

**Business Lending Residential Funding 2 Limited**  
**Standard Lending Conditions 2012**

(Updated November 2012)

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## 1. PRELIMINARY

### 1.1 Introduction

This booklet contains the Conditions which will always apply where Business Lending Residential Funding 2 Limited (the "Lender") has issued an Offer to the Borrower.

If there is any conflict between the Offer and these Conditions then the terms of the Offer will prevail.

The rights of the Lender by virtue of the Offer and these Conditions are in addition to and not in substitution for any other rights or remedies available to the Lender against any Obligor.

The Lender strongly recommends that before accepting the Offer the Borrower should seek advice from its Solicitor in relation both to the Offer and to these Conditions.

### 1.2 Definitions

Wherever they appear in the Offer and in these Conditions the following expressions have the meanings given to them:

Definition:	Meaning:
"Acceptable Insurer"	National House Building Council ("NHBC") or another insurance company and/or financial institution acceptable to the Lender
"Advance"	any payment comprising the whole or any part of the Loan
"Base Rate"	the Lender's base rate of interest from time to time for sterling (as varied by the Lender in its discretion)
"BBA"	the British Bankers Association
"Borrower"	the person firm or corporate body to whom the Offer is addressed and anyone who may take over the legal rights and obligations of the Borrower except any Guarantor
"Building Contract"	the building contract to be entered into by the Borrower with the Building Contractor and approved by the Lender (and including without limitation provisions which make it a fixed price contract)
"Building Contractor"	such building contractor as is previously approved in writing by the Lender and employed by the Borrower in respect of the Development
"Building Guarantee Insurance Policy"	the building guarantee insurance policy (in form and substance satisfactory to the Lender) to be issued by an Acceptable Insurer in respect of each Residential Unit for the benefit of the purchaser and its mortgagee and their respective successors in title and to provide cover against structural defects and/or other defects in respect of any Residential Unit
"Conditions"	these Standard Lending Conditions
"Cost Overrun"	the amount by which the aggregate cost (in the Lender's opinion) at any time of carrying out the Development exceeds, or will in the Lender's opinion exceed the total cost appraised by the Lender (prior to the date of the first Advance) of carrying out and completing the Development
"Deposit"	any sum of money deposited by the Borrower with the Lender's bank and held to the order of, charged, assigned or otherwise pledged or hypothecated to the Lender, to secure in whole or in part any obligation of the Borrower to pay Interest on the Loan or payment due to any other person for the Purpose
"Development"	the development of the Property in the manner specified in the Offer
"Event of Default"	any event of default set out in Condition 10
"Finance Documents"	the Offer, these Conditions, the Security and any other associated document
"Group"	the Borrower and any person holding a loan account with the Lender that the Lender considers connected to the Borrower for statutory, regulatory or internal reasons because of a relationship between them and the Borrower
"Group Limit"	the total of all drawn and undrawn advances or facilities at any one time from the Lender to the Group plus any contingent liabilities that the Lender may have in respect of the Group
"Guarantor"	any person required to guarantee the obligations and/or performance of the Borrower or of any third party under the terms of the Offer



"Increased Cost"	an additional or increased cost, a reduction in the rate of return under a Finance Document or on the Lender's overall capital, or a reduction of an amount due and payable under any Finance Document, which is incurred or suffered by the Lender but only to the extent attributable to the Lender having entered into any Finance Document or funding or performing its obligations under any Finance Document
"Indebtedness"	any obligation to pay or repay money present or future whether actual or contingent, sole or joint
"Indicated Date"	the date specified in the Offer as being the latest date upon which it is the present intention of the Lender that the Loan should be repaid
"Interest"	the Interest charged periodically in arrears at the Interest Base plus the Interest Margin and subject to any minimum rate stipulated in the Offer
"Interest Base"	the LIBOR interest rate as described in these definitions or the Base Rate if stipulated in the Offer [or applicable at any time under these Conditions
"Interest Margin"	the margin added to the Interest Base which determines the amount of Interest the Borrower must pay as stipulated in the Offer
"Lender"	Business Lending Residential Funding 2 Limited and anyone who may take over its legal rights to the Loan and the Security and "we" means any of them
"LIBOR"	the interest rate equal to the rate per annum (rounded to the nearest second decimal point) determined by the BBA on the Rate Days to be the average rate per annum at which the BBA panel of contributor banks in London is prepared to offer at or about 11 am (London time) on each Rate Day for three month's sterling deposits. LIBOR will apply from the first day of February, May, August and November in each year for the next three calendar months. If the Interest Base cannot be established in accordance with the preceding provisions of this paragraph on any Rate Day it shall be such rate as the Lender may determine on the basis of quotations for three month deposits made by reference to a London clearing bank or a group of London banks reasonably selected by the Lender or (failing that) the rate offered in any other sterling inter-bank market as the Lender may reasonably select and if a rate cannot be established in accordance with the above provisions at any Rate Day then the applicable rate of interest shall be the same as that applicable on the previous Rate Day.
"Loan"	all the monies the Lender has agreed to lend the Borrower pursuant to the Offer including any Interest costs and expenses and other money that the Borrower may owe the Lender at any time and including any part of the Loan
"Maximum Aggregate"	any amount stipulated in the Offer greater than the Maximum Loan. Such amount restricts the amount available to the Borrower under any revolving facility pending receipt by the Lender of further monies in reduction of the Loan
"Maximum Loan"	the maximum amount or aggregate amount available to the Borrower at any one time pursuant to the Offer
"Minimum Value"	the value for mortgage purposes (meaning a valuation based upon a maximum period of 3 months to achieve a sale) which the Lender or a professional valuation report obtained by the Lender at the expense of the Borrower, place upon the Property and, where the Loan is made in respect of the Development of the Property (or any other land comprised in the Security), the value for mortgage purposes of the completed units to be comprised in the Development
"Obligor"	a Borrower, a Guarantor or a Third Party Chargor and "you" means any of them
"Offer"	any letter addressed by the Lender to the Borrower which refers to these Conditions including any amendment to or renewal or replacement of the Offer
"Performance Bond"	any performance bond and/or guarantee in an amount equal to at least ten percent (10%) of the contract sum under the Building Contract created in favour of the Borrower by any bank or financial institution acceptable to the Lender in respect of (i) the liabilities and obligations of the Building Contractor under the Building Contract and (ii) any insolvency of the Building Contractor
"Personal Guarantor"	any Guarantor who is an individual as distinct to a corporate entity
"Project Monitor"	one or more quantity surveyors, building surveyors, architects or other qualified persons as the Lender may appoint (or replace) from time to time in connection with the Loan or the Development
"Property"	the land of whatever tenure specified in the Offer and any building(s) erected upon, under or over such land and includes any part of the Property
"Purpose"	the Purpose specified in the Offer for which the Borrower has told the Lender that the Loan is to be used
"Rate Days"	means the last business days of January, April, July and October in each year



"Receipts"	any rent and other monies (whether of a capital or income nature) whatsoever from time to time received by you in respect of the Property and/or the Development
"Residential Sale Agreement"	any agreement for the disposal (whether by way of a transfer or lease) of a Residential Unit
"Residential Unit"	any flat or other unit of residential accommodation to be created as part of the Development
"Security"	the documents stipulated in the Offer which the Lender and its Solicitors require to be completed as Security for the Loan
"Senior Debt"	any Indebtedness (as at the date of the Offer) of the Borrower to any bank or financial institution who has with the written consent of the Lender a first legal charge over the Property
"Subsidiary"	any company or body corporate which is a subsidiary for the purposes of Section 1159 of the Companies Act 2006 and any undertaking which is a subsidiary undertaking for the purpose of Section 1162 of the Companies Act 2006 and references to Subsidiaries or any company or body corporate means those subsidiaries and subsidiary undertakings for the time being
"Tax"	any tax, levy, impost, duty or other charge or withholding of a similar nature (including any related penalty or interest)
"Third Party Chargor"	any third party required to provide the Lender with Security under the terms of the Offer
"VAT"	Value Added Tax or any tax of a like nature

### 1.3 Interpretation

In these Conditions:

- 1.3.1 Words expressed in any gender include any other gender.
- 1.3.2 Words expressed in the singular include the plural and vice-versa.
- 1.3.3 Words referring to persons shall include corporate bodies and vice-versa.
- 1.3.4 Any reference to "approved" or "approval" means approved or approval in writing.
- 1.3.5 Any reference to an Act of Parliament includes any changes to it at any time since it was made and to any legislation made pursuant to it or replacing it whether before or after these Conditions.
- 1.3.6 If the Borrower includes more than one person then the terms of the Offer will be binding on all such persons jointly and severally. This means that each such person can be responsible for paying the full amount of the Loan and/or complying with all the other obligations of the Borrower.
- 1.3.7 Headings are for ease of reference only.

### 1.4 Governing Law

These Conditions and the Offer will be governed by English law.

## 2. LOAN ADVANCES AND DEPOSITS

### 2.1 Limits

The Loan (which includes any contingent liability of the Lender in respect of the Borrower) will at no time exceed any of

- 2.1.1 the Maximum Loan (including the maximum amount of each individual element of the Loan) or
- 2.1.2 the Maximum Aggregate limit of any revolving facility incorporated in the Loan or
- 2.1.3 any Group Limit specified in the Offer.

### 2.2 Deposits

Any Deposit required from the Borrower pursuant to the terms of the Offer will be held by the Lender's bank in a separate Deposit account in the name of the Lender, held to the order of the Lender, and secured in such manner as the Lender may require. Unless otherwise stated by the Lender such Deposit will attract full off-set of Interest for so long as the debit balance of the Loan account exceeds the credit balance of the Deposit account.

The Borrower irrevocably authorises the Lender to deduct (at its discretion) from any Deposit:

- 2.2.1 all Interest due pursuant to the Offer but unpaid;
- 2.2.2 all fees costs and other monies due and owing from the Borrower to the Lender but unpaid; and
- 2.2.3 all costs (including work in progress) due and owing from the Borrower to any person for the Purpose of the Development which are due and owing.

### 2.3 Certification of Advances

2.3.1 The Lender will not make any Advance in respect of costs to be incurred by the Borrower for the Purpose of carrying out a Development until the Lender has approved a schedule of such costs and will then make such Advances as follows:

- 2.3.1.1 Advances in respect of construction costs pursuant to the Building Contract will be made direct to the Building Contractor against contract valuations (in a form approved by the Lender and without limitation including such detailed breakdown of the valuation as the Lender may require).
- 2.3.1.2 In all other circumstances Advances will be made against delivery of certificates of work completed and duly certified in accordance with a schedule of stages of work and related costs previously approved by the Lender in accordance with Condition 2.3.1.



- 2.3.2 Advances in respect of professional or other fees or costs relating to the Development will be made in accordance with the schedule of such costs previously approved by the Lender either direct to the invoicer following receipt of an original invoice approved by the Borrower, or to the Borrower following receipt of an original invoice and evidence of payment by the Borrower satisfactory to the Lender.
- 2.3.3 The Borrower will inform the Lender in writing immediately if the Borrower discovers any variations which will or may increase the sum potentially payable in respect of such costs. In such circumstances the Lender will require the Borrower to contribute the full amount of such excess in cash before any further Advance may be drawn or alternatively at its absolute discretion the Lender may reduce proportionately any such Advance to ensure in either case that the agreed amount or the Maximum Loan or any individual maxima therein, or any Maximum Aggregate stipulated in the Loan, are not exceeded.
- 2.3.4 Valuations or certificates required in connection with Advances for construction costs must be issued (in each case in a form and upon terms acceptable to the Lender) by architects, chartered surveyors, quantity surveyors or other practitioners previously approved and instructed by the Lender in writing and who in each case have accepted those written instructions. The valuation must exclude any unfixed materials on or off the Property and any retentions which the Borrower may be entitled to make in relation to the relevant payment.
- 2.3.5 Unless otherwise specified in the Offer Advances against costs incurred by the Borrower will not be made in respect of the VAT element.
- 2.3.6 The Lender will not be obliged to make more than one Advance per month in respect of any construction costs.

#### 2.4 Instructions

The Borrower agrees that the Lender may accept and rely upon instructions received in writing (whether by letter, facsimile, or email) from the Borrower or its authorised representatives and further agrees that the Lender may at its discretion (but at the risk of the Borrower) also accept and rely on such instructions if given verbally (including by telephone).

### 3. REPAYMENT

#### 3.1 Loan Repayable on Demand

The Loan is and will remain repayable on demand in writing being made by the Lender.

#### 3.2 Indicated Date

Without prejudice to Condition 3.1, it is the present intention of the Lender to allow the Loan to remain outstanding until the Indicated Date.

#### 3.3 Disposal of Residential Units

Where the Borrower is disposing of Residential Units separately in the course of the Development, it will prior to the exchange of contracts for any such disposal, submit to the Lender for its approval a schedule of minimum acceptable prices for each Residential Unit. The Borrower will not exchange contracts for any such disposal either at a price less than the minimum price approved by the Lender or without the Lender having previously approved a minimum release sum for each Residential Unit. In all cases the Lender reserves the right to receive all of the net sale proceeds subject to the deduction only of reasonable legal and agent's fees on such sale as it shall have previously approved. All deposits paid by buyers on exchange of contracts must, unless held by stakeholders, be paid to the Lender for the credit of the Borrower's account.

#### 3.4 Prepayment

Unless expressly stipulated to the contrary in the Offer, the Borrower may repay the whole or any part of the Loan without payment of any additional interest or penalty after it has both given the Lender not less than three calendar months prior written notice and compensated the Lender for any sum or sums which the Lender may determine to be due in respect of any loss of profit or other loss arising as a result of the acceptance by the Lender of the sum being repaid (including, without limitation, the cost of breaking any hedging or other interest rate management arrangement).

#### 3.5 Reborrowing

The Borrower shall have no right to redraw any repayment made under Condition 3.4.

### 4. SECURITY

#### 4.1 General Nature

The Security shall constitute continuing security for the Loan and all other monies and liabilities (including any contingent liabilities) owing or due to or incurred by the Lender on any account and in any manner whatsoever.

#### 4.2 Documentation

All documents comprising the Security must be in form and substance acceptable to both the Lender and its Solicitors in all respects.

#### 4.3 Set Off

In addition, and without limiting any other rights now or from time to time vested in the Lender (whether by law or otherwise), the Lender may (without notice to any Obligor) at any time after the Lender has demanded repayment of the Loan, combine or consolidate all or any of the accounts of any Obligor with the Lender with any of the liabilities of that Obligor to the Lender and set off, appropriate or transfer any sum or sums standing to the credit of any such account in or towards the satisfaction of any of such liabilities on the same or on any other account or in any other respect, whether such liabilities be actual or contingent, primary or collateral, joint or several, and pending any such combination, consolidation, set-off, appropriation or transfer, the Lender may place all or any such sums to the credit of a securities realised and/or suspense account.

#### 4.4 Prohibition of further Charges etc.

While the Lender retains any part of the Security:



No Obligor will sell or otherwise dispose of, or grant any lease, licence or other interest whatsoever in any subject matter comprised in the Security nor create nor allow to be created any mortgage, charge or other encumbrance thereon nor incur any indebtedness (save for the Senior Debt), without the prior written consent of the Lender.

If the Lender becomes aware of any breach of this obligation it may (apart from any other right or remedy) refuse to make further Advances to the Borrower. If in the absolute discretion of the Lender it should decide to make such further Advances despite such notice, it may open a new account or accounts with the Borrower. If the Lender does so it shall be treated as having done so at the time it became aware of the breach and as from that time all payments made by or on behalf of the Borrower to the Lender will be credited, or treated as credited, to the new account and will not reduce the amount owing from the Borrower to the Lender at the time when the Lender received the notice.

#### 4.5 Land Registry Notices

The Lender will register a notice at HM Land Registry in the following format or similar format:

"No disposition by the proprietor of the registered charge dated (date of the charge) in favour of the Lender is to be registered without a written consent signed by Field Fisher Waterhouse LLP of 35 Vine Street London EC3N 2PX or other nominated lawyers or parties specified by the Lender at its absolute discretion"

#### 4.6 Insurance

4.6.1 The Borrower will at its own expense insure (or procure insurance) with a reputable insurer on terms that are acceptable to the Lender:

4.6.1.1 the Property (whether complete or in the course of construction) for its full reinstatement value as agreed with the Lender from time to time; and

4.6.1.2 liability to third parties at a level of cover agreed with the Lender from time to time

4.6.2 The Borrower will arrange for all insurances either to be in the joint names of the Borrower and the Lender or if the Lender approves, for the interest of the Lender to be noted on the policy (as mortgagee).

4.6.3 During the course of construction by a third party contractor, the interest of the Lender in the contract and the Property is to be noted in the contractor's Liability Insurance policy.

4.6.4 The Borrower will provide the Lender with details of all insurances when so requested.

4.6.5 The Lender may instruct a surveyor to inspect the Property or Development to value it for insurance purposes and to advise the Lender generally as to what insurance is required.

4.6.6 The Borrower will comply with all the terms of such insurance and prove to the Lender that the Borrower has done so.

4.6.7 If the Borrower does not satisfy the Lender that the Borrower has complied with its obligations to the Lender as regards insurance, the Lender may do what it thinks necessary to ensure that the Property is insured as required by it and the Borrower will on demand reimburse the Lender's charges for doing so and for any premium that the Lender may have paid.

### 5. FEES COSTS AND INTEREST

#### 5.1 Loan Fees

5.1.1 The Borrower will pay the Lender any fee stipulated in the Offer in accordance with the terms set out in it and in any event upon the Indicated Date or earlier redemption of the Loan. Unless specified to the contrary in the Offer all fees will belong to the Lender absolutely whether or not the Loan is drawn at all, in part or in full.

5.1.2 Any fee or part fee not paid to the Lender on the date it becomes payable will attract interest from then until paid.

5.1.3 For the purpose of the foregoing provisions, the Lender may set up a separate loan account in the name of the Borrower designated "Fee Account".

5.1.4 If in the Offer the Lender has agreed to reduce any fee in certain circumstances, it will only do so if it considers that no Obligor is in breach of any obligation to the Lender.

#### 5.2 Interest

5.2.1 Interest accrues on the Loan and on all other sums the Borrower may owe the Lender from time to time and will be debited:

5.2.1.1 either quarterly in arrears on the respective last days of April, July, October and January in each year; or

5.2.1.2 on the last day of each calendar month

5.2.1.3 and, in any event, on the day of final repayment

as specified in the Offer and will be calculated on the daily balance outstanding on the basis of a 365-day year.

5.2.2 Interest is due and payable on the date on which it is so debited but the Lender may (if it so chooses) deduct it from any subsequent Advance made to the Borrower at any time after it is due and unpaid.

5.2.3 the Lender may in its discretion by not less than one month's written notice to the Borrower at any time and from time to time change the Interest Base between LIBOR and Base Rate (or vice versa). Where the Interest Base is changed from LIBOR to Base Rate other than on the first day of February, May, August or November the Borrower will pay to the Lender on demand such amount as the Lender may certify as being necessary to compensate the Lender for liquidating or redeploying any deposit taken by the Lender for the purpose of funding the Facility and the cost of breaking any hedging or other interest rate management arrangement.

#### 5.3 Payment of Costs etc

Whether or not the Loan is made the Borrower will be responsible for and will indemnify and pay the Lender on demand all costs, fees and expenses (including VAT) charged or incurred by or on behalf of the Lender at any time in connection with:



- 5.3.1 the negotiation, preparation and issue of the Offer and the creation, preservation and subsequent discharge of all Security required pursuant to it;
- 5.3.2 the enforcement of the obligations of any Obligor under or pursuant to any Finance Document;
- 5.3.3 the maintenance, protection, improvement and realisation of any Property or other assets comprised in the Security.

#### 5.4 Increased Costs

- 5.4.1 Except as provided Condition 5.4.2 the Borrower must pay to the Lender the amount of any Increased Cost incurred by the Lender as a result of:
  - 5.4.1.1 the introduction of, or any change in, or any change in the interpretation, application or administration of, any law or regulation; or
  - 5.4.1.2 compliance with any law or regulation,
 made after the date of this letter.
- 5.4.2 The Borrower need not make any payment for an Increased Cost to the extent that the Increased Cost is:
  - 5.4.2.1 compensated for under another Condition;
  - 5.4.2.2 a Tax on the overall net income of the Lender; or
  - 5.4.2.3 attributable to the Lender wilfully failing to comply with any law or regulation.

### 6. CONDITIONS PRECEDENT

Unless specified otherwise in the Offer all of the following conditions must be satisfied (in each case in form and substance satisfactory to the Lender) before any part of the Loan is released.

#### 6.1 Security

The receipt by the Lender of the Security which must be completed to the satisfaction of the Lender and its Solicitors both of which must also be satisfied that each Obligor has full power and authority to fulfil the requirements and obligations imposed by the Offer and the Security without breaching any other agreement or obligation.

#### 6.2 Information

All information, exhibits and reports furnished to the Lender by any Obligor are true accurate and complete in all respects and make no material omissions.

#### 6.3 References

The Lender may (at its sole discretion) require satisfactory references in respect of any Obligor from such referee(s) as the Lender believes necessary and each Obligor will upon request from the Lender authorise the provision of such references.

#### 6.4 Land

Where a loan is made against the security of any interest in land the Lender must also:

- 6.4.1 receive a satisfactory report from its Solicitors as to the title to the Property and any other matter(s) relating to the Property that the Lender or its Solicitors consider material;
- 6.4.2 receive confirmation from its Solicitors that all easements, rights, consents and approvals (including, without limitation, party wall agreements) which in the opinion of the Lender or its Solicitors are necessary or desirable, have been obtained or will be obtained on terms acceptable to the Lender;
- 6.4.3 be satisfied:
  - 6.4.3.1 that the value of the Property (and any other land and/or premises comprised in the Security) is not less than the Minimum Value specified in the Offer;
  - 6.4.3.2 that the projections of the Borrower as to the speed of sale of the Property or of the Development (and any other land and/or premises comprised in the Security) are accurate;
  - 6.4.3.3 with the engineering and soil condition of the Property (and any other land and/or premises comprised in the Security) and the structural condition of any buildings that are to be retained;
  - 6.4.3.4 that no contaminants or deleterious substances are present on in or within influencing distance of the Property (and any other land and/or premises comprised in the Security), which would in the opinion of the Lender materially affect the use and enjoyment of the Property or such other land and/or premises for its intended Purpose;
  - 6.4.3.5 where the Loan is made in respect of the Development of the Property (or any other land and/or premises comprised in the Security) with its suitability in each case for such Development and of the Minimum Value for mortgage purposes of the completed unit or units comprised in the Development.

#### 6.5 General

The receipt by the Lender of the following:

- 6.5.1 a certified resolution of the Board of Directors in respect of the entering into of each of the Finance Documents to which it is a party and appointing an individual or individuals to sign any instructions issued in respect of the Loan and all the relevant Finance Documents
- 6.5.2 certified specimen signatures of the aforesaid individual or individuals authorised above
- 6.5.3 certified true and up to date copies of the Certificate of Incorporation and Memorandum and Articles of Association of the Borrower;
- 6.5.4 the documents specified at Condition 6.5.1 to 6.5.4 (inclusive) in respect of any Guarantor (other than a Personal Guarantor)
- 6.5.5 payment of the fees, costs and expenses referred to in Condition 5.3
- 6.5.6 evidence that any property (and any buildings and/or structures from time to time thereon) is insured in accordance with Condition 4.5



- 6.5.7 full details of the terms and conditions (together with copies of documents evidencing the same) of any loans made and to be made by directors or shareholders or any sister and/or associated company to the Borrower and that any such loans are subordinated to the Lender
- 6.5.8 evidence that the Borrower is registered for VAT purposes with HM Revenue & Customs
- 6.5.9 written confirmation from any firm of solicitors acceptable to the Lender that any Personal Guarantor has received independent legal advice prior to executing any guarantee in favour of the Lender
- 6.5.10 such other documentation and/or information as the Lender may reasonably require.

## **6.6 Development Loan**

Where any part of the Loan can be used in respect of the Development the receipt (prior to the date of the first Advance) of :

- 6.6.1 approval from the Lender of the detailed plans and specifications for the Development and obtained detailed planning consent, building control approval and such other approvals, consents and easements as may be required for the Development in each case upon terms acceptable to the Lender and free from any conditions which in the opinion of the Lender are onerous;
- 6.6.2 an assignable licence in a form acceptable to it, which enables the Lender and anyone it may authorise to use all plans and specifications prepared in relation to the Development;
- 6.6.3 written contracts with such professional and/or other expert advisors whose services are in the opinion of the Lender necessary for the satisfactory completion of the Development, in each case on terms acceptable to the Lender and ensure (save where and to the extent that the Lender otherwise agrees in writing) that each such person provides a collateral warranty agreement in favour of the Lender in a form acceptable to it;
- 6.6.4 the Building Contract and a certified copy of a completed subcontract with any subcontractor who the Lender considers material to the Development
- 6.6.5 the approval from the Lender of detailed schedules of all costs which in the opinion of the Lender are required for the Development;
- 6.6.6 the Building Contractor and the Development have been registered with and accepted by a building guarantee scheme approved by the Lender and that certificates of guarantee as to the standard of construction and security for defects will be available for the completed Residential Units upon terms acceptable to the Lender
- 6.6.7 a Performance Bond (save where the Lender otherwise requires in writing)
- 6.6.8 a report from the solicitors to the Lender (i) upon any planning agreement relating to the Property and/or any conditions to the planning permission relating to the Development and (ii) confirming that such planning permission is not capable of being successfully challenged and/or revoked (whether by way of judicial review or otherwise)
- 6.6.9 copies of any environmental, archaeological and rights of light, ground condition reports for the Property and which the Borrower has the benefit of together with a letter of reliance (where any such report is not addressed to the Lender) in favour of the Lender from any consultant who prepared any of the same.
- 6.6.10 evidence that the Development will not infringe the rights of light enjoyed by any land neighbouring or adjoining the Property.

## **7. GENERAL CONDITIONS**

### **7.1 Accounts**

Irrespective of the prescribed statutory requirements, the Borrower (and all Group members) must produce their respective annual accounts to the Lender within six months of the relevant financial year-end.

### **7.2 Other Financial Information**

At any time whilst the Loan or any part of it is outstanding the Borrower must provide the Lender upon request with any additional accounts and other financial information or documentation the Lender may consider appropriate to the financial standing of any Obligor (together with any holding company).

### **7.3 No Reliance on Appraisal**

Each Obligor acknowledges that any appraisal which the Lender may have made and any views which may have been formed by the Lender or on behalf of the Lender in issuing the Offer are for the purposes of the Lender alone and do not amount to an assurance or representation as to the viability of the purchase of the Property or of the Development and that in accepting the Offer each Obligor has in each case relied solely upon whatever investigations, appraisals and independent advice it considered necessary.

### **7.4 Cancellation**

If the Borrower has not drawn-down any part of the Loan within two calendar months of the date of the Offer the Lender may terminate the Offer by giving the Borrower seven days notice in writing to that effect. If the Lender does so then all its obligations to the Borrower contained in the Offer will lapse on expiry of that notice.

### **7.5 No Demolition of Buildings**

No existing buildings on the property may be demolished or materially altered without prior written consent from the Lender.

### **7.6 Commencement of Development**

Where the Loan in whole or part is for the Purpose of Development the Borrower will commence the Development within four calendar months of the first draw down of the Loan unless the Lender has otherwise agreed in writing.

### **7.7 Reports and Valuations**

Until the Loan has been repaid in full, the Lender may require the Borrower to provide the Lender with such expert and professional reports and valuations, addressed and satisfactory to the Lender in all respects, as it may specify in relation to any matter referred to in the Offer or as it may otherwise require in relation to the Property and/or its use.

### **7.8 Provision of Information**

The Borrower will advise the Lender immediately in writing of any:



- 7.8.1 alteration in any matter affecting the Loan or the Security including (but without limitation) any reduction in anticipated sales prices or saleability of any buildings comprised or to be comprised in the Property and (where the Loan in whole or part is to be granted for Development), any increase in the anticipated costs of completing such Development;
- 7.8.2 notices received in respect of or affecting the Security or the Property and provide the Lender with copies.

**7.9 Completion of Development**

Where the Loan in whole or part is for the Purpose of Development the Borrower will diligently complete such Development in accordance with a scheme previously agreed with the Lender to achieve repayment of the Loan on or before the Indicated Date.

**7.10 Cross Default**

If any Obligor or any Group member is in breach of any obligation to the Lender or to any other lender under or pursuant to any facility provided by the Lender or such other lender such breach will constitute a breach of the Loan and the Security.

**7.11 Payments**

Each Obligor must make all payments to be made by it under the Finance Documents free of and without deduction or withholding for any present or future tax. If an Obligor is required to deduct or withhold any Tax it must make any payment required in connection with such deduction or withholding within the time allowed by the relevant law, and must promptly pay to the Lender such additional amount as is necessary to ensure that the net amount received and retained by the Lender is equal to the amount which would have been payable by that Obligor had no such deduction or withholding been required.

**7.12 Tax Indemnity**

7.12.1 Except as provided in Condition 7.12.2, the Borrower must indemnify the Lender against any loss or liability which the Lender (in its absolute discretion) determines will be or has been suffered (directly or indirectly) by it for or on account of Tax in relation to a payment received or receivable under a Finance Document.

7.12.2 Condition 7.12.1 does not apply to any Tax assessed on the Lender under the laws of the jurisdiction in which the Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which the Lender is treated as resident for Tax purposes, if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by the Lender.

**7.13 Stamp and other Taxes**

The Borrower must pay on demand and indemnify the Lender against any stamp duty, stamp duty land tax, registration or any similar Tax payable in connection with the entry into, performance or enforcement of any Finance Document.

**7.14 Development**

Where the Loan or any part is in connection with the Development the Borrower undertakes with the Lender as follows:

- 7.14.1 It shall provide reasonable access to the Lender and any representatives of the Lender (including without limitation any Project Monitor) for the purposes of inspecting the Property and evaluating the progress and quality of the Development.
- 7.14.2 The Borrower shall further hold project meetings (on a regular basis but not less frequently than once in every period of four weeks (and in any event shortly before the envisaged date of practical completion) and to give reasonable prior written notice to the Lender or the Project Monitor of such meeting whether on or off the Property to allow the representatives of the Lender to be present at and participate in the discussion at such meetings and to give and procure that there is given due attention to all observations made by such representatives. The Borrower shall also provide to the Lender regular reports and copies of appropriate certificates in advance of all drawdown requests.
- 7.14.3 It will not without the prior written approval of the Lender agree to any sale, presale or other disposal of the Property (or any part thereof) provided that the Borrower shall be entitled unless there is a subsisting Event of Default to enter into a Residential Sale Agreement where (i) the same is completed in accordance with a standard form agreement for lease (or as the case may be standard form agreement for sale) previously approved in writing by the solicitors to the Lender and (ii) the sale price for any Residential Unit the subject of such agreement is such a price (after allowing for sale inducements) which matches or exceeds the value and/or price of the relevant specified type of Residential Unit which has previously been specified in the Valuation.
- 7.14.4 It shall carry out the Development in a good and workmanlike manner in accordance with all applicable consents and regulations to the satisfaction of the Project Monitor and otherwise in such manner as to ensure (i) compliance with its obligations (as to the Development) in any Residential Sale Agreement (ii) the issue of the Building Guarantee Insurance Policy (for each Residential Unit) from an Acceptable Insurer and (iii) that each Residential Unit meets the standard required to be "finaled" by NHBC or (as the case may be) any other such latent defects insurer in accordance with the requirements of the Council of Mortgage Lenders (and thereby enabling any prospective mortgagee of any such Residential Unit to release funds in connection with the acquisition of the same).
- 7.14.5 It shall on a regular basis keep the Lender informed of all material matters relating to the Property and including without limitation the offers made for the purchase of any part of the Property (and including without limitation any offer made for the sale of any Residential Unit). It shall further provide such other information as the Lender shall from time to time request in relation to the Property, the Development and/or the sales of any Residential Unit. The Lender shall have the right (without limitation to any other right) if it has not been repaid by the Indicated Date to direct the marketing of any Residential Unit.
- 7.14.6 It shall comply with its obligations and liabilities under any Residential Sale Agreement, the Building Contract, any appointment of a professional engaged in respect of the Development and/or any other contract or agreement relating to the Property and/or the Development and shall not amend, vary and/or determine any of the same without the prior written approval of the Lender.

**7.15 General**

The Borrower further undertakes with the Lender as follows:

- 7.15.1 It shall procure the any Receipts shall be paid into an account with the Lender any shall be applied in permanent reduction of such part of the Indebtedness of the Borrower to the Lender as it shall select.
- 7.15.2 It will not create (or allow to subsist) any Subsidiary.



- 7.15.3 It will not carry on any business other than the carrying out of the Development and the letting and sale of the completed Development
- 7.15.4 It shall (unless otherwise agreed with the Lender in writing) only maintain bank accounts with [the Lender] (as distinct with any other bank or financial institution).

## 8. REPRESENTATIONS AND WARRANTIES

Each Obligor and (where a corporate body, on behalf of its Directors and/or Members) individually (and jointly and severally with the other Obligors) represents and warrants to the Lender as set out in this Condition.

### 8.1 Insolvency

It has never been adjudged insolvent, or had an insolvency practitioner or similar third party appointed to all or any part of its business or assets or, if applicable, been disqualified as a company director. For the purpose of this Condition an insolvency practitioner means a liquidator, receiver, receiver and manager, administrative receiver, administrator or supervisor appointed under a voluntary arrangement with its creditors.

### 8.2 Liabilities

It has no liabilities which it is unable to satisfy as and when they fall due and will, at the time of any drawdown of the whole or any part of the Loan, be solvent for all the purposes of the Companies and/or Insolvency Acts from time to time in force.

### 8.3 Dishonesty

It has never been convicted of any offence involving fraud, dishonesty or malpractice of any kind in any jurisdiction or capacity.

### 8.4 Continuing Representations

It can and will continue to satisfy all the matters referred to in Conditions 8.1 and 8.2 above.

Each of the persons making these representations and warranties authorises the Lender to make any enquiries it considers necessary to verify these warranties.

## 9. VARIATIONS EXPIRY AND LIMIT OF LIABILITY

### 9.1 Acknowledgement

Each Obligor acknowledges that the Lender will not be responsible for any act or default of any agent or officer of the Lender except where otherwise provided by law.

### 9.2 Confidentiality

Any report or valuation by such agent or officer shall be wholly confidential to the Lender, which shall not be required to divulge its contents.

### 9.3 Variations and Waivers

The terms of the Offer can only be varied or waived in writing by a duly authorised officer of the Lender.

### 9.4 Preservation of Rights

Any termination (for whatever reason) of the facility granted by the Offer shall be without prejudice to the obligations of each Obligor to the Lender existing at the date of such termination.

## 10. EVENTS OF DEFAULT

Notwithstanding the on demand nature of the Loan, each of the following events or circumstances is an Event of Default namely if:

- 10.1 the Borrower fails to pay any amount due under the Offer and/or the Conditions on time unless its failure is only caused by an administrative error or technical problem, and payment is made within three business days of its due date;
- 10.2 the Borrower fails to comply with any provision of the Offer and/or the Conditions (other than a failure to pay);
- 10.3 any Indebtedness of the Borrower is not paid when due nor within any originally applicable grace period;
- 10.4 any Indebtedness of the Borrower is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described);
- 10.5 the Borrower stops or suspends payment of any of its debts, or is unable to, or admits its inability to, pay its debts as they fall due;
- 10.6 the Borrower begins negotiations, or enters into a composition or arrangement, with one or more of its creditors in order to reschedule any of its Indebtedness because of actual or anticipated financial difficulties;
- 10.7 a moratorium is declared over any of the Borrower's Indebtedness;
- 10.8 any action, proceedings, procedure or step is taken for:
  - 10.8.1 the suspension of payments, winding-up, dissolution, administration or (using a voluntary arrangement, scheme of arrangement or otherwise) reorganisation of or by the Borrower; or
  - 10.8.2 the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Borrower or any of its assets;
- 10.9 any event similar to those set out in Conditions 10.4 to 10.8 (inclusive) above occurs in respect of any Guarantor (other than a Personal Guarantor);
- 10.10 any expropriation, attachment, sequestration, distress or execution affects any asset of the Borrower;
- 10.11 it is or becomes unlawful for the Borrower to perform any of its obligations under the Offer and/or the Conditions;
- 10.12 the Borrower repudiates the Offer and/or the Conditions or shows an intention to do so;



- 10.13 the Lender believes that an event or situation that has occurred is likely materially and adversely to affect the Borrower's ability to perform all or any of its obligations under the Offer and/or the Conditions, or otherwise to comply with it
- 10.14 if any Personal Guarantor (a) dies or (b) is admitted to a hospital pursuant to the provisions of the Mental Health Act 1983 or becomes incapable of managing his or her own affairs by reason of mental disorder or severe mental impairment (each as defined in Section 1 of the Mental Health Act 1983) or becomes incapable of managing his own affairs for any reason whatsoever or (c) permits or allows a petition for a bankruptcy order to be made against him, or becomes or appears to be unable to pay his debts or any of them (as defined in Section 268 of the Insolvency Act 1986) or otherwise becomes or appears to be insolvent, or executes a trust deed for his creditors or enters or attempts to enter into any arrangement or composition with his creditors or gives notice to the Official Receiver of his proposal for a voluntary arrangement (as defined in Section 253 of the Insolvency Act 1986) or
- 10.15 the Development is not practically completed within 14 months of the date of the first Advance

On and at any time after the occurrence of an Event of Default, the Lender may by notice to the Borrower:

- (a) cancel any facility or obligation to make any Advance;
- (b) require the Borrower immediately to repay the Loan together with all accrued interest and all other sums payable under any Finance Document where upon they shall become immediately due and payable and/or
- (c) increase the Interest Margin by an amount specific within the Loan Agreement or in absence of a specific reference by an additional seven per cent (7%).

## 11. CHANGES TO THE PARTIES

### 11.1 Borrower

The Borrower may not assign or transfer any of its rights and obligations under any Finance Document.

### 11.2 Lender

The Lender may:

- 11.2.1 at any time assign or transfer (including by way of novation) all or any part of its rights or obligations under any Finance Document to any other person (the "New Lender"). A transfer of obligations will be effective only if the New Lender confirms to the Borrower in writing that it is bound by the terms of the Offer and these Conditions. On the transfer the Lender will be released from its obligations under the Finance Documents to the extent they are transferred to the New Lender. The Borrower agrees to enter into all documents which the Lender may reasonably require to give effect to any assignment or transfer of the Lender's obligations; and
- 11.2.2 disclose to any of its affiliates or professional advisors, or to any other person to which the Lender assigns or transfers or may assign or transfer, all or any of its rights and/or obligations under any Finance Document or with or through whom the Lender enters into or may enter into any sub-participation in relation to any Finance Document, or to which information is required to be disclosed by any law or regulation, or in connection with the protection or enforcement of its rights under any Finance Document, any information about any Obligor and any Finance Document as it considers appropriate.

## 12. NOTICES

### 12.1 Address

The address, fax number and electronic address of each Obligor for any notice, demand or other communication under or in connection with the Finance Documents are those set out in the Offer or any substitute address, fax number or electronic address as any Obligor may notify to the Lender by not less than five days written notice. Any such notice, demand or other communication shall also be effective if sent to the Obligor's registered office or the address or electronic address of the Obligor last known to the Lender.

### 12.2 Method and Receipt

Any notice, demand or other communication to be given or made pursuant to any Finance Document to an Obligor may be given or made by letter delivered personally or by first class prepaid letter or by facsimile or by email or other electronic means and shall be effective in the case of a facsimile when transmitted, where the original fax transmission report shows that the transmission has been successful and that the recipient number had been dialled correctly, or in the case of a letter, when it has been left at the relevant address or on the following day after being deposited in the post prepaid or in the case of email or other electronic means, when a delivery receipt or other confirmation report is received from the recipient's server and the original transmission has been properly addressed provided that if any notice, demand or communication would become effective under these provisions on a day which is not a business day, or outside normal working hours on a business day, at the place of receipt, it shall become effective at the next business day in such place.

## 13. CUSTOMER IDENTIFICATION

### 13.1 Customer Due Diligence

So that the Lender may satisfy its legal and regulatory requirements it is obliged to:

- 13.1.1 verify the identity of each Obligor before the Lender transacts any new business. Each of them agrees to provide the Lender with the information it requires to be satisfied in this respect. Periodically, the Lender shall be entitled to update this information; and
- 13.1.2 if the Borrower is a trust or corporate entity the Lender is also required to identify the controlling directors and shareholders or other beneficial owners who have a significant influence on the business. The term "significant influence" currently means any shareholder whose shareholding is 25% or more of the issued share capital of the company. If the shareholder itself is a trust or company the Borrower must ensure that the Lender is able to positively identify the ultimate beneficial owners of that trust or company. It will periodically require this information to be updated.



### 13.2 Source of Funds

The Borrower must provide the Lender with evidence acceptable to it of the source of the Borrower's financial contribution to the transaction, which is the Purpose of the Loan.

## 14. DATA PROTECTION

**Please read this statement carefully. It is applicable to any Obligor and to any director and/or shareholder of a corporate Obligor about whom the Lender collects personal data and whose identity it may verify.**

By signing the Offer as Borrower, Guarantor or Third Party Chargor you are consenting to us the Lender, our associates, agents and affiliates (including group companies) retaining and holding records of the information you provide or which we obtain through our dealings with you or in connection with your account, even if your application does not proceed to completion. That information may also be held and used for the same purposes by any third party to whom we may transfer the benefit of our interests in any loan or mortgage loan made.

#### Information uses

We will use this information to help us provide you with the services you are applying for, to update or enhance our customer records, and for account administration.

- We will make such enquiries as we consider necessary for the purposes of confirming the accuracy of data provided by you.
- We will make searches about you at credit reference agencies who will supply us with credit information, as well as information from the Electoral Register. The agencies will record details of the search whether or not this application proceeds. Information held about you by the credit reference agencies may already be linked to records relating to one or more of your partners. For the purposes of this application you may be treated as financially linked and your application will be assessed with reference to any "associated" records. An association will be made at the credit reference agencies between any joint applicants to this application, which will link your financial records. You and anyone else you have a financial link with understand that each other's information will be taken into account in all future applications by either or both of you. This linking will continue until one of you successfully files a "disassociation" at the credit reference agencies.

- Where you borrow or may borrow from us, we may give details of your account and how you manage it to credit reference agencies. If you borrow and do not repay in full and on time, we may tell credit reference agencies who will record the outstanding debt. If arrears remain unresolved, such information may be disclosed to a court and if this proceeds to possession of the property, details may also be passed to the Council of Mortgage Lenders for entry onto their Register of Possessions.

- We and other companies may use credit searches and other information which is provided to us and/or the credit reference agencies, about you and those you are financially linked with:

- if credit decisions are made about you, or other members of your household
- for debt tracing, the prevention of money laundering, and the management of your account.

- We will check your details with fraud prevention agencies.

- If false or inaccurate information is provided and fraud is identified, details will be passed to fraud prevention agencies and other organisations involved in fraud prevention.

- Law enforcement agencies may access and use this information.

- We and other organisations may also access and use this information to prevent fraud and money laundering, for example, when:

- checking details on applications for credit and credit related and other facilities;

- managing credit and credit related accounts or facilities;

- recovering debt;

- checking details on proposals and claims for all types of insurance, and

- checking details of job applicants and employees.

We and other organisations may access and use from other countries the information recorded by fraud prevention agencies. Where you borrow from us, we will make periodical checks of our records, those of our associates, agents and affiliates (including group companies), and with credit reference agencies and/or fraud prevention agencies, to manage your account with us, for ongoing credit assessment including whether to make available, continue or extend credit, for identity verification and fraud prevention and detection. These searches will not be seen or used by lenders to assess your ability to obtain credit.

- We may use credit scoring and other automated decision-making methods when assessing your application, verifying your identity, and managing your account.

- When you provide information about criminal convictions it will be used to assess your application.

- We will use information about your nationality in connection with identity checks and for assessing the applicability of any sanctions or limitations on international business.

- We may use your account and customer records to understand how you deal with us, for market research and business/statistical analysis, to help us develop and improve our business and services, and to identify what products may be of interest to you. We may also share it within our associates, agents and affiliates (including group companies) or any third party to whom we may transfer the benefit of our interests in any loan or mortgage loan made by us.

#### Information disclosures

We may pass on your information to:

- any of our associates, agents and affiliates (including group companies);

- any third party to whom we may transfer the benefit of our interests in any loan or mortgage loan made, including group companies of such third party;

- other organisations which might assist us in processing your application or administering your loan or mortgage;

- other appropriate organisations, including debt collection agencies, to enable debtors or defaulters to be traced and pursued for any sums due to us;

- any insurance company/local authority to which you may make an application for a guarantee with this loan;

- your solicitor, financial adviser, any organisation that introduced you to us and any other of your professional advisers;

- the person who values any property which is security for the mortgage, and we may use or give information about the property to others for the purpose of helping to value properties;

- regulatory authorities (including regulators of voluntary codes of practice) and any other person/corporate body having a legal right to the information or if the law allows, or requires, us to do so;

- the police or other law enforcement agency requesting it in connection with the commission of any offence, once we are reasonably satisfied as to the circumstances surrounding the request;

- joint applicants in order for them to obtain independent legal advice regarding this application, any person giving you a guarantee in respect of the loan for which you are applying, and any occupier of the property, and/or their advisers;



- any other lender which has a charge secured on the property;
- any employer, accountant, bank, landlord or mortgage lender, or other appropriate person from whom we seek a reference;
- our professional advisers or auditors;
- the insurer of the property or any insurer which is to provide general insurance in relation to your mortgage; or
- any individual or organisation that we contract or employ to provide goods or services to us, our associates, agents and affiliates (including group companies) or persons contracting with any third party to whom we may transfer the benefit of our interests in any loan or mortgage loan made by us.

#### **Marketing of Products and Services**

The Lender, our associates, agents and affiliates (including group companies) or any third party to whom we may transfer the benefit of our interests in any loan or mortgage loan made by the Lender, may inform you about products and services (including those of related\* and selected other companies and organisations) such as financial services, which are consider to be of interest to you. We may share your contact details and information about the types of services we provide to you, with other organisations whose products may be of interest to you. We or they may contact you:

- by email messages if you have agreed to receive this information in this way;
- by any other form of communication (including mail and telephone) unless you have contacted us indicating you do not wish to receive this information in this way.

\* A related company is a company which provides products and services which can be purchased through the Lender, our associates, agents and affiliates (including group companies) or any third party to whom we may transfer the benefit of our interests in any loan or mortgage loan made by us.

#### **Your Rights**

- We will give you a copy of the information we hold about you, on payment of a fee, if you apply to us in writing: Crown House, One Crown Square, Woking, Surrey GU21 6HR.
- You have a legal right to access your personal held by credit and fraud agencies. Please telephone 0845 465 6500 if you would like us to supply their addresses.
- Your calls or emails may be monitored or recorded to prevent or detect crime, for service quality or security purposes.