

CHFP025

## Declaration in relation to assistance for the acquisition of shares

# 155(6)a

Pursuant to section 155(6) of the Companies Act 1985

**To the Registrar of Companies  
(Address overleaf - Note 5)**

For official use

Company number

— — — — —

05778803

Name of company

\* Mount House (Coach House) Limited (the "Company")

XWe, David Duncan of Flat 43, The Piper Building, Peterborough Road, London  
SW6 3EF

Ø insert name(s) and address(es) of all the directors

~~XXXXXXXXXXXX~~ [all the directors] † of the above company do solemnly and sincerely declare that

The business of the company is

[illegible]~~XX S~~

(c) something other than the above \$

The company is proposing to give financial assistance in connection with the acquisition of shares in the

~~CONFIDENTIAL~~ [company's holding company The Mount House

Limited1 t

The assistance is for the purpose of [that acquisition] ~~XXXXXXXXXXXXXXXXXXXX~~

~~XXXXXXXXXXXXX~~ †

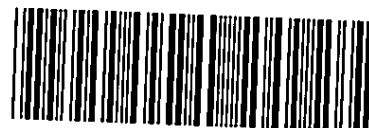
The number and class of the shares acquired or to be acquired is 1 ordinary share of £1

Presentor's name address and  
reference (if any)  
Berwin Leighton Paisner LLP  
Adelaide House  
London Bridge  
London  
EC4R 9HA

92 Chancery Lane

For official Use  
General Section

TUESDAY



A19 25/09/2007 516  
COMPANIES HOUSE

COMPANIES HOUSE

The assistance is to be given to (note 2) Barchester Propco Two Limited

Please do not  
write in this  
margin

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

The assistance will take the form of

See schedule 1 attached

The person who ~~XXXXXX~~ <sup>12</sup> [will acquire] † the shares is

† delete as  
appropriate

Barchester Propco Two Limited

The principal terms on which the assistance will be given are

See schedule 2 attached

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

The value of any asset to be transferred to the person assisted is £ Nil

The date on which the assistance is to be given is within 8 weeks of the date hereof

The date on which the assistance is to be given is

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

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

\* delete either (a) or (b) as appropriate

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

[illegible]

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

Declared at **ADELAIDE HOUSE, LONDON BRIDGE**  
**LONDON EC4R 9HA**

Declarants to sign below

*Thunberg*

Day Month Year  
on 14 09 2007

before me

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

**A Commissioner for Oaths**  
**10 Philpot Lane,**  
**London EC3M 8RR**  
**England**  
**(Alisa Grafton)**

## NOTES

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

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

or, for companies registered in Scotland -

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

## SCHEDULE TO FORM 155(6)(a)

### Mount House (Coach House) Limited (the Company)

Company Number 5778803

Unless otherwise specified, defined terms used in this schedule shall have the meaning given to them in the document to which they relate. References to clauses are references to clauses in the relevant document.

#### 1 The form of financial assistance

The assistance will take the form of

- 1.1 the execution, delivery and performance of an accession letter (the **Facility Agreement Accession Letter**) by which the Company will accede to the terms of a facility agreement between, Barchester Propco Limited as Principal Borrower, Barchester New Devco Limited, Barchester Propco Two Limited, Barchester New Propco Holdco Limited as Original Guarantors, The Royal Bank Of Scotland plc as Arranger, Agent, Security Trustee and Original Hedge Counterparty ("**Agent**") and The Royal Bank of Scotland plc, The Governor and Company of the Bank of Ireland, Allied Irish Banks, p l c , AIB Group (UK) p l c and The Governor and Company of the Bank of Scotland as Lenders (the "**Lenders**") (the **Facility Agreement**) The Facility Agreement provides for facilities of £157,500,000,
- 1.2 the execution and delivery of a debenture by the Company, The Mount House Limited, Barchester Propco Limited, Barchester New Devco Limited, Barchester Propco Two Limited and Barchester New Propco Holdco Limited in favour of The Royal Bank of Scotland plc as Security Trustee on behalf of the Beneficiaries (the **ProCo Debenture**) to which the Company grants fixed and floating charges over all of its properties, assets and undertakings in favour of the Security Trustee as continuing security for the Secured Obligations,
- 1.3 the execution and delivery of a debenture by the Company, The Mount House Limited, Barchester Propco Limited, Barchester New Devco Limited, Barchester Propco Two Limited and Barchester New Propco Holdco Limited in favour of The Royal Bank of Scotland plc as Security Trustee on behalf of the Beneficiaries (the **OpCo Debenture**) to which the Company grants fixed and floating charges over all of its properties, assets and undertakings in favour of the Security Trustee as continuing security for the Secured Obligations,

- 1.4 the execution, delivery and performance of an accession letter (the **Subordination Agreement Accession Letter**) by which the Company will accede to the terms of a subordination agreement by Grove Limited, Barchester Healthcare Homes Limited, Barchester Propco Limited, Barchester New Devco Limited, Barchester Propco Two Limited and Barchester New Propco Holdco Limited as Junior Creditors, Barchester Propco Limited, Barchester New Devco Limited, Barchester Propco Two Limited and Barchester New Propco Holdco Limited as Original Obligors, and The Royal Bank of Scotland plc as Security Trustee (the **Subordination Agreement**) under which the Barchester Companies and others will subordinate their rights (the **Junior Liabilities**) to the Senior Liabilities and any payments and receipt of any amount of the Junior Liabilities until the Security Trustee is satisfied that the Senior Liabilities have been irrevocably paid or discharged in full;
- 1.5 the execution and delivery of a business and asset sale agreement by the Company in favour of Barchester Healthcare Homes Limited (the **Business Sale Agreement**) under which the Company will agree to sell with full title guarantee the Businesses and the Assets with effect from the Transfer Date;
- 1.6 the execution, delivery and performance of an accession letter (the **Inter Group Loan Accession Letter**) by which the Company will accede to the terms of an inter group loan (the **Inter-Group Loan**) by the Barchester Companies and Grove Limited in favour of the themselves.
- 1.7 the execution, delivery and performance of an agreement for sale and leaseback to be entered into by Barchester Propco Limited, Barchester Healthcare Limited, Barchester Healthcare Homes Limited, the Company, The Mount House Limited and Barchester Nominee (No 1) Limited under which the Company will agree to sell and leaseback the Purcell Property (the **"Agreement for Sale and Leaseback"**);
- 1.8 the execution and delivery of a stock transfer form to be given by the Company in favour of Barchester PropCo Two Limited (the **Stock Transfer Form**) under which the Company will transfer £6,500,000 of RP 346 Limited Unsecured Loan Notes 2057.
- 1.9 the execution, delivery and performance of an accession letter (the **Tax Facility Deed Accession Letter**) by which the Company will accede to the terms of a facility deed (the **Tax Facility**) by Grove Limited, Barchester Healthcare Homes Limited, Barchester Propco Limited, Barchester New Devco Limited, Barchester Propco Two Limited and Barchester New Propco Holdco Limited as Junior Creditors, Barchester Propco Limited, Barchester New Devco Limited, Barchester Propco Two Limited and Barchester New Propco Holdco Limited as Original Obligors, and The Royal Bank of Scotland plc as Security Trustee

- 1 10 the execution, delivery and performance of a priority agreement (the **Priority Agreement**) by The Royal Bank of Scotland plc, The Governor and Company of the Bank of Ireland, Allied Irish Banks, p.l.c.; AIB Group (UK) p l c and The Governor and Company of the Bank of Scotland as Original PropCo Creditors, The Royal Bank of Scotland plc, The Governor and Company of the Bank of Ireland, Allied Irish Banks, p.l.c., and The Governor and Company of the Bank of Scotland as Original OpCo Creditors, and Barchester Propco Limited, Barchester New Devco Limited, Barchester Propco Two Limited and Barchester New Propco Holdco Limited as Original Obligors.
- 1 11 the execution and delivery of a directors' certificate given by a director of the Company approving the Transaction and the solvency certificate therein
- 1 12 Deed of release between The Governor and Company of the Bank of Ireland, The Mount House Limited and Mount House (Coach House) Limited.
- 1.13 the execution and delivery of a Conditions Precedent Waiver Letter entered into by, amongst others, Barchester Propco Limited, Barchester Propco Two Limited, Barchester New Devco Limited, The Mount House Limited, Mount House (Coach House) Limited, Barchester Healthcare Homes Limited and Barchester Healthcare Limited
- 1 14 indemnity provisions under the Finance Documents (as that term is defined in the Facility Agreement), and
- 1.15 various representations, warranties and undertakings under the Finance Documents (as that term is defined in the Facility Agreement),
- 1.16 And all other ancillary documents and notices necessary or useful for the proper execution of the above documents.

and by the performance of any other acts or the execution of any other documents ancillary or otherwise relating to the documents set out in paragraphs 1.1 to 1 12 above

## 2 **The principal terms of the financial assistance**

### 2 1 Under the Facility Agreement

#### 2.1.1 Each Obligor, jointly and severally, irrevocably and unconditionally:

- (a) guarantees to each Finance Party punctual performance by each other Obligor of all of that Obligor's obligations under the Finance Documents including in respect of the Additional Borrowing;

- (b) undertakes with each Finance Party that whenever another Obligor does not pay any amount when due under or in connection with any Finance Document, that Obligor shall immediately on demand by the Security Trustee pay that amount as if it was the principal Obligor; and
- (c) indemnifies each Finance Party immediately on demand by the Security Trustee against any cost, loss or liability suffered by that Finance Party if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal. The amount of the cost, loss or liability shall be equal to the amount which that Finance Party would otherwise have been entitled to recover.

2.1.2 If any payment by an Obligor or any discharge given by a Finance Party (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:

- (a) the liability of each Obligor shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
- (b) each Finance Party shall be entitled to recover the value or amount of that security or payment from each Obligor, as if the payment, discharge, avoidance or reduction had not occurred.

2.1.3 The obligations of each Obligor will not be affected by an act, omission, matter or thing which would reduce, release or prejudice any of its obligations (without limitation and whether or not known to it or any Finance Party) including

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any Obligor;
- (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 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) or replacement of a Finance Document or any 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

2.1.4 Each Obligor waives any right it may have of first requiring any Finance Party (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 Obligor under the Finance Documents. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

2.1.5 Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, each Finance Party (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 that Finance Party (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 Obligor shall be entitled to the benefit of the same, and
- (b) hold in an interest-bearing suspense account any moneys received from any Obligor or on account of any Obligor's liability under the Finance Documents.

2.2 Under the Debenture (terms in this paragraph shall have the same meaning given to them in the Debenture (unless otherwise defined)):

2.2.1 Each Chargor covenants with the Security Trustee (as trustee for the Finance Parties) to pay, discharge and satisfy the Secured Obligations in accordance with their respective terms and to indemnify the Finance Parties against any losses, costs, charges, expenses and liabilities arising from any breach or failure to pay, discharge and satisfy the Secured Obligations in accordance with their respective terms.



2.2.2 Each Chargor assigns and agrees to assign absolutely with full title guarantee to the Security Trustee (as trustee for the Finance Parties) as security for the payment and discharge of the Secured Obligations, all of its right, title and interest from time to time in and to each of the following assets:

- (a) any agreements, contracts, deeds, leases, licences, undertakings, guarantees, covenants, warranties, representations and other documents entered into by, given to or otherwise benefiting that Chargor in respect of the Real Property,
- (b) the proceeds of any Insurance Policy and all Related Rights
- (c) the Specific Contracts (other than specific contracts which relate to Real Property situated in Scotland);
- (d) any Rental Income and Disposal Proceeds and the right to make demand for and receive the same;
- (e) the Assigned Accounts and the debt or debts represented thereby,
- (f) the Collateral Warranties and all proceeds paid or payable thereunder, and
- (g) the Hedge Documents and all proceeds paid or payable thereunder.

2.2.3 Each Chargor charges with full title guarantee in favour of the Security Trustee (as trustee for the Finance Parties) (to the extent not validly and effectively charged by way of first legal mortgage pursuant to Clause 3.1 (*Mortgage*) or assigned pursuant to Clause 3.2 (*Assignment by way of Security*)) with the payment and discharge of the Secured Obligations, by way of first fixed charge, all of its rights, title and interest from time to time in and to each of the following assets

- (a) the Real Property and all Related Rights;
- (b) the Building Contracts, Development Management Agreements, Trade Contracts to which a Warranty Trade Contractor is party, Consultant Appointments to which a Warranty Consultant is party, Specifications, Required Consents, each Opco Lease and agreement for Lease permitted under the Facility Agreement and

any other Development Document and all rights under each Development Document;

- (c) the Tangible Moveable Property,
- (d) each of its present and future accounts other than the Assign Accounts, with any bank, building society, financial institution or other person (including any replacement account or sub-division or sub-account of that account) and the debt or debts represented thereby;
- (e) each of its present and future interest or currency rate swap, cap, floor, collar or option transactions, all proceeds paid or payable thereunder and all Related Rights,
- (f) book and other debts and Monetary Claims owing to it and any proceeds of those debts and claims and all Related Rights,
- (g) the Intellectual Property,
- (h) any goodwill and rights in relation to the uncalled capital of each Chargor,
- (i) goodwill and rights and claims in relation to its uncalled share capital;
- (j) rights to recover any VAT on any supplies made to it relating to the Charged Assets and any sums so recovered,
- (k) any rent deposits and all Related Rights (other than any rent deposits and rental rights in relation to Real Property situated in Scotland),
- (l) the Investments;
- (m) Shares and Related Rights,
- (n) stocks, shares, debentures, securities and certificates of deposit, all interests in collective investment schemes and partnerships and all warrants, options and rights to subscribe for any investment whether held by or on behalf of any Chargor and all Related Rights; and

- (o) each of the assets which are specified in Clause 3.2 (*Assignment by way of Security*).

- 2.2.4 Each Chargor with full title guarantee charges in favour of the Security Trustee (as trustee for the Finance Parties), with the payment and discharge of the Secured Obligations, by way of first floating charge all present and future assets and undertaking of that Chargor.
- 2.2.5 The floating charge created by paragraph 3.3.1 above shall be deferred in point of priority to (i) any Scottish Floating Charge and (ii) all fixed Security validly and effectively created by each Chargor under the Finance Documents, in each case, in favour of the Security Trustee as trustee for the Secured Parties as security for the Secured Obligations
- 2.2.6 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created pursuant to this Clause 3.3 (Floating Charge)
- 2.2.7 The debenture contains a covenant for further assurances and shall remain in full force and effect notwithstanding any amendments, variations, or novations from time to time of the Finance Documents or any assignment, transfer, novation of the rights and obligations of any Lender or the Security Trustee
- 2.3 Under the Opco Debenture (terms in this paragraph shall have the same meaning given to them in the Debenture (unless otherwise defined)):
  - 2.3.1 Each Chargor covenants with the Security Trustee (as trustee for the Finance Parties) to pay, discharge and satisfy the Secured Obligations in accordance with their respective terms and to indemnify the Finance Parties against any losses, costs, charges, expenses and liabilities arising from any breach or failure to pay, discharge and satisfy the Secured Obligations in accordance with their respective terms
  - 2.3.2 Each Chargor assigns and agrees to assign absolutely with full title guarantee to the Security Trustee (as trustee for the Finance Parties) as security for the payment and discharge of the Secured Obligations, all of its right, title and interest from time to time in and to each of the following assets:
    - (a) any agreements, contracts, deeds, leases, licences, undertakings, guarantees, covenants, warranties, representations and other documents entered into by, given to or otherwise benefiting that Chargor in respect of the Real Property;
    - (b) the proceeds of any Insurance Policy and all Related Rights

- (c) the Specific Contracts (other than specific contracts which relate to Real Property situated in Scotland);
- (d) any Rental Income and Disposal Proceeds and the right to make demand for and receive the same;
- (e) the Disposal Proceeds Account, Receipts Account, Insurance Proceeds Account, Rectification Account, Disbursement Account, Maintenance Reserve Account, General Account and the VAT Account and the debt or debts represented thereby;
- (f) the Collateral Warranties and all proceeds paid or payable thereunder; and
- (g) the Hedge Documents and all proceeds paid or payable thereunder

2.3.3 Each Chargor charges with full title guarantee in favour of the Security Trustee (as trustee for the Finance Parties) (to the extent not validly and effectively charged by way of first legal mortgage pursuant to Clause 3.1 (Mortgage) or assigned pursuant to Clause 3.2 (Assignment by way of Security)) with the payment and discharge of the Secured Obligations, by way of first fixed charge, all of its rights, title and interest from time to time in and to each of the following assets

- (a) the Real Property and all Related Rights,
- (b) the Building Contracts, Development Management Agreements, Trade Contracts to which a Warranty Trade Contractor is party, Consultant Appointments to which a Warranty Consultant is party, Specifications, Required Consents, each Opco Lease and agreement for Lease permitted under the Facility Agreement and any other Development Document and all rights under each Development Document;
- (c) the Tangible Moveable Property;
- (d) each of its present and future accounts other than the Assign Accounts, with any bank, building society, financial institution or other person (including any replacement account or sub-division or sub-account of that account) and the debt or debts represented thereby;

- (e) the Hedge Documents and all proceeds paid or payable thereunder and each of its present and future interest or currency rate swap, cap, floor, collar or option transactions, all proceeds paid or payable thereunder and all Related Rights,
- (f) book and other debts and Monetary Claims owing to it and any proceeds of those debts and claims and all Related Rights;
- (g) the Intellectual Property,
- (h) any goodwill and rights in relation to the uncalled capital of each Chargor;
- (i) goodwill and rights and claims in relation to its uncalled share capital,
- (j) rights to recover any VAT on any supplies made to it relating to the Charged Assets and any sums so recovered;
- (k) any rent deposits and all Related Rights (other than any rent deposits and rental rights in relation to Real Property situated in Scotland);
- (l) the Investments;
- (m) Shares and Related Rights,
- (n) stocks, shares, debentures, securities and certificates of deposit, all interests in collective investment schemes and partnerships and all warrants, options and rights to subscribe for any investment whether held by or on behalf of any Chargor and all Related Rights, and
- (o) each of the assets which are specified in Clause 3 2 (Assignment by way of Security)

2.3.4 Each Chargor with full title guarantee charges in favour of the Security Trustee (as trustee for the Finance Parties), with the payment and discharge of the Secured Obligations, by way of first floating charge all present and future assets and undertaking of that Chargor.

2.3.5 The floating charge created by paragraph 3 3 1 above shall be deferred in point of priority to (i) any Scottish Floating Charge and (ii) all fixed Security validly and

effectively created by each Chargor under the Finance Documents, in each case, in favour of the Security Trustee as trustee for the Secured Parties as security for the Secured Obligations.

- 2.3.6 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created pursuant to this Clause 3.3 (Floating Charge)
- 2.3.7 The debenture contains a covenant for further assurance and shall remain in full force and effect notwithstanding any amendments, variations, or novations from time to time of the Finance Documents or any assignment, transfer, novation of the rights and obligations of any Lender or the Security Trustee.
- 2.4 Under the Subordination Agreement (terms in this paragraph shall have the same meaning given to them in the Subordination Agreement)
- 2.4.1 Except as provided in the Subordination Agreement, the rights of the Junior Creditors in respect of the Junior Liabilities are subordinated to the Senior Liabilities and accordingly payment and receipt of any amount of the Junior Liabilities is not permitted until the end of the Subordination Period.
- 2.4.2 The Company jointly and severally give the undertakings set out in the Subordination Agreement to the Security Trustee and acknowledge that the Finance Parties have entered into the Finance Documents in full reliance upon those undertakings. The undertakings given by the Obligor will remain in force until the end of the Subordination Period and include
- 2.4.2.1 The Company, shall not, without the prior written consent of the Security Trustee:
- (a) except for any Permitted Payments, make any payment (whether in respect of principal interest or otherwise) on account of all or any of the Junior Liabilities (whether by way of cash, loan or otherwise);
  - (b) redeem, purchase or otherwise acquire, or grant Security in respect of, all or any of the Junior Liabilities;
  - (c) take, or permit to be taken, any action or step with a view to the winding-up, receivership or administration of an Obligor;
  - (d) except for any Permitted Payments, repay or prepay any, or pay any interest, fees or commissions (but without prejudice to the

accrual thereof) on, or by reference to, all or any of the Junior Liabilities, or

- (e) take or omit to take any action or step whereby the subordination of all or any of the Junior Liabilities might be terminated, impaired or adversely affected

2.4.2.2 The Obligors shall not, without the prior written consent of the Security Trustee

- (a) except for Permitted Payments, receive any payment (whether in respect of principal, interest or otherwise) made by any Obligor of all or any of the Junior Liabilities (whether by way of cash, loan or otherwise),
- (b) assign, transfer or otherwise dispose of, or make demand for or accept Security in respect of, all or any of the Junior Liabilities or all or any rights which it may have against any Obligor in respect of all or any part of the Junior Liabilities;
- (c) take, or permit to be taken, any action or step to commence or continue any proceedings against any Obligor, or save in respect of requesting and receiving Permitted Payments take any action in respect of, all or any of the Junior Liabilities (including, without limitation, the exercise of any right of set-off, counterclaim or lien);
- (d) take, or permit to be taken, any action or step with a view to the winding-up, receivership or administration of any Obligor, or
- (e) take or omit to take any action or step whereby the subordination of all or any of the Junior Liabilities might be terminated, impaired or adversely affected.

2.4.2.3 If an Obligor makes any payment in cash or in kind on account of, or for the purchase or other acquisition of, all or any part of the Junior Liabilities; or the Company receives all or any amount in cash or in kind of the Junior Liabilities by way of payment, repayment, prepayment, set-off or in any other manner, or on account of the enforcement of any Security or payment under any guarantee for any of the Junior Liabilities in contravention of the Subordination Agreement, then in cases where the Company actually receive

the amount discharged or purported to be discharged hold the same upon trust for the Security Trustee for application in or towards payment of all the Senior Liabilities and will promptly pay the same to the Security Trustee, and in cases where the Company do not, for any reason, actually receive the amount discharged or purported to be discharged promptly pay an amount equal to that discharged or purported to be discharged to the Security Trustee for application in or towards payment of all the Senior Liabilities.

2.4.2.4 The Subordination Agreement will apply in respect of the Senior Liabilities notwithstanding any intermediate payment in whole or in part of the Senior Liabilities.

2.4.2.5 The subordination effected by, and the obligations of each Junior Party to the Security Trustee under, the Subordination Agreement will not be affected by any act, omission or circumstances which might operate to release or otherwise exonerate all or any of the Junior Parties from their respective obligations under the Subordination Agreement or affect such obligations including, without limitation, and whether or not known by any Junior Party or any other person

- (a) any Security or right of any Finance Party in respect of the Senior Liabilities;
- (b) any time or indulgence granted by the Security Trustee to any Junior Party or to any other person or any variation, amendment, novation, supplement or extension of the terms of any Finance Document or any Security in respect of the Senior Liabilities;
- (c) any arrangement or compromise between the Security Trustee and any Junior Party or any other person;
- (d) any dealing with, exchange, release or invalidity of any Finance Document or any Security in respect of the Senior Liabilities,
- (e) any omission on the part of the Security Trustee to enforce any of its rights against any Obligor or any other person or any Security in respect of the Senior Liabilities;
- (f) the winding-up, dissolution or administration of any Junior Party or any other person or any change in its status, function or control,



- (g) any of the obligations of any Junior Party or any other person under any Finance Document to which it is a party being or becoming illegal, invalid or unenforceable;
- (h) any action taken or purported to be taken under Clause 12 (*Further assurance*) of the Subordination Agreement (whether or not any such action is authorised by such Clause), or
- (i) any other fact or circumstances whatsoever and whether or not similar to any of the foregoing which could or might in any way diminish any Junior Party's or any other person's obligations or the rights of the Security Trustee under the Subordination Agreement.

## 2.5 Under the Business Sale Agreement

2.5.1 Subject to the Condition, the Sellers agree to sell with full title guarantee and the Buyer agrees to buy the Businesses each as a going concern, and the Assets with effect from the Transfer Date

2.5.2 The Assets shall comprise the following assets of the Sellers:

- (a) the Stock;
- (b) the Book Debts,
- (c) any cash in hand or at bank (whether on current or on deposit account) or bills receivable relating to the relevant Business, including uncleared cheques held at the Transfer Date,
- (d) the benefit of all the Contracts;
- (e) the Leased Assets subject to and with the benefit of the relevant Contract;
- (f) the goodwill of the Sellers associated with carrying on its Business, together with the exclusive right to carry on business and for the Buyer to represent itself as carrying on the relevant Business in succession to that Seller and together also with the exclusive right to use the trading name of each care home owned by that Seller;
- (g) the Business Records;

- (h) the Intellectual Property, and
- (i) all other property, assets and rights belonging to the Sellers of whatsoever nature used in or for the purposes of or arising in respect of its Business

2.5.3 The consideration payable by the Buyer to each of the Sellers for the relevant Businesses and Assets shall be the sum set out against its name in Schedule 1.

2.5.4 The Consideration is payable to the Sellers at Completion and shall be owed by the Buyer to the Sellers with effect from the Transfer Date on the terms of the Intra Group Loan.

2.5.5 Completion is subject to the Buyer having received confirmation in writing from the Commission for Social Care Inspection ("**CSCI**") that the Buyer is a fit and proper person for the purposes of paragraph 7 of the Care Homes Regulations 2001 and the CSCI consents to the transfer of the ownership and management of the Businesses to the Buyer without any material change to the existing terms and conditions applicable to the registration of Businesses under such Regulations on or prior to 31 December 2007 (or such later date as the Sellers and the Buyer shall agree in writing) (the **Condition**).

2.5.6 If the Condition is not fulfilled on or before 31 December 2007 (or such later date as the Sellers and the Buyer shall agree in writing), the Business Sale Agreement shall cease to have effect but without prejudice to the rights of any party in respect of any breach of the Business Sale Agreement which has occurred before such date

## 2.6 Under the Inter-Group Loan Agreement

2.6.1 The Barchester Companies and Grove Limited will provide agreed loans amongst themselves for the purpose of future acquisitions, repayments and as otherwise they may agree,

2.6.2 The loan shall be made in one amount in an amount as set out in the Inter-Company Loan Agreement,

2.6.3 The Barchester Companies and Grove Limited shall receive Interest on the loan at a rate of 7% per annum on terms as set out in the Inter Company Loan Agreement;

2.6.4 The rights of the Barchester Companies and Grove Limited under the Inter-company loan agreement shall be subordinated in favour of The Royal Bank of Scotland plc

and no repayment of the loan shall be made unless as expressly provided in the Finance Documents (as defined in the Facility Agreement)

2.7 Under the Agreement for Sale and Leaseback:

2.7.1 The Company as seller will sell, and Barchester Propco Limited as buyer will buy the Property

2.7.2 The sale of each Property will include the equipment and other items (if any) as set out in the annexed list and ascribed to the property in which is to pass by delivery at the time of actual completion

2.7.3 The price attributed to the Property and the amount apportioned to the equipment and other items is set out in the annexed list and ascribed to the property is set out in the Agreement for Sale and Leaseback

2.7.4 The Company is to maintain in force the insurance of each of the Properties until Actual Completion (unless it is maintained by a tenant, mortgagee or other third party, or the consent of the insurer is required to cover the interest of a contractual purchaser and it is lawfully withheld) and Commercial Condition 7.1.2 applies but:

2.7.4.1 the Company is not responsible to the Buyer for any deficiency in the amount insured or inadequacy of the risks covered,

2.7.4.2 Commercial Condition 7.1.2(d) does not apply if the interest in the Property of a contractual purchaser is covered by the terms of the policy; and

2.7.4.3 the Buyer is only entitled to credit against its obligation in Commercial Condition 7.1.3 to pay to the Company a proportionate part of the premium which the Company paid in respect of the period from the date of this agreement to Actual Completion of so much of the amount paid by the tenants to the Company towards the premium for that period.

2.7.4.4 the Company is to pay any refund of premium it receives to the relevant tenant in proportion to the premium which that tenant had paid to the Company in advance.

2.8 Under the Stock transfer Form The Mount House Limited will transfer £6,500,000 of RP 346 Limited Unsecured Loan Notes 2057 to Barchester PropCo Two Limited.

2.9 Under the Tax Facility the Funder undertakes with Propco that if and to the extent Propco does not have sufficient free cash available to it after all obligations then due and payable by

Propco pursuant to the terms of the Finance Documents have been paid to meet a Tax Liability in full it will either:

- 2.9.1 make available whether by way of loan or share subscription (or procure that there shall be made available) to Propco on the due date for payment (as provided in Clause 6.3 (*Due date for payment*)) an amount equal to any Tax Liability (or part thereof) in excess of the free cash payable by Propco; and/or
- 2.9.2 on behalf of and at the direction of Propco, apply an amount otherwise to be made available under clause 2.1.1 above in making a payment (or procuring that a payment is made) of the amount of the Tax Liability (or part thereof) in excess of the free cash to the relevant Tax Authority on or prior to the date when payment of the Tax Liability is due to be made,

and any Tax Facility Drawdown made available by the Funder (whether to Propco or to a Tax Authority) pursuant to Clauses 2.1.1 or 2.1.2 by way of a loan shall be made on the terms set out in Clause 2.3 (*Terms of any loan*)

2.10 Under the Priority Agreement all existing and future Propco Security will

- 2.10.1 Rank in all aspects prior to all existing and future Opco Security over the same assets, regardless of order or registration, notice, execution or otherwise and
- 2.10.2 secure all the Propco Liabilities in priority to the Opco Liabilities regardless of the date upon which the Propco Liabilities arise, regardless of whether the Propco Finance Parties are obliged to advance monies included in the Propco Liabilities, and regardless of any intermediate discharge of the Propco liabilities in whole or in part
- 2.10.3 under the Priority Agreement the Obligors acknowledge the ranking of the Propco Security and the Opco Security

2.11 Under the directors' certificate, the directors of the Company approve the transaction and the solvency of the Company as stated therein.

2.12 Under the deed of release the bank releases the Company from its past, present and future liability pursuant to the Security Documents and releases and reassigns to the Company all of the Bank's rights, title and interest to the property charged under the Security Documents.

2.13 Under the conditions precedent waiver letter, the bank agrees to waive the requirement for certain conditions precedent to be satisfied before completion



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Our ref vs/1jb/715

Contact Ian Brokenshire  
01752 632292

14 September 2007

Dear Sirs

**Auditors' report to the directors of Mount House (Coach House) Limited ('the company') pursuant to Section 156(4) of the Companies Act 1985**

We have examined the attached statutory declaration of the directors dated 14 September 2007 in connection with the proposal that the company will enter into arrangements that will or may constitute the giving of financial assistance, particulars of which are given in the statutory declaration, for the purchase of the company's holding company's ordinary shares

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

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

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

Yours faithfully

*KPMG LLP*

KPMG LLP

Registered Auditor