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legibly, preferably  
in black type, or  
bold block lettering

\*insert full name  
of Company

## COMPANIES FORM No. 395

### Particulars of a mortgage or charge

A fee of £13 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

Company number

[1413]

02938988

Name of company

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

Date of creation of the charge

4 June 2007

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

Security Assignment relating to a purchase contract relating to sixty 3,000 THP, Model JT42CWRM  
diesel-electric locomotives (the "Goods") (the "Security Assignment")

Amount secured by the mortgage or charge

All moneys, liabilities and obligations which are now or at any time hereafter may be expressed to be  
due, owing or payable by an Obligor to the Assignee in any currency, actually or contingently, with  
another or others, as principal or surety, on any account whatsoever under any Transaction Document  
or as a consequence of any breach, non-performance, disclaimer or repudiation by such Obligor (or  
by a liquidator, receiver, administrative receiver, administrator, or any similar officer in respect of such  
Obligor) of any of such Obligor's obligations under any Transaction Document (the "Secured  
Obligations")

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

Export Development Canada, 151 O'Connor Street, Ottawa, Canada (the "Assignee")

Postcode K1A 1K3

Presentor's name address and  
reference (if any)

Norton Rose  
3 More London Riverside  
London  
SE1 2AQ

NNFR/TXXJ/LN08825/BD#6125249

Time critical reference

For official Use (06/2005)

Mortgage Section

Post room

MONDAY



\*L5Z12QBT\*

LD2

11/06/2007

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COMPANIES HOUSE

Short particulars of all the property mortgaged or charged

1 As security for the payment, performance and discharge in full of the Secured Obligations, the Company assigns absolutely and agrees to assign absolutely, with full title guarantee and by way of first priority security, the Collateral in favour of the Assignee

2 To the extent that the Collateral is not capable of assignment pursuant to the Security Assignment as security for the payment, performance and discharge of the Secured Obligations, the Company charges, with full title guarantee and by way of first fixed charge, the Collateral in favour of the Assignee

3 The Security Assignment contains an undertaking by the Company that it shall not, without the prior written consent of the Assignee sell, assign or otherwise dispose of the Collateral (or any part thereof) or create or permit to subsist any Lien in relation to the Goods or the Collateral (or any part thereof), other than (i) Permitted Liens and (ii) in a sale and lease back of the Goods between the Company and a third party lessor, after title has passed to the Company

Please see Addendum 4/4

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 Norton Rose

Date 8 June 2007

On behalf of ~~XXXXXXXXXXXXXXXXXXXX~~ [chargee] †

A fee 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 A fee of £13 is payable to Companies House in respect of each register entry for a mortgage or charge Cheques and Postal Orders must be made payable to **Companies House**
- 6 The address of the Registrar of Companies is **Companies House, Crown Way, Cardiff CF14 3UZ**

Addendum 1/4

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

Addendum 2/4

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

Addendum 3/4

3 Names, addresses and description of the mortgages or persons entitled to the charge (continued)

Addendum 4/4

4 Short particulars of all the property mortgaged or charged (continued)

In this Form 395, the following definitions shall apply

**"Acknowledgement to Assignment"** means the acknowledgement to assignment relating to the Notice of Assignment delivered by Electro-Motive to the Company,

**"Collateral"** means all of the right, title and interest (present and future, actual and contingent) of the Company in and to the Contract including, without limitation

- (a) the right to purchase, accept delivery of, and take good and unencumbered title to the Goods,
- (b) the right to receive (i) the reimbursement of any or all of the Pre-Delivery Payments (or any part thereof) from Electro-Motive, whether or not financed or funded in whole or in part by or by the proceeds of any Advance (as defined in the Loan Agreement) under the Loan Agreement, and (ii) all other moneys (including any moneys payable pursuant to any indemnity provision contained in the Contract or upon the termination thereof and including any liquidated damages) from Electro-Motive, in each case in the event that any such amount becomes payable to the Company under the Contract in relation to the Goods,
- (c) all of its right, title and interest in and to paragraph 6 of the Contract (*Warranty*) Limits and all claims arising in respect thereof,
- (d) all of its right, title and interest in and to all claims for damages arising out of any breach or default by Electro-Motive under the Contract, and
- (e) the right to compel performance by Electro-Motive of its obligations under the Contract insofar as it relates to the rights referred to in paragraphs (a) - (d) inclusive above,

**"Contract"** means the contract no 20068864 between the Company and Electro-Motive for the purchase of the Goods, as amended from time to time with the Assignee's consent,

**"Electro-Motive"** means Electro-Motive Diesel, Inc of 9301 W 55th St , La Grange, Illinois 60525, U S A ,

**"Event of Default"** means any event or circumstance described in section 9 of the Loan Agreement,

**"Governmental Authority"** means the government of any nation or any political subdivision thereof, whether state or local,

and any agency, authority, instrumentality, regulatory body, court, central bank or other entity (including any federal or other association of or with which any such nation may be a member or associated) exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government,

**"Group"** means English Welsh & Scottish Railway Holdings Limited and each of its Subsidiaries,

**"Guarantee"** means the guarantee relating to the obligations of the Company dated 4 June 2007 and entered into between the Guarantors and the Assignee as beneficiary,

**"Guarantors"** means each of English Welsh & Scottish Railway International Limited, English Welsh & Scottish Railway Holdings Limited and Rail Express Systems Limited,

**"Lien"** means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset, and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities,

**"Loan Agreement"** means the loan agreement relating to the financing of the Pre-Delivery Payments dated 4 June 2007 and entered into between the Company, as borrower, and the Assignee, as lender,

**"Marcroft Companies"** means Marcroft Engineering Limited (company number 02234482) and Marcroft Holdings Limited (company number 0499280),

**"Notice of Assignment"** means the notice of assignment delivered by the Assignor to Electro-Motive,

**"Obligors"** means, together, the Company and each of the Guarantors (each an **"Obligor"**),

**"Permitted Lien"** means

- (a) carrier's, warehousemen's, mechanics', materialmen's, repairmen's and other like Liens, arising both by operation of law and in the ordinary course of business and securing obligations that are not overdue by more than sixty (60) days or are being contested in compliance with subsection 8 1(f) of the Loan Agreement,
- (b) Liens imposed by law for Taxes that are not yet due or that are being contested in compliance with subsection 8 1(f) of the Loan Agreement,
- (c) cash deposits to secure the performance of bids, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of like nature incurred in the ordinary course of business,
- (d) judgment Liens in respect to judgments that do not constitute Events of Default under subsection 9 1(i) of the Loan Agreement provided that there shall be no period of more than thirty (30) consecutive days during which a stay of enforcement of any related judgment shall not be in effect,
- (e) easements, zoning restrictions, rights of way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not detract from the value of the affected property or interfere with the ordinary conduct of the business of the Company as the case may be,
- (f) Liens arising solely by virtue of any statutory provisions relating to banker's liens, rights of set-off or other similar rights to deposit accounts or the funds maintained with a creditor depository institution, and
- (g) Liens existing on the date hereof,
- (h) any Lien arising by operation of law or out of title retention provision in a supplier's standard conditions of supply in respect of goods and/or services supplied to the Group,
- (i) any Lien arising over or affecting any asset acquired by any member of the Group or over or affecting any asset of any company which becomes a member of the Group after the date of the Security Assignment, where the Lien is created prior to the date on which that company becomes a member of the Group, if
  - (i) the Lien was not created in contemplation of the acquisition of that asset and/or company, and
  - (ii) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset and/or company, and
  - (iii) the Lien is removed or discharged within 6 months of the asset being acquired or, as the case may be, of that company becoming a member of the Group,
- (a) any Lien granted with the prior written consent of the Assignee which consent shall not be unreasonably withheld,
- (b) any other Lien securing indebtedness the principal amount of which (when aggregated with the principal amount of

Name of company

\*insert full name  
of Company

\* ENGLISH WELSH &amp; SCOTTISH RAILWAY LIMITED (the "Company")

any other indebtedness which has the benefit of security given by any member of the Group other than any permitted under paragraphs (a) to (i) above does not exceed EUR 5,000,000 (or its equivalent in another currency or currencies), and

(c) any Lien granted by either of the Marcroft Companies from time to time

**"Person"** means any individual, corporation, voluntary association, partnership, joint venture, trust or government (or any agency or political subdivision thereof),

**"Pre-Delivery Payments"** means the pre-delivery payments (excluding for the avoidance of doubt the final instalment of the Purchase Price payable to Electro-Motive pursuant to the Contract in relation to the Purchase Price and which is financed under the Loan Agreement,

**"Purchase Price"** means the purchase price payable to Electro-Motive pursuant to the Contract which amount is the sum of (a) the purchase price as determined in accordance with Attachment I to the Contract and (b) any other price adjustments made pursuant to and in accordance with the terms of the Contract,

**"Subsidiary"** of a Person means a subsidiary within the meaning of section 736 of the Companies Act 1985,

**"Taxes"** means all present or future taxes of any kind or nature whatsoever (other than taxes imposed in Canada) including, without limitation, income taxes, sales or value-added taxes, goods and services taxes, stamp taxes, levies, duties, fees, royalties and all deductions and withholdings therefrom together with any fines, penalties and interest thereon and any restrictions or conditions resulting in an obligation to pay monies to a Governmental Authority,

**"Transaction Documents"** means, together, the Loan Agreement, the Guarantee, the Security Assignment, the Notice of Assignment, the Acknowledgement to Assignment and all other documents, notices, consents, acknowledgements and certificates from time to time entered into pursuant to or in connection with any thereof

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## **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 SECURITY ASSIGNMENT DATED THE 4th JUNE 2007 AND CREATED BY ENGLISH WELSH & SCOTTISH RAILWAY LIMITED FOR SECURING ALL MONIES DUE OR TO BECOME DUE FROM AN OBLIGOR TO EXPORT DEVELOPMENT CANADA ON ANY ACCOUNT WHATSOEVER 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 11th JUNE 2007

GIVEN AT COMPANIES HOUSE, CARDIFF THE 19th JUNE 2007



*Companies House*

— for the record —



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES