

## MINUTE OF AGREEMENT

Between

**HANNAH EMILY FORD**, residing at 142/10 Broughton Road, Edinburgh, EH7 4LE (hereinafter referred to as "**Miss Ford**")

and

**EDWIN ALEXANDER WALLACE**, residing at 7 Cedar Court, Ashgrove Road, Aberdeen AB25 3BJ(hereinafter referred to as "**Mr Wallace**")

(and both hereinafter referred to collectively as "**the Parties**")

WHEREAS the Parties are in a committed relationship and the Parties have resolved to regulate certain matters and in particular matters arising from their joint purchase of the heritable Property situated at 4A Halketts Hall, Limekilns, Dunfermline KY11 3HJ (hereinafter referred to as "the Property"); the date of entry for taking entry to the Property will be 8 January 2021 and the Parties will cohabit with each other at the Property; and WHEREAS the Parties are aware of the important financial and legal consequences of this document and have had either the opportunity or benefit of taking separate independent legal advice; THEREFORE the Parties HAVE AGREED AND DO HEREBY AGREE:

### 1. Binding Nature of Agreement

The Parties intend by this deed to create a binding legal contract, irrevocable save with the consent in writing of the Parties.

### 2. Subsequent marriage

This contract will subsist notwithstanding the Parties' subsequent marriage to each other.

### **3. Termination of cohabitation**

3.1 For the purposes of this Deed the Parties' relationship will be deemed to terminate in the following circumstances: -

- (a) By mutual agreement; or
- (b) By either party giving the other written notice to the effect that their relationship has broken down irretrievably.

3.2 The date of termination of cohabitation shall be the date mutually agreed or on the date of service of the notice referred to in Clause 3.1(b)

### **4. Financial contributions made by the Parties to the Property**

4.1 The Parties confirm by their signatures that they have purchased the Property and that the purchase price of the said Property was TWO HUNDRED AND TWENTY THOUSAND POUNDS (£220,000) STERLING;

4.2 The Parties confirm that they are in receipt of a loan from Nationwide Building Society in the sum of ONE HUNDRED AND SEVENTY SIX THOUSAND POUNDS STERLING (£176,000) which loan will be secured over the Property, said loan to be on a capital and interest basis held in the Parties' joint names. The parties shall meet the payments due to the Nationwide Building Society equally between them.

4.3 The Parties confirm that the balance of the purchase price was made up by a deposit in the sum of FORTY FOUR THOUSAND POUNDS (£44,000) STERLING (hereinafter referred to as "the -Deposit") paid by Mr Wallace.

### **5. Additional Capital Contributions**

In the event that either party pays for renovations to the Property or makes overpayments to any mortgage secured on the Property as evidenced by a written record thereof kept by the parties from time to time and signed by both parties (hereinafter referred to as "Additional Capital Contributions"), then the provisions of Clause 6 will apply.

## 6. Transfer or Sale of Property

6.1 It is hereby agreed that in the event the Parties agree or in the event the Parties' relationship is deemed to have terminated in accordance with Clause 3 hereof the following provisions will apply: -

6.1.1 The Parties have the option of reaching agreement to the effect that the Property will be transferred from one party to the other for an agreed price subject to the transferee being in a position to release the transferor from any mortgage over the Property. In the event that either party ("the transferee") wishes to acquire the interest of the other party ("the transferor") in the Property following deemed termination of cohabitation then he or she will be entitled to offer to do so prior to the marketing for sale of the Property in terms of Clause 6.2 hereof. The transferor will be obliged to accept the transferee's offer, provided that the consideration offered is as follows and that the transferee is in a position to release the transferor from the mortgage over the Property.

In the event that Miss Ford is the transferee the consideration to be paid by Miss Ford to Mr Wallace in exchange for transfer of his interest in the Property as provided above shall be:

- i. Such sum as the Parties may mutually agree or,
- ii. Failing such agreement, according to the following formula:

$$0.5(A-B+E)-C+D$$

Where

A = the independent open market value of the property (as assessed by a firm of chartered surveyors)

B = the outstanding sum due in respect of the mortgage with Nationwide Building Society at the Completion Date, and the legal costs and associated outlays of said transfer

C = any Additional Capital Contribution made by Miss Ford

D = any Additional Capital Contributions made by Mr Wallace

E = the Deposit

In the event that Mr Wallace is the transferee the consideration to be paid by Mr Wallace to Miss Ford in exchange for transfer of her interest in the Property as provided above shall be:

- i. Such sum as the Parties may mutually agree or,
- ii. Failing such agreement, according to the following formula:

$$0.5(A-B-E)+C-D$$

Where

A = the independent open market value of the property (as assessed by a firm of chartered surveyors)

B = the outstanding sum due in respect of the mortgage with Nationwide Building Society at the Completion Date, and the legal costs and associated outlays of said transfer

C = any Additional Capital Contribution made by Miss Ford

D = any Additional Capital Contributions made by Mr Wallace

E = the Deposit

6.1.2 The open market value of the Property will be assessed by such Chartered Surveyor as may be agreed and instructed by both Parties, or in default of such agreement by such Chartered Surveyor as shall be appointed by the President of the RICS. The Parties will each be responsible for one half of the costs of instruction of the surveyor. The transferor shall deliver a validly executed Disposition together with a validly executed and notarised Renunciation of any or all rights available to him/her under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (as amended), if required, in respect of the Property, and a validly executed Declaration of Solvency, if required, and all other necessary deeds. The transferee will procure an executed Discharge of the existing Standard Security over the Property in order to discharge the transferor from all liability and obligations in respect of the existing mortgage, and the transferor's agents will register the Discharge within 21 days of their receipt of the conveyance. The consideration due to the transferor by the transferee will be paid to the transferor on the date that the transfer is completed. The

transferee will be liable for all payments in respect of the mortgage over the Property from the date of the transfer of the Property. The transferor will be required to vacate the Property no later than the date of the transfer of the Property. The transfer will be completed as soon as practicable, but not later than three months from the date of the offer by the transferee. In the event that both Parties offer to acquire the other's interest in the said property, then it will be sold in accordance with the terms of Clause 6.2 hereof.

- 6.2 In the event the Parties agree or in the event the Parties' relationship is deemed to have terminated in accordance with Clause 3 hereof and no such agreement is reached under Clause 6.1 above, the following provisions will apply: -
- 6.2.1 Either party will have the right to insist on the Property being marketed for sale within three months of the date of termination of cohabitation in accordance with Clause 3 hereof. Said Property will be marketed, sold and conveyed by such estate agents and/or solicitors as may be agreed and instructed by both Parties, or in default of such agreement by such selling agents as shall be determined by the President of the RICS (hereinafter referred to as "the selling agents").
- 6.2.2 The parties will consult with each other on all steps required to effect a sale, neither party withholding acceptance of any reasonable offer for the purchase of the said Property. The parties undertake to accept the professional advice given to them by the selling agents in respect of the sale and to act reasonably in that regard. In the event that the parties disagree, the question of what is a reasonable offer will be referred to a senior conveyancing law practitioner of at least ten years post qualifying experience within the selling agents, which practitioner is hereby authorised and instructed by the parties to determine what is a reasonable offer.
- 6.2.3 The parties authorise and instruct the selling agents to accept any offer thereby determined as being reasonable without further reference to either party, which acceptance will be confirmed in writing to the purchaser's solicitors by the selling agents in exchange of missives. In the event that the Property remains unsold after three months of being marketed for sale, the parties are entitled to review the terms of this Clause. In particular, they may review the sale price and the agents marketing the Property. In the event that the parties cannot agree on the sale price, the matter may be referred to a Chartered Surveyor as may be agreed and instructed by both

Parties, or in default of such agreement by such Chartered Surveyor as shall be appointed by the President of the RICS.

6.2.4 From the sale price there will be deducted:

- (a) the sum required to redeem any borrowing secured over the Property as at the date of settlement;
- (b) all fees incurred in respect of the sale including the estate agency fees together with all properly incurred and vouched outlays; and

After deduction of the sums aforesaid, the net free proceeds will be divided as follows:

- (i) Mr Wallace will receive the Deposit of FORTY FOUR THOUSAND POUNDS STERLING (£44,000) and any Additional Capital Contributions made by him;
- (ii) Miss Ford will receive any Additional Capital Contributions made by her,
- (iii) The balance will be divided between the parties equally.

In the event that the net free proceeds are less than the total of the Deposit plus any Additional Capital Contributions, they will be divided between the Parties pro rata based on the Parties' respective Deposit and Additional Capital Contributions to the Property.

6.2.5 The parties hereby undertake not to interfere in any way with the said division of the free proceeds and hereby grant an irrevocable mandate in favour of the solicitors instructed in the sale of the Property to distribute the free proceeds in accordance with the terms of Clause 6.2.4 immediately after settlement of the aforementioned sale transaction.

## **7. Co-operation required for future sale**

Both Parties will fully cooperate in the sale and execute all deeds reasonably necessary to effect such a sale and for the avoidance of doubt they will each irrevocably authorise the Sheriff Clerk at Dunfermline to execute all and any such deeds on his or her behalf in the event of either of them refusing or failing for any reason to execute such deeds within two weeks of being called upon to do so.

## **8. Outgoings Associated with the Property**

Subject to Clause 5 hereof, whilst the Parties are both occupying the Property, the Parties will each be liable to pay 50% of all outgoings in respect of the Property, including, without prejudice to the foregoing generality, the mortgage, the council tax, all fuel and telephone bills and household insurance until such time as the property is sold or transferred in terms of Clause 6 hereof. In the event that one Party vacates the Property, both Parties will continue to be liable to pay 50% of the mortgage over the Property and household insurance. The Party continuing to occupy the Property will be solely responsible for paying the council tax, and all fuels and telephone bills.

## **9. Independent legal advice**

The Parties hereby acknowledge that in reaching the terms of this Agreement, they have had the opportunity to take separate legal advice, which Mr Wallace has declined. The Parties hereby acknowledge that having regard to the whole circumstances prevailing at the time this Agreement was entered into, the terms of the Agreement are fair and reasonable as at the said date and that they are entering into this Agreement of their own free will. The Parties have had the opportunity of full advice about the terms of Section 25 – 29 of the Family Law (Scotland) Act 2006 and the implications of this legislation.

## **10. Notices**

Any notice to be given by any Party hereto to the other under this Agreement shall be deemed to be validly served if sent by

- (a) Prepaid registered letter post addressed to such address as may be notified from time to time in writing to the other Party;
- (b) Personal delivery by hand to such address; or
- (c) Email to such email address as may be notified from time to time in writing to the other Party

And any notice so served shall be deemed to have been served:

- (d) In the case of paragraph (a) within two business days after posting the same
- (e) In the case of paragraph (b) above upon delivery; and

(f) In the case of paragraph (c) above two hours after the notice was sent.

In proving service it shall be sufficient to prove that the notice was properly addressed to the last notified address and posted, or that delivery took place or that the email was addressed to the last notified email address.

#### **11. Costs**

Each party will be responsible for their own legal costs and outlays in respect of the negotiation, preparation, execution, registration and implementation of this Agreement. Nothing in this Clause will prevent either party from seeking to recover from the other the costs of enforcing the provisions of this Deed.

#### **12. Binding Nature of Agreement**

This Agreement will be binding on and enforceable by each of the Parties and their respective heirs, executors or assignees whomsoever.

#### **13. Jurisdiction**

This Agreement will be governed by and interpreted in accordance with the laws of Scotland.



#### 14. Registration and Testing Clause

The Parties hereby consent to registration of these presents for preservation and execution.

IN WITNESS WHEREOF these presents consisting of this and the 8 preceding pages are subscribed by me, Hannah Emily Ford at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2021 before this witness

\_\_\_\_\_  
**Hannah Emily Ford**

Witnesses Signature \_\_\_\_\_  
Witnesses Full Name \_\_\_\_\_  
Witnesses Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

And they are subscribed by me, Edwin Alexander Wallace, at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2021 before this witness

\_\_\_\_\_  
**Edwin Alexander Wallace**

Witnesses Signature \_\_\_\_\_  
Witnesses Full Name \_\_\_\_\_  
Witnesses Address \_\_\_\_\_  
\_\_\_\_\_  
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