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COMPANIES FORM No. 395

Particulars of a mortgage or charge

FEE	PA
£	13.00
COMPANIES HOUSE	

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

[9111]

00192753

Name of company

* Ewen & Company Limited (the "Company")

Date of creation of the charge

1 February 2005

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

Debenture (the "Charge")

Amount secured by the mortgage or charge

All or any Secured Obligations and all or any monies, liabilities and obligations due by the Chargor under or pursuant to the Charge.

See Paper Apart 1 for definitions.

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

The Governor and Company of the Bank of Scotland as Security Trustee for the Secured Parties (the "Security Trustee")
The Mound, Edinburgh

Postcode EH1 1YZ

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

McGrigors

Princes Exchange
1 Earl Grey Street
Edinburgh
EH3 9AQ

eimange - 538954

Time critical reference

For official Use (02/00)

Mortgage Section

Post room



A41
COMPANIES HOUSE

0509
10/02/05

Short particulars of all the property mortgaged or charged

See Paper Apart 2

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)

N/A

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

Signed



Date

09/02/05

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 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

Paper Apart 1
EWEN & COMPANY LIMITED
Registered in England and Wales with Company Number 00192753
Paper Apart to Form 395 in respect of a debenture granted in favour of the Governor and
Company of the Bank of Scotland in its capacity as Security Trustee for the Secured Parties.

"Account Bank" means Bank of Scotland solely in its capacity as account bank under the Senior Facility Agreement, its successors in title and each successor account bank appointed from time to time under the Senior Facility Agreement;

"Agent" means Bank of Scotland, solely in its capacity as agent under the Senior Facility Agreement, its successors in title and each successor agent appointed from time to time under the Senior Facility Agreement;

"Ancillary Rights " means the benefit of all covenants, leases, tenancies, agreements, licences, rights, conditions or encumbrances relating to the Mortgaged Properties and all monies paid or payable thereunder;

"Arranger" means Bank of Scotland solely in its capacity as arranger under the Senior Facility Agreement, its successors in title and each successor arranger appointed from time to time under the Senior Facility Agreement;

"Asset Finance Facility Documents" means:

- (a) the Asset Finance Documents (as defined in the Senior Facility Agreement); and
- (b) any replacement and/or additional asset finance agreement entered into with the consent of the Agent (such consent not required for any asset finance agreement which is entered into to replace any facility available under the Asset Finance Document withdrawn by Bank of Scotland) by an Obligor and an Asset Finance Facility Provider; provided that the face amount of any such replacement and/or additional agreements (when aggregated with the principal amount outstanding under the agreement referred to in paragraph (a)) shall not exceed £15,000,000 in principal aggregate amount at any time outstanding,

and **"Asset Finance Facility Document"** means any of them;

"Asset Finance Facility Providers" means:

- (a) The Governor and Company of the Bank of Scotland through the trading name Bank of Scotland Asset Finance, solely in its capacity as lender under the Asset Finance Facility Documents; and
- (b) any other bank or financial institution that provides an asset finance facility to any Obligor, which has entered into a Deed of Accession,

and **"Asset Finance Facility Provider"** means any of them;

"Asset Finance Obligations" means all obligations and liabilities (whether present or future, actual or contingent, as principal or surety and whether severally or jointly) of the Obligors (or any of them) to an Asset Finance Facility Provider under or arising out of or in connection with the Asset Finance Facility Documents (or any of them);

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

"Deed of Accession" means:

- (a) in respect of an assignee or transferee of a Secured Party or a new Secured Party, a deed of accession in the form set out in schedule 2 (*Secured Party Deed of Accession*) of the Intercreditor Agreement; and
- (b) in respect of any Subsidiary of the Parent, a deed of accession in the form set out in schedule 1 (*Obligor Deed of Accession*) of the Intercreditor Agreement;

"Encumbrance" means any Security Interest (as defined in the Senior Facility Agreement);

"Finance Documents" means:

- (i) the Finance Documents referred to in the Senior Facility Agreement;
- (ii) the Finance Documents referred to in the Mezzanine Facility Agreement;
- (iii) the Working Capital Facility Agreements;
- (iv) the Asset Finance Facility Documents;
- (v) the Invoice Discounting Facility Documents;
- (vi) the Hedging Agreements;
- (vii) the Security Documents; and
- (viii) the Intercreditor Agreement;

"Hedging Agreements" means:

- (a) the agreement dated on or about the date of the Intercreditor Agreement in the form of the ISDA Master Agreement, Schedule and confirmation thereto entered into between the Company and/or the Principal Subsidiary and the Hedge Counterparty; and
- (b) any replacement or additional hedging agreement entered into by an Obligor and a Hedge Counterparty in accordance with the Senior Facility Agreement;

"Hedge Counterparty" means:

- (a) HBOS Treasury Services plc, solely in its capacity as a party to the Hedging Agreement and its successors in title; and
- (b) any other bank or financial institution that enters into a hedging agreement with an Obligor which has entered into a Deed of Accession;

"Hedging Obligations" means all obligations and liabilities (whether present or future, actual or contingent, as principal or surety and whether severally or jointly) of the Obligors (or any of them) to a Hedge Counterparty under or arising out of or in connection with the Hedging Agreements (or any of them);

"Insurances" means all policies of contracts of insurance or assurance at the date of the Charge or thereafter effected by the Chargor or on the Chargor's behalf or in which it may have an interest;

"Intellectual Property Rights" has the meaning given to "Intellectual Property" in the Senior Facilities Agreement;

"Intercreditor Agreement" means the Intercreditor agreement dated 1 February 2005 between, *inter alios*, the Parent, Agent, Senior Lender, Account Bank, Arranger, Working Capital Bank, Hedge Counterparties, Invoice Discounting Facility Providers, Mezzanine Lenders and Security Trustee;

"Invoice Discounting Facility Documents" means:

- (a) the Invoice Discounting Documents (as defined in the Senior Facility Agreement); and
- (b) any replacement and/or additional cashflow finance facility documentation entered into with the consent of the Agent (such consent not required for any cashflow finance documentation entered into to replace any facility available under the Invoice Discounting Documents which is withdrawn by Bank of Scotland) between an Obligor and an Invoice Discounting Facility Provider; provided that the face amount of any such replacement and/or additional agreements (when aggregated with the principal amount outstanding under the agreement referred to in paragraph (a)) shall not exceed £40,000,000 in principal aggregate amount at any time outstanding,

and **"Invoice Discounting Facility Document"** means any of them;

"Invoice Discounting Facility Providers" means:

- (a) The Governor and Company of the Bank of Scotland through the trading name Bank of Scotland Cashflow Finance, solely in its capacity as lender under the Invoice Discounting Facility Documents, its successors in title and each transferee or assignee of its rights and obligations under the Invoice Discounting Facility Documents that enters into a Deed of Accession; and
- (b) any other bank or financial institution that enters an agreement described in paragraph (b) of the definition above of Invoice Discounting Facility Documents and enters into a Deed of Accession,

and **"Invoice Discounting Facility Provider"** means any of them;

"Invoice Discounting Obligations" means all obligations and liabilities (whether present or future, actual or contingent, as principal or surety and whether severally or jointly) of the Obligors to the Invoice Discounting Facility Providers under or arising out of or in connection with an Invoice Discounting Facility Document;

"Mezzanine Enforcement Event" means the service by the Mezzanine Lender of a notice under clause 22.20 (*Acceleration*) of the Mezzanine Facility Agreement pursuant to an event of default under clause 22 of the Mezzanine Facility Agreement;

"Mezzanine Facility Agreement" means the mezzanine facility agreement dated 15 October 2001 made between the Company, Meadfine Limited and Westdeutsche

Landesbank Girozentrale, assigned by Meadfine Limited to Investec Bank (Channel Islands) Limited pursuant to an assignment dated March 2002 and as amended and restated on or about the date of the Intercreditor Agreement;

"Mezzanine Lenders" means Investec Bank (Channel Islands) Limited, solely in its capacity as a mezzanine lender under the Mezzanine Facility Agreement, its successors in title and each transferee or assignee of its rights under the Mezzanine Facility Agreement that enters into a Deed of Accession, and **"Mezzanine Lender"** means any of them;

"Mezzanine Obligations" means all obligations and liabilities (whether present or future, actual or contingent, as principal or surety and whether severally or jointly) of the Obligors (or any of them) to the Mezzanine Lenders under or arising out of or in connection with the Mezzanine Facility Agreement and related Finance Documents (as defined in the Mezzanine Facility Agreement);

"Mortgaged Properties" means all freehold or leasehold properties from time to time forming part of the Security Assets and includes the Specified Properties;

"Obligors" means the Parent, each company listed in schedule 4 (*Obligors*) of the Intercreditor Agreement (including the Chargor) and each other Subsidiary of the Parent that signs a Deed of Accession in the form of schedule 1 (*Obligor Deed of Accession*) of the Intercreditor Agreement and **"Obligor"** means any of them;

"Parent" means Whyte and Mackay Group Limited, a company incorporated in Scotland with the registered number SC221954 and having its registered office at Dalmore House, 310 St Vincent Street, Glasgow, G2 5RG;

"Principal Subsidiary" means Whyte and Mackay Limited, a company incorporated in Scotland with the registered number SC014456 and having its registered office at Dalmore House, 310 St Vincent Street, Glasgow, G2 5RG;

"Secured Obligations" means the Senior Obligations, the Working Capital Obligations, the Hedging Obligations, the Asset Finance Obligations, the Invoice Discounting Obligations and the Mezzanine Obligations, or any of them;

"Secured Parties" means the Agent, the Security Trustee, the Senior Lenders, the Account Bank, the Mezzanine Lenders, the Working Capital Banks, the Invoice Discounting Facility Providers, the Hedge Counterparties and the Asset Finance Facility Providers and **"Secured Party"** means any of them;

"Security Assets" means all or any part of or interest in the undertaking, property, rights and assets of the Chargor which at the date of the Charge or any time thereafter are or are expressed to be the subject of any Security Interest created or purported to be created by or pursuant to the Charge;

"Security Documents" means:

- (i) each Floating Charge;
- (ii) each Debenture;
- (iii) each Share Pledge;
- (iv) each Standard Security;

- (v) each Stock Pledge;
- (vi) each Fixed Charge;
- (vii) the Intercreditor Agreement; and
- (viii) all other Encumbrances over the assets of Obligor securing amounts outstanding under the Finance Documents;

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

"Senior Discharge Date" means the first date following drawdown of the Term Loan (as defined in the Senior Facility Agreement) when no Obligor has any liability, actual or contingent to any Senior Lender, Hedge Counterparty or Working Capital Bank under any Finance Document (as defined in the Senior Facility Agreement);

"Senior Enforcement Event" means the delivery to the Parent by the Agent of a notice under clause 27.20 (*Acceleration*) of the Senior Facility Agreement or, following the Senior Discharge Date, an event of default under the Asset Finance Facility Documents or the Invoice Discounting Facility Documents;

"Senior Facility Agreement" means the facilities agreement dated 1 February 2005 among *inter alios* the Company, Arranger, Agent, Security Trustee and Account Bank and the Senior Lenders;

"Senior Lenders" means Bank of Scotland, solely in its capacity as lender under the Senior Facility Agreement, its successors in title and each transferee or assignee of its rights and obligations under the Senior Facility Agreement that enters into a Deed of Accession, and **"Senior Lender"** means any of them;

"Senior Obligations" means all obligations and liabilities (whether present or future, actual or contingent, as principal or surety and whether severally or jointly) of the Obligor (or any of them) to the Senior Lenders, the Agent, the Arranger, the Account Bank and the Security Trustee under or arising out of or in connection with the Senior Facility Agreement or any related Finance Document (as defined in the Senior Facility Agreement);

"Specified Intellectual Property Rights" means the Intellectual Property Rights specified in schedule 3 of the Charge;

"Specified Insurances" means the Insurances specified in part 1 of schedule 2 to the Charge;

"Specified Properties" means the freehold and leasehold properties specified in schedule 1 of the Charge;

"Subsidiary" means a subsidiary undertaking within the meaning of Section 258 of the Companies Act 1985;

"Working Capital Banks" means:

- (a) Bank of Scotland in its capacity as lender under the Working Capital Facility Agreement, its successors in title and each transferee or assignee of its rights and

obligations under the Working Capital Facility Agreements that enters into a Deed of Accession; and

- (b) any other bank or financial institution that enters into an agreement described in paragraph (b) of the definition below of Working Capital Facility Agreements and enters into a Deed of Accession,

and **"Working Capital Bank"** means any of them;

"Working Capital Facility Agreements" means:

- (a) the Working Capital Documents (as defined in the Senior Facility Agreement); and
- (b) any replacement and/or additional working capital facility agreement entered into with the consent of the Agent (such consent not required for any working capital facility agreement entered into to replace any facility made available under the Working Capital Documents which is withdrawn by Bank of Scotland) between an Obligor and a bank or financial institution provided that the aggregate amount of any such replacement and/or additional agreements (when aggregated with the amount outstanding under the agreement referred to in paragraph (a)) shall not exceed £25,000,000 in principal aggregate amount at any time outstanding; and

"Working Capital Obligations" means all obligations and liabilities (whether present or future, actual or contingent, as principal or surety and whether severally or jointly) of the Obligors (or any of them) to the Working Capital Banks from time to time.

Paper Apart 2
EWEN & COMPANY LIMITED
Registered in England and Wales with Company Number 00192753
Paper Apart to Form 395 in respect of a debenture granted in favour of the Governor and
Company of the Bank of Scotland

Mortgages and Charges

Land

- (a) by way of first legal mortgage all estates and interests in the Specified Properties and all other freehold or leasehold properties at the date of the Charge or thereafter belonging to the Chargor together with the premises and the fixtures on and in them, and the Ancillary Rights pertaining to them;
- (b) by way of first legal charge (to the extent not effectively mortgaged under paragraph (a) above, or any other present or future mortgage in favour of the Security Trustee), all estates and interests in all freehold or leasehold properties at the date of the Charge or thereafter belonging to the Chargor together with the premises and the fixtures and fittings on and in them and the Ancillary Rights pertaining to them.

Plant, machinery and chattels

By way of first fixed charge, all plant, machinery and other chattels at the date of the Charge or thereafter owned by the Chargor, and the Chargor's interest in all plant, machinery and other chattels held by the Chargor under any lease, licence, hire or rental contract or other arrangement (excluding any forming part of the Chargor's stock in trade or work in progress) together with the benefit of all hiring, leasing or rental contracts in respect of any such plant, machinery or chattels hired, leased or rented by the Chargor to any other person, and any guarantees, indemnities and Security Interests for the performance of such person's obligations at the date of the Charge or thereafter held or enjoyed by the Chargor in relation thereto.

Rental Income

By way of first fixed charge (except to the extent the subject of a valid fixed Security Interest under any other provision of the Charge), all rental income together with the benefit of all guarantees, indemnities, Security Interests and other rights of any nature now or hereafter held or enjoyed by the Chargor in relation thereto.

Intellectual Property Rights

By way of first fixed charge, the Specified Intellectual Property Rights, and all other Intellectual Property Rights at the date of the Charge or thereafter owned by the Chargor (solely or with others), and the Chargor's interest in all Intellectual Property Rights at the date of the Charge or thereafter held or used by the Chargor (solely or with others) under licence, sub licence, franchise or otherwise in any way together with the benefit of all licences, sub licences, franchises and other agreements or arrangements of any nature entered into by the Chargor in relation to the use by the Chargor or third parties of such Intellectual Property Rights.

Miscellaneous

By way of first fixed charge:

- (a) the benefit of all statutory or regulatory licences, permissions, consents or authorisations held by the Chargor in connection with the Chargor's business or the use of any Security Asset and any right to payment of compensation thereunder;
- (b) all sums, realised or recovered by any liquidator or administrator of the Chargor pursuant to Part VI of the Insolvency Act 1986;
- (c) the Chargor's goodwill; and
- (d) the Chargor's uncalled capital.

Assignments

By way of absolute assignment by way of security, the benefit of and the Chargor's whole present and future rights and claims under or in respect of the Specified Insurances and all other Insurances including without limitation, all rights to submit, negotiate and settle claims, and all monies at the date of the Charge or thereafter payable thereunder, including return of premiums provided that the Chargor may exercise such rights up until the occurrence of a Senior Enforcement Event or Mezzanine Enforcement Event (in each case which is continuing).

Charge

By way of first floating charge, the Chargor's whole undertaking, property, rights and assets, present and future, (including, without limitation, any immoveable property of the Chargor in Scotland and any assets in Scotland falling within any of the types mentioned in clause 2.1.2 (*Plant, machinery and chattels*) to 2.1.5 (*Miscellaneous*) of the Charge) except to the extent they are effectively mortgaged, charged or assigned by way of fixed mortgage, charge or assignment under or pursuant to the Charge (including any such property rights or assets comprised in a charge which is reconverted under clause 3.5 (*Reconversion*) of the Charge), or any other mortgage, charge or assignment in favour of the Security Trustee.

FILE COPY



CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

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

COMPANY No. 00192753

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT A DEBENTURE DATED THE 1st FEBRUARY 2005 AND CREATED BY EWEN & COMPANY LIMITED FOR SECURING ALL MONIES DUE OR TO BECOME DUE FROM THE OBLIGORS TO THE SENIOR LENDERS, THE AGENT, THE ARRANGER, THE ACCOUNT BANK AND THE SECURITY TRUSTEE 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 10th FEBRUARY 2005.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 15th FEBRUARY 2005.

P Debbu



Companies House

— for the record —



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES