Companies House

MR01(ef)

Registration of a Charge

Company name: **PARC EIRIN DEVELOPMENT COMPANY LIMITED**

Company number: **08741560**

Received for Electronic Filing: **11/12/2013**

X2MZGP2J

Details of Charge

Date of creation: **10/12/2013**

Charge code: **0874 1560 0001**

Persons entitled: **THE WELSH MINISTERS**

Brief description: **DEED OF SECURITY OVER CASH DEPOSITS IN THE ACCOUNT KNOWN AS PARC EIRIN DEVELOPMENT COMPANY LIMITED.**

Contains fixed charge(s).

Notification of addition to or amendment of charge.

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 SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **BETHAN EVANS**

CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 8741560

Charge code: 0874 1560 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 10th December 2013 and created by PARC EIRIN DEVELOPMENT COMPANY LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 11th December 2013 .

Given at Companies House, Cardiff on 11th December 2013

Companies House

THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

We hereby certify this to be a true copy of the original subject to redaction under s.859(G) Companies Act 2006.
Eversheds LLP

Dated 10th December 2013

(1) PARC EIRIN DEVELOPMENT COMPANY LIMITED

(2) THE WELSH MINISTERS

Deed of security over cash deposits (with third party bank)

Eversheds LLP
1 Callaghan Square
Cardiff
CF10 5BT

Tel 0845 497 9797
Fax 0845 498 7333
Int +44 29 2047 1147
DX 33016 Cardiff
www.eversheds.com

car_lib1\8756694\2
19 November 2013 fairfat

CONTENTS

This deed is made on 10th December 2013

Between:

(1) **PARC EIRIN DEVELOPMENT COMPANY LIMITED** a company incorporated in England and Wales with company number 8741560 whose registered office is at 7 Neptune Court, Vanguard Way, Cardiff, CF24 5PJ (the "**Account Holder**"); and

(2) **THE WELSH MINISTERS** of Welsh Government, Crown Buildings, Cathays Park, Cardiff, CF10 3NQ (the "**Lender**");

1. **INTERPRETATION**

1.1 **Expressly defined terms**

In this deed:

"**Authorisation**" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration

"**Account**" means each account of the Account Holder at the Account Bank of which brief particulars are set out in Schedule 1 (*The Accounts*) and includes, where the context admits, any sub- account or ledger relating to each such account, and to all renewals or redesignations of each such account and also any account opened pursuant to the provisions of clause 14.5 (*Power to establish new account*) and "**Accounts**" shall mean all of the Accounts.

"**Account Bank**" means Barclays Bank PLC or such bank(s) or building society holding the Project Accounts from time to time in accordance with the provisions of Facilities Agreement.

"**Business Day**" means a day, other than a Saturday or a Sunday, on which banks are open for general business in London or, for the purpose of clause 15 (*Communications*), in the principal financial centre in the jurisdiction in which the relevant communication is delivered.

"**Default Rate**" means two per cent. per annum above the highest rate of interest ordinarily applicable to the Secured Obligations from time to time.

"**Delegate**" means any delegate, agent, attorney or trustee appointed by the Lender.

"**Deposits**" means the aggregate of the sums from time to time standing to the credit of the Accounts, together with interest (including interest compounded and treated as capital) and other rights, benefits or sums accruing to , in respect of or incidental to each of the Accounts, and the debts represented by the Accounts.

"**Discharge Date**" means the date with effect from which the Lender confirms to the Account Holder that all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full and all relevant commitments of the Lender cancelled.

"**Enforcement Party**" means any of the Lender, a Receiver or a Delegate.

"**Event of Default**" means the occurrence of any of the events or circumstances defined in the Facilities Agreement as an Event of Default but shall also include any breach by the Account Holder of or non-compliance by the Account Holder with the provisions of this deed.

"**Expenses**" means all fees, discounts, commissions and other banking or service charges, legal and other professional fees, premiums, costs or expenses, in each case calculated on a full indemnity basis and together with VAT, incurred by any Enforcement Party in connection with the Secured Assets, the preparation, negotiation and creation of this deed, taking, perfecting, enforcing or exercising any power under this deed, the appointment of any Receiver or Delegate, the breach of any provision of this deed and / or the protection, realisation or enforcement of this deed, and includes the costs of transferring to the Lender or the Receiver any security ranking in priority to the security constituted by this deed, or the amount required to be paid to secure the unconditional and irrevocable discharge of such security, or any of the foregoing as the context shall require.

"**Facilities Agreement**" means a loan agreement dated on or about the date of this deed made between (1) Ely Bridge Development Company Limited (2) the Account Holder (3) Whiteheads Development Company Limited and (4) the Lender for the provision of certain loan facilities.

"**Group**" means any group of companies for the time being comprising the Account Holder, its Subsidiaries, any company of which the Account Holder is a Subsidiary and any other Subsidiary of such company.

"**Insolvency Act**" means the Insolvency Act 1986.

"**Interest**" means interest at the rate provided and calculated and compounded in accordance with the Facilities Agreement both before and after judgement.

"**LPA**" means the Law of Property Act 1925.

"**Party**" means a party to this deed.

"**Receiver**" means any one or more receivers and managers or (if the Lender so specifies in the relevant appointment) receivers appointed by the Lender pursuant to this deed in respect of the Account Holder or in respect of the Secured Assets or any of them.

"**Secured Assets**" means the assets assigned pursuant to clause 3.1 (*Grant of security*) or otherwise the subject of any security created by or pursuant to this deed and includes any part or parts of such assets.

"**Security Notice**" means a notice issued from the Lender to the Account Bank on or following an Event of Default.

"**Secured Obligations**" means all indebtedness and all obligations or liabilities of any kind which may now or at any time in the future be due, owing or incurred by the Account Holder to the Lender, whatever their nature or basis, in any currency or currencies and however they are described together with Interest and Expenses.

"**Security Period**" means the period beginning on the date of this deed and ending on the Discharge Date.

"**Subsidiary**" means a subsidiary within the meaning of section 1159 of the Companies Act 2006.

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

"**Transaction Documents**" has the meaning given to that term in the Facilities Agreement.

"**VAT**" means value added tax as provided for in the Value Added Taxes Act 1994 and any other tax of a similar fiscal nature.

1.2 **Construction**

In this deed:

1.2.1 any reference to:

1.2.1.1 the word "**assets**" includes present and future property, revenue, rights and interests of every kind;

1.2.1.2 the word "**guarantee**" includes any guarantee or indemnity and any other financial support (including any participation or other assurance against loss and any deposit or payment) in respect of any person's indebtedness;

1.2.1.3 the word "**indebtedness**" includes any obligation for the payment or repayment of money, whatever the nature or basis of the relevant obligation (and whether present or future, actual or contingent);

1.2.1.4 the word "**law**" includes law established by or under statute, constitution, treaty, decree, regulation or judgment, common law and customary law; and the word "**lawful**" and similar words and phrases are to be construed accordingly;

1.2.1.5 the word "**person**" includes any individual, company, corporation, firm, government, state or any agency of a state and any association, partnership or trust (in each case, whether or not it has separate legal personality);

1.2.1.6 the word "**regulation**" includes all guidelines, official directives, regulations, requests and rules (in each case, whether or not having the force of law) of any governmental, inter-governmental or supranational agency, body or department or of any regulatory or other authority or organisation (whether statutory or non-statutory, governmental or non-governmental);

1.2.1.7 the word "**security**" includes any assignment by way of security, charge, lien, mortgage, pledge or other security interest securing any obligation of any person and any other agreement or arrangement having a similar effect;

1.2.1.8 the word "**set-off**" includes analogous rights and obligations in other jurisdictions;

1.2.1.9 the word "**sums**" includes all sums or amounts denominated in any currency whatever and includes the proceeds of any conversion of any sum or amount from one currency to another; and

1.2.1.10 the word "**tax**" includes any tax, duty, impost or levy and any other charge or withholding of a similar nature (including any interest or penalty for late payment or non-payment);

1.2.2 except where this deed expressly states otherwise, each term used in this deed which is defined in the Facilities Agreement has the same meaning as in the Facilities Agreement, construed in accordance with the Facilities Agreement;

1.2.3 where something (or a list of things) is introduced by the word "**including**", or by the phrase "**in particular**", or is followed by the phrase "**or otherwise**", the intention is to state an example (or examples) and not to be exhaustive (and the same applies when other similar words or phrases are used);

1.2.4 each reference to the "**Account Bank**", the "**Account Holder**" or to the "**Lender**" includes its successors in title and, in the case of the Account Holder or the Lender, its permitted assignees or permitted transferees;

1.2.5 unless this deed expressly states otherwise or the context requires otherwise, (a) each reference in this deed to any provision of any statute or of any subordinate legislation means, at any time, the relevant provision as in force at that time (even if it has been amended or re-enacted since the date of this deed) and (b) each reference in this deed to any provision of any statute at any time includes any subordinate legislation made pursuant to or in respect of such provisions as in force at such time (whether made before or after the date of this deed and whether amended or re-enacted since the date of this deed);

1.2.6 each reference to this deed (or to any other agreement or deed) means, at any time, this deed (or as applicable such other agreement or deed) as amended, novated, re-stated, substituted or supplemented at that time, provided that the relevant amendment, novation, re-statement, substitution or supplement does not breach any term of this deed or of the Facilities Agreement;

1.2.7 each reference to the singular includes the plural and vice versa, as the context permits or requires;

1.2.8 the index and each heading in this deed is for convenience only and does not affect the meaning of the words which follow it;

1.2.9 each reference to a clause or Schedule is (unless expressly provided to the contrary) to be construed as a reference to the relevant clause of or Schedule to this deed;

1.2.10 wherever this deed states that the Account Holder must not take a particular step without the consent of the Lender, the Lender has discretion whether to give its consent and can impose conditions on any such consent it gives; and

1.2.11 an Event of Default is "**continuing**" if it has not been waived.

1.3 **Third Party interests**

1.3.1 A person who is not an Enforcement Party has no right under the Third Parties Act to enforce or enjoy the benefit of any term of this deed or any of the Transaction Documents except to the extent that this deed expressly provides for it to do so.

1.3.2 No consent of any person who is not a Party is required to rescind or vary this deed at any time.

1.3.3 This clause 1.3 does not affect any right or remedy of any person which exists, or is available, otherwise than pursuant to the Third Parties Act.

2. **COVENANT TO PAY**

2.1 **Covenant**

The Account Holder hereby, as primary obligor and not merely as surety, covenants with the Lender that it will pay, discharge and perform the Secured Obligations on demand and (where applicable) in the manner provided in the Transaction Documents.

2.2 **Default Interest**

Any amount which is not paid under this deed on the due date shall bear interest (as well after as before judgment) payable on demand at the Default Rate from time to time from the due date until the date of actual unconditional and irrevocable payment and discharge of such amount in full, save to the extent that interest at such rate on such amount and for such period is charged pursuant to any other document relevant to that liability and itself constitutes part of the Secured Obligations.

3. **CHARGING CLAUSE**

3.1 **Grant of security**

The Account Holder, as a continuing security for the payment, discharge and performance of the Secured Obligations, assigns absolutely to the Lender all its rights, title and interest in and to the Deposits but subject to the covenant for re-assignment contained in clause 14.11 (*Release of security*).

3.2 **Continuing security**

All the security granted or created by this deed is to be a continuing security which shall remain in full force and effect notwithstanding any intermediate payment or settlement of account or other matter or thing whatsoever and in particular the intermediate satisfaction by the Account Holder or any other person of the whole or any part of the Secured Obligations.

3.3 **Full title guarantee and implied covenants**

All the security created or given under this deed is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.

3.4 **Miscellaneous**

The fact that incorrect or incomplete, details of any particular Account are included or inserted in a Schedule 1 (*The Accounts*) shall not affect the validity or enforceability of the security created by this deed.

4. **NEGATIVE PLEDGE AND DISPOSAL RESTRICTIONS**

4.1 **Negative pledge**

During the Security Period, the Account Holder must not create, extend or permit to subsist any security over any of the Secured Assets, nor may it:

4.1.1 sell, transfer or otherwise dispose of any of the Secured Assets

4.1.2 in any way sell or dispose of the equity of redemption or any interest in the Secured Assets; or

4.1.3 enter into any other preferential arrangement having a similar effect.

4.2 **Exceptions**

Clause 4.1 does not apply:

4.2.1 to the security created or required to be created by this deed;

4.2.2 to any other security or transaction which is permitted pursuant to the terms of the Facilities Agreement; nor

4.2.3 to any security or transaction to which the Lender has given its written consent.

5. **REPRESENTATIONS AND WARRANTIES**

The Account Holder represents and warrants to the Lender on the date of this deed and on each subsequent date upon which the representations and warranties set out in the Facilities Agreement are repeated and upon which fails during the Security Period as follows:-

5.1 **Status**

it is a limited liability company, duly incorporated and validly existing under the laws of England and Wales and has the power to own its assets and carry on its business and other activities as they are being conducted;

5.2 **Power and enforceability**

the Account Holder has the power to enter into this deed and to perform its obligations and exercise its rights under it and the obligations expressed to be assumed by it under this deed are (and at all relevant times have been) legal, valid, binding and enforceable obligations (subject to the principle that equitable remedies are discretionary and subject to any applicable insolvency laws);

5.3 **No Event of Default**

5.3.1 no Event of Default has occurred or is continuing or might reasonably be expected to result from the execution of this deed or from effect being given to its provisions;

5.3.2 no person who holds any other security over any other asset of the Account Holder has enforced or given notice of its intention to enforce such security;

5.4 **Non-conflict with other obligations**

neither the execution of this deed by the Account Holder, nor the Account Holder's compliance with its terms will:

5.4.1 conflict with or result in any breach of any law or regulation applicable to it;

5.4.2 cause any limitation on any of its powers or on the right or ability of its directors to exercise those powers to be exceeded; nor

5.4.3 constitute a default, acceleration of payment or termination event (however described) under any agreement or instrument binding upon it;

5.5 **Authorisations**

all Authorisations required or desirable for the execution, delivery, issue, validity or enforceability of this deed or of the performance of the Account Holder's obligations or the exercise of its rights under this deed have been obtained and have not been (and the Account Holder is not aware of any circumstance having arisen whereby they might be) withdrawn or varied in whole or part;

5.6 **Priority of security**

the security contained in clause 3 (*Charging clause*) constitute first priority security over the assets which are expressed to be secured by such charges or assignments and those assets are not subject to any prior or pari passu security; and

5.7 **Beneficial ownership**

the Account Holder is the sole absolute and unencumbered legal and beneficial owner of each Account and of the Deposits and has the right to assign the Secured Assets to the Lender upon the terms of this deed.

6. **UNDERTAKINGS**

The Account Holder undertakes to the Lender in the terms of the following provisions of this clause 6, all such undertakings to commence on the date of this deed and to continue throughout the Security Period:

6.1 **Perform**

it will at all times comply with the terms (express or implied) of this deed and of all contracts relating to the Secured Obligations;

6.2 **Not to jeopardise security**

it will not do anything or allow anything to be done which may in any way depreciate, jeopardise or otherwise prejudice the value to the Lender of the security constituted by this deed or the priority of its ranking as expressed in this deed;

6.3 **Give notice of security**

it will procure that the Account Bank receives, immediately following execution of this deed and in respect of each Account, notice of the security created by this deed in the form of the letter set out in Schedule 2 (*Notice of security*) (or such other form as may be agreed by the Lender) and will procure that the Account Bank delivers to the Lender an acknowledgement and undertaking in the form of the endorsement to such letter as set out in Schedule 2 (*Notice of security*) (or such other form as may be agreed by the Lender);

6.4 **Operation of Accounts**

it will take all necessary action to ensure that each Account is operated in accordance with the terms of the mandate relating to it and of this deed and shall ensure that no withdrawals of any monies standing to the credit of the Account are made other than in accordance with the provisions of the Facilities Agreement but for the avoidance of doubt, withdrawals and applications of funds may be made in relation to and for the purposes of Qualifying Expenditure as set out in the Facilities Agreement prior to the issuance of a Security Notice (and the Lender agrees to notify the Account Holder at the time of such issuance of a Security Notice so that it is not in breach of this clause);

6.5 **Disputes**

it will promptly inform the Lender of any material disputes relating to the Accounts or the Deposits;

6.6 **Further assurance**

it will at all times (and forthwith upon the Lender's written request) but at the Account Holder's own expense take all steps (including the making of all filings and registrations and the payment of all fees and taxes) and execute all documents necessary or, in the reasonable opinion of the Lender, desirable (a) to render effective and valid any security or any right or power created or intended to be created or evidenced under or by this deed but which is or may be ineffective or invalid, (b) to perfect, protect or improve any such security or to facilitate its enforcement or realisation, (c) to protect the Lender's position under this deed or any other deed or document entered into pursuant to this deed or (d) in connection with the exercise of any of any rights or powers by any Enforcement Party under or in relation to this deed, and so that any security document required to be executed pursuant to this clause will be in such form and will contain such provisions as the Lender may reasonably require;

6.7 **Deposit of documents**

it will promptly at the Lender's request deposit with the Lender (or as the Lender directs):the originals of all such certificates, acknowledgements, letters, statements or other documents relating to the Secured Assets as the Lender may from time to time reasonably require;

6.8 **Statements**

whether or not it receives a request to do so, it will promptly deliver to the Lender a copy of every statement received by it from the Account Bank relating to any of the Accounts or to the Deposits;

6.9 **Notify Lender of new account or deposit**

it will promptly notify the Lender of the opening by it after the date of this deed of any bank account or the making of any cash deposit with any bank or other authorised deposit taker and will provide such further details of such account or deposit as the Lender may require;

6.10 **Retention of documents**

it agrees that the Lender may retain any document delivered to it pursuant to clause 6.8 (*Deposit of Documents*) or 6.9 (*Statements*) or otherwise until the Discharge Date and if, for any reason it ceases to hold any such document before such time, it may by notice to the Account Holder require that the relevant document be redelivered to it and the Account Holder must immediately comply (or procure compliance) with such notice;

6.11 **Power to remedy**

It agrees that if the Account Holder fails to comply with any of the covenants and undertakings set out or referred to in Clauses 6.1 to 6.10 inclusive it will allow (and hereby irrevocably authorises) the Lender and/or such persons as the Lender nominates to take such action (including the making of payments) on behalf of the Account Holder as is necessary to ensure that such covenants are complied with.

6.12 **Expenses**

It will pay all Expenses on demand. If it does not do so, the Expenses will bear Interest at the Default Rate from and including the date of demand to and including the date of actual payment.

6.13 **Indemnity**

The Account Holder will indemnify the Lender and will keep the Lender indemnified against all losses and Expenses incurred by the Lender as a result of a breach by the Account Holder of its obligations under clauses 6.1 to 6.10 inclusive and in connection with the exercise by the Lender of its rights contained in clause 6.12 above (*Power to remedy*). All sums the subject of this indemnity will be payable by the Account Holder to the Lender on demand and if not so paid will bear interest at the Default Rate. Any unpaid interest will be compounded with Monthly rests.

7. **ENFORCEABILITY**

For the purposes of all powers implied by the LPA or any other applicable statute the Secured Obligations shall be deemed to have become due and payable on an Event of Default and this deed will become immediately enforceable and the powers of the Lender and any Receiver exercisable on the date of this deed, but, as between the Lender and the Account Holder, the power of sale shall be exercisable only upon the occurrence of an Event of Default and for so long as it is continuing (unless there has been a request from the Account Holder to the

Lender for the appointment of a Receiver, in which case it shall be exercisable at any time following the making of such request).

8. **ENFORCEMENT OF SECURITY**

8.1 At any time after the Lender's power of sale has become exercisable on an Event of Default, the Lender may without further notice:

8.1.1 appoint one or more than one Receiver in respect of the Secured Assets or any of them and if more than one Receiver is appointed the Receiver may act jointly and severally or individually; or

8.1.2 take possession of the Secured Assets; or

8.1.3 in its absolute discretion enforce all or any part of the security created by this deed in such other lawful manner as it thinks fit.

8.2 The Lender may remove the Receiver and appoint another Receiver and the Lender may also appoint an alternative or additional Receiver.

8.3 The Receiver will, so far as the law permits, be the agent of the Account Holder and the Account Holder alone will be responsible for the acts or defaults of the Receiver and will be liable on any contracts or obligations made or entered into by the Receiver. The Lender will not be responsible for any misconduct, negligence or default of the Receiver.

8.4 The powers of the Receiver will continue in full force and effect following the liquidation of the Account Holder.

8.5 The remuneration of the Receiver may be fixed by the Lender but will be payable by the Account Holder. The amount of the remuneration will form part of the Secured Obligations.

8.6 The Receiver will have the power on behalf and at the cost of the Account Holder:

8.6.1 to do or omit to do anything which he considers appropriate in relation to the Secured Assets; and

8.6.2 to exercise all or any of the powers conferred on the Receiver or the Lender under this deed or conferred upon administrative receivers by the Insolvency Act (even if he is not an administrative receiver), or upon receivers by the LPA or any other statutory provision (even if he is not appointed under the LPA or such other statutory provision).

8.7 If (notwithstanding any representation or warranty to the contrary contained in this deed) there shall be any security affecting the Secured Assets or any of them which ranks in priority to the security created by this deed and the holder of such prior security takes any steps to enforce such security, the Lender or any Receiver may, at its option, take a transfer of, or repay the indebtedness secured by, such security.

8.8 The Lender may, at any time after this deed has become enforceable pursuant to clause 7 (*Enforceability*), exercise, to the fullest extent permitted by law, all or any of the powers authorities and discretions conferred on a Receiver by this deed, whether as attorney of the Account Holder or otherwise and whether or not a Receiver has been appointed.

8.9 The Lender may, in writing, either in its appointment of a Receiver or by subsequent notice to that Receiver, restrict the right of such Receiver to exercise all or any of the powers conferred on Receivers by this deed.

9. APPLICATION OF PROCEEDS

9.1 Recoveries by Receiver

The proceeds arising from the exercise of the powers of the Receiver will, subject to any claims ranking in priority to the Secured Obligations, be applied by or at the direction of the Receiver in or towards discharging or satisfying, in the following order of priority:

9.1.1 the costs, charges and expenses of and incidental to the Receiver's appointment and the payment of his remuneration;

9.1.2 any costs, charges, expenses and liabilities of or incurred by any Enforcement Party in the exercise of any of its powers including all rents, taxes, rates and outgoings whatever affecting the Secured Assets, all premiums on Insurances properly payable under this deed or any applicable statute, the cost of executing necessary or proper repairs to the Secured Assets, and the payment of annual sums or other payments, and the interest on all principal sums, having priority to the Secured Obligations;

9.1.3 the Secured Obligations, in accordance with the provisions of the Facilities Agreement and otherwise in such order as the Lender may determine; and

9.1.4 the claims of those persons entitled to any surplus.

9.2 Right of appropriation

The Lender is entitled to appropriate money and/or assets to Secured Obligations in such manner or order as it thinks fit and any such appropriation shall override any appropriation by the Account Holder.

9.3 Suspense Account

The Lender may place (for such time as it thinks prudent) any money received by it pursuant to this deed to the credit of a separate or suspense account (without liability to account for interest thereon) for so long and in such manner as the Lender may from time to time determine without having any obligation to apply that money or any part of it in or towards discharge of the Secured Obligations.

10. PROTECTION OF THIRD PARTIES

10.1 No duty to enquire

A buyer from, or other person dealing with any Enforcement Party will not be concerned to enquire whether any of the powers which it has exercised or purported to exercise has arisen or become exercisable and may assume that it is acting in accordance with this deed.

10.2 Receipt conclusive

The receipt of the Lender or any Receiver shall be an absolute and a conclusive discharge to a purchaser of the Secured Assets and shall relieve him of any obligation to see to the application of any monies paid to or by the direction of the Lender or any Receiver.

11. PROTECTION OF LENDER

11.1 Lender's receipts

The Lender shall not be obliged to account to the Account Holder, nor to any other person, for anything other than its own actual receipts which have not been distributed or paid to the person entitled (or who the Lender, acting reasonably, believes to be entitled) in accordance with the requirements of this deed.

11.2 Exclusion of liability

11.2.1 No Enforcement Party will be liable to the Account Holder for any expense, loss liability or damage incurred by the Account Holder arising out of the exercise of its rights or powers or any attempt or failure to exercise those rights or powers, except for any expense, loss, liability or damage arising from its gross negligence, fraud or wilful misconduct.

11.2.2 The Account Holder may not take any proceedings against any officer, employee or agent of any Enforcement Party in respect of any claim it might have against such Enforcement Party or in respect of any act or omission of any kind by that officer, employee or agent in relation to this deed.

11.2.3 Any officer, employee or agent of any Enforcement Party may rely on this clause 11 under the Third Parties Act.

11.3 Effect of possession

If the Lender or any Receiver enters into possession of the Secured Assets, this will not oblige either the Lender or the Receiver to account as mortgagee in possession, and if the Lender enters into possession at any time of the Secured Assets it may at any time at its discretion go out of such possession.

11.4 Account Holder's indemnity

The Account Holder agrees with the Lender to indemnify the Lender and any Receiver or Delegate on demand against any costs, loss or liability incurred by any of them in respect of:

11.4.1 any exercise of the powers of the Lender or the Receiver or any attempt or failure to exercise those powers; and

11.4.2 anything done or omitted to be done in the exercise or purported exercise of the powers under this deed or under any appointment duly made under the provisions of this deed.

12. POWER OF ATTORNEY

12.1 Grant of power

The Account Holder irrevocably and by way of security appoints the Lender and each Receiver and any person nominated for the purpose by the Lender or the Receiver (in writing, under hand, signed by an officer of the Lender or by the Receiver) severally to be the attorney of the Account Holder (with full power of substitution and delegation) for the purposes set out in clause 12.2 below.

12.2 **Extent of power**

The power of attorney granted in clause 12.1 above allows the Lender, the Receiver or such nominee, in the name of the Account Holder, on its behalf and as its act and deed to:

12.2.1 perfect the security given by the Account Holder under this deed; and

12.2.2 execute, seal and deliver (using the Account Holder's seal where appropriate) any document or do any act or thing which the Account Holder may, ought or has agreed to execute or do under this deed or which the Lender, the Receiver or such nominee may in their absolute discretion consider appropriate in connection with the exercise of any of the rights, powers authorities or discretions of the Lender or the Receiver under, or otherwise for the purposes of, this deed.

12.3 **Ratification**

The Account Holder covenants with the Lender to ratify and confirm all acts or things made, done or executed by any attorney exercising or purporting to exercise the powers conferred in accordance with this clause 12

13. **APPLICATION, VARIATION AND EXTENSION OF STATUTORY PROVISIONS**

13.1 **Conditions applicable to power of sale etc.**

13.1.1 For the purposes only of section 101 of the LPA, (but otherwise subject to the provisions of clause 7 (*Enforceability*)), the conditions set out in that section as to when such powers arise do not apply and the Secured Obligations become due and the statutory power of sale and other powers of enforcement arise immediately following the execution of this deed; and

13.1.2 the Lender and any Receiver may exercise the statutory power of sale conferred by the LPA free from the restrictions imposed by section 103 of the LPA, which shall not apply to this deed.

13.2 **Extension of powers of sale, etc.**

13.2.1 The power of sale and the other powers conferred by the LPA or otherwise are extended and varied to authorise the Lender in its absolute discretion to do all or any of the things or exercise all or any of the powers which a Receiver is empowered to do or exercise under this deed.

13.2.2 The Lender and any Receiver shall also have and enjoy all the other powers, privileges, rights and protections conferred by the LPA and the Insolvency Act on mortgagees, receivers or administrative receivers (each as amended and extended by this deed and whether or not a receiver or administrative receiver has been appointed) but so that if there is any ambiguity or conflict between the powers contained in such statutes and those contained in this deed, those contained in this deed shall prevail.

13.3 **Consolidation of mortgages**

The restriction on the consolidation of mortgages in Section 93 of the LPA does not apply to this deed nor to any security given to the Lender pursuant to this deed.

13.4 **LPA provisions relating to appointment of Receiver**

Section 109(1) of the LPA shall not apply to this deed.

13.5 **Application of proceeds**

Sections 105, 107(2), 109(6) and 109(8) of the LPA will not apply to the Lender nor to a Receiver appointed under this deed.

14. **OTHER MISCELLANEOUS PROVISIONS**

14.1 **Powers, rights and remedies cumulative**

The powers, rights and remedies provided in this deed are in addition to (and not instead of), powers, rights and remedies under law.

14.2 **Exercise of powers, rights and remedies**

If an Enforcement Party fails to exercise any power, right or remedy under this deed or delays its exercise of any power, right or remedy, this does not mean that it waives that power, right or remedy. If an Enforcement Party exercises, or partly exercises, a power, right or remedy once, this does not mean that it cannot exercise such power right or remedy again, fully or in part.

14.3 **Discretion**

14.3.1 The Lender may decide:

14.3.1.1 whether and, if so, when, how and to what extent (i) to exercise its rights under this deed and (ii) to exercise any other right it might have in respect of the Account Holder (or otherwise); and

14.3.1.2 when and how to apply any payments and distributions received for its own account under this deed,

and the Account Holder has no right to control or restrict the Lender's exercise of this discretion.

14.3.2 No provision of this deed will interfere with the Lender's right to arrange its affairs as it may in its absolute discretion decide (nor oblige it to disclose any information relating to its affairs), except as expressly stated.

14.4 **Set-off and combination of accounts**

14.4.1 No right of set-off or counterclaim may be exercised by the Account Holder in respect of any payment due to the Lender under this deed.

14.4.2 The Lender may at any time after this deed has become enforceable and without notice to the Account Holder:

14.4.2.1 combine or consolidate all or any of the Account Holder's then existing accounts with, and liabilities to, the Lender;

14.4.2.2 set off or transfer any sums standing to the credit of any one or more of such accounts; and/or

14.4.2.3 set-off any other obligation owed by the Lender to the Account Holder (whether or not matured at such time),

in or towards satisfaction of any of the Secured Obligations. The Lender is to notify the Account Holder in writing that such a transfer has been made.

14.4.3 If any amount is in a different currency from the amount against which it is to be set off, the Lender may convert either amount (or both) at any reasonable time and at any reasonable rate.

14.5 **Power to establish new account**

If the Lender receives notice of a subsequent mortgage or charge relating to the Secured Assets, it will be entitled to close any account and to open a new account in respect of the closed account. If the Lender does not open such new account, it will in any event be treated as if it had done so at the time when it received such notice.

14.6 **Information**

The Account Holder authorises the holder of any prior or subsequent security to provide to the Lender, and the Lender to receive from such holder, details of the state of account between such holder and the Account Holder.

14.7 **No assignment by Account Holder**

The Account Holder must not assign, novate or otherwise deal with its rights or obligations under or interests in this deed, except with the prior written consent of the Lender.

14.8 **Transfer by Lender**

14.8.1 Save as otherwise provided in the Facilities Agreement the Lender may at any time assign, novate or otherwise deal with any rights or obligations under or interests in this deed.

14.8.2 The Lender may disclose any information about the Account Holder, the Secured Assets and/or this deed to any person to whom it proposes to assign or novate or transfer (or has assigned, novated or transferred) any rights or obligations under or interests in this deed, or with whom it proposes to enter into (or has entered into) any other dealings in relation to any such rights, obligations or interests.

14.8.3 Any person to whom the benefit of all such rights has been transferred, subject to such obligations, may enforce this deed in the same way as if it had been a Party.

14.9 **Avoidance of settlements and other matters**

14.9.1 Any payment made by the Account Holder, or settlement or discharge between the Account Holder and the Lender, is conditional upon no security or payment to the Lender by the Account Holder or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency, administration or liquidation for the time being in force and accordingly (but without limiting the Lender's other rights under this deed) the Lender shall be entitled to recover from the Account Holder the value which the Lender has placed upon such security or the amount of any such payment as if such payment, settlement or discharge had not occurred.

14.9.2 If the Lender, acting reasonably, considers that any amount paid by the Account Holder in respect of the Secured Obligations is capable of being avoided or ordered to be refunded or reduced for the reasons set out in clause 14.9.1, then for the purposes of this deed such amount shall not be considered to have been irrevocably paid.

14.10 **Time Deposits**

Without prejudice to the provisions of clause 14.4 (*Set-off and combination of accounts*), if during the Security Period a time deposit matures on any account which the Account Holder holds with the Lender and an Event of Default has arisen which is continuing but no amount of Secured Obligations has fallen due and payable such time deposit shall be renewed for such further maturity as the Lender may in its absolute discretion determine.

14.11 **Release of security**

On the Discharge Date (but subject to clause 14.9 (*Avoidance of settlements and other matters*)) the Lender shall at the request and cost of the Account Holder re-assign the Deposits to the Account Holder and otherwise execute and do all deeds, acts and things as may be necessary to release the Secured Assets from the security constituted hereby or pursuant hereto.

15. **COMMUNICATIONS**

15.1 Each notice, consent and other communication in respect of this deed will be effective only if made by letter, delivered to the relevant address specified on the execution page(s) of this deed (or to any substitute address notified in writing by the relevant Party for this purpose) and marked for the attention of the specified department/individual, if applicable. Each communication by letter will be effective only if delivered by hand, sent by first class post (if sent from and to an address in the UK) or sent by airmail (if sent from or to an address elsewhere).

15.2 Each communication will become effective as follows (references to times are to times in the place of delivery of the communication):

15.2.1 a hand-delivered letter will be effective as soon as it is delivered (or, if it is delivered after 5pm or on a day that is not a Business Day, it will be effective at 9am on the next Business Day);

15.2.2 a letter sent by post from and to an address in the UK will be effective at 9am on the second Business Day after it is posted and a letter sent by airmail from or to an address elsewhere will be effective at 9am on the tenth Business Day after it is posted; and

15.2.3 each communication to the Lender will become effective only when actually received by the Lender.

16. **GOVERNING LAW**

16.1 **Governing law**

This Deed and any non-contractual obligations arising out of or in connection with it is governed by English law.

17. **THIS DEED**

17.1 **Consideration**

The Account Holder has entered into this deed in consideration of the Lender agreeing to provide (or to continue to provide) finance facilities to it on the terms agreed between them.

17.2 **Execution of this deed - counterparts**

If the Parties execute this deed in separate counterparts, this deed will take effect as if they had all executed a single copy.

17.3 **Execution of this deed - formalities**

This deed is intended to be a deed even if any Party's execution is not in accordance with the formalities required for the execution of deeds.

17.4 **Partial invalidity**

17.4.1 If, at any time, any provision of this deed is or is found to have been illegal, invalid or unenforceable in any respect under the law of any jurisdiction, this does not affect the legality, validity or enforceability of the other provisions of this deed, nor the legality, validity or enforceability of the affected provision under the law of any other jurisdiction.

17.4.2 If any Party is not bound by this deed (or any part of it) for any reason, this does not affect the obligations of each other Party under this deed (or under the relevant part).

17.5 **Conflict**

If there is any conflict between the provisions of the Facilities Agreement and the provisions of this deed the provisions of the Facilities Agreement shall prevail.

17.6 **Other security**

This deed is in addition to, and does not operate so as in any way to prejudice or affect, or be prejudiced or affected by, any other security or guarantee which the Lender may now or at any time after the date of this deed hold for or in respect of the Secured Obligations.

17.7 **Ownership of this deed**

This deed and every counterpart is the property of the Lender.

This document is executed as a deed and delivered on the date stated at the beginning of this Deed.

SCHEDULE 1

The Accounts

	Account Name	Account number
1	Parc Eirin Development Company Limited	[redacted]

SCHEDULE 2

Notice of security

To: Barclays Bank PLC (the "**Account Bank**")

Dated: [*date*]

Dear Sirs,

Re: **Account No:** [*insert account number(s)*] [the "**Account(s)**"]
Account Branch [*insert branch name and address*]
Account Holder: [*name of Account Holder*] (the "**Account Holder**")

We hereby notify you that by a Deed of Security dated [*date*] (the "**Deed**") made by the Account Holder in favour of The Welsh Ministers (the "**Lender**") the Account Holder has assigned to the Lender all its right, title and interest in all sums from time to time standing to the credit of the Account(s), together with interest (including interest compounded and treated as capital) and other rights, benefits or sums accruing to the Account(s) and the debts represented by the Accounts (in aggregate the "**Deposits**").

We hereby irrevocably and unconditionally authorise and instruct you:

1. that the Deposits may be withdrawn and applied freely by the Account Holder with the consent of the Lender unless and until you receive a further notice from the Lender (a Security Notice) which then directs you to hold the Deposits to the order of the Lender only (and which thereby withdraws consent for the Account Holder in relation to the Deposits) and following which by further notice and direction you are required to pay all or any part of the Deposits to the Lender (or as it may direct) on written instructions from the Lender to that effect;

2. to disclose to the Lender such information relating to the Account Holder, the Account and the Deposits as the Lender may from time to time (whether before or after the Security Notice) request you to provide;

3. at any time following a Security Notice as referred to in (1) being received by you of instructions in writing from the Lender to release the Deposits, or any part of them as may be specified by the Lender, and to act upon such instructions without further reference to or authority from us and without any enquiry by you as to the justification for or validity of such instructions and you may rely on the act of the Lender that they are entitled to issue a Security Notice without enquiry;

4. the provisions of this Notice may only be revoked or varied with the prior written consent of the Lender.

Please sign and return the enclosed copy of this notice to the Lender (with a copy to the Account Holder) by way of your confirmation that:

A. you agree to act in accordance with the provisions of this notice;

B. you have not at the date of such confirmation received notice that the Account Holder has assigned its rights to the Deposits or otherwise granted any security or other interest over those monies in favour of any third party; and

C. you do not have, and will not make or exercise any claim or demand, right of counterclaim, right to combine accounts, any rights of set-off or lien, nor any similar rights in relation to the Deposits save that you may at any time including after receipt of a Security Notice set-off all or part of the Deposits against money actually or prospectively due to you in relation to BACS or Internet Banking payments which were actioned prior to receipt of a Security Notice and which are you obliged to pay

We note that your acknowledgement of this notice is subject to the following conditions:-

- you shall not be bound to enquire whether the right of any person (including, but not limited to, the Lender) to withdraw any monies from the Account has arisen or be concerned with (A) the propriety or regularity of the exercise of that right or (B) notice to the contrary or (C) to be responsible for the application of any monies received by such person (including, but not limited to, the Lender);

- you shall have no liability for having acted on instructions from any person (including, but not limited to, the Lender) which on their face appear to be genuine, and which comply with the latest bank mandate held by you or relevant electronic banking system procedures in the case of an electronic instruction; and

- you shall not be deemed to be a trustee for the Account Holder or the Lender of the Account.

The provisions of this notice and any non-contractual obligations arising out of or in connection with it are governed by English law.

Yours faithfully

for and on behalf of
Parc Eirin Development Company Limited

Countersigned by

……………………………………
for and on behalf of
THE WELSH MINISTERS

To: The Welsh Ministers

Copy to:[*name and address of Account Holder*]

We hereby acknowledge receipt of the above notice and confirm the matters set out in paragraphs A, B and C above.

for and on behalf of
Barclays Bank PLC

Dated: [*date*]

EXECUTION

The Account Holder

Executed as a deed by **PARC EIRIN DEVELOPMENT COMPANY LIMITED** acting by a director ~~and its secretary~~ ~~or by two directors~~ [redacted] LOUIS JOHN LOVELL **Director**	**Communications to be delivered to:** Address: Temple Court 13A Cathedral Road Cardiff CF11 9HA Attention: Colin Lewis

~~**Director/Secretary**~~

in the presence of:

[redacted]

BETHAN EVANS

c/o Eversheds LLP
One Callaghan Square
Cardiff
CF10 5BT

The Lender

EXECUTED as a **DEED** by applying the seal of **THE WELSH MINISTERS**

The application of the Seal of The Welsh Ministers is **AUTHENTICATED** by Patricia M Clarke Senior Lawyer who is duly authorised for that purpose by the Director of Legal Services by authority of The Welsh Ministers under Section 90(2) of the Government of Wales Act 2006

Signed ....

Name ....

Job Title ....

Communications to be delivered to:

Address:
Welsh Government
QED Centre
Main Avenue
Treforest Industrial Estate
Pontypridd CF37 5YR

Attention: The Head of Property