



Registration of a Charge

Company name: **BIBBY BULK CARRIERS LIMITED**

Company number: **01036027**



X3YNGR2G

Received for Electronic Filing: **08/01/2015**

Details of Charge

Date of creation: **01/01/2015**

Charge code: **0103 6027 0054**

Persons entitled: **NORDEA BANK FINLAND PLC**

Brief description:

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

This form was authorised by: **a person with an interest in the registration of the charge.**

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **NORTON ROSE FULBRIGHT LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 1036027

Charge code: 0103 6027 0054

The Registrar of Companies for England and Wales hereby certifies that a charge dated 1st January 2015 and created by BIBBY BULK CARRIERS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 8th January 2015 .

Given at Companies House, Cardiff on 9th January 2015

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



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

I certify that, save for material redacted pursuant to s.859G of the Companies Act 2006, this copy instrument is a correct copy of the original instrument.

DATED 1 January **2015**

Sign & Dated Norfen Rose Fulbright LLP
05/01/2015

BIBBY BULK CARRIERS LIMITED

and

BIBBY NAVIGATION LIMITED

and

BIBBY TRANSPORT LIMITED
as Chargors

- and -

NORDEA BANK FINLAND PLC
as Bank

ACCOUNTS SECURITY

holman fenwick willan 

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THIS DEED OF CHARGE is made the *1st* day of *JANUARY* 2015

BETWEEN

- (1) **BIBBY BULK CARRIERS LIMITED**, a company incorporated in England and Wales with company registration number 01036027, whose registered office is at 105 Duke Street, Liverpool L1 5JQ, England ("**BBCL**"); **BIBBY NAVIGATION LIMITED**, a company incorporated in England and Wales with company registration number 01195556, whose registered office is at 105 Duke Street, Liverpool L1 5JQ, England ("**BNL**"); and **BIBBY TRANSPORT LIMITED** a company incorporated in England and Wales with company registration number 01277618, whose registered address is 105 Duke Street, Liverpool L1 5JQ, England, ("**BTL**" and together with BBCL and BNL, the "**Chargors**" and each a "**Chargor**");
- (2) **NORDEA BANK FINLAND PLC**, a bank incorporated in Finland acting for the purposes of this Deed through its office at Aleksanterinkatu, 36 B Helsinki FI-00020, as bank (the "**Bank**"); and
- (3) **NORDEA BANK AB, LONDON BRANCH**, a bank incorporated in Sweden acting through its office at 8th Floor, 55 Basinghall Street, London EC2V 5NB (the "**Account Bank**").

WHEREAS:

- (A) By a loan agreement dated 28 July 2014 (the "**Agreement**") made between (1) the Chargors as joint and several borrowers, and (2) the Bank, the Bank agreed to make available to the Chargors a term loan facility of up to \$26,500,000.
- (B) By :
 - (i) an ISDA master agreement and schedule thereto dated 9 July 2010 (as amended and supplemented from time to time) and made between the Bank as swap provider and (2) Bibby Line Limited ("**BLL**"); and
 - (ii) an ISDA master agreement and schedule thereto dated 24 September 2009 (as amended and supplemented from time to time) and made between the Bank as swap provider and (2) the Chargors,the Bank has agreed that it may enter into swap transactions with the Chargors and/or BLL from time to time to, amongst other things, hedge the Chargors' interest and/or currency risk under the Agreement.
- (C) Pursuant to the Agreement the Chargors have opened the Accounts with the Account Bank.
- (D) As security for the repayment of the Loan and the payment of interest thereon, the Master Agreement Liabilities and all other moneys from time to time due or owing to the Bank under or pursuant to the Finance Documents, the Chargors have agreed to enter into this Deed.

NOW THIS DEED WITNESSETH as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Words and expressions defined in the Agreement shall, unless otherwise expressly provided herein or the context otherwise requires, have the same meanings when used in this Deed, including the Recitals. In addition, in this Deed:

"Accounts" means the Earnings Accounts and the Retention Accounts;

"Charged Property" means the Accounts and the Credit Balances;

"Credit Balance" means, in relation to an Account:

- (a) amount for the time being standing to the credit of that Account; and
- (b) any amount received by or for the account of the Bank which the Bank is under a duty to credit to that Account but which the Bank has not yet credited to the Account; and
- (c) any interest accrued or accruing on an amount covered by paragraph (a) or (b) above, whether or not the interest has been credited to that Account;

"Earnings Accounts" means the following Dollar denominated accounts with the Account Bank:

- (a) BBCL's and BNL's account with number [REDACTED] designated "Bibby Navigation – Earnings Account";
- (b) BTL's account with number [REDACTED] designated "Bibby Transport – Earnings Account"

and includes any account or accounts in substitution therefor, whether designated as such or not, from time to time opened by the Chargors or any of them with the Bank, as well as any sub-accounts to which funds in the said accounts may be allocated for currency or deposit purposes;

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

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

"Receiver" has the meaning given to it in Clause 7.4;

"Retention Accounts" means the following Dollar denominated accounts with the Account Bank:

- (a) BBCL's and BNL's account with number [REDACTED] designated "Bibby Bulk and Others – Retention Account"; and
- (b) BTL's account with number [REDACTED] designated "Bibby Transport – Retention Account",

each opened with the Bank for the purpose of retaining part of the Earnings of the Vessels as cash collateral security for the Chargors' obligations under the Agreement and includes any account or accounts in substitution therefor, whether designated as such or not, from time to time opened by the Chargors or any of them with the Bank, as well as any sub-accounts to which funds in the said accounts may be allocated for currency or deposit purposes; and

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

1.2 General interpretation

1.3 General interpretation

In this Deed:

- 1.3.1 unless the context otherwise requires, words in the singular include the plural and vice versa;
- 1.3.2 references to any document include the same as varied, supplemented or replaced from time to time;
- 1.3.3 references to any enactment include re-enactments, amendments and extensions of that enactment;
- 1.3.4 references to any person include that person's successors and permitted assigns;
- 1.3.5 clause headings are for convenience of reference only and are not to be taken into account in construction;
- 1.3.6 unless otherwise specified, references to Clauses and Recitals are to Clauses of and the Recitals to this Deed;
- 1.3.7 any words following the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.3.8 references to an Account include all sub-accounts thereof and any substitute account from time to time opened by a Chargor at the request of the Bank (whether with another bank or any branch, sub-branch or subsidiary of the Bank).

1.4 Agreement to prevail

This Deed shall be read together with the other Finance Documents and, in the case of any conflict between this Deed and the Agreement, the latter shall prevail.

1.5 Third party rights

- 1.5.1 Subject to Clause 1.5.2, a third party (being any person other than the Chargors, the Bank and its permitted successors and assigns or any Receiver) has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or enjoy the benefit of any term of this Deed.
- 1.5.2 Notwithstanding Clause 1.5.1 but subject always to Clause 1.5.3 and the provisions of the Third Parties Act, any officer, employee or agent of the Bank or any Receiver may rely upon the relevant provisions of Clause 7.3 Clause 7.4.2 and Clause 8.1.
- 1.5.3 Notwithstanding any term of this Deed or any other Finance Document, the consent of any person who is not a party to this Deed is not required to rescind or vary this Deed at any time.

2. JOINT AND SEVERAL LIABILITY

Unless expressly provided otherwise in this Deed, the Chargors shall be jointly and severally liable for their respective obligations and liabilities arising under this Deed.

3. CHARGE

- 3.1 As security for the payment of the Outstanding Indebtedness, the Chargors as beneficial owners and with full title guarantee hereby charge and agree to charge, to the Bank by way of first fixed charge all their respective rights, title and interest, both present and future, in and to the Charged Property, all of which the Chargors hereby warrant that they have not assigned, mortgaged, charged or otherwise encumbered or disposed of to any other person and declare that each Encumbrance created by this Clause 3.1 is fixed.
- 3.2 Each Encumbrance created in respect of any part of the Charged Property by Clause 3.1 is a separate and distinct Encumbrance and if any such Encumbrance is categorised as a floating charge that shall not result in the Encumbrance over any other part of the Charged Property being so categorised. Paragraph 14 of Schedule B1 to the Insolvency Act 1986 shall apply to any charge created by this Deed which is so categorised as a floating charge.
- 3.3 The Chargors agree that repayment of the moneys from time to time standing to the credit of the Accounts is conditional on the Outstanding Indebtedness having been repaid in full and that until such time, the Chargors shall not be entitled to withdraw the whole or any part of the moneys from time to time credited to the Accounts except as provided in Clause 3.4.
- 3.4 The Chargors may without prejudice to the rights of the Bank under this Deed withdraw moneys from the Earnings Accounts in accordance with and subject to the provisions of Clause 9.3 of the Agreement.
- 3.5 The rights of the Bank under this Deed shall be without prejudice to any rights of set off, combination or lien which the Bank may have under the Agreement or any of the other Security Documents, at law, in equity or otherwise.

4. CONTINUING SECURITY

4.1 It is declared and agreed that the security created by this Deed:

4.1.1 shall be held by the Bank as a continuing security for the payment of the Outstanding Indebtedness;

4.1.2 shall not be satisfied by any intermediate payment or satisfaction of any part of the amount secured by this Deed and shall be in addition to and shall not be prejudiced or affected by any other security which may have been, or may at any time hereafter be, given to the Bank by the Chargors or any other person; and

4.1.3 shall extend to and cover all moneys which the Chargors may be called to pay by virtue of the Finance Documents or any of them, or which may be owed by the Chargors to the Bank in relation to any transaction or matter of the Chargors, whether the Bank holds other security for the same or not.

4.2 The Bank shall be entitled to consolidate this Deed with any other security held by the Bank for any other indebtedness or obligation of the Chargors.

4.3 Neither Section 93 nor Section 103 of the Law of Property Act 1925 shall apply to this Deed or to the security hereby created.

5. COVENANTS OF THE CHARGORS

5.1 The Chargors hereby covenant with the Bank and undertake throughout the Security Period:

5.1.1 not hereafter to create or suffer the creation of an Encumbrance (other than a Permitted Encumbrance) over or in respect of the Charged Property, or dispose of or deal with, the whole or any of the moneys from time to time credited to the Accounts otherwise than in accordance with Clause 3 and not to do or omit to do or suffer any act or thing to be done which may prejudice the rights of the Bank hereunder; and

5.1.2 to do or permit to be done each and every act or thing which the Bank may from time to time require to be done for the purpose of enforcing its rights under this Deed and to allow the Chargors' names to be used as and when required by the Bank for that purpose.

6. CONTINUING LIABILITY OF CHARGORS

6.1 It is agreed and declared that, notwithstanding the charge contained in Clause 3:

6.1.1 the Bank shall not be obliged to make any enquiry as to the nature or sufficiency of any payment received by it under this Deed or to make any claim or take any other action to collect any moneys hereby charged to the Bank or to enforce any rights and benefits hereby granted to the Bank or to which the Bank may at any time be entitled under this Deed; and

- 6.1.2 the Chargors shall remain liable to perform all the obligations assumed by them in relation to the moneys and the Charged Property hereby charged to the Bank and the Bank shall not be under any obligation of any kind whatsoever in relation thereto or be under any liability whatsoever in the event of any failure by the Chargors to perform such obligations.

7. ENFORCEMENT

Right to enforce security

The security constituted by this Deed shall become immediately enforceable upon the occurrence of an Event of Default which is continuing.

Powers upon enforcement

Upon this Deed becoming enforceable the power of sale and other powers conferred by Section 101 of the Law of Property Act 1925, as varied by this Deed, shall become exercisable and the Bank shall become immediately entitled, without being required to obtain any court order or declaration that an Event of Default has occurred and whether or not the Bank has made any demand for payment under Clause 13.2 of the Agreement, as and when it may see fit, to put into force and to exercise all or any of the powers possessed by it as chargee of the Charged Property (whether by law or otherwise) and, in particular, but without prejudice to the generality of the foregoing:

- 7.1.1 to transfer all or any of the moneys credited to the Accounts to such place and account as the Bank may think fit, and following such Event of Default at any time and without notice to the Chargors to appropriate all or any of the moneys standing to the credit of the Accounts and apply the same in or towards the discharge of the Outstanding Indebtedness in accordance with Clause 7.2 of the Agreement;
- 7.1.2 to purchase with the moneys standing to the credit of any of the Accounts any such other currency or currencies as may be necessary to effect any application referred to in this Clause 7;
- 7.1.3 to enter into all kinds of transactions for the purpose of hedging risks which have arisen or which the Bank considers may arise in respect of any Charged Property out of movements in exchange rates, interest rates or other risks of any kind.

For the avoidance of doubt, the powers of the Bank by virtue of this Deed shall not be limited to those specified in Section 101 of the Law of Property Act 1925.

7.2 Right of appropriation

To the extent that the Charged Property constitutes Financial Collateral and this Deed and the obligations of the Chargors hereunder constitute a Security Financial Collateral Arrangement, the Bank shall have the right, at any time after this Deed has become enforceable, to appropriate all or any of that part of the Charged Property in or towards the payment and/or discharge of the Outstanding Indebtedness in accordance with the Financial Collateral Regulations in such order as the Bank in its absolute discretion may from time to time

determine. The value of the Charged Property appropriated in accordance with this Clause shall be, in the case of cash, the amount of cash appropriated. The Chargors agree that the method of valuation provided for in this Clause is commercially reasonable for the purposes of the Financial Collateral Regulations.

7.3 Exclusion of liability

Neither the Bank nor any of its officers, employees or agents (except in the case of its or their gross negligence or wilful misconduct) shall be liable for any loss, damage, liability or expense whatsoever and howsoever suffered or incurred by the Chargors arising out of or in connection with the exercise or purported exercise by or on behalf of the Bank of any rights, powers or discretions under this Deed.

7.4 Receivers

The Lender may, at any time after this Deed has become enforceable, appoint in writing, under the hand of any officer or officers of the Bank or under the seal of the Bank, any person, whether an officer of the Bank or not, to be receiver or receiver and manager (each of which is referred to below as a "Receiver") of the Charged Property and may in like manner, from time to time, remove any Receiver so appointed and appoint another in his stead. Any Receiver so appointed shall:

- 7.4.1 be the agent of the Chargors, who shall be solely liable for his remuneration, costs, charges and expenses and for his acts and defaults;
- 7.4.2 have all the powers conferred by the Law of Property Act 1925, without the restrictions contained in Sections 93 and 103 of that Act, together with all the powers conferred by the Insolvency Act 1986, and, in addition, shall have the power, on behalf of and at the cost of the Chargors, to do or omit to do anything which the Chargors could do or omit to do in relation to the Charged Property and to exercise all the rights, powers and remedies of the Bank under this Deed, for which purpose the benefit of all the immunities and limitations of liability conferred on the Bank by this Deed shall extend to the Receiver and his officers, employees and agents;
- 7.4.3 be entitled to remuneration appropriate to the work and responsibilities involved, upon the basis of charging adopted by the Receiver in accordance with the current practices of his firm, without being limited to the maximum rate specified in Section 109(6) of the Law of Property Act 1925.

8. POWER OF ATTORNEY

- 8.1 Each Chargor by way of security hereby irrevocably appoints the Bank and any Receiver, jointly and severally, its true and lawful attorney with full power in the name of the Chargor, should the Bank or Receiver so elect, to do all such acts and things and to execute all such documents and instruments as the Chargor could do in relation to the Charged Property, to ask, require, demand, receive, compound and give acquittance for any and all moneys, and claims for any and all moneys, due under or arising out of this Deed, and to endorse any cheques or other instruments or orders in connection with such moneys, and to make any

claims, take any action and institute any proceedings which the Bank or Receiver may consider to be necessary or advisable in this respect PROVIDED ALWAYS:

8.1.1 that neither the Bank nor any Receiver nor any of its respective officers, employees or agents shall be liable to the Chargor for any loss, damage, liability or expense whatsoever and howsoever suffered or incurred by the Chargor as a result of the exercise of such powers;

8.1.2 that the Bank or Receiver will not exercise such powers unless and until an Event of Default has occurred;

8.1.3 notwithstanding the terms of Clause 8.1.2, third parties shall not be bound to see or enquire whether the right of the Bank or the Receiver to exercise such powers has arisen.

9. MISCELLANEOUS

9.1 No failure to exercise, nor any delay in exercising, on the part of the Bank, any right or remedy under this Deed shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and exclusive of any rights or remedies provided by law.

9.2 Any waiver by the Bank of any provision of this Deed, and any consent or approval given by the Bank hereunder, shall only be effective if given in writing and then only strictly for the purpose and upon the terms for which it is given. This Deed may not be amended or varied orally but only by an instrument signed by or on behalf of each of the parties hereto.

9.3 If at any time one or more of the provisions of this Deed is or becomes invalid, illegal or unenforceable in any respect under any law by which it may be governed or affected, the validity, legality and enforceability of the remaining provisions shall not be in any way affected or impaired as a result.

9.4 This Deed may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute but one and the same instrument.

9.5 The Account Bank confirms that it has notice of the Security over the Accounts constituted by this Deed.

10. FURTHER ASSURANCE

10.1 The Chargors shall, upon demand, and at its own expense, sign, perfect, do, execute and register all such further assurances, documents, acts and things as the Bank may reasonably require for:

10.1.1 perfecting or protecting the security constituted by this Deed;

10.1.2 the exercise by the Bank of any right, power or remedy vested in it under this Deed;

10.1.3 enforcing the security constituted by this Deed after the same shall have become enforceable; or

10.1.4 perfecting any assignment by the Bank of any of its rights and benefits under this Deed and ensuring that the covenants and obligations of the Chargors under this Deed shall inure to the benefit of any such assignee.

11. SUCCESSORS AND ASSIGNS

11.1 This Deed shall be binding upon the Chargors and their successors and permitted assigns and shall inure to the benefit of the Bank and its successors and assigns.

11.2 The Chargors may not assign or transfer all or any of their rights, benefits or obligations under this Deed without the Bank's prior written consent.

11.3 The Bank may assign or transfer all or any of its rights, benefits or obligations under this Deed to the same extent that it is permitted by the Agreement to assign or transfer its rights, benefits or obligations under the other relevant Finance Documents.

12. NOTICES

12.1 All notices (which expression includes any demand, request, consent or other communication) to be given by one party to the other under this Deed shall be given in the manner provided in the Agreement.

13. DISCHARGE OF SECURITY

13.1 Upon the repayment of the whole of the Outstanding Indebtedness, the Bank upon the request and at the expense and cost of the Chargors shall release and discharge the security constituted by this Deed to the extent then still subsisting and capable of release and discharge.

14. APPLICABLE LAW AND JURISDICTION

14.1 This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.

14.2 The Chargors hereby irrevocably agree for the exclusive benefit of the Bank that the English courts shall have jurisdiction in relation to any dispute and any suit, action or proceeding (referred to together in this Clause 14 as "**Proceedings**") which may arise out of or in connection with this Deed and for such purposes irrevocably submits to the jurisdiction of such courts.

14.3 Nothing in this Clause 14 shall affect the right of the Bank to serve process in any manner permitted by law or limit the right of the Bank to take Proceedings against the Chargors in any other court of competent jurisdiction, nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings by the Bank in any other jurisdiction, whether concurrently or not.

The Chargors shall not commence any Proceedings in any country other than England in relation to any matter arising out of or in connection with this Deed.


- 14.4 The Chargors irrevocably waive any objection which it may now or hereafter have on the grounds of inconvenient forum or otherwise to Proceedings being brought in any such court as is referred to in this Clause 14, and further irrevocably agree that a judgment or order in any Proceedings brought in the English courts shall be conclusive and binding upon the Chargors and may be enforced without review in the courts of any other jurisdiction.
- 14.5 The Chargors consent generally in respect of any Proceedings arising out of or in connection with this Deed to the giving of any relief or the issue of any process in connection with such Proceedings, including without limitation, the making, enforcement or execution against any property or assets whatsoever of any order or judgment which may be made or given in such Proceedings.

IN WITNESS whereof the Chargors and the Bank have caused this Deed to be duly signed and delivered the day and year first before written.

EXECUTION PAGE

THE CHARGORS

SIGNED AND DELIVERED AS A DEED)

by )
duly authorised for and on behalf of)
BIBBY BULK CARRIERS LIMITED)
in the presence of:)



.....

Signature:


Name:

Occupation:

Address:


300 New Road
C147 1HB


SIGNED AND DELIVERED AS A DEED)

by )
duly authorised for and on behalf of)
BIBBY NAVIGATION LIMITED)
in the presence of:)



.....

Signature:


Name:

Occupation:

Address:


300 New Road
C147 1HB


SIGNED AND DELIVERED AS A DEED)

by )
duly authorised for and on behalf of)
BIBBY TRANSPORT LIMITED)
in the presence of:)


.....

Signature:

Name:

Occupation:

Address:


300 New Road
C147 1HB


THE BANK

SIGNED AND DELIVERED AS A DEED)
by)
duly authorised for and on behalf of)
NORDEA BANK FINLAND PLC)
in the presence of:)

Signature: [REDACTED]

Name: [REDACTED]

Occupation: [REDACTED]

Address: [REDACTED]

THE ACCOUNT BANK

SIGNED AND DELIVERED AS A DEED)
by)
duly authorised for and on behalf of)
NORDEA BANK AB, LONDON BRANCH)
in the presence of:)

Signature: [REDACTED]

Name: [REDACTED]

Occupation: [REDACTED]

Address: [REDACTED]