Companies House

MR01(ef)

Registration of a Charge

Company name: **BHS GROUP LIMITED**

Company number: **03858895**

Received for Electronic Filing: **23/04/2015**

X45YNOTS

Details of Charge

Date of creation: **14/04/2015**

Charge code: **0385 8895 0005**

Persons entitled: **ARCADIA GROUP LIMITED (AND IT'S SUCCESSORS IN TITLE AND PERMITTED TRANSFEREES)**

Brief description:

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

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: **LINKLATERS LLP**

CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 3858895

Charge code: 0385 8895 0005

The Registrar of Companies for England and Wales hereby certifies that a charge dated 14th April 2015 and created by BHS GROUP LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 23rd April 2015 .

Given at Companies House, Cardiff on 24th April 2015

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

Certified Heat, save for material redacted pursuant to Section 859G of the Companies Act 2006, this copy instrument is a correct copy of the original instrument.

Linklaters LLP

EXECUTION VERSION

SECURITY AGREEMENT

4
dated 18 April 2015

created by

BHS GROUP LIMITED

BHS LIMITED

DAVENBUSH LIMITED

BHS PROPERTIES LIMITED

LOWLAND HOMES LIMITED

BHS SERVICES LTD (DORMANT)

BHS (JERSEY) LIMITED

EPOCH PROPERTIES LIMITED

as the Chargors

in favour of

ARCADIA GROUP LIMITED
acting as Lender

Linklaters

Ref: TB/AK

Linklaters LLP

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THE SCHEDULES

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THIS DEED is dated 14 April 2015 and made between:

(1) THE COMPANIES listed in Schedule 1 as chargors (the "**Chargors**"); and

(2) Arcadia Group Limited, incorporated in England and Wales with registration number 00237511, as lender (the "**Lender**").

Background

(A) Prior to the signing of the SPA, loans totalling in aggregate approximately £240,000,000 were made available by the Lender to members of the Group.

(B) In anticipation of the signing of the SPA and the transactions contemplated by the SPA (including the entry into this Deed), approximately £200,000,000 of that amount was written off by the Lender.

(C) A principal amount of £40,000,000 remains outstanding between the Lender and BHS Group Limited, the terms of which are set out in the Acknowledgement of Debt and secured under the terms of this Deed.

(D) The board of directors of each Chargor is satisfied that entering into this Deed would be most likely to promote the success of that Chargor for the benefit of its members as a whole and to the further benefit and advantage of that Chargor.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed:

"**ACEL Security Agreement**" means the legal charge agreement dated 11 March 2015 between Allied Commercial Exporters Limited and BHS Properties Limited.

"**Acknowledgement for Debt**" means the acknowledgement of debt sent through from BHS Group Limited to Arcadia Group Limited dated on or about the date of this Deed in respect of a debt of £40,000,000.

"**Administrator**" means an administrator appointed under Schedule B1 to the Insolvency Act.

"**Authorisation**" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

"**Corporate Guarantee 1**" has the meaning given to the term Corporate Guarantee under the facility agreement in respect of HSBC Facility 1.

"**Corporate Guarantee 2**" has the meaning given to the term Corporate Guarantee under the facility agreement in respect of HSBC Facility 2.

"**Delegate**" means a delegate or sub-delegate appointed by the Lender or a Receiver in accordance with this Deed.

"**Finance Document**" means the Acknowledgement for Debt and this Deed and any other document designated as such by the Lender and a Chargor.

"**Fixtures**" means fixtures, fittings and fixed plant, machinery and apparatus.

"**Financial Indebtedness**" means any indebtedness for or in respect of:

(a) moneys borrowed;

(b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease;

(e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);

(f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);

(h) shares which are expressed to be redeemable;

(i) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and

(j) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (i) above.

"**Group**" means BHS Group Limited and each of its Subsidiaries from time to time.

"**Head Lease**" means any lease pursuant to which title to the Property is vested in the Chargor.

"**HSBC Facility 1**" means the facility made available to Carmen Properties Limited by HSBC Bank plc under a facility agreement between, among others, BHS Group Limited, BHS Properties Carmen Properties Limited and HSBC Bank plc dated 12 March 2015.

"**HSBC Facility 2**" means the facility made available to BHS Group Limited by HSBC Bank plc under a facility agreement between, among others, BHS Group Limited as the borrower and HSBC Bank plc as the lender dated 26 March 2015.

"**HSBC Security**" means the Security to be granted by:

(a) in relation to HSBC Facility 1:

(i) the Security to be granted by BHS Limited as a condition subsequent under HSBC Facility 1 in respect of the Third Party Legal Charge Properties and any Related Rights; and

(ii) the share charge to be granted by BHS Properties Limited as a condition subsequent under HSBC Facility 1 in respect of its shares in Carmen Properties

Limited (a company incorporated under the laws of Jersey with registered number 81511 and having its registered office at Nautilus House, La Cour Des Casernes, St Helier, Jersey, JE1 3NH),

in each case, only to the extent required by the facility agreement for HSBC Facility 1 as at the date of this Deed, and

(b) in relation to HSBC Facility 2:

(i) the Security to be granted by the relevant Chargor over the properties listed as at the date of this Deed in Schedule 5 to the facility agreement for the HSBC Facility 2 and any Related Rights in respect of those properties; and

(ii) any Security granted in accordance with the terms of clause 19.6 of the facility agreement for the HSBC Facility 2,

in each case, only to the extent required by the facility agreement for the HSBC Facility 2 as at the date of this Deed.

"**Insolvency Act**" means the Insolvency Act 1986.

"**Law of Property Act**" means the Law of Property Act 1925.

"**Legal Reservations**" means:

(a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;

(c) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim; and

(d) similar principles, rights and defences under the laws of any Relevant Jurisdiction.

"**Limitation Acts**" means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984.

"**Occupational Lease**" means any lease or contractual licence or other right of occupation of all or any part of the Property.

"**Original Jurisdiction**" means, in relation to each Chargor, the jurisdiction under whose laws that Chargor is incorporated as at the date of this Deed.

"**Party**" means a party to this Deed.

"**Permitted Security**" means:

(a) the HSBC Security;

(b) any Security granted by BHS Properties Limited and in existence on the date of this Deed in favour of Allied Commercial Exporters Limited under the ACEL Security Agreement;

(c) any Security granted by any Chargor in relation to any bank or debt financing entered into after the date of this Deed;

(d) any lien arising by operation of law and in the ordinary course of trading;

(e) any netting off or set-off arrangement entered into by any Chargor in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of members of the Group;

(f) any payment or close out netting or set off arrangements pursuant to any treasury transaction or foreign exchange transaction entered into by any Chargor;

(g) any Security or Quasi-Security affecting any asset acquired by a Chargor after the date of this Deed;

(h) any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to any Chargor in the ordinary course of trading and on the supplier's standard or usual terms;

(i) any Security or Quasi–Security arising as a consequence of any finance or capital lease; or

(j) any Security or Quasi-Security granted with the consent of the Lender,

in each case, other than any fixed charge or mortgage over or affecting the Property.

"**Property**" means the leasehold property located at 19 The Mall, Cribbs Causeway Regional Shopping Centre, Patchway, Bristol, England BS34 5GF and registered at the Land Registry with title number GR206287, together with all Fixtures from time to time on that property and all Related Rights.

"**Property Chargor**" means BHS Limited, incorporated in England and Wales with registration number 00229606.

"**Quasi Security**" means a transaction under which any Chargor will:

(a) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by any Chargor or any member of the Group;

(b) sell, transfer or otherwise dispose of any of its receivables on recourse terms;

(c) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or

(d) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

"**Real Property**" means, in relation to each Chargor, all its right, title and interest from time to time (but excluding the Property) in and to any freehold or leasehold property in England and Wales and other real property anywhere in the world, all Fixtures from time to time on that property, and all Related Rights.

"**Receiver**" means a receiver and manager or other receiver appointed in respect of all or any part of the Security Assets and shall, if allowed by law, include an administrative receiver.

"**Related Rights**" means, in relation to a Security Asset and any Real Property:

(a) any proceeds of sale, transfer or other disposal, lease, licence, sub-licence, or agreement for sale, transfer or other disposal, lease, licence or sub-licence, of that Security Asset;

(b) any moneys or proceeds paid or payable deriving from that Security Asset;

(c) any rights, claims, guarantees, indemnities, Security or covenants for title in relation to that Security Asset;

(d) any awards or judgments in favour of a Chargor in relation to that Security Asset; and

(e) any other assets deriving from, or relating to, that Security Asset.

"**Relevant Jurisdiction**" means, in relation to each Chargor:

(a) its Original Jurisdiction;

(b) any jurisdiction where any asset subject to or intended to be subject to Security under this Deed; and

(c) any jurisdiction where it conducts its business.

"**Repayment Trigger**" has the meaning given to that term as set out in the Acknowledgement of Debt.

"**Secured Liabilities**" means all present and future liabilities and obligations at any time due, owing or incurred by BHS Group Limited to the Lender under any Finance Document both actual and contingent and whether incurred solely or jointly or as principal or surety or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities and obligations:

(a) any refinancing, novation, deferral or extension;

(b) any claim for breach of representation, warranty or undertaking or on a Repayment Trigger or under any indemnity given under or in connection with any document or agreement evidencing or constituting any other liability or obligation falling within this definition;

(c) any claim for damages or restitution; and

(d) any claim as a result of any recovery by a Chargor of a payment, prepayment, repayment, redemption, defeasance or discharge of those liabilities or obligations on the grounds of preference or otherwise,

and any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings.

"**Security**" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"**Security Assets**" means the assets which from time to time are, or expressed to be, the subject of the Security Interests or any part of those assets.

"**Security Interests**" means all or any of the Security created or expressed to be created in favour of the Lender by or pursuant to this Deed.

"**SPA**" means the sale and purchase agreement in relation to the sale of the entire share capital of BHS Group Limited entered into by Taveta Investments (No. 2) Limited and Retails Acquisitions Limited dated 11 March 2015.

"**Subsidiary**" means a subsidiary within the meaning of section 1159 of the Companies Act 2006.

"**Tax**" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"**Third Party Legal Charge Properties**" means the freehold property known as 116 Silbury Arcade, Milton Keynes, MK9 3BE registered under title number BM176755.

"**VAT**" means:

(a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and

(b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above or imposed elsewhere.

1.2 **Construction**

Any reference in this Deed to:

(a) a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended, restated (however fundamentally and whether or not more onerously) or replaced.; and

(b) "**Secured Liabilities**" is a reference the Secured Liabilities as amended, extended or replaced (however fundamentally and whether or not more onerously); and

(c) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent.

1.3 **Third Party Rights**

A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this Deed.

1.4 **Disposition**

The terms of the other Finance Documents and of any other agreement or instrument between the Parties are incorporated into each Finance Document to the extent required for any disposition or purported disposition of all or any part of any Real Property or any other relevant Security Asset contained in any Finance Document to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

2. SECURITY INTERESTS

2.1 Creation of Security Interests

(a) The Property Chargor, with full title guarantee and as security for the payment of all Secured Liabilities (to the extent that those Secured Liabilities relate to Tranche A (as defined in the Acknowledgement of Debt)), charges in favour of the Lender:

(i) by way of first legal mortgage, the Property; and

(ii) by way of first fixed equitable charge, the Property, to the extent not validly and effectively mortgaged under sub-paragraph (i) above.

(b) Each Chargor, with full title guarantee and as security for the payment of all Secured Liabilities, charges in favour of the Lender by way of first floating charge, all its undertaking and all its assets, both present and future (including assets expressed to be mortgaged, charged or assigned under this Clause 2.1), except in each case for:

(i) any Real Property;

(ii) any assets or undertakings encompassed within the HSBC Security; and

(iii) any assets or undertakings encompassed within the definition of Charged Property (as defined in the ACEL Security Agreement) as at the date of this Deed.

2.2 Ranking

(a) The floating charge created by each Chargor under Clause 2.1 (*Creation of Security Interests*) ranks:

(a) behind all the mortgages, fixed charges and assignments (or an equivalent type of security granted under the laws of a jurisdiction other than England and Wales) created by that Chargor; but

(b) in priority to any other Security over the Security Assets of that Chargor except for Security ranking in priority in accordance with paragraph (g) of Schedule 2 (*Rights of Receivers*).

(b) The Lender agrees to take reasonable steps to cooperate with the Chargors and any third party financier to negotiate, agree and enter into a deed of priority agreement or similar subordination arrangements with the Chargors and that third party financier in respect of any third party financing provided to a Chargor after the date of this Deed.

2.3 Conversion by notice

The Lender may convert the floating charge over all or any of the Security Assets into a fixed charge by notice to the relevant Chargor specifying the relevant Security Assets while a Repayment Trigger is continuing.

2.4 Automatic conversion

If:

(a) any Chargor takes any step to create any Security or Quasi Security in breach of Clause 3.1 (*Negative* pledge) over any Security Asset subject to a floating charge; or

(b) any person takes any formal step to effect any expropriation, attachment, sequestration, distress or execution against any such Security Asset (which is not frivolous or vexatious),

the floating charge over the relevant Security Assets shall automatically and immediately be converted into a fixed charge.

2.5 **Company voluntary arrangement moratorium**

Obtaining a moratorium or doing anything with a view to obtaining a moratorium pursuant to Schedule A1 of the Insolvency Act (including any preliminary decision or investigation) shall not cause the floating charge over all or any of the Security Assets to crystallise until the date upon which it is permitted to crystallise in accordance with paragraph 13 of Schedule A1 of the Insolvency Act.

2.6 **Consents**

If the consent of any party to a document relating to the Property is required to create fixed security over, or an assignment of, the rights of a Chargor under that document:

(a) that Chargor shall promptly notify the Lender;

(b) until the consent of the relevant party has been obtained, this Deed shall secure all amounts which that Chargor may receive, or has received, under that document but exclude any fixed security over, or any assignment of, those rights;

(c) unless the Lender requires otherwise, that Chargor shall use reasonable endeavours to obtain the consent of the relevant party to the creation of fixed security over or, as the case may be, an assignment of, those rights under this Deed as soon as reasonably practicable; and

(d) on the date on which the consent of the relevant party is obtained, the fixed security over or, in respect of an asset expressed to be subject to an assignment, the assignment of, those rights under this Deed shall attach to those rights.

2.7 **Substitution**

The Chargors may elect to substitute the Security granted under this Deed over the Property with Security over any other Real Property, subject to the consent of the Lender.

3. **RESTRICTIONS ON DEALING WITH SECURITY ASSETS**

3.1 **Negative pledge**

No Chargor shall create or permit to subsist any Security or Quasi Security over any Security Asset save for any Permitted Security.

3.2 **Disposals**

No Chargor shall enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, transfer or otherwise dispose of the Property (at any time).

4. **FURTHER ASSURANCE**

(a) Each Chargor shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Lender may

reasonably specify (and in such form as the Lender may reasonably require in favour of the Lender or its nominee(s)):

(i) to perfect the Security created or intended to be created under or evidenced by this Deed (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Security Interests) or for the exercise of any rights, powers and remedies of the Lender provided by or pursuant to the Finance Documents or by law; or

(ii) following enforcement of any Security under this Deed, to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security Interests.

(b) Each Chargor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Lender by or pursuant to this Deed.

(c) For the avoidance of doubt, nothing under this Clause 4 shall entitle the Lender to convert any floating charge into a fixed charge other than in the circumstances set out in Clause 2.3 (*Conversion by notice*).

5. REAL PROPERTY

5.1 Documents

The Property Chargor shall promptly deposit with the Lender, and the Lender shall be entitled to hold, all title deeds and documents relating to the Property.

5.2 Present Real Property

The Property Chargor shall, in respect of the Property:

(a) promptly apply to the Land Registry for first registration of the Property (where the Property is capable of being registered at the Land Registry and is not already so registered) and for registration of it as proprietor of the Property;

(b) promptly apply to the Land Registry to register the Security created by paragraph (a)(i) and paragraph (a)(ii) of Clause 2.1 (*Creation of Security Interests*);

(c) promptly apply to the Land Registry requesting:

(i) a restriction in the form specified by the Lender; and

(ii) the obligation to make further advances,

to be entered on the register of the title to the Property in respect of the Security created by paragraph (a)(i) and paragraph (a)(ii) of Clause 2.1 (*Creation of Security Interests*);

(d) promptly pay all applicable registration fees;

(e) promptly deal with any requisitions by the Land Registry relating to the Property and keep the Lender informed as to the progress of any such application for registration, the nature of any such requisitions and its response,

or, if the Lender gives notice to the Property Chargor that the Lender will submit the relevant forms to the Land Registry, the Property Chargor shall promptly provide the Lender with all duly completed forms reasonably requested by the Lender and all applicable registration fees.

5.3 **Title Information Document**

On completion of the registration of any Security Interest pursuant to this Clause 5, the Property Chargor shall promptly supply to the Lender a certified copy of the relevant Title Information Document issued by the Land Registry or, as the case may be, Certificate of Registration of Land Charge issued by the Land Charges Registry.

5.4 **Protection of assets**

The Property Chargor shall repair and keep in good and substantial repair and condition the Property.

5.5 **Compliance with obligations**

Each Chargor shall comply with any covenants, stipulations, conditions, licences, consents and any other statutory, regulatory or contractual obligations relating to the Property or its use.

5.6 **Leases**

Each Chargor shall:

(a) observe and perform all covenants, stipulations and obligations binding upon it as lessee under any Head Lease and as lessor or lessee under any Occupational Lease;

(b) diligently enforce all covenants, stipulations and obligations benefiting it as lessor under any Head Lease or Occupational Lease;

(c) not amend, waive, release or vary any provision of, or exercise any option or power to break, terminate, forfeit or extend (or agree to do any of the foregoing) any Head Lease or Occupational Lease;

(d) not do or permit to be done anything under any Head Lease which may result in its forfeiture;

(e) promptly notify the Lender of anything which may result in the forfeiture or termination of any Head Lease or Occupational Lease; and

(f) not grant any new Occupational Lease or exercise any of the powers of leasing or agreeing to lease the Property vested in or conferred on mortgagors by law.

5.7 **Notices**

The Property Chargor shall produce to the Lender within 7 days of receipt by it a copy of every material communication made in connection with the Property and comply with the reasonable instructions of the Lender in relation to any such communication.

5.8 **Power to remedy**

(a) If the Chargor does not comply with any provision of this Clause 5, the Lender, or any agent, contractor or other person required by the Lender, may take any action reasonably required by the Security Agent to comply with any such provision.

(b) The cost and expense of any action referred to in paragraph (a) above shall be borne by the Chargor.

6. GENERAL UNDERTAKINGS

6.1 Information

Each Chargor shall supply to the Lender promptly such information regarding the Property and its compliance with this Deed as the Lender may reasonably request.

6.2 Access

Each Chargor shall permit the Lender and/or any of its representatives (including workmen, surveyors, valuers and other persons) at all reasonable times to view the condition of, and repair, the Property.

6.3 No other prejudicial conduct

No Chargor shall do, or permit to be done, anything which could prejudice the Security Interests. For the avoidance of doubt, nothing in this Clause shall prevent any Chargor from granting or maintaining any Permitted Security.

7. REPRESENTATIONS AND WARRANTIES

Each Chargor makes the representations and warranties set out in this Clause 7 to the Lender on the date of this Agreement and every three months thereafter.

7.1 Status

(a) It is a corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation.

(b) It has the power to own its assets and carry on its business as it is being conducted.

7.2 Binding obligations

Subject to the Legal Reservations and any perfection requirements, the obligations expressed to be assumed by it in any Finance Documents are legal, valid, binding and enforceable obligations.

7.3 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not and will not conflict with:

(a) any law or regulation applicable to it;

(b) its or any of its Subsidiaries' constitutional documents; or

(c) any agreement or instrument binding upon it or any of its assets.

7.4 Power and authority

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of its obligations under the Finance Documents to which it is a party and the transactions contemplated by the Finance Documents.

7.5 Validity and admissibility in evidence

All Authorisations required:

(a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents; and

(b) to make the Finance Documents to which it is a party admissible in evidence in its jurisdiction of incorporation,

have been obtained or effected and are in full force and effect.

7.6 **Governing law and enforcement**

(a) The choice of English law as the governing law of this Deed will be recognised and enforced in its jurisdiction of incorporation.

(b) Any judgment obtained in England in relation to this Deed will be recognised and enforced in its jurisdiction of incorporation.

7.7 **Insolvency**

No corporate action, legal proceeding or other procedure or step described in paragraph (a) of clause 1.2 (*Insolvency proceedings*) of the Schedule as set out in the Acknowledgement of Debt has been taken or, to the knowledge of each Chargor, threatened in relation to a Chargor and the circumstances described in clause 1.1 (*Insolvency*) of the Schedule as set out in the Acknowledgement of Debt applies to a Chargor.

7.8 **Legal and beneficial ownership**

It is the sole legal and beneficial owner of the respective assets over which it purports to grant Security subject to any Permitted Security.

8. ENFORCEMENT OF SECURITY INTERESTS

8.1 **When enforceable**

The Security Interests shall be immediately enforceable on and at any time after the occurrence of a Repayment Trigger which is continuing.

8.2 **Enforcement action**

At any time after the Security Interests have become enforceable, the Lender may in its absolute discretion enforce all or any part of the Security Interests in any manner it sees fit.

8.3 **Law of Property Act powers**

At any time after the Security Interests have become enforceable, the powers, authorities and discretions conferred by the Law of Property Act on mortgagees, including the power of sale and other powers conferred by section 101 (*Powers incident to estate or interest of mortgagee*) of the Law of Property Act, as varied and extended by this Deed, shall be immediately exercisable.

9. LAW OF PROPERTY ACT

9.1 **Section 101**

The power of sale and other powers conferred by section 101 (*Powers incident to estate or interest of mortgagee*) of the Law of Property Act on mortgagees, as varied and extended by this Deed, shall arise (and the Secured Liabilities shall be deemed due and payable for that purpose) on the date of this Deed and shall be exercisable in accordance with Clause 8.3 (*Law of Property Act powers*).

9.2 **Section 103**

Section 103 (*Regulation of exercise of power of sale*) of the Law of Property Act shall not apply to this Deed.

9.3 **Section 93**

Section 93 (*Restriction on consolidation of mortgages*) of the Law of Property Act shall not apply to this Deed.

9.4 **Sections 99 and 100**

At any time after the Security Interests have become enforceable, the Lender may make any lease or agreement for lease, accept any surrender of lease and grant any option as it sees fit and without the need to comply with any provision of section 99 (*Leasing powers of mortgagor and mortgagee in possession*) or section 100 (*Powers of mortgagor and mortgagee in possession to accept surrenders of leases*) of the Law of Property Act.

10. APPOINTMENT OF RECEIVERS AND ADMINISTRATORS

10.1 **Appointment of Receivers**

If:

(a) requested by any Chargor; or

(b) the Security Interests have become enforceable,

without any notice or further notice, the Lender may, by deed or otherwise in writing signed by the Lender or any person authorised for this purpose by the Lender, appoint one or more persons to be a Receiver of all or any part of the Security Assets. The Lender may similarly remove any Receiver and appoint any person instead of any Receiver. If the Lender appoints more than one person as Receiver, the Lender may give those persons power to act either jointly or severally.

10.2 **Appointment of Administrators**

Paragraph 14 of Schedule B1 to the Insolvency Act applies to this Deed and the Lender may appoint an Administrator of any Chargor pursuant to that paragraph.

10.3 **Agent of Chargor**

Any Receiver shall be the agent of the relevant Chargor for all purposes. That Chargor alone shall be responsible for the Receiver's contracts, engagements, acts, omissions and defaults.

10.4 **Remuneration of Receivers**

The Lender may determine the remuneration of any Receiver and the maximum rate specified in section 109(6) (*Appointment, powers, remuneration and duties of receiver*) of the Law of Property Act shall not apply. The Lender may direct payment of that remuneration out of moneys it receives as Receiver. The relevant Chargor alone shall be liable for the remuneration and all other costs, losses, liabilities and expenses of the Receiver.

11. RIGHTS AND LIABILITIES OF THE LENDER AND RECEIVERS

11.1 **Rights of Receivers**

Any Receiver appointed pursuant to Clause 10 (*Appointment of Receivers and Administrators*) shall have:

(a) the rights set out in Schedule 2 (*Rights of Receivers*); and

(b) the rights, powers, privileges and immunities conferred by law, including:

(i) in the case of an administrative receiver, the rights, powers, privileges and immunities conferred by the Insolvency Act on administrative receivers duly appointed under the Insolvency Act; and

(ii) in all other cases, the rights, powers, privileges and immunities conferred by the Law of Property Act and the Insolvency Act on receivers or receivers and managers.

11.2 **Rights of the Lender**

At any time after the Security Interests have become enforceable, to the fullest extent permitted by law, any rights conferred by any Finance Document or by law upon a Receiver may be exercised by the Lender, whether or not the Lender shall have appointed a Receiver of all or any part of the Security Assets.

11.3 **Delegation**

The Lender may delegate in any manner to any person any rights exercisable by the Lender under any Finance Document. Any such delegation may be made upon such terms and conditions (including power to sub-delegate) as the Lender thinks fit and the Lender may pass confidential information to any such delegate.

11.4 **Financial collateral arrangement**

(a) To the extent that this Deed constitutes a "financial collateral arrangement" (as defined in the Financial Collateral Arrangements (No. 2) Regulations 2003 (the "**Financial Collateral Regulations**")) the Lender shall have the right:

(i) to use and dispose of any Security Asset which constitutes "financial collateral" (as defined in the Financial Collateral Regulations ("**Financial Collateral**")) in such manner as it sees fit, in which case the Lender shall comply with any requirements of the Financial Collateral Regulations in relation to obtaining "equivalent financial collateral" (as defined in the Financial Collateral Regulations);

(ii) to set-off the value of any equivalent financial collateral against, or apply it in discharge of, any Secured Liabilities in accordance with the Financial Collateral Regulations; and

(iii) at any time after the Security Interests have become enforceable, to appropriate any Security Asset which constitutes Financial Collateral in such manner as it sees fit in or towards satisfaction of the Secured Liabilities in accordance with the Financial Collateral Regulations.

(b) If the Lender is required to value any equivalent financial collateral or Financial Collateral for the purpose of paragraph (a)(ii) or (a)(iii) above, the value shall be:

(i) in the case of cash, its face value at the time of appropriation or set-off; and

(ii) in the case of financial instruments or other Financial Collateral, their market value at the time of appropriation or set-off as determined (after appropriation) by the Lender by reference to a public index or other applicable generally recognised source or such other process as the Lender may select, including a valuation carried out by an independent investment bank, firm of accountants or other valuers appointed by the Lender,

as converted, where necessary, into the currency in which the Secured Liabilities are denominated at a market rate of exchange prevailing at the time of appropriation or set-off selected by the Lender. The Parties agree that the methods of valuation set out in this paragraph (b) are commercially reasonable for the purpose of the Financial Collateral Regulations.

(c) Each Chargor authorises the Lender to transfer any Security Asset which constitutes Financial Collateral in accordance with the Financial Collateral Regulations, and any such Security Asset shall pass from the relevant Chargor to the Lender by way of outright title transfer, free and clear of any liens, claims, charges or encumbrances or any other interest of any Chargor or any third party. The Lender shall, accordingly, have the right to deal with, lend, dispose of, pledge, charge or otherwise use any Security Asset which constitutes Financial Collateral.

11.5 **Possession**

If the Lender, any Receiver or any Delegate takes possession of the Security Assets, it may at any time relinquish possession. Neither the Lender, any Receiver nor any Delegate shall be liable, by reason of viewing or repairing any of the present or future assets of any Chargor, as a mortgagee in possession.

11.6 **Lender's liability**

Neither the Lender, any Receiver nor any Delegate shall, either by reason of taking possession of the Security Assets or for any other reason and whether as mortgagee in possession or otherwise, be liable for:

(a) any costs, losses, liabilities or expenses relating to the realisation of any Security Assets; or

(b) any act or omission of the Lender, any Receiver, any Delegate or their respective officers, employees or agents in relation to the Security Assets or in connection with the Finance Documents, unless directly caused by its gross negligence or wilful misconduct.

12. ORDER OF APPLICATION

All amounts from time to time received or recovered by the Lender or any Receiver pursuant to the terms of this Deed or in connection with the realisation or enforcement of all or any part of the Security Interests shall be held by the Lender on trust to apply them at any time as the Lender (in its discretion) sees fit, to the extent permitted by applicable law, in the following order of priority:

(a) in discharging any sums owing to the Lender, any Receiver or any Delegate;

(b) in discharging all costs and expenses incurred by the Lender in connection with any realisation or enforcement of the Security Interests or any action taken at the request of the Lender under Clause 4 (*Further assurance*);

(c) in payment or distribution to the Lender for application towards the discharge of the Secured Liabilities; and

(d) the balance, if any, in payment or distribution to the relevant Chargor,

provided that nothing in this provision shall infringe the rights of any holder of Permitted Security in relation to such amounts.

13. POWER OF ATTORNEY

13.1 Appointment

Upon the occurrence of a Repayment Trigger which is continuing, each Chargor by way of security irrevocably appoints the Lender, each Receiver and each Delegate severally to be its attorney (with full power of substitution), on its behalf and in its name or otherwise, at such time and in such manner as the attorney thinks fit:

(a) to do anything which that Chargor is obliged to do under any Finance Document to which it is party but has failed to do (including to do all such acts or execute all such documents, assignments, transfers, mortgages, charges, notices, instructions, filings and registrations as the Lender may reasonably specify (and in such form as the Lender may reasonably require in favour of the Lender or its nominee(s))); and

(b) to exercise any of the rights conferred on the Lender, any Receiver or any Delegate in relation to the Security Assets or under any Finance Document or under any law.

13.2 Ratification

Each Chargor ratifies and confirms and agrees to ratify and confirm whatever any such attorney shall do in the exercise or purported exercise of the power of attorney granted by it in Clause 10.1 (*Appointment of Receivers*).

14. PROTECTION OF THIRD PARTIES

No purchaser or other person dealing with the Lender, any Receiver or its agents shall be concerned to enquire:

(a) whether the powers conferred on the Lender, any Receiver or its agents have arisen;

(b) whether the powers conferred on the Lender, any Receiver or its agents have become exercisable;

(c) whether any consents, regulations, restrictions or directions relating to such powers have been obtained or complied with;

(d) whether the Lender, any Receiver or its agents is acting within such powers;

(e) whether any money remains due under the Finance Documents and/or in respect of the Secured Liabilities and the receipt in writing of the Lender, any Receiver or its agents shall be sufficient discharge to that purchaser or other person;

(f) as to the propriety or validity of acts purporting or intended to be in exercise of any such powers; or

(g) as to the application of any money paid to the Lender, any Receiver or its agents.

15. SAVING PROVISIONS

15.1 Continuing Security

Subject to Clause 16 (*Discharge of Security*), the Security Interests are continuing Security and will extend to the ultimate balance of the Secured Liabilities, regardless of any intermediate payment or discharge in whole or in part.

15.2 **Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of any Chargor or any security for those obligations or otherwise) is made by a Lender in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation or otherwise, without limitation, then the liability of each Chargor and the Security Interests will continue or be reinstated as if the discharge, release or arrangement had not occurred.

15.3 **Waiver of defences**

Neither the obligations of each Chargor under this Deed nor the Security Interests will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under any Finance Document or any of the Security Interests (without limitation and whether or not known to it or the Lender) including:

(a) any time, waiver or consent granted to, or composition with, any Chargor or other person;

(b) the release of any other Chargor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;

(c) 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 Chargor 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;

(d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Chargor or any other person;

(e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;

(f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or

(g) any insolvency or similar proceedings.

15.4 **Chargor intent**

Without prejudice to the generality of Clause 15.3 (*Waiver of defences*), each Chargor expressly confirms that it intends that the Security Interests shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents and/or any Secured Liabilities.

15.5 **Immediate recourse**

Each Chargor waives any right it may have of first requiring the Lender (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 Chargor under this Deed. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

15.6 **Appropriations**

Until all amounts which may be or become payable by each Chargor under or in connection with the Finance Documents have been irrevocably paid in full and all facilities which might give rise to Secured Liabilities have terminated, the Lender (or any trustee or agent on its behalf) may:

(a) refrain from applying or enforcing any other moneys, security or rights held or received by the Lender (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 Chargor shall be entitled to the benefit of the same; and

(b) hold in an interest-bearing suspense account any moneys received from any Chargor or on account of any Chargor's liability under this Deed.

15.7 **Deferral of Chargor's rights**

Until all amounts which may be or become payable by the Chargors under or in connection with the Finance Documents have been irrevocably paid in full and all facilities which might give rise to Secured Liabilities have terminated and unless the Lender otherwise directs, no Chargor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under the Finance Documents:

(a) to be indemnified by a Chargor;

(b) to claim any contribution from any other Chargor or provider of Security for or guarantor of any Chargor's obligations under the Finance Documents;

(c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Lender under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by the Lender;

(d) to bring legal or other proceedings for an order requiring any Chargor to make any payment, or perform any obligation, in respect of which the Chargor had given a guarantee, undertaking or indemnity;

(e) to exercise any right of set-off against any Chargor; and/or

(f) to claim or prove as a creditor of any Chargor in competition with any Lender.

If a Chargor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Lender by a Chargor under or in connection with the Finance Documents and/or in respect of the Secured Liabilities to be repaid in full on trust for the Lender and shall promptly pay or transfer the same to the Lender or as the Lender may direct for application in accordance with Clause 12 (*Order of application*).

15.8 **Additional security**

The Security Interests are in addition to and are not in any way prejudiced by any other guarantee or security now or subsequently held by the Lender.

15.9 **Tacking**

The Lender shall comply with its obligations under the Finance Documents (including any obligation to make further advances).

16. DISCHARGE OF SECURITY

16.1 **Final redemption**

Subject to Clause 16.2 (*Retention of security*), if all amounts which may be or become payable by the Chargors under or in connection with the Finance Documents have been irrevocably paid in full, the Lender shall at the request and cost of the Chargors release, reassign or discharge (as appropriate) the Security Assets from the Security Interests, without recourse to, or any representation or warranty by, the Lender or any of its nominees.

16.2 **Retention of security**

If the Lender considers that any amount paid or credited to it under any Finance Document and/or in respect of the Secured Liabilities is capable of being avoided or otherwise set aside, that amount shall not be considered to have been paid for the purposes of determining whether all the Secured Liabilities have been irrevocably paid.

16.3 **Final redemption - the Property**

Subject to Clause 16.4 (*Retention of security over the Property*), if all amounts which may be or become payable by the Chargors under or in connection with Tranche A have been irrevocably paid in full, the Lender shall at the request and cost of the Chargors release, reassign or discharge (as appropriate) the Property from the Security Interests, without recourse to, or any representation or warranty by, the Lender or any of its nominees.

16.4 **Retention of security over the Property**

If the Lender considers that any amount paid or credited to it under or in connection with Tranche A is capable of being avoided or otherwise set aside, that amount shall not be considered to have been paid for the purposes of determining whether all amounts which may be or become payable by the Chargors under or in connection with Tranche A have been irrevocably paid in full.

17. COSTS AND EXPENSES

17.1 **Transaction expenses**

Each party to this Deed will bear it own costs and expenses (including legal fees) reasonably incurred by it (and any Receiver or Delegate) in connection with the negotiation, preparation, printing and execution ofthis Deed and any other documents referred to in this Deed.

17.2 **Amendment costs**

If a Chargor requests an amendment, waiver or consent, a Chargor shall within three Business Days of demand, reimburse the Lender for the amount of all reasonable costs and expenses (including legal fees) properly incurred by the Lender (and by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

17.3 **Enforcement and preservation costs**

Each Chargor shall, within three Business Days of demand, pay to the Lender the amount of all costs, losses, liabilities and expenses (including legal fees) incurred by the Lender or any Receiver in relation to any Finance Document and/or in respect of the Secured Liabilities

(including the administration, protection, realisation, enforcement or preservation of any rights under or in connection with this Deed, or any consideration by the Lender as to whether to realise or enforce the same, and/or any amendment, waiver, consent or release of any Finance Document and/or any other document referred to in this Deed).

17.4 **Stamp taxes**

Each Chargor shall pay and, within three Business Days of demand, indemnify the Lender of any cost, loss or liability it incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document and/or in respect of the Secured Liabilities.

17.5 **VAT**

(a) All amounts expressed to be payable under a Finance Document and/or in respect of the Secured Liabilities by any party to the Lender which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by the Lender to any party under a Finance Document and in respect of the Secured Liabilities and the Lender is required to account to the relevant tax authority for the VAT, that party must pay to the Lender (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and the Lender must promptly provide an appropriate VAT invoice to that party).

(b) Where a Finance Document requires any party to reimburse or indemnify the Lender for any cost or expense, that party shall reimburse or indemnify (as the case may be) the Lender for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that the Lender reasonably determines it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.

(c) Any reference in this Clause 17.5 to any party shall, at any time when such party is treated as a member of a group or unity (or fiscal unity) for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the person who is treated at that time as making the supply, or (as appropriate) receiving the supply, under the grouping rules (provided for in Article 11 of Council Directive 2006/112/EC (or as implemented by the relevant member state of the European Union) or any other similar provision in any jurisdiction which is not a member state of the European Union) so that a reference to a party shall be construed as a reference to that party or the relevant group or unity (or fiscal unity) of which that party is a member for VAT purposes at the relevant time or the relevant representative member (or head) of that group or unity (or fiscal unity) at the relevant time (as the case may be).

(d) In relation to any supply made by the Lender to any party under a Finance Document and/or in respect of the Secured Liabilities, if reasonably requested by the Lender, that party must promptly provide the Lender with details of that party's VAT registration and such other information as is reasonably requested in connection with such Lender's VAT reporting requirements in relation to such supply.

18. **INDEMNITY**

Each Chargor shall, within three Business Days of demand, indemnify the Lender and any Receiver against any cost, loss, liability or expense incurred by it or them as a result of:

(a) any breach by any Chargor of the Finance Documents; or

(b) the exercise or purported exercise of any of the rights, powers, discretions, authorities and remedies conferred on it or them by the Finance Documents.

19. PAYMENTS

19.1 Undertaking to pay

Each Chargor shall pay each of the Secured Liabilities when due in accordance with its terms.

19.2 Demands

Any demand for payment made by the Lender shall be valid and effective even if it contains no statement of the relevant Secured Liabilities or an inaccurate or incomplete statement of them.

19.3 Payments

All payments by any Chargor under this Deed shall be made to such account, with such financial institution and in such other manner as the Lender may direct.

19.4 Continuation of accounts

(a) At any time after the Lender has received or is deemed to have received notice of any subsequent Security affecting all or any part of the Security Assets of any Chargor, the Lender may open a new account in the name of that Chargor (whether or not it permits any existing account to continue).

(b) If the Lender does not open such a new account, it shall be treated as if it had done so when the relevant notice was received or deemed to have been received and as from that time all payments made by or on behalf of that Chargor to the Lender shall be credited or be treated as having been credited to the relevant new account and not as having been applied in reduction of the Secured Liabilities as at the time the relevant notice was received or deemed to have been received.

19.5 Contingencies

If all or any part of the Security Interests are enforced at a time when no amount is due under the Finance Documents (and/or in respect of the Secured Liabilities) but any such amount may or will become due, the Lender or the Receiver may pay the proceeds of any recoveries effected by it into a suspense account.

19.6 No set-off by Chargors

All payments to be made by a Chargor under the Finance Documents and/or in respect of the Secured Liabilities shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

20. AMENDMENTS AND WAIVERS

Any term of the Finance Documents may be amended or waived only with the consent of the Lender and the Chargors and any such amendment or waiver will be binding on all parties.

21. CHANGES TO THE LENDER AND CHARGORS

(a) The Lender may assign any of its rights and benefits under the Finance Documents or transfer by novation any of your rights, benefits and obligations under the Finance Documents to the

trustees of the BHS Pension Scheme and the BHS Senior Management Scheme (and in each case any successor scheme trustees) or a security trustee appointed by the BHS Pension Scheme and the BHS Senior Management Scheme to hold the benefit of the Security granted under this Deed on their behalf. (a "**Trustee Transfer**").

(b) Save in the circumstances set out in paragraph (a) above, the Lender may not assign any of its rights and benefits under the Finance Documents or transfer by novation any of its rights, benefits and obligations under the Finance Documents to any other parties without the written consent of BHS Group Limited (not to be unreasonably withheld).

(c) The Chargors may not assign any of their rights and benefits under the Finance Documents or transfer by novation any of their rights, benefits and obligations under the Finance Documents without the written consent of the Lender.

22. PARTIAL INVALIDITY

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

23. NOTICES

23.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents and/or in respect of the Secured Liabilities shall be made in writing and, unless otherwise stated, may be made by fax or letter.

23.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with the Finance Documents and/or in respect of the Secured Liabilities is that identified with its name below or any substitute address, fax number or department or officer as the party may notify to another party by not less than five Business Days' notice.

23.3 Delivery

(a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents and/or in respect of the Secured Liabilities will only be effective:

(i) if by way of fax, when received in legible form; or

(ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 23.2 (*Addresses*), if addressed to that department or officer.

(b) Any communication or document made or delivered to BHS Group Limited in accordance with this Clause will be deemed to have been made or delivered to each of the Chargors

(c) Any communication or document which becomes effective, in accordance with paragraphs (a) to (c) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

23.4 **Electronic communication**

(a) Any communication to be made between any two parties under or in connection with the Finance Documents and/or in respect of the Secured Liabilities may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two parties:

(i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and

(ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.

(b) Any such electronic communication as specified in paragraph (a) above to be made between a Chargor and a Lender may only be made in that way to the extent that those two parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.

(c) Any such electronic communication as specified in paragraph (a) above made between any two Parties will be effective only when actually received (or made available) in readable form.

(d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the party to whom the relevant communication is sent or made available has its address for the purpose of this Deed shall be deemed only to become effective on the following day.

(e) Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 23.4.

23.5 **English language**

(a) Any notice given under or in connection with any Finance Document and/or in respect of the Secured Liabilities must be in English.

(b) All other documents provided under or in connection with any Finance Document and/or in respect of the Secured Liabilities must be:

(i) in English; or

(ii) if not in English, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

24. REMEDIES, WAIVERS AND DETERMINATIONS

24.1 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of the Lender, Receiver or Delegate, any right or remedy under any Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No waiver or election to affirm any of the Finance Documents on the part of the Lender, Receiver or Delegate shall be effective unless in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in the Finance Documents are cumulative and not exclusive of any rights or remedies provided by law, including the right to appoint an Administrator under the Insolvency Act.

24.2 Certificates and Determinations

Any certification or determination by the Lender or any Receiver of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

25. SEPARATE AND INDEPENDENT OBLIGATIONS

(a) The Security created by each Chargor by or in connection with any Finance Document and/or in respect of the Secured Liabilities is separate from and independent of the Security created or intended to be created by any other Chargor by or in connection with any Finance Document and/or in respect of the Secured Liabilities.

(b) Any reference in this Deed to a "Chargor" in relation to any Security Asset is, if that Chargor holds any right, title or interest in that Security Asset jointly with any other Chargor, a reference to those Chargors jointly.

26. COUNTERPARTS

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

27. GOVERNING LAW

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

28. ENFORCEMENT

(a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a "**Dispute**").

(b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

(c) This Clause 28 is for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

(d) Without prejudice to any other mode of service allowed under any relevant law, each Chargor (other than a Chargor incorporated in England and Wales):

(i) irrevocably appoints BHS Group Limited as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document and/or in respect of the Secured Liabilities; and

(ii) agrees that failure by a process agent to notify the relevant Chargor of the process will not invalidate the proceedings concerned.

This Deed has been delivered on the date stated at the beginning of this Deed.

SCHEDULE 1

NAME OF COMPANIES

Name of Chargor	Registration number (or equivalent, if any)
BHS Group Limited	03858895
BHS Limited	00229606
Davenbush Limited	02341207
BHS Properties Limited	02139762
Lowland Homes Limited	05565259
BHS Services Ltd (dormant)	04002328
BHS (Jersey) Limited	2363
Epoch Properties Limited	74753

SCHEDULE 2

RIGHTS OF RECEIVERS

Any Receiver appointed pursuant to Clause 10 (*Appointment of Receivers and Administrators*) shall have the right, either in its own name or in the name of the Chargor or otherwise and in such manner and upon such terms and conditions as the Receiver thinks fit, and either alone or jointly with any other person:

(a) **Enter into possession**

to take possession of, get in and collect all or any part of the Security Assets;

(b) **Carry on business**

to manage and carry on any business of the Chargor;

(c) **Contracts**

to enter into any contract or arrangement and to perform, repudiate, rescind or vary any contract or arrangement to which that Chargor is a party;

(d) **Deal with Security Assets**

to sell, transfer, assign, exchange, hire out, lend, licence or otherwise dispose of or realise all or any part of the Security Assets (including any Fixtures, which may be sold separately from the Property) to any person either by public offer or auction, tender or private contract and for a consideration of any kind (which may be payable or delivered in one amount or by instalments or deferred);

(e) **Hive down**

to form a new company and to subscribe for or acquire (for cash or otherwise) any investment in or of the new company and to sell, transfer, assign, exchange and otherwise dispose of or realise any such investments or any rights attaching thereto;

(f) **Borrow money**

to borrow or raise money either unsecured or on the security of all or any part of the Security Assets (either in priority to the Security Interests or otherwise);

(g) **Lend money**

to lend money or advance credit to any person;

(h) **Covenants and guarantees**

to enter into bonds, covenants, guarantees, indemnities and other commitments;

(i) **Dealings with tenants**

to grant leases, tenancies, licences and rights of user, grant renewals and accept surrenders of leases, tenancies, licences or rights of user, and otherwise to reach agreements and make arrangements with, and to make allowances to, any lessees, tenants or other persons;

(j) **Rights of ownership**

to manage and use all or any part of the Security Assets and to exercise and do all such rights and things as the Receiver would be capable of exercising or doing if it were the absolute beneficial owner of all or any part of the Security Assets;

(k) **Protection of Security Assets**

to insure all or any part of the Security Assets, to carry out decorations, repairs, alterations, improvements and additions to all or any part of the Security Assets (including the development or redevelopment the Property), to commence and/or complete any building operation, to apply for and maintain any planning permission, building regulation approval or any other authorisation and to purchase or otherwise acquire or do anything in connection with all or any part of the Security Assets;

(l) **Legal actions**

to bring, prosecute, enforce, defend and abandon actions, suits and proceedings relating to all or any part of the Security Assets or any business of each Chargor;

(m) **Claims**

to settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person or relating to all or any part of the Security Assets or any business of each Chargor;

(n) **Redemption of Security**

to redeem any Security (whether or not having priority to the Security Interests) over all or any part of the Security Assets and to settle the accounts of any person with an interest in all or any part of the Security Assets;

(o) **Employees**

to appoint, hire and employ officers, employees, contractors, agents, advisors and others and to discharge any such persons and any such persons appointed, hired or employed by each Chargor;

(p) **Delegation**

to delegate in any manner to any person any rights exercisable by the Receiver under any Finance Document, and any such delegation may be made upon such terms and conditions (including power to sub-delegate) as it thinks fit, and to pass confidential information to any such delegate;

(q) **Insolvency Act**

to exercise all powers set out in Schedule 1, Schedule B1 or (in the case of a Scottish Receiver) Schedule 2 to the Insolvency Act as now in force (whether or not in force at the date of exercise and whether or not the Receiver is an administrative receiver) and any powers added to Schedule 1 or Schedule 2, as the case may be, after the date of this Deed;

(r) **Receipts**

to give a valid receipt for any moneys and do anything which may be necessary or desirable for realising all or any part of Security Assets; and

(s) **Other powers**

to do anything else it may think fit for the realisation of all or any part of the Security Assets or incidental to the exercise of any of the rights conferred on the Receiver under or by virtue of any Finance Document to which each Chargor is party, the Law of Property Act or the Insolvency Act.

SIGNED as a **DEED** by

[redacted]

BHS Group Limited

acting by:

.....DOMINIC CHAPPELL.....

[redacted]

in the presence of

[redacted]

Name: DAVID ROBERTS

Address: [redacted]

Occupation: [redacted]

Notice details:

SIGNED as a **DEED** by

BHS Limited

acting by: [redacted] DOMINIC CHAPPELL

in the presence of

[redacted]

Name: DAVID ROBERTS

Address: [redacted]

Occupation: [redacted]

Notice details:

SIGNED as a **DEED** by

[redacted]

DAVENBUSH LIMITED

acting by:

..... DOMINIC CHAPPELL

[redacted]

in the presence of

[redacted]

Name: DAVID ROBERTS

Address: [redacted]

Occupation: [redacted]

Notice details:

SIGNED as a **DEED** by

[redacted]

BHS PROPERTIES LIMITED

acting by:

..... DOMINIC CHAPPELL

[redacted]

in the presence of

[redacted]

Name: DAVID ROBERTS

Address: [redacted]

Occupation:

[redacted]

Notice details:

SIGNED as a **DEED** by

[redacted]

LOWLAND HOMES LIMITED

acting by:

DOMINIC CHAPPELL

[redacted]

in the presence of

[redacted]

Name: DAVID ROBERTS

Address: [redacted]

Occupation:

[redacted]

Notice details:

SIGNED as a **DEED** by

[redacted]

BHS SERVICES LTD (DORMANT)

acting by:

.....DOMINIC CHAPPELL.....

[redacted]

in the presence of

[redacted]

Name: DAVID ROBERTS

Address: [redacted]

Occupation: [redacted]

Notice details:

SIGNED as a **DEED** by

[redacted]

BHS (JERSEY) LIMITED

acting by:

..... DOMINIC CHAPPELL

[redacted]

in the presence of

[redacted]

Name: DAVID ROBERTS

Address: [redacted]

Occupation:

[redacted]

Notice details:

SIGNED as a **DEED** by

[redacted]

EPOCH PROPERTIES LIMITED

acting by:

.....Dominic CHAPPELL.....

[redacted]

in the presence of

[redacted]

Name: David Roberts

Address: [redacted]

Occupation:

[redacted]

Notice details:

[redacted]

SIGNED as a **DEED** by

ARCADIA GROUP LIMITED

acting by:

PAUL BUDGE

[redacted]

in the presence of

[redacted]

Name: TOBY GRIMSTONE

Address: [redacted]

Occupation: [redacted]

Notice details:

[redacted]