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Particulars of an instrument of alteration to a floating charge created by a company registered in Scotland

466

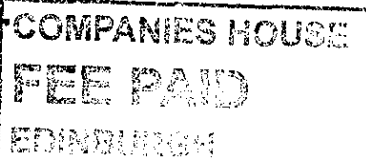
CHFP025

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write in this
margin

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

Pursuant to section 410 and 466 of the Companies Act 1985

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



For official use Company number



SC146610

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

Name of company

DCM (Optical Holdings) Limited (the "Borrower")

• insert full name
of company

Date of creation of the charge (note 1)

22nd October 2002

Description of the instrument creating or evidencing the charge or of any ancillary document which has
been altered (note 1)

Floating Charge

Names of the persons entitled to charge

David Charles Mouldsdale

Short particulars of all the property charged

The whole of the property (including uncalled capital) which is or may from
time to time, while the security constituted by the Floating Charge is in
force, be comprised in the property and undertaking of the Borrower

Presentor's name address and
reference (if any):
KLegal
63 Queen Victoria Street
London

EC4N 4ST
DX: 135180 Cheapside
RSHK/OP0556.000009

For official use
Charges Section



COMPANIES HOUSE

30/10/02

L466 Form International 3/99

...and the effect of the persons who have executed the instrument of alteration under 2/

(1) DCK (Optical Holdings) Limited, a company incorporated in Scotland (Registered Number SC146610) with its registered office at 9 Clairmont Gardens, Glasgow G3 7LW;

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write in
this margin

(2) The Governor And Company of the Bank of Scotland, a company incorporated in Scotland by Act of Parliament of The Mound, Edinburgh EH1 1YZ as Bank (hereinafter referred to as "the Bank" or "BoS"); and

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

(3) David Charles Mouldsdale Ben Cruach Lodge, Tarbet, Loch Lomond, Scotland (the "Investor").

Date(s) of execution of the instrument of alteration

22nd October 2002

A statement of the provisions, if any, imposed by the instrument of alteration prohibiting or restricting the creation by the company of any fixed security or any other floating charge having, priority over, or ranking pari passu with the floating charge

Until the Senior Debt is discharged in full, the Borrower will not without the prior written consent of the Bank create or permit to subsist or permit any member of the Group to create or permit to subsist, any encumbrance (other than the Subordinated Security) over any of its assets for any Subordinated Debt.

Until the Senior Debt is discharged in full, the Investor will not without the prior written consent of the Bank permit to subsist or receive any encumbrance (other than the Subordinated Security) or any guarantee or other assurance against financial loss for, or in respect of, any Subordinated Debt.

Short particulars of any property released from the floating charge

None

The amount, if any, by which the amount secured by the floating charge has been increased

Nil

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write in
this margin

A statement of the provisions, if any, imposed by the instrument of alteration varying or otherwise regulating the order of the ranking of the floating charge in relation to fixed securities or to other floating charges

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

Please see Paper Apart 1

Continuation of the statement of the provisions, if any, imposed by the instrument of alteration varying or otherwise regulating the order of the ranking of the floating charge in relation to fixed securities or to other floating charges

Please do not
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this margin

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

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

Signed 

Date 22nd October 2002

On behalf of [company] ~~[charges]~~ †

† delete as
appropriate

Notes

1. A description of the instrument e.g. "Instrument of Charge" "Debenture" etc, as the case may be, should be given. For the date of creation of a charge see section 410(5) of the Companies Act.

2. In accordance with section 466(1) the instrument of alteration should be executed by the company, the holder of the charge and the holder of any other charge (including a fixed security) which would be adversely affected by the alteration.

3. A certified copy of the instrument of alteration, 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 execution of that instrument.

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. Cheques and Postal Orders are to be made payable to Companies House.

6. The address of the Registrar of Companies is:-
Companies Registration Office, 37 Castle Terrace, Edinburgh, EH1 2EB

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DCM (OPTICAL HOLDINGS) LIMITED (THE "BORROWER")
(Registered Number SC146610)

Paper Apart 1- Form 466

Instrument of Alteration
(re Floating Charge)

1. SECURITY RANKING

- 1.1. The Investor agrees and the Borrower acknowledges that the BoS Security shall rank in priority to the Subordinated Security in all respects.
- 1.2. If the Bank agrees to release any of the Borrower's assets from the BoS Security, the Investor will promptly execute such release and any other necessary documents to permit those assets to be held by the Borrower or any acquirer from it free from the Subordinated Security.
- 1.3. The Investor agrees that during the Security Period documents of title to the property and assets charged by the Investor shall be held by the Bank and the Bank agrees to deliver all such documents to the Investor or other person entitled to them at the end of the Security Period.
- 1.4. Subject to the provisions of the Inter Creditor Agreement, the BoS Security and the Subordinated Security shall rank as continuing securities for the payment and discharge of all the liabilities and obligations the payment and/or discharge of which are thereby secured and shall not be affected by any fluctuation in the moneys, obligations and liabilities from time to time due, owing or incurred to the Bank or by the existence at any time of a credit balance on any current or other account of the Bank.
- 1.5. Moneys received by any receiver and/or manager appointed under either the BoS Security or the Subordinated Security (after payment of his remuneration and receivership expenses and after providing for all costs, charges, expenses and liabilities and other payments incidental to the appointment of such receiver and the exercise of all or any of his powers and of all outgoings properly paid by him ranking in priority to the BoS Security and the Subordinated Security) from realisation of the BoS Security or the Subordinated Security or otherwise shall be applied to give effect to the provisions of Clause 3.1. of the Inter Creditor Agreement.
- 1.6. Each of the Bank and the Investor hereby consents to the creation of the BoS Security and the Subordinated Security.
- 1.7. The ranking of security set out in Clause 3 of the Inter Creditor Agreement shall have effect notwithstanding:-
 - (i) the dates of execution, creation, registration or recording of any of the BoS Security or the Subordinated Security;

- (ii) the terms of any of the BoS Security or the Subordinated Security;
- (iii) the date or dates on which any sum or liability forming part of the Senior Debt or the Subordinated Debt is drawn down or incurred or arises or becomes due in any way by the Borrower or is repaid and/or re-advanced to or by the Borrower;
- (iv) any fluctuation in the amount from time to time of the Senior Debt or the Subordinated Debt; or
- (v) the existence of any credit or debit balance on any current or other account of the Borrower held with or for the benefit of the Bank.

Where:

"BoS Security" means all fixed and floating charges and other security and all collateral or substituted securities for the time being held by the Bank and given by the Borrower as security for the payment and/or discharge of the Senior Debt;

"Group" means the Borrower and its subsidiary undertakings from time to time and "member of the Group" shall be construed accordingly;

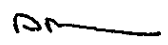
"Inter Creditor Agreement" means the inter creditor agreement between (1) DCM (Optical Holdings) Limited, (2) The Governor And Company of the Bank of Scotland, and (3) David Charles Moulds, dated 22nd October 2002;

"Investor Financing Documents" means the Loan Note Instrument and the Subordinated Security;

"Obligor" means any member of the Group which has or will have any liability (actual or contingent) whether alone or jointly with any other person and whether as principal debtor, guarantor or surety or otherwise (or as the equivalent obligor under the laws of any other jurisdiction) to the Bank for payment of any amounts outstanding or capable of being outstanding under the Senior Financing Documents;

"Security Period" means the period from the date of this Agreement to the date on which the BoS Security is discharged in full;

"Senior Debt" means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or as principal debtor, guarantor, surety or otherwise or as the equivalent obligor under the laws of any other jurisdiction) of each Obligor to the Bank in whatever manner and on any account including but not limited to the Senior Financing Documents together with (a) all costs, charges and expenses properly incurred by the Bank in connection with the protection, preservation or enforcement of their respective rights under the Senior Financing Documents or otherwise, (b) any refinancing, novation, refunding,



deferral or extension of any of those obligations or liabilities and (c) any further advances which may be made by the Bank to any Obligor under any agreement expressed to be supplemental to any of the Senior Financing Documents and all interest, fees and costs in connection therewith;

"Senior Financing Documents" means the BoS Documents as defined in the Facility Letter between the Bank and the Borrower, dated 22nd October 2002;

"Subordinated Security" means the floating charge dated on or around the date hereof and granted by the Borrower in favour of the Investor and all other fixed or floating charges and other security and all collateral, additional or substituted securities for the time being held by the Investor and given by the Borrower as security for the payment and discharge of any part of the Subordinated Debt;

FILE COPY



CERTIFICATE OF THE REGISTRATION OF AN ALTERATION TO A FLOATING CHARGE

Company number 146610

I hereby certify that particulars of an instrument of alteration dated
22 OCTOBER 2002

were delivered pursuant to section 410 of the Companies Act, 1985,
on 5 NOVEMBER 2002.

The instrument relates to a charge created on 22 OCTOBER 2002

by DCM (OPTICAL HOLDINGS) LIMITED

in favour of DAVID CHARLES MOULSDALE

for securing

ALL SUMS DUE IN ACCORDANCE WITH THE TERMS OF A SUBORDINATED
LOAN NOTE INSTRUMENT

Given at Companies House, Edinburgh
6 NOVEMBER 2002



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



N.B. Searchers may find it desirable to refer to the documents mentioned in column (2) for more detailed particulars

REGISTER of Charges, Alterations to Charges,

COMPANY: SC146610 CHARGE: 5

(1) Date of Registration	(2) Serial Number of Document on File	(3) Date of Creation of each Charge and Description thereof	(4) Date of the aquisition of the Property	(5) Amount secured by the Charge £	(6) Short Particulars of the Property Charged	(7) Names of the Persons entitled to the Charge
05/11/2002		22/10/02 FLOATING CHARGE		ALL SUMS DUE IN ACCORDANCE WITH THE TERMS OF A SUBORDINATED LOAN NOTE INSTRUMENT	UNDERTAKING AND ALL PROPERTY AND ASSETS PRESENT AND FUTURE OF THE COMPANY INCLUDING UNCALLED CAPITAL	DAVID CHARLES MOULSDALE

Memoranda of Satisfaction and Appointments etc. of Receivers

N.B. Searchers may find it desirable to refer to the documents mentioned in column (2) for more detailed particulars

COMPANY: SC146610 CHARGE: 5

(8) In the case of a floating charge, a statement of the provisions, if any, prohibiting or restricting the creation by the company of any fixed security or any other floating charge having priority over, or ranking <i>pari passu</i> with the floating charge.	(9) In the case of a floating charge, a statement of 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 the subject of the floating charge or any part of it.	(10) Amount or rate per cent of the Commission Allowance or discount	(11) Memoranda of Satisfaction	(12) Receiver		
				Name	Date of Appointment	Date of Ceasing to act
COMPANY ARE EXPRESSLY PROHIBITED FROM CREATING SUBSEQUENT FIXED SECURITY HAVING PRIORITY OVER OR RANKING EQUALLY WITH THE FLOATING CHARGE						

N.B. Searchers may find it desirable to refer to the documents mentioned in column (2) for more detailed particulars

COMPANY: SC146610 CHARGE: 5

Instruments of Alteration to a Floating Charge					
(13) Date of Execution	(14) Names of the persons who have executed the instrument	(15) The provisions, if any, prohibiting or restricting the creation by the Company of any fixed security or any other floating charge having priority over, or ranking <i>pari passu</i> with, the floating charge.	(16) The provisions, if any, varying or otherwise regulating the order of the ranking of the floating charge in relation to fixed securities or to other floating charges.	(17) Short particulars of any property released from the floating charge	(18) The amount, if any, by which the amount secured by the floating charge has been increased. £
	DAVID CHARLES MOULSDALE THE GOVERNOR AND COMPANY OF THE BANK OF SCOTLAND DCM (OPTICAL HOLDINGS) LIMITED				