



**Registration of a Charge**

Company Name: **HC-ONE (NHP6) LIMITED**

Company Number: **05579560**



XCE240PC

Received for filing in Electronic Format on the: **13/10/2023**

**Details of Charge**

Date of creation: **12/10/2023**

Charge code: **0557 9560 0047**

Persons entitled: **MOUNT STREET MORTGAGE SERVICING LIMITED AS SECURITY AGENT**

Brief description:

**Contains fixed charge(s).**

**Contains negative pledge.**

**Authentication of Form**

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

**Authentication of Instrument**

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **WALKER MORRIS LLP**



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

Company number: 5579560

Charge code: 0557 9560 0047

The Registrar of Companies for England and Wales hereby certifies that a charge dated 12th October 2023 and created by HC-ONE (NHP6) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 13th October 2023 .

Given at Companies House, Cardiff on 17th October 2023

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



**Companies House**



**THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES**

DATED 12 October 2023

**HC-One (NHP6) Limited (f/k/a Libra Careco CH3 Propco Limited)**  
**(as Chargor)**

and

**MOUNT STREET MORTGAGE SERVICING LIMITED**  
**(Security Agent)**

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**SUPPLEMENTAL SECOND-RANKING EQUITABLE MORTGAGE OVER SHARES**  
**In**  
**HC-One (NHP2) Limited (f/k/a Care Homes No.3 Limited)**

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**B E D E L L**  
**C R I S T I N**

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This Supplemental Second-Ranking Equitable Mortgage Over Shares (the "**Mortgage**") is made on 12 day of October 2023

Between:

- (1) HC-One (NHP6) Limited (f/k/a Libra Careco CH3 Propco Limited) a company incorporated in England and Wales, the registered office of which is at Southgate House, Archer Street, Darlington, England, DL3 6AH, United Kingdom (the "**Chargor**"); and
- (2) Mount Street Mortgage Servicing Limited, as security trustee for the Secured Parties (the "**Security Agent**").

Whereas:

- (A) Pursuant to the Original Facility Agreement (as defined below), the Lenders (as defined in the Original Facility Agreement) agreed to make available to the Borrowers (as defined in the Original Facility Agreement) a sterling term loan facility of [REDACTED] subject to the terms and conditions set out in the Original Facility Agreement. As a condition to the Original Facility Agreement, the Chargor executed the Existing Share Mortgage (as defined below).
- (B) Pursuant to the Facility Agreement (as defined below), the Lenders have agreed to increase the aggregate amount of the sterling term loan facility available to the Borrowers (as defined in the Facility Agreement) to [REDACTED] subject to the terms and conditions set out in the Facility Agreement.
- (C) It is a condition precedent of the Facility Agreement that the Chargor enters into this supplemental second-ranking equitable mortgage and assignment of rights over shares in the Company.

It is agreed as follows:

**1. Definitions and Interpretation**

- 1.1 In this Mortgage (except where the context otherwise requires) words and expressions shall have the same meanings assigned to them as defined in the Facility Agreement and the following words and expressions shall have the following meanings:

"**Company**" means HC-One (NHP2) Limited (f/k/a Care Homes No.3 Limited);

"**Companies Act**" means the Companies Act (Revised) of the Cayman Islands;

"**Dissolution**" means in respect of any person, any corporate action, legal proceedings or other procedure or step taken in relation to:

- (i) the suspension of payments, a moratorium of any indebtedness, winding up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise);
- (ii) any composition, compromise, assignment or arrangement with any of its creditors;
- (iii) the appointment of any liquidator, receiver, administrative receiver, compulsory manager, restructuring officer or other similar officer in respect of it or any of its assets;

or any analogous procedure or step taken in any jurisdiction;

<b>"Electronic Transactions Act"</b>	means the Electronic Transactions Act (Revised) of the Cayman Islands;
<b>"Event of Default"</b>	has the meaning given to such term under the Facility Agreement;
<b>"Existing Security"</b>	means the Security created by the Existing Share Mortgage
<b>"Existing Share Mortgage"</b>	means the equitable share mortgage dated 27 April 2021 between the Chargor and the Security Agent in respect of certain shares in the Company;
<b>"Facility Agreement"</b>	means the [REDACTED] facility agreement originally dated 20 April 2021 and as amended and restated on the Effective Date between, inter alios, the Chargor and the Security Agent, as amended from time to time (including any amendment to the amount, composition or purpose of the facilities provided for therein and liabilities imposed thereunder, however fundamental);
<b>"Initial Shares"</b>	means the securities listed in Schedule 1 which are all registered in the name of the Chargor;
<b>"Liability"</b>	means any liability, damage, loss, cost, claim or expense of any kind or nature, whether direct, indirect, special, consequential or otherwise;
<b>"Mortgaged Shares"</b>	<p>means the Initial Shares and all and any other shares, warrants and other securities of any kind (including loan capital) of the Company now or at any time in the future beneficially owned by the Chargor or in which the Chargor has any interest (including any equity of redemption) and all rights, benefits and advantages now or at any time in the future deriving from or incidental to any of the Mortgaged Shares including;</p> <ul style="list-style-type: none"><li>(i) all dividends, interest and other income paid or payable in relation to any Mortgaged Shares; and</li></ul>

- (ii) all shares, securities, rights, monies or other property accruing, offered or issued at any time by way of redemption, conversion, exchange, substitution, preference, option or otherwise in respect of any Mortgaged Shares (including but not limited to proceeds of sale);

<b>"Original Agreement"</b>	<b>Facility</b>	means the [REDACTED] facility agreement dated 20 April 2021 between, inter alios, the Chargor and the Security Agent;
<b>"Receiver"</b>		has the meaning given to it in Clause 10;
<b>"Register of Directors"</b>		means the register of directors of the Company maintained by the Company in accordance with the Companies Act.
<b>"Register of Members"</b>		means the register of members of the Company (including any applicable branch register and non-listed shares register) maintained by the Company in accordance with the Companies Act.
<b>"Restrictions Notice"</b>		means a restrictions notice as defined in Section 244(1) of the Companies Act.
<b>"Retention Period"</b>		means, in relation to any Relevant Transaction (with the meaning given to it in clause 7.1), the period which commences on the date when that Relevant Transaction was made or given, and which ends on the date falling one month after the expiration of the maximum period within which that Relevant Transaction can be avoided, reduced or invalidated by virtue of any applicable law;
<b>"Secured Liabilities"</b>		has the meaning given in the Facility Agreement.

**1.2 In this Mortgage:**

- (a) any reference to a Recital, Clause or Schedule is to the relevant Recital, Clause or Schedule of or to this Mortgage;
- (b) the clause headings are included for convenience only and shall not affect the interpretation of this Mortgage;
- (c) use of the singular includes the plural and vice versa;
- (d) use of any gender includes the other gender;
- (e) any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (f) references to this Mortgage or any other document (including any Finance Document) or agreement are to be construed as references to this Mortgage or such other document as varied in any manner from time to time, even if changes are made to the composition of the parties to this Mortgage or such other document or to the nature or amount of any

facilities made available under such other document;

- (g) indebtedness due, owing or incurred under the Finance Documents shall include all moneys, obligations and liabilities due, owing or incurred in respect of any variations or increases in the amount or composition of the facilities provided for therein or the obligations and liabilities imposed thereunder however fundamental;
- (h) sections 8 and 19(3) of the Electronic Transactions Act shall not apply;
- (i) no person shall be found to have committed actual fraud or wilful default under this Mortgage unless or until a court of competent jurisdiction shall have made a finding to that effect; and
- (j) references to a "person" shall be construed so as to include any individual, firm, company or other body corporate, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality); and in each case, its successors and assigns and persons deriving title under or through it, in whole or in part, and any person which replaces any party to any document in its respective role thereunder, whether by assuming the rights and obligations of the party being replaced or whether by executing a document in or substantially in the form of the document it replaces.

1.3 Clause 1.2 (Construction) of the Facility Agreement shall be incorporated into this Mortgage except that references to "this Agreement" shall be substituted for references to "this Mortgage".

1.4 If any conflict arises between the covenants and undertakings in this Mortgage and the corresponding covenants and undertakings in the Facility Agreement, the covenants and undertakings given in the Facility Agreement shall prevail.

1.5 Expressions defined in the Companies Act of the Cayman Islands as in effect from time to time (and not redefined in this Mortgage) shall have the same meanings in this Mortgage, except that the expression "company" shall include a body corporate established outside the Cayman Islands.

1.6 The Recitals and Schedules form part of this Mortgage and shall have effect as if set out in full in the body of this Mortgage and any reference to this Mortgage includes the Recitals and Schedules.

## **2. Covenant to Pay**

2.1 The Chargor as primary obligor and not merely as surety hereby covenants with the Security Agent that it will, on the Security Agent's written demand, pay or discharge to the Security Agent all Financial Indebtedness now or in the future due and payable, owing or incurred by all Obligors to each Finance Party under or in connection with the Finance Documents, whether on or after such demand.

2.2 The making of one demand shall not preclude the Security Agent from making any further demands.

**3. Security**

- 3.1 The Chargor, as legal and beneficial owner, hereby mortgages to the Security Agent by way of a second-ranking equitable mortgage (second only to the Existing Share Mortgage) as a continuing security for the payment and discharge of the Secured Liabilities, the Mortgaged Shares.
- 3.2 The Chargor, as legal and beneficial owner, hereby charges to the Security Agent by way of second-ranking fixed charge (second only to the Existing Share Mortgage) as a continuing security for the payment and discharge of the Secured Liabilities, all its right, title, interest and benefit present and future in, to and under the Mortgaged Shares.
- 3.3 The Chargor following the reassignment to it of its rights to the Mortgaged Shares upon the release of the Existing Share Mortgage, assigns, and agrees to assign, absolutely by way of security, to the Security Agent all its rights, present and future, relating to any of the Mortgaged Shares (to the extent not effectively mortgaged under Clause 3.1)
- 3.4 The security created under this Mortgage shall exist concurrently (if applicable) with the Existing Security and shall be second ranking and have second priority in all respects only to the Existing Security.
- 3.5 Any receipt, release or discharge of any security interest created by this Mortgage or any other Finance Document or of any Liability arising under this Mortgage or any other Finance Document may be given by the Security Agent in accordance with the provisions of this Mortgage or any other Finance Document and shall not release or discharge the Chargor from any Liability owed to the Security Agent for the same or any other monies which may exist independently of this Mortgage or any other Finance Document. Where such receipt, release or discharge relates to only part of the Secured Liabilities such receipt, release or discharge shall not prejudice or affect any other part of the Secured Liabilities nor any of the rights and remedies of the Security Agent under this Mortgage or under any Finance Document nor any of the obligations of the Chargor under this Mortgage or any Finance Document.
- 3.6 Subject to Clause 11.4 of this Mortgage, upon the unconditional and irrevocable payment or discharge of all Secured Liabilities and the Lenders having no further obligation (whether actual or contingent) to make advances or provide other financial accommodation under the Finance Documents or otherwise, the Security Agent shall on request by the Chargor (at the Chargor's cost) release the Mortgaged Shares from the security interests and discharge the obligations of the Chargor, each created by this Mortgage. Such release shall not prejudice the rights of the Security Agent under Clause 13.4 and Clause 15.
- 3.7 The Security Agent shall, following the release of the security interest and discharge of the obligations of the Chargor created by this Mortgage, provide written confirmation of such release and discharge to the Chargor.
- 3.8 Any release, discharge or settlement between the Chargor and the Security Agent shall be conditional upon no security, disposition or payment to the Security Agent being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation or insolvency or for any other reason whatsoever and if such condition is not fulfilled the Security Agent shall be entitled to enforce this Mortgage as if such release, discharge or settlement had not occurred and any such payment not been made.

#### **4. Covenants by the Chargor**

The Chargor covenants that, for so long as any Secured Liabilities remain outstanding:

4.1 it shall deliver to the Security Agent (on the date hereof) in form and substance acceptable to the Security Agent:

- (a) to the extent not already delivered to the Security Agent in respect of the Existing Share Mortgage, the original share certificate(s) (if any) in respect of the Initial Shares (or confirmation in a form satisfactory to the Security Agent that no share certificates have been issued or will be requested) and a certified true copy of the current Register of Members showing the Chargor as registered owner of the Mortgaged Shares;
- (b) a blank, signed and undated share transfer form in respect of the Initial Shares in the form set out in Schedule 2;
- (c) a memorandum signed by a director of the Company concerning the endorsement of a note of this Mortgage on the Register of Members of the Company in the form set out in Schedule 3;
- (d) a notice of equitable mortgage and/or charge and assignment addressed by the Chargor to the Company in the form set out in Schedule 4;
- (e) a signed and undated irrevocable shareholder proxy and power of attorney in favour of the Security Agent in the form set out in Schedule 5;
- (f) an executed letter of instruction from the Company to its registered office service provider in the form set out in Schedule 6;
- (g) an executed irrevocable deed of undertaking and confirmation from the Company to the Security Agent in the form set out in Schedule 7;
- (h) executed but undated written resolutions of all the directors of the Company in the form set out in Schedule 8; and
- (i) copies of the corporate documents, resolutions and authorities of the Chargor required to authorise the execution of this Mortgage;

4.2 other than as expressly permitted pursuant to the Finance Documents, it will procure that there shall be no increase or reduction in the authorised or issued share capital of the Company, no change in the registered office or registered office provider, no change to the Register of Members (including as to it being maintained at the registered office in the Cayman Islands), and no appointment of any further director or officers of the Company, in each case, without the prior consent in writing of the Security Agent (where, in the case of changes to the registered office or registered office provider, such consent shall not be unreasonably withheld or delayed);

4.3 it shall, for as long as any Secured Liabilities remain outstanding, promptly and from time to time deposit with the Security Agent:

- (a) to the extent not already delivered to the Security Agent in respect of the Existing Share

Mortgage, all original share certificates (if any) and any other documents of title relating to the Mortgaged Shares (which, for the avoidance of doubt, includes all share certificates and other documents of title relating to any shares in the Company acquired by the Chargor after the date of this Mortgage) or confirmation from the Company in a form satisfactory to the Security Agent that it does not issue any such certificates; and

- (b) blank, signed and undated transfers in respect of all Mortgaged Shares other than the Initial Shares in the form set out in Schedule 2 as and when any further shares in the Company are acquired by the Chargor and a certified true copy of the Register of Members showing the Chargor as registered owner of the Mortgaged Shares;

4.4 it shall, for as long as any Secured Liabilities remain outstanding, within 3 Business Days following any change in the directors of the Company or Chargor (as applicable) affecting, in the reasonable opinion of the Security Agent, the validity of any deliverable set out at clause 4.1(b), (e), (h) and/or 4.3(b) previously deposited with the Security Agent, at the request of the Security Agent deposit with the Security Agent updated versions of such deliverable signed by a current director or directors of the Company or Chargor (as applicable);

4.5 it shall immediately after execution of this Mortgage procure that the following notation be entered on the Register of Members of the Company:

*"All the shares issued as fully paid up and registered in the name of HC-One (NHP6) Limited (f/k/a Libra Careco CH3 Propco Limited) are mortgaged and charged in favour of Mount Street Mortgage Servicing Limited pursuant to an equitable share mortgage dated 27 April 2021 and a second-ranking equitable share mortgage dated 12 October 2023, each as amended from time to time."*

4.6 it shall immediately after execution of this Mortgage, provide the Security Agent with a certified true copy of the Register of Members with the annotation referred to in Clause 4.5;

4.7 it shall promptly pay (and shall indemnify the Security Agent on demand against) all calls, instalments and other payments which may be made or become due in respect of the Mortgaged Shares and, in the event of default by the Chargor, the Security Agent may do so on behalf of the Chargor;

4.8 subject to the terms of the Existing Share Mortgage, it hereby authorises the Security Agent to arrange at any time and from time to time following the occurrence and during the continuance of an Event of Default for the Mortgaged Shares or any part thereof to be registered in the name of the Security Agent (or its nominee) thereupon to be held, as so registered, subject to the terms of this Mortgage and at the request of the Security Agent, the Chargor shall without delay procure that the foregoing shall be done;

4.9 save as pursuant to or as otherwise permitted, agreed under or contemplated by the Facility Agreement or the Existing Share Mortgage or any other Finance Document, it shall not, except with the prior written consent of the Security Agent:

- (a) create, or agree or attempt to create, or permit to subsist over all or part of the Mortgaged Shares of the Chargor (or any interest therein) any Security (except as may be created under the Existing Share Mortgage or this Mortgage or a lien arising by operation of law in the ordinary course of the Chargor's business) or any trust over the Mortgaged Shares of

the Chargor whether ranking prior to, pari passu with or behind the security contained in this Mortgage;

- (b) sell, assign, lease, license or sub-license, grant any interest in the Mortgaged Shares of the Chargor or any interest therein or attempt or agree to surrender or so dispose (other than in accordance with this Mortgage or the Existing Share Mortgage);
- (c) permit any person other than the Chargor or the Security Agent or the Security Agent's nominee or nominees to be registered as, or become the holder of, the Mortgaged Shares;
- (d) vote in favour of a resolution (i) to amend, modify or change the memorandum and articles of association of the Company in a manner which would materially adversely affect the value of the Mortgaged Shares or (ii) to continue the Company in a jurisdiction outside the Cayman Islands;
- (e) exercise any voting or other rights in a way which would materially prejudice the value of the Mortgaged Shares or otherwise materially adversely jeopardise the security constituted by this Mortgage over them;
- (f) cause or permit any rights attaching to the Mortgaged Shares to be varied or abrogated in a manner which would materially adversely affect the value of the Mortgaged Shares;
- (g) cause or permit any of the Mortgaged Shares to be consolidated, sub-divided or converted or the capital of the Company to be re-organised, exchanged or repaid, in each case, in a manner which would materially adversely affect the value of the Mortgaged Shares;
- (h) cause or permit anything to be done which may depreciate, jeopardise or otherwise materially and adversely prejudice the value of the security hereby given; or
- (i) permit the Register of Members for the Company to be maintained outside of the Cayman Islands or by a service provider other than the person to whom the letter of instructions in Schedule 6 has been given (unless in the latter case, the Company has executed and delivered a new letter of instruction in substantially the form of Schedule 6 to the new service provider and the new service provider signs a copy of such letter to acknowledge, and agree to the terms of, such letter and a copy of such acknowledgment is delivered by or on behalf of the Company to the Security Agent within seven Business Days from the date of the appointment of the new service provider);

4.10 it shall procure that the Company shall not, except as permitted by the Existing Share Mortgage or any Finance Document:

- (a) create or permit to subsist any Security upon the whole or any part of its assets;
- (b) issue any replacement share certificates in respect of any of the Mortgaged Shares;
- (c) do anything which might prejudice its status as an exempted company;
- (d) issue, allot or grant warrants or options with respect to any additional shares;
- (e) exercise any rights of forfeiture over any of the Mortgaged Shares; or

- (f) purchase, redeem, otherwise acquire, cancel, sub-divide, amalgamate, consolidate, reclassify or otherwise restructure any of the Mortgaged Shares,

without the prior written consent of the Security Agent;

- 4.11 it shall procure that the Company shall irrevocably consent to any transfer of the Mortgaged Shares by the Security Agent or its nominee to any other person pursuant to the exercise of the Security Agent's rights under this Mortgage or the Existing Share Mortgage;
- 4.12 it shall not, without the prior written consent of the Security Agent, participate in any vote concerning a voluntary liquidation or compromise in respect of the Company pursuant to sections 86 or 116 of the Companies Act, respectively;
- 4.13 save as pursuant to or as otherwise permitted, agreed under or contemplated by the Facility Agreement, the Existing Share Mortgage or any other Finance Document and to the extent that the same is within the control of the Chargor, it shall ensure that no further shares in the Company will be issued without the prior consent of the Security Agent;
- 4.14 at any time after the occurrence of an Event of Default that is continuing it shall exercise all voting and other rights and powers which may at any time be exercisable by the holder of the Mortgaged Shares as the Security Agent may in its absolute discretion direct; and
- 4.15 without limiting the provisions of this Clause 4 or any other provisions of this Mortgage, it shall promptly after execution of this Mortgage, make all filings and registrations necessary in its jurisdiction of incorporation to protect and perfect the security interests created pursuant to this Mortgage and promptly after such filings and registrations have been made, provide the Security Agent with a true copy of such evidence that the same have been made satisfactory to the Security Agent.

## **5. Representations and Warranties**

The Chargor represents and warrants to the Security Agent on the date of this Mortgage (subject to any disclosure made by the Chargor, and accepted by the Security Agent, in writing):

- 5.1 the Chargor is the absolute sole legal and beneficial owner of all of the Initial Shares free of all Security, encumbrances, trusts, equities, options, rights of pre-emption and claims whatsoever (save for those under this Mortgage and the Existing Share Mortgage) and that all of the Initial Shares are fully paid up;
- 5.2 the Initial Shares represent all the shares issued by the Company registered in the name of the Chargor;
- 5.3 any Mortgaged Shares are, or will be when mortgaged and charged, duly authorised, validly issued, fully paid, non-assessable, freely transferable to the Security Agent and constitute shares in the capital of a Cayman Islands exempted company. To the extent they are in existence there are no moneys or liabilities outstanding or payable in respect of any such shares nor will there be any and they have not been redeemed nor cancelled in any way nor will they be;
- 5.4 no person has or is entitled to any conditional or unconditional option, warrant or other right to subscribe for, purchase or otherwise acquire (other than pursuant to the Existing Share Mortgage)

any issued or unissued shares, or any interest in shares, in the capital of the Company;

- 5.5 the Register of Members of the Company is located and maintained at the registered office of the Company in the Cayman Islands;
- 5.6 the Mortgaged Shares are not issued with any preferred, deferred or other special rights or restrictions whether in regard to dividends, voting, return of any amount paid on account of shares or otherwise which are not expressly set out in the memorandum and articles of association of the Company;
- 5.7 other than pursuant to the Existing Share Mortgage, there are no covenants, agreements, conditions, interest, rights or other matters whatsoever which materially adversely affect the Mortgaged Shares or the right or the power of the Chargor to grant the mortgages and charges set out herein;
- 5.8 other than pursuant to the Existing Share Mortgage, it has not received any notice of an adverse claim by any person in respect of the ownership of the Mortgaged Shares or any interest in the Mortgaged Shares;
- 5.9 subject to the terms of the Existing Share Mortgage, it has full power and authority to:
  - (a) execute and deliver this Mortgage;
  - (b) be the legal and beneficial owner of the Mortgaged Shares; and
  - (c) comply with the provisions of, and perform all its obligations under this Mortgage;
- 5.10 it has duly executed and delivered this Mortgage;
- 5.11 the execution and performance of its obligations under this Mortgage will not contravene any law or regulation or any order of any governmental or other official authority, body or agency or any judgment, order or decree of any court having jurisdiction over it;
- 5.12 it has not taken any action nor have any steps been taken or legal proceedings been started or threatened or any analogous procedure or steps taken in any jurisdiction against it for:
  - (a) winding up, strike-off, dissolution or reorganization;
  - (b) continuation or migration out of its jurisdiction of incorporation ;
  - (c) the enforcement of any security interest over its assets; or
  - (d) the appointment of a liquidator, receiver, administrative receiver, administrator, trustee, restructuring officer or similar officer of it or of any or all of its assets;
- 5.13 there does not subsist any unsatisfied judgment or award given against it by any court, board of arbitration or other body;
- 5.14 this Mortgage constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms (subject to the terms of the Existing Share Mortgage);

- 5.15 it has not taken any action whereby the rights attaching to the Mortgaged Shares are altered or diluted save to the extent such alteration or dilution is expressly permitted under this Mortgage or the Existing Share Mortgage;
- 5.16 this Mortgage is effective to create a valid and enforceable second-ranking equitable mortgage and second-ranking fixed charge upon the Mortgaged Shares in favour of the Security Agent ranking in priority to the interests of any of its creditors or any liquidator (or similar officer) appointed in respect of it (other than the Security Agent acting under the Existing Share Mortgage);
- 5.17 it has disclosed to the Security Agent all existing set off, netting or analogous arrangements entered into, and otherwise affecting or relating to the Mortgaged Shares;
- 5.18 the Security Agent's claims or rights over the Mortgaged Shares under or pursuant to this Mortgage, are not subject to, or otherwise materially adversely affected by any rights of set off, netting or analogous arrangements that will otherwise materially adversely affect the value of the Security Agent's security constituted by this Mortgage, other than those previously disclosed to the Security Agent by the Chargor (including the Existing Share Mortgage); and
- 5.19 none of the Mortgaged Shares is subject to or affected by any Restrictions Notice issued by the Company pursuant to the Companies Act.

## **6. Power of Attorney**

- 6.1 The Chargor, by way of security for the payment of the Secured Liabilities and the performance of its obligations under this Mortgage and the Finance Documents, hereby irrevocably appoints the Security Agent (whether or not a Receiver or administrator has been appointed) and the persons deriving title under it and any Receiver separately to be its attorney (with full power to appoint substitutes and to delegate) with power in its name and on its behalf, and as its act and deed or otherwise at any time and from time to time, to (subject always to the terms of the Existing Share Mortgage):
  - (a) sign, seal, execute, deliver and complete all transfers, renunciations, proxies, mandates, assignments, deeds and documents and do all acts and things, which the Security Agent may reasonably consider to be necessary or advisable to perfect or improve its security over the Mortgaged Shares;
  - (b) give proper effect to the intent and purposes of this Mortgage;
  - (c) enable or assist in any way in the exercise of any right or the enforcement thereof including any power of sale of the Mortgaged Shares (whether arising under this Mortgage or implied by statute or otherwise); and
  - (d) perform any other act of any description,

which may be required of the Chargor under this Mortgage or may be deemed by such attorney necessary or desirable for any purpose of this Mortgage or to constitute, enhance or perfect the security intended to be constituted by it or to convey or transfer legal ownership of any Assets, provided that unless and until the occurrence of an Event of Default (and for so long as the same continues) the Security Agent may not do anything pursuant to this appointment.

- 6.2 The Chargor ratifies and confirms whatever any attorney does or purports to do pursuant to its appointment under this Clause.
- 6.3 All sums expended by the Security Agent or any Receiver under this Clause shall be recoverable from the Chargor in accordance with the terms of this Mortgage.
- 6.4 The Security Agent and any other attorney shall not be liable to the Chargor for any action taken by it under or in connection with Clause 6.

## **7. Retention of Mortgaged Shares**

- 7.1 If the Security Agent reasonably considers that any payment, security or guarantee provided or to be provided to it (a "**Relevant Transaction**") by any person is capable of being avoided, reduced or invalidated by virtue of applicable law, the Security Agent shall be entitled to retain and shall not be obliged to release any of the relevant Mortgaged Shares until the expiry of the Retention Period in relation to that Relevant Transaction.
- 7.2 In the event of the Dissolution of such person at any time before the expiry of that Retention Period, the Security Agent:
  - (a) may continue to retain the Mortgaged Shares and the charge for a further period expiring on the later of the expiry of the Retention Period and the date on which all proceedings relating to such Dissolution are determined; and
  - (b) shall not be obliged during such period to release any of the relevant Mortgaged Shares from any Security created pursuant to this Mortgage.

## **8. Event of Default**

- 8.1 Unless and until the occurrence of an Event of Default that is continuing:
  - (a) the Chargor shall be entitled to exercise all voting rights attaching to the Mortgaged Shares or any thereof for all purposes not inconsistent with the purposes of this Mortgage, any of the Secured Liabilities, and of the Finance Documents; and
  - (b) the Chargor shall be entitled to receive and retain any and all dividends paid in respect of the Mortgaged Shares or any thereof.
- 8.2 Subject to the terms of the Existing Share Mortgage, the Chargor shall forthwith following the occurrence of an Event of Default that is continuing, enforce all of the security created by this Mortgage and exercise all or any of the powers, authorities and discretions conferred by the Finance Documents or this Mortgage or otherwise by law on mortgages, charges and Receivers (whether or not it has appointed a Receiver), to sign, seal, deliver and complete all transfers, renunciations, proxies, mandates, assignments, deeds and documents and do all acts and things which the Security Agent may reasonably require at any time and from time to time specify for enabling or assisting the Security Agent:
  - (a) to perfect or improve its title to and security over the Mortgaged Shares;
  - (b) to vest the Mortgaged Shares in the Security Agent or its nominee or nominees;

- (c) to procure that the Security Agent or its nominee or nominees is registered in the Register of Members of the Company in respect of the Mortgaged Shares;
- (d) to exercise (or enable its nominee or nominees to exercise) any rights or powers attaching to the Mortgaged Shares;
- (e) to sell or dispose of the Mortgaged Shares; and/or
- (f) otherwise to enforce any of the rights of the Security Agent under or in connection with this Mortgage.

#### **9. Security Agent's Rights as to Shares**

Subject to the terms of the Existing Share Mortgage at any time after the occurrence of an Event of Default that is continuing, the Security Agent shall, without prejudice to any other right or remedy available hereunder or under applicable law, forthwith become entitled:

- 9.1 solely and exclusively to exercise all voting rights attaching to the Mortgaged Shares or any thereof and shall exercise such rights in such manner as the Security Agent may in its absolute discretion determine; and/or
- 9.2 solely and exclusively to exercise all other rights and/or powers and/or discretions of the Chargor in, to and under the Mortgaged Shares pursuant to the memorandum and articles of association of the Company; and/or
- 9.3 to receive and retain all dividends and other distributions made on or in respect of the Mortgaged Shares or any thereof and any such dividends, and other distributions received by the Chargor after such time shall be held in trust by the Chargor for the Security Agent and be paid or transferred to the Security Agent on demand to be applied towards the discharge of the Secured Liabilities; and/or
- 9.4 borrow or raise money either unsecured or on the security of the Mortgaged Shares (either in priority to the Mortgage or otherwise); and/or
- 9.5 settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Chargor or relating to the Mortgaged Shares; and/or
- 9.6 bring, prosecute, enforce, defend and abandon actions, suits and proceedings in relation to the Mortgaged Shares or any business of the Chargor; and/or
- 9.7 redeem any security (whether or not having priority to the Mortgage) over the Mortgaged Shares and to settle the accounts of any person with an interest in the Mortgaged Shares; and/or
- 9.8 exercise and do (or permit the Chargor or any nominee of the Chargor to exercise and do) all such rights and things as the Security Agent would be capable of exercising or doing if it were the absolute beneficial owner of the Mortgaged Shares; and/or
- 9.9 do anything else it may think fit for the realisation of the Mortgaged Shares or incidental to the exercise of any of the rights conferred on the Security Agent under or by virtue of any document

to which the Chargor is party; and/or

- 9.10 without notice to, or further consent or concurrence by, the Chargor to sell the Mortgaged Shares or any part thereof by such method, at such place and upon such terms as the Security Agent may in its reasonable discretion determine, with power to postpone any such sale and in any such case the Security Agent may exercise any and all rights attaching to the Mortgaged Shares as the Security Agent in its reasonable discretion may determine and without being answerable for any loss occasioned by such sale or resulting from postponement thereof or the exercise of such rights; and/or
- 9.11 to date and present to the Company or any other applicable person any undated documents provided to it pursuant to Clause 4 or any other provision of this Mortgage, including to remove the then existing directors and officers (with or without cause) by dating and presenting the undated, signed letters of resignation delivered pursuant to this Mortgage to appoint such persons as directors of the Company as it shall deem appropriate and to take all steps to register the Mortgaged Shares in the name of the Security Agent or its nominee or nominees and to assume control as registered owner of the Mortgaged Shares.

#### **10. Receiver**

- 10.1 At any time after the occurrence of an Event of Default that is continuing, then notwithstanding the terms of any other agreement between the Chargor and any person (except for the Existing Share Mortgage), the Security Agent may by writing without notice to the Chargor appoint one or more person or persons as the Security Agent thinks fit to be a receiver (the "**Receiver**") in relation to the Mortgaged Shares. Where the Security Agent appoints two or more persons as Receiver, the Receivers may act jointly or independently.
- 10.2 The Security Agent may remove any Receiver it appoints, and appoint another person or other persons as Receiver or Receivers, either in the place of a Receiver it has removed, or who has otherwise ceased to act, or to act jointly with a Receiver or Receivers.
- 10.3 If at any time any two or more persons hold office as Receivers of the same assets or income, such Receivers may act jointly and/or severally so that each one of such Receivers shall be entitled (unless the contrary is stated in any instrument(s) appointing them) to exercise all the powers and discretions hereby conferred on Receivers individually and to the exclusion of the other or others of them.
- 10.4 Every such appointment or removal, and every delegation, appointment or removal by the Security Agent in the exercise of any right to delegate its powers or to remove delegates, may be made in writing under the hand of any officer of the Security Agent.
- 10.5 Every Receiver shall have all the powers of the Security Agent in this Mortgage and, without prejudice to the foregoing, shall have the following powers:
- (a) power to take possession of, collect and get in any of the Mortgaged Shares and, for that purpose, to take such proceedings as may seem to him to be expedient;
  - (b) without notice to, or further consent or concurrence by, any Chargor to sell or otherwise dispose of any of the Mortgaged Shares by such method, at such place and upon such terms as a Receiver may in its absolute discretion determine, with power to postpone any such

sale and in any such case a Receiver may exercise any and all rights attaching to the Mortgaged Shares as the Receiver in its absolute discretion may determine and without being answerable for any loss occasioned by such sale or resulting from postponement thereof or the exercise of such rights;

- (c) power to raise or borrow money and grant security over any of the Mortgaged Shares;
- (d) power to appoint attorneys or accountants or other professionally qualified persons to assist him in the performance of his functions;
- (e) power to bring or defend any action or other legal proceedings in the name of and on behalf of the Chargor in respect of the Mortgaged Shares;
- (f) power to do all acts and execute in the name and on behalf of the Chargor any document or deed in respect of the Mortgaged Shares;
- (g) power to make any payment which is necessary or incidental to the performance of his functions;
- (h) power to make any arrangement or compromise on behalf of the Chargor in respect of the Mortgaged Shares;
- (i) power to rank and claim in the insolvency or liquidation of the Company and to receive dividends and to accede to trust deeds for the creditors of the Company;
- (j) power to present or defend a petition for the winding up of the Company; and
- (k) power to do all other things incidental to the exercise of the foregoing powers.

- 10.6 The Receiver shall be the agent of the Chargor and the Chargor shall be jointly responsible for his acts and defaults and jointly liable on any contracts made, entered into or adopted by the Receiver. The Security Agent shall not be liable for the Receiver's acts, omissions, negligence or default, nor be liable on contracts entered into or adopted by the Receiver.
- 10.7 In making any sale or other disposal of any of the Mortgaged Shares in the exercise of their respective powers, the Receiver or the Security Agent may accept by way of consideration for such sale or other disposal, cash, shares, loan capital or other obligations including, without limitation, consideration fluctuating according to or dependent upon a profit or turnover and consideration the amount of which is to be determined by a third party. Any such consideration may be receivable in a lump sum or by instalments.
- 10.8 Every Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Security Agent (or, failing such agreement, to be conclusively fixed by the Security Agent) commensurate with the work and responsibilities involved upon the basis of charging from time to time adopted in accordance with the current practice of such Receiver or his firm.
- 10.9 To the fullest extent permissible under law, the Security Agent may exercise any right or power that the Receiver may exercise in relation to the enforcement of this Mortgage.

**11. Other powers exercisable by the Security Agent**

- 11.1 All powers of the Receiver conferred by this Mortgage may be exercised by the Security Agent after this Mortgage has become enforceable.
- 11.2 The Security Agent shall have no Liability or responsibility to the Chargor arising out of the exercise or non-exercise of the powers conferred on it by this Clause, except for gross negligence, actual fraud or wilful default.
- 11.3 The Security Agent need not enquire as to the sufficiency of any sums received by it in respect of any debt or claim so assigned to it or make any claim or take any other action to collect in or enforce them.
- 11.4 The Security Agent may at any time delegate to any person (a "**Delegate**") either generally or specifically, on such terms and conditions (including power to sub-delegate) and in such manner as the Security Agent thinks fit, any rights (including the power of attorney) from time to time exercisable by the Security Agent under or in connection with this Mortgage. No such delegation shall preclude the subsequent exercise by the Security Agent of such right or any subsequent delegation or revocation thereof.

**12. Application of Monies by the Security Agent or a Receiver**

All monies received or recovered by the Security Agent or any Receiver pursuant to this Mortgage or the powers conferred by it shall be applied in accordance with the terms of the Facility Agreement.

**13. Protection of the Security Agent and Receiver**

- 13.1 Neither the Security Agent nor any Receiver shall be liable in respect of any Liability which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise, any of their respective powers under or by virtue of this Mortgage, except if and insofar as such Liability results from its or his own gross negligence, actual fraud or wilful default.
- 13.2 The Security Agent may from time to time and at any time require any Receiver to give security for the due performance of its duties as such Receiver and may fix the nature and amount of the security to be so given but the Security Agent shall not be bound in any case to require any such security.
- 13.3 Without prejudice to the generality of Clause 13.1, neither the Security Agent nor any Receiver shall be liable to account as mortgagee in possession or otherwise for any sum not actually received by it or him respectively. If and whenever the Security Agent enters into possession of any Assets, it shall be entitled at any time at its discretion to go out of possession.
- 13.4 The Security Agent executes this Mortgage in the exercise of the rights, powers and authority conferred and vested in it under the Facility Agreement and any other Finance Document for and on behalf of the Secured Parties for whom it acts. It will exercise its powers, rights, duties and authority under this Mortgage in the manner provided for in the Facility Agreement and, in so acting, it shall have the protections, immunities, limitations of liability, rights, powers, authorisations, indemnities and benefits conferred on it under and by the Facility Agreement and the other Finance Documents.

- 13.5 The Security Agent shall not have any duty to ensure that any dividends, interest or other moneys and assets receivable in respect of the Mortgaged Shares are duly and punctually paid, received or collected as and when the same become due and payable or to ensure that the correct amounts (if any) are paid or received on or in respect of the Mortgaged Shares or to ensure the taking up of any (or any offer of any) stocks, shares, rights, moneys or other property paid, distributed, accruing or offered at any time by way of redemption, bonus, rights, preference, or otherwise on or in respect of, any of the Mortgaged Shares.
- 13.6 The Security Agent shall owe no fiduciary duties to any party to this Mortgage or any of their directors, employees, agents or affiliates.
- 13.7 The Security Agent shall not be obliged to make any enquiry as to the nature or sufficiency of any payment received by it under this Mortgage or to make any claim or to take any action to collect any moneys assigned by this Mortgage or to enforce any rights or benefits assigned to the Security Agent by this Mortgage or to which the Security Agent may at any time be entitled hereunder.
- 13.8 Until all Secured Liabilities have been unconditionally and irrevocably paid and discharged in full, the Security Agent may refrain from applying or enforcing any other moneys, security or rights held by it in respect of the Secured Liabilities or may apply and enforce such moneys, security or rights in such manner and in such order as it shall decide in its unfettered discretion.
- 13.9 Notwithstanding any other provisions of this Mortgage, in acting under and in accordance with this Mortgage the Security Agent is entitled to seek instructions from the relevant Finance Parties in accordance with the provisions of the Facility Agreement and at any time, and where it so acts or refrains from acting on the instructions of a Finance Party or Finance Parties entitled to give it instructions, the Security Agent shall not incur any liability to any person for so acting or refraining from acting.

#### **14. Protection of Purchasers**

- 14.1 No purchaser from, or other person dealing with, the Security Agent, any Receiver or any Delegate shall be concerned to enquire whether any event has happened upon which any of the rights which they have exercised or purported to exercise under or in connection with this Mortgage has arisen or become exercisable, whether the Secured Liabilities remain outstanding, whether any event has happened to authorise the Security Agent, any Receiver or any Delegate to act, or whether the Receiver is authorised to act, whether any consents, regulations, restrictions or directions relating to such rights have been obtained or complied with, or otherwise as to the propriety, regularity or validity of the exercise or purported exercise of any such right or as to the application of any moneys borrowed or raised or other realisation proceeds; and the title and position of a purchaser or such person shall not be impeachable by reference to any of those matters.
- 14.2 The receipt of the Security Agent or the Receiver or any Delegate shall be an absolute and conclusive discharge to a purchaser or such person and shall relieve it of any obligation to see to the application of any moneys paid to or by the direction of the Security Agent or the Receiver.

#### **15. Continuing Security and Non-Merger; Preservation of Security**

- 15.1 The Security, covenants, undertakings and provisions contained in or granted pursuant to this Mortgage shall remain in full force and effect as a continuing security to the Security Agent for

the Secured Liabilities and shall not be satisfied, discharged or affected by any intermediate payment or settlement of account of all or part of the Secured Liabilities (whether any Secured Liabilities remain outstanding thereafter) or any other act, event, matter, or thing whatsoever, except only the release or discharge by the Security Agent of all the Security after all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full.

15.2 This Mortgage is cumulative, in addition to and independent of, and shall not merge with or otherwise exclude, prejudice or affect any other Security, guarantee, indemnity, right of recourse or any other right (including any right under the Existing Share Mortgage) whatsoever which the Security Agent may now or hereafter hold or have (or would apart from this Mortgage or the Security hold or have) from the Chargor or any other person in respect of any of the Secured Liabilities.

15.3 It is hereby agreed and declared that:

- (a) the Security Agent shall not be bound to enforce any other security before enforcing the security created by this Mortgage;
- (b) no delay or omission on the part of the Security Agent in exercising any right, power or remedy under this Mortgage shall impair such right, power or remedy or be construed as a waiver thereof nor shall any single or partial exercise of any such right, power or remedy preclude any further exercise thereof or the exercise of any other right, power or remedy. The rights, powers and remedies herein provided are cumulative and not exclusive of any rights, powers and remedies provided by law and may be exercised from time to time and as often as the Security Agent may deem expedient; and
- (c) any waiver by the Security Agent of any terms of this Mortgage shall only be effective if given in writing and then only for the purpose and upon the terms for which it is given.

15.4 The rights of the Security Agent under this Mortgage and the security hereby constituted shall not be affected by any act, omission, matter or thing which, but for this provision, might operate to impair, affect or discharge such rights and security, in whole or in part, including, and whether or not known to or discoverable by the Company, the Chargor, the Security Agent or any other person:

- (a) any time or waiver granted to or composition with the Company, the Chargor or any other person;
- (b) the taking, variation, compromise, renewal or release of or refusal or neglect to perfect or enforce any rights, remedies or securities against the Company, the Chargor or any other person;
- (c) any legal limitation, disability, incapacity or other circumstances relating to the Company, the Chargor or any other person;
- (d) any amendment, novation, amendment, variation or supplement to any Finance Document or other document or security (including any amendment the effect of which is to change the nature or amount of any facilities made available thereunder or to change the nature or extent of any obligations thereunder);

- (e) the insolvency, bankruptcy, administration, winding-up, dissolution, liquidation, amalgamation, reconstruction or reorganisation of the Company, the Chargor or any other person; or
- (f) the unenforceability, invalidity or frustration of any obligations of the Company, the Chargor or any other person under any Finance Document or any other document or security.

15.5 Until the Secured Liabilities have been unconditionally and irrevocably satisfied and discharged in full to the reasonable satisfaction of the Security Agent, the Chargor shall not by virtue of any payment made hereunder on account of the Secured Liabilities or by virtue of any enforcement by Security Agent of its rights under, or the security constituted by, this Mortgage or any Finance Document or by virtue of any relationship between or transaction involving the Chargor and/or the Company (whether such relationship or transaction shall constitute the Chargor a creditor of the Company, a guarantor of the obligations of the Company or in part subrogated to the rights of others against the Company or otherwise howsoever and whether or not such relationship or transaction shall be related to, or in connection with, the subject matter of this Mortgage):

- (a) exercise any rights of subrogation against the Company or any other person in relation to any rights, security or moneys held or received or receivable by the Security Agent or any person;
- (b) exercise any right of contribution from any co-surety liable in respect of such moneys and liabilities under any other guarantee, security or agreement;
- (c) exercise any right of set-off or counterclaim against the Company or any such co-surety;
- (d) receive, claim or have the benefit of any payment, distribution, security or indemnity from the Company or any such co-surety; or
- (e) unless so directed by the Security Agent (when the Chargor will prove in accordance with such directions), claim as a creditor of the Company or any such co-surety in competition with the Security Agent.

15.6 Subject to the terms of the Existing Share Mortgage, the Chargor shall hold in trust for the Security Agent and forthwith pay or transfer (as appropriate) to the Security Agent any such payment (including an amount to any such set-off), distribution or benefit of such security, indemnity or claim in fact received by it. Notwithstanding any other provision of this Mortgage and the Existing Share Mortgage, at any time outside of the duration of an Event of Default, the Chargor shall be entitled to receive, claim or have the benefit of any payment, distribution, security or indemnity from any other grantor in the ordinary course of business, provided that such action is not in breach of any term of any Finance Document.

15.7 Subject to the terms of the Existing Share Mortgage, until the Secured Liabilities have been unconditionally and irrevocably satisfied and discharged in full to the satisfaction of the Security Agent, the Security Agent may at any time keep in a separate account or accounts (without liability to pay interest thereon) in the name of the Security Agent for as long as it may think fit, any moneys received, recovered or realised under this Mortgage or under any other guarantee, security or agreement relating in whole or in part to the Secured Liabilities without being under any intermediate obligation to apply the same or any part thereof in or towards the discharge of

the Secured Liabilities or any other amount owing or payable under the Finance Documents; provided that the Security Agent shall be obliged to apply amounts standing to the credit of such account or accounts once the aggregate amount held by the Security Agent any such account or accounts opened pursuant hereto is sufficient to satisfy the outstanding amount of the Secured Liabilities in full.

**16. Ruling Off Account**

16.1 If the Security Agent receives or is deemed to be affected by notice (actual or constructive) of any Security or any other interest affecting the Mortgaged Shares (other than the Existing Share Mortgage) and/or if an Insolvency Event occurs in relation to the Chargor:

- (a) the Security Agent may open a new account or accounts with or on behalf of the Chargor (whether or not it allows any existing account to continue) and, if it does not, it shall nevertheless be deemed to have done so at the time it received or was deemed to have received such notice or at the time that the Insolvency Event occurred; and
- (b) all payments made by the Chargor to the Security Agent after the Security Agent received or is deemed to have received such notice or after such Insolvency Event occurred shall be credited or deemed to have been credited to the new account or accounts, and in no circumstances whatsoever shall operate to reduce the Secured Liabilities as at the time the Security Agent received or was deemed to have received such notice or as at the time that such Insolvency Event occurred until such time as such amounts are sufficient to discharge the Secured Liabilities in full, at which part they shall be so applied.

**17. Currency**

The currency indemnity provisions in the Facility Agreement shall be deemed to be incorporated mutatis mutandis into this Mortgage.

**18. Costs**

The costs provisions in the Facility Agreement shall be deemed to be incorporated mutatis mutandis into this Mortgage.

**19. Variation and Amendment**

This Mortgage shall remain in full force and effect notwithstanding any amendments or variations from time to time of the Finance Documents and no variation of this Mortgage shall be valid unless it is in writing and signed by or on behalf of each of the parties.

**20. Assignment**

- 20.1 The Chargor may not assign or transfer all or any part of its rights, benefits or obligations under this Mortgage to any other person.
- 20.2 The Security Agent may assign or otherwise transfer the whole or any part of the benefit of this Mortgage to any person to whom all or any part of its rights, benefits and obligations under the Facility Agreement are assigned or transferred and the expression "the Security Agent" wherever used herein shall be deemed to include the assignees and other successors, whether immediate

or derivative, of the Security Agent, who shall be entitled to enforce and proceed upon this Mortgage in the same manner as if named herein. The Security Agent shall be entitled to disclose any information concerning the Chargor to any such assignee or other successor or any participant or proposed assignee, successor or participant.

**21. Information**

The information provisions in the Facility Agreement shall be deemed to be incorporated mutatis mutandis into this Mortgage.

**22. Forbearance, severability and consents**

- 22.1 All rights, powers and privileges under this Mortgage shall continue in full force and effect, regardless of the Security Agent exercising, delaying in exercising or omitting to exercise any of them.
- 22.2 No provision of this Mortgage shall be avoided or invalidated by reason only of one or more other provisions being invalid or unenforceable.
- 22.3 Save as otherwise expressly specified in this Mortgage, any consent of the Security Agent may be given absolutely or on any terms and subject to any conditions as the Security Agent may determine in its entire discretion.

**23. Entire Agreement**

This Mortgage and the Finance Documents constitute the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this Mortgage.

**24. Further Assurance**

- 24.1 The Chargor shall at its own expense promptly execute all documents and do all things that the Security Agent may reasonably specify for the purpose of:

- (a) securing and perfecting its security over or title to all or any of the Mortgaged Shares; and/or
- (b) enabling the Security Agent to vest all or part of the Mortgaged Shares in its name or in the names of its nominee(s), agent or any purchaser,

including the execution and delivery of all assignments, transfers, mortgages, charges, notices and instructions and such other documents as the Security Agent may in its discretion think fit.

**25. Notices**

- 25.1 Without prejudice to any other method of service of notices and communications provided by law, a demand or notice under this Mortgage shall be in writing signed by an officer or agent of the Security Agent or the Chargor, as the case may be, and may be served on the Chargor or the Security Agent, as the case may be, by hand, by post, by facsimile transmission or by email. Any such notice or communication shall be sent to the address or number of the relevant party as set

out below:

Chargor:

**HC-One (NHP6) Limited (f/k/a Libra Careco CH3 Propco Limited)**

Address: c/o HC-One Limited, Southgate House, Archer Street, Darlington DL3 6AH, County Durham, UK

Fax: +44 (0) 1325 351 144

Email: [REDACTED]

Attention: [REDACTED]

Security Agent:

**Mount Street Mortgage Servicing Limited**

Address: 100 Wood Street, London EC2V 7AN, United Kingdom

Fax: [REDACTED] 2

Email: [REDACTED]

Attention: Brendan McGrath

25.2 The notice provisions in the Facility Agreement shall be deemed to be incorporated mutatis mutandis into this Mortgage.

**26. Miscellaneous**

26.1 All sums payable by the Chargor under this Mortgage shall be paid without any set off, counterclaim, withholding or deduction whatsoever unless required by law in which event the Chargor will simultaneously with making the relevant payment under this Mortgage pay to the Security Agent such additional amount as will result in the receipt by the Security Agent of the full amount which would otherwise have been receivable and will supply the Security Agent promptly with evidence satisfactory to the Security Agent that the Chargor has accounted to the relevant authority for the sum withheld or deducted.

26.2 A certificate signed (or, where reliance is being placed on it by any third party, appearing to be signed) by an officer of the Security Agent as to the Secured Liabilities for the time being due or owing from the Chargor to the Security Agent shall be treated, in favour of the Security Agent or any person to whom such certificate is issued, as prima facie evidence for all purposes against the Chargor and binding on it (save in the case of manifest error) and such certificate may be relied upon by the Security Agent and any other such person in all circumstances without further enquiry.

26.3 No delay or omission on the part of the Security Agent in exercising any right or remedy under this Mortgage shall impair that right or remedy or operate as or be taken to be a waiver of it nor shall any single, partial or defective exercise of any such right or remedy preclude any other or further exercise under this Mortgage of that or any other right or remedy.

26.4 The Security Agent's rights powers and remedies under this Mortgage are cumulative and are not, nor are they to be construed as, exclusive of any rights, powers or remedies provided by law or otherwise and may be exercised from time to time and as often as the Security Agent deems expedient.

26.5 Any waiver by the Security Agent of any terms of this Mortgage or any consent or approval given

by the Security Agent under it shall be effective only if given in writing and then only for the purpose and upon the terms and conditions (if any) on which it is given.

- 26.6 If at any time any one or more of the provisions of this Mortgage is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction neither the legality, validity or enforceability of the remaining provisions of this Mortgage nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall be in any way affected or impaired as a result.
- 26.7 The Chargor shall at all times maintain an agent for service of process in the Cayman Islands. Such agent shall be the Company at its registered office and (without prejudice to any obligation on the Security Agent to serve on the Chargor directly) any writ, judgment or other notice of legal process shall be sufficiently served on the Chargor if delivered to such agent at its address set out above. The Chargor undertakes not to revoke any authority of above agent and if, for any reason, such agent no longer serves as agent of the Chargor to receive service of process the Chargor shall promptly appoint another such agent and advise the Security Agent of the new agent's name and address for service. Failing this, the Security Agent may appoint another agent for this purpose.
- 26.8 The Chargor shall be deemed to be a principal debtor and the sole, original and independent obligor for the Secured Liabilities and the Security created by this Mortgage shall be deemed to be a principal security for the Secured Liabilities. The Liability of the Chargor under this Mortgage shall not be discharged, impaired or otherwise affected by any circumstance, act, omission, matter or thing which but for this provision might operate to reduce, release, prejudice or otherwise exonerate the Chargor from its obligations under the Finance Documents in whole or in part, including without limitation and whether or not known to the Chargor, the Security Agent or any other person any variation (however fundamental and whether or not involving any increase in the Liability of the Chargor or any other obligor thereunder) or replacement of any Finance Documents or any other document or security so that the Chargor's obligations under this Mortgage remain in full force and effect and that this Mortgage shall be construed accordingly as if there were no such circumstance, act, omission, matter or thing.

## **27. Law and Jurisdiction**

- 27.1 This Mortgage is governed by, and shall be construed in accordance with, the laws of the Cayman Islands.
- 27.2 The Chargor irrevocably agrees for the exclusive benefit of the Security Agent that the courts of the Cayman Islands shall have jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of or in connection with this Mortgage and for such purposes irrevocably submits to the jurisdiction of such courts.

## **28. Third Party Rights**

- 28.1 Each Receiver has the right under the Contracts (Rights of Third Parties) Act, 2014, as amended, modified, re-enacted or replaced (the "**Third Party Rights Act**"), to enforce, in its own right, its rights pursuant to Clauses 6, 10, 12 and 13 of this Mortgage subject to and in accordance with the provisions of the Third Party Rights Law.
- 28.2 Notwithstanding any other term of this Mortgage, the consent of any person who is not a party to this Mortgage (including, without limitation, any Receiver) is not required for any amendment

to, or variation, release, rescission or termination of this Mortgage.

**29. Counterparts**

This Mortgage may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument.

This Mortgage has been executed and delivered by the Chargor as a deed and signed by the Security Agent and it shall take effect on the date stated at the beginning of this document.

**Executed as a Deed by**

**HC-One (NHP6) Limited (f/k/a Libra Careco CH3 Propco Limited)**

[Redacted Signature]

Director

Name: David Smith

[Redacted Signature]

in the presence of:

Witness name: Clare Tanney

Address:

[Redacted Address]

This Mortgage has been executed and delivered by the Chargor as a deed and signed by the Security Agent and it shall take effect on the date stated at the beginning of this document.

Signed by  
for and on behalf of  
**Mount Street Mortgage Servicing Limited**  
(in its capacity as Security Agent)

)  
)   
) \_\_\_\_\_  
) Authorised Signatory

Amount or number of Initial Shares	Description of Shares
500	Ordinary shares of GBP 0.01 par value in HC-One (NHP2) Limited (f/k/a Care Homes No.3 Limited), a Cayman Islands exempted company, of P. O. Box 309, Ugland House, South Church Street, George Town, Grand Cayman KY1-1104, Cayman Islands.

### Share Transfer

The Undersigned, HC-One (NHP6) Limited (f/k/a Libra Careco CH3 Propco Limited), (the "**Transferor**"), for value received does hereby transfer to \_\_\_\_\_  
(being the Security Agent (as defined in the Supplemental Second-Ranking Equitable Mortgage Over Shares dated on or around 12 October 2023 between HC-One (NHP6) Limited (f/k/a Libra Careco CH3 Propco Limited) as Chargor and Mount Street Mortgage Servicing Limited as Security Agent pursuant to a \_\_\_\_\_ facility agreement originally dated 20 April 2021 and as amended and restated on or around 12 October 2023 between, inter alios, HC-One (NHP6) Limited (f/k/a Libra Careco CH3 Propco Limited) and Mount Street Mortgage Servicing Limited)(the "**Transferee**"), the shares \_\_\_\_\_ standing in its name in the undertaking called HC-One (NHP2) Limited (f/k/a Care Homes No.3 Limited) to hold the same unto the Transferee.

**SIGNED BY the Transferor:**

)  
)  
)  
)  
)  
)  
)

\_\_\_\_\_  
Duly Authorised Signatory

Dated:

Name: David Smith

Title: Director

**Director's Memorandum**

HC-One (NHP2) Limited (f/k/a Care Homes No.3 Limited)  
P. O. Box 309, Ugland House  
South Church Street  
George Town  
Grand Cayman KY1-1104  
Cayman Islands

To: The Security Agent, as security agent

12 October 2023

Dear Sirs

**Mortgage over Shares**

I confirm that we have been instructed by HC-One (NHP6) Limited (f/k/a Libra Careco CH3 Propco Limited) to make and have accordingly made an annotation of the existence of the supplemental second-ranking mortgage over shares entered into between HC-One (NHP6) Limited (f/k/a Libra Careco CH3 Propco Limited) and the Security Agent (as defined in the Second-Ranking Mortgage over Shares, being as at the date hereof Mount Street Mortgage Servicing Limited) dated 12 October 2023 (the "**Second-Ranking Mortgage over Shares**") noting the existence of the security interests created in favour of the Security Agent by the Second-Ranking Mortgage over Shares in the register of members of HC-One (NHP2) Limited (f/k/a Care Homes No.3 Limited) (the "**Company**").

I also confirm that the register of members of the Company is located and maintained at the registered office of the Company in the Cayman Islands.

Yours sincerely

Director  
Name: David Smith



**Second-Ranking Equitable Mortgage and Assignment**

To: HC-One (NHP2) Limited (f/k/a Care Homes No.3 Limited)

12 October 2023

Dear Sirs

**Mortgage over Shares**

We hereby notify you that pursuant to a supplemental second-ranking equitable mortgage over shares between HC-One (NHP6) Limited (f/k/a Libra Careco CH3 Propco Limited) and the Security Agent (as defined in the Second-Ranking Mortgage over Shares, being as at the date hereof Mount Street Mortgage Servicing Limited) dated 12 October 2023 (the "**Second-Ranking Mortgage over Shares**"), the Chargor has granted a second-ranking equitable mortgage and security interest over (including an assignment of its rights in relation to) the 500 Ordinary shares standing in its name in HC-One (NHP2) Limited (f/k/a Care Homes No.3 Limited) and at any time after the Security Agent notifies you that an Event of Default that is continuing (as defined in the Second-Ranking Mortgage over Shares) has occurred you may take such steps to register the Security Agent or its nominee or nominees as the registered holder of the shares pursuant to the Second-Ranking Mortgage over Shares.

Yours faithfully

Director

Name: David Smith

for and on behalf of

HC-One (NHP6) Limited (f/k/a Libra Careco CH3 Propco Limited)



**Irrevocable Proxy and Power of Attorney**

**HC-ONE (NHP2) LIMITED (f/k/a CARE HOMES NO.3 LIMITED)**

The undersigned HC-One (NHP6) Limited (f/k/a Libra Careco CH3 Propco Limited), being the legal owner of 500 issued shares (the "**Shares**") in the share capital of HC-One (NHP2) Limited (f/k/a Care Homes No.3 Limited) (the "**Company**"), a company incorporated in the Cayman Islands, hereby makes, constitutes and appoints the Security Agent (as defined in the Second-Ranking Mortgage over Shares, being as at the date hereof Mount Street Mortgage Servicing Limited) (the "**Attorney**") as the true and lawful attorney and proxy of the undersigned with full power to appoint a nominee or nominees to act hereunder from time to time and to vote the Shares and any future shares in the Company which may from time to time be issued and/or registered in our name on the register of members of the Company at all general meetings of shareholders or stockholders of the Company with the same force and effect as the undersigned might or could do, to sign resolutions in writing of the Company in respect of the Shares or further shares in the Company which may from time to time be issued and/or registered in our name and to requisition and convene a meeting or meetings of the shareholders of the Company for the purpose of appointing or confirming the appointment of new directors of the Company and/or such other matters as may in the opinion of the Attorney be necessary or desirable for the purpose of implementing the Mortgage referred to below and the undersigned hereby ratifies and confirms all that the said attorney or its nominee or nominees shall do or cause to be done by virtue hereof.

The Shares have been mortgaged to the Attorney pursuant to a second-ranking equitable mortgage over shares between HC-One (NHP6) Limited (f/k/a Libra Careco CH3 Propco Limited) and Mount Street Mortgage Servicing Limited as security agent dated 12 October 2023 (the "**Second-Ranking Mortgage over Shares**").

This power and proxy is given to secure a proprietary interest of the donee of the power or the performance of an obligation owed to the donee and is irrevocable and shall remain irrevocable as long as the Second-Ranking Mortgage over Shares is in force. This power and proxy shall only become effective upon the occurrence and continuation of an Event of Default (as defined in the Second-Ranking Mortgage over Shares) and shall be subject to the terms of the Existing Share Mortgage (as defined in the Second-Ranking Mortgage over Shares).

**Irrevocable Proxy and Power of Attorney**

In witness whereof this instrument has been duly executed and delivered this \_\_\_\_\_ as a deed.

**Executed as a Deed by**  
HC-One (NHP6) Limited (f/k/a Libra Careco CH3 Propco Limited)  
acting by:

A black rectangular box redacting the signature of the director.

Director

Name of director: David Smith

**Notice and Letter Agreement between HC-One (NHP2) Limited (f/k/a Care Homes No.3 Limited),  
the Chargor, the Security Agent and Walkers Corporate Limited**

**HC-ONE (NHP2) LIMITED (f/k/a CARE HOMES NO.3 LIMITED)**

WALKERS CORPORATE LIMITED

190 Elgin Avenue

George Town

Grand Cayman KY1-9008

Cayman Islands

cc: Mount Street Mortgage Servicing Limited, 100 Wood Street, London EC2V 7AN, United Kingdom

12 October 2023

Dear Sirs

**HC-One (NHP2) Limited (f/k/a Care Homes No.3 Limited) (the "Company"): Agreement re Register  
of Members of the Company**

We hereby notify you that pursuant to a supplemental second-ranking equitable mortgage over shares (the "**Mortgage**") dated 12 October 2023 between the Security Agent (as defined in the Mortgage, being as at the date hereof Mount Street Mortgage Servicing Limited) and HC-One (NHP6) Limited (f/k/a Libra Careco CH3 Propco Limited) as Chargor (the "**Chargor**"), the Chargor has granted a supplemental second-ranking equitable mortgage and security interest in favour of the Security Agent over all the shares standing in its name on the register of members of the Company (the "**Register**") and all other shares in the Company from time to time legally or beneficially owned by the Chargor in the Company (the "**Shares**").

We refer to the Terms and Conditions under which you provide registered office services to the Company (the "**Terms**") and set out below the agreement reached between the Company, the Chargor, you and the Security Agent in relation to the Register maintained by you pursuant to the Terms that, notwithstanding any other provisions of the Terms:

- 1 You are irrevocably instructed to make an annotation of the existence of the Mortgage and the security interests created thereby in the Register and, only upon your receipt of the Discharge Notice (as defined below), you shall amend such annotation to record that the Mortgage and such security interests have been released and discharged.
- 2 At any time after the Security Agent notifies you in writing that an Event of Default has occurred and is continuing (as defined in the Mortgage) you are authorised and entitled to rely upon the instructions of the Security Agent to register the Security Agent or its nominee (as the Security Agent may direct) in the Register as the registered holder of the Shares pursuant to the Mortgage (provided that the Security Agent delivers to you a duly completed and executed transfer form together with the relevant share certificates (if any) in respect of the Shares being transferred) and to otherwise comply with any directions or instructions from the Security Agent in relation thereto. Such authorisation and entitlement to rely upon the instructions of the Security Agent shall only terminate upon your receipt of a notification in writing from the Security Agent confirming that the Mortgage has been discharged (such notification being the "**Discharge Notice**").

- 3 In performing your obligations under the terms of this letter you shall be entitled to rely upon instructions given by, or purporting to be given by, a director or other officer or authorised signatory of the Security Agent.
- 4 The Security Agent's instructions shall prevail in all circumstances in respect of the matters referred to in 1 and 2 above and you are entitled to comply with such instructions of the Security Agent.
- 5 The Company, the Chargor and the Security Agent shall jointly and severally indemnify (on a full indemnity basis) and hold harmless you, the firm of Walkers (Cayman) LLP and any entities, whether partnerships, limited liability partnerships, companies or otherwise, owned or controlled by, or under common control with or affiliated with, Walkers (Cayman) LLP as may be established from time to time (for themselves and on trust and as agents for the benefit of the other persons mentioned below), their successors and assigns and their respective directors, officers, employees, agents and partners present and future and each of them, as the case may be, against all liabilities, obligations losses, damages, penalties, actions, proceedings, claims, judgements, demands, costs, expenses or disbursements of any kind (including legal fees and expenses) whatsoever which they or any of them may incur or be subject to in consequence of acting pursuant to any instructions received from the Security Agent in respect of the matters referred to in 1 and 2 above. This indemnity provision shall survive termination of the agreement set out in this letter.
6. The agreement with respect to the Register set out in this letter shall terminate upon the earlier of the date of (i) the Discharge Notice, (ii) termination of the Terms and (iii) you ceasing to maintain the Register.

The Company and you hereby agree that the Terms, and all rights and obligations of the parties thereunder, shall remain in full force and effect. The terms of this letter shall not, except as expressly provided herein, be deemed to be consent to any waiver or modification of any other terms or provisions of the Terms.

The terms set out in this letter are governed by, and shall be construed in accordance with, the laws of the Cayman Islands.

Please confirm by countersigning below that you agree to the above.

Yours faithfully



Name: David Smith

Title: Director

For and on behalf of HC-One (NHP2) Limited (f/k/a Care Homes No.3 Limited)

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Authorised Signatory

For and on behalf of the Security Agent



Name: David Smith

Authorised Signatory

For and on behalf of HC-One (NHP6) Limited (f/k/a Libra Careco CH3 Propco Limited)

Acknowledged and agreed



Authorised Signatory

For and on behalf of Walkers Corporate Limited

Yours faithfully

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Name: David Smith

Title: Director

For and on behalf of HC-One (NHP2) Limited (f/k/a Care Homes No.3 Limited)

A black rectangular box redacting the signature of David Smith.

Authorised Signatory

For and on behalf of the Security Agent

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Name: David Smith

Authorised Signatory

For and on behalf of HC-One (NHP6) Limited (f/k/a Libra Careco CH3 Propco Limited)

Acknowledged and agreed

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Authorised Signatory

For and on behalf of Walkers Corporate Limited

**Deed of Undertaking and Confirmation from the Company to the Security Agent**

**HC-One (NHP2) Limited (f/k/a CARE HOMES NO.3 LIMITED)**

12 October 2023

Mount Street Mortgage Servicing Limited (the "**Security Agent**")

Dear Sirs

**HC-One (NHP2) Limited (f/k/a Care Homes No.3 Limited) (the "Company")**

We refer to the supplemental second-ranking equitable share mortgage in respect of shares of the Company dated 12 October 2023 between HC-One (NHP6) Limited (f/k/a Libra Careco CH3 Propco Limited) as chargor (the "**Chargor**") and the Security Agent (as defined in the Mortgage, being as at the date hereof Mount Street Mortgage Servicing Limited) whereby, inter alia, the Chargor granted a supplemental second-ranking mortgage and charge over (and assignment of its rights in relation to) the Mortgaged Shares in favour of the Security Agent (the "**Mortgage**").


Capitalised words and expressions used in this deed poll which are not expressly defined herein have the meanings ascribed to them in the Mortgage.

This deed of undertaking and confirmation is given pursuant to the Mortgage.

- 1.1 The Company confirms it has actual notice of the Mortgage.
- 1.2 For valuable consideration receipt of which is hereby acknowledged, the Company hereby irrevocably and unconditionally undertakes to register (and hereby permits the Security Agent or its nominee(s), if they have custody of the original Register of Members to register) in the Register of Members any and all share transfers to the Security Agent or its nominee in respect of the Mortgaged Shares submitted to the Company by the Security Agent.
- 1.3 The Company hereby confirms that it has instructed its registered office provider to make an annotation of the existence of the Mortgage and the security interests created thereby in the original Register of Members (if it retains the original or update its copy if it retains a copy) pursuant to the Mortgage.
- 1.4 The Company hereby confirms that the Register of Members provided to the Security Agent pursuant to the Mortgage is a certified copy of the original Register of Members and it will not redesignate or otherwise seek to recreate the Register of Members.

**THIS DEED POLL** has been executed and delivered as a Deed Poll on the day and year first above written.

*[signature page to Deed of Undertaking and Confirmation from the Company to the Security Agent]*

Executed as a Deed by  
HC-One (NHP2) Limited (f/k/a Care Homes No.3 Limited)  
acting by:   
\_\_\_\_\_  
Director  
Name of director: David Smith

**Director's Written Resolutions**

**HC-ONE (NHP2) LIMITED (f/k/a CARE HOMES NO.3 LIMITED)**

**(the "COMPANY")**

**WRITTEN RESOLUTIONS OF THE DIRECTORS OF THE COMPANY**

**DATED \_\_\_\_\_**

**1. THE COMPANY**

- 1.1 These written resolution of all the directors of the Company are made pursuant to the articles of association of the Company.

**2. SHARE TRANSFER**

- 2.1 **IT IS RESOLVED** that the following transfer(s) of the shares of the Company in connection with the enforcement of the supplemental second-ranking equitable share mortgage in respect of shares of the Company dated \_\_\_\_\_ October 2023 between HC-One (NHP6) Limited (f/k/a Libra Careco CH3 Propco Limited) and the Security Agent (as defined in the Mortgage, being as at the date hereof Mount Street Mortgage Servicing Limited)(the "**Mortgage**") be approved with immediate effect, provided that the Existing Share Mortgage (as defined in the Mortgage) has been released:

**3. CHANGES IN DIRECTORS**

- 3.1 **IT IS RESOLVED** that:

- (a) the following persons be appointed as directors of the Company with immediate effect:
- (b) that the resignation of the following persons as directors of the Company be accepted with immediate effect:
- a) David Smith
  - b) James Walter Tugendhat

**4. REGISTER OF MEMBERS**

- 4.1 **IT IS RESOLVED** that that the Register of Members of the Company be updated to record the transfer of the shares to the transferee referred to above and the registered office provider of the Company be hereby authorised and instructed to:
- (a) update the original Register of Members if it retains the original or update its copy of the Register of Members if it retains a copy of the Register of Members to record the transferee as the registered holder of the relevant shares; and

- (b) provide a copy of the updated Register of Members to the transferee.

**5. REGISTER OF DIRECTORS**

5.1 **IT IS RESOLVED** that the Register of Directors of the Company be updated to record the above changes in directors as set out in paragraph 3.1 above and secretary and the registered office provider be hereby authorised and instructed to:

- (a) update the original Register of Directors and provide a copy of the updated Register of Directors to the transferee; and
- (b) make the necessary filings with the Registrar of Companies to reflect the change of directors.

*[signature page to follow]*

*[signature page to HC-One (NHP2) Limited (f/k/a CARE HOMES NO.3 LIMITED) - Director's Written Resolutions]*



David Smith  
Director



James Walter Tugendhat  
Director