

MG01

Particulars of a mortgage or charge

2220 34/13



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 NOT for**
You cannot use this form to register
particulars of a charge for
company. To do this, please use
form MG01s.

THURSDAY



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21/01/2010

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COMPANIES HOUSE

1 Company details

Company number 4 8 7 5 8 5 3

Company name in full Prestbury Wentworth Limited (the **Chargor**)

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 d1 d3 m0 m1 y2 y0 y1 y0

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 A Confirmatory Security Agreement dated 13 January 2010 (the **Deed**)
between, among others, the **Chargor** and the **Security Agent** (as defined
below).

4 Amount secured

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

Amount secured All present and future obligations and liabilities
(whether actual or contingent and whether owed
jointly or severally or in any other capacity
whatsoever) of the Obligors (as each such term is
defined in this Form MG01) to any Finance Party
under the Finance Documents including those
obligations and liabilities as they are amended by
the Supplemental Agreement (the **Secured**
Liabilities).

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

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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 Bank of Scotland PLC (the **Security Agent**)

Address The Mound

Edinburgh

Postcode E H 1 1 Y Z

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

See continuation sheets.

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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

Nil

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 866).

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 870). 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 Allen & Overy LLP 20/01/10 X

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 **Morwenna Pestell**

Company name

Allen & Overy LLP

Ref: 0043278-0000327 BK:12891865

Address **Level 32, 40 Bank Street,**

Canary Wharf

Post town **London**

County/Region

Postcode

E 1 4 5 D U

Country **United Kingdom**

DX **73/LONDON/CITY**

Telephone **0203 088 3916**



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,
First Floor, Waterfront Plaza, 8 Laganbank Road,
Belfast, Northern Ireland, BT1 3BS.
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

1. CREATION OF SECURITY

1.1 General

(a) All the security created under the Deed:

- (i) is created in favour of the Security Agent;
- (ii) is created over present and future assets of the Chargor;
- (iii) is security for the payment and satisfaction of all the Secured Liabilities; and
- (iv) is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.

(b) If the rights of the Chargor under a document cannot be secured without the consent of a party to that document:

- (i) the Chargor must notify the Security Agent promptly;
- (ii) the Security will secure all amounts which the Chargor may receive, or has received, under that document but exclude the document itself;
- (iii) unless the Security Agent otherwise requires, the Chargor must use reasonable endeavours to obtain the consent of the relevant party to that document being secured under the Deed; and
- (iv) the Chargor must promptly supply to the Security Agent a copy of the consent obtained by it.

(c) The Security Agent holds the benefit of the Deed on trust for the Finance Parties.

(d) All the security created under the Deed:

- (i) is created in case the security created by the Original Security Agreement does not secure all of the Secured Liabilities; and
- (ii) is created in addition to and does not affect the security created by the Original Security Agreement.

(e) Where the Deed purports to create a first fixed Security Interest, that Security Interest will be a second ranking Security Interest ranking subject to the equivalent Security Interest created by the Original Security Agreement until such time as the Security Interest created by the Original Security Agreement ceases to have effect.

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- (f) Subject to paragraph (b) above, where a right or asset has been assigned (subject to a proviso for re-assignment on redemption) under the Original Security Agreement and the same asset or right is expressed to be assigned again under the Deed, that second assignment will take effect as a fixed charge over the right or asset and will only take effect as an assignment if the relevant security interest created by the Original Security Agreement ceases to have effect at a time when the Deed still has effect.

1.2 Land

- (a) The Chargor charges:

- (i) by way of a first priority legal mortgage all estates or interests in any freehold or leasehold property owned by it (this includes the real property specified in Appendix 1 (Real Property) to the various Deeds of Accession to the Original Security Agreement) and all rights under any licence or other agreement or document which gives the Chargor a right to occupy or use property; and
- (ii) (to the extent that they are not the subject of a mortgage under sub-paragraph (i) above) by way of first fixed charge all estates or interests in any freehold or leasehold property owned by it and all rights and licences or other agreement or document which gives the Chargor a right to occupy or use property.

- (b) A reference in the Deed to any freehold or leasehold property includes:

- (i) all buildings, fixtures, fittings and fixed plant and machinery on that property owned by the Chargor; and
- (ii) the benefit of any covenants for title given or entered into by any predecessor in title of the Chargor in respect of that property or any moneys paid or payable in respect of those covenants.

1.3 Investments

- (a) The Chargor charges:

- (i) by way of a first priority legal mortgage all shares in any member of the Group (other than itself) owned by it or held by any nominee on its behalf; and
- (ii) (to the extent that they are not the subject of a mortgage under sub-paragraph (i) above) by way of a first fixed charge its interest in all shares, stocks, debentures, bonds or other securities and investments owned by it or held by any nominee on its behalf.

- (b) A reference in the Deed to any stock, share, debenture, bond or other security includes:

- (i) any dividend or interest paid or payable in relation to it; and
- (ii) any right, money or property accruing or offered at any time in relation to it by way of redemption, substitution, exchange, bonus or preference, under option

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rights or otherwise.

1.4 Plant and machinery

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

1.5 Credit balances

The Chargor charges by way of a first fixed charge all of its rights in respect of any amount standing to the credit of any account (including any account contemplated by the Deed) it has with any person and the debt represented by it.

1.6 Book debts etc.

The Chargor charges by way of a first fixed charge:

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

1.7 Insurances

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

1.8 Other contracts

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

- (a) its Relevant Contracts;
- (b) any letter of credit issued in its favour; and
- (c) any bill of exchange or other negotiable instrument held by it.

1.9 Intercompany Loans

The Chargor assigns absolutely by way of security, subject to a proviso for re-assignment on redemption, all of its rights in respect of any Intercompany Loans to which it is a party provided that while no Event of Default is outstanding the Chargor may, subject to the terms of the Facility Agreement, exercise all its rights in respect of any Intercompany Loan to which it is a party and receive and exercise all rights in respect of the proceeds thereof.

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1.10 Miscellaneous

The Chargor charges by way of first fixed charge:

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

1.11 Floating charge

(a) The Chargor charges by way of a first floating charge:

- (i) all its assets not at any time otherwise effectively mortgaged, charged or assigned by way of fixed mortgage, charge or assignment under Clause 2.11 of the Deed; and
- (ii) all its assets located in or otherwise governed by Scots law (irrespective of whether or not such assets are effectively mortgaged, charged or assigned by way of first mortgage, charge or assignment under Clause 2.11 of the Deed).

(b) Except as provided below, the Security Agent may (acting on the instructions of the Majority Lenders) by notice to a Chargor convert the floating charge created by that Chargor under this Subclause into a fixed charge as regards any of that Chargor's assets specified in that notice, if:

- (i) an Event of Default is outstanding; or
- (ii) the Security Agent considers those assets to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy.

(c) The floating charge created by Subclause 2.11 of the Deed may not be converted into a fixed charge solely by reason of:

- (i) the obtaining of a moratorium; or
- (ii) anything done with a view to obtaining a moratorium,
under the Insolvency Act 2000.

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(d) The floating charge created by Subclause 2.11 of the Deed will automatically convert into a fixed charge over all of a Chargor's assets if an administrator is appointed or the Security Agent receives notice of an intention to appoint an administrator.

(e) The floating charge created by Subclause 2.11 of the Deed is a **qualifying floating charge** for the purpose of paragraph 14 of Schedule B1 to the Insolvency Act 1986.

2. RESTRICTIONS ON DEALINGS

No Chargor may:

(a) create or permit to subsist any Security Interest on any Security Asset; or

(b) sell, transfer, licence, lease or otherwise dispose of any Security Asset,

except as expressly allowed under the Facility Agreement.

3. INTERPRETATION

In this Form MG01:

Accounting Principles means the accounting principles, policies, standards, bases and practices which, at any relevant time, are generally accepted in the United Kingdom and approved by the Institute of Chartered Accountants of England and Wales.

Additional Chargor means a member of the Group which becomes a Chargor by executing a Deed of Accession.

Administrative Party means the Bank of Scotland as Mandated Lead Arranger and the Bank of Scotland as Facility Agent.

Agreement for Sale and Leaseback means the agreement for sale and leaseback date 27 January 2004 made between, among others, the Relevant Spirit Tenants and Spirit Sunningdale Limited.

Asset Management Agreement means the management agreement dated on or around 24 March 2004, made between the Company, PIHL Wentworth Manager Limited and Prestbury Investment Holdings Limited pursuant to which PIHL Wentworth Manager Limited agrees to provide investment and property management services to the Company.

Asset Manager means PIHL Wentworth Manager Limited or any other asset manager appointed with the approval of the Facility Agent.

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Commitment means:

(a) for an Original Lender, the amount set opposite its name in Schedule 1 of the Facility Agreement of the designated Facility A or Facility B and the amount of any other Commitment, as so designated, it acquires;

(b) for any other Lender, the amount of any other Commitment it acquires;

in each case, extent not cancelled, transferred or reduced under the Facility Agreement.

Company means Prestbury Wentworth Limited.

Deed of Accession means a deed substantially in the form of Schedule 4 of the Original Security Agreement.

Drawdown Date means each date on which a Loan is borrowed.

Duty of Care Agreement means the duty of care agreement to be entered into between, in each case:

(a) the Asset Manager, the Company and the Facility Agent; and

(b) the Managing Agent, the Company and the Facility Agent,

in respect of their respective duties and obligations regarding the Properties.

Event of Default means an event specified as such in Clause 22 of the Facility Agreement.

Facility Agent means the Bank of Scotland.

Facility Agreement means the £475,000,000 facility agreement dated 24 March 2004 between (among others) the Original Chargor and any Additional Chargor.

Final Maturity Date means 10 years after the first Drawdown Date.

Finance Document means a document or security including (without prejudice to any prohibition on amendments) any amendment to that Finance Document or other document or security, including any change in the purpose of, any extension of or any increase in the amount of a facility or any additional facility.

Finance Party means a Lender, a Hedging Bank or an Administrative Party.

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Financial Indebtedness means (without double counting) any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any acceptance credit or bill discounting facility (including any dematerialised equivalent);
- (c) any bond, note, debenture, loan stock, loan note or other similar instrument;
- (d) any redeemable preference share to the extent redeemable at the option of the holder prior to the date falling 12 months after the Final Maturity Date;
- (e) any agreement treated as a finance or capital lease in accordance with the Accounting Principles;
- (f) receivables sold or discounted (otherwise than on a non-recourse basis);
- (g) the acquisition cost of any asset to the extent payable after its acquisition or possession by the party liable where the deferred payment is arranged primarily as a method of raising finance or financing the acquisition of that asset;
- (h) any derivative transaction protecting against or benefiting from fluctuations in any rate or price (and, except for non-payment of an amount, the then mark to market value of the derivative transaction will be used to calculate its amount);
- (i) any other transaction (including any forward sale or purchase agreement) which has the commercial effect of a borrowing;
- (j) any counter-indemnity obligation in respect of any guarantee, indemnity, bond, letter of credit or any other instrument issued by a bank or financial institution; or
- (k) any guarantee, indemnity or similar assurance against financial loss of any person in respect of any item referred to in the above paragraphs.

First Amendment Agreement means the amendment agreement dated 21 June 2004 entered into in connection with the Facility Agreement.

Group means Prestbury Wentworth Holdings Limited and its Subsidiaries.

Hedging Bank means any bank or financial institution party to the Hedging Documents which is a party to the Priority Deed as a hedging counterparty.

Hedging Documents means ISDA master agreement or other interest hedging agreements or documents which may be entered into with a Hedging Bank by a member of the Group as contemplated in the Hedging Letter.

6 Short particulars of all the property mortgaged or charged

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Hedging Letter means a letter dated on or about the date of this Agreement between Prestbury Wentworth Limited and The Governor and Company of the Bank of Scotland relating to the interest hedging to be effected by the Group.

Intercompany Loans means all Financial Indebtedness payable or owing by one member of the Group to another member of the Group.

Joint Venture Agreement means the joint venture agreement dated on or about the date of the First Amendment Agreement and made between the Parent and the Original Investors.

Lease Document means

- (a) the Agreement for Sale and Leaseback;
- (b) a permitted Occupational Lease; or
- (c) any other document designated as such by the Facility Agent and Company.

Lender means:

- (a) an Original Lender; or
- (b) any person which becomes a Lender after the date of the Facility Agreement.

Loan means, unless otherwise stated in the Facility Agreement, the principal amount of each borrowing under the Facility Agreement or the principal amount outstanding of that borrowing and when designated:

- (a) **Facility A** means a loan under Facility A as described in Clause 2.1 of the Facility Agreement; and
- (b) **Facility B** means a loan under Facility B as described in Clause 2.2 of the Facility Agreement.

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Majority Lenders means:

(a) at any time when there are Facility A Loans outstanding or undrawn Facility A Commitments or, in respect of sub-paragraph (iii) below, at any time after Facility A Commitments have been reduced to zero, Lenders:

(i) whose share in the outstanding Facility A Loans then aggregate 66 2/3 per cent. or more of the outstanding Facility A Loans;

(ii) if there is no Facility A Loan outstanding, whose undrawn Facility A Commitments then aggregate 66 2/3 per cent. or more of the aggregate Facility A Commitments of all the Lenders; or

(iii) if there is no Facility A Loan outstanding and the aggregate Facility A Commitments have been reduced to zero, whose Facility A Commitments aggregated 66 2/3 per cent. or more of the aggregate Facility A Commitments of all the Lenders immediately before the reduction (provided that this sub-paragraph (iii) shall cease to apply when all amounts owing under the Finance Documents to such Lenders have been unconditionally and irrevocably paid and discharged in full); and

(b) at any other time, Lenders:

(i) whose share in the outstanding Facility B Loans then aggregate 66 2/3 per cent. or more of the outstanding Facility B Loans;

(ii) if there is no Facility B Loan outstanding, whose undrawn Facility B Commitments then aggregate 66 2/3 per cent, or more of the aggregate Facility B Commitments of all the Lenders; or

(iii) if there is no Facility B Loan outstanding and the aggregate Facility B Commitments have been reduced to zero, whose Facility B Commitments aggregated 66 2/3 per cent. or more of the aggregate Facility B Commitments of all the Lenders immediately before the reduction.

Managing Agent means GVA Grimley or any other managing agent appointed by the Company in respect of the Properties with the approval of the Facility Agent.

Managing Agent means GVA Grimley or any other managing agent appointed by the Company in respect of the Properties with the approval of the Facility Agent.

Obligors means:

(a) Prestbury Wentworth Limited;

(b) PW London Limited;

(c) PW Scotland Limited;

(d) PW No 1 Limited;

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Short particulars

- (e) PW No 3 Limited;
- (f) PW No 4 Limited;
- (g) PW No 5 Limited;
- (h) PW No 6 Limited;
- (i) PW No 7 Limited; and
- (j) PW No 8 Limited.

Occupational Lease means any lease or licence or other right of occupation or right to receive rent to which a Property may at any time be subject.

Original Chargor means Prestbury Wentworth Limited.

Original Investor means:

- (a) Uberior Ventures Limited;
- (b) Prestbury Investments Holdings Limited;
- (c) West Coast Capital;
- (d) Dominic Silvester;
- (e) Aldersgate Investments Limited;
- (f) PIHL Wentworth Manager Limited; and
- (g) The Trustees of the TB Hunter Childrens' Trust.

Original Lender means the Governor and Company of the Bank of Scotland.

Original Property means the real or heritable (including leasehold) property listed in Schedule 7 (The Properties) of the Sale and Purchase Agreement provided such property is and continues to be wholly, legally and beneficially owned by one or more wholly-owned members of the Group.

Original Security Agreement means a security agreement dated 25 March 2004 between Prestbury Wentworth Limited, and any additional chargors thereafter, and the Security Agent.

Parent means Prestbury Wentworth Holdings Limited.

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Priority Deed means the priority deed dated 25 March 2004 between, among others, the Parties and certain other investors in and creditors of the Group.

Property means the Original Property and any other real or heritable property which is, now or in the future, wholly, legally and beneficially owned by one or more members of the Group.

Relevant Contract means:

- (a) in the case of the Original Chargor only, the Joint Venture Agreement;
- (b) in relation to the Original Chargor or any Additional Chargor, any Hedging Document to which it is a party;
- (c) in the case of the Original Chargor only, the Sale and Purchase Agreement;
- (d) in relation to the Original Chargor or any Additional Chargor, any Lease Document to which it is a party;
- (e) in the case of the Original Chargor only, the Duty of Care Agreement and any Asset Management Agreement to which it is a party; and
- (f) any other agreement to which the Original Chargor or any Additional Chargor is a party and which the Security Agent has designated a Relevant Contract by notice in writing to the Original Chargor or Additional Chargor where relevant.

Relevant Spirit Tenants means each of:

- (a) Huggins and Company Limited;
- (b) The Chef & Brewer Group Limited;
- (c) Spirit Group Retail Limited;
- (d) Freshwild Limited;
- (e) Partstripe Limited;
- (f) CPH (R&L) No. 2 Limited;
- (g) Aspect Ventures Limited;
- (h) Spirit Group Retail (Pubs) No. 2 Limited; and
- (i) AVL (Pubs) No. 2 Limited.

Sale and Purchase Agreement means the sale and purchase agreement in the agreed form between the Company, the Sellers and Spirit Intermediate Holdings Limited relating to the sale and purchase of the shares in Target.

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Security means any security created by the Deed.

Security Assets means all assets of the Original Chargor or any Additional Chargor the subject of any security created by the Original Security Agreement or any document entered into pursuant hereto.

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

Sellers means Spirit Acquisition Holdings Limited and Spirit Acquisitions Guarantee Limited.

Subsidiary means an entity of which a person has direct or indirect control or owns directly or indirectly more than 50 per cent. of the voting capital or similar right of ownership.

Target means Prestbury Wentworth Intermediate Limited.



**CERTIFICATE OF THE REGISTRATION
OF A MORTGAGE OR CHARGE**

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

**COMPANY NO. 4875853
CHARGE NO. 2**

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES
HEREBY CERTIFIES THAT A CONFIRMATORY SECURITY
AGREEMENT DATED 13 JANUARY 2010 AND CREATED BY
PRESTBURY WENTWORTH LIMITED FOR SECURING ALL
MONIES DUE OR TO BECOME DUE FROM THE OBLIGORS TO
ANY FINANCE PARTY 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 21 JANUARY 2010

GIVEN AT COMPANIES HOUSE, CARDIFF THE 25 JANUARY
2010

P. Seb.



Companies House
— for the record —



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES