

MR01

Particulars of a charge

204215/13

**A fee is payable with this form.**  
Please see 'How to pay' on the  
last page

**You can use the WebFiling service to file this form online**  
Please go to [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

☒ **What this form is for**  
You may use this form to register  
a charge created or evidenced by  
an instrument

☒ **What this form is NOT for**  
You may not use this form to  
register a charge where there is no  
instrument. Use form MR0

For further information, please  
refer to our guidance at  
[www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

This form **must be delivered to the Registrar for registration within 21 days** beginning with the day after the date of creation of the charge. If delivered outside of the 21 days it will be rejected unless it is accompanied by a court order extending the time for delivery.

☐ You **must** enclose a certified copy of the instrument with this form. This must be scanned and placed on the public record.



A20 \*A2DAL2E4\* #260  
24/07/2013  
COMPANIES HOUSE

WEDNESDAY

**1 Company details**

Company number 0 7 0 4 2 0 8 6

Company name in full 1Malaysia Racing Team (UK) Limited (the **Chargor**)

For official use

→ **Filing in this form**  
Please complete in typescript or in  
bold black capitals

All fields are mandatory unless  
specified or indicated by \*

**2 Charge creation date**

Charge creation date 01 02 07 20 11 13

**3 Names of persons, security agents or trustees entitled to the charge**

Please show the names of each of the persons, security agents or trustees  
entitled to the charge

Name Export-Import Bank of Malaysia Berhad (**EXIM BANK**)

Name

Name

Name

If there are more than four names, please supply any four of these names then  
tick the statement below

☐ I confirm that there are more than four persons, security agents or  
trustees entitled to the charge

# MR01

## Particulars of a charge

**4**

### Description

Please give a short description of any land (including buildings), ship, aircraft or intellectual property registered (or required to be registered) in the UK which is subject to this fixed charge or fixed security

#### Continuation page

Please use a continuation page if you need to enter more details

Description

The Chargor hereby charges in favour of EXIM BANK with full title guarantee as continuing security for the payment and discharge of all present and future monies, obligations and liabilities now or hereafter due owing or incurred to EXIM BANK by the Chargor or Caterham Cars Limited (company registered number 1171408) by way of first fixed legal mortgage, the land and buildings known as the Leafield Technical Centre, Langley, Witney, Oxfordshire, OX29 9EF registered at the Land Registry under title numbers ON112510, ON226629, ON257767, ON257768 and ON257769 and by way of first fixed charge the benefit of licences, consents, authorisations, contracts, buildings, erections, rights and claims, insurances, guarantees, warranties and representations held or utilised by the Chargor in connection with the assets, rights, property and undertaking of the Chargor from time to time mortgaged, charged, assigned or agreed to be assigned to EXIM BANK by the Chargor under the charge

For more details please refer to the instrument

**5**

### Fixed charge or fixed security

Does the instrument include a fixed charge or fixed security over any tangible or intangible (or in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box

☒ Yes

☐ No

**6**

### Floating charge

Is the instrument expressed to contain a floating charge? Please tick the appropriate box

☒ Yes Continue

☐ No Go to Section 7

Is the floating charge expressed to cover all the property and undertaking of the company?

☒ Yes

**7**

### Negative Pledge

Do any of the terms of the charge prohibit or restrict the chargor from creating any further security that will rank equally with or ahead of the charge? Please tick the appropriate box

☒ Yes

☐ No

MR01

Particulars of a charge

8

**Trustee statement ①**

You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge

☐

① This statement may be filed after the registration of the charge (use form MR06)

9

**Signature**

Please sign the form here

Signature

Signature

X *Traues & Hamlin LLP*

X

This form must be signed by a person with an interest in the charge

**MR01****Particulars of a charge****Presenter information**

We will send the certificate to the address entered below. All details given here will be available on the public record. You do not have to show any details here but, if none are given, we will send the certificate to the company's Registered Office address.

Contact name **Eleanor James**

Company name **Trowers & Hamlins LLP**

Address **3 Bunhill Row**

Post town **London**

County/Region

Postcode **E C 1 Y 8 Y Z**

Country **United Kingdom**

DX **774 London/City**

Telephone **+44 (0)20 7423 8000**

**Certificate**

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank.

**Checklist**

**We may return forms completed incorrectly or with information missing**

**Please make sure you have remembered the following:**

- ☐ The company name and number match the information held on the public Register
- ☐ You have included a certified copy of the instrument with this form
- ☐ You have entered the date on which the charge was created
- ☐ You have shown the names of persons entitled to the charge
- ☐ You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8
- ☐ You have given a description in Section 4, if appropriate
- ☐ You have signed the form
- ☐ You have enclosed the correct fee
- ☐ Please do not send the original instrument, it must be a certified copy

**Important information**

**Please note that all information on this form will appear on the public record**

**How to pay**

**A fee of £13 is payable to Companies House in respect of each mortgage or charge filed on paper.**

Make cheques or postal orders payable to 'Companies House'

**Where to send**

**You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below:**

**For companies registered in England and Wales**  
The Registrar of Companies, Companies House,  
Crown Way, Cardiff, Wales, CF14 3UZ  
DX 33050 Cardiff

**For companies registered in Scotland:**  
The Registrar of Companies, Companies House,  
Fourth floor, Edinburgh Quay 2,  
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF  
DX ED235 Edinburgh 1  
or LP - 4 Edinburgh 2 (Legal Post)

**For companies registered in Northern Ireland:**  
The Registrar of Companies, Companies House,  
Second Floor, The Linenhall, 32-38 Linenhall Street,  
Belfast, Northern Ireland, BT2 8BG  
DX 481 N R Belfast 1

**Further information**

For further information, please see the guidance notes on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk) or email [enquiries@companieshouse.gov.uk](mailto:enquiries@companieshouse.gov.uk)

**This form is available in an alternative format. Please visit the forms page on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)**



**FILE COPY**

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

Company number: 7042086

Charge code: 0704 2086 0007

The Registrar of Companies for England and Wales hereby certifies that a charge dated 12th July 2013 and created by 1MALAYSIA RACING TEAM (UK) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 24th July 2013.

*DX*

Given at Companies House, Cardiff on 26th July 2013



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

I certify that, save for material redacted  
Pursuant to s 859G of the Companies  
Act 2006, this copy instrument is a true,  
Accurate and correct copy of the original  
Instrument

*Trowers & Hamblins LLP*  
Trowers & Hamblins LLP

Dated *12 July 2013* ..

dated *12 July* 2013

**1MALAYSIA RACING TEAM (UK) LIMITED**

(as Chargor)

and

**EXPORT-IMPORT BANK OF MALAYSIA BERHAD**

**Legal Charge**

relating to a Tawarruq Commodity Murabahah Facility Agreement

(Note to the Chief Land Registrar. This Charge contains (in clause 5.1) the consent of the Chargor to the lodgement at the Land Registry of an application by or on behalf of EXIM BANK to enter a restriction in the Proprietorship Register and (in clause 5.3.3) the consent of the Chargor to the lodgement at the Land Registry of an application by or on behalf of EXIM BANK to enter a notice on the Charges Register )

Trowers & Hamblins LLP  
3 Bunhill Row  
London  
EC1Y 8YZ  
t +44 (0)20 7423 8000  
f +44 (0)20 7423 8001  
www.trowers.com

| <b>Contents</b>   | <b>Page</b> |
|---|-------------|
| <b>1 Definitions and Interpretation</b>                           | <b>1</b>    |
| <b>2 Payment of Secured Liabilities</b>                           | <b>6</b>    |
| <b>3 Security</b>   | <b>7</b>    |
| <b>4 Conversion of the Floating Charge</b>                        | <b>8</b>    |
| <b>5 The Land Registry and further advances</b>                   | <b>9</b>    |
| <b>6 Further assurance</b>  | <b>10</b>   |
| <b>7 Negative pledge and disposal restrictions</b>                | <b>12</b>   |
| <b>8 Representations and warranties</b>                           | <b>12</b>   |
| <b>9 General undertakings</b>                                     | <b>14</b>   |
| <b>10 Mortgaged Land</b>  | <b>15</b>   |
| <b>11 Insurance</b>   | <b>21</b>   |
| <b>12 Deposit of title deeds</b>                                  | <b>22</b>   |
| <b>13 Power to remedy</b>   | <b>23</b>   |
| <b>14 Enforcement of Security</b>                                 | <b>23</b>   |
| <b>15 Extension and variation of the Law of Property Act 1925</b> | <b>24</b>   |
| <b>16 Appointment of Receiver</b>                                 | <b>26</b>   |
| <b>17 Powers of Receiver</b>                                      | <b>26</b>   |
| <b>18 Protection of purchasers</b>                                | <b>28</b>   |
| <b>19 Power of attorney</b>                                       | <b>28</b>   |
| <b>20 Effectiveness of Security</b>                               | <b>28</b>   |
| <b>21 Deferral of rights</b>                                      | <b>30</b>   |
| <b>22 Release of Security</b>                                     | <b>30</b>   |
| <b>23 Subsequent Security Interests</b>                           | <b>31</b>   |
| <b>24 Assignment</b>  | <b>31</b>   |
| <b>25 Expenses, stamp taxes and Indemnity</b>                     | <b>31</b>   |
| <b>26 Payments free of deduction</b>                              | <b>32</b>   |
| <b>27 Discretion and delegation</b>                               | <b>32</b>   |
| <b>28 Perpetuity period</b>                                       | <b>32</b>   |
| <b>29 Counterparts</b>  | <b>32</b>   |
| <b>30 Certification</b>   | <b>33</b>   |
| <b>31 Reorganisation</b>  | <b>33</b>   |
| <b>32 Set off</b>   | <b>33</b>   |
| <b>33 Payment of monies</b>                                       | <b>33</b>   |
| <b>34 Notices</b>   | <b>34</b>   |
| <b>35 Governing law and Jurisdiction</b>                          | <b>35</b>   |
| <b>Schedule 1 - Mortgaged Property</b>                            | <b>37</b>   |
| <b>Schedule 2 – Notice of Assignment of Insurance</b>             | <b>38</b>   |
| <b>Signatories</b>  | <b>41</b>   |

## Deed

dated 12 July 2013

### Parties

- (1) **1MALAYSIA RACING TEAM (UK) LIMITED** registered as a company limited by shares under the laws of England and Wales with registration number 07042086 whose registered office is at Leaffield Technical Centre, Langley, Oxfordshire OX29 9EF (the **Chargor**), and
- (2) **EXPORT IMPORT BANK OF MALAYSIA BERHAD** a company incorporated in Malaysia with company number 357198-K and having its registered address at Level 16, EXIM Bank, Jalan Sultan Ismail 50250 Kuala Lumpur and its business address at Level 1 EXIM Bank, Jalan Sultan Ismail 50250 Kuala Lumpur, Malaysia (**EXIM BANK**)

### Introduction

- (A) EXIM BANK has agreed to grant a Tawarruq (Commodity Murabahah) Facility to Caterham Cars Limited (English registration number 1171408) as customer (the **Customer**) in accordance with the terms of the Facility Agreement (as defined below) subject to and in conformity with Shari'ah principles (as such Shari'ah principles are determined by the Shari'ah Committee of EXIM BANK)
- (B) It is a condition precedent to entry into the Facility Agreement that the Chargor enters into this Deed to provide security to EXIM BANK for the purposes and on the terms as described below.
- (C) It is intended by the parties to this document that it will take effect as a deed

### Agreed terms

#### 1 Definitions and interpretation

##### 1.1 Definitions

In this Deed, unless the context otherwise requires.

**Administrator** has the meaning given to it by paragraph 1 of Schedule B1 to the Insolvency Act 1986 (incorporated by Schedule 16 to the Enterprise Act 2002),

**Certificate of Title** means any report on or a certificate of title relating to the Mortgaged Land provided to EXIM BANK by the Chargor (or on its behalf);

**Collateral Rights** means all rights, powers and remedies of EXIM BANK provided by or pursuant to this Deed or by law,

**Competent Authority** means any legal person and/or any court of law or tribunal in each case having authority under applicable Environmental Law;

**Dangerous Substances** means any substance or waste (as defined in the Environmental Protection Act 1990) which is capable of causing harm to man or any living organism supported by the Environment or damaging the Environment or public health or welfare,



**Development Documents** has the meaning given to that term in the Facility Agreement and, in addition, includes any other agreement or document relating to the acquisition, construction, management, design, serving, marketing, development, operation or use of the Mortgaged Land (or any part of it) and agreed to be designated as a Development Document between the Chargor and EXIM BANK;

**Environment** means the environment as defined in Section 1(2) of the Environmental Protection Act 1990,

**Environmental Audit** means a full risk assessment of the Security Assets to ascertain the nature and extent of any harm or detriment caused to, or the risk of any possible harm or detriment which may be caused to the Environment by any activity, including soil, air or water testing of the Security Assets and any other property,

**Environmental Law** means any applicable common or statutory law, regulation, standard or code having the force of law, any code of practice, circular, guidance note, judgment or decision of any court or tribunal relating to the protection of human health and safety, the workplace or the Environment,

**Environmental Licence** means a licence, permit, certificate of registration, consent, or approval, including any conditions which attach thereto, which relates to or affects the Security Assets and which is required by an Environmental Law,

**Event of Default** has the meaning given to it in the Facility Agreement,

**Facility Agreement** means the Tawarruq (Commodity Murabahah) facility agreement dated on or about the date of this Deed entered into between the Customer and EXIM BANK pursuant to which EXIM BANK has agreed to make available certain commodity trading facilities to the Customer,

**Financial Collateral** shall have the meaning given to that expression in the Financial Collateral Regulations,

**Financial Collateral Regulations** means the Financial Collateral Arrangements (No 2) Regulations 2003 (SI 2003/3226),

**Floating Charge Assets** means the assets charged pursuant to clause 3 3;

**Insurances** means all contracts and policies of takaful and/or insurance of whatever nature which are from time to time taken out by or with the authority or on behalf of the Chargor in relation to the Security Assets or any part of them,

**Insured Risks** means fire, storm, tempest, flood, earthquake, lightning, explosion, impact, aircraft and other aerial devices and articles dropped from them, riot, civil commotion, malicious damage, landslip, subsidence, burst pipes, environmental pollution, terrorist acts and other such risks as EXIM BANK may, from time to time, require including demolition and site clearance costs and expenses and architects', surveyors' and other professional fees and all other incidental expenses;

**Land** means any present or future freehold, leasehold or immovable property owned or occupied by the Chargor,

**Mortgaged Land** means all the freehold Land specified in Schedule 1,

**Permitted Development** means any development of the Mortgaged Land permitted by EXIM BANK,

**Planning Acts** means the **consolidating Acts** as defined in the Planning (Consequential Provisions) Act 1990 together with the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004, the Planning Act 2008 and the Localism Act 2011 and all applicable laws, orders, regulations, instruments, by laws, instructions and standards, whether national, regional or local, including any subordinate legislation relating to town and country planning and to the use and/or occupation of any Land;

**Practical Completion** means the practical completion of any Permitted Development in accordance with the building contract entered into with a contractor in respect of that Permitted Development and references to the **date of Practical Completion** are to be the date on which the certificate or written statement of practical completion is issued by the certifier under that building contract or the issue of such other evidence of Practical Completion having taken place as contemplated by that contract,

**Project Monitor** means the person appointed by EXIM BANK to monitor and report on the progress of any Permitted Development if EXIM BANK deems necessary;

**Receiver** means a receiver or receiver and manager of the whole or any part of the Security Assets,

**Related Rights** means, in relation to any asset which comprises the Security Assets.

- (a) the proceeds of sale of any part of that asset,
- (b) all rights under any licence, agreement for sale or agreement for lease in respect of that asset;
- (c) all rights, covenants, easements, benefits, claims, contracts, warranties, remedies, security, indemnities or covenants for title in respect of that asset; and
- (d) any monies and proceeds paid or payable in respect of that asset,

**Secured Liabilities** means all present and future monies, obligations and liabilities now or hereafter due owing or incurred to EXIM BANK by

- (a) the Chargor under the terms of this Deed, and
- (b) the Customer under the terms of any Transaction Document,

in either case including, without limitation, under any amendments, supplements or restatements of this Deed and/or any of the Transaction Documents or in relation to any increase thereof) in any manner whatsoever, in any currency or currencies (whether present or future, actual or contingent) and whether owed by the Chargor or the Customer (as the case may be) as principal or surety or incurred solely or jointly with another, together with any compensation payment payable in that respect and all costs charges and expenses incurred by EXIM BANK in connection therewith;

**Security** means the security constituted by or pursuant to this Deed,

**Security Assets** means all the assets, rights, property and undertaking of the Chargor from time to time mortgaged, charged, assigned or agreed to be assigned to EXIM BANK by the Chargor under this Deed including, without limitation, the Mortgaged Land;

**Security Financial Collateral Arrangement** shall have the meaning given to that expression in the Financial Collateral Regulations,

**Security Interest** means any mortgage, pledge, lien, charge, security assignment, right of set off, hypothecation or security interest or any other agreement or arrangement having the effect of conferring security (including, for the avoidance of doubt, a floating charge) or any other type of preferential arrangement (including, without limitation, title transfer or retention of title) having a similar effect,

**Security Period** means the period beginning on the date hereof and ending on the date upon which all the Secured Liabilities have been irrevocably and unconditionally paid and discharged in full and no further Secured Liabilities are capable of being outstanding,

**Tax** includes any form of taxation, levy, duty, charge, contribution or impost of whatever nature (including any applicable fine, penalty, surcharge or interest) imposed by any government authority, body or official (whether central, local, state or federal) anywhere in the world competent to impose any of them;

**Transaction Documents** has the meaning given to that term in the Facility Agreement, and

**Valuation** means any valuation relating to the Mortgaged Land supplied to EXIM BANK by the Chargor (or on its behalf)

## 12 Interpretation

In this Deed, unless the context otherwise requires, a reference to

**assets** includes present and future properties, undertakings, revenues, rights and benefits of every description,

an **authorisation** includes an authorisation, consent, approval, resolution, licence, exemption, filing or registration,

the **Chargor**, the **Customer** or **EXIM BANK** includes a reference to its respective successors, permitted assigns and permitted transferees,

a **person** includes a permitted body corporate, unincorporated association and partnership, in each case, whether or not having a separate legal personality,

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 regulatory, self-regulatory or other authority or organisation,

one gender shall include a reference to other genders, an individual will be treated as including corporations and vice versa, words importing the singular will be treated as including the plural and vice versa and words importing the whole will be treated as

including a reference to any part, in each case except where the context specifically requires otherwise,

this Deed or to any provision of this Deed or any other document (including, without limitation any of the Transaction Documents) is a reference to it as amended, restated, supplemented, varied or novated from time to time;

the words **include** or **including** (or any similar term) are not to be construed as implying any limitation and general words introduced by the word **other** (or any similar term) will not be given a *restrictive meaning* by reason of the fact that they are preceded or followed by words indicating a particular class of acts, matters or things,

a statute, a statutory provision, enactment or an EC Directive or subordinate legislation is a reference to any amendment, modification, extension, consolidation, replacement or re-enactment of any such statute, statutory provision, enactment or EC Directive, whether before or after the date of this Deed,

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 property) or paragraph 22 (by the Chargor or the directors of the Chargor) of Schedule B1 to the Insolvency Act 1986,

the making of 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 paragraphs 14 or 22 of that Schedule, or giving notice under paragraphs 15 or 26 of that Schedule of intention to appoint an Administrator, and

an Event of Default is **continuing** if it has not been remedied or waived

### 1.3 **Facility Agreement**

Words and expressions defined in the Facility Agreement will have the same meanings when used in this Deed, unless the context otherwise requires. In the case of inconsistency, definitions set out in the Facility Agreement will prevail.

### 1.4 **Headings**

The clause, paragraph and Schedule headings and the table of contents are inserted for ease of reference only and will not affect construction

### 1.5 **Law of Property (Miscellaneous Provisions) Act 1989**

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Transaction Documents under which the Secured Liabilities arise and of any side letters between any parties in relation hereto are incorporated into this Deed.

### 1.6 **Nature of security over Mortgaged Land**

A reference in this Deed to a **charge or mortgage of or over the Mortgaged Land** includes

1.6 1 all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) and fixed plant and machinery which are situated on or form part of the Mortgaged Land at any time, and

1.6.2 all Related Rights

**1.7 Third party rights**

A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy, any term of this Deed.

**1.8 Qualifying floating charge**

This Deed contains a qualifying floating charge which gives EXIM BANK the power to appoint an administrator of the Chargor and paragraph 14 of schedule B1 to the Insolvency Act 1986 applies to the floating charge created by clause 3.3 of this Deed

**1.9 Avoidance of payments**

If EXIM BANK considers an amount paid by the Chargor in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the insolvency, liquidation or administration of the Chargor or otherwise set aside, that amount shall not have been irrevocably and unconditionally paid for the purposes of this Deed

**2 Payment of Secured Liabilities**

**2.1 Covenant to pay**

The Chargor covenants with EXIM BANK that it will, on demand, pay and discharge the Secured Liabilities as and when they fall due for payment in the manner provided in this Deed and/or, in the case of the Customer, the Transaction Documents

**2.2 Compensation fee**

If the Chargor fails to pay any sum on the due date for payment of that sum it is expressly agreed that EXIM BANK shall be entitled to impose on the Chargor a compensation fee on late payments and default payment of any sum due to EXIM BANK in accordance with the mechanism set out in clause 22 of the Facility Agreement

**2.3 Limited recourse**

Notwithstanding any other provision of the Transaction Documents, it is expressly agreed and understood that:

2.3.1 the sole recourse of EXIM Bank to the Chargor under this Deed is to the Chargor's interest in the Security Assets, and

2.3.2 the liability of the Chargor to EXIM Bank pursuant to or otherwise in connection with the Transaction Documents shall be

(a) limited in aggregate to an amount equal to that recovered as a result of enforcement of this Deed with respect to the Security Assets, and

- (b) satisfied only from the proceeds of sale or other disposal or realisation of the Security Assets pursuant to this Deed

### **3 Security**

#### **3.1 Fixed charges**

The Chargor hereby charges in favour of EXIM BANK with full title guarantee as continuing security for the payment and discharge of the Secured Liabilities:

3.1 1 by way of a first fixed legal mortgage, the Mortgaged Land, and

3 1 2 by way of first fixed charge.

- (a) the benefit of all present and future licences, consents and authorisations (statutory or otherwise) held or utilised by the Chargor in connection with the Mortgaged Land or the use of the Mortgaged Land and all rights in connection with them,
- (b) the benefit of all other contracts, rents, agreements for maintenance, repair or upkeep, guarantees, appointments, covenants and warranties relating to the Mortgaged Land and other documents to which the Chargor is a party or which are in its favour or of which it has the benefit relating to letting, development, sale, purchase, use or the operation of the Mortgaged Land or any part of it or otherwise relating to the Mortgaged Land,
- (c) all buildings, erections and structures at any time on or in the course of construction on the Mortgaged Land and all equipment, plant, machinery, fittings, and installations or other tangible movable property (including, but no limited to, any component parts of those assets) belonging to the Chargor and not regularly disposed of in the ordinary course of business together with all additions, alterations, substitutions, replacements, renewals or modifications of or to those assets and all accessories to those assets from time to time and the benefit of all contracts, licences and warranties relating to the same,
- (d) all rights and claims in relation to any Mortgaged Land including, without limitation, all rights and claims against any lessees, tenants, sub-lessees, sub-tenants, licensees or occupiers of any Mortgaged Land from time to time and all guarantors and sureties for the obligations of such persons,
- (e) all its rights and interests in and claims under the Insurances issued in relation to the Mortgaged Land,
- (f) the benefit of any Development Documents and all undertakings, agreements, rights, warranties, securities, covenants, guarantees, bonds and indemnities of any nature now or at any time enjoyed or held by the Chargor and relating to the Development Documents,

- (g) the benefit of all guarantees, warranties and representations given or made by, and any rights or remedies to which the Chargor may now or in the future be entitled against, all or any professional advisors and contractors in relation to any Mortgaged Land, any business carried out on any Mortgaged Land, and the manufacturers, supplier and installers of all plant, machinery, fixtures and fittings or other items now or hereafter in buildings located on the Mortgaged Land and any other person now or from time to time under contract or under a duty to the Chargor in relation to the Mortgaged Land including without limitation the right to prosecute in the name of the Chargor proceedings against any such person and the benefit of all sums recovered in proceedings against all or any such persons,
- (h) all claims, remedies, awards or judgments paid or payable to the Chargor (including, without limitation, all liquidated and ascertained damages payable to the Chargor under the above), and
- (i) insofar as the legal mortgages referred to in clause 3.1 1 or any of the assignments referred to in clause 3 2 shall for any reason be ineffective as a legal mortgage or an assignment, the assets referred to in those clauses

### **3.2 Assignments**

The Chargor hereby assigns and agrees to assign by way of security to EXIM BANK with full title guarantee for the payment and discharge of the Secured Liabilities all the Chargor's rights and interests in, and claims under, the Insurances provided that to the extent (if any) that the benefits, rights, titles, claims and interests assigned under this clause 3 2 are not assignable, such assignment will operate as an assignment of all proceeds received by the Chargor in connection with such benefits, rights, titles, claims and interests

### **3 3 Floating charge**

The Chargor hereby charges in favour of EXIM BANK with full title guarantee for the payment and discharge of the Secured Liabilities by way of floating charge the whole of the Chargor's undertaking, property and assets, present and future wherever situate not from time to time subject to an effective mortgage, fixed charge or assignment under this Deed

## **4 Conversion of the Floating Charge**

### **4.1 Notice of conversion**

- 4 1.1 EXIM BANK may from time to time, by notice in writing to the Chargor following the occurrence of an Event of Default which is continuing or if EXIM BANK considers those assets to be in danger of being seized or sold under any form of distress, attachment, execution, diligence or other legal process or to otherwise be in jeopardy, convert the floating charge contained in clause 3 3 into a fixed charge as regards any Floating Charge Assets specified in such notice.

- 4.1.2 The floating charge contained in clause 3.3 may not be converted into a fixed charge solely by reason of the obtaining of a moratorium or anything done with a view to obtaining a moratorium under the Insolvency Act 2000.

## **4.2 Automatic conversion**

Notwithstanding anything contained in this Deed, if (without the prior written consent of EXIM BANK),

- 4.2.1 the Chargor creates any Security Interest over or otherwise encumbers any of the Security Assets created by this Deed or attempts to do so other than as permitted under the Transaction Documents,
- 4.2.2 any person levies or attempts to levy any distress, execution, diligence, sequestration or other process against the Security Assets;
- 4.2.3 a resolution is passed or a petition is presented for the winding up, dissolution, administration or re-organisation of the Chargor,
- 4.2.4 a receiver, an administrative receiver or a receiver and manager is appointed over the Security Assets or, if any person entitled to do so, gives notice of its intention to appoint a receiver, an administrative receiver or a receiver and manager over the Security Assets or files such a notice with the court, or
- 4.2.5 an Administrator is appointed in respect of the Chargor or EXIM BANK receives notice of an intention to appoint an Administrator pursuant to paragraphs 15 or 26 of Schedule B1 of the Insolvency Act 1986 in respect of the Chargor,

the floating charge created by this Deed over the Floating Charge Assets shall with immediate effect and without notice automatically convert into a fixed charge.

## **5 The Land Registry and further advances**

### **5.1 Land registration**

The Chargor hereby consents to an application being made to the Chief Land Registrar by or on behalf of EXIM BANK to enter the following restriction (in form P of Schedule 4 to the Land Registration Rules 2003) in the Proprietorship Register of any property which is, or is required to be, registered forming part of the Mortgaged Land:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the charge dated [the date of this Deed] in favour of Export-Import Bank of Malaysia Berhad referred to in the Charges Register or their conveyancer or an individual identified as an authorised signatory of Export-Import Bank of Malaysia Berhad"

### **5.2 Implied covenants**

For the purposes of Rule 68(1) of the Land Registration Rules 2003, the covenants set out in Sections 2 to 5 (inclusive) of the Law of Property (Miscellaneous Provisions) Act 1994 will be extended by the provisions of this Deed



### **5.3 Further advances**

- 5.3.1 Subject to the terms of the Transaction Documents, EXIM BANK is under an obligation to make further advances to, or enter into further commodity transactions with, the Customer
- 5.3.2 For the purposes of section 94(1)(c) of the Law of Property Act 1925, section 49(3) of the Land Registration Act 2002 and Rule 108 of the Land Registration Rules 2003, the obligation on EXIM BANK to make further advances or commodity transactions will be deemed to be incorporated in this Deed as if the same were set out in this Deed
- 5.3.3 For the purposes of the Land Registration Rules 2003 and section 49(3) of the Land Registration Act 2002, the Chargor hereby consents to an application being made to the Chief Land Registrar by or on behalf of EXIM BANK for the entry of a note of the obligation to make further advances or commodity transactions on the Charges Register of any registered Land forming part of the Mortgaged Land

## **6 Further assurance**

### **6.1 Further assurance: general**

The Chargor shall, at its own expense, promptly do all such acts or execute all such documents (including, without limitation, assignments, transfers, mortgages, charges, notices and instructions) as may be necessary to EXIM BANK or any Receiver or as EXIM BANK or any Receiver may reasonably specify (and in such form as EXIM BANK or any Receiver may require) in favour of EXIM BANK or its nominees

- 6.1.1 to perfect or protect the security created or intended to be created in respect of the Security Assets (which may include the execution by the Chargor of a mortgage, fixed charge or assignment over all or any of the assets constituting, or intended to constitute, Security Assets) or for the exercise of the Collateral Rights, and/or
- 6.1.2 to facilitate the realisation of the Security Assets, and/or
- 6.1.3 to obtain all necessary consents to procure the registration of this Deed with
  - (a) the Registrar of Companies, and
  - (b) in respect of the Mortgaged Land, at the Land Registry or on the Land Charges Register, as appropriate

### **6.2 Consents**

The Chargor will use all reasonable endeavours to obtain (in form and content satisfactory to EXIM BANK) as soon as possible any consents necessary to enable the relevant Security Assets purported to be so charged or assigned to be the subject of an effective fixed charge or assignment pursuant to clauses 3.1 and 3.2 and, immediately upon obtaining any such consent, the relevant Security Asset shall become subject to such

Security and the Chargor shall promptly deliver a copy of each such consent to EXIM BANK.

**6 3 Notices of assignment of Insurances**

The Chargor will promptly give notice of assignment to all insurers in respect of the Insurances in the form set out in part I of Schedule 6 and shall procure that such insurers acknowledge the notice in the form set out in part II of Schedule 6.

**6 4 Preservation of rights**

Neither the obligations of the Chargor contained in this Deed nor the rights, powers and remedies conferred in respect of the Chargor upon EXIM BANK by this Deed, under the Transaction Documents or by law shall be affected by an act, omission, matter or thing which, but for this clause, would reduce, release, prejudice discharge or otherwise be affected by:

- 6.4 1 the winding-up, dissolution, administration or reorganisation of the Chargor, the Customer or any other person or any other insolvency or similar proceedings or any change in its status, function, control or ownership,
- 6 4.2 the release of the Chargor, the Customer or any other person under the terms of any composition or arrangement with any creditor of such person;
- 6 4.3 any of the obligations of the Chargor, the Customer or any other person under the Transaction Documents or under any other security relating to the Transaction Documents being or becoming illegal, invalid, unenforceable or ineffective in any respect;
- 6 4 4 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of the Chargor, the Customer or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security,
- 6.4 5 any failure to realise or fully to realise the value of, or any release, discharge, exchange or substitution of, any security taken or agreed to be taken in respect of the Chargor's, the Customer's or any other person's obligations under the Transaction Documents;
- 6 4 6 any time, waiver, consent or other indulgence being granted or agreed to be granted to the Chargor, the Customer or any other person in respect of their respective obligations under the Transaction Documents or otherwise;
- 6 4 7 any amendment to, or any variation, waiver or release of any obligation of the Chargor, the Customer or any other person under the Transaction Documents;
- 6 4 8 any failure to take, or fully to take, any security contemplated by the Transaction Documents or otherwise agreed to be taken in respect of the Chargor's, the Customer's or any other person's obligations under the Transaction Documents,

- 6 4.9 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Chargor, the Customer or any other person;
- 6.4.10 any amendment, novation, supplement, extension or restatement (in each case, however fundamental) or replacement of a Transaction Document or any other document or security;
- 6 4 11 any other act, event or omission which, but for this clause 6 4, might operate to discharge, impair or otherwise affect any of the obligations of the Chargor or any other person or any of the rights, powers or remedies conferred upon EXIM BANK by any Transaction Document or by law.

## **7 Negative pledge and disposal restrictions**

### **7.1 Negative pledge**

Save as permitted by the Transaction Documents, the Chargor will not, without the prior written consent of EXIM BANK, create, purport to create, or permit to subsist (in favour of any person other than EXIM BANK) any Security Interest over any of the Security Assets now or in the future, or agree or attempt to do so, or increase or extend any liability of the Chargor secured on any of the Security Assets

### **7 2 Disposal of fixed charge assets**

Save as permitted by the Transaction Documents, the Chargor will not, without the prior written consent of EXIM BANK (whether by a single transaction or number of related or unrelated transactions, and whether at the same time or over a period of time) sell, transfer, lease out, lend or otherwise dispose of any of the Security Assets charged or assigned by clauses 3.1 and 3 2 or following the crystallisation of the floating charge created by clause 3 3 the Floating Charge Assets charged by clause 3 3 or any interests therein or the right to receive or to be paid the proceeds arising from their disposal or agree or attempt to do so

## **8 Representations and warranties**

### **8 1 Duration and to whom made**

The representations and warranties made by the Chargor in this clause 8 will remain in force (and will be deemed repeated on each day falling during) during the Security Period and are given to EXIM BANK

### **8 2 Matters represented – Mortgaged Property**

Except as disclosed in writing to EXIM BANK or in the Certificate of Title on or prior to the date of this Deed or on or prior to the date the Mortgaged Land becomes subject to a fixed charge hereunder

- 8 2 1 the Chargor is the legal and beneficial owner of the Mortgaged Land, and has good and marketable title to the Mortgaged Land,
- 8 2 2 planning permission has been obtained or is deemed to have been granted in accordance with statute for the purposes of the Planning Acts and has been

complied with in respect to any development and the existing use of the Mortgaged Land, and the Planning Acts and all relevant building regulations or previously relevant building bye-laws have been complied with in respect of all developments, alterations and improvements to the Mortgaged Land and they have also been complied with in respect of the use of the Mortgaged Land,

- 8 2 3 there are no covenants, agreements, stipulations, reservations, conditions, interests, rights or other matters whatsoever affecting the Mortgaged Land or any part of it which materially adversely affect or are likely to materially adversely affect the value of the Mortgaged Land or any part of it or the ability of the Chargor to perform its obligations owed to EXIM BANK;
- 8.2 4 nothing has arisen or has been created or is subsisting which would be an overriding interest over the Mortgaged Land which materially adversely affects or is likely to materially adversely affect the value of the Mortgaged Land or the ability of the Chargor to perform its obligations owed to EXIM BANK,
- 8 2 5 no facilities necessary for the enjoyment and use of the Mortgaged Land are enjoyed by the Mortgaged Land on terms entitling any person to terminate or curtail its or their use which materially adversely affects or is likely to materially adversely affect the value of the Mortgaged Land or the ability of the Chargor to perform its obligations owed to EXIM BANK,
- 8.2 6 the Chargor has received no notice of any adverse claims by any person in respect of the ownership of the Mortgaged Land or any interest therein, nor has any acknowledgement been given to any person in respect thereof which has not been disclosed to EXIM BANK,
- 8 2 7 nothing has arisen, or has been created, which would be an overriding interest in any Mortgaged Land,
- 8 2 8 the Mortgaged Land will be free from any tenancies or licences, other than those tenancies or licences permitted under the Facility Agreement,
- 8 2 9
- (a) all written information supplied by the Chargor or on its behalf for the purpose of each Valuation and Certificate of Title was true and accurate in all material respects as at its date or as at the date (if any) on which it was stated to be given,
  - (b) the information referred to in clause 8 2 9(a) was, as at its date or as at the date (if any) on which it was stated to be given, complete and the Chargor did not omit to supply any information which, if disclosed, would adversely affect the Valuation or Certificate of Title; and
  - (c) in the case of the first Valuation or Certificate of Title only, nothing has occurred during the period from the date the information referred to in clause 8 2.9(a) was supplied to and including the date of this Deed which would adversely affect such Valuation or Certificate of Title,

- 8.2 10 the Chargor has disclosed to EXIM BANK full details of all inspections, investigations, studies, Environmental Audits and other analyses commissioned by it in relation to environment matters in respect of the Mortgaged Land and any adjoining Land,
- 8.2 11 the Chargor is, and has at all times been, in compliance with all applicable Environmental Law, and
- 8.2.12 the Chargor has obtained and is, and has at all times been, in compliance with all Environmental Licences

### 8 3 **Matters represented – Security Assets**

- 8.3 1 There are no covenants, agreements, stipulations, reservations, conditions, interests, rights or other matters whatsoever affecting the Security Assets which materially adversely affect or are likely to materially adversely affect the Security Assets or the ability of the Chargor to perform its obligations owed to EXIM BANK
- 8 3.2 No facilities necessary for the enjoyment and use of the Security Assets are enjoyed by the Security Assets on terms entitling any person to terminate or curtail its or their use which materially adversely affects or is likely to materially adversely affect the Security Assets or the ability of the Chargor to perform its obligations owed to EXIM BANK.
- 8 3.3 The Chargor has received no notice of any adverse claims by any person in respect of the ownership of the Security Assets or any interest therein, nor has any acknowledgement been given to any person in respect thereof which has not been disclosed to EXIM BANK

### 8 4 **Contracts**

The Chargor does not have any contracts which are material in the context of its business as a whole.

### 8 5 **Security created**

Subject to registration with the Registrar of Companies, at the Land Registry or at the Land Charges Registry as appropriate, this Deed creates those Security Interests it purports to create ranking as set out above and is not liable to be avoided or otherwise set aside on the liquidation or administration of the Chargor or otherwise

## 9 **General undertakings**

### 9 1 **Duration and benefit**

The undertakings in this clause 9.

- 9.1 1 shall remain in force during the Security Period, and
- 9.1 2 are given to EXIM BANK

**9.2 Not to jeopardise the Security**

The Chargor will not do or allow to be done anything which could reasonably be expected materially to decrease the value of the Security to EXIM BANK (other than fair wear and tear arising from the use of the Security Assets in the ordinary course of business)

**9.3 Maintenance**

The Chargor will keep all plant, machinery, fixtures, fittings, vehicles, computers and other equipment included in the Security Assets in a good state of repair and in good working order and condition and when necessary replace the same by items of similar quality and value

**9.4 Information and access**

The Chargor will, at the request of EXIM BANK, promptly provide EXIM BANK with such information as EXIM BANK may reasonably require about the Security Assets and the Chargor's compliance with the terms of this Deed and the Chargor will permit EXIM BANK, its representatives, professional advisers and contractors, free access at all reasonable times and on reasonable notice:

9.4.1 to view the Security Assets (without becoming liable as mortgagee in possession), and

9.4.2 to inspect and take copies and extracts from such books, accounts and records of the Chargor as relate to the Security Assets

**9.5 Law**

The Chargor will comply with all applicable laws, regulations and authorisations affecting the Security Assets

**10 Mortgaged Land**

The Chargor undertakes to EXIM BANK at all times during the Security Period

**10.1 Repair**

to keep the Mortgaged Land in good and substantial repair and condition,

**10.2 Outgoings**

to pay punctually all Taxes, rents, rates, duties, assessments and other outgoings payable in respect of the Mortgaged Land,

**10.3 Covenants**

to perform and observe all covenants (positive and restrictive), conditions and stipulations from time to time affecting the Mortgaged Land or the use or enjoyment of it,

**10.4 Development**

Subject to clause 10.13, (within the meaning of that expression in the Planning Acts and being development for which the permission of the local planning authority is required) not without the prior written consent of EXIM BANK to carry out or permit any development of the Mortgaged Land, or remove any of the fixtures on the Mortgaged Land (except in connection with the renewal or replacement of them),

**10.5 User**

to use the Mortgaged Land only for such purpose or purposes as may for the time being be authorised as the permitted use or user thereof under or by virtue of the Planning Acts,

**10.6 Planning**

10.6.1 to comply with any conditions attached to any planning permissions relating to or affecting the Mortgaged Land,

10.6.2 not without the prior written consent of EXIM BANK to make any application for planning permission or implement any planning permission obtained or enter or agree to enter into any agreement or undertaking under the Planning Acts in each case in respect of the Mortgaged Land;

**10.7 Notices**

to pass onto EXIM BANK immediately upon receipt a copy of any notice or proposal for a notice or order served on the Chargor by any public or local or any other authority in respect of the Mortgaged Land or any part thereof and to give notice to EXIM BANK immediately on becoming aware of any other matter which is likely to affect adversely the value of the Mortgaged Land, and in each case if EXIM BANK so requires or approves and at the Chargor's cost to make such representations in respect of such notice or order as EXIM BANK may require;

**10.8 Information**

at the request of EXIM BANK promptly to provide EXIM BANK with such documents or information relating to the Mortgaged Land or any development of the Mortgaged Land as EXIM BANK may reasonably require,

**10.9 Compliance with leases**

where the Mortgaged Land is leasehold or the Mortgaged Land is subject to any lease, agreement for lease, tenancy or licence:

10.9.1 to observe and perform all the covenants, stipulations and obligations contained in any lease, agreement for lease, tenancy or licence affecting the Mortgaged Land of which the Chargor is the lessee, tenant or licensee, and

10.9.2 to comply with all covenants on the part of the lessor or licensor contained in the lease, agreement for lease, tenancy or licence affecting the Mortgaged Land of which the Chargor is the lessor or licensor,

#### **10.10 Environmental matters**

- 10 10 1 to obtain and maintain all licences required by it under Environmental Law and comply in all material respects with all Environmental Law applicable to it, and
- 10.10 2 to ensure that no Dangerous Substances are used, disposed of, generated, stored, transported, deposited, buried or emitted at, on, from or under any premises (whether or not owned, leased, occupied or controlled by it) in circumstances where this might result in a liability of EXIM BANK;

#### **10.11 Leases**

- 10 11 1 save as permitted by the Facility Agreement, not without the previous consent in writing of EXIM BANK to grant or agree to grant (whether in exercise or independently of any statutory power) any lease or tenancy of the Mortgaged Land or any part thereof or accept a surrender of any lease or tenancy or confer upon any person any contractual licence or right to occupy the Mortgaged Land or any part of it and provided, on request by EXIM BANK, it notifies EXIM BANK of all leases, tenancies, licences or rights to occupy granted or surrendered by it and if so reasonably requested by EXIM BANK provided it sends a copy thereof to EXIM BANK forthwith upon request,
- 10 11.2 to enforce and not waive or release the covenants, conditions, agreements and obligations contained in or imposed by any of the Occupational Lease Documents or any guarantee in respect of the obligations of the tenants, lessees, licensees or other parties thereunder which materially affects or is reasonably likely to materially affect the value of the Mortgaged Land,
- 10 11.3 not without the prior written consent of EXIM BANK to accept or agree to accept the surrender or alteration of any of the Occupational Lease Documents which materially affects or is reasonably likely to materially affect the value of the Mortgaged Land or any part of it and observe and perform all the covenants, conditions, agreements and obligations on its part in all material respects, and
- 10.11 4 to deliver to EXIM BANK within 14 days of demand full particulars of all Occupational Lease Documents

#### **10 12 Commonhold**

The Chargor shall not convert, or permit the conversion of, any freehold estate of any of the Mortgaged Land to a freehold estate in commonhold land under Part 1 of the Commonhold and Leasehold Reform Act 2002

#### **10.13 Permitted Development**

if the Chargor obtains EXIM BANK's consent to any Permitted Development the Chargor shall

- 10.13 1 ensure that the Permitted Development proceeds in all material respects in accordance with a timetable agreed with EXIM BANK (taking into account any grace periods contained in that timetable);



10 13 2 subject to clause 10 13 3 below, ensure that the Permitted Development is carried out

- (a) in accordance with the Development Documents and the documents delivered to EXIM BANK pursuant to the Development Documents,
- (b) in a good and workmanlike manner, using materials of good quality which are fit for their respective purposes, and
- (c) at least in accordance with the relevant Codes of Practice, the Construction (Design and Management) Regulations 1994 and British Standard Specifications which relate to designs, layout, workmanship and materials used,

10 13.3 except with the prior written consent of EXIM BANK, not request, make or consent to any amendment to the specifications relating to the Permitted Development approved by EXIM BANK unless such amendment is required by law (in which case the Chargor shall promptly notify EXIM BANK and any Project Monitor of such amendment and the legal basis for it) (save for amendments which enhance the specifications or the value of the Mortgaged Land or substitutions or amendments which are of at least equal quality to those specified in the specifications),

10 13 4 ensure that each necessary consent required under any law or regulation in order to commence, carry out or complete the Permitted Development is obtained, complied with and maintained in full force and effect,

10.13 5 ensure that a copy of each consent required by clause 10 13 4 is supplied to the EXIM BANK promptly on request,

10.13 6 not seek any planning consent in respect of any Permitted Development or enter into any highways, planning or other similar agreement with any governmental authority without the prior consent of EXIM BANK,

10 13 7 ensure that where any easement, right or interest in the opinion of EXIM BANK

- (a) enjoyed by a third party would be infringed by the carrying out or completion of the Permitted Development or would prevent or impede the carrying out or completion of it, or
- (b) is required by the Chargor or any other person in order for the Permitted Development to be commenced, carried out or completed or for the Mortgaged Land to be enjoyed following Practical Completion,

the Chargor shall use all reasonable endeavours to agree the release, modification or grant (as appropriate) of such easement, right or interest on terms previously approved by EXIM BANK;

10 13 8 ensure that EXIM BANK, its representative(s) and any Project Monitor may at all reasonable times and on reasonable notice

- (a) enter the Mortgaged Land to inspect the Permitted Development and/or the development works undertaken as part of the Permitted Development; and
  - (b) have access to the Chargor's records relating to the Mortgaged Land and the Permitted Development;
- 10.13 9 ensure that
  - (a) site or progress meetings relating to the Permitted Development are held at least monthly;
  - (b) EXIM BANK and any Project Monitor are given at least five (5) Business Days' prior notice of, and afforded the opportunity to attend and speak at those meetings, and
  - (c) written minutes of such meetings are taken and a copy of such minutes is promptly supplied to EXIM BANK and the Project Monitor (if any);
- 10 13 10 ensure that it and any persons appointed by it have regard to any written recommendations of any Project Monitor as to the progress and implementation of the Permitted Development,
- 10 13 11 ensure that any approval by EXIM BANK or any Project Monitor of any drawings, specifications, invoices or applications for payment shall not excuse the Chargor or any other Party from performance of any Transaction Documents in accordance with their terms,
- 10 13 12 not enter into or accept the benefit of any agreement or instrument relating to the Permitted Development without the prior written consent of EXIM BANK;
- 10.13 13 ensure that any documents entered into by the Chargor in relation to the Permitted Development provide that
  - (a) the Chargor's rights are capable of being assigned to EXIM BANK; and
  - (b) the Chargor's obligations may be assumed by EXIM BANK,
 without the prior consent of any other person,
- 10 13 14 ensure that no person, contractor, professional or company is appointed in relation to the Permitted Development unless.
  - (a) the identity and terms of appointment of such person is approved by EXIM BANK; and
  - (b) contemporaneously with such appointment (if requested by EXIM BANK), such person enters into and delivers to EXIM BANK a copy of such appointment together with a collateral warranty and evidence of the scope and amount of its construction all risks or professional indemnity insurance (as applicable, all in form and substance satisfactory to EXIM BANK);

- 10.13 15 ensure that if it or any person appointed in accordance with the terms of 11 13.14 breaches in any material respect the terms of any document by which such person is appointed in respect of the Permitted Development, it shall, on request by EXIM BANK, terminate such appointment or ensure that such appointment is terminated provided the terms of that appointment permit it to do so,
- 10 13 16 each time its enters into a Development Document, if requested by EXIM BANK, grant a Security Interest over each Development Document in favour of EXIM BANK in form and substance satisfactory to EXIM BANK,
- 10.13.17 ensure that in anticipation of the issue of the statement recording the date of Practical Completion, EXIM BANK and the Project Monitor are given at least five (5) Business Days prior notice of the date on which they (or their nominated representative) intends to carry out each inspection in this respect,
- 10 13 18 ensure that if required to do so by EXIM BANK, a representative of EXIM BANK and any Project Monitor is allowed to accompany the Chargor or any other relevant person on each inspection referred to in clause 10 13.17 above and to make representations to the Chargor and any other relevant persons before the issue of the relevant statement,
- 10.13 19 ensure that due regard is given to any representations made under clause 10 13 18,
- 10.13 20 ensure that a statement confirming achievement of Practical Completion is promptly supplied to EXIM BANK and any Project Monitor and that such statement shall not be issued until the Permitted Development has been completed in accordance with the required standards of any warranty provider and so that the applicable certificate/s of insurance to be issued by that warranty provider for the Mortgaged Land can be issued with no endorsements, qualifications or exclusions noted on the certificate/s of insurance,
- 10 13 21 ensure that the Mortgaged Land is properly managed in accordance with the usual principles of good estate management (save for implementing the Permitted Development) and that
- (a) no property manager of the Mortgaged Land is appointed without first obtaining the consent of EXIM BANK and the approval of EXIM BANK as to the terms of the appointment,
  - (b) the appointment of any property manager referred to in paragraph (a) above is not terminated without first obtaining the consent of EXIM BANK,
  - (c) if requested by EXIM BANK in circumstances where any property manager approved by EXIM BANK is in breach of the terms of any management agreement or duty of care deed given by that person to EXIM BANK, such person's appointment is terminated,

- (d) if an appointment is terminated under the paragraph (c) above, that the requirements of paragraph (a) are complied with in relation to the appointment of a new property manager of the Mortgaged Land,

10.13.22 permit EXIM BANK to at any time appoint a person as Project Monitor on such terms as are considered appropriate by EXIM BANK and to replace at any time the Project Monitor then holding office with any other person who in the opinion of EXIM BANK is suitably qualified and able to carry out the duties and functions of the Project Monitor under this Deed and/or the Transaction Documents,

10.13.23 provide the Project Monitor any information requested by the Project Monitor to prepare and deliver to EXIM BANK such estimates, reports, reviews, studies and checks in relation to the Permitted Development and the Mortgaged Land EXIM BANK may require from time to time; and

10.13.24 confirm that it has no right to receive copies of any reports, opinions, estimates, reviews, studies or checks undertaken or carried out by the Project Monitor or to receive copies of any correspondence between the Project Monitor and EXIM BANK

## **11 Insurance**

### **11.1 Insured Risks**

The Chargor will insure all of the Security Assets (which are of an insurable nature) against

11.1.1 the Insured Risks,

11.1.2 third party and public liability, and

11.1.3 any other risks normally insured against by persons carrying on the same class of business as that carried on by it

### **11.2 Replacement value**

Any Insurance must be in a sum or sums not less than the replacement value of the Security Assets. For this purpose, replacement value means the total cost of rebuilding, reinstating or replacing those Security Assets in the event of their being completely destroyed, together with any relevant architects' and surveyors' fees

### **11.3 Insurance company**

Any Insurances required under this clause must be with an insurance company or underwriters acceptable to EXIM BANK.

### **11.4 Application**

All monies received or receivable under any Insurances must be applied

11.4.1 in replacing, restoring or reinstating the Security Assets destroyed or damaged or in any other manner which EXIM BANK may agree, or

11 4.2 if EXIM BANK so directs and the terms of the relevant insurances allow in or towards satisfaction of the Secured Liabilities

**11.5 Co-insurance**

The Chargor will procure that a note of EXIM BANK's interest as co-insured (composite) is endorsed upon all Insurances maintained by the Chargor and that EXIM BANK is named first loss payee (other than in relation to insurance against third parties and public liability risks)

**11.6 Provisions of Insurances**

The Chargor will procure that the relevant Insurances contain provisions that.

11 6 1 they will not be terminated, invalidated or otherwise allowed to lapse for failure to pay any premium or otherwise unless 30 days' notice is given to EXIM BANK;

11 6.2 they will not be vitiated or avoided as against EXIM BANK in the event or as a result of any misrepresentation, act, neglect or failure to make disclosure on the point of any issued party or any circumstances beyond the control of an issued party, and

11 6 3 a waiver of the rights of subrogation of the insurer as against the Chargor, EXIM BANK and the tenants of any Mortgaged Land

**11 7 Avoidance of policy**

The Chargor will not do or permit anything to be done which may make the Insurances void or voidable

**11 8 Premiums**

The Chargor will promptly pay all premiums and do all other things necessary to keep the Insurances in force

**11 9 Return of policy**

The Chargor will, immediately at the request of EXIM BANK, produce to EXIM BANK the policy, certificate or cover note relating to any of the Insurances and the receipt for the payment of the last premium and will if EXIM BANK requests deposit all Insurances with EXIM BANK.

**12 Deposit of title deeds**

12.1 The Chargor will deposit all deeds and documents of title relating to the Security Assets with EXIM BANK and such other documents relating to the Security Assets as EXIM BANK may require from time to time, for the duration of the Security Period, except to the extent that any such Security Assets are released by EXIM BANK pursuant to the terms of the Facility Agreement

- 12.2 If any of the documents referred to in clause 12.1 are not within the possession or control of the Chargor, the Chargor undertakes to obtain possession of those documents as soon as practicable

**13 Power to remedy**

In the case of default by the Chargor in repairing or keeping in repair or insuring the Security Assets or any part thereof or in observing or performing any of the covenants or stipulations affecting the same, the Chargor will permit EXIM BANK or its agents and contractors to enter on the Security Assets and to comply with or object to any notice served on the Chargor in respect of the Security Assets and to effect such repairs or insurance or generally do such things or pay all such costs, charges and expenses as EXIM BANK may consider are necessary or desirable to prevent or remedy any breach of covenant or stipulation or to comply with or object to any notice. The Chargor will indemnify and keep EXIM BANK indemnified against all losses, costs, charges and expenses reasonably incurred in connection with the exercise of the powers contained in this clause 13.

**14 Enforcement of Security**

**14.1 When Security becomes enforceable**

The Security shall be immediately enforceable if an Event of Default occurs and is continuing. After the Security has become enforceable, EXIM BANK may in its absolute discretion enforce all or any part of such Security at the times, in the manner, and on the terms as it shall think fit and take possession of or hold or dispose of all or any part of the Security.

**14.2 Exercise of powers**

At any time after the Security becomes immediately enforceable, EXIM BANK may, without notice to the Chargor or prior authorisation from any court, in its absolute discretion whether or not it has appointed a Receiver, exercise all or any of the powers, authorities and discretions conferred by the Law of Property Act 1925 (as varied or extended by this Deed) on mortgagees and by this Deed on any Receiver or otherwise conferred by law on mortgagees or Receivers.

**14.3 Right of appropriation**

To the extent that any of the Security Assets constitutes Financial Collateral and this Deed and the obligations of the Chargor hereunder constitute a Security Financial Collateral Arrangement, EXIM BANK shall have the right, at any time after this Deed has become enforceable, to appropriate all or any part of such Financial Collateral in or towards payment and/or discharge of the Secured Liabilities in such order as EXIM BANK in its absolute discretion may from time to time determine. For this purpose each of the Chargor and EXIM BANK agrees that the value of such Financial Collateral so appropriated shall be the amount standing to the credit of any applicable account, at the time the right of appropriation is exercised and EXIM BANK agrees that the method of valuation provided for in this clause 14 shall constitute a commercially reasonable method of valuation for the purpose of the Financial Collateral Regulations.

#### **14.4 Access on enforcement**

14 4.1 At any time after EXIM BANK has demanded payment of the Secured Liabilities or if the Chargor or the Customer defaults in the performance of its obligations under this Deed or the Facility Agreement, the Chargor will allow EXIM BANK, any Receiver or any delegate of any such person, without further notice or demand, immediately to exercise all its rights, powers and remedies in particular (and without limitation) to take possession of any Security Asset and for that purpose to enter on any premises where a Security Asset is situated (or where EXIM BANK, any Receiver or any delegate of any such person reasonably believes a Security Asset to be situated) without incurring any liability to the Borrower for, or by any reason of, that entry

14 4.2 At all times, the Chargor must use its best endeavours to allow EXIM BANK, any Receiver or any delegate of any such person access to any premises for the purpose of clause 14 4.1 (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same

#### **14.5 Possession**

If EXIM BANK, any Receiver or any delegate of any such person takes possession of the Security Assets, it or he may at any time relinquish such possession

#### **14 6 No liability as mortgagee in possession**

EXIM BANK will not be liable to account as a mortgagee in possession in respect of all or any part of the Security Assets or be liable for any loss upon realisation or for any neglect, default or omission in connection with the Security Assets to which a mortgagee in possession might otherwise be liable

#### **14 7 Power of sale**

The power of sale under this Deed may be exercised notwithstanding that EXIM BANK or the Receiver may have previously waived or refrained from exercising that power; and no demand or notice of sale made or given under this Deed will be waived by the acceptance of any payment on account of the Secured Liabilities, or by any negotiations between EXIM BANK and the Chargor or any other party who is acting as agent for the Chargor or on behalf of it

#### **14.8 Receiver's liability**

All the provisions of clause 14 6 will apply, mutatis mutandis, in respect of the liability of any Receiver and delegate of the Receiver or EXIM BANK or any officer, employee or agent of EXIM BANK, any Receiver or any delegate

#### **15 Extension and variation of the Law of Property Act 1925**

##### **15 1 Extension of powers**

The power of sale or other disposal conferred on EXIM BANK and on any Receiver by this Deed will operate as a variation and extension of the statutory power of sale under Section

101 of the Law of Property Act 1925 and such power will arise (and the Secured Liabilities will be deemed due and payable for that purpose) on the execution of this Deed.

**15.2 Restrictions**

The restrictions contained in Sections 93 and 103 of the Law of Property Act 1925 will not apply to this Deed or to the exercise by EXIM BANK of its right to consolidate all or any of the Security with any other security in existence at any time or to its power of sale, which powers may be exercised by EXIM BANK without notice to the Chargor

**15.3 Power of leasing**

The statutory powers of leasing may be exercised by EXIM BANK at any time and EXIM BANK and any Receiver may make any lease or agreement for lease, accept surrenders of leases and grant options on such terms as it will think fit, without the need to comply with any restrictions imposed by Sections 99 and 100 of the Law of Property Act 1925

**15.4 Non-application**

The following provisions of the Law of Property (Miscellaneous Provisions) Act 1994 will not apply to clause 3 being

15.4.1 the words 'other than any charges, encumbrances or rights which that person does not and would not reasonably be expected to know about' in Section 3(1),

15.4.2 the words 'except to the extent that' and all words thereafter in Section 3(2), and

15.4.3 Section 6(2)

**15.5 Application**

Section 109(8) of the Law of Property Act 1925 will not apply, and all monies received by EXIM BANK or any Receiver in the exercise of any powers conferred by this Deed will be applied in the following order:

15.5.1 in the payment of.

(a) all costs, charges, liabilities and expenses incurred by EXIM BANK or any Receiver in the exercise of those powers or incidental to any Receiver's appointment, together with any compensation fee at the applicable rate set out in clause 2.2 (both before and after judgment) from the date those amounts became due until the date they are irrevocably paid in full, and

(b) any Receiver's remuneration,

15.5.2 in or towards discharge of all liabilities having priority to the Secured Liabilities;

15.5.3 in or towards the satisfaction of the Secured Liabilities in such order as EXIM BANK determines, and

15.5.4 in the payment of any surplus to the Chargor or other person entitled to it



**15 6      Application of sums received**

The Chargor will have no rights in respect of the application by EXIM BANK of any sums received, recovered or realised by EXIM BANK under this Deed

**16          Appointment of Receiver**

**16.1       Appointment and removal**

At any time after the Security becomes enforceable, or if requested to do so by the Chargor, EXIM BANK may by deed or otherwise (acting through an authorised officer of EXIM BANK), without prior notice to the Chargor

16 1.1      appoint one or more persons to be a Receiver of the whole or any part of the Security Assets or an Administrator of the Chargor,

16 1.2      remove (so far as it is lawfully able) any Receiver or an Administrator so appointed, and

16 1.3      appoint another person(s) as an additional or replacement Receiver(s) or Administrator(s)

**16 2       Capacity of Receivers**

Each person appointed to be a Receiver under this Deed will be

16 2.1      entitled to act individually or together with any other person appointed or substituted as Receiver,

16 2.2      for all purposes will be deemed to be the agent of the Chargor which will be solely responsible for his acts, defaults and liabilities and for the payment of his remuneration and no Receiver will at any time act as agent for EXIM BANK, and

16 2.3      entitled to remuneration for his services at a rate to be fixed by EXIM BANK from time to time (without being limited to the maximum rate specified by the Law of Property Act 1925)

**16 3       Statutory powers of appointment**

The powers of a Receiver will be in addition to all statutory and other powers of EXIM BANK under the Law of Property Act 1925 (as extended by this Deed), an administrative receiver under the Insolvency Act 1986 or otherwise and such powers will remain exercisable from time to time by EXIM BANK in respect of any part of the Security Assets

**17          Powers of Receiver**

**17.1       Powers**

Every Receiver appointed by EXIM BANK will (in addition to all powers conferred on him by law) have the following powers exercisable in respect of the Security Assets upon such terms and conditions as he thinks fit

- 17.1.1 to take possession of and generally to manage the Security Assets and any business of the Chargor;
- 17.1.2 to enter into, carry into effect, complete, deliver, perform, repudiate, rescind or vary any deed, contract, transaction or arrangement to which the Chargor is or is to be a party,
- 17.1.3 to carry out on any Mortgaged Land (or on any other property which it may in his opinion be necessary or desirable to work upon) any development or new works or complete any unfinished works of building, reconstruction, maintenance, furnishing or equipment and to apply for and obtain all planning permissions, consents or licences as may be necessary or desirable for such purposes,
- 17.1.4 to purchase or acquire any land and purchase, acquire, grant or release any interest in or right over land and enter into, take or release the benefit of covenants (positive or restrictive) binding on or benefiting the Mortgaged Land,
- 17.1.5 to sell, lease, licence, surrender or accept surrender of leases or licences of, charge or otherwise deal with and dispose of the Security Assets without restriction including (without limitation) power to dispose of any fixtures separately from the Mortgaged Land,
- 17.1.6 to enter any premises where any Security Assets are located and sever, dismantle and remove any Security Assets from the premises without the Chargor's consent;
- 17.1.7 to carry into effect and complete any transaction by executing deeds or documents in the name of or on behalf of the Chargor,
- 17.1.8 to insure the Security Assets and any works and effect indemnity insurance or other similar insurance and obtain bonds or give commitments, guarantees indemnities and security,
- 17.1.9 to engage, rely on the advice of and discharge advisers, consultants, officers, managers, agents, workmen and others,
- 17.1.10 to purchase materials, tools, equipment, goods or supplies,
- 17.1.11 to bring, continue or defend any claim, dispute, action or legal proceedings and enter into any arrangement or compromise in relation to the Security Assets or any part of them;
- 17.1.12 to redeem any security and to borrow or raise any money and secure the payment of any money in priority to the Secured Liabilities for the purposes of the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise;
- 17.1.13 to make any elections for value added tax purposes, and
- 17.1.14 to do any other acts or things as

- (a) he may consider to be necessary or desirable for the realisation of the Security Assets or any part thereof,
- (b) as he may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this Deed or law.

**18 Protection of purchasers**

**18.1 Consideration**

The receipt of EXIM BANK or any Receiver will be conclusive discharge to a purchaser and, in making any sale or disposal of any of the Security Assets or making any acquisition, EXIM BANK or any Receiver may do so for such consideration, in such manner and on such terms as it thinks fit

**18.2 Protection of purchaser**

No purchaser or other person dealing with EXIM BANK or any Receiver will be bound to inquire whether the right of EXIM BANK or such Receiver to exercise any of its powers has arisen or become exercisable or be concerned with any propriety or regularity on the part of EXIM BANK or such Receiver in such dealings.

**19 Power of attorney**

**19.1 Appointment and powers**

The Chargor by way of security irrevocably appoints EXIM BANK and every Receiver or Administrator and any delegate or sub-delegate severally to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things which

- 19.1.1 the Chargor ought to have done by this Deed (including the execution and delivery of any deeds, charges, legal mortgages, assignments or other security and any transfers of the Security Assets),
- 19.1.2 enable EXIM BANK and any Receiver or Administrator or any delegate or sub-delegate to exercise, or delegate the exercise of, any of the rights, powers and authorities conferred on them by or pursuant to this Deed or by law (including the exercise of any right of a legal or beneficial owner of the Security Assets)

**19.2 Ratification**

The Chargor will ratify and confirm all things lawfully done and all documents executed by any attorney in the exercise or purported exercise of all or any of his powers

**20 Effectiveness of Security**

**20.1 Continuing Security**

The Security will remain in full force and effect as a continuing security for the Secured Liabilities during the Security Period

**20.2 Cumulative rights**

The Security and the Collateral Rights will be cumulative, in addition to and independent of every other security which EXIM BANK may at any time hold for the Secured Liabilities or any other obligations or any rights, powers and remedies provided by law. No prior security held by EXIM BANK over the whole or any part of the Security Assets will merge into the Security.

**20.3 No prejudice**

Neither the Security nor the Collateral Rights will be prejudiced by any time or indulgence granted to the Chargor or any other person or by any other thing which might otherwise prejudice the Security or any Collateral Right.

**20.4 Remedies and waivers**

No failure on the part of EXIM BANK to exercise, or any delay on its part in exercising, any Collateral Right will operate as a waiver thereof, nor will any single or partial exercise of any Collateral Right preclude any further or other exercise of that or any other Collateral Right.

**20.5 No liability**

None of EXIM BANK, any Receiver or any delegate or sub-delegate will be liable by reason of

20.5.1 taking any action permitted by this Deed, or

20.5.2 any neglect or default in connection with the Security Assets, or

20.5.3 taking possession of or realising all or any part of the Security Assets

except in the case of negligence or wilful default or fraud upon its part.

**20.6 Partial invalidity**

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Deed nor of such provision under the laws of any other jurisdiction will in any way be affected or impaired thereby and, if any part of the Security is invalid, unenforceable or ineffective for any reason, that will not affect or impair any other part of the Security.

**20.7 Other security**

EXIM BANK will not be obliged to resort to any guarantees, indemnities, Security Interests or other means of payment now or hereafter held by or available to it before enforcing this Deed and no action taken or omitted by EXIM BANK in connection with any such guarantee, indemnity, Security Interests or other means of payment will discharge, reduce, prejudice or affect the liability of the Chargor or the Secured Liabilities nor will EXIM BANK be obliged to account for any money or other property received or recovered in consequence of any enforcement or realisation of any such guarantees, indemnities, Security Interests or other means of payment.

## **20.8 Appropriations**

Until all amounts which may be or become payable by the Chargor and/or the Customer under or in connection with any Transaction Document have been irrevocably paid in full, EXIM BANK (or any trustee or agent on its behalf) may

20.8.1 refrain from applying or enforcing any other moneys, security or rights held or received by EXIM BANK (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Chargor will not be entitled to the benefit of the same; and

20.8.2 hold in a suspense account any moneys received from the Chargor or on account of the Chargor's liability under this clause 20.8

## **20.9 Variation**

No variation of the terms of this Deed will be valid unless it is in writing and executed as a deed by the Chargor and confirmed in writing by EXIM BANK.

## **21 Deferral of rights**

### **21.1 Non-exercise of rights**

Until all amounts which may be or become payable by the Chargor and/or the Customer under or in connection with any Transaction Document have been irrevocably paid in full and unless EXIM BANK otherwise directs, the Chargor will not exercise any rights which it may have by reason of performance by it of its obligations under this Deed

21.1.1 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of EXIM BANK under any Transaction Document or of any other guarantee or security taken pursuant to, or in connection with, any Transaction Document by EXIM BANK, and

21.1.2 to claim any set-off or counterclaim from any party to any Transaction Document or guarantor of the Chargor's obligations or to claim or to prove in competition with EXIM BANK in the insolvency of any other such party or guarantor

### **21.2 Receipt of payment**

If the Chargor receives any payment, distribution, guarantee, indemnity, mortgage, charge or other security or other benefit or exercises any set-off or counterclaim or otherwise acts in breach of this clause 21, the Chargor agrees forthwith to deposit an amount equal to the value of any benefit derived directly or indirectly therefrom with EXIM BANK and pending such deposit to hold the benefit so derived in trust for EXIM BANK

## **22 Release of Security**

Upon the expiry of the Security Period and EXIM BANK not being under any further actual or contingent obligation to make advances or provide other financial accommodation to the Customer, EXIM BANK will, at the request and cost of the Chargor, release and cancel the Security and procure the reassignment to the Chargor of the property and assets assigned

to EXIM BANK pursuant to this Deed and without recourse to, or any representation or warranty by, EXIM BANK or any of its nominees

**23 Subsequent Security Interests**

If EXIM BANK at any time receives or is deemed to have received notice of any subsequent Security Interest affecting all or any part of the Security Assets or any assignment or transfer of the Security Assets which is prohibited by the terms of this Deed, all payments thereafter by or on behalf of the Chargor to EXIM BANK will be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities as at the time when EXIM BANK received such notice

**24 Assignment**

**24.1 Right to assign**

EXIM BANK may at any time assign or otherwise transfer all or any part of its rights under this Deed

**24.2 Restriction on Chargor**

The Chargor may not assign or transfer any of its rights or obligations under this Deed

**24.3 Confidentiality**

EXIM BANK may give such information relating to the Chargor and the Secured Liabilities as it thinks fit to any person proposing to take an assignment and/or transfer from EXIM BANK and/or to enter into contractual relations with EXIM BANK with respect to this Deed.

**25 Expenses, stamp taxes and indemnity**

**25.1 Expenses**

The Chargor will, from time to time on demand of EXIM BANK, reimburse EXIM BANK on a full indemnity basis for all the costs and expenses (including legal fees) together with any value added tax thereon properly incurred by it or by any Receiver in connection with:

25.1.1 the negotiation, preparation and execution of this Deed and the completion of the transactions and perfection of the security contemplated in this Deed, or

25.1.2 the exercise, preservation and/or enforcement of any of the Collateral Rights or the security contemplated by this Deed or any proceedings instituted by or against EXIM BANK or any Receiver as a consequence of taking or holding the security or of enforcing the Collateral Rights,

and any compensation fee payable under clause 2.2

**25.2 Stamp taxes**

The Chargor will pay all stamp, stamp duty land tax, registration and other Tax to which this Deed, the Security or any judgment given in connection with it is or at any time may be subject and will, from time to time, indemnify EXIM BANK on demand against any

liabilities, costs, claims and expenses resulting from any failure to pay or delay in paying any such Tax

**25.3 Indemnity**

The Chargor will, notwithstanding any release or discharge of all or any part of the Security, indemnify EXIM BANK, its agents, attorneys and any Receiver against any action, proceeding, claims, losses, liabilities and costs which it may sustain as a consequence of any breach by the Chargor of the provisions of this Deed, the exercise or purported exercise of any of the rights and powers conferred on them by this Deed or otherwise relating to the Security Assets.

**26 Payments free of deduction**

All payments to be made under this Deed will be made free and clear of and without deduction or withholding whatsoever for or on account of any Tax except to the extent that the Chargor is required by law to make such payment subject to the deduction or withholding of any Tax. If any Tax or amount in respect of Tax is required to be deducted from any amounts payable or paid by the Chargor, the Chargor will pay such additional amounts as may be necessary to ensure that after the making of the deduction or withholding which is required the relevant recipient receives and retains (free from any liability in respect of any such deduction or withholding) a net amount equal to the full amount which it would have received and retained had no such deduction or withholding been made.

**27 Discretion and delegation**

**27.1 Discretion**

Any power or discretion which may be exercised or any determination which may be made hereunder by EXIM BANK or any Receiver may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

**27.2 Delegation**

Each of EXIM BANK and any Receiver will have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Deed (including the power of attorney) on such terms and conditions as it sees fit, which delegation may include power to sub-delegate and will not preclude either the subsequent exercise of such power, authority or discretion by EXIM BANK or the Receiver itself or any subsequent delegation or revocation thereof.

**28 Perpetuity period**

The perpetuity period under the rule against perpetuities, if applicable to this Deed, will be the period of 125 years from the date of this Deed (as specified in section 5(1) of the Perpetuities and Accumulations Act 2009).

**29 Counterparts**

This Deed may be executed in counterparts, all of which when taken together will constitute a single deed.

**30 Certification**

The Chargor hereby certifies that its creation of this Deed in favour of EXIM BANK does not contravene any of the provisions of its constitutional documents

**31 Reorganisation**

This Deed will remain binding on the Chargor notwithstanding any change in the constitution of EXIM BANK or its absorption by, or amalgamation with, or the acquisition of all or part of its undertaking by, any other person, or any reconstruction or reorganisation of any kind. The Security will remain valid and effective in all respects in favour of EXIM BANK and for any assignee, transferee or other successor in title of EXIM BANK.

**32 Set off**

EXIM BANK may set off any matured obligation due from the Chargor under this Deed against any matured obligation owed by EXIM BANK to the Chargor (whether actual or contingent, present or future), regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, EXIM BANK may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

**33 Payment of monies**

**33.1 Date for payment**

Where neither the Facility Agreement nor this Deed specified the due date for payment of any monies owed by the Chargor to EXIM BANK such monies will be due and payable to EXIM BANK by the Chargor on demand.

**33.2 Currency**

The Chargor's liability under this Deed is to discharge the Secured Liabilities in Sterling. If at any time EXIM BANK receives a payment (including by set-off) referable to any of the Secured Liabilities from any source in a currency other than Sterling, then such payment will take effect as a payment to EXIM BANK of the amount in Sterling which EXIM BANK is able to purchase (after deduction of any relevant costs) with the amount of the payment so received in accordance with its usual practice.

**33.3 Currency indemnity**

If a payment is made under a court order or in satisfaction of a claim or proof and is treated by clause 33.2 as a payment of an amount which falls short of the relevant liability of the Chargor expressed in Sterling, the Chargor as a separate and independent obligation will on demand from time to time indemnify EXIM BANK against such shortfall and pay any compensation fee pursuant to clause 2.2 in that respect.

**33.4 Certificates**

A certificate signed by an official of EXIM BANK as to the amount due or owing from the Chargor will be conclusive evidence against the Chargor, except in the case of manifest error.



**34 Notices**

**34.1 Service**

Any notice or communication to be given in connection with this Deed will be in writing and delivered by hand or sent by first class prepaid post or fax and:

34 1.1 sent to the Chargor at.

Leafield Technical Centre  
Langley  
Oxfordshire OX29 9EF

Fax +44 1993 871891

Attention Mr Cyril Abiteboul, Team Principal,

34 1 2 sent to EXIM BANK at

Export-Import Bank of Malaysia Berhad  
Level 1, EXIM Bank  
Jalan Sultan Ismail  
50250 Kuala Lumpur  
MALAYSIA

Fax +603 26012100

Attention Head of Banking Department

unless either party has communicated another address or fax number to the other in which case it must be sent to the last address or fax number so communicated

**34 2 Receipt by Chargor**

A notice or communication sent by EXIM BANK to the Chargor under clause 34 will be deemed to have been received

34 2 1 if delivered by hand, at the time of delivery;

34.2.2 if sent by first class pre-paid post, on the next business day after posting; or

34 2 3 if sent by fax, when received in legible form

**34 3 Receipt of notices**

Any notice or communication given to EXIM BANK by the Chargor shall be deemed to have been received only on actual receipt.

**34 4 Confirmation in writing**

The Chargor may not rely on any oral notice, waiver, consent, approval, representation, advice, statement or other communication by EXIM BANK or any of its employees, agents

or representatives except where such communications are confirmed in writing and signed for EXIM BANK pursuant to clause 34

#### **34 5 Electronic communication**

34 5.1 Any communication to be made between the Chargor and EXIM BANK under or in connection with this Deed may be made by electronic mail or other electronic means to the extent that they agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if they

(a) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means, and

(b) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice

34 5 2 Any electronic communication made between the Chargor and EXIM BANK will be effective only when actually received in readable form and in the case of any electronic communication made by the Chargor to EXIM BANK only if it is addressed in such a manner as EXIM BANK shall specify for this purpose.

34 5 3 Any electronic communication which becomes effective, in accordance with clause 34.5.2 above, after 5 00 pm in the place of receipt shall be deemed only to become effective on the following Business Day.

#### **35 Governing law and Jurisdiction**

35 1 This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by, and be construed in accordance with, the laws of England

35.2 The courts of England have exclusive jurisdiction to settle any dispute arising in connection with this Deed (a **Dispute**) The parties agree that these courts are the most appropriate and convenient courts to settle any Dispute that arises under or in connection with this Deed and accordingly neither party will argue to the contrary.

35 3 This clause 35 is for the benefit of EXIM BANK only As a result EXIM BANK will not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction To the extent allowed by law, EXIM BANK may take concurrent proceedings in any number of jurisdictions

35 4 The parties to this Deed recognise and agree that the principle of the payment of interest is repugnant to the Shan'ah and accordingly, to the extent that any legal system would (but for the provisions of this clause) impose (whether by contract or by statute) any obligation to pay interest, the parties hereby irrevocably and unconditionally expressly waive and reject any entitlement to recover interest from each other and to pay any amounts of interest that they receive to any charitable organisation at EXIM BANK's absolute discretion

**This Deed** has been executed as a deed by the parties and is delivered and takes effect on the date at the beginning of this Deed

## **Schedule 1**

### **Mortgaged Property**

Land and buildings known as the Leafield Technical Centre, Langley, Witney, Oxfordshire, OX29 9EF registered and the Land Registry under title numbers ON112510, ON226629, ON257767, ON257768 and ON257769

## Schedule 2

### Part I

#### Form of notice of assignment of Insurances

To: [Insurer]

Date:

#### Notice of assignment

We hereby give notice that by a debenture dated [•] made between 1Malaysia Racing Team (UK) Limited (the **Chargor**) (1) and Export-Import Bank of Malaysia Berhad (**EXIM BANK**) (2) (the **Debenture**) that the Chargor has assigned in favour of EXIM BANK all its rights, title and interest in and to the proceeds of *[insert details of insurance policy]* (the **Policy**)

We hereby instruct you with effect from the date you receive this notice to

- 1 make all payments under or in respect of the Policy to EXIM BANK or as EXIM BANK may specify in writing from time to time,
- 2 note the interest of EXIM BANK as co-insured (composite) on the Policy;
- 3 disclose to EXIM BANK without further approval from us such information regarding the Policy as EXIM BANK may from time to time request, and
- 4 send a copy of all notices issued by you in respect of the Policy to EXIM BANK

All rights, interests and benefits accruing to the Chargor under the Policy belong to and are exercisable by EXIM BANK

The instructions in this letter may not be revoked or amended without the prior written consent of EXIM BANK.

This letter and all non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, the laws of England

Please acknowledge receipt of this letter and your acceptance of the instructions and authorisations contained in it by signing and returning a copy of this letter addressed to us and to EXIM BANK in the form attached hereto

Yours faithfully

.....  
Authorised signatory  
for and on behalf of  
**1Malaysia Racing Team (UK) Limited**

## Part II - Form of acknowledgement of assignment of Insurances

To: Export-Import Bank of Malaysia Berhad  
c/o Trowers & Hamlins LLP (reference ERJ/NCG/NCE)  
3 Bunhill Row  
London  
EC1Y 8YZ

Date

We acknowledge receipt of the notice dated [●] (the **Notice**) and addressed to us by 1Malaysia Racing Team (UK) Limited (the **Chargor**) in relation to the Policy (as defined in the Notice) and we accept the instructions and authorisations contained in the Notice and confirm that:

- 1 we shall comply with the terms of the notice,
- 2 we have not received notice of any other interest relating to the Policy; and
- 3 no amendment or termination of the Policy shall be effective until the expiry of 30 days after the date we have given EXIM BANK written notice of such amendment or termination

We confirm that

- 1 the Policy is in full force and effect,
- 2 as at the date of this letter, the insurance premium payable in relation to the Policy is paid up to date,
- 3 the Insurance is in all material respects in accordance with the requirements of the [Facility Agreement / Transaction Documents] and amongst other things
  - 3 1 the interest of EXIM BANK is noted as co insured (composite) and first loss payee in respect of any insurance proceeds (other than third party liability claims) on the relevant policy relating to the Insurances, and we hereby confirm that we will provide quarterly notification to EXIM BANK of all claims made under the policy;
  - 3 2 full terrorism cover applies;
  - 3 3 includes property owners public liability,
  - 3.4 provides cover for loss of rent insurance in respect of a period of not less than 3 years,
  - 3.5 the policy contains a provision to the effect that the relevant Insurance shall not be invalidated or otherwise terminated or cancelled or the cover thereunder reduced as against EXIM BANK for non-payment of any premium due or for other cause without the insurer first giving to EXIM BANK 30 days' prior written notice;

- 3.6 the Policy contains a standard mortgagee protection clause whereby, among other things, the relevant Insurance shall not be vitiated or avoided as against a mortgagee notwithstanding that it could otherwise be so against the Chargor,
- 3.7 the Policy will not be prejudiced, vitiated or avoidable as against a mortgagee in the event of any misrepresentation, act or neglect or failure to disclose on the part of the insured party or parties,
- 3.8 a waiver of the rights of subrogation of the insurer as against the Chargor and EXIM BANK (save in their respective capacities as the insured) and the tenants of the property to which the Policy relates, and
- 3.9 under the terms of the Policy relating to the insurances, EXIM BANK shall not in any circumstances be liable for the relevant premium.

This letter and all non-contractual obligations arising out of or in connection with it shall be governed by, and outlined in accordance with, the laws of England

For and on behalf of  
[Insurer]

Signatories

signed as a deed on behalf of **1MALAYSIA RACING TEAM (UK) LIMITED** acting by a director in the presence of a witness:

Director

*LIAD AGNAT*

Print Name of Director

Witness signature:

Witness name

*CHAMAN CLOREK*

Witness address:

Witness occupation:

*DESIGNER*

executed as a deed by

**EXPORT-IMPORT BANK OF MALAYSIA BERHAD**

incorporated in Malaysia

(Malaysia company number 357198-K) by its

lawful attorney in the presence of:

Attorney

Name

NRIC No

Designation

Witness signature

Witness name

Witness address

Witness occupation:

**Signatories**

signed as a deed on behalf of **1MALAYSIA RACING TEAM (UK) LIMITED** acting by a director in the presence of a witness:

Director

Print Name of Director

Witness signature: .....

Witness name: .....

Witness address: .....

Witness occupation: .....

executed as a deed by

**EXPORT-IMPORT BANK OF MALAYSIA BERHAD**

incorporated in Malaysia

(Malaysia company number 357198-K) by its

lawful attorney in the presence of

Attorney

Name

**DATO' ADISSADIKIN ALI**

Managing Director/Chief Executive Officer

NRIC No

Designation

Witness signature: .....

Witness name: .....

Witness address: .....

Witness occupation: .....

**TAN KIM CHOY**

Advocate & Solicitor

Peguambela & Peguamcara

Shah Alam

**SALADIN & ASSOCIATES**

Advocates & Solicitors

Lot 10, Jalan

Pusat Dagangan, Unit 10, Shah Alam

Peraturan Darat Seksyen 11

40100 Shah Alam, Selangor

Malaysia

Tel : 603-5513 5610

Fax : 603-5513 5609

Email : salsoc@pdjaring.my