



Registration of a Charge

Company name: **MILLER HOMES LIMITED**

Company number: **SC255429**



X9JL99Z7

Received for Electronic Filing: **10/12/2020**

Details of Charge

Date of creation: **04/12/2020**

Charge code: **SC25 5429 0373**

Persons entitled: **ROBERT EDWIN PRESTON
FIONA ELIZABETH WOLLOCOMBE**

Brief description: **THAT PART OF THE FREEHOLD PROPERTY KNOWN AS LAND ON
THE SOUTH WEST SIDE OF RED LEES ROAD BURNLEY CURRENTLY
REGISTERED UNDER TITLE NUMBER LAN72618 AND SHOWN EDGED
PURPLE ON THE PLAN ATTACHED TO THE LEGAL CHARGE.**

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **GOWLING WLG UK LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 255429

Charge code: SC25 5429 0373

The Registrar of Companies for Scotland hereby certifies that a charge dated 4th December 2020 and created by MILLER HOMES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 10th December 2020 .

Given at Companies House, Edinburgh on 10th December 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 *14th December* 2020

MILLER HOMES LIMITED (1)

AND

ROBERT EDWIN PRESTON AND FIONA ELIZABETH WOLLOCOMBE (2)

LEGAL CHARGE

relating to Land on the south west side of Red
Lees Road Burnley



GOWLING WLG

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THIS LEGAL CHARGE is dated

4th December

2020

AND MADE BETWEEN:

- (1) **MILLER HOMES LIMITED** (Company No. SC255429) whose registered office is at Miller House, 2 Lochside View, Edinburgh Park, Edinburgh EH12 9DH (the "**Mortgagor**"); and
- (2) **ROBERT EDWIN PRESTON** of 9 Furzedown Close Egham Surrey TW20 9PY and **FIONA ELIZABETH WOLLOCOMBE** of Holt Lodge Norwich Road Holt Norfolk NR25 6SP (the "**Mortgagee**").

WITNESSES as follows:

1 INTERPRETATION

1.1 In this Deed, unless the context otherwise requires:

| | |
|---------------------------|--|
| Affordable Housing | housing 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 Units " shall be construed accordingly; |
| Charged Assets | all the property and rights of the Mortgagor described in clause 3.1; |
| Default Rate | 4% above the base lending rate of The National Westminster Bank PLC from time to time; |
| Development Site | the land which is the subject of the Sale Agreement (which is shown for identification purposes edged red on Plan 2); |
| Disposal | any freehold transfer or assent or a lease for a term in excess of 7 years or grant of rights and " Dispose " shall be interpreted accordingly; |
| Encumbrance | any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, standard security, assignment by way |

of security or other security interest of any kind;

Enforcement Date

the date on which the Mortgagee gives written notice of its intention to take enforcement action following the occurrence of an Event of Default which is continuing;

Event of Default

any one or more of the following events:

- (a) any petition is presented for the purpose of winding up the Mortgagor or an order is made or resolution passed for the winding up of the Mortgagor or a notice is issued convening a meeting for the purpose of passing any such resolution, but excluding any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement or, if earlier, the date on which it is advertised; or
- (b) any petition is presented or other step is taken for the purpose of the appointment of an administrator of the Mortgagor or an administration order is made in relation to the Mortgagor; or
- (c) any administrative or other receiver is appointed of the Mortgagor or any part of its assets and/or undertaking or any other steps are taken to enforce any Encumbrance over all or any part of the assets of the Mortgagor, or
- (d) the Mortgagor fails to pay or discharge the Secured Obligations when due;

Excluded Disposition

all or any of the following as the case may be:

- (a) the Disposal, dedication or adoption of any part of the Property or service within the Property and/or any rights over 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 services sewers or other infrastructure;

- (b) the Disposal, dedication or adoption of any parts 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 areas 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 the relevant Infrastructure Agreement;
- (c) the Disposal of any part of the Property which is required to comply with the requirements of any Infrastructure Agreement;
- (d) the grant of an easement over the Property or any part of parts of it pursuant to an Infrastructure Agreement or as part of the Development Site or the Disposal of any Unit;
- (e) the Disposal of any part of the Property as common parts, open space, amenity land or similar to the local authority or the Disposal of land intended for use as an electricity substation, transformer chamber, gas governor, pumping station or similar infrastructure; and/or
- (f) the 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 part of the Property where such contract or other disposition (as aforesaid) relates to Affordable Units;

| | |
|---------------------------------|--|
| Independent Valuer | a chartered surveyor having at least ten years' experience of town and country planning for mixed use but predominantly residential land; |
| Infrastructure Agreement | any agreement under: <ul style="list-style-type: none"> (a) section 38 or section 278 of the Highways Act 1980 or similar agreement for the construction, maintenance, adoption of roads and footpaths and the connection of the same to the public highway or any other works to the public authority; (b) section 98 or 104 or 185 of the Water Industry Act 1991 or similar agreement relating to the provision, maintenance and adoption of the sewers and drains; (c) an agreement, wayleave or deed with a Relevant Authority for or relating to the installation of Service Media for the provision and supply of Services; (d) any other similar agreement with a Relevant Authority for the carrying out and/or diversion of works and/or the maintenance, cleansing and/or adoption of the same; and/or (e) section 111 Local Government Act 1972 or section 106 of the Town and Country Planning Act 1990 with a Relevant Authority relating to the grant of planning permission for the development of (inter alia) the Property; |
| Plan 1 | the plan attached to this Deed at Appendix 1; |
| Plan 2 | the plan attached to this Deed at Appendix 2; |
| Property | all the property short particulars of which are set out in Schedule 1 and references to the Property include, where relevant, any one or more of such assets and any part of |

such assets;

| | |
|----------------------------|---|
| Receiver | any one or more receivers and/or managers appointed by the Mortgagee pursuant to this Deed in respect of the Mortgagor or over all or any of the Charged Assets; |
| Release | a form DS3 or form DS1 and/or form RX4 or such other form as shall be appropriate to release (when dated) the Property or any interest in the Property or any part of parts of the Property from this Deed; |
| Relevant Authority | the local county highway and planning authorities, gas, water, electricity, cable television and telecommunication companies and any other authority, company, utility, body, corporation or organisation concerned with the grant of planning permission and the control of development or the adoption of roads and sewers or the provision of Services and "Relevant Authority" is to mean any one of them as the context may admit; |
| Sale Agreement | the contract for sale in relation to the Property and other land entered into between Robert Edwin Preston and Fiona Elizabeth Wollocombe (1) and Miller Homes Limited (2) dated 15 March 2019 as varied by supplemental agreements dated 20 February 2020 and 25 August 2020 made between the same parties; |
| Secured Obligations | the obligation to make the 'First Deferred Payment and Second Deferred Payment' (as defined in the Sale Agreement) in accordance with the Sale Agreement and any other sums due under clause 2 of this Deed; |
| Service Media | sewers, pipes, drains, mains, channels, gutters, water courses, culverts, gullies, manholes, conduits, ducts, poles, wires, cables, laser, optical fibres and other media equipment and installations for the transmission of Services; |

| | |
|--------------------|---|
| Services | gas, fuel, oil, electricity, telephone, television, video, audio, fax, electronic mail, data information and communications, foul storm and surface water drainage and other services and supplies; |
| Unit | a single dwelling (or the intended site of a single dwelling) including any curtilage together with associated private driveways, garage or access (being a house, flat, maisonette, bungalow or other construction intended for residential use) erected or to be erected; and |
| Working Day | a day (other than a Saturday or Sunday) on which commercial banks are open for general business in London and deposits are dealt with in the London Interbank Market. |

1.2 Successors and assigns:

The expressions "**Mortgagee**", and "**Mortgagor**" include, where the context admits, their respective successors, and, in the case of the Mortgagee, its transferees and assignees, whether immediate or derivative.

1.3 Headings:

Clause headings and the contents page are inserted for convenience of reference only and shall be ignored in the interpretation of this Deed.

1.4 Construction of certain terms:

In this Deed, unless the context otherwise requires:

- (a) references to clauses and the schedules are to be construed as references to the clauses of, and the schedules to, this Deed and references to this Deed include its schedules;
- (b) reference to (or to any specified provision of) this Deed or any other document shall be construed as references to this Deed, that provision or that document as in force for the time being and as amended in accordance with the terms thereof or, as the case may be, with the agreement of the relevant parties and (where such consent is,

by the terms of this Deed or the relevant document, required to be obtained as a condition to such amendment being permitted) the prior written consent of the Mortgagee;

- (c) words importing the plural shall include the singular and vice versa and the masculine shall include the feminine and vice versa;
- (d) references to a person shall be construed as including references to an individual, firm, company, corporation, unincorporated body of persons or any State or any agency thereof;
- (e) references to statutory provisions shall be construed as references to those provisions as replaced, amended or re-enacted from time to time;
- (f) where the expression "**Mortgagor**" includes more than one person the expression shall include each and all of such persons as the context may permit, and each such person shall be jointly and severally liable under this Deed; and
- (g) a reference to 'continuing' in relation to an Event of Default means an Event of Default that has not been remedied or waived.

1.5 Effect as a deed:

This Deed is intended to take effect as a deed notwithstanding that a party may have executed it under hand only.

2 COVENANT TO PAY

2.1 Secured obligations:

The Mortgagor hereby covenants that they will discharge and pay to the Mortgagee the Secured Obligations when the same become due for payment or discharge in accordance with the provisions of the Sale Agreement.

2.2 Certain liabilities:

The liabilities referred to in clause 2.1 shall, without limitation, include interest at the Default Rate (both before and after judgment) from the date on which such sums fall due under the

Sale Agreement (if not paid on such dates) to date of payment at such rates and upon such terms as may from time to time be agreed, and all legal and other costs, charges and expenses on a full indemnity basis which may be incurred by the Mortgagee in relation to any of the Secured Obligations or generally in respect of the Mortgagor.

3 CHARGES

3.1 Fixed Charge:

The Mortgagor with full title guarantee as a continuing security for the payment and discharge of the Secured Obligations hereby charges to the Mortgagee by way of first legal mortgage the Property (and all buildings and fixtures from time to time on such Property) together with all rights, easements and privileges appurtenant to, or benefiting, the same.

3.2 The Land Registry:

- (a) The Mortgagor hereby applies to the Chief Land Registrar for the registration of the following restriction in standard Form P against the Property:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be registered without a written consent signed by the proprietor for the time being of the charge dated ~~(being the date of this deed)~~ in favour of Robert Edwin Preston and Fiona Elizabeth Wollocombe referred to in the charges register or their conveyancer or without a certificate signed by a conveyancer stating that the provisions of paragraph 5 of Schedule 2 of such charge have been complied with or that they do not apply to the disposition." *at 14th December 2020*

or in such other form (as approved by the Mortgagee and the Mortgagor acting reasonably and without undue delay) as stipulated by the Land Registry from time to time.

- (b) Subject to receipt from Companies House of a certificate of registration of this charge, the Mortgagor hereby covenants to apply to register this charge and the restrictions referred to in clause 3.2(a) at the Land Registry House within 10 Working Days of the date hereof, and will use its best endeavours to ensure that any requisitions are dealt with, and that the registration is completed in a timely manner. The Mortgagor shall forward a copy of the updated titles showing the registrations to the Mortgagee within 10 Working Days of receipt.

- 3.3 The Mortgagor hereby covenants to apply to register this charge at Companies House within 10 Working Days of the date hereof, and will use its best endeavours to ensure that any requisitions are dealt with, and that the registration is completed in a timely manner. The Mortgagor shall forward a copy of the registration certificate to the Mortgagee within 10 Working Days of receipt.

4 UNDERTAKINGS

4.1 Undertakings:

The Mortgagor hereby undertakes with the Mortgagee that during the continuance of this security the Mortgagor will comply with the undertakings set out in Schedule 2.

4.2 Power to remedy:

If the Mortgagor at any time defaults in complying with any of its obligations contained in this Deed and fails to so comply within 12 Working Days of a written request from the Mortgagee requiring it to take such action, the Mortgagee shall, without prejudice to any other rights arising as a consequence of such default, be entitled (but not bound) to make good such default and the Mortgagor hereby irrevocably authorises the Mortgagee and his agents by way of security to do all such things (including, without limitation, entering the Property and/or the Development Site (which entry shall be subject to giving reasonable prior notice, complying with all health and safety requirements and not interfering with or delaying the development of the Development Site) necessary or desirable in connection therewith. Any moneys so expended by the Mortgagee shall be repayable by the Mortgagor to the Mortgagee on demand. No exercise by the Mortgagee of his powers under this clause 4.2 shall make him liable to account as a Mortgagee in possession.

5 FURTHER ASSURANCE

The Mortgagor shall if and when at any time required by the Mortgagee execute such further Encumbrances and assurances in favour of the Mortgagee and do all such acts and things as the Mortgagee shall from time to time reasonably require over or in relation to all or any of the Charged Assets to secure the Secured Obligations or to perfect or protect the security intended to be created by this Deed over the Charged Assets or any part thereof or to facilitate the proper realisation of the same.

6 CERTAIN POWERS OF THE MORTGAGEE: ENFORCEMENT

6.1 Powers on enforcement:

At any time on or after the Enforcement Date or if requested by the Mortgagor, the Mortgagee may, without further notice, without the restrictions contained in section 103 Law of Property Act 1925 and whether or not a Receiver shall have been appointed, exercise all the powers conferred upon Mortgagees by the Law of Property Act 1925 as varied or extended by this Deed and all the powers and discretions conferred by this Deed on a Receiver either expressly or by reference.

6.2 Statutory power of leasing:

The Mortgagee shall have the power to lease and make agreements for leases at a premium or otherwise, to accept surrenders of leases and to grant options on such terms as the Mortgagee shall consider expedient and without the need to observe any of the provisions of sections 99 and 100 Law of Property Act 1925.

7 APPOINTMENT AND POWERS OF RECEIVER

7.1 Appointment:

At any time on or after the Enforcement Date or if requested by the Mortgagor, the Mortgagee may by instrument in writing executed as a deed appoint any qualified person to be a Receiver of the Charged Assets or any part thereof. Where more than one Receiver is appointed, each joint Receiver shall have power to act severally, independently of any other joint Receivers, except to the extent that the Mortgagee may specify to the contrary in the appointment. The Mortgagee may (subject, where relevant, to section 45 Insolvency Act 1986) remove any Receiver so appointed and appoint another in his place. In this clause 7 a "qualified person" is a person who, under the Insolvency Act 1986, is qualified to act as a receiver of the property of any Mortgagor with respect to which he is appointed or, as the case may be, an administrative receiver of any such Mortgagor.

7.2 Receiver as agent:

Any Receiver shall be the agent of the Mortgagor and the Mortgagor shall be solely responsible for his acts or defaults and for his remuneration.

7.3 Powers of Receiver:

Any Receiver shall have all the powers conferred from time to time on receivers and administrative receivers by statute (in the case of powers conferred by the Law of Property Act 1925, without the restrictions contained in section 103 of that Act) and power on behalf and at the expense of the Mortgagor (notwithstanding bankruptcy of the Mortgagor) to do or omit to do anything which the Mortgagor could do or omit to do in relation to the Charged Assets or any part thereof. In particular (but without limitation) a Receiver shall have power to do all or any of the following acts and things:

- (a) Take possession: take possession of, collect and get in all or any of the Charged Assets;
- (b) Manage Property: manage, develop, alter, improve or reconstruct the Property or concur in so doing; buy, lease or otherwise acquire and develop or improve properties or other assets without being responsible for loss or damage; acquire, renew, extend, grant, vary or otherwise deal with easements, rights, privileges and licences over or for the benefit of the Property;
- (c) Borrow money: raise or borrow any money from or incur any other liability to the Mortgagee or others on such terms with or without security as he may think fit and so that any such security may be or include a charge on the whole or any part of the Charged Assets ranking in priority to this security or otherwise;
- (d) Dispose of assets: without the restrictions imposed by section 103 Law of Property Act 1925 or the need to observe any of the provisions of sections 99 and 100 of such Act, sell by public auction or private contract, let, surrender or accept surrenders, grant licences or otherwise dispose of or deal with all or any of the Charged Assets or concur in so doing in such manner for such consideration and generally on such terms and conditions as he may think fit with full power to convey, let, surrender, accept surrenders or otherwise transfer or deal with such Charged Assets in the name and on behalf of the Mortgagor or otherwise and so that covenants and contractual obligations may be granted and assumed in the name of and so as to bind the Mortgagor (or other estate owner) if he shall consider it necessary or expedient so to do; any such sale, lease or disposition may be for cash, debentures or other obligations, shares, stock, securities or other valuable consideration and be payable immediately or by instalments spread over such period as he shall think fit and so that any consideration received or receivable shall ipso facto forthwith be and become

charged with the payment of all the Secured Obligations; and the Receiver may apportion any rent and the performance of any obligations affecting the premises sold without the consent of the Mortgagor;

- (e) **Compromise contracts:** make any arrangement or compromise or enter into or cancel any contracts which he shall think expedient;
- (f) **Repair and maintain assets:** make and effect such repairs, renewals and improvements to the Charged Assets or any part thereof as he may think fit and maintain, renew, take out or increase insurances;
- (g) **Appoint employees:** appoint managers, agents, officers and employees for any of the purposes referred to in this clause 7.3 or to guard or protect the Charged Assets at such salaries and commissions and for such periods and on such terms as he may determine and may dismiss the same;
- (h) **Exercise statutory leasehold powers:** without any further consent by or notice to the Mortgagor exercise for and on behalf of the Mortgagor all the powers and provisions conferred on a landlord or a tenant by the Landlord and Tenant Acts, the Rent Acts, the Housing Acts or the Agricultural Holdings Act or any other legislation from time to time in force in any relevant jurisdiction relating to security of tenure or rents or agriculture in respect of the Property but without any obligation to exercise any of such powers and without any liability in respect of powers so exercised or omitted to be exercised;
- (i) **Legal proceedings:** institute, continue, enforce, defend, settle or discontinue any actions, suits or proceedings in relation to the Charged Assets or any part thereof or submit to arbitration as he may think fit;
- (j) **Execute documents:** sign any document, execute any deed and do all such other acts and things as may be considered by him to be incidental or conducive to any of the matters or powers aforesaid or to the realisation of the security created by or pursuant to this Deed and to use the name of the Mortgagor for all the purposes aforesaid;
- (k) **Insolvency Act powers:** do all the acts and things described in Schedule 1 to the Insolvency Act 1986 as if the words "he" and "him" referred to the Receiver and "company" referred to the Mortgagor.

7.4 Remuneration:

The Mortgagee may from time to time determine the remuneration of any Receiver and section 109(6) Law of Property Act 1925 shall be varied accordingly. A Receiver shall be entitled to remuneration appropriate to the work and responsibilities involved upon the basis of charging from time to time adopted by the Receiver in accordance with the current practice of his firm.

8 APPLICATION OF PROCEEDS; PURCHASERS

8.1 Application of proceeds:

All moneys received by the Mortgagee or by any Receiver shall be applied, after the discharge of the remuneration and expenses of the Receiver and all liabilities having priority to the Secured Obligations, in or towards satisfaction of such of the Secured Obligations and in such order as the Mortgagee in his absolute discretion may from time to time conclusively determine.

8.2 Protection of purchasers:

No purchaser or other person shall be bound or concerned to see or enquire whether the right of the Mortgagee or any Receiver to exercise any of the powers conferred by this Deed has arisen or be concerned with notice to the contrary or with the propriety of the exercise or purported exercise of such powers.

9 INDEMNITIES, COSTS AND EXPENSES

9.1 Enforcement costs:

The Mortgagor hereby undertakes with the Mortgagee to pay on demand all reasonable costs, charges and expenses properly incurred by the Mortgagee or by any Receiver in or about the enforcement, preservation or attempted preservation of any of the security created by or pursuant to this Deed or any of the Charged Assets on a full indemnity basis, together with interest at the Default Rate from the date on which such costs, charges or expenses are so incurred until the date of payment by the Mortgagor (both before and after judgment).

9.2 No liability as Mortgagee in possession:

Neither the Mortgagee nor any Receiver shall be liable to account as Mortgagee in possession in respect of all or any of the Charged Assets or be liable for any loss upon realisation or for any neglect or default of any nature whatsoever for which a Mortgagee in possession may be liable as such.

9.3 Indemnity from Charged Assets:

The Mortgagee and any Receiver, attorney, agent or other person appointed by the Mortgagee under this Deed and the Mortgagee's officers and employees (each an **"Indemnified Party"**) shall be entitled to be indemnified out of the Charged Assets in respect of all costs, losses, actions, claims, expenses, demands or liabilities whether in contract, tort, delict or otherwise and whether arising at common law, in equity or by statute which may be incurred by, or made against, any of them (or by or against any manager, agent, officer or employee for whose liability, act or omission any of them may be answerable) at any time relating to or arising directly or indirectly out of or as a consequence of:

- (a) anything done or omitted in the exercise or purported exercise of the powers contained in this Deed; or
- (b) any breach by the Mortgagor of any of its obligations under this Deed.

and the Mortgagor shall indemnify the Mortgagee and any Receivers against any such matters.

10 EFFECT OF ENFORCEMENT DATE

On the Enforcement Date, all Secured Obligations (other than contingent liabilities) of the Mortgagor not otherwise so payable shall immediately become payable.

11 POWER OF ATTORNEY

11.1 Power of attorney:

At any time on or after the Enforcement Date, the Mortgagor by way of security hereby irrevocably appoints each of the Mortgagee and any Receiver severally to be its attorney in its name and on its behalf:

- (a) to execute and complete any documents or instruments which the Mortgagee or such Receiver may require for perfecting the title of the Mortgagee to the Charged Assets or for vesting the same in the Mortgagee, its nominees or any purchaser;
- (b) to sign, execute, seal and deliver and otherwise perfect any further security document referred to in clause 5; and
- (c) otherwise generally to sign, seal, execute and deliver all deeds, assurances, agreements and documents and to do all acts and things which may be required for the full exercise of all or any of the powers conferred on the Mortgagee or a Receiver under this Deed or which may be deemed expedient by the Mortgagee or a Receiver in connection with any disposition, realisation or getting in by the Mortgagee or such Receiver of the Charged Assets or any part thereof or in connection with any other exercise of any power under this Deed.

11.2 By way of security the Mortgagee irrevocably appoints the Mortgagor to be the attorney of the Mortgagee and in its name, on its behalf and as its act and deed to execute any documents and do any acts and things which the Mortgagee is required to do in accordance with this Deed and fails to do within 12 Working Days of written request by the Mortgagor.

11.3 Ratification:

- (a) The Mortgagor ratifies and confirms and agrees to ratify and confirm all acts and things which any attorney as is mentioned in clause 11.1 shall do or purport to do in the exercise of his powers under such clause.
- (b) The Mortgagee ratifies and confirms and agrees to ratify and confirm all acts and things which any attorney as is mentioned in clause 11.2 shall do or purport to do in the exercise of his powers under such clause.

12 RELEASES AND EXCLUDED DISPOSITIONS

12.1 Releases:

- (a) Upon payment of the Secured Obligations the Mortgagee will provide to the Mortgagor such form of Release as shall be appropriate to release the Property from the burden of this Deed (and any associated title restriction) together with any relevant Land Registry Form(s).

- (b) The Mortgagee agrees to execute the Releases for Excluded Dispositions provided by the Mortgagor at the Mortgagor's cost and expense (including, the Mortgagee's reasonable and proper legal and agent's fees in relation to such request) and agrees to deliver the same to the Mortgagor within 10 Working Days of receipt of request from the Mortgagor provided that any such request shall include the form of Release required to be executed
- (c) The Mortgagee covenants to comply with the provisions of clause 27.6 of the Sale Agreement insofar as the legal charge created by this Deed is concerned.

12.2 Substitution:

The Mortgagor and the Mortgagee agree that:

- (a) Subject to the Mortgagor not at the time of such notice being in breach of the provisions of this Deed, the Mortgagor (acting reasonably) may serve notice on the Mortgagee to release any or all of the Property from the burden of this Deed (the '**Released Land**') PROVIDED THAT the Mortgagor simultaneously grants the Mortgagee a first fixed legal charge over alternative parts of the Development Site of combined equivalent or greater value (such alternative parts to be congruous with the parts of the Property remaining charged under this Deed) (as agreed between the parties acting reasonably or in the absence of agreement determined by the expert on the application of either party in accordance with the Sale Agreement) to the Released Property (the '**Substitute Charged Property**') in terms identical to this Deed (the '**Substitute Charge**') PROVIDED ALWAYS that the Mortgagor shall be responsible for the Mortgagee's reasonable and proper legal and agent's fees in complying with this obligation; and
- (b) If the Mortgagor serves notice on the Mortgagee in accordance with clause 12.2(a) and a Substitute Charge is subsequently completed the Mortgagee shall deliver to the Mortgagor such properly completed, signed and dated Land Registry form(s) to enable to Mortgagor to release the Released Land from the burden of this Deed.

13 CONTINUING SECURITY AND OTHER MATTERS

13.1 Continuing security:

This Deed and the obligations of the Mortgagor under this Deed shall:

- (a) secure the Secured Obligations from time to time owing to the Mortgagee by the Mortgagor and shall be a continuing security notwithstanding any settlement of account or other matter whatsoever;
- (b) be in addition to, and not prejudice or affect, any present or future Encumbrance, right or remedy held by or available to the Mortgagee; and
- (c) not merge with or be in any way prejudiced or affected by the existence of any such Encumbrance, rights or remedies or by the same being or becoming wholly or in part void, voidable or unenforceable on any ground whatsoever or by the Mortgagee dealing with, exchanging, releasing, varying or failing to perfect or enforce any of the same, or giving time for payment or indulgence or compounding with any other person liable.

14 SETTLEMENTS CONDITIONAL

Any release, discharge or settlement between the Mortgagor and the Mortgagee shall be conditional upon no security, disposition or payment to the Mortgagee by the Mortgagor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Mortgagee shall be entitled to enforce this Deed subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made.

15 MISCELLANEOUS

15.1 Remedies Cumulative:

No failure or delay on the part of the Mortgagee to exercise any power, right or remedy shall operate as a waiver thereof nor shall any single or any partial exercise or waiver of any power, right or remedy preclude its further exercise or the exercise of any other power, right or remedy.

15.2 Successors and assigns:

Any appointment or removal of a Receiver under clause 7 and any consents under this Deed may be made or given in writing signed or sealed by any successors or assigns of the Mortgagee and accordingly the Mortgagor hereby irrevocably appoints each successor and

assign of the Mortgagee to be his attorney in the terms and for the purposes set out in clause 11.

15.3 Unfettered discretion:

Any liability or power which may be exercised or any determination which may be made under this Deed by the Mortgagee may be exercised or made in his absolute and unfettered discretion and it shall not be obliged to give reasons therefore.

15.4 Provisions severable:

Each of the provisions of this Deed is severable and distinct from the others and if any time one or more of such provisions is or becomes invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions of this Deed shall not in any way be affected or impaired thereby.

15.5 Consolidation:

Section 93 of the Law of Property Act 1925 shall not apply to the security created by this Deed or to any security given to the Mortgagee pursuant to this Deed.

15.6 Assignment:

Neither the Mortgagee or the Mortgagor shall assign or transfer any of their rights or benefits under this Deed, without first agreeing to the other party doing so and requiring the assignee or transferee to execute and deliver a deed (in a form satisfactory to the relevant party, acting reasonably) in which the assignee or transferee agrees to be bound by the terms of this Deed.

16 INFRASTRUCTURE AGREEMENTS

- 16.1** The Mortgagee covenants with the Mortgagor that if requested by the Mortgagor it will within 15 Working Days of receipt of a written request and upon payment of its reasonable and proper legal fees enter into any Infrastructure Agreement in relation to the Property, in its capacity as Mortgagee only in order to consent to and acknowledge the terms thereof, and not in its capacity of owner of any adjoining land which the Mortgagee owns from time to time (unless so obliged by virtue of separate obligations owed by the Mortgagee to the Mortgagor).

- 16.2 The Mortgagor will indemnify the Mortgagee against all costs, liabilities, losses and expenses whatsoever arising out of any Infrastructure Agreement or in respect of any Community Infrastructure Levy under the Planning Act 2008 in respect of the Development Site and/or its development.

17 NOTICES

17.1 Mode of service:

Any notice, communication or demand for payment by the Mortgagee to the Mortgagor under this Deed shall be in writing and shall be delivered personally or sent by post to the address given in the Sale Agreement or such other address as may be notified in writing. Proof of posting or despatch of any notice, communication or demand shall be deemed to be proof of receipt.

17.2 Notices conclusive:

Any such notice or demand or any certificate as to the amount at any time secured by the Deed shall be conclusive and binding upon the Mortgagor if signed by the Mortgagee.

18 LAW

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

19 COUNTERPARTS

This Deed may be executed and delivered in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

IN WITNESS whereof this Deed has been executed and delivered by or on behalf of the parties on the date stated at the beginning of this Deed.

SCHEDULE 1

Property

That part of the freehold property known as south west side of Red Lees Road Burnley registered at the Land Registry under title number LAN72618 shown more particularly delineated edged purple on Plan 1.

SCHEDULE 2

Undertakings

- 1 Deposit of deeds: if the Mortgagee so requires deposit with the Mortgagee the original of this Deed signed by the Mortgagor.
- 2 Compliance with covenants etc: observe and perform all covenants, stipulations, requirements and obligations from time to time affecting the Charged Assets whether imposed by statute, law or regulation, contract, lease, licence, grant or otherwise, carry out all registrations or renewals and generally do all other acts and things (including the taking of legal proceedings) necessary or desirable to maintain, defend or preserve his right, title and interest to and in the Charged Assets without infringement by any third party and not without the prior consent in writing of the Mortgagee enter into any onerous or restrictive obligations affecting any of the same.
- 3 Property outgoings: Punctually pay, or cause to be paid, and indemnify the Mortgagee and any Receiver (on a several basis) against, all present and future rent, rates, taxes, duties, charges, assessments, impositions and outgoings whatsoever (whether imposed by agreement, statute or otherwise) now or at any time during the continuance of this security payable in respect of the Property or by the owner or occupier thereof.
- 4 Possession of Property: not:
 - (a) without the prior consent in writing of the Mortgagee: or
 - (b) otherwise than in accordance with the provisions of the Sale Agreement: or
 - (c) other than in the case of an Excluded Disposition,

dispose of the whole or any part of the Property or any estate or interest in it or grant any lease, part with possession or share occupation of the whole or any part of the Property or confer any licence, right or interest to occupy or grant any licence or permission to assign, underlet or part with possession of the same or any part thereof (or agree to do any of these things) or permit any person to be registered (jointly with the Mortgagor or otherwise) as proprietor under the Land Registration Acts of the Property nor create or permit to arise any overriding interest affecting the same within the definition in those Acts

- 5 Preservation of Charged Assets: The Mortgagor shall not do, or permit to be done, any act or thing that would or might materially depreciate, jeopardise or otherwise prejudice the security held by the Mortgagee or materially diminish the value of any of the Charged Assets or the effectiveness of the security created by this Deed.
- 6 Insurance: To maintain, renew, take out or increase insurances appropriate for the development of the Property ensuring that:
- 6.1 insured risks include contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Mortgagor;
- 6.2 the policy includes generic noting of mortgagees interests;
- 6.3 all monies payable under an insurance policy shall be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or, after the security constituted by this Deed has become enforceable and, if the Mortgagee so directs, in or towards discharge or reduction of the Secured Obligations.
- 7 No invalidation of insurance: The Mortgagor shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any insurance policy required by paragraph 6 of this Schedule 2
- 8 Encumbrances: not:
- (a) without the prior consent in writing of the Mortgagee: or
- (b) otherwise than in accordance with the provisions of the Sale Agreement: or
- (c) other than in the case of an Excluded Disposition,
- create or purport to create or permit to subsist any mortgage, debenture, charge or pledge upon or permit any Encumbrance to arise on or affect any part of the Charged Assets provided that the Mortgagee shall not withhold such consent to the creation of a second charge over the Property that is subject to a deed of priority (in a form approved by the Mortgagee acting reasonably) that gives the Mortgagee priority in respect of the Secured Obligations (and the Mortgagor shall pay the Mortgagee's reasonable and proper legal and professional fees on a full indemnity basis in respect of such deed of priority).

- 9 Orders and proposals: within seven days of receipt send to the Mortgagee copies and if required the originals of any notice or order (or proposal for the same) given issued or made to the Mortgagor by any local or other authority whether under the Town and Country Planning Acts or otherwise relating to the Property and also without delay comply with any such notice or order.
- 10 Rights of Access: Following the occurrence of an Event of Default which is continuing the Mortgagor shall permit the Mortgagee and any Receiver to enter and remain on the Property and/or such parts of the unbuilt parts of the Development Site as are necessary on reasonable prior written notice (except in the case of emergency) with or without workmen, plant and materials to carry out any inspection, survey or valuation of the Property (subject to complying with such reasonable requirements as the Mortgagor may specify (including compliance with health and safety legislation) and to making good any damage caused), to ascertain whether any breach of the undertakings in this Deed have occurred and to remedy, at the Mortgagor's reasonable and proper cost, any breach of these which have occurred (and the Mortgagor shall pay the Mortgagee's reasonable and proper legal and professional fees on a full indemnity basis in respect of such inspection, survey or valuation).
- 11 Land for Roads: The Mortgagor shall ensure that at all times there are sufficient and suitable parts of the Development Site which are unbuilt upon so that a road can be installed in such reasonable position or, if the position is specified in planning permission granted for the Property specified in accordance with that, as may be necessary for the development of the Property and use thereafter
- 12 Laying of Roads and Services: Following the occurrence of an Event of Default which is continuing the Mortgagor shall permit the Mortgagee and any Receiver (and any persons they contract to undertake works on their behalf) to enter on to such parts of the unbuilt parts of the Development Site as are necessary with or without vehicles plant and machinery to lay any Services and construct any roads as may be necessary for the development of the Property and if necessary the Development Site and to make such connections provided that the Mortgagee or Receiver shall cause as little inconvenience and damage as possible in exercising such rights, shall do so in consultation with the Mortgagor (both parties acting reasonably), shall make good any damage caused to the Development Site and, if any planning permission exists in respect of such works, those works are carried out and completed in accordance with that planning permission (and the Mortgagor shall pay the Mortgagee's reasonable and proper legal and professional fees on a full indemnity basis in respect of such works)

13 Grant of Rights: The Mortgagor and the Mortgagee shall procure that in the event of any sale or transfer (including a transfer to the Mortgagee) of the Property or any part thereof by the Mortgagee or any Receiver in exercise of its powers of sale pursuant to the terms of this Deed:

- (a) 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 and such rights shall be effective and include the development of the Property or any part are granted or excepted and reserved (as the case may be) over the remainder of the Development Site (insofar as that remains in the ownership of the Mortgagor from time to time) for the benefit of the Property or any part;
- (b) appropriate reasonable and necessary rights for the proper use and enjoyment including but not limited to rights of access, right of Services, rights to maintain and rights of support and such rights shall be effective and include the development of the remainder of the Development Site are granted or excepted and reserved (as the case may be) over the Property or any part for the benefit of the remainder of the Development Site or any part;
- (c) at the same time appropriate covenants are entered into and the Mortgagee and the Mortgagor shall procure that prior to the transfer of the Property or part the form of the transfer shall be proposed by the Mortgagee or any Receiver (as the case may be) and approved by the Mortgagor (such approval not to be unreasonably withheld or delayed)

PROVIDED ALWAYS that in the event of dispute between the parties it may be referred for determination by an expert pursuant to clause 16 of the Sale Agreement on the application of either party and if either party served notice on the other implementing this provision that parties shall do all such things as are necessary to give effect to the expert appointment

14 Development: The Mortgagor covenants that:

- (a) the Mortgagor shall (insofar as it has not already done so) deliver to the Mortgagee copies of all documentation under its control relating to any planning permission for the development of the Property and any Infrastructure Agreement;

- (b) the Mortgagor shall (at their own cost) procure the grant of reliance or assignment to the Mortgagor of the copyright in all drawings and reports reasonably required to develop the Property pursuant to any planning permission;
- (c) the Mortgagor shall take any other steps reasonably required by the Mortgagee to ensure that the Mortgagee has the rights to develop the Property in accordance with any planning permission; and
- (d) the Mortgagor shall provide an indemnity to the Mortgagee to comply with all conditions in any planning permission and all obligations in any Infrastructure Agreement imposed in respect of the balance of the Development Site (excluding the Property)

15 Grant of Rights: The Mortgagor shall procure that in the event of any disposition of the Development Site (excluding the Property) or any part of thereof:

- (a) 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 and the right for connection to such Services, rights to maintain and rights of support and such rights shall be effective and include the development of the Property or any part are granted or excepted and reserved (as the case may be) over the Development Site (excluding the Property) for the benefit of the Property;
- (b) the Mortgagor shall deliver to the Mortgagee such evidence as is reasonably requested by the Mortgagee to show that such rights have been reserved/granted or are not required over any part of the Development Site being disposed of

PROVIDED ALWAYS that in the event of dispute between the parties it may be referred for determination by an expert pursuant to clause 15 of the Sale Agreement on the application of either party and if either party served notice on the other implementing this provision that parties shall do all such things as are necessary to give effect to the expert appointment.

APPENDIX 1

Plan 1 - the Property

APPENDIX 2

Plan 2 - the Development Site



DRAWING NEW

Illustrations: **Priglas**
Illustrations: **Priglas**
Illustrations: **Priglas**

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Graphic Illustrations: Priglas
Illustrations: **Priglas**

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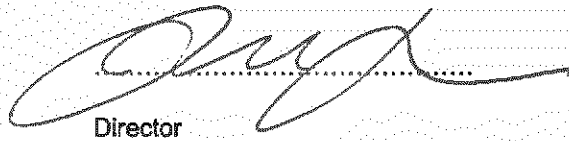
MORTGAGOR'S EXECUTION CLAUSE:

Executed as a deed)

for and on behalf of)

MILLER HOMES LIMITED)

by a Director in the presence of)


Director

Witness *C Coulter*

Name *CAULETTE COULTER*

Address *MILLER HOUSE 2 LOCKSIDE VIEW EDINBURGH EH12 9DH*

Occupation *PERSONAL ASSISTANT*

MORTGAGEE'S EXECUTION CLAUSE:

EXECUTED as a DEED by
ROBERT EDWIN PRESTON

In the presence of:

Witness

Name

Address

Occupation

EXECUTED as a DEED by
FIONA ELIZABETH WOLLOCOMBE

In the presence of:

Witness

Name

Address

Occupation