

Declaration by the directors of a holding company in relation to assistance for the acquisition of shares

155(6)b

* Westminster Health Care (UK) Limited

0588
15/12/04

The assistance is for the purpose of ~~XXXXXXX~~ [reducing or discharging a liability incurred for the purpose of that acquisition]. † (note 1)

Please do not write in this margin

Please complete legibly, preferably in black type, or bold block lettering

The number and class of the shares acquired or to be acquired is: 1,740,000 A ordinary of 10
10 pence each, 180,000 ordinary of £1 each and 78,500 B ordinary of £1 each

The assistance is to be given to: (note 2) Barchester Healthcare Limited (company number
2792285) whose registered office is Suite 201, The Chambers, Chelsea Harbour,
London SW10 0XF

The assistance will take the form of:

See the attached schedule

The person who [has acquired] ~~XXXXXXX~~ † the shares is:
Barchester Healthcare Limited

† delete as appropriate

The principal terms on which the assistance will be given are:

See the attached schedule

The amount (if any) by which the net assets of the company which is giving the assistance will be reduced by giving it is Nil

The amount of cash to be transferred to the person assisted is £ Nil

The value of any asset to be transferred to the person assisted is £ Within 8 weeks

The date on which the assistance is to be given is Within 8 weeks

☒ We have formed the opinion, as regards this company's initial situation immediately following the date on which the assistance is proposed to be given, that there will be no ground on which it could then be found to be unable to pay its debts. (note 3)

(a) ~~X~~We have formed the opinion that this company will be able to pay its debts as they fall due during the year immediately following that date]* (note 3)

(b) ~~XXXXX intended to compromise the working group of the company, with the objective of that date, and~~
~~XXXXX have formed the opinion that this company will be able to pay its debts in full within 12 months of the~~
~~XXXXX reference date of the winding up.* (note 3)~~

And ~~X~~we make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Declared at

Declarants to sign below

on

Day	Month	Year
9	1	2004

before me

A Commissioner for Oaths or Notary Public or Justice of the Peace or a Solicitor having the powers conferred on a Commissioner for Oaths.

NOTES

- 1 For the meaning of "a person incurring a liability" and "reducing or discharging a liability" see section 152(3) of the Companies Act 1985.
- 2 Insert full name(s) and address(es) of the person(s) to whom assistance is to be given; if a recipient is a company the registered office address should be shown.
- 3 Contingent and prospective liabilities of the company are to be taken into account - see section 156(3) of the Companies Act 1985.
- 4 The auditors report required by section 156(4) of the Companies Act 1985 must be annexed to this form.
- 5 The address for companies registered in England and Wales or Wales is:-

The Registrar of Companies
Companies House
Crown Way
Cardiff
CF14 3UZ

or, for companies registered in Scotland:-

The Registrar of Companies
Companies House
37 Castle Terrace
Edinburgh
EH1 2EB

SCHEDULE TO FORM 155(6)(b)

Westminster Health Care (UK) Limited Company Number 3738097

Words and expressions used in this Schedule shall, unless otherwise defined in this Schedule, have the meaning ascribed to them in the credit agreement dated 19 October 2004 and made between, amongst others, Barchester Healthcare Limited as Borrower and certain subsidiaries of Barchester Healthcare Limited as original guarantors, The Royal Bank of Scotland plc as Security Trustee, Arranger, Bridging Arranger, Overdraft Bank, Issuing Bank and Agent and The Royal Bank of Scotland plc, AIB Group (UK) p.l.c., Allied Irish Banks, p.l.c., RBS Mezzanine Limited, The Governor and Company of the Bank of Scotland and The Governor and Company of the Bank of Ireland as original lenders (the **Credit Agreement**)

References to:

- (a) clauses and defined terms are to be construed as references to Clauses and definitions in the Credit Agreement unless otherwise defined; and
- (b) the **Company** are to be construed as references to WHC Diagnostics Limited (Company Number: 2974294)

The Form of Financial Assistance

The assistance will take the form of:

- 1 the execution, delivery and performance of an accession letter to the Credit Agreement (the **Credit Agreement Accession Letter**) and the assumption of obligations under a guarantee as the same may be amended, varied, supplemented or substituted from time to time (the **Guarantee**) by the Company in favour of each Beneficiary under the Credit Agreement pursuant to which the Company guarantees that it shall on demand pay all moneys at any time due or owing by the Borrower to each Beneficiary pursuant to the terms of any of the Guarantee Documents;
- 2 the execution and delivery of an accession deed to a debenture dated 19 October 2004 granted by Barchester Healthcare Limited and certain of its subsidiaries in favour of The Royal Bank of Scotland plc as Security Trustee on behalf of the Beneficiaries (the **Debenture**) pursuant to which the Company grants fixed and floating charges over all of its properties, assets and undertakings in favour of the Security Trustee as continuing security for the obligations and liabilities of the Company to the Beneficiaries under or pursuant to any of the Guarantee Documents, including the Debenture (the **Debenture Accession Deed**);
- 3 the execution of an accession letter (the **Upstream Loan Accession Letter**) whereby the Company would accede to an upstream intra-group loan facility agreement dated 27 November 2003 (as amended and restated by an amendment and restatement agreement dated 1 April 2004) made between the Barchester Healthcare Limited, Barchester Healthcare Homes Limited and certain subsidiaries of Barchester Healthcare Limited (the **Upstream Loan Agreement**) in respect of upstream inter-group loans;
- 4 an accession deed to an intercreditor deed (the **Intercreditor Deed**) between Barchester Healthcare Limited (the **Parent**), certain subsidiaries of the Parent, certain senior lenders, certain junior lenders, certain investors and The Royal Bank of Scotland plc as agent, overdraft bank, issuing bank and security trustee (the **Intercreditor Accession Deed**);
- 5 indemnity provisions under the Finance Documents; and
- 6 various representations, warranties and undertakings under the Finance Documents, and by the performance of any other acts or the execution of any other documents ancillary or

otherwise relating to the Credit Agreement Accession Letter, the Guarantee, the Debenture Accession Letter, the Debenture, the Upstream Loan Accession Letter, the Upstream Loan Agreement, the Intercreditor Deed and the Intercreditor Accession Deed in each case pursuant to the Credit Agreement pursuant to which the Lenders made available:

- (a) a Sterling term loan and guarantee facility of £268,000,000; and
- (b) a Sterling revolving loan facility and guarantee facility of £30,000,000;
- (c) a Sterling revolving development facility of £20,000,000; and
- (d) a Sterling term loan bridging facility of £47,000,000.

The Principal Terms of the Financial Assistance

The principal terms on which the assistance will be given are:

1 Under the terms of the Guarantee:

- (a) Each Guarantor irrevocably and unconditionally jointly and severally (to the extent the relevant payment has not been made by the Borrower or the relevant obligation has not been performed by the Borrower):
 - (i) guarantees to each Beneficiary punctual performance by the Borrower of all the Borrower's obligations under the Guarantee Documents;
 - (ii) undertakes with each Beneficiary that whenever the Borrower does not pay any amount when due under or in connection with any Guarantee Document, that Guarantor shall immediately on demand pay that amount as if it were the principal obligor; and
 - (iii) indemnifies each Beneficiary immediately on demand against any cost, loss or liability suffered by that Beneficiary if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal. The amount of the cost, loss or liability shall be equal to the amount which that Beneficiary would otherwise have been entitled to recover.
- (b) The guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Charging Group Company under the Guarantee Documents, regardless of any intermediate payment or discharge in whole or in part.
- (c) If any payment by a Charging Group Company or any discharge given by a Finance Party (whether in respect of the obligations of any Charging Group Company or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:
 - (i) the liability of each Charging Group Company shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
 - (ii) each Finance Party shall be entitled to recover the value or amount of that security or payment from each Charging Group Company, as if the payment, discharge, avoidance or reduction had not occurred.
- (d) The obligations of each Guarantor under the Guarantee will not be affected by an act, omission, matter or thing which would reduce, release or prejudice any of its obligations under the Guarantee (whether or not known to it or any Beneficiary), including:
 - (i) any time, waiver or consent granted to, or composition with, any Charging

Group Company or other person;

- (ii) the release of any other Charging Group Company or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
 - (iii) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Charging Group Company or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
 - (iv) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Charging Group Company or any other person;
 - (v) any amendment (however fundamental) or replacement of a Guarantee Document or any other document or security;
 - (vi) any unenforceability, illegality or invalidity of any obligation of any person under any Guarantee Document or any other document or security; or
 - (vii) any insolvency or similar proceedings.
- (e) Each Guarantor waives any right it may have of first requiring any Beneficiary (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under the Guarantee. This waiver applies irrespective of any law or any provision of a Guarantee Document to the contrary.
- (f) Until all amounts which may be or become payable by the Charging Group Companies under or in connection with the Guarantee Documents have been irrevocably paid in full, each Beneficiary (or any trustee or agent on its behalf) may:
- (i) refrain from applying or enforcing any other moneys, security or rights held or received by that Beneficiary (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and
 - (ii) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under the Guarantee;

- 2 Under the terms of the Debenture (terms in this Clause shall have the same meaning ascribed to them in the Debenture unless otherwise defined):

The Company covenants with the Security Trustee and the other Beneficiaries that it will on demand pay and discharge the Secured Obligations when due in accordance with the Guarantee Documents to the Security Trustee and the other Beneficiaries.

The Company, with full title guarantee, as continuing security for the payment of all the Secured Obligations, charges in favour of the Security Trustee (as security trustee and agent for the Beneficiaries):

- (a) by way of legal mortgage all estates or interests in the Legally Mortgaged Property;
- (b) by way of fixed charge all estates or interests in any freehold, leasehold and other

immovable property now or at any time during the continuance of the security belonging to the Company (other than the Legally Mortgaged Property) and the proceeds of sale thereof and all buildings and trade and other fixtures from time to time on any such property belonging to or charged to the Company;

- (c) by way of fixed charge all its title, rights and interests in all plant, machinery, vehicles, computers and office and other equipment legally and beneficially owned by the Company both present and future;
- (d) by way of fixed charge all book debts and other debts now and from time to time due or owing to the Company (the **Debts**) and all moneys which the Company receives in respect thereof together with all rights relating thereto including any security and remedies therefor;
- (e) by way of fixed charge all balances standing to the credit of any current, deposit or other account of the Company (the **Bank Accounts**) with the Security Trustee or any other Beneficiary or with other bankers, financial institutions or similar third parties (the **Credit Balances**);
- (f) by way of fixed charge all stocks, shares, debentures, bonds, notes and loan capital of:
 - (i) any Subsidiary; and
 - (ii) any other body corporate;

and all rights to subscribe for, redeem, convert other securities into or otherwise acquire any of the same which may now or hereafter belong to the Company, together with all dividends, interest and other income and all other rights of whatsoever kind deriving from or incidental to any of the foregoing;

- (g) by way of fixed charge the goodwill of the Company and its uncalled capital now or at any time hereafter in existence;
- (h) by way of fixed charge all copyrights, patents, patent applications, licences, trade marks, tradenames, know-how and inventions or other rights of every kind deriving therefrom now or at any time hereafter belonging to the Company and all fees, royalties and other rights of every kind deriving from such copyrights, patents, trade marks, tradenames, know-how and inventions;
- (i) by way of assignment by way of security all of the Company's rights, title and interest now or in the future in:
 - (i) the rights under the appointment of any managing agent of the Legally Mortgaged Property;
 - (ii) the benefit of all covenants, agreements, Tenancy Agreements (as defined in the Debenture), undertakings, security or obligations entered into or to be entered into by the Company and of all other guarantees, indemnities, licences, deeds, rent deposit agreements, or other deeds or documents supplemental or collateral in respect of any of the aforesaid;
 - (iii) the benefit of all rights and claims to which the Company is now or may hereafter become entitled in relation to the Legally Mortgaged Property (including those against all persons who now or may at any time be in occupation of the Legally Mortgaged Property under any Tenancy Agreement or licence or otherwise and all guarantors and sureties for the obligations of such persons);
 - (iv) the benefit of all guarantees, warranties and representations given or made

now or hereafter by and any rights or remedies against all or any of the designers, builders, contractors, professional advisers, sub-contractors, manufacturers, suppliers and installers of any fixtures in relation to the Legally Mortgaged Property;

- (v) the Company's interest in every insurance policy and all benefits in respect of them effected in respect of the Charged Property (as defined in the Debenture);
 - (vi) the benefit of all other agreements, contracts, deeds, undertakings, guarantees, warranties or other documents entered into by or given to the Company at the time of or after the date of the Debenture in respect of the Charged Property (as defined in the Debenture) and all documents now in existence at the time of or after the date of the Debenture necessary to enable the Security Trustee to perfect the same and all the proceeds of any payment of any claims, awards or judgments paid or payable to the Company under or in respect of the Charged Property (including but without limitation all liquidated and ascertained damages payable to the Company under the Charged Property) and all the rights or remedies of the Company now or hereafter in existence arising under the Charged Property;
 - (vii) all Hedging Agreements (as defined in the Debenture) including without limitation and all proceeds paid or payable thereunder;
 - (viii) the benefit of all Acquisition Agreements and Project Documents entered into by the Company at any time as at the date of the Debenture or at any date thereafter;
 - (ix) all payments, repayments and refunds of VAT due or owing by HM Customs and Excise to the Company;
 - (x) any Intercompany Loans;
 - (xi) the Grove Commitment Letter; and
 - (xii) the Westminster Acquisition Documents.
- (j) by way of floating charge the whole of the Company's undertaking and all its property, assets and rights, whatsoever and wheresoever, present and future, other than any property or assets from time to time or for the time being effectively mortgaged, assigned or charged to the Security Trustee by way of fixed charge by the Debenture (hereinafter collectively referred to as the **Floating Charge Property**).
- (k) To the extent that any right, title or interest described in paragraph 2 (i) above is not assignable or capable of assignment, the assignment purported to be effected by paragraph 2(i) shall operate as:
- (i) in the case of insurances, an assignment of any and all proceeds of insurances received by the Company; and
 - (ii) in the case of the other Assigned Assets (as defined in the Debenture) , as assignment of any and all damages, compensation, remuneration, profit, rent, income or other benefit which the Company may derive or be awarded or entitled to in respect of the relevant Assigned Assets

in each case as continuing security for the payment, discharge and performance of the Secured Obligations (as defined in the Debenture).

The Company agrees to indemnify the Security Trustee, the other Beneficiaries and any Receiver against all losses, actions, claims, costs, charges, expenses and liabilities incurred

by the Security Trustee, the other Beneficiaries and by any Receiver (including any substitute delegate attorney as aforesaid) in relation to the Debenture or the Secured Obligations (including, without limitation, the costs, charges and expenses incurred in the carrying of the Debenture into effect or in the exercise of any of the rights, remedies and powers conferred hereby or in the perfection or enforcement of the security constituted by the Debenture or pursuant to the Debenture or in the perfection or enforcement of any other security for or guarantee in respect of the Secured Obligations or from any actual or alleged breach of any Environmental Law) or occasioned by any breach by any Chargor of any of its covenants or obligations under the Debenture. The Company shall so indemnify the Security Trustee, the other Beneficiaries and any Receiver on demand and shall pay interest on the sum demanded at the Security Trustee's Rate from time to time from the date on which the same was demanded by the Security Trustee, any other Beneficiary or any Receiver, as the case may be, and any sum so demanded together with any interest, shall be a charge upon the Charged Property in addition to the moneys hereby secured.

For the purposes of section 94(1) of the Law of Property Act 1925 and Section 49 of the Land Registration Act 2002, the Lenders shall make further advances to each Chargor on the terms and subject to the conditions of the Guarantee Documents or of any other agreement, whether made before or after the date of the Debenture, for the provision of credit by the Lenders to the Chargors.

The Company consents to the registration against the registered titles of the Legally Mortgaged Property of a notice of the obligation to make further advances on the terms and conditions of the Guarantee Documents.

The Debenture shall remain in full force and effect notwithstanding any amendments or variations from time to time of the Credit Agreement and all references to the Credit Agreement herein shall be taken as referring to the Credit Agreement as amended or varied from time to time (including, without limitation, any increase in the amount of the Secured Obligations).

At any time after a Default is continuing, each Beneficiary may set off any matured obligation under the Finance Documents (to the extent beneficially owned by that Beneficiary) against any matured obligation owed by that Beneficiary to that Chargor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Beneficiary may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

In addition to any general lien or similar rights to which they may be entitled by operation of law, each of the Secured Parties shall have the right at any time and without notice to the Company to combine or consolidate all or any of the Company's then existing accounts with, and liabilities to, each of such Secured Parties and or transfer any sum or sums standing to the credit of any one or more of such accounts in or towards satisfaction of any of the liabilities of the Company to each of such Secured Parties on any other account or in any other respect. The liabilities referred to in Clause 14.2 of the Debenture may be actual, contingent, primary, collateral, several or joint liabilities, and the accounts, sums and liabilities referred to in Clause 14.2 of the Debenture may be denominated in any currency.

No failure on the part of the Security Trustee to exercise, or delay on its part in exercising, any of its respective rights, powers and remedies provided by the Debenture or by law (collectively the Rights) shall operate as a waiver thereof, nor shall any single or partial waiver of any of the Rights preclude any further or other exercise of that one of the Rights concerned or the exercise of any other of the Rights.

- 3 Under the terms of the Intercreditor Deed (terms in this Clause shall have the same meaning ascribed to them in the Intercreditor Deed unless otherwise defined):

Whether secured or unsecured, the Liabilities (other than any in relation to any Junior Proceeds prior to the Junior Discharge Date) shall rank at all times and for all purposes as follows:

- (a) first, the Senior Liabilities and the Hedging Liabilities, *pari passu*;
- (b) second, the Junior Liabilities; and
- (c) third, the Investor Liabilities.

Whether secured or unsecured any Liabilities in relation to any Junior Proceeds prior to the Junior Discharge Date shall rank at all times and for all purposes as follows:

- (a) first, the Junior Liabilities;
- (b) second, the Senior Liabilities and the Hedging Liabilities, *pari passu*;
- (c) third, the Investor Liabilities.

All Security (other than the Junior Charges) conferred on the Creditors will at all times:

- (a) secure the Senior Liabilities and the Hedging Liabilities *pari passu*; and
- (b) rank as Security for the Senior Liabilities and the Hedging Liabilities in priority to the Security for the Junior Liabilities,

regardless of the date or order of registration or execution of the Security Documents.

The Junior Charges will at all times:

- (a) secure the Senior Liabilities and the Hedging Liabilities, *pari passu*; and
- (b) rank as Security for the Junior Liabilities in priority to the security for the Senior Liabilities and the Hedging Liabilities,

regardless of the date or order of registration or execution of the Junior Charges.

4 Under the terms of the Upstream Loan Agreement:

The Company together with other members of its group will make available to Barchester Healthcare Homes Limited, Barchester Healthcare Limited and other companies in the Group an upstream loan facility up to an amount as agreed from time to time between the parties to be used by the Borrower under the Finance Documents to make payments when due to (among others) the Finance Parties but on the basis that the Company will only be obliged to make advances under the Upstream Loan Agreement if, *inter alia*, it has the cash resources and the Company is not in liquidation or administration or the subject of a creditor's voluntary winding up order.

Definitions

Charged Property means the property, assets and income of the Company mortgaged, assigned or charged to the Security Trustee (whether by way of legal mortgage, assignment, fixed or floating charge) by or pursuant to the Debenture and each and every part thereof.

Finance Document means the Credit Agreement, the Subordination Agreement, the Intercreditor Agreement, any Intercreditor Accession Deed, any Fee Letter, any Hedging Agreement, any Transfer Certificate and any Security Document and any other document designated as such by the Agent and the Borrower.

Guarantee Document means each Finance Document and each Overdraft Document and Guarantee Documents means all such documents.

Hedging Documents has the meaning given to it in the Intercreditor Deed.

Hedging Lender has the meaning given to it in the Intercreditor Deed.

Hedging Liabilities means all liabilities of any Group Company to a Hedging Lender under the Hedging Documents.

Intragroup Documents has the meaning given to it in the Intercreditor Deed.

Intragroup Liabilities means all present and future liabilities or obligations (actual or contingent) payable or owing at any time by any Group Company to any other Group Company under any Intragroup Document.

Investor Documents has the meaning given to it in the Intercreditor Deed.

Investor Liabilities means all present and future liabilities or obligations (actual or contingent) payable or owing at any time by any Group Company to the Investors under the Investor Documents.

Junior Liabilities means present and future liabilities or obligations (actual or contingent) payable or owing at any time by any Group Company to the Junior Finance Parties under the Finance Documents and in respect of the Junior Bridging Loan.

Legally Mortgaged Property means the property described in the Schedule, the proceeds of sale thereof and all buildings and trade and other fixtures on any such property belonging to or charged to the Company.

Liabilities means the Senior Liabilities, the Junior Liabilities, the Hedging Liabilities, the Intragroup Liabilities and the Investor Liabilities and **Liability** means any of them.

Secured Obligations means the actual, contingent, present and/or future obligations and liabilities of the Chargors under or pursuant to the Guarantee Documents, including the Debenture except for any liabilities which, if secured by the Debenture, would result in a contravention by any Chargor of section 151 of the Companies Act 1985.

Senior Liabilities means all present and future liabilities or obligations (actual or contingent) payable or owing at any time by any Group Company to the Senior Finance Parties under the Finance Documents.

Schedule

None



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Private and confidential

The Directors
Westminster Health Care (UK) Limited
c/o Barchester Healthcare Limited
Suite 201
The Chambers
Chelsea Harbour
London, SW10 0XF

Contact **Ian Brokenshire**
01752 632100
Ext: 2292

6 December 2004

Dear Sirs

Auditors' report to the directors of Westminster Health Care (UK) Limited (the "Company") pursuant to Section 156(4) of the Companies Act 1985

We have examined the attached statutory declaration of the directors dated 6 December 2004 in connection with the proposal that the Company's subsidiary, WHC Diagnostics Limited should give financial assistance for the purchase of the ordinary shares of Westminster Health Care Holdings Limited, the Company's ultimate holding company.

This report is made solely to the Company's directors as a body in accordance with section 156(4) of the Companies Act 1985. Our work has been undertaken so that we as the Company's auditors might state to the Company's directors those matters we are required to state to them in a report under section 156(4) of that Act and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the Company and the Company's directors as a body for our work under section 156(4) of that Act or for this report.



KPMG LLP

*Auditors' report to the directors of Westminster Health
Care (UK) Limited (the "Company") pursuant to Section
156(4) of the Companies Act 1985
6 December 2004*

We have enquired into the state of the Company's affairs in order to review the bases for the statutory declaration.

We are not aware of anything to indicate that the opinion expressed by the directors in their declaration as to any of the matters mentioned in Section 156(2) of the Companies Act 1985 is unreasonable in all the circumstances.

Yours faithfully

KPMG LLP

KPMG LLP