

M

COMPANIES FORM No. 395

Particulars of a mortgage or charge

A fee of £13 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

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

For official use



Company number

03194228

Name of company

* Skelton Group Limited (the "Chargor").

Date of creation of the charge

14 April 2005

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

Shares Charge made between (1) the Chargor and (2) the Security Trustee (as defined below) (the "Shares Charge").

Amount secured by the mortgage or charge

See Part I of attached schedule.

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

Capita IRG Trustees Limited, Guildhall House, 81/87 Gresham Street, London (the "Security Trustee").

Postcode EC2V 7QE

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

Mayer, Brown, Rowe & Maw LLP
11 Pilgrim Street
London

EC4V 6RW

21204/05007534

Time critical reference

For official Use (02/00)
Mortgage Section

Post room



LD2
COMPANIES HOUSE

0413
19/04/05

Short particulars of all the property mortgaged or charged

See Part II of the attached schedule. The charges created by the Shares Charge are qualified by the covenants set out in Part III of the attached schedule and should be read together.

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)

Nil

Signed Mayer Brown Date 18 April 2005

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

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

† 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 A fee of £13 is payable to Companies House in respect of each register entry for a mortgage or charge. Cheques and Postal Orders must be made payable to **Companies House**.
- 6 The address of the Registrar of Companies is: Companies House, Crown Way, Cardiff CF14 3UZ

Skelton Group Limited

Schedule to Form 395

Certain terms used in this Schedule are defined in Part IV

Part I

Amount secured by mortgage or charge

All present and future obligations and liabilities (whether actual or contingent, whether owed jointly, severally or in any other capacity whatsoever and whether originally incurred by the relevant Obligor to a Finance Party) due, owing or incurred by any Obligor to any Finance Party under the Finance Documents except for any obligation of liability which, if it were so included, would result in the Obligor concerned giving financial assistance which is unlawful under s151 Companies Act 1985 or an equivalent provision (the "**Secured Liabilities**").

Part II

Short particulars of all the property mortgaged or charged

1. Mortgage

The Chargor charges will full title guarantee in favour of the Security Trustee, as security for the payment and discharge of the Secured Obligations, by way of first legal mortgage the Shares.

2. Rights attaching to investments

95

- (a) Subject as provided in this Paragraph 2, all powers and other rights conferred by statute or otherwise upon an absolute owner of any Investment will, with respect to any Shares agreed to be mortgaged or charged by or pursuant to this Shares Charge (whether or not registered in the name of the Security Trustee or its nominee(s)) be exercised as the Chargor may direct. Such powers and other rights will not be exercised in any manner which is inconsistent with the Security intended to be conferred on the Security Trustee by this Shares Charge.
- (b) The Chargor will not, without the prior written consent of the Security Trustee, permit or agree to any variation of the rights attaching to or conferred by any of its Investments (including the Shares), participate in any rights issue, elect to receive or vote in favour of receiving any dividends other than in the form of cash or participate in any vote concerning a members voluntary winding-up or a compromise or arrangement pursuant to s425 Companies Act 1985.
- (c) After the Shares Charge becomes enforceable in accordance with Clause 7 (*When enforceable*) of the Shares Charge (and without any consent or authority on the part of the Chargor), the Security Trustee and its nominee(s) may at the Security Trustee's discretion (in the name of the Chargor or otherwise) exercise or cause to be exercised in respect of any of its Investments (including the Shares) any voting rights or rights to receive

dividends, interest, principal or other payments of money, as the case may be, forming part of its Investments (including the Shares) and all other powers and other rights conferred on or exercisable by the bearer or holder of such Investments.

Part III

Covenants

1. Negative Pledge

Save for the Security created by the Shares Charge the Chargor will not create or permit to subsist any Security on the whole or part of the Charged Assets.

2. Restriction on dealings

Except where agreed or consented to in writing by the Security Trustee, the Chargor will not create or permit to subsist any Security on any part of the Shares or dispose of or otherwise deal with any part of the Shares.

3. Power of Attorney

The Chargor by way of security irrevocably appoints the Security Trustee 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 the attorney may consider to be required or desirable for:

- (a) carrying out any obligation imposed on the Chargor by the Shares Charge (including the execution and delivery of any deeds, charges, assignments or other security and any transfers of the Charged Assets); and
- (b) enabling the Security Trustee and any Receiver to exercise, or delegate the exercise of, any of the powers, authorities and other rights conferred on them by or pursuant to the Shares Charge or by law (including, after the occurrence of an Event of Default, the exercise of any right of a legal or beneficial owner of the Charged Assets).

4. Power to appoint a Receiver

- (a) At any time after having been requested to do so by the Chargor or after the Shares Charge becomes enforceable in accordance with Clause 7 (*When enforceable*) of the Shares Charge, the Security Trustee may by deed or otherwise (acting through an authorised officer of the Security Trustee), without prior notice to the Chargor:
 - (i) appoint one or more persons to be an administrator of the Chargor;
 - (ii) appoint one or more persons to be a receiver or receiver and manager of the whole or any part of the Charged Assets;
 - (iii) appoint two or more persons each to be a receiver or receiver and manager of a separate part of the Charged Assets;

- (iv) remove (so far as it is lawfully able) any administrator or Receiver so appointed; and
 - (v) appoint another person(s) as an additional or replacement Receiver(s).
- (b) Each person appointed to be a Receiver will be:
 - (i) entitled to act individually or together with any other person appointed or substituted as Receiver;
 - (ii) for all purposes deemed to be the agent of the Chargor which shall be solely responsible for his acts, defaults and liabilities and for the payment of his remuneration and no Receiver shall at any time act as agent for the Security Trustee; and
 - (iii) entitled to remuneration for his services at a rate to be fixed by the Security Trustee from time to time (without being limited to the maximum rate specified by the Law of Property Act 1925).

Part IV

Definitions

"Advance" means the principal amount borrowed or to be borrowed under the Facility Agreement or the principal amount of that borrowing outstanding under the Facility Agreement from time to time;

"Agent" means Merrill Lynch International in its capacity as agent of the Facility;

"Agreed Terms" means in relation to any document the terms agreed by, and initialled for the purpose of identification as a Finance Document by or on behalf of, the Agent and the Borrowers, as amended from time to time with the consent of the Borrowers and the Agent in writing and in the absence of any such terms having been so agreed and initialled, in form and substance satisfactory to the Agent;

"Arranger" means Merrill Lynch International in its capacity as arranger of the Facility;

"Borrowers" means the Alegrove Ltd and Ainsford Ltd and **"Borrower"** means either of them;

"Charged Assets" means the assets of the Chargor from time to time charged or assigned by way of fixed Security under the Shares Charge as security for the payment or discharge of all or any of the Secured Obligations;

"Company" means Skelton Birmingham Limited, a company incorporated in England and Wales (registered number 02462311) whose registered office is at 104 Park Street, London W1K 6NF;

"Debenture" means the debenture to be entered into in the Agreed Terms by the Obligors in favour of the Security Trustee;

"Drawdown Notice" means a notice in writing substantially in the form of Schedule 4 (*Drawdown Notice*) to the Facility Agreement;

"Duty of Care Agreement" means any agreement between the Borrowers, the Managing Agent and the Security Trustee in the Agreed Terms relating to the management of the Property;

"Event of Default" means any of those events specified in Clause 20.1 (*Events of Default*) of the Facility Agreement;

"Facility" means the maximum £46,415,000 (forty six million four hundred and fifteen thousand pounds sterling) secured term loan facility granted to the Borrowers by the Lenders under the Facility Agreement;

"Facility Agreement" means a facility agreement dated 14 April 2005 and made between (1) Alegrove Ltd, Ainsford Ltd, Sphere Properties Limited, the Company and Artcroft Ltd, (2) the Lenders, (3) the Agent and Arranger and (4) the Security Trustee and any letter, agreement, charge, deed or other instrument entered into under or supplemental to it;

"Fees Letter" the letter dated on or about the date of the Facility Agreement from the Agent to the Borrowers and countersigned by the Borrowers setting out fees payable by the Borrowers to the Arranger and the Agent;

"Finance Document" means each of:

- (a) the Facility Agreement;
- (b) the Debenture;
- (c) the Shares Charges;
- (d) the Park Lane Share Charge;
- (e) the Stenham Share Charge;
- (f) any Subordination Agreement;
- (g) the Intercreditor Deed;
- (h) any Transfer Certificate;
- (i) any Hedge Document;
- (j) the Drawdown Notice;
- (k) the Fees Letter;
- (l) any Duty of Care Agreement;
- (m) any other document from time to time creating, evidencing or entered into as security for, or supporting, any of the Secured Obligations;

- (n) any document entered into pursuant to, or which amends or varies, any document referred to in paragraph (a) – (k) (inclusive) above; and
- (o) any other document designated as such in writing by either the Agent or the Security Trustee of the one part and the Borrowers of the other;

"Finance Parties" means the Agent, the Arranger, the Security Trustee and the Lenders and each of their respective successors and assigns and **"Finance Party"** means any of them;

"Hedge Document" means any interest rate swap, cap, floor, collar or option transaction or any other treasury transaction or any combination of the same or any other transaction or deemed transaction (including book entries entered) in connection with protection against or benefit from fluctuation in interest rates including any indemnity or other transactions entered, or deemed entered, into by any Finance Party to make the Advance available at a fixed rate of interest and includes all related documentation;

"Intercreditor Deed" means an intercreditor deed entered into in the Agreed Terms between, amongst others, the Vendor, the Security Trustee and the Obligors;

"Investment" means any stock, share, debenture or other security;

"Lenders" means Merrill Lynch Commercial Finance Corp. (and any Transferee which becomes a party to the Facility Agreement pursuant to a Transfer Certificate) and each of their respective permitted successors and assigns and **"Lender"** means any one of them;

"Managing Agent" means GVA Grimley or any firm of chartered surveyors appointed by the Borrowers and approved by the Agent to act managing agent of the Property;

"Obligors" means the Borrowers and the Shareholders and **"Obligor"** means any of them;

"Park Lane Share Charge" means the share charge to be granted by Mr Joshua Halpern and Mr Samuel Halpern in the Agreed Terms in respect of their shares in Artcroft Ltd in favour of the Security Trustee;

"Property" means the freehold property known as Broadway Plaza, Ladywood Middleway, Birmingham, as the same is registered at Land Registry with title absolute under title number WM657963;

"Receiver" means a receiver or receiver and manager appointed (whether alone or jointly with others) pursuant to the Shares Charge by the Security Trustee;

"Security" means any mortgage, standard security, pledge, lien, charge, security assignment, hypothecation, security interest or any other agreement or arrangement (such as sale or lease and leaseback, a blocked account, set-off or similar "flawed asset" arrangement) having a commercial effect analogous to the conferring of security;

"Shares" means the entire issued share capital of the Company being 202 ordinary shares of £1.00 each;

"Shareholders" means Sphere Properties Limited, the Company and Artcroft Ltd and **"Shareholder"** means any of them;

"Stenham Share Charge" means the share charge to be granted by Briarwood Property Company Limited (registered in the British Virgin Islands with registered number 621012) in the Agreed Terms in respect of its shares in Sphere Properties Limited (registered in the British Virgin Islands with registered number 642510) in favour of the Security Trustee;

"Subordination Agreement" means an agreement entered into in the Agreed Terms by the providers of any subordinated debt to the Borrowers, subordinating the same to the Borrowers' obligations to the Finance Parties;

"Transfer Certificate" means a certificate substantially in the form set out in Schedule 6 (*Form of Transfer Certificate*) to the Facility Agreement completed in accordance with Clause 29 (*Changes to the Lenders*) to the Facility Agreement;

"Transferee" means a bank or other institution to which a Lender seeks to transfer rights and obligations under this Agreement in accordance with Clause 29 (*Changes to the Lenders*) of the Facility Agreement; and

"Vendor" means Broadway Plaza (Birmingham Children's Hospital) Limited.

FILE COPY



CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

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

COMPANY No. 03194228

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT A SHARES CHARGE DATED THE 14th APRIL 2005 AND CREATED BY SKELTON GROUP LIMITED FOR SECURING ALL MONIES DUE OR TO BECOME DUE FROM ANY OBLIGOR TO ANY FINANCE PARTY ON ANY ACCOUNT WHATSOEVER UNDER THE TERMS OF THE AFOREMENTIONED INSTRUMENT CREATING OR EVIDENCING THE CHARGE WAS REGISTERED PURSUANT TO CHAPTER 1 PART XII OF THE COMPANIES ACT 1985 ON THE 19th APRIL 2005.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 21st APRIL 2005.

10/52



Companies House

— for the record —



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES