

# M

CHFP041

Please do not  
write in  
this margin

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

\* Insert full name  
of company

COMPANIES FORM No. 395

## Particulars of a mortgage or charge

Pursuant to section 395 of the Companies Act 1985

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

388100/120

# 395

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

For official use Company number



03795352

Name of company

\* Simon Storage Limited (the "Company")

Date of creation of the charge

4 November 2003

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

Guarantee and Debenture (the "Guarantee and Debenture")

Amount secured by the mortgage or charge

Please see attached schedule, Part I.

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

The Royal Bank of Scotland plc (company number 90312) acting through its Syndicated Loans  
Agency team at Level 7, 135 Bishopsgate, London as Security Trustee for itself and for each of the  
Finance Parties (in such capacity as agent and trustee  
referred to as the "Security Trustee")

Postcode EC2M 3UR

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

Osborne Clarke, (Ref:  
ESM/0878698)  
2 Temple Back East, Temple  
Quay BS1 6EG  
DX 7818 Bristol

Time critical reference

For official use  
Mortgage section

Post room

A54  
COMPANIES HOUSE0678  
12/11/03

Com 395-1/2

Short particulars of all the property mortgaged or charged

Please see attached schedule, Part II.

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)

NIL

Signed Shane Clarke

Date 11/11/08

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.

**Simon Storage Limited**  
**Company number: 03795352**

## **Schedule to Form M395**

### **Definitions**

**"Accession Deed"** means a document substantially in the form set out in Schedule 5 (Form of Accession Deed) of the Guarantee and Debenture.

**"Agent"** means The Royal Bank of Scotland plc in its capacity as agent for and on behalf of the Finance Parties under the Facilities Agreement.

**"Book Debts"** shall be construed as a reference to all debts due to the Company whether or not the sum is such as would in the ordinary course of business be entered in the books relating to such business and shall extend to and be deemed to include all bank deposits, royalties, fees and income of like nature in relation to intellectual property and all moneys becoming payable to the Company in respect of debts due to or claims (including insurance claims) by the Company notwithstanding that the amount thereof shall not have been quantified at the time when the moneys secured by the Guarantee and Debenture shall have become payable.

**"Borrower"** means SIL.

**"Companies"** means the Companies listed in Part III of this schedule and any company that has executed an Accession Deed in favour of the Security Trustee.

**"Event of Default"** has the meaning given to it in the Facilities Agreement.

**"Facilities"** means the Senior Facilities and the Mezzanine Facilities.

**"Facilities Agreement"** means a facility agreement dated 31 October 2003 and made between Siena Investments Limited (1) the Arranger (2) the Mezzanine Arranger (3) the various financial institutions named therein as Original Senior Lenders (5) the various financial institutions named therein as Original Mezzanine Lenders (6) the Agent (7) and the Security Trustee (8) (as such terms are defined in the Facilities Agreement).

**"Fee Letter"** means any letter or letters dated on or after the date of this Agreement between the Arranger and the Borrower, the Mezzanine Arranger and the Borrower, the Security Trustee and the Borrower or the Agent and the Borrower setting out any of the fees referred to in Clause 12 (*Fees*) of the Facilities Agreement.

**"Finance Documents"** means the Facilities Agreement, the Security Documents, the Intercreditor Deed, any Working Capital Facility Agreement, the Hedging Documents, any Fee Letter, any Accession Deed and any other document designated as such by the Agent and the Borrower.

**"Finance Parties"** shall mean:

- (a) the Senior Finance Parties and Mezzanine Finance Parties (as defined in the Facilities Agreement); and
- (b) the Working Capital Lenders, Senior Hedging Lenders, Mezzanine Hedging Lenders, each as defined in the Intercreditor Deed.

**"Group"** means Siena Holdings Limited, the Companies and any of their Subsidiaries from time to time and **"member of the Group"** and **"Group Company"** shall be construed accordingly.

**"Hedging Arrangements"** means any and all interest rate management and/or foreign currency and/or other hedging arrangements entered into or committed to be entered into in respect of the Facilities by any member of the Group as have from time to time been agreed in writing between the Borrower, the Agent and the relevant Hedging Bank or Hedging Banks to constitute the Hedging Arrangements.

**"Hedging Documents"** means any and all documents setting out the terms of the Hedging Arrangements.

**"Hedging Bank"** means any party to the Intercreditor Deed in its capacity as a Senior Hedging Lender or a Mezzanine Hedging Lender, and **"Hedging Banks"** shall mean all of them.

**"Intercreditor Deed"** means the deed dated 31 October 2003 between the Security Trustee, the Agent, the Lenders, the Working Capital Lenders (as defined therein), the Senior Hedging Lenders (as defined therein), the Mezzanine Hedging Lenders (as defined therein), the Subordinated Creditors (as defined therein), and certain of the Group Companies regulating the respective rights and obligations of such parties.

**"Keyman Policies"** means the keyman life insurance policies for the benefit of the Group on the following terms:

Life Assured	Sum Assured	Duration of Cover	Policy Number
Roger Hartless	£250,000	5 years	ASSH007985
Martyn Lyons	£250,000	5 years	ASSH007986
Peter Rendall	£250,000	5 years	ASSH007984
Richard Sammons	£250,000	5 years	ASSH007987
Philip Betts	£250,000	5 years	ASSH007988

**"Mezzanine Arranger"** means Investec Bank (UK) Limited.

**"Mezzanine Facility"** means the mezzanine term loan facility made available under the Facilities Agreement as described in Clause 2.4 of the Facilities Agreement.

**"Mezzanine Hedging Deposit"** means any and all sums for the time being standing to the credit of, and the debt represented by the Mezzanine Hedging Receipts Account together with all interest accruing thereon;

**"Mezzanine Hedging Receipts"** means all sums payable to SIL under the Hedging Arrangements affected by SIL in connection with the hedging of interest payments relating to the Mezzanine Loan.

**"Mezzanine Hedging Receipts Account"** means an interest bearing account with the Agent bearing account number 20164575 into which all Mezzanine Hedging Receipts will be paid.

**"Mezzanine Loan"** means the loan made or to be made under the Mezzanine Facility, or the aggregate of the principal amount outstanding for the time being of that loan (including all capitalised and compounded interest accrued in accordance with this Agreement).

**"Permitted Security Interest"** has the meaning given to it in the Facilities Agreement.

**"Receiver"** means any receiver, receiver and manager or manager appointed pursuant to the Guarantee and Debenture.

**"Secured Liabilities"** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or as principal debtor, guarantor, surety or otherwise or as the equivalent obligor under the laws of any other jurisdiction) of each Group Company to the Security Trustee and the Finance Parties under the Finance Documents together with:

- (a) any refinancing, novation, refunding, deferral or extension of or increase in any of those obligations or liabilities of any Group Company under any facilities agreement entered into after the date hereof with all or any of the Finance Parties which is entered into wholly or partially in order to refinance the Secured Liabilities at the date of the Guarantee and Debenture;
- (b) any further obligations and liabilities which may be made by any Finance Party to any Group Company under any agreement expressed to be supplemental to any of the Finance Documents and all interest, fees, and costs in connection therewith;
- (c) all costs, charges and expenses incurred by the Security Trustee or any of the Finance Parties in connection with the protection, preservation or enforcement of its respective rights under the Finance Documents;
- (d) any claim for damages or restitution in the event of rescission of any of those obligations or liabilities or otherwise in connection with the Finance Documents;
- (e) any claim against any Group Company flowing from the recovery by a Group Company of a payment or discharge in respect of any of those obligations or liabilities on grounds of preference or otherwise; and

- (f) any amounts which would be included in any of the foregoing but for any discharge, non-provability, unenforceability or non-allowability of the same in any insolvency or other proceedings.

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

**"Security Documents"** means all Security to be granted to the Security Trustee pursuant to Schedule 2 (*Conditions Precedent*) of the Facilities Agreement, every Guarantee and Debenture, and every other document entered into in favour of the Security Trustee creating guarantees or creating Security for the obligations of the Group to the Finance Parties from time to time.

**"Senior A Facility"** means the senior term loan facility A made available under the Facilities Agreement as described in Clause 2.1 (*The Facilities*) of the Facilities Agreement.

**"Senior B Facility"** means the senior term loan facility B made available under the Facilities Agreement as described in Clause 2.2 (*The Facilities*) of the Facilities Agreement.

**"Senior C Facility"** means the senior term loan facility C made available under the Facilities Agreement as described in Clause 2.3 (*The Facilities*) of the Facilities Agreement.

**"Senior A Loan"** means a loan made or to be made under the Senior A Facility or the principal amount outstanding for the time being of that loan.

**"Senior B Loan"** means a loan made or to be made under the Senior B Facility or the principal amount outstanding for the time being of that loan.

**"Senior C Loan"** means a loan made or to be made under the Senior C Facility or the principal amount outstanding for the time being of that loan.

**"Senior Facilities"** means the Senior A Facility, the Senior B Facility and the Senior C Facility, each made available under the Facilities Agreement and **"Senior Facility"** shall mean any of the Senior Facilities (as the context requires).

**"Senior Hedging Deposit"** means any and all sums for the time being standing to the credit of, and the debt represented by the Senior Hedging Receipts Account together with all interest accruing thereon.

**"Senior Hedging Receipts"** means all sums payable to SIL under the Hedging Arrangements effected by SIL in connection with the hedging of interest payments relating to the Senior Loans;

**"Senior Hedging Receipts Account"** means an interest bearing account with the Agent bearing account number 20164583 into which all Senior Hedging Receipts will be paid.

**"Senior Loans"** means the principal amount outstanding for the time being of all Senior A Loans, all Senior B Loans and all Senior C Loans.

**"SIL"** means Siena Investments Limited (company number: 4559942).

**"Working Capital Lender"** means the financial institution providing the clearing banking facilities and any Working Capital Facility to the Group from time to time.

**"Working Capital Facility"** means any working capital facility made available to the Borrower and its Subsidiaries from time to time.

**"Working Capital Facility Agreement"** means the agreement setting out the terms upon which the Working Capital Lender makes available the Working Capital Facility from time to time.

#### **Part I – amount secured by the mortgage or charge**

The Secured Liabilities (on the due date in the manner prescribed in the relevant Finance Document), as principal obligor.

Under the Guarantee and Debenture the Company indemnified each Finance Party against any cost, loss or liability suffered by a Finance Party if any amount of the Secured Liabilities becomes unenforceable, invalid or illegal (equal to the amount which the relevant Finance Party would otherwise have been entitled to recover).

All costs, charges and expenses incurred and all payments made by the Security Trustee or any Receiver appointed under the Guarantee and Debenture in the lawful exercise of the powers conferred by the Guarantee and Debenture whether or not occasioned by any act, neglect or default of the Company shall carry interest from the date of the same being incurred or becoming payable at the rate per annum specified in Clause 9.7 (Default interest) of the Facilities Agreement and the amount of all such interest thereon and all remuneration payable hereunder shall be payable by the Company on demand and shall be an additional charge on the property charged by the Guarantee and Debenture. All such costs, charges, expenses and payments shall be paid and charged as between the Security Trustee and the Company on the basis of a full indemnity and not on the basis of a party and party or any other kind of taxation. The remuneration of the Receiver shall be such as may be agreed between him and the Security Trustee.

#### **Part II – short particulars of all the property mortgaged or charged**

The Company with full title guarantee (but so that any implied warranty shall not be breached by the existence of any Permitted Security) charged with the payment and discharge to the Security Trustee (as agent and trustee) of all the Secured Liabilities:

- 1.1 the property described in Part IV of this schedule together with all buildings and fixtures (including trade fixtures) and fixed plant and machinery from time to time thereon and therein;
- 1.2 all other freehold and leasehold property of the Company both present and future together with all buildings and fixtures (including trade fixtures) and fixed plant and machinery from time to time thereon and therein;
- 1.3 all plant, machinery, vehicles and other equipment now or hereafter owned by the Company together with the benefit of any obligations and warranties given by the manufacturer or supplier of such plant, machinery or other equipment and the benefit

of all maintenance agreements entered into between the Company and any other person in respect of such plant, machinery and other equipment;

- 1.4 all other shares and stock in the capital of any Company which as at the date hereof or at any time hereafter is owned by the Company or in which the Company otherwise have an interest together in all cases with all rights, including dividends and other distributions, arising in relation thereto;
- 1.5 the benefit of all present and future licences (statutory or otherwise) held in connection with its business or the user of any of the property charged by the Guarantee and Debenture and the right to recover and receive all compensation which may at any time become payable to it in respect thereof;
- 1.6 all licences and patents (including applications and the rights to apply therefor), copyrights, rights in trademarks whether registered or not, trade names, rights in service marks whether registered or not, registered designs, know-how and rights in confidential information now or at any time belonging to it;
- 1.7 the goodwill and the uncalled capital of the Company both present and future;
- 1.8 the book debts due or owing to the Company both present and future;
- 1.9 all benefits in respect of all contracts and policies of insurance (including, for the avoidance of any doubt, all cover notes, the Keyman Policies (to the extent the assignment set out below did not operate as a valid assignment) and any other keyman life assurance policies) which are from time to time taken out by the Company or (to the extent of such interest) in which it has an interest;
- 1.10 the Senior Hedging Deposit and all claims it may have in relation to moneys (and interest) from time to time standing to the credit of the Senior Hedging Receipts Account;
- 1.11 the Mezzanine Hedging Deposit and all claims it may have in relation to moneys (and interest) from time to time standing to the credit of the Mezzanine Hedging Receipts Account;
- 1.12 the stock-in-trade and work-in-progress, prepayments, investments quoted on a recognised stock exchange and cash of the Company both present and future; and
- 1.13 the undertaking and all other property and assets of the Company both present and future;

the charges referred to in paragraphs 1.1-1.11 above being created as fixed charges (and legal mortgages in the case of 1.1 and 1.2) and those referred to in 1.12 and 1.13 being created as floating charges (subject to automatic crystallisation provisions).

Under the Guarantee and Debenture the Company in security for the payment and discharge of all the Secured Liabilities with full title guarantee assigned and agreed to assign to the Security Trustee (as agent and trustee aforesaid) all of the Company' right, title and interest, present and future, in (a) the Keyman Policies and all moneys thereby assured which may become payable thereunder; and (b) any agreement or arrangement (including the Hedging



Arrangements) the Company may enter into on or after the date of the Guarantee and Debenture with any person for the purpose of or in connection with the fixing, capping or hedging of the rate of interest payable by them in respect of any borrowing or indebtedness and any right or option to enter into any such agreement or arrangement.

NB

Under the Guarantee and Debenture the Company gave the following covenants and undertakings:

1. The Company shall from time to time execute and do all such assurances and things as the Security Trustee may reasonably require to perfect the security under the Guarantee and Debenture constituted including, without prejudice to the foregoing generality, the pledging, endorsement and delivery of any promissory note or other instrument evidencing any book debt, and after the Secured Liabilities shall have become due and payable shall execute and do all such assurances and things as the Security Trustee may reasonably require for facilitating the realisation of the property charged by the Guarantee and Debenture or any part thereof and for exercising all powers, authorities and discretions by the Guarantee and Debenture or by law conferred on the Security Trustee or the Finance Parties or any Receiver appointed by the Security Trustee. The Company shall not be required to perfect any assignment or Security created in the Guarantee and Debenture by serving notice on any of its customers or clients prior to the occurrence of an Event of Default. The Company irrevocably appointed the Security Trustee to be the attorney of the Company in the name and on behalf of the Company to (following the occurrence of an Event of Default but only while it is continuing) execute and do assurances and things which the Company ought to execute and do hereunder including without prejudice to the foregoing generality:
  - (i) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the mortgaged property;
  - (ii) to receive, endorse and collect any drafts or other instruments or documents, in connection with Condition 18 (a) of Schedule 2 of the Guarantee and Debenture;
  - (iii) to file any claims or take any action or institute any proceedings which the Security Trustee may deem necessary or desirable for the collection of any of the mortgaged property or otherwise to enforce the rights of the Security Trustee with respect to any of the mortgaged property; and
  - (iv) to perform the obligations of the Company under the Guarantee and Debenture and generally to use the name of the Company in the exercise of all or any of the powers conferred on the Security Trustee or the Finance Parties or any Receiver appointed by the Security Trustee under the Guarantee and Debenture and the Company expressly authorises the Security Trustee to delegate all or any of the powers conferred upon it to any Receiver appointed by it under the Guarantee and Debenture or to such other person or persons as it may reasonably think fit.

2. The rights of the Company to deal for any purpose whatever with the property charged by the Guarantee and Debenture or any part thereof shall forthwith cease and the floating charges shall forthwith crystallise and become fixed charges immediately on the happening of any of the following events:
  - (i) the making of an order for the winding up of any Company or the passing of an effective resolution for a creditors' voluntary winding up of any Company; or
  - (ii) the presentation of a petition for the making of an administration order pursuant to the Insolvency Act 1986 in respect of any Company; or
  - (iii) the giving of any notice under Clause 23 (Events of Default) of the Facilities Agreement.
3. The Security Trustee may at any time by notice to the Company convert the floating charges into a fixed charge as regards any assets which the Security Trustee (acting reasonably) considers to be in danger of being seized, or sold under any form of distress, attachment, execution or other legal process and which are specified in such notice.
4. Save with the prior written consent of the Security Trustee, the Company shall not;
  - (i) create any Security over all or any part of its present or future revenues or assets except for Security permitted under the Facilities Agreement; or
  - (ii) (disregarding sales of stock in trade in the ordinary course of business) sell, lease, transfer or otherwise dispose of, by one or more transactions or series of transactions (whether related or not) the whole or any part of its revenues or its assets save as permitted pursuant to the Facilities Agreement.

### **Part III - The Companies**

<b>Name of Company</b>	<b>Registered Number</b>
Siena Holdings Limited	04559941
Siena Investments Limited	04559942
Simon Storage Limited	03795352
Seal Sands Storage Limited	00465548
Simon Intermodal Limited	03261244
Simon Riverside Limited	03422427
Chemicals & Oil Storage Management Limited	00891872
Simon Management Limited	02599129
Lewis Tankers Limited	01150390
Cumbrian Storage Limited	01130726
Immingham Storage Company Limited	00244414
Velva Liquids (North Shields) Limited	01174150

FILE COPY



## CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

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

COMPANY No. 03795352

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT GUARANTEE & DEBENTURE DATED THE 4th NOVEMBER 2003 AND CREATED BY SIMON STORAGE LIMITED FOR SECURING ALL MONIES DUE OR TO BECOME DUE OF EACH GROUP COMPANY TO THE SECURITY TRUSTEE AND THE FINANCE PARTIES 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 12th NOVEMBER 2003.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 13th NOVEMBER 2003.

DX  
1282



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES



*Companies House*

— for the record —