

# MR01

Particulars of a charge



A fee is payable with this form.  
Please see 'How to pay' on the  
last page.

You can use the WebFiling service to file this form online.  
Please go to [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

✓ **What this form is for**  
You may use this form to register  
a charge created or evidenced by  
an instrument.

✗ **What this form is NOT for**  
You may not use this form to  
register a charge where the  
instrument. Use form MR08

THURSDAY



\*S4ASHA36\*

SCT 02/07/2015 #483  
COMPANIES HOUSE

This form **must be delivered to the Registrar for registration within 21 days** beginning with the day after the date of creation of the charge. If delivered outside of the 21 days it will be rejected unless it is accompanied by a court order extending the time for delivery.

You **must** enclose a certified copy of the instrument with this form. This will be scanned and placed on the public record. **Do not send the original.**

## 1 Company details

Company number S C 2 5 5 4 2 9

Company name in full Miller Homes Limited

2 2 3

For official use

→ **Filling in this form**  
Please complete in typescript or in  
bold black capitals.

All fields are mandatory unless  
specified or indicated by \*

## 2 Charge creation date

Charge creation date 2 6 0 6 2 0 1 5

## 3 Names of persons, security agents or trustees entitled to the charge

Please show the names of each of the persons, security agents or trustees  
entitled to the charge.

Name Bank of Scotland plc as security agent

Name

Name

Name

If there are more than four names, please supply any four of these names then  
tick the statement below.

☐ I confirm that there are more than four persons, security agents or  
trustees entitled to the charge.



MR01

Particulars of a charge

4

**Brief description**

Please give a short description of any land, ship, aircraft or intellectual property registered or required to be registered in the UK subject to a charge (which is not a floating charge) or fixed security included in the instrument.

Please submit only a short description. If there are a number of plots of land, aircraft and/or ships, you should simply describe some of them in the text field and add a statement along the lines of, "for more details please refer to the instrument".

Please limit the description to the available space.

Brief description

All the freehold property known as St Marys Green and registered at H.M. Land Registry under Title Number CE133774 but excluding the following plots 1 - 21, 23, 25, 27 - 29, 31 and 32.

For more details of the remaining properties please refer to the charge.

5

**Other charge or fixed security**

Does the instrument include a charge (which is not a floating charge) or fixed security over any tangible or intangible or (in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box.

☒ Yes

☐ No

6

**Floating charge**

Is the instrument expressed to contain a floating charge? Please tick the appropriate box.

☒ Yes Continue

☐ No Go to **Section 7**

Is the floating charge expressed to cover all the property and undertaking of the company?

☒ Yes

7

**Negative Pledge**

Do any of the terms of the charge prohibit or restrict the company from creating further security that will rank equally with or ahead of the charge? Please tick the appropriate box.

☒ Yes

☐ No

8

**Trustee statement <sup>1</sup>**

You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge.

☐

<sup>1</sup> This statement may be filed after the registration of the charge (use form MR06).

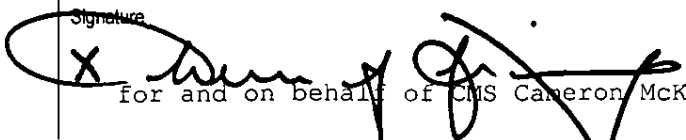
9

**Signature**

Please sign the form here.

Signature

Signature

  
for and on behalf of CMS Cameron McKenna LLP

This form must be signed by a person with an interest in the charge.



MR01

Particulars of a charge



**Presenter information**

You do not have to give any contact information, but if you do, it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name FIHE/125853.00041

Company name CMS Cameron McKenna LLP

Address Saltire Court

20 Castle Terrace

Edinburgh

Post town

County/Region

Postcode E H 1 2 E N

Country

DX DX553001

Telephone 0131 226 3626



**Certificate**

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank.



**Checklist**

**We may return forms completed incorrectly or with information missing.**

**Please make sure you have remembered the following:**

- ☐ The company name and number match the information held on the public Register.
- ☐ You have included a certified copy of the instrument with this form.
- ☐ You have entered the date on which the charge was created.
- ☐ You have shown the names of persons entitled to the charge.
- ☐ You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8.
- ☐ You have given a description in Section 4, if appropriate.
- ☐ You have signed the form.
- ☐ You have enclosed the correct fee.
- ☐ Please do not send the original instrument; it must be a certified copy.



**Important information**

**Please note that all information on this form will appear on the public record.**



**How to pay**

**A fee of £13 is payable to Companies House in respect of each mortgage or charge filed on paper.**

Make cheques or postal orders payable to 'Companies House.'



**Where to send**

**You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below:**

**For companies registered in England and Wales:**  
The Registrar of Companies, Companies House,  
Crown Way, Cardiff, Wales, CF14 3UZ.  
DX 33050 Cardiff.

**For companies registered in Scotland:**  
The Registrar of Companies, Companies House,  
Fourth floor, Edinburgh Quay 2,  
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF.  
DX ED235 Edinburgh 1  
or LP - 4 Edinburgh 2 (Legal Post).

**For companies registered in Northern Ireland:**  
The Registrar of Companies, Companies House,  
Second Floor, The Linenhall, 32-38 Linenhall Street,  
Belfast, Northern Ireland, BT2 8BG.  
DX 481 N.R. Belfast 1.



**Further information**

For further information, please see the guidance notes on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk) or email [enquiries@companieshouse.gov.uk](mailto:enquiries@companieshouse.gov.uk)

**This form is available in an alternative format. Please visit the forms page on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)**





**FILE COPY**

## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 255429

Charge code: SC25 5429 0223

The Registrar of Companies for Scotland hereby certifies that a charge dated 26th June 2015 and created by MILLER HOMES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 2nd July 2015.

Given at Companies House, Edinburgh on 8th July 2015



**Companies House**



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



DATE: 26 JUNE 2015

---

**DEBENTURE**

---

Between

**MILLER HOMES LIMITED**

and

**BANK OF SCOTLAND PLC**

as Security Agent

CERTIFIED AS A TRUE AND  
COMPLETE COPY OF THE  
ORIGINAL SAVE FOR  
REDACTIONS UNDER  
S.859G COMPANIES ACT 2006

Date: 1 July 2015  
CMS Cameron McKenna LLP,  
Saltire Court, 20 Castle Terrace,  
Edinburgh EH1 2EN

---

CMS Cameron McKenna LLP  
Saltire Court  
20 Castle Terrace  
Edinburgh  
EH1 2EN  
T +44 131 228 8000  
F +44 131 228 8888



## TABLE OF CONTENTS

1.	DEFINITIONS AND INTERPRETATION .....	1
	Incorporation of definitions.....	1
	Additional definitions.....	1
	Effect as a deed .....	3
	Law of Property (Miscellaneous Provisions) Act 1989 .....	3
	Security trust and intercreditor provisions .....	3
	Construction .....	3
2.	COVENANT TO PAY.....	5
	Covenant to pay.....	5
	Interest.....	5
3.	CREATION OF SECURITY .....	5
	General .....	5
	Mortgage .....	5
	Fixed charges .....	5
	Exceptions to fixed security .....	6
	Floating charge.....	6
	Automatic crystallisation of floating charge .....	6
	Crystallisation on notice of floating charge .....	6
	Qualifying floating charge .....	6
4.	PROVISIONS AS TO SECURITY .....	7
	Continuing security .....	7
	Additional security .....	7
	No obligation to take other enforcement proceedings.....	7
	Waiver of defences.....	7
5.	PERFECTION OF SECURITY .....	8
	Shares .....	8
6.	RESTRICTION ON DEALINGS .....	8
7.	SHARES .....	8
	Rights prior to default .....	8
	Rights during default.....	9
	Dividends prior to default .....	9
	Dividends during default.....	9
	Performance by Security Agent .....	10
	No liability for Security Agent.....	10
8.	REPRESENTATIONS AND WARRANTIES .....	10
	Representations and warranties.....	10
	Repetition .....	11
9.	UNDERTAKINGS.....	11
	General undertakings.....	11
	Undertakings relating to Shares .....	11
10.	WHEN SECURITY BECOMES ENFORCEABLE.....	12
11.	ENFORCEMENT OF SECURITY.....	12



	Enforcement .....	12
	Powers of Security Agent.....	12
	Statutory Provisions .....	12
	Protection of third parties .....	13
	Protection of the Security Agent and Receiver .....	13
	Delegation .....	13
	Prior charges.....	13
12.	RECEIVERS AND ADMINISTRATORS .....	14
	Appointment and Removal.....	14
	Receiver as agent of the Chargor .....	14
	Remuneration of Receiver.....	14
	Powers of Receiver.....	14
	Discretions.....	16
	Powers may be restricted.....	16
	Discretions.....	16
	Actions of any Administrators .....	16
13.	AVOIDANCE OF PAYMENTS .....	16
14.	CUMULATIVE REMEDIES AND WAIVERS .....	16
15.	SEVERABILITY .....	16
16.	EVIDENCE AND CALCULATIONS.....	17
17.	APPLICATION OF PROCEEDS .....	17
	Application of proceeds .....	17
	Other claims .....	17
18.	NEW ACCOUNTS .....	17
	New Accounts .....	17
	Ruling off.....	17
19.	SUSPENSE ACCOUNTS.....	17
20.	POWER OF ATTORNEY .....	18
	Appointment and powers .....	18
	Ratification.....	18
21.	TRANSFERS .....	18
	Transfer by Chargor .....	18
	Transfer by Security Agent .....	18
22.	NOTICES .....	18
23.	LAND REGISTRY .....	18
	Request to the Land Registry .....	18
	Further advances .....	19
24.	THIRD PARTIES .....	19
25.	FINANCIAL COLLATERAL .....	19
	Right to appropriate.....	19
	Value of financial collateral .....	19
26.	COUNTERPARTS.....	19
27.	GOVERNING LAW AND JURISDICTION .....	19



Governing law .....	19
Jurisdiction .....	20
schedule 1 .....	21
MORTGAGED PROPERTY .....	21
SCHEDULE 2 .....	24
PLANS .....	24
SCHEDULE 3 .....	25
SHARES .....	25
SCHEDULE 4 SUPPLEMENTAL DEBENTURE.....	26



THIS DEBENTURE is made as a deed on the 26th day of JUNE 2015

**BETWEEN:**

- (1) **MILLER HOMES LIMITED** (registered number SC255429) having its registered office at Miller House, 2 Lochside View, Edinburgh Park, Edinburgh EH12 9DH (the "Chargor"); and
- (2) **BANK OF SCOTLAND PLC** as trustee, agent and security agent for itself and on behalf of each of the Secured Parties (the "Security Agent").

**WHEREAS:**

- (A) The Chargor enters into this Deed 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 Deed.
- (C) The Board of Directors of the Chargor is satisfied that the giving of the security contained or provided for in this Deed is in the interests of the Chargor and has passed a resolution to that effect.

**NOW THIS DEED WITNESSES as follows:**

**1. DEFINITIONS AND INTERPRETATION**

*Incorporation of definitions*

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

*Additional definitions*

- 1.2 In this Deed:

"**Administrator**": any person appointed as an administrator pursuant to paragraph 26 of Schedule B1 to the Insolvency Act.

"**Charged Assets**": the assets, rights and undertaking of the Chargor from time to time mortgaged, charged or assigned to the Security Agent by or pursuant to this Deed always excluding the Excluded Assets.

"**Deed**": this debenture.

"**Enforcement Event**": an acceleration notice is served pursuant to clause 23.19 (*Acceleration*) of the Facilities Agreement following an Event of Default.

"**Excluded Assets**": means the following assets in respect of which as at the date of this Deed security cannot be granted without the consent of a third party:

- (a) the area or strip of ground one metre in width which forms part and portion of The Larches, Crookston over which a security interest dated 12 April 2013 has been granted in favour of The Scottish Ministers (NHS Trust);
- (b) part of the land registered at the Land Registry under title number DY479261 known as Mackworth, Derbyshire over which a security interest dated 22 November 2013 has been granted in favour of Elspeth Mary Reid, Simon Balfour Reid, Jean Mary Clark-Maxwell, John Andrew Forbes Clark-Maxwell;



- (c) land to the West side of Crookston Road, Glasgow over which a security interest dated 6 August 2014 has been granted in favour of The Scottish Ministers (NHS Trust);
- (d) 20 acres in East Craigmillar Park, Edinburgh over which a security interest has been granted in favour of the University of Edinburgh;
- (e) land at Buckshaw Village, Chorley over which a security interest dated 22 December 2006 has been granted in favour of BAE Systems plc;
- (f) heat exchanger units held in the name of Miller Homes Limited contained in land on the south side of Goodman Street, Leeds registered at the Land Registry under title number WYK837451; and
- (g) the interest that the Chargor holds pursuant to a declaration of trust and collaboration agreement among Birch Homes Limited (registered number 02196684), Birch plc (registered number 02563345), Miller Homes Holdings Limited, The Miller Group Limited, Peter James Gadsby and the Chargor dated 28 May 2004.

**"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 1 to the facilities agreement as lenders, (4) Bank of Scotland plc as agent of the Finance Parties and (5) the Security Agent.

**"Insolvency Act"**: the Insolvency Act 1986.

**"LPA"**: the Law of Property Act 1925.

**"Mortgaged Property"**: the freehold and leasehold property specified in Schedule 1 (*Mortgaged Property*) and includes all buildings and fixtures on that property, the proceeds of sale of any part of that property, any licence, agreement for sale or agreement for lease in relation to that property, the benefit of any covenants for title given or entered into by any predecessor in title of the Chargor in respect of that property and any monies paid or payable in respect of those covenants.

**"Plan"** means each numbered plan contained in Schedule 2 (*Plans*).

**"Real Property"**: the Mortgaged Property and any other present or future freehold or leasehold property in respect of which the Chargor delivers a Supplemental Debenture to the Security Agent.

**"Receiver"**: a receiver or receiver and manager or an administrative receiver of the whole or any part of the Charged Assets, which term will include joint receivers and any substitute receiver, receiver and manager or administrative receiver whether appointed under this Deed or pursuant to statute.

**"Related Rights"**: in relation to a Charged Asset:

- (a) any proceeds of sale, transfer or other disposal, lease, licence, sub-licence, or agreement for sale, transfer or other disposal, lease, licence or sub-licence, of that Charged Asset;
- (b) any moneys or proceeds paid or payable deriving from that Charged Asset;
- (c) any rights, claims, guarantees, indemnities, Security or covenants for title in relation to that Charged Asset;
- (d) any awards or judgments in favour of the Chargor in relation to that Charged Asset; and



(e) any other assets deriving from, or relating to, that Charged Asset.

**"Shares"**: the shares listed in Schedule 3 (*Shares*) together with all Related Rights.

**"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.

**"Supplemental Debenture"**: a supplemental debenture substantially in the form set out in Schedule 4 to this Deed.

*Effect as a deed*

- 1.3 This Deed is intended to take effect as a deed notwithstanding that the Security Agent may have executed it under hand only.

*Law of Property (Miscellaneous Provisions) Act 1989*

- 1.4 To the extent necessary for any agreement for the disposition of the Charged Assets in this Deed to be a valid agreement under section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the other Finance Documents and of any side letters between the parties to this Deed are incorporated into this Deed.

*Security trust and intercreditor provisions*

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

*Construction*

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



- 1.7.1 the “**Chargor**”, “**Security Agent**”, “**Secured Party**”, “**Obligor**” or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- 1.7.2 “**assets**” includes present and future properties, revenues and rights of every description;
- 1.7.3 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;
- 1.7.4 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;
- 1.7.5 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;
- 1.7.6 a provision of law is a reference to that provision as from time to time amended or re-enacted;
- 1.7.7 “**disposal**” includes a sale, transfer, grant, lease or other disposal, whether voluntary or involuntary (and “**dispose**” shall be construed accordingly);
- 1.7.8 “**document**” includes any deed, instrument (including negotiable instrument) or other document of any kind;
- 1.7.9 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);
- 1.7.10 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
- 1.8 Clauses and Schedules are to the clauses and schedules to this Deed.
- 1.9 Clause headings are for ease of reference only.
- 1.10 Words in the singular shall import the plural and *vice versa*.
- 1.11 Words defined in the Companies Act 2006 have the same meanings in this Deed.



## **2. COVENANT TO PAY**

### *Covenant to pay*

- 2.1 The Chargor, as principal debtor and not just as surety, covenants with 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 Deed 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. CREATION OF SECURITY**

### *General*

- 3.1 All the security created under this Deed:

- 3.1.1 is created in favour of the Security Agent as trustee, agent and security agent for itself and on behalf of each of the Secured Parties;
- 3.1.2 is created over present and future assets of the Chargor (excluding, for the avoidance of doubt, the Excluded Assets);
- 3.1.3 is security for the payment of all the Secured Obligations; and
- 3.1.4 is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.

### *Mortgage*

- 3.2 The Chargor charges by way of first legal mortgage all its right title and interest in the Mortgaged Property.

### *Fixed charges*

- 3.2.1 To the extent not validly and effectively charged by way of first legal mortgage pursuant to Clause 3.2 (*Mortgage*) or by way of specific legal charge in favour of the Security Agent as security for the payment of the Secured Obligations, the Chargor charges by way of first fixed charge the freehold and leasehold property specified in Schedule 1 (*Mortgaged Property*) together with all buildings and fixtures on that property, the proceeds of sale of any part of that property, any licence, agreement for sale or agreement for lease in relation to that property, the benefit of any covenants for title given or entered into by any predecessor in title of the Chargor in respect of that property and any monies paid or payable in respect of those covenants; and
  - 3.2.2 the Shares specified against its name in Schedule 3 (*Shares*),
- provided always that none of the Excluded Assets shall be included in this Clause 3.2.



*Exceptions to fixed security*

- 3.3 The fixed security from time to time created by this Deed does not extend to any asset situated outside England and Wales or the rights to which are governed by any law other than the laws of England and Wales to the extent that and for so long as any such fixed security would be unlawful or ineffective under the laws of the jurisdiction in which such asset is situated.

*Floating charge*

- 3.4 As security for the payment of the Secured Obligations each Chargor charges by way of first floating charge the whole of its property (including uncalled capital) comprised from time to time in its property and undertaking with the exception of the Excluded Assets and all other property, assets and rights of whatever nature and wherever situated which are not Excluded Assets, whether or not the same are otherwise effectively charged or assigned pursuant to the foregoing provisions of this Deed, other than the Excluded Assets.

*Automatic crystallisation of floating charge*

- 3.5 The floating charge created by Clause 3.4 (*Floating charge*) shall (other than in respect of any Charged Assets situated in Scotland if and to the extent that a Receiver would not be capable of exercising his powers in Scotland in relation thereto under Section 72 of the Insolvency Act by reason of automatic conversion) immediately upon the occurrence of the relevant event (unless otherwise permitted by any of the Finance Documents) convert into a fixed charge in respect of:

- 3.5.1 any Charged Asset which shall without the prior written consent of the Security Agent become subject to a fixed charge in favour of any person other than the Security Agent;
- 3.5.2 any Charged Asset in respect of which any person shall levy any distress, diligence, execution, sequestration or other similar process;
- 3.5.3 all Charged Assets if an Administrator is appointed by the Security Agent or the Security Agent receives notice of an intention to appoint an Administrator; or
- 3.5.4 all Charged Assets on the convening of any meeting of the members of the Chargor to consider a resolution to wind up the Chargor (or not to wind up the Chargor).

*Crystallisation on notice of floating charge*

- 3.6 The Security Agent may at any time:
- 3.6.1 after the security created by this Deed has become enforceable in accordance with Clause 8 (*When security becomes enforceable*); or
  - 3.6.2 if the Security Agent in good faith considers that steps are being taken or have been taken which are likely or intended to lead to the appointment of an Administrator or the presentation of a petition for the winding-up of the Chargor,

by giving notice in writing to that effect to the Chargor convert the floating charge created by Clause 3.4 (*Floating charge*) into a fixed charge as regards any asset specified in such notice. The conversion shall take effect immediately upon the giving of the notice.

*Qualifying floating charge*

- 3.7 Paragraph 14 of Schedule B1 to the Insolvency Act applies to the floating charge created by Clause 3.4 (*Floating charge*) so that the floating charge created by Clause 3.4 (*Floating charge*) shall be a "qualifying floating charge" for the purposes of that paragraph.



4. **PROVISIONS AS TO SECURITY**

*Continuing security*

- 4.1 The security from time to time created by this Deed 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.
- 4.2 No part of the security from time to time created by this Deed will be considered satisfied or discharged by any intermediate payment, discharge or satisfaction of the whole or any part of the Secured Obligations.

*Additional security*

- 4.3 As security for the Secured Liabilities, the Chargor shall, at its own cost, as soon as reasonably practicable, execute and deliver to the Security Agent a Supplemental Debenture or such mortgage or legal charge of such of their property from time to time as the Security Agent and the Company may agree to:
- 4.3.1 perfect the security created or intended to be created in respect of the Charged Assets (which may include the execution by the Chargor of a mortgage, charge or assignment over all or any of the assets constituting, or intended to constitute, Charged Assets); and/or
- 4.3.2 facilitate the realisation of the Charged Assets.

- 4.4 This Deed shall be without prejudice and in addition to any other security which may at any time be held by the Security Agent or any other Secured Party from the Chargor or any other person in respect of the whole or any part of the Secured Obligations and may be enforced independently of any such other security.

*No obligation to take other enforcement proceedings*

- 4.5 The Security Agent shall not be obliged before exercising any of the rights conferred on it by this Deed or by law:
- 4.5.1 to make any demand of the Chargor or any other person other than that required by the terms of the Finance Documents;
- 4.5.2 to take any action, enforce any security, exercise any right of compensation or set-off or to obtain or enforce any judgement, decree or order in any court against the Chargor or any other person;
- 4.5.3 to make or file any claim or proof in a winding up, liquidation, administration or other insolvency proceedings of the Chargor or any other person; or
- 4.5.4 to enforce or seek to enforce any other security taken in respect of any of the obligations of the Chargor or any other person under the Finance Documents.

*Waiver of defences*

- 4.6 The obligations of the Chargor under this Deed will not be affected by any act, omission or circumstances which, but for this Clause 4.6 (*Waiver of defences*), might operate to release, discharge, impair or otherwise affect any of the obligations of the Chargor under this Deed or any of the rights, powers or remedies conferred upon the Security Agent and the other Secured



Parties or any of them by the relevant Finance Documents or by law including (but without limitation) and whether or not known to the Chargor or any Secured Party:

- 4.6.1 any time, waiver or consent granted to, or composition with, any Obligor or other person;
- 4.6.2 the release of any other Obligor or any other person (other than the relevant Chargor) from its obligations under any Finance Document or any security or guarantee granted in connection therewith;
- 4.6.3 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;
- 4.6.4 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;
- 4.6.5 any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- 4.6.6 any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- 4.6.7 any insolvency or similar proceedings.

## **5. PERFECTION OF SECURITY**

### *Shares*

- 5.1 Immediately upon execution of this Deed or, if later, immediately upon becoming entitled to the relevant Shares, the Chargor shall deliver to the Security Agent duly executed signed but blank stock transfer forms in respect of the Shares together with the certificates in respect of all the Shares and such other documents of title as the Security Agent shall require to enable it (or its nominee) to be registered as the owner of or otherwise acquire legal title to the Shares upon enforcement of this Security.

## **6. RESTRICTION ON DEALINGS**

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

## **7. SHARES**

### *Rights prior to default*

- 7.1 Prior to the security created by this Deed becoming enforceable in accordance with Clause 8 (*When security becomes enforceable*):



7.1.1 the Chargor shall have the sole right to exercise all voting rights in relation to the Shares in its own interests and, to the extent that such rights are exercisable by the Security Agent, the Security Agent hereby grants, subject to Clause 7.3 below, a standing proxy to the Chargor in connection therewith to exercise all voting rights and to execute such documents under hand or as a deed and do such acts and things as the Chargor shall from time to time think fit as if it were the sole shareholder provided that the Chargor shall not exercise any of the rights or discretions referred to in this Clause in any manner prohibited under any Finance Document; and

7.1.2 the Security Agent shall, at the Chargor's cost and expense, execute any additional documents which the Chargor reasonably requires to evidence to any third parties such standing proxy.

7.2 Prior to the security created by this Deed becoming enforceable in accordance with Clause 8 (*When security becomes enforceable*) the Security Agent shall have no right to exercise any voting rights in relation to the Shares.

*Rights during default*

7.3 After the security created by this Deed has become enforceable in accordance with Clause 8 (*When security becomes enforceable*), the Security Agent may, at its discretion (without any further consent or authority from the Chargor):

7.3.1 if it has not already been done pursuant to Clause 5.1 or otherwise, register all or any of the Shares in the name of the Security Agent or its nominee and the Chargor shall, as and when required by the Security Agent, procure such registration;

7.3.2 exercise (or refrain from exercising) or, as the case may be, require the Chargor to exercise (or refrain from exercising) any voting rights in respect of the Shares and may revoke the proxy in Clause 7.1 above or any other proxy previously granted in connection therewith; and

7.3.3 exercise (or refrain from exercising) or, as the case may be, require the Chargor to exercise (or refrain from exercising) the powers and rights conferred on or exercisable by the legal or beneficial owner of the Shares,

in such manner and on such terms as the Security Agent may think fit.

*Dividends prior to default*

7.4 Prior to the security created by this Deed becoming enforceable in accordance with Clause 8 (*When security becomes enforceable*):

7.4.1 the Chargor shall have the sole right to receive any dividends, interest and other monies arising from the Shares and the Security Agent will, if so required by the Chargor, execute any necessary dividend mandate in connection therewith; and

7.4.2 the Security Agent shall have no right to receive any dividends, interest and other monies arising from the Shares.

*Dividends during default*

7.5 After the security created by this Deed has become enforceable in accordance with Clause 8 (*When security becomes enforceable*):



- 7.5.1 the Security Agent shall be entitled to receive all dividends, interest and other monies arising from the Shares and may, at its discretion (without any further consent or authority from the Chargor) apply the same in payment of the Secured Obligations and may revoke any dividend mandate previously granted in connection therewith; and
- 7.5.2 the Chargor shall take all necessary steps to ensure that all dividends, interest and other monies arising from the Shares are paid directly to the Security Agent and if the Chargor receives any dividends, interest and other monies arising from the Shares it shall promptly pay the same to the Security Agent and pending such payment shall hold the same on trust for the Security Agent.

*Performance by Security Agent*

- 7.6 If the Chargor fails to perform any of the obligations relating to the Shares (including the payment of any call or other payment due in respect of any of the Shares), the Security Agent may, at its sole discretion, do so on its behalf and any cost or expenses incurred by the Security Agent in so doing shall be repaid by the Chargor to the Security Agent on demand together with accrued interest thereon at the rate from time to time applicable to unpaid sums specified in the Facilities Agreement from the time or respective times of the same having been paid or incurred until payment thereof (as well as after as before judgement).

*No liability for Security Agent*

- 7.7 Notwithstanding the provisions of Clause 7.6 (*Performance by Security Agent*) the Security Agent shall not be obliged to perform any of the obligations of the Chargor in relation to the Shares nor shall it have any liability in respect of the Shares as a result of the grant of this Deed, the transfer of the Shares to it or its nominee or as a result of the performance or non-performance of any such obligation.

**8. REPRESENTATIONS AND WARRANTIES**

*Representations and warranties*

- 8.1 The Chargor represents and warrants to the Security Agent as agent and security agent for each of the Secured Parties that:
- 8.1.1 in the case of each of those companies wholly owned by a member of the Group whose shares are charged by this Deed the Shares represent the entire issued share capital of the relevant companies listed in Schedule 3 (*Shares*);
- 8.1.2 it is the sole legal and beneficial owner of the relevant Shares all of which are fully paid;
- 8.1.3 in the case of each of those companies wholly owned by a member of the Group whose shares are charged by this Deed, it has not granted or created, nor is there outstanding, any option, right of pre-emption, assignment or Security over any of the Shares or the Related Rights except any Permitted Security;
- 8.1.4 the particulars contained in the Schedule 3 (*Shares*) are complete and accurate in all respects;
- 8.1.5 it has delivered to the Security Agent, a complete and up to date copy of the articles of association of the relevant companies listed in Schedule 3 (*Shares*) together with any



resolution varying or amending the rights attaching to the Shares and there are no agreements or arrangements relating to the Shares which have not been disclosed in writing to the Security Agent; and

- 8.1.6 as at the date of its last audited annual statements, the aggregate book value of the Excluded Assets did not exceed three per cent. (3%) of the gross assets of the Group.

*Repetition*

- 8.2 The representations and warranties set out in Clause 8.1 (*Representations and warranties*) shall be given on the date of this Deed and shall be deemed to be repeated on each date on which the representations and warranties set out in clause 19 (*Representations*) of the Facilities Agreement are deemed to be repeated by reference to the facts and circumstances then subsisting.

9. **UNDERTAKINGS**

*General undertakings*

- 9.1 The Chargor shall:

- 9.1.1 supply to the Security Agent such information as the Security Agent may reasonably require about the Charged Assets and compliance with the terms of this Deed; and
- 9.1.2 obtain, effect, comply with and maintain in full force and effect all registrations, licences, consents, authorisations and exemptions required for the performance, validity and enforceability of this Deed and any document entered into pursuant to this Deed.

*Undertakings relating to Shares*

- 9.2 The Chargor shall:

- 9.2.1 observe and perform all conditions and obligations relating to the Shares where failure to do so would have a Material Adverse Effect;
- 9.2.2 promptly deliver to the Security Agent a copy of every circular, notice, resolution or similar documents received by it in respect of any of the Shares;
- 9.2.3 not take or omit to take any action which, in the opinion of the Security Agent acting in good faith, would prejudice the security conferred by this Deed, impair the value of any of the Shares to an extent which could result in a Material Adverse Effect or adversely affect the ability of the Security Agent to realise the security conferred by this Deed and shall, at its own cost, promptly take all action which is at any time necessary to protect the value of the interests of the Chargor and the Security Agent in, and their rights to, the Shares;
- 9.2.4 not vary or abrogate all or any of the rights attached to any of the Shares or take or omit to take any steps which would result in such a change, unless:
- (a) would not adversely affect the interests of the Security Agent (or its nominee); and
- (b) would not have a Material Adverse Effect, or
- 9.2.5 pay when due all calls or other payments which may be or become due in respect of any of the Shares.



10. **WHEN SECURITY BECOMES ENFORCEABLE**

The security created by this Deed will become immediately enforceable upon the occurrence of an Enforcement Event.

11. **ENFORCEMENT OF SECURITY**

*Enforcement*

- 11.1 After the security created by this Deed has become enforceable in accordance with Clause 8 (*When security becomes enforceable*), the Security Agent may in its absolute discretion without prior notice to the Chargor enforce all or any part of the security created by this Deed and take possession of or dispose of all or any of the Charged Assets in any manner it sees fit.

*Powers of Security Agent*

- 11.2 Any right, power or discretion conferred by this Deed or by law on a Receiver may after the security created by this Deed has become enforceable, to the extent permitted by law, be exercised by the Security Agent in relation to any Charged Asset without first appointing a Receiver or notwithstanding the appointment of a Receiver.

*Statutory Provisions*

- 11.3 The rights, powers, privileges and immunities conferred on mortgagees or receivers by the LPA, the Insolvency Act, the Insolvency Rules 1986, the Insolvency (Scotland) Rules 1986 or by any other enactment now or at any time in force shall apply to the Security Agent and any Receiver except in so far as they are expressly or impliedly excluded and where there is any ambiguity or conflict between powers conferred by that legislation and those contained in this Deed the terms of this Deed shall prevail.
- 11.4 Save as may be permitted in the Facilities Agreement, the Chargor shall not exercise or agree to exercise any of the powers of leasing or of accepting surrenders of leases conferred by sections 99 and 100 of the LPA or by common law or otherwise or grant or accept or agree to grant or accept any lease, tenancy or licence or share or agree to share possession or occupation of the Charged Assets but the Security Agent shall be entitled to grant and make agreements for leases at a premium or otherwise and accept surrenders of leases and grant options on such terms as the Security Agent shall consider expedient and without statutory or other restrictions.
- 11.5 For the purposes of Section 99 of the LPA, the expression "Mortgagor" will include any encumbrancer deriving title under the Chargor and Sub-section (18) of Section 99 of the LPA will not apply.
- 11.6 Section 93 of the LPA shall not apply to this Deed or to any sale made under it. The Security Agent shall have the right after the security created by this Deed has become enforceable in accordance with Clause 8 (*When security becomes enforceable*) to consolidate all or any of the security created by or pursuant to this Deed with any other security in existence at any time.
- 11.7 The Secured Obligations shall be deemed to have become due and payable on the date of this Deed for the purposes of section 101 of the LPA and the power of sale and other powers conferred by section 101 of the LPA (as varied or extended by this Deed) and all other powers shall be deemed to arise immediately after execution of this Deed.
- 11.8 Section 103 of the LPA (restricting the exercise of the power of sale) shall not apply to this Deed.



*Protection of third parties*

- 11.9 No purchaser from, or other person dealing with, the Security Agent or a Receiver shall be concerned to enquire whether any of the powers exercised or purported to be exercised has arisen or become exercisable, whether any of the Secured Obligations remains outstanding, whether the Security Agent or a Receiver is authorised to act or as to the propriety or validity of the exercise or purported exercise of any power and a certificate in writing by an officer or agent of the Security Agent or any Receiver that the power of sale or other disposal has arisen and is exercisable shall be conclusive evidence of that fact in favour of a purchaser of all or any of the Charged Assets.
- 11.10 The receipt of Security Agent or a Receiver shall be an absolute discharge to a purchaser from, or other person dealing with, the Security Agent or a Receiver and shall relieve that purchaser of any obligation to see to the application of any monies paid to or at the discretion of Security Agent or a Receiver and in making any sale or disposal the Security Agent or a Receiver may do so for such consideration, in such manner and on such terms (including payment by instalments) as it thinks fit.

*Protection of the Security Agent and Receiver*

- 11.11 Neither the Security Agent nor any Receiver shall be liable to account to the Chargor as mortgagee in possession in respect of any Charged Asset or be liable to the Chargor in respect of any loss or damage which arises out of the exercise, the attempted or purported exercise or the failure to exercise any of their respective powers or for any other loss of any nature whatsoever.

*Delegation*

- 11.12 The Security Agent and any Receiver may from time to time delegate by power of attorney or otherwise to any person or corporation any of the powers and discretions of the Security Agent or the Receiver under this Deed whether arising by statute, the provisions hereof or otherwise upon such terms and for such periods of time as it may think fit and may determine any such delegation.
- 11.13 Neither the Security Agent nor any Receiver will be liable to the Chargor for any loss or damage arising from any act, default, omission or misconduct of any such delegate, and references in this Deed to the Security Agent or to any Receiver will where the context so admits include references to any delegates so appointed.

*Prior charges*

- 11.14 In the event of any action, proceeding or step being taken to exercise any powers or remedies conferred by any prior ranking security in case of exercise by the Security Agent or any Receiver of any power of sale under this Deed the Security Agent may redeem such prior security or procure the transfer thereof to itself.
- 11.15 The Security Agent may settle and pass the accounts of the prior mortgagee, chargee or encumbrancer and any accounts so settled and passed will be conclusive and binding on the Chargor.
- 11.16 All principal monies, interest, costs, charges and expenses of and incidental to any redemption or transfer will be paid by the Chargor to the Security Agent on demand together with accrued interest thereon at the rate from time to time applicable to unpaid sums specified in the Facilities



Agreement from the time or respective times of the same having been paid or incurred until payment thereof (as well as after as before judgement).

## 12. RECEIVERS AND ADMINISTRATORS

### *Appointment and Removal*

- 12.1 Without prejudice to the provisions of the Insolvency Act, at any time after having been requested to do so by the Chargor or after the security created by this Deed has become enforceable in accordance with Clause 8 (*When security becomes enforceable*), the Security Agent may by instrument in writing (under seal, by deed or otherwise under hand), without prior notice to the Chargor:

- 12.1.1 (subject to section 72A of the Insolvency Act) appoint one or more persons to be a Receiver of the whole or any part of the Charged Assets;
- 12.1.2 remove (so far as it is lawfully able) any Receiver so appointed;
- 12.1.3 appoint another person(s) as an additional or replacement Receiver(s); and
- 12.1.4 appoint one or more persons to be an Administrator in accordance with paragraph 14 of Schedule B1 to the Insolvency Act 1986.

### *Receiver as agent of the Chargor*

- 12.2 A Receiver shall be the agent of the Chargor and, except as otherwise required by the Insolvency Act, the Chargor shall be solely responsible for his acts and defaults and liable on any contract or engagements made or entered into or adopted by him.

### *Remuneration of Receiver*

- 12.3 The Security Agent may fix the remuneration of any Receiver appointed by it and any maximum rate imposed by law (including Section 109(6) of the LPA) shall not apply. The amount of such remuneration shall be paid in accordance with the terms and conditions and in the manner agreed from time to time between the Security Agent and the Receiver.

### *Powers of Receiver*

- 12.4 A Receiver shall have (and be entitled to exercise in such manner and on such terms as he may in his absolute discretion think fit) in relation to the Charged Assets over which he is appointed the following powers (as the same may be varied or extended by the provisions of this Deed):
- 12.4.1 all of the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act (whether or not the Receiver is an administrative receiver) (or in Schedule 2 thereof in the event of the Chargor being a company registered in Scotland);
  - 12.4.2 all of the powers conferred from time to time on receivers, mortgagors and mortgagees in possession by the LPA;
  - 12.4.3 power to sell (whether by public auction or private contract or otherwise) all or any of the Charged Assets on any terms and for any consideration (including without limitation for deferred consideration or a consideration payable wholly or partly in instalments or consisting in whole or in part of shares or securities of any other company or of any other non-cash asset);



- 12.4.4 power to grant any lease or tenancy or right of or affecting the Charged Assets for any term or terms of years at any or no rent and with or without any premium and accept the surrender of any lease or tenancy or right and give a valid receipt for any premium payable on any such grant or surrender and to amend or vary any lease, licence agreement or other arrangement in any way relating to or affecting the Charged Assets;
- 12.4.5 power to grant options to sell, lease, licence or dispose of the Charged Assets;
- 12.4.6 power to enter on or otherwise take possession of the Charged Assets to repair, convert, manufacture, process, decorate, alter, renew, improve, add to or develop or to complete any development or building which may be unfinished and to settle, compound, compromise or submit to arbitration any accounts or claims arising out of the commencement, carrying on or completion of any such development or building;
- 12.4.7 power to redeem any mortgage, charge or other encumbrance on, over or affecting the Charged Assets or any part of it;
- 12.4.8 power to repair, renew or improve plant, machinery, implements, furniture, equipment and other effects of the Chargor in or on the Charged Assets;
- 12.4.9 power to settle or compromise or submit to arbitration any claim or claims on or against the Charged Assets or claim or dispute arising out of the Charged Assets;
- 12.4.10 power to disclaim, abandon or disregard all or any of the outstanding contracts of the Chargor and to allow time for payment by or to the Chargor of any debts either with or without security;
- 12.4.11 power to manage and carry on or concur in managing or carrying on upon the Charged Assets any type of trade or business and to enter and perform such contracts and arrangements and incur any obligations in relation thereto;
- 12.4.12 power to make or exercise an election pursuant to paragraphs 2 and 3 of Schedule 10 to the Value Added Tax Act 1994 in relation to the Charged Assets or exercise any option or right of election available to the Chargor or the Security Agent or the Receiver that the supplies made in respect of any lease or tenancy of any part of the Charged Assets shall be supplies chargeable or taxable for value added tax purposes at the standard or other applicable rate provided always that neither the Security Agent nor the Receiver shall be liable for any loss suffered by the Chargor as a result and to execute all documents, and perform such acts or things as a result and to execute all documents, and perform such acts or things as maybe necessary to permit any disposal of the Charged Assets to be zero-rated for the purposes of value added tax;
- 12.4.13 power to exercise all voting and other rights attaching to stocks, shares and other securities comprising or comprised within the Charged Assets;
- 12.4.14 power to exercise in relation to any Charged Asset all the powers, authorities and things which he would be capable of exercising if he were the absolute beneficial owner of that Charged Asset; and
- 12.4.15 power to do all things which, in the opinion of the Receiver, are incidental to any of the powers, functions, authorities or discretions conferred or vested in the Receiver pursuant to this Deed or upon receivers by statute or law generally (including the bringing or defending of proceedings in the name of, or on behalf of, the Chargor; the



preservation, improvement, collection and/or realisation of Charged Assets; and the execution of documents in the name of the Chargor (whether under hand, or by way of deed or by utilisation of the company seal of the Chargor).

*Discretions*

- 12.5 Any liberty or power which may be exercised or any determination which may be made under this Deed by the Security Agent or any Receiver may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

*Powers may be restricted*

- 12.6 The powers granted to a Receiver pursuant to this Deed may be restricted by the instrument (signed by the Security Agent) appointing him but they shall not be restricted by any winding-up or dissolution of the Chargor.

*Discretions*

- 12.7 Any liberty or power which may be exercised or any determination which may be made under this Deed by the Security Agent or any Receiver may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

*Actions of any Administrators*

- 12.8 Save as provided for in statute or otherwise agreed in writing by that Secured Party, no Secured Party shall have any liability for the acts or omissions of an Administrator.

**13. AVOIDANCE OF PAYMENTS**

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 and any costs payable by it pursuant to or otherwise incurred in connection therewith) or to appoint a Receiver and enforce the security created by this Deed to the full extent of the Secured Obligations.

**14. CUMULATIVE REMEDIES AND WAIVERS**

The rights of the Security Agent and the Receiver may be exercised as often as necessary, are cumulative and are in addition to its respective rights under general law and may be waived only in writing and specifically. Delay in the exercise or non-exercise of any right shall not be a waiver of that right.

**15. SEVERABILITY**

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



16. **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 Deed.

17. **APPLICATION OF PROCEEDS**

*Application of proceeds*

- 17.1 Any moneys received by the Security Agent or any Receiver after the security created by this Deed has become enforceable in accordance with Clause 8 (*When security becomes enforceable*) shall be applied in accordance with the provisions of the Intercreditor Agreement.

*Other claims*

- 17.2 The provisions of Clause 17.1 (*Application of Proceeds*) are subject to the payment of any claims having priority over the security created by this Deed. This Clause does not prejudice the right of any Secured Party to recover any shortfall from the Chargor.

18. **NEW ACCOUNTS**

*New Accounts*

- 18.1 If the Security Agent at any time becomes aware of any subsequent security or other like interest, matter, event or transaction affecting any Charged Asset (except as permitted by the Facilities Agreement), the Security Agent may open a new account or accounts for the Chargor in its books.

*Ruling off*

- 18.2 If the Security Agent does not open any such new account then, unless it gives express written notice to the Chargor to the contrary, the Security Agent will be treated as if it had in fact opened such account or accounts at the time when it became so aware and as from that time all payments by or on behalf of the Chargor to the Security Agent will be credited or treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations then outstanding.

19. **SUSPENSE ACCOUNTS**

All monies received, recovered or realised by the Security Agent under this Deed (including the proceeds of any conversion of currency) may in the discretion of the Security Agent be credited to any interest bearing suspense or impersonal account maintained with any bank, building society or financial institution as it considers appropriate and may be held in such account for so long as the Security Agent may think fit pending their application from time to time (as the Security Agent is entitled to do in its discretion) in or towards the discharge of any of the Secured Obligations and save as provided herein no party will be entitled to withdraw any amount at any time standing to the credit of any suspense or impersonal account referred to above.



20. **POWER OF ATTORNEY**

*Appointment and powers*

20.1 By way of security for the obligations of the Chargor under this Deed, the Chargor irrevocably appoints the Security Agent and every Receiver to be its attorney on its behalf or in its name or otherwise to:

20.1.1 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 Deed and has failed to do following a written request from the Security Agent; and

20.1.2 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*

20.2 The Chargor ratifies and confirms whatever any such attorney mentioned in Clause 20.1 (*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.

21. **TRANSFERS**

*Transfer by Chargor*

21.1 The Chargor may not assign or otherwise transfer its rights and obligations under this Deed.

*Transfer by Security Agent*

21.2 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 Deed 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 Deed in accordance with the terms of the Facilities Agreement.

22. **NOTICES**

Any communication to be made under or in connection with this Deed shall be made in accordance with clause 31 (*Notices*) of the Facilities Agreement.

23. **LAND REGISTRY**

*Request to the Land Registry*

23.1 Where the whole or any part of the Real Property is registered at the Land Registry the Chargor hereby applies to the Chief Land Registrar for registration against the registered title of the following restriction:



"No disposition of the registered estate by the proprietor of the registered estate (other than a lease), or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the charge dated [ ] 2015 in favour of Bank of Scotland plc referred to in the charges register or their conveyancers."

*Further advances*

- 23.2 If any Secured Party is obliged to make further advances under the Finance Documents, that obligation is deemed to be incorporated in this Deed and, where the whole or part of the Real Property is registered at the Land Registry, the Chargor applies to the Chief Land Registrar for the registration against the registered title of the Real Property of a note that the Security Agent is under an obligation to make further advances to the Chargor.

**24. THIRD PARTIES**

Unless expressly provided to the contrary in this Deed, a person who is not a party to this Deed or a Secured Party may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

**25. FINANCIAL COLLATERAL**

*Right to appropriate*

- 25.1 To the extent that the Charged Assets constitute "financial collateral" and this Deed and the obligations of the Chargor constitute a "security financial collateral arrangement" (in each case for the purpose of and as defined in the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226) (the "Regulations")) the Security Agent shall have the right after the security created by this Deed has become enforceable to appropriate all or any part of that financial collateral in or towards the satisfaction of the Secured Obligations.

*Value of financial collateral*

- 25.2 For the purpose of Clause 25.1 (*Right to appropriate*), the value of the financial collateral appropriated shall be such amount as the Security Agent reasonably determines having taken into account advice obtained by it from an independent investment or accountancy firm of national standing selected by it and the Chargor agrees that the method of valuation provided for in this Deed shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

**26. COUNTERPARTS**

This Deed may be executed in any number of counterparts and all of those counterparts taken together shall be deemed to constitute one and the same instrument.

**27. GOVERNING LAW AND JURISDICTION**

*Governing law*

- 27.1 This Deed and any non-contractual obligations arising from or in relation to it shall be governed by, and construed in accordance with, the laws of England.



*Jurisdiction*

- 27.2 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed) (a “Dispute”).
- 27.3 The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.
- 27.4 Clause 27.2 (*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.

**IN WITNESS WHEREOF** this Deed has been executed as a deed on the date stated at the beginning of this Deed.



## SCHEDULE 1

### MORTGAGED PROPERTY

1.	All the freehold property known as St Marys Green and registered at H.M. Land Registry under Title Number CE133774 but excluding the following plots 1 – 21, 23, 25, 27 – 29, 31 and 32.
2.	All the freehold property known as land on the south east side of Crewe Road, Alsager, Stoke on Trent registered at H.M. Land Registry under title number CH391654 but excluding the following plots: 1-7, 22, 25, 29, 32, 38-47, 49-50 and 52-65.
3.	All the freehold land known as land and buildings on the west side of Weatherhill Road, Huddersfield and registered at H.M. Land Registry under Title Number WYK92229 but excluding the following plots 1-45, 212, 231, 235 and 240-291.
4.	All the freehold property known as land on the south west side of Stenson Road, Derby registered at H.M. Land Registry under title number DY474628 but excluding the following plots: 4-56, 79-81 and 87-113.
5.	All the freehold property known as Doves Keep, Tutbury and registered at H.M. Land Registry under Title Number SF595257 but excluding the following plots 1 – 21, 24 – 32, 34 and 35.
6.	All the freehold property known as Land at Loxley Road, Wellesbourne, Warwickshire and registered at H.M. Land Registry under Title Number WK477462.
7.	All the freehold property known as Land on the North Side of Gorsey Lane, Wythall and registered at H.M. Land Registry under Title Number WR156669.
8.	All the freehold property known as and on the north west side of London Road, Tetbury and registered at H.M. Land Registry under Title Number GR388611.
9.	All the freehold property known as Land and buildings to the north and the north east of Crabmill Close, Knowle, Solihull and registered at H.M. Land Registry under title numbers MM31034 and MM31035 but excluding the following plots: 1-23, 25-35, 76, 83-85 and 88.
10.	All the freehold property known as Brookfield, Acklam and registered at H.M. Land Registry under Title Number CE218742 but excluding the following plots 1, 5 – 15, 17, 18, 20, 23, 24, 26, 30 and 32.
11.	All the freehold property being the land and buildings known as Clairville Stadium, Park Road South, Middlesbrough TS4 2RB and registered at H.M. Land Registry under Title Number CE222748.
12.	All the freehold property known as Miller's Green, Mossgate and registered at H.M. Land Registry under Title Numbers LAN148145 but excluding the following plots 1-22, 24, 39,



	40, 41, 42, 43, 44 and part of the freehold property registered under LAN61186 but excluding all plots.
13.	All the freehold property known as land at Preston Road, Longridge and registered at H.M. Land Registry under Title Number LAN143075 but excluding plot numbers; 47, 49-58 (inclusive), 23, 24, 25, 27, 28 and 29.
14.	All the freehold property known as The Views, Billinge and registered at H.M. Land Registry under Title Number MAN91862.
15.	All the freehold property known as Montgomerie Gardens and registered at H.M. Land Registry under Title Number LAN114405 but excluding the following plots 1, 2, 4 – 15, 17, 19-21, 24 – 26, 29, 85, 86, 88 – 116.
16.	All the freehold property known as Flaxton Court, Bradford and registered at H.M. Land Registry under Title Number WYK863496 but excluding the following plots 1-61, 66, 67, 163, 164, 166, 168 – 199.
17.	All the freehold property known as Harlow One and registered at H.M. Land Registry under Title Number NYK348395 but excluding the following plots 1-13 and 29-46.
18.	All the freehold property known as Land on the east side of Matthews Lane, Sheffield and registered at H.M. Land Registry under Title Number SYK622106.
19.	Part of the freehold property known as Brailsford and registered at H.M. Land Registry under Title Numbers DY256205 and DY431083 and which is in the course of registration and has been allocated Title Number DY492301.
20.	All the freehold property known as Lodge Farm Chase 2 and registered at H.M. Land Registry under Title Number DY283873 but excluding the following plots 3, 4, 7, 33, 34, 35, 36 and 37.
21.	All the freehold property known as land at 61 Station Road, Ashwell, Baldock SG7 5LR and registered at H.M. Land Registry under Title Number HD534802.
22.	All the freehold property known as Land lying to the north of Burleigh Lane, Crawley Down, Crawley comprised in a transfer dated 29 May 2015 made between (1) John David Sutton and Veronica Sutton and (2) Miller Homes Limited being part of the land registered at H.M. Land Registry under Title Number WSX84607.
23.	All the freehold property known as Land lying on the South of Clappers Lane, Bracklesham Bay, Chichester and registered at H.M. Land Registry under Title Number WSX362001 but excluding the following plots: 1, 3 to 9, 29 to 35 and 37 to 50.
24.	All the freehold property known as The Meadows on the west side of Newark Road, Ollerton, Nottinghamshire and registered at H.M. Land Registry under Title Number NT324906 but excluding the plots shown coloured green and blue on Plan 1.



25.	All the freehold property known as Lancaster Leisure Park, Wyresdale Road, Lancaster and registered at H.M. Land Registry under title number LAN159904 but excluding the property shown shaded orange on Plan 2.
26.	All the freehold property known as Land lying to the west of Aqueduct Road, Shirley, Solihull registered at H.M. Land Registry under Title Number MM37912 but excluding the plots shown coloured green, hatched blue and hatched orange and the substation hatched orange on Plan 3.
27.	All the freehold property known as Land on the East Side of Woodlands Close, Crawley Down, Crawley and registered at H.M. Land Registry under Title Number WSX359612 excluding the following plots: 1, 2, 3, 5, 7, 26 to 46 and the land shown coloured orange on Plan 4.
28.	All that freehold property known as Land at Lymington Bottom Road, Medstead, Alton, GU34 5EW, and Land at Lymington Farm Industrial Estate Lymington Bottom Road, Medstead, Alton, GU34 5EW shown edged red on Plan 5 and forming part of the land registered at H.M. Land Registry under Title Numbers SH38736 and SH39521 and <del>excluding the property shown edged green on Plan 5</del>
29.	All the freehold property known as Wensleydale Park and registered at H.M. Land Registry under Title Number ND172988 but excluding the following plots 1-20, 24, 26, 31-34, 36-63, 65 and 67-68 and excluding the property shown coloured orange on Plan 6.
30.	All the freehold property known as Foxby Lane, Gainsborough and registered at H.M. Land Registry under Title Number LL281535 but excluding the following plots 1-91, 93 - 102, 117, 119 -146, 204 - 212, 214 - 225, 227, 229 - 275 and excluding the property shown coloured orange on Plan 7.
31.	All the freehold property known as Windsor Gate and registered at H.M. Land Registry under Title Numbers LT456929 but excluding the following plots 16, 17, 18, 33 - 41 and 45 and excluding the property shown coloured and hatched orange on Plan 8.
32.	All the freehold property known as Brookfields, Sileby and registered at H.M. Land Registry under Title Number LT444578 but excluding the following plots 2 - 9, 12 - 56, 68 - 71, 73 -100, 175, 176, 178 and 179 and the property shown shaded orange on Plan 9.
33.	All the freehold property known as Terlings Park and registered at H.M. Land Registry under Title Number HD539011 but excluding the following plots 8, 11, 12 and 59 - 78 and the property shown shaded orange on Plan 10.

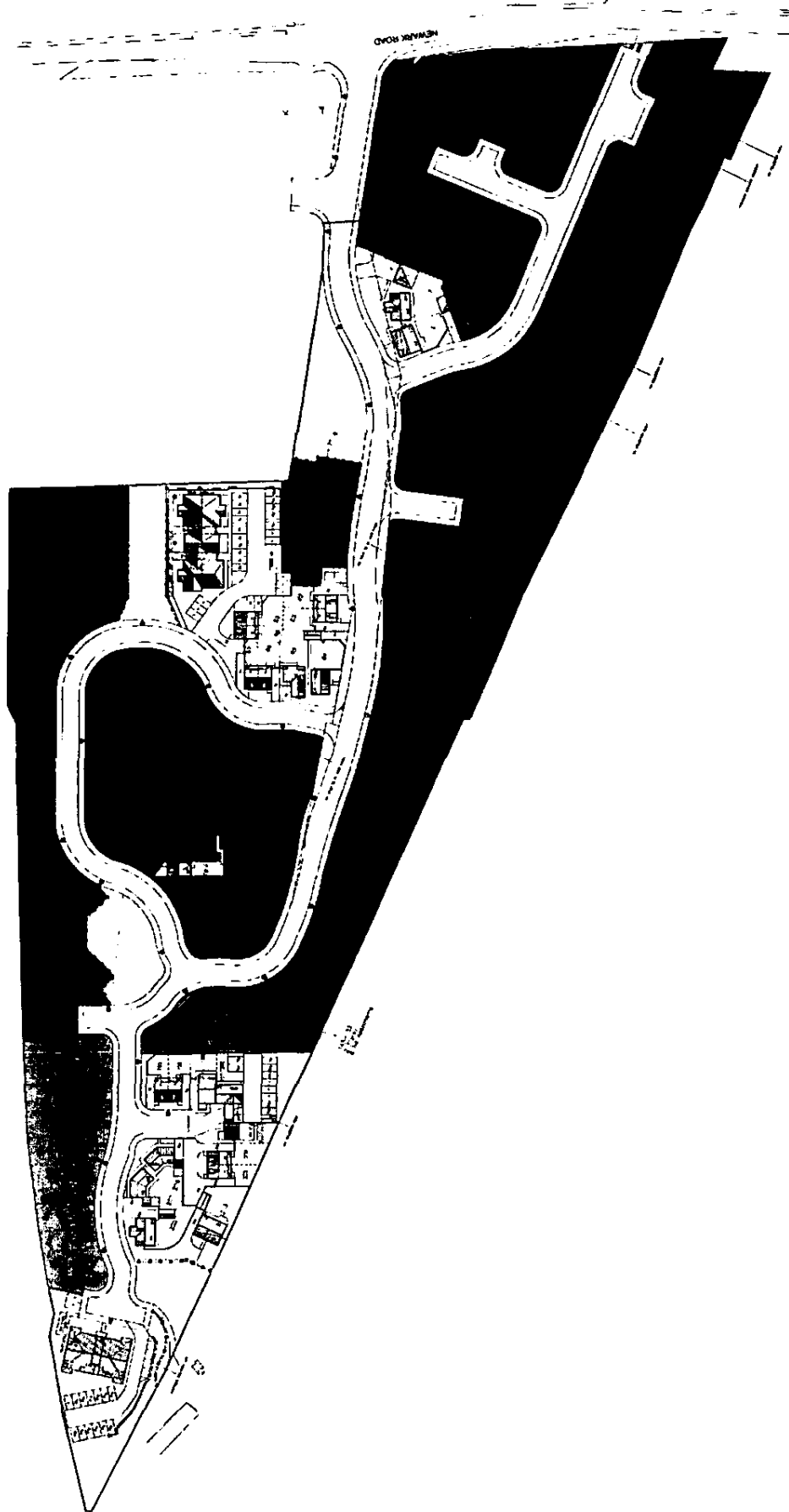
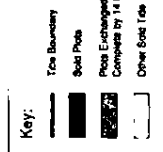


**SCHEDULE 2**

**PLANS**



THE MEADOWS, OLLERTON



müller homes

Higher Education Ltd. - Yorkshire  
 Learning - Leeds  
 Prep at yr 4, Camp at yr  
 5, 6 and 7  
 Prep, Yorkshire 100 2 24

Telephone 01977 523 4423  
 Fax 01977 523 4427  
 email info@helsing.co.uk

THE  
FEDERAL  
BUREAU OF INVESTIGATION

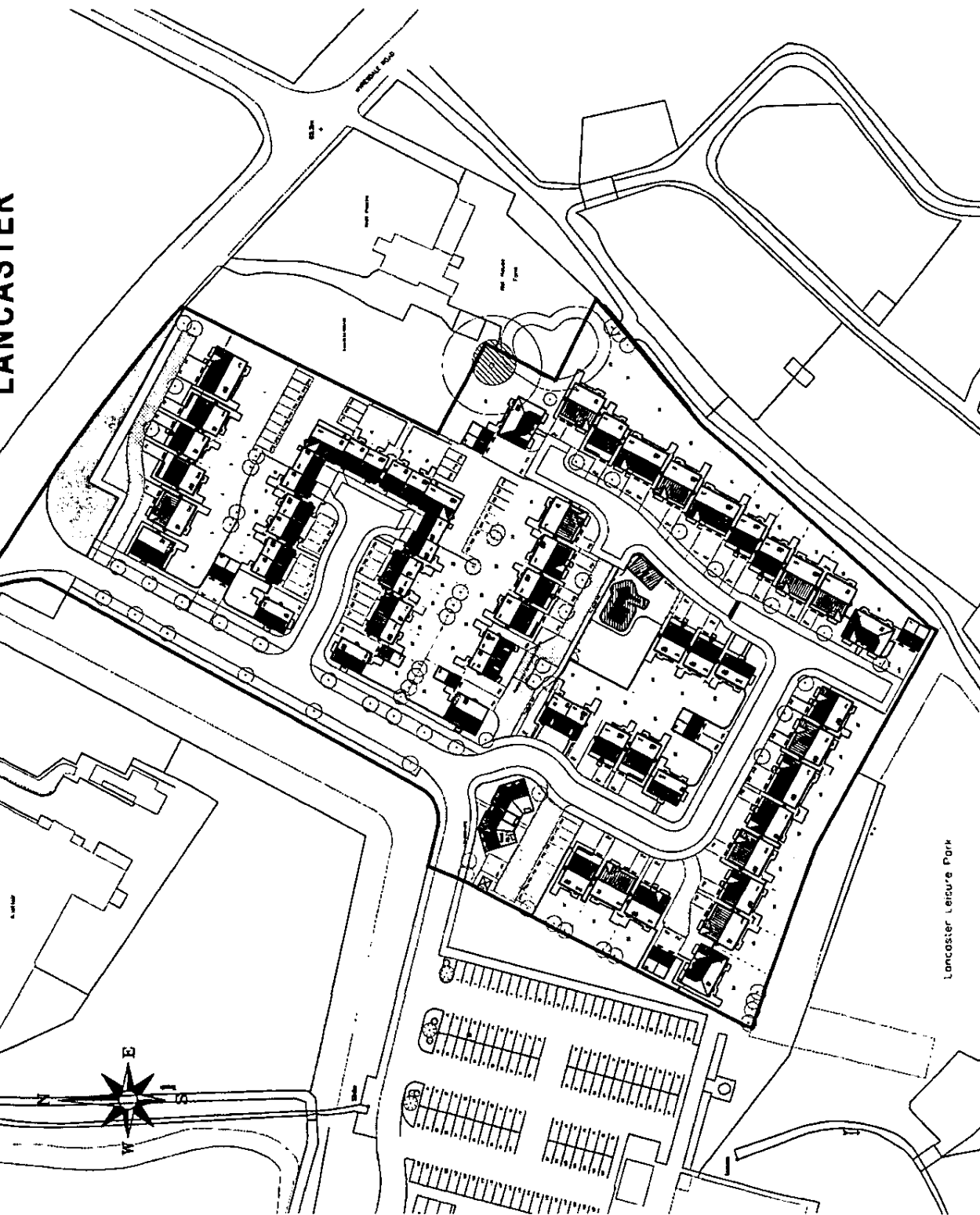
### Key Features

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
---	---	---	---	---	---	---	---	---	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	-----



**miller homes**

The Potteries, Lancs Leisure Park,  
**LANCASTER**



**Key:**

- Title Boundary
- Sold Plots
- Plots Exchanged & Due to Complete by 14.07.15
- Other Sold Title



Rev	Description	Drawn	Date
B	Amended to A3 Sheet size	JAC	23.08.15
A	Other Sold Title Identified.	SPJ	15.08.15

**miller homes**

Miller Homes Limited - North West Region

Hawthorn House

Woodlands Park

Ashton Road

Newton-le-Willows, WA12 0HF

Telephone 0870 336 4700

Fax 01925 228570

www.millerhomes.co.uk

**Project Title**  
**THE POTTERIES**  
**WYRESDALE ROAD**  
**LANCASTER**

**Drawing Title**  
**REFINANCING PLANS**

Scale	Drawn By	Checked By	Authorised By
1:1000	SPJ		
Date	Date	Date	Date
MAY 15	MAY 15		
Job No.	Drawing No.	Revision	
809000	RFP/001		B

Original Sheet Size A3 Do Not Scale From This Drawing

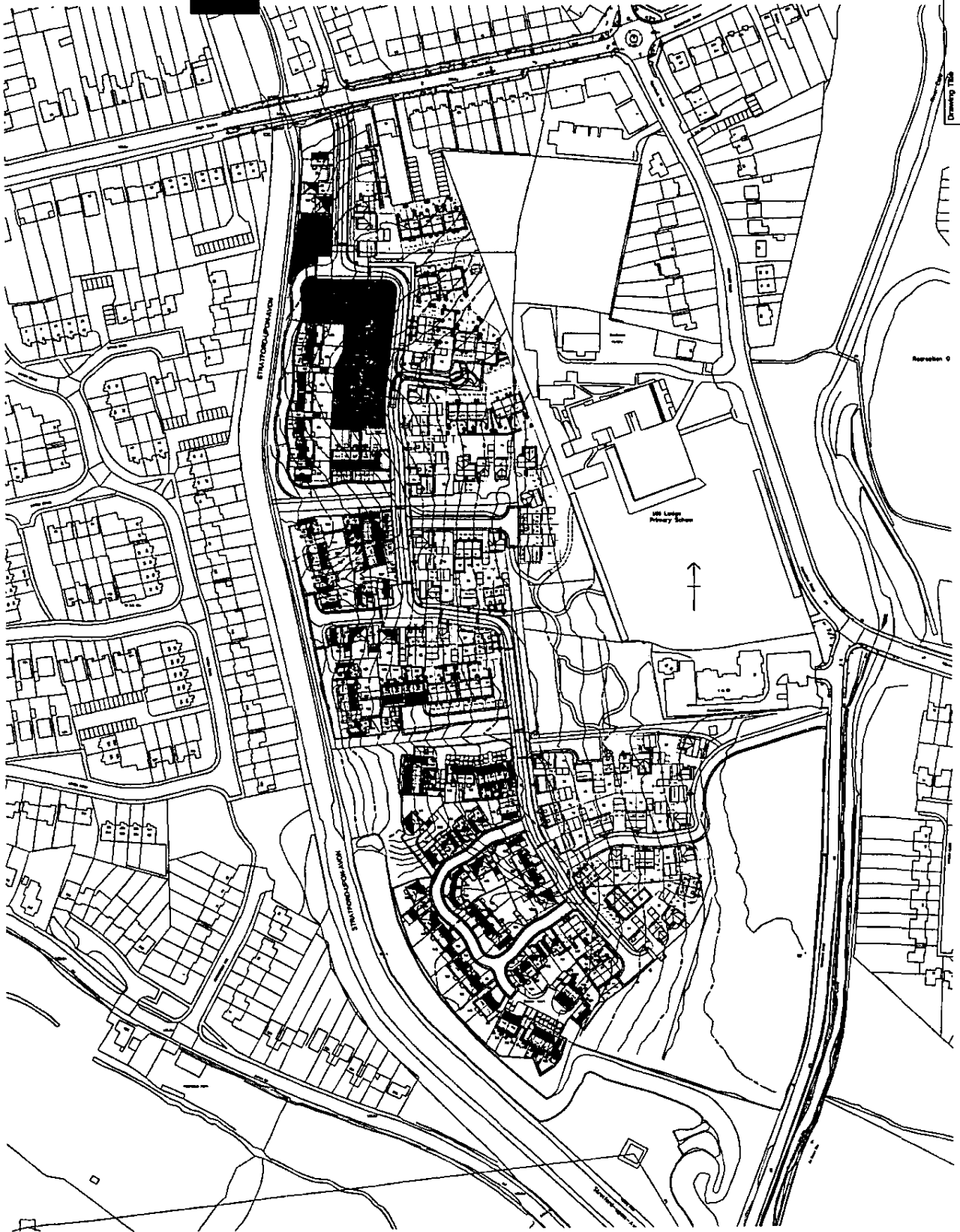


PLAN 3

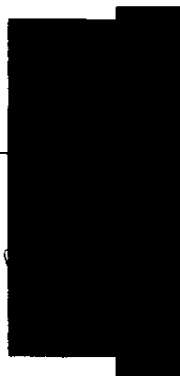
- SOLD PLOTS
- EXCHANGED PLOTS
- COLOR RECALCULATION

Scale  
1:2000

Drawing No.  
MOUNTS CHASE  
SOLIHULL  
Original Sheet Size A3





[illegible]

**Miller Homes Ltd**

**Southern Region  
Spinnaker House  
Lime Tree Way  
Basingstoke  
RG24 8GG**

Telephone 0870 338 4200

[www.millertomes.co.uk](http://www.millertomes.co.uk)

**Product Title**

**BURLEIGH WOODS**

**Operating Year**

REDLINE PLAN MAY 2015

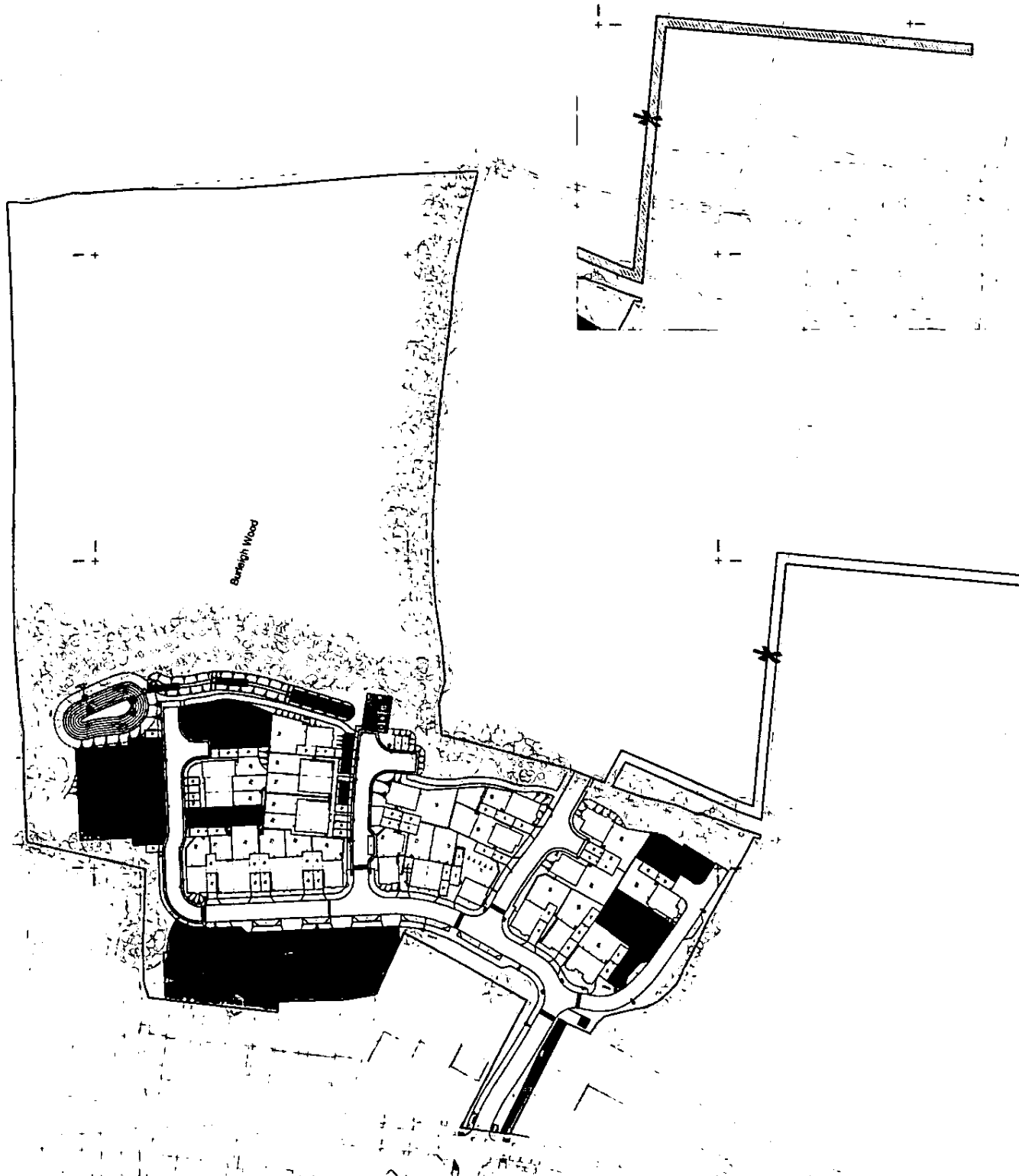
\_\_\_\_\_

Page 10

Page 10

1

May 15





PLAN 1

Rev	Description	Date

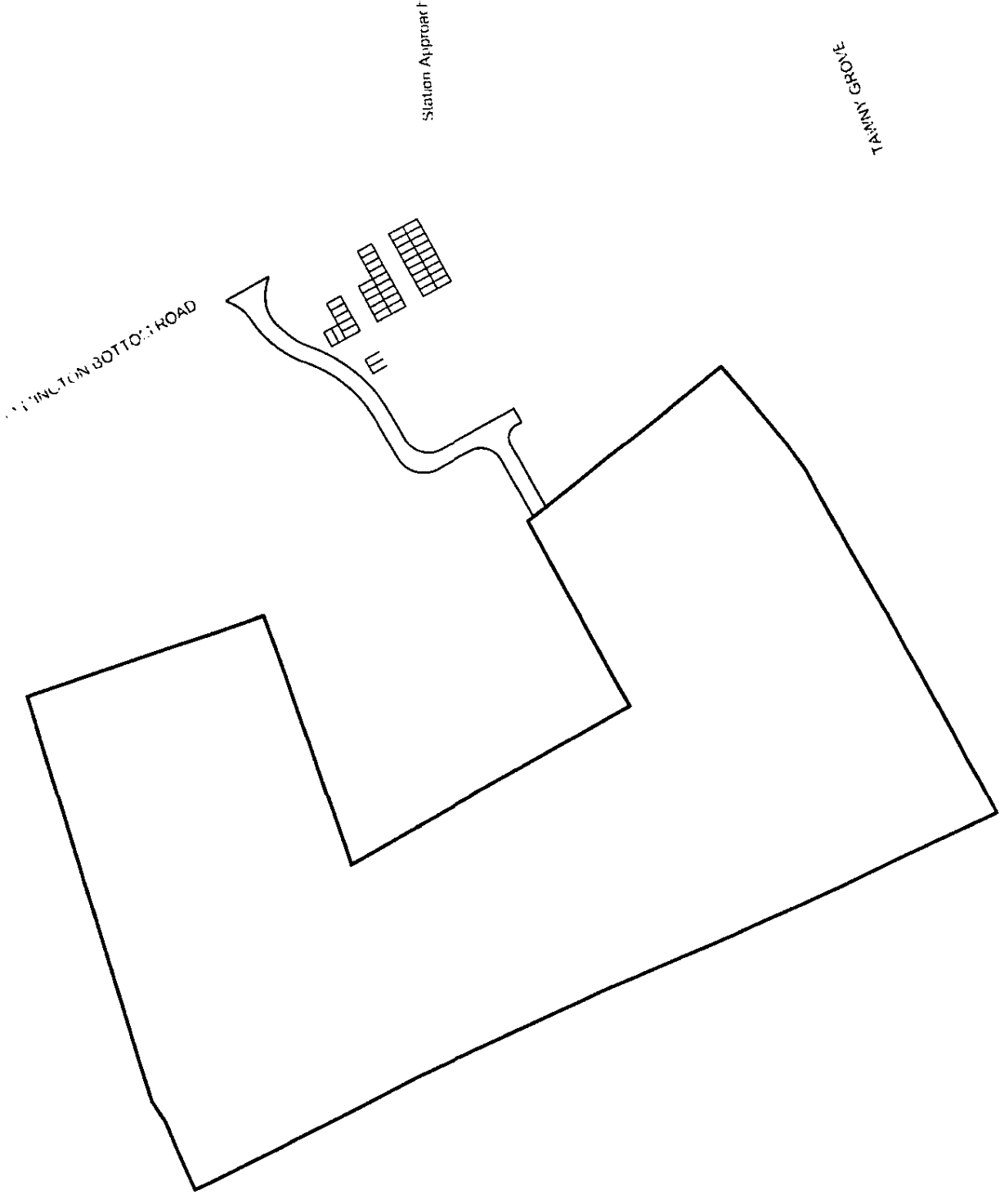


**miller homes**  
Miller Homes Ltd  
Southern Region  
Spinnaker House  
Lime Tree Way  
Basingstoke  
RG24 8GG  
Telephone 0870 338 4200  
www.millerhomes.co.uk

LYMINGTON BOTTOM ROAD  
MEDSTEAD, HAMPSHIRE

REDLINE PLAN 2015

Scale	Drawn By	Checked By	Date
1 : 1250	SR		May 2015

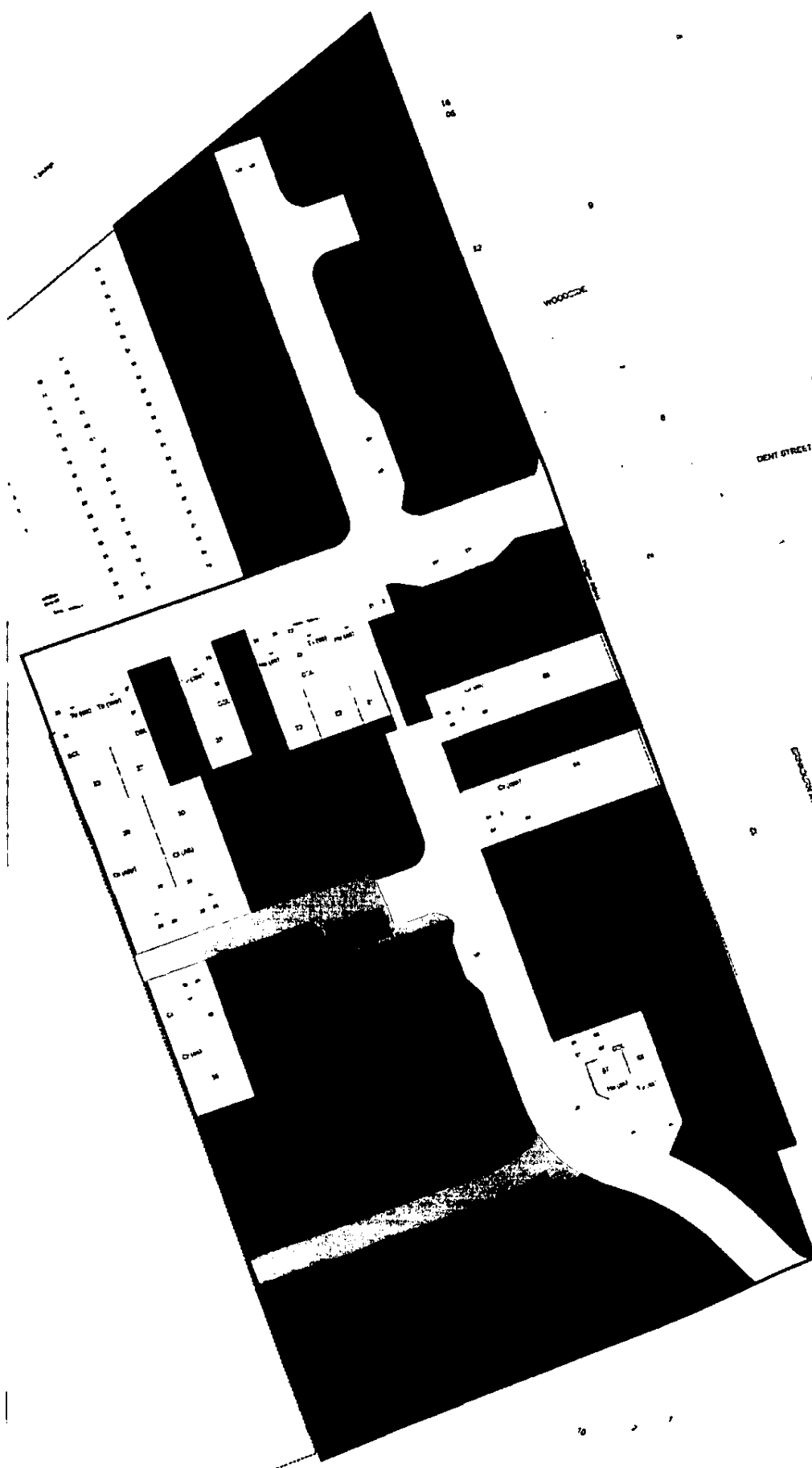
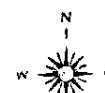




**miller homes**

Wensleydale Park, Blyth,  
NORTHUMBERLAND

KEY  
 --- Site Boundary  
 --- Access  
 --- Plot boundaries & Plot No.  
 --- Other Plot No.



REV A PLOTS 24 & 26 NOW SOLD. JA 22.06.15

Rev. Description Date

**miller homes**

Miller Homes Limited - North East Region

Nautilus House  
 Redburn Court, Earl Grey Way  
 Royal Quays  
 North Shields, NE29 6AR

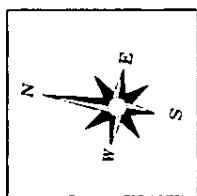
Telephone 0870 338 4100  
 Fax 0191 258 6243  
 www.millerhomes.co.uk

Project Title  
 Wensleydale Park  
 Blyth  
 Northumberland

Drawing Title  
 Refinance Plan

Drawn	Drawn By	Checked By	Authorised By
1:500	JA		
Date	MAY 15	Date	Date
Job No.	807124	Drawing No.	RFP/WP/001
Original Sheet Size A3			A





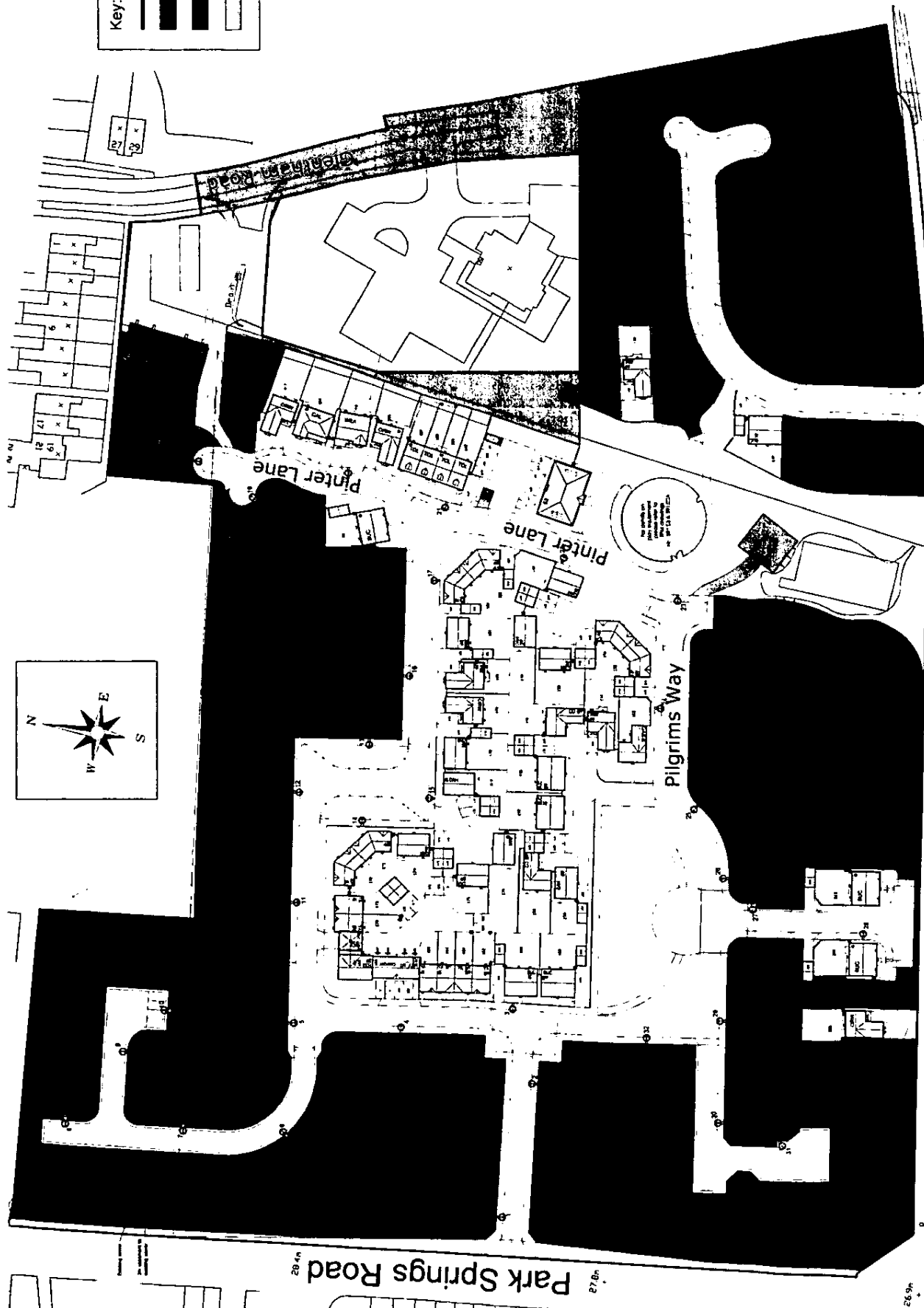
Key:

Title Boundary

Sold Plots

Plots Exchanged & Due to Complete by 14.07.15

Other Sold Title



**miller homes**

Miller Homes Ltd., Yorkshire  
Leaving House  
Pond Avenue, Calder Park  
West Yorkshire, WF2 7UA  
Telephone 01977 339 4000  
Fax 01977 339 4007  
www.millerhomes.co.uk

Brooklands  
Pinter Lane,  
Gainsborough

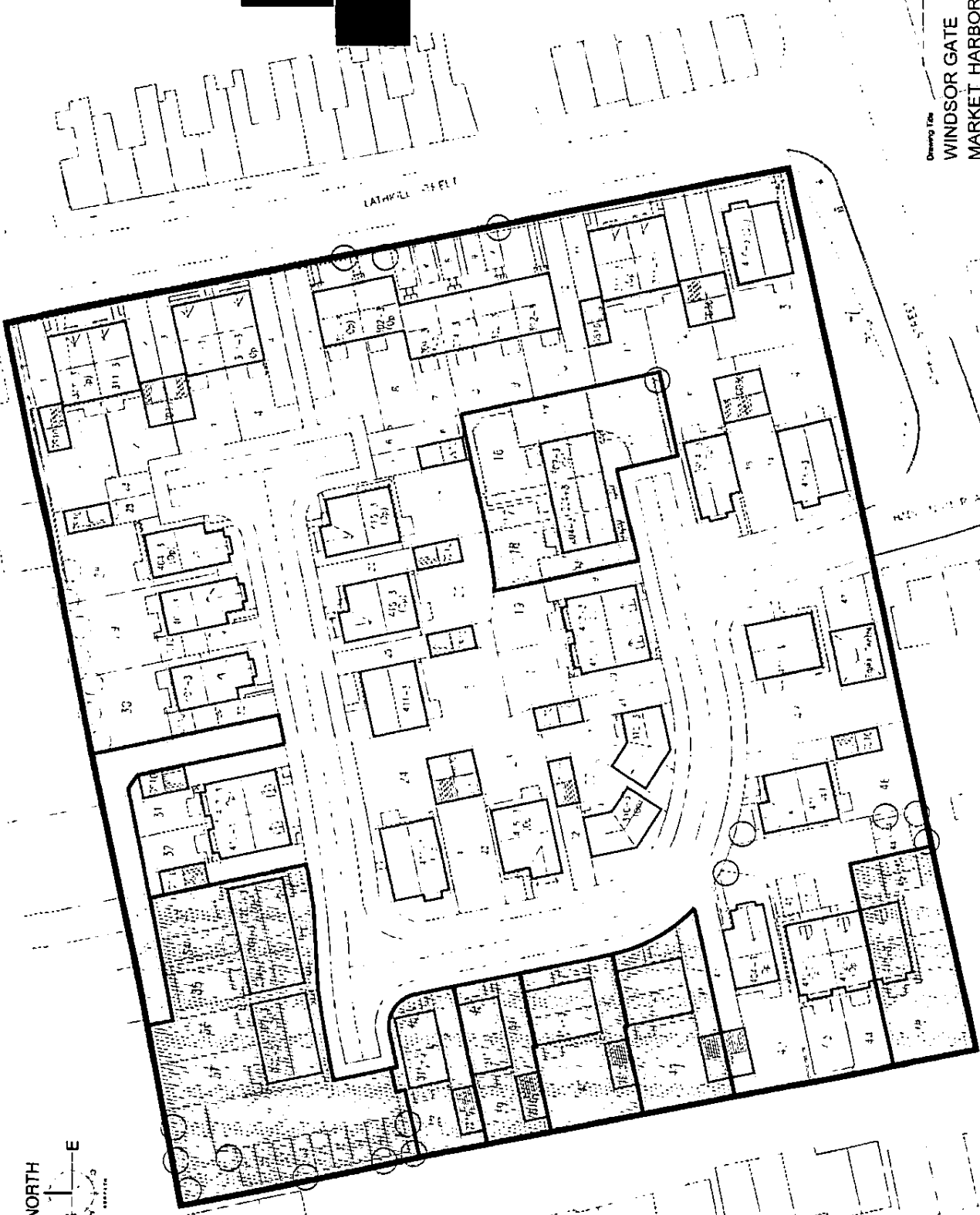
Refinancing Plan

1500	1500	1500	1500
811058	811058	811058	811058
RFP000	RFP000	RFP000	RFP000
B	B	B	B

BROOKLANDS, GAINSBOROUGH



PLANE



Scale  
1:500

Drawing No.  
**WINDSOR GATE**  
**MARKET HARBOUROUGH**  
Original Sheet Size A3



PLAN 9



Scale

1:2000

Drawing Title

BROOKFIELDS

SIBLEY

Original Sheet Size A3



**Miller Homes Ltd**  
Southern Region  
Spinnaker House  
Lime Tree Way  
Basingstoke  
RG24 8GG  
Telephone 0870 336 4200  
[www.millerhomes.co.uk](http://www.millerhomes.co.uk)

**Project Title**

MILLERS AT TERLINGS PARK

### **Brandro Tala**

REDLINE PLAN 2015

Scale	Drawn By	Checked By	Date
1:1500	SR		May 2015



**SCHEDULE 3**

**SHARES**

NONE



## SCHEDULE 4

### SUPPLEMENTAL DEBENTURE

THIS SUPPLEMENTAL DEBENTURE is made the       day of       20[•]

#### AMONG:

- (1) [•] LIMITED (registered number [•]) having its registered office at (1) [•] (the "Chargor"); and
- (2) BANK OF SCOTLAND PLC as trustee, agent and security agent for itself and on behalf of each of the Secured Parties (the "Security Agent").

and is supplemental to the Debenture (as defined below).

#### BACKGROUND

- (A) The Chargor enters into this Deed in connection with the Facilities Agreement.
- (B) It is a condition to the Secured Parties continuing to make available the credit facilities pursuant to the terms of the Facilities Agreement that the Chargor enters into this Deed.
- (C) The Board of Directors of the Chargor is satisfied that the giving of the security contained or provided for in this Deed is in the interests of the Chargor and has passed a resolution to that effect.

NOW THEREFORE IT IS HEREBY AGREED as follows:

#### 1. INTERPRETATION

##### *Definitions*

##### 1.1 In this Supplemental Debenture:

**"Debenture"**: the debenture dated [•] between the Chargor and the Security Agent for and on behalf of the Secured Parties, as supplemented, acceded to and amended from time to time;

**"Facilities Agreement"**: the senior facilities agreement dated [•] 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 1 to the facilities agreement as lenders, (4) Bank of Scotland plc as agent of the Finance Parties and (5) the Security Agent.

**"Mortgaged Property"**: the freehold and leasehold property specified in the Schedule hereto (*Mortgaged Property*) and includes all buildings and fixtures on that property, the proceeds of sale of any part of that property, any licence, agreement for sale or agreement for lease in relation to that property, the benefit of any covenants for title given or entered into by any predecessor in title of the Chargor in respect of that property and any monies paid or payable in respect of those covenants.

##### *Interpretation*

##### 1.2 The provisions set out at clause 1 of the Debenture shall apply equally to this Supplemental Debenture.



1.3 This Supplemental Debenture is a Finance Document and a Security Document.

**2. FIXED SECURITY**

*Mortgage*

2.1 The Chargor charges by way of first legal mortgage all its right title and interest in the Mortgaged Property.

*Fixed Charge*

2.2 To the extent not validly and effectively charged by way of first legal mortgage pursuant to Clause 2.1 (*Mortgage*) above, as security for the payment of the Secured Obligations, the Chargor charges by way of first fixed charge the Mortgaged Property

**3. LAND REGISTRY**

In respect of the Mortgaged Property specified in the Schedule the Chargor consents to a restriction being entered on the Register of the titles of such of the Chargor's Mortgaged Property as is now or in the future registered under the Land Registration Act 2002 in the following form:

"No disposition of the registered estate by the proprietor of the registered estate (other than a lease), or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the charge dated [ ] 2015 in favour of Bank of Scotland plc referred to in the charges register or their conveyancers."

**4. CONTINUATION**

4.1 References in the Debenture to "this Debenture", "this Deed", "hereof", "hereunder" and expressions of similar import shall be deemed to be references to the Debenture as amended by this Deed and to this Deed.

4.2 This Supplemental Debenture is supplemental to the Debenture. On and from the date of this Supplemental Debenture:

(a) the Supplemental Debenture and the Debenture shall be read and construed as one document and in particular the property charged pursuant to Clause 3 of the Debenture and the definition of "Real Property" shall include the Mortgaged Property described in the Schedule hereto; and

(b) the Chargor acknowledges that references to the "Debenture" in any Facilities Agreement is a reference to the Debenture as amended by this Supplemental Debenture.

4.3 Except insofar as supplemented hereby, the Debenture will remain in full force and effect.

**5. GOVERNING LAW**

This Supplemental Debenture and any non-contractual obligations arising from or in connection with it shall be governed by and construed in accordance with English law.

**IN WITNESS WHEREOF** this Supplemental Debenture has been duly executed as a Deed on the date first above written.



**SCHEDULE**  
**MORTGAGED PROPERTY**

[            ]



## SIGNATORIES TO THE SUPPLEMENTAL DEBENTURE

### Chargor

Executed as a deed by )  
**MILLER HOMES LIMITED** )  
acting by ) .....  
in the presence of: ) Director

Name of witness: .....

Signature of witness: .....

Address: .....

.....

Occupation: .....

### Security Agent

Executed as a deed by )  
**BANK OF SCOTLAND PLC** )  
as Security Agent ) .....  
in the presence of this witness: ) Authorised Signatory

Name of witness: .....

Signature of witness: .....

Address: .....

.....

Occupation: .....



EXECUTION PAGE

Chargor

Executed as a deed by  
**MILLER HOMES LIMITED**  
acting by  
in the presence of:

)  
)  
)  
)

Director

Name of witness:

JONATHAN HARDMAN

Signature of witness:

Address:

16 CHARLOTTE SQUARE

EDINBURGH

Occupation:

SOLICITOR

Security Agent

Executed as a deed by  
**BANK OF SCOTLAND PLC**  
as Security Agent  
in the presence of this witness:

)  
)  
)  
)

Authorised Signatory

Name of witness:

FIONA E. HENDERSON

Signature of witness:

Address:

40 GMS CAMERON MCKENNA LLP

20 SALTIRE COURT, EDINBURGH

Occupation:

TRAINEE SOLICITOR