



**Registration of a Charge**

Company Name: **ELIVIA HOMES LIMITED**

Company Number: **05011077**



XCFEKJI2

Received for filing in Electronic Format on the: **01/11/2023**

**Details of Charge**

Date of creation: **31/10/2023**

Charge code: **0501 1077 0019**

Persons entitled: **FERN HEALTHCARE HOLDINGS LIMITED**

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 ELECTRONIC INSTRUMENT.**

Certified by: **CLYDE & CO LLP**



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

Company number: 5011077

Charge code: 0501 1077 0019

The Registrar of Companies for England and Wales hereby certifies that a charge dated 31st October 2023 and created by ELIVIA HOMES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 1st November 2023 .

Given at Companies House, Cardiff on 2nd November 2023

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**

**ELIVIA HOMES LIMITED**  
Chargor

and

**FERN HEALTHCARE HOLDINGS LIMITED**  
Chargee

**Floating Charge Security Agreement**

---

## Contents

1	Definitions and interpretation	1
2	Covenant to pay	2
3	Creation of Security	2
4	Nature of Security created	3
5	Conversion of floating charge	3
6	Positive covenants	3
7	Negative covenants	4
8	Enforcement	5
9	Appointment and powers of Receivers	6
10	Protection of purchasers	6
11	Protection of the Chargee and Receivers	7
12	Preservation of Security	8
13	Tacking	10
14	Further assurance	10
15	Power of attorney	10
16	Currency	11
17	Discharge of Security	11
18	Costs and expenses	11
19	Assignment	12
20	Notices	12
21	Calculations and certificates	12
22	Partial invalidity	12
23	Remedies and waivers	12
24	Amendments and waivers	12
25	Counterparts	12
26	Governing law and enforcement	13

## Floating Charge Security Agreement

Dated 31 October 2023

### Between:

- (1) **ELIVIA HOMES LIMITED** incorporated and registered in England and Wales with company number 05011077 whose registered office is at Apollo House Mercury Park, Wycombe Lane, Wooburn Green, Buckinghamshire, HP10 0HH (the **Chargor**); and
- (2) **FERN HEALTHCARE HOLDINGS LIMITED** incorporated and registered in England and Wales with company number 10595778 whose registered office is at 6th Floor 33 Holborn, London, England, EC1N 2HT (the **Chargee**).

### Background

- (A) The Chargee has agreed to make credit facilities available on the terms of the Facility Agreement on a secured basis.
- (B) The Chargor has agreed to provide Security to the Chargee to secure the payment and discharge of the Secured Liabilities.

### It is agreed as follows:

#### 1 Definitions and interpretation

##### 1.1 Definitions

Words and expressions defined in the Facility Agreement have the same meanings in this Deed, unless they are expressly defined in it and, in addition, in this Deed, unless the context otherwise requires, the following definitions apply:

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

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for general business in London.

**Default Rate** means the rate of interest calculated in accordance with the default interest provisions contained in clause 8.3 (*Default interest*) of the Facility Agreement.

**Facility Agreement** means the revolving credit facility agreement dated on or about the date of this Deed between, among others, the Chargor as borrower and the Chargee as lender, as amended, restated, supplemented or novated from time to time.

**Receiver** means a receiver appointed pursuant to this Deed or to any applicable law, whether alone or jointly, and includes a receiver and/or manager and, if the Chargee is permitted by law to appoint an administrative receiver, includes an administrative receiver.

**Secured Liabilities** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally, whether incurred as principal or surety or in any other capacity whatsoever, whether or not in respect of indebtedness and whether actual or contingent) of each Obligor to the Chargee together with all interest (including, without limitation, default interest) accruing in respect of those obligations or liabilities.

**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 all of the assets of the Chargor which are the subject of any Security created or to be created by this Deed.

**Security Period** means the period starting on the date of this Deed and ending on the date on which the Chargee is satisfied that all of the liabilities of the Chargor under this Deed are irrevocably discharged in full and the Chargee has no commitment or liability, whether present or future, actual or contingent, in relation to the Secured Liabilities.

## 1.2 **Interpretation**

The principles of interpretation set out in clause 1.2 (*Construction*) of the Facility Agreement apply to this Deed, insofar as they are relevant to it and subject to any necessary changes, as they apply to the Facility Agreement.

## 1.3 **Third party rights**

1.3.1 The Chargee, any Receiver and their respective officers, employees and agents may enforce any term of this Deed which purports to confer a benefit on that person, but no other person who is not a party to this Deed has any 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.

1.3.2 Notwithstanding any term of the any Finance Document, the parties to this Deed and any Receiver may rescind, vary, waive, release, assign, novate or otherwise dispose of all or any of their respective rights or obligations under this Deed without the consent of any person who is not a party to this Deed.

## 1.4 **Effect as a deed**

This Deed shall take effect as a deed even if it is signed under hand on behalf of the Chargee.

## 1.5 **Law of Property (Miscellaneous Provisions) Act 1989**

The terms of the other Finance Documents and of any side letters between any parties in relation to any Finance Document are incorporated in this Deed to the extent required to ensure that any purported disposition of an interest in land contained in this Deed is a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

1.6 If there is an inconsistency between any of the provisions of this deed and the provisions of the Facility Agreement, the provisions of the Facility Agreement shall prevail.

## 2 **Covenant to pay**

The Chargor covenants with the Chargee that it will on demand pay and discharge the Secured Liabilities when due.

## 3 **Creation of Security**

### 3.1 **Charge**

3.1.1 The Chargor charges by way of floating charge all its present and future business, undertaking and assets.

3.1.2 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 shall apply to any floating charge created by this Deed.

### 3.2 **Trust**

If or to the extent that the assignment or charging of any Security Asset is prohibited, the Chargor holds it on trust for the Chargee.

#### 4 **Nature of Security created**

The Security created under this Deed is created:

- (a) as a continuing security to secure the payment and discharge of the Secured Liabilities;
- (b) over all assets of the kind described which are owned by the Chargor and, to the extent that it does not own those assets, shall extend to any right or interest which it may have in them;
- (c) in favour of the Chargee; and
- (d) with full title guarantee (except that the covenant set out in section 3(1) of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to all charges, incumbrances and rights, even if the Chargor does not know and could not reasonably be expected to know about them).

#### 5 **Conversion of floating charge**

##### 5.1 **Conversion on notice**

Subject to Clause 5.2 (*Limitation*), the Chargee may by notice to the Chargor at any time during the Security Period convert the floating charge created by this Deed into a fixed charge in respect of any Security Asset specified in that notice if:

- (a) an Event of Default is continuing; or
- (b) the Chargee considers that Security Asset to be in danger of being seized, attached, charged, taken possession of or sold under any form of distress, sequestration, execution or other process or otherwise to be in jeopardy.

##### 5.2 **Limitation**

Clause 5.1 (*Conversion on notice*) shall not apply by reason only of a moratorium being obtained, or anything being done with a view to a moratorium being obtained, under section 1A of the Insolvency Act 1986.

##### 5.3 **Automatic conversion**

The floating charge created by this Deed will convert automatically into fixed charges:

- (a) if the Chargee receives notice of an intention to appoint an administrator of the Chargor;
- (b) if any steps are taken, (including the presentation of a petition, the passing of a resolution or the making of an application) to appoint a liquidator, provisional liquidator, administrator or Receiver in respect of the Chargor over all or any part of its assets, or if such person is appointed;
- (c) if the Chargor creates or attempts to create Security over all or any of the Security Assets (other than Security permitted under this Deed);
- (d) on the crystallisation of any other floating charge over the Security Assets;
- (e) if any person seizes, attaches, charges, takes possession of or sells any Security Asset under any form of distress, sequestration, execution or other process, or attempts to do so; and
- (f) in any other circumstances prescribed by law.

#### 6 **Positive covenants**

The covenants in this Clause 6 remain in force from the date of this Deed until the expiry of the Security Period.

## 6.1 **Preservation of the Security Assets**

The Chargor shall:

- (a) on and from the date of practical completion of any Development, keep all tangible assets which form part of the Security Assets on the Property to which that Development relates in the same or better condition as that in which they were on the date of such practical completion;
- (b) at all times keep all tangible assets which form part of the Security Assets (other than those Security Assets described in paragraph (a) above) in the same or better condition, subject to any development, as that in which they are on the date of this Deed;
- (c) in relation to all Security Assets, permit the Chargee free access at reasonable times and on reasonable notice to view their state and condition, provided that in respect of access to any Security Assets described in paragraph (a) above prior to the date of practical completion of the relevant Development the Chargee shall at all times comply with the health and safety regulations which the Chargor is subject to and/or has implemented in respect of the relevant Development and Property and be accompanied by a representative of the Chargor;
- (d) observe and perform all covenants, undertakings, laws and regulations from time to time affecting any Security Asset or its use or enjoyment;
- (e) pay all taxes, levies, imposts, rents, rates, duties, fees, charges, assessments, impositions, calls, instalments and outgoings which are properly payable at any time during the Security Period in respect of any Security Asset or by the owner or occupier of it (and if it fails to pay that amount when due, the Chargee may pay it);
- (f) notify the Chargee of any action commenced by a third party to seize, attach, charge, take possession of or sell any Security Asset which (to the best of its knowledge and belief) has been started or threatened; and
- (g) at its own cost, defend any proceedings (including proceedings to seize, attach, charge, take possession of or sell) brought by a third party relating to any Security Asset.

## 6.2 **Payments without deduction**

The Chargor covenants with the Chargee that all payments to be made by it under this Deed shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

## 7 **Negative covenants**

The covenants in this Clause 7 remain in force from the date of this Deed until the expiry of the Security Period.

### 7.1 **Negative pledge**

7.1.1 Except as permitted by the Facility Agreement, the Chargor shall not create or permit to subsist any Security over any Security Asset.

7.1.2 Clause 7.1.1 does not apply to:

- (a) any Security created pursuant to or permitted by the Finance Documents;
- (b) any netting or set-off arrangement entered into by the Chargor in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances; or



- (c) any lien arising by operation of law and in the ordinary course of the Chargor's day-to-day trading activities in respect of any obligation which is less than 60 days overdue or which is being contested in good faith and by appropriate means.

## 7.2 **Preservation of the Security Assets**

The Chargor shall not without the written consent of the Chargee take any Security in connection with its liabilities under this Deed from any guarantor of, or provider of Security for, any of the Secured Liabilities.

## 8 **Enforcement**

### 8.1 **When Security becomes enforceable**

The Security created by this Deed shall become enforceable:

- (a) on the occurrence of an Event of Default which is continuing; or
- (b) if the Chargor so requests.

### 8.2 **Powers on enforcement**

At any time after the Security created by this Deed has become enforceable the Chargee may (without prejudice to any other of its rights and remedies and without notice to the Chargor) do all or any of the following:

- (a) exercise all the powers and rights conferred on mortgagees by the Act, as varied and extended by this Deed, without the restrictions contained in sections 103 or 109(1) of the Act;
- (b) exercise the power of leasing, letting, entering into agreements for leases or lettings or accepting or agreeing to accept surrenders of leases in relation to any Security Asset, without the restrictions imposed by sections 99 and 100 of the Act;
- (c) subject to Clause 9.1.1 (*Method of appointment and removal*), appoint one or more persons to be a Receiver or Receivers of all or any of the Security Assets; and
- (d) appoint an administrator of the Chargor.

### 8.3 **Disposal of the Security Assets**

In exercising the powers referred to in Clause 8.2(a) (*Powers on enforcement*), the Chargee or any Receiver may sell or dispose of all or any of the Security Assets at the times, in the manner and order, on the terms and conditions and for the consideration determined by it.

### 8.4 **Application of moneys**

#### 8.4.1 The Chargee or any Receiver shall apply moneys received by them under this Deed after the Security created under this Deed has become enforceable in the following order:

- (a) **first**, in or towards the payment pro rata of, or the provision pro rata for, any unpaid costs and expenses of the Chargee and any Receiver under this Deed or which are incidental to any Receiver's appointment, together with interest at the Default Rate (both before and after judgment) from the date those amounts became due until the date they are irrevocably paid in full;
- (b) **secondly**, in or towards the payment pro rata of, or the provision pro rata for, any unpaid fees, commission or remuneration of the Chargee and any Receiver;

- (c) **thirdly**, in or towards the discharge of all liabilities having priority to the Secured Liabilities;
- (d) **fourthly**, in or towards the discharge of the Secured Liabilities in accordance with the Facility Agreement; and
- (e) **fifthly**, in the payment of any surplus to the Chargor or other person entitled to it,

and section 109(8) of the Act shall not apply.

8.4.2 Clause 8.4.1 will override any appropriation made by the Chargor.

## 9 **Appointment and powers of Receivers**

### 9.1 **Method of appointment and removal**

9.1.1 The Chargee may not appoint a Receiver by reason only of a moratorium being obtained, or anything being done with a view to a moratorium being obtained, under section 1A of the Insolvency Act 1986.

9.1.2 Every appointment or removal of a Receiver, of any delegate or of any other person by the Chargee pursuant to this Deed may be made in writing under the hand of any officer or manager of the Chargee (subject to any requirement for a court order in the removal of an administrative receiver).

### 9.2 **Powers of Receiver**

Every Receiver shall have all the powers:

- (a) of the Chargee under this Deed;
- (b) conferred by the Act on mortgagees in possession and on receivers appointed under the Act;
- (c) which are specified in Schedule 1 of the Insolvency Act 1986 in relation to, and to the extent applicable to, the Security Assets or any of them, (whether or not the Receiver is an administrative receiver within the meaning of that Act); and
- (d) in relation to any Security Asset, which he would have if he were its only absolute beneficial owner.

### 9.3 **Joint or several**

If two or more persons are appointed as Receivers of the same assets, they may act jointly and/or severally so that (unless any instrument appointing them specifies to the contrary) each of them may exercise individually all the powers and discretions conferred on Receivers by this Deed.

### 9.4 **Receiver as agent**

Every Receiver shall be the agent of the Chargor which shall be solely responsible for his acts and defaults and for the payment of his remuneration.

### 9.5 **Receiver's remuneration**

Every Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Chargee, and the maximum rate specified in section 109(6) of the Act shall not apply.

## 10 **Protection of purchasers**

No purchaser or other person dealing with the Chargee or any Receiver shall be bound or concerned:

- (a) to see or enquire whether the right of the Chargee or any Receiver to exercise any of the powers conferred by this Deed has arisen or not;
- (b) with the propriety of the exercise or purported exercise of those powers; or
- (c) with the application of any moneys paid to the Chargee, to any Receiver or to any other person.

## 11 **Protection of the Chargee and Receivers**

### 11.1 **Exclusion of liability**

None of the Chargee, any Receiver or any of their respective officers or employees shall have any responsibility or liability:

- (a) for any action taken, or any failure to take any action, in relation to all or any of the Security Assets;
- (b) to account as mortgagee in possession or for any loss upon realisation of any Security Asset;
- (c) for any loss resulting from any fluctuation in exchange rates in connection with any purchase of currencies under Clause 16 (*Currency*);
- (d) for the loss or destruction of, or damage to, any of the Security Assets, or to any documents of or evidencing title to them, which are in the possession or held to the order of the Chargee; or
- (e) for any other default or omission in relation to all or any of the Security Assets for which a mortgagee in possession might be liable,

except in the case of gross negligence or wilful misconduct on the part of that person.

### 11.2 **General indemnity**

11.2.1 The Chargor shall indemnify the Chargee, any Receiver and their respective officers and employees against all actions, proceedings, demands, claims, costs, expenses, and other liabilities incurred by them in respect of all or any of the following:

- (a) any act or omission by any of them in relation to all or any of the Security Assets;
- (b) any payment relating to or in respect of all or any of the Security Assets which becomes payable at any time by any of them;
- (c) any stamp, registration or similar tax or duty which becomes payable in connection with the entry into, or the performance or enforcement of, this Deed;
- (d) carrying out or purporting to carry out any of the rights, powers and discretions conferred on them by or permitted under this Deed; and
- (e) any breach by the Chargor of any of its covenants or other obligations to the Chargee,

except in the case of gross negligence or wilful misconduct on the part of that person.

11.2.2 The Chargor shall pay interest at the Default Rate on the sums payable under this Clause from the date on which the liability was incurred to the date of actual payment (both before and after judgment).

### 11.3 **Indemnity out of the Security Assets**

The Chargee, any Receiver and their respective officers and employees shall be entitled to be indemnified out of the Security Assets in respect of the actions,

proceedings, demands, claims, costs, expenses and liabilities referred to in Clause 11.2 (*General indemnity*).

## 12 **Preservation of Security**

### 12.1 **Reinstatement**

If any payment by the Chargor or discharge given by the Chargee (whether in respect of the obligations of the Chargor or any Security for those obligations or otherwise) is avoided or reduced as a result of insolvency, liquidation, administration or any similar event:

- (a) the liabilities of the Chargor and the Security created by this Deed shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
- (b) the Chargee shall be entitled to recover the value or amount of that Security or payment from the Chargor, as if the payment, discharge, avoidance or reduction had not occurred.

### 12.2 **Waiver of defences**

Neither the Security created by this Chargee nor the obligations of the Chargor under this Chargee will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice that Security or any of those obligations (whether or not known to the Chargor or the Lender) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any Obligor or any other person under the terms of any composition or arrangement with any person;
- (c) the taking, variation, compromise, exchange, renewal, enforcement or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over, assets of any Obligor 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 an Obligor or any other person;
- (e) any amendment (however fundamental), replacement, variation, novation, assignment or the avoidance or termination of a Finance Document or any other document or Security;
- (f) any unenforceability, illegality or invalidity of any obligation of, or any Security created by, any person under any Finance Document or any other document; or
- (g) any insolvency, liquidation, administration or similar procedure.

### 12.3 **Chargor intent**

Without prejudice to the generality of Clause 12.2 (*Waiver of defences*), the Chargor expressly confirms that it intends that the Security created by this Chargee 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 for the purposes of or in connection with any of the following:

- (a) acquisitions of any nature;
- (b) increasing working capital;

- (c) enabling investor distributions to be made;
- (d) carrying out restructurings;
- (e) refinancing existing facilities;
- (f) refinancing any other indebtedness;
- (g) making facilities available to new borrowers;
- (h) any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and
- (i) any fees, costs and/or expenses associated with any of the foregoing.

#### 12.4 **Immediate recourse**

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

#### 12.5 **Appropriations**

During the Security Period the Chargee may:

- (a) refrain from applying or enforcing any moneys, Security or rights held or received by it (or any trustee or agent on its behalf) in respect of the Secured Liabilities, or, subject to Clause 8.4.1 (*Application of moneys*), apply and enforce the same in such manner and order as it sees fit (whether against the Secured Liabilities or otherwise) and the Chargor shall not be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from the Chargor or on account of the Secured Liabilities.

#### 12.6 **Deferral of Chargor's rights**

During the Security Period and unless the Chargee otherwise directs, the Chargor shall not exercise any rights which it may have by reason of performance by it of its obligations under this Deed or the enforcement of the Security created by this Deed:

- (a) to receive or claim payment from, or be indemnified by an Obligor;
- (b) to claim any contribution from any guarantor of, or provider of Security in respect of any Obligor's obligations under the Finance Documents; or
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Chargee under any Finance Document or of any guarantee or Security taken pursuant to, or in connection with, the Finance Documents by the Chargee;
- (d) to exercise any right of set-off against any Obligor; and/or
- (e) to claim or prove as a creditor of any Obligor in competition with the Chargee.

#### 12.7 **Additional Security**

This Deed is in addition to, is not in any way prejudiced by and shall not merge with any contractual right or remedy or other Security now or in the future held by or available to the Chargee.

**12.8 New accounts**

If the Chargee receives notice (actual or otherwise) of any subsequent Security over or affecting all or any of the Security Assets it may open a new account or accounts in the name of the Chargor and, if it does not do so, it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice of that subsequent Security, and as from that time all payments made by or on behalf of the Chargor to the Chargee:

- (a) shall be credited or be treated as having been credited to the new account of the Chargor; and
- (b) shall not operate to reduce the Secured Liabilities at the time when the Chargee received or was deemed to have received such notice.

**13 Tacking**

For the purposes of section 94(1) of the Act and section 49(3) of the Land Registration Act 2002 the Chargee confirms that it shall make further advances to the Chargor on the terms and subject to the conditions of the Finance Documents.

**14 Further assurance****14.1 Further action**

The Chargor shall, at its own expense, promptly take any action and sign or execute any further documents which the Chargee may require in order to:

- (a) give effect to the requirements of this Deed;
- (b) protect, preserve and perfect the Security intended to be created by or pursuant to this Deed;
- (c) protect and preserve the ranking of the Security intended to be created by or pursuant to this Deed with any other Security over any assets of the Chargor; or
- (d) facilitate the realisation of all or any of the Security Assets or the exercise of any rights, powers and discretions conferred on the Chargee, any Receiver or any administrator in connection with all or any of the Security Assets,

and any such document may disapply section 93 of the Act.

**14.2 Deposit of documents**

The Chargor covenants that, on the date of this Deed and at all times during the Security Period as soon as it receives them (and in any event as soon as the Chargee so requests), it shall deposit with the Chargee, in respect of or in connection with the Security Assets:

- (a) all deeds, certificates and other documents of or evidencing title; and
- (b) any other documents which the Chargee may from time to time require for perfecting its title, or the title of any purchaser,

all of which will be held by the Chargee at the expense and risk of the Chargor.

**14.3 Law of Property (Miscellaneous Provisions) Act 1994**

The covenant set out in section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to the provisions set out in this Clause 14.

**15 Power of attorney**

The Chargor irrevocably and by way of security appoints each of:

- (a) the Chargee;
- (b) any delegate or sub-delegate of, or other person nominated in writing by, an officer of the Chargee; and
- (c) any Receiver,

jointly and severally as the Chargor's attorney, in the Chargor's name, on its behalf and in such manner as the attorney may in its or his absolute discretion think fit following the occurrence of an Event of Default which is continuing or following the failure by the Chargor to comply with a request or demand from the Chargee, to take any action and sign or execute any further documents which the Chargor is required to take, sign or execute in accordance with this Deed. The Chargor agrees, promptly on the request of the Chargee or any Receiver, to ratify and confirm all such actions taken and documents signed or executed.

## 16 **Currency**

### 16.1 **The Spot Rate**

In this Clause 16, the **Spot Rate** means, in relation to the Chargee, the spot rate of exchange of Barclays Bank PLC for the purchase of any currency with any other currency in the London foreign exchange market.

### 16.2 **Conversion of moneys received**

The Chargee may convert any moneys received, recovered or realised in any currency under this Deed (including the proceeds of any previous conversion under this Clause 16) from their existing currency into any other currency, by purchasing that other currency at the Spot Rate.

## 17 **Discharge of Security**

Upon the irrevocable and unconditional payment and discharge in full of the Secured Liabilities, unless any third party has any subrogation or other rights in respect of the Security created by this Deed at that time, the Chargee shall, or shall procure that its appointees will, at the request and cost of the Chargor release the Security Assets from this Deed. Section 93 of the Act shall not apply to this Deed.

## 18 **Costs and expenses**

### 18.1 **Transaction expenses**

The Chargor shall promptly on demand pay the Chargee the amount of all costs and expenses (including legal fees) reasonably incurred by it in connection with the negotiation, preparation, printing and execution of this Deed.

### 18.2 **Amendment costs**

If the Chargor requests an amendment, waiver, consent or release of or in relation to this Deed, the Chargor shall, within three Business Days of demand, reimburse the Chargee for the amount of all costs and expenses (including legal fees) reasonably incurred by it in responding to, evaluating, negotiating or complying with that request or requirement.

### 18.3 **Enforcement costs**

The Chargor shall, within three Business Days of demand, pay to the Chargee or any Receiver the amount of all costs and expenses (including legal fees) incurred by the Chargee or any Receiver in connection with the enforcement of, or the preservation of any rights under, this Deed or the investigation of any possible Default.

19       **Assignment**

19.1      **Procedure**

The Chargee may assign any of its rights under this Deed to any person to whom it assigns or transfers any of its rights or obligations under the Facility Agreement.

19.2      **Disclosure of information**

The Chargee may disclose to any assignee or proposing assignee any information it thinks fit in relation to the Chargor and the Finance Documents.

20       **Notices**

20.1      **Notices**

Any notice or other communication given by a party under this deed must be given in accordance with Clause 30 (*Notices*) of the Facility Agreement.

20.2      **Service of proceedings**

This clause 20 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

21       **Calculations and certificates**

21.1      **Accounts**

In any litigation or arbitration proceedings arising out of or in connection with this Deed, the entries made in the accounts maintained by the Chargee are prima facie evidence of the matters to which they relate.

21.2      **Certificates and determinations**

Any certification or determination by the Chargee of a rate or amount under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

22       **Partial invalidity**

If, at any time, any provision of this Deed 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       **Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of the Chargee, any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

24       **Amendments and waivers**

Any term of this Deed may be amended or waived only with the written consent of the Chargor and the Chargee.

25       **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.



26 **Governing law and enforcement**

26.1 **Governing law**

This Deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

26.2 **Jurisdiction**

Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Deed or its subject matter or formation. Nothing in this Clause 26.2 (Jurisdiction) shall limit the right of the Chargee to take proceedings against the Chargor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

26.3 **Other service**

26.3.1 The Chargor irrevocably consents to any process in any legal action or proceedings under Clause 26.2 (Jurisdiction) being served on it in accordance with the provisions of this Deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

**Executed** as a deed and delivered on the date appearing at the beginning of this Deed.

Execution Page

Chargor

Executed as a Deed by )  
Elivia Homes Limited )  
acting by a Director in the presence of: )  
)

sign here:

Director

Iain Brown

print name:

Witness signature:

witness sign here:

Robin Armstrong

print name:

Witness name:

Witness address:

Witness occupation:

Group FC

Chargee

Executed as a Deed by )  
Fern Healthcare Holdings Limited )  
acting by a director in the presence of: )  
)

sign here:

Director

Edward Fellows

print name:

In the presence of:

Witness signature:

witness sign here:

Laura Fellows

print name:

Witness name:

Witness address:

Witness occupation:

Lawyer