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COMPANIES FORM No. 395

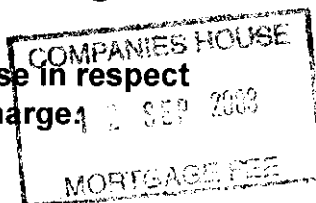
A/C 04668140

12/09/03

## 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



4668140

Name of company

\* DERBY HEALTHCARE PLC (THE "COMPANY")

Date of creation of the charge

9 SEPTEMBER 2003

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

ISSUER DEBENTURE DATED 9 SEPTEMBER 2003 AND MADE BY THE COMPANY IN FAVOUR OF BNP PARIBAS TRUST CORPORATION UK LIMITED (THE "SECURITY TRUSTEE") (THE "DEBENTURE")

Amount secured by the mortgage or charge

SEE ANNEX 1

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

BNP PARIBAS TRUST CORPORATION UK LIMITED acting in its capacity as Security Trustee for the Beneficiaries (as defined below),  
10 HAREWOOD AVENUE  
LONDON

Postcode NW1 6AA

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

Clifford Chance LLP  
10 Upper Bank Street  
London E14 5JJ  
return via CH London  
Counter

DSC/PZC/I1297/589/DJQB

Time critical reference

For official Use  
Mortgage Section

Post room



LD2  
COMPANIES HOUSE

\*L0YZX0AD\*

0347  
12/09/03

Short particulars of all the property mortgaged or charged

SEE ANNEX 2

Please do not  
write in  
this margin

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

01  
+  
05.

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 Clifford Chance

Date 9 SEPTEMBER 2003

On behalf of [company] ~~XXXXXXXXXXXX~~ †

† 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

**Form M395 - Particulars of Mortgage or Charge**

NAME OF COMPANY: Derby Healthcare PLC (the "**Company**")

COMPANY NUMBER: 4668140

DOCUMENT: Issuer Debenture dated 9 September 2003 and made by the Company in favour of BNP Paribas Trust Corporation UK Limited (the "**Security Trustee**") (the "**Debenture**")

**ANNEX 1**

**AMOUNT SECURED BY THE MORTGAGE OR CHARGE**

All present or future, actual or contingent, obligations of the Company (whether entered into solely or jointly with one or more persons and whether as principal or as surety) to any of the Beneficiaries (as defined below) under the Senior Finance Documents (as defined below) (which shall include, without limitation, any obligations of the Company which may from time to time arise by way of subrogation and any liability in respect of any further advances made under the Senior Finance Documents) (the "**Secured Obligations**").

## **Form M395 - Particulars of Mortgage or Charge**

NAME OF COMPANY: Derby Healthcare PLC

COMPANY NUMBER: 4668140

DOCUMENT: Issuer Debenture dated 9 September 2003 and made by the Company in favour of BNP Paribas Trust Corporation UK Limited (the "**Security Trustee**") (the "**Debenture**")

### **ANNEX 2**

#### **SHORT PARTICULARS OF ALL THE PROPERTY MORTGAGED OR CHARGED**

1. Pursuant to the Debenture the Company charges with full title guarantee in favour of the Security Trustee as security for the payment and discharge of the Secured Obligations by way of first fixed charge (which so far as it relates to land in England and Wales vested by the Company at the date of the Debenture shall be a charge by way of legal mortgage) on all the Company's right, title and interest from time to time in and to each of the following assets, namely:
  - (a) all the Real Property (as defined below);
  - (b) all the Tangible Moveable Property (as defined below);
  - (c) all goodwill (including all brand names not otherwise subject to a fixed charge or assignment by or pursuant to the Debenture) at the date of the Debenture or at any time thereafter belonging to the Company;
  - (d) the Investments (as defined below);
  - (e) the Insurances (as defined in the Collateral Deed (as defined below)) and any proceeds received thereunder (other than proceeds paid or payable into the Trust Insurance Proceeds Account (as defined in the Collateral Deed));
  - (f) the Intellectual Property (as defined below);
  - (g) the Variation Bonds (as defined in the Collateral Deed); and
  - (h) all Monetary Claims (as defined below) (other than any claims which are otherwise subject to a fixed charge or assignment (at law or in equity) by way of security pursuant to the Debenture) and all Related Rights (as defined below).
2. The Company, pursuant to the Debenture, assigns with full title guarantee to the Security Trustee by way of security for the payment and discharge of the Secured Obligations all the Company's right, title and interest from time to time in and to each of the following assets:
  - 2.1 all rights and claims in relation to the Tangible Moveable Property (including those against any manufacturer, supplier or installer of such property, any contractor or

professional adviser engaged in relation to any such property, and to the extent that any of the Tangible Moveable Property is at the date of the Debenture or at any time thereafter hired, leased or rented to any other person, the rights under the hiring, leasing or rental contract and any guarantee, indemnity or security for the performance of the obligations of such person and any other rights and benefits relating thereto);

2.2

- (i) any agreements, contracts, deeds, undertakings, guarantees, warranties or other documents at the date of the Debenture or thereafter entered into by or given to the Company in respect of the Property (as defined in the Collateral Deed) and all documents at the date of the Debenture or thereafter in existence necessary to enable the Security Trustee to perfect the same and all the proceeds of any payment of any claims, awards or judgments paid or payable to the Company under or in respect of the same (including but without limitation all liquidated and ascertained damages payable to the Company thereunder) and all the Company's rights or remedies at the date of the Debenture or thereafter in existence arising thereunder;
- (ii) all tenant covenants, all landlord covenants (including those relating to the Leases (as defined in the Collateral Deed)) and all covenants, agreements, undertakings or obligations entered into or to be entered into by any other party to any leases or to any licences, deeds, rent deposit agreements, or other deeds or documents supplemental or collateral to any lease and of all guarantees or indemnities in any of the aforesaid;
- (iii) all chattels at the date of the Debenture or at any time thereafter hired, leased or rented by the Company to any other person together in each case with the benefit of the related hiring, leasing or rental contract and any guarantee, indemnity or other security for the performance of the obligations of any person under or in respect of such contract; and
- (iv) all licences held at the date of the Debenture and at any time thereafter in connection with the business carried on upon the Property or any part thereof;

2.3 all rights and claims to the Assigned Accounts (as defined below) and to the proceeds of such Assigned Accounts;

2.4 all book and other debts and Monetary Claims at the date of the Debenture or at any time thereafter due or owing to the Company which are not otherwise subject to a fixed charge or assigned (whether at law or in equity) by way of security to the Security Trustee by or pursuant to the Debenture and all rights relating thereto including any security, guarantees, indemnities or remedies therefor;

2.5 all Investments to which the Company was at the date of the Debenture or may thereafter become entitled;

2.6 all rights and claims to which the Company was at the date of the Debenture or may thereafter become entitled in relation to the proceeds of any of the Insurances (other

than rights and claims to proceeds under the Trust Insurances (as defined in the Collateral Deed) and the right to receive such proceeds and all Related Rights;

- 2.7 all rights and Claims (as defined below) to which the Company was at the date of the Debenture or may thereafter become entitled in relation to its uncalled capital;
  - 2.8 all rights, title and interest of the Company under or in respect of the Assigned Contracts (as defined below) and in respect of all ancillary documentation entered into at the date of the Debenture or to be entered into pursuant to the Assigned Contracts;
  - 2.9 all rights to which the Company was at the date of the Debenture or may thereafter become entitled in respect of the proceeds of any order of the court made pursuant to Sections 238(3), 239(3) or 244 of the Insolvency Act 1986; and
  - 2.10 all Related Rights in relation to any other Charged Property (as defined below).
3. Pursuant to the Debenture the Company charges with full title guarantee in favour of the Security Trustee as security for the payment and discharge of the Secured Obligations by way of first floating charge all of the Company's undertaking and assets, present and future other than any assets at the date of the Debenture effectively charged to the Security Trustee by way of fixed charge or effectively assigned (whether at law or in equity) by way of security to the Security Trustee or otherwise subject to an effective fixed security in favour of the Security Trustee.

**N.B. The Debenture contains the following provisions:**

1. The Security Trustee may at any time by notice in writing to the Company convert the floating charge created by Clause 3.3 (*Floating Charge*) of the Debenture with immediate effect into a fixed charge as regards any property or assets specified in the notice if:
  - (i) an Event of Default (as defined in the Collateral Deed) has occurred and is continuing; or
  - (ii) the Security Trustee considers that any of the Charged Property may be in jeopardy or in danger of being seized or sold pursuant to any form of legal process; or
  - (iii) the Security Trustee reasonably considers that it is desirable in order to protect the priority of the security.
2. Notwithstanding paragraph 1 above and without prejudice to any rule of law which may have a similar effect, the floating charge shall automatically be converted with immediate effect into a fixed charge as regards all the assets subject to the floating charge and without notice from the Security Trustee to the Company on the occurrence of an Automatic Crystallisation Event (as defined below).
3. Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created pursuant to Clause 3.3 of the Debenture.

**N.B. The Debenture also contains provisions whereby:**

**NEGATIVE PLEDGE**

1. The Company undertakes that at no time during the subsistence of the Security (as defined below) will the Company otherwise than:
  - (i) in the Security Trustee's favour; or
  - (ii) with the Security Trustee's prior written consent,create, or permit to subsist any Encumbrance (as defined below) (other than a Permitted Encumbrance (as defined in the Collateral Deed)) on or over all or any of the Charged Property.
2. Pursuant to the Debenture the Company undertakes, subject to paragraph 4 below and to the provisions of each of the Senior Finance Documents and the Project Documents (as defined in the Collateral Deed), that at no time during the subsistence of the Security will the Company, except with the prior written consent of the Security Trustee and except to the extent permitted by paragraphs 3 and 4 below:
  - 2.1 execute or agree to execute any conveyance, transfer, lease, sale, surrender, determination or other disposition or assignment of all or any part of the Property whether by one or more transactions or series of transactions (whether related or not); or
  - 2.2 dispose or agree to dispose of, or create or agree to create, any legal or equitable estate or interest in or over, or relating to the enjoyment of, all or any part of the Charged Property or grant or agree to grant any licence or consent, whether expressly or by conduct, for assignment, parting with or sharing possession or occupation, or underletting in relation to any lease to which any of the Charged Property may from time to time be subject and the Company will procure that no person shall become entitled to assert any proprietary interest or right over, or which may affect the value of, any of the Charged Property; or
  - 2.3 allow any person any licence or other right to use, occupy or share possession of all or any part of the Charged Property other than in accordance with the Finance Documents (as defined in the Collateral Deed); or
  - 2.4 sell or grant any rights of pre-emption over or grant or agree to grant any lease or tenancy of or otherwise dispose of or agree to dispose of the benefit of all or any of the Charged Property; or
  - 2.5 (a) grant or vary, or accept any surrender, or cancellation or disposal of, any lease, tenancy, licence, consent or other right to occupy in relation to any of the Charged Property other than in accordance with the Finance Documents or (b) allow any person any right to use or occupy or to become entitled to assert any proprietary interest in, or right over, the Charged Property, which may, in each case, adversely affect the value of any of the Charged Property or the ability of the Security Trustee to exercise any of

the Collateral Rights (as defined below) other than in accordance with the Finance Documents; or

- 2.6 assign or otherwise dispose of any interest in any Account (as defined in the Collateral Deed) and no right, title or interest in relation to any Account maintained with the Security Trustee, or the credit balance standing to any such Account shall be capable of assignment or other disposal; or
  - 2.7 withdraw any sums whatsoever from the Accounts, other than as permitted by the Senior Finance Documents; or
  - 2.8 vary, release or waive any obligations by a third party in any of the Project Documents.
3. Subject to paragraphs 1 and 2 above and the provisions of each of the Senior Finance Documents, the Company may sell, transfer or otherwise dispose of all or any part of its Tangible Moveable Property, all or any of the Charged Investments (as defined below) and all or any part of its undertaking and assets for the time being subject to the floating charge in the ordinary and usual course of and for the purposes of the Company's business and perform and comply with its obligations under the Project Documents (as defined in the Collateral Deed).
  4. None of the foregoing prohibitions in paragraphs 1, 2 and 3 above shall be construed as limiting any powers exercisable by any Receiver (as defined below) appointed by the Security Trustee under or pursuant to the Debenture.

**N.B. The Debenture also contains a covenant for further assurance.**



## Schedule of Definitions and Interpretation

1. All defined terms and expressions herein used shall, if not otherwise defined, have the following meanings and any term not herein defined shall have the meaning given to such term in the Collateral Deed (as defined below):

**"Assigned Accounts"** has the same meaning as is given to it in the Debenture, and each of which are described in detail in an accounts agreement dated 9 September 2003 between the Company, Derby Healthcare (Holdings) Limited, the Security Trustee, MBIA and BNP Paribas, London Branch (the **"Accounts Agreement"**);

**"Assigned Contracts"** means all the Relevant Documents to which the Company is a party other than the Bonds;

**"Automatic Crystallisations Event"** means any of the following events:

- (a) the convening of any general meeting of the Company for the purposes of considering any resolution for the winding-up, dissolution, compromise, arrangement or reconstruction of the Company (other than for the purposes of a solvent amalgamation or reconstruction previously approved in writing by the Security Trustee); or
- (b) the commencement of any legal proceedings (or their renewal after a stay) by the Company or any of its directors, or shareholders for (i) the winding-up, dissolution or re-organisation (other than a reorganisation previously approved by the Security Trustee) of the Company or (ii) the presentation of a petition for the making of an administration order (or any order having the same or a similar effect) in relation to the Company; or
- (c) the commencement or renewal of any such legal proceedings as are referred to in (b) above (other than frivolous or vexatious proceedings which are discharged before being advertised) which were not commenced by the Company, its directors or shareholders unless such legal proceedings are discharged or stayed within 14 days after such legal proceedings are started (or renewed) or, if earlier, the occurrence of:
  - (i) the third business day prior to the first date set for the hearing of any such proceedings; or
  - (ii) the first date set for the hearing of any proceedings for the appointment of a provisional liquidator of the Company; or
  - (iii) if the time for any such hearing is set three business days or less in advance, the setting of the time of such hearing; or
- (d) the making of an order by a competent court or the passing of a resolution for the winding-up, dissolution, administration, compromise, arrangement or reconstruction of the Company or the appointment of any receiver,

administrator, administrative receiver or any similar officer in relation to the Company or any material part of its property, assets or revenues;

- (e) the Company creates or attempts to create any Encumbrance (other than a Permitted Encumbrance) over any of the Charged Property; or
- (f) any person levies or attempts to levy any distress, execution or other process against any of the Charged Property;

**"Beneficiaries"** means each of MBIA Assurance S.A. ("**MBIA**"), BNP Paribas Trust Corporation UK Limited in its capacity as bond trustee (the "**Bond Trustee**"), the Bondholders and the Security Trustee and "**Beneficiary**" means each such person;

**"Bondholders"** means each person who is for the time being a holder of one or more Bonds for the purposes of the Bond Trust Deed and "**Bondholders**" means all such persons;

**"Bond Trust Deed"** means the trust deed made on or about 9 September 2003 between the Company, the Bond Trustee and MBIA;

**"Charged Investments"** means all Investments from time to time charged (or purported to be charged) in favour of, or assigned (or purported to be assigned) (whether at law or in equity) by way of security to, the Security Trustee by or pursuant to the Debenture;

**"Charged Property"** means, subject to any contrary indication, the undertaking and assets of the Company from time to time charged (or purported to be charged) in favour of, or assigned (or purported to be assigned) by way of security (whether at law or in equity) to the Security Trustee by or pursuant to Clause 3 (*Fixed Charges, Assignments and Floating Charges*) of the Debenture and any Mortgage (as defined below);

**"Claims"** means the book and other debts and Monetary Claims referred to in sub-clause 3.2 (*Assignments*) of the Debenture (other than those referred to in sub-clause 3.2.3) or deriving from the Intellectual Property, the Charged Investments, the Insurances, any court order or judgment, any contract or agreement to which the Company is a party and any other assets, property, rights or undertaking of the Company;

**"Collateral Deed"** means the collateral deed of even date with the Debenture made between the Company, Derby Healthcare (Holdings) Limited, the Security Trustee, the Bond Trustee and MBIA;

**"Collateral Rights"** means all rights, powers and remedies of the Security Trustee provided by or pursuant to the Debenture or any Mortgage or by law;

**"Encumbrance"** means (a) a mortgage, charge, pledge, lien or other encumbrance securing any obligation of the Company, (b) any arrangement under which money or claims to, or the benefit of, a bank or other account may be applied, set off or made

subject to a combination of accounts so as to effect discharge of any sum owed or payable to any person or (c) any other type of preferential arrangement (including any title transfer and retention arrangement) having a similar effect;

**"Intellectual Property"** means any patents, trade marks, service marks, designs, business names, copyrights, design rights, moral rights, inventions, confidential information, know-how and other intellectual property rights and interests, whether registered or unregistered, the benefit of all applications and rights to use such assets and all Related Rights;

**"Investments"** means stocks, shares, debentures and other securities together with all rights to and relating to stocks, shares, debentures or other securities and any other assets, rights or interests falling within any paragraph in Part 2 of Schedule 2 to the Financial Services and Markets Act 2000 as in force at the date of the Debenture (including any authorised investments acquired pursuant to the Accounts Agreement) whether held directly by or to the order of the Company or by any other trustee, fiduciary or clearance system on its behalf and all Related Rights (including all rights against any such trustee, fiduciary or clearance system);

**"Monetary Claims"** means any book and other debts and monetary claims owing to the Company and any proceeds thereof (including any claims or sums of money deriving from or in relation to any Intellectual Property, any Investment, the proceeds of any insurance policy, any court order or judgment, any contract or agreement to which the Company is a party and any other assets, property, rights or undertaking of the Company);

**"Mortgage"** means a mortgage or charge in respect of all the Real Property in accordance with Clause 6 (*Further Assurance*) of the Debenture substantially in the form of Schedule 4 (*Form of Legal Mortgage*) of the Debenture;

**"Real Property"** means:

- (a) any freehold, leasehold or immovable property (including the freehold and leasehold property in England and Wales of the Company from time to time), and
- (b) any buildings, fixtures, fittings, fixed plant or machinery from time to time situated on or forming part of such freehold or leasehold property,

and includes all Related Rights;

**"Receiver"** means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property;

**"Related Rights"** means, in relation to any asset:

- (a) the proceeds of sale of any part of that asset;

- (b) all rights under any licence, agreement for sale or agreement for lease in respect of that asset;
- (c) all rights, benefits, claims, contracts, warranties, remedies, security, indemnities or covenants for title in respect of that asset; and
- (d) any moneys and proceeds paid or payable in respect of that asset;

"**Security**" means the security from time to time constituted (or purported to be constituted) by or pursuant to the Debenture and any Mortgage;

"**Senior Finance Documents**" has the same meaning as is given to it in the Collateral Deed; and

"**Tangible Moveable Property**" means any plant, machinery, office equipment, vehicles and all other chattels at the date of the Debenture or at any time thereafter belonging to the Company and all Related Rights.

FILE COPY



## CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

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

COMPANY No. 04668140

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT AN ISSUER DEBENTURE DATED THE 9th SEPTEMBER 2003 AND CREATED BY DERBY HEALTHCARE PLC FOR SECURING ALL MONIES DUE OR TO BECOME DUE FROM THE COMPANY TO ANY OF THE BENEFICIARIES 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 12th SEPTEMBER 2003.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 22nd SEPTEMBER 2003 .



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES



*Companies House*

— for the record —