



Companies House

MR01(ef)

Registration of a Charge

Company name: **BATTERSEA PLACE RETIREMENT VILLAGE LIMITED**

Company number: **07545666**

Received for Electronic Filing: **12/08/2013**



Details of Charge

Date of creation: **07/08/2013**

Charge code: **0754 5666 0004**

Persons entitled: **STARWOOD EUROPEAN FINANCE PARTNERS LIMITED**

Brief description:

Contains fixed charge(s).

Notification of addition to or amendment of charge.

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: **NIGEL DALE**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 7545666

Charge code: 0754 5666 0004

The Registrar of Companies for England and Wales hereby certifies that a charge dated 7th August 2013 and created by BATTERSEA PLACE RETIREMENT VILLAGE LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 12th August 2013 .

Given at Companies House, Cardiff on 12th August 2013



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

Mezzanine Charge over Partnership Interests relating to the Chargors' holdings as members of Battersea Place LLP

Lifecare Residences Limited and Battersea Place
Retirement Village Limited

and

~~Starfin Lux S.à r.l.~~

(AL)

Starwood European Finance Partners Limited

The rights and obligations of the parties to this Deed are subject to an
Intercreditor Agreement (as defined in this Deed)

7 August 2013



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THIS DEED is made on

7 August 2013

BETWEEN:

- (1) **LIFECARE RESIDENCES LIMITED** of Sherwood House, Forest Road, Kew, TW9 3BY (No. 05110137) (the "**First Chargor**") and **BATTERSEA PLACE RETIREMENT VILLAGE LIMITED** of Sherwood House, Forest Road, Kew TW9 3BY (registered number 0754566) (the "**Second Chargor**") (the First Chargor and the Second Chargor being together the "**Chargors**"); and
- (2) ~~STARFIN LUX S.A.R.L.~~ in its capacity as security trustee for the Secured Parties (the "**Security Trustee**").

(AL)

RECITALS

- (A) The Chargors enter into this Deed in connection with the Mezzanine Facility Agreement (as defined below).
- (B) It is intended that this document takes effect as a deed notwithstanding the fact that a party may only execute this document under hand.

Starwood European Finance Partners Limited

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

In this Deed:

"**Act**" means the Law of Property Act 1925;

"**Authorisation**" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration;

"**Authority**" shall have the meaning given to such term in the Mezzanine Facility Agreement;

"**Borrower**" means Battersea Place LLP of Sherwood House, Forest Road, Kew TW9 3BY (registered number: OC326797);

"**COMI**" means in relation to each Chargor its "**centre of main interests**" for the purposes of Council Regulation (EC) No 1346/2000 of 29th May 2000;

"**Contract Party**" means any party to the Subordinated Loan Agreements other than the Chargors and if more than one such party shall, where the context so requires, mean any one of them;

"**Contract Proceeds**" means all proceeds of the Subordinated Loan Agreements from time to time in whatever form they may be, including:

- (a) all monies receivable by the Chargors under, arising out of, or evidenced by, the Subordinated Loan Agreements;
- (b) any other rights, titles, benefits or interests (whether present, future, proprietary contractual or otherwise) of the Chargors in, under, arising out of, or evidenced by, the Subordinated Loan Agreements;
- (c) the benefit of any Authorisation, conveyance, assignment, transfer, lease or licence which may be granted to the Chargors in relation to the Subordinated Loan

Agreements, whether or not arising out of an obligation contained in any Subordinated Loan Agreement;

- (d) all claims competent to the Chargors to recover and receive damages or compensation arising out of or relating to any breach or termination of the Subordinated Loan Agreements or any Authorisation, conveyance, assignment, transfer, lease or licence referred to in paragraph (c) above; and
- (e) the full benefit of all guarantees, indemnities, bonds, debentures, mortgages, charges or other security given in relation to the Subordinated Loan Agreements (including but not limited to the Parent Security Documents) or any obligation of any Contract Party arising under the Subordinated Loan Agreements,

in each case to the extent that they relate to a Subordinated Loan;

"Default Rate" means three per cent per annum above the highest rate of interest ordinarily applicable to the Secured Obligations from time to time;

"Delegate" means any delegate, agent, attorney or trustee appointed by the Security Trustee;

"Discharge Date" means the date with effect from which the Security Trustee confirms to the Chargors that all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full and all relevant commitments of the Security Trustee and of each of the Mezzanine Finance Parties have been cancelled;

"Enforcement Party" means any of the Security Trustee, a Receiver or a Delegate;

"Establishment" means, in relation to a company or person, any place of operations where that company or person (as applicable) carries on non-transitory economic activity with human means and goods;

"Expenses" means all fees, discounts, commissions and other banking or servicer charges, legal and other professional fees, premiums, costs or expenses, in each case calculated on a full indemnity basis and together with VAT, incurred by any Enforcement Party in connection with the Security Assets, the preparation, negotiation and creation of this Deed, taking, perfecting, enforcing or exercising any power under this Deed, the appointment of any Receiver or Delegate, the breach of any provision of this Deed and/or the protection, realisation or enforcement of this Deed, and also includes the costs of transferring to the Security Trustee or the Receiver any security ranking in priority to the security constituted by this Deed, or the amount required to be paid to secure the unconditional and irrevocable discharge of such security (if applicable);

"Insolvency Act" means the Insolvency Act 1986;

"Intercreditor Agreement" shall have the meaning given to such term in the Mezzanine Facility Agreement;

"Membership Interests" means all of the existing or future interests in the limited liability partnership interests in the Borrower including any income, offer, right or benefit in respect of any such interest;

"Mezzanine Facility Agreement" means a mezzanine facility agreement dated on or around the date hereof between, inter alios, the Borrower, Battersea Place Retirement Village Limited as mezzanine guarantor and the Security Trustee (in various capacities), as varied, amended or restated from time to time;

"Obligor" means any Chargor and the Borrower;

"Party" means a party to this Deed;

"Property" shall have the meaning given to such term in the Mezzanine Facility Agreement;

"Receiver" means an administrative receiver, receiver and manager, judicial manager, trustee in bankruptcy, nominee, supervisor, officinal manager or similar person in each case, appointed under this Deed;

"SDN List" shall have the meaning given to such term in the Mezzanine Facility Agreement;

"Secured Obligations" means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Obligor and each grantor of Security to the Secured Parties (or any of them) under each of the Mezzanine Finance Documents together with all costs, charges and expenses incurred by any Secured Party in connection with the protection, preservation or enforcement of its respective rights under the Mezzanine Finance Documents;

"Secured Parties" means the Mezzanine Finance Parties, the Security Trustee and any Receiver or Delegate and **"Secured Party"** means any of the Secured Parties;

"Security" shall have the meaning given to such term in the Mezzanine Facility Agreement;

"Security Assets" means the assets of each Chargor charged at clause 3 (Charging Clause) and includes any part or parts of them;

"Security Period" means the period beginning on the date of this Deed and ending on the Discharge Date;

"Senior Charge over Partnership Interests" means the charge over partnership interests dated on or about the date of this deed, between inter alia, the Chargors and Barclays Bank PLC;

"Subordinated Loan" means each loan made by a Chargor to the Borrower under or pursuant to the terms of the Subordinated Loan Agreements;

"Subordinated Loan Agreement" means each of the subordinated loan agreements' brief particulars of which are set out in schedule 2 (Subordinated Loan Agreements) and also where the context shall so require or permit any other loan agreement or contract between a Chargor and the Borrower and the expression **"Subordinated Loan Agreement"** shall also mean any one of such contracts or agreements;

"Senior Discharge Date" shall have the meaning given to such term in the Intercreditor Agreement; and

"Third Parties Act" means the Contracts (Rights of Third Parties) Act 1999.

1.2 Definitions contained in Mezzanine Facility Agreement

Unless a contrary indication appears, each term used in this Deed which is defined in the Mezzanine Facility Agreement shall have the same meaning as in the Mezzanine Facility Agreement.

1.3 Construction

In this Deed:

- (a) any reference to:
 - (i) the word **"assets"** includes present and future property, revenue, rights and interests of every kind;
 - (ii) the word **"guarantee"** includes any guarantee or indemnity and any other financial support (including any participation or other assurance against loss and any deposit or payment) in respect of any person's indebtedness;
 - (iii) the word **"law"** includes law established by or under statute, constitution, treaty, decree, regulation or judgment, common law and customary law; and the word **"lawful"** and similar words and phrases are to be construed accordingly;
 - (iv) the word **"security"** includes any assignment by way of security, charge, lien, mortgage, pledge or other security interest securing any obligation of any person and any other agreement or arrangement having a similar effect;
 - (v) the word **"set-off"** includes analogous rights and obligations in other jurisdictions; and
 - (vi) the word **"tax"** includes any tax, duty, impost or levy and any other charge or withholding of a similar nature (including any interest or penalty for late payment or non-payment);
- (b) where something (or a list of things) is introduced by the word **"including"**, or by the phrase **"in particular"**, or is followed by the phrase **"or otherwise"**, the intention is to state an example (or examples) and not to be exhaustive (and the same applies when other similar words or phrases are used);
- (c) each reference to the **"Chargors"**, or to the **"Security Trustee"**, any **"Party"** or any of the **"Beneficiaries"** or **"Obligors"** includes its successors in title, and its permitted assignees or permitted transferees; and
- (d) each reference to any **"Contract Party"** shall extend to any permitted assignee or transferee of, or successor in title to, any such person, and to any other person who is obligated to that Chargor under the terms of any Subordinated Loan Agreement.
- (e) The provisions of clause 1.3 (Construction) of the Mezzanine Facility Agreement apply to this Deed as though they were set out in full in this Deed except that references to the Mezzanine Facility Agreement are to be construed as references to this Deed:
 - (i) the term "Mezzanine Finance Document" includes all amendments and supplements including supplements providing for further advances;
 - (ii) the term "this Security" means any security created by this Deed; and
 - (iii) a reference to any asset, unless the context otherwise requires, includes any present and future assets.
- (f) Any covenant of a Chargor under this Deed (other than a payment obligation) remains in force during the Security Period.
- (g) Unless the context otherwise requires, a reference to a Security Asset includes the proceeds of sale of that Security Asset.

1.4 Third Party Rights

- (a) A person who is not an Enforcement Party has no right under the Third Parties Act to enforce or enjoy the benefit of any term of this Deed except to the extent that this Deed or any other Mezzanine Finance Document expressly provides for it to do so.
- (b) No consent of any person who is not a Party is required to rescind or vary this Deed at any time.
- (c) This clause 1.4 does not affect any right or remedy of any person which exists, or is available, otherwise than pursuant to the Third Parties Act.

1.5 Each party to this Deed acknowledges that their rights and obligations are subject to the terms of the Intercreditor Agreement.

2. CREATION OF SECURITY

2.1 General

All the security created under this Deed:

- (a) is created in favour of the Security Trustee;
- (b) is created over present and future Membership Interests of each Chargor;
- (c) is security for the payment and satisfaction of all the Secured Obligations; and
- (d) is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.

2.2 Covenant to Pay

Subject to clause 2.3 (Limited Recourse), each Chargor, as primary obligor and not merely as surety, covenants with the Security Trustee that it will pay, discharge and perform the Secured Obligations on demand once such Secured Obligations have become due for payment, discharge or performance.

2.3 Limited Recourse

- (a) No liability under this Deed shall attach to the First Chargor in excess of the proceeds of realisation of the Security Assets and the Security Trustee shall not have recourse to the First Chargor's assets other than the Security Assets under the terms of this Deed.
- (b) The Security Trustee agrees that its rights of enforcement in respect of the Secured Obligations against the First Chargor shall be limited to the rights of enforcement or recovery against the Security Assets.

3. CHARGING CLAUSE

3.1 Grant of security

As a continuing security for the payment, discharge and performance of the Secured Obligations:

- (a) **Assignment by way of security**

- (i) each Chargor assigns absolutely to the Security Trustee all its rights, title and interest in the following assets:

- (A) the Subordinated Loan Agreements; and

- (B) the Contract Proceeds,

in each case to the fullest extent capable of assignment and subject to re-assignment on redemption as provided in clause 19 (Discharge and Release);

(b) First fixed charge

- (i) each Chargor charges in favour of the Security Trustee, by way of first fixed charge all the Membership Interests owned by it or held by any nominee on its behalf, and including all rights of enforcement of the same;

- (ii) each Chargor charges in favour of the Security Trustee by way of first fixed charge the following assets:

- (A) the Subordinated Loan Agreements;

- (B) the Contract Proceeds,

in each case excluding the Subordinated Loan Agreements or Contract Proceeds which have been validly and effectively assigned to the Security Trustee pursuant to clause 3.1(a) (Assignment by way of security); and also

- (C) any monies (including any deposit, advance or instalment payment) payable to a Chargor for or in connection with the disposal (by whatever means and whether or not permitted by this Deed) of the Subordinated Loan Agreements or any interest in the Subordinated Loan Agreements.

3.2 Notice of assignment or charge

- (a) The First Chargor shall on the date of this Deed give notice of each such assignment of its right, title and interest (if any) in and to the Subordinated Loan Agreements and the Contract Proceeds by sending a notice in the form set out in schedule 1 (Form of notice to Contract Parties) (with such amendments as the Security Trustee may agree) duly completed to each of the Contract Parties and the First Chargor shall procure that on the date of this Deed each such Contract Party delivers an acknowledgement to the Security Trustee in the form of the acknowledgement of notice contained in the notice set out in Schedule 1 (Form of notice to Contract Parties) in each case with such amendments as the Security Trustee may agree.

- (b) The Chargors will immediately upon the entering into of any Subordinated Loan Agreements after the date of this Deed give notice of each such assignment of its right, title and interest (if any) in and to the Subordinated Loan Agreements and the Contract Proceeds by sending a notice in the form set out in schedule 1 (Form of notice to Contract Parties) (with such amendments as the Security Trustee may agree) duly completed to each of the Contract Parties and the relevant Chargor shall procure that within 14 days of the date of serving such notice each such Contract Party delivers an acknowledgement to the Security Trustee in the form of the acknowledgement of notice contained in the notice set out in Schedule 1 (Form of notice to Contract Parties) in each case with such amendments as the Security Trustee may agree.

3.3 Exercise of rights and obligations under Subordinated Loan Agreements

- (a) Whilst no Event of Default exists and is continuing the Security Trustee shall permit the Chargors to exercise their rights under the Subordinated Loan Agreements provided that the exercise of those rights in the manner proposed would not result in an Event of Default and is in accordance with the terms of the Intercreditor Agreement.
- (b) Where an Event of Default exists and is continuing the Chargors shall immediately upon notification by the Security Trustee, but subject to the terms of the Intercreditor Agreement, exercise its rights to recover sums from the Contract Party under the Subordinated Loan Agreements in accordance with the instructions of the Security Trustee.
- (c) The Chargors shall at all times remain liable to perform all the obligations assumed by them under the Subordinated Loan Agreements and the Security Trustee shall assume no obligation of any kind whatsoever under the Subordinated Loan Agreements, nor be under any liability whatsoever in the event of any failure by the Chargors to perform their obligations under the Subordinated Loan Agreements and the Chargors will at all times indemnify the Security Trustee from and against any demands, claims, damages, costs or expenses arising from or in relation to the Subordinated Loan Agreements or any such failure by the Chargors.

4. REPRESENTATIONS

Each Chargor makes the representations set out in this clause 3 to the Security Trustee on the date(s) specified in clause 4.17 below.

4.1 Incorporation

It is duly incorporated and validly existing under the laws of the place of its incorporation or formation and has the power to own its property and assets and to carry on its business as it has been conducted.

4.2 Powers and Authorisations

It has the power to enter into and perform this Deed, and has taken all necessary actions to authorise entry into and performance of, this Deed and the transactions contemplated by this Deed.

4.3 Legal Validity

Subject to the Legal Reservations, this Deed constitutes its legally valid, binding and enforceable obligations.

4.4 No Event of Default

- (a) No Event of Default has occurred or is continuing or might reasonably be expected to result from the execution of this Deed or from effect being given to its provisions;
- (b) No person who holds any other security over the Security Assets or over any other asset of the Chargor has enforced or given notice of its intention to enforce such security;

4.5 Non-conflict

The entry into and performance by it of, and the transactions contemplated by, this Deed do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any document which is binding upon it or any of its assets.

4.6 Authorisations

Except for registration of this Deed, all authorisations required by it in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, this Deed have been obtained or effected (as appropriate) and are in full force and effect.

4.7 Priority of Security

Subject to the Intercreditor Agreement, the assets subject to such Security created by this Deed constitutes first priority Security over the assets which are expressed to be subject to such Security and those assets are not subject to any Security other than Permitted Security Interests.

4.8 Membership Interests

- (a) The Membership Interests represent the whole membership interest in the Borrower.
- (b) Each Chargor is the sole legal and beneficial owner of its Membership Interests.
- (c) There are no calls or other payments due and payable in respect of the Membership Interests as at the date of this Deed.

4.9 Subordinated Loan Agreements

- (a) Each Subordinated Loan Agreement is in full force and effect and constitutes legal, valid, binding and enforceable obligations of the Chargors and the relevant Contract Parties.
- (b) Each Chargor:
 - (i) has not rescinded or otherwise terminated or novated any Subordinated Loan Agreement and there have been no amendments to nor defaults under any Subordinated Loan Agreement other than as permitted by the Mezzanine Finance Documents;
 - (ii) has not waived, compromised, assigned nor agreed to waive, compromise or assign any of its present or future rights, title or interest in and to the Subordinated Loan Agreements or the Contract Proceeds otherwise than as provided in this Deed or in the Senior Charge over Partnership Interests;
 - (iii) has no right of action vested in it nor in any Contract Party in respect of any representation, breach of condition, breach of warranty or breach of any other express or implied term of any Subordinated Loan Agreement; and
 - (iv) confirms that other than for actions which it is permitted to take in accordance with this Deed, it is not aware of any fact or circumstance which would or might prejudice or affect the ability of the Security Trustee to enforce the Subordinated Loan Agreements nor to recover and retain the Contract Proceeds.

4.10 Stamp Duties

Except for registration fees payable at the Companies House registry, as at the date of this Deed, no stamp or registration duty or similar Tax or charge is payable by it in its jurisdiction of incorporation in respect of this Deed.

4.11 Commercial Benefit

It enters into this Deed in good faith and for the purposes of the promotion of the success of its business and has given due consideration to the terms and conditions of this Deed and has satisfied itself that there are reasonable grounds for believing that by executing this Deed it will derive commercial benefit.

4.12 COMI

Its COMI is situated in England and Wales and it has no Establishment in any other jurisdiction.

4.13 Litigation

Save as specifically disclosed to the Mezzanine Lenders in writing prior to the date of this Deed, there is no litigation, arbitration or administrative proceedings are current or, to its knowledge, pending or threatened, which (if adversely determined) have or are reasonably likely to have a Material Adverse Effect.

4.14 Immunity

- (a) The entry by it into this Deed constitutes, and the exercise by it of its rights and performance of its obligations under this Deed will constitute, private and commercial acts performed for private and commercial purposes.
- (b) It will not be entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken in its jurisdiction of incorporation in relation to this Deed.

4.15 Sanctions

It is not:

- (a) listed, or is owned or controlled, directly or indirectly, by any person which is listed, on an SDN List;
- (b) located, organised or resident in a country which is the subject of sanctions by any Authority; or
- (c) a governmental agency, authority, or body or state-owned enterprise of any country which is the subject of sanctions by any Authority.

4.16 Jurisdiction/Governing Law

- (a) Its:
 - (i) irrevocable submission under this Deed to the jurisdiction of the courts of England;
 - (ii) agreement that this Deed is governed by English law; and
 - (iii) agreement not to claim any immunity to which it or its assets may be entitled,

is legal, valid and binding under the laws its the jurisdiction of incorporation.

- (b) Any judgment obtained in England against any Chargor will be recognised and be enforceable by the courts of the jurisdiction of incorporation of that Chargor.

4.17 Times for making representations

- (a) The representations set out in this Deed are made on the date of this Deed.
- (b) Unless a representation is expressed to be given at a specific date, each representation under this Deed (other than the representation at clause 4.11 above) is deemed to be repeated by the Chargors on each day during the Security Period on which representations and warranties set out in clause 12 (Representations) of the Mezzanine Facility Agreement are, or are deemed to be, made or repeated.
- (c) When a representation is repeated, it is applied to the circumstances existing at the time of repetition.

5. RESTRICTIONS ON DEALINGS

5.1 No Chargor shall:

- (a) create or allow to subsist any Security Interest (other than this Deed) on any Security Asset;
- (b) create or allow to subsist any floating charge over any of, its assets or undertakings, whether present or future and wherever located; or
- (c) sell, transfer or otherwise dispose of any Security Asset.

5.2 Clause 5.1 does not apply:

- (a) to the security created or required to be created by this Deed;
- (b) to any Permitted Security Interest;
- (c) to Security granted over specific assets to secure borrowings, provided that:
 - (i) the debt for equity ratio relating to such borrowings shall not exceed 70 per cent; and
 - (ii) the specific assets in respect of which Security is to be granted do not include the Property;
- (d) to any security or transaction to which the Security Trustee has given its written consent; or
- (e) to any other security or transaction which is permitted pursuant to the terms of the Mezzanine Facility Agreement.

6. UNDERTAKINGS

6.1 Deposit

Each Chargor must:

- (a) use reasonable endeavours to procure delivery, on or promptly following the Senior Discharge Date, of all certificates and other documents of title or evidence of

ownership (if any) in relation to any Security Asset to the Security Trustee, or as the Security Trustee may direct; and

- (b) following an Event of Default which is continuing but subject to the terms of the Intercreditor Agreement promptly execute and deliver to the Security Trustee all transfer and other documents which may be requested by the Security Trustee in order to enable the Security Trustee or its nominees to be registered as the owner or otherwise obtain a legal title to any Security Asset.

6.2 Changes to Rights

No Chargor shall take or allow the taking of any action on its behalf which may result in the rights attaching to any Security Asset being altered.

6.3 Calls

- (a) Each Chargor must pay all calls or other payments due and payable in respect of any Security Asset.
- (b) If any Chargor fails to do so, the Security Trustee may pay the calls or other payments on behalf of such Chargor. The relevant Chargor must immediately on request reimburse the Security Trustee for any payment made by the Security Trustee under this clause 6.3(b).

6.4 Subordinated Loan Agreements

Each Chargor will:

- (a) perform all its obligations under each Subordinated Loan Agreement in a diligent and timely manner;
- (b) not rescind, terminate, novate or permit rescission, termination or novation of any Subordinated Loan Agreement nor make or agree to make any amendments or modifications to a Subordinated Loan Agreement or waive or compromise any of its rights under any Subordinated Loan Agreement nor release any Contract Party from its obligations under that Subordinated Loan Agreement except in any case in accordance with the terms of the Intercreditor Agreement; and
- (c) promptly inform the Security Trustee of any material disputes relating to a Subordinated Loan Agreement.

6.5 Other Obligations in Respect of Security Assets

- (a) Each Chargor must comply with all conditions and obligations assumed by it in respect of any Security Asset.
- (b) The Security Trustee is not obliged to:
 - (i) perform any obligation of any Chargor;
 - (ii) make any payment;
 - (iii) make any enquiry as to the nature or sufficiency of any payment received by it or any Chargor; or
 - (iv) present or file any claim or take any other action to collect or enforce the payment of any amount to which it may be entitled under this Deed,in respect of any Security Asset.

6.6 Voting rights

- (a) Before this Security becomes enforceable, but subject to the terms of the Intercreditor Agreement, the voting rights, powers and other rights in respect of the Security Assets shall be exercisable by the relevant Chargor provided that it will not exercise any such voting rights or powers in a manner which would prejudice the value of, or the ability of the Security Trustee to realise the security created by this Deed.
- (b) Each Chargor must indemnify the Security Trustee against any loss or liability incurred by the Security Trustee as a consequence of the Security Trustee acting in respect of the Security Assets on the direction of such Chargor.
- (c) After this Security has become enforceable in accordance with the terms of the Intercreditor Agreement, the Security Trustee may exercise (in the name of a Chargor and without any further consent or authority on the part of a Chargor) any voting rights and any powers or rights which may be exercised by the legal or beneficial owner of any Security Asset, any person who is the holder of any Security Asset or otherwise.

7. WHEN SECURITY BECOMES ENFORCEABLE

For the purposes of all powers implied by the Act or any other applicable statute the Secured Obligations shall be deemed to have become due and payable and this Deed will become immediately enforceable and the powers of the Security Trustee and any Receiver will become exercisable on the date of this Deed, but, as between the Security Trustee and any Chargor, the power of sale and other, powers conferred by this Deed shall be exercisable in accordance with the terms of the Intercreditor Agreement and only upon the occurrence of an Event of Default and for so long as it is continuing (unless it is expressly provided to the contrary otherwise than in this clause 7 or there has been a request from such Chargor to the Security Trustee for the appointment of a Receiver, in which case they shall be exercisable when so provided or at any time following the making of such request as the case may be).

8. ENFORCEMENT OF SECURITY

- 8.1 At any time after the Security Trustee's power of sale has become exercisable subject to the terms of the Intercreditor Agreement, the Security Trustee may appoint one or more than one Receiver in respect of the Security Assets and if more than one Receiver is appointed the Receivers may act jointly and severally or individually.
- 8.2 The Security Trustee may remove the Receiver and appoint another Receiver and the Security Trustee may also appoint an alternative or additional Receiver.
- 8.3 The Receiver will, so far as the law permits, be the agent of each Chargor and the relevant Chargor alone will be responsible for the acts or defaults of the Receiver and will be liable on any contracts or obligations made or entered into by the Receiver. The Security Trustee will not be responsible for any misconduct, negligence or default of the Receiver.
- 8.4 The powers of the Receiver will continue in full force and effect following the liquidation of the relevant Chargor.
- 8.5 The remuneration of the Receiver may be fixed by the Security Trustee but will be payable by the relevant Chargor. The amount of the remuneration will form part of the Secured Obligations.
- 8.6 The Receiver will have the power on behalf and at the cost of the relevant Chargor:

- (a) to do or omit to do anything which he considers appropriate in relation to the Security Assets; and
 - (b) to exercise all or any of the powers conferred on the Receiver or the Security Trustee under this Deed or conferred upon administrative receivers by the Insolvency Act (even if he is not an administrative receiver), or upon Receivers by the Act or any other statutory provision (even if he is not appointed under the Act or such other statutory provision).
- 8.7 Without prejudice to the general powers set out in clause 8.6 a Receiver will also have the powers and discretions set out in clause 9 (Powers of Receiver).
- 8.8 If (notwithstanding any representation or warranty to the contrary contained in this Deed) there shall be any security affecting the Security Asset which ranks in priority to the security created by this Deed (other than pursuant to any Senior Security Documents) and the holder of such prior security takes any steps to enforce such security, the Security Trustee or any Receiver may, at its option, take a transfer of, or repay the indebtedness secured by, such security.
- 8.9 The Security Trustee may, at any time after this Deed has become enforceable pursuant to clause 7 (When Security Becomes Enforceable), exercise, to the fullest extent permitted by law, all or any of the powers, authorities and discretions conferred on a Receiver by this Deed, whether as attorney of any Chargor or otherwise and whether or not a Receiver has been appointed.
- 8.10 The Security Trustee may, in writing, either in its appointment of a Receiver or by subsequent notice to that Receiver, restrict the right of such Receiver to exercise all or any of the powers conferred on Receivers by this Deed.

9. **POWERS OF RECEIVER**

9.1 **The Receiver will have full power and authority to:**

(a) **Possession**

take possession of and generally manage the Security Assets;

(b) **Sale And Disposal**

without restriction, to sell, charge, grant or vary the terms or accept surrenders of options or rights over, or otherwise deal with and dispose of the Security Assets or any assets acquired in the exercise of its powers under this Deed;

(c) **Acquisition**

to purchase or acquire any assets or rights required or convenient for the exercise of the Receiver's powers under this Deed;

(d) **Borrowing**

for the purpose of exercising any of the rights, powers, authorities and discretions conferred on the Receiver by or pursuant to this Deed and/or for defraying any losses or Expenses which may be incurred by him in their exercise or for any other purpose, to raise or borrow any money from the Security Trustee or others or to incur any other liability on such terms, whether secured or unsecured, as he may think fit, and whether to rank in priority to this security or not;

(e) **Appointments, etc.**

to appoint and discharge employees, officers, consultants, advisers, managers, agents, solicitors, accountants or other professionally qualified persons, workmen and others for any of the purposes of this Deed or to protect the Security Assets upon such terms as to remuneration or otherwise as he may think fit and to discharge any such persons appointed by the relevant Chargor prior to his appointment;

(f) Legal actions and compromises

- (i) in the name of the relevant Chargor, to bring, prosecute, enforce, defend and discontinue all such actions, suits and proceedings, in relation to such Chargor, the Security Assets or any business carried on from the Property, as in any case he thinks fit; and
- (ii) to settle, adjust, refer to arbitration or expert determination, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person or body who is or claims to be a creditor of the relevant Chargor or relating in any way to the Security Assets;

(g) Receipts

to give valid receipts for all moneys and execute all assurances and things which may be proper or desirable for realising the Security Assets;

(h) Contracts

to enter into, vary, cancel or waive any of the provisions of any contracts relating to the Security Assets which he shall in any case think expedient in the interests of any Chargor or the Security Trustee;

(i) Insurances and bonds

to insure the Security Assets, any assets acquired by him in the exercise of his powers, and effect indemnity insurance or other similar insurance, in every case in such amounts, against such risks and with such offices as he thinks fit, and obtain bonds and give indemnities and security to any bondsmen;

(j) Form company

- (i) to promote or establish any company or to acquire shares in any company (whether as a subsidiary of the relevant Chargor or otherwise) to facilitate the exercise of his powers under this Deed;
- (ii) to transfer to any such company all or any of the Security Assets or other assets acquired by him in the exercise of his powers; and
- (iii) to exercise or cause to be exercised all voting and other rights attaching to, and to charge, sell or otherwise transfer any shares in any such company;

(k) Voting rights

to exercise all voting and other rights attaching to the Membership Interests in such manner as he may think fit;

(l) Transaction

to carry into effect and complete any transaction;

(m) Redeem security

to redeem any prior security (or procure the transfer of such security to himself) and settle and pass the accounts of the person entitled to the prior security so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on the relevant Chargor and the money so paid shall be deemed to be an expense properly incurred by the Receiver; and

(n) **General**

either in the name of the relevant Chargor or in the name of the Receiver, to execute documents and do all other acts or things which the Receiver may consider to be incidental or conducive to any of the Receiver's powers or to the realisation or use of the Security Asset.

10. APPLICATION OF PROCEEDS

10.1 Recoveries by Receiver

The proceeds arising from the exercise of the powers of the Receiver will, subject to any claims ranking in priority to the Secured Obligations and subject to the terms of the Intercreditor Agreement, be applied by or at the direction of the Receiver in or towards discharging or satisfying, in the following order of priority:

- (a) the costs, charges and expenses of and incidental to the Receiver's appointment and the payment of his remuneration;
- (b) any costs, charges, expenses and liabilities of or incurred by any Enforcement Party in the exercise of any of its powers including all taxes and outgoings whatever affecting the Security Assets, all premiums on insurances properly payable under this Deed or any applicable statute, and the payment of annual sums or other payments, and the interest on all principal sums, having priority to the Secured Obligations;
- (c) the remaining Secured Obligations (excluding any amount of the Secured Obligations paid pursuant to clause 10.1(b) above), in accordance with the provisions of the Mezzanine Finance Documents and otherwise in such order as the Security Trustee may determine; and
- (d) the claims of those persons entitled to any surplus.

10.2 Right of Appropriation

Subject to the terms of the Intercreditor Agreement, the Security Trustee is entitled to appropriate money and/or assets to Secured Obligations in such manner or order as it thinks fit and any such appropriation shall override any appropriation by any Chargor.

10.3 Suspense Account

Subject to the terms of the Intercreditor Agreement, the Security Trustee may place (for such time as it thinks prudent) any money received by it pursuant to this Deed to the credit of a suspense account (without liability to account for interest thereon) for so long and in such manner as the Security Trustee may from time to time determine without having any obligation to apply that money or any part of it in or towards discharge of the Secured Obligations.

10.4 Calculations

The Security Trustee's calculation of any amount payable by any Chargor under this Deed at any time will be conclusive (except in the case of manifest error).

11. EXPENSES AND INDEMNITY

11.1 Each Chargor must will pay all Expenses within 3 Business Days of demand and keep each of them indemnified against any failure or delay in paying those Expenses.

11.2 Any failure or delay in paying the Expenses will bear interest at the Default Rate from and including the date of demand to and including the date of actual payment.

12. FURTHER ASSURANCES

Each Chargor shall:

12.1 promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Trustee may reasonably specify (and in such form as the Security Trustee may reasonably require) in favour of the Security Trustee or its nominee(s):

(a) to perfect the Security created or intended to be created or evidenced by this Deed or for the exercise of any rights, powers and remedies of the Security Trustee provided by or pursuant to this Deed;

(b) to confer on the Security Trustee or the Mezzanine Finance Parties Security over the Security Assets; and/or

(c) to facilitate the realisation of the assets which are, or are intended to be, the subject of this Deed; and

12.2 take all such action as is available to it (including making all filings and registrations and the payment of all fees and Taxes) as is necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Trustee by or pursuant to this Deed.

13. POWER OF ATTORNEY

13.1 Grant of Power

Each Chargor irrevocably and by way of security appoints the Security Trustee and each Receiver and any person nominated for the purpose by the Security Trustee or the Receiver (in writing, under hand, signed by an officer of the Security Trustee or by the Receiver) to be the attorney of such Chargor, (with full power of substitution and delegation) for the purposes set out in clause 13.2.

13.2 Extent of Power

The power of attorney granted in clause 13.1 allows the Security Trustee, the Receiver or such nominee in the name of such Chargor and on its behalf and as its act and deed:

(a) to perfect the security given by such Chargor under this Deed; and

(b) to execute, seal and deliver (using such Chargor's seal where appropriate) any document or do any act or thing which such Chargor may be required, ought or has agreed to execute or do under this Deed but has failed to do or which the Security Trustee, the Receiver or such nominee may in their absolute discretion consider appropriate in connection with the exercise of any of the rights, powers authorities or discretions of the Security Trustee or the Receiver under, or otherwise for the purposes of, this Deed.

13.3 Ratification

Each Chargor covenants with the Security Trustee to ratify and confirm all acts or things lawfully made, done or executed by any attorney exercising or purporting to exercise the powers conferred in accordance with this clause 13.

14. PROTECTION OF THIRD PARTIES

14.1 No Duty to Enquire

A buyer from or other person dealing with any Enforcement Party will not be concerned to enquire whether any of the powers which such Enforcement Party has exercised or purported to exercise have arisen or become exercisable and may assume that such Enforcement Party is acting in accordance with this Deed.

14.2 Receipt Conclusive

Receipt by the Security Trustee or any Receiver shall be an absolute and conclusive discharge to the purchaser of the Security Assets and shall relieve such purchaser of any obligation to see to the application of any monies paid to or by the direction of the Security Trustee or any Receiver.

15. PROTECTION OF SECURITY TRUSTEE

15.1 Security Trustee's receipts

The Security Trustee's obligation to account (whether to any Chargor or to any other person) shall be limited to the Security Trustee's own actual receipts which the Security Trustee must distribute or pay to the person entitled (or who the Security Trustee, acting reasonably, believes to be entitled) in accordance with the requirements of this Deed.

15.2 Exclusion of Liability

- (a) No Enforcement Party will be liable to any Chargor for any expense, loss liability or damage incurred by any Chargor arising out of the exercise of its rights or powers or any attempt or failure to exercise those rights or powers except any expense, loss, liability or damage arising from its gross negligence, fraud or wilful misconduct.
- (b) No Chargor may take any proceedings against any officer, employee or agent of the Security Trustee in respect of any claim it might have against the Security Trustee or in respect of any act or omission of any kind by that officer, employee or agent in relation to this Deed. Any officer, employee or agent of the Security Trustee may rely on this clause 15 under the Third Parties Act.

15.3 Effect of possession

If the Security Trustee or any Receiver registers itself or any nominee as the holder of the Membership Interests or otherwise enters into possession of the Security Assets, this will not oblige either the Security Trustee or the Receiver to account as mortgagee in possession.

15.4 Chargors' Indemnity

Each Chargor agrees with the Security Trustee to indemnify each Enforcement Party on demand against any costs, loss or liability incurred by it in respect of:

- (a) any exercise of the powers of the Security Trustee or the Receiver or any attempt or failure to exercise those powers; and

- (b) anything done or omitted to be done in the exercise or purported exercise of the powers under this Deed or under any appointment duly made under the provisions of this Deed.

16. APPLICATION, VARIATION AND EXTENSION OF STATUTORY PROVISIONS

16.1 Conditions applicable to power of sale etc

- (a) For the purposes only of section 101 of the Act (but otherwise subject to the provisions of clause 7 (When security becomes enforceable)) the conditions set out in that section as to when such powers arise do not apply and the Secured Obligations become due and the statutory power of sale and other powers of enforcement arise immediately following the execution of this Deed.
- (b) The Security Trustee and any Receiver may exercise the statutory power of sale conferred by the Act free from the restrictions imposed by section 103 of the Act, which shall not apply to this Deed.

16.2 Extension of Powers of Sale, etc

- (a) The power of sale and the other powers conferred by the Act or otherwise are extended and varied to authorise the Security Trustee in its absolute discretion to do all or any of the things or exercise all or any of the powers which a Receiver is empowered to do or exercise under this Deed.
- (b) The Security Trustee and any Receiver shall also have and enjoy all the other powers, privileges, rights and protections conferred by the Act and the Insolvency Act on mortgagees, receivers or administrative receivers (each as amended and extended by this Deed and whether or not a receiver or administrative receiver has been appointed) but so that if there is any ambiguity or conflict between the powers contained in such statutes and those contained in this Deed, those contained in this Deed shall prevail.

16.3 Consolidation of Mortgages

The restriction on the consolidation of mortgages in section 93 of the Act does not apply to this Deed nor to any security given to the Security Trustee pursuant to this Deed.

16.4 Act provisions relating to appointment of Receiver

Section 109(1) of the Act shall not apply to this Deed.

16.5 Application of Proceeds

Sections 105, 107(2), 109(6) and 109(8) of the Act will not apply to the Security Trustee nor to a Receiver appointed under this Deed.

17. PRESERVATION OF SECURITY

17.1 Continuing Security

This Security is a continuing security and will extend to the ultimate balance of the Secured Obligations regardless of any intermediate payment or discharge in whole or in part.

17.2 Waiver of Defences

The obligations of each Chargor under this Deed will not be affected by any act, omission or thing which, but for this provision, would reduce, release or prejudice any of its

obligations under this Deed (whether or not known to such Chargor or the Mezzanine Finance Parties). This includes:

- (a) any time or waiver granted to, or composition with, any person;
- (b) the release of any person under the terms of any composition or arrangement;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any person;
- (d) any non-presentation or non-observance of any formality or other requirement in respect of any instruments or any failure to realise the full value of any security;
- (e) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person;
- (f) any amendment (however fundamental) of a Mezzanine Finance Document or any other document or security; or
- (g) any unenforceability, illegality, invalidity or non-provability of any obligation of any person under any Mezzanine Finance Document or any other document or security.

17.3 Immediate Recourse

Each Chargor waives any right it may have of first requiring the Security Trustee (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from such Chargor under this Deed.

17.4 Non-Competition

- (a) Unless:
- (b) the Security Period has expired; or
- (c) the Security Trustee otherwise requests, no Chargor shall, after a claim has been made under this Deed or by virtue of any payment or performance by them under this Deed:
 - (i) be subrogated to any rights, security or moneys held, received or receivable by the Security Trustee (or any trustee or agent on its behalf);
 - (ii) be entitled to any right of contribution or indemnity in respect of any payment made or moneys received on account of such Chargor's liability under this Deed;
 - (iii) claim, rank, prove or vote as a creditor of any Obligor or its estate in competition with the Security Trustee (or any trustee or agent on its behalf) save to the extent permitted under the terms of the Intercreditor Agreement; or
 - (iv) except to the extent permitted under the terms of the Intercreditor Agreement, receive, claim or have the benefit of any payment, distribution or security from or on account of any Obligor, or exercise any right of set-off as against any Obligor.

Each Chargor must hold in trust for and immediately pay or transfer to the Security Trustee any payment or distribution or benefit of security received by them

contrary to this clause 17.4 or in accordance with any directions given by the Security Trustee under this clause 17.4.

17.5 Additional Security

This Security is in addition to and is not in any way prejudiced by any other security now or subsequently held by the Mezzanine Finance Parties.

18. OTHER MISCELLANEOUS PROVISIONS

18.1 Powers, Rights and Remedies Cumulative

The powers, rights and remedies provided in this Deed are in addition to (and not instead of) powers, rights and remedies under law.

18.2 Exercise of powers, rights and remedies

If an Enforcement Party fails to exercise any power, right or remedy under this Deed or delays its exercise of any power, right or remedy, this does not mean that it waives that power, right or remedy. If an Enforcement Party exercises, or partly exercises, a power, right or remedy once, this does not mean that it cannot exercise such power right or remedy again, fully or in part.

18.3 Discretion

(a) The Security Trustee may decide:

- (i) whether and, if so, when, how and to what extent (i) to exercise its rights under this Deed and (ii) to exercise any other right it might have in respect of any Chargor (or otherwise); and
- (ii) when and how to apply any payments and distributions received for its own account under this Deed,

and no Chargor shall have the right to control or restrict the Security Trustee's exercise of this discretion.

(b) No provision of this Deed will interfere with the Security Trustee's right to arrange its affairs as it may decide (or oblige it to disclose any information relating to its affairs), except as expressly stated.

18.4 Set-off and combination of accounts

(a) No right of set-off or counterclaim may be exercised by any Chargor in respect of any payment due to the Security Trustee under this Deed.

(b) Subject to the terms of the Intercreditor Agreement, the Security Trustee may at any time after this Deed has become enforceable and without notice to any Chargor:

- (i) combine or consolidate all or any of the relevant Chargor's then existing accounts with, and liabilities to, the Security Trustee;
- (ii) set off or transfer any sums standing to the credit of any one or more of such accounts; and/or
- (iii) set-off any other obligation owed by the Security Trustee to the relevant Chargor (whether or not matured at such time),

in or towards satisfaction of any of the Secured Obligations. The Security Trustee is to notify the relevant Chargor in writing that such a transfer has been made.

- (c) If any amount is in a different currency from the amount against which it is to be set off, the Security Trustee may convert either amount (or both) at any reasonable time and at any reasonable rate.

18.5 Power to open new account

- (a) If the Security Trustee receives notice of a subsequent mortgage or charge relating to the Security Assets, it will be entitled to close any account and to open a new account in respect of the closed account. If the Security Trustee does not open such new account, it will be treated as if it had done so at the time when it received such notice.
- (b) As from that time all payments made to the Security Trustee will be credited or be treated as having been credited to the new account and will not operate to reduce any Secured Obligations.

18.6 Other security

Each Chargor authorises the holder of any prior or subsequent security to provide to the Security Trustee, and the Security Trustee to receive from such holder details of the state of account between such holder and the relevant Chargor.

18.7 No assignment by Chargor

A Chargor must not assign, novate or otherwise deal with its rights or obligations under or interests in this Deed, except with the prior written consent of the Security Trustee.

18.8 Transfer by Security Trustee

- (a) The Security Trustee may at any time assign, novate or otherwise deal with any rights or obligations under or interests in this Deed in accordance with and subject to the provisions of clause 24 of the Mezzanine Facility Agreement.
- (b) The Security Trustee may disclose in accordance with and subject to the provisions of clause 25 of the Mezzanine Facility Agreement, any information about any Chargor, the Security Assets and/or this Deed to any person to whom it proposes to assign or novate or transfer (or has assigned, novated or transferred) any rights or obligations under or interests in this Deed; or with whom it proposes to enter into (or has entered into) any other dealings in relation to any such rights, obligations or interests.
- (c) Any person to whom the benefit of all such rights has been transferred, subject to such obligations, may enforce this Deed in the same way as if it had been a Party.

18.9 Avoidance of settlements and other matters

- (a) Any payment made by any Chargor, or settlement or discharge between any Chargor and the Security Trustee, is conditional upon no security or payment to the Security Trustee by the relevant Chargor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency, administration or liquidation for the time being in force and, accordingly, (but without limiting the Security Trustee's other rights under this Deed) the Security Trustee shall be entitled to recover from the relevant Chargor the value which the Security Trustee has placed upon such security or the amount of any such payment as if such payment, settlement or discharge had not occurred.

- (b) If the Security Trustee, acting reasonably, considers that any amount paid by any Chargor in respect of the Secured Obligations is capable of being avoided or ordered to be refunded or reduced for the reasons set out in clause 18.9(a), then for the purposes of this Deed such amount shall not be considered to have been irrevocably paid.

18.10 Tacking

The Security Trustee as agent for the Secured Parties confirms that the Secured Parties shall perform their respective obligations to the extent arising under the Mezzanine Finance Documents to make further advances. The Security created by this Deed has been made for securing further advances.

18.11 Time deposits

Without prejudice to any right of set-off the Security Trustee may have under any other Mezzanine Finance Document or otherwise, if at any time deposit matures on any account any Chargor has with the Security Trustee within the Security Period when:

- (a) this Security has become enforceable; and
- (b) no Secured Obligation is due and payable,

that time deposit will automatically be renewed for any further maturity which the Security Trustee considers appropriate.

19. DISCHARGE DATE & RELEASE

Once all Secured Obligations have been unconditionally and irrevocably discharged in full and all relevant commitments of the Secured Parties cancelled, the Security Trustee shall, if requested by the Chargors in writing, give confirmation to the Chargors of the Discharge Date. At the end of the Security Period, the Security Trustee must, at the request and cost of each Chargor, take whatever action is necessary to release the Security Assets from this Security.

20. NOTICES

20.1 In writing

- (a) Any communication in connection with this Deed must be in writing and, unless otherwise stated, may be given in person, by post, telex, fax or any other form of communication in writing approved by the Security Trustee.
- (b) For the purpose of this Deed, an electronic communication will be treated as being in writing.
- (c) Unless it is agreed to the contrary, any consent or agreement required under this Deed must be given in writing.

20.2 Contact details

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Deed is:

- (a) in the case of each Chargor and the Security Trustee, those given for each of them, respectively, in the signature pages of this Deed; and

- (b) in the case of each Receiver and each Delegate, those notified in writing to the Security Trustee (whether in that capacity or in any other capacity) by such Receiver or Delegate (or by the Security Trustee on its behalf) as soon as practicable after its appointment,

or any substitute address, fax number or department or officer as the relevant person may notify to the Security Trustee (or as the Security Trustee may notify to the other Parties, if a change is made by the Security Trustee) by not less than 5 Business Days' notice.

20.3 Effectiveness

- (a) Except as provided below, any notice in connection with this Deed will be deemed to be given as follows:
 - (i) if delivered in person, at the time of delivery;
 - (ii) if posted, five days after being deposited in the post, postage prepaid, in a correctly addressed envelope;
 - (iii) if by fax, when received in legible form; and
 - (iv) if by e-mail or any other electronic communication, when received in legible form.
- (b) A communication given under clause 20.3(a) but received on a non-working day or after business hours in the place of receipt will only be deemed to be given on the next working day in that place.
- (c) A notice to the Security Trustee will only be effective on actual receipt by it.

21. LANGUAGE

Any notice given in connection with this Deed must be in English.

22. SEVERABILITY

If a term of this Deed is or becomes illegal, invalid or unenforceable in any jurisdiction, that will not affect:

- (a) the legality, validity or enforceability in that jurisdiction of any other term of this Deed; or
- (b) the legality, validity or enforceability in any other jurisdiction of that or any other term of this Deed.

23. COUNTERPARTS

This Deed may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

24. CONFLICT

The provisions of the Mezzanine Facility Agreement and each Mezzanine Security Document (including this Deed) are subject to the terms of the Intercreditor Agreement. If there is any conflict or inconsistency between:

- (a) the terms of the Mezzanine Facility Agreement and the terms of any Mezzanine Security Document, the terms of the Mezzanine Facility Agreement shall prevail; or

- (b) the terms of the Mezzanine Facility Agreement (or any Mezzanine Security Document) and the terms of the Intercreditor Agreement, the terms of the Intercreditor Agreement shall prevail.

25. **GOVERNING LAW**

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

26. **ENFORCEMENT**

26.1 **Jurisdiction of English courts**

The English courts have exclusive jurisdiction to settle any dispute in connection with this Deed. The English courts are the most appropriate and convenient courts to settle any such dispute and each Chargor waives objection to those courts on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this Deed. This clause is for the benefit of the Enforcement Parties only. To the extent allowed by law, each Enforcement Party may take proceedings in any other court and concurrent proceedings in any number of jurisdictions.

IN WITNESS whereof this agreement has been executed and delivered as a deed on the date above first written.

SCHEDULE 1

Form of notice to Contract Parties

To: [Name and address of Contract Party]

Dated: [Date]

Dear Sirs

[Insert description of Subordinated Loan Agreements] (the "Loan Agreement") made between, amongst others, (1) [insert name of Chargor] (the "Chargor"); and (2) [insert name of relevant Contract Party]

We, [insert name of Chargor], hereby notify you that by a Deed dated [date] (the "Deed") made by the Chargor in favour of ~~Starfin Lux S.à.r.l.~~ (the "Security Trustee"), the Chargor has assigned and charged to the Security Trustee all of the Chargor's rights, title and interest in the Loan Agreement, the proceeds of the Loan Agreement and all guarantees, indemnities, bonds, debentures, mortgages, charges or other security given in relation to the Loan Agreement from time to time in whatever form they may be including, without limitation, all monies receivable by the Chargor under, or otherwise arising out of, or evidenced by, the Loan Agreement as security for certain obligations now or hereafter owed by the Chargor to the Security Trustee.

We acknowledge that by a letter of even date we have notified you that we have assigned and charged all of our rights, title and interest in the Loan Agreement and in the proceeds of the Loan Agreement from time to time in whatever form they may be in favour of Barclays Bank PLC (the "Senior Security Agent") pursuant to a charge over partnership interest dated [date] (the "Senior Charge Over Partnership Interests").

The security granted under the Deed is second ranking to the security granted to the Senior Security Agent under the Senior Charge Over Partnership Interests. All rights in favour of the Security Trustee granted under this notice are subject to the terms of an intercreditor agreement entered into (amongst others) the Chargor, the Senior Security Agent and the Security Trustee (the "Intercreditor Agreement").

We further notify and irrevocably and unconditionally instruct and authorise you that:

1. the Chargor may not agree to amend, modify or terminate the Loan Agreement without the prior written consent of the Security Trustee;
2. the Deed provides that you may not be released from your obligations under the Loan Agreement, nor may any rights of the Chargor be waived, in any case without the prior consent of the Security Trustee being obtained;
3. subject to paragraph 1 above, the Deed provides that you may continue to deal with the Chargor in relation to the Loan Agreement until you receive written notice to the contrary from the Security Trustee. Thereafter, the Chargor will cease to have any right to deal with you in relation to the Loan Agreement and therefore from that time you should deal only with the Security Trustee;
4. notwithstanding the foregoing the Chargor shall continue to be liable for the performance and discharge of all obligations under the Loan Agreement in accordance with its terms and the Deed provides that the Security Trustee shall be under no obligation of any kind in respect of the Loan Agreement or such obligations;

Starwood European Finance
Partners Limited

(AL)

5. you are authorised to disclose information in relation to the Loan Agreement to the Security Trustee on request without any enquiry by you as to the justification for such disclosure or reference to or further authority from the Chargor;
6. you must supply copies of all notices and other information under the Loan Agreement to the Security Trustee; and
7. the provisions of this notice may only be revoked with the written consent of the Security Trustee.

Please sign and return the enclosed copy of this notice to the Security Trustee (with a copy to the Chargor) by way of confirmation that:

- A. you acknowledge that the security granted under the Deed is second ranking to the security granted to the Senior Security Agent under the Senior Charge Over Partnership Interests of the same date;
- B. save for the assignment in favour of the Senior Security Agent you have not received notice that the Chargor has assigned its rights under the Loan Agreement to a third party or created any other interest (whether by way of security or otherwise) in the Loan Agreement in favour of a third party;
- C. you agree to the terms set out in this notice and to act in accordance with its provisions; and
- D. you have not claimed or exercised, nor do you have any outstanding right to claim or exercise against the Chargor any right of set-off, counterclaim or other right relating to the Loan Agreement.

The provisions of this notice and any non-contractual obligations arising out of or in connection with it are governed by English law.

Yours faithfully

For and on behalf of
Lifecare Residences Limited

To:

Starfin Lux S.à r.l
124 boulevard de la Pétrusse
L-2330
Luxembourg



Starwood European finance
partners Limited

Copy to:

Starfin Lux S.à r.l
3 rue Mozart
L-2166
Luxembourg; and



1 Royal Plaza, Royal Avenue
St Peter Port

Copy to:

Lifecare Residences Limited

Guernsey
GY1 2HL.

We hereby acknowledge receipt of the above notice and confirm our agreement to the matters set out in paragraphs A to D above.

Signed:
For and on behalf of [***name of contract party***]

Date: [***date***]

SCHEDULE 2

Subordinated Loan Agreements

1. Loan agreement between LB UK RE Holdings Limited and the Borrower dated 28 February 2008 in respect of the principal sum of £463,500 (assigned in favour of the First Chargor);
2. Loan agreement between the First Chargor and the Borrower dated 28 February 2008 in the sum of £51,500;
3. Loan agreement between the First Chargor and the Borrower dated 31 January 2011 in respect of the principal sum of £750,000;
4. Loan agreement between the First Chargor and the Borrower dated 19 August 2011 in respect of the principal sum of £5,425,000;
5. Loan agreement between the First Chargor and the Borrower dated 10 April 2013 in respect of the principal sum of £6,171,351;
6. Loan agreement between the First Chargor and the Borrower dated 10 April 2013 in respect of the principal sum of £2,000,000;
7. Loan agreement between the First Chargor and the Borrower to be entered into on or around the date of this Deed in respect of the principal sum of £772,509;
8. Loan agreement between the First Chargor and the Borrower dated 15 May 2007 in respect of the principal sum of £1,600,000;
9. Loan agreement between BMB Battersea LLP and the Borrower dated 15 May 2007 in respect of the principal sum of £2,400,000 assigned to the First Chargor on or around the date of this Deed;
10. Loan agreement between LB UK RE Holdings Limited and the Borrower dated 15 May 2007 in respect of the principal sum of £12,000,000 assigned to the First Chargor on 16 February 2009; and
11. Mezzanine loan agreement between the First Chargor and the Borrower dated 16 February 2009 in respect of the principal sum of £5,542,060.

The Chargors

Executed as a deed
by **LIFECARE RESIDENCES LIMITED**
in the presence of:

)
)
)

Signature
Signature of witness
Name of witness
Address of witness
.....
.....
.....
Occupation of witness
.....

Executed as a deed
by **BATTERSEA PLACE RETIREMENT VILLAGE
LIMITED** in the presence of:

)
)
)

Signature
Signature of witness
Name of witness
Address of witness
.....
.....
Occupation of witness
.....

Security Trustee

Starwood European Finance
Partners Limited

Executed as a deed

by ~~STARFIN LUX S.A. R.L.~~ acting by two
managers:)

.....

Signature of ~~manager~~ director

.....

Name of ~~manager~~ director

.....

Signature of ~~manager~~ director

.....

Name of ~~manager~~ director