



**Registration of a Charge**

Company name: **TUSTAIN MOTORS LIMITED**

Company number: **06976428**

Received for Electronic Filing: **22/09/2018**



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**Details of Charge**

Date of creation: **17/09/2018**

Charge code: **0697 6428 0007**

Persons entitled: **TUSTAIN FAMILY INVESTMENT COMPANY LIMITED**

Brief description:

**Contains fixed charge(s).**

**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 THE ELECTRONIC COPY INSTRUMENT  
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION  
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **GUNNERCOOKE LLP**



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

Company number: 6976428

Charge code: 0697 6428 0007

The Registrar of Companies for England and Wales hereby certifies that a charge dated 17th September 2018 and created by TUSTAIN MOTORS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 22nd September 2018 .

Given at Companies House, Cardiff on 26th September 2018

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**

Dated

17th September

2018

**TUSTAIN MOTORS LIMITED**

and

**TUSTAIN FAMILY INVESTMENT COMPANY LIMITED**

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**DEBENTURE**

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This deed is dated

17th September

2018.

## **PARTIES**

- (1) **TUSTAIN MOTORS LIMITED** incorporated and registered in England and Wales with company number 06976428 whose registered office is at whose registered office is at 13 Freemans Way, Ashington, Northumberland, NE63 0YB (the **Chargor**); and
- (2) **TUSTAIN FAMILY INVESTMENT COMPANY LIMITED** incorporated and registered in England and Wales with company number 09879171 whose registered office is at The Old Oak Barn, Clattercut Lane, Rushock, Droitwich, Worcestershire WR9 0NN (the **Lender**).

## **AGREED TERMS**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 DEFINITIONS**

The following definitions apply in this Deed:

**Administrator;**

an administrator appointed to manage the affairs, business and property of the **Chargor** pursuant to clause 7.6.

**Book Debts;**

all present and future book and other debts, and monetary claims due or owing to the **Chargor**, and the benefit of all security, guarantees and other rights of any nature enjoyed or held by the **Chargor** in relation to any of them.

**Business Day;**

a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Charged Property;**

any freehold, leasehold or commonhold property the subject of the security constituted by this Deed and references to "**Charged Property**" shall include references to the whole or any part or part of it.

**Default Rate;**

2% per annum above the base rate of Lloyds Bank plc from time to time.

**Delegate;**

any person appointed by the **Lender** or any Receiver pursuant to clause 12 and any person appointed as attorney of the **Lender**, Receiver or Delegate.

**Equipment;**

all present and future equipment, plant, machinery, tools, vehicles, furniture, fittings, installations and apparatus and other tangible moveable property owned by the **Chargor** or

in which it has an interest, including any part of it and all spare parts, replacements, modifications and additions.

**Event of Default;**

any of the following events:

(a) the Chargor fails to pay any of the Secured Liabilities when due, unless its failure to pay is caused solely by an administrative error or technical problem and payment is made within five Business Days of its due date;

(b) the Chargor fails (other than a failure to pay referred to in paragraph (a) of this definition) to comply with any provision of this Deed or any document under which the Chargor owes obligations to the Lender and (if the Lender considers, acting reasonably, that the default is capable of remedy) such default is not remedied within 14 days of the earlier of the Lender notifying the Chargor of the default and the remedy required and the Chargor becoming aware of the default;

(c) the Chargor repudiates or rescinds or shows an intention to repudiate or rescind this Deed or any document under which the Chargor owes obligations to the Lender (including any Finance Document).

**Facility Agreement;**

the loan facility agreement dated on or around the date of this Deed between JBTMHL, the Chargor and the Lender.

**Finance Document;**

the Facility Agreement, the Guarantee, this Deed, any other guarantee, mortgage, charge or other instrument entered into from time to time by the Chargor in favour of the Lender Document and any other document designated as a Finance Document by the Lender and the Chargor.

**Guarantee;**

the guarantee and indemnity entered into on or around the date of this Deed between the Chargor and the Lender pursuant to which the Chargor has agreed, inter alia, to guarantee

**JBTMHL;**

**LPA 1925;**

**Permitted Security;**

the obligations and liabilities of JBTMHL to the Lender.

JB Tustain Motors Holdings Limited (company number 07143241)

the Law of Property Act 1925.

any Security:

- (a) created in favour of the Lender;
- (b) created or outstanding with the Lender's prior written consent;
- (c) created in favour of Lloyds Bank PLC;
- (d) created in favour of Black Horse Limited;
- (e) created in favour of GMAC UK PLC Limited (including its successors in title and assigns);
- (f) created in favour of the John Tustain and Elizabeth Tustain;
- (g) existing over any asset the Chargor on or prior to the date of this Agreement;
- (h) arising under any lease, hire agreement, credit sale agreement, hire purchase agreement, conditional sale agreement of vehicles, plant or equipment;
- (i) being a lien arising by operation of law and in the ordinary course of trade, as long as any amount in respect of that lien is not overdue for payment; and
- (j) arising under any normal title retention arrangements included in a supplier's conditions of supply of goods acquired by the Company in the ordinary course of trade.

**Receiver;**

a receiver, receiver and manager or administrative receiver appointed by the Lender under clause 10.

**Secured Assets;**

all the assets, property and undertaking of the Chargor which are, or are expressed to be, subject to the Security created by, or pursuant to, this Deed (and references to the Secured

Assets shall include references to any part of them).

**Secured Liabilities;**

all present and future obligations and liabilities of the Chargor to the Lender, whether actual or contingent and whether owed jointly or severally, as principal, guarantor or surety or in any other capacity and whether or not the Lender was an original party to the relevant transaction and in whatever name or style (including, without limitation, those arising under or in connection with the Finance Documents), together with all interest (including, without limitation, default interest) accruing in respect of those obligations or liabilities.

**Security;**

any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.

**Security Period;**

the period starting on the date of this Deed and ending on the date on which the Lender is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

**VAT;**

value added tax or any equivalent tax chargeable in the UK or elsewhere.

**1.2 INTERPRETATION**

In this Deed:

- 1.2.1 clause headings shall not affect the interpretation of this Deed;
- 1.2.2 a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- 1.2.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.4 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.5 a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this Deed shall be

binding on, and enure to the benefit of, the parties to this Deed and their respective personal representatives, successors, permitted assigns and permitted transferees;

- 1.2.6 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.2.7 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.8 a reference to **writing** or **written** includes fax and email;
- 1.2.9 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.10 a reference to **this Deed** (or any provision of it) or to any other agreement or document referred to in this Deed is a reference to this Deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this Deed) from time to time;
- 1.2.11 unless the context otherwise requires, a reference to a clause is to a clause of this Deed;
- 1.2.12 any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.13 a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amend** and **amended** shall be construed accordingly);
- 1.2.14 a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.2.15 a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- 1.2.16 a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- 1.2.17 a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- 1.2.18 a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.



### **1.3 CLAWBACK**

If the Lender considers that an amount paid by the Chargor in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of the Chargor or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.

### **1.4 NATURE OF SECURITY OVER REAL PROPERTY**

A reference in this Deed to a charge or mortgage of or over any Charged Property includes:

- 1.4.1 all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) and fixed plant and machinery that are situated on or form part of that Charged Property at any time;
- 1.4.2 the proceeds of the sale of any part of that Charged Property and any other monies paid or payable in respect of or in connection with that Charged Property;
- 1.4.3 the benefit of any covenants for title given, or entered into, by any predecessor in title of the Chargor in respect of that Charged Property, and any monies paid or payable in respect of those covenants; and
- 1.4.4 all rights under any licence, agreement for sale or agreement for lease in respect of that Charged Property.

### **1.5 PERPETUITY PERIOD**

If the rule against perpetuities applies to any trust created by this Deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

## **2. COVENANT TO PAY**

- 2.1 The Chargor shall, on demand, pay to the Lender and discharge the Secured Liabilities when they become due.
- 2.2 The Chargor covenants with the Lender to pay interest on any amounts due under clause 2.1 from day to day until full discharge (whether before or after judgment, liquidation, winding-up or administration of the Chargor) at the Default Rate, provided that, in the case of any cost or expense, such interest shall accrue and be payable as from the date on which the relevant cost or expense arose without the necessity for any demand being made for payment.

### **3. GRANT OF SECURITY**

#### **3.1 LEGAL MORTGAGE**

As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Lender, by way of a first legal mortgage, all estates or interests in any freehold, leasehold or commonhold property now owned by it.

#### **3.2 FIXED CHARGES**

As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Lender by way of a fixed charge:

- 3.2.1 all present and future estates or interests of the Chargor in, or over, any freehold, leasehold or commonhold property (other than any such property effectively mortgaged under clause 3.1);
- 3.2.2 all the Book Debts;
- 3.2.3 all the Equipment;
- 3.2.4 all its present and future goodwill and uncalled capital for the time being; and
- 3.2.5 all monies from time to time standing to the credit of its accounts with any bank, financial institution or other, together with all other rights and benefits accruing to or arising in connection with each account (including, but not limited to, entitlements to interest.

#### **3.3 FLOATING CHARGE**

As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Lender, by way of first floating charge, all its undertaking, property, assets and rights not otherwise effectively mortgaged, charged or assigned under clause 3.1 and clause 3.2 inclusive.

#### **3.4 QUALIFYING FLOATING CHARGE**

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by clause 3.3.

#### **3.5 AUTOMATIC CRYSTALLISATION OF FLOATING CHARGE**

The floating charge created by clause 3.3 shall automatically and immediately (without notice) convert into a fixed charge over the assets subject to that floating charge if:

- 3.5.1 any person levies (or attempts to levy) any distress, attachment, execution or other process against all or any part of the Secured Assets; or

- 3.5.2 a resolution is passed or an order is made for the winding-up, dissolution, administration or re-organisation of the Chargor.

**3.6 CRYSTALLISATION OF FLOATING CHARGE BY NOTICE**

The Lender may, in its sole discretion, by written notice to the Chargor, convert the floating charge created under this Deed into a fixed charge as regards any part of the Secured Assets specified by the Lender in that notice if an Event of Default is continuing.

**3.7 ASSETS ACQUIRED AFTER ANY FLOATING CHARGE HAS CRYSTALLISED**

Any asset acquired by the Chargor after any crystallisation of the floating charge created under this Deed that, but for that crystallisation, would be subject to a floating charge under this Deed, shall (unless the Lender confirms otherwise to the Chargor in writing) be charged to the Lender by way of first fixed charge.

**4. LIABILITY OF THE CHARGOR**

**4.1 LIABILITY NOT DISCHARGED**

The Chargor's liability under this Deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

- 4.1.1 any intermediate payment, settlement of account or discharge in whole or in part of the Secured Liabilities;
- 4.1.2 any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy which the Lender may now or after the date of this Deed have from or against JBTMHL, the Chargor or any other person in connection with the Secured Liabilities;
- 4.1.3 any act or omission by the Lender or any other person in taking up, perfecting or enforcing any Security, indemnity, or guarantee from or against JBTMHL, the Chargor or any other person;
- 4.1.4 any termination, amendment, variation, novation, replacement or supplement of or to any of the Secured Liabilities;
- 4.1.5 any grant of time, indulgence, waiver or concession to JBTMHL, the Chargor or any other person;
- 4.1.6 any insolvency, bankruptcy, liquidation, administration, winding up, incapacity, limitation, disability, the discharge by operation of law, or any change in the constitution, name or style of JBTMHL, the Chargor or any other person;
- 4.1.7 any invalidity, illegality, unenforceability, irregularity or frustration of any actual or purported obligation of, or Security held from, JBTMHL, the Chargor or any other person in connection with the Secured Liabilities;

- 4.1.8 any claim or enforcement of payment from the Chargor or any other person; or
- 4.1.9 any other act or omission which would not have discharged or affected the liability of the Chargor had it been a principal debtor or anything done or omitted by any person which, but for this provision, might operate to exonerate or discharge the Chargor or otherwise reduce or extinguish its liability under this Deed.

#### **4.2 IMMEDIATE RECOURSE**

The Chargor waives any right it may have to require the Lender:

- 4.2.1 to take any action or obtain judgment in any court against the any other person;
  - 4.2.2 to make or file any claim in a bankruptcy, liquidation, administration or insolvency of any other person; or
  - 4.2.3 to make demand, enforce or seek to enforce any claim, right or remedy against any other person,
- before taking steps to enforce any of its rights or remedies under this Deed.

### **5. GENERAL COVENANTS**

#### **5.1 NEGATIVE PLEDGE AND DISPOSAL RESTRICTIONS**

The Chargor shall not at any time, except with the prior written consent of the Lender:

- 5.1.1 create, purport to create or permit to subsist any Security on, or in relation to, any Secured Asset other than any Security created by this Deed or any Permitted Security; or
- 5.1.2 create or grant (or purport to create or grant) any interest in the Secured Assets in favour of a third party except pursuant to a Permitted Security.

#### **5.2 INSURANCE**

- 5.2.1 The Chargor shall insure and keep insured the Secured Assets against:
  - 5.2.1.1 loss or damage; and
  - 5.2.1.2 other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Chargor.

**5.3 PROCEEDS FROM INSURANCE POLICIES**

All monies payable under any insurance policy maintained by the Chargor in accordance with clause 5.2.1 at any time (whether or not the security constituted by this Deed has become enforceable) shall be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received.

**5.4 INFORMATION**

The Chargor shall:

5.4.1 give the Lender such information concerning the location, condition, use and operation of the Secured Assets as the Lender may require; and

5.4.2 permit any persons designated by the Lender and any Receiver to enter on its premises and inspect and examine any Secured Asset, and the records relating to that Secured Asset, at all reasonable times and on reasonable prior notice.

**6. PROPERTY COVENANTS**

**6.1 REPAIR AND MAINTENANCE**

The Chargor shall keep all premises and fixtures and fittings on each Charged Property in good and substantial repair and condition.

**6.2 PAYMENT OF RENT AND OUTGOINGS**

The Chargor shall:

6.2.1 where a Charged Property, or part of it, is held under a lease, duly and punctually pay all rents due from time to time; and

6.2.2 pay (or procure payment of the same) when due all charges, rates, taxes, duties, assessments and other outgoings relating to or imposed on each Charged Property or on its occupier.

**6.3 INSPECTION**

The Chargor shall permit the Lender, any Receiver and any person appointed by either of them to enter on and inspect any Charged Property on reasonable prior notice.

**7. POWERS OF THE LENDER**

**7.1 POWER TO REMEDY**

7.1.1 The Lender shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Chargor of any of its obligations contained in this Deed.

7.1.2 The Chargor irrevocably authorises the Lender and its agents to do all things that are necessary or desirable for that purpose.

7.1.3 Any monies expended by the Lender in remedying a breach by the Chargor of its obligations contained in this Deed shall be reimbursed by the Chargor to the Lender on a full indemnity basis and shall carry interest in accordance with clause 14.1.

## **7.2 EXERCISE OF RIGHTS**

7.2.1 The rights of the Lender under clause 7.1 are without prejudice to any other rights of the Lender under this Deed.

7.2.2 The exercise of any rights of the Lender under this Deed shall not make the Lender liable to account as a mortgagee in possession.

## **7.3 POWER TO DISPOSE OF CHATTELS**

7.3.1 At any time after the security constituted by this Deed has become enforceable, the Lender or any Receiver may, as agent for the Chargor, dispose of any chattels or produce found on any Charged Property.

7.3.2 Without prejudice to any obligation to account for the proceeds of any disposal made under clause 7.3.1, the Chargor shall indemnify the Lender and any Receiver against any liability arising from any disposal made under clause 7.3.1.

## **7.4 LENDER HAS RECEIVER'S POWERS**

To the extent permitted by law, any right, power or discretion conferred by this Deed (either expressly or impliedly) or by law on a Receiver may, after the security constituted by this Deed has become enforceable, be exercised by the Lender in relation to any of the Secured Assets whether or not it has taken possession of any Secured Assets and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

## **7.5 INDULGENCE**

The Lender may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this Deed (whether or not any such person is jointly liable with the Chargor) in respect of any of the Secured Liabilities, or of any other security for them without prejudice either to this Deed or to the liability of the Chargor for the Secured Liabilities.

## **7.6 APPOINTMENT OF AN ADMINISTRATOR**

7.6.1 The Lender may, without notice to the Chargor, appoint any one or more persons to be an Administrator of the Chargor pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this Deed becomes enforceable.

7.6.2 Any appointment under this clause 7.6 shall:

7.6.2.1 be in writing signed by a duly authorised signatory of the Lender; and

7.6.2.2 take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986.

7.6.3 The Lender may apply to the court for an order removing an Administrator from office and may by notice in writing in accordance with this clause 7.6 appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.

## **8. WHEN SECURITY BECOMES ENFORCEABLE**

### **8.1 SECURITY BECOMES ENFORCEABLE ON EVENT OF DEFAULT**

The security constituted by this Deed shall become immediately enforceable if an Event of Default occurs.

### **8.2 DISCRETION**

After the security constituted by this Deed has become enforceable, the Lender may, 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 or dispose of all or any part of the Secured Assets.

## **9. ENFORCEMENT OF SECURITY**

### **9.1 ENFORCEMENT POWERS**

9.1.1 For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this Deed.

9.1.2 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this Deed) shall be immediately exercisable at any time after the security constituted by this Deed has become enforceable under clause 8.1.

9.1.3 Section 103 of the LPA 1925 does not apply to the security constituted by this Deed.

### **9.2 EXTENSION OF STATUTORY POWERS OF LEASING**

The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Lender and any Receiver, at any time after the security constituted by this Deed has become enforceable, whether in its own name or in that of the Chargor, to:

9.2.1 grant a lease or agreement for lease;

9.2.2 accept surrenders of leases; or

9.2.3 grant any option in respect of the whole or any part of the Secured Assets with whatever rights relating to other parts of it,

whether or not at a premium and containing such covenants on the part of the Chargor, and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) as the Lender or Receiver thinks fit without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

### **9.3 ACCESS ON ENFORCEMENT**

9.3.1 At any time after the Lender has demanded payment of the Secured Liabilities or if the Chargor defaults in the performance of its obligations under this Deed or the Facility Agreement, the Chargor will allow the Lender or its Receiver, without further notice or demand, immediately to exercise all its rights, powers and remedies in particular (and without limitation) to take possession of any Secured Asset and for that purpose to enter on any premises where a Secured Asset is situated (or where the Lender or a Receiver reasonably believes a Secured Asset to be situated) without incurring any liability to the Chargor for, or by any reason of, that entry.

9.3.2 At all times, the Chargor must use its best endeavours to allow the Lender or its Receiver access to any premises for the purpose of clause 9.3.1 (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.

### **9.4 REDEMPTION OF PRIOR SECURITY**

9.4.1 At any time after the security constituted by this Deed has become enforceable the Lender may:

9.4.1.1 redeem any prior Security over any Secured Asset;

9.4.1.2 procure the transfer of that Security to itself; and

9.4.1.3 settle and pass the accounts of the holder of any prior Security (and any accounts so settled and passed shall, in the absence of any manifest error, be conclusive and binding on the Chargor).

9.4.2 The Chargor shall pay to the Lender immediately on demand all principal, interest, costs, charges and expenses of, and incidental to, any such redemption or transfer, and such amounts shall be secured by this Deed as part of the Secured Liabilities.

### **9.5 PROTECTION OF THIRD PARTIES**

No purchaser, mortgagee or other person dealing with the Lender, any Receiver or any Delegate shall be concerned to enquire:



- 9.5.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- 9.5.2 whether any power the Lender, a Receiver or Delegate is purporting to exercise has become exercisable or is being properly exercised; or
- 9.5.3 how any money paid to the Lender, any Receiver or any Delegate is to be applied.

#### **9.6 PRIVILEGES**

Each Receiver and the Lender is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.

#### **9.7 NO LIABILITY AS MORTGAGEE IN POSSESSION**

Neither the Lender nor any Receiver or Delegate shall be liable, by reason of entering into possession of a Secured Asset or for any other reason, to account as mortgagee in possession in respect of all or any of the Secured Assets, nor shall any of them be liable for any loss on realisation of, or for any act, default or omission for which a mortgagee in possession might be liable.

#### **9.8 CONCLUSIVE DISCHARGE TO PURCHASERS**

The receipt of the Lender, or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Secured Assets or in making any acquisition in the exercise of their respective powers, the Lender, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it thinks fit.

### **10. RECEIVER**

#### **10.1 APPOINTMENT**

At any time after the security constituted by this Deed has become enforceable, or at the request of the Chargor, the Lender may, without further notice, appoint by way of deed, or otherwise in writing, any one or more persons to be a Receiver of all or any part of the Secured Assets.

#### **10.2 REMOVAL**

The Lender may, without further notice (subject to section 45 of the Insolvency Act 1986 in the case of an administrative receiver), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

#### **10.3 REMUNERATION**

The Lender may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925, and the

remuneration of the Receiver shall be a debt secured by this Deed, to the extent not otherwise discharged.

#### **10.4 POWER OF APPOINTMENT ADDITIONAL TO STATUTORY POWERS**

The power to appoint a Receiver conferred by this Deed shall be in addition to all statutory and other powers of the Lender under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

#### **10.5 POWER OF APPOINTMENT EXERCISABLE DESPITE PRIOR APPOINTMENTS**

The power to appoint a Receiver (whether conferred by this Deed or by statute) shall be, and remain, exercisable by the Lender despite any prior appointment in respect of all or any part of the Secured Assets.

#### **10.6 AGENT OF THE CHARGOR**

Any Receiver appointed by the Lender under this Deed shall be the agent of the Chargor and the Chargor shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of each Receiver shall continue until the Chargor goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Lender.

### **11. POWERS OF RECEIVER**

#### **11.1 GENERAL**

11.1.1 Any Receiver appointed by the Lender under this Deed shall, in addition to the powers conferred on it by statute, have the rights, powers and discretions set out in clause 11.2 to clause 11.23.

11.1.2 A Receiver has all the rights, powers and discretions conferred on a receiver (or a receiver and manager) under the LPA 1925, and shall have those rights, powers and discretions conferred on an administrative receiver under the Insolvency Act 1986 whether it is an administrative receiver or not.

11.1.3 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing it states otherwise) exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of any other Receiver.

11.1.4 Any exercise by a Receiver of any of the powers given by clause 11 may be on behalf of the Chargor, the directors of the Chargor (in the case of the power contained in clause 11.16) or itself.

#### **11.2 REPAIR AND DEVELOP CHARGED PROPERTIES**

A Receiver may undertake or complete any works of repair, alteration, building or development on the Charged Properties and may apply for and maintain any planning permission, development consent, building

regulation approval or any other permission, consent or licence to carry out any of the same.

**11.3 GRANT OR ACCEPT SURRENDERS OF LEASES**

A Receiver may grant, or accept, surrenders of any leases or tenancies affecting any Secured Asset on any terms, and subject to any conditions, that it thinks fit.

**11.4 EMPLOY PERSONNEL AND ADVISERS**

11.4.1 A Receiver may provide services and employ or engage any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on any terms, and subject to any conditions, that it thinks fit.

11.4.2 A Receiver may discharge any such person or any such person appointed by the Chargor.

**11.5 MAKE AND REVOKE VAT OPTIONS TO TAX**

A Receiver may make, exercise or revoke any VAT option to tax as it thinks fit.

**11.6 REMUNERATION**

A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by it) that the Lender may prescribe or agree with it.

**11.7 POSSESSION**

A Receiver may take immediate possession of, get in and realise any Secured Asset.

**11.8 MANAGE OR RECONSTRUCT THE CHARGOR'S BUSINESS**

A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Chargor.

**11.9 DISPOSE OF SECURED ASSETS**

A Receiver may sell, exchange, convert into money and realise all or any of the Secured Assets in respect of which it is appointed in any manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as it thinks fit. Any sale may be for any consideration that the Receiver thinks fit and a Receiver may promote, or concur in promoting, a company to purchase the Secured Assets to be sold.

**11.10 SEVER FIXTURES AND FITTINGS**

A Receiver may sever and sell separately any fixtures or fittings from any Charged Property without the consent of the Chargor.

#### **11.11 SELL BOOK DEBTS**

A Receiver may sell and assign all or any of the Book Debts in respect of which it is appointed in any manner, and generally on any terms and conditions, that it thinks fit.

#### **11.12 VALID RECEIPTS**

A Receiver may give a valid receipt for all monies and execute all assurances and things that may be proper or desirable for realising any of the Secured Assets.

#### **11.13 MAKE SETTLEMENTS**

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who claims to be a creditor of the Chargor or relating in any way to any Secured Asset.

#### **11.14 LEGAL ACTION**

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Secured Assets as it thinks fit.

#### **11.15 IMPROVE THE EQUIPMENT**

A Receiver may make substitutions of, or improvements to, the Equipment as it may think expedient.

#### **11.16 MAKE CALLS ON CHARGOR MEMBERS**

A Receiver may make calls conditionally or unconditionally on the members of the Chargor in respect of uncalled capital with (for that purpose and for the purpose of enforcing payments of any calls so made) the same powers as are conferred by the articles of association of the Chargor on its directors in respect of calls authorised to be made by them.

#### **11.17 INSURE**

A Receiver may, if it thinks fit, but without prejudice to the indemnity in clause 14, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Chargor under this Deed.

#### **11.18 SUBSIDIARIES**

A Receiver may form a subsidiary of the Chargor and transfer to that subsidiary any Secured Asset

#### **11.19 BORROW**

A Receiver may, for whatever purpose it thinks fit, raise and borrow money either unsecured or on the security of all or any of the Secured Assets in respect of which it is appointed on any terms that it thinks fit (including, if

the Lender consents, terms under which that security ranks in priority to this Deed).

#### **11.20 REDEEM PRIOR SECURITY**

A Receiver may redeem any prior Security and settle and pass the accounts to which the Security relates. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Chargor, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

#### **11.21 DELEGATION**

A Receiver may delegate its powers in accordance with this Deed.

#### **11.22 ABSOLUTE BENEFICIAL OWNER**

A Receiver may, in relation to any of the Secured Assets, exercise all powers, authorisations and rights it would be capable of exercising as, and do all those acts and things, an absolute beneficial owner could exercise or do, in the ownership and management of the Secured Assets or any part of the Secured Assets.

#### **11.23 INCIDENTAL POWERS**

A Receiver may do any other acts and things that it:

11.23.1 may consider desirable or necessary for realising any of the Secured Assets;

11.23.2 may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this Deed or law; or

11.23.3 lawfully may or can do as agent for the Chargor.

### **12. DELEGATION**

#### **12.1 DELEGATION**

The Lender or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this Deed (including the power of attorney granted under clause 16.1).

#### **12.2 TERMS**

The Lender and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit.

#### **12.3 LIABILITY**

Neither the Lender nor any Receiver shall be in any way liable or responsible to the Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

### **13. APPLICATION OF PROCEEDS**

#### **13.1 ORDER OF APPLICATION OF PROCEEDS**

All monies received or recovered by the Lender, a Receiver or a Delegate under this Deed or in connection with the realisation or enforcement of all or part of the security constituted by this Deed (other than sums received under any Insurance Policy), shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority (but without prejudice to the Lender's right to recover any shortfall from the Chargor):

13.1.1 in or towards payment of all costs, liabilities, charges and expenses incurred by or on behalf of the Lender (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this Deed, and of all remuneration due to any Receiver under or in connection with this Deed;

13.1.2 in or towards payment of the Secured Liabilities in any order and manner that the Lender determines; and

13.1.3 in payment of the surplus (if any) to the Chargor or other person entitled to it.

#### **13.2 APPROPRIATION**

Neither the Lender, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

#### **13.3 SUSPENSE ACCOUNT**

All monies received by the Lender, a Receiver or a Delegate under this Deed (other than sums received under any Insurance Policy that are not going to be applied in or towards discharge of the Secured Liabilities):

13.3.1 may, at the discretion of the Lender, Receiver or Delegate, be credited to a suspense account;

13.3.2 shall bear interest, if any, at the rate agreed in writing between the Lender and the Chargor; and

13.3.3 may be held in that account for so long as the Lender, Receiver or Delegate thinks fit.

### **14. COSTS AND INDEMNITY**

#### **14.1 COSTS**

The Chargor shall, promptly on demand, pay to, or reimburse, the Lender and any Receiver, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing

and out-of-pocket expenses) incurred by the Lender, any Receiver or any Delegate in connection with:

14.1.1 this Deed or the Secured Assets;

14.1.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lender's, a Receiver's or a Delegate's rights under this Deed; or

14.1.3 taking proceedings for, or recovering, any of the Secured Liabilities, together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost, charge, expense, tax or liability arose until full discharge of that cost, charge, expense, tax or liability (whether before or after judgment, liquidation, winding-up or administration of the Chargor) at the Default Rate.

## **14.2 INDEMNITY**

14.2.1 The Chargor shall indemnify the Lender, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:

14.2.1.1 the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this Deed or by law in respect of the Secured Assets;

14.2.1.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this Deed; or

14.2.1.3 any default or delay by the Chargor in performing any of its obligations under this Deed.

14.2.2 Any past or present employee or agent may enforce the terms of this clause 14.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## **15. FURTHER ASSURANCE**

### **15.1 FURTHER ASSURANCE**

15.2 The Chargor shall promptly, at its own expense, take whatever action the Lender or any Receiver may reasonably require for:

15.2.1 creating, perfecting or protecting the security created or intended to be created by this Deed;

- 15.2.2 facilitating the realisation of any Secured Asset; or
- 15.2.3 facilitating the exercise of any right, power, authority or discretion exercisable by the Lender or any Receiver in respect of any Secured Asset,

15.3 including, without limitation the execution of any mortgage, transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Secured Assets (whether to the Lender or to its nominee) and the giving of any notice, order or direction and the making of any filing or registration which, in any such case, the Lender may consider necessary or desirable.

## **16. POWER OF ATTORNEY**

### **16.1 APPOINTMENT OF ATTORNEYS**

By way of security, the Chargor irrevocably appoints the Lender, every Receiver and every Delegate separately to be the attorney of the Chargor and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

- 16.1.1 the Chargor is required to execute and do under this Deed; or
- 16.1.2 any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this Deed or by law on the Lender, any Receiver or any Delegate.

### **16.2 RATIFICATION OF ACTS OF ATTORNEYS**

The Chargor ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 16.1.

## **17. RELEASE**

17.1 Subject to clause 24.3, at the end of the Security Period, the Lender shall, at the request and cost of the Chargor, take whatever action is necessary to:

- 17.1.1 release the Secured Assets from the security constituted by this Deed; and
- 17.1.2 reassign the Secured Assets to the Chargor.

## **18. ASSIGNMENT AND TRANSFER**

### **18.1 ASSIGNMENT BY LENDER**

18.1.1 At any time, without the consent of the Chargor, the Lender may assign or transfer any or all of its rights and obligations under this Deed.



18.1.2 The Lender may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Chargor, the Secured Assets and this Deed that the Lender considers appropriate.

**18.2 ASSIGNMENT BY CHARGOR**

The Chargor may not assign any of its rights, or transfer any of its rights or obligations, under this Deed.

**19. SET-OFF**

**19.1 LENDER'S RIGHT OF SET-OFF**

The Lender may at any time set off any liability of the Chargor to the Lender against any liability of the Lender to the Chargor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Deed. If the liabilities to be set off are expressed in different currencies, the Lender may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Lender of its rights under this clause 19 shall not limit or affect any other rights or remedies available to it under this Deed or otherwise.

**19.2 NO OBLIGATION TO SET OFF**

The Lender is not obliged to exercise its rights under clause 19.1. If, however, it does exercise those rights it must promptly notify the Chargor of the set-off that has been made.

**19.3 EXCLUSION OF CHARGOR'S RIGHT OF SET-OFF**

All payments made by the Chargor to the Lender under this Deed shall be made in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

**20. AMENDMENTS, WAIVERS AND CONSENTS**

**20.1 AMENDMENTS**

No amendment of this Deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).

**20.2 WAIVERS AND CONSENTS**

20.2.1 A waiver of any right or remedy under this Deed or by law, or any consent given under this Deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

20.2.2 A failure or delay by a party to exercise any right or remedy provided under this Deed or by law shall not constitute a waiver of

that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this Deed. No single or partial exercise of any right or remedy provided under this Deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this Deed by the Lender shall be effective unless it is in writing.

### **20.3 RIGHTS AND REMEDIES**

The rights and remedies provided under this Deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

### **21. SEVERANCE**

If any provision (or part of a provision) of this Deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this Deed.

### **22. COUNTERPARTS**

This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.

### **23. THIRD PARTY RIGHTS**

Except as expressly provided elsewhere in this Deed, a person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this Deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

### **24. FURTHER PROVISIONS**

#### **24.1 INDEPENDENT SECURITY**

The security constituted by this Deed shall be in addition to, and independent of, any other security or guarantee that the Lender may hold for any of the Secured Liabilities at any time. No prior security held by the Lender over the whole or any part of the Secured Assets shall merge in the security created by this Deed.

#### **24.2 CONTINUING SECURITY**

The security constituted by this Deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Lender discharges this Deed in writing.

### **24.3 DISCHARGE CONDITIONAL**

Any release, discharge or settlement between the Chargor and the Lender shall be deemed conditional on no payment or security received by the Lender in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded under any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

24.3.1 the Lender or its nominee may retain this Deed and the security created by or under it, including all certificates and documents relating to the whole or any part of the Secured Assets, for any period that the Lender deems necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and

24.3.2 the Lender may recover the value or amount of such security or payment from the Chargor subsequently as if the release, discharge or settlement had not occurred.

### **24.4 CERTIFICATES**

A certificate or determination by the Lender as to any amount for the time being due to it from the Chargor under this Deed shall be, in the absence of any manifest error, conclusive evidence of the amount due.

### **24.5 CONSOLIDATION**

The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this Deed.

### **24.6 SMALL COMPANY MORATORIUM**

Notwithstanding anything to the contrary in this Deed, neither the obtaining of a moratorium by the Chargor under schedule A1 to the Insolvency Act 1986 nor the doing of anything by the Chargor with a view to obtaining such a moratorium (including any preliminary decision or investigation) shall be, or be construed as:

24.6.1 an event under this Deed which causes any floating charge created by this Deed to crystallise;

24.6.2 an event under this Deed which causes any restriction which would not otherwise apply to be imposed on the disposal of any property by the Chargor; or

24.6.3 a ground under this Deed for the appointment of a Receiver.

## **25. NOTICES**

### **25.1 DELIVERY**

Any notice or other communication given to a party under or in connection with this Deed shall be:

- 25.1.1 in writing;
- 25.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service to its registered office or sent by email to the email address notified by one party to the other; and

25.1.3 sent to:

25.1.3.1 the Chargor: for the attention of David Storey;

25.1.3.2 the Lender: for the attention of John Tustain

or to any other address, email address or fax number as is notified in writing by one party to the other from time to time.

**25.2 RECEIPT BY CHARGOR**

Any notice or other communication that the Lender gives to the Chargor shall be deemed to have been received:

- 25.2.1 if delivered by hand, at the time it is left at the relevant address;
- 25.2.2 if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and
- 25.2.3 if sent by email, one hour after transmission, or if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 25.2, business hours means 9.00am to 5.00pm on a Business Day.

A notice or other communication given as described in clause 25.2.1 or clause 25.2.3 on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

**25.3 RECEIPT BY LENDER**

Any notice or other communication given to the Lender shall be deemed to have been received only on actual receipt.

**25.4 SERVICE OF PROCEEDINGS**

This clause 25 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**26. GOVERNING LAW AND JURISDICTION**

**26.1 GOVERNING LAW**

This Deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**26.2 JURISDICTION**

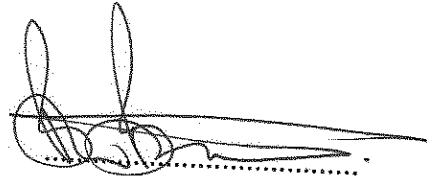
Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Deed or its subject matter or formation. Nothing in this clause shall limit the right of the Lender to take proceedings against the Chargor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

**26.3 OTHER SERVICE**

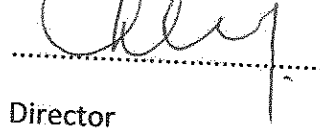
The Chargor irrevocably consents to any process in any legal action or proceedings under clause 26.2 being served on it in accordance with the provisions of this Deed relating to service of notices. Nothing contained in this Deed shall affect the right to serve process in any other manner permitted by law.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by TUSTAIN  
MOTORS LIMITED acting by BRIAN  
BAXTER, a director and DAVID  
STOREY, a director

A handwritten signature in dark ink, appearing to be 'B Baxter', written over a dotted line.

Director

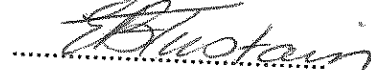
A handwritten signature in dark ink, appearing to be 'D Storey', written over a dotted line.

Director

Executed as a deed by TUSTAIN  
FAMILY INVESTMENT COMPANY  
LIMITED acting by JOHN TUSTAIN,  
a director and ELIZABETH  
TUSTAIN, a director

A handwritten signature in dark ink, appearing to be 'J Tustain', written over a dotted line.

Director

A handwritten signature in dark ink, appearing to be 'E Tustain', written over a dotted line.

Director