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## COMPANIES FORM No. 395

### Particulars of a mortgage or charge

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)

Name of company

\* Sandwell LIFT Company Limited (the "Chargor")

Date of creation of the charge

15 January 2004

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

Debenture (the "Debenture")

Amount secured by the mortgage or charge

The "Secured Liabilities" being:-

(a) all present and future obligations and liabilities of the Borrower to the Secured Creditors (or any of them) under the Secured Finance Documents and/or any deed or document supplemental thereto, whether actual, contingent, sole, joint and/or several or otherwise, including without limitation, all obligations to indemnify the Secured Creditors under the Secured Finance Documents; and

(b) all present and future obligations and liabilities of the Obligors to the Secured Creditors (or any of them) under the Secured Finance Documents and/or any deed or document supplemental thereto, whether actual, contingent, sole, joint and/or several or otherwise, including without limitation, all obligations to indemnify the Secured Creditors under the Secured Finance Documents.

(See Paper Apart I for defined terms).

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

The Governor and Company of the Bank of Scotland, The Mound, Edinburgh  
(in its capacity as the "Security Trustee")

Postcode EH1 1YZ

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

McGrigor Donald  
Princes Exchange  
1 Earl Grey Street  
Edinburgh  
EH3 9AQ

SDS/MGW/00008B.001587 443329 v 1

Time critical reference

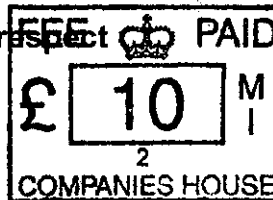
For official Use  
Mortgage Section

Post room



A14  
COMPANIES HOUSE

0608  
31/01/04



# 395

CHFP025

Please do not  
write in  
this margin

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

\*insert full name  
of Company

See Paper Apart II

Please do not  
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Please complete  
legibly, preferably  
in black type, or  
bold block  
lettering

Particulars as to commission allowance or discount (note 3)

Nil

Signed

Date

30/1/04

On behalf of [company] [mortgagor/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

**PAPER APART II TO FORM 395 RE SANDWELL LIFT COMPANY LIMITED (COMPANY NUMBER: 04730805)**

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

- 1.1 The Chargor with full title guarantee, as security for the payment of all Secured Liabilities, charged in favour of the Security Trustee:
  - 1.1.1 by way of first legal mortgage all estates or interests in any freehold or leasehold property wheresoever situate now belonging to it other than any such situated in Scotland and all buildings and Fixtures thereon, the proceeds of sale of all or any part thereof and the benefits of any covenants for title given or entered into by any predecessor in title of the Chargor and any monies paid or payable to the Chargor in respect of such covenants; and
  - 1.1.2 by way of first fixed charge:
    - 1.1.2.1 (to the extent the same are not the subject of an effective mortgage under Paragraph 1.1.1) all present and future estates or interests in any freehold or leasehold property belonging to it other than any such situated in Scotland and all buildings and Fixtures thereon and all proceeds of sale thereof and the benefit of any covenants for title given or entered into by any predecessor in title of the Chargor and any monies paid or payable in respect of such covenants;
    - 1.1.2.2 all plant and machinery now or in the future owned by the Chargor and its interest in any such plant or machinery in its possession;
    - 1.1.2.3 its present and future interest in the Securities and all other stocks, shares, debentures, bonds and other securities held by it from time to time and all rights relative thereto;
    - 1.1.2.4 all sums now or hereafter standing to the credit of any account (including, without limitation, each Bank Account) held by or for the benefit of the Chargor, and the debts represented thereby and all interest and other accruals thereon (the "Account Monies") and all rights, titles, benefit and interest of the Chargor whatsoever present and future therein;
    - 1.1.2.5 all benefits in respect of Insurances, all claims in respect thereof and return of premiums to the extent the same are not assigned pursuant to clause 4.1 of the Debenture;
    - 1.1.2.6 (to the extent that the same do not fall within any other sub-paragraph of this Paragraph 1.1.2) all book and other debts and other monies due, owing, payable or incurred to it now or at any time and the benefit of all rights, securities and guarantees of any nature whatsoever now or at any time enjoyed or held by it in relation thereto;
    - 1.1.2.7 its present and future goodwill;
    - 1.1.2.8 the benefit of all present and future licences, permissions, consents and authorisations (statutory or otherwise) held in connection with its business or the use of any of the Secured Assets the subject of the security pursuant to Paragraph 1.1.1 above and the right to recover and receive all compensation which may at any time become payable to it in respect thereof;
    - 1.1.2.9 its present and future uncalled capital; and
    - 1.1.2.10 all knowhow licences and patents (including applications and rights to apply therefor), copyrights, rights in trademarks, service marks whether registered or not, and rights in confidential information now or at any time belonging to it.

- 2        The Chargor shall not otherwise than as provided in the Facility Agreement:
- (a)        create or permit to subsist any security over all or any part of the Secured Assets;  
             or
  - (b)        part with, sell, transfer or otherwise dispose of or agree to part with, sell, transfer  
             or otherwise dispose of all or any part of the Secured Assets.

See Paper Apart I for Defined Terms.

**PAPER APART I TO FORM 395 RE SANDWELL LIFT COMPANY LIMITED (COMPANY NUMBER: 04730805)**

**Defined Terms:**

**"Account Bank"** means The Governor and Company of the Bank of Scotland;

**"Account Bank Agreement"** means the agreement dated 15 January 2004 between the Borrower, the Holding Company, the Account Bank, and the Security Trustee in relation to the establishment and operation of the Project Accounts held with the Account Bank together with any bank mandates, fee letters or safekeeping agreements agreed between the Borrower or (as the case may be) the Holding Company and the Account Bank;

**"Agent"** means The Governor and Company of the Bank of Scotland;

**"Bank Accounts"** means the Borrower Project Accounts and **"Bank Account"** means any of them;

**"Borrower"** means Sandwell LIFT Project Company (no. 1) Limited (Company No: 04772219);

**"Borrower Debenture"** means the fixed and floating charge debenture dated 15 January 2004 given by the Borrower in favour of the Security Trustee;

**"Borrower Project Accounts"** means any account of the Borrower so designated pursuant to clause 24.2 of the Facility Agreement;

**"Construction Contractor Direct Agreement"** means each agreement dated 15 January 2004 between the Borrower, the Security Trustee and the Construction Contractor in respect of the Construction Contract;

**"Construction Contract"** means the agreement dated 15 January 2004 between the Borrower and the Construction Contractor relating to the design, construction, reconstruction and refurbishment of the Sites by the Construction Contractor;

**"Construction Contractor"** means Laing O'Rourke (Midlands) Limited (registered no: 04309378) and/or such other contractor or contractors as may be appointed by the Borrower to carry out the Works from time to time in accordance with the Lease Plus Agreements;

**"Direct Agreements"** means:

- (a) the Construction Contractor Direct Agreements;
- (b) the FM Provider Direct Agreements;
- (c) the Lender's Direct Agreements;
- (d) the Whiteheath PSA Direct Agreement;
- (e) the Whiteheath Agreement for Lease Direct Agreement; and
- (f) the Strategic Partnering Mandate Letter, any
- (g) any other future direct agreements granting step-in or novation rights to the Security Trustee or any other Secured Creditor;

**"Facility Agreement"** means the Facility Agreement amongst, *inter alia*, the Borrower, the Holding Company and The Governor and Company of the Bank of Scotland (in various capacities) dated 15 January 2004;

**"Fees Letters"** means:

- (h) the arrangement fee letter from the Agent to the Borrower dated 15 January 2004;
- (i) the agency fee letter from the Agent to the Borrower dated 15 January 2004; and
- (j) the mezzanine fee letters from the Mezzanine Lenders to the Borrower dated 15 January 2004.

**"Fixtures"** means in relation to any freehold or leasehold property charged by or pursuant to this Debenture all fixtures and fittings (including trade fixtures and fittings) and fixed plant and machinery from time to time thereon, the property wherein is vested in the Chargor;

**"FM Agreement"** means the facilities management agreement dated 15 January 2004 between the Chargor and the FM Provider;

**"FM Provider"** means Equion Facilities Management Limited (registered no: 03679838) and/or any permitted successors or assignees under the FM Agreement and/or such other service provider or services providers as may be appointed by the Borrower with the prior approval of the Agent in accordance with this Agreement to provide Services;

**"FM Provider Direct Agreement"** means the direct agreement dated 15 January 2004 between the Borrower, the Security Trustee and the FM Provider in respect of the FM Agreement;

**"Hedging Agreements"** means the Original Hedging Agreements and any other agreement entered into pursuant to the Approved Hedging Programme;

**"Holding Company"** means the Chargor;

**"Holding Company Distribution Account"** means the account so designated and maintained pursuant to clause 24.13 of the Facility Agreement;

**"Holding Company Proceeds Account"** means the account so designated and maintained pursuant to clause 24.11 of the Facility Agreement;

**"Holding Company Project Accounts"** means the Holding Company Distribution Account and the Holding Company Proceeds Account;

**"Holding Company Share Mortgage"** means the shares mortgage dated 15 January 2004 given by Holding Company in favour of the Security Trustee;

**"Insurances"** means all contracts and policies of insurance or indemnities which are from time to time taken out by or on behalf of the Chargor or (to the extent of such interest) in which the Chargor has an interest;

**"Intercreditor and Security Trust Deed"** means the agreement so entitled dated 15 January 2004 between, *inter alia*, the Agent, the Security Trustee, the Mezzanine Lenders, the Subordinated Creditors, the Borrower, the Holding Company and the Shareholders;

**"Lead Tenant Side Letters"** means the side letters relating to interface of Tenants of each of the Sites dated 15 January 2004 entered into by certain of the Participants, together with such additional side letters dealing with the same or similar interface issues from time to time;

**"Lease Plus Agreements"** means the lease plus agreements entered into between the Borrower and the Participants dated 15 January 2004 and **"Lease Plus Agreement"** means any one of them;

**"Lender's Direct Agreements"** means each of the direct agreements between the Borrower, the Security Trustee and the relevant Tenant in respect of (a) each Lease Plus Agreement and relative Lead Tenant Side Letter (where applicable); (b) any other direct agreement in respect of any Lease which the Agent may request and the Borrower has obtained having used all reasonable endeavours to obtain do so;

**"Mezzanine Agent"** means The Governor and Company of the Bank of Scotland;

**"Mezzanine Arrangement Fee Letters"** means the letters from the Mezzanine Lenders to the Borrower detailing the mezzanine arrangement fee payable by the Borrower to the Mezzanine Lenders pursuant to clause 9.1 of the Mezzanine Loan Agreement;

**"Mezzanine Finance Documents"** means the Mezzanine Loan Agreement and the Mezzanine Arrangement Fee Letters;

**"Mezzanine Loan Agreement"** means the loan agreement between the Borrower, the Holding Company and the Mezzanine Lenders dated 15 January 2004;

**"Mezzanine Lenders"** means:

- (a) ExcellCare Limited;
- (b) Partnerships for Health Limited;
- (c) Wednesbury and West Bromwich Primary Care Trust;
- (d) Oldbury and Smethwick Primary Care Trust; and
- (e) Rowley Regis and Tipton Primary Care Trust.

**"Obligors"** means the Chorgor and Sandwell LIFT Project Company (no. 1) Limited.

**"Original Hedging Agreement"** means the ISDA Master Agreement dated 15 January 2004 between the Borrower and the Original Hedging Counterparty and the confirmations relating to interest rate and inflation swaps of the same date thereunder and any ancillary documentation relating thereto;

**"Original Hedging Counterparty"** means HBOS Treasury Services plc (Company Number 2692890);

**"Participants"** means:

- (a) Oldbury & Smethwick Primary Care Trust;
- (b) Rowley Regis & Tipton Primary Care Trust;
- (c) Wednesbury & West Bromwich Primary Care Trust;
- (d) Sandwell Mental Health NHS and Social Care Trust; and

(e) The Borough Council of Sandwell;

**"Participant Lease Plus Agreement"** means (i) any Lease Plus Agreement entered into between the Borrower and a Participant; and (ii) any other Lease Plus Agreement entered into by the Borrower in terms of which the anticipated Rental Income under that Lease Plus Agreement exceeds £25,000;

**"Project Accounts"** means the Borrower Project Accounts and the Holding Company Project Accounts;

**"Property Sale Agreement"** means the property sale agreements entered into by the Borrower and a Participant in respect of each Site;

**"Rental Assignment"** means an assignment of rental income in a form reflecting *mutatis mutandis* the provisions of the Borrower Debenture in respect of the assignment of rentals by the Borrower under any Lease or any Participant Lease Plus Agreement;

**"Rental Income"** means the aggregate of all amounts in the nature of rent payable to or for the benefit or account of the Chargor in connection with the letting or occupation of any premises or part thereof;

**"Secured Creditors"** means

- (a) the Governor and Company of the Bank of Scotland in its capacities as Security Trustee, Arranger, Agent, Account Bank, Mezzanine Agent;
- (b) HBOS Treasury Services plc in its capacity as Hedging Counterparty; and
- (c) ExcellCare Limited (Registered Number: 04347564), Oldbury & Smethwick Primary Care Trust, Rowley Regis and Tipton Primary Care Trust, Wednesbury and West Bromwich Primary Care Trust and Partnerships for Health Limited (Registered Number 04220587) in their capacities as Mezzanine Lenders.

**"Secured Finance Documents"** means the Senior Finance Documents and the Mezzanine Finance Documents;

**"Securities"** means all Authorised Investments and all stocks, shares, bonds and securities of any kind whatsoever whether marketable or otherwise and all other interest (including but not limited to loan capital) of the Chargor both present and future in any person and includes allotments, rights, benefits and advantages whatsoever at any time accruing, offered or arising in respect of or incidental to the same and all money or property accruing or offered at any time by way of conversion, redemption, bonus, preference, option, dividend, distribution, interest or otherwise in respect thereof;

**"Security Documents"** means:

- (a) the Debenture;
- (b) the Borrower Debenture;
- (c) the Holding Company Share Mortgage;
- (d) the Direct Agreements;
- (e) any Rental Assignments (when entered into);
- (f) the Intercreditor and Security Trust Deed; and

- (g) any other future documents evidencing or creating any Security over any asset of the Borrower or the Holding Company to secure any obligations of the Borrower or the Holding Company to a Beneficiary under the Senior Finance Documents;

**"Security Trustee"** means The Governor and Company of the Bank of Scotland;

**"Senior Finance Documents"** means:

- (a) the Facility Agreement;
- (b) the Security Documents;
- (c) the Intercreditor and Security Trust Deed;
- (d) the Hedging Agreements;
- (e) the Account Bank Agreement;
- (f) the Fees Letters; and
- (g) the counter-indemnity issued under the Original Hedging Agreements; and
- (h) all agreements and other documents which the Agent and the Borrower agree to be Senior Finance Documents;

**"Services"** has the meaning given in the Lease Plus Agreements;

**"Shareholders"** means the shareholders of the Holding Company from time to time, being, at the date hereof, ExcellCare Limited, Partnerships for Health Limited, Oldbury & Smethwick Primary Care Trust, Rowley Regis & Tipton Primary Care Trust and Wednesbury & West Bromwich Primary Care Trust and **"Shareholder"** means any one of them;

**"Site"** has the meaning given to it in each Lease Plus Agreement (and includes the "Facilities" as defined therein) and any Material Lease and **"Sites"** means all of them;

**"Strategic Partnering Agreement"** means the agreement of that name entered into on the 15<sup>th</sup> of January 2004 amongst the Participants and the Chorgor;

**"Strategic Partnering Mandate Letter"** means the letter dated 15 January 2004 between the Agent, the Security Trustee, the Borrower, the Holding Company and the Participants relating to the payment of certain amounts due and performance of certain obligations under the Strategic Partnering Agreement and other related matters;

**"Subordinated Creditors"** means Holding Company, ExcellCare Limited, Partnerships for Health Limited and Oldbury & Smethwick Primary Care Trust, Rowley Regis & Tipton Primary Care Trust and Wednesbury & West Bromwich Primary Care Trust;

**"Tenant"** means the tenant under the relevant Lease Plus Agreement and any Leases and **"Tenants"** shall mean all tenants under the Lease Plus Agreements and Leases;

**"Whiteheath Agreement for Lease Direct Agreement"** means the direct agreement in respect of the agreement for lease at the Whiteheath Site;

**"Whiteheath PSA Direct Agreement"** means the direct agreement in respect of the Property Sale Agreement for the Whiteheath Site;

**"Whiteheath Scheme"** means the scheme at the Whiteheath Site;

**"Whiteheath Site"** means the Site located at Badsey Road, Oldbury, B69 1ES; and

**"Works"** means;

- (a) the **"Works"** as defined in each Lease Plus Agreement; and
- (b) the **"Works"** as defined in the Construction Contract.

FILE COPY



## CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

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

COMPANY No. 04730805

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT A DEBENTURE DATED THE 15th JANUARY 2004 AND CREATED BY SANDWELL LIFT COMPANY LIMITED FOR SECURING ALL MONIES DUE OR TO BECOME DUE FROM THE BORROWER TO THE SECURED CREDITORS (OR ANY OF THEM) ON ANY ACCOUNT WHATSOEVER UNDER THE TERMS OF THE TERMS OF THE AFOREMENTIONED INSTRUMENT CREATING OR EVIDENCING THE CHARGE; AND ALL MONIES DUE OR TO BECOME DUE FROM THE OBLIGORS TO THE SECURED CREDITORS (OR ANY OF THEM) 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 31st JANUARY 2004.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 3rd FEBRUARY 2004.



*Companies House*

— for the record —



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES