing by the Council as Planning Authority;

- (a) be granted in favour of the Council;
- (b) be granted by a bank or other financial institution or corporate body which is of sound financial standing and capable of fulfilling the obligations under the Guarantee;
- (c) be for an initial period of two years;
- (d) be in a sum acceptable to the Council which represents the amounts which the Council and the Proprietor agree as at the Commencement Date and thereafter from time to time to be a reasonable estimate of the sums required to complete any elements of the Transport Infrastructure Works Dollar South commenced by the Proprietor (provided that the Council and the Proprietor separately agree, in connection with the foregoing, a phasing programme and timetable for the carrying out and completion of the Transport Infrastructure Works Dollar South);
- (e) be reviewable every two years to ensure that the specified amount of the guarantee always covers the value of any element of the Transport Infrastructure Works Dollar South which has been commenced by the Proprietor but remains incomplete;

- (f) come into effect on or before the Commencement Date and be maintained until the Fully Completed Date, unless called upon to complete the Transport Infrastructure Works Dollar South, or such part as is called on in relation to the completion of any one or more of the Transport Interventions making up the Transport Infrastructure Works Dollar South; and
 - (g) in the event that the Guarantee becomes invalid for any reason, no operations in terms of the Development will be carried out on the Agreement Subjects until a replacement Guarantee completed in accordance with the terms of this Clause is lodged with the Council as Planning Authority.
- 6.5 Following the Commencement Date, the Proprietors undertake to apply for and obtain all necessary statutory consents and to deliver and complete the Transport Infrastructure Works Dollar South.
- 6.6 The Transport Infrastructure Works Dollar South will be delivered and completed by the Proprietors in accordance with the triggers set out in the Schedule (Table 1, column 3, with the exception of those Transport Interventions set out at clauses 6.10 to 6.12 below) and subject to the following:
- (a) Where the relevant trigger requires completion of a Transport Intervention prior to the Commencement of a given Phase, there shall be no Commencement within that Phase until that Transport Intervention has been Fully Completed or Substantially Completed, whichever is the earlier.
 - (b) Where the relevant trigger requires completion of the Transport Intervention prior to the date of Occupation of a certain Residential Unit, no more than the specified number of Residential Units shall be Occupied until that Transport Intervention has been Fully Completed or Substantially Completed, whichever is the earlier.
 - (c) Where the relevant trigger requires completion of the Transport Intervention prior to the first use of sports facilities, this refers to the use of both the New Sports Pitches and / or the New Sports Campus and the use of the sports facilities shall not be permitted until that Transport Intervention has been Fully Completed or Substantially Completed. whichever is the earlier.
- 6.7 The Council shall be bound to call up the Guarantee and complete any of the Transport Infrastructure Works Dollar South where called on to do so by the Proprietors in the event that:
- (a) the Proprietors have taken all reasonable and necessary steps to carry out the Transport Infrastructure Works Dollar South, and the Proprietors have been unable to carry out one or more of the Transport Interventions in the Transport Infrastructure Works Dollar South for reasons beyond the Proprietors' control and as a result a Transport Intervention has not been Fully Completed or Substantially Completed such that the relevant trigger set out in the Schedule (Table 1, column 3) or in clauses 6.9, 6.10 or 6.11, as the case may be, is likely to be breached. In such circumstances, the Proprietors shall serve written notice on the Council, marked for the attention of the Senior Manager, Legal and Governance, setting out:
 - (i) The relevant Transport Intervention(s) which the Proprietors have been unable to complete;

- (ii) Details of the relevant trigger that is likely to be breached, including where relevant details of the anticipated timescales for Occupation of Residential Units;
- (iii) Details of the works required to complete the relevant Transport Intervention(s); and
- (iv) The reasons why the Proprietors have been unable to complete the relevant Transport Intervention(s), together with any supporting evidence.

In the event that the Council, acting reasonably, is satisfied that the Proprietors have been unable to carry out the relevant Transport Intervention for reasons beyond the Proprietors' control, the Council shall notify the Proprietors in writing that it intends to call upon the Guarantee and the Council shall then call upon the Guarantee within 28 Working Days of receipt of the notice from the Proprietors. In the event that Council, acting reasonably, is not satisfied that the Proprietors have been unable to carry out the relevant Transport Intervention for reasons beyond the Proprietors' control, the Council shall notify the Proprietors in writing within 28 Working Days of receipt of the notice from the Proprietors that it does not intend to call upon the Guarantee and specify the reasons for its decision.

6.8 The Council undertake to the Proprietor that the Dollar East Section 75 Agreement will contain an equivalent requirement for a guarantee in relation to the Transport Infrastructure Works Dollar East, as these are set out in Table 2 in the Schedule (“the Dollar East Guarantee”). In the event that the Dollar East Guarantee is granted in favour of the Council, the Council shall be bound to call up the Dollar East Guarantee and complete any of the Transport Infrastructure Works Dollar East where called on to do so in accordance with the terms of the Dollar East Section 75 Agreement. The Proprietors may make their own representations to the Council where the Devon Way (East Portion) Upgrade has not been Fully Completed or Substantially Completed such that the relevant trigger set out in the Schedule (Table 2, column 3) or in clause 6.13, is likely to be breached. In such circumstances, the Proprietors shall serve written notice on the Council, marked for the attention of the Senior Manager, Legal and Governance, setting out:

- (a) the relevant Transport Intervention(s) which remains incomplete;
- (b) details of the relevant trigger that is likely to be breached, including where relevant details of the anticipated timescales for Occupation of Residential Units; and
- (c) details of the works required to complete the relevant Transport Intervention(s).

6.9 Where the Guarantee or the Dollar East Guarantee is called upon by the Council in accordance with Clause 6.7 or under the Dollar East Section 75 Agreement:

- (a) to allow completion of a Transport Intervention, and the requisite monies are received by the Council, the restrictions on Occupations or use relating to that Transport Intervention shall no longer apply and the Development (or the Dollar East Development as the case may be) shall be permitted to proceed without reference to the relevant triggers in relation to that Transport Intervention alone;
- (b) to allow completion of the Transport Infrastructure Works Dollar South, and the requisite monies are received by the Council, all restrictions on Occupation or use

relating to the Transport Infrastructure Works Dollar South shall no longer apply and the Development (or the Dollar East Development as the case may be) shall be permitted to proceed without reference to the relevant triggers; or

- (c) to allow completion of the Transport Infrastructure Works Dollar East, and the requisite monies are received by the Council, all restrictions on Occupation or use relating to the Transport Infrastructure Works Dollar East shall no longer apply and the Development (or the Dollar East Development as the case may be) shall be permitted to proceed without reference to the relevant triggers

6.10 The A91/Park Place Junction Improvements shall be delivered prior to the earlier of:

- (a) Occupation of the 50th Residential Unit on the Development, and
- (b) Occupation of the 100th Residential Unit on the Dollar East Development

For the avoidance of doubt, no more than 49 Residential Units shall be Occupied in the Development until the A91/Park Place Junction Improvements have been Fully Completed or Substantially Completed, whichever is earlier. In the event that Occupation of the 99th Residential Unit on the Dollar East Development is reached at any point prior to the Occupation of the 49th Residential Unit on the Development, there shall be no further Occupations within the Development until the A91/Park Place Junction Improvements have been Fully Completed or Substantially Completed, whichever is earlier.

6.11 The Park Place Improvements shall be delivered prior to the earlier of:

- (a) Occupation of the 100th Residential Unit on the Development, and
- (b) Occupation of the 100th Residential Unit on the Dollar East Development

For the avoidance of doubt, no more than 99 Residential Units shall be Occupied in the Development until the Park Place Improvements have been Fully Completed or Substantially Completed, whichever is earlier. In the event that Occupation of the 99th Residential Unit on the Dollar East Development is reached prior to the Occupation of the 99th Residential Unit on the Development, there shall be no further Occupations within the Dollar South Development until the Park Place Improvements have been Fully Completed or Substantially Completed, whichever is earlier.

6.12 The Devon Road / Bridge Street Junction Improvements shall be delivered prior to the earlier of:

- (a) Occupation of the 50th Residential Unit in Dollarfield East and Dollarfield West (as both are shown on the Dollar South Development Plan), or
- (b) first use of any new sports facilities in Dollar South, or
- (c) Occupation of the 100th Residential Unit across the Dollar Developments

For the avoidance of doubt, no more than 49 Residential Units within Dollarfield East and Dollarfield West, or the first use of the new sports facilities in Dollar South, or 99 Residential Units across the Dollar Developments taken together, shall be Occupied (or used in the case of the sports facilities) until the Devon Road / Bridge Street Junction Improvements have been Fully Completed or Substantially Completed, whichever is earlier.

- 6.13 The final Residential Unit in the Newfield area of the Development (as that area is shown on the Dollar South Development Plan) may not be Occupied until the Devon Way (East Portion) Upgrade has been Fully Completed or Substantially Completed, whichever is earlier.
- 6.14 The Proprietors and the Council shall liaise to ensure that the Transport Infrastructure Works Dollar South are included in the roads construction consent for the Development, as appropriate, and the Proprietors shall procure that the costs of completing the Transport Infrastructure Works Dollar South shall be incorporated in the road bond to be arranged by the Proprietors for the roads in relation to the Development.
- 6.15 On the completion of the Transport Infrastructure Works Dollar South, or where appropriate, the relevant Transport Intervention, the Proprietors will serve an Inspection Request Notice on the Council. The Council shall inspect the Works, not later than the date falling one month after the date of receipt of such notice. In the event that the Council:
- (a) are satisfied (acting reasonably) that the Transport Infrastructure Works Dollar South, or where appropriate the relevant Transport Intervention, are Completed and built in accordance with the relevant Council policy on adoption standard applicable at the date, the Council shall confirm to the Proprietors that the Works are Fully Completed.
 - (b) are not satisfied (acting reasonably) that the Transport Infrastructure Works Dollar South, or where appropriate the relevant Transport Intervention, have been Completed and/or built in accordance with the relevant Council policy on adoption standard applicable at the date, the Council shall confirm that they have been Substantially Completed and serve on the Proprietors a Corrective Works Notice. The Proprietors shall comply with the terms of the Corrective Works Notice and should they fail to comply with its terms, it will be competent for the Council to serve any further Corrective Works Notice and/or give not less than fourteen (14) days' notice in writing to the Proprietors that it will take such other action as the Council may deem necessary to carry out any works required to ensure the Transport Infrastructure Works Dollar South are Fully Completed. The cost of any works carried out (including professional fees and expenses insofar as properly and reasonably incurred) by or on behalf of the Council in doing so or pursuant to its statutory powers may be recovered by the Council under the Guarantee and within 14 days of such recovery, the Council shall confirm the Transport Infrastructure Works Dollar South, or where appropriate the relevant Transport Intervention, are Fully Completed whereupon the obligations on the Proprietors relating to Clause 6.2 hereof shall cease. Should the Proprietors disagree with the terms of a Corrective Works Notice, they shall refer the matter to an Expert in terms of Clause 19 for determination.

In the event that the Transport Infrastructure Works Dollar South are Substantially Completed, the Proprietors shall maintain them to the Maintenance and Aftercare Standard throughout the Maintenance and Aftercare Period. The Council shall be entitled to inspect the progress of the Transport Infrastructure Works Dollar South whenever they reasonably require, on giving reasonable advance written notice. The Proprietors shall ensure that the Council shall be given such information as they reasonable require in relation to the progress, delivery of the Transport Infrastructure Works Dollar South and compliance with the Maintenance and Aftercare Standard.

7 PUBLIC ART CONTRIBUTION

- 7.1 Prior to the Completion of Construction of 20% of the Total Housing Units the Public Art Strategy shall be agreed in writing with the Council. This shall set out whether Public Art is to be provided:
- (a) by way of onsite delivery; or
 - (b) by way of commuted sum via the Public Art Contribution; or
 - (c) by a hybrid of onsite delivery and Public Art Contribution.
- 7.2 Any onsite delivery agreed in terms of Clause 7.1 shall be delivered according to the timescales agreed under the Public Art Strategy, which shall also set out the timescale for approval in writing of the specification and design of the Public Art by the Council.
- 7.3 Prior to the Completion of Construction of 60% of the Total Housing Units, the Proprietors shall pay to the Council the Public Art Contribution, where applicable. In the event that the Public Art Contribution, or any instalment thereof, is not paid timeously, Interest shall be payable thereon (by the Proprietors to the Council) from the due date for payment until payment of the relevant sum in full.
- 7.4 The Council shall on receipt of the Public Art Contribution, or part thereof, pay it into an interest-bearing account held by the Council.
- 7.5 The Council shall use the Public Art Contribution towards the costs of providing public art within Dollar.
- 7.6 In the event of the Public Art Contribution not being utilised in full by the Council within fifteen (15) years of the date of receipt of the last payment of the Public Art Contribution then such contribution or the unused part thereof, as appropriate, together with any interest that has accrued thereon, shall be refunded to the Proprietors who paid it in terms of Clause 7.1 within 25 Working Days of a written request from the said Proprietors for repayment.

8 COMMUNITY FUND CONTRIBUTION

- 8.1 Prior to Completion of Construction of 60% of the Total Housing Units, the Proprietors shall pay to the Council the Community Fund Contribution Indexed. In the event that the Community Fund Contribution, or any instalment thereof, is not paid timeously, Interest shall be payable thereon (by the Proprietors to the Council) from the due date for payment until payment of the relevant sum in full.
- 8.2 The Council shall agree a scheme with Dollar Community Council and Dollar Community Development Trust as to how the Community Fund Contribution shall be used to provide streetscape and public realm enhancements within Dollar.
- 8.3 The Council shall on receipt of the Community Fund Contribution, or part thereof, pay it into an interest-bearing account held by the Council.
- 8.4 The Council shall use the Community Fund Contribution, together with any interest accrued thereon, solely towards the provision of streetscape and public realm enhancements in accordance with the scheme agreed in terms of Clause 8.2
- 8.5 In the event of the Community Fund Contribution not being utilised in full by the Council for the purposes specified in clause 8.4 within fifteen (15) years of the date of receipt of the last payment by 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 who paid it in terms of Clause 8.1 within 25 Working Days of a written request from the said Proprietors for repayment.

9 IMPLEMENTATION AND PHASING PLAN

- 9.1 As part of the First MSC Approval Application, an Implementation and Phasing Plan shall be submitted to the Council for approval.
- 9.2 The details agreed in accordance with the Implementation and Phasing Plan approved in terms of Clause 9.1 shall be implemented by the Proprietors to the satisfaction of the Council (acting reasonably) but may be varied by the written agreement of the Proprietors and the Council, both acting reasonably at all times.

10 DESIGN BRIEF AND DESIGN CODE

- 10.1 As part of the First MSC Approval Application, a Draft Design Brief and Design Code shall be submitted to the Council for approval. This will include arrangements for community input under Clause 11.
- 10.2 The details agreed in accordance with the Approved Design Brief and Design Code shall be implemented by the Proprietors to the satisfaction of the Council (acting reasonably) but may be varied by the written agreement of the Proprietors and the Council, both acting reasonably at all times.

11 COMMUNITY LIAISON

- 11.1 Within three months of the lodging of any MSC Approval and at suitable intervals throughout the construction of the development, as requested by the Council, the Proprietors shall liaise with the Council, Dollar Community Council and Dollar Community Development Trust and provide details of their development programme and ongoing works relative to the Agreement Subjects.

12 PUBLIC ACCESS TO DOLLAR ACADEMY SPORTS CAMPUS

- 12.1 Six months after the New Sports Pitches become Operational, the Proprietors will set out arrangements for public access to the New Sports Campus, in consultation with the Council. Such access will thereafter be implemented in accordance with the agreed arrangements or as otherwise agreed in writing, with Dollar Community Council and Dollar Community Development Trust being informed of such agreed arrangements.
- 12.2 The New Sports Pitches shall be available to access by members of the public on the Completion of Construction. Such access shall be arranged using the same method as is currently in place as at the date of signing this Agreement, with access being arranged directly with the Second Proprietors.

13 NOTIFICATION REQUIREMENTS

- 13.1 In order to assist with monitoring of obligations, the Proprietors shall, on a quarterly basis from the Commencement Date throughout the period of the Development, provide the Council with a schedule in a form reasonably required by the Council setting out:

- (a) the number of Residential Units within the Development which have reached Completion of Construction in the preceding quarter;
- (b) the number of Occupations which have taken place in the preceding quarter; and
- (c) for the forthcoming quarter the anticipated number of:
 - (i) Residential Units within the Development expected to reach Completion of Construction, and
 - (ii) Occupations scheduled to occur.

13.2 In the event the Council no longer requires provision of this information, it will confirm this to the Proprietors in writing.

14 AGREEMENTS AND DECLARATIONS

14.1 If the Planning Permission is refused, falls, is revoked or otherwise withdrawn or (without the consent of the Proprietors) is modified by any statutory procedure or expires before the Commencement Date then the obligations of the Proprietors under this Agreement shall thenceforth cease to have effect and shall be deemed *non pro scripto* and all contributions specified in this Agreement, or the unused parts thereof, together with any Interest that has accrued thereon, as appropriate, shall be refunded by the Council to the relevant Proprietors, or former Proprietors, which paid the Contributions within 25 Working Days of a written request being received from the relevant Proprietors or former Proprietors for repayment.

14.2 If the Proprietors transfer its interest in the Agreement Subjects or any part thereof as undeveloped land the relevant Proprietor shall notify the Council by registered post of the identity and contact address of the transferee within 10 Business Days of the date of the transfer.

14.3 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Agreement Subjects in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.

14.4 Nothing contained or implied in this Agreement shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise of its functions as local authority and its rights powers, duties, and obligations under all public and private statutes bye-laws and regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement.

14.5 If any provision of this Agreement shall be held to be invalid, illegal or unenforceable the validity legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected or impaired.

14.6 All consideration given in accordance with the terms of this Agreement shall be inclusive of any VAT properly payable in respect thereof.

14.7 No waiver (whether express or implied) by the Council of any breach or default by the Proprietors in performing or observing any of the terms and conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms or conditions or from acting upon any subsequent breach.

15 ENFORCEABILITY

- 15.1 The undertakings on the part of the Proprietors in this Agreement are provisions which for the purposes of Section 75 of the 1997 Act are intended to be enforceable by the Council against the Proprietors and their successors as owners of the Agreement Subjects or any part thereof at the Council's discretion, pursuant to Section 75(5) and Section 75C of the 1997 Act, until they are discharged provided always that for the purposes of Section 75C of the 1997 Act no person shall be liable for the performance, or any breach of any obligation after they have disposed of their interest in the Agreement Subjects or the relevant part thereof, save in relation to any breach subsisting prior to disposing of such interest.
- 15.2 Notwithstanding the provisions of Clause 14.1, the undertakings in this Agreement shall not be binding on (i) any Bona Fide Third-Party Purchaser or Occupier of any Open Market Housing Unit or land associated with any Open Market Housing Unit constructed on the Agreement Subjects and/or (ii) any utility company that occupies part of the Agreement Subjects and/or acquires part of the Agreement Subjects for the purposes of their utility services network including providing services to the Development. In respect of the Bona Fide Third Party Purchaser or Occupier of an Affordable Housing Unit or land associated with any such Affordable Housing Unit constructed on the Agreement Subjects the said Bona Fide Third Party Purchaser shall be bound to remain subject to Affordable Housing Tenure in terms of Clause 3.1, but shall not otherwise be bound by the terms of this Agreement. The liability of the Proprietors under this Agreement shall continue notwithstanding such sales.
- 15.3 The Council acknowledges that parts of the Agreement Subjects will be sold on by the Proprietors in tranches to different ownerships for the construction of the Development. The Council further acknowledges that in consequence of such future multiple ownership following each sale or conveyance by the Proprietors, the obligations incumbent on the Proprietors in this Agreement are undertaken by them with reference only to that part of the Agreement Subjects for which the relevant Proprietor is or shall become the heritable proprietor and that obligations are only enforceable against each relevant Proprietor to the extent that such obligation affects such part or parts of the Agreement Subjects.
- 15.4 This Agreement does not confer on any person who is not a party to this Agreement any right to enforce or otherwise invoke this Agreement or any part of it under the Contract (Third Party Rights) (Scotland) Act 2017.
- 15.5 Notification of any sale by the Proprietors in tranches for the construction of the Development shall occur as follows:
- (a) On each occasion that the Proprietors enter into a Disposal Contract the Proprietors shall be obliged within 10 Working Days of the conclusion of any such Disposal Contract to provide in writing to the Council the following information: namely the name, address and full contact details including the full postal address, telephone number and email address of each and every party to any such Disposal Contract; the extent of the Development Subjects which are the subject of the Disposal Contract; and confirmation of whether the Disposal Contract in question results in a transfer of the role of the Proprietor; and
 - (b) The Proprietor shall notify the Council, and provide such information to the Council as is necessary, to specify the Proprietor's own phase or phases of development of the Residential Units within the Development for the purpose of establishing the Proprietors obligations under this Agreement;

16 DISCHARGE AND MODIFICATION

16.1 In the event that the Proprietors apply to modify and/or discharge the whole or any part of this Agreement, the terms of Section 75A of the 1997 Act shall apply. 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 and/or modification hereof.

17 ASSIGNATION

17.1 The original Proprietors (who for the purpose of this Clause are the Proprietors who signed this Agreement) shall not transfer or assign their rights and obligations under this Agreement or dispose of their interests in the Agreement Subjects (or any part thereof) prior to registration of this Agreement in the Land Register of Scotland, or the recording of this Agreement in the relevant Division of the General Registers of Sasines (as appropriate) being completed.

18 DISPUTE RESOLUTION

18.1 In the case of any dispute in respect of any of the matters referred to in this Agreement any party may refer the matter to the Expert.

18.2 The Expert shall act as an expert and not as an arbitrator.

18.3 The Expert will be agreed between the parties or in default of such agreement (where either party has given written notice to require the other party within ten Business Days to so agree) shall be appointed in the application of either party by the President for the time being of the Royal Institution of Chartered Surveyors or Vice President of the Institute and if the Expert appointed dies, delays or becomes unwilling or unable to act for any reason another may be agreed or appointed in accordance with this paragraph which procedure may be repeated as many times as is necessary.

18.4 The fees and expenses of the Expert (including the costs of his appointment) shall be borne as he shall decide or in the absence of any decision borne equally by the parties who shall otherwise bear their own costs.

18.5 The Expert shall afford the parties an opportunity to make representations to him and to comment on the representations of the other party.

18.6 The determination of the Expert shall be made and communicated to the parties in writing within 28 days of the representation at Clause 18.5 and shall be final and binding on the parties.

19 NOTICES

19.1 All notices which require to be given in terms of this Agreement shall be in writing and shall be deemed to be sufficiently served if signed by or on behalf of the party issuing the notice and either (i) delivered personally, or (ii) sent by pre-paid recorded delivery or registered post addressed:

19.2 In the case of the First Proprietors to the First Proprietors' last known address and to the First Proprietor's solicitors reference SJMLMJ/S08663.0014 at Turcan Connell, Princes Exchange, 1 Earl Grey Street, Edinburgh, EH3 9EE and in the case of the Second Proprietors at Dollar Academy, Mylne Avenue, Dollar, Clackmannanshire, FK14 7DU (FAO: The Rector) and to the Second Proprietors' solicitors at Pinsent Masons, 13 Queen's Road, Aberdeen, AB15 4YL

and, for subsequent persons with an interest in the Agreement Subjects (if a body corporate) at their Registered Office or Head Office, and (if an individual) at his last known address in the United Kingdom and (if a partnership) to the partnership and any one or more of the partners thereof at its last known principal place of business in the United Kingdom or (in any case) at such address as, with regard to the First Proprietors, the First Proprietors may have notified in writing to the Council and as, with regard to the Second Proprietors, the Second Proprietors may have notified in writing to the Council;

19.3 In the case of the Council, to the Council to both their Principal Office or to such other address as the Council may have notified to the Proprietors previously in writing; and any such notice shall be deemed to have been served (I) if delivered personally, at the time of delivery, and (II) in the case of pre-paid recorded delivery or registered post, on the second Working Day after the date on which the same was posted.

19.4 In providing service, it shall be sufficient to prove that the envelope containing the notice was duly addressed to the Council or the Proprietors, as the case may be, in accordance with this Clause and posted to the place to which it was so addressed.

20 COMMUNICATION IN WRITING

20.1 In the case of all requirements to communicate in writing in terms of this Agreement, except notices, it shall be acceptable for the written communication to be by either: (i) a letter signed by or on behalf of the party issuing the letter; or (ii) an email sent by or on behalf of the party issuing the email.

20.2 Where written communications are sent by post they shall be addressed:

(a) in the case of the First Proprietors at the First Proprietors' last known address and, for subsequent persons with an interest in the Agreement Subjects (if a body corporate) at their Registered Office or Head Office, and (if an individual) at his last known address in the United Kingdom and (if a partnership) to the partnership and any one or more of the partners thereof at its last known principal place of business in the United Kingdom or (in any case) at such address as the First Proprietors may have notified in writing, by post or email, to the Council previously with a copy being sent to the First Proprietors' solicitors reference SJMLMJ/S08663.0014 at Turcan Connell, Princes Exchange, 1 Earl Grey Street, Edinburgh, EH3 9EE;

(b) in the case of the Second Proprietors at Dollar Academy, Mylne Avenue, Dollar, Clackmannanshire, FK14 7DU (FAO: The Rector) and, for subsequent persons with an interest in the Agreement Subjects (if a body corporate) at their Registered Office or Head Office, and (if an individual) at his last known address in the United Kingdom and (if a partnership) to the partnership and any one or more of the partners thereof at its last known principal place of business in the United Kingdom or (in any case) at such address as the Second Proprietors may have notified in writing, by post or email, to the Council previously, with a copy being sent to the Second Proprietors' solicitors reference 660094.07003/SBF at Pinsent Masons LLP, 13 Queen's Road, Aberdeen, AB15 4YL; and

(c) in the case of the Council, to Kilncraigs, Greenside Street, Alloa, Clackmannanshire FK10 1EB or to such other address as the Council may have notified to the Proprietors previously in writing, by post or email;

20.3 Where written communications are sent electronically by email they shall be addressed to:

- (a) in the case of the Proprietors to such email address as the Proprietors may have notified to the Council in writing, by post or email, previously and to the First Proprietors' solicitors at [REDACTED] or [REDACTED] and to the Second Proprietors' solicitors at [REDACTED]
- (b) in the case of the Council to [] or to such other email address as the Council may have notified to the Proprietors previously in writing, by post or email.

21 REGISTRATION

- 21.1 The parties consent to registration hereof for preservation and execution in the Books of Council and Session; and the Land Register of Scotland.
- 21.2 The Proprietors (unless otherwise agreed with the Council) undertake, as soon as reasonably practicable after the last date of execution hereof, to concurrently register this Agreement in the Books of Council and Session; and against the Agreement Subjects in the Land Register of Scotland.
- 21.3 The Proprietors shall as soon as reasonably practicable after registration deliver to the Council:
- (a) a registered extract of this Agreement;
 - (b) the Keeper of the Register of Scotland's acknowledgement of the application for registration of this Agreement in the Land Register of Scotland;
 - (c) a Legal Report disclosing the application for registration of this Agreement and disclosing no entries prejudicial to the Council's interests; and
 - (d) payment of the Council's fees and expenses pursuant to Clause 22.
- 21.4 In the event that the Keeper rejects the application for registration of this Agreement the Proprietors undertake to:
- (a) within 2 Working Days of receipt of the Keeper's rejection, inform the Council, in writing and supply a copy of the rejection letter from the Keeper;
 - (b) promptly undertake such actions as may reasonably be required to allow the Keeper to accept this Agreement for registration, or a substitute agreement in terms agreed by the Council, acting reasonably.
- 21.5 The Proprietors undertake and warrant that:
- (a) they shall not take steps to withdraw the application for registration of this Agreement in the Land Register of Scotland without the consent of the Council, such consent not to be unreasonably withheld; and
 - (b) to the best of their knowledge and belief that, at the date on which they execute this Agreement, they are not subject to, or under threat or warning of, any bankruptcy, insolvency proceedings, or other Insolvency Event, including voluntary insolvency or bankruptcy, and will not take steps to enter into any voluntary insolvency, bankruptcy, or other arrangements that may result in an Insolvency Event between the date on

which they sign this Agreement and the updating of the Title Sheet by the Keeper disclosing this Agreement.

22 EXPENSES

22.1 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 this Agreement for the Council's own use.

IN WITNESS WHEREOF these presents consisting of this and the preceding [] pages together with the Schedule and Plan(s) annexed are executed as follows:-

SUBSCRIBED for and on behalf of the said **CLACKMANNANSHIRE COUNCIL**

at

on

by

.....
Print Full Name

.....
Proper Officer

Before this witness

.....
Print Full Name

.....
Witness

.....
Address

.....

.....

SUBSCRIBED for and on behalf of the said **THE GOVERNORS OF DOLLAR ACADEMY TRUST**

at

on

THIS IS THE PLAN REFERRED TO IN THE FOREGOING MINUTE OF AGREEMENT BETWEEN CLACKMANNANSHIRE COUNCIL, KATHERINE LAKE STEWART AND THE GOVERNORS OF DOLLAR ACADEMY TRUST IN RESPECT OF SUBJECTS AT LAND SOUTH OF DOLLAR, CLACKMANNANSHIRE

The Schedule

TRANSPORT INFRASTRUCTURE WORKS

Table 1 – Transport Infrastructure Works Dollar South

Transport Intervention	Agreed % Split		Trigger point for completion / block on further Occupations	To be delivered by
	South	East		
Active Travel Bridge over Dollar Burn	100	0	Prior to the earliest of: a) Occupation of first Residential Unit in Dollar South Phase 3, or b) Occupation of the 100 th Residential Unit in any phase of Dollar South (inclusive)	Dollar South
A91/Park Place Junction improvement	70	30	As per clause 6.10 of the Dollar South Section 75 Agreement As per clause 6.11 of the Dollar East Section 75 Agreement	Dollar South
Park Place improvements	55	45	As per clause 6.11 of the Dollar South Section 75 Agreement As per clause 6.11 of the Dollar East Section 75 Agreement	Dollar South
Devon Way lighting scheme	100	0	Prior to Occupation of the 50 th Residential Unit on Dollar South.	Dollar South
Devon Road/Bridge St junction improvements	55	45	As per clause 6.12 of the Dollar South Section 75 Agreement As per clause 6.12 of the Dollar East Section 75 Agreement	Dollar South
Ramshorn junction safety improvements	62	38	Prior to Occupation of the 100 th Residential Unit on Dollar South.	Dollar South
Bridge Street Improvements	100	0	Prior to the earliest of a) Occupation of the 50 th Residential Unit in	Dollar South

			Dollarfield West and Dollarfield East or, b) first use of any completed Sports Facilities in Dollar South or c) Occupation of the 100 th Residential Unit on Dollar South	
Lover's Loan road widening	100	0	Prior to Occupation of any house in Newfield phase of Dollar South	Dollar South
Gateway feature – Devon Road	90	10	Prior to the earliest of: a) Occupation of the 50 th house in Dollarfield West and Dollarfield East, or b) first use of any Sports Facilities in Dollar South.	Dollar South

Table 2 – Transport Infrastructure Works Dollar East

Transport Intervention	Agreed % Split		Trigger point for completion / block on further Occupations	To be delivered by
	South	East		
Devon Way (east portion) upgrade	25	75	As per clause 6.10 of the Dollar East Section 75 Agreement As per clause 6.13 of the Dollar South Section 75 Agreement	Dollar East
Muckhart Road improvements	0	100	Prior to Occupation of the 25 th Residential Unit in Dollar East Residential Areas 1, 2, 3 or 4 (inclusive).	Dollar East
Gateway feature – Muckhart Road	10	90	Prior to Occupation of the 25 th Residential Unit in Dollar East Residential Areas 1, 2, 3 or 4 (inclusive).	Dollar East
Active travel link: Dollar East-Lovers Loan	0	100	Prior to Occupation of the 25 th Residential Unit in Dollar East Residential Areas 2, 3 or 4 (inclusive).	Dollar East

MINUTE OF AGREEMENT

Between

CLACKMANNANSHIRE COUNCIL

And

NICHOLAS IAN JOHN HERRICK POETT

**PLANNING OBLIGATION BY
MINUTE OF AGREEMENT**

**Subjects: Land at
Harviestoun, Dollar East,
Clackmannanshire**

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Table 1 – Transport Infrastructure Works Dollar South

Table 2 – Transport Infrastructure Works Dollar East

PLANNING OBLIGATION

BY MINUTE OF AGREEMENT

BETWEEN

- (1) **CLACKMANNANSHIRE COUNCIL**, the Local Authority for Clackmannanshire in terms of the Local Government etc. (Scotland) Act 1994, and having its principal office at Kilncraigs, Greenside Street, Alloa, Clackmannanshire FK10 1EB (who and whose successors as the Planning Authority and Roads Authority respectively are hereinafter referred to as the "**Council**");
- (2) **NICHOLAS IAN JOHN HERRICK POETT**, residing at Harviestoun, Dollar, Clackmannanshire (who and whose successors in substitution therefor as the heritable proprietor of the Agreement Subjects hereinafter defined are hereinafter referred to as the "**Proprietor**")

WHEREAS:

- (A) the Council is the planning authority for Clackmannanshire in terms of Section 1 of the 1997 Act;
- (B) the Council is the roads authority for Clackmannanshire 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);
- (C) the Council is the education authority for Clackmannanshire in terms of section 135 of the Education (Scotland) Act 1980;
- (D) The Proprietor is entitled in terms of Section 75 of the 1997 Act by agreement with the Council, in respect of land in the district of the Council as planning authority, to enter into an obligation restricting or regulating the development or use of the land, either permanently or during such period as may be prescribed by the agreement;
- (E) The Proprietor has applied to the Council for planning permission under the 1997 Act for the Development 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;
- (F) In relation to the Transport Infrastructure Works, it is acknowledged and agreed that the methods for cost-sharing, equalisation and any step-in rights between the Dollar Developments are the subject of a separate commercial agreement between those parties and are not covered within this Agreement

NOW THEREFORE the Council and the Proprietor have agreed and do hereby agree as follows:-

1 DEFINITIONS

- 1.1 In this Agreement, including the preamble, the following words have the meanings ascribed to them as follows:

1997 Act means the Town and Country Planning (Scotland) Act 1997, as amended;

A91/Park Place Junction Improvement means installation of a raised table with coloured surfacing and long lead-in ramps, covering the junctions of the A91 with Park Place and East

Burnside and renewal of anti-skid surfacing on approach to the existing zebra crossing, to include re-proving of zebra crossing in its current location within the new surfaced area, to be provided by the Proprietors of the Dollar South Development in accordance with the Dollar South Section 75 Agreement;

Access Rights means any required access rights for all relevant purposes relating to the proposed end use of the Affordable Housing Subjects as are needed to ensure that a valid and marketable heritable or, as the case may be, leasehold title is granted, including without prejudice to the foregoing generality, connection rights and any rights of access over such parts of the remainder of the Agreement Subjects as may be needed for the purposes of inspecting, maintaining and renewing the Services;

Active Travel Bridge over Dollar Burn means the replacement of the existing bridge over the Dollar Burn at Park Place with a new wider bridge (minimum 3m width), to be provided by the Proprietors of the Dollar South Development in accordance with the Dollar South Section 75 Agreement;

Active Travel Link: Dollar East-Lover's Loan means, subject to the approval process in clause 6.3, the provision of a footpath link along the south side of the Kelly Burn, linking the Development to Lover's Loan;

Affordable Housing means housing which is occupied subject to an Affordable Housing Tenure and marketed for sale or rent to persons who are in Housing Need and have an income that is insufficient to have that need met in the open market;

Affordable Housing Commuted Sum means such sum calculated in accordance with Clauses 3.9 and 3.10;

Affordable Housing Contract means:

- (a) a contract for the sale by the Proprietor of the Affordable Housing Subjects duly Serviced with the benefit of the Access Rights to an Affordable Housing Provider for the purpose of constructing and marketing Affordable Housing Units to persons in Housing Need, or
- (b) such other contract or contracts to secure the delivery of Affordable Housing as the Council on the application of the Proprietor and acting reasonably may approve;

Affordable Housing Provider means a body approved by the Council whose function or aim is to provide and manage Affordable Housing, including a housing association or associations or a housing company or companies or a trust or trusts registered as a Registered Social Landlord or an alternative affordable housing provider nominated by the Proprietor in respect of the Affordable Housing Subjects;

Affordable Housing Scheme means a written scheme demonstrating how Affordable Housing will be delivered, marketed and retained on the Affordable Housing Subjects as part of the Development, such scheme to include details of (i) the proposed location of Affordable Housing Subjects, (ii) the category of Affordable Housing Tenure, (iii) the design standards to which the Affordable Housing Units are to be built, (iv), the type of Affordable Housing Contract by which the Affordable Housing Units will be made available and (v) the proposed Retention Scheme;

Affordable Housing Subjects means that area or piece of ground forming part of the Agreement Subjects on which the Affordable Housing is to be located as identified in the Approved Affordable Housing Scheme to be submitted to the Council in terms of Clause 3;

Affordable Housing Tenure means any one of the following categories of Affordable Housing tenure: Social Rent; Mid-Market; Shared Equity; and any other format of affordable housing tenure which is agreed in writing with the Council as meeting the requirements of the Priority Client Group;

Affordable Housing Unit means any Residential Unit within the Development that is to be occupied subject to an Affordable Housing Tenure;

Agreement means this agreement granted in accordance with the terms of Section 75 of the 1997 Act;

Agreement Subjects means ALL and WHOLE the three areas of land lying to the east and south of Dollar [shown outlined in red on the Plan], which areas form part and portion of (FIRST) the subjects on the north and south sides of the road from Westertoun Farm, Dollar, registered in the Land Register of Scotland under Title Number CLK7023; and (SECOND) the subjects at Home Park Field, Kellybank, Dollar, registered in the Land Register of Scotland under Title Number PTH45724;

AH Delivery Period has the meaning ascribed to it in Clause 3.7;

Application means the application for planning permission registered by the Council under the reference 19/00018/PPP for the Development;

Approved Affordable Housing Scheme means an Affordable Housing Scheme approved by the Council in writing in accordance with Clause 3, including, on the written request of the Proprietor, any amendment thereto subsequently approved in writing by the Council;

Approved Design Brief and Design Code means the Design Brief and Design Code approved by the Council in writing in accordance with Clause 10, including, on the written request of the Proprietor, any amendment thereto subsequently approved in writing by the Council;

Bona Fide Third Party Purchaser means an individual purchaser (and his, her or their successors in title) who has purchased in good faith, and for value one of the individual Residential Units and pro indiviso share of common parts pertaining thereto at the Development erected pursuant to the Planning Permission;

Bridge Street Improvements means the provision of a new pedestrian crossing point on Bridge Street and upgrades of existing bus shelters along Bridge Street, to be provided by the Proprietors of the Dollar South Development in accordance with the Dollar South Section 75 Agreement;

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

Community Fund Contribution means the sum of FIVE HUNDRED POUNDS (£500) STERLING Indexed per Residential Unit within the Development towards the cost of streetscape and public realm enhancements within Dollar;

Completion of Construction means

- (1) in respect of any Residential Unit or in respect of the Expansion of Strathdevon Primary School and Strathdevon Nursery, the earlier of the date on which the Council's Building Standards Department as the Verifier, as defined by Section 7 of the Building (Scotland) Act 2003 (the “**2003 Act**”):
 - (a) gives written intimation to the Proprietor that they have approved the Completion Certificate, in terms of Section 18 of the 2003 Act, in respect of that Residential Unit or the Expansion of Strathdevon Primary School and Strathdevon Nursery, as the case may be; or
 - (b) gives written intimation to the Proprietor that they have approved a Certificate of Temporary Habitation, in terms of Section 21 of the 2003 Act, in respect of that Residential Unit or the Expansion of Strathdevon Primary School and Strathdevon Nursery, as the case may be;

and the term **Completed** shall be construed accordingly;

Corrective Works means works identified by the Council which are deemed necessary to ensure that they are built in accordance with the agreed Transport Infrastructure Works and to an acceptable adoptable standard;

Corrective Works Notice means a notice served by the Council containing a schedule of Corrective Works;

Design Brief and Design Code means a document prepared by the Proprietor that informs all phases of development and ensures appropriate design standards are retained throughout the Development;

Development means the erection of mixed use development with supporting infrastructure comprising residential, retail (convenience) with associated parking, open space, landscaping, drainage, and accesses from the A91 (Muckhart Road) on the Agreement Subjects pursuant to the Planning Permission;

Devon Road/Bridge Street Junction Improvements means extending the footway on the corners of the A91 Bridge Street / Devon Road junction to reduce the A91 to 6.0 metres wide; relocating the “Give Way” line forward to improve junction visibility; and installation of a new pedestrian crossing point to the east, to be provided by the Proprietors of the Dollar South Development in accordance with the Dollar South Section 75 Agreement;

Devon Way (East Portion) Upgrade means, subject to the approval process in clause 6.3, the provision of new street lighting and a 3m wide shared path on Devon Way from Dollar Burn crossing point east to Lover’s Loan;

Devon Way Lighting Scheme means the provision of new street lighting on Devon Way to adoptable standard, from Devon Road (B913) east to the Dollar Burn crossing point, to be provided by the Proprietors of the Dollar South Development in accordance with the Dollar South Section 75 Agreement;

Disposal Contract means the grant of a disposition or other conveyance in respect of the Agreement Subjects or any part thereof (other than in respect of an individual Residential Unit to a proprietor or proprietors for occupation as a private dwellinghouse), or any contract or assignment therefor or thereof;

District Valuer means a district valuer for Clackmannanshire employed by the District Valuer Services section of Her Majesty's Revenue and Customs Valuation Office Agency;

Dollar Community Development Trust means Dollar Community Development Trust, a Company limited by guarantee (Company Number SC563463) and having its registered office at The Hive, Park Place, Dollar, FK14 7AA;

Dollar Developments means together the Development and the Dollar South Development;

Dollar Developments' Plans means the Dollar East Development Plan and the Dollar South Development Plan, both annexed and executed as relative hereto, showing the indicative Phases relevant to the Transport Infrastructure Works as detailed in the Schedule;

Dollar South Development means the mixed use development comprising residential, employment, commercial and community uses, sports hall, sports pitches and running track, including associated landscaping and supporting infrastructure on agricultural land and playing fields in accordance with the terms of the planning permission in principle to be granted by the Council under reference 18/00283/PPP;

Dollar South Section 75 Agreement means the Section 75 Agreement to be entered into by the Proprietors of the Dollar South Development;

Draft Affordable Housing Scheme means a draft of the proposed Affordable Housing Scheme submitted by the Proprietor to the Council for approval as part of the First MSC Approval Application;

Education Contribution means the amount of the Education Unit Contribution multiplied by the Total Housing Units;

Education Unit Contribution means the sum of SEVEN THOUSAND AND THIRTY-NINE POUNDS (£7,039) STERLING Indexed per Residential Unit within the Development towards the expansion of Strathdevon Primary School and Strathdevon Nursery, 17 Park Place, Dollar, Clackmannanshire FK14 7AA serving the Development being the sum calculated based on a maximum of 385 Residential Units on the Dollar Developments;

Expansion of Strathdevon Primary School and Strathdevon Nursery means the works to be funded by the Proprietor and the Proprietors of the Dollar South Development through the Education Contribution and undertaken by the Council to mitigate the impact of the Dollar Developments comprising:

(a) For Strathdevon Primary School:

- (i) 4 classrooms, 60m² each
- (ii) secondary hall or expansion, 180 - 200m²
- (iii) kitchen / servery expansion, 50m²
- (iv) 10 WCs, 40m² in total
- (v) circulation allowance of 20%, up to 106m²;

(b) For Strathdevon Nursery:

- (i) nursery classroom area of 46m²

- (ii) 2 WCs, 8m2 in total;

Expert means an expert who, insofar as possible, has been professionally qualified for at least 10 years in the field in which the Dispute arises;

First MSC Approval means the approval by the Council of the First MSC Approval Application;

First MSC Approval Application means the first application for approval, of any matters specified in a condition of the Planning Permission and submitted to the Council;

Fully Completed means that the Transport Infrastructure Works are constructed and completed to the Council's satisfaction and at a standard necessary for adoption by the Council as local roads authority;

Fully Completed Date means the date on which the Council confirm to the Proprietor that the Transport Infrastructure Works are Fully Completed;

Gateway Feature – Devon Road means the introduction of appropriate traffic management measures to be introduced on Devon Road to reduce traffic speed upon entry to the extended village, relocation of the 30mph speed limit and signage on Devon Road as appropriate, and Public Transport upgrades of existing bus shelters along Devon Road, to be provided by the Proprietors of the Dollar South Development in accordance with the Dollar South Section 75 Agreement;

Gateway Feature – Muckhart Road means, subject to the approval process in clause 6.3, the provision of gateway entrance feature to Dollar village on the eastern approach along the A91 / Muckhart Road;

Guarantee means a bond or financial guarantee to be provided by the Proprietor to the Council in respect of the Transport Infrastructure Works Dollar East in terms of Clause 6.4 of this Agreement;

Health Board means a board constituted either:

- (a) by order under section 2(1)(a) of the National Health Service (Scotland) Act 1978; or
- (b) under the Public Bodies (Joint Working) (Scotland) Act 2014;

Healthcare Contribution means the Healthcare Unit Contribution multiplied by the Total Housing Units;

Healthcare Unit Contribution means the sum of ONE THOUSAND ONE HUNDRED AND FIFTEEN POUNDS (£1,115) STERLING Indexed per Residential Unit within the Development;

Housing Need means households that lack their own housing or are living in housing which is inadequate or unsuitable, who are unlikely to be able to meet their needs in the housing market without some assistance and who are likely to earn below the income threshold set by the Council based on incomes across the Clackmannanshire area;

Implementation and Phasing Plan means a plan setting out the phasing of the Development and the connected arrangements to ensure construction of housing and delivery of required

contributions/provision of infrastructure to coincide with that housing and as agreed by the Council further to the operation of Clause 9 in terms of the MSC Approvals;

Index means the All-in Tender Price Index figures as published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors on a quarterly 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 17;

Indexed means increased in accordance with the following formula:

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

Where:

- a* equals the Index published for the month following the date of signing of this Agreement by the Council or, with regard to the Education Contribution only, September 2021;
- b* equals the Index published in the month immediately preceding the date of payment of the relevant sum to be Indexed; and
- c* equals the relevant sum to be Indexed;

Insolvency Event means the occurrence in relation to any party bound by this Agreement of any of the following events: (a) the party becoming apparently insolvent; (b) the making of an order that they be wound up or the passing of a resolution for voluntary winding up; (c) the appointment of an administrative receiver or receiver and manager in respect of any of their assets and undertakings; (d) the making of any bankruptcy order or order for sequestration; (e) the making of any voluntary arrangement (corporate or individual) for a composition of debts; (f) the application for, or the appointment of, an administrator or the making of an administrative order; (g) the party being struck off the Register of Companies; (h) the appointment of a liquidator; (i) the possession of any of the party's property under the terms of a floating charge; or (j) any similar event which in the opinion of the Council is of like effect;

Inspection Request Notice means a notice served on the Council by the Proprietor together with a written report and photographic evidence confirming that the Works are built in accordance with the Transport Infrastructure Works and to an acceptable adoptable standard;

Interest means 4 per cent per annum above the base rate of interest payable from time to time by the Royal Bank of Scotland plc;

Keeper means the Keeper of the Registers of Scotland as defined in Section 113 of the Land Registration etc (Scotland) Act 2012;

Longstop Date means the date falling ten months from the date on which the final payment of the Education Contribution in terms of Clause 4.3 is received by the Council from the Dollar Developments;

Lover's Loan Road Widening means the widening of Lover's Loan from Park Place to access junction for Newfield to agreed standard to incorporate footpath provision on land in control of Clackmannanshire Council to allow access to Newfield, to be provided by the

Proprietors of the Dollar South Development in accordance with the Dollar South Section 75 Agreement;

Maintenance and Aftercare Standard means the standard of maintenance and aftercare to be applied by the Proprietor to the whole or any part of the Transport Infrastructure Works for the Maintenance and Aftercare Period before it will be considered suitable for adoption for future maintenance and aftercare by the Council such standard to be in accordance with the relevant Council policy on adoption standard applicable at the date when the said Transport Infrastructure Works are Substantially Completed and the Maintenance and Aftercare Period is due to commence;

Maintenance and Aftercare Period means the period from the date when the whole or any part of the Transport Infrastructure Works are Substantially Completed until the Fully Completed Date or such shorter period as may be agreed in writing by the Council acting reasonably on the application of the Proprietor;

Material Operation means a material operation in accordance with Section 27 of the 1997 Act but excepting always any operation carried out for the purpose of (a) constructing boundary fences or hoardings or (b) survey investigations to establish the extent of any ground contamination or (c) archaeological surveys or investigations or (d) landscaping and/or planting works and all engineering works associated with site clearance for such works;

Mid-Market means housing with rents set at a level higher than Social Rent, but lower than market rent levels to meet the requirements of the Priority Client Group, such rent levels to be agreed with the Council, acting reasonably, having regard to other schemes in Clackmannanshire;

MSC Approval means the approval by the Council in terms of any MSC Approval Application;

MSC Approval Application means the application for discharge, approval, consent or agreement of any matters specified in a condition of the Planning Permission and submitted to the Council;

Muckhart Road Improvements means, subject to the approval process in clause 6.3, the provision of new crossings and bus stops, street lighting and section of new footway on Muckhart Road;

Occupation means the occupation of any Residential Unit by any person for residential use but does not include occupation by personnel engaged in construction, fitting out or decoration, or occupation for marketing or display or occupation in relation to security operations, and "Occupied" shall be construed accordingly;

Open Market Housing Units means the Residential Units comprised in the Total Housing Units which are not Affordable Housing Units;

Park Place Improvements means:

(i) the designation of that length of Park Place from its Bridge Street junction south and east to Lover's Loan as a "School Exclusion Zone" between the hours of 8.30am - 9.15am and 2.45pm - 3.30pm, Monday to Friday during school terms, with exemption (details to be set out in a Council Road Order) for access for residents and to the medical centre and community hub; and

(ii) a new footway to be provided along the west side of Park Place to provide better connection to the bridge over Dollar Burn, which footway should achieve 2.5m width subject to technical constraints and assessment of impact on tree roots,

to be provided by the Proprietors of the Dollar South Development in accordance with the Dollar South Section 75 Agreement;

Phase means a phase of the Development as identified in the Implementation and Phasing Plan;

Planning Permission means the planning permission in principle for the Development subject to the conditions set out in the report on the Application to the Council's Planning Committee held on 8 February 2022;

Plan means the plan annexed and signed as relative hereto;

Priority Client Group means persons in Housing Need as determined in accordance with the objects of the Affordable Housing Provider, failing which such other income, geographic and other eligibility criteria as may be set by the Council from time to time for the purchase or rent of Affordable Housing;

Proprietors of the Dollar South Development means (First) Katherine Lake Stewart, residing at The Manor House, Church Lane, Freckenham, Suffolk, IP28 8JF and (Second) The Governors of Dollar Academy Trust, 23 West Burnside, Dollar, Clackmannanshire, FK14 7DX, a registered charity and registered under Charity Number SC 009888 and their successors in substitution therefor as heritable proprietors of the Dollar South Development;

Public Art means the provision of public art within the Development in accordance with Supplementary Guidance (SG1 – Developer Contributions) of the Clackmannanshire Local Development Plan 2015;

Public Art Contribution means the Public Art Unit Contribution multiplied by the Total Housing Units;

Public Art Unit Contribution means the sum of TWO HUNDRED AND FIFTY POUNDS (£250) STERLING Indexed per Residential Unit within the Development towards the cost of providing public art within Dollar;

Public Art Strategy means the strategy for delivery of Public Art to be agreed with the Council in terms of Clause 7.1;

Ramshorn Junction Safety Improvements means the provision of one new map-type advance approach sign for southbound traffic, approximately 240 metres north of Devon Road junction and enhanced junction radii at the B9140 and B913 junctions with the A977, to be provided by the Proprietors of the Dollar South Development in accordance with the Dollar South Section 75 Agreement;

Registered Social Landlord means a landlord registered under Section 20 of the Housing (Scotland) Act 2010 or its subsidiary;

Relevant Milestone means the first date on which any of the following occur in respect of a Residential Unit:

(a) Completion of Construction for that Residential Unit or

- (b) that the Residential Unit is Occupied or
- (c) settlement actually occurs in terms of the first sale transaction for that Residential Unit;

Residential Unit means any property within the Agreement Subjects which is 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;

Retention Scheme means a scheme demonstrating how the Proprietor proposes to deliver a mechanism for ensuring that the heritable proprietors and their successors and assignees whomsoever of the Affordable Housing Subjects and/or Affordable Housing Units shall not permit or allow (a) the Affordable Housing Subjects to be used other than for the purposes of providing Affordable Housing Units and (b) the Affordable Housing Units to be Occupied as a residence except by a Priority Client Group;

Services means (a) such roads and footpaths constructed to the standard necessary for adoption by the Council as local roads authority as are needed to connect the boundary of the relevant area of the Affordable Housing Subjects to the public road network and (b) all related infrastructure reasonably needed to service the Affordable Housing Subjects including the pipes, drains, channels, wires, cables and conduits needed to ensure the passage of water, electricity, gas, communications and other services from the boundary of the Affordable Housing Subjects to the mains of the relevant infrastructure networks including the public water and public waste water networks, together with the benefit of any required access rights for all relevant purposes relating to the said proposed end use, including, without prejudice to the foregoing generality, connection rights and any rights of access over such parts of the remainder of the Agreement Subjects as may be needed for the purpose of maintenance, inspection and renewal of the aforesaid service media and the word **Servicing** and **Serviced** shall be construed accordingly;

Shared Equity means that 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 the Scottish Ministers or other such landlord or body as may be approved by the Council;

Substantially Completed means written confirmation issued by the Council that the works have been substantially completed but not completed and built in accordance with the relevant Council policy on adoption standard applicable at the date to the satisfaction of the Council as roads authority under the Roads (Scotland) Act 1984;

Social Rent means property provided at an affordable rent that is owned, managed, leased or otherwise provided by a Registered Social Landlord (or such other body as may be approved by the Council) to meet the requirements of persons in Housing Need and let through a Scottish Secure Tenancy;

Transferring Party means the Proprietor who elects to transfer the ownership of the Affordable Housing Subjects to the Council, or third party nominated by the Council, for nil consideration, having first used all reasonable endeavours to enter into an Affordable Housing Contract;

Transport Infrastructure Works means the list of Transport Interventions set out in the Schedule attributable to the Dollar Developments;

Transport Infrastructure Works Dollar East means the Transport Interventions which the Proprietor is bound to deliver in terms of Clause 6.2 of this Agreement, being:

- (a) Devon Way (East Portion) Upgrade;
- (b) Muckhart Road Improvements;
- (c) Gateway Feature (Muckhart Road); and
- (d) Active Travel Link: Dollar East - Lover's Loan;

Transport Infrastructure Works Dollar South means the Transport Interventions which the Proprietors of the Dollar South Development are bound to deliver in terms of the Dollar South Section 75 Agreement, being:

- (a) Active Travel Bridge over Dollar Burn;
- (b) A91/Park Place Junction Improvement;
- (c) Park Place Improvements;
- (d) Devon Way Lighting Scheme;
- (e) Devon Road/Bridge St Junction Improvements;
- (f) Ramshorn Junction Safety Improvements;
- (g) Bridge Street Improvements;
- (h) Lover's Loan Road Widening; and
- (i) Gateway Feature – Devon Road;

Transport Intervention means each of the works set out in the Schedule, being:

- (a) Active Travel Bridge over Dollar Burn;
- (b) A91/Park Place Junction Improvement;
- (c) Park Place Improvements;
- (d) Devon Way Lighting Scheme;
- (e) Devon Road/Bridge St Junction Improvements;
- (f) Ramshorn Junction Safety Improvements;
- (g) Bridge Street Improvements;
- (h) Lover's Loan Road Widening;
- (i) Gateway Feature – Devon Road;
- (j) Devon Way (East Portion) Upgrade;
- (k) Muckhart Road Improvements;

- (l) Gateway Feature – Muckhart Road; and
- (m) Active Travel Link: Dollar East-Lover’s Loan;

Total Housing Units means the total number of Residential Units (up to a maximum of 185) which are permitted to be constructed on the Agreement Subjects in terms of the Planning Permission and any MSC Approval;

Works means either one of or all together the Transport Infrastructure Works and/or Corrective Works;

Working Days means all days of the week excluding

- (a) Saturday & Sunday; and
- (b) all statutory holidays in Scotland; and
- (c) all national public holidays in Scotland; and
- (d) all Clackmannanshire local public holidays;

Written Evidence means inter alia, letters or other correspondence from the Proprietor offering to dispense the Affordable Housing Units to an Affordable Housing Provider together with the written replies advising that they have been unable or unwilling to acquire the Affordable Housing Units or confirmation from the relevant Proprietor that no replies have been received from the Affordable Housing Provider in response to their aforementioned letters of correspondence.

2 INTERPRETATION

- 2.1 References to any party shall, except where expressly stated to the contrary, include the successors in title of that party and those deriving title through that party and, in the case of the Council, the successors in title to its functions as local planning authority.
- 2.2 Words importing the singular shall include the plural and vice versa.
- 2.3 The construction of this Agreement shall ignore headings and the front sheet (all of which are for reference only).
- 2.4 Any reference to any statutory provision shall be deemed to include any subsequent re-enactment or amending provision.
- 2.5 An undertaking in this Agreement to do something includes an undertaking to procure that it be done.
- 2.6 An undertaking in this Agreement not to do something includes an undertaking not to allow it to be done.
- 2.7 Subject to Clause 14.3, where two or more persons undertake in terms of this Agreement to do something the undertaking in question may be enforced against all of them jointly or against each of them individually.
- 2.8 If any provision in this Agreement is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Agreement shall be unaffected.

- 2.9 If any provision in this Agreement shall, in whole or in part, be held to be invalid or unenforceable under any enactment or rule of law such provision shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected.
- 2.10 If any provision of this Agreement is held in any proceedings to be a provision which cannot competently be included or enforced in an agreement entered into under section 75 of the 1997 Act, such provision shall be enforceable to the same extent and effect as if this Agreement was an agreement in common form amongst the parties.

3 AFFORDABLE HOUSING

- 3.1 A minimum of Twenty-five percent of the Total Housing Units shall be Affordable Housing Units, which units shall be provided on the Affordable Housing Subjects in accordance with the Approved Affordable Housing Scheme and Occupied in perpetuity subject to an Affordable Housing Tenure.
- 3.2 As part of the First MSC Approval Application submitted in respect of the Development, a Draft Affordable Housing Scheme shall be submitted to the Council for approval in writing. The details agreed in accordance with the Approved Affordable Housing Scheme shall be implemented by the Proprietor to the satisfaction of the Council (acting reasonably) but may be varied by the written agreement of the Proprietor and the Council, both acting reasonably at all times.
- 3.3 The terms of Clauses 3.1 and 3.2 shall apply *mutatis mutandis* in respect of each Phase, it being acknowledged by the parties that the Draft Affordable Housing Scheme in terms of Clause 3.2 will include all Phases, and the number of Affordable Housing Units in a Phase may be more or less than 25%, subject always to the overriding provisions of Clause 3.1. For all Phases not included within the Draft Affordable Housing Scheme, the obligations in respect of Affordable Housing contained within this Clause 3 shall be on a Phase by Phase basis.
- 3.4 The Proprietor shall use reasonable endeavours to enter into Affordable Housing Contracts with an Affordable Housing Provider prior to the date on which 25% of the Open Market Housing Units reach a Relevant Milestone.
- 3.5 In the event that the Proprietor enters into an Affordable Housing Contract other than that set out in sub-clause (a) in the definition of Affordable Housing Contract, the Proprietor shall ensure that prior to the date on which fifty (50) Open Market Housing Units reach a Relevant Milestone, the Affordable Housing Subjects are transferred to the Affordable Housing Provider. No more than fifty (50) of the Open Market Housing Units shall be Occupied until the terms of this Clause are fulfilled to the satisfaction of the Council (acting reasonably).
- 3.6 In the event that the Proprietor has been unable to enter into any Affordable Housing Contracts in accordance with Clauses 3.4 or 3.5, the Proprietor shall give notice to that effect to the Council and shall, with any such notice, provide the Council with Written Evidence demonstrating that they have used reasonable endeavours to enter into such Affordable Housing Contracts. If, following receipt of the said notice, the Council confirms that it is satisfied that the Proprietor has used reasonable endeavours as aforesaid, then the Proprietor shall within 60 Working Days transfer the Affordable Housing Subjects, with the benefit of Access Rights and Services, to the Council or an Affordable Housing Provider nominated by the Council for no consideration. The Proprietor as the Transferring Party shall grant the Affordable Housing Provider or the Council, as the case may be, a valid marketable title to the Affordable Housing Subjects. The terms of the conveyance of the Affordable Housing Subjects in terms of Clause 3.6 shall be agreed prior to the delivery thereof declaring that

the said conveyance shall contain the Transferring Party's absolute warrandice insofar as relating to the Affordable Housing Subjects and may at the option of the Transferring Party, contain a condition providing that for the initial 60 months following the transfer the Affordable Housing Subjects shall only be used for the provision of Affordable Housing Units. On the delivery of the duly executed conveyance of the Affordable Housing Subjects by the Transferring Party to the Affordable Housing Provider or the Council, the terms of this Clause 3, with regard to the provision of Affordable Housing and restrictions on the Occupation of Open Market Housing Units by the Proprietor, shall cease to apply.

- 3.7 In the event that within 60 months of the Affordable Housing Subjects being transferred in accordance with Clause 3.6 ("**AH Delivery Period**") the Affordable Housing Provider or the Council, as appropriate, having used reasonable endeavours, have not delivered any Affordable Housing Units on the Affordable Housing Subjects or, in the case of the Council, has not entered into Affordable Housing Contracts to provide Affordable Housing Units or transfer them to a Registered Social Landlord, the Affordable Housing Provider or the Council, as the case may be, shall on receipt of a request by written notice from the Transferring Party, provided it is received within 60 Working Date of the end of the AH Delivery Period, transfer the Affordable Housing Subjects back to the Transferring Party for no consideration and subject to the provisions of Clause 3.8 to 3.13, who shall be able to market them for the purpose of Open Market Housing Units.
- 3.8 In the event that the Affordable Housing Subjects are conveyed back to the Transferring Party in accordance with Clause 3.7 the following shall apply:-
- (a) The Transferring Party shall pay to the Council the Affordable Housing Commuted Sum; and
 - (b) Payment of the Affordable Housing Commuted Sum shall discharge the Transferring Party of any requirement to provide Affordable Housing Units or Affordable Housing Subjects under this Clause 3.

- 3.9 The Affordable Housing Commuted Sum shall be equivalent to the value of the Affordable Housing Subjects as determined by the District Valuer determined in accordance with the RICS Valuation Global Standards, UK National Supplement (Red Book) with specific reference to the 2nd Edition Practice Standards 2016 on the valuation of land for affordable housing, Section 7 Comparison method (acting reasonably and properly). In making his determination, the District Valuer shall adhere to and take account of the following:
- (a) The District Valuer shall assume that the Affordable Housing Subjects shall be used for Affordable Housing Units only and in perpetuity;
 - (b) The District Valuer shall assume that no more than the number of Affordable Housing Units equivalent to twenty five percent of the Total Housing Units may be Completed on the Affordable Housing Subjects;
 - (c) That the Affordable Housing Subjects complies with the terms of Clause 3.6, including having those Access Rights and Services referred to in Clause 3.6 and the costs incurred in Servicing the land;
 - (d) Any other representations timeously made by the Transferring Party and the Council, the timeous making of which shall be at the discretion of the District Valuer (acting reasonably).
- 3.10 Instruction of the District Valuer to carry out the calculation of the Affordable Housing Commuted Sum in accordance with 3.9 shall be on the condition that the Transferring Party shall be responsible for the reasonable and properly incurred fees of the District Valuer.
- 3.11 Where the Affordable Housing Commuted Sum falls due, the Transferring Party shall pay the Affordable Housing Commuted Sum to the Council in two equal instalments as follows:
- (a) The first Affordable Housing Commuted Sum instalment shall be paid within twenty eight (28) days of the date on which the District Valuer issues his final decision on the value of the Affordable Housing Commuted Sum; and
 - (b) The second Affordable Housing Commuted Sum instalment shall be paid on the first anniversary of the date of payment of the first Affordable Housing Commuted Sum instalment.
- 3.12 Payment of the Affordable Housing Commuted Sum shall be subject to the following condition:
- (a) The Council shall use the Affordable Housing Commuted Sum for the purpose of providing Affordable Housing Units in the Clackmannanshire local government area and for no other purpose.
- 3.13 The Council shall ensure that the Affordable Housing Commuted Sum is separately identified by the Council in the accounts of the Council.

4 EDUCATION CONTRIBUTION

- 4.1 Subject to clause 4.7, no more than 100 Residential Units across the Dollar Developments shall be Occupied until the Expansion of Strathdevon Primary School and Strathdevon Nursery has been Completed by the Council.

- 4.2 The Proprietor and the Council agree that the share of the 100 Residential Units across the Dollar Developments that are permitted to be Occupied in terms of Clause 4.1 shall be apportioned as follows:
- (a) Up to 48 Residential Units may be Occupied on the Development; and
 - (b) Up to 52 Residential Units may be Occupied on the Dollar South Development;
- prior to the Completion of Construction of the Expansion of the Strathdevon Primary School and Strathdevon Nursery, unless the Longstop Date has passed without the Expansion of Strathdevon Primary School and Strathdevon Nursery having Completed, in which case the provisions of Clause 4.7 shall apply.
- 4.3 The Proprietor shall pay to the Council the Education Contribution in two equal instalments as follows:-
- (a) On or before the first Occupation on the Development; and
 - (b) On or before 24 of the Residential Units within the Development are Occupied.
- 4.4 In the event that the Education Contribution is not paid timeously, or any part thereof, Interest shall be payable thereon (by the Proprietor to the Council) from the due date for payment until payment of the relevant sum in full.
- 4.5 The Council shall on receipt of the Education Contribution, or part thereof, pay it into an interest-bearing account held by the Council.
- 4.6 The Council shall utilise the Education Contribution towards the Expansion of Strathdevon Primary School and Strathdevon Nursery. The Expansion of Strathdevon Primary School and Strathdevon Nursery shall be delivered and completed by the Council.
- 4.7 If the Expansion of Strathdevon Primary School and Strathdevon Nursery has not been Completed by the Council by the Longstop Date, the Proprietor shall be authorised to allow further Occupation to take place beyond the restriction imposed by Clause 4.1 and 4.2(a), but only in the event the total Education Contribution has been paid in full by the Dollar Developments in terms of Clause 4.3.
- 4.8 In the event of the Education Contribution paid under Clause 4.3 hereof not being utilised in full by the Council within fifteen (15) years of the date of receipt of the last payment of the Education Contribution then such contribution or the unused part thereof, as appropriate, together with any interest that has accrued thereon, shall be refunded to the Proprietor who paid it in terms of Clause 4.3 within 25 Working Days of a written request from the said Proprietor for repayment.

5 HEALTHCARE CONTRIBUTION

- 5.1 Prior to the Completion of Construction of 50% of the Total Housing Units, the Proprietor shall pay to the Council the Healthcare Contribution Indexed.
- 5.2 In the event that the Healthcare Contribution, is not paid timeously in terms of Clause 5.1, Interest shall be payable thereon (by the Proprietor to the Council) from the due date for payment until payment of the relevant sum in full.

- 5.3 The Council shall on receipt of the Healthcare Contribution, or part thereof, pay it into an interest bearing account being held by the Council.
- 5.4 The Council shall utilise the Healthcare Contribution only towards additional primary healthcare provision within Dollar, Clackmannanshire.
- 5.5 The Council may, once it has identified how to apply the Healthcare Contribution in accordance with Clause 5.4, transfer the Healthcare Contribution to the Health Board(s) that is/are responsible for the area in which the healthcare improvements are to be made. In the event the Council transfer all or part of the Healthcare Contribution to a Health Board then the Council shall procure that the said Health Board shall apply the Healthcare Infrastructure Contribution in accordance with Clause 5.4 towards the healthcare infrastructure improvements identified by the Council and for no other purpose. For the avoidance of doubt, any such transfer by the Council shall be made strictly on the basis that, in the event that the Health Board has not utilised in full the part of the Healthcare Contribution transferred to them within fifteen (15) years of the date of receipt of payment by the Council of the Healthcare Contribution from the Proprietor (or if phased payments the date of receipt of the last payment), then such contribution or the unused part thereof, as appropriate, together with any interest that has accrued thereon, shall be refunded to the Council within 25 Working Days.
- 5.6 In the event of the Healthcare Contribution not being utilised in full by the Council or the Health Board within 15 years of the date of receipt of payment by the Council (or if phased payments the date of receipt of the last payment), then such contribution or the unused part thereof, as appropriate, together with any interest that has accrued thereon, shall be refunded to the Proprietor who paid it in terms of Clause 5.3 within 25 Working Days of a written request from the Proprietor for repayment.

6 TRANSPORT INFRASTRUCTURE WORKS

- 6.1 It has been agreed between the Proprietor and the Council, together with the Proprietors of the Dollar South Development, that the Transport Infrastructure Works shall be delivered by the Proprietor and the Proprietors of the Dollar South Development in accordance with the attached Schedule and the phasing / areas as shown on the Dollar Developments' Plans. The Schedule sets out:
- (a) the proportionate share of each of the Transport Infrastructure Works attributable to each of the Dollar Developments,
 - (b) the party responsible for their delivery, and
 - (c) the trigger/s for their completion and linked restrictions on Occupations pending such completion, where these are not set out below.
- 6.2 For the avoidance of doubt, the Proprietor shall be solely responsible for the delivery of:
- (a) Devon Way (East Portion) Upgrade;
 - (b) Muckhart Road Improvements;
 - (c) Gateway Feature (Muckhart Road); and
 - (d) Active Travel Link: Dollar East - Lover's Loan
- together the "**Transport Infrastructure Works Dollar East**".

- 6.3 Prior to the Commencement Date the Proprietor shall agree in writing with the Council, acting in its aforesaid capacity as roads authority for Clackmannanshire, the scope, design and specification of the Transport Infrastructure Works Dollar East, as well as the estimated total costs of carrying out the works.
- 6.4 No Development shall commence until a Guarantee in favour of the Council has been submitted for the written approval of the Council and that such Guarantee has been approved and is in place. Such Guarantee must, unless otherwise approved in writing by the Council as Planning Authority:
- (a) be granted in favour of the Council;
 - (b) be granted by a bank or other financial institution or corporate body which is of sound financial standing and capable of fulfilling the obligations under the Guarantee;
 - (c) be for an initial period of two years;
 - (d) be in a sum acceptable to the Council which represents the amounts which the Council and the Proprietor agree as at the Commencement Date and thereafter from time to time to be a reasonable estimate of the sums required to undertake and complete any elements of the Transport Infrastructure Works Dollar East commenced by the Proprietor (provided that the Council and the Proprietor may separately agree, in connection with the foregoing, a phasing programme and timetable for the carrying out and completion of the Transport Infrastructure Works Dollar East;
 - (e) be reviewable every two years to ensure that the specified amount of the guarantee always covers the value of any element of the Transport Infrastructure Works Dollar East which has been commenced by the Proprietor but remains incomplete;
 - (f) come into effect on or before the Commencement Date and be maintained until the Fully Completed Date, unless called upon to complete the Transport Infrastructure Works Dollar East, or such part as is called on in relation to the completion of any one or more of the Transport Interventions making up the Transport Infrastructure Works Dollar East; and
 - (g) in the event that the Guarantee becomes invalid for any reason, no operations in terms of the Development will be carried out on the Agreement Subjects until a replacement Guarantee completed in accordance with the terms of this Clause is lodged with the Council as Planning Authority.
- 6.5 Following the Commencement Date, the Proprietor undertakes to apply for and obtain all necessary statutory consents and to deliver and complete the Transport Infrastructure Works Dollar East.
- 6.6 The Transport Infrastructure Works Dollar East will be delivered and completed by the Proprietor in accordance with the triggers set out in the Schedule (Table 2, column 3, with the exception of the Devon Way (East Portion) Upgrade as set out at clause 6.10 below and the Active Travel Link: Dollar East - Lover's Loan in the event that clauses 6.16 or 6.17 below apply) and subject to the following:
- (a) Where the relevant trigger requires completion of a Transport Intervention prior to the Commencement of a given Phase, there shall be no Commencement within that Phase until that Transport Intervention has been Fully Completed or Substantially Completed, whichever is the earlier.

- (b) Where the relevant trigger requires completion of the Transport Intervention prior to the date of Occupation of a certain Residential Unit, no more than the specified number of Residential Units shall be Occupied until that Transport Intervention has been Fully Completed or Substantially Completed, whichever is the earlier.

6.7 The Council shall be bound to call up the Guarantee and complete any of the Transport Infrastructure Works Dollar East where called on to do so by the Proprietor in the event that:

- (a) the Proprietor has taken all reasonable and necessary steps to carry out the Transport Infrastructure Works Dollar East, and the Proprietor has been unable to carry out one or more of the Transport Interventions in the Transport Infrastructure Works Dollar East for reasons beyond the Proprietor's control and as a result a Transport Intervention has not been Fully Completed or Substantially Completed such that the relevant trigger set out in the Schedule (Table 2, column 3) or clause 6.10, as the case may be, is likely to be breached. In such circumstances, the Proprietor shall serve written notice on the Council, marked for the attention of the Senior Manager, Legal and Governance, setting out:
 - (i) The relevant Transport Intervention(s) which the Proprietor has been unable to complete;
 - (ii) Details of the relevant trigger that is likely to be breached, including where relevant details of the anticipated timescales for Occupation of Residential Units;
 - (iii) Details of the works required to complete the relevant Transport Intervention(s); and
 - (iv) The reasons why the Proprietor has been unable to complete the relevant Transport Intervention(s), together with any supporting evidence.

In the event that the Council, acting reasonably, is satisfied that the Proprietor has been unable to carry out the relevant Transport Intervention for reasons beyond the Proprietor's control, the Council shall notify the Proprietor in writing that it intends to call upon the Guarantee and the Council shall then call upon the Guarantee within 28 Working Days of receipt of the notice from the Proprietor. In the event that Council, acting reasonably, is not satisfied that the Proprietor has been unable to carry out the relevant Transport Intervention for reasons beyond the Proprietor's control, the Council shall notify the Proprietor in writing within 28 Working Days of receipt of the notice from the Proprietor that it does not intend to call upon the Guarantee and specify the reasons for its decision.

6.8 The Council undertakes to the Proprietor that the Dollar South Section 75 Agreement will contain an equivalent requirement for a guarantee in relation to the Transportation Infrastructure Works Dollar South as these are set out in Table 1 of the Schedule (the "**Dollar South Guarantee**"). In the event that the Dollar South Guarantee is granted in favour of the Council, the Council shall be bound to call up the Dollar South Guarantee and complete any of the Transport Infrastructure Works Dollar South where called on to do so in terms of the Dollar South Section 75 Agreement. The Proprietor may make their own representations to the Council where any of the A91/Park Place Junction Improvements, Park Place Improvements and Devon Road / Bridge Street Junction Improvements have not been Fully Completed or Substantially Completed such that the relevant trigger set out in the Schedule (Table 1, column 3) or in clauses 6.11 or 6.12, as the case may be, is likely to be breached. In such

circumstances, the Proprietor shall serve written notice on the Council, marked for the attention of the Senior Manager, Legal and Governance, setting out:

- (a) the relevant Transport Intervention(s) which remain incomplete;
- (b) details of the relevant trigger that is likely to be breached, including where relevant details of the anticipated timescales for Occupation of Residential Units; and
- (c) details of the works required to complete the relevant Transport Intervention(s).

6.9 Where the Guarantee or the Dollar South Guarantee is called upon by the Council in accordance with Clause 6.7 or under the Dollar South Section 75 Agreement:

- (a) to allow completion of a Transport Intervention, and the requisite monies are received by the Council, the restrictions on Occupations or use relating to that Transport Intervention shall no longer apply and the Development (or the Dollar South Development as the case may be) shall be permitted to proceed without reference to the relevant triggers in relation to that Transport Intervention alone;
- (b) to allow completion of the Transport Infrastructure Works Dollar East, and the requisite monies are received by the Council, all restrictions on Occupation or use relating to the Transport Infrastructure Works Dollar East shall no longer apply and the Development (or the Dollar South Development as the case may be) shall be permitted to proceed without reference to the relevant triggers; or
- (c) to allow completion of the Transport Infrastructure Works Dollar South, and the requisite monies are received by the Council all restrictions on Occupation or use relating to the Transport Infrastructure Works Dollar South shall no longer apply and the Development (or the Dollar South Development as the case may be) shall be permitted to proceed without reference to the relevant triggers.

6.10 The Devon Way (East Portion) Upgrade shall be delivered prior to the earlier of:

- (a) Occupation of the 50th Residential Unit in Dollar East Residential Areas 2, 3 and 4 (inclusive), and
- (b) Occupation of the final house in the Newfield area of the Dollar South Development.

For the avoidance of doubt, no more than 49 Residential Units shall be Occupied in Dollar East Residential Areas 2, 3 and 4 (inclusive) until the Devon Way (East Portion) Upgrade has been Fully Completed or Substantially Completed, whichever is earlier. In the event that Occupation of the penultimate Residential Unit in the Newfield area of the Dollar South Development is reached at any point prior to the Occupation of the 49th Residential Unit on the Development, there shall be no further Occupations within the Development until the Devon Way (East Portion) Upgrade has been Fully Completed or Substantially Completed, whichever is earlier.

6.11 The 100th Residential Unit on the Development may not be Occupied until:

- (a) the A91/Park Place Junction Improvements have been Fully Completed or Substantially Completed, whichever is earlier, and
- (b) the Park Place Improvements have been Fully Completed or Substantially Completed, whichever is earlier.

- 6.12 The 100th Residential Unit across the Dollar Developments may not be Occupied until the Devon Road / Bridge Street Junction Improvements have been Fully Completed or Substantially Completed, whichever is earlier.
- 6.13 The Proprietor and the Council shall liaise to ensure that the Transport Infrastructure Works Dollar East are included in the roads construction consent for the Development, as appropriate, and the Proprietor shall procure that the costs of completing the Transport Infrastructure Works Dollar East shall be incorporated in the road bond to be arranged by the Proprietor for the roads in relation to the Development.
- 6.14 On the completion of the Transport Infrastructure Works Dollar East, or where appropriate, the relevant Transport Intervention, the Proprietor will serve an Inspection Request Notice on the Council. The Council shall inspect the Works, not later than the date falling one month after the date of receipt of such notice. In the event that the Council:
- (a) are satisfied (acting reasonably) that the Transport Infrastructure Works Dollar East, or where appropriate the relevant Transport Intervention, are completed and built in accordance with the relevant Council policy on adoption standard applicable at the date, the Council shall confirm to the Proprietor that the Works are Fully Completed.
 - (b) are not satisfied (acting reasonably) that the Transport Infrastructure Works Dollar East, or where appropriate the relevant Transport Intervention, have been completed and/or built in accordance with the relevant Council policy on adoption standard applicable at the date, the Council shall confirm that they have been Substantially Completed and serve on the Proprietor a Corrective Works Notice. The Proprietor shall comply with the terms of the Corrective Works Notice and should they fail to comply with its terms, it will be competent for the Council to serve any further Corrective Works Notice and/or give not less than fourteen (14) days' notice in writing to the Proprietor that it will take such other action as the Council may deem necessary to carry out any works required to ensure the Transport Infrastructure Works are Fully Completed. The cost of any works carried out (including professional fees and expenses insofar as properly and reasonably incurred) by or on behalf of the Council in doing so or pursuant to its statutory powers may be recovered by the Council under the Guarantee and within 14 days of such recovery, the Council shall confirm the Transport Infrastructure Works Dollar East, or where appropriate the relevant Transport Intervention, are Fully Completed whereupon the obligations on the Proprietor relating to Clause 6.2 hereof shall cease. Should the Proprietor disagree with the terms of a Corrective Works Notice, they shall refer the matter to an Expert in terms of Clause 17 for determination.
- 6.15 In the event that the Transport Infrastructure Works Dollar East are Substantially Completed, the Proprietor shall maintain them to the Maintenance and Aftercare Standard throughout the Maintenance and Aftercare Period. The Council shall be entitled to inspect the progress of the Transport Infrastructure Works Dollar East whenever they reasonably require, on giving reasonable advance written notice. The Proprietor shall ensure that the Council shall be given such information as they reasonable require in relation to the progress, delivery of the Transport Infrastructure Works Dollar East and compliance with the Maintenance and Aftercare Standard.
- 6.16 It is acknowledged by the Council and the Proprietor that the Active Travel Link: Dollar East - Lover's Loan will require to be carried out on land which is not in the ownership of the Proprietor or the Council and that the Proprietors may therefore not be able to acquire the necessary land rights to provide the Active Travel Link: Dollar East - Lover's Loan. In that

event, the Proprietor shall notify the Council in terms of Clause 6.7 that it has been unable to complete the Active Travel Link: Dollar East - Lover's Loan and the Council may, at its discretion, exercise its statutory powers to carry out the Active Travel Link: Dollar East - Lover's Loan and call upon the Guarantee for the requisite monies to complete the Active Travel Link: Dollar East - Lover's Loan, whereupon the terms of Clause 6.9 shall apply.

- 6.17 Should the Council decide not to use its statutory powers and not call upon the Guarantee for the requisite monies to carry out the Active Travel Link: Dollar East - Lover's Loan, the Council shall notify the Proprietor of its decision and a financial contribution shall be required from the Proprietor to carry out works to improve core paths in the vicinity of the Development. The contribution shall be based upon the cost of delivering a rural path of 240 metres length and 2 metres width, with a design and construction specification based on the Lowland Path Construction Guide produced by Paths for All (<https://www.pathsforall.org.uk/mediaLibrary/other/english/lowland-path-guide.pdf>) and agreed by the parties but shall not exceed the anticipated cost of the Active Travel Link: Dollar East - Lover's Loan as agreed under clause 6.3. In the event of failure to agree the amount of the financial contribution, the either party may refer the matter to an Expert in terms of Clause 17 for determination. On payment of the contribution as agreed or determined the restrictions Occupations or use relating to the Active Travel Link: Dollar East - Lover's Loan shall no longer apply.

7 PUBLIC ART CONTRIBUTION

- 7.1 Prior to the Completion of Construction of 20% of the Total Housing Units, the Public Art Strategy shall be agreed in writing with the Council. This shall set out whether Public Art is to be provided:
- (a) by way of onsite delivery; or
 - (b) by way of commuted sum via the Public Art Contribution; or
 - (c) by a hybrid of onsite delivery and Public Art Contribution.
- 7.2 Any onsite delivery agreed in terms of Clause 7.1 shall be delivered according to the timescales agreed under the Public Art Strategy, which shall also set out the timescale for approval in writing of the specification and design of the Public Art by the Council.
- 7.3 Prior to the Completion of Construction of 60% of the Total Housing Units, the Proprietor shall pay to the Council the Public Art Contribution, where applicable. In the event that the Public Art Contribution, or any instalment thereof, is not paid timeously, Interest shall be payable thereon (by the Proprietor to the Council) from the due date for payment until payment of the relevant sum in full.
- 7.4 The Council shall on receipt of the Public Art Contribution, or part thereof, pay it into an interest-bearing account held by the Council.
- 7.5 The Council shall use the Public Art Contribution towards the costs of providing public art within Dollar.
- 7.6 In the event of the Public Art Contribution not being utilised in full by the Council within fifteen (15) years of the date of receipt of the last payment of the Public Art Contribution then such contribution or the unused part thereof, as appropriate, together with any interest that has accrued thereon, shall be refunded to the Proprietor who paid it in terms of Clause 7.1 within 25 Working Days of a written request from the said Proprietor for repayment.

8 COMMUNITY FUND CONTRIBUTION

- 8.1 Prior to the Completion of Construction of 60% of the Total Housing Units, the Proprietor shall pay to the Council the Community Fund Contribution Indexed. In the event that the Community Fund Contribution, or any instalment thereof, is not paid timeously, Interest shall be payable thereon (by the Proprietor to the Council) from the due date for payment until payment of the relevant sum in full.
- 8.2 The Council shall agree a scheme with Dollar Community Council and Dollar Community Development Trust as to how the Community Fund Contribution shall be used to provide streetscape and public realm enhancements within Dollar.
- 8.3 The Council shall on receipt of the Community Fund Contribution, or part thereof, pay it into an interest-bearing account held by the Council.
- 8.4 The Council shall use the Community Fund Contribution, together with any interest accrued thereon, solely towards the provision of streetscape and public realm enhancements in accordance with the scheme agreed in terms of Clause 8.2.
- 8.5 In the event of the Community Fund Contribution not being utilised in full by the Council for the purposes specified in Clause 8.4 within fifteen (15) years of the date of receipt of the last payment by 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 Proprietor who paid it in terms of Clause 8.1 within 25 Working Days of a written request from the said Proprietor for repayment.

9 IMPLEMENTATION AND PHASING PLAN

- 9.1 As part of the First MSC Approval Application, an Implementation and Phasing Plan shall be submitted to the Council for approval.
- 9.2 The details agreed in accordance with the Implementation and Phasing Plan approved in terms of Clause 9.1 shall be implemented by the Proprietor to the satisfaction of the Council (acting reasonably) but may be varied by the written agreement of the Proprietor and the Council, both acting reasonably at all times.

10 DESIGN BRIEF AND DESIGN CODE

- 10.1 As part of the First MSC Approval Application, a Draft Design Brief and Design Code shall be submitted to the Council for approval. This will include arrangements for community consultation under Clause 11.
- 10.2 The details agreed in accordance with the Approved Design Brief and Design Code shall be implemented by the Proprietor to the satisfaction of the Council (acting reasonably) but may be varied by the written agreement of the Proprietor and the Council, both acting reasonably at all times.

11 COMMUNITY LIAISON

- 11.1 Within three months of the lodging of any MSC Approval and at suitable intervals throughout the construction of the Development, as requested by the Council, the Proprietor shall liaise with the Council, Dollar Community Council and Dollar Community Development Trust and provide details of their development programme and ongoing works relative to the Agreement Subjects.

12 NOTIFICATION REQUIREMENTS

- 12.1 In order to assist with monitoring of obligations, the Proprietor shall, on a quarterly basis from the Commencement Date throughout the period of the Development, provide the Council with a schedule in a form reasonably required by the Council setting out:
- (a) the number of Residential Units within the Development which have reached Completion of Construction in the preceding quarter;
 - (b) the number of Occupations which have taken place in the preceding quarter; and
 - (c) for the forthcoming quarter the anticipated number of:
 - (i) Residential Units within the Development expected to reach Completion of Construction, and
 - (ii) Occupations scheduled to occur.
- 12.2 In the event the Council no longer requires provision of this information, it will confirm this to the Proprietor in writing.

13 AGREEMENTS AND DECLARATIONS

- 13.1 If the Planning Permission is refused, falls, is revoked or otherwise withdrawn or (without the consent of the Proprietor) is modified by any statutory procedure or expires before the Commencement Date then the obligations of the Proprietor under this Agreement shall thenceforth cease to have effect and shall be deemed *non pro scripto* and all contributions specified in this Agreement, or the unused parts thereof, together with any interest that has accrued thereon, as appropriate, shall be refunded by the Council to the relevant Proprietor, or former Proprietor, which paid the Contributions within 25 Working Days of a written request being received from the relevant Proprietor or former Proprietor for repayment.
- 13.2 If the Proprietor transfers its interest in the Agreement Subjects or any part thereof as undeveloped land the relevant Proprietor shall notify the Council by registered post of the identity and contact address of the transferee within 10 Business Days of the date of the transfer.
- 13.3 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Agreement Subjects in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.
- 13.4 Nothing contained or implied in this Agreement shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise of its functions as local authority and its rights powers, duties, and obligations under all public and private statutes bye-laws and regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement.
- 13.5 If any provision of this Agreement shall be held to be invalid, illegal or unenforceable the validity legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected or impaired.
- 13.6 All consideration given in accordance with the terms of this Agreement shall be inclusive of any VAT properly payable in respect thereof.

13.7 No waiver (whether express or implied) by the Council of any breach or default by the Proprietor in performing or observing any of the terms and conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms or conditions or from acting upon any subsequent breach.

14 ENFORCEABILITY

14.1 The undertakings on the part of the Proprietor in this Agreement are provisions which for the purposes of Section 75 of the 1997 Act are intended to be enforceable by the Council against the Proprietor and their successors as owners of the Agreement Subjects or any part thereof at the Council's discretion, pursuant to Section 75(5) and Section 75C of the 1997 Act, until they are discharged provided always that for the purposes of Section 75C of the 1997 Act no person shall be liable for the performance, or any breach of any obligation after they have disposed of their interest in the Agreement Subjects or the relevant part thereof, save in relation to any breach subsisting prior to disposing of such interest.

14.2 Notwithstanding the provisions of Clause 14.1, the undertakings in this Agreement shall not be binding on (i) any Bona Fide Third Party Purchaser or Occupier of any Open Market Housing Unit or land associated with any Open Market Housing Unit constructed on the Agreement Subjects and/or (ii) any utility company that occupies part of the Agreement Subjects and/or acquires part of the Agreement Subjects for the purposes of their utility services network including providing services to the Development. In respect of the Bona Fide Third Party Purchaser or Occupier of an Affordable Housing Unit or land associated with any such Affordable Housing Unit constructed on the Agreement Subjects the said Bona Fide Third Party Purchaser shall be bound to remain subject to Affordable Housing Tenure in terms of Clause 3.1, but shall not otherwise be bound by the terms of this Agreement. The liability of the Proprietor under this Agreement shall continue notwithstanding such sales.

14.3 The Council acknowledges that parts of the Agreement Subjects will be sold on by the Proprietor in tranches to different ownerships for the construction of the Development. The Council further acknowledges that in consequence of such future multiple ownership following each sale or conveyance by the Proprietor, the obligations incumbent on the Proprietor in this Agreement are undertaken by them with reference only to that part of the Agreement Subjects for which the relevant Proprietor is or shall become the heritable proprietor and that obligations are only enforceable against each relevant Proprietor to the extent that such obligation affects such part or parts of the Agreement Subjects.

14.4 This Agreement does not confer on any person who is not a party to this Agreement any right to enforce or otherwise invoke this Agreement or any part of it under the Contract (Third Party Rights) (Scotland) Act 2017.

14.5 Notification of any sale by the Proprietor in tranches for the construction of the Development shall occur as follows:

- (a) On each occasion that the Proprietor enters into a Disposal Contract the Proprietor shall be obliged within 10 Working Days of the conclusion of any such Disposal Contract to provide in writing to the Council the following information: namely the name, address and full contact details including the full postal address, telephone number and email address of each and every party to any such Disposal Contract; the extent of the Development Subjects which are the subject of the Disposal Contract; and confirmation of whether the Disposal Contract in question results in a transfer of the role of the Proprietor; and

- (b) The Proprietor shall notify the Council, and provide such information to the Council as is necessary, to specify the Proprietor's own phase or phases of development of the Residential Units within the Development for the purpose of establishing the Proprietor's obligations under this Agreement.

15 DISCHARGE AND MODIFICATION

- 15.1 In the event that the Proprietor applies to modify and/or discharge the whole or any part of this Agreement, the terms of Section 75A of the 1997 Act shall apply. The Proprietor 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 and/or modification hereof.

16 ASSIGNATION

- 16.1 The original Proprietor (who for the purpose of this Clause is the Proprietor who signed this Agreement) shall not transfer or assign their rights and obligations under this Agreement or dispose of their interests in the Agreement Subjects (or any part thereof) prior to registration of this Agreement in the Land Register of Scotland, or the recording of this Agreement in the relevant Division of the General Registers of Sasines (as appropriate) being completed.

17 DISPUTE RESOLUTION

- 17.1 In the case of any dispute in respect of any of the matters referred to in this Agreement any party may refer the matter to the Expert.
- 17.2 The Expert shall act as an expert and not as an arbitrator.
- 17.3 The Expert will be agreed between the parties or in default of such agreement (where either party has given written notice to require the other party within ten Business Days to so agree) shall be appointed in the application of either party by the President for the time being of the Royal Institution of Chartered Surveyors or Vice President of the Institute and if the Expert appointed dies, delays or becomes unwilling or unable to act for any reason another may be agreed or appointed in accordance with this paragraph which procedure may be repeated as many times as is necessary.
- 17.4 The fees and expenses of the Expert (including the costs of his appointment) shall be borne as he shall decide or in the absence of any decision borne equally by the parties who shall otherwise bear their own costs.
- 17.5 The Expert shall afford the parties an opportunity to make representations to him and to comment on the representations of the other party.
- 17.6 The determination of the Expert shall be made and communicated to the parties in writing within 28 days of the representation at Clause 17.5 and shall be final and binding on the parties.

18 NOTICES

- 18.1 All notices which require to be given in terms of this Agreement shall be in writing and shall be deemed to be sufficiently served if signed by or on behalf of the party issuing the notice and either (i) delivered personally, or (ii) sent by pre-paid recorded delivery or registered post addressed:

- 18.2 in the case of the Proprietor at the address specified in this Agreement (or to such other address as the Proprietor have notified to the Council in writing, by post or email) and, for subsequent persons with an interest in the Agreement Subjects (if a body corporate) at their Registered Office or Head Office, and (if an individual) at his last known address in the United Kingdom and (if a partnership) to the partnership and any one or more of the partners thereof at its last known principal place of business in the United Kingdom or (in any case) at such address as the Proprietor may have notified in writing to the Council;
- 18.3 In the case of the Council, to the Council to both their Principal Office or to such other address as the Council may have notified to the Proprietor previously in writing; and any such notice shall be deemed to have been served (I) if delivered personally, at the time of delivery, and (II) in the case of pre-paid recorded delivery or registered post, on the second Working Day after the date on which the same was posted.
- 18.4 In providing service, it shall be sufficient to prove that the envelope containing the notice was duly addressed to the Council or the Proprietor, as the case may be, in accordance with this Clause and posted to the place to which it was so addressed.

19 COMMUNICATION IN WRITING

- 19.1 In the case of all requirements to communicate in writing in terms of this Agreement, except notices, it shall be acceptable for the written communication to be by either: (i) a letter signed by or on behalf of the party issuing the letter; or (ii) an email sent by or on behalf of the party issuing the email.
- 19.2 Where written communications are sent by post they shall be addressed:
- (a) In the case of the Proprietor at the address specified in this Agreement (or to such other address as the Proprietor has notified to the Council in writing, by post or email) and, for subsequent persons with an interest in the Agreement Subjects (if a body corporate) at their Registered Office or Head Office, and (if an individual) at their last known address in the United Kingdom and (if a partnership) to the partnership and any one or more of the partners thereof at its last known principal place of business in the United Kingdom or (in any case) at such address as the Proprietor may have notified in writing, by post or email, to the Council previously; and
 - (b) in the case of the Council, to Kilncraigs, Greenside Street, Alloa, Clackmannanshire FK10 1EB or to such other address as the Council may have notified to the Proprietor previously in writing, by post or email;
- 19.3 Where written communications are sent electronically by email they shall be addressed to:
- (a) in the case of the Proprietor to such email address as the Proprietor may have notified to the Council in writing, by post or email, previously;
 - (b) in the case of the Council to [] or to such other email address as the Council may have notified to the Proprietor previously in writing, by post or email.

20 REGISTRATION

- 20.1 The parties consent to registration hereof for preservation and execution in the Books of Council and Session; and the Land Register of Scotland.

- 20.2 The Proprietor (unless otherwise agreed with the Council) undertakes, as soon as reasonably practicable after the last date of execution hereof, to concurrently register this Agreement in the Books of Council and Session; and against the Agreement Subjects in the Land Register of Scotland.
- 20.3 The Proprietor shall as soon as reasonably practicable after registration deliver to the Council:
- (a) a registered extract of this Agreement;
 - (b) the Keeper of the Register of Scotland's acknowledgement of the application for registration of this Agreement in the Land Register of Scotland;
 - (c) a Legal Report disclosing the application for registration of this Agreement and disclosing no entries prejudicial to the Council's interests; and
 - (d) payment of the Council's fees and expenses pursuant to Clause 21.
- 20.4 In the event that the Keeper rejects the application for registration of this Agreement the Proprietor undertakes to:
- (a) within 2 Working Days of receipt of the Keeper's rejection, inform the Council, in writing and supply a copy of the rejection letter from the Keeper;
 - (b) promptly undertake such actions as may reasonably be required to allow the Keeper to accept this Agreement for registration, or a substitute agreement in terms agreed by the Council, acting reasonably.
- 20.5 The Proprietor undertakes and warrants that:
- (a) they shall not take steps to withdraw the application for registration of this Agreement in the Land Register of Scotland without the consent of the Council, such consent not to be unreasonably withheld; and
 - (b) to the best of their knowledge and belief that, at the date on which they execute this Agreement, they are not subject to, or under threat or warning of, any bankruptcy, insolvency proceedings, or other Insolvency Event, including voluntary insolvency or bankruptcy, and will not take steps to enter into any voluntary insolvency, bankruptcy, or other arrangements that may result in an Insolvency Event between the date on which they sign this Agreement and the updating of the Title Sheet by the Keeper disclosing this Agreement.

21 EXPENSES

- 21.1 The Proprietor 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 this Agreement for the Council's own use.

IN WITNESS WHEREOF these presents consisting of this and the preceding [] pages together with the Schedule and Plan(s) annexed are executed as follows:-

SUBSCRIBED for and on behalf of the said **CLACKMANNANSHIRE COUNCIL**

THIS IS THE PLAN REFERRED TO IN THE FOREGOING MINUTE OF AGREEMENT BETWEEN CLACKMANNANSHIRE COUNCIL AND NICHOLAS IAN JOHN HERRICK POETT IN RESPECT OF THE SUBJECTS AT LAND AT HARVIESTOUN, DOLLAR EAST, CLACKMANNANSHIRE

Schedule - TRANSPORT INFRASTRUCTURE WORKS

Table 1 – Transport Infrastructure Works Dollar South

Transport Intervention	Agreed % Split		Trigger point for completion / block on further Occupations	To be delivered by
	South	East		
Active Travel Bridge over Dollar Burn	100	0	Prior to the earliest of: a) Occupation of first Residential Unit in Dollar South Phase 3, or b) Occupation of the 100 th Residential Unit in any phase of Dollar South (inclusive)	Dollar South
A91/Park Place Junction improvement	70	30	As per clause 6.11 of the Dollar East Section 75 Agreement As per clause 6.10 of the Dollar South Section 75 Agreement	Dollar South
Park Place improvements	55	45	as per clause 6.11 of the Dollar East Section 75 Agreement As per clause 6.11 of the Dollar South Section 75 Agreement	Dollar South
Devon Way lighting scheme	100	0	Prior to Occupation of the 50 th Residential Unit on Dollar South	Dollar South
Devon Road/Bridge St junction improvements	55	45	As per clause 6.12 of the Dollar East Section 75 Agreement As per clause 6.12 of the Dollar South Section 75 Agreement	Dollar South
Ramshorn junction safety improvements	62	38	Prior to Occupation of the 100 th Residential Unit on Dollar South	Dollar South
Bridge Street Improvements	100	0	Prior to the earliest of a) Occupation of the 50 th Residential Unit in Dollarfied West and	Dollar South

			Dollarfield East or, b) first use of any completed Sports Facilities in Dollar South or c) Occupation of the 100 th Residential Unit on Dollar South	
Lover's Loan road widening	100	0	Prior to Occupation of any house in Newfield phase of Dollar South	Dollar South
Gateway feature – Devon Road	90	10	Prior to the earliest of: a) Occupation of the 50 th house in Dollarfield West and Dollarfield East, or b) first use of any Sports Facilities in Dollar South.	Dollar South

Table 2 – Transport Infrastructure Works Dollar East

Transport Intervention	Agreed % Split		Trigger point for completion / block on further Occupations	To be delivered by
	South	East		
Devon Way (east portion) upgrade	25	75	As per clause 6.10 of the Dollar East Section 75 Agreement As per clause 6.13 of the Dollar South Section 75 Agreement	Dollar East
Muckhart Road improvements	0	100	Prior to Occupation of the 25 th Residential Unit in Dollar East Residential Areas 1, 2, 3 or 4 (inclusive).	Dollar East
Gateway feature – Muckhart Road	10	90	Prior to Occupation of the 25 th Residential Unit in Dollar East Residential Areas 1, 2, 3 or 4 (inclusive).	Dollar East
Active travel link: Dollar East-Lover's Loan	0	100	Prior to Occupation of the 25 th Residential Unit in Dollar East Residential Areas 2, 3 or 4 (inclusive).	Dollar East