

# M

## COMPANIES FORM No. 395

### 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

Please do not  
write in  
this margin

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

211376/13

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

For official use

Company number

[ ] [ ] [ ] [ ] [ ] [ ]

6490331

Name of company

\* Appia Finance Limited (the "Chargor")

Date of creation of the charge

28 March 2008

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

Security Agreement dated 28 March 2008 between the Chargor and the Security Trustee (as defined below) (the "Security Agreement")

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 in any other capacity whatsoever) of the Chargor to any VLN Finance Party under any VLN Finance Document (each capitalised term as defined below) (the "Secured Obligations")

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

Investcorp Securities Limited (the "Security Trustee") as agent and trustee for the VLN Finance Parties (as defined below)  
48 Grosvenor Street, Mayfair, London

Postcode W1K 3HW

Presentor's name address and  
reference (if any)

Allen and Overy LLP  
One Bishops Square  
London  
E1 6AO

18582-00353 BK 8486411 1

Time critical reference

For official Use (06/2005)

Mortgage Section

Post room

THURSDAY



\*LP97ZYK7\*

LD5

03/04/2008

59

COMPANIES HOUSE

Short particulars of all the property mortgaged or charged

Please see attached continuation sheet

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

*Allen & Overy LLP*

Date 28 March 2008

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

**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 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 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 situated 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**

**Appia Finance Limited (Company Number: 6490331)**

**Security Agreement dated 28 March 2008**

**FORM 395 CONTINUATION SHEET**

**SHORT PARTICULARS OF ALL THE PROPERTY MORTGAGED OR CHARGED**

**1. CONSTRUCTION**

**1.1 Construction**

- (a) Unless a contrary indication appears a reference in the Security Agreement to
  - (i) the **Agent**, the **Security Trustee**, any **VLN Finance Party**, any **Noteholder**, any **party**, the **Chargor** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees,
  - (ii) a document in **agreed form** is a document which is
    - (A) initialled or otherwise agreed by or on behalf of the **Chargor** on the one hand and the **Agent** on the other hand, or
    - (B) executed on or before the **Closing Date** by the **Chargor** on the one hand and the **Agent** on the other hand,
  - (iii) **assets** includes present and future properties, revenues and rights of every description,
  - (iv) a **VLN Finance Document** or any other agreement or instrument (other than the **Senior Facilities Agreement**) is a reference to that **VLN Finance Document** or other agreement or instrument as amended or novated (however fundamentally),
  - (v) **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent,
  - (vi) the **term of the Notes** means the period from the date of the **Subscription Agreement** until the **Vendor Debt Discharge Date**,
  - (vii) a **participation** of a **Noteholder** in a **Note**, means the amount of the **Note** which such **Noteholder** has made or is to make available and thereafter that part of the **Note** which is owed to such **Noteholder**,
  - (viii) an amount **outstanding** means in relation to the **Notes** all the **Notes** issued other than
    - (A) those **Notes** which have been redeemed and cancelled pursuant to the **Terms and Conditions**, and
    - (B) those **Notes** which have been purchased and cancelled under the **Terms and Conditions**,
  - (ix) references to principal, and/or interest shall include any additional amounts payable pursuant to **Condition 5.3 (Default interest)** of the **Terms and Conditions**

- (x) a **person** includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) of two or more of the foregoing,
- (xi) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation,
- (xii) a **Noteholder** and (in relation to a Note) **holder** means the person in whose name a Note is registered in the register of Noteholders maintained by the Agent,
- (xiii) a provision of law is a reference to that provision as amended or re-enacted, and
- (xiv) a time of day is a reference to London time
- (b) Section, Condition and Schedule headings are for ease of reference only
- (c) Unless a contrary indication appears, a term used in any other VLN Finance Document or in any notice given under or in connection with any VLN Finance Document has the same meaning in that VLN Finance Document or notice as in the Terms and Conditions
- (d) A Default is **continuing** if it has not been remedied or waived
- (e)
  - (i) the term **VLN Finance Document** includes all amendments and supplements including supplements providing for further subscriptions for Notes, and
  - (ii) the term **the Security** means any security created by the Security Agreement
- (f) Unless the context otherwise requires, a reference to a Security Asset includes
  - (i) any part of that Security Asset,
  - (ii) any proceeds of that Security Asset; and
  - (iii) any present and future assets of that type

## 2. CREATION OF SECURITY

### 2.1 General

- (a) All the Security
  - (i) is created in favour of the Security Trustee,
  - (ii) is created over present and future assets of the Chargor,
  - (iii) is security for the payment, discharge and performance of all the Secured Obligations, and
  - (iv) is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994
- (b) If the Chargor assigns an agreement under the Security Agreement (or charges it) and the assignment or charge breaches a term of that agreement because a third party's consent has not been obtained

- (i) the Chargor must notify the Security Trustee immediately,
  - (ii) unless the Security Trustee otherwise requires, the Chargor must use all reasonable endeavours to obtain the consent as soon as practicable, and
  - (iii) the Chargor must promptly supply to the Security Trustee a copy of the consent obtained by it
- (c) The Security Trustee holds the benefit of the Security Agreement on trust for the VLN Finance Parties

## 2.2 Investments

- (a) Under the Security Agreement the Chargor charged by way of a first legal mortgage
- (i) all shares in Appia Finance 2 Limited (Company Number 6538054) and all shares in any other member of the VLN Group owned by it or held by any nominee on its behalf, this includes the 6,987,659 ordinary shares held by the Chargor in Appia Finance 2 Limited, and
  - (ii) all other shares, stocks, debentures, bonds, warrants, coupons or other securities and investments (including all Cash Equivalent Investments) owned by it or held by any nominee on its behalf
- (b) A reference in the Security Agreement to any share, stock, debenture, bond, warrant, coupon or other security or investment includes
- (i) any dividend, interest or other distribution paid or payable,
  - (ii) any right, money or property accruing or offered at any time by way of redemption, substitution, exchange, bonus or preference, under option rights or otherwise,
- in relation to that share, stock, debenture, bond, warrant, coupon or other security or investment

## 2.3 Other contracts

- (a) Under the Security Agreement the Chargor assigned absolutely, subject to a proviso for re-assignment on redemption, all of its rights in respect of
- (i) its Relevant Contracts,
  - (ii) any letter of credit issued in its favour, and
  - (iii) any bill of exchange or other negotiable instrument held by it
- (b) To the extent that any right described in paragraph 2 3 (a) of the Security Agreement (detailed at paragraph 2 3 (a) above) is not assignable or capable of assignment, the assignment of that right purported to be effected by paragraph 2 3 (a) of the Security Agreement (detailed at paragraph 2 3 (a) above) shall operate as an assignment of any damages, compensation, remuneration, profit, rent or income which the Chargor may derive from that right or be awarded or entitled to in respect of that right
- (c) To the extent that they do not fall within any other Subclause of the Security Agreement and are not effectively assigned under paragraphs 2 3 (a) and (b) of the Security Agreement

(detailed at paragraphs 2 3 (a) and (b) above) the Chargor has charged by way of first fixed charge all of its rights under each agreement and document to which it is a party

## 2.4 Floating charge

- (a) Under the Security Agreement the Chargor charged by way of a first floating charge all of its assets whatsoever and wheresoever not otherwise effectively mortgaged, charged or assigned under the Security Agreement
- (b) Except as provided below, the Security Trustee may by notice to the Chargor convert the floating charge created by the Security Agreement into a fixed charge as regards any of the Chargor's assets specified in that notice, if
  - (i) an Enforcement Event has occurred and is continuing,
  - (ii) the Security Trustee considers those assets to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy, or
  - (iii) the Chargor fails to comply, or takes or threatens to take any action which, in the reasonable opinion of the Security Trustee, is likely to result in it failing to comply with its obligations under Clause 4 (a) (Restrictions on dealing) in the Security Agreement
- (c) The floating charge created under the Security Agreement may not be converted into a fixed charge solely by reason of
  - (i) the obtaining of a moratorium, or
  - (ii) anything done with a view to obtaining a moratorium,under section 1A to the Insolvency Act 1986
- (d) The floating charge created under the Security Agreement will (in addition to the circumstances in which the same will occur under general law) automatically convert into a fixed charge over all of the Chargor's assets
  - (i) if an administrator is appointed or the Security Trustee receives notice of an intention to appoint an administrator, or
  - (ii) on the convening of any meeting of the members of the Chargor to consider a resolution to wind the Chargor up (or not to wind the Chargor up)
- (e) The floating charge created under the Security Agreement is a **qualifying floating charge** for the purpose of paragraph 14 of Schedule B1 to the Insolvency Act 1986
- (f) The giving by the Security Trustee of a notice under paragraph 2 4 (b) of the Security Agreement (detailed at paragraph 2 4 (b) above) in relation to any asset of the Chargor will not be construed as a waiver or abandonment of the Security Trustee's rights to give any other notice in respect of any other asset or of any other right

## **2.5 Voting rights**

- (a) Under the Security Agreement the Chargor may continue to exercise the voting rights, powers and other rights in respect of its Investments before the Security under the Security Agreement becomes enforceable
- (b) If the relevant Investments have been registered in the name of the Security Trustee or its nominee, the Security Trustee (or that nominee) must exercise the voting rights, powers and other rights in respect of the Investments in any manner which the Chargor may direct in writing. The Security Trustee (or that nominee) will execute any form of proxy or other document which the Chargor may reasonably require for this purpose
- (c) Before the Security under the Security Agreement becomes enforceable, all dividends or other income or distributions paid or payable in relation to any Investments must be paid to the Chargor. To achieve this
  - (i) the Security Trustee or its nominee will promptly execute any dividend mandate necessary to ensure that payment is made direct to the Chargor, or
  - (ii) if payment is made directly to the Security Trustee (or its nominee) before the Security under the Security Agreement becomes enforceable, the Security Trustee (or that nominee) will promptly pay that amount to the Chargor
- (d) Before the Security under the Security Agreement becomes enforceable, the Security Trustee shall use its reasonable endeavours to promptly forward to the Chargor all material notices, correspondence and/or other communication it receives in relation to the Investments
- (e) After the Security under the Security Agreement has become enforceable, the Security Trustee or its nominee may exercise or refrain from exercising
  - (i) any voting rights, and
  - (ii) any other powers or rights which may be exercised by the legal or beneficial owner of any Investment, any person who is the holder of any Investment or otherwise,

in each case, in the name of the Chargor, the registered holder or otherwise and without any further consent or authority on the part of the Chargor and irrespective of any direction given by the Chargor
- (f) To the extent that the Investments remain registered in the names of the Chargor, the Chargor irrevocably appoints the Security Trustee or its nominee as its proxy to exercise all voting rights in respect of those Investments at any time after the Security under the Security Agreement has become enforceable
- (g) The Chargor must indemnify the Security Trustee against any loss or liability incurred by the Security Trustee as a consequence of the Security Trustee acting in respect of its Investments on the direction of the Chargor

## **3. RESTRICTIONS ON DEALINGS**

Under the terms of the Security Agreement the Chargor has agreed not to

- (a) create or allow to exist any Security on any Security Asset, or
- (b) either in a single transaction or in a series of transactions and whether related or not and whether voluntarily or involuntarily dispose of all or any part of its assets,

unless permitted under the Terms and Conditions

#### 4. FURTHER ASSURANCES

Under the Security Agreement the Chargor must, at its own expense, take whatever action the Security Trustee or a Receiver may require for

- (a) creating, perfecting or protecting any security intended to be created by or pursuant to the Security Agreement,
- (b) facilitating the realisation of any Security Asset,
- (c) facilitating the exercise of any right, power or discretion exercisable, by the Security Trustee or any Receiver or any of its delegates or sub-delegates in respect of any Security Asset, or
- (d) creating and perfecting security in favour of the Security Trustee (equivalent to the security intended to be created by the Security Agreement) over any assets of the Chargor located in any jurisdiction outside England and Wales

This includes

- (i) the re-execution of the Security Agreement,
- (ii) the execution of any legal mortgage, charge, transfer, conveyance, assignment or assurance of any property, whether to the Security Trustee or to its nominee, and
- (iii) the giving of any notice, order or direction and the making of any filing or registration,

which, in any such case, the Security Trustee may think expedient

#### 5. NOTES

- (a) The Security Agreement contains the power to appoint one or more persons to be a Receiver
- (b) The Security Agreement contains a power of attorney in favour of the Security Trustee, each Receiver and each of their respective delegates and sub-delegates

#### 6. DEFINITIONS

In this Companies Form 395

**Agent** means Investcorp Securities Limited as registrar and agent

**Agency Agreement** means the agency agreement dated 28 March 2008 between the Chargor as issuer and Investcorp Securities Limited as registrar and agent

**Acquisition** means the acquisition by Appia Investments Limited of the entire issued share capital of Welcome Break Group Holdings Limited



**Cash Equivalent Investments** means

- (a) debt securities denominated in sterling, US dollars or euro issued by, or unconditionally guaranteed by the United Kingdom or the United States of America or any member state of the European Union from time to time which are not convertible into any other form of security and having not more than six months to final maturity,
- (b) debt securities denominated in sterling, US dollars or euro which are not convertible into any other form of security and having not more than six months to final maturity, at all times rated P-1 (Moody's Investor Services Inc ) or A-1 (Standard & Poor's Corporation) and which are not issued or guaranteed by any member of the VLN Group,
- (c) certificates of deposit denominated in sterling, US dollars or euro issued by banking institutions authorised under applicable legislation of the United Kingdom rated P-1 (Moody's Investor Services Inc ) or A-1 (Standard & Poor's Corporation), and
- (d) other securities (if any) approved in writing by the Agent,

to which the Chargor or a Senior Obligor is alone or with other Senior Obligors beneficially entitled and for so long as there is no Security over such investments except VLN Security or Senior Transaction Security

**Closing Date** means the date on which completion of the Acquisition occurs or, if earlier, the date on which the first Note is issued

**Enforcement Event** means an Event of Default in respect of which notice has been served and is outstanding pursuant to Condition 14 20 (Acceleration) of the Terms and Conditions

**Event of Default** means any event or circumstance specified as such in Condition 14 (Events of Default) of the Terms and Conditions

**Fee Letter** means the fee letter in the agreed form dated on or about the date of the Subscription Agreement from the Initial Purchasers to the Chargor

**Initial Purchasers** means the companies and partnerships listed in Schedule 1 of the Subscription Agreement being more particularly, Investcorp Welcome Holdings LP, M S A Enterprises Limited, M S A International Limited, Necessity Holdings International Limited, MidOcean (Europe) 2003 LP and JP Morgan (Suisse) SA

**Investments** means

- (a) the Shares, and
- (b) all other shares, stocks, debentures, bonds, warrants, coupons and other securities and investments,

which the Chargor purports to mortgage or charge under the Security Agreement

**Note** means the £55,000,000 floating rate notes due in 2013 (the **Notes**, which expression includes any further notes issued pursuant to Condition 5 2(a)(ii) (Payment of capitalisation of Interest), 5 5 (Initial Purchasers' fee), 9 1(b)(ii) (Increased costs) or 27 1(c) (Required costs) of the Terms and Conditions and forming a single series therewith)

**Noteholder** means the registered holders of the Notes, being at the Closing Date the Initial Purchasers, and subsequently the person in whose name a Note is registered in the register of Noteholders maintained by the Agent

**Receiver** means an administrative receiver, a receiver or manager or a receiver, in each case, appointed under the Security Agreement

**Relevant Contract** means the intercompany loan agreement dated 28 March 2008 entered into between Appia Finance 2 Limited and the Chargor in connection with the Acquisition

**Security** means any mortgage, standard security, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement entered into for the purpose of conferring preferential rights over an asset to any creditor having a similar effect

**Security Assets** means all assets of the Chargor which are the subject of Security created by the Security Agreement

**Senior Facilities Agreement** means the senior facilities agreement dated 23 February 2007 between, amongst others, Welcome Break Group Limited as the Company, The Royal Bank of Scotland plc and Calyon as mandated lead arrangers and The Royal Bank of Scotland plc as agent and security trustee in force at the date of the Subscription Agreement (notwithstanding Condition 1.2(a)(iv) (Construction))

**Senior Obligor** means a "Borrower" or a "Guarantor", as defined in the Senior Facilities Agreement

**Senior Transaction Security** has the meaning given to "Transaction Security" in the Senior Facilities Agreement

**Shares** means all shares that are the subject of the Security Agreement

**Subscription Agreement** means the subscription agreement dated 28 March 2008 in relation to the Notes between the Chargor and the Initial Purchasers

**Subsidiary** means in relation to a company or corporation, any company or corporation

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

**Subordination Agreement** means the subordination agreement dated 28 March 2008 between the Chargor, Appia Europe Limited and the Security Trustee

**Terms and Conditions** means the document entitled 'Conditions of the Notes', being Schedule 1 (Conditions of the Notes) to the Agency Agreement dated on 28 March 2008 between, among others, the Chargor as the issuer and the Security Trustee and relating to £55,000,000 Floating Rate Notes due 2013 and issued by the Chargor

**Vendor Debt** means all liabilities payable or owing by the Chargor to a VLN Finance Party under or in connection with the VLN Finance Documents

**Vendor Debt Discharge Date** means the date on which all the Vendor Debt has been unconditionally and irrevocably paid and discharged in full, as determined by the Security Trustee

**VLN Finance Document** means the Subscription Agreement, each Note, the Terms and Conditions, the Agency Agreement, the Subordination Agreement, the Fee Letter, each VLN Security Document and any other document designated in writing as a "VLN Finance Document" by both the Agent and the Chargor

**VLN Finance Party** means the Agent, the Security Trustee and each Noteholder

**VLN Group** means the Chargor and its Subsidiaries from time to time

**VLN Security** means the Security created or expressed to be created and any rights granted (including, without limitation, rights of subordination and priority) in favour of the Security Trustee or the VLN Finance Parties pursuant to the VLN Security Documents

**VLN Security Documents** means

- (a) the Security Agreement
- (b) the Subordination Agreement, and
- (c) any replacement or supplemental document



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

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

**COMPANY NO. 6490331  
CHARGE NO. 1**

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES  
HEREBY CERTIFIES THAT A SECURITY AGREEMENT DATED 28  
MARCH 2008 AND CREATED BY APPIA FINANCE LIMITED FOR  
SECURING ALL MONIES DUE OR TO BECOME DUE FROM THE  
COMPANY TO ANY VLN FINANCE PARTY 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 3 APRIL 2008

GIVEN AT COMPANIES HOUSE, CARDIFF THE 10 APRIL 2008



*Companies House*  
— for the record —



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

PS