



**Registration of a Charge**

Company name: **MILLER HOMES LIMITED**

Company number: **SC255429**



X996J08B

Received for Electronic Filing: **13/07/2020**

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**Details of Charge**

Date of creation: **02/07/2020**

Charge code: **SC25 5429 0367**

Persons entitled: **JOHN WILLIAM HOLMES AND CATHERINE LINDA HOLMES**

Brief description: **THE FREEHOLD PROPERTY KNOWN AS PLOTS 17 TO 21 (INCLUSIVE) AND PLOTS 28 TO 32 (INCLUSIVE) AT THE CHARGOR'S RESIDENTIAL DEVELOPMENT SITE "SPINNERS CROFT" ON THE NORTH WEST SIDE OF PLATT LANE, KEYWORTH, COMPRISING PART OF TITLE NUMBER NT171386 REGISTERED AT HM LAND REGISTRY SHOWN EDGED RED ON THE PLAN ANNEXED**

**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 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by:

**NICOLA CLARKE**



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

Company number: 255429

Charge code: SC25 5429 0367

The Registrar of Companies for Scotland hereby certifies that a charge dated 2nd July 2020 and created by MILLER HOMES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 13th July 2020 .

Given at Companies House, Edinburgh on 14th July 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

Private & Confidential

Dated 2 July 2020

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**MILLER HOMES LIMITED**

**(1)**

**AND**

**JOHN WILLIAM HOLMES AND CATHERINE LINDA HOLMES**

**(2)**

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**Legal Charge**

**in relation to land on the north west side of  
Platt Lane Keyworth**

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## CONTENTS

Clause	Heading	Page
1	DEFINITIONS AND INTERPRETATION .....	1
2	COVENANT TO PAY .....	7
3	SECURITY .....	7
4	CHARGOR'S COVENANTS .....	8
5	CHARGEES COVENANTS .....	8
6	RESTRICTION ON DEALINGS .....	8
7	RIGHTS OF ENFORCEMENT .....	9
8	CHARGEES POWERS AND RIGHTS .....	11
9	RELEASE AND STATUTORY AGREEMENTS .....	11
10	LIABILITY .....	12
11	LAW OF PROPERTY (MISCELLANEOUS PROVISIONS) ACT 1989 .....	13
12	INDEPENDENT SECURITY .....	13
13	POWER OF ATTORNEY .....	13
14	GENERAL PROVISIONS .....	13
SCHEDULE 1	DESCRIPTION OF THE PROPERTY .....	16
SCHEDULE 2	CHARGOR'S COVENANTS .....	17
SCHEDULE 3	EVENTS OF DEFAULT .....	18
SCHEDULE 4	CHARGEES POWERS .....	19
SCHEDULE 5	EXISTING LEGAL CHARGE .....	22

THIS LEGAL CHARGE by way of deed is made the

2

day of July 2020

**BETWEEN:**

- (1) **MILLER HOMES LIMITED** (Company Number: SC255429) whose registered office is at Miller House, 2 Lochside View, Edinburgh Park, Edinburgh EH12 9DH (the "**Chargor**")
- (2) **JOHN WILLIAM HOLMES AND CATHERINE LINDA HOLMES** of Highfield House, Park Road, Plumtree Park, Keyworth NG12 5LX (the "**Chargee**")

**BACKGROUND**

- (A) The Chargor is the registered proprietor of the Property.
- (B) Under the Agreement referred to below the Chargor has agreed to pay certain payments to the Chargee subject to the terms of the Agreement.

**OPERATIVE PROVISIONS**

**1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

The following definitions shall apply:

<b>Act</b>	the Law of Property Act 1925 (as amended);
<b>Affordable Dwelling</b>	<b>Housing</b> a Dwelling subject to restrictions in respect of occupiers or tenure or rent or carrying any subsidy for land or building cost and required pursuant to any planning permission and/or planning agreement and " <b>Affordable Housing Dwellings</b> " shall be construed accordingly;
<b>Agreement</b>	a sale agreement made between (1) the Chargee and (2) the Chargor dated 17 September 2019 as varied by a deed of variation dated the same date as this Charge;

<b>Delegate</b>	any person appointed by the Chargee or any Receiver and any person appointed as attorney of the Chargee, Receiver or Delegate;
<b>Dispose of</b>	bears the meaning given to it under Section 205(1) Law of Property Act 1925 in respect of the whole or any part of the Property and <b>disposition</b> and <b>Disposal</b> shall be interpreted accordingly;
<b>Dwelling</b>	a house or bungalow (in each case detached, semi-detached or terraced), apartment or flat, any flat above garage(s), maisonette, cottage or other dwelling constructed or to be constructed on the Property in accordance with the Planning Permission together with its curtilage, any associated garage, parking space, car port and the like (whether separate from the main dwelling or not) and " <b>Dwellings</b> " shall be construed accordingly;
<b>Event of Default</b>	the event specified in Schedule 3;
<b>Existing Legal Charge</b>	a legal charge dated 2 October 2019 and varied by a deed of variation dated the same date as this Charge appended to this Charge at Schedule 5;
<b>Market Dwelling</b>	a Dwelling other than an Affordable Housing Dwelling and " <b>Market Dwellings</b> " shall be construed accordingly;
<b>Permitted Disposition</b>	any of the following: <ul style="list-style-type: none"> <li>(a) the Disposal dedication or adoption of any part of the Property to or in favour of any statutory undertaking, utility company, local authority or similar body for the provision and adoption of sewers, Service Media or other infrastructure including for the avoidance of doubt any easement granted to a Relevant Authority in connection with any works in respect of the Property or as otherwise contemplated in the Planning Agreement;</li> </ul>

and/or

- (b) the Disposal dedication or adoption of any part of the Property and/or the grant of rights or easements to the highway or other competent authority for roads, footpaths, cycleways (together with ancillary area and rights) or other highway works in relation to the adoption of such roads, footpaths, cycleways (together with ancillary areas and rights) or other highway works including any agreement made under Sections 38 or 278 of the Highways Act 1980; and/or
- (c) the Disposal of any part of the Property which is required to comply with the requirements of a Statutory Agreement; and/or
- (d) the Disposal of any part of the Property as common parts, open space, amenity land or similar to the local authority, a management company or similar or the Disposal of land intended for use as an electricity substation, transformer chamber, gas governor, pumping station or similar infrastructures; and/or
- (e) the grant of easements over any part of the Property as part of the development of the Property including the grant of easements in connection with a Disposal of any Dwelling

PROVIDED THAT any such disposals are in accordance with the Planning Permission.

#### **Planning Acts**

the Town and Country Planning Act 1990 the Planning (Listed Buildings and Conservation Areas) Act 1990 the Planning (Hazardous Substances) Act 1990 the Planning (Consequential Provisions) Act 1990 and the Planning and Compensation Act 1991 and all orders regulations and instruments relating to the use and/or occupation of the



	Property;
<b>Planning Agreement</b>	the agreement entered into pursuant to section 106 of the Town and Country Planning Act 1990 dated 29 July 2019 and made between (1) the Chargee, (2) the Chargor, and Rushcliffe Borough Council (3) and as varied or further amended from time to time;
<b>Planning Permission</b>	planning permission reference 18/02412/FUL;
<b>Property</b>	the land described in Schedule 1;
<b>Receiver</b>	any one or more receiver or manager or receiver and manager appointed by the Chargee pursuant to this Charge (whether sole, joint and/or several including any substitute);
<b>Relevant Authority</b>	the local planning authority local and county highway authorities town and parish councils drainage gas water electricity cable television and telecommunications companies and any other authority utility company body corporation or organisation concerned with the grant of the Planning Permission or the control of development or the control of pollution or the adoption of the Roadways and sewers and open space or the installation of Service Media and the provision of Services and the dispersal or disposal of surface water;
<b>Roadways</b>	roads, cycleways and/or footpaths including (without limitation) carriageways, roundabouts, junctions, footways, visibility splays, verges, landscaping and/or street furniture and/or any other ancillary and/or associated works to be constructed on the Property (but excluding shared access areas which are not intended to be made available for public use);
<b>Secured Sum</b>	the sum secured pursuant to the Existing Legal Charge;

<b>Security</b>	any mortgage, fixed charge, pledge, hypothecation, lien, assignment by way of security or other security agreement, contract, interest or encumbrance whatsoever securing any obligation of any person or any other agreement or arrangement having a similar effect (for the avoidance of doubt, this excludes any floating charge);
<b>Security Period</b>	the period commencing on the date of this Charge and ending on the date upon which the Secured Sum has been paid in full;
<b>Service Media</b>	includes all drains, pipes, wires, cables, conducting media and apparatus for surface and foul water drainage gas, electricity, water, electronic transmissions and similar services now or in the future constructed on the Property;
<b>Services</b>	foul and surface water drainage, water, gas, electricity and telecommunications services;
<b>Statutory Agreement</b>	an agreement, obligation or undertaking to be made pursuant to all or any of the following:  Section 106 Town and Country Planning Act 1990, Section 38 and/or Section 278 Highways Act 1980, Section 104 Water Industry Act 1991, Section 33 Local Government (miscellaneous Provisions) Act 1982 or pursuant to any other statutory enactment or derivative legislation or as may be required by a local authority, the local highway authority or any service undertaker;
<b>VAT</b>	value added tax or any equivalent tax chargeable in the UK or elsewhere;
<b>Working Days</b>	has the meaning given to it in the Agreement.

- 1.2 The clause, paragraph and schedule headings in this Charge are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision to which they refer.

- 1.3 Unless the contrary intention appears reference:
- (a) to numbered clauses and schedules are references to the relevant clause in or Schedule to this Charge; and
  - (b) to a numbered paragraph in any Schedule are references to the relevant paragraph in that Schedule.
- 1.4 Words in this Charge denoting the singular include the plural meaning and vice versa.
- 1.5 Words in this Charge importing one gender include the other genders and may be used interchangeably and words denoting natural persons where the context allows include corporations and vice versa.
- 1.6 Where a party to this Charge comprises more than one individual the obligations and covenants of that party shall be several.
- 1.7 Reference to a party shall include that party's successors, permitted assigns and permitted transferees and this Charge shall be binding on, and enure to the benefit of, the parties to this Charge and their respective personal representatives, successors, permitted assigns and permitted transferees.
- 1.8 A reference to asset or assets includes present and future properties, undertakings, revenues, rights and benefits of every description.
- 1.9 A reference to an authorisation includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution.
- 1.10 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.
- 1.11 A reference to a statute, statutory provision or statutory instrument is a reference to it as amended, extended or re-enacted from time to time. Reference in this Charge to any statutes, statutory provision or statutory instruments include and refer to any statute, statutory provision or statutory instrument amending, consolidating or replacing them respectively from time to

time and for the time being in force and references to a statute or statutory provision include statutory instruments, regulations and other subordinate legislation made pursuant to it.

- 1.12 A reference to this Charge (or any provision of it) or to any other agreement or document referred to in this Charge is a reference to this Charge, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this Charge) from time to time.
- 1.13 A reference to an amendment includes a novation, re-enactment, supplement or variation (and amend and amended shall be construed accordingly).
- 1.14 Any obligation of the Chargor to do something shall include an obligation to procure that it is done and any obligation not to do something shall include an obligation not to perform, suffer or allow it to be done.
- 1.15 The term "person" includes individuals, firms, companies, corporations, bodies, organizations, partnerships, unincorporated bodies of persons, governments, states and agencies of a state, associations, trusts, joint ventures and consortiums (in each case whether or not having separate legal personality).
- 1.16 An Event of Default is "continuing" if it has not been remedied or waived.
- 1.17 The terms "include", "including" and "in particular" or any similar expression shall be construed as not limiting any general words and expressions in connection with which it is used.

## **2 COVENANT TO PAY**

The Chargor covenants with the Chargee to pay the Secured Sum on or before the dates set out in clause 2 of the Existing Legal Charge.

## **3 SECURITY**

- 3.1 As continuing security for the payment and discharge of the Secured Sum, the Chargor with full title guarantee charges to the Chargee by way of first legal mortgage the Property together with any other obligations on the Chargor referred to in the Agreement.

**PROVIDED THAT** this Charge shall not preclude the Chargor from entering into any Permitted Disposition and it is acknowledged and agreed that subject as referred to in this clause such

works, easements, rights, transfers and demises and the terms of any such Statutory Agreement and the performance of it shall be permitted by this Charge.

- 3.2 Section 103 of the Act shall not apply to this Charge or the security constituted by this Charge.

#### **4 CHARGOR'S COVENANTS**

The Chargor covenants with the Chargee in the manner set out in Schedule 2.

#### **5 CHARGEES COVENANTS**

The Chargee consents to any Permitted Disposition.

#### **6 RESTRICTION ON DEALINGS**

- 6.1 Other than by way of a Permitted Disposition the Chargor may not and covenants that it will not at any time without the prior written consent of the Chargee:

- (a) create or attempt to create or purport to create or suffer or permit to subsist any Security over or in relation to the Property (to the extent it is then subject to the Security created by this Charge) during the Security Period; or
- (b) contract in relation to, sell, assign, transfer, create or grant any legal or equitable estate or interest in, create or allow to exist any trust in respect of the Property notwithstanding Section 99 of the Act not to grant any lease, tenancy or licence or part with possession and occupation or in any other way dispose of the Property (or purport to or agree to do any of the foregoing) while the same remains subject to charge created by this Charge save in accordance with the terms of the Agreement and this Charge PROVIDED THAT this shall not prevent the Chargor from contracting to sell, assign, transfer, create or grant any legal or equitable estate or interest in, create or allow to exist any trust in respect of, or grant any lease, tenancy or licence or part with possession and occupation or in any other way dispose of any Dwelling or Dwellings where such contract or other disposition (as aforesaid) does not permit the sale to be subject to this Charge.

- 6.2 The parties to this Charge hereby apply to the Chief Land Registrar for a restriction in Standard Form NN to be registered against the title to the Property at the Land Registry to the effect that:

*"No disposition 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 John William Holmes and Catherine Linda Holmes of Highfield House, Park Road, Plumtree Park, Keyworth NG12 5LX or their conveyancer or a certificate signed by a conveyancer that the provisions of clause 6.1 of a legal charge dated <sup>2 July 2020</sup> [ ] made between (1) Miller Homes Limited, and (2) John William Holmes and Catherine Linda Holmes have been complied with or do not apply to the disposition"*

## **7 RIGHTS OF ENFORCEMENT**

- 7.1 The whole of the Secured Sum shall become due (including within the meaning of Section 101 of the Act) immediately following demand after the occurrence of an Event of Default that is continuing and in addition to all other protection afforded by statute every purchaser (as defined by section 205 of the Act) or other party dealing with the Chargee or the Receiver shall be entitled to assume that the power of sale and other powers conferred by section 101 of the Act (as varied or extended by this Charge) arose on and are exercisable at any time after the execution of this Charge.
- 7.2 No purchaser, mortgagee or other person dealing with the Chargee, any Receiver or Delegate shall be concerned to enquire:
- (a) whether any of the Secured Sum 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 properly exercisable; or
  - (c) how any money paid to the Chargee, any Receiver or any Delegate is to be applied.
- 7.3 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 the Property or in making any acquisition in the exercise of their respective powers, the Chargee, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it thinks fit.
- 7.4 The enforcement powers of the Chargee (in addition to the powers from time to time conferred by the Act or any other statute or otherwise under the law in force from time to time) shall be immediately exercisable upon and following demand after the occurrence of an Event of

Default and shall be as follows in each case without becoming liable as mortgagee in possession:

- (a) for the Chargee itself to exercise all or any of the powers and rights specified in this Charge (including but not limited to the powers and rights specified in Schedule 4) and in addition all statutory and other powers and rights as the Chargee shall, acting reasonably, think fit, after it has taken possession of the Property;
- (b) to appoint a Receiver or any number of Receivers (by way of deed or otherwise in writing) of the Property (and to remove and substitute any such Receiver as and when the Chargee shall think fit) with all the powers and rights in law or specified in this Charge (including but not limited to the powers and rights specified in Schedule 4) which the receiver may exercise either in its own name or in the name of the Chargor of the directors of the Chargor after it has taken possession of the Property.
- (c) so far as the law allows the Receiver shall be the agent of the Chargor who shall be liable for his acts, defaults, and remuneration but the Chargee shall be entitled to agree such reasonable fees and expenses of and the mode of payment to the Receiver and the remuneration of the 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 Chargor;
- (d) the powers conferred on mortgagees or receivers by the Act shall apply to any Receiver appointed under this Charge as if such powers were incorporated in this Charge except in so far as they are expressly or impliedly excluded and where there is any ambiguity of conflict between the powers contained in the Act and those contained in this Charge the terms of this Charge shall prevail.

7.5 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 Charge including the power of attorney granted under this Charge. The Chargee and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit.

7.6 All monies received by the Chargee, a Receiver or a Delegate shall be applied in the order determined by the Chargee. 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 in any particular order between any of the Secured Sums.

## **8 CHARGEES' POWERS AND RIGHTS**

- 8.1 At any time after this security has become enforceable the Chargee shall have all statutory and other powers and rights and in addition (and not substitution) the powers and rights specified in clause 7 and Schedule 4 and may exercise all rights and powers in the name of the Chargor and at the times and in such manner and on such terms as the person exercising them shall in its sole absolute discretion consider appropriate.
- 8.2 The Chargee and each Receiver is entitled to all the rights, powers, privileges and immunities conferred by the Act on mortgagees and receivers.

## **9 RELEASE AND STATUTORY AGREEMENTS**

- 9.1 The Chargee shall, at the reasonable request and cost of the Chargor, duly discharge from the security constituted by this Charge any part of the Property:

(a) subject to a Permitted Disposition;

and shall within 10 Working Days of such request provide all such properly executed release documentation (including, for the avoidance of doubt, a Land Registry Form DS3, DS1 and/or letter of consent) as may reasonably be required by the Chargor to give effect to the provisions of this clause.

- 9.2 On the expiry of the Security Period (and for the avoidance of doubt, provided that the Secured Sum has been paid in full to the Chargee), the Chargee shall, at the reasonable request of the Chargor, take whatever action is necessary to release the Property from the security constituted by this Charge and shall promptly following any such request:

(a) provide all such properly executed release documentation (including, for the avoidance of doubt, Land Registry Form DS1) as may reasonably be required by the Chargor to give effect to the provisions of this clause; and

(b) discharge all registrations of this Charge at Companies House.



9.3 The Chargee covenants with the Chargor that if requested by the Chargor it will as soon as reasonably possible upon receipt of a written request and upon payment of its reasonable and proper legal fees enter into any Statutory Agreement in relation to the Property, in its capacity as Chargee only in order to consent to and acknowledge the terms thereof.

9.4 The Chargee, by way of security, irrevocably appoints the Chargor as its attorney and in the name of and on behalf of each Chargee and as the act and deed of each Chargee or otherwise to sign and deliver and complete and otherwise perfect any deed assurance agreement instrument or act which may be required to be given to the Chargor by the Chargee in accordance with this clause 9 where it fails to deliver the same to the Chargor within 5 Working Days of being required to do so and this power of attorney is given as security pursuant to the Powers of Attorney Act 1971. The Chargee ratifies and confirms and agrees to ratify and confirm whatever attorney appointed under this clause properly does or purports to do in the exercise of all or any of the powers authorities and discretions granted or referred to in this clause.

## **10 LIABILITY**

10.1 The Chargor's liability under this Charge in respect of any of the Secured Sum 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 increasing any 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, might have discharged, or otherwise prejudiced or affected, the liability of the Chargor.

10.2 The Chargor waives any right it may have to require the Chargee to enforce any guarantee, security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this Charge:

**11 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 the Existing Legal Charge are incorporated into this deed.

**12 INDEPENDENT SECURITY**

The security constituted by this Charge shall be in addition to, and independent of, any other security or guarantee that the Chargee may hold for any of the Secured Sum at any time.

**13 POWER OF ATTORNEY**

13.1 Following the occurrence of an Event of Default that is continuing, 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 the Chargor is required to execute and do under this Charge, where the Chargor has failed to do any such actions following receipt of reasonable notice from the Chargee.

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

**14 GENERAL PROVISIONS**

14.1 Neither the whole or any part of the Secured Sum and/or this Charge shall be modified, released, waived or otherwise affected in any way by any grant of time, indulgence, modification, release, variation or waiver granted or allowed to or agreed with the Chargor or any other person or otherwise.

14.2 A waiver of any right or remedy under this Charge or by law by the Chargee, or any consent given under this Charge by the Chargee, is only effective if given in writing 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 Chargee from subsequently relying on the relevant provision.

14.3 The Chargee shall be able to assign or transfer any of their rights or benefits under this Deed provided that:

- (a) the Chargee assigns their rights and benefits under the Existing Legal Charge;
- (b) the Chargee assigns the benefit of his right to the receipt of payments payable by the Chargor pursuant to clause 3.3(e) of the Agreement; and
- (c) the assignee or transferee executes and delivers to the Chargor a deed in which the assignee or transferee agrees to be bound by the terms of this Deed.

- 14.4 A failure or delay by the Chargee to exercise any right or remedy provided under this Charge 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 Charge. No single or partial exercise of any right or remedy provided under this Charge or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this Charge by the Chargee shall be effective unless it is in writing.
- 14.5 The rights and remedies provided under this Charge to the Chargee are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law
- 14.6 If any provision (or part of a provision) of this Charge 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 Charge.
- 14.7 The restriction on the right of consolidation contained in Section 93 of the Act shall not apply to this Charge.
- 14.8 Any written certificate or determination given by the Chargee pursuant or relating to this Charge shall be conclusive and binding as to the relevant items save in the case of manifest error or omission.
- 14.9 The unenforceability for whatever reason of any provision of this Charge shall in no way affect the enforceability of each and every other provision.
- 14.10 This security shall not be considered as satisfied or discharged by any intermediate payment, repayment or discharge of any part only of the Secured Sum and shall constitute and be a continuing security for the Chargee notwithstanding any settlement of account or other matter

or thing and shall be in addition to and shall not operate so as in any way to limit or affect any other security which the Chargee may hold now or at any time hold for or in respect of the Secured Sum.

14.11 Any notice or other communication to be given or served under or in connection with this Charge shall be validly served if in writing and delivered by hand or by pre-paid first-class post or other next Working Day delivery service to:

(a) the Chargee at Highfield House, Park Road, Plumtree Park, Keyworth, Nottingham, NG12 5LX; and

(b) the Chargor at its registered address addressed to the Company Secretary,

or to any other address as is notified in writing by one party to the other from time to time.

14.12 A notice or other communication given under or in connection with this Charge is not valid if sent by email. A reference to writing or written does not include email.

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

14.14 Except as expressly provided elsewhere in this Charge, a person who is not a party to this Charge 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 Charge. This does not affect any right or remedy of a third party which exists, or is available, apart from the Contracts (Rights of Third Parties) Act 1999. The rights of the parties to agree any amendment or waiver under this Charge are not subject to the consent of any other person.

14.15 This Charge 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.

14.16 This Charge 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 English law and the parties submit to the exclusive jurisdiction of the English courts.

**DELIVERED** as a **DEED** on the date of this document

## **SCHEDULE 1**

### **Description of the Property**

The freehold property known as Plots 17 to 21 (inclusive) and Plots 28 to 32 (inclusive) at the Chargor's residential development site "Spinners Croft" on the north west side of Platt Lane Keyworth comprising part of title number NT171386 registered at HM Land Registry shown edged red on the plan annexed hereto ("**Plan**").

## **SCHEDULE 2**

### **Chargor's Covenants**

- 1 Other than a Permitted Disposition, that no sale, assignment, transfer, parting with possession, lease, licence or other disposal of whatever nature or realisation of the whole or any part of or any interest in the Property nor purporting to do so nor any agreement to effect nor purport to effect all or any of them shall be entered into otherwise than as permitted in accordance with the terms of this Charge.
- 2 Promptly to advise the Chargee in writing on becoming aware of the occurrence of any Event of Default.
- 3 In the event of any sale or transfer (including a transfer to the Chargee) of the Property or any part thereof by the Chargee or any Receiver in exercise of its powers of sale pursuant to the terms of this Deed to grant (or except and reserve (as appropriate)) appropriate reasonable and necessary rights for the proper use and enjoyment of the Property or any part including but not limited to rights of access, right of services, rights to maintain and rights of support over the remainder of the land comprised in title number NT171386 (insofar as that remains in the ownership of the Chargor from time to time) for the benefit of the Property or any part.

### **SCHEDULE 3**

#### **Events of Default**

Any failure by the Chargor to pay the relevant instalment of the Secured Sum in full within 5 Working Days of its due date in accordance with the Existing Legal Charge.

## **SCHEDULE 4**

### **Chargee's and Receiver's Powers**

- 1 To manage and conduct the business of the Chargor in respect of the Property in all respects as if it was and remained throughout its absolute and beneficial owner and for, such purpose to enter upon and take possession, hold, get in, collect or otherwise assume control in respect of all or any of the Property.
- 2 To enter upon and take possession of the Property and undertake any works of demolition, building, reconstruction, improvement, repair or decoration on it including the commencement, carrying out and completion of any alteration, building or development utilizing for any such purpose any chattels, plant, machinery and materials then on or in the Property or otherwise attributable to any such works or which the Chargor is otherwise entitled to use and any plans, drawings and specifications of the Chargor or otherwise.
- 3 To pay any rent or other outgoings and payments charged on or otherwise relating to the Property or their ownership, occupation or use.
- 4 To sell, assign, convert into money or otherwise realize, dispose of and deal with and transfer title to the Property and realize assets by surrender of a leasehold estate upon such terms including the amount and nature of the consideration and in such manner as the Chargee shall think fit and on terms which bind any subsequent mortgagee.
- 5 To sever or remove or permit to be severed or removed and sell separately any fixtures or fittings.
- 6 To promote, or concur in promoting, a company to purchase the Property to be disposed of.
- 7 To grant or create any lease, tenancy or licence or enter into an agreement to do so or any other agreement or contract relating to the disposal of or other dealing with the Property at any and generally on such terms as it shall agree and to accept the surrender of any lease, tenancy, licence or other such agreement or contract upon such terms as it shall think fit and on terms which bind any subsequent mortgagee
- 8 To compromise any claim or claims of, against, arising out of or otherwise relating to the Property.



- 9 To effect insurances and obtain and/or enter into bonds, covenants, commitments, engagements, guarantees and indemnities or other like matters in any way relating to the Property from time to time and to make all requisite payments to effect, maintain or satisfy them.
- 10 To give receipts and releases for any sums received and execute all assurances and things that may be proper or desirable for realising any of the Property.
- 11 To obtain and maintain all necessary planning permissions, development consents, building regulation approvals and other permissions, consents or licences as may reasonably be required for any development or use of the Property.
- 12 To cancel or otherwise determine any agreements or contracts in any way relating to the Property.
- 13 To commence, carry out and complete any acts and matters, make demands, commence, prosecute, enforce and abandon all actions, suits and proceedings, defend all actions, suits and proceedings, execute such contracts, deeds or other documents and otherwise deal for the preservation, improvement, enforcement or realization of all or any of the security created by this Charge in all respects as if it were and remained at all times the sole and absolute beneficial owner of the Property.
- 14 To provide services and employ or engage any professional advisers including: solicitors, architects, surveyors, quantity surveyors, estate agents, contractors, workmen, stockbrokers and others and purchase or otherwise acquire any property, materials and other matters.
- 15 To make, exercise or revoke any VAT option to tax that it thinks fit.
- 16 To, in the case of a Receiver, charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by the Receiver) that the Chargee may prescribe or agree with the Receiver.
- 17 To make any arrangement, settlement or compromise that it may think expedient.
- 18 To, if it thinks fit, but without prejudice to the indemnities in this Charge, 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 Charge.

- 19 To exercise all powers, authorisations and rights it 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 the Property.
- 20 To exercise all powers provided for in the Act in the same way as if it had been duly appointed under the Act and exercise all powers provided for an administrative receiver in Schedule 1 to the Insolvency Act 1986.
- 21 To do any other acts and things that it may consider desirable or necessary for realising any of the Property, may consider incidental or conducive to any of the rights or powers conferred on it under or by virtue of this Charge or by law or lawfully may or can do as agent for the Chargee.
- 22 To delegate its powers.

**SCHEDULE 5**

**Existing Legal Charge**

Private & Confidential

Dated 2nd October 2019

MILLER HOMES LIMITED

(1)

AND

JOHN WILLIAM HOLMES AND CATHERINE LINDA HOLMES

(2)

Legal Charge

In relation to land on north west side of Platt  
Lane Keyworth

We hereby certify that this is a true copy of the  
original document.

  
Gowling WLG (UK) LLP

Dated 2/10/19



GOWLING WLG

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## CONTENTS

Clause	Heading	Page
1	DEFINITIONS AND INTERPRETATION .....	1
2	COVENANT TO PAY .....	7
3	SECURITY .....	7
4	CHARGOR'S COVENANTS .....	8
5	CHARGEES COVENANTS .....	8
6	RESTRICTION ON DEALINGS .....	8
7	RIGHTS OF ENFORCEMENT .....	9
8	CHARGEES POWERS AND RIGHTS .....	11
9	RELEASE AND STATUTORY AGREEMENTS .....	11
10	LIABILITY .....	12
11	LAW OF PROPERTY (MISCELLANEOUS PROVISIONS) ACT 1989 .....	12
12	INDEPENDENT SECURITY .....	13
13	POWER OF ATTORNEY .....	13
14	GENERAL PROVISIONS .....	13
SCHEDULE 1	DESCRIPTION OF THE PROPERTY .....	16
SCHEDULE 2	CHARGOR'S COVENANTS .....	17
SCHEDULE 3	EVENTS OF DEFAULT .....	18
SCHEDULE 4	CHARGEES POWERS .....	19

THIS LEGAL CHARGE by way of deed is made the *2nd* day of *October* 2019

**BETWEEN:**

- (1) **MILLER HOMES LIMITED** (Company Number: SC255429) whose registered office is at Miller House, 2 Lochside View, Edinburgh Park, Edinburgh EH12 9D (the "Chargor")
- (2) **JOHN WILLIAM HOLMES AND CATHERINE LINDA HOLMES** of Highfield House, Park Road, Plumtree Park, Keyworth NG12 5LX (the "Chargee")

**BACKGROUND**

- (A) The Chargor is entitled to be registered as proprietor of the Property.
- (B) Under the Agreement referred to below the Chargor has agreed to pay certain payments to the Chargee subject to the terms of the Agreement.

**OPERATIVE PROVISIONS**

**1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

The following definitions shall apply:

<b>Act</b>	the Law of Property Act 1925 (as amended);
<b>Affordable Housing Dwelling</b>	a Dwelling subject to restrictions in respect of occupiers or tenure or rent or carrying any subsidy for land or building cost and required pursuant to any planning permission and/or planning agreement and "Affordable Housing Dwellings" shall be construed accordingly;
<b>Agreement</b>	an sale agreement made between (1) the Chargee and (2) the Chargor dated <i>17 September</i> 2019;

<b>Completion Date</b>	as defined in the Agreement.
<b>Delegate</b>	any person appointed by the Chargee or any Receiver and any person appointed as attorney of the Chargee, Receiver or Delegate;
<b>Dispose of</b>	bears the meaning given to it under Section 205(1) Law of Property Act 1925 in respect of the whole or any part of the Property and <b>disposition</b> and <b>Disposal</b> shall be interpreted accordingly;
<b>Dwelling</b>	a house or bungalow (in each case detached, semi-detached or terraced), apartment or flat, any flat above garage(s), maisonette, cottage or other dwelling constructed or to be constructed on the Property in accordance with the Planning Permission together with its curtilage, any associated garage, parking space, car port and the like (whether separate from the main dwelling or not) and " <b>Dwellings</b> " shall be construed accordingly;
<b>Event of Default</b>	the event specified in Schedule 3;
<b>Market Dwelling</b>	a Dwelling other than an Affordable Housing Dwelling and " <b>Market Dwellings</b> " shall be construed accordingly;
<b>Permitted Disposition</b>	any of the following: <ul style="list-style-type: none"> <li>(a) the Disposal dedication or adoption of any part of the Property to or in favour of any statutory undertaking, utility company, local authority or similar body for the provision and adoption of sewers, Service Media or other infrastructure including for the avoidance of doubt any easement granted to a Relevant Authority in connection with any works in respect of the Property or as otherwise contemplated in the Planning Agreement; and/or</li> <li>(b) the Disposal dedication or adoption of any part of the</li> </ul>

Property and/or the grant of rights or easements to the highway or other competent authority for roads, footpaths, cycleways (together with ancillary area and rights) or other highway works in relation to the adoption of such roads, footpaths, cycleways (together with ancillary areas and rights) or other highway works including any agreement made under Sections 38 or 278 of the Highways Act 1980; and/or

- (c) the Disposal of any part of the Property which is required to comply with the requirements of a Statutory Agreement; and/or
- (d) the Disposal of any part of the Property as common parts, open space, amenity land or similar to the local authority, a management company or similar or the Disposal of land intended for use as an electricity substation, transformer chamber, gas governor, pumping station or similar infrastructures; and/or
- (e) the grant of easements over any part of the Property as part of the development of the Property including the grant of easements in connection with a Disposal of any Dwelling

PROVIDED THAT any such disposals are in accordance with the Planning Permission.

**Planning Acts**

the Town and Country Planning Act 1990 the Planning (Listed Buildings and Conservation Areas) Act 1980 the Planning (Hazardous Substances) Act 1990 the Planning (Consequential Provisions) Act 1990 and the Planning and Compensation Act 1991 and all orders regulations and instruments relating to the use and/or occupation of the Property;

**Planning Agreement**

the agreement entered into pursuant to section 106 of the Town and Country Planning Act 1990 dated 29 July 2019



and made between (1) the Chargee, (2) the Chargor, and Rushcliffe Borough Council (3) and as varied or further amended from time to time;

**Planning Permission**

planning permission reference 18/02412/FUL;

**Property**

the land described in Schedule 1;

**Receiver**

any one or more receiver or manager or receiver and manager appointed by the Chargee pursuant to this Charge (whether sole, joint and/or several including any substitute);

**Relevant Authority**

the local planning authority local and county highway authorities town and parish councils drainage gas water electricity cable television and telecommunications companies and any other authority utility company body corporation or organisation concerned with the grant of the Planning Permission or the control of development or the control of pollution or the adoption of the Roadways and sewers and open space or the installation of Service Media and the provision of Services and the dispersal or disposal of surface water;

**Roadways**

roads, cycleways and/or footpaths including (without limitation) carriageways, roundabouts, junctions, footways, visibility splays, verges, landscaping and/or street furniture and/or any other ancillary and/or associated works to be constructed on the Property (but excluding shared access areas which are not intended to be made available for public use);

**Secured Sum**

the sum of £3,950,000 (three million nine hundred and fifty thousand pounds);

**Security**

any mortgage, fixed charge, pledge, hypothecation, lien, assignment by way of security or other security agreement, contract, interest or encumbrance whatsoever securing any obligation of any person or any other agreement or

arrangement having a similar effect (for the avoidance of doubt, this excludes any floating charge);

**Security Period**

the period commencing on the date of this Charge and ending on the date upon which the Secured Sum has been paid in full;

**Service Media**

includes all drains, pipes, wires, cables, conducting media and apparatus for surface and foul water drainage gas, electricity, water, electronic transmissions and similar services now or in the future constructed on the Property;

**Services**

foul and surface water drainage, water, gas, electricity and telecommunications services;

**Statutory Agreement**

an agreement, obligation or undertaking to be made pursuant to all or any of the following:

Section 106 Town and Country Planning Act 1990, Section 38 and/or Section 278 Highways Act 1980, Section 104 Water Industry Act 1991, Section 33 Local Government (miscellaneous Provisions) Act 1982 or pursuant to any other statutory enactment or derivative legislation or as may be required by a local authority, the local highway authority or any service undertaker;

**VAT**

value added tax or any equivalent tax chargeable in the UK or elsewhere;

**Working Days**

has the meaning given to it in the Agreement.

1.2 The clause, paragraph and schedule headings in this Charge are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision to which they refer.

1.3 Unless the contrary intention appears reference:

- (a) to numbered clauses and schedules are references to the relevant clause in or Schedule to this Charge; and
  - (b) to a numbered paragraph in any Schedule are references to the relevant paragraph in that Schedule.
- 1.4 Words in this Charge denoting the singular include the plural meaning and vice versa.
- 1.5 Words in this Charge Importing one gender include the other genders and may be used interchangeably and words denoting natural persons where the context allows include corporations and vice versa.
- 1.6 Where a party to this Charge comprises more than one individual the obligations and covenants of that party shall be several.
- 1.7 Reference to a party shall include that party's successors, permitted assigns and permitted transferees and this Charge shall be binding on, and enure to the benefit of, the parties to this Charge and their respective personal representatives, successors, permitted assigns and permitted transferees.
- 1.8 A reference to asset or assets includes present and future properties, undertakings, revenues, rights and benefits of every description.
- 1.9 A reference to an authorisation includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution.
- 1.10 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.
- 1.11 A reference to a statute, statutory provision or statutory instrument is a reference to it as amended, extended or re-enacted from time to time. Reference in this Charge to any statutes, statutory provision or statutory instruments include and refer to any statute, statutory provision or statutory instrument amending, consolidating or replacing them respectively from time to time and for the time being in force and references to a statute or statutory provision include statutory instruments, regulations and other subordinate legislation made pursuant to it.

- 1.12 A reference to this Charge (or any provision of it) or to any other agreement or document referred to in this Charge is a reference to this Charge, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this Charge) from time to time.
- 1.13 A reference to an amendment includes a novation, re-enactment, supplement or variation (and amend and amended shall be construed accordingly).
- 1.14 Any obligation of the Chargor to do something shall include an obligation to procure that it is done and any obligation not to do something shall include an obligation not to perform, suffer or allow it to be done.
- 1.15 The term "person" includes individuals, firms, companies, corporations, bodies, organizations, partnerships, unincorporated bodies of persons, governments, states and agencies of a state, associations, trusts, joint ventures and consortiums (in each case whether or not having separate legal personality).
- 1.16 An Event of Default is "continuing" if it has not been remedied or waived.
- 1.17 The terms "include", "including" and "in particular" or any similar expression shall be construed as not limiting any general words and expressions in connection with which it is used.

## **2 COVENANT TO PAY**

The Chargor covenants with the Chargee to pay the Secured Sum on or before the first anniversary of the Completion Date.

## **3 SECURITY**

- 3.1 As continuing security for the payment and discharge of the Secured Sum, the Chargor with full title guarantee charges to the Chargee by way of first legal mortgage the Property together with the rights referred to and contained in the Agreement,

**PROVIDED THAT** this Charge shall not preclude the Chargor from entering into any Permitted Disposition and it is acknowledged and agreed that subject as referred to in this clause such works, easements, rights, transfers and demises and the terms of any such Statutory Agreement and the performance of it shall be permitted by this Charge.

3.2 Section 103 of the Act shall not apply to this Charge or the security constituted by this Charge.

#### **4 CHARGOR'S COVENANTS**

The Chargor covenants with the Chargee in the manner set out in Schedule 2.

#### **5 CHARGEES COVENANTS**

The Chargee consents to any Permitted Disposition.

#### **6 RESTRICTION ON DEALINGS**

6.1 Other than by way of a Permitted Disposition the Chargor may not and covenants that it will not at any time without the prior written consent of the Chargee:

(a) create or attempt to create or purport to create or suffer or permit to subsist any Security over or in relation to the Property (to the extent it is then subject to the Security created by this Charge) during the Security Period; or

(b) contract in relation to, sell, assign, transfer, create or grant any legal or equitable estate or interest in, create or allow to exist any trust in respect of the Property notwithstanding Section 99 of the Act not to grant any lease, tenancy or licence or part with possession and occupation or in any other way dispose of the Property (or purport to or agree to do any of the foregoing) while the same remains subject to charge created by this Charge save in accordance with the terms of the Agreement and this Charge PROVIDED THAT this shall not prevent the Chargor from contracting to sell, assign, transfer, create or grant any legal or equitable estate or interest in, create or allow to exist any trust in respect of, or grant any lease, tenancy or licence or part with possession and occupation or in any other way dispose of any Dwelling or Dwellings where such contract or other disposition (as aforesaid) does not permit the sale to be subject to this Charge.

6.2 The parties to this Charge hereby apply to the Chief Land Registrar for a restriction in Standard Form NN to be registered against the title to the Property at the Land Registry to the effect that:

*"No disposition 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 John William Holmes and Catherine Linda Holmes of [address] or their conveyancer or a certificate signed by a conveyancer that the provisions of clause 6.1 of a legal charge dated 1 made between (1) Miller Homes Limited, and (2) John William Holmes and Catherine Linda Holmes have been complied with or do not apply to the disposition"*  
*2nd October 2019.*

## **7 RIGHTS OF ENFORCEMENT**

- 7.1 The whole of the Secured Sum shall become due (including within the meaning of Section 101 of the Act) immediately following demand after the occurrence of an Event of Default that is continuing and in addition to all other protection afforded by statute every purchaser (as defined by section 205 of the Act) or other party dealing with the Chargee or the Receiver shall be entitled to assume that the power of sale and other powers conferred by section 101 of the Act (as varied or extended by this Charge) arose on and are exercisable at any time after the execution of this Charge.
- 7.2 No purchaser, mortgagee or other person dealing with the Chargee, any Receiver or Delegate shall be concerned to enquire:
- (a) whether any of the Secured Sum 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 properly exercisable; or
  - (c) how any money paid to the Chargee, any Receiver or any Delegate is to be applied.
- 7.3 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 the Property or in making any acquisition in the exercise of their respective powers, the Chargee, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it thinks fit.
- 7.4 The enforcement powers of the Chargee (in addition to the powers from time to time conferred by the Act or any other statute or otherwise under the law in force from time to time) shall be immediately exercisable upon and following demand after the occurrence of an Event of Default and shall be as follows in each case without becoming liable as mortgagee in possession:

- (a) for the Chargee itself to exercise all or any of the powers and rights specified in this Charge (including but not limited to the powers and rights specified in Schedule 5) and in addition all statutory and other powers and rights as the Chargee shall, acting reasonably, think fit, after it has taken possession of the Property;
- (b) to appoint a Receiver or any number of Receivers (by way of deed or otherwise in writing) of the Property (and to remove and substitute any such Receiver as and when the Chargee shall think fit) with all the powers and rights in law or specified in this Charge (including but not limited to the powers and rights specified in Schedule 5) which the receiver may exercise either in its own name or in the name of the Chargor of the directors of the Chargor after it has taken possession of the Property.
- (c) so far as the law allows the Receiver shall be the agent of the Chargor who shall be liable for his acts, defaults, and remuneration but the Chargee shall be entitled to agree such reasonable fees and expenses of and the mode of payment to the Receiver and the remuneration of the 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 Chargor;
- (d) the powers conferred on mortgagees or receivers by the Act shall apply to any Receiver appointed under this Charge as if such powers were incorporated in this Charge except in so far as they are expressly or impliedly excluded and where there is any ambiguity of conflict between the powers contained in the Act and those contained in this Charge the terms of this Charge shall prevail.

7.5 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 Charge including the power of attorney granted under this Charge. The Chargee and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit.

7.6 All monies received by the Chargee, a Receiver or a Delegate shall be applied in the order determined by the Chargee. 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 in any particular order between any of the Secured Sums.

## **8 CHARGEES' POWERS AND RIGHTS**

- 8.1 At any time after this security has become enforceable the Chargee shall have all statutory and other powers and rights and in addition (and not substitution) the powers and rights specified in clause 7 and Schedule 4 and may exercise all rights and powers in the name of the Chargor and at the times and in such manner and on such terms as the person exercising them shall in its sole absolute discretion consider appropriate.
- 8.2 The Chargee and each Receiver is entitled to all the rights, powers, privileges and immunities conferred by the Act on mortgagees and receivers.

## **9 RELEASE AND STATUTORY AGREEMENTS**

- 9.1 The Chargee shall, at the reasonable request and cost of the Chargor, duly discharge from the security constituted by this Charge any part of the Property:

- (a) subject to a Permitted Disposition; or
- (b) as provided for in clause 8 of the Agreement,

and shall within 10 Working Days of such request provide all such properly executed release documentation (including, for the avoidance of doubt, a Land Registry Form DS3, DS1 and/or letter of consent) as may reasonably be required by the Chargor to give effect to the provisions of this clause.

- 9.2 On the expiry of the Security Period (and for the avoidance of doubt, provided that the Secured Sum has been paid in full to the Chargee), the Chargee shall, at the reasonable request of the Chargor, take whatever action is necessary to release the Property from the security constituted by this Charge and shall promptly following any such request provide all such properly executed release documentation (including, for the avoidance of doubt, Land Registry Form DS1) as may reasonably be required by the Chargor to give effect to the provisions of this clause.
- 9.3 The Chargee covenants with the Chargor that if requested by the Chargor it will as soon as reasonably possible upon receipt of a written request and upon payment of its reasonable and proper legal fees enter into any Statutory Agreement in relation to the Property, in its capacity as Chargee only in order to consent to and acknowledge the terms thereof.



- 9.4 The Chargee, by way of security, irrevocably appoints the Chargor as its attorney and in the name of and on behalf of each Chargee and as the act and deed of each Chargee or otherwise to sign and deliver and complete and otherwise perfect any deed assurance agreement instrument or act which may be required to be given to the Chargor by the Chargee in accordance with this clause 9 where it fails to deliver the same to the Chargor within 5 Working Days of being required to do so and this power of attorney is given as security pursuant to the Powers of Attorney Act 1971. The Chargee ratifies and confirms and agrees to ratify and confirm whatever attorney appointed under this clause properly does or purports to do in the exercise of all or any of the powers authorities and discretions granted or referred to in this clause.

## **10 LIABILITY**

- 10.1 The Chargor's liability under this Charge in respect of any of the Secured Sum 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 increasing any 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, might have discharged, or otherwise prejudiced or affected, the liability of the Chargor.

- 10.2 The Chargor waives any right it may have to require the Chargee to enforce any guarantee, security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this Charge:

## **11 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.

## **12 INDEPENDENT SECURITY**

The security constituted by this Charge shall be in addition to, and independent of, any other security or guarantee that the Chargee may hold for any of the Secured Sum at any time.

## **13 POWER OF ATTORNEY**

13.1 Following the occurrence of an Event of Default that is continuing, 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 the Chargor is required to execute and do under this Charge, where the Chargor has failed to do any such actions following receipt of reasonable notice from the Chargee.

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

## **14 GENERAL PROVISIONS**

14.1 Neither the whole or any part of the Secured Sum and/or this Charge shall be modified, released, waived or otherwise affected in any way by any grant of time, indulgence, modification, release, variation or waiver granted or allowed to or agreed with the Chargor or any other person or otherwise.

14.2 A waiver of any right or remedy under this Charge or by law by the Chargee, or any consent given under this Charge by the Chargee, is only effective if given in writing 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 Chargee from subsequently relying on the relevant provision.

14.3 The Chargee shall be able to assign or transfer any of their rights or benefits under this Deed provided that:

- (a) the Chargee assigns the benefit of his right to the receipt of payments payable by the Chargor pursuant to clause [3.3(e)] of the Agreement; and

- (b) the assignee or transferee executes and delivers to the Chargor a deed in which the assignee or transferee agrees to be bound by the terms of this Deed.

- 14.4 A failure or delay by the Chargee to exercise any right or remedy provided under this Charge 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 Charge. No single or partial exercise of any right or remedy provided under this Charge or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this Charge by the Chargee shall be effective unless it is in writing.
- 14.5 The rights and remedies provided under this Charge to the Chargee are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law
- 14.6 If any provision (or part of a provision) of this Charge 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 Charge.
- 14.7 The restriction on the right of consolidation contained in Section 93 of the Act shall not apply to this Charge.
- 14.8 Any written certificate or determination given by the Chargee pursuant or relating to this Charge shall be conclusive and binding as to the relevant items save in the case of manifest error or omission.
- 14.9 The unenforceability for whatever reason of any provision of this Charge shall in no way affect the enforceability of each and every other provision.
- 14.10 This security shall not be considered as satisfied or discharged by any intermediate payment, repayment or discharge of any part only of the Secured Sum and shall constitute and be a continuing security for the Chargee notwithstanding any settlement of account or other matter or thing and shall be in addition to and shall not operate so as in any way to limit or affect any other security which the Chargee may hold now or at any time hold for or in respect of the Secured Sum.

14.11 Any notice or other communication to be given or served under or in connection with this Charge shall be validly served if in writing and delivered by hand or by pre-paid first-class post or other next Working Day delivery service to:

(a) the Chargee at Highfield House, Park Road, Plumtree Park, Keyworth, Nottingham, NG12 5LX; and

(b) the Chargor at its registered address addressed to the Company Secretary,

or to any other address as is notified in writing by one party to the other from time to time.

14.12 A notice or other communication given under or in connection with this Charge is not valid if sent by email. A reference to writing or written does not include email.

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

14.14 Except as expressly provided elsewhere in this Charge, a person who is not a party to this Charge 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 Charge. This does not affect any right or remedy of a third party which exists, or is available, apart from the Contracts (Rights of Third Parties) Act 1999. The rights of the parties to agree any amendment or waiver under this Charge are not subject to the consent of any other person.

14.15 This Charge 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.

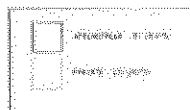
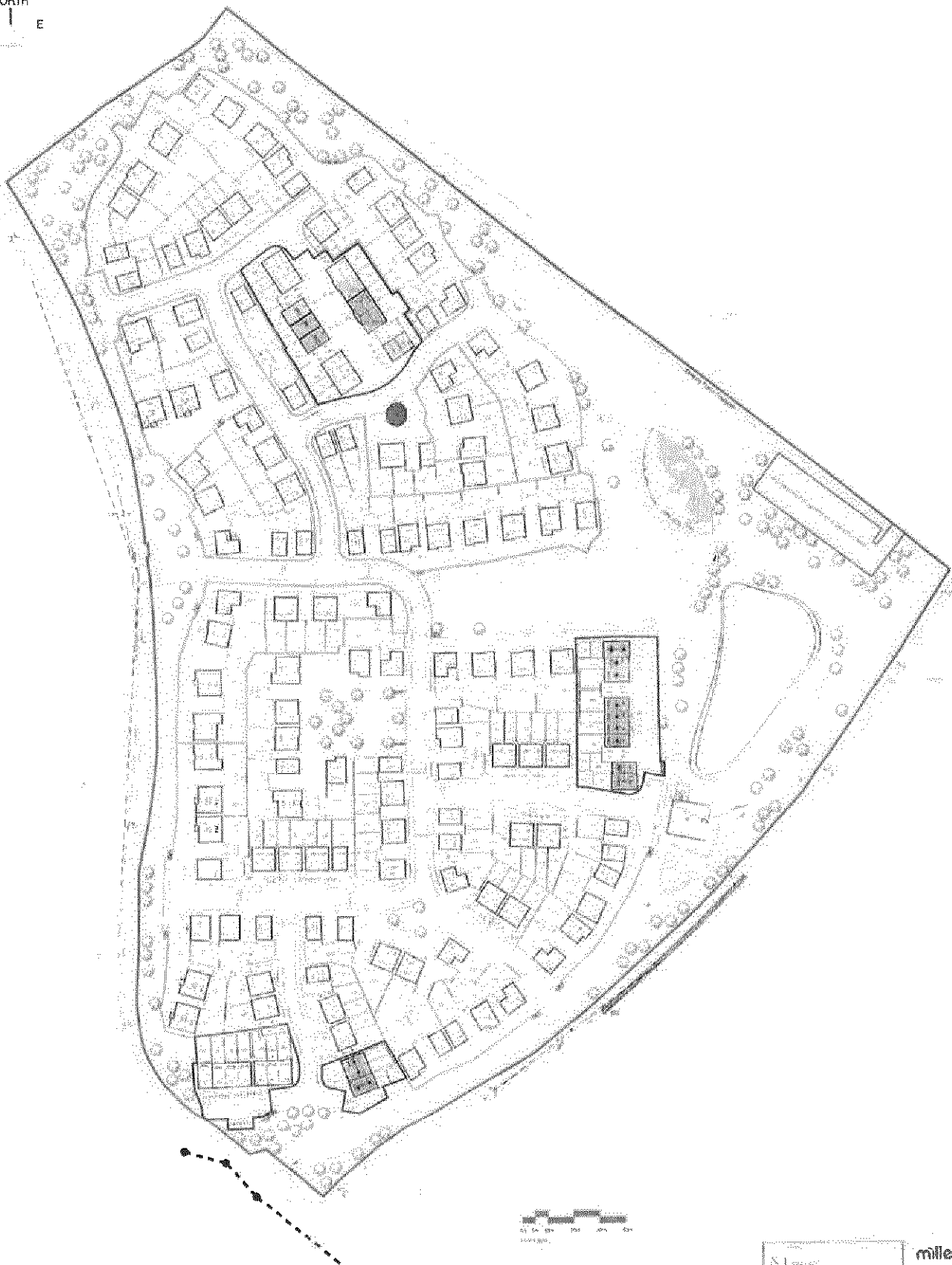
14.16 This Charge and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.

**DELIVERED as a DEED on the date of this document**

## **SCHEDULE 1**

### **Description of the Property**

The freehold property known as land on the north west side of Platt Lane Keyworth comprising the whole of the property registered at HM Land Registry with title number NT171386 (as at the date hereof) excluding the Dwellings edged blue and edged orange on the plan annexed hereto ("Plan").



Miller | Thomas



ARCHITECTS

1000 10th St, Suite 100  
San Francisco, CA 94103  
415.774.1000

www.millerthomas.com

## **SCHEDULE 2**

### **Chargor's Covenants**

- 1 Other than a Permitted Disposition, that no sale, assignment, transfer, parting with possession, lease, licence or other disposal of whatever nature or realisation of the whole or any part of or any interest in the Property nor purporting to do so nor any agreement to effect nor purport to effect all or any of them shall be entered into otherwise than as permitted in accordance with the terms of this Charge.
- 2 Promptly to advise the Chargee in writing on becoming aware of the occurrence of any Event of Default.
- 3 In the event of any sale or transfer (including a transfer to the Chargee) of the Property or any part thereof by the Chargee or any Receiver in exercise of its powers of sale pursuant to the terms of this Deed to grant (or except and reserve (as appropriate)) appropriate reasonable and necessary rights for the proper use and enjoyment of the Property or any part including but not limited to rights of access, right of services, rights to maintain and rights of support over the remainder of the land comprised in title number NT171386 (insofar as that remains in the ownership of the Chargor from time to time) for the benefit of the Property or any part.

### **SCHEDULE 3**

#### **Events of Default**

Any failure by the Chargor to pay the relevant instalment of the Secured Sum in full within 5 Working Days of its due date in accordance with the Agreement.



## **SCHEDULE 4**

### **Chargee's and Receiver's Powers**

- 1 To manage and conduct the business of the Chargor in respect of the Property in all respects as if it was and remained throughout its absolute and beneficial owner and for, such purpose to enter upon and take possession, hold, get in, collect or otherwise assume control in respect of all or any of the Property.
- 2 To enter upon and take possession of the Property and undertake any works of demolition, building, reconstruction, improvement, repair or decoration on it including the commencement, carrying out and completion of any alteration, building or development utilizing for any such purpose any chattels, plant, machinery and materials then on or in the Property or otherwise attributable to any such works or which the Chargor is otherwise entitled to use and any plans, drawings and specifications of the Chargor or otherwise.
- 3 To pay any rent or other outgoings and payments charged on or otherwise relating to the Property or their ownership, occupation or use.
- 4 To sell, assign, convert into money or otherwise realize, dispose of and deal with and transfer title to the Property and realize assets by surrender of a leasehold estate upon such terms including the amount and nature of the consideration and in such manner as the Chargee shall think fit and on terms which bind any subsequent mortgagee.
- 5 To sever or remove or permit to be severed or removed and sell separately any fixtures or fittings.
- 6 To promote, or concur in promoting, a company to purchase the Property to be disposed of.
- 7 To grant or create any lease, tenancy or licence or enter into an agreement to do so or any other agreement or contract relating to the disposal of or other dealing with the Property at any and generally on such terms as it shall agree and to accept the surrender of any lease, tenancy, licence or other such agreement or contract upon such terms as it shall think fit and on terms which bind any subsequent mortgagee
- 8 To compromise any claim or claims of, against, arising out of or otherwise relating to the Property.

- 9 To effect insurances and obtain and/or enter into bonds, covenants, commitments, engagements, guarantees and indemnities or other like matters in any way relating to the Property from time to time and to make all requisite payments to effect, maintain or satisfy them.
- 10 To give receipts and releases for any sums received and execute all assurances and things that may be proper or desirable for realising any of the Property.
- 11 To obtain and maintain all necessary planning permissions, development consents, building regulation approvals and other permissions, consents or licences as may reasonably be required for any development or use of the Property.
- 12 To cancel or otherwise determine any agreements or contracts in any way relating to the Property.
- 13 To commence, carry out and complete any acts and matters, make demands, commence, prosecute, enforce and abandon all actions, suits and proceedings, defend all actions, suits and proceedings, execute such contracts, deeds or other documents and otherwise deal for the preservation, improvement, enforcement or realization of all or any of the security created by this Charge in all respects as if it were and remained at all times the sole and absolute beneficial owner of the Property.
- 14 To provide services and employ or engage any professional advisers including: solicitors, architects, surveyors, quantity surveyors, estate agents, contractors, workmen, stockbrokers and others and purchase or otherwise acquire any property, materials and other matters.
- 15 To make, exercise or revoke any VAT option to tax that it thinks fit.
- 16 To, in the case of a Receiver, charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by the Receiver) that the Chargee may prescribe or agree with the Receiver.
- 17 To make any arrangement, settlement or compromise that it may think expedient.
- 18 To, if it thinks fit, but without prejudice to the indemnities in this Charge, 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 Charge.

- 19 To exercise all powers, authorisations and rights it 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 the Property.
- 20 To exercise all powers provided for in the Act in the same way as if it had been duly appointed under the Act and exercise all powers provided for an administrative receiver in Schedule 1 to the Insolvency Act 1986.
- 21 To do any other acts and things that it may consider desirable or necessary for realising any of the Property, may consider incidental or conducive to any of the rights or powers conferred on it under or by virtue of this Charge or by law or lawfully may or can do as agent for the Chargee.
- 22 To delegate its powers.

IN WITNESS whereof the parties have executed this Charge as a deed the day and year first before written

**CHARGOR'S EXECUTION**

**EXECUTED as a DEED by**

**MILLER HOMES LIMITED**

acting by a Director JJ

Director



In the presence of:

Witness Signature:



Witness Name (BLOCK CAPITALS):

Witness Occupation (BLOCK CAPITALS):

MOIRA KINNIBURGH

Witness Address (BLOCK CAPITALS):

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

CHARGE' EXECUTION

EXECUTED as a DEED by

JOHN WILLIAM HOLMES



in the presence of:

Witness Signature:



Witness Name (BLOCK CAPITALS): JENNIFER PERCIVAL

Witness Occupation (BLOCK CAPITALS): RETIRED

Witness Address (BLOCK CAPITALS): MENABILLY, PARK RD,  
PLUMTREE PARK, KEYWORTH, NOTTM NG12 5LX

EXECUTED as a DEED by

CATHERINE LINDA HOLMES



in the presence of:

Witness Signature:



Witness Name (BLOCK CAPITALS): JENNIFER PERCIVAL

Witness Occupation (BLOCK CAPITALS): RETIRED

**IN WITNESS** whereof the parties have executed this Charge as a deed the day and year first before written

**CHARGOR'S EXECUTION**

**EXECUTED as a DEED by**

**MILLER HOMES LIMITED**

acting by a Director

Director

in the presence of:

Witness Signature:

Witness Name (BLOCK CAPITALS):

Witness Occupation (BLOCK CAPITALS):

Witness Address (BLOCK CAPITALS):



**LEGEND**

- SITE BOUNDARY
- PRIVATE OWNERS
- APPROXIMATE INTERIMEDIATE DRAINAGE
- APPROXIMATE FIELD BOUNDARY
- APPROXIMATE WOLF HAT DRAINAGE



**Miller homes**  
 Miller Homes (East Midlands) Ltd  
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 Pride Park  
 Derby, DE24 8RF  
 Telephone 0870 336 4400  
 Fax 0202 336 4401  
 www.miller-homes.co.uk

Project Title  
**PLATTS LANE  
 KEYWORTH**

Drawing Title  
**CHARGE PLAN  
 17-21 & 28-32**

Scale	Drawn By	Designer/Checker	Engineer/Checker
1:1250	SD		
	Date: 21/01/02	Date:	Date:
Alt. No.	Drawing No.		Revision
	KEY/CRP/02		
Original Sheet Size: A3			

Dated 2 July 2020

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MILLER HOMES LIMITED (1)

AND

JOHN WILLIAM HOLMES AND CATHERINE LINDA HOLMES (2)

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**DEED OF VARIATION**

relating to a Legal Charge dated 2 October 2019  
in respect of land on the north west side of Platt  
Lane Keyworth

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THIS DEED is made on

2 July

2020

**BETWEEN:**

- (1) **MILLER HOMES LIMITED** (Company Number: SC255429) whose registered office is at Miller House, 2 Lochside View, Edinburgh Park, Edinburgh EH12 9DH (the "Chargor"); and
- (2) **JOHN WILLIAM HOLMES AND CATHERINE LINDA HOLMES** of Highfield House, Park Road, Plumtree Park, Keyworth NG12 5LX (the "Chargee").

**BACKGROUND**

- A This Deed is supplemental to the Charge (as defined below).
- B In accordance with clause 14.13 of the Charge, each party has agreed to amend the Charge as set out in this Deed.

**THIS DEED** witnesses:

**1 DEFINITIONS AND INTERPRETATION**

- 1.1 In this Deed:

**Charge** means the legal charge entered into by the parties on 2 October 2019 relating to land on the north west side of Platt Lane Keyworth

- 1.2 Unless otherwise provided, the words and expressions defined in, and the rules of interpretation of, the Charge shall have the same meaning and effect in this Deed.

**2 AMENDMENTS TO THE CHARGE**

- 2.1 The parties agree to amend the Charge by:

- 2.1.1 adding the words 'as varied by a deed of variation dated 2 July 2020' at the end of the definition of Agreement in clause 1.1;

- 2.1.2 adding the words 'plus a further sum of £50,000 (fifty thousand pounds)' at the end of the definition of Secured Sum in clause 1.1;

- 2.1.3 deleting clause 2 of the Charge in its entirety and replacing it with the following clause:

**'2 COVENANT TO PAY**

The Chargor covenants with the Chargee to pay the Secured Sum as follows:

- 2.1 £50,000 on or before 2 October 2020; and

- 2.2 £3,950,000 on or before 11 January 2021'

- 2.1.4 amending Schedule 3 of the Charge by deleting the words 'the Agreement' and replacing them with 'clause 2'.

**3 VARIATION DATE**

The parties agree that the amendments set out in this Deed shall have effect from the date of this Deed.

**4 CHARGE IN FULL FORCE AND EFFECT**

This Deed is supplemental to the Charge and, subject to the amendments described in this Deed, the Charge shall remain in full force and effect.

**5 CONFIRMATION AND INCORPORATION**

The parties further agree and declare that the terms of the Charge, except as varied by this Deed, are confirmed as if the same were set out in this Deed in full, and that such terms as so varied shall for all purposes (including, without limitation, for the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989) be deemed incorporated in this Deed.

**6 GOVERNING LAW**

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

**7 JURISDICTION**

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Deed, its subject matter or formation (including non-contractual disputes or claims).

**EXECUTED AS A DEED** by the parties and delivered on the date set out at the beginning of this Deed

**EXECUTED as a DEED by**

**MILLER HOMES LIMITED**

acting by one director

in the presence of a witness:

.....  
(Director)

Witness Signature.....

Witness Name.....

Address.....

**EXECUTED as a DEED by**

**JOHN WILLIAM HOLMES**

in the presence of a witness:

  
.....  
(Signature)

Witness Signature 


Witness Name JENNIFER PERCIVAL

Address MENABILLY, PARK RD,  
PLUMTREE PARK, KEYWORTH NOTTM NG12 5LX

**EXECUTED as a DEED by**

**CATHERINE LINDA HOLMES**

in the presence of a witness:

  
.....  
(Signature)

Witness Signature 

Witness Name JENNIFER PERCIVAL

Address MENABILLY, PARK RD,  
PLUMTREE PARK, KEYWORTH, NOTTM  
NG12 5LX

**CHARGEES' EXECUTION**

**EXECUTED as a DEED by**

**JOHN WILLIAM HOLMES**

in the presence of:

Witness Signature: 

Witness Name (BLOCK CAPITALS): JENNIFER PERCIVAL

Witness Occupation (BLOCK CAPITALS): RETIRED

Witness Address (BLOCK CAPITALS): MENABILLY, PARK RD, PLUMTREE PARK  
KEYWORTH, NOTTM NG12 5LX

**EXECUTED as a DEED by**

**CATHERINE LINDA HOLMES**



in the presence of:

Witness Signature: 

Witness Name (BLOCK CAPITALS): JENNIFER PERCIVAL

Witness Occupation (BLOCK CAPITALS): RETIRED

Witness Address (BLOCK CAPITALS): MENABILLY, PARK ROAD, PLUMTREE PARK  
KEYWORTH, NOTTINGHAM, NG12 5LX