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COMPANIES FORM No. 395

Particulars of a mortgage or charge

178731120

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

2111

4134749

Name of company

* CHESTNUTBAY LIMITED (the "Chargor")

Date of creation of the charge

11 June 2002

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

A debenture (dated 11 June 2002 (the "Debenture") made between, amongst others, the Chargor and the Governor and Company of the Bank of Scotland (the "Security Agent")

Amount secured by the mortgage or charge

See Part II of the attached schedule.

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

The Governor and Company of the Bank of Scotland
(as Security Agent for the Beneficiaries)
Corporate Banking, Level 7, Bishopsgate Exchange
155 Bishopsgate, London

Postcode EC2M 3YB

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

Lovells
65 Holborn Viaduct
London
EC1A 2DY

TSJM/A6/1033036

Time critical reference

For official Use
Mortgage Section

Post room



LD6
COMPANIES HOUSE

0081
21/06/02

Short particulars of all the property mortgaged or charged

See Part III of the attached schedule.

Part IV of the attached schedule contains covenants by and restrictions on the Chargor which protect and further define the charges and which must be read as part of the charges created.

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)

N/A

Signed *Louis*

Date *20 June 2002*

J. J. Jones
On behalf of [company] [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

SCHEDULE TO FORM 395 FOR DEBENTURE

CHESTNUTBAY LIMITED

PART I

Definitions

In this Form 395:

"Acquisition Agreements" the Sale and Purchase Agreement and any related agreements, or other agreements referred to in the Sale and Purchase Agreement;

"Acquisition Agreement Claims" all the Chargor's rights, title and interest and benefit in and to, and any sums payable to the Chargor pursuant to, all representations, warranties, undertakings and indemnities to, agreements with and security to be provided in favour of the Chargor, and any rights of abatement or set-off, and all other rights of recovery under or pursuant to the Acquisition Agreements;

"Asquith Acquisition Agreements" the Asquith Sale and Purchase Agreement and any related agreements, or other agreements referred to in the Asquith Sale and Purchase Agreement;

"Asquith Acquisition Agreement Claims" all the Chargor's rights, title and interest and benefit in and to, and any sums payable to the Chargor pursuant to, all representations, warranties, undertakings and indemnities to, agreements with and security to be provided in favour of the Chargor, and any rights of abatement or set-off, and all other rights of recovery under or pursuant to the Asquith Acquisition Agreements;

"Asquith Sale and Purchase Agreement" the sale and purchase agreement dated 10 May 2001 in relation to the acquisition of Asquith Court Holdings Limited between the Company and the Asquith Vendors;

"Asquith Vendors" the Investment Vendors and the Management Vendor (as those terms are defined in the Asquith Sale and Purchase Agreement);

"Assets" all the undertaking, property, assets, rights and revenues of the Chargor, on or after the date of the Debenture, wherever situated in the world, and includes each or any of them;

"Beneficiary" any Senior Finance Party and any Hedging Bank (as those terms are defined in the Facilities Agreement);

"Collection Account" has the meaning attributed to it by clause 5.1 of the Debenture;

"Company" Acorndrive Limited, a limited liability company incorporated in England and Wales with registered number 4167362;

"DKW Collateral Account" has the meaning given to that term in the Facilities Agreement;

"Facilities Agreement" the facilities agreement dated on or about the date of the Debenture made between Acorndrive Limited (as the Company), the companies listed in Part 1 of Schedule 1 (as Original Borrowers), the companies listed in Part 2 of Schedule 1 (as Original Guarantors) and The Governor and Company of the Bank of Scotland (as Agent, Security Agent, Arranger, Original Lender and in certain other capacities);

"Finance Document" the Facilities Agreement, any Fee Letter, any Accession Letter, any Resignation Letter, any Security Document, any Hedging Document, the Subordination Deed, any Transfer Certificate or undertaking delivered pursuant to Clause 27 (*Changes to the Lenders*) of the Facilities Agreement, any Ancillary Document, any Loan Note Guarantee - Related Document and any other document designated as such by the Agent and the Company;

"Group" the Parent and its Subsidiaries for the time being;

"Floating Charge Assets" insofar only as concerns the floating charge created by clause 3.1(q) of the Debenture, Assets from time to time comprised within it;

"Intellectual Property" all patents (including supplementary protection certificates), utility models, trade marks (including service marks), and rights in passing off, copyright and rights in the nature of copyright, database rights, design rights registered design rights and all other intellectual property rights and, in each case, any extensions and renewals of and any applications for such rights;

"Intellectual Property Rights" all and any of the Intellectual Property and other rights, causes of action, interests and assets charged pursuant to clause 3.1(j) (*Charging Clause*) of the Debenture;

"Land" includes freehold and leasehold land and (outside England and Wales) immovable property and in each case all buildings and structures upon and all things affixed to Land (including trade and tenant's fixtures);

"LNG Security Account" has the meaning given to that term in the Facilities Agreement;

"Parent" Chestnutbay Limited, a limited liability company incorporated in England and Wales under the Companies Act 1985 with registered number 4134749;

"Permitted Security" has the meaning given to that term in the Facilities Agreement;

"Realisation Account" has the meaning given to that term in the Facilities Agreement;

"Receivables" all sums of money receivable by the Chargor on or after the date of the Debenture consisting of or payable under or derived from any of its Assets;

"Secured Sums" all money and liabilities covenanted to be paid or discharged by the Chargor to the Beneficiaries under clause 2.1 of the Debenture and set out in Part II of this Schedule;

"Securities" all stocks, shares, debentures and loan stocks issued by any company or person and all other investments (whether or not marketable) now or in the future owned by the Chargor (whether at law or in equity), including all interests in investment funds and all rights and benefits arising and all money payable in respect of any of them, whether by way of conversion, redemption, bonus, option, dividend, interest or otherwise and including all Securities owned by the Chargor in any other member of the Group; and

"Subsidiaries" a subsidiary undertaking within the meaning of section 258 of the Companies Act 1985.

PART II

Amount secured by Mortgage or Charge

All money and liabilities due, owing or incurred to each Beneficiary by the Chargor on or after the date of the Debenture under or pursuant to the Finance Documents, whether on or after demand, whether actually or contingently, whether solely or jointly with any other person, whether as principal or surety and whether or not the relevant Beneficiary was an original party to the relevant transaction, including all interest, commission, fees, charges, costs and expenses which each Beneficiary may in the course of its business charge or incur in respect of any member of the Group or its affairs and so that interest shall be computed and compounded in accordance with the Finance Documents (after as well as before any demand or judgment).

PART III

Particulars of Property Mortgaged or Charged

1. By clause 3.1 of the Debenture, the Chargor, with full title guarantee, charged to the Security Agent with the payment or discharge of all Secured Sums:
 - (a) by way of first legal mortgage, all freehold and leasehold Land in England and Wales vested in the Chargor at the date of the Debenture and registered at HM Land Registry;
 - (b) by way of first legal mortgage, all other freehold and leasehold Land in England and Wales vested in the Chargor at the date of the Debenture and not registered at HM Land Registry;
 - (c) by way of first fixed charge, all Land after the date of the Debenture becoming the property of the Chargor;
 - (d) by way of first fixed charge, all interests in Land or in or to the proceeds of sale of Land belonging to the Chargor on or after the date of the Debenture which have not already been charged under the charges referred to above and all licences held by the Chargor on or after the date of the Debenture to enter upon, use or exploit Land and the benefit of all options, easements, agreements for lease and other agreements relating to the acquisition, use, exploitation or disposal of Land to which the Chargor is or may after the date of the Debenture become entitled;
 - (e) by way of first fixed charge, all plant and machinery of the Chargor attached to any Land on or after the date of the Debenture which, or an interest in which, is charged under the charges referred to above and all rights and interests of the Chargor under all present and future agreements for the purchase, maintenance or use of plant and machinery so attached;
 - (f) by way of first fixed charge, all rental and other income and all debts and claims due or owing to the Chargor on or after the date of the Debenture under or in connection with any lease, agreement or licence relating to Land;
 - (g) by way of first fixed charge, all Securities belonging to the Chargor;
 - (h) by way of first fixed charge, all contracts and policies of insurance and assurance held by or otherwise benefiting the Chargor on or after the date of the Debenture and all rights and interests of the Chargor in every such contract and policy (including the benefit of all claims arising and all money payable under such contracts and policies);
 - (i) by way of first fixed charge, all the goodwill and uncalled capital for the time being of the Chargor;
 - (j)
 - (i) by way of first fixed charge all Intellectual Property belonging to the Chargor on or after the date of the Debenture, in any part of the world (including any Intellectual Property to which the Chargor is not absolutely entitled or to which it is entitled together with others);
 - (ii) by way of first fixed charge all the benefit of agreements and licences entered into or enjoyed by the Chargor on or after the date of the Debenture relating to the use or exploitation of any Intellectual Property in any part of the world; and

- (iii) by way of first fixed charge all trade secrets, confidential information and know how owned or enjoyed by the Chargor in any part of the world on or after the date of the Debenture;
 - (k) by way of first fixed charge, all book and other debts owing to the Chargor on or after the date of the Debenture and all rights and claims of the Chargor against third parties, present and future, capable of being satisfied by the payment of money (except rights and claims effectively charged under the charges referred to above);
 - (l) by way of first fixed charge, the benefit of all negotiable instruments, guarantees, bonds, debentures, legal or equitable charges and all other security, reservation of proprietary rights, rights of tracing, unpaid vendor's liens and all other rights and remedies available to the Chargor on or after the date of the Debenture as security for any Receivable or for the performance by any third party of any obligation owed to the Chargor on or after the date of the Debenture;
 - (m) by way of first fixed charge, all money at any time standing to the credit of any Collection Account relating to the Chargor (including the proceeds of all its Receivables which proceeds shall, for the avoidance of doubt, on payment into such Collection Account cease to be subject to the charges referred to above but shall be subject to the fixed charge referred to in this paragraph (m));
 - (n) by way of first fixed charge, all money at any time standing to the credit of any Realisation Account;
 - (o) by way of first fixed charge, all money at any time standing to the credit of the LNG Security Account;
 - (p) by way of first fixed charge, all money at any time standing to the credit of any other bank account (other than the DKW Collateral Account) relating to the Chargor; and
 - (q) by way of floating charge:
 - (i) all Assets owned by the Chargor on or after the date of the Debenture except to the extent that such Assets are for the time being effectively charged by any fixed charge referred to in the above paragraphs, including any Assets comprised within a charge which is reconverted under clause 3.6 of the Debenture; and
 - (ii) without exception all Assets insofar as they are for the time being situated in Scotland.
2. By clause 3.2 of the Debenture, the Chargor with full title guarantee assigned (insofar as they are capable of being assigned by way of security) in favour of the Security Agent but subject to the right of the Chargor to redeem such assignment upon the full payment or discharge of all Secured Sums:
- (a) all claims of the Chargor against all persons who are, on or after the date of the Debenture, the lessees, sub-lessees or licensees of its Land and all guarantors and sureties for the obligations of such persons;
 - (b) the benefit of all guarantees, warranties and representatives given or made to the Chargor by, and any rights or remedies against, all or any of the manufacturers, suppliers or installers of any fixtures attached to such Land on or after the date of the Debenture;

- (c) the benefit of all rights and claims to which the Chargor is entitled on or after the date of the Debenture under any agreements for lease, agreements for sale, contracts, options or undertakings relating to any estate, right or interest in or over such Land;
- (d) all rights and claims to which the Chargor is entitled on or after the date of the Debenture against any builder, contractor or professional adviser engaged in relation to such Land or property development of works, including without limitation, under any collateral warranty or similar agreement;
- (e) the benefit of all rights and claims to which the Chargor is entitled under or in respect of any joint venture, partnership or similar arrangement or agreement on or after the date of the Debenture;
- (f) the Acquisition Agreement Claims of the Chargor; and
- (g) the Asquith Acquisition Agreements Claims of the Chargor.

PART IV

Covenants and Restrictions

1. By clause 3.1(q) of the Debenture the Chargor agreed that it would not create any mortgage or any fixed or floating charge or other security over any Floating Charge Asset (whether having priority over, or ranking pari passu with or subject to, the floating charge created by clause 3.1(q) of the Debenture) or take any other step referred to in clause 6.1(a) of the Debenture with respect to any Floating Charge Asset and that it shall not, without the prior written consent of the Security Agent, sell, transfer, part with or dispose of any Floating Charge Asset except by way of sale in the ordinary course of its business.
2. By clause 3.3 of the Debenture the Chargor agreed that the floating charge created by it under clause 3.1(q) of the Debenture may be crystallised into a fixed charge by notice in writing given at any time by the Security Agent to the Chargor. Such crystallisation shall take effect over such Floating Charge Assets or class or classes of Floating Charge Assets as shall be specified in the notice. If no Floating Charge Assets are so specified, it shall take effect over all Floating Charge Assets of the Chargor.
3. By clause 3.4 of the Debenture the Chargor agreed that if, without the Security Agent's prior written consent, it resolves to take any step to charge (whether by way of fixed or floating charge) or otherwise encumber any Floating Charge Asset or to create a trust over any Floating Charge Asset or to dispose of any Floating Charge Asset except by way of sale or other disposition in the ordinary course of the Chargor's business, or if any person resolves to take or takes any step to levy any distress, execution, sequestration or other process against any Floating Charge Asset, then the floating charge created by clause 3.1(q) of the Debenture shall be automatically crystallised (without the necessity of notice) into a fixed charge over such Floating Charge Asset instantly on the occurrence of such event.
4. By clause 3.5 of the Debenture the Chargor agreed that, except as otherwise stated in any notice given under clause 3.3 of the Debenture or unless such notice relates to all Floating Charge Assets, Floating Charge Assets acquired by the Chargor after crystallisation has occurred under clauses 3.3 or 3.4 of the Debenture shall continue subject to the floating charge created by clause 3.1(q) of the Debenture so that the crystallisation shall be effective only as to its Floating Charge Assets in existence at the date of crystallisation.

5. By clause 3.6 of the Debenture the Chargor agreed that any charge created by the Chargor which has crystallised under clauses 3.3 or 3.4 of the Debenture may, by notice in writing given at any time by the Security Agent to the Chargor, be reconverted into a floating charge in relation to the Assets or class or classes of Assets specified in such notice.
6. By clause 3.7 of the Debenture the Chargor agreed that any mortgage, fixed charge or other fixed security whenever and however created by the Chargor and subsisting in favour of the Security Agent shall (save as the Security Agent may otherwise declare at or after the time of its creation) have priority over the floating charge created by clause 3.1(q) of the Debenture.
7. By clause 3.8 of the Debenture the Chargor agreed that any debentures, mortgages or charges (fixed or floating) created after the date of the Debenture by the Chargor (except those in favour of the Security Agent) shall be expressed to be subject to the Debenture and shall rank in order of priority behind the charges created by the Debenture.
8. By clause 3.10 of the Debenture, the Chargor agreed that the fixed charges given by the Chargor over its Receivables under clause 3.1 of the Debenture shall apply to all Receivables owing to the Chargor by any other member of the Group.
9. By clause 4.1 of the Debenture the Chargor agreed that subject to the rights of any prior mortgagee and except as otherwise expressly agreed in writing by the Security Agent, it shall:
 - (a) deposit with the Security Agent, and the Security Agent shall be entitled to retain, all deeds and documents of title relating to all Assets charged by way of fixed charge under clause 3.1 of the Debenture (including policies of insurance and assurance);
 - (b) execute and deliver to the Security Agent such documents and transfers and give such instructions and perform such other acts as the Security Agent may require at any time to constitute or perfect an equitable or legal charge (at the Security Agent's option) over registered Securities or a pledge over bearer Securities, including any Securities eligible to participate in any paperless transfer and settlement system or held in a clearing system.
10. By clause 4.2 of the Debenture the Chargor agreed that unless and until the Debenture becomes enforceable or the Security Agent otherwise directs:
 - (a) all voting and other rights attaching to Securities shall continue to be exercised by the Chargor for so long as it remains their registered owner and the Chargor shall not permit any person other than the Chargor, the Security Agent or the Security Agent's nominee to be registered as holder of any Securities or any part thereof; and
 - (b) if Securities are registered in the name of the Security Agent's nominee, all voting and other rights attaching to them shall be exercised by the nominee in accordance with instructions in writing from time to time received from the Chargor and in the absence of any such instructions the nominee shall refrain from exercising any such rights.

The Chargor undertook not to exercise any voting or other rights in a way which may prejudice the value of the Securities or otherwise jeopardise the Security constituted by the Debenture.

11. By clause 5.1 of the Debenture the Chargor agreed that it shall collect and realise all Receivables and shall pay into such account of the Chargor with the Security Agent or such other of its accounts as the Security Agent may direct (a "**Collection Account**") all

money which it may receive in respect of them immediately on receipt. The Chargor agreed that, pending such payment, it shall hold all money so received upon trust for the Security Agent and shall not, without the prior written consent of the Security Agent, charge, factor, discount, assign, postpone, subordinate, release or waive its rights in respect of any Receivable in favour of any other person or purport to do so.

12. By clause 5.3 of the Debenture the Chargor agreed that if the Security Agent releases, waives or postpones its rights in respect of any Receivables for the purpose of enabling the Chargor to factor or discount them to a third party, the charges created by the Debenture shall in all other respects remain in full force and effect. In particular all amounts becoming due to the Chargor from the third party and any Receivables re-assigned, or due to be re-assigned, by the third party to the Chargor shall be subject to the relevant fixed charge created by clause 3.1 of the Debenture, subject only to any defences or rights of set-off which the third party may have against the Chargor.
13. By clause 6.1 of the Debenture the Chargor agreed that it shall not without the prior written consent of the Security Agent (and with the exception of Permitted Security):
 - (a) create, or agree or attempt to create, or permit to subsist, any Security over any Asset; and/or
 - (b) sell, assign, lease, license or sub-license, or grant any interest in, its Land or Intellectual Property Rights, or purport to do any such act, or part with possession or ownership of them, or allow any third party access or the right to use or copy any such Intellectual Property Right save as in permitted by clause 24.3 (*Restrictions on Disposals*) of the Facilities Agreement.
14. By clause 9.2 of the Debenture the Chargor agreed that it shall not, without the prior written consent of the Security Agent, which shall not be unreasonably withheld or delayed, seek to compromise, compound, discharge, postpone, release, set-off, settle or subordinate any of its Receivables or waive its rights of action in connection with them or do or omit to do anything which may delay or prejudice their full recovery.
15. By clause 11.2 of the Debenture the Chargor agreed that it shall not, without the prior written consent of the Security Agent, at any time:
 - (a) erect any building or make any structural alteration or carry out any development (as defined in section 55 Town and Country Planning Act 1990) on any such Land or apply for any planning consent for the development of any such Land, or (save in the ordinary course of repair, replacement or improvement) at any time sever, remove or dispose of any fixture on it;
 - (b) enter into onerous or restrictive obligations affecting any such Land or create or permit to arise any overriding interest or any easement or right whatever in or over it which might adversely affect its value or the value of the security over it.
16. By clause 12.1(g) of the Debenture the Chargor agreed that it shall not, unless the Security Agent otherwise agrees in writing, sell, assign, transfer, licence, sub-licence or agree to licence any Intellectual Property Rights or any interest therein or permit any third party to use or exploit such Intellectual Property Rights.
17. By clause 13.1 of the Debenture the Chargor agreed it shall not, without the prior written consent of the Security Agent, exercise any power of leasing, or accepting surrenders of leases of, any Land, nor (save where obliged to do so by law) extend, renew or vary any lease or tenancy agreement or give any licence to assign or underlet nor make any election to waive exemption under paragraph 2, schedule 10 Value Added Tax Act 1994 in its capacity as landlord of any such Land.

18. By clause 13.2 of the Debenture the Chargor agreed that it shall not part with possession (except on the determination of any lease, tenancy or licence granted to the Chargor) of any Land or share the occupation of it with any other person, or agree to do so, without the prior written consent of the Security Agent.

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CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

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

COMPANY No. 04134749

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT A DEBENTURE DATED THE 11th JUNE 2002 AND CREATED BY CHESTNUTBAY LIMITED FOR SECURING ALL MONIES DUE OR TO BECOME DUE FROM THE COMPANY TO EACH BENEFICIARY 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 21st JUNE 2002.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 25th JUNE 2002.

M.A.
P.



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES



Companies House

— for the record —