



**Registration of a Charge**

Company Name: **HARWORTH ESTATES MINES PROPERTY LIMITED**

Company Number: **08228494**



Received for filing in Electronic Format on the: **05/07/2022**

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**Details of Charge**

Date of creation: **28/06/2022**

Charge code: **0822 8494 0014**

Persons entitled: **HOMES AND COMMUNITIES AGENCY (T/A HOMES ENGLAND)**

Brief description:

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

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

Certified by: **TROWERS & HAMLINS LLP**



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

Company number: 8228494

Charge code: 0822 8494 0014

The Registrar of Companies for England and Wales hereby certifies that a charge dated 28th June 2022 and created by HARWORTH ESTATES MINES PROPERTY LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 5th July 2022 .

Given at Companies House, Cardiff on 7th July 2022

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** 28 June **2022**

**Harworth Estates Mines Property Limited**  
and  
**Homes and Communities Agency**  
(trading as Homes England)

**Deed of Assignment**

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## Deed of Assignment

**dated** 28 June 2022

### Parties

- (1) **Harworth Estates Mines Property Limited** a company registered in England and Wales with registered company number 08228494 and its registered address at Advantage House Poplar Way, Catcliffe, Rotherham, United Kingdom, S60 5TR (the **Assignor**); and
- (2) **Homes and Communities Agency** (trading as Homes England) of One Friargate, Coventry CV1 2GN (Homes England).

### RECITALS

- (A) Homes England has agreed to make credit facilities available on the terms of the Facility Agreement.
- (B) The Assignor has agreed to provide Security to Homes England to secure the payment and discharge of the Secured Liabilities.

### IT IS AGREED as follows:-

#### 1 Definitions and Interpretation

##### 1.1 In this Deed:-

**Charged Property** means all the property, assets and undertaking of the Assignor which from time to time are, or are expressed to be, the subject of the Security created in favour of Homes England by or pursuant to this Deed;

**Contracts** means the contracts, details of which are set out in Schedule 1 (*The Contracts*), and each being a **Contract**;

**Counterparties** means the counterparties to each of the Contracts (or any party in whose favour a Contract is executed), and each being a **Counterparty**;

**Deed of Priority** means the deed of priority dated on or around the date of this Deed between the National Westminster Bank plc, the Assignor and Homes England ;

**Default Rate** means the rate of interest specified in, and calculated in accordance with, clause 6.4 the Facility Agreement;

dated 31 March 2022

**Facility Agreement** means the facility agreement ~~on or around the date of this Deed~~ (as varied from time to time) between the Assignor and Homes England under which Homes England has agreed to make available a loan to the Assignor;

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**Finance Documents** has the meaning given to such term in the Facility Agreement;

**LPA** means the Law of Property Act 1925;

**Notice of Assignment** means a notice of assignment in the form set out in Schedule 2 (*Form of Notice of Assignment of contracts*);

**Receiver** means any receiver, receiver and manager or administrative receiver of the whole or any part of the Charged Property;

**Related Rights** means in relation to any Charged Property:

- (a) the proceeds of sale of any part of that Charged Property;
- (b) all rights, benefits, claims, contracts, warranties, remedies, security or indemnities in respect of that Charged Property; and
- (c) any moneys and proceeds paid or payable in respect of that Charged Property;

**Secured Liabilities** means all the money and liabilities now or hereafter due owing or incurred to Homes England by the Obligors under the terms of the Facility Agreement and the Finance Documents (including, without limitation, under any amendments, supplements or restatements of any of those documents or in relation to any new or increased advances or utilisations) in any manner whatsoever, in any currency or currencies (whether present or future, actual or contingent) and whether owed by each Obligor as principal or surety or incurred solely or jointly with another, together with all interest accruing thereon and all costs charges and expenses incurred by Homes England in connection therewith and **Secured Liability** means any one of these obligations; and

**Security Period** means the period beginning on the date of this Deed and ending on the date on which Homes England is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and all facilities which might give rise to Secured Liabilities have terminated.

## 1.2 **Incorporation of terms**

Unless the context otherwise requires or unless defined in this Deed, all words and expressions defined or whose interpretation is provided for in the Facility Agreement have the same meanings in this Deed.

## 1.3 **Interpretation**

The principles of interpretation set out in clause 1.2 of the Facility Agreement shall apply to this Deed insofar as they are relevant to it and in this Deed, unless the context otherwise requires, a reference to a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, restated or replaced (however fundamentally) and includes any increase in, extension of, or change to, any facility made available under that Finance Document or other agreement or instrument and includes any increase in, extension of or change to any facility made available under that Finance Document or other agreement or instrument.

## 1.4 **Third party rights**

- 1.4.1 Homes England and any Receiver and their respective officers, employees and agents may enforce any term of this Deed which purports to confer a benefit on that person, but no other person who is not a party to this Deed has any right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed.

1.4.2 Notwithstanding any term of any Finance Document, the parties to this Deed and any Receiver may rescind, vary, waive, release, assign, novate or otherwise dispose of all or any of their respective rights or obligations under this Deed without the consent of any person who is not a party to this Deed.

**1.5 Deed of Priority**

To the extent that there are disparities between the terms of this Deed and the terms of the Deed of Priority, the terms in the Deed of Priority will take precedence over the terms in this Deed.

**2 Covenant to pay**

**2.1 Secured Liabilities**

The Assignor covenants with Homes England that it will, on demand, discharge all of the obligations which it may at any time have to Homes England in respect of the Secured Liabilities when due and payable.

**2.2 Interest**

The Assignor covenants to pay interest on any sum demanded in accordance with Clause 2.1 (*Secured Liabilities*) until payment (both before and after judgment) at the Default Rate.

**3 Security**

**3.1 Assignment**

As a continuing security for payment of the Secured Liabilities, the Assignor with full title guarantee:-

3.1.1 subject at all times to Clause 18 (*Re-assignment of Contracts*), assigns by way of security all its present and future right, title and interest in and to, and all benefits accruing under or in connection with any Contract and all Related Rights in respect of any Contract absolutely in favour of Homes England subject to a proviso for reassignment on redemption; and

3.1.2 to the extent not assigned or effectively assigned by Clause 3.1.1 or charged pursuant to another Finance Document, charges by way of first fixed charge in favour of Homes England all its present and future right, title and interest in and to, and all benefits accruing under or in connection with any Contract and all Related Rights in respect of any Contract.

**3.2 Fixed Charge**

The Assignor hereby charges in favour of Homes England with full title guarantee, as continuing security for the payment and discharge of the Secured Liabilities, by way of first fixed charge:

3.2.1 the Contracts; and

- 3.2.2 the benefit of all present and future licences, consents and authorisations (statutory or otherwise) held or utilised by the Assignor in connection with the Contracts or the use of any of the Contracts and all rights in connection with them.

### **3.3 Dealings**

- 3.3.1 Until an Event of Default occurs and is continuing, but subject always to **Clauses 4 (Undertakings)** and **6 (Restrictions and further assurance)**, the Assignor may continue to deal with the Counterparties in relation to the Contracts.
- 3.3.2 Upon the occurrence of an Event of Default which is continuing, the Assignor shall have no further right to deal with the Counterparties unless so permitted by Homes England and Homes England may notify the Counterparties that it should deal only with Homes England .

### **3.4 Trust**

If or to the extent that for any reason the assignment or charging of any Charged Property is prohibited, the Assignor shall hold it on trust for Homes England .

## **4 Undertakings**

The covenants in this **Clause 4 (Undertakings)** remain in force from the date of this Deed until the end of the Security Period.

### **4.1 The Assignor shall:-**

- 4.1.1 duly and promptly perform all its obligations and diligently pursue its rights, and use reasonable endeavours to procure that all other parties perform their obligations, under each Contract;
- 4.1.2 notify Homes England of any material breach by any person of any term of any Contract or any right of it or any other person to rescind, cancel or terminate any Contract promptly upon becoming aware of it;
- 4.1.3 supply to Homes England promptly upon request all information, accounts and records necessary to enable Homes England to verify all sums payable under any Contract;
- 4.1.4 provide Homes England promptly upon request with any document in its possession, custody or control and provide or assist Homes England in obtaining any document or information which it may require (acting reasonably) in relation to any Contract; and
- 4.1.5 deliver (or procure delivery of) to Homes England a duly executed Notices of Assignment on the date of this Deed in relation to the Contracts and shall use reasonable endeavours to procure that each Notice of Assignment is acknowledged by the party to whom it is addressed.



#### **4.2 Conduct of claims**

The Assignor:-

- 4.2.1 shall promptly notify Homes England of any actual, threatened or anticipated material claim relating to any Contract, and shall not, without Homes England 's prior written consent, compromise or settle any material claim relating to any Contract;
- 4.2.2 shall not, without Homes England 's prior written consent, commence any proceedings or refer any dispute to arbitration in connection with any Contract; and
- 4.2.3 authorises Homes England at any time and in any manner (whether in Homes England 's name or the Assignor's name) to take, submit to arbitration, institute, stay, settle or discontinue any proceedings relating to any material claim under any Contract.

#### **4.3 Payments without deduction**

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

#### **4.4 Assignor remains liable**

The Assignor shall remain liable to perform all its obligations under each Contract and Homes England shall be under no obligation or liability as a result of any failure by the Assignor to perform those obligations.

#### **4.5 Payment of outgoings**

The Assignor shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Charged Property and, on demand, produce evidence of payment to Homes England.

### **5 Representations and warranties**

#### **5.1 Representations and warranties**

The Assignor makes the representations and warranties set out in this clause 5 to Homes England.

#### **5.2 Ownership of Charged Property**

The Assignor is the sole legal and beneficial owner of, and has good, valid and marketable title to the Charged Property.

#### **5.3 Charged Property**

- 5.3.1 The counterparts and instruments comprising the Contracts as provided to Homes England before the date of this deed, evidence all terms of the relevant Charged Property, and there are no other documents, agreements or

arrangements that may affect the operation or enforceability of any Charged Property other than the Deed of Priority and the Facility Agreement.

5.3.2 No Contract is void, voidable or otherwise unenforceable.

5.3.3 Save as permitted by the Facility Agreement, no variation of any Contract is contemplated.

5.3.4 The Assignor is not in breach of its obligations under any Contract and nothing has occurred:

(a) which is, or would constitute (with the giving of notice or passage of time or both), an event of default (however described) under any Contract; or

(b) which would entitle a person to terminate or rescind a Contract.

**5.4 No Security**

The Charged Property is free from any Security save as permitted under the Facility Agreement.

**5.5 No adverse claims**

The Assignor has not received, or acknowledged notice of, any adverse claim by any person in respect of the Charged Property or any interest in them.

**5.6 No adverse covenants**

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Charged Property.

**5.7 No breach of laws**

There is no breach of any law or regulation that materially and adversely affects the Charged Property.

**5.8 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 the Assignor or otherwise.

**5.9 No prohibitions**

There is no prohibition on assignment in any Contract and the entry into this deed by the Assignor does not and will not constitute a breach of any Contract.

**5.10 Enforceable security**

This Deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Assignor and is, and will continue to be, effective security over all and every part of the Charged Property in accordance with its terms.

**5.11 Times for making representations and warranties**

As at the date of this Deed, on the date of each Claim and the date of delivery of each Monitoring and Progress Report (by reference to the facts and circumstances then existing) the Assignor makes the representations and warranties set out in clauses 5.2 to 5.10.

**6 Restrictions and further assurance**

**6.1 Security**

The Assignor shall not create or permit to subsist any Security over any Charged Property, save as permitted in the Facility Agreement.

**6.2 Disposal**

The Assignor shall not enter into 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 Property except as permitted by the Facility Agreement.

**6.3 General**

Save where permitted by the Facility Agreement the Assignor shall not (and shall not agree to):-

6.3.1 supplement, substitute, rescind or cancel any Contract or amend any material provision of any Contract (save to correct a manifest error);

6.3.2 release any material obligation under any Contract, or waive any material breach of any Contract;

6.3.3 make any claim that any Contract is frustrated;

6.3.4 permit any party to any Contract to assign any of their rights, or transfer any of their obligations, under that Contract (to the extent that such assignment or transfer is subject to the Assignor's prior consent); and

6.3.5 take or omit to take any action, the taking or omission of which might result in any material alteration or impairment of any of the rights created by any Contract or this Deed, nor exercise any right or power conferred on it by any Contract in any manner materially adverse to the interests of Homes England.

**6.4 Preservation of Contracts**

The Assignor shall not take any Security in connection with its liability under this Deed from any guarantor or provider of Security for, any of the Secured Liabilities.

**6.5 Preservation of rights**

The Assignor shall not do, permit or suffer or to be done anything which may prevent Homes England (or any person claiming title through Homes England) from exercising the

rights of the Assignor (including any right to receive payments) under all or any part of any Contract following the occurrence of an Event of Default which is continuing.

## **6.6 Further assurance**

The Assignor shall promptly do whatever Homes England reasonably determines necessary:-

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

6.6.2 (upon the enforcement in accordance with the terms of this deed) to facilitate the realisation of the Charged Property or the exercise of any rights vested in Homes England or any Receiver,

including executing any transfer, conveyance, charge, assignment or assurance of the Charged Property (whether to Homes England or its nominees or otherwise), making any registration and giving any notice, order or direction.

## **7 Powers of Homes England**

### **7.1 Power to remedy**

7.1.1 Homes England shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Assignor of any of its obligations contained in this deed.

7.1.2 The Assignor irrevocably authorises Homes England and its agents to do all things that are necessary or desirable for that purpose.

7.1.3 Any monies expended by Homes England in remedying a breach by the Assignor of its obligations contained in this deed, shall be reimbursed by the Assignor to Homes England on a full indemnity basis and shall carry interest in accordance with clause 14.4.

### **7.2 Exercise of rights**

7.3 The rights of Homes England under clause 7.1 are without prejudice to any other rights of Homes England under this deed.

7.4 The exercise of any rights of Homes England under this deed shall not make Homes England liable to account as a mortgagee in possession.

### **7.5 Homes England has Receiver's powers**

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

## **7.6 New accounts**

7.6.1 If Homes England receives, or is deemed to have received, notice of any subsequent Security, or other interest, affecting all or part of the Charged Property, Homes England may open a new account for the Assignor in Homes England's books. Without prejudice to Homes England's right to combine accounts, no money paid to the credit of the Assignor in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.

7.6.2 If Homes England does not open a new account immediately on receipt of the notice, or deemed notice, under clause 7.6.1, then, unless Homes England gives express written notice to the contrary to the Assignor, all payments made by the Assignor to Homes England shall be treated as having been credited to a new account of the Assignor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt of the relevant notice by Homes England.

## **7.7 Indulgence**

Homes England may, at its discretion, grant time or other indulgence or make any other arrangement, variation or release with any person not being a party to this deed (whether or not any such person is jointly liable with the Assignor) in respect of any of the Secured Liabilities or of any other security for them without prejudice either to this deed or to the liability of the Assignor for the Secured Liabilities.

## **8 Demand And Enforcement**

### **8.1 Enforcement**

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

### **8.2 Powers on enforcement**

At any time after the Security created by this Deed has become enforceable, Homes England may (without prejudice to any other rights and remedies and without notice to the Assignor) do all or any of the following:-

8.2.1 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 contained in sections 103 or 109(1) of the LPA;

8.2.2 apply any sums payable under any Contract in or towards satisfaction of the Secured Liabilities;

8.2.3 exercise all the powers and rights of the Assignor under each Contract; and

8.2.4 subject to Clause 9.1 (*Method of appointment or removal*), appoint one or more persons to be a Receiver or Receivers of all or any of the Charged Property.

### **8.3 Disposal of the Charged Property**

In exercising the powers referred to in Clause 8.2 (*Powers on enforcement*), Homes England or any Receiver may sell or dispose of all or any of the Charged Property at the times, in the manner and order, on the terms and conditions and for the consideration determined by it.

### **8.4 Same rights as Receiver**

Any rights conferred by any Finance Document upon a Receiver may be exercised by Homes England or to the extent permitted by law, an administrator, after the Security created by this Deed has become enforceable, whether or not Homes England shall have taken possession or appointed a Receiver of the Charged Property.

### **8.5 Delegation**

Homes England may delegate in any manner to any person any rights exercisable by Homes England under any Finance Document. Any such delegation may be made upon such terms and conditions (including power to sub delegate) as Homes England thinks fit.

## **9 Receivers**

### **9.1 Method of appointment or removal**

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

### **9.2 Removal**

Homes England 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 Property of which he is 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 Property) appoint a further or other Receiver or Receivers over all or any part of such Charged Property.

### **9.3 Powers**

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

- 9.3.1 of Homes England under this Deed;
- 9.3.2 conferred by the LPA on mortgagees in possession and on receivers appointed under the LPA;
- 9.3.3 of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986, whether or not the Receiver is an administrative receiver;
- 9.3.4 in relation to any Charged Property, which he would have if he were its only beneficial owner; and

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

**9.4 Receiver as agent**

The Receiver shall be the agent of the Assignor (which shall be solely liable for his acts, defaults, remuneration, losses and liabilities) unless and until that Assignor goes into liquidation, from which time he shall act as principal and shall not become the agent of that Assignor.

**9.5 Joint or several**

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.

**9.6 Receiver's remuneration**

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

**10 Application Of Moneys**

**10.1 Application of moneys**

All sums received by virtue of this Deed by Homes England 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:-

10.1.1 **first**, in or towards satisfaction pro rata of, or the provision pro rata for, all costs, charges and expenses incurred and payments made by Homes England, 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;

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

10.1.3 **thirdly**, in or towards payment of the Secured Liabilities in accordance with the Facility Agreement;

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

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

**11 Power Of Attorney**

**11.1 Appointment**

The Assignor irrevocably and by way of security appoints:-

11.1.1 Homes England (whether or not a Receiver has been appointed);

11.1.2 any delegate or sub delegate of, or other person nominated in writing by, an officer of Homes England; and

11.1.3 (as a separate appointment) each Receiver,

severally as the Assignor's attorney and attorneys with power to do any act, and execute and deliver any deed or other document, on behalf of and in the name of the Assignor which the Assignor could be required to do or execute under any provision of this Deed but in each case has failed to do, or which Homes England in its sole opinion may consider necessary or desirable for perfecting its title to any of the Charged Property or enabling Homes England or the Receiver to exercise any of its rights or powers under this Deed.

**11.2 Ratification**

The Assignor ratifies and confirms and agrees to ratify and confirm whatever any attorney appointed pursuant to Clause 11.1 (*Appointment*) does or purports to do in the exercise or purported exercise of all or any of the powers, acts or other matters referred to in Clause 11.1 (*Appointment*).

**12 Consolidation**

**12.1 Combination of accounts**

In addition to any general lien, right to combine accounts, right of set-off or other right which it may at any time have, Homes England may at any time after this Deed has become enforceable, without notice to the Assignor, combine or consolidate all or any accounts which it then has in relation to the Assignor (in whatever name) and any Secured Liabilities owed by the Assignor to it, and/or set-off or transfer any amounts standing to the credit of one or more accounts of the Assignor in or towards satisfaction of any Secured Liabilities owed it on any other account or otherwise.

**12.2 Application**

Homes England's rights under Clause 12.1 (*Combination of accounts*) apply:-

12.2.1 whether or not any demand has been made under this Deed, or any liability concerned has fallen due for payment;

12.2.2 whether or not any credit balance is immediately available or subject to any restriction;

12.2.3 irrespective of the currencies in which any balance or liability is denominated, and Homes England may, for the purpose of exercising its rights, elect to



convert any sum or liability in one currency into any other at its spot rate applying at or about 11.00am on the date of conversion; and

12.2.4 in respect of any Secured Liabilities owed by the Assignor, however arising.

### **13 Protection Of Third Parties**

#### **13.1 Statutory powers**

In favour of any purchaser, the statutory powers of sale and of appointing a Receiver which are conferred upon Homes England as varied and extended by this Deed, and all other powers of Homes England shall be deemed to arise (and the Secured Liabilities shall be deemed due and payable for that purpose) immediately after the execution of this Deed.

#### **13.2 Purchasers**

No purchaser from or other person dealing with Homes England, any person to whom it has delegated any of its powers, or the Receiver, shall be concerned:-

13.2.1 to enquire whether any of the powers which Homes England or a Receiver have exercised has arisen or become exercisable;

13.2.2 to enquire whether the Secured Liabilities remain outstanding or whether any event has happened to authorise the Receiver to act; or

13.2.3 as to the propriety or validity of the exercise of those powers,

and the title and position of a purchaser or such person shall not be impeachable by reference to any of those matters.

#### **13.3 Receipts**

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 Homes England, any Receiver or any person to whom any of them have delegated any of their powers.

### **14 Protection of Homes England and any Receiver**

#### **14.1 No obligation**

Notwithstanding any other term of this Deed, Homes England or any Receiver shall not have any obligation or liability under any Contract by reason only of this Deed to:-

14.1.1 perform any of the obligations or duties of the Assignor under any Contract;

14.1.2 make any payment under any Contract;

14.1.3 present or file any claim or take any other action to collect or enforce any claim for the payment of any sum payable under any Contract; or

14.1.4 make any enquiries as to the nature or sufficiency of any payments received by it under this Deed.

**14.2 No liability**

None of Homes England . 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.

**14.3 Interest**

The Assignor shall pay interest at the Default Rate on the sums payable under this Clause 14 (*Protection of Homes England and any Receiver*) from the date on which the liability was incurred to the date of actual payment (both before and after judgment).

**14.4 Continuing protection**

The provisions of this Clause 14 (*Protection of Homes England and any Receiver*) shall continue in full force and effect notwithstanding any release or discharge of this Deed or the discharge of any Receiver from office.

**15 Provisions relating to Homes England**

**15.1 Powers and discretions**

The rights, powers and discretions given to Homes England in this Deed:-

15.1.1 may be exercised as often as, and in such manner as, Homes England thinks fit;

15.1.2 are cumulative, and are not exclusive of any of its rights under the general law; and

15.1.3 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.

**15.2 Trusts**

The perpetuity period for any trusts constituted by this Deed shall be 125 years.

**16 Preservation Of Security**

**16.1 Continuing Security**

This Deed shall be a continuing security to Homes England and shall remain in force until expressly discharged in writing by Homes England notwithstanding any intermediate settlement of account or other matter or thing whatsoever.

## **16.2 Additional Security**

This Deed is without prejudice and in addition to, and shall not merge with, any other right, remedy or Security of any kind which Homes England may have now or at any time in the future for or in respect of any of the Secured Liabilities.

## **16.3 Waiver of Defences**

Neither the Security created by this Deed nor the obligations of the Assignor under this Deed will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice that Security or any of those obligations (whether or not known to it or Homes England) including:-

- 16.3.1 any time, waiver or consent granted to, or composition with, any Obligor or other person;
- 16.3.2 the release of any Obligor or any other person under the terms of any composition or arrangement with any person;
- 16.3.3 the taking, variation, compromise, exchange, renewal, enforcement or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over, assets of any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- 16.3.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Assignor or any other person;
- 16.3.5 any amendment (however fundamental), replacement, variation, novation, assignment or the avoidance or termination of a Finance Document or any other document or Security;
- 16.3.6 any unenforceability, illegality or invalidity of any obligation of, or any Security created by, any person under any Finance Document or any other document; or
- 16.3.7 an insolvency, liquidation, administration or similar procedure.

## **16.4 Immediate recourse**

The Assignor waives any right it may have of first requiring Homes England to proceed against or enforce any other rights of Security or claim payment from any person before claiming from the Assignor under this Deed. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

## **16.5 Appropriations**

During the Security Period Homes England may:-

- 16.5.1 refrain from applying or enforcing any monies, Security or rights held or received by it (or any trustee or agent on its behalf) in respect of the Secured Liabilities, or, subject to Clause 10.1 (*Application of moneys*), apply and enforce the same in such manner and order as it sees fit (whether against the Secured Liabilities or otherwise) and the Assignor shall not be entitled to the same; and

- 16.5.2 hold in an interest-bearing suspense account any moneys received from the Assignor on or account of the Secured Liabilities.

## **16.6 Subsequent Encumbrances**

If Homes England at any time receives or is deemed to have received notice of any subsequent Encumbrance affecting all or any part of the Charged Property or any assignment or transfer of the Charged Property which is prohibited by the terms of this deed, all payments thereafter by or on behalf of the Assignor to Homes England will be treated as having been credited to a new account of the Assignor and not as having been applied in reduction of the Secured Liabilities as at the time when the Assignor received such notice.

## **17 Release**

### **17.1 Release**

Upon the irrevocable and unconditional payment and discharge in full of the Secured Liabilities and the termination of all facilities which might give rise to Secured Liabilities, Homes England shall, or shall procure that its appointees will, at the request and reasonable cost of the Assignor:-

- 17.1.1 release the Charged Property from the Security created by this Deed; and
- 17.1.2 re-assign the Charged Property that has been assigned to Homes England under this Deed.

### **17.2 Reinstatement**

If Homes England considers that any amount paid or credited to Homes England under any Finance Document (whether in respect of the obligations of any Obligor or any Security for those obligations or otherwise) is capable of being avoided, reduced or otherwise set aside:-

- 17.2.1 that amount shall not be considered to have been paid for the purposes of determining whether the Secured Liabilities have been irrevocably and unconditionally paid and discharged; and
- 17.2.2 the liability of the Assignor and the Security created by this Deed shall continue as if that amount had not been paid or credited.

### **17.3 Consolidation**

Section 93 of the LPA dealing with the consolidation of mortgages shall not apply to this Deed.

## **18 Re-assignment of Contracts**

- 18.1 On the request of the Assignor, Homes England will re-assign a Contract to the Assignor provided that:

- 18.1.1 the re-assignment of the Contract is required in order for the Assignor to enforce its obligations under the Contract;

- 18.1.2 no Event of Default is continuing;
- 18.1.3 the re-assignment of the Contract is subject to an immediate obligation on the Assignor to reassign the Contract to Homes England on demand of Homes England;
- 18.1.4 the Contract being re-assigned remains subject to the fixed charge pursuant to clause 3.2 of this deed; and
- 18.1.5 Homes England 's costs of such reassignment (and any further reassignment back to Homes England ) are to be borne by the Assignor.

## **19 Miscellaneous Provisions**

### **19.1 Severability**

If any provision of this Deed is illegal, invalid or unenforceable in any jurisdiction, that shall not affect:-

- 19.1.1 the validity or enforceability of any other provision, in any jurisdiction; or
- 19.1.2 the validity or enforceability of that particular provision, in any other jurisdiction.

### **19.2 Amendments and variations**

This Deed shall remain in full force and effect notwithstanding any amendment, restatement, novation or supplementation of the Finance Documents (including any increase in the amount of the Secured Liabilities).

### **19.3 Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of Homes England , any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provide by law.

### **19.4 Counterparts**

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

## **20 Governing Law**

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

## **21 Enforcement**

- 21.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a "**Dispute**").

- 21.1.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- 21.1.3 This Clause 20 (*Enforcement*) is for the benefit of Homes England only. As a result, Homes England shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, Homes England may take concurrent proceedings in any number of jurisdictions.

**This Deed** has been executed as a deed by the parties and is delivered and takes effect on the date at the beginning of this deed.

## **Schedule 1**

### **The Contracts**

- 1        **Any Material Contracts as such term is defined in the Facility Agreement.**
- 2        **Each Pre-Sale Agreement as such term is defined in the Facility Agreement.**

1           **Schedule 2**

**FORM OF NOTICE OF ASSIGNMENT OF CONTRACTS**

To:                   [•]

Date:               [            ]

Dear Sirs

**NOTICE OF ASSIGNMENT IN RESPECT OF [•] (EACH A "CONTRACT" AND TOGETHER THE "CONTRACTS")**

1           We refer to the Contracts and a deed of assignment of contracts dated [•] 2022 between us and Homes and Communities Agency (trading as Homes England) (**Homes England**) (the "**Assignment Deed**"). Unless the context otherwise requires or unless defined in this notice, all words and expressions defined in the Assignment Deed shall have the same meaning when used in this notice

2           We notify you that:-

2.1       under the Assignment Deed, we have assigned and charged to Homes England all our right, title and interest in and to, and all benefits accruing under or in connection with the Contracts as security for certain obligations owed to Homes England ;

2.2       Save as permitted in the Facility Agreement we may not, among other things, agree to amend, supplement, substitute, terminate, rescind or cancel the Contracts or any material provision of the Contracts, release any material obligation under or in connection with the Contracts or waive any material breach of the Contracts; and

2.3       you are authorised to disclose information relating to the Contracts to Homes England on request.

3           [We request that you:-

3.1       ensure that all moneys to which we are entitled under the Contracts are credited to the following account:

Sort Code: [•]

Account Number: [•]]<sup>1</sup>

3.2       give Homes England written notice of any breach of any term of the Contracts as soon as you become aware of it; and

3.3       give Homes England not less than 30 days' written notice of your terminating, rescinding or cancelling/giving notice to terminate or cancel the Contracts.

4           Please sign and return the enclosed copy of this notice to Homes England (with a copy to us) to confirm that you:

---

<sup>1</sup> To only apply to Contracts where the Assignor will be receiving proceeds



- 4.1 agree to the terms of this notice and to act in accordance with its provisions;
  - 4.2 have not received notice that the Assignor assigned its rights under the Contracts to a third party or created any other interest (whether by way of security or otherwise) in the Contract in favour of a third party; and
  - 4.3 have not claimed or exercised, nor do you have any outstanding right to claim or exercise against the Assignor, any right of set-off, counter-claim or other right relating to the Contracts.
- 5 The provisions of this notice and any non-contractual obligations arising out of or in connection with it are governed by English law.

Yours faithfully

.....

For and on behalf of  
**Harworth Estates Mines Property Limited**

[on acknowledgement copy]

To: **Homes and Communities Agency**

Copy to: **Harworth Estates Mines Property Limited**

We acknowledge receipt of the above notice and confirm the matters set out in paragraph 4.

.....

Date

Execution Page

The common seal of  
**HOMES AND COMMUNITIES AGENCY**

Is hereunto affixed in the presence of:

) [Redacted]

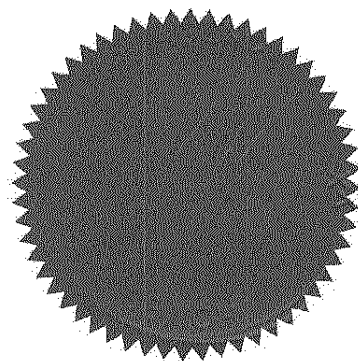
)

)

[Redacted]

Authorised Signatory

*M Harris*



executed as a deed by

**HARWORTH ESTATES MINES PROPERTY LIMITED**

in the presence of:

)

)

)

witness signature

name

address

occupation

signed by

**Execution Page**

The common seal of )

**HOMES AND COMMUNITIES AGENCY** )


Is hereunto affixed in the presence of: )

Authorised Signatory

executed as a deed by )

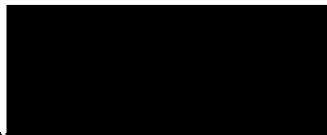
**HARWORTH ESTATES MINES PROPERTY LIMITED** )

in the presence of: )



Andrew Blackshaw -

witness signature



name Casey Perry

address A



occupation Executive Assistant

signed by Casey Perry