



Registration of a Charge

Company name: **Miller Wates (Southwater) Limited**

Company number: **09867524**



X6AN61IH

Received for Electronic Filing: **14/07/2017**

Details of Charge

Date of creation: **11/07/2017**

Charge code: **0986 7524 0002**

Persons entitled: **HSBC BANK PLC**

Brief description: **N/A**

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by: **PINSENT MASONS LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 9867524

Charge code: 0986 7524 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 11th July 2017 and created by Miller Wates (Southwater) Limited was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 14th July 2017 .

Given at Companies House, Cardiff on 18th July 2017

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



Companies House



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

Execution Version

DATED

11 JULY

2017

(1) MILLER WATES (SOUTHWATER) LIMITED

- and -

(2) HSBC BANK PLC

SECURITY OVER BENEFIT OF
CONSTRUCTION DOCUMENTATION
relating to

Land at Hogs Wood, Mill Straight,
Southwater, Horsham

HSBC 

HSBC Bank plc

CONTENTS

| Clause | | Page |
|--------|---|------|
| 1 | DEFINITIONS AND INTERPRETATION | 1 |
| 2 | COVENANT TO PAY | 3 |
| 3 | GRANT OF SECURITY | 3 |
| 4 | REPRESENTATIONS | 4 |
| 5 | GENERAL UNDERTAKINGS | 6 |
| 6 | FURTHER ASSURANCE | 8 |
| 7 | CONTINUING OBLIGATIONS | 8 |
| 8 | ENFORCEMENT | 8 |
| 9 | RECEIVER | 9 |
| 10 | POWERS OF RECEIVER | 10 |
| 11 | APPROPRIATION OF RECEIPTS | 11 |
| 12 | SUSPENSE ACCOUNT | 12 |
| 13 | SET-OFF | 12 |
| 14 | CURRENCY CONVERSION | 12 |
| 15 | NEW ACCOUNT | 12 |
| 16 | DELEGATION AND APPOINTMENT OF ATTORNEYS | 12 |
| 17 | REDEMPTION OF PRIOR SECURITY INTERESTS | 13 |
| 18 | RELEASES | 13 |
| 19 | CONTINUING SECURITY | 14 |
| 20 | THIRD PARTY PROTECTION | 14 |
| 21 | INDEMNITIES | 15 |
| 22 | CALCULATIONS AND CERTIFICATES | 15 |
| 23 | PARTIAL INVALIDITY | 15 |
| 24 | REMEDIES AND WAIVERS | 15 |
| 25 | AMENDMENTS AND WAIVERS | 15 |
| 26 | TRANSFER AND CONFIDENTIALITY | 16 |
| 27 | MANAGEMENT TIME | 16 |
| 28 | COUNTERPARTS | 16 |

| | | |
|----|---------------------------------------|----|
| 29 | NOTICES | 17 |
| 30 | GOVERNING LAW | 17 |
| 31 | ENFORCEMENT | 17 |
| | SCHEDULE 1 - DOCUMENTS | 18 |
| | SCHEDULE 2 - NOTICE OF CHARGE | 19 |
| | SCHEDULE 3 - ACKNOWLEDGMENT OF CHARGE | 20 |

THIS DEED is made on

11

JULY

2017

BETWEEN:-

- (1) **MILLER WATES (SOUTHWATER) LIMITED** a company incorporated in England & Wales (registered number 09867524) whose registered office is at 2 Centro Place, Pride Park, Derby, Derbyshire, DE24 8RF (the "**Borrower**"); and
- (2) **HSBC BANK PLC** (the "**Lender**")

IT IS AGREED as follows:-

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Deed:-

| | |
|-----------------------|---|
| "Affiliate" | means a Subsidiary of a company, a Holding Company of that company or any other Subsidiary of that Holding Company |
| "Authorisations" | means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration |
| "Contract" | means each of the documents listed in Schedule 1 (<i>Documents</i>) |
| "Contractor" | means each of the contractors, sub-contractors, consultants and other professionals referred to in the documents listed in Schedule 1 (<i>Documents</i>) |
| "Hedging Agreement" | means any master agreement, confirmation, schedule or other agreement entered into or to be entered into by the Borrower for the purpose of hedging interest rate liabilities and/or any exchange rate or other risks in relation to all or part of the Secured Liabilities and shall include all trades conducted thereunder to which the Lender is the counterparty |
| "Holding Company" | has the meaning given in section 1159 of the Companies Act 2006 |
| "Interest Rate" | means the rate of interest payable on any facility secured by the Security |
| "Property" | means the freehold property situate at and known as land at Hogs Wood, Mill Straight, Southwater, Horsham registered at the Land Registry under title number(s) WSX371230 |
| "Receiver" | means a receiver and/or manager of any or all of the Borrower's assets appointed by the Lender under the Security |
| "Secured Liabilities" | means all monies from time to time due or owing and all other actual or contingent liabilities from time to time incurred by the Borrower to the Lender (including any under any Hedging Agreement) |
| "Security" | means the Security Interests created or intended to be created by or pursuant to this Deed |

| | |
|----------------------------|---|
| "Security Assets" | means all the Borrower's assets from time to time the subject of Security |
| "Security Interest" | means a mortgage, charge, assignment, pledge, lien, standard security, assignation or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect |
| "Subsidiary" | has the meaning given in section 1159 of the Companies Act 2006 |

1.2 Interpretation

1.2.1 Unless a contrary indication appears, any reference in this Deed to:-

- (a) **"assets"** includes present and future properties, revenues and rights of every description;
- (b) **"the Lender"** shall be construed to include its successors in title, permitted assigns and permitted transferees;
- (c) a **"disposal"** includes a lease, licence, transfer, sale or other disposal of any kind;
- (d) **"includes"** or **"including"** shall be read and construed as including the phrase **"without limitation"**;
- (e) this **"Deed"** or any other agreement or instrument is a reference to this Deed, or other agreement or instrument as amended, supplemented, extended, restated, novated and/or replaced in any manner from time to time (however fundamentally and even if any of the same increases the Borrower's obligations or provides for further advances);
- (f) a provision of law is a reference to that provision as amended or re-enacted; and
- (g) the singular includes the plural and vice versa;
- (h) any real property includes:-
 - (i) all or any part of it;
 - (ii) all buildings, fixtures (including trade fixtures), fittings and fixed plant or machinery at any time on that property;
 - (iii) all easements, servitudes, rights and agreements in respect of that property;
 - (iv) all rents from and proceeds of sale of that property; and
 - (v) the benefit of all covenants given in respect of that property.

1.2.2 When any provision of this Deed refers to an approval or consent by the Lender that provision shall be construed so as to require that consent or approval to be given in writing.

1.2.3 References to clauses and paragraphs are to be construed, unless otherwise stated, as references to clauses and paragraphs of this Deed.

1.2.4 Clause headings are for ease of reference only and shall not affect the construction of this Deed.

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

1.3 Third party rights

Only a Receiver has any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed.

1.4 Delivery

The parties intend this Deed to be delivered on the first date specified on page 1 of this Deed and that this Deed shall take effect as a deed notwithstanding the fact that the Lender may only execute this Deed under hand.

2. COVENANT TO PAY

2.1 Covenant to pay

The Borrower shall pay and discharge each of the Secured Liabilities when the same fall due for payment.

2.2 Further advances

This Deed is made to secure any further advances or other facilities but it does not create any obligation on the Lender to make any further advances or make other facilities available.

2.3 Default interest

2.3.1 Any amount which is not paid under this Deed when due shall bear interest (both before and after judgment and payable on demand) from the due date until the date on which such amount is unconditionally and irrevocably paid and discharged in full on a daily basis at the rate that is two per cent above the Interest Rate from time to time.

2.3.2 Default interest will accrue from day to day on a year of 365 days and will be compounded at such intervals as the Lender considers are appropriate.

3. GRANT OF SECURITY

3.1 Charge

3.1.1 The Borrower as security for the repayment of the Secured Liabilities hereby charges by way of a first fixed legal charge:-

- (a) the Borrower's present and future rights title and interest in and to each Contract;
- (b) sums which shall from time to time become payable to the Borrower by each Contractor or otherwise under each Contract or any provision of it;
- (c) the Borrower's rights arising out of or in connection with any breach or default by each Contractor or any other party to a Contract of or under any of the terms, obligations, covenants, undertakings or conditions of that Contract whether in respect of the Property or otherwise; and

(d) the benefit of all sums recovered in any proceeding against each Contractor.

3.1.2 If at any time the Secured Liabilities have been fully discharged and repaid and the Borrower has no actual or contingent liability to the Lender then the Lender shall (at the request and cost of the Borrower) release to the Borrower the Security Assets (which has been charged to the Lender pursuant to this Deed) without recourse warranty.

3.1.3 The Borrower hereby confirms that there are no restrictions preventing the charging of the Security Assets and hereby undertake forthwith on demand to charge to the Lender absolutely or as the Lender shall direct the Security Assets and rights and remedies available to the Borrower under it to the extent that the Security Assets shall not be fully and effectively charged to the Lender by this Deed. The Borrower shall do all such things as may be necessary to effect such a charge.

3.2 Assignment

3.2.1 The Borrower assigns and agrees to assign (subject to a proviso for re-assignment on redemption) to the Lender absolutely, as continuing security for the payment, performance and discharge of the Secured Liabilities all of its right, title, benefit and interest (both present and future) in, to and under:-

(a) each Contract; and

(b) all present and future claims, causes of action, payments and proceeds in respect thereof.

3.2.2 To the extent that any such right, title, benefit and interest described in Clause 3.2.1 is not assignable or capable of assignment, such assignment purported to be effected by Clause 3.2.1 shall operate, as continuing security for the payment, discharge, performance and satisfaction of the Secured Liabilities, as an assignment of any and all proceeds of such right, title, benefit or interest paid or payable thereunder save for any proceeds or other amounts properly payable to any third party and to which the Borrower has no right, title, benefit or interest.

3.3 Trust

If or to the extent that for any reason the assignment or charging of any Security Asset is prohibited, the Borrower shall:

3.3.1 hold it on trust for the Lender as security for the payment and discharge of the Secured Liabilities; and

3.3.2 take such steps in its control as the Lender may require to remove the impediment to assignment or charging it.

3.4 Notice of Security

The Borrower must give notice on the date of this Deed of the grant of the Security to each Contractor and any other relevant person in the form set out in Schedule 2 (*Notice of Charge*) and it shall use its reasonable endeavours to procure that the recipient of each notice acknowledges it in writing substantially in the form of Schedule 3 (*Acknowledgment of Charge*).

4. REPRESENTATIONS

4.1 General

The Borrower makes the representations and warranties set out in this Clause 4 (*Representations*) to the Lender on the date of this Deed and on each day the Secured Liabilities are outstanding.

4.2 Status

- 4.2.1 It is a limited liability corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation.
- 4.2.2 It and each of its Subsidiaries have the power to own their assets and carry on their respective businesses as they are being conducted.

4.3 Binding obligations

- 4.3.1 Its obligations in this Deed are legal, valid, binding and enforceable obligations.
- 4.3.2 The Security Interests which this Deed purports to create are valid and effective and are not liable to be avoided or otherwise set aside on its bankruptcy, liquidation, death or administration.

4.4 Non-conflict with other obligations

The entry into and performance by the Borrower of its obligations under this Deed and the granting of the Security do not and will not conflict with:-

- 4.4.1 any law or regulation applicable to it;
- 4.4.2 (if the Borrower is not an individual) its constitutional documents; or
- 4.4.3 any agreement or instrument binding upon the Borrower or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.

4.5 Power and authority

- 4.5.1 The Borrower has the power to enter into, perform and deliver, and have taken all necessary action to authorise its entry into, performance and delivery of, this Deed and the grant of the Security.
- 4.5.2 No limit on the Borrower's powers will be exceeded as a result of the grant of the Security.

4.6 Validity and admissibility in evidence

- 4.6.1 All Authorisations required or desirable to enable it lawfully to enter into, and comply with its obligations under this Deed and to grant the Security have been obtained or effected and are in full force and effect.
- 4.6.2 All Authorisations necessary for the conduct of its business, trade and ordinary activities have been obtained or effected and are in full force and effect.

4.7 Solvency

As at the date of this Deed:-

- 4.7.1 where the Borrower is a company or limited liability partnership, it is able to meet its debts as they fall due and is not deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or any analogous provision in any relevant jurisdiction; or
- 4.7.2 where the Borrower is an individual, they are not deemed either unable to pay their debts as they fall due or as having no reasonable prospect of doing so, in either case, within the meaning of section 268 of the Insolvency Act 1986 or any analogous provision in any relevant jurisdiction; or

- 4.7.3 where the Borrower is a partnership, none of the foregoing (or any analogous provision in any relevant jurisdiction) applies to any of its partners.

4.8 **Security**

- 4.8.1 No Security Interest exists over the Security Assets other than as permitted by this Deed.
- 4.8.2 The Security has or will have first ranking priority and it is not subject to any prior ranking or *pari passu* ranking Security Interest.
- 4.8.3 The Borrower has a good and marketable title to and is the sole legal and beneficial owner of the Security Assets.

4.9 **Centre of main interest and establishments**

For the purposes of Regulation (EU) 2015/848 of 20 May 2015 on Insolvency Proceedings (recast) (the "**Regulation**"), the Borrower's "*centre of main interest*" (as that term is used in Article 3(1) of the Regulation) is situated in England and Wales and it has no "*establishment*" (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction.

4.10 **Contracts**

- 4.10.1 Each Contract is in full force and effect in accordance with its terms, has been validly executed and is enforceable (subject to this Deed) by the Borrower against the relevant Contractor and vice versa.
- 4.10.2 Neither the Borrower nor (to the best of the Borrower's knowledge and belief) the relevant Contractor is in breach of or in default of any of the terms and conditions of the relevant Contract.
- 4.10.3 The Borrower is entitled under each Contract and in law to create security over that Contract in the manner set out in this Deed.
- 4.10.4 Each Contract is capable of being charged to the Lender.

5. **GENERAL UNDERTAKINGS**

5.1 **Negative pledge**

The Borrower shall not create or permit to subsist any Security Interest over the Security Assets without the consent of the Lender.

5.2 **No disposals**

Unless the Lender consents, the Borrower shall not make any disposal of any Security Assets even if the disposal is involuntary.

5.3 **General**

The Borrower covenants with the Lender that it shall:-

- 5.3.1 diligently take all steps necessary or advisable or any steps the Lender may properly request to be taken to procure the due performance by each Contractor of all its obligations under the relevant Contract in accordance with the terms of it;
- 5.3.2 promptly and diligently:-
- (a) perform all the obligations on the Borrower's part contained in each Contract;

- (b) notify the Lender immediately in writing of any breach of or default under each Contract on the Borrower's part or on the part of the relevant Contractor or any other party to the relevant Contract;
- (c) institute and prosecute completely at its own expense all such proceedings as may reasonably be necessary or advisable to preserve or protect the Borrower's own interests and those of the Lender in the Security Assets;
- (d) if the Lender shall by written notice to the Borrower so require forthwith upon receipt of the same send to the Lender a copy of each instruction, professional fee, invoice, certificate, variation, order, notice, insurance policy or other document issued or served upon it or by it pursuant to under or in connection with each Contract;
- (e) upon receipt of the same and on the occurrence of an Event of Default remit to the Lender all sums which shall from time to time become payable to the Borrower in respect of the Security Assets;
- (f) provide the Lender with such information as it may request in relation to each Contract or in respect of any aspect of it or the progress of the development and in any event not later than seven business days from the Lender making the request;
- (g) will keep the Lender fully and effectively indemnified from and against any and all actions, losses, claims, proceedings, costs, demands and liabilities which may be suffered or incurred by the Lender under or by virtue of this Deed or otherwise in respect of the Property;

5.3.3 not, for the duration of this Deed without the prior written consent of the Lender:-

- (a) make or vary or consent to any material modification or variation of the terms of any Contract;
- (b) consent or agree to any waiver or release of any material obligation of any Contractor or of any other relevant person under any Contract;
- (c) give or agree to give any time or other indulgence to any Contractor in respect of its material obligations in respect of any Contract;
- (d) make or agree to any claim that any Contract is in any manner frustrated, rescinded, terminated, repudiated or otherwise at an end or that the relevant Contract is in any way waived or discharged;
- (e) rescind, cancel or terminate any Contract or accept any breach of it or default thereunder as repudiatory;
- (f) take or omit to take any action the taking or omission of which would or might result in any impairment of the Security Assets; and

5.3.4 comply at all times with the terms (expressed or implied) of this Deed and execute deliver and perform or procure the execution delivery and performance of all such documents as may be necessary or desirable to secure to the Lender the full benefit of this Deed or the rights powers and remedies herein conferred on the Lender.

5.4 Documents

The Borrower irrevocably and unconditionally undertakes to deposit with the Lender on request (to the intent that the same shall be subject in all respects to the provisions of this Deed) all and any originals of any deeds, documents, instruments or material evidencing or constituting the Security Assets.

6. FURTHER ASSURANCE

The Borrower shall at its own expense ensure any documents are executed and any acts and things are done which the Lender may reasonably require from time to time for:-

- 6.1 giving effect to, perfecting or protecting the Security;
- 6.2 facilitating the realisation of any Security Asset;
- 6.3 facilitating the exercise of all powers, authorities and discretions vested in the Lender or in any Receiver; or
- 6.4 perfecting any Security over any assets acquired by the Borrower after the date of this Deed.

7. CONTINUING OBLIGATIONS

Notwithstanding anything contained in this Deed:-

- 7.1 the Borrower shall at all times remain liable to each Contractor to perform its duties and obligations under the relevant Contract;
- 7.2 the exercise by the Lender of any of the rights confirmed by this Deed shall not release the Borrower from any of its duties or obligations under each Contract;
- 7.3 the Lender shall not be under any obligation or liability under any Contract to any Contractor or any other party by reason of this Deed or anything done or omitted to be done by the Lender pursuant to it; and
- 7.4 the Lender shall not be obliged to:-
 - 7.4.1 assume or be under any obligation in any manner to perform or fulfil any of the Borrower's obligations under or pursuant to any Contract; or
 - 7.4.2 make any payment under it; or
 - 7.4.3 enforce against any Contractor any term, obligation, covenant, undertaking or condition of any Contract; or
 - 7.4.4 make any enquiry as to the nature or sufficiency of any payment received under or pursuant to this Deed.

8. ENFORCEMENT

8.1 Remedying defaults

The Lender or a Receiver may (but is not obliged to) take any action to remedy a failure by the Borrower to observe and perform the provisions of this Deed at the Borrower's cost.

8.2 Timing of enforcement

- 8.2.1 The Secured Liabilities are deemed to have become due on the date of this Deed.
- 8.2.2 The Security shall become enforceable on the earlier of:-
 - (a) the date the Lender demands repayment of any of the Secured Liabilities;

- (b) the date the Borrower breaches a provision of this Deed or any document evidencing the facilities to which the Secured Liabilities relate; or
- (c) the Borrower's request.

8.2.3 Neither section 93(1) nor section 103 of the Law of Property Act 1925 shall apply to this Deed.

8.3 Powers of the Lender

8.3.1 At any time after the Security becomes enforceable or if requested by the Borrower, the Lender may without further notice (unless required by law):-

- (a) appoint any person (or persons) to be a receiver or receiver and manager of all or any part of the Security Assets and/or of the income of the Security Assets; and/or
- (b) appoint or apply for the appointment of any person as the Borrower's administrator (if the Borrower is a company); and/or
- (c) exercise all or any of the powers conferred on mortgagees by the Law of Property Act 1925 (as amended or extended by this Deed) and/or all or any of the powers which are conferred by this Deed on a Receiver, in each case without first appointing a Receiver or notwithstanding the appointment of any Receiver.

8.4 No liability

Neither the Lender nor any Receiver shall be liable as a mortgagee in possession or otherwise to account in relation to the Security Assets for any loss on realisation or for any other default or omission. No exercise of the right in Clause 8.1 (*Remedying defaults*) shall render the Lender or a Receiver a mortgagee in possession.

9. RECEIVER

9.1 Removal and replacement

The Lender may from time to time remove any Receiver appointed by it and, whenever it may deem appropriate, may appoint a new Receiver in the place of any Receiver whose appointment has terminated.

9.2 Multiple Receivers

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

9.3 Remuneration

Any Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Lender (or, failing such agreement, to be fixed by the Lender) and section 109(6) of the Law of Property Act 1925 shall not apply.

9.4 Payment by Receiver

Only monies actually paid by a Receiver to the Lender in relation to the Secured Liabilities shall be capable of being applied by the Lender in discharge of the Secured Liabilities.

9.5 Borrower's agent

Any Receiver shall be the Borrower's agent and the Borrower shall (subject to the Companies Act 2006 and the Insolvency Act 1986) be solely responsible for his acts and defaults and for the payment of his remuneration. The Lender shall not incur any liability (either to the Borrower or to any other person) by reason of the appointment of a Receiver or for any other reason.

10. POWERS OF RECEIVER

10.1 General powers

Any Receiver shall have:-

- 10.1.1 all the powers which are conferred by the Law of Property Act 1925 on mortgagees in possession and receivers appointed under that Act but without the restrictions contained in sections 103 and 109(1) of that Act;
- 10.1.2 all the powers which are listed in schedule 1 of the Insolvency Act 1986; and
- 10.1.3 all powers which are conferred by any other law conferring power on receivers.

10.2 Additional powers

In addition to the powers referred to in Clause 10.1 (*General powers*), a Receiver shall have the following powers:-

- 10.2.1 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;
- 10.2.2 to manage the Security Assets as he thinks fit;
- 10.2.3 to proceed to completion of any Contract and satisfy the Borrower's obligations and liabilities under any Contract;
- 10.2.4 to exercise in relation to the Security Assets all such rights as the Borrower might exercise in relation to the Security Assets as if the same were unencumbered by this Deed or otherwise;
- 10.2.5 require the Lender to lend him as the Borrower's agent (so that such loan shall be deemed to be a further advance to the Borrower) such monies as in his opinion shall be properly required to realise the Security Assets. Any such monies loaned shall be immediately owing by the Borrower to the Lender and secured by this Deed;
- 10.2.6 to redeem any Security Interest and to borrow or raise any money and secure the payment of any money in priority to the Secured Liabilities for the purpose of the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise;
- 10.2.7 to sell or concur in selling, leasing or otherwise disposing of all or any part of the Security Assets in respect of which he was appointed without the need to observe the restrictions imposed by section 103 of the Law of Property Act 1925, and, without limitation:-
 - (a) the consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration (and the amount of such consideration may be dependent upon profit or turnover or be determined by a third party); and
 - (b) any such consideration may be payable in a lump sum or by instalments spread over such period as he thinks fit;

- 10.2.8 to alter, improve, develop, complete, construct, modify, refurbish or repair any building or land and to abandon, complete or undertake or concur in the completion or undertaking (with or without modification) of any project in which the Borrower was concerned or interested before his appointment (being a project for the alteration, improvement, development, completion, construction, modification, refurbishment or repair of any building or land);
- 10.2.9 to carry out any sale or other disposal of all or any part of the Security Assets by conveying, transferring, assigning or leasing the same in the Borrower's name and, for that purpose, to enter into covenants and other contractual obligations in the Borrower's name and so as to bind it;
- 10.2.10 to take any such proceedings in the Borrower's name as he shall think fit in respect of the Security Assets and/or income in respect of which he was appointed (including proceedings for monies in arrears at the date of his appointment);
- 10.2.11 to enter into or make any such agreement, arrangement or compromise as he shall think fit;
- 10.2.12 to appoint and employ such managers, officers and workmen and engage such professional advisers as he shall think fit (including, without prejudice to the generality of the foregoing power, to employ any firm, partner, company or other entity with which he is associated);
- 10.2.13 to form one or more subsidiaries of the Borrower and to transfer to any such subsidiary all or any part of the Security Assets; and
- 10.2.14 to:-
 - (a) 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;
 - (b) 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
 - (c) use the Borrower's name for any of the above purposes.

10.3 Limitation

- 10.3.1 The Lender may in the instrument by which a Receiver is appointed limit the powers of the Receiver.
- 10.3.2 The Receiver shall be under no duty to the Borrower to exercise any power he may have and shall not incur any liability to the Borrower either by virtue of the exercise of such powers or by virtue of a failure to exercise such powers.

11. APPROPRIATION OF RECEIPTS

11.1 Application

- 11.1.1 Subject to Clause 12 (*Suspense Account*), any monies received by the Lender in respect of the Security (subject to the payment of any claims having priority to the Security, but in substitution for section 109(8) of the Law of Property Act 1925) shall be applied in the following order of priority:-
 - (a) in discharging the remuneration of any Receiver and all costs, charges and expenses of and incidental to his or her appointment;

- (b) in or towards payment or discharge of the Secured Liabilities; and
- (c) in payment of the surplus (if any) to the Borrower or other person entitled to it.

11.1.2 The Lender may apply sums received towards the payment or discharge of the Secured Liabilities in reduction of any part of the Secured Liabilities in any order or manner as it thinks fit. The Lender may override any appropriation made by the Borrower.

12. SUSPENSE ACCOUNT

Any monies received by the Lender or any Receiver may be placed in an interest bearing suspense or securities realised account and kept there for so long as the Lender considers prudent.

13. SET-OFF

13.1 The Lender may (but shall not be obliged to) set off any obligation which is due and payable by the Borrower and unpaid or any contingent obligation from the Borrower against any obligation (whether or not matured) owed by the Lender to the Borrower, regardless of the place of payment, booking branch or currency of either obligation.

13.2 If either obligation is unliquidated or unascertained, the Lender may set off in an amount estimated by it in good faith to be the amount of that obligation.

14. CURRENCY CONVERSION

All monies received or held by the Lender or any Receiver under this Deed may be converted from their existing currency into such other currency as the Lender or the Receiver considers necessary or desirable to cover the obligations and liabilities comprised in the Secured Liabilities in that other currency at the Lender's spot rate of exchange.

15. NEW ACCOUNT

If the Lender receives or is deemed to be affected by notice (whether actual or constructive) of any subsequent Security Interest affecting some or all of the Security Assets or their proceeds of sale, then the Lender may open a new account for the Borrower. If it does not do so, it shall nevertheless be treated as if it had done so at the time when it received, or was deemed to have received, the notice. As from that time, any payment made to the Lender for the Borrower's account shall be credited (or be treated as having been credited) to the new account and shall not operate to reduce the amount for which the Security applies.

16. DELEGATION AND APPOINTMENT OF ATTORNEYS

16.1 Delegation

16.1.1 The Lender may delegate to any person or persons all or any of the powers, authorities and discretions which are exercisable under this Deed. A delegation may be made in any manner (including by power of attorney) in and on any terms (including power to sub-delegate) which the Lender thinks fit.

16.1.2 The Lender shall not be liable or responsible to the Borrower for any loss or damage arising from any act, default, omission or misconduct on the part of any of its delegates or sub-delegates.

16.2 Attorneys

16.2.1 By way of security, the Borrower irrevocably appoints the Lender, every Receiver and every delegate or sub-delegate appointed under Clause 16.1 (*Delegation*) separately to be its attorney on its behalf, in its name:-

- (a) to execute and do any documents, acts and things which the Borrower is required to execute and do under this Deed or any other document relating to the Secured Liabilities; and
- (b) to execute and do any documents, acts and things which any attorney may deem proper or desirable in exercising any powers, authorities and discretions conferred by this Deed, any other document relating to the Secured Liabilities or by law on the Lender or any Receiver.

16.2.2 The Borrower ratifies and confirms anything which any of its attorneys does in the proper and lawful exercise or purported exercise of all or any of the powers, authorities and discretions referred to in this Clause 16.2 (*Attorneys*).

17. REDEMPTION OF PRIOR SECURITY INTERESTS

17.1 Redemption

The Lender may at any time redeem, or procure the transfer to it of, any prior Security Interest over any Security Assets at the Borrower's cost.

17.2 Costs of redemption

All principal monies, interest, costs, charges and expenses incurred in and incidental to any redemption or transfer under Clause 17.1 (*Redemption*) shall be paid by the Borrower on demand, in each case together with interest calculated in the manner referred to in Clause 21 (*Indemnities*).

18. RELEASES

18.1 Releases conditional

18.1.1 Any release, settlement, discharge, re-assignment or arrangement in respect of the Security (in this Clause 18 (*Releases*), a "release") made by the Lender on the faith of any assurance, security or payment shall be conditional on that assurance, security or payment not being avoided, reduced, clawed back or ordered to be repaid under any law relating to liquidation, bankruptcy or insolvency.

18.1.2 If any avoidance, reduction, or clawback occurs or any order is made as referred to in Clause 18.1.1, then the release shall have no effect and shall not prejudice the Lender's right to enforce the Security in respect of the Secured Liabilities. As between the Borrower and the Lender, the Security shall (notwithstanding the release) be deemed to have remained at all times in effect and held by the Lender as security for the Secured Liabilities.

18.2 Retention

18.2.1 If and for so long as any assurance, security or payment as is mentioned in Clause 18.1 (*Releases conditional*) remains in the reasonable opinion of the Lender susceptible of being avoided, reduced, clawed back or ordered to be repaid under any law relating to liquidation, bankruptcy or insolvency, the Lender may in its absolute discretion retain all or part of the Security and other rights under this Deed as security for the Secured Liabilities after they have been paid and discharged in full.

18.2.2 If, at any time while all or part of the Lender's rights under this Deed are so retained:-

- (a) an application is made to a competent court for a winding-up or bankruptcy order to be made in respect of the Borrower;
- (b) steps are taken to wind the Borrower up or make the Borrower bankrupt;
- (c) an application is made to a competent court for an administration order to be made in respect of the Borrower;
- (d) a notice of intention to appoint an administrator to the Borrower is filed at court; or
- (e) the appointment of an administrator to the Borrower takes effect,

then the Lender may continue to retain all or part of its rights under this Deed for any further period as the Lender may determine in its absolute discretion.

19. CONTINUING SECURITY

19.1 Continuing security

The Security is continuing security and shall secure the ultimate balance of the Secured Liabilities, notwithstanding:-

- 19.1.1 intermediate payment or discharge of the whole or part of the Secured Liabilities;
- 19.1.2 the Borrower's death, bankruptcy, liquidation or other incapacity or any change in its constitution, name or style;
- 19.1.3 any change in the Lender's constitution, name or style, its absorption in or amalgamation with any other person or the acquisition of all or part of its undertaking by any other person; or
- 19.1.4 any other event, matter or thing.

19.2 Additional to other rights

The Security is in addition to (and shall not merge with, otherwise prejudice or affect or be prejudiced or affected by) any other remedy, guarantee, indemnity, Security Interest or other right which may be or have been created (by the Borrower or otherwise) in favour of the Lender. Accordingly, the Borrower's liability under this Deed shall not be prejudiced or affected by, and this Deed may be enforced notwithstanding:-

- 19.2.1 the existence or invalidity of all or any of those rights; or
- 19.2.2 at any time, the Lender exchanging, releasing, varying, abstaining from perfecting or enforcing or otherwise dealing or omitting to deal with all or any of those rights.

20. THIRD PARTY PROTECTION

No purchaser, mortgagee or other person dealing with the Lender or a Receiver shall be concerned:-

- 20.1 to enquire whether any of the Secured Liabilities have become due or payable or remain unpaid or undischarged;
- 20.2 whether the power which the Lender or Receiver is purporting to exercise has become exercisable; or

20.3 to see to the application of any money paid to the Lender or to a Receiver.

21. INDEMNITIES

The Borrower agrees to fully indemnify the Lender and any Receiver (and in the case of legal costs and expenses on a solicitor and own client basis) on demand against all liabilities, losses, claims, actions, damages, costs and expenses incurred by, made or brought against the Lender or Receiver (or any manager or agent appointed by the Lender or Receiver):-

- 21.1 as a result of the Borrower's failure to perform any of its obligations under this Deed;
- 21.2 in the exercise (or purported exercise) of any of the powers or other rights conferred by this Deed;
- 21.3 in respect of any costs, charges or expenses incurred in connection with Clause 14 (*Currency Conversion*);
- 21.4 in respect of the redemption of any prior Security Interest over any Security Asset under Clause 17 (*Redemption of prior security interests*);
- 21.5 as a result of the Borrower's breach of any current or other obligation or matter relating to the Property; or
- 21.6 in respect of any other matter or thing done or omitted relating to the Security Assets,

together in each case with interest at the Interest Rate calculated on a daily basis from the date it is incurred or becomes payable to the Lender or the Receiver until the date of payment, whether before or after any judgment.

22. CALCULATIONS AND CERTIFICATES

Any certificate of or determination by the Lender specifying the amount of the Secured Liabilities is, in the absence of manifest error, conclusive evidence against the Borrower of the matters to which it relates.

23. PARTIAL INVALIDITY

All the provisions of this Deed are severable and distinct from one another and if at any time any provision is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of any 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.

24. REMEDIES AND WAIVERS

No failure to exercise nor any delay in exercising any right or remedy under this Deed against the Borrower shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise, or the exercise of any other right or remedy. The rights and remedies provided are cumulative and not exclusive of any rights or remedies provided by law.

25. AMENDMENTS AND WAIVERS

Any provision of this Deed may be amended only if the Borrower and the Lender agree in writing and any breach of this Deed may be waived before or after it occurs only if the Lender so agrees in writing. A waiver given or consent granted by the Lender under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

26. TRANSFER AND CONFIDENTIALITY

26.1 Transfer

26.1.1 The Lender may assign and/or transfer its rights and obligations under this Deed.

26.1.2 The Borrower shall not assign any of its rights or transfer any of its obligations under this Deed.

26.2 Confidentiality

The Lender may disclose to:-

26.2.1 any transferee or potential transferee;

26.2.2 any assignee or potential assignee;

26.2.3 any person with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to or including the Secured Liabilities;

26.2.4 any ratings agency;

26.2.5 any of the officers, directors, employees, professional advisers, auditors, partners and representatives of the persons referred to in sub-clauses 26.2.1 to 26.2.4;

26.2.6 any of its Affiliates and to any of its or their officers, directors, employees, professional advisers, auditors, partners and representatives;

26.2.7 any person to whom information is required or requested to be disclosed by any court of a competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;

26.2.8 any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes; and

26.2.9 any insurance company or underwriters in relation to the insurance of the Property,

such confidential information as the Lender shall consider appropriate if any person to whom the confidential information is to be given is informed in writing of its confidential nature.

27. MANAGEMENT TIME

The Lender reserves the right to charge for its management time or other resources (which will be calculated on the basis of such reasonable daily or hourly rates as the Lender may notify to the Borrower from time to time).

28. COUNTERPARTS

This Deed may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same instrument and any party may enter into this Deed by executing a counterpart.

29. **NOTICES**

29.1 **Communications in writing**

Any communication to be made under or in connection with this Deed shall be made in writing in the English language and, unless otherwise stated, must be made by letter.

29.2 **Addresses**

The Lender may deliver any communication, document or notice to the Borrower relating to this Deed to its registered office, to any address to which a notice under any facility relating to the Secured Liabilities might be sent or any additional address the Borrower may notify to the Lender by not less than five business days' notice.

29.3 **Delivery**

29.3.1 Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective when it has been left at the relevant address or five business days after being deposited in the post, postage prepaid, in an envelope addressed to it at that address.

29.3.2 Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer identified with Lender's signature below (or any substitute department or officer as the Lender shall specify for this purpose).

30. **GOVERNING LAW**

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

31. **ENFORCEMENT**

31.1 **Jurisdiction**

31.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including disputes regarding the existence, validity or termination of this Deed, the Security Interests intended to be created by it or any non-contractual obligations arising out of or in connection with it) (a "**Dispute**").

31.1.2 The Borrower agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly it will not argue to the contrary.

31.1.3 This Clause 31.1 is for the benefit of the Lender only. The Lender may take proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

IN WITNESS whereof the Borrower has executed this Deed as a deed the year and date appearing on the first page of it.

SCHEDULE 1

DOCUMENTS

| No. | Date | Document | Parties |
|-----|------------------|-------------------------------|---|
| 1 | 11 December 2015 | Development Services Contract | (1) the Borrower and (2) Miller Homes Limited |
| 2 | 22 December 2016 | Development Agreement | (1) the Borrower, (2) Affinity Sutton Homes Limited, (3) Affinity Sutton Professional Services Limited and (4) Miller Homes Limited |

SCHEDULE 2
NOTICE OF CHARGE

To:

Dated

Dear Sirs

We hereby give notice that, by a Deed dated [] 2017 a copy of which is attached hereto, we charged to HSBC Bank Plc (the "Lender") all of our rights, title and interest in and to the contract dated [] between [] (the "Contract").

Please note, inter alia, that:-

1. the duties and obligations have not been novated and thus we are still responsible to you for all such duties and obligations as set out in the Contract;
2. henceforth we may not without the prior written consent of the Lender:-
 - 2.1 make or agree to any modification variation or amendment of the terms of the Contract; or
 - 2.2 consent or agree to any waiver or release of any of your obligations under the Contract; or
 - 2.3 make or agree to any claim that the Contract is frustrated in whole or in part;
3. henceforth you should remit to the Lender all sums due and owing to us under or pursuant to the Contract; and
4. henceforth these instructions may not be varied save with the written consent of the Lender.

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

Please accept this notice by signing the enclosed acknowledgement and returning it to the Lender at HSBC Bank plc, 71 Queen Victoria St, London EC4V 4AY marked for the attention of Mark Woolfitt.

Yours faithfully

for and on behalf of
Miller Wates (Southwater) Limited

SCHEDULE 3

ACKNOWLEDGMENT OF CHARGE

To: HSBC Bank plc
71 Queen Victoria St
London
EC4V 4AY

FAO: Mark Woolfitt

Dear Sirs

At the request of Miller Wates (Southwater) Limited (the "**Chargor**") and in consideration of you affording banking facilities to the Chargor we write to confirm and agree that:

1. we have received from the Chargor a notice dated [] of a Deed (the "**Deed**") dated [] 2017 given by the Chargor to you relating to the construction contract referred to therein (the "**Contract**") with a copy of the Deed attached;
2. we have noted the contents of the said notice and the Deed;
3. we have not received any other notices of charge or assignment regarding the Contract;
4. we consent to the Deed taking effect in accordance with its terms;
5. we shall remit to you all sums due and owing to the Chargor under or pursuant to the Contract;
6. the benefit of the Contract and the rights and remedies under it are capable of assignment and capable of being charged and we shall not under any circumstances withhold our consent (if such consent is required under the terms of the Contract) to any assignment or charging of the Contract to you; and
7. we acknowledge and agree that you have no obligations or liabilities or duties to us under the terms of the Contract or otherwise and whether before or after the date of this letter.

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

Yours faithfully

for and on behalf of
[INSERT CONTRACTOR'S DETAILS]

Date: []

EXECUTION PAGE

EXECUTED as a Deed (but not delivered until)

dated) by MILLER WATES (SOUTHWATER)

LIMITED acting by a Director in the presence of a)

witness:) Director

)

Name of Director

Signature of witness:

[Redacted Signature]

IAN MURDOCH

Name of witness:

FRASER GRANT

Address:

MILLER HOUSE
2 LOCKSIDE VIEW
EDINBURGH EH12 9DH

THE LENDER

SIGNED for and on behalf of)
HSBC BANK PLC)

Communications to the Lender are to be delivered to:

Address: 71 Queen Victoria St, London EC4V 4AY

For the attention of: Mark Woolfitt

EXECUTION PAGE

EXECUTED as a Deed (but not delivered until)

dated) by **MILLER WATES (SOUTHWATER)**

LIMITED acting by a Director in the presence of a)

witness:

) Director

)

Name of Director

Signature of witness:

Name of witness:

Address:

THE LENDER

SIGNED for and on behalf of)
HSBC BANK PLC)

Communications to the Lender are to be delivered to:

Address: 71 Queen Victoria St, London EC4V 4AY

For the attention of: Mark Woolfitt

