

# MR01

## Particulars of a charge



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 MR08.

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 with  
21 days beginning with the day after the date of creation of the charge  
delivered outside of the 21 days it will be rejected unless it is accompan  
court order extending the time for delivery.

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



\*J35ZL0QG\*

JNI

17/04/2014

#8

COMPANIES HOUSE

THURSDAY

### 1 Company details

Company number N 1 0 3 0 2 8 1  
Company name in full AH Fuel Oils Ltd (the "Chargor")

For official use

→ Filling 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 <sup>d</sup>1 <sup>d</sup>0 <sup>m</sup>0 <sup>m</sup>4 <sup>y</sup>2 <sup>y</sup>0 <sup>y</sup>1 <sup>y</sup>4

### 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 Close Invoice Finance Limited (the "Bank")

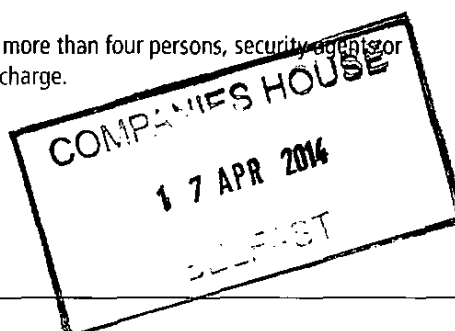
Name

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.



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<b>4</b>	<b>Description</b>	<p>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.</p>	<p><b>Continuation page</b> Please use a continuation page if you need to enter more details.</p>
Description	<p>The Mortgaged Property</p> <p>The lands and premises situate at and known as 9A Clare Lane, Cookstown, County Tyrone, BT80 8RJ, being the lands and premises comprised in Folio LY23474, County Londonderry.</p>		
<b>5</b>	<b>Fixed charge or fixed security</b>	<p>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.</p> <p><input checked="" type="checkbox"/> <b>Yes</b></p> <p><input type="checkbox"/> <b>No</b></p>	
<b>6</b>	<b>Floating charge</b>	<p>Is the instrument expressed to contain a floating charge? Please tick the appropriate box.</p> <p><input checked="" type="checkbox"/> <b>Yes</b> Continue</p> <p><input type="checkbox"/> <b>No</b> Go to <b>Section 7</b></p> <p>Is the floating charge expressed to cover all the property and undertaking of the company?</p> <p><input checked="" type="checkbox"/> <b>Yes</b></p>	
<b>7</b>	<b>Negative Pledge</b>	<p>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.</p> <p><input checked="" type="checkbox"/> <b>Yes</b></p> <p><input type="checkbox"/> <b>No</b></p>	

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**Trustee statement <sup>1</sup>**

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.

☐

<sup>1</sup> This statement may be filed after the registration of the charge (use form MR06).

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**Signature**

Please sign the form here.

Signature

Signature

X Arthur Cox

X

SOLICITOR FOR THE BANK

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	Cathy Doherty
Company name	Arthur Cox
Address	Capital House
	3 Upper Queen Street
Post town	Belfast
County/Region	Co. Antrim
Postcode	B T 1 6 P U
Country	Northern Ireland
DX	
Telephone	02890 230007



**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: NI30281

Charge code: NI03 0281 0011

The Registrar of Companies for Northern Ireland hereby certifies that a charge dated 10th April 2014 and created by A H FUEL OILS LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 17th April 2014.

Given at Companies House, Belfast on 22nd April 2014



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

DATED 10 April

2014

(1) A H FUEL OILS LTD

AND

(2) CLOSE INVOICE FINANCE LIMITED

We hereby certify that this is  
a true copy of the original  
Dated this 17<sup>th</sup> day of April 2014  
Arthur Cox N.I.  
Capital House Arthur Cox  
3 Upper Queen Street Solicitors  
Belfast BT1 6PU

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MORTGAGE AND CHARGE

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ARTHUR COX

BELFAST

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**THIS MORTGAGE AND CHARGE** is made the 10 day of April, 2014

**BETWEEN:**

- (1) **AH FUEL OILS LTD** (a company incorporated in Northern Ireland with registered number NI030281) having its registered office at 9A Clare Lane, Cookstown, County Tyrone, BT80 8RJ (hereinafter called the "Chargor" which expression shall include its successors and permitted assigns) of the one part; and
- (2) **CLOSE INVOICE FINANCE LIMITED** (a company incorporated in England and Wales with registered number 00935949) having its registered office at 10 Crown Place, London, EC2A 4FT 7EL and whose address for service is First floor, Dax House, 18-22 Howard Street, Belfast, BT1 6PA (hereinafter called the "Bank" which expression shall include its successors and assigns) of the other part.

**WHEREAS:**

- (A) The Chargor is now or may hereafter become indebted to the Bank whether as principal surety or otherwise.
- (B) It has been agreed between the Chargor and the Bank and it is hereby intended that these presents inter alia shall secure such sums of money as may from time to time be owing or become due by the Chargor whether as principal or as surety to the Bank with interest, costs and charges on the terms hereinafter set out.

**NOW THIS DEED WITNESSETH** as follows:

**1. DEFINITIONS AND INTERPRETATIONS**

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

the "Act" means the Conveyancing and Law of Property Act 1881;

"Administrator" means an administrator appointed pursuant to the Insolvency (Northern Ireland) Order, 1989;

"Business Day" means a day on which banks are open for business in Belfast;

"Charged Assets" in relation to the Chargor means its assets described in Clause 3.1 and "the Charged Assets" means such assets of the Chargor;

"Companies Act" means the Companies Act 2006;

"Default Rate" means 3% per annum above HSBC Bank plc base rate from time to time;

"Environment" includes any land (including, without limitation, soil, surface land and sub-surface strata, sea bed or river bed under any water and any natural or man made structures), any waters, (including, without limitation, coastal and inland waters, surface waters, ground waters and water in pipes, drains or other conduits) and air (including, without limitation, air within buildings and other natural or man made structures or below ground);

"Environmental Laws" means all laws in any jurisdiction (whether criminal, civil or administrative) including common law, statutes, statutory instruments, directives, regulations, bye-laws, orders, codes, judgments and other legal measures having the force of law concerning Environmental Matters and protection of the Environment including, without limitation, Health & Safety at Work (NI) Order 1978, Pollution Control & Local Government



(NI) Order 1978, Water & Sewerage Services (NI) Order 1973, Water & Sewerage (Amendment) (NI) Order 1993, Clean Air (NI) Order 1981, Industrial Pollution Control (NI) Order 1997, Alkali Etc Works Order (NI) 1991, Radioactive Substances Act 1993, the Waste and Contaminated Land (Northern Ireland) Order 1997, the Water (Northern Ireland) Order 1999 and the Environment (Northern Ireland) Order 2002 and the European Community legislation regulating the same and all regulations, bye-laws, orders, decisions and codes made thereunder;

**“Environmental Licences”** means any permit, licence, approval, consent, registration or other authorisation required by or pursuant to any applicable Environmental Laws or relating to Environmental Matters;

**“Environmental Matters”** means any matter arising out of, relating to, or resulting from pollution, contamination, protection of the Environment, human health or safety (including health and safety of employees), health and safety of animal and plant life, sanitation and any matters relating to actual or threatened emissions, discharges, disseminations, releases or hazardous materials into the Environment or otherwise arising out of, or relating to, or resulting from the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of hazardous materials;

**“Event of Default”** has the meaning ascribed to it in Clause 2.3;

**“Guarantee”** means any guarantee provided in relation to a Lease or Licence.

**“Holding Company”** has the meaning given to it in section 1159 of the Companies Act 2006;

**“Indebtedness”** means all monies, obligations and liabilities whatsoever whether principal, interest or otherwise which now are, or at any time hereafter may become, due or owing to the Bank by the Chargor either alone or jointly with any person or company on any account, whether current or otherwise in whatever currency denominated and all the Chargor's liabilities to the Bank in connection with foreign exchange or interest rate hedging transactions, the acceptance, guaranteeing, endorsement or discounting by the Bank of notes or bills issued by it or under any bonds, guarantees, indemnities or other instruments from time to time entered into by the Bank for it or at its request and all its other liabilities whatsoever to the Bank whether actual or contingent, secured, unsecured, joint or several and whether as principal debtor, guarantor or surety;

**“Leases”** means any lease, licence or contract or agreement to lease, licence or let or any contract of occupation entered into in relation to the Mortgaged Property;

**“Licence”** means any licence, permit or authority attaching to the Mortgaged Property;

**“Mortgaged Property”** means the lands and premises particulars of which are described in the First Schedule hereto and all rights and appurtenances thereunto belonging or appertaining;

**“Planning Acts”** means all laws in any jurisdiction (whether criminal, civil or administrative) including common law, statute, statutory instruments, directives, regulations, bye-laws, orders, codes, judgements and other matters having the force of law concerning planning matters, including, without limitation in Northern Ireland, the Planning (Northern Ireland) Order, 1991 and any extant order or regulation made or confirmed under any of them;

**“Receivables”** means all amounts payable to the Chargor in connection with the Mortgaged Property including, without limitation, all amounts payable pursuant to the Leases and/or Licences;

**"Receivables Account"** means the account to be opened with the Bank in the name of the Chargor to which the Receivables are to be credited or such other account as may from time to time replace same;

**"Receiver"** shall mean any one or more administrative receivers, receivers and/or managers appointed in respect of the Chargor (whether appointed pursuant to this Deed, pursuant to any statute, by a court or otherwise);

**"Related Company"** means a company which is a Holding Company of the Chargor or a Subsidiary of a Holding Company of the Chargor or of the Chargor itself;

**"Rental Income"** means the gross rents licence fees and other moneys receivable now or hereafter at any time by the Chargor in respect of or arising out of any lease of the Mortgaged Property or any agreement for lease or otherwise without limitation derived by the Chargor from the Mortgaged Property or otherwise paid to or received by the Chargor in respect of the Mortgaged Property (include without limitation all mesne profits) but save for insurance rents or service charges or the like.

**"Secured Obligations"** means in relation to the Chargor all monies, obligations and liabilities herein covenanted to be paid or discharged by the Chargor;

**"Security Interest"** includes, without limitation, any mortgage, trust, pledge, charge, lien, hypothecation, encumbrance or other security interest;

**"Subsidiary"** has the meaning given to it in section 1159 the Companies Act;

**"this Deed"** means this Mortgage and Charge; and

1.1 Except to the extent that the context requires otherwise, any reference in this Deed to:-

- (a) a "party" hereto includes a reference to its successors and permitted assigns;
- (b) Schedules, Clauses, subclauses and paragraphs shall be construed as references to Schedules to, and Clauses, subclauses and paragraphs of, this Deed and where a subclause is referred to in a Clause it shall be construed as a reference to a subclause of that Clause;
- (c) a document, deed or agreement shall include such document, deed or agreement as the same may be varied, replaced, substituted or amended from time to time;
- (d) any statute shall include any order made or regulation issued thereunder any statutory modification or re-enactment thereof from time to time in force; and unless otherwise stated any reference to a statute shall be a reference to a statute of Northern Ireland;
- (e) the singular shall include the plural and vice versa;
- (f) words importing the neuter shall include the masculine and the feminine and vice versa;

1.2 1.3 Headings shall be ignored in construing this Deed.

## 2. COVENANT TO PAY

- 2.1 For good and valuable consideration the Chargor hereby unconditionally and irrevocably covenants to pay or discharge on demand to the Bank the Indebtedness and all costs, charges, expenses and other sums (banking, legal or otherwise) on a full indemnity basis howsoever incurred or to be incurred by the Bank or by or through any Receiver, attorney, delegate, sub-delegate, substitute or agent of the Bank (including, without limitation, the remuneration of any of them) for any of the purposes referred to in this Deed or in relation to the enforcement of this security including, without limitation, any stamp duty arising on enforcement, together with interest to the date of payment (as well after as before any demand made or judgment obtained hereunder) at such rates and upon such terms as may from time to time be agreed and in the absence of agreement at the Default Rate.
- 2.2 All sums payable by the Chargor under this Deed shall be paid without any set-off counterclaim withholding or deduction whatsoever unless required by law in which event the Chargor will simultaneously with making the relevant payment under this Deed pay to the Bank such additional amount as will result in the receipt by the Bank of the full amount which would otherwise have been receivable and will supply the Bank promptly with evidence satisfactory to the Bank that the Chargor has accounted to the relevant authority for the sum withheld or deducted.
- 2.3 The Secured Obligations shall immediately become due and payable and the Chargor shall pay or repay the Secured Obligations to the Bank on the occurrence of any of the following events:-
- (a) if the Chargor fails to pay on the due date any money or to discharge any obligations or liabilities payable by him from time to time to the Bank hereunder or fails to comply with any term condition covenant or provision of this Deed or to perform any obligation of the Chargor to the Bank or if any representation or warranty or undertaking from time to time made to the Bank by the Chargor is or proves to have been incorrect or misleading in any material respect when made;
  - (b) if any event should occur which constitutes, or, with the lapse of time or giving of notice or both, would constitute, an event of default under the terms of any facility letter, agreement, deed or other arrangement between the Chargor and the Bank or if a demand is made by the Bank under any such letter, agreement, deed or arrangement; or
  - (c) if the Chargor fails to perform the Secured Obligations in accordance with this Deed; or
  - (d) if the Chargor makes default in observing or fulfilling any of its obligations under this Deed; or
  - (e) if any judgment or order made against the Chargor is not complied with within seven days or if an execution, distress or other process is levied or enforced upon or issued against any property or assets of the Chargor or any of its subsidiaries; or
  - (f) if a petition is presented, an order is made or an effective resolution is passed for the winding up of the Chargor or if a notice is issued convening a meeting for the purpose of passing any such resolution (except for the purpose of amalgamation or reconstruction not involving or arising out of insolvency, the Bank's approval in writing being first obtained); or

- (g) if the Chargor ceases or threaten to cease to carry on its business or substantially the whole of its business; or
- (h) if an encumbrancer takes possession of or a receiver or administrative receiver is appointed over all or any part of the assets of the Chargor or if a petition is presented for the appointment of a liquidator to the Chargor ; or
- (i) a resolution is passed or any other step is taken by the Chargor or its directors for the appointment of an Administrator;
- (j) an Administrator is appointed or the Bank receives notice of an intention to appoint an Administrator or files such a notice with the Court;
- (k) a petition or application for an administration order is presented in relation to the Chargor;
- (l) if the Chargor makes default in observing or fulfilling any of its obligations under this Deed; or
- (m) if the Chargor stops payment or agrees to declare a moratorium or becomes or is deemed to be insolvent or is unable to pay its debts within the meaning of Article 103 of the Insolvency (Northern Ireland) Order 1989 or is unable to pay its debts when they fall due or if the Chargor proposes or enters into any composition or arrangement with its creditors or any class of its creditors; or
- (n) if any licence, authorisation, consent or registration at any time necessary or desirable to enable the Chargor to comply with its obligations to the Bank or to carry on its business in the normal course shall be revoked, withheld or materially modified or shall fail to be granted or perfected or shall cease to remain in full force and effect; or
- (o) if the Chargor fails to observe or perform any of the covenants in any lease licence, concession or agreement whereby any property or rights of the Chargor may become liable to forfeiture; or
- (p) if any other charge whether floating or fixed granted by the Chargor over its property and undertaking crystallises or becomes enforceable or if any other action is taken to enforce any charge or encumbrance granted, created or issued by the Chargor; or
- (q) if the shareholders of the Chargor at the date hereof reduce their respective shareholdings in the Chargor so as to vest the beneficial ownership of the Chargor in any other person without the prior written consent of the Bank;
- (r) if any loan, debt, guarantee or other obligation constituting indebtedness of the Chargor becomes due prior to its specified maturity or is not paid when due or if the Chargor is in breach of or in default under any agreement, deed or mortgage under or pursuant to which any such indebtedness was incurred (whether or not steps are taken to enforce the same); or
- (s) if any representation or warranty made or reaffirmed pursuant to the terms of this Deed proves at any time to be incorrect or inaccurate;
- (t) if the Chargor defaults in the payment of any taxes due and payable (other than those being contested in good faith and where adequate reserves have been made therefor); or

- (u) if any circumstances shall occur which, in the judgment of the Bank, are prejudicial to or imperil or are likely to prejudice or imperil the security hereby created.

- 2.4. On the occurrence of an Event of Default, a certificate signed by a duly authorised officer of the Bank setting forth the amount of any sum due hereunder shall, in the absence of manifest error or unless the contrary is proved, be conclusive evidence against the Chargor.
- 2.5 The Secured Obligations shall, on the occurrence of an Event of Default, immediately become due and payable and the Chargor shall pay or repay all actual liabilities and provide cash cover to the Bank for all actual and contingent liabilities of the Chargor to the Bank on the occurrence of an Event of Default and the making of a demand by the Bank.
- 2.6 The Chargor hereby covenants immediately to notify the Bank in writing of the occurrence of an Event of Default or of the occurrence of any event which with the lapse of time or giving of notice or both would constitute an Event of Default.

### 3. THE CHARGING CLAUSE

- 3.1 As continuing security for the payment and discharge of the Secured Obligations and as beneficial owner and/or as registered owner and/or as the person entitled to be registered as registered owner as the case may be the Chargor hereby:-

- (a) **GRANTS, CONVEYS, TRANSFERS AND DEMISES** unto the Bank **ALL THAT AND THOSE** the Mortgaged Property other than the parts thereof the ownership of which is registered or registrable in the Land Registry pursuant to the provisions of the Land Registration Act (Northern Ireland) 1970 and all its interest in all buildings, fixtures (including, without limitation, trade fixtures) and its fixed plant and machinery from time to time thereon **TO HOLD** the same as to so much thereof as is of freehold tenure unto the Bank in fee simple and as to so much thereof as is of leasehold tenure unto the Bank for the residue of the respective terms of years for which the Chargor from time to time holds the same less the last three days of each such term, subject to the proviso for redemption contained in Clause 3.3 **PROVIDED** that the Chargor hereby declares that it shall henceforth stand possessed of such of the said property as is of leasehold tenure for the last day or respective last days of the term or terms or years for which the same is held by it, and for any further or other interest which it now has or may hereafter acquire or become entitled to in the same or any part thereof by virtue of any Act or Acts of Parliament or otherwise howsoever, in trust for the Bank and to be conveyed assigned or otherwise dealt with whether to the Bank or its nominee or otherwise as the Bank shall direct but subject to the same equity of redemption as may for the time being be subsisting in the said property, and the Chargor further agrees that (subject as aforesaid) the Bank shall be entitled to the custody of all the title deeds of the said property, and the Chargor hereby further authorises the Bank as mortgagee during the continuance of this security to remove it or any other person from being a trustee in respect of the trust hereinbefore declared and to appoint the Bank or any other person or persons to be a trustee or trustees in respect of the said property, and whereupon to make a declaration vesting all and any of its estate and interest in the said property in such new trustee or trustees, and so (but without prejudice to the generality of the foregoing) that any such trustee or trustees, may be any Receiver or Receivers of the said property appointed

by the Bank under the powers herein contained **PROVIDED FURTHER** that the Chargor doth hereby irrevocably appoint the Secretary for the time being of the Bank to be its attorney, in its name and on its behalf, and as its act and deed to sign seal and deliver and otherwise perfect every or any Deed of Conveyance of the leasehold reversion which may be desired by the Bank, in order to vest in the Bank or in any person or persons in trust as agent for the Bank, subject as aforesaid, or in any purchaser of the said property or any part thereof, the said leasehold reversion and any further or other interest which the Bank now has or may hereafter acquire or become entitled to in the said leasehold premises or any part thereof by virtue of any Act or Acts of Parliament or otherwise howsoever;

- (b) **CHARGES** unto the Bank **ALL THAT AND THOSE** such part of the Mortgaged Property as is registered or in the course of being registered under the Land Registration Act (Northern Ireland) 1970 together with all buildings, fixtures and fixed plant and machinery from time to time thereon with the payment, performance and discharge of the Secured Obligations;
- (c) by way of security assignment **ASSIGNS** unto the Bank the Rental Income and all powers and remedies for the recovery of the Rental Income **TO HOLD** the same unto the Bank with power to give a good discharge for the same subject only to the proviso for redemption contained in clause 3.3 hereof;
- (d) by way of fixed charge **ASSIGNS** unto the Bank all plant and machinery and all its other present and future fittings, furniture, plant, machinery, vehicles, fixtures, implements, utensils, goods, chattels and equipment in connection with the Mortgaged Property, together with all replacements thereof, additions, improvements and accessories thereto together with the full benefit of the insurances on same subject to the proviso for redemption contained in Clause 3.3;
- (e) by way of fixed charge **CHARGES AND ASSIGNS** unto the Bank all its present and future benefits, rights, title and interest in any or all monies, payments and proceeds of the insurances maintained or effected now or hereafter by it whether pursuant to Clause 5.1(d) of this Deed or otherwise howsoever;
- (f) by way of security assignment **ASSIGNS** unto the Bank all its rights and title to and benefits under (but not its obligations under) the Leases, the Licences and the Guarantees and all security from time to time granted to the Chargor as security under the Leases and the Licences and all security arrangements and the full benefit of all rights and remedies relating to the Leases and Licences, including all negotiable and non-negotiable instruments, guarantees, indemnities and rights of tracing and all its powers of recovery in respect thereof subject to the proviso for redemption contained in clause 3.3 hereof;
- (g) by way of fixed charge **CHARGES** unto the Bank all debts now and from time to time due or owing to it in connection with the Mortgaged Property including, without prejudice to the generality of the foregoing, all Receivables and other sums receivable by it by virtue of leases, leasing agreements or agreements for lease and the full benefit of all rights and remedies relating thereto, including all negotiable and non-negotiable instruments, guarantees, indemnities and rights of tracing;

(h) by way of fixed charge **CHARGES AND ASSIGNS** unto the Bank all of its rights and title to, and interest and benefits in, the Receivables Account and all monies from time to time standing to the credit thereof;

(i) by way of fixed charge **CHARGES AND ASSIGNS** unto the Bank the following covenants, agreements and rights:-

(i) any covenant agreement or undertaking in relation to the construction and maintenance of roads pavements and utilities for services abutting and serving the Mortgaged Property or charges levies or such like in respect of the same or the taking in charge thereof by the Department of the Environment and any indemnity in respect of the matters aforesaid;

(ii) any right, benefit or agreement made between the Chargor and the Department of the Environment in relation to the Mortgaged Property pursuant to which the Chargor has been or may be granted rights of access or rights of way;

(iii) any covenant agreement guarantee or indemnity in respect of the construction and maintenance of the buildings now erected or in the course of erection or hereafter to be erected on the Mortgaged Property the benefit of which is vested in it;

(iv) all of its rights to be paid or receive compensation under any statute by reason of any compulsory acquisition or other exercise of compulsory powers or in respect of criminal damage pursuant to the Criminal Damage (Compensation) (Northern Ireland) Order 1977 in relation to the Mortgaged Property or any refusal, grant subject to conditions, withdrawal or modification of planning permission or approval relative thereto or any control or limitation imposed upon or affecting the use of the Mortgaged Property and so that the production of these presents to the person liable to pay such compensation shall be sufficient authority to it or him to pay such monies to the Bank; and

(j) by way of first floating charge **CHARGES** unto the Bank all of its property, assets and undertaking referred to in Clauses 3.1(a) to (i) and in so far as such charges or any part or parts of the same shall be for any reason ineffective as specific or fixed charges.

(k) The Chargor shall at any time on written demand by the Bank procure that the Rental Income shall be paid directly to its account with the Bank (or such other account as the Bank may from time to time direct) and the Chargor shall forthwith upon any such demand so instruct its lessees and occupiers of the Mortgaged Property by notice in writing. The Chargor shall hold all Rental Income on trust for the Bank until it is paid to the Bank;

3.2 The Chargor hereby covenants with the Bank that, during the continuance of the security created by or pursuant to this Deed, it shall not without the prior consent in writing of the Bank:-

(a) create or permit to exist any mortgage, debenture, charge, pledge, lien (save liens arising by operation of law) or other interest (whether express or arising by operation of law) on or affecting its Charged Assets or any part thereof; or

- (b) sell or otherwise dispose of any of its Charged Assets otherwise than in accordance with Clause 5.1(c).

3.3 Upon payment of all principal monies all premiums (if any) all interest and other sums payable to the Bank in accordance with the terms of this Deed and upon the payment of all costs charges and expenses incurred by the Bank or any Receiver in relation to this Deed, the Bank will at any time thereafter at the request and cost of the Chargor execute and do all such deeds, acts and things that may be necessary to surrender or release the charges hereby created and surrender or reconvey or reassign to the Chargor or its assigns the Charged Assets.

#### 4. REPRESENTATIONS AND WARRANTIES

4.1 The Chargor hereby represents and warrants to the Bank that:-

- (a) it is a company duly incorporated and validly existing under the laws of Northern Ireland and has the power and authority to own its assets and to carry on its business as it is now being conducted;
- (b) it has power to enter into this Deed and has taken all necessary corporate and other action to authorise the execution, delivery and performance hereof;
- (c) the execution and delivery of this Deed and compliance by it with the covenants and other obligations on its part contained in this Deed does not, and will not, violate in any respect any applicable provision of any law or regulation to which it is subject or of its Memorandum or Articles of Association or of any mortgage, charge, agreement or other instrument to which it is a party or which may be binding on it or any of its assets and will not result in the creation or imposition of, or any obligation to create or impose, any mortgage, charge or other form of security on any of its assets or revenues;
- (d) all consents, approvals, authorisations, exemptions or licences, of any legislative body, governmental or other regulatory authority, bureau or agency required by the laws of its place of incorporation for or in connection with the execution, delivery, performance and enforceability of this Deed for or in connection with the carrying on of its business have been duly obtained and are in full force and effect and any condition contained therein or otherwise applicable thereto has been complied with or fulfilled;
- (e) no action, suit, proceeding, litigation or dispute against it is currently taking place or pending or, to its knowledge, threatened nor is there subsisting any judgment or award given against it before any court, board or arbitration or other body which, in either case, could or might adversely affect its ability to perform its obligations under this Deed and the acts and things hereby and thereby contemplated;
- (f) it is not aware of any material facts or circumstances that have not been disclosed to the Bank and which might, if disclosed, adversely affect the decision of a prudent person considering whether or not to provide financial facilities to it;
- (g) it is not in default under any agreement by which it is bound and no event of default (or event which, with the giving of notice and/or lapse of time or fulfilment of other conditions might constitute an event of default) has occurred and is continuing nor will such a default or event of default result



from the entry by it into or the exercise by it of its rights, or the performance by it of any of its obligations, under this Deed;

- (h) there is not in existence any Security Interest upon, against or over any of its Charged Assets;
- (i) it has no liabilities other than its Indebtedness.

## 5. GENERAL COVENANTS

5.1 The Chargor hereby covenants and undertakes with the Bank that, during the continuance of this security, the Chargor:-

- (a) shall keep all its properties and all buildings, fixtures, plant and machinery now or for the time being comprised in this security in good and substantial repair and condition and, in the case of the plant and machinery, in good working order;
- (b) shall carry on and conduct and procure its subsidiaries (if any) (so long as they respectively carry on business) to carry on and conduct their respective affairs in a proper and efficient manner and shall not, save with the prior written consent of the Bank, make any substantial alteration in the nature of such affairs;
- (c) shall not, save with the prior written consent of the Bank, sell, transfer or otherwise dispose of the whole or any of its undertaking, property or assets or deal with its book or other debts or securities for money otherwise than in the ordinary course of trading and for the purpose of carrying on its business, which expression shall not authorise the selling, factoring or discounting of its book debts or of negotiable instruments held by it;
- (d) shall keep the Mortgaged Property insured in the joint names of the Bank and the Chargor with the Bank as sole loss payee against loss or damage by fire, civil commotion, explosion, aircraft, flood, storm, tempest, lightning, burst pipes, electrical faults and such other risks as the Bank shall, from time to time, consider necessary to the full reinstatement value thereof (together with additional amounts estimated as sufficient to cover architect's and surveyor's fees, loss of rent and the costs of demolition, site clearance and shoring up) or as the Bank may decide with such insurance office or underwriters as may, from time to time, be approved by the Bank in writing, and the Chargor shall maintain such other insurances as are normally maintained by prudent companies carrying on similar businesses;
- (e) shall punctually pay all premiums and other monies necessary for keeping the aforesaid insurances in force and, on demand, lodge true copies or originals of the policies and receipts for such payments with the Bank and upon default of the same the Bank may (but shall not be obliged to) take out or renew such insurances in such sum(s) as the Bank may think expedient and all monies expended by the Bank under this Clause 5.1(e) shall be deemed to be properly paid by the Bank;
- (f) shall ensure that all monies to be received by virtue of any insurance maintained or effected by the Chargor (whether or not in pursuance of its obligations hereunder) shall be paid to the Bank and shall be applied by the Bank in reinstatement of the asset damaged or destroyed;

- (g) shall duly and punctually pay, and shall indemnify the Bank and any Receiver against payment of, all rates, rents, taxes, and other outgoings or sums payable out of or in respect of the Mortgaged Property;
- (h) shall promptly collect and realise all book debts and other debts hereby charged and shall, if called upon to do so by the Bank, execute a legal assignment of the book debts to the Bank in such form as the Bank may require and give all notices, orders and directions and effect all such registrations as the Bank may require;
- (i) shall not, without the prior written consent of the Bank, release, exchange, compound, set-off, grant time or indulgence in respect of, or permit or agree to any variation which the Bank considers to be material of the rights attaching to the book debts and other debts hereby charged or any of them;
- (j) shall, at its own expense, institute, continue or defend all such proceedings in connection with the Receivables, the book debts and other debts hereby charged as the Bank may require;
- (k) shall notify the Bank of any proposal or contract made by it for the acquisition by it of any freehold or leasehold property and, in the case of any such property the title to which (either before or after the acquisition thereof) is registered under the Land Registration Act (Northern Ireland) 1970, shall notify the Bank of the folio number(s) thereof and contemporaneously with the making of the application to the Land Registry for the registration as registered owner thereof, request the Registrar of Titles to enter a notice of these presents as a burden on the Folio and at any time, if called upon to do so by the Bank, execute over all or any part of such property a charge, by way of legal mortgage, in favour of the Bank in such form as the Bank may require and, in the case of any leasehold property, use its best endeavours to obtain any requisite consent therefor from the lessor;
- (l) shall promptly inform the Bank of any event as soon as it becomes aware of same, or of the receipt of any notice, which may affect its title to any of its freehold or leasehold property or any fixtures thereon or the fulfilment by it of any of its covenants or obligations hereunder, or which may affect its ability to carry on its business or the security created by this Deed;
- (m) shall allow the Bank or its agents with or without surveyors, workmen and others at all reasonable times to enter or inspect all or any of the properties referred to in Clause 3.1 and any plant, machinery and other effects used for the purposes of, or in connection with, its business, to view the state of repairs thereof and to carry out, at its expense, any repairs thereto which the Bank reasonably considers necessary without thereby becoming liable as a mortgagee in possession, and all monies expended by the Bank under this Clause 5.1(m) shall be deemed to be properly paid by the Bank;
- (n) shall comply with any tenant's covenants under any lease under which the whole or any part of its properties are held and with any landlord's covenants under any lease, underlease, tenancy or agreement for lease to which any such property is now or may become subject where failure to so comply would in the opinion of the Bank have a material adverse affect on the security hereby created;
- (o) shall, in relation to its properties and their use or enjoyment, obtain all Environmental Licences or other licences required by it and shall comply

with all obligations under all Environmental Licences and Environmental Laws or under any present or future statute, regulation, order or instrument or under any bye-law, regulation or requirement of any competent authority or planning permissions or other approvals, licences or consents where failure to so comply would in the opinion of the Bank have a material adverse effect on the security hereby created, and produce to the Bank, within seven days of receipt, every notice, order or proposal given or made by any competent authority and either comply with the same or make such objections and representations against the same as the Bank may reasonably require or approve;

(p) shall not sever or permit to be severed, save as hereinafter authorised or permitted, from any of its properties any fixtures and/or fittings now or subsequently affixed to, or placed upon, such property except for the purpose of replacing them with others of equal or greater value and any such replacements shall be subject to the security created by this Deed;

(q) shall not, without the prior consent in writing of the Bank, exercise any of the powers of leasing or agreeing to lease vested in, or conferred on, mortgagors by common law or by statute or create or suffer to be created a tenancy of any description of the whole or any part of any of its properties or confer upon any person any contractual licence, right or interest to occupy the whole or any part of the said property or accept or agree to accept a surrender of any lease, underlease, tenancy, licence or agreement;

(r) shall not, without the prior consent in writing of the Bank, reissue any debenture or debenture stock which may have been, or which may hereafter be, redeemed by it;

(s) shall, at the request of the Bank, call up (and shall not call up without the prior consent in writing of the Bank) any uncalled capital both present and future, and any monies received from the calling up of capital shall, be applied in, or towards, the discharge of the monies hereby secured;

(t) shall pay all stamp duty registration fees and other outlay together with the Bank's legal fees in connection with this security;

(u) shall not without the consent of the Bank after the date hereof lend monies to or enter into any guarantee for monies borrowed by or the indebtedness of any person and shall not permit the issue of any guarantee or indemnity by a third party on its behalf in respect of which there is recourse to the Chargor;

(v) shall not carry out any development within the meaning of the Planning Acts (as the same may be amended from time to time) in or upon any freehold or leasehold property hereby charged without first obtaining such permission as may be required under or by virtue of the Planning Acts;

(w) shall give five business days' notice to the Bank of its intention, and promptly notify the Bank of any intention on the part of any person of which it becomes aware, to present a petition or analogous proceedings or actions for the appointment of an examiner, administrator, administrative receiver, liquidator or any similar officer to, or over the whole or any part of its assets or those of a Related Company;

(x) shall not engage in the carrying on of any business other than the holding of the Mortgaged Property and shall, to the extent that it is within its power or

procurement, ensure that the business carried on in the Mortgaged Property is carried on in a proper efficient and businesslike manner and in conformity with all statutes regulations and bye-laws applicable thereto;

- (y) shall obtain all necessary sanctions licenses or permits that may be required for the purpose of carrying on its business and it shall at all times conform to and observe the provisions of such sanctions licences and permits and of all statutes bye-laws and regulations applicable to its business;
- (z) shall keep proper books of account and therein make true and proper entries of all dealings and transactions of and in relation to its business and keep the said books of account and all other documents relating to its affairs at its registered office or other place or places where the said books of account and documents of a similar nature may in the ordinary course be kept and allow the Bank or any person nominated by it in writing at all reasonable times to inspect the same and take extracts therefrom;
- (aa) shall give to the Bank or such person or persons as the Bank may for that purpose appoint such information as the Bank or such other person or persons aforesaid shall require as to all matters relating to the said business or to any after acquired property of the Chargor or otherwise relating to the affairs thereof;
- (bb) shall deposit with the Bank and permit the Bank to retain the following:-
  - (i) all deeds, instruments, agreements and documents of title relating to all freehold and leasehold property from time to time belonging to it (and the insurance policies relating thereto);
  - (ii) all stock and share certificates and documents of title relating to the Charged Assets and such documents of transfer in blank and other documents as the Bank may from time to time require for perfecting the title of the Bank to the Charged Assets (duly executed by or signed on behalf of the registered holder) or for vesting or enabling it to vest the same in itself or its nominee or in any purchaser;
  - (iii) all such other documents relating to its Charged Assets as the Bank may from time to time reasonably require.
- (cc) shall not without the prior written consent of the Bank form, promote, acquire or dispose of any subsidiary or other body corporate;
- (dd) shall promptly collect and realise all Receivables and shall pay, or if so requested by the Bank shall irrevocably instruct any debtor, tenant, lessee or licensee to pay, all Receivables into the Receivables Account and it shall not, without the prior written consent of the Bank, sell, factor, discount or otherwise charge, assign or dispose of the monies standing to the credit of such account in favour of any person or purport so to do and shall not make withdrawals or direct payments to be made from such account;
- (ee) shall not withdraw, or transfer any monies from, or direct payment to be made, from the Receivables Account without the prior written consent of the Bank, provided always that any consent given by the Bank may be withdrawn with immediate effect and at any time upon written notice to that effect having been served by the Bank on the Chargor. On the receipt of such

written notice no withdrawals, transfers or directions for payment of monies from the Receivables Account may be made;

(ff) shall not incur any further indebtedness or liabilities.

- 5.2 In the case of default by the Chargor in the performance of any of the foregoing covenants, the Bank may (but shall not be obliged to) do whatever may be necessary to make good such default, and all sums expended by the Bank in that behalf shall be added to the monies hereby secured and bear interest at the Default Rate, and for the aforesaid purpose the Chargor permits the Bank to enter upon any or all of the aforesaid properties to effect such repairs as the Bank may reasonably consider necessary without thereby becoming liable as a mortgagee in possession, and the Bank may effect insurances in such amounts and against such risks as the Bank shall decide irrespective of whether the Chargor is in default in the manner described in Clause 5.1(e).

## 6. POWER OF SALE

- 6.1 At any time after the occurrence of an Event of Default and after the Bank shall have demanded payment of the Secured Obligations or any part thereof or the Secured Obligations shall otherwise have become due and payable the Bank may forthwith without any further demand on or notice to the Chargor exercise the statutory power of sale conferred on mortgagees by the Act free from the restrictions imposed by Section 20 thereof and Section 17 thereof shall not apply to the mortgages and charges hereby created.
- 6.2 Immediately upon the Bank making demand upon the Chargor for payment and discharge of the Secured Obligations or any part thereof or immediately upon the Secured Obligations becoming otherwise due and payable in accordance with the provisions hereof the Secured Obligations shall be deemed to have become due within the meaning of Section 19 of the Act and this security shall immediately become enforceable and the power of sale and other powers conferred by the said Section as varied or extended by this Deed and all other powers conferred upon the Bank by this Deed shall be immediately exercisable.

## 7. APPOINTMENT OF RECEIVER

- 7.1 The Bank may, at any time after the power of sale may become exercisable (whether or not the Bank has entered into or taken possession of the Charged Assets) by writing under the hand of any manager of the Bank, or if the Bank is requested by a resolution of the board of directors of the Chargor, appoint any person or persons (including an official of the Bank) to be a Receiver of the Charged Assets or any part or parts thereof (and, in the case of the latter, the powers herein conferred on a Receiver shall have the effect as though every reference to the Charged Assets were a reference to the relevant part or parts of such assets) upon such terms as to remuneration (and the restrictions in Section 24(6) of the Act shall not apply) and otherwise as the Bank may, from time to time, think fit and may similarly remove any Receiver and appoint another in his stead, and any Receiver so appointed shall be the agent of the Chargor for all purposes, and the Chargor shall be solely responsible for his contracts, engagements, acts, defaults, omissions and losses and for liabilities incurred by him, for his misconduct and for his remuneration, and any such Receiver shall have the power, either in his own name or in the name of the Chargor (in the case of joint Receivers such powers being exercised jointly or severally):-

- (a) to enter upon, take possession of, collect and get in, the Charged Assets or any part thereof;

(b) to carry on, manage or concur in carrying on or managing the business of the Chargor or any subsidiary as he may think fit including (without limitation) power to perform, repudiate, rescind or vary any other contract or agreement to which the Chargor is a party;

(c) for the purpose of exercising any of the powers, authorities and discretions conferred on him by or pursuant to this Deed and/or defraying any costs, charges, losses or expenses (including his remuneration) which shall be incurred by him in the exercise thereof or for any other purpose, to make advances or to raise or borrow money either unsecured or secured on the Charged Assets or any part thereof in priority to, *pari passu* with, or subsequent to, the security hereby constituted or otherwise and at such rate or rates of interest and generally on such terms and conditions as the Receiver may think fit;

(d) to sell, or concur in selling, or exchanging, the Charged Assets or any part thereof and the sale of the Mortgaged Property, and to grant, or concur in granting or enter into any leases, tenancies, licences, options and rights of user for any term (without the need to observe any of the provisions of Section 18 of the Act) and to grant, or concur in granting, renewals and surrenders or accept, or concur in accepting, surrenders of any leases or tenancies at or for such considerations, rents and premiums and upon such terms and conditions (including provisions for the review of rent and the granting of long leases at a premium with or without a rent reserved) as the Receiver shall, in his absolute discretion, think fit and, without prejudice to the generality of the foregoing, he may do any of the aforementioned things for a consideration consisting of cash, debentures or other obligations, shares, stock or other valuable consideration, and any such consideration may be payable in a lump sum or by instalments spread over such period as he may think fit, and to carry into effect and complete any such transaction by executing any deeds or documents as may be necessary or appropriate in the name of, or on behalf of the Chargor. Sales of property may be by public auction, tender or private treaty with or without advertisement and in such lot or lots as the Receiver may, in his absolute discretion, think fit. Fixtures and/or plant and machinery may be severed and sold separately from the property containing them without the consent of the Chargor;

(e) to promote the formation of a subsidiary company and/or companies of the Chargor with a view to such subsidiary company and/or companies purchasing, leasing, licensing or otherwise acquiring interests in all or any of the assets of the Chargor;

(f) to make allowances to and re-arrangements with any lessees, tenants or other persons from whom any rents or profits may be receivable (including the granting of any licences and reviewing rent in accordance with the terms of, and varying the provisions of, any leases affecting the Charged Assets);

(g) to make and effect all such repairs, structural and other alterations, improvements, additions and developments in or to the Charged Assets or any part thereof as he may consider fit, and to purchase or otherwise acquire any materials, articles or things and do anything else in connection with the said assets which the Receiver may think desirable for the purpose of making productive or increasing the letting or market value of the said assets or protecting the security constituted by this Deed;

- (h) to arrange for or provide all the services (including, without prejudice to the generality of the foregoing, the lighting, heating and cleaning) which may be deemed proper for the efficient use or management of the Charged Assets;
- (i) to reconstruct, alter, improve, decorate, furnish, complete and maintain the whole or any part of the buildings hereby charged;
- (j) to effect such insurances as he shall, in his absolute discretion, think fit;
- (k) to redeem any prior encumbrance and to settle and prove the accounts of the encumbrancer, and accounts so settled and proved shall be conclusive and binding on the Chargor and the money so paid shall be a receivership expense;
- (l) to exercise, or permit the Chargor or any nominees of the Chargor to exercise, any powers or rights incidental to the ownership of the Charged Assets or any part thereof in such manner as he may think fit and in particular (as regards shares, stock and the Securities) any voting rights conferred by the same and (as regards the Securities) any rights of enforcing the same by foreclosure, sale or otherwise, and to call up all or any portion of the uncalled capital of the Chargor;
- (m) to settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is, or claims to be, a creditor of the Chargor or which relate in any way to the Charged Assets or any part thereof;
- (n) to bring, prosecute, enforce, defend and abandon all such actions, suits and proceedings in relation to the Charged Assets or any part thereof as may seem to him to be expedient;
- (o) to appoint, hire and employ and to remunerate agents, servants, attendants, workmen and others on such terms and generally in such manner as he shall think fit, either in connection with any exercise by him of any of the foregoing powers or otherwise for any purpose connected with the Charged Assets or any part thereof and to discharge any person so appointed, hired or employed;
- (p) to take recover collect and get in all or any part of the book debts and other debts hereby charged and for that purpose to give such notice to the Chargor's debtors as may be required or to sue take any proceedings in the name of the Chargor or otherwise as may seem expedient and to sell assign or otherwise deal with all or any part of the book debts and other debts hereby charged in such manner and generally on such terms and conditions (and whether for a lump sum or for a consideration payable in instalments and whether for cash or for a consideration other than cash) as may seem to him to be expedient;
- (q) to do all such other acts and things as he may consider necessary or desirable for the realisation of any of the Charged Assets or any part thereof or incidental or conducive to any of the matters, powers or authorities conferred on a Receiver under or by virtue of these presents, and to exercise and do, in relation to the Charged Assets or any part thereof, all such powers, authorities and things as he would be capable of exercising if he were the absolute beneficial owner of the same.

## **8. APPROPRIATION**

8.1 All monies received by the Bank in the exercise of its powers under this Deed or by any Receiver shall, subject to the repayment of any claims having priority to these presents and, save insofar as otherwise directed by the Bank, be applied in the following order:-

- (a) in payment of all proper costs, charges and expenses of, and incidental to the appointment of, the Receiver and the exercise of all or any of his powers including his remuneration and all outgoings properly paid by the Receiver and liabilities incurred by him as a result of such exercise;
- (b) in or towards payment to the Bank of all monies and liabilities covenanted to be paid or discharged by the Chargor to the Bank under this Deed and to be applied by the Bank in such order as the Bank may in its absolute discretion from time to time determine;
- (c) the surplus (if any) shall be paid to the Chargor or such other person or entity as may be entitled thereto and the Chargor hereby confirms that such payment shall discharge the Bank from its obligations with respect to the payment of such surplus.

## **9. RESPONSIBILITY FOR RECEIVER**

9.1 The Bank shall not incur any liability in respect of any contracts, engagements, acts, omissions, defaults or losses of the Receiver or for liabilities incurred by him or for any misconduct by him or for his remuneration (either to the Chargor or to any other person whatsoever) by reason of its making his appointment as such Receiver or of its having made or given any regulation or direction to such Receiver or for any other reason whatsoever.

9.2 The Bank may, from time to time, fix the remuneration of any Receiver and direct payment of such remuneration out of monies accruing to him in the exercise of his powers as such Receiver but the Chargor alone shall be liable for the payment of such remuneration.

## **10. ADDITIONAL POWERS OF THE BANK**

10.1 All or any of the powers, authorities and discretions which are conferred by this Deed, either expressly or impliedly, upon a Receiver of the Charged Assets, may be exercised by the Bank in relation to the whole of such assets or any part thereof without first appointing a Receiver of such assets or any part thereof or notwithstanding the appointment of a Receiver of such assets or any part thereof.

10.2 The powers conferred by this Deed in relation to the Charged Assets or any part thereof on the Bank or on any Receiver of such assets or any part thereof shall be in addition to, and not in substitution for, the powers conferred on mortgagees or Receivers under the Act, and where there is any ambiguity or conflict between the powers contained in the Act and those conferred by this Deed as aforesaid then the terms of this Deed shall prevail.

## **11. DELEGATION OF POWERS OF THE BANK**

The Bank may, at any time and from time to time, delegate by power of attorney or in any other manner (including, without limitation, under the hand of any officer of the Bank) to any person or persons or company or fluctuating body of persons all or any of the powers,



authorities and discretions which are, for the time being, exercisable by the Bank under this Deed or under the Act in relation to the Charged Assets or any part thereof, and any such delegation may be made upon such terms and conditions (including power to sub-delegate) and subject to such regulations as the Bank may think fit, and the Bank shall not be in any way liable or responsible to the Chargor for any loss or damage arising from any act, default, omission, or misconduct on the part of any such delegate (or sub-delegate).

## **12. LIABILITY OF THE BANK IN POSSESSION**

12.1 If the Bank or any Receiver appointed by the Bank or any such delegate (or sub-delegate) as aforesaid shall enter into possession of the Charged Assets or any part thereof, the Bank may, from time to time at pleasure, go out of such possession.

12.2 The Bank shall not, in any circumstances either by reason of any entry by it into, or taking by it of possession of, the Charged Assets or any part thereof or for any other reason whatsoever and whether as mortgagee in possession or on any other basis whatsoever, be liable to account to the Chargor for anything except the Bank's own actual receipts or be liable to the Chargor for any loss or damage arising from any realisation by the Bank of the Charged Assets or any part thereof or from any act, default or omission of the Bank in relation to the Charged Assets or any part thereof or from any exercise or non-exercise by the Bank of any power, authority or discretion conferred upon it in relation to the Charged Assets or any part thereof by or pursuant to this Deed or by the Act or by the Insolvency (Northern Ireland) Order 1989.

12.3 All the provisions of Clause 12.2 shall apply in respect of the liability of any Receiver of the Charged Assets or any part thereof and in respect of the liability of any such delegate (or sub-delegate) as aforesaid in all respects as though every reference in Clause 12.2 to the Bank were instead a reference to such Receiver or (as the case may be) to such delegate (or sub-delegate).

12.4 The Chargor shall indemnify the Bank and every Receiver against all actions, claims, demands, losses, expenses or liabilities of whatever nature now or hereafter incurred by it or by any officer, agent or employee for whose liability act or omission it may be answerable for anything done or omitted in the exercise or purported exercise of the powers herein contained or occasioned by any breach by the Chargor of any of its covenants or other obligations to the Bank or the Bank.

## **13. FURTHER DOCUMENTATION**

The Chargor shall at any time execute and do all such assurances, acts and things as the Bank may require for perfecting or protecting the security created by this Deed over the Charged Assets both present and future or any part thereof or for facilitating the realisation of such assets and the exercise of all powers, authorities and discretions vested in the Bank or in any Receiver of the Charged Assets or any part thereof or in any such delegate (or sub-delegate) as aforesaid, and shall, in particular, execute all mortgages, charges, transfers, conveyances, assignments and assurances of the Charged Assets whether to the Bank or to its nominee(s) and give all notices, orders and directions which the Bank may think expedient.

## **14. ATTORNEY**

14.1 The Chargor hereby, by way of security, irrevocably appoints the Bank and separately every Receiver of the Charged Assets or any part thereof appointed hereunder and every such delegate (or sub-delegate) as aforesaid to be its attorney and on its behalf and in its name, or otherwise to execute and do all such assurances, acts and things which the Chargor ought to do under the covenants and provisions

contained in this Deed and generally, on its behalf and in its name, to exercise all or any of the powers, authorities and discretions conferred by or pursuant to this Deed or by the Act on the Bank or any such Receiver, delegate or sub-delegate and (without prejudice to the generality of the foregoing) to seal and deliver and otherwise perfect any deed, assurance, agreement, instrument or act which it or he may deem proper in or for the purpose of exercising any of such powers, authorities and discretions including, without limitation, to exercise the Chargor's rights under the Contract for Sale.

- 14.2 The Chargor hereby ratifies and confirms and agrees to ratify and confirm whatever any such attorney as is mentioned in Clauses 14.1 shall do or purport to do in the exercise or purported exercise of all or any of the powers, authorities and discretions referred to in Clauses 14.1.

## **15. PROTECTION FOR THIRD PARTY PURCHASERS**

No person dealing with the Bank or with any Receiver or with any such delegate or sub-delegate as aforesaid shall be concerned to enquire whether any event has happened upon which any of the powers, authorities and discretions conferred by or pursuant to this Deed in relation to the Charged Assets or any part thereof are or may be exercisable by the Bank or by any Receiver, delegate or sub-delegate or otherwise as to the propriety or regularity of acts purporting or intended to be in exercise of any such powers, and all the protection to purchasers contained in Sections 21 and 22 of the Act shall apply to any person purchasing from, or dealing with, the Bank or any Receiver, delegate or sub-delegate in like manner as if the statutory powers of sale and of appointing a Receiver in relation to the Charged Assets had not been varied or extended by these presents.

## **16. FURTHER PROTECTION**

In addition to all other protection afforded by law, any person dealing with the Bank or any Receiver or any delegate (or sub-delegate) as aforesaid shall be entitled and bound to assume without enquiry that some monies are owing on the security hereof and have become payable.

## **17. ADDITIONAL AND CONTINUING SECURITY**

- 17.1 This security shall be in addition to and shall not prejudice, or be prejudiced by, any other security, right, remedy or lien which the Bank may now, or at any time hereafter, have or hold for all or any of the Secured Obligations.

- 17.2 This security shall be a continuing security to the Bank for all debts and liabilities owing by, and obligations from time to time of, the Chargor to the Bank and shall not be considered as satisfied or discharged by any intermediate payment or satisfaction of the whole or any part of the debts or liabilities or obligations hereby secured.

## **18. NEW ACCOUNT AND DESIGNATED ACCOUNT**

- 18.1 If the Bank receives notice (whether actual or otherwise) of any subsequent charge or other interest affecting the Charged Assets or any part thereof, the Bank may forthwith open a new account or accounts for the Chargor and if the Bank does not open a new account they shall nevertheless be treated as if they had done so at the time of receipt (or deemed receipt) of such notice, and as from that time all monies paid by the Chargor shall be credited or be treated as having been credited to the new account and shall not operate to reduce the amount due to the Bank by the Chargor at the time of receipt (or deemed receipt) of such notice, and furthermore the Bank may forthwith discontinue any guarantee or any other facility given or granted on the account of the Chargor.

18.2 The Bank shall have, in addition to any general lien or similar right (if any) to which it may be entitled by law, the right at any time or times and without notice to the Chargor after demand has been made hereunder to combine or consolidate all or any of the then existing accounts (including accounts in the name of the Bank) of the Chargor with the Bank and/or set-off or transfer any sum or sums standing to the credit of any one or more of such accounts (whether subject to notice or restriction on availability or not and whether denominated in Sterling or in a foreign currency) in or towards satisfaction of any of the liabilities of the Chargor to the Bank on any other account or in any other respect whether such liabilities be actual contingent primary collateral several or joint. In the case of all accounts (whether denominated in Sterling or in a foreign currency) the Bank may elect to convert all or any of such accounts (in whole or in part) into the currency or currencies of the whole or any part of the liability of the Chargor and the rate of exchange shall be the Bank's spot rate for the currency in question prevailing at or about 11.00 am on the date the Bank exercises its rights hereunder.

## 19. VARIATION

The Bank may in its discretion grant time or other indulgence or make any other arrangement variation or release with any person or persons (whether or not a party hereto and whether or not such person or persons are jointly and/or severally liable with the Chargor) in respect of the Secured Obligations or of any other security therefor without prejudice either to this security or to the liability of the Chargor for the Secured Obligations.

## 20. BENEFIT OF DEED

This Deed shall remain enforceable, valid and binding for all purposes notwithstanding any change in the name of the Bank or its absorption of, or by, or amalgamation or consolidation with, any other company or any change in the constitution of the Bank, its successors or assigns or the company by which the business of the Bank may from time to time, be carried on and shall be available to such successors, assigns or company carrying on that business for the time being.

## 21. MISCELLANEOUS

### 21.1 Northern Ireland Land Registry

The Chargor consents to the Bank applying to the Land Registry for the registration of the following inhibition against the Mortgaged Property and the folio(s) (if any) specified in the First Schedule to this Deed (and against any title to any unregistered property specified in the First Schedule to this Deed which is or ought to be the subject of a first registration of title at Land Registry at the date of this Deed or as a result of this Deed having been entered into):

"No disposition of the registered land by the registered owner of the registered land is to be registered without a written consent signed by the registered owner for the time being of the charge dated [ ] registered on the folio(s) in favour of Close Asset Finance Limited whose address in the United Kingdom for service of notices is Tolworth Tower, Ewell Road, Tolworth Surbiton, Surrey KT6 7EL".

## 22. NOTICES

22.1 Where a notice is to be given to any party hereunder it must be in writing and may be served:

- (a) by leaving it at the registered office or address for service of that party or by sending it by first class letter post to the registered office or address for service of that party when it shall be deemed to have been served 2 Business Days after it has been posted;
- (b) by facsimile transmission to the facsimile transmission number supplied by each party to the other for the purposes of this Clause or otherwise, if not so supplied, the facsimile transmission number shown on the last letter received from the party on whom notice is to be served, and such notice shall be deemed to be served on the address as soon as despatched provided that:
  - (i) the sender receives a satisfactory transmission report; and
  - (ii) it is sent between 9.00 a.m. and 5.00 p.m. on a Business Day and if sent outside of those hours, it shall be deemed to have been received at 9.00 a.m. on the next Business Day.

## 23. FOREIGN CURRENCY

- 23.1 All monies received or held by the Bank or by a Receiver under this Deed may from time to time after demand has been made be converted into such other currency as the Bank or the Receiver considers necessary or desirable to cover the obligations and liabilities of the Chargor in that currency at the then prevailing spot rate of exchange of the Bank (as conclusively determined by the Bank) for purchasing the currency to be acquired with the existing currency.
- 23.2 If and to the extent that the Chargor fails to pay the amount due on demand the Bank may in its absolute discretion without notice to the Chargor purchase at any time thereafter so much of a currency as the Bank considers necessary or desirable to cover the obligations and liabilities of the Chargor in such currency at the then prevailing spot rate of exchange of the Bank (as conclusively determined by the Bank) and the Chargor hereby agrees to indemnify the Bank against the full price (including all costs, charges and expenses) paid by the Bank.
- 23.3 The Chargor shall be obliged to pay to the Bank the full amount of the Secured Obligations in the currencies in which they are denominated. No payment to the Bank (whether under any judgment or court order or otherwise) shall discharge the obligation or liability of the Chargor in respect of which it was made unless and until the Bank shall have received payment in full in the currency in which such obligation or liability was incurred and to the extent that the amount of any such payment shall on actual conversion into such currency fall short of such obligation or liability expressed in that currency the Bank shall have a further separate cause of action against the Chargor and shall be entitled to enforce the security hereby created to recover the amount of the shortfall. Interest shall accrue on the amount of the shortfall at the Default Rate until the same has been discharged in full.

## 24. MERGER

- 24.1 Nothing contained in this Deed shall operate so as to merge or otherwise prejudice or affect any bill note guarantee mortgage or other security or any contractual or other right which the Bank may at any time have for the Secured Obligations or any right or remedy of the Bank thereunder and any receipt release or discharge of the security provided by or of any liability arising under this Deed shall not release or discharge the Chargor from any liability to the Bank for the same or any other indebtedness which may exist independently of this Deed.

24.2 Where the security hereby given initially takes effect as a collateral or further security then notwithstanding any receipt release or discharge endorsed on or given in respect of or under the principal security to which this Deed operates as a collateral or further security the security hereby provided shall in respect of any money or liabilities or other sums which were originally intended to be secured be an independent security for any such money or liabilities or other sums.

24.3 The Bank may in its absolute discretion at all times pending the payment to the Bank of the whole of the Secured Obligations place and keep to the credit of a separate or suspense account any money received by the Bank by virtue of the security created hereunder by the Chargor for so long and in such manner as the Bank may determine without any obligation to apply the same or any part thereof in or towards the discharge of the Secured Obligations.

24.4 The Bank may apply allocate or appropriate the whole or any part of any payment made by the Chargor hereunder and any monies received by the Bank from any Receiver or Receivers appointed by the Bank hereunder or the proceeds of realisation of any part of the Charged Assets to such part or parts of Secured Obligations as the Bank may in its sole discretion think fit to the entire exclusion of any right of the Chargor to do so.

## 25. GOVERNING LAW

25.1 This security shall be governed by, and construed in accordance with, the laws of Northern Ireland and the courts of Northern Ireland shall have non-exclusive jurisdiction.

## 26. GENERAL

26.1 A waiver of any breach of any of the terms, provisions or conditions of these presents or the acquiescence in any act (whether of commission or omission) which but for such acquiescence would be a breach as aforesaid shall not constitute a general waiver of such term provision or condition or of any subsequent act contrary thereto.

26.2 These presents shall bind the Chargor's successors but shall not be assigned by it. The Bank shall have a full and unfettered right to assign or transfer all or any part of its rights and/or obligations under this Deed and any assignee or other successor shall be entitled to enforce and proceed with this security in the same manner as if named herein. The Bank shall be entitled to impart to any potential assignee, successor or participant such information about the Chargor and this Deed as the Bank shall consider appropriate.

26.3 Each of the provisions of this Deed is severable and distinct from the others and if at any time one or more of such provisions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

26.4 This Deed may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which, when executed and delivered, shall constitute an original, but all the counterparts shall together constitute one and the same instrument.

## 27. ASSENT TO CHARGE

27.1 The Chargor hereby assents to the registration as burdens on the folio of any registered land referred to in Clause 3 of which it is the registered owner:-

- (a) of the fixed or specific charge hereby created on the said land;
- (b) on crystallisation of the floating charge, of such crystallised charge; and
- (c) of the power of any Receiver appointed hereunder to charge the said land.

27.2 The address of the Bank in Northern Ireland for the service of notices and its description is as set out above.

## **FIRST SCHEDULE**

### **The Mortgaged Property**

The lands and premises situate at and known as 9A Clare Lane, Cookstown, County Tyrone, BT80 8RJ, being the lands and premises comprised in Folio LY23474, County Londonderry.

IN WITNESS whereof this Mortgage and Charge has been executed as a deed on the day and year first herein written.

**THE CHARGOR**

EXECUTED as a DEED by )

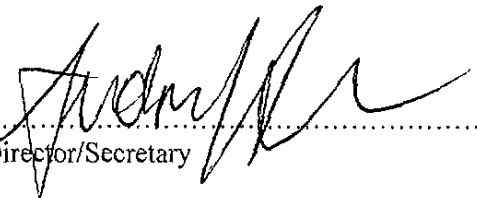
AH FUEL OILS LTD acting )

by a director and )

a director / secretary: )

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Director

  
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Director/Secretary

**THE BANK**

EXECUTED as a DEED by CLOSE )

INVOICE FINANCE LIMITED )

acting by a director and )

a director / secretary: )

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Director

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Director/Secretary