

M

COMPANIES FORM No. 395

Particulars of a mortgage or charge

106167/65
395

A fee of £13 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

Pursuant to section 395 of the Companies Act 1985

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

For official use

Company number

05999250

Name of company

*insert full name of Company

* Tonstate (Hotels) Cardiff Limited (the "Chargor")

Date of creation of the charge

10 July 2007

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

Debenture (the "Debenture")

Amount secured by the mortgage or charge

All present and future obligations and liabilities, (whether actual or contingent, whether owed jointly, severally or in any other capacity whatsoever and whether originally incurred by an Obligor to the Finance Parties (or any of them) under each of the Finance Documents, except for any obligation or liability which, if it were so included, would result in the Obligor concerned giving financial assistance which is unlawful under section 151 of the Companies Act 1985 (the "Secured Obligations").

See Continuation Sheet 2 for definitions

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

The Governor and Company of the Bank of Scotland, The Mound, Edinburgh as agent and security trustee for each of the Finance Parties (the "Security Trustee")

Postcode EH1 1YZ

Presentor's name address and reference (if any)

Maclay Murray & Spens LLP
One London Wall
London
EC2Y 5AB
020 7002 8500
SZD/BAN/13/3107

For official Use (02/00)
Mortgage Section

FRIDAY



A19

AW050REG

20/07/2007

224

COMPANIES HOUSE

Time critical reference

Short particulars of all the property mortgaged or charged

See Continuation Sheet 1

Please do not
write in
this margin

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

01
95

Particulars as to commission allowance or discount (note 3)

n/a

Signed  FOR AND ON BEHALF OF
MACLAY MURRAY & SPENS LLP

Date

19/7/07

On behalf of ~~XXXXXXXXXXXXXXXXXXXX~~ (chargee) †

*A fee is payable
to Companies
House in
respect of each
register entry
for a mortgage
or charge.
(See Note 5)*

† delete as
appropriate

Notes

- 1 The original instrument (if any) creating or evidencing the charge, together with these prescribed particulars correctly completed must be delivered to the Registrar of Companies within 21 days after the date of creation of the charge (section 395) If the property is situated and the charge was created outside the United Kingdom delivery to the Registrar must be effected within 21 days after the date on which the instrument could in due course of post, and if dispatched with due diligence, have been received in the United Kingdom (section 398) A copy of the instrument creating the charge will be accepted where the property charged is situated and the charge was created outside the United Kingdom (section 398) and in such cases the copy must be verified to be a correct copy either by the company or by the person who has delivered or sent the copy to the Registrar The verification must be signed by or on behalf of the person giving the verification and where this is given by a body corporate it must be signed by an officer of that body A verified copy will also be accepted where section 398(4) applies (property situate in Scotland or Northern Ireland) and Form No 398 is submitted
- 2 A description of the instrument, eg "Trust Deed", "Debenture", "Mortgage", or "Legal charge", etc, as the case may be, should be given
- 3 In this section there should be inserted the amount or rate per cent of the commission, allowance or discount (if any) paid or made either directly or indirectly by the company to any person in consideration of his,
(a) subscribing or agreeing to subscribe, whether absolutely or conditionally, or
(b) procuring or agreeing to procure subscriptions, whether absolute or conditional,
for any of the debentures included in this return The rate of interest payable under the terms of the debentures should not be entered
- 4 If any of the spaces in this form provide insufficient space the particulars must be entered on the prescribed continuation sheet
- 5 A fee of £13 is payable to Companies House in respect of each register entry for a mortgage or charge Cheques and Postal Orders must be made payable to **Companies House**.
- 6 The address of the Registrar of Companies is Companies House, Crown Way, Cardiff CF14 3UZ

Continuation sheet 1

To the Registrar of Companies

Name of company
Tonstate (Hotels) Cardiff Limited (the "Chargor")

Company number
05999250

Short particulars of all the property mortgaged or charged

- 1 Clause 3 of the Debenture provides that the Chargor -
 - 1.1 charges with full title guarantee in favour of the Security Trustee (as agent and security trustee for each of the Finance Parties), with the payment and discharge of the Secured Obligations by way of first legal mortgage the Mortgaged Property,
 - 1.2 (to the extent not validly and effectively charge by way of first legal mortgage pursuant to paragraph 1.1 above) assigns and agrees to assign absolutely with full title guarantee to the Security Trustee (as agent and security trustee for the Finance Parties) (to the fullest extent assignable or capable of assignment without first infringing any contractual provision restricting the same (unless any applicable consent or waiver to any such assignment has been granted)), as security for the payment and discharge of the Secured Obligations, the benefit of all of its right, title and interest to, in and under all present and future
 - 1.2.1 agreement contracts, deeds, licences, undertakings, guarantees, covenants, warranties, representations and other documents entered into by, given to or otherwise benefiting the Chargor in respect of the Real Property,
 - 1.2.2 licences in relation to the Real Property,
 - 1.2.3 any Rental Income, any Owners Return, any Disposal Proceeds or any other such monies arising in connection with the Acquisition Documents or the Management Agreement and the right to make demand for and receive the same,
 - 1.2.4 Insurance Policies in relation to the Real Property and all proceeds paid or payable thereunder; and
 - 1.2.5 the Acquisition Documents

- 1 3 The Chargor (to the extent not validly and effectively charged by way of first legal mortgage pursuant to paragraph 1 1 above or effectively assigned pursuant to paragraph 1 2 above), charges with full title guarantee in favour of the Security Trustee (as agent and security trustee for the Finance Parties), with the payment and discharge of the Secured Obligations, by way of first fixed charge, all present and future
- 1 3 1 rights, title and interests in, to and under the Real Property,
- 1 3 2 monies standing to the credit of the Control Accounts and each of its present and future accounts with any bank, building society, financial institution or other person and the debts represented thereby,
- 1 3 3 ~~goodwill,~~
- 1 3 4 rights and claims in relation to the uncalled ~~share~~ capital of the Chargor,
- 1 3.5 rights to recover any VAT on any supplies made to it relating to the Charged Assets and any sums so recovered,
- 1 3 6 book and other ~~debts~~ and monetary claims due or owing to the respective Chargor and all rights relating to such debts including all guarantees, Security or other remedies for or attaching to such debts;
- 1 3 7 rights in respect of the proceeds of any order of the court made pursuant to Sections 238(3), 239(3) or 244 of the Insolvency Act 1986,
- 1.3 8 Shares, and
- 1.3 9 assets which are specified in Clause 3.2 of the Debenture
- 1 4 A reference in the Debenture to a mortgage, assignment or charge of any freehold or leasehold property includes
- 1 4 1 all buildings and fixtures on that property,
- 1 4 2 the proceeds of sale of any part of that property;
- 1 4 3 any licence, agreement for sale or agreement for lease in relation to that property, and
- 1 4 4 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 monies paid or payable in respect of those covenants,

- 1 5 The Chargor with full title guarantee charges in favour of the Security Trustee (as Security Trustee for the Finance Parties), with the payment and discharge of the Secured Obligations, by way of first floating charge all present and future assets and ~~undertaking~~ of the Chargor other than those assets validly and effectively charged, both under the laws of England and Wales and also the jurisdiction in which each such asset is situated, by way of fixed Security granted under any Finance Document in favour of the Security Trustee (as Security Trustee for the Finance Parties) as Security for the Secured Obligations,
- 1 6 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to any floating charge created pursuant to the Debenture and the floating charge created in the Debenture is a qualifying floating charge for the purpose of that paragraph
- 1 7 The Security from time to time constituted by the Debenture is a continuing security and will remain in full force and effect as a continuing security until released or discharged by the Security Trustee
- 1.8 No part of the Security from time to time constituted by the Debenture will be considered satisfied or discharged by an intermediate payment, discharge or satisfaction of the whole or any part of the Secured Obligations.

Pursuant to Section 395 of the Companies Act 1985

Continuation sheet 2

To the Registrar of Companies

Name of company
Tonstate (Hotels) Cardiff Limited

Company number
05999250

In this form 395 unless the context otherwise requires

DEFINITIONS

“Accession Letter”	means a document substantially set out in the form set out in Schedule 7 of the Facility Agreement,
“Acquisition”	means the acquisition by the Chargor of the Target Shares on the terms of the Acquisition Documents,
“Acquisition Agreement”	means the share sale and purchase agreement dated 29 May 2007 relating to the sale and purchase of the Target Shares and made between the Chargor and the Vendors as amended by a letter dated on or about the date of the Debenture,
“Acquisition Documents”	means the Acquisition Agreement, the Disclosure Letter and the Tax Deed, and any other document designated as an “Acquisition Document” by the Agent and the Chargor,
“Additional Guarantor”	means a company which becomes a Guarantor in accordance with Clause 28 of the Facility Agreement (<i>Changes to the Obligors</i>),
“Charged Assets”	means the assets and undertaking of the Chargor from time to time charged or assigned by way of fixed and floating Security to which that Chargor is a party as security for the payment or discharge of all or any of the Secured Obligations,
“Compliance Certificate”	means a certificate in form and substance satisfactory to the Security Trustee,

“Company Intra-Group Loan Agreement”	means the loan agreement in the agreed form between the Chargor and certain other members of the Group pursuant to which those members of the Group have or will make available a facility to the Chargor up to a maximum aggregate principal amount equal to the aggregate principal amount of (plus interest on) the Facilities,
“Completion”	means the completion of the Acquisition in accordance with clause 6 of the Acquisition Agreement
“Control Account”	means the Disposal Proceeds Account, the General Account, the Owner’s Return Account and the Mandatory Prepayment Account,
“Disclosure Letter”	means the disclosure letter as defined in the Acquisition Agreement,
“Disposal Proceeds”	means all sums paid or payable or any other consideration given or to be given in money or money’s worth for the disposal of an Obligor’s interest in all or part of the Property including (without limitation) all such sums and other consideration of a capital nature and all compensation and damages received for any use or disturbance, blight or compulsory purchase,
“Disposal Proceeds Account”	means the account maintained by the Chargor in accordance with Clause 23.1 of the Facility Agreement (<i>Designation of Control Accounts</i>) and includes its interest in any replacement account or sub-division or sub-account of that account,
“Facilities”	means a facility available pursuant to the Facility Agreement,
“Facility Agreement”	means the facility agreement dated on or around the date of the Debenture between, <i>inter alia</i> , the Chargor, the Original Obligors (as defined therein), The Governor and Company of the Bank of Scotland as Arranger, Original Lender, Agent, Security Trustee, Hedging Guarantor, and Account Bank (each as defined therein) and HBOS Treasury Services plc as Original Hedge Counterparty (as defined therein) relating to certain term and capex facilities and “Facilities” shall be construed accordingly,
“Fee Letter”	means any letter or letters dated on or about the date of the Debenture between any Finance Party and the Chargor setting out

any of the fees referred to in Clause 13 (*Fees*) of the Facility Agreement,

“Finance Document” means the Facility Agreement, any Accession Letter, the Company Intra-Group Loan Agreement, any Compliance Certificate, any Fee Letter, any Hedging Agreement, the Intercreditor Agreement, any Resignation Letter, any Selection Notice, any Transaction Security Document, any Utilisation Request and any other document designated as a “Finance Document” by the Agent and the Chargor,

“Finance Party” means the Agent, the Arranger, the Security Trustee, a Lender, a Hedge Counterparty, the Hedging Guarantor or the Account Bank and the term “Finance Parties” shall be construed accordingly,

“General Account” means any account maintained by the Chargor in accordance with Clause 23.1(b) of the Facility Agreement (*Designation of Control Accounts*) and includes its interest in any replacement account or sub-division or sub-account of that account,

“Group” means the Chargor, the Target and each of their respective Subsidiaries for the time being,

“Guarantor” means an Original Guarantor or an Additional Guarantor, unless it has ceased to be a Guarantor in accordance with the Facility Agreement,

“Hedge Counterparty” means the Original Hedge Counterparty or any other person which has become a party to the Intercreditor Agreement as a Hedge Counterparty in accordance with the provisions of the Intercreditor Agreement;

“Hedging Agreement” means any master agreement, confirmation, schedule or other agreement in agreed form entered into or to be entered into by the Chargor and a Hedge Counterparty for the purpose of hedging interest rate liabilities and/or any exchange rate or other risks in relation to the Facilities in accordance with the Hedging Letter delivered to the Agent under Clause 4.1 of the Facility Agreement (*Initial Conditions Precedent*),

“Hedging Letter”	has the meaning given to that term in Part 1 of Schedule 2 of the Facility Agreement (<i>Conditions Precedent</i>),
“Hotel”	means the hotel owned by Summerhill and operated by the Operator on the Property,
“Insurance Policy”	means any policy of insurance or assurance in which an Obligor may at any time have an interest entered into in accordance with Clause 24.25 of the Facility Agreement (<i>Insurance</i>),
“Intercreditor Agreement”	means the intercreditor agreement dated the same date as this Agreement and made between the Chargor, the other Obligors, the Subordinated Creditor, The Governor and Company of the Bank of Scotland as Security Trustee, The Governor and Company of the Bank of Scotland as Agent, The Governor and Company of the Bank of Scotland as Arranger, the Lenders, the Account Bank and the Hedge Counterparty,
“Lender”	means any Original Lender and any bank, financial institution, trust, fund or other entity which has become a Party in accordance with Clause 27 of the Facility Agreement (<i>Changes to the Lenders</i>), which, in each case, has not ceased to be a Party in accordance with the terms of the Facility Agreement;
“Management Agreement”	means the management agreement dated 8 December 1997 between Summerhill and Hilton International Co which was assigned to the Operator by an assignment dated 20 January 1998 and relates to the management of the Hotel as amended by a letter agreement dated 21 September 1998, an amendment agreement dated 24 May 1999, a letter advising address for service dated 23 November 2005,
“Mandatory Prepayment Account”	means any account maintained by the Chargor in accordance with Clause 23 1 1(d) of the Facility Agreement (<i>Designation of Control Accounts</i>) and includes its interest in any replacement account or sub-division or sub-account of that account,
“Mortgaged Property”	means the freehold and leasehold property specified in Schedule 1 to the Debenture (<i>Mortgaged Property</i>),

"Obligor"	means the Chargor or a Guarantor
"Operator"	means Hilton UK Hotels Limited, a company incorporated in England with registered number 81009 and having its registered office at Maple Court, Central Park , Reeds Crescent, Watford, Herts WD24 4QQ,
"Original Guarantors"	means the Chargor together with Hotel Innovations (Cardiff) Limited and Summerhill Properties Limited,
"Original Hedge Counterparty"	means HBOS Treasury Services plc,
"Owners Return Account"	means any account maintained by the Chargor in accordance with Clause 23 1 1(c) of the Facility Agreement (<i>Designation of Control Accounts</i>) and includes its interest in any replacement account or sub-division or sub-account of that account,
"Owners Return"	means the Adjusted Gross Operating Profit (as defined in the Management Agreement) after deduction of the Operator's incentive fee (calculated in accordance with the Management Agreement) and all other sums of money payable, howsoever arising, by the Operator to the Chargor pursuant to the Management Agreements,
"Party"	means a party to the Facility Agreement,
"Property"	means the property known as the Cardiff Hilton Hotel and Capital Tower Basement Car Park being respectively freehold land registered at the Land Registry under Title Numbers WA760939 and WA92553 and leasehold land registered at the Land Registry under Title Number WA982617,
"Real Property"	means any freehold, leasehold or immovable property and any buildings, fixtures, fittings, fixed plant or machinery from time to time situated on or forming part of that freehold, leasehold or immovable property;
"Rental Income"	means all sums paid or payable to or for the benefit of the Chargor arising from the letting, use or occupation of all or any part of any

Real Property, including, without limitation.

- (a) rents, licence fees and equivalent sums reserved or made payable,
- (b) sums received from any deposit held as security for performance of any tenant's obligations,
- (c) any other monies payable in respect of use and/or occupation,
- (d) proceeds of insurance in respect of loss of rent,
- (e) receipts from or the value of consideration given for the grant, surrender or variation of any letting,
- (f) proceeds paid by way of reimbursement of expenses incurred or on account of expenses to be incurred in the management, maintenance and repair of, and the payment of insurance premiums for, a Real Property,
- (g) any contribution by a tenant of a Real Property to ground rent due under any Lease out of which the Chargor derives its interest in that Real Property,
- (h) proceeds paid for a breach of covenant under any Lease in relation to a Real Property and for expenses incurred in relation to any such breach,
- (i) any contribution to a sinking fund paid by a tenant of a Real Property,
- (j) any payment from a guarantor or other surety in respect of any of the items listed in this definition,
- (k) interest, damages or compensation in respect of any of the items in this definition; and
- (l) any VAT payable on any sum mentioned in this definition,

"Security"	means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect,
"Selection Notice"	means a notice substantially in the form set out in Part II of Schedule 3 (<i>Requests</i>) of the Facility Agreement given in accordance with Clause 11 (<i>Interest Periods</i>) of the Facility Agreement in relation to a Facility,
"Share"	means any stock, share, debenture or other security and any rights relating thereto and the term "Shares" shall be construed accordingly,
"Subordinated Creditors"	means Tonstate (Hotels) Limited,
"Subsidiary"	means a subsidiary within the meaning of section 736 of the Companies Act 1985 and the term subsidiaries shall be construed accordingly,
"Summerhill"	means Summerhill Properties Limited (Company Number 03454201) having its registered office at 10 Upper Berkeley Street, London W1H 7PE,
"Target"	means Hotel Innovations (Cardiff) Limited, a company incorporated under the law of England & Wales with registered number 05497110 and having its registered office at 10 Upper Berkeley Street, London W1H 7PE;
"Target Shares"	means all of the shares of the Target,
"Tax Deed"	means the tax deed of covenant to be dated on or around the date of Completion between the Chargor and the Vendors;
"Transaction Security Documents"	means each of the documents listed as being a Transaction Security Document in paragraph 3.6 of Part I of Schedule 2 of the Facility Agreement (<i>Conditions Precedent</i>) and any document required to be delivered to the Agent under paragraph 12 of Part II of Schedule 2 (<i>Conditions Precedent</i>) of the Facility Agreement together with any other document entered into by any Obligor creating or

expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Obligor under any of the Finance Documents,

“Utilisation Request” means a notice substantially in the form set out in Part I of Schedule 3 of the Facility Agreement (*Requests*), and

“Vendors” means the individuals whose names and addresses are set out in Schedule 1 to the Acquisition Agreement.

FILE COPY



CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

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

COMPANY No 05999250

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT A DEBENTURE DATED THE 10th JULY 2007 AND CREATED BY TONSTATE (HOTELS) CARDIFF LIMITED FOR SECURING ALL MONIES DUE OR TO BECOME DUE FROM AN OBLIGOR TO THE FINANCE PARTIES (OR ANY OF THEM) 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 20th JULY 2007

GIVEN AT COMPANIES HOUSE, CARDIFF THE 24th JULY 2007



Companies House

— for the record —



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES