

Particulars of a mortgage or charge

395

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)

For official use

Company number

[4] [1] [1]

03197645

Name of company

* Browns Hotel Limited (the "Chargor")

Date of creation of the charge

31 October 2008

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

Deed of Confirmation to the Debenture (see Continuation Sheet for definitions)

Amount secured by the mortgage or charge

All present and future liabilities and obligations (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) which now or hereafter may be or become due and owing by the Chargor to any Secured Party under the Relevant Documents (the "Secured Obligations" and references to Secured Obligations include references to any of them)

(see Continuation sheet for definitions)

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

Bank of Scotland plc (formerly known as The Governor and Company of the Bank of Scotland) as agent and security trustee for itself and for each of the other Secured Parties (the "Security Trustee")

Postcode EH1 1YZ

Presentor's name address and reference (if any)

Maclay Murray & Spens LLP

Quartermile One
15 Lauriston Place
Edinburgh
EH3 9EP

RZS/CEXM/SMK/BAN/13/3741

Time critical reference

For official Use (06/2005)
Mortgage Section

THURSDAY



AL7GW4L3

A35

06/11/2008

166

COMPANIES HOUSE

Short particulars of all the property mortgaged or charged

see Continuation sheet

Please do not
write in
this margin

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

Particulars as to commission allowance or discount (note 3)

Nil

Signed

For and on behalf of Maclay Murray & Spens LD

Date 5 November 2008

On behalf of ~~XXXXXXXXXXXXXXXXXX~~ [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 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 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.

Continuation sheet

To the Registrar of Companies

Name of company

Company number

Browns Hotel Limited (the "Company")

03197645

Short particulars of all the property mortgaged or charged -

Short particulars of all property mortgaged or charged:

- 1 The Company, in security for the payment or discharge of the Secured Obligations, with full title guarantee charges in favour of the Security Trustee
- 1 1 by way of a first legal mortgage all estates or interests in any freehold and leasehold property (except any heritable or leasehold property in Scotland) now or after the date of the Debenture belonging to it
- 1 2 by way of a first fixed charge -
 - 1 2 1 (to the extent that they are not the subject of an effective mortgage under paragraph 1 1 above) all estates or interests in any freehold or leasehold property now or hereafter belonging to it (other than any property the subject of paragraph 1 1 above) including any rights under any occupational lease, licence or other right of occupation,
 - 1 2 2 all plant and machinery owned by the Company and its interests in any plant or machinery in its possession,
 - 1 2 3 all monies standing to the credit of any account with any person and the debts represented by them,
 - 1 2 4 all benefits in respect of all contracts and policies of insurances taken out by or on behalf of the Company or (to the extent of the Company's interest) in which the Company has an interest and all claims and returns of premiums in respect of any such policies,
 - 1 2 5 all of its book debts and other debts, the proceeds of the same and all other moneys due and owing to the Company and the benefit of all rights, securities and guarantees of any nature enjoyed or held by it in relation to any of the foregoing.
 - 1 2 6 all its rights under any interest rate hedging arrangements,
 - 1 2 7 any beneficial interest, claim or entitlement of the Company in any pension fund,
 - 1 2 8 its goodwill,
 - 1 2 9 its uncalled capital.

- 1 2 10 all stocks, shares and other securities held now or in the future by it and/or any nominee on its behalf and all dividends and other distributions paid or payable on any such stocks, shares or other securities (and interest thereon) or other rights accruing or offered at any time by way of redemption, bonus, pre-emption or otherwise or in respect of any such stocks, shares or other securities or in substitution or exchange thereof,
- 1 2 11 all present and future Intellectual Property Rights owned by it, and
- 1 2 12 the benefit of all licences, consents and authorisations (statutory or otherwise) held in connection with its business or the use of any Asset specified in any other subparagraph in this Clause and the right to recover and receive all compensation which may be payable to it in respect of them,
- 1 3 by way of floating charge the whole of its undertaking and all other property, assets and rights of whatever nature and wherever situated both present and future which are not otherwise effectively charged pursuant to paragraphs 1 1 and 1 2 above or (in relation to assets situated in Scotland) whether or not the same are effectively charged pursuant to paragraphs 1 1 and 1 2 above
- 1 4 The Security Trustee may at any time following the occurrence of an Event of Default which is continuing or if the if the Security Trustee reasonably considers the 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 by notice in writing to the Company convert the floating charge created by the Debenture into a fixed charge in respect of any assets specified in the notice and the Company will immediately at its own cost execute a fixed charge over the specified assets in favour of the Security Trustee in such form as may be reasonably required
- 1 5 The floating charge created by the Debenture shall (other than in respect of any of the Assets situated in Scotland if and to the extent that a Receiver would not be capable of exercising his powers in Scotland in relation thereto under Section 72 of the Insolvency Act 1986 by reason of automatic conversion) immediately convert into a fixed charge in respect of -
 - 1 5 1 any Asset which shall without the prior written consent of the Security Trustee become subject to a fixed charge in favour of any person other than the Security Trustee,
 - 1 5 2 any Asset in respect of which any person shall levy, or attempt to levy, any distress, execution, sequestration or other similar process (which is not frivolous or vexatious),
 - 1 5 3 all Assets if the Company ceases to carry on business or if a petition is presented to wind the Company up or if a meeting of members is convened to consider a resolution to wind the Company up or if a petition is presented for an administration order
- 1 6 Save for Permitted Security Rights and subject to the terms of any Relevant Document (which shall prevail to the extent of any conflict with the Debenture), the Company shall not, without the prior written consent of the Security Trustee, create or permit to subsist any Security Right over any Asset other than pursuant to the Debenture or a Permitted Security Right or any other Security Right in favour of the Security Trustee
- 1 7 Save for any Permitted Disposals and subject to the terms of any Relevant Document (which shall prevail to the extent of any conflict with the Debenture), the Company shall not without the prior written consent of the Security Trustee -
 - 1 7 1 dispose of the Assets or any part thereof or interest therein other than in the ordinary course of business,

- 1 7 2 sell, factor, assign or otherwise deal with book or other debts forming part of the Assets except in accordance with Clause 8(l) of the Debenture,
- 1 7 3 pull down or remove the whole or any part of any buildings forming part of the Assets or sever or unfix or remove any of the fixtures thereto nor (except for the purposes of effecting necessary repairs thereto or of replacing the same) remove any of the plant and machinery belonging to or used by it, or
- 1 7 4 grant or agree to grant any tenancy or licence affecting all or any part of the Assets or grant or agree to grant a lease or sublease of, or accept a surrender of a lease, sublease or tenancy of all or any part of the Assets

For the purposes of this form 395

- “Agent”** means Bank of Scotland plc acting through its office at New Ubertior House, 11 Earl Grey Street, Edinburgh, EH3 9BN as agent of the other Finance Parties,
- “Assets”** means the whole of the property, assets and undertaking (including uncalled capital) from time to time of the Company,
- “Arranger”** means Bank of Scotland plc acting through its office at New Ubertior House, 11 Earl Grey Street, Edinburgh, EH3 9BN as arranger,
- “Borrower”** means Rocco Forte & Family (Luxury Hotels) Limited (company number 04413112),
- “Deed of Confirmation”** means the deed of confirmation dated 31 October 2008 confirming the Debenture,
- “Debenture”** means the debenture dated 3 July 2003 granted by the Company in favour of the Security Trustee,
- “Event of Default”** has the meaning given to it in the Facility Agreement,
- “Facility Agreement”** means the facility agreement dated on around the date of the Debenture among inter alia Rocco Forte & Family (Luxury Hotels) Limited (company number 04413112) as Borrower, the Original Lenders (as defined therein) and Bank of Scotland plc as Arranger, Agent, Security Trustee and Guarantor Bank in relation to the term loan facilities,
- “Fee Letter”** means any letter or letters dated on or around the date of the Facility Agreement between the Arranger and the Borrower (or the Agent and the Borrower) setting out any of the fees referred to in Clause 12 of the

Facility Agreement,

“Finance Documents”

means the Facility Agreement, any Fee Letter, the Security Documents, any Hedging Agreement, the Inter Creditor Agreement and any other document designated as such by the Agent and the Borrower;

“Finance Party”

means the Agent, the Security Trustee, the Arranger, a Lender or the Guarantor Bank,

“Guarantor Bank”

means Bank of Scotland plc acting through its office at New Ueberior House, 11 Earl Grey Street, Edinburgh, EH3 9BN as guarantor bank for the Original Hedging Counterparty,

“Hedging Agreement”

means the agreement or agreements put in place by the Borrower from time to time in accordance with Clause 21 l(I) of the Facility Agreement,

“Intellectual Property Rights”

means any and all intellectual property rights of any nature anywhere in the world whether registered, registrable or otherwise including but not limited to patents, utility models, trademarks, registered designs, semiconductor topography rights and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights into databases, moral rights, know how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, sketches, instruction manuals, lists and particulars of customers, marketing methods and procedures and advertising and marketing literature,

“Inter Creditor Agreement”

means the inter creditor agreement dated on or around the date of the Facility Agreement between inter alia the Borrower, the Agent, the Security Trustee, the Lenders, the Loan Stockholders and the RFF Belgium Group Companies and the Target,

“Lender”

means -

- (a) any Original Lender, and
- (b) any bank, financial institution trust, fund or other entity which has become a Party in accordance with Clause 23 of the Facility

Agreement

which in each case has not ceased to be a Party in accordance with the terms of the Facility Agreement

“Loan Stock”

means the £20,350,000 secured loan stock 2013 issued or to be issued by the Borrower pursuant to the Loan Stock Instrument,

“Loan Stockholders”

means the “Stockholders” as defined in the Loan Stock Instrument,

“Loan Stock Instrument”

means the loan stock instrument executed by the Borrower on or around the date of the Facility Agreement constituting the Loan Stock,

“Original Hedging Counterparty”

means HBOS Treasury Services Limited (Company Number 2692890) having its registered office at 33 Old Broad Street, London EC2N 1HZ,

“Permitted Disposal”

means -

- (a) the disposal of assets on an arm’s length basis in the ordinary and usual course of business including the use of cash for any such purpose excluding any assets which are subject to a fixed charge pursuant to the Security Documents,
- (b) disposals between Group Companies which have granted fixed and/or floating security over their respective assets in favour of the Security Trustee for the benefit of the Finance Parties,
- (c) disposals where the proceeds are applied towards the acquisition of a replacement within 30 days of the disposal,
- (d) disposals made other than in the ordinary and usual course of business and not referred to in paragraphs (a) to (c) above but on an arm’s length basis and only if the value of the assets disposed of (whether by a single or several transaction) when taken together with all similar disposals made by the Group is not in total more than £500,000,

“Permitted Security Right”

means -

- (e) liens and rights of set-off securing obligations which are not

overdue beyond their standard payment dates, arising by operation of law in the ordinary and usual course of trading,

- (f) Security Rights arising out of title retention provisions in a supplier's standard conditions of supply of goods acquired in the ordinary and usual course of trading,
- (g) Security Rights granted in terms of the Finance Documents, or
- (h) Security Rights granted with the consent of the Agent,

“Receiver”

includes any person or persons appointed (and any additional person or persons appointed or substituted) as a receiver and manager or a receiver by the Security Trustee under the Debenture and shall include joint Receivers,

“Relevant Documents”

means each of the Finance Documents and the Loan Stock Instrument and any other document designated as such from time to time by the Security Trustee and any of them shall be a “Relevant Document”, and

“RFF Belgium Group Companies”

means Rocco Forte & Family (Belgium) Limited (Company Number 03893836) and its Subsidiaries from time to time and “RFF Belgium Group Company” means any one of them,

“Security Documents”

means security documents listed in Part 3 of Schedule 2 of the Facility Agreement together with any other security granted to the Security Trustee for the benefit of the Finance Parties from time to time,

“Secured Parties”

means each of the Finance Parties and the Loan Stockholders or any person designated as such from time to time by the Security Trustee and any of them shall be a “Secured Party”,

“Security Right”

means any mortgage, charge, security pledge, lien, right of set off or right to retention of title or other security right whether fixed or floating over any present or future property, assets or undertaking,

“Subsidiary”

means a subsidiary within the meaning of section 736 of the Companies Act 1985, and

“Target”

means Browns Hotel Limited (company number 03197645) and having its registered office at 33 Albemarle Street, London, W1S 4BP

For the purposes of this form 395, any references to any person is to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect



CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

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

**COMPANY NO. 3197645
CHARGE NO. 4**

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES
HEREBY CERTIFIES THAT A DEED OF CONFIRMATION TO THE
DEBENTURE DATED 31 OCTOBER 2008 AND CREATED BY
BROWNS HOTEL LIMITED FOR SECURING ALL MONIES DUE
OR TO BECOME DUE FROM THE COMPANY TO BANK OF
SCOTLAND PLC (FORMERLY KNOWN AS THE GOVERNOR AND
COMPANY OF THE BANK OF SCOTLAND) AS AGENT AND
SECURITY TRUSTEE FOR ITSELF AND FOR EACH OF THE
OTHER SECURED PARTIES (THE SECURITY TRUSTEE) 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 6 NOVEMBER 2008

GIVEN AT COMPANIES HOUSE, CARDIFF THE 10 NOVEMBER
2008



Companies House
— for the record —

PS



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES