

Dated _____ 201[]

CUMBRIA COUNTY COUNCIL (1)

-and-

[] (2)

GRANT FUNDING AGREEMENT

[Insert name of scheme] Housing and Care Facility



CONTENTS

CLAUSE		PAGE
1	DEFINITIONS AND INTERPRETATION	3
2	PURPOSE OF GRANT	7
3	PAYMENT OF GRANT	8
4	THE RECIPIENT'S OBLIGATIONS	8
5	ACCOUNTS AND RECORDS	9
6	MONITORING AND REPORTING	10
7	ACKNOWLEDGMENT AND PUBLICITY	11
8	INTELLECTUAL PROPERTY RIGHTS	11
9	CONFIDENTIALITY	12
10	FREEDOM OF INFORMATION	12
11	DATA PROTECTION	13
12	WITHHOLDING, SUSPENDING AND REPAYMENT OF GRANT	14
13	ANTI-DISCRIMINATION	16
14	HUMAN RIGHTS	16
15	LIMITATION OF LIABILITY	16
16	WARRANTIES	17
17	INSURANCE	18
18	DURATION	19
19	TERMINATION AND FORCE MAJEURE	19
20	ASSIGNMENT	20
21	WAIVER	20
22	NOTICES	20
23	DISPUTE RESOLUTION	20
24	STATE AID	21
25	SECURITY	21
26	NO PARTNERSHIP OR AGENCY	22
27	JOINT AND SEVERAL LIABILITY	22
28	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	22
29	GOVERNING LAW	23
30	SURVIVAL OF THIS AGREEMENT	23

SCHEDULES

Schedule 1	PAYMENT SCHEDULE
Schedule 1	FORM OF LEGAL CHARGE
Schedule 1	PLAN TO BE ATTACHED

THIS AGREEMENT is dated [date] and made between:

- (1) **CUMBRIA COUNTY COUNCIL** of Cumbria House, Botchergate, Carlisle, Cumbria, CA1 1RD (“**Funder**”); and
- (2) [NAME] a UK company with a company number of [number] and with a registered business address of [address]; (“**Recipient**”).

Jointly referred to as the “**Parties**” or individually as “**Party**”

BACKGROUND

- (A) The Funder has approved a strategy to extend the availability of extra care housing and supported living accommodation within Cumbria.
- (B) The Recipient is a Registered Provider of social housing.
- (C) The Funder has agreed to pay the Grant to the Recipient to assist it in carrying out the Project.
- (D) This Agreement sets out the terms and conditions on which the Grant is made by the Funder to the Recipient.
- (E) These terms and conditions are intended to ensure that the Grant is used for the purpose for which it is awarded.
- (F) The Parties agree that the Grant is to be made in accordance with the Commission’s Decision.
- (G) In consideration for the Grant the Recipient has agreed to enter into this Agreement.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following terms shall have the following meanings:

Authorised Officer:	means, in relation to the Recipient, any of the persons notified by the Recipient from time to time as being authorised by the Recipient to sign and despatch documents relating to this Agreement;
Bribery Act:	means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;
Charge Period:	means the period from the Commencement date until twenty-five (25) years after the date of Completion;

Commencement Date:	means [date];
Commission's Decision:	means the Decision of the Commission of the European Community of 20 December 2011 (2012/21/EU);
Completed	means when the Project achieves Practical Completion, opens for business and the first resident takes occupation of a unit of accommodation within it (and Completion shall be construed accordingly);
Event of Default:	is defined in Sub-Clause 12.2 ;
Expiry Date:	means the earlier of: (a) the date on which the Project is Completed by the Recipient; or (b) the date on which this Agreement is determined (howsoever that occurs);
Governing Body:	means the governing body of the Recipient including its board of management, directors or trustees;
Grant:	means the capital sum of [number] pounds (£[•]) to be paid by the Funder to the Recipient in accordance with this Agreement;
Grant Period:	means the period for which the Grant is awarded starting on the Commencement Date and expiring on the Expiry Date;
Intellectual Property Rights:	means all patents, copyrights and design rights (whether registered or not) and all applications for any of the foregoing and all rights of confidence and Know-How however arising for their full term and any renewals and extensions;
Know-How:	means information, data, know-how or experience whether patentable or not and including but not limited to any technical and commercial information relating to research, design, development, manufacture, use or sale;
Materially Commenced:	means when material commencement of construction works on the Property being the carrying out of any material operation within the meaning of section 56(k) of the Town and Country Planning Act 1990 and completion of the foundations in respect of the Scheme but (for the avoidance of doubt) the carrying

	out of any above surface clearance works shall not be deemed to be a material operation;
Material Disposal:	means a material disposal (other than by way of legal or equitable mortgage) made within twenty-five (25) years of the Commencement Date by way of transfer of the whole or part of the Recipient's [freehold OR leasehold] interest in the Scheme or by way of a transfer, grant of a lease of the whole or part of the Scheme at a premium or the grant of an option to purchase the Recipient's leasehold interest in the Scheme;
Practical Completion:	means the date of practical completion of the Project and references to the date of practical completion are to the date on which the certificate of or written statement as to practical completion is issued in accordance with the building contract(s) entered into by the Recipient for the Project;
Programme of Works:	means the programme of works prepared by the Recipient in respect of the Project and as carried out under the building contract entered into by the Recipient for the Project;
Prohibited Act:	<p>means:</p> <p>(a) offering, giving or agreeing to give to any servant of the Funder any gift or consideration of any kind as an inducement or reward for:</p> <ul style="list-style-type: none"> • doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Funder; or • showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Funder; or <p>(b) entering into this Agreement or any other contract with the Funder where a commission has been paid or has been agreed to be paid by the Recipient or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing</p>

	<p>to the Funder; or</p> <p>(c) committing any offence:</p> <ul style="list-style-type: none"> • under the Bribery Act; or • under legislation creating offences in respect of fraudulent acts; or • at common law, in respect of fraudulent acts in relation to this Agreement or any other contract with the Funder; or • defrauding or attempting to defraud or conspiring to defraud the Funder;
Project:	means the construction and subsequent operation, use and management of the Scheme;
Project Manager:	means the person who has been nominated to represent the Funder for the purposes of this Agreement;
Property:	means [insert title number of property to be secured] the land forming part of the Recipient's land against which this Agreement may be enforced, more particularly described and shown for the purpose of identification only edged red on the Plan attached to this Agreement at Schedule 3 ;
Registered Provider:	means a registered provider as defined by the Housing and Regeneration Act 2008 (or as defined by any amendment, replacement or re-enactment of such Act) and registered under the provisions of the Housing and Regeneration Act 2008;
Repayment Amount:	is defined in Sub-Clause 12.2 ;
Scheme:	means the [extra care housing [and/or] supported living accommodation] scheme to be built on the Property comprising [Insert Number] units, which offers [low cost rental accommodation for adults over 55 years of age, adults with dementia or adults under 55 years with a care and support need] [and/or low cost rental accommodation for adults aged 18 years and over (with eligible social care needs; predominantly a learning disability, physical disability, mental health or acquired brain injury needs) which

	enables them to live as independently as possible in their own home];
Term:	means a period of twenty-five (25) years from the Commencement Date;
Working Day:	means Monday to Friday, excluding any public holidays in England and Wales.

- 1.2 The headings to Clauses are inserted for convenience only and shall not affect the interpretation or construction of this Agreement.
- 1.3 Words imparting the singular shall include the plural and vice versa. Words imparting a gender include every gender and references to persons include an individual, company, corporation, firm or partnership.
- 1.4 The words and phrases “**other**”, “**including**” and “**in particular**” shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.
- 1.5 References to any statute or statutory provision shall include (i) any subordinate legislation made under it (ii) any provision which it has modified or re-enacted (whether with or without modification) and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification).
- 1.6 All references in this Agreement to Clauses and schedules are to the Clauses and schedules to this Agreement unless otherwise stated.

2. PURPOSE OF GRANT

- 2.1 The Recipient shall use the Grant only for the capital costs of the delivery of the Project and in accordance with the terms and conditions set out in this Agreement. The Recipient shall not use the Grant for any other purpose.
- 2.2 The Recipient shall not make any material change to the Project without the Funder's prior written agreement.
- 2.3 Where the Recipient intends to apply to a third party for other funding for the Project, it will notify the Funder in advance of its intention to do so. Where such other funding is obtained, the Recipient will provide the Funder with details of the amount and purpose of that funding. The Recipient agrees and accepts that it shall not apply for duplicate funding in respect of any part of the Project or any related administration costs which the Funder is funding in full under this Agreement.

2.4 If the recipient fails to comply with this **Clause 2** this can be regarded as an Event of Default in accordance with **Sub-Clause 12.2**.

3. PAYMENT OF GRANT

3.1 Subject to **Clause 12**, the Funder shall pay the Grant to the Recipient in five (5) instalments in accordance with **Schedule 1**.

3.2 No Grant shall be paid unless and until the Funder is satisfied that such payment will be used for proper expenditure in the delivery of the Project.

3.3 The Funder will not increase the amount of the Grant in the event of any overspend by the Recipient in its delivery of the Project, or otherwise.

3.4 The Recipient shall not transfer any part of the Grant to bank accounts which are not ordinary business accounts within the UK clearing bank system, without the prior written consent of the Funder.

3.5 The Recipient shall promptly repay to the Funder any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or where Grant monies have been paid in error before all conditions attaching to this Agreement have been complied with by the Recipient.

4. THE RECIPIENTS OBLIGATIONS

ALLOCATION

4.1 The Scheme should aim to accommodate and support people with a range of care and support needs. The range of care and support needs aim to reflect a balanced community model of approximately [one third of people with low needs (0-7 hours/week); one third of people with medium needs (8-14 hours/week) and one third of people with high needs (15+ hours/week).]

4.2 For the lifetime of the Scheme the Recipient agrees that it will consider Funder nominations in respect of approximately [insert percentage %] of the tenancies ([insert number] of the [insert number] units).

Use of Grant

- 4.3 The Grant shall be used by the Recipient for the delivery of the Project.
- 4.4 The Recipient shall not use the Grant to:
- 4.4.1 make any payment to members of its Governing Body; or
 - 4.4.2 pay for any expenditure commitments of the Recipient entered into before the Commencement Date.

Unless this has been approved in writing by the Funder.

- 4.5 The Recipient shall not spend any part of the Grant on the delivery of the Project after the Grant Period.
- 4.6 Should any part of the Grant remain unspent at the end of the Grant Period, the Recipient shall ensure that any unspent monies are returned to the Funder within twenty (20) Working Days or, if agreed in writing by the Funder, shall be entitled to retain the unspent monies to use for charitable purposes as agreed between the parties.
- 4.7 Any liabilities arising at the end of the Project including any redundancy liabilities for staff employed by the Recipient to deliver the Project must be managed and paid for by the Recipient using the Grant or other resources of the Recipient. There will be no additional funding available from the Funder for this purpose.

5. ACCOUNTS AND RECORDS

- 5.1 The Grant shall be shown in the Recipient's accounts as a restricted fund and shall not be included under general funds.
- 5.2 The Recipient shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Grant monies received by it.
- 5.3 The Recipient shall keep all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of the Grant. The Funder shall have the right to review, at the Funder's reasonable request, the Recipient's accounts and records that relate to the expenditure of the Grant and shall have the right to take copies of such accounts and records.
- 5.4 The Recipient shall, if requested, provide the Funder with a copy of its annual accounts within six (6) months (or such lesser period as the Funder may reasonably require) of the end of the relevant financial year in respect of each year in which the Grant is paid.

- 5.5 The Recipient shall comply and facilitate the Funder's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Funder.
- 5.6 The provisions of this **Clause 5** shall apply from the Commencement Date until the expiry of six (6) years from the end of the Grant Period.

6. MONITORING AND REPORTING

- 6.1 The Recipient shall closely monitor the delivery and success of the Project throughout the Grant Period to ensure that this Agreement is being adhered to.
- 6.2 The Recipient shall provide the Funder with a financial report and an operational report on its use of the Grant and delivery of the Project every quarter. The financial report and operational report shall be in a format as agreed between the parties and in such other formats as the Funder may reasonably require. The Recipient shall provide the Funder with each report at least five (5) Working Days prior to the end of each quarter or, if earlier, five (5) Working Days prior to the Milestone Event as specified in **Schedule 1**.
- 6.3 Where the Recipient has obtained funding from a third Party for its delivery of part of the Project, the Recipient shall include the amount of such funding in its financial report together with details of what that funding has been used for in the operational report.
- 6.4 The Recipient shall provide the Funder with a final report on completion of the Grant Period which shall confirm whether the construction of the Project has been successfully and properly undertaken.
- 6.5 Throughout the Term of this Agreement the Recipient shall:
- 6.5.1 on request provide the Funder with such further information, explanations and documents as the Funder may reasonably require in order for it to establish that the Grant has been used properly in accordance with this Agreement and to monitor the delivery and outcomes of the Project;
 - 6.5.2 permit any person authorised by the Funder such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Recipient's fulfilment of the conditions of this Agreement and shall, if so required, provide appropriate oral or written explanations from them; and

- 6.5.3 permit any person authorised by the Funder for the purpose to visit the Recipient once every quarter to monitor the delivery of the Project. Where, in its reasonable opinion, the Funder considers that additional visits are necessary to monitor the Project, it shall be entitled to authorise any person to make such visits on its behalf.

7. ACKNOWLEDGMENT AND PUBLICITY

- 7.1 The Recipient shall acknowledge the Grant in its annual report and accounts, including an acknowledgement of the Funder as the source of the Grant.
- 7.2 The Recipient shall not publish any material referring to the Project or the Funder without the prior written agreement of the Funder.
- 7.3 The Funder and Recipient shall agree and enter into a joint communications plan in respect of the Project.
- 7.4 The Recipient shall ensure that the Funder's requirements from time to time in relation to public relations and publicity for capital projects (including site signage and branding) as notified to the Recipient from time to time are observed and implemented. The Recipient shall acknowledge the support of the Funder in any materials that refer to the Project and in any written or spoken public presentations about the Project. Such acknowledgements (where appropriate or as requested by the Funder) shall include the Funder's name and logo (or any future name or logo adopted by the Funder) using the templates provided by the Funder from time to time.
- 7.5 In using the Funder's name and logo, the Recipient shall comply with all reasonable branding guidelines issued by the Funder from time to time.
- 7.6 The Recipient agrees to participate in and co-operate with promotional activities relating to the Project that may be instigated and/or organised by the Funder.
- 7.7 The Funder may acknowledge the Recipient's involvement in the Project as appropriate without prior notice.
- 7.8 The Recipient shall comply with all reasonable requests from the Funder to facilitate visits, provide reports, statistics, photographs and case studies that will assist the Funder in its promotional and fundraising activities relating to the Project.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 The Parties agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology and any other Intellectual Property Rights whatsoever owned by either the Funder or the Recipient before the Commencement Date or developed by either Party during the Grant Period, shall remain the property of that Party.
- 8.2 Where the Funder has provided the Recipient with any of its Intellectual Property Rights for use in connection with the Project (including without limitation its name and logo), the Recipient shall, on termination of this Agreement, cease to use such Intellectual Property Rights immediately and shall either return or destroy such Intellectual Property Rights as requested by the Funder.

9. CONFIDENTIALITY

- 9.1 Subject to **Clause 10** (Freedom of Information), each Party shall during the term of this Agreement and thereafter keep secret and confidential all Intellectual Property Rights or other business, technical or commercial information disclosed to it as a result of the Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorised in writing by the other Party.
- 9.2 The obligation of confidentiality contained in this **Clause 9** shall not apply or shall cease to apply to any Intellectual Property Rights or other business, technical or commercial information which:
- 9.2.1 at the time of its disclosure by the disclosing Party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving Party;
- 9.2.2 is already known to the receiving Party as evidenced by written records at the time of its disclosure by the disclosing Party and was not otherwise acquired by the receiving Party from the disclosing Party under any obligations of confidence; or
- 9.2.3 is at any time after the date of this Agreement acquired by the receiving Party from a third Party having the right to disclose the same to the receiving Party without breach of the obligations owed by that Party to the disclosing Party.

10. FREEDOM OF INFORMATION

10.1 The Recipient acknowledges that the Funder is subject to the requirements of the Freedom of Information Act 2000 (“**FOIA**”) and the Environmental Information Regulations 2004 (“**EIRS**”) and shall assist and co-operate with the Funder (at no cost to the Funder) to enable the Funder to comply with these information disclosure requirements.

10.2 The Recipient shall:

10.2.1 transfer the request for information to the Funder as soon as practicable after receipt and in any event within two (2) Working Days of receiving a request for information;

10.2.2 provide the Funder with a copy of all information in its possession or power in the form that the Funder requires within five (5) Working Days (or such other period as the Funder may specify) of the Funder requesting that information; and

10.2.3 provide all necessary assistance as reasonably requested by the Funder to enable the Funder to respond to a request for information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIRS.

10.3 The Funder shall be responsible for determining at its absolute discretion whether the information:

10.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the EIRS;

10.3.2 is to be disclosed in response to a request for information, and in no event shall the Recipient respond directly to a request for information unless expressly authorised to do so by the Funder.

10.4 The Recipient acknowledges that the Funder may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the EIRS to disclose information without consulting with the Recipient.

10.5 The Recipient shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Funder to inspect such records as requested from time to time.

11. DATA PROTECTION

The Recipient shall (and shall procure that any of its staff involved in connection with the activities under the Agreement shall) comply with any notification requirements under the Data Protection Act 2018 (“DPA”) the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy and both Parties will duly observe all their obligations under the DPA, which arise in connection with this Agreement.

12. WITHHOLDING, SUSPENDING AND REPAYMENT OF GRANT

12.1 The Funder's intention is that the Grant will be paid to the Recipient. However, notwithstanding any other terms of this Agreement and without prejudice to the Funder's other rights and remedies, (i) the Funder shall not be obliged to make any payment or any further payment of the Grant to the Recipient and (ii) may at its discretion and after careful consideration withhold or suspend payment of the Grant and/or require repayment of all or part of the Grant or such other sum as provided and determined in accordance with **Sub-Clause 12.2** where:

- 12.1.1 the Recipient uses the Grant for purposes other than those for which they have been awarded;
- 12.1.2 the Project is not Materially Commenced within twelve (12) months of the Recipient obtaining planning permission and the Recipient has failed to provide the Funder with a reasonable explanation for the delay;
- 12.1.3 the Funder considers that the Recipient has not made satisfactory progress with the delivery of the Project;
- 12.1.4 Practical Completion of the Project has not been achieved by the date which is eighteen (18) months from the date the Project is Materially Commenced;
- 12.1.5 the Recipient is, in the reasonable opinion of the Funder, delivering the Project in a negligent manner;
- 12.1.6 the Recipient obtains duplicate funding from a third party for the Project;
- 12.1.7 the Recipient obtains funding from a third party which, in the reasonable opinion of the Funder, undertakes activities that

- are likely to bring the reputation of the Project or the Funder into disrepute;
- 12.1.8 the Recipient provides the Funder with any materially misleading or inaccurate information;
- 12.1.9 the Recipient commits or committed a Prohibited Act;
- 12.1.10 any member of the governing body, employee or volunteer of the Recipient has (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Project or (b) taken any actions which, in the reasonable opinion of the Funder, bring or are likely to bring the Funder's name or reputation into disrepute;
- 12.1.11 the Recipient ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
- 12.1.12 the Recipient becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due;
- 12.1.13 the Recipient fails to comply with any of the terms and conditions set out in this Agreement and fails to rectify any such failure within thirty (30) days of receiving written notice detailing the failure;
- 12.1.14 the Property fails to be or ceases to be used for the Scheme following the issue of the certificate of Practical Completion; or
- 12.1.15 the Recipient makes a Material Disposal without the prior written consent of the Funder.
- 12.2 Each of the above events and circumstances being an **Event of Default**. If and Event of Default occurs the Funder shall be entitled to receive the sum (the "**Repayment Amount**") calculated as follows:
- 12.2.1 the Repayment Amount shall be either the higher of the capital value of the Grant originally made or the proportion of the open market value of the Property at the date of the Event of Default that is equivalent to the proportion that the Grant bears to the open market value of the Property at the date such Grant is made;

12.2.2 the Repayment Amount calculated by reference to (i) above shall be reduced by four percent (4%) per annum for every year

that the Scheme was provided by the Recipient with the intention that after twenty five (25) years, no repayment will be due; or

12.2.3 in the event the Event of Default occurs before the Completion of the Project the Repayment Amount shall be either the higher of the capital value of the Grant originally made or the proportion

of the open market value of the Property at the date of the Event

of Default that is equivalent to the proportion that the Grant bears to the open market value of the Property at the date such

Grant is made.

12.3 Wherever under this Agreement any sum of money is recoverable from or payable by the Recipient (including any sum that the Recipient is liable to pay to the Funder in respect of any breach of the Agreement), the Funder may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Recipient under the Agreement or under any other agreement or contract with the Funder.

12.4 The Recipient shall make any payments due to the Funder without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise within thirty (30) days of demand.

12.5 Should the Recipient be subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the Project or compliance with this Agreement it will notify the Funder as soon as possible so that, if possible, and without creating any legal obligation, the Funder will have an opportunity to provide assistance in resolving the problem or to take action to protect the Funder and the Grant monies.

13. ANTI-DISCRIMINATION

13.1 The Recipient shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment.

13.2 The Recipient shall take all reasonable steps to secure the observance of this **Clause 13** by all servants, employees or agents of the Recipient and all suppliers and sub-contractors engaged on the Project.

14. HUMAN RIGHTS

14.1 The Recipient shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement as if the Recipient were a public body (as defined in the Human Rights Act 1998).

14.2 The Recipient shall undertake, or refrain from undertaking, such acts as the Funder requests so as to enable the Funder to comply with its obligations under the Human Rights Act 1998.

15. LIMITATION OF LIABILITY

15.1 The Funder accepts no liability for any consequences, whether direct or indirect, that may come about from the Recipient running the Project, the use of the Grant or from withdrawal of the Grant.

15.2 The Recipient shall indemnify and hold harmless the Funder, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Recipient in relation to the Project, the non-fulfilment of obligations of the Recipient under this Agreement or its obligations to third parties.

15.3 Subject to this **Clause 15**, the Funder's liability under this Agreement is limited to the payment of the Grant.

16. WARRANTIES

16.1 As at, (i) the date of this Agreement, (ii) on the date of submission of each claim for payment in accordance with **Schedule 1** and (iii) on the date of delivery of each report submitted pursuant to **Clause 6**, the Recipient warrants, undertakes and agrees that:

16.1.1 it is duly incorporated or (where appropriate) otherwise validly exists under the law of England and Wales and has the power to own its assets and to carry on the business and activities which it conducts or proposes to conduct (including but not

- limited to the business and activities envisaged under this Agreement);
- 16.1.2 it has all necessary power, resources and expertise to deliver the Project (assuming due receipt of the Grant) and to enter into the Project Documents;
- 16.1.3 it has not committed, nor shall it commit, any Prohibited Act;
- 16.1.4 it shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and shall notify the Funder immediately of any significant departure from such legislation, codes or recommendations;
- 16.1.5 it shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Project;
- 16.1.6 it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
- 16.1.7 it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
- 16.1.8 all financial and other information concerning the Recipient which has been disclosed to the Funder is to the best of its knowledge and belief, true and accurate;
- 16.1.9 It is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with the Grant;
- 16.1.10 so far as it is aware, it is not in breach of or in default under any agreement to which it is a party or which is binding on it or any of its assets which has or could have a materially adverse effect on its ability to perform any of its obligations under this Agreement;
- 16.1.11 it is not aware of anything in its own affairs, which it has not disclosed to the Funder or any of the Funder's advisers, which might reasonably have influenced the decision of the Funder to make the Grant on the terms contained in this Agreement;

- 16.1.12 since the date of its last accounts there has been no material change in its financial position or prospects;
- 16.1.13 no person having any security over the Property or any other assets of the Recipient has enforced or given notice of its intention to enforce such security;
- 16.1.14 it is not aware, after due enquiry, of anything which materially adversely affects the successful completion of the Scheme or the carrying out and performance of the Project;
- 16.1.15 all consents, required by it in connection with the execution, delivery, issue, validity, performance or enforceability of this Agreement have been obtained and have not been withdrawn;
- 16.1.16 it is not aware of any reason why payment of the Grant would infringe rules relating to state aid;
- 16.1.17 [Its status as a Registered Provider has not been removed or withdrawn]; and
- 16.1.18 It continues to operate.

17. INSURANCE

- 17.1 The Recipient shall effect and maintain with a reputable insurance company a policy or policies in respect of all risks which may be incurred by the Recipient, arising out of the Recipient's performance of this Agreement, including death or personal injury, loss of or damage to property or any other loss (the **Required Insurances**).
- 17.2 The Required Insurances referred to above include (but are not limited to):
 - 17.2.1 public liability insurance with a limit of indemnity of not less than £10 million in relation to any one claim or series of claims arising from the Project;
 - 17.2.2 employer's liability insurance with a limit of indemnity of not less than £10 million in relation to any one claim or series of claims arising from the Project; and
 - 17.2.3 professional indemnity insurance with a limit of not less than £2 million in relation to any one claim or series of claims arising from the Project.

The Recipient shall (on request) supply to the Funder a copy of such insurance policies and evidence that the relevant premiums have been paid.

18. DURATION

18.1 Except where otherwise specified, the terms of this Agreement shall apply from the date of this Agreement and shall continue until the later of:

18.1.1 expiry of the Term;

18.1.2 so long as the Grant monies remain unspent by the Recipient;

18.1.3 so long as any payments from the Recipient in accordance with **Clause 12** remain outstanding; and

18.1.4 so long as any other terms of this Agreement remain unperformed.

19. TERMINATION AND FORCE MAJEURE

19.1 The Funder may terminate this Agreement and any obligation to make future Grant payments thereafter on giving the Recipient three (3) months written notice should it be required to do so by financial restraints.

19.2 If either Party is delayed in carrying any of its obligations under this Agreement due to a circumstance beyond its reasonable control then it shall notify the other Party of the circumstance causing the delay and the period within which to carry out that obligation will be extended by a reasonable period.

20. ASSIGNMENT

The Recipient may not, without the prior written consent of the Funder, assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of this Agreement or, except as contemplated as part of the Project, transfer or pay to any other person any part of the Grant.

21. WAIVER

No failure or delay by either Party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.

22. NOTICES

- 22.1 All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, e-mailed, or mailed (first class postage prepaid) or otherwise notified in writing to the persons at **Sub-Clause 22.2** at the address in this Agreement. If personally delivered or if e-mailed all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any Working Day they shall be deemed received on the next Working Day) and if mailed all such communications shall be deemed to have been given and received on the second Working Day following such mailing.
- 22.2 (a) Notices for the Funder shall be addressed for the attention of [Name] [Title] [Email]
- (b) Notices for the Recipient shall be addressed for the attention of [Name] [Title] [Email]

23. DISPUTE RESOLUTION

- 23.1 In the event of any complaint or dispute (which does not relate to the Funder's right to withhold funds or terminate) arising between the Parties to this Agreement in relation to this Agreement the matter should first be referred for resolution to the Project Manager or any other individual nominated by the Funder from time to time.
- 23.2 Should the complaint or dispute remain unresolved within fourteen (14) days of the matter first being referred under **Sub-Clause 23.1**, either Party may refer the matter to the Director for Health and Community Services of the Funder and the Chief Executive of the Recipient with an instruction to attempt to resolve the dispute by agreement within twenty eight (28) days, or such other period as may be mutually agreed by the Parties.
- 23.3 In the absence of agreement under **Sub-Clause 23.1**, the Parties may seek to resolve the matter through mediation under the CEDR Model Mediation Procedure (or such other appropriate dispute resolution model as is agreed by both Parties). Unless otherwise agreed, the Parties shall bear the costs and expenses of the mediation equally.

24. STATE AID

- 24.1 It is agreed and acknowledged by the Parties that the Funder shall not be required to give funding or resources to the Recipient in such a way as

would
confer unlawful state aid.

24.2 The Parties agree that the Grant is being made in accordance with the Commission's Decision.

24.3 Notwithstanding **Sub-Clause 24.2** the Funder shall incur no liability to the Recipient if the Grant is not made in accordance with the Commission's Decision. If the Funder is required pursuant to the Commission's Decision in relation to public sector compensation granted to certain undertakings entrusted with the operation of services of general economic interest:

24.3.1 to recover any amount of overcompensation (as described in the
Commission's Decision); or

24.3.2 under other legislation to recover any amount of the Grant.

The Recipient shall repay and the Funder will be entitled to recover any such amount from the Recipient.

25. **SECURITY**

25.1 The Recipient shall register within twenty one (21) days of the date of this Agreement the following restriction against its [freehold OR leasehold] interest in the Property and shall provide the Funder with evidence that the application has been made followed by a copy of the completed registration, being:

25.1.1 ***“No disposition of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed on behalf of Cumbria County Council of Cumbria House, Botchergate, Carlisle CA1 1RZ or by its Senior Manager Legal and Democratic Services.”***

25.2 The Recipient shall if requested grant at its own expense to the Council a legal charge over the Property substantially in the form set out in **Schedule 2** and such which charge shall be a first charge on the title to the Property.

25.3 The Recipient shall execute such further documents and provide such assistance as the Funder may reasonably require in order to effect the registration of the legal charge referred to in **Sub-Clause 25.1** and the Recipient shall make the necessary registrations at Companies House

and/or
the Land Registry and supply the Funder with evidence of such registrations.

25.4 If the Recipient is a charity and it gives a legal charge in accordance with **Sub-Clause 25.1** it shall comply with the provisions of sections 124, 125 and 126 of the Charities Act 2011.

25.5 The Recipient shall provide a solicitor's certificate of title confirming good and marketable title in respect of the Property and the Scheme in such form as the Funder may require.

25.6 Following the Charge Period subject to:

25.6.1 the Grant or any part of it not having become repayable to the Funder in accordance with **Clause 12**; or

25.7.2 the Grant or any part of it which has become repayable to the Funder in accordance with **Clause 12** having been repaid

The Funder will agree to the discharge of the legal charge required under this **Clause 25**.

26. NO PARTNERSHIP OR AGENCY

This Agreement shall not create any partnership or joint venture between the Parties, nor any relationship of principal and agent, nor authorise either Party to make or enter into any commitments for or on behalf of the other Party.

27. JOINT AND SEVERAL LIABILITY

Where the Recipient is neither a company nor an incorporated entity with a distinct legal personality of its own, the individuals who enter into and sign this Agreement on behalf of the Recipient shall be jointly and severally liable for the Recipient's obligations and liabilities arising under this Agreement.

28. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

This Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

29. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

30. SURVIVAL OF THIS AGREEMENT

30.1 Insofar as any of the rights and powers of the Funder provided for in this Agreement shall or may be exercised or exercisable after the termination or expiry of this Agreement the provisions of this Agreement conferring such rights and powers shall survive and remain in full force and effect notwithstanding such termination or expiry.

30.2 Insofar as any of the obligations of the Recipient provided for in this Agreement remain to be discharged after the termination or expiry of this Agreement the provisions of this Agreement shall survive and remain in full force and effect notwithstanding such termination or expiry.

30.3 Without limitation the provisions of **Clauses 1** (Definitions and Interpretation), **4** (Recipient's Obligations), **5** (Accounts and Records), **6** (Monitoring and Reporting), **7** (Acknowledgement and Publicity), **8** (Intellectual Property Rights), **9** (Confidentiality), **10** (Freedom of Information), **11** (Data Protection), **12** (Withholding, Suspending and Repayment of Grant), **15** (Limitation of Liability), **16** (Warranties), **24** (State Aid), **25** (Security), **27** (Joint and Several Liability), **28** (Contracts (Rights of Third Parties) Act 1999), **29** (Governing Law) and this **Clause 30** and such other provisions of this Agreement as are necessary to give effect to such Clauses are expressly agreed to survive the termination or expiry of this Agreement.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Sealed by **CUMBRIA COUNTY COUNCIL**)
by affixing the Council seal) Authorised signatory
)
)
) Name

Signed by **[Recipient]** acting by a director)
in the presence of:) Director
)
)
) Name

.....
Witness

.....
Name

SCHEDULE 1
Payment Schedule

Amount of Grant Payable	Milestone Event
10%	Scheme Commencement
15%	Roof Plate Level
25%	Weather Tight
45%	Practical Completion
5%	Completion

1. PRE-CONDITIONS TO DRAWDOWN OF FUNDING

1.1 The Recipient will not make any claim and the Funder will not be liable to make available any Grant unless:

1.1.1 the Recipient has (and continues to have) sufficient funding (whether from its own resources or otherwise) to complete the Project by the date specified in its Programme of Works;

1.1.2 the Funder is satisfied that no Event of Default is continuing or would result from the provision of any proposed Funding;

1.1.3 the Funder has received all of the documents and evidence listed in **Clause 2** of this schedule and that each is, in form and substance, satisfactory to it; and

1.1.4 the Works are being carried out in accordance with the Programme of Works.

2. PRE-CONDITION DOCUMENTS

2.1 The documents referred to in **Sub-Clause 1.1.3** of this schedule comprise certified copies (unless otherwise stated) of the following:

2.1.1 the building contract(s) for carrying out the Project;

2.1.2 letters of appointment for each member of the professional team appointed in connection with the design and/or management of the Project;

2.1.3 any collateral warranties provided in respect of the Project;

2.1.4 the statutory approvals, consents, licences or permissions required to enable the Recipient to lawfully carry out and complete the Project;

- 2.1.5 the Programme of Works;
- 2.1.6 the detailed design plans in respect of the Project;
- 2.1.7 details of the costings, plans, drawings, site surveys and engineering reports relating to the Project; and
- 2.1.8 a copy of any other authorisation or other document, opinion or assurance which the Funder reasonably considers to be necessary in connection with the entry into and performance of,
and the transactions contemplated by the Project Documents (as defined herein) or for the validity and enforceability of any relevant Project Document.

For the avoidance of doubt the Funder may waive in writing at its absolute discretion the requirement by the Recipient to provide any or all of the documentation listed in this **Clause 2** but without prejudice to its right at any time to call for the provision of any such document whose provision had been previously waived by the Funder.

3. PAYMENT

Contents of a claim request

- 3.1 Each claim request for Grant shall be irrevocable and will not be deemed to have been duly completed unless:
 - 3.1.1 the request specifies the proposed payment date and the proposed payment date is a Working Day falling within the Grant Period;
 - 3.1.2 the request specifies:
 - (a) the purpose of the claim; and
 - (b) the payment instructions, which shall be to a bank account of the Recipient within the UK;
 - 3.1.3 the request is signed by an Authorised Officer of the Recipient and only one (1) payment is requested in such request; and
 - 3.1.4 the request:
 - (a) is signed by an Authorised Officer of the Recipient confirming that the relevant Works are being carried out in accordance with the Programme of Works;
 - (b) accompanied by a certificate or certificates signed by a professional on behalf of the Recipient confirming that work or services to the value of the amount of the proposed request have been properly carried out or provided in respect of the Project; and

- (c) confirms that the amount requested under the request plus the aggregate of (i) all other requests outstanding and (ii) amounts requested under all other outstanding requests issued does not exceed the amount of Grant, together with a monthly statement of actual costs and remaining budget.

Payment

- 3.2 Subject to compliance with the terms of this Agreement, the Funder shall make the requested claim for payment of Grant to the Recipient in accordance with the relevant request within twenty eight (28) Working Days of receipt of a valid claim request or in such other manner as the Parties shall agree from time to time.

SCHEDULE 2
Form of Legal Charge

DATED

20[]

**LEGAL MORTGAGE OVER PROPERTY FROM A RECIPIENT SECURING
SPECIFIC MONIES (OWN LIABILITIES)**

BETWEEN

[RECIPIENT]

-AND-

CUMBRIA COUNTY COUNCIL

CONTENTS

CLAUSE

1	DEFINITIONS AND INTERPRETATION
2	SECURED LIABILITIES
3	GRANT OF SECURITY
4	LAW OF PROPERTY ACT 1989
5	PERPITUITY PERIOD
6	SCHEDULES
7	COVENANT TO PAY
8	GRANT OF SECURITY
9	PERFECTION OF SECURITY
10	LIABILITY OF THE RECIPIENT
11	GENERAL COVENANTS
12	PROPERTY COVENANTS
13	POWERS OF THE FUNDER
14	WHEN SECURITY BECOMES ENFORCEABLE
15	ENFORCEMENT OF SECURITY
16	RECIEVERS
17	POWER OF RECIEVERS
18	DELEGATION
19	APPLICATION OF PROCEEDS
20	COSTS AND INDEMNITY
21	FURTHER ASSURANCE
22	POWER OF ATTORNEY
23	RELEASE
24	ASSIGNMENT AND TRANSFER
25	SET OFF
26	AMENDMENTS, WAIVERS AND CONSENTS
27	SEVERANCE
28	COUNTERPARTS
29	THIRD PARTY RIGHTS
30	FURTHER PROVISIONS
31	NOTICES
32	GOVERNING LAW AND JURISDICTION

THIS DEED is dated

20[]

PARTIES:

- (1) [RECIPIENT] [details]; (“Recipient”); and
- (2) CUMBRIA COUNTY COUNCIL of Cumbria House, 117 Botchergate, Carlisle, Cumbria, CA1 1RD (“Funder”).

BACKGROUND

- (A) The Funder has agreed, under the Funding Agreement, to provide the Recipient with the Grant on a secured basis.
- (B) The Recipient owns the Property.
- (C) This deed provides security which the Recipient has agreed to give the Funder for the Grant.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

Definitions

1.1 The following definitions apply in this deed:

Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
Certificate of Title	any report on or certificate of title relating to the Property supplied to the Funder by the Recipient (or on its behalf).
Charged Property	all the assets, property and undertaking for the time being subject to any Security created by this deed (and references to the Charged Property shall include references to any part of it).
Crown	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf.
Delegate	any person appointed by the Funder or by any Receiver under Clause 14 and any person appointed as attorney

	of the Funder, Receiver or Delegate.
Environment	the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.
Environmental Law	all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes in so far as they relate to or apply to the Environment
Environmental Licence	any authorisation, permit or licence necessary under Environmental Law in respect of any of the Charged Property.
Event of Default	has the same meaning as in the Funding Agreement.
Funding Agreement	the funding agreement dated [DATE] between the Recipient and the Funder.
Grant	the sums provided by the Funder to the Recipient in accordance with the Funding Agreement.
Insurance Policy	each contract or policy of insurance effected or maintained by the Recipient from time to time in respect of the Property.
LPA 1925	the Law of Property Act 1925.
Property	means the land forming part of the Recipient's land against which this deed may be enforced (part of Title CU261661) shown for the purpose of identification only edged red on the Plan attached to this deed as Error! Reference source not found.
Receiver	a receiver or a receiver and manager of any or all of the Charged Property appointed pursuant to the terms of this deed.
Secured Liabilities	all present and future monies, obligations and liabilities of the Recipient to the Funder, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with the Funding Agreement or this deed.

Security	any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.
Security Period	the period starting on the date of this deed and ending on the date on which the Funder is satisfied that there is no further liability to the Funder on the part of the Recipient pursuant to the terms of the Funding Agreement.
Valuation	any valuation relating to the Property supplied to the Funder by the Recipient (or on its behalf).
VAT	value added tax.

Interpretation

1.2 In this deed:

- (b) Clause and Schedule headings shall not affect the interpretation of this deed;
- (c) a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person's personal representatives, successors, permitted assigns and permitted transferees;
- (d) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (e) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- (f) a reference to a party shall include that party's successors, permitted assigns and permitted transferees;
- (g) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (h) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- (i) a reference to **writing** or **written** does not include fax or e-mail;
- (j) an obligation on a party not to do something includes an obligation not to allow that thing to be done;

- (k) a reference to **this deed** (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;
- (l) unless the context otherwise requires, a reference to a Clause or Schedule is to a Clause of, or Schedule to, this deed and a reference to a paragraph is to a paragraph of the relevant Schedule;
- (m) any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (n) a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amended** shall be construed accordingly);
- (o) a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (p) a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- (q) a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- (r) a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- (s) a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

2. **SECURED LIABILITIES**

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

3. **GRANT OF SECURITY**

3.1 A reference in this deed to a **charge or mortgage of or over the Property** includes:

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

4. LAW OF PROPERTY (MISCELLANEOUS PROVISIONS) ACT 1989

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Funding Agreement and of any side letters between any parties in relation to the same are incorporated into this deed. In the event of conflict between this deed and the Funding Agreement, this deed shall take priority followed by the Funding Agreement.

5. PERPETUITY PERIOD

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

6. SCHEDULES

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

7. COVENANT TO PAY

The Recipient shall, on demand, pay to the Funder and discharge the Secured Liabilities or any part of the Secured Liabilities demanded by the Funder.

8. GRANT OF SECURITY

Legal mortgage and fixed charges

8.1 As a continuing security for the payment and discharge of the Secured Liabilities, the Recipient with full title guarantee charges to the Funder:

- (i) by way of first legal mortgage on the Property; and
- (ii) by way of first fixed charge:

9. PERFECTION OF SECURITY

Registration of legal mortgage at the Land Registry

9.1 The Recipient consents to an application being made by the Funder to the Land Registrar for the following restriction in Form P to be registered against its title to the Property:

"No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the charge dated [whatever date] in favour of Cumbria County Council referred to in the charges register or their conveyancer."

Cautions against first registration and notices

9.2 Whether or not title to the Property is registered at the Land Registry, if any caution against first registration or any notice (whether agreed or unilateral) is registered against the Recipient's title to the Property, the Recipient shall immediately provide the Funder with full particulars of the circumstances relating to any such caution or notice. If such caution or notice was registered to protect a purported interest the creation of which is not permitted under this deed, the Recipient shall immediately, and at its own expense, take such steps as the Funder may require to ensure that the caution or notice, as applicable, is withdrawn or cancelled.

10. LIABILITY OF THE RECIPIENT

Liability not discharged

10.1 The Recipient's liability under this deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

- (i) any security, guarantee, indemnity, remedy or other right held by, or available to, the Funder that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;

- (ii) the Funder renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
- (iii) any other act or omission that, but for this **Sub-Clause 10.1**, might have discharged, or otherwise prejudiced or affected, the liability of the Recipient.

Immediate Recourse

- 10.2 The Recipient waives any right it may have to require the Funder to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this deed against the Recipient.

Times for making representations and warranties

- 10.3 The Recipient makes the representations and warranties set out in this **Clause 10** to the Funder on the date of this deed.

Ownership of Charged Property

- 10.4 The Recipient is the legal and beneficial owner of the Charged Property and has good and marketable title to the Property.

No Security

- 10.5 The Recipient warrants that the Charged Property is free from any Security other than the Security created by this deed.

No adverse claims

- 10.6 The Recipient warrant that it has not received, or acknowledged notice of, any adverse claim by any person in respect of the Charged Property or any interest in it.

No adverse covenants

- 10.7 The Recipient warrants that there are no covenants, agreements, reservations, conditions, interests, rights or other matters whatever that materially and adversely affect the Charged Property.

No breach of laws

- 10.8 The Recipient warrants that there is no breach of any law or regulation that materially and adversely affects the Charged Property.

No interference in enjoyment

- 10.9 The Recipient warrants that there is no facility necessary for the enjoyment and use of the Charged Property and it is not subject to any terms entitling any person to terminate or curtail its use.

No overriding interests

- 10.10 The Recipient warrants that nothing has arisen, has been created or is subsisting that would be an overriding interest in the Property.

Environmental compliance

- 10.11 The Recipient warrants that it has, at all times complied in all material respects with all applicable Environmental Law and Environmental Licences.

Information for Valuations and Certificates of Title

- 10.12 The Recipient warrants that all written information supplied by the Recipient or on its behalf for the purpose of each Valuation and Certificate of Title was true and accurate in all material respects at its date or at the date (if any) on which it was stated to be given.
- 10.13 The Recipient warrants that the information referred to in **Sub-Clause 10.12** was, at its date or at the date (if any) on which it was stated to be given, complete and the Recipient did not omit to supply any information that, if disclosed, would adversely affect the Valuation or Certificate of Title.
- 10.14 The Recipient warrants that in the case of the first Valuation and Certificate of Title only, nothing has occurred since the date the information referred to in **Sub-Clause 10.12** was supplied and the date of this deed which would adversely affect such Valuation or Certificate of Title.

Avoidance of security

- 10.15 The Recipient accepts that no Security expressed to be created under this deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Recipient or otherwise.

Enforceable security

- 10.16 The Recipient accepts that this deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Recipient and is and will

continue to be effective security over every part of the Charged Property in accordance with its terms.

11. GENERAL COVENANTS

Negative pledge and disposal restrictions

11.1 The Recipient shall not at any time, except with the prior written consent of the Funder:

- (i) create, purport to create or permit to subsist any Security on, or in relation to, any Charged Property other than any Security created by this deed;
- (ii) sell, assign, transfer, part with possession of or otherwise dispose of in any manner (or purport to do so) all or any part of, or any interest in, the Charged Property; or
- (iii) create or grant (or purport to create or grant) any interest in the Charged Property in favour of a third party.

Save that the Recipient shall be entitled to grant assured shorthold and non-shorthold tenancies (as defined by the Housing Act 1988) of all or parts of the Property without requiring the prior written consent of the Funder.

Preservation of Charged Property

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

Compliance with laws and regulations

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

11.4 The Recipient shall:

- (i) comply with the requirements of any law or regulation relating to or affecting the Charged Property or the use of it or any part of it;
- (ii) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Charged Property or its use or that are necessary to preserve, maintain or renew any Charged Property; and
- (iii) promptly effect any maintenance, modifications, alterations or repairs to be effected on or in connection with the Charged Property that are required to be made by it under any law or regulation.

Enforcement of rights

- 11.5 The Recipient shall use reasonable endeavours to:
- (i) procure the prompt observance and performance by the relevant counterparty to any agreement or arrangement with the Recipient and forming part of the Charged Property of the covenants and other obligations imposed on such counterparty; and
 - (ii) enforce any rights and institute, continue or defend any proceedings relating to any of the Charged Property that the Funder (acting reasonably) may require from time to time.

Notice of misrepresentations and breaches

- 11.6 The Recipient shall, promptly on becoming aware of any of the same, give the Funder notice in writing of:
- (i) any representation or warranty set out in this deed that is incorrect or misleading in any material respect when made or deemed to be repeated; and
 - (ii) any breach of any covenant set out in this deed.

Notices to be given by the Recipient

- 11.7 The Recipient shall within five (5) days of the execution of this deed give notice to the relevant insurers of the second fixed charge over the Recipient's rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy under **Sub-Clause 12.5** and procure that each addressee of such notice promptly provides an acknowledgement of that notice to the Funder.

Recipient's waiver of set-off

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

12. PROPERTY COVENANTS

Repair and maintenance

- 12.1 The Recipient shall keep all premises, and fixtures and fittings on the Property, in good and substantial repair and condition and shall keep all premises adequately and properly painted and decorated and replace any

fixtures and fittings which have become worn out or otherwise unfit for use with others of a like nature and equal value.

No alterations

- 12.2 The Recipient shall not, without the prior written consent of the Funder:
- (i) pull down or remove the whole or any part of any building forming part of the Property nor permit the same to occur; or
 - (ii) make or permit to be made any material alterations to the Property or sever or remove or permit to be severed or removed any of its fixtures or fittings (except to make any necessary repairs or renew or replace the same in accordance with **Sub-Clause 12.1**).

Save that the Recipient may continue the re-development of the Property in accordance with the terms of the Funding Agreement.

- 12.3 The Recipient shall promptly give notice to the Funder if the Property is destroyed or materially damaged.

Development restrictions

- 12.4 The Recipient shall not, without the prior written consent of the Funder:
- (i) make or, in so far as it is able, permit others to make any application for
planning permission or development consent in respect of the
Property;
or
 - (ii) carry out or permit or suffer to be carried out on the Property any development (as defined in each of the Town and Country Planning Act 1990 and the Planning Act 2008) or change or permit or suffer to be changed the use of the Property.

Save that the Recipient may take such actions where they are in accordance with the terms of the Funding Agreement.

Insurance

- 12.5 The Recipient shall insure and keep insured the Charged Property against:
- (i) loss or damage by fire;
 - (ii) other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Recipient; and
 - (iii) any other risk, perils and contingencies as the Funder may reasonably require.

- 12.6 Any such insurance must be with an insurance company or underwriters and on such terms as are reasonably acceptable to the Funder and must be for not less than the replacement value of the relevant Charged Property (meaning in the case of any premises on the Property, the total cost of entirely rebuilding, reinstating or replacing the premises in the event of their being destroyed, together with architects', surveyors', engineers' and other professional fees and charges for demolition and reinstatement).
- 12.7 The Recipient shall, on reasonable request, produce to the Funder each policy, certificate or cover note relating to any insurance required by **Sub-Clause 12.9**.
- 12.8 The Recipient shall, if requested by the Funder, request that a note of the Funder's interest is endorsed upon each Insurance Policy required by **Sub-Clause 12.9**.

Insurance premiums

- 12.9 The Recipient shall:
- (i) promptly pay all premiums in respect of each Insurance Policy and do all other things necessary to keep that policy in full force and effect;
- and
- (ii) (if the Funder so requires) give to the Funder copies of the receipts for all premiums and other payments necessary for effecting and keeping up each Insurance Policy.

No invalidation of insurance

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

Proceeds from Insurance Policies

- 12.11 All monies payable under any Insurance Policy at any time (whether or not the security constituted by this deed has become enforceable) shall be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or, after the security constituted by this deed has become enforceable and, if the Funder so directs, in, or towards, discharge or reduction of the Secured Liabilities.

Leases and licences affecting the Property

- 12.12 The Recipient shall not, save as permitted by **Sub-Clause 11.1**, without the prior written consent of the Funder:

- (i) grant any licence or tenancy affecting the whole or any part of the Property, or exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925 (or agree to grant any such licence or tenancy, or agree to exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925);
- (ii) in any other way dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property (or agree to dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property);
- (iii) let any person into occupation of or share occupation of the whole or any part of the Property; or
- (iv) grant any consent or licence under any lease or licence affecting the Property.

No restrictive obligations

12.13 The Recipient shall not, save as set out at **Sub-Clause 11.1**, and without the prior written consent of the Funder, enter into any onerous or restrictive obligations affecting the whole or any part of the Property or create or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of the Property.

Proprietary rights

12.14 The Recipient shall procure that no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of the Property, without the prior written consent of the Funder, save as set out at **Sub-Clause 8.1**, or as permitted pursuant to **Sub-Clause 12.8**.

Compliance with and enforcement of covenants

12.15 The Recipient shall:

- (i) observe and perform all covenants, stipulations and conditions to which the Property, or the use of it, is or may be subject and (if the Funder so requires) produce to the Funder evidence sufficient to satisfy the Funder that those covenants, stipulations and conditions have been observed and performed; and
- (ii) diligently enforce all covenants, stipulations and conditions benefiting the Property and shall not (and shall not agree to) waive, release or vary any of the same.

Notices or claims relating to the Property

12.16 The Recipient shall:

- (i) give full particulars to the Funder of any claim, notice or other communication served on it in respect of any modification, suspension or revocation of any Environmental Licence or any alleged breach of any Environmental Law, in each case relating to the Property;
- (ii) give full particulars to the Funder of any notice, order, direction, designation, resolution, application, requirement or proposal given or made by any public or local body or authority (a **Notice**) that specifically applies to the Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Notice; and
- (ii) (if the Funder so requires) as soon as reasonably possible, and at the cost of the Recipient, take all reasonable and necessary steps to comply with any Notice, and make, or join with the Funder in making, any objections or representations in respect of that Notice that the Funder thinks fit.

Payment of outgoings

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

Environment

12.18 The Recipient shall in respect of the Property:

- (i) comply with all the requirements of Environmental Law; and
- (ii) obtain and comply with all Environmental Licences.

Conduct of business on Property

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

Inspection

12.20 The Recipient shall permit the Funder and any Receiver and any person appointed by either of them to enter on and inspect the Property on

reasonable
prior notice.

VAT option to tax

- 12.21 The Recipient shall not, without the prior written consent of the Funder:
- (i) exercise any VAT option to tax in relation to the Property; or
 - (ii) revoke any VAT option to tax exercised, and disclosed to the Funder
- in
writing, before the date of this deed.

13. POWERS OF THE FUNDER

Power to remedy

- 13.1 The Funder shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Recipient of any of its obligations contained in this deed.
- 13.2 The Recipient irrevocably authorises the Funder and its agents to do all things that are necessary or desirable for that purpose.
- 13.3 Any monies expended by the Funder in remedying a breach by the Recipient of its obligations contained in this deed shall be reimbursed by the Recipient to the Funder on a full indemnity basis.
- 13.4 In remedying any breach in accordance with **Sub-Clause 13.1**, the Funder, its agents and their respective officers, agents and employees shall be entitled to enter onto the Property and to take any action as the Funder may reasonably consider necessary or desirable including, without limitation, carrying out any repairs, other works or development.

Exercise of rights

- 13.5 The rights of the Funder under **Sub-Clause 0** are without prejudice to any other rights of the Funder under this deed. The exercise of any rights of the Funder under this deed shall not make the Funder liable to account as a mortgagee in possession.

Funder has Receiver's powers

- 13.6 To the extent permitted by law, any right, power or discretion conferred by this deed on a Receiver may, after the security constituted by this deed has become enforceable, be exercised by the Funder in relation to any of the Charged Property whether or not it has taken possession of any Charged Property and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

Indulgence

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

14. WHEN SECURITY BECOMES ENFORCEABLE

Security becomes enforceable on Event of Default

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

Discretion

- 14.2 After the security constituted by this deed has become enforceable, the Funder may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Charged Property.

15. ENFORCEMENT OF SECURITY

Enforcement powers

- 15.1 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall, as between the Funder and a purchaser from the Funder, arise on and be exercisable at any time after the execution of this deed, but the Funder shall not exercise such power of sale or other powers until the security constituted by this deed has become enforceable under **Sub-Clause 0**.
- 15.2 Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

Extension of statutory powers of leasing

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

- (i) grant a lease or agreement for lease;
- (ii) accept surrenders of leases; or
- (iii) grant any option in respect of the whole or any part of the Property with
whatever rights relating to other parts of it,

Whether or not at a premium and containing such covenants on the part of the Recipient and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) as the Funder or Receiver (in either case acting reasonably) thinks fit, without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

Prior Security

15.4 At any time after the security constituted by this deed has become enforceable,

or after any powers conferred by any Security having priority to this deed shall have become exercisable, the Funder may:

- (i) redeem that or any other prior Security;
- (ii) procure the transfer of that Security to itself; and
- (iii) settle any account of the holder of any prior Security.

15.5 The settlement of any such account under **Sub-Clause 15.4** shall be, in the absence of any manifest error, conclusive and binding on the Recipient. All monies paid by the Funder to an encumbrancer in settlement of such an account shall be, as from its payment by the Funder, due from the Recipient to the Funder on current account and shall bear interest at the default rate of interest specified in the Funding Agreement and be secured as part of the Secured Liabilities.

Protection of third parties

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

- (i) whether any of the Secured Liabilities have become due or payable, or
remain unpaid or undischarged;
- (ii) whether any power the Funder, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable; or

- (iii) how any money paid to the Funder, any Receiver or any Delegate is to be applied.

Privileges

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

No liability as mortgagee in possession

- 15.8 Neither the Funder, any Receiver nor any Delegate shall be liable to account as mortgagee in possession in respect of all or any of the Charged Property, nor shall any of them be liable for any loss on realisation of, or for any neglect or default of any nature in connection with, all or any of the Charged Property for which a mortgagee in possession might be liable as such.

Relinquishing possession

- 15.9 If the Funder, any Receiver or Delegate enters into or takes possession of the Charged Property, it or he may at any time relinquish possession.

Conclusive discharge to purchasers

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

16. RECEIVERS

Appointment

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

Removal

- 16.2 The Funder may, without further notice (subject to section 45 of the Insolvency Act 1986), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit,

appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

Remuneration

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

Power of appointment additional to statutory powers

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

Power of appointment exercisable despite prior appointments

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

Agent of the Recipient

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

17. POWERS OF RECEIVER

Powers additional to statutory powers

- 17.1 Any Receiver appointed by the Funder under this deed shall, in addition to the powers conferred on him by statute, have the powers set out in **Sub-Clause 17.2 to Sub-Clause 17.20**.
- 17.2 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.

- 17.3 Any exercise by a Receiver of any of the powers given by this **Clause 17** may be on behalf of the Recipient, the directors of the Recipient or himself.

Repair and develop the Property

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

Grant or accept surrenders of leases

- 17.5 A Receiver may grant, or accept, surrenders of any leases or tenancies affecting the Property on any terms and subject to any conditions that he thinks fit.

Employ personnel and advisers

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

Make and revoke VAT options to tax

- 17.7 A Receiver may exercise or revoke any VAT option to tax that he thinks fit.

Charge for remuneration

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

Realise Charged Property

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

Manage or reconstruct the Recipient's business

- 17.10 A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing,

amalgamating or diversifying the business of the Recipient carried out at the Property.

Dispose of Charged Property

- 17.11 A Receiver may grant options and licences over all or any part of the Charged Property, grant any other interest or right over, sell, assign or lease (or concur in granting options and licences over all or any part of the Charged Property, granting any other interest or right over, selling, assigning or leasing) all or any of the Charged Property in respect of which he is appointed for such consideration and in such manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions that he thinks fit. A Receiver may promote, or concur in promoting, a company to purchase the Charged Property to be disposed of by him.

Sever fixtures and fittings

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

Give valid receipts

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

Make settlements

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

Bring proceedings

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

Insure

- 17.16 A Receiver may, if he thinks fit, but without prejudice to the indemnity in **Sub-Clause 20.2**, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Recipient under this deed.

Powers under LPA 1925

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

Borrow

17.18 A Receiver may, for any of the purposes authorised by this **Clause 17**, raise money by borrowing from the Funder (or from any other person) either unsecured or on the security of all or any of the Charged Property in respect of which he is appointed on any terms that he thinks fit (including, if the Funder consents, terms under which that Security ranks in priority to this deed).

Redeem prior Security

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

Delegation

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

Absolute beneficial owner

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

Incidental powers

17.22 A Receiver may do any other acts and things:

- (i) that he may consider desirable or necessary for realising any of the Charged Property;
 - (ii) that he may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law;
- or

- (iii) that he lawfully may or can do as agent for the Recipient.

18. DELEGATION

Delegation

- 18.1 The Funder or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this deed.

Terms

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

Liability

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

19. APPLICATION OF PROCEEDS

Order of application of proceeds

- 19.1 All monies received by the Funder, a Receiver or a Delegate under this deed after the security constituted by this deed has become enforceable (other than

sums received under any Insurance Policy), shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority:

- (i) in or towards payment of or provision for all costs, charges and expenses incurred by or on behalf of the Funder (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this deed and of all remuneration due to any Receiver under or in connection with this deed;
- (ii) in or towards payment of or provision for the Secured Liabilities in any order and manner that the Funder determines; and
- (iii) in payment of the surplus (if any) to the Recipient or other person entitled to it.

Appropriation

19.2 Neither the Funder, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or

otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

Suspense account

19.3 All monies received by the Funder, a Receiver or a Delegate under this Deed:

- (i) may, at the discretion of the Funder, Receiver or Delegate, be credited to any suspense or securities realised account;
- (ii) shall bear interest, if any, at the rate agreed in writing between the Funder and the Recipient; and
- (iii) may be held in that account for so long as the Funder, Receiver or Delegate thinks fit.

20. COSTS AND INDEMNITY

Costs

20.1 The Recipient shall, within five (5) Business Days of demand, pay to, or reimburse, the Funder and any Receiver, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by the Funder, any Receiver or any Delegate in connection with:

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

Indemnity

20.2 The Recipient shall indemnify the Funder, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect

or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:

- (i) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this deed or by law in respect of the Charged Property;
- (ii) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this deed; or
- (iii) any default or delay by the Recipient in performing any of its obligations under this deed.

20.3 Any past or present employee or agent may enforce the terms of **Sub-Clause 20.2** subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

21. FURTHER ASSURANCE

21.1 The Recipient shall, at its own expense, take whatever action the Funder or any Receiver may reasonably require for:

- (i) creating, perfecting or protecting the security intended to be created by
this deed;
- (ii) facilitating the realisation of any of the Charged Property; or
- (iii) facilitating the exercise of any right, power, authority or discretion exercisable by the Funder or any Receiver in respect of any of the Charged Property.

Including, without limitation (if the Funder or Receiver thinks it expedient) the execution of any transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Charged Property (whether to the Funder or to its nominee) and the giving of any notice, order or direction and the making of any registration.

22. POWER OF ATTORNEY

Appointment of attorneys

22.1 By way of security, the Recipient irrevocably appoints the Funder, every Receiver and every Delegate separately to be the attorney of the Recipient

and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

- (i) the Recipient is required to execute and do under this deed; or
- (ii) any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this deed or by law on the Funder, any Receiver or any Delegate.

Ratification of acts of attorneys

22.2 The Recipient ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in **Sub-Clause 18.1**.

23. RELEASE

23.1 Subject to **Sub-Clause 26.3**, on the expiry of the Security Period (but not otherwise), the Funder shall, at the request of the Recipient, take whatever action is necessary promptly to:

- (i) release the Charged Property from the security constituted by this deed;
and
- (ii) reassign the Charged Property to the Recipient.

24. ASSIGNMENT AND TRANSFER

Assignment by Funder

24.1 In the event the local government structure in its administrative area is subject to change the Funder may, without the consent of the Recipient, assign or transfer its rights and obligations under this deed to another body established by the Crown or under statute to substantially perform any of the functions that had previously been performed by the Funder PROVIDED THAT any such assignment, transfer or other such transaction will in all cases be of both the Funding Agreement and this Legal Charge to the same such other body.

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

Assignment by Recipient

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

25. SET OFF

Funder's right of set-off

- 25.1 The Funder may at any time set off any liability of the Recipient to the Funder against any liability of the Funder to the Recipient, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this deed. If the liabilities to be set off are expressed in different currencies, the Funder may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Funder of its rights under this **Sub-Clause 25.1** shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

No obligation to set off

- 25.2 The Funder is not obliged to exercise its rights under **Sub-Clause 25.1**. If, however, it does exercise those rights it must promptly notify the Recipient of the set-off that has been made.

26. AMENDMENTS, WAIVERS AND CONSENTS

Amendments

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

Waivers and consents

- 26.2 A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- 26.3 A failure to exercise or a delay in exercising any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Funder shall be effective unless it is in writing.

Rights and remedies

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

27. SEVERANCE

If any provision (or part of a provision) of this deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this **Clause 27** shall not affect the legality, validity and enforceability of the rest of this deed.

28. COUNTERPARTS

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

28.2 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

29. THIRD PARTY RIGHTS

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

29.2 The rights of the parties to rescind or agree any amendment or waiver under this deed are not subject to the consent of any other person.

30. FURTHER PROVISIONS

Independent security

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

Continuing security

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

Discharge conditional

30.3 Any release, discharge or settlement between the Recipient and the Funder shall be deemed conditional on no payment or security received by the Funder

in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded under any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

- (i) the Funder or its nominee may retain this deed and the security created by or under it, including all certificates and documents relating to the whole or any part of the Charged Property, for any period that the Funder deems necessary to provide the Funder with security against any such avoidance, reduction or order for refund; and
- (ii) the Funder may recover the value or amount of such security or payment from the Recipient subsequently as if the release, discharge or settlement had not occurred.

Certificates

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

Consolidation

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

31. NOTICES

Delivery

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

- (i) in writing;
- (ii) delivered by hand, by pre-paid first-class post or other next working day delivery service; and

- (iii) sent to the address of the party as stated at the start of this deed or to any other address as is notified in writing by one party to the other from time to time.

Receipt by Recipient

- 31.2 Any notice or other communication that the Funder gives to the Recipient shall be deemed to have been received:
- (i) if delivered by hand, at the time it is left at the relevant address; and
 - (ii) if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting.
- 31.3 A notice or other communication given as described in **Sub-Clause 31.2** on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

Receipt by Funder

- 31.4 Any notice or other communication given to the Funder shall be deemed to have been received only on actual receipt.

Service of proceedings

- 31.5 This **Clause 31** does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution

No notice by e-mail or fax

- 31.6 A notice or other communication given under or in connection with this deed is not valid if sent by e-mail or fax.

32. GOVERNING LAW AND JURISDICTION

Governing law

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

Jurisdiction

32.2 Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims). Nothing in this **Sub-Clause 32.2** shall limit the right of the Funder to take proceedings against the Recipient in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

Other service

32.3 The Recipient irrevocably consents to any process in any legal action or proceedings under **Sub-Clause 32.2** being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by the common seal of **[RECIPIENT]** being affixed in the presence of a Director/Board member and its secretary

.....
Director/Board Member

.....
Secretary

THE COMMON SEAL of)
CUMBRIA COUNTY COUNCIL)
was affixed to this deed which was)
delivered when stated)
in the presence of:)

Authorised Signatory

SCHEDULE 3

Plan