

# M

CHFP041

## COMPANIES FORM No. 395

**Particulars of a mortgage or charge***Pursuant to section 395 of the Companies Act 1985*

# 395

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

3

3552187

**Name of company**

\* Equity Partnerships Fund Management Limited, a company incorporated under the laws of England and Wales and having its registered office at Europe House, 20 Esplanade, Scarborough, North Yorkshire, YO11 2AQ (the "Assignor")

**Date of creation of the charge**

16 July 2004

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

Accounts Pledge (the "Charge")

**Amount secured by the mortgage or charge**

The Secured Liabilities

See Paper Apart I for definitions

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

The Governor and Company of the Bank of Scotland, incorporated by Special Act of Parliament and having its head office at The Mound, Edinburgh, for itself and as trustee for and on behalf of the Banks (the "Agent")

**Postcode** EH1 1YZ**Presentor's name, address and reference (if any):**

Dundas & Wilson CS  
20 Castle Terrace  
Edinburgh EH1 2EN

**Time critical reference**

HLM/ADCF/SJP/BOS001.2040

**For official use**  
*Mortgage section**Post room*A04  
COMPANIES HOUSE0562  
24/07/04

Com 395-1/2

**Short particulars of all the property mortgaged or charged**

In security of the due and punctual payment and performance by the Assignor of the Secured Liabilities, the Assignor assigns to the Agent for itself and as trustee for the Banks their whole right, title, interest and benefit in and to:-

(1) each Account together with:-

(i) all balances at any time during the subsistence of the Charge standing to the credit of each Account;

(ii) any agreements (whether oral, written or implied) or instruments entered into in the constitution of the rights and obligations of the Assignor and the Account Bank in relation to any Account; and

(iii) any agreements (whether oral, written or implied) or instruments entered into in substitution therefor or for such substituted agreement or instrument; and

(2) all Rights of the Assignor relative thereto.

See Paper Apart I for definitions

Please do not write in this margin

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

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

**Particulars as to commission allowance or discount (note 3)**

N/A

Signed *D. M. M.*

Date *23 July 2004*

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 CF4 3UZ.

**This is the Paper Apart I referred to in the foregoing Form 395 in respect of an Accounts Pledge by Equity Partnerships Fund Management Limited and The Governor and Company of the Bank of Scotland (for itself and as trustee for and on behalf of the Banks).**

In the interpretation of this Form 395:-

**"Accounts"** means each and any of the Rent Account, Operational Account and Sale Proceeds Account;

**"Account Bank"** means The Governor and Company of the Bank of Scotland, St. Andrew Square, Edinburgh Branch;

**"Accounts Pledge"** means the assignation of accounts to be made by the Borrower in favour of the Security Trustee in form and substance satisfactory to the Agent;

**"Additional Property"** means any freehold or leasehold property situated in Scotland or England and Wales as approved in writing by the Agent and in respect of which security has been granted to the Agent as security trustee;

**"Agent"** means The Governor and Company of The Bank of Scotland incorporated by Special Act of Parliament and having its head office at The Mound, Edinburgh, EH1 1YZ for itself and as trustee for and on behalf of the Banks;

**"Assignor"** means Equity Partnerships Fund Management Limited, a company incorporated under the laws of England and Wales (Registered Number 3552187) and having its registered office at Europe House, 20 Esplanade, Scarborough, North Yorkshire, YO11 2AQ;

**"Banks"** means the Senior Banks and the Junior Banks and each a **"Bank"**;

**"Borrower"** means Active Retail Rookery Fund a limited partnership registered in Scotland under number SL005173 acting by York Place (No. 294) Limited, a company registered in Scotland under company number SC251570 as general partner of that partnership;

**"Corporate Cross Guarantee"** means the guarantee to be entered into by the Borrower, the General Partner, Active Retail Fund, Active Retail Fund (General Partner) Limited and the Agent;

**"Debentures"** means the debentures executed by the General Partner in favour of the Agent in form and substance satisfactory to the Agent;

**"Deed of Subordination"** means a deed of subordination in form and substance satisfactory to the Agent;

**"Facility Agreement"** means agreement dated on or around 9 July 2004 between the Borrower and others, the Banks and the Agent;

**"Finance Documents"** means:

- (a) the Facility Agreement;
- (b) the Fees Letter;
- (c) any Transfer Certificate;
- (d) the Security Documents;
- (e) any Hedging Agreement;
- (f) the Managing Agent's Undertaking.

and any other agreement, document or deed entered into or executed and delivered pursuant to the terms of this agreement, the Security Documents or in connection with this agreement and/or the Security Documents which, in each case, is designated by the Agent and the Borrower as a Finance Document;

**"Finance Party"** means each of the Agent, the Banks and the Hedge Counterparty;

**"General Partner"** means Active Retail Rookery Fund (General Partner) Limited a company registered in Scotland under company number SC263072 as general partner of the Borrower;

**"Hedge Counterparty"** means any of the Banks and other counterparty which enters into any Hedging Agreement with the Borrower;

**"Hedging Agreement"** means an interest rate swap, cap, collar or floor agreement or other contract entered into in a form satisfactory to the Agent by the Borrower for the purpose of securing profit or avoiding a loss by reference to fluctuations in interest rates and includes (without prejudice to the foregoing generality) any counter indemnity in respect of any guarantee by an Finance Party in favour of a Hedge Counterparty;

**"Junior Bank"** means:

- (a) any Original Junior Bank; and
- (b) any bank or financial institution which has become a Party as a Junior Bank in accordance with the terms of this agreement,

which in each case has not ceased to be a Party in accordance with such terms;

**"Legal Charge"** means the first ranking legal charge to be granted by the Borrower in favour of the Agent in form and substance satisfactory to the Agent;

**"Managing Agent"** means any managing agent of a Property approved by the Agent;

**"Managing Agent's Undertaking"** means an undertaking from the Managing Agent to the Agent in form and substance satisfactory to the Agent;

**"Operational Account"** means account number 06045647 of the Assignor with The Governor and Company of the Bank of Scotland (sort code 80-20-00);

**"Original Banks"** means the Original Junior Banks and the Original Senior Banks and each an **"Original Bank"**;

**"Original Junior Bank"** means a Junior Bank which is a Party at the date of this agreement and together the **"Original Junior Banks"**;

**"Original Senior Bank"** means a Senior Bank which is a Party at the date of this agreement and together the **"Original Senior Banks"**;

**"Original Property"** means the leasehold and freehold property as follows:

- (i) Rookery I Shopping Centre, The Rookery, Newmarket as demised by a lease dated 22 June 1993 and made between (1) Forest Heath District Council and (2) Lloyds Bank SF Nominees Limited registered at HM Land Registry under Title Number SK130917;

- (ii) Rookery II Shopping Centre, The Rookery, Newmarket as demised by a lease dated 22 June 1993 and made between (i) Forest Heath District Council and (2) Lloyds Bank SF Nominees Limited registered at HM Land Registry under Title Number SK130918; and
- (iii) 1,2 and 3 Market Street, Newmarket being the whole of the freehold property registered at HM Land Registry under Title Number SK215211;

**"Party"** means a party to this agreement and includes its successors in title, permitted assigns and permitted transferees;

**"Property"** means the Original Property and each Additional Property;

**"Rent Account"** means account number 06026087 of the Assignor with The Governor and Company of the Bank of Scotland (sort code 801100)

**"Rights"** in relation to any contract, agreement or arrangement includes:-

- (i) the right to receive all and any moneys payable thereunder;
- (ii) the proceeds of any payment thereunder;
- (iii) all claims for damages for any breach thereof (except for a breach by the Assignor);
- (iv) the benefit of all warranties and indemnities contained therein;
- (v) any right to terminate the same; and
- (vi) the right to perform and observe the provisions of the same and to compel the performance and observance of the same;

**"Sale Proceeds Account"** means the account number 06026079 of the Assignor with The Governor and Company of the Bank of Scotland (sort code 801100);

**"Security Documents"** means the Legal Charge, the Debenture, the Deed of Subordination, the Corporate Cross Guarantee, the Managing Agent's Undertaking, the Accounts Pledge and any other document which grants security rights or rights by way of guarantee and/or indemnity or other assurance against loss in respect of any liabilities of the Borrower under the Finance Documents;

**"Secured Liabilities"** means all present and future obligations and liabilities of the Borrower to the Agent and the Banks (or any of them) hereunder and under the Facility Agreement and any Security Document and/or any deed or document supplemental thereto, whether actual, contingent, sole, joint and/or several or otherwise including, without prejudice to the foregoing generality, all obligations to indemnify the Agent;

**"Senior Bank"** means:

- (a) any Original Senior Bank; and
- (b) any bank or financial institution which has become a Party as a Senior Bank in accordance with the terms of this agreement,

which in each case has not ceased to be a Party in accordance with such terms;

**"Transfer Certificate"** means a certificate substantially in the form set out in Schedule 6 of the Facility Agreement signed by the Agent, a Bank and the bank or financial institution which is specified as the New Bank in such certificate;

FILE COPY



## CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

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

COMPANY No. 03552187

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT AN ACCOUNTS PLEDGE DATED THE 16th JULY 2004 AND CREATED BY EQUITY PARTNERSHIPS FUND MANAGEMENT LIMITED FOR SECURING ALL MONIES DUE OR TO BECOME DUE FROM THE BORROWER TO THE GOVERNOR AND COMPANY OF THE BANK OF SCOTLAND, FOR ITSELF AND AS TRUSTEE FOR AND ON BEHALF OF THE BANKS AND THE BANKS (OR ANY OF THEM) 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 24th JULY 2004.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 28th JULY 2004.

DRP



*Companies House*  
— for the record —



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES