



Registration of a Charge

Company Name: **MILLER HOMES LIMITED**

Company Number: **SC255429**



Received for filing in Electronic Format on the: **27/08/2021**

XABQWG77

Details of Charge

Date of creation: **19/08/2021**

Charge code: **SC25 5429 0385**

Persons entitled: **GLEESON STRATEGIC LAND LIMITED**

Brief description: **THE FREEHOLD PROPERTY KNOWN AS BOORLEY GARDENS, WINCHESTER ROAD, BOTLEY, HAMPSHIRE AND COMPRISING BOTH UNREGISTERED LAND AND LAND REGISTERED AT HM LAND REGISTRY WITH TITLE NUMBERS HP69517 (PART) AND HP203720, HP804634, HP414912 (AS AT THE DATE HEREOF) ALL WHICH WAS THE LAND THE SUBJECT OF THE AGREEMENT AND IS SHOWN EDGED RED ON THE PLAN ATTACHED AT ANNEXURE 1 TO THE CHARGING INSTRUMENT.**

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

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



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 255429

Charge code: SC25 5429 0385

The Registrar of Companies for Scotland hereby certifies that a charge dated 19th August 2021 and created by MILLER HOMES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 27th August 2021 .

Given at Companies House, Edinburgh on 31st August 2021

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 19 August 2021

MILLER HOMES LIMITED

(1)

(as Chargor)

AND

GLEESON STRATEGIC LAND LIMITED

(2)

(as Chargee)

LEGAL CHARGE

**relating to land known as Boorley Gardens,
Winchester Road, Botley, Hampshire**



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THIS LEGAL CHARGE by way of deed is made the

19

day of August 2021

BETWEEN:

- (1) **MILLER HOMES LIMITED** (Company Registration No. SC255429) whose registered office is situated at Miller House, 2 Lochside View, Edinburgh Park, EH12 9DH (the "**Chargor**") and
- (2) **GLEESON STRATEGIC LAND LIMITED** (Company Registration No. 5181745) whose registered office is situated at 6 Europa Court, Sheffield Business Park, Sheffield S9 1XE (individually known as "**Gleeson**") (Gleeson together with Miller being the "**Chargee**")

BACKGROUND

- (A) The Chargor is entitled to be registered as proprietor of the Property.
- (B) Under the Agreement referred to below the Sellers have agreed to make certain payments to the Chargee subject to the terms of the Agreement and the Chargor has agreed to provide security over the Property in respect of those liabilities of the Sellers to the Chargee.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions shall apply:

Act the Law of Property Act 1925 (as amended);

Adjoining Land the land registered at the Land Registry with title number HP723762 which is the subject of the Adjoining Land Charge (and indicatively tinted grey on the plan attached at Annexure 2);

Adjoining Landowners each of Georgina Louise Shorney Julie Anne Parr and Roslynn Frances Roderigo;

Adjoining Charge	Landowners'	a legal charge dated on or about the date of this Charge between (1) the Chargor and (2) the Adjoining Landowners;
Agreement		a contract for sale made between (amongst others) (1) the Chargee (2) the Chargor dated 30 April 2021;
Affordable Housing		housing subject to restrictions in respect of price or occupiers or tenure or rent or carrying subsidy from the Chargor or its successor in title for land or building cost or housing required to be transferred to or managed by a local authority, a registered provider, a social landlord or society association, charity or similar body;
Deferred Fee Payments		the amount payable by the Sellers to the Chargee under Clause 3.4, 3.5 (i)&(ii) and 3.6 (i) &(ii) of the Agreement;
Delegate		any person appointed by the Chargee or any Receiver and any person appointed as attorney of the Chargee, Receiver or Delegate;
Dispose of		bears the meaning given to it under Section 205(1) Law of Property Act 1925 in respect of the whole or any part of the Property and disposition and Disposal shall be interpreted accordingly;
Dwelling		a house or bungalow (in each case detached, semi-detached or terraced), apartment or flat, any flat above garage(s), maisonette, cottage or other dwelling constructed or to be constructed on the Property and/or the Adjoining Land together with its curtilage, any associated garage, parking space, car port and the like (whether separate from the main dwelling or not) and "Dwellings" shall be construed accordingly;
Event of Default		the event specified in Schedule 3;
Existing	Planning	the planning permission (ref. O/15/75953) for 680 dwellings

Permission	and Reserved Matters Approval RMA 1 (RM/17/81628 approved Nov 16 for 301 dwellings) and pending approvals for RMA 2 (RM/18/84466 validated Nov 18 for 143 dwellings) and RMA 3 (RM/19/86658 validated Oct 19 for 236 dwellings);
Partition Transfers	the partition transfers of the Property between the parties comprising the Borrower;
Permitted Disposition	<p>any of the following:</p> <ul style="list-style-type: none"> (a) the Disposal dedication or adoption of any part of the Property to or in favour of any statutory undertaking, utility company, local authority or similar body for the provision and adoption of sewers, Service Media or other infrastructure including for the avoidance of doubt any easement granted to a Relevant Authority in connection with any works in respect of the Property or as otherwise contemplated in the Planning Agreement; and/or (b) the Disposal dedication or adoption of any part of the Property and/or the grant of rights or easements to the highway or other competent authority for roads, footpaths, cycleways (together with ancillary area and rights) or other highway works in relation to the adoption of such roads, footpaths, cycleways (together with ancillary areas and rights) or other highway works including any agreement made under Sections 38 or 278 of the Highways Act 1980; and/or (c) any easements over the Property for the benefit of the Affordable Housing; (d) the creation of any easements over the Property remaining within this Charge for the benefit of any parts of the Property which have been released from

this Charge under Clause 9;

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

Planning Acts

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

Planning Agreement

the Section 106 Agreement dated 16 June 2016 and made between Eastleigh Borough Council (1) Hampshire County Council (2) Charles Edmund Browning, Timothy Mark Browning, Peter Malcom Browning & Juliette Helen Hooper (3) Victoria Susan Saunders, Paul John Snook & Iris Isabella Wilton Combes (4) Rodney Arthur Poore (5) Georgina Louise Shorney, Julie Anne Parr and Roslynn Frances Roderigo (6) Gleeson Strategic Land Limited (7) Miller Homes Limited (8) Welbeck Strategic Land LLP (9) and MF Strategic Land Limited (10) and as varied by a deed of variation, and as may be further amended from time to

time

Property

the land described in Schedule 1;

Receiver

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

Relevant Authority

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

Roadways

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

Secured Sum

the Deferred Fee Payment together with any costs of enforcement occurred in connection with and in accordance with this charge and any accrued, due and payable default interest relating to the Deferred Fee Payment only in accordance with clause 3.10 of the Agreement;

Security

any legal mortgage;

Security Period

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

	paid in full;
Sellers	has the meaning give to it in the Agreement;
Service Media	includes all drains, pipes, wires, cables, conducting media and apparatus for surface and foul water drainage gas, electricity, water, electronic transmissions and similar services now or in the future constructed on the Property;
Services	foul and surface water drainage, water, gas, electricity and telecommunications services;
Statutory Agreement	an agreement, obligation or undertaking to be made pursuant to all or any of the following: Section 106 Town and Country Planning Act 1990, Section 38 and/or Section 278 Highways Act 1980, Section 104 Water Industry Act 1991, Section 33 Local Government (miscellaneous Provisions) Act 1982 or pursuant to any other statutory enactment or derivative legislation or as may be required by a local authority, the local highway authority or any service undertaker;
Substitute Property	the property approved by the Chargee pursuant to clause 3.2;
VAT	value added tax or any equivalent tax chargeable in the UK or elsewhere;
Working Days	has the meaning given to it in the Agreement.

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

(a) to numbered clauses and schedules are references to the relevant clause in or Schedule to this Charge; and

(b) to a numbered paragraph in any Schedule are references to the relevant paragraph in that Schedule.

1.4 Words in this Charge denoting the singular include the plural meaning and vice versa.

1.5 Words in this Charge importing one gender include the other genders and may be used interchangeably and words denoting natural persons where the context allows include corporations and vice versa.

1.6 Where a party to this Charge comprises more than one individual the obligations and covenants of that party shall be several.

1.7 Reference to a party shall include that party's successors, permitted assigns and permitted transferees and this Charge shall be binding on, and enure to the benefit of, the parties to this Charge and their respective personal representatives, successors, permitted assigns and permitted transferees.

1.8 A reference to asset or assets includes present and future properties, undertakings, revenues, rights and benefits of every description.

1.9 A reference to an authorisation includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution.

1.10 A reference to a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

1.11 A reference to a statute, statutory provision or statutory instrument is a reference to it as amended, extended or re-enacted from time to time. Reference in this Charge to any statutes, statutory provision or statutory instruments include and refer to any statute, statutory provision or statutory instrument amending, consolidating or replacing them respectively from time to time and for the time being in force and references to a statute or statutory provision include statutory instruments, regulations and other subordinate legislation made pursuant to it.

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

2 COVENANT TO PAY

- 2.1 Subject to Clause 2.2 below, the Chargor covenants with the Chargee to pay the Secured Sum on the date, and otherwise, in accordance with the Agreement.
- 2.2 Notwithstanding any other provision of this Charge, the Chargee shall have no recourse against the Chargor or its assets, whether by court proceedings, a winding up application or otherwise, in respect of its obligations and liabilities under this Charge except by enforcement of its security over the Property, and the liability of the Chargor shall extend only to and shall not exceed the proceeds of any such enforcement.
- 2.3 The Chargee confirms that the arrangements set out in clauses 3.4 to 3.7 of the Agreement relating to the apportionment reflect the arrangements between the Sellers and the Promoters (under and as defined in the Agreement) and do not affect the Chargor's obligations and confirm that the payment and unconditional release of the relevant monies in accordance with those provisions, shall be sufficient discharge of the Chargor's obligations in each respect and

the Chargor hereby confirms and warrants that they have provided irrevocable instructions to the applicable legal advisors in respect of the receipt of the Secured Sums under this Charge and the discharge of this Charge (in whole or in part) on payment of the Secured Sums or otherwise as set out herein.

3 SECURITY

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

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

- 3.2 The Chargor may, at any time, submit to the Chargee a request that at the cost of the Chargor there be substituted for any property forming part of the Property another property, a bond or a bank guarantee (or any combination of them) in accordance with the terms of the Agreement (the "**Substitute Property**").

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

- 3.4 If an Event of Default has occurred and is continuing, the Chargor shall grant to the Chargee and all persons deriving title under the Chargee for the benefit of the Property:

- (a) the right to lateral and subjacent support and protection for the Property from the Adjoining Land;
- (b) the right to the free passage and running of Services in and through the Service Media now constructed or at any time to be constructed on through or under the Adjoining Land provided that the Chargor may vary the route of such Service Media at any time without notice to the Chargee (provided that in varying the route there is no interruption to the running and passage of the Services and further provided that such alternative route is no less commodious and of no lesser specification or standard) and in such circumstances the right of passage and running shall apply to the Service Media as varied and the exercise of the rights shall not be materially and unreasonably prejudiced by such variation;

- (c) the right to lay new Service Media in the Roadways and the right to connect into the Service Media now constructed or at any time to be constructed on through or under the Adjoining Land and to connect to any road to be laid on the Adjoining Land;
- (d) the right (with or without surveyors, agents, workmen, machinery and materials) to enter and for so long as is reasonably necessary remain on so much of the unbuilt parts of the Adjoining Land as is reasonably necessary for the purpose of:
 - (i) exercising its right contained in clauses 3.4(b) and 3.4(c) hereof and thereafter inspecting, cleansing, maintaining, altering, testing, replacing, repairing and renewing such Service Media;
 - (ii) constructing a road on the Property and to connect the same to the Roadways on the Adjoining Land;
- (e) The right to pass and repass at all times and for all purposes to and from the Property over the Roadways such passage and re-passage to be with or without motor and other vehicles (and in the case of footpaths on foot only) provided that the Chargor may upgrade the Roadways at any time without notice to the Chargor provided that there is no interruption to the right of way and in such circumstances the right of passage and re-passage shall apply to the Roadway as upgraded and the exercise of the rights shall not be materially and unreasonably prejudiced by such upgrade;
- (f) Until the Roadways are constructed the right to pass and repass at all times and for all purposes to and from the Property over the Adjoining Land to obtain access to the public adopted highway and to enter on to such parts of the Adjoining Land with or without workmen plant and machinery as is necessary to construct and complete such Roadways (and any Service Media under them) as are necessary between the Property and the public adopted highway.

BUT PROVIDED ALWAYS the easements capable of grant pursuant to this clause 3.4 shall only be granted to the extent required for the purpose of development strictly in accordance with the Existing Planning Permission and for no other purpose and further provided that such easements as aforesaid shall not be granted in such manner or to such extent as would have the effect of reducing the value of the Adjoining Landowners' Security under the Adjoining Landowners' Charge

- 3.5 The Chargor covenants (at the cost of the Chargor) with the Chargee promptly to execute and do all such assurances and things as the Chargee or any Receiver may require for creating, perfecting or protecting the security constituted by or intended to be created by this Charge or the rights granted or intended to be granted by it (including without prejudice to the foregoing generality those granted by clauses 3.4(a) to 3.4(f) (inclusive)), facilitating the realisation of the Security created under this Charge and for facilitating the exercise of all rights, powers, authorities and discretions conferred by this Charge upon the Chargee or any Receiver including, without limitation (if the Chargee or Receiver thinks it expedient) the execution of any transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Security created by this Charge (whether to the Chargee or to its nominee), any deed of grant in respect of rights exercisable over, through and under the Adjoining Land and the giving of any notice, order or direction and the making of any registration and vice versa.

4 CHARGOR'S COVENANTS

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

5 CHARGEES COVENANTS

The Chargee consents to any Permitted Disposition and to enter into any Statutory Agreement within 10 Working Days following a request from the Chargor, provided that:

- (a) the Chargor indemnifies the Chargee against all reasonable and proper expenses and liabilities incurred by the Chargee arising out of any Statutory Agreement; and
- (b) the Chargee is not liable to perform any covenants contained in the Statutory Agreement to the extent they relate to the Property unless and until it takes possession of the Property.

6 RESTRICTION ON DEALINGS

- 6.1 Other than by way of a Permitted Disposition the Chargor may not and covenants that it will not at any time without the prior written consent of the Chargee (such consent not to be unreasonably withheld or delayed):

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

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

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

"No disposition of the registered estate or by the proprietor of any registered charge not being a charge registered before the entry of this restriction is to be registered without a written consent signed by Miller Homes Limited and Gleeson Strategic Land Limited or their conveyancer or a certificate signed by a conveyancer that the provisions of clause 6.1 of a legal charge dated [11 AUG] 2021 made between (1) Gleeson Strategic Land Limited and (2) Miller Homes Limited have been complied with or do not apply to the disposition".

7 RIGHTS OF ENFORCEMENT

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

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

- 7.2 The receipt of the Chargee or any Receiver or Delegate shall be a conclusive discharge to a purchaser.
- 7.3 The enforcement powers of the Chargee (in addition to the powers from time to time conferred by the Act or any other statute or otherwise under the law in force from time to time) shall be immediately exercisable and the Secured Sum shall be immediately due and payable upon and following demand after the occurrence of an Event of Default that is continuing and shall be as follows in each case without becoming liable as mortgagee in possession:
- (a) for the Chargee itself to exercise all or any of the powers and rights specified in this Charge (including but not limited to the powers and rights specified in Schedule 5) and in addition all statutory and other powers and rights as the Chargee shall, acting reasonably, think fit, after it has taken possession of the Property;
 - (b) to appoint a Receiver or any number of Receivers (by way of deed or otherwise in writing) of the Property (and to remove and substitute any such Receiver as and when the Chargee shall think fit) with all the powers and rights in law or specified in this Charge (including but not limited to the powers and rights specified in Schedule 5) which the receiver may exercise either in its own name or in the name of the Chargor or the directors of the Chargor after it has taken possession of the Property.
 - (c) so far as the law allows the Receiver shall be the agent of the Chargor who shall be liable for his acts, defaults, and remuneration but the Chargee shall be entitled to agree such reasonable fees and expenses of and the mode of payment to the Receiver and the remuneration of the Receiver. The agency of each Receiver shall continue until the Chargor goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Chargor;
 - (d) the powers conferred on mortgagees or receivers by the Act shall apply to any Receiver appointed under this Charge as if such powers were incorporated in this Charge except in so far as they are expressly or impliedly excluded and where there is any ambiguity of conflict between the powers contained in the Act and those contained in this Charge the terms of this Charge shall prevail.
- 7.4 The Chargee or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this Charge including the power of attorney granted under this Charge. The

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

- 7.5 All monies received by the Chargee, a Receiver or a Delegate shall be applied in the order determined by the Chargee. Neither the Chargee, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment in any particular order between any of the Secured Sums.

8 CHARGEES POWERS AND RIGHTS

- 8.1 At any time after this security has become enforceable the Chargee shall have all statutory and other powers and rights and in addition (and not substitution) the powers and rights specified in clause 7 and Schedule 4 and may exercise all rights and powers in the name of the Chargor and at the times and in such manner and on such terms as the person exercising them shall in its sole absolute discretion consider appropriate.

- 8.2 The Chargee and each Receiver is entitled to all the rights, powers, privileges and immunities conferred by the Act on mortgagees and receivers.

9 RELEASE AND CONSENT TO EASEMENTS

Release

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

- (a) subject to a Permitted Disposition (excluding Partition Transfers where the part of the Property being transferred will not be discharged from the security and the restriction at Clause 6.2 shall be carried forward onto the subsequent title(s) created by any Partition Transfer of the Property); or
- (b) forming part of the Property to be released in accordance with clause 3.2 of this Charge,

and shall within 5 Working Days of such request provide all such properly executed release documentation (including, for the avoidance of doubt, a Land Registry Form DS3, DS1 and/or

letter of consent and RX4) as may reasonably be required by the Chargor to give effect to the provisions of this clause.

9.2 The Chargee shall, at the reasonable request and without cost to the Chargor, duly discharge from the security constituted by this Charge the part of the Property shown tinted purple on the plan annexed ^{at Annexure 2} ~~hereto~~ upon request and shall within 2 Working Days of such request provide all such properly executed release documentation (including, for the avoidance of doubt, a Land Registry Form DS3, DS1, letter of consent and RX4) as may be reasonably required by the Chargor to give effect to the provisions of this clause. BULG

9.3 The Chargee, shall, at the reasonable request and without costs to the Chargor, duly discharge from the security constituted by this Charge the part of the Property tinted yellow on the plan annexed ^{at Annexure 2} ~~hereto~~ upon receipt of the First Deferred Payment in accordance with Clause 3.5(i) of the Agreement and shall within 5 Working Days of such request provide all such properly executed release documentation (including, for the avoidance of doubt, a Land Registry Form DS3, DS1, letter of consent and RX4) as may reasonably be required by the Chargor to give effect to the provisions of this clause. BULG

9.4 On the expiry of the Security Period, the Chargee shall, at the request of the Chargor, take whatever action is necessary to release the Property from the security constituted by this Charge and shall on expiry of the Security Period provide all such properly executed release documentation (including, for the avoidance of doubt, Land Registry Form DS1 and RX4 of required) as may reasonably be required by the Chargor to give effect to the provisions of this clause.

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

10 LIABILITY

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

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

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

11 LAW OF PROPERTY (MISCELLANEOUS PROVISIONS) ACT 1989

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

12 INDEPENDENT SECURITY

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

13 POWER OF ATTORNEY

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

and do under this Charge, where the Chargor has failed to do any such actions following receipt of reasonable notice from the Chargee.

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

14 THIRD PARTY CLAUSES

- 14.1 If any purported obligation or liability of the Sellers to the Chargee which if valid would have been the subject of the charges hereby created is not or ceases to be valid or enforceable against the Sellers on any ground whatsoever whether or not known to the Chargee including but not limited to any defect in or want of powers of the Sellers or irregular exercise thereof or lack of authority by any person purporting to act on behalf of the Sellers or any legal or other limitation (whether under the Limitation Acts or otherwise) disability incapacity or any change in the constitution of or any amalgamation or reconstruction or liquidation or administration or bankruptcy of any Seller, the Chargor shall nevertheless be liable to the Chargee in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Chargor was the principal debtor in respect thereof. The Chargor hereby agrees to keep the Chargor fully indemnified against all damages loss costs and expenses arising from any failure of the Sellers Debtor to carry out any such purported obligation or liability.

- 14.2 The liability of the Chargor shall not be affected nor shall the charges hereby created be discharged or diminished by reason of:

- (a) any present or future bill note guarantee indemnity mortgage charge pledge lien or other security or right or remedy held by or available to any Chargee being or becoming wholly or in part void voidable or unenforceable on any ground whatsoever or by the Chargee from time to time dealing with exchanging varying realising releasing or failing to perfect or enforce any of the same; or
- (b) the Chargee compounding with discharging releasing or varying the liability of or granting any time indulgence or concession to any Seller or any other person or renewing determining varying or increasing any bill promissory note or other negotiable instruments accommodation facility or transaction in any manner whatsoever or concurring in accepting or varying any compromise arrangement or settlement or omitting to claim or enforce payment from any Seller or any other person; or

- (c) the making or absence of making any demand on any Seller or any other person for payment;
- (d) the bankruptcy, death, incapacity, liquidation or administration of any Seller or any other person;
- (e) the illegality, invalidity or unenforceability of or any defect in the Secured Amounts or any of the obligations of any Seller or other party thereunder;
- (f) any act or omission which would not have discharged or affected the liability of the Chargor had it been principal debtor instead of guarantor or by anything done or omitted which but for this provision might operate to exonerate the Chargor.

14.3 Until the ultimate balance owing by the Sellers and/or the Chargor to the Chargee has been paid or satisfied in full (and notwithstanding payment of a dividend in any liquidation or bankruptcy or under any compromise or arrangement) the Chargor waives all rights of subrogation and indemnity against the Sellers and agrees not to demand or accept or to negotiate assign charge or otherwise dispose of any moneys obligations or liabilities now or hereafter due or owing to the Chargor from the Sellers or any co guarantor or any promissory note bill of exchange guarantee indemnity mortgage charge or other security from the same or to take any step to enforce any right against the Sellers or any co guarantor or to claim any set off or counter claim against the same or to claim or prove in competition with a Chargee in the bankruptcy, liquidation or administration of any Seller or any co guarantor or have the benefit of or share in any payment or composition from the same or in any other guarantee indemnity or security now or hereafter held by any Chargee for any moneys obligations or liabilities of the Sellers. If the Chargor receives any payment promissory note bill of exchange guarantee indemnity mortgage charge or other security or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this clause, the Chargor agrees forthwith to deposit an amount equal to the value of any benefit derived directly or indirectly therefrom with the Chargee until anything so received and any benefit so derived is returned to the Seller.

14.4 Any money received in connection with the charges or the guarantee hereby created may be placed to the credit of a suspense account with a view to preserving the rights of the Chargee to prove for the whole of its claims against the Sellers or any other person liable or may be applied by the Chargee in or towards satisfaction of such of the moneys obligations or liabilities of the Sellers hereby secured as a Chargee may in its absolute discretion may from time to time conclusively determine.

15 GENERAL PROVISIONS

- 15.1 Neither the whole or any part of the Secured Sum and/or this Charge shall be modified, released, waived or otherwise affected in any way by any grant of time, indulgence, modification, release, variation or waiver granted or allowed to or agreed with the Chargor or any other person or otherwise.
- 15.2 A waiver of any right or remedy under this Charge or by law by the Chargee, or any consent given under this Charge by the Chargee, is only effective if given in writing and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the Chargee from subsequently relying on the relevant provision.
- 15.3 A failure or delay by the Chargee to exercise any right or remedy provided under this Charge or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this Charge. No single or partial exercise of any right or remedy provided under this Charge or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this Charge by the Chargee shall be effective unless it is in writing.
- 15.4 The rights and remedies provided under this Charge to the Chargee are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law
- 15.5 If any provision (or part of a provision) of this Charge is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this Charge.
- 15.6 The restriction on the right of consolidation contained in Section 93 of the Act shall not apply to this Charge.
- 15.7 Any written certificate or determination given by the Chargee pursuant or relating to this Charge shall be conclusive and binding as to the relevant items save in the case of manifest error or omission.

- 15.8 The unenforceability for whatever reason of any provision of this Charge shall in no way affect the enforceability of each and every other provision.
- 15.9 This security shall not be considered as satisfied or discharged by any intermediate payment, repayment or discharge of any part only of the Secured Sum and shall constitute and be a continuing security for the Chargee notwithstanding any settlement of account or other matter or thing and shall be in addition to and shall not operate so as in any way to limit or affect any other security which the Chargee may hold now or at any time hold for or in respect of the Secured Sum.
- 15.10 Any notice or other communication to be given or served under or in connection with this Charge shall be validly served if in writing and delivered by hand or by pre-paid first-class post or other next Working Day delivery service to:
- (a) the Chargee at 6 Europa Court, Sheffield Business Park, Sheffield S9 1XE.
 - (b) the Chargor, at Miller House, 2 Lochside View, Edinburgh Park, EH12 9DH;; and
- or to any other address as is notified in writing by one party to the other from time to time.
- 15.11 A notice or other communication given under or in connection with this Charge is not valid if sent by email. A reference to writing or written does not include email.
- 15.12 No amendment of this Charge shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).
- 15.13 Except as expressly provided elsewhere in this Charge, a person who is not a party to this Charge shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this Charge. This does not affect any right or remedy of a third party which exists, or is available, apart from the Contracts (Rights of Third Parties) Act 1999. The rights of the parties to agree any amendment or waiver under this Charge are not subject to the consent of any other person.
- 15.14 This Charge may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.

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

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

SCHEDULE 1

Description of the Property

The freehold property known as Boorley Gardens, Winchester Road, Botley, Hampshire and comprising both Unregistered Land and land registered at HM Land Registry with title numbers HP69517 (part) and HP203720, HP804634, HP414912 (as at the date hereof) all of which was the land subject of the Agreement as shown edged red on the plan attached at Annexure 1

SCHEDULE 2

Chargor's Covenants

- 1 Other than a Permitted Disposition, that no sale, assignment, transfer, parting with possession, lease, licence or other disposal of whatever nature or realisation of the whole or any part of or any interest in the Property nor purporting to do so nor any agreement to effect nor purport to effect all or any of them shall be entered into otherwise than as permitted in accordance with the terms of this Charge.
- 2 Promptly to advise the Chargee in writing on becoming aware of the occurrence of any Event of Default.

SCHEDULE 3

Events of Default

Any failure by the Chargor to pay the Secured Sum in full within 15 Working Days of its due date in accordance with the Agreement.

SCHEDULE 4

Chargee's and Receiver's Powers

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

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

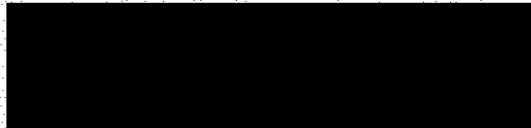
- 19 To exercise all powers, authorisations and rights it would be capable of exercising, and do all those acts and things, as an absolute beneficial owner could exercise or do in the ownership and management of the Property.
- 20 To exercise all powers provided for in the Act in the same way as if it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

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

EXECUTED as a DEED by

MILLER HOMES LIMITED

acting by ^a two Directors or a Director
in the presence
and its secretary of a witness:



JOYCE MORRISON



EXECUTED as a DEED by

GLEESON STRATEGIC LAND LIMITED

acting by two Directors or a Director

and its secretary

.....

.....

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

EXECUTED as a DEED by

MILLER HOMES LIMITED

acting by two Directors or a Director

.....

and its secretary

.....

EXECUTED as a DEED by

GLEESON STRATEGIC LAND LIMITED

[REDACTED]

acting by two Directors or a Director

.....

and its ~~secretary~~ ^{WITNESS}

[REDACTED]

V K BLAKE

[REDACTED]

Annexure 1

Plan showing Property edged in red (charged land)

Annexure 2

Plan showing Adjoining Land (shaded grey)

land excluded from the charge