



Registration of a Charge

Company name: **Stewart Milne Group Limited**

Company number: **SC057709**



X5GZ2HQL

Received for Electronic Filing: **05/10/2016**

Details of Charge

Date of creation: **28/09/2016**

Charge code: **SC05 7709 0177**

Persons entitled: **BANK OF SCOTLAND PLC (AS SECURITY AGENT)**

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: **PAUL ANDERSON**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 57709

Charge code: SC05 7709 0177

The Registrar of Companies for Scotland hereby certifies that a charge dated 28th September 2016 and created by Stewart Milne Group Limited was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 5th October 2016 .

Given at Companies House, Edinburgh on 6th October 2016

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**

MORTGAGE OF SHARES

Dated *28 September* 2016

between

STEWART MILNE GROUP LIMITED

and

BANK OF SCOTLAND PLC

as Security Agent

This Mortgage of Shares is entered into with the benefit of and subject to the terms of the Intercreditor Agreement (as defined in this Mortgage of Shares)



Dickson Minto W.S.
Edinburgh

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THIS MORTGAGE OF SHARES is made the 28th day of September 2016

BETWEEN:

- (1) **STEWART MILNE GROUP LIMITED**, a company incorporated in Scotland with registered number SC057709 and having its registered office at Peregrine House, Mosscroft Avenue, Westhill Business Park, Westhill, Aberdeen. AB32 6JQ (the "**Mortgagor**"); and
- (2) **BANK OF SCOTLAND PLC**, a company incorporated in Scotland with registered number SC327000 and having its registered office at The Mound, Edinburgh EH1 1YZ as agent and trustee for itself and for each of the other Secured Parties (as defined below) on the terms and conditions set out in the Intercreditor Agreement (as defined below) (in such capacity as agent and trustee hereinafter referred to as the "**Security Agent**" (which expression shall include each person appointed as the Security Agent at the date of this Mortgage of Shares or any additional security agent appointed for the purpose of, and in accordance with, the Intercreditor Agreement)).

WHEREAS:

- (A) The Senior Lenders (as defined below) have agreed in accordance with the terms and conditions of the facilities agreement originally dated 7 November 2013, as amended and restated on 30 October 2015, as amended on 23 December 2015, as amended on 11 January 2016, as amended on 19 February 2016, as amended on 18 March 2016, as amended on 29 July 2016, as amended on 31 August 2016, as amended and restated on or around the date hereof and as further amended, restated or supplemented from time to time between inter alia, Stewart Milne Group Limited (1), the various banks and financial institutions named therein (2) and the Agent (as defined herein) (3) (hereinafter referred to as the "**Facilities Agreement**") to make available to SMGL (as defined below) certain term loan, revolving credit and ancillary facilities (hereinafter referred to as the "**Senior Facilities**").
- (B) The Ancillary Lenders (as defined below) may agree in accordance with the terms and conditions of the Facilities Agreement and certain ancillary documents (as such documents are amended, varied, supplemented, novated or replaced from time to time hereinafter referred to as the "**Ancillary Documents**") between inter alia the Borrowers (as defined below) and the Ancillary Lenders to make available to the Borrowers certain ancillary facilities (hereinafter referred to as the "**Ancillary Facilities**").
- (C) The Working Capital Bank (as defined below) has agreed in accordance with the terms and conditions of the Initial Working Capital Facility Agreement (as defined in the Facilities Agreement) (as such documents are amended, varied, supplemented, novated or replaced from time to time hereafter) to provide certain working capital facilities (hereinafter referred to as the "**Working Capital Facilities**").
- (D) The Hedge Counterparties (as defined below) may make after the date hereof interest rate hedging and other similar facilities (hereinafter referred to as the "**Hedging Facilities**") available to an Obligor (as defined below) or any other member of the Group (as defined below).
- (E) It is a condition precedent to the Secured Parties making or continuing to make the Facilities (as defined below) available to the Borrowers that the Mortgagor enters into this Mortgage of Shares.

NOW THIS DEED WITNESSES as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions from Facilities Agreement

Words and expressions defined in the Facilities Agreement or whose definitions are imported into the Facilities Agreement shall bear the same meaning in this Mortgage of Shares (including, without limitation, the recitals and schedule in this Mortgage of Shares) unless otherwise defined in this Mortgage of Shares or unless the context otherwise requires.

1.2. Definitions

In this Mortgage of Shares:

"**Act**" means The Law of Property Act 1925.

"**Agent**" means the Agent as defined in the Facilities Agreement.

"**Ancillary Lenders**" means the Ancillary Lenders as defined in the Facilities Agreement and "**Ancillary Lender**" means any one of them.

"**Borrower**" means a Borrower as defined in the Facilities Agreement and "**Borrowers**" shall be construed accordingly.

"**Company**" means Stewart Milne Homes North West England Limited, a company incorporated in England and Wales with registered number 10375540 and having its registered office at Falcon House, Curbridge Business Park, Downs Road, Witney, Oxton, OX29 7WJ.

"**Enforcement Event**" means the giving of a notice by the Agent to the Parent under Clause 27.20 (Acceleration) of the Facilities Agreement and/or failure of any party (other than the Security Agent or any Nominee) to comply (or give valid reason to justify (in the opinion of the Security Agent acting reasonably) such non-compliance) with the terms of any warning notice by the Company to any party other than the Security Agent or any Nominee pursuant to paragraph 1(2) of Schedule 1B to the Companies Act within five Business Days of the date on which such warning notice was given.

"**Event of Default**" means an Event of Default as defined in the Facilities Agreement.

"**Facilities**" means the Senior Facilities, the Hedging Facilities, the Ancillary Facilities and the Working Capital Facilities.

"**Finance Documents**" means the Finance Documents as defined in the Facilities Agreement and any other document which the Security Agent and SMGL agree shall be designated as a Finance Document.

"**Financial Collateral Regulations**" means the Financial Collateral Arrangements (No. 2) Regulations (SI 2003 No. 3226).

"**Financial Indebtedness**" means Financial Indebtedness as defined in the Facilities Agreement.

"**Group**" means Group as defined in the Facilities Agreement.

"Hedge Counterparty" means a Hedge Counterparty as defined in the Facilities Agreement and **"Hedge Counterparties"** shall be construed accordingly.

"Intercreditor Agreement" means the intercreditor agreement dated 7 November 2013 and made between, amongst others, SMGL and the Agent, the Security Agent, the Senior Lenders, the Ancillary Lenders, the Hedge Counterparties and certain others as amended, restated or supplemented from time to time.

"Nominee" means the person or persons nominated by the Security Agent in whose name or names all or any of the Secured Assets are from time to time and for the time being registered.

"Obligor" means an **"Obligor"** as defined in the Facilities Agreement and **"Obligors"** shall be construed accordingly.

"PSC Notice" means any of:

- (a) a notice issued under section 790D of the Companies Act 2006;
- (b) a notice issued under section 790E of the Companies Act 2006;
- (c) a warning notice issued under paragraph 1 of Schedule 1B of the Companies Act 2006; or
- (d) a restriction notice issued under paragraph 1 of Schedule 1B of the Companies Act 2006.

"Quasi-Security" means an arrangement or transaction in terms of which the Mortgagor:

- (a) sells, transfers or otherwise disposes of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor or any other member of the Group (other than pursuant to a Permitted Disposal);
- (b) sells, transfers or otherwise disposes of any of its receivables on recourse terms;
- (c) enters into an arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (d) enters into any other preferential arrangements having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

"Receiver" means a receiver and manager, receiver or administrative receiver and includes any substitute receiver, receiver and manager or administrative receiver.

"Related Rights" means:

- (a) any dividend, interest or distribution paid or payable in relation to any Share; and

- (b) any right, money or property accruing, offered or issued at any time in relation to any Share by way of redemption, substitution, exchange, conversion, bonus, preference or otherwise, under option rights or otherwise.

"Repeating Representations" means the Repeating Representations as defined in the Facilities Agreement.

"Secured Assets" means all of the assets, property and undertaking for the time being subject to any Security created by, or pursuant to, this Mortgage of Shares.

"Secured Liabilities" means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or as principal debtor, guarantor, cautioner, surety or otherwise or as the equivalent obligor under the laws of any other jurisdiction) of the Mortgagor or any other Obligor to the Security Agent and the other Secured Parties (or any of them) under the Finance Documents together with (without double counting):

- (a) any refinancing, novation, refunding, deferral or extension of or increase in any of those obligations or liabilities;
- (b) any further advances and additional facilities which may be made by any Secured Party to the Mortgagor or any other Obligor under any Finance Documents and all interest, fees and costs in connection therewith;
- (c) any claim for damages or restitution in the event of rescission of any of those obligations or liabilities or otherwise in connection with any of the Finance Documents; and
- (d) any amounts which would be included in any of the foregoing but for any discharge, non-provability, unenforceability or non-allowability of the same in any insolvency or other proceedings.

"Secured Parties" means the Secured Parties as defined in the Facilities Agreement or any of them as the context requires and **"Secured Party"** shall be construed accordingly.

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

"Senior Lenders" means the Lenders as defined in the Facilities Agreement and **"Senior Lender"** means any one of them.

"Shares" means the shares listed in Schedule 1 (The Shares) and all other shares held by or on behalf of the Mortgagor in the Company.

"SMGL" means Stewart Milne Group Limited, a company incorporated in Scotland under the Companies Acts (Reg. No. SC057709) and having its registered office at Peregrine House, Mosscroft Avenue, Westhill Business Park, Westhill, Aberdeen AB32 6JQ.

"Working Capital Bank" means the Working Capital Bank as defined in the Facilities Agreement.

1.3. Interpretation

Save where the contrary is indicated, any reference in this Mortgage of Shares to:

- 1.3.1. "assets" includes present and future properties, revenues and rights of every description;
- 1.3.2. a "company" includes any body corporate;
- 1.3.3. "guarantee" means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- 1.3.4. "indebtedness" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.3.5. a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- 1.3.6. a "regulation" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency or department or of any regulatory, self-regulatory or other authority or organisation;
- 1.3.7. a provision of law is a reference to that provision as amended or re-enacted;
- 1.3.8. the singular shall include the plural and vice versa;
- 1.3.9. this Mortgage of Shares and any provisions of this Mortgage of Shares or to any other agreements, instrument or document are to be construed as references to this Mortgage of Shares, those provisions or that agreement, instrument or document as amended, varied, supplemented, substituted, replaced or novated (however fundamentally) from time to time, including (without limiting the generality of the foregoing) any variation, increase, extension or addition of or any variation of or to any facility or amount made available under any Finance Document or any variation of the purposes for which such facility or amount may be available from time to time; and
- 1.3.10. Clauses and Schedules are to be construed as references to the Clauses of, and Schedules to, this Mortgage of Shares as amended or varied from time to time and references to sub-clauses shall unless otherwise specifically stated be construed as references to the sub-clauses of the Clause in which the reference appears.

1.4. Law of Property (Miscellaneous Provisions) Act 1994

The limitations on liability set out in Section 6 of the Law of Property (Miscellaneous Provisions) Act 1994 shall not apply to, or in respect of, the covenants implied by virtue of Sections 2(1)(a), 3 and 4 of that Act on the part of the Mortgagor by its execution and delivery of this Mortgage of Shares.

1.5. Successors and assignees

Any reference in this Mortgage of Shares to the Security Agent or a Secured Party shall include the successors, permitted assignees and permitted transferees of the Security Agent or such Secured Party.

1.6. Rights of Third Parties

Unless expressly provided to the contrary in a Finance Document, a third party (being any person other than the Mortgagor or the Security Agent or any Secured Party and their permitted successors and assignees) has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Mortgage of Shares and no consent of any third party is required for any amendment, variation or termination of this Mortgage of Shares.

1.7. Trust

The Security Agent shall hold the benefit of the covenants, mortgages and charges given by the Mortgagor under this Mortgage of Shares upon trust for the other Secured Parties in accordance with Clause 16 (the Security Agent) of the Intercreditor Agreement. The duty contained in Section 1 of the Trustee Act 2000 shall not apply to the Security Agent in relation to the trust created by this Mortgage of Shares.

2. COVENANT TO PAY

2.1. Covenant to Pay

The Mortgagor hereby, as principal debtor and not merely as surety, covenants with the Security Agent for itself and on behalf of the other Secured Parties that it will pay or discharge the Secured Liabilities on the due date therefor in the manner provided in the relevant Finance Document or, where no such provision is made in the Finance Documents, on demand.

2.2. Interest

If the Mortgagor fails to pay any sum on the due date for payment of that sum, the Mortgagor shall pay interest on any such sum (before and after any judgment and to the extent interest at a default rate is not otherwise being paid on such sum) from the date of demand until the date of payment calculated on a daily basis at the rate determined in accordance with the provisions of Clause 11.3 (Default Interest) of the Facilities Agreement.

3. LEGAL MORTGAGE

The Mortgagor hereby charges with full title guarantee in favour of the Security Agent (as agent and trustee for the Secured Parties) as security for the payment and discharge of all the Secured Liabilities, by way of first legal mortgage, the Shares and the Related Rights.

4. NEGATIVE PLEDGE

4.1. Negative Pledge

The Mortgagor hereby covenants that (without the prior written consent of the Security Agent) it shall not:

- 4.1.1. create (or permit to subsist) any Security or Quasi-Security over all or any of the Secured Assets;
 - 4.1.2. sell, assign, lease, transfer or otherwise dispose of or part with possession of (by one or more transactions or series of transactions whether related or not) the whole or any part of the Secured Assets; or
 - 4.1.3. dispose of the equity of redemption of all or any part of the Secured Assets,
- except as permitted under the Facilities Agreement.

5. FURTHER ASSURANCE

5.1. Further assurance

The Mortgagor shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)):

- 5.1.1. to perfect the Security created or intended to be created under or evidenced by this Mortgage of Shares (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of this Mortgage of Shares) or for the exercise of any rights, powers and remedies of the Security Agent or the Secured Parties provided by or pursuant to this Mortgage of Shares or by law;

or

- 5.1.2. to facilitate the realisation of the Secured Assets.

5.2. Necessary Action

The Mortgagor shall take all such action as is available to it (including making all filings and registrations) as is necessary for the purposes of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Secured Parties by or pursuant to this Mortgage of Shares.

6. TITLE TO SECURED ASSETS

On the execution of this Mortgage of Shares, the Mortgagor shall deliver to the Security Agent signed stock transfer forms transferring the Secured Assets to the Security Agent or the Nominee together with the related share certificates or other documents of title. The Mortgagor shall procure the registration of the Secured Assets in the name of the Security Agent or the Nominee and shall procure that a certified true copy of the register of members of the Company together with a share certificate in the name of the Security Agent or the Nominee are delivered to the Security Agent as soon as possible following execution of this Mortgage of Shares.

7. VOTING RIGHTS AND DIVIDENDS

7.1. Voting Right and Dividends: Prior to an Enforcement Event

- 7.1.1. Until the occurrence of an Enforcement Event, the Mortgagor shall be entitled to exercise all voting and other rights and powers attached to the Secured

Assets provided that the Mortgagor shall not exercise any voting rights or other powers in any way that restricts or limits the ability of the Security Agent to sell or transfer the Secured Assets to any third party, conflicts with any of the Finance Documents or is otherwise likely to have an adverse effect on the value of the Secured Assets.

- 7.1.2. Until the occurrence of an Enforcement Event, the Mortgagor shall be entitled to retain and apply for its own use all dividends, interest and other monies paid or payable in respect of the Secured Assets.
- 7.1.3. The Mortgagor shall indemnify the Security Agent against any loss or liability incurred by the Security Agent or the Nominee as a consequence of the Security Agent or the Nominee acting in respect of the Secured Assets at the direction of the Mortgagor except to the extent resulting from the Security Agent's or Nominee's gross negligence or wilful misconduct.
- 7.1.4. The Security Agent shall not, by exercising or not exercising any voting rights or otherwise, be construed as permitting or agreeing to any variation or other change in the rights attaching to or conferred by any of the Secured Assets which the Security Agent considers prejudicial to, or impairing the value of, the security created by this Mortgage of Shares.

7.2. Voting Rights and Dividends: Following an Enforcement Event

After the occurrence of an Enforcement Event, the Security Agent may at its discretion:

- 7.2.1. exercise (or refrain from exercising) any voting rights in respect of the Secured Assets;
- 7.2.2. apply all dividends, interest and other monies arising from the Secured Assets in accordance with Clause 11.1 (Application of Monies); and
- 7.2.3. in addition to any other power created under this Mortgage of Shares, exercise (or refrain from exercising) all the powers and rights of the legal or beneficial owner of the Secured Assets in each case in such manner and on such terms as the Security Agent may think fit.

8. UNDERTAKINGS

8.1. Nominations

- 8.1.1. The Mortgagor shall terminate with immediate effect all nominations it may have made under Sections 145 and 146 of the Companies Act 2006 in respect of any of the Secured Assets and, pending such termination, procure that any person so nominated:
 - (a) does not exercise any rights in respect of the Secured Assets without the prior written approval of the Security Agent; and
 - (b) promptly following receipt, forward to the Security Agent all communications or other information received in respect of any Secured Assets for which it has been so nominated.

8.1.2. The Mortgagor shall not at any time exercise any rights under Section 145 and 146 of the Companies Act 2006 to nominate any person other than the Security Agent or the Nominee in respect of the Secured Assets.

8.2. Information

The Mortgagor shall send to the Security Agent copies of all notices, circulars, reports, accounts and other documents which are sent to holders of any Secured Assets promptly following receipt.

8.3. Calls and Payments

Notwithstanding the security created by this Mortgage of Shares, the Mortgagor shall promptly pay all calls or other payments which may be or become due and payable in respect of any of the Secured Assets. If the Mortgagor defaults in making such payment, the Security Agent may make such payment on behalf of the Mortgagor. Any sums paid by the Security Agent shall be reimbursed by the Mortgagor to the Security Agent on demand.

8.4. No Amendments

8.4.1. The Mortgagor shall not take, or allow the taking of, any action on its behalf which may result in the rights attaching to, or conferred by, all or any of the Secured Assets being altered.

8.4.2. The Mortgagor shall not cause or permit:

- (a) any of the Secured Assets to be consolidated, sub-divided or converted; or
- (b) any further shares in the share capital of the Company to be issued.

8.5. PSC Notices

The Mortgagor shall promptly comply with every PSC Notice which it receives in relation to the Secured Assets.

8.6. Failure to comply

If the Mortgagor fails to comply with this Clause 8, the Security Agent may do such things as in its reasonable opinion may be required to remedy such failure.

9. POWERS OF SECURITY AGENT

9.1. Exercise of Powers

At any time after the occurrence of an Enforcement Event, the security created by or pursuant to this Mortgage of Shares is immediately enforceable and the Security Agent may (without further notice and without any of the restrictions contained in Section 103 of the Act and whether or not it shall have appointed a Receiver):

- 9.1.1. exercise all the powers conferred on mortgagees by the Act (as varied or extended by this Mortgage of Shares);
- 9.1.2. exercise all the powers and discretions conferred by this Mortgage of Shares;

9.1.3. enforce all or any part of the security created by or pursuant to this Mortgage of Shares; and

9.1.4. take possession of and retain or dispose of all or any part of the Secured Assets.

The power of sale conferred upon the Security Agent and on any Receiver by this Mortgage of Shares shall operate as a variation and extension of the statutory power of sale under Section 101 of the Act and such power shall arise (and the Secured Liabilities shall be deemed due and payable for that purpose) on the execution of this Mortgage of Shares.

9.2. Consolidation of mortgages

The restriction on the right of consolidating mortgage securities contained in Section 93 of the Act shall not apply to this Mortgage of Shares.

9.3. Mortgagee in possession

Except to the extent resulting from its gross negligence or wilful misconduct and so far as permitted by law, neither the Security Agent nor any Receiver shall, by reason of it or any Receiver entering into possession of any part of the Secured Assets when entitled to do so, be liable to account as mortgagee in possession or be liable for any loss or realisation or for any default or omission for which a mortgagee in possession might be liable.

9.4. Prior Charges

The Security Agent may at any time after the occurrence of an Enforcement Event redeem any prior Security on or relating to the Secured Assets or may procure the transfer of such Security to itself and settle and pass the accounts to which the Security relates. Any accounts so settled and passed shall be, in the absence of manifest error, conclusive and binding on the Mortgagor. The Mortgagor shall reimburse the Security Agent on demand all principal monies and interest and all reasonably incurred losses incidental to such redemption or transfer.

9.5. Financial Collateral

The Security Agent may, to the extent that any of the Secured Assets constitutes "financial collateral" (as defined in the Financial Collateral Regulations) and that this Mortgage of Shares constitutes a "security financial collateral arrangement" (as defined in the Financial Collateral Regulations), appropriate such financial collateral in or towards the discharge of the Secured Liabilities.

9.6. Value of Financial Collateral

The Mortgagor and the Security Agent agree for the purposes of Clause 9.5 (Financial Collateral) above that the value of any such financial collateral so appropriated shall be:

9.6.1. in the case of any cash, the amount standing to the credit of the relevant account together with any accrued interest at the date of appropriation; and

9.6.2. in the case of any shares or stock of any nature whatsoever in the capital of any company, the market value thereof as determined by the Security Agent

(acting reasonably) by reference to the information available to the Security Agent.

In each case the Mortgagor and the Security Agent agree that the method of valuation referred to above shall constitute a commercially reasonable method of valuing the relevant financial collateral for the purposes of the Financial Collateral Regulations.

10. APPOINTMENT OF RECEIVER

10.1. Appointment of Receiver

At any time after:

- 10.1.1. the occurrence of an Enforcement Event;
 - 10.1.2. the passing of 14 days following a petition being presented for the winding up or reorganisation of the Mortgagor without such petition being deemed frivolous or vexatious and having been discharged, stayed or dismissed;
 - 10.1.3. an application being presented or resolution proposed for the winding up, reorganisation or administration of the Mortgagor;
 - 10.1.4. the Mortgagor or any other person entitled to do so gives written notice of its intention to appoint an administrator or liquidator to the Mortgagor or the appointment of an administrator or liquidator to the Mortgagor; or
 - 10.1.5. a written request has been made by the Mortgagor to the Security Agent for the appointment of a Receiver or administrator; or
 - 10.1.6. the Mortgagor breaches any of the material terms of this Mortgage of Shares,
- the Security Agent may appoint one or more persons to be a Receiver or Receivers of the Secured Assets or any part thereof.

10.2. Removal of Receiver

Subject to Section 45 of the Insolvency Act 1986, the Security Agent may remove any Receiver previously appointed under this Mortgage of Shares and appoint another person or persons as Receiver or Receivers, either in the place of a Receiver so removed or who has otherwise ceased to act or to act jointly with the Receiver or Receivers previously appointed under this Mortgage of Shares.

10.3. Joint and several appointment

If at any time and by virtue of any such appointments any two or more persons shall hold office as Receivers of the same assets or income, such Receivers may act jointly and/or severally so that each one of such Receivers shall be entitled (save to the extent that the contrary shall be stated in any of the deeds or other instruments appointing them) to exercise all the powers and discretions conferred by this Mortgage of Shares on Receivers individually and to the exclusion of the other or others of them.

10.4. Appointment in writing under hand

Every such appointment or removal and every delegation, appointment or removal by the Security Agent in the exercise of any rights to delegate its powers or to remove

delegates contained in this Mortgage of Shares, may be made in writing under the hand of any officer of the Security Agent.

10.5. General Powers of Receiver

Every Receiver shall have:

- 10.5.1. all the powers conferred by the Act on mortgagees in possession and receivers appointed under the Act;
- 10.5.2. all the powers specified in the Insolvency Act 1986 (whether or not such Receiver is an administrative receiver within the meaning of the Insolvency Act 1986);
- 10.5.3. all the powers of the Secured Parties under this Mortgage of Shares;
- 10.5.4. all the powers and rights of an absolute owner to do or omit to do anything which the Mortgagor itself could do or omit to do; and
- 10.5.5. the power to do all things which are in the opinion of the Receiver incidental or conducive to the powers vested in him by this Mortgage of Shares or by law or are incidental or conducive to the gathering in by him of any assets which, when gathered in would be, Secured Assets.

10.6. Further Powers of a Receiver

Every Receiver may:

- 10.6.1. collect in and take possession of all or any part of the Secured Assets or any part of it and make such demands and take such proceedings as may seem expedient for that purpose;
- 10.6.2. provide services and employ, or engage such managers, contractors and other personnel on such terms as he thinks fit in relation to the Secured Assets;
- 10.6.3. discharge any person appointed by the Mortgagor in relation to the Secured Assets;
- 10.6.4. raise and borrow money (either unsecured or secured on any Secured Assets) on such terms as he shall think fit (including, if the Security Agent consents, terms under which such security ranks in priority to this Mortgage of Shares);
- 10.6.5. grant options over all or any part of the Secured Assets, sell, concur in selling and assign or concur in assigning and all or any of the property of the Mortgagor in respect of which he is appointed;
- 10.6.6. make any arrangement, settlement or compromise between the Mortgagor and any other person which he may think expedient;
- 10.6.7. bring, prosecute, enforce, defend and abandon all actions and proceedings and submit to arbitration in the name of the Mortgagor in relation to any of the Secured Assets as he may think expedient;

10.6.8. redeem any prior Security on or relating to the Secured Assets and settle and pass the accounts to which the Security relates so that any accounts so settled and passed shall be, in the absence of manifest error, conclusive and binding on the Mortgagor and the monies so paid shall be deemed to be an expense properly incurred by the Receiver; and

10.6.9. effect with any insurer any policy of insurance in relation to the Secured Assets.

10.7. Consideration

In making any sale or the disposal of any of the Secured Assets in the exercise of their respective powers, the Receiver or the Security Agent may accept as, and by way of consideration for such sale or other disposal, cash, shares, loan capital or other obligations, including, without limitation, consideration fluctuating, according to or dependent on turnover and consideration the amount of which is to be determined by a third party. Any such consideration may be receivable in a lump sum or by way of instalments.

10.8. Receiver as agent of the Mortgagor

Every Receiver shall be the agent of the Mortgagor who shall be solely responsible for his acts and defaults and for the payment of his remuneration.

10.9. Remuneration

Each Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Security Agent (or, failing such agreement, to be conclusively fixed by the Security Agent) commensurate with the work and responsibilities involved upon the basis of charging from time to time adopted in accordance with his current practice or the current practice of his firm and without being limited to the maximum rate specified in Section 109(6) of the Act.

11. APPLICATION OF MONIES

11.1. Application of Monies

All moneys received by the Security Agent or by any Receiver appointed under this Mortgage of Shares shall be applied in the following order:

- 11.1.1. in the payment of the costs, charges and expenses of and incidental to the appointment of any Receiver under this Mortgage of Shares and the payment of his remuneration;
- 11.1.2. in the payment and discharge of any outgoings paid and liabilities incurred by any Receiver appointed under this Mortgage of Shares in the exercise of any powers of such Receiver;
- 11.1.3. in providing for the matters (other than the remuneration of a Receiver) specified in the first three paragraphs of Section 109(8) of the Act;
- 11.1.4. in or towards payments of any debts or claims which are required by law to be paid in preference to the Secured Liabilities, but only to the extent to which such debts or claims have such preference;

11.1.5. in or towards the satisfaction of the Secured Liabilities in accordance with the terms of the Intercreditor Agreement; and

11.1.6. any surplus shall be paid to the Mortgagor or any other person entitled thereto.

11.2. Section 109 of the Act

The provisions of this Clause and Clause 10.9 (Remuneration) shall take effect as and by way of variation and extension to the provisions of the Section 109(8) of the Act, which provisions as so varied and extended shall be deemed to be incorporated in this Mortgage of Shares.

12. REPRESENTATIONS AND WARRANTIES

12.1. Representations and Warranties

The Mortgagor represents and warrants to the Security Agent and the other Secured Parties that:

12.1.1. the Shares are fully paid and are not subject to any option to purchase or similar rights;

12.1.2. the Shares represent the entire issued share capital of the Company;

12.1.3. the constitutional documents of the Company do not and could not restrict or inhibit any transfer of the Shares on creation or enforcement of the Security constituted by this Mortgage of Shares;

12.1.4. there are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of the Company (including any option or right of pre-emption or conversion);

12.1.5. the Mortgagor has complied with all notices relating to all or any of the Shares received by it pursuant to sections 790D and 790E of the Companies Act 2006; and

12.1.6. no warning notice has been issued under paragraph 1(2) of Schedule 1B of the Companies Act 2006, and no restrictions notice has been issued under paragraph 1(3) of Schedule 1B of the Companies Act 2006, in respect of all or any of the Shares.

12.2. Repetition

Each of the representations and warranties made by the Mortgagor under Clause 12.1 (Representations and Warranties) above are made on the date of this Mortgage of Shares and on each date that the Repeating Representations are repeated under the Facilities Agreement.

13. POWER OF ATTORNEY

13.1. Power of Attorney

The Mortgagor hereby irrevocably appoints the Security Agent and any Receiver appointed under this Mortgage of Shares and for the time being holding office as

such severally to be its attorney and on its behalf and in its name to sign, seal, execute, deliver and perfect all deeds, instruments and documents which may be required for:

- 13.1.1. carrying out any obligation imposed on the Mortgagor by or pursuant to this Mortgage of Shares; and
- 13.1.2. enabling the Security Agent or the Receiver to exercise the rights and powers conferred upon them by this Mortgage of Shares or by law (including the right to sell, lease, convey, transfer or realise any of the Secured Assets).

The Security Agent shall have full power to delegate the power conferred on it by this clause and no such delegation shall preclude the subsequent exercise of such power by the Security Agent itself or preclude the Security Agent from making a subsequent delegation thereof to some other person and any such delegation may be revoked by the Security Agent at any time. The appointment pursuant to this Clause 13.1 is to take effect immediately but the rights and powers of the attorney pursuant to this Clause 13.1 are only exercisable upon the occurrence of an Enforcement Event or where the Mortgagor has failed to remedy a breach of its obligations under this Mortgage of Shares within 5 Business Days of such breach of obligation

13.2. Ratification

The Mortgagor shall ratify and confirm all acts and things done and all deeds, instruments and/or documents signed, sealed, executed and/or perfected by any attorney in the exercise or purported exercise of all or any of his powers under Clause 13.1.

14. PROTECTION OF PURCHASERS

14.1. Consideration

The receipt of the Security Agent or any Receiver shall be conclusive discharge to a purchaser and, in making any sale or disposal of any of the Secured Assets or making any acquisition, the Security Agent or any Receiver may do so for such consideration, in such manner and on such terms as it thinks fit.

14.2. Protection of Purchasers

No purchaser or other person dealing with the Security Agent or its delegate or any Receiver appointed under this Mortgage of Shares shall be bound to see or enquire whether the right of the Security Agent or such Receiver to exercise any of its or his powers has arisen or become exercisable or be concerned with notice to the contrary or be concerned to see whether any such delegation by the Security Agent shall have lapsed for any reason or be revoked.

15. PRESERVATION OF SECURITY

15.1. Continuing Security

The security created by or pursuant to this Mortgage of Shares shall remain in full force and effect as a continuing security for the Secured Liabilities unless and until discharged by the Security Agent and shall not be considered satisfied by any intermediate payment or satisfaction of all or any of the Secured Liabilities or for any other reason.

15.2. Waiver of defences

Neither the obligations of the Mortgagor under this Mortgage of Shares nor the rights, powers and remedies conferred in respect of the Mortgagor upon the Security Agent will be affected by any act, omission, matter or thing which, but for this Clause 15.2, would reduce, release or prejudice any of those obligations or those rights, powers and remedies (without limitation and whether or not known to it or any Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- (e) any amendment, novation, supplement, extension or restatement (however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

15.3. Rights Cumulative

The obligations of the Mortgagor contained in this Mortgage of Shares and all rights, powers and remedies of the Security Agent expressed in this Mortgage of Shares are in addition to and independent of all other rights, powers and remedies possessed by the Security Agent including, without limitation, those provided for in any Finance Document, by applicable law or in any other written instrument or agreement relating to the Mortgagor's obligations or the Secured Assets.

15.4. Remedies and Waivers

No failure to exercise, nor any delay in exercising, on the part of the Security Agent or any Secured Party, any right or remedy under this Mortgage of Shares shall operate as a waiver of any such right or remedy or constitute an election to affirm the Mortgage of Shares. No election to affirm on the part of the Security Agent or any Secured Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy.

15.5. Partial Invalidity

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

15.6. Independent Security

The Security constituted by or pursuant to this Mortgage of Shares shall be in addition to and shall be independent of every mortgage, charge, pledge, guarantee or other Security which the Security Agent or any other Secured Party may at any time hold in respect of any of the Secured Liabilities and it is hereby declared that no prior Security held by the Security Agent or any other Secured Party over the Secured Assets or any part thereof shall merge in the security constituted by this Mortgage of Shares.

16. PRESERVATION OF RIGHTS

16.1. Other than as provided in this Mortgage of Shares, the Security Agent shall not be obliged before exercising any of the rights, powers, discretions or remedies conferred upon it by this Mortgage of Shares or by law:

16.1.1. to take any action, including but not limited to the giving of any notice to, or making any demand upon, the Mortgagor or any other person or the obtaining or enforcement of any judgment, decree or order in any court against the Mortgagor or any other person;

16.1.2. to make or file any claim or proof in the administration, winding-up or liquidation, insolvency or dissolution of the Mortgagor or any other person; or

16.1.3. to enforce or seek to enforce any of its rights, powers, discretions or remedies under any other Security in respect of the Secured Liabilities.

17. SUBSEQUENT SECURITY INTERESTS

If the Security Agent (acting in its capacity as security agent or otherwise) or any of the other Secured Parties receives or is deemed to have received notice of any subsequent Security affecting all or any part of the Secured Assets, all payments thereafter by or on behalf of the Mortgagor to the Security Agent (whether in its capacity as security agent or otherwise) or any of the other Secured Parties shall be treated as having been credited to a new account of the Mortgagor and not as having been applied in reduction of the Secured Liabilities as at the time when the Security Agent received such notice.

18. SUSPENSE ACCOUNT

Until all of the Secured Liabilities have been irrevocably paid in full, all monies received by the Security Agent or any Receiver may, at the discretion of the Security Agent or Receiver, be credited to an interest bearing suspense account and may be held in such account for so long as the Security Agent or Receiver sees fit.

19. SET-OFF

A Secured Party may set-off any matured obligation due from the Mortgagor under the Finance Documents (to the extent beneficially owned by that Secured Party) against any matured obligation owed by that Secured Party to the Mortgagor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Secured Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

20. RELEASE AND DISCHARGE

20.1. Release

Subject to Clause 20.2 (Conditional discharge), the Mortgagor shall be entitled, after the Secured Liabilities have been irrevocably and unconditionally discharged in full and none of the Secured Parties being under any actual or contingent obligations to make available any facilities of any kind whatsoever to the Mortgagor under any of the Finance Documents, to require, at its cost and request, the release, re-assignment or retransfer of any of the Secured Assets mortgaged, charged or transferred under this Mortgage of Shares or otherwise in terms of this Mortgage of Shares and the release of the Secured Assets from the security created by this Mortgage of Shares.

20.2. Conditional Discharge

Any settlement or discharge between the Mortgagor and the Security Agent shall be conditional upon no security or payment to the Security Agent by the Mortgagor or any other person on behalf of the Mortgagor being avoided or reduced by the virtue of any provisions or enactments relating to bankruptcy, insolvency or liquidation for the time being in force and, if any such payment is so avoided or reduced, the Security Agent shall be entitled to recover the value or amount of such security or payment from the Mortgagor subsequently as if such settlement or discharge had not occurred.

21. CHANGES IN SECURED LIABILITIES

The Mortgagor expressly agrees and acknowledges that the parties to the Finance Documents may from time to time agree to make amendments to the terms of those documents and may enter into such supplemental agreements as are required from time to time in order to give effect to such amendments. Such amendments may include, inter alia, the increase or reduction of the facilities made available under those documents and, for the avoidance of doubt, those facilities will form part of the Secured Liabilities under and in terms of this Mortgage of Shares.

22. ASSIGNMENT

22.1. Security Agent

The Security Agent may (without prejudice to its right to appoint any joint trustee) assign and transfer all or any of its rights and obligations under this Mortgage of Shares to any person appointed as its replacement as Security Agent (or any joint trustee) in accordance with the terms of the Intercreditor Agreement. The Security Agent shall be entitled to disclose such information concerning the Mortgagor and this Mortgage of Shares in accordance with the terms of the Facilities Agreement.

22.2. Mortgagor

The Mortgagor may not assign or transfer any of its obligations under this Mortgage of Shares or enter into any transaction which would result in any of those rights or obligations passing to another person.

23. INDEMNITY

Without prejudice to Clause 8.6 (Failure to Comply) and Clause 7.1.3, the Mortgagor shall indemnify the Security Agent and any Receiver against any cost, loss or liability incurred by either of them as a result of:

- 23.1.1. the taking, holding, protection or enforcement of this Mortgage of Shares;
- 23.1.2. the exercise or purported exercise of any of the rights, powers, discretions and remedies vested in the Security Agent and each Receiver by this Mortgage of Shares or by law;
- 23.1.3. any default by the Mortgagor of any of the obligations expressed to be assumed by it in this Mortgage of Shares; or
- 23.1.4. the indemnity under this Clause 23 shall not apply to any cost, loss or liability incurred by the Security Agent or any Receiver where the Security Agent or Receiver (as appropriate) has acted with gross negligence or wilful misconduct.

24. DISCRETION AND DELEGATION**24.1. Discretion**

Any power or right which may be exercised by the Security Agent or any Receiver under this Mortgage of Shares may, subject to the terms and conditions of the Intercreditor Agreement, be exercised in the absolute and unfettered discretion of the Security Agent or Receiver and without any obligation to give reasons.

24.2. Delegation

The Security Agent and any Receiver may delegate (either generally or specifically) by power of attorney or any other manner to any person any right, power, authority or discretion conferred on it by this Mortgage of Shares (including the power of attorney granted under Clause 13 (Power of Attorney)). The Security Agent and any Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit. Any such delegation shall not preclude the subsequent exercise, any subsequent delegation or any revocation of such right, power, authority or discretion by the Security Agent or the Receiver.

25. CALCULATIONS AND CERTIFICATES**25.1. Accounts**

In any litigation or arbitration proceedings arising out of or in connection with this Mortgage of Shares, the entries made in the accounts maintained by a Secured Party are, in the absence of manifest error, prima facie evidence of the matters to which they relate.

25.2. Certificates and determinations

Any certificate or determination by a Secured Party of a rate or amount under this Mortgage of Shares is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

26. PERPETUITY PERIOD

The perpetuity period applicable to the trusts contained in or arising from this Mortgage of Shares shall be one hundred and twenty five years from the date of this Mortgage of Shares.

27. NOTICES

27.1. Communications in Writing

Any communication to be made under or in connection with this Mortgage of Shares shall be made in writing and, unless otherwise stated, may be made by fax or letter.

27.2. Address

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with this Mortgage of Shares is that identified with its name below or any substitute address, fax number or department or officer as the party may notify to the other parties by not less than 5 Business Days' notice.

27.3. Delivery

27.3.1. Any communication or document made or delivered by one person to another under or in connection with this Mortgage of Shares will only be effective:

- (a) if by way of fax, when received in legible form; or
- (b) if by way of letter, when it has been left at the relevant address or 5 Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 27.2 (Address), if addressed to that department or officer.

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

27.3.3. Any communication or document which becomes effective, in accordance with Clauses 27.3.1 and 27.3.2 above, after 5.00p.m. in the place of receipt shall be deemed only to become effective on the following day.

27.4. Electronic communication

- 27.4.1. Any communication to be made under or in connection with this Mortgage of Shares may be made by electronic mail or other electronic means (including, without limitation, by posting to a secure website) if the parties:
- (a) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
 - (b) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- 27.4.2. Any such electronic communication as specified in Clause 27.4.1 above to be made between the Mortgagor and the Security Agent or a Secured Party only be made in that way to the extent that those parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- 27.4.3. Any such electronic communication as specified in Clause 27.4.1 above made between any two parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a party to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.
- 27.4.4. Any electronic communication which becomes effective, in accordance with Clause 27.4.3 above, after 5:00 p.m. in the place in which the party to whom the relevant communication is sent or made available has its address for the purpose of this Mortgage of Shares shall be deemed only to become effective on the following day.
- 27.4.5. Any reference in this Mortgage of Shares to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 27.4.

27.5. English Language

- 27.5.1. Any notice given under or in connection with this Mortgage of Shares must be in English.
- 27.5.2. All other documents provided under or in connection with this Mortgage of Shares must be:
- (a) in English; or
 - (b) if not in English, and if so required by the Security Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

28. COUNTERPARTS

This Mortgage of Shares may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Mortgage of Shares.

29. GOVERNING LAW

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

30. JURISDICTION

30.1. Jurisdiction of English Courts

The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Mortgage of Shares (including a dispute regarding the existence, validity or termination of this Mortgage of Shares or any non-contractual obligation arising out of or in connection with this Mortgage of Shares) (a "**Dispute**").

30.2. Convenient Forum

The parties to this Mortgage of Shares agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party to this Mortgage of Shares will argue to the contrary.

30.3. Concurrent Proceedings

This Clause 30 (Jurisdiction) is for the benefit of the Secured Parties only. Accordingly, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

IN WITNESS whereof this Mortgage of Shares has been executed by the Mortgagor and the Security Agent as its deed the day and year first above written.

THE SCHEDULE**THE SHARES**

Name of Company Issuing Shares	Class of Shares	Denomination of Shares	Number of Shares
Stewart Milne Homes North West England Limited	Ordinary	£1.00	1

SIGNATORIES

SIGNED and DELIVERED
by **STEWART MILNE GROUP LIMITED**
by

[REDACTED] Director
[REDACTED] Witness
[REDACTED] Address
[REDACTED]

Address for Notice:

[REDACTED]
[REDACTED]

Fax:

[REDACTED]

Attention:

Stuart MacGregor

SIGNED and DELIVERED
by
as attorney of
BANK OF SCOTLAND PLC
as Security Agent in the presence of:

[REDACTED]
Attorney

[REDACTED] Witness
ALASDAIR PROUDFOOT Full Name
[REDACTED] Address
[REDACTED]
[REDACTED] Occupation

Address for Notice:

[REDACTED]

Fax:

[REDACTED]

Attention:

Richard Lovell