

DEED OF GUARANTEE & INDEMNITY

GREAT BRITAIN



[DATED [•]]¹ [DELIVERED ON [•]]²

BY SIGNING THIS DOCUMENT THE GUARANTOR BECOMES LIABLE AS WELL AS THE BORROWER, AND MIGHT BECOME LIABLE INSTEAD OF THE BORROWER. THE GUARANTOR SHOULD SEEK INDEPENDENT LEGAL ADVICE BEFORE SIGNING THIS GUARANTEE.

AS LENDER

AS GUARANTOR(S)

AS BORROWER

¹ England and Wales only.

² Scotland only, if signed in counterpart.

()

CONTENTS

CLAUSE	PAGE
1	3
2	4
3	5
4	6
5	7
6	8
7	8
8	8
9	9
10	9
11	9
12	10
13	10
14	10
15	11
16	11
17	11
18	12
19	12
[Execution Page]	10

[DATED [●]]³ [DELIVERED ON [●]]⁴

PARTIES

- (1) Bluestone Mortgages Limited, a company incorporated in England and Wales with company number 02305213 and having its registered office at 3rd Floor, 22 Chancery Lane, London, WC2A 1LS
- (2) (the "Lender")
- (3) [●] [(the "Guarantor") / (each a "Guarantor" and collectively, the "Guarantors")]
- (4) [●] [[name and address] / (company no [●])] whose registered office is at [●] (the "Borrower")

BACKGROUND

- (A) The Lender has agreed to provide the Borrower with a Mortgage Loan on the terms set out in the Mortgage Documents.
- (B) As a condition precedent to the availability of the Mortgage Loan under the Mortgage Documents, the Guarantor (or, if applicable, each Guarantor) has agreed to enter into this deed for the purpose of providing credit support to the Lender for the Borrower's obligations under the Mortgage Documents.

OPERATIVE PROVISIONS

1 DEFINITIONS

Terms defined in the [Bluestone Mortgages Limited General Terms and Conditions (England and Wales) 2020 (3rd Edition)]

Bluestone Mortgages General Terms and Conditions (Scotland) 2020 (2nd Edition), made by the Lender dated [●]⁵ and registered in the Books of Council and Session on [●]⁶ and any lawful variation thereto (the "Conditions") shall, unless otherwise defined herein or the context requires otherwise, bear the same meanings herein (including the recitals).

In this deed (including the recitals):

"Guarantee" means this deed.

"Guaranteed Obligations" means the Mortgage Debt and all present and future payment obligations and liabilities of the Borrower due, owing or incurred under the Mortgage Documents to the Lender (including, without limitation, under any amendment, supplement or restatement of the Mortgage Documents or in relation to any Further Loan or other increased advances or utilisation).

"Mortgage Debt" means all money from time to time due, owing or incurred to the Lender by the Borrower under the terms of the Mortgage Documents, including (without prejudice to the generality of the foregoing):

- (a) the Mortgage Loan;
- (b) the Expenses;

³ England and Wales only.

⁴ Scotland only, if signed in counterpart.

⁵ England and Wales only.

⁶ Scotland only.

- (c) the Fees;
- (d) any tax payable on any Fees and Expenses;
- (e) all Interest payable in accordance with the Offer and or the Conditions; and
- (f) any other amount due in accordance with the Offer and/or the Conditions (including, by way of example, the amounts due in respect of insurance premiums to be paid pursuant to Condition 6.4.5(e)).

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

"Secured Amount" means the Mortgage Debt and any other present or future money, obligations and liabilities owed by the Borrower to the Lender whether actual or contingent and whether jointly or severally as principal or surety, and in any other capacity (without prejudice to the generality of the foregoing) in relation to the Mortgage or any agreement made between the Borrower and the Lender after Completion except for any money payable under any agreement regulated by the Consumer Credit Act 1974 which does not provide that the agreement is secured by this Guarantee.

2 INTERPRETATION

- 3 Clause and schedule headings do not affect the interpretation of this Guarantee.
- 4 A person includes a corporate or unincorporated body (whether or not having a separate legal personality).
- 5 Words in the singular shall include the plural and vice versa.
- 6 A reference to one gender shall include a reference to the other genders.
- 7 A reference to this Guarantee (or any specified provision of it) or any other document shall be construed as a reference to this Guarantee, that provision or that document as in force for the time being and as amended, varied, supplemented or novated from time to time.
- 8 A reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it and any former statute or statutory provision which it amends or re-enacts.
- 9 A reference to writing or written includes faxes and emails.
- 10 References to clauses are to the Clauses of this Guarantee.
- 11 Unless the context requires otherwise, the expression "the Lender" shall include any person claiming any right, estate or interest from or through it and any transferee or successor.
- 12 If there is more than one Guarantor, the obligations of the Guarantors under the Guarantee shall be joint and several.

13 GUARANTEE AND INDEMNITY

14 In consideration of the Lender entering into the Mortgage Documents, the Guarantor (or, if applicable, each Guarantor) hereby unconditionally guarantees to the Lender to pay on demand the [Secured Amount].

15 If any of the Guaranteed Obligations are not recoverable from the Borrower by reason of illegality, incapacity, lack or exceeding of powers, ineffectiveness of execution of any of the Mortgage Documents or any other reason, the Guarantor (or, if applicable, each Guarantor) shall remain liable under this Guarantee for the Guaranteed Obligations as if he were a principal debtor.

16 The Guarantor (or, if applicable, each Guarantor) as principal obligor and as a separate and independent obligation and liability from the relevant obligations and liabilities under Clause 3.1 agrees to indemnify and keep indemnified the Lender in full and on demand from and against all and any losses, costs, claims, liabilities, damages, demands and expenses (including, for the sake of clarity, any internal management and administration costs) suffered or incurred by the Lender arising out of, or in connection with, any failure of the Borrower to perform or discharge any of its obligations or liabilities in respect of the Guaranteed Obligations.

17 If there is more than one Guarantor, the guarantee and the indemnity in this Clause 3 (Guarantee and indemnity) are given by each Guarantor severally and also jointly with every other Guarantor.

18 LENDER PROTECTIONS

19 This Guarantee is and shall at all times be a continuing security and shall cover the ultimate balance from time to time owing to the Lender by the Borrower in respect of the Guaranteed Obligations and shall apply until all liabilities hereunder have been expressly discharged in full.

20 The liability of the Guarantor (or, if applicable, each Guarantor) under this Guarantee shall not be reduced, discharged or otherwise adversely affected by:

21 any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy which the Lender may now or after the date of this Guarantee have from or against any of the Borrower, a co-guarantor and any other person in connection with the Guaranteed Obligations;

22 any act or omission by the Lender or any other person in taking up, perfecting or enforcing any Security, indemnity, or guarantee from or against the Borrower, a co-guarantor or any other person;

23 any termination, amendment, variation, novation or supplement of or to any of the Guaranteed Obligations;

24 any grant of time, indulgence, waiver or concession to the Borrower, a co-guarantor or any other person;

25 any insolvency, bankruptcy, liquidation, administration, winding up, incapacity, limitation, disability, death, the discharge by operation of law, or any change in the constitution, name or style of the Lender, Borrower, any Guarantor, co-guarantors or any other person; any invalidity, illegality, unenforceability, irregularity or frustration of any actual or purported

obligation of, or Security held from, the Borrower, any Guarantor, co-guarantors or any other person in connection with the Guaranteed Obligations;

- 26 any claim or enforcement of payment from the Borrower, any Guarantor, co-guarantors or any other person;
- 27 any act or omission which would not have discharged or affected the liability of the Guarantor (or, if applicable, each Guarantor) had it been principal debtors instead of guarantor or indemnifier or by anything done or omitted by any person which, but for this provision, might operate to exonerate or discharge the Guarantor(s) or otherwise reduce or extinguish its (or, if applicable, their) liability under this Guarantee.
- 28 The Lender shall not be obliged before taking steps to enforce any of its rights and remedies under this Guarantee against a Guarantor (or, if applicable, any Guarantors):
- 29 to take any action or obtain judgment or decree in any court against the Borrower, another Guarantor (if any) or any other person; or
- 30 to make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Borrower, another Guarantor (if any) or any other person; or
- 31 to make demand, enforce or seek to enforce any claim, right or remedy against the Borrower, another Guarantor (if any) or any other person.
- 32 The Guarantor (or, if applicable, each Guarantor, jointly and severally) warrants to the Lender that the Guarantor (or Guarantors, as applicable) has not taken or received, and undertake to procure that none of them shall take, exercise or receive, the benefit of any Rights from or against the Borrower, its liquidator, an administrator, co-guarantor (if any) or any other person in connection with any liability of, or payment by, the Guarantor (or, if applicable, each Guarantor) under this Guarantee but:
- 33 if any of the Rights are taken, exercised or received by any of the Guarantors, those Rights and all moneys at any time received or held in respect of those Rights shall be held by the Guarantor (or, if applicable, by each Guarantor) on trust for the Lender for application in or towards the discharge of the Guaranteed Obligations under this Guarantee; and
- 34 on demand by the Lender, the Guarantor (or, if applicable, by each Guarantor) concerned shall promptly transfer, assign or pay to the Lender all other Rights and all moneys from time to time held on trust by him under this Clause 4.4.
- 35 This Guarantee is in addition to and shall not affect nor be affected by or merge with any other judgment or decree, Security, indemnity, right or remedy obtained or held by the Lender from time to time for the discharge and performance by the Borrower, co-guarantor or any other person of the Guaranteed Obligations.
- 36 **INTEREST**
- 37 The Guarantor (or, if applicable, each Guarantor) shall pay interest to the Lender after as well as before judgment or decree at the rate from time to time payable on the Mortgage Debt on all sums demanded under this Guarantee from the date of demand by the Lender or, if earlier, the date on which the relevant damages, losses, costs or expenses arose in respect

of which the demand has been made, until, but excluding, the date of actual payment.

38 Interest under Clause 5.1 shall accrue on a day-to-day basis calculated by the Lender upon such terms as the Lender may from time to time determine and shall be compounded on the last Business Day of each month.

39 The Lender shall not be entitled to recover any amount in respect of interest under both this Guarantee and any arrangements entered into between the Borrower and the Lender in respect of any failure by the Borrower to make any payment in respect of the Guaranteed Obligations.

40 COSTS

41 The Guarantor (or, if applicable, each Guarantor) shall on a full indemnity basis pay to the Lender on demand the amount of all costs and expenses (including legal and out-of-pocket expenses and any VAT on those costs and expenses) which the Lender reasonably incurs in connection with the exercise and enforcement, of any rights under or in connection with this Guarantee or any attempt so to do.

42 CAP ON LIABILITY

43 If the Guarantor (or any of the Guarantors, as applicable) is a natural person, the maximum liability to the Lender under this Guarantee [by each Guarantor][for all Guarantors] shall not exceed £ [Borrowed amount] [plus interest, costs and expenses].

44 REPRESENTATIONS AND WARRANTIES

45 The Guarantor (or, if applicable, each Guarantor jointly and severally) represents and warrants as at the date of this Guarantee that:

46 if the Borrower is a company, each Guarantor is a director of the Borrower;

47 if the Borrower is a company, there are no directors of the Borrower who are not Guarantors;

48 if the Guarantor is a company, (i) it is duly incorporated and validly existing under the laws of the country of its incorporation, (ii) all corporate and other action required to authorise the execution and delivery of this Guarantee has been duly taken; (iii) the execution, delivery and performance of the terms of this Guarantee will not violate in any respect any provision of any contract or other undertaking to which it is a party or the provisions of its Memorandum and Articles of Association and (iv) it has or will obtain and maintain in full force and effect all approvals, authorisations and consents and do or cause to be done all other acts and things necessary or desirable in connection herewith or for the continued due performance of the Guarantors obligations under this Guarantee; and

49 the Guarantor has (or, if there is more than one Guarantor, each Guarantor has) the capacity to execute, deliver and perform his obligations under this Guarantee.

50 ACCOUNTS

51 The Lender may place to the credit of a suspense account, for so long as the Lender thinks fit, any moneys received under or in connection with this Guarantee in order to preserve the rights of the Lender to prove for

5



the full amount of all its claims against the Borrower or any other person in respect of the Guaranteed Obligations.

52 The Lender may at any time and from time to time apply all or any moneys held in any suspense account in or towards satisfaction of any of the moneys, obligations and liabilities the subject of this Guarantee as the Lender in its absolute discretion may conclusively determine.

53 If this Guarantee ceases for any reason whatsoever to be continuing the Lender may open a new account or accounts in the name of the Borrower.

54 If the Lender does not open a new account or accounts pursuant to Clause 9.3, it shall nevertheless be treated as if it had done so at the time that this Guarantee ceased to be continuing whether by termination, calling in or otherwise, in relation to the Borrower.

55 As from the time of opening or deemed opening of a new account or accounts, all payments made to the Lender by or on behalf of the Borrower shall be credited or be treated as having been credited to the new account or accounts and shall not operate to reduce the amount for which this Guarantee is available at that time, nor shall the liability of the Guarantors under this Guarantee in any manner be reduced or affected by any subsequent transactions, receipts or payments.

56 **DISCHARGE CONDITIONAL**

57 If a right given, or disposition or payment made, to the Lender in respect of the Guaranteed Obligations in consideration for a release, discharge or settlement of liabilities under this Guarantee, is avoided, set aside or ordered to be refunded pursuant to any enactment or law relating to breach of duty by any person, bankruptcy, liquidation, administration, protection from creditors generally or insolvency or for any other reason, the Lender shall be entitled to enforce this Guarantee as if such release, discharge or settlement had not occurred.

58 **PAYMENTS**

59 All sums payable by the Guarantor (or, if applicable, any Guarantor) under this Guarantee shall be paid in full to the Lender in the currency in which the Guaranteed Obligations are payable:

60 without any set-off; and

61 free and clear of any present or future taxes, levies, duties, charges, fees, deductions or withholdings whatsoever except as may be required by law or regulation which is binding on the Guarantor (or, if applicable, any Guarantor).

62 If any deduction or withholding is required by any law or regulation to be made by any of the Guarantors (or, if applicable, each Guarantor), the amount of the payment due from the Guarantor(s) shall be increased to an amount which (after making any deduction or withholding) leaves an amount equal to the payment which would have been due if no deduction or withholding had been required.

63 The Guarantor (or, if applicable, each Guarantor) shall promptly deliver or procure delivery to the Lender of all receipts issued to him evidencing each deduction or withholding which he has made.

64 The Guarantor (or, if applicable, each Guarantor) shall not and may not direct the application by the Lender of any sums received by the Lender from the Guarantor(s) under, or pursuant to, any of the terms of this Guarantee.

65 **TRANSFER**

66 This Guarantee is freely assignable or transferable by the Lender.

67 The Guarantor (or, if applicable, each Guarantor) may assign any of their rights but may not transfer any of their obligations under this Guarantee or enter into any transaction which would result in any of those rights or obligations passing to another person.

68 **SET-OFF**

69 The Guarantor (or, if applicable, each Guarantor) authorises the Lender to apply any receipt or credit balance (whether or not then due) to which he is at any time beneficially entitled on any account with the Lender in (or towards) satisfaction of any sum then due and payable by the Guarantor (or, if applicable, each Guarantor) to the Lender under this Guarantee but which is unpaid. Where such application of balances requires the conversion of one currency into another the Lender may make such conversion at a market rate of exchange.

70 The Lender shall not be obliged to exercise any rights given to it under Clause 13.1.

71 **REMEDIES, WAIVERS, AMENDMENTS AND CONSENTS**

72 Any amendment to this Guarantee must be [by deed]⁷ [in writing]⁸ and signed by or on behalf of each party hereto.

73 Any waiver of any right or consent given under this Guarantee is only effective if it is in writing and signed by the waiving or consenting party, and applies only in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

74 No delay or failure to exercise any right under this Guarantee shall operate as a waiver of that right.

75 No single or partial exercise of any right under this Guarantee shall prevent any further exercise of the same or any other right under this Guarantee.

76 Rights and remedies under this Guarantee are cumulative and not exclusive of any rights or remedies provided by law or otherwise.

77 **SEVERANCE**

78 The invalidity, unenforceability or illegality of any provision (or part of a provision) of this Guarantee under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions.

79 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall

⁷ England and Wales only.

⁸ Scotland only.

apply with whatever modification is necessary to give effect to the commercial intention of the parties.

80 THIRD PARTY RIGHTS

81 A person who is not a party to this Guarantee shall have no rights to enforce or enjoy the benefit of any term of this Guarantee under the [Contracts (Rights of Third Parties) Act 1999]⁹ [Contract (Third Party Rights) (Scotland) Act 2017]¹⁰.

82 COUNTERPARTS

83 [This Guarantee may be executed and delivered in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.]¹¹ [This Guarantee may be executed in any number of counterparts and by each of the parties on separate counterparts.

84 Where executed in counterparts:

85 this Guarantee will not take effect until each of the counterparts has been delivered;

86 each counterpart will be held as undelivered until the parties agree a date on which the counterparts are to be treated as delivered;

87 the date of delivery may be inserted on page 1 in the blank provided for the effective date of this Guarantee.]¹²

88 NOTICES

89 Every notice, request, demand, or other communication under this Guarantee shall be:

90 in writing, delivered personally or sent by pre-paid first-class letter, fax (confirmed by letter) or email; and

91 sent:

92 to a Guarantor at the address identified at the beginning of this Guarantee;

93 to the Lender at the address identified at the beginning of this Guarantee; or

94 on or to such substitute address notified by one party to the other and acknowledged in writing by the other.

95 Any notice or other communication given by the Lender shall be deemed to have been received:

96 if sent by fax, with a confirmation of transmission, on the day on which it is transmitted;

97 if given by hand, on the day of actual delivery; and

⁹ England and Wales only.

¹⁰ Scotland only.

¹¹ England and Wales only.

¹² Scotland only.

- 98 if posted, on the second Business Day following the day on which it was dispatched by pre-paid first-class post,
- 99 provided that a notice given as described in Clause 18.2(a) or Clause 18.2(b) on a day which is not a Business Day (or after normal business hours in the place of receipt) shall be deemed to have been received on the next Business Day.
- 100 Any notice or other communication given to the Lender shall be deemed to have been given only on actual receipt by the Lender.
- 101 **GOVERNING LAW AND JURISDICTION**
- 102 This Guarantee 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]¹³ [Scotland]¹⁴.
- 103 The parties to this Guarantee irrevocably agree that, subject as provided below, the courts of [England and Wales]¹⁵ [Scotland]¹⁶ shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Guarantee or its subject matter or formation (including non-contractual disputes or claims). Nothing in this Clause 19 (Governing law and jurisdiction) shall limit the right of the Lender to take proceedings against a Guarantor 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.
- 104 The Guarantor (or, if applicable, each Guarantor) irrevocably consents to any process in any proceedings under Clause 19.2 being served on them in accordance with the provisions of this Guarantee relating to service of notices. Nothing contained in this Guarantee 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.]¹⁷
[This document has been executed as follows [in counterpart and is delivered and takes effect on the date stated at the beginning of it].]^{18,19}

[DRAFTING NOTE: the following execution blocks are for Scotland only. The first execution block must appear in full on the same page as clause 19.3.]

¹³ England and Wales only.

¹⁴ Scotland only.

¹⁵ England and Wales only.

¹⁶ Scotland only.

¹⁷ England and Wales only.

¹⁸ Scotland only, if signed in counterpart.

¹⁹ Scotland only.

5



Lender

Subscribed _____ for and on behalf of _____)
Bluestone Mortgages Limited _____)
_____)

by _____)
(Print full name)

Authorised signatory

at

on

in the presence of: Name of

witness: Signature of witness:

Address:

§

10/10/10

Borrower

Subscribed by [name]

)
)

at

on

in the presence of: Name of

witness: Signature of witness:

Address:

§



Guarantor

Warning: As a guarantor of this loan, you will have to pay off the loan, the interest and all associated charges if the borrower does not. Before you sign this guarantee you should obtain independent legal advice.

Subscribed by [name]

)
)

at

on

in the presence of: Name of

witness: Signature of witness:

Address:

§



[EXECUTION PAGE]²⁰

[DRAFTING NOTE: the following execution blocks are for England and Wales only.]

Lender

Signed as a deed by [name of party])
in the presence of [name of witness])

Name of witness: Signature of

witness: Address: Occupation:

²⁰ England and Wales only.

 Borrower



Signed as a deed by [name of party]
in the presence of [name of witness]

)
)

Name of witness: Signature of

witness: Address: Occupation:

§



Guarantor

Warning: As a guarantor of this loan, you will have to pay off the loan, the interest and all associated charges if the borrower does not. Before you sign this guarantee you should obtain independent legal advice.

Signed as a deed by [name of party])
in the presence of [name of witness])

Name of witness:

Signature of witness:

Address:

Occupation:

W: bluestone.co.uk | T: 0800 368 1833

Lines open 9:00am - 5:30pm Monday to Friday. Calls may be recorded.
Bluestone Mortgages Limited is authorised and regulated by the Financial
Conduct Authority. Registered in England and Wales No. 02305213 at 3rd
Floor, 22 Chancery Lane, London, WC2A

Registered in England and Wales No. 2305213 Registered Office
3rd Floor, 22 Chancery Lane, London, WC2A 1LS
www.bluestone.co.uk
BM23 02/20