

DATED

19 December

2000


2798607

- (1) NHP PLC
- (2) SOMERFORD HEALTHCARE LIMITED
- (3) FIRST CHOICE HEALTHCARE LIMITED

AGREEMENT

For the sale and purchase of the entire issued share capital
of Somerford Leased Homes Limited

CERTIFIED TRUE COPY

Signed: 
Company Secretary/Director
Date: 22.03.2002

EVERSHEDS

Home Court
Norwich, Norfolk
Tel: 01603 610535
Fax: 01603 610535



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30/10/02



2001

THIS AGREEMENT is made on

BETWEEN:

- (1) NHP PLC (registered number 2798607) whose registered office is at 6 Broad Street Place, Blomfield Street, London EC2M 7JH (the "Purchaser"); and
- (2) SOMERFORD HEALTHCARE LIMITED (registered number 2699096) whose registered office is at 8th Floor, Aldwych House, 81 Aldwych, London WC2B 4HN ("Somerford"); and
- (3) FIRST CHOICE HEALTHCARE LIMITED (registered number 3486513) whose registered office is at 8th Floor, Aldwych House, 81 Aldwych, London WC2B 4HN ("First Choice" and together with Somerford "the Vendors").

OPERATIVE CLAUSES:

1. INTERPRETATION

In this Agreement:

- 1.1 the following expressions have the following meanings unless inconsistent with the context:

"Accounting Date"

30 June 2000

"Accounts"

the audited accounts of the Company for the financial year which ended on the Accounting Date, comprising a balance sheet, a profit and loss account, notes and directors' and auditors' reports

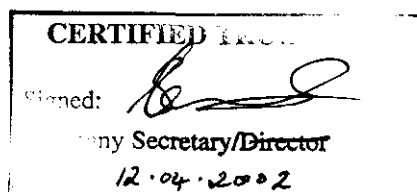
"Admission"

the admission by the UK Listing Authority of the Consideration Shares to the Official List and the admission by the London Stock Exchange Limited of the Consideration Shares to trading and such admission becoming fully effective

"Associated Company"

any company, not being the Company, which at the relevant time is:

- (a) a holding company of Somerford; or



| | |
|-----------------------------------|---|
| | (b) a subsidiary or subsidiary undertaking of Somerford; or |
| | (c) a subsidiary or subsidiary undertaking (other than Somerford itself) of any such holding company; |
| | and the expressions "holding company", "subsidiary" and "subsidiary undertaking" having the meanings given to them by CA 1985 |
| "Business Day" | any day (other than a Saturday or Sunday) on which banks are open in London for normal banking business |
| "CA 1985" | the Companies Act 1985 |
| "Care Homes" | the Ashbourne Nursing Home, the Ashton Grange Nursing Home, the Victoria Nursing Home, the Victoria Court Nursing Home, the Beechwood Nursing Home, the Elmwood Nursing Home and the Larchwood Nursing Home, brief particulars of which are set out in Schedule 1 to the Management Agreement |
| "Company" | Somerford Leased Homes Limited, (registered number 3301064) whose registered office is at 8 th Floor, Aldwych House, 81 Aldwych, London W12 4HN |
| "Company Leases" | the leases referred to in Part 2 of Schedule 6 |
| "Completion" | the meaning ascribed to it in clause 5 |
| "Completion Accounts" | the accounts prepared in accordance with paragraph 1 of Schedule 7 |
| "Confidential Information" | all information not publicly known, used in or otherwise relating to the business of the Company, its customers, or its financial or other affairs, including information relating to: |

- (a) trade secrets, know-how, ideas, computer systems and computer software;
- (b) future projects, business development or planning, commercial relationships and negotiations; and
- (c) the marketing of goods or services including customer names and lists, sales targets and statistics

| | |
|-------------------------------|---|
| "Consideration Shares" | the meaning ascribed to it in clause 3 |
| "Contract" | any agreement or commitment whether conditional or unconditional and whether by deed, under hand, oral or otherwise, and any arrangement or understanding whether legally binding or not |
| "Deed of Termination" | the deed of termination in the agreed terms to be entered into by the Purchaser and Somerford to effect the termination of the non-compete agreement dated 1 February 1995 between the Purchaser and Somerford |
| "Disclosure Letter" | the letter having the same date as this Agreement from the Vendors to the Purchaser qualifying the Warranties |
| "Encumbrance" | any mortgage, charge, pledge, lien, assignment by way of security, option, restriction, claim, right of pre-emption, right of first refusal, third party right or interest, other encumbrance or security interest of any kind, or other preferential arrangement having similar effect |
| "First Choice Leases" | the leases referred to in Part 2 of Schedule 6 |
| "ICTA" | Income and Corporation Taxes Act 1988 |
| "Management Agreement" | the agreement in the agreed terms to be entered into by the Purchaser and Somerford on |

| | |
|----------------------------------|--|
| | Completion relating to the management of the Care Homes |
| "Net Assets" | the aggregate value of the fixed and current assets of the Company (including any intangible assets) less the aggregate amount of the liability of the Company all as shown in the Completion Accounts |
| "Overdraft Facility" | the overdraft facilities provided to the Company by National Westminster Bank plc in respect of the Care Homes |
| "Proforma Balance Sheet" | the proforma balance sheet of the Company as at 1 July 2000 produced by Somerford, a copy of which is set out at Schedule 8 |
| "Property" | the property specified in Schedule 6 and each part of such property |
| "Purchaser's Accountants" | Deloitte & Touche, Hill House, 1 Little New Street, London EC4A 3TR |
| "Purchaser's Solicitors" | Eversheds of Holland Court, The Close, Norwich NR1 4DX |
| "Relevant Claim" | any claim for breach of any of the Warranties |
| "Shares" | all the issued shares in the capital of the Company |
| "Vendors' Accountants" | Cooper Lancaster Brewers, Aldwych House, 81 Aldwych, London WC2B 4HP |
| "Vendors' Solicitors" | Hardwick Stallards, Centurion House, 37 Jewry Street, London EC3N 2ER |
| "Warranties" | the representations and warranties set out or referred to in clause 5, Schedule 3 and Part 3 of Schedule 4 ; |

- 1.2 references to any statute or statutory provision include, unless the context otherwise requires, a reference to the statute or statutory provision as modified or re-enacted and

in force from time to time prior to Completion and any subordinate legislation made under the relevant statute or statutory provision in force prior to Completion;

- 1.3 references to persons will include bodies corporate, unincorporated associations and partnerships;
- 1.4 references to a document being "in the agreed terms" are to that document in the form agreed and for the purposes of identification initialled by or on behalf of the Vendors and the Purchaser;
- 1.5 references to clauses and Schedules are to clauses of and Schedules to this Agreement, and references to paragraphs are to paragraphs in the Schedule in which such references appear;
- 1.6 the Schedules form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement;
- 1.7 all covenants, agreements, undertakings, indemnities, representations and warranties on the part of Somerford and First Choice are given or made by them jointly and severally;
- 1.8 the headings in this Agreement will not affect its interpretation; and
- 1.9 any phrase introduced by the term "include", "including", "in particular" or any similar expression will be construed as illustrative and will not limit the sense of the words preceding that term.

2. SALE AND PURCHASE

The Vendors will sell with full title guarantee, and the Purchaser will buy, the Shares. The Shares will be sold free of any Encumbrance and with all rights attached or accruing to them at or after the date of this Agreement.

3. CONSIDERATION

The consideration for the sale of the Shares will be the allotment and issue to Somerford of 3,000,000 ordinary shares of 1 pence each in the share capital of the Purchaser credited as fully paid (the "**Consideration Shares**") but subject to adjustment after Completion as provided in **Schedule 7**.

4. CONSIDERATION SHARES

- 4.1. The Consideration Shares will rank *pari passu* and as a single class with the existing ordinary shares of 1 pence each in the capital of the Purchaser, and shall carry the right to receive in full all dividends and other distributions declared, made or paid after the date of Completion.
- 4.2. Somerford undertakes that it will not, without the prior written consent of the Purchaser for a period of twelve months after Completion dispose of any of the Consideration Shares.
- 4.3. The Purchaser warrants that the Consideration Shares to be issued and allotted by the Purchaser to Somerford under this Agreement have been duly authorised and will be validly issued, fully paid up and the Purchaser shall procure Admission as soon as practicable following Completion.

5. CONDITIONS AND COMPLETION

5.1. Completion is conditional upon:

5.1.1. the completion of the acquisition by the Purchaser of Southern Cross Healthcare (Herts) Limited or the completion of an acquisition by the Purchaser of any business or an interest comprising at least 25 per cent of the issued share capital of any other company carrying on as its principal activity the management of residential or healthcare facilities; and

5.1.2. the execution of the Deed of Termination by Somerford.

- 5.2. In the event that the conditions in **clause 5.1** have not been fulfilled by 31 March 2001 or by such later date as may be agreed in writing between the Vendors and the Purchaser this Agreement shall, save for **clause 9**, thereupon become null and void and none of the parties shall have any rights against any other party under this Agreement except for breach of **clause 9**.
- 5.3. The Purchaser shall have the right to waive the provisions of clause 5.1.1 above at its discretion and may serve notice to complete on Somerford on behalf of the Vendors at any time before 31 March 2001, whereupon Completion shall take place no later than seven days after the service of the notice.
- 5.4. The Vendor shall procure that between the time of the execution of this Agreement and Completion the Company will carry on business in the ordinary course and will not do anything which is not of a routine unimportant nature without the prior written consent of the Purchaser. The following acts by the Company or any agreement by the

Company to do any of the following acts, shall, but without limitation, be deemed not to be of a routine unimportant nature:

- 5.4.1. incurring any expenditure exceeding £25,000 on capital account or entering into any commitment to do so;
- 5.4.2. disposing of any part of its assets other than in the ordinary course of business;
- 5.4.3. borrowing any money except under its existing overdraft facilities from its bankers or making any payments out of or drawings on its bank account other than routine payments;
- 5.4.4. entering into any guarantee or indemnity;
- 5.4.5. entering into any unusual or abnormal Contract or commitment;
- 5.4.6. granting any lease or third party right in respect of the Property or assigning or otherwise disposing of the same (or any part thereof);
- 5.4.7. making any loan;
- 5.4.8. entering into any leasing, hire purchase or other agreement or arrangement for payment on deferred terms;
- 5.4.9. declaring, making or paying any dividend or other distribution;
- 5.4.10. granting any security;
- 5.4.11. appointing any additional director;
- 5.4.12. taking on new senior employees or terminating the employment of any employees or making any material change in the terms or conditions of employment or pension benefits of any employee;
- 5.4.13. permitting any insurance to lapse or doing anything which would make any policy of insurance void or voidable;
- 5.4.14. creating or issuing any class of share or loan capital;
- 5.4.15. making any change in its business structure or organisation;
- 5.4.16. using the Overdraft Facility for any purpose other than the provisions of working capital for the Care Homes in the ordinary course of business;

5.4.17. causing any breach of the terms of the Overdraft Facility, in particular causing any financial limits to be exceeded; and

5.4.18. knowingly doing or omitting to do, or causing or allowing to be done or omitted to be done, any act or thing which would result or be likely to result in breach of any of the Warranties at Completion.

5.5. The Vendor hereby undertakes to disclose to the Purchaser in writing any matter occurring prior to Completion which constitutes a material breach of or is inconsistent with any of the Warranties immediately upon becoming aware of the same.

5.6. If before Completion the Purchaser becomes aware of any material breach of the Warranties or anything occurs (except as the result of an act or omission of the Purchaser) which has, or is likely to have, a material or adverse effect on the financial position or business prospects of the Company, the Purchaser may elect not to complete the acquisition of the Shares by giving notice in writing to the Vendor's Solicitors without prejudice and in addition to any other rights or remedies available to it.

5.7. Provided that this Agreement has not been rescinded and provided also that the conditions stated in **clause 5.1** have been satisfied as soon as practicable thereafter, Completion of the sale and purchase of the Shares will take place at the offices of the Purchaser or at some other place as agreed by the parties.

5.8. At Completion, the Vendor and the Purchaser will comply with **Schedule 5**.

5.9. The Purchaser will not be obliged to complete the purchase of any of the Shares unless the purchase of all the Shares is completed simultaneously.

5.10. Immediately after the execution of this Agreement, the Vendors and the Purchaser will use their respective best endeavours to procure the transfer of the First Choice Leases to the Company before Completion (to the extent that they have not already been so assigned).

6. **GUARANTEES**

The Vendors will procure that on Completion the Company is released from any guarantee, indemnity, counter-indemnity, letter of comfort or other obligation given by the Company to any third party in respect of a liability of any person other than the Company.

7. WARRANTIES

- 7.1. The Vendors warrant to the Purchaser in the terms of the Warranties at the date of this Agreement and every day up to and including Completion as if they had been made or given on each day with reference to the facts then subsisting and as if each such day were substituted for any express or implied reference to the date of the execution of this Agreement. The Vendors acknowledge that the Purchaser is entering into this Agreement in reliance on each Warranty, which has also been given as a representation and with the intention of inducing the Purchaser to enter into this Agreement.
- 7.2. The Warranties are qualified by all facts and matters fully, fairly and clearly disclosed in the Disclosure Letter. No other information of which the Purchaser has knowledge (actual or constructive) will prejudice or reduce any claim made by the Purchaser in respect of the Warranties. The provisions of section 6(2) of the Law of Property (Miscellaneous Provisions) Act 1994 are hereby excluded.
- 7.3. The Vendors undertake to indemnify the Purchaser on demand against all proper costs (including legal costs), expenses or other liabilities which the Purchaser or the Company may reasonably incur before or after the commencement of any action in connection with:
 - 7.3.1. the settlement of any claim against the Vendors in respect of a breach or alleged breach of any provision of this Agreement;
 - 7.3.2. any legal proceedings in which the Purchaser claims that any provision of this Agreement in which judgment is given for the Purchaser; and
 - 7.3.3. the enforcement of any such settlement or judgment.
- 7.4. The Vendors waive and may not enforce any right which the Vendors may have against the Company, or any director or employee of the Company, on which or on whom the Vendors may have relied in agreeing to any term of this Agreement or any statement in the Disclosure Letter.
- 7.5. The Vendors undertake to disclose immediately to the Purchaser anything which comes to the notice of any of them which is or may be a breach of any of the Warranties.
- 7.6. Each Warranty is to be construed independently and is not limited or restricted by any other Warranty or any other term of this Agreement.

7.7. Unless otherwise specified, where any Warranty refers to the knowledge, information, belief or awareness of the Vendors (or similar expression), the Vendors will be deemed to have such knowledge, information, belief or awareness as the Vendors would have obtained had the Vendors made all due and careful enquiries into the subject matter of that Warranty.

7.8. The Vendors undertake to indemnify the Purchaser on demand against all costs (including legal costs), expenses or other liabilities which the Purchaser or the Company may incur before or after the commencement of any action in connection with the acquisition of the business of First Choice by the Company pursuant to an asset sale agreement dated 18 August 2000, including any liability relating to the transfer of employees from First Choice to the Company.

8. **LIMITATION ON CLAIMS**

8.1. The Vendors will not be liable for any Relevant Claim unless:

8.1.1. the amount of the liability in respect of that Relevant Claim when aggregated with the amount of the liability in respect of all other Relevant Claims exceeds £25,000 (in which event the Vendors will be liable for the whole amount of such Relevant Claim and not merely the excess);

8.1.2. the Vendors receive from the Purchaser written particulars of the Relevant Claim (stating in reasonable detail the nature of the Relevant Claim):

8.1.2.1. within twelve months after Completion, in the case of a Relevant Claim for breach of any of the Warranties contained in **Schedule 3**;

8.1.2.2. within 7 years after Completion, in the case of a Relevant Claim for breach of any of the Warranties contained in **Schedule 4**.

8.2. The aggregate amount of the liability of the Vendors for all Relevant Claims will not exceed the value of the Consideration Shares at Completion.

8.3. **Clause 8.1.1** and **clause 8.1.2** will not apply in respect of a Relevant Claim concerning **paragraph 1** (capital) and **paragraph 2** (capacity) of **Schedule 3**.

8.4. Notwithstanding any other provision of this Agreement, **clause 8.1.1** and **clause 8.1.2** will not apply to exclude or limit the liability of the Vendors to the extent that any Relevant Claim arises by reason of any fraud or dishonest, reckless or wilful misconduct or omission by or on behalf of the Vendors.

9. CONFIDENTIALITY

9.1. Except so far as required by law or any governmental or regulatory organisation and in those circumstances only after prior consultation with the Purchaser, each of the Vendors undertakes to the Purchaser and to the Company that it will not and will procure that no Associated Company or person who is a member of the Vendors at Completion will, at any time after Completion:

9.1.1. disclose any Confidential Information to any person except to those authorised by the Company to know;

9.1.2. use any Confidential Information for their own purposes or for any purposes other than those of the Company; or

9.1.3. cause or permit any unauthorised disclosure of any Confidential Information.

10. ANNOUNCEMENTS

10.1. No announcement or circular concerning the transactions contemplated by this Agreement or any matter ancillary to it and no disclosure of the terms of this Agreement will be made by the Vendors except with the prior written approval of the Purchaser or by the Purchaser except with the prior written approval of Somerford.

10.2. This clause does not apply to any announcement, circular or disclosure required by law or any governmental or regulatory organisation, provided, if practicable, that the party required to make it has first consulted and taken into account the reasonable requirements of the other party.

11. COSTS

Except where expressly stated otherwise, each party to this Agreement will bear such party's own costs and expenses relating to the negotiation, preparation and implementation of this Agreement. The Company will not bear any part of such costs and expenses.

12. INTEREST

If any of the Vendors become liable to pay the Purchaser or the Company any sum pursuant to this Agreement, whether a liquidated sum or by way of damages or otherwise, the relevant Vendors will be liable to pay interest on such sum from the due date for payment at the annual rate of 4 per cent above the base lending rate from time

to time of National Westminster Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment.

13. NOTICES

13.1. Any notice or other communication given in connection with this Agreement will be in writing and will be delivered personally or sent by pre-paid first class post (or air mail if overseas) or by fax to the recipient's address set out in this Agreement or to any other address which the recipient has notified in writing to the sender received not less than 7 Business Days before the notice was despatched.

13.2. A notice is deemed given:

13.2.1. if delivered personally, upon delivery at the address provided for in this clause; or

13.2.2. if sent by prepaid first class post, on the second Business Day after posting it; or

13.2.3. if sent by air mail, on the sixth Business Day after posting it; or

13.2.4. if sent by fax, on completion of its transmission

provided that, if it is delivered by hand or sent by fax on a day which is not a Business Day or after 4pm on a Business Day, it will instead be deemed to have been given or made on the next Business Day.

13.3. Any notice given to the Vendors' Solicitors will be treated as validly given to the Vendors.

13.4. The provisions of this clause will not apply, in the case of service of court documents, to the extent that such provisions are inconsistent with the Civil Procedure Rules.

14. ASSIGNMENT

14.1. The Purchaser may assign the benefit of, and any of its rights under, this Agreement to any person whatsoever.

14.2. The Vendors may not assign the benefit of, or any of their rights under, this Agreement.

14.3. This Agreement will be binding and enure for the benefit of and permitted assigns and successors in title of each of the parties and references to the parties will be construed accordingly.

15. GENERAL

- 15.1. Unless otherwise provided, any outstanding obligation contained in this Agreement will remain in force notwithstanding Completion.
- 15.2. Each party will do all acts and things and execute all documents as any other party reasonably considers necessary to give full effect to the terms of this Agreement.
- 15.3. Failure or delay by any party in exercising any right or remedy under this Agreement will not in any circumstances operate as a waiver of it, nor will any single or partial exercise of any right or remedy in any circumstances preclude any other or further exercise of it or the exercise of any other right or remedy.
- 15.4. Any waiver of any breach of, or any default under, any of the terms of this Agreement will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of this Agreement.
- 15.5. The rights and remedies expressly provided for by this Agreement will not exclude any rights or remedies provided by law.
- 15.6. The Company has the right to enforce only **clause 10** of this Agreement and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999. Except as stated in this clause, the parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 15.7. No variation of this Agreement will be valid unless it is in writing and signed by or on behalf of each party to this Agreement but no variation will require the consent of the Company.
- 15.8. Except as required by law, all payments by the Vendors pursuant to this Agreement will be made free and clear of all deductions and withholdings whether in respect of Taxation (as defined in **Schedule 4**) or otherwise. If any deduction or withholding is required by law to be made from any payment by the Vendors pursuant to this Agreement which is not governed by the provisions of **Schedule 4** or if (ignoring any available relief or allowance) the Purchaser or the Company is subject to Taxation in respect of any such payment which is not governed by the provisions of **Schedule 4** then the Vendors will pay to the Purchaser or the Company such additional amount as is necessary to ensure that the net amount received and retained by them (after taking account of such deduction or withholding or Taxation) is equal to the amount which they would have received and retained had the payment in question not been subject to the deduction or withholding or Taxation.

16. GOVERNING LAW AND JURISDICTION

- 16.1. This Agreement will be governed by and construed in accordance with English law.
- 16.2. The courts of England will have exclusive jurisdiction to settle any dispute which arises out of or in connection with this Agreement and the parties agree to submit to that jurisdiction.
- 16.3. The jurisdiction provisions contained in this clause are made for the benefit of the Purchaser only, which accordingly retains the right to bring proceedings in any other court of competent jurisdiction.

17. COUNTERPARTS

This Agreement may be executed in any number of counterparts each of which when executed and delivered will be an original, but all the counterparts will together constitute one and the same agreement.

SCHEDULE 1

The Vendors

| Name and address of registered and beneficial owner | Number and class of Shares to be sold |
|---|--|
| 1. Somerford Healthcare Limited 8 th Floor Aldwych House 81 Aldwych London WC2B 4HN | 100,000 ordinary shares of £1 each in the share capital of the Company |
| 2. First Choice Healthcare Limited 8 th Floor Aldwych House 81 Aldwych London WC2B 4HN | 22,000 ordinary shares of £1 each in the share capital of the Company |

SCHEDULE 2

Details of the Company

| | | |
|-------------------------------|---|---|
| Name of Company | : | Somerford Leased Homes Limited |
| Registered number | : | 3301064 |
| Registered office | : | Aldwych House 81 Aldwych London W12B 4HP |
| Date of incorporation | : | 13 January 1997 |
| Authorised share capital | : | £150,000 divided into 150,000 ordinary shares of £1 each |
| Issued share capital | : | £122,000 divided into 122,000 ordinary shares of £1 each |
| Directors' full names | : | Paul Duhig Eric Koops |
| Secretary's full name | : | Peter Orbell-Jones |
| Accounting reference date | : | 30 June |
| Mortgages/charges over Shares | : | None |

SCHEDULE 3

Non-Taxation Warranties

SHARE CAPITAL

1. Schedules 1 and 2; Capital

- 1.1 The information contained in **Schedules 1 and 2** is true, complete and accurate in all respects.
- 1.2 The Shares are fully paid and are beneficially owned and registered as set out in **Schedules 1 and 2** free from any Encumbrance or any claim to, or Contract to grant, any Encumbrance.
- 1.3 The Company has not allotted or issued any share capital other than the shares shown in **Schedules 1 and 2** as being issued.
- 1.4 No Contract has been entered into which requires or may require the Company to allot or issue any share or loan capital and the Company has not allotted or issued any securities which are convertible into share or loan capital.
- 1.5 The Company has no interest, and has not at any time during the period of 6 years ending on the date of this Agreement had any interest, in the share capital of any body corporate.
- 1.6 The Company has not, and never has had, any subsidiary undertakings (as defined in sections 258 to 260 CA 1985).

VENDORS

2. Capacity

Each of the Vendors has full power to enter into and perform this Agreement and this Agreement constitutes obligations binding on each Vendor in accordance with its terms.

3. Insiders' interests

3.1 For the purpose of this paragraph:

"Insider"

means the Vendors, any Associated Company, any person who is or was at the relevant time a director

of the Company, or any person who is or was at the relevant time connected (as defined in section 839 ICTA) with the Vendors, any Associated Company or any such director.

- 3.2 There is not outstanding and there has not at any time during the period of 2 years ending on the date of this Agreement been outstanding any Contract to which the Company is or was a party and in which any Insider is or was interested in any way whatsoever (excluding any Contract of employment between the Company and any of its directors fully, fairly and clearly disclosed in the Disclosure Letter).

4. Information supplied to the Purchaser

- 4.1 The information set out in the Disclosure Letter or in any document attached to, or referred to in the Disclosure Letter or contained in any document or written communication supplied to the Purchaser or the Purchaser's advisers by or on behalf of the Vendors or the Company is true, complete and accurate in all material respects and is not misleading.
- 4.2 The Vendors are not aware of any fact or matter concerning the Company or its business or affairs which has not been disclosed in the Disclosure Letter and which could reasonably have been expected to influence the decision of the Purchaser to enter into this Agreement.

ACCOUNTS AND RECORDS

5. The Accounts

- 5.1 For the purposes of this paragraph:

"Accounting Standards" means the statements of standard accounting practice referred to in section 256 CA 1985 issued by the Accounting Standards Board or such other body as may be prescribed by the Secretary of State from time to time, including the statements of standard accounting practice formerly issued by the Accounting Standards Committee and since adopted by the Accounting Standards Board, the Abstracts issued by the Urgent Issues Task Force and any financial reporting standards issued by the Accounting Standards Board or such other body

referred to above.

5.2 The Accounts (copies of which are attached to the Disclosure Letter):

- 5.2.1 show a true and fair view of the assets, liabilities and state of affairs of the Company as at the Accounting Date and of the profits (or losses) of the Company for the financial year ending on that date;
- 5.2.2 have been prepared and audited in accordance with the historical cost convention, with all applicable law and Accounting Standards and (to the extent that no Accounting Standard is applicable) with generally accepted accounting principles and practices of the United Kingdom then in force; and
- 5.2.3 have been prepared on bases and principles which are consistent with those used in the preparation of the audited statutory accounts of the Company for the 2 financial years immediately preceding that which ended on the Accounting Date.

5.3 Without prejudice to the generality of **paragraph 5.2**, the Accounts:

- 5.3.1 provide in accordance with relevant accounting standards for all liabilities whatsoever (other than contingent or potential liabilities which are not expected to crystallise) and fully disclose all contingent or potential liabilities which are not expected to crystallise and all capital commitments of the Company as at the Accounting Date;
- 5.3.2 correctly and accurately set forth the capital and reserves and all the assets of the Company as at the Accounting Date and the profits (or losses) of the Company for the financial year which ended on the Accounting Date;
- 5.3.3 fully provide for all bad and doubtful debts as at the Accounting Date;
- 5.3.4 attribute a value to stock which is the lower of cost or net realisable value as at the Accounting Date after wholly writing off all redundant or obsolete stock and appropriately writing down all slow moving and damaged stock; and
- 5.3.5 are not affected (except as disclosed in the Accounts) by any extraordinary or exceptional event, circumstance or item.

6. Profits or losses

The profits or losses and value of net assets of the Company for the 3 consecutive financial years ending on the Accounting Date as shown by the Accounts (and by the previous audited accounts of the Company delivered to the Purchaser) have not (except as disclosed in those accounts) been affected by the inclusion of non-recurring items of income or expenditure, by transactions entered into otherwise than on normal commercial terms or by any other factors rendering such profits or losses or value of net assets for any of such periods exceptionally high or low.

7. Records

The accounting records of the Company are up to date and contain complete and accurate (in all material respects) details of all transactions of the Company and comply with the provisions of sections 221 and 222 CA 1985. The records and information of the Company are exclusively owned by it and under its direct control.

8. Management accounts

8.1 Except as fully, fairly and clearly disclosed in the Disclosure Letter, the management accounts of the Company for each month in respect of the period from the Accounting Date to August 2000, copies of which are attached to the Disclosure Letter, have been prepared in accordance with accounting principles generally accepted in the United Kingdom and on bases consistent with those used in the preparation of the Accounts.

8.2 Except as fully, fairly and clearly disclosed in the Disclosure Letter, such management accounts:

8.2.1 are not misleading in any respect;

8.2.2 neither over-state the value of any of the assets nor under-state any of the liabilities of the Company as at the dates to which they were drawn up; and

8.2.3 do not over-state the profits or turnover of the Company in respect of the periods to which they relate.

CHANGES SINCE THE ACCOUNTING DATE

9. Since the Accounting Date:

9.1 the businesses of the Company has been carried on in the ordinary and usual course and in the same manner (including nature and scope) as in the 12 months preceding the Accounting Date;

- 9.2 there has been no material adverse change in the financial or trading position or prospects of the Company including any adverse change in respect of turnover, profits, margins of profitability, work in progress, liabilities (actual or contingent) or expenses (direct or indirect) of the Company;
- 9.3 there has been no reduction in the aggregate value of the net assets of the Company determined in accordance with the same accounting policies as those applied in the Accounts (on the basis that each of the assets of the Company is valued at a figure no greater than the value attributed to it in the Accounts or, in the case of any assets acquired by the Company after the Accounting Date, at a figure no greater than cost);
- 9.4 no dividend or other payment which is, or could be treated as, a distribution for the purposes of Part VI ICTA or section 418 ICTA has been declared, paid or made by the Company; and
- 9.5 no resolution of the shareholders of any of the Companies has been passed.

ASSETS

10. Unencumbered title; possession

- 10.1 Each asset included in the Accounts or acquired by the Company since the Accounting Date (save for stock disposed of in the ordinary course of business) and each asset used by the Company or which is in the reputed ownership of the Company is legally and beneficially owned by the Company free from any Encumbrance or any claim to, or Contract to grant, any Encumbrance.
- 10.2 The Company owns such assets as are necessary or desirable for the carrying on of its business in the manner in which it is currently carried on.
- 10.3 The Company has not leased or acquired on any hire purchase agreement or arrangement any asset or equipment currently used in each of the care homes which it manages.

11. Debtors

- 11.1 The Company has not made, or entered into any Contract to make, any loan to, or other arrangement with, any person as a result of which it is or may be owed any money, other than trade debts incurred in the ordinary course of business and cash at bank.

11.2 The Company is not entitled to the benefit of any debt otherwise than as the original creditor and has not factored, deferred or discounted any debt or agreed to do so.

11.3 All of the debts of the Company which are included in the Accounts (apart from bad and doubtful debts to the extent to which they have been provided for in the Accounts) or which have subsequently arisen have realised or will realise in the normal course of collection and in any event within 3 months of Completion their full value as included in the Accounts or in the books of the Company, and no such debt nor any part of it has been outstanding for more than 2 months from its due date for payment.

12. Plant etc.

The plant and machinery, vehicles, fixtures and fittings, furniture and other equipment used in connection with the business of the Company:

12.1 are in a good and safe state of repair and condition and satisfactory working order and have been regularly maintained to a good standard and in accordance with any safety regulations usually observed in relation to them; and

12.2 are capable and will (subject to fair wear and tear) be capable throughout the periods of time during which they will be written down to a nil value (at the rates adopted in the Accounts) of meeting the needs for which they were designed or acquired.

13. Passing Off

The Company is not passing off any part of its business as and for the business of any other person and, so far as the Vendors are aware, no person is passing off its business as and for any part of the business of the Company.

14. Computer Systems

14.1 The computer system and software used by the Company has been properly maintained, has not been susceptible to significant breakdown, malfunction or failure and has at all material times functioned in a manner satisfactory for the running of the business of the Company.

14.2 The Company has in place adequate back up arrangements to ensure continuance of their respective businesses without loss of customers, data and without additional expense, in the event of computer hardware or software breakdown, malfunction or in the event of power failure.

- 14.3 All licences which the Company requires for the computer software used by it in connection with its business has been granted to the Company and are valid and subsisting.

PROPERTY

15. Details of the Property

- 15.1 The particulars of the Property shown in **Schedule 6** are true, complete and correct.
- 15.2 *The Company has leases of all the Properties from the Purchaser or a subsidiary or associated company of the Purchaser.*
- 15.3 The Company does not own, is not in occupation of and is not entitled to any estate or interest in any freehold or leasehold property other than the Property. The Company is not party to any uncompleted agreement to acquire or dispose of any freehold or leasehold property.
- 15.4 Except in relation to the Property, the Company does not have any liability (whether actual or contingent) in relation to any freehold or leasehold property.

16. Occupation and use of the Property

- 16.1 The Property is occupied exclusively by the Company who is entitled to vacant possession of the Property and no other person has any right (actual or contingent) to possession or occupation of the Property, or any interest in it.
- 16.2 The use of the Property for the purpose stated in **Schedule 6** corresponds to the use to which it is in fact put.

17. Matters affecting the Property

The Property is not affected by any matter which is of an onerous or unusual nature, or which conflicts with the present use of the Property, or which would otherwise restrict its continued possession and enjoyment.

18. Compliance

- 18.1 The use of the Property (and the use of plant and machinery in connection with it) complies with the provisions of all relevant legislation from time to time.
- 18.2 The Company has complied in all material respects with all covenants, obligations, restrictions and provisions binding upon it in relation to the Property.

ENVIRONMENTAL MATTERS

19. *The operation of the business of the Company has never involved the use of, or the release or discharge of, a hazardous substance or article, waste, sewage or other pollutant or contaminant.*

EMPLOYEES

20. Remuneration and employees

- 20.1 Full particulars of the identities, dates of commencement of employment (or appointment to office), dates of birth, terms and conditions of employment and remuneration (including any bonus, commission, profit sharing, share and other incentive schemes, and collective or workforce agreements) of all the employees, workers and officers of the Company is fully and accurately set out in the Disclosure Letter and copies of all their written service agreements or contracts of employment or particulars of employment statements are attached to the Disclosure Letter.
- 20.2 There are no amounts owing to any present or former officers, workers or employees of the Company, other than remuneration accrued (but not yet due for payment) in respect of the calendar month in which this Agreement is executed or for reimbursement of business expenses incurred during such month, and none of them is entitled to accrued but unpaid holiday pay or accrued but untaken holiday leave in respect of the Company's current or previous holiday year.
- 20.3 All Contracts of employment between the Company and its directors and employees are terminable by the Company by giving the applicable minimum period of notice specified in section 86 Employment Rights Act 1996, and the Company is not contractually obliged to make any payment as a consequence of the termination of any such Contract.
- 20.4 Other than as fully, fairly and clearly disclosed in the Disclosure Letter, the Company has not:
- 20.4.1 offered to employ or engage any person since the Accounting Date or where such employment or engagement will take effect after the date of this Agreement;
 - 20.4.2 given or received notice to terminate the employment or engagement of any person since the Accounting Date or where such notice has not yet expired;
- or

- 20.4.3 made, agreed or proposed any change of terms and conditions of employment or engagement since the Accounting Date or where such change of terms and conditions has not yet taken effect.
- 20.5 There is no person previously employed or engaged by the Company who now has or may have a statutory or contractual right to return to work or to be re-instated or re-engaged by the Company.
- 20.6 The Company has not recognised, and has not done any act which might be construed as recognition of, a trade union and the Company is not party to any agreement with any trade union or organisation of employees or workers nor are any steps being taken by employees, workers or other representatives to ensure trade union recognition.
- 20.7 The Company is not involved, and has not during the 12 months prior to the date of this Agreement been involved, in any strike, lock-out, industrial or trade dispute or any negotiations with any trade union or body of employees or workers.
- 20.8 The Company has, in relation to all present and former employees and workers, complied with all statutes, regulations, orders and codes of conduct relating to *employment and relations with employees and trade unions* and has maintained adequate and suitable records, whether or not required to do so by law, regarding the service of each of its employees and has complied with all agreements for the time being having effect as regards such relations or the conditions of service of its employees (whether collectively or individually).

21. Pensions

The Company has no superannuation fund, retirement fund or other pension schemes or arrangements in place in relation to any employee of the Company or otherwise.

CONTRACTS

22. Insurance

- 22.1 All insurable assets of the Company are, and have at all material times been, insured in amounts equal to their full replacement or reinstatement value against all risks normally insured against by persons carrying on the same classes of business as the Company.
- 22.2 The Company is, and has at all material times been, adequately covered against accident, damage, injury, third party loss, loss of profits and any other risk normally insured against by persons carrying on the same classes of business as the Company.

22.3 All premiums due in relation to the Company's insurances have been paid, and nothing has been done or omitted to be done which would make any policy of insurance void or voidable or which might lead to any liability under such insurance being avoided by the insurers or which is likely to result in an increase in premium or which would release any insurer from any of its obligations under any policy of insurance.

22.4 No insurance claim is pending or outstanding and there are no circumstances which might result in any such claim.

22.5 Full particulars of the Company's insurances and of all claims made against those insurances in the last 2 years are set out in or attached to the Disclosure Letter.

23. Financing and working capital

23.1 The amount borrowed by the Company from its bankers does not exceed the amount of the facility agreed with such bankers and the total amount borrowed by the Company from whatever source does not exceed any limitation on its borrowing contained in its articles of association or in any Contract, debenture, loan stock deed or any other document.

23.2 The Company has not been engaged in any borrowing or financing not required to be reflected in its statutory accounts.

23.3 Full and accurate details of all overdrafts, loans or other financial facilities outstanding or available to the Company are set out in the Disclosure Letter and copies of all documents relating to those facilities are attached to the Disclosure Letter. Nothing has been done or omitted to be done which might affect or prejudice the continuance of any of those facilities in full force and effect; and no person who provides any of those facilities has given any indication that it may be withdrawn or its terms altered.

23.4 The Disclosure Letter contains details, correct at the date stated in it, of the credit or debit balances on all the bank or deposit accounts of the Company. Since that date there have been no payments out of any of those accounts except for routine payments in the ordinary and usual course of business and the balances on those accounts are not now substantially different from the balances shown in the Disclosure Letter.

23.5 No indebtedness of the Company is due and payable and no security over any of the assets of the Company is now enforceable.

24. Material contracts

The Company is not, nor has been since the Accounting Date, a party to, liable under or subject to any Contract which:

- 24.1 involves agency, distributorship, franchising, marketing rights, information sharing, manufacturing rights, consultancy, servicing, maintenance, inspection or testing;
 - 24.2 involves partnership, joint venture, consortium, joint development, shareholders or similar arrangements;
 - 24.3 involves hire purchase, conditional sale, credit sale, leasing, hiring or similar arrangements;
 - 24.4 involves or is likely to involve any capital expenditure or involves or is likely to involve an aggregate expenditure or receipt in excess of £25,000;
 - 24.5 is incapable of complete performance in accordance with its terms within 6 months after the date on which it was entered into;
 - 24.6 cannot be fulfilled or performed by the Company;
 - 24.7 involves or is likely to involve any obligation, restriction, expenditure or receipt of an unusual, onerous or exceptional nature;
 - 24.8 restricts the freedom of the Company to carry on its business in any part of the world or to use or exploit any of its assets, in each case in such manner as it may think fit;
 - 24.9 is not on arm's length terms or is in any way otherwise than in the ordinary and proper course of the Company's business.
25. The Company is not in material breach of any Contract to which it is a party and so far as the Vendors are aware no other party to any such Contract is in breach of it. All contractual agreements, rights, commitments and obligations to which the Company is party are valid and enforceable.

26. Other business matters

During the 12 months ending on the date of this Agreement there has been no substantial change in the basis or terms on which any person is prepared to do business with the Company (apart from normal price changes), and no substantial customer or supplier of the Company (providing 5% or more of the Company's supplies or turnover in any accounting year) has ceased or substantially reduced its business with

the Company, and no indication has been received by the Company or the Vendors that there will or may be any such change, cessation or reduction.

COMPLIANCE, DISPUTES

27. Company law matters

- 27.1 Compliance has been made with all legal requirements in connection with the formation of the Company and all issues and grants of shares, debentures, notes, mortgages or other securities of the Company.
- 27.2 The copy of the memorandum and articles of association of the Company attached to the Disclosure Letter is true and complete and has embodied in it or attached to it a copy of every resolution or agreement as is referred to in section 380(4) CA 1985. The Company has at all times carried on its business and affairs in all respects in accordance with its memorandum and articles of association and all such resolutions and agreements.
- 27.3 All returns, particulars, resolutions and other documents required to be filed with or delivered to the Registrar of Companies by the Company or any of its officers have been correctly and properly prepared and so filed and delivered, and no such returns, particulars, resolutions or other documents have been so filed or delivered during the period of 14 days ending on the date of this Agreement.
- 27.4 The statutory books (including all registers and minute books) of the Company have been properly kept and contain an accurate and complete record of the matters which should be dealt with in those books and no notice or allegation that any of them is incorrect or should be rectified has been received.

28. General legal compliance

- 28.1 The Company has obtained all necessary licences, consents, permits and authorities (public and private) to enable it to carry on its business effectively in the places and in the manner in which such business is now carried on. All such licences, consents, permits and authorities (copies of which are enclosed with the Disclosure Letter) are valid and subsisting and have been complied with in all respects and there is no reason why any of them should be suspended, cancelled or revoked.
- 28.2 The Company has conducted its business in all material respects in accordance with all applicable legal and administrative requirements (including the Consumer Credit Act 1974 and the Data Protection Acts 1984 and 1998).

28.3 So far as the Vendors are aware, there is not pending or in existence, any investigation or enquiry by, or on behalf of, any governmental or other body in respect of the affairs of the Company.

29. Fair trading

The Company is not a party to any agreement, arrangement or connected practice or is carrying on any practice which, so far as the Vendors are aware, in whole or part contravenes or is invalidated by any anti-trust, fair trading, consumer protection or similar legislation.

30. Litigation

30.1 The Company is not involved (whether as claimant, defendant or otherwise) in any civil, criminal, tribunal, arbitration, administrative or other proceedings.

30.2 No civil, criminal, tribunal, arbitration, administrative or other proceedings are pending or threatened by or against or concern the Company and, so far as the Vendors are aware, there are no facts or circumstances likely to result in any such proceedings.

30.3 There is no outstanding or unsatisfied judgement, decree, order, award or decision of a court, tribunal, arbitrator or governmental agency against the Company and the Company is not party to any undertaking or assurance given to a court, tribunal or any other person in connection with the determination or settlement of any claim or proceedings.

31. Insolvency

31.1 No meeting has been convened at which a resolution will be proposed, no petition has been presented, no order has been made and no resolution has been passed for the winding-up of the Company or for the appointment of any provisional liquidator.

31.2 No administrative receiver, receiver or manager has been appointed of the whole or any part of the property, assets or undertaking of the Company.

31.3 No administration order has been made appointing an administrator in respect of the Company and no petition has been presented for an administration order in respect of the Company.

31.4 No voluntary arrangement has been proposed or approved under Part I Insolvency Act 1986 and no compromise or arrangement has been proposed, agreed to or sanctioned under section 425 Insolvency Act 1986 in respect of the Company.

31.5 So far as the Vendors are aware, there are no facts in existence which are likely to lead to any of the events or circumstances referred to in this paragraph.

32. Effects of the Agreement

32.1 The execution of this Agreement and the observance and performance of its provisions will not and is not likely to:

32.1.1 result in a breach of any Contract, law, regulation, order, judgement, injunction, undertaking, decree or similar imposition to or by which the Company is party or bound, or entitle any person to terminate or avoid any Contract to which the Company is party, or have any material effect on any such Contract; or

32.1.2 result in the loss or impairment of or any default under any licence, authorisation or consent required by the Company for the purposes of its business.

SCHEDULE 4

Taxation

PART 1 - INTERPRETATION

1. Interpretation

In this **Schedule 4**:

1.1 the following expressions have the following meanings unless inconsistent with the context:

| | |
|----------------------------|---|
| "ACT" | Advance corporation tax |
| "the Auditors" | the auditors for the time being of the Company |
| "the Balance Sheet" | the audited balance sheet of the Company as at the Accounting Date |
| "CAA" | Capital Allowances Act 1990 |
| "Claim" | any notice, demand, assessment, letter or other document issued, or action taken, by or on behalf of any Taxation Authority and the submission of any <i>Taxation form, return or computation</i> from which, in either case, it appears to the Purchaser that the Company is or may be subject to a Liability to Taxation or other liability in respect of which the Vendors are or may be liable under paragraph 2 |
| "Dispute" | any dispute, appeal, negotiations or other proceedings in connection with a Claim |
| "Event" | any event, fact or circumstance whatsoever including but not limited to: (a) any transaction, action or omission (whether or not the Company is party to it); (b) the earning, receipt or accrual for any |

Taxation purpose of any income, profits or gains;

- (c) the incurring for any Taxation purpose of any loss or expenditure;
- (d) the declaration, payment or making of any dividend or other distribution;
- (e) the sale and purchase of the Shares pursuant to this Agreement; and
- (f) Completion

“FA”

Finance Act

“Group Relief”

the meaning given to that expression by section 402 ICTA

“IHTA”

Inheritance Tax Act 1984

“Liability to Taxation”

- (a) Any liability of the Company to make an actual payment of Taxation (whether or not the Company is primarily so liable and whether or not the Company has any right of recovery against any other person);
- (b) The use by the Company (in whole or in part) of any Purchaser’s Relief (including a Purchaser’s Relief surrendered to the Company by another company) to reduce or eliminate any liability of the Company to make an actual payment of Taxation (whether or not the Company is primarily so liable and whether or not the Company has any right of recovery against any other person) in respect of which the Vendors would otherwise have been liable under **paragraph 2**; and
- (c) The loss by the Company (in whole or in part) of any Purchaser’s Relief (including a

Purchaser's Relief surrendered to the Company by another company)

"Purchaser's Relief"

- (a) Any Relief which was treated as an asset of the Company in the Balance Sheet; and
- (b) Any Relief which was taken into account in computing (and so reducing or eliminating) any provision for deferred tax which appears in the Balance Sheet or which would have appeared in the Balance Sheet but for the presumed availability of such Relief; and
- (c) Any Relief which arises wholly or mainly as a result of any Event which has occurred or occurs after the Accounting Date

"Relief"

- (a) Any relief, allowance, exemption, set-off, deduction or credit available from, against or in relation to Taxation or in the computation for any Taxation purpose of income, profits or gains; and
- (b) Any right to a repayment of Taxation

"Saving"

the reduction or elimination of any liability of the Company to make an actual payment of corporation tax in respect of which the Vendors would not have been liable under **paragraph 2**, by the use of any Relief arising wholly as a result of a Liability to Taxation in respect of which the Vendors have made a payment under **paragraph 2**

“Taxation”

- (a) any tax, duty, impost or levy, past or present, of the United Kingdom or elsewhere, whether governmental, state, provincial, local governmental or municipal, including but not limited to income tax (including income tax required to be deducted or withheld from or accounted for in respect of any payment under section 203 ICTA or otherwise), corporation tax, ACT, capital gains tax, inheritance tax, VAT, customs and other import or export duties, rates, stamp duty, stamp duty reserve tax, national insurance and social security contributions; and
- (b) any fine, penalty, surcharge, interest or other imposition relating to any tax, duty, impost or levy mentioned in **paragraph (a)** of this definition or to any account, record, form, return or computation required to be kept, preserved, maintained or submitted to any person for the purposes of any such tax, duty, impost or levy

“Taxation Authority”

any authority, whether of the United Kingdom or elsewhere, competent to impose, assess or collect Taxation, including but not limited to the Board of Inland Revenue and the Commissioners of Customs and Excise

“Taxation Statute”

any statute (and all regulations and other documents having the force of law under such statute) published, enacted, issued or coming into force on or before the date of this Agreement relating to Taxation

“TCGA”

Taxation of Chargeable Gains Act 1992

“TMA”

Taxes Management Act 1970

| | |
|--------------------|--|
| "VAT" | value added tax |
| "VATA" | Value Added Tax Act 1994 |
| "VAT Group" | any group of companies for the purposes of section 43 VATA of which the Company is or has been a member on or before Completion; |

- 1.2 references to Events include Events which are deemed to have occurred for any Taxation purpose and references to income, profits or gains earned, received or accrued for any Taxation purpose include income, profits or gains which are deemed to have been earned, received or accrued for any Taxation purpose;
- 1.3 references to the loss of a Relief include the disallowance of a Relief and the failure to obtain a Relief (whether as a result of the surrender of the Relief to another company or otherwise);
- 1.4 any stamp duty which is charged on any document, or in the case of a document which is outside the United Kingdom any stamp duty which would be charged on the document if it were brought into the United Kingdom, which is necessary to establish the title of the Company to any asset or in the enforcement or production of which the Company is interested, and any interest, fine or penalty relating to such stamp duty, will be deemed to be a liability of the Company to make an actual payment of Taxation; and
- 1.5 references to any statute or statutory provisions will, unless the context otherwise requires, be construed as including references to any earlier statute or the corresponding provisions of any earlier statute, whether repealed or not, directly or indirectly amended, consolidated, extended or replaced by such statute or provisions, and to any subsequent statute or the corresponding provisions of any subsequent statute directly or indirectly amending, consolidating, extending, replacing or re-enacting the same, and will include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provisions.

PART 2 - TAX COVENANT

2. Covenant

Subject to the provisions of this **Part 2** of this **Schedule 4**, each of the Vendors covenant with the Purchaser to pay to the Purchaser an amount equal to the amount of:

- 2.1 any Liability to Taxation which has arisen or arises as a result of or in connection with any Event which occurred on or before Completion, whether or not such Liability to Taxation has been discharged on or before Completion; and
- 2.2 any Liability to Taxation which arises under section 767A or 767AA ICTA, section 132 FA 1988 or section 179, 189, 190 or 191 TCGA as a result of the combined effect of two or more Events, the first of which occurred on or before Completion; and
- 2.3 any Liability to Taxation which arises as a result of any Event which occurs after Completion pursuant to a legally binding obligation (whether or not conditional) entered into by the Company on or before Completion otherwise than in the ordinary course of business of the Company; and
- 2.4 any Liability to Taxation which arises as a result of any supply, acquisition or importation made or deemed to be made after Completion for the purposes of VAT by any member of any VAT Group other than the Company; and
- 2.5 any Liability to Taxation in respect of a chargeable gain which arises as a result of the disposal after Completion of any asset acquired by the Company on or before Completion, to the extent that such Liability to Taxation would not have arisen if the expenditure allowable under section 38(1)(a) TCGA in respect of the asset (ignoring any other Relief) had not been less than the value of the asset stated in the Balance Sheet or, in the case of an asset acquired after the Accounting Date, the cost of the asset; and
- 2.6 any Liability to Taxation which arises in respect of a chargeable gain as a result of the Company ceasing after Completion to use an asset acquired on or before Completion for the purposes of a trade, as mentioned in section 154(2)(b) TCGA, or as a result of the expiry after Completion of a period of ten years beginning on or before Completion with the acquisition of an asset, as mentioned in section 154(2)(c) TCGA; and
- 2.7 any liability of the Company to make a payment in respect of Taxation which has arisen or arises as a result of or in connection with any Event which occurred on or before Completion, whether or not such liability has been discharged on or before Completion, including, but not limited to:
 - 2.7.1 any liability of the Company to make a payment in respect of Taxation under any indemnity, covenant, guarantee or charge entered into by the Company on or before Completion; and

- 2.7.2 any liability of the Company to make a payment in respect of Taxation under any agreement or arrangement relating to the surrender of Group Relief, ACT or any other Relief or to any VAT Group, in either case entered into by the Company on or before Completion; and
- 2.8 any costs, fees or expenses (including legal costs on a full indemnity basis) incurred by the Company or the Purchaser in connection with:
 - 2.8.1 any Liability to Taxation or other liability in respect of which the Vendors are liable under any of **paragraphs 2.1 to 2.7**; or
 - 2.8.2 any Claim or any Dispute; or
 - 2.8.3 taking or defending any action (including but not limited to legal proceedings) under this **Part 2** of this **Schedule 4**

3. **Quantification**

For the purposes of **paragraph 2** the amount of a Liability to Taxation or a liability of the kind mentioned in **paragraph 2.7** will be determined as follows:

- 3.1 the amount of a Liability to Taxation falling within **paragraph (a)** of the definition of that expression in **paragraph 1.1** will be the amount of the actual payment of Taxation which the Company is liable to make;
- 3.2 the amount of a Liability to Taxation falling within **paragraph (b)** of the definition of that expression in **paragraph 1.1** will be the amount of Taxation saved by the Company as a result of the use of the Purchaser's Relief; and
- 3.3 the amount of a Liability to Taxation falling within **paragraph (c)** of the definition of that expression in **paragraph 1.1** will be:
 - 3.3.1 the amount of Taxation which would have been saved by the Company but for the loss of the Purchaser's Relief on the basis of the rates of Taxation current at the date of the loss, assuming for this purpose that the Company had sufficient profits or was otherwise in a position actually to use the Purchaser's Relief; or
 - 3.3.2 if the Purchaser's Relief lost was a right to a repayment of Taxation, the amount of the repayment of Taxation so lost; and

- 3.4 the amount of a liability of the Company to make a payment in respect of Taxation will be the amount of the payment in respect of Taxation which the Company is liable to make.

4. **Exclusions**

- 4.1 The Vendors will not be liable under **paragraph 2** in respect of a Liability to Taxation or other liability of the Company to the extent to which:

- 4.1.1 such Liability to Taxation or other liability was discharged on or before the Accounting Date and the discharge of such Liability to Taxation or other liability was recognised in the Balance Sheet or is recognised in the Completion Accounts; or
- 4.1.2 specific provision was made in the Balance Sheet or in the Completion Accounts for such Liability to Taxation or other liability; or
- 4.1.3 such Liability to Taxation or other liability would not have arisen but for any Event which occurred in the ordinary course of business of the Company after the Accounting Date and on or before Completion; or
- 4.1.4 payment has already been made in respect of such Liability to Taxation or other liability under this **Part 2** or **Part 3** of this **Schedule 4**; or
- 4.1.5 such Liability to Taxation or other liability would not have arisen but for a change in legislation (including but not limited to an increase in rates of Taxation) or in the published practice of any Taxation Authority first enacted or announced after Completion; or
- 4.1.6 such Liability to Taxation or other liability would not have arisen but for a voluntary act, transaction or omission of the Company after Completion:
 - 4.1.6.1 otherwise than pursuant to a legally binding obligation entered into by the Company on or before Completion or imposed on the Company by any legislation whether coming into force before, on or after Completion; and
 - 4.1.6.2 which the Purchaser was aware or ought reasonably to have been aware would give rise to the Liability to Taxation or other liability in question; and

- 4.1.6.3 otherwise than in the ordinary course of business of the Company;
 - 4.1.7 such Liability to Taxation or other liability relates to any of the facts and matters fully, fairly and clearly disclosed in the Disclosure Letter under the heading "Tax Disclosures" and either:
 - 4.1.7.1 does not arise as a result of the application of section 179 TCGA; and
 - 4.1.7.2 would not have arisen had the Balance Sheet or the Completion Accounts included a provision for deferred tax of £5,000 reduced by the amount of any other Liability to Taxation or other liability excluded by virtue of this paragraph 4.1.7.
- 4.2 For the purposes of **paragraph 4.1.3** none of the following will be regarded as an Event occurring in the ordinary course of business of the Company:
 - 4.2.1 any distribution (within the meaning of Part VI (with section 418) ICTA) or deemed distribution;
 - 4.2.2 the disposal or acquisition of any asset (including trading stock) or the supply or obtaining of any service or business facility of any kind (including a loan of money or the letting, hiring or licensing of any tangible or intangible property) in circumstances where the consideration (if any) actually received or given for such disposal, acquisition, supply or obtaining is different from the consideration deemed to have been received or given for any Taxation purpose;
 - 4.2.3 any Event which gives rise to a Liability to Taxation in respect of deemed (as opposed to actual) income, profits or gains;
 - 4.2.4 the Company ceasing, or being deemed to cease, to be a member of any group of companies or associated with any other company for any Taxation purpose;
 - 4.2.5 any Event which gives rise to a Liability to Taxation under section 126 and Schedule 23 FA 1995;
 - 4.2.6 any Event which gives rise to a Liability to Taxation under Part XVII ICTA;

- 4.2.7 any Event which gives rise to a Liability to Taxation primarily chargeable against or attributable wholly or partly to or recoverable wholly or partly from any other person;
- 4.2.8 the disposal of any capital asset;
- 4.2.9 any scheme, arrangement or transaction designed partly or wholly or containing steps or stages designed partly or wholly for the purpose of avoiding or reducing or deferring a Liability to Taxation;
- 4.2.10 the creation, cancellation or reorganisation of any share or loan capital of the Company;
- 4.2.11 the failure by the Company to deduct or account for any Taxation; or
- 4.2.12 any Event which gives rise to any fine, penalty, surcharge, interest or other imposition relating to any Taxation.

5. Deductions from payments

- 5.1 Except as required by law all payments by the Vendors under this **Part 2** of this **Schedule 4** will be made free and clear of all deductions and withholdings (whether in respect of Taxation or otherwise).
- 5.2 If any deduction or withholding is required by law to be made from any payment by the Vendors under this **Part 2** of this **Schedule 4** or if (ignoring any available Relief) the Purchaser is subject to Taxation in respect of any payment by the Vendors under this **Part 2** of this **Schedule 4**, the Vendors covenant with the Purchaser to pay to the Purchaser such additional amount as is necessary to ensure that the net amount received and retained by the Purchaser (after taking account of such deduction or withholding or Taxation) is equal to the amount which it would have received and retained had the payment in question not been subject to the deduction or withholding of Taxation.

6. Due date for payment

- 6.1 The due date for the making of a payment by the Vendors under this **Part 2** of this **Schedule 4** will be:
 - 6.1.1 the date falling fifteen Business Days after the Purchaser has served notice on the Vendors demanding such payment; or

6.1.2 in any case involving a liability of the Company or the Purchaser to make an actual payment (whether or not a payment of Taxation), the later of the date mentioned in **paragraph 6.1.1** and the date falling five clear Business Days before the last date upon which the payment is required to be made to the person entitled to the payment (after taking into account any postponement of the due date for payment of any Taxation which is obtained).

6.2 If any payment required to be made by the Vendors under this **Part 2** of this **Schedule 4** is not made by the due date, ascertained in accordance with **paragraph 6.1**, then such payment will bear interest from the due date for payment at the annual rate of 4 per cent above the base lending rate from time to time of NHP's Bank accruing on a daily basis until payment is made, whether before or after any judgment.

7. Claims procedure

7.1 The Purchaser will as soon as reasonably practicable give notice of any Claim to the Vendors, provided that the giving of such notice will not be a condition precedent to the liability of the Vendors under **paragraph 2**.

7.2 Provided that the Vendors indemnify and secure the Company, the Purchaser and all other members of the same group of companies as the Purchaser to the reasonable satisfaction of the Purchaser against all losses, costs, damages and expenses (including interest on overdue Taxation) which may be incurred thereby, the Purchaser will procure that the Company, at the Vendors' cost and expense, takes such action and gives such information and assistance in connection with its Taxation affairs as the Vendors may reasonably and promptly request to dispute, appeal against, settle or compromise any Claim, including, but not limited to:

7.2.1 applying to postpone (so far as legally possible) the payment of any Taxation; and

7.2.2 (except in the case of a Claim where any Taxation Authority alleges dishonest or fraudulent conduct on the part of any of the Vendors or the Company or any person acting on their or its behalf) allowing the Vendors to undertake, at their own cost and expense, the conduct of the Dispute.

7.3 The Vendors will not without the prior written consent of the Purchaser take any action in relation to any Dispute conducted by them or at their request, including, but not limited to:

- 7.3.1 the transmission of any communication (whether written or otherwise) to any Taxation Authority;
 - 7.3.2 the appointment of solicitors or other professional advisers in relation to the Dispute;
 - 7.3.3 the settlement or compromise of the relevant Claim; and
 - 7.3.4 the agreement of any matter which is likely to affect the amount of the relevant Claim or any future Liability to Taxation.
- 7.4 The Purchaser may withhold its consent to the taking of any action mentioned in **paragraph 7.3** which it considers to be materially prejudicial to the business or Taxation affairs of the Company, the Purchaser or any other member of the same group of companies as the Purchaser or on any other reasonable ground.

The Vendors will promptly and fully inform the Purchaser of all matters relating to any Dispute conducted by or at the request of the Vendors and will provide the Purchaser with copies of all correspondence and other documents relating thereto.

- 7.5 Without prejudice to the liability of the Vendors under this **Part 2** of this **Schedule 4**:
- 7.5.1 the Purchaser will be entitled, at the Vendors' cost and expense, to appoint its own solicitors and other professional advisers in relation to any Dispute conducted by or at the request of the Vendors, in addition to those appointed by the Vendors;
 - 7.5.2 the Purchaser will not be obliged to procure that the Company appeals against any assessment to or demand for Taxation unless within ten Business Days of the Purchaser giving notice thereof to the Vendors in accordance with **paragraph 7.1**, the Vendors have given notice to the Purchaser to do so;
 - 7.5.3 the Purchaser will not be obliged to prevent the Company from making a payment of Taxation at the time necessary to avoid incurring any fine, penalty, surcharge, interest or other imposition in respect of any unpaid Taxation; and
 - 7.5.4 if the Vendors fail promptly (and in any event within ten Business Days of the Purchaser giving notice requiring them to do so) to inform the Purchaser of any action which they wish the Purchaser to procure the Company to take

under **paragraph 7.2**, the Purchaser will be entitled to procure that the Company settles or compromises any Claim on such terms as it determines in its absolute discretion.

8. Time limit

8.1 The Vendors will not be liable under **paragraph 2** in respect of a Liability to Taxation or other liability of the Company unless within seven years after the date of this Agreement the Purchaser has given notice to the Vendors of any Claim whatsoever relating to such Liability to Taxation or other liability, or of any Event which may give rise to such a Claim.

8.2 The time limit in **paragraph 8.1** will not apply in any case involving:

8.2.1 dishonest, fraudulent or negligent conduct on the part of any of the Vendors or the Company or any person acting on their or its behalf; or

8.2.2 any Liability to Taxation or other liability of the Company which arises as a result of the combined effect of two or more Events not all of which occurred on or before Completion.

9. Savings

9.1 If (at the Vendors' request and expense) the Auditors determine that the Company has obtained a Saving, the Purchaser will as soon as reasonably practicable thereafter repay to the Vendors the lesser of:

9.1.1 the amount of the Saving (as determined by the Auditors); and

9.1.2 the amount paid by the Vendors under **paragraph 2** in respect of the Liability to Taxation which gave rise to the Saving less any part of that amount previously repaid to the Vendors under any provision of this Agreement or otherwise.

9.2 The Company will be entitled to use in priority to any Relief which gives rise to a Saving any other Relief available to it (including by way of surrender by another company to it) to reduce or eliminate any liability to make an actual payment of corporation tax.

9.3 The Company will not obtain a Saving until the last date upon which it would have been obliged to make the actual payment of corporation tax which has been reduced or eliminated in order to avoid incurring interest thereon.

- 9.4 In determining whether the Company has obtained a Saving, the Auditors will act as experts and not as arbitrators and their determination will (in the absence of manifest error) be conclusive and binding on the parties.

10. Recovery from other persons

- 10.1 If the Company recovers from any other person (including any Taxation Authority but excluding the Purchaser, any other member of the same group of companies as the Purchaser and any officer or employee of any such company) any amount which is referable to a Liability to Taxation or other liability of the Company in respect of which the Vendors have made a payment under **paragraph 2**, the Purchaser will repay to the Vendors the lesser of:

10.1.1 the amount so recovered (less any losses, costs, damages and expenses incurred by the Company, the Purchaser or any other member of the same group of companies as the Purchaser as a result of the recovery of that amount); and

10.1.2 the amount paid by the Vendors under **paragraph 2** in respect of the Liability to Taxation or other liability in question less any part of such amount previously repaid to the Vendors under any provision of this Agreement or otherwise.

- 10.2 If the Purchaser becomes aware that the Company is entitled to recover any amount mentioned in **paragraph 10.1**, the Purchaser will as soon as reasonably practicable give notice of that fact to the Vendors and provided that the Vendors indemnify and secure the Company, the Purchaser and all other members of the same group of companies as the Purchaser to the reasonable satisfaction of the Purchaser against all losses, costs, damages and expenses which may be incurred thereby, the Purchaser will procure that the Company, at the Vendors' cost and expense, takes such action as the Vendors may reasonably and promptly request to effect such recovery.

- 10.3 The action which the Vendors may request the Company to take under **paragraph 10.2** does not include:

10.3.1 any action which the Purchaser considers to be materially prejudicial to the business or Taxation affairs of the Company, the Purchaser or any other member of the same group of companies as the Purchaser or to which the Purchaser objects on any other reasonable ground; or

- 10.3.2 allowing the Vendors to undertake the conduct of any action necessary to effect recovery of the amount in question.

11. General

All payments by the Vendors under this **Part 2** of this **Schedule 4** will be treated as repayments by the Vendors of the consideration paid for the Shares pursuant to this Agreement, provided that this **paragraph 11** will not operate in any way to limit the liability of the Vendors under this **Part 2** of this **Schedule 4**.

12. Corporation Tax Returns

13. The Vendors or their duly authorised agents will, at the Vendors' cost and expense to the extent not provided for in the Completion Accounts, prepare the Corporation Tax returns and computations of the Company for all accounting periods ended on or before Completion, to the extent that they have not been prepared before Completion, and submit them to the Purchaser for approval.
- 13.1 The Purchaser will procure that the Company causes the returns and computations mentioned in **paragraph 12.1** to be authorised, signed and submitted to HM Inspector of Taxes with such amendments as the Purchaser reasonably considers to be necessary.
- 13.2 The Vendors or their duly authorised agents will, at the Vendors' cost and expense to the extent not provided for in the Completion Accounts, prepare all documentation and deal with all matters (including correspondence) relating to the Corporation Tax returns and computations of the Company for all accounting periods ended on or before Completion provided that the Vendors will not without the prior written consent of the Purchaser (not to be unreasonably withheld or delayed) transmit any communication (whether written or otherwise) to HM Inspector of Taxes or agree any matter with HM Inspector of Taxes.
- 13.3 The Purchaser will procure that the Company, at the Vendors' cost and expense, affords such access to its books, accounts and records as is necessary and reasonable to enable the Vendors or their duly authorised agents to prepare the Corporation Tax returns and computations of the Company for all accounting periods ended on or before Completion and conduct matters relating to them in accordance with this **paragraph 12**.

13.4 The Vendors will take all reasonable steps to ensure that the Corporation Tax returns and computations of the Company for all accounting periods ended on or before Completion are prepared and agreed with HM Inspector of Taxes as soon as possible.

14. Group Relief

14.1 The Purchaser will procure that, if directed by the Vendors to do so, the Company surrenders to the Vendors or to any member of the same group as the Vendors for no consideration pursuant to the provisions of Chapter IV Part X ICTA any trading losses or other amounts eligible for surrender by the Company by way of Group Relief in respect of any accounting period of the Company ended on or before the Accounting Date.

14.2 The Purchaser will procure that the Company does not:

14.2.1 without the prior written consent of the Vendors, revoke any surrender of Group Relief made before the date of this Agreement or as provided in **paragraph 13.1**; or

14.2.2 surrender any Group Relief in respect of any accounting period of the Company ended on or before the Accounting Date otherwise than as provided in **paragraph 13.1**.

14.3 The Vendors will bear all costs of and incidental to any surrender of Group Relief mentioned in **paragraph 13.1** and will keep the Purchaser fully informed of all matters relating to any such surrender.

14.4 Neither the Vendors nor any member of the same group as the Vendors shall be entitled to a surrender by way of Group Relief of any trading losses made by the Company in the current accounting year apportioned to the date of Completion.

PART 3 - TAX WARRANTIES

15. Returns, disputes and clearances

15.1 All notices, returns, computations, registrations and payments which should have been made by the Company for any Taxation purpose have been made within the requisite periods and are up-to-date, correct and on a proper basis and none of them is, or is likely to be, the subject of any dispute with any Taxation Authority.

- 15.2 The Company is not involved in any dispute with any Taxation Authority concerning any matter likely to affect in any way the liability of the Company to Taxation and there are no circumstances which are likely to give rise to any such dispute.
- 15.3 The Taxation affairs of the Company have never been the subject of any investigation or enquiry by any Taxation Authority (other than routine questions), no Taxation Authority has indicated that it intends to investigate the Taxation affairs of the Company and there are no circumstances which are likely to give rise to any such investigation.
- 15.4 The Company has punctually supplied all information requested by any Taxation Authority for any Taxation purpose.
- 15.5 All particulars furnished to the Inland Revenue or any other Taxation Authority in connection with the application for any consent or clearance made on behalf of or affecting the Company were made to the appropriate office, section, department or body and fully and accurately disclosed all facts, circumstances and (where appropriate) law material to the decision of the Inland Revenue or such other Taxation Authority and any such consent or clearance given remains valid and effective and any transaction for which such consent or clearance has previously been obtained has been carried into effect (if at all) only in accordance with the terms of the relevant application, consent or clearance.
- 15.6 The Disclosure Letter contains details so far as they affect the Company of all concessions, arrangements and agreements (whether formal or informal) negotiated with any Taxation Authority and no action has been taken by or on behalf of the Company which has had or is likely to have the result of altering, prejudicing or in any way disturbing any such concession, arrangement or agreement.

16. Penalties and interest

- 16.1 The Company has not since the Accounting Date paid, and is not liable to pay, any fine, penalty, charge, surcharge or interest charged by virtue of any of the provisions of any Taxation Statute and has not since the Accounting Date become subject to any forfeiture by virtue of any such provisions or the operation of any penal provisions contained in any Taxation Statute.
- 16.2 There are no circumstances which are likely to cause the Company to become liable to pay any fine, penalty, charge, surcharge or interest, or become subject to any forfeiture, as mentioned in **paragraph 13.1**.

17. Taxation claims, liabilities and reliefs

- 17.1 The Company has sufficient records to enable it to make and complete returns for Taxation purposes and to calculate the liability to Taxation or relief arising on the disposal of any asset owned at the Accounting Date or acquired since the Accounting Date but before Completion.
- 17.2 The Company has duly and properly made all Taxation claims, disclaimers, elections and surrenders and given all notices and consents and done all other things in respect of Taxation the making, giving or doing of which was assumed to have been made for the purposes of the Balance Sheet, all such claims, disclaimers, elections, surrenders, notices, consents and other things have been accepted as valid by the relevant Taxation Authorities and none has been revoked or otherwise withdrawn.
- 17.3 The Company has neither made nor is entitled to make any claim under section 23, 24, 48, 242, 279 or 280 TCGA or section 584 ICTA.
- 17.4 The Company is not, and will not become, liable to pay, or make reimbursement or indemnity in respect of, any Taxation (or amounts corresponding to any Taxation) payable by or chargeable on or attributable to any other person, whether in consequence of the failure by that person to discharge that Taxation within any specified period or otherwise, where such Taxation relates to a profit, income or gain, transaction, event, omission or circumstance arising, occurring or deemed to arise or occur (whether wholly or partly) on or prior to Completion.

18. Distributions and payments

- 18.1 The Company has deducted and properly accounted to the appropriate Taxation Authority for all amounts which it has been obliged to deduct in respect of Taxation, has complied fully with all reporting requirements relating to all such amounts and has (where required by the applicable Taxation Statute) duly provided certificates of deduction of tax to the recipients of payments from which deductions have been made.
- 18.2 The Company has not at any time declared, paid or made any dividend or other payment which is, or could be treated as, a distribution for the purposes of Part VI ICTA or section 418 ICTA except any dividend disclosed in its audited statutory accounts nor is it bound to make such a distribution.
- 18.3 There are no securities (within the meaning of section 254(1) ICTA) of the Company in issue or which the Company has agreed to issue any payment in respect of which falls to be treated as a distribution for the purposes of section 209 ICTA.

- 18.4 The Company has not at any time issued or agreed to issue any share capital as paid up otherwise than by the receipt of new consideration, after repaying any share capital, as mentioned in section 210 ICTA.
- 18.5 The Company has not made or received any exempt distribution within the meaning of section 213 ICTA, and has at no time been a relevant company in relation to an exempt distribution for the purposes of that section or concerned in an exempt distribution for the purposes of section 214 ICTA.
- 18.6 The Company has not at any time received a capital distribution to which section 189 TCGA could apply.
- 18.7 No rents, interest, annual payments or other sums of an income nature paid or payable by the Company since the Accounting Date, or which the Company is under an obligation to pay, will be wholly or partially disallowable as deductions or charges in computing the profits of the Company for the purposes of corporation tax, whether by virtue of the provisions of section 74, 79, 125, 338, 577, 779 to 786 (inclusive) or 787 ICTA or otherwise.
- 18.8 The Company has not since the Accounting Date made any payment to, or provided any benefit for, any present or former director, employee or officer which is wholly or partially disallowable as a deduction in computing the profits of the Company for the purposes of corporation tax, and is under no obligation to make any such payment or provide any such benefit.
- 18.9 The Company is not and never has been a party to any interest rate contract or option, or currency contract or option which is or may become a qualifying contract as described in Chapter II Part IV FA 1994.
- 18.10 The Company has no assets or liabilities to which Chapter II Part II FA 1993 could apply.
19. **Employee benefits**
- 19.1 Without prejudice to the generality of **paragraph 15.1**, the Company has properly operated the Pay As You Earn system, by making deductions, as required by the applicable Taxation Statute, from all payments made, or treated as made, to its directors, employees or officers or former directors, employees or officers or any persons required to be treated as such, and accounting to the Inland Revenue for all Taxation so deducted and for all Taxation chargeable on the Company on benefits

provided for its directors, employees or officers, or former directors, employees or officers.

- 19.2 The Company has complied fully with all reporting requirements, and proper records have been maintained, relating to all payments and benefits made or provided, or treated as made or provided, to its directors, employees or officers or former directors, employees or officers.
- 19.3 Without prejudice to the generality of **paragraph 12.6**, the Disclosure Letter contains full details of all dispensations granted to the Company by the Inland Revenue under section 166 ICTA or otherwise relating to payments and benefits made or provided, or treated as made or provided, to its directors, employees or officers or former directors, employees or officers or any persons required to be treated as such, and the reporting requirements mentioned in relation to such payments and benefits in **paragraph 16.2** together with full details of any PAYE settlement agreements negotiated and agreed with the Inland Revenue under Section 206A ICTA.
- 19.4 The Company has complied fully with its obligations under the provisions of sections 136(6) and 139(5) ICTA and section 85 FA 1988.
- 19.5 The Disclosure Letter contains full details of all share option schemes and profit sharing schemes established by the Company whether approved by the Inland Revenue under the provisions of Schedule 9 ICTA or otherwise and the Company has complied with all statutory requirements in respect of such schemes.
- 19.6 The Company has not established a qualifying employee share ownership trust within the meaning of section 74 and Schedule 4 FA 1989 and no chargeable event within the meaning of section 69 FA 1989 has occurred.
- 19.7 The Disclosure Letter contains full details of all profit-related pay schemes providing for the payment to any employee of the Company of emoluments calculated by reference to profits, which have ever been registered under Chapter III Part V ICTA.
- 19.8 The Company has complied fully with its obligations under Chapter IV Part XIII ICTA.
- 19.9 The Company has complied fully with all its obligations relating to Class 1 and Class 1A National Insurance Contributions, both primary and secondary.

20. Close companies

20.1 The Company is not, and has never been, a close company as defined in section 414 ICTA:

21. Group transactions

The Company has not at any time:

- 21.1 acquired any asset from any company which at the time of the acquisition was a member of the same group of companies as defined in section 170 TCGA;
- 21.2 entered into or been otherwise involved in any transaction to which section 774 ICTA applies;
- 21.3 surrendered or claimed or agreed or arranged to surrender or claim (and prior to Completion will not surrender or claim or agree or arrange to surrender or claim) any amount by way of Group Relief pursuant to sections 402 to 413 (inclusive) ICTA and has not made or received and is not liable to make or entitled to receive a payment for Group Relief;
- 21.4 surrendered or claimed or agreed or arranged to surrender or claim (and prior to Completion will not surrender or claim or agree or arrange to surrender or claim) any amount of ACT pursuant to section 240 ICTA and has not made or received and is not liable to make or receive a payment for surrender of ACT;
- 21.5 joined in the making of any election pursuant to section 247 ICTA or paid any dividend without paying ACT or made any payment without deduction of income tax in circumstances such that ACT ought to have been paid or income tax ought to have been deducted as mentioned in section 247(6) ICTA;
- 21.6 been a party to any such reconstruction as is described in section 343 ICTA;
- 21.7 been the subject of or otherwise involved in any arrangements as are referred to in section 240(11) or 410 ICTA;
- 21.8 acquired an asset as trading stock from a member of the same group where the asset did not form part of the trading stock of any trade carried on by the other member, as mentioned in section 173(1) TCGA, or disposed of an asset which formed part of the trading stock of any trade carried on by the Company to another member of the same group which acquired the asset otherwise than as trading stock of a trade carried on by the other member, as mentioned in section 173(2) TCGA;

21.9 been, and there are no circumstances by virtue of which the Company could be, assessed or charged to corporation tax by virtue of the provisions of section 178(9), 179(11), 190 or 191 TCGA and is not entitled to recover or liable to have recovered from it any sums paid pursuant to any of those sections; or

21.10 ceased to be a member of a group of companies in such circumstances that a profit or gain was deemed to accrue to the Company by virtue of section 178 or 179 TCGA and neither the execution of this Agreement nor Completion will result in any profit or gain being deemed to accrue to the Company for any Taxation purpose whether pursuant to section 179 TCGA or otherwise.

22. Gifts

22.1 There is no outstanding Inland Revenue charge (as defined in section 237 IHTA) over any asset of the Company or over any of the Shares.

22.2 There are in existence no circumstances by virtue of which any such power as is mentioned in section 212 IHTA could be exercised in relation to any asset of the Company or to any of the Shares or by virtue of which any such power could be exercised but for the provisions of section 204(6) IHTA.

22.3 The Company has not been a party to associated operations in relation to a transfer of value within the meaning of section 268 IHTA.

22.4 The Company has not received any asset by way of gift as mentioned in section 282 TCGA.

22.5 No expenditure incurred by the Company on the acquisition of any shares is liable to be reduced under the provisions of section 125 TCGA.

23. Tax avoidance

The Company has not entered into or been a party to any scheme, arrangement or transaction designed partly or wholly or containing steps or stages designed partly or wholly for the purpose of avoiding or deferring Taxation or reducing a liability to Taxation and in particular, but without limitation, has not entered into or been a party to any scheme, arrangement or transaction to which the provisions of any of sections 34 to 37 (inclusive), 56 and 398, 395, 399, 703 to 709 (inclusive), 713, 714, 729 to 737 (inclusive), 770, 775, 776, 779 to 787 (inclusive), 798 and Schedule 28AA ICTA could apply.

24. Base values and acquisition costs

- 24.1 If each of the capital assets of the Company owned at the Accounting Date was disposed of for a consideration equal to the book value of that asset in, or adopted for the purpose of, the Balance Sheet, or in the case of assets acquired since the Accounting Date, equal to the consideration given on acquisition, no liability to corporation tax on chargeable gains or balancing charge under the CAA would arise (and for this purpose there will be disregarded any relief or allowance available to the Company other than amounts falling to be deducted from the consideration receivable under section 38 TCGA).
- 24.2 The Company does not own any wasting asset within the meaning of section 44 TCGA which does not qualify in full for capital allowances as described in section 47(1) TCGA.

25. Capital gains

The Company has not at any time:

- 25.1 made a claim under sections 152 to 158 (inclusive) or 175 or 247 TCGA which affects the amount of the chargeable gain or allowable loss which would, but for such claim, have arisen upon a disposal of any asset or acquired any asset or any interest in any asset in circumstances in which another company has made a claim under section 175 TCGA which affects for the purposes of the TCGA the amount or value of the consideration given for such asset or interest;
- 25.2 been a party to, involved in, or connected with any disposal of assets within the meaning of section 29 TCGA or any scheme or arrangement such as are mentioned in section 30 TCGA;
- 25.3 been a party to, involved in, or connected with any exchange of securities whether or not (by virtue of section 135 TCGA) section 127 TCGA applied to the exchange;
- 25.4 carried out or been involved in or connected with any reorganisation or scheme of reconstruction or amalgamation whether or not (by virtue of section 126 or 136 TCGA) section 127 TCGA applied to such reorganisation or scheme of reconstruction or amalgamation;
- 25.5 carried out or been involved in or connected with any scheme of reconstruction or amalgamation involving a transfer of business assets whether or not section 139 TCGA applied to the transfer;

- 25.6 been a party to, involved in, or connected with, any depreciatory transaction to which section 176 TCGA applied (including any transaction to which that section applied by virtue of section 177 TCGA);
- 25.7 acquired or disposed of any asset or entered into any transaction or arrangement whatsoever otherwise than by way of bargain at arm's length or in respect of which there may be substituted for the actual consideration given or received by the Company a different consideration for any Taxation purpose;
- 25.8 realised a loss to which section 18(3) TCGA applied;
- 25.9 realised a pre-entry loss or acquired any pre-entry asset as defined in Schedule 7A TCGA;
- 25.10 disposed of any chargeable asset for a consideration not payable wholly in cash on completion of the disposal;
- 25.11 acquired any debt (other than a debt on a security (as defined in section 132 TCGA)) in respect of which it is not the original creditor;
- 25.12 made an election under paragraph 4 Schedule 2 TCGA and no asset owned by the Company is subject to a deemed disposal and re-acquisition under paragraph 16, 19 or 20 Schedule 2 TCGA;
- 25.13 made an election under section 35(5) TCGA nor has the Company made its first relevant disposal for the purposes of section 35(6) TCGA;
- 25.14 acquired any policy of assurance or contract for a deferred annuity or interest in any such policy or contract in circumstances such that a chargeable gain could arise on disposal under section 210 TCGA;
- 25.15 transferred a trade carried on by it outside the United Kingdom through a branch or agency in circumstances such that a chargeable gain could be deemed to arise at a date after such transfer under section 140 TCGA;
- 25.16 made any claim or election under section 161(3) TCGA;
- 25.17 made any claim under section 253 or 254 TCGA and no chargeable gain has arisen or is likely to arise under section 253 or 254 TCGA.

26. Capital allowances

- 26.1 All capital expenditure incurred by the Company since the Accounting Date and all capital expenditure which may be incurred by the Company under any existing contract has qualified or will be capable of qualifying for capital allowances.
- 26.2 There are set out in the Disclosure Letter details of all capital allowances claimed in respect of the accounting period of the Company ended on the Accounting Date in respect of each asset or pool of assets in respect of which separate computations for capital allowances are required to be made or, as a result of any election, are made.
- 26.3 The Company has not incurred any expenditure on the provision of any capital allowance bearing asset for leasing.
- 26.4 The Company has not made any election under section 37 CAA nor is it taken to have made any such election under section 37(8)(c) CAA.
- 26.5 The Company has not obtained any capital allowances under Chapter VI Part II CAA.
- 26.6 The Disclosure Letter gives full details of all disclaimers of capital allowances and writing down allowances on plant and machinery and of any reduction initial allowances on industrial buildings.
- 26.7 The Company is not in dispute with any person as to the availability of allowances under section 51 CAA and there are no circumstances which are likely to give rise to such a dispute.
- 26.8 None of the Company's assets, expenditure on which has qualified for a capital allowance under Part I CAA, has at any time since that expenditure was incurred been used otherwise than as an industrial building or structure.
- 26.9 The Company has not been party to a transfer of an asset to or from a connected person within section 157 or 158 CAA.
- 26.10 The Company has not entered into, nor agreed to enter into, any elections under section 59B CAA.

27. VAT: general

- 27.1 The Company:

- 27.1.1 is duly registered and is a taxable person for the purposes of VAT and such registration is not subject to any conditions imposed by or agreed with the Commissioners of Customs and Excise;
 - 27.1.2 has complied in all respects with all statutory requirements, orders, provisions, directions or conditions relating to value added tax;
 - 27.1.3 maintains complete, correct and up-to-date records for the purposes of all legislation relating to VAT and is not subject to any condition imposed by the Commissioners of Customs and Excise under paragraph 6 Schedule 11 VATA relating to the presentation of information;
 - 27.1.4 is not in arrears with any payment or returns under legislation relating to VAT or excise duties, or liable to any abnormal or non-routine payment of VAT, or any forfeiture or penalty, or to the operation of any penal provision;
 - 27.1.5 has not within the two years ending on the date of this Agreement been served with any penalty liability notice under section 64 VATA or any surcharge liability notice under section 59 VATA or been issued with any written warning under section 76(2) VATA;
 - 27.1.6 has not been required by the Commissioners of Customs and Excise to give security under paragraph 4 Schedule 11 VATA;
 - 27.1.7 has not been or applied for treatment as a member of a group for VAT purposes under section 43 VATA and no transaction has been effected in consequence of which the Company is or may be held liable for any VAT arising from supplies made by another company;
 - 27.1.8 has no interest and has not at any time within the period of ten years preceding the date of this Agreement had any interest in any assets treated as items under Part XV of the Value Added Tax Regulations 1995; and
 - 27.1.9 is not, and has not agreed to become, an agent, manager or factor for the purposes of section 47 VATA of any person who is not resident in the United Kingdom.
- 27.2 All supplies of goods and services made by the Company are taxable supplies for the purposes of the VATA and all input tax is deductible in accordance with the provisions of sections 25 and 26 VATA.

- 27.3 All goods or services supplied to the Company, or goods imported by the Company, in respect of which the Company has claimed credit for input tax under the rules set out in VATA, are used or to be used wholly for the purposes of the Company's business.
- 27.4 The Company has never disposed of or acquired any business or assets in the circumstances mentioned in section 49 VATA or Article 5 of the Value Added Tax (Special Provisions) Order 1995.
- 27.5 The Company has never been registered for the purposes of VAT by reason of its intention to make taxable supplies (within the meaning of section 4 VATA) and has not claimed input tax on the basis of anticipated taxable supplies which have not yet been made.
- 27.6 There are set out in the Disclosure Letter details of all outstanding claims made by the Company under section 22 Value Added Tax Act 1983 and section 36 VATA.
- 27.7 The Company has not been a party to any transaction or arrangement as a result of which a direction has been or may be given under Schedule 9A VATA.
- 27.8 The Company has not received any supplies of the type described in Schedule 4 VATA.
28. **VAT: property transactions**
- 28.1 The Company has not incurred any liability in respect of VAT (whether to HM Customs and Excise or to any other person) by reason of the provisions of paragraph 2(1) Schedule 10 VATA and there are no circumstances whereby the Company could become so liable as a result of a person making an election under that paragraph.
- 28.2 Neither the Company nor any relevant associate (within the meaning of paragraph 3(7) Schedule 10 VATA) has made any election under paragraph 2(1) Schedule 10 VATA in respect of any land in, over or in respect of which the Company has any interest, right or licence to occupy and the Company is not aware of any intention to make such an election.
- 28.3 The Company does not own the fee simple in any building or work such as is referred to in Item 1(a) Group 1 Schedule 9 VATA the supply of which would be standard rated.
- 28.4 No interest in or right over land or any licence to occupy land of the Company constitutes or is subject to a developmental tenancy, developmental lease or developmental licence such as is referred to in Item 1(b) Group 1 Schedule 9 VATA.

29. Stamp duty and stamp duty reserve tax

- 29.1 All documents which are liable to stamp duty and which confer any right upon the Company have been duly stamped and no document which confers any right upon the Company and which is outside the United Kingdom would attract stamp duty if it were brought into the United Kingdom and there is no liability to any penalty in respect of such duty or circumstances which may give rise to such a penalty.
- 29.2 The Company has never incurred or otherwise been under a liability to stamp duty reserve tax and there are no circumstances which may result in the Company being so liable.
- 29.3 Within the five years ending on the date of this Agreement, the Company has not made any claim for relief or exemption under section 42 FA 1930 or section 75, 76 or 77 FA 1986.

30. Residence and offshore interests

- 30.1 The Company is and has at all times been resident in the United Kingdom for the purposes of all Taxation Statutes and has not at any time been resident outside the United Kingdom for the purposes of any Taxation Statute or any double taxation arrangements.
- 30.2 The Company is not, and has never been, a dual-resident investing company within the meaning of section 404 ICTA.
- 30.3 The Company has not at any time entered into any transaction falling within section 765 ICTA or failed to comply with the requirements of section 765A ICTA.
- 30.4 The Company has not at any time been subject to Taxation in any jurisdiction outside the United Kingdom or had a branch outside the United Kingdom or any permanent establishment (as that expression is defined in the respective double taxation relief orders current at the date of this Agreement) outside the United Kingdom.
- 30.5 The Company does not own and has not at any time owned a material interest in an offshore fund which is or has at any material time been a non-qualifying offshore fund within the meaning of section 760 ICTA.
- 30.6 The Company does not own and has not at any time owned any interest in a controlled foreign company within the meaning of sections 747 and 752 ICTA.

30.7 The Company is not, and has not at any time since 1 April 1985 been, a company which has, or an associated company of a company which has, a qualifying presence in a unitary state for the purposes of sections 812 to 814 ICTA.

30.8 The Company is not assessable and has not at any time been assessed to tax under section 78 TMA.

30.9 The Company does not and has at no time held shares in a company which is not resident in the United Kingdom and which would be a close company if it were resident in the United Kingdom, in circumstances such that a chargeable gain accruing to that other company could be apportioned to the Company under section 13 TCGA.

31. Losses, ACT and Shadow ACT

31.1 Within the period of three years ending on the date of this Agreement there has been no major change in the nature or conduct of a trade or business carried on by the Company within the meaning of section 245, 245A or 768 ICTA.

31.2 There has at no time been a change in the ownership of the Company (otherwise than pursuant to this Agreement) such that section 245B, 768 or 768A ICTA has been or may be applied to deny relief in respect of any ACT or loss or losses or excess charges on income of the Company.

31.3 The Company has complied with the provisions of the Corporation Tax (Treatment of Unrelieved Surplus Advanced Corporate Tax) Regulations SI 1999/358 in utilising any surplus ACT in existence at 6 April 1999.

32. Shares and securities

32.1 The Company has not at any time:

32.1.1 purchased or agreed to purchase, repaid or agreed to repay or redeemed or agreed to redeem any shares of any class of its share capital or any amount paid up on any of its shares;

32.1.2 capitalised or agreed to capitalise in the form of redeemable shares or debentures any profits or reserves of any class or description or passed or agreed to pass any resolution to do so; or

32.1.3 provided capital to any company on terms whereby the company so capitalised has in consideration of the provision of capital issued loan stock

or other securities on terms which were otherwise than by way of a bargain made at arm's length.

- 32.2 The Company does not hold or have in issue any shares or securities (as defined in section 132(3)(b) TCGA) other than the Shares.

33. Loan relationships

There are no outstanding debts owned to or by the Company or any securities issued by the Company or which it owns or in which it has an interest, which will not be repaid at Completion, other than trade debts which fall within the exemption in section 251(1) TCGA and which do not arise out of loan relationships of the Company for the purposes of section 81(1) FA 1996.

34. Foreign exchange gains and losses

- 34.1 The Company is not, nor has it since the Accounts Date been:

34.1.1 the holder of a qualifying asset;

34.1.2 subject to a qualifying liability; or

34.1.3 a party to a currency contract

for the purposes of Chapter II Part II FA 1993.

- 34.2 The Company is not and never has been a party to any debt contract or option, any interest rate contract or option, or any currency or option which is treated as a qualifying contract in Chapter II Part IV FA 1994 or which in future may become such a qualifying contract.

35. Quarterly instalment payments

The Company is not obliged to pay corporation tax in quarterly instalments under the provisions of Corporation Tax (Instalment Payments) Regulations 1998 (SI 1998 No 3175) and section 59E TMA.

36. Group payment arrangements

The Company has not entered into any group payment arrangements under the provisions of section 36 FA 1998.

37. Transfer pricing

- 37.1 The Company has not, nor agreed to, undertake any transactions which are within the provisions of Schedule 28AA ICTA and the Disclosure Letter sets out the details of the documentation the Company has prepared to enable it to fulfil its obligations under Schedule 18 FA 1998 in respect of accounting periods ending after 30 June 1999 in relation to transfer pricing.
- 37.2 The Company has not entered into any advance pricing arrangements with the Inland Revenue under the provisions of section 85 FA 1999.

38. Balance Sheet

- 38.1 The Balance Sheet fully provides or reserves, in accordance with the accounting policies set out in the notes included in the Balance Sheet, for all Taxation (including deferred tax attributable to timing differences capable of reversal after the Accounting Date) for which the Company is or may be liable, or for which it may be accountable, as at the Accounting Date by reference to:
- 38.1.1 the profits, gains, income and earnings (whether actual or deemed) for any period ended on or before the Accounting Date; or
 - 38.1.2 any distributions (within the meaning of Part VI or section 418 ICTA) made or deemed to be made on or before Accounting Date; or
 - 38.1.3 any other transaction entered into or deemed to be entered into on or before the Accounting Date.
- 38.2 To the extent that provision for deferred tax was not made in the Balance Sheet, full details of the amounts of deferred tax not provided for and the matter to which the deferred tax relates are disclosed in the notes to the Balance Sheet.
- 38.3 The Balance Sheet fully provides or reserves, in accordance with the accounting policies set out in the notes included in the Balance Sheet, for all Taxation (including deferred tax attributable to timing differences capable of reversal after the Accounting Date) for which the Company is or may be liable, or for which it may be accountable, as at the Accounting Date by reference to:
- 38.3.1 the profits, gains, income and earnings (whether actual or deemed) for any period ended on or before the Accounting Date; or

- 38.3.2 any distributions (within the meaning of Part VI or section 418 ICTA) made or deemed to be made on or before Accounting Date; or
 - 38.3.3 any other transaction entered into or deemed to be entered into on or before the Accounting Date.
- 38.4 To the extent that provision for deferred tax was not made in the Balance Sheet, full details of the amounts of deferred tax not provided for and the matter to which the deferred tax relates are disclosed in the notes to the Balance Sheet.

SCHEDULE 5

Completion Arrangements

At Completion the following will take place:

1. Items For Delivery

1.1 The following items will be produced and delivered by the Vendors:

Share Transfers

- 1.1.1 Executed transfers of the Shares in favour of the Purchaser (or its nominee(s)) together with the share certificates for the Shares (or in the case of any lost certificate an indemnity satisfactory to the Purchaser in relation to it).
- 1.1.2 Any waiver, consent or other document necessary to give the Purchaser (or its nominee(s)) full legal and beneficial ownership of the Shares.

Authorisations

- 1.1.3 A copy of a resolution of the board of directors (certified by a duly appointed officer as true and correct) of the Company authorising the execution of and the performance by the Company of its obligations under each of the documents to be executed by it.
- 1.1.4 If the Purchaser requests, a power of attorney in the agreed terms by each registered holder of the Shares which enables the Purchaser or its nominee to attend and vote at general meetings of the Company.
- 1.1.5 A copy of a resolution of the board of directors of each of the Vendors (certified by a duly appointed officer as true and correct) authorising the disposal of the Shares held by them and the execution of and the performance by the Vendors of their obligations under this Agreement.

Resignations and Appointments

- 1.1.6 A letter of resignation in the agreed terms from each director of the Company.
- 1.1.7 A letter of resignation in the agreed terms from the secretary of the Company.

- 1.1.8 A copy of a letter to the Company from its auditors resigning from office with effect from Completion and containing the statement required by section 394 CA 1985, the original of the letter having been deposited at the registered office of the Company.

Company Documentation

- 1.1.9 The certificate of incorporation, any certificate(s) of incorporation on change of name, the common seal and the statutory books and registers (which will be written up to but not including Completion) of the Company.
- 1.1.10 All deeds and documents relating to the title of the Company to the Property.
- 1.1.11 All cheque books in current use of the Company.

Financial

- 1.1.12 A copy of the bank mandate of the Company and copies of bank statements in respect of each account of the Company as at the close of business on the last Business Day prior to Completion, together in each case with a reconciliation statement prepared by the Vendors to show the position at Completion (listing unpresented cheques drawn or received by the Company and standing orders payable since the date of such bank statements).
- 1.1.13 A deed of release in the agreed terms by National Westminster Bank plc in respect of the guarantee granted by the Vendors to National Westminster Bank plc.

2. Convening of Meetings

- 2.1 The Vendors will procure that duly convened board meetings of the Company is held at which:
- 2.1.1 the transfers referred to in **paragraph 1.1.1** (subject to stamping if not previously effected) are approved for registration in the books of the Company;
- 2.1.2 the accounting reference date of the Company is changed to 30 September;
- 2.1.3 the address of the registered office of the Company is changed to 6 Broad Street Place, Blomfield Street, London EC2M 7JH;

2.1.4 the resignations of directors, secretary and auditors referred to in each of **paragraphs 1.1.6, 1.1.7 and 1.1.8** are accepted with effect from the end of the relevant board meeting;

2.1.5 such persons as are nominated by the Purchaser as directors, secretary and auditors of the Company are appointed with effect from the end of the relevant board meeting; and

2.1.6 all existing instructions to the bankers of the Company are revoked and new instructions given to such bankers as the Purchaser may nominate, in such form as the Purchaser directs.

3. Management Agreement and Deed of Termination

Somerford and the Purchaser will enter into the Management Agreement and the Deed of Termination.

4. Repayment of Monies Owed

Somerford will repay, and will procure that each Associated Company will repay, any amounts owed by the Vendors to the Company whether due for payment or not.

5. Share Certificates

The Purchaser will deliver to the Vendors' Solicitors definitive share certificates in respect of the Consideration Shares and procure Admission thereof.

6. Release of Guarantees

The Purchaser will procure the release of:

6.1 the guarantee given by Somerford to National Westminster Bank plc in respect of the Overdraft Facility; and

6.2 the guarantees given by Somerford to Associated Companies of the Purchaser.

7. Re-registration of the Care Homes

The Purchaser and the Vendors will use their respective best endeavours to procure the re-registration of each of the Care Homes as soon as practicable.

8. **Completion Accounts**

The Vendors and the Purchaser will procure that Completion Accounts are drawn up and any adjustment to the consideration for the Shares shall be made in accordance with the provisions of **Schedule 7**.

SCHEDULE 6

The Property

PART 1 – Company Leases

| Description | Current Landlord Company | Date of Lease | Parties to Lease | Term and current rent | Use |
|--|-----------------------------|---------------|---|--------------------------------|-----------------------------------|
| 1. Beechcroft Nursing and Residential Home | NHP Securities No.5 Limited | 04/06/1997 | NHP Securities No.3 Limited Somerford Leased Homes Limited Somerford Healthcare Limited | 34 years £226,800 per annum | Nursing and residential care home |
| 2. Elmwood Nursing Home | NHP Securities No.8 Limited | 20/02/1998 | Vertical Enterprise Limited Somerford Leased Homes Limited Somerford Healthcare Limited | 34 years £291,600 per annum | Nursing and residential care home |
| 3. Larchwood Residential Care Home | NHP Securities No.5 Limited | 27/04/1998 | Vertical Enterprise Limited Somerford Leased Homes Limited Somerford Healthcare Limited | 25 years £241,920 per annum | Nursing and residential care home |

PART 2 – First Choice Leases

| Description | Current Landlord Company | Date of Lease | Parties to Lease | Term and current rent | Use |
|--|------------------------------|---------------|---|---------------------------------|-----------------------------------|
| 1. Ashbourne Lodge Residential Home | NHP Securities No.10 Limited | 03/06/1998 | NHP Securities No. 4 Limited First Choice Healthcare Limited Somerford Healthcare Limited | 34 years £159,516 per annum | Nursing and residential care home |
| 2. Ashton Grange Residential Nursing Home | NHP Securities No 8 Limited | 03/06/1998 | NHP Securities No. 4 Limited First Choice Healthcare Limited Somerford Healthcare Limited | 34 years £154,224 per annum | Nursing and residential care home |
| 3. Victoria House Residential Nursing Home | NHP Securities No.8 Limited | 03/06/1998 | NHP Securities No. 4 Limited First Choice Healthcare Limited Somerford Healthcare Limited | 34 years £246,564 per annum | Nursing and residential care home |
| 4. Windsor Court Nursing Home | NHP Securities No.10 Limited | 03/06/1998 | NHP Securities No. 4 Limited First Choice Healthcare Limited Somerford Healthcare Limited | 34 years £292, 896 per annum | Nursing and residential care home |

SCHEDULE 7

Adjustment of Consideration

1. COMPLETION ACCOUNTS

- 1.1 Somerford and the Purchaser will procure that after Completion accounts for the Company will be prepared and reported on in accordance with the provisions of this **Schedule 7**.
- 1.2 The Completion Accounts will consist of a balance sheet of the Company as at the close of business on the date of Completion and a profit and loss account of the Company in respect of the period ("the Completion Accounts Period") commencing on the day immediately following the Accounting Date and ending on the date of Completion.
- 1.3 The Completion Accounts will be prepared (subject as otherwise provided):
 - 1.3.1 in accordance with the historical cost convention and with accounting principles generally accepted in the United Kingdom (including Accounting Standards);
 - 1.3.2 adopting the bases and policies of accounting applied for the purposes of the Accounts; and
 - 1.3.3 so as to show a true and fair view of the state of affairs of the Company at the close of business on the date of Completion and of the profits of the Company for the Completion Accounts Period.
- 1.4 In preparing the Completion Accounts to the extent there would otherwise be a conflict between the provisions of **paragraphs 1.3.1 and 1.3.2** above then the provisions of **paragraph 1.3.2** shall prevail

2. PROCEDURE

- 2.1 Forthwith after Completion Somerford will provide the Vendors' Accountants with access to those assets, documents and records within its possession or control which the Vendors' Accountants may reasonably require for the purpose of preparing and agreeing the draft Completion Accounts.
- 2.2 Somerford will procure that within 60 days after the date of Completion the Vendors' Accountants will prepare and deliver to the Purchaser's Accountants a final draft of the Completion Accounts.

- 2.3 The Purchaser will procure that the Purchaser's Accountants notify the Vendors' Accountants in writing within 21 days after receipt of the draft Completion Accounts whether or not they accept them as complying with **paragraph 1** of this Schedule. Somerford will ensure that the Purchaser and the Purchaser's Accountants are given access to all additional information they may reasonably require to enable the Purchaser's Accountants to make their decision. If the Purchaser's Accountants do not so notify the Vendors' Accountants within 21 days then the Purchaser will be deemed to have accepted the draft Completion Accounts as complying with **paragraph 1**.
- 2.4 If within the period of 21 days referred to in **paragraph 2.3** the Purchaser's Accountants notify the Vendors' Accountants in writing that they do not accept that the draft Completion Accounts comply with **paragraph 1** then:
- 2.4.1 the Purchaser will procure that the Purchaser's Accountants set out in reasonable detail their reasons for such non acceptance and specify the adjustments that in their opinion should be made to the draft Completion Accounts in order to comply with **paragraph 1** and provide supporting evidence for each such adjustment; and
- 2.4.2 the Purchaser and Somerford will procure that the Purchaser's Accountants and the Vendors' Accountants respectively use all reasonable endeavours to reach agreement upon the adjustments needed to meet the objections of the Purchaser's Accountants.
- 2.5 If the Purchaser's Accountants and the Vendors' Accountants do not reach agreement within 14 days after service of the Purchaser's Accountants' notice of non acceptance under **paragraph 2.4**, or if the Vendors' Accountants are unable to prepare and deliver the draft Completion Accounts in accordance with **paragraph 2.2** within the period specified in that paragraph because of a dispute between them and the Purchaser or the Vendors' Accountants as to the completeness or accuracy of the Company's accounting records or otherwise, then the matter(s) in dispute will be referred to the decision of a single independent chartered accountant or an independent firm of chartered accountants (in either case, the "Independent Accountant") to be agreed upon between them or (in default of such agreement) to be selected (at the instance of either of them) by the President or other senior officer for the time being of the Institute of Chartered Accountants in England and Wales. The Independent Accountant (whose costs will be paid as the Independent Accountant will direct) will act as expert (and not as arbitrator) and the decision of the Independent Accountant shall (in the absence of manifest error) be final and binding on the parties. The Purchaser and Somerford will use all reasonable endeavours to provide all such

working papers, documents and other information as is requested by the Independent Accountant and will procure that the Independent Accountant is requested to state, when giving his decision on the matter(s) referred to him, what adjustments (if any) need to be made to the draft Completion Accounts in order that it will comply with **paragraph 1**.

- 2.6 If the Purchaser's Accountants and the Vendor's Accountants reach agreement on (or pursuant to **paragraph 2.3** the Purchaser is deemed to have accepted) the Completion Accounts, or if the Completion Accounts are finally determined at any stage in the procedure set out in this **paragraph 2**, the Completion Accounts as so agreed or determined will be the Completion Accounts for the purposes of this Agreement and shall be final and binding on Somerford and the Purchaser and the amount of the Net Assets shall be derived from the Completion Accounts.
- 2.7 The Purchaser and Somerford will pay their own costs and expenses in connection with the preparation and agreement of the Completion Accounts including, where applicable, any costs associated with presentation of its case to the Independent Accountant.

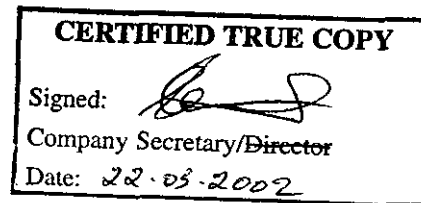
3. **ADJUSTMENT OF CONSIDERATION**

When the Completion Accounts have become final and binding pursuant to **paragraph 2** the Consideration paid in accordance with **clause 3** will be subject to the following adjustments:

- 3.1.1 there will be paid in cash by the Purchaser to the Vendors the amount, if any, by which the Net Assets are greater than the net assets of the Company as at 1 July 2000 as shown by the Proforma Balance Sheet; or
- 3.1.2 there will be paid in cash by the Vendors the amount, if any, by which the Net Assets are less than the net assets of the Company as at 1 July 2000 as shown by the Proforma Balance Sheet.
- 3.2 The amount of any increase or reduction in the Consideration will be paid by the Purchaser or the Vendors as the case may be within 14 days after the Completion Accounts have become final and binding and any amount not paid when due shall carry interest at the rate of 2 per cent per annum above the base rate of Bank of Scotland plc from time to time.
4. Provided **paragraph 3** has been complied with in full the Purchaser will have no claim against the Vendors under this Agreement or the Taxation Deed in respect of any liability or deficiency to the extent that they are taken into account in the Completion Accounts but otherwise preparation and acceptance of the Completion Accounts by the Purchaser will be without prejudice to any claim which the Purchaser

may have against the Vendors in respect of any breach of the Warranties or under **Schedule 4.**

5. All sums payable under this Schedule will be paid in cash by way of a banker's draft drawn on a Clearing Bank (and in the case of sums payable to the Vendors will be paid to the Vendors' Solicitors and payment to them will be a good and sufficient discharge to the Purchaser and the Purchaser will not be concerned as to the application of the moneys so paid).

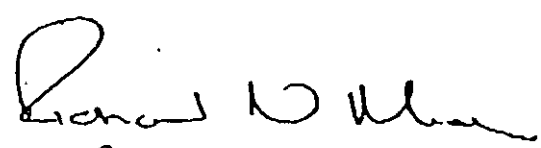


SCHEDULE 8

Proforma Balance Sheet

SIGNED by)
duly authorised for and on behalf of)
NHP PLC)
acting by:)

Director



Director/Secretary

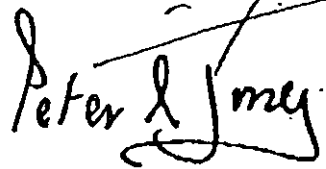


SIGNED by)
duly authorised for and on behalf of)
SOMERFORD HEALTHCARE LIMITED)
acting by:)

Director

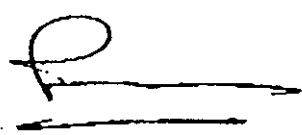


Director/Secretary

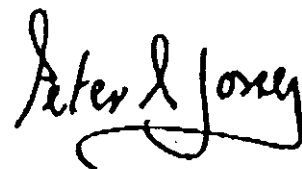


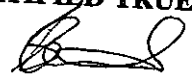
SIGNED by)
Duly authorised for and on behalf of)
FIRST CHOICE HEALTHCARE LIMITED)
acting by:)

Director



Director/Secretary



CERTIFIED TRUE COPY
Signed: 
Company Secretary/Director
Date: 