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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

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

For official use

Company number

Name of company

* Castle Village Investments Limited (the "Company")

Date of creation of the charge

12th July 2002

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

Guarantee and Debenture (the "Guarantee and Debenture")

Amount secured by the mortgage or charge

See Appendix A

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

See Appendix B

Postcode

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

Dickson Minto W.S.
Royal London House
22-25 Finsbury Square
London
EC2A 1DX

For official Use
Mortgage Section



Time critical reference

Ref:CastleVillageinv.1dd

CHFP025

Please do not
write in
this margin

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

*insert full name
of Company

Short particulars of all the property mortgaged or charged

See Appendix C

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)

Signed

Mark Scharn Schulte

Date

26/7/02

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

A fee of £10 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 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

**COMPANIES FORM 395
GUARANTEE AND DEBENTURE**

APPENDIX A

Amount secured by the mortgage or charge (the "Secured Liabilities")

All present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or as principal debtor, guarantor, surety or otherwise or as the equivalent obligor under the laws of any other jurisdiction) of each Obligor to the Security Trustee and to the Secured Parties and to any of them under any of the Financing Documents together with:

- (a) all costs, charges and expenses incurred by the Security Trustee or any Secured Party in connection with the protection, preservation or enforcement of its rights under any of the Financing Documents;
- (b) any refinancing, novation, refunding, deferral or extension of any of those obligations or liabilities;
- (c) any further advances and additional facilities which may be made by any Secured Party to any Obligor under any agreement expressed to be supplemental to any of the Financing Documents and all interest, fees and costs in connection therewith;
- (d) any claim for damages or restitution in the event of rescission of any of those obligations or liabilities or otherwise in connection with any of the Financing Documents;
- (e) any claim against any Obligor flowing from the recovery by an Obligor of a payment or discharge in respect of any of those liabilities on grounds of preference or otherwise; and
- (f) any amounts which would be included in any of the foregoing but for any discharge, non-provability, unenforceability or non-allowability of the same in any insolvency or other proceedings

Capitalised terms are defined in Appendix D attached hereto



**COMPANIES FORM 395
GUARANTEE AND DEBENTURE**

APPENDIX B

The Chargee/Mortgagee

The Royal Bank of Scotland plc, 36 St Andrew Square, Edinburgh, EH2 2YB as Security Trustee for itself and for each of the Secured Parties (in such capacity as Agent, Arranger, Issuing Bank, Ancillaries Bank and Security Trustee) (the "Security Trustee").

Capitalised terms are defined in Appendix D attached hereto

A handwritten signature in black ink, appearing to be 'WSS' or similar, located below the text 'Capitalised terms are defined in Appendix D attached hereto'.

**COMPANIES FORM 395
GUARANTEE AND DEBENTURE**


APPENDIX C

1. The Company with full title guarantee has charged, with the payment and discharge to the Security Trustee (as agent and trustee aforesaid) of all the Secured Liabilities:
 - (a) By way of fixed charge and legal mortgage, all the Company's freehold and leasehold property both present and future together with all buildings and fixtures (including trade fixtures) and fixed plant and machinery from time to time thereon and therein;
 - (b) By way of fixed charge, all plant, machinery, vehicles and other equipment now or hereafter owned by the Company together with the benefit of any obligations and warranties given by the manufacturer or supplier of such plant, machinery or other equipment and the benefit of all maintenance agreements entered into between it and any other person in respect of such plant, machinery and other equipment;
 - (c) By way of fixed charge and legal mortgage the Shares owned by the Company;
 - (d) By way of fixed charge all other shares and stock in the capital of any company which as at the date hereof or at any time hereafter is owned by the Company or in which the Company otherwise has an interest together in all cases with all rights arising in relation thereto;
 - (e) By way of fixed charge, the benefit of all present and future licences (statutory or otherwise) held in connection with the Company's business or the user of any of the mortgaged property and the right to recover and receive all compensation which may at any time become payable to the Company in respect thereof;
 - (f) By way of fixed charge, all licences and patents (including applications and the rights to apply therefor), copyrights, rights in trademarks whether registered or not, trade names, rights in service marks whether registered or not, registered designs, know-how and rights in confidential information now or at any time belonging to the Company;
 - (g) By way of fixed charge, the Company's goodwill and uncalled capital both present and future;

- (h) By way of fixed charge, the book debts due or owing to the Company both present and future;
 - (i) By way of fixed charge, all benefits in respect of all contracts and policies of insurance which are from time to time taken out by or (to the extent of such interest) in which the Company has an interest;
 - (j) By way of floating charge, the Company's stock-in-trade and work-in-progress, prepayments, investments quoted on a recognised stock exchange and cash both present and future; and
 - (k) By way of floating charge, the Company's undertaking and all other property and assets of the Company both present and future.
2. The Company has also assigned and agreed to assign to the Security Trustee (as agent and trustee) with full title guarantee all of its right, title and interest, present and future, in and to:
- (i) the Acquisition Documents; and
 - (ii) the Keyman Policies

provided that to the extent (if any) that such rights, title and interests are not assignable the assignment will operate as an assignment of proceeds received by the Company under the Acquisition Documents or Keyman Policies as the case may be.

Capitalised terms are defined in Appendix D attached hereto.



**COMPANIES FORM 395
GUARANTEE AND DEBENTURE**

APPENDIX D

Definitions

"Acquisition Documents" means:

- (a) the Share Purchase Agreement; and
- (b) the Investment Agreement.

"Banks" means the Banks as defined in the Senior Facility Agreement;

"Financing Documents" has the meaning ascribed to it in the Senior Facility Agreement;

"Group" means the Parent and its subsidiary undertakings from time to time;

"Hedging Bank" has the meaning ascribed to it in the Guarantee and Debenture;

"Investment Agreement" means the agreement dated 12th July 2002 relating to the Parent and made amongst the Vendors (as defined in the Share Purchase Agreement) RBSM Investments Limited, The United Bank of Kuwait plc and others;

"Keyman Policies" means the keyman life assurance policies to be taken out on Michael Williams and Michael Lethaby in a minimum amount of £250,000 each and on David Holliday in a minimum amount of £1,000,000 and for a period of five years in each case;

"Lenders" means the Lenders from time to time as defined in the Senior Facility Agreement and the Mezzanine Loan Agreement;

"Mezzanine Lenders" means the Lenders from time to time as defined in the Mezzanine Loan Agreement;

"Mezzanine Loan Agreement" means the mezzanine loan facility agreement between Kealoha II as Borrower, The Royal Bank of Scotland Plc as Arranger and RBS Mezzanine Limited as Agent and Lender dated 12th July 2002;

"Obligor" means any person which is or has been a member of the Group and which has or which will have any liability (actual or contingent) and whether alone or jointly with any other person and whether as principal debtor, guarantor or surety or otherwise (or as the equivalent obligor under the laws of any other jurisdiction) to the Security Trustee and the Secured Parties or any of them for the payment or

repayment of any amounts outstanding or capable of becoming outstanding under the Financing Documents;

"Parent" means Kealoha II Limited (registered number 4421641);

"the Planning Acts" means the Town and Country Planning Act 1990, the Planning (Listed Building and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning and Compensation Act 1991, the Town & Country Planning (Scotland) Act 1972 and all regulations made or taking effect as if made thereunder in each case as from time to time amended and re-enacted by subsequent legislation and regulations;

"Secured Parties" means the Banks, the Hedging Banks and the Mezzanine Lenders;

"Senior Facility Agreement" means the term loan, revolving credit and guarantee facility agreement among Kealoha II Limited and others as Borrowers, The Royal Bank of Scotland plc as Arranger, Agent, Issuing Lender and Ancillaries Lender and the Lenders listed therein dated 12th July 2002;

"Share Purchase Agreement" means the agreement dated 12th July 2002 between (1) the Shareholders of Ward Homes Group Limited and (2) the Parent for the sale and purchase of the whole issued share capital of Ward Homes Group Limited;

"Shares" means any shares listed in the Second Schedule of the Guarantee and Debenture as being charged by the Company together with all rights including dividends and other distributions, arising in relation thereto.

Save where the contrary is indicated, any reference to:

"book debts" shall be construed as a reference to all debts due to any Company whether or not the sum is such as would in the ordinary course of business be entered in the books relating to such business and shall extend to and be deemed to include all bank deposits (subject to Condition 18(B) set out in the Third Schedule to the Guarantee and Debenture and excluding any deposits held on an Excluded Account), royalties, fees and income of like nature in relation to intellectual property and all moneys becoming payable to such Company in respect of debts due to or claims (including insurance claims) by such Company notwithstanding that the amount thereof shall not have been quantified at the time when the moneys hereby secured shall have become payable, but shall exclude all debts in the nature of insurance premia due to such Company in its capacity as trustee or agent on behalf of a third party;

a **"company"** includes any body corporate;

a **"holding company"** shall be construed as a holding company within the meaning of Section 736 of the Companies Act 1985 or any re-enactment or replacement thereof;

"intellectual property" shall be construed as a reference to the property described in Appendix C (f) hereof;

"mortgaged property" shall be construed as a reference to the property described (a) to (k) inclusive in Appendix C hereof;

a **"person"** includes an individual, body corporate, partnership, government, state or agency of a state, in each case whether or not having separate legal personality;

"specifically mortgaged property" shall be construed as a reference to the property described (a) in Appendix C hereof;

"stock-in-trade" and **"work-in-progress"** shall (without prejudice to the generality of those expressions) be construed so as to include:

- (i) all materials wherever situated belonging to any Company which are intended to be or are in the course of being used for manufacture and all goods partly or wholly manufactured both present and future; and
- (ii) all general stores and stocks of fuel and like chattels belonging to any Company and used in or adapted or intended for use in the course of manufacture (but not including plant, machinery and motor vehicles) both present and future;

a **"subsidiary"** shall be construed as a subsidiary within the meaning of Section 736 of the Companies Act 1985 or any re-enactment or replacement thereof;

"book debts", **"stock-in-trade"** and **"work-in-progress"** as defined herein shall be construed and shall be deemed to include all moneys becoming payable to any Company in respect thereof under or by virtue of any policy of insurance taken out by such Company against the non-payment of book debts or the loss, damage or destruction of stock-in-trade or work-in-progress as the case may be.



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CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

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

COMPANY No. 03870595

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT GUARANTEE & DEBENTURE DATED THE 12th JULY 2002 AND CREATED BY CASTLE VILLAGE INVESTMENTS LIMITED FOR SECURING ALL MONIES DUE OR TO BECOME DUE FROM EACH OBLIGOR TO THE ROYAL BANK OF SCOTLAND PLC AS SECURITY TRUSTEE FOR ITSELF AND FOR EACH OF THE SECURED PARTIES AND TO THE SECURED PARTIES 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 27th JULY 2002.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 31st JULY 2002.

P. Parn



Companies House

— for the record —



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES