



Registration of a Charge

Company name: **TOWER PENSION TRUSTEES LIMITED**

Company number: **02178783**



XA2PYS54

Received for Electronic Filing: **19/04/2021**

Details of Charge

Date of creation: **29/03/2021**

Charge code: **0217 8783 0881**

Persons entitled: **HOMES & COMMUNITIES AGENCY**

Brief description: **UNIT 12 CONNECT BUSINESS VILLAGE LIVERPOOL L5 9PR**

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: **BLAKE MORGAN LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 2178783

Charge code: 0217 8783 0881

The Registrar of Companies for England and Wales hereby certifies that a charge dated 29th March 2021 and created by TOWER PENSION TRUSTEES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 19th April 2021 .

Given at Companies House, Cardiff on 20th April 2021

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

Dated

29 March 2021

We certify this to be a true and complete copy of the original

this 31 day of March

BLAKE 
MORGAN
6 New Street Square
London EC4A 3DJ

HOMES AND COMMUNITIES AGENCY (trading as Homes England) (1)

TOWER PENSION TRUSTEES LIMITED (2)

DEED OF COVENANT IN RESPECT OF CLAWBACK
Relating to Unit 12, Connect Business Village, Liverpool, L5 9PR

THIS DEED is made the 29th March 2021 ^{BM}

BETWEEN:

- (1) **HOMES & COMMUNITIES AGENCY** (trading as Homes England) of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH ("**Homes England**")
- (2) **TOWER PENSION TRUSTEES LIMITED**, incorporated and registered in England and Wales with company number 02178783 whose registered office is at 3 Temple Quay, Temple Back East, Bristol, BS1 6DZ ("**the Covenantor**")

BACKGROUND:

1. This Deed is supplemental to an agreement ("**the Agreement**") dated 9 October 2006 for the sale and purchase of land at Wellington Employment area, Dunes Way and land off Dunes Way, Sandhills Lane Liverpool ("**the Original Property**") made between the Commission for New Towns (known as English Partnerships) (1) and Langtree Group PLC (2).
2. On 14 November 2012 Langtree Group PLC transferred the part of the Original Property known as land on the east side of Derby Road, Kirkdale, Liverpool registered under title number MS552753 ("**the Additional Property**") to Network Space Limited.
3. On 5 December 2014 Network Space Limited entered into a Deed of Covenant with Homes and Communities Agency in relation to the Additional Property.
4. On 24 January 2020 CBV (1) Limited and 2CBV Limited entered into a Deed of Covenant with Homes and Communities Agency ("**CBV Deed of Covenant**") in relation to the Additional Property.
5. The Covenantor is acquiring Unit 12 Connect Business Village, 24 Derby Road, Liverpool as shown edged red on the Plan attached to this deed ("**the Property**") from CBV (1) Limited and 2CBV Limited.
6. Pursuant to the Agreement and the CBV Deed of Covenant the Covenantor is required to enter into this Deed of Covenant.
7. By virtue of the:
 - a) Housing and Regeneration Act 2008;
 - b) Housing and Regeneration Act 2008 (Commencement No. 1 and Transition Provision) Order 2008 (SI 2008 No. 2358 (c.103)) dated 2nd September 2008;
 - c) Housing and Regeneration Act 2008 (Commencement No. 2 and Transitional, Saving and Transitory Provisions) Order 2008 (SI 2008 No c 3068 (c.132)) dated 26th November 2008; and
 - d) Homes and Communities Agency, Tenants Services Authority and the Welsh Ministers Transfer Scheme

all assets, liabilities and interests were transferred from Commission for the New Towns and The Urban Regeneration Agency to Homes and Communities Agency with effect from 1st December 2008.

NOW THIS DEED WITNESSES and Homes England and the Covenantor agree as follows:

1. **DEFINITIONS**

In this Deed the following expressions shall (except where the context otherwise requires) have the meanings respectively attributed to them and the expressions defined in paragraph 1 shall have the meanings therein attributed to them:

Act The Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991) and any act or instrument or order altering amending or replacing the said Acts

Act of Circumvention any act or omission of the Covenantor or transaction or series of transactions entered into by the Covenantor or its successors in title with any person or persons the principal purpose or effect of which is to avoid or depress or reduce the size of any Additional Sum which might otherwise fall due to Homes England or to avoid or delay the recoverability or potential receipt in whole or part by Homes England of any Additional Sum

Additional Sum a sum in Pounds Sterling (exclusive of VAT) equal to 75% of the amount by which the Open Market Value of the Relevant Property exceeds its Current Use Value (if any)

Charge the charge created by **Clause 4** of this Deed

Covenantors Successor any person or persons to whom or in whose favour the Covenantor or any mortgagee administrator receiver trustee in bankruptcy personal representative or liquidator of the Covenantor shall have made a Disposal of the Property or any part or parts thereof (other than an Excluded Disposal)

Current Use means:

- (a) use for the purposes of the Permitted Use; and
- (b) use for any purposes constituting or permitted by any Specified Event which occurred before the Latest Specified Event (if any)

Current Use Value the price which the Relevant Property might reasonably be expected to realise on the Valuation

Date upon an unconditional sale for cash in the open market at arms length by a willing seller to a willing buyer for an estate in fee simple absolute in possession with vacant possession without the benefit of the Latest Specified Event and upon the assumptions that:

- (a) the Relevant Property may be used for the Current Use;
- (b) there has been a reasonable period for the proper marketing of the interest prior to the Valuation Date; and
- (c) the Relevant Property is to be sold together with the rights granted by but subject to the covenants exceptions reservations and other matters contained or referred to in the entries on the register of the title relating to (or including) the Relevant Property with the exception of any entries on the register of the title relating to the requirement to enter into a deed of covenant (in the form of this Deed/pay any Additional Sum) insofar as they are still subsisting and relate to or affect the Relevant Property but otherwise free from onerous restrictions encumbrances covenants and conditions (including the Charge and any restrictions encumbrances covenants and conditions created by the Covenantor or the Covenantor's Successor)

but disregarding

- (a) any existing or prospective planning consent for any use other than for the Current Use; and
- (b) any other factor or event which might enhance the value of the Relevant Property or any part thereof at the Valuation Date

Develop and Development

shall have the meanings respectively assigned to them by the Act and shall be deemed to include in addition any development or change of use or intensification of use for which planning permission is not required

Disposal

any disposal or dealing with the Property or part of it including:

- (a) the transfer or grant of any interest or licence

over the Property or part of it; and

- (b) the variation of any interest or licence in the Property or part of it so as to permit a use other than the Permitted Use

Excluded Disposal

any disposal or dealing with the Property or any part of it that is:

- (a) the bona fide grant or renewal of a lease or licence at arms length for a term of less than 30 years at a rack rent without taking or receiving a premium on terms which do not permit any use of the Property or part of it for a use other than the Permitted Use; and
- (b) a bona fide mortgage on normal commercial terms; and
- (c) any disposal to a statutory undertaker highway authority or similar body in connection with the provision of utilities or services to the Property or the dedication of part of the Property for highway purposes
- (d) the grant of any easements or rights for the benefit of the Property or burdening the Property
- (e) the grant of interests rights or other matters which are not registrable at the Land Registry
- (f) the entering into of any covenants binding or burdening the Property

Implementation

in relation to any planning permission or Development constituting a Specified Event the first date upon which any works constituting the proposed Development are commenced or (in relation to change of use only) the date upon which the Relevant Property is first used for the relevant purpose

Interest Rate

3% above the annual base lending rate for the time being of Barclays Bank Plc

Judicial Proceedings

Any form of judicial proceedings or legal challenge including any application or appeal to the Court or any other tribunal or forum in respect of the decision act or omission of the local planning authority the Secretary of State for the Environment the Court or any other tribunal or forum including without

Open Market Value

limitation an application for judicial review

the price which the Relevant Property might reasonably be expected to realise as at the Valuation Date upon an unconditional sale for cash in the open market at arms length by a willing seller to a willing buyer for an estate in fee simple absolute in possession with vacant possession with the benefit (if applicable) of the Latest Specified Event and upon the assumptions that:

- (a) the Latest Specified Event (if applicable) is capable of Immediate Implementation but has not yet been implemented (but taking account of any Planning Costs and making a due allowance for such Planning Costs);
- (b) there has been a reasonable period for the proper marketing of the interest prior to the Valuation Date;
- (c) the Relevant Property is fully accessible and serviced so as to be capable of being immediately used or Developed for the use or Development permitted or constituted by the Latest Specified Event (if applicable) but also taking account of any Servicing Costs and making a due allowance for such Servicing Costs; and
- (d) the Relevant Property is to be sold together with the rights granted by but subject to the exceptions and reservations contained or referred to in the entries on the register of the title relating to (or including) the Relevant Property with the exception of any entries on the register of the title relating to the requirement to enter into a deed of covenant (In the form of this Deed/pay any Additional Sum) insofar as they are still subsisting and relate to or affect the Relevant Property but otherwise free from any onerous restrictions encumbrances covenants and conditions (including the Charge and any restrictions encumbrances covenants and conditions created by the Covenantor or the Covenantor's successor)

but disregarding

- (a) any existing or prospective planning consent

for a use other than the Current Use and that permitted by the Latest Specified Event (if applicable); and

- (b) any other factor or event which might enhance the value of the Relevant Property or any part thereof at the Valuation Date

Permitted Use

a use within classes B1, B2 and B8 of the Town and Country Planning (Use Classes) Order 1987 (as amended) as at 31 August 2020

Planning Costs

the reasonable and proper costs and other sums which have been or would be necessarily incurred by the Covenantor or the person to whom any Disposal is being made (including but not limited to professional fees and capital sums):

- (a) in connection with the obtaining of the planning permission for the Latest Specified Event
- (b) in connection with obtaining and complying with any Statutory Agreement entered into or required to be entered into in relation to the change of use or Development authorised by the planning permission which constitutes the Latest Specified Event
- (c) paying any commuted sum or planning gain or any other sums payable to the local authority or other competent body
- (d) carrying out any off site or other enabling works that are required in order to carry out the change of use or Development authorised by the planning permission which constitutes the Latest Specified Event (provided that there shall be no double accounting with Servicing Costs)

Relevant Period

the date of this deed and expiring on 11 March 2023

Relevant Property

the Property as a whole (in the event of a Specified Event occurring in respect of the whole of the Property) or the part of the Property in respect of which a Specified Event has occurred (in the event of a Specified Event occurring in respect of part of the Property only) (as the case may be)

Servicing Costs

the reasonable and proper costs (if any) which have been or would be necessarily incurred to provide up

to the boundaries of the Relevant Property (insofar as they do not exist at the Valuation Date);

- (a) additional services or connections to existing services for the provision of water electricity and foul and surface water drainage and where necessary gas; and
- (b) access roads connecting to the nearest existing adopted highway or private road over which private rights are enjoyed giving access to the Property

so as to render the Relevant Property capable of being used or Developed for the use or Development permitted or constituted by the relevant Specified Event Provided that such costs shall be properly evidenced to the reasonable satisfaction of Homes England or the person determining the Open Market Value for the purposes of this Schedule by estimates specifications vouchers receipts invoices or other appropriate documentation

Specified Event

the grant of planning permission in writing to any person other than Homes England in accordance with the provisions of the Act for a change of use or for Development of the Property or any part thereof for any purpose other than the Current Use

The Latest Specified Event

the planning permission or change of use or Development which constitutes the Latest Specified Event relating to the Relevant Property or the relevant part of it to occur on or prior to the Valuation Date

Valuation Date

in relation to any Specified Event the earliest of:

- (a) the date of implementation of the relevant planning permission (or Development or change of use as the case may be) constituting or permitted by the Latest Specified Event;
- (b) the date of completion of any Disposal of the Relevant Property or part of it first occurring after and with the benefit of the Latest Specified Event; and
- (c) (unless the relevant planning permission was granted pursuant to an application by a third party other than (and not on behalf of or in

collusion with) the Covenantor or a person deriving title under the Covenantor) where the planning permission constituting the Latest Specified Event is granted before the expiration of the Relevant Period the date of implementation of such planning permission

2. **ADDITIONAL SUM**

The parties hereby acknowledge and agree that if and on each occasion:

2.1 during the Relevant Period a Specified Event occurs in relation to the whole or part of the Property; and

2.2 a Valuation Date occurs in relation to that Specified Event,

then the Covenantor shall on each and every occasion pay to Homes England an Additional Sum calculated pursuant to the provisions of **Clause 3**.

3. **DETERMINATION OF THE ADDITIONAL SUM**

3.1 During the period of one month commencing on the relevant Valuation Date the parties shall consult together and endeavour to agree the Open Market Value and the Current Use Value and any Additional Sum payable.

3.2 If the parties fail to agree within the period specified in **Clause 3.1** then the Open Market Value or the Current Use Value or both of them (as the case may be) and any Additional Sum payable shall be determined by a chartered surveyor in accordance with the provisions of **Clause 6** at the request of either party by service of written notice upon the other at any time after the expiration of such period.

3.3 The Additional Sum shall become payable on a date being fourteen days from the date of agreement or determination of the Additional Sum pursuant to **Clauses 3.1** and **3.2** above and in the event that such sum is not paid on the due date interest at the Interest Rate for the period commencing on the due date and ending on the date of actual payment shall become payable calculated on a daily basis but compounded with quarterly rests on the usual quarter days.

4. **CREATION OF CHARGE**

4.1 The Covenantor acknowledges the existence of a debt to Homes England of the sum of One Pound (£1) ("**the Debt**") and hereby covenants to pay the Debt to Homes England upon demand.

4.2 The Covenantor hereby charges the Property in favour of Homes England by way of legal mortgage with payment of the Debt and of all such sums (together with interest) as may from time to time become due under **Clause 3** and the provisions of this Deed.

5. **PRIORITY OF BORROWINGS**

5.1 If the Covenantor shall desire to mortgage or charge the Property as security for the repayment of monies and if the Covenantor shall so request by notice in writing Homes

England shall enter into and execute as expeditiously as is reasonably practicable in such form as shall be proposed by the Covenantor and approved by Homes England (such approval not to be unreasonably withheld or delayed) a deed confirming that the Property shall stand charged with repayment of monies in the following order:

5.1.1 all monies borrowed by the Covenantor, together with unpaid interest on such monies and unpaid fees and costs in connection therewith due to the lender under the terms of the borrowing and all sums of whatever nature properly expended in the enforcement of the security, to the extent that the aggregate thereof does not exceed the Open Market Value from time to time;

5.1.2 the sums secured by **Clause 3** and the provisions of this Deed.

5.2 In the event of a dispute as to the form of the deed referred to in clause 5.1, it shall be settled in accordance with the provisions of clause 7.

6. COVENANTOR'S CONSEQUENTIAL OBLIGATIONS

The Covenantor shall during its period of ownership of the Property:

6.1 Supply to Homes England copies of all applications for planning permission relating to the Property or any part of it and all material information relating to any Judicial Proceedings in relation thereto immediately after they are submitted to the local planning authority the Secretary of State for the Environment Court or any other tribunal or forum as appropriate or notified to the Covenantor and will from time to time supply such further information as to the progress of any such application or of any such Judicial Proceedings as Homes England may reasonably require;

6.2 Notify Homes England forthwith upon the occurrence of any Specified Event in relation to the Property or any part thereof and supply copies of all consents permissions or approvals or notices in relation thereto forthwith upon receipt of the same by the Covenantor; and

6.3 Not enter into any Act of Circumvention and not assist cause or permit any other party to enter into any Act of Circumvention.

7. DISPUTE RESOLUTION

7.1 All disputes differences and questions which arise between Homes England and the Covenantor concerning arising out of or connected with this Deed shall if such dispute difference or question relates to the value of any interest in property be referred to a chartered surveyor agreed upon by the parties but in default of agreement appointed at the request made at any time of either of the parties by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors ("**the RICS President**").

7.2 Any reference to such a chartered surveyor shall if the parties so agree in writing be deemed to be a reference to an expert (and not an arbitrator) but shall otherwise be deemed to be a reference to an arbitrator.

7.3 If the dispute is determined by an Arbitrator the arbitration will be conducted in accordance with the Arbitration Act 1996 but the arbitrator will not be entitled to take the initiative in ascertaining the facts.

- 7.4 If the dispute is determined by an expert then the expert will allow the parties a reasonable opportunity to make representations and counter representations to him and take reasonable account of any representations which are made and if required by either party give written reasons for his decision which shall be final and binding.
- 7.5 The fees and expenses of the determination of the chartered surveyor (including the costs of his appointment) will be borne as he may direct.
- 7.6 If a party fails to pay any fees and expenses the chartered surveyor directs be paid by it within a reasonable time and the other party pays them the defaulting party will reimburse the amount paid for it on demand from the paying party.
- 7.7 If the chartered surveyor dies or becomes unwilling to act or incapable of acting or his determination is not made within a reasonable time after his appointment the RICS President may on the application of either party or both parties discharge him and appoint another chartered surveyor in his place.
- 7.8 Any person so appointed to determine a dispute shall be of at least 10 year's professional qualification and shall be experienced in relation to property of a similar nature to the Relevant Property and in the case of a dispute arising under paragraph 3.2 above shall have knowledge of the values of property used for the Current Use and the use proposed by virtue of the Latest Specified Event.

8. **SUCCESSOR'S COVENANT**

The Covenantor hereby covenants with Homes England that if and when during the Relevant Period the Covenantor shall make a Disposal (other than an Excluded Disposal) in favour of the Covenantor's Successor the Covenantor shall procure that the Covenantor's Successor shall charge the Property the subject of any Disposal to Homes England in the terms of **Clause 4** and enter into a deed of covenant with Homes England or to whom it shall direct in the form of this Deed (with such amendments as the parties may reasonably agree) so as to bind himself or themselves and his or their successors in title (jointly and severally in the case of a covenant by more than one person) and for the benefit of and so as to be enforceable by Homes England and its statutory successors but under which the Covenantor's Successor is "the Covenantor" and upon the making of any such Disposal provided that the Covenantor has paid any Additional Sum due and payable to Homes England in accordance with this Deed the Covenantor shall be released from its obligations hereunder absolutely.

9. **REGISTRATION AGAINST TITLE**

Homes England and the Covenantor hereby apply to the Chief Land Registrar to enter upon the register of the title to the Property a restriction in the following terms:

"Until 11 March 2023 no disposition or dealing of the registered estate (other than an Excluded Disposal) by the proprietor of the registered estate or the proprietor of a registered charge is to be registered without a certificate signed by the Homes and Communities Agency or his conveyancer that the provisions of paragraph 8 of a deed of covenant dated 17/2/2020 between (1) Homes and Communities Agency and (2) Tower Pension Trustees Limited have been complied with."

10. **ASSIGNMENT BY HOMES ENGLAND**

Homes England shall not assign compromise and otherwise deal with all of its interests rights and entitlement under this Schedule and in respect of any Additional Sum payable there under except to any statutory successor of Homes England.

11. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a party to this instrument has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms and Homes England and the Covenantor may rescind, or vary the terms of it Without the consent of such person but this does not affect any right or remedy of any person who is not a party to this instrument which exists or is available apart from that Act and it does not affect the ability of the parties to assign their respective interests in accordance with the provisions of this Deed.

12. **SERVICE OF NOTICES**

The provisions of the Law of Property Act 1925 (as amended) as to the service of notices shall apply to any notice or other document required or authorised to be given or served under this Deed.

13. **RELEASES AND CONSENTS**

13.1 Homes England shall as expeditiously as is reasonably practicable:

13.1.1 release the Charge in respect of any land which is the subject of a Disposal upon receipt of a new Charge and deed of covenant from the Covenantor's Successor in respect of such land given in accordance with **Clause 8**;

13.1.2 issue such written consent as may be properly required by the Land Registry formally and legally to effect and/or register at the Land Registry any Excluded Disposal; and

13.1.3 release the Charge and provide such written confirmation as may be properly required by the Land Registry to remove from the title to the Property the restriction referred to in **Clause 9** at the expiry of the Relevant Period,

PROVIDED ALWAYS that Homes England shall not be required to comply with this **Clause 13** where at any time a Specified Event occurs and any Additional Sum due remains outstanding.

IN WITNESS whereof this deed has been executed the day and year first before written

THE COMMON SEAL of .)

HOMES & COMMUNITIES AGENCY)

was hereunto affixed in the presence of:)

Authorised Signatory

.....

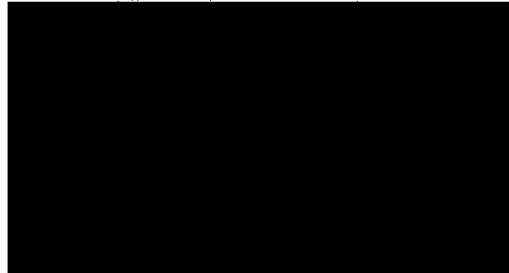
EXECUTED AS A DEED by .)

TOWER PENSONS TRUSTEES LIMITED)

acting by two directors or

a director and its secretary

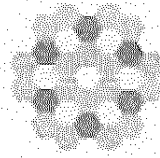
in the presence ✓



Director/Secretary

HM Land Registry
Official copy of
title plan

Title number **MS552753**
Ordnance Survey map reference **SJ3492NW**
Scale **1:1250**
Administrative area **Merseyside : Liverpool**



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