

# M

COMPANIES FORM No. 395  
Particulars of a mortgage or charge

092569/13

# 395

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

CHFP131

Pursuant to section 395 of the Companies Act 1985

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

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

For official use Company number

☐ ☐ ☐ ☐ ☐ ☐

00922947

\*insert full name of Company

Name of company

Churchill Group Limited (the "Company")

Date of creation of the charge

6 June 2006

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

Debenture (the "Debenture")

Amount secured by the mortgage or charge

All monies, obligations and liabilities which shall from time to time (and whether on or at any time after any demand or judgment) be due, owing or incurred from each Obligor to the Finance Parties whether actually or contingently and whether solely or jointly with any other person and in whatever style or name and whether as principal or surety (the "Liabilities").

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

Barclays Bank PLC (the "Security Trustee")  
54 Lombard Street  
London

Postcode EC3P 3AH

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

Berwin Leighton Paisner LLP  
Adelaide House  
London Bridge  
London, EC4R 9HA  
DX 92 London  
Tel: 020 7760 1000

Ref: EPER/B0354.204 5148119.02

Time critical reference

For official Use  
Mortgage Section

Post room



Short particulars of all the property mortgaged or charged

- 1 By way of legal mortgage, the Company's interest in the Property.
- 2 By way of fixed charge each of the following including all rights of enforcement of the same:
  - 2.1 the Company's interest in any freehold or leasehold property acquired after the date of the Debenture;
  - 2.2 the Company's interest in the Relevant Contracts;
  - 2.3 the Accounts which are held by the Company and any other accounts of the Company and all monies standing to the credit thereof;
  - 2.4 all fixtures, fittings, plant, machinery, manuals and other chattels in respect of the Property and all guarantees and warranties in respect of any of them;
  - 2.5 all easements, licences and other rights relating to the Property in which the Company has an interest;
  - 2.6 the Investments;
  - 2.7 the Company's Intellectual Property;
  - 2.8 if applicable the Company's uncalled capital; and
  - 2.9 the Company's goodwill.
- 3 By way of security assignment each of the following including all rights of enforcement of

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)

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

Signed *Simon Leighton Moore LLP*

Date *19/06/2006*

On behalf of ~~[company]~~ ~~[mortgagee/chargee]~~<sup>□</sup>

<sup>□</sup>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 £10 (£13 for forms delivered on or after 1 February 2005) is payable to Companies House in respect of each register entry for a mortgage or charge. Cheques and Postal Order are to be made payable to **Companies House**.
6. The address of the Registrar of Companies is: Companies House, Crown Way, Cardiff CF14 3UZ.

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## Particulars of a mortgage or charge (continued)

Continuation sheet No 1  
to Form No 395 and 410 (Scot)

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

Company Number

00922947

Name of Company

\* delete if  
inappropriate

Churchill Group

Limited\*

Description of the instrument creating or evidencing the mortgage or charge (continued) (note 2)

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

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Names, addresses and descriptions of the mortgages or persons entitled to the charge (continued)

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

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

- the same:
- 3.1 the Rents;
  - 3.2 the Disposal Proceeds;
  - 3.3 all book debts and other debts and all other monies due and owing to the Company;
  - 3.4 the monies payable to the Company under any policy of insurance in which a Chargor may from time to time have an interest relating to the Property;
  - 3.5 the benefit of the copyright and similar rights vested in it in connection with the Property;
  - 3.6 *all causes of action and other rights and remedies in which the Company has an interest;*
  - 3.7 all monies payable to the Company under any Hedging Arrangement;
  - 3.8 all monies payable to the Company under the Management Agreement and the Management Agreement Guarantee; and
  - 3.9 the benefit of any monies paid or payable to the Company by way of compensation, endowment, gift, grant or otherwise.
- 4 By way of floating charge all the assets, property and undertaking of the Company both present and future.

### NOTES

- 1 The Debenture provides that the charges created under this Debenture expressed to be (a) fixed charges, shall only apply to the extent that they create fixed security, and (b) floating charges, shall not apply to any Charged Asset which is the subject of any fixed security, mortgage or assignment under the Debenture.
- 2 The Debenture provides that at any time whilst an Event of Default is continuing (a) the Security Trustee may by written notice to each Chargor convert any floating charge created by the Debenture into a fixed charge; and (b) each Chargor shall, upon receipt of a written notice from the Security Trustee, procure an absolute assignment of the Relevant Contracts as specified in the notice.
- 3 The Debenture provides that each Chargor shall execute and do at its own cost and in *such form as reasonably required by the Security Trustee such further additional* mortgages, charges, assignments, transfers and conveyances and such assurances, deeds, documents, acts and things as the Security Trustee may reasonably require to perfect or protect the security created by the Debenture and/or to facilitate or effect any dealing with the Charged Assets in connection with the Debenture.
- 4 The Debenture provides that following an Event of Default which is continuing, the Security Trustee may (without notice to or consent from a Chargor and in that Chargor's name or otherwise) exercise any rights (including the right to collect dividends, interest, principal or other payments of money) in respect of the Investments and may do anything necessary to complete any transfer form in favour of itself or otherwise.
- 5 There is a negative pledge in the Facility Agreement against a Chargor creating or permitting to subsist any Security Interest over any assets in respect of any its assets in respect of any financial indebtedness or otherwise.
- 6 The Debenture contains or incorporates from the Facility Agreement the following definitions:

*Account Bank* means Barclays Bank PLC (and National Bank of Kuwait in the case of the Business Operating Account) or such other banks now or in the future with whom the Agent (with the Borrower's consent, such consent not to be unreasonably withheld however no such consent is required after an Event of Default which is continuing) nominates the Accounts are held;

*Accounts* means the Business Operating Account, the Borrower Proceeds Account, the Borrower Operating Account, the Development Account, the Interest Reserve Account, the FF&E Maintenance Reserve Account and any other accounts maintained by an Obligor under the Finance Documents;

*Agent* means Barclays Bank PLC;

*Arranger* means Barclays Capital, as the investment banking division of Barclays Bank PLC;

*Borrower* means Havana Holdings (UK) Limited;

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## Particulars of a mortgage or charge (continued)

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Continuation sheet No 2  
to Form No 395 and 410 (Scot)

Please complete  
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black type, or bold  
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Company Number

00922947

Name of Company

Churchill Group

Limited\*

\* delete if  
inappropriate

Description of the instrument creating or evidencing the mortgage or charge (continued) (note 2)

*Borrower Proceeds Account* means an account numbered 30434590 (sort code 20 - 65 - 82) opened and/or maintained by the Borrower with the Account Bank;

*Borrower Operating Account* means an account opened and/or maintained by the Borrower with the Account Bank for the purposes set out in the Facility Agreement;

*Building Contract* means the building contract between the Operator and the Contractor for the Development and each and every contract, bond or guarantee relating to the Development in which the Operator has any benefit;

*Business Operating Account* means an account numbered 31110002 (sort code 405188) opened and/or maintained by the Operator with the Account Bank, being National Bank of Kuwait PLC at 7 Portman Square, London W1H 9PR;

*Charged Assets* means each and all of the assets, property, undertaking and other interests from time to time assigned or charged or intended to be assigned or charged by the Debenture and the subject matter of each of them;

*Chargor* means Havana Holdings (UK) Limited, Primeairo Limited, International Hoteliers (UK) Limited and Churchill Group Limited and any reference to "Chargor" shall mean any of them;

*Collateral Warranties* means a collateral warranty in such form as the Security Trustee may reasonably require in writing;

*Contractor* means Chorus Limited or such other firm agreed between the Agent and the Borrower which agreement shall not be unreasonably withheld or delayed;

*Contractor Parent Company Guarantee* means the guarantee in respect of the obligations of the Contractor under the Building Contract between the Operator and Byrne Group PLC;

*Design Contracts* means the contract to be entered into between the Operator (1) and Holt, Hamilton & Zuch (2) relating to the fixtures and fittings designs, and the contract to be entered into between the Operator (1) and Building Services Group (2) relating to the M&E design;

*Development* means the refurbishment of the Property in accordance with the Development Appraisal (as defined in the Facility Agreement);

*Development Account* means the account numbered 30971898, sort code 20 - 65 - 82 opened and maintained by the Borrower with the Account Bank for the purpose of holding (i) Utilisations made under the Tranche B Facility and (ii) the Equity Contribution (all as defined in the Facility Agreement);

*Development Documents* means the Design Contracts and the Building Contract;

*Disposal Proceeds* means all capital monies or other sums or other consideration paid or payable in respect the disposal of the Borrower's interest in all or any part of the Property;

*Event of Default* means any event or circumstance specified in clause 26 (*Events of Default and acceleration*) in the Facility Agreement (whether or not declared);

*Facility Agreement* means a facility agreement dated on or around the date of the Debenture and made between Barclays Bank Plc (as Agent, Security Trustee and Hedging Counterparty) (1), Barclays Capital (as Arranger) (2), the Borrower (3), Churchill Group Limited (4), Primeairo Limited (5) and International Hoteliers (UK) Limited (6) and any letter, agreement, charge, deed or other instrument entered into under or supplemental to it;

*FF&E Maintenance Reserve Account* means the account numbered 10772399, sort code 20 - 65 - 82 opened and maintained by the Operator with the Account Bank for the purpose of holding the FF&E Maintenance Reserve (as defined in the Facility Agreement);

*Fees Letter* means the letter dated on or about the date of the Facility Agreement from the Agent and the Arranger to the Borrower and countersigned by the Borrower setting out fees payable by the Borrower to the Agent and the Arranger referred to in clause 12.2 (*Arrangement fee*) and clause 12.3 (*Agent & Security Trustee fees*) of the Facility Agreement;

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## Particulars of a mortgage or charge (continued)

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Continuation sheet No 3  
to Form No 395 and 410 (Scot)

Please complete  
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block lettering

Company Number

00922947

Name of Company

Churchill Group

Limited\*

\* delete if  
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Description of the instrument creating or evidencing the mortgage or charge (continued) (note 2)

Please complete  
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*Finance Documents* means each of the Facility Agreement, each Security Document, the Subordination Deed, the Fees Letter, the Hedging Strategy Letter, the Hedging Arrangement, each Utilisation Request, each Transfer Certificate and any other document so designated in writing by both the relevant Obligor and the Agent;

*Finance Parties* means each of the Arranger, the Agent, the Security Trustee, the Hedging Counterparty and the Lenders;

*Headlease* means the lease dated 5 April 1967 between The Portman Estate (1) A Penney and Company Limited (2) and Penny and Company Limited (3) registered at the Land Registry under title number NGL55695;

*Hedging Arrangement* means any currency swap or interest rate hedging arrangement in relation to currency fluctuations or interest payments under the Facility Agreement;

*Hedging Counterparty* means the Arranger or such other person as the Borrower may appoint with the consent of the Arranger (such consent not to be unreasonably withheld) and in accordance with the Hedging Strategy Letter;

*Hedging Strategy Letter* means the letter agreed between the Agent and the Borrower setting out the proposed strategy in relation to the hedging of the Liabilities against interest rate movement;

*Intellectual Property* means any rights in respect of any patent, copyright, trade mark, trade name, service mark, invention, design, knowhow, confidential information, domain names or any other kind of intellectual property whether registered or unregistered and any registration or application relating to any of the foregoing;

*Interest Reserve Account* means an account opened and/or maintained by the Borrower with the Account Bank for the purpose set out in the Facility Agreement;

*Investments* means the existing or future interest of the relevant person in any stocks, shares, bonds, units or any form of loan or other capital of or in any legal entity and any warrant or other right to acquire any such investment in each case, including any income, offer, right or benefit in respect of any such investment;

*Lender* means Barclays Bank Plc, and any person which has become a Party in accordance with clause 27 (*Changes to the Finance Parties*) of the Facility Agreement, which, in each case, has not ceased to be a Party in accordance with the terms of the Facility Agreement;

*Licences* means each and all of the grants, authorities, licences, quotas, certificates, justices and excise licences, now or in future attached to the Charged Assets and/or the business of the Operator;

*Locatelli Agreement* means the agreement relating to the Locanda Locatelli Restaurant dated 5<sup>th</sup> September 2001 between the Operator (1), Findcharm Limited (2) and Giorgio Locatelli (3);

*Management Agreement* means the hotel management agreement dated 8 January 2004, as amended and restated on 28 November 2005, between the Operator (1) and Hyatt Holdings (UK) Limited (2) appointing Hyatt Holdings (UK) Limited as manager of the Property and the Management Agreement Guarantee;

*Management Agreement Guarantee* means the restated performance guarantee issued to the Operator by Hyatt International (Europe Africa and Middle East) LLC dated 28 November 2005;

*Monitoring Surveyor* means Capita Symonds or any other firm of monitoring surveyor appointed by the Agent to monitor and report on the progress of the Development;

*Obligors* means the Borrower and each Chargor;

*Occupational Lease* means any leases and/or agreement for lease and/or licence or other occupational interest subject to which International Hoteliers (UK) Limited or the Operator's interest in the Property is held now or in the future (including the Locatelli Agreement but excluding the lease referred to in paragraph (b) of the definition of property) including any guarantee and rent deposit arrangements entered into under the terms of them;

*Operator* means the Churchill Group Limited;

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## Particulars of a mortgage or charge (continued)

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Continuation sheet No 4  
to Form No 395 and 410 (Scot)

Please complete  
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Company Number

00922947

Name of Company

\* delete if  
inappropriate

Churchill Group

Limited\*

Description of the instrument creating or evidencing the mortgage or charge (continued) (note 2)

*Parent* means Sandwood Worldwide Limited (registered in the British Virgin Islands under company number 506967) whose registered office is at Arias Fabrega, Fabrega Trust Co. BVI Limited, 325 Waterfront Drive, Omar Hodge Building, 2 Floor, Wickhams Cay, Road Town, Tortola, British Virgin Islands;

*Party* means a party to the Facility Agreement;

*Professional Contracts* means each and all of the contracts in which any Obligor has any benefit now or in future with architects, surveyors, quantity surveyors, mechanical and electrical consultants, structural or other engineers or other professional advisers in respect of the Property and/or the Development, including the engagements with the Professional Team and all bonds or guarantees relating to the performance of all or any of those contracts;

*Professional Team* means each of the Project Manager and the parties to the Design Contracts, or such other consultants and advisers (if any) selected by the Operator and approved by the Agent such approval not to be unreasonably withheld or delayed;

*Project Manager* means APPI (UK) Limited whose registered office is at PO Box 5031, London, W1A 4XX;

*Property* means (a) the Headlease and (b) the leasehold property owned by the Operator and known as The Churchill Hyatt Regency Hotel, 23-33 Portman Square, 2-8 Seymour Street, 18-24 Berkeley Mews and 75-78 Upper Berkeley Street, London registered at the Land Registry with title absolute under title number NGL221828;

*Relevant Contracts* means each and all of the Development Documents, the Building Contract, the Management Agreement, the Management Agreement Guarantee, the Contractor Parent Company Guarantee, each contract in respect of any disposal of any Charged Asset, each Occupational Lease, each Professional Contract, the Licences and any contracts with customers of the hotel including corporate contracts, in each case, including any guarantees or securities entered into in respect of them;

*Rent* means all sums paid or payable to or for the benefit of the Operator arising from the letting, use or occupation of all or any part of the Property, including, without limitation, rents, licence fees and equivalent sums reserved or made payable, sums received from any deposit held as security for performance of any tenant's obligations, proceeds of insurance in respect of loss of rent or interest on rent, receipts from or the value of consideration given for the grant, surrender or variation of any lease, any service charge payments, proceeds paid for a breach of covenant or dilapidations under any lease in relation to the Property and for expenses incurred in relation to any such breach, any contribution to a sinking fund paid by an occupational tenant under an Occupational Lease, any contribution by an occupational tenant of the Property to ground rent due under any lease out of which an Obligor derives its interest in the Property, any payment from a guarantor or other surety in respect of any of the items listed in this definition, interest, damages or compensation in respect of any of the items in the definition and any amount which represents VAT chargeable in respect of any such sum;

*Security Document* means each of the debenture granted by the Borrower in favour of the Security Trustee, the debenture granted by Primeairo Limited in favour of the Security Trustee, the debenture granted by International Hoteliers (UK) Limited in favour of the Security Trustee, the debenture granted by the Operator in favour of the Security Trustee, a share charge over the entire issued share capital of the Borrower granted by the Parent to be supported by a floating charge over the assets of the Parent, the Subordination Deed, each other document designated in writing by the Borrower and the Agent or the Security Trustee and the Collateral Warranties;

*Security Interest* means any mortgage, pledge, lien, charge, security assignment, hypothecation, security trust, encumbrance or security interest and any other agreement or arrangement entered into to create or confer security over any asset;

*Security Trustee* means Barclays Bank Plc;

*Subordinated Creditors* means the Parent and each Obligor (as the case may be);

*Subordination Deed* means the Subordination Deed dated on or about the date of the Facility Agreement between the Obligors as debtors, the Subordinated Creditor and the Agent;

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## Particulars of a mortgage or charge (continued)

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Continuation sheet No 5  
to Form No 395 and 410 (Scot)

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

Company Number

00922947

\* delete if  
inappropriate

Name of Company

Churchill Group

Limited\*

Description of the instrument creating or evidencing the mortgage or charge (continued) (note 2)

*Transfer Certificate* means a transfer certificate substantially in the form set out in schedule 6 to the Facility Agreement or any other form agreed between the Agent and the Borrower; and

*Utilisation Request* means a notice substantially in the form set in schedule 5 to the Facility Agreement.

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

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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. 00922947

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT A DEBENTURE DATED THE 6th JUNE 2006 AND CREATED BY CHURCHILL GROUP LIMITED FOR SECURING ALL MONIES DUE OR TO BECOME DUE FROM EACH OBLIGOR TO THE FINANCE PARTIES ON ANY ACCOUNT WHATSOEVER WAS REGISTERED PURSUANT TO CHAPTER 1 PART XII OF THE COMPANIES ACT 1985 ON THE 20th JUNE 2006.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 22nd JUNE 2006.



*Companies House*

— for the record —



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES