

# M

CHFP025

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\*insert full name  
of Company

## COMPANIES FORM No. 395

539 462/13

### 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.

Pursuant to section 395 of the Companies Act 1985

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

For official use

Company number

[211]

5026590

Name of company

\* Pilkingtons Group plc (the "Company")

Date of creation of the charge

9 February 2009

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

Debenture (the "Deed") dated 9 February 2009 executed by the Company in favour of Kevin Whiteley (the "Lender")

Amount secured by the mortgage or charge

1. The Company, as principal obligor and not merely as surety, covenants with the Lender that it will pay or discharge on demand the Secured Obligations (as defined below) as and when they fall due;
2. The Company agrees to pay interest on each amount demanded under the Deed from the date of demand until payment (even before and after judgment) at the Default Rate (as defined below). Such interest shall be compounded at the end of each period determined for this purpose by the Lender in the event of it not being paid when demanded but will remain immediately due and payable;
3. All payments to be made by the Company under the Deed shall be made in full, without any set-off or counterclaim whatsoever and free and clear of any deductions or withholdings (save where required by law) on the due date to such account as the Lender may from time to time specify in writing; and,

(cont...)

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

Kevin Whiteley  
Sandy Lane 1B, Kustlaan,  
Knokke 8300, Belgium

Postcode

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

Pannone LLP  
123 Deansgate  
Manchester  
M3 2BU

RF/704997/5

Time critical reference

For official Use (06/2005)  
Mortgage Section

Post room

SATURDAY



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A26

21/02/2009

197

COMPANIES HOUSE

Short particulars of all the property mortgaged or charged

1. As a continuing security for the payment of the Secured Obligations, the Company, with full title guarantee, charges, and agrees to charge, in favour of the Lender the following assets which are at any time owned by the Company, or in which the Company is from time to time interested:

(a) by way of first legal mortgage, all the freehold and leasehold property (if any) vested in or charged to the Company, together with all buildings and fixtures (including trade fixtures at any time thereon);

(b) by way of first fixed charge, all other interests (not being charged by paragraph 1(a) above) in any freehold or leasehold property vested in or charged to the Company, the buildings and fixtures (including trade fixtures) at any time thereon, all proceeds of sale derived therefrom and the benefit of all covenants given in respect thereof and 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, machinery, computers, vehicles, office and other equipment and the benefit of all contracts, licences and warranties relating to the same;

(d) by way of first fixed charge, all rights and interests the Company has in, and claims under, the Insurances (as defined below) and all proceeds thereof;

(cont...)

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

Particulars as to commission allowance or discount (note 3)

None

Signed

*Pennar LLP*

Date

*20 February 2009*

On behalf of [company] ~~XXXXXXXXXXXX~~ †

*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

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## Particulars of a mortgage or charge (continued)

Please do not  
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Continuation sheet No 1  
to Form No 395 and 410 (Scot)

*Please complete  
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Company Number

5026590

Name of Company

Pilkington's Group PLC (the "Company")

~~XXXXXX~~

\* delete if  
inappropriate

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

4. In this form M395, the following terms have the following meanings:

"Corporate Guarantee" means the corporate guarantee dated 9 February 2009 executed by (1) Pilkington's Tiles Limited (company number 33221) and Quiligotti Access Flooring Limited (company number 2698541) in favour of (2) the Lender;

"Default Rate" means two per cent (2%) above the base lending rate from time to time of Bank of Scotland plc;

"Finance Documents" means the Deed, the Loan Agreement, the Corporate Guarantee, the Intercreditor Agreement and any other document designated as a "Finance Document" by the Lender and the Company;

"Intercreditor Agreement" means the intercreditor agreement dated 9 February 2009 made between (1) GMAC Commercial Finance plc, (2) the Lender, (3) the Company, (4) Pilkington's Tiles Limited (company number 33221), (5) Quiligotti Access Flooring Limited (company number 2698541) and (6) Pilkington's Tiles (Ireland) Limited (incorporated in Eire under registered number 446084);

"Loan Agreement" means the loan agreement dated 9 February 2009 made between the Lender and the Company; and,

"Secured Obligations" means all present and future obligations and liabilities (whether actual or contingent, whether as principal or surety and whether owed jointly or severally or alone or in any other capacity whatsoever) of the Company to the Lender under or pursuant to the Finance Documents and all costs, charges and expenses incurred by the Lender in connection with the preparation, negotiation of, preservation or enforcement of the Finance Documents.

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

*Please complete  
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(e) by way of first fixed charge, all monies standing to the credit of the Company from time to time on any and all accounts with any bank, financial institution, or other person;

(f) by way of first fixed charge, all Intellectual Property (as defined below);

(g) to the extent that any of the Assigned Assets (as defined below) are not effectively assigned pursuant to the provisions of the Deed summarised in paragraphs 4 and 5 below, by way of first fixed charge, those Assigned Assets;

(h) by way of first fixed charge, the benefit of all licences, consents, agreements and authorisations held or utilised by the Company in connection with its business or the use of any of its assets;

(i) by way of first fixed charge, all the goodwill and uncalled capital of the Company; and

(j) by way of first fixed charge, all the Charged Shares (as defined below);

2. As continuing security for the payment of the Secured Obligations, the Company charges with full title guarantee in favour of the Lender by way of first floating charge all its assets and undertaking whatsoever and wheresoever situated both present and future not effectively charged by way of first fixed mortgage or charge pursuant to the provisions of the Deed summarised in paragraph 1 above, including (without prejudice to the generality of the foregoing) heritable property and all other property and assets (if any) in Scotland;

3. Pursuant to the provisions of the Deed, paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to any floating charge created by or pursuant to the Deed (and each such floating charge is a qualifying floating charge for the purposes of the Insolvency Act 1986);

4. As further continuing security for the payment of the Secured Obligations, the Company assigns and agrees to assign absolutely all its present and future right, title and interest in and to:

(a) the Receivables (as defined below); and

(b) the Insurances (including all claims under the Insurances and the proceeds of the Insurances);

5. Pursuant to the provisions of the Deed, to the extent that any Assigned Asset described in paragraph 4 above is not assignable, the assignment which that clause of the Deed purports to effect shall operate as an assignment of all present and future rights and claims of the Company to any proceeds of the Insurances;

6. Pursuant to the provisions of the Deed, the Lender may, by written notice to the Company, convert the floating charge created by the Deed into a fixed charge as regards all or any of the assets of the Company specified in any notice.

7. The floating charge created by the Company pursuant to paragraph 2 above shall (in addition to the circumstances in which the same will occur under general law) automatically be converted into a fixed charge in relation to any of the Charged Assets (as defined below) subject to the floating charge created by the provisions of the Deed pursuant to paragraph 2 above (the "**Floating Charge Assets**") if:

(a) the Company creates (or purports to create) any Security Interest (as defined below) on or over the relevant Floating Charge Asset without the prior consent in writing of the Lender;

(b) any third party levies or attempts to levy any distress, execution attachment or other legal process against any such Floating Charge Asset; or

(c) an Administrator (as defined below) is appointed or the Lender receives notice of an intention to appoint an Administrator, provided that the floating charge created under the Deed by the Company shall not convert into a fixed charge solely by reason of (1) the obtaining of a moratorium or (2) anything done with a view to obtaining a moratorium, in each case under the Insolvency Act 2000 in respect of the Company;

(cont...)

**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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Company Number

5026590

Name of Company

Pilkington's Group PLC (the "Company")

~~XXXXXX~~

\* delete if  
inappropriate

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

1

**Please complete  
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Names, addresses and descriptions of the mortgagees or persons entitled to the charge (continued)

*Please complete  
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8. The giving by the Lender of a notice pursuant to paragraph 7 above in relation to any class of assets of the Company shall not be construed as a waiver or abandonment of the right of the Lender to serve similar notices in respect of any of the other classes of assets or of any of the other rights of the Lender;

9. Pursuant to the provisions of the Deed, the Company will not do, or agree to do, any of the following without the prior written consent of the Lender:

(a) create or permit to subsist any Security Interest on or over any of the Charged Assets (excluding any Security Interest regulated by the Intercreditor 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 Charged Asset other than in favour of the Lender or in the ordinary course of business;

10. Pursuant to the provisions of the Deed, the Company shall, at its own expense, promptly take whatever action the Lender or any Administrator or Receiver (as defined below) may require for:

(a) creating, perfecting or protecting the Security Interests intended to be created by the Deed; and

(b) facilitating the realisation of any Charged Asset or the exercise of any right, power or discretion exercisable by the Lender, any Administrator or any Receiver (or any of its or their delegates or sub-delegates) in respect of any Charged Asset,

including the execution of any document, transfer, conveyance, assignment or assurance of any property (whether to the Lender or to its nominees), and the giving of any notice, order or direction and the making of any registration, which in any such case, the Lender may think expedient;

11. The security constituted by the Deed shall become immediately enforceable at any time after the Lender has demanded payment of any of the Secured Obligations and the power of sale and other powers conferred by section 101 of the Act (as defined below) (as varied or amended by the Deed) shall be immediately exercisable upon and at any time after the Lender has demanded payment of any of the Secured Obligations. After the security constituted by the Deed has become enforceable, the Lender may in his absolute discretion enforce all or any part of the security constituted by the Deed in such manner as he sees fit;

12. Pursuant to the provisions of the Deed, for the purposes of all powers implied by statute, the Secured Obligations shall be deemed to have become due and payable on the date of the Deed and sections 93 and 103 of the Act shall not apply to the security constituted by the Deed. The statutory powers of leasing conferred on the Lender shall be extended so as to authorise the Lender to lease, make agreements for leases, accept surrenders of leases and grant options as the Lender shall think fit and without the need to comply with any of the provisions of sections 99 and 100 of the Act;

13. At any time after the Deed becomes enforceable (or if requested by the Company by written notice at any time), the Lender may without further notice appoint any person (or persons) to be an Administrator or Receiver of all or any part of the Charged Assets and/or of the income thereof; and,

14. In this form M395, the following terms shall have the following meanings:

"Act" means the Law of Property Act 1925;

"Administrator" means any person appointed under schedule B1 of the Insolvency Act 1986 (as amended) to manage the affairs, business and properties of the Company;

"Assigned Assets" means the Charged Assets expressed to be assigned by way of security pursuant to the provisions of the Deed and described in paragraph 4 above;

"Charged Assets" means all property and assets from time to time of the Company charged by or pursuant to the Deed;

(cont...)

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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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Company Number

5026590

Name of Company

Pilkington's Group PLC (the "Company")

~~XXXXXX~~

\* delete if  
inappropriate

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

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

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

*Please complete  
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"Charged Shares" means all stocks, shares, debentures, bonds, warrants, coupons or other securities and investments owned by the Company, together with all dividends, distributions and other income paid or payable and all rights, bonuses or benefits attaching thereto;

"Insurances" means all present and future contracts or policies of insurance effected by the Company or any other person and in which the Company from time to time has an interest;

"Intellectual Property" means

(a) any patents, trade marks, service marks, designs, business names, copyrights, database rights, design rights, domain names, moral rights, inventions, confidential information, know-how and other intellectual property rights and interests (which may at the date of the Deed or in the future subsist), whether registered or unregistered; and

(b) the benefit of all applications and rights to use such assets of the Company (which may at the date of the Deed or in the future subsist);

"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 Company (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 Interests and remedies relating to any of the foregoing (including without limitation, claims for damages and other remedies for non-payment of the same, all entitlements to interest, 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 any receiver or receiver and manager appointed by the Lender under the Deed; and,

"Security Interest" means a mortgage, charge, pledge, lien, assignment by way of security, or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.



## **CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE**

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

**COMPANY NO. 5026590  
CHARGE NO. 2**

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES  
HEREBY CERTIFIES THAT A DEBENTURE DATED 9 FEBRUARY  
2009 AND CREATED BY PILKINGTON'S GROUP PLC FOR  
SECURING ALL MONIES DUE OR TO BECOME DUE FROM THE  
COMPANY TO KEVIN WHITELEY 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 21 FEBRUARY 2009

GIVEN AT COMPANIES HOUSE, CARDIFF THE 25 FEBRUARY  
2009



*Companies House*  
— for the record —



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES