

# M

CHFP025

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in black type, or  
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\*insert full name  
of Company

**COMPANIES FORM No. 395****Particulars of a mortgage or charge**

nm

# 395

A fee of £10 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

[ ][ ][ ][3]

4050400

Name of company

\* Tom Cobleigh Holdings Limited (the "**Chargor**")

Date of creation of the charge

31st October, 2003

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

Security Agreement (the "**Deed**") dated 31st October, 2003 between  
(amongst others) the Chargor and the Facility Agent (as defined below).

Amount secured by the mortgage or charge

All present and future obligations and liabilities (whether actual or  
contingent and whether owned jointly or severally or in any other  
capacity whatsoever) of each Obligor to each Finance Party under each  
Finance Document to which that Obligor is a party, except for any  
obligation which, if it were so included, would result in the Deed  
contravening Section 151 of the Companies Act 1985 (the "**Secured  
Liabilities**").

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

The Royal Bank of Scotland plc, 2 1/2 Devonshire Square, London (the  
"**Facility Agent**")

Postcode EC2M 4BB

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

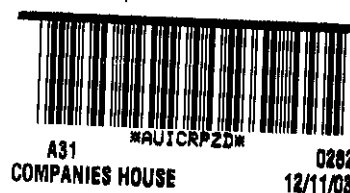
Allen & Overy  
One New Change  
London  
EC4M 9QQ

REISP/BK:1145978.1

Time critical reference

For official Use  
Mortgage Section

Post room



See Continuation Sheets.

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

Particulars as to commission allowance or discount (note 3)

Nil

Signed *Allen & Jery*

Date 11th November, 2003

On behalf of [XXXXXX] [mortgagee/chargee]†

A fee of £10 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 Cheques and Postal Orders are to be made payable to **Companies House**.
- 6 The address of the Registrar of Companies is:-  
Companies House, Crown Way, Cardiff CF14 3UZ

**SHORT PARTICULARS OF THE PROPERTY MORTGAGED OR CHARGED**

**1. General**

- (a) All the security created under the Deed:
  - (i) is created in favour of the Facility Agent;
  - (ii) is created over present and future assets of the Chargor;
  - (iii) is security for the payment 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) Notwithstanding any other provision of the Deed, 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 Facility Agent promptly;
  - (ii) the Deed will secure all amounts which the Chargor may receive, or has received, under that document but exclude the document itself; and
  - (iii) unless the Facility Agent otherwise requires, the Chargor must use reasonable endeavours to obtain consent of the relevant party to that document being secured under the Deed.
- (c) The Facility Agent holds the benefit of the Deed on trust for the Finance Parties.

**2. Land**

- (a) The Chargor charges:
  - (i) by way of a first legal mortgage all estates or interests in any freehold or leasehold property now owned by it; this includes the real property (if any) specified in schedule 1 (Security Assets) of this Form 395 under its name under the heading **Real 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 present and future estates or interests in any freehold or leasehold property subject, in the case of any leasehold properties, to any necessary third party's consent to such mortgage being obtained (the charge in relation to any such leasehold property to take effect immediately on such consent being obtained).
- (b) A reference in this subclause to a mortgage or charge of 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 a Chargor in respect of that property or any moneys paid or payable in respect of those covenants.

**3. Investments**

**(a) The Chargor charges:**

- (i) by way of a first equitable mortgage all shares in any company owned by it, or held by any nominee on its behalf, including shares in the companies listed in Schedule 2 (Shares) of this Form 395; 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 this subclause to a mortgage or charge of any stock, share, debenture, bond, interest 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 rights or otherwise.

**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.

**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.

**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.

**7. Insurances**

The Chargor assigns absolutely, 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.

**8. Other contracts**

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

- (a) any agreement to which it is a party (including but not limited to any loan agreement or other arrangement effecting any loan made to any member of the Group) except to the extent that it is subject to any fixed security created under any other term of this Clause; this includes (but is not limited to) the agreements (if any) specified in schedule 1 (Security Assets) of this Form 395 under its name under the heading **Relevant Contracts**;
- (b) any letter of credit issued in its favour; and
- (c) any bill of exchange or other negotiable instrument held by it.

**9. Intellectual property**

The Chargor charges by way of a first fixed charge, all of its rights in respect of:

- (a) any Intellectual Property Rights including the patents and trademarks (if any) specified in schedule 1 (Security Assets) of this Form 395 under its name under the heading **Specific Intellectual Property Rights**; or
- (b) any interest (including by way of licence) in any of the above,

in each case whether registered or not and including all applications for the same.

**10. Miscellaneous**

The Chargor charges by way of a first fixed charge:

- (a) any beneficial interest, claim or entitlement it has in any pension fund;
- (b) its goodwill;
- (c) the benefit of any authorisation (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 authorisation referred to in paragraph (c) above; and
- (e) its uncalled capital.

**11. Floating charge**

- (a) The Chargor charges by way of a first floating charge all its assets not at any time otherwise effectively mortgaged, charged or assigned by way of fixed mortgage, charge or assignment under this clause.

- (b) Except as provided below, the Facility Agent may by notice to the Chargor convert the floating charge created by the Chargor under this subclause into a fixed charge as regards any of the Chargor's assets specified in that notice, if:
  - (i) an Event of Default is outstanding and has been declared by the Facility Agent under clause 23.21 (Acceleration) of the Credit Agreement; or
  - (ii) the Facility Agent reasonably believes 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 this subclause 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.
- (d) The floating charge created by this subclause will automatically convert into a fixed charge over all of the Chargor's assets if an administrator is appointed or the Facility Agent receives notice of an intention to appoint an administrator.
- (e) The floating charge created by this subclause is a **qualifying floating charge** for the purpose of paragraph 14 of Schedule B1 to the Insolvency Act 1986.

## 12. Restrictions on dealings

The Chargor may not:

- (a) create or permit to subsist any Security Interest on any Security Asset other than pursuant to any Security Document; or
  - (b) sell, transfer, licence, lease or otherwise dispose of any Security Asset,
- except as permitted under the Credit Agreement.

In this Form 395:

**Accession Agreement** means a letter, substantially in the form of Schedule 8 (Form of Accession Agreement) of the Credit Agreement, with such amendments as the Facility Agent may approve.

**Acquired Business** means the business to be acquired, directly or indirectly, by the Company under the S&N Acquisition Documents.

**Acquisition** means the S&N Acquisition and the Spirit Acquisition.

**Additional Borrower** means a member of the Target Group which becomes a Borrower after the date of the Credit Agreement.

**Additional Guarantor** means a member of the Group which becomes a Guarantor after the date of the Credit Agreement.

**Administrative Party** means a Mandated Lead Arranger or the Facility Agent.

**Agreed Security and Guarantee Memorandum** means the memorandum setting out the security and guarantees provided or to be provided by the Group and accepted by the Facility Agent in satisfaction of the relevant documentary condition precedent.

**Amber Newcos** means Amber 1, Amber 1A and Amber 2 as shown in the Completion Steps Paper.

**Beer Distribution Agreement** means the distribution and warehousing agreement between Scottish Courage Limited and Spirit Supply Company Limited to be dated on or before the Closing Date relating to the distribution of certain products to the Acquired Business.

**Beer Supply Agreement** means the agreement between Scottish Courage Limited and Spirit Supply Company Limited to be dated on or before the Closing Date relating to the supply of beer, cider and other products.

**BidCo** means Spirit Amber BidCo Limited.

**Borrower** means the Company or an Additional Borrower.

**Closing** means completion of the Acquisitions in accordance with the Relevant Acquisition Documents.

**Closing Date** means the date on which Closing occurs.

**Company** means Spirit Amber Parent Limited (registered number 4872039).

**Completion Steps Paper** means the documents prepared by Slaughter and May comprising:

- (a) the set of 14 diagrams entitled "Payment Obligations";
- (b) the paper entitled "Project Amber – Detailed Step List";
- (c) the diagram entitled "Cash Flows"; and
- (d) the paper entitled "Project Amber – Completion: Cash Flows",

in each case approved by the Facility Agent as a condition precedent.

**Credit Agreement** means the £2,500,000,000 credit agreement dated 5th October, 2003 between (among others) the Chargor and the Facility Agent.

**Event of Default** means an event specified as such in Clause 23 (Default) of the Credit Agreement.

**Fee Letter** means any letter entered into by reference to the Credit Agreement between one or more Administrative Parties and the Company and the Parent setting out the amount of certain fees referred to in the Credit Agreement.

**Finance Document** means:

- (a) the Credit Agreement;
- (b) a Security Document;
- (c) a Fee Letter;
- (d) a Transfer Certificate;
- (e) an Accession Agreement;
- (f) the Priority Deed;
- (g) a Hedging Document; or
- (h) any other document designated as such by (i) either the Mandated Lead Arrangers or the Facility Agent and (ii) the Company.

**Finance Party** means a Lender, a Hedging Counterparty or an Administrative Party.

**Group** means the Parent and its Subsidiaries.

**Guarantor** means the Company, BidCo, the Parent, Intermediate Holdings, each Amber Newco, an Original Guarantor or an Additional Guarantor.

**Hedging Counterparty** means any hedging counterparty which has entered into a Hedging Document and is party to the Priority Deed as a hedging counterparty.

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

**Hedging Letter** means a letter dated on or about the date of the Credit Agreement between the Company and the Facility Agent relating to the hedging to be effected by the Group.

**Intellectual Property Rights** means:

- (a) any right of confidence in respect of know-how, patent, right in any trade mark, service mark, design, or business name, or similar intellectual property right;
- (b) any copyright, database right or similar intellectual property right;

in each case whether registered or not, and including any related application.

**Intermediate Holdings** means the Spirit Intermediate Holdings Limited (registered number 4914762).

**Lender** means:

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

**Mandated Lead Arrangers** means Barclays Capital, Citigroup Global Markets Limited, Merrill Lynch International and The Royal Bank of Scotland Plc.

**Obligor** means a Borrower or a Guarantor.

**Original Guarantors** means the subsidiaries of the Company listed in Schedule 1 (Original Parties) of the Credit Agreement as original guarantors.

**Original Lenders** means the financial institutions listed in Schedule 1 (Original Parties) of the Credit Agreement as original lenders.

**Parent** means Spirit Amber Holdings Limited.

**Party** means a party to the Credit Agreement.

**Priority Deed** means the subordination agreement dated on or about the date of the Credit Agreement between, among others, the Parties and certain other creditors of the Group.

**Relevant Acquisition Documents** means the S&N Acquisition Documents and the Spirit Acquisition Documents.

**S&N Acquisition** means the acquisition by the BidCo of the entire issued share capital of each Target in accordance with the S&N Acquisition Documents.

**S&N Acquisition Documents** means the sale and purchase agreement dated on or about the date of the Credit Agreement between Scottish & Newcastle plc, BidCo and the Parent (the **S&N Sale and Purchase Agreement**) and the other documents and agreements relating to the acquisition of the Targets referred to therein.

**Security Agreement** means a security agreement creating fixed and/or floating security interests substantially in the form agreed between the Facility Agent and the Company.

**Security Assets** means all assets of the Chargor the subject of any security created by the Deed.

**Security Document** means:

- (a) each Security Agreement; and
- (b) any other document evidencing or creating security over any asset of an Obligor to secure any obligation of any Obligor to a Finance Party under the Finance Documents including, without limitation, standard securities over and assignments of rent relative to land in Scotland and pledges of shares in Scottish companies as anticipated in the Agreed Security and Guarantee Memorandum.

**Security Interest** means any mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having a substantially similar legal effect or having the effect of creating security over an asset in favour of any person.

**Spirit** means Spirit Group Holdings Limited (registered number 4271973).

**Spirit Acquisition** means the acquisition by the Company of the entire issued share capital of Spirit in accordance with the Spirit Acquisition Documents and the Completion Steps Paper.

**Spirit Acquisition Documents** means the sale and purchase agreement dated on or about the date of the Credit Agreement between Intermediate Holdings and certain shareholders of Spirit.

**Subsidiary** means:

- (a) a subsidiary within the meaning of section 736 of the Companies Act 1985; and
- (b) unless the context otherwise requires, a subsidiary undertaking within the meaning of section 258 of the Companies Act 1985.

**Target** means each of Aspect Ventures Limited (Registered number 2468264), Cleveland Place Holdings Limited (Registered number 57987), Partstripe Limited (Registered number 4555293), S&N Pubs and Restaurants Limited (Registered number SC086166), S&N Retail (Northampton) Limited (Registered number 4090163), Scottish & Newcastle Retail Limited (Registered number 379485) and Scottish & Newcastle Retail Pensions Limited (Registered number 2862968).

**Target Group** means each Target and its respective Subsidiaries.

**Transfer Certificate** means a certificate, substantially in the form of Schedule 5 (Form of Transfer Certificate) of the Credit Agreement, with such amendments as the Facility Agent may approve or reasonably require or any other form agreed between the Facility Agent and the Company.

**Wine Distribution Agreement** means the agreement entitled "Wine Distribution and Warehousing Agreement" between Scottish Courage Limited acting by its duly Authorised Agent Waverley Vintners Limited and Spirit Supply Company Limited dated 5th October, 2003.

**Wine Supply Agreement** means the agreement in respect of the supply of wines to the Acquired Business between Scottish Courage Limited acting by its duly Authorised Agent Waverley Vinters Limited and Spirit Supply Company Limited dated 5 October, 2003.

**SCHEDULE 1**

**SECURITY ASSETS**

**REAL PROPERTY**

NONE

**SPECIFIC INTELLECTUAL PROPERTY RIGHTS**

NONE

**RELEVANT CONTRACTS**

1. Beer Supply Agreement;	
2. Spirit Acquisition Documents;	
3. Wine Supply Agreement;	
4. Beer Distribution Agreement; and	
5. Wine Distribution Agreement.	

**SCHEDULE 2**

**SHARES**

<b>Chargor</b>	<b>Shares in:</b>
Tom Cobleigh Holdings Limited	Tom Cobleigh Group Limited

FILE COPY



## CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

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

COMPANY No. 04050400

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT A SECURITY AGREEMENT DATED THE 31st OCTOBER 2003 AND CREATED BY TOM COBLEIGH HOLDINGS LIMITED FOR SECURING ALL PRESENT AND FUTURE OBLIGATIONS AND LIABILITIES (WHETHER ACTUAL OR CONTINGENT AND WHETHER OWNED JOINTLY OR SEVERALLY OR IN ANY OTHER CAPACITY WHATSOEVER) OF EACH OBLIGOR TO EACH FINANCE PARTY UNDER EACH FINANCE DOCUMENT WAS REGISTERED PURSUANT TO CHAPTER 1 PART XII OF THE COMPANIES ACT 1985 ON THE 12th NOVEMBER 2003.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 17th NOVEMBER 2003.

*Don*



*Companies House*

— for the record —



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES