



**Registration of a Charge**

Company Name: **ELIVIA DEVELOPMENT FINANCE LIMITED**

Company Number: **08599295**



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

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**Details of Charge**

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

Charge code: **0859 9295 0006**

Persons entitled: **FERN HEALTHCARE HOLDINGS LIMITED**

Brief description:

**Contains fixed charge(s).**

**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: 8599295

Charge code: 0859 9295 0006

The Registrar of Companies for England and Wales hereby certifies that a charge dated 31st October 2023 and created by ELIVIA DEVELOPMENT FINANCE 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 DEVELOPMENT FINANCE LIMITED**  
Company

and

**FERN HEALTHCARE HOLDINGS LIMITED**  
Lender

**Share Charge**  
in respect of shares in Elivia Homes Limited

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## Share Charge

Dated 31 October 2023

### Between:

- (1) **ELIVIA DEVELOPMENT FINANCE LIMITED** incorporated and registered in England and Wales with company number 08599295 whose registered office is at Apollo House Mercury Park, Wycombe Lane, Wooburn Green, Buckinghamshire, HP10 0HH (**Company**).
- (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 (**Lender**).

### Background

- (A) The Lender has agreed to make credit facilities available to the Borrower, a subsidiary of the Company, on the terms of the Facility Agreement on a secured basis.
- (B) It is a condition precedent to the availability of the credit facilities to Borrower that the Company enter into this Deed for the purpose of providing security in favour of the Lender in respect of the Secured Obligations (as defined below).

### It is agreed as follows:

#### 1 Definitions and interpretation

##### 1.1 Definitions

Terms defined in the Facility Agreement shall, unless otherwise defined in this Deed, have the same meaning in this Deed. In addition, the following definitions apply in this Deed:

**Borrower:** 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.

**Facility Agreement:** the revolving credit facility agreement dated on or about the date of this Deed between, among others, the Borrower as borrower and the Lender as lender, as amended, restated, supplemented or novated from time to time and as secured by this deed.

**LPA:** the Law of Property Act 1925.

**Party:** a party to this Deed.

**Receiver:** any receiver appointed under this Deed or pursuant to any applicable law, whether alone or jointly, and includes a receiver and/or manager.

**Related Rights:** all of the present and future rights to:

- (a) dividends, distributions, interest and other income from the Shares and Investments;
- (b) allotments, rights, money or property arising from the Shares and Investments by way of conversion, exchange, redemption, bonus, preference, option or otherwise;
- (c) stock, shares and securities offered in addition to or substitution for the Shares and Investments; and
- (d) proceeds of, or from, the disposal of, or other dealing with, any Shares and Investments.

**Secured Assets:** all of the:

- (a) Shares and Investments; and
- (b) Related Rights.

**Secured Obligations:** 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 Lender together with all interest (including, without limitation, default interest) accruing in respect of those obligations or liabilities.

**Security Term:** the period beginning on the date of this Deed and ending on the date on which the Lender is satisfied that the Secured Obligations have been unconditionally and irrevocably discharged in full and that no further Secured Obligations are capable of being outstanding.

**Shares and Investments:** each of:

- (a) the Specific Shares and Investments;
- (b) all of the present and future shares owned or held by the Company, or any nominee on behalf of the Company, of the issued share capital of the Borrower; and
- (c) all of the present and future stocks, debentures, securities and certificates of deposit held by the Company or by any nominee on behalf of the Company in the Borrower.

**Specific Shares and Investments:** the Shares and Investments in the issued share capital of the Borrower specified in Schedule 1 (Specific Shares and Investments).

## 1.2 Construction

1.2.1 The principles of interpretation set out in clause 1.2 (*Interpretation*) 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.

1.2.2 The provisions of Clause 8.3 (*Default interest*) of the Facility Agreement apply to this Deed as though they were set out in full in this Deed except that references to an Obligor will be construed as references to the Company.

1.2.3 Unless a contrary indication appears, a 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, varied, novated, supplemented, extended or restated from time to time;
- (b) any rights in respect of an asset includes:
  - (i) all amounts and proceeds paid or payable;
  - (ii) all rights to make any demand or claim; and
  - (iii) all powers, remedies, causes of action, security, guarantees and indemnities,in each case in respect of or derived from that asset;
- (c) any share, stock, debenture, securities, certificates of deposit or other security or investment includes:
  - (i) any dividend, interest or other distribution paid or payable;

- (ii) any right, money or property accruing or offered at any time by way of redemption, substitution, exchange, bonus or preference, under option rights or otherwise,

in each case in respect of that share, stock, debenture, securities, certificates of deposit or other security or investment; and

- (d) the term "this Security" means any Security created by this Deed.

- 1.2.4 Any covenant of the Company under this Deed (other than a payment obligation which has been discharged) remains in force during the Security Term.
- 1.2.5 If the Lender considers that an amount paid to it under a Finance Document is capable of being avoided or otherwise set aside on the liquidation or administration of the payer or otherwise, then that amount will not be considered to have been irrevocably paid for the purposes of this Deed.
- 1.2.6 No delay or omission on the part of the Lender in exercising any of its rights, powers or privileges under this Deed shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 1.2.7 Any right, power or remedy which may be exercised or any request or determination which may be made hereunder by the Lender or any Receiver may be exercised or made in the Lender's or any Receiver's absolute discretion.
- 1.2.8 Unless the context otherwise requires, a reference to a Secured Asset includes the proceeds of any disposal of that Secured Asset.

## **2 Covenant to pay**

- 2.1 The Company shall pay and discharge the Secured Obligations when due or, if they do not specify a time, on demand.

## **3 Fixed charge**

The Company, with full title guarantee, charges by way of fixed charge, in favour of the Lender, as security for the payment and discharge of the Secured Obligations, all of the Company's rights, title and interest from time to time:

- (a) in and to the Specific Shares and Investments;
- (b) in and to the Shares and Investments other than the Specific Shares and Investments;
- (c) in and to the Related Rights arising in connection with the Specific Shares and Investments; and
- (d) in and to the Related Rights arising in connection with all of the Shares and Investments other than the Specific Shares and Investments.

## **4 Limit**

- 4.1 Notwithstanding any other provision of the Finance Documents;
  - 4.1.1 the liability of the Company to the Lender under this deed shall be limited in aggregate to an amount equal to the proceeds of sale or other disposal or realisation of the Secured Assets; and
  - 4.1.2 the Lender shall have no recourse against the Company or its assets, whether by way of court proceedings, a winding up application or otherwise, in respect of its obligations and liabilities under this deed except by enforcement of its security over the Secured Assets.

**5 Representations and warranties**

- 5.1 The Company makes the following representations and warranties to and for the benefit of the Lender on the date of this Deed and acknowledges that the Lender has entered into the Finance Documents in reliance on such representations and warranties:
- 5.1.1 it is a limited company duly incorporated and validly existing under the laws of England and Wales;
  - 5.1.2 it has the corporate power to carry on its business as it is now being conducted and own its assets;
  - 5.1.3 its obligations under this Deed are legal, valid, binding and enforceable;
  - 5.1.4 this Deed creates the Security that it purports to create and each such Security constitutes a legal, valid and effective Security with first ranking priority;
  - 5.1.5 the entry into, delivery and performance by it of this Deed, will not involve or result in a contravention of:
    - (a) its constitutional documents;
    - (b) any law or regulation applicable to it; or
    - (c) any contractual or other obligation or restriction that is binding on it or any of its assets;
  - 5.1.6 it has taken the necessary corporate action to allow it to enter into, deliver and perform its obligations under this Deed and it does not exceed any limit on its powers in so doing;
  - 5.1.7 all authorisations, consents and licences necessary to enable it to enter into, deliver and perform its obligations under this Deed and to conduct its business in its current form have been obtained;
  - 5.1.8 its payment obligations under this Deed rank at least pari passu with all its other present and future unsecured and unsubordinated payment obligations, apart from payment obligations mandatorily preferred by law;
  - 5.1.9 all information provided by it or on its behalf to the Lender in relation to it, the Secured Assets or this Deed was true, complete and accurate in all material respects as at the date it was provided;
  - 5.1.10 it has not withheld from the Lender any information which makes the information provided to the Lender materially misleading, incomplete, inaccurate or untrue as at the date it was provided;
  - 5.1.11 so far as it is aware having made due and careful enquiry, no corporate action, legal proceedings or other procedures or steps have been taken against it for its winding-up, dissolution, administration or re-organisation or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of it or of any or all of its assets or revenues;
  - 5.1.12 no Security subsists over any of the Secured Assets except for the Security created by or pursuant to this Deed and no person holds an interest in any of the Secured Assets other than the Lender under this Deed;
  - 5.1.13 it is the sole legal and beneficial owner of all of the Secured Assets and on it acquiring any property forming part of the Secured Assets, it will be the sole legal and beneficial owner of that property;
  - 5.1.14 the Borrower is a wholly owned subsidiary of the Company and all of the Shares and Investments owned or held by the Company, or by any nominee on behalf of the



Company, in the Borrower on the date of this Deed are identified in Schedule 1 (Specific Shares and Investments);

- 5.1.15 the Secured Assets are duly authorised, validly issued, fully called up, fully paid and not subject to any option to purchase or similar right;
- 5.1.16 any transfer of any of the Secured Assets as a result of the creation or enforcement of this Deed is and will not be restricted in any way by the constitutional documents of the Borrower;
- 5.1.17 the Borrower is not obliged under the terms of any agreement to issue or allot any of its shares to any particular person or class of persons, whether or not following the making of a call or demand; and
- 5.1.18 it has not made any nomination under section 145 of the Companies Act 2006 in connection with any of the Secured Assets.
- 5.2 The representations contained in this Clause 5 (Representations and warranties) are deemed to be repeated by the Company by reference to the facts and circumstances then existing on each Interest Payment Date.

## 6 **Undertakings**

- 6.1 The undertakings in this Clause 6 (Undertakings) remain in effect throughout the Security Term.
- 6.2 The Company must:
  - 6.2.1 ensure that it has all authorisations, consents and licences necessary to enable it to enter into, deliver and perform its obligations under this Deed and to conduct its business in its current form;
  - 6.2.2 comply with all laws and regulations applicable to it;
  - 6.2.3 save as permitted by the Facility Agreement, maintain, preserve, protect and keep good and marketable title to all of the Secured Assets;
  - 6.2.4 save as permitted by the Facility Agreement, maintain and preserve the Security created by or pursuant to this Deed and the first-ranking priority of such Security;
  - 6.2.5 promptly pay when due all calls on any of its Secured Assets that, despite Clause 5.1.15, are not fully paid; and
  - 6.2.6 provide the Lender with any notices, reports, accounts, circulars and other documents relating to the Secured Assets promptly when they are received.
- 6.3 The Company must not:
  - 6.3.1 create or permit to subsist any Security over any of the Secured Assets other than the Security created by or pursuant to this Deed;
  - 6.3.2 save as permitted by the Facility Agreement, either in a single transaction or in a series of transactions sell, transfer, grant any option in respect of or otherwise dispose of all or any part of the Secured Assets or agree or attempt to do so;
  - 6.3.3 make any nomination under section 145 of the Companies Act 2006 in connection with any of the Secured Assets;
  - 6.3.4 convert any of the Secured Assets from certificated to uncertificated form;
  - 6.3.5 save as permitted by the Facility Agreement, cause or permit any of the Secured Assets to be consolidated, sub-divided or converted and must take such action as the Lender may direct in respect of any proposed compromise, arrangement, capital organisation, conversion, exchange, repayment or takeover offer affecting any of the

Secured Assets or any proposal to vary or abrogate any rights attaching to any of the Secured Assets;

- 6.3.6 permit any document relating to the Secured Assets or the articles of association of the Borrower to be amended or modified in any way that would be adverse to the interests of the Lender or adversely affect the Security created, or purported to be created, by or pursuant to this Deed; or
- 6.3.7 exercise any voting or other rights in respect of the Secured Assets in any way that is likely to materially prejudice the value of the Secured Assets or otherwise jeopardise the Security created, or purported to be created, by or pursuant to this Deed.

## **7 Voting rights, dividends and interest**

### **7.1 Before this Deed becomes enforceable**

Unless and until the Security created by or pursuant to this Deed become enforceable:

- 7.1.1 all voting and other rights (including the right to receive dividends, distributions and interest) attaching to any of the Secured Assets shall continue to be exercised by the Company; and
- 7.1.2 the Company shall be free to receive and deal with all the dividends, distributions and interest and other money paid on the Secured Assets.

### **7.2 After this Deed becomes enforceable**

At any time after the Security created by or pursuant to this Deed become enforceable:

- 7.2.1 the Lender or its nominee may, in the name of the Company or otherwise and without any further consent or authority on the part of the Company, exercise any or all voting and other rights attaching to the Secured Assets and any rights attaching to the Secured Assets to nominate or remove a director as if the Lender or its nominee were the sole beneficial owner of the Secured Assets;
- 7.2.2 all the Related Rights shall, if received by the Company or its nominee, be held on trust for, and shall be paid or transferred to, the Lender or its nominee;
- 7.2.3 the Company must, and must procure that its nominees will, accept short notice for and attend any meeting of the holders of any of the Secured Assets, appoint proxies and exercise voting and other rights and powers exercisable by the holders of the Secured Assets as the Lender or its nominee may direct from time to time; and
- 7.2.4 the Lender or its nominee may without notice to the Company:
  - (a) deal with the documents referred to in Clause 8.1 (Title documents) and complete any transfers of any of the Secured Assets as if it was the absolute and unencumbered owner of such Secured Assets; and
  - (b) in exercising a power of sale, deliver the documents referred to in Clause 8.1 (Title documents) to a purchaser of the Secured Assets to which they relate.

## **8 Perfection of Security**

### **8.1 Title documents**

The Company must:

- 8.1.1 immediately upon the execution of this Deed (and promptly upon the acquisition of any Secured Assets after the date of this Deed), deposit with the Lender, all deeds,

title documents, certificates, indemnities and other documents constituting or evidencing title to each of the Secured Assets; and

- 8.1.2 at any time after the execution of this Deed, deposit with the Lender any further deeds, title documents, certificates and other documents constituting or evidencing title to the Secured Assets, promptly upon coming into possession of any of them.

## 8.2 **Document delivery and other steps to perfect Security**

- 8.2.1 The Company must, promptly upon the execution of this Deed (and promptly upon the acquisition of any Secured Assets after the date of this Deed), execute and deliver to the Lender (at the Borrower's expense) in such form and substance as the Lender may reasonably require:

- (a) all documents required to perfect the Security created, or purported to be created, by or pursuant to this Deed (including any documents required in connection with any registration formalities); and
- (b) stock transfer forms or other instruments of transfer (executed by the Company with the details of the transferee, the consideration and the date left blank) in relation to each of the Secured Assets.

- 8.2.2 The Company must take all such other action as is available to it as may be necessary or as may be requested by the Lender to create, perfect, protect or maintain any of the Security created, or purported to be created, by or pursuant to this Deed or to vest title to any Secured Asset in the Lender or its nominee or any purchaser, or to facilitate the realisation of any Secured Asset under this Deed or the exercise of any of the rights, powers and remedies of the Lender provided by or pursuant to this Deed or by law, including making all filings and registrations with and paying all taxes and duties (including all stamp duties) to the appropriate authorities (including Companies House).

## 9 **Further assurance**

- 9.1 The Company must, if requested by the Lender, execute in favour of the Lender (or as the Lender directs) such further legal or other assignments or mortgages of, or charges on, the Secured Assets as the Lender reasonably requires to secure the payment and discharge of the Secured Obligations.
- 9.2 The assignments, mortgages or charges shall be prepared by or on behalf of the Lender at the cost of the Company and shall contain such provisions as the Lender may reasonably require.

## 10 **Enforcement**

- 10.1 The Security created by or pursuant to this Deed shall become immediately enforceable following the occurrence of an Event of Default which is continuing.
- 10.2 After the Security created by or pursuant to this Deed has become enforceable, the Lender may in its absolute discretion without any further consent or authority on the part of the Company and irrespective of any direction given by the Company enforce all or any part of this Deed in any manner it sees fit.

## 11 **Right of appropriation**

To the extent that the provisions of the Financial Collateral Arrangements (No 2) Regulations 2003, SI 2003/3226 apply to a Secured Asset, the Lender shall have the right to appropriate all or any part of that Secured Asset in or towards the payment or discharge of the Secured Obligations. For this purpose, a commercially reasonable method of valuing a Secured Asset shall be:

- (a) in the case of cash, the amount standing to the credit of the relevant bank account, together with any accrued interest, at the time of appropriation; and

- (b) in the case of any other Secured Asset, its market value determined by the Lender by reference to a public index, independent valuation or by such other process as the Lender may select.

## **12 Appointment and powers of a Receiver**

### **12.1 Appointment of a Receiver**

At any time:

- (a) after the Security created by or pursuant to this Deed has become enforceable; or
- (b) if so requested by the Borrower,

the Lender may appoint any one or more persons to be a Receiver of all or any part of the Secured Assets.

### **12.2 Powers of Receivers joint and several**

Where more than one Receiver is appointed, they shall have power to act separately unless the Lender in the appointment specifies to the contrary.

### **12.3 Remuneration of Receiver**

The Lender may from time to time determine the remuneration of the Receiver and the maximum rate specified in section 109(6) of the LPA will not apply.

### **12.4 Power of the Lender to remove Receiver**

The Lender may, subject to section 45 of the Insolvency Act 1986, remove the Receiver from the assets of which it is Receiver.

### **12.5 Further appointment**

The appointment of a Receiver shall not preclude:

- (a) the Lender from making any subsequent appointment of a Receiver over all or any of the Secured Assets over which a Receiver has not previously been appointed or has ceased to act; or
- (b) a Receiver, while continuing to act, consenting to the appointment of an additional Receiver to act with it.

### **12.6 Status of Receiver as agent**

A Receiver shall be the agent of the Company and the Company shall be solely liable for the Receiver's acts, defaults and remuneration, unless and until the Company goes into liquidation, after which the Receiver shall act as principal and shall not become the agent of the Lender.

### **12.7 Powers of Receiver**

A Receiver shall have and be entitled to exercise in relation to the Company all the powers set out in Schedule 1 to the Insolvency Act 1986, and in particular, by way of addition and without limiting such powers, and without prejudice to the powers of the Lender, a Receiver shall have power either in its own name or in the name of the Company:

- (a) in connection with any sale or other disposition of the Secured Assets, to receive the consideration for the sale in a lump sum or in instalments and to receive shares by way of consideration;
- (b) to grant options or any other interests in the Secured Assets;

- (c) to exercise any voting rights belonging to the Company;
- (d) to do all other acts and things which it may consider desirable or necessary for realising any Secured Asset or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Deed; and
- (e) to exercise in relation to any of the Secured Assets all the powers, authorities and things which it would be capable of exercising if it was the absolute beneficial owner of the Secured Asset.

**12.8 Limitation on Lender's liability**

Neither the Lender nor any Receiver shall be liable:

**12.8.1** for any loss, however caused, arising out of:

- (a) any sale or other disposal of any of the Secured Assets and whether or not a better price could or might have been obtained by deferring or advancing the date of such sale or other disposal; or
- (b) the exercise of or failure to exercise any of the Lender's powers under this Deed; or

**12.8.2** to account as mortgagee in possession for any of the Secured Assets.

**13 Lender may exercise Receiver's powers**

All powers of a Receiver conferred by this Deed may be exercised by the Lender after the Security created by or pursuant to this Deed has become enforceable, whether as attorney of the Company or otherwise, and whether or not a Receiver has been appointed.

**14 Statutory power of sale to arise on execution**

Section 103 of the LPA shall not apply to this Deed, but the statutory power of sale shall, as between the Lender and a purchaser from the Lender, arise on, and be exercisable at any time after, the execution of this Deed. However, the Lender shall not exercise such power of sale until the Security created by or pursuant to this Deed has become enforceable, or a Receiver has been appointed, but this provision shall not affect a purchaser or require a purchaser to ask whether a demand or appointment has been made.

**15 Protection of third parties**

No person (including a purchaser) dealing with the Lender or any Receiver or any of their respective nominees or agents, shall be concerned to enquire:

- (a) whether the Security created by or pursuant to this Deed have become enforceable;
- (b) whether any Receiver is validly appointed or acting within its powers;
- (c) whether any power exercised or purported to be exercised has become exercisable;
- (d) whether any of the Secured Obligations remain due;
- (e) as to the necessity or expediency of any stipulations or conditions subject to which the sale of any Secured Asset is made, or otherwise as to the propriety or regularity of the sale of any Secured Asset; or
- (f) how any money paid to the Lender or a Receiver, or their respective nominees or agents, is applied.

16      **Consolidation of mortgages**

The restrictions on consolidation of mortgages contained in section 93 of the LPA shall not apply to this Deed.

17      **Rights of Lender or Receiver to remedy breach**

If the Company defaults in its performance of any of the undertakings under Clause 6 (Undertakings) or other obligations in this Deed, the Lender or any Receiver may (but shall not be obliged to) do whatever may be necessary to rectify the default or protect the Lender's interest under this Deed at the expense of the Company.

18      **Application of money received by the Lender or a Receiver**

18.1    **Application of recoveries**

Any money received under this Deed shall, subject to the discharge of any prior-ranking claims, be paid or applied in the following order of priority:

- 18.1.1   in payment of the remuneration of the Receiver and the costs of realisation incurred by the Lender and/or the Receiver including all costs, charges and expenses of or incidental to any exercise of any power conferred by this Deed;
- 18.1.2   in or towards the payment of any debts or other amounts which are by statute made payable in preference to the Secured Obligations, to the extent that such debts or other amounts are made so payable;
- 18.1.3   in or towards satisfaction of the Secured Obligations in such order as the Lender determines, in its absolute discretion; and
- 18.1.4   as to the surplus, if any, to the Company or to any other person or persons entitled to it.

18.2    **Credit to a suspense account**

The Lender may, in its absolute discretion on or at any time or times after demand and pending the payment to the Lender of the whole of the Secured Obligations, place and keep to the credit of an interest-bearing separate or suspense account any money received, recovered or realised by the Lender under or in connection with this Deed for so long and in such manner as the Lender may determine without any intermediate obligation on its part to apply the same or any part of such money in or towards the discharge of any of the Secured Obligations.

19      **Costs, expenses and indemnity**

19.1    The Company must, immediately on demand by the Lender, pay to the Lender all reasonable costs and expenses (including legal fees) together with VAT on such amounts reasonably and properly incurred by the Lender arising at any time in connection with:

- (a)    the negotiation, preparation, execution or perfection of this Deed (or the Security created by it) including pursuant to Clauses 8 (Perfection of Security) and 9 (Further assurance); and/or
- (b)    responding to, considering or implementing any request for a consent, amendment or waiver to this Deed.

19.2    The Company must, immediately on demand by the Lender, pay to the Lender on a full indemnity basis all costs, losses and liabilities (including legal fees) together with VAT on such amounts incurred by or on behalf of the Lender arising at any time as a result of or in connection with:

- (a)    the occurrence of an Event of Default under the Facility Agreement; or

- (b) the preservation and/or enforcement of any of the rights of the Lender under this Deed.

20 **Payments**

20.1 All sums payable by the Company under this Deed must be paid in Sterling in full without any set-off or counterclaim and in cleared funds on the day in question to such account as the Lender may have specified for this purpose.

20.2 Where the day on or by which any payment is to be made is not a Business Day, that payment must be made on or by the preceding Business Day.

21 **Set-off**

21.1 **Retention and set-off**

The Lender may retain any money standing to the credit of any of the Company's bank accounts with the Lender or the Lender (in any currency) as cover for any of the Secured Obligations and/or may at any time, without notice to the Company, combine or consolidate all or any of such money with all or such part of the Secured Obligations as the Lender may select, whether presently payable or not, and the Lender may purchase with any such money any other currency required to effect such combination.

21.2 **Power to sign documents**

The Company irrevocably authorises the Lender in its name and at the Company's expense to perform such acts and sign such documents as may be required to give effect to any set-off or transfer pursuant to Clause 21.1 (Retention and set-off), including the purchase with the money standing to the credit of any such bank account of such other currencies as may be necessary to effect such set-off or transfer.

21.3 **No Security**

This Clause 21 (Set-off) gives to the Lender a contractual right of set-off only, and does not create any equitable charge or other Security over any credit balance of the Company.

22 **Power of attorney**

The Company, by way of security, irrevocably and severally appoints the Lender, each Receiver and any of their respective delegates or sub-delegates to be its attorney with the full power and authority of the Company to execute, deliver and perfect all deeds, instruments and other documents in its name and otherwise on its behalf and to do or cause to be done all acts and things, in each case which may be required or which any attorney may in its absolute discretion deem necessary for carrying out any obligation of the Company under or pursuant to this Deed or generally for enabling the Lender or any Receiver to exercise the respective powers conferred on them under this Deed or by law. The power of attorney granted in this Clause 22 (Power of Attorney) shall only be exercisable while an Event of Default is continuing. The Company ratifies and confirms whatever any attorney does or purports to do under its appointment under this Clause 22 (Power of attorney).

23 **Transfers**

23.1 **Right of Lender to transfer**

The Lender is entitled at any time to assign its rights or otherwise transfer all or any part of its rights or obligations under this Deed to any party to whom it has assigned its rights or otherwise transferred its rights or obligations under the Facility Agreement.

### 23.2 **No right of Company to transfer**

The Company is not entitled to assign its rights or otherwise transfer all or any part of its rights or obligations under this Deed.

### 23.3 **Disclosure**

The Company irrevocably authorises the Lender to disclose any information concerning the Company, this Deed or the Secured Obligations to:

- (a) any prospective assignee or transferee referred to in Clause 23.1 (Right of Lender to transfer) and any other person considered by the Lender to be concerned in the prospective assignment or transfer; and
- (b) any person who, as part of the arrangements made in connection with any transaction referred to in Clause 23.1 (Right of Lender to transfer), requires such information after the transaction has been effected.

### 24 **Continuing and additional Security**

24.1 This Security is a continuing security for the Secured Obligations and shall extend to the ultimate balance due at any time from the Borrower and the Company under the Finance Documents, notwithstanding any intermediate payment or settlement of account (whether in whole or in part) or any other matter whatever.

24.2 This Security is in addition to and do not prejudice, nor are they in any way prejudiced by, any other Security, guarantee or right of set-off, combination or other rights exercisable by the Lender against the Borrower and the Company or any Security, guarantee, indemnity and/or negotiable instrument now or in the future held by the Lender.

### 25 **Waiver of defences**

The obligations of the Company under this Deed will not be affected by any act or omission which would otherwise have a prejudicial effect on this Deed or the obligations of the Company under this Deed, including:

- (a) any giving of time or any indulgence, consent or waiver granted in favour of the Company or any other person;
- (b) any release of the Company or any other person under the terms of any composition or arrangement with its creditors;
- (c) any variation or release of or failure to perfect or enforce rights (including security rights) over the assets of the Company or any other person or any other act or omission which diminishes the benefit or value of any such rights;
- (d) any lack of power, authority or legal personality of, any incapacity of or the insolvency of or any similar proceedings against the Company or any other person;
- (e) any change in the status or identity (including any dissolution) of the Lender, the Company or any other person;
- (f) any amendment or supplement to or novation, restatement or replacement of any of the Finance Documents or any other document, in each case, of whatever nature and however fundamental (including any increase in the Facility, the provision of any new loan facility or any change to the purpose for which any Loan is made available);
- (g) any illegality, unenforceability or invalidity of any obligation of the Company or any other person under the Finance Documents or any other document; or



- (h) any other matter or thing, whether or not in the knowledge of the Lender, the Company or any other person.

## 26 **Immediate recourse**

26.1 The Lender may enforce this Deed without first:

- (a) having recourse to any other Security, guarantee or rights of set-off;
- (b) making or filing any claim or proof in a winding-up, dissolution or bankruptcy of any other person; or
- (c) taking any steps or proceedings against the Borrower or any other person.

26.2 The Company waives any right it may have to require or request the Lender to take any steps set out in Clauses 26.1(a), 26.1(b) or 26.1(c) prior to enforcing this Deed.

## 27 **No competition**

27.1 During the Security Term, the Company shall not:

- 27.1.1 exercise any right of indemnity, set-off or counterclaim against the Borrower or any other party to any Security created by or pursuant to any Finance Document;
- 27.1.2 bring proceedings for an order of the court compelling the Borrower to pay the Secured Obligations to the Lender;
- 27.1.3 claim or prove in the winding-up or dissolution of the Borrower or any other party to any Security created by or pursuant to any Finance Document;
- 27.1.4 exercise any right of subrogation to the Lender's rights under the Finance Documents;
- 27.1.5 claim any contribution from the Borrower or any other party to any Security created by or pursuant to any Finance Document;
- 27.1.6 claim payment of any other monies due to it by the Borrower or any other party to any Security created by or pursuant to any Finance Document by reason of the performance of its obligations under this Deed or on any account whatsoever or exercise any other right or remedy or enforce any Security, guarantee, indemnity or other assurance against loss which it has in respect of such monies; or
- 27.1.7 negotiate, assign, charge or otherwise dispose of:
  - (a) any monies, obligations or liabilities now or in the future due or owing to it by the Borrower or any other party to any Security created by or pursuant to any Finance Document; or
  - (b) any Security, guarantee, indemnity or other assurance in respect of any such monies, obligations or liabilities.

27.2 If the Company receives any sums in contravention of this Clause 27 (No competition), it shall hold them on trust to be applied by the Lender in or towards satisfaction of the Secured Obligations in such order or manner as the Lender may specify.

## 28 **Opening of new accounts**

28.1 If the Lender receives notice (whether actual or constructive) that the Company has created a Security over any of the Secured Assets, the Lender may rule off the Company's account or accounts and open one or more new accounts with the Company.

28.2 If the Lender does not open any such new account or accounts, it shall nevertheless be treated as if it had done so at the time when it received such notice and, from that

time, all payments made to the Lender shall be treated as having been credited to such new account or accounts and shall not operate to reduce the Secured Obligations.

29 **No prejudice**

The Security created, or intended to be created, by or pursuant to this Deed shall not be prejudiced by any unenforceability or invalidity of any other agreement or document.

30 **No merger**

Nothing contained in this Deed shall operate so as to merge or otherwise prejudice, affect or exclude any other Security which the Lender may for the time being hold for the Secured Obligations or would have but for this Deed.

31 **Evidence of debt**

31.1 A copy of any entry in the Lender's accounts shall in any legal proceedings arising out of or in connection with any of the Finance Documents be prima facie evidence of the matters, transactions and accounts to which it relates.

31.2 A certificate by the Lender as to any sum payable to it under any of the Finance Documents shall, in the absence of manifest error, be conclusive evidence of the matters, transactions and accounts to which it relates.

32 **Redemption of Security and releases**

On the irrevocable and unconditional payment and discharge in full of the Secured Obligations, the Lender shall, at the request and cost of the Company:

(a) take whatever action is necessary to release and cancel the Security created by or pursuant to this Deed; and

(b) return all documents of title delivered to the Lender under this Deed,

in each case without recourse to, or any representation or warranty by, the Lender or any of its nominees.

33 **Notices**

33.1 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 save that the references to "Company" within that clause shall be deemed to refer to the Company and the Company's delivery details being as follows:

33.1.1 the Company at:

Elivia Homes, Apollo House, Mercury Park, Wooburn Green, High Wycombe, HP10 0HH

Attention: Iain Brown, Chief Financial Officer

or to any other address as is notified in writing by the Company to the Lender from time to time.

33.2 This Clause 33 (Notices) 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.

34 **Amendments**

No amendment of this Deed shall be effective unless it is in writing and signed by, or on behalf of, each Party (or its authorised representative).

35 **Waivers and remedies**

35.1 **Waivers and consents**

35.1.1 A waiver of any right or remedy under this Deed or by law, or any consent given under this Deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any subsequent right or remedy. It only applies to the circumstances in relation to which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

35.1.2 A failure by the Lender to exercise or delay by it in exercising any right or remedy provided under this Deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this Deed. No single or partial exercise of any right or remedy provided under this Deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this Deed by the Lender shall be effective unless it is in writing.

35.2 **Rights and remedies**

The rights and remedies provided under this Deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

36 **Partial invalidity**

36.1 If any provision of this Deed (or part of any provision of this Deed) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Deed (or other part of that provision of this Deed) shall not be affected.

36.2 If any provision of this Deed (or part of any provision of this Deed) is or becomes illegal, invalid or unenforceable but would be legal, valid or enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion, the Parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision in place of the provision or part-provision so deleted.

37 **Due execution**

The parties to this Deed intend it to take effect as a deed, notwithstanding that the Lender may have executed it under hand only and even if the Company's execution is not in accordance with the formalities required for the execution of deeds.

38 **Counterparts**

38.1 This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.

38.2 Transmission of an executed counterpart of this Deed (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Deed.

38.3 Without prejudice to the validity of the Deed thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

39 **Third party rights**

39.1 Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed.

39.2 Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Deed at any time.

39.3 Any Receiver may enforce and enjoy the benefit of any clause which expressly confers rights on it, subject to Clause 39.2 above and the provisions of the Contracts (Rights of Third Parties) Act 1999.

#### 40 **Governing law and jurisdiction**

##### 40.1 **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.

##### 40.2 **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 40.2 (Jurisdiction) shall limit the right of the Lender to take proceedings against the Company 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.

##### 40.3 **Other service**

The Company irrevocably consents to any process in any legal action or proceedings under Clause 40.2 (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.

**Schedule 1: Specific Shares and Investments**

<b>Shares:</b>	Ordinary Shares of £1 each
<b>Number of Shares:</b>	105

Execution page

Share Charge

In **witness** of which this document has been executed by the Parties as a **Deed** and **delivered** on the date set out at the beginning of this Deed.

**This is an important legal document. The Lender recommends that before signing it you should seriously consider seeking the advice of a Solicitor or other legal adviser. In particular you should note that by signing this document you are agreeing to guarantee and indemnify the Lender in respect of liabilities and obligations of the Company and the Borrower subject to the limited recourse set out in Clause 4 of this Deed.**

Company

Executed as a **Deed** by )  
**Elivia Development Finance Limited** )  
acting by a Director in the presence of: )

sign here:

Director

Iain Brown

print name:

Witness signature:

witness sign here:

Robin Armstrong

Witness name:

print name:

Witness address:

Witness occupation:

Group FC

**Lender**

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


sign here:   
\_\_\_\_\_  
Director

print name: **Edward Fellows**  
\_\_\_\_\_

In the presence of:

Witness signature:   
\_\_\_\_\_

Witness name: **Laura Fellows**  
\_\_\_\_\_

Witness address:   
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Witness occupation: **Lawyer**  
\_\_\_\_\_