

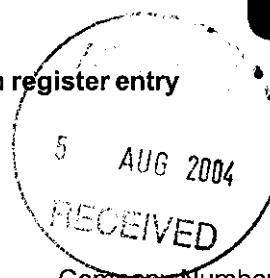
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# Particulars of a mortgage or charge

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

Please do not write in this margin

Pursuant to section 395 of the Companies Act 1985



CHFP025

To the Registrar of Companies

For official use

Company Number

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

\*Insert full name of company

1

5148685

Name of company

**Ensign Highways Holdings Limited**, a company incorporated in England having its registered office at Wallage Lane, Rowfant, Crawley, West Sussex, RH10 4NF (the "**Chargor**")

Date of creation of the charge

2 August 2004

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

Debenture dated 2 August 2004 entered into between the Chargor and Lloyds TSB Bank p.l.c. (the "**Debenture**")

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 alone or in any other capacity whatsoever) of the Chargor to any Finance Party under each Finance Document to which the Chargor is a party except for any obligation which, if it were so included, would result in the Debenture contravening section 151 of the Companies Act 1985.

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

**Lloyds TSB Bank plc**, a company incorporated in England, registered number 2065 whose registered office is at 25 Gresham Street, London EC2V 7HN (as security trustee for the Finance Parties) on the terms set out in the Security Trust Deed (as defined in the Debenture) (which expression shall, where the context so admits, include all persons for the time being the trustee or trustees under the Debenture) (the "**Security Trustee**")

Presentors name address and reference (if any):

ADDLESHAW GODDARD  
150 Aldersgate Street  
LONDON  
EC1A 4EJ

Ref: Lon/13845.102

LON4/246992.1

For official use

Mortgage Section

Post room



LD2  
COMPANIES HOUSE

0085  
05/08/04

Time critical reference

Short particulars of all the property mortgaged or charged

**1 FIXED SECURITY**

The Chargor charged and agreed to charge with full title guarantee all its present and future right, title and interest in and to the following assets which are at any time owned by it or in which it from time to time has an interest:

(a) by way of first fixed charge:

- (i) all the Borrower Shares together with all Related Rights from time to time accruing to those Borrower Shares and all cash or other assets hereafter belonging to the Chargor and deriving from the Borrower Shares;
- (ii)
  - (A) all Authorised Investments; and
  - (B) all other Investments (if any) now or in the future owned (legally or beneficially) by it or in which it has an interest (not being charged by the Debenture);

**Particulars as to commission allowance or discount (note 3)**

N/A

Signed Adelle Ann Goddard Date 5 August 2004

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 made payable to **Companies House**.
- 6 The address of the Registrar of Companies is:-  
Companies House, Crown Way, Cardiff CF4 3UZ

in each case, together with all Related Rights from time to time accruing to those Investments and all rights which it may have at any time against any clearance or settlement system or custodian in respect of any Investments;

- (iii) each bank and other account maintained by it with any bank or financial institution or in which it has an interest (including, without limitation, each Bank Account and excluding the Parent Distribution Account) and including, without limitation, all monies standing to the credit of any such account, all interest accrued on any such account, any investment made out of such monies or account and all rights to repayment of any of the above;
- (iv) all of its book and other debts, the proceeds of the same and all other monies due and owing to it and the benefit of all rights, securities and guarantees of any nature enjoyed or held by it in relation to any of the foregoing;
- (v) (to the extent that they do not fall within any other part of this sub-clause (a) all of its rights and benefits under the Contracts, any distributorship or similar agreements entered into by it at any time, any letters of credit issued in its favour and all bills of exchange and other negotiable instruments held by it;
- (vi) its goodwill;
- (vii)
  - (A) the benefit of all licences, consents and authorisations (statutory or otherwise) (unless the terms of such license, consent or authorisation prohibit any security being created over it) held in connection with its business or the use of any Security Asset specified in any other part of clause 3.1 (*Creation of fixed security*) of the Debenture and the right to recover and receive all compensation which may be payable to it in respect of them; and
  - (B) any letter of credit issued in favour of it and all bills of exchange and other and negotiable instruments held by it;
- (viii) its uncalled capital;
- (ix) its Intellectual Property (including the patents and trademarks specified in schedule 1 of the Debenture); and
- (x) to the extent that any of the Assigned Assets are not effectively assigned under the Debenture, by way of first fixed charge, those Assigned Assets.

## 1.2 Security Assignments

The Chargor assigned and agreed to assign absolutely (subject to a proviso for redemption in accordance with Clause 27.1 (*Covenant to release*)) of the Debenture all its present and future right, title and interest in and to:

- (a) the Project Documents and Investment Documents to which the Chargor is expressed to be a party, all rights and remedies in connection with the Project Documents and Investment Documents and all proceeds and claims arising from them; and
- (b) all other Receivables (not being assigned under the Debenture).

## 1.3 Limited Licence to the Chargor in relation to Assigned Assets

Whilst no Event of Default has occurred and which is continuing unremedied:

- (a) the Security Trustee will permit the Chargor to exercise the rights assigned by it to the Security Trustee in respect of the Project Documents on behalf of the Security Trustee (including the right to receive payment of money) provided that the exercise of those rights in the manner proposed would not result in the occurrence of an Event of Default

and that all such rights are exercised only in accordance with the terms of the relevant Project Documents and the Investment Documents;

- (b) any payments received by the Security Trustee or the Chargor in respect of any Assigned Asset shall be paid into the Proceeds Account in accordance with the Facility Agreement unless the Security Trustee otherwise requires and/or except to the extent that the Finance Documents require such amount to be applied against the Secured Liabilities or paid into another account.

## 2 FLOATING CHARGE

The Chargor charged and agreed to charge by way of first floating charge all of its present and future assets and undertaking (wherever located) which is not effectively charged by way of first fixed mortgage or charge or assigned pursuant to the provisions of clause 3.1 (Creation of Fixed Security) of the Debenture and clause 3.2 (Security Assignments) of the Debenture or any other provisions of the Debenture (other than the Distribution Accounts and any Authorised Investments relating thereto).

## 3 CONVERSION OF FLOATING CHARGE AND AUTOMATIC CRYSTALLISATION

### 3.1 Conversion by notice

- (a) The Security Trustee may by notice to the Chargor convert the floating charge created by the Debenture into a fixed charge as regards all or any of the Chargor's assets specified in the notice if:

- (i) an Event of Default has occurred; or
- (ii) the Security Trustee considers any Security Assets (whether or not those specified in the notice) 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.

### 3.2 Automatic conversion

A floating charge created under the Debenture shall (in addition to the circumstances in which the same will occur under general law) automatically be converted into a fixed charge in relation to any of the Security Assets which are subject to such floating charge if:

- (a) the Chargor creates (or attempts or purports to create) any encumbrance other than a Permitted Encumbrance on or over the relevant asset; or
- (b) if any third party levies or attempts to levy any distress, execution, attachment or other legal process against any such asset; or
- (c) if an administrator is appointed or the Agent receives notice of an intention to appoint an administrator.

### 3.3 Partial conversion

The giving by the Security Trustee of a notice pursuant to clause 3.1 (*Conversion by notice*) in relation to any class of assets of the Chargor shall not be construed as a waiver or abandonment of the rights of the Security Trustee to serve similar notices in respect of any other class of assets or of any of the other rights of the Security Trustee and/or the Finance Parties.

## 4 TRUST

The Security Trustee shall hold the benefit of the covenants contained in the Debenture and all its rights and claims under the Debenture as trustee for the Finance Parties from time to time on the terms set out in the Security Trust Deed. Any reference to security being granted or executed or obligations being entered into "in favour of the Security Trustee" shall mean such security being granted or executed or obligations being entered into in favour of the Security

Trustee as trustee for the Finance Parties from time to time.

## 5 CONTINUING SECURITY

The security constituted by the Debenture is continuing and will extend to the ultimate balance of all the Secured Liabilities, regardless of any intermediate payment or discharge in whole or in part. The Debenture shall remain in full force and effect as a continuing security for the duration of the Security Period.

## 6 FURTHER ASSURANCE

6.1 Without limiting the generality of clause 20.24 (*Further Assurance*) of the Facility Agreement, whenever requested by the Security Trustee, the Chargor will at its own expense, promptly execute any deeds or documents and take any action required by the Security Trustee:

- (a) to perfect, improve and protect the security created (or intended to be created) by or pursuant to the Debenture; or
- (b) to facilitate the realisation of any Security Asset or otherwise to enforce the security created by or pursuant to the Debenture; or
- (c) to exercise any of the rights of the Security Trustee or any Receiver or any delegate or sub-delegate thereof under the Debenture,

including (without limitation) (1) the execution of any transfer, conveyance, assignment or assurance of any property (whether to the Security Trustee or its nominees) and (2) the giving of any notice, order or direction and the making of any registration which, in any such case, the Security Trustee may think expedient.

### 6.2 Specific obligations

Without limiting the generality of clause 18.1 (*Further assurance*) of the Debenture, the Chargor will execute, in favour of the Security Trustee and in such form as the Security Trustee shall reasonably require:

- (a) a valid legal mortgage of any freehold or leasehold property now or in the future belonging to the Chargor which is not effectively charged by way of legal mortgage under or pursuant to the Debenture;
- (b) a legal assignment over all or any of the Receivables and give notice of such assignment to the persons liable to discharge those Receivables (whether as principal debtor or as surety); and
- (c) a valid fixed charge over any asset which is subject to the floating charge under the Debenture.

## 7 ADDITIONAL PROVISIONS

The Debenture contains the following negative pledge at clause 9.2:

Subject to the terms of the Facility Agreement, the Chargor shall not:

- (a) without the prior written consent of the Security Trustee create or permit to subsist any Encumbrance on any Security Asset or any other asset other than any Permitted Encumbrance; or
- (b) sell, assign, transfer, grant, or lease or otherwise dispose of any Security Asset, except:
  - (i) for the disposal in the ordinary course of trade of any Security Asset subject to the floating charge created under clause 4.1 (*Creation of floating charge*) of the Debenture; and
  - (ii) as permitted by clause 20.32 (*Disposals*) of the Facility Agreement.

The Debenture gives a power to the Bank to appoint a Receiver at clause 12.

The Debenture provides at clause 2.1 that:

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to any floating charge created by or pursuant to this Debenture (and each such charge is a qualifying floating charge for the purpose of the Insolvency Act 1986).

In this form, the following terms shall have the following meanings:

**Act** means the Law of Property Act 1925.

**Account Bank** has the meaning ascribed to such term in the Facility Agreement.

**Agent** has the meaning ascribed to such term in the Facility Agreement.

**Assigned Assets** means the Security Assets expressed to be assigned by way of security pursuant to clause 3.2 (*Security Assignments*) of the Debenture.

**Authorised Investments** has the meaning set out in Schedule 13 of the Facility Agreement;

**Bank Accounts** means each of the Proceeds Account, the Debt Service Reserve Account, the Maintenance Reserve Account, the Insurance Account (and if the same is opened pursuant to Clause 9.9 of the Facility Agreement, the Tax Reserve Account), the Subordinated Debt Proceeds Account, the Parent Distribution Account and the Borrower Distribution Account details of which are shown in Schedule 12 of the Facility Agreement and such other accounts as are agreed from time to time by the Agent, the Borrower and the Account Bank and references to "**Bank Account**" shall include any renewal, substitution, replacement or redesignation thereof at any time;

**Bank Collateral Warranties** has the meaning ascribed to such term in the Facility Agreement.

**Banks** has the meaning ascribed to such term in the Facility Agreement.

**Borrower Shares** means shares in the ordinary share capital of the Borrower issued to the Chargor;

**Borrower Subordinated Debt Instrument** has the meaning ascribed to such term in the Facility Agreement.

**Charged Investments** means all Investments and all Related Rights from time to time accruing thereto, which are from time to time charged in favour of, or assigned to the Security Trustee by or pursuant to the Debenture.

**Contracts** means all contracts and agreements to which the Chargor is a party and/or which confer any rights upon it (including, without limitation, the Relevant Agreements).

**Encumbrance** includes any security, mortgage, pledge, lien, charge (whether fixed or floating), encumbrance, hypothecation, security interest, title retention or other preferential right having the effect of creating security or a similar effect;

**Equity Bridge Guarantee** has the meaning ascribed to such term in the Facility Agreement.

**Equity Subscription Agreement** has the meaning ascribed to such term in the Facility Agreement.

**Event of Default** means any of the events specified in Clauses 21.2 to 21.37 of the Facility Agreement;

**Facility Agreement** means the facility agreement dated 2 August 2004 between, inter alios, the Borrower, the Account Bank and the Agent.

**Fee Letter** has the meaning ascribed to such term in the Facility Agreement.

**Finance Party** means any of:

- (a) the Banks;
- (b) the Agent;
- (c) the Account Bank;
- (d) the Security Trustee; and
- (e) any Hedging Counterparty;

and **Finance Parties** means any or all of them;

**Finance Documents** means the Facility Agreement, the Security Documents, the Intercreditor Deed, the Fee Letter, the Hedging Agreement, the Bank Collateral Warranties, the Hedging Guarantee and any other document designated as such by the Agent and the Borrower;

**Hedging Agreement** has the meaning ascribed to such term in the Facility Agreement.

**Hedging Counterparty** has the meaning ascribed to such term in the Facility Agreement.

**Hedging Guarantee** has the meaning ascribed to such term in the Facility Agreement.

**Intellectual Property** means all present and future legal and/or equitable rights of the Chargor (including without limitation, the benefit of all licences) in or relating to registered and unregistered trade marks and service marks, patents, registered designs, utility models, applications for any of the foregoing, trademarks, copyrights, design rights, unregistered designs, inventions, confidential information, know-how, registerable business names, database rights, domain names and any other rights owned by the Chargor, or in which the Chargor has an interest, to the extent only of that interest or deriving from or through the exploitation of any of the aforementioned rights of the Chargor;

**Intercreditor Deed** has the meaning ascribed to such term in the Facility Agreement.

**Investment Documents** means the Equity Subscription Agreement, the Borrower Subordinated Debt Instrument, the Parent Subordinated Debt Instrument and the Equity Bridge Guarantee;

**Investments** means all or any of (1) all Authorised Investments (excluding any Authorised Investments made from the proceeds standing to the credit of the Distribution Accounts) and (2) all other stocks, shares, debentures, bonds, warrants, coupons and other securities or investments (as defined in Part II of Schedule II to the Financial Services and Markets Act 2000 in force at the date of the Debenture in each case now or in future owned (legally or beneficially) by the Chargor or in which the Chargor has an interest at any time or which are held to the order of the Chargor by any trustee, fiduciary or clearance system on its behalf.

**Parent Distribution Account** means an account opened by the Parent with the Account Bank to receive distributions in relation to the Parent;

**Parent Subordinated Debt Instrument** has the meaning ascribed to such term in the Facility Agreement.

**Permitted Encumbrances** means:

- (a) Encumbrances in favour of the Security Trustee and the Banks;
- (b) any lien arising solely by operation of law in the ordinary course of the business of the Borrower in respect of any obligation which is not more than 45 days overdue for settlement;
- (c) any retention of title arrangements on suppliers' standard terms of business, on normal commercial terms and in the ordinary course of business;
- (d) *Encumbrances granted with the prior written consent of the Majority Banks;*
- (e) a lien or other Encumbrance over any Authorised Investment in favour of a clearing system or custody system within which such Authorised Investments are held;
- (f) any Encumbrance arising in respect of unpaid tax or arising under an attachment or similar process or out of judgments, licences or awards whilst the tax or other amount concerned is being contested by the Borrower in good faith on reasonable grounds and in respect of which the Borrower has made adequate provision in its financial statements;

**Proceeds Account** means an account opened by the Borrower with the Account Bank and operated pursuant to Clause 9.1 of the Facility Agreement the details of which are set out in Schedule 12 of the Facility Agreement;

**Project Documents** means all of the documents referred to in Schedule 8 of the Facility Agreement;

**Receivables** means all present and future book and other debts, rentals, royalties, fees, VAT and monetary claims and all other amounts at any time recoverable or receivable by, or due or owing to, the Chargor (whether actual or contingent and whether arising under contract or in any other manner whatsoever) together with:

- (a) the benefit of all rights, guarantees, encumbrances and remedies relating to any of the foregoing (including, without limitation, negotiable instruments, indemnities, reservations of property rights, rights of tracing and unpaid vendor's liens and similar associated rights); and
- (b) all proceeds of any of the foregoing.

**Receiver** means any receiver, receiver and manager or administrative receiver appointed by the Security Trustee under the Debenture.

**Related Rights** means:

- (a) any dividend or interest paid or payable in relation to the Investments or Borrower Shares;
- (b) any stock, shares, securities, rights, monies or property accruing or offered at any time (whether by way of redemption, substitution, exchange, bonus or preference, under option rights or otherwise) to or in respect of any of the Investments or Borrower Shares or in substitution or exchange for or otherwise derived from any of the Investments or Borrower Shares; and
- (c) any dividend, interest or other income in respect of any asset referred to in paragraph (b) above.

**Relevant Agreements** means the agreements listed in schedule 2 of the Debenture.



**Secured Liabilities** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or alone or in any other capacity whatsoever) of the Chargor to any Finance Party under each Finance Document to which the Chargor is a party except for any obligation which, if it were so included, would result in the Debenture contravening section 151 of the Companies Act 1985. The term "**Finance Document**" includes all amendments and supplements including supplements providing for further advances.

**Security Assets** means all property and assets of the Chargor from time to time charged or assigned (or expressed to be charged or assigned) by or pursuant to the Debenture.

**Security Documents** has the meaning ascribed to such term in the Facility Agreement.

**Security Period** means the period beginning on the date of the Debenture and ending on the date on which (i) the Security Trustee is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full; and (ii) no Finance Party has any further commitment, obligation and liability under or pursuant to the Finance Documents to the Chargor.

**Security Trust Deed** means the security trust deed 2 August 2004 and entered into between inter alios (1) the Borrower (2) the Chargor and (3) the Security Trustee.

#### **Schedule 2**

##### **Relevant Agreements**

Parent Subordinated Debt Instrument

Equity Subscription Agreement

FILE COPY



## CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

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

COMPANY No. 05148685

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT A DEBENTURE DATED THE 2nd AUGUST 2004 AND CREATED BY ENSIGN HIGHWAYS HOLDINGS LIMITED FOR SECURING ALL MONIES DUE OR TO BECOME DUE FROM THE COMPANY TO ANY FINANCE PARTY 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 5th AUGUST 2004.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 9th AUGUST 2004.

P. Cox



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES



*Companies House*

— for the record —