



**Registration of a Charge**

Company Name: **JAMES FLEMING & COMPANY LIMITED**

Company Number: **SC131587**



Received for filing in Electronic Format on the: **04/08/2022**

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**Details of Charge**

Date of creation: **18/07/2022**

Charge code: **SC13 1587 0004**

Persons entitled: **BNP PARIBAS LONDON BRANCH**

Brief description:

**Contains fixed charge(s).**

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

**Contains negative pledge.**

**Authentication of Form**

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

**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: **IAN ROSENTHAL, BNP PARIBAS**



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

Company number: 131587

Charge code: SC13 1587 0004

The Registrar of Companies for Scotland hereby certifies that a charge dated 18th July 2022 and created by JAMES FLEMING & COMPANY LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 4th August 2022 .

Given at Companies House, Edinburgh on 5th August 2022

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 *July, 18<sup>th</sup>* 2022

Between

- (1) **James Fleming & Company Limited**, a company incorporated under the laws of Scotland with registered number SC131587 of Mazers Llp, 100 Queen Street, Glasgow, Scotland, G1 3DN (the **Company**); and
- (2) **BNP Paribas London Branch**, a *société anonyme* incorporated in France with Limited Liability. Registered Office: 16 boulevard des Italiens, 75009 Paris, France, 662 042 449 RCS Paris, operating through its UK Branch (registered branch number FC13447) whose registered office in the UK is at 10 Harewood Avenue, London NW1 6AA (the **Bank**)

#### Recitals

- A The Bank may from time to time agree to grant or continue to make available to the Company loans or credit facilities, hedging facilities, foreign exchange facilities or other banking facilities, including without limitation the Uncommitted Facility Letter from the Bank to the Company dated on or around the date of this Deed (the **Facility Letter**) (each a **Financing**).
- B The Company has agreed to provide Security to the Bank to secure the payment and discharge of the Secured Liabilities.

#### This deed witnesses

##### 1 Definitions and interpretation

In this Deed the definitions and interpretive provisions in Schedule 1 (*Definitions and interpretation*) apply.

##### 2 Covenant to pay

The Company shall on demand pay to the Bank and discharge the Secured Liabilities when they become due.

##### 3 Creation of Security

3.1 The Security is created in favour of the Bank with full title guarantee as continuing security for the payment and discharge of the Secured Liabilities.

##### 3.2 The Company charges:

- (a) by way of legal mortgage its interest in the Land referred to in Schedule 3 (*Land charged by way of legal mortgage*); and
- (b) by way of fixed charge any right, title or interest which it has now or may subsequently acquire to or in any other Land.

- 3.3 The Company mortgages or (if or to the extent that this Deed does not take effect as a mortgage) charges by way of fixed charge all its Investments including (without limitation) those held for it by a nominee.
- 3.4 The Company charges by way of fixed charge (a) all patents, petty patents, trade marks, service marks, trade names, domain names, rights in designs, software rights, utility models, database rights, copyrights, rights in the nature of copyright, and all other forms of intellectual or industrial property (the IP Rights); and (b) all other rights of every kind (including, without limitation, fees and royalties) deriving from the IP Rights now or at any time afterwards belonging to the Company arising or subsisting in any jurisdiction and whether registered or not.
- 3.5 The Company charges by way of fixed charge its goodwill.
- 3.6 The Company charges by way of fixed charge its uncalled capital.
- 3.7 The Company charges by way of fixed charge the benefit of each authorisation, consent, permission, approval, revocation, licence, exemption, filing, notarisation or registration held in relation to any Security Asset.
- 3.8 The Company charges by way of first fixed charge the Deposit and all its right, title and interest in the Deposit.
- 3.9 The Company pledges all of its right, title and interest in and to the Pledged Assets.
- 3.10 The Company assigns absolutely all its right, title and interest in and to each Receivable.
- 3.11 The Company assigns absolutely all its rights and interests under all contracts and policies of insurance.
- 3.12 The Company assigns absolutely all rights under any agreement to which it is a party that are not mortgaged, charged by way of fixed charge or assigned under any of paragraphs 3.2 to 3.11 (inclusive).
- 3.13 The Company charges by way of floating charge all its present and future business, undertaking and assets which are not effectively mortgaged, charged by way of fixed charge, assigned or pledged under this paragraph 3. Paragraph 14 of Schedule B1 to the Insolvency Act 1986 shall apply.
- 3.14 If or to the extent that for any reason the assignment or charging of any Security Asset is prohibited, the Company holds it on trust for the Bank.

#### **4 Conditions of the Deposit**

Regardless of the terms on which moneys are credited to the Accounts, the Company shall be entitled to repayment of the Deposit if and only if:

- (a) the Secured Liabilities have been paid and discharged in full; and
- (b) the Bank remains under no further obligation to make banking or other facilities available to the Company,

and until that time the Company shall not request, demand or claim to be entitled to withdraw the Deposit except (without prejudice to the Bank's rights under this Deed) as the Bank may in its absolute discretion from time to time permit.

**5 Conversion of floating charge**

**5.1** The Bank may at any time by notice in writing to the Company convert the floating charge created by this Deed into a fixed charge as regards any of the Secured Assets specified in the notice:

- (a) if the Company makes default in the payment when due of the Secured Liabilities;
- (b) which the Bank shall consider to be in danger of being seized or sold under any form of distress, attachment, execution, diligence or other process levied or threatened or to be otherwise in jeopardy;
- (c) if any distress, execution, sequestration or other process is levied or enforced upon or sued out against the property of the Company for repayment of all or any of the Secured Liabilities and is not discharged within seven days of being levied;
- (d) if the Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or any statutory modification or re-enactment thereof for the time being in force or certifies that it is unable to pay its debts as and when they fall due;
- (e) if the Company fails to comply with any of the covenants, conditions or provisions contained in this Deed;
- (f) if any Secured Assets or any part thereof is compulsorily acquired by or by order of any local or other authority and as a result the business of the Company is, in the opinion of the Bank, seriously affected;
- (g) if an effective resolution is passed for the members' voluntary winding-up of the Company or if a proposal is made to the Company and its creditors for a voluntary arrangement pursuant to Section 1 of the Insolvency Act 1986;
- (h) if the Company suspends or threatens to suspend a substantial part of its business operations (otherwise than for the purposes of a reconstruction or amalgamation on terms previously approved in writing by the Bank) or any governmental authority permits or procures or threatens to permit or procure any reorganisation transfer or expropriation (whether with or without compensation) of a substantial part of the business or assets of the Company; or
- (i) if a material adverse change occurs in the financial condition, results of operations or business of the Company.

**5.2** The floating charge created by this Deed shall convert automatically into fixed charges:

- (a) immediately upon the occurrence of an Acceleration Event;
- (b) if the Bank receives notice of an intention to appoint an administrator of the Company;
- (c) if any steps are taken, (including, without limitation, the presentation of a petition, the passing of a resolution or the making of an application) to appoint a liquidator, provisional liquidator, administrator or Receiver or administrative receiver in respect of the Company over all or any part of its assets, or if such person is appointed;
- (d) if the Company creates or attempts to create a Security Interest over any Security Asset;
- (e) on the crystallisation of any other floating charge over the Security Assets;
- (f) if any person seizes, attaches, charges, takes possession of or sells any Security Asset under any form of distress, sequestration, execution or other process, or attempts to do so; and
- (g) in any other circumstances prescribed by law.

## **6 Undertakings**

### **6.1 General: The Company shall:**

- (a) keep all Land and all other tangible assets which form part of the Security Assets in good and substantial repair, fair wear and tear excepted and permit the Bank free access at all reasonable times and on reasonable notice to view their state and condition;
- (b) observe and perform all covenants, undertakings, laws and regulations from time to time affecting any Security Asset or the use or enjoyment of it;
- (c) pay all taxes, rents, rates, duties, fees, charges, assessments, impositions, calls, instalments and outgoings which are properly payable at any time in respect of any Security Asset or by the owner or occupier of it (and if it fails to pay that amount when due, the Bank may pay it);
- (d) notify the Bank of any action commenced by a third party to seize, attach, charge, take possession of or sell any Security Asset which has been started or threatened;
- (e) at its own cost, defend any proceedings (including, without limitation, proceedings to seize, attach, charge, take possession of or sell) brought by a third party relating to any Security Asset;
- (f) not, without the written consent of the Bank, whether by a single transaction or by a series of transactions (related or not), sell, transfer, lend or otherwise dispose of the whole or any substantial part of any Security Asset, or enter into an agreement to make any such disposal. This paragraph does not apply to a disposal of any Security Asset which, at the time of that disposal, is subject to

the floating charge created by this Deed and which is made in the ordinary course of the day-to-day trading activities of the Company;

- (g) not, without the written consent of the Bank, create or permit to subsist any Security Interest over any Security Asset except Security Interests entered into under this Deed and Security Interests over Pledged Assets that are permitted under paragraph 14.3(n);
- (h) not, without the written consent of the Bank, enter into any onerous obligation or restriction affecting any Security Asset;
- (i) not, without the written consent of the Bank, in relation to any Land forming part of the Security Assets:
  - (i) part with possession of it, confer on any other person any right or licence to occupy it or grant any licence to assign, sub-let or create any Security Interest over it;
  - (ii) exercise any of the powers conferred by sections 99 and 100 of the Act of leasing, letting, entering into agreements for leases or lettings or accepting or agreeing to accept surrenders of leases;
  - (iii) vary, assign or otherwise dispose of or allow to be forfeited any leasehold interest or agree any rent review;
  - (iv) make any structural or material alteration, or do or allow anything to be done which falls within the definition of development in section 55 of the Town and Country Planning Act 1990;
  - (v) allow any person other than itself to be registered under the Land Registration Act 2002 as proprietor, or create or permit to arise any interest which overrides under the Land Registration Act 2002 (and the Company shall reimburse the Bank for its reasonable costs of lodging (1) a caution against first registration of the title to that Land, or (2) if that Land is unregistered, a land charge); or
  - (vi) make an application, consent to or acquiesce in the application by any third party, to the Land Registry to enter any matter on the register of title;
- (j) in relation to any uncalled capital of the Company, not, without the written consent of the Bank, call it up or receive it in advance of calls unless the Bank otherwise directs, nor apply it, when paid, otherwise than in payment of the Secured Liabilities or as the Bank otherwise directs; or
- (k) not, without the written consent of the Bank, take any Security Interest in connection with its liability under this Deed from any guarantor of, or provider of Security Interests for, any of the Secured Liabilities.

**6.2 Investments:** The Company covenants that at all times during the Security Period as soon as any Investments are registered in, or transferred into the name of, the Company, or held by or in the name of the Bank (and in any event as soon as the Bank

so requests), it shall deposit with the Bank, in respect of or in connection with those Investments:

- (a) all stock and share certificates and documents of or evidencing title;
- (b) signed undated transfers, completed in blank and, if the Bank so requires, pre-stamped; and
- (c) any other documents which the Bank may from time to time require for perfecting its title, or the title of any purchaser,

all of which shall be held by the Bank at the expense and risk of the Company.

**6.3 Receivables: The Company shall:**

- (a) deliver promptly to the Bank all documents and other information evidencing or relating to any Receivable, as the Bank may reasonably request;
- (b) hold on trust for the Bank and separately from its own property any Receivable which shall fall to vest in the Bank under this Deed;
- (c) comply promptly with all instructions given by the Bank in relation to protecting any Receivable;
- (d) perform its obligations under all applicable contracts in a diligent manner and do all things necessary to cause any Receivable to become payable and to inform the Bank promptly of any disputes relating to or any default in payment of any Receivable;
- (e) not to undertake anything that might endanger, depreciate, jeopardise or otherwise prejudice the rights of the Bank in respect of any Receivable; and
- (f) unless the Bank otherwise agrees, promptly on any Receivable becoming subject to the Security:
  - (i) ensure that each invoice relating to that Receivable contains in a prominent position an irrevocable instruction to the addressee to pay all amounts payable under that invoice into an account of the Company held at the Bank;
  - (ii) ensure that the person owing that Receivable is instructed to pay any and all amounts that form part of, or otherwise relate to, that Receivable into an account of the Company held at the Bank; and
  - (iii) not amend or change those payment instructions or give any other instructions to that person with respect to that Receivable that are inconsistent with those payment instructions or with any of the other terms of this Deed.

**7 Enforcement of the Security**

**7.1** At any time following the occurrence of an Acceleration Event, the Security shall be enforceable and all powers conferred by this Deed or by any law shall become exercisable and the Bank may, without prior notification to the Company, do all or any of the following:

- (a) exercise all the powers and rights conferred on mortgagees by the Act, as varied and extended by this Deed, without the restrictions contained in sections 103 or 109(1) of the Act;
- (b) exercise the power of leasing, letting, entering into agreements for leases or lettings or accepting or agreeing to accept surrenders of leases in relation to any Security Asset, without the restrictions imposed by sections 99 and 100 of the Act;
- (c) collect, recover, compromise and give a good discharge for any and all moneys due to or on moneys then outstanding or thereafter arising in respect of any Receivable;
- (d) take any action, make any demand and exercise any rights available to the Company in respect of any Receivable;
- (e) take over or institute (if necessary using the name of the Company) all such proceedings in connection with any Receivable as the Bank in its absolute discretion thinks fit;
- (f) apply for and maintain, at the Company's expense, any licence, authorisation, consent, registration, filing or approval from any governmental body or any person at any time necessary or desirable to enable the performance of any obligation or the exercise of any right under this Deed or in respect of any Receivable;
- (g) fulfil, at the Company's expense and risk, the Company's obligations in respect of any Receivable;
- (h) subject to paragraph 8.1, appoint one or more persons to be a Receiver or Receivers of all or any of the Security Assets;
- (i) appoint an administrator of the Company; and
- (j) apply moneys received under this Deed in such order as the Bank may from time to time conclusively determine and section 109(8) of the Act shall not apply. This paragraph will override any appropriation made by the Company.

**7.2** At any time following the occurrence of an Acceleration Event, the Bank may without further notice or the consent of any person sell, assign, transfer, negotiate or otherwise dispose of the Pledged Assets at such times, in such manner and generally on such terms and for such consideration (whether payable on delivery, on deferred terms or by instalments) as the Bank in its absolute discretion thinks fit.

- 7.3** The Company irrevocably authorises (but does not oblige) the Bank (acting reasonably) and its agents and nominees:
- (a) at the Company's expense, to insure and arrange for the landing, transportation and storage of any Pledged Assets;
  - (b) to deal with Pledged Documents as the Bank thinks fit; and
  - (c) to execute all documents and do all other acts and things the Bank considers necessary or desirable, to perfect its security or to effect any disposal of any Pledged Assets, or to enforce any rights to which the Company or the Bank is entitled in connection with any Pledged Assets.
- 7.4** The Bank shall not be liable to account to the Company (whether as mortgagee in possession or on any other basis) for anything except its actual receipts or be liable to the Company for any loss or damage arising from the possession or realisation of the Pledged Assets or for any act, default or omission in relation to them whether on the part of the Bank or any of its agents or nominees.
- 8** **Appointment and powers of Receivers**
- 8.1** Every appointment or removal of a Receiver, of any delegate or of any other person by the Bank under this Deed may be made in writing under seal or under the hand of any officer or manager of the Bank.
- 8.2** Every Receiver shall have all the powers:
- (a) of the Bank under this Deed;
  - (b) conferred by the Act on mortgagees in possession and on receivers appointed under the Act;
  - (c) in relation to, and to the extent applicable to, the Security Assets or any of them, the powers specified in Schedule 1 of the Insolvency Act 1986 (despite it not being an administrative receiver within the meaning of that Act);
  - (d) in relation to any Security Asset, which he would have if he were its only beneficial owner;
  - (e) to undertake or complete any works of repair, building or development on any Land referred to in Schedule 3 (*Land charged by way of legal mortgage*) or otherwise forming part of the Security Assets;
  - (f) to grant or to accept surrenders of any leases or tenancies affecting any Land referred to in Schedule 3 (*Land charged by way of legal mortgage*) or otherwise forming part of the Security Assets upon such terms and subject to such conditions as he thinks fit;
  - (g) to provide services and employ, or engage, such managers contractors and other personnel and professional advisors on such terms as he deems expedient;

- (h) to make such elections for value added tax purposes as he thinks fit;
- (i) to charge and receive such sum by way of remuneration (in addition to all costs, charges and expenses incurred by him) as the Bank may prescribe or agree with him;
- (j) to collect and get in any Security Asset in respect of which he is appointed or any part thereof and for that purpose to make such demands and take any proceedings as may seem expedient and to take possession of the charged property with like rights;
- (k) to carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Company;
- (l) to grant options and licences over all or any part of the Security Assets, sell or concur in selling, assign or concur in assigning, lease or concur in leasing and accept or concur in accepting surrenders of all or any of the property of the Company in respect of which he is appointed in such manner and generally on such terms and conditions as he thinks fit (fixtures and plant and machinery may be severed and sold separately from the premises in which they are contained without the consent of the Company) and to carry any such sale, assignment, leasing or surrender into effect. Any such sale may be for such consideration as he shall think fit and he may promote or concur in promoting a Company to purchase the property to be sold;
- (m) to make substitutions of, or improvements to, the equipment as he may think expedient; and
- (n) to raise money by borrowing from the Bank or from any other person on the security of all or any of the Security Assets in respect of which he is appointed upon such terms (including if the Bank shall consent to terms under which such security ranks in priority to this debenture) as he shall think fit.

8.3 Receivers of the same assets may act jointly and/or severally so that each of them may exercise individually all the powers and discretions conferred on Receivers by this Deed.

8.4 Every Receiver shall be the agent of the Company which shall be solely responsible for his acts and defaults and for the payment of his remuneration. The maximum rate of a receiver's remuneration specified in section 109(6) of the Act shall not apply.

## 9 Protections

9.1 No purchaser or other person dealing with the Bank or any Receiver shall be bound or concerned:

- (a) to see or enquire whether the right of the Bank or any Receiver to exercise any of the powers conferred by this Deed has arisen or not;
- (b) with the propriety of the exercise or purported exercise of those powers; or

(c) with the application of any moneys paid to the Bank, to any Receiver or to any other person.

9.2 Except in the case of their gross negligence or wilful misconduct, none of the Bank, any Receiver or any of their respective officers or employees shall have any responsibility or liability:

- (a) for any action taken, or any failure to take any action, regarding any Security Asset;
- (b) to account as mortgagee in possession or for any loss on realisation of any Security Asset; or
- (c) for any other default or omission in relation to any Security Asset for which a mortgagee in possession might be liable.

9.3 Except in the case of their gross negligence or wilful misconduct, the Company shall indemnify the Bank, any Receiver and their respective officers and employees against all actions, proceedings, demands, claims, costs, expenses, and other liabilities incurred by them in respect of all or any of the following:

- (a) any act or omission by any of them relating to any Security Asset;
- (b) any payment relating to any Security Asset which is made at any time by any of them;
- (c) any stamp, registration or similar tax or duty which becomes payable in connection with the entry into, or the performance or enforcement of, this Deed;
- (d) carrying out or purporting to carry out any of the rights, powers and discretions conferred on them by or permitted under this Deed; and
- (e) any breach by the Company of any of its obligations to the Bank.

9.4 The Bank, any Receiver and their respective officers and employees may be indemnified out of the Security Assets in respect of the actions, proceedings, demands, claims, costs, expenses and liabilities referred to in paragraph 9.3.

## 10 Nature of the Security

10.1 The rights that the Bank holds under this Deed are in addition to any other rights or security held by it for any Secured Liabilities and shall not merge with or prejudice or be prejudiced by any other rights or security of the Bank, or by the variation, non-enforcement, non-perfection or release of any of them, and this Deed may be enforced against the Company without first having recourse to any other rights or security of the Bank.

10.2 If, following any release, settlement, satisfaction or discharge of any of the Secured Liabilities, any security, disposition or payment is avoided, reduced, set aside, rendered unenforceable or required to be paid away, the Bank shall be entitled to

recover the value or amount of that security, disposition or payment from the Company as if that release, settlement, satisfaction or discharge had not occurred.

- 10.3 The Security Interests created pursuant to this Deed are continuing and will not be considered satisfied or discharged by any intermediate payment or settlement, any fluctuation in the Secured Liabilities or any variation of any Financing but will remain in force until the end of the Security Period.

#### 11 Suspense account

All moneys received, recovered or realised by the Bank under this Deed (including, without limitation, the proceeds of any currency conversion) may in the discretion of the Bank be credited to any suspense or impersonal account held with the Bank and may be held in such account for so long as the Bank thinks fit until such time as the Bank has irrevocably received, recovered or realised, in freely transferable funds, amounts sufficient to discharge all the Secured Liabilities.

#### 12 Security Interests

If at any time the Bank receives actual or constructive notice of any Security Interest (other than the Security) or other interest or any other event or matter affecting the Deposit or any part of it, or any of the rights and obligations created by this Deed, the Bank may open a new account or accounts in the name of the Company, but if it does not do so it will nevertheless be deemed to have done so at the time when it received that notice and as from that time all payments made by or on behalf of the Company to the Bank will be credited or be treated as having been credited to the new account or accounts, and not be appropriated towards or have the effect of reducing or discharging the Secured Liabilities outstanding at the time when the Bank received that notice.

#### 13 Release of Security Assets other than Pledged Assets

For Secured Assets other than Pledged Assets, on the irrevocable and unconditional payment and discharge in full of the Secured Liabilities the Bank shall, or shall procure that its appointees will, at the request and cost of the Company (a) release those Security Assets from this Deed and (b) re-assign to the Company those Security Assets that have been assigned to the Bank under paragraph 3. Section 93 of the Act shall not apply to this Deed.

#### 14 Release of Pledged Assets

- 14.1 If the Company wishes the Bank to release any Pledged Assets to, or to the order of, the Company, the Company must execute a Trust Receipt in respect of those Pledged Assets before they are released.
- 14.2 If the Bank releases any Pledged Assets to, or to the order of, the Company, whether or not a Trust Receipt is signed and delivered to the Bank for that release, (unless otherwise specifically agreed by the Bank in writing) the Company shall hold those Pledged Assets and any proceeds of their sale on trust for the Bank.

14.3 Where any Pledged Assets are released to, or to the order of the Company, the Company acknowledges that:

- (a) those Pledged Assets are pledged to the Bank on the terms of this Deed and that pledge will continue notwithstanding the release of those Pledged Assets by the Bank to the Company;
- (b) those Pledged Assets are held at all times to the order of the Bank but at the expense and at the risk of the Company;
- (c) the Bank's knowledge of any breach, failure or omission in respect of any of the Company's obligations under this Deed will not operate as a waiver of, or otherwise detract from, any of the Bank's rights under this Deed; and
- (d) the Bank will have no responsibility for the correctness, validity or sufficiency of any Pledged Documents or for the existence, character, quality, quantity, condition, packing, value or delivery of any Pledged Goods that form part of those Pledged Assets (if applicable).

and undertakes:

- (e) to deal with those Pledged Assets with the sole purpose of achieving the objective for which those Pledged Assets have been released which, if no purpose is specified, shall be the sale of the Pledged Goods comprising those Pledged Assets to buyers approved by the Bank;
- (f) pending the sale of any Pledged Goods that form part of those Pledged Assets, to keep those Pledged Goods stored in the name of the Bank in warehouses approved by the Bank, separate from other goods and generally under conditions satisfactory to the Bank;
- (g) to hand to the Bank any documents (other than documents that are already Pledged Documents) relating to those Pledged Assets promptly on receipt;
- (h) on the sale of any of those Pledged Assets, to remit to the Bank all sale proceeds immediately on receipt without set-off or deduction and without intermingling those proceeds with other moneys;
- (i) not to sell or otherwise dispose of any of those Pledged Assets on deferred terms (other than normal trade credit) or for any non-monetary consideration or for less than current market value;
- (j) to keep the Bank informed of the whereabouts of all of those Pledged Assets at all times;
- (k) not to permit any of those Pledged Assets to be altered;
- (l) to ensure all invoices issued to buyers of those Pledged Assets are copied to the Bank and instruct the buyer to pay all amounts due under the invoice into a bank account of the Company held with the Bank over which no third party has any Security Interest;

- (m) to notify the Bank immediately of any change, occurrence or circumstance affecting the value, state, condition, quality or quantity of any of those Pledged Assets;
- (n) to keep all of those Pledged Assets free from all Security Interests (other than those in favour of the Bank) and other third party rights (other than any lien arising solely by operation of law in the ordinary course of trading); and
- (o) to return to the Bank any of those Pledged Assets that have not yet been sold and delivered to the relevant buyer immediately on the Bank's demand.

14.4 The Bank has the right to inspect the Pledged Assets at any time.

14.5 The Company undertakes to pay all freight, warehouse charges, dock transit charges, rent and all other costs of and incidental to the transportation and storage of any Pledged Assets.

**15 Discharge conditional**

Any release, discharge or settlement between the Company and the Bank shall be deemed conditional upon no payment or security received by the Bank in respect of the Secured Liabilities being avoided or reduced or ordered to be refunded pursuant to any provision of any enactment relating to insolvency, bankruptcy, winding-up, administration or receivership and, notwithstanding any such release, discharge or settlement:

- (a) the Bank or its nominee shall be at liberty to retain this Deed and the Security, including all certificates and documents relating to the whole or any part of the Security Assets, for such period as the Bank shall deem necessary to provide the Bank with security against any such avoidance or reduction or order for refund; and
- (b) the Bank shall be entitled to recover the value or amount of such Security or payment from the Company subsequently as if such settlement, discharge or release had not occurred and the Company agrees with the Bank accordingly and charges the Security Assets and the proceeds of any sale of them with any liability under this paragraph.

**16 Miscellaneous**

16.1 The Bank shall make advances or other banking facilities available to the Company on the terms and subject to the conditions of the relevant Financing.

16.2 Except as otherwise provided in this Deed, this Deed is subject to the Bank's General Terms of Business in force from time to time and applicable to the UK branches of the Bank.

16.3 The Company undertakes to execute and deliver such further documents and to perform such further acts as the Bank may require to implement the purposes of this Deed or any of the transactions contemplated by this Deed, to perfect or protect the

Security, or to facilitate the appropriation or realisation of any right or other asset that is subject to the Security.

16.4 The Company irrevocably and by way of security appoints each of:

- (a) the Bank;
- (b) any delegate, or sub-delegate of, or other person nominated in writing by, an officer of the Bank; and
- (c) any Receiver,

jointly and severally as the Company's attorney, in the Company's name, on its behalf and in such manner as the attorney may in its or his absolute discretion think fit following the failure by the Company to comply with a request from the Bank, to take any action and execute any further documents which the Company is required to take, sign or execute in accordance with this Deed, and to do all other things the Bank considers necessary or desirable, to perfect the Security or to effect any disposal of any Security Assets, or to enforce any rights in which the Company or the Bank is entitled in connection with any Security Assets. The Company agrees, promptly on the request of the Bank or any Receiver, to ratify and confirm all such actions taken and documents signed or executed.

16.5 The Company consents to the registration against the registered titles specified in Schedule 3 (*Land charged by way of legal mortgage*) of:

- (a) a restriction following "Form P" in Schedule 4 of the Land Registration Rules 2003; and
- (b) a notice that the Bank is under an obligation to make further advances on the terms of the relevant Financing.

16.6 Any amendment, variation, waiver, release or consent by the Bank under this Deed shall only be effective if made in writing and signed on behalf of the Bank and, in the case of an amendment or variation of this Deed, if signed by or on behalf of the Company.

16.7 The terms of the relevant Financing and of any side letters between any parties in relation to it are incorporated in this Deed to the extent required to ensure that any purported disposition of an interest in Land contained in this Deed is a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

16.8 Any demand or other communication from the Bank to the Company will be duly served if given in accordance with the notice provisions applicable to the relevant Financing.

## 17 Governing law and jurisdiction

17.1 This Deed is governed by, and shall be construed in accordance with, the Laws of England.

17.2 Each of the Bank and the Company irrevocably agrees that the Courts of England are to have jurisdiction to settle any dispute which may arise out of this Deed and that, accordingly, any proceedings arising out of this Deed may be brought in such Courts. The Bank and the Company each irrevocably submit to the jurisdiction of such Courts and waive any objection to proceedings in any such Court on the grounds of venue or on the grounds that the proceedings have been brought in an inconvenient forum. The Company's submission is made for the Bank's benefit and the Bank's submission is made for the Company's benefit and will not limit the right to take proceedings in any other court of competent jurisdiction nor will the taking of proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

17.3 The Company hereby confirms that it has irrevocably appointed Zeelandia Holdings (UK) Limited, Unit 10, Easter Park, Axial Way, Colchester, CO4 5WY (company number 02451997) as its agent to accept service of English legal process on behalf of the Company in relation to this Deed and that this agent has accepted this appointment.

The Company has executed this Deed as a deed with the intention that it be delivered on the date written at the beginning of this Deed. This Deed shall take effect as a deed even if it is signed under hand on behalf of the Bank.

## **Schedule 1 – Definitions and interpretation**

### **1 Definitions**

In this Deed the following definitions apply:

**Acceleration Event** means if an Event of Default has occurred or the Company is otherwise in breach of its obligations under this Deed or any Financing.

**Accounts** means each and every bank account of the Company held with the London Branch of the Bank and any new account opened pursuant to paragraph 12 (in each case, as those accounts may from time to time be replaced, re-designated or re-numbered) and any sub-accounts of those accounts.

**Act** means the Law of Property Act 1925.

**Deposit** means all or any of the amounts now or from time to time standing to the credit of the Accounts, together with any interest accrued or accruing from time to time on any of those amounts and all the other rights and claims of the Company in respect of any of those amounts and the Accounts.

**Event of Default** has the meaning given to that term in the Credit Terms and Conditions referred to in the Facility Letter.

**Investments** means

- (a) all stocks, shares, debentures, bonds, notes, securities of any kind (marketable or otherwise), negotiable instruments and warrants and any other financial instruments;
- (b) all allotments, accretions, offers, options, rights, bonuses, benefits and advantages, whether by way of conversion, redemption, preference, option or otherwise which at any time accrue to or are offered or arise in respect of them; and
- (c) all dividends, interest and other distributions paid or payable on or in respect of them.

**Land** has the same meaning as it has in section 205(1) of the Act.

**Pledged Assets** means the Pledged Documents and the Pledged Goods.

**Pledged Documents** means all bills of exchange, promissory notes, securities and other negotiable instruments, all bills of lading, mate's receipts, warrants, delivery orders, forwarder's certificates of receipt, holding certificates, wharfinger's or other warehouse-keeper's warrants or receipts, all policies and certificates of insurance and all other documents of title and other documents relating to any Pledged Goods.

**Pledged Goods** means all goods from time to time in the possession of, or stored in the name of, or received by, or deposited or lodged with, or transferred to or otherwise

held by, or to the order of, or under the control of, the Bank or its agent or nominee (either directly or indirectly and whether for safe keeping, collection, security or otherwise and whether in England or elsewhere).

Receivable means a debt that is owed or will become due to the Company together with all ancillary rights including (without limitation) insurance, guarantees, letters of credit, indemnities or other credit support, and contractual claims relating to that receivable.

Receiver means a receiver appointed pursuant to this Deed or to any applicable law, whether alone or jointly, and includes a receiver and/or manager.

Secured Liabilities means all present and future indebtedness, obligations and liabilities of the Company to the Bank whether actual, contingent, joint or several including (without limitation) all expenses, legal fees, taxes and any charges or costs incurred by the Bank in relation to any financing or any guarantee, indemnity or other credit support undertaking given by the Company to the Bank in respect of any other person's liabilities (present or future, actual or contingent, joint or several) owed to the Bank.

Security Asset means any asset of the Company which is the subject of any Security.

Security means the Security Interests created or intended to be created under this Deed.

Security Interest means any mortgage, charge, assignment by way of security, pledge, hypothecation, lien, right of set off, retention of title provision, trust or flawed asset arrangement (for the purpose of, or which has the effect of, granting security) or any other security interest of any kind whatsoever, or any agreement, whether conditional or otherwise, to create any of the same, or any agreement to sell or otherwise dispose of any asset on terms whereby such asset is or may be leased to or re-acquired by the person selling it (or a person connected to the person selling it).

Security Period means the period commencing on the date of this Deed and ending on the date upon which the Bank notifies the Company in writing that all the Secured Liabilities have been irrevocably discharged in full and all Financings have been terminated.

Trust Receipt means a trust receipt substantially in the form set out in Schedule 2 (*Form of Trust Receipt*) or such other form as the Bank may agree.

## 2 Interpretation

In this Deed the following interpretations apply (unless otherwise stated):

- 2.1 References to this Deed or any other document are references to this Deed or that other document, as varied, novated, supplemented or replaced from time to time.
- 2.2 Reference to any person, including (without limitation) a party to this Deed, includes (without limitation) that person's successors in title and transferees (unless the transfer to the successor in title or transferee was in breach of this Deed).

- 2.3 Reference to the Bank or a Receiver, includes its duly appointed nominees, attorneys, correspondents, trustees, advisers, agents, delegates and sub-delegates.**
- 2.4 The word person includes (without limitation) each of the following, even if they have no separate legal personality: an individual, firm, partnership, trust, joint venture, body corporate, unincorporated body, association, organisation or any government, state or local body or authority.**

**Schedule 2 – Form of Trust Receipt**

**<sup>1</sup>Trust Receipt No [\*\*] from [insert company name] relating to the Pledge dated [date of pledge]\***

Description of Pledged Documents	Description of Pledged Goods	Marks and numbers	Vessel	Name(s) of Buyer(s), warehouse and location	Invoice price	Invoice payment date

This trust receipt is delivered pursuant to the pledge (the Pledge) dated [date of pledge] granted by [insert company name] (the Company) in favour of Fortis Bank, UK Branch (the Bank). We acknowledge that the Pledged Assets described in the table above are being released to us to hold on trust for the Bank and subject to the terms of the Pledge.

Signed for and on behalf of [insert name of company] by

\_\_\_\_\_  
 Authorised Signatory  
 [Date]

\_\_\_\_\_  
 Authorised Signatory

\*Amend the column headings as appropriate for the Pledged Assets being released.

<sup>1</sup> Always include this Schedule unless paragraph 3.10 and all other provisions relating to the pledge are being deleted.

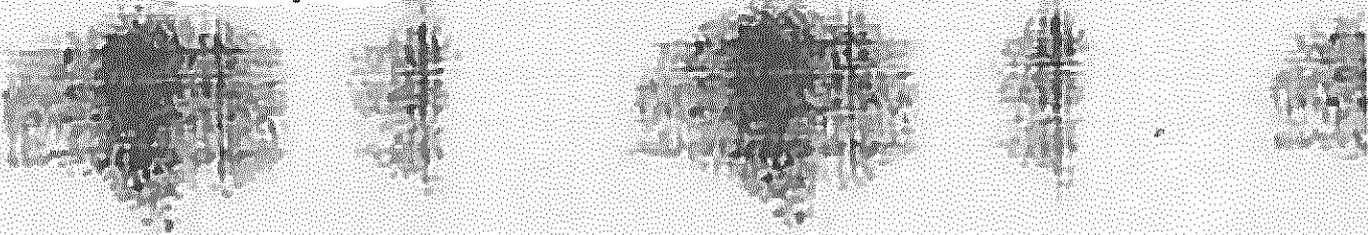
**Schedule 3 - Land charged by way of legal mortgage**

**Part 1 - Registered Land**

Description and address	Title number
Intentionally left blank	

**Part 2 - Unregistered Land**

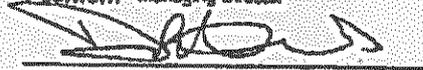
Intentionally left blank



**EXECUTED as a DEED and DELIVERED by James Fleming & Company Limited and signed by person(s) who under the laws of Scotland are acting under the authority of the company**

Name: David Robert Arnos

Position: Managing Director



Name: Lodewijk Lockefeer

Position: CFO



Signed for and on behalf of BNP Paribas, London Branch



Name:

LOUSE SMYTH

Position:

DIRECTOR

Name:

BEN SOUTH

Position:

DIRECTOR