



Registration of a Charge

Company name: **ENCORE CARE HOMES DEVELOPMENTS LTD**

Company number: **10955711**



X77EU1OR

Received for Electronic Filing: **04/06/2018**

Details of Charge

Date of creation: **17/05/2018**

Charge code: **1095 5711 0001**

Persons entitled: **QUANTUM SECURED LENDING PLC**

Brief description:

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:

LESTER ALDRIDGE LLP



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 10955711

Charge code: 1095 5711 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 17th May 2018 and created by ENCORE CARE HOMES DEVELOPMENTS LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 4th June 2018 .

Given at Companies House, Cardiff on 5th June 2018

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



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

DATED

17th May 2018

- (1) ENCORE CARE HOMES
DEVELOPMENTS LTD**
- (2) QUANTUM SECURED LENDING
PLC**

DEBENTURE

THIS DEED is made on

17th May 2018

BETWEEN:

- (1) **ENCORE CARE HOMES DEVELOPMENTS LTD**, a private limited company incorporated in England and Wales with company number 10955711 with its registered office at 10 Bridge Street, Christchurch, Dorset, BH23 1EF (the **Chargor**)
- (2) **QUANTUM SECURED LENDING PLC** a company incorporated in England and Wales with company number 09413068 with its registered office at Midland House, 2 Poole Road, Bournemouth, BH2 5QY (the **Lender**).

BACKGROUND

- (A) The Lender has agreed, pursuant to the terms of the Facility Agreement, to provide the Chargor with a loan facility on a secured basis.
- (B) The Members of the Chargor are satisfied that the giving of the security contained or provided for in this deed is in the interests of the Chargor and has passed a resolution to that effect.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in this deed:

Administrator	an administrator appointed to manage the affairs, business and property of the Chargor pursuant to clause 12.8;
Authorisation	an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.
Book Debts	all present and future book and other debts, and monetary claims due or owing to the Chargor, and the benefit of all security, guarantees and other rights of any nature enjoyed or held by the Chargor in relation to any of them;
Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in the City of London open for ordinary clearing business;
Charged Property	all the assets of the Chargor which from time to time are the subject of any security created or expressed to be created in favour of the Lender by or pursuant to this deed;
Delegate	any person appointed by the Lender or any Receiver pursuant to clause 17 and any

	person appointed as attorney of the Lender, Receiver or Delegate;
Designated Account	any account of the Chargor nominated by the Lender as a designated account for the purposes of this deed;
Event of Default	has the meaning given to that expression in the Facility Agreement;
Facility Agreement	the facility agreement of 1 st March 2018 herewith between the Chargor and the Lender for the provision of the loan facility secured by this deed;
Financial Collateral	shall have the meaning given to that expression in the Financial Collateral Regulations;
Financial Collateral Regulations	the Financial Collateral Arrangements (No 2) Regulations 2003 (SI 2003/3226);
Insurance Policy	each contract and policy of insurance effected or maintained by the Chargor from time to time in respect of its assets or business (including, without limitation, any contract or policy of insurance relating to the Property);
Intellectual Property	the Chargor's present and future patents, trademarks, service marks, trade names, designs, copyrights, inventions, topographical or similar rights, confidential information and know-how and any interest in any of these rights, whether or not registered, including all applications and rights to apply for registration and all fees, royalties and other rights derived from, or incidental to, these rights;
LPA 1925	the Law of Property Act 1925;
Material Contract	a contract to which the Chargor is a party and which is material for the purpose of enabling the Chargor to conduct its ordinary business activities;
Properties or Property	all freehold and leasehold properties (whether registered or unregistered) and all commonhold properties, now or in the future (and from time to time) owned by the Chargor, or in which the Chargor holds an interest
Receiver	a receiver, receiver and manager or administrative receiver of any or all of the Charged Property appointed by the Lender

under clause 15;

Secured Liabilities

all present and future monies, obligations and liabilities of the Chargor to the Lender, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with the Facility Agreement or this deed (including, without limitation, those arising under clause 28.3.2), together with all interest (including, without limitation, default interest) accruing in respect of those monies, obligations or liabilities;

Security Financial Collateral Arrangement

shall have the meaning given to that expression in the Financial Collateral Regulations;

Security

any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect; and

Security Period

the period starting on the date of this deed and ending on the date on which the Lender is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

1.2 Interpretation

In this deed:

- 1.2.1 clause and Schedule headings shall not affect the interpretation of this deed;
- 1.2.2 a reference to a person shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- 1.2.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.4 a reference to a party shall include that party's successors, permitted assigns and permitted transferees;
- 1.2.5 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;

- 1.2.6 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.7 a reference to writing or written includes fax and email;
- 1.2.8 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.9 a reference to this deed (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;
- 1.2.10 any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.11 a reference to an amendment includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly);
- 1.2.12 a reference to assets includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.2.13 a reference to an authorisation includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- 1.2.14 a reference to continuing in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- 1.2.15 a reference to determines or determined means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- 1.2.16 a reference to a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

1.3 ***Clawback***

If the Lender considers that an amount paid by the Chargor in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of the Chargor or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this deed.

1.4 ***Nature of security over real property***

A reference in this deed to a charge or mortgage of or over any Property includes:

- 1.4.1 all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) that are situated on or form part of that Property at any time;
- 1.4.2 the proceeds of the sale of any part of that Property and any other monies paid or payable in respect of or in connection with that Property;
- 1.4.3 the benefit of any covenants for title given, or entered into, by any predecessor in title of the Chargor in respect of that Property, and any monies paid or payable in respect of those covenants; and
- 1.4.4 all rights under any licence, agreement for sale or agreement for lease in respect of that Property.

1.5 *Law of Property (Miscellaneous Provisions) Act 1989*

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Facility Agreement are incorporated into this deed.

1.6 *Perpetuity period*

If the rule against perpetuities applies to any trust created by this deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

1.7 *Schedules*

The Schedules form part of this deed and shall have effect as if set out in full in the body of this deed. Any reference to this deed includes the Schedules.

2. COVENANT TO PAY

2.1 *Covenant to pay*

The Chargor covenants with the Lender that it shall pay, perform and discharge the Secured Liabilities as and when the same fall due for payment, performance or discharge in accordance with their terms or, in the absence of any such express terms, on demand.

2.2 *Interest*

The Chargor covenants with the Lender to pay interest on any amount due under clause 2.1 from day to day until full discharge (whether before or after any judgment, liquidation, winding-up or administration of the Chargor) at such rate and pursuant to such terms and conditions as provided for in the Facility Agreement.

3. FIXED SECURITY

3.1 *Charges*

The Chargor, as security for the payment, performance and discharge of all the Secured Liabilities, charges in favour of the Lender by way of first fixed charge all of its right, title and interest in and to the following assets, both present and future:

- 3.1.1 all fixed and other plant and machinery, computers, vehicles, office equipment and other chattels in its ownership or possession (but excluding any of those items to the extent that they are part of its stock in trade);
- 3.1.2 all book debts and all other debts or monetary claims (including all choses in action which may give rise to a debt or monetary claim), all proceeds thereof and, in each case, any cheque, bill, note, negotiable instrument or other document representing the same;
- 3.1.3 all moneys from time to time deposited in or standing to the credit of any bank account with a bank or financial institution (including, without limitation, any rent deposit given to secure liabilities in relation to land and any retention or similar sum arising out of a construction contract or any other contract (and, in each case, any cheque, bill, note negotiable instrument or other document representing the same));
- 3.1.4 all of its goodwill;
- 3.1.5 all Intellectual Property; and
- 3.1.6 all Authorisations (statutory or otherwise) held in connection with its business or the use of any Charged Property and the right to recover and receive all compensation which may be payable in respect of them.

3.2 ***Assignment***

As a continuing security for the payment, performance and discharge of all the Secured Liabilities, the Chargor with full title guarantee assigns to the Lender absolutely by way of a first legal assignment all of its right, title and interest in and to:

- 3.2.1 any Insurance Policy, including all claims, the proceeds of all claims and all returns of premium in connection with each Insurance Policy; and
- 3.2.2 all agreements, instruments and rights relating to the Charged Property.

4. **FLOATING CHARGE**

4.1 ***Creation of floating charge***

The Chargor, as security for the payment, performance and discharge of all the Secured Liabilities, charges in favour of the Lender by way of a first floating charge all of its undertaking and all of its other property, assets and rights, present and future, including all of its stock in trade and all of its property, assets and rights not otherwise validly and effectively mortgaged, charged or assigned (whether at law or in equity) by way of fixed security pursuant to clause 3.

4.2 ***Qualifying floating charge***

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by clause 4.1.

4.3 *Conversion by notice*

The Lender may by notice in writing at any time to the Chargor convert the floating charge created pursuant to clause 4.1 with immediate effect into a fixed charge (either generally or specifically as regards any assets of the Chargor specified in the notice) if:

- 4.3.1 the security constituted by this Deed becomes enforceable; or
- 4.3.2 the Lender reasonably considers that any of the Charged Property

4.4 *Automatic conversion*

Notwithstanding clause 4.3 and without prejudice to any law which may have a similar effect, the floating charge created by clause 4.1 will automatically be converted (without notice) with immediate effect into a fixed charge as regards all of the undertaking and assets subject to that floating charge if:

- 4.4.1 the Chargor creates or attempts to create without the prior written consent of the Lender, any Security or a trust in favour of another person over any of the Charged Property (except as expressly permitted by the terms of the Facility Agreement); or
- 4.4.2 any person levies or attempts to levy any distress, attachment, execution or other process against any of the Charged Property; or
- 4.4.3 a resolution is passed or an order is made for the winding-up, dissolution, administration or re-organisation of the Chargor or an administrator is appointed in respect of the Chargor.

5. *PERFECTION OF SECURITY*

5.1 *Further advances*

The Lender covenants with the Chargor that it shall perform its obligations to make advances under the Facility Agreement and any other agreement to which it and the Chargor is party (including any obligation to make available further advances).

5.2 *Notice of charge and assignment*

The Chargor shall, promptly upon the request of the Lender from time to time, give or join the Lender in giving:

- 5.2.1 a notice in such form as may be reasonably requested by the Lender to each of the counterparties to a Material Contract and to each bank or financial institution (other than the Lender) in respect of each account of the Chargor opened or maintained with it; and
- 5.2.2 in respect of any other asset which is charged or assigned pursuant to clause 3, a notice of charge or, as applicable, assignment in such form as the Lender may reasonably require to the relevant obligor, debtor or other third party (as the case may be).

- 5.3 Each such notice shall be duly signed by or on behalf of the Chargor and it shall procure that each of the persons on whom any such notice is served

promptly provides to the Lender a duly signed acknowledgement of that notice in such form as the Lender may reasonably require.

5.4 *Acknowledgment of notice*

The execution of this deed by the Chargor and the Lender shall constitute notice to the Lender of the charge created by this deed over any account opened or maintained by the Chargor with the Lender.

6. *FURTHER ASSURANCE*

6.1 *Further assurance*

The Chargor shall promptly do all such acts and execute all such documents (including assignments, transfers, mortgage, charges, notices and instructions) as the Lender or any Receiver may reasonably specify (and in such form as the Lender or any Receiver may reasonably require in favour of the Lender or its nominee(s)) to:

- 6.1.1 perfect the security created or intended to be created in respect of the Charged Property (which may include the execution by the Chargor of a mortgage, charge, assignment or other Security over all or any of the assets forming part of, or which are intended to form part of, the Charged Property);
- 6.1.2 confer on the Lender Security over any property and assets of the Chargor located in any jurisdiction equivalent or similar to the security intended to be conferred by or pursuant to this deed;
- 6.1.3 facilitate the exercise of any rights, powers and remedies of the Lender or any Receiver or Delegate provided by or pursuant to this deed or by law; and/or
- 6.1.4 facilitate the realisation of the assets which form part of, or are intended to form part of, the Charged Property.

6.2 *Necessary action*

The Chargor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any security conferred or intended to be conferred on the Lender by or pursuant to this deed.

6.3 *Acquisitions of new land*

The Chargor shall immediately notify the Lender of any acquisition by it of any freehold, commonhold or leasehold property or of any agreement entered into by it or of which it has the benefit for the acquisition of any such property.

6.4 *Implied covenants for title*

Each of the mortgages, charges and assignments granted by the Chargor under this deed are granted with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994, save that the covenants set out in section 2(1)(a), sections 3 and 4 of that Act shall extend to the Chargor without, in each case, the benefit of section 6(2) of that Act.

7. REPRESENTATIONS AND WARRANTIES

7.1 *Representations*

The Chargor makes the representations and warranties set out in this clause 7 to the Lender on the date of this deed.

7.2 *Status*

It is a private limited company validly existing under the law of England and Wales and it has the power to own its assets and carry on its business as it is being conducted.

7.3 *Binding obligations*

The obligations expressed to be assumed by it in this deed are legal, valid, binding and enforceable obligations.

7.4 *Ownership of Charged Property*

The Chargor is the sole legal and beneficial owner of the Charged Property.

7.5 *No adverse claims*

The Chargor has not received, or acknowledged notice of, any adverse claim by any person in respect of the Charged Property or any interest in it.

7.6 *No adverse covenants*

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Charged Property.

7.7 *No breach of laws*

There is no breach of any law or regulation that materially and adversely affects the Charged Property.

7.8 *No overriding interests*

Nothing has arisen, has been created or is subsisting, that would be an overriding interest in any Property.

7.9 *Avoidance of security*

No Security expressed to be created under this deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Chargor or otherwise.

7.10 *No misleading information*

All financial and other information provided by it to the Lender was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any respect.

7.11 *No proceedings pending or threatened*

No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which, if adversely determined, could or might result in any material adverse change in its financial condition, business or assets have (to the best of its knowledge and belief

(having made due and careful enquiry)) been started or threatened against it.

7.12 *Creation of security*

This deed creates or, as applicable, evidences in favour of the Lender the security which it purports to create or evidence with the ranking and priority which it is expressed to have.

7.13 Without limiting clause 7.12, its payment obligations under this deed rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

7.14 *Good title to assets*

It has a good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as it is being conducted.

7.15 *Continuing representations*

The Chargor undertakes with the Lender that the representations and warranties in this clause 7 will be true and accurate throughout the continuance of this deed by reference to the facts and circumstances existing from time to time.

8. *UNDERTAKINGS*

8.1 *General*

The undertakings in this clause 8 remain in force from the date of this deed for so long as any amount is outstanding under this deed.

8.2 *Preservation of Charged Property*

The Chargor shall not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Lender, or materially diminish the value of the Charged Property or the effectiveness of the security created by this deed.

8.3 *Chargor's waiver of set-off*

The Chargor waives any present or future right of set-off it may have in respect of the Secured Liabilities (including sums payable by the Chargor under this deed).

8.4 *Compliance with laws and regulations*

8.4.1 The Chargor shall not, without the Lender's prior written consent, use or permit the Charged Property to be used in any way contrary to law.

8.4.2 The Chargor shall:

8.4.2.1 comply with the requirements of any law and regulation relating to or affecting the Charged Property or the use of it or any part of them;

8.4.2.2 obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Charged Property or their use or that are necessary to preserve, maintain or renew the Charged Property; and

8.4.2.3 promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Charged Property.

8.5 *Enforcement of rights*

The Chargor shall use its best endeavours to:

8.5.1 procure the prompt observance and performance of the covenants and other obligations imposed on the Chargor's counterparties (including each counterparty in respect of an agreement referred to in clause 3.2.2 and each insurer in respect of an Insurance Policy); and

8.5.2 enforce any rights and institute, continue or defend any proceedings relating to the Charged Property that the Lender may require from time to time.

8.6 *Notice of misrepresentation and breaches*

The Chargor shall, promptly on becoming aware of any of the same, notify the Lender in writing of:

8.6.1 any representation or warranty set out in clause 7 which is incorrect or misleading in any material respect when made or deemed to be repeated; and

8.6.2 any breach of any covenant set out in this deed.

8.7 *Title documents*

The Chargor shall, as so required by the Lender, deposit with the Lender and the Lender shall, for the duration of this deed be entitled to hold:

8.7.1 all deeds and documents of title relating to the Charged Property that are in the possession or control of the Chargor (and if these are not within the possession or control of the Chargor, the Chargor undertakes to obtain possession of all these deeds and documents of title);

8.7.2 all Insurance Policies and any other insurance policies relating to the Charged Property that the Chargor is entitled to possess;

8.7.3 all deeds and documents of title (if any) relating to the Book Debts as the Lender may specify from time to time; and

8.7.4 copies of all agreements referred to in clause 3.2.2, certified to be true copies by either a director of the Chargor or by the Chargor's solicitors.

8.8 *Insurance*

8.8.1 The Chargor shall insure and keep insured the Charged Property against:

8.8.1.1 loss or damage by fire or terrorist acts;

8.8.1.2 other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Chargor; and

8.8.1.3 any other risk, perils and contingencies as the Lender may reasonably require.

Any such insurance must be with a reputable insurance company or underwriters and must be for not less than the replacement value of the relevant Charged Property.

8.8.2 The Chargor shall, if requested by the Lender, provide the Lender with a copy of each policy, certificate or cover note relating to an Insurance Policy.

8.9 ***Insurance premiums***

The Chargor shall promptly pay all premiums in respect of each Insurance Policy and do all other things necessary to keep each such policy in full force and effect.

8.10 ***No invalidation of insurance***

The Chargor shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any Insurance Policy.

8.11 ***Proceeds of Insurance Policies***

All monies received or receivable by the Chargor under any Insurance Policy at any time (whether or not the security constituted by this deed has become enforceable) shall:

8.11.1 immediately be paid into a Designated Account;

8.11.2 if they are not paid directly to the Lender by the insurers, be held by the Chargor as trustee of the same for the benefit of the Lender (and the Chargor shall account for them to the Lender); and

8.11.3 at the option of the Lender, be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or in, or towards, discharge or reduction of the Charged Property.

8.12 ***Notices to be given by Chargor***

The Chargor shall:

8.12.1 if so requested by the Lender from time to time:

8.12.1.1 give notice to each counterparty to an agreement referred to in clause 3.2.2 in the form set out in Part A of Schedule 1; and

8.12.1.2 procure that each counterparty promptly provides to the Lender within five Business Days an acknowledgement of the notice in the form set out in 0 of Schedule 1;

8.12.2 if so requested by the Lender from time to time:

8.12.2.1 give notice to each insurer under an Insurance Policy in the form set out in Part A of Schedule 2; and

8.12.2.2 procure that each insurer promptly provides to the Lender within five Business Days an acknowledgement of the notice in the form set out in 0 of Schedule 2; and

8.12.3 if so requested by the Lender from time to time:

8.12.3.1 give notice to each bank, financial institution or other person (other than the Lender) with whom the Chargor holds an account (including each Designated Account) in the form set out in Part A of Schedule 3; and

8.12.3.2 procure that each such bank, financial institution or other person promptly provides to the Lender within five Business Days an acknowledgement of the notice in the form of Part B of Schedule 3.

8.13 ***Information***

The Chargor shall:

8.13.1 give the Lender such information concerning the location, condition, use and operation of the Charged Property as the Lender may require;

8.13.2 permit any persons designated by the Lender and any Receiver to enter on its premises and inspect and examine the Charged Property, and the records relating to the Charged Property, at all reasonable times and on reasonable prior notice; and

8.13.3 promptly notify the Lender in writing of any action, claim, notice or demand made by or against it in connection with all or any part of the Charged Property or of any fact, matter or circumstance which may, with the passage of time, give rise to such an action, claim, notice or demand, together with, in each case, the Chargor's proposals for settling, liquidating, compounding or contesting any such action, claim, notice or demand and shall, subject to the Lender's prior approval, implement those proposals at its own expense.

8.14 ***Payment of outgoings***

The Chargor shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Charged Property and, on demand, produce evidence of payment to the Lender.

9. PROPERTY COVENANTS

9.1 *Maintenance*

The Chargor shall keep all buildings and all fixtures on the Property in good and substantial repair and condition.

9.2 *Preservation of Property, fixtures, plant and machinery*

The Chargor shall not, without the prior written consent of the Lender:

9.2.1 pull down or remove the whole, or any part of, any building forming part of any Property or permit the same to occur;

9.2.2 make or permit any material alterations to any Property, or sever or remove, or permit to be severed or removed, any of its fixtures; or

9.2.3 remove or make any material alterations to any of the fixtures, plant, machinery, implements and other effects and chattels and the Chargor shall at all times, to the Lender's reasonable satisfaction, repair and keep such fixtures, plant, machinery, implements and other effects and chattels owned by it in a good state of repair and in good working order and condition and shall, as and when necessary, renew and replace such items when they shall become obsolete, worn out or destroyed with items of similar quality and of equal or greater value.

9.3 *Conduct of business on Property*

The Chargor shall carry on its trade and business on those parts (if any) of the Property as are used for the purpose of trade or business in accordance with the standards of good management from time to time current in that trade or business.

9.4 *Planning information*

The Chargor shall:

9.4.1 give full particulars to the Lender of any notice, order, direction, designation, resolution or proposal given or made by any planning authority or other public body or authority (**Planning Notice**) that specifically applies to any Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Planning Notice; and

9.4.2 at its own expense, immediately on request by the Lender, and at the cost of the Chargor, take all reasonable and necessary steps to comply with any Planning Notice, and make, or join with the Lender in making, any objections or representations in respect of that Planning Notice that the Lender may desire.

9.5 *Compliance with covenants and payment of rent*

The Chargor shall:

9.5.1 observe and perform all covenants, stipulations and conditions to which the Property, or the use of it, is or may be subjected, and (if the Lender so requires) produce evidence sufficient to satisfy the

Lender that those covenants, stipulations and conditions have been observed and performed;

9.5.2 diligently enforce all covenants, stipulations and conditions benefiting the Property and shall not (and shall not agree to) waive, release or vary any of the same; and

9.5.3 (without prejudice to the generality of the foregoing) where the Property, or part of it, is held under a lease, duly and punctually pay all rents due from time to time, and perform and observe all the tenant's covenants and conditions.

9.6 ***Payment of rent and outgoings***

The Chargor shall:

9.6.1 where a Property, or part of it, is held under a lease, duly and punctually pay all rents due from time to time; and

9.6.2 pay (or procure payment of the same) when due all charges, rates, taxes, duties, assessments and other outgoings relating to or imposed on each Property or on its occupier.

9.7 ***Maintenance of interests in Property***

The Chargor shall not, without the prior written consent of the Lender:

9.7.1 grant, or agree to grant, any licence or tenancy affecting the whole or any part of any Property, or exercise, or agree to exercise, the statutory powers of leasing or of accepting surrenders under sections 99 or 100 of the Law of Property Act 1925; or

9.7.2 in any other way dispose of, surrender or create, or agree to dispose of surrender or create, any legal or equitable estate or interest in the whole or any part of any Property.

9.8 ***Registration restrictions***

If the title to the Property is not registered at the Land Registry, the Chargor shall procure that no person (other than itself) shall be registered under the Land Registration Acts 1925 to 2002 as proprietor of all or any part of any Property without the prior written consent of the Lender. The Chargor shall be liable for the costs and expenses of the Lender in lodging cautions against the registration of the title to the whole or any part of the Property from time to time.

9.9 ***Development restrictions***

The Chargor shall not, without the prior written consent of the Lender:

9.9.1 make or, insofar as it is able, permit others to make any application for planning permission or development consent in respect of the Property; or

9.9.2 carry out, or permit, or suffer to be carried out on the Property any development as defined in the Town and Country Planning Act

1990 and the Planning Act 2008, or change or permit or suffer to be changed the use of the Property.

9.10 *No restrictive obligations*

The Chargor shall not, without the prior written consent of the Lender, enter into any onerous or restrictive obligations affecting the whole or any part of the Property, or create or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of the Property.

9.11 *Proprietary rights*

The Chargor shall procure that no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of the Property without the prior written consent of the Lender.

9.12 *Inspection*

The Chargor shall permit the Lender, any Receiver and any person appointed by either of them to enter on and inspect the Property on reasonable prior notice.

9.13 *Property information*

The Chargor shall inform the Lender promptly of any acquisition by the Chargor of, or contract made by the Chargor to acquire, any freehold, leasehold or other interest in any property.

10. *BOOK DEBTS COVENANTS*

10.1 *Realising Book Debts*

10.1.1 The Chargor shall as an agent for the Lender, collect in and realise all Book Debts, pay the proceeds into a Designated Account immediately on receipt and, pending that payment, hold those proceeds in trust for the Lender.

10.1.2 The Chargor shall not, without the prior written consent of the Lender, withdraw any amounts standing to the credit of any Designated Account.

10.1.3 The Chargor shall, if called on to do so by the Lender, execute a legal assignment of the Book Debts to the Lender on such terms as the Lender may require and give notice of that assignment to the debtors from whom the Book Debts are due, owing or incurred.

10.2 *Preservation of Book Debts*

The Chargor shall not (except as provided by clause 10.1 or with the prior written consent of the Lender) release, exchange, compound, set-off, grant time or indulgence in respect of, or in any other manner deal with, all or any of the Book Debts.

11. *INTELLECTUAL PROPERTY COVENANTS*

11.1 *Preservation of rights*

The Chargor shall take all necessary action to safeguard and maintain present and future rights in, or relating to, the Intellectual Property including

by observing all covenants and stipulations relating to those rights, and by paying all applicable renewal fees, licence fees and other outgoings.

11.2 *Registration of Intellectual Property*

The Chargor shall use all reasonable efforts to register applications for the registration of any Intellectual Property, and shall keep the Lender informed of all matters relating to each such registration.

11.3 *Maintenance of Intellectual Property*

The Chargor shall not permit any Intellectual Property to be abandoned, cancelled or to lapse.

12. *POWERS OF THE LENDER*

12.1 *Power to remedy*

12.1.1 The Lender shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Chargor of any of its obligations contained in this deed.

12.1.2 The Chargor irrevocably authorises the Lender and its agents to do all things that are necessary or desirable for that purpose.

12.1.3 Any monies expended by the Lender in remedying a breach by the Chargor of its obligations contained in this deed shall be reimbursed by the Chargor to the Lender on a full indemnity basis and shall carry interest in accordance with clause 19.1.

12.2 *Exercise of rights*

12.2.1 The rights of the Lender under clause 12.1 are without prejudice to any other rights of the Lender under this deed.

12.2.2 The exercise of any rights of the Lender under this deed shall not make the Lender liable to account as a mortgagee in possession.

12.3 *Power to dispose of chattels*

12.3.1 At any time after the security constituted by this deed has become enforceable, the Lender or any Receiver may, as agent for the Chargor, dispose of any chattels or produce found on any Property.

12.3.2 Without prejudice to any obligation to account for the proceeds of any disposal made under clause 12.3.1, the Chargor shall indemnify the Lender and any Receiver against any liability arising from any disposal made under clause 12.3.1.

12.4 *Lender has Receiver's powers*

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 Charged Property whether or not it has taken possession of any Charged Property and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

12.5 *Conversion of currency*

12.5.1 For the purpose of, or pending the discharge of, any of the Secured Liabilities, the Lender may convert any monies received, recovered or realised by it under this deed (including the proceeds of any previous conversion under this clause 12.5) from their existing currencies of denomination into any other currencies of denomination that the Lender may think fit.

12.5.2 Any such conversion shall be effected at Barclays Bank plc's then prevailing spot selling rate of exchange for such other currency against the existing currency.

12.5.3 Each reference in this clause 12.5 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

12.6 New accounts

12.6.1 If the Lender receives, or is deemed to have received, notice of any subsequent Security, or other interest, affecting all or part of the Charged Property, the Lender may open a new account for the Chargor in the Lender's books. Without prejudice to the Lender's right to combine accounts, no money paid to the credit of the Chargor in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.

12.6.2 If the Lender does not open a new account immediately on receipt of the notice, or deemed notice, under clause 12.6.1, then, unless the Lender gives express written notice to the contrary to the Chargor, all payments made by the Chargor to the Lender shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt or deemed receipt of the relevant notice by the Lender.

12.7 Indulgence

The Lender may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this deed (whether or not any such person is jointly liable with the Chargor) in respect of any of the Secured Liabilities, or of any other security for them without prejudice either to this deed or to the liability of the Chargor for the Secured Liabilities.

12.8 Appointment of an Administrator

12.8.1 The Lender may, without notice to the Chargor, appoint any one or more persons to be an Administrator of the Chargor pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this deed becomes enforceable.

12.8.2 Any appointment under this clause 12.8 shall:

12.8.2.1 be in writing signed by a duly authorised signatory of the Lender; and

12.8.2.2 take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986.

12.8.3 The Lender may apply to the court for an order removing an Administrator from office and may by notice in writing in accordance with this clause 12.8 appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.

13. WHEN SECURITY BECOMES ENFORCEABLE

13.1 *Security becomes enforceable on Event of Default*

The security constituted by this deed shall become immediately enforceable if an Event of Default occurs.

13.2 *Discretion*

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 Charged Property.

14. ENFORCEMENT OF SECURITY

14.1 *Enforcement powers*

14.1.1 For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this deed.

14.1.2 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall be immediately exercisable at any time after the security constituted by this deed has become enforceable under clause 13.1.

14.1.3 Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

14.2 *Extension of statutory powers of leasing*

The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Lender and any Receiver, at any time after the security constituted by this deed has become enforceable, whether in its own name or in that of the Chargor, to:

14.2.1 grant a lease or agreement to lease;

14.2.2 accept surrenders of leases; or

14.2.3 grant any option of the whole or any part of the Charged Property with whatever rights relating to other parts of it,

whether or not at a premium and containing such covenants on the part of the Chargor, and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) as the Lender or Receiver thinks fit without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

14.3 *Access on enforcement*

14.3.1 At any time after the Lender has demanded payment of the Secured Liabilities or if the Chargor defaults in the performance of its obligations under this deed or the Facility Agreement, the Chargor will allow the Lender or its Receiver, without further notice or demand, immediately to exercise all its rights, powers and remedies in particular (and without limitation) to take possession of the Charged Property and for that purpose to enter on any premises where the Charged Property is situated (or where the Lender or a Receiver reasonably believes the Charged Property to be situated) without incurring any liability to the Chargor for, or by any reason of, that entry.

14.3.2 At all times, the Chargor must use its best endeavours to allow the Lender or its Receiver access to any premises for the purpose of clause 14.3.1 (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.

14.4 ***Prior Security***

At any time after the security constituted by this deed has become enforceable, or after any powers conferred by any Security having priority to this deed shall have become exercisable, the Lender may:

14.4.1 redeem that or any other prior Security;

14.4.2 procure the transfer of that Security to it; and

14.4.3 settle and pass any account of the holder of any prior Security.

The settlement and passing of any such account passed shall, in the absence of any manifest error, be conclusive and binding on the Chargor. All monies paid by the Lender to an encumbrancer in settlement of any of those accounts shall, as from its payment by the Lender, be due from the Chargor to the Lender on current account and shall bear interest at the default rate of interest specified in the Facility Agreement and be secured as part of the Secured Liabilities.

14.5 ***Protection of third parties***

No purchaser, mortgagee or other person dealing with the Lender, any Receiver or Delegate shall be concerned to enquire:

14.5.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;

14.5.2 whether any power the Lender, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable; or

14.5.3 how any money paid to the Lender, any Receiver or any Delegate is to be applied.

14.6 ***Privileges***

Each Receiver and the Lender is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.

14.7 *No liability as mortgagee in possession*

Neither the Lender, any Receiver, any Delegate nor any Administrator shall be liable, by reason of entering into possession of Charged Property or for any other reason, to account as mortgagee in possession in respect of all or any of the Charged Property, nor shall any of them be liable for any loss on realisation of, or for any act, neglect or default of any nature in connection with, all or any of the Charged Property for which a mortgagee in possession might be liable as such.

14.8 *Conclusive discharge to purchasers*

The receipt of the Lender, or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Charged Property or in making any acquisition in the exercise of their respective powers, the Lender, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it or he thinks fit.

14.9 *Right of appropriation*

14.9.1 To the extent that:

14.9.1.1 the Charged Property constitutes Financial Collateral; and

14.9.1.2 this deed and the obligations of the Chargor under it constitute a Security Financial Collateral Arrangement,

the Lender shall have the right, at any time after the security constituted by this deed has become enforceable, to appropriate all or any of the Charged Property in or towards the payment or discharge of the Secured Liabilities in any order that the Lender may, in its absolute discretion, determine.

14.9.2 The value of any Charged Property appropriated in accordance with this clause 14.9 shall be the price of the Charged Property at the time the right of appropriation is exercised as listed on any recognised market index or determined by any other method that the Lender may select (including independent valuation).

14.9.3 The Chargor agrees that the methods of valuation provided for in this clause 14.9 are commercially reasonable for the purposes of the Financial Collateral Regulations.

15. *RECEIVER*

15.1 *Appointment*

At any time after the security constituted by this deed has become enforceable, or at the request of the Chargor, the Lender may, without further notice, appoint by way of deed, or otherwise in writing, any one or more persons to be a Receiver of all or any part of the Charged Property.

15.2 *Removal*

The Lender may, without further notice (subject to section 45 of the Insolvency Act 1986 in the case of an administrative receiver), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in

the place of any Receiver whose appointment may for any reason have terminated.

15.3 *Remuneration*

The Lender may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925, and the remuneration of the Receiver shall be a debt secured by this deed, to the extent not otherwise discharged.

15.4 *Power of appointment additional to statutory powers*

The power to appoint a Receiver conferred by this deed shall be in addition to all statutory and other powers of the Lender under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

15.5 *Power of appointment exercisable despite prior appointments*

The power to appoint a Receiver (whether conferred by this deed or by statute) shall be, and remain, exercisable by the Lender despite any prior appointment in respect of all or any part of the Charged Property.

15.6 *Agent of the Chargor*

Any Receiver appointed by the Lender under this deed shall be the agent of the Chargor and the Chargor shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of each Receiver shall continue until the Chargor goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Lender.

16. *POWERS OF RECEIVER*

16.1 *General*

16.1.1 Any Receiver appointed by the Lender under this deed shall, in addition to the powers conferred on him by statute, have the powers set out in clauses 16.2 through 16.21 (inclusive).

16.1.2 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.

16.1.3 Any exercise by a Receiver of any of the powers given by this clause 16 may be on behalf of the Chargor, the members of the Chargor or himself.

16.2 *Repair and develop Properties*

A Receiver may undertake or complete any works of repair, building or development on the Properties and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same.

16.3 *Surrender leases*

A Receiver may grant, or accept surrenders of, any leases or tenancies affecting any Property and may grant any other interest or right over any Property on any terms, and subject to any conditions, that he thinks fit.

16.4 *Employ personnel and advisers*

A Receiver may provide services and employ or engage any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on any terms, and subject to any conditions, that he thinks fit. A Receiver may discharge any such person or any such person appointed by the Chargor.

16.5 *Make VAT elections*

A Receiver may make, exercise or revoke any value added tax option to tax as he thinks fit.

16.6 *Remuneration*

A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by him) that the Lender may prescribe or agree with him.

16.7 *Realise Charged Property*

A Receiver may collect and get in the Charged Property or any part of them in respect of which he is appointed, and make any demands and take any proceedings as may seem expedient for that purpose, and take possession of the Charged Property with like rights.

16.8 *Manage or reconstruct the Chargor's business*

A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Chargor.

16.9 *Dispose of Charged Property*

A Receiver may sell, exchange, convert into money and realise all or any of the Charged Property in respect of which he is appointed in any manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as he thinks fit. Any sale may be for any consideration that the Receiver thinks fit and a Receiver may promote, or concur in promoting, a company to purchase the Charged Property to be sold.

16.10 *Sever fixtures and fittings*

A Receiver may sever and sell separately any fixtures or fittings from any Property without the consent of the Chargor.

16.11 *Sell Book Debts*

A Receiver may sell and assign all or any of the Book Debts in respect of which he is appointed in any manner, and generally on any terms and conditions, that he thinks fit.

16.12 *Valid receipts*

A Receiver may give valid receipt for all monies and execute all assurances and things that may be proper or desirable for realising any of the Charged Property.

16.13 *Make settlements*

A Receiver may make any arrangement, settlement or compromise between the Chargor and any other person that he may think expedient.

16.14 *Bring proceedings*

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Charged Property as he thinks fit.

16.15 *Insure*

A Receiver may, if he thinks fit, but without prejudice to the indemnity in clause 19, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Chargor under this deed.

16.16 *Powers under the LPA 1925*

A Receiver may exercise all powers provided for in the LPA 1925 in the same way as if he had been duly appointed under the LPA 1925, and exercise all powers provided for an administrative receiver in Schedule 1 to the Insolvency Act 1986.

16.17 *Borrow*

A Receiver may, for any of the purposes authorised by this clause 16, raise money by borrowing from the Lender (or from any other person) either unsecured or on the security of all or any of the Charged Property in respect of which he is appointed on any terms that he thinks fit (including, if the Lender consents, terms under which that security ranks in priority to this deed).

16.18 *Redeem prior Security*

A Receiver may redeem any prior Security and settle and pass the accounts to which the Security relates. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Chargor, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

16.19 *Delegation*

A Receiver may delegate his powers in accordance with this deed.

16.20 *Absolute beneficial owner*

A Receiver may, in relation to any of the Charged Property, exercise all powers, authorisations and rights he would be capable of exercising, and do all those acts and things, as an absolute beneficial owner could exercise or do in the ownership and management of the Charged Property or any part of the Charged Property.

16.21 *Incidental powers*

A Receiver may do any other acts and things that he:

16.21.1 may consider desirable or necessary for realising any of the Charged Property;

16.21.2 may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law; or

16.21.3 lawfully may or can do as agent for the Chargor.

17. DELEGATION

17.1 *Delegation*

The Lender or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this deed (including the power of attorney granted under clause 20.1).

17.2 *Terms*

The Lender and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit.

17.3 *Liability*

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

18. APPLICATION OF PROCEEDS

18.1 *Order of application of proceeds*

All monies received by the Lender, a Receiver or a Delegate pursuant to this deed, after the security constituted by this deed has become enforceable, shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority:

18.1.1 in or towards payment of or provision for all costs, charges and expenses incurred by or on behalf of the Lender (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this deed, and of all remuneration due to any Receiver under or in connection with this deed;

18.1.2 in or towards payment of or provision for the Secured Liabilities in any order and manner that the Lender determines; and

18.1.3 in payment of the surplus (if any) to the Chargor or other person entitled to it.

18.2 *Appropriation*

Neither the Lender, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

18.3 *Suspense account*

All monies received by the Lender, a Receiver or a Delegate under this deed:

- 18.3.1 may, at the discretion of the Lender, Receiver or Delegate, be credited to any suspense or securities realised account;
- 18.3.2 shall bear interest, if any, at the rate agreed in writing between the Lender and the Chargor; and
- 18.3.3 may be held in that account for so long as the Lender, Receiver or Delegate thinks fit.

19. *COSTS AND INDEMNITY*

19.1 *Costs*

The Chargor shall, within five Business Days of demand, pay to, or reimburse, the Lender and any Receiver, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, reasonable legal, printing and properly incurred out-of-pocket expenses) incurred by the Lender, any Receiver or any Delegate in connection with:

- 19.1.1 this deed or the Charged Property;
- 19.1.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lender's, a Receiver's or a Delegate's rights under this deed; or
- 19.1.3 taking proceedings for, or recovering, any of the Secured Liabilities, together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost or expense arose until full discharge of that cost or expense (whether before or after judgment, liquidation, winding up or administration of the Chargor) at the rate and in the manner specified in the Facility Agreement.

19.2 *Indemnity*

The Chargor shall indemnify the Lender, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:

- 19.2.1 the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this deed or by law in respect of the Charged Property;
- 19.2.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this deed; or

19.2.3 any default or delay by the Chargor in performing any of its obligations under this deed.

Any past or present employee or agent may enforce the terms of this clause 19.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

20. POWER OF ATTORNEY

20.1 *Appointment of attorneys*

By way of security, the Chargor irrevocably appoints the Lender, every Receiver and every Delegate separately to be the attorney of the Chargor and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

20.1.1 the Chargor is required to execute and do under this deed; or

20.1.2 any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this deed or by law on the Lender, any Receiver or any Delegate.

20.2 *Ratification of acts of attorneys*

The Chargor ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 20.1.

21. RELEASE

21.1 Subject to clause 28.3, on the expiry of the Security Period (but not otherwise), the Lender shall, at the request and cost of the Chargor, take whatever action is necessary to:

21.1.1 release the Charged Property from the security constituted by this deed; and

21.1.2 reassign the Charged Property to the Chargor.

22. ASSIGNMENT AND TRANSFER

22.1 *Assignment by Lender*

22.1.1 At any time, without the consent of the Chargor, the Lender may assign or transfer any or all of its rights and obligations under this deed.

22.1.2 The Lender may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Chargor, the Charged Property and this deed that the Lender considers appropriate.

22.2 *Assignment by Chargor*

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

23. SET-OFF

23.1 *Lender's right of set-off*

The Lender may at any time set off any liability of the Chargor to the Lender against any liability of the Lender to the Chargor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this deed. If the liabilities to be set off are expressed in different currencies, the Lender may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Lender of its rights under this clause 23 shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

23.2 *No obligation to set off*

The Lender is not obliged to exercise its rights under clause 23.1. If, however, it does exercise those rights it must promptly notify the Chargor of the set-off that has been made.

23.3 *Exclusion of Chargor's right of set-off*

All payments made by the Chargor to the Lender under this deed shall be made without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

24. AMENDMENTS, WAIVERS AND CONSENTS

24.1 *Amendments*

No amendment of this deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).

24.2 *Waivers and consents*

24.2.1 A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

24.2.2 A failure to exercise, or a delay in exercising, any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Lender shall be effective unless it is in writing.

24.3 *Rights and remedies*

The rights and remedies provided under this deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

25. SEVERANCE

Severance

If any provision (or part of a provision) of this deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this deed.

26. COUNTERPARTS

26.1 *Counterparts*

26.1.1 This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.

26.1.2 Transmission of the executed signature page of a counterpart of this deed by fax or email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this deed. If either method of delivery is adopted, without prejudice to the validity of the deed thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

27. THIRD PARTY RIGHTS

Third party rights

Except as expressly provided elsewhere in this deed, a person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

28. FURTHER PROVISIONS

28.1 *Independent security*

The security constituted by this deed shall be in addition to, and independent of, any other security or guarantee that the Lender may hold for any of the Secured Liabilities at any time. No prior security held by the Lender over the whole or any part of the Charged Property shall merge in the security created by this deed.

28.2 *Continuing security*

The security constituted by this deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Lender discharges this deed in writing.

28.3 *Discharge conditional*

Any release, discharge or settlement between the Chargor and the Lender shall be deemed conditional on no payment or security received by the Lender in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded pursuant to any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

28.3.1 the Lender or its nominee may retain this deed and the security created by or pursuant to it, including all certificates and documents relating to the whole or any part of the Charged Property, for any period that the Lender deems necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and

28.3.2 the Lender may recover the value or amount of such security or payment from the Chargor subsequently as if the release, discharge or settlement had not occurred.

28.4 *Certificates*

A certificate or determination by the Lender as to any amount for the time being due to it from the Chargor under this deed and the Facility Agreement shall be, in the absence of any manifest error, conclusive evidence of the amount due.

28.5 *Consolidation*

The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this deed.

29. *NOTICES*

29.1 *Delivery*

Each notice or other communication required to be given to a party under or in connection with this deed shall be:

29.1.1 in writing;

29.1.2 delivered by hand, by pre-paid first-class post or other next Business Day delivery service or sent by fax or email; and

29.1.3 sent to the postal address or to the fax number or email address initially provided by each party to the other (for the purpose of consummating this deed) or to any other address or fax number or email address as is notified in writing by one party to the other from time to time.

29.2 A notice or other communication given under clause 29.1 on a day that is not a Business Day, or after normal business hours (which shall be deemed to be 5:30 p.m. in the place of receipt), in the place it is received, shall be deemed to have been received on the next Business Day.

29.3 *Service of proceedings*

This clause 29 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

30. *GOVERNING LAW AND JURISDICTION*

30.1 *Governing law*

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims)

shall be governed by and construed in accordance with the law of England and Wales.

30.2 Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims).

In witness whereof this document has been executed and delivered as a deed on the date first stated above.

Schedule 1
Notice and acknowledgement

Part A
Form of notice

[On the letterhead of the Chargor]

[NAME OF COUNTERPARTY]
[ADDRESS]
[ADDRESS]

[DATE]

Dear Sirs

Debenture dated [DATE] between ENCORE CARE HOMES DEVELOPMENTS LTD and Quantum Secured Lending Plc (the "Debenture")

We refer to the [DESCRIBE RELEVANT AGREEMENT] (the Contract).

This letter constitutes notice to you that under the Debenture we have assigned, by way of security, to Quantum Secured Lending Plc (Lender) all our rights in respect of the Contract.

We confirm that:

- (A) We will remain liable under the Contract to perform all the obligations assumed by us under the Contract.
- (B) None of the Lender, any delegate appointed by the Lender or any receiver will at any time be under any obligation or liability to you under or in respect of the Contract.
- (C) Neither the Debenture nor this notice releases, discharges or otherwise affects your liability and obligations in respect of the Contract.

Subject to the above, we will remain entitled to exercise all our rights, powers and discretions under the Contract and you may continue to deal with us in relation to the Contract and give notices under the Contract to us unless and until you receive written notice to the contrary from the Lender. Thereafter, all such rights, powers and discretions shall be exercisable by, and notices shall be given to, the Lender or as it directs and we will cease to have any right to deal with you in relation to the Contract and you must deal only with the Lender.

Please note that we have agreed that we will not amend or waive any provision of or terminate the Contract without the prior written consent of the Lender.

The instructions in this notice may only be revoked or amended with the prior written consent of the Lender.

Please confirm that you agree to the terms of this notice, and to act in accordance with its provisions, by sending the attached acknowledgement to the Lender at 170 Charminster Road, Bournemouth, BH8 9RL, with a copy to us.

This notice, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of England and Wales.

Yours faithfully

authorised for and on behalf of

**ENCORE CARE HOMES
DEVELOPMENTS TLD**

Part B
Form of acknowledgement

[On the letterhead of the counterparty]

Quantum Secured Lending Plc
170 Charminster Road
Bournemouth
BH8 9RL

[DATE]

Dear Sirs

Debenture dated [DATE] between ENCORE CARE HOMES DEVELOPMENTS LTD and Quantum Secured Lending Plc (the "Debenture")

We confirm receipt from ENCORE CARE HOMES DEVELOPMENTS LTD (together or separately, the **Chargor**) of a notice (**Notice**) dated [DATE] of an assignment, by way of security, of all the Chargor's rights under [DESCRIBE RELEVANT AGREEMENT] (the **Contract**).

We confirm that:

- (A) We accept the confirmations and instructions contained in the Notice and agree to comply with the Notice.
- (B) There has been no amendment, waiver or release of any rights or interests in the Contract since the date of the Contract.
- (C) We will not cancel, avoid, release or otherwise allow the Contract to lapse without giving the Lender at least 30 days' prior written notice.
- (D) We have not, as at the date of this acknowledgement, received notice that the Chargor has assigned its rights under the Contract to a third party, or created any other interest (whether by way of security or otherwise) in the Contract in favour of a third party.

The Lender will not in any circumstances have any liability in relation to the Contract.

The Contract shall not be rendered void, voidable or unenforceable by reason of any non-disclosure by the Lender.

This letter, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of England and Wales.

Yours faithfully

[COUNTERPARTY]

Schedule 2
Notice and acknowledgement – Insurance Policy

Part A
Form of notice

[On the letterhead of the Chargor]

[NAME OF INSURANCE COMPANY]
[ADDRESS]
[ADDRESS]

[DATE]

Dear Sirs

Debenture dated [DATE] between ENCORE CARE HOMES DEVELOPMENTS TLD and Quantum Secured Lending Plc (the "Debenture")

We refer to the [DESCRIBE INSURANCE POLICY AND SPECIFY ITS POLICY NUMBER] (the Policy).

This letter constitutes notice to you that under the Debenture we have assigned, by way of security, to Quantum Secured Lending Plc (the Lender) all our rights in respect of the Policy (including all claims and all returns of premium in connection with the Policy).

We irrevocably instruct and authorise you to:

- (A) Comply with the terms of any written instructions received by you from the Lender relating to the Policy, without notice or reference to, or further authority from, us and without enquiring as to the justification or the validity of those instructions.
- (B) Hold all sums from time to time due and payable by you to us under the Policy to the order of the Lender.
- (C) Pay, or release, all monies to which we are entitled under the Policy to the Lender, or to such persons as the Lender may direct.
- (D) Disclose information in relation to the Policy to the Lender on request by the Lender.

Neither the Debenture nor this notice releases, discharges or otherwise affects your liability and obligations in respect of the Policy.

Subject to the foregoing, you may continue to deal with us in relation to the Policy until you receive written notice to the contrary from the Lender. Thereafter, we will cease to have any right to deal with you in relation to the Policy and you must deal only with the Lender.

The instructions in this notice may only be revoked or amended with the prior written consent of the Lender.

Please confirm that you agree to the terms of this notice and to act in accordance with its provisions by sending the attached acknowledgement to the Lender at 170 Charminster Road, Bournemouth, BH8 9RL, with a copy to us.

This notice, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of England and Wales.

Yours faithfully

authorised for and on behalf of

**ENCORE CARE HOMES
DEVELOPMENTS LTD**

Part B
Form of acknowledgement

[On the letterhead of the insurance company]

Quantum Secured Lending Plc
170 Charminster Road
Bournemouth
BH8 9RL

[DATE]

Dear Sirs

Debenture dated [DATE] between ENCORE CARE HOMES DEVELOPMENTS LTD and Quantum Secured Lending Plc (the "Debenture")

We confirm receipt from ENCORE CARE HOMES DEVELOPMENTS LTD (together or separately, the **Chargor**) of a notice (**Notice**) dated [DATE] of an assignment, by way of security, of all the Chargor's rights under [DESCRIBE INSURANCE POLICY AND ITS NUMBER] (the **Policy**).

We confirm that:

- (A) We accept the instructions and authorisations contained in the Notice and agree to comply with the Notice.
- (B) There has been no amendment, waiver or release of any rights or interests in the Policy since the date the Policy was issued.
- (C) We will not cancel, avoid, release or otherwise allow the Policy to lapse without giving the Lender at least 30 days' prior written notice.
- (D) We have not, as at the date of this acknowledgement, received notice that the Chargor has assigned its rights under the Policy to a third party, or created any other interest (whether by way of security or otherwise) in the Policy in favour of a third party.
- (E) The Lender will not in any circumstances be liable for the premiums in relation to the Policy.
- (F) The Policy shall not be rendered void, voidable or unenforceable by reason of any non-disclosure by the Lender.

This letter, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of England and Wales.

Yours faithfully

.....
[INSURER]

Schedule 3
Notice and acknowledgement - bank account

Part A
Form of notice

[On the letterhead of the Chargor]

[BANK]
[ADDRESS]
[ADDRESS]

[DATE]

Dear Sirs

Debenture dated [DATE] between ENCORE CARE HOMES DEVELOPMENTS LTD and Quantum Secured Lending Plc (the "Debenture")

This letter constitutes notice to you that under the Debenture we have charged, by way of first fixed charge, in favour of Quantum Secured Lending Plc (the Lender) all monies from time to time standing to the credit of the accounts held with you and detailed below (together or separately, the Account), together with all other rights and benefits accruing to or arising in connection with the Account (including, but not limited to, entitlements to interest):

Name of Account: ENCORE CARE HOMES DEVELOPMENTS LTD
Sort code: 40-11-60
Account number: 80156140

We irrevocably instruct and authorise you to disclose to the Lender any information relating to the Account requested from you by the Lender.

We acknowledge that you may comply with the instructions in this notice without any further permission from us.

The instructions in this notice may only be revoked or amended with the prior written consent of the Lender.

This notice, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of England and Wales.

Please acknowledge receipt of this notice by sending the attached acknowledgement to the Lender at 170 Charminster Road, Bournemouth, BH8 9RL, with a copy to us.

Yours faithfully

.....
authorised for and on behalf of
**ENCORE CARE HOMES
DEVELOPMENTS LTD**

Part B
Form of acknowledgement

[On the letterhead of Bank]

Quantum Secured Lending Plc
170 Charminster Road
Bournemouth
BH8 9RL

[DATE]

Dear Sirs

Debenture dated [DATE] between ENCORE CARE HOMES DEVELOPMENTS LTD and Quantum Secured Lending Plc (the "Debenture")

We confirm receipt from **ENCORE CARE HOMES DEVELOPMENTS LTD** (together or separately, the **Chargor**) of a notice (the **Notice**) dated [DATE] of a charge (on the terms of the Debenture) over all monies from time to time standing to the credit of the account detailed below (together or separately, the **Account**), together with all other rights and benefits accruing to or arising in connection with the Account (including, but not limited to, entitlements to interest).

We confirm that we:

- (A) Accept the instructions contained in the Notice and agree to comply with the Notice.
- (B) Have not received notice of the interest of any third party in the Account.
- (C) Have neither claimed nor exercised, nor will claim or exercise any security interest, set-off, counter-claim or other right in respect of the Account.

The Account is:

Name of Account:	ENCORE CARE HOMES DEVELOPMENTS LTD
Sort code:	40-11-60
Account number:	80156140


This letter, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of England and Wales.

Yours faithfully

.....
[LENDER]

Executed as a deed by ENCORE
CARE HOMES DEVELOPMENTS
LTD acting by a designated member
in the presence of:


Designated Member


Signature of witness


Name of witness:

GRACE LAWTON

Address of witness:

Executed as a deed by QUANTUM
SECURED LENDING acting by a
director in the presence of:


DAVID HINES
Name of Director


Signature of witness

Name of witness:

GRACE LAWTON

Address of witness: