

Notice: These Heads of Terms and the details of the Get Britain Building facilities set out herein are indicative and may change. Any application made by a Developer for a Get Britain Building facility under these draft terms may be approved by the Homes and Communities Agency assuming that the Developer has agreed to any final amended terms and conditions contained in the final version of the Heads of Terms.

dated 2012

Homes and Communities Agency

and

[Developer]

Heads of Terms

for the Get Britain Building facilities

Version 2

12 July 2012

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	<p><u>then</u></p> <p>2 Development Facility; <u>then</u></p> <p>3 Equity A Facility: distribution in proportions equal to equity stake proportions</p>
Development Costs	All costs and expenses properly and reasonably incurred by the Developer in carrying out the Project as set out in the Project Budget, including, but not limited to, land acquisition costs, infrastructure costs, construction costs, professional fees, section 106 costs, sales and marketing costs, legal costs, any non-recoverable VAT and interest and expenses incurred.
Project Value	At any time, the aggregate of all Receipts (as defined below) and the open market value of the remainder of the interest of the Developer in the Project on the assumption that the Project has been practically completed in accordance with the Due Diligence Package and Project Budget and that all security (including the security held by the Senior Lender and the Agency) has been released.
Capital Receipts	All sums derived by the Developer from the disposal of any properties in the Project including but not limited to the proceeds of sale of each dwelling received by the Developer, the proceeds of disposals of freehold reversionary interests and rental income in respect of any dwelling let to a third party under a tenancy agreement, licence or lease.
Interest Periods	Interest to be calculated every 3 months from the date of the first drawdown and added to the Development Facility.
Development Facility Interest Rate	Interest shall be calculated by reference to the aggregate of the EC Reference Rate plus a margin of []%.
Agency Equity Contribution	£[] []% (Not to be more than the Developer Equity Contribution)
Developer Equity Contribution	£[] []%
Purpose	Payment of not more than 50% of the Development Costs.
Availability	The period beginning [DATE] and ending on [DATE], subject to the conditions precedent. Any amounts not drawn by the end of this availability period will be cancelled.
Final Repayment Date	31 March 2018
Voluntary Prepayment	Prepayment permitted with 15 business days' notice without premium or penalty in or multiples of £500,000 and may not be redrawn.

Security	<ul style="list-style-type: none"> (a) Security in the form of a legal mortgage over all property on which units for sale are to be constructed and rights involved in or necessary for the completion of those units for sale as disclosed by the Certificate of Title as security for all monies due from the Developer to the Agency (the Legal Mortgage); and/or (b) All monies guarantee by the Guarantor (the Guarantee); and/or (c) Performance bond satisfactory to the Agency; and/or (d) Charge over project bank account; and/or (e) [Other] in a form acceptable to the Agency.
Intercreditor Deed	<p>An intercreditor deed between the Agency, the Senior Lender and the Developer may be required which will include both Agency and Senior Lender standstill provisions.</p>
Conditions precedent	<ul style="list-style-type: none"> (a) The following conditions are indicative and not limited to those which need to be met (in form and substance satisfactory to the Agency) prior to drawdown under any Facility: (b) if applicable evidence of availability of Senior Lender debt funding, including confirmation that all conditions precedent thereto have been met by the Developer; (c) evidence that the Developer has contributed the Developer Equity Contribution if applicable; (d) a copy of the Due Diligence Package; (e) evidence that all other amounts specified in the Project Budget to be provided prior to drawdown have been received in full by the Developer; (f) execution of the Development Facility / Equity Facility agreement, Legal Mortgage, Guarantee (if any) and Intercreditor Deed if required and any other documentation required by the Agency; (g) certified copies of certificates of incorporation, memorandum and articles of association of the Developer and any Guarantor; (h) certified copies of board resolutions of the Developer and any Guarantor approving the financing and related transactions and approving entry into all required documents; (i) a Certificate of Title in a form acceptable to the Agency,

	<p>prepared by solicitors acceptable to the Agency;</p> <p>(j) undertakings from the Developer's solicitor in connection with the real property the subject of the Legal Mortgage and registration of the Legal Mortgage;</p> <p>(k) evidence that the necessary detailed planning consent including for the avoidance of doubt all necessary section 106 agreement has been obtained by 31 January 2013;</p> <p>(l) evidence that all necessary consents have been obtained and all other matters are in place to enable house-building work in respect of the Project to be commenced by 31 March 2013;</p> <p>(m) evidence that the works comprising the certified build programme in respect of the Project will be completed by 31 March 2015;</p> <p>(n) evidence that the interest of the Developer in the property the subject of the Certificate of Title is sufficient to allow the Project to be completed without the need to obtain any further property or rights and that it is free from any conditions, restrictions or covenants which adversely affect the completion of the Project;</p> <p>(o) evidence that the Developer will have sufficient funding (when added to the funding to be provided by the Agency under the Development Facility or Equity Facility (as relevant)) to commence and complete the Project in accordance with paragraphs (j) and (k) above and in accordance with the Project Budget;</p> <p>(p) certified copies of deeds of release relating to all outstanding security interests granted by the Developer over the property comprising the Project (other than as permitted or contemplated by the Intercreditor Deed if any);</p> <p>(q) satisfactory completion of due diligence in relation to matters not limited to health and safety, environmental protection, procurement, data protection, equality and diversity, project deliverability, design quality and financial and legal issues;</p> <p>(r) professional valuations and surveys;</p> <p>(s) the latest available audited financial statements of the Developer and any Guarantor including certified copies of the accountants' reports;</p> <p>(t) confirmation of the roles of Developer and other partners in delivering the scheme, for example, registered provider, senior lender and contractor.</p>
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<p>Representations and warranties</p>	<p>Representations and warranties by the Developer and Guarantor (if any and to the extent relevant) that are usually included in loan documentation of this kind including but not limited to:</p> <ul style="list-style-type: none"> (a) performance of obligations under the project documents and finance documents will not breach or conflict with any law, regulation or other agreement; (b) vires; (c) enforcement and validity of obligations; (d) no prohibited acts; (e) compliance with all finance and project documents; (f) undertaking the Project and all marketing activity in accordance with the Due Diligence Package and the Project Budget; (g) no default under any law or other agreement which may affect the Developer's ability to perform its obligations under the project documents or finance documents; (h) maintenance and provision of financial statements; (i) no withholding tax on any payments to be made to the Agency; (j) no litigation, arbitration or administrative proceedings taking place, pending or, to the Developer's knowledge, threatened against the Developer or Guarantor or their assets which may have a material adverse effect; (k) full disclosure and accuracy of all information that might influence the Agency's decision to provide funding to the Developer; (l) solvency of the Developer and any Guarantor; (m) no material adverse change or event of default; and (n) all required authorisations have been and are being complied with and remain current.
<p>Undertakings</p>	<p>Undertakings from the Developer and Guarantor (if any and to the extent relevant) that are usually include in loan documentation of this kind, including but not limited to:</p> <ul style="list-style-type: none"> (a) negative pledge (except as permitted by any Intercreditor Deed); (b) no borrowings (except as contemplated by the Project

	<p>Budget);</p> <ul style="list-style-type: none"> (c) maintenance of full and accurate accounts and records (including receipts and expenditure) in relation to the Project and permitting inspection by the Agency and/or its advisors or any project monitor appointed by the Agency; (d) promptly to provide the Agency or its project monitor with all requested information and documentation in relation to the Project and the Developer's business; (e) promptly to provide the Agency or its project monitor (or its nominee) access to the Project site upon request; (f) no material alteration (including any alteration which may have an effect on the Development Costs, the value of the Project, or the type or area of accommodation to be provided) to the Project, Project Budget or Due Diligence Package, without the prior written consent of the Agency; (g) compliance with terms of all consents required for the Project; (h) compliance with the law and all relevant legislation, including EU procurement legislation and other procurement legislation and the provision of evidence of such compliance on request; (i) maintenance of full and proper insurance; (j) to act at all times with the utmost good faith; (k) to ensure that all contracts entered into in connection with the Project are competitively procured (utilising a documented decision making process, taking into account public sector accountability and probity) and/or to provide evidence satisfactory to the Agency of the procurement process and that the costs of the works to be undertaken under such contract represent fair market cost; (l) to dispose of any home constructed under the Project: <ul style="list-style-type: none"> i only at arm's length fair market value and terms (which may include a disposal to a registered provider in accordance with the marketing strategy); ii pursuant to freehold or long leasehold or pursuant to tenancy agreements or lease approved by the Agency; iii in accordance with a marketing strategy and timetable, and provide the Developer with monthly marketing reports setting out the details of and progress of sales as against the marketing strategy and timetable, with full disclosure in connection with
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	<p>any variance;</p> <p>(m) the provision of the following information in writing:</p> <ul style="list-style-type: none"> i annual and quarterly financial statements ii quarterly cashflow; iii notification of any matter which could result in material change to the Project Budget (whether actual or estimated) or the Due Diligence Package; iv the receipt of (or an offer of) public financial assistance or guarantees in relation to the Project; v the commencement date, milestone dates and scheduled completion date for the Project; vi notification of any event which might adversely affect timely delivery and completion of any part of the Project; vii notification of any change in control of the Developer; viii the occurrence of any event of default; and ix any information the Agency requires in relation to the Project; <p>(n) to ensure that the Project is completed in accordance with the Project Budget, the Due Diligence Package, any necessary consents and any project specifications and that all work is carried out in a good and workmanlike manner;</p> <p>(o) provision of a report every 30 days setting out the progress of the Project against the Project Budget and the Due Diligence Package, and confirming compliance with the facility agreement, signed by a senior representative of the Developer;</p> <p>(p) to ensure that all marketing materials in connection with the Project acknowledge that the Agency and the Communities and Local Government department are providing financial assistance; and</p> <p>(q) to ensure that a representative of the Agency has the right to be represented at project meetings and that such representative is provided with all relevant meeting materials and reasonable notice of all such meetings.</p>
<p>Events of default</p>	<p>These include without limitation:</p> <ul style="list-style-type: none"> (a) failure to commence works for the Project by 31 March 2013

	<p>and failure to complete the Project by 31 March 2015;</p> <p>(b) the Agency determines that proper progress is not being made in relation to completion of the Project in accordance with the agreed milestone dates, the Project Budget and the Due Diligence Package;</p> <p>(c) the Project is not carried out in a good and workmanlike manner, or in accordance with the necessary consents, project specifications or the Due Diligence Package;</p> <p>(d) any consent required under the Project is withdrawn or revoked and is likely to have a material adverse effect on the ability of the Developer to meet its obligations under the facility agreement;</p> <p>(e) breach of any representation, warranty or undertaking by the Developer or the Guarantor;</p> <p>(f) fraud by the Developer or the Guarantor;</p> <p>(g) cross-default including but not limited to default under any other agreement between the Agency and the Developer or the Guarantor;</p> <p>(h) default in payment or other obligations (subject to certain materiality thresholds);</p> <p>(i) insolvency or potential insolvency events in relation to the Developer or the Guarantor;</p> <p>(j) change of status of the Developer or the Guarantor (control or financial) which is likely to have a material adverse effect;</p> <p>(k) the Developer or the Guarantor ceases trading;</p> <p>(l) the Developer has insufficient funds and resources to complete the Project in accordance with the Project Budget or the Due Diligence Package; or</p> <p>(m) any material adverse change.</p>
<p>Consequences of Event of Default</p>	<p>Upon the occurrence of an Event of Default, the Agency may (subject to the terms of any Intercreditor Deed):</p> <p>(a) cancel, suspend or vary the terms of the Facility; and/or</p> <p>(b) call for immediate repayment or whole or part of the Facility; and/or</p> <p>(c) enforce the Legal Mortgage and/or Guarantee or other security.</p>

Agency Liability	The Agency's liability to the Developer or any other third party in respect of the Development Facility, Equity Facility or Equity B Facility shall not be more than the principal investment by the Agency under the development facility or the Equity Facility or the Equity B Facility, as appropriate.
Costs	All of the Developer's legal and other fees and expenses (including third party fees and expenses) in connection with the Project including fees and expenses incurred in connection with the preparation, execution and delivery of the facility and all other project documents (including VAT thereon), whether or not the documents are signed by all parties to them or any amount is drawn down under the Development Facility or Equity Facility (as relevant) to be paid by the Developer.
Taxes	All payments are to be free of withholding and any other taxes.
Assignment	The Agency may transfer or assign all or part of the Facility at any time. The Developer may not transfer or assign all or any part of the Facility at any time without the prior written consent of the Agency.
Boilerplate	The facility agreement will include standard boilerplate provisions, including but not limited to procurement, confidentiality, waiver, notices, amendments, set off and severability.
Governing law	Laws of England and Wales.
Other	All other terms and conditions standard for a Facility of this type shall be included.
Validity	Until [] 2012 (subject to note below).

THE ABOVE TERMS, INCLUDING PRICING LEVELS, DO NOT CONSTITUTE OR IMPLY A COMMITMENT TO PROVIDE FUNDING BY THE LENDER, NOR A REPRESENTATION THAT SUCH FUNDING WILL BE MADE AVAILABLE. ANY SUCH COMMITMENT WILL BE SUBJECT TO CONTRACT AND SATISFACTORY DUE DILIGENCE AND DOCUMENTATION.