



**Registration of a Charge**

Company name: **MILLER HOMES LIMITED**

Company number: **SC255429**



X7GBI0XM

Received for Electronic Filing: **11/10/2018**

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**Details of Charge**

Date of creation: **26/09/2018**

Charge code: **SC25 5429 0336**

Persons entitled: **BANKS PROPERTY LIMITED**

Brief description: **LAND AT ROUNDHILL ROAD, HURWORTH ON TEES, DARLINGTON**

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

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

Certified by: **GOWLING WLG (UK) LLP**



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

Company number: 255429

Charge code: SC25 5429 0336

The Registrar of Companies for Scotland hereby certifies that a charge dated 26th September 2018 and created by MILLER HOMES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 11th October 2018 .

Given at Companies House, Edinburgh on 11th October 2018

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 26 September 2018

Miller Homes Limited

and

Banks Property Limited

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Legal Mortgage

relating to

land at Roundhill Road, Hurworth on Tees,  
Darlington

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This Deed is dated

2018

Between

- (1) **Miller Homes Limited** incorporated and registered in Scotland with company number SC255429 whose registered office is at Miller House, 2 Lochside View, Edinburgh Park, Edinburgh EH12 9DH ("the Borrower"); and,
- (2) **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 ("the Lender").

Background

- (A) Immediately prior to the entering into this legal mortgage, the Lender has sold and the Borrower has purchased the Property but the Lender has agreed to defer part of the consideration payable by the Borrower to the Lender under and in accordance with the terms of the Contract.
- (B) The Borrower is now the owner of the Property.
- (C) This legal mortgage provides security which the Borrower has agreed to give the Lender for the deferred consideration due under the Contract.

Agreed Terms

1. Definitions and Interpretation

1.1. Definitions:

The definitions and rules of interpretation in this clause apply in this legal mortgage.

"Business Day"	a day (other than a Saturday or a Sunday) on which commercial banks are open for general business in London and deposits are dealt with on the London Interbank Market;
"Charged Property"	that part of the property edged and hatched red on the plan attached to this charge at Annexure 1;
"Contract"	a contract for the sale of the Property dated 15 June 2018 between (1) the Lender and (2) the Borrower;
"Costs"	all reasonable proper costs, charges, expenses, taxes and liabilities of any kind, including (without limitation) costs and damages in connection with litigation, professional fees, disbursements and any irrecoverable VAT charged on Costs which

	the Lender or any Receiver or Delegate may charge or incur in relation to any breach of any provision of this legal mortgage by the Borrower;
"Deferred Payment"	the instalment of the Purchase Price payable pursuant to clauses 13.2.2 of the Contract;
"Delegate"	any person appointed by the Lender or any Receiver pursuant to clause 11 and any person appointed as attorney of the Lender, Receiver or Delegate;
"Dispose" or "Disposal"	any transfer or assent or licence or deed of grant or a lease for a term in excess of 10 years;
"Dwelling"	means a residential dwellinghouse (whether detached or semi-detached part of a terrace or otherwise) or a residential maisonette or apartment (to include any affordable housing unit) together with any garden, car parking space and/or any other curtilage thereto;
"Encumbrance"	any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect;
"Environment"	the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media;
"Environmental Law"	all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, legally binding codes of practice and guidance notes in so far as they relate to or apply to the Environment;
"Environmental Licence"	any authorisation, permit or licence necessary under Environmental Law in respect of any of the Charged Property;
"Event of Default"	means any of the events of default set out in Schedule 5;

"LPA"

the Law of Property Act 1925;

"Permitted Disposal"

means any of the following disposals:

- (a) a disposal (including but not limited to a transfer, lease, dedication or deed of easement) to a statutory body or undertaker in relation to the provisions of services for the Charged Property or any agreement for the adoption of any public infrastructure on the Charged Property;
- (b) a disposal to the local highways authority of land comprising or to be comprised in the adopted highway for highway purposes;
- (c) a disposal to a local authority or other body pursuant to a planning obligation within a Planning Agreement or a condition of a planning permission;
- (d) a disposal to a management company of amenity or shared areas for the maintenance of such areas in the interests of good estate management;
- (e) a disposal by way of a transfer of the freehold reversion of any part of the Charged Property in respect of which the disposal of a Dwelling or Dwellings has or have already occurred; or
- (f) a disposal of land comprising a garage by way of the grant of a garage lease to an associated company of the Borrower at a nil consideration where such garage lease will be assigned by such company to a purchaser of a Dwelling in which such garage is not comprised within the structure of such Dwelling;

"Property"

the freehold property owned by the Borrower described in Schedule 1;

"Purchase Price"

has the same meaning given to that expression in the Contract;

*Gulfi (G) the sum (for the benefit of the Uncharged  
estate or any part thereof) of the unpaid  
estate debts and contents over the Charged Property  
which is not built upon and not comprised in a residential dwelling.*



"Receiver"	a receiver and/or manager of the Charged Property;
"Rights"	the rights set out in Part 1 of Schedule 6;
"Road Infrastructure"	ways comprising vehicular carriageways footpaths and/or verges with an associated kerbs lighting street furniture vision splays turning areas bridges (and bridge footings and abutments) crossings tunnels and underpasses structures earthworks and supporting banks and mounds and works;
"Secured Liabilities"	the obligations set out in clause 13.2 of the Contract to pay the Deferred Payment on the dates specified in clause 13.2 together with default interest (if any) accruing in respect of such monies or liabilities;
"Security Period"	the period starting on the date of this legal mortgage and ending on the date on which all the Secured Liabilities have been paid and discharged fully in accordance with the Contract;
"Services Infrastructure"	pipes wires cables and other conduits for conveyance of water gas electricity light telecommunications and other services (together with any associated sub-stations gas governor houses junction boxes poles and stays inspection chambers and other works and equipment;
"Sewerage Infrastructure"	sewers drains and other sewerage and drainage conduits (with any associated manholes inspection chambers and other equipment and works) including (without limitation) the SUDS Facility;
"SUDS Facility"	the sustainable water drainage system to be constructed on the Property;
"Uncharged Property"	all the Property excluding the Charged Property;
"VAT"	value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement and any additional replacement tax.

## 1.2. Interpretation

In this legal mortgage:

- 1.2.1. a 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 shall 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 legal mortgage and references to paragraphs are to paragraphs of the relevant Schedule, unless the context otherwise requires.
- 1.2.5. a reference to this legal mortgage (or any provision of it) or any other document shall be construed as a reference to this legal mortgage, 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 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 determines or determined means, unless the contrary is indicated, a determination at the discretion of the person making it acting reasonably.
- 1.2.12. clause, Schedule and paragraph headings shall not affect the interpretation of this legal mortgage.

### 1.3. Nature of security over real property

A reference in this legal mortgage to a charge or mortgage of or over the Charged Property includes:

- 1.3.1. all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) and fixed plant and machinery which are situated on or form part of the Charged Property at any time;
- 1.3.2. the proceeds of sale of any part of the Charged Property and any other monies paid or payable in respect of or in connection with the Charged Property;
- 1.3.3. the benefit of any covenants for title given, or entered into, by any predecessor in title of the Borrower in respect of the Charged Property and any monies paid or payable in respect of those covenants; and
- 1.3.4. all rights under any licence, agreement for sale or agreement for lease in respect of the Charged Property.

1.4. Third party rights

A third party (being any person other than the Borrower, the Lender and its permitted successors and assigns, any Receiver and any Delegate) has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any term of this legal mortgage.

1.5. Schedules

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

2. **Covenant to Pay**

2.1. Payment of Secured Liabilities

The Borrower covenants that it will discharge and pay to the Lender the Secured Liabilities when they become due under the Contract.

2.2. Payment of interest

The Borrower shall pay interest on any amounts that are still due to be paid under the Contract after the date on which they are due to be paid thereunder from day to day until full discharge (whether before or after judgment, liquidation, winding-up or administration of the Borrower) at the rate of 3% per annum above the base rate from time to time of Barclays Bank plc. In the case of any Costs, such interest shall accrue and be payable as from the date on which the relevant Costs arose, without the need for any demand for payment being made.

3. **Grant of Security**

Legal mortgage and fixed charges

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee charges to the Lender by way of first legal mortgage the Charged Property together with the Rights and the benefits of the covenants over the Uncharged Property set out in Schedule 6.

#### 4. Perfection of Security

4.1. The Borrower hereby grants with full title guarantee out of the Uncharged Property for the benefit of the Charged Property and the Lender and its successors in title to the Charged Property and anyone else deriving title from the Lender the Rights in common with the Borrower and any other persons lawfully entitled to the same or similar rights.

4.2. The Borrower covenants with the Lender in favour of the Charged Property to observe and perform the restriction set out in Part 2 of Schedule 6 and it is agreed and declared that:

4.2.1. the benefit of this covenant is to be attached to and endure for each and every part of the Charged Property;

4.2.2. the burden of these covenants is intended to bind and binds each and every part of the Uncharged Property into whosoever hands it may come but not so as to render any owner of the Uncharged Property personally liable for any breach of this covenant arising after the date that party has parted with all interest in the Uncharged Property or the part of the Uncharged Property on which such breach is committed; and

4.2.3. an obligation in the restriction set out in Part 2 of Schedule 6 not to do any act or thing includes an obligation not to permit or suffer that act or thing to be done by another person.

4.3. Cautions against first registration and notices

Whether or not title to the Charged Property is registered at the Land Registry, if any caution against first registration or any notice (whether agreed or unilateral) is registered against the Borrower's title to the Charged Property, the Borrower shall immediately upon becoming aware of the same provide the Lender with full particulars of the circumstances relating to such caution or notice save where such notice or caution relates to a Permitted Disposal. If such caution or notice was registered to protect a purported interest the creation of which was subsequent to this legal mortgage and is not permitted under this legal mortgage, the Borrower shall immediately, 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

*Final* 4.4 The Borrower consents to an application being made by the Lender to the Land Registrar for the following restriction in Form P to be registered against its title to the Charged 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 2018 in favour of Banks Property Limited referred to in the charges register or their conveyancer."

4.5 The Lender covenants to provide the certificate (at no cost to the Borrower) referred to in the restriction at clause 4.4 within 7 days of a request by the Borrower to do so in relation to a Permitted Disposal.

There is no enforceable or any ground, or

5.1.2. the Lender renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying

any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or

- 5.1.3. any other act or omission, which but for this clause 5.1 might have discharged, or otherwise prejudiced or affected, the liability of the Borrower.

5.2. Immediate recourse

The Borrower waives any right it may have to require the Lender to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this legal mortgage against the Borrower.

6. **Covenants**

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

7. **Powers of The Lender**

The Lender shall have the powers set out in Schedule 3.

8. **Enforcement**

8.1. When security becomes enforceable

The security constituted by this legal mortgage shall be immediately enforceable and the power of sale and other powers given by section 101 of the LPA (as varied or extended by this legal mortgage) shall be immediately exercisable at any time after the date that is 2 working days after the occurrence of an Event of Default.

8.2. When statutory powers arise

Section 103 of the LPA shall not apply to this legal mortgage and the statutory power of sale and other powers given by section 101 of the LPA (as varied or extended by this legal mortgage) shall, as between the Lender and a purchaser, arise on the execution of this legal mortgage and be exercisable at any time after such execution, but the Lender shall not exercise such power of sale until the security constituted by this legal mortgage has become enforceable under clause 8.1.

8.3. Enforcement of security

After the security constituted by this legal mortgage 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 Property but subject to the terms of this legal mortgage.

8.4. Extension of statutory powers of leasing

The statutory powers of leasing and accepting surrenders are extended so as to authorise the Lender and any Receiver, at any time after the security constituted by this legal mortgage has become enforceable, whether in its own name or in that of the Borrower, to make any lease or agreement for lease, accept surrenders of leases or grant any option of the whole or any part of the Charged Property with

whatever rights relating to other parts of it, containing whatever covenants on the part of the Borrower, generally on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) and whether or not at a premium 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.

#### 8.5. Privileges

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

#### 8.6. No liability as mortgagee in possession

Save as required by law, neither the Lender, any Receiver nor any Delegate shall be liable to account as mortgagee in possession in respect of the Charged Property, 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, the Charged Property for which a mortgagee in possession might be liable as such.

#### 8.7. Relinquishing possession

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

### 9. Receivers

#### 9.1. Appointment and removal of a Receiver

At any time after an Event of Default or at the request of the Borrower, the Lender may, without further notice:

- 9.1.1. appoint under seal or in writing, by a duly authorised officer of the Lender, any one or more person or persons to be a receiver or a receiver and manager, of the Charged Property; and
- 9.1.2. (subject to section 45 of the Insolvency Act 1986) from time to time, under seal or in writing, by a duly authorised officer of the Lender, remove any person appointed to be Receiver and may, in a similar manner, appoint another in his place.

Where more than one person is appointed Receiver, they shall have power to act separately (unless the appointment by the Lender specifies to the contrary).

#### 9.2. Power of appointment additional to statutory powers

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

#### 9.3. Power of appointment exercisable despite prior appointments

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

10. **Powers and Capacity of a Receiver**

10.1. Powers of a Receiver

Any Receiver appointed by the Lender under this legal mortgage shall, in addition to the powers conferred on him by the LPA and the Insolvency Act 1986, have the powers set out in Schedule 4.

10.2. Scope of Receiver's powers

Any exercise of any of the powers of a Receiver by the Receiver may be on behalf of the Borrower, the directors of the Borrower or himself.

10.3. Receiver is agent of the Borrower

Any Receiver appointed by the Lender under this legal mortgage shall be the agent of the Borrower and the Borrower shall be solely responsible for his acts and remuneration, as well as for any defaults committed by him. 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. **Delegation**

Each of the Lender and any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this legal mortgage (including the power of attorney granted under clause 15.1). Any such delegation may be made upon such terms and conditions (including the power to sub-delegate) as the Lender or any Receiver shall think fit. Neither the Lender nor any Receiver shall be in any way liable or responsible to the Borrower for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

12. **Application of Proceeds**

12.1. Order of application

All monies received by the Lender, a Receiver or a Delegate (other than sums received pursuant to any Insurance Policy) pursuant to this legal mortgage after the security constituted by this legal mortgage has become enforceable, shall (subject to the claims of any person having prior rights and by way of variation of the LPA) be applied:

- 12.1.1. first in paying all reasonable proper costs, charges and expenses of, and incidental to, the appointment of any Receiver and the exercise of his powers and all outgoings properly paid by him;
- 12.1.2. second in paying the reasonable and proper remuneration of any Receiver (as agreed between the Receiver and the Lender);
- 12.1.3. third in or towards discharge of the Secured Liabilities in such order and manner as the Lender determines; and
- 12.1.4. finally in paying any surplus to the Borrower.

## 12.2. Appropriation

Neither the Lender, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA, 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. **Protection of Third Parties**

### 13.1. Protection of third parties

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

13.1.1. to enquire whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged, or whether the power the Lender or a Receiver or Delegate is purporting to exercise has become exercisable; or

13.1.2. to see to the application of any money paid to the Lender or any Receiver or Delegate.

### 13.2. Conclusive discharge to purchasers

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

## 14. **Costs and Indemnity**

### 14.1. Costs

The Borrower shall pay to, or reimburse, the Lender and any Receiver on demand, on a full indemnity basis, all Costs properly incurred by the Lender, any Receiver or Delegate in relation to:

14.1.1. any breach of the Borrower's obligations in this legal mortgage or the Charged Property;

14.1.2. taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lender's, Receiver's or Delegate's rights under this legal mortgage; and

14.1.3. suing for, or recovering, any of the Secured Liabilities,

(including, without limitation, the Costs of any proceedings in relation to this legal mortgage or the Secured Liabilities), together with interest from day to day until full discharge (whether before or after judgment, liquidation, winding-up or administration of the Borrower) at the rate of 4% per annum above the base rate from time to time of Barclays Bank plc. In the case of any Costs which have been properly demanded but have not been paid within 5 Business Days of written demand, such interest shall accrue and be payable as from the date on which the



relevant Costs became due, without the need for any further demand for payment being made.

15. **Power of Attorney**

15.1. Appointment of attorneys

By way of security, the Borrower irrevocably appoints the Lender, every Receiver and every Delegate 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 which:

- 15.1.1. the Borrower is required to execute and do under this legal mortgage; and
- 15.1.2. any attorney may deem proper or desirable in exercising any of the powers, authorities and discretions conferred by this legal mortgage or by law on the Lender, any Receiver or any Delegate.

16. **Release**

16.1. On the expiry of the Security Period or the earlier discharge of the Secured Liabilities fully in accordance with the terms hereof (but not otherwise), the Lender shall within 5 (five) Business Days, issue a Release to the Borrower (and at no cost to the Borrower), take whatever action is necessary to release and discharge the Charged Property from the security constituted by this legal mortgage and the Uncharged Property from the restriction registered pursuant to clause 4.3.

16.2. The Lender shall comply with its obligations in clause 13.11 of the Contract.

16.3. The Lender shall upon request and promptly enter into any deed of grant of easements and/or dedication/adoption agreement, planning agreement, infrastructure agreement or other documents as the Borrower may require for the purpose of carrying out or facilitating development of the Property provided that in doing so the Lender shall not be required to accept any liability in such documents.

17. **Assignment and Transfer**

Neither the Borrower nor the Lender may assign or otherwise deal with any of their rights, or transfer any of their obligations, under this legal mortgage or enter into any transaction which would result in any of those rights or obligations passing to another person.

18. **Grant of Easements and Covenants**

18.1. On any sale of the Charged Property or any part of it by the Lender or a Receiver pursuant to the powers conferred by this Legal Charge, the Borrower will (at its own cost) on demand enter into such deed as the Lender requires to grant to the purchaser or other disponee the rights for the benefit of the Charged Property over the Uncharged Property set out in Schedule 6, Part 1 and the covenants in favour of the Charged Property at Schedule 6, Part 2 and such other rights and covenants as may reasonably be required for the beneficial use, development and enjoyment of the Charged Property (including but not limited to use for residential development) and the Borrower will (at the cost of the Borrower (such costs to be reasonable and proper)) on demand enter into such adoption

agreements and/or deeds of easement as the Lender or the relevant utilities supplier may require in respect of the Services Infrastructure and/or Sewerage Infrastructure and/or Road Infrastructure and/or access roads and/or footpaths.

- 18.2. Following the occurrence of an Event of Default the Borrower shall allow the Lender or a Receiver to exercise the rights over the Uncharged Property set out in Schedule 6, Part 1 and such other rights as may reasonably be required for the beneficial use, development and enjoyment of the Charged Property including but not limited to use for residential development.
- 18.3. Following the occurrence of an Event of Default the Borrower shall observe and perform the covenants set out in Schedule 6, Part 2 and such other covenants as may reasonably be required for the beneficial use, development and enjoyment of the Charged Property including but not limited to use for residential development.
- 18.4. If the Borrower fails to execute any agreements, deed of easement, deed of covenant, dedication and/or adoption agreement in accordance with its obligation in clause 18.3, the Borrower hereby irrevocably appoints the Lender its attorney by way of security to execute the relevant deed.
- 18.5. On or prior to a Disposal of the Uncharged Property or any part or parts thereof Borrower will (at its own cost) procure that the disponee enters in to a deed of covenant with the Lender in a form and substance satisfactory to the Lender (acting reasonably and properly) to grant the rights and covenants referred to in Schedule 6 over the Uncharged Property or part or parts thereof in the event that the Lender or a Receiver requires the grant of the same.

## 19. **Further Provisions**

### 19.1. Independent security

This legal mortgage shall be in addition to, and independent of, every other security or guarantee (if any) which the Lender may hold for any of the Secured Liabilities at any time. No prior security held by the Lender over the whole or any part of the Charged Property shall merge in the security created by this legal mortgage.

### 19.2. Continuing security

This legal mortgage 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 Secured Liabilities have been discharged in full under the terms hereof.

### 19.3. Rights cumulative

The rights and powers of the Lender conferred by this legal mortgage 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.

### 19.4. Waivers

Any waiver or variation of any right by the Lender (whether arising under this legal mortgage 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.

19.5. 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 legal mortgage or constitute a suspension or variation of any such right or power.

19.6. Single or partial exercise

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

19.7. Consolidation

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

19.8. Partial invalidity

The invalidity, unenforceability or illegality of any provision (or part of a provision) of this legal mortgage 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 modification necessary to give effect to the commercial intention of the parties.

19.9. Counterparts

This legal mortgage 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.

20. **Notices**

20.1. Service

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

20.1.1. in writing, delivered personally or sent by pre-paid first-class recorded delivery letter; and

20.1.2. sent:

20.1.2.1. to the Borrower at Miller House, 2 Lochside View, Edinburgh Park, Edinburgh EH12 9DH marked for the attention of the Company Secretary (or such other address as may be notified in writing to the Lender) and to Gowling WLG (UK) LLP of Two Snowhill, Birmingham, B4 6WR quoting the reference 2652341/AFM/JWF1

;

20.1.2.2. to the Lender at Inkerman House, St John's Road, Meadowfield, Durham, DH7 8XL (or such other address as may be notified in writing to the Borrower) marked for the attention of the Company Secretary and to Ward Hadaway of Sandgate House, 102 Quayside, Newcastle upon Tyne NE1 3DX quoting the reference (P)AJC.BAN067.38,

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

## 20.2. Receipt of Notices

Any notice or other communication that either party gives shall be deemed to have been received:

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

20.2.2. if posted, on the second Business Day after the day it was sent by pre-paid first-class recorded delivery.

A notice or other communication given as described in clause 19.2(a) or clause 20.2(b) on a day which is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

## 21. Governing Law and Jurisdiction

### 21.1. Governing law

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

### 21.2. Jurisdiction

The parties to this legal mortgage irrevocably agree that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this legal mortgage 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.

### 21.3. 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 legal mortgage relating to service of notices. Nothing contained in this legal mortgage 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 – Property**

All that freehold land at Roundhill Road, Hurworth on Tees, Darlington and being the land comprised in title number DU80418.

## **Schedule 2 – Covenants**

### **Part 1 – General Covenants**

#### **1. Negative Pledge And Disposal Restrictions**

The Borrower shall not at any time, except with the prior written consent of the Lender (which consent will not be unreasonably withheld or delayed):

- 1.1. create, purport to create or permit to subsist any Encumbrance on or in relation to, the Charged Property other than this legal mortgage; or
- 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 Property; or
- 1.3. create or grant (or purport to create or grant) any interest in the Charged Property in favour of a third party

save by way of a Permitted Disposal and for the avoidance of doubt the Lender consents to the disposal of residential units (and/or land to a registered provider of affordable housing) on the Uncharged Property containing all usual estate rights and covenants.

#### **2. Preservation of the Charged Property**

The Borrower shall not do, or knowingly permit to be done, any act or thing which would or might depreciate, jeopardise or otherwise prejudice the security held by the Lender or materially diminish the value of the Charged Property or the effectiveness of the security created by this legal mortgage save for any Permitted Disposals and for the avoidance of doubt the Borrower's use of the Charged Property for residential and ancillary development and the construction thereof shall not constitute a breach of this covenant.

#### **3. Compliance with Laws**

- 3.1. The Borrower shall not use or permit the Charged Property to be used in any way contrary to law.
- 3.2. The Borrower shall comply with all laws and regulations for the time being in force relating to or affecting the Charged Property and shall obtain and promptly renew from time to time and comply with the terms of all authorisations which may be necessary to enable it to preserve, maintain or renew the Charged Property.

#### **4. Notice of breaches**

The Borrower shall, promptly on becoming aware of any of the same, give the Lender notice in writing of any breach of any covenant set out in this Schedule 2.

#### **5. Further assurance**

The Borrower, at its own cost, shall prepare and execute such further legal or other mortgages, charges or transfers (containing a power of sale and such other provisions as the Lender may reasonably require) in favour of the Lender as the

Lender, in its absolute discretion (acting reasonably), requires from time to time over all or any part of the Charged Property and give all notices, orders and directions which the Lender may require, in its absolute discretion, for perfecting, protecting or facilitating the realisation of its security over the Charged Property.

6. Borrower's waiver of set off

The Borrower waives any present or future right of set-off it may have in respect of the Secured Liabilities (including sums payable by the Borrower under this legal mortgage).

**Part 2 – Property Covenants**

1. No Restrictive Obligations

The Borrower shall not (save as permitted by this deed), without the prior written consent (such consent not to be unreasonably withheld or delayed) of the Lender, enter into any onerous or restrictive obligations affecting the whole or any part of the Charged Property or create or permit to arise any overriding interest, easement or right whatsoever in or over the whole or any part of the Charged Property.

2. Proprietary Rights

The Borrower shall use reasonable endeavours to ensure that (save as permitted by this deed) no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of the Charged Property, without the prior written consent of the Lender.

3. Compliance with and Enforcement of Covenants

The Borrower shall observe and perform all covenants, stipulations and conditions to which the Charged Property, or the use of it, is or may be subject

4. Notices or Claims Relating to the Charged Property

The Borrower shall:

4.1. 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 Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Notice; and

4.2. (if the Lender so reasonably requires) immediately, and at the cost of the Borrower, take all 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 may desire.

5. 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 Property or on its occupier.



6. Environment

The Borrower shall in respect of the Charged Property:

- 6.1. comply with all the requirements of Environmental Law; and
- 6.2. obtain and comply with all Environmental Licences.

7. 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 Property on reasonable prior notice at reasonable times subject to all health and safety instructions issued by the Borrower.

### **Schedule 3 – Powers of the Lender**

#### **1. Power to Remedy**

1.1. The Lender shall be entitled (but shall not be obliged) to remedy a breach at any time by the Borrower of any of its obligations contained in this legal mortgage. The Borrower irrevocably authorises the Lender and its agents to do all such things as are necessary for that purpose. Any monies properly expended by the Lender in remedying a breach by the Borrower of any of its obligations contained in this legal mortgage shall be reimbursed by the Borrower to the Lender on a full indemnity basis and shall carry interest in accordance with clause 14.1.

1.2. In remedying any breach in accordance with paragraph 1.1 of this Schedule 3, the Lender, its agents and their respective officers, agents and employees shall be entitled to enter onto the Charged Property and so much as is reasonably required of the Uncharged Property and to take any action as the Lender may reasonably consider necessary including, without limitation, carrying out any repairs, other works or development.

#### **2. Exercise of Rights**

The rights of the Lender under paragraph 1 of this Schedule 3 are without prejudice to any other rights of the Lender under this legal mortgage. The exercise of those rights shall not make the Lender liable to account as a mortgagee in possession.

#### **3. Lender has Receiver's Powers**

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

#### **4. Indulgence**

The Lender may, at its discretion, grant time or other indulgence or make any other arrangement, variation or release with any person that is not party to this legal mortgage (whether or not such person is jointly liable with the Borrower) in respect of any of the Secured Liabilities or of any other security for them without prejudice either to this legal mortgage or to the liability of the Borrower for the Secured Liabilities.

#### **Schedule 4 – Powers of a Receiver**

1. Power to Repair and Develop the Charged Property

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

2. Power to Grant or Accept Surrenders of Leases

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

3. Power to Employ Personnel and Advisers

A Receiver may, for the purposes of this Schedule 4, provide services and employ, or engage, such managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on such salaries, for such periods and on such other terms as he thinks fit. A Receiver may discharge any such person or any such person appointed by the Borrower.

4. Power to Make and Revoke Vat Options to Tax

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

5. Power to Charge for Remuneration

A Receiver may charge and receive such reasonable 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.

6. Power to Realise the Charged Property

A Receiver may take possession of the Charged Property with like rights.

7. Power to Manage or Reconstruct the Borrower's Business

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

8. Power to Dispose of the Charged Property

A Receiver may grant options and licences over all or any part of the Charged Property, sell or concur in selling, assign or concur in assigning, lease or concur in leasing and accept or concur in accepting surrenders of leases of, all or any of the Charged Property 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 Property to be disposed of by him.

9. Power to Sever Fixtures and Fittings

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

10. Power to 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 Property.

11. Power to Make Settlements

A Receiver may make any arrangement, settlement or compromise between the Borrower and any other person as he thinks fit.

12. Power to Bring Proceedings

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

13. Power to Insure

A Receiver may, if he thinks fit, but without prejudice to the indemnity in clause 14.2, effect with any insurer any policy of insurance in respect of the Charged Property either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Borrower under this legal mortgage.

14. Powers Under LPA

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

15. Power to Borrow

A Receiver may, for any of the purposes authorised by this Schedule 4, raise money by borrowing from the Lender (or from any other person) on the security of all or any of the Charged Property 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 legal mortgage).

16. Power to Redeem Prior Encumbrances

A Receiver may redeem any prior Encumbrance and settle and pass the accounts to which the Encumbrance relates. Any accounts so settled and passed shall be conclusive and binding on the Borrower, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

17. Power of Absolute Power

A Receiver may do all such acts and things as an absolute owner could do in the ownership and management of the Charged Property or any part of it.

18. Incidental Powers

A Receiver may do all such other acts and things as he may consider incidental or conducive to any of the matters or powers in this Schedule 4, or which he lawfully may or can do as agent for the Borrower.

#### **Schedule 5 – Events of Default**

For the purposes of this legal charge, it shall be an event of default if the Borrower does not pay and discharge any part of the Secured Liabilities in accordance with the terms of the Contract.

## **Schedule 6 – Rights to be Granted and Covenants**

### **Part 1: Rights to be Granted**

The following rights (with effect from the date on which this legal charge becomes enforceable) over the Uncharged Property in common with the Borrower and all others who have such or similar rights:-

1. the right of support and protection for the benefit of the Charged Property (and any building thereon) as is now enjoyed from the Uncharged Property;
2. the right to the uninterrupted passage and running of water, storm and surface water, soil, gas, electricity, telephone, television and radio signals and other radio and microwave and electronic data or communications transmissions and other services and/or supplies through such Services Infrastructure and Sewerage Infrastructure as are now or at any time in the future laid, installed or constructed under, on or over the Uncharged Property together with the right to connect into any Services Infrastructure and Sewerage Infrastructure which are now or at any time in the future in on under or over parts of the Uncharged Property which do not contain Dwellings and the right to lay new Service Infrastructure under the estate roads and other Road Infrastructure from time to time laid out on the Uncharged Property to serve the Charged Property only and the right to the full and free passage and running of water, storm and surface water, soil, gas, electricity, telephone, television, radio signals and other radio and microwave and electronic data or communications transmissions and other services and/or supplies through the same;
3. the right to pass and re-pass for all purposes with or without vehicles of all kinds over all estate roads and spine roads and any other roads and Road Infrastructure now or at any time thereafter constructed on the Uncharged Property together with the right to make a connection from the Charged Property into all estate roads and spine roads and any other roads and Road Infrastructure now or at any time in the future constructed or to be constructed along such routes within the Charged Property as the Borrower shall approve (such approval not to be unreasonably withheld or delayed) and thereafter a right to pass and re-pass for all purposes with or without vehicles of all kinds over such connections;
  - 3.1. the right to pass and re-pass for all purposes:
    - 3.1.1. on foot over the footpaths, cycleways or bridle paths;
    - 3.1.2. on bicycles over the cycle paths; and
    - 3.1.3. on horses or similar animals over the bridle paths,
- now or at any time in the future constructed on the Uncharged Property;
4. the right upon reasonable prior written notice served upon the Borrower to enter and remain for a reasonable period of time on any part of the Uncharged Property which is unbuilt upon with or without vehicles, plant equipment, machinery, materials and workmen for the purposes set out in paragraphs 2 and 3 above if it is not reasonably practicable or economical to carry out such works without making such entry;

5. to inspect, maintain, clean, unblock, repair, relay, upgrade, reinstate, replace or renew any Services Infrastructure and Sewerage Infrastructure serving the Charged Property in, on or over the parts of the Uncharged Property which do not contain Dwellings; and
6. to inspect, maintain, clean, reinstate, replace, build, repair or renew any building structure or engineering work built on the Charged Property (other than Dwellings) or any boundary feature on the common boundary between the Uncharged Property and the Charged Property if it is not reasonably practical or economical to carry out such works without making such entry;
7. the full and unrestricted right at any time after the date of grant of these rights to erect or permit to be erected any buildings or other erections and to alter any building or other erection erected after the date of the grant of these rights on any part of the Charged Property in such manner as to obstruct or interfere with the passage and access of light and air to any building which is or may be erected on any part of the Uncharged Property and so that all privileges of light and air now or at any time after the date of grant of these rights are to be enjoyed over any part of the Charged Property by or in respect of the Uncharged Property are deemed to be enjoyed by the licence or consent of the Lender and not as of right;
8. the right to enter onto and remain upon the Uncharged Property at all reasonable times with or without workmen vehicles and machinery as necessary for the purposes of carrying out infrastructure works for the benefit of the Charged Property within such other areas within the Uncharged Property as are reasonably required by the Lender (and approved by the owner of the appropriate part of the Charged Property) (such approval not to be unreasonably withheld or delayed)) (which for the avoidance of doubt shall include but not be limited to the construction of estate roads, spine roads and any other roads and Road Infrastructure, Services Infrastructure and Sewerage Infrastructure and in connection therewith to break open re-grade fill and carry away the soil of the Uncharged Property) and all ancillary rights necessary for the purposes of performing such works where the Borrower has failed to carry out such works within a reasonable period of time subject to the Borrower paying and indemnifying the Lender from and against all costs expenses and liabilities incurred in the reasonable and proper exercise of these rights

All rights of entry are subject to the following conditions:

1. entry can only be exercised so far as and to the extent that the purpose for which the right is exercised cannot reasonably be undertaken without such entry.
2. entry shall not be exercised over the curtilage of any Dwellings.
3. entry can only be exercised at reasonable times of the day after giving reasonable prior written notice (except in an emergency when no notice shall be required).
4. entry can be exercised with and without workmen and appliances if necessary.
5. anyone exercising a right of entry must do as little damage as possible and must make good or pay compensation for any damage that is done.
6. the route of any additional Sewerage Infrastructure or Service Infrastructure to be laid in on or under the Charged Property shall first be agreed by the Borrower or (if



different) the owner of the Charged Property (such agreement not to be unreasonably withheld or delayed).

## **Part 2: Covenants**

The Restrictions are the following:

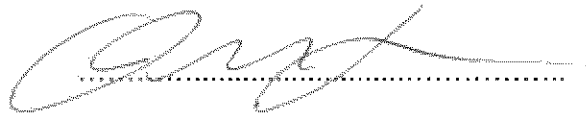
1. not to cause or allow or permit any obstruction to any Road Infrastructure, Services Infrastructure and/or Sewerage Infrastructure in on or under the Uncharged Property;
2. not to do or permit or suffer on the Uncharged Property anything that is a legal nuisance;
3. not to cause or permit or allow to be caused any damage to the Charged Property or to any property of the owners or occupiers of the Charged Property;
4. not deposit any waste, rubbish, soil or other material on any part of the Charged Property

PROVIDED ALWAYS that the use of the Property for the purpose of a residential development and prior to that the construction works required in connection with the residential development of the Property shall not constitute a breach of this Legal Charge.

**Executed** as a deed by  
**Miller Homes Limited**  
acting by

  
.....

Signature of Authorised Signatory

  
.....

Signature of Authorised Signatory

**Executed** as a deed by  
**Banks Property Limited**

acting by a two directors or a director and its  
secretary or a director in the presence of:

.....

Director

.....

Director/Secretary

Witness Signature: .....

Name: .....

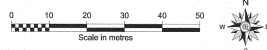
Address: .....

.....

.....

Occupation: .....

## Annexure 1 - The Plan



CHARGED AREAS

*Mr W*  
*Quf*



1:1000	1:500	1:250	1:125
0m	10m	20m	30m

**miller homes**  
Miller Homes Limited - North East Region  
Nautilus House  
Redburn Court, East Grey Way  
Royal Chalmers  
North Shields, NE25 6AR  
Telephone 0670 335 4100  
Fax 0191 258 6243  
www.millerhomes.co.uk

Project No:  
**ROUNDHILL ROAD  
HURWORTH  
DARLINGTON**

Drawing No:  
**CHARGE PLAN**

Date	Drawn By	Checked By	Authorised By
1/30/04	MA	JAW	
Issued: JUNE 18 Rev: JUNE 18 Rev: JUNE 18			
Job No.	Drawn By	Checked By	Authorised By
807178	HUR/CHG/01		
Original Issue: Rev: 01			

Dated 26 September 2018

Miller Homes Limited

and

Banks Property Limited

---

Legal Mortgage

relating to

land at Roundhill Road, Hurworth on Tees,  
Darlington

---

wardhadaway  
lawfirm

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**Between**

- (1) **Miller Homes Limited** incorporated and registered in Scotland with company number SC255429 whose registered office is at Miller House, 2 Lochside View, Edinburgh Park, Edinburgh EH12 9DH ("the Borrower"); and,
- (2) **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 ("the Lender").

**Background**

- (A) Immediately prior to the entering into this legal mortgage, the Lender has sold and the Borrower has purchased the Property but the Lender has agreed to defer part of the consideration payable by the Borrower to the Lender under and in accordance with the terms of the Contract.
- (B) The Borrower is now the owner of the Property.
- (C) This legal mortgage provides security which the Borrower has agreed to give the Lender for the deferred consideration due under the Contract.

**Agreed Terms**

1. **Definitions and Interpretation**

1.1. Definitions:

The definitions and rules of interpretation in this clause apply in this legal mortgage.

"Business Day"	a day (other than a Saturday or a Sunday) on which commercial banks are open for general business in London and deposits are dealt with on the London Interbank Market;
"Charged Property"	that part of the property edged and hatched red on the plan attached to this charge at Annexure 1;
"Contract"	a contract for the sale of the Property dated 15 June 2018 between (1) the Lender and (2) the Borrower;
"Costs"	all reasonable proper costs, charges, expenses, taxes and liabilities of any kind, including (without limitation) costs and damages in connection with litigation, professional fees, disbursements and any irrecoverable VAT charged on Costs which

	the Lender or any Receiver or Delegate may charge or incur in relation to any breach of any provision of this legal mortgage by the Borrower;
"Deferred Payment"	the instalment of the Purchase Price payable pursuant to clauses 13.2.2 of the Contract;
"Delegate"	any person appointed by the Lender or any Receiver pursuant to clause 11 and any person appointed as attorney of the Lender, Receiver or Delegate;
"Dispose" or "Disposal"	any transfer or assent or licence or deed of grant or a lease for a term in excess of 10 years;
"Dwelling"	means a residential dwellinghouse (whether detached or semi-detached part of a terrace or otherwise) or a residential maisonette or apartment (to include any affordable housing unit) together with any garden, car parking space and/or any other curtilage thereto;
"Encumbrance"	any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect;
"Environment"	the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media;
"Environmental Law"	all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, legally binding codes of practice and guidance notes in so far as they relate to or apply to the Environment;
"Environmental Licence"	any authorisation, permit or licence necessary under Environmental Law in respect of any of the Charged Property;
"Event of Default"	means any of the events of default set out in Schedule 5;

"LPA"

the Law of Property Act 1925;

"Permitted Disposal"

means any of the following disposals:

- (a) a disposal (including but not limited to a transfer, lease, dedication or deed of easement) to a statutory body or undertaker in relation to the provisions of services for the Charged Property or any agreement for the adoption of any public infrastructure on the Charged Property;
- (b) a disposal to the local highways authority of land comprising or to be comprised in the adopted highway for highway purposes;
- (c) a disposal to a local authority or other body pursuant to a planning obligation within a Planning Agreement or a condition of a planning permission;
- (d) a disposal to a management company of amenity or shared areas for the maintenance of such areas in the interests of good estate management;
- (e) a disposal by way of a transfer of the freehold reversion of any part of the Charged Property in respect of which the disposal of a Dwelling or Dwellings has or have already occurred; or
- (f) a disposal of land comprising a garage by way of the grant of a garage lease to an associated company of the Borrower at a nil consideration where such garage lease will be assigned by such company to a purchaser of a Dwelling in which such garage is not comprised within the structure of such Dwelling; ~~(g)~~

~~with~~  
ⓧ (g) the grant (for the benefit of the Uncharged Property or any part thereof) of the usual estate rights and covenants over the Charged Property which is not built upon and not comprised in a residential dwelling or its curtilage,

"Property"

the freehold property owned by the Borrower described in Schedule 1;

"Purchase Price"

has the same meaning given to that expression in the Contract;

"Receiver"	a receiver and/or manager of the Charged Property;
"Rights"	the rights set out in Part 1 of Schedule 6;
"Road Infrastructure"	ways comprising vehicular carriageways footpaths and/or verges with an associated kerbs lighting street furniture vision splays turning areas bridges (and bridge footings and abutments) crossings tunnels and underpasses structures earthworks and supporting banks and mounds and works;
"Secured Liabilities"	the obligations set out in clause 13.2 of the Contract to pay the Deferred Payment on the dates specified in clause 13.2 together with default interest (if any) accruing in respect of such monies or liabilities;
"Security Period"	the period starting on the date of this legal mortgage and ending on the date on which all the Secured Liabilities have been paid and discharged fully in accordance with the Contract;
"Services Infrastructure"	pipes wires cables and other conduits for conveyance of water gas electricity light telecommunications and other services (together with any associated sub-stations gas governor houses junction boxes poles and stays inspection chambers and other works and equipment;
"Sewerage Infrastructure"	sewers drains and other sewerage and drainage conduits (with any associated manholes inspection chambers and other equipment and works) including (without limitation) the SUDS Facility;
"SUDS Facility"	the sustainable water drainage system to be constructed on the Property;
"Uncharged Property"	all the Property excluding the Charged Property;
"VAT"	value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement and any additional replacement tax.

## 1.2. Interpretation

In this legal mortgage:

- 1.2.1. a 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 shall 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 legal mortgage and references to paragraphs are to paragraphs of the relevant Schedule, unless the context otherwise requires.
- 1.2.5. a reference to this legal mortgage (or any provision of it) or any other document shall be construed as a reference to this legal mortgage, 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 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 determines or determined means, unless the contrary is indicated, a determination at the discretion of the person making it acting reasonably.
- 1.2.12. clause, Schedule and paragraph headings shall not affect the interpretation of this legal mortgage.

### 1.3. Nature of security over real property

A reference in this legal mortgage to a charge or mortgage of or over the Charged Property includes:

- 1.3.1. all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) and fixed plant and machinery which are situated on or form part of the Charged Property at any time;
- 1.3.2. the proceeds of sale of any part of the Charged Property and any other monies paid or payable in respect of or in connection with the Charged Property;
- 1.3.3. the benefit of any covenants for title given, or entered into, by any predecessor in title of the Borrower in respect of the Charged Property and any monies paid or payable in respect of those covenants; and
- 1.3.4. all rights under any licence, agreement for sale or agreement for lease in respect of the Charged Property.

#### 1.4. Third party rights

A third party (being any person other than the Borrower, the Lender and its permitted successors and assigns, any Receiver and any Delegate) has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any term of this legal mortgage.

#### 1.5. Schedules

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

### 2. **Covenant to Pay**

#### 2.1. Payment of Secured Liabilities

The Borrower covenants that it will discharge and pay to the Lender the Secured Liabilities when they become due under the Contract.

#### 2.2. Payment of interest

The Borrower shall pay interest on any amounts that are still due to be paid under the Contract after the date on which they are due to be paid thereunder from day to day until full discharge (whether before or after judgment, liquidation, winding-up or administration of the Borrower) at the rate of 3% per annum above the base rate from time to time of Barclays Bank plc. In the case of any Costs, such interest shall accrue and be payable as from the date on which the relevant Costs arose, without the need for any demand for payment being made.

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

Legal mortgage and fixed charges

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee charges to the Lender by way of first legal mortgage the Charged Property together with the Rights and the benefits of the covenants over the Uncharged Property set out in Schedule 6.

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

- 4.1. The Borrower hereby grants with full title guarantee out of the Uncharged Property for the benefit of the Charged Property and the Lender and its successors in title to the Charged Property and anyone else deriving title from the Lender the Rights in common with the Borrower and any other persons lawfully entitled to the same or similar rights.
- 4.2. The Borrower covenants with the Lender in favour of the Charged Property to observe and perform the restriction set out in Part 2 of Schedule 6 and it is agreed and declared that:
- 4.2.1. the benefit of this covenant is to be attached to and endure for each and every part of the Charged Property;
- 4.2.2. the burden of these covenants is intended to bind and binds each and every part of the Uncharged Property into whosoever hands it may come but not so as to render any owner of the Uncharged Property personally liable for any breach of this covenant arising after the date that party has parted with all interest in the Uncharged Property or the part of the Uncharged Property on which such breach is committed; and
- 4.2.3. an obligation in the restriction set out in Part 2 of Schedule 6 not to do any act or thing includes an obligation not to permit or suffer that act or thing to be done by another person.
- 4.3. Cautions against first registration and notices

Whether or not title to the Charged Property is registered at the Land Registry, if any caution against first registration or any notice (whether agreed or unilateral) is registered against the Borrower's title to the Charged Property, the Borrower shall immediately upon becoming aware of the same provide the Lender with full particulars of the circumstances relating to such caution or notice save where such notice or caution relates to a Permitted Disposal. If such caution or notice was registered to protect a purported interest the creation of which was subsequent to this legal mortgage and is not permitted under this legal mortgage, the Borrower shall immediately, 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.

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#### 5. **Liability of The Borrower**

##### 5.1. Liability not discharged

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

- 5.1.1. any security, guarantee, indemnity, remedy or other right held by, or available to, the Lender that is or becomes wholly or partially illegal, void or unenforceable on any ground; or
- 5.1.2. the Lender renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying

4.4 The Borrower consents to an application being made by the Lender to the Land Registrar for the following restriction in Form P to be registered against its title to the Charged Property:

W/H  
"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 26 September 2018 in favour of Banks Property Limited referred to in the charges register or their conveyances"

4.5 The Lender covenants to provide the certificate (at no cost to the Borrower) referred to in the restriction at clause 4.4 within 7 days of a request by the Borrower to do so in relation to a Permitted Disposal.

W/H



any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or

- 5.1.3. any other act or omission, which but for this clause 5.1 might have discharged, or otherwise prejudiced or affected, the liability of the Borrower.

5.2. Immediate recourse

The Borrower waives any right it may have to require the Lender to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this legal mortgage against the Borrower.

6. **Covenants**

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

7. **Powers of The Lender**

The Lender shall have the powers set out in Schedule 3.

8. **Enforcement**

8.1. When security becomes enforceable

The security constituted by this legal mortgage shall be immediately enforceable and the power of sale and other powers given by section 101 of the LPA (as varied or extended by this legal mortgage) shall be immediately exercisable at any time after the date that is 2 working days after the occurrence of an Event of Default.

8.2. When statutory powers arise

Section 103 of the LPA shall not apply to this legal mortgage and the statutory power of sale and other powers given by section 101 of the LPA (as varied or extended by this legal mortgage) shall, as between the Lender and a purchaser, arise on the execution of this legal mortgage and be exercisable at any time after such execution, but the Lender shall not exercise such power of sale until the security constituted by this legal mortgage has become enforceable under clause 8.1.

8.3. Enforcement of security

After the security constituted by this legal mortgage 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 Property but subject to the terms of this legal mortgage.

8.4. Extension of statutory powers of leasing

The statutory powers of leasing and accepting surrenders are extended so as to authorise the Lender and any Receiver, at any time after the security constituted by this legal mortgage has become enforceable, whether in its own name or in that of the Borrower, to make any lease or agreement for lease, accept surrenders of leases or grant any option of the whole or any part of the Charged Property with

whatever rights relating to other parts of it, containing whatever covenants on the part of the Borrower, generally on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) and whether or not at a premium 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.

#### 8.5. Privileges

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

#### 8.6. No liability as mortgagee in possession

Save as required by law, neither the Lender, any Receiver nor any Delegate shall be liable to account as mortgagee in possession in respect of the Charged Property, 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, the Charged Property for which a mortgagee in possession might be liable as such.

#### 8.7. Relinquishing possession

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

### 9. **Receivers**

#### 9.1. Appointment and removal of a Receiver

At any time after an Event of Default or at the request of the Borrower, the Lender may, without further notice:

- 9.1.1. appoint under seal or in writing, by a duly authorised officer of the Lender, any one or more person or persons to be a receiver or a receiver and manager, of the Charged Property; and
- 9.1.2. (subject to section 45 of the Insolvency Act 1986) from time to time, under seal or in writing, by a duly authorised officer of the Lender, remove any person appointed to be Receiver and may, in a similar manner, appoint another in his place.

Where more than one person is appointed Receiver, they shall have power to act separately (unless the appointment by the Lender specifies to the contrary).

#### 9.2. Power of appointment additional to statutory powers

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

#### 9.3. Power of appointment exercisable despite prior appointments

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

10. **Powers and Capacity of a Receiver**

10.1. Powers of a Receiver

Any Receiver appointed by the Lender under this legal mortgage shall, in addition to the powers conferred on him by the LPA and the Insolvency Act 1986, have the powers set out in Schedule 4.

10.2. Scope of Receiver's powers

Any exercise of any of the powers of a Receiver by the Receiver may be on behalf of the Borrower, the directors of the Borrower or himself.

10.3. Receiver is agent of the Borrower

Any Receiver appointed by the Lender under this legal mortgage shall be the agent of the Borrower and the Borrower shall be solely responsible for his acts and remuneration, as well as for any defaults committed by him. 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. **Delegation**

Each of the Lender and any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this legal mortgage (including the power of attorney granted under clause 15.1). Any such delegation may be made upon such terms and conditions (including the power to sub-delegate) as the Lender or any Receiver shall think fit. Neither the Lender nor any Receiver shall be in any way liable or responsible to the Borrower for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

12. **Application of Proceeds**

12.1. Order of application

All monies received by the Lender, a Receiver or a Delegate (other than sums received pursuant to any Insurance Policy) pursuant to this legal mortgage after the security constituted by this legal mortgage has become enforceable, shall (subject to the claims of any person having prior rights and by way of variation of the LPA) be applied:

- 12.1.1. first in paying all reasonable proper costs, charges and expenses of, and incidental to, the appointment of any Receiver and the exercise of his powers and all outgoings properly paid by him;
- 12.1.2. second in paying the reasonable and proper remuneration of any Receiver (as agreed between the Receiver and the Lender);
- 12.1.3. third in or towards discharge of the Secured Liabilities in such order and manner as the Lender determines; and
- 12.1.4. finally in paying any surplus to the Borrower.

## 12.2. Appropriation

Neither the Lender, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA, 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. **Protection of Third Parties**

### 13.1. Protection of third parties

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

13.1.1. to enquire whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged, or whether the power the Lender or a Receiver or Delegate is purporting to exercise has become exercisable; or

13.1.2. to see to the application of any money paid to the Lender or any Receiver or Delegate.

### 13.2. Conclusive discharge to purchasers

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

## 14. **Costs and Indemnity**

### 14.1. Costs

The Borrower shall pay to, or reimburse, the Lender and any Receiver on demand, on a full indemnity basis, all Costs properly incurred by the Lender, any Receiver or Delegate in relation to:

14.1.1. any breach of the Borrower's obligations in this legal mortgage or the Charged Property;

14.1.2. taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lender's, Receiver's or Delegate's rights under this legal mortgage; and

14.1.3. suing for, or recovering, any of the Secured Liabilities,

(including, without limitation, the Costs of any proceedings in relation to this legal mortgage or the Secured Liabilities), together with interest from day to day until full discharge (whether before or after judgment, liquidation, winding-up or administration of the Borrower) at the rate of 4% per annum above the base rate from time to time of Barclays Bank plc. In the case of any Costs which have been properly demanded but have not been paid within 5 Business Days of written demand, such interest shall accrue and be payable as from the date on which the

relevant Costs became due, without the need for any further demand for payment being made.

15. **Power of Attorney**

15.1. Appointment of attorneys

By way of security, the Borrower irrevocably appoints the Lender, every Receiver and every Delegate 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 which:

15.1.1. the Borrower is required to execute and do under this legal mortgage; and

15.1.2. any attorney may deem proper or desirable in exercising any of the powers, authorities and discretions conferred by this legal mortgage or by law on the Lender, any Receiver or any Delegate.

16. **Release**

16.1. On the expiry of the Security Period or the earlier discharge of the Secured Liabilities fully in accordance with the terms hereof (but not otherwise), the Lender shall within 5 (five) Business Days, issue a Release to the Borrower (and at no cost to the Borrower), take whatever action is necessary to release and discharge the Charged Property from the security constituted by this legal mortgage and the Uncharged Property from the restriction registered pursuant to clause 4.3.

16.2. The Lender shall comply with its obligations in clause 13.11 of the Contract.

16.3. The Lender shall upon request and promptly enter into any deed of grant of easements and/or dedication/adoption agreement, planning agreement, infrastructure agreement or other documents as the Borrower may require for the purpose of carrying out or facilitating development of the Property provided that in doing so the Lender shall not be required to accept any liability in such documents.

17. **Assignment and Transfer**

Neither the Borrower nor the Lender may assign or otherwise deal with any of their rights, or transfer any of their obligations, under this legal mortgage or enter into any transaction which would result in any of those rights or obligations passing to another person.

18. **Grant of Easements and Covenants**

18.1. On any sale of the Charged Property or any part of it by the Lender or a Receiver pursuant to the powers conferred by this Legal Charge, the Borrower will (at its own cost) on demand enter into such deed as the Lender requires to grant to the purchaser or other disponent the rights for the benefit of the Charged Property over the Uncharged Property set out in Schedule 6, Part 1 and the covenants in favour of the Charged Property at Schedule 6, Part 2 and such other rights and covenants as may reasonably be required for the beneficial use, development and enjoyment of the Charged Property (including but not limited to use for residential development) and the Borrower will (at the cost of the Borrower (such costs to be reasonable and proper)) on demand enter into such adoption

agreements and/or deeds of easement as the Lender or the relevant utilities supplier may require in respect of the Services Infrastructure and/or Sewerage Infrastructure and/or Road Infrastructure and/or access roads and/or footpaths.

- 18.2. Following the occurrence of an Event of Default the Borrower shall allow the Lender or a Receiver to exercise the rights over the Uncharged Property set out in Schedule 6, Part 1 and such other rights as may reasonably be required for the beneficial use, development and enjoyment of the Charged Property including but not limited to use for residential development.
- 18.3. Following the occurrence of an Event of Default the Borrower shall observe and perform the covenants set out in Schedule 6, Part 2 and such other covenants as may reasonably be required for the beneficial use, development and enjoyment of the Charged Property including but not limited to use for residential development.
- 18.4. If the Borrower fails to execute any agreements, deed of easement, deed of covenant, dedication and/or adoption agreement in accordance with its obligation in clause 18.3, the Borrower hereby irrevocably appoints the Lender its attorney by way of security to execute the relevant deed.
- 18.5. On or prior to a Disposal of the Uncharged Property or any part or parts thereof Borrower will (at its own cost) procure that the disponee enters in to a deed of covenant with the Lender in a form and substance satisfactory to the Lender (acting reasonably and properly) to grant the rights and covenants referred to in Schedule 6 over the Uncharged Property or part or parts thereof in the event that the Lender or a Receiver requires the grant of the same.

19. **Further Provisions**

19.1. Independent security

This legal mortgage shall be in addition to, and independent of, every other security or guarantee (if any) which the Lender may hold for any of the Secured Liabilities at any time. No prior security held by the Lender over the whole or any part of the Charged Property shall merge in the security created by this legal mortgage.

19.2. Continuing security

This legal mortgage 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 Secured Liabilities have been discharged in full under the terms hereof.

19.3. Rights cumulative

The rights and powers of the Lender conferred by this legal mortgage 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.

19.4. Waivers

Any waiver or variation of any right by the Lender (whether arising under this legal mortgage 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.

19.5. 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 legal mortgage or constitute a suspension or variation of any such right or power.

19.6. Single or partial exercise

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

19.7. Consolidation

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

19.8. Partial invalidity

The invalidity, unenforceability or illegality of any provision (or part of a provision) of this legal mortgage 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 modification necessary to give effect to the commercial intention of the parties.

19.9. Counterparts

This legal mortgage 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.

20. **Notices**

20.1. Service

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

20.1.1. in writing, delivered personally or sent by pre-paid first-class recorded delivery letter; and

20.1.2. sent:

20.1.2.1. to the Borrower at Miller House, 2 Lochside View, Edinburgh Park, Edinburgh EH12 9DH marked for the attention of the Company Secretary (or such other address as may be notified in writing to the Lender) and to Gowling WLG (UK) LLP of Two Snowhill, Birmingham, B4 6WR quoting the reference 2652341/AFM/JWF1 ;

20.1.2.2. to the Lender at Inkerman House, St John's Road, Meadowfield, Durham, DH7 8XL (or such other address as may be notified in writing to the Borrower) marked for the attention of the Company Secretary and to Ward Hadaway of Sandgate House, 102 Quayside, Newcastle upon Tyne NE1 3DX quoting the reference (P)AJC.BAN067.38,

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

## 20.2. Receipt of Notices

Any notice or other communication that either party gives shall be deemed to have been received:

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

20.2.2. if posted, on the second Business Day after the day it was sent by pre-paid first-class recorded delivery.

A notice or other communication given as described in clause 19.2(a) or clause 20.2(b) on a day which is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

## 21. **Governing Law and Jurisdiction**

### 21.1. Governing law

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

### 21.2. Jurisdiction

The parties to this legal mortgage irrevocably agree that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this legal mortgage 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.

### 21.3. 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 legal mortgage relating to service of notices. Nothing contained in this legal mortgage 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 – Property**

All that freehold land at Roundhill Road, Hurworth on Tees, Darlington and being the land comprised in title number DU80418.

## **Schedule 2 – Covenants**

### **Part 1 – General Covenants**

#### **1. Negative Pledge And Disposal Restrictions**

The Borrower shall not at any time, except with the prior written consent of the Lender (which consent will not be unreasonably withheld or delayed):

- 1.1. create, purport to create or permit to subsist any Encumbrance on or in relation to, the Charged Property other than this legal mortgage; or
- 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 Property; or
- 1.3. create or grant (or purport to create or grant) any interest in the Charged Property in favour of a third party

save by way of a Permitted Disposal and for the avoidance of doubt the Lender consents to the disposal of residential units (and/or land to a registered provider of affordable housing) on the Uncharged Property containing all usual estate rights and covenants.

#### **2. Preservation of the Charged Property**

The Borrower shall not do, or knowingly permit to be done, any act or thing which would or might depreciate, jeopardise or otherwise prejudice the security held by the Lender or materially diminish the value of the Charged Property or the effectiveness of the security created by this legal mortgage save for any Permitted Disposals and for the avoidance of doubt the Borrower's use of the Charged Property for residential and ancillary development and the construction thereof shall not constitute a breach of this covenant.

#### **3. Compliance with Laws**

- 3.1. The Borrower shall not use or permit the Charged Property to be used in any way contrary to law.
- 3.2. The Borrower shall comply with all laws and regulations for the time being in force relating to or affecting the Charged Property and shall obtain and promptly renew from time to time and comply with the terms of all authorisations which may be necessary to enable it to preserve, maintain or renew the Charged Property.

#### **4. Notice of breaches**

The Borrower shall, promptly on becoming aware of any of the same, give the Lender notice in writing of any breach of any covenant set out in this Schedule 2.

#### **5. Further assurance**

The Borrower, at its own cost, shall prepare and execute such further legal or other mortgages, charges or transfers (containing a power of sale and such other provisions as the Lender may reasonably require) in favour of the Lender as the

Lender, in its absolute discretion (acting reasonably), requires from time to time over all or any part of the Charged Property and give all notices, orders and directions which the Lender may require, in its absolute discretion, for perfecting, protecting or facilitating the realisation of its security over the Charged Property.

6. Borrower's waiver of set off

The Borrower waives any present or future right of set-off it may have in respect of the Secured Liabilities (including sums payable by the Borrower under this legal mortgage).

**Part 2 – Property Covenants**

1. No Restrictive Obligations

The Borrower shall not (save as permitted by this deed), without the prior written consent (such consent not to be unreasonably withheld or delayed) of the Lender, enter into any onerous or restrictive obligations affecting the whole or any part of the Charged Property or create or permit to arise any overriding interest, easement or right whatsoever in or over the whole or any part of the Charged Property.

2. Proprietary Rights

The Borrower shall use reasonable endeavours to ensure that (save as permitted by this deed) no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of the Charged Property, without the prior written consent of the Lender.

3. Compliance with and Enforcement of Covenants

The Borrower shall observe and perform all covenants, stipulations and conditions to which the Charged Property, or the use of it, is or may be subject

4. Notices or Claims Relating to the Charged Property

The Borrower shall:

4.1. 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 Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Notice; and

4.2. (if the Lender so reasonably requires) immediately, and at the cost of the Borrower, take all 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 may desire.

5. 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 Property or on its occupier.

6. Environment

The Borrower shall in respect of the Charged Property:

- 6.1. comply with all the requirements of Environmental Law; and
- 6.2. obtain and comply with all Environmental Licences.

7. 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 Property on reasonable prior notice at reasonable times subject to all health and safety instructions issued by the Borrower.

### **Schedule 3 – Powers of the Lender**

#### **1. Power to Remedy**

- 1.1. The Lender shall be entitled (but shall not be obliged) to remedy a breach at any time by the Borrower of any of its obligations contained in this legal mortgage. The Borrower irrevocably authorises the Lender and its agents to do all such things as are necessary for that purpose. Any monies properly expended by the Lender in remedying a breach by the Borrower of any of its obligations contained in this legal mortgage shall be reimbursed by the Borrower to the Lender on a full indemnity basis and shall carry interest in accordance with clause 14.1.
- 1.2. In remedying any breach in accordance with paragraph 1.1 of this Schedule 3, the Lender, its agents and their respective officers, agents and employees shall be entitled to enter onto the Charged Property and so much as is reasonably required of the Uncharged Property and to take any action as the Lender may reasonably consider necessary including, without limitation, carrying out any repairs, other works or development.

#### **2. Exercise of Rights**

The rights of the Lender under paragraph 1 of this Schedule 3 are without prejudice to any other rights of the Lender under this legal mortgage. The exercise of those rights shall not make the Lender liable to account as a mortgagee in possession.

#### **3. Lender has Receiver's Powers**

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

#### **4. Indulgence**

The Lender may, at its discretion, grant time or other indulgence or make any other arrangement, variation or release with any person that is not party to this legal mortgage (whether or not such person is jointly liable with the Borrower) in respect of any of the Secured Liabilities or of any other security for them without prejudice either to this legal mortgage or to the liability of the Borrower for the Secured Liabilities.

#### **Schedule 4 – Powers of a Receiver**

1. Power to Repair and Develop the Charged Property

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

2. Power to Grant or Accept Surrenders of Leases

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

3. Power to Employ Personnel and Advisers

A Receiver may, for the purposes of this Schedule 4, provide services and employ, or engage, such managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on such salaries, for such periods and on such other terms as he thinks fit. A Receiver may discharge any such person or any such person appointed by the Borrower.

4. Power to Make and Revoke Vat Options to Tax

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

5. Power to Charge for Remuneration

A Receiver may charge and receive such reasonable 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.

6. Power to Realise the Charged Property

A Receiver may take possession of the Charged Property with like rights.

7. Power to Manage or Reconstruct the Borrower's Business

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

8. Power to Dispose of the Charged Property

A Receiver may grant options and licences over all or any part of the Charged Property, sell or concur in selling, assign or concur in assigning, lease or concur in leasing and accept or concur in accepting surrenders of leases of, all or any of the Charged Property 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 Property to be disposed of by him.

9. Power to Sever Fixtures and Fittings

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

10. Power to 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 Property.

11. Power to Make Settlements

A Receiver may make any arrangement, settlement or compromise between the Borrower and any other person as he thinks fit.

12. Power to Bring Proceedings

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

13. Power to Insure

A Receiver may, if he thinks fit, but without prejudice to the indemnity in clause 14.2, effect with any insurer any policy of insurance in respect of the Charged Property either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Borrower under this legal mortgage.

14. Powers Under LPA

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

15. Power to Borrow

A Receiver may, for any of the purposes authorised by this Schedule 4, raise money by borrowing from the Lender (or from any other person) on the security of all or any of the Charged Property 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 legal mortgage).

16. Power to Redeem Prior Encumbrances

A Receiver may redeem any prior Encumbrance and settle and pass the accounts to which the Encumbrance relates. Any accounts so settled and passed shall be conclusive and binding on the Borrower, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

17. Power of Absolute Power

A Receiver may do all such acts and things as an absolute owner could do in the ownership and management of the Charged Property or any part of it.



18. Incidental Powers

A Receiver may do all such other acts and things as he may consider incidental or conducive to any of the matters or powers in this Schedule 4, or which he lawfully may or can do as agent for the Borrower.

#### **Schedule 5 – Events of Default**

For the purposes of this legal charge, it shall be an event of default if the Borrower does not pay and discharge any part of the Secured Liabilities in accordance with the terms of the Contract.

## **Schedule 6 – Rights to be Granted and Covenants**

### **Part 1: Rights to be Granted**

The following rights (with effect from the date on which this legal charge becomes enforceable) over the Uncharged Property in common with the Borrower and all others who have such or similar rights:-

1. the right of support and protection for the benefit of the Charged Property (and any building thereon) as is now enjoyed from the Uncharged Property;
2. the right to the uninterrupted passage and running of water, storm and surface water, soil, gas, electricity, telephone, television and radio signals and other radio and microwave and electronic data or communications transmissions and other services and/or supplies through such Services Infrastructure and Sewerage Infrastructure as are now or at any time in the future laid, installed or constructed under, on or over the Uncharged Property together with the right to connect into any Services Infrastructure and Sewerage Infrastructure which are now or at any time in the future in on under or over parts of the Uncharged Property which do not contain Dwellings and the right to lay new Service Infrastructure under the estate roads and other Road Infrastructure from time to time laid out on the Uncharged Property to serve the Charged Property only and the right to the full and free passage and running of water, storm and surface water, soil, gas, electricity, telephone, television, radio signals and other radio and microwave and electronic data or communications transmissions and other services and/or supplies through the same;
3. the right to pass and re-pass for all purposes with or without vehicles of all kinds over all estate roads and spine roads and any other roads and Road Infrastructure now or at any time thereafter constructed on the Uncharged Property together with the right to make a connection from the Charged Property into all estate roads and spine roads and any other roads and Road Infrastructure now or at any time in the future constructed or to be constructed along such routes within the Charged Property as the Borrower shall approve (such approval not to be unreasonably withheld or delayed) and thereafter a right to pass and re-pass for all purposes with or without vehicles of all kinds over such connections;
  - 3.1. the right to pass and re-pass for all purposes:
    - 3.1.1. on foot over the footpaths, cycleways or bridle paths;
    - 3.1.2. on bicycles over the cycle paths; and
    - 3.1.3. on horses or similar animals over the bridle paths,now or at any time in the future constructed on the Uncharged Property;
4. the right upon reasonable prior written notice served upon the Borrower to enter and remain for a reasonable period of time on any part of the Uncharged Property which is unbuilt upon with or without vehicles, plant equipment, machinery, materials and workmen for the purposes set out in paragraphs 2 and 3 above if it is not reasonably practicable or economical to carry out such works without making such entry;

5. to inspect, maintain, clean, unblock, repair, relay, upgrade, reinstate, replace or renew any Services Infrastructure and Sewerage Infrastructure serving the Charged Property in, on or over the parts of the Uncharged Property which do not contain Dwellings; and
6. to inspect, maintain, clean, reinstate, replace, build, repair or renew any building structure or engineering work built on the Charged Property (other than Dwellings) or any boundary feature on the common boundary between the Uncharged Property and the Charged Property if it is not reasonably practical or economical to carry out such works without making such entry;
7. the full and unrestricted right at any time after the date of grant of these rights to erect or permit to be erected any buildings or other erections and to alter any building or other erection erected after the date of the grant of these rights on any part of the Charged Property in such manner as to obstruct or interfere with the passage and access of light and air to any building which is or may be erected on any part of the Uncharged Property and so that all privileges of light and air now or at any time after the date of grant of these rights are to be enjoyed over any part of the Charged Property by or in respect of the Uncharged Property are deemed to be enjoyed by the licence or consent of the Lender and not as of right;
8. the right to enter onto and remain upon the Uncharged Property at all reasonable times with or without workmen vehicles and machinery as necessary for the purposes of carrying out infrastructure works for the benefit of the Charged Property within such other areas within the Uncharged Property as are reasonably required by the Lender (and approved by the owner of the appropriate part of the Charged Property) (such approval not to be unreasonably withheld or delayed)) (which for the avoidance of doubt shall include but not be limited to the construction of estate roads, spine roads and any other roads and Road Infrastructure, Services Infrastructure and Sewerage Infrastructure and in connection therewith to break open re-grade fill and carry away the soil of the Uncharged Property) and all ancillary rights necessary for the purposes of performing such works where the Borrower has failed to carry out such works within a reasonable period of time subject to the Borrower paying and indemnifying the Lender from and against all costs expenses and liabilities incurred in the reasonable and proper exercise of these rights

All rights of entry are subject to the following conditions:

1. entry can only be exercised so far as and to the extent that the purpose for which the right is exercised cannot reasonably be undertaken without such entry.
2. entry shall not be exercised over the curtilage of any Dwellings.
3. entry can only be exercised at reasonable times of the day after giving reasonable prior written notice (except in an emergency when no notice shall be required).
4. entry can be exercised with and without workmen and appliances if necessary.
5. anyone exercising a right of entry must do as little damage as possible and must make good or pay compensation for any damage that is done.
6. the route of any additional Sewerage Infrastructure or Service Infrastructure to be laid in on or under the Charged Property shall first be agreed by the Borrower or (if

different) the owner of the Charged Property (such agreement not to be unreasonably withheld or delayed).

## **Part 2: Covenants**

The Restrictions are the following:

1. not to cause or allow or permit any obstruction to any Road Infrastructure, Services Infrastructure and/or Sewerage Infrastructure in on or under the Uncharged Property;
2. not to do or permit or suffer on the Uncharged Property anything that is a legal nuisance;
3. not to cause or permit or allow to be caused any damage to the Charged Property or to any property of the owners or occupiers of the Charged Property;
4. not deposit any waste, rubbish, soil or other material on any part of the Charged Property

PROVIDED ALWAYS that the use of the Property for the purpose of a residential development and prior to that the construction works required in connection with the residential development of the Property shall not constitute a breach of this Legal Charge.

**Executed** as a deed by  
**Miller Homes Limited**  
acting by

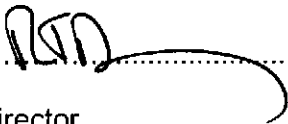
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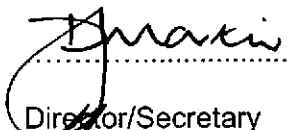
Signature of Authorised Signatory

.....

Signature of Authorised Signatory

**Executed** as a deed by  
**Banks Property Limited**  
acting by a two directors or a director and its  
secretary or a director in the presence of:

  
.....  
Director

  
.....  
Director/Secretary

Witness Signature: .....

Name: .....

Address: .....

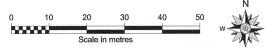
.....

.....

Occupation: .....

## **Annexure 1 - The Plan**





Rev.	Description	Drawn	Date

As shown on the site plan, the boundaries of the proposed development are shown.

**miller homes**  
 Miller Homes Limited - North East Region  
 Nautilus House  
 Redburn Court, East Gray Way  
 Royal Quays  
 North Shields, NE29 6AR  
 Telephone 0870 336 4100  
 Fax 0191 258 6243  
 www.millerhomes.co.uk

Project No.  
**ROUNDHILL ROAD  
 HURWORTH  
 DARLINGTON**

Drawing No.  
**CHARGE PLAN**

Scale	Drawn By	Checked By	Authorised By
1:500 @ A1	NA	JJAD	
Job No.	Drawn By	Checked By	Authorised By
807178	HUR/CHG/01		

Original Sheet Size A1