

M

COMPANIES FORM No. 395

Particulars of a mortgage or charge

395

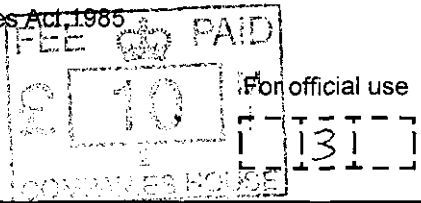
A fee of £10 is payable to Companies House in respect of each register entry for a mortgage or charge.

CHFP025

Please do not write in this margin  
Please complete legibly, preferably in black type, or bold block lettering

Pursuant to section 395 of the Companies Act 1985

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



156410 / 10  
Company number  
3401618 ✓

\*insert full name of Company

Name of company  
\* EPR ELY LIMITED (THE "COMPANY")

Date of creation of the charge  
9 JUNE 2004

Description of the instrument (if any) creating or evidencing the charge (note 2)  
SECOND RANKING DEBENTURE (THE "DEBENTURE")

Amount secured by the mortgage or charge  
AS SPECIFIED IN APPENDIX ONE TO THIS FORM

Names and addresses of the mortgagees or persons entitled to the charge  
ENERGY POWER RESOURCES LIMITED (THE "SECURITY TRUSTEE") KINNAIRD HOUSE,  
1 PALL MALL EAST, LONDON  
Postcode SW1Y 5AN

Presenter's name address and reference (if any):  
EVERSHEDS  
EVERSHEDS HOUSE  
70 GREAT BRIDGEWATER ST  
MANCHESTER  
M1 5ES  
C.CANNONR DOC REF:790310  
Time critical reference

For official Use  
Mortgage Section

Post room

A11  
COMPANIES HOUSE  
0581  
29/06/04

Short particulars of all the property mortgaged or charged

AS SPECIFIED IN APPENDIX TWO TO THIS FORM

Please do not  
write in  
this margin

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

Particulars as to commission allowance or discount (note 3)

N/A

Signed

*P. Roberts*  
FOR EVERSHEDS LLP

Date 28 June 2004

On behalf of ~~XXXXXX~~ [mortgagee/chargee]†

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

† delete as  
appropriate

**Notes**

- 1 The original instrument (if any) creating or evidencing the charge, together with these prescribed particulars correctly completed must be delivered to the Registrar of Companies within 21 days after the date of creation of the charge (section 395). If the property is situated and the charge was created outside the United Kingdom delivery to the Registrar must be effected within 21 days after the date on which the instrument could in due course of post, and if dispatched with due diligence, have been received in the United Kingdom (section 398). A copy of the instrument creating the charge will be accepted where the property charged is situated and the charge was created outside the United Kingdom (section 398) and in such cases the copy must be verified to be a correct copy either by the company or by the person who has delivered or sent the copy to the Registrar. The verification must be signed by or on behalf of the person giving the verification and where this is given by a body corporate it must be signed by an officer of that body. A verified copy will also be accepted where section 398(4) applies (property situate in Scotland or Northern Ireland) and Form No. 398 is submitted.
- 2 A description of the instrument, eg "Trust Deed", "Debenture", "Mortgage" or "Legal charge", etc, as the case may be, should be given.
- 3 In this section there should be inserted the amount or rate per cent. of the commission, allowance or discount (if any) paid or made either directly or indirectly by the company to any person in consideration of his;
  - (a) subscribing or agreeing to subscribe, whether absolutely or conditionally, or
  - (b) procuring or agreeing to procure subscriptions, whether absolute or conditional,for any of the debentures included in this return. The rate of interest payable under the terms of the debentures should not be entered.
- 4 If any of the spaces in this form provide insufficient space the particulars must be entered on the prescribed continuation sheet.
- 5 Cheques and Postal Orders are to be made payable to **Companies House**.
- 6 The address of the Registrar of Companies is:-

Companies House, Crown Way, Cardiff CF14 3UZ

**APPENDIX ONE**  
**EPR ELY LIMITED**  
**(COMPANY NUMBER 3401618)**

**AMOUNT SECURED BY THE MORTGAGE OR CHARGE**

Each and every liability which the Company may now or hereafter hence owe to the Security Trustee and/or any of the Loan Stock Holders under the Secured Documents whether in respect of principal, interest or any other monies payable thereunder (the “**Secured Obligations**”).

**Definitions:-**

“**Anglian Ash Limited**” means a company incorporated in England and Wales with registered number 3723396 whose registered office is at Kinnaird House, 1 Pall Mall East, London SW1Y 5AN;

“**Cinergy**” means Cinergy Global Ely, Inc., a company incorporated under the laws of Delaware, USA whose registered office is at Withington, New Castle, Delaware, USA;

“**EPRL**” means Energy Power Resources Limited a company incorporated in England and Wales with registered number 3302734 whose registered office is at Kinnaird House, 1 Pall Mall East, London SW1Y 5AN;

“**Loan Stock**” means the £430,000 secured ‘A’ loan stock in the Company created by the Loan Stock Instrument;

“**Loan Stock Holders**” means the holders of the Loan Stock (defined above) or any of them;

“**Loan Stock Instrument**” the loan stock instrument of even date herewith entered into by the Company and constituting the Loan Stock;

“**Secured Documents**” means the Debenture, the Loan Stock, the Loan Stock Instrument (defined above) and the Security Trustee Deed (defined below);

“**Security Trustee Deed**” means the security trustee deed dated on or around the date hereof between the Company and Anglian Ash Limited, EPRL and Cinergy as Lenders and EPRL as Security Trustee.

The definitions above also apply to appendix two.

**APPENDIX TWO**  
**EPR ELY LIMITED**  
**(COMPANY NUMBER: 3401618)**

**SHORT PARTICULARS OF THE PROPERTY MORTGAGED OR CHARGED**

1. Pursuant to the terms of the debenture the Company with full title guarantee and as a continuing security for the Secured Obligations (as defined in appendix one) charges in favour of the Security Trustee as trustee for itself and the Loan Stock Holders (as defined in appendix one) for the payment and discharge of the Secured Obligations by way of first fixed charge (which so far as it relates to land in England and Wales vested in the Company at the date hereof shall be a charge by way of legal mortgage) each of the following, namely:

7  
95  
(a) **Land**

the Real Property, all proceeds of sale thereof and the benefit of all covenants for title given or entered into in respect thereof by any predecessor in title of the Company and any moneys paid or payable in respect of any such covenant;

(b) **Equipment**

except to the extent effectively charged or mortgaged to the Security Trustee under Clause 3.1.1 (a) of the Debenture, the Equipment;

(c) **Accounts**

all rights and claims to which the Company is now or may hereafter become entitled in relation to any bank accounts (including each Project Account) and all moneys now or at any time hereafter standing to the credit thereof, together with all rights relating or attaching thereto (including the right to interest);

(d) **Intellectual Property**

the Intellectual Property;

(e) **Goodwill**

all goodwill (including all brand names not otherwise subject to a fixed charge by or pursuant to the Debenture) now or at any time hereafter belonging to the Company;

(f) **Consents**

the benefit of all the Consents;

(g) **Property Rights**

all rights and claims to which the Company is now or may hereafter become entitled in relation to the Real Property and the Equipment including those against any manufacturer, supplier or installer thereof, any builder, contractor or professional adviser engaged in relation thereto and any lessee, sub-lessee or licensee thereof and any guarantor or surety for the obligations of such person;

(h) **Debts**

all present and future book and other debts and monetary claims now or at any time hereafter due or owing to the Company which are not otherwise subject to a fixed charge by or pursuant to the Debenture and all rights relating thereto including any security or remedies thereof;

(i) **Investments**

all Investments to which the Company is now or may hereafter become entitled, including all Permitted Investments;

(j) **Uncalled Capital**

all rights and claims to which the Company is now or may hereafter become entitled in relation to its uncalled capital;

(k) **Section 238, 239 and 244 orders**

all rights to which the Company is now or may hereafter become entitled in respect of the proceeds of any order of the court made pursuant to Sections 238(3), 239(3) or 244 of the Insolvency Act 1986;

(l) **Additional Documentation**

the Additional Documentation;

(m) **Project Documents etc.**

- (A) (1) the Insurance Policies;
- (2) each present and future Project Document to which it is a party;
- (3) each present and future Hedging Agreement effected pursuant to the Approved Hedging Programme; and
- (4) the Loan Stock Subscription Agreement;

including all claims and all moneys which may at any time be or become paid or payable to the Company under or in respect of any of the above (including the proceeds of any claims, awards or judgments and any returns of premium) provided that the Company

shall be entitled to exercise all its rights, powers and discretions in respect of any of the above until the occurrence of an Enforcement Event;

(B) all Compensation and all moneys which may at any time be or become paid or payable to the Company in respect of Compensation;

2. Pursuant to the terms of the Debenture the Company with full title guarantee and as a continuing security for the Secured Obligations (as defined in appendix one) charges in favour of the Security Trustee as trustee for itself and the Loan Stock Holders for the payment and discharge of the Secured Obligations by way of floating charge the whole of the Company's undertaking and assets, present and future, other than any assets for the time being effectively charged to the Security Trustee by way of fixed charge or otherwise subject to an effective fixed security in favour of the Security Trustee.

#### NOTE

1. Pursuant to the terms of the Debenture the Company hereby undertakes that it will not, otherwise than in favour of the Security Trustee as create, grant, extend or permit to subsist any Encumbrance (other than a Permitted Encumbrance) on or over all or any part of the Charged Property.
2. The Company hereby undertakes, but subject to Clause 7.4 of the Debenture, that at no time during the subsistence of the Security will the Company, except as contemplated by the Relevant Documents or with the prior written consent of the Security Trustee and except to the extent permitted by Clause 7.3 of the Debenture:
  - (i) create, or agree to create, any legal or equitable estate or interest in or over, or relating to the enjoyment of, any Real Property; or
  - (ii) exercise any of the powers reserved to a mortgagor by Sections 99 and 100 of the Law of Property Act 1925 or accept or agree to accept a surrender, cancellation, assignment, charge or any other disposal of any lease, tenancy or licence thereof or relating thereto or agree to vary the provisions of any lease, tenancy or licence thereof or relating thereto; or
  - (iii) allow any person any licence or other right to use, occupy or share possession of all or any part of the Charged Property

Provided always that for the purpose of Clause 7.2 of the debenture a "licence" shall be construed as a non-revocable legal or equitable right to occupy the freehold or leasehold property.

3. Subject to Clauses 7.1 and 7.2 of the Debenture the Company will not (whether by a single transaction or a number of related or unrelated transactions and whether at any time or over a period of time) sell, transfer, lease out, lend or otherwise dispose of (whether outright, by a sale-and-repurchase or sale-and-leaseback arrangement or

otherwise) any interest in all or any of its assets other than as expressly permitted by clause 12.14 of the Credit Agreement.

4. None of the foregoing prohibitions in Clause 7 of the Debenture shall be construed as limiting any powers exercisable by any Receiver appointed by the Security Trustee under or pursuant to the Debenture.

**Definitions:**

**"Additional Documentation"** means all manuals (including the EPC Design Control Manual (as defined in the EPC Agreement) and the Operations and Maintenance Manual (as defined in the Operation and Maintenance Agreement), records, data and other documentation of any kind which is necessary or desirable for the continuation of the Project;

**"Approved Hedging Programme"** shall bear the same meaning as defined in the Credit Agreement (defined below);

**"Compensation"** as defined in the Credit Agreement (defined below);

**"Consents"** as defined in the Credit Agreement (defined below);

**"Credit Agreement"** means a credit agreement originally dated 9 September 1998 made between EPR Ely Limited (as Borrower), NIB Capital Bank NV (as Agent and Trustee), Bayerische Hypo-Und Vereinsbank AG and NIB Capital Bank NV (as Arrangers) and the Banks (as defined therein) as amended and restated by an amendment letter dated 14 March 2000, as further amended and restated by an amendment and restatement agreement dated 15 February 2001, as further amended by an amendment agreement dated 1 February 2002, as further amended by an amendment and restatement agreement dated 2 September 2002 and as further amended and restated by an amendment and restatement agreement dated 19 May 2004;

**"Encumbrance"** as defined in the Credit Agreement;

**"Enforcement Event"** means any of the events specified in paragraph 3 of the conditions attaching to the Loan Stock;

**"EPC Agreement"** as defined in the Credit Agreement;

**"Equipment"** means all plant, machinery, vehicles, computers and office and other equipment now or hereafter belonging to the Company and all rights and interests of the Company to and in any such items now or hereafter in its possession;

**"Hedging Agreement"** as defined in the Credit Agreement (defined above);

**"Insurance Policies"** means all policies of insurance in which the Company may now or hereafter have an interest;

**"Intellectual Property"** means all letters patent, trade marks, service marks, trade names, designs, utility models, copyrights, design rights, applications for registration of any of the foregoing and rights to apply for them in any part of the world, moral rights, inventions, confidential information, know-how and rights of like nature arising or subsisting anywhere in the world in relation to any of the foregoing, whether registered or unregistered, and the

benefits of all licences and other rights to use any of the same now or hereafter in each and every case belonging to the Company and all fees, royalties and other rights of every kind deriving from any of the same;

**"Investments"** means stocks, shares, debentures and other securities together with all rights to and relating to stocks, shares, debentures or other securities and any other assets, rights or interests falling within any paragraph in Part 1 of Schedule 1 to the Financial Services Act 1986 as in force at the date hereof but so that the exceptions in the notes to paragraphs 2 and 5 and note (1) to paragraph 8 of that Part shall not apply;

**"Loan Stock Subscription Agreement"** means an agreement dated on or around the date of the debenture and made between EPRL (as defined in appendix one) (1) and the Company (2), EPRL has agreed to subscribe for, or procure that both it and Cinergy subscribe for, an aggregate amount of £430,000 subordinated 'A' secured loan stock to be issued by the Company subject to the terms and conditions set out in the Loan Stock Subscription Agreement.

**"Operation and Maintenance Agreement"** as defined in the Credit Agreement;

**"Permitted Encumbrance"** as defined in the Credit Agreement;

**"Permitted Investments"** as defined in the Credit Agreement (defined above);

**"Project"** as defined in the Credit Agreement (defined above);

**"Project Account"** as defined in the Credit Agreement (defined above);

**"Project Document"** as defined in the Credit Agreement (defined above);

**"Real Property"** means all estates and other interests in freehold, leasehold and other immovable property and each part thereof wheresoever situate now or hereafter belonging to the Company (including the registered and unregistered land, if any, in England and Wales in which the Company has an interest specified or referred to in Appendix 3 to this form) and all buildings, trade and other fixtures, fixed plant and machinery from time to time on any such freehold, leasehold and other immovable property together with all rights, easements and privileges appurtenant to, or benefiting, the same;

**"Receiver"** as defined in clause 12.2 of the Debenture;

**"Relevant Documents"** as defined in the Credit Agreement (defined above);

**"Security"** means the security from time to time constituted by or pursuant to the Debenture.



**APPENDIX THREE**  
**EPR ELY LIMITED**  
**(COMPANY NUMBER:3401618)**  
**PROPERTY**

Approximately 14 acres of land comprising a part of Elean Business Park, Sutton,  
Cambridgeshire to be registered with title number 199852

FILE COPY



## CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

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

COMPANY No. 03401618

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT A SECOND RANKING DEBENTURE DATED THE 9th JUNE 2004 AND CREATED BY EPR ELY LIMITED FOR SECURING ALL MONIES DUE OR TO BECOME DUE FROM THE COMPANY TO ENERGY POWER RESOURCES LIMITED (SECURITY TRUSTEE) AND/OR ANY OF THE LOAN STOCK HOLDERS UNDER THE TERMS OF THE AFOREMENTIONED INSTRUMENT CREATING OR EVIDENCING THE CHARGE WAS REGISTERED PURSUANT TO CHAPTER 1 PART XII OF THE COMPANIES ACT 1985 ON THE 29th JUNE 2004.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 2nd JULY 2004.

*P. Ken.*



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES



*Companies House*

— for the record —