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Particulars of a mortgage or charge

395

CHFP000

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

Pursuant to section 395 of the Companies Act 1985

COMPANIES HOUSE

For Official use

Company Number

115382/117

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

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40203

Name of Company

* Cape PLC (the "Company")

Date of creation of the charge

16 October 2006

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

Fixed and Floating Security Document (the "Security Document")

Amount secured by the mortgage or charge

(PLEASE SEE ATTACHED CONTINUATION SHEET)

Name and address of the mortgagees or persons entitled to the charge

Barclays Bank PLC, 5 The North Colonnade, London, E14 4BB,

as security trustee and security agent for the Secured Parties (the "Security Agent")

Postcode

E14 4BB

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

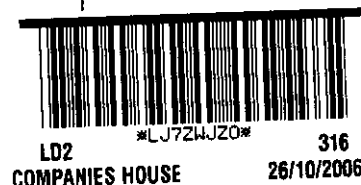
Linklaters
One Silk Street
London EC2Y 8HQ
Tel: 020 7456 2000

Ref: JSCW/SBAS/LZH

Time critical reference

For official Use
Mortgage Section

Post room

Please do not write
in this marginPlease complete
legibly, preferably
in black type or
bold block lettering*insert full name of
company

(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

hnhwater

Date

25/10/06

On behalf of ~~{company}~~ [mortgagee/chargee][†]

A fee of £13 is
payable to
Companies House
in respect of each
register entry for a
mortgage or
charge.
(See Note 5)

[†] Delete as appropriate

Note

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 including 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

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Name of Company

Cape PLC

Company Number

40203

Amount secured by the mortgage or charge

The "**Liabilities**", which are defined in the Security Document as meaning all present and future moneys, debts and liabilities due, owing or incurred by the Company to any Secured Party including but not limited to under or in connection with any Finance Document (in each case, whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently and whether as principal, surety or otherwise).

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Short particulars of all the property mortgaged or charged

The Company, with full title guarantee and as security for the payment and discharge of all Liabilities (whether of the Company or any other Chargor), charged in favour of the Security Agent (as trustee for the Secured Parties):

- 1 **Present Real Property:** by way of first legal mortgage, all of the Real Property described in Schedule 4 (*The Legally Mortgaged Property*) to the Security Document (as set out in Note (3)) owned by it.
- 2 **Future Real Property:** by way of first fixed equitable charge, all Real Property belonging to it at the date of the Security Document and all Real Property acquired by it thereafter, except (in the case of leasehold property) to the extent that the landlord's consent is required to create that charge and has not been obtained.
- 3 **Other Assets:** by way of first fixed charge, all its:

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 - 3.1 Book Debts; ✓
 - 3.2 Bank Accounts;
 - 3.3 Investments and Dividends;
 - 3.4 uncalled capital and goodwill; ✓
 - 3.5 Intellectual Property;
 - 3.6 beneficial interest in any pension fund;
 - 3.7 plant and machinery (including, without limitation, the Plant) (except any already charged by paragraph 1 above (*Present Real Property*)); and ✓
 - 3.8 Insurances and all related proceeds, claims of any kind, returns of premium and other benefits, in each case, both present and future.
- 4 **Floating Charge:** The Company, with full title guarantee and as security for the payment of all Liabilities (whether of the Company or any other Chargor), charges in favour of the Security Agent (as trustee for the Secured Parties) by way of first floating charge, its undertaking and all its assets, both present and future (including assets expressed to be charged by paragraphs 1 (*Present Real Property*) to 3 (*Other Assets*) above. ✓

Note (1): The Security Document provides that:

- 1 **Security:** The Company shall not create or permit to subsist any Security Interest over the Charged Assets (except for the Charges and Security Interests expressly permitted under Clause 25.3 (*Negative Pledge*) of the Facility Agreement) nor do anything else prohibited by that clause.

Short particulars of all the property mortgaged or charged

- 2 Disposal:** The Company shall not (and shall not agree to) enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, license, sub-license, transfer or otherwise dispose of any Charged Asset except as permitted by Clause 25.4 (*Disposals*) of the Facility Agreement.
- 3 Conversion by Notice:** The Security Agent may convert the floating Charge over all or any of the Charged Assets into a fixed Charge by notice to the Company specifying the relevant Charged Assets (either generally or specifically):
- 3.1** if it (acting reasonably) considers it necessary to do so in order to protect or preserve the Charges over those Charged Assets and/or the priority of those Charges; and/or
- 3.2** when an Enforcement Event has occurred.
- 4 Automatic Conversion:** If:
- 4.1** the Company takes any step to create any Security Interests in breach of paragraph 1 (*Security*) above over any of the Charged Assets not subject to a fixed Charge; or
- 4.2** any person takes any step to effect any expropriation, attachment, sequestration, distress or execution against any of those Charged Assets,
- the floating Charge over the relevant Charged Assets shall automatically and immediately be converted into a fixed Charge.

Note (2): In this Form, except to the extent that the context requires otherwise:

"Accession Letter" means a document substantially in the form set out in Schedule 6 (*Form of Accession Letter*) of the Facility Agreement.

"Affiliate" means, in relation to any person, a subsidiary of that person or a holding company of that person or any other subsidiary of that holding company.

"Agent" means Barclays Bank PLC, as Agent under the Facility Agreement.

"Ancillary Facility" means an ancillary facility made available by an Ancillary Lender in accordance with Clause 8 (*Ancillary Facilities*) of the Facility Agreement.

"Ancillary Facility Document" means a document setting out the terms of an Ancillary Facility.

"Ancillary Lender" means a Lender, or an Affiliate of a Lender, which agrees to make available an Ancillary Facility in accordance with Clause 8 (*Ancillary Facilities*) of the Facility Agreement.

"Arranger" means Barclays Capital and Bank of Scotland, as mandated lead arrangers of the Facility Agreement.

"Bank Accounts" means all current, deposit or other accounts with any bank or financial institution in which the Company at the date of the Security Document or in the future has an interest and (to the extent of its interest) all balances at the date of the Security Document or in the future standing to the credit of or accrued or accruing on those accounts.

"Bank of Scotland" means The Governor and Company of the Bank of Scotland.

"Barclays Capital" means Barclays Capital, the investment banking division of Barclays Bank PLC.

"Barclays Term Loan" means the £15m term loan facility made available to Cape PLC by Barclays Bank PLC under the Existing Facility Agreement.

Short particulars of all the property mortgaged or charged

"Bilateral Lender" means Barclays Bank PLC.

"Book Debts" means all book and other debts of any nature, and all other rights to receive money (excluding Bank Accounts), at the date of the Security Document or in the future due, owing or payable to the Company and the benefit of all related negotiable instruments, rights, Security Interests, guarantees and indemnities of any kind.

"Charged Assets" means the assets from time to time subject, or expressed to be subject, to the Charges or any part of those assets.

"Charges" means all or any of the Security Interests created or expressed to be created by or pursuant to the Security Document and **"Charge"** means any of them.

"Chargor" means the companies listed in Schedule 1 of the Security Document (each a **"Chargor"** and together the **"Chargors"**).

"Dividends" means all of the following at the date of the Security Document or in the future:

- (i) dividends and distributions of any kind and any other sum received or receivable in respect of any Investment;
- (ii) rights, shares, money or other assets accruing or offered by way of redemption, bonus, option or otherwise in respect of any Investment;
- (iii) allotments, offers and rights accruing or offered in respect of any Investment; and
- (iv) other rights and assets attaching to, deriving from or exercisable by virtue of the ownership of, any Investment.

"Enforcement Event" means an Event of Default in respect of which any notice has been issued or rights exercised by the Agent under Clause 26.15 (*Acceleration*) of the Facility Agreement or under Clause 25.15 (*Acceleration*) of the Barclays Term Loan or any valid demand has been made for Junior Debt as defined in and permitted by the Intercreditor Agreement.

"Event of Default" means any event or circumstance specified as such in Clause 26 (*Events of Default*) of the Facility Agreement.

"Existing Facility Agreement" means the facility agreement dated 27 August 2003, as amended and restated pursuant to a second amendment and restatement agreement dated 31 January 2006.

"Facility Agreement" means the facility agreement dated on or about the date of the Security Document made between, *inter alia*, Cape PLC and certain subsidiaries of Cape PLC as borrowers and guarantors, the Arrangers, the Agent and the Security Agent, and the Lenders named therein.

"Fee Letter" means any letter or letters dated on or about the date of the Facility Agreement between, as the case may be, the Arranger and the Cape PLC, the Agent and Cape PLC or the Security Agent and Cape PLC setting out any of the fees referred to in Clause 15 (*Fees*) of the Facility Agreement.

"Finance Document" means the Facility Agreement, any Ancillary Facility Document, any Fee Letter, any Hedging Document, the Hedging letter, the Intercreditor Agreement, any Accession Letter, any Security Document (as defined in the Facility Agreement), and any other document designated as such by the Agent and Cape PLC.

Short particulars of all the property mortgaged or charged

"Fixtures" means fixtures, fittings (including trade fixtures and fittings) and fixed plant, machinery and apparatus.

"Hedging Bank" means a Lender (or an Affiliate of a Lender) which has become a party to the Intercreditor Agreement as a Hedging Bank in accordance with the Intercreditor Agreement.

"Hedging Documents" means the documents entered into between a member of the Group and a Hedging Bank for the purpose of implementing the hedging strategy required by the Hedging Letter.

"Hedging Letter" means the letter to be entered into between the Arranger and Cape PLC setting out the hedging strategy agreed in relation to the Facilities.

"Insolvency Act" means the Insolvency Act 1986.

"Insurances" means all contracts and policies of insurance of any kind at the date of the Security Document or in the future taken out by or on behalf of the Company or (to the extent of its interest) in which the Company at the date of the Security Document or in the future has an interest.

"Intellectual Property" means all trade marks, service marks, trade names, domain names, logos, get up, patents, inventions, registered and unregistered design rights, copyrights, topography rights, database rights, rights in confidential information and know-how, and any associated or similar rights anywhere in the world, which the Company at the date of the Security Document or in the future owns or (to the extent of its interest) in which the Company at the date of the Security Document or in the future has an interest (in each case whether registered or unregistered and including any related licences and sub-licences of the same granted by it or to it, applications and rights to apply for the same).

"Intercreditor Agreement" means the intercreditor agreement entered into on or about the date of the Security Document between the Agent, the Security Agent, the Hedging Bank and the Obligors.

"Investments" means:

- (i) securities and investments of any kind (including shares, stock, debentures, units, depositary receipts, bonds, notes, commercial paper and certificates of deposit);
- (ii) warrants, options or other rights to subscribe for, purchase or otherwise acquire securities and investments;
- (iii) all rights relating to securities and investments which are deposited with, or registered in the name of, any depositary, custodian, nominee, clearing house or system, investment manager, chargee or other similar person or their nominee, in each case whether or not on a fungible basis (including rights against any such person); and
- (iv) all other rights attaching or relating to securities or investments and all cash or other securities or investments in the future deriving from Investments or such rights,

in each case at the date of the Security Document or in the future owned by the Company or (to the extent of its interest) in which the Company at the date of the Security Document or in the future has an interest.

Short particulars of all the property mortgaged or charged

"Junior Debt" means all present and future moneys, debts and liabilities other than Senior Debt due, owing or incurred by any Obligor to any Junior Lender (in each case, whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently, and whether as principal, surety or otherwise).

"Junior Lenders" means Barclays Bank PLC and Bank of Scotland as providers of ancillary facilities made available to any obligor other than under the Facility Agreement.

"Lender" means a Lender under and as defined in the Facility Agreement.

"Obligor" means Cape PLC, each Original Obligor, each Additional Borrower and each Additional Guarantor (each term as defined in the Intercreditor Agreement).

"Plant" means all items listed in any Plant Notice.

"Plant Notice" means a notice (in substantially similar form to that set out in Schedule 3 of the Security Document) of plant, machinery and other equipment to be delivered to the Security Agent pursuant to Clause 10.6 (*Notification of Plant*) of the Security Document.

"Real Property" means freehold and leasehold property in England and Wales and other real property anywhere in the world (in each case including any estate or interest therein, all rights from time to time attached or relating thereto and all Fixtures from time to time therein or thereon).

"Secured Party" means the Senior Lenders and the Junior Lenders (each as defined in the Intercreditor Agreement).

"Security Interests" means a mortgage, charge, pledge, lien, assignation, standard security, hypothecation, assignment by way of security or other security interest securing any obligation of any person or any other agreement or arrangement entered into with the primary intention of providing security and a **"Security Interest"** is any of them.

"Senior Lenders" means a Syndicated Finance Party, a Hedging Bank and the Bilateral Lender.

"Syndicated Finance Party" means the Agent, the Security Agent and each Syndicated Lender.

"Syndicated Lenders" means Barclays Bank PLC and Bank of Scotland as Lenders under the Facility Agreement including in their capacity as Ancillary Lenders.

Name of Company

Cape PLC

Company Number

40203

Short particulars of all the property mortgaged or charged

Note (3): In relation to the Company, the Real Property specified in Schedule 4 (*The Legally Mortgaged Property*) to the Security Document is as follows:

None

FILE COPY



CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

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

COMPANY No. 00040203

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT A FIXED AND FLOATING SECURITY DOCUMENT DATED THE 16th OCTOBER 2006 AND CREATED BY CAPE PUBLIC LIMITED COMPANY FOR SECURING ALL MONIES DUE OR TO BECOME DUE FROM THE COMPANY TO ANY SECURED 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 26th OCTOBER 2006.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 31st OCTOBER 2006.

Handwritten signature



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES



Companies House

— for the record —