



Registration of a Charge

Company Name: **SWANTON CARE & COMMUNITY (SOUTHFIELD HOUSE CARE SERVICES) LIMITED**

Company Number: **SC232927**



Received for filing in Electronic Format on the: **25/03/2022**

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Details of Charge

Date of creation: **17/03/2022**

Charge code: **SC23 2927 0023**

Persons entitled: **NATIONAL WESTMINSTER BANK PLC**

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: **JONATHAN HEANEY**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 232927

Charge code: SC23 2927 0023

The Registrar of Companies for Scotland hereby certifies that a charge dated 17th March 2022 and created by SWANTON CARE & COMMUNITY (SOUTHFIELD HOUSE CARE SERVICES) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 25th March 2022 .

Given at Companies House, Edinburgh on 25th March 2022

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**

Jasmin

~~Burness Paul~~

DELIVERED ON 17 March 2022

SWANTON CARE & COMMUNITY (SOUTHFIELD HOUSE CARE SERVICES) LIMITED
as Chargor

in favour of

NATIONAL WESTMINSTER BANK PLC
as Security Trustee for the Secured Parties

BOND AND FLOATING CHARGE

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BOND AND FLOATING CHARGE DELIVERED ON 17 March 2022

by

- (1) **SWANTON CARE & COMMUNITY (SOUTHFIELD HOUSE CARE SERVICES) LIMITED**, a company incorporated under the Companies Acts with registered number SC232927 and having its registered office at Southfield House, Slamannan, Falkirk, FK1 3BB (the “Chargor”)

in favour of

- (2) **NATIONAL WESTMINSTER BANK PLC**, a company incorporated under the Companies Acts with registered number 00929027 and having its registered office at 250 Bishopsgate, London, England EC2M 4AA, as trustee for the Secured Parties (the “Security Trustee”)

CONSIDERING THAT:

The Chargor has agreed to provide Security to the Security Trustee (as trustee for the Secured Parties) to secure the payment and discharge of the Secured Obligations.

NOW IT IS HEREBY AGREED AND DECLARED as follows:

1 DEFINITIONS AND INTERPRETATION

- 1.1 Words and expressions defined in the Intercreditor Agreement shall have the same meanings in this Instrument unless they are expressly defined in this Instrument:

“**Administrator**” means any administrator appointed pursuant to this Instrument;

“**Charged Assets**” means the whole of the property (including uncalled capital) which is or may be from time to time while this Instrument is in force comprised in the property and undertaking of the Chargor;

“**Default Rate**” means the rate of interest specified in, and calculated in accordance with, clause 13.5 (Default interest) of the Senior Facilities Agreement;

“**Intercreditor Agreement**” means the intercreditor agreement dated 2 May 2019 and made between, among others:

- (a) the Parent and the Security Trustee; and
- (b) the Original Debtors, the Senior Agent, the Senior Arrangers, the Senior Lenders, the Subordinated Creditor, the Ancillary Lenders and the Intra-Group Lenders (each as defined in the Intercreditor Agreement);

"Parent" means Sunshine Care Bidco Limited, a company incorporated under the laws of England and Wales with registered number 10849661 whose registered office is at Number Three Siskin Drive, Middlemarch Business Park, Coventry, England, CV3 4FJ;

"Receiver" means any receiver or administrative receiver appointed in respect of the Security Assets (whether pursuant to this Instrument, pursuant to any statute, by a court or otherwise) and includes joint receivers;

"Secured Obligations" means all monies and liabilities now or after the date of delivery of this Instrument due, owing or incurred by the Chargor to any Secured Party under the Senior Debt Documents (or any of them) in any manner and in any currency or currencies and whether present or future, actual or contingent, whether incurred solely or jointly with any other person and whether as principal or surety, together with all interest accruing on such monies and liabilities and all costs, charges and expenses incurred by any Secured Party under any Senior Debt Document, except for any obligation which, if it were included here, would constitute unlawful financial assistance, or its equivalent in any other jurisdiction;

"Secured Parties" means the Security Trustee, any Receiver or Delegate and each of the Senior Creditors from time to time but, in the case of each Senior Creditor, only if it is a party to the Intercreditor Agreement or has acceded to the Intercreditor Agreement, in the appropriate capacity, pursuant to clause 19.9 (Creditor Accession Undertaking) of the Intercreditor Agreement, and **"Secured Party"** means any of the Secured Parties;

"Security" means a mortgage, standard security, charge, pledge, lien, assignment by way of security, assignation in security, assignation, retention of title provision, trust or flawed asset arrangement (for the purpose of, or which has the effect of, granting security) or other security interest securing any obligation of any person or any other agreement or arrangement in any jurisdiction having a similar effect;

"Security Assets" means all of the assets which are the subject of any Security created or to be created by the Instrument;

"Security Period" means the period beginning on the date of delivery of this Instrument and ending on the Final Discharge Date;

"Senior Debt Documents" means the Senior Finance Documents, the Hedging Agreements, the Ancillary Documents and any other agreement evidencing or setting out the terms of any Secured Obligations;

"Senior Event of Default" has the meaning given to it in the Intercreditor Agreement; and

"Senior Facilities Agreement" means the senior facilities agreement originally dated 2 May 2019 as amended on 27 September 2019, 24 February 2020 and 26 March 2021 and as amended and restated on 6 January 2022 and on or about the date of delivery of this Instrument between, among others, the Parent, Swanton Care & Community Limited as borrower, the Security Trustee and the other Finance Parties (as defined in that agreement).

1.2 Construction

1.2.1 The principles of construction set out in clause 1.2 (Construction) of the Intercreditor Agreement shall apply to this Instrument insofar as they are relevant to it and subject to any necessary changes, as they apply to the Intercreditor Agreement.

1.2.2 Unless a contrary intention appears, any reference in this Instrument to:

- (a) this Instrument is a reference to this Instrument supplemented and replaced from time to time;
- (b) the Chargor, the Security Trustee or any Secured Party includes any one or more of its assigns, transferees and successors in title (in the case of the Chargor, so far as any such is permitted);
- (c) the Security Trustee or any Secured Party (except for the references in Clause 14 (Mandate and Attorney)), includes its duly appointed nominees, attorneys, correspondents, trustees, advisers, agents, delegates and sub-delegates;
- (d) “**guarantee**” means any guarantee, letter of credit, bond, indemnity, documentary or other credit or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- (e) the words **include(s)**, **including** and **in particular** shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words; and
- (f) the words **other** and **otherwise** shall not be construed ejusdem generis with any preceding words where a wider construction is possible.

1.3 Third party rights

1.3.1 Unless expressly provided to the contrary in this Instrument, a person who is not a party to this Instrument has no right under the Contract (Third Party Rights) (Scotland) Act 2017 (“**Third Parties Act**”) to enforce or to enjoy the benefit of any term of this Instrument.

1.3.2 The parties to this Instrument may rescind, vary, waive, release, assign, novate or otherwise dispose of all or any of their respective rights or obligations under this

Instrument without the consent of any person that is not a party (without prejudice to the terms of the other Senior Debt Documents).

- 1.3.3 Any Secured Party or any person described in Clause 10 (Protection of purchasers) or Clause 11 (Protection of the Secured Parties) may, subject to this Clause 1.3 and the Third Parties Act, rely on any clause of this Instrument which expressly confers rights on it.

1.4 Senior Finance Document

This Instrument is a Senior Finance Document.

2 UNDERTAKING TO PAY

- 2.1 The Chargor undertakes to the Security Trustee and the other Secured Parties that it will on demand pay and discharge the Secured Obligations when due in accordance with the terms of the Senior Debt Documents.
- 2.2 Paragraph 14 of Schedule B1 to the Insolvency Act (incorporated by Schedule 16 to the Enterprise Act 2002) shall apply to this Instrument which is accordingly a qualifying floating charge.

3 FLOATING CHARGE

The Chargor as security for the payment and discharge of all the Secured Obligations hereby grants in favour of the Security Trustee a floating charge over the Charged Assets.

4 NATURE OF SECURITY CREATED

4.1 General

The Security created under this Instrument is created:

- 4.1.1 as a continuing security to secure the payment and discharge of the Secured Obligations and shall remain in full force and effect regardless of any intermediate payment or discharge by the Chargor or any other person of the whole or any part of the Secured Obligations;
- 4.1.2 over all present and future assets of the kind described which are owned by the Chargor and, to the extent that it does not own those assets, shall extend to any right or interest which it may have in them;
- 4.1.3 in favour of the Security Trustee as trustee for the Secured Parties; and
- 4.1.4 with absolute warrandice, subject to the Security granted pursuant to any Security Document.

4.2 Recourse

The Security constituted by this Instrument:

- 4.2.1 is in addition to any other Security which any Secured Party may hold at any time for the Secured Obligations (or any of them); and
- 4.2.2 may be enforced without first having recourse to any other rights of any Secured Party.

5 POSITIVE UNDERTAKINGS

The undertakings in this Clause 5 remain in force for the date of delivery of this Instrument until the expiry of the Security Period.

5.1 Preservation of the Security Assets

The Chargor shall:

- 5.1.1 keep all tangible assets which form part of the Security Assets in good and substantial repair, fair wear and tear excepted and permit the Security Trustee free access at all reasonable times and on reasonable notice to view their state and condition;
- 5.1.2 observe and perform all covenants, undertakings, laws and regulations from time to time affecting any Security Asset or the use or enjoyment of it;
- 5.1.3 pay all Tax, rents, rates, duties, fees, charges, assessments, impositions, calls, instalments and outgoings which are properly payable at any time during the Security Period in respect of a Security Asset or by the owner or occupier of it (and if it fails to pay that amount when due, the Security Trustee may pay it);
- 5.1.4 notify the Security Trustee of any action commenced by a third party to seize, attach, charge, take possession of or sell any Security Asset which (to the best of its knowledge and belief) has been started or threatened; and
- 5.1.5 at its own cost, defend any proceedings (including proceedings to seize, attach, charge, take possession of or sell) brought by a third party relating to any Security Asset.

5.2 Payments without deduction

The Chargor undertakes to the Secured Parties that all payments to be made by it under this Instrument shall be calculated and be made without and free and clear of any deduction for set-off or counterclaim.

6 NEGATIVE UNDERTAKINGS

The undertakings in this Clause 6 remain in force from the date of delivery of this Instrument until the expiry of the Security Period.

6.1 Disposals

The Chargor shall not enter into a single transaction or a series of transactions (whether related or not), whether voluntary or involuntary and whether at the same time or over a period of time, to sell, lease, transfer, loan, nor otherwise dispose of any Security Asset, nor enter into an agreement to make any such disposal other than as permitted under the provisions of the Senior Debt Documents.

6.2 Negative pledge

The Chargor shall not create or permit to subsist any Security over any Security Asset other than as permitted under the provisions of the Senior Debt Documents.

6.3 Preservation of the Security Assets

The Chargor shall not, save as permitted to do so by the Senior Debt Documents or, without the prior written consent of the Security Trustee:

6.3.1 enter into any onerous obligation or restriction affecting any Security Asset; or

6.3.2 take any Security in connection with its liability under this Instrument from any guarantor of, or provider of Security for, any of the Secured Obligations.

7 ENFORCEMENT

7.1 The Security created by the Chargor under this Instrument shall become enforceable:

7.1.1 on the occurrence of a Senior Event of Default which is continuing; or

7.1.2 if the Chargor so requests,

and the Security Trustee may then (or as soon thereafter as permitted by law) by instrument in writing appoint any person or persons (if more than one with power to act both jointly and separately) to be an administrator of the Chargor or (subject, if applicable, to Section 72A of the Insolvency Act 1986) a receiver of the Security Assets. In addition, and without prejudice to the foregoing provisions of this Clause 7.1, in the event that any person appointed to be a Receiver shall be removed by a court or shall otherwise cease to act as such, then the Security Trustee shall be entitled so to appoint another person as Receiver in his place.

7.2 An Administrator shall have and be entitled to exercise, in addition to and without limiting all the powers of an administrator under the Insolvency Act 1986, all the powers of a receiver

under Schedule 2 of the Insolvency Act 1986 and a Receiver shall have and be entitled to exercise, in addition to and without limiting all the powers of a receiver under Schedule 2 of the Insolvency Act 1986, all the powers of an administrative receiver set out in Schedule 1 of the Insolvency Act 1986 together with (in either case) the power to exercise any powers or rights incidental to ownership of the Security Assets, including (as regards shares and other securities) any voting rights or rights of enforcing the same together with power to:

- 7.2.1 implement and exercise all or any of the Chargor's powers and/or rights and/or obligations under any contract or other agreement forming a part of the Security Assets;
- 7.2.2 make any arrangement or compromise which he shall think expedient of or in respect of any claim by or against the Chargor;
- 7.2.3 promote or procure the formation of any new company or corporation;
- 7.2.4 subscribe for or acquire for cash or otherwise any share capital of such new company or corporation in the name of the Chargor and on its behalf and/or in the name(s) of a nominee(s) or trustee(s) for it;
- 7.2.5 sell, assign, transfer, exchange, hire out, grant leases of or otherwise dispose of or realise the Security Assets or any part thereof to any such new company or corporation and accept as consideration or part of the consideration therefor in the name of the Chargor and on its behalf and/or in the name(s) of any nominee(s) or trustee(s) for it, any shares or further shares in any such company or corporation or allow the payment of the whole or any part of such consideration to remain deferred or outstanding by way of loan or debt or credit;
- 7.2.6 sell, assign, transfer, exchange, hire out, grant leases of or otherwise dispose of or realise on behalf of the Chargor any such shares or deferred consideration or part thereof or any rights or benefits attaching thereto;
- 7.2.7 convene an extraordinary general meeting of the Chargor;
- 7.2.8 acquire any property on behalf of the Chargor;
- 7.2.9 do all such other acts and things as he may consider necessary or desirable for realising the Security Assets, or any part thereof, or incidental or conducive to any of the matters, powers or authorities conferred on a Receiver under or by virtue of or pursuant to this Instrument and exercise in relation to the Security Assets, or any part thereof, all such powers and authorities and do all such things as he would be capable of exercising or doing if he were the absolute beneficial owner of the same,

subject always to the rights of the Security Trustee as holder of this Security.

- 7.3 At any time after the Security created by this Instrument has become enforceable, to the extent that any of the Security Assets constitutes "financial collateral" and this Instrument and the obligations of the Chargor hereunder constitute a "security financial collateral arrangement" (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226) (the "**Regulations**") the Security Trustee shall have the right to appropriate all or any part of such financial collateral in or towards discharge of the Secured Obligations and may exercise such right to appropriate upon giving written notice to the Chargor.

8 OFFICE OF RECEIVER

- 8.1 Any Receiver appointed under Clause 7 (Enforcement) shall be the agent of the Chargor for all purposes and (subject to the provisions of the Insolvency Act 1986) the Chargor alone shall be responsible for his contracts, engagements, acts, omissions, defaults and losses and for liabilities incurred by him and for his remuneration and his costs, charges and expenses.
- 8.2 Any Receiver appointed under Clause 7 (Enforcement) shall be entitled to remuneration for his services and the services of his firm appropriate to the responsibilities involved. Subject to Section 58 of the Insolvency Act 1986, the remuneration of the Receiver may be fixed by the Security Trustee (and may be or include a commission calculated by reference to the gross amount of all money received or otherwise and may include remuneration in connection with claims, actions or proceedings made or brought against the Receiver by the Chargor or any other person or the performance or discharge of any obligation imposed upon him by statute or otherwise).

9 APPLICATION OF MONEYS

- 9.1 The Security Trustee shall apply any moneys received or recovered by it pursuant to this Instrument in accordance with the Intercreditor Agreement.
- 9.2 Any Receiver shall apply any moneys received or recovered by it pursuant to this Instrument:
- 9.2.1 first, in or towards the pro rata payment of or provision for any sums owing to the Security Trustee, any Receiver or any Delegate; and
- 9.2.2 secondly, to the Security Trustee for application in accordance with Clause 9.1.
- 9.3 Clauses 9.1 and 9.2 will override any appropriation made by the Chargor.

10 PROTECTION OF PURCHASERS

- No purchaser or other person dealing with the Security Trustee or any Receiver shall be bound or concerned:
- 10.1 whether the Secured Obligations have become payable;

- 10.2 whether any Secured Obligations or other monies remain outstanding;
- 10.3 to see or enquire whether the right of the Security Trustee or any Receiver to exercise any of the powers conferred by this Instrument has arisen or not;
- 10.4 with the propriety of the exercise or purported exercise of those powers; or
- 10.5 with the application of any moneys paid to the Security any other person.

11 PROTECTION OF THE SECURED PARTIES

11.1 Exclusion of liability

None of the Security Trustee, the Secured Parties or any of their respective officers or employees shall have any responsibility or liability:

- 11.1.1 for any action taken, or any failure to take any action, in relation to all or any of the Security Assets;
- 11.1.2 to account as heritable creditor in possession or for any loss upon realisation of any Security Asset;
- 11.1.3 for any loss resulting from any fluctuation in exchange rates in connection with any purchase of currencies under Clause 15 (Currency);
- 11.1.4 for the loss or destruction of, or damage to, any of the Security Assets, or to any documents of or evidencing title to them, which are in the possession or held to the order of any such person (and which will be held by such persons at the expense and risk of the Chargor); or
- 11.1.5 for any other default or omission in relation to all or any of the Security Assets for which a mortgagee in possession might be liable,

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

11.2 General indemnity

- 11.2.1 The Chargor shall indemnify the Security Trustee, the Secured Parties and their respective officers and employees against all actions, proceedings, demands, claims, costs, expenses, and other liabilities incurred by them in respect of all or any of the following:
 - (a) any act or omission by any of them in relation to all or any of the Security Assets;

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

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

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

11.3 Indemnity out of the Security Assets

The Security Trustee, the Secured Parties and their respective officers and employees shall be entitled to be indemnified out of the Security Assets in respect of the actions, proceedings, demands, claims, costs, expenses and liabilities referred to in Clause 11.2 (General indemnity).

12 PRESERVATION OF SECURITY

12.1 Reinstatement

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

- 12.1.1 the liabilities of the Chargor and the Security created by the Chargor under this Instrument shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
- 12.1.2 the Secured Parties shall be entitled to recover the value or amount of that Security or payment from the Chargor, as if the payment, discharge, avoidance or reduction had not occurred.

12.2 Waiver of defences

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

- 12.2.1 any time, waiver or consent granted to, or composition with, any Debtor, Group Company or other person;
- 12.2.2 the release of any Debtor, Group Company or any other person under the terms of any composition or arrangement with any person;
- 12.2.3 the taking, variation, compromise, exchange, renewal, enforcement or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over, assets of any Debtor, Group Company or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- 12.2.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Debtor, Group Company or any other person;
- 12.2.5 any amendment (however fundamental), replacement, variation, novation, assignment or the avoidance or termination of a Senior Debt Document or any other document or Security;
- 12.2.6 any unenforceability, illegality or invalidity of any obligation, by, any person under any Senior Debt Document or any other document; or
- 12.2.7 any insolvency, liquidation, administration or similar procedure.

12.3 Chargor intent

Without prejudice to the generality of Clause 12.2, the Chargor expressly confirms that it intends that the Security created by this Instrument shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Senior Debt Documents and/or any facility or amount made available under any of the Senior Debt Documents for the purposes of or in connection with any of the following:

- 12.3.1 acquisitions of any nature;
- 12.3.2 increasing working capital;
- 12.3.3 enabling investor distributions to be made;
- 12.3.4 carrying out restructurings;
- 12.3.5 refinancing existing facilities;

- 12.3.6 refinancing any other indebtedness;
- 12.3.7 making facilities available to new borrowers;
- 12.3.8 any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and
- 12.3.9 any fees, costs and/or expenses associated with any of the foregoing.

12.4 Immediate recourse

The Chargor waives any right it may have or first requiring any Secured Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or Security or claim payment from a person before claiming from the Chargor under this Instrument. This waiver applies irrespective of any law or any provision of a Senior Debt Document to the contrary.

12.5 Appropriations

During the Security Period each Secured Party may:

- 12.5.1 refrain from applying or enforcing any moneys, Security or rights held or received by it (or any trustee or agent on its behalf) in respect of the Secured Obligations, or, subject to Clause 9 (Application of moneys), apply and enforce the same in such manner and order as it sees fit (whether against the Secured Obligations or otherwise) and the Chargor shall not be entitled to the benefit of the same; and
- 12.5.2 hold in an interest-bearing suspense account any moneys received from the Chargor or on account of the Secured Obligations.

12.6 Deferral of Chargor's rights

During the Security Period and unless the Security Trustee otherwise directs, the Chargor shall exercise any rights which it may have by reason of performance by it of its obligations under this Instrument or the enforcement of the Security created by this Instrument:

- 12.6.1 to receive or claim payment from, or be indemnified by a Debtor or Group Company;
- 12.6.2 to claim any contribution from any guarantor of, or provider of Security in respect of, any Debtor's or Group Company's obligations under the Senior Debt Documents;
- 12.6.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of any Secured Party under any Senior Debt Document or of any guarantee or Security taken pursuant to, or in connection with, the Senior Debt Documents by any Secured Party;

12.6.4 to exercise any right of set-off against any Debtor or Group Company; and/or

12.6.5 to claim or prove as a creditor of any Debtor or Group Company in competition with any Secured Party.

12.7 Additional Security

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

12.8 New accounts

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

12.8.1 shall be credited to be treated as having been credited to the new account of that Borrower; and

12.8.2 shall not operate to reduce the Secured Obligations at the time when the Secured Party received or was deemed to have received such notice.

13 FURTHER ASSURANCE

13.1 Registration at Companies House

The Chargor consents to the registration of this Instrument at Companies House pursuant to Part 25 of the Companies Act 2006.

13.2 Further action

The Chargor shall, at its own expense, promptly take any action and sign or execute any further documents which the Security Trustee (acting reasonably where no Senior Default has occurred and is continuing) may require in order to:

13.2.1 give effect to the requirements of this Instrument;

13.2.2 protect, preserve and perfect the Security intended to be created by or pursuant to this Instrument;

13.2.3 protect and preserve the ranking of the Security intended to be created by or pursuant to this Instrument with any other Security over any assets of the Chargor; and/or

- 13.2.4 facilitate the realisation of all or any of the Security Assets or the exercise of any rights, powers and discretions conferred on the Security Trustee, any Receiver or any administration with all or any of the Security Assets.

13.3 Deposit of documents

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

- 13.4 all deeds, certificates and other documents of or evidencing title; and
- 13.5 any other documents which the Security Trustee may from time to time require for perfecting its title, or the title of any purchaser.

14 MANDATE AND ATTORNEY

The Chargor irrevocably appoints each of:

- 14.1 the Security Trustee;
- 14.2 any delegate or sub-delegate of, or other person nominated in writing by, an officer of the Security Trustee; and
- 14.3 any Receiver,

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

15 CURRENCY

15.1 Currency

Clause 33.9 (Currency of account) of the Senior Facilities Agreement shall apply to this Instrument as if set out here in full but so that references to the Finance Documents shall be construed as references to this Instrument and any Security created by or under it and references to the Obligors shall be construed as references to the Chargor.

15.2 The Spot Rate

In this Clause 15, the Spot Rate means, in relation to the Security Trustee or any other Secured Party, the spot rate of exchange of that Secured Party for the purchase of any currency with any other currency in the London foreign exchange market.

15.3 Conversion of moneys received

The Security Trustee or any other Secured Party may convert any moneys received, recovered or realised in any currency under this Instrument (including the proceeds of any previous conversion under this Clause 15) from their existing currency into any other currency, by purchasing that other currency at the Spot Rate.

16 DISCHARGE OF SECURITY

Upon the irrevocable and unconditional payment and discharge in full of the Secured Obligations, the Security Trustee shall, unless any third party has any subrogation or other rights in respect of the Security created by this Instrument at that time, or shall procure that its appointees will, at the request and cost of the Chargor release the Security Assets from this Instrument.

17 COSTS AND EXPENSES

17.1 Transaction expenses

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

17.2 Amendment costs

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

17.3 Enforcement costs

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

18 NOTICES

18.1 Communications in writing

Any communication to be made under or in connection with this Instrument shall be made in writing and, unless otherwise stated, may be made by letter.

18.2 Addresses

18.2.1 The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with this Instrument is that identified with its name below or any substitute address or department or officer as either party may notify to the other by not less than five Business Days' notice.

18.2.2 The addresses referred to in Clause 18.2.1 are:

(a) The Chargor:

Swanton Care and Community Limited
Number Three
Siskin Drive
Middlemarch Business Park
Coventry
England
CV3 4FJ

Attention: Alex Cowie and Garry Cross

Email: Alex.Cowie@swantoncare.com and
Garry.Cross@swantoncare.com

(b) The Security Trustee:

National Westminster Bank Plc
4th Floor
250 Bishopsgate
London
EC2M 4AA

Attention: Sergio Creese-Moreno

Email: sergio.moreno@natwest.com

18.3 Delivery

18.3.1 Any communication or document made or delivered by one person to another under or in connection with this Instrument will only be effective if by way of letter:

- (a) when it has been left at the relevant address; or
- (b) two Business Days (or, in the case of airmail, five Business Days) after being deposited in the post postage prepaid (or, as the case may be, airmail postage prepaid), in an envelope addressed to it at that address,

and, if a particular department or office is specified as part of its address details provided under Clause 18.2, if addressed to that department or officer.

18.3.2 Any communication or document to be made or delivered to the Security Trustee will be effective only when actually received by the Security Trustee and then only if it is expressly marked for the attention of the department or officer identified in Clause 18.2.2 (or any substitute department or officer as the Security Trustee shall specify for this purpose).

18.4 **English language**

18.4.1 Any notice given under or in connection with this Instrument must be in English.

18.4.2 All other documents provided under or in connection with this Instrument must be:

- (a) in English; or
- (b) if not in English, and if so required by the Security Trustee accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

19 **CALCULATIONS AND CERTIFICATES**

19.1 **Accounts**

In any litigation or arbitration proceedings arising out of or in connection with this Instrument, the entries made in the accounts maintained by the Security Trustee or any other Secured Party are prima facie evidence of the matters to which they relate.

19.2 **Certificates and determinations**

Any certification or determination by the Security Trustee or any other Secured Party of a rate or amount under this Instrument is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

20 **PARTIAL INVALIDITY**

If, at any time, any provision of this Instrument is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

21 **REMEDIES AND WAIVERS**

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

22 **AMENDMENTS AND WAIVERS**

Any term of this Instrument may be amended or waived only with the written consent of the Chargor and the Security Trustee.

23 **COUNTERPARTS AND DELIVERY**

23.1 This Instrument may be executed in any number of counterparts and by each of the parties on separate counterparts.

23.2 Where executed in counterparts:

23.2.1 this Instrument will not take effect until each of the counterparts has been delivered;

23.2.2 where any counterpart is being held as undelivered, delivery will take place on the date of delivery agreed between the parties (the “**Agreed Date**”). The Agreed Date will be inserted in the testing clause, on the front cover and on page 1 of this Instrument; and

23.2.3 section 2(3) of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 is hereby excluded and shall not apply to the execution arrangements in respect of this Instrument.

24 **GOVERNING LAW AND ENFORCEMENT**

24.1 **Governing Law**

Scots law governs this Instrument, its interpretation and any non-contractual obligations arising from or connected with it.

24.2 **Jurisdiction**

- 24.2.1 The Scottish courts have exclusive jurisdiction to settle any dispute arising out of or in connection with this Instrument (including a dispute regarding the existence, validity or termination of this Instrument) (a “Dispute”).
- 24.2.2 The parties agree that the Scottish courts are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.
- 24.2.3 This Clause 24 is for the benefit of the Security Trustee and the other Secured Parties only. As a result, neither the Security Trustee nor any other Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Trustee and the other Secured Parties may take concurrent proceedings in any number of jurisdictions.

CONSENT TO REGISTRATION

The Chargor hereby consents to the registration of this Instrument and of any certificate referred to in Clause 19 for preservation.

IN WITNESS WHEREOF these presents consisting of this and the preceding 19 pages are executed in counterpart as follows and DELIVERED on 17 March 2022:

THE CHARGOR

SUBSCRIBED for and on behalf of the said SWANTON CARE & COMMUNITY (SOUTHFIELD HOUSE CARE SERVICES) LIMITED

at LONDON

on 14.03.22

by

FORD DAVID PETER

Print Full name

[REDACTED]

Director

before this witness:

ANNE-VALE HEYNICH

Print Full Name

[REDACTED]

Witness

Address:

Flat 13

13 Fairclough St

LONDON E1 1PT.

THE SECURITY TRUSTEE

SUBSCRIBED for and on behalf of the said NATIONAL WESTMINSTER BANK PLC

at LONDON

on 14/03/22

by

SERGIO CRESECE-MORENO

Print Full name

before this witness:

JONATHAN HEAD

Print Full Name

Address: 250 BISHOPSGATE

LONDON, EC2M 4AA



Authorised Signatory



Witness