



**Registration of a Charge**

Company name: **MILLER HOMES LIMITED**

Company number: **SC255429**



X8YKR1YA

Received for Electronic Filing: **11/02/2020**

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**Details of Charge**

Date of creation: **31/01/2020**

Charge code: **SC25 5429 0362**

Persons entitled: **WILLIAM JAMES GREY, ALEC GEORGE GREY, ROBERT EDRIC GREY  
AND HAZEL VERONICA STALEY**

Brief description: **6.1 ACRES OF THE NET DEVELOPABLE AREA OF THE ACQUIRED  
PROPERTY (AS DEFINED IN THE CHARGE), BEING THE AREAS SHOWN  
FOR IDENTIFICATION PURPOSES ONLY COLOURED GREEN ON THE  
CHARGE RELEASE PLAN (WHICH IS APPENDED AT SCHEDULE 1 TO  
THE CHARGE).**

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**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:

**BURGES SALMON LLP**



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

Company number: 255429

Charge code: SC25 5429 0362

The Registrar of Companies for Scotland hereby certifies that a charge dated 31st January 2020 and created by MILLER HOMES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 11th February 2020 .

Given at Companies House, Edinburgh on 11th February 2020

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

## **Legal Mortgage**

between

- (1) **Miller Homes Limited**
- (2) **William James Grey, Alec George Grey, Robert Edric Grey and Hazel Veronica Staley**

Dated **31 JANUARY** 2020

**Osborne Clarke LLP**

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This Deed is made on 31 JANUARY 2020

**Between:**

- (1) **MILLER HOMES LIMITED** (incorporated and registered in Scotland under company registration number SC255429), the registered office of which is at Miller House, 2 Lochside View, Edinburgh Park, Edinburgh, EH12 9DH ("**Chargor**"); and
- (2) **WILLIAM JAMES GREY** of Hackett Farm, Hacket Lane, Thornbury, Bristol, BS35 3TY, **ALEC GEORGE GREY** of The Paddocks, Symonds Hall Farm, Bowcott, Wotton-under-Edge, Gloucestershire, GL12 7PT, **ROBERT EDRIC GREY** of Symonds Hall Farm, Bowcott, Wotton-under-Edge, Gloucestershire, GL12 7PT and **HAZEL VERONICA STALEY** of Kington Mead Farm, Kington, Thornbury, Bristol, BS35 1PQ ("**Chargee**").

**Background:**

On or about the date of this deed, the Chargor has acquired the Property from the Chargee and owes certain liabilities to the Chargee under the Agreement.

Under this deed, the Chargor provides security over the Property and certain other assets to the Chargee for its obligations under the Agreement.

**Agreed terms:**

**1. Definitions and interpretation**

**1.1 Definitions**

Terms defined in the Agreement shall, unless otherwise defined in this deed, have the same meaning in this deed. In addition, the following definitions apply in this deed:

**"Acquired Property"** has the definition given to the term "Phase 1" in the Agreement.

**"Affordable Dwelling"** has the meaning given to such term by the Section 106 Agreement.

**"Agreement"** means the sale agreement relating to the Property (and other land) and dated on or about the date of this deed between (1) William James Grey, Alec George Grey and Robert Edric Grey (2) William James Grey, Alec George Grey, Robert Edric Grey and Hazel Veronica Staley (3) the Chargor and (4) Welbeck Strategic Land LLP.

**"Appropriate Authority"** means any statutory undertaker or any statutory public local or other authority or regulatory body or any court of law or government department.

**"Business Day"** means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**"Charged Property"** means all the assets, property and undertaking for the time being of the Chargor, which are, or are intended to be, subject to any Security created by this deed (and references to the Charged Property shall include references to any part of it).

**"Chargee's Solicitors"** means Burges Salmon LLP of One Glass Wharf, Bristol, BS2 0ZX (reference: AF06/36981.6) or such other firm of solicitors as the Chargee may appoint and notify to the Chargor in writing from time to time.

**"Charge Release Plan"** means the plan appearing at Schedule 1 to this deed.

**"Chargor's Solicitors"** means Gowling WLG (UK) Limited of Two Snowhill, Birmingham, B4 6WR (reference: 2678225/AFM/TJE1) or such other firm of solicitors as the Chargor may appoint and notify to the Chargee in writing from time to time.

**"Consent"** means the letter addressed to the Land Registry in the form attached to this deed at Schedule 2.

**"Default Rate"** means 4% above the base rate of National Westminster Bank Plc from time to time.

**"Deferred Payment"** means all present and future monies, obligations and liabilities of the Chargor to the Chargee whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with clause 3.5(d) of the Agreement, together with all interest (including, without limitation, default interest) accruing in respect of those monies, obligations or liabilities.

**"Delegate"** means any person appointed by the Chargee or any Receiver under clause 16 and any person appointed as attorney of the Chargee, Receiver or Delegate.

**"Development"** means the development of the Property in accordance with the Planning Permission.

**"Dwelling"** means a self-contained residential house, flat or other unit of residential accommodation constructed or to be constructed on the Property.

**"Environment"** means the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.

**"Environmental Law"** means all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes in so far as they relate to or apply to the Environment.

**"Environmental Licence"** means any authorisation, permit or licence necessary under Environmental Law in respect of any of the Charged Property.

**"Event of Default"** means each of the events or circumstances set out below:

- (a) the Chargor does not pay on the due date any of the Secured Liabilities at the place and in the currency in which it is expressed to be payable unless:
  - (i) its failure to pay is caused by an administrative or technical error; and
  - (ii) payment is made within five (5) Business Days of its due date;
- (b) the Chargor does not comply with any provision of this deed (other than those referred to in paragraph (a) above and paragraph (c) below) provided that no Event of Default will occur if the failure to comply is, in the reasonable opinion of the Chargee, capable of remedy and is remedied to the reasonable satisfaction of the Chargee within fourteen (14) Business Days of the earlier of (i) the Chargee giving notice to the Chargor and (ii) the Chargor becoming aware of the failure to comply;
- (c) any representation or statement made or deemed to be made by the Chargor in this deed is or proves to have been incorrect or misleading in any material respect when made or deemed to be made;
- (d) the Chargor:
  - (i) is unable or admits inability to pay its debts as they fall due;
  - (ii) is deemed to, or is declared to, be unable to pay its debts under applicable law;

- (iii) suspends or threatens to suspend making payments on any of its debts; or
- (iv) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
- (e) the value of the assets of the Chargor is less than its liabilities (taking into account contingent and prospective liabilities);
- (f) a moratorium is declared in respect of any indebtedness of the Chargor;
- (g) any corporate action, legal proceedings or other procedure or step is taken in relation to:
  - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Chargor;
  - (ii) a composition, compromise, assignment or arrangement with any creditor of the Chargor;
  - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Chargor or any of its assets; or
  - (iv) enforcement of any Security over any assets of the Chargor,
 or any analogous procedure or step is taken in any jurisdiction except for any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within seven (7) days of commencement; or
- (h) any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of the Chargor.

**"Exempt Disposals"** means:

- (a) a disposal of Affordable Dwellings built to Golden Brick to a Registered Provider and/or land transferred for the purpose of the construction of the Affordable Dwellings to a Registered Provider;
- (b) any Works Agreements and/or transfer(s) and/or lease(s) for nil or nominal consideration to an Appropriate Authority of any part or parts of the Property to be used for roads, schools or playing fields to be laid out pursuant to the Planning Permission, cycle ways or footpaths to be maintained at the public expense or to a utility company for any electricity substation, gas governor station, pumping station or similar facility which shall include balancing ponds/lagoons (any of the foregoing being an **"Infrastructure Exempt Disposal"**) and the grant of any easements for no consideration or nominal consideration in connection with the same;
- (c) any deeds of grant of easement required by a statutory body or service supply company in respect of electricity gas water or other statutory services which have been or are to be constructed or installed in or on the development;
- (d) the disposal of any commercial unit or commercial units situated upon the Uncharged Property together with any ancillary rights and easements over and in respect of the Property contained in the instrument giving effect to said disposal;
- (e) the disposal to a bona fide management company managing any land to the extent only that the land so disposed of is required for such management;



- (f) the disposal of any Dwelling or Dwellings (including any Dwellings with care facilities) situated upon the Uncharged Property together with any ancillary rights and easements over and in respect of the Property contained in the instrument giving effect to said disposal.

in each case where such disposals are properly required in order to conduct the Development and to sell Dwellings on the Uncharged Property and provided always that in each case no Event of Default has occurred and has not been remedied or waived to the satisfaction of the Chargee.

**"Golden Brick"** means the construction of an Affordable Dwelling and its foundation to the level of two brick courses above damp proof course level or such other level that would comprise a partially constructed Affordable Dwelling as contemplated by HM Revenue and Customs Notice 708 (Buildings and Construction) dated October 2013.

**"Insurance Policy"** means each contract or policy of insurance effected or maintained by the Chargor from time to time in respect of the Charged Property, together with all monies paid or payable in respect of that policy.

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

**"Planning Permission"** has the meaning given to such term by the Agreement.

**"Private Dwelling"** means any Dwelling that is not an Affordable Dwelling.

Gravel

6.1 acres

**"Property"** means ~~4.1%~~ of the net developable area of the Acquired Property, being the areas shown for identification purposes only coloured green on the Charge Release Plan. within

**"Receiver"** means a receiver or a receiver and manager of any or all of the Charged Property.

**"Registered Provider"** means a registered affordable housing provider as defined in section 80(2)(a) Part 2 of the Housing and Regeneration Act 2008.

**"Release"** means:

- (a) in respect of Exempt Disposals, a copy of the Consent in respect of the specific Exempt Disposal as shall be necessary in order to register the necessary Exempt Disposal at the Land Registry;
- (b) in respect of any transfer which constitutes an Infrastructure Exempt Disposal, a form DS3 or such other form as may be required by the Land Registry to release (when dated) such transfer from the Security created under this deed together with Land Registry Form RX4 required to withdraw the restriction referred to in clause 4.1 in respect of that transfer;
- (c) in respect of the release of the Property pursuant to clause 10 (*Release on full discharge of the Secured Liabilities*), a form DS3 or such other form as may be required by the Land Registry to release (when dated) the Property from the Security created under this deed together with Land Registry Form RX4 required to withdraw the restriction referred to in clause 4.1 (*Registration of legal mortgage at the Land Registry*) in respect of the Property.

**"Section 106 Agreement"** has the meaning given to such term by the Agreement.

**"Secured Liabilities"** means:

- (a) the Deferred Payment; and
- (b) all present and future monies, obligations and liabilities of the Chargor to Chargee, whether actual or contingent and whether owed jointly or severally, as principal or

surety or in any other capacity, under or in connection with this deed (including, without limitation, those arising under clause 27.3(b)), together with all interest (including, without limitation, default interest) accruing in respect of those monies, obligations or liabilities.

**"Security"** means any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.

**"Security Period"** means the period starting on the date of this deed and ending on the date on which the Chargee is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

**"Uncharged Property"** means the Acquired Property but excluding the Property.

**"VAT"** means value added tax or any equivalent tax chargeable in the UK or elsewhere.

**"Works Agreement"** means any agreement with supporting bonds (if required and to be paid by the Chargor) properly associated with the Development under:

- (a) section 38 or section 278 of the Highways Act 1980 or section 111 of the Local Government Act 1972 or similar agreement for the construction, maintenance and adoption of roads and the connection of the same to the public highway or any other works to the public highway;
- (b) section 98 and/or section 201 and/or section 104 and/or section 116 and/or section 185 of the Water Industry Act 1991 or similar agreement relating to the provision, maintenance and adoption of foul or surface water sewers;
- (c) any agreement with a utility provider for the installation of service conduits and for the provision and supply of services including any deeds of easement required by a utility provider;
- (d) any other agreement with a utility provider for the carrying out and/or diversion of works and the maintenance, cleansing and adoption of the same;
- (e) a planning obligation in respect of and affecting the Property pursuant to section 106 of the Town and Country Planning Act 1990 and any variations including any made pursuant to section 73 of the Town and Country Planning Act 1990.

## 1.2 Interpretation

In this deed:

- (a) clause, schedule and paragraph headings shall not affect the interpretation of this deed;
- (b) a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- (c) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (d) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;

- (e) a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this deed shall be binding on, and enure to the benefit of, the parties to this deed and their respective personal representatives, successors, permitted assigns and permitted transferees;
- (f) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (g) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- (h) a reference to **writing** or **written** includes fax but not email;
- (i) an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- (j) a reference to **this deed** (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;
- (k) unless the context otherwise requires, a reference to a clause or Schedule is to a clause or Schedule of this deed;
- (l) any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (m) a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amend** and **amended** shall be construed accordingly);
- (n) a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (o) a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- (p) a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- (q) a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

### 1.3 Clawback

If the Chargee considers that an amount paid by the Chargor in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of the Chargor or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this deed.

### 1.4 Nature of Security over real Property

A reference in this deed to a **charge or mortgage of or over the Property** includes:

- (a) all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) and fixed plant and machinery that are situated on or form part of the Property at any time;

- (b) the proceeds of the sale of any part of the Property and any other monies paid or payable in respect of or in connection with the Property;
- (c) the benefit of any covenants for title given, or entered into, by any predecessor in title of the Chargor in respect of the Property and any monies paid or payable in respect of those covenants; and
- (d) all rights under any licence, agreement for sale or agreement for lease in respect of the Property.

#### **1.5 Law of Property (Miscellaneous Provisions) Act 1989**

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Agreement and of any side letters between any parties in relation to the Agreement are incorporated into this deed.

#### **1.6 Trusts**

If the rule against perpetuities applies to any trust created by this deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

#### **1.7 Schedules**

The schedules form part of this deed and shall have effect as if set out in full in the body of this deed. Any reference to this deed includes the schedules.

#### **2. Covenant to pay**

The Chargor shall, on written demand, pay to the Chargee and discharge the Secured Liabilities when they become due.

#### **3. Grant of Security**

##### **3.1 Legal mortgage and fixed charges**

As a continuing Security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Chargee by way of a first legal mortgage, the Property.

#### **4. Perfection of Security**

##### **4.1 Registration of legal mortgage at the Land Registry**

The Chargor consents to an application being made by or on behalf of the Chargee to the Land Registrar for the following restriction in Form P to be registered against its title to the Property:

"No disposition of the registered estate by the proprietor of the registered estate, 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 31 JANUARY 2020 in favour of each of William James Grey, Alec George Grey, Robert Edric Grey and Hazel Veronica Staley referred to in the charges register or their conveyancer."

##### **4.2 Releases for Exempt Disposals**

- (a) The Chargee will (at no cost to the Chargor) do all such acts and execute and complete all such documents as shall be reasonably necessary to effect the releases of those parts of the Charged Property that are the subject of an Exempt Disposal and/or to permit the registration of any Exempt Disposals.

- (b) The Chargee shall deliver to the Chargor within two Business Days from the date of this deed the Consent dated and signed by the Chargee's Solicitors required to satisfy the Land Registry restriction referred to in clause 4.1 to enable the registration of every Exempt Disposal Provided Always that the Chargor will serve notice on the Chargee on a quarterly basis certifying each and every Exempt Disposal made during that quarter and will on the request of the Chargee provide evidence of each and every (as applicable) Exempt Disposal which is certified as having been made.
- (c) The Chargee agrees (at no cost to the Chargor) to execute Releases for any transfer which constitutes an Infrastructure Exempt Disposal and agrees to deliver the same within 15 Business Days of receipt of request from the Chargor provided that any such request shall include the form of Release required to be executed.
- (d) If the Chargee fails to execute any Release or to complete any relevant Land Registry forms to remove the restriction at clause 4.1 from the Proprietorship Register of the Charged Property in accordance with its obligations in clause 4.2 the Chargee appoints the Chargor its attorney by way of Security to execute where the Chargee fails to do so within the period prescribed and the Chargee shall (at no cost to the Chargor) reissue the power of attorney in favour of the Chargor on the first anniversary of this deed.
- (e) For the avoidance of doubt, no Exempt Disposal may be made if an Event of Default has occurred and has not been remedied or waived to the satisfaction of the Chargee.

#### **4.3 First registration**

If the title to the Property is not registered at the Land Registry, the Chargor shall ensure that no person (other than itself) shall be registered under the Land Registration Act 2002 as the proprietor of all or any part of the Property, without the prior written consent of the Chargee.

#### **4.4 Cautions against first registration and notices**

Whether or not title to the Property is registered at the Land Registry, if any caution against first registration or any notice (whether agreed or unilateral) is registered against the Chargor's title to the Property, the Chargor shall immediately provide the Chargee with full particulars of the circumstances relating to such caution or notice. If such caution or notice was registered to protect a purported interest the creation of which is not permitted under this deed, the Chargor shall immediately, and at its own expense, take such steps as the Chargee may require to ensure that the caution or notice, as applicable, is withdrawn or cancelled.

### **5. Liability of the Chargor**

#### **5.1 Liability not discharged**

The Chargor's liability under this deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

- (a) any Security, guarantee, indemnity, remedy or other right held by, or available to, the Chargee that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
- (b) the Chargee renewing, determining, varying or amending the Agreement or other liabilities or obligations forming part of the Secured Liabilities or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
- (c) any other act or omission that, but for this clause 5.1, might have discharged, or otherwise prejudiced or affected, the liability of the Chargor.

#### **5.2 Immediate recourse**

The Chargor waives any right it may have to require the Chargee to enforce any Security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this deed against the Chargor.

**6. Representations and warranties**

**6.1 Times for making representations and warranties**

The Chargor makes the representations and warranties set out in this clause 6 to the Chargee on the date of this deed and they are each deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition.

**6.2 Ownership of Charged Property**

The Chargor is the sole legal and beneficial owner of the Charged Property and has good and marketable title to the Property.

**6.3 No Security**

The Charged Property is free from any Security other than the Security created by this deed.

**6.4 No adverse claims**

The Chargor has not received, or acknowledged notice of, any adverse claim by any person in respect of the Charged Property or any interest in it.

**6.5 No adverse covenants**

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatever that materially and adversely affect the Charged Property other than any such matters that have been disclosed in writing to the Chargee prior to the date of this deed.

**6.6 No breach of laws**

There is no breach of any law or regulation that materially and adversely affects the Charged Property.

**6.7 No interference in enjoyment**

No facility necessary for the enjoyment and use of the Charged Property is subject to terms entitling any person to terminate or curtail its use.

**6.8 No overriding interests**

Nothing has arisen, has been created or is subsisting that would be an overriding interest in the Property.

**6.9 No prohibitions or breaches**

There is no prohibition on the Chargor assigning its rights in any of the Charged Property referred to in clause 13.10 (*Assignment*) and the entry into of this deed by the Chargor does not and will not constitute a breach of any policy, agreement, document, instrument or obligation binding on the Chargor or its assets.

**6.10 Environmental compliance**

The Chargor has, at all times, complied in all material respects with all applicable Environmental Law and Environmental Licences.

#### **6.11 Avoidance of Security**

No Security expressed to be created under this deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Chargor or otherwise.

#### **6.12 Enforceable Security**

This deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Chargor and is and will continue to be effective Security over all and every part of the Charged Property in accordance with its terms.

### **7. General covenants**

#### **7.1 Negative pledge and disposal restrictions**

The Chargor shall not at any time, except with the prior written consent of the Chargee:

- (a) create, purport to create or permit to subsist any Security on, or in relation to, any Charged Property other than any Security created by this deed;
- (b) subject to clause 4.2, sell, assign, transfer, part with possession of or otherwise dispose of in any manner (or purport to do so) all or any part of, or any interest in, the Charged Property, other than Exempt Disposals; or
- (c) create or grant (or purport to create or grant) any interest in the Charged Property in favour of a third party.

#### **7.2 Preservation of Charged Property**

The Chargor shall not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the Security held by the Chargee or materially diminish the value of any of the Charged Property or the effectiveness of the Security created by this deed.

#### **7.3 Compliance with laws and regulations**

- (a) The Chargor shall not, without the Chargee's prior written consent, use or permit the Charged Property to be used in any way contrary to law.
- (b) The Chargor shall:
  - (i) comply with the requirements of any law or regulation relating to or affecting the Charged Property or the use of it or any part of it;
  - (ii) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Charged Property, the Development or its use or that are necessary to preserve, maintain or renew any Charged Property; and
  - (iii) promptly effect any maintenance, modifications, alterations or repairs to be effected on or in connection with the Charged Property that are required to be made by it under any law or regulation.

#### **7.4 Enforcement of rights**

The Chargor shall use reasonable endeavours to:

- (a) procure the prompt observance and performance by the relevant counterparty to any agreement or arrangement with the Chargor and forming part of the Charged Property of the covenants and other obligations imposed on such counterparty; and



- (b) enforce any rights and institute, continue or defend any proceedings relating to any of the Charged Property that the Chargee may require from time to time, if the Chargee consider that a failure to do so would or might materially diminish the value of any of the Charged Property.

## **7.5 Notice of misrepresentations and breaches**

The Chargor shall, promptly on becoming aware of any of the same, give the Chargee notice in writing of:

- (a) any representation or warranty set out in this deed that is incorrect or misleading in any material respect when made or deemed to be repeated; and
- (b) any breach of any covenant set out in this deed.

## **8. Property covenants**

### **8.1 Notification of damage**

The Chargor shall promptly give notice to the Chargee if the premises or fixtures or fittings forming part of the Property are destroyed or damaged.

### **8.2 Insurance**

- (a) The Chargor shall insure and keep insured the Charged Property against:
  - (i) loss or damage by fire or terrorist acts, including any third party liability arising from such acts;
  - (ii) construction and development risk;
  - (iii) other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Chargor; and
  - (iv) any other risk, perils and contingencies as the Chargee may reasonably require.
- (b) Any such insurance must be with an insurance company or underwriters and must include property owners' public liability and third party liability insurance and be for not less than the replacement value of the relevant Charged Property (meaning in the case of any premises on the Property, the total cost of entirely rebuilding, reinstating or replacing the premises in the event of their being destroyed, together with architects', surveyors', engineers' and other professional fees and charges for shoring or propping up, demolition, site clearance and reinstatement with adequate allowance for inflation).
- (c) The Chargor shall, if requested by the Chargee, produce to the Chargee each policy, certificate or cover note relating to any insurance required by clause 8.2(a).

### **8.3 Insurance premiums**

The Chargor shall:

- (a) promptly pay all premiums in respect of each Insurance Policy and do all other things necessary to keep that policy in full force and effect; and
- (b) (if the Chargee so requires) give to the Chargee copies of the receipts for all premiums and other payments necessary for effecting and keeping up each Insurance Policy.



#### **8.4 No invalidation of insurance**

The Chargor shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any Insurance Policy.

#### **8.5 Proceeds from Insurance Policies**

All monies payable under any Insurance Policy at any time while an Event of Default is continuing shall:

- (a) be paid immediately to the Chargee;
- (b) if they are not paid directly to the Chargee by the insurers, be held, pending such payment, by the Chargor as trustee of the same for the benefit of the Chargee; and
- (c) at the option of the Chargee, be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or in, or towards, discharge or reduction of the Secured Liabilities.

#### **8.6 Leases and licences affecting the Property**

The Chargor shall not, without the prior written consent of the Chargee:

- (a) grant any licence or tenancy affecting the whole or any part of the Property, or exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925 (or agree to grant any such licence or tenancy, or agree to exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925);
- (b) in any other way dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property (or agree to dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property);
- (c) let any person into occupation of or share occupation of the whole or any part of the Property; or
- (d) grant any consent or licence under any lease or licence affecting the Property save for any licences reasonably required pursuant to the Planning Permission.

#### **8.7 No restrictive obligations**

The Chargor shall not, without the prior written consent of the Chargee or otherwise as is proper and necessary to give effect to the Chargor's obligations under the Agreement and/or carry out the Development, enter into any onerous or restrictive obligations affecting the whole or any part of the Property or create or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of the Property save for Exempt Disposals.

#### **8.8 Proprietary rights**

The Chargor shall procure that no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of the Property, without the prior written consent of the Chargee.

#### **8.9 Compliance with and enforcement of covenants**

The Chargor shall:

- (a) observe and perform all covenants, stipulations and conditions to which the Property, or the use of it, is or may be subject and (if the Chargee so requires) produce to the

Chargee evidence sufficient to satisfy the Chargee that those covenants, stipulations and conditions have been observed and performed; and

- (b) diligently enforce all covenants, stipulations and conditions benefiting the Property and shall not (and shall not agree to) waive, release or vary any of the same.

#### **8.10 Notices or claims relating to the Property**

- (a) The Chargor shall:
  - (i) give full particulars to the Chargee of any notice, order, direction, designation, resolution, application, requirement or proposal given or made by any public or local body or authority (a "Notice") that specifically applies to the Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Notice; and
  - (ii) (if the Chargee so requires) immediately, and at the cost of the Chargor, take all reasonable and necessary steps to comply with any Notice, and make, or join with the Chargee in making, any objections or representations in respect of that Notice that the Chargee thinks fit.
- (b) The Chargor shall give full particulars to the Chargee of any claim, notice or other communication served on it in respect of any modification, suspension or revocation of any Environmental Licence or any alleged breach of any Environmental Law, in each case relating to the Property.

#### **8.11 Payment of outgoings**

The Chargor shall pay (or procure payment of the same) when due all charges, rates, taxes, duties, assessments and other outgoings relating to or imposed on the Property or on its occupier.

#### **8.12 Environment**

The Chargor shall in respect of the Property:

- (a) comply in all material respects with all the requirements of Environmental Law; and
- (b) obtain and comply in all material respects with all Environmental Licences.

#### **8.13 Inspection**

The Chargor shall permit the Chargee, any Receiver and any person appointed by either of them to enter on and inspect the Property on reasonable prior notice.

### **9. Works Agreements**

- 9.1 The Chargor will provide a copy of any proposed Works Agreement (to which the Chargee is required to be a party) to the Chargee for approval, such approval not to be unreasonably withheld or delayed, and provided always that:

- (a) the Chargee shall only enter into such Works Agreement as a mortgagee and shall have no liability or obligations under such Works Agreement unless and until it becomes a mortgagee in possession having enforced the provisions of this deed;
- (b) the Chargor agrees to indemnify the Chargee in relation to any charges, costs (including legal and surveyor's costs), expenses or disbursements which are or may be reasonably and properly incurred by the Chargee in connection with such Works Agreement.

- 9.2 The Chargee shall sign and return to the Chargor each Works Agreement within 15 Business Days of the Chargee receiving the engrossment version for signing (subject always to clause 9.1).

**10. Release on full discharge of the Secured Liabilities**

- 10.1 No later than two (2) Business Days before the due date for the payment of the Deferred Payment under the terms of the Agreement, the Chargee shall (at no cost to the Chargor save for the requirement to pay the outstanding Secured Liabilities) execute and send to the Chargee's Solicitors an undated copy of the relevant Release in respect of the Charged Property. The executed Release shall be held by the Chargee's Solicitors strictly to the Chargee's orders until the Chargee or the Chargee's Solicitors (as applicable) have received payment in full of all outstanding Secured Liabilities (including, without limitation, payment of the Deferred Payment in accordance with the terms of the Agreement), at which point the Release shall be dated so as to unconditionally and irrevocably release the Charged Property from the Security created under this deed and the restriction created pursuant to clause 4.1 (*Registration of legal mortgage at the Land Registry*).

- 10.2 For the avoidance of doubt, the provisions of clause 10.1 are subject to clause 27.3 (*Discharge conditional*).

- 10.3 Subject to clause 27.3 (*Discharge conditional*), on the expiry of the Security Period (but not otherwise), the Chargee shall, at the request and cost of the Chargor, take whatever further action is necessary to release the Charged Property from the Security constituted by this deed.

**11. Powers of the Chargee**

**11.1 Power to remedy**

- (a) The Chargee shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Chargor of any of its obligations contained in this deed.
- (b) The Chargor irrevocably authorises the Chargee and its agents to do all things that are necessary or desirable for that purpose.
- (c) Any monies expended by the Chargee in remedying a breach by the Chargor of its obligations contained in this deed shall be reimbursed by the Chargor to the Chargee on a full indemnity basis and shall carry interest in accordance with clause 18.1.
- (d) In remedying any breach in accordance with this clause 11.1, the Chargee, its agents and their respective officers, agents and employees shall be entitled to enter onto the Property and to take any action as the Chargee may reasonably consider necessary or desirable including, without limitation, carrying out any repairs, other works or development.

**11.2 Exercise of rights**

The rights of the Chargee under clause 11.1 are without prejudice to any other rights of the Chargee under this deed. The exercise of any rights of the Chargee under this deed shall not make the Chargee liable to account as a mortgagee in possession.

**11.3 Chargee has Receiver's powers**

To the extent permitted by law, any right, power or discretion conferred by this deed (either expressly or impliedly) or by law on a Receiver may, after the Security constituted by this deed has become enforceable, be exercised by the Chargee in relation to any of the Charged Property whether or not it has taken possession of any Charged Property and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

**11.4 New accounts**

- (a) If the Chargee receives, or is deemed to have received, notice of any subsequent Security or other interest, affecting all or part of the Charged Property, the Chargee may open a new account for the Chargor in the Chargee's books. Without prejudice to the Chargee's right to combine accounts, no money paid to the credit of the Chargor in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.
- (b) If the Chargee does not open a new account immediately on receipt of the notice, or deemed notice, referred to in clause 11.4(a), then, unless the Chargee gives express written notice to the contrary to the Chargor, all payments made by the Chargor to the Chargee shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt or deemed receipt of the relevant notice by the Chargee.

#### **11.5 Indulgence**

The Chargee may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this deed (whether or not any person is jointly liable with the Chargor) in respect of any of the Secured Liabilities or of any other Security for them without prejudice either to this deed or to the liability of the Chargor for the Secured Liabilities.

#### **12. When Security becomes enforceable**

##### **12.1 Acceleration**

On the occurrence of an Event of Default, all the Secured Liabilities shall become immediately due and payable in full by the Chargor, notwithstanding any other term of this deed or the Agreement.

##### **12.2 Security becomes enforceable on Event of Default**

The Security constituted by this deed shall become immediately enforceable if an Event of Default occurs.

##### **12.3 Discretion**

After the Security constituted by this deed has become enforceable, the Chargee may, in its absolute discretion, enforce all or any part of that Security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Charged Property.

#### **13. Enforcement of Security**

##### **13.1 Enforcement powers**

- (a) The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall, as between the Chargee and a purchaser from the Chargee, arise on and be exercisable at any time after the execution of this deed, but the Chargee shall not exercise such power of sale or other powers until the Security constituted by this deed has become enforceable under clause 12.1.
- (b) Section 103 of the LPA 1925 does not apply to the Security constituted by this deed.

##### **13.2 Extension of statutory powers of leasing**

The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Chargee and any Receiver, at any time after the Security constituted by this deed has become enforceable, whether in its own name or in that of the Chargor, to:

- (a) grant a lease or agreement for lease;
- (b) accept surrenders of leases; or
- (c) grant any option in respect of the whole or any part of the Property with whatever rights relating to other parts of it,

whether or not at a premium and containing such covenants on the part of the Chargor and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) as the Chargee or Receiver thinks fit, without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

### **13.3 Redemption of prior Security**

- (a) At any time after the Security constituted by this deed has become enforceable, or after any powers conferred by any Security having priority to this deed shall have become exercisable, the Chargee may:
  - (i) redeem any prior Security over any Charged Property;
  - (ii) procure the transfer of that Security to itself; and
  - (iii) settle and pass the account of the holder of any prior Security (and any accounts so settled and passed shall, in the absence of any manifest error, be conclusive and binding on the Chargor).
- (b) The Chargor shall pay to the Chargee immediately on demand all principal, interest, costs, charges and expenses of, and incidental to, any such redemption or transfer, and such amounts shall be secured by this deed as part of the Secured Liabilities.

### **13.4 Protection of third parties**

No purchaser, mortgagee or other person dealing with the Chargee, any Receiver or any Delegate shall be concerned to enquire:

- (a) whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- (b) whether any power the Chargee, a Receiver or Delegate is purporting to exercise has become exercisable or is being properly exercised; or
- (c) how any money paid to the Chargee, any Receiver or any Delegate is to be applied.

### **13.5 Privileges**

Each Receiver and the Chargee is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.

### **13.6 No liability as mortgagee in possession**

Neither the Chargee, any Receiver nor any Delegate shall be liable, by reason of entering into possession of the Charged Property or for any other reason, to account as mortgagee in possession in respect of all or any of the Charged Property, nor shall any of them be liable for any loss on realisation of, or for any act, default or admission for which a mortgagee in possession might be liable as such.

### **13.7 Relinquishing possession**

If the Chargee, any Receiver or Delegate enters into or takes possession of the Charged Property, it may at any time relinquish possession.

### 13.8 Conclusive discharge to purchasers

The receipt of the Chargee or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Charged Property or in making any acquisition in the exercise of their respective powers, the Chargee, every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it thinks fit.

### 13.9 Chargee's Development Rights Following Enforcement

- (a) At any time after the Security constituted by this deed has become enforceable the Chargee or any Receiver or Delegate may serve upon the Chargor a written notice identifying in detail and with reference to a plan the nature and extent of all temporary and permanent rights and easements reasonably required for the benefit of the Property over the balance of the Acquired Property and/or covenants for the continued use of the Property and its future development ("**Appropriate Reservations**").
- (b) In determining the nature of the Appropriate Reservations regard shall be had to the following intention of the parties:
  - (i) the routes of such easements and rights shall be determined by the Chargee;
  - (ii) proper infrastructure adequate for the future development of the Property is to be taken to the boundary with the Property and where such infrastructure would normally be adopted and maintained by the highway authority or statutory undertakers the same shall be made the subject of agreements for adoption as soon as reasonably possible;
  - (iii) such easements and rights relating to the passage of any services and drainage shall be over an identified route and of an identified width of land reasonably and properly designated by the Chargee and shall, as appropriate, have with them the rights to enter upon the burdened land to connect into install inspect maintain alter adjust and repair the same; and
  - (iv) such easements and rights relating to access (including but without limitation as to roadways, footpaths and cycle ways) shall be over an identified route of an identified width reasonably designated by the Chargee and shall have with them the appropriate rights to enter upon the burdened land to construct maintain and repair the same.
- (c) On receipt of a notice pursuant to paragraph (a) above the Chargor shall promptly enter into all documentation required to grant the Appropriate Reservations ("**Appropriate Reservations Documentation**").

### 13.10 Assignment

After the Security constituted by this deed has become enforceable (except where the Security has become enforceable as a result of events or circumstances falling within limb (d), (e), (f) or (g) of the definition of Event of Default), the Chargee may, in its absolute discretion, call upon the assignment of and the Chargor will immediately and with full title guarantee assign to the Chargee absolutely:

- (a) all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy;
- (b) all its rights in relation to any structural guarantee scheme relating to any Dwelling (including for the purposes of this clause both Affordable Dwellings and/or Private Dwellings) constructed or to be constructed on the Property;

- (c) the benefit of all other contracts, guarantees, appointments and warranties relating to the Charged Property and other documents to which the Chargor is a party or which are in its favour or of which it has the benefit relating to any letting, development, sale, purchase, use or the operation of the Charged Property or otherwise relating to the Charged Property (including, in each case, but without limitation, the right to demand and receive all monies whatever payable to or for its benefit under or arising from any of them, all remedies provided for in any of them or available at law or in equity in relation to any of them, the right to compel performance of any of them and all other rights, interests and benefits whatever accruing to or for its benefit arising from any of them); and
- (d) all licences, consents and authorisations (statutory or otherwise) held or required in connection with the Chargor's business carried on at the Property or the use of any Charged Property, and all rights in connection with them,

to the extent that that relate to the Charged Property.

## **14. Receivers**

### **14.1 Appointment**

At any time after the Security constituted by this deed has become enforceable, or at the request of the Chargor, the Chargee may, without further notice, appoint by way of deed, or otherwise in writing, any one or more person or persons to be a Receiver of all or any part of the Charged Property.

### **14.2 Removal**

The Chargee may, without further notice (subject to section 45 of the Insolvency Act 1986), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have been terminated.

### **14.3 Remuneration**

The Chargee may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925 and the remuneration of the Receiver shall be a debt secured by this deed, to the extent not otherwise discharged.

### **14.4 Power of appointment additional to statutory powers**

The power to appoint a Receiver conferred by this deed shall be in addition to all statutory and other powers of the Chargee under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

### **14.5 Power of appointment exercisable despite prior appointments**

The power to appoint a Receiver (whether conferred by this deed or by statute) shall be, and remain, exercisable by the Chargee despite any prior appointment in respect of all or any part of the Charged Property.

### **14.6 Agent of the Chargor**

Any Receiver appointed by the Chargee under this deed shall be the agent of the Chargor and the Chargor shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of each Receiver shall continue until the Chargor goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Chargee.



## **15. Powers of Receiver**

### **15.1 Powers additional to statutory powers**

- (a) Any Receiver appointed by the Chargee under this deed shall, in addition to the powers conferred on him or her by statute, have the rights, powers and discretions set out in clause 15.2 to clause 15.20.
- (b) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him or her states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.
- (c) Any exercise by a Receiver of any of the powers given by this clause 15 may be on behalf of the Chargor, the directors of the Chargor or himself or herself.

### **15.2 Repair and develop the Property**

A Receiver may undertake or complete any works of repair, alteration, building or development on the Property and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same.

### **15.3 Grant or accept surrenders of leases**

A Receiver may grant, or accept, surrenders of any leases or tenancies affecting the Property on any terms and subject to any conditions that he or she thinks fit.

### **15.4 Employ personnel and advisers**

A Receiver may provide services and employ, or engage, any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on any terms and subject to any conditions that he or she thinks fit. A Receiver may discharge any such person or any such person appointed by the Chargor.

### **15.5 Make and revoke VAT options to tax**

A Receiver may make, exercise or revoke any VAT option to tax in respect of the Charged Property that he or she thinks fit.

### **15.6 Charge for remuneration**

A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by him or her) that the Chargee may prescribe or agree with him or her.

### **15.7 Possession**

A Receiver may take immediate possession of, get in and realise any of the Charged Property.

### **15.8 Manage or reconstruct the Chargor's business**

A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Chargor carried out at the Property.

### **15.9 Dispose of Charged Property**



A Receiver may grant options and licences over all or any part of the Charged Property, grant any other interest or right over, sell, assign or lease (or concur in granting options and licences over all or any part of the Charged Property, granting any other interest or right over, selling, assigning or leasing) all or any of the Charged Property in respect of which he or she is appointed for such consideration and in such manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions that he or she thinks fit. A Receiver may promote, or concur in promoting, a company to purchase the Charged Property to be disposed of by him or her.

**15.10 Sever fixtures and fittings**

A Receiver may sever and sell separately any fixtures or fittings from the Property without the consent of the Chargor.

**15.11 Give valid receipts**

A Receiver may give a valid receipt for all monies and execute all assurances and things that may be proper or desirable for realising any of the Charged Property.

**15.12 Make settlements**

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who claims to be a creditor of the Chargor or relating in any way to any of the Charged Property.

**15.13 Bring legal action**

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Charged Property that he or she thinks fit.

**15.14 Insure**

A Receiver may, if he or she thinks fit, but without prejudice to the indemnity in clause 18.2, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Chargor under this deed.

**15.15 Powers under LPA 1925**

A Receiver may exercise all powers provided for in the LPA 1925 in the same way as if he or she had been duly appointed under the LPA 1925 and exercise all powers provided for an administrative receiver in Schedule 1 to the Insolvency Act 1986.

**15.16 Borrow**

A Receiver may, for any of the purposes authorised by this clause 15, raise money by borrowing from the Chargee (or from any other person) either unsecured or on the Security of all or any of the Charged Property in respect of which he is appointed on any terms that he or she thinks fit (including, if the Chargee consents, terms under which that Security ranks in priority to this deed).

**15.17 Redeem prior Security**

A Receiver may redeem any prior Security and settle and pass the accounts to which the Security relates. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Chargor, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

**15.18 Delegation**

A Receiver may delegate his or her powers in accordance with this deed.

#### **15.19 Absolute beneficial owner**

A Receiver may, in relation to any of the Charged Property, exercise all powers, authorisations and rights he or she would be capable of exercising, and do all those acts and things, as an absolute beneficial owner could exercise or do in the ownership and management of all or any part of the Charged Property.

#### **15.20 Incidental powers**

A Receiver may do any other acts and things that he or she:

- (a) may consider desirable or necessary for realising any of the Charged Property;
- (b) may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law; or
- (c) lawfully may or can do as agent for the Chargor.

### **16. Delegation**

#### **16.1 Delegation**

The Chargee or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this deed (including the power of attorney granted under clause 20.1).

#### **16.2 Terms**

The Chargee and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit.

#### **16.3 Liability**

Neither the Chargee nor any Receiver shall be in any way liable or responsible to the Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

### **17. Application of proceeds**

#### **17.1 Order of application of proceeds**

All monies received or recovered by the Chargee, a Receiver or a Delegate under this deed or in connection with the realisation or enforcement of all or part of the Security constituted by this deed, shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority (but without prejudice to the Chargee's right to recover any shortfall from the Chargor):

- (a) in or towards payment of all costs, liabilities, charges and expenses incurred by or on behalf of the Chargee (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this deed and of all remuneration due to any Receiver under or in connection with this deed;
- (b) in or towards payment of the Secured Liabilities in any order and manner that the Chargee determines; and
- (c) in payment of the surplus (if any) to the Chargor or other person entitled to it.

#### **17.2 Appropriation**

Neither the Chargee, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

### **17.3 Suspense account**

All monies received by the Chargee, a Receiver or a Delegate under this deed (other than sums received under any Insurance Policy that are not going to be applied in or towards discharge of the Secured Liabilities):

- (a) may, at the discretion of the Chargee, Receiver or Delegate, be credited to any suspense or securities realised account;
- (b) shall bear interest, if any, at the rate agreed in writing between the Chargee and the Chargor; and
- (c) may be held in that account for so long as the Chargee, Receiver or Delegate thinks fit.

## **18. Costs and indemnity**

### **18.1 Costs**

The Chargor shall, within five (5) Business Days of written demand, pay to, or reimburse, the Chargee and any Receiver, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) properly incurred by the Chargee, any Receiver or any Delegate in connection with:

- (a) this deed or the Charged Property;
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Chargee's, a Receiver's or a Delegate's rights under this deed; or
- (c) taking proceedings for, or recovering, any of the Secured Liabilities.

together with interest, which shall accrue and be payable from the date on which the relevant cost, charge, expense, tax or liability arose until full discharge of that cost, charge, expense, tax or liability (whether before or after judgment, liquidation, winding-up or administration of the Chargor) at Default Rate.

### **18.2 Indemnity**

- (a) The Chargor shall indemnify the Chargee, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:
  - (i) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this deed or by law in respect of the Charged Property;
  - (ii) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the Security constituted by this deed; or
  - (iii) any default or delay by the Chargor in performing any of its obligations under this deed.

- (b) Any past or present employee or agent may enforce the terms of this clause 18.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

**19. Further assurance**

19.1 The Chargor shall promptly, at its own expense, take whatever action the Chargee or any Receiver may reasonably require for:

- (a) creating, perfecting or protecting the Security created or intended to be created by this deed;
- (b) facilitating the realisation of any of the Charged Property; or
- (c) facilitating the exercise of any right, power, authority or discretion exercisable by the Chargee or any Receiver in respect of any of the Charged Property,

including, without limitation the execution of any mortgage, transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Charged Property (whether to the Chargee or to its nominee) and the giving of any notice, order or direction and the making of any filing or registration which, in any such case, the Chargee may consider necessary or desirable.

**20. Power of attorney**

**20.1 Appointment of attorneys**

By way of Security, the Chargor irrevocably appoints the Chargee, every Receiver and every Delegate separately to be the attorney of the Chargor and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

- (a) the Chargor is required to execute and do under this deed; and/or
- (b) any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this deed or by law on the Chargee, any Receiver or any Delegate; and/or
- (c) are required to enter into any Appropriate Reservations Documentation; and/or
- (d) are required to enter in to any Works Agreement or documentation required pursuant to the Section 106 Agreement or the Planning Permission or any other documentation required for the continued use of the Property or its future development.

**20.2 Ratification of acts of attorneys**

The Chargor ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 20.1.

**21. Assignment and transfer**

**21.1 Assignment by Chargee**

- (a) At any time, with the consent of the Chargor, the Chargee may assign or transfer any or all of its rights and obligations under this deed.
- (b) The Chargee may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Chargor, the Charged Property and this deed that the Chargee considers appropriate.

## **21.2 Assignment by Chargor**

The Chargor may not assign any of its rights, or transfer any of its rights or obligations, under this deed.

## **22. Set-off**

### **22.1 Chargee's right of set-off**

The Chargee may at any time set off any liability of the Chargor to the Chargee against any liability of the Chargee to the Chargor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this deed. If the liabilities to be set off are expressed in different currencies, the Chargee may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Chargee of its rights under this clause 22.1 shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

### **22.2 No obligation to set off**

The Chargee is not obliged to exercise its rights under clause 22.1. If, however, it does exercise those rights it must promptly notify the Chargor of the set-off that has been made.

### **22.3 Exclusion of Chargor's right of set-off**

All payments made by the Chargor to the Chargee under this deed shall be made in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **23. Amendments, waivers and consents**

### **23.1 Amendments**

No amendment of this deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).

### **23.2 Waivers and consents**

- (a) A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- (b) A failure or delay by a party to exercise any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Chargee shall be effective unless it is in writing.

### **23.3 Rights and remedies**

The rights and remedies provided under this deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

## **24. Severance**

If any provision (or part of a provision) of this deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid,

legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this deed.

## **25. Counterparts**

### **25.1 Counterparts**

This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.

## **26. Third party rights**

### **26.1 Third party rights**

- (a) Except as expressly provided elsewhere in this deed, a person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- (b) The rights of the parties to rescind or agree any amendment or waiver under this deed are not subject to the consent of any other person.

## **27. Further provisions**

### **27.1 Independent Security**

The Security constituted by this deed shall be in addition to, and independent of, any other Security or guarantee that the Chargee may hold for any of the Secured Liabilities at any time. No prior Security held by the Chargee over the whole or any part of the Charged Property shall merge in the Security created by this deed.

### **27.2 Continuing Security**

The Security constituted by this deed shall remain in full force and effect as a continuing Security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Chargee discharges this deed in writing.

### **27.3 Discharge conditional**

Any release, discharge or settlement between the Chargor and the Chargee shall be deemed conditional on no payment or Security received by the Chargee in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded under any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

- (a) the Chargee or its nominee may retain this deed and the Security created by or under it, including all certificates and documents relating to the whole or any part of the Charged Property, for any period that the Chargee deems necessary to provide the Chargee with Security against any such avoidance, reduction or order for refund; and
- (b) the Chargee may recover the value or amount of such Security or payment from the Chargor subsequently as if the release, discharge or settlement had not occurred.

### **27.4 Certificates**

A certificate or determination by the Chargee as to any amount for the time being due to it from the Chargor under this deed shall be, in the absence of any manifest error, conclusive evidence of the amount due.

**27.5 Consolidation**

The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this deed.

**28. Notices**

**28.1 Delivery**

Any notice or other communication given to a party under or in connection with this deed shall be:

- (a) in writing;
- (b) delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by fax; and
- (c) sent to:

- (i) the Chargor at:

Miller House  
2 Lochside View  
Edinburgh Park  
Edinburgh  
EH12 9DH

Attention: The Company Secretary

with a copy to the Chargor's Solicitors at:

Two Snowhill  
Birmingham  
B4 6WR

Attention: Timothy Evans and Ashley Mitchell

- (ii) the Chargee at each of their addresses stated at the beginning of this deed with a copy to David James & Partners Ltd, Well House, the Chipping, Wotton-under-Edge, South Gloucestershire GL12 7AD (marked for the attention of Matthew Blaken) and a further copy to the Chargee's Solicitors at:

Burges Salmon LLP  
One Glass Wharf  
Bristol  
BS2 0ZX

Attention: Ailsa Fudge and Matthew Sims (reference: AF06/MS01/36981.6)

or to any other address or fax number as is notified in writing by one party to the other from time to time in accordance with this clause 28.

**28.2 Receipt by Chargor**

Any notice or other communication that the Chargee gives to the Chargor shall be deemed to have been received:

- (a) if delivered by hand, at the time it is left at the relevant address;
- (b) if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and
- (c) if sent by fax, when received in legible form.

A notice or other communication given as described in Clause 28.2(a) or Clause 28.2(c) on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

### **28.3 Receipt by Chargee**

Any notice or other communication given to the Chargee shall be deemed to have been received only on actual receipt.

### **28.4 Service of proceedings**

This Clause 28 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

### **28.5 No notice by email**

A notice or other communication given under or in connection with this deed is not valid if sent by email.

## **29. Governing law and jurisdiction**

### **29.1 Governing law**

This deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

### **29.2 Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation.

### **29.3 Other service**

The Chargor irrevocably consents to any process in any legal action or proceedings under Clause 29.2 being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.



## Schedule 1

### Charge Release Plan



**Legend**

- Legal Charge Extents
- Retained Freehold Parcel

**NORTH**

E	Other area highlighted	27/01/24 01:30
D	Other area highlighted	27/01/24 01:30
C	New simplified area C4 information added	18/01/24 01:30
B	Blue area removed & key added	18/01/24 01:30
A	Drift station removed, new area indicated in wall line with plan	18/01/24 01:30
Rev.	Description	Drawn Date

**miller homes**

Miller Homes (Midlands) Ltd  
 2 Centro Place  
 Pride Park  
 Derby, DE24 8RF

Telephone 0870 336 4400  
 Fax 0870 336 4401  
[www.millerhomes.co.uk](http://www.millerhomes.co.uk)

Project File  
**CLEVE PARK  
 MORTON WAY  
 THORNBURY**

Drawing Title  
**CHARGE PLAN**

Drawn By	Checked By	Designed/Client	Engineer/Check
11/0008A1	LB		
Date: 10/01/18	Date:	Date:	Date:
28 Rev.	Drawn By	Checked By	Engineer/Check
	TH/PH/1		E

Original Sheet Size: A1

*Ian Mordal*

*Mark*

Schedule 2

Consent

TO BE PROVIDED BY CHARGEES'S SOLICITOR AND PRINTED ON LETTER HEADED PAPER

Land Registry [ ] Office

DX [ ]

Dear Sirs

**Registered Proprietor:** *Miller Homes Limited*

**Title Numbers:** *Formerly GR333864 and GR341584 and to be allocated a new title number pursuant to the registration of the Original Transfer*

**Original Transfer:** *Transfer deed dated [ ] and made between (1) William James Grey, Alec George Grey and Robert Edric Grey (2) William James Grey, Alec George Grey, Robert Edric Grey and Hazel Veronica Staley and (3) Miller Homes Limited*

**Property:** *The freehold property known as Cleve Park, Morton Way, Thornbury, Bristol, South Gloucestershire, BS35 3TS and which was transferred to Miller Homes Limited pursuant to the Original Transfer*

We refer to the restriction in respect of clause 4.1 of the legal charge dated [ ] made between (1) Miller Homes Limited and (2) William James Grey, Alec George Grey, Robert Edric Grey and Hazel Veronica Staley (the "Charge").

Under the Charge, the Chargor is permitted to make Exempt Disposals and the Chargees consent to every disposal that is an Exempt Disposal.

We act for William James Grey, Alec George Grey, Robert Edric Grey and Hazel Veronica Staley and we are instructed to give the necessary consent in respect of the Exempt Disposal. Please accept this letter as consent from William James Grey, Alec George Grey, Robert Edric Grey and Hazel Veronica Staley as the Chargee under the Legal Charge that on the provision of a certificate by us confirming that the disposal is an "Exempt Disposal" (as defined in the Charge) and the Exempt Disposal may be registered at the Land Registry against the Title Numbers for the Property.

Yours faithfully

## Signatures

Executed as a Deed )

by Miller Homes Limited )

acting by [name], )

a director,

in the presence of: )

Signature of witness:

Name:

Address:

Occupation:

Director

MOIRA KINNIBURGH  
LEGAL DIRECTOR

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

Signed as a Deed by )

William James Grey )

in the presence of: )

Signature of witness:

Name:

Address:

Occupation:

**Signed as a Deed by** )

Alec George Grey )

in the presence of: )

Signature of witness:

Name:

Address:

Occupation:

**Signed as a Deed by** )

Robert Edric Grey )

in the presence of: )

Signature of witness:

Name:

Address:

Occupation:

**Signed as a Deed by** )

Hazel Veronica Staley )

in the presence of: )

Signature of witness:

Name:

Address:

Occupation: