



**Registration of a Charge**

Company name: **ABBNEYFIELD SOUTH DOWNS LIMITED**

Company number: **00736150**



X971L195

Received for Electronic Filing: **12/06/2020**

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**Details of Charge**

Date of creation: **09/06/2020**

Charge code: **0073 6150 0010**

Persons entitled: **THE CHARITY BANK LIMITED**

Brief description: **AT ANY TIME THE FREEHOLD, HERITABLE AND LEASEHOLD PROPERTIES OF THE COMPANY AT THAT TIME OR ANY OF THEM AS THE CONTEXT REQUIRES AND SHALL INCLUDE ALL BUILDINGS, STRUCTURES, FIXTURES (INCLUDING TRADE AND TENANT'S FIXTURES) FROM TIME TO TIME ON OR IN ANY SUCH PROPERTY.**

**Contains fixed charge(s).**

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

**Contains negative pledge.**

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**Authentication of Form**

This form was authorised by: **a person with an interest in the registration of the charge.**

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**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: **BATES WELLS**



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 736150

Charge code: 0073 6150 0010

The Registrar of Companies for England and Wales hereby certifies that a charge dated 9th June 2020 and created by ABBEYFIELD SOUTH DOWNS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 12th June 2020 .

Given at Companies House, Cardiff on 15th June 2020

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

This Debenture is made the

9<sup>TH</sup>

day of

JUNE 2020

2019

BW

BETWEEN

- (1) **ABBEYFIELD SOUTH DOWNS LIMITED**, a company limited by guarantee incorporated in England and Wales with company number 00736150, incorporated as a charitable Registered Society with registered number 216779 and registered with the Regulator of Social Housing with number H0375, whose registered address is c/o Nolan Taylor, Abbeyfield House, North Road, Alfriston, East Sussex, BN26 5XB ("Company"); and
- (2) **THE CHARITY BANK LIMITED** (company number 4330018) whose registered office is at Fosse House, 182 High Street, Tonbridge, TN9 1BE as security trustee for the Secured Parties as defined in the Facility Agreement ("Security Agent")

WITNESSES as follows:-

1. **COVENANT TO PAY**

- 1.1 The Company, as primary obligor and not merely as surety, covenants with the Security Agent to pay or discharge to the Security Agent the Secured Liabilities on the due date or dates for payment or discharge or, in the absence of any agreed or specified due dates, immediately on demand.
- 1.2 If the Company shall fail to pay any amount under this Debenture when it is due then such amount shall bear interest (after as well as before judgment and payable on demand) at the Default Rate from time to time from the due date until the date such amount is paid in full to the Security Agent.

2. **CHARGING CLAUSE**

- 2.1 The Company with full title guarantee charges and mortgages to the Security Agent as a continuing security for the payment and discharge of the Secured Liabilities:
  - 2.1.1 by way of legal mortgage all freehold and leasehold property (including heritable property situate in Scotland) of the Company at the date of this Debenture and the proceeds of sale thereof together with all buildings, structures and fixtures (including trade and tenant's fixtures) from time to time on or in any such property;
  - 2.1.2 by way of fixed charge:
    - 2.1.2.1 all estates and interests of the Company in freehold, leasehold property (including heritable property situate in Scotland) and other immovable property (wherever situate), now or at any time hereafter during the continuance of this security belonging to or charged to the Company and the proceeds of sale thereof, together with all buildings, structures and fixtures (including trade and tenant's fixtures) from time to time on or in any such property (other than any property charged in terms of clause 2.1.1 above);
    - 2.1.2.2 by way of fixed charge the benefit of all its rights, present and future, under covenants for title given in relation to the Property and the benefit of all its rights, present and future, against any lessee, sub-lessee, licensee or other occupier of the Property for the time being (including rights to rental income, licence fees, mesne profits and other income) and, in each case, its rights against guarantors and sureties for the obligations of such persons;
    - 2.1.2.3 by way of fixed charge the benefit of all its rights, present and future, under any contract for the sale, letting or other disposal of the Property and any option to renew any lease or purchase any reversion (whether freehold or not) in relation to the Property;

**CERTIFIED**

To be a true copy of the original

Bates Wells

Bates Wells & Braithwaite London LLP

Registered OC325522

Dated 9 JUNE 2020

- 2.1.2.4 by way of fixed charge the benefit of all its rights, present and future, against persons in connection with any works carried out and/or services and/or goods supplied in the design, construction, fitting out, repair or replacement of the Property;
- 2.1.2.5 by way of fixed charge all licences, consents and authorisations (both public and private), present and future, held by it in connection with any of its activities (including any Licences);
- 2.1.2.6 by way of fixed charge all other agreements relating to land which the Company is or may become party to or otherwise entitled;
- 2.1.2.7 by way of fixed charge all its present and future plant and machinery (save to the extent that such plant and machinery forms part of its stock in trade or work in progress);
- 2.1.2.8 by way of fixed charge all its present and future vehicles (save to the extent that such vehicles forms part of its stock in trade or work in progress);
- 2.1.2.9 by way of fixed charge all its present and future computers (save to the extent that such computers forms part of its stock in trade or work in progress);
- 2.1.2.10 by way of fixed charge all its present and future office equipment (save to the extent that such office equipment forms part of its stock in trade or work in progress);
- 2.1.2.11 by way of fixed charge all other equipment present and future not more particularly charged by this clause 2.1 (unless it forms part of its stock in trade or work in progress) together with all related spare parts, fuels, equipment, tools and all log books, maintenance records, record books, manuals, hand books, contracts, warranties and services records and the benefit of all its rights, present and future, against any person in respect of their design, manufacture, purchase, installation, repair and/or replacement;
- 2.1.2.12 by way of fixed charge all its goodwill and uncalled capital, present and future;
- 2.1.2.13 by way of fixed charge all stocks, shares and other securities (including debt securities) and interests in any unincorporated business or entity, now and at any time during the continuance of this security owned by the Company, together with all rights, benefits and property (including dividend and other income whether by way of dividend, distribution or otherwise) offered, arising or accruing in relation thereto whether by way of bonus, consolidation, conversion, exchange, option, preference, return of capital or otherwise;
- 2.1.2.14 by way of fixed charge all interests in and rights under policies of insurance and assurance now or at any time during the continuance of this security belonging to the Company, and all its rights, present and future, to other compensation monies from time to time payable in respect of the Charged Assets;
- 2.1.2.15 by way of fixed charge all patents, trade and service marks, brand and trade names, copyrights, design rights, registered designs, trade secrets, know-how, inventions, confidential information and other intellectual property rights, including the benefit of any pending applications for any of them, now or at any time during the continuance of this security belonging to the Company, including all the Company's rights under any agreements, both present or future, relating to the use or exploitation of such rights;
- 2.1.2.16 by way of fixed charge, the Receivables;

- 2.1.2.17 by way of fixed charge, with effect from the opening or establishment of any Collections Account (as defined in clause 4.26), all monies standing to the credit of such Collections Account;
- 2.1.2.18 by way of fixed charge all Account Balances (not being charged by clause 2.1.2.17);
- 2.1.2.19 by way of fixed charge the benefit of all warranties, instruments, guarantees, charges, pledges, and other security and all other rights and remedies available to the Company in respect of any Charged Assets;
- 2.1.3 by way of floating charge all its undertaking, property and assets, whatever and wherever, both present and future except to the extent effectively charged under the preceding provisions of this clause 2.1.
- 2.2 The fixed charges created by clauses 2.1.1 and 2.1.2 inclusive shall, in each case, include all related spare parts, fuels, equipment, tools and all log books, maintenance records, record books, manuals, hand books, contracts, warranties and services records and the benefit of all its rights, present and future, against any person in respect of their design, manufacture, purchase, installation, repair and/or replacement but shall in each case exclude Restricted Funds.
- 2.3 The Security Agent may at any time while this Debenture is enforceable by written notice to the Company convert any floating charge granted by the Company with immediate effect into a fixed charge as regards any asset which is the subject of the floating charge or which is specified in the notice.
- 2.4 Without prejudice to any rule of law which may have a similar effect, any floating charge constituted under this Debenture will automatically be converted (without notice) with immediate effect into a fixed charge as regards all assets the subject of the floating charge upon the occurrence of:
- 2.4.1 any step being taken by any third party to take a fixed charge over any Charged Assets;
- 2.4.2 any step being taken by any third party to levy any distress, attachment, execution or other legal process against any Charged Assets;
- 2.4.3 the Company ceasing to carry on business or to be a going concern; or
- 2.4.4 on the making of an order for the compulsory winding-up of the Company, on the convening of a meeting for the passing of a resolution for the voluntary winding-up of the Company or the taking of any steps (including, without limitation, the making of an application or the giving of any notice) by the Company or any other person for the appointment of an administrator in respect of the Company.
- 2.5 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 shall apply to the charges created by or pursuant to this Debenture.
- 2.6 The Company requests the Land Registry to enter a restriction in the following form in the Proprietorship Register of any registered land forming part of the Charged Assets now or in the future:
- "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 [ ] in favour of The Charity Bank Limited referred to in the Charges Register."
- and

The Company further requests, where applicable, that a note of the obligation on the part of the Security Agent to make further advances to the Company (which is deemed to be incorporated in this Debenture) is entered on the Register of Title of any registered land forming part of the Charged Assets now or in the future.

### **3. CONTINUING SECURITY**

- 3.1 Without prejudice to the generality of clause 2, this Debenture secures all advances already made and to be made, and shall be a continuing security to the Security Agent notwithstanding any settlement of account or other matter whatsoever.
- 3.2 This Debenture shall not be considered as satisfied or discharged by any intermediate payment, repayment or discharge of the whole or any part of the Secured Liabilities.

### **4 UNDERTAKINGS AND COVENANTS**

The Company undertakes and covenants with the Security Agent (save as expressly provided for in the Facility Agreement or where the Security Agent agrees in writing to the contrary): -

- 4.1 It will not, without the prior written consent of the Security Agent, either in a single transaction or in a series of transactions whether related or not and whether voluntarily or involuntarily, sell or transfer the Charged Assets or any interest in any Charged Assets;
- 4.2 It will comply with the terms of this Debenture and all agreements relating to the Secured Liabilities;
- 4.3 It will preserve and maintain all intellectual property rights owned or used by the Company (including those referred to in clause 2.1.2.15);
- 4.4 It will promptly notify the Security Agent of the acquisition by the Company of any interest in any Property;
- 4.5 It will comply with all covenants, agreements, stipulations and obligations now or at any time affecting or binding Charged Assets insofar as the same are subsisting and are capable of being enforced, and it will duly and diligently enforce all covenants, agreements, stipulations and obligations benefiting a Charged Assets and will not waive, release or vary (or agree to do so) the obligations of any other party thereto;
- 4.6 It will keep each Charged Asset in good and substantial repair and condition and, promptly after being required to do so by the Security Agent, make good any want of repair of a Charged Asset or renew when necessary (in each case at the cost of the Company);
- 4.7 It will not do or permit to be done anything which may in any way materially adversely affect the value of a Charged Asset or jeopardise, depreciate or otherwise materially prejudice any rights or assets secured in favour of the Security Agent;
- 4.8 It will obtain and maintain any permits, registrations, licences, exemptions, consents or other approvals required for its business or in respect of a Charged Asset (and file any notification, report or assessment required) under any Environmental Laws, and will comply in all material respects with all Environmental Laws;
- 4.9 It will not create or permit to subsist any Encumbrance on any Charged Asset other than in favour of the Security Agent;
- 4.10 It will not make any structural or material alteration to or to the use of any Property or do or permit to be done any development of any Property or apply for any planning consent in relation to any Property or do or permit to be done any act, matter or thing which would have a material and adverse effect on the value or marketability of the Property in question (excluding, for the avoidance of doubt, the carrying out of the Development in accordance with the terms of the Facility Agreement);

- 4.11 It will not grant any Lease of, part with possession or share occupation of the whole or part of the Property or confer any licence, right or interest to occupy or grant any licence or permission to assign, under-let or part with possession of the same;
- 4.12 It will not vary, surrender, cancel or dispose of, or permit to be forfeit, any leasehold interest in any Property;
- 4.13 It will observe and perform all covenants, agreements and stipulations from time to time affecting any interest in the Property or contained in any lease, agreement for lease or other agreement under which any part of the Property may be held;
- 4.14 It will immediately upon the execution of the relevant Transaction Security Document (or upon coming into the possession of the Company at any time) deposit with the Security Agent (i) all planning permissions, consents and licences and any other documents relating to the permitted use of any Charged Assets, and (ii) all deeds, certificates and other documents constituting or evidencing title to any asset which is subject to fixed security in favour of the Security Agent including, without limitation, all certificates and other documents of title to the stocks, shares and other securities referred to in clause 2.1.2.13 above together with stock transfer forms in respect of the same executed in blank (except for the number and class of shares and the name of the transferor) and left undated. The Security Agent may at any time after the date of this Debenture complete the instruments of transfer on behalf of the Company in favour of itself or such other person as it shall select;
- 4.15 It will, promptly on the request of the Security Agent from time to time, give notice of assignment or charge (in such form as the Security Agent may require) in respect of any asset which is the subject of an assignment or charge pursuant to a Finance Document and will use reasonable endeavours to procure that the recipient of that notices acknowledges receipt in a form satisfactory to the Security Agent;
- 4.16 It will (at its own cost) on demand by the Security Agent execute and deliver in such form as the Security Agent may from time to time require:
  - 4.16.1 a legal mortgage of any freehold or leasehold property of the Company which is not effectively charged by clause 2.1.1 and of any freehold or leasehold property acquired by the Company after the date of this Debenture;
  - 4.16.2 a standard security or other fixed security over the Company's heritable freehold, leasehold or other property situate in Scotland;
  - 4.16.3 a fixed charge or assignment ~~in~~ in or by way of security of any Asset subject to a floating charge under clause 2.1.3; and/or
  - 4.16.4 a chattel mortgage over such chattels, plant and machinery as the Security Agent may specify,

and the Company will execute such other deeds, documents, agreements and instruments and will otherwise do and concur in all such other acts or things as the Security Agent may deem necessary for perfecting, preserving or protecting the security created (or intended to be created) by this Debenture or for facilitating the realisation of the Charged Assets or the exercise of any rights of the Security Agent under this Debenture;
- 4.17 It will comply with the terms of clause 21.8 (Insurances) of the Facility Agreement.
- 4.18 It will comply with all legislation relating to the Charged Assets including, without limitation, all laws relating to town and country planning, fire precautions and health and safety at work;
- 4.19 It will promptly pay or cause to be paid and indemnify the Security Agent and any Receiver against all present and future rent, rates, taxes, duties, charges, assessments, impositions and outgoings whatsoever now or at any time in the future payable in respect of the Property (or any part of it) or by the owner or occupier of the Property (or any part of it);



- 4.20 It will carry out all works, and maintain all arrangements which any relevant public or statutory authority may require recommend or direct to be carried out or maintained in relation to the Charged Assets;
- 4.21 It will notify the Security Agent immediately upon the receipt of any notice, order, complaint or summons (or proposal for the same) from any statutory or other authority relating to the Charged Assets and to produce a copy of the same to the Security Agent, and at the request of the Security Agent (but at the cost of the Company) to make or join with the Security Agent in making such objections to or representations against the same as the Security Agent shall require;
- 4.22 It will, if the Company is in breach of any legislation, carry out with all reasonable speed such remedial steps as the Security Agent or any Receiver shall require and, in default, the Security Agent or any Receiver may (but shall not be obliged to) enter the Property and carry out such remedial steps at the expense of the Company;
- 4.23 It will permit the Security Agent, any authorised representative of the Security Agent or any Receiver to enter the Property for any reasonable purpose (including to take any steps or action which the Security Agent is entitled to take under this Debenture) and on reasonable notice, to have access during normal office hours to its accounts and accounting records and any books and records relating to the Charged Assets, to inspect and take copies of the same and to provide to the Security Agent or any Receiver such information in relation to the Charged Assets as it or he shall reasonably request;
- 4.24 It will promptly upon the reasonable request of the Security Agent supply, or ensure the supply of, all such documentation, information and other evidence as is requested by the Security Agent (for itself or on behalf of any prospective new lender) in order for the Security Agent (or that prospective new lender) to carry out and be satisfied it has complied with all necessary "know your Company" or similar identification procedures and requirements;
- 4.25 It will promptly supply to the Security Agent:
- 4.25.1 a copy of any notice, order, directive, designation, resolution or proposal having application to or affecting a Charged Asset or the area in which it is situate, including any statutory notice; and
- 4.25.2 such further information regarding the financial condition, business and operations of the Company, a Charged Asset or any other matter related to any Loan as the Security Agent may reasonably request;
- 4.26 Following this Debenture becoming enforceable, it will collect, or accept payment of and receive, in each case as agent for the Security Agent, all Receivables and, immediately upon receipt, pay all monies which it may receive in respect of any Receivables or in respect of any other rights charged to the Security Agent by way of fixed charge under this Debenture into such specially designated account(s) as the Security Agent may from time to time direct (each such account together with all additions to or renewals or replacements thereof being a "**Collections Account**") and, pending such payment, hold all monies so received upon trust for the Security Agent;
- 4.27 It will not be entitled, and shall not attempt, to withdraw or transfer any monies standing to the credit of a Collections Account without the prior consent of the Security Agent and the Security Agent may in its absolute discretion withhold such consent;
- 4.28 It will on demand by the Security Agent execute a legal assignment of any or all of the Receivables in such form as the Security Agent may require and give notice of such assignment to the debtors and take such other steps as the Security Agent may wish to perfect such assignment;
- 4.29 It will deal with the Receivables in accordance with any directions from time to time given in writing by the Security Agent and, in addition to its obligations under clauses 4.26 to 4.28

not, without the prior written consent of the Security Agent, release set-off, grant time or indulgence or otherwise deal with the Receivables save in accordance with this clause 4.29;

- 4.30 It will furnish the Security Agent with such information as to the nature and amount of the Receivables as the Security Agent may reasonably require; and
- 4.31 If necessary, it will affix to such items of the Charged Assets subject to a fixed charge under this Debenture or endorse or cause to be endorsed on such documents as the Security Agent shall in each case reasonably stipulate any label, sign or memorandum required by the Security Agent drawing attention to the security created by this Debenture.

## **5. PROTECTION OF SECURITY**

- 5.1 If there is any breach by the Company of its obligations under any Finance Document, the Security Agent may (without any obligation to do so) carry out such works, or take such other action or steps as the Security Agent considers appropriate to remedy the breach, in each case at the cost of the Company.
- 5.2 The obligations of the Company under this Debenture and/or any other Finance Document shall not be affected by any act, omission, matter or thing which, would reduce, release or prejudice any of its obligations, including:
  - 5.2.1 any time, waiver or consent granted to, or composition with the Company or other person;
  - 5.2.2 the release of the Company or any other person under the terms of any composition or arrangement with any creditor of the Company;
  - 5.2.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of the Company or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
  - 5.2.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Company or any other person;
  - 5.2.5 any amendment (however fundamental) or replacement of any Finance Document;
  - 5.2.6 any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security;
  - 5.2.7 any insolvency or similar proceedings;
  - 5.2.8 the winding-up, dissolution, administration or reorganisation of the Company or any other person or any change in its status, function, control or ownership;
  - 5.2.9 any failure to take, or fully to take, any security agreed to be taken in relation to any of the Secured Liabilities;
  - 5.2.10 any failure to realise or fully to realise the value of, or any release, discharge, exchange or substitution of, any Transaction Security Document taken in respect of any of the Secured Liabilities; or
  - 5.2.11 any other act, event or omission which, but for this clause 5.2, might operate to discharge, impair or otherwise affect any of the obligations of the Company contained in this Debenture or any of the rights, powers or remedies conferred upon the Security Agent by a Finance Document or by law.

## **6. ENFORCEMENT**

- 6.1 This Debenture is immediately enforceable at any time after the occurrence of an Event of Default that is continuing whereupon the Security Agent may, without notice to the Company, in its absolute discretion:
- 6.1.1 enforce all or any part of this Debenture (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 any asset which is secured in favour of the Security Agent; and
  - 6.1.2 whether or not it has appointed a Receiver, exercise all or any of the powers, authorisations and discretions conferred by the Law of Property Act 1925 (as varied or extended by this Debenture) on mortgagees and on any Receiver or otherwise conferred by law on mortgagees or Receivers, and all the powers conferred on the holder of a qualifying floating charge (as defined by in the Insolvency Act 1986) by the Insolvency Act 1986 and all other rights and powers conferred by this Debenture.
- 6.2 The Security Agent shall not be entitled to exercise its rights hereunder where the right arises as a result of an Event of Default occurring solely due to any person obtaining or taking steps to obtain a moratorium pursuant to Schedule A1 of the Insolvency Act 1986.
- 6.3 The power of sale or other disposal conferred on the Security Agent and on the Receiver by any Finance Document shall operate as a variation and extension of the statutory power of sale under Section 101 of the Law of Property Act 1925 and such power shall arise (and the Secured Liabilities shall be deemed due and payable for that purpose) on execution of this Debenture.
- 6.4 Sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Debenture or to the exercise by the Security Agent of its right to consolidate all or any of the security constituted by this Debenture with any Transaction Security Document in existence at any time or to its power of sale, which powers may be exercised by the Security Agent without notice to the Company on or at any time after the occurrence of an Event of Default.
- 6.5 The statutory powers of leasing may be exercised by the Security Agent at any time on or after the occurrence of an Event of Default and the Security Agent and the Receiver may make any Lease or agreement for lease, accept surrenders of Leases and grant options on such terms as it shall think fit, without the need to comply with any restrictions imposed by Sections 99 and 100 of the Law of Property Act 1925.
- 6.6 The protection given to purchasers from a mortgagee in Sections 104 and 107 of the Law of Property Act 1925 and Section 42(3) of the Insolvency Act 1986 will apply equally to purchasers and any other persons dealing with a Receiver or the Security Agent and no purchaser or other person dealing with the Security Agent or any Receiver will be bound to see or inquire whether the right of the Security Agent or such Receiver to exercise any of its or his powers has arisen or become exercisable or be concerned with any propriety or regularity on the part of the Security Agent or such Receiver in such dealings.
- 6.7 No person advancing monies or making available credit to any Receiver will be concerned to enquire as to the propriety or purpose of the exercise of the Receiver's powers or to see to the application of any monies so raised or borrowed.
- 6.8 Neither the Security Agent nor any Receiver will be liable to account as mortgagee or mortgagee in possession in respect of any asset which is secured in favour of the Security Agent or be liable for any loss upon realisation or for any neglect or default of any nature whatsoever in connection with any asset which is secured in favour of the Security Agent for which a mortgagee or mortgagee in possession might as such be liable.
- 6.9 The Security Agent and any Receiver may from time to time delegate by power of attorney or otherwise to any person any of the powers and discretions of the Security Agent or the Receiver under any Finance Document (whether arising by statute, the provisions of any Finance Document or otherwise) upon such terms and for such periods of time as it may think fit and may determine any such delegation. Neither the Security Agent nor any

Receiver will be liable to the Company for any loss or damage arising from any act, default, omission or misconduct of any such delegate and references in this Debenture to the Security Agent or to any Receiver will where the context so admits include references to any such delegates so appointed.

- 6.10 No statutory or other power of granting or agreeing to grant or of accepting or agreeing to accept surrenders of leases or tenancies of the whole or any part of the Property will be capable of being exercised by the Company without the prior written consent of the Security Agent.
- 6.11 The powers conferred hereunder or by any Finance Document on the Security Agent and any Receiver are in addition to and not in substitution for the powers conferred on mortgagees and mortgagees in possession under the Law of Property Act 1925, the Insolvency Act 1986 or otherwise by law and in the case of any conflict between the powers contained in any such Act and those conferred by this Debenture the terms of herein will prevail.
- 6.12 To the extent that Charged Assets constitute Financial Collateral and are subject to a Security Financial Collateral Arrangement created by or pursuant to this Debenture, the Security Agent shall have the right, at any time after this Debenture becomes enforceable, to appropriate all of any part of those Charged Assets in or towards the payment or discharge of the Secured Liabilities. The value of any Charged Assets appropriated in accordance with this clause 6.12 shall be the price of those Charged Assets at the time the right of appropriation is exercised as listed on any recognised market index, or determined by such other method as the Security Agent may select (including independent valuation). The Company agrees that the methods of valuation provided for in this clause 6.12 are commercially reasonable for the purpose of Regulation 18 of the Financial Collateral Regulations. To the extent that Charged Assets constitute Financial Collateral, the Company agrees that such Charged Assets shall be held or redesignated so as to be under the control of the Security Agent for all purposes of the Financial Collateral Regulations.
- 6.13 At any time after this Debenture becomes enforceable, all voting rights in respect of all stock, shares and securities charged by clause 2.1.2.13 may be exercised (without obligation to do so) by the Security Agent (or its nominee) in such a manner as it shall (in its absolute discretion) see fit and all dividends and other distributions payable in respect of such stock, shares and securities shall be paid to and retained by the Security Agent and may be applied by the Security Agent in accordance with clause 8.
- 6.14 At any time after this Debenture becomes enforceable, the Security Agent may redeem any prior mortgage, charge or encumbrance in respect of all or any of the Charged Assets or procure the transfer of them to itself and may settle the accounts of the prior mortgagee, chargee or encumbrancer and any accounts so settled will be, in the absence of manifest error, conclusive and binding on the Company. All money paid by the Security Agent to the mortgagee, chargee or encumbrancer in accordance with such accounts shall form part of the Secured Liabilities.

## **7. APPOINTMENT AND POWERS OF RECEIVER**

- 7.1 The Security Agent may at any time after having been requested to do so by the Company or after this Debenture becomes enforceable, by deed or otherwise (acting through an authorised officer of the Security Agent), without prior notice to the Company:
  - 7.1.1 appoint one or more persons to be a Receiver of the whole or any part of any asset which is secured in favour of the Security Agent;
  - 7.1.2 remove (so far as it is lawfully able) any Receiver so appointed;
  - 7.1.3 appoint another person(s) as an additional or replacement Receiver(s); and/or
  - 7.1.4 appoint one or more persons to be an administrator of the Company.
- 7.2 Each person appointed to be a Receiver pursuant to this Debenture will be:

- 7.2.1 entitled to act individually or together with any other person appointed or substituted as Receiver;
- 7.2.2 deemed for all purposes to be the agent of the Company and the Company shall be solely responsible for its acts, defaults and liabilities and for the payment of his remuneration and no Receiver shall at any time act as agent for the Security Agent; and
- 7.2.3 entitled to remuneration for his services at a rate to be fixed by the Security Agent from time to time (without being limited to the maximum rate specified by the Law of Property Act 1925).
- 7.3 The powers of appointment of a Receiver shall be in addition to all statutory and other powers of appointment of the Security Agent under the Law of Property Act 1925 (as extended by this Debenture), the Insolvency Act 1986 (as extended by this Debenture) or otherwise and such powers shall remain exercisable from time to time by the Security Agent in respect of any part of any asset which is secured in favour of the Security Agent.
- 7.4 Each Receiver will be the agent of the Company (which will be solely liable for his acts, defaults and remuneration) and will have and be entitled to exercise in relation to the Company all the powers set out in Schedule 1 to the Insolvency Act 1986 and all the powers conferred from time to time on receivers by statute and in particular by way of addition to but without prejudice to those powers (and those of the Security Agent) the Receiver will have:
  - 7.4.1 all the powers conferred by the Law of Property Act 1925 on mortgagors and on mortgagees in possession and on receivers appointed under that Act;
  - 7.4.2 all the powers and rights of an absolute owner and power to do or omit to do anything which the Company itself could do or omit to do; and
  - 7.4.3 the power to do all things (including bringing or defending proceedings in the name or on behalf of the Company) which seem to the Receiver to be incidental or conducive to:
    - 7.4.3.1 any of the functions, powers, authorities or discretions conferred on or vested in him;
    - 7.4.3.2 the exercise of any rights, powers and remedies of the Security Agent provided by or pursuant to this Debenture or by law (including realisation of all or any part of any asset which is secured in favour of the Security Agent); or
    - 7.4.3.3 bringing to his hands any assets of the Company forming part of, or which when got in would be, Charged Assets.
- 7.5 The receipt of the Security Agent or any Receiver shall be conclusive discharge to a purchaser and, in making any sale or disposal of any asset which is secured in favour of the Security Agent or making any acquisition, the Security Agent or any Receiver may do so for such consideration, in such manner and on such terms as it thinks fit.
- 7.6 No purchaser or other person dealing with the Security Agent or any Receiver shall be bound to inquire whether the right of the Security Agent or such Receiver to exercise any of its powers has arisen or become exercisable or be concerned with any propriety or regularity on the part of the Security Agent or such Receiver in such dealings.
- 7.7 Any liberty or power which may be exercised or any determination which may be made under this Debenture by the Security Agent or any Receiver may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.
- 7.8 The Security Agent will not incur any liability (either to the Company or to any other person whatsoever) in respect of any contracts, engagements, acts, omissions, defaults or losses

of a Receiver or for any liabilities incurred by him or for any misconduct by him or for his remuneration by reason of its appointing a Receiver or of its having made or given any regulation or direction to the Receiver for any other reason whatsoever.

- 7.9 The provisions of this Debenture will not confer on the Security Agent any right in equity to any fittings, furniture, vehicles, goods, livestock, equipment or materials so far as this Debenture constitutes a Bill of Sale.

## **8. ORDER OF PAYMENTS AND APPLICATION OF PROCEEDS**

- 8.1 If the Security Agent receives a payment that is insufficient to discharge all of the Secured Liabilities the Security Agent shall apply that payment towards the Secured Liabilities in such order as the Security Agent requires.

- 8.2 All moneys received or recovered by the Security Agent or any Receiver pursuant to this Debenture or the powers conferred by it shall (subject to the claims of any person having prior rights thereto and by way of variation of the provisions of the Law of Property Act 1925) be applied towards the following items in the following order:

- 8.2.1 first, in the payment of all costs, charges and expenses of and incidental to the Receiver's appointment and his remuneration;
- 8.2.2 second, in the payment or the discharge of any liabilities incurred by a Receiver in the exercise of any powers of the Receiver;
- 8.2.3 third, in providing for the matters (other than the remuneration of the Receiver) specified in the first three paragraph of Section 109 (8) of the Law of Property Act 1925 (in or towards any payment of any debts or claims which are by statute payable in preference to the Security Agent but only to the extent to which such debts or claims shall have such preference); and
- 8.2.4 fourth, in or towards the satisfaction of the Secured Liabilities in such order as the Security Agent shall direct; and
- 8.2.5 thereafter, any surplus being paid to the person then entitled to such surplus.

The above shall override any appropriation made by the Company.

## **9. SECURITY POWER OF ATTORNEY**

- 9.1 The Company by way of security agrees to irrevocably appoint the Security Agent and any Receiver severally to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things which the attorney may consider to be required or desirable to:

- 9.1.1 carry out or fulfil any obligation imposed on the Company by any Finance Document or by this Debenture (including the execution and delivery of any deeds, charges, assignments, notices or other security and any transfers of any asset which is secured in favour of the Security Agent) which the Company has not done; and/or
- 9.1.2 enable the Security Agent or any Receiver to exercise, or delegate the exercise of, any of the rights, powers and authorities conferred on them by or pursuant to any Finance Document, by this Debenture or by law (including, after any Transaction Security Document becomes enforceable, the exercise of any right of a legal or beneficial owner of any asset which is secured in favour of the Security Agent).

- 9.2 The Company agrees to ratify and confirm all things done and all documents executed by any attorney in the exercise or purported exercise of all or any of his powers.

## **10 INDEMNITIES**

- 10.1 The Security Agent, the Receiver and every attorney, manager, agent, employee or other person appointed by the Security Agent or the Receiver under or in connection with this Debenture shall be indemnified on demand by the Company in respect of all liabilities, costs, losses and expenses incurred by it or him in the execution (or purported execution) of any of the powers, authorities or discretions vested in it or him pursuant to the terms of this Debenture (or by any law or regulation) and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in any way in connection with or relating to all or any of the Charged Assets and the Security Agent, the Receiver or any such other person may retain and pay all sums in respect of the same out of the money received under the powers conferred by this Debenture.
- 10.2 The indemnity under clause 10.1 shall not apply to the extent that any such liability, cost, loss and/or expense arises as a result of the wilful default or gross negligence of the Security Agent or the Receiver.

## **11. COSTS AND EXPENSES**

The Company shall pay or reimburse to the Security Agent on demand (on a full indemnity basis) all costs, charges and expenses (including legal fees) incurred or to be incurred by the Security Agent in the creation, registration, perfection, enforcement, discharge, preservation of rights and/or assignment of any Finance Document (including, without limitation, the costs of any proceedings in relation to this Debenture or the Secured Liabilities), which costs, charges and expenses shall form part of the Secured Liabilities.

## **12. NO LIABILITY**

None of the Security Agent, its nominee(s) or any Receiver will be liable by reason of taking any action permitted by this Debenture and/or any Finance Document or any neglect or default in connection with any asset which is secured in favour of the Security Agent or taking possession of or realising all or any part of any asset which is secured in favour of the Security Agent, except in the case of gross negligence or wilful default upon its part.

## **13. CONSOLIDATION AND SET OFF**

- 13.1 This Debenture and each Transaction Security Document shall be security not only for the moneys primarily provided for it but also for all moneys which may be or become owing by the Company to the Security Agent pursuant to the terms of the Finance Documents on any account and (save at the discretion of the Security Agent) no Charged Asset held by the Security Agent shall be released until the Secured Liabilities have been paid in full.
- 13.2 The Company authorises the Security Agent to apply any credit balance to which the Company is entitled on any account of the Company with the Security Agent in satisfaction of the Secured Liabilities.
- 13.3 All payments to be made to the Security Agent under the Finance Documents shall be calculated and made without (and free and clear of any deduction for) set-off or counterclaim.
- 13.4 The Security Agent may at any time after the making of a demand for payment (and without notice to the Company) combine or consolidate all or any of the then existing accounts between the Security Agent and the Company (including accounts in the name of the Company jointly with another), and may set-off or transfer any sum standing to the credit of any one or more of such accounts in or towards satisfaction of the Secured Liabilities.

## **14 PAYMENTS**

- 14.1 All payments by the Company to the Security Agent must be made to such account as the Security Agent may notify to the Company from time to time. Time of payment by the Company is of the essence. Payments are sent at the risk of the Company and the

Security Agent is not responsible for loss of or delay to payments sent by or to the Company.

- 14.2 Sterling is the currency of account and payment for any sum due from the Company, save that:

14.2.1 each payment in respect of costs, expenses or taxes shall be made in the currency in which the costs, expenses or taxes are incurred; and

14.2.2 any amount expressed to be payable in a currency other than sterling shall be paid in that other currency.

## **15. NOTICE OF CHARGE OR DISPOSAL**

- 15.1 On receiving notice that the Company has encumbered or disposed of the Property or any of the Charged Assets other than as expressly permitted pursuant to this Debenture, the Security Agent shall be entitled to close the Company's then current account or accounts and to open a new account or accounts with the Company and (without prejudice to the Security Agent's right to combine accounts) no monies paid in or carried to the Company's credit in any such new account(s) shall be appropriated towards, or have the effect of discharging, any part of the amount due to the Security Agent on such closed account(s).

- 15.2 If the Security Agent does not open such new account or accounts, it shall nevertheless be treated as if it had done so at the time when it received such notice.

- 15.3 As from that time, all payments made by the Company to the Security Agent shall be credited or be treated as having been credited to such new account or accounts, and shall not operate to reduce the amount due from the Company to the Security Agent at the time when it received such notice.

## **16. OTHER PROVISIONS**

- 16.1 If the Security Agent reasonably considers that any amount paid to it is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws the liability of the Company under this Debenture, this Debenture will continue and such amount will not be considered to have been irrevocably paid.

- 16.2 A certificate signed by an official or manager of the Security Agent as to the amount of the Secured Liabilities shall be conclusive evidence save in the case of manifest error or on any question of law.

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

- 16.4 No failure or delay by the Security Agent in exercising any right or remedy under this Debenture shall operate as a waiver, and no single or partial exercise shall prevent further exercise of any right or remedy.

- 16.5 The Security Agent will be entitled to disclose to, its auditors, advisers or applicable regulatory authority or any other person that enters or proposes to enter into any assignment, transfer, securitisation or other disposition of any part of any right or obligation in relation to the Secured Liabilities confidential information concerning this Debenture or any arrangement made or to be made in connection with this Debenture.

- 16.6 Save to the extent expressly provided to the contrary in this Debenture, a third party (being any person other than the Company or the Security Agent and their permitted successors and assigns) may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 and no consent of any third party is required for any amendment, variation or termination of this Debenture.



- 16.7 This Debenture may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute one agreement.

## **17. CERTIFICATE OF NON-CONTRAVENTION**

The Company certifies that this Debenture does not contravene any of the provisions of the Company's Memorandum and Articles of Association or its rules or other constitution as the case may be.

## **18. ASSIGNMENT**

- 18.1 The Security Agent may at any time:

18.1.1 assign all or any of its rights and benefits under this Debenture; or

18.1.2 transfer or otherwise dispose of all or any of its rights, benefits and obligations under this Debenture to any bank or financial institution in accordance with clause 24.1 (Assignment and transfers by the Lenders) of the Facility Agreement.

- 18.2 The Company may not assign or transfer any of its rights, benefits or obligations under this Debenture save with the prior written consent of the Security Agent.

## **19. NOTICES**

The provisions of clause 32 of the Facility Agreement shall apply to this Debenture.

## **20. DEFINITIONS AND INTERPRETATION**

- 20.1 In this Debenture where the context so admits: -

**"Account Balances"** means all monies standing to the credit of the Company from time to time on any and all accounts with any bank or financial institution;

**"Book Debts"** means all present and future book debts of the Company;

**"Charged Assets"** means all property, assets and rights of the Company, both present and future which are for the time being subject to the security created by or pursuant to this Debenture and (unless the context requires otherwise) shall include each and every part thereof;

**"Default Rate"** means the rate of interest payable in accordance with the terms of any Finance Documents setting out the terms of the Secured Liabilities in relation to any amount which is not paid on the due date for payment;

**"Encumbrance"** means any mortgage, charge, assignment by way of security, pledge, lien (save where arising by operation of law in the usual course of business), hypothecation, preferential right (save as arising under the general law for the protection of certain classes of creditors) or trust or other arrangement made for the purpose of or having an economic or financial effect similar to that of security, or other security interest of any kind;

**"Facility Agreement"** means the facility agreement dated 26 July 2019 and made between Abbeyfield South Downs Limited (as Borrower) (1), The Charity Bank Limited (as Arranger) (2), The Charity Bank Limited (as Agent) (3), The Charity Bank Limited and Big Society Capital Limited (as Original Lenders) (4) and The Charity Bank Limited (as Security Agent) (5) (as amended, supplemented or varied from time to time);

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

**"Financial Collateral Regulations"** means the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003 No. 3226);

**"Lease"** means any lease, underlease, sub-lease, licence, tenancy or right to occupy all or any part of the Property and any agreement for the grant of a Lease;

**"Licences"** includes (but is not limited to) justices licences, supper hours licences, gaming licences, extended hours licences, premises licences, certificates of registration in respect of a nursing home or a residential home or any other licences required for or related to the Company's business or use of the Charged Assets;

**"Payment Obligations"** means all present and future debts (other than Book Debts) and monetary claims and all other amounts recoverable or receivable (whether ascertained or not) by the Company or due or owing to the Company;

**"Property"** means at any time the freehold, heritable and leasehold properties of the Company at that time or any of them as the context requires and shall include all buildings, structures, fixtures (including trade and tenant's fixtures) from time to time on or in any such property;

**"Receivables"** together the Book Debts, the Payment Obligations and the Refundables (and shall include the benefit of all related rights and remedies (including equitable rights and rights under guarantees, indemnities, liens and Encumbrances));

**"Refundables"** means all present and future payments of or entitlements to claim payment or repayment of any taxes, insurance premiums or other over-payments by the Company;

**"Restricted Funds"** means funds received by the Borrower as a direct consequence of fund raising and soliciting charitable donations;

**"Security Financial Collateral Arrangements"** shall have the meaning given to that expression in the Financial Collateral Regulations;

## 20.2 Interpretation

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

20.2.2 In the event of any inconsistency, ambiguity or discrepancy between the provisions of the Facility Agreement and the provisions of this Debenture, then the provisions of the Facility Agreement shall prevail.

## 20.3 Where "the Company" includes two or more persons or bodies: -

20.3.1 the liabilities of such persons or bodies shall be joint and several, and any event referred to in this Debenture shall be deemed to have happened if it happens in relation to any one of those persons or bodies;

20.3.2 all monies, obligations and liabilities due, owing or incurred by the Company to the Security Agent shall mean all monies, obligations and liabilities of all, or any one or more, of such persons or bodies to the Security Agent;

## 20.4 Where a restrictive obligation is imposed on the Company, it shall be deemed to include an obligation on the Company not to permit or suffer such restrictive obligation to be done by any other person.

## 20.5 The singular shall include the plural and the masculine the feminine and neuter and vice versa.

## 20.6 The clause headings in this Debenture are for ease of reference and do not affect the construction of the relevant clauses.

- 20.7 Each of the provisions of this Debenture shall be severable and distinct from one another and if one or more of such provisions is invalid or unenforceable the remaining provisions shall not in any way be affected.
- 20.8 Reference to any Act or legislation includes reference to the Act or legislation as for the time being amended, replaced or re-enacted and includes reference to any sub-ordinate legislation (including any European Community law which is applicable in the United Kingdom) order regulation or direction made under or by virtue of that Act or legislation.
- 20.9 References to "the Security Agent" include persons deriving title under the Security Agent its successors and assigns and any company with which it may amalgamate to the intent that this Debenture shall constitute a continuing security in favour of such new company as if it had been expressly named herein instead of the Security Agent.
- 20.10 References to the "Company" include its successors and assigns his/their executors and administrators and (in addition) any committee receiver administrator or other person lawfully acting on behalf of every such party (though no personal liability shall attach to any authorised agent or attorney signing as such) and if this Debenture is executed by two or more parties the word "Company" shall be construed to refer to each of such parties separately as if each such party had executed a separate charge in the form of this Debenture.
- 20.11 References to this "Debenture" shall be construed as including each separate or independent stipulation or agreement herein contained.
- 20.12 References to a "person" include any person, firm, company, corporation, government, state or agency of a state, association, unincorporated body of persons, trust or partnership (whether or not having a separate legal personality) and any two or more of the foregoing.

## **21. GOVERNING LAW**

This Debenture is governed by and will be construed in accordance with English Law and the Company submits to the non-exclusive jurisdiction of the English courts.

## **22. CHARITIES ACT 2011**

The land charged is held by or in trust for the Company being a non-exempt charity and this Debenture is not one falling within section 124 (9) of the Charities Act 2011 so that the restrictions imposed by section 124 of the Charities Act 2011 apply. The directors of the Company certify that the Company has the power under its trusts to effect this Debenture and that it has obtained and considered such advice as is mentioned in section 124 (2) of the Charities Act 2011.

IN WITNESS whereof this Deed has been executed by the Company and is intended to be and is hereby delivered on the date first above written.

**THIS IS AN IMPORTANT DOCUMENT, SIGN ONLY IF YOU WANT TO BE LEGALLY BOUND,  
YOU ARE RECOMMENDED TO TAKE INDEPENDENT LEGAL ADVICE BEFORE SIGNING.**

EXECUTED AS A DEED by  
**ABBNEYFIELD SOUTH DOWNS  
LIMITED**

acting by a director in the presence of:

Director

Witness Signature:

Witness Name:

Address:

Occupation:

Signed as a deed on behalf of the trustees of **ABBNEYFIELD SOUTH DOWNS LIMITED** by two of their number, under an authority conferred pursuant to section 333 of the Charities Act 2011, in the presence of:

Signature

Trustee

Name in full

Signature

Trustee

Name in full

Witness Signature:

Witness Name:

Address:

Occupation:

**SIGNED** for and behalf of

**THE CHARITY BANK LIMITED**  
as the Security Agent

**THIS IS AN IMPORTANT DOCUMENT, SIGN ONLY IF YOU WANT TO BE LEGALLY BOUND,  
YOU ARE RECOMMENDED TO TAKE INDEPENDENT LEGAL ADVICE BEFORE SIGNING.**

EXECUTED AS A DEED by )  
**ABBNEYFIELD SOUTH DOWNS** )  
**LIMITED** )

acting by a director in the presence of: )

.....  
Director

Witness Signature: .....

Witness Name: .....

Address: .....

Occupation: .....

Signed as a deed on behalf of the trustees of **ABBNEYFIELD SOUTH DOWNS LIMITED** by two of their number, under an authority conferred pursuant to section 333 of the Charities Act 2011, in the presence of:

Signature .....

Trustee

Name in full .....

Signature .....

Trustee

Name in full .....

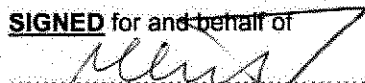
Witness Signature: .....

Witness Name: .....

Address: .....

Occupation: .....

**SIGNED** for and behalf of

  
**THE CHARITY BANK LIMITED**  
as the Security Agent

  
DIRECTOR



SECRETARY