

M

COMPANIES FORM No. 395

395

CHFP021

Particulars of a mortgage or charge

A fee of £13 is payable to Companies House in respect of each register entry for a mortgage or charge.

Please do not
write in
this margin

Pursuant to section 395 of the Companies Act 1985

711280 | 13

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

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

For official use

Company number

1 1

00047676

Name of company

* insert full name
of Company

* Waterford Wedgwood Australia Limited (the "Chargor")

Date of creation of the charge

26 March 2009

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

Australian law deed of charge dated 26 March 2009 between inter alios the Chargor (1) and WWRD (Gibraltar) Midco Limited (the "Chargee") (2) (the "Australian Deed of Charge")

Amount secured by the mortgage or charge

all (a) principal of and premium, if any, on the Loans, (b) interest, expenses, fees and other sums payable by Obligors under Loan Documents, (c) obligations of Obligors under any indemnity for Claims, (d) Extraordinary Expenses, and (e) other Debts, obligations and liabilities of any kind owing by Obligors pursuant to the Loan Documents, whether now existing or hereafter arising, whether evidenced by a note or other writing, whether allowed in any Insolvency Proceeding, whether arising from an extension of credit, issuance of a letter of credit, acceptance, loan, guaranty, indemnification or otherwise, and whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, or joint or several (the "Obligations").

See part 1 of the attached Schedule for definitions.

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

WWRD (Gibraltar) Midco Limited, 57/63 Line Wall Road, Gibraltar

Postcode N/a

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

Kirkland & Ellis International LLP
30 St Mary Axe
London
EC3A 8AF
FAO Bryan Robson

Time critical reference

For official Use (02/06)
Mortgage Section

DEED



PG4QJ001

PMO

09/04/2009
COMPANIES HOUSE

298

LD4

L7UAQ80I
02/04/2009

104

COMPANIES HOUSE

Short particulars of all the property mortgaged or charged

See part 2 of the attached Schedule.

Please do not
write in
this margin

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

Particulars as to commission allowance or discount (note 3)

N/A

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

Signed Kulhad & Ellis, Solicitors Ltd Date 24/9

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

*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 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

Part 1

Definitions

"Books" has the same meaning as in the Corporations Act.

"Business" means each business conducted by the Chargor either alone or with others during the currency of this charge.

"Capital" means the uncalled and called but unpaid capital of the Chargor.

"Charged Debts" means all unrealised book debts and other debts whether actual or contingent at any time owing to the Chargor together with all Books or documents of account or records evidencing or recording such debts.

"Charged Property" means all of the Chargor's interest in all its property anywhere (real and personal and present and future) including:

(a) all of the Chargor's interest in the assets, undertaking and goodwill of the Business; and

(b) the Capital.

"Claims" has the meaning giving to that term in the Second Lien Loan Agreement.

"Corporations Act" means the Corporations Act 2001 (Cth).

"Debts" has the meaning giving to that term in the Second Lien Loan Agreement.

"Encumbrance" means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person.

"Event of Crystallisation" means each or any of the following events:

(a) any breach of clause 5.1 or clause 5.2 of the Australian Deed of Charge;

(b) an Event of Default has occurred and is continuing;

(c) the Chargee has reasonable grounds for considering the assets the subject of the floating charge described in clause 2.2 of the Australian Deed of Charge to be in jeopardy by legal process or otherwise; and

(d) any other event that the Chargee has notified the Chargor to be an Event of Crystallisation for the purposes of this charge.

"Event of Default" has the meaning given to it in the Second Lien Loan Agreement.

"Extraordinary Expenses" has the meaning giving to that term in the Second Lien Loan Agreement.

"First Lien Agent" has the meaning given to it in the Intercreditor Agreement.

"First Securities" means the Encumbrances granted by the Chargor in favour of the First Lien Agent.

"Insolvency Proceedings" has the meaning giving to that term in the Facility Agreement.

"Intellectual Property" means all subsisting patents and subsisting rights of a similar nature held in any part of the world, applications for patents and such rights, divisions and continuations of such applications for patents, registered and unregistered trade marks (including all rights to sue on or in relation to unregistered marks in any jurisdiction under passing off, unfair competition or similar rules or otherwise, and all goodwill and other rights that would form the basis for any such claims), registered designs, utility models (in each case for their full period and all extensions and renewals of them), applications for any of them and the right to apply for any of them in any part of the world, inventions, confidential information, database rights, Know-how (and all rights in relation to it), business names, trade names, brand names, domain names (and the rights of registrant therein), copyright and rights in the nature of copyright, design rights and get-up and any similar rights existing in any country; and the benefit (subject to the burden) of any and all agreements, arrangements and licenses in connection with any of the foregoing.

"Intercreditor Agreement" means the intercreditor and subordination agreement dated on or about the date of this charge between, among others, Bank of America, N.A. as First Lien Agent and the lender.

"Know-how" means all the body of knowledge, technical experience, expertise and skills, technical processes, secret processes, formulae and technical information held by the chargor and relating to its business, which is not in the public domain.

"Loans" has the meaning giving to that term in the Second Lien Loan Agreement.

"Loan Documents" has the meaning given to it in the Second Lien Loan Agreement.

"License" means each license, certificate, document, registration, permission, privilege, permit, authority or consent which is issued to or held by the Chargor in connection with the Business, which is necessary or desirable in relation to the Business or which is otherwise issued to or held by the Chargor including, any variation or renewal thereof.

"Marketable Security" has the meaning given in section 9 of the Corporations Act.

"Obligors" has the meaning given to it in the Second Lien Loan Agreement.

"Power" means any right, power, authority, discretion, remedy or privilege conferred on the Chargee, a Receiver or any attorney or agent appointed under this charge, by any Loan Document, by Statute, or by law or equity.

"Proceeds" means the proceeds of realisation of the Charged Debts.

"Proceeds Account" means any bank account opened or maintained by the Chargor under clause 5.2 of the Australian Deed of Charge as identified in each notice given under clause 5.2A of the Australian Deed of Charge.

"Receiver" includes a receiver, receiver and manager or any other person who (whether or not as agent for the Chargor) is in possession, or has control, of any of the Charged Property for the purpose of enforcing this charge.

"Second Lien Loan Agreement" means that certain Senior Subordinated Loan Agreement, dated 26 March 2009 between WWRD (Gibraltar) Inventory Co. Limited as a borrower and the Chargee as lender (as may be amended, restated or otherwise modified from time to time).

"Secured Liabilities" means all Obligations whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever, and whether owed by the Chargor or any other person, together with all costs, charges and expenses incurred by the Chargee or its representatives in connection with the protection, preservation or enforcement of its respective rights under this charge.

"Securities" means all charges and mortgages granted to the Chargee to secure the payment and performance of the Secured Liabilities.

"Statute" means any legislation of the Parliament of the Commonwealth of Australia or of any State or Territory of the Commonwealth of Australia in force at any time, and any rule, regulation, ordinance, by-law, statutory instrument, order or notice at any time made under that legislation.

Part 2

Short particulars of all property mortgaged and charged

1.1 The charge

By this charge, the Chargor as beneficial owner charges the Charged Property to the Chargee to secure the payment and performance of the Secured Liabilities.

1.2 Assets over which this charge is fixed

This charge will operate as a fixed charge over the Charged Property listed below (whether present or future) which does not constitute stock-in-trade or work in progress of the Business:

- (a) all real and leasehold property, and all fixtures and improvements on that property;
- (b) all Capital;
- (c) all machinery, vehicles, fittings, furniture, plant and equipment, computer software and hardware;
- (d) all documents, contracts, rights, records and Books relating to the Business and
- (e) any other business transaction of the Chargor;
- (f) all Charged Debts, the Proceeds Account and all Proceeds;
- (g) the goodwill of the Business and all Licenses;
- (h) all Encumbrances, Marketable Securities, negotiable instruments, documents of title and Intellectual Property; and
- (i) all other property not ordinarily disposed of in the ordinary course of the Business,

with the intention that each item of future property described in this 1.2 will be specifically charged to the Chargee at the time it is acquired by the Chargor. This charge will operate as a floating charge as regards all other Charged Property.

1.3 Priority

This charge will take priority over all other Encumbrances of the Chargor other than the First Securities and any Encumbrance mandatorily preferred by law.

1.4 Dealing with property subject to floating charge

Subject to any contrary provision in any Loan Document, the Chargor may in respect of any part of the Charged Property which is subject to the floating charge created by this charge deal with and pay or apply that part of the Charged Property in the ordinary course of its ordinary business.

1.5 Automatic crystallisation of floating charge

If any Event of Crystallisation occurs, the floating charge created by this charge will at that time automatically crystallise and immediately become a fixed charge over that part of the Charged Property which was not the subject of the fixed charge immediately before that occurrence.

1.6 Notice of conversion

By notice in writing to the Chargor, the Chargee may at any time convert or reconvert its security under this charge from a floating charge to a fixed charge or from a fixed charge to a floating charge in respect of any asset or class of asset specified in that notice. A conversion will be effective from the moment of receipt of the notice.

1.7 Limit

Notwithstanding any other term of this charge and notwithstanding that this charge is security for the whole of the Secured Liabilities, the amount recoverable by the Chargee under all Securities against property located, or taken to be located, in New South Wales for the purposes of the *Duties Act 1997* (NSW) (the “**NSW Secured Property**”) is limited to:

- (a) \$30,000,000; or
- (b) such greater amount notified from time to time by the Chargee to the Chargor in writing provided that such greater amount may not exceed 120% of the aggregate value of all NSW Secured Property as at the time of notification.

1.8 Prospective liability

For the purpose only of section 282(3) of the Corporations Act, the specified maximum amount of the prospective liability secured by this charge is \$1,064,337,620. The nature of the prospective liability is as shown on the notice lodged with this charge with the Australian Securities and Investments Commission. Nothing in this 1.8 will limit, or put the Chargee under any obligation to do any act or thing so as to increase, the amount of the money secured by this charge.

2. RESTRICTIONS IN RELATION TO THE CHARGED PROPERTY

The Chargor will not without the Chargee's prior written consent or as expressly permitted in any other Loan Document:

- (a) create, purport or attempt to create or permit to exist any Encumbrance however ranking over any part of the Charged Property other than the First Securities;
- (b) sell, convey, assign, transfer, lease or otherwise dispose or part with possession of, make any bailment over, grant any option over or create or permit to exist any other interest in any part of the Charged Property whilst that part of the Charged Property is subject to the fixed charge created in this charge;
- (c) subject to clause 5.2 of the Australian Deed of Charge assign, transfer or deal with or attempt to assign, transfer or deal with or enter into any agreement, arrangement, or course of dealing to hold to the account of or on trust for any person, or permit any set-off or combination of accounts in respect of, any Charged Debts or Proceeds;
- (d) do or permit any act, omission or thing whereby the Charged Property becomes or could be liable to surrender, forfeiture or cancellation or becomes materially prejudiced in any manner or the value of this charge as a security to the Chargee becomes or could be materially lessened;

- (e) subject to this charge, deal with or attempt to deal with the Charged Property other than in the ordinary course of its ordinary business; or
- (f) take any steps towards doing any of the things referred to in paragraphs (a) to (e) above.

3. FURTHER ASSURANCE

3.1 The Chargor will, and will procure that, all persons having or claiming any estate or interest in the Charged Property from time to time and at all times after the date of this charge on the request of the Chargee, acting reasonably, and at the cost of the Chargor, will make, do and execute or cause to be made, done and executed all acts, deeds and assurances for:

- (a) more satisfactorily securing to the Chargee the payment and satisfaction of the Secured Liabilities;
- (b) assuring or more satisfactorily assuring the Charged Property to the Chargee, or as the Chargee may direct; or
- (c) facilitating the exercise of any Power.

In particular, whenever requested to do so by the Chargee, the Chargor will execute in favour of the Chargee legal mortgages, transfers, assignments or other assurances of the Charged Property in terms acceptable to the Chargee.



CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

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

**COMPANY NO. 47676
CHARGE NO. 11**

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES
HEREBY CERTIFIES THAT AN AUSTRALIAN LAW DEED OF
CHARGE DATED 26 MARCH 2009 AND CREATED BY
WATERFORD WEDGWOOD AUSTRALIA LIMITED FOR
SECURING ALL MONIES DUE OR TO BECOME DUE FROM THE
OBLIGORS 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
9 APRIL 2009

GIVEN AT COMPANIES HOUSE, CARDIFF THE 14 APRIL 2009



Companies House
— for the record —



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES