



Registration of a Charge

Company Name: **DUCHY HOMES LIMITED**

Company Number: **07852681**



XB YDL00H

Received for filing in Electronic Format on the: **01/03/2023**

Details of Charge

Date of creation: **28/02/2023**

Charge code: **0785 2681 0017**

Persons entitled: **OAKNORTH BANK PLC AS SECURITY TRUSTEE**

Brief description:

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

This form was authorised by: **a person with an interest in the registration of the charge.**

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **SQUIRE PATTON BOGGS (UK) LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 7852681

Charge code: 0785 2681 0017

The Registrar of Companies for England and Wales hereby certifies that a charge dated 28th February 2023 and created by DUCHY HOMES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 1st March 2023 .

Given at Companies House, Cardiff on 2nd March 2023

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**

EXECUTION VERSION

28 February 2023

DUCHY HOMES LIMITED

as the company

and

OAKNORTH BANK plc

as security trustee

SUBORDINATED CREDITOR'S SECURITY AGREEMENT

THIS DEED is made on 28 February 2023

BETWEEN:

- (1) **DUCHY HOMES LIMITED** (a company registered in England and Wales with registration number 07852681) whose registered office is at Middleton House, Westland Road, Leeds, West Yorkshire, LS11 5UH (the "**Company**"); and
- (2) **OAKNORTH BANK plc** as security trustee for each of the Finance Parties (the "**Security Trustee**").

IT IS AGREED as follows:

1. DEFINITIONS, CONSTRUCTION AND THIRD PARTY RIGHTS

1.1 Definitions

Terms defined in the Offer Letter shall, unless otherwise defined in this Deed or unless a contrary intention appears, bear the same meaning when used in this Deed and the following terms shall have the following meanings:

"Ancillary Liabilities" in relation to any of the Subordinated Debt means:

- (a) any refinancing, novation, refunding, restructuring, deferral or extension of any of those liabilities;
- (b) any further advance which may be made under any agreement supplemental to the relevant facilities or credit agreement plus all interest, indemnities, fees and costs in connection therewith;
- (c) any claim for damages or restitution in the event of rescission of any such liabilities or otherwise in connection with any relevant facilities or credit agreement;
- (d) any claim against the Borrower flowing from any recovery by the Borrower of a payment or discharge in respect of those liabilities on the grounds of preference or otherwise; and
- (e) any amounts (including post-insolvency interest) which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowability of the same in any insolvency or other proceedings.

"Assigned Rights" means all rights, titles, benefits and interests, whether present or future, of the Company in, to or arising under the Contract including rights to any sums payable to the Company and the full benefit of any Security, options, indemnities, guarantees and warranties in respect of the Contract.

"Borrower" means Duchy Homes (Green Lane) Limited, a company registered in England and Wales with registered number 14129159, whose registered office is at Park House, Westland Road, Leeds, West Yorkshire, United Kingdom, LS11 5UH.

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London or if any such date is not a Business Day, the preceding Business Day.

"Contract" means any document evidencing or recording the terms of any Subordinated Debt.

"LPA" means the Law of Property Act 1925.

"Offer Letter" means loan offer letter to the Borrower from the Security Trustee consisting of the particulars and the conditions dated on or about the date of this Deed.

"Receiver" means any person appointed by the Security Trustee to be a receiver or receiver and manager or administrative receiver of the whole or any part of the Assigned Rights or the Undocumented Debt or any part thereof.

"Relevant Assets" means the Contract, the Assigned Rights and the Undocumented Debt.

"Secured Liabilities" means all monies, obligations and liabilities covenanted to be paid or discharged under or pursuant to Clause 2 (*Covenants to Pay*).

"Security" means any mortgage, charge, pledge, lien, assignment or other security interest securing any obligation of any person or any other agreement or arrangement having similar effect.

"Secured Party" means a Finance Party, a Receiver or any Delegate.

"Security Period" means the period from the date of this Deed until the date on which the Secured Liabilities have been irrevocably and unconditionally paid and discharged in full.

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"Subordinated Debt" means all present and future sums, liabilities and obligations whatsoever (actual or contingent) payable, owing due or incurred by the Borrower to the Company together with all Ancillary Liabilities relating thereto.

"Undocumented Debt" means all present and future sums, liabilities and obligations whatsoever (actual or contingent) payable, owing due or incurred by the Borrower to the Company together with any Ancillary Liabilities relating thereto which are not evidenced or recorded by the Contract but which otherwise exists from time to time.

"VAT" means United Kingdom Value Added Tax together with all interest and penalties relating thereto.

1.2 **Construction and Third Party Rights**

1.2.1 The provisions of clause 1.3 (*Construction*) of the Conditions shall apply to this Deed as if they were set out in this Deed.

1.2.2 Unless a contrary intention appears, words defined in the Companies Act 2006 have the same meanings in this Deed.

1.2.3 No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Deed (other than a Secured Party who is not a party to this Deed).

1.3 **Implied Covenants for Title**

The obligations of the Company under this Deed shall be in addition to the covenants for title deemed to be included in this Deed by virtue of Part I of the Law of Property (Miscellaneous Provisions) Act 1994.

1.4 **Effect as a Deed**

This Deed is intended to take effect as a deed notwithstanding that the Security Trustee may have executed it under hand only.

1.5 **Security Trust Provisions**

The Security Trustee holds the benefit of this Deed on trust for the Finance Parties in accordance with clause 24 (*Role of the Agent and the Security Trustee*) of the Conditions.

2. **COVENANTS TO PAY**

2.1 **Covenant to Pay Secured Liabilities**

The Company covenants that it shall on demand pay to the Security Trustee all monies and discharge all obligations and liabilities now or hereafter due, owing or incurred by it or any Obligor to any Finance Party in each case when the same becomes due for payment or discharge, whether by acceleration or otherwise, and whether such monies, obligations or liabilities are express or implied; present, future or contingent; joint or several; incurred as principal or surety; originally owing to a Finance Party or purchased (whether by assignment or otherwise) or acquired in any other way by it; denominated in sterling or any other currency; or incurred on any current or other banking account or in any other manner whatsoever provided that the covenant of the Company to pay the Secured Liabilities shall be limited to an amount equal to the proceeds of enforcement of the Subordinated Debt. The Company's covenant shall be satisfied only from those proceeds and the Secured Parties shall have no remedy against the Company other than the enforcement of the security granted by this Deed and pursuant to the terms of the Offer Letter.

2.2 **Potential Invalidity**

Neither the covenant to pay in Clause 2.1 (*Covenant to Pay Secured Liabilities*) nor the security created by this Deed shall extend to or include any liability or sum which would, but for this Clause 2.2, cause such covenant, obligation or security to be unlawful under any applicable law.

3. **SECURITY**

As a continuing security for the payment and discharge of the Secured Liabilities, the Company with full title guarantee hereby:

3.1.1 assigns by way of security to the Security Trustee, the Assigned Rights;

3.1.2 charges to the Security Trustee by way of first fixed charge, the Undocumented Debt; and

3.1.3 (to the extent not effectively assigned under Clause 3.1.1 above) charges to the Security Trustee by way of fixed charge, the Assigned Rights.

4. FURTHER ASSURANCE

4.1 The Company must promptly upon request by the Security Trustee execute (in such form as the Security Trustee may require) such documents (including assignments, transfers, mortgages, charges, notices and instructions) in favour of the Security Trustee or its nominees and do all such assurances and things as the Security Trustee may require for:

4.1.1 perfecting and/or protecting (by registration or in any other way) the security created or intended to be created by this Deed; and

4.1.2 for exercising all powers, authorities and discretions conferred on the Security Trustee or any Receiver pursuant to this Deed or by law.

5. UNDERTAKINGS

5.1 General Undertakings

The Company undertakes to the Security Trustee:

5.1.1 Payments and performance

it shall promptly pay all sums due by it under the Contract and promptly and diligently observe and perform the covenants and conditions on its part to be observed and performed as set out in the Contract;

5.1.2 Negative Pledge

It shall not, without the prior consent in writing of the Security Trustee, create or attempt to create or permit to subsist or arise any Security on, over or affecting any of the Relevant Assets;

5.1.3 Disposals

it shall not dispose of any of the Relevant Assets or agree so to do and for these purposes the term "dispose" shall include any form of disposal including any transfer, declaration of trust, assignment, sale, novation or the creation of any other form of legal or equitable interest in or over any of the Relevant Assets;

5.1.1 Consents and Other Necessary Action

it shall take all such action as may be available to it for the purpose of creating, perfecting or maintaining the security created or intended to be created pursuant to this Deed which shall include, without limitation, the obtaining of any necessary consent (in form and content satisfactory to the Security Trustee) to enable the Relevant Assets to be assigned or charged pursuant to this Deed; and

5.1.2 General

it shall:

- (A) notify the Security Trustee within three Business Days of any material default by it or any other party under the Contract;
- (B) provide the Security Trustee with such information as the Security Trustee may from time to time reasonably request with respect to the Relevant Assets;
- (C) not, without the Security Trustee's prior written consent, amend, modify, waive or release any provision of or terminate any of the Relevant Assets;
- (D) not take or omit to take any action the taking or omission of which might adversely affect the interests of the Security Trustee or the Finance Parties in relation to the Relevant Assets; and
- (E) not give any consent, waiver or approval under the Contract or exercise any right in respect of the Assigned Rights or Undocumented Debt without the prior written consent of the Security Trustee.

5.2 Notices of Assignment

- 5.2.1 The Company shall forthwith give notice to the counterparty to the Contract in the form set out in Schedule 1 (*Notice to Counterparty*) and procure that each such counterparty acknowledges such notice to the Security Trustee in the form set out in Schedule 2 (*Acknowledgement of Counterparty*).
- 5.2.2 The notices of assignment and acknowledgement referred to in Clause 5.2.1 shall be in a form substantially similar to those contained in Schedule 1 and Schedule 2 or such other form as the Security Trustee may require.

5.3 No Liability

Notwithstanding anything contained in this Deed:

- 5.3.1 no Finance Party or any nominee shall be under any obligation or liability under or in respect of the Relevant Assets or be liable to make any payment under or in respect of the Relevant Assets;
- 5.3.2 no Finance Party or any nominee shall be obliged to take any steps necessary to preserve the Relevant Assets or enforce against the Company or any other person any term of the Contract, or to make any enquiries as to the nature or sufficiency of any payment received by the Company pursuant to the terms of the Contract; and
- 5.3.3 the Company shall remain solely and fully liable under or in respect of the Contract to perform all the obligations and to pay all losses, costs, expenses, taxes and damages payable by it under or in connection with the Contract.

6. RIGHTS OF THE SECURITY TRUSTEE**6.1 Enforcement**

At any time on or after the occurrence of an Event of Default the security created pursuant to this Deed shall be immediately enforceable and the Security Trustee may in its absolute discretion and without notice to the Company or the prior authorisation of any court:

- 6.1.1 enforce all or any part of the security created by this Deed and take possession of or dispose of all or any of the Assigned Rights and any such of the Undocumented Debt in each case at such times and upon such terms as it sees fit;
- 6.1.2 whether or not it has appointed a Receiver, exercise all of the powers, authorities and discretions granted to a Receiver by this Deed or by law;
- 6.1.3 settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands relating in any way to any of the Relevant Assets;
- 6.1.4 bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Relevant Assets which may seem to it to be expedient;
- 6.1.5 exercise in relation to any of the Assigned Rights and any of the Undocumented Debt all the powers, authorities and things which it would be capable of exercising if it were the absolute owner of the same;
- 6.1.6 apply for and maintain any regulatory permission, consent or licence required in connection with any of the Relevant Assets; and
- 6.1.7 fulfil, at the Company's expense and risk, its obligations under the Contract.

6.2 Restrictions on Consolidation

Section 93 of the LPA shall not apply to this Deed or to any sale made under it. The Security Trustee shall have the right to consolidate all or any of the security created by or pursuant to this Deed with any other security in existence at any time. Such power may be exercised by the Security Trustee at any time on or after the occurrence of an Event of Default.

6.3 Restrictions on Exercise of Power of Sale

Section 103 of the LPA shall not apply to this Deed and the power of sale arising under the LPA shall arise on the date of this Deed (and the Secured Liabilities shall be deemed to have become due and payable for that purpose). The power of sale and other powers conferred by section 101 of the LPA as varied or extended by

this Deed and those powers conferred (expressly or by reference) on a Receiver shall be immediately exercisable by the Security Trustee at any time on or after the occurrence of an Event of Default.

6.4 No Prior Notice Needed

The powers of the Security Trustee set out in Clauses 6.2 (*Restrictions on Consolidation*) and 6.3 (*Restrictions on Exercise of Power of Sale*) above may be exercised by the Security Trustee without prior notice to the Company.

7. EXONERATION

7.1 Exoneration

No Finance Party or any Receiver shall, by reason of it entering into possession of the Assigned Rights, Undocumented Debt or any part thereof, be liable to account as mortgagee in possession or be liable for any loss or realisation or for any default or omission for which a mortgagee in possession might be liable; but every Receiver duly appointed by the Security Trustee under this Deed shall for all purposes be deemed to be in the same position as a receiver duly appointed by a mortgagee under the LPA save to the extent that the provisions of that Act are varied by or are inconsistent with the provisions of this Deed when the provisions hereof shall prevail and every such Receiver and the Security Trustee shall in any event be entitled to all the rights, powers, privileges and immunities conferred by the LPA on mortgagees and receivers duly appointed under the LPA.

7.2 Indemnity

The Security Trustee and every Receiver, attorney, delegate, manager, agent or other person appointed by the Security Trustee hereunder shall be entitled to be indemnified out of the Assigned Rights, the Undocumented Debt or any part thereof in respect of all liabilities and expenses incurred by it or him in the execution of any of the powers, authorities or discretions vested in it or him pursuant to this Deed and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in any way relating to the Assigned Rights, the Undocumented Debt or any part of them. The Security Trustee and any such Receiver may retain and pay all sums in respect of which it is indemnified out of any monies received under the powers conferred by this Deed.

8. APPOINTMENT OF RECEIVER

8.1 Appointment

At any time on or after the occurrence of an Event of Default, or at the request of a Company, the Security Trustee may, without prior notice to the Company, in writing (under seal, by deed or otherwise under hand) appoint a Receiver in respect of the Relevant Assets or any part thereof and may in like manner from time to time (and insofar as it is lawfully able to do) remove any Receiver and appoint another in his stead.

8.2 More than one Receiver

Where more than one Receiver is appointed, each joint Receiver shall have the power to act severally, independently of any other joint Receiver, except to the extent that the Security Trustee may specify to the contrary in the appointment.

8.3 Receiver as agent

A Receiver shall be the agent of the Company and shall be solely responsible for his acts or defaults and for his remuneration. No Receiver shall at any time act as agent of any Finance Party.

8.4 Receiver's Remuneration

A Receiver shall be entitled to remuneration for his services at a rate to be determined by the Security Trustee from time to time (and without being limited to any maximum rate specified by any statute or statutory instrument).

9. RECEIVER'S POWERS

9.1 Powers

A Receiver shall have (and be entitled to exercise) in relation to the Relevant Assets over which he is appointed the following powers (as the same may be varied or extended by the provisions of this Deed):

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- 9.1.1 all of the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver);
- 9.1.2 all of the powers conferred from time to time on receivers, mortgagors and mortgagees in possession by the LPA;
- 9.1.3 all the powers and rights of a legal and beneficial owner and the power to do or omit to do anything which the Company itself could do or omit to do; and
- 9.1.4 the power to do all things which, in the opinion of the Receiver, are incidental to any of the powers, functions, authorities or discretions conferred or vested in the Receiver pursuant to this Deed or upon receivers by statute or law generally (including, without limitation, the bringing or defending of proceedings in the name of, or on behalf of, the Company;
- 9.1.5 the collection and/or realisation of Assigned Rights in such manner and on such terms as the Receiver sees fit; and
- 9.1.6 and the execution of documents in the name of the Company (whether under hand, or by way of deed or by utilisation of the company seal of the Company).

9.2 Powers may be Restricted

The powers granted to a Receiver pursuant to this Deed may be restricted by the instrument (signed by the Security Trustee) appointing him but they shall not be restricted by any winding-up or dissolution of the Company.

10. PROTECTION OF PURCHASERS**10.1 Absence of Enquiry**

No person or persons dealing with the Security Trustee or any Receiver shall be concerned to enquire whether any event has happened upon which any of the powers in this Deed are or may be exercisable or otherwise as to the propriety or regularity of any exercise of such powers or of any act purporting or intended to be an exercise of such powers or whether any amount remains secured by this Deed. All the protections to purchasers and persons dealing with receivers contained in sections 104, 107 and 109(4) of the LPA shall apply to any person purchasing from or dealing with the Security Trustee or any such Receiver.

10.2 Receipt: Conclusive Discharge

The receipt of the Security Trustee or any Receiver shall be a conclusive discharge to any purchaser of the Relevant Assets.

11. POWER OF ATTORNEY AND DELEGATION**11.1 Power of Attorney: General**

The Company hereby irrevocably and by way of security appoints the Security Trustee and any Receiver severally to be its attorney in its name and on its behalf and as its act and deed:

- 11.1.1 to execute and deliver any documents or instruments which the Security Trustee or such Receiver may require for perfecting the title of the Security Trustee to the Relevant Assets or for vesting the same in the Security Trustee, its nominee or any purchaser;
- 11.1.2 to sign, execute, seal and deliver and otherwise perfect any further security document which the Company is required to enter into pursuant to this Deed; and
- 11.1.3 otherwise generally to sign, seal, execute and deliver all deeds, assurances, agreements and documents and to do all acts and things which may be required for the full exercise of all or any of the powers conferred on the Security Trustee or any Receiver under this Deed or which the Company is required to do pursuant to this Deed or which may be deemed expedient by the Security Trustee or a Receiver in connection with any preservation, disposition, realisation or getting in by the Security Trustee or such Receiver of the Relevant Assets or any part thereof or in connection with any other exercise of any other power under this Deed,

provided that the power of attorney granted in this Clause 11.1 shall only be exercisable: (a) if a Default is continuing; or (b) following a failure by the Company to comply with its obligations under this Deed.

EXECUTION VERSION**11.2 Power of Attorney: Ratification**

The Company ratifies and confirms and agrees to ratify and confirm all acts and things which any attorney mentioned in this Clause 11 (*Power of Attorney and Delegation*) does or purports to do in exercise of the powers granted by this Clause.

11.3 General Delegation

The Security Trustee and any Receiver shall have full power to delegate the powers, authorities and discretions conferred on it or him by this Deed (including the power of attorney) on such terms and conditions as it or he shall see fit which shall not preclude exercise of those powers, authorities or discretions by it or him or any revocation of the delegation or any subsequent delegation.

12. APPLICATION OF MONIES RECEIVED UNDER THIS DEED

Any monies received under the powers hereby conferred shall, subject to the repayment of any claims having priority to this Deed, be applied for the following purposes and in the following order of priority:

12.1 In satisfaction of all costs, charges, expenses, payments and liabilities (including payments made in accordance with paragraphs (i), (ii) and (iii) of section 109(8) of the LPA) made or incurred by the Security Trustee or the Receiver and of remuneration to the Receiver in such order as the Security Trustee shall in its absolute discretion decide; and

12.2 In or towards satisfaction of the Secured Liabilities which shall be applied in such order as the Security Trustee shall in its absolute discretion decide; and

12.3 the surplus, if any, shall be paid to the Company or other person or persons entitled to it, save that the Security Trustee may credit any monies received under this Deed to a suspense account for so long and in such manner as the Security Trustee may from time to time determine and the Receiver may retain the same for such period as he and the Security Trustee consider appropriate.

13. RELEASE OF SECURITY**13.1 Release**

At the end of the Security Period the Security Trustee shall, at the request and cost of the Company, execute or procure the execution by its nominee (in each case in a form acceptable to the Security Trustee) and do all such deeds, acts and things as are necessary to release and/or reassign the Assigned Rights and the Undocumented Debt from the security created by or in accordance with this Deed.

13.2 Avoidance of Payments

13.2.1 No amount paid, repaid or credited to a Finance Party shall be deemed to have been irrevocably paid if the Security Trustee considers that the payment or credit of such amount is capable of being avoided or reduced because of any laws applicable on bankruptcy, insolvency, liquidation or similar laws.

13.2.2 If any amount paid, repaid or credited to a Finance Party is avoided or reduced because of any laws applicable on bankruptcy, insolvency, liquidation or any similar laws then any release, discharge or settlement between that Finance Party and the Company shall be deemed not to have occurred and the Security Trustee shall be entitled to enforce this Deed subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made.

14. AMOUNTS PAYABLE**14.1 No Deduction**

All payments under this Deed by the Company shall be made without any set-off, counterclaim or equity and (subject to the following sentence) free from, clear of and without deduction for any taxes, duties, levies, imposts or charges whatsoever, present or future. If the Company is/are compelled by the law of any applicable jurisdiction (or by an order of any regulatory authority in such jurisdiction) to withhold or deduct any sums in respect of taxes, duties, levies, imposts or charges from any amount payable to a Finance Party under this Deed or, if any such withholding or deduction is made in respect of any recovery under this Deed, the Company shall pay such additional amount so as to ensure that the net amount received by that Finance Party shall equal the full amount due to it under the provisions of this Deed (had no such withholding or deduction been made).

14.2 Currency of Payment

The obligation of the Company under this Deed to make payments in any currency shall not be discharged or satisfied by any tender, or recovery pursuant to any judgment or otherwise, expressed in or converted into any other currency, except to the extent that tender or recovery results in the effective receipt by a Finance Party of the full amount of the currency expressed to be payable under this Deed.

15. REPRESENTATIONS AND WARRANTIES**15.1 Representations**

The Company makes the following representations and warranties in favour of the Finance Parties:

- 15.1.1 It is the sole legal and beneficial owner of the Assigned Rights and the Undocumented Debt free from Security (other than the Security created by this Deed) and this Deed confers the security it purports to confer over the Assigned Rights and the Undocumented Debt and the security created under or pursuant to this Deed is not subject to any prior or pari passu Security and is not liable to avoidance on liquidation or bankruptcy, composition or any other similar insolvency proceedings.;
- 15.1.2 the terms of the Contract do not restrict or prohibit the assignment of the Assigned Rights to the Security Trustee;
- 15.1.3 it is a company duly incorporated and validly existing under the laws of its jurisdiction of incorporation and has the power to own its property and assets and carry on its business as it is being conducted;
- 15.1.4 the documents to which it is a party are within its powers and have been duly authorised and executed by it; and
- 15.1.5 this deed constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms and the entry into and performance by it of this deed does not and will not conflict with any law or regulation applicable to it, its constitutional documents, or in any material respect, with any agreement or instrument binding upon its or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.

15.2 Times for Making Representations and Warranties

The representations and warranties set out in this Clause are made on the date of this Deed and are deemed to be repeated each day prior to the expiry of the Security Period by reference to the facts and circumstances then existing.

16. NEW ACCOUNTS

If a Finance Party receives notice of any subsequent charge or other interest affecting any part of the Relevant Assets (the date of receipt of such notice being the "**Notice Date**") it may, without prejudice to its rights under this Deed, open a fresh account or accounts with the Company and continue any existing account in the name of the Company and may appropriate to any such fresh account any monies paid in, received or realised for the credit of the Company after that time without being under any obligation to apply the same or any part of them in discharge of any of the Secured Liabilities. If a Finance Party fails to open a fresh account it will be deemed to have done so and any monies received or realised after the Notice Date will not reduce the Secured Liabilities outstanding on the Notice Date.

17. MISCELLANEOUS**17.1 The Company**

This Deed is binding on the successors and assigns of the Company.

17.2 Assignment and Transfer

- 17.2.1 The Company may not assign any rights or transfer any of the rights or obligations it has under this Deed.
- 17.2.2 The Security Trustee may assign and transfer all or any part of its rights and obligations under this Deed to a replacement security trustee appointed pursuant to the terms of the Offer Letter. Such

replacement security trustee will, from the date of such assignment or transfer, be the security trustee for the Finance Parties under this Deed instead of the previous security trustee.

17.3 Remedies and Waivers Cumulative

Save as expressly provided in this Deed, no failure to exercise, or delay in exercising, on the part of any party hereto any right, power or privilege under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise, or the exercise of any other right, power or privilege. No waiver by the Security Trustee shall be effective unless it is in writing. The rights and remedies of the Security Trustee are cumulative and not exclusive of any rights or remedies provided by law.

17.4 Set-Off, Combination of Accounts and Lien

A Finance Party may (but shall not be obliged to) set-off any obligation in respect of Secured Liabilities which is due and payable by the Company against any obligation (contingent or otherwise) owed by that Finance Party to the Company (regardless of the place of payment, booking branch or currency of either obligation) and apply any credit balance to which the Company is/are entitled on any account with that Finance Party in payment of the Secured Liabilities. That Finance Party may, at the cost of the Company, effect such currency exchanges as such Finance Party considers are appropriate to implement such set-off.

17.5 Partial Invalidity

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any relevant jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Deed, nor the legality, validity or enforceability of that provision under the law of any other jurisdiction, shall in any way be affected or impaired.

17.6 Property

This Deed is and will remain the property of the Security Trustee.

17.7 Continuing Security and indemnity

This Deed shall be a continuing security and shall not be discharged by any intermediate payment or satisfaction of the whole or any part of the Secured Liabilities.

17.8 Additional Security

This Deed shall be in addition to and not be affected by any other security or guarantee at any time held by a Finance Party for all or any part of the Secured Liabilities nor shall any such other security or guarantee of liability to a Finance Party of or by any person not a party to this Deed be in any way impaired or discharged by this Deed nor shall this Deed in any way impair or discharge such other security or guarantee.

17.9 Variation of Security

This Deed shall not in any way be affected or prejudiced by a Finance Party at any time dealing with, exchanging, releasing, varying or abstaining from perfecting or enforcing any security or guarantee referred to in Clause 17.8 (*Additional Security*) above or any rights which a Finance Party may at any time have or giving time for payment or granting any indulgence or compounding with any person whatsoever.

17.10 Enforcement of Other Security

No Finance Party shall be obliged to enforce any other Security it may hold for the Secured Liabilities before enforcing any of its rights under this Deed.

17.11 Redemption of Prior Incumbrances

The Security Trustee may redeem or take a transfer of any prior Security over the Assigned Rights or Undocumented Debt and may agree the accounts of prior incumbrancers. An agreed account shall be conclusive and binding on the Company. Any amount paid in connection with such redemption or transfer (including expenses) shall be paid on demand by the Company to the Security Trustee and until such payment shall form part of the Secured Liabilities.

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18. CALCULATIONS AND CERTIFICATES

18.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with this Deed, the entries made in the accounts maintained by the Security Trustee in connection with this Deed are *prima facie* evidence of the matters to which they relate.

18.2 Certificates and Determinations

Any certification or determination by the Security Trustee of a rate or amount under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

19. GOVERNING LAW

This Deed and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including any non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

IN WITNESS whereof this Deed has been duly executed and delivered as a deed on the date first above written.

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SCHEDULE 1

Notice to Counterparty
[on the letterhead of the Company]

To: [Counterparty]

Date: []

Dear Sir or Madam,

Subordinated Creditor's Security Agreement dated [] between []
and [the Security Trustee] (the "Security Agreement")

We refer to the [*describe contract*] dated [●] and made between [], [] and us (the "Contract").

This letter constitutes notice to you that under the Security Agreement we assigned (by way of security) to [] (the "Security Trustee") all our rights, benefits and interests (including any and all sums payable to us under the Contract and the benefit of all security, options, indemnities, guarantees and warranties) under the Contract.

We irrevocably instruct and authorise you to:

- (A) disclose to the Security Trustee, without any reference to or further authority from us and without any inquiry by you as to the justification for the disclosure, any information relating to the Contract (including the performance of our obligations thereunder) which the Security Trustee may request from you; and
- (B) following a confirmation from the Security Trustee that an Event of Default (defined in the Security Agreement)) has occurred pay any sum payable by you under the Contract to such account as the Security Trustee may notify you in writing.

We will remain liable to perform all our obligations under the Contract and the Security Trustee shall not be under any obligation or liability under the Contract by reason of the Security Agreement or anything arising therefrom.

We will also remain entitled to exercise all our rights, powers and discretions under the Contract and you should continue to give notices under the Contract to us, in each case unless and until you receive notice from the Security Trustee to the contrary stating that the Security Agreement has become enforceable. In this event, all the rights, powers and discretions under the Contract will be exercisable by, and notices should be given to, the Security Trustee or as it directs.

The instructions in this letter apply until you receive notice from the Security Trustee to the contrary and notwithstanding any previous instructions given by us.

The instructions in this letter may not be revoked or amended without the prior written consent of the Security Trustee.

This letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

Please confirm your agreement to the above by sending the enclosed acknowledgement to the Security Trustee at [●], Attention [●], with a copy to us.

Yours faithfully,

.....
(Authorised signatory)
[Company]

EXECUTION VERSION

Schedule 2

Acknowledgement of Counterparty

To: [Security Trustee; Address]

Attention: []

Copy: [Company; Address]

Date: []

Dear Sir or Madam,

Subordinated Creditor's Security Agreement dated [] between [] and [the Security Trustee] (the "Security Agreement")

We confirm receipt from [] (the "**Assignor**") of a notice dated [] (the "**Notice**") of an assignment upon the terms of the Security Agreement of all the Assignor's rights, benefits and interests under the Contract (as defined in the Notice).

We confirm that:

- (A) we have not received any notice that any third party has or will have any right or interest in, or has made or will be making any claim or demand or taking any action in respect of, the rights of the Assignor under or in respect of the Contract;
- (B) following a confirmation from you that an Event of Default (as defined in the Security Agreement) has occurred we will pay any amount payable by us under the Contract to such account as you notify to us in writing;
- (C) we will accept your instructions in relation to the Assignor's rights under the Contract following a confirmation from you that an Event of Default (as defined in the Security Agreement) has occurred; and
- (D) we will not agree to any amendment, waiver or variation of the terms of the Contract without your prior written consent.

This letter and any non-contractual obligations arising out of or in connection with it are governed by English law.
Yours faithfully

.....
(Authorised signatory)
[Counterparty]

EXECUTION VERSION

The Company

EXECUTED AS A DEED by)
DUCHY HOMES LIMITED)
acting by Mark Aylward)
in the presence of:)

[Redacted]
12BB1C8C4BCC4DA...
Director

[Redacted]
Signature of witness

Dominic Lush
Name of witness
(in BLOCK CAPITALS)

[Redacted]

Address of witness

The Security Trustee

SIGNED by)
)
)
for and on behalf of)
OAKNORTH BANK plc)

The Company

EXECUTED AS A DEED by)
DUCHY HOMES LIMITED)
)
acting by) Director
)
in the presence of:)

.....
Signature of witness

.....
Name of witness
(in BLOCK CAPITALS)
.....
.....
.....

Address of witness

The Security Trustee

SIGNED by)
Ben wu1wik)
.....)
for and on behalf of)
OAKNORTH BANK plc)