

THE SCOTTISH MINISTERS acting through the More Homes Division of the Housing, Regeneration, and Welfare Division, having its place of business at 5th Floor, Atlantic Quay, 150 Broomielaw, Glasgow, G2 8LU

8 JULY 2016

George Bruce Pirie Smith c/o Union Plaza,  
1 Union Wynd, Aberdeen, AB10 1DQ  
and The Honourable Malcolm Nigel Lord  
Forbes (formerly Master of Forbes and now Lord Forbes),  
Castle Forbes, Keig, Alford, Aberdeenshire, AB33 8BL  
as the current surviving Trustees of **The Grandhome Trust**

Dear Sirs

**Infrastructure Fund (Loan Scheme)  
Grandhome, Aberdeenshire**

In relation to the Borrower's Application for a loan under the Infrastructure Fund (Loan Scheme) (the "**Scheme**"), the Lender, acting pursuant to the general functions and powers specified in Section 1 and 2 of the Housing (Scotland) Act 1988, hereby offers to loan to the Borrower, the Loan, and that on the following terms and conditions:-

**1 Definitions and Interpretation**

**1.1 Definitions**

In this Offer:-

**"Advance Notice"** means an advance notice as defined in Section 56 of the Land Registration etc. (Scotland) Act 2012;

**"Agreement"** means this Offer and the contract to follow on it;

**"Application"** means the Borrower's application for funding under the Scheme in respect of the Property dated May 2014 as amended, developed and supplemented between the Lender and the Borrower from time to time and includes for the avoidance of any doubt all information and documentation submitted in support of the application;

**"Availability Period"** means the period between the date of acceptance of this Offer and 31 March 2017 or such other dates as have been agreed between the parties;

**"Borrower"** means George Bruce Pirie Smith care of Union Plaza, 1 Union Wynd, Aberdeen, AB10 1DQ and The Honourable Malcolm Nigel Lord Forbes (formerly Master of Forbes and now Lord Forbes) of Castle Forbes, Keig, Alford, Aberdeenshire, AB33 8BL as the current surviving Trustees of the Trust created by John David Paton by Deed of Settlement dated 5, 7, 12 and 17 August 1965 and recorded in the Books of Council and Session on 9 September 1965, as amended by subsequent arrangements and court interlocutors and commonly known as **The Grandhome Trust**;

**"Business Day"** means a day other than a Saturday, Sunday or a bank holiday in Edinburgh or Glasgow;

**"Certificate of Relevant Costs"** means a certificate issued by the Project Manager stating the amount that the Project Manager considers is due, to be paid in respect of the Works carried out which are Eligible for Assistance for the relevant Payment Period and the basis upon which that amount has been calculated including a breakdown of the cumulative value of the Works carried out which are Eligible for Assistance properly executed up to the end of the relevant Payment Period;

**"Completion Documents"** means the documents detailed in Schedule Part 1;

**"Contractor"** means each contractor under a Works Building Contract or a Future Works Building Contract in respect of the Works and/or the Future Works respectively;

**"Consultants"** means each and any of the Initial Consultants, (in so far as they are not included as one of Initial Consultants) each and any member of the Professional Team and such other consultants as are appointed by the Borrower from time to time in relation to the Works and/or the Future Works and appointed on terms approved by the Lender (acting reasonably);

**"Consultants Costs"** means the fees, costs and expenses properly incurred by the Borrower of employing the Consultants which are Eligible for Assistance;

**"Costs Expended"** means the costs already incurred by the Borrower in respect of the Works which are more particularly detailed in the column entitled "2015/16" under the heading "Detailed Design Fee Financial Years" in the Schedule of Costs Expended set out in Schedule Part 7;

**"Day 1 Payment"** means Five Hundred and Fifty Thousand Pounds (£550,000) Sterling being the amount deemed Eligible for Assistance by the Scottish Ministers in respect of the Costs Expended;

**"Deed of Restriction"** means a deed of restriction in respect of the Standard Security granted pursuant to the provisions of Clause 12;

**"Default Interest Rate"** means 6.22% per annum;

**"Development"** means the eight areas outlined in blue on Plan 2 being part and portion of ALL and WHOLE the towns and lands of Grandhome and Persley and others in the County of Aberdeen more particularly described in and disposed by the Disposition by the Trustee of the deceased William Roger Paton in favour of John David Paton of Grandhome dated 7<sup>th</sup> and recorded in the Division of the General Register of Sasines applicable to the County of Aberdeen on 19<sup>th</sup>, both days of August 1925; Together with (One) the whole buildings and erections on the said subjects; (Two) the fittings and fixtures therein and thereon; and (Three) the pertinents, rights and privileges of the said subjects;

**"Drawdown Request"** means a request made in the form of the draft set out in Part 3 of the Schedule;

**"Drawdown Schedule"** means the indicative drawdown schedule of the Loan forming Schedule Part 3 as varied by agreement from time to time (both parties being bound to act reasonably and having regard to the Programme (as the same may be varied from time to time) but subject always to the ultimate last date for payment as set out in Clause 5);

**"Eligible for Assistance"** means costs incurred (including for the avoidance of doubt the Day 1 Payment) or to be incurred by or on behalf of the Borrower in carrying out the Works and which relate to the design, layout, or construction of physical infrastructure and housing units and which costs are or were genuinely required (in the opinion of the Lender and at the Lender's absolute discretion but

Provided that such costs will be deemed to be genuinely required if they are included in the Schedule of Works forming Schedule Part 5 but only up to a maximum of the costs set out in the Approved Costs Schedule forming Schedule Part 8) to be incurred in order to commence, progress and complete construction of housing units on the Development, including but not restricted to roads, sewers, SUDS ponds, decontamination, flood remediation, demolition work, house building, off-site infrastructure required by the Section 75 Agreement, but excluding any community based infrastructure or contributions required in terms of the Section 75 Agreement.

**"Environmental Authority"** means any person or legal entity (whether statutory or non-statutory or governmental or non-governmental) having regulatory authority under Environmental Law and/or any court of law or tribunal or any other judicial or quasi-judicial body;

**"Environmental Law"** means all laws, regulations, directives, statutes, subordinate legislation, rules of common law and generally all international, EU, national and local laws and all judgments, orders, instructions, decisions, guidance awards, codes of practice and other lawful statements of any Environmental Authority applying from time to time in relation to the Borrower and/or the Property concerning the protection of human health or the environment (both natural and built) or the conditions of the work place or the generation, transportation, storage, treatment or disposal of Dangerous Substances and includes, without limitation, the Environmental Protection Act 1990 and all primary and subordinate legislation which that Act replaces or re-enacts;

**"Environmental Licence"** means any permit, licence, authorisations, consent or other approval required by any Environmental Law in respect of the Works and/or the Property;

**"Event of Default"** shall have the meaning ascribed to it in Clause 8;

**"Fees"** means the statutory fees incurred by the Borrower in obtaining the requisite consents and permissions required in order to carry out the Works;

**"Future Works"** means any works in respect of Phase 1B and Phase 1C;

**"Future Works Building Contract"** means each contract entered into or to be entered into between the Borrower and a Contractor for the construction of any Future Works in respect of the Development for an amount and on terms approved by the Lender (acting reasonably) each of which shall include minimum retentions of one and one half per cent (1.5%) to cover the Contractor's maintenance and defects obligations;

**"Future Works Construction Documents"** means in respect of any Future Works (i) each Future Works Building Contract (ii) each appointment of any member of the Professional Team and (iii) each sub-contract (or details of the scope of works covered by each sub-contract) in respect of any works to be undertaken by any Principal Sub-Contractor; all in terms approved by the Lender (acting reasonably) together with all design drawings, specifications, bills of quantities, cost plans, tender lists, reports, performance bonds, guarantees, health and safety files, road bonds and any other document requested by the Project Manager in connection with any Future Works;

**"Initial Valuation"** means the valuation prepared by Douglas Bowers MRICS, DVS, dated 7 March 2016 of the Borrower's interest in the Development;

**"Initial Consultants"** means those consultants detailed in Schedule Part [11];

**"Interest Rate"** means 4.22% per annum;

**"Lender"** means the Scottish Ministers acting through the More Homes Division of the Housing, Regeneration, and Welfare Division, having its place of business at 5th Floor, Atlantic Quay, 150 Broomielaw, Glasgow, G2 8LU;

**"Loan"** means the sum of SEVEN MILLION NINE HUNDRED THOUSAND THREE HUNDRED AND NINETY SEVEN POUNDS (£7,900,397) STERLING;

**"Loan Balance"** means the amount of Loan outstanding at any point during the Loan Period, taking into account sums drawn down, repayments made and interest accrued, all in terms of this Agreement;

**"Loan Period"** means the period from the date of acceptance of this Offer to the date falling fifteen years after the date of acceptance of this Offer;

**"Market Value"** means the estimated realisation price (assuming the sale is completed within six months) of the Proposed Remaining Secured Property determined in accordance with the then current edition of the RICS Appraisal and Valuation Manual and taking account of the Works completed as at the date of the Valuation (and for the avoidance of any doubt disregarding the remainder of any of the Works yet to be completed as at that date);

**"Monitoring Report"** means a report detailing the progress of the Works against the Programme in the form set out in Schedule Part 9;

**"Open Market Unit"** means a unit of housing that has been constructed in accordance with all planning permissions and relevant authorisations applicable to it other than units of housing required to be provided as affordable housing in terms of the Section 75 Agreement;

**"Open Market Unit Plot"** means an area of land forming part of the Development in respect of which the Borrower has obtained all relevant permissions and consents to allow the construction of an Open Market Unit (whether by the Borrower or a third party developer);

**"Other Security"** means any mortgage, standard security, pledge, lien, assignment in security, hypothecation, floating charge or other security interest or any other agreement or arrangement having the effect of conferring a security on the Development or the Works, except: (i) any lien arising by operation of law in the ordinary course of business and securing amounts not more than thirty days overdue; (ii) any security interest created under or pursuant to this Agreement or the Standard Security; and/or (iii) any security interest created with the prior consent of the Lender.

**"Parties"** means the Lender and the Borrower and "Party" refers to either of them as the context requires;

**"Payment Period"** means the period from the day after a payment date specified in the Drawdown Schedule to the next payment date specified in the Drawdown Schedule;

**"Principal Sub-contractor"** means each sub-contractor appointed by the Contractor having significant design responsibility;

**"Professional Team"** means such professionals as the Borrower may employ including the architect, employer's agent, civil and structural engineer, mechanical and electrical engineers, cost consultant, quantity surveyor, planning supervisor, the

Project Manager and any other adviser to be appointed in respect of the execution of the Works and/or the Future Works and on terms acceptable to the Lender (acting reasonably);

**"Phase"** means each of Phase 1A, Phase 1B and Phase 1C;

**"Phase 1A "** means that part of the Development shown outlined in **blue** and labelled **"1A"** on the Plan

**"Phase 1A Longstop Date"** means the eighth anniversary of the date of the Borrower's acceptance of this Offer;

**"Phase 1B "** means that part of the Development shown outlined in **blue** and labelled **"1B"** on the Plan;

**"Phase 1B Longstop Date"** means the eleventh anniversary of the date of the Borrower's acceptance of this Offer;

**"Phase 1C "** means that part of the Development shown outlined in **blue** and labelled **"1C"** on the Plan;

**"Phase 1C Longstop Date"** means the fifteenth anniversary of the date of the Borrower's acceptance of this Offer;

**"Plan"** means the plan contained within Schedule Part 10;

**"Pre-start Programme"** means the indicative programme for completing the Works prepared immediately prior to the commencement of the Works and which indicative programme, so far as it relates to the duration of the Works (but disregarding any dates specified in the Provisional Programme on the basis that it is acknowledged by the parties that the programme will depend on the date that the Works commence) will not extend the duration of the Works as set out in the Provisional Programme by a period of more than three months, without the consent of the Lender (which consent shall not be unreasonably withheld or delayed, but declaring that the Lender would not be deemed unreasonable where the effect of extension of the duration of the Works would result in a Drawdown Request being submitted post 25 September 2017);

**"Programme"** means the Provisional Programme and in substitution therefor the Pre-start Programme;

**"Provisional Programme"** means the indicative programme for completing the Works as set out in Schedule Part 6;

**"Project Manager"** means Turner & Townsend (Reference: Gordon Rendall), Riverside House, Riverside Drive, Aberdeen AB11 7LH or such other relevant professional as may be appointed by the Borrower from time to time as project manager in terms of the Works Building Contract or any Future Works Building Contract;

**"Property"** means any or all of the Development over which the Standard Security has been granted by the Borrower in favour of the Lender pursuant to the Agreement from time to time;

**"Proposed Remaining Secured Property"** means the extent of the Development proposed to remain secured by the Standard Security pursuant to Clause 12.2 following the grant of the requested Deed of Restriction;

**"Schedule"** means the schedule annexed to this Offer and comprising the following Parts:-

- 1 Completion Documents
- 2 Drawdown Request
- 3 Drawdown Schedule
- 4 Standard Security
- 5 Schedule of Works
- 6 Provisional Programme
- 7 Schedule of Costs Expended
- 8 Approved Costs Schedule
- 9 Monitoring Report
- 10 Initial Consultants
- 11 Plan

**"Section 75 Agreement"** means the minute of agreement among Aberdeen City Council and Borrower the dated 18, 19 and 23 December 2014 and recorded in the Division of the General Register of Sasines applicable to the County of Aberdeen on 30 December 2014;

**"Site Investigation Report"** means the reports referred to in paragraph 2 of Schedule Part 1

**"Standard Security"** means any Standard Security granted pursuant to this Agreement by the Borrower in favour of the Lender substantially in the form of the draft Standard Security forming Part 4 of the Schedule and completed in accordance with the provisions of this Agreement;

**"Validly Executed"** means executed in accordance with the requirements of Sections 3 and 7 and Schedule 2 of the Requirements of Writing (Scotland) Act 1995;

**"Valuation"** means a valuation, addressed to the Lender, in respect of the Proposed Remaining Secured Property, by the Valuer on the basis of the Market Value thereof;

**"Valuer"** means such surveyor or valuer as may be approved by the Lender;

**"Works"** means the works to install infrastructure in respect of Phase 1A specified in the Schedule of Works forming Part 5 of the Schedule;

**"Works Building Contract"** means each contract entered into or to be entered into between the Borrower and a Contractor for the construction of the Works in respect of the Development for an amount and on terms approved by the Lender each of which shall include minimum retentions of one and one half per cent (1.5%) to cover the Contractor's maintenance and defects obligations;

**"Works Construction Documents"** means in respect of the Works (i) each Works Building Contract (ii) each appointment of any member of the Professional Team and (iii) each sub-contract (or details of the scope of works covered by each sub-contract) in respect of any works to be undertaken by any Principal Sub-Contractor; all in terms approved by the Lender (acting reasonably) together with all design

drawings, specifications, bills of quantities, cost plans, tender lists, reports, performance bonds, guarantees, health and safety files, road bonds and any other document relating to the Works;

## 1.2 Interpretation

Save to the extent that the context or the express provisions of the Agreement otherwise requires, in the Agreement:-

- 1.2.1 any term defined in this Offer or in any of the Parts of the Schedule shall, unless the context requires otherwise, have the same meaning throughout the Agreement;
- 1.2.2 words importing any gender shall include all other genders;
- 1.2.3 words importing the singular number only shall include the plural number and vice versa;
- 1.2.4 obligations contained in the Agreement undertaken by more than one person shall be binding jointly and severally on them and their respective executors and representatives whomsoever without the necessity of discussing them in their order;
- 1.2.5 words importing individuals include corporations and vice versa;
- 1.2.6 references to the Agreement or to any other document shall be construed as reference to the Agreement or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time;
- 1.2.7 any reference to a Clause, Schedule or Part of the Schedule is to the relevant Clause, Schedule or Part of the Schedule of or to the Agreement;
- 1.2.8 reference to any statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the same, or which has been amended, extended, consolidated or replaced by the same, and shall include any orders, legislation, instruments or other subordinate legislation made under the relevant statute or statutory provision; and
- 1.2.9 any phrase introduced by the words "including", "include", "in particular" or any similar expression shall be construed as illustrative only and shall not be construed as limiting the generality of any preceding words.

## 1.3 Headings

The headings in the Agreement are included for convenience only and are to be ignored in construing the Agreement.

## 1.4 Schedule

The Schedule forms part of the Agreement.

# 2 Facility

- 2.1 Subject to the terms of this Agreement, the Lender agrees to make available to the Borrower a term loan of an amount equal to the Loan for the Loan Period.
- 2.2 In no event shall the Lender be obliged to release more than the amount of the Loan.

### **3 The Works**

- 3.1 The Loan will be used by the Borrower towards the (i) cost of carrying out the Works which are Eligible for Assistance; (ii) meeting the Consultants Costs; and (iii) meeting the Fees; and for no other purpose.
- 3.2 During the progress of the Works, the Borrower will, 5 Business Days' following receipt of notice in writing, permit the Lender and their representatives to have access to the part of the Property on which the Works are being undertaken at all reasonable times for the purpose of inspection of the state and progress of the Works, provided that the Lender and its representatives shall (i) comply with all safety precautions as may be in force from time to time in respect of that part of the Property; (ii) not issue any directions to any contractor or their representatives in respect of the Works, written or otherwise; (iii) not interfere or inhibit the progress of the Works; and (iv) indemnify the Borrower in respect of any harm, damage or loss occurring to its property during the course of such inspection and as a direct result of the actions of the Lender.
- 3.3 The Borrower shall use its reasonable endeavours to complete the Works in accordance with the Programme and in any event shall complete:-
  - 3.3.1 the Works by the Phase 1A Longstop Date;
  - 3.3.2 the Future Works by the Phase 1C Longstop Date;
 and undertakes to notify the Lender in the event that the Works or the Future Works fall significantly behind the Programme.

### **4 Conditions Precedent**

#### **4.1 Conditions Precedent to Completion**

Completion of this Agreement shall not take place and the obligations of the Lender hereunder shall not come into effect until the Lender has notified the Borrower that it has received and is satisfied (the Lender being obliged to act reasonably) with all of the Completion Documents. The Lender undertakes to notify the Borrower promptly upon being so satisfied.

#### **4.2 Conditions Precedent to Drawdown**

The Lender shall only be obliged to make available to the Borrower any instalment of the Loan if:-

- 4.2.1 the Borrower has complied with the terms of this Agreement;
- 4.2.2 no Event of Default has occurred which is continuing;
- 4.2.3 in respect of each drawdown of the Loan, the Borrower has delivered to the Lender a Drawdown Request together with:-



4.2.3.1 in respect of the Works, the Certificate of Relevant Costs in terms satisfactory to the Lender (acting reasonably); and

4.2.3.2 in respect of the Consultant Costs and the Fees, all third party invoices, bills, accounts or such other information as the Lender may reasonably require to verify the amount claimed in the Drawdown Request as being Eligible for Assistance;

4.3 Each of the conditions specified in Clause 4.1 and 4.2 shall be for the benefit of the Lender and the Lender may waive any such condition or part thereof as it sees fit.

## 5 Drawdown

5.1 Subject to the Availability Period, the Loan will be drawn down as follows:

5.1.1 the Day 1 Payment shall be drawn down in addition to the first Drawdown Request submitted by the Borrower in accordance with the Drawdown Schedule; and

5.1.2 the balance of the Loan will be drawn down in accordance with the Drawdown Schedule, but in any event by the 25 September 2017.

5.2 When the Borrower wishes to make a drawdown it must ensure that before submitting the Drawdown Request, all the Conditions Precedent detailed in Clause 4 have been satisfied or will be satisfied by the submission of the Drawdown Request.

5.3 Payment of the Loan will be made by the Lender within 14 days of the Lender being satisfied that the Borrower has met all of the conditions set out in Clause 4.2.

5.4 For the avoidance of any doubt, the Borrower acknowledges that the Lender will be unable to make any payments after the 30 September 2017, so any Drawdown Requests (provided they meet the criteria set out elsewhere in this agreement) must be validly submitted by the 25 September 2017.

## 6 Repayment

6.1 The Loan Balance will be repaid by the Borrower to the Lender as follows:-

6.1.1 The sum of Six Hundred and Fifty Thousand Pounds (£650,000) Sterling shall be repaid on the earlier of (i) the sale of the two hundredth Open Market Unit Plot in the Development; or (ii) the Phase 1A Longstop Date;

6.1.2 The sum of One Million Eight Hundred and Forty Thousand Pounds (£1,840,000) Sterling shall be repaid on the earlier of (i) the sale of the three hundred and sixtieth Open Market Unit Plot in the Development; or (ii) the Phase 1B Longstop Date;

6.1.3 The remainder of the Loan Balance, if any, outstanding following the repayments referred to at Clauses 6.1.1 and 6.1.2 above shall be repaid on the earlier of (i) the sale of the six hundred and tenth Open Market Unit Plot in the Development; or (ii) the Phase 1C Longstop Date.

- 6.2 Without prejudice to Clause 6.1, the Loan and all interest accrued on the Loan in accordance with this Agreement must be repaid in full by the end of the Loan Period;
- 6.3 The Borrower may repay the Loan in full, accelerate repayment, or increase the level of any repayment, at any time during the Loan Period without penalty, but is not permitted to re-borrow any such sum so repaid.
- 6.4 All payments made by the Borrower to the Lender in terms of this Agreement must be made in Sterling by electronic transfer of funds into an account designated by the Lender to the Borrower so that the Lender is in receipt of cleared funds on the due date.
- 6.5 The payment profile set out in Schedule Part 12 provided to the Lender by the Borrower prior to the date of this Offer represents an aspirational projection of when the Borrower might be in a position to repay instalments of the Loan Balance. The Borrower will consider making accelerated prepayments in line with Schedule Part 12 if and to the extent (i) the Borrower's cashflows allow it to do so and (ii) such action can be objectively justified by the Trustees of the Borrower (on the basis of the facts then existing and that there is no obligation under this agreement to make such prepayment) as being in the best interests of the Borrower and its beneficiaries.

## **7 Interest**

- 7.1 The Borrower will be charged interest on the Loan Balance at the Interest Rate until repayment of the Loan, together with all interest accrued thereon, in full.
- 7.2 Interest will accrue on the Loan Balance and shall be added to the Loan Balance on the first day of each calendar month.
- 7.3 If the Borrower fails to pay any amount due and payable by it under this Agreement, it will pay interest on the outstanding amount from the due date up to the date of actual payment, both before and after judgment, at the Default Interest Rate and that without prejudice to any other remedies the Lender may have under this Agreement and/or the Standard Security.

## **8 Events of Default**

- 8.1 At any time after the occurrence of an Event of Default the Lender may, by notice to the Borrower, declare the Loan Balance to be immediately due and payable on demand.
- 8.2 Each of the following events shall be an Event of Default:-
  - 8.2.1 Non-Payment  
The failure of the Borrower (i) to make any repayment required in terms of this Agreement; or (ii) to pay any other monies due under this Agreement and/or the Standard Security; in each case by the date falling fourteen days after the date upon which any payment falls due.
  - 8.2.2 Breach of Other Obligations  
The Borrower fails to comply with any provision of this Agreement and/or the Standard Security (other than those referred to in Clause 8.2.1) and such failure, if, in the reasonable opinion of the Lender, it is capable or remedy, is not remedied, within such reasonable period of

time as the Lender may stipulate (acting reasonably), having regard to the circumstances.

### 8.2.3 Negative Pledge

The Borrower granting or permitting to subsist any Other Security.

### 8.2.4 Misrepresentation

Any representation, warranty or statement made or repeated by the Borrower in, or in connection with the Application, this Agreement and/or the Standard Security, or any notice, certificate or documents delivered, made or issued by or on behalf of the Borrower is or proves to have been misleading or incorrect in any respect when made or repeated.

### 8.2.5 Unenforceability

This Agreement and/or the Standard Security is terminated or frustrated or declared void or unenforceable by any court of competent jurisdiction or is claimed to be void or unenforceable by the Borrower.

### 8.2.6 Insolvency Proceedings

8.2.6.1 Proceedings are initiated against the Borrower under any applicable insolvency laws or any action is taken for or with a view to the appointment of (or there is otherwise appointed) a receiver, administrative receiver, administrator, trustee, supervisor or other similar officer, in relation to the Borrower or in relation to the whole or any substantial part of the Development, undertaking, assets and/or revenues of the Borrower (other than in all cases pursuant to a solvent reorganisation previously approved by the Lender).

8.2.6.2 An encumbrancer, chargee, mortgagee, heritable creditor or security holder takes possession of all or any part of the property, undertaking, assets and/or revenues of the Borrower.

8.2.6.3 Any judgement, decree or order made against the Borrower is not complied with within 10 Business Days or any execution, distress, diligence, sequestration or other process is levied or enforced upon any of the properties, undertakings, assets and/or revenues of the Borrower and is not discharged within 10 Business Days.

8.2.6.4 The Borrower admits its inability to pay its debts as and when they fall due or become or is deemed to be unable to pay its debts (within the meaning of Section 123(1)(e) of the Insolvency Act 1986 (or any statutory modification or re-enactment thereof)).

8.2.6.5 The Borrower convenes a meeting of, proposes or enters into any composition or arrangement with, or makes a conveyance or assignation for the benefit of, its creditors or any group or class of its creditors.

8.2.6.6 The Borrower initiates or consents to judicial proceedings relating to itself under any applicable insolvency laws or seeks appointment of an administrator, a receiver or an administrative receiver or other similar officer.

8.2.6.7 The Borrower becomes apparently insolvent.

8.2.6.8 The Borrower stops or threatens to stop any payment due under this Agreement.

A Trustee in Bankruptcy is appointed in relation to the Borrower.

#### 8.2.7 Litigation

Any litigation, arbitration or administration proceedings are instituted which, if adversely determined, would have a material adverse affect on the business, assets or financial condition of the Borrower.

#### 8.2.8 Unlawfulness

It is or becomes unlawful for the Borrower to perform any of its obligations under this Agreement and/or the Standard Security.

#### 8.2.9 Change of Constitution

A change in respect of the trust deed or other constitutional documents of the Borrower which has not previously been approved by the Lender or there has been a change in the trustees of the Borrower which has not been notified to the Lender in accordance with the provisions of Clause 10.2.5.

#### 8.2.10 Cessation of Business

The Borrower ceases or threatens to cease to carry on all or a substantial part of its business which in the Lender's opinion would have a material adverse effect on the ability of the Borrower to comply with its obligations under this Agreement and/or the Standard Security.

### 9 **Borrower's Warranties and Undertakings:-**

The Borrower warrants that (i) on the date of this Agreement or, if later, submission of the relevant information; and (ii) on the date of submission of each Drawdown Request; and (iii) on the date of each drawdown:-

#### 9.1 Powers and Authority

the Borrower has full power and authority to enter into and perform, and has taken all necessary action to authorise the entry into, performance and delivery of this Agreement and the Standard Security, and the exercise of its rights and performance of its obligations under the transactions contemplated by this Agreement and the Standard Security;

#### 9.2 Information

9.2.1 the written information provided to the Lender by the Borrower was true in all material respects as at the date on which it was provided. All projections, cashflow statements and statements of belief and opinion

contained in that written information were made in good faith and all such beliefs and opinions were honestly held;

9.2.2 to the best of the Borrower's knowledge and belief, the Borrower has not failed to disclose to the Lender any information which, if disclosed, could adversely affect the decision of a person considering whether or not to provide finance on the terms of this Agreement or to accept the Property as security;

9.2.3 as at the date of this Agreement, nothing has occurred since the date any written information was provided (except to the extent such information has been superseded by subsequent information provided) which renders the information contained in it untrue or misleading in any material respect and which, if disclosed, would adversely affect the decision of a person considering whether or not to provide finance on the terms of this Agreement or to accept the Property as security;

### 9.3 Legal Validity

this Agreement and the Standard Security constitute legal, valid and binding obligations of the Borrower enforceable against it in accordance with its terms and will be admissible as evidence in Scotland;

### 9.4 Non-Conflict

the entry into and the exercise of its rights and the performance of its obligations (if any) under this Agreement and the Standard Security do not and will not conflict with:

9.4.1 any law or regulation or official or judicial order with which it is by law or custom obliged to comply;

9.4.2 the Borrower's rules in effect from time to time; or

9.4.3 any document which is binding upon the Borrower or any asset of the Borrower,

in each case to the extent that such conflict would have an adverse effect on the Borrower's ability to comply with its obligations under this Agreement;

### 9.5 No Default

9.5.1 no Event of Default is outstanding or could be expected to result from the Borrower entering into this Agreement and/or the Standard Security;

9.5.2 no other event is outstanding which constitutes (or with the giving of notice, lapse of time, determination of materiality or the fulfilment of any other condition might constitute) a default under any other document which is binding on the Borrower;

### 9.6 Authorisations

the execution and delivery by the Borrower of this Agreement and the borrowing by the Borrower of the Loan and the performance of all the obligations expressed to be assumed under this Agreement and the compliance with the terms of this Agreement have been duly authorised by all necessary actions of the Borrower and:

9.6.1 do not violate any provisions of any law, decree, rule or regulation or any order, judgment, injunction, interdict, decree, resolution, determination or award of court or any judicial, administrative or governmental authority or organisation having applicability to the Borrower; and

9.6.2 do not violate any provision of the Standard Security or any agreement or other undertaking or instrument to which the Borrower is a party or which is binding upon it or any of its assets nor result in the creation or imposition of any encumbrance on any of its assets pursuant to the provision of any agreement or other undertaking or instrument;

#### 9.7 Accounts

the audited accounts of the Borrower most recently delivered to the Lender:

9.7.1 have been prepared in accordance with applicable law and regulations; and

9.7.2 fairly represent the financial condition of the Borrower as at the date to which they were drawn up;

and there has been no material adverse change in the financial condition of the Borrower since the date to which those accounts were drawn up;

#### 9.8 Litigation

no judgment, order or decree has been given in legal proceedings and no arbitral or administrative award has been given which has had or could be expected to have an adverse effect on the assets, financial condition or business of the Borrower and no litigation or administrative or arbitration proceeding before or of any court, tribunal, arbiter or any other relevant authority is presently in process, pending or threatened which might adversely affect the assets, financial condition or business of the Borrower or its ability to perform its obligations under this Agreement;

#### 9.9 Disputes

9.9.1 there is not in existence any dispute with any governmental or other authority which affects the Borrower and which might adversely affect its assets, financial condition or business or any other dispute of any kind which would materially adversely affect its asset, financial condition or business; and

9.9.2 the Borrower is not in default under any law, decree, rule or regulation or under any order, judgment, injunction, decree, resolution, determination or award of any court or any judicial, administrative or governmental authority or organisation having applicability to it or under any agreement or other undertaking or instrument which adversely affect its business, assets or financial condition;

#### 9.10 The Property

9.10.1 the Borrower is the heritable proprietor of the Property;

9.10.2 no intimation of an application for registration or late registration of a community interest in terms of the Land Reform (Scotland) Act 2003, nor a notice prohibiting a transfer of land in respect of which a community interest is registered, has been received by the Borrower

and the Borrower has not taken any action with a view to such a transfer;

- 9.10.3 there is no breach of any planning legislation or local authority or statutory requirements and the Borrower has complied with all conditions contained in the Section 75 Agreement in respect of the Development as is required to be complied with for the relevant stage of the Works;
- 9.10.4 there are no title burdens, agreements, stipulations, reservations, conditions, interests, rights or other matters whatsoever affecting the Property other than as have been disclosed to and accepted by the Lender;
- 9.10.5 no facilities (other than water, gas and electricity) necessary for the enjoyment and use of the Property are enjoyed by the Property on terms entitling any person to terminate or curtail its or their use; and
- 9.10.6 the Borrower has received no notice of any adverse claims by any person in respect of the ownership of the Property or any interest in it, nor has any acknowledgement been given to any person in respect of it.

#### 9.11 Environmental

The Borrower:-

- 9.11.1 has obtained or will at the relevant stage of the Works obtain or has procured or will at the relevant stage of the Works procure that the Contractor has obtained or shall obtain all requisite Environmental Licences and has and will and/or has procured and/or will procure that the Contractor has and will at all times have complied with in all material respects (a) the terms and conditions of such Environmental Licences and (b) all other applicable Environmental Law; and
- 9.11.2 confirms that so far as it is aware after due and diligent enquiry and save as disclosed in the Site Investigation Report, no dangerous substances (which are generally considered in the construction industry to be deleterious) have been used, disposed of, generated, stored, transported, dumped, released, deposited, buried or emitted at, on, from or under any premises (whether or not owned, leased, occupied or controlled by the Borrower and including any off-site waste management or disposal location utilised by the Borrower) in circumstances where this might result in a liability on the Borrower which would be likely to have a material adverse effect on the business, assets or financial condition of the Borrower or on its ability to perform its obligations under the Agreement and/or the Standard Security.
- 9.11.3 shall carry out and complete any remediation works that are required in terms of the planning permission granted in respect of the Works.

#### 9.12 Valuation

- 9.12.1 So far as Borrower is aware after due and diligent enquiry all information provided by it or on its behalf to the Valuer for the purposes of the Initial Valuation and any subsequent Valuation was true, complete and accurate as at the date on which the information was provided to the Valuer; and

- 9.12.2 the information did not omit as at the date on which it was provided to the Valuer any information which, if disclosed, might adversely affect the Initial Valuation or any subsequent Valuation (as the case may be); and.
- 9.12.3 nothing has occurred since the date the information was provided to the Valuer which, if it had occurred prior to the Initial Valuation or relevant subsequent Valuation (as the case may be), might have adversely affected Initial Valuation or that subsequent Valuation.

## 10 General Undertakings

The Borrower undertakes that from and after the date of signing of this Agreement by the Borrower and for as long as any amount payable hereunder is outstanding, the Borrower shall:-

### 10.1 Notification of Default

notify the Lender in writing of the occurrence of any Event of Default or of the occurrence of any event or change in circumstances which would make any representation, warranty or statement in this Agreement incorrect (as at the date the relevant representation, warranty or statement was made or given) in any material respect in each case promptly following it becoming aware of the same;

### 10.2 General Information

supply to the Lender:-

- 10.2.1 promptly in writing upon becoming aware of them, details of any threatened or pending or commenced litigation, administrative or arbitration proceedings before or of any court, tribunal, arbitrator or other relevant authority or any dispute with any governmental or other authority or any other dispute of any kind which might adversely affect the assets, financial condition or business of the Borrower;
- 10.2.2 promptly upon becoming aware, details of any adverse variations in its cash flows which could reasonably be expected to have a material adverse effect on the Borrower's financial condition or its ability to perform its obligations under this Agreement;
- 10.2.3 on each anniversary of the last date of execution of this Agreement, certified copies of all policies, certificates or cover notes relating to each contract or policy of insurance taken out by or on behalf of the Borrower or in which the Borrower or the Lender has an interest and which relate to the Property and/or the Works (including, for the avoidance of any doubt, evidence that the Contractor, each member or the Professional Team and each Principal Sub-Contractor have in place the professional indemnity insurance policies required in terms of the collateral warranties granted to the Lender in terms hereof;
- 10.2.4 promptly upon request by the Lender, such further information about the Borrower's financial condition or about the Property as the Lender may reasonably request; and
- 10.2.5 prior notification of any proposed changes in the trustees of the Borrower;

### 10.3 Statutory Compliance



comply with all legislation and statutory consents applicable to the Property, the Works and the Borrower and promptly give to the Lender a copy of any such consent obtained and any notice concerning compliance with them;

#### 10.4 Statutory Framework

Carry out the Works, the Future Works and any other works on the Development in compliance with the statutory planning framework and not apply for any amendment to the outline planning permission that would result in a variance of more than 5% in the number of Open Market Units to be constructed on the Development

#### 10.5 Section 75

timeously comply with all conditions contained in the Section 75 Agreement;

#### 10.6 The Works

provide the Lender on request with such information as is reasonably required by the Lender in relation to the Works;

#### 10.7 Negative Pledge

not create or permit to subsist any Other Security;

#### 10.8 Insurance

10.8.1 keep the Property insured against fire and all other comprehensive perils, and against any additional perils which the Lender (acting reasonably) may require for the full reinstatement value, with such insurance company as is acceptable to the Lender and, if required by the Lender, have the Lender's interest in the Property noted thereon;

10.8.2 procure that the Contractor has in place Contractor's "All Risk" insurance during the progress of the Works in respect of any part of the Property or any other property on which the Works are being undertaken;

#### 10.9 Construction Documentation

deliver to the Lender collateral warranties (including duty of care and step-in rights) from any Contractor, member of the Professional Team and/or Principal Sub-contractor appointed or replaced in respect of the Works after the date of first drawdown of the Loan, together with evidence of professional indemnity insurance cover maintained by the granter; all in terms satisfactory to the Lender (acting reasonably).

#### 10.10 Disposal of Property

not sell, transfer or otherwise dispose of the Property except to the extent (i) envisaged by this Agreement; (ii) such disposal is of a part of the Property subject to a Deed of Restriction; or (iii) otherwise consented to by the Lender.

### 11 **Monitoring and Reporting**

11.1 The Borrower must keep accurate and up to date accounts and records of the receipt and expenditure of the Loan or any part of it.

11.2 Submit the Monitoring Report to the Lender on a quarterly basis on 1 May, 1 August, 1 November and 1 February in each year during the Loan Period.

- 11.3 The Borrower must provide the Lender with a financial report and an operational report on utilisation of the Loan in such format as the Lender may reasonably require, each such report to be provided to the Lender within 20 Business Days of the end of the relevant quarter.
- 11.4 The Borrower must provide the Lender on request with such further information, explanations and documents as the Lender may reasonably require in order for it to ensure that the Loan is being properly used in accordance with this Agreement.

## 12 Deeds of Restriction

- 12.1 Subject to the Borrower having made the relevant repayment pursuant to Clause 6 and to the remaining provisions of this Clause 12 and provided that no Event of Default has occurred that is continuing, the Lender will on request enter into such deeds of restriction as are necessary to release any part of the Development from the Standard Security and shall deliver the signed deeds of restriction in return for payment of the Lender's costs in relation to the grant, execution and delivery of any documents required in order to give effect to the deeds of restriction.
- 12.2 The Borrower shall be entitled to request that the Lender grants a deed of restriction in respect of any part of the Development so as to leave the Standard Security in place in respect of the Proposed Remaining Secured Property, and the Lender shall grant such deed or deeds of restriction where the:-
  - 12.2.1 Borrower has provided the Lender with a Valuation showing that that Market Value of the Proposed Remaining Secured Property provides at least a 1:1.25 loan to value ratio on the assumption, if not fact, that the loan used for the basis of the calculation includes the total of:-
    - 12.2.1.1 the Loan Balance as at the date of the request;
    - 12.2.1.2 all future drawdowns set out in the Drawdown Schedule;
    - ("together the Profiled Loan Balance"); and
    - 12.2.1.3 interest to be incurred on the Profiled Loan Balance, calculated at the Interest Rate from the date of the request (or future drawdown, as the case may be) until the Phase 1C Longstop Date;
  - 12.2.2 In the Lender's reasonable opinion, the proposed Remaining Secured Property would continue to provide good and marketable title and continue to benefit from all necessary servitude rights and wayleaves required in respect of the proposed use thereof;
  - 12.2.3 Borrower undertakes to pay the Lender's costs in relation to the grant, execution and delivery of any documents required in order to give effect to the deeds of restriction;

## 13 Assignment

- 13.1 The Borrower must not assign, transfer, hold on trust or otherwise dispose of any of its rights and/or obligations under this Agreement.

- 13.2 The Lender shall be entitled to assign its rights and/or obligations under this Agreement.

#### **14 Notices**

Any notice or other communication under or in connection with this Agreement shall be in writing and shall be delivered personally or sent by first class post pre-paid recorded delivery to the party due to receive the notice or communication at its address set out in this Agreement or such other address as either party may specify by notice in writing to the other.

#### **15 Costs**

The Borrower shall be responsible for paying all costs properly incurred by the Lender including, but not limited to, all fees of agents, solicitors, surveyors and accountants employed by the Lender in connection with the enforcement of the Agreement and any security granted by the Borrower or any third party to secure the obligations of the Borrower.

#### **16 Post Completion**

Provided that the Standard Security is presented for registration prior to the earlier of 14 days after settlement and (where applicable) the date of expiry of the last Advance Notice registered in relation to the Standard Security:-

- 16.1 the updated or newly created Title Sheet of the Property will (a) contain no exclusion or limitation of warranty in terms of Section 75 of the Land Registration etc (Scotland) Act 2012 Act; (b) disclose no entry, deed or diligence prejudicial to the interest of the Lender other than such as are created by or against the Lender or have been disclosed to, and accepted in writing by, the Lender prior to settlement; and (c) show the Lender as the first ranking security holder over the Borrower's interest in the Property, save as otherwise agreed by the Lender in writing prior to settlement.
- 16.2 The Borrower will deliver to the Lender, on demand from time to time and at the expense of the Borrower, such documents and evidence as the Keeper may require to enable the Keeper to update or create (as the case may be) the Title Sheet of the Property to disclose (i) the Borrower as the registered proprietor of the whole of the Property; and (ii) the Lender as first ranking security holder of over the whole of the Property.

#### **17 Principal Sub-Contractor and Future Works Construction Documents**

- 17.1 The Borrower will deliver to the Lender, and as soon as reasonably practicable and in any event by the date that the relevant Principal Sub-Contractor commences work in respect of the Works, (a) collateral warranties (including duty of care and step-in rights) from any Principal Sub-Contractor in respect of the Works all to be granted for a period of 12 years from completion of the Works determined in terms of the Works Building Contract and which shall be assignable at least twice without the consent of the party granting the relevant collateral warranty, incorporating an undertaking on the grantor to hold and maintain adequate professional indemnity insurance, on an each and every claim basis, in respect of the Works with a reputable insurance company for the period of the relevant collateral warranty, and containing no cap on liability and in a form otherwise approved by the Lender (acting reasonably); and (b) details of the professional indemnity insurance cover maintained by the grantor of the collateral warranty agreements specified at paragraph (a) above.
- 17.2 Prior to commencement of any Future Works the Borrower will deliver to the Lender:

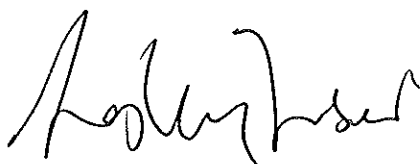
- 17.2.1 a copy of each of the Future Works Construction Documents validly executed by the parties thereto in respect of the Future Works;
  - 17.2.2 collateral warranties (including duty of care and step-in rights) from the Contractor and each member of the Professional Team in respect of the Future Works all to be granted for a period of 12 years from completion of the Future Works determined in terms of the Future Works Building Contract and which shall be assignable at least twice without the consent of the party granting the relevant collateral warranty, incorporating an undertaking on the granter to hold and maintain adequate professional indemnity insurance, on an each and every claim basis, in respect of the Future Works with a reputable insurance company for the period of the relevant collateral warranty, and containing no cap on liability and in a form otherwise approved by the Lender (acting reasonably); and
  - 17.2.3 details of the professional indemnity insurance cover maintained by the grantor of the collateral warranty agreements specified at paragraph 17.2.2 above
- 17.3 The Borrower will deliver to the Lender as soon as reasonably practicable and in any event by the date that the relevant Principal Sub-Contractor commences works at the Property, (a) collateral warranties (including duty of care and step-in rights) from any Principal Sub-contractor Contractor in respect of the Future Works all to be granted for a period of 12 years from completion of the Future Works determined in terms of the Future Works Building Contract and which shall be assignable at least twice without the consent of the party granting the relevant collateral warranty, incorporating an undertaking on the granter to hold and maintain adequate professional indemnity insurance, on an each and every claim basis, in respect of the Future Works with a reputable insurance company for the period of the relevant collateral warranty, and containing no cap on liability and in a form otherwise approved by the Lender (acting reasonably); and (b) details of the professional indemnity insurance over maintained by the grantor of the collateral warranty agreements specified at paragraph (a) above.

**18 Additional Contractual Provisions**

- 18.1 The Agreement will be governed and construed in accordance with the Laws of Scotland.
- 18.2 This Offer is intended to form part of a contract between the Parties which, when concluded, shall be binding upon them.
- 18.3 The Borrower shall indemnify and keep indemnified the Lender against any loss, claim, liability, cost or expense suffered or incurred by the Lender pursuant to this Offer as a result of any of the warranties proving to be untrue.
- 18.4 By acceptance of this Offer, the Parties agree that the terms and conditions of the Agreement constitute the whole terms and provisions of the contract between the Parties pursuant to Section 1(3) of the Contract (Scotland) Act 1997.

This Offer is open for acceptance until Friday 15 July 2016 unless previously withdrawn, after which time it will lapse.

Yours faithfully



For and on behalf of Scottish Ministers

Agreed and accepted by **THE RIGHT HONOURABLE MALCOLM NIGEL LORD FORBES; AND GEORGE BRUCE PIRIE SMITH AS THE PRESENT TRUSTEES ACTING UNDER THE DEED OF SETTLEMENT ON BEHALF OF THE GRANDHOME TRUST:**

**THE RIGHT HONOURABLE MALCOLM NIGEL LORD FORBES**

Witness

Full name

Full Name

Date of Signature

Address

Place of Signature

---

**GEORGE BRUCE PIRIE SMITH**

---

**Witness**

---

**Full name**

---

**Full Name**

---

**Date of Signature**

---

**Address**

---

**Place of Signature**

## SCHEDULE PART 1

### COMPLETION DOCUMENTS

- 1 copies of all requisite consents and permissions required in order to carry out the Works, including any planning permission(s), building warrants, Scottish Water Technical Approval and road construction consents and evidence of compliance with conditions attached to such consents, including any such conditions contained in the Section 75 Agreement;
- 2 a report or reports in relation to site, soil and other ground conditions, including site stability, in respect of that part of the Development and any other property on which the Works are being undertaken, in terms satisfactory to the Lender such reports to be addressed to the Lender, failing which the Borrower shall procure, at its sole expense, from the grantor or grantors of such report or reports, a formal undertaking addressed to the Lender stating that the Lender may rely on such report or reports;
- 3 evidence that the Contractor has appropriate insurance cover in place all in terms satisfactory to the Lender (acting reasonably);
- 4 a Validly Executed Standard Security over the Development;
- 5 Validly Executed discharges of any heritable securities over the Development with all items required for their registration;
- 6 an executed Certificate of Title in respect of the Property, in a form agreed between the Borrower and the Lender, and to the Lender's satisfaction, acting reasonably.
- 7 on the proviso that the Borrower's title to the Development is currently recorded in the General Register of Sasines:-
  - a.
  - b. such documents and evidence as the Keeper may require to enable the Keeper to update or create (as the case may be) the Title Sheet of the Development to disclose the Lender as the first ranking security holder in for the whole Development. Such documents will include:-
    - i. a plan or bounding description sufficient to enable the Development to be identified on the cadastral map; and
    - ii. evidence (such as a plans report) that the description of the Development in the title deeds is habile to include the whole of the occupied extent and that there is no conflict between the extent of the Development and any registered cadastral units;
  - c. all necessary links in title evidencing the Borrower's exclusive ownership of the Development;
  - d. a Legal Report brought down as near as practicable to settlement which report will show:-
    - i. no entries adverse to the Borrower's interest in the Development;
    - ii. the Advance Notice for the Standard Security over the Development; and
    - iii. no other Advance Notices;

- 8 where applicable, a search in the Register of Community Interests brought down to as near as practicable to settlement disclosing no entries affecting the Development;
- 9 if the Development is in an area for which the Law Society of Scotland recommends a coal mining search, a report from the Coal Authority in respect of the Development;
- 10 a property enquiry certificate in respect of the Development from the local council and water authority or such other provider as may be acceptable to the Lender acting reasonably and a plan showing the extent of adopted roads within or serving the Development;
- 11 where applicable, evidence that no part of the Development is, nor was within the 5 years preceding the date hereof, a matrimonial home for the purposes of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 or a family home for the purposes of Part 3 of the Civil Partnership Act 2004;
- 12 minutes of the meeting of the Borrower approving the entering into of this Agreement and the grant of the Standard Security as well as copies of the Trust documentation confirming the Borrower's powers to enter into the Agreement and to grant the Standard Security;
- 13 evidence that the insurance required in terms of the Agreement is in place;
- 14 a copy of each of the Works Construction Documents validly executed by the parties thereto in respect of the Works (other than those which are to be delivered pursuant to Clause 17.1 of the foregoing Offer);
- 15 collateral warranties (including duty of care and step-in rights) from the Contractor and each member of the Professional Team in respect of the Works all to be granted for a period of 12 years from completion of the Works determined in terms of the Works Building Contract and which shall be assignable at least twice without the consent of the party granting the relevant collateral warranty, incorporating an undertaking on the grantor to hold and maintain adequate professional indemnity insurance, on an each and every claim basis, in respect of the Works with a reputable insurance company for the period of the relevant collateral warranty, and containing no cap on liability and in a form otherwise approved by the Lender (acting reasonably);
- 16 details of the professional indemnity insurance cover maintained by the grantor of the collateral warranty agreements specified at paragraph 14 above;
- 17 the Borrower's solicitors' application for voluntary registration of the Borrower's title to the Development confirming that there has been no limitation or restriction to the examination of title carried out and providing for payment of the registration dues by direct debit together with all documentation required to be submitted therewith;
- 18 all items previously exhibited which the Borrower is obliged to redeliver at settlement in terms of the Agreement.



## SCHEDULE PART 2

### DRAWDOWN REQUEST

To: [ ]

From: [ ] LIMITED

Date:

Request under loan agreement dated [ ] 2013

1 We wish to drawdown part of the Loan as follows:-

1.1 Amount: [ ]

1.2 Drawdown Date: [ ]

1.3 Payment instructions: [ ]

By:

[ ]

Authorised signatory for

and on behalf of

[ ] LIMITED

**SCHEDULE PART 3**  
**DRAWDOWN SCHEDULE**

# Drawdown Schedule

Cost Type	Financial Years	2016												2017						Total
		July	August	September	October	November	December	January	February	March	April	May	June							
Infrastructure	2016/17	£ 250,000	£ 845,000	£ 950,000	£ 875,500	£ 650,000	£ 425,000	£ 450,000	£ 850,000	£ 865,000	N/A	N/A	N/A	£ 6,160,500						£ 6,160,500
Consultancy Fees	2016/17	£ 601,670	£ 61,666	£ 61,666	£ 61,666	£ 61,666	£ 61,666	£ 61,666	£ 61,666	£ 61,666	N/A	N/A	N/A	£ 1,094,998						£ 1,094,998
Infrastructure	2017/18	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	£ 350,000	£ 185,000	£ 149,500	£ 684,500						£ 684,500
Total		£ 851,670	£ 906,666	£ 1,011,666	£ 937,166	£ 711,666	£ 486,666	£ 511,666	£ 911,666	£ 926,666	£ 350,000	£ 185,000	£ 149,500	£ 7,939,998						£ 7,939,998

**SCHEDULE PART 4****STANDARD SECURITY****STANDARD SECURITY**

By

**[BORROWER]**

in favour of

**THE SCOTTISH MINISTERS**

Subjects: [ ]

Reference: [ 2013 ]**DRAFT****MORTON FRASER**<sup>®</sup>  
SOLICITORS

**IMPORTANT NOTICE:** We recommend that you consult your solicitor or other independent legal adviser before executing this document.

## **STANDARD SECURITY**

by

(1) [name] [address] ("**Borrower**");

in favour of

(2) The Scottish Ministers acting through the More Homes Division of the Housing, Regeneration and Welfare Division, having its place of business at 5<sup>th</sup> Floor, Atlantic Quay, Broomielaw, Glasgow, G2 8LU ("**Lender**").

## **WHEREAS:-**

- (A) The Borrower has undertaken or is about to undertake the Secured Obligations to the Lender; and
- (B) The Parties have agreed that the Secured Obligations shall be secured over the Property.

**THEREFORE** the Borrower hereby agrees and undertakes as follows:-

## **1 Interpretation**

### **1.1 In this Standard Security:-**

**"Certificate"** means a certificate of the amount of the Borrower's indebtedness to the Lender issued by an authorised representative of the Lender;

**"Expenses"** means all expenses (on a full indemnity basis) incurred by the Lender at any time in connection with the Property or the Secured Obligations or in entering into this Standard Security, or in preserving, defending or enforcing the security created by this Standard Security or in exercising any power under this Standard Security or otherwise, with Interest from the date on which they are incurred;

**"Interest"** means interest at the rate charged to the Borrower by the Lender from time to time;

**"Property"** means ALL and WHOLE means the eight areas outlined in blue on Plan 2 being part and portion of ALL and WHOLE the towns and lands of Grandhome and Persley and others in the County of Aberdeen more particularly described in and disposed by the Disposition by the Trustee of the deceased William Roger Paton in favour of John David Paton of Grandhome dated 7<sup>th</sup> and recorded in the Division of the General Register of Sasines applicable to the County of Aberdeen on 19<sup>th</sup>, both days of August 1925; Together with (One) the whole buildings and erections on the said subjects; (Two) the fittings and fixtures therein and thereon; and (Three) the pertinents, rights and privileges of the said subjects;

**"Secured Obligations"** means all money or liabilities in any currency due, owing or incurred to the Lender at present or in the future, in any manner whether actual or contingent, whether incurred solely or jointly with any other

person and whether as principal or surety, guarantor or cautioner including any money and liabilities of the Borrower to a third party which have been assigned or novated to or otherwise vested in the Lender; and all Interest and Expenses, but excludes any sums due under a regulated consumer credit agreement falling within Part V of the Consumer Credit Act 1974, unless such agreement specifies that it is to be secured over the Property;

**"Standard Conditions"** means the standard conditions specified in Schedule 3 to the Conveyancing and Feudal Reform (Scotland) Act 1970 (as amended) and any lawful variation to them operative for the time being; and

**"Standard Security"** means this standard security.

- 1.2 Clause headings shall not affect the interpretation of this Standard Security.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assignees.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to any party shall include that party's personal representatives, successors and permitted assignees.
- 1.7 Any reference to a Scottish legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than Scotland, be deemed to include a reference to what most nearly approximates to the Scottish legal term in that jurisdiction.
- 1.8 References to clauses are to the clauses of this Standard Security.
- 1.9 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## **2 Borrower's Undertaking**

The Borrower undertakes to pay to the Lender on demand the Secured Obligations.

## **3 Grant of Security**

The Borrower, in security of the Secured Obligations, GRANTS a Standard Security in favour of the Lender over the Property.

## **4 Standard Conditions**

The Standard Conditions shall apply to this Standard Security, subject to the following variations:

### **4.1 Insurance**

The Borrower shall insure the Property in the names of the Lender and the Borrower for their respective rights and interests to the extent of the reinstatement value of the Property, or to any other extent approved by the Lender, against the risk of fire and such other risks as the Lender may reasonably require with an insurer chosen by the Borrower and approved by the Lender, such approval not to be unreasonably withheld or delayed. In the event of the Borrower failing so to insure the Property, the Lender shall be entitled but not bound to effect such insurance and to recover the costs of doing so from the Borrower. All monies paid or to be paid out under such insurance shall be held to be assigned to the Lender, with full power to the Lender to negotiate, agree and adjust the amount of any such insurance monies. Any such insurance monies becoming payable to the Lender shall be applied in making good the loss or damage in respect of which such monies become payable or, if the Lender so requires, in or towards the discharge of the Secured Obligations.

#### 4.2 Restrictions Relating to the Property

The Borrower shall not at any time during the continuance of the security without the consent in writing of the Lender:-

- 4.2.1 make any alteration in the proposed use of the Property as a residential housing development;
- 4.2.2 where at the date of this Standard Security or at any time subsequently the Borrower is in occupation of the Property, part with occupation of the Property or any part of it or grant any servitude, wayleave, real burden or water or drainage rights or other continuing rights upon or affecting the Property or any part of it;
- 4.2.3 create or permit to arise over the Property any overriding interest (as defined in Section 28(1) of the Land Registration (Scotland) Act 1979,
- 4.2.4 apply under any statute relating to housing, agricultural land or crofts or any other statute of any kind for the time being in force for an improvement grant or other grant in respect of the Property;
- 4.2.5 make directly or indirectly any application for planning permission other than as is required to facilitate the development of the Property as a residential housing development;
- 4.2.6 create a subsequent security over the Property or any part of it; or
- 4.2.7 transfer the Property under burden of this Standard Security.

#### 4.3 Compulsory purchase

If the Property or any part of it shall be compulsorily purchased or requisitioned or be the subject of a Notice to Treat for the purposes of compulsory acquisition, all claims and rights competent or that may become competent to the Borrower to compensation by reason of such acquisition shall be held to be assigned to the Lender, with full power to the Lender to negotiate, agree and adjust the amount of any such compensation.

#### 4.4 Right to Possession of the Property

The Lender may, at any time after it shall have become entitled to enter into possession of the Property, serve notice upon the Borrower requiring the Borrower to vacate the Property within a period of 7 days and the Borrower shall upon the expiry of that period, vacate the Property so far as occupied by the Borrower or others for whom the Borrower is responsible, and the Borrower agrees that a warrant of summary ejection may competently proceed against the Borrower in the Sheriff Court of the County in which the Property is situated at the instance of the Lender.

#### 4.5 Ultimate Loss Clause

The security created by this Standard Security shall be a security to the Lender for any balance which may remain due to the Lender after applying any payments received by the Lender from any person (including any liquidator, receiver, administrator, trustee in sequestration or trustee under any trust deed for creditors) in respect of the Secured Obligations and the Borrower shall not be entitled to require from the Lender any assignation of those obligations or any part of them or to rank in any liquidation, receivership, administration or sequestration or under any trust deed in respect of any payment made by the Borrower to the Lender or to have the benefit of any securities held by the Lender until the whole amount secured by this Standard Security has been paid or settled in full.

### 5 **Declarations**

#### 5.1 Breach of Obligations

If the Borrower breaches any of the obligations contained or referred to in the Standard Security, the Lender shall (without prejudice to all other rights and powers available to it) be entitled without further notice to the Borrower, to withhold further lending facilities from the Borrower.

#### 5.2 Notice of Subsequent Charge

If the Lender receives notice of any subsequent charge or other interest affecting all or any part of the Property, the Lender may open a new account or accounts in the name of the Borrower and, if or in so far as the Lender does not open a new account or accounts, it shall nevertheless be treated as if it had done so at the time when it receives such notice and as and from that time all payments made by the Lender to the Borrower shall, notwithstanding any instructions by the Borrower to the contrary be certified or treated as having been credited to the new account or accounts and shall not operate to reduce the amount due by the Lender to the Borrower at the time when it received the notice.

#### 5.3 Certificate

The sums due by the Borrower to the Lender shall be conclusively ascertained by a Certificate.

#### 5.4 Arrangements with Others



The Lender may (without releasing, modifying, rendering unenforceable or otherwise prejudicing the Standard Security and the liability of the Borrower to the Lender under the Standard Security) allow any person any time or indulgence or enter into, renew, vary or end any arrangement, security or guarantee with any person.

#### 5.5 Preservation of Lender's Claims Against Others

If the Borrower is liable under the Standard Security for the debts of another person then:

- 5.5.1 the Borrower shall not in competition with or in priority to the Lender make any claim against that other person nor take or share in or enforce any security in respect of such debts until such debts have been paid to the Lender in full;
- 5.5.2 the liability of the Borrower under the Standard Security shall not be affected by the existence of any other security or guarantee nor by any other security or guarantee being or becoming void or unenforceable; and
- 5.5.3 the Lender may place to the credit of a suspense account for so long as it considers desirable any monies received in respect of such debts without any obligation to apply them towards payment of such debts and, in applying monies towards payments of such debts, the Lender may appropriate them towards such part or parts of the debts as it thinks fit.

#### 5.6 Assignment

The Lender may assign this Standard Security to any other lender or person without consent or approval of the Borrower.

### 6 **Warrandice**

The Borrower grants warrandice.

### 7 **Registration**

The Borrower consents to registration of this Standard Security and any Certificates for execution.

IN WITNESS WHEREOF these presents printed on this and the [5] preceding pages are subscribed on behalf of the Borrower at \_\_\_\_\_ on \_\_\_\_\_ 2016 by:-

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

**SCHEDULE PART 5**  
**SCHEDULE OF WORKS**