



**Registration of a Charge**

Company name: **HORNCastle GROUP PLC**

Company number: **00813569**

Received for Electronic Filing: **17/11/2016**



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**Details of Charge**

Date of creation: **15/11/2016**

Charge code: **0081 3569 0019**

Persons entitled: **THE HOMES AND COMMUNITIES AGENCY**

Brief description:

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT  
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION  
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **ROLLITS LLP**



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

Company number: 813569

Charge code: 0081 3569 0019

The Registrar of Companies for England and Wales hereby certifies that a charge dated 15th November 2016 and created by HORNCastle GROUP PLC was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 17th November 2016 .

Given at Companies House, Cardiff on 18th November 2016

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



**Companies House**



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

dated 15 November 2016

**Horncastle Group Plc**

(as Chargor)

and

**the Homes and Communities Agency**

(as the Agency)

**Charge Over Bank Account**

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## Deed

dated 15 November 2016

### Parties

- (1) **Horncastle Group Plc** of Unicorn House, 8 Innovation Drive, Newport Brough East Yorkshire HU15 2FW with company number 00813569 (the **Chargor**); and
- (2) **The Homes and Communities Agency** of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH (the **Agency**).

### Introduction

- (A) The Agency has agreed to loan facilities available to the Chargor in accordance with the terms of the Loan Facility Agreement.
- (B) It is a condition precedent to the granting of the loan facilities under the Loan Facility Agreement that the Chargor enters into this deed.
- (C) It is intended by the parties to this document that it will take effect as a deed despite the fact that a party may only execute this document under hand.

### Agreed terms

#### 1 Definitions and interpretation

##### 1.1 Definitions

In this deed unless the context otherwise requires:

**Account** means the Deposit Account (as such account may be re-designated, re-numbered or replaced from time to time);

**Account Bank** means Svenska Handelsbanken AB (publ) acting through its branch at Hull Hesslewood (sort code 40-51-62) or such other bank, building society or financial institution acting through a branch in England as may be agreed between the Chargor and the Agency from time to time;

**Account Interest** means any interest earned on monies held in the Account;

**Business Day** means any day other than a Saturday, Sunday or statutory bank holiday in England;

**Charged Assets** means all the assets, rights, property and undertaking of the Chargor from time to time charged, assigned or agreed to be assigned to, the Agency by the Chargor under this deed;

**Collateral Rights** means all rights, powers and remedies of the Agency provided by or pursuant to this deed or by law;

**Deposit Account** means the account in the name of the Chargor with the Account Bank which is designated as the Deposit Account with account number 23754233 and sort code 40-51-62;

**Encumbrance** means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, standard security, assignation in security, bond and floating charge or other Encumbrance of any kind, and any right of set-off, assignment, trust, flawed asset or other agreement or arrangement whatsoever for the purpose of providing security or having a similar effect to the provision of security;

**Event of Default** has the meaning given to it in the Loan Facility Agreement;

**Finance Document** means a "Finance Document" as defined in the Loan Facility Agreement;

**Loan Facility Agreement** means the facility agreement between, the Chargor and the Agency under which the Agency has agreed to make available the loan facilities to the Chargor;

**Operating Account** means the account in the name of the Chargor with the Account Bank which is designated as the Operating Account with account number 79947794 and sort code 40-51-62;

**Programme Document** means:

- (a) the Loan Facility Agreement; and
- (b) each Finance Document;

**Receiver** means a receiver or receiver and manager of the whole or any part of the Charged Assets;

**Secured Liabilities** means all the money and liabilities now or hereafter due owing or incurred to the Agency by the Chargor under the terms of the Programme Documents (including, without limitation, under any amendments, supplements or restatements of any of the Programme Documents or in relation to any new or increased advances or utilisations) in any manner whatsoever, in any currency or currencies (whether present or future, actual or contingent) and whether owed by the Chargor as principal or surety or incurred solely or jointly with another, together with all interest accruing thereon and all costs charges and expenses incurred by the Agency in connection therewith and **Secured Liability** means any one of these obligations;

**Security** means the security constituted by or pursuant to this deed; and

**Tax** includes any form of taxation, levy, duty, charge, contribution or impost of whatever nature (including any applicable fine, penalty, surcharge or interest) imposed by any government authority, body or official (whether central, local, state or federal) anywhere in the world competent to impose any of them.

## 1.2 Interpretation

In this deed references to:

the **Chargor** or the **Agency** where the context admits include a reference to its respective successors, assigns and/or transferees;

persons include bodies corporate, unincorporated associations and partnerships in each case whether or not having a separate legal personality;

words importing one gender will be treated as importing any gender, words importing individuals will be treated as importing corporations and vice versa, words importing the singular will be treated as importing the plural and vice versa and words importing the whole will be treated as including a reference to any part, except where the context specifically requires otherwise;

this deed or to a provision of this deed, or any other document are references to it as amended, restated, supplemented or novated from time to time;

the words include or including (or any similar term) are not to be construed as implying any limitation and general words introduced by the word "other" (or any similar term) will not be given a restrictive meaning by reason of the fact that they are preceded or followed by words indicating a particular class of acts, matters or things;

statutory provisions, enactments or EC Directives will include references to any amendment, modification, extension, consolidation, replacement or re-enactment of any such provision, enactment or EC Directive, whether before or after the date of this deed.

### **1.3 Loan Facility Agreement**

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

### **1.4 Headings**

The clause, paragraph and schedule headings and the table of contents are inserted for ease of reference only and will not affect construction.

### **1.5 Third party rights**

A person who is not a party to this deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

## **2 Payment of Secured Liabilities**

### **2.1 Covenant to pay**

The Chargor covenants with the Agency that it will, on demand, discharge all of the obligations which it may at any time have to the Agency in respect of the Secured Liabilities.

### **2.2 Interest on demand**

If the Chargor fails to pay any sum on the due date for payment of that sum the Chargor will pay interest on such sum (before and after any judgement) from the date of demand until the date of payment calculated on a daily basis at the rate referred to in the Loan

Facility Agreement at such intervals as the Agency shall determine. Such interest will be calculated on the basis of a 360 day year according to the usual practice of the Agency.

**3 Security**

The Chargor hereby charges in favour of the Agency with full title guarantee for the payment and discharge of the Secured Liabilities by way of first fixed charge all the Chargor's right, title and interest from time to time in or to all the amounts standing to the credit from time to time in the Account and the debts represented thereby together with all entitlements to interest and other rights and benefits accruing to or arising in connection therewith.

**4 Further assurance**

**4.1 Further assurance: general**

The Chargor will, at its own expense, promptly do all such acts or execute all such documents (including assignments, transfers, charges, notices and instructions) as the Agency may specify (and in such form as the Agency may require in favour of the Agency or its nominee(s)):

- 4.1.1 to perfect or protect the security created or intended to be created in respect of the Charged Assets (which may include the execution by the Chargor of a fixed charge or assignment over all or any of the assets constituting, or intended to constitute, Charged Assets) or for the exercise of the Collateral Rights; and/or
- 4.1.2 to facilitate the realisation of the Charged Assets; and/or
- 4.1.3 to obtain all necessary consents to procure the registration of this deed at Companies House.

**4.2 Consents**

The Chargor will obtain (in form and content satisfactory to the Agency) prior to or contemporaneously with completion of this deed any consents necessary to enable the relevant assets of the Chargor purported to be so charged or assigned to be the subject of an effective fixed charge or assignment pursuant to clause 3 and, immediately upon obtaining any such consent, the asset concerned shall become subject to such security and the Chargor shall promptly deliver a copy of each consent to the Agency.

**4.3 Preservation of rights**

Neither the obligations of the Chargor contained in this deed nor the rights, powers and remedies conferred in respect of the Chargor upon the Agency by the Programme Documents or by law shall be discharged, impaired or otherwise affected by:

- 4.3.1 the winding-up, dissolution, administration or reorganisation of the Chargor or any other person or any change in its status, function, control or ownership;
- 4.3.2 any of the obligations of the Chargor or any other person under the Programme Documents or under any other security relating to the Programme Documents being or becoming illegal, invalid, unenforceable or ineffective in any respect;



- 4.3.3 time or other indulgence being granted or agreed to be granted to the Chargor or any other person in respect of its obligations under the Programme Documents or under any such other security;
- 4.3.4 any amendment to, or any variation, waiver or release of any obligation of the Chargor or any other person under the Programme Documents or under any such other security;
- 4.3.5 any failure to take, or fully to take, any security contemplated by the Programme Documents or otherwise agreed to be taken in respect of the Chargor's or any other person's obligations under the Programme Documents;
- 4.3.6 any failure to realise or fully to realise the value of, or any release, discharge, exchange or substitution of, any security taken or agreed to be taken in respect of the Chargor's or any other person's obligations under the Programme Documents; or
- 4.3.7 any other act, event or omission which, but for this clause 4.3, might operate to discharge, impair or otherwise affect any of the obligations of the Chargor or any other person or any of the rights, powers or remedies conferred upon the Agency by the Programme Documents or by law.

## **5 Negative pledge and disposal restrictions**

### **5.1 Negative pledge**

Save as permitted by the Loan Facility Agreement the Chargor will not, without the prior written consent of the Agency, create, or permit to arise, or continue (in favour of any person other than the Agency) any Encumbrance over the Charged Assets now or in the future, or agree or attempt to do so, or increase or extend any liability of the Chargor secured on any of the Charged Assets.

### **5.2 Disposal of fixed charge assets**

Save as permitted by the Finance Documents, the Chargor will not, without the prior written consent of the Agency (whether by a single transaction or number of related or unrelated transactions, and whether at the same time or over a period of time) sell, transfer, assign or otherwise dispose of the Charged Assets charged or assigned by clause 3 or any interests therein or the right to receive or to be paid the proceeds arising from their disposal or agree or attempt to do so.

## **6 Representations and warranties**

### **6.1 Duration and to whom made**

The representations and warranties made by the Chargor in this clause 6 will remain in force for (and will be deemed repeated on each day falling during) the period for which the Secured Liabilities are outstanding and are given to the Agency.

### **6.2 Matters represented**

Except as disclosed in writing to the Agency on or prior to the date of this deed:

- 6.2.1 the Chargor is the legal and beneficial owner of the Charged Assets;
- 6.2.2 there are no agreements, stipulations, reservations, conditions, interests, rights or other matters whatsoever affecting the Charged Assets which materially adversely affect or are likely to materially adversely affect the value of the Charged Assets or the ability of the Chargor to perform its obligations owed to the Agency; and
- 6.2.3 the Chargor has received no notice of any adverse claims by any person in respect of the ownership of the Charged Assets or any interest therein, nor has any acknowledgement been given to any person in respect thereof which has not been disclosed to the Agency.

**6.3 Security created**

Subject to registration at Companies House, or the Financial Services Authority as appropriate this deed creates those Encumbrances it purports to create, ranking as set out above and is not liable to be avoided or otherwise set aside on the liquidation or administration of the Chargor or otherwise.

**7 General undertakings**

**7.1 Not to jeopardise the Security**

The Chargor will not do or allow to be done anything which could reasonably be expected materially to decrease the value of the Security to the Agency.

**7.2 Information and access**

The Chargor will at the request of the Agency, promptly provide the Agency with such information as the Agency may reasonably require about the Charged Assets and the Chargor's compliance with the terms of this deed and the Chargor will permit the Agency, its representatives and professional advisers free access at all reasonable times and on reasonable notice to inspect and take copies and extracts from such books, accounts and records of the Chargor as relate to the Charged Assets.

**7.3 Law**

The Chargor will comply with all applicable laws and regulations affecting the Charged Assets.

**8 The Accounts**

**8.1 Account**

The Chargor will open and maintain the relevant Account(s) with an Account Bank.

**8.2 Notice**

The Chargor will promptly give notice to the bank at which the Deposit Account is held in the form set out in part I of Schedule 1 and shall procure that the Account Bank acknowledges that notice substantially in the form set out in part II of Schedule 1.

**8.3 Withdrawal**

The Chargor will only withdraw monies (including Account Interest) standing to the credit of the Deposit Account in accordance with clauses 8.5 and 8.6 of the Loan Facility Agreement.

**8.4 Statements**

The Chargor will provide to the Agency from time to time at the request of the Agency full statements and particulars of any Account and advise the Agency prior to any change to it.

**9 Deposit of title deeds**

The Chargor will deposit all certificates and documents of title relating to the Charged Assets (if any) with the Agency and such other documents relating to the Charged Assets as the Agency may require from time to time.

**10 Power to remedy**

In the case of default by the Chargor in observing or performing any of the covenants or stipulations affecting the Charged Assets, the Chargor will permit the Agency or its agents to do such things or pay all such costs, charges and expenses as the Agency may consider are necessary or desirable to prevent or remedy any breach of covenant or stipulation or to comply with or object to any notice served on the Chargor in respect of the Charged Assets. The Chargor will indemnify and keep the Agency indemnified against all losses, costs, charges and expenses reasonably incurred in connection with the exercise of the powers contained in this clause 10.

**11 Enforcement of Security**

**11.1 Enforcement**

At any time after the security created by or pursuant to this deed becomes enforceable, the Agency may, without notice to the Chargor or prior authorisation from any court, in its absolute discretion:

11.1.1 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 Assets; and/or

11.1.2 whether or not it has appointed a Receiver, exercise all or any of the powers, authorities and discretions conferred by the Law of Property Act 1925 (as varied or extended by this deed) on mortgagees and by this deed on any Receiver or otherwise conferred by law on mortgagees or Receivers.

**11.2 Possession**

If the Agency, any Receiver or any delegate of any such person will take possession of the Charged Assets, it or he may at any time relinquish such possession.

**11.3 No liability as mortgagee in possession**

The Agency will not be liable to account as a mortgagee in possession in respect of all or any part of the Charged Assets or be liable for any loss upon realisation or for any neglect, default or omission in connection with the Charged Assets to which a mortgagee in possession might otherwise be liable.

**11.4 Power of Sale**

The power of sale under this deed may be exercised notwithstanding that the Agency or the Receiver may have previously waived or refrained from exercising that power; and no demand or notice of sale made or given under this deed will be waived by the acceptance of any payment on account of the Secured Liabilities, or by any negotiations between the Agency and the Chargor or any other party who is acting as agent for the Chargor or on behalf of it.

**11.5 Receiver's liability**

All the provisions of clause 11.3 will apply, mutatis mutandis, in respect of the liability of any Receiver and delegate of the Receiver or the Agency or any officer, employee or agent of the Agency, any Receiver or any delegate.

**12 Extension and variation of the Law of Property Act 1925**

**12.1 Extension of powers**

The power of sale or other disposal conferred on the Agency and on any Receiver by this deed will operate as a variation and extension of the statutory power of sale under Section 101 of the Law of Property Act 1925 and such power will arise (and the Secured Liabilities will be deemed due and payable for that purpose) on execution of this deed.

**12.2 Restrictions**

The restrictions contained in Sections 93 and 103 of the Law of Property Act 1925 will not apply to this deed or to the exercise by the Agency of its right to consolidate all or any of the security created by or pursuant to this deed with any other security in existence at any time or to its power of sale, which powers may be exercised by the Agency without notice to the Chargor.

**12.3 Non-application**

The following provisions of the Law of Property (Miscellaneous Provisions) Act 1994 will not apply to clause 3 being:

12.3.1 the words 'other than any charges, encumbrances or rights which that person does not and would not reasonably be expected to know about' in Section 3(1);

12.3.2 the words 'except to the extent that' and all words thereafter in Section 3(2); and

12.3.3 Section 6(2).

**12.4 Application**

Section 109(8) of the Law of Property Act 1925 will not apply, and all monies received by the Agency or any Receiver in the exercise of any powers conferred by this deed will be applied in the following order:

12.4.1 in the payment of:

- (a) all costs, charges, liabilities and expenses incurred by the Agency or any Receiver in the exercise of those powers or incidental to any Receiver's appointment, together with interest at the applicable rate set out in clause 2.2 (both before and after judgement) from the date those amounts became due until the date they are irrevocably paid in full; and
- (b) any Receiver's remuneration;

12.4.2 in or towards discharge of all liabilities having priority to the Secured Liabilities;

12.4.3 in or towards the satisfaction of the Secured Liabilities in such order as the Agency determines; and

12.4.4 in the payment of any surplus to the Chargor or other person entitled to it.

12.5 The Chargor will have no rights in respect of the application by the Agency of any sums received, recovered or realised by the Agency under this deed.

### 13 Appointment of Receiver

#### 13.1 Appointment and removal

At any time after the security created by or pursuant to this deed becomes enforceable, the Agency may by deed or otherwise (acting through an authorised officer of the Agency), without prior notice to the Chargor:

- 13.1.1 appoint one or more persons to be a Receiver of the whole or any part of the Charged Assets;
- 13.1.2 remove (so far as it is lawfully able) any Receiver so appointed; and
- 13.1.3 appoint another person(s) as an additional or replacement Receiver(s).

#### 13.2 Capacity of Receivers

Each person appointed to be a Receiver under this deed will be:

- 13.2.1 entitled to act individually or together with any other person appointed or substituted as Receiver;
- 13.2.2 for all purposes will be deemed to be the agent of the Chargor which will be solely responsible for his acts, defaults and liabilities and for the payment of his remuneration and no Receiver will at any time act as agent for the Agency; and
- 13.2.3 entitled to remuneration for his services at a rate to be fixed by the Agency from time to time (without being limited to the maximum rate specified by the Law of Property Act 1925).

### **13.3 Statutory powers of appointment**

The powers of appointment of a Receiver will be in addition to all statutory and other powers of appointment of the Agency under the Law of Property Act 1925 (as extended by this deed) or otherwise and such powers will remain exercisable from time to time by the Agency in respect of any part of the Charged Assets.

## **14 Powers of Receiver**

### **14.1 Powers**

Any receivers appointed by the Agency will (in addition to all powers conferred on him by law) have the following powers exercisable upon such terms and conditions as he thinks fit:

- 14.1.1 to take possession of and generally to manage the Charged Assets;
- 14.1.2 to enter into, carry into effect, complete, deliver, perform, repudiate, rescind or vary any deed, contract, transaction or arrangement in relation to the Charged Assets to which the Chargor is or is to be a party;
- 14.1.3 to carry into effect and complete any transaction in relation to the Charged Assets by executing deeds or documents in the name of or on behalf of the Chargor;
- 14.1.4 to engage, rely on the advice of and discharge advisers, consultants, officers, managers, agents and others;
- 14.1.5 to bring, continue or defend any claim, dispute, action or legal proceedings and enter into any arrangement or compromise in relation to the Charged Assets;
- 14.1.6 to redeem any security and to borrow or raise any money and secure the payment of any money in priority to the Chargor's Liabilities for the purposes of the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise;
- 14.1.7 to make any elections for value added tax purposes in relation to the Charged Assets; and
- 14.1.8 to do any other acts which he may consider to be incidental or conducive to any of his powers or to the realisation of the Charged Assets.

## **15 Protection of purchasers**

### **15.1 Consideration**

The receipt of the Agency or any Receiver will be conclusive discharge to a purchaser and, in making any sale or disposal of any of the Charged Assets or making any acquisition, the Agency or any Receiver may do so for such consideration, in such manner and on such terms as it thinks fit.

### **15.2 Protection of purchaser**

No purchaser or other person dealing with the Agency or any Receiver will be bound to inquire whether the right of the Agency or such Receiver to exercise any of its powers has arisen or become exercisable or be concerned with any property or regularity on the part of the Agency or such Receiver in such dealings.

**16 Power of attorney**

**16.1 Appointment and powers**

The Chargor by way of security irrevocably appoints the Agency and any Receiver severally to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things which:

16.1.1 the Chargor ought to have done by this deed (including the execution and delivery of any deeds, charges, assignments or other security and any transfers of the Charged Assets);

16.1.2 enable the Agency and any Receiver to exercise, or delegate the exercise of, any of the rights, powers and authorities conferred on them by or pursuant to this deed or by law (including the exercise of any right of a legal or beneficial owner of the Charged Assets);

**16.2 Ratification**

The Chargor will ratify and confirm all things lawfully done and all documents executed by any attorney in the exercise or purported exercise of all or any of his powers.

**17 Effectiveness of Security**

**17.1 Continuing security**

The security created by or pursuant to this deed will remain in full force and effect as a continuing security for the Secured Liabilities unless and until discharged by the Agency.

**17.2 Cumulative rights**

The security created by or pursuant to this deed and the Collateral Rights will be cumulative, in addition to and independent of every other security which the Agency may at any time hold for the Secured Liabilities or any other obligations or any rights, powers and remedies provided by law. No prior security held by the Agency over the whole or any part of the Charged Assets will merge into the security constituted by this deed.

**17.3 No prejudice**

Neither the security or the Collateral Rights will be prejudiced by any time or indulgence granted to the Chargor or any other person or by any other thing which might otherwise prejudice the security or any Collateral Right.

**17.4 Remedies and waivers**

No failure on the part of the Agency to exercise, or any delay on its part in exercising, any Collateral Right will operate as a waiver thereof, nor will any single or partial exercise of

any Collateral Right preclude any further or other exercise of that or any other Collateral Right.

**17.5 No liability**

None of the Agency, its nominee(s) or any Receiver will be liable by reason of:

17.5.1 taking any action permitted by this deed; or

17.5.2 any neglect or default in connection with the Charged Assets; or

17.5.3 taking possession of or realising all or any part of the Charged Assets,

except in the case of negligence or wilful default or fraud upon its part.

**17.6 Partial invalidity**

If, at any time, any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this deed nor of such provision under the laws of any other jurisdiction will in any way be affected or impaired thereby and, if any part of the security intended to be created by or pursuant to this deed is invalid, unenforceable or ineffective for any reason, that will not affect or impair any other part of the security.

**17.7 Other security**

The Agency will not be obliged to resort to any guarantees, indemnities, Encumbrances or other means of payment now or hereafter held by or available to it before enforcing this deed and no action taken or omitted by the Agency in connection with any such guarantees, indemnities, Encumbrance or other means of payment will discharge, reduce, prejudice or affect the liability of the Chargor or the Secured Liabilities nor will the Agency be obliged to account for any money or other property received or recovered in consequence of any enforcement or realisation of any such guarantees, indemnities, Encumbrances or other means of payment.

**17.8 Variation**

No variation of the terms of this deed will be valid unless it is in writing signed by the Chargor and confirmed in writing by the Agency.

**18 Release of Security**

**18.1 Redemption of security**

Upon the Secured Liabilities being discharged in full and the Agency not being under any further actual or contingent obligation to make advances or provide other financial accommodation to the Chargor, the Agency will, at the request and cost of the Chargor, release and cancel the security constituted by this deed and procure the reassignment to the Chargor of the property and assets assigned to the Agency pursuant to this deed, in each case subject to clause 18.2 and without recourse to, or any representation or warranty by, the Agency or any of its nominees.

**18.2 Avoidance of payments**



If the Agency considers that any amount paid or credited to it is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws the liability of the Chargor under this deed and the security constituted hereby will continue and such amount shall not be considered to have been irrevocably paid.

**18.3 Retention of security**

Where the Agency has reasonable cause to be concerned that the Chargor is or may become insolvent, the Agency may retain this deed, the Security and all documents of title, certificates and other documents relating to or evidencing ownership of all or any part of the Charged Assets.

**19 Subsequent Encumbrances**

If the Agency at any time receives or is deemed to have received notice of any subsequent Encumbrance affecting all or any part of the Charged Assets or any assignment or transfer of the Charged Assets which is prohibited by the terms of this deed, all payments thereafter by or on behalf of the Chargor to the Agency will be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities as at the time when the Agency received such notice.

**20 Assignment**

**20.1 Right of Agency to assign**

The Agency may at any time assign or otherwise transfer all or any part of its rights under this deed in accordance with and subject to the Loan Facility Agreement.

**20.2 Restriction on Chargor**

The Chargor may not assign or transfer any of its rights or obligations under this deed.

**20.3 Confidentiality**

The Agency may give such information relating to the Chargor and the Chargor's Liabilities as it thinks fit to any person proposing to take an assignment and/or transfer from the Agency and/or to enter into contractual relations with the Agency with respect to this deed.

**21 Expenses, stamp taxes and indemnity**

**21.1 Expenses**

The Chargor will, from time to time on demand of the Agency, reimburse the Agency on a full indemnity basis for all the costs and expenses (including legal fees) together with any VAT thereon properly incurred by it or by any Receiver in connection with:

- 21.1.1 the negotiation, preparation and execution of this deed and the completion of the transactions and perfection of the security contemplated in this deed; or
- 21.1.2 the variation or amendment of, or exercise, preservation and/or enforcement of any of the Collateral Rights or the security contemplated by this deed or any proceedings instituted by or against the Agency or any Receiver as a

consequence of taking or holding the security or of enforcing the Collateral Rights,

and such expenses will carry interest until so reimbursed at the rate referred to in clause 2.2.

**21.2 Stamp taxes**

The Chargor will pay all stamp, stamp duty land tax, registration and other taxes to which this deed, the security contemplated in this deed or any judgement given in connection with it is or at any time may be subject and will, from time to time, indemnify the Agency on demand against any liabilities, costs, claims and expenses resulting from any failure to pay or delay in paying any such tax.

**21.3 Indemnity**

The Chargor will, notwithstanding any release or discharge of all or any part of the Security:

21.3.1 be liable for and will indemnify the Agency in full against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of personal injury to or death of any person whomsoever or loss of or damage to property whether belonging to the Agency or otherwise or any claim by any third party arising out of or in the course of or caused or contributed to by the Chargor and/or the performance or non performance or delay in performance by the Chargor of its obligations under this deed except to the extent that the same is due to any act or neglect of the Agency; and

21.3.2 be liable for and shall indemnify the Agency against any expense, liability, loss, claim or proceedings arising directly or indirectly from or in connect with any breach of the terms of this Agreement by or otherwise through the default or negligence of the Chargor.

**22 Payments free of deduction**

22.1 All payments by the Chargor under or in connection with this deed shall be made without set-off or counterclaim, free and clear of and without any deduction or withholding, including, without limitation, for or on account of all taxes except for taxes which must be deducted by law.

22.2 If the Chargor is required by law to make any deduction or withholding the Chargor shall:

22.2.1 ensure that the deduction or withholding does not exceed the minimum amount legally required;

22.2.2 forthwith pay to the Agency such additional amount as may be determined by the Agency to be necessary to ensure that after making any required deduction or withholding the Agency receives and retains a net amount equal to the full amount which would have been received had no deduction or withholding been required;

22.2.3 pay to the applicable taxation or other authorities within the period for payment permitted by law the full amount of the deduction or withholding; and

22.2.4 supply to the Agency, within the period for the payment permitted by law, an official receipt of the applicable taxation or other authorities for all amounts deducted or withheld.

22.3 Without prejudice to any other provisions of this deed, if:

22.3.1 the Agency is required by law to make any payment on account of taxes (other than taxes on its overall net income) on or in relation to any sum received or receivable by the Agency under or pursuant to this deed; or

22.3.2 any liability in respect of any such payment is imposed, levied or assessed against the Agency,

the Chargor shall on demand by the Agency indemnify the Agency against such payment or liability together with any interest, penalties and expenses payable or incurred in connection with it.

## 23 Discretion and delegation

### 23.1 Discretion

Any liberty or power which may be exercised or any determination which may be made hereunder by the Agency or any Receiver may, be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

### 23.2 Delegation

Each of the Agency and any Receiver will have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this deed (including the power of attorney) on such terms and conditions as it sees fit which delegation may include power to sub-delegate and will not preclude either the subsequent exercise of such power, authority or discretion by the Agency or the Receiver itself or any subsequent delegation or revocation thereof.

## 24 Perpetuity period

The perpetuity period under the rule against perpetuities, if applicable to this deed, will be the period of 125 years from the date of this deed.

## 25 Counterparts

This deed may be executed in any number of counterparts and each counterpart will when executed be an original of this deed and all counterparts together will constitute one instrument.

## 26 Constitutive documents

The Chargor hereby certifies that its creation of this deed in favour of the Agency does not contravene any of the provisions of the Companies Act 2006 or its memorandum and

articles of association or rules or, in the case of a limited liability partnership or limited partnership, the partnership deed constituting the Chargor.

**27 Reorganisation**

This deed will remain binding on the Chargor notwithstanding any change in the constitution of the Agency or its absorption by, or amalgamation with, or the acquisition of all or part of its undertaking by, any other person, or any reconstruction or reorganisation of any kind. The security granted by this deed will remain valid and effective in all respects in favour of the Agency and for any assignee, transferee or other successor in title of the Agency.

**28 Set-off**

The Agency may set off any obligation due from the Chargor under this deed against any obligation owed by the Agency to the Chargor (whether actual or contingent, present or future), regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Agency may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

**29 Payment of monies**

**29.1 Date for payment**

Where neither the Facility Agreement nor this deed specified the due date for payment of any monies owed by the Chargor to the Agency such monies will be due and payable to the Agency by the Chargor on demand.

**29.2 Certificates**

A certificate signed by an official of the Agency as to the amount due or owing from the Chargor will be conclusive evidence against the Chargor except in the case of manifest error or any question of law.

**30 Communication**

**30.1 Written**

Any communication to be given in connection with this deed will be in writing.

**30.2 Addresses**

Any communication will either be delivered by hand or sent by first class prepaid post to the Agency or the Chargor at its address shown on page 1 unless it has communicated another address to the other in which case it must be sent to the last address so communicated.

**30.3 Communication**

30.3.1 Any notice to be given hereunder shall be in writing and shall be sufficiently served if delivered by hand and receipted for by the recipient or sent by the Recorded Delivery Service addressed in the case of any party to the other

party's registered office as set out at the beginning of this deed or to such other addresses a party may from time to time notify to the other in writing provided that such other address is within England and Wales.

30.3.2 Any notice shall be deemed to be given by the sender and received by the recipient:

- (a) If delivered by hand, when delivered to the recipient;
- (b) if delivered by the Recorded Delivery Service, three (3) Business Days after delivery including the date of postage;

provided that if the delivery or receipt is on a day which is not a Business Day or is after 4.00pm it is to be regarded as received at 9.00am on the following Business Day.

### 31 Governing law

#### 31.1 Law of England

This deed will be governed by and is to be construed in accordance with the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to settle any dispute arising in connection with this deed.

**This Deed** has been executed as a deed by the parties and is delivered and takes effect on the date at the beginning of this deed.

## Schedule 1

### Part I

#### Form of notice to Account Bank of fixed charge in respect of Deposit Account

To: [Bank]  
[Address]

Date:

Dear Sirs

#### Notice of fixed charge

We hereby give notice that by a Charge over Bank Account dated [ • ] made between [ ] (the **Chargor**) (1) and [ ] (the **Agency**) (2) (the **Account Charge**), the Chargor charged to the Agency all its rights, title and interest present and future over the following account opened by it with you:

**Account:**                      **Account number:** [   ]      **Account sort code:** [   ]

(the **Deposit Account**) as security for the obligations more particularly referred to in the Account Charge.

The Chargor hereby gives you notice that pursuant to the Account Charge, it has, with full title guarantee, charged to the Agency all its rights, title and interest in and to all sums which may at any time be standing to the credit of the Deposit Account (the **Account Funds**).

In connection therewith and by way of security for its obligations to the Agency, the Chargor hereby irrevocably and unconditionally instructs and authorises you (notwithstanding any previous instructions whatsoever which it may have given you to the contrary):

- 1      to disclose to the Agency without any reference to or further authority from the Chargor and without any enquiry by you as to the justification for such disclosure, such information relating to the Account Funds and the debt represented thereby as the Agency may, at any time and from time to time, request you to disclose to it;
- 2      to comply with the terms of any written notice, statement or instructions in any way relating or purporting to relate to the Account Funds or the debt represented thereby which you receive at any time and from time to time from the Agency or without any reference to or further authority from the Chargor and without any enquiry by you as to the jurisdiction for such notice, statement or instructions or the validity thereof; and
- 3      to accept all instructions from the Agency in connection with any payments from or withdrawals from the Deposit Account, at any time and from time to time, and to comply with all such instructions save that until you receive notice to the contrary from the Agency, all instructions relating to payments from or withdrawals from the Deposit Account may be validly given by us together with the Agency in accordance with the Deposit Account mandate. Upon receipt of such notice to the contrary from the Agency, you hereby agree to accept and comply with all such instructions from the Agency in connection with any payments from or withdrawals from the Deposit Account.

The instructions and authorisations which are contained in this letter will remain in full force and effect until the Agency gives you notice in writing revoking them.

This letter and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, the laws of England.

Please acknowledge receipt of this letter and your acceptance of the instructions and authorisations contained in it by sending a letter addressed to us and to the Agency in the form attached hereto.

Yours faithfully

.....  
Authorised Signatory  
for and on behalf of  
**[Chargor]**

Schedule 1

Part II

**Acknowledgement of notice of charge over Deposit Account**

To: [ ] (the Agency)

Copy: [Chargor]

Dated:

Dear Sirs

**Acknowledgement of notice**

**Account number:** [ ] (the Deposit Account)

We hereby acknowledge receipt of a letter (a copy of which is attached hereto) dated [ • ] (the Notice) and addressed to us by [ • ] (the Chargor) and we accept the instructions and authorisations contained in the Notice and undertake to act in accordance and comply with the terms thereof.

We hereby acknowledge and confirm to each of the Chargor and the Agency that we have not, as at the date hereof, received any notice that any third party has or will have any right or interest whatsoever in or has made or will be making any claim or demand or taking any action whatsoever against the Account Funds or the debt represented thereby or any part thereof.

We hereby acknowledge and confirm to each of the Chargor and the Agency that we will not make any claim or demand or exercise any rights of counterclaim, rights of set-off or any other equities whatsoever against the Chargor in respect of the Account Funds or the debt represented thereby or any part thereof.

We agree that in the event of us receiving notice at any time that any person or entity other than the Chargor or the Agency claims to have or claims it will acquire any right or interest whatsoever in the Account Funds or any part thereof we will as soon as is reasonably practicable give written notice of the terms thereof to the Agency.

The expressions defined and used in the Notice will have the same meaning when used in this Notice.

This letter and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, the laws of England.

Yours faithfully

.....  
Duly authorised signatory  
for and on behalf of  
[Account bank]



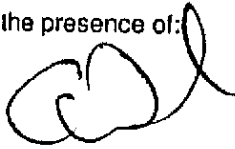
Execution Page

the common seal of )

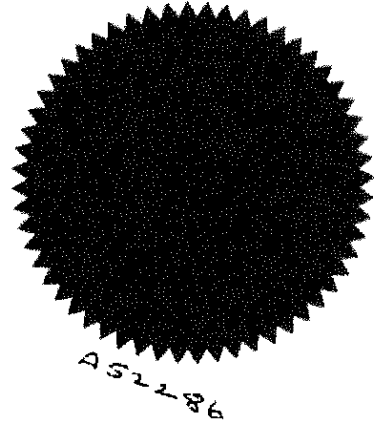
**HOMES AND COMMUNITIES AGENCY** )

is hereunto affixed in the presence of: )

Authorised Signatory



Christine Wilson  
Deputy Head of Legal



Signed as a deed but not delivered until dated by )

**Horncastle Group plc** )

acting by two Directors or by one Director )

and its Secretary )

Director


Director/Secretary

Execution Page

the common seal of )  
**HOMES AND COMMUNITIES AGENCY** )  
is hereunto affixed in the presence of: )

Authorised Signatory

Signed as a deed but not delivered until dated by )  
**Horncastle Group plc** )  
acting by two Directors or by one Director )  
and its Secretary )

Director   
Director/Secretary 