



Registration of a Charge

Company Name: **AUDLEY GROUP LIMITED**

Company Number: **09906780**



Received for filing in Electronic Format on the: **13/08/2021**

XAAS9SLL

Details of Charge

Date of creation: **10/08/2021**

Charge code: **0990 6780 0005**

Persons entitled: **HOMES AND COMMUNITIES AGENCY (TRADING AS HOMES ENGLAND)**

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 INSTRUMENT.**

Certified by: **MILLS & REEVE LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 9906780

Charge code: 0990 6780 0005

The Registrar of Companies for England and Wales hereby certifies that a charge dated 10th August 2021 and created by AUDLEY GROUP LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 13th August 2021 .

Given at Companies House, Cardiff on 16th August 2021

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

10 AUGUST 2021

Homes and Communities Agency

(trading as Homes England)

and

Audley Group Limited

(as Chargor)

and

Mayfield Villages Care Limited

(as Subcontractor)

Charge Over Care Subcontract

Mayfield Watford Retirement Village

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Deed

dated

10 AUGUST 2021

Parties

- (1) **Homes and Communities Agency** (trading as Homes England) of One Friargate, Coventry CV1 2GN (**Homes England**);
- (2) **Audley Group Limited** a company incorporated in England and Wales of 65 High Street, Egham, England, TW20 9EY and with registered number 09906780 (the **Chargor**); and
- (3) **Mayfield Villages Care Limited** a company incorporated in England and Wales of 65 High Street, Egham, England, TW20 9EY and with registered number 12104090 (the **Subcontractor**).

Introduction

- (A) Homes England has agreed to make loan facilities available to the Borrower in accordance with the terms of the Facility Agreement.
- (B) The Chargor has agreed to assign its interests and rights in and to the Care Subcontract by way of security to Homes England and to enter into this deed.
- (C) It is intended by the parties to this document that it will take effect as a deed despite the fact that a party may only execute this document under hand.

Agreed terms

1 Definitions and interpretation

1.1 Definitions

In this deed unless the context otherwise requires:

Business Day means any day other than a Saturday, Sunday or statutory bank holiday in England;

Charged Assets means all the assets, rights, property and undertaking of each Chargor from time to time charged, assigned or agreed to be assigned to, Homes England by such Chargor pursuant to clause 3 of this deed;

Charged Contract means the sub-contract for the provision of care services in respect of the Project made between the Chargor and the Subcontractor on or around the date of this deed;

Collateral Rights means all rights, powers and remedies of Homes England provided by or pursuant to this deed or by law;

Direct Agreement means a direct agreement entered into on or around the date of this deed between Homes England, the Chargor and the Subcontractor;

Encumbrance means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, standard security, assignation in security, bond and floating charge or other Encumbrance of any kind, and any right of set-off, assignment, trust, flawed asset or other agreement or arrangement whatsoever for the purpose of providing security or having a similar effect to the provision of security;

Event of Default has the meaning given to it in the Facility Agreement;

Finance Document means a "Finance Document" as defined in the Facility Agreement;

"Facility Agreement" means an agreement between Homes England and the Borrower dated in or around the date of this deed in respect of a secured £40,528,366 term facility for the acquisition and development of Mayfield Watford Retirement Village;

Liabilities means all present or future monies, obligations or liabilities, whether actual or contingent and whether owed jointly or severally, as principal or surety and/or in any other capacity and including interest thereon;

Receiver means a receiver or receiver and manager of the whole or any part of the Charged Assets;

Secured Liabilities means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally as principal or surety or in any other capacity whatsoever) of each Obligor to Homes England under or in connection with each Finance Document (whether originally owing or incurred).

Security means the security constituted by or pursuant to this deed; and

Tax includes any form of taxation, levy, duty, charge, contribution or impost of whatever nature (including any applicable fine, penalty, surcharge or interest) imposed by any government authority, body or official (whether central, local, state or federal) anywhere in the world competent to impose any of them.

1.2 Interpretation

In this deed references to:

- 1.2.1 the Chargor or Homes England where the context admits include a reference to its respective successors, assigns and/or transferees;
- 1.2.2 persons include bodies corporate, unincorporated associations and partnerships in each case whether or not having a separate legal personality;
- 1.2.3 words importing one gender will be treated as importing any gender, words importing individuals will be treated as importing corporations and vice versa, words importing the singular will be treated as importing the plural and vice versa and words importing the whole will be treated as including a reference to any part, except where the context specifically requires otherwise;
- 1.2.4 this deed or to a provision of this deed, or any other document are references to it as amended, restated, supplemented or novated from time to time;

1.2.5 the words include or including (or any similar term) are not to be construed as implying any limitation and general words introduced by the word "other" (or any similar term) will not be given a restrictive meaning by reason of the fact that they are preceded or followed by words indicating a particular class of acts, matters or things;

1.2.6 statutory provisions, enactments or EC Directives will include references to any amendment, modification, extension, consolidation, replacement or re-enactment of any such provision, enactment or EC Directive, whether before or after the date of this deed.

1.3 Facility Agreement

Words and expressions defined in the Facility Agreement will have the same meanings when used in this deed, unless the context otherwise requires. In the case of inconsistency definitions set out in the Facility Agreement will prevail.

1.4 Headings

The clause, paragraph and schedule headings and the table of contents are inserted for ease of reference only and will not affect construction.

1.5 Third party rights

1.5.1 Unless expressly provided otherwise in this deed, a person who is not a party to this deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

1.5.2 The parties to this deed and any Receiver may rescind, vary, waive, release, assign, novate or otherwise dispose of all or any of their respective rights or obligations under this deed without the consent of a third party to whom an express right to enforce any of its terms has been provided.

2 Payment of Secured Liabilities

2.1 Covenant to pay

The Chargor covenants with Homes England that it will, on demand, discharge all of the obligations which it may at any time have to Homes England in respect of the Secured Liabilities.

2.2 Interest on demand

If the Chargor fails to pay any sum on the due date for payment of that sum the Chargor will pay interest on such sum (before and after any judgement) from the date of demand until the date of payment calculated on a daily basis at the rate referred to in the Facility Agreement at such intervals as Homes England shall determine.

3 Security

3.1 Assignment of rights under the Charged Contract

The Chargor hereby assigns and agrees to assign absolutely in favour of Homes England, with full title guarantee for the payment and discharge of the Secured Liabilities the benefit of all of its present and future rights, interest, title, claims, causes of action, payments and proceeds in relation to the Charged Contract.

3.2 Fixed charge

The Chargor charges by way of first fixed charge in favour of Homes England with full title guarantee for the payment and discharge of the Secured Liabilities to the extent the same are not effectively assigned under clause 3.1:

3.2.1 the Charged Contract; and

3.2.2 all present and future rights, interest, title, claims, causes of action, payments and proceeds in respect thereof.

3.3 Further advances

The parties acknowledge that Homes England may make further advances (to the extent arising) under the Finance Documents. The assignments and charges created by this deed together secure any such further advances made by Homes England.

4 Further assurance

4.1 Further assurance: general

The Chargor will, at its own expense, promptly do all such acts or execute all such documents (including assignments, transfers, charges, notices and instructions) as Homes England may specify (and in such form as Homes England may require in favour of Homes England or its nominee(s)):

4.1.1 to perfect or protect the security created or intended to be created in respect of the Charged Assets (which may include the execution by the Chargor of a fixed charge or assignment over all or any of the assets constituting, or intended to constitute, Charged Assets) or for the exercise of the Collateral Rights; and/or

4.1.2 to facilitate the realisation of the Charged Assets; and/or

4.1.3 to obtain all necessary consents to procure the registration of this deed at Companies House.

4.2 Consents

The Chargor will obtain (in form and content satisfactory to Homes England) prior to or contemporaneously with completion of this deed any consents necessary to enable the relevant assets of the Chargor purported to be so charged or assigned to be the subject of an effective fixed charge or assignment pursuant to clause 3 and, immediately upon obtaining any such consent, the asset concerned shall become subject to such security and the Chargor shall promptly deliver a copy of each consent to Homes England.

4.3 Preservation of rights

Neither the obligations of the Chargor contained in this deed nor the rights, powers and remedies conferred in respect of the Chargor upon Homes England by the Finance Documents or by law shall be discharged, impaired or otherwise affected by:

- 4.3.1 the winding-up, dissolution, administration or reorganisation of the Chargor or any other person or any change in its status, function, control or ownership;
- 4.3.2 any of the obligations of the Chargor or any other person under the Finance Documents or under any other security relating to the Finance Documents being or becoming illegal, invalid, unenforceable or ineffective in any respect;
- 4.3.3 time or other indulgence being granted or agreed to be granted to the Chargor or any other person in respect of its obligations under the Finance Documents or under any such other security;
- 4.3.4 any amendment to, or any variation, waiver or release of any obligation of the Chargor or any other person under the Finance Documents or under any such other security;
- 4.3.5 any failure to take, or fully to take, any security contemplated by the Finance Documents or otherwise agreed to be taken in respect of the Chargor's or any other person's obligations under the Finance Documents;
- 4.3.6 any failure to realise or fully to realise the value of, or any release, discharge, exchange or substitution of, any security taken or agreed to be taken in respect of the Chargor's or any other person's obligations under the Finance Documents; or
- 4.3.7 any other act, event or omission which, but for this clause 4.3, might operate to discharge, impair or otherwise affect any of the obligations of the Chargor or any other person or any of the rights, powers or remedies conferred upon Homes England by the Finance Documents or by law.

5 Negative pledge and disposal restrictions

5.1 Negative pledge

Save as permitted by the Facility Agreement the Chargor will not, without the prior written consent of Homes England, create, or permit to arise, or continue (in favour of any person other than Homes England) any Encumbrance over the Charged Assets now or in the future, or agree or attempt to do so, or increase or extend any liability of the Chargor secured on any of the Charged Assets.

5.2 Disposal of fixed charge assets

Save as permitted by the Facility Agreement, the Chargor will not, without the prior written consent of Homes England (whether by a single transaction or number of related or unrelated transactions, and whether at the same time or over a period of time) sell, transfer, assign or otherwise dispose of the Charged Assets or any interests therein or the right to receive or to be paid the proceeds arising from their disposal or agree or attempt to do so.

6 Representations and warranties

6.1 Duration and to whom made

The representations and warranties made by the Chargor in this clause 6 will remain in force for (and will be deemed repeated on each day falling during) the period for which the Secured Liabilities are outstanding and are given to Homes England.

6.2 Matters represented

Except as disclosed in writing to Homes England on or prior to the date of this deed, the Chargor represents and warrants that:

- 6.2.1 the Chargor is the sole legal and beneficial owner of the Charged Assets in respect of the Charged Contract that the Chargor is a party to;
- 6.2.2 the Chargor is duly incorporated and validly existing under the laws of England and Wales with the power and authority to own its assets and carry on its business as presently being conducted;
- 6.2.3 all actions and conditions required in order for it to lawfully enter into, exercise its rights and comply with its obligations under this deed as valid legally binding and enforceable obligations and for this deed to be admissible in court have been obtained or effected and are in full force and effect;
- 6.2.4 the Chargor's entry into and performance of its obligations under this deed will not conflict with any law or regulation applicable to it or, its constitutional documents or any agreement or instrument binding upon it or any of the Charged Assets or constitute a default or termination (however defined) under any such agreement or instrument;
- 6.2.5 nothing has occurred and is continuing which is or would constitute an event of default (howsoever described) under the Charged Contract or other document or agreement comprising the Charged Assets or which would entitle a party to such Charged Assets to terminate or rescind such Charged Assets; litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which if adversely determined might reasonably be expected to have a material adverse effect have been started or threatened against it;
- 6.2.6 no proceedings or other steps have been taken and not discharged for the winding up or dissolution or bankruptcy or voluntary arrangement in relation to or for the appointment of a receiver or liquidator or similar appointment in relation to the Chargor or its assets;
- 6.2.7 the Chargor's centre of main interest, including (without limitation) its place of registered office, is and remains situated within the jurisdiction of the High Court of Justice in England and Wales for the purposes of the opening of insolvency proceedings under all applicable insolvency regulations;
- 6.2.8 the Chargor has received or acknowledged notice of any adverse claim by any person in respect of the Charged Assets or any interest in it; and

- 6.2.9 there are no covenants, agreements, reservations, conditions, interests, rights or other matters whatever, which materially adversely affect the Charged Assets so far as we are aware;
- 6.2.10 the Chargor has not received notice of any adverse claims by any person in respect of the ownership of the Charged Assets or any interest therein, nor has any acknowledgement been given to any person in respect thereof which has not been disclosed to Homes England; and
- 6.2.11 the security created by this deed constitutes first priority security over the assets which are expressed to be subject to such security and those assets are not subject to any security.

6.3 Security created

Subject to registration at Companies House, or the Financial Services Authority as appropriate this deed creates those Encumbrances it purports to create, ranking as set out above and is not liable to be avoided or otherwise set aside on the liquidation or administration of the Chargor or otherwise.

7 General undertakings

7.1 Not to jeopardise the Security

The Chargor will not do or allow to be done anything which could reasonably be expected materially to decrease the value of the Charged Assets to Homes England.

7.2 Information and access

The Chargor will at the request of Homes England, promptly provide Homes England with such information as Homes England may reasonably require about the Charged Assets and the Chargor's compliance with the terms of this deed and the Chargor will permit Homes England, its representatives and professional advisers free access at all reasonable times and on reasonable notice to inspect and take copies and extracts from such books, accounts and records of the Chargor as relate to the Charged Assets.

7.3 Centre of main interests

The Chargor shall ensure that its centre of main interest, including (without limitation) its place of registered office, is and remains situated within the jurisdiction of the High Court of Justice in England and Wales for the purposes of the opening of insolvency proceedings under any applicable insolvency regulation and all other applicable law.

7.4 Performance under the Charged Contract

The Chargor will:

- 7.4.1 perform all of its obligations under the Charged Contract in a diligent and timely manner and not make or agree to make any material amendments or modifications to the Charged Contract;

7.4.2 not waive any of its rights under the Charged Contract, nor exercise any rights to terminate any of the Charged Contract except, in any case, with the prior written consent of Homes England; and

7.4.3 promptly inform Homes England of any material disputes or material notices received relating to the Charged Contract.

7.5 Law

The Chargor will comply with all applicable laws and regulations affecting the Charged Assets.

8 Provisions relating to assignment

8.1 Event of Default

Whilst no Event of Default exists and is continuing and subject to the provisions of the Facility Agreement, the Chargor may exercise its rights under the Charged Contract provided that such exercise would not result in an Event of Default. Following an Event of Default which is continuing, Homes England may notify the Chargor that the Chargor is no longer entitled to deal with that counterparty of the Charged Contract and that the counterparty must, with effect from the date of that notice, pay any amounts to which the Chargor is entitled to such account as Homes England may direct.

8.2 Notice

Notice of the assignment of the Charged Contract will be given and acknowledged in accordance with clause 2 of the Direct Agreement.

9 Power to remedy

In the case of default by the Chargor in observing or performing any of the covenants or stipulations affecting the Charged Assets, the Chargor will permit Homes England or its agents to do such things or pay all such costs, charges and expenses as Homes England may consider are necessary or desirable to prevent or remedy any breach of covenant or stipulation or to comply with or object to any notice served on the Chargor in respect of the Charged Assets. The Chargor will indemnify and keep Homes England indemnified against all losses, costs, charges and expenses reasonably incurred in connection with the exercise of the powers contained in this clause 9.

10 Enforcement of Security

10.1 Enforcement

10.1.1 Upon the occurrence of an Event of Default that is continuing all of the Secured Liabilities shall immediately become due and payable and Homes England may, without notice to the Chargor or prior authorisation from any court, in its absolute discretion:

- (a) enforce all or any part of that security (at the times, in the manner and on the terms it thinks fit) and take possession of and hold or dispose of all or any part of the Charged Assets;

- (b) appoint a Receiver to all or any part of the Charged Property; and/or
- (c) whether or not it has appointed a Receiver, exercise all or any of the powers, authorities and discretions conferred by the Law of Property Act 1925 (as varied or extended by this deed) on mortgagees and by this deed on any Receiver or otherwise conferred by law on mortgagees or Receivers.

10.1.2 Homes England shall not be obliged to proceed first against, or enforce any rights or security or claim payment from any person before claiming any benefit under this deed and the Chargor hereby waives any contrary right it may have whether arising under law or otherwise.

10.2 **Possession**

If Homes England, any Receiver or any delegate of any such person will take possession of the Charged Assets, it or he may at any time relinquish such possession.

10.3 **No liability as mortgagee in possession**

Homes England will not be liable to account as a mortgagee in possession in respect of all or any part of the Charged Assets or be liable for any loss upon realisation or for any neglect, default or omission in connection with the Charged Assets to which a mortgagee in possession might otherwise be liable.

10.4 **Power of Sale**

The power of sale under this deed may be exercised notwithstanding that Homes England or the Receiver may have previously waived or refrained from exercising that power; and no demand or notice of sale made or given under this deed will be waived by the acceptance of any payment on account of the Secured Liabilities, or by any negotiations between Homes England and the Chargor or any other party who is acting as agent for the Chargor or on behalf of the Chargor.

10.5 **Receiver's liability**

All the provisions of clause 10.3 will apply, mutatis mutandis, in respect of the liability of any Receiver and delegate of the Receiver or Homes England or any officer, employee or agent of Homes England, any Receiver or any delegate.

10.6 **Prior security**

Homes England may, at any time after this deed has become enforceable, redeem or transfer to itself any prior Security against the Charged Assets and may settle and pass the accounts of the prior chargee (which shall be binding on the Chargor). All principal monies, interest, costs, charges and expenses of and incidental to such redemption or transfer shall be paid by the Chargor to Homes England on demand.

11 **Extension and variation of the Law of Property Act 1925**

11.1 **Extension of powers**

The power of sale or other disposal conferred on Homes England and on any Receiver by this deed will operate as a variation and extension of the statutory power of sale under Section 101 of the Law of Property Act 1925 and such power will arise (and the Secured Liabilities will be deemed due and payable for that purpose) on execution of this deed.

11.2 **Restrictions**

The restrictions contained in Sections 93 and 103 of the Law of Property Act 1925 will not apply to this deed or to the exercise by Homes England of its right to consolidate all or any of the Security with any other security in existence at any time or to its power of sale, which powers may be exercised by Homes England without notice to the Chargor.

11.3 **Non-application**

The following provisions of the Law of Property (Miscellaneous Provisions) Act 1994 will not apply to clause 3 being:

- 11.3.1 the words 'other than any charges, encumbrances or rights which that person does not and would not reasonably be expected to know about' in Section 3(1);
- 11.3.2 the words 'except to the extent that' and all words thereafter in Section 3(2); and
- 11.3.3 Section 6(2).

11.4 **Application**

- 11.4.1 Section 109(8) of the Law of Property Act 1925 will not apply.
- 11.4.2 The Chargor will have no rights in respect of the application by Homes England of any sums received, recovered or realised by Homes England under this deed.
- 11.4.3 Subject to sums secured by Security having priority to the Security created by this Deed, all monies received by the Lender and/or any Receiver pursuant to or in the enforcement of this Deed shall be held by the Lender and applied in the following order:
 - (a) in or towards payment of or provision for all costs and expenses incurred by the Lender or any Receiver in connection with this Deed and all remuneration due to any Receiver under or in accordance with the terms of this Deed;
 - (b) in or towards payment of or provision for the Secured Liabilities; and
 - (c) in payment of the surplus (if any) to any Chargor or other person entitled to it.
- 11.4.4 If Homes England (or any Receiver) enforces the security constituted by this deed at a time when no amount in respect of the Secured Liabilities is due and payable, or when the amount due and payable is not ascertained, Homes England (or any Receiver) may pay the proceeds of any recoveries effected by it into an interest bearing suspense account. Homes England may withdraw

amounts standing to the credit of such suspense account for application in or towards discharge of the Secured Liabilities.

- 11.4.5 Until the Secured Liabilities have been irrevocably paid in full, Homes England may refrain from applying or enforcing (or attempting to enforce) any other security, monies or rights held or received by Homes England or may apply and enforce the same in such manner and order as Homes England sees fit (whether against the Secured Liabilities or otherwise) and the Chargor shall not be entitled to the benefit of such other security.

11.5 Right of appropriation

Homes England and/or any Receiver is entitled to appropriate money and/or assets to the Secured Liabilities in such manner or order as it thinks fit and any such appropriation shall override any appropriation by the Chargor.

12 Appointment of Receiver

12.1 Appointment and removal

At any time after the Security becomes enforceable, Homes England may by deed or otherwise (acting through an authorised officer of Homes England), without prior notice to the Chargor:

- 12.1.1 appoint one or more persons to be a Receiver of the whole or any part of the Charged Assets;
- 12.1.2 remove (so far as it is lawfully able) any Receiver so appointed; and
- 12.1.3 appoint another person(s) as an additional or replacement Receiver(s).

12.2 Capacity of Receivers

Each person appointed to be a Receiver under this deed will be:

- 12.2.1 entitled to act individually or together with any other person appointed or substituted as Receiver;
- 12.2.2 for all purposes will be deemed to be the agent of the Chargor which will be solely responsible for his acts, defaults and liabilities and for the payment of his remuneration and no Receiver will at any time act as agent for Homes England; and
- 12.2.3 entitled to remuneration for his services at a rate to be fixed by Homes England from time to time (without being limited to the maximum rate specified by the Law of Property Act 1925).

12.3 Statutory powers of appointment

The powers of appointment of a Receiver will be in addition to all statutory and other powers of appointment of Homes England under the Law of Property Act 1925 (as extended by this deed) or otherwise and such powers will remain exercisable from time to time by Homes England in respect of any part of the Charged Assets.

13 Powers of Receiver

13.1 Powers

Any Receiver appointed by Homes England will in addition to all powers conferred on it by law have the following powers exercisable upon such terms and conditions as it thinks fit (without personal liability):

- 13.1.1 to take possession of and generally to manage the Charged Assets;
- 13.1.2 to enter into, carry into effect, complete, deliver, perform, repudiate, rescind or vary any deed, contract, transaction or arrangement in relation to the Charged Assets to which the Chargor is or is to be a party;
- 13.1.3 to carry into effect and complete any transaction in relation to the Charged Assets by executing deeds or documents in the name of or on behalf of the Chargor;
- 13.1.4 to engage, rely on the advice of and discharge advisers, consultants, officers, managers, agents and others;
- 13.1.5 to bring, continue or defend any claim, dispute, action or legal proceedings and enter into any arrangement or compromise in relation to the Charged Assets;
- 13.1.6 to redeem any security and to borrow or raise any money and secure the payment of any money in priority to the Chargor's Liabilities for the purposes of the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise;
- 13.1.7 to make any elections for value added tax purposes in relation to the Charged Assets;
- 13.1.8 to give receipts and releases for any sums received;
- 13.1.9 (where such Receiver is an administrative receiver permitted to be appointed pursuant to the exceptions referred to in subsection (6) to section 72(A) of the Insolvency Act 1986 but not further or otherwise) to use the powers conferred by schedule 1 of the Insolvency Act 1986; and
- 13.1.10 to do any other acts which he may consider to be incidental or conducive to any of his powers or to the realisation of the Charged Assets.

14 Protection of purchasers

14.1 Consideration

The receipt of Homes England or any Receiver will be conclusive discharge to a purchaser and, in making any sale or disposal of any of the Charged Assets or making any acquisition, Homes England or any Receiver may do so for such consideration, in such manner and on such terms as it thinks fit.

14.2 Protection of purchaser

No purchaser or other person dealing with Homes England or any Receiver will be bound to inquire whether the right of Homes England or such Receiver to exercise any of its powers has arisen or become exercisable or be concerned with any property or regularity on the part of Homes England or such Receiver in such dealings.

15 Power of attorney

15.1 Appointment and powers

The Chargor by way of security irrevocably appoints Homes England and any Receiver severally to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things which:

15.1.1 the Chargor ought to have done by this deed (including the execution and delivery of any deeds, charges, assignments or other security and any transfers of the Charged Assets); and

15.1.2 enable Homes England and any Receiver to exercise, delegate or sub-delegate the exercise of, any of the rights, powers and authorities conferred on them by or pursuant to this deed or by law (including the exercise of any right of a legal or beneficial owner of the Charged Assets).

15.2 Ratification

The Chargor will ratify and confirm all things lawfully done and all documents executed by any attorney in the exercise or purported exercise of all or any of his powers.

16 Effectiveness of Security

16.1 Continuing security

The Security will remain in full force and effect as a continuing security for the Secured Liabilities unless and until discharged by Homes England.

16.2 Cumulative rights

The Security and the Collateral Rights will be cumulative, in addition to and independent of every other security which Homes England may at any time hold for the Secured Liabilities or any other obligations or any rights, powers and remedies provided by law. No prior security held by Homes England over the whole or any part of the Charged Assets will merge into the security constituted by this deed.

16.3 No prejudice

Neither the Security or the Collateral Rights will be prejudiced by any time or indulgence granted to the Chargor or any other person or by any other thing which might otherwise prejudice the Security or any Collateral Right.

16.4 Remedies and waivers

No failure on the part of Homes England to exercise, or any delay on its part in exercising, any Collateral Right will operate as a waiver thereof, nor will any single or partial exercise

of any Collateral Right preclude any further or other exercise of that or any other Collateral Right.

16.5 No liability

16.5.1 None of Homes England, its nominee(s) or any Receiver will be liable for any loss or liability by reason of:

- (a) taking or omitting to take any action permitted by this deed; or
 - (b) the action or omission of any delegate or sub-delegate appointed under this deed; or
 - (c) any neglect or default in connection with the Charged Assets; or
 - (d) taking possession of or realising all or any part of the Charged Assets,
- except in the case of negligence or wilful default or fraud upon its part.

16.5.2 None of the provisions of this deed shall be deemed to impose on Homes England or imply on its part any obligation or other liability in relation to the Charged Assets.

16.6 Partial invalidity

If, at any time, any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this deed nor of such provision under the laws of any other jurisdiction will in any way be affected or impaired thereby and, 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 will not affect or impair any other part of the Security.

16.7 Other security

Homes England will not be obliged to resort to any guarantees, indemnities, Encumbrances or other means of payment now or hereafter held by or available to it before enforcing this deed and no action taken or omitted by Homes England in connection with any such guarantees, indemnities, Encumbrance or other means of payment will discharge, reduce, prejudice or affect the liability of the Chargor or the Secured Liabilities nor will Homes England be obliged to account for any money or other property received or recovered in consequence of any enforcement or realisation of any such guarantees, indemnities, Encumbrances or other means of payment.

16.8 Variation

No variation of the terms of this deed will be valid unless it is in writing signed by the Chargor and confirmed in writing by Homes England.

17 Release of Security

17.1 Redemption of security

Upon the Secured Liabilities being discharged in full and Homes England not being under any further actual or contingent obligation to make advances or provide other financial accommodation to the Borrower, Homes England will, at the request and cost of the Borrower, release and cancel the Security and procure the reassignment to the Chargor of the property and assets assigned to Homes England by the Chargor pursuant to this deed, in each case subject to clause 17.2 and without recourse to, or any representation or warranty by, Homes England or any of its nominees.

17.2 Avoidance of payments

If Homes England considers that any amount paid or credited to it is capable of being avoided, reduced or invalidated by virtue of any bankruptcy, insolvency, liquidation or similar laws the liability of the Chargor under this deed and the Security will continue and such amount shall not be considered to have been irrevocably paid.

17.3 Retention of security

Where Homes England has reasonable cause to be concerned that the Chargor is or may become insolvent, Homes England may retain this deed, the Security and all documents of title, certificates and other documents relating to or evidencing ownership of all or any part of the Charged Assets.

18 Subsequent Encumbrances

If Homes England at any time receives or is deemed to have received notice of any subsequent Encumbrance affecting all or any part of the Charged Assets or any assignment or transfer of the Charged Assets which is prohibited by the terms of this deed, all payments thereafter by or on behalf of the Chargor to Homes England will be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities as at the time when Homes England received such notice.

19 Assignment

19.1 Right of Homes England to assign

Homes England may at any time (without notice to or prior consent of the Chargor) assign or otherwise transfer all or any part of its rights under this deed in accordance with and subject to the Facility Agreement.

19.2 Restriction on Chargor

The Chargor shall not assign or transfer any of its rights or obligations under this deed.

20 Confidentiality

Homes England may give such information relating to the Chargor and the Chargers' Liabilities as it thinks fit to any person proposing to take an assignment and/or transfer from Homes England and/or to enter into contractual relations with Homes England with respect to this deed.

21 Expenses, stamp taxes and indemnity

21.1 Expenses

The Chargor will be liable for (jointly and severally), and shall from time to time on demand of Homes England, reimburse Homes England on a full indemnity basis for all the costs and expenses (including legal fees) together with any VAT thereon properly incurred by it or by any Receiver in connection with:

- 21.1.1 the variation or amendment of, or exercise, preservation and/or enforcement of any of the Collateral Rights or the Security or any proceedings instituted by or against Homes England or any Receiver as a consequence of taking or holding the Security or of enforcing the Collateral Rights,

and such expenses will carry interest until so reimbursed at the rate referred to in clause 2.2.

21.2 Stamp taxes

The Chargor will pay all stamp, stamp duty land tax, registration and other taxes to which this deed, the Security or any judgement given in connection with it is or at any time may be subject and will, from time to time, indemnify Homes England on demand against any liabilities, costs, claims and expenses resulting from any failure to pay or delay in paying any such tax.

21.3 Indemnity

The Chargor will, notwithstanding any release or discharge of all or any part of the Security, be liable for (jointly and severally) and promptly indemnify and keep indemnified (on a full indemnity basis) Homes England and every Receiver against:

- 21.3.1 any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of personal injury to or death of any person whomsoever or loss of or damage to property whether belonging to Homes England or otherwise or any claim by any third party arising out of or in the course of or caused or contributed to by the Chargor and/or the performance or non performance or delay in performance by the Chargor of its obligations under this deed except to the extent that the same is due to any act or neglect of Homes England;
- 21.3.2 any cost, loss or liability incurred by any of them as a result of acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised and
- 21.3.3 be liable for and shall indemnify Homes England against any expense, liability, loss, claim or proceedings arising directly or indirectly from or in connect with any breach of the terms of this Agreement by or otherwise through the default or negligence of the Chargor.

22 Payments free of deduction

- 22.1 All payments by the Chargor under or in connection with this deed shall be made without set-off or counterclaim, free and clear of and without any deduction or withholding,

including, without limitation, for or on account of all taxes except for taxes which must be deducted by law.

22.2 If the Chargor is required by law to make any deduction or withholding the Chargor shall:

22.2.1 ensure that the deduction or withholding does not exceed the minimum amount legally required;

22.2.2 forthwith pay to Homes England such additional amount as may be determined by Homes England to be necessary to ensure that after making any required deduction or withholding Homes England receives and retains a net amount equal to the full amount which would have been received had no deduction or withholding been required;

22.2.3 pay to the applicable taxation or other authorities within the period for payment permitted by law the full amount of the deduction or withholding; and

22.2.4 supply to Homes England, within the period for the payment permitted by law, an official receipt of the applicable taxation or other authorities for all amounts deducted or withheld.

22.3 Without prejudice to any other provisions of this deed, if:

22.3.1 Homes England is required by law to make any payment on account of taxes (other than taxes on its overall net income) on or in relation to any sum received or receivable by Homes England under or pursuant to this deed; or

22.3.2 any liability in respect of any such payment is imposed, levied or assessed against Homes England,

the Chargor shall be liable for and on demand by Homes England indemnify Homes England against such payment or liability together with any interest, penalties and expenses payable or incurred in connection with it.

23 **Discretion and delegation**

23.1 **Discretion**

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

23.2 **Delegation**

Each of Homes England and any Receiver will 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 sees fit which delegation may include power to sub-delegate and will not preclude either the subsequent exercise of such power, authority or discretion by Homes England or the Receiver itself or any subsequent delegation or revocation thereof.

24 **Perpetuity period**

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

25 **Counterparts**

This deed may be executed in any number of counterparts and each counterpart will when executed be an original of this deed and all counterparts together will constitute one instrument.

26 **Constitutive documents**

The Chargor hereby certifies that its creation of this deed in favour of Homes England does not contravene any of the provisions of the Companies Act 2006 or its memorandum and articles of association or rules or, in the case of a limited liability partnership or limited partnership, the partnership deed constituting the Chargor.

27 **Reorganisation**

This deed will remain binding on the Chargor notwithstanding any change in the constitution of Homes England or its absorption by, or amalgamation with, or the acquisition of all or part of its undertaking by, any other person, or any reconstruction or reorganisation of any kind. The Security will remain valid and effective in all respects in favour of Homes England and for any assignee, transferee or other successor in title of Homes England.

28 **Set-off**

Homes England may (but is not obliged to) set off any obligation due from the Chargor to Homes England against any obligation owed by Homes England to the Chargor (whether actual or contingent, present or future, liquidated or unliquidated) regardless of the place of payment, booking branch or currency of either obligation, and whether or not such liability arises under this deed. If the obligations are in different currencies, Homes England may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

29 **Currency**

The obligations of the Chargor to make payments under this deed are in the currency of the Secured Liabilities and shall not be discharged or satisfied by the receipt by Homes England of any monies expressed or converted into any other currency and to the extent there is any shortfall between amounts due under this deed in one currency and receipt by Homes England in another currency then Homes England shall be entitled to recover the amount of any shortfall from the Chargor and to sell any currency received for the currency due and the Chargor shall be liable for (jointly and severally) and shall promptly indemnify Homes England against the full cost incurred in relation to such sale. Homes England shall not have any liability to the Chargor in respect of any loss arising from any fluctuation in exchange rates after such sale.

30 **Payment of monies**

30.1 **Date for payment**

Where neither the Facility Agreement nor this deed specified the due date for payment of any monies owed by the Chargor to Homes England such monies will be due and payable to Homes England by the Chargor on demand.

30.2 Certificates

A certificate signed by an official of Homes England as to the amount due or owing from the Chargor will be conclusive evidence against the Chargor except in the case of manifest error or any question of law.

31 Communication

31.1 Written

Any communication to be given in connection with this deed will be in writing.

31.2 Addresses

Any communication will either be delivered by hand or sent by first class prepaid post to Homes England or the Chargor at its address shown on page 1 unless it has communicated another address to the other in which case it must be sent to the last address so communicated.

31.3 Communication

31.3.1 Any notice to be given hereunder shall be in writing and shall be sufficiently served if delivered by hand and receipted for by the recipient or sent by the Recorded Delivery Service addressed in the case of any party to the other party's registered office as set out at the beginning of this deed or to such other addresses a party may from time to time notify to the other in writing provided that such other address is within England and Wales.

31.3.2 Any notice shall be deemed to be given by the sender and received by the recipient:

- (a) if delivered by hand, when delivered to the recipient;
- (b) if delivered by the Recorded Delivery Service, three (3) Business Days after delivery including the date of postage;

provided that if the delivery or receipt is on a day which is not a Business Day or is after 4.00pm it is to be regarded as received at 9.00am on the following Business Day.

32 Governing law

32.1 Law and jurisdiction of England

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

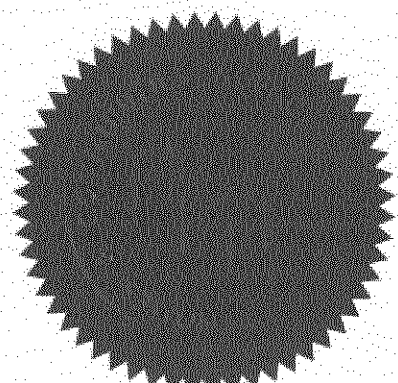
- 32.1.2 The parties to this deed agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party to this deed will argue to the contrary.
- 32.1.3 Notwithstanding Clause 32.1.1, Homes England shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, Homes England may take concurrent proceedings in any number of jurisdictions.

This deed has been executed as a deed by the parties and is delivered and takes effect on the date at the beginning of this deed.

EXECUTION PAGE

The Common Seal of
HOMES AND COMMUNITIES AGENCY)
was hereunto affixed in the presence of:)

D41222



Authorised Signatory:



Print Name: *M. Olanrewaju*

Executed as a deed by **AUDLEY GROUP**)
LIMITED acting by a director in the presence)
of:

Director

Signature of witness:

Name (in BLOCK CAPITALS)

Address:

Occupation:

Executed as a deed by **MAYFIELD**)
VILLAGES CARE LIMITED acting by a)
director in the presence of:

Director

Signature of witness:

Name (in BLOCK CAPITALS)

Address:

Occupation:

EXECUTION PAGE

The Common Seal of)
HOMES AND COMMUNITIES AGENCY)
was hereunto affixed in the presence of:)

Authorised Signatory:

Print Name:

Executed as a deed by **AUDLEY GROUP**)
LIMITED acting by a director in the presence)
of:

Director

Signature of witness:

Name (in BLOCK CAPITALS)

Address:

Occupation:

PHILIPPA SANDERSON
406 BUILDERS WHARF
LONDON SE1 2TE
RETIRED.

Executed as a deed by **MAYFIELD**)
VILLAGES CARE LIMITED acting by a)
director in the presence of:

Director

Signature of witness:

Name (in BLOCK CAPITALS)

Address:

Occupation:

PHILIPPA SANDERSON
406 BUILDERS WHARF
LONDON SE1 2TE
RETIRED.