



Registration of a Charge

Company name: **PHAROS CARE LIMITED**

Company number: **05613970**

Received for Electronic Filing: **29/12/2015**



X4NA0S3X

Details of Charge

Date of creation: **18/12/2015**

Charge code: **0561 3970 0013**

Persons entitled: **HAVERCROFT CONSTRUCTION LIMITED**

Brief description: **BY WAY OF LEGAL MORTGAGE, ALL FREEHOLD AND LEASEHOLD LAND IN ENGLAND AND WALES NOW VESTED IN THE CHARGING COMPANY (MIDWAY CARE GROUP LIMITED) AND REGISTERED AT HM LAND REGISTRY. BY WAY OF LEGAL MORTGAGE, ALL OTHER FREEHOLD AND LEASEHOLD LAND IN ENGLAND AND WALES NOW VESTED IN THE CHARGING COMPANY AND NOT REGISTERED AT HM LAND REGISTRY. BY WAY OF FIXED CHARGE, ALL LAND IN THE FUTURE BECOMING THE PROPERTY OF THE CHARGING COMPANY. BY WAY OF FIXED CHARGE, ALL INTERESTS IN LAND OR THE PROCEEDS OF SALE OF LAND NOW OR IN THE FUTURE BELONGING TO THE CHARGING COMPANY THAT HAVE NOT ALREADY BEEN CHARGED UNDER THE PRECEDING PROVISIONS AND ALL LICENCES NOW OR IN THE FUTURE HELD BY IT TO ENTER UPON, USE OR EXPLOIT LAND AND THE BENEFIT OF ALL OPTIONS, EASEMENTS, AGREEMENTS FOR LEASE AND OTHER AGREEMENTS RELATING TO THE ACQUISITION, USE, EXPLOITATION OR DISPOSAL OF LAND TO WHICH IT IS OR MAY IN THE FUTURE BECOME ENTITLED. BY WAY OF FIXED CHARGE TO THE LENDER, WITH THE PAYMENT OR DISCHARGE OF ALL OF THE SECURED SUMS, ALL PRESENT AND FUTURE INTELLECTUAL PROPERTY RIGHTS.**

Contains fixed charge(s).

Contains floating charge(s) (floating charge covers all the property or undertaking of the company).

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: **ANDREW JACKSON**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 5613970

Charge code: 0561 3970 0013

The Registrar of Companies for England and Wales hereby certifies that a charge dated 18th December 2015 and created by PHAROS CARE LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 29th December 2015 .

Given at Companies House, Cardiff on 30th December 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

18th December 2015

**MIDWAY CARE GROUP LIMITED and
its Subsidiaries**

**Guarantee and Debenture in favour of
Havercroft Construction Limited**

Wright Hassall LLP
Olympus Avenue
Leamington Spa
Warwickshire
CV34 6BF

Tel: 01926 886688
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THIS GUARANTEE AND DEBENTURE IS MADE ON

18th December

2015

PARTIES

- (1) The several companies named in Schedule 1 (the "**Companies**"); and
- (2) Havercroft Construction Limited incorporated and registered with company number 01900257 whose registered office is at Halifax Approach, Elsham Wolds Industrial Estate, Brigg, North Lincolnshire DN20 0SS (the "**Lender**").

BACKGROUND

- (A) The Lender has made available a loan facility to Midcroft Care Limited (the "**Borrower**").
- (B) The Guarantors have agreed to guarantee the obligations of the Borrower to the Lender upon the terms of, and subject to the conditions of this deed.
- (C) The Charging Companies have agreed to this grant the security created by this deed as security for their obligations as, respectively, Guarantors and Borrower.
- (D) This entire deed is subject to the terms of a Deed of Subordination in favour of Barclays Bank Plc entered into on or around the date of this deed.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this deed, words or expressions shall have the following meaning in this deed:

- 1.1.1 references to "**assets**" in relation to any of the Charging Companies, are references to all the Charging Company's undertaking, property, assets, rights and revenues, present or future, wherever situated in the world, and 'an asset' shall be interpreted accordingly;
- 1.1.2 "the **Charging Companies**" means the companies named in Part 1 of Schedule 1 and includes any company which subsequently adopts the obligations of a Charging Company with effect from its execution and delivery of an agreement under which it accedes to this deed or grants a guarantee and/or debenture in terms similar to this deed, and "the **Charging Company**" refers to any of the Charging Companies relevant in the circumstances;
- 1.1.3 "the **Guarantors**" means the companies identified in Part 2 of Schedule 1 and includes any company which subsequently adopts the obligations of a Guarantor with effect from its execution and delivery of an agreement under which it accedes to this deed or grants a guarantee and/or debenture in terms similar to this deed, and "the **Guarantor**" refers to any of the Guarantors relevant in the circumstances;
- 1.1.4 references to "an **encumbrance**" are references to a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

- 1.1.5 references to "**floating charge assets**", so far only as concerns the floating charge created by clause 3.3, are references to assets for the time being comprised within that floating charge;
- 1.1.6 references to "**indebtedness**" shall include references to any obligation in any currency, whether incurred as principal debtor or surety, for the payment or repayment of money, whether present or future, actual or contingent;
- 1.1.7 references to "**intellectual property rights**" are references to patents, trade marks, service marks and all goodwill associated with them, brand and trade names, copyrights and rights in the nature of copyright, design rights and registered designs, documented trade secrets and know-how and other intellectual property, applications for the protection of any such rights in any part of the world and the benefit of all agreements and licences relating to the use or exploitation of any such rights, and "**an intellectual property right**" shall be interpreted accordingly;
- 1.1.8 references to "**land**" include references to freehold and leasehold land and, outside England and Wales, immovable property and, in each case, all buildings and structures upon and all things affixed to land including trade and tenant's fixtures;
- 1.1.9 references to "**permitted encumbrances**" are references to any encumbrances permitted to be created or to subsist by the Lender;
- 1.1.10 references to "**a receiver**" are references to any receiver and manager or receivers and managers appointed under clause 12.1 and includes any substituted receiver and manager or receivers and managers;
- 1.1.11 "**the Secured Sums**" means all money and liabilities covenanted and/or guaranteed to be paid or discharged by the Borrower to the Lender under clause 2.1;
- 1.1.12 references to "**securities**" are references to all stocks, shares, debentures and loan stocks issued by any company or person and all other investments;
- 1.1.13 "**writing**" includes a fax transmission or email, except in relation to any certificate, notice or other document that is expressly required by this debenture to be signed, and 'written' has a corresponding meaning and
- 1.1.14 "**Event of Default**" means any breach of any loan agreement from the Lender to Midcroft Care Limited or any event or circumstance which entitles the Lender to call for immediate accelerated repayment of all or any sums owing under any such agreement or otherwise.

1.2 Interpretation

In this deed unless the context otherwise requires or unless otherwise expressly provided:

- 1.2.1 references to persons include references to natural persons, firms, partnerships, companies, corporations, associations, organisations, and trusts, in each case whether or not having a separate legal personality;
- 1.2.2 references to documents, instruments and agreements, including, without limitation, this deed and any document referred to in this deed, are references to such documents, instruments and agreements as modified, supplemented or novated from time to time;
- 1.2.3 references to a party to this deed include references to its successors, transferees and assigns;
- 1.2.4 references to clauses and schedules are references to clauses of, and schedules to, this deed, and references to this deed include its schedules;
- 1.2.5 references to paragraphs, unless otherwise expressly provided, are references to paragraphs of the schedule in which the references appear;
- 1.2.6 references to statutory provisions are construed, subject to 12.11, as references to those provisions as respectively amended, consolidated, extended or re-enacted from time to time, and to any orders, regulations, instruments or other subordinate legislation made under the relevant statute;
- 1.2.7 references to "a **company**" include references to any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.8 "a **regulation**" includes references to any regulation, rule, official directive, request or guideline, whether or not having the force of law, of any governmental body, agency, department or regulatory, self-regulatory or other authority or organisation;
- 1.2.9 the contents page and clause headings are included for convenience only and do not affect the construction of this deed;
- 1.2.10 words denoting the singular include the plural and vice versa; and
- 1.2.11 words denoting one gender include all genders.

2. **COVENANT TO PAY**

2.1 Each of the Guarantors and the Borrower:

- 2.1.1 covenants that it will on demand in writing made to it by the Lender pay or discharge to the Lender all money and liabilities now or in the future due, owing or incurred to the Lender by any of the Guarantors and/or the Borrower (as may be applicable); and
- 2.1.2 covenants and guarantees that it will on demand in writing made to it by the Lender pay or discharge to the Lender all money and liabilities now or in the

future due, owing or incurred to the Lender by any of the Guarantors and/or the Borrower (as may be applicable).

whether on or after such demand, whether actually or contingently, whether solely or jointly with any other person, whether as principal or surety and whether or not the Lender was an original party to the relevant transaction, including all interest, commission, fees, charges, costs and expenses that the Lender may, in the course of its business, charge or incur in respect of any of the Companies or its affairs and so that interest shall be computed and compounded (after as well as before any demand or judgment).

- 2.2 The guarantee contained in 2.1.2 is given subject to, and with the benefit of, the provisions set out in Schedule 2 by each of the Guarantors and the Borrowers separately and also jointly with all the Guarantors except the Company guaranteed.
- 2.3 Each of the Guarantors agrees to be bound by the guarantee contained in 2.1.2 even if any other company that was intended to execute this deed does not do so or is not effectually bound.
- 2.4 The making of one demand under this deed will not preclude the Lender from making any further demands.
- 2.5 No demand may be made under this deed in respect of sums due, owing or incurred except to the extent that the Lender has become entitled to make the demand relevant to it, but any third party dealing with the Lender or any receiver appointed under this deed shall not be concerned to see or enquire as to the validity of any demand under this deed.

3. CHARGING CLAUSE

- 3.1 Each of the Charging Companies, with full title guarantee, charges to the Lender with the payment or discharge of all of the Secured Sums:
 - 3.1.1 by way of legal mortgage, all freehold and leasehold land in England and Wales now vested in each Charging Company and registered at HM Land Registry;
 - 3.1.2 by way of legal mortgage, all other freehold and leasehold land in England and Wales now vested in the Charging Company and not registered at HM Land Registry;
 - 3.1.3 by way of fixed charge, all land in the future becoming the property of the Charging Company;
 - 3.1.4 by way of fixed charge, all interests in land or the proceeds of sale of land now or in the future belonging to the Charging Company that have not already been charged under the preceding provisions of this clause 3.1 and all licences now or in the future held by it to enter upon, use or exploit land and the benefit of all options, easements, agreements for lease and other agreements relating to the acquisition, use, exploitation or disposal of land to which it is or may in the future become entitled; and

- 3.1.5 by way of fixed charge, all plant and machinery of the Charging Company now or in the future attached to any land which, or an interest in which, is charged under the preceding provisions of clause 3.1 or clause 3.2 and all rights and interests of the Charging Company under all present and future agreements for the purchase, maintenance or use of plant and machinery so attached.
- 3.2 Each of the Charging Companies, with full title guarantee, charges by way of fixed charge to the Lender with the payment or discharge of all of the Secured Sums:
- 3.2.1 all contracts and policies of insurance and assurance now or in the future held by or otherwise benefiting it and all rights and interests of it in every such contract and policy, including the benefit of all claims arising and all money payable under such contracts and policies;
- 3.2.2 all its goodwill and uncalled capital for the time being;
- 3.2.3 all present and future intellectual property rights; and
- 3.2.4 the benefit of all negotiable instruments, guarantees, bonds, debentures, legal or equitable charges and all other security, reservation of proprietary rights, rights of tracing, unpaid vendor's liens and all other rights and remedies now or in the future available to it as security for any receivable or for the performance by any third party of any obligation now or in the future owed to it.
- 3.3 Each of the Charging Companies, with full title guarantee, charges by way of floating charge with the payment to the Lender and discharge of all of the Secured Sums:
- 3.3.1 all its present and future assets except to the extent that those assets are for the time being effectively charged by any fixed charge contained in clauses 3.1 or 3.2, including any assets comprised within a charge reconverted under clause 4.4.;
- 3.3.2 without exception, all assets in so far as they are for the time being situated in Scotland.
- 3.4 Each of the Charging Companies, with full title guarantee, assigns in favour of the Lender all its present or future claims against the lessees, sub-lessees or licensees of its land and all guarantors and sureties for the obligations of such lessees, sub-lessees or licensees.
- 3.5 Any mortgage, fixed charge or other fixed security whenever and however created by any of the Charging Companies and subsisting in favour of the Lender will have priority over the floating charge created by clause 3.3, save as the Lender may otherwise declare at or after the time of its creation.
- 3.6 Any debentures, mortgages or charges, fixed or floating, created in the future by any of the Charging Companies, except those in favour of the Lender, must be expressed to be subject to this deed and will rank in order of priority behind the charges created by this deed.

4. CRYSTALLISATION OF FLOATING CHARGE

4.1 The floating charge created by any of the Charging Companies in clause 3.3 may be crystallised into a fixed charge by notice in writing given by the Lender to the Charging Company at any time after the security constituted by this deed becomes enforceable. The crystallisation shall take effect over the floating charge assets or class or classes of floating charge assets specified in the notice. If no floating charge assets are so specified, it shall take effect over all floating charge assets of the relevant Charging Company.

4.2 If:

4.2.1 any of the Charging Companies, without the Lender's prior written consent, resolves to take or takes any step to create an encumbrance (other than a permitted encumbrance) over any floating charge asset or to create a trust over any floating charge asset or to dispose of it except by way of sale or other disposition in the ordinary course of the Charging Company's business; or

4.2.2 any person resolves to take or takes any step under any procedure for the taking of control of any floating charge asset;

then the floating charge created by clause 3.3 will be automatically crystallised, without the necessity of notice, into a fixed charge over the relevant floating charge asset instantly on the occurrence of such event.

4.3 Except as otherwise stated in any notice given under clause 4.1 or unless the notice relates to all floating charge assets, floating charge assets acquired by any of the Charging Companies after crystallisation has occurred under clauses 4.1 or 4.2 are to become subject to the floating charge created by clause 3.3, so that the crystallisation will be effective only as to the Charging Company's floating charge assets in existence at the date of crystallisation.

4.4 Any charge by any of the Charging Companies that has crystallised under clauses 4.1 or 4.2 may, by notice in writing given at any time by the Lender to the Charging Company, be reconverted into a floating charge in relation to the assets or class of assets specified in the notice.

4.5 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by any of the Charging Companies in clause 3.3.

5. CONTINUING SECURITY

5.1 This deed is to be a continuing security to the Lender notwithstanding any intermediate payment or settlement of account or any other matter whatever, and is to be in addition to and not prejudice or be prejudiced by any encumbrance, other than any permitted encumbrance, set-off, combination or other rights exercisable by the Lender against the Companies (or any of them) or any security, guarantee, indemnity or negotiable instrument now or in the future held by the Lender.

6. GENERAL COVENANTS

- 6.1 Each of the Companies must at all times immediately notify the Lender in writing of its acquisition of any interest or right in or to any land or intellectual property rights.
- 6.2 The Companies shall not at any time, except with the prior written consent of the Lender:
- 6.2.1 create, purport to create or permit to subsist any encumbrance on, or in relation to, any of its asset other than any created by this deed or any created on or before the date of this deed in favour of Barclays Bank Plc and referred to in a deed of subordination dated on or around the date of this deed;
 - 6.2.2 sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the assets (except, in the ordinary course of business, assets that are only subject to an uncrystallised floating charge); or
 - 6.2.3 create or grant (or purport to create or grant) any interest in assets in favour of a third party.
- 6.3 Each Charging Company consents to an application being made by the Lender (if it so wishes at any time on or after the date of this deed) to the Land Registrar for the following restriction in Form P to be registered against its title to each leasehold or freehold property owned by each Charging Company:
- 6.3.1 "No disposition of the registered estate by the proprietor of the registered estate [or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction] is to be registered without a written consent signed by the proprietor for the time being of the charge dated [DATE] in favour of [NAME OF PARTY] referred to in the charges register [or [their conveyancer or specify appropriate details]]."

7. INSURANCE

- 7.1 None of the Charging Companies may do or omit to be done anything that may render any policy of insurance charged by this deed void or voidable.
- 7.2 All money received by any of the Charging Companies on any policy of insurance must be paid to the Lender and applied towards making good the loss or damage in respect of which the money was received or, if the loss or damage has already been made good, in refinancing money expended in that connection or, at the option of the Lender after the security constituted by this deed has become enforceable, towards the discharge of the Secured Sums. If any money payable under any policy of insurance is paid to any of the Charging Companies, the Charging Company must hold the money on trust for the Lender.

8. PROPERTY UNDERTAKINGS

8.1 Each of the Charging Companies must:

- 8.1.1 keep all buildings and all plant, machinery, fixtures, fittings and other effects charged under this deed in good repair and in good working order, except only for fair wear and tear, and must not, without the prior written consent of the Lender, alter, pull down, remove or dispose of any of them except in the ordinary course of repair, maintenance or improvement;
- 8.1.2 punctually pay or cause to be paid and keep the Lender indemnified against, all present and future rents, rates, taxes, levies, charges, duties, assessments, impositions and outgoings whatever, whether parliamentary, parochial, local or otherwise, assessed, charged or imposed upon or now or in respect of its land or in which it has an interest and, when required, produce to the Lender proof of such payment;
- 8.1.3 ensure the due observance of all laws, statutes, statutory instruments, regulations and bye-laws for the time being in force and all notices, orders and requirements of any competent authority, statutory or otherwise, and all directives and codes of practice affecting its land, or land in which it has an interest, or its business or its assets or relating to the protection of the environment or health and safety and carry out all works and give effect to all arrangements which any such authority may direct or recommend;
- 8.1.4 complete with reasonable expedition any building operations (all of which must be previously approved by the Lender) commenced at any time by it on its land to the satisfaction of the Lender and any competent authority and in conformity with all requisite planning and bye-law consents, including the provisions of any agreement it enters into with any such authority;
- 8.1.5 observe and perform all agreements, assignments, contracts, conveyances, grants and other deeds and documents for the time being binding on it or affecting its land or its use or enjoyment, and not take or omit to take any action of any kind whereby its interest or estate in its land may be forfeited or otherwise adversely affected;
- 8.1.6 punctually pay the rents reserved by any lease, tenancy or licence and observe and perform its other obligations under any lease, agreement for lease, tenancy agreement or licence to occupy any land and enforce the observance and performance by the landlord or licensor of their respective obligations under any such document;
- 8.1.7 supply to the Lender within 7 days of receipt copies of any notice, order or proposal it receives from any competent authority, statutory or otherwise, or from any landlord or tenant affecting any such land in any material respect, and, at its own cost either punctually comply with the notice or order or, if so requested by the Lender, make or join with the Lender in making such objections or

representations or taking such other steps as the Lender may think fit, and any compensation received as a result must be charged to the Lender and paid to it and applied in or towards the discharge of the Secured Sums;

- 8.1.8 promptly on receipt, cause a copy of each professional valuation report it obtains in relation to its land to be provided to the Lender; and
 - 8.1.9 notify the Lender, promptly on receipt, of any claim, notice or other communication received by it alleging non-compliance by it in relation to any matter referred to in this clause 8.1.
- 8.2 None of the Charging Companies may, without the prior written consent of the Lender, at any time:
- 8.2.1 erect any building or make any structural alteration or apply for any planning consent for the development or change of use of any such land, or, save in the ordinary course of repair, replacement or improvement, at any time sever, remove or dispose of any fixture on it; or
 - 8.2.2 enter into onerous or restrictive obligations affecting its land or create or permit to arise any overriding interest or any easement or right whatever in or over it that might materially adversely affect its value or the value of the security over it.
- 8.3 If any of the Charging Companies defaults in the performance of any undertaking contained in this clause 8, the Lender or any receiver may (but need not) do whatever may be necessary to rectify the default, and all sums expended by the Lender or any receiver under this clause 8 are to be recoverable by the Lender or receiver from the Charging Company under clause 15. The Charging Company must also permit the Lender for this purpose to enter upon its land to effect such repairs as the Lender may consider necessary without becoming liable as a mortgagee in possession.
- 8.4 Each of the Charging Companies must indemnify the Lender and its employees and Lenders fully at all times against any claim, liability, loss or expense incurred by them directly or indirectly as a result of any failure by the Charging Company to comply with this clause 8 or to comply with any law, regulation, directive or code of practice applicable to the Charging Company or to its business or assets or relating to the protection of the environment or health and safety.

9. INTELLECTUAL PROPERTY UNDERTAKINGS

- 9.1 Each of the Charging Companies must, during the continuance of this security, unless the Lender otherwise agrees in writing:
- 9.1.1 take all necessary action to protect and maintain its intellectual property rights and franchises, wherever situated, that are material to its business and contracts, promptly notify the Lender of any infringement or alleged infringement or any challenge to the validity of any intellectual property rights of which the

Charging Company has notice and supply the Lender with all information in its possession relating to them as the Lender may request;

9.1.2 duly register in such register(s) or with such authorities as may be available for the purpose, in the United Kingdom or elsewhere, and in such name(s) as may be required by the law and practice of the place of registration, such of the following as may be capable of registration, whether in the United Kingdom or elsewhere:

- (a) this deed;
- (b) all licences, registered user agreements or other interests granted to or acquired by the Charging Company relating to its intellectual property rights; and
- (c) all future assignments and/or mortgages made under this deed,

and pay all fees and costs in connection with such registration,

9.1.3 pay all application, registration, renewal and other payments necessary to effect, protect, maintain or renew registrations required to be made under clause 9.1.2, do all other acts and things necessary to maintain all intellectual property rights in full force and effect, and send or deliver to the Lender the receipt for every such payment immediately after it has been made;

9.1.4 maintain an up-to-date record of all trade marks and intellectual property rights belonging to it, all applications for registration of trade marks and all copyright, patents and patent applications owned by the Charging Company and provide a copy to the Lender on written request;

9.1.5 not sell, assign, transfer, license or agree to license any intellectual property rights belonging to it or any interest in them, or permit any third party to use them;

9.1.6 diligently commence and prosecute all proceedings that may be necessary to prevent infringement of any intellectual property rights belonging to it where the infringement has or could have a material effect on its business.

9.2 If any of the Charging Companies defaults in carrying out its obligations under clause 10.1, the Lender or a receiver may carry out any acts or things at the expense of the relevant Charging Company necessary to protect the Lender's interest under this deed or to protect or maintain the relevant intellectual property rights.

9.3 All money expended by the Lender under this provision is to be recoverable by the Lender or any receiver from the Charging Company under clause 15.

10. LEASES, POSSESSION OF LAND AND CONSOLIDATION OF MORTGAGES

10.1 None of the Charging Companies may, without the prior written consent of the Lender:

- 10.1.1 exercise any power of leasing its land, or accepting surrenders of leases of its land; or
 - 10.1.2 save where obliged to do so by law, extend, renew or vary any lease or tenancy agreement or give any licence to assign or underlet.
- 10.2 None of the Charging Companies may part with possession of its land except on the determination of any lease, tenancy or licence granted to it, or share the occupation of it with any other person, or agree to do so, without the prior written consent of the Lender.
- 10.3 Section 93 of the Law of Property Act 1925 is not to apply to this deed.
- 11. POWERS OF SALE, LEASING, ACCEPTING SURRENDERS AND SEVERANCE**
- 11.1 Section 103 of the Law of Property Act 1925 is not to apply to this deed, but as between the Lender and a purchaser from the Lender the statutory power of sale is to arise on, and be exercisable at any time after, the execution of this deed. The Lender must not exercise the power of sale until payment of the Secured Sums has been demanded, or a receiver has been appointed, but this provision is not to affect a purchaser or require him to ask whether a demand or appointment has been made.
- 11.2 The statutory powers of sale, leasing and accepting surrenders exercisable by the Lender by virtue of this deed are extended so as to authorise the Lender to grant leases of any land vested in any of the Charging Companies or in which any of them has an interest:
 - 11.2.1 after the security constituted by this deed has become enforceable;
 - 11.2.2 in its own name or that of the Charging Company concerned; and
 - 11.2.3 on any terms and conditions the Lender thinks fit.
- 11.3 The statutory power of sale exercisable by the Lender is extended so as to authorise the Lender to sever any fixtures from land and sell them separately.
- 11.4 No person dealing with the Lender or any receiver, its Lenders or delegates, need:
 - 11.4.1 enquire whether:
 - (a) this deed has become enforceable;
 - (b) any power exercised or purported to be exercised has become exercisable; or
 - (c) any of the Secured Sums remain due upon this deed,
 - 11.4.2 enquire as to the necessity or expediency of any stipulations and conditions subject to which the sale of any asset is made, or otherwise as to the propriety or regularity of the sale of any asset; or

11.4.3 see to the application of any money paid to the Lender or a receiver, or its Lenders or delegates,

and each such dealing is deemed to be within the powers conferred by this deed and to be valid and effectual accordingly.

12. ENFORCEMENT

12.1 At any time:

12.1.1 after the Lender has in writing demanded payment of any of the Secured Sums from any of the Companies; or

12.1.2 notwithstanding the terms of any other agreement between any of the Charging Companies and the Lender, after a proposal has been made for a voluntary arrangement or a petition has been presented for an administration order in relation to any of the Companies pursuant to the Insolvency Act 1986 Part I or Part II and Schedule B1 as inserted by the Enterprise Act 2002; or

12.1.3 if so requested by any of the Charging Companies in respect of its own assets;

12.1.4 an Event of Default occurs;

the security constituted by this deed shall become immediately enforceable.

12.2 At any time after the security constituted by this deed has become enforceable the Lender may appoint by writing any person to be a receiver and manager of all or any part of the assets of the Charging Company or may appoint any one or more persons to be administrators.

12.3 After the security constituted by this deed has become enforceable, the Lender may, in its absolute discretion, 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 assets secured by this deed.

12.4 The Lender shall be entitled (but shall not be obliged) to remedy, at any time, a breach by a Company of any of its obligations contained in this deed and each Company authorises the Lender and its agents to do all things that are necessary or desirable for that purpose and any monies expended by the Lender in remedying such a breach shall be reimbursed by the Companies to the Lender on a full indemnity basis and shall carry interest in accordance with clause 15.1.

12.5 To the extent permitted by law, any right, power or discretion conferred by this deed on a receiver may, after the security constituted by this deed has become enforceable, be exercised by the Lender in relation to any of the assets whether or not it has taken possession of any assets and without first appointing a receiver or notwithstanding the appointment of a receiver.

- 12.6 Where more than one receiver is appointed, they may act separately unless the Lender in the appointment specifies to the contrary.
- 12.7 The Lender may from time to time determine the remuneration of the receiver.
- 12.8 The Lender may, subject to the Insolvency Act 1986 section 45, remove the receiver from the assets of which he is receiver.
- 12.9 Appointment of a receiver and manager is not to preclude:
- 12.9.1 the Lender from making any subsequent appointment of a receiver over all or any assets over which a receiver has not previously been appointed or has ceased to act; or
 - 12.9.2 a receiver, while continuing to act, consenting to the appointment of an additional receiver to act with him.
- 12.10 A receiver is to be the agent of the Charging Company concerned, which will be solely liable for his acts, defaults and remuneration, unless and until the Charging Company goes into liquidation, after which he must act as principal and will not become the agent of the Lender.
- 12.11 A receiver will have and may exercise in relation to the Charging Company concerned all the powers set out in the Insolvency Act 1986 Schedule I as in force at the date of this deed, and in particular, by way of addition and without limiting such powers, and without prejudice to the powers of the Lender, a receiver may, either in his own name or in the name of the Charging Company:
- 12.11.1 in connection with any sale or other disposition of the assets of the Charging Company, receive the consideration for the sale in a lump sum or in instalments and receive shares by way of consideration;
 - 12.11.2 grant options, licences or any other interest whatsoever in the assets of the Charging Company;
 - 12.11.3 sever fixtures from, and repair, improve and make any alterations to, the assets of the Charging Company;
 - 12.11.4 exercise any voting rights appertaining to the Charging Company;
 - 12.11.5 do all other acts and things which he may consider desirable or necessary for realising any asset of the Charging Company or incidental or conducive to any of the rights, powers or discretions conferred on a receiver under or by virtue of this deed; and
 - 12.11.6 exercise in relation to any asset of the Charging Company all the powers, authorities and things which he would be capable of exercising if he was the absolute beneficial owner of the asset.

12.12 Neither the Lender nor any receiver is to be liable to account as mortgagee in possession or otherwise for any money not actually received.

12.13 Section 109 of the Law of Property Act 1925 is not to apply to this deed.

13. POWER OF ATTORNEY

13.1 Each of the Charging Companies, by way of security, irrevocably appoints the Lender, whether or not a receiver has been appointed, and any receiver separately, to be the attorney of the Charging Company with full power to appoint substitutes and to delegate, for the Charging Company, in its name and on its behalf, and as its act and deed or otherwise, at any time after this security has become enforceable to execute and deliver and otherwise perfect any agreement, assurance, deed, instrument or document, or perform any act that may be required of the Charging Company under this deed, or may be deemed by the attorney necessary or desirable for any purpose of this deed or to enhance or perfect the security intended to be constituted by it or to convey or transfer legal ownership of any assets.

13.2 Without prejudice to the generality of the provisions contained in clause 13.1 each of the Charging Companies covenants with the Lender and separately with any receiver that if required so to do it will ratify and confirm:

13.2.1 all transactions entered into by it or them in the proper exercise of its or their powers in accordance with this deed; and

13.2.2 all transactions entered into by it or them in signing, sealing, delivering and otherwise perfecting any assignment, mortgage, charge, security, deed, assurance, document or act as aforesaid.

14. APPLICATION OF MONEY RECEIVED BY THE LENDER OR A RECEIVER

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

14.1.1 in satisfaction of all costs, charges and expenses incurred, and payments made, by the Lender and/or a receiver, and of the remuneration of the receiver;

14.1.2 in or towards satisfaction of the Secured Sums; and

14.1.3 as to the surplus, if any, to the person or persons entitled to it.

14.2 The Lender may, in its absolute discretion on or at any time or times after demand and pending the payment to the Lender of the whole of the Secured Sums, place and keep to the credit of a separate or suspense account any money received, recovered or realised by the Lender by virtue of this deed for so long and in such manner as the Lender may determine without any intermediate obligation to apply it in or towards the discharge of any of the Secured Sums.

15. COSTS AND INTEREST ON OVERDUE AMOUNTS

15.1 All costs, charges and liabilities, including all professional fees and disbursements and VAT and/or any similar tax, and all other sums paid or incurred by the Lender, may be recovered on a full indemnity basis as a debt payable on demand from such of the Companies as the Lender may select, may be debited without notice to any account of the Companies, shall bear interest accordingly and shall be charged on the assets of the Companies. Each of the Charging Companies must indemnify the Lender against all and any costs, charges and expenses arising:

15.1.1 out of any of the property charged or assigned pursuant to clauses 3 or 5 resulting from it infringing or allegedly infringing any third party rights; and

15.1.2 in relation to any proceedings referable to the Charging Company brought against the Lender or to which the Lender may be joined whether as plaintiff or defendant that relate to any of such charged property.

15.2 Without prejudice to the generality of clause 15.1 the costs recoverable by the Lender and/or any receiver under this deed include:

15.2.1 all reasonable costs incurred by the Lender in preparing and administering this deed or perfecting the security created by it;

15.2.2 all reasonable costs, whether or not allowable on a taxation by the court, of all proceedings for the enforcement of this deed or for the recovery or attempted recovery of the Secured Sums;

15.2.3 all money expended and all costs arising out of the exercise of any power, right or discretion conferred by this deed;

15.2.4 all costs and losses arising from any default by any of the Companies in payment of any of the Secured Sums when due or performance of its obligations under this deed.

16. RETENTION AND SET OFF

16.1 The Lender may retain any money standing to the credit of any of the Companies with the Lender in any currency upon any account or otherwise as cover for any of the Secured Sums and/or at any time or times without notice to the applicable Company combine or consolidate all or any of such money with all or such part of the Secured Sums as the Lender may select, whether presently payable or not, and the Lender may purchase with any such money any other currency required to effect such combination.

16.2 Each of the Companies irrevocably authorises the Lender to perform such acts and sign such documents as may be required to give effect to any set-off or transfer pursuant to clause 16.1, including the purchase with the money standing to the credit of any such account of such other currencies as may be necessary to effect such set-off or transfer.

- 16.3 This clause 16 gives to the Lender a contractual right of set-off only, and does not create any equitable charge or other encumbrance over any credit balance of any of the Charging Companies.

17. FORBEARANCE AND SEVERABILITY

- 17.1 All rights, powers and privileges under this deed are to continue in full force and effect, regardless of the Lender exercising, delaying in exercising or omitting to exercise any of them.
- 17.2 None of the covenants and guarantees given and none of the charges created by the Companies under this deed is to be avoided or invalidated by reason only of one or more of them being invalid or unenforceable.
- 17.3 Any provision of this deed which for any reason is or becomes illegal, invalid or unenforceable is to be ineffective only to the extent of such illegality, invalidity and unenforceability, without invalidating the remaining provisions of this deed.

18. VARIATIONS AND CONSENTS

- 18.1 No variation of this deed is to be considered valid and as constituting part of this deed, unless it is made in writing and signed by the Lender and the Companies.
- 18.2 The expression 'variation' includes any variation, supplement, extension, deletion or replacement however effected.
- 18.3 Save as otherwise expressly specified in this deed, any consent of the Lender may be given absolutely or on any terms and subject to any conditions as Lender may determine in its entire discretion.

19. SERVICE OF DEMANDS AND NOTICES

- 19.1 A demand for payment or any other demand or notice under this deed may be made or given by any manager or officer of the Lender in writing addressed to the Company concerned and served on it at the address for service of the Company stated in Schedule 1 or its existing or last known place of business (or, if more than one, any one of such places), or by fax to the fax number last known to the Lender, or by email to the last known email address known to the Lender. Service of a demand or notice by some other method or at some other address is valid provided it comes to the attention of the addressee.
- 19.2 A notice or demand will be deemed to be duly served on any of the Companies:
- 19.2.1 if delivered by hand, when left at such an address;
- 19.2.2 if sent by post, at noon on the next day following the day of posting even if it is misdelivered or returned undelivered; and
- 19.2.3 if given or made by fax or email, at the time of transmission;

19.2.4 provided that, where delivery or transmission occurs after 1800 hours on a business day or on a day that is not a business day, service will be deemed to occur at 0900 hours on the next business day.

19.3 Any communication to the Lender will be deemed to have been given only on actual receipt by it.

20. COUNTERPARTS

This deed may be executed by any of the Companies in any number of copies, all of which taken together shall constitute a single deed.

21. JOINT AND SEPARATE LIABILITY

21.1 Unless the context otherwise requires, all covenants, agreements, representations and warranties on the part of the Companies contained in this deed are given by them jointly and separately and are to be construed accordingly.

22. PROVISIO FOR REDEMPTION AND RELEASES

22.1 On payment and discharge in full of the Secured Sums or if any of the Charging Companies wishes to dispose of an asset charged by way of fixed charge under this deed where disposal is permitted under this deed, the Lender must, at the request and cost of the Charging Company, execute a release and reassignment of all or any part of the security comprised in this deed in the form the Charging Company reasonably requires.

23. GOVERNING LAW AND JURISDICTION

23.1 This deed is to be governed by and construed in all respects in accordance with the laws of England.

23.2 The parties irrevocably agree that the courts of England are to have jurisdiction to settle any dispute that may arise out of, or in connection with, this deed and that, accordingly, any suit, action or proceedings (together in this clause referred to as 'proceedings') arising out of, or in connection with, this deed may be brought in such courts.

SCHEDULE 1 THE CHARGING COMPANIES

Part 1 The Charging Companies

- 1.1 MIDWAY CARE GROUP LIMITED incorporated and registered in England and Wales with company number 07209472 whose registered office is at Virginia House, 56 Warwick Road, Solihull, West Midlands, B92 7HX
- 1.2 PHAROS SUPPORT LIMITED incorporated and registered in England and Wales with company number 06533283 whose registered office is at Harmac House, 131 Lincoln Road North, Acocks Green, Birmingham, West Midlands, B27 6RT
- 1.3 MIDWAY SUPPORT SERVICES LIMITED incorporated and registered in England and Wales with company number 06917712 whose registered office is at Virginia House, 56 Warwick Road, Solihull, West Midlands, B92 7HX
- 1.4 MIDDLEWAY CARE LIMITED incorporated and registered in England and Wales with company number 05864420 whose registered office is at Virginia House, 56 Warwick Road, Solihull, West Midlands, B92 7HX
- 1.5 MIDWAY CARE LIMITED incorporated and registered in England and Wales with company number 06470043 whose registered office is at Virginia House, 56 Warwick Road, Solihull, West Midlands, B92 7HX
- 1.6 MIDWAY WARWICKSHIRE CARE LIMITED incorporated and registered in England and Wales with company number 05388795 whose registered office is at Virginia House, 56 Warwick Road, Solihull, West Midlands, B92 7HX
- 1.7 PHAROS CARE LIMITED incorporated and registered in England and Wales with company number 05613970 whose registered office is at Harmac House, 131 Lincoln Road North, Acocks Green, Birmingham, West Midlands, B27 6RT.
- 1.8 MIDCROFT CARE LIMITED incorporated and registered in England and Wales with company number 07994998 whose registered office is at Virginia House, 56 Warwick Road, Solihull, West Midlands, B92 7HX

Part 2 The Guarantors

- 1.1 MIDWAY CARE GROUP LIMITED incorporated and registered in England and Wales with company number 07209472 whose registered office is at Virginia House, 56 Warwick Road, Solihull, West Midlands, B92 7HX
- 1.2 PHAROS SUPPORT LIMITED incorporated and registered in England and Wales with company number 06533283 whose registered office is at Harmac House, 131 Lincoln Road North, Acocks Green, Birmingham, West Midlands, B27 6RT
- 1.3 MIDWAY SUPPORT SERVICES LIMITED incorporated and registered in England and Wales with company number 06917712 whose registered office is at Virginia House, 56 Warwick Road, Solihull, West Midlands, B92 7HX

- 1.4 MIDDLEWAY CARE LIMITED incorporated and registered in England and Wales with company number 05864420 whose registered office is at Virginia House, 56 Warwick Road, Solihull, West Midlands, B92 7HX
- 1.5 MIDWAY CARE LIMITED incorporated and registered in England and Wales with company number 06470043 whose registered office is at Virginia House, 56 Warwick Road, Solihull, West Midlands, B92 7HX
- 1.6 MIDWAY WARWICKSHIRE CARE LIMITED incorporated and registered in England and Wales with company number 05388795 whose registered office is at Virginia House, 56 Warwick Road, Solihull, West Midlands, B92 7HX
- 1.7 PHAROS CARE LIMITED incorporated and registered in England and Wales with company number 05613970 whose registered office is at Harmac House, 131 Lincoln Road North, Acocks Green, Birmingham, West Midlands, B27 6RT.

SCHEDULE 2 TERMS OF GUARANTEE

2. TERMS OF GUARANTEE

- 2.1 This guarantee is a continuing guarantee and shall extend to the ultimate balance of all sums payable by the Companies under this deed.
- 2.2 Where any discharge, whether in respect of the obligations of any of the Companies or any security for them or otherwise, is made in whole or in part or any arrangement is made on the faith of any payment, security or other disposition that is avoided or must be repaid on bankruptcy, liquidation or otherwise without limitation, the liability of the Guarantors under this guarantee is to continue as if there had been no such discharge or arrangement. The Lender may concede or compromise any claim that any such payment, security or other disposition is liable to avoidance or repayment.
- 2.3 The obligations of the Guarantors under this deed are not to be affected by any act, omission, matter or thing that, but for this provision, might operate to release or otherwise exonerate the Guarantors from their obligations under this deed in whole or in part, including without limitation and whether or not known to the Guarantors or the Lender:
- 2.3.1 any time or waiver granted to or composition with the Companies or any other person;
 - 2.3.2 the taking, variation, compromise, renewal or release of, or refusal or neglect to perfect or enforce, any rights, remedies or securities against the Companies or any other person;
 - 2.3.3 any legal limitation, disability, incapacity or other circumstances relating to the Companies or any other person;
 - 2.3.4 any variation of this deed or any other document or security; or
 - 2.3.5 any unenforceability, invalidity or frustration of any obligations of the Companies, this deed or any other document or security, to the intent that the obligations of the Guarantors under this deed shall remain in full force and this guarantee be construed accordingly as if there were no such unenforceability, invalidity or frustration.
- 2.4 The Guarantors waive any right they may have of requiring the Lender to proceed against, or enforce any other rights of security of, or claim payment from any other person before claiming from the Companies under this deed.
- 2.5 Until all amounts that may be or become payable by the Companies have been irrevocably paid and discharged in full, the Lender may:
- 2.5.1 refrain from applying or enforcing any other security, money or rights held or received by the Lender in respect of such amounts or apply and enforce them in

such manner and order as the Lender sees fit, whether against such amounts or otherwise, and the Guarantors are not to be entitled to the benefit of them;

- 2.5.2 hold in suspense account, without liability to pay interest on it, any money received from the Companies or on account of the Companies' liability under this deed; and
 - 2.5.3 appropriate as they or each of them see fit, any money received from the Companies to any part of the liability of the Companies whether it be principal or interest and whenever arising.
- 2.6 The Lender need not make the appropriation referred to in paragraph 2.5.3 above at the time of the receipt but may make the appropriation at any time at their sole discretion, and need not give any form of notice to the Companies of such appropriation after it has occurred.
- 2.7 The Companies waive any right to appropriate any money received by the Companies, irrevocably covenant not to make any such appropriation and further agree that any such purported appropriation shall be null and void.
- 2.8 Until all amounts that may be or become payable by the Companies have been irrevocably paid in full, the Guarantors will not, after default and a claim has been made pursuant to this guarantee:
- 2.8.1 be subrogated to any rights, security or money held, received or receivable by the Lender or be entitled to any right of contribution in respect of any payment made or money received on account of the Companies' liability under this deed;
 - 2.8.2 be entitled to rank as creditor against the estate, or in the bankruptcy or liquidation, of the Companies in competition with the Lender, and must not claim to do so; or
 - 2.8.3 receive, claim or have the benefit of any payment, distribution or security from or on account the Companies or exercise any right of set-off as against the Companies.
- 2.9 This guarantee shall be in addition to, and shall not in any way be prejudiced by, any other security now or hereafter held by the Lender as security for the obligations of the Companies to the Lender.
- 2.10 A certificate of the Lender as to any amount owing from the Companies (under this deed or otherwise) shall be conclusive evidence of such amount as against the Guarantors.

Executed as a deed by

HAVERCROFT CONSTRUCTION LIMITED

In the presence of:

.....

Witness

Name: SEAN MATTHEWS

Address:

Occupation: ESTIMATOR

Executed as a deed by

MIDWAY CARE GROUP LIMITED

In the presence of:

.....

Witness

Name: SOPHIE MILWARD

Address:

Occupation: SOLICITOR

Executed as a deed by

PHAROS SUPPORT LIMITED

In the presence of:

.....

Witness

Name: SOPHIE MILWARD

Address:

Occupation: SOLICITOR

Executed as a deed by

MIDWAY SUPPORT SERVICES LIMITED

In the presence of:

.....

Witness

Name: SOPHIE MILLARD

Address:

Occupation: SOLICITOR

Executed as a deed by

MIDDLEWAY CARE LIMITED

In the presence of:

.....

Witness

Name: SOPHIE MILLARD

Address:

Occupation: SOLICITOR

Executed as a deed by

MIDWAY CARE LIMITED

In the presence of:

..

Witness

Name: SOPHIE MILLARD

Address:

Occupation: SOLICITOR

Executed as a deed by

MIDWAY WARWICKSHIRE CARE LIMITED

In the presence of:

...

Witness

Name: SOPHIE MILLARD

Address:

Occupation: SOLICITOR

Executed as a deed by

PHAROS CARE LIMITED

In the presence of:

..

Witness

Name: SOPHIE MILLARD

Address:

Occupation: SOLICITOR

Executed as a deed by

MIDCROFT CARE LIMITED

In the presence of:

.....

Witness

Name: SEAN MATTHEWS

Address:

Occupation: ESTIMATOR