



**Registration of a Charge**

Company name: **WARREN PARK (CHAPELTOWN) LIMITED**

Company number: **09333453**



X44Y4TVL

Received for Electronic Filing: **09/04/2015**

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**Details of Charge**

Date of creation: **07/04/2015**

Charge code: **0933 3453 0001**

Persons entitled: **FERN TRADING LIMITED (COMPANY NUMBER 06447318)**

Brief description: **WARREN PARK NURSING HOME, WHITE LANE, CHAPELTOWN,  
SHEFFIELD, S35 2YH**

**Contains fixed charge(s).**

**Contains floating charge(s) .**

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

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

**FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL  
INSTRUMENT.**

Certified by:

**SHOOSMITHS LLP ON BEHALF OF FERN TRADING LIMITED**



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

Company number: 9333453

Charge code: 0933 3453 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 7th April 2015 and created by WARREN PARK (CHAPELTOWN) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 9th April 2015 .

Given at Companies House, Cardiff on 10th April 2015

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

DATED

7<sup>th</sup> April

2015

(1) WARREN PARK (CHAPLETOWN) LIMITED

and

(2) FERN TRADING LIMITED

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LEGAL CHARGE

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**OCTOPUS**  
INVESTMENTS

**SHOOSMITHS**

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Ref. RMM/ /ALV/M-367301

## TABLE OF CONTENTS

1	INTERPRETATION .....	1
2	COVENANT TO PAY .....	7
3	GRANT OF SECURITY.....	7
4	CRYSTALLISATION OF FLOATING CHARGE.....	8
5	NEGATIVE PLEDGE .....	8
6	PERFECTION OF SECURITY .....	9
7	FURTHER ASSURANCE.....	10
8	REPRESENTATIONS .....	10
9	UNDERTAKINGS.....	11
10	ENFORCEMENT OF SECURITY.....	16
11	POWERS OF THE LENDER.....	16
12	APPOINTMENT OF RECEIVER .....	17
13	POWERS OF RECEIVER .....	18
14	APPLICATION OF MONEYS.....	20
15	PROTECTION OF PURCHASERS.....	20
16	POWER OF ATTORNEY .....	20
17	PRESERVATION OF SECURITY .....	21
18	SET-OFF AND CURRENCY .....	22
19	NEW ACCOUNTS .....	23
20	EXPENSES AND INDEMNITY.....	23
21	MISCELLANEOUS.....	23
22	NOTICES.....	24
23	COUNTERPARTS.....	25
24	GOVERNING LAW.....	25
25	JURISDICTION .....	25
	SCHEDULE 1 THE PROPERTY .....	27

<b>SCHEDULE 2 FORM OF NOTICE OF ASSIGNMENT TO INSURERS.....</b>	<b>28</b>
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THIS DEED is made the 7<sup>th</sup> day of April 2015

**BETWEEN**

1. **WARREN PARK (CHAPLETOWN) LIMITED** registered in England & Wales (registered number 9333453) (the "**Chargor**"); and
2. **FERN TRADING LIMITED**, a company incorporated in England and Wales (company number 06447318) whose registered office is at 33 Holborn, London EC1N 2HT (the "**Lender**").

**BACKGROUND**

It is intended that this document take effect as a deed notwithstanding the fact that a Party may only execute it under hand.

The Parties agree as follows:

**1 INTERPRETATION**

**1.1 Definitions**

In this Deed the following definitions apply:

- |                            |  |
|----------------------------|--|
| <b>"Authorisation"</b>     | an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration;   |
| <b>"Business Day"</b>      | a day (other than a Saturday or Sunday) on which banks are open for general business in London;  |
| <b>"Charged Property"</b>  | in respect of the Chargor, all the assets which from time to time are the subject of the security created or expressed to be created in favour of the Lender by or pursuant to this Deed;  |
| <b>"CQC"</b>               | means the Care Quality Commission or any replacement or alternative regulator of health and social care in the United Kingdom;   |
| <b>"Enforcement Event"</b> | <ol style="list-style-type: none"><li>(a) any of the Secured Obligations are not paid or discharged when due or demanded (whether on demand, at scheduled maturity, or by acceleration or otherwise) and any applicable grace period has expired;</li><li>(b) the Chargor is in breach of any of its obligations under this Deed or under any other agreement between the Chargor and the Lender and any applicable grace period (whether arising under this Deed or any other such agreement) has expired;</li><li>(c) a default or event of default, however defined, occurs under any agreement between the</li></ol> |

Chargor and the Lender;

- (d) the Chargor is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
- (e) the value of the assets of the Chargor is less than its liabilities (taking into account contingent and prospective liabilities);
- (f) a moratorium is declared in respect of any indebtedness of the Chargor;
- (g) any corporate action, legal proceedings or other procedure or step is taken in relation to:
  - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Chargor;
  - (ii) a composition, compromise, assignment or arrangement with any creditor of the Chargor;
  - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Chargor or any of its assets; or
  - (iv) enforcement of any security over any assets of the Chargor;
- (h) any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Chargor;
- (i) any event occurs in relation to the Chargor that is analogous to those set out in paragraphs (d) to (h) above; or
- (j) any representation, warranty or statement made or deemed to be made by the Chargor under this Deed or any other agreement between the Chargor and the Lender is or proves to have been incorrect or misleading when made or deemed to be made, in a



material respect;

**"Environment"**

the natural and man-made environment, including all or any of the following media, namely air, water and land (including air within buildings and other material or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media;

**"Environmental Claim"**

any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law;

**"Environmental Law"**

all and any international, European Union or national laws, common law, statutes, directives, bye-laws, orders, regulations or other subordinate legislation, notices, codes of practice, circulars, guidance notes, judgments or decrees, relating to or connected with the protection of human health or the Environment or the conditions of the work place or the generation, transportation, storage, treatment or disposal of Hazardous Items;

**"Environmental Permits"**

any permit or other Authorisation and the filing of any notification, report or assessment required under any Environmental law for the operation of the business of the Chargor conducted on or from the properties owned or used by the Chargor;

**"EU Regulation"**

the Council of the European Union Regulation 1346/2000/EC on insolvency proceedings;

**"Floating Charge Property"**

has the meaning given in clause 3.1.6;

**"Group"**

means Astonbrook Care Limited (company number 09187663) and its Subsidiaries for the time being.

**"Hazardous Items"**

any waste of any kind, noise, vibration, smell, fumes, smoke, soot, ash, dust, grit, pollution, chemicals, leachate, petroleum products, ground water, noxious, radioactive, inflammable, explosive, dangerous or offensive gases or materials and any other substances of whatever nature which could cause harm to the health of living organisms or the Environment or to public health or welfare;

**"Insurance Policy"**

any policy of insurance and cover note relating to the Real Property in which the Chargor may from time to time have an interest;

**"Legal Reservations"**

means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws

relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;

- (b) the time barring of claims under the Limitation Act 1980, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;
- (c) the limitation of the enforcement of the terms of leases of real property by laws of general application to those leases;
- (d) the discretion of a court to reclassify a charge expressed as a fixed charge, as a floating charge where it is not operated in a manner consistent with the chargee's rights as a fixed chargeholder; and
- (e) similar principles, rights and remedies under the laws of any relevant jurisdiction.

**"LPA 1925"**

the Law of Property Act 1925;

**"Material Adverse Effect"**

means in the opinion of the Lender a material adverse effect on:

- (a) the business, operations, property, condition (financial or otherwise) or prospects of the Chargor;
- (b) the ability of the Chargor to perform its obligations under this Deed; or
- (c) the validity or enforceability of, or the effectiveness or ranking of any security granted or purporting to be granted pursuant to this Deed or the rights or remedies of the Lender under this Deed;

**"Material Contracts"**

- (a) the agreements (if any) listed opposite its name under the heading "Material Contracts" in Schedule 1;
- (b) all Related Rights;

**"Party"**

a party to this Deed;

**"Plant and Machinery"**

- (a) all equipment, machinery, plant, computers, office equipment, vehicles and all other assets of a similar nature which are now, or at any time after the date of this Deed become, the property of the Chargor; and

<b>"Real Property"</b>	<p>(b) all Related Rights;</p> <p>(a) any freehold, leasehold or other immovable property (including the property (if any) specified opposite its name in Schedule 1); and</p> <p>(b) any buildings, erections, fixtures or fittings from time to time situated on or forming part of such property (including any trade fixtures and fittings); and</p> <p>(c) all Related Rights;</p>
<b>"Receiver"</b>	<p>a receiver, manager, administrator or administrative receiver appointed pursuant to the provisions of this Deed or any applicable law;</p>
<b>"Relevant Agreement"</b>	<p>an agreement between the Lender and the Chargor creating or evidencing the Secured Liabilities;</p>
<b>"Related Rights"</b>	<p>in relation to any asset,</p> <p>(a) the proceeds of sale of any part of that asset;</p> <p>(b) all rights under any licence, agreement for sale or agreement for lease in respect of that asset;</p> <p>(c) all rights, benefits, claims, contracts, warranties, remedies, security, indemnities or covenants for title in respect of that asset; and</p> <p>(d) any income, moneys and proceeds paid or payable in respect of that asset;</p>
<b>"Secured Obligations"</b>	<p>all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally, as principal or surety and/or in any other capacity whatsoever) owed by the Chargor to the Lender together with all costs, charges and expenses incurred by the Lender in connection with the protection, preservation or enforcement of its respective rights;</p>
<b>"Security Period"</b>	<p>the period beginning on the date of this Deed and ending on the date on which the Secured Obligations have been unconditionally and irrevocably repaid and discharged in full and the Lender has no further obligation to lend to any member of the Group;</p>
<b>"Subsidiary"</b>	<p>a subsidiary within the meaning of section 1159 of the Companies Act 2006.</p>

## 1.2 Interpretation

### 1.2.1 In this Deed:

- a) clause and schedule headings are for convenience of reference only and shall not affect the construction of this Deed;
- b) references to clauses and schedules are references to the clauses of and schedules to this Deed unless specified otherwise;
- c) references to this Deed or any other agreement or instrument shall be construed as references to this Deed, that agreement or instrument as amended, novated, supplemented, extended or restated;
- d) references to a person shall be construed to include that person's permitted assigns, permitted transferees or successors in title and shall be construed as including any individual, firm, trust, partnership, joint venture, company, corporation, unincorporated body of persons or any state or agency thereof, whether or not having separate legal personality;
- e) references to a provision of law are references to that provision as amended or re-enacted;
- f) words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders;
- g) an Enforcement Event is "**continuing**" if it has not been remedied or waived;
- h) the words "**including**" shall not be construed as limiting the generality of the words preceding it; and
- i) unless the context otherwise requires, any reference to "**Charged Property**" includes any part of that Charged Property, any proceeds of that Charged Property and any present and future assets of that type.

1.2.2 Any covenant by the Chargor under this Deed remains in force during the Security Period and is given for the benefit of the Lender.

1.2.3 The terms of any finance arrangements between the parties to this Deed are incorporated in this Deed to the extent required to ensure that any disposition of Real Property contained in this Deed is a valid disposition in accordance with Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

1.2.4 Unless expressly provided to the contrary in this Deed, 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.

1.2.5 Notwithstanding any terms of this Deed, the consent of any person who is not a Party is not required to rescind or vary this Deed at any time.

1.2.6 If any provisions of this Deed at any time conflict or are inconsistent with any provisions of a Relevant Agreement, the Relevant Agreement shall prevail and, where such conflict exists, compliance by the Chargor with the terms of the Relevant

Agreement shall be deemed to be compliance with the conflicting or inconsistent terms in this Deed.

### 1.3 General

- 1.3.1 The fact that no or incomplete details of any Charged Property are inserted in Schedule 1 (*The Property*) does not affect the validity or enforceability of the security created by this Deed.
- 1.3.2 If the Chargor assigns an agreement under this Deed and the assignment or charge breaches a term of that agreement because a third party's consent has not been obtained:
- a) the Chargor must notify the Lender immediately;
  - b) unless the Lender otherwise requires, the Chargor must use all reasonable endeavours to obtain the consent as soon as practicable; and
  - c) that Chargor must promptly supply the Lender with a copy of the consent obtained by it.

## 2 COVENANT TO PAY

The Chargor covenants that it will pay and discharge the Secured Obligations to the Lender as and when the same are due.

## 3 GRANT OF SECURITY

### 3.1 Charges

The Chargor with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994 charges in favour of the Lender as continuing security for the payment and discharge of the Secured Obligations:

- 3.1.1 by way of legal mortgage, the Real Property;
- 3.1.2 by way of fixed charge, all Plant and Machinery owned by it and its interest in any Plant and Machinery in its possession;
- 3.1.3 by way of fixed charge, all rights, interests and claims in the Insurance Policies, other than those validly and effectively assigned under clause 3.2;
- 3.1.4 by way of fixed charge, all rights, interests and claims in the Material Contracts, other than those validly and effectively assigned under clause 3.2;
- 3.1.5 to the extent permitted by law, or under the terms of grant of any of the same, by way of fixed charge, the benefits of all licences, consents and authorisations held in connection with its business or the use of any Charged Property, and the right to any compensation in respect of any of them; and
- 3.1.6 by way of floating charge, all moveable plant, machinery, implements, utensils, furniture and equipment from time to time placed on or used in or upon the Real Property and the benefits of all licences, contracts and warranties in connection with the same (the "**Floating Charge Property**").

### 3.2 Security Assignment

3.2.1 The Chargor with full title guarantee assigns absolutely to the Lender, subject to a proviso for re-assignment on redemption, as continuing security for the payment and discharge of the Secured Obligations all of its rights, title, interest and benefit from time to time in and to the:

- a) Material Contracts; and
- b) Insurance Policies.

3.2.2 To the extent that any right described in clause 3.2.1 is not assignable or capable of assignment, the assignment purported to be effected by clause 3.2.1 shall operate as an assignment of any damages, compensation, remuneration, profit, rent or income which the Chargor may derive from that right or be entitled to in respect of that right.

## 4 CRYSTALLISATION OF FLOATING CHARGE

4.1 The Lender may at any time by notice in writing to the Chargor immediately convert the floating charge created by clause 3.1.6 into a fixed charge as regards any property or assets specified in the notice if:

- 4.1.1 an Enforcement Event has occurred and is continuing; or
- 4.1.2 the Lender considers that any of the Charged Property may be in jeopardy or in danger of being seized or sold pursuant to any form of legal process; or
- 4.1.3 the Lender considers that it is desirable in order to protect the priority of the security created under this Deed.

4.2 If, without the prior written consent of the Lender:

- 4.2.1 any steps are taken for any of the Charged Property to become subject to any security in favour of any other person; or
- 4.2.2 any person levies or attempts to levy any distress, execution or other process against any of the Charged Property; or
- 4.2.3 a resolution is passed or an order is made for the winding-up, dissolution, or re-organisation of or any steps are taken for the appointment of an administrator in respect of the Chargor,

the floating charge created under clause 3.1.6 by the Chargor will automatically be converted (without notice) with immediate effect into a fixed charge in respect of the relevant Floating Charge Property.

4.3 The floating charge created under this Deed shall not convert into a fixed charge solely by reason of a moratorium being obtained under the Insolvency Act 1986 (or anything done with a view to obtaining such a moratorium) in respect of the Chargor.

## 5 NEGATIVE PLEDGE

Except as expressly permitted by any Relevant Agreement:

- 5.1 the Chargor shall not create or permit to subsist any security over any of the Charged Property, other than any lien arising by operation of law and in the ordinary course of trading and not as a result of any default or omission by the Chargor; and
- 5.2 the Chargor shall not enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, discount, factor, transfer, assign, lease, lend or otherwise dispose of any of the Charged Property.

## **6 PERFECTION OF SECURITY**

### **6.1 Deposit of Title Documents**

Immediately following the execution of this Deed (or, if later, the date of acquisition of the relevant Charged Property), the Chargor shall deposit with the Lender:

- 6.1.1 all deeds and documents of title relating to the Charged Property;
- 6.1.2 all Insurance Policies to which the Chargor is entitled to possession;
- 6.1.3 all other documents as the Lender (acting reasonably) may from time to time require for perfecting its title to the Investments or for vesting or enabling it to vest the Investments in itself or its nominees or in any purchaser.

### **6.2 Notices of Assignment regarding Insurance Policy**

Unless already given pursuant to a Relevant Agreement, the Chargor shall, on the date of this Deed (and within five Business Days of obtaining any Insurance Policy or, opening of any bank account after the date of this Deed) give notice in the form set out in of Schedule 2 (*Form of Notice of Assignment to Insurers*) to each insurer with whom the Chargor has an Insurance Policy of the assignment and shall use all reasonable endeavours to procure that each addressee of such notice will promptly provide an acknowledgement to the Lender in the form set out in Schedule 2 (*Acknowledgement and Undertaking*).

### **6.3 Notices of Assignment regarding Material Contracts**

Unless already given pursuant to a Relevant Agreement, the Chargor shall, if required by the Lender at any time while an Enforcement Event is continuing, give notice in the form set out in Schedule 3 (*Form of Notice of Assignment to Contract Counterparty*) to each person with whom the Chargor has entered into a Material Contract and shall use all reasonable endeavours to procure that each addressee of such notice promptly provides an acknowledgement to the Lender in the form set out in Schedule 3 (*Form of Acknowledgement from Contract Counterparty*);.

### **6.4 Land Registry disposal restriction**

In respect of any Real Property or part of or interest in any Real Property title to which is registered at the Land Registry (or any unregistered land subject to first registration), the Chargor shall apply or consent to an application being made to the Chief Land Registrar to enter the following restriction on the Register of Title for its Real Property:

*"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the Deed dated [●] 2015 in favour of Fern Trading Limited referred to in the charges register."*

6.5 Tacking

The obligation on the part of the Lender to make further advances is deemed to be incorporated in this Deed and the Chargor shall apply to the Chief Land Registrar for the following to be entered on the Register of Title in relation to any of its Real Property the title to which is registered at the Land Registry:

*"The Lender under a facility agreement dated [●] 2015 between, Astonbrook Care Limited, Astonbrook Care Holdings Limited and Fern Trading Limited is under an obligation (subject to the terms of that facility agreement) to Astonbrook Care Limited to make further advances and the legal charge referred to in the charges register dated [●] 2015 in favour of Fern Trading Limited secures those further advances."*

**7 FURTHER ASSURANCE**

7.1 The Chargor shall, at its own expense, promptly take whatever action the Lender may require for:

7.1.1 creating, perfecting or protecting the security intended to be created by this Deed;

7.1.2 facilitating the realisation of any of the Charged Property; or

7.1.3 facilitating the exercise of any right, power or discretion exercisable by the Lender or any Receiver (or any delegates or sub-delegates) in respect of any of the Charged Property,

including the execution of any security or other document (in such form as the Lender may reasonably require), the giving of any notice, order or direction and the making of any registration which the Lender may think expedient.

**8 REPRESENTATIONS**

8.1 The Chargor represents and warrants to the Lender, on the date of this Deed and on each date during the Security Period by reference to the facts and circumstances then existing that:

8.1.1 it is a corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation;

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

8.1.3 the Charged Property is, or when acquired will be, legally and beneficially owned by it free of any security other than security created by or expressly permitted by this Deed;

8.1.4 the obligations expressed to be assumed by it in this Deed is are, subject to the Legal Reservations, legal, valid, binding and enforceable obligations;

8.1.5 it has the power to enter into, perform and deliver and has taken all necessary action to authorise its entry into, performance and delivery of this Deed and the transactions contemplated by this Deed;

8.1.6 all authorisations required or desirable to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed and to make this Deed



admissible in evidence in its jurisdiction of incorporation have been obtained or effected and are in full force and effect; and

- 8.1.7 for the purposes of the EU Regulation, its centre of main interests (as that expression is used in Article 3(1) of the EU Regulation, is situated in England and Wales and it has no other "establishment" (as that term is used in Article 2(h) of the EU Regulation) in any other jurisdiction.

## **9 UNDERTAKINGS**

The Chargor covenants and agrees with the Lender that it will, during the Security Period:

### **9.1 Charged Property generally**

- 9.1.1 permit the Lender and/or its delegates (not more than once in every financial year unless the Lender reasonably suspects an Enforcement Event is continuing or may occur) access at all reasonable times and on reasonable notice at its risk and cost to its premises (including, without limitation, any Charged Property), assets, books, accounts and records provided that any visit to Real Property will be during normal business hours, with reasonable notice and subject the rights of quiet enjoyment of the Chargor's clients and to any requirements of the CQC;
- 9.1.2 provide the Lender with all information which it may reasonably request in relation to the Charged Property;
- 9.1.3 comply in all material respects with all obligations in relation to the Charged Property under any present or future law, regulation, order or instrument of any competent authority or other approvals, licences or consents applicable to it;
- 9.1.4 notify the Lender within 14 days of receipt of every application, requirement, notice, order or proposal given, or made in relation to, the Charged Property by any competent authority and (if required by the Lender) immediately provide it with a copy of the same and either (i) comply with such notice, order or proposal or (ii) make such objections to the same as the Lender may require or approve;
- 9.1.5 duly and punctually pay all rates, rents, taxes and other outgoings owed by it in respect of the Charged Property;
- 9.1.6 comply in all material respects with any covenant, stipulation or obligation (restrictive or otherwise) at any time affecting the Charged Property;
- 9.1.7 not, except with the prior written consent of the Lender, or as required by the CQC, enter into any onerous or restrictive obligation affecting any of the Charged Property or agree to any amendment, supplement, waiver, surrender or release of any covenant, stipulation or obligation (restrictive or otherwise) at any time affecting the Charged Property; and
- 9.1.8 not do, cause or permit to be done or omit to do anything which may in any way depreciate, jeopardise or otherwise prejudice the value of any of the Charged Property;

### **9.2 Property matters**

- 9.2.1 not, except with the prior written consent of the Lender:

- a) grant or agree to grant any lease, licence or other right of occupation or right to receive rent in respect of any of the Real Property;
- b) accept a surrender of any lease, licence or other right of occupation (whether independently or under any statutory power);
- c) consent to any sublease or assignment of any interest in any part of the Real Property;

#### 9.2.2

- (a) comply and ensure that any relevant third party complies with all Environmental Law;
- (b) obtain, maintain and ensure compliance with all requisite Environmental Permits applicable to it or to any Real Property;
- (c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law applicable to it or any Real Property,

where failure to do so has or is reasonably likely to have a Material Adverse Effect or result in any liability for a Lender.

#### 9.2.3 promptly upon becoming aware, notify the Lender of:

- (a) any Environmental Claim started, or to its knowledge, threatened;
- (b) any circumstances reasonably likely to result in an Environmental Claim; or
- (c) any suspension, revocation or notification of any Environmental Permit,

which has or is reasonably likely to have a Material Adverse Effect or result in any liability for the Lender.

#### 9.2.4 must indemnify the Lender against any loss or liability which the Lender incurs as a result of any actual or alleged breach of any Environmental Law by any person unless it is caused by the Lender's gross negligence or wilful misconduct;

#### 9.2.5 maintain all buildings, plant, machinery, fixtures and fittings forming part of the Charged Property in a good and substantial repair and condition and, as appropriate, in good working order;

#### 9.2.6

- a) exercise its rights and comply with its obligations under any headlease;
- b) use its reasonable endeavours to ensure that each landlord complies with its obligations under each headlease; or
- c) if required to do so by the Lender apply for release against forfeiture of any headlease,

in a proper and timely manner where failure to do so would have a Material Adverse Effect;

9.2.7 not:

- a) agree to any amendment, supplement, waiver, surrender or release of any headlease;
- b) exercise any right to break, determine or extend any headlease; or
- c) do or permit to be done anything as a result of which any lease may be liable to forfeiture or otherwise be terminated where such forfeiture or termination would have a Material Adverse Effect;

9.2.8 not make or allow to be made any application for planning permission in respect of any Real Property or carry out any demolition, construction, structural alterations or additions, development or any similar operations in respect of any part of its Real Property except maintenance of the building, plant, machinery, fixtures and fittings or the carrying out of non-structural improvements or alterations which affect only the interior of any building on any Real Property;

9.2.9 comply in all respects with all planning laws, permissions, agreements and conditions to which its Real Property may be subject;

9.2.10 grant the Lender on request all reasonable facilities within its power to allow the Lender (or its lawyers) to carry out (at the Chargor's expense) investigations of title to the Real Property and to make all enquiries in relation to any part of the Real Property which a prudent mortgagee might carry out;

9.2.11 immediately upon demand by the Lender, provide the Lender with such information and documents as may be reasonably required to enable the Lender's lawyers to prepare a report as to the title of the Chargor to the Real Property concerning those items which may properly be sought to be covered by a prudent mortgagee in a lawyer's report of this nature;

9.2.12 notify the Lender immediately upon the acquisition of any real property;

9.2.13 in respect of any real property which is acquired after the date of this Deed, title to which is registered at the Land Registry or which is required to be so registered:

- a) immediately on request by the Lender and at the cost of the Chargor, execute and deliver to the Lender a legal mortgage in favour of the Lender of that property in the form agreed between the Lender and the Chargor;
- b) give written notice of the security to the Land Registry and procure that notice of the security is clearly noted in the Register of Title for such real property;
- c) procure that no person is registered as proprietor of any such property under the Land Registration Acts 1925 to 2002 without the prior written consent of the Lender;

### 9.3 Plant and Machinery

9.3.1 maintain at its own expense all Plant and Machinery which is Charged Property for the time being owned by it, in good working order and condition (ordinary wear and tear excepted);

- 9.3.2 immediately on request by the Lender, affix to any item of Plant and Machinery a durable notice of this Deed in such form as the Lender may require;
- 9.3.3 not make any material alterations or additions to any Plant and Machinery which are reasonably likely to depreciate, jeopardise or prejudice their value or marketability;
- 9.3.4 not except with the prior written consent of the Lender remove any Plant and Machinery from the Charged Property except for the purpose of maintenance pursuant to the terms of this Deed;

#### 9.4 Insurance

9.4.1 ensure that at all times insurances are maintained in full force and effect, which:

- a) insure it in respect of its interests in any Charged Property and the plant and machinery on each Real Property (including fixtures and improvements) for their full replacement value (being the total cost of entirely rebuilding, reinstating or replacing the relevant asset if it is completely destroyed, together with all related fees and demolition costs) and to:
  - i provide cover against loss or damage by fire, storm, tempest, flood, earthquake, lightning, explosion, impact, aircraft and other aerial devices and articles dropped from them, riot, civil commotion and malicious damage, bursting or overflowing of water tanks, apparatus or pipes and all other normally insurable risks of loss or damage;
  - ii provide cover for site clearance, shoring or propping up, professional fees and value added tax together with adequate allowance for inflation; and
  - iii provide cover against acts of terrorism, including any third party liability arising from such acts;
- b) include property owners' public liability and third party liability insurance;
- c) insure such other risks as a prudent company in the same business as the Chargor would insure; and
- d) in each case are in an amount, and in form, and with an insurance company or underwriters, acceptable at all times to the Lender;

9.4.2 procure that the Lender is named as co-insured under each of the Insurance Policies (other than public liability and third party liability insurances) but without liability on the part of the Lender for any premium in relation to those Insurance Policies;

9.4.3 procure that the Insurance Policies comply with the following requirements:

- a) each of the Insurance Policies must contain:
  - i a non-invalidating and non-vitiating clause under which the Insurance will not be vitiated or avoided as against any insured party as a result of any circumstances beyond the control of that insured party or any misrepresentation, non-disclosure, or breach of any policy term or

- condition, on the part of any insured party or any agent of any insured party;
  - ii a waiver of the rights of subrogation of the insurer as against the Chargor and the Lender; and
  - iii a loss payee clause in such terms as the Lender may reasonably require in respect of insurance claim payments otherwise payable to the Chargor;
  - b) the insurers must give at least 30 days' notice to the Lender if any insurer proposes to repudiate, rescind or cancel any insurance, to treat it as avoided in whole or in part, to treat it as expired due to non-payment of premium or otherwise decline any valid claim under it by or on behalf of any insured party and must give the opportunity to rectify any such non-payment of premium within the notice period; and
  - c) the Chargor must be free to assign all amounts payable to it under each of its Insurance Policies and all its rights in connection with those amounts in favour of the Lender;
- 9.4.4 use all reasonable endeavours to ensure that the Lender receives copies of the Insurance Policies, receipts for the payment of premiums for insurance and any information in connection with the insurances and claims under them which the Lender may reasonably require;
- 9.4.5 promptly notify the Lender of:
- a) the proposed terms of any future renewal of any of the Insurance Policies;
  - b) any amendment, supplement, extension, termination, avoidance or cancellation of any of the Insurance Policies made or, to its knowledge, threatened or pending;
  - c) any claim, and any actual or threatened refusal of any claim, under any of the Insurance Policies; and
  - d) any event or circumstance of which it is aware which has led or may lead to a breach by it of any term of this clause;
- 9.4.6 comply with the terms of the Insurance Policies (where failure to do so would invalidate, vitiate or otherwise negatively impact the cover);
- 9.4.7 not do or permit anything to be done which may make any of the Insurance Policies void or voidable;
- 9.4.8 comply with all reasonable risk improvement requirements of its insurers;
- 9.4.9 ensure that:
- a) each premium for the Insurance Policies is paid promptly and in any event prior to the commencement of the period of insurance for which that premium is payable; and

- b) all other things necessary are done so as to keep each of the Insurance Policies in force;

## 9.5 Material Contracts

- 9.5.1 not, without the prior written consent of the Lender, amend or waive any term of any Material Contract, terminate any Material Contract or release any other party from its obligations under any Material Contract;
- 9.5.2 duly perform its obligations under each Material Contract, notify the Lender of any material default by it or any other party under any Material Contract and not take any action which would reduce or impede recoveries in respect of any Material Contract;
- 9.5.3 provide to the Lender, as soon as practicable upon receipt, copies of all notices which it may from time to time receive from any other party to any Material Contract;
- 9.5.4 diligently pursue its rights under each Material Contract (to the extent that such exercise would not result in an Enforcement Event);

## 9.6 Centre of Main Interests

not, without the prior written consent of the Lender, change its centre of main interest (as that expression is used in Article 3(1) of the EU Regulation) to somewhere other than England and Wales, nor will it have any establishment (as that term is used in Article 2(h) of the EU Regulation) in any other jurisdiction.

# 10 ENFORCEMENT OF SECURITY

## 10.1 Enforcement

The security created under this Deed shall become immediately enforceable if an Enforcement Event is continuing.

## 10.2 Powers on enforcement

At any time after the security created under this Deed becomes enforceable, the Lender may, without notice to the Chargor and whether or not it has appointed a Receiver, exercise:

- 10.2.1 all or any of the powers, authorities and discretions conferred on mortgagees by the LPA 1925 (as varied or extended by this Deed); AND
- 10.2.2 all or any of the powers conferred by this Deed.

## 10.3 No Liability as Mortgagee in Possession

Neither the Lender nor any Receiver shall be liable to account as a mortgagee in possession in respect of all or any part of the Charged Property or be liable for any loss upon realisation or for any neglect, default or omission for which a mortgagee in possession might otherwise be liable, in the absence of their negligence or wilful default.

# 11 POWERS OF THE LENDER

## 11.1 Extension of Powers

The power of sale conferred on the Lender and on any Receiver by this Deed shall operate as a variation and extension of the statutory power of sale under section 101 of the LPA 1925 and such power shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on execution of this Deed.

#### 11.2 Restrictions

Sections 93 and 103 of the LPA 1925 shall not apply to this Deed.

#### 11.3 Power of Leasing

At any time after the security created by this Deed becomes enforceable, the Lender may lease or make arrangements to lease, at a premium or otherwise, and accept surrenders of leases without any restriction and in particular without the need to comply with any restrictions imposed by sections 99 and 100 of the LPA 1925.

#### 11.4 Discretion

Any liberty or power which may be exercised or any determination which may be made hereunder by the Lender or any Receiver may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

#### 11.5 Delegation

Each of the Lender and any Receiver shall have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Deed (including the power of attorney) on such terms and conditions as it shall see fit which delegation shall not preclude either the subsequent exercise of such power, authority or discretion by the Lender or the Receiver itself or any subsequent delegation or revocation thereof.

#### 11.6 Investigations

Following the occurrence of an Enforcement Event which is continuing the Lender may initiate an investigation of, and/or instruct any report (accounting, legal, valuation or other) on the business and affairs of the Chargor which it considers necessary to ascertain the financial position of the Chargor. All fees and expenses incurred by the Lender in connection with such investigations shall be payable by the Chargor and the Chargor consents to the provision by the Lender of all information in relation to the Chargor which the Lender provides to any person in relation to the preparation of any such report.

#### 11.7 Power to Remedy

If at any time the Chargor does not comply with any of its obligations under this Deed, the Lender may (but shall not be obliged to) rectify such default and the Chargor irrevocably authorises the Lender, its employees and agents, at the Chargor's expense, to do all such things as are necessary or desirable to rectify such default.

### 12 APPOINTMENT OF RECEIVER

#### 12.1 Appointment and Removal

At any time after the security created under this Deed becomes enforceable, or if requested to do so by the Chargor, the Lender may (by deed or otherwise and acting through its authorised officer):

12.1.1 appoint one or more persons jointly or severally to be a Receiver of the whole or any part of the Charged Property;

12.1.2 remove (so far as it is lawfully able) any Receiver so appointed; and

12.1.3 appoint another person as an additional or replacement Receiver.

## 12.2 Restrictions on appointment

12.2.1 Except as provided below, any restriction imposed by law on the right of a mortgagee to appoint a Receiver (including under section 109(1) of the LPA 1925) does not apply to this Deed.

12.2.2 The Lender is not entitled to appoint a Receiver solely as a result of the obtaining of a moratorium (or anything done with a view to obtaining a moratorium) under section 1A to the Insolvency Act 1986.

12.2.3 The Lender may not appoint an administrative receiver (as defined in section 29(2)) of the Insolvency Act 1986) over the Charged Property if the Lender is prohibited from doing so by section 72A of the Insolvency Act 1986 and no exception to the prohibition on appointing an administrative receiver applies.

## 12.3 Capacity of Receivers

Each Receiver shall be:

12.3.1 an agent of the Chargor. The respective Chargor shall be solely responsible for the Receiver's Contracts, engagements, acts, omissions, defaults, losses and liabilities and for the payment of the Receiver's remuneration; and

12.3.2 entitled to remuneration for his services at a rate to be fixed by the Lender from time to time (without being limited to the maximum rate specified in section 109(6) of the LPA 1925).

## 13 POWERS OF RECEIVER

### 13.1 General Powers

Every Receiver shall have all the powers:

13.1.1 conferred by the LPA 1925 on mortgagors and on mortgagees in possession and receivers appointed under that Act;

13.1.2 set out in Schedule 1 to the Insolvency Act 1986; and

13.1.3 conferred from time to time on receivers by statute.

### 13.2 Additional Powers

In addition to the powers referred to in clause 13.1 (*General Powers*) a Receiver shall have the power, at the cost of the Chargor and either in his own name or in the name of the Chargor or (with the written approval of the Lender) in the name of the Lender:

13.2.1 to take possession of, collect and get in all or any part of the Charged Property;



- 13.2.2 to borrow or raise money and secure the payment of any money in priority to the charges created by this Deed for the purpose of exercising his powers and/or defraying any costs or expenses incurred by him in such exercise;
- 13.2.3 to sell, let, lease or concur in selling, letting or leasing and to vary the terms or determine, surrender and to accept surrenders of leases or tenancies of or grant options or licences over all or any part of the Charged Property in any manner and on such terms as he thinks fit. The consideration for any such transaction may consist of cash or of shares or securities or other obligations (and the amount of such consideration may be dependent on profit or turnover or be determined by a third party) and may be payable in a lump sum or in instalments;
- 13.2.4 to sever any fixtures (including trade and tenants fixtures) from the property of which they form part, without the consent of the Chargor;
- 13.2.5 to exercise all powers, rights and/or obligations under any contract or agreement forming part of the Charged Property;
- 13.2.6 to make and effect all repairs, renewals, improvements, and insurances, commence and/or complete any building operation and/or apply for and maintain any planning permission, building regulation approval or other authorisation in each case as he thinks fit;
- 13.2.7 to redeem any prior security in respect of all or any of the Charged Property and to settle and pass the accounts of the holder of such prior security and any accounts so settled and passed will, in the absence of manifest error, be conclusive and binding on the Chargor. All moneys paid to the holder of such security in accordance with such accounts shall form part of the Secured Obligations;
- 13.2.8 to promote the formation of subsidiaries of the Chargor for the purpose of purchasing, leasing, licensing or otherwise acquiring interests in all or any of the assets of the Chargor and to arrange for any such subsidiaries to trade or cease to trade on such terms as the Receiver thinks fit;
- 13.2.9 to take such proceedings and to settle, adjust, refer to arbitration, compromise and/or arrange any claim, account or demand which the Lender or the Receiver may think fit;
- 13.2.10 to appoint managers, officers, agents, accountants and workmen at such salaries and for such periods as the Receiver may determine and to discharge any person appointed by the Chargor;
- 13.2.11 to exercise in relation to all or any part of the Charged Property all such powers and rights as he would be capable of exercising if he were the absolute beneficial owner of the Charged Property;
- 13.2.12 lend money or advance credit to any customer of the Chargor;
- 13.2.13 give a valid receipt for any moneys and execute any assurance or thing which may be proper or desirable for realising any Charged Property;
- 13.2.14 let any Charged Property for any term and at any rent (with or without a premium) which he thinks fit and may accept a surrender of any lease or tenancy of any Charged Property on any terms which he thinks fit; and/or

13.2.15 to do all other acts and things as may be considered by the Receiver to be incidental or conducive to the above or otherwise expedient for or incidental or conducive to the preservation, improvement or realisation of the Charged Property.

#### **14 APPLICATION OF MONEYS**

14.1 All moneys received or recovered by the Lender or any Receiver pursuant to this Deed shall be applied in the following order:

14.1.1 first, in satisfaction of, or provision for, all costs, charges and expenses incurred by the Lender or any Receiver and the payment of the remuneration of any Receiver;

14.1.2 second, in or towards satisfaction of the Secured Obligations; and

14.1.3 third, any surplus shall be paid to the Chargor or any other person entitled thereto.

This clause is subject to the payment of any claims having priority over the security created under this Deed. This clause does not prejudice the right of the Lender to recover any shortfall from the Chargor.

14.2 Only money actually paid by the Receiver to the Lender shall be capable of being applied in or towards the satisfaction of the Secured Obligations and the Chargor shall have no rights in respect of the application by the Lender of any sums received, recovered or realised by the Lender under this Deed.

14.3 Avoidance of Payments

If the Lender reasonably considers that any amount paid or credited to it is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws, the liability of the Chargor under this Deed and the security created under this Deed shall continue and such amount shall not be considered to have been irrevocably paid.

#### **15 PROTECTION OF PURCHASERS**

15.1 Receipts

The receipt of the Lender or its delegate or any Receiver shall be conclusive discharge to a purchaser in any sale or disposal of any of the Charged Property.

15.2 Protection of Purchasers

No purchaser or other person dealing with the Lender or its delegate or any Receiver shall be bound to enquire whether the right of the Lender or such Receiver to exercise any of its powers has arisen or become exercisable or be concerned with any notice to the contrary, or be concerned to see whether any such delegation by the Lender shall have lapsed for any reason or have been revoked.

#### **16 POWER OF ATTORNEY**

16.1 Appointment

The Chargor irrevocably appoints the Lender, each person to whom the Lender shall from time to time have delegated the exercise of the power of attorney conferred by this clause and any Receiver jointly and severally to be its attorney and in its name and on its behalf to

execute, deliver and perfect all documents and to do all things which the attorney may consider to be required or desirable for:

16.1.1 carrying out any obligation imposed on the Chargor by this Deed (including the execution and delivery of any deeds, charges, assignments or other security and any transfers of the Charged Property) where the Chargor has failed to comply with such obligation within any applicable time period; and

16.1.2 enabling the Lender and any Receiver to exercise any of the powers conferred on them by or pursuant to this Deed or by law.

## 16.2 Ratification

The Chargor ratifies and confirms to agree to ratify and confirm all things done and all documents executed by any attorney in the exercise or purported exercise of all or any of his powers.

## 17 PRESERVATION OF SECURITY

### 17.1 Continuing Security

The security created under this Deed will be a continuing security for the ultimate balance of the Secured Obligations notwithstanding any intermediate payment or settlement of all or any part of the Secured Obligations.

### 17.2 Waiver of defences

The obligations of the Chargor under this Deed will not be affected by any act, omission or thing which, but for this provision would reduce, release or prejudice any of its obligations under this Deed (whether or not known to it or the Lender). This includes:

17.2.1 any time or waiver granted to, or composition with, any person;

17.2.2 any release or any person under the terms of any composition or arrangement;

17.2.3 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 person;

17.2.4 any non-presentation, non-observance of any formality or other requirements in respect of any instrument or any failure to realise the full value of any security;

17.2.5 any incapacity, lack of power, authority or legal personality of or dissolution or change in the members or status of any person;

17.2.6 any amendment of any document or security;

17.2.7 any unenforceability, illegality, invalidity or non-provability of any obligation of any person under any document or security or the failure by any person to enter into or be bound by any document or security; or

17.2.8 any insolvency or similar proceedings.

### 17.3 Chargor Intent

Without prejudice to the generality of Clause 17.2 (*Waiver of Defences*), the Chargor expressly confirms that it intends that the security created under this Deed shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any document creating a Secured Obligation and/or any facility or amount made available under such document.

**17.4 Immediate recourse**

The Chargor waives any rights it may have of first requiring the Lender (or any trustee or agent on its behalf) to proceed against or enforce any other right or security or claim payment from any person or file any proof or claim in any insolvency, administration, winding-up or liquidation proceedings relative to any other person before claiming from the Chargor under this Deed.

**17.5 Appropriations**

Until all amounts which may be or become payable by the Chargor to the Lender have been irrevocably paid in full, the Lender (or any trustee or agent on its behalf) may without affecting the liability of the Chargor under this Deed:

17.5.1 refrain from applying or enforcing any other monies, security or rights held or received by the Lender (or any trustee or agent on its behalf) against those accounts; or apply and enforce them in such manner and order as it sees fit (whether against those amounts or otherwise); and

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

**17.6 Additional security**

17.6.1 This Deed is in addition to and is not in any way prejudiced by any other security now or subsequently held by the Lender.

17.6.2 No prior security held by the Lender (in its capacity as such or otherwise) over any Charged Property will merge into the security created under this Deed.

**18 SET-OFF AND CURRENCY**

**18.1 Consolidation of accounts and set off**

In addition to any general lien or similar rights to which it may be entitled by operation of law, the Lender may at any time and without notice to the Chargor combine or consolidate all or any of the Chargor's then existing accounts with any liabilities to the Lender and set off or transfer any sum or sums standing to the credit of any one of more of such accounts in or towards satisfaction of the Secured Obligations.

**18.2 Currency**

For the purpose of or pending the discharge of the Secured Obligations, the Lender may, in its sole discretion, convert any moneys received, recovered or realised in any currency under this Deed (including the proceeds of any previous conversion under this clause) from their existing currency into any other currency at such rate or rates of exchange and at such time as the Lender thinks fit.

## **19 NEW ACCOUNTS**

- 19.1 If the Lender at any time receives or is deemed to have received notice of any subsequent security affecting all or any part of the Charged Property it may open a new account or accounts with the Chargor.
- 19.2 If the Lender does not open a new account or accounts it shall nevertheless be treated as if it had done so as at the time when it received or was deemed to have received such notice.
- 19.3 As from such time all payments made to the Lender shall be credited or be treated as having been credited to such new account or accounts and shall not operate to reduce the amount of the Secured Obligations, but so that nothing in this Clause shall enable the Lender to make double recovery in respect of any of the Secured Obligations.

## **20 EXPENSES AND INDEMNITY**

### **20.1 Expenses**

The Chargor shall, from time to time on demand of the Lender, pay or reimburse the Lender on a full indemnity basis for all costs and expenses (including legal fees) reasonably incurred together with any VAT or similar taxes thereon incurred by it in connection with the preparation, execution, perfection, amendment, enforcement, discharge and/or assignment of this Deed. Such costs and expenses shall form part of the Secured Obligations and shall carry interest from the date of such demand until so paid or reimbursed at the rate determined by the Lender.

### **20.2 Indemnity**

The Chargor shall, notwithstanding any release or discharge of all or any part of the security created under this Deed, indemnify the Lender, its agents, attorneys and any Receiver against any action, proceeding, claim, loss, liability and cost which it may sustain in good faith:

20.2.1 in the exercise (or purported exercise) of any of the rights, powers or discretions vested in them by this Deed (or by law): and/or

20.2.2 in connection with or otherwise relating to this Deed or the Charged Property.

## **21 MISCELLANEOUS**

### **21.1 Assignment and disclosure of information**

The Lender may assign and transfer all or any of its rights and obligations under this Deed. The Lender shall be entitled to disclose such information concerning the Chargor and this Deed as the Lender considers appropriate to any actual or proposed direct or indirect successor or to any person to whom information may be required to be disclosed by any applicable law provided the Lender asks such recipients to keep such information confidential.

### **21.2 No Deductions**

All payments to be made to the Lender under this Deed shall be made in freely available funds and shall be made clear of and without deduction for or on account of tax. If the Chargor is required by law to make a tax deduction, the sum payable by the Chargor shall be increased to the extent necessary to ensure that, after the making of such deduction, the

recipient of such sum receives and retains a net sum equal to the sum which it would have received and retained had no such deduction been made or required to be made.

### 21.3 Perpetuity Period

The perpetuity period under the rule against perpetuities, if applicable to this Deed, shall be the period of 125 years from the date of this Deed.

### 21.4 No Liability

21.4.1 None of the Lender, its delegate(s) nominee(s) or any Receiver shall be liable for any loss by reason of (a) taking any action permitted by this Deed or (b) any neglect or default in connection with the Charged Property or (c) taking possession of or realising all or any part of the Charged Property, except in the case of gross negligence or wilful default upon its part.

21.4.2 The Lender will not be required in any manner to perform or fulfil any obligation of the Chargor, make any payment, make any enquiry as to the nature or sufficiency of any payment received by it or present or file any claim or take any action to collect or enforce the payment of any amount.

21.4.3 The Lender shall not be liable either to the Chargor or to any other person by reason of the appointment of a Receiver or for any other reason.

21.4.4 Neither the Lender nor the Receiver will be in any way liable or responsible to the Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any delegate or sub-delegate.

### 21.5 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 of this Deed nor the legality, validity or enforceability of such provision under the laws of any other jurisdiction shall in any way be affected or impaired. If any part of the security intended to be created by or pursuant to this Deed is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the security.

### 21.6 Certificates

Any certificate of the Lender specifying any amount due from the Chargor is, in the absence of manifest error, conclusive evidence of such amount.

### 21.7 Release

At the end of the Security Period, the Lender must, at the request and cost of the Chargor, take whatever action is reasonably necessary to release the Charged Property from the security created under this Deed and re-assign any Charged Property assigned under this Deed.

## 22 NOTICES

22.1 Any communication to be made under or in connection with this Deed must be made in writing and, unless otherwise stated, may be made by fax or letter.

22.2 The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) for any communication or document to be made or delivered under or in connection with this Deed is:

22.2.1 in the case of the Chargor: Astonbrook Care Limited, 133 Station Road, Sidcup, Kent DA15 7AA marked for the attention of Peter Ford; and

22.2.2 in the case of the Lender: 33 Holborn, London EC1N 2HT, marked for the attention of Shay Ramalingam or Benjamin Davis,

or in each case any substituted address or fax number or department or officer as one party may notify to the other party by not less than five Business Day's notice.

22.3 Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective:

22.3.1 If by way of fax, when received in legible form; or

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

22.4 Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender.

22.5 Any notice given under or in connection with this Deed must be in English.

## **23 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.

## **24 GOVERNING LAW**

This Deed and any non-contractual obligation arising in connection with it are governed by English law.

## **25 JURISDICTION**

25.1 English Courts

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

25.2 Convenient Forum

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

25.3 Exclusive Jurisdiction

This clause 25 is for the benefit of the Lender only. As a result the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

THIS DEED has been signed on behalf of the Lender and EXECUTED AS A DEED by the Chargor and is delivered by them on the date specified at the beginning of this Deed.



**SCHEDULE 1  
THE PROPERTY**

**Real Property**

<b>Address</b>	<b>Leasehold Title Number</b>
Warren Park Nursing Home, White Lane, Chapelton, Sheffield, S35 2YH	SYK340642

**Material Contracts**

**SCHEDULE 2**  
**FORM OF NOTICE OF ASSIGNMENT TO INSURERS**

To: *[Insurer]*

Date: [●]

Dear Sirs

We refer to the *[insert details of relevant Insurance Policy and policy number]* (the "**Policy**").

We give notice that pursuant to a legal charge dated [●] (the "**Legal Charge**") we have assigned to Fern Trading Limited (the "**Lender**") all our right, title and interest in and to the proceeds of the Policy.

With effect from your receipt of this notice we instruct you to:

- 1 note the interest of the Lender on the Policy as loss payee and as first priority assignee of the amounts and rights; and
- 2 disclose to the Lender, without further approval from us, such information regarding the Policy as the Lender may from time to time request and to send it copies of all notices issued by you under the Policy.

We will remain entitled to exercise all of our rights under the Policy and you should continue to give notices under the Policy to us unless and until you receive notice from the Lender that the security constituted by the Legal Charge has become enforceable. In this event, unless the Lender agrees otherwise in writing:

- 1 all amounts payable to us under the Policy must be paid to the Lender; and
- 2 any of our rights in connection with those amounts will be exercisable by and notices must be given to the Lender or as it directs.

We confirm that we will remain liable under the Policy to perform all the obligations assumed by us under the Policy and the Lender, its agents, any receiver or any other person will not at any time be under any obligation or liability to you under or in respect of the Policy.

This letter is governed by English law.

Please acknowledge receipt of this notice and give the confirmations set out in the attached acknowledgement by signing the acknowledgement and giving the undertakings in the enclosed copy letter and returning the same to the Lender at 33 Holborn, London EC1N 2HT marked for the attention of Isobel Burlington or Benjamin Davis.

Yours faithfully

.....  
Authorised signatory for and on behalf of *[Chargor]*

## ACKNOWLEDGEMENT AND UNDERTAKING

To: Fern Trading Limited

Copy: [Chargor]

Date: [•]

Dear Sirs,

[CHARGOR]

We confirm receipt from [Chargor] (the "Obligor") of a notice dated [•] of an assignment by the Obligor of all amounts payable to it in connection with the Policy and all of its rights under the Policy (as defined in that notice).

In consideration of your agreeing to the Obligor continuing its insurance arrangements with us we:

- 1 accept the instructions contained in the notice and agree to comply with the notice;
- 2 confirm that we have not received notice of any third party in those amounts and rights;
- 3 undertake to note on the Policy your interest as loss payee and as first priority assignee of those amounts and rights;
- 4 undertake to disclose to you without any reference or further authority to the Obligor any information relating to those contracts which you may at any time request; and
- 5 undertake to notify you of:
  - a) any cancellation, alteration, termination or expiry of any such insurance at least 30 days before it is due to take effect;
  - b) any default in any payment of premium or failure to renew at least 30 days before the renewal date; and
  - c) any act or omission that we are aware of which may make the Policy void, voidable or unenforceable (in whole or in part).

This letter is governed by English law.

Yours faithfully

.....

For and on behalf of [Insurer]

**SCHEDULE 3**  
**FORM OF NOTICE OF ASSIGNMENT TO CONTRACT COUNTERPARTY**

To: [*Counterparty to Material Contract*]

Date: [●]

Dear Sirs

We give notice that pursuant to a legal charge dated [●] we have assigned to Fern Trading Limited (the "**Lender**") all our right, title and interest in and to [*details of Material Contract*] (the "**Contract**") including all moneys which may be payable in respect of the Contract.

With effect from your receipt of this notice:

- 6 all payments by you to us under or arising from the Contract should be made to us unless and until the Lender notifies you to the contrary stating that the security has become enforceable;
- 7 all remedies provided for in the Contract or available at law or in equity are exercisable by the Lender;
- 8 all rights, interests and benefits whatsoever accruing to or for the benefit of ourselves arising from the Contract and all rights to compel performance of the Contract are exercisable by the Lender although we shall remain liable to perform all the obligations assumed by us under the Contract;
- 9 you are authorised and instructed, without requiring further approval from us, to disclose to the Lender such information relating to the Contract as it may from time to time request and to send it copies of all notices issued by you under the Contract to the Lender at 33 Holborn, London EC1N 2HT marked for the attention of Isobel Burlington or Benjamin Davis as well as to us;
- 10 we may not initiate or agree to any amendment to, waive any obligation under or agree to any termination of the Contract without the prior written consent of the Lender.

These instructions may not be revoked or amended without the prior written consent of the Lender.

For the avoidance of doubt, the Lender, its agents, any receiver or any person will not be under any obligation or liability to you under or in respect of the Contract.

This notice is governed by English law

Please acknowledge receipt of this notice by signing the acknowledgement on the enclosed copy letter and returning it to the Lender at the address set out in paragraph 9 of this notice.

Yours faithfully

.....

Authorised Signatory for and on behalf of [*Chargor*]

## FORM OF ACKNOWLEDGEMENT FROM CONTRACT COUNTERPARTY

To: Fern Trading Limited (the "Lender")

Date: [●]

Dear Sirs

[CHARGOR]

We acknowledge receipt of a notice dated [●] (the "Notice") relating to the [*details of Material Contract*] (the "Contract").

We:

- 1 agree to the terms set out in the Notice and to act in accordance with its terms;
- 2 confirm that we have not received any prior notice that [*Chargor*] has assigned its rights under the Contract or created any other interest (whether by way of security or otherwise) in favour of a third party; and
- 3 agree not to exercise any right to terminate the Contract or take any action to amend or supplement the Contract without the prior written consent of the Lender.

This letter is governed by English law.

Yours faithfully

.....

For and on behalf of

[*Counterparty to Material Contract*]

SIGNATORIES

THE CHARGOR

SIGNED as a DEED by

)

**WARREN PARK (CHAPLETOWN))  
LIMITED**

)

Director

acting by a director in the presence of:


Signature of witness

Name

(in BLOCK CAPITALS)

Address

Occupation

  
SUSAN STRONGER

  
P.A.

**THE LENDER**

**SIGNED by FERN TRADING LIMITED**

By: