



**Registration of a Charge**

Company Name: **TATA CHEMICALS EUROPE LIMITED**

Company Number: **02607081**



XC8OHGV4

Received for filing in Electronic Format on the: **27/07/2023**

**Details of Charge**

Date of creation: **13/07/2023**

Charge code: **0260 7081 0018**

Persons entitled: **INOVYN ENTERPRISES LIMITED**

Brief description: **THE PROPERTY COMPRISED IN THE WHOLE OF TITLE NUMBER CH520715 AND PART OF TITLE NUMBER CH345675 AS SHOWN EDGED RED ON THE PLAN (EXCLUDING THE PART EDGED BLUE ON THE PLAN).**

**Contains fixed charge(s).**

**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 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: **CSILLA GYORI**



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

Company number: 2607081

Charge code: 0260 7081 0018

The Registrar of Companies for England and Wales hereby certifies that a charge dated 13th July 2023 and created by TATA CHEMICALS EUROPE LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 27th July 2023 .

Given at Companies House, Cardiff on 27th July 2023

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**

We certify this document as a true copy of the original

EXECUTION VERSION

*Eversheds Sutherland (International) LLP*

Date: *25 July 2023*

Eversheds Sutherland (International) LLP

Dated *13 July 2023*

**TATA CHEMICALS EUROPE LIMITED**  
as Chargor

**NOVYN ENTERPRISES LIMITED**  
as Chargee

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**CHARGE BY WAY OF LEGAL  
MORTGAGE**

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This Deed is made on

2023

Between

- (1) **TATA CHEMICALS EUROPE LIMITED** (registered in England with company number 02607081) whose registered office is at Natrium House, Winnington Lane, Northwich Cheshire CW8 4GW (**Chargor**); and
- (2) **INOVYN ENTERPRISES LIMITED** (registered in England with company number 04651437) whose registered office is at Bankes Lane Office, Bankes Lane, PO Box 9, Runcorn Cheshire WA7 4JE (**Chargee**).

It is agreed

## 1 Definitions and interpretation

### 1.1 Definitions

In this Deed:

**Authorisation** means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation

**BMPF Trustees** means the trustees for the time being of the Scheme

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for general business in London

**Collaboration Agreement** means the collaboration agreement dated on or about the date of this Deed and made between the Chargor (1), the Chargee (2) and Gladman Developments Limited (3)

**Delegate** means any delegate, agent, attorney or co-trustee appointed by the Chargee

**Enabling Works** means the enabling works agreement dated on or about the date of this Deed and made between the Chargor (1) and the Chargee (2)

**Event of Default** means any event or circumstance specified as such in Clause 11 (*Events of Default*)

**Fixtures** means, in respect of the Property, all fixtures and fittings (including trade fixtures and fittings) and fixed plant and machinery now or at any time after the date of this Deed on the Property

**Intercreditor Deed** means the intercreditor deed dated on or about the date of this Deed relating to the ranking of security and distribution of certain proceeds made between BMPF Trustees (1), the Chargor (2), the Chargee (3) and Gladman Developments Limited (4)

**Land Receipts** has the meaning given to such term in the Intercreditor Deed

**Legal Reservations** means:

- (a) the principle that equitable remedies are remedies which may be granted or refused at the discretion of a court, the principle of reasonableness and fairness, the limitation of validity or enforcement by laws relating to bankruptcy, insolvency, judicial management,

liquidation, reorganisation, court schemes, moratoria, administration and other laws generally affecting the rights of creditors

- (b) the time barring of claims under any applicable laws of limitation (including without limitation the Limitation Acts), the possibility that an undertaking to assume liability for or to indemnify a person against non-payment of stamp duty may be void and defences of set off or counterclaim
- (c) the principle that in certain circumstances security granted by way of fixed charge may be re characterised as a floating charge or that security purported to be constituted as an assignment may be re characterised as a floating charge
- (d) the principle that additional interest imposed pursuant to any relevant agreement may be held to be unenforceable on the grounds that it is a penalty and thus void
- (e) the principle that a court may not give effect to an indemnity for legal costs incurred by an unsuccessful litigant
- (f) the principle that the creation or purported creation of security over any contract or agreement which is subject to a prohibition on transfer, assignment or charging may be void, ineffective or invalid and may give rise to a breach of the contract or agreement over which security has purportedly been created
- (g) the limitation of the enforcement of the terms of leases of real property by laws of general application to those leases and
- (h) similar principles, rights and defences under the laws of any Relevant Jurisdiction

**Limitation Acts** means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984

**Material Adverse Effect** means a material adverse effect on:

- (a) the ability of the Chargor to perform its payment obligations under this Deed or the Intercreditor Deed; or
- (b) subject to the Legal Reservations and the Perfection Requirements, the validity or enforceability of, or the effectiveness or ranking of this Deed or the rights or remedies of the Chargee under this Deed or the Intercreditor Deed

**Original Jurisdiction** means, in relation to the Chargor, the jurisdiction under whose laws it is incorporated as at the date of this Deed

**Party** means a party to this Deed

**Perfection Requirements** means the making or the procuring of the necessary registrations, filings, endorsements, notarisations, stamping or notifications of this Deed as specifically contemplated by this Deed and/or necessary for the validity, enforceability, perfection, priority or enforcement of the Security created hereunder

**Permitted Disposal** means any sale, lease, licence, transfer or other disposal of land at the Property pursuant to the terms of the Intercreditor Deed

**Permitted Security** means:

(a) the legal charge dated 1 February 2021 given by the Chargor to the BMPF Trustees in the form attached;

(b) the legal charge dated 29 March 2019 given by the Chargor to the BMPF Trustees in the form attached; and

(c) the legal charge dated *13 July* 2023 given by the Chargor to Gladman Developments Limited in the form attached.

**Property** means the property described in Schedule 1

**Receiver** means any receiver, manager or administrative receiver appointed by the Chargee in respect of the Chargor or the Property

**Relevant Jurisdiction** means, in relation to the Chargor:

- (a) its Original Jurisdiction;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Security created by this Deed is situated;
- (c) any jurisdiction where it conducts its business

**Scheme** means the Brunner Mond Pension Fund governed by a trust deed and rules dated 21 February 2002 as amended from time to time

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

**Secured Assets** means the assets and undertaking of the Chargor which are the subject of any Security created by, under or supplemental to, this Deed, in favour of the Chargee

**Secured Obligations** means all monies and liabilities now or after the date of this deed due owing or incurred by the Chargor to the Chargee, (i) pursuant to this Deed, (ii) pursuant to the Intercreditor Deed, (iii) pursuant to the Enabling Works Agreement and (iv) pursuant to the the Collaboration Agreement, in any manner and in any currency or currencies and whether present or future, actual or contingent, whether incurred solely or jointly with any other person and whether as principal or surety together with all interest accruing on such monies and liabilities and all costs, charges and expenses incurred by the Chargee under this Deed

**Security Period** means the period beginning on the date of this Deed and ending on the date upon which the Secured Obligations have been irrevocably and unconditionally satisfied in full

**Subsidiary** means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006

**Termination Event** means the termination of the Collaboration Agreement and/or the Enabling Works Agreement in accordance with their terms

**Transaction Documents** means:

- (a) this Deed;
- (b) the Enabling Works Agreement;

- (c) the Intercreditor Deed; and
- (d) the Collaboration Agreement

## 1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Deed to:
  - (i) the "**Chargor**" and the "**Chargee**" or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under this Deed and/or the Enabling Works Agreement and/or the Collaboration Agreement (but subject to the Intercreditor Deed);
  - (ii) a document in "**agreed form**" is a document which is previously agreed in writing by or on behalf of the Chargee and the Chargor or, if not so agreed, is in the form specified by the Chargee;
  - (iii) "**assets**" includes present and future properties, revenues and rights of every description;
  - (iv) "**disposal**" includes a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary, and "**dispose**" will be construed accordingly;
  - (v) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (vi) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership or other entity (whether or not having separate legal personality);
  - (vii) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
  - (viii) a provision of law is a reference to that provision as amended or re-enacted; and
  - (ix) a time of day is a reference to London time.
- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) An Event of Default is "**continuing**" if it has not been remedied or waived.

## 1.3 Third party rights

- (a) Unless expressly provided to the contrary in this Deed, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed or any other document issued or entered into under or in connection with it but this does not affect any right or remedy of a third party which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.



- (b) Unless expressly provided to the contrary in this Deed the consent of any person who is not a Party is not required to rescind or vary this Deed or any other document entered into under or in connection with it.

#### **1.4 Administration**

- (a) Any reference in this Deed, to the making of an administration order shall be treated as including a reference to the appointment of an administrator under paragraph 14 (by the holder of a qualifying floating charge in respect of the Chargor's assets) or 22 (by the Chargor or the directors of the Chargor) of Schedule B1 to the Insolvency Act 1986 or any steps taken toward such order or appointment.
- (b) Any reference in this Deed, to making an application for an administration order by petition shall be treated as including a reference to making an administration application to the court under Schedule B1 to the Insolvency Act 1986, appointing an administrator under paragraph 14 or 22 of that Schedule, or giving notice under paragraph 15 or 26 of that Schedule of intention to appoint an administrator or any steps taken towards such application or notice.

### **2 Charging provisions**

#### **2.1 General**

All Security created by the Chargor under clauses 2.2 to 2.3 inclusive is:

- (a) a continuing security for the payment and discharge of the Secured Obligations;
- (b) granted with full title guarantee;
- (c) granted in respect of all the right, title and interest (if any), present and future, of the Chargor in and to the Property; and
- (d) granted in favour of the Chargee.

#### **2.2 First legal mortgage**

The Chargor charges by way of first legal mortgage the Property and all Fixtures on the Property (subject to the terms of the Intercreditor Deed).

#### **2.3 First fixed charges**

The Chargor charges by way of first fixed charge (subject to the terms of the Intercreditor Deed):

- (a) the proceeds of sale of the Property and all licences to enter on or use the Property;
- (b) the benefit of all other agreements, instruments and rights relating to the Property; and
- (c) to the extent that any legal mortgage in clause 2.2 is ineffective as a legal mortgage, the assets referred to in that clause.

#### **2.4 Small company moratorium**

Where the Chargor is an eligible company within the meaning of paragraphs 2 to 4 (inclusive) of Schedule A1 to the Insolvency Act 1986, then the obtaining of a moratorium, including any preliminary decision, or investigation in terms of paragraph 43 of Schedule A1 to the Insolvency

Act 1986 shall not cause restrictions which would not otherwise apply to be imposed on the disposal of its property and assets by the Chargor.

### **3 Continuing security**

#### **3.1 Continuing security**

The Security constituted by this Deed shall be continuing security and shall remain in full force and effect regardless of any intermediate payment or discharge by the Chargor or any other person of the whole or any part of the Secured Obligations.

#### **3.2 Recourse**

The Security constituted by this Deed:

- (a) is in addition to any other Security which the Chargee may hold at any time for the Secured Obligations (or any of them); and
- (b) may be enforced without first having recourse to any other rights of the Chargee.

### **4 Negative pledge**

4.1 The Chargor shall not create or permit to subsist any Security over any of the Property (other than the Permitted Security and other than any Security constituted under this Deed).

4.2 The Chargor shall not:

- (a) sell, transfer or otherwise dispose of the Property on terms whereby they are or may be leased to or re-acquired by it; or
- (b) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising indebtedness or of financing the acquisition of an asset.

### **5 Restrictions on disposals**

5.1 The Chargor shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary sell, assign, transfer, licence, lease or otherwise dispose of all or any part of, or any interest in the Property.

5.2 Clause 5.1 does not apply to any Permitted Disposal or the grant of any Permitted Security.

### **6 Notifiable events**

The Chargor shall promptly notify the Chargee upon becoming aware that any representation made or deemed to be made by the Chargor under this Deed is or proves to have been incorrect or misleading when made or deemed to be made.

### **7 Further assurance**

7.1 The Chargor shall promptly do all such acts and execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Chargee may reasonably specify (and in such form as the Chargee may reasonably require) in favour of the Chargee or its nominee(s):

- (a) to create, perfect, protect and maintain the Security created or intended to be created under or evidenced by this Deed or for the exercise of any rights, powers and remedies of the Chargee provided by or pursuant to this Deed or by law;
- (b) to confer on the Chargee Security over the Property intended to be conferred by or pursuant to this Deed; and/or
- (c) (if an Event of Default is continuing) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security created by or under this Deed.

7.2 The Chargor shall take all such action as is reasonably available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Chargee by or pursuant to this Deed.

7.3 Any document required to be executed by the Chargor under this clause 7 will be prepared at the cost of the Chargor.

## **8 Representations**

The Chargor makes the representations and warranties set out in this clause 8 to the Chargee on the date of this Deed and on each day during the Security Period.

### **8.1 Status**

- (a) It is a limited liability corporation, duly incorporated and validly existing under the law of its Original Jurisdiction.
- (b) It has the power to own its assets and carry on its business as it is being conducted.

### **8.2 Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, this Deed and the granting of the Security constituted by this Deed, will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any material agreement or instrument binding upon it or any of its material assets or constitute a default or termination event (however described) under any such agreement or instrument.

### **8.3 Power and authority**

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Deed to which it is or will be a party and the transactions contemplated by this Deed.

- (b) No limit on its powers will be exceeded as a result of the grant of this Deed.

#### 8.4 Legal Validity

Subject to the Legal Reservations and Perfection Requirements, the obligations expressed to be assumed by it in this Deed are legal, binding, valid and enforceable obligations.

#### 8.5 No Default

No event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of the foregoing, would constitute) a default or termination event (howsoever described) under any document which is binding on it or any of its assets to an extent or in a manner which has or is reasonably likely to have a Material Adverse Effect.

#### 8.6 Authorisations

All authorisations required by it in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, this Deed have been obtained or effected (as appropriate) and are in full force and effect to the extent that a failure to do so would have or is reasonably likely to have a Material Adverse Effect.

#### 8.7 Litigation

No litigation, arbitration or administrative proceedings are current or, to its knowledge, pending or threatened against it, which have or, if adversely determined, are reasonably likely to have a Material Adverse Effect.

#### 8.8 Nature of Security

- (a) This Deed creates the Security it purports to create and is not liable to be amended or otherwise set aside in the insolvency, liquidation or administration of the Chargor or otherwise.
- (b) The Security created by this Deed constitutes Security of the type described over the Property and the Property is not subject to any prior or pari passu Security other than Permitted Security.

### 9 Land Registry

#### 9.1 Application for restriction

- (a) In relation to land and buildings comprised within the Property situated in England and Wales title to which is registered or is to be registered at the Land Registry, the Chargor consents to an application being made to the Chief Land Registrar for registration of a restriction on the register of title of all such present and future registered freehold, leasehold or commonhold property (and any unregistered properties subject to compulsory first registration at the date of this Deed) in the form set out below:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated [♦] in favour of [♦] from time to time referred to in the charges register."

- (b) The Chargor confirms that so far as any of the Property is unregistered, such land is not affected by any disclosable overriding interests within the meaning of the Land Registration Act 2002 or the Land Registration Rules 2003.

## 10 Security power of attorney

- (a) The Chargor, by way of security, irrevocably and severally appoints the Chargee, each Receiver and any of their delegates or sub-delegates to be its attorney to take any action which the Chargor is obliged to take under this Deed. The Chargor ratifies and confirms whatever any attorney lawfully does or purports to do pursuant to its appointment under this clause 10.
- (b) The Chargee, any Receiver or any Delegate shall only be able to exercise a power of attorney under this Deed:
  - (i) following the occurrence of an Event of Default that is continuing; or
  - (ii) if the Chargor has failed to comply with a further assurance or perfection obligation (or any of them) under this Deed, within 10 Business Days of being notified of such failure and being requested to comply provided that the exercise of such power of attorney shall only be used to remedy the Chargor's failure to so comply.

## 11 Events of Default

Each of the events or circumstances set out in this Clause 11 is an Event of Default.

### 11.1 Non-Compliance

- (a) The Chargor fails to comply with any provision of this Deed unless the failure to comply is capable of remedy and is remedied within 14 days of the earlier of the Chargee giving notice to the Chargor and the Chargor becoming aware of the failure to comply.
- (b) The Chargor fails to pay a Land Receipt when due in accordance with the terms of the Intercreditor Deed, unless such failure to pay is caused by an administrative or technical error and payment is made within 14 days of the Chargor becoming aware that it is past its due date.

### 11.2 Misrepresentation

Any representation or statement made or deemed to be made by the Chargor in this Deed is or proves to have been incorrect or misleading in any material respect when made or deemed to be made (**Misrepresentation**), unless such Misrepresentation:

- (a) is capable of remedy; and
- (b) is remedied within fourteen (14) days of the earlier of:
  - (i) the Chargee giving notice of such Misrepresentation; and
  - (ii) the Chargor becoming aware of the circumstances giving rise to such Misrepresentation.

### 11.3 Insolvency

- (a) The Chargor:
  - (i) is unable or admits inability to pay its debts as they fall due;
  - (ii) by reason of actual or anticipated financial difficulties, suspends or threatens to suspend making payments on any of its debts; or
  - (iii) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- (b) A moratorium is declared in respect of any indebtedness of the Chargor.
- (c) No Event of Default will occur under this Clause 11.3 if any of the events or circumstances in (a) or (b) occur in relation to an amount owing by the Chargor that is equal to or less than £1,000,000 (or its equivalent).

#### 11.4 Insolvency Proceedings

- (a) Any corporate action, legal proceedings or other procedure is taken in relation to:
  - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Chargor;
  - (ii) a composition, compromise, assignment or arrangement with any creditor of the Chargor in connection with or as a result of any financial difficulty on the part of the Chargor;
  - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Chargor or any of its assets; or
  - (iv) enforcement of any Security over any asset or assets of the Chargor where such assets have an aggregate value of at least £1,000,000 (or its equivalent),
 or any analogous procedure or step is taken in any jurisdiction.
- (b) Paragraph (a) above shall not apply to:
  - (i) any corporate action, legal proceedings or other procedure or step which relates to an amount that is equal to or less than £1,000,000 (or its equivalent); or
  - (ii) any proceedings which are being contested in good faith.

**11.5 Creditors' Process**

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of the Chargor having an aggregate value of at least £1,000,000 (or its equivalent) unless it is being contested in good faith.

**11.6 Cessation of business**

The Chargor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business except as a result of any disposal allowed under this Deed.

**11.7 Unlawfulness and invalidity**

- (a) It is or becomes unlawful for the Chargor to perform any of its obligations under the Transaction Documents or the Security created or expressed to be created or evidenced by this Deed ceases to be effective or becomes unlawful.
- (b) Any obligation or obligations of the Chargor under any Transaction Document are not or cease (subject to the Legal Reservations and Perfection Requirements) to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Chargee under the Transaction Documents.
- (c) Any Transaction Document ceases to be in full force and effect or ceases (subject to the Legal Reservations and Perfection Requirements) to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than the Chargee) to be ineffective.

**11.8 Repudiation and rescission of this charge**

The Chargor rescinds or purports to rescind or repudiates any Transaction Document or evidences an intention to rescind or repudiate any Transaction Document.

**11.9 Material adverse change**

- (a) Any event or circumstance occurs which in the reasonable opinion of the Chargee, has or is reasonably likely to have a Material Adverse Effect.
- (b) The occurrence of a Termination Event.

**12 Enforcement of security****12.1 When security is enforceable**

On the occurrence of any Event of Default which is continuing, the Security created by and under this Deed is immediately enforceable.

**12.2 Acts of enforcement**

The Chargee may, at their absolute discretion, at any time after the Security created by or under this Deed is enforceable:

- (a) enforce all or any part of the Security created by or under this Deed in any manner they see fit;

- (b) exercise their rights and powers conferred upon mortgagees by the Law of Property Act 1925, as varied and extended by this Deed, and rights and powers conferred on a Receiver by this Deed, whether or not they have taken possession or appointed a Receiver to the Property;
- (c) appoint a Receiver to all or any part of the Property;
- (d) if permitted by law, appoint an administrator in respect of the Chargor and take any steps to do so;
- (e) exercise their power of sale under section 101 of the Law of Property Act 1925 (as amended by this Deed); or
- (f) if permitted by law, appoint an administrative receiver in respect of the Chargor.

### 12.3 Statutory powers - general

- (a) For the purposes of all powers implied by statute, the Secured Obligations are deemed to have become due and payable on the date of this Deed.
- (b) Section 103 of the Law of Property Act 1925 and section 93 of the Law of Property Act 1925 do not apply to the Security constituted by or under this Deed.
- (c) The statutory powers of leasing conferred on the Chargee are extended so that, without the need to comply with any provision of section 99 or section 100 of the Law of Property Act 1925, the Chargee is empowered to lease and make agreements for lease at a premium or otherwise, accept surrenders of leases and grant options or vary or reduce any sum payable under any leases or tenancy agreements as it may think fit.
- (d) Each Receiver and the Chargee is entitled to all the rights, powers, privileges and immunities conferred by the Law of Property Act 1925 and the Insolvency Act 1986 on mortgagees and Receivers.

### 12.4 Mortgagee in possession - no liability

Neither the Chargee nor any Receiver will be liable, by reason of entering into possession of the Property, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might otherwise be liable.

### 12.5 Redemption of prior mortgages

At any time after the Security created by or under this Deed has become enforceable, the Chargee may, at the sole cost of the Chargor (payable to the Chargee on demand):

- (a) redeem any prior form of Security over the Property; and/or
- (b) procure the transfer of that Security to itself; and/or
- (c) settle and pass the accounts of any prior mortgagee, chargee or encumbrancer which once so settled and passed shall be conclusive and binding on the Chargor.



## 13 Receiver

### 13.1 Appointment of Receiver

#### (a)

- (i) At any time after any Security created by or under this Deed is enforceable, the Chargee may appoint a Receiver to all or any part of the Property in accordance with clause 12.2(c) (Acts of enforcement).
- (ii) At any time, if so requested in writing by the Chargor, without further notice, the Chargee may appoint a Receiver to all or any part of the Property as if the Chargee had become entitled under the Law of Property Act 1925 to exercise the power of sale conferred under the Law of Property Act 1925.

- (b) Any Receiver appointed under this Deed shall be the agent of the Chargor and the Chargor shall be solely responsible for his acts or defaults and for his remuneration and liable on any contracts or engagements made or entered into by him and in no circumstances whatsoever shall the Chargee be in any way responsible for any misconduct, negligence or default of the Receiver.

- (c) Where the Chargor is an eligible company within the meaning of paragraphs 2 to 4 (inclusive) of Schedule A1 to the Insolvency Act 1986:

- (i) obtaining a moratorium, or
- (ii) anything done with a view to obtaining a moratorium including any preliminary decision or investigation in terms of paragraph 43 of Schedule A1 to the Insolvency Act 1986,

shall not be grounds for appointment of a Receiver.

### 13.2 Removal

The Chargee may by written notice remove from time to time any Receiver appointed by them (subject to the provisions of section 45 of the Insolvency Act 1986 in the case of an administrative receiver) and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated.

### 13.3 Powers of Receiver

#### (a) General

- (i) In addition to those conferred by the Law of Property Act 1925 on any Receiver appointed under that Act, each Receiver has, and is entitled to exercise, all of the rights, powers and discretions set out in this clause 13.3.
- (ii) If there is more than one Receiver holding office at the same time, unless the document appointing him states otherwise, each Receiver may exercise all of the powers conferred on a Receiver under this Deed or under the Insolvency Act 1986 individually and to the exclusion of any other Receivers.
- (iii) A Receiver of the Chargor has all the rights, powers and discretions of an administrative receiver under the Insolvency Act 1986.

- (iv) A Receiver may, in the name of the Chargor:
  - (A) do all other acts and things which he may consider expedient for realising the Property; and
  - (B) exercise in relation to the Property all the powers, authorities and things which he would be capable of exercising if he were its absolute beneficial owner.

(b) Borrow money

A Receiver may raise and borrow money (either unsecured or on the security of the Property, either in priority to the security constituted by this Deed or otherwise) on any terms and for whatever purpose which he thinks fit. No person lending that money need enquire as to the propriety or purpose of the exercise of that power or to check the application of any money so raised or borrowed.

(c) Carry on business

A Receiver may carry on the business of the Chargor as he thinks fit and, for the avoidance of doubt, a Receiver may apply for such Authorisations as he considers in his absolute discretion appropriate.

(d) Compromise

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Chargor or relating in any way to the Property.

(e) Delegation

A Receiver may delegate his powers in accordance with clause 14 (Delegation).

(f) Employees

For the purposes of this Deed, a Receiver as he thinks appropriate, on behalf of the Chargor or for itself as Receiver, may:

- (i) appoint and discharge managers, officers, agents, accountants, servants, workmen and others upon such terms as to remuneration or otherwise as he may think proper; and
- (ii) discharge any such persons appointed by the Chargor.

(g) Leases

A Receiver may let the Property for any term and at any rent (with or without a premium) which he thinks proper and may accept a surrender of any lease or tenancy of the Property on any terms which he thinks fit (including the payment of money to a lessee or tenant on a surrender).

(h) Legal actions

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings or submit to arbitration or any form of alternative dispute resolution in the name of the Chargor in relation to the Property as he considers expedient.

(i) Possession

A Receiver may take immediate possession of, get in and collect the Property.

(j) Protection of assets

A Receiver may, in each case as he may think fit:

- (i) make and effect all repairs and insurances and do all other acts which the Chargor might do in the ordinary conduct of its business be they for the protection or for the improvement of the Property;
- (ii) commence and/or complete any building operations on the Property; and
- (iii) apply for and maintain any planning permission, building regulation approval or any other permission, consent or licence.

(k) Receipts

A Receiver may give valid receipts for all monies and execute all assurances and things which may be expedient for realising the Property.

(l) Sale of assets

A Receiver may sell, exchange, convert into monies and realise the Property by public auction or private contract in any manner and on any terms which he thinks proper. The consideration for any such transaction may consist of cash, debenture or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over such period as he thinks fit. Fixtures and any plant and machinery annexed to any part of the Property may be severed and sold separately from the property containing them without the consent of the Chargor.

(m) Subsidiaries

A Receiver may form a Subsidiary of the Chargor and transfer to that Subsidiary the Property.

(n) Deal with the Property

A Receiver may, without restriction sell, let or lease, or concur in selling, letting or leasing, or vary the terms of, determine, surrender or accept surrenders of, leases or tenancies of, or grant options and licences over or otherwise dispose of or deal with, all or any part of the Property without being responsible for loss or damage, and so that any such sale, lease or disposition may be made for cash payable by instalments, loan stock or other debt obligations or for shares or securities of another company or other valuable consideration. The Receiver may form and promote, or concur in forming and promoting, a company or companies to purchase, lease, licence or otherwise acquire interests in all or any part of the Property or otherwise, arrange for such companies to trade or cease to trade and to purchase, lease, license or otherwise acquire all or any

part of the Property on such terms and conditions whether or not including payment by instalments secured or unsecured as he may think fit.

(o) Security

A Receiver may redeem any prior Security and settle and pass the accounts of the person entitled to the prior Security so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on the Chargor and the money so paid shall be deemed to be an expense properly incurred by the Receiver.

(p) Acquire land

The Receiver may purchase or acquire any land and purchase, acquire or grant any interest in or right over land.

(q) Development

A Receiver may implement or continue the development of (and obtain all consents required in connection therewith) and/or complete any buildings or structures on, any real property comprised in the Property and do all acts and things incidental to the Property.

(r) Landlord's obligations

A Receiver may on behalf of the Chargor and without consent of or notice to the Chargor exercise all the powers conferred on a landlord or a tenant by the Landlord and Tenants Acts, the Rents Acts and Housing Acts or any other legislation from time to time in force in any relevant jurisdiction relating to rents or agriculture in respect of any part of the Property.

(s) Uncalled capital

A Receiver may make calls conditionally or unconditionally on the members of the Chargor in respect of uncalled capital.

(t) Incidental matters

A Receiver may do all other acts and things including without limitation, signing and executing all documents and deeds as may be considered by the Receiver to be incidental or conducive to any of the matters or powers listed here or granted by law or otherwise incidental or conducive to the preservation, improvement or realisation of the Property and to use the name of the Chargor for all the purposes set out in this clause 13.

#### 13.4 Remuneration

The Chargee may from time to time fix the remuneration of any Receiver appointed by it.

#### 14 Delegation

- 14.1 The Chargee and any Receiver may delegate by power of attorney or in any other manner all or any of the powers, authorities and discretions which are for the time being exercisable by the Chargee and the Receiver (as appropriate) under this Deed to any person or persons as it shall think fit. Any such delegation may be made upon such terms and conditions (including the power to sub-delegate) as the Chargee and Receiver (as appropriate) may think fit.

- 14.2 The Chargee and any Receiver will not be liable or responsible to the Chargor or any other person for any losses, liabilities or expenses arising from any act, default, omission or misconduct on the part of any delegate.

## **15 Application of monies**

- 15.1 Sections 109(6) and (8) (Appointment, powers, remuneration and duties of receiver) of the Law of Property Act 1925 shall not apply to a Receiver appointed under this Deed.
- 15.2 All monies received by the Chargee or any Receiver under this Deed shall be applied in the following order:
- (a) in discharging any sums owing to the Chargee, any Receiver or any Delegate;
  - (b) in payment of all costs and expenses incurred by the Chargee in connection with any realisation or enforcement of this Deed;
  - (c) in or toward payment of the Secured Obligations; and
  - (d) the balance (if any) will be applied as required by law.
- 15.3 The Chargee and any Receiver may place any money received, recovered or realised pursuant to this Deed in an interest bearing suspense account and it may retain the same for such period as it considers expedient without having any obligation to apply the same or any part of it in or towards discharge of the Secured Obligations.

## **16 Remedies and waivers**

- 16.1 No failure to exercise, nor any delay in exercising, on the part of the Chargee or any Receiver, any right or remedy under this Deed shall operate as a waiver or any such right or remedy or constitute an election to affirm this Deed. No election to affirm this Deed on the part of the Chargee or any Receiver shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.
- 16.2 A waiver given or consent granted by the Chargee or any Receiver under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

## **17 Protection of third parties**

- 17.1 No person (including a purchaser) dealing with the Chargee or a Receiver or its or his agents has an obligation to enquire of the Chargee, Receiver or others:
- (a) whether the Secured Obligations have become payable;
  - (b) whether any power purported to be exercised has become exercisable;
  - (c) whether any Secured Obligations or other monies remain outstanding;
  - (d) how any monies paid to the Chargee or to the Receiver shall be applied; or
  - (e) the status, propriety or validity of the acts of the Receiver or the Chargee.

17.2 The receipt of the Chargee or any Receiver shall be an absolute and a conclusive discharge to a purchaser and shall relieve him of any obligation to see to the application of any monies paid to or by the direction of the Chargee or any Receiver.

17.3 In clauses 17.1 and 17.2 **purchaser** includes any person acquiring, for money or monies worth, any lease of, or Security over, or any other interest or right whatsoever in relation to, the Property.

## 18 Additional security

The Security created by or under this Deed is in addition to and is not in any way prejudiced by any guarantee or security now or subsequently held by the Chargee.

## 19 Settlements conditional

19.1 If the Chargee (acting reasonably) believes that any amount paid by the Chargor or any other person in respect of the Secured Obligations is capable of being avoided or set aside for any reason, then for the purposes of this Deed, such amount shall not be considered to have been paid.

19.2 Any settlement, discharge or release between the Chargor and the Chargee shall be conditional upon no Security or payment to or for the Chargee by the Chargor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any law relating to bankruptcy, insolvency or liquidation or otherwise.

## 20 Subsequent Security

If the Chargee receives notice of any other subsequent Security or other interest affecting all or any part of the Property it may open a new account or accounts for the Chargor in its books. If they do not do so then, unless they give express written notice to the contrary to the Chargor, as from the time of receipt of such notice by the Chargee, all payments made by the Chargor to the Chargee shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations.

## 21 Notices

### 21.1 Communications in writing

Any communication to be made under or in connection with this Deed shall be made in writing and, unless otherwise stated, may be made by letter but not by fax.

### 21.2 Addresses

The address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Deed is that identified with its name below or any substitute address or department or officer as one Party may notify to the other Party by not less than 5 Business Days' notice.

### 21.3 Delivery

(a) Any communication or document made or delivered by 1 person to another under or in connection with this Deed will only be effective if by way of letter, when it has been left at the relevant address or 5 Business Days after being deposited in the post postage

prepaid in an envelope addressed to it at that address and, if a particular department or officer is specified as part of its address details provided under clause 21.2, if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Chargee will be effective only when actually received by the Chargee and then only if it is expressly marked for the attention of the department or officer identified with the Chargee's signature below (or any substitute department or officer as the Chargee shall specify for this purpose).
- (c) Any communication or document which becomes effective, in accordance with clause 21.3(a) and/or clause 21.3(b) after 5.00 pm in the place of receipt shall be deemed only to become effective on the following day.

## **22 Partial invalidity**

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## **23 Releases**

- (a) Upon expiry of the Security Period, the Chargee shall, at the request and reasonable cost of the Chargor, take whatever action is necessary to release and reassign to the Chargor:
  - (i) its rights arising under this Deed;
  - (ii) the Secured Assets from the Security created by and under this Deed,
 and return all documents or deeds of title delivered to the Chargee under this Deed.
- (b) If the Chargor disposes of any Secured Asset or any part of any Secured Asset where such disposal is a Permitted Disposal or otherwise made with the prior written consent of the Chargee, the Chargee shall promptly release the relevant asset from the Security created by and under this Deed and return all documents or deeds of title relating to the relevant asset delivered to the Chargee under this Deed.

## **24 Counterparts**

This Deed or any document entered into under or in connection with this Deed may be executed in any number of counterparts, and by each Party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument.

## **25 Governing law**

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

**26 Enforcement****26.1 Jurisdiction of English courts**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (**Dispute**).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This clause 26 is for the benefit of the Chargee. As a result, the Chargee shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Chargee may take concurrent proceedings in any number of jurisdictions.

**26.2 Service of process**

- (a) The Civil Procedure Rules regarding service and deemed service will not apply to any letter or other communication notifying a claim or serving legal proceedings under or in connection with this Deed, which shall instead be served in accordance with this clause 26.2.
- (b) Any letter or other communication notifying a claim or serving legal proceedings under or in connection with this Deed may not be made by way of fax and must be made pursuant to clauses 21 (Notices) of this Deed.

**This Deed** has been signed on behalf of the Chargee and executed as a deed by the Chargor and is delivered on the date given at the beginning of this Deed.



**Schedule 1**

**Property**

**Registered Land**

The property comprised in:

1. the whole of title number CH520715 and
2. part of title number CH345675 as shown edged red on the Plan (excluding the part edged blue on the Plan)

**Appendix 1**  
**Site Plan**



## SIGNATORIES TO THE DEED

## The Chargor

Executed as a deed by  
**TATA CHEMICALS EUROPE LIMITED**  
acting by a director in the presence of

  
Signature of witness

Name ..... **ADDLESHAW GODDARD LLP**  
Address ..... **ONE ST. PETER'S SQUARE**  
..... **MANCHESTER**  
..... **M2 3DE**

Address: Natrium House,  
Winnington Lane,  
Northwich,  
Cheshire,  
CW8 4GW

Attention: Phil Evans

**The Chargee**

Executed as a deed by )  
**INOVYN ENTERPRISES LIMITED** ) .....  
acting by a director in the presence of ) Director

.....  
Signature of witness

Name .....

Address .....

.....

Address:   Banks Lane Office,  
              Banks Lane,  
              PO Box 9,  
              Runcorn  
              Cheshire WA7 4JE

Attention:   the INOVYN Estates Manager  
and the Brine and Water Estates Manager,  
Holdford Brinefields, Lostock Gralam Northwich  
Cheshire CW9 7TD; and Banks Lane Office,  
Banks Lane PO Box 9 Runcorn Cheshire WA7  
4JE; and Richard Nelson



**Registration of a Charge**

Company name: **TATA CHEMICALS EUROPE LIMITED**

Company number: **02607081**



X9Y5TC7D

Received for Electronic Filing: **12/02/2021**

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**Details of Charge**

Date of creation: **01/02/2021**

Charge code: **0260 7081 0016**

Persons entitled: **20-20 PENSION SERVICES LIMITED  
CRAIG THORNHILL  
KENNETH HUGH  
MADELEY BRAY**

**There are more than four persons entitled to the charge.**

Brief description: **THE WHOLE OF TITLE NUMBER CH520715 AND THE WHOLE OF TITLE  
NUMBER CH345675 (EXCLUDING THE PART EDGED AND HATCHED  
RED ON THE PLAN ATTACHED TO THE INSTRUMENT) AS MORE  
PARTICULARLY DESCRIBED IN SCHEDULE 1 OF THE INSTRUMENT.**

**Contains fixed charge(s).**

**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 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: **DAVID PARRY**



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

Company number: 2607081

Charge code: 0260 7081 0016

The Registrar of Companies for England and Wales hereby certifies that a charge dated 1st February 2021 and created by TATA CHEMICALS EUROPE LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 12th February 2021 .

Given at Companies House, Cardiff on 15th February 2021

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 1<sup>st</sup> FEBRUARY 2020 2021

**TATA CHEMICALS EUROPE LIMITED**  
as Chargor

**20-20 PENSION SERVICES LIMITED, CRAIG THORNHILL, KENNETH HUGH  
MADELEY BRAY, LESLIE DEREK WESTON AND RICHARD DIGGLE BEING THE  
TRUSTEES OF THE BRUNNER MOND PENSION FUND**  
as Trustees

---

**CHARGE BY WAY OF LEGAL  
MORTGAGE**

---

We certify this document as a true copy of the  
original, save for material redacted pursuant to  
section 859G Companies Act 2006

*Eversheds Sutherland (International) LLP*

Date: 10 February 2021  
EVERSHEDS SUTHERLAND (INTERNATIONAL) LLP

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This Deed is made on

1<sup>st</sup> FEBRUARY

2020-2021

Between

- (1) **TATA CHEMICALS EUROPE LIMITED** (registered in England with number 02607081) (Chargor); and
- (2) **20-20 PENSION SERVICES LIMITED** (registered number 8084210) of 100 Wood Street London EC2V 7AN, **CRAIG THORNHILL** of 20 Foxhill Grove, Helsby, Cheshire, WA6 9LQ, **KENNETH HUGH MADELEY BRAY** of Black Dog Farm, Whitchurch Road, Waverton, Chester, Cheshire, CH3 7PB, **LESLIE DEREK WESTON** of 10 Penmore Drive, Pensby, Wirral, Merseyside, CH61 5UJ and **RICHARD DIGGLE** of 15 Stamford Avenue, Altrincham, Cheshire, WA14 4JH as the trustees of **THE BRUNNER MOND PENSION FUND (Trustees)**.

It is agreed

## 1 Definitions and interpretation

### 1.1 Definitions

In this Deed:

**Authorisation** means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation

**BMPF Agreement** means the agreement relating to the Scheme dated on or around the date of this Deed between (1) the Chargor and (2) the Trustees as amended or supplemented from time to time

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for general business in London

**Delegate** means any delegate, agent, attorney or co-trustee appointed by the Trustees

**Event of Default** means any event or circumstance specified as such in Clause 11 (*Events of Default*)

**Fixtures** means, in respect of the Property, all fixtures and fittings (including trade fixtures and fittings) and fixed plant and machinery now or at any time after the date of this Deed on the Property

**Land Receipts** has the meaning given to such term in the BMPF Agreement

**Legal Reservations** means:

- (a) the principle that equitable remedies are remedies which may be granted or refused at the discretion of a court, the principle of reasonableness and fairness, the limitation of validity or enforcement by laws relating to bankruptcy, insolvency, judicial management, liquidation, reorganisation, court schemes, moratoria, administration and other laws generally affecting the rights of creditors
- (b) the time barring of claims under any applicable laws of limitation (including without limitation the Limitation Acts), the possibility that an undertaking to assume liability for or to indemnify a person against non-payment of stamp duty may be void and defences of set off or counterclaim

- (c) the principle that in certain circumstances security granted by way of fixed charge may be re characterised as a floating charge or that security purported to be constituted as an assignment may be re characterised as a floating charge
- (d) the principle that additional interest imposed pursuant to any relevant agreement may be held to be unenforceable on the grounds that it is a penalty and thus void
- (e) the principle that a court may not give effect to an indemnity for legal costs incurred by an unsuccessful litigant
- (f) the principle that the creation or purported creation of security over any contract or agreement which is subject to a prohibition on transfer, assignment or charging may be void, ineffective or invalid and may give rise to a breach of the contract or agreement over which security has purportedly been created
- (g) the limitation of the enforcement of the terms of leases of real property by laws of general application to those leases and
- (h) similar principles, rights and defences under the laws of any Relevant Jurisdiction

**Limitation Acts** means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984

**Material Adverse Effect** means a material adverse effect on:

- (a) the ability of the Chargor to perform its payment obligations under this Deed; or
- (b) subject to the Legal Reservations and the Perfection Requirements, the validity or enforceability of, or the effectiveness or ranking of this Deed or the rights or remedies of the Trustees under this Deed

**Original Jurisdiction** means, in relation to the Chargor, the jurisdiction under whose laws it is incorporated as at the date of this Deed

**Party** means a party to this Deed

**Pensions Regulator** means the body of that name and referred to as the "Regulator" in the Pensions Act 2004

**Perfection Requirements** means the making or the procuring of the necessary registrations, filings, endorsements, notarisations, stamping or notifications of this Deed as specifically contemplated by this Deed and/or necessary for the validity, enforceability, perfection, priority or enforcement of the Security created hereunder

**Permitted Disposal** means any sale, lease, licence, transfer or other disposal of land at the Property pursuant to the terms of the Promotion Agreement and/or the BMPF Agreement

**Promotion Agreement** means the agreement for the promotion, marketing and sale of plots at the Property to be entered into between (1) the Chargor and (2) Gladman Developments Limited (company number 03341567) as amended or supplemented from time to time

**Property** means the property described in Schedule 1 (Property)

**Receiver** means any receiver, manager or administrative receiver appointed by the Trustees in respect of the Chargor or the Property

**Relevant Jurisdiction** means, in relation to the Chargor:

- (a) its Original Jurisdiction;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Security created by this Deed is situated;
- (c) any jurisdiction where it conducts its business

**Scheme** means the Brunner Mond Pension Fund governed by a trust deed and rules dated 21 February 2002 as amended from time to time

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

**Secured Assets** means the assets and undertaking of the Chargor which are the subject of any Security created by, under or supplemental to, this Deed in favour of the Trustees

**Secured Obligations** means all monies and liabilities now or after the date of this deed due owing or incurred by the Chargor to the Trustees (i) pursuant to any Recovery Plan agreed from time to time under Section 226 Pensions Act 2004 between the Chargor and the Trustees, (ii) pursuant to the BMPF Agreement and (iii) in an amount equal to the entire aggregate liability of the Chargor in relation to the Scheme, were a debt under Section 75 of the Pensions Act 1995 to have become due (other than where a debt under Section 75 of the Pensions Act 1995 becomes due as a consequence of the Trustees deciding to trigger a winding up of the Scheme under clause 22(b) of the trust deed and rules dated 21 February 2002 on the basis that it appears to the Trustees on the advice of the actuary that the Scheme is (or is likely in 6 months to become) insolvent), in any manner and in any currency or currencies and whether present or future, actual or contingent, whether incurred solely or jointly with any other person and whether as principal or surety together with all interest accruing on such monies and liabilities and all costs, charges and expenses incurred by the Trustees under this Deed

**Security Period** means the period beginning on the date of this Deed and ending on the earlier of:

- (a) the date upon which the Secured Obligations have been irrevocably and unconditionally satisfied in full and
- (b) the occurrence of an agreement in writing between the Chargor and the Trustees referred to at clause 6.4 (Termination) of the BMPF Agreement

**Subsidiary** means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006

**Termination Event** means the termination of the BMPF Agreement in accordance with its terms

**Transaction Documents** means:

- (a) this Deed; and
- (b) the BMPF Agreement

## 1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Deed to:

- (i) the "**Chargor**" and the "**Trustees**" or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under this Deed and/or the BMPF Agreement and this Deed shall be binding on and enforceable by any person who is for the time being a trustee of the Scheme including any person who succeeds or replaces a trustee of the Scheme (and this sub-clause (i) shall be in addition to, and not affect, the provisions of the Trustee Act 2000 dealing with transfers of assets and liabilities from one trustee to another);
  - (ii) a document in "**agreed form**" is a document which is previously agreed in writing by or on behalf of the Trustees and the Chargor or, if not so agreed, is in the form specified by the Trustees;
  - (iii) "**assets**" includes present and future properties, revenues and rights of every description;
  - (iv) "**disposal**" includes a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary, and "**dispose**" will be construed accordingly;
  - (v) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (vi) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership or other entity (whether or not having separate legal personality);
  - (vii) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
  - (viii) a provision of law is a reference to that provision as amended or re-enacted; and
  - (ix) a time of day is a reference to London time.
- (b) Section, Clause and Schedule headings are for ease of reference only.
  - (c) Unless a contrary indication appears, a term used in the Promotion Agreement or in any notice given under or in connection with this Deed and/or the Promotion Agreement has the same meaning in that this Deed and/or the Promotion Agreement.
  - (d) An Event of Default is "**continuing**" if it has not been remedied or waived.

### 1.3 Third party rights

- (a) Unless expressly provided to the contrary in this Deed, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed or any other document issued or entered into under or in connection with it but this does not affect any right or remedy of a third party which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

- (b) Unless expressly provided to the contrary in this Deed the consent of any person who is not a Party is not required to rescind or vary this Deed or any other document entered into under or in connection with it.

#### **1.4 Administration**

- (a) Any reference in this Deed, to the making of an administration order shall be treated as including a reference to the appointment of an administrator under paragraph 14 (by the holder of a qualifying floating charge in respect of the Chargor's assets) or 22 (by the Chargor or the directors of the Chargor) of Schedule B1 to the Insolvency Act 1986 or any steps taken toward such order or appointment.
- (b) Any reference in this Deed, to making an application for an administration order by petition shall be treated as including a reference to making an administration application to the court under Schedule B1 to the Insolvency Act 1986, appointing an administrator under paragraph 14 or 22 of that Schedule, or giving notice under paragraph 15 or 26 of that Schedule of intention to appoint an administrator or any steps taken towards such application or notice.

### **2 Charging provisions**

#### **2.1 General**

All Security created by the Chargor under clauses 2.2 to 2.3 inclusive is:

- (a) a continuing security for the payment and discharge of the Secured Obligations;
- (b) granted with full title guarantee;
- (c) granted in respect of all the right, title and interest (if any), present and future, of the Chargor in and to the Property; and
- (d) granted in favour of the Trustees.

#### **2.2 First legal mortgage**

The Chargor charges by way of first legal mortgage the Property and all Fixtures on the Property.

#### **2.3 First fixed charges**

The Chargor charges by way of first fixed charge:

- (a) the proceeds of sale of the Property and all licences to enter on or use the Property;
- (b) the benefit of all other agreements, instruments and rights relating to the Property; and
- (c) to the extent that any legal mortgage in clause 2.2 is ineffective as a legal mortgage, the assets referred to in that clause.

#### **2.4 Small company moratorium**

Where the Chargor is an eligible company within the meaning of paragraphs 2 to 4 (inclusive) of Schedule A1 to the Insolvency Act 1986, then the obtaining of a moratorium, including any preliminary decision, or investigation in terms of paragraph 43 of Schedule A1 to the Insolvency

Act 1986 shall not cause restrictions which would not otherwise apply to be imposed on the disposal of its property and assets by the Chargor.

### **3 Continuing security**

#### **3.1 Continuing security**

The Security constituted by this Deed shall be continuing security and shall remain in full force and effect regardless of any intermediate payment or discharge by the Chargor or any other person of the whole or any part of the Secured Obligations.

#### **3.2 Recourse**

The Security constituted by this Deed:

- (a) is in addition to any other Security which the Trustees may hold at any time for the Secured Obligations (or any of them); and
- (b) may be enforced without first having recourse to any other rights of the Trustees.

### **4 Negative pledge**

4.1 The Chargor shall not create or permit to subsist any Security over any of the Property (other than any Security constituted under this Deed).

4.2 The Chargor shall not:

- (a) sell, transfer or otherwise dispose of the Property on terms whereby they are or may be leased to or re-acquired by it; or
- (b) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising indebtedness or of financing the acquisition of an asset.

### **5 Restrictions on disposals**

5.1 The Chargor shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary sell, assign, transfer, licence, lease or otherwise dispose of all or any part of, or any interest in the Property.

5.2 Clause 5.1 does not apply to any Permitted Disposal.

### **6 Notifiable events**

The Chargor shall promptly notify the Trustees upon becoming aware that:

- 6.1 any event has occurred in respect of the Chargor which would (or would if the Chargor were an employer in relation to the Scheme within the meaning set out in Section 318 of the Pensions Act 2004 and regulations made thereunder) require notification to the Pensions Regulator in accordance with Section 69 of the Pensions Act 2004 and any regulations and directions made thereunder; or
- 6.2 any representation made or deemed to be made by the Chargor under this Deed is or proves to have been incorrect or misleading when made or deemed to be made.



**7 Further assurance**

7.1 The Chargor shall promptly do all such acts and execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Trustees may reasonably specify (and in such form as the Trustees may reasonably require) in favour of the Trustees or its nominee(s):

- (a) to create, perfect, protect and maintain the Security created or intended to be created under or evidenced by this Deed or for the exercise of any rights, powers and remedies of the Trustees provided by or pursuant to this Deed or by law;
- (b) to confer on the Trustees Security over the Property intended to be conferred by or pursuant to this Deed; and/or
- (c) (if an Event of Default is continuing) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security created by or under this Deed.

7.2 The Chargor shall take all such action as is reasonably available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Trustees by or pursuant to this Deed.

7.3 Any document required to be executed by the Chargor under this clause 7 will be prepared at the cost of the Chargor.

**8 Representations**

The Chargor makes the representations and warranties set out in this clause 8 to the Trustees on the date of this Deed and on each day during the Security Period.

**8.1 Status**

- (a) It is a limited liability corporation, duly incorporated and validly existing under the law of its Original Jurisdiction.
- (b) It has the power to own its assets and carry on its business as it is being conducted.

**8.2 Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, this Deed and the granting of the Security constituted by this Deed, will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any material agreement or instrument binding upon it or any of its material assets or constitute a default or termination event (however described) under any such agreement or instrument.

**8.3 Power and authority**

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Deed to which it is or will be a party and the transactions contemplated by this Deed.

- (b) No limit on its powers will be exceeded as a result of the grant of this Deed.

#### 8.4 Legal Validity

Subject to the Legal Reservations and Perfection Requirements, the obligations expressed to be assumed by it in this Deed are legal, binding, valid and enforceable obligations.

#### 8.5 No Default

No event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of the foregoing, would constitute) a default or termination event (howsoever described) under any document which is binding on it or any of its assets to an extent or in a manner which has or is reasonably likely to have a Material Adverse Effect.

#### 8.6 Authorisations

All authorisations required by it in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, this Deed have been obtained or effected (as appropriate) and are in full force and effect to the extent that a failure to do so would have or is reasonably likely to have a Material Adverse Effect.

#### 8.7 Litigation

No litigation, arbitration or administrative proceedings are current or, to its knowledge, pending or threatened against it, which have or, if adversely determined, are reasonably likely to have a Material Adverse Effect.

#### 8.8 Nature of Security

- (a) This Deed create the Security it purports to create and is not liable to be amended or otherwise set aside in the insolvency, liquidation or administration of the Chargor or otherwise.
- (b) The Security created by this Deed constitutes first priority Security of the type described over the Property and the Property is not subject to any prior or pari passu Security.

### 9 Land Registry

#### 9.1 Application for restriction

- (a) In relation to land and buildings comprised within the Property situated in England and Wales title to which is registered or is to be registered at the Land Registry, the Chargor consents to an application being made to the Chief Land Registrar for registration of a restriction on the register of title of all such present and future registered freehold, leasehold or commonhold property (and any unregistered properties subject to compulsory first registration at the date of this Deed) in the form set out below:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated [•] in favour of [•] from time to time referred to in the charges register."

- (b) The Chargor confirms that so far as any of the Property is unregistered, such land is not affected by any disclosable overriding interests within the meaning of the Land Registration Act 2002 or the Land Registration Rules 2003.

## 10 Security power of attorney

- (a) The Chargor, by way of security, irrevocably and severally appoints the Trustees, each Receiver and any of their delegates or sub-delegates to be its attorney to take any action which the Chargor is obliged to take under this Deed. The Chargor ratifies and confirms whatever any attorney lawfully does or purports to do pursuant to its appointment under this clause 10.
- (b) The Trustees, any Receiver or any Delegate shall only be able to exercise a power of attorney under this Deed:
  - (i) following the occurrence of an Event of Default that is continuing; or
  - (ii) if the Chargor has failed to comply with a further assurance or perfection obligation (or any of them) under this Deed, within 10 Business Days of being notified of such failure and being requested to comply provided that the exercise of such power of attorney shall only be used to remedy the Chargor's failure to so comply.

## 11 Events of Default

Each of the events or circumstances set out in this Clause 11 is an Event of Default.

### 11.1 Non-Compliance

- (a) The Chargor fails to comply with any provision of this Deed unless the failure to comply is capable of remedy and is remedied within 14 days of the earlier of the Trustees giving notice to the Chargor and the Chargor becoming aware of the failure to comply.
- (b) The Chargor fails to pay a Land Receipt when due in accordance with the terms of the BMPF Agreement unless such failure to pay is caused by an administrative or technical error and payment is made within 14 days of the Chargor becoming aware that it is past its due date.

### 11.2 Misrepresentation

Any representation or statement made or deemed to be made by the Chargor in this Deed is or proves to have been incorrect or misleading in any material respect when made or deemed to be made (**Misrepresentation**), unless such Misrepresentation:

- (a) is capable of remedy; and
- (b) is remedied within fourteen (14) days of the earlier of:
  - (i) the Trustees giving notice of such Misrepresentation; and
  - (ii) the Chargor becoming aware of the circumstances giving rise to such Misrepresentation.

### 11.3 Insolvency

- (a) The Chargor:
  - (i) is unable or admits inability to pay its debts as they fall due;
  - (ii) by reason of actual or anticipated financial difficulties, suspends or threatens to suspend making payments on any of its debts; or
  - (iii) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- (b) A moratorium is declared in respect of any indebtedness of the Chargor.
- (c) No Event of Default will occur under this Clause 11.3 if any of the events or circumstances in (a) or (b) occur in relation to an amount owing by the Chargor that is equal to or less than £1,000,000 (or its equivalent).

#### 11.4 Insolvency Proceedings

- (a) Any corporate action, legal proceedings or other procedure is taken in relation to:
  - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Chargor;
  - (ii) a composition, compromise, assignment or arrangement with any creditor of the Chargor in connection with or as a result of any financial difficulty on the part of the Chargor;
  - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Chargor or any of its assets; or
  - (iv) enforcement of any Security over any asset or assets of the Chargor where such assets have an aggregate value of at least £1,000,000 (or its equivalent),
 or any analogous procedure or step is taken in any jurisdiction.
- (b) Paragraph (a) above shall not apply to:
  - (i) any corporate action, legal proceedings or other procedure or step which relates to an amount that is equal to or less than £1,000,000 (or its equivalent); or
  - (ii) any proceedings which are being contested in good faith.

**11.5 Creditors' Process**

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of the Chargor having an aggregate value of at least £1,000,000 (or its equivalent) unless it is being contested in good faith.

**11.6 Cessation of business**

The Chargor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business except as a result of any disposal allowed under this Deed.

**11.7 Unlawfulness and invalidity**

- (a) It is or becomes unlawful for the Chargor to perform any of its obligations under the Transaction Documents or the Security created or expressed to be created or evidenced by this Deed ceases to be effective or becomes unlawful.
- (b) Any obligation or obligations of the Chargor under any Transaction Document are not or cease (subject to the Legal Reservations and Perfection Requirements) to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Trustees under the Transaction Documents.
- (c) Any Transaction Document ceases to be in full force and effect or ceases (subject to the Legal Reservations and Perfection Requirements) to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than the Trustees) to be ineffective.

**11.8 Repudiation and rescission of this charge**

The Chargor rescinds or purports to rescind or repudiates any Transaction Document or evidences an intention to rescind or repudiate any Transaction Document.

**11.9 Material adverse change**

- (a) Any event or circumstance occurs which in the reasonable opinion of the Trustees, has or is reasonably likely to have a Material Adverse Effect.
- (b) The occurrence of a Termination Event.

**12 Enforcement of security****12.1 When security is enforceable**

On the occurrence of any Event of Default which is continuing, the Security created by and under this Deed is immediately enforceable.

**12.2 Acts of enforcement**

The Trustees may, at their absolute discretion, at any time after the Security created by or under this Deed is enforceable:

- (a) enforce all or any part of the Security created by or under this Deed in any manner they see fit;

- (b) exercise their rights and powers conferred upon mortgagees by the Law of Property Act 1925, as varied and extended by this Deed, and rights and powers conferred on a Receiver by this Deed, whether or not they have taken possession or appointed a Receiver to the Property;
- (c) appoint a Receiver to all or any part of the Property;
- (d) if permitted by law, appoint an administrator in respect of the Chargor and take any steps to do so;
- (e) exercise their power of sale under section 101 of the Law of Property Act 1925 (as amended by this Deed); or
- (f) if permitted by law, appoint an administrative receiver in respect of the Chargor.

### **12.3 Statutory powers - general**

- (a) For the purposes of all powers implied by statute, the Secured Obligations are deemed to have become due and payable on the date of this Deed.
- (b) Section 103 of the Law of Property Act 1925 and section 93 of the Law of Property Act 1925 do not apply to the Security constituted by or under this Deed.
- (c) The statutory powers of leasing conferred on the Trustees are extended so that, without the need to comply with any provision of section 99 or section 100 of the Law of Property Act 1925, the Trustees is empowered to lease and make agreements for lease at a premium or otherwise, accept surrenders of leases and grant options or vary or reduce any sum payable under any leases or tenancy agreements as it may think fit.
- (d) Each Receiver and the Trustees is entitled to all the rights, powers, privileges and immunities conferred by the Law of Property Act 1925 and the Insolvency Act 1986 on mortgagees and Receivers.

### **12.4 Mortgagee in possession - no liability**

Neither the Trustees nor any Receiver will be liable, by reason of entering into possession of the Property, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might otherwise be liable.

### **12.5 Redemption of prior mortgages**

At any time after the Security created by or under this Deed has become enforceable, the Trustees may, at the sole cost of the Chargor (payable to the Trustees on demand):

- (a) redeem any prior form of Security over the Property; and/or
- (b) procure the transfer of that Security to itself; and/or
- (c) settle and pass the accounts of any prior mortgagee, chargee or encumbrancer which once so settled and passed shall be conclusive and binding on the Chargor.

**13 Receiver****13.1 Appointment of Receiver****(a)**

- (i) At any time after any Security created by or under this Deed is enforceable, the Trustees may appoint a Receiver to all or any part of the Property in accordance with clause 12.2(c) (Acts of enforcement).
- (ii) At any time, if so requested in writing by the Chargor, without further notice, the Trustees may appoint a Receiver to all or any part of the Property as if the Trustees had become entitled under the Law of Property Act 1925 to exercise the power of sale conferred under the Law of Property Act 1925.

- (b) Any Receiver appointed under this Deed shall be the agent of the Chargor and the Chargor shall be solely responsible for his acts or defaults and for his remuneration and liable on any contracts or engagements made or entered into by him and in no circumstances whatsoever shall the Trustees be in any way responsible for any misconduct, negligence or default of the Receiver.

- (c) Where the Chargor is an eligible company within the meaning of paragraphs 2 to 4 (inclusive) of Schedule A1 to the Insolvency Act 1986:

- (i) obtaining a moratorium, or
- (ii) anything done with a view to obtaining a moratorium including any preliminary decision or investigation in terms of paragraph 43 of Schedule A1 to the Insolvency Act 1986,

shall not be grounds for appointment of a Receiver.

**13.2 Removal**

The Trustees may by written notice remove from time to time any Receiver appointed by them (subject to the provisions of section 45 of the Insolvency Act 1986 in the case of an administrative receiver) and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated.

**13.3 Powers of Receiver****(a) General**

- (i) In addition to those conferred by the Law of Property Act 1925 on any Receiver appointed under that Act, each Receiver has, and is entitled to exercise, all of the rights, powers and discretions set out in this clause 13.3.
- (ii) If there is more than one Receiver holding office at the same time, unless the document appointing him states otherwise, each Receiver may exercise all of the powers conferred on a Receiver under this Deed or under the Insolvency Act 1986 individually and to the exclusion of any other Receivers.
- (iii) A Receiver of the Chargor has all the rights, powers and discretions of an administrative receiver under the Insolvency Act 1986.

(iv) A Receiver may, in the name of the Chargor:

- (A) do all other acts and things which he may consider expedient for realising the Property; and
- (B) exercise in relation to the Property all the powers, authorities and things which he would be capable of exercising if he were its absolute beneficial owner.

(b) Borrow money

A Receiver may raise and borrow money (either unsecured or on the security of the Property, either in priority to the security constituted by this Deed or otherwise) on any terms and for whatever purpose which he thinks fit. No person lending that money need enquire as to the propriety or purpose of the exercise of that power or to check the application of any money so raised or borrowed.

(c) Carry on business

A Receiver may carry on the business of the Chargor as he thinks fit and, for the avoidance of doubt, a Receiver may apply for such Authorisations as he considers in his absolute discretion appropriate.

(d) Compromise

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Chargor or relating in any way to the Property.

(e) Delegation

A Receiver may delegate his powers in accordance with clause 14 (Delegation).

(f) Employees

For the purposes of this Deed, a Receiver as he thinks appropriate, on behalf of the Chargor or for itself as Receiver, may:

- (i) appoint and discharge managers, officers, agents, accountants, servants, workmen and others upon such terms as to remuneration or otherwise as he may think proper; and
- (ii) discharge any such persons appointed by the Chargor.

(g) Leases

A Receiver may let the Property for any term and at any rent (with or without a premium) which he thinks proper and may accept a surrender of any lease or tenancy of the Property on any terms which he thinks fit (including the payment of money to a lessee or tenant on a surrender).

(h) Legal actions



A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings or submit to arbitration or any form of alternative dispute resolution in the name of the Chargor in relation to the Property as he considers expedient.

(i) Possession

A Receiver may take immediate possession of, get in and collect the Property.

(j) Protection of assets

A Receiver may, in each case as he may think fit:

- (i) make and effect all repairs and insurances and do all other acts which the Chargor might do in the ordinary conduct of its business be they for the protection or for the improvement of the Property;
- (ii) commence and/or complete any building operations on the Property; and
- (iii) apply for and maintain any planning permission, building regulation approval or any other permission, consent or licence.

(k) Receipts

A Receiver may give valid receipts for all monies and execute all assurances and things which may be expedient for realising the Property.

(l) Sale of assets

A Receiver may sell, exchange, convert into monies and realise the Property by public auction or private contract in any manner and on any terms which he thinks proper. The consideration for any such transaction may consist of cash, debenture or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over such period as he thinks fit. Fixtures and any plant and machinery annexed to any part of the Property may be severed and sold separately from the property containing them without the consent of the Chargor.

(m) Subsidiaries

A Receiver may form a Subsidiary of the Chargor and transfer to that Subsidiary the Property.

(n) Deal with the Property

A Receiver may, without restriction sell, let or lease, or concur in selling, letting or leasing, or vary the terms of, determine, surrender or accept surrenders of, leases or tenancies of, or grant options and licences over or otherwise dispose of or deal with, all or any part of the Property without being responsible for loss or damage, and so that any such sale, lease or disposition may be made for cash payable by instalments, loan stock or other debt obligations or for shares or securities of another company or other valuable consideration. The Receiver may form and promote, or concur in forming and promoting, a company or companies to purchase, lease, licence or otherwise acquire interests in all or any part of the Property or otherwise, arrange for such companies to trade or cease to trade and to purchase, lease, license or otherwise acquire all or any

part of the Property on such terms and conditions whether or not including payment by instalments secured or unsecured as he may think fit.

(o) Security

A Receiver may redeem any prior Security and settle and pass the accounts of the person entitled to the prior Security so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on the Chargor and the money so paid shall be deemed to be an expense properly incurred by the Receiver.

(p) Acquire land

The Receiver may purchase or acquire any land and purchase, acquire or grant any interest in or right over land.

(q) Development

A Receiver may implement or continue the development of (and obtain all consents required in connection therewith) and/or complete any buildings or structures on, any real property comprised in the Property and do all acts and things incidental to the Property.

(r) Landlord's obligations

A Receiver may on behalf of the Chargor and without consent of or notice to the Chargor exercise all the powers conferred on a landlord or a tenant by the Landlord and Tenants Acts, the Rents Acts and Housing Acts or any other legislation from time to time in force in any relevant jurisdiction relating to rents or agriculture in respect of any part of the Property.

(s) Uncalled capital

A Receiver may make calls conditionally or unconditionally on the members of the Chargor in respect of uncalled capital.

(t) Incidental matters

A Receiver may do all other acts and things including without limitation, signing and executing all documents and deeds as may be considered by the Receiver to be incidental or conducive to any of the matters or powers listed here or granted by law or otherwise incidental or conducive to the preservation, improvement or realisation of the Property and to use the name of the Chargor for all the purposes set out in this clause 13.

#### 13.4 Remuneration

The Trustees may from time to time fix the remuneration of any Receiver appointed by it.

#### 14 Delegation

- 14.1 The Trustees and any Receiver may delegate by power of attorney or in any other manner all or any of the powers, authorities and discretions which are for the time being exercisable by the Trustees and the Receiver (as appropriate) under this Deed to any person or persons as it shall think fit. Any such delegation may be made upon such terms and conditions (including the power to sub-delegate) as the Trustees and Receiver (as appropriate) may think fit.

- 14.2 The Trustees and any Receiver will not be liable or responsible to the Chargor or any other person for any losses, liabilities or expenses arising from any act, default, omission or misconduct on the part of any delegate.

## **15 Application of monies**

- 15.1 Sections 109(6) and (8) (Appointment, powers, remuneration and duties of receiver) of the Law of Property Act 1925 shall not apply to a Receiver appointed under this Deed.
- 15.2 All monies received by the Trustees or any Receiver under this Deed shall be applied in the following order:
- (a) in discharging any sums owing to the Trustees, any Receiver or any Delegate;
  - (b) in payment of all costs and expenses incurred by the Trustees in connection with any realisation or enforcement of this Deed;
  - (c) in or toward payment of the Secured Obligations; and
  - (d) the balance (if any) will be applied as required by law.
- 15.3 The Trustees and any Receiver may place any money received, recovered or realised pursuant to this Deed in an interest bearing suspense account and it may retain the same for such period as it considers expedient without having any obligation to apply the same or any part of it in or towards discharge of the Secured Obligations.

## **16 Remedies and waivers**

- 16.1 No failure to exercise, nor any delay in exercising, on the part of the Trustees or any Receiver, any right or remedy under this Deed shall operate as a waiver or any such right or remedy or constitute an election to affirm this Deed. No election to affirm this Deed on the part of the Trustees or any Receiver shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.
- 16.2 A waiver given or consent granted by the Trustees or any Receiver under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

## **17 Protection of third parties**

- 17.1 No person (including a purchaser) dealing with the Trustees or a Receiver or its or his agents has an obligation to enquire of the Trustees, Receiver or others:
- (a) whether the Secured Obligations have become payable;
  - (b) whether any power purported to be exercised has become exercisable;
  - (c) whether any Secured Obligations or other monies remain outstanding;
  - (d) how any monies paid to the Trustees or to the Receiver shall be applied; or
  - (e) the status, propriety or validity of the acts of the Receiver or the Trustees.

17.2 The receipt of the Trustees or any Receiver shall be an absolute and a conclusive discharge to a purchaser and shall relieve him of any obligation to see to the application of any monies paid to or by the direction of the Trustees or any Receiver.

17.3 In clauses 17.1 and 17.2 **purchaser** includes any person acquiring, for money or monies worth, any lease of, or Security over, or any other interest or right whatsoever in relation to, the Property.

## **18 Additional security**

The Security created by or under this Deed is in addition to and is not in any way prejudiced by any guarantee or security now or subsequently held by the Trustees.

## **19 Settlements conditional**

19.1 If the Trustees (acting reasonably) believes that any amount paid by the Chargor or any other person in respect of the Secured Obligations is capable of being avoided or set aside for any reason, then for the purposes of this Deed, such amount shall not be considered to have been paid.

19.2 Any settlement, discharge or release between the Chargor and the Trustees shall be conditional upon no Security or payment to or for the Trustees by the Chargor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any law relating to bankruptcy, insolvency or liquidation or otherwise.

## **20 Subsequent Security**

If the Trustees receive notice of any other subsequent Security or other interest affecting all or any part of the Property they may open a new account or accounts for the Chargor in their books. If they do not do so then, unless they give express written notice to the contrary to the Chargor, as from the time of receipt of such notice by the Trustees, all payments made by the Chargor to the Trustees shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations.

## **21 Notices**

### **21.1 Communications in writing**

Any communication to be made under or in connection with this Deed shall be made in writing and, unless otherwise stated, may be made by fax or letter.

### **21.2 Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Deed is that identified with its name below or any substitute address or fax number or department or officer as one Party may notify to the other Party by not less than 5 Business Days' notice.

### **21.3 Delivery**

(a) Any communication or document made or delivered by 1 person to another under or in connection with this Deed will only be effective:

(i) if by way of fax, when received in legible form; or

- (ii) if by way of letter, when it has been left at the relevant address or 5 Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address;

and, if a particular department or officer is specified as part of its address details provided under clause 21.2, if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Trustees will be effective only when actually received by the Trustees and then only if it is expressly marked for the attention of the department or officer identified with the Trustees' signature below (or any substitute department or officer as the Trustees shall specify for this purpose).
- (c) Any communication or document which becomes effective, in accordance with clause 21.3(a) and/or clause 21.3(b) after 5.00 pm in the place of receipt shall be deemed only to become effective on the following day.

## **22 Partial invalidity**

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## **23 Releases**

- (a) Upon expiry of the Security Period, the Trustees shall, at the request and reasonable cost of the Chargor, take whatever action is necessary to release and reassign to the Chargor:
  - (i) its rights arising under this Deed;
  - (ii) the Secured Assets from the Security created by and under this Deed,
 and return all documents or deeds of title delivered to the Trustees under this Deed.
- (b) If the Chargor disposes of any Secured Asset or any part of any Secured Asset where such disposal is a Permitted Disposal or otherwise made with the prior written consent of the Trustees, the Trustees shall promptly release the relevant asset from the Security created by and under this Deed and return all documents or deeds of title relating to the relevant asset delivered to the Trustees under this Deed.

## **24 Counterparts**

This Deed or any document entered into under or in connection with this Deed may be executed in any number of counterparts, and by each Party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument.

## **25 Governing law**

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

**26 Enforcement**

**26.1 Jurisdiction of English courts**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (**Dispute**).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This clause 26 is for the benefit of the Trustees. As a result, the Trustees shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Trustees may take concurrent proceedings in any number of jurisdictions.

**26.2 Service of process**

- (a) The Civil Procedure Rules regarding service and deemed service will not apply to any letter or other communication notifying a claim or serving legal proceedings under or in connection with this Deed, which shall instead be served in accordance with this clause 26.2.
- (b) Any letter or other communication notifying a claim or serving legal proceedings under or in connection with this Deed may not be made by way of fax and must be made pursuant to clauses 21 (Notices) of this Deed.

**This Deed** has been signed on behalf of the Trustees and executed as a deed by the Chargor and is delivered on the date given at the beginning of this Deed.

**Schedule 1**

**Property**

**Registered Land**

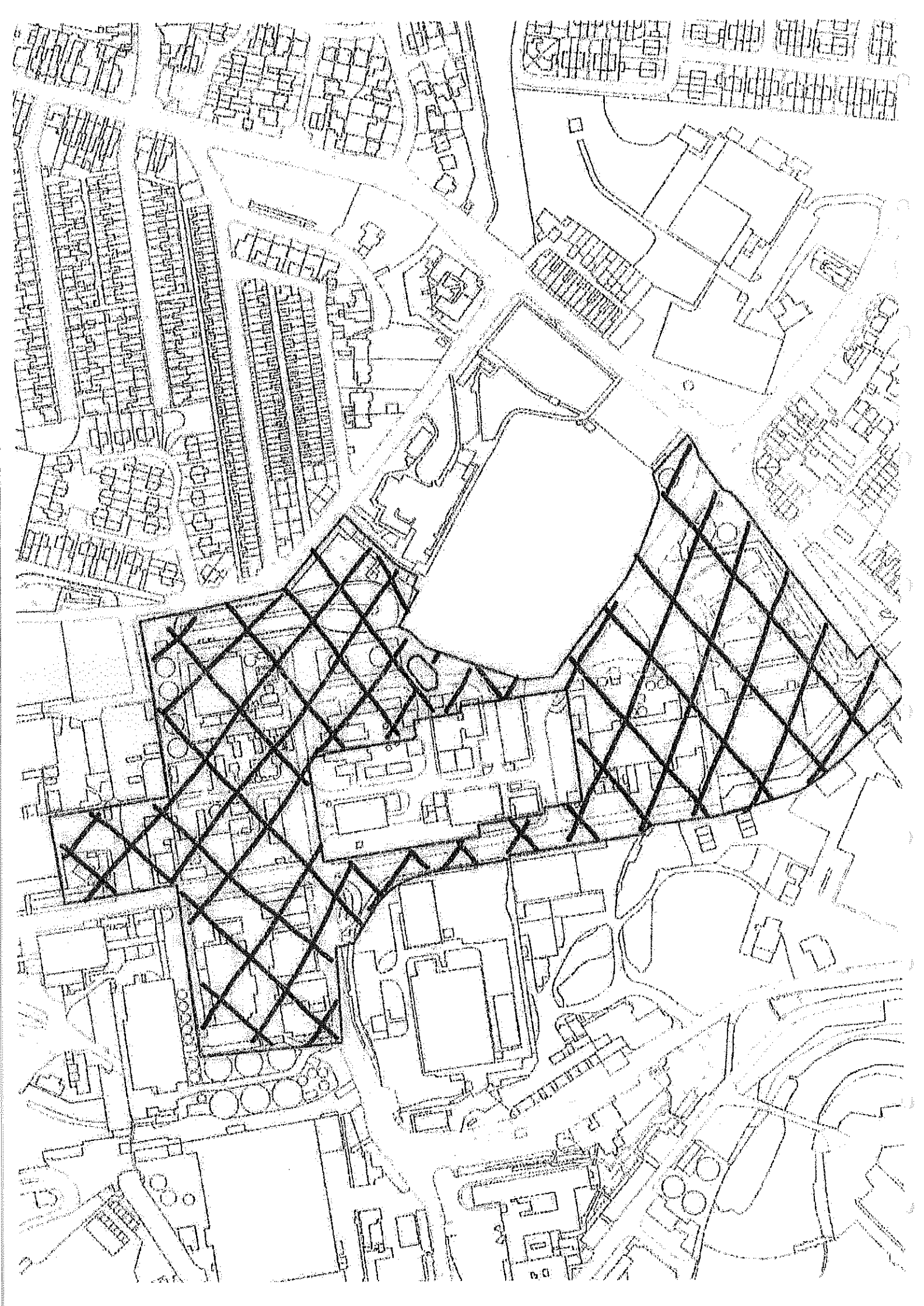
Circa 150 acres being:

1. the whole of title number CH520715 and
2. the whole of title number CH345675 excluding the part edged red and cross hatched red on the (attached) plan.

**Appendix 1**

**Site Plan**





**SIGNATORIES TO THE DEED**

**Chargor**

Executed as a deed by )

**TATA CHEMICALS EUROPE LIMITED** )

acting by a director in the presence of )

Director

Signature of witness

Name JACIE BARICKS

Address

Address: Natrium House  
Winnington Lane  
Northwich  
Cheshire  
CW8 4GW

Fax No: N/A

Attention: John Abbotts

**The Trustees**

Signed by a director of **20-20 PENSION  
SERVICES LIMITED** as trustee of  
**The Brunner Mond Pension Fund**

Signed by a **CRAIG THORNHILL** as trustee of  
**The Brunner Mond Pension Fund**

Signed by a **KENNETH HUGH MADELEY  
BRAY** as trustee of  
**The Brunner Mond Pension Fund**

Signed by a **LESLIE DEREK WESTON** as  
trustee of **The Brunner Mond Pension Fund**

)  
)  
) .....

Signed by a **RICHARD DIGGLE** as trustee of  
**The Brunner Mond Pension Fund**



**Registration of a Charge**

Company name: **TATA CHEMICALS EUROPE LIMITED**

Company number: **02607081**



X82LKT1Q

Received for Electronic Filing: **03/04/2019**

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**Details of Charge**

Date of creation: **29/03/2019**

Charge code: **0260 7081 0014**

Persons entitled: **STEVEN SOUTHERN TRUSTEES LIMITED  
CRAIG THORNHILL  
KENNETH HUGH MADELEY BRAY  
LESLIE DEREK WESTON**

**There are more than four persons entitled to the charge.**

Brief description: **CIRCA 150 ACRES (TITLE NUMBER CH345675) AS SHOWN EDGED  
RED ON THE ATTACHED PLAN AT APPENDIX 1 OF THE CHARGING  
DOCUMENT.**

**Contains fixed charge(s).**

**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 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: **RICHARD COWAN**



## CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 2607081

Charge code: 0260 7081 0014

The Registrar of Companies for England and Wales hereby certifies that a charge dated 29th March 2019 and created by TATA CHEMICALS EUROPE LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 3rd April 2019.

Given at Companies House, Cardiff on 4th April 2019

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 *29 March* 2019

**TATA CHEMICALS EUROPE LIMITED**  
as Chargor

**STEVE SOUTHERN TRUSTEES LIMITED, CRAIG THORNHILL, KENNETH HUGH  
MADELEY BRAY, LESLIE DEREK WESTON AND RICHARD DIGGLE BEING THE  
TRUSTEES OF THE BRUNNER MOND PENSION FUND**  
as Trustees

---

**CHARGE BY WAY OF LEGAL  
MORTGAGE**

---

We certify this document as a true copy of the original, save  
for material redacted pursuant to section  
859G Companies Act 2006.  
*Eversheds Sutherland (International) LLP*  
Date: *2 April 2019*  
EVERSHEDS SUTHERLAND (INTERNATIONAL) LLP

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This Deed is made on

29 March

2019

Between

- (1) **TATA CHEMICALS EUROPE LIMITED** (registered in England with number 02607081) (Chargor); and
- (2) **STEVE SOUTHERN TRUSTEES LIMITED** (registered number 8084210) of Alex House, 260/268 Chapel Street, Salford, Manchester, M3 5JZ, **CRAIG THORNHILL** of 20 Foxhill Grove, Helsby, Cheshire, WA6 9LQ, **KENNETH HUGH MADELEY BRAY** of Black Dog Farm, Whitchurch Road, Waverton, Chester, Cheshire, CH3 7PB, **LESLIE DEREK WESTON** of 10 Penmore Drive, Pensby, Wirral, Merseyside, CH61 5UJ and **RICHARD DIGGLE** of 15 Stamford Avenue, Altrincham, Cheshire, WA14 4JH as the trustees of **THE BRUNNER MOND PENSION FUND (Trustees)**.

It is agreed

**1 Definitions and interpretation****1.1 Definitions**

In this Deed:

**Authorisation** means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation

**BMPF Agreement** means the agreement relating to the Scheme dated on or around the date of this Deed between (1) the Chargor and (2) the Trustees as amended or supplemented from time to time

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for general business in London

**Delegate** means any delegate, agent, attorney or co-trustee appointed by the Trustees

**Event of Default** means any event or circumstance specified as such in Clause 11 (*Events of Default*)

**Fixtures** means, in respect of the Property, all fixtures and fittings (including trade fixtures and fittings) and fixed plant and machinery now or at any time after the date of this Deed on the Property

**Land Receipts** has the meaning given to such term in the BMPF Agreement

**Legal Reservations** means:

- (a) the principle that equitable remedies are remedies which may be granted or refused at the discretion of a court, the principle of reasonableness and fairness, the limitation of validity or enforcement by laws relating to bankruptcy, insolvency, judicial management, liquidation, reorganisation, court schemes, moratoria, administration and other laws generally affecting the rights of creditors
- (b) the time barring of claims under any applicable laws of limitation (including without limitation the Limitation Acts), the possibility that an undertaking to assume liability for

or to indemnify a person against non-payment of stamp duty may be void and defences of set off or counterclaim

- (c) the principle that in certain circumstances security granted by way of fixed charge may be re characterised as a floating charge or that security purported to be constituted as an assignment may be re characterised as a floating charge
- (d) the principle that additional interest imposed pursuant to any relevant agreement may be held to be unenforceable on the grounds that it is a penalty and thus void
- (e) the principle that a court may not give effect to an indemnity for legal costs incurred by an unsuccessful litigant
- (f) the principle that the creation or purported creation of security over any contract or agreement which is subject to a prohibition on transfer, assignment or charging may be void, ineffective or invalid and may give rise to a breach of the contract or agreement over which security has purportedly been created
- (g) the limitation of the enforcement of the terms of leases of real property by laws of general application to those leases and
- (h) similar principles, rights and defences under the laws of any Relevant Jurisdiction

**Limitation Acts** means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984

**Material Adverse Effect** means a material adverse effect on:

- (a) the ability of the Chargor to perform its payment obligations under this Deed; or
- (b) subject to the Legal Reservations and the Perfection Requirements, the validity or enforceability of, or the effectiveness or ranking of this Deed or the rights or remedies of the Trustees under this Deed

**Maximum Liability Amount** means an amount equal to the sum of:

- (a) £44,400,000
- less
- (b) the aggregate amount of all Land Receipts received by the Trustees from the date of this Deed

**Original Jurisdiction** means, in relation to the Chargor, the jurisdiction under whose laws it is incorporated as at the date of this Deed

**Party** means a party to this Deed

**Pensions Regulator** means the body of that name and referred to as the "Regulator" in the Pensions Act 2004

**Perfection Requirements** means the making or the procuring of the necessary registrations, filings, endorsements, notarisations, stamping or notifications of this Deed as specifically contemplated by this Deed and/or necessary for the validity, enforceability, perfection, priority or enforcement of the Security created hereunder

**Permitted Disposal** means any sale, lease, licence, transfer or other disposal of land at the Property pursuant to the terms of the Promotion Agreement and/or the BMPF Agreement

**Promotion Agreement** means the agreement for the promotion, marketing and sale of plots at the Property to be entered into between (1) the Chargor and (2) Gladman Developments Limited (company number 03341567) as amended or supplemented from time to time

**Property** means the property described in Schedule 1 (Property)

**Receiver** means any receiver, manager or administrative receiver appointed by the Trustees in respect of the Chargor or the Property

**Relevant Jurisdiction** means, in relation to the Chargor:

- (a) its Original Jurisdiction;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Security created by this Deed is situated;
- (c) any jurisdiction where it conducts its business

**Scheme** means the Brunner Mond Pension Fund governed by a trust deed and rules dated 21 February 2002 as amended from time to time

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

**Secured Assets** means the assets and undertaking of the Chargor which are the subject of any Security created by, under or supplemental to, this Deed in favour of the Trustees

**Secured Obligations** means all monies and liabilities now or after the date of this deed due owing or incurred by the Chargor to the Trustees (i) pursuant to any Recovery Plan agreed from time to time under Section 226 Pensions Act 2004 between the Chargor and the Trustees, (ii) pursuant to the BMPF Agreement and (iii) in an amount equal to the entire aggregate liability of the Chargor in relation to the Scheme, were a debt under Section 75 of the Pensions Act 1995 to have become due (other than where a debt under Section 75 of the Pensions Act 1995 becomes due as a consequence of the Trustees deciding to trigger a winding up of the Scheme under clause 22(b) of the trust deed and rules dated 21 February 2002 on the basis that it appears to the Trustees on the advice of the actuary that the Scheme is (or is likely in 6 months to become) insolvent), in any manner and in any currency or currencies and whether present or future, actual or contingent, whether incurred solely or jointly with any other person and whether as principal or surety up to a maximum aggregate amount not exceeding the Maximum Liability Amount together with all interest accruing on such monies and liabilities and all costs, charges and expenses incurred by the Trustees under this Deed

**Security Period** means the period beginning on the date of this Deed and ending on the earlier of:

- (a) the date upon which the aggregate amount of all Land Receipts received by the Trustees is equal to or exceeds £44,400,000; and
- (b) the date upon which the Secured Obligations have been irrevocably and unconditionally satisfied in full

**Subsidiary** means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006

**Termination Event** means the termination of the BMPF Agreement in accordance with its terms

**Transaction Documents** means:

- (a) this Deed; and
- (b) the BMPF Agreement

## 1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Deed to:
  - (i) the "Chargor" and the "Trustees" or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under this Deed and/or the BMPF Agreement and this Deed shall be binding on and enforceable by any person who is for the time being a trustee of the Scheme including any person who succeeds or replaces a trustee of the Scheme (and this sub-clause (i) shall be in addition to, and not affect, the provisions of the Trustee Act 2000 dealing with transfers of assets and liabilities from one trustee to another);
  - (ii) a document in "agreed form" is a document which is previously agreed in writing by or on behalf of the Trustees and the Chargor or, if not so agreed, is in the form specified by the Trustees;
  - (iii) "assets" includes present and future properties, revenues and rights of every description;
  - (iv) "disposal" includes a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary, and "dispose" will be construed accordingly;
  - (v) "indebtedness" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (vi) a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership or other entity (whether or not having separate legal personality);
  - (vii) a "regulation" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
  - (viii) a provision of law is a reference to that provision as amended or re-enacted; and
  - (ix) a time of day is a reference to London time.
- (b) Section, Clause and Schedule headings are for ease of reference only.

- (c) Unless a contrary indication appears, a term used in the Promotion Agreement or in any notice given under or in connection with this Deed and/or the Promotion Agreement has the same meaning in that this Deed and/or the Promotion Agreement.
- (d) An Event of Default is "continuing" if it has not been remedied or waived.

### 1.3 Third party rights

- (a) Unless expressly provided to the contrary in this Deed, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed or any other document issued or entered into under or in connection with it but this does not affect any right or remedy of a third party which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.
- (b) Unless expressly provided to the contrary in the Deed the consent of any person who is not a Party is not required to rescind or vary this Deed or any other document entered into under or in connection with it.

### 1.4 Administration

- (a) Any reference in this Deed, to the making of an administration order shall be treated as including a reference to the appointment of an administrator under paragraph 14 (by the holder of a qualifying floating charge in respect of the Chargor's assets) or 22 (by the Chargor or the directors of the Chargor) of Schedule B1 to the Insolvency Act 1986 or any steps taken toward such order or appointment.
- (b) Any reference in this Deed, to making an application for an administration order by petition shall be treated as including a reference to making an administration application to the court under Schedule B1 to the Insolvency Act 1986, appointing an administrator under paragraph 14 or 22 of that Schedule, or giving notice under paragraph 15 or 26 of that Schedule of intention to appoint an administrator or any steps taken towards such application or notice.

## 2 Charging provisions

### 2.1 General

All Security created by the Chargor under clauses 2.2 to 2.3 inclusive is:

- (a) a continuing security for the payment and discharge of the Secured Obligations;
- (b) granted with full title guarantee;
- (c) granted in respect of all the right, title and interest (if any), present and future, of the Chargor in and to the Property; and
- (d) granted in favour of the Trustees.

### 2.2 First legal mortgage

The Chargor charges by way of first legal mortgage the Property and all Fixtures on the Property.

**2.3 First fixed charges**

The Chargor charges by way of first fixed charge:

- (a) the proceeds of sale of the Property and all licences to enter on or use the Property;
- (b) the benefit of all other agreements, instruments and rights relating to the Property; and
- (c) to the extent that any legal mortgage in clause 2.2 is ineffective as a legal mortgage, the assets referred to in that clause.

**2.4 Small company moratorium**

Where the Chargor is an eligible company within the meaning of paragraphs 2 to 4 (inclusive) of Schedule A1 to the Insolvency Act 1986, then the obtaining of a moratorium, including any preliminary decision, or investigation in terms of paragraph 43 of Schedule A1 to the Insolvency Act 1986 shall not cause restrictions which would not otherwise apply to be imposed on the disposal of its property and assets by the Chargor.

**3 Continuing security****3.1 Continuing security**

The Security constituted by this Deed shall be continuing security and shall remain in full force and effect regardless of any intermediate payment or discharge by the Chargor or any other person of the whole or any part of the Secured Obligations.

**3.2 Recourse**

The Security constituted by this Deed:

- (a) is in addition to any other Security which the Trustees may hold at any time for the Secured Obligations (or any of them); and
- (b) may be enforced without first having recourse to any other rights of the Trustees.

**4 Negative pledge****4.1 The Chargor shall not create or permit to subsist any Security over any of the Property (other than any Security constituted under this Deed).****4.2 The Chargor shall not:**

- (a) sell, transfer or otherwise dispose of the Property on terms whereby they are or may be leased to or re-acquired by it; or
- (b) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising indebtedness or of financing the acquisition of an asset.

**5 Restrictions on disposals**

- 5.1 The Chargor shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary sell, assign, transfer, licence, lease or otherwise dispose of all or any part of, or any interest in the Property.
- 5.2 Clause 5.1 does not apply to any Permitted Disposal.

**6 Notifiable events**

The Chargor shall promptly notify the Trustees upon becoming aware that:

- 6.1 any event has occurred in respect of the Chargor which would (or would if the Chargor were an employer in relation to the Scheme within the meaning set out in Section 318 of the Pensions Act 2004 and regulations made thereunder) require notification to the Pensions Regulator in accordance with Section 69 of the Pensions Act 2004 and any regulations and directions made thereunder; or
- 6.2 any representation made or deemed to be made by the Chargor under this Deed is or proves to have been incorrect or misleading when made or deemed to be made.

**7 Further assurance**

- 7.1 The Chargor shall promptly do all such acts and execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Trustees may reasonably specify (and in such form as the Trustees may reasonably require) in favour of the Trustees or its nominee(s):
- (a) to create, perfect, protect and maintain the Security created or intended to be created under or evidenced by this Deed or for the exercise of any rights, powers and remedies of the Trustees provided by or pursuant to this Deed or by law;
  - (b) to confer on the Trustees Security over the Property intended to be conferred by or pursuant to this Deed; and/or
  - (c) (if an Event of Default is continuing) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security created by or under this Deed.
- 7.2 The Chargor shall take all such action as is reasonably available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Trustees by or pursuant to this Deed.
- 7.3 Any document required to be executed by the Chargor under this clause 7 will be prepared at the cost of the Chargor.
- 8 Representations**
- The Chargor makes the representations and warranties set out in this clause 8 to the Trustees on the date of this Deed and on each day during the Security Period.
- 8.1 **Status**
- (a) It is a limited liability corporation, duly incorporated and validly existing under the law of its Original Jurisdiction.

- (b) It has the power to own its assets and carry on its business as it is being conducted.

## 8.2 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, this Deed and the granting of the Security constituted by this Deed, will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any material agreement or instrument binding upon it or any of its material assets or constitute a default or termination event (however described) under any such agreement or instrument.

## 8.3 Power and authority

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Deed to which it is or will be a party and the transactions contemplated by this Deed.
- (b) No limit on its powers will be exceeded as a result of the grant of this Deed.

## 8.4 Legal Validity

Subject to the Legal Reservations and Perfection Requirements, the obligations expressed to be assumed by it in this Deed are legal, binding, valid and enforceable obligations.

## 8.5 No Default

No event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of the foregoing, would constitute) a default or termination event (howsoever described) under any document which is binding on it or any of its assets to an extent or in a manner which has or is reasonably likely to have a Material Adverse Effect.

## 8.6 Authorisations

All authorisations required by it in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, this Deed have been obtained or effected (as appropriate) and are in full force and effect to the extent that a failure to do so would have or is reasonably likely to have a Material Adverse Effect.

## 8.7 Litigation

No litigation, arbitration or administrative proceedings are current or, to its knowledge, pending or threatened against it, which have or, if adversely determined, are reasonably likely to have a Material Adverse Effect.

## 8.8 Nature of Security

- (a) This Deed create the Security it purports to create and is not liable to be amended or otherwise set aside in the insolvency, liquidation or administration of the Chargor or otherwise.



- (b) The Security created by this Deed constitutes first priority Security of the type described over the Property and the Property is not subject to any prior or pari passu Security.

## 9 Land Registry

### 9.1 Application for restriction

- (a) In relation to land and buildings comprised within the Property situated in England and Wales title to which is registered or is to be registered at the Land Registry, the Chargor consents to an application being made to the Chief Land Registrar for registration of a restriction on the register of title of all such present and future registered freehold, leasehold or commonhold property (and any unregistered properties subject to compulsory first registration at the date of this Deed) in the form set out below:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated [✱] in favour of [✱] from time to time referred to in the charges register."

- (b) The Chargor confirms that so far as any of the Property is unregistered, such land is not affected by any disclosable overriding interests within the meaning of the Land Registration Act 2002 or the Land Registration Rules 2003.

## 10 Security power of attorney

- (a) The Chargor, by way of security, irrevocably and severally appoints the Trustees, each Receiver and any of their delegates or sub-delegates to be its attorney to take any action which the Chargor is obliged to take under this Deed. The Chargor ratifies and confirms whatever any attorney lawfully does or purports to do pursuant to its appointment under this clause 10.
- (b) The Trustees, any Receiver or any Delegate shall only be able to exercise a power of attorney under this Deed:
  - (i) following the occurrence of an Event of Default that is continuing; or
  - (ii) if the Chargor has failed to comply with a further assurance or perfection obligation (or any of them) under this Deed, within 10 Business Days of being notified of such failure and being requested to comply provided that the exercise of such power of attorney shall only be used to remedy the Chargor's failure to so comply.

## 11 Events of Default

Each of the events or circumstances set out in this Clause 11 is an Event of Default.

### 11.1 Non-Compliance

- (a) The Chargor fails to comply with any provision of this Deed unless the failure to comply is capable of remedy and is remedied within 14 days of the earlier of the Trustees giving notice to the Chargor and the Chargor becoming aware of the failure to comply.
- (b) The Chargor fails to pay a Land Receipt when due in accordance with the terms of the BMPF Agreement unless such failure to pay is caused by an administrative or technical

error and payment is made within 14 days of the Chargor becoming aware that it is past its due date.

## 11.2 Misrepresentation

Any representation or statement made or deemed to be made by the Chargor in this Deed is or proves to have been incorrect or misleading in any material respect when made or deemed to be made (**Misrepresentation**), unless such Misrepresentation:

- (a) is capable of remedy; and
- (b) is remedied within fourteen (14) days of the earlier of:
  - (i) the Trustees giving notice of such Misrepresentation; and
  - (ii) the Chargor becoming aware of the circumstances giving rise to such Misrepresentation.

## 11.3 Insolvency

- (a) The Chargor:
  - (i) is unable or admits inability to pay its debts as they fall due;
  - (ii) by reason of actual or anticipated financial difficulties, suspends or threatens to suspend making payments on any of its debts; or
  - (iii) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- (b) A moratorium is declared in respect of any indebtedness of the Chargor.
- (c) No Event of Default will occur under this Clause 11.3 if any of the events or circumstances in (a) or (b) occur in relation to an amount owing by the Chargor that is equal to or less than £1,000,000 (or its equivalent).

## 11.4 Insolvency Proceedings

- (a) Any corporate action, legal proceedings or other procedure is taken in relation to:
  - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Chargor;
  - (ii) a composition, compromise, assignment or arrangement with any creditor of the Chargor in connection with or as a result of any financial difficulty on the part of the Chargor;
  - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Chargor or any of its assets; or
  - (iv) enforcement of any Security over any asset or assets of the Chargor where such assets have an aggregate value of at least £1,000,000 (or its equivalent),

or any analogous procedure or step is taken in any jurisdiction.

(b) Paragraph (a) above shall not apply to:

- (i) any corporate action, legal proceedings or other procedure or step which relates to an amount that is equal to or less than £1,000,000 (or its equivalent); or
- (ii) any proceedings which are being contested in good faith.

#### **11.5 Creditors' Process**

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of the Chargor having an aggregate value of at least £1,000,000 (or its equivalent) unless it is being contested in good faith.

#### **11.6 Cessation of business**

The Chargor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business except as a result of any disposal allowed under this Deed.

#### **11.7 Unlawfulness and invalidity**

- (a) It is or becomes unlawful for the Chargor to perform any of its obligations under the Transaction Documents or the Security created or expressed to be created or evidenced by this Deed ceases to be effective or becomes unlawful.
- (b) Any obligation or obligations of the Chargor under any Transaction Document are not or cease (subject to the Legal Reservations and Perfection Requirements) to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Trustees under the Transaction Documents.
- (c) Any Transaction Document ceases to be in full force and effect or ceases (subject to the Legal Reservations and Perfection Requirements) to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than the Trustees) to be ineffective.

#### **11.8 Repudiation and rescission of this charge**

The Chargor rescinds or purports to rescind or repudiates any Transaction Document or evidences an intention to rescind or repudiate any Transaction Document.

#### **11.9 Material adverse change**

- (a) Any event or circumstance occurs which in the reasonable opinion of the Trustees, has or is reasonably likely to have a Material Adverse Effect.
- (b) The occurrence of a Termination Event.

### **12 Enforcement of security**

#### **12.1 When security is enforceable**

On the occurrence of any Event of Default which is continuing, the Security created by and under this Deed is immediately enforceable.

**12.2 Acts of enforcement**

The Trustees may, at their absolute discretion, at any time after the Security created by or under this Deed is enforceable:

- (a) enforce all or any part of the Security created by or under this Deed in any manner they see fit;
- (b) exercise their rights and powers conferred upon mortgagees by the Law of Property Act 1925, as varied and extended by this Deed, and rights and powers conferred on a Receiver by this Deed, whether or not they have taken possession or appointed a Receiver to the Property;
- (c) appoint a Receiver to all or any part of the Property;
- (d) if permitted by law, appoint an administrator in respect of the Chargor and take any steps to do so;
- (e) exercise their power of sale under section 101 of the Law of Property Act 1925 (as amended by this Deed); or
- (f) if permitted by law, appoint an administrative receiver in respect of the Chargor.

**12.3 Statutory powers - general**

- (a) For the purposes of all powers implied by statute, the Secured Obligations are deemed to have become due and payable on the date of this Deed.
- (b) Section 103 of the Law of Property Act 1925 and section 93 of the Law of Property Act 1925 do not apply to the Security constituted by or under this Deed.
- (c) The statutory powers of leasing conferred on the Trustees are extended so that, without the need to comply with any provision of section 99 or section 100 of the Law of Property Act 1925, the Trustees is empowered to lease and make agreements for lease at a premium or otherwise, accept surrenders of leases and grant options or vary or reduce any sum payable under any leases or tenancy agreements as it may think fit.
- (d) Each Receiver and the Trustees is entitled to all the rights, powers, privileges and immunities conferred by the Law of Property Act 1925 and the Insolvency Act 1986 on mortgagees and Receivers.

**12.4 Mortgagee in possession - no liability**

Neither the Trustees nor any Receiver will be liable, by reason of entering into possession of the Property, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might otherwise be liable.

**12.5 Redemption of prior mortgages**

At any time after the Security created by or under this Deed has become enforceable, the Trustees may, at the sole cost of the Chargor (payable to the Trustees on demand):

- (a) redeem any prior form of Security over the Property; and/or
- (b) procure the transfer of that Security to itself; and/or

- (c) settle and pass the accounts of any prior mortgagee, chargee or encumbrancer which once so settled and passed shall be conclusive and binding on the Chargor.

### **13 Receiver**

#### **13.1 Appointment of Receiver**

- (a)
  - (i) At any time after any Security created by or under this Deed is enforceable, the Trustees may appoint a Receiver to all or any part of the Property in accordance with clause 12.2(c) (Acts of enforcement).
  - (ii) At any time, if so requested in writing by the Chargor, without further notice, the Trustees may appoint a Receiver to all or any part of the Property as if the Trustees had become entitled under the Law of Property Act 1925 to exercise the power of sale conferred under the Law of Property Act 1925.
- (b) Any Receiver appointed under this Deed shall be the agent of the Chargor and the Chargor shall be solely responsible for his acts or defaults and for his remuneration and liable on any contracts or engagements made or entered into by him and in no circumstances whatsoever shall the Trustees be in any way responsible for any misconduct, negligence or default of the Receiver.
- (c) Where the Chargor is an eligible company within the meaning of paragraphs 2 to 4 (inclusive) of Schedule A1 to the Insolvency Act 1986:
  - (i) obtaining a moratorium, or
  - (ii) anything done with a view to obtaining a moratorium including any preliminary decision or investigation in terms of paragraph 43 of Schedule A1 to the Insolvency Act 1986,

shall not be grounds for appointment of a Receiver.

#### **13.2 Removal**

The Trustees may by written notice remove from time to time any Receiver appointed by them (subject to the provisions of section 45 of the Insolvency Act 1986 in the case of an administrative receiver) and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated.

#### **13.3 Powers of Receiver**

- (a) General
  - (i) In addition to those conferred by the Law of Property Act 1925 on any Receiver appointed under that Act, each Receiver has, and is entitled to exercise, all of the rights, powers and discretions set out in this clause 13.3.
  - (ii) If there is more than one Receiver holding office at the same time, unless the document appointing him states otherwise, each Receiver may exercise all of the powers conferred on a Receiver under this Deed or under the Insolvency Act 1986 individually and to the exclusion of any other Receivers.

(iii) A Receiver of the Chargor has all the rights, powers and discretions of an administrative receiver under the Insolvency Act 1986.

(iv) A Receiver may, in the name of the Chargor:

(A) do all other acts and things which he may consider expedient for realising the Property; and

(B) exercise in relation to the Property all the powers, authorities and things which he would be capable of exercising if he were its absolute beneficial owner.

(b) Borrow money

A Receiver may raise and borrow money (either unsecured or on the security of the Property, either in priority to the security constituted by this Deed or otherwise) on any terms and for whatever purpose which he thinks fit. No person lending that money need enquire as to the propriety or purpose of the exercise of that power or to check the application of any money so raised or borrowed.

(c) Carry on business

A Receiver may carry on the business of the Chargor as he thinks fit and, for the avoidance of doubt, a Receiver may apply for such Authorisations as he considers in his absolute discretion appropriate.

(d) Compromise

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Chargor or relating in any way to the Property.

(e) Delegation

A Receiver may delegate his powers in accordance with clause 14 (Delegation).

(f) Employees

For the purposes of this Deed, a Receiver as he thinks appropriate, on behalf of the Chargor or for itself as Receiver, may:

(i) appoint and discharge managers, officers, agents, accountants, servants, workmen and others upon such terms as to remuneration or otherwise as he may think proper; and

(ii) discharge any such persons appointed by the Chargor.

(g) Leases

A Receiver may let the Property for any term and at any rent (with or without a premium) which he thinks proper and may accept a surrender of any lease or tenancy of the Property on any terms which he thinks fit (including the payment of money to a lessee or tenant on a surrender).

(h) Legal actions

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings or submit to arbitration or any form of alternative dispute resolution in the name of the Chargor in relation to the Property as he considers expedient.

(i) Possession

A Receiver may take immediate possession of, get in and collect the Property;

(j) Protection of assets

A Receiver may, in each case as he may think fit:

(i) make and effect all repairs and insurances and do all other acts which the Chargor might do in the ordinary conduct of its business be they for the protection or for the improvement of the Property;

(ii) commence and/or complete any building operations on the Property; and

(iii) apply for and maintain any planning permission, building regulation approval or any other permission, consent or licence.

(k) Receipts

A Receiver may give valid receipts for all monies and execute all assurances and things which may be expedient for realising the Property.

(l) Sale of assets

A Receiver may sell, exchange, convert into monies and realise the Property by public auction or private contract in any manner and on any terms which he thinks proper. The consideration for any such transaction may consist of cash, debenture or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over such period as he thinks fit. Fixtures and any plant and machinery annexed to any part of the Property may be severed and sold separately from the property containing them without the consent of the Chargor.

(m) Subsidiaries

A Receiver may form a Subsidiary of the Chargor and transfer to that Subsidiary the Property.

(n) Deal with the Property

A Receiver may, without restriction sell, let or lease, or concur in selling, letting or leasing, or vary the terms of, determine, surrender or accept surrenders of, leases or tenancies of, or grant options and licences over or otherwise dispose of or deal with, all or any part of the Property without being responsible for loss or damage, and so that any such sale, lease or disposition may be made for cash payable by instalments, loan stock or other debt obligations or for shares or securities of another company or other valuable consideration. The Receiver may form and promote, or concur in forming and promoting, a company or companies to purchase, lease, licence or otherwise acquire interests in all or any part of the Property or otherwise, arrange for such companies to trade or cease to trade and to purchase, lease, licence or otherwise acquire all or any

part of the Property on such terms and conditions whether or not including payment by instalments secured or unsecured as he may think fit.

(o) **Security**

A Receiver may redeem any prior Security and settle and pass the accounts of the person entitled to the prior Security so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on the Chargor and the money so paid shall be deemed to be an expense properly incurred by the Receiver.

(p) **Acquire land**

The Receiver may purchase or acquire any land and purchase, acquire or grant any interest in or right over land.

(q) **Development**

A Receiver may implement or continue the development of (and obtain all consents required in connection therewith) and/or complete any buildings or structures on, any real property comprised in the Property and do all acts and things incidental to the Property.

(r) **Landlord's obligations**

A Receiver may on behalf of the Chargor and without consent of or notice to the Chargor exercise all the powers conferred on a landlord or a tenant by the Landlord and Tenants Acts, the Rents Acts and Housing Acts or any other legislation from time to time in force in any relevant jurisdiction relating to rents or agriculture in respect of any part of the Property.

(s) **Uncalled capital**

A Receiver may make calls conditionally or unconditionally on the members of the Chargor in respect of uncalled capital.

(t) **Incidental matters**

A Receiver may do all other acts and things including without limitation, signing and executing all documents and deeds as may be considered by the Receiver to be incidental or conducive to any of the matters or powers listed here or granted by law or otherwise incidental or conducive to the preservation, improvement or realisation of the Property and to use the name of the Chargor for all the purposes set out in this clause 13.

#### 13.4 **Remuneration**

The Trustees may from time to time fix the remuneration of any Receiver appointed by it.

#### 14 **Delegation**

- 14.1 The Trustees and any Receiver may delegate by power of attorney or in any other manner all or any of the powers, authorities and discretions which are for the time being exercisable by the Trustees and the Receiver (as appropriate) under this Deed to any person or persons as it shall think fit. Any such delegation may be made upon such terms and conditions (including the power to sub-delegate) as the Trustees and Receiver (as appropriate) may think fit.



- 14.2 The Trustees and any Receiver will not be liable or responsible to the Chargor or any other person for any losses, liabilities or expenses arising from any act, default, omission or misconduct on the part of any delegate.

## 15 Application of monies

- 15.1 Sections 109(6) and (8) (Appointment, powers, remuneration and duties of receiver) of the Law of Property Act 1925 shall not apply to a Receiver appointed under this Deed.

- 15.2 All monies received by the Trustees or any Receiver under this Deed shall be applied in the following order:

- (a) in discharging any sums owing to the Trustees, any Receiver or any Delegate;
- (b) in payment of all costs and expenses incurred by the Trustees in connection with any realisation or enforcement of this Deed;
- (c) in or toward payment of the Secured Obligations; and
- (d) the balance (if any) will be applied as required by law.

- 15.3 The Trustees and any Receiver may place any money received, recovered or realised pursuant to this Deed in an interest bearing suspense account and it may retain the same for such period as it considers expedient without having any obligation to apply the same or any part of it in or towards discharge of the Secured Obligations.

## 16 Remedies and waivers

- 16.1 No failure to exercise, nor any delay in exercising, on the part of the Trustees or any Receiver, any right or remedy under this Deed shall operate as a waiver or any such right or remedy or constitute an election to affirm this Deed. No election to affirm this Deed on the part of the Trustees or any Receiver shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

- 16.2 A waiver given or consent granted by the Trustees or any Receiver under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

## 17 Protection of third parties

- 17.1 No person (including a purchaser) dealing with the Trustees or a Receiver or its or his agents has an obligation to enquire of the Trustees, Receiver or others:

- (a) whether the Secured Obligations have become payable;
- (b) whether any power purported to be exercised has become exercisable;
- (c) whether any Secured Obligations or other monies remain outstanding;
- (d) how any monies paid to the Trustees or to the Receiver shall be applied; or
- (e) the status, propriety or validity of the acts of the Receiver or the Trustees.

17.2 The receipt of the Trustees or any Receiver shall be an absolute and a conclusive discharge to a purchaser and shall relieve him of any obligation to see to the application of any monies paid to or by the direction of the Trustees or any Receiver.

17.3 In clauses 17.1 and 17.2 **purchaser** includes any person acquiring, for money or monies worth, any lease of, or Security over, or any other interest or right whatsoever in relation to, the Property.

## **18 Additional security**

The Security created by or under this Deed is in addition to and is not in any way prejudiced by any guarantee or security now or subsequently held by the Trustees.

## **19 Settlements conditional**

19.1 If the Trustees (acting reasonably) believes that any amount paid by the Chargor or any other person in respect of the Secured Obligations is capable of being avoided or set aside for any reason, then for the purposes of this Deed, such amount shall not be considered to have been paid.

19.2 Any settlement, discharge or release between the Chargor and the Trustees shall be conditional upon no Security or payment to or for the Trustees by the Chargor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any law relating to bankruptcy, insolvency or liquidation or otherwise.

## **20 Subsequent Security**

If the Trustees receive notice of any other subsequent Security or other interest affecting all or any part of the Property they may open a new account or accounts for the Chargor in their books. If they do not do so then, unless they give express written notice to the contrary to the Chargor, as from the time of receipt of such notice by the Trustees, all payments made by the Chargor to the Trustees shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations.

## **21 Notices**

### **21.1 Communications in writing**

Any communication to be made under or in connection with this Deed shall be made in writing and, unless otherwise stated, may be made by fax or letter.

### **21.2 Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Deed is that identified with its name below or any substitute address or fax number or department or officer as one Party may notify to the other Party by not less than 5 Business Days' notice.

### **21.3 Delivery**

(a) Any communication or document made or delivered by 1 person to another under or in connection with this Deed will only be effective:

(i) if by way of fax, when received in legible form; or

- (ii) if by way of letter, when it has been left at the relevant address or 5 Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address;

and, if a particular department or officer is specified as part of its address details provided under clause 21.2, if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Trustees will be effective only when actually received by the Trustees and then only if it is expressly marked for the attention of the department or officer identified with the Trustees' signature below (or any substitute department or officer as the Trustees shall specify for this purpose).
- (c) Any communication or document which becomes effective, in accordance with clause 21.3(a) and/or clause 21.3(b) after 5.00 pm in the place of receipt shall be deemed only to become effective on the following day.

## 22 Partial invalidity

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## 23 Releases

- (a) Upon expiry of the Security Period, the Trustees shall, at the request and reasonable cost of the Chargor, take whatever action is necessary to release and reassign to the Chargor:
  - (i) its rights arising under this Deed;
  - (ii) the Secured Assets from the Security created by and under this Deed,
 and return all documents or deeds of title delivered to the Trustees under this Deed.
- (b) If the Chargor disposes of any Secured Asset or any part of any Secured Asset where such disposal is a Permitted Disposal or otherwise made with the prior written consent of the Trustees, the Trustees shall promptly release the relevant asset from the Security created by and under this Deed and return all documents or deeds of title relating to the relevant asset delivered to the Trustees under this Deed.

## 24 Counterparts

This Deed or any document entered into under or in connection with this Deed may be executed in any number of counterparts, and by each Party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument.

## 25 Governing law

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

**26 Enforcement****26.1 Jurisdiction of English courts**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (Dispute).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This clause 26 is for the benefit of the Trustees. As a result, the Trustees shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Trustees may take concurrent proceedings in any number of jurisdictions.

**26.2 Service of process**

- (a) The Civil Procedure Rules regarding service and deemed service will not apply to any letter or other communication notifying a claim or serving legal proceedings under or in connection with this Deed, which shall instead be served in accordance with this clause 26.2.
- (b) Any letter or other communication notifying a claim or serving legal proceedings under or in connection with this Deed may not be made by way of fax and must be made pursuant to clauses 21 (Notices) of this Deed.

This Deed has been signed on behalf of the Trustees and executed as a deed by the Chargor and is delivered on the date given at the beginning of this Deed.

**Schedule 1**

**Property**

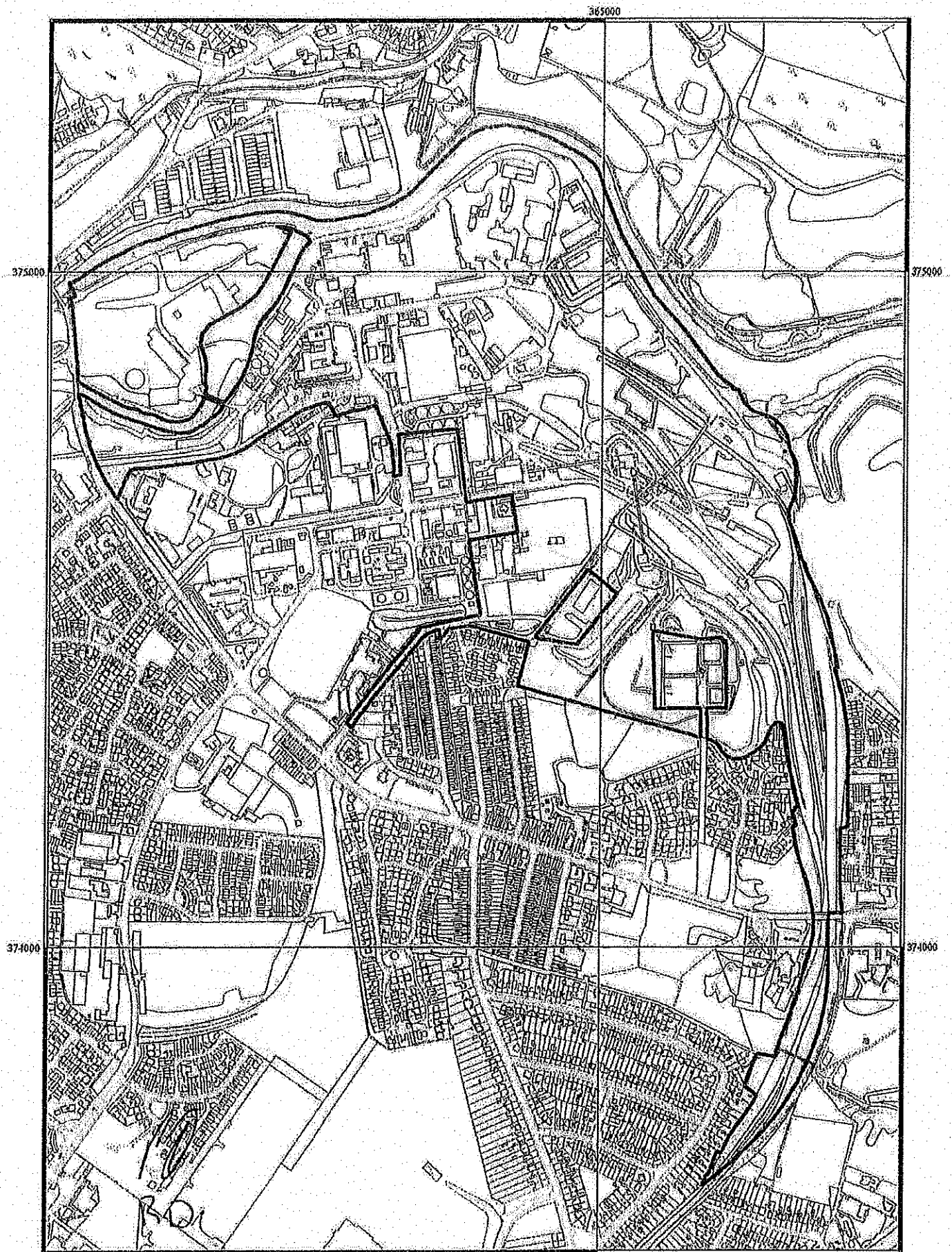
**Registered Land**

Country and District (or Address or Description London Borough)	Title Number
Circa 150 acres as shown edged red on the attached plan at Appendix 1.	CH345675

**Unregistered Land**

Appendix 1

Site Plan



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100 0 100 200 300 400 m



Nominal Scale 1:5000 @ A3



SIGNATORIES TO THE DEED

Chargor

Executed as a deed by  
**TATA CHEMICALS EUROPE LIMITED**  
acting by a director in the presence of

)  
)  
) Director



Signature of witness

Name Jessica Burgess

Address Addleshaw Road

Manchester Office

Address: Mond House  
Winnington  
Northwich  
Cheshire  
CW8 4DT

Fax No: N/A

Attention: John Abbotts

The Trustees

Signed by a director of **STEVE SOUTHERN**  
**TRUSTEES LIMITED** as trustee of  
**The Brunner Mond Pension Fund**

Signed by a **CRAIG THORNHILL** as trustee of  
**The Brunner Mond Pension Fund**

Signed by a **KENNETH HUGH MADELEY**  
**BRAY** as trustee of  
**The Brunner Mond Pension Fund**



SIGNATORIES TO THE DEED

Chargor

Executed as a deed by )  
**TATA CHEMICALS EUROPE LIMITED** ) .....  
acting by a director in the presence of ) Director

Signature of witness

Name .....

Address .....

Address: Mond House  
Winnington  
Northwich  
Cheshire  
CW8 4DT

Fax No: N/A

Attention: John Abbotts

The Trustees

Signed by a director of **STEVE SOUTHERN**  
**TRUSTEES LIMITED** as trustee of  
The Brunner Mond Pension Fund

Signed by a **CRAIG THORNHILL** as trustee of  
The Brunner Mond Pension Fund

Signed by a **KENNETH HUGH MADELEY**  
**BRAY** as trustee of  
The Brunner Mond Pension Fund

## SIGNATORIES TO THE DEED

## Chargor

Executed as a deed by )  
**TATA CHEMICALS EUROPE LIMITED** )  
acting by a director in the presence of ) Director

## Signature of witness

Name .....

Address .....

Address: Mond House  
Winnington  
Northwich  
Cheshire  
CW8 4DT

Fax No: N/A

Attention: John Abbotts

## The Trustees

Signed by a director of **STEVE SOUTHERN**  
**TRUSTEES LIMITED** as trustee of  
**The Brunner Mond Pension Fund**

Signed by a **CRAIG THORNHILL** as trustee of  
**The Brunner Mond Pension Fund**



Signed by a **KENNETH HUGH MADELEY**  
**BRAY** as trustee of  
**The Brunner Mond Pension Fund**



24.

EXECUTION VERSION

)  
)  
)  
) .....

Signed by a **LESLIE DEREK WESTON** as  
trustee of **The Brunner Mond Pension Fund**



Signed by a **RICHARD DIGGLE** as trustee of  
**The Brunner Mond Pension Fund**

Dated 13 July 2023

**TATA CHEMICALS EUROPE LIMITED**  
as Chargor

**GLADMAN DEVELOPMENTS LIMITED**  
as Chargee

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**CHARGE BY WAY OF LEGAL  
MORTGAGE**

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This Deed is made on

13 July

2023

**Between**

- (1) **TATA CHEMICALS EUROPE LIMITED** (registered in England with company number 02807081) whose registered office is at Natrium House, Winnington Lane, Northwich, Cheshire, CW8 4GW (**Chargor**); and
- (2) **GLADMAN DEVELOPMENTS LIMITED** (registered in England with company number 03341567) whose registered office is at Gladman House, Alexandria Way, Congleton Business Park, Congleton, Cheshire, CW12 1LB (**Chargee**).

**It is agreed**

**1 Definitions and interpretation**

**1.1 Definitions**

In this Deed:

**Authorisation** means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation

**BMPF Trustees** means the trustees for the time being of the Scheme

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for general business in London

**Chargor Promotion Agreement** means the agreement for the promotion, marketing and sale of plots at the Property entered into between (1) the Chargor and (2) the Chargee dated 23 March 2021 as amended or supplemented from time to time

**Delegate** means any delegate, agent, attorney or co-trustee appointed by the Chargee

**Event of Default** means any event or circumstance specified as such in Clause 11 (*Events of Default*)

**Fixtures** means, in respect of the Property, all fixtures and fittings (including trade fixtures and fittings) and fixed plant and machinery now or at any time after the date of this Deed on the Property

**INOVYN** means Inovyn Enterprises Limited (Company Number 04651437) whose registered office is at Bankes Lane Office, Bankes Lane, PO Box 9, Runcorn Cheshire WA7 4JE

**Intercreditor Deed** means the deed dated 13 July 2023 relating to the ranking of security and distribution of certain proceeds made between BMPF Trustees (1) the Chargor (2) the Chargee (3) and INOVYN (4)

**Land Receipts** has the meaning given to such term in the Intercreditor Deed

**Legal Reservations** means:

- (a) the principle that equitable remedies are remedies which may be granted or refused at the discretion of a court, the principle of reasonableness and fairness, the limitation of validity or enforcement by laws relating to bankruptcy, insolvency, judicial management,

liquidation, reorganisation, court schemes, moratoria, administration and other laws generally affecting the rights of creditors

- (b) the time barring of claims under any applicable laws of limitation (including without limitation the Limitation Acts), the possibility that an undertaking to assume liability for or to indemnify a person against non-payment of stamp duty may be void and defences of set off or counterclaim
- (c) the principle that in certain circumstances security granted by way of fixed charge may be re characterised as a floating charge or that security purported to be constituted as an assignment may be re characterised as a floating charge
- (d) the principle that additional interest imposed pursuant to any relevant agreement may be held to be unenforceable on the grounds that it is a penalty and thus void
- (e) the principle that a court may not give effect to an indemnity for legal costs incurred by an unsuccessful litigant
- (f) the principle that the creation or purported creation of security over any contract or agreement which is subject to a prohibition on transfer, assignment or charging may be void, ineffective or invalid and may give rise to a breach of the contract or agreement over which security has purportedly been created
- (g) the limitation of the enforcement of the terms of leases of real property by laws of general application to those leases and
- (h) similar principles, rights and defences under the laws of any Relevant Jurisdiction

**Limitation Acts** means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984

**Material Adverse Effect** means a material adverse effect on:

- (a) the ability of the Chargor to perform its payment obligations under this Deed or the Intercreditor Deed; or
- (b) subject to the Legal Reservations and the Perfection Requirements, the validity or enforceability of, or the effectiveness or ranking of this Deed or the rights or remedies of the Chargee under this Deed or the Intercreditor Deed

**Original Jurisdiction** means, in relation to the Chargor, the jurisdiction under whose laws it is incorporated as at the date of this Deed

**Party** means a party to this Deed

**Perfection Requirements** means the making or the procuring of the necessary registrations, filings, endorsements, notarisations, stamping or notifications of this Deed as specifically contemplated by this Deed and/or necessary for the validity, enforceability, perfection, priority or enforcement of the Security created hereunder

**Permitted Disposal** means any sale, lease, licence, transfer or other disposal of land at the Property pursuant to the terms of the Chargor Promotion Agreement

**Permitted Security** means:



(a) the legal charge dated 1 February 2021 given by the Chargor to the BMPF Trustees in the form attached;

(b) the legal charge dated 29 March 2019 given by the Chargor to the BMPF Trustees in the form attached; and

(c) the legal charge dated 13 July 2023 given by the Chargor to INOVYN in the form attached.

**Property** means the property described in Schedule 1

**Receiver** means any receiver, manager or administrative receiver appointed by the Chargee in respect of the Chargor or the Property

**Relevant Jurisdiction** means, in relation to the Chargor:

- (a) its Original Jurisdiction;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Security created by this Deed is situated;
- (c) any jurisdiction where it conducts its business

**Scheme** means the Brunner Mond Pension Fund governed by a trust deed and rules dated 21 February 2002 as amended from time to time

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

**Secured Assets** means the assets and undertaking of the Chargor which are the subject of any Security created by, under or supplemental to, this Deed, in favour of the Chargee

**Secured Obligations** means all monies and liabilities now or after the date of this deed due owing or incurred by the Chargor to the Chargee, (i) pursuant to the Chargor Promotion Agreement and (ii) pursuant to the Intercreditor Deed, in any manner and in any currency or currencies and whether present or future, actual or contingent, whether incurred solely or jointly with any other person and whether as principal or surety together with all interest accruing on such monies and liabilities and all costs, charges and expenses incurred by the Chargee under this Deed

**Security Period** means the period beginning on the date of this Deed and ending on the date upon which the Secured Obligations have been irrevocably and unconditionally satisfied in full

**Subsidiary** means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006

**Termination Event** means the termination of the Chargor Promotion Agreement in accordance with its terms

**Transaction Documents** means:

- (a) this Deed;
- (b) the Chargor Promotion Agreement; and

- (c) the Intercreditor Deed

## 1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Deed to:
- (i) the "**Chargor**" and the "**Chargee**" or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under this Deed and/or the Chargor Promotion Agreement (but subject to the Intercreditor Deed);
  - (ii) a document in "**agreed form**" is a document which is previously agreed in writing by or on behalf of the Chargee and the Chargor or, if not so agreed, is in the form specified by the Chargee;
  - (iii) "**assets**" includes present and future properties, revenues and rights of every description;
  - (iv) "**disposal**" includes a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary, and "**dispose**" will be construed accordingly;
  - (v) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (vi) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership or other entity (whether or not having separate legal personality);
  - (vii) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
  - (viii) a provision of law is a reference to that provision as amended or re-enacted; and
  - (ix) a time of day is a reference to London time.
- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) Unless a contrary indication appears, a term used in the Chargor Promotion Agreement or in any notice given under or in connection with this Deed and/or the Chargor Promotion Agreement has the same meaning in that this Deed and/or the Chargor Promotion Agreement.
- (d) An Event of Default is "**continuing**" if it has not been remedied or waived.

## 1.3 Third party rights

- (a) Unless expressly provided to the contrary in this Deed, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed or any other document issued or entered into under or

In connection with it but this does not affect any right or remedy of a third party which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

- (b) Unless expressly provided to the contrary in this Deed the consent of any person who is not a Party is not required to rescind or vary this Deed or any other document entered into under or in connection with it.

#### **1.4 Administration**

- (a) Any reference in this Deed, to the making of an administration order shall be treated as including a reference to the appointment of an administrator under paragraph 14 (by the holder of a qualifying floating charge in respect of the Chargor's assets) or 22 (by the Chargor or the directors of the Chargor) of Schedule B1 to the Insolvency Act 1986 or any steps taken toward such order or appointment.
- (b) Any reference in this Deed, to making an application for an administration order by petition shall be treated as including a reference to making an administration application to the court under Schedule B1 to the Insolvency Act 1986, appointing an administrator under paragraph 14 or 22 of that Schedule, or giving notice under paragraph 15 or 26 of that Schedule of intention to appoint an administrator or any steps taken towards such application or notice.

## **2 Charging provisions**

### **2.1 General**

All Security created by the Chargor under clauses 2.2 to 2.3 inclusive is:

- (a) a continuing security for the payment and discharge of the Secured Obligations;
- (b) granted with full title guarantee;
- (c) granted in respect of all the right, title and interest (if any), present and future, of the Chargor in and to the Property; and
- (d) granted in favour of the Chargee.

### **2.2 First legal mortgage**

The Chargor charges by way of first legal mortgage the Property and all Fixtures on the Property (subject to the terms of the Intercreditor Deed).

### **2.3 First fixed charges**

The Chargor charges by way of first fixed charge (subject to the terms of the Intercreditor Deed):

- (a) the proceeds of sale of the Property and all licences to enter on or use the Property;
- (b) the benefit of all other agreements, instruments and rights relating to the Property; and
- (c) to the extent that any legal mortgage in clause 2.2 is ineffective as a legal mortgage, the assets referred to in that clause.

## 2.4 Small company moratorium

Where the Chargor is an eligible company within the meaning of paragraphs 2 to 4 (inclusive) of Schedule A1 to the Insolvency Act 1986, then the obtaining of a moratorium, including any preliminary decision, or investigation in terms of paragraph 43 of Schedule A1 to the Insolvency Act 1986 shall not cause restrictions which would not otherwise apply to be imposed on the disposal of its property and assets by the Chargor.

## 3 Continuing security

### 3.1 Continuing security

The Security constituted by this Deed shall be continuing security and shall remain in full force and effect regardless of any intermediate payment or discharge by the Chargor or any other person of the whole or any part of the Secured Obligations.

### 3.2 Recourse

The Security constituted by this Deed:

- (a) is in addition to any other Security which the Chargee may hold at any time for the Secured Obligations (or any of them); and
- (b) may be enforced without first having recourse to any other rights of the Chargee.

## 4 Negative pledge

4.1 The Chargor shall not create or permit to subsist any Security over any of the Property (other than the Permitted Security and other than any Security constituted under this Deed).

4.2 The Chargor shall not:

- (a) sell, transfer or otherwise dispose of the Property on terms whereby they are or may be leased to or re-acquired by it; or
- (b) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising indebtedness or of financing the acquisition of an asset.

## 5 Restrictions on disposals

5.1 The Chargor shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary sell, assign, transfer, licence, lease or otherwise dispose of all or any part of, or any interest in the Property.

5.2 Clause 5.1 does not apply to any Permitted Disposal or the grant of any Permitted Security.

## 6 Notifiable events

The Chargor shall promptly notify the Chargee upon becoming aware that any representation made or deemed to be made by the Chargor under this Deed is or proves to have been incorrect or misleading when made or deemed to be made.

**7 Further assurance**

- 7.1 The Chargor shall promptly do all such acts and execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Chargee may reasonably specify (and in such form as the Chargee may reasonably require) in favour of the Chargee or its nominee(s):
- (a) to create, perfect, protect and maintain the Security created or intended to be created under or evidenced by this Deed or for the exercise of any rights, powers and remedies of the Chargee provided by or pursuant to this Deed or by law;
  - (b) to confer on the Chargee Security over the Property intended to be conferred by or pursuant to this Deed; and/or
  - (c) (if an Event of Default is continuing) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security created by or under this Deed.
- 7.2 The Chargor shall take all such action as is reasonably available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Chargee by or pursuant to this Deed.
- 7.3 Any document required to be executed by the Chargor under this clause 7 will be prepared at the cost of the Chargor.

**8 Representations**

The Chargor makes the representations and warranties set out in this clause 8 to the Chargee on the date of this Deed and on each day during the Security Period.

**8.1 Status**

- (a) It is a limited liability corporation, duly incorporated and validly existing under the law of its Original Jurisdiction.
- (b) It has the power to own its assets and carry on its business as it is being conducted.

**8.2 Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, this Deed and the granting of the Security constituted by this Deed, will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any material agreement or instrument binding upon it or any of its material assets or constitute a default or termination event (however described) under any such agreement or instrument.

**8.3 Power and authority**

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Deed to which it is or will be a party and the transactions contemplated by this Deed.

- (b) No limit on its powers will be exceeded as a result of the grant of this Deed.

#### **8.4 Legal Validity**

Subject to the Legal Reservations and Perfection Requirements, the obligations expressed to be assumed by it in this Deed are legal, binding, valid and enforceable obligations.

#### **8.5 No Default**

No event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of the foregoing, would constitute) a default or termination event (howsoever described) under any document which is binding on it or any of its assets to an extent or in a manner which has or is reasonably likely to have a Material Adverse Effect.

#### **8.6 Authorisations**

All authorisations required by it in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, this Deed have been obtained or effected (as appropriate) and are in full force and effect to the extent that a failure to do so would have or is reasonably likely to have a Material Adverse Effect.

#### **8.7 Litigation**

No litigation, arbitration or administrative proceedings are current or, to its knowledge, pending or threatened against it, which have or, if adversely determined, are reasonably likely to have a Material Adverse Effect.

#### **8.8 Nature of Security**

- (a) This Deed creates the Security it purports to create and is not liable to be amended or otherwise set aside in the insolvency, liquidation or administration of the Chargor or otherwise.
- (b) The Security created by this Deed constitutes Security of the type described over the Property and the Property is not subject to any prior or pari passu Security other than Permitted Security.

### **9 Land Registry**

#### **9.1 Application for restriction**

- (a) In relation to land and buildings comprised within the Property situated in England and Wales title to which is registered or is to be registered at the Land Registry, the Chargor consents to an application being made to the Chief Land Registrar for registration of a restriction on the register of title of all such present and future registered freehold, leasehold or commonhold property (and any unregistered properties subject to compulsory first registration at the date of this Deed) in the form set out below:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated [●] in favour of [●] from time to time referred to in the charges register."

- (b) The Chargor confirms that so far as any of the Property is unregistered, such land is not affected by any disclosable overriding interests within the meaning of the Land Registration Act 2002 or the Land Registration Rules 2003.

## **10 Security power of attorney**

- (a) The Chargor, by way of security, irrevocably and severally appoints the Chargee, each Receiver and any of their delegates or sub-delegates to be its attorney to take any action which the Chargor is obliged to take under this Deed. The Chargor ratifies and confirms whatever any attorney lawfully does or purports to do pursuant to its appointment under this clause 10.
- (b) The Chargee, any Receiver or any Delegate shall only be able to exercise a power of attorney under this Deed:
  - (i) following the occurrence of an Event of Default that is continuing; or
  - (ii) if the Chargor has failed to comply with a further assurance or perfection obligation (or any of them) under this Deed, within 10 Business Days of being notified of such failure and being requested to comply provided that the exercise of such power of attorney shall only be used to remedy the Chargor's failure to so comply.

## **11 Events of Default**

Each of the events or circumstances set out in this Clause 11 is an Event of Default.

### **11.1 Non-Compliance**

- (a) The Chargor fails to comply with any provision of this Deed unless the failure to comply is capable of remedy and is remedied within 14 days of the earlier of the Chargee giving notice to the Chargor and the Chargor becoming aware of the failure to comply.
- (b) The Chargor fails to pay a Land Receipt when due in accordance with the terms of the Chargor Promotion Agreement (but subject to the terms of the Intercreditor Deed) unless such failure to pay is caused by an administrative or technical error and payment is made within 14 days of the Chargor becoming aware that it is past its due date.

### **11.2 Misrepresentation**

Any representation or statement made or deemed to be made by the Chargor in this Deed is or proves to have been incorrect or misleading in any material respect when made or deemed to be made (**Misrepresentation**), unless such Misrepresentation:

- (a) is capable of remedy; and
- (b) is remedied within fourteen (14) days of the earlier of:
  - (i) the Chargee giving notice of such Misrepresentation; and
  - (ii) the Chargor becoming aware of the circumstances giving rise to such Misrepresentation.

### **11.3 Insolvency**

- (a) The Chargor:
  - (i) is unable or admits inability to pay its debts as they fall due;
  - (ii) by reason of actual or anticipated financial difficulties, suspends or threatens to suspend making payments on any of its debts; or
  - (iii) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- (b) A moratorium is declared in respect of any indebtedness of the Chargor.
- (c) No Event of Default will occur under this Clause 11.3 if any of the events or circumstances in (a) or (b) occur in relation to an amount owing by the Chargor that is equal to or less than £1,000,000 (or its equivalent).

#### 11.4 Insolvency Proceedings

- (a) Any corporate action, legal proceedings or other procedure is taken in relation to:
  - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Chargor;
  - (ii) a composition, compromise, assignment or arrangement with any creditor of the Chargor in connection with or as a result of any financial difficulty on the part of the Chargor;
  - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Chargor or any of its assets; or
  - (iv) enforcement of any Security over any asset or assets of the Chargor where such assets have an aggregate value of at least £1,000,000 (or its equivalent),
 or any analogous procedure or step is taken in any jurisdiction.
- (b) Paragraph (a) above shall not apply to:
  - (i) any corporate action, legal proceedings or other procedure or step which relates to an amount that is equal to or less than £1,000,000 (or its equivalent); or
  - (ii) any proceedings which are being contested in good faith.



**11.5 Creditors' Process**

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of the Chargor having an aggregate value of at least £1,000,000 (or its equivalent) unless it is being contested in good faith.

**11.6 Cessation of business**

The Chargor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business except as a result of any disposal allowed under this Deed.

**11.7 Unlawfulness and invalidity**

- (a) It is or becomes unlawful for the Chargor to perform any of its obligations under the Transaction Documents or the Security created or expressed to be created or evidenced by this Deed ceases to be effective or becomes unlawful.
- (b) Any obligation or obligations of the Chargor under any Transaction Document are not or cease (subject to the Legal Reservations and Perfection Requirements) to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Chargee under the Transaction Documents.
- (c) Any Transaction Document ceases to be in full force and effect or ceases (subject to the Legal Reservations and Perfection Requirements) to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than the Chargee) to be ineffective.

**11.8 Repudiation and rescission of this charge**

The Chargor rescinds or purports to rescind or repudiates any Transaction Document or evidences an intention to rescind or repudiate any Transaction Document.

**11.9 Material adverse change**

- (a) Any event or circumstance occurs which in the reasonable opinion of the Chargee, has or is reasonably likely to have a Material Adverse Effect.
- (b) The occurrence of a Termination Event.

**12 Enforcement of security**

**12.1 When security is enforceable**

On the occurrence of any Event of Default which is continuing, the Security created by and under this Deed is immediately enforceable.

**12.2 Acts of enforcement**

The Chargee may, at their absolute discretion, at any time after the Security created by or under this Deed is enforceable:

- (a) enforce all or any part of the Security created by or under this Deed in any manner they see fit;

- (b) exercise their rights and powers conferred upon mortgagees by the Law of Property Act 1925, as varied and extended by this Deed, and rights and powers conferred on a Receiver by this Deed, whether or not they have taken possession or appointed a Receiver to the Property;
- (c) appoint a Receiver to all or any part of the Property;
- (d) If permitted by law, appoint an administrator in respect of the Chargor and take any steps to do so;
- (e) exercise their power of sale under section 101 of the Law of Property Act 1925 (as amended by this Deed); or
- (f) If permitted by law, appoint an administrative receiver in respect of the Chargor.

#### **12.3 Statutory powers - general**

- (a) For the purposes of all powers implied by statute, the Secured Obligations are deemed to have become due and payable on the date of this Deed.
- (b) Section 103 of the Law of Property Act 1925 and section 93 of the Law of Property Act 1925 do not apply to the Security constituted by or under this Deed.
- (c) The statutory powers of leasing conferred on the Chargee are extended so that, without the need to comply with any provision of section 99 or section 100 of the Law of Property Act 1925, the Chargee is empowered to lease and make agreements for lease at a premium or otherwise, accept surrenders of leases and grant options or vary or reduce any sum payable under any leases or tenancy agreements as it may think fit.
- (d) Each Receiver and the Chargee is entitled to all the rights, powers, privileges and immunities conferred by the Law of Property Act 1925 and the Insolvency Act 1986 on mortgagees and Receivers.

#### **12.4 Mortgagee in possession - no liability**

Neither the Chargee nor any Receiver will be liable, by reason of entering into possession of the Property, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might otherwise be liable.

#### **12.5 Redemption of prior mortgages**

At any time after the Security created by or under this Deed has become enforceable, the Chargee may, at the sole cost of the Chargor (payable to the Chargee on demand):

- (a) redeem any prior form of Security over the Property; and/or
- (b) procure the transfer of that Security to itself; and/or
- (c) settle and pass the accounts of any prior mortgagee, chargee or encumbrancer which once so settled and passed shall be conclusive and binding on the Chargor.

**13 Receiver****13.1 Appointment of Receiver****(a)**

- (i) At any time after any Security created by or under this Deed is enforceable, the Chargee may appoint a Receiver to all or any part of the Property in accordance with clause 12.2(c) (Acts of enforcement).
- (ii) At any time, if so requested in writing by the Chargor, without further notice, the Chargee may appoint a Receiver to all or any part of the Property as if the Chargee had become entitled under the Law of Property Act 1925 to exercise the power of sale conferred under the Law of Property Act 1925.

- (b) Any Receiver appointed under this Deed shall be the agent of the Chargor and the Chargor shall be solely responsible for his acts or defaults and for his remuneration and liable on any contracts or engagements made or entered into by him and in no circumstances whatsoever shall the Chargee be in any way responsible for any misconduct, negligence or default of the Receiver.

- (c) Where the Chargor is an eligible company within the meaning of paragraphs 2 to 4 (inclusive) of Schedule A1 to the Insolvency Act 1986:

- (i) obtaining a moratorium, or
- (ii) anything done with a view to obtaining a moratorium including any preliminary decision or investigation in terms of paragraph 43 of Schedule A1 to the Insolvency Act 1986,

shall not be grounds for appointment of a Receiver.

**13.2 Removal**

The Chargee may by written notice remove from time to time any Receiver appointed by them (subject to the provisions of section 45 of the Insolvency Act 1986 in the case of an administrative receiver) and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated.

**13.3 Powers of Receiver****(a) General**

- (i) In addition to those conferred by the Law of Property Act 1925 on any Receiver appointed under that Act, each Receiver has, and is entitled to exercise, all of the rights, powers and discretions set out in this clause 13.3.
- (ii) If there is more than one Receiver holding office at the same time, unless the document appointing him states otherwise, each Receiver may exercise all of the powers conferred on a Receiver under this Deed or under the Insolvency Act 1986 individually and to the exclusion of any other Receivers.
- (iii) A Receiver of the Chargor has all the rights, powers and discretions of an administrative receiver under the Insolvency Act 1986.

(iv) A Receiver may, in the name of the Chargor:

- (A) do all other acts and things which he may consider expedient for realising the Property; and
- (B) exercise in relation to the Property all the powers, authorities and things which he would be capable of exercising if he were its absolute beneficial owner.

(b) Borrow money

A Receiver may raise and borrow money (either unsecured or on the security of the Property, either in priority to the security constituted by this Deed or otherwise) on any terms and for whatever purpose which he thinks fit. No person lending that money need enquire as to the propriety or purpose of the exercise of that power or to check the application of any money so raised or borrowed.

(c) Carry on business

A Receiver may carry on the business of the Chargor as he thinks fit and, for the avoidance of doubt, a Receiver may apply for such Authorisations as he considers in his absolute discretion appropriate.

(d) Compromise

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Chargor or relating in any way to the Property.

(e) Delegation

A Receiver may delegate his powers in accordance with clause 14 (Delegation).

(f) Employees

For the purposes of this Deed, a Receiver as he thinks appropriate, on behalf of the Chargor or for itself as Receiver, may:

- (i) appoint and discharge managers, officers, agents, accountants, servants, workmen and others upon such terms as to remuneration or otherwise as he may think proper; and
- (ii) discharge any such persons appointed by the Chargor.

(g) Leases

A Receiver may let the Property for any term and at any rent (with or without a premium) which he thinks proper and may accept a surrender of any lease or tenancy of the Property on any terms which he thinks fit (including the payment of money to a lessee or tenant on a surrender).

(h) Legal actions

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings or submit to arbitration or any form of alternative dispute resolution in the name of the Chargor in relation to the Property as he considers expedient.

(i) Possession

A Receiver may take immediate possession of, get in and collect the Property.

(j) Protection of assets

A Receiver may, in each case as he may think fit:

- (i) make and effect all repairs and insurances and do all other acts which the Chargor might do in the ordinary conduct of its business be they for the protection or for the improvement of the Property;
- (ii) commence and/or complete any building operations on the Property; and
- (iii) apply for and maintain any planning permission, building regulation approval or any other permission, consent or licence.

(k) Receipts

A Receiver may give valid receipts for all monies and execute all assurances and things which may be expedient for realising the Property.

(l) Sale of assets

A Receiver may sell, exchange, convert into monies and realise the Property by public auction or private contract in any manner and on any terms which he thinks proper. The consideration for any such transaction may consist of cash, debenture or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over such period as he thinks fit. Fixtures and any plant and machinery annexed to any part of the Property may be severed and sold separately from the property containing them without the consent of the Chargor.

(m) Subsidiaries

A Receiver may form a Subsidiary of the Chargor and transfer to that Subsidiary the Property.

(n) Deal with the Property

A Receiver may, without restriction sell, let or lease, or concur in selling, letting or leasing, or vary the terms of, determine, surrender or accept surrenders of, leases or tenancies of, or grant options and licences over or otherwise dispose of or deal with, all or any part of the Property without being responsible for loss or damage, and so that any such sale, lease or disposition may be made for cash payable by instalments, loan stock or other debt obligations or for shares or securities of another company or other valuable consideration. The Receiver may form and promote, or concur in forming and promoting, a company or companies to purchase, lease, licence or otherwise acquire interests in all or any part of the Property or otherwise, arrange for such companies to trade or cease to trade and to purchase, lease, license or otherwise acquire all or any

part of the Property on such terms and conditions whether or not including payment by instalments secured or unsecured as he may think fit.

(o) **Security**

A Receiver may redeem any prior Security and settle and pass the accounts of the person entitled to the prior Security so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on the Chargor and the money so paid shall be deemed to be an expense properly incurred by the Receiver.

(p) **Acquire land**

The Receiver may purchase or acquire any land and purchase, acquire or grant any interest in or right over land.

(q) **Development**

A Receiver may implement or continue the development of (and obtain all consents required in connection therewith) and/or complete any buildings or structures on, any real property comprised in the Property and do all acts and things incidental to the Property.

(r) **Landlord's obligations**

A Receiver may on behalf of the Chargor and without consent of or notice to the Chargor exercise all the powers conferred on a landlord or a tenant by the Landlord and Tenants Acts, the Rents Acts and Housing Acts or any other legislation from time to time in force in any relevant jurisdiction relating to rents or agriculture in respect of any part of the Property.

(s) **Uncalled capital**

A Receiver may make calls conditionally or unconditionally on the members of the Chargor in respect of uncalled capital.

(t) **Incidental matters**

A Receiver may do all other acts and things including without limitation, signing and executing all documents and deeds as may be considered by the Receiver to be incidental or conducive to any of the matters or powers listed here or granted by law or otherwise incidental or conducive to the preservation, improvement or realisation of the Property and to use the name of the Chargor for all the purposes set out in this clause 13.

**13.4 Remuneration**

The Chargee may from time to time fix the remuneration of any Receiver appointed by it.

**14 Delegation**

- 14.1 The Chargee and any Receiver may delegate by power of attorney or in any other manner all or any of the powers, authorities and discretions which are for the time being exercisable by the Chargee and the Receiver (as appropriate) under this Deed to any person or persons as it shall think fit. Any such delegation may be made upon such terms and conditions (including the power to sub-delegate) as the Chargee and Receiver (as appropriate) may think fit.

- 14.2 The Chargee and any Receiver will not be liable or responsible to the Chargor or any other person for any losses, liabilities or expenses arising from any act, default, omission or misconduct on the part of any delegate.

## **15 Application of monies**

- 15.1 Sections 109(6) and (8) (Appointment, powers, remuneration and duties of receiver) of the Law of Property Act 1925 shall not apply to a Receiver appointed under this Deed.

- 15.2 All monies received by the Chargee or any Receiver under this Deed shall be applied in the following order:

- (a) in discharging any sums owing to the Chargee, any Receiver or any Delegate;
- (b) in payment of all costs and expenses incurred by the Chargee in connection with any realisation or enforcement of this Deed;
- (c) in or toward payment of the Secured Obligations; and
- (d) the balance (if any) will be applied as required by law.

- 15.3 The Chargee and any Receiver may place any money received, recovered or realised pursuant to this Deed in an interest bearing suspense account and it may retain the same for such period as it considers expedient without having any obligation to apply the same or any part of it in or towards discharge of the Secured Obligations.

## **16 Remedies and waivers**

- 16.1 No failure to exercise, nor any delay in exercising, on the part of the Chargee or any Receiver, any right or remedy under this Deed shall operate as a waiver or any such right or remedy or constitute an election to affirm this Deed. No election to affirm this Deed on the part of the Chargee or any Receiver shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

- 16.2 A waiver given or consent granted by the Chargee or any Receiver under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

## **17 Protection of third parties**

- 17.1 No person (including a purchaser) dealing with the Chargee or a Receiver or its or his agents has an obligation to enquire of the Chargee, Receiver or others:

- (a) whether the Secured Obligations have become payable;
- (b) whether any power purported to be exercised has become exercisable;
- (c) whether any Secured Obligations or other monies remain outstanding;
- (d) how any monies paid to the Chargee or to the Receiver shall be applied; or
- (e) the status, propriety or validity of the acts of the Receiver or the Chargee.

17.2 The receipt of the Chargee or any Receiver shall be an absolute and a conclusive discharge to a purchaser and shall relieve him of any obligation to see to the application of any monies paid to or by the direction of the Chargee or any Receiver.

17.3 In clauses 17.1 and 17.2 **purchaser** includes any person acquiring, for money or monies worth, any lease of, or Security over, or any other interest or right whatsoever in relation to, the Property.

## **18 Additional security**

The Security created by or under this Deed is in addition to and is not in any way prejudiced by any guarantee or security now or subsequently held by the Chargee.

## **19 Settlements conditional**

19.1 If the Chargee (acting reasonably) believes that any amount paid by the Chargor or any other person in respect of the Secured Obligations is capable of being avoided or set aside for any reason, then for the purposes of this Deed, such amount shall not be considered to have been paid.

19.2 Any settlement, discharge or release between the Chargor and the Chargee shall be conditional upon no Security or payment to or for the Chargee by the Chargor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any law relating to bankruptcy, insolvency or liquidation or otherwise.

## **20 Subsequent Security**

If the Chargee receives notice of any other subsequent Security or other interest affecting all or any part of the Property it may open a new account or accounts for the Chargor in its books. If they do not do so then, unless they give express written notice to the contrary to the Chargor, as from the time of receipt of such notice by the Chargee, all payments made by the Chargor to the Chargee shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations.

## **21 Notices**

### **21.1 Communications in writing**

Any communication to be made under or in connection with this Deed shall be made in writing and, unless otherwise stated, may be made by letter but not by fax.

### **21.2 Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Deed is that identified with its name below or any substitute address or fax number or department or officer as one Party may notify to the other Party by not less than 5 Business Days' notice.

### **21.3 Delivery**

(a) Any communication or document made or delivered by 1 person to another under or in connection with this Deed will only be effective if by way of letter, when it has been left at the relevant address or 5 Business Days after being deposited in the post postage



prepaid in an envelope addressed to it at that address and, if a particular department or officer is specified as part of its address details provided under clause 21.2, if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Chargee will be effective only when actually received by the Chargee and then only if it is expressly marked for the attention of the department or officer identified with the Chargee's signature below (or any substitute department or officer as the Chargee shall specify for this purpose).
- (c) Any communication or document which becomes effective, in accordance with clause 21.3(a) and/or clause 21.3(b) after 5.00 pm in the place of receipt shall be deemed only to become effective on the following day.

## **22 Partial invalidity**

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## **23 Releases**

- (a) Upon expiry of the Security Period, the Chargee shall, at the request and reasonable cost of the Chargor, take whatever action is necessary to release and reassign to the Chargor:
  - (i) its rights arising under this Deed;
  - (ii) the Secured Assets from the Security created by and under this Deed,and return all documents or deeds of title delivered to the Chargee under this Deed.
- (b) If the Chargor disposes of any Secured Asset or any part of any Secured Asset where such disposal is a Permitted Disposal or otherwise made with the prior written consent of the Chargee, the Chargee shall promptly release the relevant asset from the Security created by and under this Deed and return all documents or deeds of title relating to the relevant asset delivered to the Chargee under this Deed.

## **24 Counterparts**

This Deed or any document entered into under or in connection with this Deed may be executed in any number of counterparts, and by each Party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument.

## **25 Governing law**

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

**26 Enforcement**

**26.1 Jurisdiction of English courts**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (**Dispute**).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This clause 26 is for the benefit of the Chargee. As a result, the Chargee shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Chargee may take concurrent proceedings in any number of jurisdictions.

**26.2 Service of process**

- (a) The Civil Procedure Rules regarding service and deemed service will not apply to any letter or other communication notifying a claim or serving legal proceedings under or in connection with this Deed, which shall instead be served in accordance with this clause 26.2.
- (b) Any letter or other communication notifying a claim or serving legal proceedings under or in connection with this Deed may not be made by way of fax and must be made pursuant to clauses 21 (Notices) of this Deed.

**This Deed** has been signed on behalf of the Chargee and executed as a deed by the Chargor and is delivered on the date given at the beginning of this Deed.

**Schedule 1**

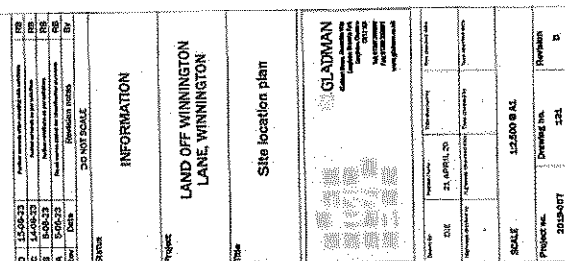
**Property**

**Registered Land**

The property comprised in:

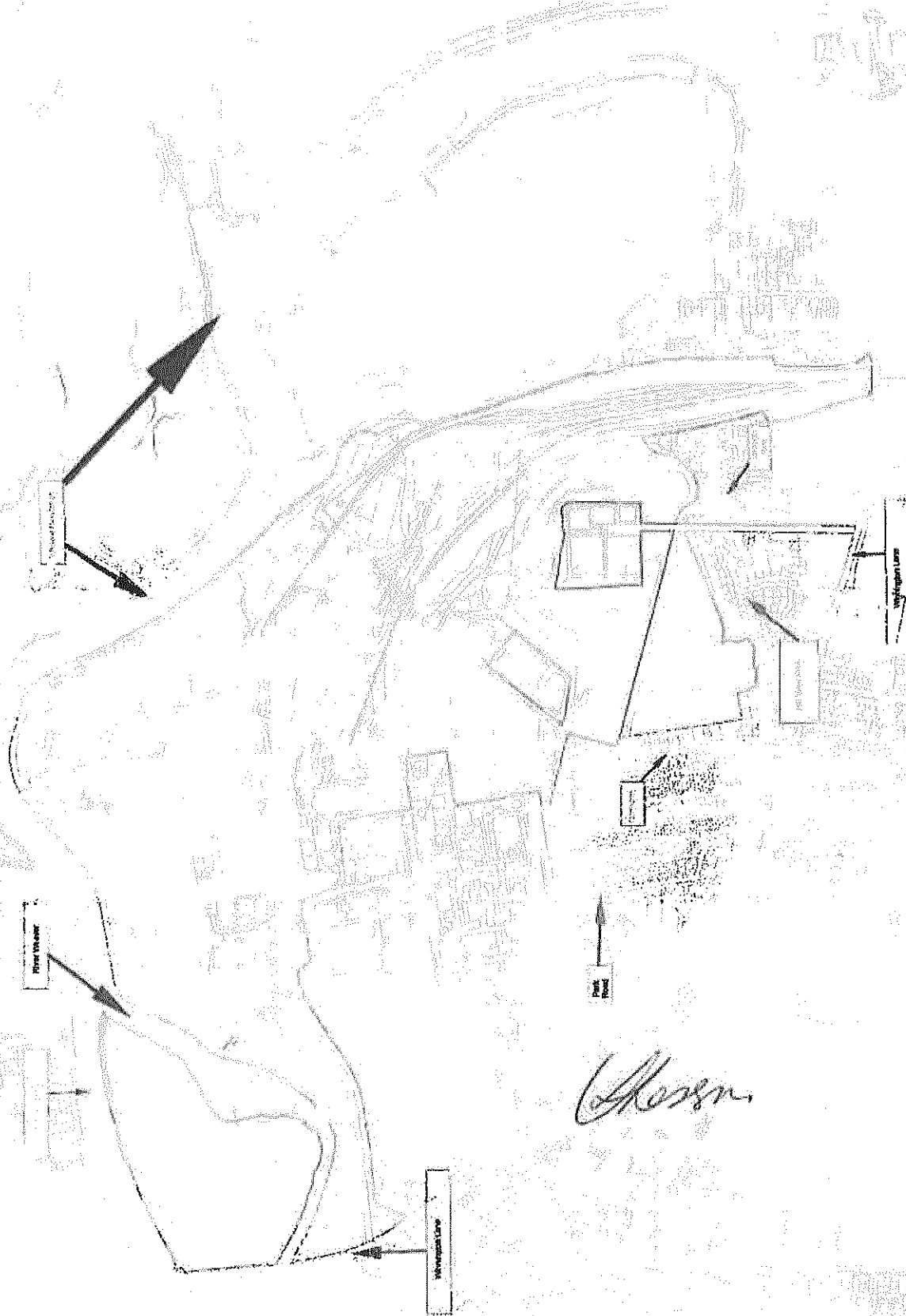
1. the whole of title number CH520715 and
2. part of title number CH345675 as shown edged red on the attached Plan (excluding the part edged blue on the attached Plan).

**Appendix 1**  
**Site Plan**





PROJECT INFORMATION	
PROJECT NO.	100-000000
PROJECT NAME	LAND OFF WINNINGTON LANE, WINNINGTON
DATE	21 APRIL 2000
SCALE	1:2500 S.A.S.
PROJECT NO.	100-000000
PROJECT NAME	LAND OFF WINNINGTON LANE, WINNINGTON
DATE	21 APRIL 2000
SCALE	1:2500 S.A.S.
PROJECT NO.	100-000000
PROJECT NAME	LAND OFF WINNINGTON LANE, WINNINGTON
DATE	21 APRIL 2000
SCALE	1:2500 S.A.S.



*Chosen*

**SIGNATORIES TO THE DEED**

**Chargor**

Executed as a deed by )  
**TATA CHEMICALS EUROPE LIMITED** ) .....  
acting by a director in the presence of ) Director


.....  
Signature of witness

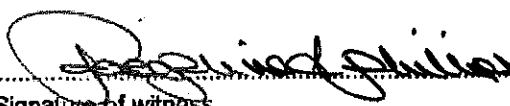
Name .....

Address .....

.....  
Address: Natrium House  
Winnington Lane  
Northwich  
Cheshire  
CW8 4GW  
Fax No: N/A  
Attention: John Abbotts

**The Chargee**

Executed as a deed by ~~VICTORIA WESSON~~   
**GLADMAN DEVELOPMENTS LIMITED**  
acting by a director in the presence of

  
Signature of witness

Name ~~Joanne Phillips~~ .....

Address .....

.....  
Address: Gladman House,  
Alexandria Way,  
Congleton Business Park,  
Congleton,  
Cheshire,  
CW12 1LB

**EXECUTION VERSION**

**Fax No:** N/A  
**Attention:** Julian Hamer