



Registration of a Charge

Company name: **ELKE SOLAR LIMITED**

Company number: **07931240**

Received for Electronic Filing: **11/10/2013**



Details of Charge

Date of creation: **26/09/2013**

Charge code: **0793 1240 0001**

Persons entitled: **FERN TRADING LIMITED**

Brief description: **ALL FREEHOLD AND LEASEHOLD PROPERTY OF THE COMPANY AND ALL LIENS, CHARGES, OPTIONS AND AGREEMENTS, RIGHTS AND INTERESTS IN OR OVER LAND OR THE PROCEEDS OF SALE OF LAND AND ALL BUILDINGS FIXTURES AND FIXED PLANT MACHINERY FROM TIME TO TIME ON SUCH PROPERTY OR LAND TOGETHER WITH ALL RIGHTS EASEMENTS AND PRIVILEGES APPURTENANT TO OR BENEFITING THE SAME. THE INTELLECTUAL PROPERTY.**

Contains fixed charge(s).

Contains floating charge(s) (floating charge covers all the property or undertaking of the company).

Notification of addition to or amendment of charge.

Chargor acting as a bare trustee for the property.

Authentication of Form

This form was authorised by: **a person with an interest in the registration of the charge.**

Authentication of Instrument

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **NICOLA BOARD**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 7931240

Charge code: 0793 1240 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 26th September 2013 and created by ELKE SOLAR LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 11th October 2013 .

Given at Companies House, Cardiff on 14th October 2013



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

DATED 26TH September **2013**

- (1) ELKE SOLAR LIMITED**
- (2) FERN TRADING LIMITED**

DEBENTURE



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THIS DEBENTURE is made on 26TH September 2013

BETWEEN:

- (1) **ELKE SOLAR LIMITED** incorporated and registered in England and Wales with company number 07931240 whose registered office is at 20 Old Bailey, London EC4M 7AN (the "**Company**"); and
- (2) **FERN TRADING LIMITED** incorporated and registered in England and Wales with company number 06447318) whose registered office is at 20 Old Bailey, London EC4M 7AN acting for itself and as trustee on behalf of the Additional Lenders (the "**Security Trustee**").

IT IS AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

- 1.1 In this Debenture, unless the context otherwise requires, the following words and expressions shall have the following meanings:

"**the 1999 Act**" means the Contracts (Rights of Third Parties) Act 1999;

"**Additional Lenders**" has the same meaning as in the Loan Facility Agreement;

"**Affiliate**" means a person means any person which Controls, is Controlled by or is in common Control with the first person;

"**Bracken**" means Bracken Holdings Limited a company incorporated and registered in England and Wales with company number 06447011;

"**Business Day**" means any day (other than a Saturday, Sunday or public holiday) on which clearing banks are generally open for business in the City of London;

"**Assigned Agreements**" means any agreement which the Security Trustee and the Company from time to time agree in writing to designate as such;

"**Charged Assets**" means in respect of the Company all the undertaking, goodwill, property, assets and rights of the Company described in clauses 3.1 and 3.2;

"**Collateral Instruments**" means negotiable and non-negotiable instruments, guarantees, indemnities and other assurances against financial loss and any other documents or instruments which contain or evidence an obligation (with or without security) to pay, discharge or be responsible directly or indirectly for any liabilities of any person and including without limitation any document or instrument creating or evidencing an Encumbrance;

"**Collections Account**" has the meaning as defined in clause 7;

"**Control**" means the power of a person to secure:

- (i) by means of the holding of shares or the possession of voting power or the power to appoint or remove members of the board of directors or equivalent body in or in relation to the first person or any other person; or
- (ii) by virtue of any powers conferred by the articles of association of, or any other document regulating the first person or any other person

that the affairs of another person are conducted in accordance with the wishes or duration of that person and Controlled shall be interpreted accordingly;

"**Dangerous Substance**" means any radioactive emissions and any natural or artificial substance (whether in solid or liquid form or in the form of a gas or vapour and whether alone or in combination with any other substance) capable (in each case) of causing harm to man or any other living organism or damaging the environment or public health

or welfare, including (without limitation) any controlled, special, hazardous, toxic, radioactive or dangerous waste;

"this Debenture" means this Debenture;

"Default Rate" means 5 per cent. per annum over the sterling base lending rate of HSBC Bank PLC from time to time;

"Disruption Event" means either or both of:

- (a) an event (not caused by, and outside the control of, either party) that materially disrupts the systems for payment or communication or the financial markets needed in each case, to enable either payment to be made or transactions to be carried out under the Finance Documents; or
- (b) any other event (not caused by, and outside the control of, the party whose operations are disrupted) occurs, which results in disruption (of a technical or systems-related nature) to the treasury or payments operations of a party and which prevents either or both parties from:
 - (i) performing its payment obligations under the Finance Documents; or
 - (ii) communicating with the other party as required by the terms of the Finance Documents;

"Encumbrance" means any mortgage, charge, assignment for the purpose of security, pledge, lien, right of set-off, arrangement for retention of title, or hypothecation or trust arrangement for the purpose of, or which has the effect of, granting security, or other security interest of any kind whatsoever and any agreement, whether expressed to be conditional or otherwise, to create any of the same or any agreement to sell or otherwise dispose of any asset on terms whereby such asset is or may be leased to or re-acquired or acquired by the person so agreeing or disposing;

"Enforcement Date" means the date on which:

- (i) the Security Trustee, following the occurrence of an Event of Default which is continuing pursuant to the terms of the Finance Documents, demands the payment or discharge of all or any part of the Secured Obligations which have become due and payable; or
- (ii) if earlier, an application for an administration order, notice of intention to appoint or notice of appointment of an administrator is presented or served in relation to any Company;

"Environment" means all gases, air, water, vapour, controlled waters (including ground and surface water) soil (surface and sub-surface), flora and fauna and all other natural resources;

"Environmental Laws" means all laws, regulations, codes of practice, circulars, guidance notices and the like having legal effect whether or not in force at the date of this Debenture (whether in the United Kingdom or elsewhere) concerning the Environment, the protection of public health, the conditions of the work place or the control of Dangerous Substances;

"Event of Default" means any of the events of default listed in clause 16 hereof (and an Event of Default will be continuing unless it has been remedied or expressly waived in writing by any of the Finance Parties);

"Finance Documents" means this Debenture, the Loan Facility Agreement and any document, certificate or instrument executed in connection therewith or pursuant

thereto and any other document that the Security Trustee and the Company (both acting reasonably) agree is to be treated as such;

"Finance Parties" means the Security Trustee, Terido and each of the Additional Lenders (each a **"Finance Party"**);

"Floating Charge Assets" means those assets of the Company from time to time subject to a floating charge pursuant to this Debenture;

"Group" means the Company and each of its Subsidiaries

"Group Company" means any member for the time being of the Group;

"Insurances" means all policies of insurance either now or in the future held by or written in favour of any Company or in which any Company is otherwise interested but excluding any third party liability or public liability insurance and any directors or officers insurance;

"Intellectual Property" means all patents (including applications, improvements, prolongations, extensions and rights to apply for them in any part of the world) designs (whether registered or unregistered) copyrights, design rights, trade marks and service marks (whether registered or unregistered) utility models, trade names, business names, domain names and brand names, knowhow, formulae, confidential information, trade secrets, computer software programs and systems and any similar rights existing in any country (including the benefit of any licences or consents relating to any of the above) and all fees, royalties or other rights derived from them or incidental to them in any part of the world;

"Listing" has the same meaning as in the articles of association of the Company;

"Loan Facility Agreement" means the loan facility agreement entered or to be entered into on or around the date of this document between Terido (1), the Security Trustee (2), Bracken (3) and the Company (4), as amended from time to time;

"Material Adverse Effect" means any event or circumstance which, in the Security Trustee's reasonable opinion, is likely to materially and adversely affect the Company's ability to perform all or any of its material obligations under, or otherwise comply with, the terms of the Finance Documents or any of them;

"OME Entity" means any:

- (i) bank or financial institution, trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets and which is managed by Octopus Investments Limited;
- (ii) Related Fund or Affiliate of Fern or any Additional Lender;

"Permitted Encumbrances" means:

- (i) any lien for taxes of any kind either not yet assessed or, if assessed, not yet due and payable or being contested in good faith by appropriate proceedings (and for the payment of which adequate reserves have been provided by the Company);
- (ii) any lien arising in the ordinary course of business by statute or by operation of law, in any case in respect of any monies:
 - (a) which are not yet due and payable;
 - (b) which have become due and payable, to the extent that the payment of such monies is the subject of a dispute which the Company is conducting in good faith, if necessary by appropriate proceedings;

- (iii) any rights by way of reservation or retention of title which are required by the supplier of any property to the Company in the normal course of such supplier's business;
- (iv) any security interest arising under the Finance Documents;
- (v) any Encumbrance permitted by the Loan Facility Agreement;

"Properties" means the assets of the Company described in clause 1.5(a);

"Receivables" means in respect of the Company:

- (i) all present and future book debts and other debts, rentals, royalties fees, VAT and monetary claims and all other amounts recoverable or receivable by the Company from other persons or due or owing to the Company (whether actual or contingent and whether arising under contract or in any other manner whatsoever);
- (ii) the benefit of all rights and remedies relating to any of the items in (i) above including, without limitation, claims for damages and other remedies for non-payment of the same, all entitlements to interest, negotiable instruments, guarantees, indemnities, Encumbrances, Collateral Instruments, reservations of property rights, rights of tracing and unpaid vendor's liens and similar associated rights; and
- (iii) all proceeds of any of the items listed in (i) or rights and remedies in (ii) above;

"Receiver" means any one or more receivers and/or managers or appointed by the Security Trustee pursuant to this Debenture in respect of the Company or over all or any of its Charged Assets;

"Related Fund" means in relation to a fund ("the First Fund"), a fund which is managed or advised by the same investment manager or investment adviser as the First Fund or, if it is managed or advised by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the First Fund;

"Sale" has the same meaning as in the articles of association of the Company;

"Secured Obligations" means all monies, obligations and liabilities now or at any time in the future due, owing or incurred to the Finance Parties from or by the Company when the same become due for payment or discharge, whether by acceleration or otherwise, and whether such monies obligations or liabilities are express or implied, present or future, actual or contingent, joint or several, incurred as principal or surety and whether originally owing to the Finance Parties or purchased or otherwise acquired by it or any of them and whether denominated in sterling or in any other currency, or incurred on any banking account or in any other manner whatsoever and all other amounts payable by the Company under the Finance Documents;

"Securities" means the assets of the Company described in clause 3.1(c);

"Subsidiary" means a subsidiary undertaking as defined in Section 1159 of the Companies Act 2006;

"Terido" means Terido LLP, a limited liability partnership registered in England and Wales under number OC378171;

"Town and Country Planning Acts" means the Town and Country Planning Act 1990 the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Consequential Provisions) Act 1990 and the Planning and Compensation Act 1991 and all regulations and orders made or confirmed under any of them.

- 1.2 The expressions "**Security Trustee**" and "**Company**" include, where the context admits, their respective successors and in the case of the Security Trustee its transferees and assignees whether immediate or derivative and any replacement, additional or substitute Security Trustee.
- 1.3 Clause headings and the Contents page (if any) are for ease of reference only and shall not affect the construction or the interpretation of this Debenture.
- 1.4 In this Debenture unless the context otherwise requires:
- (a) words and expressions defined in the Loan Facility Agreement and not otherwise defined in this Debenture shall have the meaning given to them in the Loan Facility Agreement;
 - (b) references to clauses and Schedule(s) are to be construed as references to the clauses of, and the Schedule(s) to, this Debenture and references to this Debenture include its Schedule(s);
 - (c) reference to (or to any specified provision of) this Debenture or any other document shall be construed as references to this Debenture, that provision, or that document as in force for the time being and as amended, restated, varied, extended, supplemented, novated or replaced in accordance with the terms of such document or, as the case may be, with the agreement of the relevant parties and (where such consent is by the terms of this Debenture or the relevant document required to be obtained as a condition to such amendment being permitted) the prior written consent of the Company or the Security Trustee (as required);
 - (d) words importing the plural shall include the singular and vice versa;
 - (e) references to a person shall be construed as including references to that person's assigns, transferees or successors in title and shall include an individual, firm, company, corporation, unincorporated body of persons joint venture or any state or any agency of any state;
 - (f) references to statutory provisions shall be construed as references to those provisions as replaced, amended or re-enacted from time to time and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute;
 - (g) the words "other" and "otherwise" shall not be construed ejusdem generis with any of the words preceding them where a wider construction is possible;
 - (h) the words "including" and "in particular" shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any of the words preceding them; and
 - (i) references to "disposal" includes without limitation any sale, lease, sub-lease, assignment or transfer, the grant of an option or similar right, the grant of any easement right or privilege, the creation of a trust or other equitable interest in favour of a third party, a sharing or parting with possession or occupation whether by way of licence or otherwise and the granting of use of or access to any other person over any intellectual property and "dispose" and "disposition" shall be construed accordingly.
- 1.5 If there is any conflict or an inconsistency between any provisions of this Debenture and any provision of the Loan Facility Agreement the provisions of the Loan Facility Agreement will prevail.

2. **COVENANT TO PAY**

The Company covenants that it will pay to the Finance Parties on demand by the Finance Parties the Secured Obligations (or that part then due to be paid and remaining unpaid) as and when the same or any part of them are due for payment or on such earlier date as this security becomes enforceable in accordance with the terms of this Debenture and the Finance Parties determine(s) to enforce the security.

3. **CHARGES**

3.1 The Company with full title guarantee charges to the Security Trustee by way of fixed charge (and as regards all those parts of the freehold and leasehold property in England and Wales now vested in the Company by way of legal mortgage) as a continuing security for the payment and discharge of the Secured Obligations the following assets, both present and future, from time to time owned by the Company or in which the Company may from time to time have an interest:

- (a) all freehold and leasehold property of the Company and all liens, charges, options, agreements, rights and interests in or over land or the proceeds of sale of land and all buildings fixtures (including trade fixtures) and fixed plant and machinery from time to time on such property or land together with all rights easements and privileges appurtenant to or benefiting the same;
- (b) all plant, machinery (other than that charged by clause (a)) vehicles computers and office and other equipment and the benefit of all contracts and warranties relating to the same;
- (c) all stocks, shares, bonds and securities of any kind whatsoever whether marketable or otherwise and all other interests (including but not limited to loan capital) in any person including all allotments, rights, benefits and advantages whatsoever at any time accruing offered or arising in respect of or incidental to the same and all money or property accruing or offered at any time by way of conversion, redemption, bonus, preference, option, dividend, distribution, interest or otherwise in respect of them;
- (d) (subject, in the case of any monies held in, or sums standing to the credit of, the Collections Account, to clause 7) the Receivables;
- (e) all its rights, title and interest in and to cash at bank and (if different) any amount from time to time standing to the credit of any bank or other account with the Security Trustee or with any other bank, financial institution or person (including, without limitation but subject to clause 7, the Collections Account);
- (f) the Insurances and all proceeds of the Insurances;
- (g) all uncalled capital and the goodwill of the Company now or at any time in the future in existence; and
- (h) the Intellectual Property.

3.2 The Company with full title guarantee charges to the Security Trustee by way of floating charge as a continuing security for the payment and discharge of the Secured Obligations its undertaking and all its property, assets and rights whatsoever and wheresoever, both present and future, but excluding any property or assets from time to time or for the time being effectively charged to the Security Trustee by way of fixed charge pursuant to clause 3.1 or assigned pursuant to clause 3.3.

3.3 As further security for the payment of the Secured Obligations, the Company assigns absolutely to the Security Trustee all its right, title and interest in the Receivables (subject to clause 7) and the Assigned Agreements and Insurances, provided that on payment or discharge in full of the Secured Obligations the Security Trustee will at the

request and cost of the Company reassign the Receivables, Assigned Agreements and Insurances (each an **Assigned Asset**) to the Company.

- 3.4 Each of the charges referred to in clause 3.1 shall be read and construed as, and deemed to be, separate charges over each of the items mentioned in sub-clauses 3.1(a) – (h) (inclusive), so that each item mentioned in each sub-clause and each item forming any constituent element of the Receivables, the Insurances and the Intellectual Property shall be deemed to be subject to a separate charge. Without prejudice to the generality of the previous sentence if any such item shall be found to be subject to a floating charge and not to a fixed charge, such finding shall not of itself result in any other such item being deemed to be subject to a floating charge (as opposed to a fixed charge).

- 3.5 Paragraph 14 of schedule B1 to the Insolvency Act 1986 applies to the floating charge created by clause 3.2 which floating charge is accordingly a qualifying floating charge for such purposes.

4. **NEGATIVE PLEDGE**

- 4.1 The Company covenants that it will not without the prior consent in writing of the Security Trustee:

- (a) (save in relation to Receivables to the extent permitted or required pursuant to clause 7) dispose of, factor, discount, assign or in any other manner deal with, or create, or attempt to create, or permit to subsist or arise any Encumbrance (except a Permitted Encumbrance) on or over, the Receivables or any part of the Receivables, or release, set off or compound them;
- (b) create or attempt to create or permit to subsist in favour of any person other than the Security Trustee any Encumbrance (except Permitted Encumbrances);
- (c) dispose of the Charged Assets or any part of them or attempt or agree so to do, except in relation to
 - (i) Receivables to the extent permitted pursuant to clause 7; and
 - (ii) Floating Charge Assets which may (subject to the other provisions of this Debenture and in particular but without limitation subject to the provisions of clause 7) be sold on market value terms in the usual course of trading as now conducted and for the purpose of carrying on the relevant Company's business; and
 - (iii) computers, office and other equipment which are considered obsolete and disposed of where the proceeds of disposal are used within three months of that disposal for the purchase of an asset to replace directly the assets the subject of that disposal and where the consideration received does not exceed £25,000 in any financial year of the Company.

5. **CONVERSION OF FLOATING CHARGE AND AUTOMATIC CRYSTALLISATION**

- 5.1 Notwithstanding anything expressed or implied in this Debenture the floating charge created by this deed by the Company shall automatically and without notice be converted into a fixed charge in respect of the Floating Charge Assets of the Company:

- (a) if the Company creates or attempts to create any Encumbrance (other than a Permitted Encumbrance) over all or any of the Floating Charge Assets without the prior consent in writing of the Security Trustee; or

- (b) if any person levies or attempts to levy any distress, execution, sequestration or other process against any of the Floating Charge Assets of the Company.

- 5.2 If at any time an Event of Default shall take place or the Security Trustee believes that any assets of the Company are in danger of being seized or sold under any form of distress execution or other similar process then, without prejudice to the provisions of clause 5.1 the Security Trustee shall be entitled at any time by giving notice in writing to that effect to the Company to convert the floating charge over all or any part of the Floating Charge Assets of the Company into a fixed charge as regards the assets specified in such notice.

6. FURTHER ASSURANCE

- 6.1 The Company shall at any time if and when required by the Security Trustee and at the cost and expense of the Company execute such deeds and documents and take any action required by the Security Trustee to perfect and protect the security created (or intended to be created) by this Debenture or to facilitate the realisation of it or otherwise to enforce the same or exercise any rights of the Security Trustee under this Debenture. In addition the Company shall execute such further charges and mortgages in favour of the Security Trustee as the Security Trustee shall from time to time require over all or any of the Charged Assets to secure the Secured Obligations. Such further charges and mortgages shall be prepared by or on behalf of the Security Trustee at the cost of the Company and shall be in a form required by the Security Trustee (but containing terms and conditions, where directly comparable, no more onerous than those in this Debenture).
- 6.2 Without prejudice to the generality of the provisions of clause 6.2, the Company shall execute as and when so required by the Security Trustee a legal mortgage, legal charge, standard security or other hypothecation (as appropriate) over any freehold, leasehold and heritable properties acquired by it after the date of this Debenture (including all or any of the Properties as and when the same are conveyed, transferred or let to it) and over any and all fixtures, trade fixtures and fixed plant and machinery at any time and from time to time situate on any such property.

7. DEBTS AND CREDIT BALANCES

- 7.1 The Company will upon the specific direction of the Security Trustee:
 - (a) collect all Receivables in the ordinary course of trading as agent for the Security Trustee and, immediately upon receipt, pay all monies which it may receive in respect of the Receivables into such specially designated account(s) with the Security Trustee or such other account(s) with such bank as the Security Trustee may from time to time direct (such account(s) together with all additions to or renewals or replacements of such accounts (in whatever currency) being the "Collections Accounts") and, pending such payment, hold all monies so received upon trust for the Security Trustee;
 - (b) deal with the uncollected Receivables in accordance with any directions given in writing from time to time by the Security Trustee and, in default of and subject to such directions, in accordance with this Debenture; and
 - (c) at any time after the security constituted by this Debenture has become enforceable, execute and deliver to the Security Trustee a legal assignment of the Receivables to the Security Trustee (to the extent that the Receivables have not already been assigned to the Security Trustee) on such terms as the Security Trustee may require and give notice of it to the debtors from whom the Receivables are due owing or incurred and take any other steps as the Security Trustee may require to perfect such legal assignment.
- 7.2 The Company will deliver to the Security Trustee such information as to the amount and nature of its Receivables as the Security Trustee may from time to time reasonably require.

- 7.3 Before the security constituted by this Debenture shall have been enforced the monies credited to the Collections Account may be withdrawn by the Company and applied by it for any lawful purpose.
- 7.4 Upon the security constituted by this Debenture being enforceable the Security Trustee (or a Receiver) may (subject to the payment of any claims having priority to this security) withdraw amounts standing to the credit of each Collections Account to meet any amount due and payable in respect of the Secured Obligations.
- 7.5 The Security Trustee or a Receiver shall not be responsible to the Company for any non-payment of any liability of the Company which could be paid out of monies standing to the credit of the relevant Collections Account, nor be liable to the Company for any withdrawal wrongly made if made in good faith, except for gross negligence or wilful default.
- 7.6 The Security Trustee may delegate its powers of withdrawal under this clause to any receiver and/or manager appointed pursuant to this Debenture.
- 7.7 Prior to the floating charge constituted by clause 3.2 of this Debenture being converted into a fixed charge by operation of law or otherwise, any monies received by the Company and paid into the Collections Account in respect of the Receivables shall upon payment stand released from the fixed charge contained in clauses 3.1(d) and 3.1(e) of this Debenture and shall stand subject to the floating charge contained in clause 3.2 of this Debenture, but such release shall in no respects derogate from the subsistence of the said fixed charge on all other Receivables for the time being outstanding.

8. THE SECURITIES

- 8.1 Until the Enforcement Date unless the Security Trustee shall otherwise direct the Company shall, for as long as it remains the registered owner of any of the Securities, continue to be entitled to exercise the rights attaching to such shares as beneficial owner and to receive and retain any dividends or interest paid on them.
- 8.2 The Company will, if so requested by the Security Trustee, transfer all or any of the Securities to such nominees or agents as the Security Trustee may select, in which case:
- (a) until the Enforcement Date the Security Trustee will hold all dividends, interest and other monies paid on and received by it in respect of the Securities for the account of the Company and will, subject to any right of set-off, pay such dividends, interest and other monies to the Company upon request; and
 - (b) until the Enforcement Date the Security Trustee will exercise all voting and other rights and powers attached to the Securities as the Company may from time to time in writing reasonably direct.

9. REPRESENTATIONS AND WARRANTIES

- 9.1 The Company represents and warrants to the Security Trustee that:
- (a) it is duly incorporated and validly existing under the laws of England and Wales and has power to carry on its business as it is now being conducted and to own its property and other assets;
 - (b) it has power to execute, deliver and perform its obligations under the Finance Documents and the transactions contemplated by it and all necessary corporate, shareholder and other action has been taken to authorise the execution, delivery and performance of the same and no limitation on its powers will be exceeded as a result of the execution and delivery of the Finance Documents or the performance of its obligations under the Finance Documents;

- (c) the Finance Documents constitutes valid and legally binding obligations of it enforceable in accordance with its terms;
- (d) the execution and delivery of the performance of its obligations under and compliance with the provisions of the Finance Documents by the Company will not:
 - (i) contravene or conflict with any existing applicable law, regulation or judicial or official order applicable to it;
 - (ii) contravene or conflict with any agreement binding on it or its assets or constitute a default or termination event (howsoever described) under any such agreement or instrument to an extent that such conflict, default or termination event has or is likely to have a Material Adverse Effect; or
 - (iii) contravene or conflict with any provision of its Memorandum and Articles of Association.

9.2 The representations and warranties in clause 9.1 shall be deemed to be made by the Company and repeated on each day until all the Secured Obligations have been paid or discharged in full as if made with reference to the facts and circumstances existing on each such day.

10. COVENANTS

10.1 The Company covenants with the Security Trustee that during the continuance of this security:

Documents of Title

- (a) it will deposit with the Security Trustee (to be held at the risk of the Company):
 - (i) all deeds and documents of title relating to the Properties and to any subordinate interest in any of them and the insurance policies relating to them;
 - (ii) all certificates and documents of title relating to the Securities and such deeds of transfer in blank and other documents as the Security Trustee may from time to time require for perfecting the title of the Security Trustee to the Securities (duly executed by or signed on behalf of the registered holder) or for vesting or enabling it to vest the same in itself or its nominees or in any purchaser; and
 - (iii) all such other documents relating to the Charged Assets as the Security Trustee may from time to time reasonably require;

Securities

- (b) it will duly and promptly pay all calls, instalments or other monies which may from time to time become due in respect of any of the Securities, it being acknowledged by the Company that the Security Trustee shall not in any circumstances incur any liability whatsoever in respect of any such calls, instalments or other monies;

Intellectual Property

- (c) it will preserve, maintain and renew as and when necessary all copyrights, licences, patents, trade marks, designs, business names and domain names, computer programmes and all other rights required in connection with its

business and will use its best endeavours to detect any infringement of the Intellectual Property and it will upon becoming aware of an infringement or potential infringement promptly take such action as may be required to remove such infringement or prevent the occurrence of such potential infringement;

General Business

- (d) it will conduct and carry on its business and procure that each of its Subsidiaries conducts and carries on its business in a proper and efficient manner and keep or cause or procure to be kept proper books of account relating to such business normally maintained by prudent companies carrying on businesses similar to those of the Company and not make any material alteration in the nature or mode of conduct of any such business which would not be permitted under the Loan Facility Agreement;
- (e) it will observe and perform all covenants, burdens, stipulations, requirements and obligations from time to time affecting the Charged Assets and/or the use ownership, occupation, possession, operation, repair, maintenance or other enjoyment or exploitation of the Charged Assets whether imposed by statute, contract, lease, licence, grant or otherwise carry out all registrations or renewals and generally do all other acts and things (including the taking of legal proceedings) necessary or desirable to maintain defend or preserve its right, title and interest to and in the Charged Assets without infringement by any third party and not without the prior consent in writing of the Security Trustee enter into any onerous or restrictive obligations affecting any of the same or agree any rent review relating to any interest in any of the Properties;
- (f) it will keep all its buildings, machinery, plant, fixtures, vehicles, computers and office and other equipment in good and substantial repair (ordinary wear and tear excepted) and in good working order and condition (ordinary wear and tear excepted) and permit the Security Trustee and its agents or representatives to enter and view their state and condition;
- (g) it will not do or cause or permit to be done anything which may in any way depreciate jeopardise or otherwise prejudice the value to the Security Trustee of any of the Charged Assets otherwise than as a result of any action in the ordinary course of business which would have been taken by a prudent company carrying on businesses similar to those of the Company;

Insurance

- (h) (subject to (k) below) it will insure and keep insured and procure that each of its Subsidiaries will insure and keep insured at its own expense to the full replacement or reinstatement value from time to time (including, where applicable, the cost of demolition and site clearance architects' surveyors' and other professional fees and incidental expenses in connection with reinstatement) all its assets of an insurable nature with insurers previously approved by the Security Trustee in writing against loss or damage, (including loss of rent and profits), by fire, storm, lightning, explosion, riot, civil commotion, malicious damage, impact, flood, burst pipes, aircraft and other aerial devices or articles dropped from them (other than war risk) third party and public liability and liability under the Defective Premises Act 1972 and such other risks and contingencies as the Security Trustee shall from time to time request such insurances to be effected with the interest of the Security Trustee noted on the policy and with the policy containing such provisions for the protection of the Security Trustee as the Security Trustee may reasonably require: in particular the Security Trustee may require the inclusion of a mortgagee's protection clause providing that such insurance shall not be invalidated as regards the Security Trustee by any act or neglect of the Company nor by any misrepresentation or non-disclosure by the Company, nor by enforcement of this Debenture;

- (i) it will maintain such other insurance policies (with the interest of the Security Trustee noted on the policies) containing like provisions for the protection of the Security Trustee as are normally maintained by prudent companies carrying on businesses similar to those of the Company or as the case may be its Subsidiaries: in particular the Security Trustee may require the inclusion of a mortgagee's protection clause providing that such insurance shall not be invalidated as regards the Security Trustee by any act or neglect of the Company nor by any misrepresentation or non disclosure by the Company, nor by enforcement of the Finance Documents;
- (j) it will duly and promptly pay all premiums and other monies necessary for effecting and keeping up such insurances and on demand produce to the Security Trustee the policies of such insurance and evidence of such payments and comply in all other respects with the terms and conditions of the relevant policies including without limitation any stipulations or restrictions as to the use and/or operation of any asset;
- (k) in the case of any leasehold property where the Company or any Subsidiary is prohibited by the terms of the relevant lease from complying with the obligations referred to in (h)) it will procure (where it is empowered to do so), or otherwise use all reasonable efforts to procure, the maintenance by the landlord (or other third party) of such insurance obligations in accordance with the provisions of the relevant lease;

Properties

- (l) it will not make any structural or material alteration to any of its Properties or do or permit to be done anything which is a "development" within the meaning of the Town and Country Planning Acts from time to time or any orders or regulations under such Acts or do or permit or omit to be done any act matter or thing as a consequence of which any provision of any statute, bye-law, order or regulation or any condition of any consent licence permission or approval (whether of a public or private nature) from time to time in force affecting any of the Properties;
- (m) it will punctually pay and indemnify the Security Trustee and any Receiver against all present and future rent, rates, taxes, duties, charges, assessments, impositions and outgoings whatsoever (whether imposed by agreement statute or otherwise) now or at any time during the continuance of this security payable in respect of the Properties or any part of them or by the owner or occupier of them;
- (n) it will, without prejudice to the generality of clause 4.1, not without the prior consent in writing of the Security Trustee grant any lease, part with possession or share occupation of the whole or any part of any of the Properties or confer any licence, right or interest to occupy or grant any licence or permission to assign, underlet or part with possession of the same or any part of them or permit any person:
 - (i) to be registered (jointly with the Company or otherwise) as proprietor under the Land Registration Act 2002 of any of the Properties, nor create or permit to arise any unregistered interests falling within Schedules 1, 3 or 12 to that Act (as the case may be) or where relevant any interests falling within Section 11(4)(c) of that Act affecting the same nor any overriding interests affecting the same; or
 - (ii) to become entitled to any right, easement, covenant, interest or other title encumbrance which might adversely affect the value or marketability of any of the Properties;
- (o) it will not without the prior consent in writing of the Security Trustee (such consent not to be unreasonably withheld or delayed) vary, surrender, cancel

or dispose of or permit to be forfeit any leasehold interest in any of the Properties;

- (p) It will inform the Security Trustee immediately before contracting to purchase or acquire any estate or interest in freehold, leasehold or heritable property and supply the Security Trustee with such details of the purchase as the Security Trustee may from time to time request;
- (q) it will, and will procure (so far as it is able) that each Subsidiary will:
 - (i) comply with all applicable Environmental Laws;
 - (ii) promptly upon receipt of the same, notify the Security Trustee of any claim, notice or other communication served on it in respect of any alleged breach of any Environmental Law which might, if substantiated, have a material adverse effect; and
 - (iii) indemnify the Finance Parties, any Receiver and their respective officers, employees, agents and delegates (together the "Indemnified Parties") against any cost or expense suffered or incurred by them which;
 - (A) (arises by virtue of any actual or alleged breach of any Environmental Law (whether by the Company, an Indemnified Party or any other person);
 - (B) would not have arisen if the Finance Documents had not been executed; and
 - (C) was not caused by the negligence or wilful default of the relevant Indemnified Party.

11. **RIGHT TO REMEDY COMPANY'S DEFAULT**

If the Company at any time defaults in complying with any of its obligations contained in the Finance Documents the Security Trustee shall, without prejudice to any other rights arising as a consequence of such default, be entitled (but not bound) to make good such default and the Company irrevocably authorises the Security Trustee and its employees and agents by way of security to do all such things (including, without limitation, entering the Company's property) which it reasonably believes is necessary or desirable in connection with such task. Any monies reasonably expended by the Security Trustee shall be repayable by the Company to the Security Trustee on demand together with interest accruing daily at the Default Rate from the date of payment by the Security Trustee until such repayment both before and after judgment. Such interest shall be compounded monthly.

12. **GENERAL POWERS OF THE SECURITY TRUSTEE**

General

- 12.1 At any time on or after the Enforcement Date, or if requested by the Company, the Security Trustee may, without further notice and without the restrictions contained in Section 103 of the Law of Property Act 1925 and whether or not a Receiver shall have been appointed, exercise all the powers conferred upon mortgagees by the Law of Property Act 1925 as varied or extended by this Debenture and all the powers and discretions conferred by this Debenture on a Receiver either expressly or by reference.

- 12.2 Section 93 of the Law of Property Act 1925 shall not apply to the security created by this Debenture or to any security given to the Security Trustee pursuant to this Debenture.

Leasing

- 12.3 During the continuance of this security the statutory and any other powers of leasing, letting, entering into agreements for leases or lettings and accepting or agreeing to accept surrenders of leases or tenancies shall not be exercisable by the Company in relation to the Charged Assets or any part of them.
- 12.4 The Security Trustee shall have the power to lease and make agreements for leases at a premium or otherwise to accept surrenders of leases and to grant options on such terms as the Security Trustee shall consider expedient and without the need to observe any of the provisions of Sections 99 and 100 of the Law of Property Act 1925.

Subsequent Encumbrance

- 12.5 If the Security Trustee receives notice of any subsequent Encumbrance affecting the Charged Assets of the Company or any part of the Charged Assets of the Company the Security Trustee may open a new account for the Company. If it does not do so then, unless the Security Trustee gives express written notice to the contrary to the Company, it shall nevertheless be treated as if it had opened a new account at the time when it received such notice and as from that time all payments made by or on behalf of the Company to the Security Trustee shall be credited or be treated as having been credited to the new account and shall not operate to reduce the amount due from the Company to the Security Trustee at the time when it received such notice.

13. APPOINTMENT AND POWERS OF RECEIVER

- 13.1 At any time on or after the Enforcement Date or if requested by the Company the Security Trustee may by deed or by instrument in writing under the hand of any director or other duly authorised officer appoint one or more persons to be (a) Receiver(s) of the Charged Assets of any or all of the Company or any part of such Charged Assets.

- 13.2 Where more than one Receiver is appointed each joint Receiver shall have power to act severally and independently of any other joint Receiver except to the extent that the Security Trustee may specify to the contrary in the appointment. The Security Trustee may (subject where relevant to Section 45 of the Insolvency Act 1986) remove any Receiver so appointed and appoint another in his place.

- 13.3 Subject to Section 45 of the Insolvency Act 1986, the Security Trustee may in respect of the Company:

- (a) remove any Receiver previously appointed under this Debenture; and
- (b) appoint another person or other persons as Receiver or Receivers

either in the place of a Receiver so removed or who has otherwise ceased to act or to act jointly with a Receiver or Receivers previously appointed under this Debenture.

- 13.4 A Receiver shall (save as otherwise required or provided as a matter of law) be the agent of the Company and the Company shall be solely responsible for his acts or defaults and for his remuneration.

- 13.5 A Receiver shall have all the powers conferred from time to time on receivers by statute (in the case of powers conferred by the Law of Property Act 1925 without the restrictions contained in Section 103 of that Act) and power on behalf and at the cost of the Company (notwithstanding liquidation of the Company) to do or omit to do anything which the Company could do or omit to do in relation to the Charged Assets or any part of them. In particular (but without limitation) a Receiver shall have power to do all or any of the following acts and things in respect of the Company and the Charged Assets in respect of which he is appointed namely:

- (a) take possession of, collect and get in all or any of the Charged Assets, exercise in respect of the Securities all voting or other powers or rights available to a registered holder of the Securities in such manner as he may

think fit and bring, defend or discontinue any proceedings or submit to arbitration in the name of the Company or otherwise as may seem expedient to him;

- (b) carry on, manage, develop, reconstruct, amalgamate or diversify the business of the Company or any part of it, or concur in so doing, lease or otherwise acquire and develop or improve properties or other assets without being responsible for loss or damage;
- (c) raise or borrow any money from or incur any other liability to any of the Finance Parties or others on such terms, with or without security, as he may think fit and so that any such security may be or include a charge on the whole or any part of the Charged Assets ranking in priority to this Debenture or otherwise;
- (d) without the restrictions imposed by Section 103 of the Law of Property Act 1925 or the need to observe any of the provisions of Sections 99 and 100 of such Act, sell by public auction or private contract, let, surrender or accept surrenders, grant licences or otherwise dispose of or deal with all or any of the Charged Assets or concur in so doing in such manner for such consideration and generally on such terms and conditions as he may think fit, with full power to convey, let, surrender, accept surrenders or otherwise transfer or deal with such Charged Assets in the name and on behalf of the Company or otherwise and so that covenants and contractual obligations may be granted and assumed in the name of and so as to bind the Company (or other estate owner if he shall consider it necessary or expedient so to do) and so that any such sale, lease or disposition may be for cash, Debentures or other obligations, shares, stock, securities or other valuable consideration and be payable immediately or by instalments spread over such period as he shall think fit, and so that any consideration received or receivable shall ipso facto forthwith be and become charged with the payment of all the Secured Obligations, plant, machinery and other fixtures may be severed and sold separately from the premises containing them and the Receiver may apportion any rent and the performance of any obligations affecting the premises sold without the consent of the Company;
- (e) promote the formation of companies with a view to the same purchasing, leasing, licensing, or otherwise acquiring interests in all or any of the Charged Assets or otherwise arrange for such companies to trade or cease to trade and to purchase, lease, license or otherwise acquire all or any of the Charged Assets on such terms and conditions whether or not including payment by instalments secured or unsecured as he may think fit;
- (f) make any arrangement or compromise or enter into or cancel any contracts which he shall think expedient;
- (g) make and effect such repairs, renewals and improvements to the Charged Assets or any part of them as he may think fit and maintain, renew, take out or increase insurances;
- (h) appoint managers, agents, officers and employees for any of such purposes or to guard or protect the Charged Assets at such salaries and commissions and for such periods and on such terms as he may determine and may dismiss the same;
- (i) make calls conditionally or unconditionally on the members of the Company in respect of uncalled capital;
- (j) without any further consent by or notice to the Company exercise for and on behalf of the Company all the powers and provisions conferred on a landlord or a tenant by the Landlord and Tenant Acts, the Rents Acts, the Housing Acts or the Agricultural Holdings Act or any other legislation from time to time in force in any relevant jurisdiction relating to rents or agriculture in

respect of any part of the Properties, but without any obligation to exercise any of such powers and without any liability in respect of powers so exercised or omitted to be exercised;

- (k) sign any document, execute any deed and do all such other acts and things as may be considered by him to be incidental or conducive to any of the above matters or powers or to the realisation of the security of the Security Trustee and to use the name of the Company for all the above purposes;
- (l) do all the acts and things described in Schedule 1 to the Insolvency Act 1986 as if the words "he" and "him" referred to the Receiver and "company" referred to the Company;
- (m) to exercise all the powers of the Security Trustee under this Debenture.

13.6 The Security Trustee may from time to time determine the remuneration of any Receiver without being limited to the maximum rate specified in Section 109(6) of the Law of Property Act 1925. A Receiver shall be entitled to remuneration appropriate to the work and responsibilities involved upon the basis of charging from time to time adopted by the Receiver in accordance with the current practice of his firm.

13.7 The Security Trustee may at any time after the Enforcement Date or if requested by the Company appoint one or more persons to be (an) administrator(s) of the Company pursuant to the Insolvency Act 1986.

14. **APPLICATION OF PROCEEDS; INSURANCE MONIES; PURCHASERS**

14.1 All monies received by any Receiver appointed under this Debenture shall (subject to any requirement of law to the contrary) be applied in the following order:

- (a) in the payment of the costs, charges and expenses of and incidental to the Receiver's appointment and the payment of his remuneration;
- (b) in the payment and discharge of any outgoings paid and liabilities incurred by the Receiver in the exercise of any of the powers of the Receiver;
- (c) in providing for the matters (other than the remuneration of the Receiver) specified in the first three paragraphs of Section 109(8) of the Law of Property Act 1925;
- (d) in discharge of any charges ranking in priority to this Debenture;
- (e) in or towards payment of any debts or claims which are required by law to be paid in preference to the Secured Obligations but only to the extent to which such debts or claims have such preference;
- (f) in or towards the satisfaction of the Secured Obligations in such order as the Finance Parties shall in their absolute discretion decide and in the absence of agreement as the Security Trustee shall decide provided that the Security Trustee shall also at the same time discharge any charges ranking equally with the Debenture; and
- (g) any surplus shall be paid to the Company or other person entitled to it.

The provisions of this clause shall take effect by way of variation and extension to the provisions of Section 109(8) of the Law of Property Act 1925 which provisions as so varied and extended shall be deemed incorporated in this clause.

14.2 For the purposes of clause 14.1 the Security Trustee shall in the absence of manifest error be entitled to rely on the certificate of the Additional Lenders as to any particular amount falling within any sub-paragraph of clause 14.1 which is due and payable to the Additional Lenders and shall not be obliged to verify the contents of any such certificate.

- 14.3 All monies receivable by virtue of any Insurances shall be paid to the Security Trustee (or if not paid by the insurers directly to the Security Trustee shall be held on trust for the Security Trustee) and shall at the option of the Security Trustee be applied in replacing, restoring or reinstating the property or assets destroyed, damaged or lost (any deficiency being made good by the Company) or (except where the Company is obliged (as landlord or tenant) to lay out such insurance monies under the provisions of any lease of any of the Charged Assets) in reduction of the Secured Obligations.
- 14.4 No purchaser or other person shall be bound or concerned to see or enquire whether the right of the Finance Parties or any Receiver to exercise any of the powers conferred by this Debenture has arisen or be concerned with notice to the contrary or with the propriety of the exercise or purported exercise of such powers.
- 14.5 Any moneys received, recovered or realised under the powers conferred under this Debenture may, at the discretion of the Security Trustee, be placed in a suspense account and kept there for so long as the Security Trustee thinks fit pending application from time to time (as the Security Trustee shall be entitled to do as it may think fit) of moneys in or towards discharge of the Secured Obligations.

15. **COSTS AND EXPENSES; LIABILITY; INDEMNITY**

- 15.1 The Company covenants with the Security Trustee to pay on demand all costs, charges and expenses incurred by the Finance Parties or by any Receiver in or about the enforcement, protection, preservation or attempted preservation of any of the security created by or pursuant to this Debenture or any of the Charged Assets on a full indemnity basis, together with interest accruing daily at the Default Rate from the date on which such costs charges or expenses are so incurred until the date of payment (both before and after judgment) such interest to be compounded monthly in accordance with the normal practice of the Security Trustee.
- 15.2 Neither the Security Trustee nor any Receiver shall be liable to account as mortgagee or heritable creditor in possession in respect of all or any of the Charged Assets or be liable for any loss upon realisation or for any neglect or default of any nature whatsoever for which a mortgagee or heritable creditor in possession may be liable as such.
- 15.3 The Company agrees to indemnify the Finance Parties and any Receiver on demand against all losses, actions, claims, expenses, demands or liabilities whether in contract, tort, delict or otherwise and whether arising at common law in equity or by statute which may be incurred by or made against any of them (or by or against any manager agent officer or employee for whose liability, act or omission any of them may be answerable) as a consequence of:
- (a) anything done or omitted in the exercise or purported exercise of the powers contained in the Finance Documents; or
 - (b) any breach by the Company of any of its obligations under the Finance Documents.

other than where there has been gross misconduct or wilful default on the part of the Finance Parties or any of them or the Receiver.

- 15.4 The Company shall pay interest on the sum demanded at the Default Rate.

16. **EVENTS OF DEFAULT; ENFORCEMENT**

On the occurrence of any of the following Events of Default which is continuing (and subject to any grace periods agreed between the Company and the Security Trustee) all Secured Obligations (other than unascertained or contingent liabilities) of the Company, not otherwise so payable, shall immediately become payable on demand:

- 16.1 the Company makes default in the payment on the due date of any money which may have become due from it to the Security Trustee unless its failure to pay is caused solely by :
- (a) an administrative error or technical problem and payment is made within three Business days of its due date;
 - (b) a Disruption Event occurs and payment is made within three Business Days of such Disruption Event ending;
- 16.2 any distress, execution, sequestration or other process is levied or enforced upon or sued out against any material part of the property or assets or revenues of the Company or the Group (taken as a whole) and such distress, execution, sequestration or other process has an aggregate value of £25,000 and is not discharged or stayed within 21 days;
- 16.3 the Company or any Group Company stops or suspends payment of any of its debts, or is unable to, or admits its inability to pay its debts as they fall due;
- 16.4 the Company commences negotiations, or enters into any composition or arrangement, with one or more of its creditors with a view to rescheduling any of its indebtedness (because of actual or anticipated financial difficulties);
- 16.5 any action, proceedings, procedure or step is taken for:
- (a) the suspension of payments, winding up, dissolution, administration or reorganisation (using a voluntary arrangement, scheme of arrangement or otherwise) of the Company; or
 - (b) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Company or any of its assets;
- 16.6 the value of the Company's assets is less than its liabilities (taking into account contingent and prospective liabilities);
- 16.7 any event occurs in relation to the Company that is analogous to those set out in clauses 16.3 to 16.5;
- 16.8 (an event or circumstance referred to in clauses 16.3 to 16.5 inclusive shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement or, if earlier, the date on which it is advertised);
- 16.9 any indebtedness in excess of £25,000 (or such greater amount as the Security Trustee may agree by giving notice to the Company in writing) of the Company or any Group Company is not paid when due nor within any originally applicable grace period or any Indebtedness becomes capable of being declared due and payable prior to the due date for repayment thereof by reason of default or event of default (howsoever described) or any commitment for any indebtedness is cancelled or suspended by a creditor of the Company by reason of an event of default howsoever described;
- 16.10 the Company fails to comply with any provision of any of the Finance Documents Agreement and (if the Security Trustee considers, acting reasonably, that the default is capable of remedy) such default is not remedied within 14 days of the earlier of:
- (a) the Security Trustee notifying the Company of the default and the remedy required; and
 - (b) the Company becoming aware of the default.

16.11 any representation, warranty or statement made, repeated or deemed made by the Company in, or pursuant to, the Finance Documents is (or proves to have been made) when incomplete, untrue, incorrect or misleading in any material respect when made, repeated or deemed made;

16.12 a Sale or Listing (as such expressions are respectively defined in the articles of association of the Company) taking place.

17. NOTICE OF DEFAULT

The Company hereby undertakes to the Security Trustee that so long as any of the Secured Obligations remains outstanding the Company will promptly upon becoming aware of any such event as is mentioned in clause 16 hereof or of any event which would, with the giving of notice, lapse of time or satisfaction of any other condition, constitute such an event (and in any event no later than 3 Business Days after becoming so aware) give notice in writing thereof to the Security Trustee.

18. POWER OF ATTORNEY

If an action is not done within three days of receipt of a written request from the Security Trustee to the Company, then the Company by way of security irrevocably appoints:

18.1 the Security Trustee;

18.2 each person to whom the Security Trustee shall from time to time have delegated the exercise of the power of attorney conferred by this clause; and

18.3 any Receiver;

severally to be its attorney in its name and on its behalf:

(a) to execute and complete any documents or instruments which the Security Trustee or such Receiver may require for perfecting the title of the Security Trustee to the Charged Assets or for vesting the same in the Security Trustee its nominees or any purchaser;

(b) to sign, execute, seal and deliver and otherwise perfect any further security document referred to in clause 6; and

(c) otherwise generally to sign, seal, execute and deliver all deeds, assurances agreements and documents and to do all acts and things which may be required for the full exercise of all or any of the powers conferred on the Security Trustee or a Receiver under this Debenture or which may be deemed expedient by the Security Trustee or a Receiver in connection with any disposition, realisation or getting in by the Security Trustee or such Receiver of the Charged Assets or any part of them or in connection with any other exercise of any power under this Debenture.

19. CONTINUING SECURITY AND OTHER MATTERS

19.1 The Finance Documents and the obligations of the Company under the Finance Documents shall:

Continuing Security

(a) secure the ultimate balance from time to time owing to the Security Trustee by the Company and shall be a continuing security notwithstanding any settlement of account or other matter whatsoever;

- (b) be in addition to and not prejudice or affect any present or future Collateral Instrument, Encumbrance, right or remedy held by or available to the Security Trustee; and
- (c) not merge with or be in any way prejudiced or affected by the existence of any such Collateral Instruments, Encumbrances, rights or remedies or by the same being or becoming wholly or in part void, voidable or unenforceable on any ground whatsoever or by the Security Trustee dealing with, exchanging, releasing, varying or failing to perfect or enforce any of the same or giving time for payment or indulgence or compounding with any other person liable.

Other Security

- 19.2 The Security Trustee shall not be obliged to resort to any Collateral Instrument or other means of payment now or after the date of this Debenture held by or available to it before enforcing this Debenture, and no action taken or omitted by the Security Trustee or any in connection with any such Collateral Instrument or other means of payment shall discharge, reduce, prejudice or affect the liability of the Company.

Release Conditional

- 19.3 Any release, discharge or settlement between the Company and the Security Trustee shall be conditional upon no security, disposition or payment to the Security Trustee by the Company or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Security Trustee shall be entitled to enforce this Debenture subsequently as if such release discharge or settlement had not occurred and any such payment had not been made.

20. CURRENCY CLAUSES

- 20.1 All monies received or held by the Security Trustee or by a Receiver under this Debenture may from time to time be converted into such other currency as the Security Trustee or Receiver considers necessary or desirable to cover the Secured Obligations in that other currency at the market rate of exchange then offered to the Security Trustee (as conclusively determined by the Security Trustee) for purchasing that other currency with the existing currency.
- 20.2 If and to the extent that the Company fails to pay any amount due on demand, the Security Trustee may, in its absolute discretion, without notice to the Company, purchase at any time afterwards so much of any currency as the Security Trustee considers necessary or desirable to cover the Secured Obligations in such currency at the then prevailing spot rate of exchange of HSBC Bank plc (as conclusively determined by the Security Trustee acting reasonably) for purchasing such currency with sterling and the Company agrees to indemnify the Security Trustee against the full sterling cost (including all costs charges and expenses) paid.
- 20.3 No payment to the Security Trustee (whether under any judgment or court order or otherwise) shall discharge the obligation or liability of the Company in respect of which it was made unless and until the Security Trustee shall have received payment in full in the currency in which such obligation or liability was incurred. To the extent that the amount of any such payment shall on actual conversion into such currency fall short of such obligation or liability expressed in that currency the Security Trustee shall have a further separate cause of action against the Company and shall be entitled to enforce the charges created by this Debenture to recover the amount of the shortfall.

21. TRANSFER

- 21.1 Any Finance Party may freely and separately assign, transfer or novate (in whole or in part) all or any of its rights and/or obligations under this Debenture to any OME Entity or otherwise grant an interest in any such rights or obligations to any OME Entity. On request by a Finance Party, the Borrower shall immediately execute and deliver to the

relevant Finance Party any form of instrument required by the relevant Finance Party to confirm or facilitate any such assignment or transfer or novation or grant of interest.

- 21.2 The Borrower may not assign, transfer or novate any of its rights, benefits or obligations under this deed.

22. DISCLOSURE OF INFORMATION AND PUBLICITY

- 22.1 Any Finance Party may disclose to any other Finance Party or to any person to (or through) whom the Finance Party assigns, transfers or novates (or may potentially assign, transfer or novate) any of its rights and obligations under, or enters into (or may potentially enter into) any sub-participation in relation to, the Finance Documents or the Company such information about the Company and the Finance Documents as the Finance Party shall consider appropriate provided such person(s) agree to keep such information confidential.

- 22.2 The Company and the Finance Parties shall agree the terms of any public announcement, press release or other publicity concerning this deed. All costs of any such publicity will be met by the Company.

- 22.3 Nothing in this clause 22 shall prevent disclosure by the Finance Parties, any affiliates, any assignee, transferee or novatee (or potential assignee, transferee or novatee) which is required by law or of matters which are in the public domain or to such persons' professional advisers provided they are under a similar duty of confidentiality.

23. THIRD PARTY RIGHTS

- 23.1 Subject to clauses 23.4, 23.5 and 23.6 below, the Receiver may rely upon and enforce the rights conferred upon it under this Debenture, including, without limitation, those set out in clauses 10.1(q)(iii) (indemnity), 13.1 (right for jointly appointed Receivers to act independently), 13.4 (payment by the Company), 13.5 (Receivers powers), 13.6 (level of remuneration), 14 (application of proceeds), 15 (costs and expenses), 18 (power of attorney), 20.1 (conversion of currency) against the Company.
- 23.2 Subject to clauses 23.4, 23.5 and 23.6 below, the indemnified parties may rely upon and enforce the rights conferred upon them under clause 10.1(q)(iii) (indemnity) of this Debenture.
- 23.3 Without limiting clause 21, if the Security Trustee assigns its rights under this Debenture to any person, such assignee may rely upon and enforce the undertakings given by the Company in this Debenture against the Company.
- 23.4 The third party rights referred to in clauses 23.1, 23.2 and 23.3 (any other terms of this Debenture which provide that a third party may in his own right enforce a term of this Debenture) may only be enforced by the relevant third party with the written consent of the Security Trustee and subject to and in accordance with the provisions of the 1999 Act and all other relevant terms of this Debenture.
- 23.5 Notwithstanding any other provision of this Debenture (including, without limitation, clauses 23.1, 23.2 and 23.3), the Security Trustee and the Company may by agreement in writing rescind or vary any of the provisions in this Debenture in any way without the consent of any third party, and accordingly Section 2(1) of the 1999 Act shall not apply.
- 23.6 Except as contemplated or provided in clauses 12.5, 19, 20, 20.3, 23.1, 23.2, 23.3 and 27 (or insofar as this Debenture otherwise contemplates or expressly provides that a third party may in his own right enforce a term of this Debenture), a person who is not a party to this Debenture has no right under the 1999 Act to rely upon or enforce any term of this Debenture but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

24. **SECURITY TRUSTEE**

- 24.1 This Debenture is granted in favour of the Security Trustee for itself and as trustee on behalf of the Additional Lenders.
- 24.2 Upon being notified of the appointment of a successor to the Security Trustee under the Loan Facility Agreement or any other document the Company shall enter the name of that successor as the Security Trustee in its register of charges as the holder of this Debenture.

25. **MISCELLANEOUS**

- 25.1 The rights, powers and remedies provided in this Debenture are cumulative and are not, nor are they to be construed as, exclusive of any rights, powers or remedies provided by law or otherwise.
- 25.2 No failure or delay on the part of the Finance Parties to exercise any power, right or remedy shall operate as a waiver of it, nor shall any single or any partial exercise or waiver of any power, right or remedy preclude its further exercise or the exercise of any other power right or remedy.
- 25.3 Any liability or power which may be exercised or any determination which may be made under this Debenture by the Finance Parties may be exercised or made in its absolute and unfettered discretion and the Finance Parties shall not be obliged to give reasons.
- 25.4 Each of the provisions of this Debenture is severable and distinct from the others and if at any time one or more of such provisions is or becomes invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions of this Debenture shall not in any way be affected or impaired by such event.
- 25.5 This Debenture shall remain in full force and effect notwithstanding any amendments or variations from time to time of the Finance Documents and all references to the Finance Documents in this Debenture shall be taken as referring to the Finance Documents as amended or varied from time to time (including, without limitation, any increase in the amount of the Secured Obligations).
- 25.6 For the purposes of the Law of Property (Miscellaneous Provisions) Act 1989 any provisions of the Finance Documents relating to any disposition of an interest in land shall be deemed to be incorporated in this Debenture.
- 25.7 This Debenture may be executed in any number of counterparts each of which shall be deemed to be an original, and which together shall constitute one and the same instrument.

26. **NOTICES**

- 26.1 Any notices required to be given under the provisions of this Debenture shall be in writing and shall be deemed to have been duly served if hand delivered or sent by pre paid recorded or special delivery post or pre paid international recorded airmail post or facsimile or pre paid first class post, correctly addressed to the relevant party's address as specified in this Debenture or at such other address as either party may designate from time to time in accordance with this clause.
- 26.2 Any notice pursuant to clause 24.1 shall be deemed to have been served:
- (a) if hand delivered or sent by pre paid recorded or special delivery post or pre paid international recorded airmail post at the time of delivery;
 - (b) if sent by facsimile at the time of transmission but subject to proof by the sender that he holds an acknowledgement from the addressee confirming receipt of the transmitted notice in readable form; or

(c) if sent by pre paid first class post within two Business Days of posting.

26.3 Provided that if deemed receipt occurs before 9.00 am on a Business Day the notice shall be deemed to have been received at 9.00 am on that day, and if deemed receipt occurs after 5.00 pm on a Business Day, or on any day which is not a Business Day, the notice shall be deemed to have been received at 9.00 am on the next Business Day. For the purpose of this clause, references to any time shall be to London time.

27. **LAW**

- (a) This Debenture, its interpretation and any non-contractual obligations arising from or connected with it shall be governed by and shall be construed in accordance with English law.
- (b) The Company irrevocably agrees for the benefit of the Finance Parties that the courts in England shall have jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of or in connection with, this Debenture and for such purposes irrevocably submits to the jurisdiction of such courts.
- (c) Nothing contained in this clause 25 shall limit the right of the Finance Parties to take proceedings against the Company in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction whether concurrently or not (unless prevented by applicable law).
- (d) The Company irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

EXECUTED as a DEED by the parties hereto the day and year first above written.


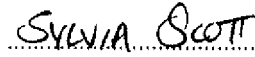
EXECUTED as a **DEED**
by **ELKE SOLAR LIMITED**
acting by a director
in the presence of:

Witness' Signature:

Name:

Address:

Occupation:


.....

SYLVIA SCOTT
20 OLD BAILEY
LONDON EC4M 7AN
.....
Investment Admin


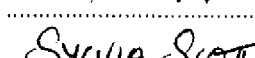
EXECUTED as a **DEED**
by **FERN TRADING LIMITED**
acting by a director
in the presence of:

Witness' Signature:

Name:

Address:

Occupation:


.....

SYLVIA SCOTT
20 OLD BAILEY
LONDON EC4M 7AN
.....
Investment Admin