



**Registration of a Charge**

Company name: **MILLER HOMES LIMITED**

Company number: **SC255429**

Received for Electronic Filing: **19/10/2020**



X9G0UPII

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**Details of Charge**

Date of creation: **29/09/2020**

Charge code: **SC25 5429 0370**

Persons entitled: **JAMES THOMAS BOON  
EDWARD ROBERTS BOON  
JOANNA ELIZABETH PARKER  
BANKS PROPERTY LIMITED**

Brief description: **LAND AT MOSS CLOSE FARM, PELTON, COUNTY DURHAM, EDGED  
GREEN ON THE PLAN**

**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:

**MUCKLE LLP**



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

Company number: 255429

Charge code: SC25 5429 0370

The Registrar of Companies for Scotland hereby certifies that a charge dated 29th September 2020 and created by MILLER HOMES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 19th October 2020 .

Given at Companies House, Edinburgh on 19th October 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**

Dated 29th September

2020

**Miller Homes Limited**

**and**

**James Thomas Boon, Edward Roberts Boon, Joanna Elizabeth Parker**

**and Banks Property Limited**

**Legal mortgage over land at Moss Close Farm, Pelton, County Durham**

muckle<sup>LLP</sup>

Muckle LLP  
Time Central  
32 Gallowgate  
Newcastle upon Tyne  
NE1 4BF

101475.0001.9819362.13

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

Gowling WLG (UK) LLP  
Gowling WLG (UK) LLP

Dated 12.10.2020

This Deed is dated

29 September

2020

## Parties

- (1) **Miller Homes Limited** incorporated and registered in England and Wales with company number SC255429 whose registered office is at Miller House, 2 Lochside View, Edinburgh Park, Edinburgh, EH12 9DH (**Borrower**);
- (2) **James Thomas Boon, Edward Roberts Boon and Joanna Elizabeth Parker** all c/o Youngs RPS, 50 Front Street, Sedgfield, County Durham, TS21 2AQ (**First Lender**) and **Banks Property Limited** incorporated and registered in England and Wales with company number 03081092 whose registered office is at Inkerman House, St John's Road, Meadowfield, Durham, DH7 8XL (**Second Lender**) (together the **Lender**).

## Background

- (A) The Borrower owns the Charged Area.
- (B) This deed provides security which the Borrower has agreed to give to secure the payment of the Deferred Consideration as owing from time to time under the Contract.

## Agreed terms

### 1. Definitions and interpretation

#### 1.1 Definitions

The following definitions apply in this deed.

#### Charged Area

the land at Moss Close Farm, Pelton, County Durham which is shown edged red on the Plan;

*green circle*

#### Contract

a contract dated 28 February 2020 made between (1) the First Lender (2)

the Borrower and (3) the Second Lender, <sup>as amended by the Deed of Variation</sup>

#### Costs

all costs, charges, expenses, taxes and liabilities of any kind, including professional fees, properly incurred disbursements and any irrecoverable VAT charged on Costs

*Muller*

	which the Lender or any Receiver may charge or incur;
<b>Deed of Variation</b>	the deed dated 28 August 2020 made between (1) James Thomas Boon, Edward Roberts Boon and Joanna Elizabeth Parker (2) Miller Homes Limited and (3) Banks Property Limited;
<b>Deferred Consideration</b>	the payment contractually due to be made by the Borrower to the First Lender under clause 27.2.2 of the Contract (amended by the the Deed of Variation) or so much of it as at the relevant time remains to be paid;
<b>Development</b>	shall have the same meaning as is ascribed to it in the Contract;
<b>Development Programme</b>	the Buyer's proposed programme and schedule to install and construct the services and roads across the Property as annexed to this deed;
<b>Disposal</b>	any disposition within the meaning of section 205 of the Law of Property Act 1925 or section 27(2) of the Land Registration Act 2002;
<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 and "Dwellings" shall be construed accordingly;
<b>Event of Default</b>	any of the following events of default:

- (a) the Borrower does not pay the Secured Liabilities within 10 Working Days of when they fall due;
- (b) a receiver or administrative receiver is appointed of the whole or any part of the Property or any person takes possession of or exercises or attempts to exercise any power of sale in relation to the Property;

**Group Company**

as defined in section 42 of the Landlord and Tenant Act 1954;

**Interest Rate**

4% above the base rate of National Westminster Bank plc or such other clearing bank nominated by the Lender at any time or if the clearing banks cease at any time to publish a base lending rate such comparable rate of interest as the Lender may determine;

**Land**

the Property other than the Charged Area from time to time;

**LPA 1925**

the Law of Property Act 1925;

**Permitted Disposal**

any of the following:

- (a) the grant of rights over any part of the Charged Area to or in favour of any statutory undertaking, utility company, local authority or similar body for the provision and adoption of sewers and Service Media provided that the grant of such rights will not

prohibit or make more difficult or more expensive the carrying out of the Development of the Charged Area in accordance with the layout shown on the attached plan; and/or

- (b) the grant of such easements as are contained in transfers of Dwellings comprised in the Property but not comprised in the Charged Area in the nature of the rights referred to in clause 7.3.5;

**Plan**

the plan attached to this deed;

**Planning Agreement**

any agreement under section 106 of the Town and Country Planning Act 1990 or under section 33 of the Local Government (Miscellaneous Provisions) Act 1982 or under section 111 of the Local Government Act 1972 upon which the issue of planning permission is conditional and any variations or amendments to the same and any subsequent agreements pertaining to those provisions;

**Property**

shall have the same meaning as ascribed to it in the Contract, being the Land and the Charged Area;

**Public Utility**

any public utility and any other statutory undertaking or authority;

<b>Receiver</b>	a receiver and/or manager of any or all of the Charged Area;
<b>Restriction</b>	any restriction registered at HM Land Registry pursuant to clause 4.1 of this deed;
<b>Satisfactory Planning Permission</b>	the planning permission so defined in the Contract or such alternative planning permission as is obtained by the Borrower in respect of the Charged Area and which relates to its Development as residential Dwellings;
<b>Secured Liabilities</b>	the Deferred Consideration and all other sums due or to become due to the Lender under this deed (and including without limitation any interest which becomes due on the Deferred Consideration pursuant to the Contract);
<b>Security Interest</b>	any legal or equitable mortgage;
<b>Security Period</b>	the period starting on the date of this deed and ending on the date on which all of the Secured Liabilities are unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding;
<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;

**Specified Works**

site clearance works, remediation, grading/remodelling and other groundworks and any other such preparatory works connected with the carrying out of the Development which are first approved by the Lender, but not including the construction of Dwellings (and the expression the 'construction of Dwellings' shall include, without limitation, the laying of foundations for individual dwellings);

**Statutory Agreement**

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

- (a) section 106 of the Town and Country Planning Act 1990 or 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; and/or
- (b) section 38 or section 278 of the Highways Act 1980 or section 111 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; and/or

- (c) section 98 and/or section 102 and/or section 104 and/or section 116 and/or section 185 Water Industry Act 1991 or similar agreement relating to the provision maintenance and adoption of drainage systems; and
- (d) any deeds of easements or similar required in connection with any such agreement;

**Substitute Property**

the property approved by the Lender pursuant to clause 3.2;

**VAT**

value added tax;

**Working Day**

any day from Monday to Friday (inclusive) which is not Christmas Day Good Friday or a statutory bank holiday;

**Works Agreement**

an agreement to be entered into with any relevant body or competent/appropriate authority that (in the Borrower's reasonable opinion) is necessary for or will assist in either the carrying out of the Development of the Charged Area and other land pursuant to the Satisfactory Planning Permission including (without limitation) any agreement pursuant to (any or all of) section 18 of the Public Health Act 1936 sections 38 or 278 of the Highways Act 1980 or sections 104, 106 or 185 of the Water Industry Act 1991 or any provision to

similar intent or an agreement with a water undertaker or a drainage undertaker (within the meaning of the Water Industry Act 1991) or the Environment Agency or an Internal Drainage Board (within the meaning of the Water Resources Act 1991 or the Land Drainage Act 1991) or other appropriate authority as to water supply or drainage of surface and/or foul water from the Property or an agreement with any competent authority or body relating to other services, including, in all cases, any variations or amendments and any subsequent agreements pertaining thereto.

## 1.2 Interpretation

In this deed:

- 1.2.1 reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force for the time being, taking account of any amendment or re-enactment or extension and includes any former statute, statutory provision or subordinate legislation which it amends or re-enacts;
- 1.2.2 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.3 unless the context otherwise requires, words in the singular include the plural and in the plural include the singular;
- 1.2.4 a reference to a clause or Schedule is to a clause of, or Schedule to, this deed and references to paragraphs are to paragraphs of the relevant Schedule, unless the context otherwise requires;
- 1.2.5 a reference to **this deed** (or any provision of it) or any other document shall be construed as a reference to this deed, that provision or that document as it is in force

for the time being and as amended in accordance with its terms or with the agreement of the relevant parties;

- 1.2.6 a reference to a **person** shall include a reference to an individual, firm, company, partnership, corporation, unincorporated body of persons, or any state or any agency of any person;
- 1.2.7 a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amended** shall be construed accordingly);
- 1.2.8 a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.2.9 a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- 1.2.10 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;
- 1.2.11 a reference to the **Borrower** or the **Lender** shall include its successors, permitted transferees and permitted assigns;
- 1.2.12 a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the discretion of the person making it; and
- 1.2.13 clause, Schedule and paragraph headings shall not affect the interpretation of this deed.

### 1.3 Nature of security over real property

A reference in this deed to a charge or mortgage of or over the Charged Area includes:

- 1.3.1 all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) and fixed plant and machinery which belong to the Borrower and are situated on or form part of the Charged Area at any time; and

- 1.3.2 the proceeds of sale of the Charged Area and any other monies paid or payable in respect of or in connection with the Charged Area (in both cases only up to the level of the Secured Liabilities); and
  - 1.3.3 the benefit of any covenants for title given to any predecessor in title of the Borrower in respect of the Charged Area and any monies paid or payable in respect of those covenants; and
  - 1.3.4 all rights under any licence to occupy, agreement for sale or agreement for lease in respect of the Charged Area the sale of which is completed after the occurrence of an Event of Default.
- 1.4 **Third-party rights**
- Except as expressly provided elsewhere in this deed, a person who is not a party to this deed (other than a permitted successor or assign, or any Receiver) has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this deed.
- 1.5 **Perpetuity period**
- 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).
- 1.6 **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**
- 2.1 The Borrower shall on demand pay to the First Lender and discharge the Secured Liabilities when they become due as set out in the Contract.
- 2.2 If the Deferred Consideration or any part of it is not paid on the relevant due date for payment it will bear interest at the Interest Rate both before and after any judgment from and including the due date.
- 3. Grant of security**
- 3.1 The Borrower with full title guarantee charges to the Lender by way of first legal mortgage

the Charged Area as a continuing security for the payment and discharge of the Secured Liabilities;

- 3.2 The Borrower may, at any time, submit to the Lender a request that at the cost of the Borrower there be substituted for any property forming part of the Property another property, a bond or a bank guarantee (or any combination of them) (the "**Substitute Property**"). The Lender shall give due and proper consideration to any such request but shall have discretion as to whether to approve any such revised arrangements.

**4. Perfection of security**

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

- 4.1.1 The Borrower consents to an application being made by the Lender to the Land Registrar for the following restriction to be registered against its title to the Charged Area (only):

*"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 29 September 2020 in favour of James Thomas Boon, Edward Roberts Boon, Joanna Elizabeth Parker and Banks Property Limited referred to in the charges register or their conveyancer"*

PROVIDED always that following the payment of the Deferred Consideration in accordance with the Contract (and any other monies then contractually due hereunder) the Lender shall as soon as reasonably practicable and no later than 5 Working Days following the date of payment:

- 4.1.1.1 apply to the Land Registry at the Borrower's cost to have the Restriction removed from the registers of title to the Charged Area; and

- 4.1.1.2 provide to the Borrower at the Borrower's cost a duly executed DS1 in respect of the Charged Area.

- 4.1.2 The Lender hereby confirms its consent (and agrees that a copy of this deed may be produced to the Land Registry as evidence of such consent) in relation to each and

every Permitted Disposal that the Restriction above shall not apply to such a disposition and that such a Permitted Disposal may be registered without any further consent or agreement being supplied by the Lender.

4.1.3 The Lender hereby confirms (and agrees that a copy of this deed may be produced to the Land Registry as evidence of such consent) in relation to a Permitted Disposal that results in the disponent becoming the registered owner of a new title the Restriction in this clause need not be reproduced on the new title created by such disposition and the Lender shall at the request and cost of the Borrower produce a signed form RX4 in such form as the Borrower reasonably requires to ensure that the said Restriction is not reproduced on such title.

4.1.4 The Borrower acknowledges and agrees that the Lender may apply to have the security created by this Charge registered with the Registrar of Companies.

#### 4.2 Notices

If any notice (whether agreed or unilateral) is registered against the Borrower's title to the Charged Area to protect a purported interest, the creation of which is not permitted under this deed, the Borrower shall as soon as it becomes aware of such registration provide the Lender with full particulars of the circumstances relating to such notice and at its own expense take such steps as the Lender may reasonably require to ensure that the caution or notice as applicable is withdrawn or cancelled.

#### 5. Warranties

The Borrower warrants to the Lender that:

5.1 neither the execution of this deed by the Borrower nor compliance with its terms will:

5.1.1 conflict with or result in any breach of any law or enactment or any deed, agreement or other obligation or duty to which the Borrower is bound; or

5.1.2 cause any limitation on any of the powers of the Borrower or on the right or ability of the directors of the Borrower to exercise those powers to be exceeded;

5.1 all consents required by the Borrower for the execution, delivery, issue, validity or enforceability of this deed have been obtained and have not been withdrawn;

- 5.2 no person having any charge or other form of security over the Charged Area or any other assets of the Borrower has enforced or given notice of its intention to enforce such security;
- 5.3 no Event of Default has occurred and is continuing;
- 5.4 the Charged Area is free from any Security Interest other than the Security Interest created by this deed.

**6. Covenants**

The Borrower covenants with the Lender in the terms set out in Schedule 2.

**7. Powers of the Lender and consents to Borrower**

**7.1 Lender has Receiver's powers**

To the extent permitted by law, any right, power or discretion conferred by this deed on a Receiver may, after the security constituted by this deed has become enforceable, be exercised by the Lender in relation to any of the Charged Area whether or not it has taken possession of any property and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

**7.2 Power to Remedy**

7.2.1 The Lender shall be entitled (but shall not be obliged) to remedy, at any time, the breach by the Borrower of any of its obligations contained in this deed.

7.2.2 The Borrower irrevocably authorises the Lender and its agent to do all such things as shall be necessary or desirable for that purpose.

7.2.3 Any monies properly and reasonably expended by the Lender in remedying a breach by the Borrower of its obligations contained in this deed shall be reimbursed by the Borrower to the Lender on a full indemnity basis and shall carry interest at the Interest Rate. In remedying any breach in accordance with this clause 7.2 the Lender, its agent and their respective officers, agents and employees shall be entitled to enter onto the Charged Area and take any action as the Lender may reasonably consider necessary or desirable including, without limitation, carrying out any repairs, or other works of development.

7.2.4 The rights of the Lender under this clause 7.2 are without prejudice to any other rights of the Lender under this deed. The exercise of any rights of the Lender under this deed shall not make the Lender liable to account as a mortgagee in possession.

### 7.3 Consent

Provided that the security afforded by this deed has not become enforceable under clause 8.1 and provided that the Borrower pays all of the Lender's proper and reasonable costs relating to this clause 7.3, the Borrower shall be entitled:

- 7.3.1 to enter into any Works Agreement in accordance with the Satisfactory Planning Permission; and
- 7.3.2 to enter into any agreement including wayleaves with regard to the provision of services by any Public Utility to the Charged Area in connection with the Development of the Charged Area and/or the Property in accordance with the Satisfactory Planning Permission; and
- 7.3.3 to grant rights over such parts of the Charged Area as may be required to be leased or granted to any Public Utility for the purposes of including but not limited to an electricity substation gas governor pumping station(s) attenuation pipe(s) and/or tank(s) rising mains service supply conduits or similar infrastructure (as the case may be) in connection with the Development of the Charged Area and/or the Property in accordance with the Satisfactory Planning Permission; and
- 7.3.4 to enter into any Planning Agreement and Works Agreement; and
- 7.3.5 to grant to either (i) the purchaser of any dwellinghouse located on the Land or (ii) the purchaser of any land within the Land upon which dwellinghouses will be constructed any rights in the nature of "estate-wide" easements including but not limited to rights to use accessways and roads, rights to use services and rights to use public or common facilities; and
- 7.3.6 to grant rights to a local authority or management company in relation to public open space or any other facilities or land required to be transferred or leased pursuant to the provisions of a Planning Agreement or a Works Agreement.

- 7.4 The Lender will, as soon as reasonably practicable (at the cost of the Borrower), enter into a Works Agreement, a Planning Agreement and any agreement or deed relating to those matters mentioned in clauses 7.3.2 and 7.3.3 and the Borrower will (but without prejudice to the Lender's obligations in the Contract) indemnify and keep indemnified the Lender in respect of all liabilities thereunder and the Lender may refuse to enter into any such agreement only if a) it would bind any land belonging to the Lender other than the Charged Area and any other land referred to within or that has the benefit of the Satisfactory Planning Permission and/or b) it would have the effect of sterilising any part of the Charged Area or otherwise materially prejudicing the potential Development of the Charged Area pursuant to the Satisfactory Planning Permission and (for the avoidance of doubt) in joining in any such agreement or deed the Lender shall have no liability unless it enters the Charged Area as mortgagee in possession.
- 7.5 In respect of any Permitted Disposal the Lender will as soon as reasonably practicable after the Borrower's request supply to the Borrower a duly executed consent to dealing (addressed to the Land Registry and the Borrower) (as the case may be) as soon as is reasonably practicable after receiving a written request to do so.
8. **When security becomes enforceable**
- 8.1 Security becomes enforceable on Event of Default
- The security constituted by this deed shall be immediately enforceable if an Event of Default occurs and is continuing unremedied.
- 8.2 Discretion
- After the security constituted by this deed has become enforceable, the Lender 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 Area.
9. **Enforcement of security**
- 9.1 Enforcement powers
- 9.1.1 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 Lender and a purchaser from

the Lender, arise on and be exercisable at any time after the execution of this deed, but the Lender shall not exercise such power of sale or other powers until the security constituted by this deed has become enforceable under clause 8.1.

9.1.2 Section 103 of the LPA 1925 (restricting the power of sale) does not apply to the security constituted by this deed.

## 9.2 Extension of statutory powers of leasing

The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and/or by any other statute are extended so as to authorise the Lender 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 Borrower, to:

9.2.1 grant any lease or agreement for lease;

9.2.2 accept surrenders of leases; or

9.2.3 grant any option of the whole or any part of the Charged Area with whatever rights relating to other parts of it,

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

## 9.3 Protection of third parties

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

9.3.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;

9.3.2 whether any power the Lender or a Receiver is purporting to exercise has become exercisable or is properly exercisable; or

9.3.3 how any money paid to the Lender or any Receiver is to be applied.

## 9.4 Privileges

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

**9.5 No liability as mortgagee in possession**

Neither the Lender nor any Receiver shall be liable to account as mortgagee in possession in respect of all or any of the Charged Area, nor shall any of them be liable for any loss on realisation of, or for any neglect or default of any nature in connection with, all or any of the Charged Area for which a mortgagee in possession might be liable as such.

**9.6 Relinquishing possession**

If the Lender or any Receiver enters into or takes possession of the Charged Area, it or he may at any time relinquish possession.

**9.7 Conclusive discharge to purchasers**

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

**10. Receivers**

**10.1 Appointment**

At any time after the security constituted by this deed has become enforceable, the Lender 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 Area.

**10.2 Removal**

The Lender 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 terminated.

**10.3 Remuneration**

The Lender 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, which shall become due and payable immediately on it being paid by the Lender.

**10.4 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 Lender 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.

**10.5 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 Lender despite any prior appointment in respect of all or any part of the Charged Area.

**10.6 Agent of the Borrower**

Any Receiver appointed by the Lender under this deed shall be the agent of the Borrower and the Borrower 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 Borrower goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Lender.

**11. Powers of Receiver**

**11.1 Powers additional to statutory powers**

11.1.1 Any Receiver appointed by the Lender under this deed shall, in addition to the powers conferred on him by statute, have the powers set out in this clause 11.

11.1.2 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.

11.1.3 Any exercise by a Receiver of any of the powers given by this clause 11 may be on behalf of the Borrower, the directors of the Borrower or himself.

**11.2 Repair and develop the Charged Area**

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

**11.3 Grant or accept surrenders of leases**

A Receiver may grant, or accept surrenders of, any leases or tenancies affecting the Charged Area and may grant any other interest or right over the Charged Area on such terms and subject to such conditions as he thinks fit.

**11.4 Employ personnel and advisers**

A Receiver may provide services and employ, or engage, such managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on such terms and subject to such conditions as he thinks fit in respect of the Charged Area. A Receiver may discharge any such person or any such person appointed by the Borrower.

**11.5 Make VAT options to tax**

A Receiver may exercise any VAT option to tax as he thinks fit.

**11.6 Charge for remuneration**

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

**11.7 Realise Charged Area**

A Receiver may collect and get in the Charged Area or any part of it in respect of which he is appointed and make such demands and take such proceedings as may seem expedient for that purpose, and take possession of the Charged Area with like rights.

**11.8 Manage the Borrower's business**

A Receiver may carry on manage or permit the carrying on or managing of the business of the Borrower carried on at the Charged Area.

**11.9 Dispose of Charged Area**

A Receiver may grant options and licences over all or any part of the Charged Area, sell, assign, lease and accept surrenders of leases of (or concur in selling, assigning, leasing or accepting

surrenders of leases of) all or any of the Charged Area in respect of which he is appointed for such consideration and in such manner (including, without limitation, by public auction or private sale) and generally on such terms and conditions as he thinks fit. A Receiver may promote, or concur in promoting, a company to purchase the Charged Area to be disposed of by him.

**11.10 Sever fixtures and fittings**

A Receiver may sever and sell separately any fixtures or fittings from the Charged Area without the consent of the Borrower.

**11.11 Give valid receipts**

A Receiver may give valid receipts for all monies and execute all assurances and things which may be proper or desirable for realising any of the Charged Area.

**11.12 Make settlements**

A Receiver may make any arrangement, settlement or compromise between the Borrower and any other person which he may think expedient in respect of the Charged Area.

**11.13 Bring proceedings**

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

**11.14 Insure**

A Receiver may, if he thinks fit, but without prejudice to the indemnity in clause 13, 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 Borrower under this deed in respect of the Charged Area.

**11.15 Powers under LPA 1925**

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

**11.16 Borrow**

A Receiver may, for any of the purposes authorised by this clause 11, raise money by borrowing from the Lender (or from any other person) either unsecured or on the security of all or any of

the Charged Area in respect of which he is appointed on such terms as he thinks fit (including, if the Lender consents, terms under which such security ranks in priority to this deed).

**11.17 Absolute beneficial owner**

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

**11.18 Incidental powers**

A Receiver may do all such other acts and things:

11.18.1 as he may consider desirable or necessary for realising any of the Charged Area;

11.18.2 as he 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

11.18.3 that he lawfully may or can do as agent for the Borrower.

**12. Application of proceeds**

**12.1 Order of application of proceeds**

All monies received by the Lender or a Receiver under this deed after the security constituted by this deed has become enforceable, 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:

12.1.1 in or towards payment of or provision for all costs, charges and expenses incurred by or on behalf of the Lender (and any Receiver, 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;

12.1.2 in or towards payment of or provision for the Secured Liabilities in such order and manner as the Lender determines; and

12.1.3 in payment of the surplus (if any) to the Borrower or other person entitled to it.

**12.2 Appropriation**

Neither the Lender nor any Receiver 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.

**13. Costs and indemnity**

PROVIDED THAT any such costs are not recoverable under the Contract or otherwise, the Borrower shall promptly on written demand pay to, or reimburse, the Lender and any Receiver, on a full indemnity basis, all reasonable costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal costs) incurred by the Lender, any Receiver or any delegate in connection with taking proceedings for, or recovering, any of the Secured Liabilities.

**14. Further assurance**

The Borrower shall, at its own expense, take whatever action the Lender or any Receiver may reasonably require for:

- 14.1 creating, perfecting or protecting the security intended to be created by this deed;
  - 14.2 facilitating the realisation of any of the Charged Area; or
  - 14.3 facilitating the exercise of any right, power, authority or discretion exercisable by the Lender or any Receiver in respect of any of the Charged Area
- including, without limitation, if the Lender thinks it expedient, the execution of any transfer, conveyance, assignment or assurance of all or any of the assets forming part of, or intended to form part of, the Charged Area (whether to the Lender or to its nominee) and the giving of any notice, order or direction and the making of any registration.

**15. Power of attorney**

**15.1 Appointment of attorneys**

Following the occurrence of an Event of Default that is continuing, by way of security, the Borrower irrevocably appoints the Lender and every Receiver separately to be the attorney of the Borrower and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

- 15.1.1 the Borrower is required to execute and do under this deed; or

15.1.2 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 Lender or any Receiver.

**15.2 Ratification of acts of attorneys**

The Borrower ratifies and confirms, and agrees to ratify and confirm, anything which 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 15.1.

**16. Release**

**16.1 The Lender shall at no cost to the Borrower:**

16.1.1 on the date of this Charge provide a bulk letter of consent to any Permitted Disposal effected by way of paragraph (b) of the definition of Permitted Disposal to allow such Permitted Disposals to be registered; and

16.1.2 within five (5) Working Days of request (and of being provided with a copy of the relevant completed document) to provide such consent as is required to enable any Permitted Disposal effected by way of paragraph (a) of the definition of Permitted Disposal to be registered at HM Land Registry; and

16.1.3 duly discharge from the security constituted by this Charge any part of the Property forming part of the Property to be released in accordance with clause 3.2 of this Charge; and

16.1.4 within 2 Working Days of a written request by the Borrower provide all such properly executed release documentation (including, for the avoidance of doubt, a Land Registry Form DS3, DS1 and a letter of consent) and/or Form RX4 as may reasonably be required by the Borrower to give effect to the provisions of this clause.

16.2 Subject to clause 18.2, on the expiry of the Security Period, the Lender shall, at the request of and at no cost to the Borrower, take whatever action is necessary to release the Charged Area from the security constituted by this deed and shall in any event within two Working Days apply to the Land Registry to have the Restriction removed from the registers of title to the Charged Area.

- 16.3 The Lender, by way of security, irrevocably appoints the Borrower as its attorney and in the name of and on behalf of each Lender and as the act and deed of each Lender 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 Borrower by the Lender in accordance with this clause 16 and clause 7 and clauses 4.1.1.1 and 4.1.1.2 where the Lender fails to deliver the same to the Borrower within 10 Working Days of being required to do so (and being notified of such obligation by the Borrower) (but unless the obligation of the Lender to give such deed, assurance, instrument, deed or act is subject to a bona fide dispute raised by the Lender to the Borrower prior to the expiry of the said period of 10 Working Days) and this power of attorney is given as security pursuant to the Powers of Attorney Act 1971. The Borrower 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.
- 16.4 Any dispute arising out of this clause 16 may be referred by either party to an expert in accordance with the provisions of clause 16.5 of this charge.
- 16.5 Except where otherwise expressly herein provided for if any dispute or difference shall arise between the parties with regard to this clause 16 then either party may give notice to the other that it requires such dispute or difference to be referred to and to be determined by an independent expert in accordance with the provisions of this clause 16 who (if not appointed jointly by agreement between the parties within ten (10) Working Days of either party requesting an appointment) shall be appointed upon the application of either of the parties at any time as follows:
- 16.5.1 in regard to any matter or thing of a valuation nature arising out of or connected with the subject matter of this Agreement to the President for the time being of The Royal Institution of Chartered Surveyors;
- 16.5.2 in regard to matters of law to the President for the time being of the Law Society;
- 16.5.3 the independent expert appointed in accordance with this clause 16.5 shall:

- 16.5.3.1 be of not less than fifteen years' recent experience in his profession dealing with matters similar to the subject matter of the dispute;
  - 16.5.3.2 act as an expert;
  - 16.5.3.3 consider any written representations made by or on behalf of either party (each party being entitled to receive a copy of the other's representations and within fifteen (15) Working Days to submit counter representations) but otherwise shall have an unfettered discretion;
  - 16.5.3.4 insofar as reasonably practicable determine the matter within thirty (30) Working Days of his appointment and serve written notice of his reasoned determination on each party;
  - 16.5.3.5 be paid his proper fees and expenses in connection with such determination by the parties in equal shares or such shares as he shall determine Provided That either party may pay the costs of the other party and may recover from that other party such costs and the reasonable and proper costs of making such payment of costs.
- 16.6 Nothing in clause 16.5 shall prevent either party applying to the court for an order of specific performance.
17. **Assignment and transfer**
- 17.1 Assignment by Lender
- 17.1.1 At any time, without the consent of the Borrower, the Lender may assign or transfer the whole or any part of the Lender's rights and/or obligations under this deed to (only) a UK clearing bank PROVIDED that any assignee or transferee shall have first covenanted by Deed with the Borrower to observe and perform the Lender's obligations hereunder.
  - 17.1.2 The Lender may disclose to any actual or proposed assignee or transferee such information about the Borrower, the Charged Area and this deed as the Lender considers appropriate.
- 17.2 Assignment by Borrower

17.2.1 Subject to clause 17.2.2, the Borrower may not assign any of its rights, or transfer any of its obligations, under this deed or enter into any transaction that would result in any of those rights or obligations passing to another person.

17.2.2 The Borrower may, without the consent of the Lender, transfer the freehold title to the whole of the Charged Area subject to this deed and assign its rights subject to the obligations under this deed in respect of the transferred Charged Area to a Group Company of the Borrower provided that the assignee provides a deed of covenant for the benefit of the Lender under which the assignee covenants to comply with all of the obligations in this deed as if it were a party to this deed in relation to the Charged Area and the assignee and the Borrower shall be a party to the deed of covenant.

17.2.3 The Borrower will pay the Lender's reasonable Costs reasonably and properly incurred in connection with any assignment.

17.2.4 Subject to the Borrower complying with clause 17.2.2 the Lender will provide a written consent for the purposes of each assignment in order to comply with the Restriction at clause 4.1.1.

**18. Further provisions**

**18.1 Continuing security**

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 Lender discharges this deed in writing.

**18.2 Discharge conditional**

Any release, discharge or settlement between the Borrower and the Lender shall be deemed conditional on no payment or security received by the Lender 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:

18.2.1 the Lender 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

Area, for such period as the Lender deems necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and

18.2.2 the Lender may recover the value or amount of such security or payment from the Borrower subsequently as if such release, discharge or settlement had not occurred.

**18.3 Rights cumulative**

The rights and powers of the Lender conferred by this deed are cumulative, may be exercised as often as the Lender considers appropriate, and are in addition to its rights and powers under the general law.

**18.4 Amendments**

Any amendment of this deed shall be in writing and signed by, or on behalf of, each party.

**18.5 Variations and waivers**

Any waiver or variation of any right by the Lender (whether arising under this deed or under the general law) shall only be effective if it is in writing and signed by the Lender and applies only in the circumstances for which it was given, and shall not prevent the Lender from subsequently relying on the relevant provision.

**18.6 Further exercise of rights**

No act or course of conduct or negotiation by or on behalf of the Lender shall, in any way, preclude the Lender from exercising any right or power under this deed or constitute a suspension or variation of any such right or power.

**18.7 Delay**

No delay or failure to exercise any right under this deed shall operate as a waiver of that right or constitute an election to affirm this deed. No election to affirm this deed shall be effective unless it is in writing.

**18.8 Single or partial exercise**

No single or partial exercise of any right under this deed shall prevent any other or further exercise of that or any other right.

**18.9 Consolidation**

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

**18.10 Partial invalidity**

The invalidity, unenforceability or illegality of any provision (or part of a provision) of this deed under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with any modifications necessary to give effect to the commercial intention of the parties.

**19. Notices**

**19.1 Service**

Each notice or other communication required to be given under, or in connection with, this deed shall be:

19.1.1 in writing, delivered personally or sent by prepaid first-class letter; and

19.1.2 sent:

19.1.2.1 to the Borrower at: Nautilus House, Redburn Court, Earl Grey Way, Royal Quays, North Shields, NE29 6AR marked for the attention of: Phil James and John Jameson; and the Buyer's registered office as noted at Companies House marked for the attention of Moira Kinniburgh and Julia Jackson; and the Buyer's Conveyancer, quoting the reference 2685595/AFM/VRP1; and

19.1.2.2 to the Lender at the address for the First Lender stated above marked for the attention of Edward Boon

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

**19.2 Receipt by Borrower and Lender**

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

19.2.1 if given by hand, at the time of actual delivery; and

19.2.2 if posted, on the second Working Day after the day it was sent by prepaid first-class post.

A notice or other communication given as described in clause 19.2.1 or clause 19.2.2 on a day that is not a Working Day, or after 4.00pm on a Working Day, shall be deemed to have been received on the next Working Day.

**20. Governing law and jurisdiction**

**20.1 Governing law**

This deed shall be governed by and construed in accordance with English law.

**20.2 Jurisdiction**

The parties to this deed irrevocably agree that, subject as provided below, the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims). Nothing in this clause shall limit the right of the Lender to take proceedings against the Borrower in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

**20.3 Other service**

The Borrower irrevocably consents to any process in any proceedings under clause 20.2 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**

### **Covenants**

#### **1. Negative pledge and Disposal restrictions**

Subject to clause 7.3, the Borrower shall not at any time, except with the prior written consent of the Lender:

- 1.1 create, or permit to subsist any Security Interest on, or in relation to, the Charged Area other than any Security Interest created by this deed;
- 1.2 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 Area other than in accordance with this deed; or
- 1.3 create or grant (or purport to create or grant) any interest in the Charged Area in favour of a third party save by way of a Permitted Disposal or an agreement to effect a Permitted Disposal or as otherwise authorised under this deed.

#### **2. Preservation of Property**

- 2.1 The Borrower 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 Lender or materially diminish the value of any of the Charged Area or the effectiveness of the security created by this deed. Provided that the Borrower's use of the Property to carry out the Specified Works shall not constitute a breach of this covenant. The Borrower shall not carry out any works on the Charged Area save for the Specified Works.
- 2.2 The Borrower hereby:
  - 2.2.1 agrees to comply with the obligations on its part which are set out in Schedule 2; and
  - 2.2.2 grants the rights in favour of the Charged Area which are set out in Schedule 2 to this deed; and
  - 2.2.3 agrees, to the extent required by the Lender, on any sale of the Charged Area by the Lender or Receiver, in order to perfect the rights set out in Schedule 2, to immediately enter into such deeds and documents as are required by the Lender or Receiver.

#### **3. Compliance with laws and regulations**

- 3.1 The Borrower shall not, without the Lender's prior written consent, use or permit the Charged Area to be used in any way contrary to law.
- 3.2 The Borrower shall:
- 3.2.1 comply with the requirements of any law and regulation relating to or affecting the Charged Area or the use of it or any part of it;
  - 3.2.2 obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Charged Area or its use or that are necessary to preserve, maintain or renew the Property or any part or parts of it; and
  - 3.2.3 promptly effect any maintenance, modifications, alterations or repairs to be effected on or in connection with the Charged Area that are required to be made by it under any law or regulation.
- 3.3 The Borrower shall not, without the prior written consent of the Lender (such consent not to be unreasonably withheld or delayed) make or, in so far as it is able, permit others to make any application for planning permission or development consent in respect of the Charged Area other than an application for Planning Permission (as defined in the Contract).

**4. Insurance**

The Borrower shall insure and keep insured with a reputable insurer the Charged Area and the buildings and work-in-progress from time to time constructed on the Charged Area against loss or damage by such risks, perils and contingencies and in such amounts as the Borrower shall reasonably determine.

**5. Leases and licences affecting the Charged Area**

Subject to clause 7.3 the Borrower shall not, without the prior written consent of the Lender, (except in respect of a Permitted Disposal, where no consent will be required):

- 5.1 grant any licence or tenancy affecting the whole or any part of the Charged Area, 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);

- 5.2 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 Charged Area (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 Charged Area);
- 5.3 let any person into occupation of or share occupation of the whole or any part of the Charged Area; or
- 5.4 grant any consent or licence under any lease or licence affecting the Charged Area.

**6. No restrictive obligations**

Subject to clause 7.3 the Borrower shall not, without the prior written consent of the Lender, (except in respect of a Permitted Disposal, where no consent will be required), enter into any onerous or restrictive obligations affecting the whole or any part of the Charged Area or create or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of the Charged Area.

**7. Notices or claims relating to the Charged Area**

The Borrower shall:

- 7.1 (save where the same relate to the Development of the Charged Area by the Borrower in accordance with the Satisfactory Planning Permission (as defined in the Contract)) give full particulars to the Lender 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 Charged Area, or to the locality in which it is situated, promptly after becoming aware of the relevant Notice; and
- 7.2 (if the Lender so reasonably requires) immediately, and at the cost of the Borrower, take reasonable and necessary steps to comply with any Notice, and make, or join with the Lender in making, such objections or representations in respect of any such Notice as the Lender thinks fit.

**8. Payment of outgoings**

The Borrower shall pay (or procure payment of the same) when due all charges, rates, taxes, duties, assessments and other outgoings relating to or imposed upon the Charged Area or on

its occupier including (without prejudice to the generality of the foregoing) all charges levied for the development or maintenance of any public open space.

9. **Inspection**

The Borrower shall permit the Lender and any Receiver and any person appointed by either of them to enter on and inspect the Charged Area on reasonable prior notice.

10. **Development of the Property**

The Borrower shall in relation to the development of the Property use reasonable endeavours (to the extent as is permitted by the Satisfactory Planning Permission and any requirement of a Public Utility and having due regard to the Development Programme) to construct and lay Service Apparatus so as to serve a development of all the Property (as opposed to the Property less the Charged Area) in accordance with the Satisfactory Planning Permission.

## Schedule 2

### Development Covenants and Rights

1. In this Schedule 2 the following words and expressions shall have the following meanings:
  - 1.1 **Excluded Land** means any part of the Land on which a structure is erected or on which it may be erected pursuant to an issued planning permission or any part of the Land that forms the private curtilage or a private car parking space for a Dwelling;
  - 1.2 **Highways Authority** means the authority or body for the time being carrying out the functions of a 'Highways Authority' for the area which includes the Property and the duly appointed agents for the time being of such authority or body;
  - 1.3 **Land** means such parts of the Property as are not from time to time subject to the legal charge created by this deed, provided that on any release of any part of the Property from the legal charge contained in this deed, the rights set out in paragraph 2 shall be deemed to be restated in favour of the then Charged Area over the land which is the subject of the release;
  - 1.4 **Service Media** means all media for the supply or removal of heat, electricity, gas, water, sewage, energy, telecommunications, data and all other services and utilities and all structures machinery and equipment ancillary to those media (and including without limitation any SUDS provision constructed or to be constructed by the Borrower);
  - 1.5 **Service Undertakers** means the statutory or private undertakers responsible for the provision of or having power to provide water, gas, electricity, telephone, drainage and other services for the area which includes the Property and the respective successors and duly appointed agents for the time being of such undertakers;
  - 1.6 **Statutory Agreement** means any agreement required or desirable in order to facilitate the Development of the Property as a residential estate and such agreement may (without limitation) be with the local planning authority the Highways Authority and the relevant Service Undertaker(s).

2. There is hereby granted to the Lender and its successors in title the owners and occupiers for the time being of the Charged Area and each and every part thereof and all persons authorised by it or them the following rights (but on the basis that such rights shall be created now but such rights shall not be exercisable by the Lender (or its successors in title or those deriving title under it (or under its receivers where relevant)) until the date on which the Lender exercises its rights pursuant to clause 9.1.1 of this deed):
- 2.1 Support - the right of support and protection for the benefit of the Charged Area and any buildings from time to time on the Charged Area as is now enjoyed from the Land;
- 2.2 Building - the right to raise the height of or make any alterations or additions or execute any other works to the buildings on the Charged Area or to erect any new buildings of any height on the Charged Area after the date of this deed in such a manner as the Lender or the persons exercising the right shall think fit notwithstanding that any of those works result in a reduction in the flow of light or air to the Land or loss of amenity for the Land;
- 2.3 Services
- 2.3.1 the right to the free and uninterrupted passage and running of services through and along the Service Media which are constructed on or within or located on or within the Land from time to time together with the right to connect to and use any such Service Media (but not so that the flow of services to or from the Land is materially diminished) now existing within the Land or laid within the Land at any time and which are capable of serving the Charged Area;
- 2.3.2 the right in common with the Borrower and those authorised by it to lay any Service Media in on under or over the Land (but not in on or over any Excluded Land (save in respect of any Service Media which can be constructed within unbuilt upon parts of the Excluded Land without preventing the proposed development of the Excluded Land) for the passage of services to and from the Charged Area;
- 2.3.3 the benefit of the rights (as above) are subject to the Lender obtaining the prior written consent of the Borrower before exercising the right to connect to the Service Media or

lay new Service Media such consent not to be unreasonably withheld or delayed provided that:

2.3.3.1 the Borrower may withhold consent where in its reasonable opinion the then existing Service Media would become overloaded by the additional passage of services in on or through them following connection to them by the Lender; and

2.3.3.2 the Borrower may divert and/or alter any Service Media now or in the future laid and which are the subject of these reservations subject to an obligation to provide not less than three months' written notice to the Lender of any such proposed re-routing and subject to an obligation at all times to maintain a continuous supply of services to the Charged Area;

2.3.4 Entry - the right for the Lender and those authorised by them to enter and remain upon so much as is necessary of the Land (but not on any Excluded Land) on reasonable prior written notice (except in case of emergency) with or without workmen plant materials and equipment to:

2.3.4.1 lay, inspect, repair, maintain, replace, renew, clean, connect to and sever connections with any Service Media over which rights are reserved by this deed;

2.3.4.2 to repair, inspect, maintain, repair, replace, renew, clear and clean any roads and footpaths over which rights are granted in favour of the Charged Area by this deed in the event of a failure by the Borrower to keep the same clear and in good repair and condition;

2.3.4.3 repair inspect maintain decorate replace renew and clean any buildings or fences on the Charged Area or boundary fences or party walls between the Charged Area and the Land;

2.3.4.4 carry out any works which are required by the relevant planning permission and/or planning agreement or statutory agreement and which are necessary to facilitate the Development of the Charged Area

PROVIDED always that such rights are subject to the Lender causing as little nuisance or damage as is reasonably possible and promptly making good all damage caused to the reasonable satisfaction of the Borrower;

- 2.3.5 Right of Way - a right of way with or without vehicles (save in the case of footpaths where the right shall be for pedestrian access only) over and along such roads and footpaths (until such time as the same are adopted and maintained at the public expense) as are from time to time laid out on the Land in order to gain access and egress to and from the Charged Area to and from the adopted highway (and until such roads and footpaths are constructed over such temporary route(s) as is/are first approved by the Borrower (such approval not to be unreasonably withheld or delayed))

Provided That:

- 2.3.5.1 the Borrower may from time to time re-designate the route or routes in respect of which the Transferor enjoys rights under this paragraph 2.3.5 so long as they are not substantially less commodious than those over which rights were previously enjoyed; and

- 2.3.5.2 in the case that the Borrower has not complied with its obligations in paragraphs 2.4.3 and/or 2.4.4 (or as at the date on which an Event of Default occurs the Borrower has not completed the works referred to in paragraphs 2.4.3 and 2.4.4) the right, at the expense of the Borrower (on a full indemnity basis), and subject to the consent and requirements of the relevant authority to enter onto the Land (but not on any built upon parts of the Excluded Land) in order to:

- 2.3.5.2.1 make such connections to any road or street already constructed upon the Land for the purposes aforesaid and so far as necessary from and to the points of such connections to construct (but not on any land laid out as a plot or a designated car parking space or which is intended to be laid out as a plot or a designated car parking space)

sections of road or street along such routes as are permitted by the relevant planning permission or approved by the Borrower (such approval not to be unreasonably withheld or delayed) so as to serve the Charged Area or any buildings now or after the date of this deed to be erected thereon;

2.3.5.2.2 make such connections to any Service Media already constructed in on or under the Land (but not so that the flow of services to and from the Land is materially diminished) and from and to the points of such connection to construct lay and complete or procure that the relevant Service Undertakers construct lay and complete (but not on any land laid out as a plot or a designated car parking space or which is intended to be laid out as a plot or a designated car parking space (save in respect of any Service Media which can be constructed within unbuilt upon parts of such land without preventing the proposed Development of the such land) Service Media in on under or over the Property so as to serve the Charged Area along such routes as are permitted by the relevant Statutory Agreement (if any) or approved by the Borrower (such approval not to be unreasonably withheld or delayed) so as to serve the Charged Area or any buildings now or after the date of this deed to be erected thereon.

2.4 The Borrower covenants with the Lender as follows:

2.4.1 to pay to the Lender, within 10 Working Days of written demand, the sums which the Borrower is required to contribute or reimburse pursuant to the provisions set out in this Schedule 2 provided that such sums have been reasonably and properly incurred;

2.4.2 to keep any works constructed on the Land pursuant to paragraphs 2.4.3 and 2.4.4 in good repair and condition until such time as the same are adopted as maintainable at

the public expense Provided That in the event of a failure by the Borrower to comply with the provisions of this paragraph 2.4.2 the Lender shall be entitled to carry out such works as are necessary to remedy any breach and any reasonable costs properly incurred by the Lender in carrying out such works shall be due as a debt from the Borrower to the Lender which shall be due and payable within ten Working Days of written demand;

2.4.3 the Borrower shall (as soon as reasonably practicable but having due regard to the Development Programme) construct on the Land a road to at least base course level in accordance with all respects of the requirements of the Highways Authority from the current public highway to a point abutting the boundary of each parcel of the Charged Area in positions shown on the Plan so as to provide access and egress to and from each parcel of the Charged Area to and from the adopted highway. All parties acknowledge that Development Programme means the Borrower cannot comply with this covenant within the Security Period and the Lender confirms that the Borrower will not be in breach of this obligation as a result of a failure to carry out/ complete the works referred to in this clause 2.4.3 within the Security Period;

2.4.4 the Borrower shall (as soon as reasonably practicable but having due regard to the Development Programme) construct or procure that the relevant Service Undertakers construct Service Media in on under or over the Land (so as to serve each parcel of the Charged Area) to the boundary of each parcel of the Charged Area within the roads as shown on the Plan in accordance with the Satisfactory Planning Permission and the Borrower shall pay to the Service Undertakers all sums properly payable to them for or in respect of the construction of such Service Media until such time as such Service Media is adopted by the relevant authority. All parties acknowledge that Development Programme means the Borrower cannot comply with this covenant within the Security Period and the Lender confirms that the Borrower will not be in breach of this obligation as a result of a failure to carry out/ complete the works referred to in this clause 2.4.4 within the Security Period;

- 2.4.5 the Borrower shall use reasonable but commercially sensible endeavours as soon as reasonably practicable after the date of this deed to enter into an agreement with the Highways Authority pursuant to Section 38(3) of the Highways Act 1980 for the construction of any roads and footpaths to be constructed on the Property and for their maintenance until adopted and shall procure such bonds and security in support of such agreement as the Highways Authority may reasonably require and shall if requested produce to the Lender a copy of such agreement and bond or security on their completion;
- 2.4.6 the Borrower shall use reasonable endeavours as soon as reasonably practicable after the date of this deed to enter into an agreement with the relevant water authority pursuant to the provisions of Section 104 of the Water Industry Act 1991 for the construction of the drains to be constructed on the Property to adoption standard and for their maintenance until adopted and shall procure such bond or security in support of such agreement as such water authority may reasonably require and shall if requested produce to the Lender's solicitors a copy of such agreement and bond or security on their completion;
- 2.4.7 the Borrower shall pay to the Lender within 14 days of written demand (such demand being accompanied by details of such costs) the reasonable and proper costs incurred by the Lender of carrying out those works upon the Property that it is permitted to carry out pursuant to paragraph 2.3.5.2;
- 2.4.8 at the Lender's request the Borrower will enter into (and will procure that any mortgagee (or any other person with a material interest in the part of the Property so affected) enters into) any Statutory Agreement as is reasonably required by the Lender in order to assist the Lender in carrying out any development of the Charged Area (including the carrying out of any works on the Land which the Lender is entitled to carry out pursuant to the provisions of this deed provided that any such Statutory Agreement shall be in a reasonable form (in so far as it relates to the Land) approved by the Borrower (such approval not to be unreasonably withheld or delayed).



Executed as a Deed by  
**Miller Homes Limited**  
acting by two attorneys  
in the presence of:

[Redacted]

.....  
*Signature of witness*

.....  
CHLOE WILLIAMSON  
.....  
*Name of witness*

.....  
*Address*

.....  
*Address*

[Redacted]

.....  
*Signature of witness*

.....  
*Name of witness*

.....  
*Address*

Executed as a Deed by  
**Banks Property Limited**  
acting by  
a director in the presence of:

.....  
*Signature of witness*

.....  
*Name of witness*

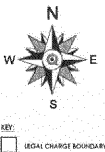
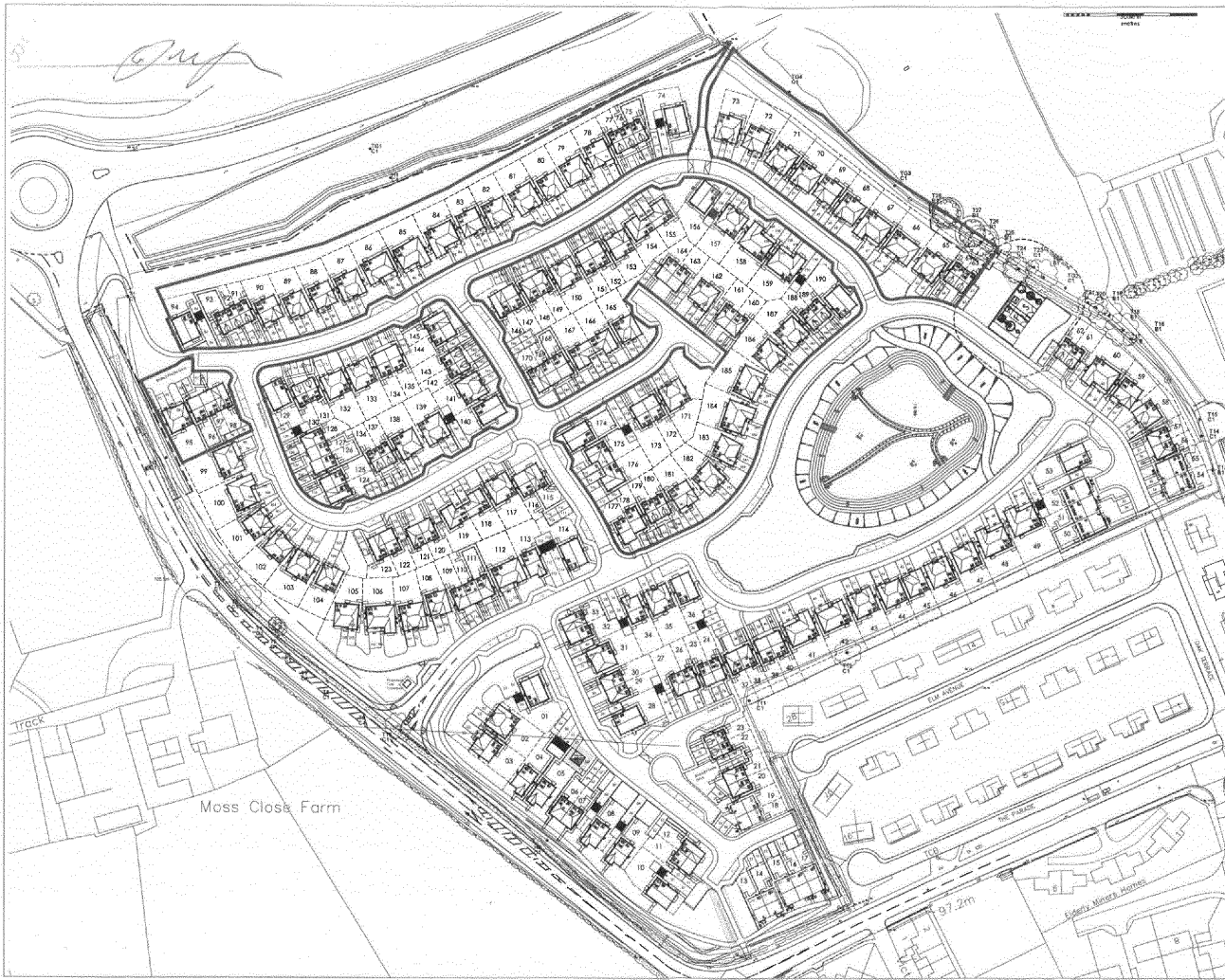
.....  
*Address*

[Redacted]

.....  
*Attorney*

.....  
*Attorney*

.....  
*Director*



**Queensberry**  
**miller homes**  
Miller Homes Limited - North East Region  
Building Division  
Endsley Court, Eastbury Way  
North, Chester CH4 4JL  
Telephone: 01244 555 4100  
Fax: 01244 555 4101  
www.millerhomes.co.uk

**LAND AT FELTON LANE  
FELTON, CHESTERLE-STRÉE  
CO. DURHAM**

**LEGAL CHARGE PLAN**

Drawn by	Scale	Sheet
Checked by	1:1000	1 of 1
Project No.	100-10	A
Date	10/01/02	

Executed as a Deed by  
**James Thomas Boon**  
in the presence of:

.....  
Signature

.....  
*Signature of witness*

.....  
*Name of witness*

.....  
*Address*

Executed as a Deed by  
**Edward Roberts Boon**  
in the presence of:

.....  
Signature

.....  
*Signature of witness*

.....  
*Name of witness*

.....  
*Address*

Executed as a Deed by  
**Joanna Elizabeth Parker**  
in the presence of:

.....  
Signature

.....  
*Signature of witness*

.....  
*Name of witness*

.....  
*Address*