



**Registration of a Charge**

Company name: **BUPA CARE HOMES GROUP LIMITED**

Company number: **03833978**

Received for Electronic Filing: **24/12/2013**



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**Details of Charge**

Date of creation: **19/12/2013**

Charge code: **0383 3978 0004**

Persons entitled: **UK CARE NO. 1 LIMITED (INCORPORATED IN GUERNSEY WITH NUMBER 35825)**

Brief description: **AS MORE PARTICULARLY DESCRIBED IN CLAUSE 3 OF THE DEBENTURE, A DEBENTURE GRANTING A FIRST LEGAL MORTGAGE OVER ALL OF THE ORDINARY SHARES IN BUPA CARE HOMES (CFCHOMES) LIMITED HELD BY BUPA CARE HOMES GROUP LIMITED AND A FLOATING CHARGE OVER ALL OF THE ASSETS AND UNDERTAKING (PRESENT AND FUTURE) OF BUPA CARE HOMES GROUP LIMITED**

**Contains fixed charge(s).**

**Contains floating charge(s) (floating charge covers all the property or undertaking of the company).**

**Notification of addition to or amendment of charge.**

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**Authentication of Form**

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

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## Authentication of Instrument

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

Certified by: **JASON WURZAL**



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

Company number: 3833978

Charge code: 0383 3978 0004

The Registrar of Companies for England and Wales hereby certifies that a charge dated 19th December 2013 and created by BUPA CARE HOMES GROUP LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 24th December 2013 .

Given at Companies House, Cardiff on 24th December 2013



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

DATED 19 December 2013

BUPA CARE HOMES GROUP LIMITED  
as Operating Tenant Guarantor

in favour of

UK CARE NO. 1 LIMITED  
as Issuer

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DEBENTURE

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THIS DEBENTURE is made by way of deed on the 19 December 2013

BY

- (1) **BUPA CARE HOMES GROUP LIMITED** (registration number 03833978 whose registered office is at Bridge House, Outwood Lane, Horsforth, Leeds LS18 4UP (the "Operating Tenant Guarantor")

in favour of

- (2) **UK CARE NO. 1 LIMITED** (registration number 35825) whose registered office is at PO Box 34, St Martin's House, Le Bordage, St Peter Port, Guernsey, GY1 4AU (the "Issuer").

NOW THE DEBENTURE WITNESSETH as follows:

**BACKGROUND:**

1. This Debenture is made in connection with the substitution of the Incoming Property for the Outgoing Property.
2. The Operating Tenant Guarantor and the Issuer have agreed to enter into this Debenture to extend the Previous Obligations to cover the Incoming Property and to release the Previous Obligations in respect of the Outgoing Property

**Part 1**  
**INTERPRETATION**

**1. INTERPRETATION**

- 1.1 In this Debenture the words and expressions defined in the Deed of Master Definitions dated 17 February 2000 and made between, inter alios, the parties hereto shall have the same meanings when used in this Debenture unless the context requires otherwise or an alternative meaning is set out below and clause 1 of the Deed of Master Definitions shall apply to the interpretation of this Debenture and in addition the following expressions shall have the following meanings (save to the extent that the context otherwise so requires):-

**"the Ancaster Court Property"** means Ancaster Court, 24 Hastings Road, Bexhill on Sea, TN40 2HH

**"the Charged Property"** means the property, assets and income of the Operating Tenant Guarantor for the time being assigned, charged or secured whether by way of legal mortgage, standard security, fixed or floating charge or legal or equitable assignment to the Issuer by or pursuant to this Debenture;

**"the Dales Property"** means The Dales, Woodhall Road, Thornbury, Bradford, BD3 7DR

**"Deed of Master Definitions"** means the deed of master definitions dated 17 February 2000 made between, inter alios, the Issuer, The Law Debenture Trust Corporation plc, BUPA Leaseco (Guernsey) Limited, BUPA Care Homes Group Limited, Goldsborough

Estates Limited, BUPA Leaseco Holdings Limited, Marsh Management Services Guernsey Limited, Deloitte & Touche, Lloyds TSB Bank plc, Virgo Limited, Deutsche Bank AG, London Branch, Deutsche Bank Luxembourg S.A., Merrill Lynch Capital Services Inc, Merrill Lynch Derivative Products AG and Greenwich Natwest Limited;

**"Event of Default"** means:-

- (a) if any of the Obligations shall not be paid or discharged or performed by the Operating Tenant the Operating Tenant Guarantor or the Lessor (as appropriate) within seven days of the date they are due and payable, or
- (b) if the Operating Tenant Guarantor shall be in material breach of any covenant, warranty, representation, term, condition or provision of this Debenture, or
- (c) if a petition for the winding-up of the Operating Tenant Guarantor or the Operating Tenant (which is presented and is not discharged within 14 days) or if an order for the winding-up of the Operating Tenant Guarantor the Operating Tenant or the Lessor is made, or
- (d) if an encumbrancer shall take possession of or a receiver shall be appointed over or any secured creditor of the Operating Tenant Guarantor or the Issuer shall seek to enforce his security in respect of all or any substantial part of the Charged Property or such other property charged to the Operating Tenant Guarantor and any such action is not lifted or discharged within 14 days, or
- (e) if a petition shall be presented for an administration order in relation to the Operating Tenant Guarantor the Operating Tenant or the Lessor.

**"the Forest Court Operating Lease"** means the Operating Lease of the Forest Court Property dated 8 October 1999 and made between (1) BUPA LeaseCo (Guernsey) Limited (2) Care First Care Homes Limited (now the Forest Court Operating Tenant) and (3) the Operating Tenant Guarantor (as varied by a deed of variation made between the same parties and dated with the same date as this Debenture);

**"the Forest Court Operating Tenant"** means BUPA Care Homes (CFCHomes) Limited CRN: 2006738);

**"the Forest Court Property"** means Forest Court, Bradley Court Road, Mitcheldean, Gloucestershire, GL17 0DR

**"Incoming Property"** means the Forest Court Property and the Summerhill Property;

**"Issuer"** includes any successor in title, transferee or assignee of the Issuer whether legal or equitable;

**"Obligations"** means:-

- (a) all monies, costs, charges, expenses, liabilities and obligations whether certain or contingent which now or hereafter may be or become due, owing or incurred by the Operating Tenants to the Issuer under the Operating Leases and the Operating Lease Security (whether as Operating Tenants or as Guarantor); and

- (b) all monies, costs, charges, expenses, liabilities and obligations whether certain or contingent which now or hereafter may be or become due, owing or incurred by the Operating Tenant Guarantor to the Issuer in its capacity as Guarantor or under this Debenture; and
- (c) all monies, costs, charges, expenses, liabilities and obligations whether certain or contingent which now or hereafter may be or become due, owing or incurred by the Lessor to the Issuer under the Overriding Leases (whether solely or jointly with one or more persons) and any reference herein shall include all or any part thereof;

**"Operating Leases"** means the Forest Court Operating Lease and the Summerhill Operating Lease;

**"Operating Lease Security"** means :

1. the Supplemental Legal Charge (Operating Lease) for the Forest Court Property made between (1) the Operating Tenant and (2) the Issuer;
2. the Supplemental Legal Charge (Operating Lease) for the Summerhill Property made between (1) the Operating Tenant and (2) the Issuer;
3. the Rent Deposit Deed for the Forest Court Operating Lease made between (1) the Operating Tenant and (2) the Issuer;
4. the Rent Deposit Deed for the Summerhill Operating Lease made between (1) the Operating Tenant and (2) the Issuer;
5. the Operating Tenant Power of Attorney between (1) the Forest Court Operating Tenant and (2) two directors of the Issuer;
6. the Operating Tenant Power of Attorney between (1) the Summerhill Operating Tenant and (2) two directors of the Issuer;

all dated on or around the date of this Debenture

**"Operating Tenants"** means the Forest Court Operating Tenant and the Summerhill Operating Tenant;

**"Operating Tenant Guarantor"** includes its successors in title and assigns and those deriving title from the Operating Tenant Guarantor or otherwise entitled to redeem the security constituted hereby;

**"Outgoing Property"** means the Ancaster Court Property, the Dales Property, the St Williams Property, the Straven House Property and the Winscombe Property;

**"Overriding Leases"** means the overriding leases of the Incoming Property dated on or around the date of this Debenture and made between (1) BUPA LeaseCo (Guernsey) Limited and (2) UK Care No.1 Limited;

**"Previous Debenture"** means the debenture dated 8 October 1999 and made between (1) the Operating Tenant Guarantor and (2) the Issuer;



**"Previous Obligations"** means the "Obligations" as defined in the Previous Debenture;

**"Receiver"** means a receiver or receiver and manager or an administrative receiver as the case may be;

**"Shares"** means all of the ordinary shares in the Operating Tenant held by the Operating Tenant Guarantor;

**"the Straven House Property"** means Straven House, Queens Road, Ilkley LS29 9QL

**"the Summerhill Operating Lease"** means the Operating Lease of the Summerhill Property dated on or around the date of this Debenture and made between (1) BUPA LeaseCo (Guernsey) Limited (2) Care First Care Homes Limited (now the Forest Court Operating Tenant) and (3) the Operating Tenant Guarantor;

**"the Summerhill Operating Tenant"** means BUPA Care Homes (CFCHomes) Limited CRN: 2006738);

**"the Summerhill Property"** means Summerhill, East View, Kendal, LA9 4JY

**"the St Williams Property"** means St. Williams, Cornwall Avenue, Darlington, DL1 2LJ

**"tax"** shall be construed so as to include any tax levy, impost, duty or other charge of a similar nature (including, without limitation, any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same);

**"the Winscombe Property"** means Winscombe, Furze Hill, Kingswood, Surrey, KT20 6EP

**"VAT"** shall be construed as a reference to value added tax including any similar tax which may be imposed in place thereof from time to time;

**"1994 Act"** means the Law of Property (Miscellaneous Provisions) Act 1994.

1.2 Any reference in this Debenture to:

a **"Clause"** shall, subject to any contrary indication, be construed as a reference to a clause hereof;

an **"encumbrance"** shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;

**"fees"** shall, subject to any contrary indication, be construed so as to include (where applicable) disbursements and any other VAT on such fees and/or disbursements required to be charged;

a **"Part"** shall, subject to any contrary indication, be construed as a reference to a part hereof;

a "**Schedule**" shall, subject to any contrary indication, be construed as a reference to a schedule hereto.

- (a) Any obligation on the Operating Tenant Guarantor hereunder to do something shall include an obligation to procure that the same be done and any obligation not to do something shall include an obligation not to permit, suffer or allow the same to be done.
- (b) The rule known as the ejusdem generis rule shall not apply and accordingly general words introduced by the word "other" shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts matters or things.
- (c) General words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by general words.
- (d) Words denoting the singular number only shall include the plural number also and vice versa and words denoting one gender only shall include the other genders and words denoting a person only shall include firms and corporations and vice versa.

1.3 Save where the contrary is indicated, any reference in this Debenture to:

1.3.1 this Debenture or any other agreement or document shall be construed as a reference to this Debenture or, as the case may be, such other agreement or document as the same may have been, or may from time to time be, amended, varied, novated or supplemented (and so that any reference to this Debenture shall include, unless the context otherwise requires, any agreement or document expressed to be supplemental hereto or expressed to be collateral herewith or which is otherwise entered into pursuant to or in accordance with the provisions hereof); and

1.3.2 a statute or statutory provision shall be construed as a reference to such statute or statutory provision as the same may have been, or may from time to time be, amended or re-enacted and all instruments, orders, plans, regulations, bye-laws, permissions and directions at any time made thereunder.

1.4 Clause, Part and Schedule headings are for ease of reference only.

## **Part 2**

### **COVENANT TO PAY**

#### **2. COVENANT TO PAY**

2.1 The Operating Tenant Guarantor hereby covenants with and undertakes to the Issuer:

2.1.1 to pay discharge and satisfy to the Issuer the Obligations as and when due;

- 2.1.2 to observe and perform in all respects the obligations on the part of the Operating Tenant Guarantor contained in this Debenture; and
- 2.1.3 that all sums payable by the Operating Tenant Guarantor under this Debenture shall be paid without any deduction, set-off, counterclaim or withholding (unless required by law in which case the Operating Tenant Guarantor will pay to the Issuer an additional sum equivalent to the sum withheld and will provide evidence satisfactory to the Issuer that the Operating Tenant Guarantor has properly accounted to the relevant authority for the sum withheld or deducted).

### **Part 3**

## **THE SECURITY**

### **3. SECURITY**

#### **3.1**

##### **3.1.1 Charge Over Shares**

The Operating Tenant Guarantor with full title guarantee hereby (and to the intent that the security so constituted shall be a continuing security in favour of the Issuer) charges in favour of the Issuer with the payment and discharge of the Obligations by way of first legal mortgage all its right, title and other interests in the Shares.

##### **3.1.2 Rights attaching to Shares**

- (a) Subject as provided below, all rights and powers conferred by statute or otherwise upon an absolute owner of the Shares will be exercised as the Operating Tenant Guarantor may direct.
- (b) After this Mortgage becomes enforceable, but not before, (and without any consent or authority on the part of the Operating Tenant Guarantor), the Issuer may at the Issuer's discretion (in the name of the Operating Tenant Guarantor or otherwise) exercise or cause to be exercised in respect of any of the charged Shares any voting rights or rights to receive dividends, interest, principal or other payments of money, as the case may be, forming part of the charged Shares and all other powers and rights conferred on or exercisable by the bearer or holder of such Shares.

##### **3.1.3 Limited Recourse**

Notwithstanding any other provision of this Debenture, the obligations of the Operating Tenant Guarantor under this Debenture shall be limited to the proceeds of the realisation of its interest in the Shares subject to the security created by, or pursuant to, this Debenture and to the extent that such proceeds are insufficient to meet such obligations in full, any outstanding obligations shall be extinguished and the Operating Tenant Guarantor shall have no further liability.

#### **3.2 Floating Charge**

3.2.1 The Operating Tenant Guarantor with full title guarantee (and to the intent that the security so constituted shall be a continuing security in favour of the Issuer) charges in favour of the Issuer with the payment and discharge of the Obligations by way of floating charge the whole of the Operating Tenant Guarantor's undertaking and all its property, rights and assets whatsoever and wheresoever present and future other than any property for the time being effectively charged by way of fixed charge by Clause 3.1 or otherwise pursuant to this Debenture.

3.2.2 The Issuer shall be entitled at any time by notice in writing to the Operating Tenant Guarantor to convert the floating charge created by Clause 3.2.1 above into a fixed charge affecting all the property and assets which for the time being are the subject of such floating charge or as the case may be such of the said property and assets as are specified by such notice if the Issuer considers the relevant assets to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy.

3.2.3 The floating charge created by Clause 3.2.1 shall (in addition to the circumstances in which the same shall occur under the general law) automatically crystallise and be converted into a fixed charge affecting all the property and assets which for the time being are the subject of such floating charge without notice from the Issuer to the Operating Tenant Guarantor on:

- (a) the presentation of a petition for the appointment of an administrator of the Operating Tenant Guarantor or the compulsory winding up of the Operating Tenant Guarantor;
- (b) the appointment of an administrative receiver, receiver, official manager, trustee, liquidator or similar officer of the Operating Tenant Guarantor over the whole or any part of the Charged Property;
- (c) the convening of a meeting for the passing of a resolution for the liquidation, winding-up or dissolution of the Operating Tenant Guarantor;  
or
- (d) the presentation or making of an application for a warrant of execution, writ of fieri facias, garnishee order or charging order in respect of any of the assets charged or assigned by or pursuant to this Debenture.

3.2.4 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by Clause 3.2.1 above;

#### **4. PROVISIONS AS TO SECURITY**

##### **4.1 Continuing Security**

4.1.1 The security from time to time constituted by or pursuant to this Debenture shall remain in full force and effect as a continuing security until discharged by the Issuer.

- 4.1.2 No part of the security created hereby or pursuant hereto shall be considered satisfied or discharged by any intermediate payment, discharge or satisfaction of the whole or any part of the Obligations.

#### **4.2 Perfection of Security**

- 4.2.1 The Operating Tenant Guarantor shall from time to time at the request of the Issuer do any act or execute in favour of the Issuer or as it may direct, such further or other assignments (whether legal or equitable), transfers, mortgages, legal or other charges, securities, notices or documents as in each case the Issuer may require for:
- (a) the perfection of the security hereby constituted or intended to be constituted;
  - (b) the better realisation of the security hereby constituted or intended to be constituted; or
  - (c) the exercise or more effective exercise of the powers, authorities, directions, rights or remedies vested in the Issuer or any Receiver appointed hereunder.
- 4.2.2 Any assignments (whether legal or equitable), transfers, mortgages, legal or other charges, securities, notices or documents to be given by the Operating Tenant Guarantor pursuant to the provisions of this Debenture shall be in such form and contain such provisions as the Issuer may reasonably require.
- 4.2.3 The Operating Tenant Guarantor shall take such action as is available to it:
- (a) to perfect and protect the security intended to be conferred on the Issuer by or pursuant to this Debenture;
  - (b) to maintain the security hereby intended to be created; and
  - (c) to make all filings and registrations and to take all such other steps as may be necessary in connection with the creation, perfection or protection of security created by or pursuant to this Debenture.
- 4.2.4 The obligations of the Operating Tenant Guarantor under this Clause 4.2 shall be in addition to and not in substitution for the covenants for further assurance deemed to be included herein by virtue of the 1994 Act.

#### **4.3 Deposit of Title Deeds**

Unless the same shall be held by or be required to be delivered to any holder of a security ranking in priority to that of the Issuer the Operating Tenant Guarantor shall within ten Business Days of the execution of this Debenture and any standard security granted pursuant hereto (or upon becoming possessed thereof at any time hereafter) deposit with the Issuer all deeds, certificates and other documents constituting or evidencing title to the Charged Property other than those relating to the Operating Tenant

Guarantor's property, rights, assets and undertaking charged pursuant to Clause 3.2 until conversion and/or crystallisation shall have taken place over all or any part thereof.

#### **4.4 Release of Security**

4.4.1 It is hereby agreed and declared that if at any time:

- (a) the Obligations have been irrevocably paid or discharged in full; or
- (b) security or a guarantee for the Obligations secured by this Debenture, acceptable to the Issuer, has been provided in substitution for this Debenture

the Issuer will at the request and cost of the Operating Tenant Guarantor release, reassign or discharge (as appropriate) the Charged Property without recourse or warranty.

4.4.2 Without limitation to the provisions of the Insolvency Act 1986 if the Issuer reasonably considers that any amount paid by the Operating Tenant Guarantor to the Issuer in satisfaction of the Obligations is capable of being avoided or otherwise set aside on liquidation or administration of the Operating Tenant Guarantor or otherwise then such amount shall not be considered to have been irrevocably paid for the purposes hereof.

### **5. RESTRICTIONS ON OTHER SECURITIES**

#### **5.1 Negative Pledge**

5.1.1 The Operating Tenant Guarantor undertakes with the Issuer not at any time during the subsistence of the security constituted by the Debenture to create or permit to subsist any other encumbrance over the Shares or any part or parts thereof without the prior written consent of the Issuer except for any security arising by operation of law in the ordinary course of the Operating Tenant Guarantor's business.

5.1.2 The Operating Tenant Guarantor undertakes with the Issuer not to sell, transfer, lease, lend or otherwise dispose of the Shares or any part or parts thereof or enter into any agreement for the same.

### **Part 4**

## **OUTGOING PROPERTY**

### **6. RELEASE**

The Issuer hereby irrevocably and unconditionally releases the Operating Tenant Guarantor from the Previous Obligations created by the Previous Debenture in so far as they relate to the Outgoing Property.

### **Part 5**

## REPRESENTATIONS

### 7. REPRESENTATIONS

#### 7.1 Benefit

The Operating Tenant Guarantor makes the representations and warranties set out in this Clause 7 in favour of the Issuer and acknowledges that the Issuer has entered into the Transaction Documents in full reliance on those representations and warranties.

#### 7.2 Status

The Operating Tenant Guarantor:

7.2.1 is a limited liability company, duly incorporated and validly and perpetually existing under the laws of its jurisdiction of incorporation;

7.2.2 possesses the capacity to sue and be sued in its own name; and

7.2.3 has the power to own its assets and to carry on its business as it is being conducted.

#### 7.3 Powers

7.3.1 The Operating Tenant Guarantor has the power to enter into this Debenture and to exercise its rights and perform its obligations under it; and

7.3.2 it has taken all necessary corporate and other action to authorise its entry into this Debenture and to exercise its rights and perform its obligations under it.

#### 7.4 Legal validity

7.4.1 This Debenture constitutes, or will constitute when executed in accordance with its terms, the Operating Tenant Guarantor's legal, valid and binding obligations.

#### 7.5 Authorisations

Subject to any requirements under the laws of the Operating Tenant Guarantor's place of incorporation or where it carries on business, all actions, conditions and things required to be taken, fulfilled and done (including the obtaining of any necessary authorisations, the making of registrations and the like) by the laws of the jurisdiction under which the Operating Tenant Guarantor is incorporated or formed in or in which any of its assets are situated in order:

7.5.1 to enable it lawfully to enter into, exercise its rights and perform and comply with its obligations under, and the transactions contemplated by, this Debenture;

7.5.2 to ensure that those obligations are valid and legally binding; and

7.5.3 to make this Debenture admissible in evidence in the courts of its jurisdiction of incorporation and of England and Wales,

have been taken, fulfilled and done in order for it to comply with its obligations to the Issuer under, and the transactions contemplated by, this Debenture.

#### 7.6 No conflict

The Operating Tenant Guarantor's entry into, exercise of its rights and/or performance of or compliance with its obligations under, and the transactions contemplated by, this Debenture:

7.6.1 do not violate, or exceed any borrowing or other power or restriction granted or imposed by any law to which it or its assets are subject or its constitutional documents; or

7.6.2 conflict with any document or agreement which is binding upon the Operating Tenant Guarantor or any asset of the Operating Tenant Guarantor.

**7.7 No default**

No event has occurred and is continuing which has not been waived and which constitutes (or with the giving of notice, lapse of any period of time, determination of materiality or the fulfilment of any other applicable condition or any combination of the foregoing in each case specified in the relevant document, would so constitute) a default under any document which is binding on the Operating Tenant Guarantor or any of its assets.

**7.8 Choice of law**

In any proceedings taken in its jurisdiction of incorporation in relation to this Debenture, the choice of governing law of this Debenture and any judgment determined in any relevant jurisdiction of such governing law will be recognised and enforced.

**8. OBLIGATIONS NOT DISCHARGED**

The obligations of the Operating Tenant Guarantor under this Debenture and the rights, powers and remedies conferred in respect of the Borrower upon the Issuer under the Transaction Documents or by law will not be discharged, impaired or otherwise affected by:

8.1 the winding-up, dissolution, administration or re-organisation of an Obligor or any other person or any change in an Obligor's status, function, control or ownership; or

8.2 any of the Obligations or the obligations of any other person under any Transaction Document being or becoming illegal, invalid, unenforceable or ineffective in any respect; or

8.3 time or other indulgence being granted or agreed to be granted to an Obligor in respect of the Obligations; or

8.4 any:

8.4.1 amendment to or waiver under; or

8.4.2 variation, waiver or release of, any obligation of an Obligor under, any Transaction Document; or

8.5 any failure to take, or fully to take, any Security contemplated by any Transaction Document or otherwise agreed to be taken in respect of the Obligations; or



- 8.6 any failure to realise or fully to realise the value of, or any release, discharge, exchange or substitution of, any Security taken under the Transaction Documents or any of the Obligations; or
- 8.7 any action taken or purported to be taken under Clause 4.2 (whether or not any such action is authorised by such Clause); or
- 8.8 any other act, event or omission which, but for this Clause 8, might operate to discharge, impair or otherwise affect any of the Obligations or any of the rights, powers or remedies conferred upon the Issuer under the Transaction Documents or by law.

## **Part 6**

### **ENFORCEMENT OF SECURITY**

#### **9. ENFORCEMENT OF SECURITY**

##### **9.1 Power of Sale**

- 9.1.1 As between the Issuer and any purchaser, Receiver, delegate or other third party dealing in good faith the statutory power of sale shall arise and be exercisable and the security hereby constituted shall be enforceable and all powers of the Issuer arising hereunder (whether by statute or the provisions hereof) shall be immediately exercisable with immediate effect from the date hereof Provided that, as between the Issuer and the Operating Tenant Guarantor, the Issuer will not exercise any such powers before the occurrence of an Event of Default.
- 9.1.2 Section 103 of the Law of Property Act 1925 shall not restrict the exercise by the Issuer of the statutory power of sale conferred on it by Section 101 of the Law of Property Act 1925.

##### **9.2 Protection of Purchaser**

The protection given to purchasers from a mortgagee in Sections 104 and 107 of the Law of Property Act 1925 and Section 42 (3) of the Insolvency Act 1986 shall apply equally to purchasers and any other persons dealing with a Receiver or the Issuer and no purchaser or other person dealing with the Issuer or any Receiver shall be bound to see or inquire whether the right of the Issuer or such Receiver to exercise any of its or his powers has arisen or become exercisable or be concerned with any propriety or regularity on the part of the Issuer or such Receiver in such dealings.

##### **9.3 Mortgagee's Powers**

Without prejudice to any other rights, powers or remedies of the Issuer howsoever arising all or any of the powers, authorities or discretions conferred expressly or impliedly upon a Receiver of the whole or any part of the Charged Property (whether arising under this Debenture or otherwise) may also be exercised by the Issuer in respect of the whole or any part of the Charged Property at any time after the occurrence of an Event of Default whether with or without the appointment of a Receiver.

##### **9.4 Mortgagee's Liability**

Neither the Issuer nor any Receiver appointed hereunder shall be liable to account as mortgagee or mortgagees in possession in respect of the Charged Property or be liable for any loss upon realisation or for any neglect or default of any nature whatsoever in connection with the Charged Property for which a mortgagee in possession might as such be liable.

**9.5 Exclusion of sub section (18) of Section 99 of the Law of Property Act 1925**

For the purposes of section 99 of the Law of Property Act 1925 the expression "Mortgagor" shall include any encumbrancer deriving title under the Operating Tenant Guarantor and sub section (18) of Section 99 of the Law of Property Act 1925 shall not apply.

**9.6 Statutory Powers**

The powers conferred by this Debenture on the Issuer and/or any Receiver or Receivers of the Charged Property or any part thereof shall be in addition to and not in substitution for the powers conferred on mortgagees or Receivers under the Law of Property Act 1925 or otherwise by law and in the case of any conflict between the powers contained in such Acts and those conferred by this Debenture the terms of this Debenture shall prevail.

**9.7 Consolidation**

The restriction on the right of consolidating mortgage securities contained in section 93 of the Law of Property Act 1925 shall not apply to this Debenture.

**9.8 Shares**

The Issuer may at any time after this Mortgage becomes enforceable, but not before, in accordance with Clause 9.1 exercise, at its discretion (in the name of the Operating Tenant Guarantor and without any further consent or authority on the part of the Operating Tenant Guarantor) any voting rights and any powers or rights which may be exercised by the person or persons in whose name the Shares are registered or who is the holder thereof under the terms thereof or otherwise including, but without limitation, all the powers given to trustees by Section 10(3) and (4) of the Trustee Act, 1925 as amended by Section 9 of the Trustee Investment Act, 1961 in respect of securities or property subject to a trust. Until such time, such voting rights, powers and other rights will be exercised in accordance with Clause 3.1.2.

**10. RECEIVERS**

**10.1 Appointment and Removal of Receiver**

10.1.1 At any time after having been requested so to do by the Operating Tenant Guarantor or after the presentation of a petition for the making of an administration order in relation to the Operating Tenant Guarantor or after an Event of Default the Issuer may appoint one or more persons to be a Receiver or Receivers of the whole or any part of the Charged Property.

10.1.2 The Issuer may:

- (a) remove any Receiver previously appointed hereunder; and
  - (b) appoint another person or other persons as Receiver or Receivers either in the place of a Receiver so removed or who has otherwise ceased to act or to act jointly with a Receiver or Receivers previously appointed hereunder.
- 10.1.3 If at any time and by virtue of any such appointment(s) any two or more persons shall hold office as Receivers of the same assets or income each one of such Receivers shall be entitled (unless the contrary shall be stated in any of the deed(s) or other instrument(s) appointing them) to exercise all the powers and discretions hereby conferred on Receivers individually and to the exclusion of the other or others of them.
- 10.1.4 Every such appointment or removal and every delegation appointment or removal by the Issuer in the exercise of any right to delegate its powers or to remove delegates herein contained may be made either by deed or by instrument in writing under the hand of any officer of the Issuer or any person authorised in writing in that behalf by any such officer.

## 11. POWERS OF RECEIVER

- 11.1 Every Receiver for the time being holding office by virtue of an appointment made by the Issuer hereunder shall (subject to any limitations or restrictions expressed in the deed or other instrument appointing him but notwithstanding any winding-up, administration, voluntary arrangement or dissolution of the Operating Tenant Guarantor) have in relation to the Charged Property or as the case may be that part of the Charged Property in respect of which he is appointed:
- 11.1.1 all the powers (as varied and extended by the provisions hereof) conferred by the Insolvency Act 1986 and the Law of Property Act 1925 on mortgagors and on mortgagees in possession, Administrators, Receivers and Administrative Receivers appointed under those Acts; and
  - 11.1.2 power in the name or on behalf and at the cost of the Operating Tenant Guarantor to exercise all the powers, authorities and rights of an absolute, beneficial and legal owner and do or omit to do anything which the Operating Tenant Guarantor itself could do as an absolute, beneficial and legal owner and irrespective of any winding-up, administration, voluntary arrangement or dissolution.
- 11.2 In addition and without prejudice to the generality of the foregoing every Receiver for the time being holding office by virtue of an appointment made by the Issuer hereunder shall (notwithstanding any winding-up, administration, voluntary arrangement or dissolution of the Operating Tenant Guarantor) have the following powers:
- 11.2.1 Carry on business
- power to carry on and manage, or concur in the carrying on and management of the whole or any part of the Operating Tenant Guarantor's business as if he

were the absolute beneficial owner thereof including the power to enter into any contract or arrangement and to perform, repudiate, rescind or vary any contract to which the Operating Tenant Guarantor is a party and power where the Operating Tenant Guarantor has one or more subsidiaries, to supervise, control and finance any subsidiary or subsidiaries and its or their business or businesses and the conduct thereof and to change the registered office of the Operating Tenant Guarantor and any subsidiary;

11.2.2 Acquiring new companies

power to promote or otherwise acquire the share capital of any body corporate with a view to such body corporate:

- (a) becoming a subsidiary of the Operating Tenant Guarantor;
- (b) purchasing, leasing or otherwise acquiring an interest in the whole or any part of the Charged Property; and
- (c) carrying on any business in succession to the Operating Tenant Guarantor or any subsidiary of the Operating Tenant Guarantor;

11.2.3 Take possession

power to enter upon, take possession of, collect and get in the Charged Property including rent and other income whether accrued before or after the date of his appointment and for that purpose to make or to require the directors of the Operating Tenant Guarantor to make calls conditionally or unconditionally upon the holders of the Operating Tenant Guarantor's share capital in respect of any such capital of the Operating Tenant Guarantor which remains uncalled and to enforce payment of calls so made and any previous unpaid calls by taking proceedings in the name of the Operating Tenant Guarantor or in his own name;

11.2.4 Development

power to demolish, alter, improve, develop, complete, construct, modify or refurbish the whole or any part of the Property and the Fixtures thereon and to complete or undertake or concur in the completion or undertaking (with or without modification) of any project in which the Operating Tenant Guarantor was concerned or interested prior to his appointment;

11.2.5 Repairs

power to undertake, effect or complete any work of repair, maintenance, modification, redecoration, improvement, fitting out and furnishing of the Property or any part thereof;

11.2.6 Planning and Environment

power to apply for and obtain any planning permissions, building regulation approvals, environmental permits and any other permissions, consents or licences;

11.2.7 Services

power to provide all services (including without limitation heating, lighting and cleansing) which may be deemed expedient in relation to the occupation or management of the Property;

11.2.8 Contracts

power to enter into, perform, repudiate, rescind, vary, modify, assign, sub-let or novate any contract or agreement, option agreement, agreement for lease, building contract or professional appointment or otherwise for or which relates in any way to the Charged Property and to appoint, hire and employ and remunerate such contractors, advisers, professionals, agents, servants, attendants, managers, officers, workmen and others upon such terms and at such salaries fees or remuneration and generally in such manner as he shall think fit and to discharge such persons;

11.2.9 Transferring, selling etc.

without the need to observe the restrictions imposed by Section 103 of the Law of Property Act 1925 or any need to observe all or any of the restrictions or other provisions of Section 99 of the said Act to:

- (a) sell or transfer or concur in selling or transferring;
- (b) lease or concur in leasing;
- (c) accept or concur in accepting surrenders of leases;
- (d) terminate or concur in terminating leases;
- (e) surrender or concur in surrendering leases;
- (f) grant or concur in granting licences; and/or
- (g) terminate or concur in terminating licences

of the Property in respect of which the Receiver is appointed in such manner and generally on such terms and conditions as he thinks fit and to carry any such sale, transfer, leasing, termination, surrender or licensing into effect by conveying, assigning, leasing, accepting surrenders, terminating, surrendering or licensing;

11.2.10 Landlord and Tenant

power to make allowances to and rearrangements with any lessees, tenants or other persons from whom any rents and profits may be receivable and to exercise any powers and provisions conferred on a landlord or tenant;

11.2.11 Sever Fixtures

power to sever Fixtures and sell the same separately from the premises to which they are affixed or in which they are contained;

11.2.12 Acquire additional property

power to acquire any interest in any real or personal property which he may consider necessary or desirable to acquire in order to maintain or enhance the value of the Charged Property or any part thereof and to grant or surrender, easements, covenants and licences and to make exchanges and to enter into any agreements for the revision of boundaries;

11.2.13 Rent Reviews

power to implement, negotiate and agree rent reviews in such manner and upon such terms as the Receiver deems appropriate;

11.2.14 Insurance

power to effect, maintain, renew and review indemnity and any other insurances and obtain bonds and performance guarantees;

11.2.15 Covenants, Guarantees and Indemnities

power to enter into bonds, covenants, guarantees, commitments, indemnities and other obligations or liabilities as he shall think fit and make all payments needed to effect, maintain or satisfy such obligations and liabilities;

11.2.16 Proceedings

power to bring, prosecute, enforce, defend and abandon applications, claims, disputes, actions, suits and proceedings in connection with the business of the Operating Tenant Guarantor or the Charged Property in the name of the Operating Tenant Guarantor and to submit to arbitration, negotiate, compromise and settle any such applications, claims, disputes, actions, suits or proceedings and in addition to take or defend proceedings for the compulsory winding-up of the Operating Tenant Guarantor and proceedings for directions under Section 35 (1) of the Insolvency Act 1986;

11.2.17 Advisers

power to employ, engage and appoint such managers, contractors and other personal and professional advisers and consultants on such terms as he shall think fit including without limitation power to engage his own firm in the conduct of the Receivership;

11.2.18 Value Added Tax

power to make such elections for value added tax purposes as the Receiver shall in his absolute discretion think fit;

#### 11.2.19 Borrowing

power to raise or borrow money from the Issuer or any other person to rank for payment in priority to the security constituted by or pursuant to this Debenture and with or without a mortgage or charge on the Charged Property or any part of it and generally on such terms and conditions as he may think fit and no person advancing any such monies shall be concerned to enquire as to the propriety or purpose of the exercise of this power or to see to the application of any monies so raised or borrowed;

#### 11.2.20 Incidental powers

power to do all such other things as may seem to the Receiver to be incidental or conducive to any other power vested in him or to be conducive to the realisation of the security constituted by or pursuant to this Debenture.

### 11.3 Consideration

11.3.1 Any sale or other disposal of any of the Charged Property in the exercise of the Issuer's or Receivers' respective powers (including a disposal by the Receiver to any subsidiary) may be for such consideration as the Issuer or Receiver (as appropriate) may think fit and may if considered expedient be for nil consideration.

11.3.2 The Receiver or the Issuer may accept as and by way of consideration for such sale or other disposal cash, shares, loan capital or other obligations including without limitation consideration fluctuating according to or dependent upon profit or turnover and consideration the amount whereof is to be determined by a third party and any such consideration may be receivable in a lump sum or by instalments and upon receipt by the Receiver shall ipso facto be and become charged with the payment of the Obligations.

11.3.3 Any contract for any such sale or other disposal by the Receiver or the Issuer may contain conditions excluding or restricting the personal liability of the Receiver or the Issuer.

## 12. APPLICATION OF CONSIDERATION

12.1.1 All moneys received by any Receiver appointed under this Debenture shall (subject to the rights and claims of any person having a security ranking in priority to the security constituted by or pursuant to this Debenture) be applied in the following order:

- (a) in the payment of the costs, charges and expenses of and incidental to the Receiver's appointment and the payment of his remuneration;

- (b) in the payment and discharge of any liabilities incurred by the Receiver on the Operating Tenant Guarantor's behalf in the exercise of any of the powers of the Receiver;
- (c) in providing for the matters (other than the remuneration of the Receiver) specified in the first three paragraphs of Section 109(8) of the Law of Property Act 1925;
- (d) in or towards payment of any debts or claims which are by statute payable in preference to the Obligations but only to the extent to which such debts or claims have such preference;
- (e) in or towards the satisfaction of the Obligations

12.1.2 Any surplus shall be paid to the Operating Tenant Guarantor or other person entitled thereto and the provisions of this sub-clause and sub-clause 12.1.1(a) of this Clause shall take effect as and by way of variation and extension to the provisions of the said Section 109 which provisions as so varied and extended shall be deemed incorporated herein.

12.1.3 Only moneys actually paid by the Receiver to the Issuer in satisfaction or discharge of the Obligations shall be capable of being applied by the Issuer in satisfaction thereof.

### 13. AGENT

Every Receiver so appointed shall be deemed at all times and for all purposes to be the agent of the Operating Tenant Guarantor which shall be solely responsible for his acts and defaults and for the payment of his remuneration.

### 14. RECEIVERS REMUNERATION

Every Receiver so appointed shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Issuer (or failing such agreement to be fixed by the Issuer) appropriate to the work and responsibilities involved upon the basis of charging from time to time adopted in accordance with his current practice or the current practice of his firm and without being limited to the maximum rate specified in Section 109(6) of the Law of Property Act 1925.

### 15. POWER OF ATTORNEY

15.1 The Operating Tenant Guarantor hereby irrevocably appoints the following:

15.1.1 the Issuer;

15.1.2 each and every person to whom the Issuer shall from time to time have delegated the exercise of the power of attorney conferred by this Clause; and

15.1.3 any Receiver appointed hereunder and for the time being holding office as such;

jointly and severally to be the attorney or attorneys of the Operating Tenant Guarantor and in its name and otherwise on its behalf and as its act and deed to sign, seal, execute,



deliver, perfect and do all deeds, instruments, acts and things which may be required (or which the Issuer or any Receiver appointed hereunder shall consider expedient or desirable) for:

- (a) carrying out any obligation imposed on the Operating Tenant Guarantor by or pursuant to this Debenture;
- (b) carrying any sale, lease, charge or other dealing by the Issuer or such Receiver into effect;
- (c) conveying or transferring any legal estate or other interest in land or other property;
- (d) getting in the Charged Property; and
- (e) generally for enabling the Issuer and the Receiver to exercise the respective powers conferred on them by this Debenture or by law.

15.2 The Issuer shall have full power to delegate the power conferred on it by this Clause 14 but no such delegation shall preclude the subsequent exercise of such power by the Issuer itself or preclude the Issuer from making a subsequent delegation thereof to some other person and any such delegation may be revoked by the Issuer at any time.

15.3

15.3.1 The Operating Tenant Guarantor shall ratify and confirm all transactions entered into by the attorney or delegate of the attorney in the exercise or purported exercise of the attorney's powers.

15.3.2 The Operating Tenant Guarantor shall at the request from time to time of the attorney enter into and duly execute such further power or powers of attorney (mutatis mutandis) in the form of this Clause 15 as may reasonably be so requested.

15.4 The power of attorney hereby granted is as regards the Issuer, its delegates and any Receiver (and as the Operating Tenant Guarantor hereby acknowledges) granted irrevocably and for value as part of the security constituted by this Debenture to secure proprietary interests of and the performance of obligations to the respective donees within the meaning of the Powers of Attorney Act 1971.

## **Part 7**

### **FURTHER RIGHTS OF THE CREDITOR**

#### **16. FURTHER RIGHTS OF THE ISSUER**

##### **16.1 Delegation**

16.1.1 The Issuer may from time to time delegate by power of attorney or otherwise to any person or corporation any of the powers and discretions of the Issuer under this Debenture whether arising by statute, the provisions hereof or otherwise upon such terms and for such periods of time as it may think fit and may determine any such delegation.

16.1.2 The Issuer shall not be liable to the Operating Tenant Guarantor for any loss or damage arising from any act, default, omission or misconduct of any such delegate and references herein to the Issuer and/or to any Receiver shall where the context so admits include references to any delegates so appointed.

## **16.2 Granting time**

The Issuer may at any time or times without discharging or in any way affecting the security created by or pursuant to this Debenture or any remedy of the Issuer in respect of such security grant to the Operating Tenant Guarantor or any other person time or indulgence, further credit, loans or advances or enter into any arrangement, composition or variation of rights with or abstain from perfecting, asserting, calling, exercising or enforcing any remedies, securities, guarantees or other rights which they may now or hereafter have from or against the Operating Tenant Guarantor.

## **16.3 Waiver**

No failure on the part of the Issuer to exercise or delay on its part in exercising any of the rights, powers and remedies provided by this Debenture or by law (collectively "the Issuer's Rights") shall operate as a waiver thereof nor shall any single or partial waiver of any of the Issuer's Rights preclude any further or other exercise of any of the Issuer's Rights.

## **16.4 Collateral Security**

16.4.1 Where the security given to the Issuer hereby or pursuant hereto initially takes effect as a collateral or further security then notwithstanding any receipt, release or discharge endorsed on or given in respect of or under the principal security to which this Debenture operates as a collateral or further security the security provided by or pursuant to this Debenture shall be an independent security.

16.4.2 The Issuer may in its discretion grant time or other indulgence or make any other arrangement, variation or release with any person or persons whether or not a party hereto (whether or not such person or persons are jointly liable with any Operating Tenant Guarantor) in respect of any of the Obligations or of any other security therefor or guarantee in respect thereof without prejudice either to the security constituted by or pursuant to this Debenture or to the liability of any Operating Tenant Guarantor for the Obligations or the exercise by the Issuer of any rights, remedies and privileges conferred upon it by this Debenture.

## **16.5 Rights cumulative**

The rights, powers and remedies provided in this Debenture are cumulative and are not nor are they to be construed as exclusive of any rights powers or remedies provided by law.

#### **16.6 Releases**

Any receipt, release or discharge of the security provided by or of any liability arising under this Debenture shall not release or discharge the Operating Tenant Guarantor from any liability to the Issuer for the same or any other monies which may exist independently of this Debenture.

#### **17. PRIOR CHARGES**

- 17.1.1 In the event of any action, proceeding or step being taken to exercise any powers or remedies conferred by any prior mortgage, charge or encumbrance against the Charged Property or in case of exercise by the Issuer or any Receiver of any power of sale hereunder the Issuer may redeem such prior mortgage, charge or encumbrance or procure the transfer thereof to itself.
- 17.1.2 The Issuer may settle and pass the accounts of the prior mortgagee, chargee or encumbrancer and any accounts so settled and passed shall be conclusive and binding on the Operating Tenant Guarantor.
- 17.1.3 All principal monies, interest, costs, charges and expenses of and incidental to any redemption or transfer shall be paid by the Operating Tenant Guarantor to the Issuer on demand.

#### **18. SUBSEQUENT CHARGES**

If the Issuer shall at any time receive notice of any subsequent mortgage, charge, assignment, hypothecation, pledge, lien or other like interest, matter, event or transaction affecting the Charged Property or any part of it the Issuer may open a new account or accounts for the Operating Tenant Guarantor in its books Provided that if the Issuer does not in fact open any such new account then unless it gives express written notice to the Operating Tenant Guarantor to the contrary the Issuer shall be treated as if it had in fact opened such account or accounts at the time when it received such notice and as from that time and unless such express written notice shall be given to the Operating Tenant Guarantor all payments by or on behalf of the Operating Tenant Guarantor to the Issuer shall (in the absence of any express contrary appropriation by the Operating Tenant Guarantor) be credited or treated as having been credited to a new account of the Operating Tenant Guarantor and not as having been applied in reduction of the Operating Tenant Guarantor's indebtedness and other liabilities to the Issuer at the time when such notice was received.

#### **19. ACCOUNTS AND SET-OFF**

##### **19.1 Suspense Account**

All moneys received, recovered or realised by the Issuer under this Debenture (including the proceeds of any conversion of currency) may in the discretion of the Issuer be credited to any suspense or impersonal account and may be held in such account for so

long as the Issuer may think fit pending their application from time to time (as the Issuer shall be entitled to do in its discretion) in or towards the discharge of any of the Obligations and save as provided herein no party shall be entitled to withdraw any amount at any time standing to the credit of any suspense or impersonal account referred to above.

#### **19.2 Set-Off**

All rights of set-off which the Operating Tenant Guarantor may have against the Issuer are hereby excluded.

### **Part 8 MISCELLANEOUS**

#### **20. NOTICES**

- 20.1 Each communication to be made hereunder shall be made in writing but, unless otherwise stated, may be made by fax or letter.
- 20.2 Any communication or document to be made or delivered by the Issuer to the Operating Tenant Guarantor shall (unless the Operating Tenant Guarantor has by fifteen days' written notice to the Issuer specified another address) be made or delivered to the Operating Tenant Guarantor at its registered office and shall be deemed to have been made or delivered when despatched (in the case of any communication made by telex) or (in the case of any communication made by letter) when left at that address or as the case may be two days after being deposited in the post first class postage prepaid in an envelope addressed to it at that address Provided that any communication or document to be made or delivered to the Issuer shall be effective only when received by the Issuer at BUPA House, 15-19 Bloomsbury Way, London WC1A 2BA and then only if the same is expressly marked for the attention of the Company Secretary (or such other department or officer as the Issuer shall from time to time specify for this purpose).
- 20.3 Each communication and document made or delivered by one party to another pursuant to this Debenture shall be in the English language or accompanied by a translation thereof into English certified (by an officer or the person making or delivering the same) as being a true and accurate translation thereof.

#### **21. PROVISIONS SEVERABLE AND PARTIAL INVALIDITY**

If, at any time, any provision hereof is or becomes illegal, invalid or unenforceable in any respect (or any security intended to be created by or pursuant to this Debenture is ineffective) under the law of any jurisdiction such illegality, invalidity or unenforceability shall not affect:

- 21.1 the legality, validity or enforceability of the remaining provisions or the effectiveness of the remaining security under such law; or
- 21.2 the legality, validity or enforceability of such provision or the effectiveness of such security under the laws of any other jurisdiction.

**22. ASSIGNMENT**

The Issuer shall have full and unfettered right to assign or sub-charge the whole or any part of the benefit of this Debenture.

**23. RIGHT OF APPROPRIATION**

To the extent that the provisions of the Financial Collateral Arrangements (No. 2) Regulations 2003 (the "Regulations") apply to the Charged Property, the Trustee shall (after the Security constituted by this Debenture has become enforceable) have the right to appropriate all or any part of that Charged Property in or towards the payment or discharge of the Obligations and may exercise such right to appropriate upon giving written notice to the Operating Tenant Guarantor. For this purpose, a commercially reasonable method of valuing the relevant Charged Property shall be:

- (a) in the case of cash, the amount standing to the credit of any account with any bank, building society, financial institution or otherwise, together with any accrued but unposted interest, at the time of appropriation; and
- (b) in the case of the Shares or any other investments, shares or securities, their market value determined by the Trustee by reference to a public index, independent valuation or by such other process as the Trustee may select.

In each case, the parties agree that the method of valuation provided for in this Debenture shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

**24. JOINT AND SEVERAL**

Where the Operating Tenant Guarantor is in this Debenture two or more corporate bodies all covenants, obligations, agreements, certifications and declarations expressed or implied to be made by or with the Operating Tenant Guarantor are deemed to be made by or with such corporate bodies jointly and severally.

**25. THE ISSUER'S DISCRETION**

Any liberty or power which may be exercised or any determination which may be made hereunder by the Issuer or any receiver or administrative receiver may be exercised or made at its or his absolute and unfettered discretion without any obligation to give reasons therefor.

**26. COUNTERPARTS**

This Debenture may be executed in any number of counterparts and this will have the same effect as if the signatures on the counterparts were on a single copy of this Debenture.

**27. MEMORANDUM AND ARTICLES OF ASSOCIATION**

The Operating Tenant Guarantor warrants that:

- 27.1 the creation by this Debenture of the charges in favour of the Issuer does not contravene any of the provisions of the Memorandum and Articles of Association of the Operating Tenant Guarantor or any law or any agreement;
- 27.2 all actions on the part of the Operating Tenant Guarantor's officers, directors and shareholders necessary to authorise the execution of and performance by it of the obligations expressly assumed by it under this Debenture have been taken; and
- 27.3 the execution and the performance by the Operating Tenant Guarantor of the obligations expressed to be assumed by it in this Debenture will not cause to crystallise or oblige it to create any encumbrance other than the charges hereby given.

28. LAW

This Debenture and all non-contractual obligations arising out of or in connection with it is governed by English law

**IN WITNESS** whereof this Debenture has been executed as a deed by the Operating Tenant Guarantor and has been signed by or on behalf of the Issuer and is intended to be and is hereby delivered on the date first above written.

EXECUTED as a deed by )  
BUPA CARE HOMES GROUP )  
LIMITED acting by:- )

Director

In the Presence of

Director/Secretary

Witness

JOHN A HEWITT

Address

EXECUTED as a deed by )  
UK CARE NO. 1 LIMITED )  
acting by:- )

Director

Director/Secretary