

# M

CHFP025

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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

N. West  
120414

# 395

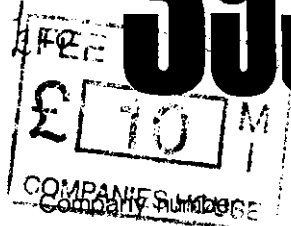
A fee of £10 is payable to Companies House in respect  
of each register entry for a mortgage or charge.

Pursuant to section 395 of the Companies Act 1985

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

For official use

[ 23 ]



02938988

Name of company

\* ENGLISH WELSH & SCOTTISH RAILWAY LIMITED (the "Chargor")

Date of creation of the charge

24th October, 2000

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

Supplemental Debenture (the "Supplemental Debenture") dated 24th  
October, 2000 between the Chargor and The Royal Bank of Scotland plc as  
security agent and trustee for each Finance Party (the "Security  
Agent").

Amount secured by the mortgage or charge

Please see Continuation Sheet 1.

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

The Royal Bank of Scotland plc  
135 Bishopgate  
London

Postcode EC2M 3UR

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

Allen & Overy  
One New Change  
London  
EC4M 9QQ

DMCK/DLLMPY:650671.1

Time critical reference

For official Use  
Mortgage Section

Post room



LD3  
COMPANIES HOUSE

WLEL1PUGLW

0136  
09/11/00

Short particulars of all the property mortgaged or charged

Please see Continuation Sheet 2.

Please do not  
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Please complete  
legibly, preferably  
in black type, or  
bold block  
lettering

Particulars as to commission allowance or discount (note 3)

Nil

Signed

*Allen & Gray*

Date

8/11/00

On behalf of [company] [mortgagee/chargee] †

A fee of £10 is  
payable to  
Companies House  
in respect of each  
register entry for a  
mortgage or  
charge.  
(See Note 5)

† 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 CF14 3UZ

English Welsh & Scottish Railway Limited  
Amounts secured by the mortgage or charge

All the present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Obligor to the Lenders (or any of them) under each or any of the Senior Finance Documents and the Mezzanine Finance Documents (as such terms are defined below) together with all costs, charges and expenses properly incurred by any lender in connection with the protection, preservation or enforcement of its respective rights under the Senior Finance Documents or the Mezzanine Finance Documents (as the case may be) or any other document evidencing or securing any such liabilities, PROVIDED THAT no obligation or liability shall be included in the definition of "Secured Liabilities" to the extent that, if it were so included, the Debenture (or any part thereof) would constitute unlawful financial assistance within the meanings of Sections 151 and 152 of the Companies Act 1985 (the "**Secured Liabilities**").

English Welsh & Scottish Railways Limited

Short Particulars of all the property mortgaged or charged

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The Chargor, as security for the payment of all the Secured Liabilities, charged in favour of the Security Agent by way of first legal mortgage all that leasehold property as the same is known as Northam Yard, Radcliffe Road, Southampton demised by a supplemental lease dated 24th October, 2000 between Railtrack plc (1) and the Chargor (2).

The following terms used in this Companies Form 395 shall have the meanings set out below:

**"Additional Borrower"**

means a member of the Group which becomes a Borrower in accordance with Clause 28.4 (Additional Borrowers) of the Senior Facility Agreement.

**"Additional Guarantor"**

means a member of the Group which becomes a Guarantor in accordance with Clause 28.5 (Additional Guarantors) of the Senior Facility Agreement.

**"Affiliate"**

means, in relation to a person, any of its Holding Companies or Subsidiaries or any other Subsidiary of any of its Holding Companies.

**"Agent"**

means The Royal Bank of Scotland plc in its capacity as facility agent.

**"Agent's Fee Letter"**

means the letter dated 24th February, 1996 between the Agent and the Parent setting out the Agent's fee referred to in Clause 22.2 (Fees) and clause 20.2 (Fees) of the EWSF Facility Agreement.

**"Arrangers "**

means The Royal Bank of Scotland plc, BankBoston Robertson Stephens Inc. and Commerzbank AG.

**"Arrangers' Fee Letter"**

means the letter dated 24th February, 1996 between the Arrangers and the Parent, setting out the Arrangers' fee referred to in Clause 22.1 (Fees) and clause 20.1 (Fees) of the EWSF Facility Agreement.

**"Bank"**

means a financial institution listed in Part III of Schedule 1 of the Senior Facility Agreement and any bank or financial institution that becomes a party to the Senior Facility Agreement pursuant to Clause 28.2 (Transfers by Banks).

**"Board"**

means the British Railways Board.

**"Borrower"**

means the Parent, an Original Borrower or an Additional Borrower.

**"Borrower Accession Agreement"**

means a letter in the form of Part II of Schedule 5 of the Senior Facility Agreement with such amendments as the Agent may approve or reasonably require.

**"Borrower's Agent"**

means English Welsh & Scottish Railway Holdings Limited in its capacity as agent for the Obligors.

**"Debenture"**

means the debenture dated 24th February, 1996 between English Welsh & Scottish Railway Holdings Limited (formerly known as North and South Railways Limited) ("EWSRH Limited")(1), the charging subsidiaries listed in Schedule 1 thereof (2) and the Security Agent (3) as amended and supplemented by a supplemental debenture dated 22nd May, 1996 between EWSRH Limited (1), the charging subsidiaries listed in Schedule 1 thereof (2) and Goldman Sachs International acting as security agent and trustee for each Finance Party (3).

**"EWSF"**

means EWS Finance Limited (Registered No. 3341510)

**"EWSF Facility Agreement"**

means the amended and restated £25,000,000 revolving credit facility agreement originally dated 25th June, 1997 and originally between EWSF, the various banks and financial institutions named therein (as banks), BankBoston, N.A. (as agent, account bank and security trustee) and the Parent, as amended by an amendment agreement dated 31st March, 1998 and amended and restated on or about the date of the Senior Facility Agreement and now between EWSF, the Arrangers, the Banks, the Agent, the Security Agent and the Parent.

**"EWSRH Supplemental Debenture"**

means the supplemental debenture dated 22nd May, 1996 given by, amongst others, the Parent.

**"Fee Letters"**

means the Agent's Fee Letter and the Arrangers' Fee Letter.

**"Finance Document"**

means:

- (a) the Senior Facility Agreement;
- (b) a Security Document;
- (c) a Fee Letter;
- (d) the Priority Agreement;
- (e) the Priority Deed;
- (f) a Novation Certificate;
- (g) a Borrower Accession Agreement;
- (h) a Guarantor Accession Agreement;
- (i) a Hedging Document; and
- (j) any other document designated as such by the Agent and the Borrowers' Agent.

**"Finance Party"**

means the Arrangers, a Bank, a Hedging Counterparty, the Single LC Banks, the Agent or the Security Agent.

**"Fixtures"**

means all fixtures and fittings (including trade fixtures and fittings) and fixed plant and machinery on the Mortgaged Property.

**"Group"**

means the Parent and its Subsidiaries.

**"Guarantor"**

means the Parent, an Original Guarantor or an Additional Guarantor.

**"Guarantor Accession Agreement"**

means a deed in the form of Part III of Schedule 5 of the Senior Facility Agreement with such amendments as the Agent may approve or reasonably require.

**"Hedging Banks"**

means any Bank (or any Affiliate of a Bank) that, in any case, is a party to a Hedging Document.

**"Hedging Counterparty"**

means:

- (a) a Bank in its capacity as counterparty to any Hedging Document; or
- (b) any other counterparty to any Hedging Document approved by the Agent.

**"Hedging Document"**

means any interest rate hedging agreement entered into by a Borrower with a Hedging Counterparty relating to interest payable under the Finance Documents.

**"Holding Company"**

means, in relation to a person, any other person (other than an individual) of which it is a Subsidiary.

**"JV Debenture"**

means the debenture dated 22nd May, 1996 given by NP JV Limited and LG JV Limited.

**"Mezzanine Credit"**

means each of:

- (a) the banks and financial institutions named in Schedule 2 in their capacity as Lenders under and as defined in the Mezzanine Facility Agreement; and
- (b) the Arranger party to (and as defined in) the Mezzanine Facility Agreement and the Mezzanine Agreement,

and in each case any successor thereto and any assigns, transferees or substitutes thereof or therefor (whether pursuant to any Substitution Certificate, as defined in the Mezzanine Facility Agreement, or otherwise), and includes any person to whom any Mezzanine Debt may be payable or owing (whether or not matured) from time to time.

**"Mezzanine Debt"**

means all present and future liabilities (actual or contingent) payable or owing by the Obligors or any of them to the Mezzanine Creditors or any of them under or in connection with the Mezzanine Finance Documents, whether or not matured and whether or not liquidated, together in each case with:

- (a) any refinancing, novation, refunding, deferral or extension of any of those liabilities;
- (b) any further advances which may be made by a Mezzanine Creditor to any Obligor under any agreement expressed to be supplemental to any of the Mezzanine Finance Documents, plus all interest, fees and costs in connection therewith;
- (c) any claim for damages or restitution arising out of, by reference to, or in connection with, any of the Mezzanine Finance Documents;
- (d) any claim flowing from any recovery by an Obligor or a receiver or liquidator thereof or any other person of a payment or discharge in respect of those liabilities on grounds of preference or otherwise; and

- (e) any amounts (such as post-insolvency interest) which would be included in any of the about but for any discharge, non-provability, invalidity, unenforceability or non-allowability of the same in any insolvency or other proceedings.

**"Mortgaged Property"**

means any freehold or leasehold property the subject of any security created by this Supplemental Debenture.

**"Novation Certificate"**

has the meaning given to it in Clause 28.3 (Procedure for novations) of the Senior Facility Agreement.

**"Obligor"**

means a Borrower or a Guarantor.

**"Original Borrowers"**

means the Subsidiaries of the Parent listed in Part I of Schedule 1 of the Senior Facility Agreement as borrowers.

**"Original Guarantors"**

means the Subsidiaries of the Parent listed in Part II of Schedule 1 of the Senior Facility Agreement as guarantors.

**"Parent"**

means English Welsh & Scottish Railway Holdings Limited.

**"Priority Agreement"**

means the priority agreement dated 24th February, 1996 between, among others, the Parent (then known as North and South Railways Limited), the subsidiaries of the Parent named in that agreement as borrowers and guarantors and the Hedging Banks, Senior Creditors and Mezzanine Creditors (each as defined in that agreement), as amended and restated.

**"Priority Deed"**

means the priority deed dated 24th February, 1996 between the Board and the Agent.

**"Security Agreement"**

means a security agreement in the form of Schedule 9 of the Senior Facility Agreement with such amendments as the Security Agent may approve or reasonably require.

**"Security Assets"**

means all assets of each Chargor the subject of any security created by the Supplemental Debenture.



**"Security Document"**

means:

- (a) each Security Agreement;
- (b) the Debenture;
- (c) the EWSRH Supplemental Debenture;
- (d) the JV Debenture;
- (e) each Standard Security; and
- (f) any other document evidencing or creating a Security Interest over any asset of an Obligor to secure any obligations of the Obligor to a Finance Party under the Finance Documents.

**"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.

**"Senior Creditor"**

means each of:

- (a) the banks and financial institutions named in Schedule 3 in their capacity as Banks and/or Single LC Bank under and in each case as defined in the Senior Facility Agreement; and
- (b) the Arranger party to (and as defined in) the Senior Facility Agreement, the Senior Agent and the Security Agent,

and in each case any successor thereto and any assigns, transferees or substitutes thereof or therefor (whether pursuant to any Novation Certificate, as defined in the Senior Facility Agreement, or otherwise).

**"Senior Facility Agreement"**

means the £150,000,000 Senior Facility Agreement dated 24th February, 1996 originally between EWSRH Limited as Parent and as the Borrowers' Agent (1), the various companies listed in Schedule 1 Part 1 thereof as borrowers (2), the various companies listed in Schedule 1 Part 2 thereof as guarantors (3), Goldman Sachs International as the arranger (4), the banks and financial institutions listed in Schedule 1 Part 3 thereof as lenders (5), Goldman Sachs International as agent (6) and Goldman Sachs International as security agent and trustee for and on behalf of the Finance Parties (7), notwithstanding that it may have ceased to be enforceable or all liabilities thereunder have been paid as amended and supplemented by a senior supplemental agreement dated 22nd May, 1996 amended by an amendment agreement dated 11th October, 1996, supplemented by a further supplemental agreement dated 11th June, 1997 and amended and restated by a supplemental agreement dated 4th November, 1999.

**"Single LC Bank"**

means any Bank which issues a Single Bank Fronted Letter of Credit or any Bank which becomes a Single LC Bank pursuant to Clause 28.9 (Change of Single LC Bank) of the Senior Facility Agreement.

**"Single Bank Fronted Letter of Credit"**

means a letter of credit issued by the Single LC Bank on its own account in the form set out in Part II of Schedule 6 of the Senior Facility Agreement with such changes thereto as the Borrowers' Agent may reasonably request.

**"Standard Security"**

means each standard security dated on or about 24th February, 1996 granted in favour of Goldman Sachs International in its previous capacity as security agent in respect of the Senior Facility Agreement.

**"Subsidiary"**

means:

- (a) a subsidiary within the meaning of Section 736 of the Companies Act 1985; and
- (b) unless the context otherwise requires, a subsidiary undertaking within the meaning of Section 258 of the Companies Act 1985.

FILE COPY



## CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

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

COMPANY No. 02938988

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT A SUPPLEMENTAL DEBENTURE BETWEEN THE CHARGOR AND THE ROYAL BANK OF SCOTLAND PLC AS SECURITY AGENT AND TRUSTEE FOR EACH FINANCE PARTY (THE SECURITY AGENT) DATED THE 24th OCTOBER 2000 AND CREATED BY ENGLISH WELSH & SCOTTISH RAILWAY LIMITED FOR SECURING ALL THE PRESENT AND FUTURE OBLIGATIONS AND LIABILITIES OF EACH OBLIGOR (AS DEFINED) TO THE LENDERS (AS DEFINED) (OR ANY OF THEM) UNDER EACH OR ANY OF THE SENIOR FINANCE DOCUMENTS (AS DEFINED) AND THE MEZZANINE FINANCE DOCUMENTS (AS DEFINED) WAS REGISTERED PURSUANT TO CHAPTER 1 PART XII OF THE COMPANIES ACT 1985 ON THE 9th NOVEMBER 2000.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 13th NOVEMBER 2000.

L.C.  
CJR



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES



COMPANIES HOUSE