

APPENDIX 1

FORM OF CERTIFICATE OF TITLE

To The Scottish Ministers

c/o [insert name and address of Administering Agent]

Dear Sirs

Name of Purchaser (the "Purchaser")

Name of Property (the 'Property'):

Proposed date of settlement:

£() (the 'Payment')

We refer to instruction letter by [insert name of Administering Agent] dated [insert date] on your behalf together with your instructions, (both referred to as the 'Instructions').

We confirm that we have fully complied with its terms. Without prejudice to your rights in respect of the foregoing we also confirm that the title may be safely accepted by you as security and is good and marketable.

[We confirm that all or part of the Purchaser's contribution is made up of the free proceeds from the sale of an existing property at [Insert address of existing property]. Where we were instructed in the sale of that property or are instructed in its sale, we confirm that the free proceeds (after repayment of any existing secured loan) were, or are expected to be [£[]]. Where we were not, or are not, instructed by the Purchaser in the sale of that property, the Purchaser has confirmed to us for the purposes of this Certificate that the free proceeds (after repayment of any existing secured loan) were, or are expected to be [£[]].] **[Note – delete if the Purchaser is not aged 60 or over, or is otherwise not applicable]**

We have received written confirmation from the Purchaser (and from each Purchaser where there is more than one person) that [the Purchaser is a first-time buyer as defined for the purposes of the OMSE scheme and that they have no interest in any other dwelling] OR [that the Purchaser has an interest in a dwelling but that it intends to sell or complete the sale of any dwelling(s) that they have an interest in, on or before the date of completion of the purchase of the Property. The Purchaser has confirmed that it anticipates that conclusion of the sale of such dwelling shall take place on or before the anticipated completion date of the purchase of the Property. We further confirm that we have received no notice or indication that contradicts such written confirmation(s) from the Purchaser.

We hereby request the Payment in time for settlement and confirm that we will (a) deal with the same (b) attend to settlement and all post settlement matters including without prejudice registration and preservation of all documents, titles records and others in accordance with the Instructions. Our client account details for the purposes of the administering agent transferring funds to us are as follows:

[Solicitor to insert details of client account]

Yours faithfully

AGREEMENT

between

THE SCOTTISH MINISTERS

and

[Shared Equity Owner]

NO GOLDEN SHARE

CLAUSES

1. [Definitions](#)
2. [Obligation to Pay](#)
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MINUTE OF AGREEMENT

between

THE SCOTTISH MINISTERS (“Scottish Ministers”) ON THE ONE PART

and

residing at # (hereinafter referred to as the “Shared Equity Owner”) ON THE OTHER PART

WHEREAS Scottish Ministers have agreed to provide the sum of # (£#) (being [#] per cent of the current value of the Property as agreed between the Parties) on condition that the Shared Equity Owner enters into this Agreement with Scottish Ministers and grants a standard security over the Property for the Shared Equity Owner’s obligations hereunder; NOW THEREFORE the Parties have agreed and do hereby agree as follows:

1. Definitions

1.1 In this Minute of Agreement where the context so admits:

1.1.1 the following words and phrases shall have the following meanings:

“Actual Open Market Value”	means the highest sum offered by a third party in an Open Market Sale;
“Administering Agent”	means any organisation appointed by Scottish Ministers from time to time to assist in the administering of the Open Market Shared Equity Scheme;
“Agreement”	means this agreement;
“Date of Entry”	means <i>[here insert the date of entry under the contract for sale]</i> ;

<p>“Deemed Open Market Value”</p>	<p>means the open market value of the Property as determined by the Valuer making the Open Market Value Assumptions and having regard to such other matters as he may in his professional judgement deem appropriate;</p>
<p>“Encumbrance”</p>	<p>means a standard security; any inhibition, adjudication or other matter which may competently be registered in the personal registers; or any other encumbrance which may affect the Property including without prejudice any order relating to property transfer or confiscation;</p>
<p>“Home Report”</p>	<p>means the documents referred to in the Housing (Scotland) Act 2006 (Prescribed Documents) Regulations 2008 being survey report, information on energy efficiency and property questionnaire in the form set out in the schedules to those regulations;</p>
<p>“New Proportion”</p>	<p>has the meaning ascribed to it in clause 3;</p>
<p>“New Security”</p>	<p>means any standard security over the Property or any part thereof other than (1) the Standard Security and (2) any standard security specifically referred to in the Ranking Agreement;</p>
<p>“Open Market Conditions”</p>	<p>means the following conditions: (i) the Shared Equity Owner has taken all reasonable steps to ensure that the price at which the Property is to be sold</p>

	<p>is the best that can be reasonably obtained which will include, without prejudice, Scottish Ministers being satisfied with the nature and level of advertising, the Home Report, the marketing of the Property and the terms of sale and (ii) the sum offered by the third party has not been adversely affected by any of the Open Market Value Assumptions not being the case in fact;</p>
<p>“Open Market Sale”</p>	<p>means a sale of the whole of the Property on the open market to a third party in circumstances where Scottish Ministers, acting reasonably, are and remain satisfied that the Open Market Conditions have been met;</p>
<p>“Open Market Shared Equity Scheme”</p>	<p>means the Scottish Ministers’ affordable home ownership scheme of the same name as described in the Open Market Shared Equity scheme guidance issued by Scottish Ministers from time to time;</p>
<p>“Open Market Value Assumptions”</p>	<p>means the following assumptions:</p> <ol style="list-style-type: none"> 1. that the Property is being sold by a willing seller to a willing purchaser in the open market on an arm’s length basis; 2. that vacant possession of the Property is available;

	<p>3. that the Shared Equity Owner has duly complied with, performed and discharged all of the obligations incumbent upon him in terms of this Agreement;</p> <p>4. that the Shared Equity Owner has complied with the obligations incumbent upon him in terms of the Standard Security;</p> <p>5. that there is no Encumbrance affecting the Property;</p> <p>6. that any increase in value arising from any additions or improvements carried out to the Property is to be reflected in the open market value; and</p> <p>7. that any diminution in value arising from adaptations which have been carried out to meet the needs of a disabled person is to be disregarded from the open market value;</p>
"Parties"	means the parties to this Agreement;
"Payment Event"	<p>means any one or more of the following events:</p> <p>(a) an Open Market Sale other than to a Spouse;</p>

	<p>(b) any transfer or transmission of the Property or part of the Property whether by sale or gift or succession or in any other way to a third party other than a Spouse which is not an Open Market Sale;</p> <p>(c) the failure on the part of a Spouse to assume the obligations of the Shared Equity Owner in terms satisfactory to Scottish Ministers within six months of the transfer or transmission of the Property or part of the Property to the Spouse whether by sale or gift or succession or in any other way;</p> <p>(d) (If the Shared Equity Owner is one individual and dies without a surviving Spouse or the Property does not pass to any such surviving Spouse as aftermentioned) the death of the Shared Equity Owner;</p> <p>(e) (If the Shared Equity Owner comprises more than one person) the death of the survivor of such persons;</p> <p>(f) The Shared Equity Owner or any Spouse of the Shared Equity Owner ceasing to use the Property as his only place of residence or renting the Property or allowing it to be occupied by a third party without the prior written consent of Scottish Ministers;</p>
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	<p>(g) The Shared Equity Owner or any Spouse of the Shared Equity Owner granting a New Security without first obtaining the written consent of Scottish Ministers;</p> <p>(h) Any security holders calling up their security or the security holders or any other party exercising any other process of law which would affect the Property;</p> <p>(i) Any default under the Standard Security;</p> <p>(j) It is established to the reasonable satisfaction of Scottish Ministers that the Shared Equity Owner has provided or permitted the provision of false or misleading information to Scottish Ministers or the Administering Agent in connection with the granting or transmission of this Agreement; or</p> <p>(k) the Shared Equity Owner becomes the proprietor of another dwelling house in addition to the Property</p>
<p>“Property”</p>	<p>means the whole of the property at [FULL POSTAL ADDRESS INCLUDING POSTCODE MUST BE INSERTED HERE];</p>
<p>“Ranking Agreement”</p>	<p>means the agreement regulating the ranking of standard securities between</p>

	Scottish Ministers, the Shared Equity Owner and [TO BE INSERTED BY PURCHASER'S SOLICITOR];
"Scottish Ministers' Proportion"	either [# %] or, if the terms of clause 3 have been implemented in full (including without prejudice all sums due to Scottish Ministers thereunder having been paid), the New Proportion;
"Spouse"	means (a) in the case of a marriage between persons of different sexes, a person who is the husband or the wife of the Shared Equity Owner; or (b) in the case of a marriage between persons of the same sex one of whom is the Shared Equity Owner, the other party to that marriage, or (c) the civil partner of the Shared Equity Owner in terms of the Civil Partnership Act 2004 or (d) a person who lives with the Shared Equity Owner as the husband or the wife;
"Standard Security"	means the standard security by the Shared Equity Owner in favour of Scottish Ministers for the Shared Equity Owner's obligations in terms of this Agreement; and
"Valuer"	means the District Valuer of HM Revenue and Customs for the district in which the Property is situated or if otherwise agreed between the Parties such other professionally qualified

	valuer as Scottish Ministers and the Shared Equity Owner may agree;
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and derivative expressions of any defined term shall be construed accordingly.

1.2 References to:

1.2.1 statutes, statutory provisions and other legislation shall include all amendments, substitutions, modifications and re-enactments for the time being in force;

1.2.2 “including” shall not be construed as limiting the generality of the words preceding it;

1.2.3 words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders;

1.2.4 this Agreement and to any provisions of it or to any other document referred to in this Agreement shall be construed as references to it in force for the time being as amended, varied, supplemented, restated, substituted or novated from time to time;

1.2.5 any person are to be construed to include references to a corporation, firm, owner, partnership, joint venture, unincorporated body of persons, individual or any state or agency of a state, whether or not a separate legal entity;

1.2.6 any person are to be construed to include that person’s assignees or transferees or successors in title, whether direct or indirect;

1.2.7 a clause means a clause of this Agreement;

1.2.8 clause headings are for ease of reference only and shall not affect the interpretation of this Agreement;

- 1.2.9 Scottish Ministers includes the Administering Agent or other persons authorised to act on behalf of Scottish Ministers; and
- 1.2.10 the consent of Scottish Ministers shall be a reference to their prior written consent.
- 1.3 For the avoidance of doubt, this Agreement supersedes any previous agreement, whether written or oral, expressed or implied, between the Parties to it (or any of them) in relation to the subject matter of this Agreement.
- 1.4 Obligations undertaken by more than one person shall be undertaken by each jointly and severally.
- 1.5 Unless otherwise stated any consent, approval or other determination of Scottish Ministers whether in this Agreement, the Standard Security or the Ranking Agreement shall not be unreasonably withheld or delayed nor given subject to unreasonable conditions.

2. Obligation to Pay

Subject always to the terms of clause 2.7:

- 2.1 If the Shared Equity Owner proposes to transfer their interest in the Property the Shared Equity Owner shall (1) notify Scottish Ministers as soon as reasonably possible; (2) provide them with such information about the proposed sale as Scottish Ministers may reasonably require; and (3) use all reasonable endeavours to ensure that the Open Market Conditions apply including without prejudice ensuring that all duties of care under the relevant Home Report are extended to Scottish Ministers on terms which Scottish Ministers consider to be satisfactory.

- 2.2 If the proposed transfer is an Open Market Sale the Shared Equity Owner shall pay to Scottish Ministers, Scottish Ministers' Proportion of the Actual Open Market Value on or before the date of settlement of the Open Market Sale.
- 2.3 If the proposed transfer is not an Open Market Sale it shall only take place with the consent of Scottish Ministers which consent shall not be unreasonably withheld or delayed but if granted shall be given subject to such conditions as Scottish Ministers may reasonably require in order to ensure that they receive payment of Scottish Ministers' Proportion of the Deemed Open Market Value.
- 2.4.1 Subject to the terms of clause 2.4.2, upon the occurrence of a Payment Event other than in the circumstances set out in clauses 2.1 – 2.3 inclusive Scottish Ministers shall be entitled to instruct the Valuer in terms of this Agreement to determine the Deemed Open Market Value as at a date ("Valuation Date") which is either on, or within a reasonable period of, the date when that Payment Event occurred.
- 2.4.2 If the Payment Event is a default which is capable of remedy Scottish Ministers shall not take any action under clause 2.4.1 or clause 6.1 unless (a) they have previously delivered to the Shared Equity Owner a notice which specifies in reasonable detail the nature of the default and a period ("Remediation Period") – which shall be not less than 28 days – in which to remedy the same and (b) the Remediation Period has elapsed and the default has not been remedied to the reasonable satisfaction of Scottish Ministers.
- 2.5 Once the Deemed Open Market Value has been determined in accordance with this Agreement Scottish Ministers shall be entitled at any time thereafter to serve notice ("Payment Notice") upon the Shared Equity Owner requiring him to make payment of Scottish Ministers' Proportion of the Deemed Open Market Value.

- 2.6 In the event that a Payment Notice is served the Shared Equity Owner shall within seven days of receipt of the Payment Notice make payment to Scottish Ministers of Scottish Ministers' Proportion of the Deemed Open Market Value.
- 2.7 For the avoidance of doubt the terms of clause 2 shall not apply in relation to any transfer or transmission to a Spouse who assumes the obligations of the Shared Equity Owner in terms satisfactory to Scottish Ministers within six months of such transfer or transmission all as set out in sub paragraph (c) of the definition of 'Payment Event'.

3. Tranching Up

- 3.1 At any time after the Date of Entry the Shared Equity Owner will be entitled to reduce Scottish Ministers' Proportion in terms of this clause 3 provided always that:
- 3.1.1 The Shared Equity Owner shall only be entitled to exercise his right to reduce Scottish Ministers' Proportion in terms of this clause 3.1 if he shall have complied with, performed and discharged all of the obligations incumbent upon him in terms of this Agreement and the Standard Security;
- 3.1.2 Scottish Ministers' Proportion expressed as a percentage of the Property after the Shared Equity Owner's exercise of this right shall be a minimum of 5% lower than it was prior to the Shared Equity Owner's exercise of that right (for example if Scottish Ministers Proportion before exercise is 30% Scottish Ministers' Proportion after exercise must be 25% or less) and
- 3.1.3 For the avoidance of doubt Scottish Ministers Proportion cannot be reduced so as to be above zero but less than 5%. For example if

Scottish Ministers' Proportion is 10% it may only be reduced to 5% or zero and if it is 9% it can only be reduced to zero.

3.2 The Shared Equity Owner shall serve on Scottish Ministers a notice ("Reduction Notice") in writing specifying the amount expressed as a percentage ("New Proportion") to which Scottish Ministers' Proportion is to be reduced and requiring Scottish Ministers to instruct the Valuer to determine the Deemed Open Market Value as at the date of service of the Reduction Notice and Scottish Ministers shall notify the Shared Equity Owner of the amount thereof in writing within seven days of the said determination by the Valuer.

3.3 Provided payment by the Shared Equity Owner of the amount necessary to reduce Scottish Ministers' Proportion in terms of clause 3.1 is effected within three months of such notification by Scottish Ministers, the Shared Equity Owner may reduce Scottish Ministers' Proportion to the New Proportion. The amount due to Scottish Ministers by the Shared Equity Owner in terms of this clause 3.3 shall be calculated in accordance with the following formula:

$A \times B$

where:

A = the difference between Scottish Ministers' Proportion at the date of the Reduction Notice and the New Proportion; and

B = the Deemed Open Market Value.

As an example if the Deemed Open Market Value of the Property at the date of the Reduction Notice was £120,000; Scottish Ministers' Proportion at the Date of the Reduction Notice was 30% and the New

Proportion was 20%; the amount due to Scottish Ministers would be £12,000 being 10% (ie 30% - 20%) x £120,000.

- 3.4 The reasonable costs of any such determination by the Valuer shall be paid on demand by the Shared Equity Owner to Scottish Ministers.
- 3.5 The Valuer shall be deemed to be acting as an expert and not as an arbiter and his decision as to the Deemed Open Market Value shall be final and binding on the Parties.
- 3.6 Upon payment by the Shared Equity Owner the Shared Equity Owner and Scottish Ministers shall forthwith execute a memorandum detailing the New Proportion.

4. Expenses

- 4.1 The Shared Equity Owner shall be liable for (a) all expenses incurred in connection with the registration of the Standard Security and the Ranking Agreement in the Land Register, (b) the costs of registering this Agreement in the Books of Council and Session and of obtaining one extract and (c) any other reasonable expenses properly incurred by Scottish Ministers in connection with the preparation and completion of this Agreement, the Standard Security and the Ranking Agreement other than the professional charges of their legal advisers.
- 4.2 The Shared Equity Owner shall pay on demand to Scottish Ministers on a full indemnity basis all reasonable costs and expenses (including but not limited to legal, valuation, registration and out-of-pocket expenses) properly incurred by Scottish Ministers in connection with any actual, proposed or attempted amendment, exercise, enforcement, discharge, extension, variation, waiver or preservation of any rights under this Agreement and/ or the Standard Security and/ or the Ranking Agreement.

5. Certificates and Determinations

- 5.1 A certificate signed by any duly authorised officer or employee of Scottish Ministers shall be prima facie evidence of any sums due to Scottish Ministers under this Agreement.

6. Interest and Losses

- 6.1 If the Shared Equity Owner fails to pay any amount payable by him under this Agreement, Scottish Ministers may charge the Shared Equity Owner interest on the overdue amount. The Shared Equity Owner shall pay the interest immediately on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 2% per annum above the base lending rate (or the equivalent) of the Royal Bank of Scotland plc prevailing at the time of the written demand from the date of the written demand until payment in full of both the sum and the interest thereon, or in the event of that ceasing to exist, such other rate equivalent to it as Scottish Ministers may specify. Such interest shall accrue on a daily basis and be compounded quarterly.
- 6.2 The Shared Equity Owner shall indemnify and keep indemnified Scottish Ministers against all losses, liabilities, costs and expenses – including without prejudice any depletion of value of the Property – reasonably incurred by Scottish Ministers as a result of any breach by the Shared Equity Owner of any terms of this Agreement, the Standard Security and/ or the Ranking Agreement.

7. Transfer

- 7.1 The Shared Equity Owner shall not at any time assign, transfer or novate any of its rights and/or obligations under this Agreement

save to a Spouse who has entered into an agreement to assume the obligations of the Shared Equity Owner in terms satisfactory to Scottish Ministers.

7.2 Scottish Ministers may at any time assign, transfer or novate any of its rights and/ or obligations under this Agreement to any person.

7.3 Scottish Ministers may disclose to any person with whom it is proposing to enter, or has entered into, any kind of transfer, participation or other agreement in relation to this Agreement:

- a copy of this Agreement; and
- any information which Scottish Ministers have acquired in connection with this Agreement.

8. Notices

8.1 Any notice to Scottish Ministers shall be addressed to:

The Scottish Ministers c/o *[insert details of Administering Agent or subsidiary including contact person]* or to the Scottish Ministers at such other address as Scottish Ministers may notify to the Shared Equity Owner in accordance with this Agreement.

8.2 Any notice to the Shared Equity Owner shall be addressed to the Shared Equity Owner at the Property.

9. Separate Provisions

If any provision of this Agreement is or becomes invalid, illegal or unenforceable that shall not affect the validity, legality or enforceability of any other provision.

10. Governing Law

This Agreement shall be governed by and construed according to Scots law and each of the parties submits to the exclusive jurisdiction of the Scottish courts.

11. Consent to Registration

The Parties consent to the registration hereof and of any such Certificate for preservation and execution: IN WITNESS WHEREOF this Agreement consisting of this and the [] preceding pages is executed as follows:

<p>SUBSCRIBED by the Shared Equity Owner at</p> <p>on the day of (Year-figure)</p> <p>in the presence of:</p> <p>..... Witness (Signature)</p> <p>..... Full Name</p> <p>..... Address</p> <p>.....</p>	<p>..... (Signature)</p> <p>..... (Signature)</p>
<p>SUBSCRIBED for and on behalf of Scottish Ministers by</p> <p>on the day of (Year-figure)</p> <p>in the presence of:</p> <p>..... Witness (Signature)</p> <p>..... Full Name</p> <p>..... Address</p> <p>.....</p>	<p>..... (Signature) Authorised signatory</p> <p>..... (Full Name)</p>

AGREEMENT

between

THE SCOTTISH MINISTERS

and

[Shared Equity Owner]

GOLDEN SHARE

CLAUSES

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2. [Obligation to Pay](#)
3. [Tranching Up](#)
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MINUTE OF AGREEMENT

between

THE SCOTTISH MINISTERS (“Scottish Ministers”) ON THE ONE PART

and

residing at # (hereinafter referred to as the “Shared Equity Owner”) ON THE OTHER PART

WHEREAS Scottish Ministers have agreed to provide the sum of # (£#) (being [#] per cent of the current value of the Property as agreed between the Parties) on condition that the Shared Equity Owner enters into this Agreement with Scottish Ministers and grants a standard security over the Property for the Shared Equity Owner’s obligations hereunder; NOW THEREFORE the Parties have agreed and do hereby agree as follows:

1. Definitions

1.1 In this Minute of Agreement where the context so admits:

1.1.1 the following words and phrases shall have the following meanings:

“Actual Open Market Value”	means the highest sum offered by a third party in an Open Market Sale;
“Administering Agent”	means any organisation appointed by Scottish Ministers from time to time to assist in the administering of the Open Market Shared Equity Scheme;
“Agreement”	means this agreement;
“Date of Entry”	means <i>[here insert the date of entry under the contract for sale]</i> ;

<p>“Deemed Open Market Value”</p>	<p>means the open market value of the Property as determined by the Valuer making the Open Market Value Assumptions and having regard to such other matters as he may in his professional judgement deem appropriate;</p>
<p>“Encumbrance”</p>	<p>means a standard security; any inhibition, adjudication or other matter which may competently be registered in the personal registers; or any other encumbrance which may affect the Property including without prejudice any order relating to property transfer or confiscation;</p>
<p>“Home Report”</p>	<p>means the documents referred to in the Housing (Scotland) Act 2006 (Prescribed Documents) Regulations 2008 being survey report, information on energy efficiency and property questionnaire in the form set out in the schedules to those regulations;</p>
<p>“New Proportion”</p>	<p>has the meaning ascribed to it in clause 3;</p>
<p>“New Security”</p>	<p>means any standard security over the Property or any part thereof other than (1) the Standard Security and (2) any standard security specifically referred to in the Ranking Agreement;</p>

<p>“Open Market Conditions”</p>	<p>means the following conditions: (i) the Shared Equity Owner has taken all reasonable steps to ensure that the price at which the Property is to be sold is the best that can be reasonably obtained which will include, without prejudice, Scottish Ministers being satisfied with the nature and level of advertising, the Home Report, the marketing of the Property and the terms of sale; and (ii) the sum offered by the third party has not been adversely affected by any of the Open Market Value Assumptions not being the case in fact;</p>
<p>“Open Market Shared Equity Scheme”</p>	<p>means the Scottish Ministers’ affordable home ownership scheme of the same name as described in the Open Market Shared Equity scheme guidance issued by Scottish Ministers from time to time;</p>
<p>“Open Market Sale”</p>	<p>means a sale of the whole of the Property on the open market to a third party in circumstances where Scottish Ministers, acting reasonably, are and remain satisfied that the Open Market Conditions have been met;</p>
<p>“Open Market Value Assumptions”</p>	<p>means the following assumptions:</p> <ol style="list-style-type: none"> 1 that the Property is being sold by a willing seller to a willing purchaser in the open market on an arm’s length basis;

	<p>2 that vacant possession of the Property is available;</p> <p>3 that the Shared Equity Owner has duly complied with, performed and discharged all of the obligations incumbent upon him in terms of this Agreement;</p> <p>4 that the Shared Equity Owner has complied with the obligations incumbent upon him in terms of the Standard Security;</p> <p>5 that there is no Encumbrance affecting the Property;</p> <p>6 that any increase in value arising from any additions or improvements carried out to the Property is to be reflected in the open market value</p> <p>7 that any diminution in value arising from adaptations which have been carried out to meet the needs of a disabled person is to be disregarded from the open market value;</p>
"Parties"	means the parties to this Agreement;

<p>“Payment Event”</p>	<p>means any one or more of the following events:</p> <p>(a) an Open Market Sale other than to a Spouse;</p> <p>(b) any transfer or transmission of the Property or part of the Property whether by sale or gift or succession or in any other way to a third party other than a Spouse which is not an Open Market Sale;</p> <p>(c) the failure on the part of a Spouse to assume the obligations of the Shared Equity Owner in terms satisfactory to Scottish Ministers within six months of the transfer or transmission of the Property or part of the Property to the Spouse whether by sale or gift or succession or in any other way;</p> <p>(d) (If the Shared Equity Owner is one individual and dies without a surviving Spouse or the Property does not pass to any such surviving Spouse as aftermentioned) the death of the Shared Equity Owner;</p> <p>(e) (If the Shared Equity Owner comprises more than one person) the death of the survivor of such persons;</p>
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	<p>(f) The Shared Equity Owner or any Spouse of the Shared Equity Owner ceasing to use the Property as his only place of residence or renting the Property or allowing it to be occupied by a third party without the prior written consent of Scottish Ministers;</p> <p>(g) The Shared Equity Owner or any Spouse of the Shared Equity Owner granting a New Security without first obtaining the written consent of Scottish Ministers;</p> <p>(h) Any security holders calling up their security or the security holders or any other party exercising any other process of law which would affect the Property;</p> <p>(i) Any default under the Standard Security;</p> <p>(j) It is established to the reasonable satisfaction of Scottish Ministers that the Shared Equity Owner has provided or permitted the provision of false or misleading information to Scottish Ministers or the Administering Agent in connection with the granting or transmission of this Agreement; or</p>
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	(k) the shared equity owner becomes the proprietor of another dwelling house in addition to the property
“Property”	means the whole of the property at [FULL POSTAL ADDRESS INCLUDING POSTCODE MUST BE INSERTED HERE];
“Ranking Agreement”	means the agreement regulating the ranking of standard securities between Scottish Ministers, the Shared Equity Owner and [TO BE INSERTED BY PURCHASER’S SOLICITOR];
“Scottish Ministers’ Proportion”	either [# %] or, if the terms of clause 3 have been implemented in full (including without prejudice all sums due to Scottish Ministers thereunder having been paid), the New Proportion;
“Spouse”	means (a) in the case of a marriage between persons of different sexes, a person who is the husband or the wife of the Shared Equity Owner; or (b) in the case of a marriage between persons of the same sex one of whom is the Shared Equity Owner, the other party to that marriage, or (c) the civil partner of the Shared Equity Owner in terms of the Civil Partnership Act 2004 or (d) a person who lives with the Shared Equity Owner as the husband or the wife;
“Standard Security”	means the standard security by the Shared Equity Owner in favour of

	Scottish Ministers for the Shared Equity Owner's obligations in terms of this Agreement; and
"Valuer"	means the District Valuer of HM Revenue and Customs for the district in which the Property is situated or if otherwise agreed between the Parties such other professionally qualified valuer as Scottish Ministers and the Shared Equity Owner may agree;

and derivative expressions of any defined term shall be construed accordingly.

1.2 References to:

1.2.1 statutes, statutory provisions and other legislation shall include all amendments, substitutions, modifications and re-enactments for the time being in force;

1.2.2 "including" shall not be construed as limiting the generality of the words preceding it;

1.2.3 words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders;

1.2.4 this Agreement and to any provisions of it or to any other document referred to in this Agreement shall be construed as references to it in force for the time being as amended, varied, supplemented, restated, substituted or novated from time to time;

1.2.5 any person are to be construed to include references to a corporation, firm, owner, partnership, joint venture, unincorporated

body of persons, individual or any state or agency of a state, whether or not a separate legal entity;

1.2.6 any person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;

1.2.7 a clause means a clause of this Agreement;

1.2.8 clause headings are for ease of reference only and shall not affect the interpretation of this Agreement;

1.2.9 Scottish Ministers includes the Administering Agent or other persons authorised to act on behalf of Scottish Ministers; and

1.2.10 the consent of Scottish Ministers shall be a reference to their prior written consent.

1.3 For the avoidance of doubt, this Agreement supersedes any previous agreement, whether written or oral, expressed or implied, between the Parties to it (or any of them) in relation to the subject matter of this Agreement.

1.4 Obligations undertaken by more than one person shall be undertaken by each jointly and severally.

1.5 Unless otherwise stated any consent, approval or other determination of Scottish Ministers whether in this Agreement, the Standard Security or the Ranking Agreement shall not be unreasonably withheld or delayed nor given subject to unreasonable conditions.

2. Obligation to Pay

Subject always to the terms of clause 2.7 and clause 5 (Scottish Ministers' Right of Pre-emption):

- 2.1 If the Shared Equity Owner proposes to transfer their interest in the Property the Shared Equity Owner shall (1) notify Scottish Ministers as soon as reasonably possible; (2) provide them with such information about the proposed sale as Scottish Ministers may reasonably require; and (3) use all reasonable endeavours to ensure that the Open Market Conditions apply including without prejudice ensuring that all duties of care under the relevant Home Report are extended to Scottish Ministers on terms which Scottish Ministers consider to be satisfactory.
- 2.2 If the proposed transfer is an Open Market Sale the Shared Equity Owner shall pay to Scottish Ministers, Scottish Ministers' Proportion of the Actual Open Market Value on or before the date of settlement of the Open Market Sale.
- 2.3 If the proposed transfer is not an Open Market Sale it shall only take place with the consent of Scottish Ministers which consent shall not be unreasonably withheld or delayed but if granted shall be given subject to such conditions as Scottish Ministers may reasonably require in order to ensure that they receive payment of Scottish Ministers' Proportion of the Deemed Open Market Value.
- 2.4.1 Subject to the terms of clause 2.4.2, upon the occurrence of a Payment Event other than in the circumstances set out in clauses 2.1 – 2.3 inclusive Scottish Ministers shall be entitled to instruct the Valuer in terms of this Agreement to determine the Deemed Open Market Value as at a date ("Valuation Date") which is either on, or within a reasonable period of, the date when that Payment Event occurred.
- 2.4.2 If the Payment Event is a default which is capable of remedy Scottish Ministers shall not take any action under clause 2.4.1 or clause 6.1 unless (a) they have previously delivered to the Shared Equity Owner a notice which specifies in reasonable detail the nature of the default and a period ("Remediation Period") – which

shall be not less than 28 days – in which to remedy the same and (b) the Remediation Period has elapsed and the default has not been remedied to the reasonable satisfaction of Scottish Ministers.

2.5 Once the Deemed Open Market Value has been determined in accordance with this Agreement Scottish Ministers shall be entitled at any time thereafter to serve notice (“Payment Notice”) upon the Shared Equity Owner requiring him to make payment of Scottish Ministers’ Proportion of the Deemed Open Market Value.

2.6 In the event that a Payment Notice is served the Shared Equity Owner shall within seven days of receipt of the Payment Notice make payment to Scottish Ministers of Scottish Ministers’ Proportion of the Deemed Open Market Value.

2.7 For the avoidance of doubt:

2.7.1 The terms of clause 5 (Scottish Ministers’ Right of Pre-emption) shall take precedence over this clause 2 (Obligation to Pay) in the event that the Scottish Ministers’ right of pre-emption is exercised; and

2.7.2 The terms of clause 2 shall not apply in relation to any transfer or transmission to a Spouse who assumes the obligations of the Shared Equity Owner in terms satisfactory to Scottish Ministers within six months of such transfer or transmission all as set out in sub paragraph (c) of the definition of ‘Payment Event’.

3. Tranching Up

3.1 At any time after the Date of Entry the Shared Equity Owner will be entitled to reduce Scottish Ministers’ Proportion as set out in this clause 3.1 provided always that:

- 3.1.1 the Shared Equity Owner shall only be entitled to exercise his right to reduce Scottish Ministers' Proportion in terms of this clause 3.1 if he shall have complied with, performed and discharged all of the obligations incumbent upon him in terms of this Agreement.
- 3.1.2 Subject to the terms of this Clause the Standard Security Scottish Ministers' Proportion expressed as a percentage of the Property after the Shared Equity Owner's exercise of this right shall be a minimum of 5% lower than it was prior to the Shared Equity Owner's exercise of that right (for example if Scottish Ministers Proportion before exercise is 30% Scottish Ministers' Proportion after exercise must be 25% or less).
- 3.1.3 For the avoidance of doubt Scottish Ministers Proportion cannot be reduced so as to be less than 10%. For example if Scottish Ministers' Proportion is 20% it may only be reduced to 15% or 10% and if it is 19% it can only be reduced to 10%.
- 3.2 The Shared Equity Owner shall serve on Scottish Ministers a notice ("Reduction Notice") in writing specifying the amount expressed as a percentage ("New Proportion") to which Scottish Ministers' Proportion is to be reduced and requiring Scottish Ministers to instruct the Valuer to determine the Deemed Open Market Value as at the date of service of the Reduction Notice and Scottish Ministers shall notify the Shared Equity Owner of the amount thereof in writing within seven days of the said determination by the Valuer.
- 3.3 Provided payment by the Shared Equity Owner of the amount necessary to reduce Scottish Ministers' Proportion in terms of clause 3.1 is effected within three months of such notification by Scottish Ministers, the Shared Equity Owner may reduce Scottish Ministers' Proportion to the New Proportion. The amount due to Scottish Ministers by the Shared Equity Owner in terms of this clause 3.3 shall be calculated in accordance with the following formula:

A x B

where:

A = the difference between Scottish Ministers' Proportion at the date of the Reduction Notice and the New Proportion; and

B = the Deemed Open Market Value.

As an example if the Deemed Open Market Value of the Property at the date of the Reduction Notice was £120,000; Scottish Ministers' Proportion at the Date of the Reduction Notice was 30% and the New Proportion was 20%; the amount due to Scottish Ministers would be £12,000 being 10% (ie 30% - 20%) x £120,000.

- 3.4 The reasonable costs of any such determination by the Valuer shall be paid on demand by the Shared Equity Owner to Scottish Ministers.
- 3.5 The Valuer shall be deemed to be acting as an expert and not as an arbiter and his decision as to the Deemed Open Market Value shall be final and binding on the Parties.
- 3.6 Upon payment by the Shared Equity Owner the Shared Equity Owner and Scottish Ministers shall forthwith execute a memorandum detailing the New Proportion.

4. Expenses

- 4.1 The Shared Equity Owner shall be liable for (a) all expenses incurred in connection with the registration of the Standard Security and the Ranking Agreement in the Land Register, (b) the costs of registering this Agreement in the Books of Council and Session and of obtaining

one extract and (c) any other reasonable expenses properly incurred by Scottish Ministers in connection with the preparation and completion of this Agreement, the Standard Security and the Ranking Agreement other than the professional charges of their legal advisers.

- 4.2 The Shared Equity Owner shall pay on demand to Scottish Ministers on a full indemnity basis all reasonable costs and expenses (including but not limited to legal, valuation, registration and out-of-pocket expenses) properly incurred by Scottish Ministers in connection with any actual, proposed or attempted amendment, exercise, enforcement, discharge, extension, variation, waiver or preservation of any rights under this Agreement and/or the Standard Security and/ or the Ranking Agreement.

5. Scottish Ministers' Right of Pre-emption

- 5.1 In the event of the Shared Equity Owner deciding to sell or otherwise dispose of the Property or, subject to clause 2.4.1, on the occurrence of a Payment Event the Shared Equity Owner shall in the first instance notify Scottish Ministers and Scottish Ministers or their nominees shall have the option of purchasing the Property at a price to be calculated in accordance with the following formula:

$$A \times (100 - B) \%$$

where:

A = the price determined by the Valuer to be the value of the Property if purchased in the open market by a willing buyer from a willing seller at arm's length as determined by the Valuer having proper regard to such matters as he may in his professional judgement deem appropriate including without prejudice to the foregoing the impact on value of (i) any failure on the part of the Shared Equity Owner to comply with, perform and discharge all of the obligations incumbent upon him in terms

of this Agreement and the Standard Security (ii) whether vacant possession is available (iii) any Encumbrance affecting the Property and (iv) any increase in value arising from any additions or improvements carried out to the Property provided however that any diminution in value arising from adaptations which have been carried out to meet the needs of a disabled person shall be disregarded; and

B = Scottish Ministers' Proportion.

For the avoidance of doubt, the Shared Equity Owner shall be bound to sell the whole of the Property and not only part thereof and the other terms and conditions of the sale shall be such as Scottish Ministers shall, acting reasonably, determine.

As an example if at the time when the option becomes exercisable under clause 5.1 the price determined by the Valuer is £120,000 and Scottish Ministers' Proportion is 20%; the amount to be paid by Scottish Ministers or their nominees will be £96,000 being $£120,000 \times (100 - 20)\%$.

- 5.2 The Scottish Ministers' right of pre-emption in terms of this clause 5 shall be exercised by Scottish Ministers giving notice in writing to the Shared Equity Owner within twenty one days from the date of receipt by Scottish Ministers of written notice of determination of the price in terms of this clause 5.
- 5.3 In the event that Scottish Ministers decide not to exercise their right of pre-emption the terms of clause 2 (Obligation to Pay) shall apply.

6. Certificates and Determinations

- 6.1 A certificate signed by any duly authorised officer or employee of Scottish Ministers shall be prima facie evidence of any sums due to Scottish Ministers under this Agreement.

7. Interest and Losses

- 7.1 If the Shared Equity Owner fails to pay any amount payable by him under this Agreement, Scottish Ministers may charge the Shared Equity Owner interest on the overdue amount. The Shared Equity Owner shall pay the interest immediately on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 2% per annum above the base lending rate (or the equivalent) of the Royal Bank of Scotland plc prevailing at the time of the written demand from the date of the written demand until payment in full of both the sum and the interest thereon, or in the event of that ceasing to exist, such other rate equivalent to it as Scottish Ministers may specify. Such interest shall accrue on a daily basis and be compounded quarterly.
- 7.2 The Shared Equity Owner shall indemnify and keep indemnified Scottish Ministers against all losses, liabilities, costs and expenses – including without prejudice any depletion of value of the Property – reasonably incurred by Scottish Ministers as a result of any breach by the Shared Equity Owner of any terms of this Agreement, the Standard Security and/ or the Ranking Agreement.

8. Transfer

- 8.1 The Shared Equity Owner shall not at any time assign, transfer or novate any of its rights and/or obligations under this Agreement save to a Spouse who has entered into an agreement to assume the obligations of the Shared Equity Owner in terms satisfactory to Scottish Ministers.
- 8.2 Scottish Ministers may at any time assign, transfer or novate any of its rights and/or obligations under this Agreement to any person.

8.3 Scottish Ministers may disclose to any person with whom it is proposing to enter, or has entered into, any kind of transfer, participation or other agreement in relation to this Agreement:

- a copy of this Agreement; and
- any information which Scottish Ministers have acquired in connection with this Agreement

9. Notices

9.1 Any notice to Scottish Ministers shall be addressed to:

The Scottish Ministers c/o *[insert details of Administering Agent or subsidiary including contact person]* or to the Scottish Ministers at such other address as Scottish Ministers may notify to the Shared Equity Owner in accordance with this Agreement.

9.2 Any notice to the Shared Equity Owner shall be addressed to the Shared Equity Owner at the Property.

10. Separate Provisions

If any provision of this Agreement is or becomes invalid, illegal or unenforceable that shall not affect the validity, legality or enforceability of any other provision.

11. Governing Law

This Agreement shall be governed by and construed according to Scots law and each of the parties submits to the exclusive jurisdiction of the Scottish courts.

12. Consent to Registration

The Parties consent to the registration hereof and of any such Certificate for preservation and execution. IN WITNESS WHEREOF this Agreement consisting of this and the [] preceding pages is executed as follows:

<p>SUBSCRIBED by the Shared Equity Owner at</p> <p>on the day of (Year-figure)</p> <p>in the presence of:</p> <p>..... Witness (Signature)</p> <p>..... Full Name</p> <p>..... Address</p> <p>.....</p>	<p>..... (Signature)</p> <p>..... (Signature)</p>
<p>SUBSCRIBED for and on behalf of Scottish Ministers by</p> <p>on the day of (Year-figure)</p> <p>in the presence of:</p> <p>..... Witness (Signature)</p> <p>..... Full Name</p> <p>..... Address</p> <p>.....</p>	<p>..... (Signature) Authorised signatory</p> <p>..... (Full Name)</p>

STANDARD SECURITY

by

[Owner]

in favour of

The Scottish Ministers

I/ We, #, (the “Owner”) residing at # (declaring that where these presents are granted by more than one person the singular herein includes the plural and all obligations herein are undertaken jointly and severally) hereby in security of all sums, liabilities and obligations which are now or may hereafter become due by the Owner to the Scottish Ministers (hereinafter referred to as ‘Scottish Ministers’) by virtue of the Minute of Agreement between Scottish Ministers and the Owner signed by the Owner on or about the date hereof (hereinafter referred to as the “Shared Equity Agreement”) and any variation thereof, GRANT a Standard Security in favour of Scottish Ministers over ALL and WHOLE **[TO BE INSERTED BY PURCHASER’S SOLICITOR]** (hereinafter referred to as the ‘Property’); The Standard Conditions specified in Schedule 3 to the Conveyancing and Feudal Reform (Scotland) Act 1970 and any lawful variation thereof operative for the time being shall apply; And the Owner agrees that the Standard Conditions shall be varied to the effect that:

- (a) standard condition 1 shall be modified to the effect that it shall be an obligation on the Owner where there is an obligation to maintain the security subjects that such obligation shall be deemed to include an obligation to renew or procure the renewal of the same should this be reasonably required by Scottish Ministers;
- (b) standard conditions 3 and 4 shall be modified to the effect that it shall be an obligation on the Owner to ensure that all consents and approvals under all statutes (including all bye-laws, instruments, orders and regulations for the time being made thereunder or deriving therefrom) and the regulations and codes of practice of any governmental, local or other competent authorities affecting the Property have been obtained and are complied with at all times;

- (c) standard condition 4 shall be varied to the effect that reference to any notice or order issued or made by virtue of the Town and Country Planning (Scotland) Acts 1997 to 2006 and any subsequent amendments shall be construed as including all notices or orders of whatsoever kind made, given or issued by any authority or person which may affect the value of the Property in any way;

- (d) standard condition 5 shall be modified to the effect that it shall be an obligation on the Owner:
 - (i) to maintain such insurances in relation to the Property as are normally maintained by prudent owners of similar properties;

 - (ii) without prejudice to the foregoing sub-paragraph (i), to effect and maintain insurance against loss or damage to the Property by fire, lightning, explosion, storm, tempest, flood, aircraft (other than hostile aircraft), landslip, subsidence, riot and civil commotion, malicious damage and such other risks as Scottish Ministers may from time to time require and that with sound and reputable insurers and the Owner shall procure that the interest of Scottish Ministers as a heritable creditor is noted on the relevant policy or policies of insurance and that in such form and manner as Scottish Ministers may specify from time to time;

- (iii) to ensure that each such insurance policy will not as against Scottish Ministers be rendered void, voidable or unenforceable by reason of any act, omission, breach of warranty or non-disclosure by the Owner or any occupier of the Property. Scottish Ministers shall have full power to settle and adjust with the insurers all questions with respect to claims under each such policy. The Owner shall also ensure that all monies payable by the insurers under each such policy will be paid to the good discharge therefor and that the insurers will not permit the policy to lapse or attempt to void the same without giving at least 28 days' notice to Scottish Ministers;

- (iv) not to insure the Property or any part thereof otherwise than in accordance with the foregoing obligation and, if the Owner shall at any time effect any insurance in breach of such obligation, then (subject as aftermentioned) to hold all monies received under any such last-mentioned insurance (hereinafter referred to as the "Insurance Monies") as trustee for Scottish Ministers and, on demand, to pay the same to Scottish Ministers to be applied as if the same arose under a policy effected in terms hereof; except that the Owner will not be held to be in breach of the foregoing obligation if the Owner holds as trustee and pays to Scottish Ministers as aforesaid part only of the Insurance Monies, in circumstances where (a) the Owner is required by the holder of a standard security over the Property which Scottish Ministers have agreed shall rank prior to these presents in respect of the Property (hereinafter referred to as the "Prior Ranking Secured Creditor") to pay the Insurance Monies to the Prior Ranking Secured Creditor towards repayment of sums owed by the Owner to the Prior Ranking Secured Creditor; and (b) the part of the Insurance Monies held by

the Owner as trustee and paid to Scottish Ministers as aforesaid is an amount which is no less than the total amount of the Insurance Monies actually received by the Owner multiplied by the Scottish Ministers' Proportion (as that term is defined in the Shared Equity Agreement) then applicable; and

- (v) the insurance to be effected in terms of Standard Condition 5(a) shall provide index linked cover to the extent of (i) full reinstatement value or (ii) the full price at which the Property would be sold in the open market (a certificate from Scottish Ministers being conclusive in that regard) or (iii) the market value from time to time whichever is the highest;

for the purposes of this Standard Security, the terms 'Scottish Ministers' and 'the Owner' herein contained shall be deemed to be references to the terms 'creditor' and 'debtor' respectively contained in the said standard conditions which shall be construed accordingly; And the Owner grants warrandice excepting therefrom standard security by the Owner in favour of [TO BE INSERTED BY PURCHASER'S SOLICITOR] dated on or about the date hereof; And the Owner declares that as at the date of the execution of these presents the Property is neither (a) a matrimonial home in relation to which a spouse of the Owner has occupancy rights within the meaning of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 as amended nor (b) a family home in relation to which a civil partner of the Owner has occupancy rights within the meaning of the Civil Partnership Act 2004:: IN WITNESS WHEREOF these presents consisting of this and the [] preceding pages are executed as follows:

RANKING AGREEMENT

among

[Bank/ Building Society]

and

The Scottish Ministers

and

[Owner]

CLAUSES

- 1. Ranking of Securities**
- 2. Security to be Continuing**
- 3. Agreement**
- 4. Negative Pledge**
- 5. Authority to Release Information**
- 6. Consent**
- 7. Variation**
- 8. Transfers**
- 9. Miscellaneous**
- 10. Notices**
- 11. Definitions**
- 12. Other Security**
- 13. Separate Provisions**
- 14. Governing Law**
- 15. Consent to Registration**

RANKING AGREEMENT

This RANKING AGREEMENT is made amongst:

- (1) [TO BE INSERTED BY PURCHASER'S SOLICITOR] (the '**Primary Lender**');
- (2) The Scottish Ministers ('**Scottish Ministers**'); and
- (3) [TO BE INSERTED BY PURCHASER'S SOLICITOR] (the '**Owner**').

Definitions are given in Clause 11.

WHEREAS

- (A) The Owner has granted or is about to grant in favour of the Primary Lender a fixed security over the Property;
- (B) The Owner has granted or is about to grant in favour of Scottish Ministers a fixed security over the Property;
- (C) The Primary Lender and Scottish Ministers wish to regulate the ranking of the Securities; and
- (D) The Owner has agreed to the terms of this Agreement.

IT IS AGREED AS FOLLOWS:

1. Ranking of Securities

- 1.1 The Primary Lender, Scottish Ministers and the Owner agree that the sums secured or to be secured by the Primary Lender Fixed Security and the Postponed Fixed Security shall rank in the following order of priority:

- 1.1.1 the Primary Lender Fixed Security to the extent of the Primary Lender Priority Debt; then
 - 1.1.2 the Postponed Fixed Security to the extent of the Postponed Debt; then
 - 1.1.3 the Primary Lender Fixed Security to the extent of the balance (if any) of the Primary Lender Debt.
- 1.2 The ranking and priority set out in Clause 1.1 shall take effect notwithstanding any of the following:
 - 1.2.1 the nature of the securities created by the Primary Lender Fixed Security and the Postponed Fixed Security and the dates of execution and registration of them;
 - 1.2.2 any provision contained in any of the Securities;
 - 1.2.3 the date or dates on which moneys have been or may be advanced or become due, owing or payable under the Primary Lender Fixed Security and the Postponed Fixed Security respectively;
 - 1.2.4 any fluctuation from time to time in the amounts secured by the Primary Lender Fixed Security or the Postponed Fixed Security including any reduction of those amounts to nil;
 - 1.2.5 the existence of any credit balance on any current or other account of the Owner with either the Primary Lender or Scottish Ministers;
 - 1.2.6 the appointment of a Trustee in bankruptcy to the Owner, his sequestration, his apparent insolvency and/ or the

appointment of a judicial factor to all or any part of his assets in respect of the Owner or over all or any part of the assets;

1.2.7 the sale or other disposal of any land or buildings or any interest in any land or buildings prior to enforcement;

1.2.8 any present or future mortgage or other charge granted by the Owner to either the Primary Lender or Scottish Ministers (other than the Securities) (unless otherwise agreed in writing by the Primary Lender or Scottish Ministers); and

1.2.9 the provisions of Section 13 of the Conveyancing and Feudal Reform (Scotland) Act 1970.

2. Security to be Continuing

The Securities shall rank as provided in this Agreement as continuing securities for repayment of the amounts owing to each of the Primary Lender and Scottish Ministers from time to time by the Owner or by any person or Owner whose obligations to the Primary Lender or Scottish Ministers are guaranteed by the Owner.

3. Agreement

If a Trustee in bankruptcy or a judicial factor regards this Agreement as failing to bind him in the distribution of the proceeds of sale of the assets of the Owner (and in as far as the refusal of the Trustee in bankruptcy or the judicial factor causes prejudice to the Primary Lender or Scottish Ministers), the Primary Lender and Scottish Ministers will compensate each other to the extent to which it has benefited as a result of this refusal.

4. Negative Pledge

The Owner shall not grant any further fixed charges over the Property without the written consent of the Primary Lender and Scottish Ministers.

5. **Authority to Release Information**

5.1 During the continuance of each of the Primary Lender Fixed Security and the Postponed Fixed Security, the Primary Lender and Scottish Ministers may disclose to each other information concerning the Owner and its affairs in such manner and to such extent as the Primary Lender and Scottish Ministers may wish and the Owner consents to such disclosure.

5.2 The Primary Lender agrees to give notice promptly to Scottish Ministers upon increasing the limit of any of the facilities for the time being granted by it to the Owner or upon granting it new facilities.

6. **Consent**

The Primary Lender and Scottish Ministers consent to the grant by the Owner of the Securities and each acknowledge the right of the other to production and delivery of copies of the Securities.

7. **Variation**

The Primary Lender Fixed Security and the Postponed Fixed Security are varied to the extent specified in this Agreement and this Agreement shall be construed and receive effect as a variation within the meaning of Section 16 of the Conveyancing and Feudal Reform (Scotland) Act 1970.

8. **Transfers**

The Primary Lender shall not assign or transfer the benefit of the Primary Lender Fixed Security and Scottish Ministers shall not assign or transfer the benefit of any of the Postponed Fixed Security unless the assignee or transferee first undertakes in writing to the Primary Lender and/ or Scottish Ministers, as the case may be, to be bound by the provisions of this Agreement as if such transferee were a party to this Agreement.

9. **Miscellaneous**

Unless and until the Primary Lender Fixed Security is discharged, Scottish Ministers agree that any obligation under the Postponed Fixed Security to deposit deeds and documents of title, and all policies of insurance with Scottish Ministers shall be deemed satisfied and complied with if those are deposited with the Primary Lender.

10. **Notices**

10.1 All notices or other communications to be made or given under this Agreement shall be in writing and shall be by first-class pre-paid post or by fax.

10.2 Receipt shall be deemed to have occurred forty-eight hours after posting (unless hand-delivered and then at the time of delivery) and if by fax when sent provided a transmission report is received.

10.3 Any notice to the Primary Lender shall be addressed to:
[TO BE INSERTED BY PURCHASER'S SOLICITOR]

10.4 Any notice to Scottish Ministers shall be addressed to:

The Scottish Ministers c/o *[insert details of Administering Agent or subsidiary including contact person]* or to the Scottish Ministers at such other address as Scottish Ministers may notify to the Owner in accordance with this Agreement.

10.5 Any notice to the Owner shall be addressed to the Owner at the Property.

11. Definitions

In the interpretation of this Agreement:

11.1 'Primary Lender Debt' means all or any monies and liabilities which shall from time to time (and whether on or at any time after demand) be due, owing or incurred in whatsoever manner to the Primary Lender by the Owner, whether actually or contingently, solely or jointly and whether as principal or surety and whether or not the Primary Lender shall have been an original party to the relevant transaction, and including interest, discount, commission and other lawful charges or expenses which the Primary Lender may in the course of its business charge or incur in respect of any of those matters or for keeping the Owner's account, and so that interest shall be computed and compounded according to the usual Primary Lender rates and practice as well after as before any demand made or decree obtained;

11.2 'Primary Lender Fixed Security' means the standard security over the Property granted by the Owner in favour of the Primary Lender dated on or about the date hereof and about to be registered in the Land Register under Title Number [TO BE INSERTED BY PURCHASER'S SOLICITOR] in security for the Primary Lender Debt;

11.3 'Primary Lender Priority Debt' means the Primary Lender's Debt not exceeding £[] Sterling (or such greater amount, if any, as shall be agreed in writing between the Primary Lender and Scottish Ministers) together with (a) outstanding interest on that amount and (b) all outstanding commission, charges, fees, costs and expenses arising or incurred in connection with it;

- 11.4 'Postponed Debt' means all sums due and to become due to Scottish Ministers by the Owner whether as principal debtor, co-obligant, guarantor, surety or otherwise (including all present, future or contingent obligations owed to Scottish Ministers, whether such obligations exist now or arise in the future) together with interest and charges, interest on them and all commission, charges, fees, costs and expenses arising or incurred in connection with those sums;
- 11.5 'Postponed Fixed Security' means the standard security over the Property granted by the Owner in favour of Scottish Ministers dated on or around the date hereof and about to be registered in the Land Register under Title Number **TO BE INSERTED BY PURCHASER'S SOLICITOR** in security for the Postponed Debt;
- 11.6 'Property' means ALL and WHOLE the subjects known as and forming **TO BE INSERTED BY PURCHASER'S SOLICITOR**, being the whole subjects registered in the Land Register of Scotland under Title Number **TO BE INSERTED BY PURCHASER'S SOLICITOR** ;
- 11.7 'Securities' means the Primary Lender Fixed Security and the Postponed Fixed Security;
- 11.8 'enforce' (and all derivations from it) means the taking of any of the following actions:
- (1) the exercising a power of sale or otherwise utilising the rights given to a creditor under any of the Securities;
 - (2) the suing for payment of any the Primary Lender Debt or the Postponed Debt;
 - (3) the petitioning for a sequestration order;

- (4) the granting of a voluntary Trust Deed or the making of a composition contract or arrangement with creditors; or
- (5) the exercising of any rights of set-off, retention combination of accounts or similar right in respect of the Primary Lender Debt or the Postponed Debt;

11.9 Derivative expressions of any defined term shall be construed accordingly;

11.10 References to:

- 11.10.1 statutes, statutory provisions and other legislation shall include all amendments, substitutions, modifications and re-enactments for the time being in force;
- 11.10.2 'including' shall not be construed as limiting the generality of the words preceding it;
- 11.10.3 words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders;
- 11.10.4 this Agreement and to any provisions of it or to any other document referred to in this Agreement shall be construed as references to it in force for the time being as amended, varied, supplemented, restated, substituted or novated from time to time;
- 11.10.5 any person are to be construed to include references to a corporation, firm, owner, partnership, joint venture, unincorporated body of persons, individual or any state or agency of a state, whether or not a separate legal entity;

11.10.6 any person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect; and

11.10.7 clause headings are for ease of reference only and are not to affect the interpretation of this Agreement; and

11.11 For the avoidance of doubt, this Agreement supersedes any previous agreement, whether written or oral, express or implied, between the parties to it (or any of them) in relation to the subject matter of this Agreement.

12. **Other Security**

The Primary Lender shall be entitled at any time at its discretion and without consulting the Owner or Scottish Ministers to transact and deal with any other securities or guarantees of any kind that may be held by it in respect of the Owner's obligations to it and may sell, dispose of or realise such other securities in any order which it may determine and this Agreement shall remain in full force and effect notwithstanding such transactions or dealings.

13. **Separate Provisions**

If any provision of this Agreement is or becomes invalid, illegal or unenforceable that shall not affect the validity, legality or enforceability of any other provision.

14. **Governing Law**

This Agreement shall be governed by and construed according to Scots law and each of the parties submits to the exclusive jurisdiction of the Scottish courts.

15. **Consent to Registration**

The parties to this Agreement consent to its registration for preservation.

IN WITNESS WHEREOF this Agreement consisting of this and the # preceding pages is executed as follows:

<p>SUBSCRIBED for and on behalf of the Primary Lender by its duly authorised signatory at</p> <p>on the day of (Year-figure)</p> <p>in the presence of:</p> <p>..... Witness (Signature)</p> <p>..... Full Name</p> <p>..... Address</p> <p>.....</p>	<p>..... (Signature)</p> <p>..... (Full Name)</p>
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<p>SUBSCRIBED by the Owner at</p> <p>on the day of (Year-figure)</p> <p>in the presence of:</p> <p>..... Witness (Signature)</p> <p>..... Full Name</p> <p>..... Address</p> <p>.....</p> <p>..... Occupation</p>	<p>..... (Signature)</p> <p>..... (Signature)</p>
<p>SUBSCRIBED for and on behalf of the Scottish Ministers by</p> <p>on the day of (Year-figure)</p> <p>in the presence of:</p> <p>..... Witness (Signature)</p> <p>..... Full Name</p> <p>..... Address</p> <p>.....</p> <p>..... Occupation</p>	<p>..... (Signature)</p> <p>..... (Full Name)</p>