

Particulars of a charge created by a company registered in Scotland

410

CHFP025

**Please do not
write in this
margin**

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

Pursuant to section 410 of the Companies Act 1985

COMPANIES HOUSE
FEE PAID
EDINBURGH

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

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

For official use

Company number

2

SC283167

Name of company

* Dunwilco (1255) Limited (the "Chargor")

C/N 102106 TO MALCOLM PROPERTIES (HOLDINGS) LIMITED

Date of creation of the charge (note 1)

31 January 2006

Description of the instrument (if any) creating or evidencing the charge (note 1)

Fixed Charge and Assignment (the "Charge") .

Amount secured by the charge

All or any monies, liabilities and obligations, whether actual or contingent and whether owed jointly or severally or as principal debtor, guarantor, cautioner, surety or otherwise, which are now or may at any time hereafter (whether before or at any time after demand) be or become due in any manner by the Chargor to the Security Trustee or the other Finance Parties under the Finance Documents, and all or any monies, liabilities and obligations due by the Chargor under the Charge (the "Secured Obligations")

See Paper Apart Part II for definitions

Names and addresses of the persons entitled to the charge

The Governor and Company of the Bank of Scotland, a company incorporated by Act of Parliament and having its head office at The Mound, Edinburgh EH1 1YZ (the "Security Trustee")

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

McGrigors

Princes Exchange
1 Earl Grey Street
Edinburgh
EH3 9AO

0131 777 7000

SWN/Ei722428 Paper Apart Ei722442

For official use (10/03)

Charges Section



Short particulars of all the property charged.

Please do not
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See Paper Apart Part I

See Paper Apart Part II for definitions

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

Statement, in the case of a floating charge, as to any restrictions on power to grant further securities and any ranking provision (note 2)

Not applicable.

Particulars as to commission, allowance or discount paid (see section 413(3))

Not applicable

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

Signed _____

Date 17/2/06

On behalf of ~~XXXXXX~~ [chargee] †

Notes

1. A description of the instrument e.g. "Standard Security" "Floating Charge" etc, should be given. For the date of creation of a charge see section 410(5) of the Act. (Examples - date of signing of an Instrument of Charge; date of recording/registration of a Standard Security; date of intimation of an Assignment.)

2. In the case of a floating charge a statement should be given of (1) the restrictions, if any, on the power of the company to grant further securities ranking in priority to, or pari passu with the floating charge; and/or (2) the provisions, if any, regulating the order in which the floating charge shall rank with any other subsisting or future floating charges or fixed securities over the property which is the subject of the floating charge or any part of it.

3. A certified copy of the instrument, if any, creating or evidencing the charge, together with this form with the prescribed particulars correctly completed must be delivered to the Registrar of Companies within 21 days after the date of the creation of the charge. In the case of a charge created out of the United Kingdom comprising property situated outside the U.K., within 21 days after the date on which the copy of the instrument creating it could, in due course of post, and if despatched with due diligence, have been received in the U.K. Certified copies of any other documents relevant to the charge should also be delivered.

4. A certified copy must be signed by or on behalf of the person giving the certification and where this is a body corporate it must be signed by an officer of that body.

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 are to be made payable to **Companies House**.

6. The address of the Registrar of Companies is: Companies House, 37 Castle Terrace, Edinburgh EH1 2EB
DX 235 Edinburgh or LP - 4 Edinburgh 2

† delete as
appropriate

FORM M410

DUNWILCO (1255) LIMITED
(Registered Number SC283167) (the "Chargor")

PAPER APART

PART I

Short particulars of all property charged

1.1 Mortgages and charges

1.1.1 Land

The Chargor charges:

- (a) by way of first legal mortgage, all estates and interests in the Specified Properties and all other freehold or leasehold properties now or hereafter belonging to it 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 Clause 2.1.1(a) of the Charge as described at 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 now or hereafter belonging to it together with the premises and the fixtures and fittings on and in them and the Ancillary Rights pertaining to them.

1.1.2 Plant, machinery and chattels

The Chargor charges by way of first fixed charge, all plant, machinery and other chattels now or hereafter owned by it, and its interest in all plant, machinery and other chattels held by it under any lease, licence, hire or rental contract or other arrangement (excluding any forming part of its 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 it to any other person, and any guarantees, indemnities and Security Interests for the performance of such person's obligations now or hereafter held or enjoyed by it in relation thereto.

1.1.3 Rental Income

The Chargor charges 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 it in relation thereto.

1.1.4 Intellectual Property Rights

The Chargor charges by way of first fixed charge, the Specified Intellectual Property Rights, and all other Intellectual Property Rights now or hereafter owned by it (solely or with others), and its interest in all Intellectual Property Rights now or hereafter held or used by it

(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 it in relation to the use by it or third parties of such Intellectual Property Rights.

1.1.5 Investments

The Chargor charges by way of first fixed charge all Investments hereafter owned by it or held by any nominee on its behalf, and any related rights pertaining to them.

1.1.6 Credit balances

The Chargor charges by way of first fixed charge, all monies, whether principal or interest, accrued or accruing, now or at any time hereafter deposited in or otherwise standing to the credit of each bank account of the Chargor and any other present or future account of the Chargor with the Security Trustee or any other bank, financial institution or other person, the debts thereby represented, and all other rights and benefits in connection therewith.

1.1.7 Receivables

The Chargor charges 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 Receivables together with the benefit of all guarantees, indemnities, Security Interests and other rights of any nature now or hereafter held or enjoyed by it in relation thereto.

1.1.8 Group loan capital

The Chargor charges by way of first fixed charge, all loan capital indebtedness now or hereafter due or owing to it by any company which is now or may at any time hereafter be or become a member of the Group.

1.1.9 Miscellaneous

The Chargor charges by way of first fixed charge:

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

2.1 **Assignments**

2.1.1 **Insurances**

The Chargor assigns absolutely by way of security, the benefit of and its 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 now or hereafter payable thereunder, including return of premiums provided that the Chargor may exercise such right up until the occurrence of an Event of Default.

2.1.2 **Financial instruments**

The Chargor assigns absolutely by way of security, the benefit of and its whole present and future rights under the Hedging Arrangements provided that the Chargor may exercise such right up until the occurrence of an Event of Default.

3 **Negative Pledge**

The Chargor shall not create or permit to subsist any Security Interest on any of its assets.

PART II

Definitions

Definitions used in the foregoing Form M410 shall have the same meaning given to them herein.

"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.

"Borrower" means Dunwilco (1255) Limited.

"Event of Default" means an event specified as such in Clause 19.1 (*Events of Default*) of the Facilities Agreement.

"Facilities Agreement" means the credit agreement dated on or about the date of the Charge entered into between The Malcolm Group Limited, The Malcolm Group (Holdings) Limited, the Chargor, The Governor of the Bank of Scotland as Agent, Bank, Account Bank, Arranger and Security Trustee and HBOS Treasury Services plc as Hedging Counterparty as amended, supplemented, novated, restated or replaced in whole or in part from time to time.

"Finance Documents" means:

- (a) the Facilities Agreement;
- (b) the Security Documents (as defined in the Facilities Agreement);
- (c) any Hedging Arrangement (as defined in the Facilities Agreement);
- (d) the Counter Indemnity (as defined in the Facilities Agreement);

- (e) any Novation Certificate (as defined in the Facilities Agreement);
- (f) the Hedging Novation Agreement (as defined in the Facilities Agreement);
- (g) the Intercreditor Deed (as defined in the Facilities Agreement); or

any other document designated as such by the Agent (as defined in the Facilities Agreement) and the Borrower and **"Finance Document"** means any of them.

"Finance Parties" means the Arranger, each Bank, the Hedging Counterparty, the Account Bank, the Agent, the Security Trustee and BoS (as defined in the Facilities Agreement) as guarantor under any Hedging Arrangements (as defined in the Facilities Agreement) and **"Finance Party"** means any of them.

"Group" means the Borrower and the Subsidiaries (as defined in the Facilities Agreement) and sub-Subsidiaries of the Borrower from time to time.

"Hedging Arrangements" means the arrangements effected by the Hedging Novation Agreement (as defined in the Facilities Agreement) and any other interest rate hedging arrangements entered into by the Borrower or any Obligor in connection with interest payable under the Facilities Agreement.

"Insurances" means all policies or contracts of insurance or assurance now or hereafter effected by the Chargor or on its behalf or in which it may have an interest.

"Investments" means all shares, stocks, bonds, debentures or other securities and investments of any kind.

"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 Borrower and the Guarantors (as defined in the Facilities Agreement).

"Receivables" means all book and other debt and monetary claims now or hereafter due or owing to the Chargor.

"Security Assets" means all or any part of or interest in the undertaking, property, rights and assets of the Chargor which now or at any time hereafter 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 Interest" means any mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having the effect of conferring security.

"Specified Insurances" means the Insurances specified in Part 1 of Schedule 2 the Charge, being none.

"Specified Intellectual Property Rights" means the Intellectual Property Rights specified in Schedule 3 of the Charge, being specified as none.

"Specified Properties" means the freehold or leasehold properties specified in Schedule 1 of the Charge, being none.



**CERTIFICATE OF THE REGISTRATION
OF A CHARGE**

Company number 283167

I hereby certify that a charge created by

MALCOLM PROPERTIES (HOLDINGS) LIMITED

on 31 JANUARY 2006

for securing ALL SUMS DUE, OR TO BECOME DUE

in favour of

THE GOVERNOR AND COMPANY OF THE BANK OF SCOTLAND

was delivered pursuant to section 410 of the Companies Act, 1985,
on 17 FEBRUARY 2006 given at Companies House, Edinburgh
21 FEBRUARY 2006



C O M P A N I E S H O U S E

