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COMPANIES FORM No. 395

A/C 00400041

Particulars of a mortgage or charge

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

Company number

Name of company

\* Priorgate Limited (the "Company")

Date of creation of the charge

8 April 2004

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

debenture (the "Debenture") dated 8 April 2004 and made between the Company (1) and The Governor and Company of the Bank of Ireland as security trustee for itself and the other Finance Parties (as defined below) (the "Security Trustee") (2)

Amount secured by the mortgage or charge

see riders 1 and 3 (attached)

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

The Governor and Company of the Bank of Ireland as Security Trustee  
36 Queen Street  
London

Postcode EC4R 1HJ

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

CMS Cameron McKenna  
Mitre House  
160 Aldersgate Street  
London  
EC1A 4DD

MBL/JXP/0Z2878.34/20986445

Time critical reference

For official Use  
Mortgage Section

Post room



LD4  
COMPANIES HOUSE

0377  
19/04/04

CHFP025

Please do not write in this margin

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

\*insert full name of Company

Please return via

CH London Counter

Sees rider 2 and 3 (attached)

Please do not  
write in  
this margin

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

T  
+  
95.

Particulars as to commission allowance or discount (note 3)

N/A

Signed *CMS Cameron McKenna*

Date

19 April 2004

On behalf of ~~XXXXXX~~ [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

**Form M395 - Particulars of Mortgage or Charge**

**NAME OF COMPANY :** Priorgate Limited (the **"Company"**)

**COMPANY NUMBER :** 4801068

**DOCUMENT:** Debenture (the **"Debenture"**) dated 8 April 2004 and made between the Company (1) and The Governor and Company of the Bank of Ireland as security trustee for itself and the other Finance Parties (as defined below) (the **"Security Trustee"**) (2)

**RIDER 1**

**AMOUNT SECURED**

All present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally, as principal or surety, or in any other capacity whatsoever) of the Company to any Finance Party (as defined below) under each of the Finance Documents (as defined below) to which the Company is a party (except for any obligation which, if it were so included, would result in the Debenture contravening section 151 of the Companies Act 1985).

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**RIDER 2**

**PARTICULARS OF ALL THE PROPERTY CHARGED**

1. As a continuing security for the payment, discharge and performance of all the Secured Liabilities (as defined below) and with full title guarantee, the Company charges in favour of the Security Trustee:-
  - (a) by way of a first legal mortgage:-
    - (i) all the property specified in Schedule 1 below, if any; and
    - (ii) all estates or interests in any freehold or leasehold property (except any Security Assets (as defined below) specified in sub-paragraph (i) above) belonging to it at the date of the Debenture, if any; and
  - (b) by way of first fixed charge:-
    - (i) (to the extent that they are not the subject of a mortgage under paragraph (a) above) all estates or interests in any freehold or leasehold property belonging to it from time to time;
    - (ii) all plant, machinery, vehicles, computers and equipment owned by the Company and its interest in any plant, machinery, vehicles, computers or equipment in its possession;
    - (iii) its interest in all the Shares and their Related Rights (as each such term is defined below);
    - (iv) all monies standing to the credit of any account (including the Accounts (as defined below)) with any person and the debts represented by them;
    - (v) all benefits in respect of the Insurances (as defined below) and all claims and returns of premiums in respect of them subject to the Security Interest (as defined below) over the proceeds of such Insurances being released by the Debenture to the extent utilised for reinstatement or otherwise in accordance with the Lenders' Direct Agreement (as defined below) and the Account Agreement (as defined below);

- (vi) all of the Company's book and other debts, the proceeds of the same and all other monies due and owing to the Company and the benefit of all rights, securities and guarantees of any nature enjoyed or held by it in relation to any of the foregoing;
- (vii) (to the extent that they do not fall within any other sub-paragraph of this paragraph (b)) all of the Company's rights and benefits under the Relevant Agreements (as defined below), including but not limited to:-
  - (a) the right to demand and receive all monies whatsoever payable to or for the benefit of the Company under or arising from the Relevant Agreements;
  - (b) all remedies provided for in the Relevant Agreements or available at law or in equity;
  - (c) the right of the Company to compel performance of the Relevant Agreements; and
  - (d) all other rights, interests and benefits whatsoever accruing to or for the benefit of the Company arising from the Relevant Agreements;
- (viii) any beneficial interest, claim or entitlement of the Company in any pension fund;
- (ix) its goodwill;
- (x) the benefit of all licences, consents and authorisations (statutory or otherwise) held in connection with its business or the use of any Security Asset (as defined below) specified in any other sub-paragraph in this paragraph (b) and the right to recover and receive all compensation which may be payable to it in respect of them;
- (xi) its uncalled capital; and
- (xii) its Intellectual Property Rights (including the patents and trademarks specified in Schedule 2, if any) (as defined below).

2 As a continuing security for the payment, discharge and performance of all the Secured Liabilities and with full title guarantee, the Company assigns to the Security Trustee all of the Company's rights and benefits under the Project Agreement (as defined below), including, but not limited to:

- 2.1 the right to demand and receive all monies whatsoever payable to or for the benefit of the Company under or arising from the Project Agreement;
- 2.2 all remedies provided for in the Project Agreement or available at law or in equity;

- 2.3 the right of the Company to compel performance of the Project Agreement; and
  - 2.4 all other rights, interests and benefits whatsoever accruing to or for the benefit of the Company arising from the Project Agreement.
- 3 As a continuing security for the payment, discharge and performance of all of the Secured Liabilities and with full title guarantee, the Company charges in favour of the Security Trustee by way of a first floating charge all its assets not otherwise effectively mortgaged, assigned or charged by way of fixed mortgage, assignment by way of security or fixed charge by paragraphs 1 or 2 (above).

N.B. The Debenture contains the following provisions:-

4. The Security Trustee may by notice to the Company convert the floating charge created by the Debenture into a fixed charge as regards all or any of the Company's assets specified in the notice if:-
- (i) an Event of Default (as defined below) is outstanding and a notice has been given pursuant to Clause 12.33 (Acceleration) of the Facilities Agreement (as defined below), provided that any relevant Event of Default for which such notice has been given has not subsequently been waived in accordance with the terms of the Facilities Agreement; and
  - (ii) at any time the Security Trustee considers those assets to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy.
5. Notwithstanding paragraphs (i) and (ii) of paragraph 4 above if any person levies or attempts to levy any distress execution or sequestration or other process against any of the Security Assets, the floating charge shall automatically and without need for notice operate as a fixed charge as regards such assets the moment any such event occurs.

N.B. The Debenture also contains provisions whereby:-

The Company shall not:-

- 6. create or permit to subsist any Security Interest on any Security Asset other than any Security Interest (as defined below) permitted under Clause 11.24 (Negative Pledge) of the Facilities Agreement; or
- 7. sell, lease, transfer or otherwise dispose of (whether by a single transaction or a number of related or unrelated transactions and whether at one time or over a period of time), or concur in any sale, lease, transfer or other disposal of, any Security Asset, or attempt or agree so to do save to the extent permitted under Clause 11 of the Facilities Agreement or otherwise in accordance with the Debenture.

## **Form M395 - Particulars of Mortgage or Charge**

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**COMPANY NUMBER :** 4801068

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### **RIDER 3**

#### **SCHEDULE OF DEFINITIONS AND INTERPRETATION**

1. All defined terms and expressions herein used shall, if not otherwise defined, have the following meanings and any terms not herein defined shall have the meaning given to such term in the Facilities Agreement (as defined below):-

**"Account Agreement"**: the account agreement dated the date of the Debenture between the Company, the Account Bank, the Security Trustee and the Agent (all as defined in the Facilities Agreement) in relation to the establishment and operation of the Accounts;

**"Accounts"**: each of the Proceeds Account, the Income Account, the Compensation Account, the Insurance Account, the Lifecycle Fund Account, the Distributions Account, the Distributions Lock-up Account and the Lifecycle Top-Up Account, details of which are shown in Schedule 1 to the Account Agreement and such other accounts as are agreed from time to time by the Agent, the Company and the Account Bank and references to an **"Account"** shall include any renewal, substitution, replacement or re-designation thereof at any time;

**"Authority"**: The Sheffield City Council;

**"Event of Default"**: any of the events specified as such in Clause 12 (Events of Default) of the Facilities Agreement;

**"Facilities Agreement"**: the facilities agreement dated on or about the date of the Debenture and made between the Company (as Borrower) (1), the Banks (2), the Agent (3), the Security Trustee (4), the Hedging Provider (5) and the Account Bank (6) (as such terms are defined therein);

**"Finance Party"** means any of the Agent, the Banks, the Security Trustee, the Hedging Provider and the Account Bank (as such terms are defined in the Facilities Agreement) and together the **"Finance Parties"**;

**"Finance Documents"**: the Facilities Agreement, the Security Documents, the Account Agreement, the Hedging Agreement, the Fees Letter, each Transfer Certificate and any document designated as such by the Agent and the Company and for the avoidance of doubt any side letter in relation to any Finance Document;

**“Hedging Agreement”:** the interest rate hedging agreement (including, for the avoidance of doubt, the schedule thereto) dated on or about the date of the Debenture and made between the Company and the Hedging Provider comprised of a Master Agreement (Multi-currency Cross Border) (1992 Edition) published by the International Swaps and Derivatives Association, Inc. and any confirmation in relation thereto;

**“Insurance”:** the insurances, and any of them, required to be taken out by the Company from time to time in accordance with Clause 11.44 (Insurance) of the Facilities Agreement and Schedule 5 (Insurances) to the Facilities Agreement;

**“Intellectual Property Rights”:** all know-how, patents, trade marks, service marks, designs, business names, topographical or similar rights, copyrights and other intellectual property monopoly rights and any interests (including by way of licence) in any of the foregoing (in each case whether registered or not and including all applications for the same);

**“Lenders’ Direct Agreement”:** the direct agreement dated on or about the date of the Debenture and made between the Authority, the Agent, the Security Trustee and the Company;

**“Project Agreement”:** the agreement dated on or about the date of the Debenture in relation to the Project (as defined in the Facilities Agreement) and made between the Authority and the Company;

**“Related Rights”:** any dividend or interest paid or payable in relation to any Shares and any rights, monies, accretions, advantages, credits, rebates or refunds (including any rebates and refunds in respect of any tax, duties imposts or charges or property accruing or offered at any time in relation to any Shares by way of redemption, substitution, capitalisation, exchange, bonus or preference, under option rights or otherwise);

**“Relevant Agreements”:** (a) the agreements listed in Schedule 3 below; and (b) any other agreement, contract or document whether now or hereafter existing relating to or connected with the Project (as defined in the Facilities Agreement) (including, for the avoidance of doubt, any Project Document (as defined in the Facilities Agreement)) to which the Company is a party or in respect of which it derives rights or benefits from time to time (but excluding the Project Agreement);

**“Security Assets”:** all assets of the Company the subject of any security created by the Debenture;

**“Security Interest”:** any mortgage, charge (fixed or floating), pledge, lien, assignment or hypothecation or any other type of preferential right or arrangement (including set-off, title transfer, title retention and trust arrangements), the economic or commercial effect of which is, in the reasonable opinion of the Majority Banks (as defined in the Facilities Agreement), similar to conferring security;

**“Secured Liabilities”:** the amounts more particularly described in Rider 1 above;



**“Shares”:** any stocks, shares, debentures, bonds or other securities and/or investments legally and/or beneficially owned by the Company or any nominee from time to time.

2. In the Debenture and this Form M395:-

- (a) the “**assets**” of any person shall include the undertaking, property, revenues, rights and assets (present and future and including any part thereof) of whatsoever nature of such person; and
- (b) the provisions of Clause 1.2 - 1.9 of the Facilities Agreement apply to the Debenture and this Form M395 as though they were set out in full in the Debenture and herein except that references to the “Agreement” therein are to be construed as references to the Debenture.

### **Schedule 3**

#### **Relevant Agreements**

(each of which is defined in the Facilities Agreement)

1.
  - (a) Project Agreement;
  - (b) Building Contract;
  - (c) Building Contract Guarantee;
  - (d) Services Contract;
  - (e) Services Contract Guarantee;
  - (f) Co-Operation Agreement;
  - (g) Investment Documents;
  - (h) Subscription and Shareholders Agreement;
  - (i) Subordinated Lender LCs; and;
  - (j) SPV Management Agreement.
2. The Hedging Agreement and any interest rate or currency swap, cap, ceiling, collar, floor or financial futures or commodity contract or option or any similar treasury transaction entered into by the Company and whether in existence at the date of the Debenture or entered into hereafter.

FILE COPY



## CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

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

COMPANY No. 04801068

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT A DEBENTURE DATED THE 8th APRIL 2004 AND CREATED BY PRIORATE LIMITED FOR SECURING ALL MONIES DUE OR TO BECOME DUE FROM THE COMPANY TO ANY FINANCE PARTY 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 19th APRIL 2004.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 21st APRIL 2004.



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES



*Companies House*

— for the record —