



**Registration of a Charge**

Company name: **WINDMILLS NO 2 LIMITED**

Company number: **NI615242**



X98G9ZMR

Received for Electronic Filing: **02/07/2020**

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**Details of Charge**

Date of creation: **24/06/2020**

Charge code: **NI61 5242 0008**

Persons entitled: **BAYERISCHE LANDESBANK AS SECURITY TRUSTEE**

Brief description:

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

**Contains negative pledge.**

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**Authentication of Form**

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

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**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:

**OSBORNE CLARKE LLP**



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: NI615242

Charge code: NI61 5242 0008

The Registrar of Companies for Northern Ireland hereby certifies that a charge dated 24th June 2020 and created by WINDMILLS NO 2 LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 2nd July 2020 .

Given at Companies House, Belfast on 3rd July 2020

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



**Companies House**



**THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES**

**Bond and Floating Charge**

by

**Windmills No 2 Limited**

in favour of

**Bayerische Landesbank**

as security trustee

**HARPER MACLEOD LLP IS ONLY ADVISING BAYERISCHE LANDESBANK AND NO OTHER PARTY IN RESPECT OF THIS DOCUMENT. EACH OTHER PARTY TO THIS DOCUMENT SHOULD TAKE THEIR OWN INDEPENDENT LEGAL ADVICE BEFORE ENTERING INTO THIS DOCUMENT AS THE EXECUTION OF THIS DOCUMENT WILL HAVE LEGAL EFFECT AND IMPLICATIONS.**

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## **BOND AND FLOATING CHARGE**

by

**Windmills No 2 Limited**, (Company Number: NI615242) and having its registered office at Montgomery House C/O Eversheds Sutherland, 29-31 Montgomery Street, Belfast, Northern Ireland, BT1 4NX (the "**Chargor**").

in favour of

**Bayerische Landesbank** as security trustee for the Secured Parties (the "**Security Trustee**").

IT IS AGREED as follows:-

### **1 Definitions and interpretation**

#### **1.1 In this Instrument the following definitions shall apply:**

"**Act**" means the Companies Act 1985;

"**Charged Property**" means the whole of the property (including without limitation, uncalled capital) which is or may be from time to time while this Instrument is in force comprised in the property and undertaking of the Company.

"**Collateral Rights**" means all rights, powers and remedies of the Security Trustee provided by or pursuant to this Instrument or by law;

"**Facilities Agreement**" means the facilities agreement originally dated 16 September 2015 as amended and restated including as amended and restated on 24 November 2015, on 17 March 2016 and on or about the date hereof between, amongst others, the Borrower and Bayerische Landesbank as the Mandated Lead Arranger, the Original Lender, the General Account Bank, the Facilities Agent, the Original Hedge Counterparty, the Issuing Bank and the Security Trustee, each as defined in such agreement as amended, restated, varied, novated or supplemented from time to time;

"**Insolvency Act**" means the Insolvency Act 1986;

"**Instrument**" means this bond and floating charge;

"**Party**" means a party to this Instrument; and

"**Specific Contracts**" means any Project Document to which the Chargor is a party.

#### **1.2 Terms defined in other Finance Documents**

Unless defined in this Instrument, or the context otherwise requires, a term defined in the Facilities Agreement or in any other Finance Document has the same meaning in this Instrument, as if all references in those defined terms to the Facilities Agreement or other Finance Documents were a reference to this Instrument.

#### **1.3 Construction**

- (a) In this Instrument the rules of interpretation contained in clause 1.2 (Construction) of the Facilities Agreement shall apply to the construction of this Instrument.

- (b) References in this Instrument to a "fixed security" shall be construed as a reference to a fixed security as defined by Section 486 of the Act as in force at the date of this Instrument.
- (c) Any references to the Security Trustee or any Receiver shall include its Delegate.
- (d) Reference to any statute or statutory provision shall include a reference to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision.
- (e) Unless a contrary indication appears, references to clauses are to clauses to this Instrument and references to sub-clauses are references to sub-clauses of the clause in which they appear.
- (f) Any person who is not a party to this Instrument has no right under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce or to enjoy the benefit of any term of this Instrument other than in the case of any of the Secured Parties in respect of any rights or powers expressly conferred on them by the terms of this Instrument.
- (g) This Instrument shall be read together with the Facilities Agreement and, in the event of any conflict or inconsistency between the provisions of this Instrument and the provisions of the Facilities Agreement, the relevant provisions of the Facilities Agreement shall prevail to the extent such provisions are in compliance with Scots law.
- (h) Reference to the "winding-up" of a person also includes the amalgamation, reconstruction, reorganisation, insolvency, bankruptcy, sequestration, administration, dissolution, provisional liquidation, liquidation, receivership, merger or consolidation of that person, the entering into of a scheme of arrangement in satisfaction of debts) in respect of that person, the appointment of an administrator, receiver, trustee in sequestration, judicial factor or any other equivalent officer in any jurisdiction in respect of that person, and any other analogous procedure under the law of any jurisdiction which has a similar effect to the foregoing.

#### 1.4 Finance Document

This Instrument is a Finance Document.

#### 1.5 Charged Property

Unless the context otherwise requires, a reference to a Charged Property includes:

- 1.5.1 any part of that Charged Property; and
- 1.5.2 the proceeds of that Charged Property.

#### 1.6 No obligation

The Security Trustee shall not be under any obligation in relation to the Charged Property as a consequence of this Instrument and the Chargor shall at all times remain liable to perform all obligations expressed to be assumed by it in respect of the Charged Property.

## **2 Bond**

- 2.1 The Chargor covenants with the Security Trustee as trustee for the Secured Parties that it shall discharge all Secured Obligations on their due date in accordance with their respective terms and the Chargor shall pay to the Security Trustee when due and payable every sum at any time owing, due or incurred by the Chargor to the Security Trustee (whether for its own account or as trustee for the Secured Parties) or any of the other Secured Parties in respect of any such Secured Obligations. Provided that neither such covenant nor the Security constituted by this Instrument shall extend to or include any liability or sum which would, but for this proviso, cause such covenant or Security to be unlawful or prohibited by any applicable law.
- 2.2 If the Chargor fails to pay any sum on the due date for payment of that sum the Chargor shall pay interest on any such sum (before and after any judgment and to the extent interest at a default rate is not otherwise being paid on such sum) from the date of demand until the date of payment calculated on a daily basis at the rate determined in accordance with the provisions of clause 12.3 (Default Interest) of the Facilities Agreement.
- 2.3 A certificate signed by or on behalf of the Security Trustee as to the amount, calculation or nature of the Secured Obligations or any part of it will, in the absence of manifest error, be conclusive and binding on the Chargor.

## **3 Floating charge**

- 3.1 The Chargor, as security for the payment and discharge of the Secured Obligations, hereby grants in favour of the Security Trustee as trustee for the Secured Parties a floating charge over the Charged Property.
- 3.2 The floating charge created by clause 3.1(a) above shall be deferred in point of priority to all fixed Security and assignments validly and effectively created by the Chargors under the Finance Documents in favour of the Security Trustee as trustee for the Secured Parties as security for the Secured Obligations.
- 3.3 Paragraph 14 of Schedule B1 to the Insolvency Act applies to the floating charge created pursuant to clause 3.1(a) above.

## **4 Further assurance**

### **4.1 General**

The Chargor shall promptly at its own cost enter into and do all such acts or execute all such documents (including assignments, pledges, transfers, standard securities, charges, notices and instructions) as the Security Trustee may specify (and in such form as the Security Trustee may require in favour of the Security Trustee or its nominee(s)):

- (a) to create, perfect, protect and maintain the Security created or intended to be created in respect of the Charged Property (which may include the execution by the a Chargor of a standard security, charge or assignment over all or any of the assets constituting, or intended to constitute, Charged Property) or for the exercise of the Collateral Rights;
- (b) to confer on the Security Trustee, Security over any assets of the Chargor, located in any jurisdiction, equivalent or similar to the Security intended to be conferred by or pursuant to this Instrument; and/or
- (c) to facilitate the realisation of the Charged Property.

## **5 Negative Pledge and disposals**

### **5.1 Negative Pledge**

The Chargor undertakes that it shall not, at any time during the subsistence of this Instrument, create or permit to subsist any Security over all or any part of the Charged Property other than Security permitted pursuant to the Facilities Agreement.

5.2 No Disposal of Interests

5.3 The Chargor undertakes that it shall not (and shall not agree to) at any time during the subsistence of this Instrument, except as permitted pursuant to the Facilities Agreement or by this clause 5 (*Negative Pledge and Disposals*):

- (a) execute any conveyance, transfer, lease or assignment of, or other right to use or occupy, all or any part of the Charged Property;
- (b) create any legal or other interest in, or over, or otherwise relating to, all or any part of the Charged Property; or
- (c) grant or vary, or accept any surrender, or cancellation or disposal of, any lease, tenancy, licence, consent or other right to occupy in relation to any of the Charged Property or allow any person any right to use or occupy or to become entitled to assert any proprietary interest in, or right over, the Charged Property, which may, in each case, adversely affect the value of any of the Charged Property or the ability of the Security Trustee to exercise any of the Collateral Rights.

6 **Undertakings**

6.1 The Chargor shall from time to time on request of the Security Trustee, furnish the Security Trustee with such information as the Security Trustee may reasonably require about the Chargor's business and affairs, its Charged Property and its compliance with the terms of this Instrument and the Chargor shall permit the Security Trustee, its representatives, professional advisers and contractors, free access at all reasonable times and on reasonable notice to (a) inspect and take copies and extracts from the books, accounts and records of the Chargor and (b) to view the Chargor's Charged Property (without becoming liable as heritable creditor in possession).

6.2 The Chargor undertakes that it shall not, at any time during the subsistence of this Instrument, agree to or acquiesce in any material variation, amendment or waiver of any provision of, or grant any material consent under, any of the Specific Contracts to which it is a party save as permitted under the Facilities Agreement.

6.3 The Chargor shall at all times during the subsistence of this Instrument:

- (a) keep the Charged Property insured in accordance with the terms of the Facilities Agreement;
- (b) if required by the Security Trustee, cause each insurance policy or policies relating to the Charged Property to contain (in form and substance reasonably satisfactory to the Security Trustee) an endorsement naming the Security Trustee as sole loss payee in respect of all claims until such time as the Security Trustee notifies the insurer(s) to the contrary;
- (c) promptly pay all premiums and other monies payable under all its insurance policies and promptly upon reasonable request, produce to the Security Trustee a copy of each policy and evidence (reasonably acceptable to the Security Trustee) of the payment of such sums;
- (d) immediately notify the Security Trustee of any contract, conveyance, transfer or other disposition for the acquisition by the Chargor (or its nominee(s)) of any heritable, freehold or leasehold property;



- (e) repair and keep in good and substantial repair and condition to the reasonable satisfaction of the Security Trustee all the heritable, freehold or leasehold property, plant, machinery, fixtures (including trade fixtures), fittings, vehicles, computers and other equipment at any time forming part of its Charged Property;
- (f) not at any time without the prior written consent of the Security Trustee sever or remove any of the fixtures forming part of any of its heritable, freehold or leasehold property or any of the plant or machinery (other than stock in trade or work in progress) on or in the Charged Property (except for the purpose of any necessary repairs, general maintenance, renewal, upgrade or replacement of it);
- (g) comply with and observe and perform:
  - (i) all applicable requirements of all planning and environmental legislation, regulations and bye-laws relating to any heritable, freehold or leasehold property forming part of its Charged Property;
  - (ii) any conditions attaching to any planning permissions relating to or affecting any heritable, freehold or leasehold property forming part of its Charged Property; and
  - (iii) any notices or other orders made by any planning, environmental or other public body in respect of all or any part of any heritable, freehold or leasehold property forming part of its Charged Property;
- (h) not grant any lease, tenancy, contractual licence or right to occupy in respect of the whole or any part of any heritable, freehold or leasehold property forming part of its Charged Property or otherwise part with possession of the whole or any part of any heritable, freehold or leasehold property forming part of its Charged Property except as permitted by the Transaction Documents or with the prior written consent of the Security Trustee;
- (i) permit the Security Trustee and any person nominated by the Security Trustee to enter into and upon any of part of the property at all reasonable times during business hours and on not less than 24 hours' notice to view the state and condition of its property and will remedy any material defect or want of repair forthwith after service by the Security Trustee of notice of the defect or want of repair; and
- (j) in relation to any lease, agreement for lease or other right to occupy to which all or any part of its Charged Property is at any time subject:
  - (i) pay the rents (if the lessee) and observe and perform in all material respects the covenants, conditions and obligations imposed (if the lessor) on the lessor or, (if the lessee) on the lessee; and
  - (ii) not do any act or thing whereby any lease or other document which gives any right to occupy any part of its Charged Property becomes or may become subject to determination or any right of re-entry or forfeiture prior to the expiration of its term.

#### 6.4 Entitlement to Remedy

If the Chargor fails to comply with any of the undertakings contained in this clause 6, the Security Trustee shall be entitled (with such agents, contractors and others as it sees fit), to do such things as may in the reasonable opinion of the Security Trustee be required to remedy such failure and all monies spent by the Security Trustee in doing so shall be reimbursed by the Chargor on demand with interest from the date of payment by the Security Trustee until reimbursed in accordance with clause 2.2.

## **7 Enforcement of security**

### **7.1 Enforcement**

At any time after the occurrence of an Event of Default (which is continuing) or if the Chargor requests the Security Trustee to exercise any of its powers under this Instrument or if a petition or application is presented for the making of an administration order in relation to the Chargor or if any person who is entitled to do so gives written notice of its intention to appoint an administrator of the Chargor or files such a notice with the court, the Security created by or pursuant to this Instrument is immediately enforceable and the Security Trustee may, without notice to the Chargors or prior authorisation from any court, in its absolute discretion enforce all or any part of that Security (at the times, in the manner and on the terms it thinks fit) and take possession of and hold, sell or otherwise dispose of all or any part of the Charged Property (at the time, in the manner and on the terms it thinks fit).

### **7.2 No Liability as Heritable Creditor in Possession**

Neither the Security Trustee nor any Receiver shall be liable to account as a heritable creditor in possession in respect of all or any part of the Charged Property or be liable for any loss upon realisation or for any neglect, default or omission of any nature whatsoever in connection with the Charged Property to which a heritable creditor or heritable creditor in possession might otherwise be liable.

### **7.3 Right of Appropriation**

To the extent that any of the Charged Property constitutes "financial collateral" and this Instrument and the obligations of the Chargor hereunder constitute a "security financial collateral arrangement" (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226), as amended, (the "**Regulations**")) the Security Trustee shall have the right to appropriate all or any part of such financial collateral in or towards discharge of the Secured Obligations and may exercise such right to appropriate upon giving written notice to the Chargor or the Obligors' Agent. For this purpose, the Parties agree that the value of such financial collateral so appropriated shall be the market price of such Charged Property determined by the Security Trustee by reference to a public index or by such other independent and impartial process as the Security Trustee may select, including independent valuation. In each case, the Parties agree that the method of valuation provided for in this Instrument shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

## **8 Appointment of receiver or administrator**

### **8.1 Appointment and Removal**

After the occurrence of an Event of Default (which is continuing) or if a petition or application is presented for the making of an administration order in relation to the Chargor or if any person who is entitled to do so gives written notice of its intention to appoint an administrator of the Chargor or files such a notice with the court or if requested to do so by the Chargor, the Security Trustee may (acting through an authorised officer of the Security Trustee), without prior notice to the Chargor:

- (a) appoint one or more persons to be a Receiver of the whole or any part of the Charged Property;
- (b) appoint two or more Receivers of separate parts of the Charged Property;
- (c) remove (so far as it is lawfully able) any Receiver so appointed;
- (d) appoint another person(s) as an additional or replacement Receiver(s); or
- (e) appoint one or more persons to be an administrator of the Chargor,

## 8.2 Capacity of Receivers

Each person appointed to be a Receiver pursuant to clause 8.1 (*Appointment and Removal*) shall be:

- (a) entitled to act individually or together with any other person appointed or substituted as Receiver;
- (b) for all purposes deemed to be the agent of the Chargor which shall be solely responsible for his acts, defaults and liabilities and for the payment of his remuneration and no Receiver shall at any time act as agent for the Security Trustee; and
- (c) entitled to remuneration for his services at a rate to be fixed by the Security Trustee from time to time.

## 8.3 Statutory Powers of Appointment

The powers of appointment of a Receiver shall be in addition to all statutory and other powers of appointment of the Security Trustee and the Insolvency Act (as extended by this Instrument) or otherwise and such powers shall remain exercisable from time to time by the Security Trustee in respect of any part of the Charged Property.

## 9 Powers of Receiver

9.1 Every Receiver shall (subject to any restrictions in the instrument appointing him but notwithstanding any winding-up or dissolution of the Chargor) have and be entitled to exercise, in relation to all or any part of the Charged Property (and any assets of the Chargor which, when got in, would be Charged Property) in respect of which he was appointed, and as varied and extended by the provisions of this Instrument (in the name of or on behalf of the Chargor or in his own name and, in each case, at the cost of the):

- (a) all the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act (whether or not the Receiver is an administrative receiver);
- (b) all the powers and rights of an absolute owner and power to do or omit to do anything which a Chargor itself could do or omit to do; and
- (c) the power to do all things (including bringing or defending proceedings in the name or on behalf of the Chargor) which seem to the Receiver to be incidental or conducive to;
- (d) any of the functions, powers, authorities or discretions conferred on or vested in him;
- (e) the exercise of the Collateral Rights (including realisation of all or any part of the Charged Property); and
- (f) bringing to his hands any assets of the relevant Chargor forming part of, or which when got in would be, Charged Property.

## 10 Application of monies

All monies received or recovered by the Security Trustee or any Receiver pursuant to this Instrument or the powers conferred by it shall be applied first in the payment of the costs, charges and expenses incurred and payments made by the Receiver, the payment of his remuneration and the discharge of any liabilities incurred by the Receiver in, or incidental to, the exercise of any of his powers, and thereafter shall be applied by the Security Trustee (notwithstanding any purported appropriation by the Chargor) in accordance with clauses

31.3 (*Post-enforcement Payment Priorities*) and 31.4 (*Insufficient Amounts*) of the Facilities Agreement.

## **11 Protection of purchasers**

### **11.1 Consideration**

The receipt of the Security Trustee or any Receiver shall be conclusive discharge to a purchaser and, in making any sale or disposal of any of the Charged Property or making any acquisition, the Security Trustee or any Receiver may do so for such consideration, in such manner and on such terms as it thinks fit.

### **11.2 Protection of Purchasers**

No purchaser or other person dealing with the Security Trustee or any Receiver shall be bound to inquire whether the right of the Security Trustee or such Receiver to exercise any of its powers has arisen or become exercisable or be concerned with any propriety or regularity on the part of the Security Trustee or such Receiver in such dealings.

## **12 Power of Attorney**

### **12.1 Appointment and Powers**

The Chargor irrevocably appoints the Security Trustee and any Receiver severally to be its mandatory and attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things which the mandatory and attorney may consider to be required or desirable for:

- (a) carrying out any obligation imposed on the Chargor by this Instrument or any other agreement binding on the Chargor to which the Security Trustee is party (including the execution and delivery of any deeds, charges, assignments or other Security and any transfers of the Charged Property); and
- (b) enabling the Security Trustee and any Receiver to exercise, or delegate the exercise of, any of the rights, powers and authorities conferred on them by or pursuant to this Instrument or by law (including, after the occurrence of an Event of Default (which is continuing), the exercise of any right of a legal or beneficial owner of the Charged Property).

### **12.2 Ratification**

The Chargor shall ratify and confirm all things done and all documents executed by any attorney in the exercise or purported exercise of all or any of his powers.

## **13 Effectiveness of security**

### **13.1 Continuing Security**

- (a) The Security created by or pursuant to this Instrument shall remain in full force and effect as a continuing Security for the Secured Obligations unless and until discharged by the Security Trustee.
- (b) No part of the Security from time to time intended to be constituted by this Instrument will be considered satisfied or discharged by any intermediate payment, discharge or satisfaction of the whole or any part of the Secured Obligations.

### **13.2 Cumulative Rights**

The Security created by or pursuant to this Instrument and the Collateral Rights shall be cumulative, in addition to and independent of every other Security which the Security Trustee or any other Secured Party may at any time hold for the Secured Obligations or any other obligations or any rights, powers and remedies provided by law. No prior Security held by the Security Trustee (whether in its capacity as trustee or otherwise) or any of the other Secured Parties over the whole or any part of the Charged Property shall merge into the Security constituted by this Instrument.

13.3 No Prejudice

The Security created by or pursuant to this Instrument and the Collateral Rights shall not be prejudiced by any unenforceability or invalidity of any other agreement or document or by any time or indulgence granted to the Chargor or any other person, or the Security Trustee (whether in its capacity as trustee or otherwise) or any of the other Secured Parties or by any variation of the terms of the trust upon which the Security Trustee holds the Security or by any other thing which might otherwise prejudice that Security or any Collateral Right.

13.4 Remedies and Waiver

No failure on the part of the Security Trustee to exercise, nor any delay on its part in exercising, any Collateral Right shall operate as a waiver of that Collateral Right or constitute an election to affirm this Instrument. No single or partial exercise of any Collateral Right shall preclude any further or other exercise of that or any other Collateral Right.

13.5 No Liability

None of the Security Trustee, its nominee(s) or any Receiver shall be liable by reason of (a) taking any action permitted by this Instrument or (b) any neglect or default in connection with the Charged Property or (c) taking possession of or realising all or any part of the Charged Property, except in the case of gross negligence or wilful default upon its part.

13.6 Partial Invalidity

If, at any time, any provision of this Instrument is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Instrument nor of such provision under the laws of any other jurisdiction shall in any way be affected or impaired thereby and, if any part of the Security intended to be created by or pursuant to this Instrument is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the Security.

13.7 Waiver of defences

The obligations of the Chargor under this Instrument, the Security created pursuant to this Instrument and the Collateral Rights will not be affected by an act, omission, matter or thing which, but for this clause 13.7 (*Waiver of defences*), would reduce, release or prejudice any of its obligations under this Instrument (without limitation and whether or not known to it or any Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor, the Parent or other person;
- (b) the release of any Obligor, the Parent or any other person under the terms of any composition or arrangement with any creditor of any Obligor or the Parent;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor, the Parent or other person or any non-presentment or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;

- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Obligor, the Parent or any other person;
- (e) any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of a Finance Document or any other document or Security or of the Secured Obligations (including, without limitation, any change in the purpose of, any extension of, or any variation or increase in any facility or the addition of any new facility under any Finance Document or other document);
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or Security or of the Secured Obligations; or
- (g) any insolvency or similar proceedings.

#### 13.8 Immediate recourse

The Chargor waives any right it may have of first requiring the Security Trustee or a Secured Party to proceed against or enforce any other rights or Security or claim payment from any person before claiming from the Chargor under this Instrument. This waiver applies irrespective of any provision of this Instrument to the contrary.

#### 13.9 Deferral of Rights

Until such time as the Secured Obligations have been discharged in full, the Chargor will not exercise any rights which it may have by reason of performance by it of its obligations under this Instrument:

- (a) to be indemnified by any Obligor; or
- (b) to claim any contribution from any guarantor of any Obligor's obligations under this Instrument or any other Finance Document; or
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Security Trustee under this Instrument or the Security Trustee or any other Secured Party under any other guarantee or other Finance Document or Security taken pursuant to, or in connection with, this Instrument or any other Finance Document by the Security Trustee or any Secured Party; or
- (d) bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which the Chargor has given an undertaking under clause 2.1 above; or
- (e) exercise any right of set-off against any Obligor; or
- (f) claim, rank, prove or vote as a creditor of any Obligor in competition with any Secured Party.

#### 13.10 Turnover Trust

The Chargor shall not accept or permit to subsist any collateral from any Obligor or any other person in respect of any rights the Chargor may have arising out of this Instrument:

- (a) if, despite this provision, any such collateral shall be accepted or subsisting the Chargor acknowledges that its rights under such collateral shall be held on trust for the Security Trustee and the Secured Parties, to the extent necessary to enable all amounts which may be or become payable to the Security Trustee and



the Secured Parties by the Obligors under or in connection with the Finance Documents to be repaid in full, and the Chargor shall if requested promptly transfer the same to the Security Trustee or as it may direct for application in accordance with clauses 31.3 (*Post-enforcement Payment Priorities*) and 31.4 (*Insufficient Amounts*) of the Facilities Agreement; or

- (b) if the Chargor receives any benefit, payment or distribution relating to the rights mentioned in clause 13.9 (*Deferral of Rights*) above, it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Security Trustee and the Secured Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Security Trustee and the Secured Parties and shall promptly pay or transfer the same to the Security Trustee or as it may direct for application in accordance with clauses 31.3 (*Post-enforcement Payment Priorities*) and 31.4 (*Insufficient Amounts*) of the Facilities Agreement.

## **14 Release of Security**

### **14.1 Redemption of Security**

Upon the Secured Obligations being discharged in full and none of the Secured Parties being under any further actual or contingent obligation to make advances or provide other financial accommodation to the Borrower or any other person under any of the Finance Documents, the Security Trustee shall, at the request and cost of the Obligors' Agent, release and cancel the Security constituted by this Instrument subject to clause 14.2 (*Avoidance of Payments*) and without recourse to, or any representation or warranty by, the Security Trustee or any of its nominees.

### **14.2 Avoidance of Payments**

If the Security Trustee (acting reasonably) considers that any amount paid or credited to it or any other Secured Party is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws, the liability of the Chargor under this Instrument and the Security constituted by this Instrument shall continue and such amount shall not be considered to have been irrevocably paid.

## **15 Retention of Instrument**

The Security Trustee may retain this Instrument, the Security constituted by or pursuant to this Instrument and all documents relating to or evidencing ownership of all or any part of the Charged Property for a period of 25 months after any discharge in full of the Secured Obligations provided that if at any time during that 25 month period a petition or application is presented for an order for the winding-up of, or the making of an administration order in respect of, the Chargor or any person who is entitled to do so gives written notice of its intention to appoint an administrator of the Chargor or files such a notice with the court or the Chargor commences to be wound-up voluntarily or any analogous proceedings are commenced in respect of the Chargor, the Security Trustee may continue to retain such Security and such documents for such further period as the Security Trustee may determine and the Security and such documents shall be deemed to have continued to be held as Security for the Secured Obligations.

## **16 Set-off**

The Chargor authorises the Security Trustee (but the Security Trustee shall not be obliged to exercise such right), after the occurrence of an Event of Default (which is continuing), to set off against the Secured Obligations any amount or other obligation (contingent or otherwise) owing by the Security Trustee to the Chargor and apply any credit balance to which the Chargor is entitled on any account with the Security Trustee in accordance with clause 10 (*Application of Monies*) (notwithstanding any specified maturity of any deposit standing to the credit of any such account).

**17 Subsequent security interests**

If the Security Trustee (acting in its capacity as trustee or otherwise) or any of the other Secured Parties at any time receives or is deemed to have received notice of any subsequent Security affecting all or any part of the Charged Property or any assignment or transfer of the Charged Property which is prohibited by the terms of this Instrument or the Facilities Agreement, all payments thereafter by or on behalf of the Chargor to the Security Trustee (whether in its capacity as trustee or otherwise) or any of the other Secured Parties shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations as at the time when the Security Trustee received such notice.

**18 Suspense accounts and currency conversion**

**18.1 Suspense Accounts**

All monies received, recovered or realised by the Security Trustee under this Instrument (including the proceeds of any conversion of currency) may in the discretion of the Security Trustee be credited to any interest bearing suspense or impersonal account maintained with the Security Trustee or any bank, building society or financial institution as it considers appropriate and may be held in such account for so long as the Security Trustee may think fit pending their application from time to time (as the Security Trustee is entitled to do in its discretion) in or towards the discharge of any of the Secured Obligations and save as provided herein no party will be entitled to withdraw any amount at any time standing to the credit of any suspense or impersonal account referred to above.

**18.2 Currency Conversion**

For the purpose of or pending the discharge of any of the Secured Obligations the Security Trustee may convert any money received, recovered or realised or subject to application by it under this Instrument from one currency to another, as the Security Trustee thinks fit and any such conversion shall be effected at the Security Trustee's spot rate of exchange for the time being for obtaining such other currency with the first currency.

**19 Assignment**

The Security Trustee may assign, transfer and otherwise dispose all or any of its rights and obligations under this Instrument to any person to whom it transfers its rights and/or obligations under the Facilities Agreement. Subject to clause 50 (*Confidentiality*) of the Facilities Agreement, the Security Trustee shall be entitled to disclose such information concerning the Chargor (or any other person) and this Instrument as the Security Trustee considers appropriate to any actual or proposed direct or indirect successor or to any person to whom information may be required to be disclosed by any applicable law.

**20 Notice**

Each communication to be made under or in connection with this Instrument shall be made in writing and in accordance with clause 45 (*Notices*) of the Facilities Agreement.

**21 Costs, expenses, stamp taxes and indemnity**

**21.1 Costs and Expenses**

Without double-counting, clauses 20.1 (*Transaction expenses*) to 20.4 (*Enforcement and preservation costs*) of the Facilities Agreement shall apply to this Instrument, *mutatis mutandis*, as if set out in full herein and therein.

**21.2 Stamp Taxes**



The Chargor shall pay all stamp, registration and other taxes to which this Instrument, the Security contemplated in this Instrument or any judgment given in connection with it is or at any time may be subject and shall, from time to time, indemnify the Security Trustee on demand against any liabilities, costs, claims and expenses resulting from any failure to pay or delay in paying any such tax.

**21.3 Indemnity**

The Chargor shall, notwithstanding any release or discharge of all or any part of the Security, indemnify the Security Trustee, its agents, attorneys and any Receiver against any action, proceeding, claims, losses, liabilities and costs which it may sustain as a consequence of any breach by the Chargor of the provisions of this Instrument, the exercise or purported exercise of any of the rights and powers conferred on them by this Instrument or otherwise relating to the Charged Property.

**22 Discretion and delegation**

**22.1 Discretion**

Any liberty or power which may be exercised or any determination which may be made under this Instrument by the Security Trustee or any Receiver may, subject to the terms and conditions of the Facilities Agreement or except as otherwise provided under this Instrument, be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

**22.2 Delegation**

Each of the Security Trustee and any Receiver shall have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Instrument (including the power of attorney) on such terms and conditions as it shall see fit which delegation shall not preclude either the subsequent exercise, any subsequent delegation or any revocation of such power, authority or discretion by the Security Trustee or the Receiver itself.

**23 Waivers**

**23.1 Waivers**

No waiver by the Security Trustee of any of its rights under this Instrument shall be effective unless given in writing.

**24 Governing law**

This Instrument and any non-contractual obligations arising out of or in connection with it are governed by Scots law.

**25 Jurisdiction and enforcement**

**25.1** The courts of Scotland have exclusive jurisdiction to settle any dispute arising out of or in connection with this Instrument (including a dispute relating to the existence, validity or termination of this Instrument, the consequences of their nullity or any non-contractual obligations arising out of or in connection with this Instrument) (a "**Dispute**").

**25.2** The Parties agree that the courts of Scotland are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

**25.3** This clause 25 (*Jurisdiction and Enforcement*) is for the benefit of the Security Trustee only. As a result, and notwithstanding clause 25.1, it does not prevent the Security Trustee from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent

allowed by law, the Security Trustee may take concurrent proceedings in any number of jurisdictions.

26

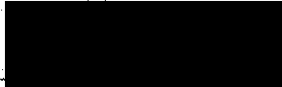
### Registration

The Chargor consents to the registration for preservation and execution in the Books of Council and Session of this Instrument and of any certificate referred to in Clause 2.3 hereof.

**IN WITNESS WHEREOF** these presents consisting of this and the preceding 13 pages are subscribed as follows:

Subscribed for and on behalf of WINDMILLS NO 2  
LIMITED

by



E A WILSON

\*Authorised Signatory/Director/Company Secretary

Full Name of Signatory (Please Print)

at

DUBLIN

on

24 JUNE 2020

before



W MORRISON

Witness (Signature)

Witness Name (Please Print)

Witness Address

\*Please delete as applicable