



Registration of a Charge

Company name: **TYDWELL LIMITED**

Company number: **05766613**

Received for Electronic Filing: **03/12/2020**



X9J5BRMB

Details of Charge

Date of creation: **01/12/2020**

Charge code: **0576 6613 0005**

Persons entitled: **AL RAYAN BANK PLC**

Brief description: **INTERCREDITOR AND SECURITY DEED**

Contains fixed charge(s).

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: **AFREEN COLE**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 5766613

Charge code: 0576 6613 0005

The Registrar of Companies for England and Wales hereby certifies that a charge dated 1st December 2020 and created by TYDWELL LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 3rd December 2020 .

Given at Companies House, Cardiff on 4th December 2020

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

DATED 1 December 2020

AL RAYAN BANK PLC
and
TYDWELL LIMITED
and
KINGMEAD HOMES (NEWLANDS) LIMITED

INTERCREDITOR AND SECURITY DEED

 **SHAKESPEARE**MARTINEAU

CONTENTS

1.	DEFINITIONS AND INTERPRETATION	1
2.	PRIORITIES	4
3.	CUSTOMER COVENANTS	5
4.	JUNIOR CREDITOR'S COVENANTS	6
5.	PERMITTED PAYMENTS	7
6.	GRANT OF SECURITY	7
7.	FIXED SECURITY	7
8.	CONTINUING SECURITY	9
9.	LIABILITY OF THE JUNIOR CREDITOR	9
10.	WHEN SECURITY BECOMES ENFORCEABLE	9
11.	ENFORCEMENT OF SECURITY	10
12.	BANK RECEIVER	11
13.	POWERS OF BANK RECEIVER	12
14.	APPLICATION OF PROCEEDS	13
15.	PRESERVATION OF RIGHTS	13
16.	CO-OPERATION BY CUSTOMER AND JUNIOR CREDITOR	14
17.	PRESERVATION OF SUBORDINATION	14
18.	BOOK DEBTS, INSURANCE AND CUSTODY OF DOCUMENTS	15
19.	SENIOR OBLIGATIONS ENFORCEMENT	16
20.	JUNIOR OBLIGATIONS ENFORCEMENT	16
21.	CUSTOMER INSOLVENCY	17
22.	POWER OF ATTORNEY	18
23.	EXPENSES	18
24.	DURATION	19
25.	ASSIGNMENT	19
26.	CUSTOMER'S ACKNOWLEDGEMENTS	19
27.	REMEDIES, WAIVERS, AMENDMENTS AND CONSENTS	19
28.	SEVERANCE	20
29.	COUNTERPARTS	20
30.	THIRD PARTY RIGHTS	21
31.	PERPETUITY PERIOD	21
32.	NOTICES	21
33.	GOVERNING LAW AND JURISDICTION	22
	SCHEDULE 1 SENIOR OBLIGATIONS DOCUMENTS	23
	SCHEDULE 2 JUNIOR OBLIGATIONS AGREEMENTS	24

THIS DEED IS MADE 1 December **2020**

BETWEEN

- (1) **AL RAYAN BANK PLC** a company incorporated in England and Wales with company number 4483430 whose registered office is at 44 Hans Crescent, Knightsbridge, London SW1X 0LZ (the **Bank**);
- (2) **TYDWELL LIMITED** a company incorporated in England and Wales with company number 05766613 and having its registered office at 22 Uxbridge Road, Ealing, London W5 2RJ (the **Junior Creditor**); and
- (3) **KINGMEAD HOMES (NEWLANDS) LIMITED** a company incorporated in England and Wales with company number 11807630 and having its registered office at 168 Church Road, Hove BN3 2DL (the **Customer**).

BACKGROUND

- (A) The Bank has agreed to provide a murabaha facility to the Customer.
- (B) The Junior Creditor has agreed to provide financial facilities to the Customer.
- (C) The Bank and the Junior Creditor have agreed that the priority of their respective debts and claims against the Customer shall be as set out in this deed.
- (D) The Customer has agreed to enter this deed to acknowledge its terms and to give certain covenants to the Bank and the Junior Creditor.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in this deed.

Act means the Law of Property Act 1925.

Bank Receiver means a receiver, receiver and manager or administrative receiver appointed by the Bank pursuant to the provisions of the Senior Obligations Documents.

Business Day means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for general non electronic, non automated commercial business.

Creditors means the Bank and the Junior Creditor.

Event of Default has the meaning defined in the master murabaha agreement constituting a Senior Obligations Document.

Finance Document means each of the Junior Obligations Agreements and the Senior Obligations Documents.

Junior Obligations means all Liabilities which are or may become payable or owing by the Customer to the Junior Creditor under a Junior Obligations Agreement or otherwise.

Junior Obligations Agreement means

- (a) any document referred to in Schedule 2; and/or
- (b) any other agreement, whether written, oral or otherwise and whether made in person, fact-to-face, by telephone or any electronic means (or any combination of the above)

Liabilities means all present or future monies, obligations or liabilities, whether actual or contingent and whether owed jointly or severally, as principal or surety and/or in any other capacity.

Permitted Payment means any payment to the Junior Creditor permitted under clause 5.1.

Principal Agreement master murahaba facility agreement of even date between the Customer, PSPL and the Bank.

PSPL means Prime Surbiton Properties Limited.

Receiver means a receiver, receiver and manager or administrative receiver appointed by the Bank pursuant to the provisions of its Security Documents.

Right means any Security or other right or benefit whether arising by set-off, counterclaim, subrogation, indemnity, proof in liquidation or otherwise and whether from contribution or otherwise.

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 Assets means all property and assets from time to time mortgaged, charged or assigned (or expressed to be mortgaged, charged or assigned) by or pursuant to this deed.

Security Document means any document under which Security is taken pursuant thereto and any other document under which Security is created, whether at the date of this deed or at any later date, which secures any of the Senior Obligations.

Security Period means the period beginning on the date of this deed and ending on the date on which:

- (a) all the Senior Obligations have been unconditionally and irrevocably paid and discharged in full; and
- (b) the Customer has no further commitment, obligation or liability under or pursuant to the Senior Obligations Document.

Senior Obligations means all Liabilities which are or may become payable or owing by the Customer to the Bank under the Senior Obligations Documents or otherwise and includes obligations and liabilities which would be treated as such but for the liquidation, administration or dissolution of or similar event affecting the Customer.

Senior Obligations Document means any document referred to in Schedule 1.

Senior Security means any Security in favour of the Bank created by a Security Document.

Servicing Account has the meaning given to it in the Principal Agreement.

Subsidiary means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006.

1.2 Interpretation

In this deed:

- (a) clause, Schedule and paragraph headings shall not affect the interpretation of this deed;
- (b) a reference to a person shall include a reference to 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) and that person's personal representatives, successors, permitted assigns and permitted transferees;
- (c) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (d) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- (e) a reference to a party shall include that party's successors, permitted assigns and permitted transferees;
- (f) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and includes any equivalent or analogous statutory provision under the laws of any other applicable jurisdiction;
- (g) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- (h) a reference to writing or written includes e-mail;
- (i) an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- (j) 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;
- (k) 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;
- (l) 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;

- (m) a reference to an amendment includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly);
- (n) a reference to assets includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (o) a reference to an authorisation includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- (p) a reference to continuing in relation to an Event of Default means an Event of Default that has not been waived;
- (q) 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
- (r) 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 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.

1.4 Covenant to Pay

The Junior Creditor covenants in favour of the Bank that it will pay and discharge the Senior Obligations from time to time when they fall due save that such obligation shall be limited to the amount received by the Junior Creditor or realised by the Bank from the Junior Obligations.

1.5 Clawback

If the Bank considers that an amount paid in respect of a Senior Obligation is capable of being avoided or otherwise set aside on the liquidation or administration of the Customer or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this deed.

2. PRIORITIES

2.1 Junior Creditor's consent to Senior Security

The Junior Creditor:

- (a) consents to the creation or subsistence (as appropriate) of the Senior Security; and
- (b) confirms that the creation or subsistence of the Senior Security does not constitute a default by the Customer under any of the Junior Obligations Agreements.

2.2 **Ranking and subordination of debt**

The Creditors and the Customer agree that:

- (a) the Senior Obligations rank and shall rank in priority to the Junior Obligations in all respects;
- (b) the Junior Obligations are and shall be subordinated to the Senior Obligations; and
- (c) no payments shall (except as otherwise provided in this deed) be made by any person in respect of the Junior Obligations while the Senior Obligations are outstanding.

2.3 **Monies received by the Junior Creditor**

If the Junior Creditor receives any monies in contravention of this deed it shall hold those monies in trust for, and pay or transfer them to, the Bank for application towards the Senior Obligations until the Senior Obligations have been irrevocably discharged.

2.4 **Failure of trust**

If for any reason, a trust in favour of, or a holding of property for, the Bank under this deed is invalid or unenforceable, the Junior Creditor shall pay and deliver to the Bank in cash or in kind an amount (or, if in kind, a value) equal to the payment, receipt or recovery which it would otherwise have been bound to hold in trust for, or as property of, the Bank.

2.5 **Continuing status of security**

Nothing in this deed shall affect the status of the Security Documents as continuing security.

2.6 **No challenge to security**

The Junior Creditor shall not challenge or question:

- (a) the validity or enforceability of any Security constituted by a Security Document;
- (b) the nature of any Security constituted by a Security Document; or
- (c) without prejudice to the generality of the foregoing, whether any Security constituted by a Security Document is fixed or floating.

3. **CUSTOMER COVENANTS**

3.1 **Customer covenants**

So long as any Senior Obligations are outstanding, the Customer shall not and it shall procure that none of its subsidiaries shall:

- (a) pay, repay or make any distribution in respect of any of the Junior Obligations in cash or in kind except for a Permitted Payment;
- (b) buy or acquire the benefit of any of the Junior Obligations;

- (c) exercise any right of set-off against any of the Junior Obligations except in respect of a Permitted Payment;
- (d) make a loan or provide credit to the Junior Creditor;
- (e) create, or allow to exist, any Security over any of its assets for, or any guarantee for or in respect of, any of the Junior Obligations or in respect of a loan, credit or other financial accommodation provided to the Junior Creditor by another person;
- (f) vary any of the Junior Obligations Agreements; or
- (g) take, or omit to take, any action which may impair the ranking or the subordination set out in this deed.

4. JUNIOR CREDITOR'S COVENANTS

4.1 No payment, Security or guarantee

The Junior Creditor covenants with the Bank that, so long as any of the Senior Obligations are outstanding, it shall not:

- (a) demand, take, accept or receive any payment or distribution in respect, or on account of, the Junior Obligations in cash or in kind, or apply any money or property in discharge of the Junior Obligations other than a Permitted Payment;
- (b) allow to exist or receive the benefit of any Security, or receive the benefit of any guarantee, from any person in respect of any of the Junior Obligations;
- (c) vary any of the Junior Obligations Agreements; or
- (d) take, or omit to take, any action which may impair the ranking or the subordination set out in this deed.

4.2 No set-off

The Junior Creditor shall not claim any right of set-off, abatement or any other extinction or reduction in respect of any liability which it has to the Customer, other than in respect of a Permitted Payment.

4.3 No other arrangements

The Junior Creditor shall not make any arrangement which would place, or which aims to place, the Junior Creditor in a position similar to that in which it would be if:

- (a) it had received a payment in respect of any of the Junior Obligations; or
- (b) any of the Junior Obligations had been secured by Security.

4.4 No Security

Nothing in clause 2 or this clause 4 shall create, or be deemed to create, Security.

5. PERMITTED PAYMENTS

5.1 Permitted payments

The Customer may, subject to clause 5.2:

- (a) make each payment or repayment in respect of the Junior Obligations on the relevant due date under and in accordance with the Junior Obligations Agreements; and
- (b) pay any fees, costs and expenses due to the Junior Creditor.

5.2 When Permitted Payments can be made

A payment permitted by clause 5.1 may only be made if:

- (a) the Bank has given its prior written consent to the payment; or
- (b) it is made after the Conversion Date from surplus funds released to Kingmead from its Servicing Account, or from funds paid to Kingmead by PSPL from surplus funds released from PSPL's Servicing Account, in each case in accordance with the Principal Agreement,

and in each case provided that:

- (i) no step has been taken to enforce any Senior Security;
- (ii) no Event of Default has occurred and is continuing; and
- (iii) no step has been taken for the winding up, liquidation, dissolution, administration or reorganisation of the Customer or PSPL, or the appointment of a liquidator, Receiver, administrator or other similar officer of the Customer or PSPL, or any assets of either of them.

6. GRANT OF SECURITY

All Security and dispositions created or made by or pursuant to this deed are created or made:

- (a) in favour of the Bank;
- (b) with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994; and
- (c) as continuing security for payment of the Senior Obligations.

7. FIXED SECURITY

7.1 Fixed Charges

The Junior Creditor charges and agrees to charge all of its present and future right, title and interest in and to the Junior Obligations and the Junior Obligations Agreement which is at any time owned by the Junior Creditor, or in which it from time to time has an interest, to the extent that any Junior Obligations Agreement is not effectively assigned under clause 7.2, by way of first fixed charge over such Junior Obligations Agreement.

7.2 Security Assignments

The Junior Creditor assigns and agrees to assign absolutely (subject to a proviso for reassignment on redemption) all of its present and future right, title and interest in and to the Junior Obligations and Junior Obligations Agreement and all rights and remedies in connection with the Junior Obligations and Junior Obligations Agreement and all proceeds and claims arising from the Junior Obligations and Junior Obligations Agreement and all rights and remedies in connection with the Junior Obligations Agreement and all proceeds and claims arising from them.

7.3 Notice of assignment and/or charge

The Junior Creditor hereby gives notice to the Customer of the Security created by this deed and irrevocably authorises and instructs the Customer from time to time:

- (a) to disclose to the Bank at the Junior Creditor's expense (without any reference to or further authority from the Junior Creditor and without any enquiry by the Customer as to the justification for such disclosure), such information relating to the Security Assets as the Bank may from time to time request;
- (b) to hold all sums from time to time due and payable by the Customer to the Junior Creditor under this deed to the order of the Bank;
- (c) to pay or release all or any part of the sums from time to time due and payable by the Customer to the Junior Creditor under this deed only in accordance with the written instructions given to the Customer by the Bank from time to time;
- (d) to comply with any written notice or instructions in any way relating to, or purporting to relate to, this deed or the Security Assets or the debts represented thereby which the Customer receives at any time from the Bank without any reference to or further authority from the Junior Creditor and without any enquiry by the Customer as to the justification for or validity of such notice or instruction; and
- (e) to send copies of all notices and other information given or received under the Security Assets to the Bank,

and the Customer hereby acknowledges such notice and confirms that:

- (f) it accepts the instructions and authorisations contained in this deed and undertake to comply with the provisions of this deed;
- (g) it has not received notice of the assignment or charge; and
- (h) it will not permit any sums to be paid to it or any other person (other than the Bank) under or pursuant to the Security Assets without the prior written consent of the Bank.

7.4 No preservation or enforcement

The Bank is not obliged to take any steps necessary to preserve any Junior Obligations, to enforce any term of a Junior Obligations Agreement against any person or to make any enquiries as to the nature or sufficiency of any payment received by it pursuant to this deed.

8. CONTINUING SECURITY

The Security is continuing and will extend to the ultimate balance of the Senior Obligations regardless of any intermediate payment or discharge in whole or in part. This deed shall remain in full force and effect as a continuing security for the duration of the Security Period.

8.1 Additional and separate security

This deed is in addition to, without prejudice to, and shall not merge with, any other right, remedy, guarantee or Security which the Bank may at any time hold for any Secured Obligation.

8.2 Right to enforce

This deed may be enforced against the Junior Creditor without the Bank first having recourse to any other right, remedy, guarantee or Security held by or available to it.

9. LIABILITY OF THE JUNIOR CREDITOR

Notwithstanding anything contained in this deed or implied to the contrary, the Junior Creditor remains liable to observe and perform all conditions and obligations assumed by it in relation to the Security Assets. The Bank is under no obligation to perform or fulfil any such condition or obligation or to make any payment in respect of such condition or obligation.

10. WHEN SECURITY BECOMES ENFORCEABLE

10.1 When enforceable

This Security shall become immediately enforceable upon the occurrence of an Event of Default and shall remain so for so long as such Event of Default is continuing.

10.2 Statutory powers

The power of sale and other powers conferred by section 101 of the Act (as amended or extended by this deed) shall be immediately exercisable upon and at any time after the occurrence of any Event of Default and for so long as such Event of Default is continuing.

10.3 Enforcement

After this Security has become enforceable, the Bank may in its absolute discretion enforce all or any part of the Security in such manner as it sees fit.

11. ENFORCEMENT OF SECURITY

11.1 General

For the purposes of all powers implied by statute, the Senior Obligations are deemed to have become due and payable on the date of this deed. Sections 93 and 103 of the Act shall not apply to the Security. The statutory powers of leasing conferred on the Bank are extended so as to authorise the Bank to lease, make agreements for leases, accept surrenders of leases and grant options as the Bank may think fit and without the need to comply with section 99 or 100 of the Act.

11.2 Powers of Bank

At any time after the Security becomes enforceable (or if so requested by the Junior Creditor by written notice at any time), the Bank may without further notice (unless required by law):

- (a) appoint any person (or persons) to be a receiver, receiver and manager or administrative receiver of all or any part of the Security Assets and/or of the income of the Security Assets; and/or
- (b) exercise all or any of the powers conferred on mortgagees by the Act (as amended or extended by this deed) and/or all or any of the powers which are conferred by this deed on a Bank Receiver, in each case without first appointing a Bank Receiver or notwithstanding the appointment of any Bank Receiver.

11.3 Redemption of prior mortgages

At any time after the Security has become enforceable, the Bank may:

- (a) redeem any prior Security against any Security Asset; and/or
- (b) procure the transfer of that Security to itself; and/or
- (c) settle and pass the accounts of the holder of any prior Security and any accounts so settled and passed shall be conclusive and binding on the Junior Creditor.

All principal, costs, charges and expenses of and incidental to any such redemption and/or transfer shall be paid by the Junior Creditor to the Bank on demand.

11.4 Privileges

- (a) Each Bank Receiver and the Bank is entitled to all the rights, powers, privileges and immunities conferred by the Act on mortgagees and receivers when such receivers have been duly appointed under the Act, except that section 103 of the Act does not apply.
- (b) To the extent that the Security Assets constitute "*financial collateral*" and this deed and the obligations of the Junior Creditor under this deed constitute a "*security financial collateral arrangement*" (in each case for the purpose of and as defined in the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226)) each Bank Receiver and the Bank shall have the right after this Security has become

enforceable to appropriate all or any part of that financial collateral in or towards the satisfaction of the Senior Obligations.

- (c) For the purpose of clause 11.4(a) above, the value of the financial collateral appropriated shall be such amount as the Bank Receiver or Bank reasonably determines having taken into account advice obtained by it from an independent investment or accountancy firm of national standing selected by it.

11.5 No liability

- (a) Neither the Bank nor any Bank Receiver shall be liable (A) in respect of all or any part of the Security Assets or (B) for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, its or his respective powers (unless such loss or damage is caused by its or his gross negligence or wilful misconduct).
- (b) Without prejudice to the generality of clause 11.5(a), neither the Bank nor any Bank Receiver shall be liable, by reason of entering into possession of a Security Asset, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable.

11.6 Protection of third parties

No person (including a purchaser) dealing with the Bank or any Bank Receiver or its or his agents will be concerned to enquire:

- (a) whether the Senior Obligations have become payable; or
- (b) whether any power which the Bank or the Bank Receiver is purporting to exercise has become exercisable; or
- (c) whether any money remains due under any Senior Obligations Document; or
- (d) how any money paid to the Bank or to the Bank Receiver is to be applied.

12. BANK RECEIVER

12.1 Removal and replacement

The Bank may from time to time remove any Bank Receiver appointed by it (subject, in the case of an administrative receivership, to section 45 of the Insolvency Act 1986) and, whenever it may deem appropriate, may appoint a new Bank Receiver in the place of any Bank Receiver whose appointment has terminated.

12.2 Multiple Bank Receivers

If at any time there is more than one Bank Receiver of all or any part of the Security Assets and/or the income of the Security Assets, each Bank Receiver shall have power to act individually (unless otherwise stated in the appointment document).

12.3 **Remuneration**

Any Bank Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Bank (or, failing such agreement, to be fixed by the Bank).

12.4 **Payment by Bank Receiver**

Only monies actually paid by a Bank Receiver to the Bank in relation to the Senior Obligations shall be capable of being applied by the Bank in discharge of the Senior Obligations.

12.5 **Agent of Junior Creditor**

Any Bank Receiver shall be the agent of the Junior Creditor. The Junior Creditor shall (subject to the Companies Act 2006 and the Insolvency Act 1986 (where applicable)) be solely responsible for his acts and defaults and for the payment of his remuneration. The Bank shall incur no liability (either to the Junior Creditor or to any other person) by reason of the appointment of a Bank Receiver or for any other reason.

13. **POWERS OF BANK RECEIVER**

13.1 **General powers**

Any Bank Receiver shall have:

- (a) all the powers which are conferred by the Act on mortgagees in possession and receivers appointed under the Act; and
- (b) all powers which are conferred by any other law conferring power on receivers.

13.2 **Additional powers**

In addition to the powers referred to in clause 13.1, a Bank Receiver shall have the following powers:

- (a) to take possession of, collect and get in all or any part of the Security Assets and/or income in respect of which he was appointed;
- (b) to manage the Security Assets as he thinks fit;
- (c) to redeem any security and to borrow or raise any money and secure the payment of any money in priority to the Senior Obligations for the purpose of the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise;
- (d) to carry out any sale other disposal of all or any part of the Security Assets by transferring or assigning the same in the name of the Chargor and, for that purpose, to enter into covenants and other contractual obligations in the name of, and so as to bind, the Junior Creditor;
- (e) to take any such proceedings (in the name of the Junior Creditor or otherwise) as he shall think fit in respect of the Security Assets and/or

income in respect of which he was appointed (including proceedings for recovery of monies in arrears at the date of his appointment);

- (f) to enter into or make any such agreement, arrangement or compromise as he shall think fit;
- (g) to:
 - (i) give valid receipts for all monies and to do all such other things as may seem to him to be incidental or conducive to any other power vested in him or necessary or desirable for the realisation of any Security Asset;
 - (ii) exercise in relation to each Security Asset all such powers and rights as he would be capable of exercising if he were the absolute beneficial owner of the Security Assets; and
 - (iii) use the name of the Junior Creditor for any of the above purposes.

14. APPLICATION OF PROCEEDS

14.1 Application

All monies received by the Bank or any Bank Receiver after the Security has become enforceable shall (subject to the rights and claims of any person having a security ranking in priority to the Security) be applied in the following order:

- (a) **first**, in satisfaction of, or provision for, all costs, charges and expenses incurred, and payments made by the Bank or any Bank Receiver and of all remuneration due to the Bank Receiver in connection with this deed or the Security Assets;
- (b) **secondly**, in or towards satisfaction of the remaining Senior Obligations; and
- (c) **thirdly**, in payment of any surplus to the Junior Creditor or other person entitled to it.

14.2 Contingencies

If the Security is enforced at a time when no amounts are due under the Senior Obligations Documents (but at a time when amounts may become so due), the Bank or a Bank Receiver may pay the proceeds of any recoveries effected by it into a blocked suspense account.

15. PRESERVATION OF RIGHTS

15.1 No waiver of rights

No delay in exercising rights and remedies in respect of the Senior Obligations or the Junior Obligations, or the Senior Security, because of any term of this deed postponing, restricting or preventing such exercise shall operate as a waiver of any of those rights and remedies.

15.2 Junior Obligations remain due and payable

The Junior Obligations shall remain owing, or due and payable, from the Customer, and any payments due in respect of late payment will accrue on missed payments in accordance with the terms of the Junior Obligations Agreements, despite any term of this deed that might postpone, subordinate or prevent payment of the Junior Obligations.

16. CO-OPERATION BY CUSTOMER AND JUNIOR CREDITOR

The Bank may require the Customer and the Junior Creditor, either jointly or severally, to sign any document and take any steps to protect or give effect to the Bank's rights under this deed, or any similar or related purpose.

17. PRESERVATION OF SUBORDINATION

17.1 Continuing subordination

The subordination provisions in this deed constitute continuing subordination and shall benefit the ultimate balance of all the Senior Obligations, regardless of any intermediate payment or discharge in whole or in part.

17.2 Waiver of defences

The subordination in this deed, and the obligations of the Junior Creditor under this deed, will not be affected by any act, omission, matter or thing which, but for this provision, would reduce, release or prejudice the subordination, or any of those obligations, including (without limitation and whether or not known to any party):

- (a) any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy which a Creditor may now, or after the date of this deed, have from or against the Customer or any other person;
- (b) any act or omission by a Creditor or any other person in taking up, perfecting or enforcing any Security, indemnity, or guarantee from or against the Customer or any other person;
- (c) any termination, amendment, variation, novation or supplement of or to any Finance Document;
- (d) any grant of time, indulgence, waiver or concession to the Customer or any other person;
- (e) any insolvency, bankruptcy, liquidation, administration, winding up, incapacity, limitation, disability, discharge by operation of law, or any change in the constitution, name or style of the Customer or any other person;
- (f) any invalidity, illegality, unenforceability, irregularity or frustration of any actual or purported obligation of, or Security held from, the Customer or any other person under any Finance Document or any other document or security; or
- (g) any claim or enforcement of payment from the Customer or any other person.

17.3 Immediate recourse

The Junior Creditor waives any right it may have to require the Bank to:

- (a) take any action or obtain judgment in any court against the Customer or any other person;
- (b) make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Customer or any other person; or
- (c) make, demand, enforce or seek to enforce any claim, right or remedy against the Customer or any other person,

before claiming the benefit of this deed.

17.4 Non-competition

The Junior Creditor warrants to the Bank that it has not taken or received, and shall not take, exercise or receive the benefit of any Right from or against the Customer, its liquidator, an administrator or any other person in connection with any liability of, or payment by, the Junior Creditor under this deed but:

- (a) if any such Right is taken, exercised or received by the Junior Creditor, that Right and all monies at any time received or held in respect of that Right shall be held by the Junior Creditor on trust for the Bank for application in or towards the discharge of the Senior Obligations; and
- (b) on demand by the Bank, the Junior Creditor shall promptly transfer, assign or pay to the Bank all Rights and all monies from time to time held on trust by the Junior Creditor under this clause 17.4.

18. BOOK DEBTS, INSURANCE AND CUSTODY OF DOCUMENTS**18.1 Book debts**

Notwithstanding the terms of any charge over book or other debts contained in any Security Document, and any covenant by the Customer to pay those debts into any particular account, the parties agree that:

- (a) the Customer shall not be deemed to be in breach of any such covenant so long as it complies with any such covenant in the Senior Obligations Documents;
- (b) the Bank may credit any payments received by it in respect of book and other debts to any account of the Customer with the Bank; and
- (c) the Bank may, in respect of any credit balances on any of the Customer's accounts, notwithstanding any charge over those credit balances (if any) created by any document or instrument other than a Security Document:
 - (i) permit the Customer to draw on any credit balance and otherwise permit any such account to continue to be operated as a current account; and
 - (ii) to the extent permitted by the relevant Senior Obligations Document, exercise any right of set-off or combination it may

have against any account of the Customer without regard to the other provisions of this deed or any Junior Obligations Agreement.

18.2 Insurance

The Bank may require the Customer to insure its assets and apply any monies received or recovered in respect of any claim under any relevant insurance policy in accordance with the terms of the Senior Obligations Documents or such other insurance provisions in the Finance Documents as the Bank may select. The Creditors acknowledge that the Customer's compliance with the insurance obligations so selected shall be a full discharge by the Customer of its insurance obligations under the Finance Documents.

18.3 Title documents

The Bank shall be entitled, but not obliged, to hold each title or other document relating to any asset subject to the Security.

19. SENIOR OBLIGATIONS ENFORCEMENT

19.1 Enforcement

The Bank may take any action to enforce any of the Senior Obligations without consulting or reaching any agreement with the Junior Creditor in relation to such action.

19.2 Actions not invalid or ineffective

No enforcement action taken by the Bank shall be invalid or ineffective because it does not consult with the Junior Creditor or because it does not reach an agreement with the Junior Creditor in respect of such action.

19.3 Notification of action taken

As soon as reasonably practicable after taking any action in accordance with clause 19.1, the Bank shall inform the Junior Creditor of the action taken.

19.4 Marshalling

The Junior Creditor waives any right it has, or may have in the future, to marshalling in respect of any Senior Security.

19.5 Co-operation by the Junior Creditor

The Junior Creditor will, at the request of the Bank or any Receiver appointed by the Bank, join in such documents or otherwise take such action as may be reasonably required by the Bank or such Receiver to facilitate the disposal of any asset subject to Senior Security whether or not there will be any balance of proceeds available for the Junior Creditor arising from that disposal.

20. JUNIOR OBLIGATIONS ENFORCEMENT

20.1 No service of demand or notice

Except with the prior written consent of the Bank, the Junior Creditor shall not:

- (a) serve a demand for the payment of any of the Junior Obligations on the Customer;
- (b) serve a notice on the Customer to the effect that any of the Junior Obligations is immediately due and payable; or
- (c) present, or join in, an application for an administration order or a petition for a winding-up or liquidation order to be made in relation to the Customer or initiate, or support or take, any step with a view to any voluntary arrangement or assignment for the benefit of creditors or similar proceeding involving the Customer or issue a notice of intention to appoint an administrator or appoint an administrator of the Customer.

20.2 Compliance with the Bank directions

The Junior Creditor shall comply with any directions given to it by the Bank relating to the taking any of the following actions:

- (a) presenting an application for an administration order or a petition for a winding-up or liquidation order to be made in relation to the Customer;
- (b) joining in, or opposing, such an application or a petition; or
- (c) voting for or against, or accepting or rejecting:
 - (i) any proposal in a voluntary arrangement or administration in relation to the Customer or in its winding up or liquidation;
 - (ii) any scheme of arrangement proposed in relation to the Customer; or
 - (iii) any rescheduling, refinancing or reorganisation agreement or moratorium in respect of any debts of the Customer.

20.3 Preferential payments

The Junior Creditor shall bring into account any preferential payments received by it under section 175 of the Insolvency Act 1986.

20.4 Purchaser protection

No purchaser dealing with a Creditor or any Receiver shall be concerned in any way with the provisions of this deed, but shall assume that the Creditor or Receiver, as the case may be, is acting in accordance with the provisions of this deed.

21. CUSTOMER INSOLVENCY

21.1 Junior Creditor

If an administration, liquidation or winding-up order is made in relation to the Customer, the Junior Creditor shall take all steps it reasonably can to:

- (a) recover all amounts which may be due to it from the Customer (or any third party) in respect of the Junior Obligations;

- (b) exercise its rights (however arising) against any property in respect of any such amounts; and
- (c) prove in that administration, liquidation or winding-up.

21.2 Payment to the Bank

The Junior Creditor shall pay all monies received by it under clause 21.1 to the Bank, after deducting all reasonable costs and expenses (including legal fees and expenses) incurred in recovering those monies.

21.3 Suspense account

The Bank shall hold all monies received by it under clause 21.2 in a suspense account and shall, as soon as it is reasonably apparent to it that the Senior Obligations will not be fully discharged, apply them in reduction of the Senior Obligations or otherwise in accordance with clause 20.

21.4 No payment by Customer

Between the Customer and its creditors, no payments or receipts under clause 21.2 shall be deemed to constitute payment by the Customer to the Bank in respect of the Senior Obligations.

22. POWER OF ATTORNEY

22.1 Appointment of attorney

By way of security, each of the Customer and the Junior Creditor irrevocably appoints the Bank to be its attorney and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things which the Customer or the Junior Creditor is required to execute and do under this deed.

22.2 Ratification of acts of attorney

Each of the Customer and the Junior Creditor ratifies and confirms, and agrees to ratify and confirm, anything which any of its attorneys may do in the proper and lawful exercise or purported exercise of all or any of the powers, authorities and discretions referred to in clause 22.1.

23. EXPENSES

23.1 Negotiation and amendment costs and expenses

The Customer shall, promptly on demand, pay to, or reimburse, each Creditor, 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 that Creditor in connection with:

- (a) the negotiation, preparation and execution of this deed; or
- (b) any amendment, extension, waiver, consent or suspension of rights (or any proposal for any of these) relating to this deed,

together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost or expense arose until full discharge of that cost or expense (whether before or after

judgment, liquidation, winding up or administration of the Customer) at the rate and in the manner specified in a Finance Document selected by the Bank in its absolute discretion.

23.2 Enforcement costs and expenses

The Customer shall, on demand, pay to each Creditor the amount of all costs and expenses (including legal, printing and out-of-pocket expenses) incurred by that Creditor in connection with enforcing, preserving any rights under, or monitoring the provisions of this deed.

24. DURATION

This deed shall cease to have effect when the Senior Obligations have, to the satisfaction of the Bank, been irrevocably and unconditionally paid and discharged in full.

25. ASSIGNMENT

25.1 Junior Creditor

The Junior Creditor shall not assign or transfer any of its rights and benefits under this deed.

25.2 Bank

The Bank shall not assign or transfer any of its rights and benefits under this deed, or any Senior Obligations Document, without first requiring the assignee or transferee to execute and deliver to the Junior Creditor a deed in which the assignee or transferee agrees to be bound by the terms of this deed.

26. CUSTOMER'S ACKNOWLEDGEMENTS

26.1 Customer's acknowledgement and consent

The Customer acknowledges the terms of this deed and consents to the Creditors communicating with each other about the Customer's affairs for the purposes of this deed.

26.2 No reliance by Customer

The Customer further acknowledges that none of the provisions entered into by the Creditors are for the benefit of the Customer, nor may they be enforced or relied on by the Customer.

27. REMEDIES, WAIVERS, AMENDMENTS AND CONSENTS

27.1 Amendments

Any amendment to this deed shall be in writing and signed by, or on behalf of, each party, except that:

- (a) the Bank does not need the consent of the Junior Creditor to an amendment to this deed (and the Junior Creditor need not be party to any amendment document) that only alters the Customer's obligations to the Bank and the corresponding rights of the Bank; and

- (b) neither Creditor needs the Customer's consent to an amendment to this deed (and the Customer need not be party to any amendment document) that only alters the obligations of one Creditor to the other Creditor and the corresponding rights of that other Creditor.

27.2 Waivers and consents

- (a) 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 other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- (b) A failure or delay by a party to exercise 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 a Creditor shall be effective unless it is in writing.

27.3 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.

28. SEVERANCE

If any provision (or part of a provision) of this deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this deed.

29. COUNTERPARTS

- (a) 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.
- (b) Transmission of an executed counterpart of this deed (but not just a signature page) by e-mail (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.
- (c) No counterpart shall be effective until each party has executed and delivered at least one counterpart.

30. **THIRD PARTY RIGHTS**

- (a) Except as expressly provided in this deed, a person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- (b) The rights of the parties to rescind or agree any amendment or waiver under this deed are not subject to the consent of any other person.

31. **PERPETUITY PERIOD**

If the rule against perpetuities applies to any trust created by this deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

32. **NOTICES**

32.1 **Delivery**

Each notice or other communication required to be given under or in connection with this deed shall be:

- (a) in writing;
- (b) delivered by hand, by pre-paid first-class post or other next working day delivery service; and
- (c) sent to:
 - (i) the Bank at:

24a Calthorpe Road
Edgbaston
Birmingham
B15 1RP

Email: cpfadmin@alrayanbank.co.uk

Attention: CPF Administration
 - (ii) the Junior Creditor at:

22 Uxbridge Road
Ealing
London
W5 2RJ

E-mail: camran@kingmead.co.uk
 - (iii) the Customer at:

22 Uxbridge Road
Ealing
London
W5 2RJ

E-mail: camran@kingmead.co.uk

or to such other address as is notified in writing by one party to the others from time to time.

32.2 **Receipt**

Any notice or other communication given under or in connection with this deed shall be deemed to be received:

- (a) if delivered by hand, at the time it is left at the relevant address;
- (b) if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and
- (c) if sent by email, when received in legible form.

A notice or other communication given as described in paragraph (a) or (c) on a day which 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.

32.3 **Service of proceedings**

This clause 32 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.

33. **GOVERNING LAW AND JURISDICTION**

33.1 **Governing law**

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

33.2 **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 arising out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims). Nothing in this clause shall limit the right of the Bank to take proceedings against the Customer or the Junior Creditor 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.

33.3 **Other service**

Each of the Customer and the Junior Creditor irrevocably consent to any process in any legal action or proceedings under clause 33.2 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 document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

SCHEDULE 1 SENIOR OBLIGATIONS DOCUMENTS

1. The Principal Agreement
2. The legal charge of even date between the Customer and the Bank over the Property
3. The Corporate Security Document of even date between the Customer and the Bank
4. This deed
5. The Share Charge made between the Shareholders, the Bank and the Customer
6. Any other Facility Document, as defined in the Principal Agreement

SCHEDULE 2
JUNIOR OBLIGATIONS AGREEMENTS

Executed as a deed by
AL RAYAN BANK PLC
acting through its attorney
in the presence of:

.....
Attorney

.....
Witness signature

.....
Witness name

.....
Witness address

.....
Witness occupation

Executed as a deed by
TYDWELL LIMITED
acting by
in the presence of:

.....
Director

SAIRA MIRZA

.....
Witness signature

.....
Witness name

ADRIAN PRICE
TWM Solicitors LLP
65 Woodbridge

.....
Witness address

Guildford
Surrey
GU1 4RD

SOLICITOR
Witness occupation

Executed as a deed by
**KINGMEAD HOMES
(NEWLANDS) LIMITED**
acting by
in the presence of:

.....
Director

CAMRON W. HARRIS

Witness signature /

MARIAN PRICE

Witness name TWM Solicitors LLP
65 Woodbridge Road

Witness address Guildford

SOLICITOR Surrey
GU1 4RD..

Witness occupation