



Registration of a Charge

Company name: **HIGHBROOK HOMES (KIRKSTONE) LIMITED**

Company number: **09916778**



X98DGXMR

Received for Electronic Filing: **01/07/2020**

Details of Charge

Date of creation: **24/06/2020**

Charge code: **0991 6778 0002**

Persons entitled: **HOMES AND COMMUNITIES AGENCY (TRADING AS HOMES ENGLAND)**

Brief description:

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by: **WALKER MORRIS LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 9916778

Charge code: 0991 6778 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 24th June 2020 and created by Highbrook Homes (Kirkstone) Limited was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 1st July 2020 .

Given at Companies House, Cardiff on 2nd July 2020

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 24 JUNE 2020

Highbrook Homes (Kirkstone) Limited

(as Chargor)

and

Homes and Communities Agency (trading as Homes England)

(as Homes England)

Charge Over Bank Account

I/We certify that, save for material redacted pursuant to S.859G of the Companies Act 2006, this copy instrument is a correct copy of the original instrument.

Walker Morris LLP

WALKER MORRIS LLP

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Deed

dated 24 JUNE 2020

Parties

- (1) **Highbrook Homes (Kirkstone) Limited** a company incorporated in England and Wales with registration number 09916778 whose registered office is at Stramongate House, 53 Stramongate, Kendal, Cumbria, England, LA9 4BH (the **Chargor**); and
- (2) **Homes and Communities Agency** (trading as Home England) of One Friargate, Coventry CV1 2GN (**Homes England**).

Introduction

- (A) The Agency has agreed to loan facilities available to the Chargor in accordance with the terms of the Loan Facility Agreement.
- (B) It is a condition to the continuance of the granting of the loan facilities under the Loan Facility Agreement that the Chargor enters into this deed.
- (C) It is intended by the parties to this document that it will take effect as a deed despite the fact that a party may only execute this document under hand.

Agreed terms

1 Definitions and interpretation

1.1 Definitions

In this deed unless the context otherwise requires:

Account means the account specified in schedule 1 (as such accounts may be re-designated, re-numbered or replaced from time to time);

Account Bank means National Westminster Bank PLC acting through its branch at 1000 Cathedral Square, Cathedral Hill, Guildford, Surrey GU2 7YL (sort code [REDACTED]) or such other bank, building society or financial institution acting through a branch in England as may be agreed between the Chargor and Homes England from time to time;

Account Interest means any interest earned on monies held in the Account(s);

Business Day means any day other than a Saturday, Sunday or statutory bank holiday in England;

Charged Assets means all the assets, rights, property and undertaking of the Chargor from time to time charged, assigned or agreed to be assigned to, Homes England by the Chargor under this deed;

Collateral Rights means all rights, powers and remedies of Homes England provided by or pursuant to this deed or by law;

Encumbrance means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, standard security, assignation in security, bond and floating charge or other Encumbrance of any kind, and any right of set-off, assignment, trust, flawed asset or other agreement or arrangement whatsoever for the purpose of providing security or having a similar effect to the provision of security;

Event of Default has the meaning given to it in the Loan Facility Agreement;

Finance Document means a "Finance Document" as defined in the Loan Facility Agreement;

Loan Facility Agreement means the facility agreement dated 27 March 2019 between, the Chargor and Homes England under which Homes England has agreed to make available the loan facilities to the Chargor;

Programme Document means:

- (a) the Loan Facility Agreement; and
- (b) each Finance Document;

Receiver means a receiver or receiver and manager of the whole or any part of the Charged Assets;

Secured Liabilities means all the money and liabilities now or hereafter due owing or incurred to Homes England by the Chargor under the terms of the Programme Documents (including, without limitation, under any amendments, supplements or restatements of any of the Programme 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 the Chargor 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;

Security means the security constituted by or pursuant to this deed; and

Tax includes any form of taxation, levy, duty, charge, contribution or impost of whatever nature (including any applicable fine, penalty, surcharge or interest) imposed by any government authority, body or official (whether central, local, state or federal) anywhere in the world competent to impose any of them.

1.2 Interpretation

In this deed references to:

the **Chargor** or **Homes England** where the context admits include a reference to its respective successors, assigns and/or transferees;

persons include bodies corporate, unincorporated associations and partnerships in each case whether or not having a separate legal personality;

words importing one gender will be treated as importing any gender, words importing individuals will be treated as importing corporations and vice versa, words importing the

singular will be treated as importing the plural and vice versa and words importing the whole will be treated as including a reference to any part, except where the context specifically requires otherwise;

this deed or to a provision of this deed, or any other document are references to it as amended, restated, supplemented or novated from time to time;

the words include or including (or any similar term) are not to be construed as implying any limitation and general words introduced by the word "other" (or any similar term) will not be given a restrictive meaning by reason of the fact that they are preceded or followed by words indicating a particular class of acts, matters or things;

statutory provisions, enactments or EC Directives will include references to any amendment, modification, extension, consolidation, replacement or re-enactment of any such provision, enactment or EC Directive, whether before or after the date of this deed;

this deed is a Finance Document for the purposes of the Loan Facility Agreement.

1.3 Loan Facility Agreement

Words and expressions defined in the Loan Facility Agreement will have the same meanings when used in this deed, unless the context otherwise requires. In the case of inconsistency definitions set out in the Loan Facility Agreement will prevail.

1.4 Headings

The clause, paragraph and schedule headings and the table of contents are inserted for ease of reference only and will not affect construction.

1.5 Third party rights

A person who is not a party to this deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

2 Payment of Secured Liabilities

2.1 Covenant to pay

The Chargor 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.

2.2 Interest on demand

If the Chargor fails to pay any sum on the due date for payment of that sum the Chargor will pay interest on such sum (before and after any judgement) from the date of demand until the date of payment calculated on a daily basis at the rate referred to in the Loan Facility Agreement at such intervals as Homes England shall determine. Such interest will be calculated on the basis of a 360 day year according to the usual practice of Homes England.

3 Security

The Chargor hereby charges in favour of Homes England with full title guarantee for the payment and discharge of the Secured Liabilities by way of first fixed charge all the Chargor's right, title and interest from time to time in or to all the amounts standing to the credit from time to time of any Account in its name with Homes England or any other bank or financial institution, and the debts represented thereby together with all entitlements to interest and other rights and benefits accruing to or arising in connection therewith.

4 Further assurance

4.1 Further assurance: general

The Chargor will, at its own expense, promptly do all such acts or execute all such documents (including assignments, transfers, charges, notices and instructions) as Homes England may specify (and in such form as Homes England may require in favour of Homes England or its nominee(s)):

- 4.1.1 to perfect or protect the security created or intended to be created in respect of the Charged Assets (which may include the execution by the Chargor of a fixed charge or assignment over all or any of the assets constituting, or intended to constitute, Charged Assets) or for the exercise of the Collateral Rights; and/or
- 4.1.2 to facilitate the realisation of the Charged Assets; and/or
- 4.1.3 to obtain all necessary consents to procure the registration of this deed at Companies House.

4.2 Consents

The Chargor will obtain (in form and content satisfactory to Homes England) prior to or contemporaneously with completion of this deed any consents necessary to enable the relevant assets of the Chargor purported to be so charged or assigned to be the subject of an effective fixed charge or assignment pursuant to clause 3 and, immediately upon obtaining any such consent, the asset concerned shall become subject to such security and the Chargor shall promptly deliver a copy of each consent to Homes England.

4.3 Preservation of rights

Neither the obligations of the Chargor contained in this deed nor the rights, powers and remedies conferred in respect of the Chargor upon Homes England by the Programme Documents or by law shall be discharged, impaired or otherwise affected by:

- 4.3.1 the winding-up, dissolution, administration or reorganisation of the Chargor or any other person or any change in its status, function, control or ownership;
- 4.3.2 any of the obligations of the Chargor or any other person under the Programme Documents or under any other security relating to the Programme Documents being or becoming illegal, invalid, unenforceable or ineffective in any respect;
- 4.3.3 time or other indulgence being granted or agreed to be granted to the Chargor or any other person in respect of its obligations under the Programme Documents or under any such other security;

- 4.3.4 any amendment to, or any variation, waiver or release of any obligation of the Chargor or any other person under the Programme Documents or under any such other security;
- 4.3.5 any failure to take, or fully to take, any security contemplated by the Programme Documents or otherwise agreed to be taken in respect of the Chargor's or any other person's obligations under the Programme Documents;
- 4.3.6 any failure to realise or fully to realise the value of, or any release, discharge, exchange or substitution of, any security taken or agreed to be taken in respect of the Chargor's or any other person's obligations under the Programme Documents; or
- 4.3.7 any other act, event or omission which, but for this clause 4.3, might operate to discharge, impair or otherwise affect any of the obligations of the Chargor or any other person or any of the rights, powers or remedies conferred upon Homes England by the Programme Documents or by law.

5 Negative pledge and disposal restrictions

5.1 Negative pledge

Save as permitted by the Loan Facility Agreement the Chargor will not, without the prior written consent of Homes England, create, or permit to arise, or continue (in favour of any person other than Homes England) any Encumbrance over the Charged Assets now or in the future, or agree or attempt to do so, or increase or extend any liability of the Chargor secured on any of the Charged Assets.

5.2 Disposal of fixed charge assets

The Chargor will not, without the prior written consent of Homes England (whether by a single transaction or number of related or unrelated transactions, and whether at the same time or over a period of time) sell, transfer, assign or otherwise dispose of the Charged Assets charged or assigned by clause 3 or any interests therein or the right to receive or to be paid the proceeds arising from their disposal or agree or attempt to do so.

6 Representations and warranties

6.1 Duration and to whom made

The representations and warranties made by the Chargor in this clause 6 will remain in force for (and will be deemed repeated on each day falling during) the period for which the Secured Liabilities are outstanding and are given to Homes England.

6.2 Matters represented

Except as disclosed in writing to Homes England on or prior to the date of this deed:

- 6.2.1 the Chargor is the legal and beneficial owner of the Charged Assets;
- 6.2.2 there are no agreements, stipulations, reservations, conditions, interests, rights or other matters whatsoever affecting the Charged Assets which materially adversely affect or are likely to materially adversely affect the value of the

Charged Assets or the ability of the Chargor to perform its obligations owed to Homes England; and

- 6.2.3 the Chargor has received no notice of any adverse claims by any person in respect of the ownership of the Charged Assets or any interest therein, nor has any acknowledgement been given to any person in respect thereof which has not been disclosed to Homes England.

6.3 Security created

Subject to registration at Companies House, or the Financial Services Authority as appropriate this deed creates those Encumbrances it purports to create, ranking as set out above and is not liable to be avoided or otherwise set aside on the liquidation or administration of the Chargor or otherwise.

7 General undertakings

7.1 Not to jeopardise the Security

The Chargor will not do or allow to be done anything which could reasonably be expected materially to decrease the value of the Security to Homes England.

7.2 Information and access

The Chargor will at the request of Homes England, promptly provide Homes England with such information as Homes England may reasonably require about the Charged Assets and the Chargor's compliance with the terms of this deed and the Chargor will permit Homes England, its representatives and professional advisers free access at all reasonable times and on reasonable notice to inspect and take copies and extracts from such books, accounts and records of the Chargor as relate to the Charged Assets.

7.3 Law

The Chargor will comply with all applicable laws and regulations affecting the Charged Assets.

8 The Accounts

8.1 Account

The Chargor will open and maintain the relevant Account(s) with an Account Bank.

8.2 Notice

The Chargor will promptly give notice to the bank or financial institution with which the relevant Account has been opened substantially in the form set out in of schedule 2 Part I and procure that the bank or financial institution acknowledges that notice substantially in the form set out in schedule 2 Part II. The Chargor will immediately on receipt of such acknowledgement of notice provide a copy to Homes England.

8.3 Withdrawal

The Chargor will not withdraw all or any monies (including Account Interest) standing to the credit of any Account without Homes England's prior written consent substantially in the form set out in the Annexure at schedule 2 Part I.

8.4 Statements

The Chargor will provide to Homes England from time to time at the request of Homes England full statements and particulars of any Account and advise Homes England prior to any change to it.

9 Deposit of title deeds

The Chargor will deposit all certificates and documents of title relating to the Charged Assets with Homes England and such other documents relating to the Charged Assets as Homes England may require from time to time.

10 Power to remedy

In the case of default by the Chargor in observing or performing any of the covenants or stipulations affecting the Charged Assets, the Chargor will permit Homes England or its agents to do such things or pay all such costs, charges and expenses as Homes England may consider are necessary or desirable to prevent or remedy any breach of covenant or stipulation or to comply with or object to any notice served on the Chargor in respect of the Charged Assets. The Chargor will indemnify and keep Homes England indemnified against all losses, costs, charges and expenses reasonably incurred in connection with the exercise of the powers contained in this clause 10.

11 Enforcement of Security

11.1 Enforcement

At any time after the security created by or pursuant to this deed becomes enforceable, Homes England may, without notice to the Chargor or prior authorisation from any court, in its absolute discretion:

11.1.1 enforce all or any part of that security (at the times, in the manner and on the terms it thinks fit) and take possession of and hold or dispose of all or any part of the Charged Assets; and/or

11.1.2 whether or not it has appointed a Receiver, exercise all or any of the powers, authorities and discretions conferred by the Law of Property Act 1925 (as varied or extended by this deed) on mortgagees and by this deed on any Receiver or otherwise conferred by law on mortgagees or Receivers.

11.2 Possession

If Homes England, any Receiver or any delegate of any such person will take possession of the Charged Assets, it or he may at any time relinquish such possession.

11.3 No liability as mortgagee in possession

Homes England will not be liable to account as a mortgagee in possession in respect of all or any part of the Charged Assets or be liable for any loss upon realisation or for any neglect,

default or omission in connection with the Charged Assets to which a mortgagee in possession might otherwise be liable.

11.4 Power of Sale

The power of sale under this deed may be exercised notwithstanding that Homes England or the Receiver may have previously waived or refrained from exercising that power; and no demand or notice of sale made or given under this deed will be waived by the acceptance of any payment on account of the Secured Liabilities, or by any negotiations between Homes England and the Chargor or any other party who is acting as agent for the Chargor or on behalf of it.

11.5 Receiver's liability

All the provisions of clause 11.3 will apply, mutatis mutandis, in respect of the liability of any Receiver and delegate of the Receiver or Homes England or any officer, employee or agent of Homes England, any Receiver or any delegate.

12 Extension and variation of the Law of Property Act 1925

12.1 Extension of powers

The power of sale or other disposal conferred on Homes England and on any Receiver by this deed will operate as a variation and extension of the statutory power of sale under Section 101 of the Law of Property Act 1925 and such power will arise (and the Secured Liabilities will be deemed due and payable for that purpose) on execution of this deed.

12.2 Restrictions

The restrictions contained in Sections 93 and 103 of the Law of Property Act 1925 will not apply to this deed or to the exercise by Homes England of its right to consolidate all or any of the security created by or pursuant to this deed with any other security in existence at any time or to its power of sale, which powers may be exercised by Homes England without notice to the Chargor.

12.3 Non-application

The following provisions of the Law of Property (Miscellaneous Provisions) Act 1994 will not apply to clause 3 being:

12.3.1 the words 'other than any charges, encumbrances or rights which that person does not and would not reasonably be expected to know about' in Section 3(1);

12.3.2 the words 'except to the extent that' and all words thereafter in Section 3(2); and

12.3.3 Section 6(2).

12.4 Application

Section 109(8) of the Law of Property Act 1925 will not apply, and all monies received by Homes England or any Receiver in the exercise of any powers conferred by this deed will be applied in the following order:

- 12.4.1 in the payment of:
- (a) all costs, charges, liabilities and expenses incurred by Homes England or any Receiver in the exercise of those powers or incidental to any Receiver's appointment, together with interest at the applicable rate set out in clause 2.2 (both before and after judgement) from the date those amounts became due until the date they are irrevocably paid in full; and
 - (b) any Receiver's remuneration;
- 12.4.2 in or towards discharge of all liabilities having priority to the Secured Liabilities;
- 12.4.3 in or towards the satisfaction of the Secured Liabilities in such order as Homes England determines; and
- 12.4.4 in the payment of any surplus to the Chargor or other person entitled to it.
- 12.5 The Chargor will have no rights in respect of the application by Homes England of any sums received, recovered or realised by Homes England under this deed.
- 13 **Appointment of Receiver**
- 13.1 **Appointment and removal**
- At any time after the security created by or pursuant to this deed becomes enforceable, Homes England may by deed or otherwise (acting through an authorised officer of Homes England), without prior notice to the Chargor:
- 13.1.1 appoint one or more persons to be a Receiver of the whole or any part of the Charged Assets;
 - 13.1.2 remove (so far as it is lawfully able) any Receiver so appointed; and
 - 13.1.3 appoint another person(s) as an additional or replacement Receiver(s).
- 13.2 **Capacity of Receivers**
- Each person appointed to be a Receiver under this deed will be:
- 13.2.1 entitled to act individually or together with any other person appointed or substituted as Receiver;
 - 13.2.2 for all purposes will be deemed to be the agent of the Chargor which will be solely responsible for his acts, defaults and liabilities and for the payment of his remuneration and no Receiver will at any time act as agent for Homes England; and
 - 13.2.3 entitled to remuneration for his services at a rate to be fixed by Homes England from time to time (without being limited to the maximum rate specified by the Law of Property Act 1925).
- 13.3 **Statutory powers of appointment**

The powers of appointment of a Receiver will be in addition to all statutory and other powers of appointment of Homes England under the Law of Property Act 1925 (as extended by this deed) or otherwise and such powers will remain exercisable from time to time by Homes England in respect of any part of the Charged Assets.

14 Powers of Receiver

14.1 Powers

Any receivers appointed by Homes England will (in addition to all powers conferred on him by law) have the following powers exercisable upon such terms and conditions as he thinks fit:

- 14.1.1 to take possession of and generally to manage the Charged Assets;
- 14.1.2 to enter into, carry into effect, complete, deliver, perform, repudiate, rescind or vary any deed, contract, transaction or arrangement in relation to the Charged Assets to which the Chargor is or is to be a party;
- 14.1.3 to carry into effect and complete any transaction in relation to the Charged Assets by executing deeds or documents in the name of or on behalf of the Chargor;
- 14.1.4 to engage, rely on the advice of and discharge advisers, consultants, officers, managers, agents and others;
- 14.1.5 to bring, continue or defend any claim, dispute, action or legal proceedings and enter into any arrangement or compromise in relation to the Charged Assets;
- 14.1.6 to redeem any security and to borrow or raise any money and secure the payment of any money in priority to the Chargor's Liabilities for the purposes of the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise;
- 14.1.7 to make any elections for value added tax purposes in relation to the Charged Assets; and
- 14.1.8 to do any other acts which he may consider to be incidental or conducive to any of his powers or to the realisation of the Charged Assets.

15 Protection of purchasers

15.1 Consideration

The receipt of Homes England or any Receiver will be conclusive discharge to a purchaser and, in making any sale or disposal of any of the Charged Assets or making any acquisition, Homes England or any Receiver may do so for such consideration, in such manner and on such terms as it thinks fit.

15.2 Protection of purchaser

No purchaser or other person dealing with Homes England or any Receiver will be bound to inquire whether the right of Homes England or such Receiver to exercise any of its powers

has arisen or become exercisable or be concerned with any property or regularity on the part of Homes England or such Receiver in such dealings.

16 Power of attorney

16.1 Appointment and powers

The Chargor by way of security irrevocably appoints Homes England and any Receiver severally to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things which:

16.1.1 the Chargor ought to have done by this deed (including the execution and delivery of any deeds, charges, assignments or other security and any transfers of the Charged Assets);

16.1.2 enable Homes England and any Receiver to exercise, or delegate the exercise of, any of the rights, powers and authorities conferred on them by or pursuant to this deed or by law (including the exercise of any right of a legal or beneficial owner of the Charged Assets);

16.2 Ratification

The Chargor will ratify and confirm all things lawfully done and all documents executed by any attorney in the exercise or purported exercise of all or any of his powers.

17 Effectiveness of Security

17.1 Continuing security

The security created by or pursuant to this deed will remain in full force and effect as a continuing security for the Secured Liabilities unless and until discharged by Homes England.

17.2 Cumulative rights

The security created by or pursuant to this deed and the Collateral Rights will be cumulative, in addition to and independent of every other security which Homes England may at any time hold for the Secured Liabilities or any other obligations or any rights, powers and remedies provided by law. No prior security held by Homes England over the whole or any part of the Charged Assets will merge into the security constituted by this deed.

17.3 No prejudice

Neither the security or the Collateral Rights will be prejudiced by any time or indulgence granted to the Chargor or any other person or by any other thing which might otherwise prejudice the security or any Collateral Right.

17.4 Remedies and waivers

No failure on the part of Homes England to exercise, or any delay on its part in exercising, any Collateral Right will operate as a waiver thereof, nor will any single or partial exercise of any Collateral Right preclude any further or other exercise of that or any other Collateral Right.

17.5 No liability

None of Homes England, its nominee(s) or any Receiver will be liable by reason of:

17.5.1 taking any action permitted by this deed; or

17.5.2 any neglect or default in connection with the Charged Assets; or

17.5.3 taking possession of or realising all or any part of the Charged Assets,

except in the case of negligence or wilful default or fraud upon its part.

17.6 Partial invalidity

If, at any time, any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this deed nor of such provision under the laws of any other jurisdiction will in any way be affected or impaired thereby and, if any part of the security intended to be created by or pursuant to this deed is invalid, unenforceable or ineffective for any reason, that will not affect or impair any other part of the security.

17.7 Other security

Homes England will not be obliged to resort to any guarantees, indemnities, Encumbrances or other means of payment now or hereafter held by or available to it before enforcing this deed and no action taken or omitted by Homes England in connection with any such guarantees, indemnities, Encumbrance or other means of payment will discharge, reduce, prejudice or affect the liability of the Chargor or the Secured Liabilities nor will Homes England be obliged to account for any money or other property received or recovered in consequence of any enforcement or realisation of any such guarantees, indemnities, Encumbrances or other means of payment.

17.8 Variation

No variation of the terms of this deed will be valid unless it is in writing signed by the Chargor and confirmed in writing by Homes England.

18 Release of Security

18.1 Redemption of security

Upon the Secured Liabilities being discharged in full and Homes England not being under any further actual or contingent obligation to make advances or provide other financial accommodation to the Chargor, Homes England will, at the request and cost of the Chargor, release and cancel the security constituted by this deed and procure the reassignment to the Chargor of the property and assets assigned to Homes England pursuant to this deed, in each case subject to clause 18.2 and without recourse to, or any representation or warranty by, Homes England or any of its nominees.

18.2 Avoidance of payments

If Homes England considers that any amount paid or credited to it is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws the

liability of the Chargor under this deed and the security constituted hereby will continue and such amount shall not be considered to have been irrevocably paid.

18.3 Retention of security

Where Homes England has reasonable cause to be concerned that the Chargor is or may become insolvent, Homes England may retain this deed, the Security and all documents of title, certificates and other documents relating to or evidencing ownership of all or any part of the Charged Assets.

19 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 Assets or any assignment or transfer of the Charged Assets which is prohibited by the terms of this deed, all payments thereafter by or on behalf of the Chargor to Homes England will be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities as at the time when Homes England received such notice.

20 Assignment

20.1 Right of Agency to assign

Homes England may at any time assign or otherwise transfer all or any part of its rights under this deed in accordance with and subject to the Loan Facility Agreement.

20.2 Restriction on Chargor

The Chargor may not assign or transfer any of its rights or obligations under this deed.

20.3 Confidentiality

Homes England may give such information relating to the Chargor and the Chargor's Liabilities as it thinks fit to any person proposing to take an assignment and/or transfer from Homes England and/or to enter into contractual relations with Homes England with respect to this deed.

21 Expenses, stamp taxes and indemnity

21.1 Expenses

The Chargor will, from time to time on demand of Homes England, reimburse Homes England on a full indemnity basis for all the costs and expenses (including legal fees) together with any VAT thereon properly incurred by it or by any Receiver in connection with:

- 21.1.1 the negotiation, preparation and execution of this deed and the completion of the transactions and perfection of the security contemplated in this deed; or
- 21.1.2 the variation or amendment of, or exercise, preservation and/or enforcement of any of the Collateral Rights or the security contemplated by this deed or any proceedings instituted by or against Homes England or any Receiver as a consequence of taking or holding the security or of enforcing the Collateral Rights,

and such expenses will carry interest until so reimbursed at the rate referred to in clause 2.2.

21.2 Stamp taxes

The Chargor will pay all stamp, stamp duty land tax, registration and other taxes to which this deed, the security contemplated in this deed or any judgement given in connection with it is or at any time may be subject and will, from time to time, indemnify Homes England on demand against any liabilities, costs, claims and expenses resulting from any failure to pay or delay in paying any such tax.

21.3 Indemnity

The Chargor will, notwithstanding any release or discharge of all or any part of the Security:

21.3.1 be liable for and will indemnify Homes England in full against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of personal injury to or death of any person whomsoever or loss of or damage to property whether belonging to Homes England or otherwise or any claim by any third party arising out of or in the course of or caused or contributed to by the Chargor and/or the performance or non performance or delay in performance by the Chargor of its obligations under this deed except to the extent that the same is due to any act or neglect of Homes England; and

21.3.2 be liable for and shall indemnify Homes England against any expense, liability, loss, claim or proceedings arising directly or indirectly from or in connect with any breach of the terms of this Agreement by or otherwise through the default or negligence of the Chargor.

22 Payments free of deduction

22.1 All payments by the Chargor under or in connection with this deed shall be made without set-off or counterclaim, free and clear of and without any deduction or withholding, including, without limitation, for or on account of all taxes except for taxes which must be deducted by law.

22.2 If the Chargor is required by law to make any deduction or withholding the Chargor shall:

22.2.1 ensure that the deduction or withholding does not exceed the minimum amount legally required;

22.2.2 forthwith pay to Homes England such additional amount as may be determined by Homes England to be necessary to ensure that after making any required deduction or withholding Homes England receives and retains a net amount equal to the full amount which would have been received had no deduction or withholding been required;

22.2.3 pay to the applicable taxation or other authorities within the period for payment permitted by law the full amount of the deduction or withholding; and

- 22.2.4 supply to Homes England, within the period for the payment permitted by law, an official receipt of the applicable taxation or other authorities for all amounts deducted or withheld.
- 22.3 Without prejudice to any other provisions of this deed, if:
- 22.3.1 Homes England is required by law to make any payment on account of taxes (other than taxes on its overall net income) on or in relation to any sum received or receivable by Homes England under or pursuant to this deed; or
- 22.3.2 any liability in respect of any such payment is imposed, levied or assessed against Homes England,
- the Chargor shall on demand by Homes England indemnify Homes England against such payment or liability together with any interest, penalties and expenses payable or incurred in connection with it.
-
- 23 **Discretion and delegation**
- 23.1 **Discretion**
- Any liberty or power which may be exercised or any determination which may be made hereunder by Homes England or any Receiver may, be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.
- 23.2 **Delegation**
- Each of Homes England and any Receiver will have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this deed (including the power of attorney) on such terms and conditions as it sees fit which delegation may include power to sub-delegate and will not preclude either the subsequent exercise of such power, authority or discretion by Homes England or the Receiver itself or any subsequent delegation or revocation thereof.
- 24 **Perpetuity period**
- The perpetuity period under the rule against perpetuities, if applicable to this deed, will be the period of 125 years from the date of this deed.
- 25 **Counterparts**
- This deed may be executed in any number of counterparts and each counterpart will when executed be an original of this deed and all counterparts together will constitute one instrument.
- 26 **Constitutive documents**
- The Chargor hereby certifies that its creation of this deed in favour of Homes England does not contravene any of the provisions of the Companies Act 2006 or its memorandum and articles of association or rules or, in the case of a limited liability partnership or limited partnership, the partnership deed constituting the Chargor.

27 Reorganisation

This deed will remain binding on the Chargor notwithstanding any change in the constitution of Homes England or its absorption by, or amalgamation with, or the acquisition of all or part of its undertaking by, any other person, or any reconstruction or reorganisation of any kind. The security granted by this deed will remain valid and effective in all respects in favour of Homes England and for any assignee, transferee or other successor in title of Homes England.

28 Set-off

The Agency may set off any obligation due from the Chargor under this deed against any obligation owed by Homes England to the Chargor (whether actual or contingent, present or future), regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, Homes England may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

29 Payment of monies

29.1 Date for payment

Where neither the Facility Agreement nor this deed specified the due date for payment of any monies owed by the Chargor to Homes England such monies will be due and payable to Homes England by the Chargor on demand.

29.2 Certificates

A certificate signed by an official of Homes England as to the amount due or owing from the Chargor will be conclusive evidence against the Chargor except in the case of manifest error or any question of law.

30 Communication

30.1 Written

Any communication to be given in connection with this deed will be in writing.

30.2 Addresses

Any communication will either be delivered by hand or sent by first class prepaid post or fax to Homes England or the Chargor at its address or fax number shown on page 1 unless it has communicated another address or fax number to the other in which case it must be sent to the last address or fax number so communicated.

30.3 Communication

30.3.1 Any notice to be given hereunder shall be in writing and shall be sufficiently served if delivered by hand and receipted for by the recipient or sent by the Recorded Delivery Service addressed in the case of any party to the other party's registered office as set out at the beginning of this deed or to such other addresses a party may from time to time notify to the other in writing provided that such other address is within England and Wales.

30.3.2 Any notice shall be deemed to be given by the sender and received by the recipient:

- (a) if delivered by hand, when delivered to the recipient;
- (b) if delivered by the Recorded Delivery Service, three (3) Business Days after delivery including the date of postage;

provided that if the delivery or receipt is on a day which is not a Business Day or is after 4.00pm it is to be regarded as received at 9.00am on the following Business Day.

31 **Governing law**

31.1 **Law of England**

This Deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and is to be construed in accordance with the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to settle any dispute arising in connection with this deed.

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

Details of the Accounts

Name of Account	Sort Code and Number of Account	Details of Account Bank
Highbrook Homes (Kirkstone) Limited	Sort code: [REDACTED] Account number: [REDACTED]	National Westminster Bank plc

Schedule 2

Part I Notice of Account Bank

From: [Details of Chargor] (the "Chargor")

To: National Westminster Bank plc, [address]

Copy to: Homes and Communities Agency (trading as Homes England) ("Homes England"), One Friargate, Coventry CV1 2GN

Date:

Notice of assignment

1. We hereby give notice that pursuant to a charge dated [●] made between [amongst others] [●] the Chargor (1) and Homes England (2) (the "**Charge**"), the Chargor has assigned (and, to the extent not validly or effectively assigned, charged by way of fixed charge) to Homes England all its rights, title and interest present and future over the following account opened by it with you:

Account name	Account number	Sort code
[]	[]	[]

being the "**Blocked Account**", as security for the obligations more particularly referred to in the Charge.

2. The Chargor hereby gives you notice that pursuant to the Charge, it has, with full title guarantee, assigned (and, to the extent not validly or effectively assigned, charged by way of fixed charge) to Homes England all its rights, title and interest in and to all amounts standing to the credit of the Blocked Account from time to time, together with all entitlements to any interest and other rights and benefits accruing to or arising in connection therewith (the "**Account Funds**").
3. In connection therewith and by way of security for its obligations to Homes England, the Chargor hereby irrevocably and unconditionally instructs and authorises you (notwithstanding any previous instructions whatsoever which it may have given you to the contrary):
 - a) to disclose to Homes England without any reference to or further authority from the Chargor and without any enquiry by you as to the justification for such disclosure, such information relating to the Account Funds and the debt represented thereby as Homes England may, at any time and from time to time, request you to disclose to it;
 - b) to comply with the terms of any written notice, statement or instructions in any way relating or purporting to relate to the Account Funds or the debt represented thereby which you receive at any time and from time to time from Homes England or without any reference to or further authority from the Chargor and without any enquiry by you as to the jurisdiction for such notice, statement or instructions or the validity thereof; and
 - c) to accept all instructions from Homes England in connection with any payments from or withdrawals from the Blocked Account, at any time and from time to time, and to comply with

all such instructions without any reference to or further authority from the Chargor and without any enquiry by you as to the jurisdiction for such notice, statement or instructions or the validity thereof; and

- d) not to release any monies from the Blocked Account without the prior written consent of Homes England.

4. With effect from the date of receipt of this letter:

- a) all moneys standing to the credit of the Blocked Account are to be held to the order of Homes England; and
- b) all rights, interests and benefits whatsoever accruing to or for the benefit of ourselves arising from the Blocked Account belong to Homes England.

5. By acknowledgement of receipt of this letter, you confirm that:

- a) you do not have, and will not make or exercise, any claims or demands, any rights of counterclaim, rights of deduction, set-off or any other equities against the Chargor or Homes England in respect of the Account Funds;
- b) notwithstanding the fact that communications in respect of the Blocked Account will continue to be delivered to us (for operational reasons), no amendment, waiver or release of any right or obligation in connection with the Blocked Account and no termination or rescission of the Blocked Account by the Chargor shall be effective without the prior written consent of Homes England and in any event no such termination or rescission shall be effective unless you have given notice to Homes England;
- c) you will not permit an overdraft facility to apply in respect of the Blocked Account;
- d) you will not permit payments out of the Blocked Account using internet banking (being the "Bankline" electronic platform) or otherwise except with the prior written consent of Homes England; and
- e) you will not permit debit cards, direct debits, standing orders nor any other means of payment or withdrawal to apply in respect of the Blocked Account.

6. Notwithstanding anything in this letter or otherwise, the Chargor (and not Homes England nor its appointees) shall be liable to perform all the obligations assumed by the Chargor in respect of the Blocked Account.

7. In respect of any notice or instructions received from Homes England pursuant to paragraphs 3b) or 3c) above, we agree that you are not bound to enquire whether such rights of Homes England have arisen.

8. The instructions and authorisations which are contained in this letter will remain in full force and effect until Homes England gives you notice in writing revoking them. The instructions and authorisations given by the Chargor are irrevocable and may not be revoked by the Chargor.

9. In consideration of your accepting the instructions and authorisations which are contained in this letter, the Chargor will at all times indemnify you and keep you indemnified from and against all

actions, suits, proceedings, claims, demands, liabilities, damages, costs, expenses, losses and charges whatsoever in relation to or arising out of your acting on or complying with such instructions and authorisations and the Chargor will pay or reimburse to you on demand the amount of all losses, costs and expenses whatsoever suffered or incurred from time to time by you under or by reason or in consequence of you acting or complying with such instructions and authorisations.

10. This letter and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of England and Wales.
11. Please acknowledge receipt of this letter and your acceptance of the instructions and authorisations contained in it by sending a letter addressed to the Chargor and to Homes England in the form attached hereto.

Yours faithfully

.....

Authorised Signatory
for and on behalf of
Chargor

Schedule 2

Part II Form of Acknowledgement of the Account Bank to Homes England

From: National Westminster Bank plc, [address]

To: Homes and Communities Agency (trading as Homes England) ("**Homes England**"), One Friargate, Coventry CV1 2GN

To: [Details of Chargor] (the "**Chargor**")

Date:

Dear Sirs

Acknowledgement of notice

Account name	Account number	Sort code
[]	[]	[]

being the "**Blocked Account**".

We hereby acknowledge receipt of a letter (a copy of which is attached hereto) dated [] and addressed to us by the Chargor (the "**Letter**") and hereby accept the instructions and authorisations contained therein and undertake to act in accordance and comply with the terms thereof.

We hereby acknowledge and confirm to each of the Chargor and Homes England that we will not accept any instructions in connection with any payments from or withdrawals from the Blocked Account unless we receive the prior written consent of Homes England either (i) in writing and duly signed by an authorised signatory of Homes England or (ii) provided in electronic format by Homes England on the "Bankline" electronic platform followed by a confirmatory email to us from an authorised representative on behalf of Homes England (being a representative named on the account mandate for the Blocked Account as may be updated by the Chargor, Homes England and us in writing from time to time).

We hereby acknowledge and confirm to each of the Chargor and Homes England that we have not, as at the date hereof, received any notice that any third party has or will have any right or interest whatsoever in or has made or will be making any claim or demand or taking any action whatsoever against the Account Funds (as defined in the Letter) or the debt represented thereby or any part thereof.

We hereby acknowledge and confirm to each of the Chargor and Homes England that:

- a) we will not make any claim or demand or exercise any rights of counterclaim, rights of set-off or any other equities whatsoever against the Chargor in respect of the Account Funds (as defined in the Letter) or the debt represented thereby or any part thereof;
- b) notwithstanding the fact that communications in respect of the Blocked Account will continue to be delivered to the Chargor (for operational reasons), no amendment, waiver or release of any right or obligation in connection with the Blocked Account and no termination or rescission of the Blocked Account by the Chargor shall be effective without the prior written consent of

Homes England and in any event no such termination or rescission shall be effective unless we have given notice to Homes England;

- c) we will not permit an overdraft facility to apply in respect of the Blocked Account;
- d) we will not permit payments out of the Blocked Account using internet banking (being the "Bankline" electronic platform) or otherwise except with the prior written consent of Homes England; and
- e) we will not permit debit cards, direct debits, standing orders nor any other means of payment or withdrawal to apply in respect of the Blocked Account.

We hereby acknowledge and confirm to each of the Chargor and Homes England that any personal details provided to us by Homes England will be used only for the purpose of completing our internal 'know your customer' process and such details will be held confidentially by us.

We have made the acknowledgements and confirmations and have given the undertakings set out in this letter in the knowledge that they are required by Homes England in connection with the security which has been constituted by the Chargor in favour of Homes England under the Charge (as defined in the Letter).

This letter and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of England and Wales.

Yours faithfully

.....
Duly authorised signatory
for and on behalf of
National Westminster Bank plc

Execution Page

the common seal of)

HOMES AND COMMUNITIES AGENCY)

Is hereunto affixed in the presence of:)

Authorised Signature:

Print Name:

Executed as a Deed)

by **HIGHBROOK HOMES (KIRKSTONE) LIMITED**)

acting by one Director in the)

presence of a witness)

Director

witness signature:

name: *Amanda Davenport*

address:

occupation: *New Homes Sales Advisor.*