



**Registration of a Charge**

Company Name: **MILLER HOMES LIMITED**

Company Number: **SC255429**



XCZQ4H00

Received for filing in Electronic Format on the: **26/03/2024**

**Details of Charge**

Date of creation: **15/03/2024**

Charge code: **SC25 5429 0420**

Persons entitled: **CENTRAL BEDFORDSHIRE COUNCIL**

Brief description: **THE LAND ON THE SOUTH WEST SIDE OF STOTFOLD ROAD, ARLESEY, BEDFORDSHIRE SHOWN EDGED RED ON THE ATTACHED PLAN BEING THE WHOLE OF THE LAND COMPRISED IN A TRANSFER DATED 15 MARCH 2024 MADE BETWEEN (1) THE COUNCIL AND (2) MILLER**

**Contains fixed charge(s).**

**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: **PINSENT MASONS LLP**



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

Company number: 255429

Charge code: SC25 5429 0420

The Registrar of Companies for Scotland hereby certifies that a charge dated 15th March 2024 and created by MILLER HOMES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 26th March 2024 .

Given at Companies House, Edinburgh on 26th March 2024

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 15 March 2024

- (1) MILLER HOMES LIMITED
- (2) CENTRAL BEDFORDSHIRE COUNCIL

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**LEGAL CHARGE**  
over land at Phase 1 Stotfold Road,  
Arlesey, Bedfordshire

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THIS DEED is made on

15 March

2024

**PARTIES**

- (1) **MILLER HOMES LIMITED** (No SC255429) whose registered office is at Miller House, 2 Lochside View, Edinburgh Park, Edinburgh, EH12 9DH (**Miller**); and
- (2) **CENTRAL BEDFORDSHIRE COUNCIL** of Priory House, Monks Walk, Chickstands, Shefford, SG17 5TQ (the **Council**).

**IT IS AGREED**

**1. DEFINITIONS AND INTERPRETATION**

**1.1** In this Deed the following definitions will apply:

**Affordable Housing**

means Dwellings for sale or rent at costs below those associated with open market housing which is available to households in housing need and which complies with one or more of the definitions of affordable housing contained in Annex 2 of the National Planning Policy Framework (March 2012 as may be updated from time to time), and which is available either to rent or purchase;

**Business Day**

any day (other than a Saturday, Sunday or public holiday) during which clearing banks in the City of London are open for normal business;

**Charged Assets**

that part of the Property from time to time which is, or is expressed to be, the subject of the security created in favour of the Council by or pursuant to this Deed (and references to the Charged Assets shall include any part of them);

**Council's Solicitors**

Pinsent Masons LLP of 30 Crown Place, Earl Street, London EC2A 4ES (ref: SW57.699765.07001);

**Default Rate**

interest at the rate of 4% per annum above the base lending rate of The Bank of England in force from day to day;

**Deferred Consideration**

the First Deferred Payment, the Second Deferred Payment and the Third Deferred Payment;

**Dwelling(s)**

a dwelling (or the intended site of a dwelling) including their curtilages, garages, parking spaces, private driveways, outbuildings and the like and such dwelling(s) being a house, flat, maisonette, bungalow or other construction intended for residential use and erected or to be erected on some part of the Property;

**Encumbrance**

a fixed mortgage or charge;

**Event of Default**

each of the events or circumstances set out in clause 8

**First Deferred Payment**

the instalment of the purchase price payable by Miller to the Council pursuant to clause 8.4 of the Sale Agreement;

**Insolvency Event**

the occurrence of any of the following events or circumstances:-

- (a) a winding up order is made against Miller;

- (b) an administrator, liquidator or receiver is appointed in respect of Miller;
- (c) a voluntary winding up of Miller is commenced except a winding up for the purpose of amalgamation or reconstruction of a solvent company;
- (d) Miller is struck off from the Register of Companies;
- (e) Miller otherwise ceases to exist; or
- (f) any analogous procedure or step is taken in any jurisdiction;

**LPA**

the Law of Property Act 1925;

**Miller's Solicitors**

Gateley Legal of One Eleven Edmund Street, Birmingham B3 2HJ (ref: RNF/CRI/052799.01059);

**Permitted Disposal**

any disposition of the following part of parts of the Property:

- (a) up to a maximum of 37 Private Dwellings during the period from the date of this Deed up to and including the date on which the First Deferred Payment has been received by the Council (the "**First Period**");
- (b) up to a further 37 Private Dwellings during the period from the expiry of the First Period to and including the date on which the Second Deferred Payment has been received by the Council (the "**Second Period**") (being in aggregate, a maximum of 74 Private Dwellings disposed of during the First Period and Second Period);
- (c) up to a further 42 Private Dwellings during the period from the expiry of the Second Period to and including the date on which the Third Deferred Payment has been received by the Council (the "**Third Period**") (being in aggregate, a maximum of 116 Private Dwellings disposed of during the First Period, Second Period and Third Period);
- (d) any part or parts of the Property which are being transferred, leased or otherwise disposed of for the purposes of an electricity sub station, pumping station, gas governor station, balancing pond, the provision of drainage (foul or surface water) and/or water mains, telecommunications or similar and ancillary apparatus for the provision and adoption of services sewers or other infrastructure to an appropriate utility supplier, water undertaker, management company or other relevant authority or similar body and any easements granted in respect of the same; and/or
- (e) the dedication/adoption and/or disposal of any parts of the Property and/or the grant of rights or easements to the highway or other competent authority for roads, footpaths, cycleways (together with ancillary areas and rights) or other highway works in relation to the adoption of such roads, footpaths, cycleways (together with ancillary areas and rights) or other highway works including any agreement made under sections 38 or 278 Highways Act 1980; and/or
- (f) the disposal of any part of the Property which is required to comply with the requirements of any Works Agreement; and/or
- (g) a lease of a garage or garages erected or to be erected underneath a Dwelling; and/or
- (h) 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 infrastructure; and/or

- (i) a disposal of a Dwelling or Dwellings pursuant to clause 6; and/or
- (j) the grant of any easement (including easements in the transfers or leases of Dwellings); and/or
- (k) a disposal of part of the Property to a registered provider as defined in the Housing and Regeneration Act 2008 or to any other Affordable Housing provider.

**Planning Permission**

planning permission permitting the development of the Property granted by Central Bedfordshire Council with reference CB/17/01158/OUT and any modification, amendment or variation thereto and any substituted planning permission and any approval of all matters reserved under such planning permissions;

**Private Dwelling(s)**

means any Dwelling(s) to be constructed on the Property which do not comprise Affordable Housing;

**Property**

the Property described in Schedule 1;

**Receiver**

any receiver, administrative receiver or receiver and manager of the whole or any part of the Charged Assets;

**Release**

a form DS3 or form DS1 or such other form as shall be appropriate to release (when dated) the Charged Assets or any interest in the Charged Assets or any part of parts of the Charged Assets from this Deed;

**Release Fee**

a sum per Private Dwelling in respect of which a Release has been requested pursuant to clause 6 calculated in accordance with the following formula:

$$X = A \times (B \div C)$$

Where:

**A** is the balance of the Deferred Consideration which at the relevant time remains unpaid

**B** is the number of Private Dwellings in respect of which a Release is sought by Miller

**C** is the total number of Private Dwellings which at the relevant time remain subject to this Deed;

**Sale Agreement**

an agreement for the sale and purchase of the Property dated 16 February 2024 and made between (1) the Council and (2) Miller;

**Second Deferred Payment**

the instalment of the purchase price payable by Miller to the Council pursuant to clause 8.5 of the Sale Agreement;

**Security**

a mortgage, charge, pledge, lien or any other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

**Security Period**

the period beginning on the date of this Deed and ending on the date on which the Secured Liabilities have been irrevocably and unconditionally paid and discharged in full;

**Secured Liabilities**

the obligations of Miller under the Sale Agreement to pay to the Council in accordance with the terms set out in the Sale Agreement, the Deferred Consideration and the sums (if any) referred to in clause 2.5 of the Sale Agreement together with any interest accruing at the Default Rate arising under clause 2.2 and any costs arising under clause 19 together with any interest and costs arising in connection thereof;

**Services**

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

**Third Deferred Payment**

the instalment of the purchase price payable by Miller to the Council pursuant to clause 8.6 of the Sale Agreement;

**Works Agreement**

all or any of the following as the case may be

- (a) an agreement in respect of and affecting the Property (whether or not also affecting other land or property) pursuant to section 33 Local Government Miscellaneous Provisions) Act 1982 and/or section 111 Local Government Act 1972 and/or section(s) 38 and/or 278 Highways Act 1980 and/or section 104 Water Industry Act 1991 or any provision to similar intent or an agreement with a water undertaker or a sewerage undertaker (within the meaning of the Water Industry Act 1991) or the Environment Agency or an Internal Drainage Board (within the meaning of the Water Resources Act 1991 or the Land Drainage Act 1991) or other appropriate authority as to water supply or drainage of surface and/or foul water from the Property or an agreement with any competent authority or body relating to other services; and/or
- (b) a planning obligation (whether entered into by agreement or otherwise) in respect of and affecting the Property (whether or not also affecting other land or property) pursuant to Section 106 of the Town and County Planning Act 1990.

1.2 In this Deed, a reference to:

- 1.2.1 a clause or a schedule is, unless otherwise stated, a reference to a clause of, or a schedule to, this Deed;
- 1.2.2 a particular law is a reference to it as it is in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it;
- 1.2.3 laws in general is to all local, national and directly applicable supra-national laws in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under them and all orders, notices, codes of practice and guidance made under them;
- 1.2.4 a person includes a reference to an individual, body corporate, association, government, state, agency of state or any undertaking (whether or not having a legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists);
- 1.2.5 a party is to a party to this Deed and includes its permitted assignees and/or the successors in title to substantially the whole of its undertaking and, in the case of an individual, to his estate and personal representatives;
- 1.2.6 a company shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established; and



- 1.2.7 a reference to this Deed (or any provision of it) or to any other agreement or document referred to in this Deed is a reference to this Deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this Deed) from time to time.
- 1.3 The schedules form part of this Deed and have the same effect as if expressly set out in the body of this Deed and shall be interpreted and construed as though they were set out in this Deed.
- 1.4 The contents table and headings in this Deed are for convenience only and do not affect the interpretation or construction of this Deed.
- 1.5 Words importing the singular include the plural and vice versa and words importing a gender include every gender.
- 1.6 The words **other**, **include**, **including** and **in particular** do not limit the generality of any preceding words and any words which follow them shall not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible.
- 1.7 Writing or written includes faxes but not e-mail unless otherwise specified in this Deed.
- 1.8 Where a party is placed under a restriction in this Deed, the restriction is to be deemed to include an obligation on that party not to permit infringement of the restriction.
- 1.9 Whenever a party is more than one person, all their obligations can be enforced against all jointly and against each individually.
- 1.10 A reference in this Deed to a charge over the Property includes:
- 1.10.1 all buildings, fixtures and fittings situated on or forming part of the Property at any time;
  - 1.10.2 any estate, right or interest over the Property, whether legal or equitable, and wherever the Property is situated, including the benefit of any covenants or rights; and
  - 1.10.3 the benefit of any covenants for title given, or entered into, by any predecessor in title of Miller in respect of the Property.
- 1.11 If the rule against perpetuities applies to any trust created by this Deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).
- 1.12 This Deed shall take effect as a deed even if it is signed under hand on behalf of the Council.
- 2. COVENANT TO PAY**
- 2.1 Deferred Consideration**
- Miller covenants with the Council that it shall pay or discharge on demand the Secured Liabilities when the same are due and payable in accordance with the terms of the Sale Agreement.
- 2.2 Interest**
- If Miller fails to pay the Deferred Consideration when due and payable in accordance with the terms of the Sale Agreement, Miller covenants with the Council that it shall pay interest at the Default Rate on the amount unpaid from the date falling two Business Days after the date the sum became due until the date of actual payment.
- 3. CHARGES**
- 3.1 Fixed Charges**
- As a continuing security for the payment and discharge of the Secured Liabilities, Miller with full title guarantee charges to the Council all its right, title and interest from time to time in and to each of the following (subject to clause 6):
- 3.1.1 by way of first legal mortgage the Property; and

3.1.2 by way of first fixed charge, to the extent not effectively charged by clause 3.1.1, all buildings, fixtures and fittings situated on or forming part of the Charged Assets from time to time.

**3.2 Trust**

If or to the extent that for any reason the assignment or charging of any Charged Assets is prohibited, Miller shall hold it on trust for the Council.

**4. APPLICATION TO THE LAND REGISTRY**

Miller consents to the Council applying to HM Land Registry for the following restriction to be entered on to the registered title to the Property:

**"RESTRICTION**

*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 ~~15 March~~ 2024 or their conveyancer or without a certificate signed by a conveyancer that the provisions of clause 5.1 of the charge dated ~~15 March~~ 2024 made between (1) Miller Homes Limited and (2) Central Bedfordshire Council have been complied with or that they do not apply to that disposition."*

**5. COVENANTS**

**5.1 Disposals**

Miller covenants with the Council that it will not without the Council's prior written consent dispose or agree to enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, license, sub-license, transfer or otherwise dispose of any Charged Assets other than a Permitted Disposal.

**5.2 Negative Pledge**

Miller covenants with the Council that it shall not create or permit to subsist any Security over any Charged Assets.

**5.3 Further assurance**

Miller shall as soon as reasonably practicable assist the Council:-

5.3.1 to perfect or protect the Security created or expressed to be created by this Deed, or its priority; or

5.3.2 to facilitate the realisation of the Charged Assets or the exercise of any rights vested in the Council or any Receiver,

including executing any transfer, conveyance, charge, assignment or assurance of the Charged Assets (whether to the Council or its nominees or otherwise), the grant or reservation of any easement, wayleave or similar right over the Property for the benefit of the Charged Assets, or making any registration and giving (where reasonably appropriate in the circumstances) any notice, order or direction.

**5.4 Payments without deduction**

Miller shall calculate and make all payments under this Deed without (and free and clear of any deduction for) set off or counterclaim.

**5.5 Preservation**

Miller shall not knowingly do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the Security held by the Council or materially diminish the value of the Property or the effectiveness of the Security created by this Deed provided that development of the Property pursuant to the Planning Permission shall not amount to a breach of this obligation.

**5.6 Compliance**

5.6.1 Miller shall not, without the Council's prior written consent, use or permit the Property to be used in any way contrary to law.

5.6.2 Miller shall in so far as consistent with its proposed development of the Property pursuant to the Planning Permission:

- (a) comply with the requirements of any law or regulation relating to or affecting the Property or the use of it or any part of it; and
- (b) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Property or its proposed use or that are necessary to preserve, maintain or renew any Property.

## **6. PARTIAL RELEASE AND WORKS AGREEMENTS**

6.1 The Council agrees, within 10 Business Days of a request from Miller, to provide to Miller executed Release(s) or (as appropriate) consent(s) or other executed forms of discharge in respect of both this Deed and the restriction referred to in clause 4 (which shall in each case be compliant with the Land Registry's requirements from time to time) in respect of a Permitted Disposal and take any further action as is necessary to release the land subject to the relevant Permitted Disposal from this Deed and the restriction referred to in clause 4.

6.2 Miller may at any time during the Security Period request that the Council executes Release(s) for such parts of the Charged Assets as Miller may require, such request to be accompanied by the forms of Release. Subject to payment of the appropriate Release Fee being made by Miller to the Council to the Council's satisfaction, the Council agrees to provide to Miller the duly executed forms of discharge in respect of both this Deed and the restriction referred to in clause 4 (which shall in each case be compliant with the Land Registry's requirements from time to time) within 5 Business Days of receipt of the Release Fee. The Council and Miller agree and acknowledge that any payment(s) of a Release Fee from time to time shall be treated as a part payment of the Deferred Consideration and shall reduce the amount due to the Council on the date for payment of the relevant part of the Deferred Consideration.

6.3 The Council agrees, within 10 Business Days of a request from Miller, to provide to Miller an overarching consent to the Land Registry acknowledging the Council's consent to the grant of rights and easements in the transfers and/or leases of Dwellings to use the new roadways, footpaths, service media and similar matters to be constructed on the Property for the use and enjoyment of such Dwellings.

6.4 The Council will if so reasonably requested by Miller and in order to facilitate the development of the Property enter into any relevant Works Agreement (as the mortgagee only) and return to Miller the relevant Works Agreement duly executed by the Council (together with the Council's irrevocable authority to complete such Works Agreement) within 10 Business Days of service of such Works Agreement upon the Council.

6.5 In the event that the Council fails to comply with its obligations under this clause 6, Miller may deliver a notice to the Council notifying the Council of its failure to comply with such obligations (**Notice**). If the Council fails to satisfy its obligations under this clause 6 (such obligations to be specified in the Notice) within 5 Business Days of receipt of the Notice (calculated in accordance with clause 18 of this Deed), the Council hereby irrevocably appoints Miller as its attorney to sign the relevant forms of discharge or the relevant Works Agreement (as applicable) on behalf of the Council and provided that Miller has complied with the requirements of this clause 6, the Council hereby grants Miller a security power of attorney to do such acts in accordance with the terms of this clause 6.

6.6 All reasonable costs and expenses (including legal fees, subject to any pre-agreed cap), incurred by the Council pursuant to this clause 6 shall be payable by Miller within 20 Business Days of demand.

## **7. REPRESENTATIONS AND WARRANTIES**

Miller represents and warrants to the Council that:

### **7.1 Incorporation**

It is a limited company or a limited liability partnership duly organised, validly existing and registered under the relevant laws of the jurisdiction in which it is incorporated and has the

power and all necessary governmental and other consents, approvals, licences and authorities to own the Charged Assets;

**7.2 Authority**

It is empowered to enter into and perform its obligations contained in this Deed and has taken all necessary action to authorise the execution, delivery and performance of this Deed, to create the security to be constituted by this Deed and to observe and perform its obligations under this Deed.

**7.3 Obligations binding**

This Deed as executed and delivered constitutes and will constitute its legal, valid and binding obligations.

**7.4 Ownership of the Property**

Miller is the sole legal and beneficial owner of the Property and has good and marketable title to the Property.

**7.5 No adverse claims**

Miller has not received, or acknowledged notice of, any adverse claim by any person in respect of the Property or any interest in it.

**7.6 No breaches**

The entry into of this Deed by Miller does not and will not constitute a breach of any policy, agreement, document, instrument or obligation binding on Miller or its assets.

**7.7 Avoidance of security**

No Security expressed to be created under this Deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of Miller or otherwise.

**7.8 Enforceable security**

This Deed is and will continue to be effective security over all and every part of the Property in accordance with its terms.

**8. EVENTS OF DEFAULT**

Each of the following events or circumstances set out in this clause 8 is an Event of Default:-

8.1.1 Miller fails to pay any part of the Deferred Consideration when such payment is due under the Sale Agreement, unless:-

- (a) its failure to pay is caused by an administrative error or technical problem; and
- (b) payment is made within three Business Days of the date on which the Council has notified Miller in writing of any outstanding payment of the Deferred Consideration; and

8.1.2 the occurrence of an Insolvency Event.

**9. ENFORCEMENT OF SECURITY**

**9.1 When Security becomes enforceable**

The Security constituted by this Deed shall become immediately enforceable upon the occurrence of an Event of Default which is continuing.

**9.2 Discretion**

After the Security constituted by this Deed has become enforceable, the Council may, in its absolute discretion, by notice in writing to Miller 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 Assets.

## **10. POWERS ON ENFORCEMENT**

10.1 At any time after the security constituted by this Deed becomes enforceable or if so requested by Miller by written notice at any time, the Council may do all or any of the following (without prejudice to any other rights and remedies):

- 10.1.1 appoint any person (or persons) to be a Receiver of all or any part of the Charged Assets and/or of the income from any Charged Asset;
- 10.1.2 exercise the power of sale under section 101 of the LPA together with all other powers and rights conferred on mortgagees by the LPA, as varied and extended by this Deed, without the restrictions imposed by sections 103 or 109(1) of the LPA; and
- 10.1.3 exercise the power of leasing, letting, entering into agreements for leases or lettings or accepting or agreeing to accept surrenders of leases in relation to any Charged Asset, without the restrictions imposed by sections 99 and 100 of the LPA.

10.2 The Council may remove from time to time any Receiver appointed by it and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated for whatever reason.

10.3 In exercising the powers referred to in Clause 10.1 (*Powers on enforcement*), the Council or any Receiver may sell or dispose of all or any of the Charged Assets at the times, in the manner and order, on the terms and conditions and for the consideration determined by it.

10.4 Any rights conferred under this Deed upon a Receiver may be exercised by the Council, or to the extent permitted by law, an administrator, after the Security created by this Deed has become enforceable, whether or not the Council shall have taken possession or appointed a Receiver of the Charged Assets.

The Council may delegate in any manner to any person any rights exercisable by the Council under this Deed. Any such delegation may be made upon such terms and conditions (including power to sub-delegate) as the Lender thinks fit.

## **11. RECEIVERS**

11.1 Every appointment or removal of a Receiver, any delegate or any other person by the under this Deed shall be in writing under the hand of any officer or manager of the Council (subject to any requirement for a court order in the case of the removal of an administrative receiver).

11.2 The Council may (subject to the application of section 45 of the Insolvency Act 1986) remove any person from office in relation to all or any part of the Charged Asset of which they are the Receiver and at any time (before or after any person shall have vacated office or ceased to act as Receiver in respect of any of such Charged Asset) appoint a further or other Receiver or Receivers over all or any part of such Charged Asset.

11.3 Every Receiver shall have and be entitled to exercise all the powers:-

- 11.3.1 of the Council under this Deed;
- 11.3.2 conferred by the LPA on mortgagees in possession and on Receivers appointed under the LPA;
- 11.3.3 of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986, whether or not the Receiver is an administrative receiver;
- 11.3.4 in relation to any Charged Asset, which they would have if they were the only beneficial owner; and
- 11.3.5 to do all things incidental or conducive to any functions, powers, authorities or discretions conferred or vested in the Receiver.

11.4 The Receiver shall be the agent of Miller (and Miller shall be solely liable for the Receiver's acts, defaults, remuneration, losses and liabilities) unless and until Miller goes into liquidation, from which time the Receiver shall act as principal and shall not become the agent of the Council.

11.5 If two or more persons are appointed as Receivers of the same assets, they may act jointly and/or severally so that (unless any instrument appointing them specifies to the contrary) each of them may exercise individually all the powers and discretions conferred on Receivers by this Deed.

11.6 Every Receiver shall be entitled to remuneration for their services at a rate to be fixed by the Council and the maximum rate specified in section 109(6) of the LPA shall not apply.

## 12. APPLICATION OF MONEYS

All sums received by virtue of this Deed by the Council or any Receiver shall, subject to the payment of any claim having priority to this Deed, be paid or applied in the following order of priority:-

12.1.1 **first**, in or towards satisfaction pro rata of, or the provision pro rata for, all costs, charges and expenses incurred and payments made by the Council in relation to this Deed, or by any Receiver (including legal expenses), together with interest at the Default Rate (both before and after judgment) from the date those amounts became due until the date they are irrevocably paid in full or other person entitled to it;

12.1.2 **secondly**, in or towards the payment pro rata of, or the provision pro rata for, any unpaid fees, commission or remuneration of the Council or any Receiver;

12.1.3 **thirdly**, in or towards payment of the Secured Liabilities in accordance with the Sale Agreement; and

12.1.4 **fourthly**, in the payment of the surplus (if any), to Miller or any other person entitled to it,

and section 109(8) of the LPA shall not apply.

## 13. PROTECTION OF THIRD PARTIES

No purchaser from or other person dealing with the Council or with any Receiver shall be obliged or concerned to enquire whether the right of the Council to appoint a Receiver or the right of the Council or any Receiver to exercise any of the powers conferred by this Deed in relation to the Charged Assets or any part of the Charged Assets has arisen or become exercisable by the Council or by any such Receiver, nor be concerned with notice to the contrary, nor with the propriety of the exercise or purported exercise of any such powers and the title of such a purchaser and the position of such a person shall not be impeachable by reference to any of those matters. All the protection to purchasers contained in sections 104 and 107 of the LPA, section 42(3) of the Insolvency Act 1986 or in any other applicable legislation shall apply to any person purchasing from or dealing with the Council, any Receiver or any person to whom any of them have delegated any of their powers.

## 14. PROTECTION OF THE COUNCIL

14.1 None of the Council, any Receiver or any of their respective officers, employees or delegates shall be liable in respect of any cost, liability, expense, loss or damage which arises out of the exercise, or attempted or purported exercise of, or the failure to exercise, any of their respective rights under this Deed.

14.2 Without prejudice to any other provision of this Deed, entry into possession of any Charged Asset shall not render the Lender, any Receiver or any of their respective officers or employees liable:-

14.2.1 to account as mortgagee in possession;

14.2.2 for any loss on realisation; or

14.2.3 for any default or omission for which a mortgagee in possession might be liable,

and if and whenever the Council or any Receiver enters into possession of any Charged Asset it shall be entitled at any time it or they think fit to relinquish possession.

- 14.3 None of the Council, any Receiver, or any of their respective officers, employees and delegates, shall be responsible for any losses, costs, expenses and liabilities incurred in respect of all or any of the following:-
- 14.3.1 any act or omission by any of them in relation to all or any of the Charged Assets;
  - 14.3.2 any payment relating to or in respect of all or any of the Charged Asset which is made at any time by any of them;
  - 14.3.3 any stamp, registration or similar Tax or duty which becomes payable in connection with the entry into, or the performance or enforcement of, this Deed;
  - 14.3.4 exercising or purporting to exercise or failing to exercise any of the rights, powers and discretions conferred on them or permitted under this Deed; and
  - 14.3.5 any breach by Miller of any of its covenants or other obligations to the Council, except in the case of gross negligence or wilful misconduct on the part of that person.
- 14.4 The rights, powers and discretions given to the Council in this Deed:-
- 14.4.1 may be exercised as often as and in such manner as, the Council thinks fit;
  - 14.4.2 are cumulative, and are not exclusive of any of its rights under the general law; and
  - 14.4.3 may only be waived in writing and specifically, and any delay in exercising, or non-exercise of, any right, is not a waiver of it.
15. **PRESERVATION OF SECURITY**
- This Deed shall be a continuing security to the Council and shall remain in force until expressly discharged in writing by the Council notwithstanding any intermediate settlement of account or other matter or thing whatsoever.
16. **RELEASE**
- Upon the irrevocable and unconditional discharge in full of the Secured Liabilities, the Council shall, at the request and cost of Miller, promptly:-
- 16.1.1 release the Charged Assets from this Deed;
  - 16.1.2 remove the restriction referred to in clause 4;
  - 16.1.3 re-assign any Charged Asset that has been assigned to the Council (if any) under this Deed; and
  - 16.1.4 take whatever further action as is necessary to release the Charged Assets from this Deed.
17. **THIRD PARTY RIGHTS**
- 17.1 Subject to clause 17.2, a person who is not a party to this Deed shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or rely upon a provision of this Deed. No party to this Deed may hold itself out as trustee of any rights under this Deed for the benefit of any third party unless specifically provided for in this Deed. This clause 17.1 does not affect any right or remedy of any person which exists, or is available, otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 17.2 Any person to whom the benefit of any provision of this Deed is assigned in accordance with the terms of this Deed is entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed which confers (expressly or impliedly) any benefit on any such person.
18. **NOTICES**
- 18.1 Any notice given under this Deed shall be in writing and signed by or on behalf of the party giving it.
- 18.2 Any notice to be given under this Deed shall be given by delivering it by hand, or by commercial courier, or sending it by prepaid recorded delivery first class post or other next Business Day delivery service:

- 18.2.1 to the Council at: Priory House, Monks Walk, Chicksands, Shefford SG17 5TQ, marked for the attention of Lorna Carver (Director of Place and Communities) and copied to Harry Cole;
- 18.2.2 to Miller at:
- (a) its registered office address for the time being, marked for the attention of the company secretary; and
  - (b) South Midlands Office, Secondus House, Cygnet Drive, Northampton NN4 9BS or such other address notified in writing to the Council from time to time after the date of this Deed, marked for the attention of the Managing Director.
- 18.3 In the absence of evidence of earlier receipt and subject to clause 18.4, a notice served in accordance with clause 18.2 shall be deemed to have been received:
- 18.3.1 if delivered by hand, at the time of actual delivery to the address referred to in clause 18.2; or
  - 18.3.2 if delivered by commercial courier, on the date and at the time (if given) that the courier's delivery receipt is signed; or
  - 18.3.3 if delivered by prepaid recorded delivery first class post or other next Business Day delivery service, at 9.00 a.m. on the second Business Day after posting.
- 18.4 If deemed receipt under clause 18.3 occurs on a day which is not a Business Day or after 5.00 p.m. on a Business Day, the notice shall be deemed to have been received at 9.00 a.m. on the next Business Day.
- 18.5 In proving delivery, it will be sufficient to prove that delivery was made or that the envelope containing the notice or document was properly addressed and posted as a pre-paid recorded delivery first class letter or by another next Business Day delivery service, as the case may be.
- 18.6 A notice to be given under this Deed shall not be validly given if sent by fax or email.
19. **COSTS AND EXPENSES**
- Miller shall, within 20 Business Days of receipt of a written demand, pay to, or reimburse, the Council and any Receiver all reasonable costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) reasonably incurred by the Council, or any Receiver in connection with:-
- 19.1.1 taking any action or step pursuant to clause 6 at the request of Miller; or
  - 19.1.2 enforcing (or attempting to do so) any of the Council's or a Receiver's rights under this Deed; or
  - 19.1.3 taking proceedings for, or recovering, any of the Secured Liabilities.
20. **POWER OF ATTORNEY**
- Miller irrevocably and by way of security appoints the Council, any delegate or sub-delegate or officer of the Lender and (as separate appointment) each Receiver, severally as the Miller's attorney with power to do any act, and execute and deliver any deed or other document, on behalf of and in the name of Miller which Miller is required to do or execute under any provision of this Deed, or which the Council in its sole opinion (acting reasonably) may consider necessary for perfecting its title to any of the Charged Assets or enabling the Lender or the Receiver to exercise any of its rights or powers under this Deed, provided that such appointment shall only take effect following:-
- 20.1.1 failure by Miller to comply with its obligations under this Deed;
  - 20.1.2 delivery of a notice by the Council to Miller notifying Miller of its failure to comply with such obligations (Council's Notice); and
  - 20.1.3 Miller failing to satisfy the obligations specified in the Council's Notice within 5 Business Days of receipt of the Council's Notice (calculated in accordance with clause 18 of this Deed).



**21. GENERAL**

- 21.1 No variation to this Deed shall be effective unless made in writing and signed by or on behalf of all the parties to this Deed. Miller and Council shall not be required to obtain the consent of any third party on whom a benefit is conferred under this Deed to the termination or variation of this Deed or to the waiver or settlement of any right or claim arising under it. A waiver given or consent granted by the Council under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.
- 21.2 Each provision of this Deed is severable and distinct from the others. If at any time any provision of this Deed is or becomes unlawful, invalid or unenforceable to any extent or in any circumstances for any reason, it shall to that extent or in those circumstances be deemed not to form part of this Deed but (except to that extent or in those circumstances in the case of that provision) the legality, validity and enforceability of that and all other provisions of this Deed shall not be affected in any way.
- 21.3 If any provision of this Deed is found to be illegal, invalid or unenforceable in accordance with clause 21.2 but would be legal, valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it legal, valid or enforceable.
- 21.4 The failure or delay in exercising a right or remedy provided by this Deed or by law does not constitute a waiver of that (or any other) right or remedy. No single or partial exercise, or non-exercise or non-enforcement of any right or remedy provided by this Deed or by law prevents or restricts any further or other exercise or enforcement of that (or any other) right or remedy.
- 21.5 The Council's rights and remedies contained in this Deed are cumulative and not exclusive of any rights or remedies provided by law.
- 21.6 This Deed may be executed in any number of counterparts each of which when executed and delivered shall be an original. All the counterparts together shall constitute one and the same document.

**22. GOVERNING LAW AND JURISDICTION**

- 22.1 This Deed will be governed by and construed in accordance with the law of England and Wales.
- 22.2 Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with this Deed or the legal relationships established by this Deed.

**Executed and delivered as a deed on the date appearing at the beginning of this Deed.**

## SCHEDULE 1

### The Property

The land on the south west side of Stotfold Road, Arlesey, Bedfordshire shown edged red on the attached plan being the whole of the land comprised in a transfer dated 15 March 2024 made between (1) the Council and (2) Miller.

EXECUTED and DELIVERED as a DEED by )  
MILLER HOMES LIMITED acting by a )  
director in the presence of a witness: )

Director

Witness signature .

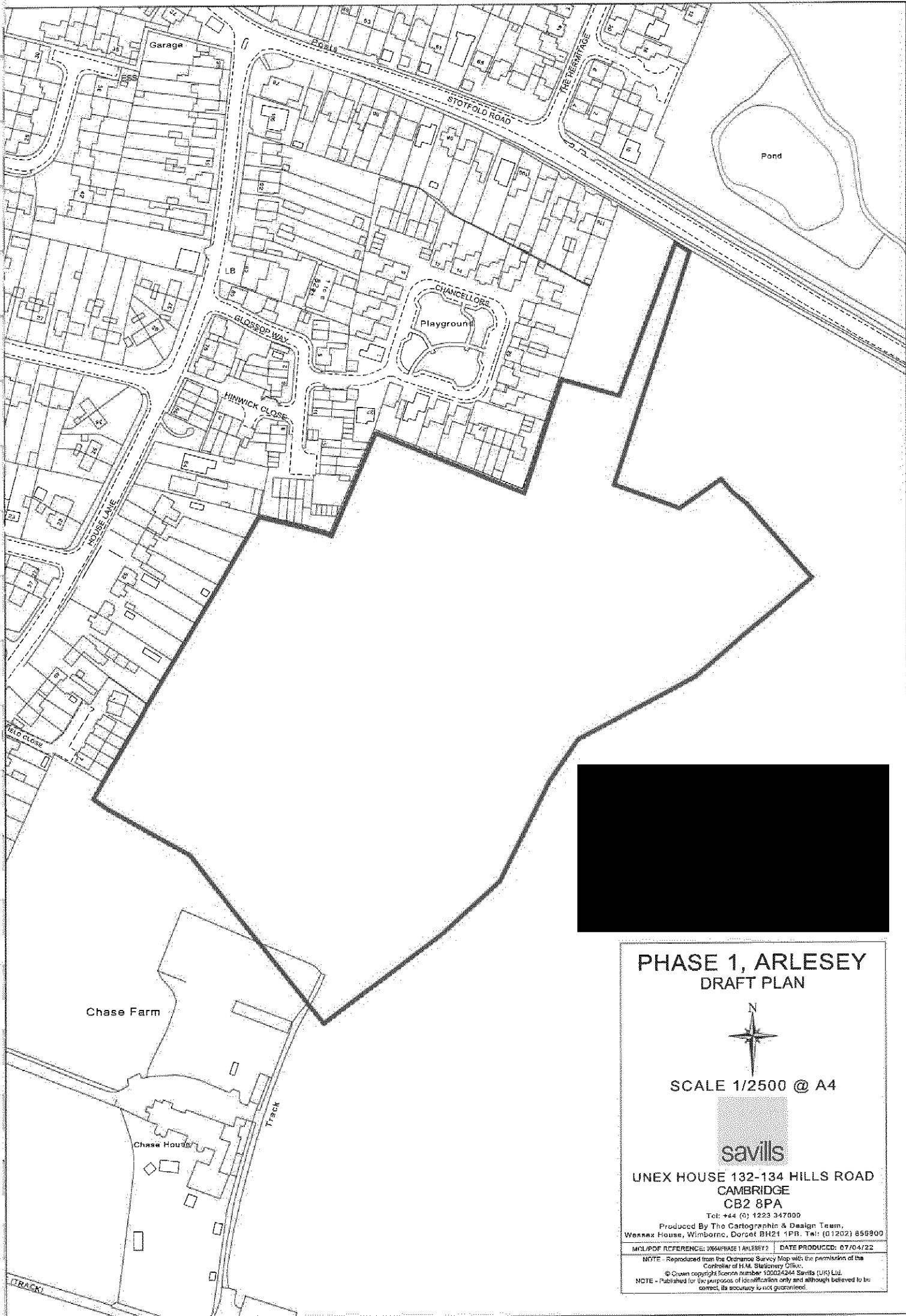
Witness name ...JOYCE GRAHAM.....

Address: ...MILLER HOUSE, 2 LOCHSIDE VIEW

...EDINBURGH EH12 9DH  
Occupation: ...PA.....

The Common Seal of CENTRAL  
BEDFORDSHIRE COUNCIL  
was hereunto affixed  
in the presence of:-

(Duly authorised officer)  
(Print name.....)



## PHASE 1, ARLESEY DRAFT PLAN



SCALE 1/2500 @ A4

**savills**

UNEX HOUSE 132-134 HILLS ROAD  
CAMBRIDGE  
CB2 8PA

Tel: +44 (0) 1223 347000

Produced By The Cartographic & Design Team,  
Wentax House, Wimborne, Dorset BH21 1PB. Tel: (01202) 855900

MDL/POD REFERENCE: 10654/PHASE 1 ARLESEY 2 DATE PRODUCED: 07/04/22

NOTE - Reproduced from the Ordnance Survey Map with the permission of the  
Controller of H.M. Stationery Office.  
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NOTE - Published for the purposes of identification only and although believed to be  
correct, its accuracy is not guaranteed.

DATED 15 March 2024

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- (1) MILLER HOMES LIMITED
- (2) CENTRAL BEDFORDSHIRE COUNCIL

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**LEGAL CHARGE**  
over land at Phase 1 Stotfold Road,  
Arlesey, Bedfordshire

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THIS DEED is made on 15 March

2024

## **PARTIES**

- (1) **MILLER HOMES LIMITED** (No SC255429) whose registered office is at Miller House, 2 Lochside View, Edinburgh Park, Edinburgh, EH12 9DH (**Miller**); and
- (2) **CENTRAL BEDFORDSHIRE COUNCIL** of Priory House, Monks Walk, Chickstands, Shefford, SG17 5TQ (the **Council**).

## **IT IS AGREED**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 In this Deed the following definitions will apply:**

##### **Affordable Housing**

means Dwellings for sale or rent at costs below those associated with open market housing which is available to households in housing need and which complies with one or more of the definitions of affordable housing contained in Annex 2 of the National Planning Policy Framework (March 2012 as may be updated from time to time), and which is available either to rent or purchase;

##### **Business Day**

any day (other than a Saturday, Sunday or public holiday) during which clearing banks in the City of London are open for normal business;

##### **Charged Assets**

that part of the Property from time to time which is, or is expressed to be, the subject of the security created in favour of the Council by or pursuant to this Deed (and references to the Charged Assets shall include any part of them);

##### **Council's Solicitors**

Pinsent Masons LLP of 30 Crown Place, Earl Street, London EC2A 4ES (ref. SW57.699765.07001);

##### **Default Rate**

interest at the rate of 4% per annum above the base lending rate of The Bank of England in force from day to day;

##### **Deferred Consideration**

the First Deferred Payment, the Second Deferred Payment and the Third Deferred Payment;

##### **Dwelling(s)**

a dwelling (or the intended site of a dwelling) including their curtilages, garages, parking spaces, private driveways, outbuildings and the like and such dwelling(s) being a house, flat, maisonette, bungalow or other construction intended for residential use and erected or to be erected on some part of the Property;

##### **Encumbrance**

a fixed mortgage or charge;

##### **Event of Default**

each of the events or circumstances set out in clause 8

##### **First Deferred Payment**

the instalment of the purchase price payable by Miller to the Council pursuant to clause 8.4 of the Sale Agreement;

##### **Insolvency Event**

the occurrence of any of the following events or circumstances:-

- (a) a winding up order is made against Miller;

- (b) an administrator, liquidator or receiver is appointed in respect of Miller;
- (c) a voluntary winding up of Miller is commenced except a winding up for the purpose of amalgamation or reconstruction of a solvent company;
- (d) Miller is struck off from the Register of Companies;
- (e) Miller otherwise ceases to exist; or
- (f) any analogous procedure or step is taken in any jurisdiction;

**LPA**

the Law of Property Act 1925;

**Miller's Solicitors**

Gateley Legal of One Eleven Edmund Street, Birmingham B3 2HJ (ref: RNF/CRI/052799.01059);

**Permitted Disposal**

any disposition of the following part of parts of the Property:

- (a) up to a maximum of 37 Private Dwellings during the period from the date of this Deed up to and including the date on which the First Deferred Payment has been received by the Council (the "**First Period**");
- (b) up to a further 37 Private Dwellings during the period from the expiry of the First Period to and including the date on which the Second Deferred Payment has been received by the Council (the "**Second Period**") (being in aggregate, a maximum of 74 Private Dwellings disposed of during the First Period and Second Period);
- (c) up to a further 42 Private Dwellings during the period from the expiry of the Second Period to and including the date on which the Third Deferred Payment has been received by the Council (the "**Third Period**") (being in aggregate, a maximum of 116 Private Dwellings disposed of during the First Period, Second Period and Third Period);
- (d) any part or parts of the Property which are being transferred, leased or otherwise disposed of for the purposes of an electricity sub station, pumping station, gas governor station, balancing pond, the provision of drainage (foul or surface water) and/or water mains, telecommunications or similar and ancillary apparatus for the provision and adoption of services sewers or other infrastructure to an appropriate utility supplier, water undertaker, management company or other relevant authority or similar body and any easements granted in respect of the same; and/or
- (e) the dedication/adoption and/or disposal of any parts of the Property and/or the grant of rights or easements to the highway or other competent authority for roads, footpaths, cycleways (together with ancillary areas and rights) or other highway works in relation to the adoption of such roads, footpaths, cycleways (together with ancillary areas and rights) or other highway works including any agreement made under sections 38 or 278 Highways Act 1980; and/or
- (f) the disposal of any part of the Property which is required to comply with the requirements of any Works Agreement; and/or
- (g) a lease of a garage or garages erected or to be erected underneath a Dwelling; and/or
- (h) 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 infrastructure; and/or



- (i) a disposal of a Dwelling or Dwellings pursuant to clause 6; and/or
- (j) the grant of any easement (including easements in the transfers or leases of Dwellings); and/or
- (k) a disposal of part of the Property to a registered provider as defined in the Housing and Regeneration Act 2008 or to any other Affordable Housing provider.

**Planning Permission**

planning permission permitting the development of the Property granted by Central Bedfordshire Council with reference CB/17/01158/OUT and any modification, amendment or variation thereto and any substituted planning permission and any approval of all matters reserved under such planning permissions;

**Private Dwelling(s)**

means any Dwelling(s) to be constructed on the Property which do not comprise Affordable Housing;

**Property**

the Property described in Schedule 1;

**Receiver**

any receiver, administrative receiver or receiver and manager of the whole or any part of the Charged Assets;

**Release**

a form DS3 or form DS1 or such other form as shall be appropriate to release (when dated) the Charged Assets or any interest in the Charged Assets or any part of parts of the Charged Assets from this Deed;

**Release Fee**

a sum per Private Dwelling in respect of which a Release has been requested pursuant to clause 6 calculated in accordance with the following formula:

$$X = A \times (B \div C)$$

Where:

**A** is the balance of the Deferred Consideration which at the relevant time remains unpaid

**B** is the number of Private Dwellings in respect of which a Release is sought by Miller

**C** is the total number of Private Dwellings which at the relevant time remain subject to this Deed;

**Sale Agreement**

an agreement for the sale and purchase of the Property dated 16 February 2024 and made between (1) the Council and (2) Miller;

**Second Deferred Payment**

the instalment of the purchase price payable by Miller to the Council pursuant to clause 8.5 of the Sale Agreement;

**Security**

a mortgage, charge, pledge, lien or any other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

**Security Period**

the period beginning on the date of this Deed and ending on the date on which the Secured Liabilities have been irrevocably and unconditionally paid and discharged in full;

**Secured Liabilities**

the obligations of Miller under the Sale Agreement to pay to the Council in accordance with the terms set out in the Sale Agreement, the Deferred Consideration and the sums (if any) referred to in clause 2.5 of the Sale Agreement together with any interest accruing at the Default Rate arising under clause 2.2 and any costs arising under clause 19 together with any interest and costs arising in connection thereof;

**Services**

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

**Third Deferred Payment**

the instalment of the purchase price payable by Miller to the Council pursuant to clause 8.6 of the Sale Agreement;

**Works Agreement**

all or any of the following as the case may be

- (a) an agreement in respect of and affecting the Property (whether or not also affecting other land or property) pursuant to section 33 Local Government Miscellaneous Provisions) Act 1982 and/or section 111 Local Government Act 1972 and/or section(s) 38 and/or 278 Highways Act 1980 and/or section 104 Water Industry Act 1991 or any provision to similar intent or an agreement with a water undertaker or a sewerage undertaker (within the meaning of the Water Industry Act 1991) or the Environment Agency or an Internal Drainage Board (within the meaning of the Water Resources Act 1991 or the Land Drainage Act 1991) or other appropriate authority as to water supply or drainage of surface and/or foul water from the Property or an agreement with any competent authority or body relating to other services; and/or
- (b) a planning obligation (whether entered into by agreement or otherwise) in respect of and affecting the Property (whether or not also affecting other land or property) pursuant to Section 106 of the Town and County Planning Act 1990.

**1.2 In this Deed, a reference to:**

- 1.2.1 a clause or a schedule is, unless otherwise stated, a reference to a clause of, or a schedule to, this Deed;
- 1.2.2 a particular law is a reference to it as it is in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it;
- 1.2.3 laws in general is to all local, national and directly applicable supra-national laws in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under them and all orders, notices, codes of practice and guidance made under them;
- 1.2.4 a person includes a reference to an individual, body corporate, association, government, state, agency of state or any undertaking (whether or not having a legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists);
- 1.2.5 a party is to a party to this Deed and includes its permitted assignees and/or the successors in title to substantially the whole of its undertaking and, in the case of an individual, to his estate and personal representatives;
- 1.2.6 a company shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established; and

- 1.2.7 a reference to this Deed (or any provision of it) or to any other agreement or document referred to in this Deed is a reference to this Deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this Deed) from time to time.
- 1.3 The schedules form part of this Deed and have the same effect as if expressly set out in the body of this Deed and shall be interpreted and construed as though they were set out in this Deed.
- 1.4 The contents table and headings in this Deed are for convenience only and do not affect the interpretation or construction of this Deed.
- 1.5 Words importing the singular include the plural and vice versa and words importing a gender include every gender.
- 1.6 The words **other**, **include**, **including** and **in particular** do not limit the generality of any preceding words and any words which follow them shall not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible.
- 1.7 Writing or written includes faxes but not e-mail unless otherwise specified in this Deed.
- 1.8 Where a party is placed under a restriction in this Deed, the restriction is to be deemed to include an obligation on that party not to permit infringement of the restriction.
- 1.9 Whenever a party is more than one person, all their obligations can be enforced against all jointly and against each individually.
- 1.10 A reference in this Deed to a charge over the Property includes:
- 1.10.1 all buildings, fixtures and fittings situated on or forming part of the Property at any time;
  - 1.10.2 any estate, right or interest over the Property, whether legal or equitable, and wherever the Property is situated, including the benefit of any covenants or rights; and
  - 1.10.3 the benefit of any covenants for title given, or entered into, by any predecessor in title of Miller in respect of the Property.
- 1.11 If the rule against perpetuities applies to any trust created by this Deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).
- 1.12 This Deed shall take effect as a deed even if it is signed under hand on behalf of the Council.
- 2. COVENANT TO PAY**
- 2.1 Deferred Consideration**
- Miller covenants with the Council that it shall pay or discharge on demand the Secured Liabilities when the same are due and payable in accordance with the terms of the Sale Agreement.
- 2.2 Interest**
- If Miller fails to pay the Deferred Consideration when due and payable in accordance with the terms of the Sale Agreement, Miller covenants with the Council that it shall pay interest at the Default Rate on the amount unpaid from the date falling two Business Days after the date the sum became due until the date of actual payment.
- 3. CHARGES**
- 3.1 Fixed Charges**
- As a continuing security for the payment and discharge of the Secured Liabilities, Miller with full title guarantee charges to the Council all its right, title and interest from time to time in and to each of the following (subject to clause 6):
- 3.1.1 by way of first legal mortgage the Property; and

3.1.2 by way of first fixed charge, to the extent not effectively charged by clause 3.1.1, all buildings, fixtures and fittings situated on or forming part of the Charged Assets from time to time.

**3.2 Trust**

If or to the extent that for any reason the assignment or charging of any Charged Assets is prohibited, Miller shall hold it on trust for the Council.

**4. APPLICATION TO THE LAND REGISTRY**

Miller consents to the Council applying to HM Land Registry for the following restriction to be entered on to the registered title to the Property:

*"RESTRICTION*

*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 15 MARCH 2024 or their conveyancer or without a certificate signed by a conveyancer that the provisions of clause 5.1 of the charge dated 15 MARCH 2024 made between (1) Miller Homes Limited and (2) Central Bedfordshire Council have been complied with or that they do not apply to that disposition."*

**5. COVENANTS**

**5.1 Disposals**

Miller covenants with the Council that it will not without the Council's prior written consent dispose or agree to enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, license, sub-license, transfer or otherwise dispose of any Charged Assets other than a Permitted Disposal.

**5.2 Negative Pledge**

Miller covenants with the Council that it shall not create or permit to subsist any Security over any Charged Assets.

**5.3 Further assurance**

Miller shall as soon as reasonably practicable assist the Council:-

5.3.1 to perfect or protect the Security created or expressed to be created by this Deed, or its priority; or

5.3.2 to facilitate the realisation of the Charged Assets or the exercise of any rights vested in the Council or any Receiver,

including executing any transfer, conveyance, charge, assignment or assurance of the Charged Assets (whether to the Council or its nominees or otherwise), the grant or reservation of any easement, wayleave or similar right over the Property for the benefit of the Charged Assets, or making any registration and giving (where reasonably appropriate in the circumstances) any notice, order or direction.

**5.4 Payments without deduction**

Miller shall calculate and make all payments under this Deed without (and free and clear of any deduction for) set off or counterclaim.

**5.5 Preservation**

Miller shall not knowingly do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the Security held by the Council or materially diminish the value of the Property or the effectiveness of the Security created by this Deed provided that development of the Property pursuant to the Planning Permission shall not amount to a breach of this obligation.

**5.6 Compliance**

5.6.1 Miller shall not, without the Council's prior written consent, use or permit the Property to be used in any way contrary to law.

5.6.2 Miller shall in so far as consistent with its proposed development of the Property pursuant to the Planning Permission:

- (a) comply with the requirements of any law or regulation relating to or affecting the Property or the use of it or any part of it; and
- (b) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Property or its proposed use or that are necessary to preserve, maintain or renew any Property.

## **6. PARTIAL RELEASE AND WORKS AGREEMENTS**

6.1 The Council agrees, within 10 Business Days of a request from Miller, to provide to Miller executed Release(s) or (as appropriate) consent(s) or other executed forms of discharge in respect of both this Deed and the restriction referred to in clause 4 (which shall in each case be compliant with the Land Registry's requirements from time to time) in respect of a Permitted Disposal and take any further action as is necessary to release the land subject to the relevant Permitted Disposal from this Deed and the restriction referred to in clause 4.

6.2 Miller may at any time during the Security Period request that the Council executes Release(s) for such parts of the Charged Assets as Miller may require, such request to be accompanied by the forms of Release. Subject to payment of the appropriate Release Fee being made by Miller to the Council to the Council's satisfaction, the Council agrees to provide to Miller the duly executed forms of discharge in respect of both this Deed and the restriction referred to in clause 4 (which shall in each case be compliant with the Land Registry's requirements from time to time) within 5 Business Days of receipt of the Release Fee. The Council and Miller agree and acknowledge that any payment(s) of a Release Fee from time to time shall be treated as a part payment of the Deferred Consideration and shall reduce the amount due to the Council on the date for payment of the relevant part of the Deferred Consideration.

6.3 The Council agrees, within 10 Business Days of a request from Miller, to provide to Miller an overarching consent to the Land Registry acknowledging the Council's consent to the grant of rights and easements in the transfers and/or leases of Dwellings to use the new roadways, footpaths, service media and similar matters to be constructed on the Property for the use and enjoyment of such Dwellings.

6.4 The Council will if so reasonably requested by Miller and in order to facilitate the development of the Property enter into any relevant Works Agreement (as the mortgagee only) and return to Miller the relevant Works Agreement duly executed by the Council (together with the Council's irrevocable authority to complete such Works Agreement) within 10 Business Days of service of such Works Agreement upon the Council.

6.5 In the event that the Council fails to comply with its obligations under this clause 6, Miller may deliver a notice to the Council notifying the Council of its failure to comply with such obligations (**Notice**). If the Council fails to satisfy its obligations under this clause 6 (such obligations to be specified in the Notice) within 5 Business Days of receipt of the Notice (calculated in accordance with clause 18 of this Deed), the Council hereby irrevocably appoints Miller as its attorney to sign the relevant forms of discharge or the relevant Works Agreement (as applicable) on behalf of the Council and provided that Miller has complied with the requirements of this clause 6, the Council hereby grants Miller a security power of attorney to do such acts in accordance with the terms of this clause 6.

6.6 All reasonable costs and expenses (including legal fees, subject to any pre-agreed cap), incurred by the Council pursuant to this clause 6 shall be payable by Miller within 20 Business Days of demand.

## **7. REPRESENTATIONS AND WARRANTIES**

Miller represents and warrants to the Council that:

### **7.1 Incorporation**

It is a limited company or a limited liability partnership duly organised, validly existing and registered under the relevant laws of the jurisdiction in which it is incorporated and has the

power and all necessary governmental and other consents, approvals, licences and authorities to own the Charged Assets;

**7.2 Authority**

It is empowered to enter into and perform its obligations contained in this Deed and has taken all necessary action to authorise the execution, delivery and performance of this Deed, to create the security to be constituted by this Deed and to observe and perform its obligations under this Deed.

**7.3 Obligations binding**

This Deed as executed and delivered constitutes and will constitute its legal, valid and binding obligations.

**7.4 Ownership of the Property**

Miller is the sole legal and beneficial owner of the Property and has good and marketable title to the Property.

**7.5 No adverse claims**

Miller has not received, or acknowledged notice of, any adverse claim by any person in respect of the Property or any interest in it.

**7.6 No breaches**

The entry into of this Deed by Miller does not and will not constitute a breach of any policy, agreement, document, instrument or obligation binding on Miller or its assets.

**7.7 Avoidance of security**

No Security expressed to be created under this Deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of Miller or otherwise.

**7.8 Enforceable security**

This Deed is and will continue to be effective security over all and every part of the Property in accordance with its terms.

**8. EVENTS OF DEFAULT**

Each of the following events or circumstances set out in this clause 8 is an Event of Default:-

8.1.1 Miller fails to pay any part of the Deferred Consideration when such payment is due under the Sale Agreement, unless:-

- (a) its failure to pay is caused by an administrative error or technical problem; and
- (b) payment is made within three Business Days of the date on which the Council has notified Miller in writing of any outstanding payment of the Deferred Consideration; and

8.1.2 the occurrence of an Insolvency Event.

**9. ENFORCEMENT OF SECURITY**

**9.1 When Security becomes enforceable**

The Security constituted by this Deed shall become immediately enforceable upon the occurrence of an Event of Default which is continuing.

**9.2 Discretion**

After the Security constituted by this Deed has become enforceable, the Council may, in its absolute discretion, by notice in writing to Miller 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 Assets.

## 10. **POWERS ON ENFORCEMENT**

10.1 At any time after the security constituted by this Deed becomes enforceable or if so requested by Miller by written notice at any time, the Council may do all or any of the following (without prejudice to any other rights and remedies):

10.1.1 appoint any person (or persons) to be a Receiver of all or any part of the Charged Assets and/or of the income from any Charged Asset;

10.1.2 exercise the power of sale under section 101 of the LPA together with all other powers and rights conferred on mortgagees by the LPA, as varied and extended by this Deed, without the restrictions imposed by sections 103 or 109(1) of the LPA; and

10.1.3 exercise the power of leasing, letting, entering into agreements for leases or lettings or accepting or agreeing to accept surrenders of leases in relation to any Charged Asset, without the restrictions imposed by sections 99 and 100 of the LPA.

10.2 The Council may remove from time to time any Receiver appointed by it and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated for whatever reason.

10.3 In exercising the powers referred to in Clause 10.1 (*Powers on enforcement*), the Council or any Receiver may sell or dispose of all or any of the Charged Assets at the times, in the manner and order, on the terms and conditions and for the consideration determined by it.

10.4 Any rights conferred under this Deed upon a Receiver may be exercised by the Council, or to the extent permitted by law, an administrator, after the Security created by this Deed has become enforceable, whether or not the Council shall have taken possession or appointed a Receiver of the Charged Assets.

The Council may delegate in any manner to any person any rights exercisable by the Council under this Deed. Any such delegation may be made upon such terms and conditions (including power to sub-delegate) as the Lender thinks fit.

## 11. **RECEIVERS**

11.1 Every appointment or removal of a Receiver, any delegate or any other person by the under this Deed shall be in writing under the hand of any officer or manager of the Council (subject to any requirement for a court order in the case of the removal of an administrative receiver).

11.2 The Council may (subject to the application of section 45 of the Insolvency Act 1986) remove any person from office in relation to all or any part of the Charged Asset of which they are the Receiver and at any time (before or after any person shall have vacated office or ceased to act as Receiver in respect of any of such Charged Asset) appoint a further or other Receiver or Receivers over all or any part of such Charged Asset.

11.3 Every Receiver shall have and be entitled to exercise all the powers:-

11.3.1 of the Council under this Deed;

11.3.2 conferred by the LPA on mortgagees in possession and on Receivers appointed under the LPA;

11.3.3 of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986, whether or not the Receiver is an administrative receiver;

11.3.4 in relation to any Charged Asset, which they would have if they were the only beneficial owner; and

11.3.5 to do all things incidental or conducive to any functions, powers, authorities or discretions conferred or vested in the Receiver.

11.4 The Receiver shall be the agent of Miller (and Miller shall be solely liable for the Receiver's acts, defaults, remuneration, losses and liabilities) unless and until Miller goes into liquidation, from which time the Receiver shall act as principal and shall not become the agent of the Council.

11.5 If two or more persons are appointed as Receivers of the same assets, they may act jointly and/or severally so that (unless any instrument appointing them specifies to the contrary) each of them may exercise individually all the powers and discretions conferred on Receivers by this Deed.

11.6 Every Receiver shall be entitled to remuneration for their services at a rate to be fixed by the Council and the maximum rate specified in section 109(6) of the LPA shall not apply.

## 12. APPLICATION OF MONEYS

All sums received by virtue of this Deed by the Council or any Receiver shall, subject to the payment of any claim having priority to this Deed, be paid or applied in the following order of priority:-

12.1.1 **first**, in or towards satisfaction pro rata of, or the provision pro rata for, all costs, charges and expenses incurred and payments made by the Council in relation to this Deed, or by any Receiver (including legal expenses), together with interest at the Default Rate (both before and after judgment) from the date those amounts became due until the date they are irrevocably paid in full or other person entitled to it;

12.1.2 **secondly**, in or towards the payment pro rata of, or the provision pro rata for, any unpaid fees, commission or remuneration of the Council or any Receiver;

12.1.3 **thirdly**, in or towards payment of the Secured Liabilities in accordance with the Sale Agreement; and

12.1.4 **fourthly**, in the payment of the surplus (if any), to Miller or any other person entitled to it,

and section 109(8) of the LPA shall not apply.

## 13. PROTECTION OF THIRD PARTIES

No purchaser from or other person dealing with the Council or with any Receiver shall be obliged or concerned to enquire whether the right of the Council to appoint a Receiver or the right of the Council or any Receiver to exercise any of the powers conferred by this Deed in relation to the Charged Assets or any part of the Charged Assets has arisen or become exercisable by the Council or by any such Receiver, nor be concerned with notice to the contrary, nor with the propriety of the exercise or purported exercise of any such powers and the title of such a purchaser and the position of such a person shall not be impeachable by reference to any of those matters. All the protection to purchasers contained in sections 104 and 107 of the LPA, section 42(3) of the Insolvency Act 1986 or in any other applicable legislation shall apply to any person purchasing from or dealing with the Council, any Receiver or any person to whom any of them have delegated any of their powers.

## 14. PROTECTION OF THE COUNCIL

14.1 None of the Council, any Receiver or any of their respective officers, employees or delegates shall be liable in respect of any cost, liability, expense, loss or damage which arises out of the exercise, or attempted or purported exercise of, or the failure to exercise, any of their respective rights under this Deed.

14.2 Without prejudice to any other provision of this Deed, entry into possession of any Charged Asset shall not render the Lender, any Receiver or any of their respective officers or employees liable:-

14.2.1 to account as mortgagee in possession;

14.2.2 for any loss on realisation; or

14.2.3 for any default or omission for which a mortgagee in possession might be liable,

and if and whenever the Council or any Receiver enters into possession of any Charged Asset it shall be entitled at any time it or they think fit to relinquish possession.



- 14.3 None of the Council, any Receiver, or any of their respective officers, employees and delegates, shall be responsible for any losses, costs, expenses and liabilities incurred in respect of all or any of the following:-
- 14.3.1 any act or omission by any of them in relation to all or any of the Charged Assets;
  - 14.3.2 any payment relating to or in respect of all or any of the Charged Asset which is made at any time by any of them;
  - 14.3.3 any stamp, registration or similar Tax or duty which becomes payable in connection with the entry into, or the performance or enforcement of, this Deed;
  - 14.3.4 exercising or purporting to exercise or failing to exercise any of the rights, powers and discretions conferred on them or permitted under this Deed; and
  - 14.3.5 any breach by Miller of any of its covenants or other obligations to the Council, except in the case of gross negligence or wilful misconduct on the part of that person.
- 14.4 The rights, powers and discretions given to the Council in this Deed:-
- 14.4.1 may be exercised as often as and in such manner as, the Council thinks fit;
  - 14.4.2 are cumulative, and are not exclusive of any of its rights under the general law; and
  - 14.4.3 may only be waived in writing and specifically, and any delay in exercising, or non-exercise of, any right, is not a waiver of it.
15. **PRESERVATION OF SECURITY**
- This Deed shall be a continuing security to the Council and shall remain in force until expressly discharged in writing by the Council notwithstanding any intermediate settlement of account or other matter or thing whatsoever.
16. **RELEASE**
- Upon the irrevocable and unconditional discharge in full of the Secured Liabilities, the Council shall, at the request and cost of Miller, promptly:-
- 16.1.1 release the Charged Assets from this Deed;
  - 16.1.2 remove the restriction referred to in clause 4;
  - 16.1.3 re-assign any Charged Asset that has been assigned to the Council (if any) under this Deed; and
  - 16.1.4 take whatever further action as is necessary to release the Charged Assets from this Deed.
17. **THIRD PARTY RIGHTS**
- 17.1 Subject to clause 17.2, a person who is not a party to this Deed shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or rely upon a provision of this Deed. No party to this Deed may hold itself out as trustee of any rights under this Deed for the benefit of any third party unless specifically provided for in this Deed. This clause 17.1 does not affect any right or remedy of any person which exists, or is available, otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 17.2 Any person to whom the benefit of any provision of this Deed is assigned in accordance with the terms of this Deed is entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed which confers (expressly or impliedly) any benefit on any such person.
18. **NOTICES**
- 18.1 Any notice given under this Deed shall be in writing and signed by or on behalf of the party giving it.
- 18.2 Any notice to be given under this Deed shall be given by delivering it by hand, or by commercial courier, or sending it by prepaid recorded delivery first class post or other next Business Day delivery service:

- 18.2.1 to the Council at: Priory House, Monks Walk, Chicksands, Shefford SG17 5TQ, marked for the attention of Lorna Carver (Director of Place and Communities) and copied to Harry Cole;
- 18.2.2 to Miller at:
- (a) its registered office address for the time being, marked for the attention of the company secretary; and
  - (b) South Midlands Office, Secondus House, Cygnet Drive, Northampton NN4 9BS or such other address notified in writing to the Council from time to time after the date of this Deed, marked for the attention of the Managing Director.
- 18.3 In the absence of evidence of earlier receipt and subject to clause 18.4, a notice served in accordance with clause 18.2 shall be deemed to have been received:
- 18.3.1 if delivered by hand, at the time of actual delivery to the address referred to in clause 18.2; or
  - 18.3.2 if delivered by commercial courier, on the date and at the time (if given) that the courier's delivery receipt is signed; or
  - 18.3.3 if delivered by prepaid recorded delivery first class post or other next Business Day delivery service, at 9.00 a.m. on the second Business Day after posting.
- 18.4 If deemed receipt under clause 18.3 occurs on a day which is not a Business Day or after 5.00 p.m. on a Business Day, the notice shall be deemed to have been received at 9.00 a.m. on the next Business Day.
- 18.5 In proving delivery, it will be sufficient to prove that delivery was made or that the envelope containing the notice or document was properly addressed and posted as a pre-paid recorded delivery first class letter or by another next Business Day delivery service, as the case may be.
- 18.6 A notice to be given under this Deed shall not be validly given if sent by fax or email.
- 19. COSTS AND EXPENSES**
- Miller shall, within 20 Business Days of receipt of a written demand, pay to, or reimburse, the Council and any Receiver all reasonable costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) reasonably incurred by the Council, or any Receiver in connection with:-
- 19.1.1 taking any action or step pursuant to clause 6 at the request of Miller; or
  - 19.1.2 enforcing (or attempting to do so) any of the Council's or a Receiver's rights under this Deed; or
  - 19.1.3 taking proceedings for, or recovering, any of the Secured Liabilities.
- 20. POWER OF ATTORNEY**
- Miller irrevocably and by way of security appoints the Council, any delegate or sub-delegate or officer of the Lender and (as separate appointment) each Receiver, severally as the Miller's attorney with power to do any act, and execute and deliver any deed or other document, on behalf of and in the name of Miller which Miller is required to do or execute under any provision of this Deed, or which the Council in its sole opinion (acting reasonably) may consider necessary for perfecting its title to any of the Charged Assets or enabling the Lender or the Receiver to exercise any of its rights or powers under this Deed, provided that such appointment shall only take effect following:-
- 20.1.1 failure by Miller to comply with its obligations under this Deed;
  - 20.1.2 delivery of a notice by the Council to Miller notifying Miller of its failure to comply with such obligations (Council's Notice); and
  - 20.1.3 Miller failing to satisfy the obligations specified in the Council's Notice within 5 Business Days of receipt of the Council's Notice (calculated in accordance with clause 18 of this Deed).

**21. GENERAL**

- 21.1 No variation to this Deed shall be effective unless made in writing and signed by or on behalf of all the parties to this Deed. Miller and Council shall not be required to obtain the consent of any third party on whom a benefit is conferred under this Deed to the termination or variation of this Deed or to the waiver or settlement of any right or claim arising under it. A waiver given or consent granted by the Council under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.
- 21.2 Each provision of this Deed is severable and distinct from the others. If at any time any provision of this Deed is or becomes unlawful, invalid or unenforceable to any extent or in any circumstances for any reason, it shall to that extent or in those circumstances be deemed not to form part of this Deed but (except to that extent or in those circumstances in the case of that provision) the legality, validity and enforceability of that and all other provisions of this Deed shall not be affected in any way.
- 21.3 If any provision of this Deed is found to be illegal, invalid or unenforceable in accordance with clause 21.2 but would be legal, valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it legal, valid or enforceable.
- 21.4 The failure or delay in exercising a right or remedy provided by this Deed or by law does not constitute a waiver of that (or any other) right or remedy. No single or partial exercise, or non-exercise or non-enforcement of any right or remedy provided by this Deed or by law prevents or restricts any further or other exercise or enforcement of that (or any other) right or remedy.
- 21.5 The Council's rights and remedies contained in this Deed are cumulative and not exclusive of any rights or remedies provided by law.
- 21.6 This Deed may be executed in any number of counterparts each of which when executed and delivered shall be an original. All the counterparts together shall constitute one and the same document.

**22. GOVERNING LAW AND JURISDICTION**

- 22.1 This Deed will be governed by and construed in accordance with the law of England and Wales.
- 22.2 Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with this Deed or the legal relationships established by this Deed.

**Executed and delivered as a deed on the date appearing at the beginning of this Deed.**

## SCHEDULE 1

### The Property

The land on the south west side of Stotfold Road, Arlesey, Bedfordshire shown edged red on the attached plan being the whole of the land comprised in a transfer dated *15 March* 2024 made between (1) the Council and (2) Miller.

EXECUTED and DELIVERED as a DEED by )  
MILLER HOMES LIMITED acting by a )  
director in the presence of a witness: )  
)

.....  
Director

Witness signature .....

Witness name .....

Address: .....

.....  
Occupation: .....

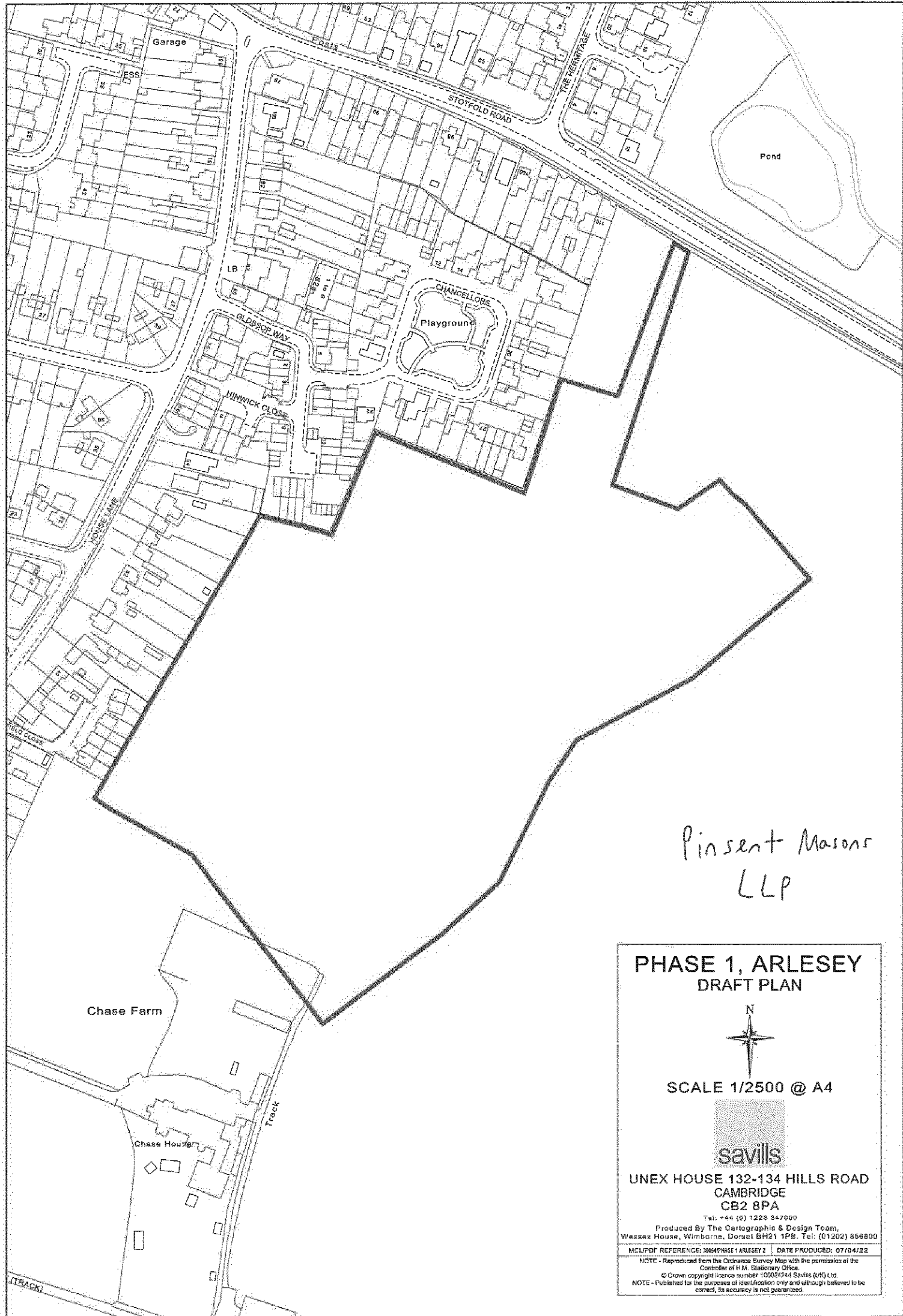
The Common Seal of CENTRAL  
BEDFORDSHIRE COUNCIL  
was hereunto affixed  
in the presence of:-



(Duly authorised officer)

(Print name) JENNIFER MARIE LEE





Pinsent Masons  
LLP

# PHASE 1, ARLESEY DRAFT PLAN



SCALE 1/2500 @ A4



UNEX HOUSE 132-134 HILLS ROAD  
CAMBRIDGE  
CB2 8PA

Tel: +44 (0) 1223 347000  
Produced By The Cartographic & Design Team,  
Weasex House, Wimborne, Dorset BH21 1PB. Tel: (01202) 656800

MCL/PDF REFERENCE: 3884/PHASE 1 ARLESEY 2 | DATE PRODUCED: 07/04/22

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