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COMPANIES FORM No. 395

00400041

Particulars of a mortgage or charge

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

A fee of £13 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)

ACCOUNT

2

13 MAY 2005

For official use

Company number

5314236

Name of company

* **HEALTHCARE SUPPORT (NEWCASTLE) FINANCE PLC** (the "Chargor")

Date of creation of the charge

✓ 4. May 2005

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

25
A DEED OF DEBENTURE CREATING A FIRST FIXED AND FIRST FLOATING CHARGE DATED
4TH MAY 2005 AND MADE BETWEEN (1) THE CHARGOR AND (2) PRUDENTIAL TRUSTEE
COMPANY LIMITED * AS SECURITY TRUSTEE FOR ITSELF AND THE OTHER ISSUER
DEBENTURE BENEFICIARIES (THE "SECURITY TRUSTEE") (THE "CHARGE")

Amount secured by the mortgage or charge

SEE RIDER 1

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

1
PRUDENTIAL TRUSTEE COMPANY LIMITED *
LAURENCE POUNTNEY HILL
LONDON

Postcode EC4R 0HH

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

← CMS Cameron McKenna LLP
~~Mitre House~~
~~160 Aldersgate Street~~
London
~~EC1A 4DD~~

LKE/TJD/120008.1

Time critical reference

For official Use (02/00)

Mortgage Section

Post room



LD6
COMPANIES HOUSE

0398
13/05/05

Please return via
CH London Counter

SEE RIDER 2

Please do not
write in
this margin

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

21
as

Particulars as to commission allowance or discount (note 3)

NOT APPLICABLE

Signed CMS Cameron McKenna LLP Date 12TH MAY 2005

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

*A fee 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 situated 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

Form M395 - Particulars of a Mortgage or Charge

NAME OF COMPANY: Healthcare Support (Newcastle) Finance Plc (the "**Chargor**")

COMPANY NUMBER: 5314236

DOCUMENT: A deed of debenture creating a first fixed and floating charge dated 4th May 2005 and made between (1) the Chargor and (2) Prudential Trustee Company Limited as security trustee for itself and the other Issuer Debenture Beneficiaries (as defined below) (the "**Security Trustee**") (the "**Charge**")

RIDER 1

AMOUNT SECURED BY THE MORTGAGE OR CHARGE

All present or future, actual or contingent, obligations of each Obligor (as defined below) (whether entered into solely or jointly, or jointly or severally, with one or more persons and whether actual or contingent and whether as principal or as surety or otherwise) to the Issuer Debenture Beneficiaries under the Finance Documents (as defined below) (which shall include, without limitation, any obligations of any Obligor which may from time to time arise by way of subrogation) (the "**Secured Obligations**")

RIDER 2

SHORT PARTICULARS OF ALL THE PROPERTY MORTGAGED OR CHARGED

1. Fixed charge

1.1 The Chargor with full title guarantee and as a continuing security for the payment, discharge and performance of all the Secured Obligations, charges in favour of the Security Trustee:-

1.1.1 by way of a first legal mortgage:-

- (a) all estates or interests in any freehold or leasehold property belonging to it as at the date of the Charge, if any; and

1.1.2 by way of first fixed charge:-

- (a) (to the extent that they are not the subject of a mortgage under paragraph 1.1.1) all estates or interests in any freehold or leasehold property belonging to it from time to time;
- (b) all plant, machinery, vehicles, computers and equipment owned by the Chargor and its interest in any plant, machinery, vehicles, computers or equipment in its possession;
- (c) its interest in all the Shares (as defined below) and their Related Rights (as defined below);
- (d) all monies standing to the credit of any bank account (including the Issuer Accounts (as defined below)) with any person and the debts represented by them;
- (e) all benefits in respect of the Insurances (as defined below) and all claims and returns of premiums in respect of them (including the Insurances to the extent that they are not effectively assigned, by way of security, in accordance with paragraph 1.2) subject to the Encumbrances (as defined below) constituted under the Charge over the proceeds of such Insurances being released by the Charge to the extent utilised for reinstatement or otherwise in accordance with the Insurance Proceeds Account Agreement, the Funders' Direct Agreement and/or the Accounts Agreement (as applicable) (each as defined below);
- (f) all of the Chargor's book and other debts, the proceeds of the same and all other monies due and owing to the Chargor and the benefit of all rights, securities and guarantees of any nature enjoyed or held by it in relation to any of the foregoing;
- (g) (to the extent that they do not fall within any other sub-paragraph of this paragraph 1.1.2 and are not effectively assigned, by way of security, in accordance with paragraph 1.2) all of the Chargor's rights and benefits under the Assigned Agreements (as defined below), including, but not limited to:-

- (i) the right to demand and receive all monies whatsoever payable to or for the benefit of the Chargor under or arising from the Assigned Agreements;
- (ii) all remedies provided for in the Assigned Agreements or available at law or in equity;
- (iii) the right of the Chargor to compel performance of the Assigned Agreements; and
- (iv) all other rights, interests and benefits whatsoever accruing to or for the benefit of the Chargor arising from the Assigned Agreements;
- (h) its goodwill;
- (i) the benefit of all licences, consents and authorisations (statutory or otherwise) held in connection with its business or the use of any Security Asset (as defined below) specified in any other sub-paragraph in this paragraph 1.1 and the right to recover and receive all compensation which may be payable to it in respect of them;
- (j) its uncalled capital; and
- (k) its Intellectual Property Rights (as defined below).

Security Assignment

1.2 The Chargor with full title guarantee, assigns to the Security Trustee all its present and future:

- 1.2.1 right, title and interest in and to the Assigned Agreements including all monies which at any time may be or become payable to the Chargor and any claims, awards and judgments in favour of, receivable or received by the Chargor, under or in connection with or pursuant to the Assigned Agreements; and
- 1.2.2 right, title and interest in and to all the Insurances and all proceeds in respect of the Insurances and all benefits of the Insurances (including all claims relating to, and all returns of premium in respect of, the Insurances) to the extent of the Chargor's interests in the same.

2. Floating Charge

2.1 The Chargor, with full title guarantee and as a continuing security for the payment, discharge and performance of all of the Secured Obligations, charges in favour of the Security Trustee by way of a first floating charge all its assets not otherwise effectively mortgaged or charged by way of fixed mortgage or fixed charge by paragraph 1 above.

N.B. The Charge contains the following provisions

A) The Security Trustee may, by notice to the Chargor, convert the floating charge created by the Charge into a fixed charge as regards all or any of the Chargor's assets specified in the notice if:-

- (i) an Event of Default (as defined below) is outstanding and a notice has been given pursuant to clause 14.1.4 – 14.1.9 of the Collateral Deed (as defined below) and/or clause 10.1 of the EIB Loan Agreement (as defined below), provided that any relevant Event of Default for which such notice has been given has not subsequently been waived in accordance with the terms of the Collateral Deed and/or the EIB Loan Agreement (as applicable); or
- (ii) at any time the Security Trustee considers in good faith 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.

B) Notwithstanding paragraph (A) above:

- (i) if any person levies or attempts to levy any distress execution or sequestration or other process against any of the Security Assets; or
- (ii) if the Chargor takes any step to create any Encumbrance (other than a Permitted Encumbrance (as defined below)) over any of the Security Assets in breach of clause 5.2.1 of the Charge,

the floating charge shall automatically and without need for notice operate as a fixed charge as regards such assets the moment any such event occurs.

C) The provisions of paragraph 14 of Schedule B1 to the Insolvency Act 1986 shall apply to the floating charge created by the Charge.

D) The Chargor undertakes to the Security Trustee that:

- (i) it shall not create or permit to subsist any Encumbrance over all or any of its present or future rights, claims, revenues or assets (including the Security Assets) other than a Permitted Encumbrance;
- (ii) it shall not sell, lease, transfer, surrender, determine, assign, convey or otherwise dispose of, by one or more transactions or series of transactions (whether related or not) any Security Asset or attempt or agree so to do save to the extent permitted under clause 9.7 (*Disposals*) of the Collateral Deed or otherwise in accordance with the Charge; and
- (iii) it shall not without the prior consent in writing of the Security Trustee or as permitted under clause 9.7 (*Disposals*) of the Collateral Deed, deal with its book or other debts or other sums due to, or received by, it for its own account, except for getting in and realising the same and as required or permitted by the Accounts Agreement or the Insurance Proceeds Account Agreement, or (without prejudice to the generality of the foregoing) factor, discount, transfer, assign or waive any of its book and other debts or sums as aforesaid or enter into any agreement for such factoring, discounting or waiving, provided that if the Security Trustee so consents or the Collateral Deed, the Accounts Agreement or the Insurance Proceeds Account Agreement so permits and the same would require a withdrawal from an Issuer Account other than for the purposes of crediting the same to another Issuer Account, on the date such withdrawal is made from the relevant Issuer Account, the amount so withdrawn shall be released automatically from the fixed charge created pursuant to the Charge.

DEFINITIONS AND INTERPRETATION

1. All defined terms and expressions used herein shall, if not otherwise defined, have the following meanings and any terms not here defined shall have the meaning given to such term in the Charge:

"Accounts Agreement" means the accounts agreement made on or about the Issue Date between the Obligors, the Security Trustee, Prudential Trustee Company Limited as bond trustee (the **"Bond Trustee"**), XL Capital Assurance (UK) Limited (**"XLCA"**), European Investment Bank (**"EIB"**) and The Governor and Company of the Bank of Scotland (the **"Account Bank"**);

"Assigned Agreements":

- (a) any Project Documents to which the Chargor is a party from time to time;
- (b) the Accounts Agreement; and
- (c) any other document which the Security Trustee (acting reasonably) may from time to time designate as an Assigned Agreement;

"Bond Trust Deed" means the trust deed constituting the Bonds (as defined in the Master Definitions Agreement) dated on or about the Issue Date between the Issuer, the Bond Trustee and XLCA;

"Bond Creditor" has the meaning given in the Master Definitions Agreement;

"Collateral Deed" means the collateral deed dated on or about the Issue Date between the Obligors, the Bond Trustee, the Security Trustee, EIB and XLCA;

"EIB Loan Agreement" means the loan agreement between the Obligors and EIB dated on or about the Issue Date pursuant to which EIB has agreed to make available to the Issuer a term loan facility in an aggregate amount of up to £115,000,000 (adjusted for indexation);

"Encumbrance" any mortgage, charge (fixed or floating), pledge, lien, assignment or hypothecation or any other type of preferential right or arrangement (including set-off, title transfer, title retention and trust arrangements), the economic or commercial effect of which is, in the reasonable opinion of the Majority Creditor, similar to conferring security;

"Event of Default" means any circumstances described as such in clause 13 (*Events of Default*) of the Collateral Deed;

"Finance Documents" means the Senior Finance Documents, the Mezzanine Finance Documents and the Junior Finance Documents (each as defined in the Master Definitions Agreement);

"Funders' Direct Agreement" means the direct agreement dated on or about the Issue Date between Healthcare Support (Newcastle) Limited (**"Project Co"**), the Security Trustee and The Newcastle Upon Tyne Hospitals National Health Service Trust (the **"Trust"**) in respect of the Project Agreement;

"Insurance Proceeds Account Agreement" means the account agreement relating to the Trust Insurance Proceeds Account dated on or about the Issue Date between Project Co, the Trust, the Security Trustee and the Account Bank;

"Insurances": all contracts and policies of insurance taken out by or on behalf of the Chargor or (to the extent of its interest) in which the Chargor has an interest (including, for the avoidance of doubt, any Insurances (as defined in the Master Definitions Agreement) taken out by or on behalf of the Chargor or (to the extent of its interest) in which the Chargor has an interest);

"Issue Date" means 4th May 2005;

"Issuer" means the Chargor;

"Issuer Accounts" means the Issuer Enforcement Proceeds Account and the Issuer Debt Service Account;

"Issuer Debenture Beneficiaries" means the Senior Beneficiaries, the Mezzanine Beneficiaries, the Junior Beneficiaries and Project Co and **"Issuer Debenture Beneficiary"** means any one of them;

"Issuer Debt Service Account" means account number 6046779 with sort code 12-01-03 opened and maintained by the Issuer with the Account Bank in accordance with clause 2 (Accounts) of the Accounts Agreement;

"Issuer Enforcement Proceeds Account" means account number 6046787 with sort code 12-01-03 opened and maintained by the Issuer with the Account Bank in accordance with clause 2 (*Accounts*) of the Accounts Agreement;

"Junior Beneficiaries" means the Junior Creditors (as defined in the Security Trust and Intercreditor Deed) as beneficiaries of the Security;

"Master Definitions Agreement": the master definitions agreement dated on or about the date of the Charge between, *inter alios*, the Chargor, Healthcare Support (Newcastle) Limited, Healthcare Support (Newcastle) Holdings Limited ("**Hold Co**"), the Bond Trustee, EIB, XLCA and the Security Trustee;

"Majority Creditor" means:

- (a) where XLCA is the Bond Creditor and a rating above or equal to AA from Standard and Poor's and Aa2 from Moody's ("Level 1 Rating") applies, XLCA;
- (b) where XLCA is the Bond Creditor and any time where the requirements for a Level 1 Rating are not met, XLCA and EIB acting together; or
- (c) where the Bond Trustee is the Bond Creditor, the Bond Trustee and EIB acting together or, if the Bond Trustee fails to act within a reasonable time (taking into account the facts and circumstances at the time), EIB;

"Mezzanine Beneficiaries" means the Mezzanine Creditors (as defined in the Security Trust and Intercreditor Deed);

"MSCP Development Debenture" means the first ranking debenture dated 25th February 2004 and granted by Project Co in favour of Barclays Bank plc;

"Obligors" means Project Co, the Issuer and Hold Co and **"Obligor"** means any of them;

"Permitted Encumbrance" means:

- (a) an encumbrance arising under, created by or pursuant to the Finance Documents;
- (b) an encumbrance arising solely by operation of law;
- (c) an encumbrance consented to by the Majority Creditor; and
- (d) the MSCP Development Debenture;

"Project Agreement" means the project agreement dated on or about the Issue Date between Project Co and the Trust in relation to the refurbishment, design, construction, finance, operation of certain hospital facilities;

"Project Documents" has the meaning given in the Master Definitions Agreement;

"Related Rights": any dividend or interest paid or receivable in relation to any Shares and any rights, monies, accretions, advantages, credits, rebates or refunds (including any rebates and refunds in respect of any tax, duties, imposts or charges or property accruing or offered at any time in relation to any Shares by way of redemption, substitution, capitalisation, exchange, bonus or preference, under option rights or otherwise;

"Security Assets": all assets of the Chargor the subject of any security created by the Charge;

"Security Trust and Intercreditor Deed" means the security trust and intercreditor deed dated on or about the Issue Date between the Obligors, Laing O'Rourke Northern Limited, Equion Limited, Newcastle Investment Company Limited, XLCA, XL Capital Assurance, Inc., EIB, the Bond Trustee, the Junior Creditors (as defined therein) and the Security Trustee;

"Senior Beneficiaries" means each of XLCA, XL Capital Assurance, Inc., EIB and the Bond Trustee for itself and for the Bondholders (as defined in the Bond Trust Deed);

"Shares": any stocks, shares, debentures, bonds, other securities and/or investments legally and/or beneficially owned by the Chargor or any nominee from time to time; and

"Trust Insurance Proceeds Account" means account number 6047368 with sort code 12-01-03 opened and maintained in the joint names of Project Co and the Trust in accordance with the Project Agreement.

2. In this Form M395 the provisions of clauses 1.2.1 to 1.2.5 of the Charge apply to this Form M395 as though they were set out in full herein except that the references to "this Deed" therein are to be construed as references to this Form M395.

FILE COPY



CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

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

COMPANY No. 05314236

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT A DEBENTURE DATED THE 4th MAY 2005 AND CREATED BY HEALTHCARE SUPPORT (NEWCASTLE) FINANCE PLC FOR SECURING ALL MONIES DUE OR TO BECOME DUE FROM EACH OBLIGOR TO THE ISSUER DEBENTURE 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 13th MAY 2005.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 18th MAY 2005.

CRH
LIC



Companies House

— for the record —



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES