

Hawkhurst House Limited
Cranbrook Road, Hawkhurst, Cranbrook, Kent TN18 5EF

Mr Joe Bloggs
123 High Street, Anytown, Kent, MR15 1AB

Date: 20/06/2020

Dear Mr Joe Bloggs,

Hawkhurst House Limited (“the Provider”) – PERSONAL GUARANTEE DEED (“the Guarantee”)

For ease of reference, this letter uses the same definitions as set out on page 1 of the Guarantee.

Following this letter is a deed potentially making you personally liable for the monies due under the Nursing Home Agreement for Mr Arnold Bloggs.

This letter is to explain the reason behind the Guarantee, its practical effect and the potential consequences should the Provider need to enforce the terms of the Guarantee against you.

Whilst this letter explains the terms of the Guarantee, you should obtain independent legal advice should any of terms, and their practical effect, remain unclear.

You may also wish to take advice from an independent financial adviser on the potential financial impact the Guarantee may have on you.

Reasoning

The Provider has agreed to provide Mr Arnold Bloggs with accommodation together with care services under a Nursing Home Agreement. Mr Arnold Bloggs will become personally liable for the fees due under this agreements.

In consideration for you agreeing to sign the Guarantee, the Provider will oblige by the terms of the Nursing Home Agreement.

Should any fees under the agreements remain due and unpaid, the Provider can demand payment from you personally.

This makes Mr Arnold Bloggs’s placement financially viable should they become unable to pay the fees due under the Nursing Home Agreement.

Practical Effect

The Guarantee makes you personally liable for Mr Arnold Bloggs's obligations should they be unable to pay.

The Provider will be able to pursue you, and any of your personal assets, for any debt, including interest and costs, owed by Mr Arnold Bloggs.

You will also be liable to indemnify the Provider for any losses, costs, claims, liabilities, damages, demands, and expenses incurred by the Provider in connection with recovering the guaranteed amount from Mr Arnold Bloggs, or you.

Enforcement

If you do not pay the amount demanded by the Provider which becomes due under the terms of the Guarantee, the Provider can commence legal proceedings against you to recover the monies due.

The Provider hopes enforcement of the Guarantee is not required. However, the Provider reserves its right to enforce the terms of the Guarantee in the event of non-payment.

Monthly Payment

The Provider does not want to have to rely on the Guarantee.

To that end, the Provider will waive its right to enforce the terms of the Guarantee should you make a payment of £2,000.00 per month for a total of six months.

Should the monthly payment not be made, the Provider reserves its right to demand payment as set out above, and as more precisely set out in the Guarantee.

Declaration

To show you understand the terms of the Guarantee, the contents of this letter and to acknowledge that you have received independent legal and financial advice or do not require it, please sign and date the declaration on the page overleaf and return this to the Provider with the other executed documents.

Yours sincerely
on behalf of Hawkhurst House Limited

Ernie Graham, Director

DECLARATION BY Mr Joe Bloggs

I confirm that I have read and understood the terms of the Guarantee.

I confirm that I have read and understood the contents of this letter.

I confirm that I have received independent legal advice and I understand the practical consequences of executing the Guarantee or I confirm that I understand that the Provider has told me to obtain independent legal advice but I have not received it because I understand the terms of the Guarantee and the practical consequences and have decided to execute the Guarantee in any event.

I confirm that I have received independent financial advice and I understand the practical consequences of executing the Guarantee or I confirm that I understand that the Provider has told me to obtain independent financial advice but I have not received it because I understand the terms of the Guarantee and the practical consequences and have decided to execute the Guarantee in any event.

I confirm that I have decided to enter into the Guarantee, this is my own free choice and I do not require the Provider to vary any of the terms.

Signed by Mr Joe Bloggs

Date:

Date: 20/06/2020

PERSONAL GUARANTEE DEED

Between

Mr Joe Bloggs

and

Hawkhurst House Limited

Gordons Partnership LLP
22 Great James Street
London
WC1N 3ES
www.gordonsols.co.uk

This DEED is dated 20/06/2020

PARTIES

- (1) Mr Joe Bloggs of 123 High Street, Anytown, Kent, MR15 1AB (“Guarantor”)
- (2) Hawkhurst House Limited incorporated and registered in England and Wales with company number 10498015 whose registered office is at Cranbrook Road, Hawkhurst, Cranbrook, Kent TN18 5EF (“Provider”)

BACKGROUND

- (A) The Provider has agreed to grant the Resident a place under the terms of the Nursing Home Agreement.
- (B) The Guarantor has agreed to enter into this guarantee and indemnity for the purpose of guaranteeing the Provider for the Resident’s liabilities under the Tenancy Agreement and Care Agreement.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in this guarantee.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Care Agreement: the agreement for the provision of care services by the Provider to the Resident dated 20/06/2020.

Guaranteed Obligations: all monies, debts and liabilities of any nature from time to time due, owing or incurred by the Resident to the Provider under or in connection with the Nursing Home Agreement.

Rights: any Security or other right or benefit whether arising by set-off, counterclaim, subrogation, indemnity, proof in liquidation or otherwise and whether from contribution or otherwise.

Security: a mortgage, charge, pledge, lien or other security interest securing any obligation of any person, or any other agreement having a similar effect.

Resident: Mr Arnold Bloggs of Suite 201, Hawkhurst House Limited, Cranbrook Road, Hawkhurst, Cranbrook, Kent TN18 5EF

Nursing Home Agreement: the agreement dated 20/06/2020 between the Provider and the Resident.

Warranties: the representations and warranties set out in the Schedule 1.

1.2

Interpretation

In this guarantee:

- (a) clause, Schedule and paragraph headings shall not affect the interpretation of this guarantee;
- (b) 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;
- (c) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (d) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- (e) a reference to Provider shall include the Provider's successors, permitted assigns and permitted transferees;
- (f) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (g) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- (h) a reference to writing or written includes fax but not e-mail;

- (i) a reference to this guarantee (or any provision of it) or to any other agreement or document referred to in this guarantee is a reference to this guarantee, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this guarantee) from time to time;
- (j) unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this guarantee and a reference to a paragraph is to a paragraph of the relevant Schedule;
- (k) 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;
- (l) a reference to an amendment includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly);
- (m) a reference to assets includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (n) a reference to an authorisation includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- (o) 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
- (p) 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. GUARANTEE AND INDEMNITY

- 2.1 In consideration of the Provider obliging by the terms of the Nursing Home Agreement, the Guarantor guarantees to the Provider, whenever the Resident does not pay any of the Guaranteed Obligations when due, to pay on demand the Guaranteed Obligations.
- 2.2 The Guarantor as principal obligor and as a separate and independent obligation and liability from his or her obligations and liabilities under Clause 2.1 agrees to indemnify and keep indemnified the Provider in full and on demand from and against all and any losses, costs, claims, liabilities, damages, demands and expenses suffered or incurred by the Provider arising out of, or in connection with, the Guaranteed Obligations not being recoverable for any reason or any failure of

the Resident to perform or discharge any of its obligations or liabilities in respect of the Guaranteed Obligations.

3. PROVIDER PROTECTIONS

3.1 This guarantee is and shall at all times be a continuing security and shall cover the ultimate balance from time to time owing to the Provider by the Resident in respect of the Guaranteed Obligations.

3.2 The liability of the Guarantor under this guarantee shall not be reduced, discharged or otherwise adversely affected by:

- (a) any intermediate payment, settlement of account or discharge in whole or in part of the Guaranteed Obligations;
- (b) any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy which the Provider may now or after the date of this guarantee have from or against any of the Resident and any other person in connection with the Guaranteed Obligations;
- (c) any act or omission by the Provider or any other person in taking up, perfecting or enforcing any Security, indemnity, or guarantee from or against the Resident or any other person;
- (d) any termination, amendment, variation, novation, replacement or supplement of or to any of the Guaranteed Obligations including without limitation any change in the purpose of, any increase in or extension of the Guaranteed Obligations and any addition of new Guaranteed Obligations;
- (e) any grant of time, indulgence, waiver or concession to the Resident or any other person;
- (f) any insolvency, bankruptcy, liquidation, administration, winding up, incapacity, limitation, disability, the discharge by operation of law, or any change in the constitution, name or style of the Resident or any other person;
- (g) the death or incapacity (whether mental or physical) of the Guarantor, or any notice of his or her death or incapacity; or
- (h) any invalidity, illegality, unenforceability, irregularity or frustration of any actual or purported obligation of, or Security held from, the Resident or any other person in connection with the Guaranteed Obligations;
- (l) any claim or enforcement of payment from the Resident or any other person; or

- (j) any act or omission which would not have discharged or affected the liability of the Guarantor had he or she been a principal debtor instead of a guarantor; or
- (k) any other act or omission except an express written release by deed of the Guarantor by the Provider.

3.3 The Provider shall not be obliged, before taking steps to enforce any of its rights and remedies under this guarantee, to:

- (a) take any action or obtain judgment in any court against the Resident or any other person;
- (b) make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Resident or any other person; or
- (c) make demand, enforce or seek to enforce any claim, right or remedy against the Resident or any other person.

3.4 The Guarantor warrants to the Provider that he or she has not taken or received, and shall not take, exercise or receive the benefit of any Rights from or against the Resident in connection with any liability of, or payment by, the Guarantor under this guarantee but:

- (a) if any of the Rights are taken, exercised or received by the Guarantor, those Rights and all monies at any time received or held in respect of those Rights shall be held by the Guarantor on trust for the Provider for application in or towards the discharge of the Guaranteed Obligations under this guarantee; and
- (b) on demand by the Provider, the Guarantor shall promptly transfer, assign or pay to the Provider all other Rights and all monies from time to time held on trust by the Guarantor under this Clause 3.4.

4. INTEREST

4.1 The Guarantor shall pay interest to the Provider after as well as before judgment at the annual rate which is 4% above the base rate on all sums demanded under this guarantee from the date of demand by the Provider or, if earlier, the date on which the relevant damages, losses, costs or expenses arose in respect of which the demand has been made, until, but excluding, the date of actual payment.

4.2

Interest under Clause 4.1 shall accrue on a day-to-day basis calculated by the Provider on such terms as the Provider may from time to time determine and shall be compounded on the last Business Day of each month.

4.3

The Provider shall not be entitled to recover any amount in respect of interest under both this guarantee and any arrangements entered into between the Resident and the Provider in respect of any failure by the Resident to make any payment in respect of the Guaranteed Obligations.

5.

REPRESENTATIONS AND WARRANTIES

5.1

The Guarantor represents and warrants that the Warranties are true and correct on the date of this guarantee.

6.

DISCHARGE CONDITIONAL

6.1

Any release, discharge or settlement between the Guarantor and the Provider in relation to this guarantee shall be conditional on no right, Security, disposition or payment to the Provider by the Guarantor, the Resident or any other person in respect of the Guaranteed Obligations being avoided, set aside or ordered to be refunded under any enactment or law relating to breach of duty by any person, bankruptcy, liquidation, administration, protection from creditors generally or insolvency or for any other reason.

6.2

If any right, Security, disposition or payment referred to in Clause 6.1 is avoided, set aside or ordered to be refunded, the Provider shall be entitled subsequently to enforce this guarantee against the Guarantor as if such release, discharge or settlement had not occurred and any such right, Security, disposition or payment had not been given or made.

7.

PAYMENTS

7.1

All sums payable by the Guarantor under this guarantee shall be paid in full to the Provider in the currency in which the Guaranteed Obligations are payable without any set-off, condition or counterclaim whatsoever.

7.2

The Guarantor shall not and may not direct the application by the Provider of any sums received by the Provider from the Guarantor under, or in relation to, any of the terms of this guarantee.

8.

TRANSFER

8.1

This guarantee is freely assignable or transferable by the Provider.

8.2

9. The Guarantor may not assign any of his or her rights and may not transfer any of his or her obligations under this guarantee or enter into any transaction which would result in any of those rights or obligations passing to another person.

9.1 **REMEDIES, WAIVERS, AMENDMENTS AND CONSENTS**

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

9.3 A waiver of any right or remedy under this guarantee or by law, or any consent given under this guarantee, is only effective if given in writing and signed 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.

9.4 A failure or delay by a party to exercise any right or remedy provided under this guarantee 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 guarantee. No single or partial exercise of any right or remedy provided under this guarantee or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this guarantee by the Provider shall be effective unless it is in writing and signed.

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

SEVERANCE

11. If any provision (or part of a provision) of this guarantee 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 shall not affect the legality, validity and enforceability of the rest of this guarantee.

11.1 **THIRD PARTY RIGHTS**

11.2 Except as expressly provided elsewhere in this guarantee person who is not a party to this guarantee 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 guarantee. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

12. The rights of the parties to rescind, terminate or agree any amendment or waiver under this guarantee are not subject to the consent of any other person.

12.1

COUNTERPARTS

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

12.3 Transmission of the executed signature page of a counterpart of this guarantee by fax or e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this guarantee. If either method of delivery is adopted, without prejudice to the validity of the deed thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

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

13.1

NOTICES

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

- (a) in writing;
- (b) delivered by hand by pre-paid first-class post or other next working day delivery service or sent by fax; and
- (c) sent to:
 - (i) the Guarantor at:
123 High Street, Anytown, Kent, MR15 1AB
E-mail: joe@bloggs.co.uk
Attention: Mr Joe Bloggs
 - (ii) the Provider at:
Hawkhurst House Limited
Cranbrook Road, Hawkhurst, Cranbrook, Kent TN18 5EF
E-mail: manager@hawkhursthouse.com
Attention: Ernie Graham, Director

13.2 RECEIPT Any notice or other communication given under or in connection with this guarantee shall be deemed to have been received:

- (a) if delivered by hand, at the time it is left at the relevant address;
- (b) if posted by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; and
- (c) if sent by email, when received in legible form.

A notice or other communication given as described in Clause 13.2(a) or Clause 13.2(c) 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. For the purposes of Clause 13.2, all references to time are to local time in the place of deemed receipt.

13.3 This clause 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.

14. GOVERNING LAW

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

14.2 The Guarantor irrevocably consents to any process in any proceedings under Clause 15 being served on it in accordance with the provisions of this guarantee relating to service of notices. Nothing contained in this guarantee shall affect the right to serve process in any other manner permitted by law.

15. JURISDICTION

Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this guarantee or its subject matter or formation. Nothing in this clause shall limit the right of the Provider to take proceedings against the Guarantor 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.

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

SCHEDULE 1

REPRESENTATIONS AND WARRANTIES

1. CAPACITY

- 1.1 The Guarantor has the capacity to execute, deliver and perform his or her obligations under this guarantee and the transactions contemplated by them.
- 1.2 The Guarantor is not, by reason of illness or incapacity (whether mental or physical), incapable of managing his or her own affairs.
- 1.3 The court has not made an order or appointed a deputy under section 16 of the Mental Capacity Act 2005 in respect of the Guarantor.

2. NON-CONTRAVENTION

- 2.1 The execution, delivery and performance of the obligations in, and transactions contemplated by, this guarantee does not and will not contravene any agreement or instrument binding on the Guarantor or his or her assets, or any applicable law or regulation.

3. AUTHORISATIONS

- 3.1 The Guarantor has taken all necessary action and obtained all required or desirable consents to enable him to execute, deliver and perform his or her obligations under this guarantee and to make this guarantee admissible in evidence in England and Wales. Any such authorisations are in full force and effect.

4. BINDING OBLIGATIONS

- 4.1 The Guarantor's obligations under this guarantee are, subject to any general principles of law limiting obligations, legal, valid, binding and enforceable.

5. LITIGATION

- 5.1 No litigation, arbitration or administrative proceedings are taking place, pending or, to the Guarantor's knowledge, threatened against him or any of his or her assets.

6. ASSETS NOT IMMUNE TO ACTION

6.1

None of the Guarantor's assets is entitled to immunity on any grounds from any legal action or proceeding (including, without limitation, suit, attachment prior to judgment, execution or other enforcement).

7.

NO DEFAULT

7.1

No event or circumstance is outstanding which constitutes a default under any deed or instrument which is binding on the Guarantor, or to which his or her assets are subject, which might have a material adverse effect on the Guarantor's ability to perform his or her obligations under this guarantee.

8.

RANKING OF OBLIGATIONS

8.1

The Guarantor's payment obligations under this guarantee rank at least pari passu with the claims of all his or her other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law generally.

9.

BANKRUPTCY AND ANALOGOUS EVENTS

9.1

The Guarantor has not suspended, or threatened to suspend, payment of his or her debts, is not unable to pay his or her debts as they fall due, has not admitted inability to pay his or her debts and is not deemed either unable to pay his or her debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986.

9.2

The Guarantor has not commenced negotiations with all or any class of his or her creditors with a view to rescheduling any of his or her debts, and has not made a proposal for or entered into any compromise or arrangement with his or her creditors.

9.3

The Guarantor is not the subject of a bankruptcy petition, application or order.

9.4

No person has become entitled to appoint a receiver over any of the assets of the Guarantor, and no receiver has been appointed over any of the assets of the Guarantor.

9.5

No creditor or encumbrancer has attached or taken possession of, and no distress, execution, sequestration or other such process has been levied or enforced on or sued against, any of the Guarantor's assets.

BY ENTERING INTO THIS GUARANTEE YOU MIGHT BECOME LIABLE INSTEAD OF OR AS WELL AS THE RESIDENT.

YOU SHOULD SEEK INDEPENDENT LEGAL ADVICE BEFORE ENTERING INTO THIS GUARANTEE.

Signed as a DEED by:)
)
)
)
)
)

Guarantor

in the physical presence of (1)*)
)
)
)
)
)

Witness's Signature

Witnessed by:

Name

Address

Occupation

(1)* if executing this deed by way of e-signature, by executing as a witness, you hereby warrant to the Provider that you were, at all material times, in the physical presence of the Guarantor and you will indemnify and keep indemnified the Provider in full and on demand from and against all and any losses, costs, claims, liabilities, damages, demands and expenses suffered or incurred by the Provider arising out of, or in connection with, the Guaranteed Obligations not being recoverable for any reason as a result of this deed being null and void by reason of your compliance with the witness requirements of a deed.