Pinsent Masons

BY POST

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28 March 2014

Dear Sir

On behalf of and as instructed by our client, **Duddingston House Properties Limited**, incorporated under the Companies Acts with registered number SC164841 and having its registered office at Duddingston House, Milton Road, Edinburgh, EH15 1RB, we offer and undertake (1) to enter into with you on behalf of your client, **The City of Edinburgh Council**, the local authority for the said City in terms of the Local Government etc (Scotland) Act 1994 and having its principal office at City Chambers, High Street, Edinburgh ("**CEC**") (a) the Development Agreement and (b) the Lease (both hereinafter defined) and (2) to make payment of the Price at the Date of Entry and otherwise to perform the whole other undertakings of DHP under and pursuant to the Missives (hereinafter defined), all in relation to the land and the buildings thereon belonging to CEC which are situated at and comprise the former Royal High School, Regent Road, Edinburgh, and that all upon the following terms and conditions:

1 **Definitions and interpretation**

1.1 In this offer and the Missives:

"Agreed Site Investigation Works" means the intrusive site investigation works to be carried out in terms of the Scope of Works within the Buildings or otherwise within the presently unbuilt on parts of the Site;

"Application" means the application to be submitted by or on behalf of DHP to the Planning Authority for full planning permission and listed buildings consent for the Development under and in accordance with Clause 3.1 and includes any new or amended application which DHP may make under and in accordance with Clause 3.4;

"Application Longstop Date" means the date eighteen (18) months after Challenge Expiry Date;

"Approved Form" in relation to any deed or document means it is in the form of a draft reproduced in the Schedule having all blanks and sections in square brackets properly completed in accordance with the directions therein in compliance with the Missives;

"Base Drawings" means the drawings illustrating the Proposals which are reproduced in Part 1 of the Schedule and any amendments thereto notified to CEC [redacted]

"Beyond Challenge" in relation to the Desired Planning Permission means (a) that there has not been a sustainable legal challenge by a third party to the grant of the Desired Planning Permission and that a period of not less than [redacted] after the Decision Date has elapsed since the grant thereof and no third party has raised Proceedings; or (b) in a case where Proceedings have been raised that such Proceedings have been concluded (and any further appeal procedures have either been exhausted or are no longer competent) all to the effect that the decision of the local planning authority to grant the Desired Planning Permission has not been overturned;

"Beyond Challenge Date" has the meaning given to it in Clause 2.8;

"Buildings" means the buildings on the Site as at the Conclusion Date numbered "1", "2", "3", "4", "5", "6" and "7" on the Site Plan;

"Challenge Expiry Date" has the meaning given to [redacted];

"Completion" means the date on which the grant of the Lease is completed under and in terms of the Missives and all the obligations of the Parties in terms of the Missives to be performed on the Date of Entry have been fully performed, whether that is the Date of Entry or some other date;

"Conclusion Date" means the date of conclusion of the Missives;

"Date of Entry" means the date occurring [redacted] after the last of the Suspensive Conditions has been [redacted];

"Decision Date" means the date of issue of a decision letter by each of the Planning Authority and by Historic Scotland granting full planning permission and listed buildings consent under and pursuant to the Application and if such decision letters are issued on different dates, the Decision Date shall be the later of them;

"Desired Content" in relation to the Development means that it will comprise not less than 120 bedrooms or such greater number as may be notified to CEC by DHP under Clause 3.4 together with publicly accessible art space, restaurant, bar and leisure space, parking (if and to the extent desired by DHP) and other facilities;

"Desired Planning Permission" means a full planning permission and listed buildings consent for the Development which, including its reserved matters and conditions is entirely acceptable to DHP, who shall have sole discretion in that regard;

"Development" means the change of use and development of the Site by the partial demolition of the Buildings, the alteration and adaption of the remaining Buildings and the construction of new structures all in accordance with the Proposals so as to provide a high quality hotel which may be licensed of international standing (but not for the avoidance of doubt a budget hotel, or similar) of the Desired Content;

"Development Agreement" means the development agreement in respect of the Development to be entered into between the Parties at the Conclusion Date which

shall be in the form of the draft thereof reproduced in Part 2 of the Schedule and otherwise shall be duly completed so that it is in an Approved Form;

"Development Completion Date" means the date on which there is issued in respect of the Development by a verifier a notice of acceptance of completion under and in accordance with the Building (Scotland) Act 2003;

"DHP" means the said Duddingston House Properties Limited [redacted];

"DHP's Solicitors" means Pinsent Masons LLP or such other firm of solicitors in Scotland as DHP may appoint and intimate to CEC as having so appointed;

"Disclosed Documents" means the documents listed in Part 3 of the Schedule

"First Cut Off Date" means the date of expiry of [redacted] following the Conclusion Date;

"Funder" means [redacted]

[redacted]

"Historic Scotland" means Historic Scotland acting as agent for and with the authority of Scottish Ministers under and for the purposes of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997;

"Interest" means in relation to any sum of money interest at the rate of 4% per annum above Bank of England official bank lending rate at the time or times such interest falls to be ascertained;

"Lease" means a lease of the Site and the Buildings to be entered into between CEC as landlord thereunder and the Tenant at Completion which shall be in the form of the draft lease reproduced in Part 6 of the Schedule and otherwise shall be fully completed so that it is in an Approved Form;

"Longstop Date" means the date of expiry of [redacted] after the Planning Submission Date as the same may be deferred under Clause 2.11;

"Maximum Relevant Delay" means a period in the aggregate of [redacted];

"Missives" means the missives to be concluded between DHP and CEC of which this offer forms part;

"Parties" means together CEC and DHP and **"Party"** means that one of them as the context requires;

"Planning Acts" means the Town and Country Planning (Scotland) Act 1997, the Local Government and Planning (Scotland) Act 1982, the Planning (Listed Buildings and Conversation Areas) (Scotland) Act 1997, the Planning (Hazardous Substances) (Scotland) Act 1997 and the Planning (Consequential Provisions) (Scotland) Act 1997, Town and Country Planning (Scotland) Act 1997 and the Planning Etc (Scotland) Act 2006 and any future legislation of a similar nature;

"Planning Agreement" means an agreement under S75 of the Town and Country Planning (Scotland) Act 1997 or another agreement under the Planning Acts which is intended to be binding on the owners from time to time of the Site and which is entered into in respect of the Site in terms of the Missives;

"Planning Authority" means City of Edinburgh Council in their capacity as local planning authority for the City of Edinburgh under and in terms of the Planning Acts;

"Planning Process Agreement" means an agreement to be entered into between DHP and the Planning Authority and which provides a project management tool for DHP, the Planning Authority and relevant stakeholders in relation to the key stages involved in determining the Application;

"Planning Submission Date" means whichever is the earlier of (a) the Application Longstop Date and (b) the date on which an Application is submitted by or on behalf of DHP to the Planning Authority after all pre-application procedures requisite for a major application under the Planning Acts have been completed and DHP having entered into the Planning Process Agreement;

"Price" means the sum of [redacted] representing the premium payable to CEC as landlord under the Lease for the grant of the Lease at the Date of Entry

"Proceedings" means proceedings raised by a third party for a judicial review of or to appeal or otherwise to challenge the decision of the Planning Authority to grant the Desired Planning Permission;

"Procurement Challenge" has the meaning given to it in Clause 5.4.1;

"Project Finance" means committed equity or shareholders loans, or bank loans or any other form of funding to be provided or sourced by the Funder of a sufficient amount to enable payment to be made of the costs of the Application and the Price at the time or times the same will become payable;

"Proposals" means DHP's proposals for the development of the Site and the conversion of the Buildings to provide a high quality hotel of international standing (but not for the avoidance of doubt a budget hotel, or similar) of the Desired Content;

"Relevant Delay" means (1) any periods of delay between the time when the Planning Authority determines that it is minded to grant the Application and the Decision Date including delay by Historic Scotland or delays which are otherwise attributable to Historic Scotland's processes in considering the Application; and (2) all periods of delay or time prior to the Decision Date during which the process for determination of the Application (a) is being delayed (beyond and in addition to the periods prescribed in the Planning Acts for its consideration or determination by the Planning Authority) for a reason, or due to circumstances not within the control of DHP

or those for whom DHP is responsible including administrative delays by the Planning Authority in the pre application process; and/or (b) is being delayed by a challenge or attempted challenge by a third party to either the determination by the Planning Authority or Historic Scotland or otherwise to the processes prior to the date when the Desired Planning Permission becomes Beyond Challenge;

"Reports and Surveys" means the Site Investigation Report and the Structural Survey;

[redacted]

"Scope of Works" means the scope of works reproduced in Part 7 of the Schedule;

"Site" means ALL and WHOLE (a) the subjects known as and forming the former Royal High School, Regent Road and (b) the landscaped area lying to the south of the said subjects and fronting Regent Road all in the City of Edinburgh and County of Midlothian and being the subjects shown outlined in red on the Site Plan;

"Site Investigation Report" means a report or reports following an intrusive and non intrusive investigation of the geotechnical conditions pertaining in and below the Site and the Agreed Site Investigation Works together with a report or reports on the availability of services of drainage, water supply and power to the Site all to be carried out by a reputable engineer for DHP and at DHP's sole cost;

"Site Plan" means the plan reproduced in Part 8 of the Schedule;

"Structural Survey" means a structural survey and report on the fabric and condition of the Buildings numbered 1, 4, 5, 6 and 7 on the Site Plan which is carried out by a reputable building surveyor for DHP and at DHP's sole cost;

"Subsidiary" means a subsidiary of the said Duddingston House Properties Limited (as defined in section 1159 of the Companies Act 2006) in respect of which the members right to vote on all or substantially all matters which are decided by vote the members (including the right to appoint or remove a majority of its Board of Directors) are controlled by the said Duddingston House Properties Limited;

"Sub-station Lease" means the lease between the Secretary of State for the Environment and the South of Scotland Electricity Board dated 23 October 1979 and subsequent dates and recorded in the Division of the General Register of Sasines for the County of Midlothian on 6 December 1979;

"Suspensive Conditions" means the conditions set out in [redacted] **"Suspensive Condition"** means any one of them;

"Tenant" means [redacted];

"Ultimate Longstop Date" means [redacted]

"VAT" means value added tax as provided for in the Value Added Tax Act 1994, as amended.

"Working Day" means any day which is not a public holiday, and on which the clearing banks in Edinburgh, Glasgow and London are open for normal business

1.2 **Interpretation and construction**

In the Missives unless otherwise specified or the context otherwise requires:

(a) a reference to one gender includes all other genders;

(b) words in the singular only include the plural and vice versa;

(c) any reference to the whole is to be treated as including reference to any part of the whole;

(d) any reference to a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and words importing individuals include corporations and vice versa;

(e) any reference to a Clause, Schedule or Part of the Schedule is to the relevant Clause, Schedule or Part of the Schedule of or to this offer;

(f) any reference to a statute or statutory provision includes any subordinate legislation which is in force from time to time under that statute or statutory provision;

(g) any reference to any statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment;

(h) any phrase introduced by the words "including", "include", "in particular" or any similar expression is to be construed as illustrative only and is not to be construed as limiting the generality of any preceding words;

(i) a document will be duly executed only if it is executed in such manner as meets the requirements of Section 3 of the Requirements of Writing (Scotland) Act 1995;

(j) for the avoidance of doubt, nothing herein contained or implied or done in terms of the Missives shall prejudice or affect the powers, rights, duties and obligations of The City of Edinburgh Council or its statutory successors as local authority, Planning Authority, Building Control Authority, Roads Authority or similar such authority under or by virtue of any public or local Act, order, statutory instrument, regulation or byelaw or relieve DHP of the necessity of obtaining from The City of Edinburgh Council or its statutory successors in said capacity all consents, permissions, warrants or approvals as may be requisite under or by virtue of any such public or local Act or others;

(k) where at any one time there are two or more persons included in the expression "DHP" or "CEC" obligations contained in the Missives which are expressed to be made by DHP or CEC are binding jointly and severally on them and their respective executors and representatives whomsoever without the necessity of discussing them in their order; and

(l) any reference to "reasonable consent" means the prior written consent of the party in question, such consent not to be unreasonably withheld or delayed.

2 Suspensive Conditions

[redacted]

[redacted]

3 **The Application**

3.1 As soon as practicable subject to the provisions of [redacted] and in any event prior to the Application Longstop Date DHP shall at its sole cost give and implement all pre-application notices consultations and other procedures and shall commission all necessary design and studies in order to make a competent Application for the Development and [redacted]

3.2 DHP will use reasonable endeavours (subject to the provisions of [redacted]) to enter into the Planning Process Agreement within [redacted]s of the Conclusion Date all as may be required by the Planning Authority in connection with the Application.

3.3 DHP will comply with the obligations and conditions contained in the Planning Process Agreement.

3.4 [redacted]

3.5 DHP will provide to CEC a true and complete copy of the Application on or prior to the Planning Submission Date and of each amendment thereof or new Application.

3.6 DHP shall not be bound to appeal a refusal or deemed refusal of the Application and (with the exception of an appeal under [redacted]) DHP may only appeal a refusal of the Application with the prior consent of CEC such consent not to be unreasonably withheld.

3.7 In the event that the Planning Authority declares that it is minded to grant the Application subject to a Planning Agreement being entered into, then subject to the whole provision of this Clause:

3.7.1 [redacted]

3.7.2 Upon such terms being agreed between DHP and the Planning Authority, DHP shall provide to CEC as owners of the Site a draft of the proposed Planning Agreement for approval (such approval not to be unreasonably withheld or delayed) and may not be withheld in any case where there is no material prejudice to CEC's interest as heritable proprietor of the Site on the assumption that the obligations of the Development Agreement and the Lease would be performed and nothwithstanding any term or provision of any Planning Agreement which is apparently to the contrary DHP or the Tenant as the case may be shall be solely responsible for observing and performing the whole obligations of such Planning Agreement, and shall so free and relieve CEC in respect thereof.

3.7.3 [redacted]

3.7.4 CEC will be kept free of all reasonable legal and professional or surveying costs or expenses, in entering into or any subsequent discharge of any Planning Agreement and removing such conditions/burdens from CEC's title including in the event that the

Development does not proceed and CEC require to make an application to discharge the Planning Agreement with the Planning Authority;

3.7.5 Once the Planning Agreement has been approved by CEC in terms of [redacted] DHP will deliver the Planning Agreement to CEC who shall validly execute and return the same to DHP within ten (10) Working Days of receipt of the same.

3.8 [redacted]

4 **Reports and Surveys**

4.1 DHP shall commission the Reports and Surveys as soon as practicable after the Conclusion Date.

4.2 Subject to Clause 4.3 CEC shall afford all reasonable facilities to DHP and those employed by them to enable the Reports and Surveys to be completed as soon as practicable and upon reasonable prior notice being given shall provide access to the Site and to the Buildings on all necessary occasions to enable the Reports and Surveys to be carried out.

4.3 Prior to the commencement of any intrusive works as part of the Reports and Surveys (under exception of the Agreed Site Investigation Works to which CEC has already given its approval) DHP will provide CEC with a specification detailing the intrusive works it intends to carry out at the Site and to the Buildings and shall not carry out any such works until CEC's approval has been obtained (which approval shall not be unreasonably withheld) and then, subject to complying with any reasonable conditions CEC may attach to such approval.

4.4 In the event that there is any damage, destruction or disturbance to the Site or the Buildings caused by the carrying out of the Reports and Surveys including the Agreed Site Investigation Works DHP must immediately and at its sole cost restore and make good the same to the reasonable satisfaction of CEC

5 **Application, Project Finance, and Procurement Challenge**

5.1 The following conditions are essential material conditions of the Missives:

5.1.1 DHP must submit the Application to the Planning Authority not later than the Application Longstop Date;

5.1.2 [redacted]