

# M

COMPANIES FORM No. 395

470116/39.

## Particulars of a mortgage or charge

# 395

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

CHFP025

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

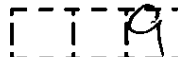
\*insert full name of Company

Pursuant to section 395 of the Companies Act 1985

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

For official use

Company number



2263726

Name of company

\* Whittard of Chelsea Limited (the "Chargor")

Date of creation of the charge

2 November 2007

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

Debenture between, inter alia, (1) the Chargor and (2) Landsbanki Islands hf as security trustee for the Security Beneficiaries (as defined below) ("Security Trustee") (the "Debenture")

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 alone or in any other capacity whatsoever) to the Security Trustee and/or the other Security Beneficiaries (or any of them) under or pursuant to any Finance Document to which the Chargor is a party (including all monies covenanted to be paid under the Debenture), provided that no obligation or liability shall be included in the definition of "Secured Obligations" to the extent that, if it were so included, the Debenture (or any part of it) would constitute unlawful financial assistance within the meaning of sections 151 and 152 of the Companies Act 1985 or any analogous provisions in any other jurisdictions (the "Secured Obligations")

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

Landsbanki Island hf at Beaufort House, 15 St Botolph Street, London

Postcode EC3A 7QR

Presentor's name address and reference (if any)

Aidan Lawes  
SJ Berwin LLP  
10 Queen Street Place  
London  
EC4R 1BE

Time critical reference

For official Use (06/2005)  
Mortgage Section

Post room

TUESDAY



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A08

13/11/2007

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COMPANIES HOUSE

Short particulars of all the property mortgaged or charged

- 1 The Chargor charges and agrees to charge all the present and future right, title and interest of the Chargor in and to the following assets which are at any time owned by the Chargor, or in which the Chargor from time to time has an interest
- (a) by way of first legal mortgage the Property,
  - (b) by way of first fixed charge
    - (i) all Property and all interests in Property (not subject to the legal mortgage referred to in paragraph (a) above), and
    - (ii) all licences to enter upon or use land and the benefit of all other agreements relating to land,
  - (c) by way of first fixed charge all plant and machinery (not charged under paragraph (a) or (b)) and the benefit of all contracts, licences and warranties relating to the same,
  - (a) by way of first fixed charge
    - (i) all computers, vehicles, office equipment and other equipment (not charged by paragraph (c)), and

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 S J Lewis LLP

Date 12/11/07

On behalf of ~~XXXXXXXX~~ (mortgagee/~~XXXXXX~~) †

*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**

Name of company

\*insert full name  
of Company

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## Addendum 1/4

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

## Addendum 2/4

2 Amount due or owing on the mortgage or charge (continued)

## Addendum 3/4

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

## Addendum 4/4

4 Short particulars of all the property mortgaged or charged (continued)

(i) the benefit of all contracts, licences and warranties relating to the same,

(other than any which is for the time being part of the Chargor's stock-in-trade or work-in-progress),

(b) by way of first fixed charge

(i) the one ordinary share of £1 00 held by the Chargor in the Best of British com Limited,

(ii) the 9,900 ordinary shares of £1 00 each and the 100 deferred shares of £1 00 each held by the Chargor in Whittard and Company Limited,

(iii) the 1000 common stock capital held by the Company in Whittard of Chelsea, Inc , and

(iv) all other Charged Securities (not charged by paragraph (e)(i)),

in each case, together with (1) all Related Rights from time to time accruing to those Charged Securities and (2) all rights which the Chargor may have at any time against any clearance or settlement system or any custodian in respect of any Charged Investments,

(c) by way of first fixed charge

(i) the Security Accounts and all monies at any time standing to the credit of such accounts, and

(ii) all monies standing to the credit of the Chargor from time to time on any and all accounts with any bank, financial institution or other person not otherwise charged by paragraph (e)(i),

in each case, together with all interest from time to time accrued or accruing on such monies, any investment made out of such monies or account and all rights to repayment of any of the foregoing,

(d) by way of first fixed charge any Intellectual Property,

(e) to the extent that any of the Assigned Assets are not effectively assigned under Clause 4.2 (Security

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assignments) of the Debenture, by way of first fixed charge those Assigned Assets,

- (f) by way of first fixed charge (to the extent not otherwise charged or assigned in the Debenture)
- (i) the benefit of all licences, consents, agreements and authorisations held or used in connection with the business of the Chargor or the use of any of its assets, and
- (ii) any letter of credit issued in favour of the Chargor and all bills of exchange and other negotiable instruments held by it, and
- (g) by way of first fixed charge all of the goodwill and uncalled capital of the Chargor
- 2 The Chargor assigns and agrees to assign absolutely (subject to a proviso for reassignment on redemption) all its present and future right, title and interest in and to
- (a) the Relevant Contracts, all rights and remedies in connection with the Relevant Contracts and all proceeds and claims arising therefrom,
- (b) the Insurances, all claims under the Insurances and all proceeds of the Insurances,
- (c) the Treasury Transactions, all rights and remedies in connection with the Treasury Transactions and all proceeds and claims arising therefrom, and
- (d) all other Receivables (not otherwise referred to in paragraphs (a), (b) or (c) above)

To the extent that any Assigned Asset described in paragraph (b) above is not assignable, the assignment which that clause purports to effect shall operate as an assignment of all present and future rights and claims of the Chargor to any proceeds of the Insurances

- 3 The Chargor charges and agrees to charge by way of first floating charge all of its present and future assets and undertaking (wherever located) which are not effectively charged by way of first legal mortgage or first fixed charge or assigned pursuant to the provisions of Clause 4 1 (Fixed charges), Clause 4 2 (Security Assignments) or any other provision of the Debenture
- 4 The Chargor will not do or agree to do any of the following without the prior written consent of the Security Trustee
- (a) create or permit to subsist any Security on any of the Security Assets (except for Security permitted to be created or to subsist under the terms of the Facilities Agreement, or
- (b) sell, transfer, lease, lend or otherwise dispose of (whether by a single transaction or a number of transactions and whether related or not), the whole or any part of its interest in any Security Asset except for a disposal permitted under the Facilities Agreement

In this form 395 the following terms have the following meanings

"Agent" means Landsbanki Islands hf

"Arranger" means Landsbanki Islands hf

"Assigned Assets" means the Security Assets assigned pursuant to Clause 4 2 (Security assignments) of the Debenture (and described in paragraph 2 above)

"Baugur Guarantee" means the guarantee and indemnity entered into by BG Holding ehf (a limited company registered in Iceland with number 520603-4330) on or around the date of the Facilities Agreement in favour of the Security Trustee

"Boaters" means Boaters Coffee Co Limited (registered number 2550799)

Name of company

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"Borrowers" means the Chargor, Java and Boaters

"Charged Investments" means the Charged Securities and all present and future Related Rights accruing to all or any of the Charged Securities

"Charged Securities" means

- (a) the one ordinary share of £1 00 held by the Chargor in the Best of British com Limited,
- (b) the 9,900 ordinary shares of £1 00 each and the 100 deferred shares of £1 00 each held by the Chargor in Whittard and Company Limited,
- (c) the 1000 common stock capital held by the Company in Whittard of Chelsea, Inc , and
- (d) all other stocks, shares, debentures, bonds, warrants, coupons, negotiable instruments, certificates of deposit or other securities or "investments" (as defined in part II of schedule II to the Financial Services and Markets Act 2000 in force as at 2<sup>nd</sup> November 2007) now or in future owned (legally or beneficially) by the Chargor, held by any nominee on its behalf or in which the Chargor has an interest at any time

"Company Intra-Group Loan Agreement" means the loan agreement to be entered into between Java and Boaters pursuant to which Boaters will make available a facility to Java up to a maximum aggregate principal amount equal to the aggregate principal amount of (plus interest on) the Facility A Loan

"Compliance Certificate" means a certificate substantially in the form set out in Schedule 8 (Form of Compliance Certificate) of the Facilities Agreement

"Delegate" means any delegate, agent, attorney or co-trustee appointed by the Security Trustee

"Facility A" means the PIK term loan facility made available in accordance with the Facilities Agreement

"Facility A Loan" means a loan made or to be made under Facility A or the principal amount outstanding for the time being of that loan

"Facilities Agreement" means the £13,500,000 senior facilities agreement for Java and the Chargor between, inter alia, the Parent, the Borrowers, the Original Guarantors, the Security Trustee, the Arranger, the Agent and the Original Lenders

"Finance Document" means the Facilities Agreement, any accession letter under the Facilities Agreement, the Baugur Guarantee, the Company Intra-Group Loan Agreement, any Compliance Certificate, any Hedging Agreement, the Intercreditor Agreement, 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, the Issuing Bank or a Hedge Counterparty

"Guarantor" means an Original Guarantor or a company which becomes a guarantor in accordance with the terms of the Facilities Agreement

"Hedge Counterparty" means a 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 a Borrower and a Hedge Counterparty for the purpose of hedging interest rate liabilities in relation to the Facilities in accordance with the Hedging Letter delivered to the Agent under Clause 4.1 (Initial conditions precedent) of the Facilities Agreement

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"Hedging Letter" means the letter between the Agent and the Borrowers entered into on or prior to the date of the Facilities Agreement describing the hedging arrangements to be entered into in respect of the interest rate liabilities of the Borrowers under the Facilities Agreement

"Insurances" means all policies of insurance (and all cover notes) which are at any time held by or written in favour of the Chargor, or in which the Chargor from time to time has an interest

"Intellectual Property" means

- (a) any patents, trade marks, service marks, designs, business names, copyrights, design rights, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests, whether registered or unregistered, and
- (b) the benefit of all applications and rights to use such assets of each member of the Java Group

"Intercreditor Agreement" means the Agreement entered into on or around the date of the Facilities Agreement by, inter alia, the Obligors, the Java Chargor Shareholders and the Finance Parties

"Issuing Bank" means Landsbanki Islands hf and any other Lender that has notified the Agent that it has agreed to WoC's request that pursuant to the terms of the Facilities Agreement

"Java" means Java Acquisitions Limited (registered number 5650854)

"Java Chargor Shareholders" means the Parent and any other person which accedes to the Intercreditor Deed as a "Java Charge Shareholder" (for the avoidance of doubt, in their capacity as shareholders of Java Acquisitions Limited and in no other capacity)

"Java Group" means Java and each of its Subsidiaries from time to time

"Lender" means Landsbanki Islands hf as original lender and any bank, financial institution, trust, fund or other entity which has become a Party in accordance with clause 29 (Changes to the Obligors) of the Facilities Agreement which in each case has not ceased to be a Party in accordance with the terms of the Facilities Agreement


"Obligor" means a Borrower or a Guarantor

"Original Guarantors" means the Chargor and Boaters

"Original Lenders" means Landsbanki Islands hf

"Parent" means Barney Holding Limited

"Party" means a party to the Facilities Agreement

 "Property" means all estates and interests in freehold, leasehold and other immovable property (wherever situated) at 2<sup>nd</sup> November 2007, or at any time thereafter, belonging to the Chargor, or in which the Chargor has an interest at any time (including any interest in the leasehold property situated at the basement and ground floor premises at 13 Regent Street, London SW1Y 4LR with title number NGL 877873)), together with

- (a) all buildings and fixtures (including trade fixtures) and fixed plant and machinery at any time thereon,
- (b) all easements, rights and agreements in respect thereof,
- (c) all proceeds of sale of that property, and

the benefit of all covenants given in respect thereof

Name of company

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"Receivables" means all present and future book debts and other debts, rentals, royalties, fees, VAT and monetary claims and all other amounts at any time recoverable or receivable by, or due or owing to, the Chargor (whether actual or contingent and whether arising under contract or in any other manner whatsoever) together with

- (a) the benefit of all rights, guarantees, Security and remedies relating to any of the foregoing (including without limitation, negotiable instruments, indemnities, reservations of property rights, rights of tracing and unpaid vendor's liens and similar associated rights), and
- (b) all proceeds of any of the foregoing

"Receiver" means a receiver or receiver and manager or an administrative receiver of the whole or any part of the assets of the Chargor subject to the Transaction Security

"Related Rights" means, in relation to any Charged Securities

- (a) all dividends, distributions and other income paid or payable on the relevant Charged Securities or any asset referred to in paragraph (b) below,
- (b) all rights, monies or property accruing or offered at any time in relation to the Charged Securities whether by way of redemption, substitution, exchange, bonus or preference, under option rights or otherwise

"Relevant Contract" means each of the agreements to which the Chargor is a party together with each other agreement supplementing or amending or novating or replacing the same, in each case, which does not contain a prohibition on assignment

"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

"Security Account" means any accounts as the Security Trustee may from time to time direct (together with all additions to or renewals or replacements thereof) into which all monies received by the Chargor in respect of the Receivables must be paid

"Security Assets" means all property and assets from time to time mortgaged, charged or assigned (or expressed to be mortgaged, charged or assigned) by or pursuant to the Debenture

"Security Beneficiaries" means each Finance Party from time to time party to the Facilities Agreement and any Receiver or Delegate

"Selection Notice" means a notice substantially in the form set out in Part 2 of Schedule 3 (Requests) of the Facilities Agreement given in accordance with Clause 14 (Interest Periods) of the Facilities Agreement

"Subsidiary" means of a company or corporation, any company or corporation

- (a) which is controlled, directly or indirectly by the first-mentioned company or corporation, or
- (b) more than half the issued share capital of which is beneficially owned, directly or indirectly, by the first-mentioned company or incorporation, or
- (c) which is a Subsidiary of another Subsidiary of the first mentioned company or corporation,

and, for these purposes, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to direct its affairs and/or to control the composition of its board of directors or equivalent body

Name of company

\*insert full name  
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pursuant to the Transaction Security Documents

"Transaction Security Documents" means the debenture granted by each of the Chargor, Boaters and Java and the charge are securities granted by the Parent together with any other document entered into by the Parent, any Obligor, any Java Chargor Shareholder or any other person creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Obligors under any of the Finance Documents

"Treasury Transactions" means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price

"Utilisation Request" means a notice substantially in the form set out in Part 1 of Schedule 3 (Requests) of the Facilities Agreement



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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 02263726

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT A DEBENTURE DATED THE 2nd NOVEMBER 2007 AND CREATED BY WHITTARD OF CHELSEA LIMITED FOR SECURING ALL MONIES DUE OR TO BECOME DUE FROM THE COMPANY TO LANDSBANKI ISLAND HF AND/OR THE OTHER SECURITY BENEFICIARIES (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 13th NOVEMBER 2007

GIVEN AT COMPANIES HOUSE, CARDIFF THE 16th NOVEMBER 2007.

PO  
NW



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES



*Companies House*

— for the record —