Companies House

MR01 (ef)

Registration of a Charge

Company name: **OPORTUNITAS LIMITED**

Company number: **09038505**

Received for Electronic Filing: **08/12/2014**

X3MA9G29

Details of Charge

Date of creation: **17/11/2014**

Charge code: **0903 8505 0002**

Persons entitled: **SHEPWAY DISTRICT COUNCIL**

Brief description: **2,4,6 AND 16 WATLER TULL WAY FOLKESTONE KENT CT20 5 UN**

Contains fixed charge(s).

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 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **AMANDEEP KHROUD**

CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 9038505

Charge code: 0903 8505 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 17th November 2014 and created by OPORTUNITAS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 8th December 2014 .

Given at Companies House, Cardiff on 8th December 2014

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

Date: 17 November 2014

OPORTUNITAS LIMITED

IN FAVOUR OF

SHEPWAY DISTRICT COUNCIL

AS LENDER

FIXED CHARGE
over **2, 4,6 & 16 Walter Tull Way**
Folkestone Kent
CT20 5UN

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Schedule 1 Real Property

THIS FIXED CHARGE is dated 17th November 2014

BETWEEN

(1) **OPORTUNITAS LIMITED,** (registered number: 09038505) whose registered office is at Shepway District Council, The Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY (the "**Borrower**"); and

(2) **SHEPWAY DISTRICT COUNCIL** of **[**The Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY**]**) (the "**Lender**"),

(together the "**Parties**" and each a "**Party**")

1 INTERPRETATION

1.1 In this Fixed Charge, the following terms have the meanings given to them in this Clause 1.1:

Charged Property
means the land, property, assets and income of the Borrower for the time being assigned or charged (whether by way of legal mortgage or fixed charge) to the Lender by or pursuant to this Fixed Charge and each and every part thereof;

Planning Acts
means the Town and Country Planning Acts 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning and Compensation Act 1991 and any Act or Acts for the time being in force amending or re-enacting the same and any orders, regulations or permissions made, issued or granted under or by virtue of such Acts or any of them;

Real Property
means all estates and other interests in the properties more particularly specified in Schedule 1 (Real Property) and all buildings, trade and other fixtures, fixed plant and machinery (excluding tenants fixtures and fittings) from time to time on any such property; and

Receiver
means a receiver, receiver and manager or administrative receiver of any or all of the Charged Property appointed by the Lender under clause 11 .

1.2 The terms of the documents under which the Obligations (as defined below) arise and of any agreements between the parties hereto in relation to such documents are incorporated herein to the extent required for any purported disposition of the Charged Property contained herein to be a valid disposition in accordance with Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

1.3 The Clause headings are for reference only and shall not affect the construction of this Fixed Charge.

1.4 A person who is not a party to this Fixed Charge has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this Fixed Charge.

2 THE OBLIGATIONS

2.1 In this Fixed Charge, the term "Obligations" means all monies and liabilities, whether certain or contingent, which now or hereafter may be or become due and owing by the Borrower to the Lender.

2.2 The Borrower hereby acknowledges to the Lender the liability of the Borrower with respect to the Obligations and further covenants with the Lender that it shall, on the Lender's demand, pay to the Lender all monies constituting the Obligations.

3 LEGAL MORTGAGE AND ASSIGNMENT

3.1 The Borrower with full title guarantee hereby charges with the payment and discharge of the Obligations by way of first legal mortgage the Real Property.

3.2 The Borrower with full title guarantee hereby assigns to the Lender the benefit to the Borrower of all rights and claims to which the Borrower is now or may hereafter become entitled in relation to the Real Property including in particular (but without prejudice to the generality of the foregoing) all rights and claims of the Borrower against all persons who now are or who at any time have been or may become lessees of the whole or any part of the Real Property and all guarantors and sureties for the obligations of such persons.

3.3 The Borrower agrees that the security granted by it in this Fixed Charge shall be a continuing security in favour of the Lender extending to all beneficial interests of the Borrower in the assets hereby charged and to any proceeds of sale or other realisation thereof or of any part thereof.

3.4 The security from time to time constituted by or pursuant to this Fixed Charge shall:

3.4.1 be in addition to and shall be independent of every bill, note, guarantee, mortgage or other security which the Lender may at any time hold for any of the Obligations and it is hereby declared that no prior security held by the Lender over the Charged Property or any part thereof shall merge in the security created hereby or pursuant hereto; and

3.4.2 remain in full force and effect as a continuing security until discharged by the Lender.

3.5 If at any time the Obligations have been paid or discharged in full to the satisfaction of the Lender, the Lender will, at the request and cost of the Borrower, reassign (without recourse or warranty) the property referred to in Clause 3.2 above and the Lender shall release and discharge the security hereby constituted and the Lender shall release the Real Property from the first legal mortgage referred to in Clause 3.1 above.

4 RESTRICTIONS ON OTHER SECURITIES

4.1 The Borrower shall not grant or permit to subsist any encumbrance over the Charged Property without the consent in writing of the Lender.

4.2 The Borrower hereby consents to an application being made to the Chief Land Registrar to enter the following restriction in the Proprietorship Register of any registered land forming part of the Charged Property:

"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 [17/11/14] in favour of Shepway District Council referred to in the charges register."

4.3 The Borrower covenants with the Lender that, if so requested by the Lender, it will promptly request the Land Registry to enter a notice of this charge in the form set out in Clause 4.2 above on the Charges Register relating to each property or parcel of land in which it has an interest and to lodge the relevant Land Registration forms.

5 FURTHER ADVANCES

5.1 In the event that the Lender makes any further advance to the Borrower, such advance will be deemed to be incorporated in this Fixed Charge as if set out herein.

5.2 The Borrower hereby consents to an application being made to the Chief Land Registrar to enter any obligations to make further advances made by the Lender, on the Charges Register of any registered land forming part of the Charged Property and to lodge the relevant Land Registration forms.

6 PERFECTION OF THE LENDER'S SECURITY

6.1 The covenant set out in Section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to include the obligations set out in Clause 6.2 below.

6.2 The Borrower shall from time to time, whenever requested by the Lender and at the Borrower's cost, execute in favour of the Lender, or as it may direct, such further or other legal assignments, transfers, mortgages, legal or other charges or securities as in each such case the Lender shall stipulate over the Borrower's estate or interest in any property or assets of whatsoever nature or tenure and wheresoever situate for the purpose of more effectively providing security for the payment or discharge of the Obligations (in accordance with the terms of this Fixed Charge). Without prejudice to the generality of the foregoing, such assignments, transfers, mortgages, legal or other charges, or securities shall be in such form as shall be prepared on behalf of the Lender and may contain provisions such as are herein contained or provisions to the like effect and/or such other provisions of whatsoever kind as the Lender shall consider requisite for the improvement or perfection of the security constituted by or pursuant to this Fixed Charge.

6.3 Unless the same shall be held by, or be required to be delivered to, any holder of a security ranking in priority to that of the Lender, the Borrower shall immediately upon the execution of this Fixed Charge (or upon becoming possessed thereof at any time hereafter) deposit with the Lender all deeds, certificates and other documents constituting or evidencing title to the Real Property referred to in Clause 3.1 hereof or any part thereof.

7 ACTION BY THE LENDER TO PROTECT ITS SECURITY

If at any time it shall appear to the Lender that any part of the Charged Property shall be in danger of seizure, distress, diligence or other legal process, or that the Lender's security thereover shall for any other reason be in jeopardy, the Lender shall be entitled without notice to the Borrower to take possession of and hold the same or to appoint a Receiver thereof. The provisions of Clause 10 below shall govern the appointment, removal and powers or a Receiver appointed under this Clause as if he were a Receiver appointed under that Clause.

8 INSURANCE

8.1 The Borrower shall at all times during the subsistence of the security constituted by or pursuant to this Fixed Charge comply with all insurance requirements imposed by the terms of any lease, agreement for lease or any tenancy under which the Borrower derives its estate or interest in any part of the Charged Property and, subject to the foregoing and so far as not inconsistent with the said terms, the Borrower shall at all such times:

8.1.1 cause all parts of the Charged Property to be insured and to be kept insured in an insurance office or with underwriters approved by the Lender (such approval not to be unreasonably withheld or delayed) against such loss or damage as the Lender (acting reasonably and properly) shall direct, to the full reinstatement value thereof, adequate provision also being made for the cost of clearing the site and professional fees incidental thereto and the loss of rents or prospective rents (for a period of not less than three years) and with the interest of the Lender noted on the policy of insurance (or, if the Lender shall reasonably and properly direct, in the joint names of the Borrower and the Lender);

8.1.2 insure against risks and liabilities to employees or third parties and contingencies arising under any Act or at common law as the Lender may from time to time reasonably direct;

8.1.3 cause the interest of the Lender in all parts of the Charged Property that are for the time being insured otherwise than in the joint names of the Lender and the Borrower to be noted by endorsement on the policy or policies of insurance relating thereto;

8.1.4 duly and punctually pay all premiums and other moneys payable under all such insurances as aforesaid and promptly upon request by the Lender produce to the Lender the premium receipts or other evidence of the payment thereof; and

8.2 (if so required by the Lender) deposit all policies and other contracts of insurance and any subsequent endorsements relating to the Charged Property or any part thereof with the Lender or produce the same to the Lender for inspection.

8.3 If default shall be made by the Borrower in complying with Clause 8.1 it shall be lawful for the Lender, but not obligatory on the Lender, to effect or renew any such insurance as is mentioned in Clause 8.1 either in its own name or in its name and that of the Borrower jointly or in the name of the Borrower with an endorsement of the Lender's interest. The moneys expended by the Lender on so effecting or renewing any such insurance shall be reimbursed by the Borrower to the Lender on demand and until so reimbursed shall carry interest at the rate determined by the Lender from time to time applicable to unpaid sums from the date of payment to the date of reimbursement (as well after as before judgment).

8.4 All claims and moneys received or receivable under any such insurance as aforesaid exceeding the sum of £10,000 in respect of each property comprised in the Real Property shall (subject to the rights and claims of any prior mortgagee or chargee or any lessor or tenant (other than the Borrower) of any part of the Charged Property) be held by the Borrower in trust for the Lender and shall be applied by the Borrower in repairing, replacing, restoring or rebuilding the property damaged or destroyed or if the Lender shall so require, in repaying or reducing the Obligations.

8.5 The Borrower shall reimburse the Lender on demand for all reasonable costs and expenses properly incurred by it in connection with any proper and reasonable review of the insurances in respect of the Charged Property or any part thereof.

9 UNDERTAKINGS BY THE BORROWER

9.1 The Borrower hereby undertakes with the Lender that the Borrower will at all times while there shall subsist any security constituted by or pursuant to this Fixed Charge:

9.1.1 punctually pay or cause to be paid all rents, rates, taxes duties, assessments and other outgoings payable by the Borrower in respect of the Charged Property or any part thereof;

9.1.2 except where the Charged Property is in the course of being developed, demolished, constructed or is the subject of material refurbishment or alteration or repair or improvement, repair and keep all buildings, trade and other fixtures, fixed and other plant and machinery forming part of the Charged Property in good and substantial repair (save for fair wear and tear) and permit the Lender, its officers, employees and agents free access subject to the provision of the tenancies of the Charged Property, at all reasonable times to view the state and condition of the foregoing without becoming liable to account as mortgagee in possession;

9.1.3 forthwith after being required to do so by the Lender make good any want of repair in breach of its obligation in sub-clause 9.1.2 of this Clause 9.1 hereof in all buildings, other erections, trade and other fixtures, fixed plant and other machinery forming part of the Charged Property;

9.1.4 comply with all requirements of the Planning Acts and all building and other regulations and bye-laws so far in each case as the same affect any land or buildings forming part of the Charged Property or the user thereof;

9.1.5 observe and perform the covenants on the part of the lessor reserved by or contained in any lease, agreement for lease or tenancy agreement under which any part of the Charged Property may be held, duly enforce the performance and observance of the tenant's covenants and the conditions contained therein, duly and efficiently implement any provisions therein for the review of any rent thereby reserved, in each case in accordance with the Borrower's usual policies relating to enforcement and rent review;

9.1.6 observe and perform all restrictive and other covenants and stipulations for the time being affecting any part of the Charged Property or the use or the enjoyment of the same or any part thereof;

9.1.7 comply with the provisions of all statutes for the time being in force and every notice order, direction, licence, consent or permission given or made thereunder and the requirements of any competent authority so far as any of the same shall relate to the Real Property or its user or anything done thereon and in particular will not do or omit or suffer to be done or omitted any act matter or thing in on or respecting the Real Property required to be omitted or done by the Planning Acts or any other Act or statutory provision whatever or which shall contravene the provisions of such Act or Acts or statutory provision aforesaid or any of them and will at all times indemnify and keep indemnified the Lender against all actions proceedings costs expenses claims and demands in respect of any such matter or thing contravening the provisions of the said Acts or provision aforesaid or any of them.

9.2 The Borrower covenants that the Borrower has not before the date hereof carried out or suffered or permitted to be carried out any operations upon the Real Property or put or suffered or permitted to be put the Real Property to any use which is a development within the meaning of the Planning Acts in respect of which any requisite permission has not been obtained or any valid enforcement notice has been or may be made and that all the conditions subject to which consents to develop the Real Property have been granted have been duly complied with.

9.3 If at any time the Borrower shall fail, or shall reasonably be believed by the Lender to have failed, to perform any of the undertakings contained in sub-clause 9.1.2, 9.1.3, 9.1.4 and 9.1.7 of Clause 9.1 above, it shall be lawful for the Lender, but the Lender shall be under no obligation, to enter the Real Property with agents appointed by it and architects, contractors, workmen and others and to execute such works and do such other things as may in the reasonable opinion of the Lender be properly required to remedy such failure and take such other reasonable steps on or in relation to the Real Property (including without limitation the payment of money) as may in the opinion of the Lender be properly required to remedy such failure. The reasonable and proper cost to the Lender of such works and steps shall be reimbursed by the Borrower to the Lender on demand and until so reimbursed shall carry interest at the rate specified in Clause 8.2 above from the date of payment to the date of reimbursement. No exercise by the Lender of its powers under this Clause shall render the Lender liable to account as a mortgagee in possession.

9.4 Without prejudice to any other provision hereof, if any sums shall be paid by the Lender (or any such Receiver or Receivers appointed by it) pursuant to any provision of this Fixed Charge the same shall be repaid by the Borrower on demand with interest at the rate specified in Clause 8.2 above from the time or respective times of the same having been paid.

10 EXTENSION AND VARIATION OF THE LAW OF PROPERTY ACT 1925

10.1 Section 103 of the Law of Property Act 1925 shall not restrict the exercise by the Lender of the statutory power of sale conferred on it by section 101 of such Act, which power shall arise

and may be exercised by the Lender at any time after the Lender shall have demanded the payment or discharge by the Borrower of all or any of the Obligations, and the provisions of the said Act relating to and regulating the exercise of the said power of sale, so far as they relate to the security constituted by or pursuant to this Fixed Charge, shall be varied and extended accordingly.

10.2 The statutory powers of leasing, letting, entering into agreement for leases or lettings and accepting and agreeing to accept surrenders of leases conferred by sections 99 and 100 of the said Act shall not be exercisable by the Borrower in relation to any part of the Real Property without the prior written consent of the Lender. The foregoing shall not be construed as a limitation of the powers of any Receiver appointed hereunder and being an agent of the Borrower. Such statutory powers shall be exercisable by the Lender at any time after the Lender shall have demanded the payment or discharge by the Borrower of all or any of the Obligations and, whether or not the Lender shall then be in possession of the premises proposed to be leased, so as to authorise the Lender to make a lease or agreement for lease of a premium and for any length of term and generally without any restriction on the kinds of leases and agreements for lease that the Lender may make and generally without the necessity for the Lender to comply with any restrictions imposed by or the other provisions of the said sections 99 and 100. The Lender may delegate such powers to any person and no such delegation shall preclude the subsequent exercise of such powers by the Lender itself or preclude the Lender from making a subsequent delegation thereof to some other person; and any such delegation may be revoked.

10.3 The restriction on the right of consolidating mortgage securities contained in section 93 of the Law of Property Act 1925 shall not apply to this Fixed Charge.

10.4 The covenants set out in Sections 3(1), 3(2) and 6(2) of the Law of Property (Miscellaneous Provisions) Act 1994 will not extend to Clause 3 (Legal Mortgage and Assignment). It shall be implied in respect of Clause 3 that the Borrower is disposing of the Charged Property free from all charges and incumbrances (whether monetary or not) and from all other rights exercisable by third parties (including liabilities imposed and rights conferred by or under any enactment).

11 APPOINTMENT OF RECEIVER

11.1 At any time after having been requested so to do by the Borrower, or at any time after the Lender shall have demanded the payment or discharge by the Borrower of all or any of the Obligations, the Lender may appoint one or more persons to be a Receiver (which expression where used in this Fixed Charge includes a Receiver) or Receivers of the whole or any part of the Charged Property. The Lender may:

11.1.1 remove any Receiver previously appointed hereunder; and

11.1.2 appoint another person or other persons as Receiver or Receivers, either in the place of a Receiver so removed or who has otherwise ceased to act or to act jointly with a Receiver or Receivers previously appointed hereunder.

If at any time and by virtue of any such appointment(s) any two or more persons shall hold office as Receivers of the same assets or income, each one of such Receivers shall be entitled (unless the contrary shall be stated in any of the deed(s) or other instrument(s) appointing them) to exercise all the powers and discretions hereby conferred on Receivers individually and to the exclusion of the other or others of them.

11.2 Every such appointment or removal, and every delegation, appointment or removal by the Lender in the exercise of any right to delegate its powers or to remove delegates herein contained, may be made either by deed or by instrument in writing under the hand of any officer of the Lender or any person authorised in writing in that behalf by any such officer.

11.3 Every Receiver for the time being holding office by virtue of an appointment made by the Lender hereunder shall (subject to any limitations or restrictions expressed in the deed or

other instrument appointing him but notwithstanding any winding-up, administration, voluntary arrangement or dissolution of the Borrower) have in relation to the Charged Property, or as the case may be, that part of the Charged Property in respect of which he is appointed:

11.3.1 all the powers (as varied and extended by the provisions hereof) conferred by the Insolvency Act 1986 and the Law of Property Act 1925 on mortgagors and on mortgagees in possession, administrators and receivers appointed under those Acts; and

11.3.2 power in the name or on behalf and at the cost of the Borrower to exercise all the powers and rights of an absolute owner and do or omit to do anything which the Borrower itself could do as an absolute owner and irrespective of any such winding-up, administration, voluntary arrangement or dissolution.

11.4 In addition without prejudice to the generality of the foregoing every Receiver for the time being holding office by virtue of an appointment made by the Lender hereunder shall (notwithstanding any winding-up, administration, voluntary arrangement or dissolution of the Borrower) have the following powers, namely:

11.4.1 power to take possession of, collect and get in the Charged Property;

11.4.2 power to carry on and manage, or concur in the carrying on of the Borrower's business, including the power where the Borrower has one or more Subsidiaries of supervising, controlling and financing such Subsidiary or Subsidiaries (inclusive of any bodies corporate as are referred to in sub-paragraph 11.4.6 below) and its or their business or businesses and the conduct thereof;

11.4.3 power to alter, improve, develop, complete, construct, modify, refurbish or repair any building or land and to complete or undertake or concur in the completion or undertaking (with our without modification), of any project in which the Borrower was concerned or interested prior to his appointment being a project for the alteration, improvement, development, completion, construction, modification, refurbishment or repair of any building or land;

11.4.4 without the need to observe the restriction imposed by Section 103 of the Law of Property Act 1925 or any need to observe all or any of the restrictions or other provisions of Section 99 of the said Act to sell or transfer or concur in leasing, accept or concur in accepting surrenders or leases, terminate or concur in terminating leases, surrender or concur in surrendering leases, grant or concur to granting licences, terminate or concur in terminating licences of the Charged Property in respect of which the Receiver is appointed in such manner and generally on such terms and conditions as he thinks fit to carry on any such sale, transfer, leasing, termination, surrender or licensing into effect by conveying, assigning, leasing, accepting surrenders, terminating surrendering or licensing. Any such sale, transfer, leasing, acceptance of surrender, termination, surrender or licensing may be for such consideration as the Receiver shall think fit (and whether for a lump sum or a consideration payable in instalments and whether for cash or a consideration other than cash) and may, if thought expedient by the Receiver, be for a consideration of nil; and fixtures and plant and machinery comprised in this security may be severed and sold separately from the premises to which they are affixed or in which they are contained without the consent of the Borrower being obtained;

11.4.5 power to carry any sale, lease or other disposal of any land or buildings and other property and assets into effect by conveying, transferring, assigning or leasing in the name of the Borrower and for that purpose to enter into covenants and other contractual obligations in the name of and so as to bind the Borrower;

11.4.6 power to promote, or otherwise acquire the share capital of any body corporate with a view to such body corporate becoming a subsidiary of the Borrower and

purchasing, leasing or otherwise acquiring an interest in the whole or any part of the Charged Property or carrying on any business in succession to the Borrower or any subsidiary of the Borrower;

11.4.7 power to make any arrangement or compromise of claims as he shall think fit;

11.4.8 power to effect and renew insurances;

11.4.9 power to take or defend proceedings in the name of the Borrower including proceedings for the compulsory winding-up of the Borrower and proceedings for directions under Section 35(1) of the Insolvency Act 1986;

11.4.10 power to employ, engage and appoint such managers and other employees and professional advisers on such terms as he shall think fit including, without limitation, power to engage his own firm in the conduct of the receivership;

11.4.11 power to raise or borrow money from the Lender or any other person to rank for repayment in priority to the security constituted by or pursuant to this Fixed Charge and with or without a mortgage or charge on the Charged Property or any part of it; and

11.4.12 power to do all such other things as may seem to the receiver to be incidental or conducive to the realisation of the security constituted by or pursuant to this Fixed Charge.

11.5 In making any sale or other disposal of any of the Charged Property in the exercise of their respective powers (including a disposal by the Receiver to any such Subsidiary as is referred to in sub-clause 11.4.2 of Clause 11.4) the Receiver or the Lender may accept, as and by way of consideration for such sale or other disposal, cash, shares, loan capital or other obligations, including, without limitation, consideration fluctuating according to or dependent upon profit or turnover and consideration, the amount whereof is to be determined by a third party. Any such consideration may be receivable in a lump sum or by instalments and upon receipt by the Receiver shall ipso facto be and become charged with the payment of the Obligations. Any contract for any such sale or other disposal by the Receiver or the Lender may contain conditions excluding or restricting the personal liability of the Receiver or the Lender separately from the premises to which they are attached without any consent being obtained from the Borrower.

11.6 All moneys received by any Receiver appointed under this Fixed Charge shall (subject to the rights and claims of any person having a security ranking in priority to the security constituted by or pursuant to this Fixed Charge) be applied in the following order: (1) in the payment of the costs, charges and expenses of and incidental to the Receiver's appointment and the payment of his remuneration; (2) in the payment and discharge of any liabilities incurred by the Receiver on the Borrower's behalf in the exercise of any powers of the Receiver; (3) in providing for the matters (other than the remuneration of the Receiver) specified in the first three paragraphs of Section 109(8) of the Law of Property Act 1925; (4) in or towards payment of any debts or claims which are by statute payable in preference to the Obligations but only to the extent to which such debts or claims have such preference; (5) in or towards the satisfaction of the Obligations; and any surplus shall be paid to the Borrower or other person entitled thereto. The provisions of this Clause 11.6 and Clause 11.8 shall take effect as and by way of variation and extension to the provisions of the said Section 109, which provisions as so varied and extended shall be deemed incorporated herein.

11.7 Every Receiver so appointed shall be deemed at all times and for all purposes to be the agent of the Borrower which shall be solely responsible for his acts and defaults and for the payment of his remuneration.

11.8 Every Receiver so appointed shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Lender (or, failing such agreement, to be fixed by the Lender) appropriate to the work and responsibilities involved upon the basis of charging

from time to time adopted in accordance with his current practice or the current practice of his firm and without being limited to the maximum rate specified in Section 109(6) of the Law of Property Act 1925.

11.9 Only moneys actually paid by the Receiver to the Lender in satisfaction or discharge of the Obligations shall be capable of being applied by the Lender in satisfaction thereof.

11.10 Neither the Lender nor any Receiver appointed hereunder shall be liable to account as mortgagee or mortgagees in possession in respect of the Charged Property or be liable for any loss upon realisation or for any neglect or default of any nature whatsoever in connection with the Charged Property for which a mortgagee in possession might as such be liable, and all costs, charges and expenses incurred by the Lender or any such Receiver (including the costs of any proceedings in relation to this Fixed Charge or to the Obligations) shall be paid by the Borrower on a full indemnity basis.

12 POWER OF ATTORNEY

12.1 The Borrower hereby irrevocably appoints the following, namely:

12.1.1 the Lender;

12.1.2 each and every person to whom the Lender shall from time to time have delegated the exercise of the power of attorney conferred by this Clause; and

12.1.3 any Receiver appointed hereunder and for the time being holding office as such;

12.1.4 jointly and also severally to be the attorney or attorneys of the Borrower and in its name and otherwise on its behalf and as its act and deed to sign, seal, execute, deliver, perfect and do all deeds, instruments, acts and things which may be required (or which the Lender or any Receiver appointed hereunder shall consider requisite) for carrying out any obligation imposed on the Borrower by or pursuant to this Fixed Charge (including but not limited to the obligations of the Borrower under Clause 6.2 above and the statutory covenant referred to in such Clause), for carrying any sale, lease or other dealing by the Lender or such Receiver into effect, for conveying or transferring any legal estate or other interest in land or other property or otherwise howsoever, for getting in the Charged Property, and generally for enabling the Lender and the Receiver to exercise the respective powers conferred on them by or pursuant to this Fixed Charge or by law. The Lender shall have full power to delegate the power conferred on it by this Clause, but no such delegation shall preclude the subsequent exercise of such power by the Lender itself or preclude the Lender from making a subsequent delegation thereof to some other person; any such delegation may be revoked by the Lender at any time.

12.2 The Borrower shall ratify and confirm all transactions entered into by the Lender or such Receiver or delegate of the Lender in the exercise or purported exercise of the Lender's or such Receiver's respective powers and all transactions entered into, documents executed and things done by the Lender or such Receiver or delegate by virtue of the power of attorney given by Clause 12.1.

12.3 The power of attorney hereby granted is as regards the Lender, its delegates and any such Receiver (and as the Borrower hereby acknowledges) granted irrevocably and for value as part of the security constituted by this Fixed Charge to secure proprietary interests of and the performance of obligations owed to the respective donees within the meaning of Powers of Attorney Act 1971.

13 PROTECTION OF PURCHASERS

No purchaser or other person dealing with the Lender or its delegate or any Receiver appointed hereunder shall be bound to see or inquire whether the right of the Lender or such

Receiver to exercise any of its or his powers has arisen or become exercisable or be concerned with notice to the contrary, or be concerned to see whether any such delegation by the Lender shall have lapsed for any reason or been revoked.

14 NOTICES

A demand for payment or any other demand or notice under this Fixed Charge shall be made or delivered to the Borrower at its registered office and shall be deemed to have been made or delivered when left at that address or if sent by post at noon on the day following the day the letter was deposited in the post.

15 THE LENDER'S REMEDIES

15.1 The Lender may at any time or times without discharging or in any way affecting the security created by or pursuant to this Fixed Charge or any remedy of the Lender in respect of such security grant to the Borrower time or indulgence or abstain from asserting, calling, exercising or enforcing any remedies, securities, guarantees or other rights which it may now or hereafter have from or against the Borrower.

15.2 Any receipt release or discharge of the security provided by, or of any liability arising under, this Fixed Charge shall not release or discharge the Borrower from any liability to the Lender for the same or any other monies which may exist independently of this Fixed Charge.

15.3 Where the security given to the Lender hereby or pursuant hereto initially takes effect as a collateral or further security then notwithstanding any receipt, release or discharge indorsed on or given in respect of or under the principal security to which this Fixed Charge operates as a collateral or further security, the security provided by or pursuant to this Fixed Charge shall continue to apply in respect of the Obligations or of any other security therefor or guarantee in respect thereof without prejudice either to the security constituted by or pursuant to this Fixed Charge or to the liability of the Borrower for the Obligations or the exercise by the Lender of any rights, remedies and privileges conferred upon it by this Fixed Charge.

15.4 The rights, powers and remedies provided in this Fixed Charge are cumulative and are not, nor are they to be construed as, exclusive of any rights, powers or remedies provided by law.

15.5 No failure by the Lender to exercise, or delay on its part in exercising, any of the rights, powers and remedies provided by this Fixed Charge or by law (collectively "Lender's Rights") shall operate as a waiver thereof, nor shall any single or partial waiver of any of the Lender's Rights preclude any further or other exercise of that one of the Lender's Rights concerned or the exercise of any other of the Lender's Rights.

15.6 All the reasonable and proper costs, charges and expenses of the Lender reasonably and properly incurred by the Lender in relation to this Fixed Charge or the Obligations (including, without limitation, the costs, charges and expenses properly incurred in the carrying of this Fixed Charge into effect or in the exercise of any of the rights, remedies and powers conferred on the Lender hereby or in the perfection or enforcement of the security constituted hereby or pursuant hereto or in the perfection or enforcement of any other security for or guarantee in respect of the Obligations) shall be reimbursed by the Borrower to the Lender promptly on demand on a full indemnity basis. Until so reimbursed the same shall carry interest as mentioned in Clause 8.2 above accruing from the date of the same being incurred by the Lender.

15.7 The Lender shall notify the Borrower on a regular basis of all such costs, charges and expenses as are referred to in Clause 15.6 above.

16 PAYMENTS FREE OF DEDUCTION

16.1 All payments to be made under this Fixed Charge shall, save as required by law, be made free and clear of and without deduction for taxes, levies, imposts, duties, charges, fees or

withholdings of any nature whatsoever now or hereafter imposed by any governmental, fiscal or other authority.

16.2 If the Borrower shall at any time be compelled by law to deduct or withhold any amount from any payment to be made hereunder the Borrower shall concurrently pay to the Lender such additional amount as will result in payment to the Lender of the full amount which would have been received if such deduction or withholding had not been made.

17 PROVISIONS SEVERABLE

Every provision contained in this Fixed Charge shall be severable and distinct from every other such provision and if at any time any one or more of such provisions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining such provisions shall not in any way be affected thereby.

18 GOVERNING LAW AND JURISDICTION

18.1 Governing law

This Fixed Charge and any non-contractual obligations arising out of it or in connection with it are governed by and construed in accordance with English law.

18.2 Jurisdiction

1.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Fixed Charge (including a dispute regarding the existence, validity or termination of this Agreement) (a "**Dispute**").

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

IN WITNESS WHEREOF this Fixed Charge has been executed as a deed by the Borrower and has been signed by or on behalf of the Lender and is intended to be and is hereby delivered on the date first above written.

SCHEDULE 1

REAL PROPERTY

2,4,6 & 16 Walter Tull Way, Folkestone, Kent, CT20 5UN

DISCLOSURES SCHEDULE
2,4,6 & 16 Walter Tull Way
Folkestone Kent Ct20 5UN

1. The Properties are being purchased for the following prices;-
   2 Walter Tull Way £200,00.00
   4 Walter Tull Way £155,000.00
   6 Walter Tull Way £155,000.00
   16 Walter Tull Way £170,000.00

ANNEX 1 – THE PROPERTY

[PLEASE ATTACH PLANS SHOWING ALL THE PROPERTIES TO BE CHARGED]
[REGISTERED PROPERTY]

NO	Property Description	Land Registry description (if different to postal address	Freehold
2	2 Walter Tull Way Folkestone Kent CT20 5UN	Land on south-east Side of Shepway Close Folkestone	TT11882
4	Walter Tull Way Folkestone Kent CT20 5UN	Land on south-east Side of Shepway Close Folkestone	TT11882
6	Walter Tull Way Folkestone Kent CT20 5UN	Land on south-east Side of Shepway Close Folkestone	TT11882
16	Walter Tull Way Folkestone Kent CT20 5UN	Land on south-east Side of Shepway Close Folkestone	TT11882

Head of Legal & Democratic Services and Monitoring Officer – T W Mortimer LLB Solicitor
Ask for: Sarah Hartles
Email: sarah.hartles@ashford.gov.uk
Direct Line: 01233 330215
Fax No: 01233 330649

ASHFORD
BOROUGH COUNCIL
Civic Centre
Tannery Lane
Ashford
Kent TN23 1PL
(01233) 331111
Typetalk (01233) 330744
www.ashford.gov.uk
DX 151140 Ashford (Kent) 7

Shepway District Council
The Civic Centre
Castle Hill Avenue
Folkestone
Kent
CT20 2QY

Our Ref: DSJ/SDC-006
Date: 12 November 2014

CERTIFICATE OF TITLE
IN RESPECT OF
Flat 1, 2 Walter Tull Way
Flat 2, Walter Tull Way
4, 6, 16 Walter Tull Way

General

1. This Certificate is made in accordance with the provisions of a Facilities Agreement made between Shepway District Council ("the Lender") and Oportunitas Limited ("the Borrower").

2. This Certificate is addressed to the Lender and is intended solely for its benefit. It is not to be relied upon by any other person or used for any other purpose.

3. Clause 2 above does not prevent this Certificate being disclosed for information purposes only to any third party.

Title

4. On the basis of and insofar as the same is discoverable from our investigations mentioned in this Certificate, we certify that:

   4.1 We have investigated the title of the Borrower to the Property in the knowledge that the Lender is relying on this Certificate for the purpose of taking the Property as Security under the Facilities Agreement.

   4.2 We have:

best company
one to watch
2012

Ashford

4.2.1 examined and considered the documents of title and other documents and papers relating to the Property produced to or obtained by us; and

4.2.2 considered the results of the searches and replies to the enquiries made by us as referred to in the Additional Disclosures Schedule which are those that we consider appropriate or necessary in the circumstances of the transaction and having regard to the nature of the Property;

and this Certificate is given solely on the basis of that examination and consideration and the results of those searches and enquiries and from material provided to us by the Borrower and which, so far as we are aware, is the documentation and information which we need in order to give this Certificate.

4.3 Subject to the matters referred to in the Additional Disclosures Schedule:

4.3.1 in our opinion, subject to due registration at the Land Registry of the transfer of the Property from the seller to the Borrower, the Company has a good and marketable title to the Property and is solely legally and beneficially entitled to the Property and neither we nor the Company know of any reason why the Company should not be registered as proprietor of the Property with absolute title;

4.3.2 the consents of all third parties required before the Property can be transferred to the Borrower and effectively charged to the Lender by way of legal mortgage or fixed charge are set out in the Additional Disclosures Schedule and have been obtained and are not subject to onerous or unusual conditions;

4.3.3 if the Property is freehold, the Property is not registered as a freehold estate in commonhold under Part I of the Commonhold and Leasehold Reform Act 2002;

4.3.4 if the title to the Property is registered at the Land Registry, the quality of the title is title absolute; and

4.3.5 if the title to the Property is not registered at the Land Registry, then:
(A) where the Property is freehold, it commences with a good root of title at least 15 years old; or
(B) where the Property is leasehold, it commences with the Lease and has a good root of title at least 15 years old.

Use

5. The Company has told us that the Property is presently used as a residential dwelling.

Leasehold Titles

6. If the Borrower will hold the Property under the terms of a lease, the terms of the lease are fairly summarised in the Additional Disclosures Schedule.

Searches and Enquiries

7. Save as stated in the Additional Disclosures Schedule, the results of the searches and enquiries undertaken are either clear or do not disclose matters which, in our opinion, should be brought to your attention.

Confirmation by the Borrower

8. A copy of the final draft of this Certificate has been sent to the Borrower. The Borrower has confirmed to us within the five working days before the date of this Certificate that:

9.1 to the best of its knowledge, information and belief the information contained in this Certificate is complete and accurate in all respects; and

9.2 The Borrower will purchase the Property on completion. That being the case:

9.2.1 the Borrower's knowledge of the Property and related documents and information have been acquired through:

(A) its own investigations of the Property as part of that purchase including the searches and enquiries;

(B) the replies given by the seller's solicitors to any standard residential or commercial enquiries together with any additional enquiries raised by us to enable us to provide this Certificate;

(C) other material provided by the seller or the Seller's solicitors and other advisers or agents of the seller;

(D) the Borrower's own knowledge of the Property;

(E) information provided by any other parties as mentioned in the Additional Disclosures Schedule; and

(F) an inspection of the Property by the Borrower not more than 30 working days before the date of this Certificate.

9.2.2 Whenever this Certificate refers to the Borrower's knowledge, information and belief or this Certificate states that the Borrower has provided information, it is the case that the seller or the seller's solicitors and its other advisers and agents are the primary source.

9.2.3 References in this Certificate to notices given or received by the Borrower, or to any actions taken by the Borrower or expected by the Borrower, are references to the Borrower's knowledge of notices given or received by the seller, actions taken by the seller or expected by the seller, as the case may be.

9.2.4 Where information has been provided to us by the seller, our investigations have given us no reason to doubt the accuracy of that information, but we do not accept responsibility for it.

9.2.5 Where the replies given by the seller's solicitors to our enquiries or other information provided by the seller or the seller's solicitors are, in our opinion, inadequate, we have disclosed such inadequacy in the Additional Disclosures Schedule.

Assumptions and Qualifications

9. We have not inspected the Property nor have we made any enquiries of the occupiers of the Property (other than the seller and the Borrower) nor, where the Property is leasehold, of any landlord or superior landlord.

10. We give no opinion as to the capital or rental value of the Property.

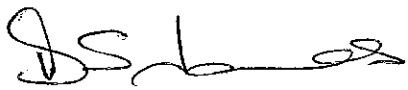
11. Except as disclosed in the Additional Disclosures Schedule, this Certificate does not consider any environmental or flood assessments, audits, surveys or other reports on

the environmental condition of the Property and the Lender should consider what investigations they wish to make in relation to those matters.

12. We have assumed that all documents relating to the Property have been validly executed and delivered by the parties to them and that all documents are within the capacity and powers of, and have been validly authorised by, each party. There is nothing on the face of the documents which indicates otherwise.

13. Except as disclosed in the Additional Disclosures Schedule, where information has been provided to us by the Borrower, our investigations have given us no reason to doubt the accuracy of that information but we do not accept responsibility for it.

Yours sincerely



for Head of Legal and Democratic Services and Monitoring Officer
Acting on behalf of Oportunitas Limited

EXECUTION PAGE

THE COMMON SEAL of **SHEPWAY DISTRICT COUNCIL** was hereunto affixed in the presence of:)
)
)

.....
Authorised Signatory

EXECUTED as a **DEED** by **OPORTUNITAS LIMITED:**)
)
)

.....
Director

.....
Witness Name

.....
Witness Address:

.....

.....

.....

.....
Witness Signature:

SCHEDULE 4 – FORM OF CERTIFICATE OF TITLE