

THIS DEBENTURE is made on

PARTIES

- (1) **Millstone Construction (Wales) Limited** (Co Reg No 04774361) of Brynna Mill, Brynna, Pontyclun Mid Glamorgan CF72 9QP (the **Company**) and
- (2) **STEPHEN JOHN HOWELLS** of Brynna Mill, Brynna, Pontyclun Mid Glamorgan CF72 9QP and **STEVEN DICKS** of Oakland House Tondy, Bridgend, Mid Glamorgan, CF32 0EH as Trustees of the **MILLSTONE EXECUTIVE PENSION** (the **Debenture Holder**)

THIS DEED WITNESSES:

1 Definitions and interpretation

1.1 In this Deed, unless the context requires otherwise:

Administrator means an administrator appointed under the Insolvency Act 1986;

Charged Assets means the undertaking, property, rights and assets charge under clause 4.1 below;

Default Rate means 8% per year over the base rate of the Bank from time to time;

Events of Default means the events of default set out in clause 5 below;

Principal Sum has the meaning given in clause 2.1 below;

Receiver has the meaning given to it in clause 12 below and shall include any substituted receiver(s) and manager(s);

1.2 In this Deed, unless the context requires otherwise:

1.2.1 the expressions 'the Company' and 'the Debenture Holder' where the context admits include their respective successors and assigns whether immediate or derivative;

1.2.2 terms defined in the Companies Act 2006 have the same meanings, save that for the purposes of the definition of **subsidiary** in Section 1159 one company (A) shall be treated as being a member of another (B) if any shares in B are held by a subsidiary of A, by any person acting on

behalf of A or a subsidiary of A, or by a person holding by way of security provided by A or a subsidiary of A;

1.2.3 reference to any statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as from time amended extended or re-enacted or consolidated, and
- (b) all statutory instruments or orders made pursuant to it;

1.2.4 words denoting the singular shall include the plural and vice versa; and

1.2.5 words denoting any gender include all the genders and words denoting persons shall include firms and corporations and vice versa.

1.3 References to **clauses** are to the clauses or sub-clauses of this Deed and references to **Schedules** are to the schedules to this Deed.

1.4 Clause headings do not form part of this Deed are for convenience only and shall not be taken into account in its construction or interpretation.

2 Covenant to pay Principal Sum

2.1 The Company covenants with the Debenture Holder that it will pay to the Debenture Holder the principal sum of £100,000.00 plus Interest as set out in the Loan Agreement of even date. A copy of the loan agreement is attached to this Deed at Schedule 1 (the **Principal Sum**).

3 Floating charge

3.1 As a continuing security for the payment of all money and the discharge of all obligations and liabilities covenanted under this Deed to be paid or discharged or otherwise secured by this Deed the Company with full title guarantee charges by way of first floating charge to the Debenture Holder all the undertaking, property, rights and assets of the Company both present and future of any kind whatsoever and wherever situated.

4 Restrictions

- 4.1 The Company covenants that it will not (without the prior consent in writing of the Debenture Holder):
- 4.1.1 create or attempt to create or permit to subsist any mortgage debenture charge or pledge or permit any lien or other encumbrance (save a lien arising by operation of law in the ordinary course of trading) to arise on or affect all or any part of the Charged Assets; or
 - 4.1.2 part with possession or transfer, sell, lease or otherwise dispose of all or any of the Charged Assets or attempt or agree so to do (save for sale at market value for the purpose of carrying on its business).
- 4.2 Notwithstanding anything contained in this Deed, if the Company charges, pledges or otherwise encumbers any of the Charged Assets contrary to clause 6.1 above, or attempts to do so without the prior consent in writing of the Debenture Holder, or if any creditor or other person takes or attempts to take control of, or initiates or attempts to initiate any other process of enforcement against any of the Charged Assets, the charge created by this Deed over the Charged Assets shall automatically without notice operate as a fixed charge instantly on such event occurring.

5 Events of Default

- 5.1 The Debenture Holder shall cease to be under any further commitment to the Company and all money secured by this Deed shall immediately become due and payable on demand on the occurrence of any of the following Events of Default:
- 5.1.1 if the Company fails to pay within 3 business days of the due date any interest or money due to the Debenture Holder;
 - 5.1.2 if the Company is in breach of any of the terms of this Deed (other than as to payment);
 - 5.1.3 if the Company defaults under any trust deed, loan agreement facility, debenture or any other agreement, deed or document, or any other obligation relating to borrowing or under any guarantee or indemnity or if any borrowing or other money payable under any borrowing or guarantee or indemnity becomes or is capable of being declared payable before its stated

maturity or is not paid when due or any encumbrance from time to time created by the Company becomes enforceable;

- 5.1.4 if any creditor takes control of any goods, or any other process of enforcement is initiated against any of the assets of the Company and not released or discharged within 7 days;
- 5.1.5 if any judgment or order made against the Company is not complied with within the terms of the judgment or order unless the Company's obligations under that judgment or order are stayed because a valid appeal has been lodged by the Company against such judgment or order;
- 5.1.6 if a receiver is appointed of the Company or any of its assets or any resolution is passed or any application or request is made by any person for such an appointment or a notice is issued to convene a meeting for the passing of a resolution for any such application or appointment;
- 5.1.7 if any petition is presented or any order is made or any resolution is passed for the winding up of the Company or any notice is issued convening a meeting for the purpose of passing such resolution;
- 5.1.8 if the Company goes into administration, or any person gives notice (to the company or any other person) of an intention to appoint an administrator, or if application is made or any meeting of the directors or members of the Company is called with a view to its going into administration;
- 5.1.9 if the Company stops payment or is unable or admits inability to pay its debts within the meaning of the Insolvency Act 1986 Section 123;
- 5.1.10 if the Company obtains or makes or proposes to obtain or make any moratorium, arrangement or composition with its creditors or any class of creditors or takes any other step with a view to doing any of those things;
- 5.1.11 if the Company ceases or threatens to cease to carry on all or a material part of the business conducted by it at the date of this Deed or sells or threatens to sell or otherwise dispose of all or a material part of its assets (other than in the normal course of business) whether by one or a series of transactions related or not or changes the nature or mode of conduct of its business in any material respect;

- 5.1.12 if any guarantee, indemnity or other security created in favour of the Debenture Holder is in jeopardy or is not or ceases to be in full force and effect or is voidable or unenforceable or is disputed, revoked or terminated or it becomes unlawful or impossible for the Debenture Holder to exercise any right or power vested in it under any such security and (in any such case) the same is considered by the Debenture Holder to be material;
- 5.1.13 if an order is made for the compulsory acquisition of any part of the Company's assets which in the opinion of the Debenture Holder is a material part of the assets of the Company;
- 5.1.14 if any licence, authorisation, consent or registration at any time necessary or desirable to enable the Company to carry on its business in the normal course shall be revoked, withheld or materially modified or shall fail to be granted or perfected or shall cease to remain in full force and effect;
- 5.1.15 if control (as defined in the Corporation Tax Act 2010 Section 450) of the Company is acquired by any person or company or group of connected persons (as defined in the Corporation Tax Act 2010 Section 1122) not having control of the Company at the date of this Deed (unless with the prior consent in writing of the Debenture Holder); or
- 5.1.16 if any circumstances arise which may (in the opinion of the Debenture Holder) affect materially and adversely the ability of the Company to perform its obligations under this Deed.

6 Covenants by the Company

The Company covenants with the Debenture Holder that during the continuance of this security the Company will at all times and as applicable immediately:

- 6.1 notify the Debenture Holder by fax and confirmed in writing of the occurrence of any event which will or may in due course constitutes an Event of Default;
- 6.2 conduct and carry on its business in a proper efficient and business-like manner and not make any substantial alteration in the nature of or mode of conduct of that business and keep or cause to be kept proper books of account relating to such business;
- 6.3 deliver to the Debenture Holder within 4 months of the end of the Company's financial year to the Debenture Holder an annual balance sheet and profit and loss account and trading account showing the true position of the Company's affairs in each year certified by a chartered

accountant approved by the Debenture Holder and also from time to time such other information relating to the assets and liabilities and the business of the Company as the Debenture Holder may reasonably require;

- 6.4 get in and realise all book and other debts and claims charged by this Deed in the ordinary course of its business and pay them into such account as the Debenture Holder may direct;
- 6.5 observe and perform all covenants and stipulations from time to time affecting its freehold, leasehold or heritable property or the mode of user or enjoyment of such property, and not without the prior consent in writing of the Debenture Holder enter into any onerous or restrictive obligations affecting any such property, nor do or suffer or omit to be done any act, matter or thing which would infringe any provision of any statute, order or regulation from time to time in force affecting any such property;
- 6.6 observe and perform all covenants and stipulations from time to time affecting its patents, patent applications, trade marks, trade names, registered designs and copyrights and all other intellectual property or any licence or ancillary or connected rights from time to time relating to intellectual property, and preserve, maintain and renew when necessary or desirable all such licences and rights;
- 6.7 use its best endeavours to enforce and at its own cost institute, continue or defend all proceedings relating to the Charged Assets;
- 6.8 keep all buildings and erections and all plant, machinery, fixtures, fittings, vehicles, computers and office and other equipment and every part of such property in good and substantial repair and in good working order and condition. If the Company is at any time in default in complying with this covenant the Debenture Holder shall be entitled but not bound to repair and maintain such property, with power for the Debenture Holder, its agents and their respective employees to enter any of the Company's property for that purpose or to inspect such property, and any sum so spent by the Debenture Holder shall be repayable by the Company to the Debenture Holder on demand together with interest at the Default Rate from the date of payment by the Debenture Holder;
- 6.9 at its own expense insure and keep insured any of the Charged Assets of an insurable nature with insurers previously approved by the Debenture Holder in writing against loss or damage by fire, burglary, theft, civil commotion, explosion, aircraft, flood, storm, tempest lightning, burst pipes and such other risks and contingencies as the Debenture Holder shall from time to time

request to the full replacement value of such property and effects from time to time, including fees of architects, surveyors, engineers and all other professional fees and demolition charges together (in the case of leasehold properties) with loss of rent for [3] years in the name of the Company. The interest of the Debenture Holder shall be noted on the policy and the policy shall contain such provisions for the protection of the Debenture Holder as the Debenture Holder may reasonably require. The Company must maintain such other insurance policies (with the interest of the Debenture Holder noted on such policies) containing like provisions for the protection of the Debenture Holder as are normally maintained by prudent companies carrying on similar businesses and pay all premiums and other money necessary for effecting and keeping up such insurances, and on demand produce to the Debenture Holder the policies of such insurance and proof of such payments, failing which the Debenture Holder may take out or renew such insurances in any sum which the Debenture Holder may think expedient, and all money spent by the Debenture Holder under this provision shall be reimbursed by the Company on demand and bear interest at the Default Rate from the date of payment by the Debenture Holder. All money to be received by virtue of any insurance maintained or effected by the Company (whether or not in pursuance of the obligations under this clause 9.9) shall be [paid to the Debenture Holder (or if not paid by the insurers directly to the Debenture Holder held on trust for the Debenture Holder) and shall at the option of the Debenture Holder be] applied in repayment of the sums secured by this Deed or in replacing, restoring or reinstating the property or assets destroyed, damaged or lost (any deficiency being made good by the Company);

- 6.10 punctually pay and indemnify the Debenture Holder and any Receiver against all existing and future rent, rates, taxes, duties, charges, assessments, impositions and outgoings (whether imposed by agreement, statute or otherwise and whether in the nature of capital or revenue and even if wholly novel) now or at any time during the continuance of this Deed payable in respect of all or any of the Charged Assets or by the owner or occupier of the Charged Assets. If any such sums shall be paid by the Debenture Holder or by any Receiver they shall be repaid by the Company on demand with interest at the Default Rate;
- 6.11 comply with and fulfil its obligations under every lease and agreement relating to any of the Charged Assets and when required produce to the Debenture Holder proof of all payments from time to time due from the Company under such lease or agreement;
- 6.12 take all necessary steps to comply with any notice, proposal or order given, issued or made by any local or other authority relating to any of the Charged Assets and serve any appropriate counter-notice so as to protect the Charged Assets, and also at the request of the Debenture Holder (but at the expense of the Company) make or join with the Debenture Holder in making

such objections, appeals or representations in relation to the Charged Assets as the Debenture Holder considers or agrees is expedient, and any compensation received by the Company as a result of such notice or order shall be applied in the reduction of the money due to the Debenture Holder from the Company unless the Debenture Holder otherwise agrees;

- 6.13 not (without the prior consent in writing of the Debenture Holder) permit any person:
 - 6.13.1 to be registered as proprietor under the Land Registration Act 2002 of any land forming part of the Charged Assets nor create or permit to arise any unregistered interest which overrides first registration affecting such property within Schedule 1 of that Act, or
 - 6.13.2 to become entitled to any proprietary right or interest which might affect the value of any land, fixtures or fixed plant and machinery charged by this Deed;
- 6.14 not (without the prior consent in writing of the Debenture Holder) redeem or purchase its own shares nor pay an abnormal amount by way of dividend;
- 6.15 deposit (if required by the Debenture Holder) with the Debenture Holder or a nominee of the Debenture Holder and permit the Debenture Holder or its nominee during the continuance of this security to hold and retain the following:
 - 6.15.1 all deeds and documents of title relating to all freehold, leasehold and heritable property from time to time belonging to the Company (and the insurance policies relating to such property),
 - 6.15.2 all stock and share certificates and documents of title relating to the Securities,
 - 6.15.3 all assurance policies from time to time effected by the Company on the lives of key employees, and
 - 6.15.4 all such documents relating to the Charged Assets as the Debenture Holder may from time to time require;
- 6.16 not to do or cause or permit to be done anything which may in any way prejudice the value to the Debenture Holder of the Charged Assets.

7 Further security

The Company shall on request by the Debenture Holder execute such legal or other mortgages or assignments in favour of the Debenture Holder as the Debenture Holder shall from time to time require over all or any of the Charged Assets both present and future to secure all money, obligations and liabilities covenanted under this Deed to be paid or otherwise secured by this Deed, such mortgages, charges or assignments to be prepared by or on behalf of the Debenture Holder at the cost of the Company, and to contain an immediate power of sale without notice, a clause excluding the Law of Property Act 1925 Section 93 and the restrictions contained in Section 103 of that Act and such other clauses for the benefit of the Debenture Holder as the Debenture Holder may reasonably require.

8 Powers of the Debenture Holder

- 8.1 At any time after the Debenture Holder shall have demanded payment of any money or the discharge of any obligation or liability secured by this Deed or if requested by the Company the Debenture Holder may exercise without further notice (and without the restrictions contained in the Law of Property Act 1925 Section 103) and whether or not it shall have appointed a Receiver all the powers conferred on mortgagees by that Act as varied or extended by this Deed and all the powers and discretions conferred by this Deed either expressly or by reference to a Receiver appointed under this Deed.
- 8.2 The Law of Property Act 1925 Section 93 shall not apply to this security or to any security given to the Debenture Holder under this Deed.
- 8.3 The statutory powers of leasing conferred on the Debenture Holder shall be extended so as to authorise the Debenture Holder to lease and make agreements for leases at a premium or otherwise and accept surrenders of leases and grant options as the Debenture Holder shall consider expedient and without the need to observe any of the provisions of the Law of Property Act 1925 Sections 99 and 100.
- 8.4 All money received by the Debenture Holder or by any Receiver in the exercise of any powers conferred by this Deed shall be applied, after the discharge of the remuneration and expenses of the Receiver and all liabilities having priority to the claims of the Debenture Holder, in or towards satisfaction of such of the obligations and liabilities secured by this Deed and in such order as the Debenture Holder in its absolute discretion may from time to time conclusively decide (save that the Debenture Holder may credit the money to a suspense account for so long

and in such manner as the Debenture Holder may from time to time decide). The Receiver may retain any amount for such period as he considers expedient before so applying it.

- 8.5 No purchaser or other person shall be bound or concerned to see or enquire whether the right of the Debenture Holder or a Receiver to exercise any of the powers conferred by this Deed has arisen or not or be concerned with notice to the contrary or with the propriety of the exercise or purported exercise of such powers.
- 8.6 The Company covenants with the Debenture Holder on demand to pay all costs, charges and expenses incurred by the Debenture Holder or which it or he shall properly incur in or about the enforcement, preservation or attempted preservation of this security or of all or any of the Charged Assets on a full indemnity basis with interest at the Default Rate.
- 8.7 Neither the Debenture Holder nor any Receiver shall be liable to account as mortgagee in possession in respect of all or any of the Charged Assets nor be liable for any loss upon realisation or for any neglect or default of any nature in connection with the Charged Assets for which a mortgagee in possession may be liable as such.
- 8.8 The Company agrees to indemnify the Debenture Holder and any Receiver against all losses, actions, claims, expenses, demands and liabilities, whether in contract, tort or otherwise, now or after the date of this Deed, incurred by it or by any manager, agent, officer or employee for whose liability act or omission it may be answerable, for anything done or omitted in the exercise or purported exercise of the powers contained in this Deed or occasioned by any breach by the Company of any of its covenants or other obligations to the Debenture Holder. The Company shall so indemnify the Debenture Holder on demand and shall pay interest on the sums demanded at the Default Rate until payment.

9 Power of attorney

The Company by way of security irrevocably appoints the Debenture and separately any Receiver jointly and severally to be its attorney, in its name and on its behalf and as its act and deed or otherwise to execute and complete in favour of the Debenture Holder or its nominees or of any purchaser any documents which the attorney may require for perfecting its title to or for vesting the Charged Assets, both present and future, in the Debenture Holder or its nominees or in any purchaser, and to do all such acts and things as may be required for the full exercise of all or any of the powers conferred by this Deed, or which may be deemed expedient by the attorney on or in connection with any sale, lease, disposition, realisation or getting in by the Debenture Holder or any such Receiver of all or any part of the Charged Assets, or in

connection with any other exercise of any power under this Deed. This appointment shall operate as a general power of attorney made under the Powers of Attorney Act 1971 Section 10. The Company covenants with the Debenture Holder and separately with any Receiver that on request it will ratify and confirm all security, agreements, documents, acts and things and all transactions entered into by the Debenture Holder or such Receiver in the exercise or purported exercise of its or his powers, and the Company irrevocably acknowledges and agrees that such power of attorney is inter alia given to secure the performance of the obligations owed to the Debenture Holder and any such Receiver by the Company.

10 Notice of trusts

The Company shall recognise and treat the Debenture Holder as the sole absolute owner of this Deed and as alone entitled to receive and give effectual discharges for the money secured by this Deed. The Company shall not be affected by notice of any trust or any right title or claim or any person other than the Debenture Holder to this Deed.

11 Freedom from equities

The money secured by this Deed shall be paid and this Deed shall be transferable without regard to any set-off, cross-claim or equities between the Company and the original or any intermediate holder and the receipt of the sole holder or of joint holders shall be a good discharge to the Company.

12 Miscellaneous

- 12.1 No failure or delay by the Debenture Holder in exercising any right or remedy shall operate as a waiver nor shall any single or any partial exercise or waiver of any right or remedy preclude its further exercise or the exercise of any other right or remedy.
- 12.2 Each of the provisions of this Deed is severable and distinct from the others and if at any time one or more of such provisions is or becomes invalid illegal or unenforceable the validity, legality and enforceability of the remaining provisions of this Deed shall not in any way be affected or impaired.
- 12.3 The Company certifies that neither the execution of this Deed nor the creation of the charges contained in this Deed contravenes any of the provisions of the constitution of the Company.

12.4 Any demand for payment, and any other notice to be given by the Debenture Holder under this Deed, shall be in writing [and may be signed by any official of the Debenture Holder], and may be made or given at any place of business of the Company or at its registered office:

12.4.1 by delivering it to any such place; or

12.4.2 by sending it by first class post to any such place (in which case it shall be deemed received at 10.00 am on the next business day after posting, and proof of posting shall be proof of delivery); or

12.4.3 by sending it by fax to any of the Company's fax numbers (in which case it shall be deemed received when sent, and proof of sending shall be proof of receipt).

13 Register

The Company will keep a register and enter in it the issue and all transfers and changes of ownership of this Deed. The register may be closed from time to time for such periods (not exceeding 30 days in all in any year) as the Company may decide.

14 Transfer

14.1 A transfer of this Deed shall be in writing under the hand of the transferor.

14.2 The transfer shall be lodged with the Company together with such evidence of the title of the transferor (including production of this Deed) as the Company may reasonably require and after that the transferee shall be registered as the holder of this Deed.

14.3 The Company shall be entitled to retain the transfer.

15 Death of Debenture Holder

On the death of the Debenture Holder his personal representatives and on the death of a joint holder the survivor or survivors shall be the only persons recognised by the Company as having any title to this Deed.

16 Registration on transmission

Any person entitled to this Deed by reason of the death of the Debenture Holder or otherwise by operation of law may upon producing such evidence of his title as the Company may reasonably require be registered as the holder of this Deed and be subject to the conditions of this Deed as a transferee would be subject to under clause 18 above.

Schedule 1

Loan agreement between Millstone Construction (Wales) Limited (1) and **STEPHEN JOHN HOWELLS**
AND STEVEN DICKS as Trustees of the **MILLSTONE EXECUTIVE PENSION**

Executed as a Deed by
Millstone Construction (Wales) Limited
Acting by a Director
In the presence of:-

Witness Signature:

Witness Name:

Witness Occupation:

Witness Address:

Executed as a Deed by
Stephen John Howells
As Trustee for the
Millstone Executive Pension
In the presence of:-

Witness Signature:

Witness Name:

Witness Occupation:

Witness Address:

Executed as a Deed by
Steven Dicks
As Trustee for the
Millstone Executive Pension
In the presence of:-

Witness Signature:

Witness Name:

Witness Occupation:

Witness Address: