



**Registration of a Charge**

Company Name: **MILLER HOMES LIMITED**

Company Number: **SC255429**



Received for filing in Electronic Format on the: **04/03/2022**

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**Details of Charge**

Date of creation: **23/02/2022**

Charge code: **SC25 5429 0399**

Persons entitled: **HARWORTH ESTATES INVESTMENTS LIMITED**

Brief description: **THE PARTS OF PHASE 2A, SIMPSON PARK, HARWORTH, COMPRISING THE 5 UNITS SHOWN EDGED AND HATCHED BLUE AND EDGED AND HATCHED GREEN ON THE PLAN AND WHICH FORM PART OF THE LAND COMPRISED IN A TRANSFER DATED 21 DECEMBER 2021 MADE BETWEEN 1) THE CHARGEES AND 2) THE CHARGOR AND WHICH AS AT THE DATE OF THIS CHARGE WAS REGISTERED UNDER AND FORMED PART OF TITLE NUMBER NT381564**

**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: **GATELEY LEGAL**



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

Company number: 255429

Charge code: SC25 5429 0399

The Registrar of Companies for Scotland hereby certifies that a charge dated 23rd February 2022 and created by MILLER HOMES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 4th March 2022 .

Given at Companies House, Edinburgh on 7th March 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 23 February <sup>2</sup>/<sub>2021</sub>

- (1) MILLER HOMES LIMITED
- (2) HARWORTH ESTATES INVESTMENTS LIMITED

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LEGAL CHARGE  
IN RESPECT OF LAND AT PHASE 2A SIMPSON PARK,  
HARWORTH

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## CONTENTS

1.	DEFINITIONS AND INTERPRETATION.....	1
2.	COVENANT TO PAY .....	4
3.	CHARGING PROVISIONS.....	4
4.	RESTRICTIONS.....	5
5.	DISCHARGE AND POWER OF ATTORNEY .....	5
6.	GENERAL COVENANTS.....	5
7.	FURTHER ASSURANCE AND POWER OF ATTORNEY.....	7
8.	ENFORCEMENT.....	8
9.	APPOINTMENT OF A RECEIVER.....	8
10.	POWERS ON ENFORCEMENT .....	8
11.	CHARGEES'S POWERS AND PROTECTIONS.....	9
12.	APPLICATION OF MONIES .....	9
13.	DEALINGS WITH THE EQUIPMENT .....	9
14.	PROTECTION OF THIRD PARTIES .....	10
15.	CONTINUING AND ADDITIONAL SECURITY .....	10
16.	EXPENSES AND INDEMNITIES .....	10
17.	PAYMENTS.....	11
18.	DISCHARGE .....	11
19.	STATUTORY AGREEMENTS AND DEVELOPMENT .....	11
20.	TRANSFERS AND DISCLOSURES .....	11
21.	MISCELLANEOUS .....	12
22.	SERVICE OF NOTICES AND PROCESS .....	12
23.	JURISDICTION .....	12
	SCHEDULE 1 - REGISTERED LAND.....	14
	APPENDIX 1 - PLAN	

DATE

BETWEEN

23 February

2  
2021

- (1) **MILLER HOMES LIMITED** (company number SC255429) whose registered office is Miller House, 2 Lochside View, Edinburgh Park, Edinburgh EH12 9DH (the **Chargor**); and
- (2) **HARWORTH ESTATES INVESTMENTS LIMITED** a company incorporated and registered in England and Wales (registered number 07532134) whose registered office is at Advantage House, Poplar Way, Catcliffe, Rotherham, S60 5TR (the **Chargee**).

**IT IS AGREED**

**1. DEFINITIONS AND INTERPRETATION**

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

**Approved**

implies an obligation by the party giving the approval neither to withhold nor delay providing such approval unreasonably and **Approval** shall be construed accordingly. **Approval** will be deemed to have been given if the party requested to give approval fails to do so within five Working Days of receipt of a reminder notice from the requesting party which shall not be served less than 10 Working Days of receipt of the original request;

**Buyer's Road Works**

has the same meaning as in the Contract;

**Charged Assets**

the subject matter of the mortgages and charges created by clause 3;

**Contract**

the contract for sale of the freehold property known as Phase 2A, Simpson Park, Harworth dated 29 September 2021 and entered into between (1) the Chargor and (2) the Chargee;

**Default**

the occurrence of any of the following events:

- (a) the Chargor suffers an Insolvency Event; or
- (b) the Chargor breaches (or is found to have breached) any of the material covenants or warranties given by it to the Chargee in this Charge and which have not been remedied within ten Working Days of demand (or such longer period as is reasonable in the circumstances);
- (c) the Chargor fails to comply with a 'Default Notice' as defined in schedule 6 of the Contract
- (d) the Chargor fails to carry out and complete the Buyer's Road Works in accordance with schedule 6 of the Contract

**Dispose or Disposal**

includes sale, transfer, lease, licence, or parting with possession or granting any interest in the Property or part thereof;

**Environmental Claim**

- (a) any claim, order, notice or other communication received by the Chargor alleging failure to comply in any material respect with any Environmental Law or alleging liability under it; or
- (b) any indication that any charge is or may be imposed under any Environmental Law on the Property;

**Environmental Laws**

all laws, directions and regulations and all codes of practice, circulars and guidance notes issued by any competent authority or agency (whether in the United Kingdom or elsewhere and whether or not having the force of law) concerning the protection of the environment or human health including, without limitation, the conservation of natural resources, the production, storage, transportation, treatment, recycling or disposal of any waste or any noxious, offensive or dangerous substance or the liability of any person, whether civil or criminal, for any damage to or pollution of the environment or the rectification thereof or any related matters;

**Environmental Licence**

any permit, licence, authorisation, consent or other approval required by any Environmental Law;

**Equipment**

any moveable plant, equipment, fittings, furniture, containers, utensils and any other effects of the Chargor at the date of this Charge or at any time in the future in or about the Property;

**Insolvency Act**

the Insolvency Act 1986 and any secondary legislation made under it;

**Insolvency Event**

the occurrence of any of the following:-

- (a) a winding up order is made against the Chargor;
- (b) an administrator or receiver is appointed in respect of the Chargor
- (c) a voluntary winding up of the Chargor is commenced except a winding up for the purpose of amalgamation or reconstruction of a solvent company.
- (d) the Chargor is struck off from the Register of Companies
- (e) the Chargor otherwise ceases to exist

**LPA**

the Law of Property Act 1925;

**Permitted Disposal**

- (a) the Disposal dedication or adoption of any part of the Property or service within the Property and/or any rights over any part of the Property to or in favour of any statutory undertaking, utility company, local authority or similar body for the provision and adoption of services sewers or other infrastructure; and/or
- (b) 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
- (c) the Disposal of any part of the Property which is required to comply with the requirements of any Works Agreement or the entering into of any Works Agreements affecting the Property; and/or
- (d) the Disposal of land intended for use as an electricity substation, transformer chamber, gas governor, pumping station or similar infrastructure; and/or
- (e) the grant of any easements required for the Chargor's residential development of the Property; and/or

- (f) the grant or reservation of any easements rights of covenants as may be required in connection with any of the above mentioned Disposals and other dealings; and/or
- (g) the grant of any easement contained within a Disposal of a Unit not forming part of the Property;

**Permitted Security Interest**

- (a) any lien arising by operation of law in the ordinary course of trading over property other than land;

**Plan**

the plan attached to this Charge at Appendix 1;

**Property**

the property described in schedule 1 and the benefit of all rights, easements and privileges in relation to such property but subject to any variation as reasonably required by the Chargor and approved by the Chargee in accordance with the provisions of clause 24;

**Receiver**

any receiver or receiver and manager who is not an administrative receiver (within the meaning of section 29(2) Insolvency Act) appointed under this Charge;

**Release**

a Land Registry form DS3 or form DS1 or such other form as shall be appropriate to release (when dated) the Property or any interest in the Property or any part of parts of the Property from this Charge together with a Land Registry form RX4 or any replacement thereof to the relevant part or parts of the Property from the restriction which is noted at clause 4 below;

**Secured Liabilities**

- (a) the Chargor's obligations to carry out and complete the Buyer's Road Works in accordance with schedule 6 of the Contract, and all such other obligations on the Chargor contained in schedule 6 of the Contract which are imposed prior to the date that the Chargee is obliged to provide a Release in accordance with clause 16.5 of the Contract; and
- (b) any cost incurred or reasonably anticipated to be incurred by the Chargee in remedying default of the Chargor's obligations at (a) above; and
- (c) all amounts payable pursuant to clause 16.1 of this charge;

**Security Interest**

any mortgage, charge, pledge, trust, assignment by way of security, hypothecation, lien, or any other arrangement for the purpose of or having a similar effect to creating security or any title retention rights or any set off rights created by agreement;

**Unit**

any dwelling house including a flat, bungalow, maisonette or other building designed or adapted for human habitation and its curtilage;

**Working Day**

has the same definition as in the Contract;

**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 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 drainage 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 property) pursuant to section 106 Town and County Planning Act 1990.

1.2 In this Charge:

- 1.2.1 unless the context requires otherwise, the singular includes the plural and vice versa and any reference to a gender includes any other gender;
- 1.2.2 headings to clauses are for reference only and shall not affect the interpretation of this Charge;
- 1.2.3 references to **clauses** and to **schedules** are to the clauses of and schedules to this Charge;
- 1.2.4 references to a person includes individuals, firms, partnerships, corporations, unincorporated bodies and government entities;
- 1.2.5 references to the Chargee include its assignees or transferees;
- 1.2.6 references to any Act of Parliament include that Act as amended, modified or re-enacted from time to time and all rules, regulations, orders and subordinate legislation made pursuant to it;
- 1.2.7 any provision of this Charge which refers to an Act which is amended, may itself be amended in such manner as the Chargee may determine to preserve the intended effect of this Charge;
- 1.2.8 references to this Charge or any other document are to this Charge or that document as from time to time amended, supplemented, restated, novated or replaced, however fundamentally;
- 1.2.9 references to the Property or the Charged Assets are to the whole or any part of such property or assets, as the context requires;
- 1.2.10 whenever the Chargor is obliged to do something if required or requested by the Chargee, it shall do that thing promptly; and
- 1.2.11 the meaning of general words introduced by the word **other** (or followed by the word **including**) shall not be limited by reference to any preceding (or following) word or enumeration indicating a particular class of acts, matters or things.

1.3 It is intended that this Charge takes effect as a deed even though the Chargee may only execute it under hand.

1.4 This Charge may be executed in one or more parts, each of which when executed shall be an original. All counterparts together shall constitute one and the same document.

1.5 Any term or phrase defined in the Companies Act 2006 (whether capitalised or not) bears the same meaning in this Charge.

2. **COVENANT TO DISCHARGE**

The Chargor agrees with the Chargee that it will discharge the Secured Liabilities in accordance with the terms of the Contract.

3. **CHARGING PROVISIONS**

As continuing security for the discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Chargee by way of legal mortgage, the Property.



#### 4. RESTRICTIONS

4.1 The Chargor agrees with the Chargee that it will not, without the Chargee's prior written consent:

- 4.1.1 dispose or agree to Dispose of any Charged Assets charged by way of fixed charge;
- 4.1.2 create or permit to subsist, in favour of any person other than the Chargee, any Security Interest on the Charged Assets, except for a Permitted Security Interest; or
- 4.1.3 dispose of any assets charged by way of floating charge other than for market value in the ordinary course of business.

4.2 The Chargor agrees with the Chargee that it will not, without the Chargee's prior written consent Dispose or agree to Dispose of the Property save where such Disposal is a Permitted Disposal only.

4.3 The Chargor consents to the Chargee applying to HM Land Registry in form RX1 to register the following restriction against each of the titles specified in schedule 1 or which is the subject of first registration of title.

##### **"RESTRICTION**

*No disposition of the part of the registered estate shown [edged and hatched blue and edged and hatched green on the Plan attached to the Charge] 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 23 February 2022 2021 in favour of Harworth Estates Investments Limited (company number 07532134) of Advantage House, Poplar Way, Catcliffe, Rotherham S60 5TR referred to in the charges register or their conveyancer or without a certificate signed by a conveyancer that the provisions of clause 4.2 ~~Error Reference source not found.~~ of the charge dated 23 February 2022 2021 in favour of Harworth Estates Investments Limited (company number 07532134) of Advantage House, Poplar Way, Catcliffe, Rotherham S60 5TR have been complied with or do not apply."*

4.4 The Chargee shall, within ten Working Days of written request of the Chargor (and at the reasonable cost of the Chargor) join in any Works Agreement in respect of the Property or for the grant of any planning permission for the development of the Property pursuant to the Contract in such form as previously Approved by the Chargee provided that the Chargor shall indemnify and keep indemnified the Chargee and its successors in title against all actions, proceedings, claims, demands, losses, costs, expenses, damages and liabilities whatsoever and howsoever arising in connection with such Works Agreement(s) and/or from a request of the Chargee made pursuant to this clause 4.4.

#### 5. DISCHARGE

After the completion of the Buyer's Road Works in accordance with schedule 6 of the Contract and after compliance by the Chargor with clauses 16.5.3, 16.5.4 of the Contract, subject always to clause 16.5.5 of the Contract the Chargee will give to the Chargor a Release to release the Property and the restriction created pursuant to clause 4.3 (together with any relevant HM Land Registry form(s)) in accordance with the provisions as set out in clause 16.5 of the Contract.

#### 6. GENERAL COVENANTS

6.1 The Chargor agrees with the Chargee that it will:

- 6.1.1 keep the Property and those Charged Assets of an insurable nature comprehensively insured against loss (including loss of rent and profits for three years) or damage by fire, explosion, storm, flood, lightning, landslip, subsidence, terrorism and such other risks usually insured against by prudent businesses or that the Chargee reasonably requires to its full replacement or reinstatement value for the time being on an index linked basis together with all demolition and debris removal costs and all architects, surveyors, engineers and

- other professional fees for rebuilding the Property (plus VAT where applicable) with insurers approved by the Chargee (the **Insurance**);
- 6.1.2 ensure that the Chargee's interest is noted as loss payee on the Insurance;
- 6.1.3 punctually (or within any agreed credit period) pay all premiums for the Insurance and on the Chargee's request deliver to it a copy of the policy and the receipt (or other evidence of payment satisfactory to the Chargee) for the current premium; failing such production the Chargee may assume that the Insurance has lapsed and exercise its rights under clause 6.3 below;
- 6.1.4 ensure that, unless the Chargee agrees otherwise, the terms of the Insurance:
- (a) will require the insurer not to cancel or vary the insurance without giving the Chargee at least 14 days prior notice; and
  - (b) will provide that any misrepresentation, act or neglect or failure to make disclosure by the Chargor or breach of any other condition of the insurance will not invalidate or prejudice the insurance as against the Chargee;
- 6.1.5 on reasonable prior written notice to the Chargor allow the Chargee (and any person authorised by it) access, at all reasonable times, to view the condition of the Property;
- 6.1.6 observe and perform all restrictive and other covenants and stipulations for the time being affecting the Property or its use or enjoyment;
- 6.1.7 comply in all material respects with all statutory and regulatory obligations relating to the Property;
- 6.1.8 not, without the Chargee's prior written consent, such consent not to be unreasonably withheld or delayed in relation to the Property:
- (a) part with or share possession or occupation other than by way of a Permitted Disposal;
  - (b) grant or extend any lease or licence or agreement for the same;
  - (c) grant any licence or permission to any tenant, licensee or other occupier to assign, underlet, part with possession or occupation;
  - (d) forfeit, determine, accept or agree to accept the surrender of any lease;
  - (e) vary the terms of any lease or licence;
  - (f) agree any rent review of any lease or licence of the Property;
  - (g) create or permit to arise on the Property any interest having overriding effect;
  - (h) permit any person to become entitled to any right, easement, covenant or other matter which might adversely affect the use, value or marketability of the Property; or
  - (i) vary the Satisfactory Planning Permission (as that term is defined in the Contract) in a way that materially decreases the value of the Property other than in accordance with the provisions of the Contract.
- 6.1.9 enforce the Chargor's rights as landlord under any lease of the Property and perform the Chargor's obligations as landlord under any lease;
- 6.1.10 deposit with the Chargee a copy of the insurance of the Property;
- 6.1.11 grant the Chargee or its solicitors, on request, all reasonable facilities to enable it or them to carry out such investigation of the title to the Property and enquiries about it as would be carried out by a prudent mortgagee;
- 6.1.12 punctually pay and indemnify the Chargee and any Receiver against all rent, rates, taxes, charges and any other outgoings payable in respect of the Property and promptly produce the receipts for them to the Chargee upon its request;

- 6.1.13 promptly send to the Chargee a copy of any notice, order or proposal received from any person relating to the Property and if required to do so comply with such notice or order or (if requested by the Chargee) join with it in making such objections or representations or taking such other steps as the Chargee may think fit;
- 6.1.14 comply with all Environmental Laws and Environmental Licences applicable to the Property and its business and on the Chargee's request, provide it with copies of any Environmental Licences;
- 6.1.15 upon becoming aware of the same, notify the Chargee of any Environmental Claim made or threatened against the Chargor and any condition imposed pursuant to any Environmental Licence or Environmental Law which requires the Chargor to incur any capital expenditure or materially alter the nature or manner of conduct of its business or which could have an adverse impact on the value of the Property;
- 6.1.16 keep the Chargee informed of any steps taken or intended to be taken by the Chargor in respect of any of the matters referred to in clause 6.1.15 above and give notice to the Chargee as soon as practicable of any new or additional requirements under any Environmental Law imposed on the Chargor or the Property;
- 6.1.17 on the Chargee's request provide such information regarding the Development (as defined in the Contract) and the progress of it;
- 6.1.18 procure that the Development (as defined in the Contract) is carried out diligently, in a good and workmanlike manner and in accordance with good building practice;
- 6.2 The Chargor represents and warrants to the Chargee that:
  - 6.2.1 the Chargor has acquired, maintained and complied with all Environmental Licences (if any) needed for its use or occupation of its Property or for the conduct of its business and has not done or permitted any act or omission whereby its Environmental Licences (if any) could be varied or revoked; and
  - 6.2.2 the Chargor is not in breach of and has not incurred or become subject to any civil or criminal liability under any Environmental Laws or the terms of any Environmental Licence and it has not done anything or omitted to do anything which could result in any liability being imposed on the Chargee under any Environmental Law.
- 6.3 If the Chargor fails to comply with any of its obligations under this Charge (including failing to insure or repair any Property) the Chargor irrevocably authorises the Chargee (and any agent appointed by it) to do all such things necessary or desirable to make good such failure on its behalf. For this purpose the Chargor authorises the Chargee (and any agent appointed by it) to enter the Property. The Chargee shall not become liable as mortgagee in possession as a result of any action taken by it under this clause 5.3. All costs and expenses reasonably and properly incurred by the Chargee pursuant to this authority shall be reimbursed by the Chargor to the Chargee on its demand.
- 7. **FURTHER ASSURANCE AND POWER OF ATTORNEY**
  - 7.1 The Chargor will, upon the Chargee's reasonable request, grant such further Security Interests in the Charged Assets in such form and on such terms as the Chargee may reasonably require and do whatever other acts or things the Chargee may require in relation to the Charged Assets in order to secure the Secured Liabilities, to perfect or protect the Security Interests created by this Charge or to facilitate the realisation of the Charged Assets.
  - 7.2 The Chargor by way of security irrevocably appoints the Chargee and any Receiver severally to be its attorneys in its name and on its behalf to:
    - 7.2.1 do all things which the Chargor may be required to do under this Charge;
    - 7.2.2 sign, execute, and deliver and otherwise perfect any security required to be executed pursuant to clause 7.1; and

- 7.2.3 sign, execute, deliver and complete any deeds, instruments or other documents and to do all acts and things which may be required to enable the Chargee or any Receiver to exercise their powers under this Charge, or to perfect or vest in the Chargee, its nominees or any purchaser, title to any Charged Assets or which they may deem expedient in connection with the getting in, disposal, or realisation of any Charged Assets or the exercise of any other power under this Charge.
- 7.3 Each attorney may appoint a substitute or delegate his authority. The Chargor ratifies and confirms (and agrees to ratify and confirm) anything which an attorney does under the power of attorney granted in this clause 7.
- 8. ENFORCEMENT**
- At any time after a Default which has not been remedied or waived the Chargee may with or without further notice to the Chargor:
- 8.1 appoint an Administrator to the Company in accordance with the Insolvency Act;
- 8.2 appoint a Receiver to the Charged Assets; and
- 8.3 exercise in respect of the Charged Assets all or any of the powers and remedies given to mortgagees by the LPA, including the power to take possession of, receive the benefit of, or sell any of the Charged Assets.
- 9. APPOINTMENT OF A RECEIVER**
- 9.1 An Administrator will have all the powers given to him under the Insolvency Act.
- 9.2 The Chargee may either under hand of any manager or by deed appoint any one or more than one person to act as Receiver of those Charged Assets specified in the appointment.
- 9.3 The Chargee may from time to time fix the remuneration of any Receiver on such basis as it shall determine. This may include a fixed fee or an hourly rate or a commission depending upon the work and responsibilities assumed by the Receiver and the basis of charging applied by his firm. Section 109 LPA shall be varied accordingly.
- 9.4 The Chargee may remove or replace any Receiver appointed by it.
- 9.5 The Chargee may extend a Receiver's appointment to include Charged Assets previously excluded from his appointment.
- 9.6 A Receiver will be the agent of the Chargor and the Chargor will be solely responsible for his acts, omissions, defaults and remuneration.
- 10. POWERS ON ENFORCEMENT**
- 10.1 A Receiver may exercise in respect of the Charged Assets to which he is appointed:
- 10.1.1 the same powers to do, or to omit to do, in the name of and on behalf of the Chargor, anything which the Chargor itself could have done or omitted to do with the Charged Assets were they not the subject of this Charge and the Chargor were not in insolvency proceedings;
- 10.1.2 all or any powers given to receivers by the LPA but without any of the restrictions imposed upon the exercise of those powers by the LPA; and
- 10.1.3 notwithstanding that he is not an administrative receiver, all or any of the powers specified in schedule 1 Insolvency Act.
- 10.2 If more than one person is appointed to act as Receiver, each person may act severally, independently of any other, except to the extent that the Chargee states to the contrary in the appointment. References in this Charge to the Receiver are to each and all of them as appropriate.
- 10.3 If the Chargee enforces this Charge itself pursuant to clause 8.3 it will have the same powers as a Receiver in respect of those Charged Assets which are the subject of the enforcement.
- 10.4 Except to the extent provided by law, none of the powers described in this clause 9 will be affected by an insolvency event in relation to the Chargor.

**11. CHARGEES' POWERS AND PROTECTIONS**

- 11.1 The powers and remedies conferred on the Chargee as a mortgagee by the LPA shall not be subject to any of the restrictions imposed by the LPA upon the exercise of those powers and remedies including those imposed by sections 103 and 109 LPA.
- 11.2 The Chargee may grant or accept surrenders of leases at a premium or otherwise and grant agreements or options for the same on such terms as it shall consider expedient and without the need to observe sections 99 and 100 LPA.
- 11.3 The restrictions on the right of consolidating mortgages contained in section 93 LPA will not apply to this Charge.
- 11.4 Neither the Chargee nor any Receiver will be liable to account as mortgagee in possession of the Charged Assets or be liable for any loss upon realisation or for any neglect or default of any nature for which a mortgagee may be liable.
- 11.5 If the Chargee receives notice of any subsequent Security Interest affecting the Charged Assets then the Chargee may open a new account for the Chargor. If it does not open a new account, then, unless it notifies the Chargor otherwise, it shall be treated as if it had done so at the time when it received such notice. From that time onwards all payments received by the Chargee in or towards payment of the Secured Liabilities shall be credited (or be treated as having been credited) to the new account and will not reduce the amount then due from the Chargor to the Chargee.

**12. APPLICATION OF MONIES**

- 12.1 All money received by the Chargee or any Receiver under this Charge will be applied in the following order:
- 12.1.1 first, in or towards payment of liabilities having priority to the Secured Liabilities;
- 12.1.2 secondly, in or towards payment of all costs, charges and expenses incurred in or incidental to the exercise or performance (or attempted exercise or performance) by the Chargee of the powers or authorities conferred by or in any other way connected with this Charge;
- 12.1.3 thirdly, in or towards payment to the Receiver of his remuneration fixed in accordance with this Charge;
- 12.1.4 fourthly, in or towards payment to the Chargee of the Secured Liabilities in such order as the Chargee in its absolute discretion thinks fit;
- 12.1.5 fifthly, in payment to the Chargor or any other person entitled to the surplus.
- 12.2 Any surplus shall not carry interest. The Receiver or the Chargee may pay any surplus into any of the Chargor's bank accounts including an account opened specifically for that purpose. The Receiver and Chargee shall then have no further liability for any surplus.
- 12.3 The Chargee or the Receiver may credit any monies received upon realisation of the Charged Assets to a suspense account for so long and on whatever basis the Chargee or the Receiver may from time to time decide in order to preserve the Chargee's right to prove for the whole of its claim against the Chargor or any other person.
- 12.4 Subject to the rights of the holder of any prior ranking Permitted Security Interest or any landlord, any money received by the Chargor under any insurance of the Charged Assets will be applied at the discretion of the Chargee either in reducing the Secured Liabilities or towards making good the loss or damage for which the money became payable. Any money received by the Chargor under any insurance will be held on trust for the Chargee pending such application.

**13. DEALINGS WITH THE EQUIPMENT**

On entering into the possession of the Property, the Chargee or any Receiver shall (as regards the matters mentioned in this clause) become the agent of the Chargor with its authority and at its expense to remove, store, use, sell (on such terms and subject to such conditions as the Chargee and/or the Receiver sees fit) or otherwise deal with in such manner as the Chargee or the Receiver may determine any Equipment of the Chargor which the Chargor shall have

refused or failed to remove from the Property within seven days of being requested to do so by the Chargee or the Receiver. The Chargor shall keep the chargee indemnified against all costs, claims, and demands whatsoever in respect of the removal, storage, use, sale, disposal or other dealing with any such Equipment. The Chargee or the Receiver shall pay the net proceeds of sale (after deduction of the costs of removal, storage, sale or disposal) to the Chargor. Neither the Chargee nor any Receiver shall be liable to the Chargor for any act or omission by any person appointed to effect such sale or for any failure to obtain a proper price provided such appointment has been made by the Chargee or the Receiver in good faith and neither the Chargee nor any Receiver shall be liable for any damage caused to any such Equipment.

#### 14. **PROTECTION OF THIRD PARTIES**

14.1 Any person dealing with the Chargee or a Receiver may assume, unless he has actual knowledge to the contrary that:

14.1.1 the Chargee or Receiver has the power to do the things which they purport to do; and

14.1.2 they are exercising their powers properly.

14.2 All the protections to purchasers by sections 104 and 107 LPA shall apply to any person purchasing from or dealing with any Receiver or the Chargee as if the Secured Liabilities had become due and the statutory power of sale and appointing a Receiver in relation to the Charged Assets had arisen on the date of this Charge.

#### 15. **CONTINUING AND ADDITIONAL SECURITY**

15.1 This Charge is a continuing security. It secures the ultimate balance of the Secured Liabilities despite any interim settlement of account until a final discharge of this Charge is given by the Chargee to the Chargor.

15.2 The Chargee's rights under this Charge are in addition to any other rights it may have against the Chargor (or any other person in respect of the Secured Liabilities) under any other document, the general law or otherwise. The Chargee's rights will not merge with or limit those other rights or be limited by them.

15.3 The Chargee is not obliged to make any claim or demand on the Chargor or any other person or to enforce any guarantee, mortgage or other security now or in future held by it before enforcing this Charge and no action taken or omitted in connection with any such right or instrument shall discharge, reduce or affect the Chargor's liability to the Chargee. The Chargee does not have to account for any money or other asset received pursuant to any such right or instrument.

#### 16. **EXPENSES AND INDEMNITIES**

16.1 The Chargor will on demand pay all professionals' fees (including VAT) and any other costs, charges or expenses (on a full indemnity basis) incurred by the Chargee and any Receiver in connection with the actual or attempted perfection, preservation, defence or enforcement of this Charge or the preservation or disposal of the Property/any Charged Assets or the exercise of any power under this Charge or any amendment, waiver, consent or release of this Charge.

16.2 The Chargor will on demand indemnify the Chargee and any Receiver and any of its and their officers and employees and any attorney, agent or other person appointed by the Chargee under this Charge (each an **Indemnified Party**) in respect of all costs, losses, actions, claims, expenses, demands or liabilities whether in contract, tort, or otherwise and whether arising at common law, in equity or by statute which may be incurred by, or made against any of them at any time relating to or arising directly or indirectly out of:

16.2.1 anything done or omitted to be done in the exercise or purported exercise of the powers contained in this Charge;

16.2.2 a claim of any kind (including one relating to the environment) made or asserted against any Indemnified Party which would not have arisen if this Charge had not been executed; or

16.2.3 any breach by the Chargor of any of its obligations under this Charge;

unless, in the case of clauses 16.2.1 and 16.2.2, it was caused by the negligence or wilful misconduct of the Indemnified Party.

- 16.3 Neither the Chargee nor any Receiver nor any officer nor employee of either of them shall in any way be liable or responsible to the Chargor for any loss or liability of any kind arising from any act or omission by it of any kind (whether as mortgagee in possession or otherwise) in relation to the Property/Charged Assets, except to the extent caused by its own negligence or wilful misconduct.

**17. PAYMENTS**

- 17.1 The Chargee or any Receiver may convert any money received under this Charge (including the proceeds of any previous conversion) into any currency the Chargee or Receiver may decide in order to discharge the Secured Liabilities. Any conversion shall be effected at the then prevailing spot selling rate of exchange of the Chargee's bankers for the other currency against the existing currency.

- 17.2 If the amount of the currency so converted is less than the amount of the Secured Liability concerned, the Chargor will indemnify the Chargee in respect of the shortfall.

- 17.3 All amounts payable by the Chargor under this Charge will be paid in full without set off or other deduction.

- 17.4 The Chargee may at any time without notice set off against any Secured Liabilities any amount owed by it to the Chargor. The Chargee may effect such set off by transferring all or any part of any balance standing to the credit of any of the Chargor's accounts with it to any other account or by combining or consolidating accounts.

**18. DISCHARGE**

- 18.1 This Charge incorporates the provisions of clause 16 of the Contract as if the same were set out in this Charge in full.

- 18.2 If any payment by the Chargor or any other person or any release given by the Chargee is avoided or adjusted pursuant to the Insolvency Act:

18.2.1 the Chargor's liability for the Secured Liabilities will continue as if the payment, release, avoidance or adjustment had not occurred; and

18.2.2 the Chargee will be entitled to recover the value or amount of that payment or security from the Chargor as if the payment, release, avoidance or adjustment had not occurred.

**19. STATUTORY AGREEMENTS AND DEVELOPMENT**

- 19.1 The Chargee shall if so required by the Chargor or the appropriate authority or undertaker or utility company and without fine or premium but otherwise at the proper cost of the Chargor consent to any agreement under Section 38 Highways Act 1980 and/or Section 104 Water Industry Act 1991 to be entered into by the Chargor in relation to the Property in such form as the appropriate authority or utility company may require including (inter alia) being a party to any such agreement to consent as mortgagee to its terms Provided That the Chargee has no obligations in such deed(s) and it enters into such as Chargee of the Charged Assets only with the Chargor providing a full indemnity to the Chargee in doing so.

- 19.2 For the avoidance of doubt nothing in this Charge shall prevent or restrict the Chargor from developing the Property for the purpose of residential development in accordance with the Satisfactory Planning Permission (as that term is defined in the Contract) and/or from using the Property for the purpose of a site compound or sales office or for contractors' parking or for any other use incidental to such development.

**20. TRANSFERS AND DISCLOSURES**

- 20.1 The Chargee may assign, transfer, delegate or make any declaration of trust of any of its rights under this Charge.

- 20.2 The Chargor may not assign, transfer, delegate or make any declaration of trust of any of its rights or obligations under this Charge.

- 20.3 The Chargee may disclose any information about the Chargor and any member of its group and any other person connected or associated with it to any member of the Chargee's group and/or to any person to whom it is proposing to transfer or assign or has transferred or assigned this Charge.

**21. MISCELLANEOUS**

- 21.1 No delay or failure by the Chargee to exercise any right or remedy under this Charge shall impair or operate as a waiver of that right or remedy. Any single, partial or defective exercise of any such power, right or remedy shall not prevent the further exercise of that or any other right or remedy.
- 21.2 Any waiver, consent or approval given by the Chargee of or under this Charge will only be effective if given in writing. Such waiver, consent or approval shall then only apply for the purpose stated and be subject to any written terms and conditions imposed by the Chargee.
- 21.3 If at any time any one or more of the provisions of this Charge is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction then neither the legality, validity or enforceability of the remaining provisions of this Charge nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall be in any way affected or impaired as a result.
- 21.4 Each Indemnified Party may enforce the terms of this Charge in accordance with the Contracts (Rights of Third Parties) Act 1999. Apart from the Indemnified Parties and the parties to this Charge, no other person may enforce its terms.
- 21.5 The Chargee may grant releases of or waivers under this Charge and it and the Chargor may agree variations to its terms without either notifying the Indemnified Parties or obtaining their consent.

**22. SERVICE OF NOTICES AND PROCESS**

- 22.1 Any notice, request, demand, consent, approval, notification, instruction, proceedings or other communication from the Chargee to the Chargor under this Charge shall be in writing and may be sent by first class post or courier. Any such communication shall be addressed to the Chargor at its address given in this Charge, its registered office or the address last known to the Chargee at which it carried on business and shall be treated as served:
- 22.1.1 if delivered by courier or personally during business hours on a Working Day: on receipt; or
- 22.1.2 if delivered by courier or personally outside business hours or on a day which is not a Working Day: on the first Working Day after receipt; or
- 22.1.3 if posted: 48 hours after posting or upon receipt (whichever is earlier).
- 22.2 Any notice, request or other communication under this Charge from the Chargor to the Chargee must be in writing and sent by first class post to the Chargee's registered office or such other address as the Chargee advises the Chargor in writing for this purpose and will be treated as served:
- 22.2.1 if it is received during business hours on a Working Day: on receipt; or
- 22.2.2 if it is received outside business hours or on a day which is not a Working Day: on the first Working Day after receipt; or
- 22.2.3 if posted: 48 hours after posting or upon receipt (whichever is earlier).

**23. JURISDICTION**

This Charge shall be governed by and construed in accordance with the laws of England. The Chargor accepts the non-exclusive jurisdiction of the English Courts in connection with any matter arising under this Charge.

**24. CHANGE TO PROPERTY**

- 24.1 In this clause 24 the following definition shall apply

**Reserved Matters Approval**

the Chargor's reserved matters planning permission for its development of the Site;



**Site**

the land transferred pursuant to the transfer referred to at Schedule 1.

- 24.2 The Chargor and the Chargee acknowledge that this Legal Charge has been granted prior to the Chargor securing Reserved Matters Approval and that the exact location of Units on the Site is not yet certain.
- 24.3 The Chargor and the Chargee covenant with one another to co-operate and act in good faith and use their respective reasonable endeavours to agree any variation to the Property which is required so as to facilitate the development and sale of the Units at the Site by the Chargor provided always that:
- 24.3.1 the Chargee shall not be obliged to agree any variation to the extent of the Property where there is an adverse impact on the security provided by this Legal Charge from time to time; and
- 24.3.2 the Chargor shall pay the Chargee's proper and reasonable legal costs in respect of such variation where it is requested by the Chargor following the date that is 2 months after the grant of the Reserved Matters Approval.
- 24.4 The obligations in this clause shall include obligations to sign any necessary HM Land Registry and or Companies House forms to give effect to any variation to the Property agreed pursuant to this clause.

**IN WITNESS** whereof this Charge has been executed as a Deed by the Chargor on the date inserted at the beginning of this Charge.

**SCHEDULE 1**  
**Registered Land**

**Description**

The parts of Phase 2a, Simpson Park, Harworth, comprising the 5 Units shown edged and hatched blue and edged and hatched green on the Plan and which form part of the land comprised in a transfer dated 21 December 2021 made between 1) the Chargee and 2) the Chargor and which as at the date of this Charge was registered under and formed part of title number NT381564.

AP .

**THE CHARGOR**

**EXECUTED** as a **DEED** by  
**MILLER HOMES LIMITED**

acting by a director in the presence of:

Signature of Witness

Name in block capitals

JOYCE MORRISON

Address

**THE CHARGE**

Executed as a deed by **HARWORTH  
ESTATES INVESTMENTS LIMITED**  
acting by [a director] [its attorney  
under a power of attorney dated  
1 September 2020]

.....  
Name:

Limited)).

[(as attorney of Harworth Estates Investments

in the presence of a witness:

Witness signature:

Witness name:

Witness address:

**APPENDIX 1**  
**Plan**

[illegible][illegible]

DATED 23 February 2022 ~~2021~~

- (1) MILLER HOMES LIMITED
- (2) HARWORTH ESTATES INVESTMENTS LIMITED

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LEGAL CHARGE  
IN RESPECT OF LAND AT PHASE 2A SIMPSON PARK,  
HARWORTH

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## CONTENTS

1.	DEFINITIONS AND INTERPRETATION .....	1
2.	COVENANT TO PAY .....	4
3.	CHARGING PROVISIONS .....	4
4.	RESTRICTIONS .....	5
5.	DISCHARGE AND POWER OF ATTORNEY .....	5
6.	GENERAL COVENANTS .....	5
7.	FURTHER ASSURANCE AND POWER OF ATTORNEY .....	7
8.	ENFORCEMENT .....	8
9.	APPOINTMENT OF A RECEIVER .....	8
10.	POWERS ON ENFORCEMENT .....	8
11.	CHARGEES'S POWERS AND PROTECTIONS .....	9
12.	APPLICATION OF MONIES .....	9
13.	DEALINGS WITH THE EQUIPMENT .....	9
14.	PROTECTION OF THIRD PARTIES .....	10
15.	CONTINUING AND ADDITIONAL SECURITY .....	10
16.	EXPENSES AND INDEMNITIES .....	10
17.	PAYMENTS .....	11
18.	DISCHARGE .....	11
19.	STATUTORY AGREEMENTS AND DEVELOPMENT .....	11
20.	TRANSFERS AND DISCLOSURES .....	11
21.	MISCELLANEOUS .....	12
22.	SERVICE OF NOTICES AND PROCESS .....	12
23.	JURISDICTION .....	12
	SCHEDULE 1 - REGISTERED LAND .....	14
	APPENDIX 1 - PLAN	

DATE

23 February 2022

2021

BETWEEN

- (1) **MILLER HOMES LIMITED** (company number SC255429) whose registered office is Miller House, 2 Lochside View, Edinburgh Park, Edinburgh EH12 9DH (the **Chargor**); and
- (2) **HARWORTH ESTATES INVESTMENTS LIMITED** a company incorporated and registered in England and Wales (registered number 07532134) whose registered office is at Advantage House, Poplar Way, Catcliffe, Rotherham, S60 5TR (the **Chargee**).

**IT IS AGREED**

**1. DEFINITIONS AND INTERPRETATION**

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

**Approved**

implies an obligation by the party giving the approval neither to withhold nor delay providing such approval unreasonably and **Approval** shall be construed accordingly. **Approval** will be deemed to have been given if the party requested to give approval fails to do so within five Working Days of receipt of a reminder notice from the requesting party which shall not be served less than 10 Working Days of receipt of the original request;

**Buyer's Road Works**

has the same meaning as in the Contract;

**Charged Assets**

the subject matter of the mortgages and charges created by clause 3;

**Contract**

the contract for sale of the freehold property known as Phase 2A, Simpson Park, Harworth dated 29 September 2021 and entered into between (1) the Chargor and (2) the Chargee;

**Default**

the occurrence of any of the following events:

- (a) the Chargor suffers an Insolvency Event; or
- (b) the Chargor breaches (or is found to have breached) any of the material covenants or warranties given by it to the Chargee in this Charge and which have not been remedied within ten Working Days of demand (or such longer period as is reasonable in the circumstances);
- (c) the Chargor fails to comply with a 'Default Notice' as defined in schedule 6 of the Contract
- (d) the Chargor fails to carry out and complete the Buyer's Road Works in accordance with schedule 6 of the Contract

**Dispose or Disposal**

includes sale, transfer, lease, licence, or parting with possession or granting any interest in the Property or part thereof;

**Environmental Claim**

- (a) any claim, order, notice or other communication received by the Chargor alleging failure to comply in any material respect with any Environmental Law or alleging liability under it, or
- (b) any indication that any charge is or may be imposed under any Environmental Law on the Property;



**Environmental Laws**

all laws, directions and regulations and all codes of practice, circulars and guidance notes issued by any competent authority or agency (whether in the United Kingdom or elsewhere and whether or not having the force of law) concerning the protection of the environment or human health including, without limitation, the conservation of natural resources, the production, storage, transportation, treatment, recycling or disposal of any waste or any noxious, offensive or dangerous substance or the liability of any person, whether civil or criminal, for any damage to or pollution of the environment or the rectification thereof or any related matters;

**Environmental Licence**

any permit, licence, authorisation, consent or other approval required by any Environmental Law;

**Equipment**

any moveable plant, equipment, fittings, furniture, containers, utensils and any other effects of the Chargor at the date of this Charge or at any time in the future in or about the Property;

**Insolvency Act**

the Insolvency Act 1986 and any secondary legislation made under it;

**Insolvency Event**

the occurrence of any of the following:-

- (a) a winding up order is made against the Chargor;
- (b) an administrator or receiver is appointed in respect of the Chargor
- (c) a voluntary winding up of the Chargor is commenced except a winding up for the purpose of amalgamation or reconstruction of a solvent company.
- (d) the Chargor is struck off from the Register of Companies
- (e) the Chargor otherwise ceases to exist

**LPA**

the Law of Property Act 1925;

**Permitted Disposal**

- (a) the Disposal dedication or adoption of any part of the Property or service within the Property and/or any rights over any part of the Property to or in favour of any statutory undertaking, utility company, local authority or similar body for the provision and adoption of services sewers or other infrastructure; and/or
- (b) 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
- (c) the Disposal of any part of the Property which is required to comply with the requirements of any Works Agreement or the entering into of any Works Agreements affecting the Property; and/or
- (d) the Disposal of land intended for use as an electricity substation, transformer chamber, gas governor, pumping station or similar infrastructure; and/or
- (e) the grant of any easements required for the Chargor's residential development of the Property; and/or

- (f) the grant or reservation of any easements rights of covenants as may be required in connection with any of the above mentioned Disposals and other dealings; and/or
- (g) the grant of any easement contained within a Disposal of a Unit not forming part of the Property;

**Permitted Security Interest**

- (a) any lien arising by operation of law in the ordinary course of trading over property other than land;

**Plan**

the plan attached to this Charge at Appendix 1;

**Property**

the property described in schedule 1 and the benefit of all rights, easements and privileges in relation to such property but subject to any variation as reasonably required by the Chargor and approved by the Chargee in accordance with the provisions of clause 24;

**Receiver**

any receiver or receiver and manager who is not an administrative receiver (within the meaning of section 29(2) Insolvency Act) appointed under this Charge;

**Release**

a Land Registry form DS3 or form DS1 or such other form as shall be appropriate to release (when dated) the Property or any interest in the Property or any part or parts of the Property from this Charge together with a Land Registry form RX4 or any replacement thereof to the relevant part or parts of the Property from the restriction which is noted at clause 4 below;

**Secured Liabilities**

- (a) the Chargor's obligations to carry out and complete the Buyer's Road Works in accordance with schedule 6 of the Contract, and all such other obligations on the Chargor contained in schedule 6 of the Contract which are imposed prior to the date that the Chargee is obliged to provide a Release in accordance with clause 16.5 of the Contract; and
- (b) any cost incurred or reasonably anticipated to be incurred by the Chargee in remedying default of the Chargor's obligations at (a) above; and
- (c) all amounts payable pursuant to clause 16.1 of this charge;

**Security Interest**

any mortgage, charge, pledge, trust, assignment by way of security, hypothecation, lien, or any other arrangement for the purpose of or having a similar effect to creating security or any title retention rights or any set off rights created by agreement;

**Unit**

any dwelling house including a flat, bungalow, maisonette or other building designed or adapted for human habitation and its curtilage;

**Working Day**

has the same definition as in the Contract;

**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 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 drainage 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 property) pursuant to section 106 Town and County Planning Act 1990.

1.2 In this Charge:

- 1.2.1 unless the context requires otherwise, the singular includes the plural and vice versa and any reference to a gender includes any other gender;
- 1.2.2 headings to clauses are for reference only and shall not affect the interpretation of this Charge;
- 1.2.3 references to **clauses** and to **schedules** are to the clauses of and schedules to this Charge;
- 1.2.4 references to a person includes individuals, firms, partnerships, corporations, unincorporated bodies and government entities;
- 1.2.5 references to the Chargee include its assignees or transferees;
- 1.2.6 references to any Act of Parliament include that Act as amended, modified or re-enacted from time to time and all rules, regulations, orders and subordinate legislation made pursuant to it;
- 1.2.7 any provision of this Charge which refers to an Act which is amended, may itself be amended in such manner as the Chargee may determine to preserve the intended effect of this Charge;
- 1.2.8 references to this Charge or any other document are to this Charge or that document as from time to time amended, supplemented, restated, novated or replaced, however fundamentally;
- 1.2.9 references to the Property or the Charged Assets are to the whole or any part of such property or assets, as the context requires;
- 1.2.10 whenever the Chargor is obliged to do something if required or requested by the Chargee, it shall do that thing promptly; and
- 1.2.11 the meaning of general words introduced by the word **other** (or followed by the word **including**) shall not be limited by reference to any preceding (or following) word or enumeration indicating a particular class of acts, matters or things.

1.3 It is intended that this Charge takes effect as a deed even though the Chargee may only execute it under hand.

1.4 This Charge may be executed in one or more parts, each of which when executed shall be an original. All counterparts together shall constitute one and the same document.

1.5 Any term or phrase defined in the Companies Act 2006 (whether capitalised or not) bears the same meaning in this Charge.

2. **COVENANT TO DISCHARGE**

The Chargor agrees with the Chargee that it will discharge the Secured Liabilities in accordance with the terms of the Contract.

3. **CHARGING PROVISIONS**

As continuing security for the discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Chargee by way of legal mortgage, the Property.

4. **RESTRICTIONS**

4.1 The Chargor agrees with the Chargee that it will not, without the Chargee's prior written consent:

- 4.1.1 dispose or agree to Dispose of any Charged Assets charged by way of fixed charge;
- 4.1.2 create or permit to subsist, in favour of any person other than the Chargee, any Security Interest on the Charged Assets, except for a Permitted Security Interest; or
- 4.1.3 dispose of any assets charged by way of floating charge other than for market value in the ordinary course of business.

4.2 The Chargor agrees with the Chargee that it will not, without the Chargee's prior written consent Dispose or agree to Dispose of the Property save where such Disposal is a Permitted Disposal only.

4.3 The Chargor consents to the Chargee applying to HM Land Registry in form RX1 to register the following restriction against each of the titles specified in schedule 1 or which is the subject of first registration of title.

**\*RESTRICTION**

*No disposition of the part of the registered estate shown [edged and hatched blue and edged and hatched green on the Plan attached to the Charge] 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 23 February 2022 ~~2021~~ in favour of Harworth Estates Investments Limited (company number 07532134) of Advantage House, Poplar Way, Catcliffe, Rotherham S60 5TR referred to in the charges register or their conveyancer or without a certificate signed by a conveyancer that the provisions of clause **Error! Reference source not found.** of the charge dated 23 February 2022 ~~12021~~ in favour of Harworth Estates Investments Limited (company number 07532134) of Advantage House, Poplar Way, Catcliffe, Rotherham S60 5TR have been complied with or do not apply."*

4.4 The Chargee shall, within ten Working Days of written request of the Chargor (and at the reasonable cost of the Chargor) join in any Works Agreement in respect of the Property or for the grant of any planning permission for the development of the Property pursuant to the Contract in such form as previously Approved by the Chargee provided that the Chargor shall indemnify and keep indemnified the Chargee and its successors in title against all actions, proceedings, claims, demands, losses, costs, expenses, damages and liabilities whatsoever and howsoever arising in connection with such Works Agreement(s) and/or from a request of the Chargee made pursuant to this clause 4.4.

5. **DISCHARGE**

After the completion of the Buyer's Road Works in accordance with schedule 6 of the Contract and after compliance by the Chargor with clauses 16.5.3, 16.5.4 of the Contract, subject always to clause 16.5.5 of the Contract the Chargee will give to the Chargor a Release to release the Property and the restriction created pursuant to clause 4.3 (together with any relevant HM Land Registry form(s)) in accordance with the provisions as set out in clause 16.5 of the Contract.

6. **GENERAL COVENANTS**

6.1 The Chargor agrees with the Chargee that it will:

- 6.1.1 keep the Property and those Charged Assets of an insurable nature comprehensively insured against loss (including loss of rent and profits for three years) or damage by fire, explosion, storm, flood, lightening, landslip, subsidence, terrorism and such other risks usually insured against by prudent businesses or that the Chargee reasonably requires to its full replacement or reinstatement value for the time being on an index linked basis together with all demolition and debris removal costs and all architects, surveyors, engineers and

- other professional fees for rebuilding the Property (plus VAT where applicable) with insurers approved by the Chargee (the **Insurance**);
- 6.1.2 ensure that the Chargee's interest is noted as loss payee on the Insurance;
- 6.1.3 punctually (or within any agreed credit period) pay all premiums for the Insurance and on the Chargee's request deliver to it a copy of the policy and the receipt (or other evidence of payment satisfactory to the Chargee) for the current premium; failing such production the Chargee may assume that the Insurance has lapsed and exercise its rights under clause 6.3 below;
- 6.1.4 ensure that, unless the Chargee agrees otherwise, the terms of the Insurance:
- (a) will require the insurer not to cancel or vary the insurance without giving the Chargee at least 14 days prior notice; and
  - (b) will provide that any misrepresentation, act or neglect or failure to make disclosure by the Chargor or breach of any other condition of the insurance will not invalidate or prejudice the insurance as against the Chargee;
- 6.1.5 on reasonable prior written notice to the Chargor allow the Chargee (and any person authorised by it) access, at all reasonable times, to view the condition of the Property;
- 6.1.6 observe and perform all restrictive and other covenants and stipulations for the time being affecting the Property or its use or enjoyment;
- 6.1.7 comply in all material respects with all statutory and regulatory obligations relating to the Property;
- 6.1.8 not, without the Chargee's prior written consent, such consent not to be unreasonably withheld or delayed in relation to the Property.
- (a) part with or share possession or occupation other than by way of a Permitted Disposal;
  - (b) grant or extend any lease or licence or agreement for the same;
  - (c) grant any licence or permission to any tenant, licensee or other occupier to assign, underlet, part with possession or occupation;
  - (d) forfeit, determine, accept or agree to accept the surrender of any lease;
  - (e) vary the terms of any lease or licence;
  - (f) agree any rent review of any lease or licence of the Property;
  - (g) create or permit to arise on the Property any interest having overriding effect;
  - (h) permit any person to become entitled to any right, easement, covenant or other matter which might adversely affect the use, value or marketability of the Property; or
  - (i) vary the Satisfactory Planning Permission (as that term is defined in the Contract) in a way that materially decreases the value of the Property other than in accordance with the provisions of the Contract.
- 6.1.9 enforce the Chargor's rights as landlord under any lease of the Property and perform the Chargor's obligations as landlord under any lease;
- 6.1.10 deposit with the Chargee a copy of the insurance of the Property;
- 6.1.11 grant the Chargee or its solicitors, on request, all reasonable facilities to enable it or them to carry out such investigation of the title to the Property and enquiries about it as would be carried out by a prudent mortgagee;
- 6.1.12 punctually pay and indemnify the Chargee and any Receiver against all rent, rates, taxes, charges and any other outgoings payable in respect of the Property and promptly produce the receipts for them to the Chargee upon its request;

- 6.1.13 promptly send to the Chargee a copy of any notice, order or proposal received from any person relating to the Property and if required to do so comply with such notice or order or (if requested by the Chargee) join with it in making such objections or representations or taking such other steps as the Chargee may think fit;
- 6.1.14 comply with all Environmental Laws and Environmental Licences applicable to the Property and its business and on the Chargee's request, provide it with copies of any Environmental Licences;
- 6.1.15 upon becoming aware of the same, notify the Chargee of any Environmental Claim made or threatened against the Chargor and any condition imposed pursuant to any Environmental Licence or Environmental Law which requires the Chargor to incur any capital expenditure or materially alter the nature or manner of conduct of its business or which could have an adverse impact on the value of the Property;
- 6.1.16 keep the Chargee informed of any steps taken or intended to be taken by the Chargor in respect of any of the matters referred to in clause 6.1.15 above and give notice to the Chargee as soon as practicable of any new or additional requirements under any Environmental Law imposed on the Chargor or the Property;
- 6.1.17 on the Chargee's request provide such information regarding the Development (as defined in the Contract) and the progress of it;
- 6.1.18 procure that the Development (as defined in the Contract) is carried out diligently, in a good and workmanlike manner and in accordance with good building practice;
- 6.2 The Chargor represents and warrants to the Chargee that:
  - 6.2.1 the Chargor has acquired, maintained and complied with all Environmental Licences (if any) needed for its use or occupation of its Property or for the conduct of its business and has not done or permitted any act or omission whereby its Environmental Licences (if any) could be varied or revoked; and
  - 6.2.2 the Chargor is not in breach of and has not incurred or become subject to any civil or criminal liability under any Environmental Laws or the terms of any Environmental Licence and it has not done anything or omitted to do anything which could result in any liability being imposed on the Chargee under any Environmental Law.
- 6.3 If the Chargor fails to comply with any of its obligations under this Charge (including failing to insure or repair any Property) the Chargor irrevocably authorises the Chargee (and any agent appointed by it) to do all such things necessary or desirable to make good such failure on its behalf. For this purpose the Chargor authorises the Chargee (and any agent appointed by it) to enter the Property. The Chargee shall not become liable as mortgagee in possession as a result of any action taken by it under this clause 5.3. All costs and expenses reasonably and properly incurred by the Chargee pursuant to this authority shall be reimbursed by the Chargor to the Chargee on its demand.
- 7. **FURTHER ASSURANCE AND POWER OF ATTORNEY**
  - 7.1 The Chargor will, upon the Chargee's reasonable request, grant such further Security Interests in the Charged Assets in such form and on such terms as the Chargee may reasonably require and do whatever other acts or things the Chargee may require in relation to the Charged Assets in order to secure the Secured Liabilities, to perfect or protect the Security Interests created by this Charge or to facilitate the realisation of the Charged Assets.
  - 7.2 The Chargor by way of security irrevocably appoints the Chargee and any Receiver severally to be its attorneys in its name and on its behalf to:
    - 7.2.1 do all things which the Chargor may be required to do under this Charge;
    - 7.2.2 sign, execute, and deliver and otherwise perfect any security required to be executed pursuant to clause 7.1; and

- 7.2.3 sign, execute, deliver and complete any deeds, instruments or other documents and to do all acts and things which may be required to enable the Chargee or any Receiver to exercise their powers under this Charge, or to perfect or vest in the Chargee, its nominees or any purchaser, title to any Charged Assets or which they may deem expedient in connection with the getting in, disposal, or realisation of any Charged Assets or the exercise of any other power under this Charge.
- 7.3 Each attorney may appoint a substitute or delegate his authority. The Chargor ratifies and confirms (and agrees to ratify and confirm) anything which an attorney does under the power of attorney granted in this clause 7.
8. **ENFORCEMENT**
- At any time after a Default which has not been remedied or waived the Chargee may with or without further notice to the Chargor:
- 8.1 appoint an Administrator to the Company in accordance with the Insolvency Act;
- 8.2 appoint a Receiver to the Charged Assets, and
- 8.3 exercise in respect of the Charged Assets all or any of the powers and remedies given to mortgagees by the LPA, including the power to take possession of, receive the benefit of, or sell any of the Charged Assets.
9. **APPOINTMENT OF A RECEIVER**
- 9.1 An Administrator will have all the powers given to him under the Insolvency Act.
- 9.2 The Chargee may either under hand of any manager or by deed appoint any one or more than one person to act as Receiver of those Charged Assets specified in the appointment.
- 9.3 The Chargee may from time to time fix the remuneration of any Receiver on such basis as it shall determine. This may include a fixed fee or an hourly rate or a commission depending upon the work and responsibilities assumed by the Receiver and the basis of charging applied by his firm. Section 109 LPA shall be varied accordingly.
- 9.4 The Chargee may remove or replace any Receiver appointed by it.
- 9.5 The Chargee may extend a Receiver's appointment to include Charged Assets previously excluded from his appointment.
- 9.6 A Receiver will be the agent of the Chargor and the Chargor will be solely responsible for his acts, omissions, defaults and remuneration.
10. **POWERS ON ENFORCEMENT**
- 10.1 A Receiver may exercise in respect of the Charged Assets to which he is appointed:
- 10.1.1 the same powers to do, or to omit to do, in the name of and on behalf of the Chargor, anything which the Chargor itself could have done or omitted to do with the Charged Assets were they not the subject of this Charge and the Chargor were not in insolvency proceedings;
- 10.1.2 all or any powers given to receivers by the LPA but without any of the restrictions imposed upon the exercise of those powers by the LPA; and
- 10.1.3 notwithstanding that he is not an administrative receiver, all or any of the powers specified in schedule 1 Insolvency Act.
- 10.2 If more than one person is appointed to act as Receiver, each person may act severally, independently of any other, except to the extent that the Chargee states to the contrary in the appointment. References in this Charge to the Receiver are to each and all of them as appropriate.
- 10.3 If the Chargee enforces this Charge itself pursuant to clause 8.3 it will have the same powers as a Receiver in respect of those Charged Assets which are the subject of the enforcement.
- 10.4 Except to the extent provided by law, none of the powers described in this clause 9 will be affected by an insolvency event in relation to the Chargor.

**11. CHARGEES' POWERS AND PROTECTIONS**

- 11.1 The powers and remedies conferred on the Chargee as a mortgagee by the LPA shall not be subject to any of the restrictions imposed by the LPA upon the exercise of those powers and remedies including those imposed by sections 103 and 109 LPA.
- 11.2 The Chargee may grant or accept surrenders of leases at a premium or otherwise and grant agreements or options for the same on such terms as it shall consider expedient and without the need to observe sections 99 and 100 LPA.
- 11.3 The restrictions on the right of consolidating mortgages contained in section 93 LPA will not apply to this Charge.
- 11.4 Neither the Chargee nor any Receiver will be liable to account as mortgagee in possession of the Charged Assets or be liable for any loss upon realisation or for any neglect or default of any nature for which a mortgagee may be liable.
- 11.5 If the Chargee receives notice of any subsequent Security Interest affecting the Charged Assets then the Chargee may open a new account for the Chargor. If it does not open a new account, then, unless it notifies the Chargor otherwise, it shall be treated as if it had done so at the time when it received such notice. From that time onwards all payments received by the Chargee in or towards payment of the Secured Liabilities shall be credited (or be treated as having been credited) to the new account and will not reduce the amount then due from the Chargor to the Chargee.

**12. APPLICATION OF MONIES**

- 12.1 All money received by the Chargee or any Receiver under this Charge will be applied in the following order:
- 12.1.1 first, in or towards payment of liabilities having priority to the Secured Liabilities;
- 12.1.2 secondly, in or towards payment of all costs, charges and expenses incurred in or incidental to the exercise or performance (or attempted exercise or performance) by the Chargee of the powers or authorities conferred by or in any other way connected with this Charge;
- 12.1.3 thirdly, in or towards payment to the Receiver of his remuneration fixed in accordance with this Charge;
- 12.1.4 fourthly, in or towards payment to the Chargee of the Secured Liabilities in such order as the Chargee in its absolute discretion thinks fit;
- 12.1.5 fifthly, in payment to the Chargor or any other person entitled to the surplus.
- 12.2 Any surplus shall not carry interest. The Receiver or the Chargee may pay any surplus into any of the Chargor's bank accounts including an account opened specifically for that purpose. The Receiver and Chargee shall then have no further liability for any surplus.
- 12.3 The Chargee or the Receiver may credit any monies received upon realisation of the Charged Assets to a suspense account for so long and on whatever basis the Chargee or the Receiver may from time to time decide in order to preserve the Chargee's right to prove for the whole of its claim against the Chargor or any other person.
- 12.4 Subject to the rights of the holder of any prior ranking Permitted Security Interest or any landlord, any money received by the Chargor under any insurance of the Charged Assets will be applied at the discretion of the Chargee either in reducing the Secured Liabilities or towards making good the loss or damage for which the money became payable. Any money received by the Chargor under any insurance will be held on trust for the Chargee pending such application.

**13. DEALINGS WITH THE EQUIPMENT**

On entering into the possession of the Property, the Chargee or any Receiver shall (as regards the matters mentioned in this clause) become the agent of the Chargor with its authority and at its expense to remove, store, use, sell (on such terms and subject to such conditions as the Chargee and/or the Receiver sees fit) or otherwise deal with in such manner as the Chargee or the Receiver may determine any Equipment of the Chargor which the Chargor shall have



refused or failed to remove from the Property within seven days of being requested to do so by the Chargee or the Receiver. The Chargor shall keep the chargee indemnified against all costs, claims, and demands whatsoever in respect of the removal, storage, use, sale, disposal or other dealing with any such Equipment. The Chargee or the Receiver shall pay the net proceeds of sale (after deduction of the costs of removal, storage, sale or disposal) to the Chargor. Neither the Chargee nor any Receiver shall be liable to the Chargor for any act or omission by any person appointed to effect such sale or for any failure to obtain a proper price provided such appointment has been made by the Chargee or the Receiver in good faith and neither the Chargee nor any Receiver shall be liable for any damage caused to any such Equipment.

#### **14. PROTECTION OF THIRD PARTIES**

14.1 Any person dealing with the Chargee or a Receiver may assume, unless he has actual knowledge to the contrary that:

14.1.1 the Chargee or Receiver has the power to do the things which they purport to do, and

14.1.2 they are exercising their powers properly.

14.2 All the protections to purchasers by sections 104 and 107 LPA shall apply to any person purchasing from or dealing with any Receiver or the Chargee as if the Secured Liabilities had become due and the statutory power of sale and appointing a Receiver in relation to the Charged Assets had arisen on the date of this Charge.

#### **15. CONTINUING AND ADDITIONAL SECURITY**

15.1 This Charge is a continuing security. It secures the ultimate balance of the Secured Liabilities despite any interim settlement of account until a final discharge of this Charge is given by the Chargee to the Chargor.

15.2 The Chargee's rights under this Charge are in addition to any other rights it may have against the Chargor (or any other person in respect of the Secured Liabilities) under any other document, the general law or otherwise. The Chargee's rights will not merge with or limit those other rights or be limited by them.

15.3 The Chargee is not obliged to make any claim or demand on the Chargor or any other person or to enforce any guarantee, mortgage or other security now or in future held by it before enforcing this Charge and no action taken or omitted in connection with any such right or instrument shall discharge, reduce or affect the Chargor's liability to the Chargee. The Chargee does not have to account for any money or other asset received pursuant to any such right or instrument.

#### **16. EXPENSES AND INDEMNITIES**

16.1 The Chargor will on demand pay all professionals' fees (including VAT) and any other costs, charges or expenses (on a full indemnity basis) incurred by the Chargee and any Receiver in connection with the actual or attempted perfection, preservation, defence or enforcement of this Charge or the preservation or disposal of the Property/any Charged Assets or the exercise of any power under this Charge or any amendment, waiver, consent or release of this Charge.

16.2 The Chargor will on demand indemnify the Chargee and any Receiver and any of its and their officers and employees and any attorney, agent or other person appointed by the Chargee under this Charge (each an **Indemnified Party**) in respect of all costs, losses, actions, claims, expenses, demands or liabilities whether in contract, tort, or otherwise and whether arising at common law, in equity or by statute which may be incurred by, or made against any of them at any time relating to or arising directly or indirectly out of:

16.2.1 anything done or omitted to be done in the exercise or purported exercise of the powers contained in this Charge;

16.2.2 a claim of any kind (including one relating to the environment) made or asserted against any Indemnified Party which would not have arisen if this Charge had not been executed; or

16.2.3 any breach by the Chargor of any of its obligations under this Charge;

unless, in the case of clauses 16.2.1 and 16.2.2, it was caused by the negligence or wilful misconduct of the Indemnified Party.

- 16.3 Neither the Chargee nor any Receiver nor any officer nor employee of either of them shall in any way be liable or responsible to the Chargor for any loss or liability of any kind arising from any act or omission by it of any kind (whether as mortgagee in possession or otherwise) in relation to the Property/Charged Assets, except to the extent caused by its own negligence or wilful misconduct.

## **17. PAYMENTS**

- 17.1 The Chargee or any Receiver may convert any money received under this Charge (including the proceeds of any previous conversion) into any currency the Chargee or Receiver may decide in order to discharge the Secured Liabilities. Any conversion shall be effected at the then prevailing spot selling rate of exchange of the Chargee's bankers for the other currency against the existing currency.
- 17.2 If the amount of the currency so converted is less than the amount of the Secured Liability concerned, the Chargor will indemnify the Chargee in respect of the shortfall.
- 17.3 All amounts payable by the Chargor under this Charge will be paid in full without set off or other deduction.
- 17.4 The Chargee may at any time without notice set off against any Secured Liabilities any amount owed by it to the Chargor. The Chargee may effect such set off by transferring all or any part of any balance standing to the credit of any of the Chargor's accounts with it to any other account or by combining or consolidating accounts.

## **18. DISCHARGE**

- 18.1 This Charge incorporates the provisions of clause 16 of the Contract as if the same were set out in this Charge in full.
- 18.2 If any payment by the Chargor or any other person or any release given by the Chargee is avoided or adjusted pursuant to the Insolvency Act:
- 18.2.1 the Chargor's liability for the Secured Liabilities will continue as if the payment, release, avoidance or adjustment had not occurred; and
- 18.2.2 the Chargee will be entitled to recover the value or amount of that payment or security from the Chargor as if the payment, release, avoidance or adjustment had not occurred.

## **19. STATUTORY AGREEMENTS AND DEVELOPMENT**

- 19.1 The Chargee shall if so required by the Chargor or the appropriate authority or undertaker or utility company and without fine or premium but otherwise at the proper cost of the Chargor consent to any agreement under Section 38 Highways Act 1980 and/or Section 104 Water Industry Act 1991 to be entered into by the Chargor in relation to the Property in such form as the appropriate authority or utility company may require including (inter alia) being a party to any such agreement to consent as mortgagee to its terms Provided That the Chargee has no obligations in such deed(s) and it enters into such as Chargee of the Charged Assets only with the Chargor providing a full indemnity to the Chargee in doing so.
- 19.2 For the avoidance of doubt nothing in this Charge shall prevent or restrict the Chargor from developing the Property for the purpose of residential development in accordance with the Satisfactory Planning Permission (as that term is defined in the Contract) and/or from using the Property for the purpose of a site compound or sales office or for contractors' parking or for any other use incidental to such development.

## **20. TRANSFERS AND DISCLOSURES**

- 20.1 The Chargee may assign, transfer, delegate or make any declaration of trust of any of its rights under this Charge.
- 20.2 The Chargor may not assign, transfer, delegate or make any declaration of trust of any of its rights or obligations under this Charge.

- 20.3 The Chargee may disclose any information about the Chargor and any member of its group and any other person connected or associated with it to any member of the Chargee's group and/or to any person to whom it is proposing to transfer or assign or has transferred or assigned this Charge.

**21. MISCELLANEOUS**

- 21.1 No delay or failure by the Chargee to exercise any right or remedy under this Charge shall impair or operate as a waiver of that right or remedy. Any single, partial or defective exercise of any such power, right or remedy shall not prevent the further exercise of that or any other right or remedy.
- 21.2 Any waiver, consent or approval given by the Chargee of or under this Charge will only be effective if given in writing. Such waiver, consent or approval shall then only apply for the purpose stated and be subject to any written terms and conditions imposed by the Chargee.
- 21.3 If at any time any one or more of the provisions of this Charge is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction then neither the legality, validity or enforceability of the remaining provisions of this Charge nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall be in any way affected or impaired as a result.
- 21.4 Each Indemnified Party may enforce the terms of this Charge in accordance with the Contracts (Rights of Third Parties) Act 1999. Apart from the Indemnified Parties and the parties to this Charge, no other person may enforce its terms.
- 21.5 The Chargee may grant releases of or waivers under this Charge and it and the Chargor may agree variations to its terms without either notifying the Indemnified Parties or obtaining their consent.

**22. SERVICE OF NOTICES AND PROCESS**

- 22.1 Any notice, request, demand, consent, approval, notification, instruction, proceedings or other communication from the Chargee to the Chargor under this Charge shall be in writing and may be sent by first class post or courier. Any such communication shall be addressed to the Chargor at its address given in this Charge, its registered office or the address last known to the Chargee at which it carried on business and shall be treated as served:
- 22.1.1 if delivered by courier or personally during business hours on a Working Day: on receipt; or
- 22.1.2 if delivered by courier or personally outside business hours or on a day which is not a Working Day: on the first Working Day after receipt; or
- 22.1.3 if posted: 48 hours after posting or upon receipt (whichever is earlier).
- 22.2 Any notice, request or other communication under this Charge from the Chargor to the Chargee must be in writing and sent by first class post to the Chargee's registered office or such other address as the Chargee advises the Chargor in writing for this purpose and will be treated as served:
- 22.2.1 if it is received during business hours on a Working Day: on receipt; or
- 22.2.2 if it is received outside business hours or on a day which is not a Working Day: on the first Working Day after receipt; or
- 22.2.3 if posted: 48 hours after posting or upon receipt (whichever is earlier).

**23. JURISDICTION**

This Charge shall be governed by and construed in accordance with the laws of England. The Chargor accepts the non-exclusive jurisdiction of the English Courts in connection with any matter arising under this Charge.

**24. CHANGE TO PROPERTY**

- 24.1 In this clause 24 the following definition shall apply

**Reserved Matters Approval**

the Chargor's reserved matters planning permission for its development of the Site;

**Site**

the land transferred pursuant to the transfer referred to at Schedule 1.

- 24.2 The Chargor and the Chargee acknowledge that this Legal Charge has been granted prior to the Chargor securing Reserved Matters Approval and that the exact location of Units on the Site is not yet certain.
- 24.3 The Chargor and the Chargee covenant with one another to co-operate and act in good faith and use their respective reasonable endeavours to agree any variation to the Property which is required so as to facilitate the development and sale of the Units at the Site by the Chargor provided always that:
- 24.3.1 the Chargee shall not be obliged to agree any variation to the extent of the Property where there is an adverse impact on the security provided by this Legal Charge from time to time; and
- 24.3.2 the Chargor shall pay the Chargee's proper and reasonable legal costs in respect of such variation where it is requested by the Chargor following the date that is 2 months after the grant of the Reserved Matters Approval.
- 24.4 The obligations in this clause shall include obligations to sign any necessary HM Land Registry and or Companies House forms to give effect to any variation to the Property agreed pursuant to this clause.

**IN WITNESS** whereof this Charge has been executed as a Deed by the Chargor on the date inserted at the beginning of this Charge.

6/20/21

**SCHEDULE 1**  
**Registered Land**

**Description**

The parts of Phase 2a, Simpson Park, Harworth, comprising the 5 Units shown edged and hatched blue and edged and hatched green on the Plan and which form part of the land comprised in a transfer dated 21 December 2021 made between 1) the Chargee and 2) the Chargor and which as at the date of this Charge was registered under and formed part of title number NT381564.

**THE CHARGOR**

**EXECUTED as a DEED by**

**MILLER HOMES LIMITED**

acting by a director in the presence of:

Signature of Witness

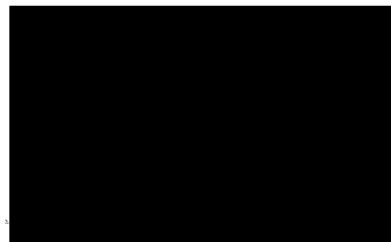
Name in block capitals

Address

**THE CHARGE**

**Executed as a deed by HARWORTH  
ESTATES INVESTMENTS LIMITED**

acting by [a director] [its attorney  
under a power of attorney dated  
1 September 2020]



Name: JONATHAN HAIGH

[(as attorney of Harworth Estates Investments

Limited)]

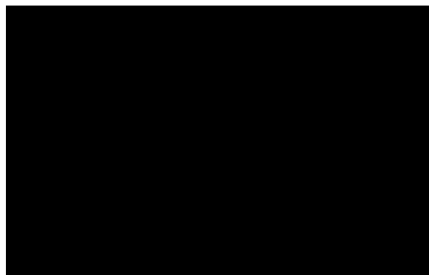
in the presence of a witness:

Witness signature



Witness name: HARMONY OLDFIELD

Witness address:



**APPENDIX 1**  
**Plan**

