

# M

COMPANIES FORM No 395

BARC \$120 x 12

061302

## Particulars of a mortgage or charge

# 395

CHFP000

A fee of £10 is payable to Companies House in respect of each register entry for the 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

3834064

Name of Company

\* REIB International Holdings Limited (the "Company")

Date of creation of the charge

7 September 2000

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

Charge of Partnership Interests (the "Deed")

Amount secured by the mortgage or charge

The "Liabilities", which are defined in the Deed as meaning all present and future moneys, debts and liabilities due, owing or incurred by the Chargors, the Obligors and the Parent to any Finance Party under or in connection with any Finance Document (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).

Name and address of the mortgagees or persons entitled to the charge

Eurohypo AG Europäische Hypothekenbank der Deutschen Bank, London Branch of

Winchester House, 1 Great Winchester Street, London, UK (as agent for the Finance Parties and each term to include the parties' successor and assigns)

Postcode

EC2N 2DB

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

Linklaters  
One Silk Street  
London EC2Y 8HQ  
Tel: 020 7456 4653/2000

Ref: TGC

Time critical reference

For official Use  
Mortgage Section

Post room



LD3  
COMPANIES HOUSE

\*LB71UT03\*

0206  
13/09/00

(PLEASE SEE ATTACHED 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)

Signed Linklaters  
On behalf of ~~mortgagee~~/chargee<sup>†</sup>

Date 12.7.2000

A fee of £10 is  
payable to  
Companies House in  
respect of each  
register entry for a  
mortgage or charge.  
<sup>†</sup> Delete as appropriate

**Note**

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 including in this return. The rate of interest payable under the terms of the debentures should not be entered.
4. If any of the spaces in this form provide insufficient space the particulars must be entered on the prescribed continuation sheet.
5. Cheques and Postal Orders are to be made payable to **Companies House**.
6. The address of the Registrar of Companies is:-

A fee of £10 is  
payable to  
Companies House  
in respect of each  
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mortgage or  
charge.

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

- 1 **Partnership Interest and Distributions:** the Company, with full title guarantee and as security for the payment of the Liabilities (whether of that or any other Chargor or any other person), charges in favour of the Agent (as trustee for the Finance Parties) by way of first fixed charge all its present and future Partnership Interest and Distributions.
- 2 **Assignment of Partnership Contracts:** the Company with full title guarantee assigns by way of security to the Agent all its present and future right, title and interest in and to the Assigned Partnership Contracts, including all moneys payable to the Chargors and any claims, awards and judgments in favour of, receivable or received by the Chargors, under or in connection with or pursuant to the Assigned Partnership Contracts.

Note (1): The Deed provides that:

- 1 **Security:** The Company shall not (and shall not agree to) create or permit to subsist any Security over the Charged Assets except for the Charges.
- 2 **Disposal:** The Company shall not (and shall not agree to) enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, transfer or otherwise dispose of the Charged Assets except, in the case of Distributions, as permitted by Clause 5.4 (*Distributions before enforcement*) (see Note (3) to this Form) of the Deed and, in the case of a Partnership Interest, as permitted by the provisions of the Facility Agreement permitting transfers by Obligors in certain circumstances.

Note (2): In this Form, except to the extent that the context requires otherwise:

**"Accession Document"** means each Accession Letter and Deed of Accession

**"Accession Letter"** means a document substantially in the form set out in Schedule 8 (Form of Accession Letter) to the Facility Agreement

an **"Affiliate"** of any person means any Subsidiary or holding company of that person, or any Subsidiary of any such holding company

**"Agent"** means Eurohypo AG Europäische Hypothekenbank der Deutschen Bank, London Branch as security trustee for the benefit of the Finance Parties and including its successors and assigns

**"Arranger"** means Eurohypo AG Europäische Hypothekenbank der Deutschen Bank, London Branch in its capacity as arranger under the Facility Agreement

**"Assigned Partnership Contracts"** means:

- (i) the Limited Partnership Agreement between the General Partner and the Investors dated 27 June 2000
- (ii) the Investment and Shareholders Agreement between the Original GP Shareholders, M. Goldhill, A. Browne and Hemingway GP No.3 Limited dated 27 June 2000
- (iii) the Property Management Agreement between the General Partner and the Parent dated 27 June 2000
- (iv) each Declaration of Trust entered into or to be entered into between the General Partner, the relevant Trustees and the Borrower in relation to a property in the agreed form

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

- (v) the Loan Note Instrument dated 27 June 2000 for the issue by the Borrower of £42,857,143 zero coupon unsecured loan notes
- (vi) each Deed of Adherence entered into for the purpose of adhering to the Limited Partnership Agreement in the agreed form

**"Borrower"** means The Hemingway Mixed Use Partnership

**"Banks"** means the banks and financial institutions listed as **"Banks"** on the signature pages to the Facility Agreement (including Eurohypo AG Europäische Hypothekenbank der Deutschen Bank, London Branch at the date thereof

**"Charged Assets"** 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 Deed

**"Charge of Shares"** means the security document entered into on 7 September 2000 between the Parent, JER Hemingway Mixed Use, LLC, REIB Europe Operator Limited and the Agent

**"Chargor"** means Hemingway GP No.3 Limited, Amalgamated Investments Limited, JER Real Estate Partners II Hemingway, LLC, JER Real Estate Partners II-A Hemingway, LLC, JER Real Estate Qualified Partners II Hemingway, LLC, JER Real Estate Partners Europe Hemingway, LLC, the Company, and each person acceding to the Deed by executing and delivering a Deed of Accession

**"Commitment"** means, in relation to:

- (i) a Bank listed on the signature pages of the Facility Agreement, the amount in the relevant column set opposite its name on those pages and
- (ii) in relation to any other Bank, the amount of the Commitment acquired by it under Clause 28 (*Transfer*) of the Facility Agreement

in each case:

- (a) adjusted by the amount of any Commitment acquired and/or transferred by it under Clause 28 (*Transfer*) of the Facility Agreement and
- (b) less any amount cancelled or reduced under the Facility Agreement

**"Counterparty"** means Deutsche Bank AG, London

**"Debenture"** means the fixed and floating security document between the Borrower, the Trustees and the Agent and dated 7 September 2000

**"Deed of Accession"** means a deed in substantially the same form as the accession deed set out in Schedule 4 (Form of Deed of Accession) to the Deed executed by an acceding Chargor in accordance with Clause 7.5 (Accession) of the Deed or with such changes as the Agent may reasonably require

**"Distributions"** means, in relation to any Partnership Interest, all present and future:

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

- (i) distributions of any kind and any other sum received or receivable in respect of that Partnership Interest, including distributions of income or capital
- (ii) offers, rights, shares, money or other assets accruing or offered by way of redemption, bonus, repayment of capital, option or otherwise in respect of that Partnership Interest
- (iii) other rights and assets attaching to, deriving from or exercisable by virtue of the ownership of, that Partnership Interest and
- (iv) any interest or principal payable to a Chargor in respect of its Partnership Interest

any "**document**" (including the Deed) is a reference to that document as from time to time amended, supplemented, novated, restated or replaced and includes a reference to any document which amends, supplements, novates, restates, replaces or is entered into, made or given under or in accordance with any of the terms of, that document

**"Duty of Care Agreement"** means any agreement entered into in substantially the form of Schedule 7 to the Facility Agreement (or in such other form as may be approved by the Agent (acting reasonably)) between a Managing Agent and the Agent in relation to the management of a Property

**"Event of Default"** means an event mentioned in Clause 19.1 (*Events of Default*) of the Facility Agreement

**"Enforcement Event"** means:

- (i) any corporate action, legal proceedings or other procedure or step is taken in relation to the administration of any Chargor or
- (ii) an Event of Default

**"Facility Agreement"** means the £25,000,000 property investment facility agreement dated 31 July 2000 and between the Borrower, the General Partner, the Trustees, the Parent, Arranger, Agent and Counterparty

**"Finance Documents"** means:

- (i) the Facility Agreement
- (ii) each Security Document
- (iii) any Hedging Arrangement
- (iv) a Subordination Deed
- (v) the fee letters referred to in Clause 22 of the Facility Agreement
- (vi) each Transfer Notice
- (vii) each Accession Document; and
- (viii) each other document designated as such by the Agent and the Borrower

**"Finance Parties"** means the Agent, the Arranger, the Counterparty and the Banks and their successors and assigns

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

**"General Partner"** means Hemingway GP No.3 Limited in its capacity as general partner of the Borrower

**"GP Shareholder"** means any shareholder in the General Partner from time to time

**"Hedging Arrangement"** means any interest rate swap, cap, swaption, caption, floor (when in combination with any of the foregoing) or other arrangement for the hedging or fixing of the interest payable by the Borrower under the Facility Agreement

**"GP Shareholder"** means any shareholder in the General Partner from time to time

**"Investors"** means Amalgamated Investments Limited; JER Real Estate Partners II Hemingway, LLC; JER Real Estate Partners II-A Hemingway, LLC; JER Real Estate Qualified Partners II Hemingway, LLC; JER Real Estate Partners Europe Hemingway, LLC; the Company and any other person who is subsequently admitted to the Hemingway Mixed Use Partnership as a limited partner in accordance with the Partnership Agreement

**"Managing Agent"** means DTZ Debenham Tie Leung, the Parent, any Affiliate of the Parent or any other managing agent of the Properties (or any of them) appointed from time to time with the prior written consent of the Agent (not to be unreasonably withheld or delayed)

**"Majority Banks"** means:

- (i) Banks whose Outstandings together exceed 66.67% of the total Outstandings or
- (ii) if there are no Outstandings, Banks whose Commitments together exceed 66.67% of the total Commitments or
- (iii) if there are no Outstandings or Commitments, Banks whose Commitments together exceeded 66.67% of the total Commitments immediately before the Commitments were reduced to zero

**"Obligors"** means the Borrower; the General Parent and each Trustee

**"Original GP Shareholder"** means each of the Parent, JER Hemingway Mixed Use, LLC and REIB Europe Operator Limited

**"Outstandings"** means the aggregate principal amount of a Bank's share of all (if any) outstanding Advances

**"Parent"** means Hemingway Properties Limited

**"Partnership"** means the Borrower, a limited partnership established under the laws of England, regulated by the Partnership Agreement, and registered under the Limited Partnerships Act 1907 with number LP7008 and any successor partnership (including any reconstitution thereof) or other successor entity

**"Partnership Agreement"** means the limited partnership agreement dated 27 June 2000, constituting the Partnership and between the General Partner and each other Chargor as a limited partner

**"Partnership Interest"** means:

## Short particulars of all the property mortgaged or charged

- (i) all right, title and interest under and in the Partnership Interest (as defined in the Partnership Agreement) of that Chargor, at any time, whether arising under the Partnership Agreement, at law or in equity
- (ii) other rights to purchase or otherwise acquire any additional interest in the Partnership

in each case owned by it at the date of the Deed or in the future or (to the extent of its interest) in which it at the time of the Deed or in the future has an interest, including any interest in the joint estate of the Partnership

**"person"** includes any individual, company, corporation, firm, partnership, joint venture, undertaking, association, organisation, trust, state or agency of a state (in each case whether or not having separate legal personality) and any of their respective successors and assigns

**"Property"** means each property which is charged pursuant to the Debenture and/or and Supplemental Debenture and/or is financed or is to be financed by an advance made pursuant to the Facility Agreement and **"Properties"** shall mean all of them

**"rights"** includes rights, authorities, discretions, remedies, liberties, powers, easements, quasi-easements and appurtenances (in each case, of any nature whatsoever)

**"Security"** includes any mortgage, pledge, lien, hypothecation, security interest or other charge or encumbrance and any other agreement or arrangement having substantially the same economic effect (and **"secured"** shall be construed accordingly)

**"Security Document"** means:

- (i) the Debenture and each Supplemental Debenture
- (ii) the Deed
- (iii) the Charge of Shares
- (iv) each Duty of Care Agreement and

any other document designated as such by the Agent and the Borrower

**"Subordination Deed"** means the subordination deed between the Agent, the Parent, the Borrower, the General Partner, each Trustee, each Investor and each GP Shareholder and dated 7 September 2000

**"Supplemental Debenture"** means a security document in the agreed form entered into or to be entered into between the Borrower, the relevant Trustees and the Agent with respect to a Property acquired after the date of the first advance

**"Transfer Notice"** means a notice substantially in the form set out in Schedule 5 (Transfer Notice) to the Facility Agreement

**"Trustees"** means Hemingway GP No.3 Limited in its capacity as a trustee and Hemingway Nominee No. 3 Limited as a trustee

Note (3): Clause 5.4 (*Distributions before enforcement*) of the Deed provides that:

### 1 Distributions before enforcement

Name of Company

REIB International Holdings Limited

Company Number

3834064

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

Subject to paragraph 2 (*Distributions of capital after enforcement*) to this Note (3) (below), the relevant chargor is entitled to retain any Distributions

**2 Distributions of capital after enforcement**

Subject to the Subordination Deed, at any time while an Enforcement Event is continuing the relevant chargor shall hold any Distributions received by it on trust for the Finance Parties and pay the same immediately to the Agent or as it may direct. The Agent shall be entitled to require the Chargors to direct the General Partner to pay such Distributions directly to the Agent and the Chargors and the General Partner shall comply with any such requirements and/or direction. The Agent shall be entitled to apply the same in each case as it sees fit



FILE COPY



## CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

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

COMPANY No. 03834064

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT A CHARGE OF PARTNERSHIP INTERESTS DATED THE 7th SEPTEMBER 2000 AND CREATED BY REIB INTERNATIONAL HOLDINGS LIMITED FOR SECURING ALL MONEYS, DEBTS AND LIABILITIES DUE OR TO BECOME DUE FROM THE CHARGORS, THE OBLIGORS AND THE PARENT (ALL AS DEFINED) TO ANY FINANCE PARTY (AS DEFINED) UNDER OR IN CONNECTION WITH ANY FINANCE DOCUMENT (AS DEFINED) ON ANY ACCOUNT WHATSOEVER WAS REGISTERED PURSUANT TO CHAPTER 1 PART XII OF THE COMPANIES ACT 1985 ON THE 13th SEPTEMBER 2000.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 21st SEPTEMBER 2000 .

LR  
LC



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES



C O M P A N I E S   H O U S E