

08/19025

Books of Council and Session

Extract Registered 2 May 2008

DECLARATION

MORAY FACULTY OF SOLICITORS

**REGISTERS OF SCOTLAND**  
*Executive Agency*



*Information about Scotland's land & property*

[Deed Extract]

# Registers of Scotland

08/19025

AT EDINBURGH the Second day of May Two thousand and eight the Deed hereinafter reproduced was presented for registration in the Books of the Lords of Council and Session for preservation and is registered in the said Books as follows:-

WE, GORDON MACKENZIE WEBSTER, Solicitor, One hundred and forty-one High Street, Elgin, Moray, ANN CRUICKSHANK, Solicitor, One hundred High Street, Forres, Moray and DAMIAN SALERA MARINELLO, Solicitor, The Old Station, Maisondieu Road, Elgin, Moray, Dean, Vice-Dean and Secretary and Treasurer respectively of MORAY FACULTY OF SOLICITORS CONSIDERING that the said Faculty has agreed to produce standard clauses which are intended to be incorporated in contracts for the purchase and sale of dwellinghouses (which clauses are to be known as "Moray Faculty Standard Clauses (2008 Edition)") HEREBY DECLARE that the clauses detailed in the Schedule annexed and signed as relative hereto are the Moray Faculty Standard Clauses (2008 Edition); And we FURTHER DECLARE that any party desiring to use the Moray Faculty Standard Clauses (2008 Edition) shall be at liberty to do so and to add to and alter and vary the same in any contract as they may wish: IN WITNESS WHEREOF these presents, together with the Schedule annexed, are signed as follows:- by me the said Damian Salera Marinello, as Secretary and Treasurer foresaid, at Elgin on Eleventh April Two thousand and Eight before this witness Amanda Jane Young (signing "A. Young"), The Old Station, Maisondieu Road, Elgin, by me the said Ann Cruickshank, as Vice Dean foresaid, at Forres on the Fourteenth day of the last mentioned month and year before this witness Erica Jane Ferguson, One hundred High Street, Forres and by me the said Gordon Mackenzie Webster, as Dean foresaid, at Elgin on the Twenty-second day of the last mentioned month and year before this witness, Wendy Thomasina Ann Marschler (signing "W. Marschler"), One hundred and Forty one High Street, Elgin.

W Marschler

Gordon Mackenzie Webster

Erica J. Ferguson, witness

Ann Cruickshank

Amanda Jane Young

D. S. Marinello

a/

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This is the Schedule referred to in the foregoing Declaration by Gordon Mackenzie Webster, Ann Cruickshank and Damian Salera Marinello dated Eleventh, Fourteenth and Twenty second April, Two thousand and Eight.

## 1. THE PROPERTY AND ITS FIXTURES, FITTINGS AND CONTENTS

The Property shall be all as advertised by the Seller, described in the sales particulars and as inspected by the Purchaser, including the *solum* thereof (or where the Property is part of larger subjects, a right in common to the *solum* and any common parts of the said larger subjects) and ground attached (if any), the garage (if any), and the whole other buildings and erections thereon whether temporary, permanent or moveable and the whole pertinents, rights and others pertaining thereto.

The Property is sold including:-

- (a) all fittings and fixtures;
- (b) all items of whatever nature fixed or fitted to the Property the removal of which would damage the fabric or decoration of the Property;
- (c) all items specified as included in the sales particulars made available to the Purchaser and
- (d) the following insofar as any were in the Property when viewed by the Purchaser (and were fitted or fixed to the Property):- garden shed or hut, greenhouse, summerhouse, all types of blinds, pelmets, curtain rails and runners, curtain poles and rings thereon, all carpets and floorcoverings (but excluding loose rugs), stair carpet fixings, fitted bedroom furniture, all fitted mirrors, bathroom and toilet fittings and accessories, kitchen units, all cookers, hobs, ovens, washing machines, dishwashers, fridges and freezers (if any are integral to or encased within matching units), extractor hoods, extractor fans, electric storage heaters, fitted gas or electric fires, electric light fittings (including all fluorescent lighting, wall lights, dimmer switches and bulbs and bulb holders, but not shades), television aerials and associated cables and sockets, satellite dishes, loft ladders, clothes poles and rotary clothes driers, smoke and burglar alarms, other security systems and associated equipment, secondary glazing, shelving and fireplace surround units, and all plants, shrubs and trees in the garden with the exception of those in potted containers and oil in any storage tank and gas in any gas cylinders or tank remaining at settlement. Where a wheeled bin or other receptacle for the collection of refuse is provided for the Property by the Local Authority or other body responsible therefor, the Seller shall deliver the same to the Purchaser, failing which the Seller shall meet the cost of replacement thereof. For the avoidance of doubt, the telephone instruments are excluded from the sale.

The Seller warrants that at the Date of Entry all items included in the Price are owned by the Seller, are free of all debt, and are not the subject of any litigation.

## 2. AWARENESS OF CIRCUMSTANCES AFFECTING THE PROPERTY

- (i) So far as the Seller is aware the Property (including the larger building or tenement of which the Property forms part, if appropriate) is not and has not been affected by:-
  - (a) any Notice of Potential Liability for Costs registered in terms of the Tenements (Scotland) Act 2004;
  - (b) any proposed scheme of common repairs which has not yet been ordered or instructed;
  - (c) registration of rent in terms of the Rent (Scotland) Acts or Housing (Scotland) Acts;
  - (d) any Improvement or Repairs Grant;
  - (e) any contamination from a present or previous use as defined in terms of the Environmental Protection Act 1990 or any amending legislation or any landfill site or contaminated land (or toxic substances used in the Property or in any subsequent works upon the Property);

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(f) flooding which has taken place within the last five years (nor is it subject to special insurance terms due to flooding or the threat of flooding);

(g) any proposals, applications or re-development plans affecting the Property or any adjacent or neighbouring property and

(h) any wet rot, dry rot, rising damp, woodworm or other infestation.

(ii) Without prejudice to the foregoing, the Seller warrants that he has not been served with, nor received any neighbour notification notice issued in terms of planning legislation by any third party. If such notice is served on or received by the Seller prior to the date of settlement, the Seller will immediately forward the notice to the Purchaser's Agent. If the proposals contained in the notice would have a materially detrimental effect on the Property the Purchaser will be entitled to resile from the Missives without penalty due to or by either party.

(iii) If the Property is of timber framed construction, so far as the Seller is aware, no cavity wall foam or other cavity wall insulation has at any time been introduced into the wall cavities.

### 3. GUARANTEES AND REPORTS

Any guarantees in force at the Date of Settlement in respect of (i) treatments which have been carried out for the eradication of timber infestation, dry rot, wet rot, rising damp or such other defects and/or insulation and double glazing, together with all supporting estimates, survey reports and other papers relating thereto ("the Guarantees") will be exhibited with the acceptance hereof and delivered at settlement. If the Guarantees are not to the Purchaser's reasonable satisfaction he shall be entitled to rescind the missives without penalty to or by either party, by giving notice thereof to the Seller prior to settlement or within seven days of the receipt of the Guarantees whichever is the earlier.

### 4. CENTRAL HEATING

Any central heating system night storage heaters, and gas fires (whether integral to the central heating system or not) or other mechanical system or item ("the Central Heating System") shall be complete and in good and safe working order at the date of settlement having regard to the age, specification and type of the system and, so far as the Seller is aware, has been installed in accordance with all relevant regulations applicable at the time of installation. In order to enable the Purchaser to comply with this clause the Seller must allow the Purchaser (or any person appointed by the Purchaser) access, upon reasonable notice being given, to inspect the said Central Heating System. Any relevant defects in the Central Heating System will require to be intimated to the Seller's agents in writing five working days prior to the date of settlement and the Seller will have the opportunity to carry out any necessary remedial works or alternatively permit the Purchaser to instruct the necessary remedial works, the cost of which works shall be borne entirely by the Seller. For the avoidance of doubt the Seller shall not be liable for any defect notified to the Seller's Agent less than five working days before settlement or any element of betterment or any upgrading of the Central Heating System required to comply with the current installation regulations of British Gas or any other competent authority and the Purchaser accepts that the lack of servicing does not constitute a defect in the Central Heating System.

### 5. STATUTORY NOTICES and COMMON REPAIRS

(a) The Seller warrants that he has not received any Notices or Orders issued by the Local Authority or other public body calling for repairs or other works to the Property.

(b) The Seller warrants that no scheme of common repairs or improvement affecting any larger building of which the Property forms part has been approved, entered into or authorised. Where such a scheme has been approved, entered into or authorised, the Seller shall remain liable for the share of the cost of such works applicable to the Property. Details of any such scheme or any proposal will be disclosed to the Purchaser prior to settlement.

(c) Clause 5 (b) shall remain in full force and effect without limit of time notwithstanding any provision to the contrary in the Missives.

(d) If any Notices or Orders, are issued by the Local Authority or other public body after the date of this offer, but prior to the Date of Entry, the Seller shall be obliged immediately to intimate same to the Purchaser's Agent. If the Seller is

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unable or unwilling to implement said Notice or Order prior to the Date of Entry, the Purchaser shall have the option of accepting the terms thereof, failing which his sole remedy will be to resile from the Missives without penalty due to or by either party.

## **6. FACTORING**

The Seller will be obliged to intimate the change of ownership to the Factors (if any) and the Factoring Charges will be apportioned at the Date of Entry. The Seller will disclose details of any current factoring charges and any common buildings insurance policy.

## **7. CONSTRUCTION AND ALTERATIONS**

(a) If there has been any development on the Property in terms of the Town and Country Planning Acts within 5 years of the date of entry, all appropriate Planning Permissions and relevant approved plans (or copies thereof) will be exhibited prior to and delivered at settlement.

(b) If any works have been carried out to the Property requiring a Building Warrant, Completion Certificate, or Listed Building Consent within 10 years of the date of entry, these and the relevant approved plans (or copies thereof) will be exhibited prior to and delivered at settlement. Any work carried out to the Property after 1st May 2005 (other than work carried out in terms of a Building Warrant granted prior to 1st May 2005) will comply with the terms of the Building (Scotland) Regulations 2004 and any amendment thereof.

(c) The Seller warrants (i) that any building work carried out to the Property has been in a state of substantial completion for a period of not less than 12 weeks prior to the date of conclusion of missives and (ii) that no valid objection to the work was made at any time by any person with title and interest to do so under a real burden.

(d) There are no planning conditions of a continuing nature which restrict the use of or adversely affect the Property.

## **8. ACCESS**

The Seller shall, after conclusion of the Missives, give access to the Purchaser or his agents at agreed times and upon reasonable notice for the purposes of inspection, measurement or the provision of quotations. This right of access shall not be exercised on more than two occasions without the consent of the Seller.

## **9. UTILITIES**

The Property is directly connected to the mains electricity supply and if the Property has a gas supply, that supply is a mains gas supply. There are no outstanding charges or liabilities relating to the connection of the supply and any gas supply. There is no supply agreement in force affecting the Property and requiring a minimum revenue to be paid to the appropriate electricity or gas supplier. Prior to settlement, the Seller shall confirm the present suppliers of utility services (gas, electricity and telephone as applicable) to the Property. The Seller shall act reasonably in ensuring that such services are not terminated prior to the date of settlement and shall co-operate reasonably with the Purchaser in ensuring transfer of such services to the Purchaser.

## **10. BREACH OF CONTRACT BY SELLER**

(a) It is an essential condition of the Missives that vacant possession is given in exchange for payment of the Price in full by 3.00pm on the Date of Entry.

(b) If, as a result of the failure of the Seller to implement the Seller's whole obligations in terms of the Missives timeously, settlement does not take place timeously, the Seller shall pay to the Purchaser an amount equal to the total of all losses, costs and damages which the Purchaser acting reasonably has incurred or may incur as a result thereof.

(c) If the Seller is not, within 14 days of the Date of Entry, in a position to implement the Seller's whole material obligations in terms of the Missives, the Purchaser shall be entitled at any time thereafter to rescind the Missives by giving notice in writing to the Seller, without prejudice to any right or claim competent to the Purchaser arising from the breach of contract by the Seller.

This clause shall be suspended during any delay in settlement attributable to the Purchaser or his Agent and shall continue to be enforceable notwithstanding rescission.

## **11. BREACH OF CONTRACT BY THE PURCHASER**

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(a) It is an essential condition of the Missives that the Price is paid in full by 3.00pm on the Date of Entry. The Seller shall not be obliged to offer vacant possession except as against payment of the Price and any interest or damages due as aftermentioned.

(b) If the Price or any part thereof is not paid timeously then notwithstanding consignment or the fact that entry has not been taken by the Purchaser, the Purchaser shall pay to the Seller whichever is the greater amount of the following:-

Either:-

Interest on the amount outstanding at the rate of 4% *per annum* above The Royal Bank of Scotland plc base rate from time to time until the earliest of (i) the date when full payment of the price is made by the Purchaser or (ii) the date twelve months after the Date of Entry or (iii) the date of entry in terms of the resale missives (under declaration that in the event of any shortfall between the Price and the resale price, interest as aforesaid shall continue to apply on such shortfall until such time as the shortfall shall have been paid to the Seller).

Or:-

An amount equal to the total of all losses, costs and damages which the Seller acting reasonably has incurred or may incur arising from such breach of contract by the Purchaser including, without prejudice to the generality, any costs relating to any loan effected to enable the Seller to complete the purchase of another property.

(c) If the price is not paid in full within 14 days of the Date of Entry the Seller shall be entitled at any time thereafter to rescind the Missives by giving notice in writing to the Purchaser without prejudice to any right or any claim competent to the Seller arising from the breach of contract by the Purchaser.

This clause shall be suspended during any delay in settlement attributable to the Seller or his Agent and shall continue to be enforceable notwithstanding rescission.

## 12. N.H.B.C./ BUILDERS WARRANTY

(a) If the Property was constructed within ten years prior to the Date of Entry, there shall be delivered at settlement appropriate NHBC documentation (Buildmark 10 Year Notice, Insurance Certificate, or otherwise) or such equivalent new home warranty documentation as required by and acceptable to the Council of Mortgage Lenders (Scotland). The Seller is not aware of any current or pending claim under the NHBC Scheme or such equivalent new home warranty scheme

or

(b) There will be exhibited with the acceptance hereof and delivered at settlement, a Certificate issued by a qualified and indemnified professional consultant with adequate professional indemnity insurance cover which is acceptable to the Purchaser and the Purchaser's lender if appropriate. The Purchaser shall be deemed to have accepted such Certificate unless he gives notice to the contrary within 21 days of receipt thereof.

## 13. TITLE CONDITIONS

13.1 Where the Property does not have direct access to a roadway maintained by the local authority, a servitude right of way for vehicles and pedestrians shall be granted to the Purchaser by the access route at present used from such roadway to the Property. Liability for the maintenance, repair and renewal of the access route is or shall be the responsibility of the proprietors having right to use the said access route, the liability being shared on an equitable basis;

13.2.1 If the connection to the mains water supply lies outwith the Property any necessary servitudes permitting the use of the water supply system as at present existing will be granted in favour of the Purchaser and

13.2.2 If any part of such water supply system is not part of the public mains water supply system but is common to the Property and other subjects, the title deeds contain provisions for the maintenance, repair and where necessary renewal of such part by the parties served by the same according to user or on some other equitable basis.

13.3 If the Property is connected to a private water supply system:-

13.3.1 All necessary servitude rights for the use, maintenance, repair and renewal of the said system shall be granted to the Purchaser;

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13.3.2 The Seller warrants that throughout his ownership the quantity of the supply has been sufficient to meet normal domestic requirements and (2) will exhibit prior to settlement an up to date report from the Local Authority and, where applicable, from the Public Analyst evidencing that the supply meets the current minimum statutory requirements and

13.3.3 If any part of the said-system is common to the Property and other subjects liability for the maintenance, repair and when necessary renewal of the said system shall be the responsibility of the parties having right to use the same, the liability being shared on an equitable basis.

13.4 If the Property is connected to a public sewer and drainage system:-

13.4.1 If the connection to the public sewer lies outwith the Property, any necessary servitudes for the existing pipes and drains between the Property and the public sewer will be granted in favour of the Purchaser;

13.4.2 If any part of the drainage system for the Property is not part of the public sewer but is common to the Property and other subjects, the title deeds contain provisions for the maintenance, repair and where necessary renewal of such parts by the parties served by the same according to user or on some other equitable basis and

13.4.3 If the Property is served by a septic tank, outfall pipe(s) and/or soakaway, all necessary Local Authority consents and SEPA licence issued in terms of the Control of Pollution Act 1974 as amended or evidence of registration or licence issued in terms of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 as amended will be exhibited prior to and delivered at settlement.

13.5 If the Property is connected to a private drainage system comprising a septic tank with relative outfall or soakaway and all relative pipes, drains and connections (the drainage system) :-

13.5.1 The drainage system for the Property lies entirely within the Property or all necessary servitude rights permitting the same to be used as at present used by the Seller and for the maintenance, repair and renewal of thereof will be granted to the Purchaser and

13.5.2 If any part of the drainage system is common to the Property and any other subjects, all necessary rights in common will be granted to the Purchaser and the title deeds contain provisions for the maintenance, repair and renewal of the drainage system by the parties having right to use the same on an equitable basis.

13.6 All necessary servitude rights of access for the inspection, maintenance, repair and renewal of the Property shall be granted to the Purchaser.

13.7 There are no servitudes or other third party rights and no unusual or unduly onerous real conditions which materially and adversely affect the Property.

13.8 There are no repayable grants affecting the Property.

13.9 All obligations affecting the Property have been duly implemented and so far as continuing are being duly complied with.

13.10 There is no outstanding liability for any part of the cost of constructing walls, fences, roadways, footpaths or sewers or other services.

13.11 The Property includes the minerals in so far as the Seller has right thereto. If the minerals have been reserved to any party, such reservation does not include any right to enter upon or work the surface of the Property and is subject to that party making good any surface damage occasioned thereby. So far as the Seller is aware, no mines, metals or minerals have been at any time removed from the Property, there is no intention to work the same and no planning consent has been granted therefor.

If there is any matter which is at variance with the terms of Clause 13 and which materially and/or adversely affects the Property, the Purchaser's only remedy shall be to rescind the missives without penalty to or by either party, by giving notice thereof to the Seller prior to settlement or within 21 days of such matter being disclosed to the Purchaser whichever is the earlier. Failing such notice, the Purchaser shall be deemed to have accepted such matter.

14. SETTLEMENT

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- (a) The Price will be payable on the Date of Entry in exchange for (i) delivery of a duly executed valid Disposition of the Property in favour of the Purchaser or his nominees; (ii) vacant possession of the Property and (iii) all keys held by the Seller and any remote controllers for garage doors or parking barriers.
- (b) In these Clauses the phrase "settlement" or "date of settlement" means the point at which settlement is actually effected whether that is the Date of Entry or not.
- (c) If the Purchaser's Agent forwards a cheque for the price on the basis that it is to be held as undelivered until certain conditions are fulfilled, without prejudice to any other terms in the Missives, the Seller and his Agent will be obliged to adhere to said conditions before cashing the cheque.

## 15. TITLE REQUIREMENTS

- (a) If the provisions of the Land Registration (Scotland) Act 1979 ("the Act") relating to a First Registration under the Act apply, there will be exhibited at least five working days prior to the Date of Entry a valid marketable progress of titles for the prescriptive period and any deeds referred to for burdens together with a Form P16 Report or Property Definition Report from reputable professional searchers confirming that the legal boundaries of the Property coincide with those on the Ordnance Survey Map. If there is a Form P16 Report/PDR discrepancy which is materially prejudicial to the Purchaser's interest in the Property and the Seller fails to remedy same prior to the Date of Entry, the Purchaser's sole remedy shall be to rescind from the Missives without penalty due to or by either party. At settlement, there will be delivered in exchange for the price (i) a Form 10A or Form 11A Report brought down to a date as near as practicable to the Date of Settlement showing no entries adverse to the Seller's interest in the Property (the cost of said Report being the Seller's responsibility), (ii) such documents and evidence including a plan as the Keeper may require, to enable the Keeper to issue a Land Certificate in the name of the Purchaser as the registered proprietor of the Property without exclusion of indemnity in terms of Clause 12 (2) of the Act, (iii) an executed Discharge of any outstanding Standard Security, together with relative Forms 2 and 4 and cheque for registration dues (if appropriate), failing which an undertaking contained in the Letter of Obligation aftermentioned to deliver same within 21 days of the date of settlement, (iv) a Letter of Obligation by the Seller's solicitor in the classic style recommended by the Law Society of Scotland, (v) the Disposition specified in Clause 14 hereof and (vi) where dual registration is applicable the appropriate forms and cheque (if appropriate) for dual registration dues.
- (b) If the title to the Property is already registered in terms of the Act, there will be exhibited at least five working days before the Date of Entry a Land Certificate containing no exclusion of indemnity in terms of Section 12 (2) of the Act with all necessary links in title evidencing the Seller's exclusive ownership of the Property. There will be delivered at settlement in exchange for the price, (i) a Form 12A or Form 13A Report brought down to a date as near as practicable to the date of settlement and showing no entries adverse to the Seller (the cost of the said Report being the Seller's responsibility), (ii) such documents and evidence as the Keeper may require to enable the interest of the Purchaser to be registered in the Land Register as registered proprietor of the Property without exclusion of indemnity under Section 12 (2) of the Act, (iii) an executed Discharge of any outstanding Standard Security, together with relative Forms 2 and 4 and cheque for registration dues (if appropriate), failing which an undertaking contained in the Letter of Obligation aftermentioned to deliver same within 21 days of the Date of Settlement, (iv) a Letter of Obligation by the Seller's solicitor in the Classic style recommended by the Law Society of Scotland; (v) the Disposition specified in Clause 14 hereof and (vi) where dual registration is applicable, the appropriate forms and cheque (if appropriate) for dual registration dues.
- (c) The Land Certificate to be issued to the Purchaser will disclose no entry, deed or diligence prejudicial to the Purchaser's interest other than such as have been created by or against the Purchaser or have been disclosed to or accepted in writing by the Purchaser prior to the date of settlement.
- (d) If the Application for First Registration or Transfer of Part of the title to the Property is still being processed by the Keeper, the Seller warrants that (1) no requisitions have been made by the Keeper but not implemented (2) the



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Keeper has not indicated any concern with the Application such as might result in any restriction of indemnity or refusal to register and (3) any copy documents provided to the Purchaser's Agent are true copies of the originals.

(e) Where the Property is not excluded land under the Community Right to Buy (Definition of Excluded Land) Scotland Order 2004, the Seller warrants that he has not received intimation of an Application for Registration, a Notice prohibiting a transfer, a registered interest and/or an Application for Late Registration and that he has not taken any action with a view to a transfer, all in terms of Part 2 of the Land Reform (Scotland) Act 2003. If so required by the Purchaser, the Seller will exhibit a clear Search in the Register of Community Interests in Land immediately prior to settlement.

(f) Clauses 15 (a), 15 (b), 15 (c) and 15 (d) shall remain in full force and effect without limit of time notwithstanding any provision to the contrary in the Missives.

## 16. INCORPORATED BODIES

The Seller will produce appropriate evidence, if required, to satisfy the Purchaser that there are no entries in any Charges Register or Company Files which adversely affect the title.

If the Seller is a Company or other incorporated body:-

16.1 The Seller will deliver or exhibit within three months after settlement:

16.1.1 A Search or Searches in the Register of Charges disclosing no charges granted by the Seller other than such as may have been disclosed to and accepted by the Purchaser prior to settlement and

16.1.2 A Report on the Companies Office Files of the Seller brought down to disclose no Notices relating to the winding up, liquidation, administration, suspension, receivership or striking off and disclosing its registered office bearers;

16.2 Such Search and Report shall be brought down to 22 days after the date when the Seller ceased to have an interest in the Property or any part thereof

16.3 There shall be exhibited an Interim Report on Search in the Register of Charges and the Report on the Companies Office Files, both dated not more than three days prior to settlement. If such Interim Report shall disclose any Floating Charge which is still in force, there shall be delivered at settlement a Certificate of Non-Crystallisation of such Floating Charge by the security holders in such terms as the Purchaser may reasonably require.

## 17. FAMILY LAW/LITIGATION

The Seller warrants that:

(a) The Property is not affected by any Transfer of Property Order made in terms of the Family Law (Scotland) Act 1985 or any amendment thereto and this will remain the position at settlement;

(b) Neither the Property nor the Seller's title is affected by or under consideration in any court proceedings or other litigation or are the subject of any dispute and

(c) The Seller is not a party to any action in which any such Order is being or has been sought.

## 18. OCCUPANCY RIGHTS

At settlement the Property will not be affected by any occupancy rights as defined in the Matrimonial Homes (Family Protection) (Scotland) Act 1981 as amended and the Civil Partnership Act 2004 and appropriate Declaration/Renunciation/Consent evidence to this effect will be delivered at settlement.

## 19. MAINTENANCE and RISK

(a) The Seller will maintain the Property including any garden ground in its present condition, fair wear and tear excepted, until settlement.

(b) the risk of damage to or destruction of the Property, howsoever caused, will remain with the Seller until settlement

(c) if the Property is destroyed or materially damaged prior to settlement, either the Purchaser or the Seller shall have the right to resale from the Missives without penalty due to or by either party.

## 20. PROPERTY ENQUIRY CERTIFICATE

A Property Enquiry Certificate dated not earlier than three months before the Date of Entry and such other evidence from the appropriate authorities as the Purchaser reasonably requires for compliance with the current edition of the

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CML Lenders' Handbook for Solicitors (Scotland) will be exhibited at least five working days prior to the Date of Entry. If the Certificate discloses any matter which is materially prejudicial to the Purchaser and which the Seller is unable or unwilling to remedy before the Date of Entry, the Purchaser's sole remedy shall be to rescind from the Missives without penalty due to or by either party by giving written notice, prior to settlement and within five working days of receipt of the said Certificate or other evidence, of his intention to do so. For the avoidance of doubt, the Property Enquiry Certificate (a) will not be materially prejudicial if the Property or any part thereof is shown to be subject to an Article 4 Direction, to be situated in a conservation area, to be affected by a Tree Preservation Order or to be listed as a building of architectural or historic interest and (b) will be materially prejudicial if the roadway, footpath and sewer *ex adverso* the Property are not maintained by the local authority or the Property is not served by a public water supply.

## **21. CONTAMINATED LAND**

So far as the Seller is aware there are (a) no entries in the Register maintained under the section 78R(1) of the Environmental Protection Act 1990 affecting the Property, (b) no notices or resolutions to serve notice relating to the Property under section 78R (3) of said Act, (c) no consultations or resolutions to consult with the owners or occupier of the Property under section 78G(3) of said Act in relation to anything to be done on the Property as a result of adjoining or adjacent land being contaminated and (d) no entries in the said Register, or any notice served or resolved to be served, under section 78B(3) in relation to any adjoining or adjacent land which has been identified as contaminated because it is in such a position that harm or pollution of controlled waters might be caused on the Property.

21.1 If the Seller has exhibited a Property Enquiry Certificate from a private searcher in terms of this clause there will in addition be exhibited at the Seller's expense prior to settlement a GroundSure Home Environmental Report from GroundSure Limited or an Envirosearch Residential Report from the Landmark Information Group, or if the Seller produces a Moray Council Property Enquiry Certificate which deals with contaminated land matters and the risk rating is A, B or C then either in addition a Land Use Report from Moray Council or a GroundSure Home Environmental Report or Envirosearch Residential Report will be exhibited prior to and delivered at settlement and

in the event that the Moray Council Land Use Report or the GroundSure Home Environmental Report or Envirosearch Residential Report discloses anything prejudicial to the Purchaser's interest, the Purchaser shall be entitled, but not obliged, to rescind without penalty from the bargain to follow hereon provided always that the Seller has been given a reasonable opportunity to remedy whatever prejudicial matter is disclosed by said Land Use Report or GroundSure Home Environmental Report or Envirosearch Residential Report. In the event that the Land Use Report or GroundSure Home Environmental Report or the Envirosearch Residential Report discloses the Property as having passed, the Purchaser shall be deemed to be satisfied with the terms of the Land Use Report, GroundSure Home Environmental Report or Envirosearch Residential Report, so far as they relate to environmental matters.

## **22. COAL AUTHORITY REPORT**

If the Property is situated in an area listed in the Directory of Places in Part 4 of the Law Society of Scotland Guidance Notes and Directory 2003, a Coal Mining Search will be exhibited prior to settlement. If the Report discloses any matter materially prejudicial to the Property or the Purchaser's proposed use of same, the Purchaser's sole remedy will be to rescind from the Missives and that without penalty due to or by either party by giving written notice of his intention to do so prior to settlement and within five working days of receipt of said Report.

## **23. SUPERSESION OF MISSIVES**

The missives shall cease to be enforceable two years after the date of settlement except in so far as (i) they are founded on in Court proceedings commenced within the said period or (ii) this provision is excluded in terms of any other condition of the Missives.

## **24. PARTIES' ADDRESSES**

All parties irrevocably authorise their agents to release their current addresses on request.

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## 25. LIMITATION OF CLAIMS

Section 3 of the Contract (Scotland) Act 1997 will not be available to the Purchaser in respect of (1) matters disclosed to and accepted by the Purchaser prior to the date of settlement or (2) any item or claim amounting in value to less than £200, or (3) any matter in respect of which any provision in the Missives limits or dictates the remedy available to the Purchaser in the way contemplated by that provision.

*Subscribed*

*Ann Lumbark*

*DS Marshall*

*100/*

EXTRACTED by me having commission to that effect from the  
Keeper of the Registers of Scotland.

*AM*