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CHFP041

COMPANIES FORM No. 395

Particulars of a mortgage or charge

Pursuant to section 395 of the Companies Act 1985

395

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

Please do not write in this margin

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

* Insert full name of company

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

For official use Company number

Name of company

3

02999276

* ESB Hotels Limited (the Chargor)

Date of creation of the charge

18 June 2004

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

Debenture (the Debenture) dated 18 June 2004 between, amongst others, the Chargor and The Law Debenture Trust Corporation plc (as Security Trustee)

Amount secured by the mortgage or charge

For a description of the amount secured by the Debenture please see Continuation Sheet No.1 attached to this Form 395

All capitalised terms used in this Form 395 and the Continuation Sheets which form part hereof shall have the meaning given to them in Continuation Sheet No. 3

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

The Law Debenture Trust Corporation plc
Fifth Floor
100 Wood Street
London

Postcode EC2V 7ER

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

FRESHFIELDS BRUCKHAUS
DERINGER
65 FLEET STREET, LONDON
ENGLAND EC4Y 1HS
DX 23 LONDON/CHANCERY LANE
MF - 103648/0017

Time critical reference

For official use
Mortgage section

Post room



LD2
COMPANIES HOUSE

LGAXCH9P

0456
25/06/04

Short particulars of all the property mortgaged or charged

For short particulars of all the property charged please see Continuation Sheet No.2 attached to this Form 395

Please do not
write in
this margin

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

A fee of £10 is
payable to
Companies House
in respect of each
register entry for a
mortgage or
charge.
(See Note 5)

Particulars as to commission allowance or discount (note 3)

N/A

Signed Freshfield Buckle & Dering

Date 25/6/04

On behalf of [company] [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. 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 CF4 3UZ.

CONTINUATION SHEET NUMBER 1 TO FORM 395 (DATED 25/6/2004)

Amount secured by the mortgage or charge

The Secondary Secured Obligation being the obligation of the Chargor (other than the Company) to fund, or procure the funding of, the Trust Account pursuant to and in accordance with the Fund Deed Poll under which the Subsidiary Companies agreed to promptly, upon receipt by one or more of them of Subsidiary Sale Proceeds remit, or procure the remittance of, to the Trust Account from such Subsidiary Sale Proceeds, an amount equal to the Maximum Amount less any amount remitted by the Company to the Trust Account pursuant to its obligations under the Fund Deed Poll.

CONTINUATION SHEET NUMBER 2 TO FORM 395 (DATED 25/6/2004)

Particulars of all the property mortgaged or charged

1.1 Subject to paragraphs 1.5 and 1.6 below, each Chargor (other than the Company), with full title guarantee, as continuing security for the performance of the Secondary Secured Obligation charged in favour of the Security Trustee (as trustee for the Secured Creditors):

- (a) by way of legal mortgage all estates or interests in the freehold, leasehold and other immovable property described in the second schedule to the Debenture and the proceeds of sale thereof and all buildings and trade and other fixtures on any such property belonging to or charged to each Chargor from time to time (the *Legally Mortgaged Property*);
- (b) by way of fixed charge all estates or interests in any freehold, leasehold and other immovable property at the date of execution of the Debenture or at any time during the continuance of the security constituted by the Debenture belonging to each Chargor which is not effectively legally mortgaged under Clause 2.1(a) of the Debenture other than the Excluded Leasehold Properties and the proceeds of sale thereof and all buildings and trade and other fixtures from time to time on any such property belonging to or charged to each Chargor but excluding the Scottish Property;
- (c) by way of fixed charge all stocks, shares, debentures, bonds, notes and loan capital of any subsidiary and any other body corporate and all rights to subscribe for, redeem, convert other securities into or otherwise acquire any of the same which may at the date of the execution of the Debenture or thereafter belong to each Chargor (excluding the shares in the Dutch Holding Company and any subsidiary thereof and the German Holding Company and any subsidiary thereof), together with all dividends, interest and other income and all other rights of whatsoever kind deriving from or incidental to any of the foregoing;
- (d) by way of fixed charge the goodwill of each Chargor and its uncalled capital at the date of the execution of the Debenture or at any time thereafter in existence; and
- (e) by way of fixed charge all copyrights, patents, patent applications, licences, trade marks (save any asset consisting of intellectual property in or connected with the Bilderberg brand name, including, but not limited to, trademarks, trade names or other marks or designs, whether registered or not, connected therewith), trade names, know-how and inventions or other rights of every kind deriving therefrom at the date of the execution of the Debenture or at any time thereafter belonging to each Chargor and all fees, royalties and other rights of every kind deriving from such copyrights, patents, trade marks, trade names, know-how and inventions.

1.2 In addition and subject to paragraphs 1.5 and 1.6, each Chargor (other than the Company), with full title guarantee, as continuing security for the performance of the

Secondary Secured Obligation charged in favour of the Security Trustee (as trustee for the Secured Creditors) by way of floating charge (1) the whole of each Chargor's undertaking and all its property, assets and rights, whatsoever and wheresoever, present and future, other than any property or assets from time to time or for the time being effectively mortgaged, assigned or charged to the Security Trustee by way of fixed charge by Clause 2.1 of the Debenture and (2) whether or not so mortgaged, assigned or charged the whole of the Chargor's undertaking and all its property, assets and rights, whatsoever and wheresoever present and future located in or otherwise governed by the laws of Scotland other than the Excluded Leasehold Property (collectively the *Secondary Floating Charge Property*).

1.3 The security constituted by or pursuant to the Debenture shall be in addition to and shall be independent of every bill, note, guarantee, mortgage, pledge or other security which the Security Trustee or any other Secured Creditor or the M&A Advisor may at any time hold in respect of the Secondary Secured Obligation and it was declared that no prior security held by the Security Trustee or any other Secured Creditor or the M&A Advisor over the Charged Property or any part thereof shall merge in the security created by or pursuant to the Debenture.

1.4 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 (incorporated by Schedule 16 of the Enterprise Act 2002) applies to any floating charge created by the Debenture.

1.5 Notwithstanding anything to the contrary in paragraph 1.1, 1.6 and 1.8, no security was created over the Excluded Leasehold Property, the Charged Accounts, the Retention Accounts or Sloane Square Moat House.

1.6 All security, assignments and trusts constituted by the Debenture shall be released, re-assigned or determined absolutely in accordance with Clause 14 of the Debenture and the Intercreditor Deed and the Security Trustee shall do such further reasonable acts at the cost of the Chargor as is necessary to procure such release.

2. COVENANTS

2.1 Each Chargor covenanted that without the prior written consent of the Security Trustee it would not agree or purport to:

- (a) create or permit to subsist any Encumbrance whether in any such case ranking in priority to or *pari passu* with or after the security created by the Debenture save for any Encumbrance:
 - (i) existing at the date of execution of the Debenture; and
 - (ii) permitted in accordance with the terms of the Term Facility Agreement.
- (b) sell, discount, factor, transfer, lease, lend or otherwise dispose of, whether by means of one or a number of transactions related or not and whether at one time or over a period of time, the whole or any part of its undertaking or assets except:

- (i) as permitted under the Term Facility Agreement; and
- (ii) Floating Charge Property in the ordinary course of trade by each Chargor and on arm's length terms.

2.2 In the event that the Company, acting reasonably, concludes that the sale of the UK Division will be by way of a sale of the assets of subsidiaries of the Company (rather than by way of a sale of the issued shares of the subsidiaries), the Company covenants to procure that the Chargor (other than the Company) will extend the security granted by such Chargor hereunder to secure the UK Secured Obligation.

3. UNDERTAKINGS BY THE CHARGOR

3.1 Each Chargor has undertaken with the Security Trustee and the other Secured Creditors and the M&A Advisor that it will at all times while there shall subsist any security constituted by or pursuant to the Debenture:

- (a) keep all buildings, trade and other fixtures, fixed and other plant and machinery forming part of the Charged Property in good and substantial repair and permit the Security Trustee, its officers, employees and agents free access at all reasonable times to view the state and condition thereof, provided that the Security Trustee shall have given the relevant Chargor reasonable prior notice of its desire to exercise its rights under this sub-Clause 3.1(a) and requested access accordingly;
- (b) preserve, maintain and renew as and when necessary all copyrights, licences, patents, trade marks and other rights required in connection with its business;
- (c) observe and perform all covenants and stipulations from time to time affecting its freehold or leasehold property or the mode of user or enjoyment of the same including all Environmental Laws and not without the prior consent in writing of the Security Trustee enter into any onerous or restrictive obligations affecting any such property or make any structural or material alteration thereto or do or suffer to be done on any such property anything which is a "development" as defined in section 55 of the Town and Country Planning Act 1990 nor do or suffer or omit to be done any act, matter or thing whereby any provision of any Act of Parliament order or regulation from time to time in force affecting any such property is infringed;
- (d) observe and perform all covenants reserved by or contained in any lease, agreement for lease or tenancy agreement under which any part of the Charged Property may be held and will not without the consent of the Security Trustee vary, surrender, cancel, assign or otherwise dispose of or permit to be forfeited any leasehold interest forming part of the Charged Property or agree any rent review;
- (e) not without the prior written consent of the Security Trustee part with possession of the whole or any part of, or confer on any other person any right or licence to occupy, or grant any licence to assign or sub-let any land or buildings forming part of the Charged Property;

- (f) not without the prior written consent of the Security Trustee allow any person other than itself and any person permitted in accordance with the terms of the Intercreditor Deed to be registered under the Land Registration Act 1925 as proprietor of the Charged Property or any part thereof or create or permit to arise any overriding interest (as specified in schedules 1, 3 and 12 of the Land Registration Act 2002) affecting such property and the costs properly incurred by the Security Trustee of lodging a caution against registration of the title to such property or a land charge (if unregistered) or any part thereof, shall be an expense properly incurred in relation to this security; and
- (g) indemnify the Security Trustee (and as a separate covenant any Receiver or Receivers appointed by it) against all existing and future rents, taxes, rates, duties, fees, renewal fees, charges, assessments, impositions and outgoings whatsoever (whether imposed by deed or statute or otherwise and whether in the nature of capital or revenue and even though of a wholly novel character) which now or at any time during the continuance of the security constituted by or pursuant to this Debenture are properly payable in respect of the Charged Property or any part thereof or by the owner or occupier thereof.

4. POWER OF ATTORNEY

4.1 Each Chargor irrevocably appointed the following, namely:

- (a) the Security Trustee;
- (b) each and every person to whom the Security Trustee shall from time to time have delegated the exercise of the power of attorney conferred by clause 4; and
- (c) any Receiver appointed thereunder and for the time being holding office as such;

jointly and also severally to be its attorney or attorneys and in its name and otherwise on its behalf to do all acts and things and to sign, seal, execute, deliver, perfect and do all deeds, instruments, documents, acts and things which may be required for carrying out any obligation imposed on the Chargor by or pursuant to this Debenture (including but not limited to the obligations of the Chargor under Clause 4.2 and the statutory covenant referred to in such Clause), for carrying any sale, lease or other dealing by the Security Trustee or such Receiver into effect, for conveying or transferring any legal estate or other interest in land or other property or otherwise howsoever, for getting in the Charged Property, and generally for enabling the Security Trustee and the Receiver to exercise the respective powers conferred on them by or pursuant to this Debenture or by law. The Security Trustee shall have full power to delegate the power conferred on it by this Clause, but no such delegation shall preclude the subsequent exercise of such power by the Security Trustee itself or preclude the Security Trustee from making a subsequent delegation thereof to some other person; any such delegation may be revoked by the Security Trustee at any time.

5. FURTHER ASSURANCE

The Debenture contains a further assurance covenant given by the Company.

CONTINUATION SHEET NUMBER 3 TO FORM 395 (DATED 25/6/2004)

Definitions

Account Bank means Clydesdale Bank PLC of 35 Regents Street, London SW1Y 4ND;

Account Subsidiary means Queens Moat Houses Finance Limited with registered number 05016653 of Queens Court, 9-17 Eastern Road, Romford, Essex RM1 3NG, a company incorporated in England and Wales whose share capital is wholly legally and beneficially owned by the Company;

Advisors means those advisors to the Company, other than the M&A Advisor, who are party to Advisory Agreements with the Company (details of which are set out in schedule 1 to the Fund Deed Poll) together with any other advisor designated as an Advisor by the Company with the consent of the Steering Committee;

Advisory Agreement means each advisory agreement, other than the MSDW Engagement Letter, (details of which are set out in schedule 1 to the Fund Deed Poll) made between the Company and an Advisor pursuant to which the Company has agreed to pay the Advisor certain fees in certain circumstances together with any advisory agreement between an Advisor (including an advisor designated as such by the Company with the consent of the Steering Committee) and the Company designated as an Advisory Agreement by the Company with the consent of the Steering Committee;

Bank means HSBC Bank plc, Poultry & Princes Street Branch, 27-32 Poultry, London EC2P 2BX;

Beneficiary Instructing Group means:

- (a) in matters relating to all Secured Property other than Dutch Secured Assets and the German Secured Assets, together:
 - (i) the Company acting on behalf of the Employees;
 - (ii) each Advisor;
 - (iii) the Paying Agent; and
 - (iv) the M&A Advisor;

but in the case of (i), (ii), and (iii) only to the extent that they have an undischarged FDP Beneficial Entitlement and in the case of (iv) only in the event that the UK Secured Obligation has not been discharged.

- (b) in matters relating to the Dutch Secured Assets and the German Secured Assets, the M&A Advisor only.

Subject to the following sentence, for the purposes of determining whether a FDP Beneficial Entitlement has been discharged or not the Security Trustee shall be

entitled to rely on a statement from the Company to that effect contained in a notice sent to it by the Company pursuant to clause 4.4 of the Fund Deed Poll or otherwise. For the purposes of determining whether a UK Secured Obligation, Dutch Secured Obligation or German Secured Obligation has been discharged or not the Security Trustee shall be entitled to rely on a written statement from the Company to that effect counter-signed by the M&A Advisor;

Bonus means the bonus payable to an Employee in accordance with that Employee's Incentive Scheme;

Business Day means any day other than a Saturday or Sunday on which banks are generally open for business in England and Wales;

Chairman means Steve Marshall, Chairman of the Company as at 18 June 2004;

Charged Accounts means the following accounts:

(a) the Euro bank account in the name of the Account Subsidiary with account number 4505 244 308 500 held with the Account Bank at Clydesdale's International Department, 150 Buchanan Street, Glasgow G1 2LB; and

(b) the Sterling bank account in the name of the Account Subsidiary with account number 90129835, sort code 82-11-07 held with the Account Bank;

Charged Property means the UK Secured Assets, the Dutch Secured Assets, the German Secured Assets and the UK Secondary Secured Assets;

Company means Queens Moat Houses plc, a company incorporated under the laws of England and Wales with company registration number 416937;

Company Sale Proceeds means the net cash consideration payable to the Company arising on the sale of the UK Division, which for the avoidance of doubt shall be net of any fees payable to the M&A Advisor pursuant to the MSDW Engagement Letter in respect of such sale;

Consent means any consent, release, approval, waiver, amendment or other like action;

Debenture means the debenture dated 18 June 2004 and made between the Company, the Subsidiary Companies and the Security Trustee;

Dutch Division means the issued shares in the Dutch Holding Company or all or substantially all of the assets and undertaking of the Dutch Holding Company and its subsidiaries;

Dutch Holding Company means Queens Bilderberg (Nederland) B.V. (the), a company incorporated in The Netherlands;

Dutch Secured Assets means the property, assets and income of the Company mortgaged, assigned or charged to the Security Trustee (whether by way of legal

mortgage, assignment, fixed or floating charge) as security for the performance of the Dutch Secured Obligation under this Debenture;

Dutch Secured Obligation means the obligation of the Company to pay a fee to the M&A Advisor pursuant to the MSDW Engagement Letter but only to the extent that such fee becomes payable on a sale of the whole or part of the Dutch Division;

Employees means the Chairman and those employees whose names are set out in the second schedule to the Fund Deed Poll together with any additional employee with whom the Company enters into an Incentive Scheme and/or Settlement Agreement with the consent of the Steering Committee in accordance with the Term Facility Agreement and **Employee** means any one of them;

Encumbrance means any mortgage, charge, assignment, standard security, assignment for the purpose of security, pledge, lien, right of set-off, arrangements for retention of title, or hypothecation or trust arrangement for the purpose of, or which has the effect of, granting security or other security interest of any kind whatsoever or any agreement, whether expressed to be conditional or otherwise, to create any of the same but excluding all security interests hereunder or any agreement to sell or otherwise dispose of any asset on terms whereby such asset is or may be leased to or re-acquired or acquired by the Chargor;

Enforcement Notice means a notice in writing from a Beneficiary Instructing Group to the Security Trustee issued following an Event of Default under the Debenture and requesting the Security Trustee to enforce the security constituted by, and in accordance with, the Debenture;

Environment means all or any of the following media: air (including air within buildings or other structures and whether above or below ground), land (including buildings and other structures or erections in, on or under it and any soil and anything below the surface of land), land covered with water and water (including sea, ground and surface water);

Environmental Laws means all statutes, treaties and conventions, directives, regulations and all codes of practice or conduct, circulars and guidance notes having legal or judicial import or effect whether of a criminal, civil or administrative nature, and the rules of common law, relating to or concerning:

- (a) pollution or contamination of the Environment;
- (b) harm, whether actual or potential, to mankind and human senses, living organisms and ecological systems;
- (c) the generation, manufacture, processing, distribution, use (including abuse), treatment, storage, disposal, transport or handling of Hazardous Materials; and
- (d) the emission, leak, release or discharge into the Environment of noise, vibration, dust, fumes, gas, odours, smoke, steam, effluvia, heat, light, radiation (of any kind), infection, electricity or any Hazardous Materials and any matter or thing

capable of constituting a nuisance or an actionable tort of any kind in respect of such matters;

Event of Default means the failure by the Company to perform the Primary Secured Obligation, the German Secured Obligation, the Dutch Secured Obligation or the UK Secured Obligation or the failure by the Chargor (other than the Company) to perform the Secondary Secured Obligation;

Excess Advances Facility means the excess advances facility granted by certain lenders to the Company under the Term Facility Agreement;

Excess Term Loan Facility means the excess term loan facility granted by certain lenders to the Company under the Term Facility Agreement;

Excluded Company Property means:

- (a) the shares of each of the companies comprising the Dutch Division, together with the proceeds of sale of the Dutch Division;
- (b) the shares of each of the companies comprising the German Division, together with the proceeds of sale of the German Division;
- (c) amounts standing to the credit of the Retention Accounts;
- (d) amounts standing to the credit of the Charged Accounts;
- (e) Sloane Square Moat House; and
- (f) Liverpool Moat House;

Excluded Fees means any fees payable to the M&A Advisor pursuant to the MSDW Engagement Letter;

Excluded Leasehold Property means all estates or interests in the freehold, leasehold and other immoveable property described in the third schedule to the Debenture;

FDP Beneficiary means each of the Advisors, the Employees and the Paying Agent;

FDP Beneficiary Entitlement means an FDP Beneficiary's entitlement to be paid a Bonus, Liquidated Damages, Settled Amount or amount payable under the Term Facility Agreement to the Paying Agent (as relevant) by the Company pursuant to the terms of an Incentive Scheme, Settlement Agreement, Advisory Agreement, the Term Facility Agreement or the Fund Deed Poll;

Fees means any fees payable to an Advisor by the Company pursuant to an Advisory Agreement made between the Company and that Advisor but excluding the Excluded Fees;

Fee Letter means the fee letter dated 18 June 2004 from the Trustee addressed to the Company and countersigned by the Company under which the Company agrees to pay certain fees and costs to the Trustee;

Floating Charge Property means the Primary Floating Charge Property and the Secondary Floating Charge Property;

Fund means the fund represented by the sum of monies standing to the credit of the Trust Account as such sum increases or reduces from time to time;

Fund Deed Poll means the fund deed poll entered into by the Company, the Chargor and the Security Trustee on 18 June 2004;

Fund Trustee means the Security Trustee in its capacity as trustee under the Fund Deed Poll;

German Division means the issued shares in the German Holding Company or all or substantially all of the assets and undertaking of the German Holding Company and its subsidiaries;

German Holding Company means Queens Moat Houses (Germany) GmbH, a company incorporated in Germany;

German Secured Assets means the property, assets and income of the Company mortgaged, assigned or charged to the Security Trustee (whether by way of legal mortgage, assignment, fixed or floating charge) as security for the performance of the German Secured Obligation under the Debenture;

German Secured Obligation means the obligation of the Company to pay a fee to the M&A Advisor pursuant to the MSDW Engagement Letter but only to the extent that such fee becomes payable on a sale of the whole or part of the German Division;

Hazardous Materials means any element or substance, whether natural or artificial, and whether consisting of gas, liquid, solid or vapour, whether on its own or in any combination with any other element or substance, which is listed, identified, defined or determined by any Environmental Law to be, to have been, or to be capable of being or becoming harmful to mankind or any living organism or damaging to the Environment;

Incentive Scheme means each incentive plan agreement (details of which are set out in the second schedule to the Fund Deed Poll) made between the Company and an Employee setting out the terms on which a bonus will be payable to that Employee pursuant to such plan together with any incentive plan agreement made between the Company and an Employee with the consent of the Steering Committee setting out the terms on which a bonus will be payable to that Employee pursuant to the plan and **Incentive Schemes** means all such agreements;

Intercreditor Deed means an intercreditor deed dated 18 June 2004 and made between the Trustee, the Security Trustee, Barclays Bank PLC as security trustee and paying agent (on behalf of the Junior Term Lenders under the Term Facility Agreement) and the Company;

Junior Term Lenders means certain lenders who have made available the Junior Term Facility and their assignees or transferees and as defined as **Lenders** under the Term Facility Agreement;

Junior Term Loan means the aggregate principal amount from time to time outstanding under the Junior Term Facility;

Junior Term Facility means the junior term loan made available pursuant to the Term Facility Agreement;

Legally Mortgaged Property means all estates or interests in the freehold, leasehold and other immovable property described in the second schedule of the Debenture and the proceeds of sale thereof and all buildings and trade and other fixtures on any such property belonging to or charged to each Chargor from time to time, charged by way of a legal mortgage by each Chargor (other than the Company), with full title guarantee, as continuing security for the performance of the Secondary Secured Obligation, in favour of the Security Trustee (as Security Trustee for the Secured Creditors);

Liverpool Moat House means all that leasehold property being Liverpool Moat House, Paradise Street, Liverpool or any proceeds of sale thereof;

Liquidated Damages means the liquidated damages payable to the Chairman pursuant to his terms of employment with the Company in force as at 18 June 2004;

M&A Advisor means Morgan Stanley & Co. Limited;

Maximum Amount means an amount equal to the maximum aggregate sum of all Bonuses, Settled Amounts and Fees potentially payable by the Company under the terms of the Relevant Agreements calculated by the Company as at the date of receipt of the Company Sale Proceeds or the Subsidiary Sale Proceeds (as relevant) and shall not exceed, in aggregate, £16,085,000.00 (sixteen million eighty five thousand pounds Sterling);

MSDW Engagement Letter means the letter dated 10 December 2003 from the M&A Advisor to the Company, countersigned by the Company (as amended or restated from time to time with the prior consent of the Steering Committee, provided that the amendment and/or restatement does not result in the Company's maximum aggregate financial obligations under the engagement letter following such amendment and/or restatement exceeding £7.5 million (being the Company's maximum aggregate financial obligation under the engagement letter at 18 June 2004));

New Facilities means the Excess Advances Facility and the Excess Term Loan Facility;

Paying Agent means Barclays Bank PLC in its capacity as Paying Agent under the Term Facility Agreement;

Primary Floating Charge Property means the floating charge given by the Company, with full title guarantee, as continuing security for the performance of the Primary

Secured Obligation and UK Secured Obligation in favour of the Security Trustee over the whole of the Company's undertaking and all its property, assets and rights, whatsoever and wheresoever, present and future, other than any property or assets from time to time or for the time being effectively mortgaged, assigned or charged to the Security Trustee by way of fixed charge under clause 2.1 of the Debenture and the Excluded Company Property;

Primary Secured Obligation means the obligation of the Company to fund the Trust Account pursuant to and in accordance with the Fund Deed Poll;

Proof of Identity means: (i) in relation to an individual, an original valid passport or driving licence together with one original utility bill not more than 3 months' old as proof of that individual's identity; and (ii) in relation to a corporation or partnership, such proof of identity as is generally required by the Security Trustee in relation to such entities, or, in either case, such other proof of identity as the Security Trustee may from time to time specify;

Receiver means a receiver appointed pursuant to the provisions of the Debenture or pursuant to any applicable law and such expression shall include, without limitation, a receiver and manager;

Release Date means the date upon which the Company certifies to the Security Trustee that the STDP Beneficial Entitlements of all the STDP Beneficiaries (other than the Paying Agent) have been paid in full or where any such STDP Beneficial Entitlement has not been paid, the last date upon which such STDP Beneficial Entitlement no longer arises, has occurred;

Relevant Agreements means the Incentive Schemes, the Settlement Agreements and the Advisory Agreements;

Residue means the amounts held by the Trustee on trust for the Paying Agent on the Trust Release Date which stand to the credit of the Trust Account at that time (which, subject to Clause 5.2 of the Fund Deed Poll, shall include any interest accrued on the Fund held in the Trust Account);

Retention Accounts has the meaning given to it in the Term Facility Agreement;

Scottish Property means any heritable or leasehold property located in Scotland belonging to any of the Chargor;

Secondary Floating Charge Property means the floating charge given by each Chargor (other than the Company), with full title guarantee, as continuing security for the performance of the Secondary Secured Obligation in favour of the Security Trustee over (1) the whole of each Chargor's undertaking and all its property, assets and rights, whatsoever and wheresoever, present and future, other than any property or assets from time to time or for the time being effectively mortgaged, assigned or charged to the Security Trustee by way of fixed charge by Clause 2.1 of the Debenture and (2) whether or not so mortgaged, assigned or charged the whole of the Chargor's undertaking and all its property, assets and rights, whatsoever and

wheresoever present and future located in or otherwise governed by the laws of Scotland other than the Excluded Leasehold Property;

Secondary Secured Obligation means the obligation of the Chargor (other than the Company) to fund, or procure the funding of, the Trust Account pursuant to and in accordance with the Fund Deed Poll;

Secured Creditors means all and each of the Security Trustee, and each of the FDP Beneficiaries, and **Secured Creditor** shall be construed accordingly;

Secured Property means the property secured under or pursuant to the Security Documents;

Security Documents means the Security Trust Deed Poll, the Debenture and the Intercreditor Deed;

Security Trustee means The Law Debenture Trust Corporation p.l.c., a company incorporated in England and Wales with registered address Fifth Floor, 100 Wood Street, London EC2V 7ER (which expression shall include any assignee or successor in title or any party in whose favour the Debenture is novated);

Security Trust Deed Poll means the security trust deed poll dated 18 June 2004 and made by the Security Trustee;

Settlement Agreement means each settlement agreement details of which are set out in the second schedule to the Fund Deed Poll, made between the Company and certain Employees pursuant to which the Employees agree to settle the contractual claim of each Employee against the Company, that arises in the event that an Employee is made redundant, in return for payment of a fixed amount as set out in the relevant agreement together with any settlement agreement made between the Company and any one Employee with the consent of the Steering Committee in accordance with the Term Facility Agreement;

Settled Amount means the fixed amount payable to an Employee pursuant to a Settlement Agreement;

Sloane Square Moat House means the property known as Sloane Square Moat House, situated on and having frontage to the north side of Sloane Square in the Royal Borough of Kensington and Chelsea or any proceeds of sale thereof;

STDP Beneficiary means all those who are FDP Beneficiaries and the M&A Advisor;

STDP Beneficial Entitlement means:

- (a) in respect of the FDP Beneficiaries, their FDP Beneficial Entitlement; and
- (b) in respect of the M&A Advisor, its entitlement to be paid its fees pursuant to the MSDW Engagement Letter;

Steering Committee means Citibank International PLC, Merrill Lynch PCG Inc. and Lloyds TSB Bank plc, appointed to act in such capacity or any other institution duly

appointed from time to time to act in that capacity under the Term Facility Agreement;

Subsidiary Companies means the companies listed in the first schedule to the Debenture;

Subsidiary Sale Proceeds means the net cash consideration payable by a purchaser to one or more of the Subsidiary Companies on the sale of all or substantially all of its assets and undertaking but for the avoidance of doubt shall exclude any proceeds of sale of Sloane Square Moat House;

Term Facility Agreement means the term facility agreement dated 25 March 1995 and made between (inter alios) the Company, certain subsidiaries of the Company, Barclays Bank PLC as facility agent, administrative agent and paying agent and certain lenders;

Trust Account means the Sterling interest bearing account in the name of the Security Trustee held with the Bank into which the Fund is to be credited, with the following details:

Account Name:	The Law Debenture Trust Corporation p.l.c. Re QMH Trust Account
Sort Code:	40-05-30
Account Number:	03668002

Trust Release Date means the date upon which the Company certifies to the Trustee that the FDP Beneficial Entitlements of all the FDP Beneficiaries (other than the Paying Agent) have been paid in full or where any such FDP Beneficial Entitlement has not been paid, the last date upon which such FDP Beneficial Entitlement no longer arises, has occurred;

UK Division means all or substantially all of the hotel assets of the Company and its subsidiaries or the hotels business of the Company other than in respect of the Dutch Division and the German Division;

UK Secondary Secured Assets means the property, assets and income of the Chargor (other than the Company) mortgaged, assigned or charged to the Security Trustee (whether by way of legal mortgage, assignment, fixed or floating charge) as security for the performance of the Secondary Secured Obligation under the Debenture;

UK Secured Assets means the property, assets and income of the Company mortgaged, assigned or charged to the Security Trustee (whether by way of legal mortgage, assignment, fixed or floating charge) as security for the performance of the Primary Secured Obligation and the UK Secured Obligation under the Debenture;

UK Secured Obligation means the obligation of the Company to pay a fee to the M&A Advisor pursuant to the MSDW Engagement Letter but only to the extent that such fee becomes payable on a sale of the whole or part of the UK Division.

FILE COPY



CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

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

COMPANY No. 02999276

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT A DEBENTURE DATED THE 18th JUNE 2004 AND CREATED BY ESB HOTELS LIMITED FOR SECURING ALL MONIES DUE OR TO BECOME DUE FROM THE COMPANY TO THE LAW DEBENTURE TRUST CORPORATION PLC 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 25th JUNE 2004.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 29th JUNE 2004.

plm



Companies House

— for the record —



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES