



**Registration of a Charge**

Company Name: **ST. MODWEN HOMES LIMITED**

Company Number: **09095920**



Received for filing in Electronic Format on the: **23/12/2021**

XAJY9RK2

**Details of Charge**

Date of creation: **23/12/2021**

Charge code: **0909 5920 0009**

Persons entitled: **THE EAST MALLING TRUST**

Brief description: **PART OF THE LAND AND BUILDINGS ON THE EAST AND WEST SIDES OF KILN BARN ROAD, DITTON AND AYLESFORD REGISTERED WITH TITLE K81429 AND PART OF THE PROPERTY KNOWN AS LAND TO THE REAR OF 13-19 AND 20 WILTON DRIVE, AYLESFORD UNDER TITLE K127934 SHOWN EDGED RED ON THE PLAN ANNEXED TO THE LEGAL CHARGE**

**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: **BRACHERS LLP**



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 9095920

Charge code: 0909 5920 0009

The Registrar of Companies for England and Wales hereby certifies that a charge dated 23rd December 2021 and created by ST. MODWEN HOMES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 23rd December 2021 .

Given at Companies House, Cardiff on 30th December 2021

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**

I certify that this is a  
true copy of the original  
document

  
ASHLEY MITCHELL

SOLICITOR, MEMBER OF GOWLING WIG (UK) LLP  
TWO SNOWHILL, BIRMINGHAM B4 6WR

# Brachers

## Legal Mortgage Over Property From a Company Securing Specific Monies (own Liabilities)

---

ST MODWEN HOMES LIMITED

and

THE EAST MALLING TRUST

Brachers LLP  
Somerfield House  
59 London Road  
Maidstone  
Kent ME16 8JH

Tel: 01622 690691  
Ref: 96.291.EAS6009.000069

THIS DEED IS MADE ON THE 23<sup>rd</sup> DAY OF December 2021

### Parties

- (1) ST MODWEN HOMES LIMITED incorporated and registered in England and Wales with company number 9095920 whose registered office is at Park Point, 17 High Street, Longbridge, Birmingham B31 2UQ (the **Borrower**); and
- (2) THE EAST MALLING TRUST incorporated and registered in England and Wales with company number 7168674 (Charity Number 1139729) whose registered office is at Bradbourne House, East Malling, Kent ME19 6FZ (the **Lender**).

### Background

- (A) The Borrower has by a Transfer made between the Lender (1) and the Borrower (2) dated on or about the date hereof purchased the Property from the Lender. The parties to this deed acknowledge that the Transfer records the total consideration for the purchase as being £41,196,259.00 of which £24,717,755.40 remains owed by the Borrower to the Lender pursuant to the provision of the Contract.
- (B) The Borrower owns the freehold estate in Property.
- (C) Under this Deed, the Borrower provides security to the Lender for the loan.

### AGREED TERMS

#### 1. Definitions and interpretation

##### 1.1 Definitions

The following definitions apply in this Deed:

**Affordable Housing** means a dwelling provided for social and/or low cost or affordable housing in accordance with the relevant policies of any development plan or national planning guidelines including Affordable Housing and Starter Homes as defined by the National Planning Policy Framework and planning legislation and/or satisfies the definition of 'Affordable Housing' in the Section 106 Agreement (as defined in the Contract)

**Business Day** means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Delegate** means any person appointed by the Lender or any Receiver under clause 13 and any person appointed as attorney of the Lender, Receiver or Delegate.

**Disposal** means any disposition of the Property or any part of it within the meaning of section 205 Law of Property Act 1925 or section 27(2) Land

Registration Act 2002 and the expressions "**Dispose**", "**Disposed of**" and "**Disposes**" are construed accordingly

**Environment** means the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.

**Environmental Law** means all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes in so far as they relate to or apply to the Environment.

**Event of Default** has the meaning given to that expression in clause 9.2.

**Contract** means a contract dated [30 November 2021] between the Borrower and the Lender for the sale of the Property. *Curo*

**LPA 1925** means the Law of Property Act 1925.

**Loan** means the sum of £24,717,755.40 to be paid by the Borrower to the Lender in accordance with the provisions of the Contract.

**Permitted Disposal** means:

- (a) any Unit Disposal comprising a single Unit or series of Units;
- (b) any Disposal of Affordable Housing or a Disposal of land to a provider of Affordable Housing and in respect of which the Borrower has simultaneously entered into a building contract with such provider for the construction of Affordable Housing;
- (c) any Disposal to a utilities provider to facilitate the provision of any services to the Property;
- (d) a Disposal comprising the grant of an easement for the purpose of the proposed development of the Property;
- (e) a dedication and/or Disposal of a road, footpath, verge, open space or play area to a local statutory authority or other such Disposal as required under any planning, highways or other statutory agreement;
- (f) any Disposal that comprises an apartment block (but not including any Dwellings) and ancillary car parking or communal areas or open space to a management company managing the apartment block to the extent only that the land is disposed of is required for such management;



(g) any Disposal of a garage or garages erected or to be erected underneath an apartment or apartments to an end user provided the same is assigned as part of or ancillary to a Unit Disposal;

(h) the Disposal of the freehold reversion to a long lease of premises comprised in a Unit Disposal

(i) any easements granted in connection with any of the Disposals referred to in paragraphs (a) – (h) inclusive of this definition and any agreements entered into in connection with any of such Disposals

Provided that a Unit Disposal which would result in a breach of the provisions of clause 17.1.6 or 17.1.7 (as applicable) of the Contract by virtue of the aggregate number of Units which would then be released will not constitute a Permitted Disposal

**Plan** means the plan annexed at Schedule 2

**Property** means the freehold property owned by the Borrower described in Schedule 1.

**Receiver** means a receiver or receiver and manager appointed by the Lender under clause 11.

**Secured Liability** means the obligation of the Borrower to pay the Loan to the Lender in accordance with the provisions of the Contract.

**Security** means any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.

**Security Period** means the period starting on the date of this Deed and ending on the date on which the Lender is satisfied that all the Secured Liability has been unconditionally and irrevocably paid and discharged in full.

**Unit** means a dwelling house bungalow flat maisonette being a self contained dwelling including its curtilage and any driveway garage car port or ancillary parking spaces

**Unit Disposal** means a Disposal by way of transfer or long lease of a Unit at arm's length to a bona fide purchaser following practical completion of that Unit

**VAT** means value added tax or any equivalent tax chargeable in the UK or elsewhere.

## 1.2 Interpretation

In this Deed:

- 1.2.1 Clause, Schedule and paragraph headings shall not affect the interpretation of this Deed;
- 1.2.2 a **person** includes an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- 1.2.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.4 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.5 a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this Deed shall be binding on, and enure to the benefit of, the parties to this Deed and their respective personal representatives, successors, permitted assigns and permitted transferees;
- 1.2.6 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.2.7 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.8 a reference to **writing** or **written** does not include fax or email.
- 1.2.9 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.10 a reference to **this Deed** (or any provision of it) or to any other agreement or document referred to in this Deed is a reference to this Deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this Deed) from time to time;
- 1.2.11 unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this Deed and a reference to a paragraph is to a paragraph of the relevant Schedule;
- 1.2.12 any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;

- 1.2.13 a reference to an **amendment** includes a novation, supplement or variation (and **amend** and **amended** shall be construed accordingly);
- 1.2.14 a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.2.15 a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration or resolution;
- 1.2.16 a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- 1.2.17 a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- 1.2.18 a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

### **1.3 Clawback**

If the Lender considers that an amount paid by the Borrower in respect of the Secured Liability is capable of being avoided or otherwise set aside on the liquidation or administration of the Borrower or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.

### **1.4 Nature of security over real property**

A reference in this Deed to a **charge or mortgage of or over the Property** includes:

- 1.4.1 all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) and fixed plant and machinery that are situated on or form part of the Property at any time;
- 1.4.2 the benefit of any covenants for title given, or entered into, by any predecessor in title of the Borrower in respect of the Property, and any monies paid or payable in respect of those covenants; and
- 1.4.3 all rights under any licence, agreement for sale or agreement for lease in respect of the Property.

### **1.5 Law of Property (Miscellaneous Provisions) Act 1989**

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Contract and of any side letters



between any parties in relation to the Contract are incorporated into this Deed.

## **1.6 Schedules**

The Schedules form part of this Deed and shall have effect as if set out in full in the body of this Deed. Any reference to this Deed includes the Schedules.

## **2. Covenant to pay**

2.1 The Borrower shall, on demand, pay to the Lender and discharge the Secured Liability as it becomes due.

2.2 The Loan shall be repayable by the Borrower to the Lender as provided by the Contract.

## **3. Grant of security**

### **3.1 Legal mortgage and fixed charges**

As a continuing security for the payment and discharge of the Secured Liability, the Borrower with full title guarantee charges to the Lender:

3.1.1 by way of a first legal mortgage, the Property

## **4. Perfection of security**

### **4.1 Registration of legal mortgage at the Land Registry**

The Borrower consents to an application being made by the Lender to the Land Registrar for the following restriction in Form P to be registered against its title to the Property:

"No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the charge dated 23<sup>rd</sup> Dec 2021 in favour of The East Malling Trust referred to in the charges register or their conveyancer."

## **5. Liability of the Borrower**

### **5.1 Liability not discharged**

The Borrower's liability under this Deed in respect of the Secured Liability shall not be discharged, prejudiced or affected by:

5.1.1 any security, guarantee, indemnity, remedy or other right held by, or available to, the Lender that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;

5.1.2 any other act or omission that, but for this clause 5.1, might have discharged, or otherwise prejudiced or affected, the liability of the Borrower.

**5.2 Immediate recourse**

The Borrower waives any right it may have to require the Lender to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this Deed against the Borrower.

**6. General covenants**

**6.1 Negative pledge and disposal restrictions**

The Borrower shall not at any time (other than by way of a Permitted Disposal), except with the prior written consent of the Lender:

6.1.1 create, purport to create or permit to subsist any Security on, or in relation to, the Property other than any Security created by this Deed;

6.1.2 sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Property; or

6.1.3 create or grant (or purport to create or grant) any interest in the Property in favour of a third party.

**6.2 Representations and Warranties**

The Borrower makes the representations and warranties set out in this clause 6.1.4 to the Lender on the date of this Deed and the representations and warranties are deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition.

6.2.1 No Security expressed to be created under this Deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Borrower or otherwise.

6.2.2 This Deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Borrower and is, and will continue to be, effective security over all and every part of the Property in accordance with its terms

### **6.3 Preservation of Property**

The Borrower shall not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Lender or materially diminish the value of the Property or the effectiveness of the security created by this Deed.

### **6.4 Compliance with laws and regulations**

6.4.1 The Borrower shall not, without the Lender's prior written consent, use or permit the Property to be used in any way contrary to law nor carry out or permit or suffer to be carried out on the Property any development (as defined in each of the Town and Country Planning Act 1990 and the Planning Act 2008) other than the Development as defined in the Contract.

6.4.2 The Borrower shall:

- (a) comply with the requirements of any law or regulation relating to or affecting the Property or the use of them or any part of them;
- (b) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Property or their use or that are necessary to preserve, maintain or renew the Property; and
- (c) promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Property.

### **6.5 Leases and licences affecting the Property**

The Borrower shall not (other than by way of a Permitted Disposal), without the prior written consent of the Lender:

- 6.5.1 grant any licence or tenancy affecting the whole or any part of the Property, or exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925 (or agree to grant any such licence or tenancy, or agree to exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925).
- 6.5.2 in any other way dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property (or agree to dispose of, accept the surrender of, or surrender or create any legal or equitable estate or other interest in the whole or any part of the Property);
- 6.5.3 let any person into occupation or share occupation of the whole or any part of the property; or



6.5.4 grant any consent or licence under any lease or licence affecting the Property.

**6.6 No restrictive obligations**

The Borrower shall not (other than by way of a Permitted Disposal), without the prior written consent of the Lender, enter into any onerous or restrictive obligations affecting the whole or any part of the Property or create or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of the Property.

**6.7 Proprietary rights**

The Borrower shall (other than by way of a Permitted Disposal) procure that no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of the Property, without the prior written consent of the Lender.

**6.8 Compliance with and enforcement of covenants**

The Borrower shall:

6.8.1 observe and perform all covenants, stipulations and conditions to which the Property, or the use of it, is or may be subject and (if the Lender so requires) produce to the Lender evidence sufficient to satisfy the Lender that those covenants, stipulations and conditions have been observed and performed; and

6.8.2 diligently enforce all covenants, stipulations and conditions benefiting the Property and shall not (and shall not agree to) waive, release or vary any of the same.

**6.9 Notices or claims relating to the Property**

6.9.1 The Borrower shall:

(a) give full particulars to the Lender of any notice, order, direction, designation, resolution, application, requirement or proposal given or made by any public or local body or authority (a **Notice**) that specifically applies to the Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Notice; and

(b) (if the Lender so requires) immediately, and at the cost of the Borrower, take all reasonable and necessary steps to comply with any Notice, and make, or join with the Lender in making, any objections or representations in respect of that Notice that the Lender thinks fit.



- 6.9.2 The Borrower shall give full particulars to the Lender of any claim, notice or other communication served on it in respect of any modification, suspension or revocation of any Environmental Licence or any alleged breach of any Environmental Law, in each case relating to the Property.

**7. Lender has Receiver's powers**

To the extent permitted by law, any right, power or discretion conferred by this Deed (either expressly or impliedly) or by law on a Receiver may, after the security constituted by this Deed has become enforceable, be exercised by the Lender in relation to the Property whether or not it has taken possession of the Property and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

**8. Indulgence**

The Lender may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this Deed (whether or not any such person is jointly liable with the Borrower) in respect of any of the Secured Liability or of any other security for them without prejudice either to this Deed or to the liability of the Borrower for the Secured Liability.

**9. When security becomes enforceable**

**9.1 Security becomes enforceable on Event of Default**

The security constituted by this Deed shall become immediately enforceable if an Event of Default occurs

**9.2 Event of Default**

9.2.1 Each of the circumstances set out in this clause 9.2 is an Event of Default

9.2.2 The Borrower does not pay each part of the Secured Liability on each of the dates set out for payment of the same in the Contract.

9.2.3 the Borrower suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 (being a partnership) has any partner to whom any of the foregoing apply;

9.2.4 the Borrower enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Borrower with one or more other companies or the solvent reconstruction of the Borrower;

- 9.2.5 an order is made for the winding up of the Borrower (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Borrower with one or more other companies or the solvent reconstruction of the Borrower;
- 9.2.6 an order is made for the appointment of an administrator, or if an administrator is appointed over the Borrower (being a company);
- 9.2.7 the holder of a qualifying floating charge over the assets of the Borrower (being a company) has appointed an administrative receiver;
- 9.2.8 the making of an application to court for, or obtaining, a moratorium under Part A1 of the Insolvency Act 1986 in relation to the Borrower (being a company);
- 9.2.9 a creditor or encumbrancer of the Borrower attaches or takes possession of, or an execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Borrower assets and such attachment or process is not discharged within 14 Working Days;
- 9.2.10 the Borrower suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- 9.2.11 the Borrower (being a company) is struck off from the Register of Companies; or
- 9.2.12 the Borrower otherwise ceases to exist

### **9.3 Discretion**

After the security constituted by this Deed has become enforceable, the Lender may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Property.

## **10. Enforcement of security**

### **10.1 Enforcement powers**

- 10.1.1 For the purposes of all powers implied by statute, the Secured Liability are deemed to have become due and payable on the date of this Deed.
- 10.1.2 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this Deed) shall be immediately exercisable at any time after the security constituted by this Deed has become enforceable under clause 9.1
- 10.1.3 Section 103 of the LPA 1925 does not apply to the security constituted by this Deed.

## **10.2 Extension of statutory powers of leasing**

The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Lender and any Receiver, at any time after the security constituted by this Deed has become enforceable, whether in its own name or in that of the Borrower, to:

- 10.2.1 grant a lease or agreement for lease;
- 10.2.2 accept surrenders of leases; or
- 10.2.3 grant any option in respect of the whole or any part of the Property with whatever rights relating to other parts of it,

whether or not at a premium and containing such covenants on the part of the Borrower, and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender), as the Lender or Receiver thinks fit, without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

## **10.3 Protection of third parties**

No purchaser, mortgagee or other person dealing with the Lender, any Receiver or any Delegate shall be concerned to enquire:

- 10.3.1 whether any of the Secured Liability have become due or payable, or remain unpaid or undischarged;
- 10.3.2 whether any power the Lender, a Receiver or Delegate is purporting to exercise has become exercisable or is being properly exercised; or
- 10.3.3 how any money paid to the Lender, any Receiver or any Delegate is to be applied.

## **10.4 Privileges**

Each Receiver and the Lender is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.

## **10.5 No Liability as Mortgage in Possession**

Neither the Lender, nor any Receiver or Delegate, shall be liable to the Borrower or any other person to account as mortgagee in possession in respect of all or any of the Property nor shall any of them be liable;

- 10.5.1 for any loss on realisation, or for any act, default or omission for which a mortgagee in possession might be liable;

10.5.2 arising in any other way in connection with this Deed.

**10.6 Relinquishing possession**

If the Lender, any Receiver or Delegate enters into or takes possession of the Property, it or he/she may at any time relinquish possession.

**10.7 Conclusive discharge to purchasers**

The receipt of the Lender, or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Property or in making any acquisition in the exercise of their respective powers, the Lender, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it thinks fit.

**11. Receivers**

**11.1 Appointment**

At any time after the security constituted by this Deed has become enforceable, or at the request of the Borrower, the Lender may, without further notice, appoint by way of deed, or otherwise in writing, any one or more persons to be a Receiver of all or any part of the Property.

**11.2 Removal**

The Lender may, without further notice, from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

**11.3 Remuneration**

The Lender may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925 and the remuneration of the Receiver shall be a debt secured by this Deed, to the extent not otherwise discharged.

**11.4 Power of appointment additional to statutory powers**

The power to appoint a Receiver conferred by this Deed shall be in addition to all statutory and other powers of the Lender under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.



### **11.5 Power of appointment exercisable despite prior appointments**

The power to appoint a Receiver (whether conferred by this Deed or by statute) shall be, and remain, exercisable by the Lender despite any prior appointment in respect of all or any part of the Property.

### **11.6 Agent of the Borrower**

Any Receiver appointed by the Lender under this Deed shall be the agent of the Borrower and the Borrower shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of each Receiver shall continue until the Borrower goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Lender.

## **12. Powers of Receiver**

### **12.1 Powers additional to statutory powers**

12.1.1 Any Receiver appointed by the Lender under this Deed shall, in addition to the rights, powers and discretions conferred on him/her by statute, have the rights, powers and discretions set out in clause 12.2 to clause 12.20.

12.1.2 A Receiver has all the rights, powers and discretions conferred on a receiver (or a receiver and manager) under the LPA 1925, and shall have those rights, powers and discretions conferred on an administrative receiver under the Insolvency Act 1986 whether he/she is an administrative receiver or not.

12.1.3 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him/her states otherwise) exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of any other Receiver.

12.1.4 Any exercise by a Receiver of any of the powers given by clause 12 may be on behalf of the Borrower, the directors of the Borrower or himself/herself.

### **12.2 Repair and develop the Property**

A Receiver may undertake or complete any works of repair, alteration, building or development on the Property and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same.

### **12.3 Grant or accept surrenders of leases**

A Receiver may grant, or accept, surrenders of any leases or tenancies affecting the Property on any terms, and subject to any conditions, that he/she thinks fit.

### **12.4 Employ personnel and advisers**

12.4.1 A Receiver may provide services and employ, or engage, any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on any terms, and subject to any conditions, that he/she thinks fit.

12.4.2 A Receiver may discharge any such person or any such person appointed by the Borrower.

### **12.5 Make and revoke VAT options to tax**

A Receiver may make, exercise or revoke any VAT option to tax as he/she thinks fit.

### **12.6 Charge for remuneration**

A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by him/her) that the Lender may prescribe or agree with him/her.

### **12.7 Take possession**

A Receiver may take immediate possession of, get in and realise any Property.

### **12.8 Manage or reconstruct the Borrower's business**

A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Borrower carried out at the Property.

### **12.9 Dispose of the Property**

A Receiver may grant options and licences over all or any part of the Property, grant any other interest or right over, sell, exchange, assign or lease (or concur in granting options and licences over all or any part of the Property, granting any other interest or right over, selling, exchanging, assigning or leasing) all or any of the Property in respect of which he/she is appointed for such consideration and in such manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as he/she thinks fit. A Receiver may promote, or concur in

promoting, a company to purchase the Property to be disposed of by him/her.

**12.10 Sever fixtures and fittings**

A Receiver may sever and sell separately any fixtures or fittings from the Property without the consent of the Borrower.

**12.11 Give valid receipts**

A Receiver may give a valid receipt for all monies and execute all assurances and things that may be proper or desirable for realising any of the Property.

**12.12 Make settlements**

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who claims to be a creditor of the Borrower or relating in any way to any Property.

**12.13 Bring legal action**

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Property as he/she thinks fit.

**12.14 Insure**

A Receiver may, if he/she thinks fit, but without prejudice to the indemnity in clause 15.2, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Borrower under this Deed.

**12.15 Form subsidiaries**

A Receiver may form a subsidiary of the Borrower and transfer the Property to that subsidiary.

**12.16 Borrow**

A Receiver may, for whatever purpose he/she thinks fit, raise and borrow money either unsecured or on the security of all or any of the Property in respect of which he/she is appointed on any terms that he/she thinks fit (including, if the Lender consents, terms under which that security ranks in priority to this Deed).



#### **12.17 Redeem prior Security**

A Receiver may redeem any prior Security and settle and pass the accounts to which the Security relates. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Borrower, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

#### **12.18 Delegation**

A Receiver may delegate his/her powers in accordance with this Deed.

#### **12.19 Absolute beneficial owner**

A Receiver may, in relation to any of the Property, exercise all powers, authorisations and rights he/she would be capable of exercising as, and do all those acts and things, an absolute beneficial owner could exercise or do in the ownership and management of all or any part of the Property.

#### **12.20 Incidental powers**

A Receiver may do any other acts and things that he/she:

12.20.1 may consider desirable or necessary for realising the Property;

12.20.2 may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this Deed or law; or

12.20.3 lawfully may or can do as agent for the Borrower.

### **13. Delegation**

#### **13.1 Delegation**

The Lender or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it or him/her by this Deed.

#### **13.2 Terms**

The Lender and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it or he/she thinks fit.

#### **13.3 Liability**

Neither the Lender nor any Receiver shall be in any way liable or responsible to the Borrower for any loss or liability of any nature arising from any act, default, omission or misconduct on the part of any Delegate.



## **14. Application of proceeds**

### **14.1 Order of application of proceeds**

All monies received or recovered by the Lender, a Receiver or a Delegate under this Deed or in connection with the realisation or enforcement of all or part of the security constituted by this Deed (other than sums received under any Insurance Policy), shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority (but without prejudice to the Lender's right to recover any shortfall from the Borrower):

- 14.1.1 in or towards payment of all costs, liabilities, charges and expenses incurred by or on behalf of the Lender (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this Deed and of all remuneration due to any Receiver under or in connection with this Deed;
- 14.1.2 in or towards payment of the Secured Liability in any order and manner that the Lender determines; and
- 14.1.3 in payment of the surplus (if any) to the Borrower or other person entitled to it.

## **15. Costs and indemnity**

### **15.1 Costs**

The Borrower shall, promptly pay to, or reimburse, the Lender and any Receiver, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by the Lender, any Receiver or any Delegate in connection with:

- 15.1.1 enforcing (or attempting to do so) any of the Lender's, a Receiver's or a Delegate's rights under this Deed;
- 15.1.2 any amendment, extension, waiver, consent or suspension of rights (or any proposal for any of these) under or in connection with this Deed;
- 15.1.3 taking proceedings for, or recovering, the Secured Liability,

### **15.2 Indemnity**

- 15.2.1 The Borrower shall indemnify the Lender, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis)

and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:

- (a) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this Deed or by law in respect of the Property;
- (b) taking, holding, protecting, perfecting, preserving, releasing or enforcing (or attempting to do so) the security constituted by this Deed; or
- (c) any default or delay by the Borrower in performing any of its obligations under this Deed.

**16. Further assurance**

**16.1 Further assurance**

16.2 The Borrower shall promptly, at its own expense, take whatever action the Lender or any Receiver may reasonably require for:

16.2.1 creating, perfecting or protecting the security created or intended to be created by this Deed;

16.2.2 facilitating the realisation of the Property; or

16.2.3 facilitating the exercise of any right, power, authority or discretion exercisable by the Lender or any Receiver in respect of the Property,

**17. Release**

**17.1 Release**

17.2 Subject to clause 23, at the end of the Security Period, the Lender shall, at the request and cost of the Borrower, take whatever action is necessary to:

17.2.1 release the Property from the security constituted by this Deed

17.2.2 The Borrower and the Lender acknowledge that clause 17 of the Contract provides for releases of parts of the Property from the security constituted by this deed and consents to Permitted Disposals within paragraphs (d) and (i) and the parties confirm that they will observe and perform their respective obligations in clause 17 of the Contract which shall continue in force and effect notwithstanding completion of the transfer pursuant to the Contract

**18. Assignment and transfer**

Neither the Borrower nor the Lender may assign any of its rights or transfer any of its rights or obligations under this Deed

**19. Amendments, waivers and consents**

**19.1 Amendments**

No amendment of this Deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).

**19.2 Waivers and consents**

19.2.1 A waiver of any right or remedy under this Deed or by law, or any consent given under this Deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any subsequent right or remedy. It only applies to the circumstances in relation to which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

19.2.2 A failure by the Lender to exercise or delay by it in exercising any right or remedy provided under this Deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this Deed. No single or partial exercise of any right or remedy provided under this Deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this Deed by the Lender shall be effective unless it is in writing.

**19.3 Rights and remedies**

The rights and remedies provided under this Deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

**20. Partial invalidity**

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

**21. Counterparts**

**21.1 Counterparts**

- 21.1.1 This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.
- 21.1.2 Transmission of an executed counterpart of this Deed (but for the avoidance of doubt not just a signature page) email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Deed. If either method of delivery is adopted, without prejudice to the validity of the deed thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.
- 21.1.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

**22. Third party rights**

**22.1 Third party rights**

- 22.1.1 Except as expressly provided elsewhere in this Deed, a person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this Deed.
- 22.1.2 The consent of any person who is not a party to this Deed is not required to rescind or vary this Deed at any time.

**23. Discharge conditional**

Any release, discharge or settlement between the Borrower and the Lender shall be conditional on no payment or security received by the Lender in respect of the Secured Liability being avoided, reduced, set aside or ordered to be refunded under any law relating to insolvency, bankruptcy, winding-up, administration, receivership or for any other reason. Despite any such release, discharge or settlement:

- 23.1.1 the Lender or its nominee may retain this Deed and the security created by or under it, including all certificates and documents relating to the whole or any part of the Property, for any period that the Lender deems necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and
- 23.1.2 the Lender may recover the value or amount of such security or payment from the Borrower subsequently as if the release, discharge or settlement had not occurred.



**24. Consolidation**

The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this Deed.

**25. Notices**

**25.1 Delivery**

Any notice or other communication given to a party under or in connection with this Deed shall be:

25.1.1 in writing;

25.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by fax; and

25.1.3 sent to:

(a) the Borrower at:

St Modwen Homes Limited, Park Point, 17 High Street,  
Longbridge, Birmingham B31 2UQ

Attention: *Jeremy Atwater* *CWLC*

(b) the Lender at:

The East Malling Trust, Bardbourne House, East Malling,  
Kent ME19 6FZ

Attention: Sally Flanagan

or to any other address or fax number notified in writing by one party to the other from time to time.

**26. Receipt by Borrower**

Any notice or other communication that the Lender gives to the Borrower shall be deemed to have been received:

26.1.1 if delivered by hand, at the time it is left at the relevant address;

26.1.2 if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and

**26.1.3** if sent by fax, when received in legible form.

A notice or other communication given as described in clause 26.2.1 on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

**26.2** **Receipt by Lender**

Any notice or other communication given to the Lender shall be deemed to have been received only on actual receipt.

**26.3** **Service of proceedings**

This clause 25 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**26.4** **No notice by email**

A notice or other communication given under or in connection with this Deed is not valid if sent by email.

**27. Governing law and jurisdiction**

**27.1** **Governing law**

This Deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**27.2** **Jurisdiction**

Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Deed or its subject matter or formation. Nothing in this clause shall limit the right of the Lender to take proceedings against the Borrower in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

**27.3** **Other service**

The Borrower irrevocably consents to any process in any legal action or proceedings under clause 27.2 being served on it in accordance with the provisions of this Deed relating to service of notices. Nothing contained in

this Deed shall affect the right to serve process in any other manner permitted by law.

**This agreement** has been entered into as a deed on the date stated at the beginning of it.

### **Schedule 1 – Property**

Part of the Land and Buildings on the east and west sides of Kiln Barn Road, Ditton and Aylesford registered under freehold title number K81429 and part of the property known as land to the rear of 13,14,15,16,17,18,19, and 20 Wilton Drive Ditton Aylesford registered under title number K127934 shown edged red on the Plan



## **Schedule 2 – The Plan**

Job no. MSBL377057	Dwg no. EMT - B - 02	Rev	Drawn by: M.L.	Checked by:	Date: 19.02.21	Scale: 1:2500 @ A3
--------------------	----------------------	-----	----------------	-------------	----------------	--------------------

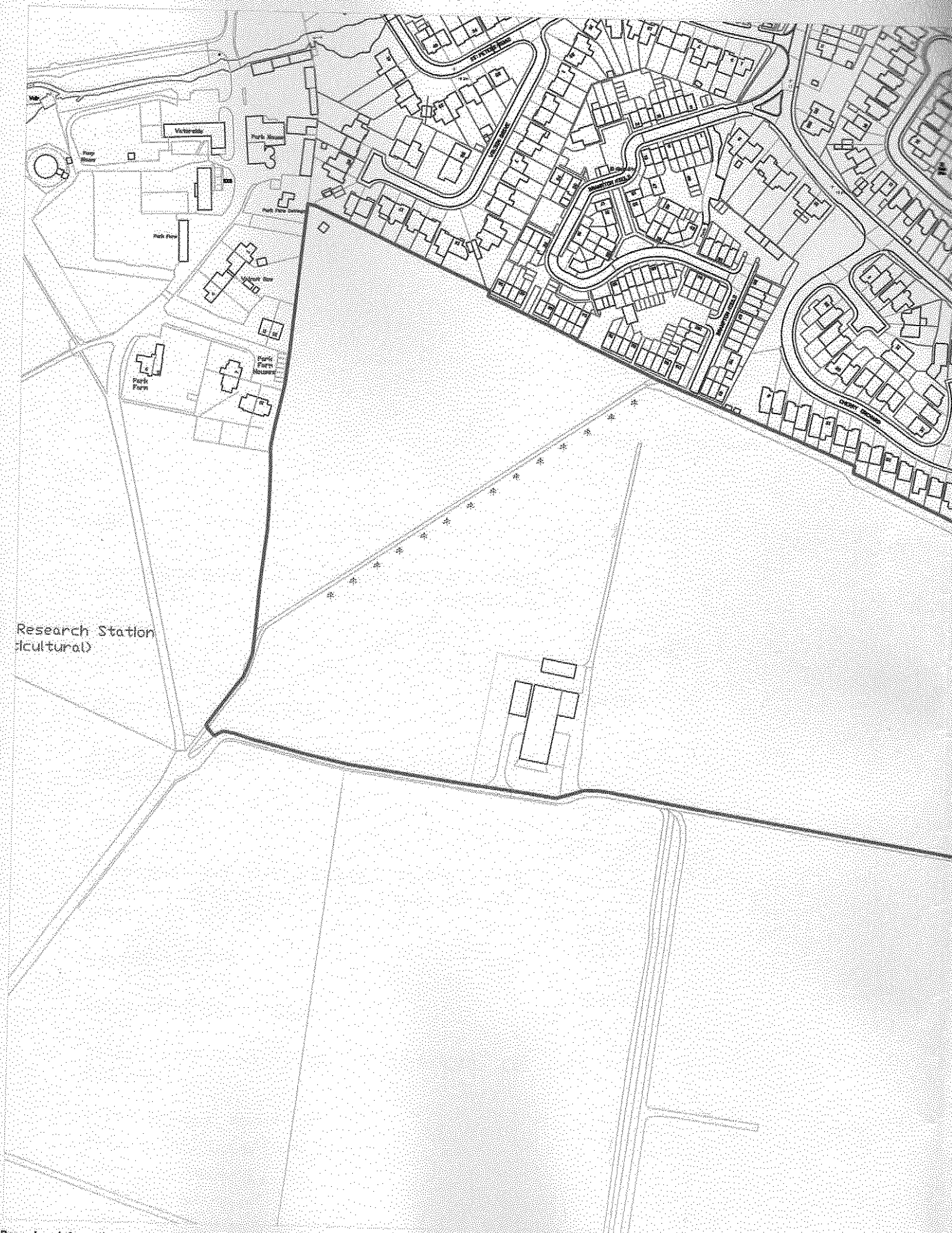
Project Name	Drawing Title
East Malling Trust	Dilton Edge: Red Line Boundary



Site B Red Line Boundary (11.27 Ha)

REV	DATE	INITIAL
-----	------	---------





Executed as deed by ST MODWEN HOMES LIMITED  
acting by [ ], a director, and  
[NAME OF SECOND DIRECTOR/SECRETARY], [a  
director OR its secretary]

.....  
[SIGNATURE OF FIRST  
DIRECTOR]

Director

.....  
[SIGNATURE OF  
SECOND DIRECTOR OR  
SECRETARY]

Director OR Secretary

~~OR~~

Executed as deed by ST. MODWEN HOMES LIMITED  
acting by [ ] a director, in the presence  
of:

.....  
[SIGNATURE OF  
DIRECTOR]

Director

.....  
[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND OCCUPATION] OF  
WITNESS]

OR

Executed as deed by ST. MODWEN HOMES LIMITED  
acting by [ ARTHUR MITCHELL ] its attorney, in the  
presence of:

  
.....  
[SIGNATURE OF  
ATTORNEY]

Attorney

.....  
[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND OCCUPATION] OF  
WITNESS]

AMARDEEP BHAMRA  
GOWLING WLG (UK) LLP  
TWO SNOWHILL  
BIRMINGHAM  
B4 6WR  
SENIOR CHARTERED LEGAL EXECUTIVE



SIGNED as a deed on behalf of the Trustees of  
THE EAST MALLING TRUST by [                      ]  
being one of their number under an authority  
conferred pursuant to Section 333 of the  
Charities Act 2011 in the presence of

.....

Dated

9<sup>th</sup> March

2021

ST. MODWEN HOMES LIMITED

---

Power of Attorney

---



We hereby certify that this is a true copy of the original document.

Gowling WLG (UK) LLP  
Gowling WLG (UK) LLP

Dated 10.03.21

THIS DEED is made on 9<sup>th</sup> April 2021

## **PARTIES**

St. Modwen Homes Limited (company number 09095920) of Park Point, 17 High Street, Longbridge, Birmingham B31 2UQ (the "Principal").

### **1. REVOCATION OF PREVIOUS POWER OF ATTORNEY**

Effective from the date of this deed, the Principal hereby revokes the previous power of attorney dated 16 April 2020 appointing Chris Hunt, Matthew Walker, Ashley Mitchell and Mark Stephenson of Gowling WLG (UK) LLP as attorneys (the "Previous PoA"), provided always that nothing in this deed shall prejudice the Principal's obligation to ratify anything an Attorney has or the Attorneys have done in good faith prior to the date of this deed in the exercise, or apparent exercise, of any authority conferred by the Previous PoA.

### **2. APPOINTMENT OF ATTORNEYS**

The Principal appoints:

- 2.1 Chris Hunt;
- 2.2 Matthew Walker;
- 2.3 Ashley Mitchell;
- 2.4 Mark Stephenson;
- 2.5 Richard Green;
- 2.6 Felicity Lindsay;
- 2.7 Nicholas Mumby; and
- 2.8 Victoria Fowler

all of Gowling WLG (UK) LLP, Two Snowhill, Birmingham B4 6WR as its attorneys ("Attorneys" – or "Attorney" when acting individually) jointly and severally to be its Attorneys for the period beginning on the date of this deed and ending at midnight on the first anniversary of such date.

### **3. DELEGATION TO ATTORNEYS**

- 3.1 The Attorneys may, with full power, authority and legal right in the name and on behalf of the Principal:

- 3.1.1 execute, deliver, seal and sign any and all deeds, agreements, consents, letters, notices or other documents (whether as deeds or otherwise);

- 3.1.2 grant any authorisations or consents on behalf of the Principal,

which the Attorney may in his sole and absolute discretion consider necessary or desirable in connection with or relating to real estate, construction, planning and/or highways and utilities matters in England or Wales.

- 3.2 The Attorneys may negotiate, vary, amend, sign, execute and/or deliver on the Principal's behalf any document relating to construction, planning, highways and utilities, land and property including (but not limited to):

Leases, transfers, agreements for lease, sale or purchase contracts, deeds of variation, supplemental agreements, rent review agreements, offers, surrenders, licences, assignments, side letters, rent deposit deeds, consents and notices (whether statutory or pursuant to any contract or lease), building contracts, performance bonds, performance guarantees, parent company guarantees, consultant appointments, task orders, project orders, collateral warranties, third party rights notices, deeds of variation, letters of reliance, letters of intent, vesting certificates, additional services letters/instructions, requests to proceed, section 106 agreements, section 38 and section 278 highways agreements, dedication agreements, section 104 agreements and/or other agreements with statutory undertakers.

**4. PRINCIPAL RATIFIES ATTORNEYS' ACTS**

The Principal will ratify anything that an Attorney or the Attorneys do in good faith in the exercise, or apparent exercise, of the authority that this deed gives to them.

**5. REVOCATION**

The Principal may revoke this power at any time by written notice to the Attorney. The Principal declares that a person who deals with the Attorney in good faith may accept a written statement signed by that Attorney to the effect that this power of attorney has not been revoked as conclusive evidence of that fact.

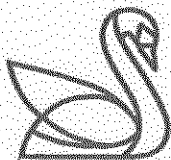
**6. INDEMNITY**

The Principal indemnifies the Attorneys fully from all actions, demands, proceedings, claims, costs, expenses, obligations, liabilities and losses of any description (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) arising from the exercise or the purported exercise in good faith of any of the powers or functions properly under this deed (including any loss incurred through enforcing this indemnity).

**7. GOVERNING LAW**

English law governs this deed.

**THIS AGREEMENT HAS BEEN ENTERED INTO AS A DEED ON THE DATE STATED AT THE BEGINNING OF IT.**





Executed as a deed by

**ST. MODWEN HOMES LIMITED**

acting by a director



Director – **DAVE SMITH**

In the presence of:



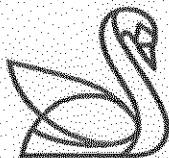
Signature of witness

*LISA WHITE*

Witness Name (in BLOCK CAPITALS)

*2 Devon Way, Longbridge, Birmingham, B31 2TS*

Address



**ST.MODWEN**