Royal Bank of Scot

COMPANIES FORM No. 395

Particulars of a mortgage or charge

395

A fee of £10 is payable to Companies House in respect of each register entry for a mortgage or charge.

Pursuant to section 395 of the Companies Act 1985

M

CHFP025

Please do not write in this margin

Please complete legibly, preferably in black type, or bold block lettering

* insert full name of Company

To the Registrar of Companies
(Address overleaf - Note 6)

For official use

Company number 2582268

Name of company

* Ferguson Care Limited (the "Company")

Date of creation of the charge

28 September 2000

Description of the instrument (if any) creating or evidencing the charge (note 2)

Group debenture (the "Debenture") between Craegmoor Healthcare Company Limited ("Healthcare"), Craegmoor Holdings Limited ("Holdco"), Parkcare Homes Limited ("Parkcare"), the Charging Subsidiaries (which together with Healthcare, Holdco and Parkcare are referred to as the "Charging Obligors") and Barclays Bank Plc (the "Bank") dated 28 September 2000

Amount secured by the mortgage or charge

All monies and liabilities whatsoever which were at the date of the Debenture or at any time thereafter may (whether before or after demand) become due, owing or payable to the Bank (and whether soley or jointly with one or more persons and whether as principal or surety) by any of the Charging Obligors, actually or contingently, under or in respect of the Bridge Facility Agreement of even date with the Debenture made between the Bank and the Charging Obligors (the "Bridge Facility Agreement") and any other Financing Document to which any Charging Obligor is a party (the "Secured Amounts").

Names and addresses of the mortgagees or persons entitled to the charge

Barclays Bank Plc, 54 Lombard Street, London

Postcode EC3P 3AH

Presentor's name address and reference (if any):

Barlow Lyde & Gilbert
Beaufort House
15 Botolph Street
London
EC3A 7NJ

1300267

Time critical reference
40210.19/RNJ/DG/3.10

For official Use
Mortgage Section | Post room

A29 *AP6LAUOI* 0338
COMPANIES HOUSE 12/10/00

Short particulars of all the property mortgaged or charged

See Schedule 1 for property particulars and Schedule 2 for the definitions to this Form 395 and Schedule 1.

Please do not *write in* this margin

Please complete legibly, preferably in black type, or bold block lettering

Particulars as to commission allowance or discount (note 3)

N/A

***A fee of £10 is* payable to Companies House in respect of each register entry for a *mortgage or* charge. (See Note 5)**

Signed Barlow Lyde & Gilbert Date 10.10.2000

On behalf of [company] [~~mortgagee/chargee~~] †

† delete as appropriate

Notes

1 The original instrument (if any) creating or evidencing the charge, together with these prescribed particulars correctly completed must be delivered to the Registrar of Companies within 21 days after the date of creation of the charge (section 395). If the property is situated and the charge was created outside the United Kingdom delivery to the Registrar must be effected within 21 days after the date on which the instrument could in due course of post, and if dispatched with due diligence, have been received in the United Kingdom (section 398). A copy of the instrument creating the charge will be accepted where the property charged is situated and the charge was created outside the United Kingdom (section 398) and in such cases the copy must be verified to be a correct copy either by the company or by the person who has delivered or sent the copy to the registrar. The verification must be signed by or on behalf of the person giving the verification and where this is given by a body corporate it must be signed by an officer of that body. A verified copy will also be accepted where section 398(4) applies (property situate in Scotland or Northern Ireland) and Form No. 398 is submitted.

2 A description of the instrument, eg "Trust Deed", "Debenture", "Mortgage" or "Legal charge", etc, as the case may be, should be given.

3 In this section there should be inserted the amount or rate per cent. of the commission, allowance or discount (if any) paid or made either directly or indirectly by the company to any person in consideration of his;
(a) subscribing or agreeing to subscribe, whether absolutely or conditionally, or
(b) procuring or agreeing to procure subscriptions, whether absolute or conditional,
for any of the debentures included in this return. The rate of interest payable under the terms of the debentures should not be entered.

4 If any of the spaces in this form provide insufficient space the particulars must be entered on the prescribed continuation sheet.

5 Cheques and Postal Orders are to be made payable to **Companies House.**

6 The address of the Registrar of Companies is:-

Companies House, Crown Way, Cardiff CF14 3UZ

FERGUSON CARE LIMITED
Company No. 2582268

SCHEDULE 1 TO FORM 395
SHORT PARTICULARS OF PROPERTY CHARGED

1 **Fixed and floating charges:** The Company, in Clause 3.4 of the Debenture, with full title guarantee (or, in relation to rights or situated in or governed by the laws of Scotland, with absolute warrandice) and subject to Clause 4 of the Debenture, mortgaged, charged and assigned to the Bank as a continuing security for payment or discharge of the Secured Amounts:

(a) by way of first legal mortgage:

(i) all freehold or leasehold property described in that part of Part 2 of the Schedule 2 to the Debenture which applies in relation to the Company;

(ii) all estates or interests in any freehold or leasehold property (other than any Scottish Property) belonging to it at the date of the Debenture; and

(b) by way of first fixed equitable mortgage, the Original Securities listed in that part of Part 3 of Schedule 3 to the Debenture which applies in relation to the Company and all its rights, title, interest and benefit in, and options to acquire Original Securities at the date of the Debenture and for the time being owned by it and/or any nominee on its behalf and all rights in respect of or incidental or ancillary thereto, subject to Clause 9.7 of the Debenture; and

(c) by way of first fixed security, conveyed, charged and assigned (to the extent not the subject of an effective mortgage under Clause 3.4 (a) of the Debenture):

(i) all estates and interests in any freehold or leasehold property (other than any Scottish Property) at the date of the Debenture or thereafter belonging to it, other than Westfield Nursing Home;

(ii) all of its right, title interest and benefit, present and future, in and to all sums of money which may at the date of the Debenture or thereafter are, from to time, standing to the credit of each Group Bank Account which is maintained in its name and which is operated and controlled by it or pursuant to its instructions, and any other bank account or deposit account which it may hold, from time to time, together with all interest accruing from time to time thereon and all debts represented thereby;

(iii) all of its right, title, interest, and benefit, present and future, in and to all sums of money which may at the date of the Debenture or thereafter at any time and from time to time be paid to it under or pursuant to the terms of any of the Care

SCHEDULE 1 TO FORM 395 – (CONT.)

Contracts to which it is a party together with all interest accruing from time to time and paid in respect thereof;

(iv) all of its right, title, benefit, power and interest, present or future, to, in and under the Insurance Policies under which it is an insured party and to all claims which it was at the date of the Debenture or may thereafter become entitled and all proceeds paid in respect of any such claim or claims;

(v) all of its right, title, interest and benefit, present and future, in, to and under each of the Financing Documents to which it is a party and all other contracts, agreements, deeds, instruments and documents to which it is a party (other than in respect of any Care Contracts) including, without limitation, all contracts, conveyances, deeds, agreements and instruments entered into by it in connection with or relating to the acquisition of any Care Home and the benefit of all reports, valuations, surveys, notices and consents received in respect thereof and all rights to receive payment of any amounts which may become payable to it thereunder and all rights to serve notices and/or to make demands thereunder and/or to take such steps as are required to cause payments to become due and payable thereunder and all rights of action in respect of any breach thereof and all rights to receive damages or obtain relief in respect thereof;

(vi) all plant and equipment owned by it and its interest in any plant or equipment;

(vii) other than in respect of money due but unpaid under Care Contracts to which it is a party and to all proceeds arising but unpaid from Care Contracts which are subject to Clause 3.4 (c) (iii) of the Debenture, all book debts and other debts (including rent), the proceeds of the same and all moneys and liabilities whatsoever for the time being due, owing or otherwise payable to it (including the benefit of any judgement, decree or order to pay a sum of money) and the benefit of any Security Interests, rights, guarantees and securities at the date of the Debenture and for the time being held by it in respect of any of the foregoing;

(viii) all bills of exchange, letters of credit issued in its favour, promissory notes and negotiable instruments of any description at any time owned or held by it and all rights and benefits under any performance bond or guarantee or similar agreements entered into by it;

(ix) all Eligible Investments held by it and, whether accrued at the date of the Debenture or accruing thereafter, all rights and

SCHEDULE 1 TO FORM 395 – (CONT.)

options to acquire Eligible Investments and all moneys, income and proceeds payable thereunder or accrued thereon and all rights in respect of or incidental thereto including all dividends, interests and other distributions paid or payable and all accretions, benefits, covenants and advantages relating thereto and all rights and remedies for enforcing the same;

(x) all of its present and future goodwill and to its uncalled capital at the date of the Debenture and for the time being;

(xi) all of its present and future rights in intellectual property including all know-how, patents, trademarks, service marks, designs, business names, topographical or similar rights, copyrights and other intellectual property monopoly rights and interests (including by licence) owned or held by it, whether registered or not and including all applications for the same and including all fees, royalties and other rights derived therefrom or incidental thereto;

(xii) all of its right, title, interest and benefit, present and future, in and under any management or other contracts at the date of the Debenture or thereafter entered into by it in relation to the management of its interest in any freehold, heritable or leasehold property belonging to it and the redevelopment of such property or any of it;

(xiii) any beneficial interest, claim or entitlement of it in any pension fund; and

(xiv) the benefit of all licences, consents and authorisations (statutory or otherwise), present and future, held in connection with its business or the use of the Other Charged Property and the right to recover and receive all compensation which may be payable to it in respect of them; and

(d) by way of first floating charge, the whole of its undertaking and all its property, assets and rights, whatsoever and wheresoever, both present and future (including all stock in trade and including all freehold, heritable and leasehold property) other than any property or assets from time to time or at the date of the Debenture and for the time being the subject of fixed charges pursuant to Clause 3.4 of the Debenture or otherwise effectively assigned by way of security (but declaring that the foregoing exclusion shall not extend to any part of its undertaking and assets, present and future, situated in Scotland, or the rights to which are governed by the laws of Scotland, all of which undertaking, rights and assets are charged by the floating charge created in the Debenture).

SCHEDULE 1 TO FORM 395 – (CONT.)

2 **Dividends and voting:** Clause 9.7 of the Debenture provides that, until an Enforcement Notice has been served:

(a) all and any cash dividends that are paid in respect of the Original Securities shall continue to be paid to the relevant Charging Obligor;

(b) subject to Clause 9.7(c) of the Debenture (repeated in paragraph (c) below), all voting and other rights and powers attached to the Original Securities shall continue to be exercisable by the registered holder(s) of such Original Securities; and

(c) each Charging Obligor which is a registered holder of any of the Original Securities undertook to the Bank not to vote on or to approve any shareholder resolution (written or otherwise) proposed to put to or which is put to the shareholders of a Charging Obligor which may, in any way whatsoever, jeopardise or prejudice the Security Interests created under the Debenture.

3 **Release of charged property:** Clause 4 of the Debenture provides that, on the irrevocable and unconditional payment or discharge by the Charging Obligors of all the Secured Amounts, the Bank shall at the request and cost of the Charging Obligors (jointly and severally) release or reassign the Charged Property to, or to the order of, the relevant Charging Obligors.

On:

(a) the making at any time by a Charging Obligor of a Permitted Disposal pursuant to the Bridge Facility Agreement; or

(b) the making at any time by a Charging Obligor of a disposal of any Eligible Investment charged pursuant to Clause 3.1(c)(ix), Clause 3.2(c)(ix), Clause 3.3(c)(ix) and Clause 3.4(c)(ix) of the Debenture; or

(c) the making at any time by a Charging Obligor of any other disposal or the withdrawal of funds from any Group Bank Account permitted by any of the Financing Documents,

the Bank shall, if so requested by and at the sole cost and expense (on an indemnity basis) of the relevant Charging Obligor, but without being responsible for any loss, costs, claims or liabilities whatsoever occasioned by so acting upon such request, release, reassign or discharge from the Charged Property:

(i) the relevant assets or property which are the subject of the Permitted Disposal; or

(ii) the relevant Eligible Investment, provided that the proceeds of such disposal are paid by the relevant Charging Obligor into the

relevant Group Bank Account from which the moneys used to acquire such Eligible Investment were originally withdrawn,

and, in all cases, subject to and in accordance with the provisions of the Bridge Facility Agreement and the Debenture.

4 **Negative covenants:** the Company undertook that, for so long as any Secured Amounts remained outstanding, it would not, without the prior written consent of the Bank:

(a) create or permit to exist over all or part of the Charged Property (or any interest therein) any Security Interest (other than under the Debenture) whether ranking prior to, pari passu with or behind the security contained in the Debenture save in respect of Permitted Security Interests; or

(b) other than by way of a Permitted Disposal under the Bridge Facility Agreement, sell, transfer, lend, license, leave or otherwise dispose of the Charged Property or any interest therein or attempt or agree to so dispose.

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Company No. 2582268

SCHEDULE 2 – DEFINITIONS TO FORM 395

Block Contract: means each long term and block funding contract for the provision of care services to which any Charging Obligor is a party as of 28 September 2000 and all future such contracts entered into by any such Charging Obligor;

Borrowers: Parkcare, Healthcare and the other borrowers listed in Schedule 6 Part 1 to the Bridge Facility Agreement;

Care Contracts: the Block Contracts and the Spot Contracts;

Care Homes: a nursing home (as defined in Section 21 of the Registered Homes Act 1984, or Section 10 of the Nursing Homes Registration (Scotland) Act 1938), or a mental nursing home (as defined in Section 22 of the Registered Homes Act 1984), or residential establishment (as defined in Section 94 of the Social Work (Scotland) Act 1968), or other buildings providing facilities for persons designated as frail, elderly, elderly mentally infirm, elderly severely mentally infirm, young physically disabled, young long term chronic sick, persons detained under the Mental Health Act 1983, the Mental Health (Scotland) Act 1984, young persons under the Children Act 1989 and the Children (Scotland) Act 1995 and persons exhibiting challenging behaviour or such other client group as shall be acceptable to the Rating Agencies and **Care Home** shall be construed accordingly;

Charged Property: the Healthcare Charged Property, the Parkcare Charged Property, the Holdco Charged Property and the Other Charged Property, and references to the **Charged Property** include references to any part of it;

Charging Subsidiaries: the Company and the other Charging Subsidiaries listed in Schedule 1 to the Debenture;

Craegmoor Security Group Care Homes: the Mortgaged Properties and the Non-Mortgaged Care Homes, and **Craegmoor Security Group Care Home** shall be construed accordingly;

Eligible Investments:

(a) sterling gilt edged securities; and

(b) sterling demand or time deposits, certificates of deposit and short-term debt obligations (including commercial paper),

provided that in all cases such investments have a maturity date falling no later than the next following date on which a payment is required to be made with the moneys invested in Eligible Investments and the short-term unsecured, unguaranteed and unsubordinated debt obligations of the issuing or guaranteeing entity or the entity with which the demand or time deposits are made (being an authorised bank under the Banking Act 1987) are rated F-1+ and/or D-1+ by the Rating Agencies (or its equivalent) or higher by at least two internationally recognised rating agencies;

Enforcement Notice: means a notice given by the Bank pursuant to Clause 12.2 of the Bridge Facility Agreement;

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Company No. 2582268

SCHEDULE 2 – DEFINITIONS TO FORM 395

Financing Documents: the Bridge Facility Agreement, the Debenture, the Standard Securities, the Interest Rate Hedging Agreement and Confirmation relating thereto, the Side Letter and any other agreement, or document to be executed by any of the Borrowers and the Bank pursuant to the Bridge Facility Agreement or any other Financing Documents;

Group Bank Accounts: the accounts specified in Schedule 8 to the Debenture;

Healthcare Charged Property: all of the property, assets, undertakings and rights at the date of the Debenture and for the time being comprised in or subject to the Security Interests provided by Healthcare pursuant to the terms of Clause 3.1 of the Debenture;

Holdco Charged Property: means all of the property, assets, undertakings and rights at the date of the Debenture and for the time being comprised in or subject to the Security Interests provided by Holdco pursuant to the terms of Clause 3.2 of the Debenture;

Insurance Policies: the policies of insurance listed in Schedule 4 to the Debenture;

Interest Rate Hedging Agreement: the interest rate swap between Barclays Bank Plc and Parkcare entered into on the same date as the Bridge Facility Agreement;

Mortgaged Properties: the freehold and leasehold properties, the details of which are set out in Part 1A of Schedule 2 of the Debenture, and the Scottish Properties, which are subject to or intended to be subject to a first fixed charge or charge by way of legal mortgage or standard security in favour of the Bank subject to and in accordance with the terms of the Debenture or Standard Securities, as the case may be, and any other freehold, heritable or leasehold property acquired in the future by a Borrower which becomes subject to the same and for the avoidance of doubt, **Mortgaged Properties** does not include the **Non-Mortgaged Care Homes**, and **Mortgaged Property** shall be construed accordingly;

Non-Mortgaged Care Homes: the freehold properties known as "Delves House" and "Westfield Assisted Nursing Home" owned (as of the date of the Bridge Facility Agreement) by Parkcare and Yorkshire Parkcare Company Limited, respectively, which are subject to a floating charge in favour of the Bank subject to and in accordance with the terms of the Debenture, and **Non-Mortgaged Care Home** shall be construed accordingly;

Original Securities: the securities listed in Schedule 3 to the Debenture and any other securities which, with the prior written consent of the Bank, may be substituted therefore;

Other Charged Property: all of the property, assets, undertakings and rights at the date of the Debenture and for the time being comprised in or subject to the Security Interests provided by each of the Charging Subsidiaries pursuant to the terms of Clause 3.4 of the Debenture;

SCHEDULE 2 – DEFINITIONS TO FORM 395

Parkcare Charged Property: means all of the property, assets, undertakings and rights at the date of the Debenture and for the time being comprised in or subject to the Security Interests provided by Parkcare pursuant to the terms of Clause 3.3 of the Debenture;

Permitted Disposal:

(a) a disposal or substitution of a Non-Mortgaged Care Home;

(b) a disposal of fixed tangible assets (not being all or any part of the Mortgaged Properties or the Non-Mortgaged Care Homes) for cash by a Charging Obligor provided that the value of the aggregate net consideration received by such Charging Obligor in respect of such disposal together with all other such disposals by the Charging Obligors over the immediately preceding three month period would not exceed £250,000; or

(c) a disposal of any single asset (not being a Mortgaged Property or a Non-Mortgaged Care Home) for cash where the proceeds of such sale would not exceed £50,000,

provided that any disposal made pursuant to paragraphs (a) – (c) in the definition of Permitted Disposal in the Bridge Facility Agreement shall be on arm's length terms;

Permitted Security Interest:

(a) any conditional sale or title retention arising under or pursuant to any contract for the purchase of goods in the normal course of trading; or

(b) any Security Interest created under any of the Financing Documents; or

(c) any Security Interest created or permitted to subsist with the prior written consent of the Bank; or

(d) any Security Interest arising by operation of law directly as a result of Healthcare, Parkcare or any other Charging Obligor (as the case may be) carrying on their business in the ordinary course which secure obligations which are not more than 90 days overdue unless contested in good faith;

Rating Agencies: Fitch Ratings Limited and Moody's Investor Services;

Scottish Properties: the heritable property situated in Scotland, details of which are set out in Part 1B of Schedule 2 of the Debenture and any other heritable or leasehold property located in Scotland which becomes subject to the Debenture or Standard Securities and "**Scottish Property**" means any of such property;

Security Interest: any mortgage, standard security, charge, encumbrance, pledge, lien, right of set-off (or analogous rights), assignment or assignation by way of security, retention of title or any security interest whatsoever or any other agreement or arrangement having the effect of conferring security, howsoever created or arising;

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SCHEDULE 2 – DEFINITIONS TO FORM 395

Side Letter: the letter of even date with the Bridge Facility Agreement between the Bank and the Charging Obligors;

Spot Contract: each spot contract relating to the provision of specific care services to specific residents, in or other clients of, the Craegmoor Security Group Care Homes to which a Charging Obligor is a party and all future such contracts entered into by any such Charging Obligor;

Standard Security: each and any standard security granted over a Scottish Property in substantially the form of Schedule 7 to the Debenture pursuant to Clause 3.7 of the Debenture and **Standard Securities** means all of them from to time.

FILE COPY

CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

Pursuant to section 401(2) of the Companies Act 1985

COMPANY No. 02582268

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT A GROUP DEBENTURE (THE "DEBENTURE") BETWEEN CRAEGMOOR HEALTHCARE COMPANY LIMITED ("HEALTHCARE"), CRAEGMOOR HOLDINGS LIMITED ("HOLDCO"), PARKCARE HOMES LIMITED ("PARKCARE"), THE CHARGING SUBSIDIARIES (WHICH TOGETHER WITH HEALTHCARE, HOLDCO AND PARKCARE ARE REFERRED TO AS THE "CHARGING OBLIGORS") AND BARCLAYS BANK PLC (THE "BANK") DATED THE 28th SEPTEMBER 2000 AND CREATED BY FERGUSON CARE LIMITED FOR SECURING ALL MONIES AND LIABILITIES BY ANY OF THE CHARGING OBLIGORS, UNDER OR IN RESPECT OF THE BRIDGE FACILITY AGREEMENT OF EVEN DATE WITH THE DEBENTURE AND ANY OTHER FINANCING DOCUMENT TO WHICH ANY CHARGING OBLIGOR IS A PARTY WAS REGISTERED PURSUANT TO CHAPTER 1 PART XII OF THE COMPANIES ACT 1985 ON THE 12th OCTOBER 2000.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 16th OCTOBER 2000.

REGISTRAR OF COMPANIES FOR ENGLAND AND WALES

THE OFFICIAL SEAL OF THE REGISTRAR OF COMPANIES

COMPANIES HOUSE

HC026B