

M

COMPANIES FORM No. 395

Particulars of a mortgage or charge

395

Please do not
write in
this margin

Pursuant to section 395 of the Companies Act 1985

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

* insert full name
of company

To the Registrar of Companies

For official use

Company number

☒ 13

M93

2447559

Name of company

*Folkestone Properties Limited

Date of creation of the charge

26th May 1992

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

Please see Continuation Sheet No. 1

Amount secured by the mortgage or charge

The obligations expressed to be assumed by the Mortgagor in any Finance
Document to which it is expressed to be a party.

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

The Chase Manhattan Bank, N.A. (as Security Agent)

Woolgate House, Coleman Street, London

Postcode

EC2P 2HD

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

Clifford Chance
Royex House
Aldermanbury Square
London EC2V 7LD
Ref: GLQE

For official Use
Mortgage Section

REGISTERED

27 MAY 1992

Post room



Time critical reference

21/5
28 MAY 1992

Short particulars of all the property mortgaged or charged

- (i) by way of legal mortgage the Property subject only to the encumbrances (if any) referred to in the Schedule to the Charge together with all buildings and fixtures (including trade fixtures) fixed plant and machinery owned by the Mortgagor from time to time thereon or on any part thereof; and

(Please see Continuation Sheet number 1, page 4)

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

Clifford Chance

Date

26.5.92

On behalf of ~~company/mortgagor/chargee~~ Solicitors acting on behalf of the 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.

Please do not
write in this
binding margin

**Particulars of a mortgage or charge
(continued)**

Continuation sheet No 1
to Form No 395 and 410 (Scot)

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

Company number

2447559

Name of company

Folkestone Properties Limited

Limited*

*delete if
inappropriate

Description of the instrument creating or evidencing the mortgage or charge (continued) (note 2)

Legal charge dated 26th May 1992 between Folkestone Properties Limited as
Mortgagor (which shall include any person from time to time deriving
title under the Mortgagor) in favour of The Chase Manhattan Bank, N.A. as
Security Agent (which shall include its successors and assigns)

Amount due or owing on the mortgage or charge (continued)

Please do not
write in this
binding margin

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

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

This image shows a completely blank white page enclosed by a thin black rectangular border. There are no markings, text, or illustrations on the page.

- (ii) the benefit to the Mortgagor of all rights and claims to which the Mortgagor is at the date of the Charge or may thereafter become entitled in relation to the Property including in particular (but without prejudice to the generality of the foregoing) all rights and claims of the Mortgagor against all persons who are at the date of the Charge or who at any time have been or may become lessees of the whole or any part or parts of the Property and all guarantors and sureties for the obligations of such persons and against all persons who are under any obligation to the Mortgagor in respect of any works of design construction repair or replacement to or on or about the Property or any of the fixtures, fittings and equipment on in or about the Property so far as the same are or become capable of assignment without the consent of a third party or such consent shall be obtained provided that the Security Agent shall not give notice of any such assignment to any third party (save pursuant to registration) unless and until the Charge shall have been declared enforceable in accordance with its terms;

The Mortgagor shall not save as permitted under the Charge or by the Agreement: and unless the Security Agent otherwise agrees:

- (i) create, purport to create or permit to subsist over all or any of the Property any mortgage, charge, lien, pledge or other security other than encumbrances referred to in the Schedule to the Charge and the charge created thereby; or
- (ii) part with, sell, transfer or otherwise dispose of or agree to part with, sell, transfer or otherwise dispose of all or any of the Property.

DEFINITIONS

"Advance" means, save as otherwise provided under the Agreement, an advance (as from time to time reduced by prepayment or repayment) made or to be made by the Lenders under the Agreement;

"Agreement" means the agreement made on 17th December, 1990 between (1) Ferry and Port Holdings Limited (the "Borrower"), (2) each of the companies named in the first schedule of the Agreement (each a "Guarantor" and together the "Guarantors"), (3) Sea Containers Ltd. ("Sea Containers"), (4) the financial institutions named in the second schedule of the Agreement (the "Lenders"), (5) The Chase Manhattan Bank, N.A. (the "Facility Agent"), (6) The Chase Manhattan Bank, N.A. (the "Security Agent"), (7) Chase Investment Bank Limited ("Chase"), and (8) Chase Investment Bank Limited (the "Arranger");

"Approved Investment" means any sterling denominated short-term investment which is currently rated AAA, or any sterling denominated long-term investment which is currently rated AAA, by Standard & Poor's Corporation and Moody's Investors Service respectively;

"Available Commitment" in relation to a Lender as at any date means, save as otherwise provided under the Agreement, the amount set opposite its name in the second schedule of the Agreement less its portion of the Original Sterling Amount of each Advance which has already been, or has been agreed to be, advanced under the Agreement;

"Available Facility" means the aggregate amount from time to time of the Available Commitments;

Please see Continuation Sheet No. 2

Please do not
write in this
binding margin

**Particulars of a mortgage or charge
(continued)**

Continuation sheet No 2
to Form No 395 and 410 (Scot)

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

Company number

2447559

Name of company

Folkestone Properties Limited

Limited*

*delete if
inappropriate

Description of the instrument creating or evidencing the mortgage or charge (continued) (note 2)

Amount due or owing on the mortgage or charge (continued)

Please do not
write in this
binding margin

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

"Beneficiaries" means the Arranger, Chase, the Facility Agent, the Security Agent, the Lenders, and the Noteholders;

"Charge" means the Legal Charge dated 26th May 1992, the subject of registration under this Form 395;

"dollars" denotes the lawful currency of the United States of America and

"sterling" denotes the lawful currency of the United Kingdom;

"F & P Group" means the Borrower and its subsidiaries;

"Finance Documents" means (i) the Agreement, (ii) the Note Documents, (iii) the Security Documents (iv) the Trust Deed;

"Instructing Group" means

- (i) before any Advances have been made hereunder, a group of Lenders whose Available Commitments amount in aggregate to more than fifty per cent. of the Available Facility; and
- (ii) thereafter, a group of Lenders to whom in aggregate more than fifty per cent. of the Sterling Amount of the Term Loan is (or, immediately prior to its prepayment or repayment, was then) owed;

"Lease" means a lease dated 13th March, 1990 made between Sealink Harbours Limited (1) the Mortgagor (2) and Sea Containers (3);

"Leasehold Charge" means a legal charge dated 17th December, 1990 by the Mortgagor in favour of the Security Agent over the Leasehold Property;

"Leasehold Property" means (1) the property demised to the Mortgagor by the Lease being land and sea bed and structures and buildings thereon situate at Folkestone Harbour in the County of Kent and at Folkestone, East Folkestone aforesaid (2) certain leasehold land registered at HM Land Registry under title number K667505 (3) the Mortgagor's interest in the two leasehold or underleasehold pieces or parcels of land edged red and hatched blue and marked E and F respectively on the Plan attached to the Certificate of Title referred to in the Leasehold Charge;

"Loan Facility" means the multicurrency, evergreen loan facility granted to the Borrower pursuant to this Agreement;

"Mortgaged Asset" means any asset (other than the assets or revenues of Wightlink, any Nominated Security, Approved Investment or Short Term Deposit) owned by a member of the F & P Group in respect of which all relevant requirements of the Agreement have been satisfied which is subject to a Mortgage and, in the case of a vessel, a deed of covenants (and, where any insurances on such vessel are maintained with an affiliate of any member of the F & P Group or the Sea Containers Group, an assignment by such affiliate of all policies of reinsurance relating to such insurances) collateral thereto which Mortgage and (as the case may be) collateral security have been duly registered, recorded or filed as required by the Facility Agent and are in full force and effect or the Facility Agent has determined that such registration, recording or filing will, in due course, Please see Continuation Sheet No. 3

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

COMPANIES FORM No. 395 (Cont.) AND FORM No. 410 (Scot)(Cont.)

Please do not
write in this
binding margin

**Particulars of a mortgage or charge
(continued)**

Continuation sheet No 3
to Form No 395 and 410 (Scot)

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

Company number

2447559

Name of company

Folkestone Properties Limited

Limited*

*delete if
inappropriate

Description of the instrument creating or evidencing the mortgage or charge (continued) (note 2)

Amount due or owing on the mortgage or charge (continued)

Please do not
write in this
binding margin

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

Please do not
write in this
binding margin

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

Names, addresses and descriptions of the mortgagees or persons entitled to the charge (continued)

--

be made; the Facility Agent reserving the right to make any such determination on a conditional basis and/or with respect to a limited period of time for the completion of such registration, recording or filing;

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

"Mortgagor" means Folkestone Properties Limited;

"Nominated Security" means any bond, debenture, loan stock, note, stock, share or other security which has been agreed by the Security Agent and the Borrower to constitute a Nominated Security for the purposes of the Finance Documents;

"Note" and "Notes" has the meaning ascribed thereto in Clause 2.2(i) of the Agreement;

"Note Documents" means (i) the Notes; and (ii) the documents executed or to be executed in connection with the note issuance facility pursuant to Clause 2.2(ii) of the Agreement;

"Noteholders" means the several persons who are for the time being the holders of outstanding Notes and/or any coupons related thereto;

"Notice of Allocation" means a notice substantially in the form set out in the fifth schedule of the Agreement;

"Optional Currency" means:

- (i) dollars;
- (ii) Deutschmarks;
- (iii) Swiss Francs; and
- (iv) Yen

or any other currency which is freely convertible into sterling and which is agreed to by the Facility Agent, an Instructing Group and the Borrower;

"Original Sterling Amount" in relation to an Advance means:

- (i) where such Advance came into existence as a result of a drawing under the Facility, the amount specified as such in the Notice of Allocation relating thereto, as the same may be reduced pursuant to clause 6.4 of the Agreement;
- (ii) where such Advance came into existence upon the consolidation of two or more Advances, the aggregate of the Sterling Amounts of the Advances so consolidated; and
- (iii) where such Advance came into existence upon the division of an Advance, the amount specified as such by the Borrower pursuant to clause 11.4 of the Agreement;

"Property" means all that property (being the Reversionary Property referred to in the Leasehold Charge) which has vested in the Mortgagor pursuant to the Sealink (Transfer of Folkestone Harbour) Harbour Revision Order 1991;

"Sea Containers Group" means Sea Containers and its subsidiaries (other than when any such subsidiary would fail to be treated as a member of the F & P Group);

Please see Continuation Sheet No. 4

**Particulars of a mortgage or charge
(continued)**

Please do not
write in this
binding margin

Continuation sheet No 4
to Form No 395 and 410 (Scot)

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

Company number

2447559

Name of company

Folkestone Properties Limited

Limited*

*delete if
inappropriate

Description of the instrument creating or evidencing the mortgage or charge (continued) (note 2)

Amount due or owing on the mortgage or charge (continued)

Please do not
write in this
binding margin

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

Please do not
write in this
binding margin

Names, addresses and descriptions of the mortgagees or persons entitled to the charge (continued)

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

"Secured Obligations" means the obligations expressed to be assumed by the Mortgagor in any Finance Document to which it is expressed to be a party;

"Security Agent" means The Chase Manhattan Bank, N.A.;

"Security Documents" means:

- (i) a debenture constituting fixed and floating charges dated 17th December 1990 from Folkestone Properties Limited and a legal charge dated 17th December 1990 from Folkestone Properties Limited in respect of property at Folkestone, Kent.
- (ii) each of the mortgages and deed of covenants (and/or such other documents as may be executed assigning the earnings and insurances of any vessel) which are executed in respect of any vessel (and each assignment of reinsurance executed by The Marine Container Insurance Co. Ltd. in respect of any such vessel's insurances) for the purpose of designating such vessel as a Mortgaged Asset for the time being for the purposes of the Agreement;
- (iii) each legal charge executed over any harbour or any other property for the purpose of designating such asset as a Mortgaged Asset for the time being for the purposes of the Agreement;
- (iv) each deed of subordination entered into for the purpose of establishing "Subordinated Debt" for the purpose of the Agreement or which is otherwise referred to in sections 8(i)d and/or 38(iv) of the Agreement; and
- (v) any other document or security from time to time entered into in relation the Agreement which is agreed between the Facility Agent and the Borrower to constitute a Security Document for the purposes of the Agreement;

"Short Term Deposit" means deposits in sterling or such Optional Currency currently drawn, at call or maturities not exceeding 12 months with any authorised institution under the Banking Act 1987 which is not a member of either the F & P Group or the Sea Containers Group;

"Sterling Amount" means:

- (i) in relation to an Advance, its Original Sterling Amount as reduced by the proportion (if any) of such Advance which has been prepaid or repaid; and
- (ii) in relation to the Term Loan, the aggregate of the Sterling Amounts of the outstanding Advances;

"Subordinated Debt" means any indebtedness for borrowed money which is owed by the Borrower to any member of the Sea Containers Group or, as the case may be, any other person who, in place of Sea Containers, pays in Subordinated Debt pursuant to sections 6 and/or 7 of the Agreement, which is subordinated, in a manner and to an extent satisfactory to the Facility Agent, to the indebtedness owed to the Beneficiaries under the Finance Documents; and

"Term Loan" means the aggregate principal amount for the time being outstanding under the Loan Facility;

Please see Continuation Sheet No. 5

Please do not
write in this
binding margin

**Particulars of a mortgage or charge
(continued)**

Continuation sheet No 5
to Form No 39E and 410 (Scot)

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

Company number

2447559

*delete if
inappropriate

Name of company

Folkestone Properties Limited

Limited*

Description of the instrument creating or evidencing the mortgage or charge (continued) (note 2)

Amount due or owing on the mortgage or charge (continued)

Please do not
write in this
binding margin

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

Names, addresses and descriptions of the mortgagees or persons entitled to the charge (continued)

Please do not
write in this
binding margin

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

"Trust Deed" means a deed of trust executed between the Facility Agent, the Security Agent, the Lenders and the Borrower pursuant to which the Security Agent declares itself to be trustee on behalf of the Beneficiaries in respect of the Security Documents.

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

"Wightlink" means Wightlink Limited.

Clause 2.2(i) of the Agreement states that Chase and the Borrower may, from time to time, agree on the terms and conditions that will be applicable to one or more issues of notes by the Borrower (each a "Note" and together the "Notes"), fungible or non-fungible, global or definitive, bearer or registered, denominated in any currency(ies) and/or multicurrency(ies) and to be issued by the Borrower under the note issuance facility to or to the order of Chase.

GLQE03\$2.16

FILE COPY



**CERTIFICATE OF THE REGISTRATION
OF A MORTGAGE OR CHARGE**

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

I hereby certify that a mortgage or charge dated the 26th MAY 1992
and created by FOLKESTONE PROPERTIES LIMITED

for securing all moneys due or to become due from the Company to THE CHASE
MANHATTAN BANK, N.A. (AS SECURITY AGENT) under the terms of ANY FINANCE
DOCUMENTS

was registered pursuant to Chapter I Part XII of the Companies Act
1985, on the 27th MAY 1992

Given under my hand at the Companies Registration Office,
Cardiff the 1st JUNE 1992

No. 2447559

P. Morris
P. MORRIS

an authorised officer

C.69

LC

MC