



**Registration of a Charge**

Company name: **IT FLEET AUTOMOTIVE LIMITED**

Company number: **04223523**



X9I6M0JV

Received for Electronic Filing: **20/11/2020**

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**Details of Charge**

Date of creation: **13/11/2020**

Charge code: **0422 3523 0007**

Persons entitled: **ARBUTHNOT COMMERCIAL ASSET BASED LENDING LIMITED**

Brief description: **KALAMARDA 2 GB (916797) - FOR MORE DETAILS PLEASE REFER TO THE INSTRUMENT.**

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S. 859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by:

**ALISTAIR HAYES**



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

Company number: 4223523

Charge code: 0422 3523 0007

The Registrar of Companies for England and Wales hereby certifies that a charge dated 13th November 2020 and created by IT FLEET AUTOMOTIVE LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 20th November 2020 .

Given at Companies House, Cardiff on 23rd November 2020

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



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

**DATED**

**13th November 2020**

**(1) IT FLEET AUTOMOTIVE LIMITED**

**and**

**(2) ARBUTHNOT COMMERCIAL ASSET BASED LENDING LIMITED**

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**DEED OF COVENANTS**

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**In relation to one (1) Fairline Squadron 65 Yacht**

**m.y. KALAMARDA 2 GB**

**SHOOSMITHS**

Forum 5  
The Forum  
Parkway  
Whiteley  
Fareham  
Hampshire  
PO15 7PA  
Ref. SJF/ M-00917546

**THIS DEED OF COVENANTS** is made on  
**BETWEEN:**

13th November

2020

- 1) **IT FLEET AUTOMOTIVE LIMITED**, a company incorporated in England and Wales (Registered number 04223523) whose registered office is at IT House Notley Park, Raydon Road, Great Wenham, Colchester, Essex CO7 6QD (the "**Chargor**"); and
- (2) **ARBUTHNOT COMMERCIAL ASSET BASED LENDING LIMITED**, a company incorporated in England and Wales (Registered number 10915339) whose registered office is at Arbuthnot House, 7 Wilson Street, London, EC2M 2SN ("**Arbuthnot**").

**IT IS AGREED:**

**1 DEFINITIONS AND CONSTRUCTION**

**1.1 Definitions**

In this Deed, unless the context otherwise requires the following expressions shall have the following meanings:

"**Administrator**" means an administrator appointed under this Deed;

"**Agreed Value**" means £800,000;

"**Business Day**" means a day other than a Saturday, Sunday or public holiday on which banks are open for business in London;

"**CBILS Loan Section**" means Section 1.4 of the Facilities Agreement entered into between Arbuthnot and the Chargor dated on or around the date of this Deed;

"**Charters**" means any charter relating to the Vessel or any other contract for the use or employment of the Vessel;

"**Charter Guarantee**" means any guarantee, bond, letter of credit or any other form of security supporting a Charter;

"**Charged Assets**" means the Vessel, the Insurances, the Requisition Compensation the Earnings, any Warranties and Maintenance Contracts;

"**Earnings**" means all of the Chargor's right, title, benefit and interest in and to any charter, sub-charter, contract of carriage, pooling agreement or other contract relating to the Vessel and all amounts whatsoever which may at any time be earned by or become payable to or for the account of the Chargor arising out of the ownership, possession, use or operation of the Vessel by the Chargor including all freight, hire and all other amounts payable under any charter, sub-charter, contract of carriage, pooling agreement or other contract relating to the Vessel, all payments for any variation or termination of any such contract and all damages for any breach of any such contract (including demurrage and damages for detention), all general average recoveries, remuneration for towage and salvage services, all compensation for requisition for hire and any amount recoverable under any loss of earnings insurance policy;

"**Encumbrance**" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

**"Event of Default"** means any event or circumstance described or defined as an event of default under any agreement (including any Finance Document) between the Chargor and the Arbuthnot including each of the events and circumstances set out as such in the Facilities Agreement (whether expressly or by reference to another document) and any breach by the Chargor of its obligations under this Deed;

**"Expenses"** means any of the following:

- (a) all banking, legal and other costs, charges, expenses and/or liabilities (including VAT thereon) paid or, if earlier, incurred, by or on behalf of Arbuthnot or any Administrator or Receiver, as the case may be, (in each case on a full indemnity basis):
  - (i) in relation to the Charged Assets;
  - (ii) in protecting, preserving, improving, enforcing or exercising (or considering, or attempting, any of the foregoing) any rights under or pursuant to any of the Finance Documents;
  - (iii) in procuring the payment, performance or discharge of the Secured Liabilities; or
  - (iv) in stamping, perfecting or registering any of the Finance Documents (or any Security Document or assignment created or purported to be created pursuant thereto); and
- (b) the principal amount of any borrowings, together with interest thereon, and all other expenses and liabilities of Arbuthnot or any Administrator or Receiver (as the case may be) paid or incurred from time to time in relation to the exercise of any of their respective rights or powers referred to or contained in any of the Finance Documents.

**"Facilities Agreement"** means the asset based lending agreement entered into between Arbuthnot and the Chargor dated on around the date of this Deed;

**"Finance Document"** means the Facilities Agreement, this Deed and any other Security Document and any other document designated as such by Arbuthnot;

**"Insurances"** means the insurances placed by the Chargor pursuant to Clause 5 (but not any insurance placed by Arbuthnot under Clause 6.2) including all claims under the policies and contracts and return of premiums;

**"Insurers"** means the underwriters, insurance companies and mutual insurance associations with whom the insurances are placed;

**"Maintenance Contracts"** all contracts for the maintenance, repair, modification or servicing of the Vessel to which the Chargor is a party;

**"Receiver"** means a receiver appointed under this Deed;

**"Requisition Compensation"** means all sums of money and all compensation payable by reason of requisition for title or other compulsory acquisition of the Vessel by any governmental, state or other competent authority other than requisition for hire;

**"Secured Liabilities"** means all present and future obligations and liabilities (whether actual or contingent, whether owed jointly or severally, as principal or as surety or in any capacity whatsoever) of the Chargor to Arbuthnot on any account whatsoever and howsoever arising (including, without limitation, under the Finance Documents) together with all Expenses;

**"Security Document"** means any other document executed by the Chargor or any third party as security for payment to Arbuthnot of all or part of the Secured Liabilities;

**"Security Period"** means the period beginning on the date of this Deed and ending on the date on which Arbuthnot is satisfied that the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and that no further Secured Liabilities are capable of being outstanding;

**"Statutory Mortgage"** means the statutory marine mortgage over all of the Vessel dated on or about the date of this Deed in respect of all monies owed by the Chargor to Arbuthnot;

**"Vessel"** means the vessel specified in Schedule 1 including any share or interest therein and the hull, engine(s), machinery, equipment, fuel and stores, tenders and appurtenances thereof and everything aboard and ashore (whether now owned or acquired after the date of this Deed) and all replacements, renewals and component parts thereof and all additions and accessories thereto which form an integral part thereof;

**"Warranties"** means any agreement under which warranties are provided in favour of the Chargor in relation to the Vessel;

**"Total Loss"** means any of the following events:

- (a) the actual, constructive, comprised, arranged or agreed total loss of the Vessel (including any damage to the Vessel which results in an insurance settlement on the basis of a total loss, or requisition for use or hire of the Vessel which results in an insurance settlement on the basis of a total loss);
- (b) the Vessel being destroyed, damaged beyond repair, or otherwise ceasing to be usable in the normal course of its business for a period exceeding 60 days;
- (c) the requisition for title or other compulsory acquisition of the Vessel other than requisition for hire; or
- (d) the capture, seizure, arrest, detention or confiscation of the Vessel by any government or by any person purporting to act on behalf of any government from which the Vessel is not released or discharged within 30 days after the occurrence thereof.

## 1.2 Interpretation

- 1.2.1 Words and phrases which are not defined or construed in this Deed but which are defined or construed in the Facilities Agreement or in the Law of Property Act 1925 or the Insolvency Act 1986 shall be construed as having the meanings ascribed to them therein.
- 1.2.2 For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Facilities Agreement and of any side letters between any parties in relation to the Facilities Agreement are incorporated into this Deed.
- 1.2.3 In construing this Deed, general words introduced by the word "other" shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things and general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words. In addition, the words "any of" shall be construed as a reference to any one or more (including all) of the rights, assets, liabilities or other things referred to.

- 1.2.4 The security constituted by, and the rights of Arbuthnot under, this Deed shall be enforceable notwithstanding any change in the constitution of Arbuthnot or its absorption in or amalgamation with any other person or the acquisition of all or part of its undertaking by any other person.
- 1.2.5 The headings in this Deed are inserted for convenience only and shall not affect its construction or interpretation and references to a Clause or Schedule are (unless otherwise stated) to a Clause in, or a Schedule to, this Deed.
- 1.2.6 Any reference in this Deed to "this Deed" or to any other agreement or document shall, unless the context otherwise requires, be construed as a reference to this Deed or to such other agreement or document as the same may from time to time be amended, varied, supplemented, novated or replaced and shall include any document which is supplemental to, is expressed to be collateral with, or is entered into pursuant to or in connection with, the terms of this Deed or of such other agreement or document.
- 1.2.7 The illegality, invalidity or unenforceability of any provision of this Deed under the law of any jurisdiction shall not affect its validity or enforceability under the law of any other jurisdiction or the legality, validity or enforceability of any other provision of this Deed.
- 1.2.8 Save where the context otherwise requires, the plural of any term includes the singular and vice versa.
- 1.2.9 Any reference in this Deed to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to such statute or statutory provision as in force at the date of this Deed and as subsequently re-enacted or consolidated and shall also include all instruments, orders and regulations for the time being made thereunder or deriving validity therefrom.
- 1.2.10 In this Deed the expressions "Chargor" and "Arbuthnot" shall, unless the context otherwise requires, include their respective assignees, transferees or successors in title, whether immediate or derivative in relation to their respective interests.
- 1.2.11 The words "including" shall not be construed as limiting the generality of the words preceding it.
- 1.2.12 An Event of Default is "continuing" if it has not been waived.
- 1.2.13 Any covenant of the Chargor under this Deed (other than a payment obligation which has been discharged) remains in force during the Security Period.
- 1.2.14 It is intended that this document takes effect as a deed notwithstanding the fact that a Party may only execute this document under hand.
- 1.2.15 A reference in the Statutory Mortgage to:
- a) "interest" includes interest covenanted to be paid under this Deed;
  - b) "principal" means all monies other than interest for the time being included in the Secured Liabilities; and
  - c) the expression "the sums for the time being owing on this security" and any expression similar to it means the whole of the Secured Liabilities.



## **2 PURPOSE**

- 2.1 The Chargor and Arbuthnot have entered into a Facility Agreement. In order to secure the due payment of the Secured Liabilities to Arbuthnot, the Chargor as the absolute and unencumbered owner of all the shares in the Vessel has agreed to grant the Statutory Mortgage to Arbuthnot and to enter into this Deed which is collateral to the Statutory Mortgage.

## **3 COVENANT TO PAY**

- 3.1 The Chargor as primary obligor undertakes that it will on demand pay, perform and discharge to Arbuthnot the Secured Liabilities in accordance with the terms of the relevant Finance Document evidencing or giving rise to.
- 3.2 The Chargor's obligation to make all payments under this Deed is absolute and unconditional and each payment must be made in full, without any set off or counterclaim, and without deduction or withholding by the Chargor (except as required by law) for any present or future taxes. If any deduction or withholding has to be made by law from any such payment in respect of taxes, the Chargor shall increase the amount to be paid so that after any such deduction or withholding Arbuthnot receives and retains a net amount equal to the amount which it would have received and retained had no such deduction or withholding been made and the Chargor shall account to the relevant taxation authority for the amounts so deducted or withheld within the applicable time limit.
- 3.3 The Chargor shall pay on demand to Arbuthnot on an indemnity basis all Arbuthnot's Expenses (including legal costs and disbursements) incurred in connection with the preparation and registration of the Statutory Mortgage and this Deed and all expenses (including legal costs and disbursements) incurred in the protection of and the actual or attempted enforcement of the security created by the Statutory Mortgage and this Deed.
- 3.4 The Chargor shall pay interest on demand at the rate referred to in clause 6.4 of the CBILS Loan Section on all amounts (including principal, interest, costs and amounts recoverable from the Chargor by way of indemnity) due but not paid by the Chargor to Arbuthnot under this Deed from the due date of payment until the date of the actual payment to Arbuthnot whether before or after judgment.

## **4 MORTGAGE AND CHARGE**

- 4.1 The Chargor has granted Arbuthnot the Statutory Mortgage and as continuing security for the payment on demand of the Secured Liabilities and with full title guarantee hereby:
- 4.1.1 mortgages and charges the Vessel to Arbuthnot;
- 4.1.2 assigns to and agrees to assign absolutely to Arbuthnot all of the Chargor's right, title, benefit and interest, now or at any later time, in and to the Charged Assets; and
- 4.1.3 charges to Arbuthnot all of its current and future spare parts, fuel and stores, whether on board or ashore.
- 4.2 The security created by the Statutory Mortgage and this Deed shall be held by Arbuthnot as a continuing security for the payment of the Secured Liabilities and shall not be released or discharged by any intermediate payment or satisfaction of part of the Secured Liabilities.
- 4.3 If any additional security is given to Arbuthnot under any other Security Document such security will not limit or affect the security created by the Mortgage and this Deed.

4.4 The Mortgage and this Deed shall remain in full force and effect until the Secured Liabilities shall have been paid in full to Arbuthnot. When the Secured Liabilities have been paid in full Arbuthnot shall at the cost of the Chargor discharge the Mortgage and this Deed and re-assign the Charged Assets to the Chargor.

4.5 Arbuthnot shall have the right to consolidate its security and the restriction in Section 93 of the Law of Property Act 1925 shall not apply to this Deed.

## **5 REPRESENTATIONS AND WARRANTIES**

5.1 In addition to the Chargor's representations and warranties in the Facilities Agreement, the Chargor represents and warrants to Arbuthnot that:

5.1.1 as of the date of this Deed that it is the sole, absolute, legal and beneficial owner of the Vessel and that it has good, valid and marketable title to the Vessel;

5.1.2 prior to the execution of the Statutory Mortgage and this Deed that it has not assigned, transferred, mortgaged or charged the Charged Assets or any part of it to any other person;

5.1.3 each of the Statutory Mortgage and this Deed constitute legal, valid and binding obligations of the Chargor enforceable in accordance with its terms;

5.1.4 no litigation, arbitration or administrative proceeding is currently taking place or pending or, to the knowledge of the Chargor, threatened against the Vessel, the Chargor or its assets which would adversely affect its ability to perform its obligations under the Statutory Mortgage or this Deed;

5.1.5 no Event of Default has occurred;

5.1.6 no Encumbrance exists with respect to the right, title, interest or benefit of the Chargor in or to the Vessel or any of the other Charged Assets (other than as created by the Statutory Mortgage and this Deed).

5.2 The Chargor also represents and warrants to and undertakes with Arbuthnot that the representations and warranties in clause 5.1 will be true and accurate throughout the Security Period with reference to the facts and circumstances from time to time then existing.

## **6 INSURANCE COVENANTS**

6.1 The Chargor undertakes with Arbuthnot to at all times during the Security Period:

6.1.1 to insure and keep insured the Vessel in pounds sterling or such other currency as may be approved in writing by Arbuthnot, at the Chargor's expense in the full insurable value of the Vessel but in no event less than the Agreed Value or such other amount as Arbuthnot may agree against fire, marine, war, third party and other risks covered by hull and machinery policies on terms, through insurance brokers and with Insurers approved in writing by Arbuthnot;

6.1.2 to enter the Vessel in the name of the Chargor in a protection and indemnity association approved in writing by Arbuthnot for its full value and tonnage for all third party liability risks, pollution risks and other risks usually insured by such protection and indemnity association;

- 6.1.3 to place such additional insurances (including insurance against oil pollution and other environmental risks) as Arbuthnot may consider to be necessary;
- 6.1.4 to pay on the due date all premiums (including additional premiums), calls, contributions or other amounts payable in connection with the insurances and to provide evidence of the payment of such amounts when so requested by Arbuthnot;
- 6.1.5 to provide such guarantees and indemnities as the protection and indemnity and war risks associations in which the Vessel is entered may require at any time;
- 6.1.6 to renew the Insurances not less than fourteen (14) days before they expire and to procure that the brokers and the Insurers confirm in writing to Arbuthnot that they have been renewed;
- 6.1.7 to give notice of assignment of Insurances to the Insurers in the form of Schedule 2 and to procure that the notice of assignment and a loss payable clause in the form in Schedule 3 (Part A or Part B as the case may be) are endorsed or attached to the insurance policies and certificates of entry;
- 6.1.8 to procure that all amounts payable by insurers are paid in accordance with the loss payable clauses in the relevant policy of insurance;
- 6.1.9 to procure that the brokers retain the original insurance policies, cover notes, certificates of entry and other documents issued in relation to the insurances to the order of Arbuthnot and give Arbuthnot copies of all such documents;
- 6.1.10 to procure that the protection and indemnity and the war risks associations in which the Vessel is entered give Arbuthnot a duplicate of the certificates of entry or policies;
- 6.1.11 to procure that the brokers and the protection and indemnity and war risks associations in which the Vessel is entered each provide Arbuthnot with a letter of undertaking in such form as Arbuthnot may reasonably require in which they agree (inter alia) to give fourteen (14) days prior written notice to Arbuthnot if the Insurances are to be cancelled or not renewed and to give Arbuthnot the right to pay any premiums or calls within a reasonable time if the Chargor has failed to pay them on the due date;
- 6.1.12 not to do or omit to do anything nor allow anything to be done as a result of which any Insurance may be cancelled or avoided;
- 6.1.13 not to allow the Vessel to load any cargo or make any voyage which is not covered under the Insurances unless the Chargor has placed additional insurance to cover the proposed voyage on terms approved by Arbuthnot;
- 6.1.14 not to allow the Vessel to enter into any zone which is declared a war zone by any government or by the Vessel's war risks Insurers unless the Chargor shall have informed the war risks Insurers of the proposed voyage and paid any applicable additional premium in accordance with the terms of the war risks policy;
- 6.1.15 to promptly provide Arbuthnot with full information regarding any casualties or damage to the Vessel in an amount in excess of £50,000 (or such equivalent amount in other currencies) or as a result of which the Vessel has become or may become a Total Loss; and

- 6.1.16 to procure that all amounts payable under the Insurances are paid in accordance with the relevant loss payable clause and to apply all amounts that are paid to the Chargor to the repair of the damage to the Vessel and the settlement of any liability or loss in respect of which the amount shall have been received.
- 6.2 If the Chargor fails to insure the Vessel in accordance with Clause 6.1 or fails to pay the premiums and calls due, Arbuthnot shall have the right to place the Insurances and pay the premiums and calls due and the Chargor shall pay to Arbuthnot on demand all amounts so paid or payable by Arbuthnot.
- 6.3 The Chargor undertakes to pay to Arbuthnot on demand all premiums or other amounts paid or payable by Arbuthnot in placing mortgagee's interest insurance and mortgagee's additional perils (pollution) insurance in the name of Arbuthnot.

## **7 CHARTERING**

- 7.1 The Chargor undertakes with Arbuthnot during the Security Period:
- 7.1.1 not to voyage charter or time charter the Vessel or enter any contract for the use of the Vessel without the prior written consent of Arbuthnot which it shall have full power to withhold;
- 7.1.2 not to demise charter the Vessel for any period;
- 7.1.3 to inform Arbuthnot of the use and operation of the Vessel and, when so requested by Arbuthnot, to give Arbuthnot copies of all charters and other documents relating to the use and operation of the Vessel;
- 7.1.4 to duly perform all obligations undertaken by the Chargor in all charters, bills of lading or other contracts entered into by the Chargor for the use of the Vessel and the carriage of cargo;
- 7.1.5 to give notice of assignment of the Earnings to each charterer in such form as Arbuthnot may require and to procure that each charterer acknowledges such notice of assignment to Arbuthnot and agrees to pay the Earnings in accordance with Arbuthnot's directions.

## **8 REQUISITION**

- 8.1 In the event of the requisition for title or other compulsory acquisition of the Vessel by any government the Chargor undertakes to execute any assignment of the Requisition Compensation requested by Arbuthnot and, if such Requisition Compensation is paid to the Chargor, to hold all amounts so received on trust for Arbuthnot.

## **9 CHARGORS OBLIGATIONS TO MAINTAIN THE VESSEL**

- 9.1 The Chargor undertakes with Arbuthnot during the Security Period:
- 9.1.1 to keep the Vessel seaworthy and in good order and condition in accordance with best management practice for a vessel of the same type as the Vessel;
- 9.1.2 to allow Arbuthnot or its authorised representative unrestricted access to the Vessel at all reasonable times for the purpose of inspecting the condition of the Vessel and its cargo and papers and, at the written request of Arbuthnot, deliver for inspection copies of all contracts and documents relating to the Vessel;

- 9.1.3 to give Arbuthnot not less than five (5) days prior notice of any dry-docking or any underwater inspection so that Arbuthnot can arrange for its representative to attend such dry-docking or inspection if it decides that this is necessary;
- 9.1.4 not without the prior written consent of Arbuthnot which it shall have full power to withhold to give possession of the Vessel to a shipyard for repairs to be carried out to the Vessel the cost of which will exceed the amount of £50,000 unless the shipyard shall have given a written waiver to Arbuthnot of its lien or right of detention on the Vessel for the cost of such repairs;
- 9.1.5 not to make or allow to be made any material alteration to the Vessel (unless such alteration is required by law) or to remove or permit the removal of any part of the Vessel or any equipment belonging to it without the prior written consent of Arbuthnot which it shall have full power to withhold;
- 9.1.6 to comply with all requirements imposed by international convention, statute, regulation, common law or otherwise in relation to the maintenance, operation and safety of the Vessel and keep on board the Vessel valid certificates evidencing such compliance;
- 9.1.7 to comply with and procure that all servants and agents of the Chargor comply with all legal requirements relating to the environmental protection and in particular the prevention of oil pollution and damage by hazardous and noxious substances;
- 9.1.8 not to use or allow the Vessel to be used in contravention of any applicable law or in any unlawful trade or carry any cargo which will render the Vessel liable to penalty, forfeiture, capture, confiscation or seizure as prize and, in the event of war in any part of the world (whether or not war has been declared), not to use or allow the Vessel to be used in carrying any prohibited cargo;
- 9.1.9 to perform and discharge all duties and liabilities imposed upon the Chargor under any charter, bill of lading or other contract that relates to the Vessel;
- 9.1.10 to pay all taxes, social security and national insurance contributions, assessments, governmental charges, fines and penalties properly payable by or imposed on the Chargor or the Vessel;
- 9.2 If the Chargor fails to perform its obligations in this Deed and in particular fails to maintain and operate the Vessel in accordance with this Clause 9 and pay and discharge the debts and liabilities incurred by the Chargor and the Vessel, Arbuthnot may take all such action as it considers necessary to protect the security created by the Statutory Mortgage and this Deed and, in particular (without in any way limiting Arbuthnot's rights and powers), to arrange for the Vessel to be surveyed and repaired and for all debts and liabilities incurred by the Chargor to be paid and discharged and the Chargor shall pay to Arbuthnot on demand all amounts so paid or payable by Arbuthnot.

## **10 UNDERTAKINGS**

- 10.1 The Chargor undertakes and agrees with Arbuthnot during the Security Period that it will:
  - 10.1.1 keep the Vessel registered on the UK Register of Ships (or such other register of ships as Arbuthnot may agree from time to time in writing) as a vessel at the port of London and not do or allow anything to be done which may result in such registration being cancelled or suspended;

- 10.1.2 procure that the Vessel is registered in the Chargor's name as registered owner in accordance with all applicable laws and regulations;
- 10.1.3 procure that the Statutory Mortgage is registered in the appropriate register for ship mortgages maintained by the UK Register of Ships and the Chargor shall not take or permit any action which would prejudice such registration;
- 10.1.4 not grant in favour of any other person any interest in or any option or other right in respect of the Charged Assets;
- 10.1.5 at all times remain the sole, absolute, legal and beneficial owner of the Vessel;
- 10.1.6 maintain the corporate existence of the Chargor under the laws of England and Wales and comply with all statutory requirements applicable to the Chargor;
- 10.1.7 not to sell or transfer the Vessel without the prior written consent of Arbuthnot (not to be unreasonably withheld);
- 10.1.8 not to mortgage, charge, hypothecate or abandon the Vessel (save in the case of maritime necessity) or any share or interest therein nor assign or charge any part of the Charged Assets;
- 10.1.9 not change the name of the Vessel or change its country of registration without the prior written consent of Arbuthnot which it shall have full power to withhold;
- 10.1.10 give to Arbuthnot upon receipt copies of all notices, requests and other documents sent or received with respect to the Charged Assets or in connection with any notice affecting the Vessel;
- 10.1.11 give Arbuthnot such information regarding the Charged Assets as Arbuthnot may require;
- 10.1.12 do or permit to be done every act or thing which Arbuthnot may from time to time require for the purpose of enforcing the rights of Arbuthnot under the Statutory Mortgage and or this Deed;
- 10.1.13 not to create or allow to exist any charge, lien or Encumbrance (except pursuant to the Statutory Mortgage and this Deed) on the Charged Assets other than a lien on the Vessel for salvage services or for crew's wages and in the ordinary course of business discharge or satisfy all claims and demands which if unpaid might in law or by statute or otherwise create a lien or Encumbrance on the Vessel;
- 10.1.14 immediately to inform Arbuthnot if any legal proceedings are issued against the Vessel or if the Vessel is attached, arrested or detained by order or direction of any court or tribunal or by any government or other competent authority, and to take any such action as is necessary to release the Vessel as soon as possible and in any event within three (3) days and to discharge all charges, liens or Encumbrances on the Vessel (except for the Mortgage and this Deed);
- 10.1.15 execute any further documents required by Arbuthnot to perfect the security created by the Mortgage and this Deed;
- 10.1.16 if any court or tribunal having jurisdiction declares or any rule of law renders any part of this Deed invalid or unenforceable to execute any further documents required by Arbuthnot to maintain the security created by this Deed;

10.1.17 immediately to inform Arbuthnot of:

- a) any actual or threatened arrest or detention of the Vessel;
- b) any casualty or damage to the Vessel as a result of which the Vessel has become or may become a Total Loss or if the estimated cost of repairs may exceed £50,000;
- c) the occurrence of any incident which may give rise to a pollution or environmental claim against the Chargor;
- d) the issue of any petition for the winding up or bankruptcy of the Chargor; and
- e) the happening of an Event of Default or an event which with the passing of time or giving of notice may result in an Event of Default;

10.1.18 carry on board the Vessel with the Vessel's papers a properly certified copy of the Statutory Mortgage and exhibit the same to any person having a legal interest in or having business with the Vessel and to any representative of Arbuthnot, and place prominently in the Vessel a framed notice printed in plain type of such size that the paragraph of reading matter shall cover a space not less than 6 inches wide and 9 inches high reading as follows:

#### **NOTICE OF MORTGAGE**

*This Vessel is covered by a first priority Mortgage and Deed of Covenants collateral thereto in favour of Arbuthnot Commercial Asset Based Lending Limited. Under the terms of the said Mortgage and Deed of Covenants, neither the owner, any charterer, the Master of the Vessel nor any other person has any right, power or authority to create, incur, permit to be imposed or suffer the imposition upon this Vessel any lien or any security interest of any kind other than liens for crew's wages and salvage*

10.1.19 to execute a bill of sale and any other documents that Arbuthnot may require if Arbuthnot sells the Vessel under its power of sale or as agent for the Chargor.

### **11 APPOINTMENT OF RECEIVER**

11.1 Arbuthnot shall have the power at any time after an Event of Default to appoint or remove a receiver of the Vessel who whose powers shall include (but not be limited to) those provided in Schedule 1 of the Insolvency Act 1986 (to the extent that they relate to the Charged Assets).

### **12 DEFAULT AND ENFORCEMENT**

12.1 If any one or more of the following Events of Default occurs then Arbuthnot or any Receiver shall have the rights and powers provided in Clause 12.2:

12.1.1 the Chargor fails to pay on the due date any amount whether principal, interest or otherwise payable by the Chargor to Arbuthnot under a Finance Documents and this Deed;

12.1.2 the Chargor fails to keep the Vessel insured in accordance with the terms of Clause 6.1;

12.1.3 the Chargor fails to perform any of its obligations under a Finance Document (other than the payment and insurance obligations referred to in Clauses 12.1.1 and 12.1.3) which failure is not remedied by the Chargor (if it is capable of remedy) within three (3) days after Arbuthnot has given notice to the Chargor of such failure;

- 12.1.4 the Vessel becomes a Total Loss and the Secured Liabilities have not been paid to Arbuthnot within thirty (30) days of the occurrence of the Total Loss;
- 12.1.5 any governmental or other consent or approval at any time necessary to enable the Chargor to perform its obligations under the Mortgage and this Deed is terminated, withheld or materially modified;
- 12.1.6 any indebtedness incurred by the Chargor whether as primary debtor or surety becomes due and payable before the due date for payment or any event occurs which gives the creditor of any such indebtedness the right to demand the immediate payment of such indebtedness prior to its maturity date;
- 12.1.7 the Chargor shall stop payment of or is unable to pay its debts as they fall due or shall enter into any arrangement with its creditors generally or shall declare a general moratorium on the payment of its debts;
- 12.1.8 any order shall be made by any competent court or other competent authority, or resolution passed by the Chargor, for the appointment of a liquidator of, or otherwise for the winding-up or dissolution of the Chargor, except for the purpose of amalgamation or re-organisation (not involving or arising out of insolvency) the terms of which shall have received the prior written approval of Arbuthnot;
- 12.1.9 an administrator, receiver, administrative receiver, trustee or manager is appointed by a creditor or a court for all or part of the property of the Chargor;
- 12.1.10 any distress or execution is levied or enforced against the property of the Chargor and such distress or execution is not withdrawn or discharged within three (3) days;
- 12.1.11 a material change occurs in the commercial or financial position of the Chargor which in the opinion of Arbuthnot will adversely affect the Chargor's ability to perform its obligations under a Finance Document
- 12.1.12 the Chargor takes any action or fails to take any action which in the reasonable opinion of Arbuthnot imperils the security created by the Statutory Mortgage and this Deed;
- 12.1.13 a substantial part (in the reasonable opinion of Arbuthnot) of the Chargor's property or assets is seized, nationalised or compulsorily acquired by or under the authority of any government; and
- 12.1.14 it becomes unlawful or impossible for the Chargor to perform and discharge any of its duties and liabilities contained in the Security Documents or for Arbuthnot to exercise any of its rights and powers under the Security Documents and, in the opinion of Arbuthnot, the security created by the Security Documents is consequently prejudiced.
- 12.2 On the occurrence of any Event of Default the Secured Liabilities shall become immediately due and payable and Arbuthnot or any Receiver shall have the right and power:
  - 12.2.1 to commence legal proceedings against the Chargor and/or the Vessel to obtain judgment for the Secured Liabilities;
  - 12.2.2 to order the master of the Vessel to proceed immediately at the Chargor's risk and expense to a port or anchorage nominated by Arbuthnot;



- 12.2.3 to take possession of the Vessel and exercise all the rights and powers of a mortgagee conferred by law or by this Deed;
- 12.2.4 to sell the Vessel or any shares therein (whether as mortgagee under its power of sale, as attorney-in-fact for the Chargor or otherwise) in such manner and on such terms as Arbuthnot may decide with power to Arbuthnot to postpone the sale without being liable for any resulting loss;
- 12.2.5 to insure, maintain, repair, charter, operate, use, employ, manage or lay up the Vessel on such terms as it may consider appropriate without being responsible for any loss or damage to the Vessel (provided such loss or damage has not been caused by the wilful act or default of Arbuthnot);
- 12.2.6 to require all documents relating to the Insurances including all policies, cover notes and all claims correspondence to be delivered to Arbuthnot or to a broker or agent appointed by it;
- 12.2.7 to defend, pay, release or compromise all claims against the Chargor in connection with the Charged Assets including those which have given or may give rise to any charge or lien on the Vessel whether ranking in priority to or subordinate to the Mortgage;
- 12.2.8 to pay all amounts as Arbuthnot considers appropriate to maintain and enforce its rights in connection with any Security Document;
- 12.2.9 to institute, continue, release or compromise all claims by the Chargor against the Insurers, any charterer or any other third party in connection with the Charged Assets;
- 12.2.10 to combine and consolidate all accounts which the Chargor may have with Arbuthnot and to set off any credit balances on such accounts against the Secured Liabilities; and
- 12.2.11 to recover from the Chargor on demand all amounts paid and payable and losses incurred by Arbuthnot in connection with the exercise of any of its powers and rights under Clauses 6.2 and 9.2, this Clause 12 or otherwise.
- 12.3 The Chargor undertakes to execute and deliver to Arbuthnot or any Receiver such documents as Arbuthnot or the Receiver may request in order to complete a sale of the Vessel by Arbuthnot or the Receiver under its powers in this Deed.
- 12.4 Section 93 and 103 of the Law of Property Act 1925 shall not apply to Arbuthnot's power of sale in this Deed.
- 12.5 On any sale of the Vessel by Arbuthnot the purchaser shall have no duty to enquire whether Arbuthnot's power of sale has become exercisable and the sale shall be deemed to be within Arbuthnot's powers. The receipt by Arbuthnot for the purchase price shall be a sufficient discharge of the purchaser who shall not be concerned with the application of the proceeds of sale and the purchaser shall have the protection provided by Sections 104 and 107 of the Law of Property Act 1925.
- 12.6 Arbuthnot's powers and rights under this Deed are cumulative and are in addition to any powers and rights which Arbuthnot may have in law or under any other Security Document and may be exercised at such times, as often and in such order as Arbuthnot may decide in its discretion.
- 12.7 The granting of time by Arbuthnot or compounding with any other person or company liable to Arbuthnot under any other Security Document shall not in any way affect Arbuthnot's rights and powers against the Chargor or the Charged Assets under the Mortgage and this Deed.

### **13 APPLICATION OF PROCEEDS**

13.1 All monies received by Arbuthnot or any Receiver under the Statutory Mortgage or this Deed unless otherwise provided in this Deed shall be applied in the following order of priority:

13.1.1 in payment of all amounts paid and payable and any losses incurred by Arbuthnot or any Receiver (together with interest thereon) in connection with the exercise of any of its powers and rights under Clauses 6.2, 9.2 and 12 or otherwise;

13.1.2 in payment towards the Secured Liabilities and any other amounts payable by the Chargor under this Deed;

13.1.3 in payment of the balance (if any) to the Chargor or to the person entitled thereto.

13.2 In the event that the proceeds are insufficient to pay the amounts specified clauses 13.1.1 and 13.1.2 above Arbuthnot shall have the right to recover the balance from the Chargor or any other person liable to pay such balance.

### **14 POWER OF ATTORNEY**

14.1 The Chargor hereby irrevocably appoints Arbuthnot and every Receiver jointly and severally as its attorney for the Security Period (with power to appoint sub-attorneys) to the intent that Arbuthnot shall have full power to do all acts and sign all documents which the Chargor itself could do in relation to the Charged Assets, including (but not limited to) selling the Vessel. The exercise of such power by or on behalf of Arbuthnot and the Receiver shall not put any person dealing with Arbuthnot or the Receiver upon any enquiry as to whether any amount is due under this Deed nor shall such person be in any way affected by notice that any such amount may not have become payable. The exercise by Arbuthnot or the Receiver of such power shall be conclusive evidence as between Arbuthnot or the Receiver and any third party of its right to exercise that power.

### **15 INDEMNITY**

15.1 The Chargor covenants to indemnify Arbuthnot and any Receiver against all amounts, liabilities and losses whatsoever which Arbuthnot may pay or incur in good faith from time to time in relation to the Charged Assets.

15.2 If under any judgment or order or under any relevant statutory provision or as a result of the insolvency of the Chargor any amount due to Arbuthnot under this Deed is paid in a currency other than the currency in which it is contractually due to be paid and if the amount actually received by Arbuthnot when converted into the currency contractually due at the then current rate of exchange used by Arbuthnot is less than the amount due under this Deed, then the Chargor as a separate obligation shall pay to Arbuthnot the amount of such shortfall.

### **16 LIABILITY OF ARBUTHNOT AND RECEIVER**

16.1 If Arbuthnot or any Receiver takes possession of the Charged Assets, Arbuthnot or the Receiver may at any time relinquish possession. Without prejudice to clause 16.2, Arbuthnot shall not be liable as a mortgagee in possession by reason of dealing with or repairing any of the Charged Assets.

16.2 Neither Arbuthnot nor any Receiver shall (either by reason of taking possession of the Charged Assets or for any other reason and whether as mortgagee in possession or otherwise) be liable to the Chargor or any other person for any losses relating to the realisation of any of the Charged Assets or from any act, default, omission, or misconduct of Arbuthnot, any Receiver, or their respective officers, employees

or agents in relation to the Charged Assets or in connection with the Finance Documents and any action or transaction taken by Arbuthnot or any Receiver, pursuant to the Statutory Mortgage or this Deed shall not be affected by the remedying of any Event of Default. If Arbuthnot takes possession of the Vessel, Arbuthnot shall not be liable for any act, default, omission or misconduct for which a mortgagee-in-possession would be liable.

## **17 ASSIGNMENT**

- 17.1 This Deed shall bind Arbuthnot and the Chargor and their respective successors and permitted assigns.
- 17.2 The Chargor may not assign or transfer all or any part of its rights, powers or obligations under this Deed.
- 17.3 Arbuthnot without the consent of the Chargor may transfer the Mortgage and assign, transfer or sub-participate its rights, powers and obligations under this Deed to any assignee, transferee or sub-participant of its rights under the Agreement and for this purpose Arbuthnot may give to any potential assignee, transferee or sub-participant any information about the Chargor, the Charged Assets, the Mortgage and this Deed which Arbuthnot considers appropriate.

## **18 NOTICES**

- 18.1 Notices under this Deed will be in writing and sent to the person and address in Clause 18.5. They may be given, and will be deemed received:
  - 18.2 by first-class post: two Business Days after posting;
  - 18.3 by hand: on delivery;
  - 18.4 by e-mail: on successful transmission.
- 18.5 Notices will be sent:
  - 18.5.1 to the Chargor at: Kim Timmis, Company Secretary, It House Notley Park, Raydon Road Great Wenham, Colchester, Essex, CO7 6QD - kimtimmis@itfleet.co.uk, andrewtimmis@itfleet.co.uk ; and
  - 18.5.2 to Arbuthnot at: Client Manager, IT Fleet Automotive Limited, 7 Wilson Street, London, EC2M 2SN - ABLPortfolioSupport@arbuthnot.co.uk.

## **19 WAIVER**

- 19.1 No failure, delay, indulgence, act or omission by either party in exercising any claim, remedy, right, power or privilege under this Deed shall operate as a waiver, nor shall any single or partial exercise of any claim, right, remedy, power or privilege prevent any future exercise of it or the exercise of any other claim, right, power or privilege.
- 19.2 Any rights or remedies conferred upon a party by this Deed, shall be in addition to and without prejudice to all other rights and remedies available to it.

## **20 AMENDMENT**

- 20.1 Any amendment or waiver of any provision of this Deed and any waiver of any default under this Deed shall be effective only if made in writing and signed by Arbuthnot.

**21 COUNTERPARTS**

- 21.1 This Deed may be executed in any number of counterparts which together make one and the same document.

**22 GOVERNING LAW AND JURISDICTION**

- 22.1 This Deed and any dispute or claim arising out of, or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 22.2 Subject to Clause 22.3, the Parties irrevocably agree, for the sole benefit of the Arbuthnot, that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Deed, its subject matter or formation (including non-contractual disputes or claims).
- 22.3 Notwithstanding Clause 22.2, the Parties irrevocably agree that the Arbuthnot shall have the right to take, and shall not be prevented from taking, proceedings against the Chargor to settle any dispute or claim arising out of, or in connection with, this Deed, its subject matter or formation (including non-contractual disputes or claims) in any other court of competent jurisdiction and that the Arbuthnot may take such proceedings in any number of jurisdictions, whether concurrently or not, to the extent permitted by law.

IN WITNESS of which this Deed has been executed as a deed by the **Chargor** and signed by **Arbuthnot** and delivered by them on the date stated at the beginning of this **Deed**

**THE CHARGOR**

Executed as a deed by **IT FLEET AUTOMOTIVE** .....

**LIMITED** acting by ANDREW TIMMIS a director **Director**

in the presence of:

Signature: .....

Name: TINA HERBERT

Address: .....

Occupation: FLEETPWS  
MANAGER

**ARBUTHNOT**

Executed as a deed by

**ARBUTHNOT COMMERCIAL ASSET**

**BASED LENDING LIMITED** acting by

a director in the presence of:

.....

Name of Director

.....

Signature of Director

Signature: .....

Name: .....

Address: .....

.....

Occupation: .....

**OR**

Executed as a deed by

**ARBUTHNOT COMMERCIAL ASSET BASED LENDING**

**LIMITED** acting by two directors:

.....

Signature of Director

.....

Name of Director

.....

Signature of Director

.....

Name of Director

**SCHEDULE 1****THE VESSEL**

<b>Vessel Details</b>	Vessel Name: KALAMARDA 2 GB	Hull Identification Number: GBFLN11946/910
	Vessel Manufacturer: Fairline Yachts Ltd	IMO Number:
	Vessel Type: Fairline Squadron 65	Flag State: UK
	Engine Type and Serial Number(s): CATERPILLAR INC C18	Port of Registry: London
	Official Number: 916797	Habitual Base:

<b>Classification and Operation</b>	Classification Society:	Permitted Waters:
	Class:	

## **SCHEDULE 2**

### **Part: NOTICE OF ASSIGNMENT**

#### **Notice and Acknowledgement of Insurance**

To: [Insert name of insurer]

Date: 2020

**Fairline Squadron 65 Yacht**  
**m.y. KALAMARDA 2 GB (official number: 916797) (the "Vessel")**

We, **IT FLEET AUTOMOTIVE LIMITED** (the "Chargors") the chargors of the Vessel hereby give you notice that by a deed of covenant dated 2020 ("Deed of Covenant") entered into by us with **ARBUTHNOT COMMERCIAL ASSET BASED LENDING LIMITED** ("Arbuthnot") we have assigned to Arbuthnot our right, title and interest in the insurances on the Vessel (including the insurance evidenced by the policy on which this notice is endorsed) including all amounts payable under the policy and all returns of premiums. Kindly acknowledge receipt of this notice by sending to Arbuthnot an acknowledgement in the form attached hereto.

Terms used herein shall, unless defined herein and unless the context otherwise requires, have the same meaning as in the Deed of Covenant (including terms defined therein by reference to another document, instrument or agreement).

\_\_\_\_\_  
signed for and on behalf of **IT Fleet Automotive Limited**

Name:

To: **Arbuthnot Commercial Asset Based Lending Limited**

We acknowledge receipt of this notice and confirm that we have not previously received any notice of other assignment of the interest of **IT Fleet Automotive Limited** in the above-mentioned insurances.

\_\_\_\_\_  
Signature

Name:

Title:

For and on behalf of [Insert name of insurer]



### **SCHEDULE 3**

#### **Part A:**

##### **LOSS PAYABLE CLAUSE (HULL AND MACHINERY AND WAR RISKS)**

m.y. KALAMARDA 2 GB (the "Vessel")

It is noted that by a deed of covenant dated 2020 between IT FLEET AUTOMOTIVE LIMITED (the "Chargor") and ARBUTHNOT COMMERCIAL ASSET BASED LENDING LIMITED ("Arbuthnot") collateral to a first priority mortgage on the Vessel given by the Chargor to Arbuthnot the Chargor has assigned to Arbuthnot its right, title and interest in the insurances on the Vessel including this policy of insurance.

It has been agreed between the Chargor and Arbuthnot that unless underwriters shall have received notice from Arbuthnot to the contrary, in which case all claims shall be paid direct to Arbuthnot, every claim in respect of a total loss (including an actual, constructive, compromised or agreed total loss) or a major casualty (that is any claim (other than a total loss) which exceeds in aggregate £50,000 inclusive of any deductible) shall be paid to Arbuthnot or its order and every other claim shall be paid to the Chargor to be applied in payment of the repair of any damage to the Vessel and the settlement of the liability or loss to which it relates.

#### **Part B:**

##### **LOSS PAYABLE CLAUSE (PROTECTION AND INDEMNITY)**

m.y. KALAMARDA 2 GB (the "Vessel")

It is noted that by a deed of covenant dated 2020 between IT FLEET AUTOMOTIVE LIMITED (the "Chargor") and ARBUTHNOT COMMERCIAL ASSET BASED LENDING LIMITED ("Arbuthnot") collateral to a first priority mortgage on the Vessel given by the Chargor to Arbuthnot the Chargor has assigned to Arbuthnot its right, title and interest in the insurances on the Vessel including the entry in this Association to the extent permitted by the rules of the Association.

It has been agreed between the Chargor and Arbuthnot that unless the association shall have received notice from Arbuthnot to the contrary, in which case all claims shall be paid direct to Arbuthnot, every claim shall be paid to the Chargor, provided always that no liability shall attach to the Association its managers or agents for failure to comply with such notice until the expiry of two Business Days after its receipt.