



**Registration of a Charge**

Company name: **ICELAND FOODS LIMITED**

Company number: **01107406**



X4Y4SW4G

Received for Electronic Filing: **08/01/2016**

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**Details of Charge**

Date of creation: **06/01/2016**

Charge code: **0110 7406 0032**

Persons entitled: **BANC OF AMERICA LEASING & CAPITAL, LLC**

Brief description:

**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: **JULIA BLACK**



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

Company number: 1107406

Charge code: 0110 7406 0032

The Registrar of Companies for England and Wales hereby certifies that a charge dated 6th January 2016 and created by ICELAND FOODS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 8th January 2016 .

Given at Companies House, Cardiff on 11th January 2016

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



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

**DATED 6 JANUARY 2016**

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**(1) ICELAND FOODS LIMITED (the Lessee)**

**and**

**(2) BANC OF AMERICA LEASING & CAPITAL, LLC (the Lessor)**

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**CHARGE OVER BANK ACCOUNT**

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THIS DEED (this "Deed") is made on 6 January 2016

## PARTIES

- (1) **ICELAND FOODS LIMITED** incorporated and registered in England and Wales with company number 01107406 whose registered office is at Second Avenue, Deeside Industrial Park, Deeside, Flintshire CH5 2NW ("Lessee").
- (2) **BANC OF AMERICA LEASING & CAPITAL, LLC** ("Lessor").

## BACKGROUND

- (A) Pursuant to the terms of the Lease Agreement (as defined below), the Lessor leased the Aircraft to the Lessee, on the terms and subject to the conditions contained therein.
- (B) This Deed provides security which the Lessee has agreed to give the Lessor for its obligations under the Lease Documents.

## AGREED TERMS

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

Unless a contrary indication appears, a term used in the Lease Agreement has the same meaning in this Deed. The following terms shall have the following meanings when used in this Deed:

**"Account Bank"** means HSBC Bank plc, London Branch.

**"Deposit"** means all monies from time to time standing to the credit of the Security Account together with all other rights and benefits accruing to or arising in connection with the Security Account (including, but not limited to, entitlements to interest).

**"Financial Collateral"** has the meaning given to that expression in the Financial Collateral Regulations.

**"Financial Collateral Regulations"** the Financial Collateral Arrangements (No 2) Regulations 2003 (*SI 2003/3226*).

**"Lease Agreement"** the lease agreement (S/N 5920) between the Lessor and the Lessee relating to one (1) 2013 Bombardier Challenger 605 aircraft with manufacturer's serial number 5920, originally dated 29<sup>th</sup> May 2013 and as amended, modified or supplemented from time to time.

**"Receiver"** a receiver appointed under this Deed.

**"Secured Liabilities"** all present and future monies, obligations and liabilities owed by the Lessee to the Lessor, whether actual or contingent and whether owed jointly or severally, as principal or surety and/or in any other capacity, under or in connection with the Lease Documents (including, without limitation, those arising under clause 17.3(b) of this Deed), together with all interest (including, without limitation, default interest) accruing in respect of such monies or liabilities.

**"Security Account"** bank account with account number [REDACTED] and sort code [REDACTED] in the name of the Lessee with the Account Bank as that account may be renumbered or redesignated from time to time and all rights of the Lessee in relation to such account.

**"Security Financial Collateral Arrangement"** has the meaning given to that expression in the Financial Collateral Regulations.

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

**"Security Period"** the period starting on the date of this Deed and ending on the date on which the Lessor (acting reasonably) is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full.

## 1.2 Interpretation

Unless the context otherwise requires, in this Deed:

- (a) clause, Schedule and paragraph headings shall not affect the interpretation of this Deed;
- (b) a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person's personal representatives, successors, permitted assigns and permitted transferees;
- (c) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (d) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- (e) a reference to a party shall include that party's successors, permitted assigns and permitted transferees;
- (f) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;

- (g) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- (h) a reference to **writing** or **written** includes fax but not e-mail;
- (i) an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- (j) a reference to **this Deed** (or any provision of it) or to any other agreement or document referred to in this Deed is a reference to this Deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this Deed) from time to time;
- (k) unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this Deed and a reference to a paragraph is to a paragraph of the relevant Schedule;
- (l) any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (m) a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amended** shall be construed accordingly);
- (n) a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (o) a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- (p) a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been waived in writing by the Lessor;
- (q) a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- (r) a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

### 1.3 Clawback

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

#### 1.4 Schedules

The schedules form part of this Deed and shall have effect as if set out in full in the body of this Deed. Any reference to this Deed includes the Schedules.

## 2 COVENANT TO PAY

The Lessee shall, on demand, pay to the Lessor and discharge the Secured Liabilities when they become due.

## 3 GRANT OF SECURITY

As a continuing security for the payment and discharge of the Secured Liabilities, the Lessee with full title guarantee charges to the Lessor, by way of first fixed charge, the Deposit.

## 4 LIABILITY OF THE LESSEE

### 4.1 Liability not discharged

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

- (a) any security, guarantee, indemnity, remedy or other right held by, or available to, the Lessor that is or becomes wholly or partially illegal, void or unenforceable on any ground;
- (b) the Lessor renewing, determining, varying or increasing any transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
- (c) any other act or omission, which but for this clause 4.1 might have discharged, or otherwise prejudiced or affected, the liability of the Lessee.

### 4.2 Immediate recourse

The Lessee waives any right it may have to require the Lessor to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this Deed against the Lessee.



## **5 REPRESENTATIONS AND WARRANTIES**

The Lessee represents and warrants to the Lessor on the terms set out in Schedule 1. The representations and warranties set out in Schedule 1 are made on the date of this Deed and shall be deemed to be made on each day of the Security Period with reference to the facts and circumstances then existing.

## **6 COVENANTS**

The Lessee covenants with the Lessor in the terms set out in Schedule 2.

## **7 POWERS OF THE LESSOR**

### **7.1 Power to remedy**

The Lessor shall be entitled (but shall not be obliged) to remedy a breach at any time by the Lessee of any of its obligations contained in this Deed and the Lessee irrevocably authorises the Lessor and its agents to do all such things as are necessary or desirable for that purpose following such a breach.

### **7.2 Exercise of rights**

The rights of the Lessor under clause 7.1 are without prejudice to any other rights of the Lessor under this Deed. The exercise of those rights shall not make the Lessor liable to account as a mortgagee in possession.

### **7.3 Prior Security**

At any time after the security constituted by this Deed has become enforceable, or after any powers conferred by any Security having priority to this Deed shall have become exercisable, the Lessor may:

- (a) redeem such or any other prior Security, or procure its transfer to itself; and
- (b) settle and pass any account of the holder of any prior Security.

Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Lessee. All monies paid by the Lessor to an encumbrancer in settlement of such an account shall, as from its payment by the Lessor, be due from the Lessee to the Lessor on current account and shall bear interest at the Default Rate and be secured as part of the Secured Liabilities.

### **7.4 Conversion of currency**

For the purpose of, or pending the discharge of, any of the Secured Liabilities, the Lessor may convert any monies received, recovered or realised by the Lessor under this Deed (including the proceeds of any previous conversion under this clause 7.4) from their existing currencies of denomination into such other currencies of denomination as the

Lessor may think fit. Any such conversion shall be effected at the Lessor's then prevailing spot selling rate of exchange for such other currency against the existing currency. Each reference in this clause 7.4 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

#### 7.5 New accounts

- (a) If the Lessor receives, or is deemed to have received, notice of any subsequent Security, or other interest, affecting all or part of the Deposit, the Lessor may open a new account for the Lessee in the Lessor's books. Without prejudice to the Lessor's right to combine accounts, no money paid to the credit of the Lessee in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.
- (b) If the Lessor does not open a new account immediately on receipt of the notice or deemed notice referred to in clause 7.5(a), then, unless the Lessor gives express written notice to the contrary to the Lessee, all payments made by the Lessee to the Lessor shall be treated as having been credited to a new account of the Lessee and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt or deemed receipt of the relevant notice by the Lessor.

#### 7.6 Indulgence

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

### 8 ENFORCEMENT

#### 8.1 Enforcement

The security constituted by this Deed shall be immediately enforceable if an Event of Default occurs. The parties to this Deed agree that the provisions of Schedule 3 shall apply to this Deed and shall be binding between them. The rights and powers of the Lessor contained in clause 8.1, clause 8.2, clause 8.3 and Schedule 3 shall apply notwithstanding that:

- (a) all or part of the Deposit may have been deposited for a fixed or minimum period or be subject to a period of notice;
- (b) any interest on the Deposit is calculated by reference to a fixed or minimum periods; and/or

- (c) any such fixed or minimum period or period of notice may or may not have been given.

The Lessee irrevocably authorises the Lessor at any time after the security constituted by this Deed has become enforceable to break or determine the Deposit in whole or in part and/or to renew all or any of the Deposit for such fixed periods as the Lessor may, in its absolute discretion, from time to time think fit.

## 8.2 Power of sale

At any time after the security constituted by this Deed has become enforceable, the Lessor and any Receiver may (without prejudice to any other right which the Lessor or the Receiver may have) without further notice to the Lessee exercise the power to sell or otherwise dispose of the whole or any part of the Deposit.

## 8.3 Terms of sale

Any sale or disposal under clause 8.2 may be made in such manner, on such terms and for such consideration (whether payable immediately or by instalments) as the Lessor or the Receiver, as the case may be, shall in its absolute discretion think fit and without liability for loss.

## 8.4 Right of appropriation

- (a) To the extent that the Deposit constitutes Financial Collateral and this Deed and the obligations of the Lessee hereunder constitute a Security Financial Collateral Arrangement, the Lessor shall have the right, at any time after the security constituted by this Deed has become enforceable, to appropriate all or any of that part of the Deposit in or towards the payment and/or discharge of the Secured Liabilities in such order as the Lessor in its absolute discretion may from time to time determine.
- (b) The value of the Deposit appropriated in accordance with this clause shall be, in the case of cash, the amount of cash appropriated.
- (c) The Lessee agrees that the method of valuation provided for in this clause is commercially reasonable for the purposes of the Financial Collateral Regulations.

## 9 COSTS AND INDEMNITY

### 9.1 Costs

The Lessee shall, promptly on demand, pay to, or reimburse, the Lessor and any Receiver, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by the Lessor or any Receiver in connection with:

- (a) this Deed or the Deposit; and/or

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

together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost or expense arose until full discharge of that cost or expense (whether before or after judgment, liquidation, winding up or administration of the Lessee) at the rate and in the manner specified in the Lease Agreement.

## 9.2 Indemnity

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

- (a) the exercise, or purported exercise, of any of the powers, authorities or discretions vested in them under this Deed;
- (b) any matter or thing done, or omitted to be done, in relation to the Deposit under those powers; and/or
- (c) any default or delay by the Lessee in performing any of its obligations under this Deed.

Any past or present employee or agent may enforce the terms of this clause 9.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## 10 RELEASE

Subject to clause 17.3, on the expiry of the Security Period (but not otherwise), the Lessor shall, at the request and cost of the Lessee, take whatever action is necessary to release the Deposit from the security constituted by this Deed.

## 11 ASSIGNMENT AND TRANSFER

### 11.1 Assignment by Lessor

- (a) At any time, without the consent of the Lessee, the Lessor may assign or transfer any or all of its rights and obligations under this Deed in connection with the exercise of any of Lessor's rights under Clauses 13.2 (*Lessor's Conveyances*) or 15 (*Remedies*) of the Lease Agreement.
- (b) The Lessor may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Lessee, the Deposit and this Deed that the Lessor considers appropriate.

### 11.2 Assignment by Lessee

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

## 12 SET-OFF

### 12.1 Lessor's right of set-off

The Lessor may at any time set off any liability of the Lessee to the Lessor against any liability of the Lessor to the Lessee, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Deed. If the liabilities to be set off are expressed in different currencies, the Lessor may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Lessor of its rights under this clause 12 shall not limit or affect any other rights or remedies available to it under this Deed or otherwise.

### 12.2 No obligation to set off

The Lessor is not obliged to exercise its rights under clause 12.1. If, however, it does exercise those rights it must promptly notify the Lessee of the set-off that has been made.

## 13 AMENDMENTS AND WAIVERS

### 13.1 Amendments

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

### 13.2 Waivers and consents

- (a) A waiver of any right or remedy under this Deed or by law, or any consent given under this Deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- (b) A failure or delay by a party to exercise any right or remedy provided under this Deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this Deed. No single or partial exercise of any right or remedy provided under this Deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this Deed by the Lessor shall be effective unless it is in writing.

### 13.3 Rights and remedies

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

## **14 SEVERANCE**

### **14.1 Severance**

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

## **15 COUNTERPARTS**

### **15.1 Counterparts**

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

## **16 THIRD PARTY RIGHTS**

### **16.1 Third party rights**

- (a) Except as expressly provided in clause 9.2 or elsewhere in this Deed, a person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this Deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- (b) The rights of the parties to rescind or agree any amendment or waiver under this Deed are not subject to the consent of any other person.

## **17 FURTHER PROVISIONS**

### **17.1 Independent security**

This Deed shall be in addition to, and independent of, every other security or guarantee which the Lessor may hold for any of the Secured Liabilities at any time. No prior security held by the Lessor over the whole or any part of the Deposit shall merge in the security created by this Deed.

### **17.2 Continuing security**

This Deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Secured Liabilities have been discharged in full.

### 17.3 Discharge conditional

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

- (a) the Lessor or its nominee may retain this Deed and the security created by or pursuant to it, including all certificates and documents relating to the whole or any part of the Deposit, for such period as the Lessor deems necessary to provide the Lessor with security against any such avoidance, reduction or order for refund; and
- (b) the Lessor may recover the value or amount of such security or payment from the Lessee subsequently as if such release, discharge or settlement had not occurred.

### 17.4 Certificates

A certificate or determination by the Lessor as to any amount for the time being due to it from the Lessee shall (in the absence of any manifest error) be prima facie evidence of the amount due.

### 17.5 Consolidation

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

## 18 NOTICES

### 18.1 Notices

The provisions of clauses 16.1 to 16.3 (*Notices, Addresses and Delivery*) of the Lease Agreement shall apply to this Deed as if set out in full herein, *mutatis mutandis*.

### 18.2 Service of proceedings

This clause 18 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 19 GOVERNING LAW AND JURISDICTION

### 19.1 Governing law

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

### 19.2 Jurisdiction

For the benefit of Lessor, Lessee hereby irrevocably consents and agrees that English Courts shall have jurisdiction and accordingly submits to the jurisdiction of English courts in relation to any legal action or proceedings to enforce the Agreement or claims arising out of or any way in connection with the Agreement or any non-contractual obligations connected with it ("**Proceedings**") without prejudice to Lessor's right to bring proceedings in any other court having jurisdiction. Lessee irrevocably waives any objection which it might now or hereafter have to Proceedings being brought or settled in the courts of England and agrees not to claim that any such court is not a convenient or appropriate forum.



**Schedule 1**  
**Representations and warranties**

1. Ownership of Deposit

The Lessee is the legal and beneficial owner of the Deposit.

2. No Security

The Deposit is free from any Security other than Permitted Liens and the Security created by this Deed.

3. Adverse claims

The Lessee has not received or acknowledged notice of any adverse claim by any person in respect of the Deposit or any interest in it.

4. Adverse covenants

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatever, which adversely affect the Deposit.

5. Avoidance of security

No Security expressed to be created under this Deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Lessee or otherwise.

6. No prohibitions or breaches

The entry into of this Deed by the Lessee does not and will not constitute a breach of any agreement or instrument binding on the Lessee or its assets.

7. Due authorisation

The entry into, performance and delivery of this Deed has been duly authorized by all necessary action on the part of Lessee consistent with its form of organization and do not contravene or constitute a default under any Applicable Law, its constitutional documents, or any agreement, indenture, or other instrument to which Lessee is a party or by which it may be bound.

8. Enforceability

This Deed has been duly executed and delivered by authorized representatives of Lessee and constitute the legal, valid and binding obligations of Lessee enforceable in accordance with its terms.

## **Schedule 2**

### **Covenants**

#### **1. Negative pledge and disposal restrictions**

The Lessee shall not at any time, except with the prior written consent of the Lessor:

- 1.1 create, purport to create or permit to subsist any Security other than a Permitted Lien on, or in relation to, the Deposit other than this Deed; or
- 1.2 sell, assign, transfer, part with possession of or otherwise dispose of in any manner (or purport to do so) all or any part of, or any interest in, the Deposit; or
- 1.3 create or grant (or purport to create or grant) any interest in the Deposit in favour of a third party.

#### **2. Preservation of Deposit**

The Lessee shall:

- 2.1 ensure that the Deposit is no less than one million two hundred thousand US Dollars (USD 1,200,000) at all times;
- 2.2 not withdraw or transfer all or any part of the Deposit until after the Security Period has expired; or
- 2.3 not do, or permit to be done, any act or thing which would or might jeopardise or otherwise prejudice the security held by the Lessor or materially diminish the value of the Deposit or the effectiveness of the security created by this Deed (including, without limitation, closing the Security Account).

#### **3. Enforcement of rights**

The Lessee shall use its best endeavours to:

- 3.1 procure the prompt observance and performance by the counterparty to any agreement or arrangement with the Lessee relating to the Deposit; and
- 3.2 enforce any rights and institute, continue or defend any proceedings relating to the Deposit which the Lessor may require from time to time.

#### **4. Notice of breaches**

The Lessee shall promptly on becoming aware of any of the same give the Lessor notice in writing of any breach of:

- 4.1 any representation or warranty set out in this Deed that is incorrect or misleading in any material respect when made or deemed to be repeated; and

4.2 any breach of any covenant set out in this Deed.

5. Title documents

The Lessee shall, on the execution of this Deed, deposit with the Lessor and the Lessor shall, for the duration of this Deed be entitled to hold all deeds and documents of title relating to the Deposit (if any) which are in the possession or control of the Lessee (if these are not within the possession and/or control of the Lessee, the Lessee undertakes to obtain possession of all such deeds and documents of title).

6. Notice of charge

The Lessee shall:

- 6.1 immediately on the execution of this Deed serve a notice of charge, substantially in the form of Part 1 of Schedule 4, on the Account Bank; and
- 6.2 ensure that the Account Bank promptly acknowledges the notice, substantially in the form of Part 2 of Schedule 4.

7. Further assurance

The Lessee, at its own cost, shall prepare and execute such further legal or other mortgages, charges or transfers (containing a power of sale and such other provisions as the Lessor may reasonably require) in favour of the Lessor as the Lessor, in its absolute discretion, requires from time to time over all or any part of the Deposit and give all notices, orders and directions which the Lessor may require, in its absolute discretion for perfecting, protecting or facilitating the realisation of its security over the Deposit.

### **Schedule 3 Enforcement**

#### **1. Enforcement events**

This Deed shall be enforceable if an Event of Default occurs, and in any such event (whether or not the event is continuing), without prejudice to any other rights of the Lessor, the powers of sale under the Law of Property Act 1925 shall immediately be exercisable and the Lessor may, in its absolute discretion, enforce all or any part of the security created by this Deed as it sees fit.

#### **2. Power of sale**

The power of sale under this Deed (including any statutory power of sale) shall, as between the Lessor and a purchaser from the Lessor, arise on and be exercisable at any time after the execution of this Deed, but the Lessor shall not exercise such power of sale until the security constituted by this Deed has become enforceable under paragraph 1 of this Schedule 3.

#### **3. Protection of third parties**

No purchaser, mortgagee or other person dealing with the Lessor or any Receiver shall be concerned:

3.1 to enquire whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged, or whether the power the Lessor or a Receiver is purporting to exercise has become exercisable; or

3.2 to see to the application of any money paid to the Lessor or any Receiver.

#### **4. No liability as mortgagee in possession**

Neither the Lessor nor any Receiver shall be liable to account as mortgagee in possession in respect of the Deposit, nor shall any of them be liable for any loss on realisation of, or for any neglect or default of any nature in connection with, the Deposit for which a mortgagee in possession might be liable as such.

#### **5. Appointment of Receiver**

5.1 At any time after the security constituted by this Deed has become enforceable, or at the request of the Lessee, the Lessor may, without further notice:

(a) appoint by way of deed, or otherwise in writing, any one or more person or persons to be a receiver of all or any part of the Deposit; and

(b) from time to time, by way of deed, or otherwise in writing, remove any person appointed to be Receiver and may, in a similar manner, appoint another in his place.

Where more than one person is appointed Receiver, they shall have power to act separately (unless the appointment by the Lessor specifies to the contrary).

5.2 The Lessor may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the Law of Property Act 1925 and the remuneration of the Receiver shall be a debt secured by this Deed which shall be due and payable immediately upon its being paid by the Lessor.

## 6. Power of sale additional

6.1 The powers of sale and appointing a Receiver conferred by this Deed shall be in addition to all statutory and other powers of the Lessor under the Insolvency Act 1986, the Law of Property Act 1925 or otherwise, and shall be exercisable without the restrictions contained in Sections 103 and 109 of the Law of Property Act 1925 or otherwise.

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

## 7. Agent of the Lessee

Any Receiver appointed by the Lessor under this Deed shall be the agent of the Lessee and the Lessee shall be solely responsible for his acts and remuneration, as well as for any defaults committed by him.

## 8. Powers of Receiver

Any Receiver appointed by the Lessor under this Deed shall, in addition to the powers conferred on him by the Law of Property Act 1925 and the Insolvency Act 1986, have the power to do all such acts and things as an absolute owner could do in the management of the Deposit.

## 9. Order of application of proceeds

All monies received by the Lessor or a Receiver in the exercise of any enforcement powers conferred by this Deed shall be applied:

- 9.1 first in paying all unpaid fees, costs and other liability incurred by or on behalf of the Lessor (and any Receiver, attorney or agent appointed by it);
- 9.2 second in paying the remuneration of any Receiver (as agreed between the Receiver and the Lessor);
- 9.3 third in or towards discharge of the Secured Liabilities in such order and manner as the Lessor determines; and
- 9.4 finally in paying any surplus to the Lessee or any other person entitled to it.

10. Appropriation

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

11. Suspense account

All monies received by the Lessor or a Receiver under this Deed may, at the discretion of the Lessor or Receiver, be credited to any suspense or securities realised account and shall bear interest at such rate, if any, as may be agreed in writing between the Lessor and the Lessee, and may be held in such account for so long as the Lessor or Receiver thinks fit.

12. Power of attorney

By way of security, the Lessee irrevocably appoints the Lessor and every Receiver separately to be the attorney of the Lessee and, in its name, on its behalf and as its act and deed following the occurrence of an Event of Default, to execute any documents and do any acts and things which:

- 12.1 the Lessee is required to execute and do under this Deed, including execute any document required by the Lessor under paragraph 6 of Schedule 2; and/or
- 12.2 any attorney may deem proper or desirable in exercising any of the powers, authorities and discretions conferred by this Deed or by law on the Lessor or any Receiver.

13. Ratification of acts of attorney

The Lessee ratifies and confirms, and agrees to ratify and confirm, anything which any of its attorneys may do in the proper and lawful exercise or purported exercise of all or any of the powers, authorities and discretions referred to in paragraph 12 of this Schedule 3.

**Schedule 4**  
**Form of letters to and from the Account Bank**

**Part 1. Form of notice to the Account Bank**

To: HSBC Bank plc (the "Account Bank")

From: Iceland Foods Limited (the "Lessee"), and

Banc of America Leasing & Capital, LLC (the "Lessor")

Date: January 2016

Dear Sirs,

**Charge over bank account dated January 2016 in respect of a bank account in the Lessee's name held with the Account Bank, with sort code [REDACTED] and account number [REDACTED] (the "Account") between the Lessee and the Lessor (the "Charge")**

We hereby give you notice that, pursuant to the Charge, the Lessee has charged by way of a fixed charge to the Lessor title to the Account, including all interest accrued or accruing in the future thereon and any monies of the Lessee with the Account Bank (however described, designated or numbered) which derive in whole or part from the Account or from any sum standing to the credit of the Account, and the beneficial interest and all other rights of the Lessee therein.

The Lessee and the Lessor irrevocably and unconditionally authorises and instructs you (notwithstanding any previous mandate or instructions of any kind which the Lessee may have given to you) to:

- hold the Account to the order of the Lessor;
- apply any monies standing to the credit of the Account as directed by the Lessor and to act on the instructions of the Lessor without any enquiry by you as to the justification or validity of such directions of instructions and not to act on the instructions of the Lessee in relation to the Account;
- disclose to the Lessor such information relating to the Account as it may from time to time require; and
- pay into the Account interest accruing to the Account and any other amounts payable by you in connection with the Account.

The Lessor shall, from time to time, provide you with a list of authorised signatories and specimen signatures for the purpose of the communication of instructions, notices or directions by the Lessor as set out above and you shall be entitled to rely upon the most recent list provided to you.

The Lessee and the Lessor confirm that:

- you may rely on any notice, instruction, direction, communication or other document or information believed by you to be genuine and correct which has been signed or communicated by the person by whom it purports to be signed and communication and you shall not be liable for the consequences such as you have no obligation whatsoever to verify the facts or matters stated therein as true and correct, including whether the terms of any agreement between the Lessor and the Lessee has been complied with or the making of any enquiry as to whether a security interest has become enforceable;
- to the extent that an instruction for withdrawal from the Account is given which would in your opinion cause the Account to be overdrawn you shall only transfer the outstanding cleared credit balance in the Account;
- you shall not be obliged to comply with any instructions received if due to circumstances which are not within your direct control, you are unable to comply with such instruction or to comply with those instructions should breach a court order or be contrary to applicable law or regulation;
- nothing will deem you to be a trustee or other fiduciary with respect to the Account and the relationship of you to us shall be that of banker and accountholder only; and
- any notice, communication, direction or instruction to be issued by the Lessor to the Account Bank pursuant to this notice shall be sent to the following recipients:

Name: Mr Steven Estill

Position: Relationship Director

Address: HSBC Bank plc, 4 Hardman Square, Spinningfields, Manchester, UK M3 3EB

Email: [stevenestill@hsbc.com](mailto:stevenestill@hsbc.com)

This notice may not be varied or revoked without the Lessor's prior written consent.

This notice may be executed in any number of counterparts and by each party on a separate counterpart each of which counterparts when so executed and delivered shall be an original but all such counterparts shall together constitute one and the same instrument.

This notice shall be governed by and construed in accordance with the laws of England and Wales.

Please confirm your agreement to the above by sending the attached acknowledgement to the Lessor at the following address, with a copy to the Lessee:

Address: One Financial Plaza, 2nd Floor, Providence, RI 02903 USA



Attention: Director of Aircraft, Operations

Fax: +1 401-278-7941

Yours faithfully,

For and on behalf of **Iceland Foods Limited**

Signed.....

For and on behalf of **Banc of America Leasing & Capital, LLC**

Signed.....

**Part 2. Form of acknowledgement of the Account Bank**

[On the letterhead of HSBC Bank plc]

To: Iceland Foods Limited (the “**Lessee**”), and  
Banc of America Leasing & Capital, LLC (the “**Lessor**”)

From: HSBC Bank plc (the “**Account Bank**”)

Date:

Dear Sirs,

**Charge over bank account dated** January 2016 **in respect of a bank account in the Lessee’s name held with the Account Bank, with sort code** [REDACTED] **and account number** [REDACTED] **(the “Account”) between the Lessee and the Lessor (the “Charge”)**

We hereby acknowledge receipt of a notice (“**Notice**”) dated January 2016 addressed to us by the Lessee and the Lessor relating to the Charge. We confirm that:

- We accept the authorisations and instructions contained in the Notice and we undertake to act in accordance and comply with the terms of the Notice.
- We hereby consent to the Charge and to the extent that there are any terms or conditions applicable to the Account which would prevent the Charge taking effect over the Account we hereby waive and dis-apply such terms and conditions.
- Until we are notified in writing by Lessor that the Charge has been released we shall neither claim nor exercise any charge, any rights of counter-claim, rights of set-off or any other rights which we may have against the Lessee including (i) our right of combination as between the Account and any other accounts held in the name of the Lessee only, and (ii) our right of set-off in respect of our costs and charges in connection with the opening, maintenance and operation of the Account pursuant to the mandates held by us and/or any applicable terms and conditions in respect of the Account.

We have not, as at the date hereof, received notice of any other charge or encumbrance over the Account. This acknowledgement shall be governed by and construed in accordance with the laws of England and Wales.

For and on behalf of

.....  
**HSBC Bank plc**

IN WITNESS WHEREOF, the parties hereto have caused this Deed to be duly executed as a deed as of the date first written above by their respective officers thereunto duly authorized.

Lessor:

**BANC OF AMERICA LEASING &  
CAPITAL, LLC**

Executed as a Deed

By: 

Title: *Senior Vice President*  
Name: *Rhonda Maggiano*

in the presence of:

Name:  *Margaret Ciborowski*

Address: *3400 Pawtucket Ave  
Riverside RI 02915*

Occupation:  
*Contract Management  
Document Officer*

Lessee:

**ICELAND FOODS  
LIMITED**

Executed as a Deed

By: \_\_\_\_\_

Title:  
Name:

in the presence of:

Name:

Address:

Occupation

IN WITNESS WHEREOF, the parties hereto have caused this Deed to be duly executed as a deed as of the date first written above by their respective officers thereunto duly authorized.

Lessor:

**BANC OF AMERICA LEASING &  
CAPITAL, LLC**

Executed as a Deed

By: \_\_\_\_\_

Title:

Name:

in the presence of:

Name:

Address:

Occupation:

Lessee:

**ICELAND FOODS  
LIMITED**

Executed as a Deed

By: \_\_\_\_\_

Title:

Name:

in the presence of:

Name:

Address:

Occupation

*DIRECTOR*

*DUNCAN VAUGHAN*

*SECOND AVENUE, DEESIDE*

*INDUSTRIAL PARK, CH5 2NW*

*COMPANY SECRETARY*