

**BEFORE THE PRIMARY COURT,
THE COMMERCIAL CIRCUIT MUSCAT**

A CASE FILED BY:

BANK MUSCAT (S.A.O.G.)

First Plaintiff

P O Box 134, Ruwi

Postal Code 112

Sultanate of Oman

Represented by:

Al Busaidy, Mansoor Jamal & Co

Barristers and Legal Consultants

P O Box 686, Ruwi

Postal Code 112

Sultanate of Oman

THE BANK OF NEW YORK MELLON

Second Plaintiff

101 Barclay Street

New York, NY 10286

United States of America

Represented by:

Al Busaidy, Mansoor Jamal & Co

Barristers and Legal Consultants

P O Box 686, Ruwi

Postal Code 112

Sultanate of Oman

AGAINST

(1) THE BLUE CITY COMPANY (1) (S.A.O.C.): First Defendant

(2) BLUE CITY COMPANY (2) (S.A.O.C.) Second Defendant

Represented by:

- (3) **BLUE CITY COMPANY (4) (S.A.O.C.)** Third Defendant
Represented by:
- (4) **BLUE CITY PHASE ONE INVESTMENT COMPANY LIMITED** Fourth Defendant
(formerly known as Blue City Real Estate Investment Sub-Holding Company 1 Limited)
Represented by:
- (5) **BLUE CITY PHASE ONE LAND COMPANY LIMITED** Fifth Defendant
(formerly known as Blue City Holdco Limited, which in turn was formerly known as Blue City Investments 1 Limited)
Represented by:
- (6) **BLUE CITY FUTURE PHASES INVESTMENT COMPANY LIMITED** Sixth Defendant
(formerly known as Blue City Real Estate Future Phases Sub-Holding Company Limited)
Represented by:
- (7) **BLUE CITY SHARE INVESTMENTS LIMITED** Seventh Defendant
Represented by:
- (8) **AL SAWADI INVESTMENT & TOURISM COMPANY LLC** Eighth Defendant
Represented by:

STATEMENT OF CLAIM

A. With due respect and on behalf of the Plaintiffs we lodge this Statement of Claim pursuant to the attached power of attorney (**Exhibit No.1**) for the recovery of US\$[665,585,000] (United States Dollars [six hundred and sixty-five million five hundred and eighty-five thousand]) with interest and default interest at the rates referred to in paragraphs 20 and 39 below until the full and final payment by the Defendants of their outstanding liability in favour of the Plaintiffs.

B. The Parties

1. The First Plaintiff is a public joint stock company incorporated in accordance with the laws of the Sultanate of Oman as a banking company for the conduct of banking business in Oman. The First Plaintiff files this case in its capacity as the “Phase 1 Onshore Security Trustee” in respect of New York transaction outlined below.
2. The Second Plaintiff (formerly known as The Bank of New York) is a banking institution incorporated in accordance with the laws of the State of New York in accordance with a law issued by the legislative council of New York . The Second Plaintiff files this case in its capacity as the “Phase 1 Offshore Security Trustee” in respect of the transaction outlined below.
3. The First Plaintiff and the Second Plaintiff were appointed as the Phase 1 Onshore Security Trustee and the Phase 1 Offshore Security Trustee respectively in accordance with Clause 17 of the Phase 1 Intercreditor Agreement (as defined in paragraph 23 below) to act as trustees for certain Secured Creditors in connection with the security given as part of the transaction structure outlined below.
4. The First Defendant, Blue City Company 1 (S.A.O.C.) which shall be referred to as (the “Borrower”), is incorporated in accordance with the laws of the Sultanate of Oman under commercial registration number CR 1/83472/0. (**Exhibit No.2**).
5. The Second Defendant, Blue City Company 2 (S.A.O.C.) which shall be referred to as (the “Transfer Company”), is incorporated in accordance with the laws of the Sultanate of Oman under commercial registration number (**Exhibit No.3**).

6. The Third Defendant, Blue City Company 4 (S.A.O.C.), is incorporated in accordance with the laws of the Sultanate of Oman under commercial registration number CR 1/83472/0 (**Exhibit No.4**).
7. The Fourth Defendant, Blue City Phase One Investment Company Limited (formerly known as Blue City Real Estate Investment Sub-Holding Company 1 Limited), is a limited liability company established in the Cayman Islands under commercial registration number WK156640 (**Exhibit No.5**).
8. The Fifth Defendant, Blue City Phase One Land Company Limited (formerly known as Blue City Holding Company Limited, which in turn was formerly known as Blue City Investments 1 Limited), is a limited liability company established in the Cayman Islands with commercial registration number WK156640 (**Exhibit No.6**).
9. The Sixth Defendant, Blue City Future Phases Investment Company Limited (formerly known as Blue City Real Estate Future Phases Sub-Holding Company Limited), is a limited liability company established in the Cayman Islands with commercial registered number WK156650 (**Exhibit No.7**).
10. The Seventh Defendant, Blue City Share Investments Limited, is a limited liability company established in the Cayman Islands with commercial registration number WK163176 (**Exhibit No.8**).
11. The Eighth Defendant, Al Sawadi Investment & Tourism Company LLC (“ASIT”), is a company incorporated in accordance with the laws of the Sultanate of Oman with commercial registration number CR 1/77173/8 (**Exhibit No.9**).
12. The Defendants are interrelated by their participation in the Project (as described further below). The structure of the relationship between the Defendants is detailed in the Transaction Structure Diagram annexed to this Statement of Claim as (**Exhibit No.10**).

C. **Background Facts**

13. These proceedings arise out of a real estate development in Oman called “Al Madina A’Zarqa” or “Blue City” (the “Project”) pursuant to the terms and subject to the conditions set out in the Development Agreement dated 26 July 2005 (as amended on

23 April 2006) entered into between the Government of the Sultanate of Oman and ASIT (the “Development Agreement”) (**Exhibit No.11**) as ratified by Royal Decree No. 59/2006 (**Exhibit No.12**). The Project is located approximately 90 km from Muscat and was intended to be built in ten phases over a period of 15 to 20 years. The Project was intended to cover a 15 km seafront site with between 20 and 30 million m² of gross floor area. It was also planned that the Project would accommodate more than 250 Thousand persons permanent residents and or and visitors on its Completion and that the Project would be one of the most significant tourism and business destinations in the Sultanate.

14. Phase 1 of the Project (“Phase 1”) was primarily a residential and tourism development with leisure and retail elements, including the construction of over 200 villas and nearly 5,000 apartments, four hotels, five individual retail areas and two golf courses over an area totaling 5.4 km². Phase 1 represented a substantial standalone project in its own right, as well as being the first component of the overall Project.
15. The total investment requirement for the Project was budgeted to be between \$15 billion and \$20 billion, out of which approximately \$2 billion was budgeted to be spent on Phase 1 of the Project.
16. In order to finance, in stages, and finance Phase 1 of the Project, on 7 November 2006, Blue City Investments 1 Limited incorporated under registration number WK156640 as an exempted company with limited liability under the laws of the Cayman Islands on 20 October 2005 with an authorised share capital of \$50,000, divided into 50,000 ordinary shares of \$1 each, all of which are fully paid up (the “Issuer”) (**Exhibit No.13**) issued the following bonds which are listed on the Irish Stock Exchange:
 - (a) \$399,000,000 Class A1 Bonds;
 - (b) \$265,500,000 Class A3 Bonds;
 - (c) \$143,000,000 Class B1 Bonds;
 - (d) \$50,500,000 Class C Bonds; and

(e) \$70,000,000 Class D Bonds;

(together, shall be referred to as the “Notes”) on the terms and conditions set out in a Bonds Trust Deed dated 7 November 2006 between the Issuer and The Bank of New York in its capacity as “Issuer of Bonds Trustee” and “Issuer of Security Trustee”.

17. The proceeds of the Bonds amounting to US\$925,000,000 were applied by the Issuer in making certain advances to the First Defendant (the “Intercompany Loan”) on 7 November 2006 pursuant to the terms of an intercompany loan agreement dated 27 October 2006 (the “Intercompany Loan Agreement”) between, amongst others, the Issuer, the First Defendant and the Second Defendant (**Exhibit No.14**).
18. The First Defendant was supposed to use the Intercompany Loan in , amongst other things: (i) financing part of Phase 1 (which includes residential and tourism developments) of the construction and development of the Project and (ii) the purchase, at a later stage, all of the shares of the company owning the Al Sawadi Beach Resort Hotel or the purchase of the business of the Al Sawadi Beach Resort Hotel and, in either case, its income rights including, if available, any associated usufruct rights with regard to the land on which the Al Sawadi Beach Resort Hotel had been constructed. Such purchase has not been completed. In addition it was planned that the Project was to be developed with the co-operation of the Government of Oman (the “Government”) pursuant to the Development Agreement.
19. The advances were made by the Issuer pursuant to the Intercompany Loan Agreement to the First Defendant through the use of four separate loan facilities (Facilities A-D) which correspond to the four overarching classes of the Bonds listed in paragraph 16 above. On 8 June 2010, the Class A1 Bonds and the Class A3 Bonds were partially redeemed by the Issuer in the amounts of \$83,790,000 and \$55,125,000 respectively, and the principal amount of the Facility A Loan was reduced by corresponding amounts to \$522,585,000.
20. Interest was to be paid quarterly on Facilities A-D in accordance with Clause 12 of the Intercompany Loan Agreement at interest rates corresponding to the interest rates applicable to the four overarching classes of the Bonds listed in paragraph 16 above (in the case of Facility A, calculated on a principal weighted average basis) as follows:

Facility	Principal currently outstanding	Rate of Interest	Amount of Interest Due Per Quarter
A	\$522,585,000	The principal weighted average of: (i) for the Class A1 Bonds, three month USD LIBOR plus 1.60% per annum; and (ii) for the Class A3 Bonds, three month USD LIBOR plus 3.80% per annum.	Floating rate depends on USD LIBOR rate for each quarter.
B	\$143,000,000	13.75% per annum	\$4,915,625.00
C	\$50,500,000	13.75% per annum	\$1,735,937.50
D	\$70,000,000	1.00% per annum	\$175,000.00

Accrued interest is payable on the 7th day of February, May, August and November in each year (or, if such day is not a Business Day, the next succeeding Business Day in respect of the Interest Period ending immediately prior thereto) (an “Interest Payment Date”).

21. Facilities A-D (including, in the case of Facilities B-D, certain Lookback Payments) were to be repaid in accordance with Clause 6 of the Intercompany Loan Agreement as follows:

Facility	Principal currently outstanding	Repayment Date	Amount of each Repayment Instalment for Facility A (corresponding to Class A1 Bonds and Class A3 Bonds)
A	\$522,585,000	Repayment Instalments due on each Interest Payment Date falling	Class A1 Notes: \$57,000,000 (final instalment due 7 May

		on and after 7 November 2011	2013) Class A3 Bonds: \$16,500,000 (to 7 May 2013) and \$73,500,000 (on 7 August 2013 and 7 November 2013)
B	\$143,000,000	7 November 2013	-
C	\$50,500,000	7 November 2013	-
D	\$70,000,000	7 November 2013	-

The Lookback Payments were intended to give the Class B, C and D Bondholders specified enhanced yields upon final redemption of their Bonds.

22. The obligations of the First Defendant, the Borrower, under the Intercompany Loan Agreement were secured in favour of the Second Plaintiff (the “Phase 1 Offshore Security Trustee”) and the First Plaintiff (the “Phase 1 Onshore Security Trustee”) on trust for the benefit of the Issuer and others by, *inter alia*, fixed and floating charges over the assets and undertakings of the Borrower and certain of its affiliates and certain third party security as described below. The Issuer in turn charged and/or assigned by way of first fixed security all of its rights, title, benefit and interest in, to and under, *inter alia*, the Intercompany Loan Agreement and the related security in favour of the Issuer Security Trustee on trust for the benefit of, amongst others, the holders of the Bonds (the “Bondholders”) pursuant to the Issuer Deed of Charge dated 7 November 2006 between, amongst others, the Issuer, the First Defendant and the Issuer Security Trustee.
23. The relationships between the Issuer, the Plaintiffs and various other creditors of the Defendants is governed by the Phase 1 Intercreditor Agreement dated 7 November 2006 between, amongst others, the Issuer, the First to Eighth Defendants and the Plaintiffs (the “Phase 1 Intercreditor Agreement”) (**Exhibit No.15**). Pursuant to the definitions in the Phase 1 Intercreditor Agreement, the Defendants constitute the “Phase 1 Obligors”.

24. The security granted to the Plaintiffs for the benefit of the Issuer and others comprised:

- (a) the Phase 1 Legal Mortgage dated 30 October 2006 entered into between the Fifth Defendant and the First Plaintiff over the land plot numbered 043/01/047/04/3 measuring 6,517,520 square meters and registered under title deed number 4995/2006 transferred to the Fifth Defendant pursuant to the Land Transfer Agreement dated 31 May 2006 (**Exhibit No.16**);
- (b) the Phase 1 Sale and Purchase Agreement dated 30 October 2006 entered into between the Fifth Defendant and the First Plaintiff with respect to the Mortgaged Property under the Phase 1 Legal Mortgage referred to in sub-paragraph (a) above (**Exhibit No.17**);
- (c) the Phase 1 Legal Mortgage No. 5115/2006 dated 31 October 2006 entered into between the Sixth Defendant and the First Plaintiff over the land plot numbered 064/047/04/3 the Al Sawadi Square in Wilayat Barka measuring 18,109,428/4 square meters and registered under title deed number 4183/2066 transferred to the Sixth Defendant pursuant to the Land Transfer Agreement dated 31 May 2006 (**Exhibit No.18**);
- (d) the Phase 1 Sale and Purchase Agreement dated 30 October 2006 entered into between the Sixth Defendant and First Plaintiff with respect to the Mortgaged Property under the Phase 1 Legal Mortgage referred to in sub-paragraph (c) above (**Exhibit No.19**);
- (e) a Commercial Mortgage dated 29 October 2006 entered into between the First Defendant and the First Plaintiff with respect to the Mortgaged Assets being the Onshore Accounts, Tangible Assets, Intangible Assets, Consents, Project Documents and Future Assets, as listed in Schedule II to the Commercial Mortgage (**Exhibit No.20**);
- (f) the Phase 1 Sale and Purchase Agreement dated 30 October 2006 entered into between the First Defendant and the First Plaintiff with respect to the Mortgaged Assets under the Commercial Mortgage referred to in sub-paragraph (e) above (**Exhibit No.21**);

- (g) The Commercial Mortgage number 1156/2006 dated 29 October 2006 entered into between the Second Defendant and the First Plaintiff with respect to the Mortgaged Assets being the Onshore Accounts, Tangible Assets, Intangible Assets, Consents, Project Documents and Future Assets, as listed in Schedule II to the Commercial Mortgage (**Exhibit No.22**);
- (h) The Commercial Mortgage number 1157/2006 dated 29 October 2006 entered into between the Third Defendant and the First Plaintiff with respect to the Mortgaged Assets being the Onshore Accounts, Tangible Assets, Intangible Assets, Consents, Project Documents and Future Assets, as listed in Schedule II to the Commercial Mortgage (**Exhibit No.23**);
- (i) the Phase 1 Omani Share Pledge number 2071/2006 dated 31 October 2006 entered into between the Eighth Defendant (being the Mortgagor), t and the First Plaintiff (being Mortgagee) with respect to the shares held by the Mortgagor in the First, Second and Third Defendants (**Exhibit No.24**);
- (j) the Phase 1 Omani Share Pledge number 2073/2006 dated 31 October 2006 entered into between Forth Defendant (being the Mortgagor), and the First Plaintiff (being the Mortgagee) with respect to the shares held by the Mortgagor in the Third Defendant (**Exhibit No.25**);
- (k) the Phase 1 Sale and Purchase Agreement dated 30 October 2006 entered into between the Fourth Defendant and the First Plaintiff with respect to the Charged Portfolio under the Phase 1 Omani Share Pledge referred to in subparagraph (j) above (**Exhibit No.26**);
- (l) the Phase 1 Omani Share Pledge number 2072/2006 dated 31 October 2006 entered into between the Third Defendant (being the Mortgagor) and the First Plaintiff (being the Mortgagee) with respect to the shares held by the Mortgagor in the First and Second Defendants (**Exhibit No.27**);
- (m) the Declaration of Trust dated the 7 November 2006 by the Seventh Defendant in favour of the First Plaintiff with respect to the shares held by the Seventh Defendant in the First Defendant, the Second Defendant and the Third Defendant (the “Declaration of Trust”);

- (n) the Cayman Islands Share Pledge given by the Third Defendant in favour of the Second Plaintiff with respect to the shares held by the Third Defendant in the Fifth Defendant;
 - (o) the Cayman Islands Share Pledge given by the Eighth Defendant in favour of the Second Plaintiff with respect to the shares held by the Eighth Defendant in the Sixth Defendant;
 - (p) the Phase 1 Master Debenture dated 7 November 2006 between, amongst others, the First Defendant, the other Phase 1 Obligor and the Plaintiffs (the “Phase 1 Master Debenture”); and
 - (q) the Phase 1 Intercreditor Agreement,
(referred to as the “Security Documents”).
25. Pursuant to the Security Documents, the main assets subject to the Phase 1 Security (other than with regard to ASIT, for which see paragraph 26 below) are as follows:
- (a) the shares it pledged in each other Phase 1 Obligor;
 - (b) the land held by the Fifth and the Sixth Defendants which is subject to the Legal Mortgages;
 - (c) the rights under the Project Documents;
 - (d) the bank accounts of the First Defendant held in Oman and London;
 - (e) in the case of the Fourth Defendant, the shares it holds in the Issuer;
 - (f) in the case of the Seventh Defendant, the shares it holds in the First, Second and Third Defendants by way of the Declaration of Trust; and
 - (g) all Authorised Investments.
26. In the case of ASIT, pursuant to Clause 2.4(b) of the Phase 1 Intercreditor Agreement, recourse is limited to:

- (a) its shares in the First Defendant, the Second Defendant, the Third Defendant, the Fourth Defendant and the Sixth Defendant; and
 - (b) all its rights under the Development Agreement insofar as they relate to phase 1 of the plot of land (save when such rights, title or interest fall within the ownership of the Fifth Defendant).
27. Pursuant to Clause 3.1 of the Phase 1 Master Debenture and subject to Clause 2.4 of the Phase 1 Intercreditor Agreement, each Phase 1 Obligor, amongst other things, unconditionally and irrevocably guarantees to the Second Plaintiff as principal obligor the punctual performance by each other Phase 1 Obligor of all Secured Obligations due, owing or incurred by that other Phase 1 Obligor, and undertakes that if any other Phase 1 Obligor fails to pay any Secured Obligations when due it will immediately on demand pay that amount as if it were the principal obligor. “Secured Obligations” is defined in the Phase 1 Intercreditor Agreement and includes, amongst other things, all liabilities due, owing or incurred by the Phase 1 Obligors under or in connection with the Intercompany Loan Agreement.
28. Pursuant to Clause 4 of the Phase 1 Master Debenture:
- (a) each Phase 1 Obligor (other than ASIT) gives the following security in favour of the Second Plaintiff:
 - (i) an assignment of (or, if not effectively assigned, a first fixed charge over) the Phase 1 Obligor Assigned Rights, which are such Phase 1 Obligor’s rights under or in respect of the Project Documents;
 - (ii) a first fixed charge over all moneys standing to the credit of the Secured Offshore Phase 1 Accounts and all Authorised Investments belonging to it; and
 - (iii) a floating charge over all of its other assets;
 - (b) ASIT gives the following security in favour of the Second Plaintiff, subject to Clause 2.4 of the Phase 1 Intercreditor Agreement: an assignment of (or, if not effectively assigned, a first fixed charge or floating charge over) the ASIT Assigned Rights, which are all of ASIT’s rights in respect of the Development

Agreement in so far as it relates to Phase 1 and to the extent such rights have not been transferred to the Sixth Defendant pursuant to the Future Phase Rights Transfer Agreement.

The assignments and charges under the Phase 1 Master Debenture do not extend to any assets or other Security Interests assigned or charged pursuant to a Phase 1 Omani Security Document.

29. The “Project Documents” referred to in paragraph 28(a)(i) above include the Development Agreement, the Future Phase Rights Transfer Agreement and the Works Agreement, which confer rights with respect to the development of the Project. Clause 34.5 of the Development Agreement provides that ASIT and its Affiliates (which include the Fifth Defendant and the Sixth Defendant) may assign by way of security or grant Security Interests over all of any part of the land vested in it, its undertaking and assets (including, without limitation, all Project Assets, all contracts or agreements of which it has the benefit and the benefit of the Development Agreement) for the purposes of raising financing for the Project or of securing indebtedness arising under any Finance Agreement (which includes the Intercompany Loan Agreement). It follows that the security given:

- (a) by the Fifth Defendant, the Sixth Defendant and ASIT over their respective rights under the Development Agreement;
- (b) the Fifth Defendant over its rights under the Works Agreement; and
- (c) the Sixth Defendant over its rights under the Future Phase Rights Transfer Agreement,

pursuant to the Phase 1 Master Debenture may be enforced in accordance with its terms and that such rights may be disposed of accordingly. Clause 10.1 of the Phase 1 Master Debenture provides that, subject to the terms of the Phase 1 Intercreditor Agreement, if a Phase 1 Security Enforcement Notice (as defined in paragraph 36 below) has been served, the Phase 1 Offshore Security Trustee shall be entitled, without further notice to the Phase 1 Obligor or prior authorisation from any court, to sell or otherwise dispose of:

- (i) all or any part of the Phase 1 Charged Property (other than the ASIT Assigned Rights) at the times, in the manner and on the terms it thinks fit; and
 - (ii) all or any part of the ASIT Assigned Rights only on the occurrence of any event set out in Clause 25.6 (*Insolvency*) to Clause 25.8 (*Creditors' Process*) of the Intercompany Loan Agreement in respect of ASIT.
30. Where not specifically defined, capitalised terms in this Statement of Claim bear the meanings given to them by the Intercompany Loan Agreement or the relevant Security Document.

D. Breach of the Intercompany Loan Agreement

31. The Intercompany Loan Agreement contains a number of events of default (each an “Intercompany Loan Event of Default”) which include events of default for non-payment, breach of other obligations (including financial covenants and the negative pledge), insolvency of any Phase 1 Obligor or Material Project Party and cross-default (subject to a financial threshold).
32. The Project did not proceed on its expected timetable, and sales of residential dwellings suffered from the onset of the global financial crisis in 2007. Construction of the Project halted in December 2009 and a number of Intercompany Loan Events of Default have occurred under the Intercompany Loan Agreement and including those set out below:

Breach of Test 5

33. By Clause 7.1(a)(ii) of the Intercompany Loan Agreement, the Borrower is under an obligation to mandatorily repay the Loans in the event that a residential sales test specified in Schedule 8 to the Intercompany Loan Agreement and known as “Test 5” is breached on any specified test date (each Interest Payment Date commencing November 2009). Test 5 for November 2009 required the net proceeds of sales of residential units of the Project to be at least \$455 million, with the threshold increasing on each subsequent Interest Payment Date.

34. Wrongly, having failed Test 5 in November 2009, the Borrower failed to repay the Loans in breach of the mandatory prepayment provision in Clause 7.1(a)(ii) of the Intercompany Loan Agreement. Further, non-payment within three Business Days of a sum due by a Phase 1 Obligor (including the Borrower) constitutes an Event of Default under Clause 25.2 of the Intercompany Loan Agreement. The Borrower acknowledged its failure in Test 5 (**Exhibit 28**).

Non-Payment of Interest

35. By Clause 12.2 of the Intercompany Loan Agreement, the Borrower is to pay accrued interest on the Loans on each Interest Payment Date as described in paragraph 20 above.
36. Wrongly, and in breach of Clause 12.2, the Borrower did not make the required interest payments:
- (a) on the Facility D Loan, on each Interest Payment Date commencing November 2009;
 - (b) on the Facility C Loan, on each Interest Payment Date commencing November 2009; and
 - (c) on the Facility B Loan, on the Interest Payment Date in May 2011.
37. Further, non-payment within three Business Days of a sum due by a Phase 1 Obligor (including the Borrower) constitutes an Event of Default under Clause 25.2 of the Intercompany Loan Agreement. The Borrower has acknowledged its failure to make payment of the Interest Payments on the above referred to Interest Payment Dates in November 2009 (**Exhibit 29**).

E. Acceleration and Enforcement of Security

38. Pursuant to Clause 25.21 of the Intercompany Loan Agreement, the Issuer (at the direction of the Second Plaintiff) gave a notice to the Borrower on 7 October 2011, amongst other things
- (a) declaring that an Event of Default is continuing;

- (b) declaring that all the Facility A Loan, including accrued interest, and the Final Repayment Amounts, and all other amounts accrued or outstanding under the Finance Documents, be immediately due and payable; and
- (c) declaring that all or any of the rights of the Finance Parties under the Security Documents may be exercised,

(in respect of sub-paragraph (b) above, the “Phase 1 Obligor Acceleration Notice” and, in respect of sub-paragraph (c), the “Phase 1 Security Enforcement Notice”) **(Exhibit No.30)**.

39. As of the date of filing this Statement of Claim, the amount due and payable remains unpaid. Pursuant to Clause 12.3 of the Intercompany Loan Agreement, if the Borrower fails to pay any amount payable by it under a Finance Document on its due date, default interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment):

- (a) at a rate which is 2% higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan for successive Interest Periods; or
- (b) if the overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan, the first Interest Period shall have a duration equal to the unexpired portion of the current Interest Period and the rate of interest applicable during that first Interest Period shall be 2% higher than the rate which would have applied if the overdue amount had not become due.

40. Pursuant to Clause 7.4(a) of the Phase 1 Intercreditor Agreement, at any time on or after the service of a Phase 1 Security Enforcement Notice or a Phase 1 Obligor Acceleration Notice, the Second Plaintiff may claim, sue and prove for, collect and receive every payment or distribution with respect to, any of the Senior Liabilities, and may file claims and proofs and take all such proceedings and do all such things in the First Plaintiff’s own name to recover the Senior Liabilities. “Senior Liabilities” includes all indebtedness and other liabilities due, owing or incurred by the Phase 1 Obligors under or in connection with the Intercompany Loan Agreement, but

excludes, after the service of a Phase 1 Security Enforcement Notice or a Phase 1 Obligor Acceleration Notice, the Junior Liabilities. The “Junior Liabilities” are the Lookback Payments in respect of the Facility B Loan, the Final C Repayment Amount and the Final D Repayment Amount (which mean, respectively, all amounts of interest, principal and Lookback Payment due and payable on or in respect of the Facility C Loan and the Facility D Loan), together with all Ancillary Liabilities relating thereto. The amounts claimed by the Second Plaintiff under this Statement of Claim are limited accordingly. This Statement of Claim is filed without prejudice to the rights of the Plaintiffs or any other person to take proceedings to recover the Junior Liabilities.

F. Prayer for Relief

41. This Honourable Court is most humbly requested by the First Plaintiff and the Second Plaintiff to pass a judgement directing that:

- (a) the Defendants shall pay to the Second Plaintiff:
 - (i) the sum of \$665,585,000 (Six Hundred and Sixty Five Million, Five Hundred and Eighty Five Thousand US Dollar)
 - (ii) contractual interest, pursuant to Clause 12.3 of the Intercompany Loan Agreement, on the sums referred to in sub-paragraph (i) in the amount of \$ 43,618,505 to the date of filing of this Statement of Claim and continuing at the rate of approximately \$133,400 per day till 7 November 2011 (assuming 3 month USD LIBOR is 27 % per annum) until the full and final settlement of the decreed liability.

- (b) in case of the Defendants’ failure to pay the decreed amount with interest under paragraph 41(a) above, then:
 - (i) the Mortgaged Property mortgaged in favour of the First Plaintiff pursuant to the Phase 1 Legal Mortgage No. 5116/2006 dated 30 October 2006, entered into between the Fifth Defendant and the First Plaintiff (**Exhibit No.16**) be disposed of, together with the secured

rights under the Development Agreement and the Works Agreement so far as they relate to such Mortgaged Property, and the proceeds thereof be applied toward the discharge of the decreed liability;

- (ii) the Mortgaged Property mortgaged in favour of the First Plaintiff pursuant to the Phase 1 Legal Mortgage No .5115/2006 dated 30 October 2006 entered into between the Sixth Defendant and the First Plaintiff (**Exhibit No.18**) be disposed of, together with the secured rights under the Development Agreement and the Future Phase Rights Transfer Agreement in so far as they relate to such Mortgaged Property, and the proceeds thereof be applied toward the discharge of the decreed liability;
- (iii) the Mortgaged Assets being the Onshore Accounts, Tangible Assets, Intangible Assets, Consents, Project Documents and Future Assets, as listed in Schedule II to the Commercial Mortgage dated 29 October 2006 entered into between the First Defendant and the First Plaintiff (**Exhibit No.20**), be disposed of and / or transferred for the proceeds thereof to be applied towards the discharge of the decreed liability;
- (iv) the Mortgaged Assets under the Commercial Mortgage (**Exhibit No.20**) be disposed of pursuant to the terms of the Phase 1 Sale and Purchase Agreement dated 30 October 2006 entered into between the First Defendant and the First Plaintiff;
- (v) the Mortgaged Assets being the Onshore Accounts, Tangible Assets, Intangible Assets, Consents, Project Documents and Future Assets, as listed in Schedule II to the Commercial Mortgage 1156/2006 dated 29 October 2006 entered into between the Second Defendant and the First Plaintiff (**Exhibit No.22**), be disposed of and / or transferred for the proceeds thereof to be applied towards the discharge of the decreed liability;
- (vi) Mortgaged Assets being the Onshore Accounts, Tangible Assets, Intangible Assets, Consents, Project Documents and Future Assets, as listed in Schedule II to the Commercial Mortgage No.1157/2006 dated

29 October 2006 entered into between the Third Defendant and the First Plaintiff (**Exhibit No.23**), be disposed of and / or transferred for the proceeds thereof to be applied towards the discharge of the decreed liability;

(vii) the shares in the First Defendant, the Second Defendant and the Third Defendant pledged by the Eighth Defendant in favour of the First Plaintiff pursuant to the Phase 1 Omani Share Pledge No.2071/2006 dated 30 October 2006 entered into between the First Defendant, the Second Defendant and the Third Defendant (all being the Charged Companies), the Eighth Defendant being the Pledgor, and the First Plaintiff (**Exhibit No.24**) be disposed of and the proceeds thereof be applied toward the discharge of the decreed liability;

(viii) the shares in the Third Defendant pledged by the Fourth Defendant in favour of the First Plaintiff pursuant to the Phase 1 Omani Share Pledge No.2073/2006 dated 30 October 2006 entered into between the Third Defendant (being the Charged Company), the Fourth Defendant being the Pledgor, and the First Plaintiff (**Exhibit No.25**) be disposed of and the proceeds thereof be applied toward the discharge of the decreed liability;

(ix) the shares in the First Defendant and the Second Defendant pledged by the Third Defendant in favour of the First Plaintiff pursuant to the Phase 1 Omani Share Pledge No.2073/2006 dated 30 October 2006 entered into between the First Defendant and the Second Defendant (being the Charged Companies), the Third Defendant being the Pledgor, and the First Plaintiff (**Exhibit No.26**) be disposed of and the proceeds thereof be applied toward the discharge of the decreed liability;

(c) the Defendants pay all costs and expenses incurred by the Plaintiffs in connection with the proceedings.

Please accept my best regards

Faris Bin Saud Al Mashari

for and on behalf of Al Busaidi, Mansour Jamal and Company

Lawyers for the Plaintiffs

EXHIBIT NO.10- TRANSACTION STRUCTURE DIAGRAM



