

# 395

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**SATURDAY**



\*A5061R12\*

07/07/2007

A48

07/07/2007  
COMPANIES HOUSE

646

Please see attached continuation sheets

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

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

Signed

*Allen & Overy LLP*

Date 04 July 2007

On behalf of ~~XXXXXXXX~~ [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 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.

## **1. CREATION OF SECURITY**

### **1.1 General**

- (a) All the security created under the Deed
  - (i) is created in favour of the Security Agent,
  - (ii) is created over present and future assets of the Chargor,
  - (iii) is security for the payment of all the Secured Liabilities, and
  - (iv) is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994
- (b) If the rights of the Chargor under a document cannot be secured without the consent of a party to that document
  - (i) the Chargor must notify the Security Agent promptly,
  - (ii) any security created by the Deed will secure all amounts which the Chargor may receive, or has received, under that document but exclude the document itself, and
  - (iii) unless the Security Agent otherwise requires, the Chargor must use reasonable endeavours to obtain the consent of the relevant party to that document being secured under the Deed
- (c) The Security Agent holds the benefit of the Deed granted pursuant to the Deed on trust for the Secured Creditors

### **1.2 Land**

- (a) The Chargor charges by way of first fixed charge all its estates or interests in any freehold or leasehold property
- (b) A reference in this subclause to a mortgage or charge of any freehold or leasehold property includes
  - (i) all buildings, fixtures, fittings and fixed plant and machinery on that property, and
  - (ii) the benefit of any covenants for title given or entered into by any predecessor in title of the Chargor in respect of that property or any moneys paid or payable in respect of those covenants

### **1.3 Investments**

- (a) The Chargor charges by way of a first fixed charge its interest in all shares, stocks, debentures, bonds or other securities and investments owned by it or held by any nominee on its behalf
- (b) A reference in this subclause to a mortgage or charge of any stock, share, debenture, bond or other security includes
  - (i) any dividend or interest paid or payable in relation to it, and
  - (ii) any right, money or property accruing or offered at any time in relation to it by way of redemption, substitution, exchange, bonus or preference, under option rights or otherwise

**1.4 Plant and machinery**

The Chargor charges by way of a first fixed charge all plant and machinery owned by the Chargor and its interest in any plant or machinery in its possession

**1.5 Credit balances**

The Chargor charges by way of a first fixed charge all of its rights in respect of any amount standing to the credit of any Account and the debt represented by it

**1.6 Book debts etc.**

The Chargor charges by way of first fixed charge

- (a) all of its book and other debts,
- (b) all other moneys due and owing to it, and
- (c) the benefit of all rights, securities or guarantees of any nature enjoyed or held by it in relation to any item under paragraph (a) or (b) above

**1.7 Insurances**

The Chargor assigns absolutely, subject to a proviso for re-assignment on redemption, all of its rights in respect of any contract or policy of insurance taken out by it or on its behalf or in which it has an interest

**1.8 Other contracts**

The Chargor assigns absolutely, subject to a proviso for re-assignment on redemption, all of its rights in respect of

- (a) any agreement to which it is a party except to the extent that it is subject to any fixed security created under any other term of this clause,
- (b) any letter of credit issued in its favour, and
- (c) any bill of exchange or other negotiable instrument held by it

**1.9 Intellectual property**

The Chargor charges by way of a first fixed charge, all of its rights in respect of

- (a) any know-how, patent, trade mark, service mark, design, business name, topographical or similar right,
- (b) any copyright or other intellectual property monopoly right, or
- (c) any interest (including by way of licence) in any of the above,

in each case whether registered or not and including all applications for the same

**1.10 Miscellaneous**

The Chargor charges by way of first fixed charge

- (a) any beneficial interest, claim or entitlement it has in any pension fund,
- (b) its goodwill,
- (c) the benefit of any authorization (statutory or otherwise) held in connection with its use of any Security Asset,
- (d) the right to recover and receive compensation which may be payable to it in respect of any authorization referred to in paragraph (c) above, and
- (e) its uncalled capital

#### **1.11 Floating charge**

- (a) The Chargor charges by way of a first floating charge all its assets not at any time otherwise effectively mortgaged, charged or assigned by way of fixed mortgage, charge or assignment under this clause
- (b) Except as provided below, the Security Agent may by notice to the Chargor convert the floating charge created by this subclause into a fixed charge as regards any of the Chargor's assets specified in that notice, if
  - (i) an Event of Default is outstanding, or
  - (ii) the Security Agent considers those assets to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy
- (c) The floating charge created by this subclause may not be converted into a fixed charge solely by reason of
  - (i) the obtaining of a moratorium, or
  - (ii) anything done with a view to obtaining a moratorium,under the Insolvency Act 2000
- (d) The floating charge created by this subclause will automatically convert into a fixed charge over all of the Chargor's assets if an administrator is appointed or the Security Agent receives notice of an intention to appoint an administrator
- (e) The floating charge created by this subclause is a qualifying floating charge for the purpose of paragraph 14 of Schedule B1 to the Insolvency Act 1986

#### **2. RESTRICTIONS ON DEALINGS**

The Chargor must not

- (a) create or permit to subsist any Security Interest (other than pursuant to the Senior Security) on any Security Asset, or
- (b) sell, transfer, licence, lease or otherwise dispose of any Security Asset,

except as expressly allowed under the Credit Agreement or the Intercreditor Agreement

In this Form 395

**Accession Agreement** means a letter, substantially in the form of schedule 6 (Form of Accession Agreement) of the Credit Agreement, with such amendments as the Facility Agent and the Company may agree

**Account** means the Interest Deposit Account or the Distribution Account

**Acquisition Facility Lender** means

- (a) the Original Acquisition Facility Lender, or
- (b) any person which becomes an Acquisition Facility Lender in accordance with clause 27.2 (Assignments and transfers by Lenders) of the Credit Agreement

**Administrative Party** means the Arranger or the Facility Agent

**Arranger** means Banc of America Securities Limited as mandated lead arranger

**BoA Equity Loan Agreement** means the £4,453,719 loan agreement dated on or about the date of the Credit Agreement between amongst others, the Company as borrower and BankAmerica International Financial Corporation as lender

**Company** means Invista Castle Limited (registered number 06174604)

**Credit Agreement** means the £34,735,126 credit agreement dated 31 May 2007 between, amongst others, the Chargor and the Facility Agent

**Declaration of Trust** means the declaration dated on or about the date of the Credit Agreement under which The Royal Bank of Scotland plc declares that it will hold the Tricomm Charges as trustee and nominee of the Banc of America Securities Limited (in its capacity as security trustee under the Project Facility Agreement)

**Distribution Account** means the account designated as such under clause 18.22 (Distribution) of the Credit Agreement

**Equity Loan Finance Documents** means the Finance Documents as defined in the BoA Equity Loan Agreement

**Event of Default** means an event or circumstance specified as such in clause 19 (Default) of the Credit Agreement

**Facility Agent** means Banc of America Securities Limited as facility agent

**Fee Letter** means any letter entered into by reference to the Credit Agreement between one or more Administrative Parties and the Company setting out the amount of certain fees referred to in the Credit Agreement

**Finance Document** means

- (a) the Credit Agreement,
- (b) a Security Document;
- (c) a Fee Letter,

- (d) a Transfer Certificate,
- (e) an Accession Agreement,
- (f) the Declaration of Trust,
- (g) the Intercreditor Agreement, or
- (h) any other document designated as such by the Facility Agent and the Company

**Finance Party** means a Lender or an Administrative Party

**Group** means the Company and its Subsidiaries

**Guarantor** means a member of the Group which becomes a guarantor after the date of the Credit Agreement by submitting a duly executed Accession Agreement

**Intercreditor Agreement** means the intercreditor agreement entered into or to be entered into between, amongst others, the Company, the Finance Parties and Invista Residential Property Trust Limited in respect of, among other things, the ranking of payments due in respect of the Finance Documents, the Equity Loan Finance Documents, the Invista Equity Loan Agreement and the Invista Preference Share Loan Agreement as between the Finance Parties and Invista Residential Property Trust Limited

**Interest Deposit Account** means the account designated as such under clause 18.18 (Interest shortfall deposit) of the Credit Agreement

**Invista Equity Loan Agreement** means the £4,453,719 loan agreement dated on or about the date of the Credit Agreement between the Company as borrower and Invista Residential Property Trust Limited as lender

**Invista Preference Share Loan Agreement** means the £15,227,126 loan agreement dated on or about the date of the Credit Agreement between the Company as borrower and Invista Residential Property Trust Limited as facility agent

**Invista PS Credit Agreement** means the £15,227,126 credit agreement dated 31 May 2007 between the Chargor and Invista Residential Property Trust Limited

**Invista PS Finance Documents** means the Finance Documents defined in the Invista PS Credit Agreement

**Invista PS Finance Parties** means the Finance Parties defined in the Invista PS Credit Agreement

**Lender** means

- (a) the Acquisition Facility Lender, or
- (b) the Preference Share Facility Lender

**Obligor** means the Company or a Guarantor

**Original Acquisition Facility Lender** means Bank of America, N A , London Branch as original acquisition facility lender

**Preference Share Facility Lender** means Bank of America, N A , London Branch as original preference share facility lender

**Project Facility Agreement** means the loan facilities agreement dated 30 November 2001 and between, amongst others, Tricomm Housing Limited as borrower and the Royal Bank of Scotland plc as lender (as amended and restated from time to time)

**Project Finance Documents** means the Senior Financing Documents as defined in the Project Facility Agreement

**Secured Creditor** has the meaning given to that term in the Intercreditor Agreement

**Security Agreement** means a security agreement in a form approved by the Security Agent (acting reasonably)

**Security Assets** means all assets of the Chargor the subject of any security created by the Deed

**Security Document** means

- (a) each Security Agreement, and
- (b) any other document evidencing or creating security over any asset of an Obligor to secure any obligation of any Obligor to a Finance Party under the Finance Documents

**Security Interest** means any mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having a similar effect

**Senior Security** means the debenture dated 5 July 2006 between the Chargor and The Governor and Company of the Bank of Scotland securing the liabilities of Tricomm Housing Limited and Tricomm Housing (Holdings) Limited under the Project Finance Documents

**Subsidiary** means an entity of which a person has direct or indirect control or owns directly or indirectly more than 50 per cent of the voting capital or similar right of ownership and **control** for this purpose means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise

**Transfer Certificate** means for a transfer by novation, a certificate substantially in the form of schedule 5 (Forms of Transfer Certificate) of the Credit Agreement, with such amendments as the Facility Agent may approve or reasonably require or any other form agreed between the Facility Agent and the Company

**Tricomm Charges** means

- (a) the debenture dated 30 November 2001 between Tricomm Housing Limited and The Royal Bank of Scotland plc as security trustee to secure the obligations of Tricomm Housing Limited under the Project Finance Documents, and
- (b) the debenture dated 21 June 2006 between Tricomm Housing Limited and The Royal Bank of Scotland plc as security trustee to secure the obligations of Tricomm Housing Limited under the Project Finance Documents



FILE COPY



## CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

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

COMPANY No 04278621

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT A SECURITY AGREEMENT DATED THE 3rd JULY 2007 AND CREATED BY TRICOMM HOUSING (HOLDINGS) LIMITED FOR SECURING ALL MONIES DUE OR TO BECOME DUE FROM THE COMPANY TO THE FINANCE PARTIES AND THE INVISTA PS FINANCE PARTIES 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 7th JULY 2007

GIVEN AT COMPANIES HOUSE, CARDIFF THE 12th JULY 2007

*P. Neal*



*Companies House*

— for the record —



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES