



Registration of a Charge

Company name: **MILLER HOMES LIMITED**

Company number: **SC255429**

Received for Electronic Filing: **01/08/2017**



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Details of Charge

Date of creation: **28/07/2017**

Charge code: **SC25 5429 0305**

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

Brief description: **LAND AT CURRIEVALE, CURRIE SHOWN COLOURED ORANGE ON THE PLAN ANNEXED AND EXECUTED AS RELATIVE TO THE INSTRUMENT, WHICH SUBJECTS FORM PART AND PORTION OF THE SUBJECTS CURRENTLY UNDERGOING REGISTTRATION IN THE LAND REGISTER OF SCOTLAND UNDER TITLE NUMBER MID188590**

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:

**DARREN CRAIG, PARTNER, FOR AND ON BEHALF OF CMS
CAMERON MCKENNA NABARRO OLSWANG LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 255429

Charge code: SC25 5429 0305

The Registrar of Companies for Scotland hereby certifies that a charge dated 28th July 2017 and created by MILLER HOMES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 1st August 2017 .

Given at Companies House, Edinburgh on 3rd August 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

**STANDARD SECURITY
BY
MILLER HOMES LIMITED**

RE: SITE AT CURRIEHILL ROAD, CURRIE

In favour of

BANK OF SCOTLAND PLC
(as Security Agent)

CMS Cameron McKenna LLP
Saltire Court
20 Castle Terrace
Edinburgh
EH1 2EN
T +44 131 228 8000
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THIS STANDARD SECURITY is granted by:

- (1) **MILLER HOMES LIMITED**, incorporated under the Companies Acts (registered number SC255429) having its registered office at Miller House, 2 Lochside View, Edinburgh Park, Edinburgh, EH12 9DH (the “**Chargor**”);
in favour of
- (2) **BANK OF SCOTLAND PLC**, incorporated under the Companies Act 1985 (Company Number SC327000) and having its registered office at The Mound, Edinburgh, EH1 1YZ as trustee, agent and security agent for each of the Secured Parties (the “**Security Agent**”).

WHEREAS:

- (A) The Chargor enters into this Standard Security in connection with the Facilities Agreement.
- (B) It is a condition to the Secured Parties making available the credit facilities pursuant to the terms of the Facilities Agreement that the Chargor enters into this Standard Security.

1. DEFINITIONS AND INTERPRETATION

Incorporation of definitions

- 1.1 Terms defined in the Facilities Agreement, unless otherwise defined in this Standard Security or unless a contrary intention appears, bear the same meaning when used in this Standard Security.

Additional definitions

- 1.2 In this Standard Security:

“**Enforcement Event**”: an acceleration notice is served pursuant to clause 23.19 of the Facilities Agreement following an Event of Default.

“**Facilities Agreement**”: the senior facilities agreement dated 22 June 2015 and made between, amongst others, (1) the Chargor, (2) Bank of Scotland plc and HSBC Bank plc as mandated lead arrangers, (3) the financial institutions listed in Part II of Schedule I to the Facilities Agreement as Lenders, (4) Bank of Scotland plc as agent of the Finance Parties and (5) the Security Agent.

“**Planning Acts**”: the Town and Country Planning (Scotland) Act 1997 and, where applicable, the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, the Planning (Hazardous Substances) (Scotland) Act 1997, the Planning (Consequential Provisions) (Scotland) Act 1997, the Planning etc. (Scotland) Act 2006 and any associated or similar legislation regulating the development or use of land.

“**Property**”: ALL and WHOLE the property or properties described in the Schedule or such of them as shall for the time being remain subject to this Standard Security including all buildings, erections and fixtures and fittings and fixed plant for the time being thereon and all improvements and additions thereto and all servitudes and other heritable rights appurtenant thereto subject to and with the benefit of all leases, underleases, tenancies, agreements for lease, rights, burdens and conditions affecting the same but otherwise free from Security.

“**Secured Obligations**”: all present and future obligations and liabilities (whether actual or contingent, whether owed jointly or severally, or as principal debtor, guarantor or surety or otherwise or as the equivalent obligor under the laws of any other jurisdiction) of the Chargor or any other Obligor to the Security Agent and the other Secured Parties (or any of them) under the Finance Documents together with:

- (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 Chargor or any other Obligor under any Finance Document 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;
- (d) any claim against the Chargor or any other Obligors flowing from the recovery by the Chargor or any other Obligors of a payment or discharge in respect of any of those liabilities on grounds of preference or otherwise;
- (e) 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; and
- (f) all costs, charges and expenses incurred by the Security Agent or any other Secured Party and payable by an Obligor in connection with the protection, preservation or enforcement of its rights against the Chargor or any other Obligor.

“Standard Security”: this standard security.

Security trust and intercreditor provisions

- 1.3 The Security Agent holds the benefit of this Standard Security on trust for the Secured Parties in accordance with clause 17 (*Security Agent*) of the Intercreditor Agreement.
- 1.4 This Standard Security is granted subject to the terms of the Intercreditor Agreement.

Construction

- 1.5 Unless a contrary indication appears, any reference in this Standard Security to:
 - 1.5.1 any **“Chargor”**, **“Security Agent”**, **“Secured Party”**, **“Obligor”** or any other person shall be construed so as to include its successors in title, permitted assignees and permitted transferees;
 - 1.5.2 an Event of Default is **“continuing”** if it has not been remedied or waived;
 - 1.5.3 **“assets”** includes present and future properties, revenues and rights of every description;
 - 1.5.4 the **“Facilities Agreement”**, a **“Finance Document”** or any other agreement or instrument is a reference to that Facilities Agreement or Finance Document or other agreement or instrument as from time to time amended, novated, supplemented, replaced, extended or restated in whole or in part;
 - 1.5.5 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) or two or more of the foregoing;
 - 1.5.6 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, department or regulatory, self-regulatory or other authority or organisation;

- 1.5.7 a provision of law is a reference to that provision as from time to time amended or re-enacted;
- 1.5.8 “**disposal**” includes a sale, transfer, grant, lease or other disposal, whether voluntary or involuntary (and “**dispose**” shall be construed accordingly);
- 1.5.9 “**document**” includes any deed, instrument (including negotiable instrument) or other document of any kind;
- 1.5.10 any matter “**including**” specific instances or examples of such matter shall be construed without limitation to the generality of that matter (and references to “**include**” shall be construed accordingly);
- 1.5.11 the “**winding-up**”, “**dissolution**” or “**administration**” of a person shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such person is incorporated or established, or any jurisdiction in which such person carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, administration, arrangement, adjustment, protection or relief of debtors; and
- 1.5.12 Clauses or the Schedule are to the clauses and schedule to this Standard Security.
- 1.6 Clause headings are for ease of reference only.
- 1.7 Words in the singular shall import the plural and *vice versa*.
- 1.8 Words defined in the Companies Act 2006 have the same meanings in this Standard Security.

2. UNDERTAKING TO PAY

Undertaking to pay

- 2.1 The Chargor, as principal debtor and not just as surety, undertakes to the Security Agent to pay, discharge and satisfy the Secured Obligations when the same become due in accordance with the terms of the Finance Documents whether by acceleration or otherwise.

Interest

- 2.2 The Chargor shall pay interest on any amount demanded from it in accordance with this Standard Security from the date of such demand until such amount is irrevocably discharged and paid in full (such interest to accrue on a daily basis after as well as before judgment or the liquidation or administration of the Chargor and to be payable on demand) at the rate from time to time applicable to unpaid sums specified in the Facilities Agreement, save to the extent that such interest is charged on such amount pursuant to the relevant Finance Document and itself constitutes a Secured Obligation.

3. CHARGE

- 3.1 In security of the payment and discharge of its obligations hereunder and in respect of the Secured Obligations, the Chargor to the intent that the security created shall rank as a continuing security, hereby grants a Standard Security in favour of the Security Agent over the Property.
- 3.2 As security for the payment and discharge of its obligations hereunder and in respect of the Secured Obligations, the Chargor hereby assigns absolutely and agrees to assign absolutely to the Security Agent (subject to re-assignment on discharge of the Secured Obligations) all rights

and claims to which the Chargor is now or may hereafter become entitled in relation to the Property.

- 3.3 The Chargor undertakes to deposit with the Security Agent, upon the date of execution hereof by the Chargor or such other date as advised by the Security Agent, such deeds and documents of title relating to the Property as required in terms of the Facilities Agreement.

4. STANDARD CONDITIONS

The Standard Conditions specified in Schedule 3 to the Conveyancing and Feudal Reform (Scotland) Act 1970 as amended by the Redemption of Standard Securities (Scotland) Act 1971 (together hereinafter referred to as the “Act”), and any lawful variation thereof operative for the time being (hereinafter referred to as the “**Standard Conditions**”) shall apply and the Standard Conditions shall be varied firstly in accordance with the terms of the Facilities Agreement (and in the event of any inconsistency between the terms of the Standard Conditions and the terms of the Facilities Agreement the terms of the Facilities Agreement shall apply) and secondly to the effect that the following provisions shall apply:

- 4.1 Standard Condition 7 shall be varied to the effect that:
- 4.1.1 the Security Agent shall not be required to give any notice of its exercise of the right of entry referred to in Standard Condition 7(2);
 - 4.1.2 the interest rate for the purposes of Standard Condition 7(3) shall be the rate applicable in accordance with Clause 9.3 of the Facilities Agreement.
- 4.2 For the purposes of Standard Condition 9(1) the Chargor shall only be held to be in default upon the occurrence of an Enforcement Event, and in the event of the Chargor being in default as aforesaid, then without prejudice to any other rights and remedies available to the Security Agent or any Secured Party by virtue of the Standard Conditions or any other security, charge or undertaking or in any other manner the Security Agent will be entitled to exercise any of the remedies available to a creditor on default of a borrower by virtue of the provisions of the Act.
- 4.3 Standard Conditions 1, 2, 3, 4, 5 and 6 shall be held as delete.

5. UNDERTAKINGS RELATING TO THE PROPERTY

If the Chargor fails at any time to perform or observe any undertaking or condition on its part contained in the Facilities Agreement in respect of the Property following a written request by the Security Agent to do so, the Security Agent shall be entitled but not obliged, in order to make good such failure in whole or in part:

- 5.1 to enter upon the Property and effect such repairs and other works thereon as the Security Agent considers necessary;
- 5.2 to take such steps, give such notices, execute such works and do such things as the Security Agent considers necessary to comply with any requirements of or any notice, order, direction, permission or proposal given, served or made under the Planning Acts or otherwise affecting or likely to affect the Property;
- 5.3 to insure and keep insured the Property in such amount and in such manner as the Security Agent considers necessary; and
- 5.4 to admit, settle, liquidate, compound or contest in such manner as the Security Agent thinks fit any claim or liability in relation to the Property whether or not the Security Agent is expressly

indemnified herein against the same and to make such payments and expend or debit on account such moneys as the Security Agent considers necessary to that end,

provided that the Security Agent shall not be deemed to be a heritable creditor in possession by reason of the exercise of any right conferred by this Clause 5 and provided further that any sum expended by the Security Agent in accordance with this Clause 5 shall be repayable by the Chargor and be added to the total of the Secured Obligations.

6. THE SECURITY AGENT'S RIGHTS

In addition to the rights of the Security Agent under this Standard Security the Security Agent also has the rights granted to the Security Agent under the terms of the Intercreditor Agreement.

7. EVIDENCE AND CALCULATIONS

Any certificate or determination by the Security Agent as to the amount of the Secured Obligations shall, in the absence of manifest error, be conclusive and binding on the Chargor for all purposes of this Standard Security.

8. RESTRICTION ON DEALINGS

The Chargor will not create or permit to subsist any Security on the whole or any part of the Property or dispose of or otherwise deal with the whole or any part of the Property in either case in any manner prohibited by the Facilities Agreement.

9. CONTINUING SECURITY

9.1 The security from time to time created by this Standard Security is a continuing security and will remain in full force and effect as a continuing security for the Secured Obligations until released or discharged by the Security Agent.

9.2 No part of the security from time to time created by this Standard Security will be considered satisfied or discharged by any intermediate payment, discharge or satisfaction of the whole or any part of the Secured Obligations.

10. SEVERABILITY

If any provision of this Standard Security is or becomes invalid, illegal or unenforceable that shall not affect the validity, legality and enforceability of any other provision in this Standard Security.

11. POWER OF ATTORNEY

Appointment and powers

11.1 By way of security for the obligations of the Chargor under this Standard Security, the Chargor irrevocably appoints the Security Agent to be its attorney on its behalf or in its name or otherwise to:

11.1.1 before the occurrence of an Enforcement Event, do all such assurances, acts and things (including to sign, execute, seal and deliver and otherwise perfect any deed, assurance, agreement, instrument or act which it or he may reasonably deem proper in or for the purpose of exercising any such powers) which the Chargor is required to do under this Standard Security and has failed to do following a written request from the Security Agent; and

- 11.1.2 after the occurrence of an Enforcement Event, do all such assurances, acts and things generally in its name and on its behalf to exercise all or any of the powers, conferred by or pursuant to this Deed or by statute on the Security Agent or any Receiver (including to sign, execute, seal and deliver and otherwise perfect any deed, assurance, agreement, instrument or act which it or he may reasonably deem proper in or for the purpose of exercising any such powers, authorities and discretions).

Ratification

- 11.2 The Chargor ratifies and confirms whatever any such attorney mentioned in Clause 11.1 (*Appointment and powers*) shall do or purport to do in the exercise or purported exercise of all or any of the powers, authorities and discretions referred to in such Clause.

12. TRANSFERS

Transfer by Chargor

- 12.1 The Chargor may not assign or otherwise transfer its rights and obligations under this Standard Security.

Transfer by Security Agent

- 12.2 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 Standard Security to any person appointed as its successor as Security Agent (or any joint trustee). The Security Agent shall be entitled to disclose such information concerning the Chargor and this Standard Security in accordance with the terms of the Facilities Agreement.

13. NOTICES

Any communication to be made under or in connection with this Standard Security shall be made in accordance with Clause 31 of the Facilities Agreement.

14. PRESERVATION OF RIGHTS

- 14.1 Neither the obligations of the Chargor herein contained nor the rights, powers and remedies conferred in respect of the Chargor upon the Security Agent by this Standard Security or by law shall be discharged, impaired or otherwise affected by:

- 14.1.1 the winding up, dissolution, administration or reorganisation of any Obligor or any change in the status, function, control or ownership of any Obligor;
- 14.1.2 any legal limitation, disability, incapacity or other circumstances relating to the Chargor or any other Obligor in relation to the indebtedness or any of the obligations of any Obligor in relation to the Secured Obligations being or becoming illegal, invalid, unenforceable or ineffective in any respect;
- 14.1.3 any time or other indulgence being granted or agreed to be granted to any Obligor in respect of its obligations in relation to the Secured Obligations or under any other Security;
- 14.1.4 any amendment to, or any variation, waiver or release of any obligation of any Obligor in relation to the Secured Obligations;
- 14.1.5 any failure to take, or fully to take, any Security agreed to be taken in respect of the obligations of any Obligor in relation to the Secured Obligations;

- 14.1.6 any failure to realise or fully to realise the value of, or any release, discharge, exchange or substitution of, any such Security taken in respect of any Obligor in relation to the Secured Obligations;
 - 14.1.7 any time or other indulgence being granted or agreed to be granted to the Chargor in respect of its obligations in relation to the Secured Obligations or this Standard Security;
 - 14.1.8 any amendment to, or any variation, waiver or release of any obligation of the Chargor in relation to the Secured Obligations or this Standard Security; or
 - 14.1.9 any other act, event or omission which, but for this Clause might operate to discharge, impair or otherwise affect any of the obligations of the Chargor herein contained or any of the rights, powers or remedies conferred upon the Security Agent by this Standard Security or by law.
- 14.2 Any settlement or discharge given by the Security Agent to the Chargor in respect of the Chargor's obligations hereunder or any other agreement reached between the Security Agent and the Chargor in relation thereto shall be, and be deemed always to have been, void if any act on the faith of which the Security Agent gave the Chargor the settlement or discharge or entered into that agreement is subsequently avoided by or in pursuance of any provision of law.
- 14.3 No assurance, security or payment which may be avoided or adjusted under the law, including under any statute relating to bankruptcy or insolvency and no release, settlement or discharge given or made by the Security Agent on the faith of any such assurance, security or payment, shall prejudice or affect the right of the Security Agent to recover the Secured Obligations from the Chargor (including any monies which any Secured Party may be compelled to pay or refund under the provisions of the Insolvency Act 1986 and any costs payable by it pursuant to or otherwise incurred in connection therewith) or to enforce the charges contained in this Standard Security to the full extent of the Secured Obligations.
- 14.4 The Security Agent shall not be obliged before exercising any of the rights, powers or remedies conferred upon it in respect of the Chargor hereby or by law:
- 14.4.1 to make any demand of any other Obligor;
 - 14.4.2 to take any action or obtain judgement in any court against any other Obligor;
 - 14.4.3 to make or file any claim or proof in a winding-up or dissolution of any other Obligor;
or
 - 14.4.4 to enforce or seek to enforce any other Security taken in respect of any of the obligations of any other Obligor in relation to the Secured Obligations.

15. GOVERNING LAW AND JURISDICTION

Governing Law

- 15.1 This Standard Security and any non-contractual obligations arising out of or in relation to this Standard Security shall be governed by, and construed in accordance with, the laws of Scotland

Jurisdiction

- 15.2 The Court of Session Scotland shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Standard Security (including a dispute regarding the existence, validity or termination of this Standard Security) (a "**Dispute**").

15.3 The parties agree that the Court of Session in Scotland is the most appropriate and convenient court to settle Disputes and accordingly no party will argue to the contrary.

Clause 15.2 (*Jurisdiction*) is for the benefit of the Secured Parties only. As a result, 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.

16. WARRANDICE

The Chargor grants warrandice.

IN WITNESS WHEREOF these presents consisting of this and the preceding 7 pages, together with the Schedule and plan annexed, are executed on behalf of the Chargor as follows:

CHARGOR

Executed for and on behalf of
MILLER HOMES LIMITED

by 
on 20 April 2017
at Edinburgh

JULIE JACKSON
Director/Authorised Signatory

in the presence of this witness:



Witness

NATALIE DRUMMOND

Full Name

Miller Homes Ltd
Miller House
2 Lochside View
Edinburgh Park
Edinburgh EH12 9DH

Address

This is the Schedule referred to in the foregoing Standard Security by MILLER HOMES LIMITED in favour of BANK OF SCOTLAND PLC (as Security Agent for itself and others) over Site at Curriehill Road, Currie

SCHEDULE

PROPERTY

ALL and WHOLE that area of ground at Currievale, Currie shown coloured orange on the plan annexed and executed as relative hereto, which subjects form part and portion of the subjects currently undergoing registration in the Land Register of Scotland under Title Number MID179470, TOGETHER WITH (one) the minerals insofar as the Chargor has right thereto; (two) the parts, privileges and pertinents thereof; (three) the whole rights, sole, common and mutual pertaining thereto, and (four) the Chargor's whole right title and interest present and future in and to the subjects hereby secured,



Director/ Authorised Signatory

DIRECTOR

