

MG01

Particulars of a mortgage or charge

✓ 05-288/13

Oyez

A fee is payable with this form

We will not accept this form unless you send the correct fee

Please see 'How to pay' on the last page



What this form is for

You may use this form to register particulars of a mortgage or charge in England and Wales or Northern Ireland



What this form is NO

You cannot use this for particulars of a charge company. To do this, p form MG01s

TUESDAY



LD2 *L170XJ7T* 17/04/2012 #2
COMPANIES HOUSE

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k

1 Company details

Company number 06897301

Company name in full MCCARTHY & STONE TOTAL CARE MANAGEMENT LIMITED
(the **Company**)

For official use

► **Filling in this form**

Please complete in typescript or in bold black capitals

All fields are mandatory unless specified or indicated by *

2 Date of creation of charge

Date of creation 04/04/2012

3 Description

Please give a description of the instrument (if any) creating or evidencing the charge, e.g. 'Trust Deed', 'Debenture', 'Mortgage', or 'Legal charge'

Description SUPPLEMENTAL LEGAL CHARGE dated 4 April 2012 between the Company as the Chargor and The Bank of New York Mellon, London Branch as Security Agent (the **Supplemental Legal Charge**)

4 Amount secured

Please give us details of the amount secured by the mortgage or charge

Amount secured All moneys, debts and liabilities as at 4 April 2012 and in the future due, owing or incurred by the Company to

(a) any Finance Party under or in connection with any Finance Document, and

(b) any Hedge Counterparty under or in connection with any Hedging Agreement,

(in each case, whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently and whether as principal, surety or otherwise)

(the **Liabilities**)

Continuation page

Please use a continuation page if you need to enter more details

5 Mortgagee(s) or person(s) entitled to the charge (if any)

Please give the name and address of the mortgagee(s) or person(s) entitled to the charge

Continuation page

Please use a continuation page if you need to enter more details

Name THE BANK OF NEW YORK MELLON, LONDON BRANCH

Address as security trustee for itself and the other Secured Parties (the *Security Agent*)

One Canada Square, Canary Wharf, London

Postcode E 1 4 5 A L

Name

Address

Postcode

6 Short particulars of all the property mortgaged or charged

Please give the short particulars of the property mortgaged or charged

Continuation page

Please use a continuation page if you need to enter more details

Short particulars 1 ACCESSION

The Company has agreed to be a Chargor for the purposes of the Original Debenture with effect from 4 April 2012 and has agreed to be bound by all the terms of the Original Debenture as if it had originally been a party to it as a Chargor

2 FIXED CHARGES

The Company, with full title guarantee and as security for the payment of all Liabilities (whether of the Company or any other Chargor), has charged in favour of the Security Agent (as trustee for the Secured Parties)

(a) by way of first fixed equitable mortgage, all its Real Property in England and Wales save and except for the properties subject to security permitted by paragraph (a) of the definition of "Permitted Security" in the Facilities Agreement over which there shall be a second ranking fixed equitable mortgage, but including the Real Property described in schedule 1 (*Real Property*) to the Supplemental Legal Charge (as set out in schedule 1 hereto) belonging to the Company as at 4 April 2012 and all Real Property acquired by it in the future, and

(b) by way of first fixed charge, all its present and future

- (i) General Book Debts,
- (ii) General Bank Accounts,
- (iii) Specific Book Debts,
- (iv) Specific Bank Accounts,
- (v) Investments (as set out in schedule 2 hereto),
- (vi) uncalled capital and goodwill,
- (vii) rights to use Intellectual Property (as set out in schedule 3 hereto),

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7 Particulars as to commission, allowance or discount (if any)

Please insert the amount or rate percent of any commission, allowance or discount paid or made either directly or indirectly by the company to any person on consideration of his

- subscribing or agreeing to subscribe, whether absolutely or conditionally, or
- procuring or agreeing to procure subscriptions, whether absolute or conditional,

for any debentures included in this return The rate of interest payable under the terms of the debentures should not be entered

Commission allowance or discount

N/A

8 Delivery of instrument

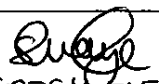
You must deliver the original instrument (if any) creating or evidencing the charge and these prescribed particulars to the Registrar of Companies within 21 days after the date of creation of the charge (section 860) If the property is situated and the charge was created outside the United Kingdom (UK), you must deliver the information to the Registrar within 21 days after the date on which the instrument could have been received in the UK in the normal course of post and assuming you had posted it promptly (section 870)

We will accept a verified copy of the instrument creating the charge where the property charged is situated and the charge was created outside the UK (section 866) The company or the person who has delivered the copy to the Registrar must verify it to be a correct copy and sign it Where a body corporate gives the verification, an officer of that body must sign it We will also accept a verified copy where section 867(2) applies (property situated in another part of UK)

9 Signature

Please sign the form here

Signature

Signature
X  STACEY-QUAYE ON BEHALF OF
FRESH FIELDS BRUCKHAUS DECIENER X
LLP, SOLICITORS TO THE COMPANY

This form must be signed by a person with an interest in the registration of the charge

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Presenter information

You do not have to give any contact information, but if you do it will help Companies House if there is a query on the form and will establish where we return the original documents. The contact information you give will be visible to searchers of the public record.

Contact name

Stacey Quaye

Company name

Freshfields Bruckhaus Deringer LLP

Address

65 Fleet Street

London

England

Post town

United Kingdom

County/Region

Postcode

E C 4 Y 1 H S

Country

DX

DX 23 London/Chancery Lane

Telephone

020 7936 4000



Certificate

We will send your certificate to the presenter's address if given above or to the Company's Registered Office if you have left the presenter's information blank.



Checklist

We may return forms completed incorrectly or with information missing

Please make sure you have remembered the following

- ☐ The company name and number match the information held on the public Register
- ☐ You have included the original deed with this form
- ☐ You have entered the date the charge was created
- ☐ You have supplied the description of the instrument
- ☐ You have given details of the amount secured by the mortgagee or chargee
- ☐ You have given details of the mortgagee(s) or person(s) entitled to the charge
- ☐ You have entered the short particulars of all the property mortgaged or charged
- ☐ You have signed the form
- ☐ You have enclosed the correct fee



Important information

Please note that all information on this form will appear on the public record.



How to pay

A fee of £13 is payable to Companies House in respect of each mortgage or charge.

Make cheques or postal orders payable to 'Companies House'.



Where to send

You may return this form to any Companies House address, however for expediency we advise you to return it to the appropriate address below.

For companies registered in England and Wales
The Registrar of Companies, Companies House,
Crown Way, Cardiff, Wales, CF14 3UZ
DX 33050 Cardiff

For companies registered in Scotland
The Registrar of Companies, Companies House,
Fourth floor, Edinburgh Quay 2,
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF
DX ED235 Edinburgh 1
or LP - 4 Edinburgh 2 (Legal Post)

For companies registered in Northern Ireland
The Registrar of Companies, Companies House,
Second Floor, The Linenhall, 32-38 Linenhall Street,
Belfast, Northern Ireland, BT2 8BG
DX 481 N R Belfast 1



Further information

For further information, please see the guidance notes on the website at www.companieshouse.gov.uk or email enquiries@companieshouse.gov.uk

This form is available in an alternative format. Please visit the forms page on the website at www.companieshouse.gov.uk.

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6 Short particulars of all the property mortgaged or charged

Please give the short particulars of the property mortgaged or charged

Short particulars

- (viii) rights to use Intellectual Property owned by third parties under licences granted to it,
- (ix) rights to receive royalties or other income from third parties in relation to those third parties' use of Intellectual Property owned by it,
- (x) beneficial interest in any pension fund,
- (xi) plant and machinery,
- (xii) Insurances and all related proceeds, claims of any kind, returns of premium and other benefits,
- (xiii) rights under any agreement relating to the purchase of any of the Real Property,
- (xiv) rights under any agreement for the sale of any of the Real Property including, without limitation, under any Land Agreement (or any other Charged Asset),
- (xv) interest in the benefit of all guarantees, warranties and representations given or made by any manufacturers, suppliers and installers of any plant, machinery, equipment, Fixtures and fittings on any of the Real Property as at 4 April 2012 and in the future, and/or by any other person under contract with or under a duty to the Company in respect of them,
- (xvi) easements and other rights at any time vested in, or conferred on, the Company in connection with or otherwise for the benefit of any of the Real Property, and
- (xviii) rights under any contract relating to the Development or refurbishment of any of the Real Property

as at 4 April 2012 and in the future

3 FLOATING CHARGE

3 1 Creation

The Company, with full title guarantee and as security for the payment of all Liabilities (whether of the Company or any other Chargor), has charged in favour of the Security Agent (as trustee for the Secured Parties) by way of first floating charge its undertaking and all its assets, as at 4 April 2012 and in the future (including assets expressed to be charged by clause 3 (*Fixed charges*) of the Supplemental Legal Charge, as set out in clause 2 above

3 2 Ranking

The Floating Charge created by the Company ranks

- (a) behind all the fixed Charges created by the Company, but
- (b) in priority to any other Security over the Charged Assets of the Company except for the Security ranking in priority in accordance with paragraph (f) of Schedule 2 (*Rights of Receivers*) to the Original Debenture

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3 3 Conversion by notice

The Security Agent may convert the floating Charge over all or any of the Charged Assets into a fixed Charge by notice to the Company specifying the relevant Charged Assets (either generally or specifically)

(a) if, acting on the instructions of the Majority Lenders, it confirms that it is desirable to do so in order to protect or preserve the Charges over those Charged Assets and/or the priority of those Charges, and/or

(b) after the occurrence of an Enforcement Event

3 4 Automatic Conversion

If

(a) the Company takes any step to create any Security in breach of Clause 5 1 (*Security*) of the Original Debenture, as set out in clause 4 1 below, over any of the Charged Assets not subject to a fixed Charge, or

(b) any person takes any step to effect any expropriation, attachment, sequestration, distress or execution against any of those Charged Assets,

the floating Charge over the relevant Charged Assets shall automatically and immediately be converted into a fixed Charge

4 RESTRICTIONS AND FURTHER ASSURANCE

4 1 Security

The Company shall not create or permit to subsist any Security over any Charged Asset, nor do anything else prohibited by clause 27 14 (*Negative pledge*) of the Facilities Agreement, except as permitted by that clause

4 2 Disposal

The Company shall not (nor shall the Company agree to) enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to dispose of any Charged Asset except as permitted by clause 27 15 (*Disposals*) of the Facilities Agreement and subject always to Clause 6 (*Real Property*) of the Original Debenture and Clause 7 (*Restrictions on Land Agreements*) of the Original Debenture

4 3 Further Assurance

(a) The Company shall promptly do whatever the Security Agent requires

(i) to perfect or protect the Charges or the priority of the Charges, or

(ii) from and after the occurrence of an Enforcement Event to facilitate the realisation of the Charged Assets or the exercise of any rights vested in the Security Agent or any Receiver,

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including, without limitation, executing any transfer, conveyance, charge, assignment or assurance of the Charged Assets (whether to the Security Agent or its nominees or otherwise), making any registration and giving any notice, order or direction, provided that no action shall be taken by or on behalf of the Security Agent, the Company or any of the Secured Parties to register or note any Charges at H M Land Registry Clause 27 32 (*Further assurance*) of the Facilities Agreement shall not apply to the Charges that are created by the Supplemental Legal Charge The Security Agent and the other Secured Parties shall be entitled to register or note any charges at H M Land Registry after the occurrence of an Enforcement Event and protect them by way of restriction on title

(b) The Company shall, as soon as reasonably practicable after 4 April 2012 and in any event within 30 days of that date, grant to the Security Agent security over its property (if any) located in Scotland in form and substance satisfactory to the Security Agent (acting on the instructions of the Majority Lenders)

SCHEDULE 1 (Real Property)

None as at 4 April 2012

SCHEDULE 2 (Investments)

None as at 4 April 2012

SCHEDULE 3 (Intellectual Property)

None as at 4 April 2012

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Short particulars

In this form

Authorisations means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation, or registration, other than, in each case, in relation to the use of Intellectual Property,

Bank Accounts means the General Bank Accounts and the Specific Bank Accounts,

Borrower means Borrower as such term is defined in the Facilities Agreement,

Charged Asset means the assets from time to time subject, or expressed to be subject, to the Charges or any part of those assets,

Charges means all or any of the Security created or expressed to be created by or pursuant to the Supplemental Legal Charge,

Chargors means the companies listed as chargors in schedule 1 to the Original Debenture,

Delegate means any delegate, agent, attorney or co-trustee appointed by the Security Agent,

Development means the development of land for residential or commercial use (or a combination of both residential and commercial use), together in each case with all ancillary uses and infrastructure as appropriate,

Disposal means any sale, lease (including the granting of a lease), licence, transfer or any other disposition other than an Unrestricted Disposal,

Enforcement Event means

(a) an Event of Default which is continuing pursuant to which the Facility Agent exercises any of its rights under clause 28 18 (*Acceleration*) of the Facilities Agreement, or

(b) an Event of Default (i) which is likely to have an adverse effect on the value, marketability or use of the Security or (ii) as a result of which the Security Agent (acting on the instructions of the Majority Lenders) confirms that the Charged Assets are in jeopardy,

Event of Default means any event or circumstance specified as such in Clause 28 (*Events of Default*) of the Facilities Agreement,

Facilities Agreement means the facilities agreement dated 24 April 2009 between, among others, each Chargor named therein, the Lenders named therein, The Bank of New York Mellon, London Branch as Agent, Bank of Scotland plc as Issuing Bank and The Bank of New York Mellon, London Branch as Security Agent,

Facility Agent means The Bank of New York Mellon, London Branch,

Finance Document means Finance Document as such term is defined in the Facilities Agreement,

Finance Party means Finance Party as such term is defined in the Facilities Agreement,

Fixtures means fixtures, fittings (including trade fixtures and fittings) and fixed plant, machinery and apparatus (excluding tenant's fixtures and fittings save where the Company is the tenant),

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General Bank Accounts of the Company means all current, deposit or other accounts with any bank or financial institution in which it has an interest as at 4 April 2012 or in the future and (to the extent of its interest) all balances as at 4 April 2012 or in the future standing to the credit of or accrued or accruing on those accounts excluding the Specific Bank Accounts,

General Book Debts of the Company means all book and other debts of any nature, and all other rights to receive money (excluding Bank Accounts) due, owing or payable to it as at 4 April 2012 or in the future and the benefit of all related negotiable instruments, rights, Security, guarantees and indemnities of any kind excluding the Specific Book Debts,

Guarantor means Guarantor as such term is defined in the Facilities Agreement,

Hedge Counterparty means

(a) any Original Hedge Counterparty as such term is defined in the Facilities Agreement, and

(b) any person which has become a Party as a Hedge Counterparty in accordance with Clause 29.8 (*Accession of Hedge Counterparties*) of the Facilities Agreement,

which, in each case, is or has become a party to the Intercreditor Agreement as a Hedge Counterparty in accordance with the provisions of the Intercreditor Agreement,

Hedging Agreement means Hedging Agreement as such term is defined in the Facilities Agreement,

Insurances of the Company means all contracts and policies of insurance of any kind as at 4 April 2012 or in the future taken out by or on behalf of it or (to the extent of its interest) in which it has an interest as at 4 April 2012 or in the future,

Intellectual Property means any patents, trade marks, service marks, designs, business names, copyrights, database rights, design rights, domain names, moral rights, inventions, confidential information, knowhow, and other intellectual property rights (which may subsist as at 4 April 2012 or in the future) whether registered or unregistered, including applications for any of the foregoing,

Intercreditor Agreement means the Intercreditor Agreement as such term is defined in the Facilities Agreement,

Investments of the Company means

(a) securities and investments of any kind (including shares, stock, debentures, units, depositary receipts, bonds, notes, commercial paper and certificates of deposit),

(b) warrants, options or other rights to subscribe for, purchase or otherwise acquire securities and investments,

(c) all rights relating to securities and investments which are deposited with, or registered in the name of, any depositary, custodian, nominee, clearing house or system, investment manager, chargee or other similar person or their nominee, in each case whether or not on a fungible basis (including rights against any such person), and

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(d) all other rights attaching or relating to securities or investments and all cash or other securities or investments in the future deriving from Investments or such rights,

in each case owned by the Company as at 4 April 2012 or in the future or (to the extent of its interest) in which it has an interest as at 4 April 2012 or in the future

Land Agreement means an agreement for the Disposal of any interest in Real Property such Disposals including, without limitation, such disposals contemplated pursuant to paragraphs (f), (g), (h), (i) and (j) of the definition of Permitted Disposal (as such term is defined in the Facilities Agreement) and any Disposal pursuant to a planning agreement,

Majority Lenders means the Majority Lenders as such term is defined in the Facilities Agreement,

Obligor means a Borrower or a Guarantor,

Original Debenture means a fixed and floating charge dated 24 April 2009 between amongst others, the Chargors named therein and the Security Agent,

Real Property means freehold and leasehold property, both as at 4 April 2012 and in the future, anywhere in the world including without limitation any Site or Sale Unit and any estate or interest therein, all rights from time to time attached or relating thereto and all Fixtures from time to time therein or thereon,

Receiver means a receiver and manager or other receiver appointed in respect of the Charged Assets and shall, if allowed by law, include an administrative receiver,

Sale Unit means Sale Unit as such term is defined in the Facilities Agreement,

Secured Party means each Finance Party from time to time party to the Facilities Agreement and any Receiver or Delegate,

Security means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect,

Site means Site as such term is defined in the Facilities Agreement,

Specific Bank Accounts means the Holding Account, the Mandatory Prepayment Account and the Tax Reserve Account, as all such terms are defined in the Facilities Agreement,

Specific Book Debts means all debts and all other rights to receive money, as at 4 April 2012 or in the future due owing or payable to the relevant Obligor in respect of the Specific Bank Accounts, and

Unrestricted Disposal means

(a) a Disposal required to be agreed to or effected pursuant to mandatory operation of law or compulsory regulatory requirements,

(b) a Disposal required pursuant to agreements already in place as at 4 April 2012, or

(c) a licence granted in the ordinary course of business of the Company



CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

Pursuant to section 869(5) & (6) of the Companies Act 2006

**COMPANY NO. 6897301
CHARGE NO. 1**

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES
HEREBY CERTIFIES THAT A SUPPLEMENTAL LEGAL CHARGE
DATED 4 APRIL 2012 AND CREATED BY MCCARTHY & STONE
TOTAL CARE MANAGEMENT LIMITED FOR SECURING ALL
MONIES DUE OR TO BECOME DUE FROM THE COMPANY TO
ANY FINANCE PARTY AND ANY HEDGE COUNTERPARTY ON
ANY ACCOUNT WHATSOEVER UNDER THE TERMS OF THE
AFOREMENTIONED INSTRUMENT CREATING OR EVIDENCING
THE CHARGE WAS REGISTERED PURSUANT TO CHAPTER 1
PART 25 OF THE COMPANIES ACT 2006 ON THE 17 APRIL 2012

GIVEN AT COMPANIES HOUSE, CARDIFF THE 24 APRIL 2012

P



Companies House
— for the record —



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES