



**Registration of a Charge**

Company name: **HENDY AUTOMOTIVE LIMITED**

Company number: **09881062**



X591JPHD

Received for Electronic Filing: **13/06/2016**

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**Details of Charge**

Date of creation: **03/06/2016**

Charge code: **0988 1062 0002**

Persons entitled: **FCE BANK PLC**

Brief description: **ALL ESTATE OR INTEREST OF THE BORROWER IN ANY FREEHOLD OR LEASEHOLD PROPERTY AT THE DATE OF THE CHARGE OR AT ANY TIME THEREAFTER DURING THE CONTINUANCE OF THE SECURITY BELONGING TO OR CHARGED TO THE BORROWER TOGETHER WITH ALL BUILDINGS FIXTURES AND FIXED PLANT AND MACHINERY FROM TIME TO TIME ON IT AND/OR THE PROCEEDS OF SALE OF IT.**

**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: **GILLIAN H BROOMFIELD**



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

Company number: 9881062

Charge code: 0988 1062 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 3rd June 2016 and created by HENDY AUTOMOTIVE LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 13th June 2016 .

Given at Companies House, Cardiff on 14th June 2016

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

Date: 3 June

2016

Company: Hendy Automotive Limited

# DEBENTURE

FCE Bank plc  
Central Office  
Eagle Way  
Brentwood  
Essex  
CM13 3AR

THIS DEBENTURE is made the

3

day of June 2016

Between **HENDY AUTOMOTIVE LIMITED** (company number: 09881062) whose registered office is situate at Hendy Group School Lane, Chandlers Ford Industrial Estate, Eastleigh, Hampshire, SO53 4DG, United Kingdom (hereinafter called "the Borrower") of the one part and **FCE BANK PLC** whose registered office is situate at Central Office Eagle Way Brentwood Essex CM13 3AR (hereinafter called "FCE" which expression shall include any other holder or assignee for the time being of this Debenture) of the other part

WHEREAS FCE has agreed to extend or to continue to extend certain finance facilities to the Borrower and the Borrower has agreed that the said finance facilities together with any instalment credit and hiring facilities now or hereafter extended by FCE to the Borrower and together with interest thereon shall be secured in manner hereinafter appearing

NOW THIS DEED WITNESSETH as follows:

1. **Payment on Demand** : THE BORROWER will upon demand in writing made to it by FCE pay or discharge to FCE:
  - (i) all monies and liabilities which now are or shall at any time hereafter be due owing or incurred by the Borrower to FCE on any account or in any manner whatsoever whether actually or contingently and whether solely or jointly with any other person firm or company and whether due from the Borrower as guarantor indemnifier or principal debtor including without limitation all costs charges expenses and other payments for which the Borrower shall be liable pursuant to this Debenture on a full indemnity basis; and
  - (ii) interest on the foregoing day by day from demand until full discharge such interest to be chargeable at the specified rate (as well after as before any judgment)
2. **All Monies** : IT IS HEREBY expressly declared and agreed that the security hereby created may be given in connection with financial obligations other than loan indebtedness in which event the expression "the Borrower" and any other words herein that in their normal meaning would imply the existence of loan indebtedness shall be construed so as to be applicable to obligations arising out of conditional sale hire purchase leasing hiring credit sale personal loan or other type of financing arrangements or any other arrangements of any kind entered into by FCE with the Borrower and shall extend to contingent liabilities
3. (i) **Charge Provisions** : THE BORROWER with FULL TITLE GUARANTEE HEREBY CHARGES with the payment and discharge of all monies and liabilities described in Clause 1 hereof:

**Legal Mortgage** :

- (a) **Freehold and Leasehold Property** : by way of legal mortgage all the freehold and leasehold property of the Borrower described in the Schedule hereto together with all buildings fixtures (including trade fixtures) and fixed plant and machinery from time to time thereon and/or the proceeds of sale thereof;
- (b) **Other Freehold and Leasehold Property** : by way of legal mortgage all other freehold and leasehold property now vested in the Borrower together with all buildings fixtures (including trade fixtures) and fixed plant and machinery from time to time thereon and/or the proceeds of the sale thereof;

**Fixed Charges :**

- (c) **Estate or Interest** : by way of fixed charge all estate or interest of the Borrower in any freehold or leasehold property at any time hereafter during the continuance of this security belonging to or charged to the Borrower together with all buildings fixtures (including trade fixtures) and fixed plant and machinery from time to time thereon and/or the proceeds of sale thereof;
- (d) **Stock and Other Securities** : by way of fixed charge all stocks shares and other securities of any kind now or hereafter owned (whether at law or in equity) by the Borrower including all allotments accretions offers rights benefits and advantages whatsoever at any time accruing offered or arising in respect of the same whether by way of redemption bonus preference option dividend interest or otherwise and all rights and interests of the Borrower in and claims under all policies of insurance and assurance now or hereafter held by or enuring to the benefit of the Borrower;
- (e) **Other Interests** : by way of fixed charge all interests not hereinbefore effectively charged now or hereafter belonging to the Borrower in or over land or the proceeds of sale of land all licences now or hereafter held by the Borrower to enter upon or use land and the benefit of all other agreements relating to land to which the Borrower is or may become party or otherwise entitled and all trade and tenant's fixtures plant and machinery now and hereafter annexed for whatever purpose to all freehold and leasehold property an interest in which stands charged hereunder;
- (f) **Books and Other Debts** : by way of fixed charge all books and other debts now and from time to time due or owing to the Borrower and whether presently payable or hereafter falling due for payment (including bank deposits and credit balances) and all rights and claims of the Borrower against third parties now or hereafter existing and capable of being satisfied by the payment of money (save as charged under Sub-clause 3(i)(d));
- (g) **Goodwill and Uncalled Capital** : by way of fixed charge all goodwill and uncalled capital for the time being of the Borrower and all patents patent applications inventions trademarks trade names registered designs copyrights know-how and other intellectual property rights and all licences and ancillary rights and benefits including all royalties and other income deriving from the same both present and future of the Borrower;
- (h) **Plant and Machinery** : by way of fixed charge all plant and machinery now or at anytime hereafter belonging to the Borrower (excluding however plant and machinery for the time being forming part of its stock in trade or work in progress) and all trade and other fixtures fixed plant and machinery not falling within Sub-clauses 3(i)(a) to 3(i)(e) inclusive and all chattels now or at any time hired or leased by the Borrower to any other person together in each case with the benefit of the related hiring or leasing contract and any guarantee indemnity or other security for the performance of the obligations of any person under such contract; and

**Floating Charge :**

- (i) **Assets** : by way of floating charge all Assets (as defined in Clause 24 of the Appendix to this Debenture) of the Borrower whatsoever and wheresoever not hereinbefore effectively charged by way of fixed charge including (without limitation) any immovable property of the Borrower and any Assets falling within any of the types mentioned in Sub-clauses 3(i)(a) to 3(i)(h) inclusive situate in Scotland not hereinafter effectively charged by way of fixed charge but so that the Borrower shall not be at liberty without the consent in writing of FCE to create or permit to continue any mortgage or charge upon or suffer any lien to affect any part of the undertaking or assets of the Borrower subject to the floating charge either in priority to or pari passu with that charge or to

sell part with or dispose of the whole or (except in the ordinary course of business) any part of the Borrower's undertaking and assets

- (ii) **Continuing Security** : This Debenture shall be a continuing security to FCE notwithstanding any settlement of account or other matter or thing whatsoever and shall be without prejudice to and in addition to any other security whether by way of mortgage equitable charge or otherwise which FCE may now or at any time hereafter hold on the property of the Borrower or any part thereof for or in respect of the monies and liabilities hereby secured or any of them or any part thereof respectively
  - (iii) **Specifically Mortgaged Property** : The property subject to legal mortgages and fixed charges hereunder or any part thereof is hereinafter called "the Specifically Mortgaged Property" The Specifically Mortgaged Property and the Assets are hereinafter together called "the Mortgaged Property"
4. **Conversion of Floating Charge** : FCE may from time to time by notice in writing to the Borrower convert the floating charge created pursuant to Sub-clause 3(i)(i) into a fixed charge as regards any Assets thereby charged as are specified in any such notice and such floating charge shall automatically be converted into a fixed charge:
- (i) in respect of any Assets which shall become subject to a fixed charge in favour of any other person firm or company or to a disposition otherwise than by way of sale in the ordinary course of the Borrower's business immediately upon such charge or disposition; and
  - (ii) in respect of all the Assets thereby charged if and when the Borrower shall cease to carry on business or to be a going concern
- but so that this Clause shall not apply to any Assets situate in Scotland
5. **Covenants** : THE BORROWER HEREBY COVENANTS that:
- (i) **Litigation** : there is not now pending against the Borrower nor to the knowledge of any directors secretary officers or managers of the Borrower is there threatened any litigation or any proceedings the outcome of which might seriously affect the continued operation of the business of the Borrower;
  - (ii) **Financial Information** : all financial statements and data that have been furnished by the Borrower to FCE fairly represent the financial condition of the Borrower and the results of its operations All other information reports papers and data furnished to FCE are accurate and correct in all material respects as may be necessary to give FCE a true and accurate knowledge of the subject matter;
  - (iii) **Material Changes** : there has been no materially adverse change in the assets liabilities or financial condition of the Borrower from that set out in the most recent financial statements furnished by the Borrower to FCE;
  - (iv) **Other Charges** : none of the Mortgaged Property is on the date hereof subject to any mortgage charge or lien (except a lien arising by operation of law in the ordinary course of business or a mortgage or charge previously disclosed in writing to the Legal Affairs Department of FCE) in favour of anyone other than FCE; and
  - (v) **Power to Enter into Legal Charge** : the charge hereby created does not contravene any of the provisions of the Borrower's Memorandum and Articles of Association
6. **First Refusal** : The Borrower hereby undertakes that during the continuance of this Debenture it will offer to FCE or such other subsidiary of Ford Motor Company Limited as FCE may from time to time direct every proposal within its power for any retail business relating to motor vehicle transactions connected with any business carried on by the Borrower but FCE shall be free in its absolute discretion to accept or reject all such offers For the purpose of this Clause "retail business" means contracts for hire purchase conditional sale leasing hiring credit sale personal

loans or any other type of financing arrangement in connection with motor vehicles to individuals firms or bodies corporate Any such directions as aforesaid by FCE may be either revoked extended or altered at any time on notice to the Borrower The Borrower shall upon request from time to time give to FCE all such information and produce to it all such records and documents as may be requisite to enable FCE to verify whether this Clause has been complied with

7. **Qualifying Floating Charge:** The floating charge created by this Debenture shall fall to be considered as a qualifying floating charge for the purposes of paragraph 14 of Schedule B1 to the Insolvency Act 1986 (as that Act is to be amended pursuant to the Enterprise Act 2002) and accordingly that paragraph shall apply to this Debenture and (as from the date that such Schedule comes into force) FCE shall be entitled at any time after it has demanded payment of any of the monies and liabilities hereby secured to appoint an administrator of the Borrower in addition to (and not in derogation of) any other rights FCE may have under this Debenture or at general law and to do all things relevant in relation to such appointment.
8. **Appendix :** The terms and conditions in the Appendix to this Debenture shall apply as if they were set out herein and the Borrower shall perform and observe the same

**The Schedule above referred to**

The following freehold and/or leasehold property of the Borrower at the date of this Debenture

Particulars of Property

Particulars of existing encumbrances (if any)



Schedule (continued)

Particulars of Property

Particulars of existing encumbrances (if any)

Signed as a Deed by

**HENDY AUTOMOTIVE LIMITED**

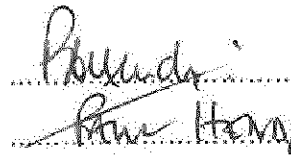
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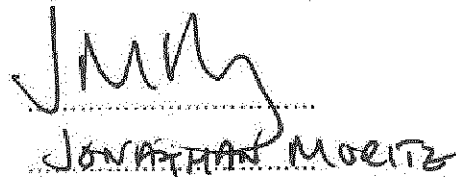
Director's Signature:

Director's Name (please print):

Director/Secretary's Signature:

Director's/Secretary's Name (please print):

  
.....  
Paul Henry

  
.....  
JONATHAN MOERITZ

Signed and delivered as a Deed  
for and on behalf of **FCE BANK PLC** by:

  
.....  
(name)

  
.....  
(name)

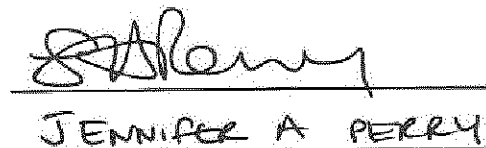
  
.....  
(signature)

  
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(signature)

duly authorised Attorneys  
in the presence of:

Witness' Signature

Witness' Full Name

  
.....  
JENNIFER A PERRY

## THE APPENDIX

1. **Borrower Covenants** : During the continuance of this Debenture the Borrower shall:

- (i) **Use of Loan** : use monies secured hereby for the purposes agreed between the Borrower and FCE from time to time and for no other purpose;
- (ii) **Book and Records** : keep full and proper books accounts and records and keep FCE fully informed of the state of its business and that of all its subsidiaries and promptly furnish to FCE all such information in relation to their respective undertakings assets transactions and affairs as FCE may from time to time require (such information to be certified as to its accuracy and completeness in such form and by such officer manager director employees or agents of the Borrower as FCE may reasonably require) Without prejudice to the generality of the foregoing the Borrower will (if required to do so) supply to FCE:
  - (a) **Monthly Statements** : monthly financial statements within twenty days after the end of the month to which they relate and in such form as FCE may from time to time prescribe; and
  - (b) **Accounts** : all accounts and documents that FCE would be entitled to receive if it were a shareholder in the Borrower and each of its subsidiaries (if any) such accounts and documents to be supplied to FCE not later than the time by which they are required by law to be furnished to the shareholders;
- (iii) **Maintenance of Book Debts** : maintain the aggregate value of the Borrower's book debts (excluding debts due from any subsidiary or from Ford Motor Company Limited) cash in hand and its stock (according to the best estimates that can be formed without there being any necessity to take stock for this purpose) within such level (if any) as may be reasonably fixed by FCE from time to time and will whenever required by FCE provide FCE with a certificate of the amount thereof attested under the hand of a Director of the Borrower together with details of any amounts payable by the Borrower to the Crown or others which under Section 175 of the Insolvency Act or under any other statute would in the event of liquidation of the Borrower constitute a preferential debt;
- (iv) **Payment Requirements** : unless FCE otherwise requires pay into the Borrower's account at its bankers as notified to FCE from time to time all monies which it may receive in respect of the book and other debts hereby charged and shall if FCE so requires pay the amounts received in respect of such debts or procure the payment thereof direct to FCE and shall not without the prior written consent of FCE sell factor discount or otherwise charge or assign the same or permit the payment (save as aforesaid) of such monies or any of such debts in favour of any other person and shall from time to time if so required by FCE execute legal assignments of such book and other debts to FCE;
- (v) **Title** : the Borrower shall upon demand in writing made by FCE at the cost of the Borrower:
  - (a) execute a valid legal mortgage in FCE's standard form for the time being or in such form as FCE may reasonably require of any freehold or leasehold property presently belonging to the Borrower which is not by this Debenture effectively charged by way of legal mortgage and of any freehold or leasehold property hereafter acquired by the Borrower;
  - (b) execute a valid fixed charge or assignation in security in such form as FCE may reasonably require of any Assets subject to a floating charge hereunder; and
  - (c) do and concur in all such other acts or things as FCE may deem necessary to vest in FCE title to all or any of the Mortgaged Property;
- (vi) **Performance of Lease Covenants, etc.** : punctually pay the rents reserved by and perform and observe all covenants agreements and stipulations on the part of the lessee contained in any lease of any leasehold property of the Borrower (whether of not forming part of the specifically Mortgaged Property) FCE may pay the whole or any part of any such rent and all

monies so paid by FCE together with all expenses of FCE in connection with any such payment shall be added forthwith to the monies hereby secured and shall bear interest at the specified rate;

- (vii) **Payment of Taxes, etc.** : pay all taxes duties charges assessments and outgoings whatsoever that shall be assessed charged or imposed upon or payable in respect of any property of the Borrower (whether or not forming part of the Specifically Mortgaged Property) as and when the same shall become due FCE may pay the whole or any part of any such taxes rates duties charges assessments and outgoings and all monies so paid by FCE together with all expenses of FCE in connection with any such payment shall be added forthwith to the monies hereby secured and shall bear interest at the specified rate
- (viii) **Repair** : keep all buildings forming part of the Specifically Mortgaged Property and all plant machinery works fixtures fittings implements utensils tools and other effects therein in good repair and working order;
- (ix) **Performance of Agreements, etc.** : perform and observe all agreements covenants and stipulations restrictive or otherwise affecting the Specifically Mortgaged Property and indemnify FCE in respect of any breach thereof;
- (x) **Replacement of Machinery** : renew and replace all moveable plant machinery tools implements utensils and other effects of a like nature now used or hereafter to be used for the purpose of or in connection with the business of the Borrower as and when the same shall be worn out or destroyed or become defective;
- (xi) **Maintenance of Vehicles** : keep all motor vehicles and parts and accessories therefor owned by or in the possession of the Borrower in good repair and working order and take all reasonable precautions to protect them from damage or deterioration (howsoever arising) at premises owned or controlled by it;
- (xii) **Right to Audit** : permit FCE or any person authorised by it at any time and from time to time to enter the land forming part of the Specifically Mortgaged Property and any other premises where the aforesaid motor vehicles parts and accessories are for the purposes of examining the state of the Mortgaged Property and of the aforesaid motor vehicles parts and accessories and to inspect the Borrower's books accounts and records;
- (xiii) **Insurance** :
  - (a) insure and keep insured with an insurance office or underwriters to be approved by FCE in writing from time to time such of the Mortgaged Property as is insurable against loss or damage by fire and such other risks as FCE may from time to time require to the full replacement value thereof and to cause notice of the interest of FCE to be endorsed on the policies (which if required by FCE shall be delivered to and retained by FCE) or if so required by FCE to effect such insurance in the joint names of the Borrower and FCE and shall maintain such other insurances as are normally maintained by prudent companies carrying on similar business and will duly pay all premiums and other monies necessary for effecting and keeping up such insurance within seven days of the same becoming due and will upon demand produce to FCE the policies of such insurance and the receipts for such payments and if default shall at any time be made by the Borrower in effecting or keeping up such insurance as aforesaid or in producing any such policy or receipt to FCE upon demand FCE may take out or renew such insurances in any sum which FCE may think expedient. All monies expended by FCE under this provision shall be deemed to be properly paid by FCE and shall be added forthwith to the monies hereby secured and shall bear interest at the specified rate; and
  - (b) cause all monies received by virtue of such insurance insofar as they relate to any land or buildings forming part of the Mortgaged Property to be forthwith expended in rebuilding and reinstating the said land and buildings to the satisfaction of FCE and to make up out of the Borrower's own monies any deficiency in the monies required to

complete such rebuilding and reinstatement or in payment or reduction of the monies hereby secured as FCE shall require;

- (xiv) **Restrictions on Subsidiaries** : procure that no subsidiary of the Borrower shall except with the prior written consent of FCE create any mortgage or charge over or suffer any lien (except a lien arising by operation of law in the ordinary course of business) to affect any assets of any such subsidiary or raise any loan or guarantee indemnify endorse or become surety for the payment of any debt or obligation of any person directly or contingently except for recourse undertakings in respect of the obligations of such subsidiary's customers under leasing hiring or other kinds of financing arrangements;
  - (xv) **Cessation of Operations** : notify FCE immediately if the Borrower shall cease to be a franchised dealer of a Ford Affiliated Company or if there shall be instituted or threatened against the Borrower any litigation or other proceedings the outcome of which might seriously affect the continued operations of the Borrower;
  - (xvi) **Notice Affecting Priority** : immediately give FCE full particulars of any notice which may be served affecting the Specifically Mortgaged Property or of any proceedings which may affect the Specifically Mortgaged Property;
  - (xvii) **Notice of Acquisitions** : notify FCE forthwith in writing upon the acquisition by the Borrower from time to time of any freehold or leasehold property or the acquisition or formation of any subsidiary company of the Borrower;
  - (xviii) **Compliance with Laws** : comply with all statutory requirements relating to the Mortgaged Property and the conduct of the Borrower's business;
  - (xix) **Evidence of Compliance with Obligations** : forthwith furnish to FCE such evidence of compliance with the terms of this Debenture as FCE may from time to time reasonably require;
  - (xx) **Compensation for Compulsory Acquisition** : tender to FCE without demand in reduction of the Borrower's indebtedness to FCE any compensation received for any land forming part of the Specifically Mortgaged Property in the event of such land or any part or parts thereof being compulsorily acquired; and
  - (xxi) **Priority Arrangements** : procure that any debentures mortgages or charges hereafter created by the Borrower (other than in favour of FCE) shall be expressed to be subject to this Debenture
2. (i) **Evidence of Insurance** : In respect of any leasehold premises forming part of the Specifically Mortgaged Property FCE will accept compliance with the obligations to insure imposed by the lease relating thereto as part performance of the Borrower's obligations to insure herein provided and if the Borrower is unable to produce a receipt for any premium due to the same being in possession of a third party it shall be sufficient compliance with the foregoing requirement for the delivery of the said policy or the receipt if the Borrower produces satisfactory evidence of payment of all premiums and of the subsistence of the policy provided that the Borrower shall use its best endeavours to ensure that the interest of FCE is noted on the policy
- (ii) **Right of Entry** : In case of the service upon the Borrower of any such notice as is mentioned in Sub-clause 1(xvi) of this Appendix or in case of default by the Borrower in repairing or keeping in repair the Mortgaged Property or observing or performing any of the agreements covenants or stipulations affecting the same FCE (or any person authorised by it) shall be entitled to enter on any land forming part of the Specifically Mortgaged Property and comply with or object to such notice and effect such repairs at the expense and as agent of the Borrower without thereby becoming a mortgagee in possession and generally to do all such acts and pay all such costs charges and expenses as FCE may consider necessary to prevent or remedy any breach of agreement covenant or stipulation or to comply with or object to any such notice All payments made and all costs and expenses

incurred by FCE pursuant to this Sub-clause shall be added forthwith to the monies hereby secured and shall bear interest at the specified rate

3. **Restrictions** : During the continuance of this Debenture the Borrower will not without the prior written consent of FCE:

- (i) **Priority Arrangements** : other than in the ordinary course of business raise any loan or enter into any hire purchase conditional sale credit sale lease or hire agreement as hirer or purchaser or guarantee indemnify or endorse or become surety for the payment of any debt or obligation of any person directly or contingently except for recourse undertakings in respect of the obligations of the Borrower's customers under hire-purchase conditional sale credit sale lease or hire agreements;
- (ii) **Title** : register any person or cause or permit any person to be registered under the Land Registration Acts as the proprietor of any land forming part of the Specifically Mortgaged Property or any part thereof and the cost of entering a caution against such registration shall be deemed to be costs properly incurred by FCE under this Debenture;
- (iii) **Parting with Possession** : grant or agree to grant any lease or tenancy or permit any person to share possession of or to occupy the land forming part of the Specifically Mortgaged Property or any part thereof or create or permit to arise any overriding interest affecting the Specifically Mortgaged Property or any part thereof within the definition of the Land Registration Acts or accept or agree to accept a surrender of any lease or tenancy thereof or do or suffer to be done any act or thing whereby any lease held by the Borrower of the land forming part of the Specifically Mortgaged Property may become liable to forfeiture or otherwise be determined but FCE may grant or accept surrenders of leases without restriction;
- (iv) **Alter Property** : pull down alter or remove any buildings or erection erected or to be erected on the land forming part of the Specifically Mortgaged Property or the fixed plant and machinery and other fixtures and fittings upon the same respectively or any of them except in the ordinary course of repair and maintenance;
- (v) **Unauthorised Use** : use any part of the land forming part of the Specifically Mortgaged Property for any purpose which is not for the time being authorised as the permitted user thereof under the lease (if any) under which it is held or the Planning Acts or carry out any development within the meaning of the Planning Acts in or upon the land forming part of the Specifically Mortgaged Property without first obtaining such permission as may be required under the said lease (if any) and/or Planning Acts;
- (vi) **Disposal of Property** : sell exchange transfer or otherwise dispose share or part with possession of the Specifically Mortgaged Property;
- (vii) **Disposal of Assets** : subject to the provisions of Sub-clause 3(vi) of this Appendix sell exchange transfer or otherwise dispose of any of the Assets or consolidate or merge with any other company or sell exchange transfer lease or otherwise dispose of all or any substantial part of the Borrower's capital assets or grant any loan or acquire any debts or obligations of any person except in the ordinary course of business
- (viii) **Change of Use/New Construction** : construct or erect or permit to be constructed or erected upon the land forming part of the Specifically Mortgaged Property any new or additional building or other erection or change or permit to be changed the use to which the land forming part of the Specifically Mortgaged Property or any part thereof is put (including any building or other erection already or hereafter to be constructed or erected thereon); and
- (ix) **Amend Memorandum and Articles of Association** : amend the Borrower's Memorandum and Articles of Association or issue or redeem any securities

4. **Appointment and Authority of Agent** : Without prejudice to any other rights of FCE under this Debenture or otherwise the Borrower hereby irrevocably appoints FCE its agents for the purposes and subject to the regulations hereinafter set out:

- (i) **Legal Proceedings** : FCE shall be authorised to demand collect and institute legal proceedings for the recovery of debts owed to the Borrower;
- (ii) **Solicitors and Other Agents** : for the foregoing purpose FCE may on behalf of the Borrower instruct solicitors or other agents;
- (iii) **Exercise of Authority** : the said authority shall not be exercised unless and until the Borrower shall be in default in making any payment due from it to FCE on any account or shall fail to carry out any obligation under this Debenture or any other guarantee or security held by or agreement with FCE or shall fail punctually to make any payment due to any other creditor (whether secured or not);
- (iv) **Demanding and Accounting for Payment** : in demanding payment of any debt as aforesaid FCE shall call upon each debtor to make a remittance in settlement of the debt in favour of the Borrower and FCE shall promptly account to the Borrower for any sum so collected after deducting any monies due to FCE hereunder or otherwise;
- (v) **Expenses, Assistance, etc.** : the Borrower shall be responsible for all expenses incurred by FCE in acting under the authority hereby conferred and will indemnify FCE accordingly. The Borrower shall give to FCE all necessary assistance and information to enable it to carry out the collection of debts as herein contemplated;
- (vi) **Liability** : FCE undertakes that in the exercise of its powers hereunder it will use its reasonable endeavours to preserve the Borrower's business reputation with those debtors to whom FCE may make application but so that FCE shall not be liable for any loss or damage to the Borrower as a result of anything done by FCE hereunder;
- (vii) **Notice** : before exercising its authority hereunder FCE shall notify the Borrower of the debts which it intends to collect and the Borrower shall not thereafter (without FCE's express consent in writing) collect or attempt to collect or release or reduce any such debt. Any such notice may specify particular debts or refer to all debts owed to the Borrower or any class or description of debts;
- (viii) **Information and Advice** : if the authority conferred by this Clause becomes exercisable FCE shall be entitled to require and the Borrower obliged to provide all information necessary to permit FCE to exercise its powers hereunder and FCE shall be entitled to advise the Borrower either generally or specifically in connection with any matter and failure by the Borrower to accept such advice shall be deemed to be a breach of terms of this Debenture; and
- (ix) **Powers** : the powers conferred by this Clause are in addition to any powers that FCE may have hereunder as the chargee of all or any book or other debts due to the Borrower

5. (i) **Events of Default** : Without prejudice to the provisions of Clause 1 and notwithstanding any agreement with the Borrower as to any specified date of payment of all or any part of the monies hereby secured FCE shall be entitled to demand payment thereof at any time after the happening of any of the following events:

- (a) **Payment** : if the Borrower makes default in the due and punctual payment of all or any portion of any principal or interest or other monies that may have become due hereunder or under any other agreement between the Borrower and FCE;
- (b) **Enforcement Against Property** : if any distress execution sequestration or other process is levied or enforced upon or sued out against any property of the Borrower and is not discharged within seven days of being levied;

- (c) **Insolvency** : if the Borrower is unable to pay its debts within the meaning of Section 123 of the Insolvency Act or certifies that it is unable to pay its debts as and when they fall due or if a notice is issued convening a meeting of the Borrower's creditors or the Borrower proposes or enters into a voluntary arrangement with its creditors under Part 1 of the Insolvency Act;
  - (d) **Breach of Contract** : if the Borrower commits any breach of any of the conditions or provisions contained herein or in any other agreement between the Borrower and FCE or for any reason whatever fails to perform any obligation hereby or thereby imposed on the Borrower;
  - (e) **Compulsory Acquisition** : if the land forming part of the Specifically Mortgaged Property is compulsorily acquired by or by order of any local or other authority and as a result the business of the Borrower is so seriously affected as to jeopardise the security hereby created;
  - (f) **Misrepresentation** : if any representation or warranty made by the Borrower to FCE shall be found to have been untrue in any material respect at the date when any such representation or warranty was made;
  - (g) **Default Under a Mortgage** : if the Borrower makes default under any mortgage or charge having priority over this Debenture;
  - (h) **Franchise Termination** : if the Borrower ceases to be a franchised dealer of a Ford Affiliated Company; or
  - (i) **Third Party Default** : if any of the foregoing events or any of the events referred to in Sub-clause 5(iii) of this Appendix occurs without the prior consent in writing of FCE in relation to any third party which now or hereafter has guaranteed or provided security for or given an indemnity in respect of any money obligation or liability hereby secured or such third party dies or if any such event occurs in relation to any subsidiary or holding company of the Borrower or any subsidiary of any such holding company
  - (ii) **Payment on Demand** : Upon any demand being made by FCE pursuant to the foregoing provisions all monies hereby secured shall immediately be due and payable
  - (iii) **Other Events of Default** : The monies hereby secured shall also become payable (whether or not demanded by FCE) forthwith on the happening of any of the following events:
    - (a) **Resolution for Winding Up** : an order is made or an effective resolution passed for winding up the Borrower;
    - (b) **Cessation of Business** : if the Borrower stops payment or ceases to carry on its business or substantially the whole of its business or threatens to cease to carry on the same;
    - (c) **Receivership** : if any encumbrancer takes possession or a receiver or receiver and manager is appointed of the Mortgaged Property or any part thereof; or
    - (d) **Administration** : if a petition applying for an administration order in relation to the Borrower is presented pursuant to Section 9 of the Insolvency Act or if any steps are taken by the Borrower, its directors, or any third party with a view to the appointment, by any such person or by the court, of an administrator of the Borrower, including making an administration application to the court, filing with the court a notice of appointment or of the intended appointment of an administrator or the giving of notice to FCE or any other person of an intention to appoint an administrator
6. **Power of Sale** : Section 103 of the Law of Property Act 1925 ("the Act") shall not apply to this Debenture which shall immediately become enforceable and the power of sale and other powers conferred by Section 101 of the Act (as varied or extended by this Debenture) shall be



immediately exercisable at any time after the monies hereby secured shall have become payable pursuant hereto:

7. (i) **Appointment and Powers of Receiver** : At any time after the monies hereby secured shall have become payable (and whether or not the Borrower shall have been accorded any time in which to make payment) or (notwithstanding the terms of any other agreement between the Borrower and FCE save only an express exclusion of this provision by reference to this Debenture) after the presentation of a petition applying for an administration order to be made in relation to the Borrower pursuant to Section 9 of the Insolvency Act or if requested by the Borrower FCE may appoint by writing any person to be a receiver or a receiver and manager (hereinafter called "the Receiver" which expression shall where the context so admits include any substituted receiver or manager and so that where more than one receiver and manager is appointed they shall have power to act severally unless FCE shall in the appointment specify to the contrary) of all or any part of the Mortgaged Property. Such an appointment over part only of the Mortgaged Property shall not preclude FCE from making any subsequent appointment of a Receiver over any part of the Mortgaged Property over which an appointment has not previously been made by FCE. The Receiver shall be the agent of the Borrower (which shall be solely liable for his acts defaults and remuneration) unless and until the Borrower goes into liquidation whereafter he shall act as principal and shall not become the agent of FCE. Every Receiver so appointed shall have and be entitled to exercise all powers conferred by Schedule 1 to the Insolvency Act as if such Receiver has been appointed thereunder and in particular by way of addition to but without hereby limiting any such powers (and without prejudice to FCE's powers) every Receiver so appointed shall have power to do the following things:
- (a) **Possession and Repair** : take immediate possession of collect and get in the Mortgaged Property and to make effect all repairs and do all other acts which the Borrower might do in the ordinary conduct of its business as well for the protection as for the improvement of the Mortgaged Property;
  - (b) **Sell, Lease, etc.** : sell let lease or concur in selling letting or leasing and to vary the terms or determine surrender or accept surrenders of leases or tenancies of or grant options and licences over all or any part of the Mortgaged Property and so that any such sale may be by public auction or private contract made for cash payable by instalments or for shares or securities of another company and the Receiver may promote or concur in promoting a company to purchase the Mortgaged Property to be sold;
  - (c) **Exercise of Voting and Other Rights** : exercise all voting and other rights attaching to stocks and shares and other securities owned by the Borrower and supervise and control any subsidiary of the Borrower;
  - (d) **Deal with Fixtures and Fittings** : sever and sell all plant machinery and other fixtures separately from the property to which they may be annexed;
  - (e) **Deal with Priority Encumbrances** : to redeem any prior encumbrance and settle and pass the accounts of the encumbrancer; any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on the Borrower and the monies so paid shall be deemed to be an expense properly incurred by the Receiver;
  - (f) **Other Acts** : do all such other acts and things as may be considered by the Receiver to be incidental or conducive to any of the matters or powers aforesaid or otherwise incidental or conducive to the preservation improvement or realisation of the Mortgaged Property; and
  - (g) **Other Arrangements** : make any arrangement or compromise which he shall think expedient in the interest of FCE;
- (ii) **Removal/Renewal** : FCE may from time to time (subject to the application of Section 45 of the Insolvency Act) by writing signed by any director secretary or manager or officer of FCE



or by any person authorised for that purpose by FCE remove any Receiver appointed by it and may whenever it may deem it expedient appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated and may from time to time fix the remuneration of any Receiver appointed by it

- (iii) **Application of Proceeds** : Any monies received under the powers hereby conferred shall subject to the payment as far as necessary of any claims having priority to this Debenture be applied for the following purposes and in the following order of priority:

- (a) in satisfaction of all costs charges and expenses properly incurred and payments properly made of and incidental to the appointment of the Receiver by FCE;
- (b) in payment of remuneration to the Receiver at such rates as may be agreed between him and FCE at or at any time after his appointment;
- (c) in or towards satisfaction of the monies outstanding and secured by this Debenture whether principal or interest in such order as FCE shall in its absolute discretion require; and
- (d) the surplus if any shall be paid to the person entitled thereto

Provided that the Receiver may retain any monies in his hands for so long as he shall think fit and that FCE is also to be at liberty without prejudice to any other rights that FCE may have at any time and from time to time to place and keep for such time as FCE may think prudent any monies received recovered or realised under or by virtue of this Debenture to or at a separate or suspense account to the credit either of the Borrower or of FCE as FCE shall think fit without any intermediate obligation on FCE's part to apply the same or any part thereof in or towards the discharge of the monies due or owing to FCE as aforesaid by the Borrower

- (iv) **Liability as Mortgagee in Possession** : FCE shall not nor shall any Receiver appointed as aforesaid by reason of it or the Receiver entering into possession of the land forming part of the Specifically Mortgaged Property be liable to account as mortgagee in possession or be liable for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable but every Receiver duly appointed by FCE under the powers in that behalf hereinbefore contained shall be deemed to be the agent of the Borrower for all purposes and shall as such agent for all purposes be deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Act and the Borrower shall be responsible for the Receiver's acts and defaults and for any loss arising therefrom and for the Receiver's remuneration. Every such Receiver and FCE shall be entitled to all the rights powers privileges and immunities conferred by the Act on mortgagees and receivers when such receivers have been duly appointed under the Act

- (v) **Good Faith** : No person dealing in good faith with FCE or the Receiver or its or his agents shall be concerned to enquire whether the monies hereby secured have become payable whether the Receiver is validly appointed or acting within his powers or whether any money remains due under this Debenture or to see to the application or any money paid to FCE or to such Receiver

- (vi) **Indemnity** : FCE and every Receiver agent or other person appointed by FCE or by any Receiver hereunder shall be entitled to be indemnified out of the Mortgaged Property in respect of all liabilities and expenses properly incurred by it or him in the execution or purported execution of any of the powers authorities or discretions vested in it or him pursuant to this Debenture and against all actions proceedings costs claims and demands arising therefrom or in connection therewith and FCE and any such Receiver may retain and pay all sums in respect of the same out of any monies received under the powers hereby conferred

8. **Exclusive Right** : FCE shall be regarded as exclusively entitled to the benefit of this Debenture and all persons may act accordingly and the Borrower shall not be bound to accept notice of any

trust or to recognise any other person as having any claim to or equitable or other interest in the same save as herein provided or as ordered by any Court of competent jurisdiction

9. **Consolidation Restriction** : The restriction on the right of consolidating mortgages contained in Section 93 of the Act shall not apply to this Debenture
10. **Perfection of Security** : During the continuance of this Debenture FCE shall (subject to the rights of any prior mortgagee) be entitled to hold and retain all deeds and documents of title relating to the Specifically Mortgaged Property and the Borrower undertakes to deposit with FCE all such deeds and documents of title
11. **Power of Attorney** : The Borrower by way of security hereby irrevocably appoints FCE (whether or not the Receiver has been appointed) and also (as a separate appointment) severally any person nominated in writing under the hand of any director secretary manager or officer of FCE including every Receiver appointed hereunder as attorney of the Borrower with full power of substitution for the Borrower and in its name and on its behalf and as its act and deed to execute seal and deliver and otherwise perfect any deed assurance agreement instrument or act which may be required or deemed proper for any of the purposes of this Debenture and generally to use the name of the Borrower in the exercise of all or any of the powers hereby conferred on FCE or any Receiver appointed by it
12. **Costs, Charges and Expenses** : All costs charges and expenses incurred or paid by FCE or by the Receiver in perfecting or otherwise in connection with this security or in respect of the Mortgaged Property including (without prejudice to the generality of the foregoing) all monies expended by FCE or the Receiver under paragraphs 2 3 4 16 and 18 of this Appendix and all costs of FCE or the Receiver (on a full indemnity basis) of all proceedings for the enforcement of this security or for obtaining payment of monies hereby secured or arising out of or in connection with the acts authorised by paragraph 7 of this Appendix shall be recoverable from the Borrower as a debt and may be debited to any account of the Borrower and shall bear interest at the specified rate and shall be charged on the Mortgaged Property
13. **Powers of Mortgagees/Receivers** : The powers conferred on mortgagees or receivers by the Act shall apply to this Debenture except insofar as they are expressly or impliedly excluded and where there is any ambiguity or conflict between the powers contained in the Act and those contained in this Debenture the terms of this Debenture shall prevail
14. **Subsequent Charges** : If FCE receives or is deemed to be affected by notice whether actual or constructive of any subsequent charge or other interest affecting any part of the Mortgaged Property and/or the proceeds of sale thereof FCE may open a new account with any person for whose liabilities this Debenture is available as security If FCE does not open a new account it shall nevertheless be treated as if had done so at the time when it received or was deemed to have received notice and as from that time all payments made to FCE shall be credited or be treated as having been credited to the new account and shall not operate to reduce the amount for which this Debenture is security
15. **Access to Information** : FCE may from time to time seek from any other person having dealings with the Borrower such information about the Borrower and its affairs as FCE may think fit and the Borrower hereby authorises and requests any such person to provide such further authority in this regard as FCE may from time to time require FCE may from time to time transfer to any holding subsidiary or associated company of FCE and/or the Borrower any information about the Borrower and its affairs as FCE may think fit
16. **Appointment of Accountant** : The Borrower shall at its own cost at any time if so requested by FCE appoint an accountant or firm of accountants nominated by FCE to investigate the financial affairs of the Borrower and/or any subsidiary of the Borrower and report thereon to FCE and hereby authorises FCE itself at any time to make such appointment on behalf of the Borrower or on its own account as it shall think fit and in every such case the fees and expenses of such accountant or firm shall be paid by the Borrower or by FCE on behalf of the Borrower and FCE may at the time of such appointment or thereafter guarantee payment by the Borrower of such fees and expenses

17. **Transfer of Balance** : In case the Borrower shall have more than one account loan hire purchase conditional sale lease or similar agreement with FCE it shall be lawful for FCE at any time and without any prior notice forthwith to transfer or set-off all or any part of any balance standing to the credit of any such account or other agreement which may be in debit

18. **Prior Encumbrances** : It is hereby agreed that:

(i) **Redemption of Prior Encumbrances** : in the event of any proceedings or step being taken to exercise or enforce any power or remedy conferred by any encumbrance having priority over this Debenture against the Mortgaged Property FCE may redeem such prior encumbrance or procure the transfer thereof to itself and may settle and pass the account of any encumbrancer entitled to such prior security and any account so settled or passed shall be conclusive and binding as well between such prior encumbrancer and the Borrower as between FCE and the Borrower; and

(ii) **Payment of Expenses by Borrowers** : all principal money interest costs charges and expenses paid or incurred by FCE in redeeming or procuring the transfer of any such prior security as aforesaid and in procuring any proper particulars to be delivered to the Registrar of Companies or any proper entries to be made in the Land Charges Registry or at H.M. Land Registry or any other register shall be paid by the Borrower to FCE upon demand

19. (a) **Appointee's Powers** : Without prejudice to any of its other rights under this Debenture FCE shall have the right to require the Borrower to appoint a person nominated by FCE ("the Appointee") with all or some of the following powers as FCE may require:

- (i) to sell or otherwise dispose of or deal with the assets of the Borrower on terms approved by the Appointee;
- (ii) to review all proposed payments to be made by the Borrower;
- (iii) to manage the business carried on by the Borrower and for this purpose to have authority to pledge the credit of the Borrower sign cheques and to have authority to do all things and sign all deeds and documents within the actual or ostensible authority of the Chairman and/or Managing Director of the Borrower;
- (iv) to enter into documents under seal as the attorney of the Borrower; and
- (v) such other powers as FCE may require;

and the Borrower shall if required execute a power of attorney under seal in favour of the Appointee expressed to be irrevocable for a period not exceeding twelve months and in such terms as FCE may require

(b) **Appointee's Responsibilities** : Whilst acting under the previous Sub-clause the Appointee:

- (i) shall be authorised to communicate to FCE any information concerning the Borrower its business or its customers that comes into his possession; and
- (ii) shall in all respects be the agent of the Borrower and not of FCE and shall be indemnified by the Borrower against all costs claims demands and expenses whatsoever brought suffered or incurred by him in connection with his activities

20. **Notice** : A demand or notice hereunder shall be in writing signed by a director secretary officer manager or agent of FCE and may be served on the Borrower by hand or post and either by delivering the same to any director secretary manager officer or agent of the Borrower at any place or by addressing the same to the Borrower at its registered office or a place of business last known to FCE If such demand or notice is sent by post it shall be deemed to have been received on the day following the day on which it was posted and shall be effective notwithstanding it being

returned undelivered. Any notice to be given by the Borrower to FCE shall be served on FCE by hand or post delivering the same to The Legal Affairs Department of FCE

21. **Certificate as Evidence of Amount Due** : A certificate by a director secretary officer manager or agent of FCE as to the amount from time to time due from the Borrower to FCE and as to the interest after demand from time to time payable hereunder shall be conclusive evidence for all purposes against the Borrower
22. **Severability of Provisions** : Every provision contained in this Debenture shall be severable and distinct from every other said provision and if at any time any one or more of such provisions is or becomes invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions shall not in any way be affected thereby
23. **Headings** : The clause headings and sub-headings are inserted for convenience only and shall be ignored in construing this document
24. **Definitions** : In this Debenture the following expressions shall have the following meanings:
  - (i) "demand" shall mean a demand in writing signed by any director secretary officer manager or agent of FCE;
  - (ii) "the Planning Acts" shall mean the Town and Country Planning Acts 1962 to 1985 and all regulations made thereunder as from time to time amended re-enacted replaced or extended by subsequent legislation and regulations;
  - (iii) "the Insolvency Act" shall mean the Insolvency Act 1986 and all regulations made thereunder as from time to time amended re-enacted replaced or extended by subsequent legislation and regulations;
  - (iv) "subsidiary" and "holding company" shall mean a subsidiary or holding company (as the case may be) as defined by Section 144 of the Companies Act 1989 and all regulations made thereunder as from time to time amended re-enacted replaced or extended by subsequent legislation and regulations;
  - (v) "the Land Registration Acts" shall mean the Land Registration Acts 1925 to 1986 and all regulations made thereunder as from time to time amended re-enacted replaced or extended by subsequent legislation and regulations;
  - (vi) "the Consumer Credit Act" shall mean the Consumer Credit Act 1974 and all regulations made thereunder as from time to time amended re-enacted replaced or extended by subsequent legislation and regulations and "regulated agreement" shall mean a regulated agreement within the meaning of the Consumer Credit Act;
  - (vii) "motor vehicles" shall include passenger cars commercial vehicles tractors trailers caravans and agricultural machinery and implements;
  - (viii) "the specified rate" shall mean the higher of 3% per annum above FCE's Base Rate (meaning FCE's Base Lending Rate ascertainable by enquiry of FCE at any time during business hours) and the highest rate of interest for the time being payable by the Borrower to FCE on any sum hereby secured;
  - (ix) "Borrower" shall include the successors in title of the Borrower and shall also extend to and include all of the Borrowers or any of them if there is more than one. In case there is more than one Borrower all the obligations on the part of the Borrower shall be construed as joint and several obligations and none of them shall be released from liability hereunder by reason of this Debenture ceasing to be a continuing security as regards any other of them;
  - (x) FCE shall be entitled to assign its interest in this Debenture to a successor in title and "FCE" shall mean and include any such successor in title

- (xi) "Assets" shall mean all the undertaking property and assets of the Borrower whatsoever and wheresoever present and future;
- (viii) Singular words shall include the plural and words importing the masculine shall include the feminine and vice versa in each case; and
- (ix) "possession" means actual or constructive possession
- (xi) "Ford Affiliated Company" means Ford Motor Company of the American Road, Dearborn, Michigan, USA and any other Group Undertaking of Ford Motor Company
- (xi) "Group Undertaking" means in respect of any person:
  - (a) an undertaking in which that person directly or indirectly:
    - (i) owns more than half the capital or business assets; or
    - (ii) has the power to exercise more than half the voting rights; or
    - (iii) has the power to appoint more than half the members of the supervisory board, the administrative board or bodies legally representing the undertakings; or
    - (iv) has the right to manage the undertakings affairs;
  - (b) those undertaking(s) which have in that person any of the rights or powers listed in (a);
  - (c) those undertaking(s) in which an undertaking as referred to in (b) has any of the rights or powers listed in (a); and
  - (d) those undertaking(s) in which two or more undertakings as referred to in (a) to (c) jointly have any of the rights or powers listed in (a)