

# M

## COMPANIES FORM No. 395

### Particulars of a mortgage or charge

# 395

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

CHFP025

Please do not write in this margin

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

\*insert full name of Company

Pursuant to section 395 of the Companies Act 1985

To the Registrar of Companies  
(Address overleaf - Note 6)

For official use

Company number

[2][1][1][1]

4914723

Name of company

[Prestbury Wentworth Intermediate Limited (formerly known as] Spirit Intermediate Acquisitions Limited) (the **Chargor**) c/n 31/3

Date of creation of the charge

✓ 25th March, 2004

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

✓ Deed of Accession dated 25th March, 2004 between the Chargor, the Company and the Security Agent (each as defined below) under which the Chargor became an Additional Chargor (as defined below) under the Security Agreement dated 25th March, 2004 between the Company and the Security Agent (the **Deed**).

Amount secured by the mortgage or charge

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 Chargor to any Finance Party under the Finance Documents (the **Secured Liabilities**).

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

The Governor and Company of The Bank of Scotland (as agent and trustee for the Finance Parties) (the **Security Agent**) of Excel House, Semple Street Edinburgh

Postcode EH3 8BL

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

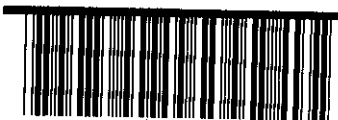
Allen & Overy  
Level 32  
40 Bank Street  
Canary Wharf  
London, E14 5NR

GPL/TIM: BK:1269728.1

Time critical reference

For official Use  
Mortgage Section

Post room



LD3  
COMPANIES HOUSE

\*LCNSKU00\*

0404  
05/04/04

Short particulars of all the property mortgaged or charged

See Continuation Sheets attached.

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

*Allen & Overy*

Date

*2<sup>nd</sup> April, 2004*

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

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

### **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 of all the Secured Liabilities; and
  - (iv) is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994 or in respect of property located in or governed by Scots law, subject to the Permitted Occupational Leases, with absolute warrandice.
- (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) this 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) The fact that no, or incomplete details, of any Security Asset are listed in the Deed or in the schedule to any Deed of Accession by which any Additional Chargor became party to the Deed does not affect the validity or enforceability of this Security.

#### **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 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 (including, without limitation, the shares specified in the schedule to this Companies 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 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 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.

### **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 this paragraph 1; 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 this paragraph 1).

- (b) Except as provided below, the Security Agent may (acting on the instructions of the Majority Lenders) by notice to the Chargor convert the floating charge created by the Chargor under this paragraph 1.11 into a fixed charge as regards any of the 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 this paragraph 1.11 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 paragraph 1.11 will automatically convert into a fixed charge over all of the 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 this paragraph 1.11 is a **qualifying floating charge** for the purpose of paragraph 14 of Schedule B1 to the Insolvency Act 1986.

## 2. **NEGATIVE PLEDGE**

The Chargor may not:

- (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.

### **NOTE 1**

The Deed is entered into subject to the terms of the Priority Deed.

### **NOTE 2**

- (a) The term **this Security** means any security created by the Deed or any document entered into pursuant thereto; and
- (b) The term **Finance Document** includes all amendments and supplements including supplements providing for further advances.

### NOTE 3

Unless the context otherwise requires, a reference to a Security Asset includes:

- (a) any part of that Security Asset;
- (b) any proceeds of sale of that Security Asset; and
- (c) any present and future assets of that type.

### DEFINITIONS

The terms used in this Companies form 395 have the meanings set out below:

**Accession Agreement** means a letter, substantially in the form of schedule 7 (Form of Accession Agreement) to the Facility Agreement, with such amendments as the Facility Agent and the Company may agree.

**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 under the Deed by executing a Deed of Accession.

**Administrative Party** means the Mandated Lead Arranger or an Agent.

**Agent** means the Facility Agent or the Security Agent.

**Agreement for Sale and Leaseback** means the agreement for sale and leaseback dated 27th January, 2004 made between, amongst others, the Relevant Spirit Tenants and Sunningdale.

**Asset Manager** means PIHL Wentworth Manager Limited, a company registered in England and Wales under number 5063116 or any other asset manager appointed with the approval of the Facility Agent.

**Asset Management Agreement** means the management agreement dated on or about the date of the Facility Agreement, made between the Company, the Asset Manager and Prestbury Investment Holdings Limited pursuant to which the Asset Manager agrees to provide investment and property management services to the Company.

**Assignment of Rents** means an assignment of rents by Sunningdale in favour of the Security Agent in security of the Secured Liabilities over Rental Income under all Permitted Occupational Leases relating to Scottish heritable or leasehold property held by Sunningdale in a form satisfactory to the Security Agent and duly intimated to the tenants.

**Commitment** means:

- (a) for an Original Lender, the amount set opposite its name in schedule 1 (Original Parties) to the Facility Agreement under the heading "Commitments" designated Facility A or Facility B and the amount of any other Commitment, as so designated, it acquires;

Company: Prestbury Wentworth Intermediate Limited (formerly known as Spirit Intermediate Acquisitions Limited)  
Company Number: 4914723  
Continuation Sheets

(b) for any other Lender, the amount of any other Commitment it acquires,  
in each case, to the extent not cancelled, transferred or reduced under the Facility Agreement.

**Company** means Prestbury Wentworth Limited, a Company incorporated in England and Wales under registered number 4875853.

**Deed of Accession** means a deed substantially in the form of schedule 4 (Form of Deed of Accession) to the Deed.

**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 (Default) of the Facility Agreement.

**Facility A** means the term loan facility described in clause 2.1 (Facility A) of the Facility Agreement.

**Facility Agent** means The Governor and Company of The Bank of Scotland as facility agent under the Facility Agreement.

**Facility Agreement** means the £475,000,000 facility agreement dated 24<sup>th</sup> March, 2004 between (among others) the Company and the Security Agent.

**Facility B** means the term loan facility described in clause 2.2 (Facility B) of the Facility Agreement.

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

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

**Finance Document** means:

- (a) the Facility Agreement;
- (b) a Security Document;
- (c) a Fee Letter;
- (d) a Transfer Certificate;
- (e) an Accession Agreement;
- (f) the Hedging Letter;
- (g) a Hedging Document;



- (h) the Priority Deed; or
- (i) any other document designated as such by the Facility Agent and the Company.

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

**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.

**Group** means the Company and its Subsidiaries and, if a Holding Company of the Company is incorporated, **Group** shall mean such Holding Company 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 any 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.

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

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**Holding Company** of any other person, means a company in respect of which that other person is a Subsidiary.

**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 16th March, 2004 and made between, among others, the Company 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 the Company.

**Leaseback** has the meaning given to that term in the Sale and Purchase Agreement.

**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; and
- (b) **Facility B** means a loan under Facility B.

**Majority Lenders** means, at any time, Lenders:

- (a) whose share in the outstanding Loans then aggregate  $66\frac{2}{3}$  per cent. or more of the outstanding Loans;
- (b) if there is no Loan outstanding, whose undrawn Commitments then aggregate  $66\frac{2}{3}$  per cent. or more of the Total Commitments; or
- (c) if there is no Loan outstanding and the Total Commitments have been reduced to zero, whose Commitments aggregated  $66\frac{2}{3}$  per cent. or more of the Total Commitments 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.

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**Mandated Lead Arranger** means the Governor and The Company of the Bank of Scotland as mandated lead arranger under the Facility Agreement.

**Obligor** means the Company or an Additional Chargor.

**Original Investor** means:

- (a) Uberior Ventures Limited, a company registered in Scotland under SC235067;
- (b) Prestbury Investments Holdings Limited, a company registered in England and Wales under number 3985560; and
- (c) WestCoast Capital Prestven Limited, a company registered in Scotland under SC220870;
- (d) Dominic Silvester;
- (e) JAA Investments Limited, a company registered in Scotland under SC252838; and
- (f) PIHL Wentworth Manager Limited, a company registered in England and Wales under number 5063116,

together, in each case, with any person to whom shares in the capital of the Company may be transferred by any of the persons listed above, in each case in accordance with article 15 of the articles of association of the Company (in force as at the date of the Facility Agreement), but excluding any persons who have transferred all their shares in the capital of the Company in accordance with article 15 of the articles of association of the Company (in force as at the date of the Facility Agreement).

**Original Lenders** means the financial institutions listed in schedule 1 (Original Parties) to the Facility Agreement as original lenders.

**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.

**Permitted Occupational Lease** means any Leaseback or Substitute Leaseback, in each case granted by Sunningdale to any Relevant Spirit Tenant on the terms set out in the Agreement for Sale and Leaseback.

**Priority Deed** means the priority deed dated 25th March, 2004 between, among others, the parties to the Facility Agreement 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) any Hedging Document to which the Chargor is a party;
- (b) any Lease Document to which the Chargor is a party; and
- (c) any other agreement to which the Chargor is a party and which the Security Agent has designated a Relevant Contract by notice in writing to the Chargor.

**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.

**Rental Income** means any amounts payable to or for the account of any member of the Group under or in connection with any Lease Document.

**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 the Chargor as target.

**Security Assets** means all assets of the Chargor the subject of any security created by the Deed or any document entered into pursuant thereto.

**Security Document** means:

- (a) the Deed;
- (b) each Standard Security;
- (c) each Assignment of Rents; and
- (d) any other document designated as such by the Facility Agent and the Company.

**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.

**Standard Security** means a Standard Security by an Obligor in favour of the Security Agent in security of the Secured Liabilities over all Scottish heritable or long leasehold property held by that Obligor in a form satisfactory to the Security Agent.

**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.

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**Substitute Leaseback** has the meaning given to that term in the Sale and Purchase Agreement.

**Sunningdale** means Spirit Sunningdale Limited, a company incorporated in England and Wales under registered number 4930446.

**Total Commitments** means the aggregate for the time being of the Commitments, being £475,000,000 at the date of the Facility Agreement.

**Transfer Certificate** means a certificate, substantially in the form of schedule 5 (Form of Transfer Certificate) of the Facility 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.

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Acquisitions Limited)  
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**SCHEDULE**

**SHARES**

<b>Name of company in which shares are held</b>	<b>Class of shares held</b>	<b>Number of shares held</b>
Spirit Sunningdale Limited	Ordinary	15,424,858

FILE COPY



## CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

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

COMPANY No. 04914723

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT A DEED OF ACCESSION DATED THE 25th MARCH 2004 AND CREATED BY PRESTBURY WENTWORTH INTERMEDIATE LIMITED FOR SECURING ALL MONIES DUE OR TO BECOME DUE FROM THE COMPANY FORMERLY KNOWN AS SPIRIT INTERMEDIATE ACQUISITIONS LIMITED 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 XII OF THE COMPANIES ACT 1985 ON THE 5th APRIL 2004.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 8th APRIL 2004.



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES



*Companies House*

— for the record —