



Registration of a Charge

Company Name: **OCEAN AGENCIES LIMITED**

Company Number: **02813300**



XAZXZP6R

Received for filing in Electronic Format on the: **17/03/2022**

Details of Charge

Date of creation: **08/03/2022**

Charge code: **0281 3300 0018**

Persons entitled: **HAMBURG COMMERCIAL BANK AG AS AGENT AND SECURITY TRUSTEE**

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: **WATSON FARLEY & WILLIAMS LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 2813300

Charge code: 0281 3300 0018

The Registrar of Companies for England and Wales hereby certifies that a charge dated 8th March 2022 and created by OCEAN AGENCIES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 17th March 2022 .

Given at Companies House, Cardiff on 21st March 2022

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



Companies House



**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**

DATED: 17/03/2022

MANAGER'S UNDERTAKING

ELIZA-ELISAVET MAKRI
ATTORNEY-AT-LAW
WATSON FARLEY & WILLIAMS GREECE
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

To: **HAMBURG COMMERCIAL BANK AG**
Gerhart-Hauptmann-Platz 50
20095 Hamburg, Germany
(and its successors and assigns)

as Agent and Security Trustee

From: **OCEAN AGENCIES LIMITED**
Marlborough House
298 Regents Park Road
London N3 2JX England

8 March 2022

Dear Sirs

m.v. "ARCOLA" owned by Arcola Marine Ltd (the "Owner")

1 BACKGROUND

1.1 We refer to:

- (a) a loan agreement dated 10 September 2021 (the "**Loan Agreement**") and made between (i) the Owner and Wimslow Marine Inc., Diamond Crown Shipping Ltd, Arnica Maritime Ltd, Alberta Shipping Services Ltd and Arinaga Marine Ltd as joint and several borrowers (the "**Borrowers**"), (ii) the banks and financial institutions listed therein as lenders (together, the "**Lenders**"), (iii) the Agent, (iv) Hamburg Commercial Bank AG as mandated lead arranger and (v) the Security Trustee, pursuant to which it was agreed that the Lenders would make available to the Borrowers a secured term loan facility of up to US\$50,000,000 on the terms and conditions therein contained; and
- (c) an agency and trust agreement dated 10 September 2021, and entered into pursuant to the Loan Agreement, pursuant to which it was agreed that the Security Trustee would hold the Trust Property on trust for the Lenders.

1.2 Advance of facility

Subject to and upon the terms of the Loan Agreement the Lenders have agreed to make available to the Borrowers a facility in such amount and on such terms therein specified.

1.3 Entry into Letter of Undertaking

We have been advised by the Owner that one of the conditions to the continuing availability of the Loan is that we enter into this Letter of Undertaking in favour of yourselves in your capacity as Agent in respect of the Ship which is owned by the Owner.

2 DEFINITIONS

Defined expressions in the Loan Agreement shall have the same meanings when used in this Letter of Undertaking unless the context otherwise requires or unless otherwise defined in this Letter of Undertaking.

3 CONFIRMATION OF APPOINTMENT, ETC.

3.1 Confirmation of appointment

We confirm that we have been appointed by the Owner as the commercial manager of the Ship on the terms of a management agreement dated 1 July 2021 (the "**Management Agreement**") a copy of which is attached to this Letter of Undertaking.

3.2 Certification

We certify that the attached copy of the Management Agreement is correct, complete and in full force and effect and that no addenda or supplements to it exist as at the date of this Letter of Undertaking.

4 UNDERTAKINGS

4.1 General

In consideration of the Agent granting its approval to our appointment as the commercial manager of the Ship, we irrevocably and unconditionally undertake with the Agent as follows in this Clause 4 (*Undertakings*).

4.2 No amendments or supplements

We shall not amend or supplement the Management Agreement without your consent.

4.3 Subordination of claims

All claims of whatsoever nature which we have or may at any time after the date of this Letter of Undertaking have against or in connection with the Ship, the Earnings, the Insurances or any Requisition Compensation or against the Owner shall rank after and be in all respects subordinate to all of the rights and claims of all the Creditor Parties.

4.4 No exercise of rights

We shall not take any step to exercise or enforce any right or remedy which we now or at any later time have under the Management Agreement under any applicable law against the Owner or the Ship, the Earnings, the Insurances or any Requisition Compensation.

4.5 No legal proceedings

We shall not institute any legal or administration action or any quasi-legal proceedings under any applicable law at any time after the date of this Letter of Undertaking against the Ship, the Earnings, the Insurances or any Requisition Compensation or against the Owner in any capacity.

4.6 Non-compete

We shall not compete with any of the Creditor Parties in a liquidation or other winding-up or bankruptcy of the Owner or in any legal or administration action or any quasi legal proceedings in connection with the Ship, the Earnings, the Insurances or any Requisition Compensation.

4.7 Delivery of documents

We shall upon the Agent's first written request deliver to the Agent all documents which you may specify (in general or specific terms) which we hold in connection with the Owner, the Ship, the Earnings, the Insurances or any Requisition Compensation.

4.8 Continuation of management

We shall continue to act as manager of the Ship pursuant to the terms and conditions of the Management Agreement for as long as the Ship remains in the ownership of the Owner and any Secured Liabilities remain outstanding pursuant to the Finance Documents.

4.9 Restriction on incompatible actions

We shall not do or omit to do or cause anything to be done or omitted which might be contrary to or incompatible with the obligations undertaken by the Owner under the Loan Agreement and the Finance Documents.

4.10 Execution of necessary insurance consents

We shall sign any consent required by any approved broker and/or any approved underwriters which they may require so that you can collect or recover any moneys payable in respect of the obligatory insurances.

5 INSURANCES

5.1 General

Notwithstanding that we are or may be named as an assured under any obligatory insurances, we confirm that our interest is limited as follows in this Clause 5 (*Insurances*).

5.2 Hull and machinery and war risks

In respect of any obligatory insurances for hull and machinery and war risks our interest is limited:

- (a) to any provable out-of-pocket expenses that we have incurred and which form part of any recoverable claim on underwriters; and
- (b) to any third party liability claims where cover for such claims is provided by the policy and then only in respect of discharge of any claims made against us.

5.3 Protection and indemnity risks

In respect of any obligatory insurances for protection and indemnity risks, our interest is limited to any recoveries we are entitled to make by way of reimbursement following discharge of any third party liability claims made specifically against us.

5.4 Deductibles

We agree that any deductible shall be apportioned between us and the Owner (and/or you where you are named insured) in proportion to the gross claims made or paid by each party.

6 ASSIGNMENT OF INSURANCES

6.1 Assignment of Insurances

As continuing security for the due and punctual payment and discharge by the Owner of the Secured Liabilities and the observation and performance of our obligations under this Letter of Undertaking, we, with full title guarantee, assign to the Security Trustee absolutely, subject to a proviso for re-assignment on redemption, all rights and interests of every kind which we now or at any later time have to, in or in connection with the Insurances.

6.2 Continuing and additional security

- (a) This Letter of Undertaking shall remain in force until the end of the Security Period as a continuing security and, in particular:
- (i) the Security Interests created by Clause 6.1 (*Assignment of Insurances*) will extend to the ultimate balance of all sums payable by the Owner under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part;
 - (ii) the Security Interests created by Clause 6.1 (*Assignment of Insurances*), and the rights of the Security Trustee under this Letter of Undertaking, are only capable of being extinguished, limited or otherwise adversely affected by an express and specific term in a document signed by or on behalf of the Security Trustee;
 - (iii) no failure or delay by or on behalf of the Security Trustee to enforce or exercise a Security created by Clause 6.1 (*Assignment of Insurances*) or a right of the Security Trustee under this Letter of Undertaking, and no act, course of conduct, acquiescence or failure to act (or to prevent the Owner or us from taking certain action) which is inconsistent with such a Security Interest or such a right or with such a Security Interest being a fixed security shall preclude or estop the Security Trustee (either permanently or temporarily) from enforcing or exercising it or result in a Security Interest expressed to be a fixed security taking effect as a floating security.
- (b) This Letter of Undertaking is in addition to and is not in any way prejudiced by, and shall not prejudice any guarantee or other Security Interests or any other right of recourse now or subsequently held by any Creditor Party or any right of set-off or netting or rights to combine accounts in connection with the Finance Documents.

6.3 Notice of assignment

- (a) We shall immediately after the execution of this Letter of Undertaking and otherwise, upon the written request of the Security Trustee from time to time, give written notice of the assignment contained in Clause 6.1 (*Assignment of Insurances*) to any insurers of the Ship as advised by the Security Trustee or the Owner.
- (b) A notice given in accordance with paragraph (a) above shall be in form set out in Schedule 1 (*Notice of Assignment*) with a loss payable clause to be endorsed on each policy in the form set

out in Schedule 2 (*Loss Payable Clause*) (or in such other form as the Security Trustee shall require).

- (c) We understand that the Owner shall procure that such notice is promptly endorsed on all policies and entries in respect of the Insurances, and we agree promptly to authorise and/or instruct any broker, insurer or association with or through whom any of the Insurances may be effected, details of which shall be advised by the Security Trustee or the Owner, to endorse the notice on any policy or entry or otherwise to give effect to such loss payable clause as may be stipulated by yourselves.
- (d) At the end of the Security Period, you shall, at our request and cost, re-assign to us such rights as you then have to, in or in connection with, the Insurances as assigned to you under this Letter of Undertaking.
- (e) We undertake to sign any consent required by any approved broker and/or any approved underwriters which they may require so that you can collect or recover any moneys payable in respect of our rights to, in or in connection with the Insurances as assigned to you under this Letter of Undertaking.

6.4 Negative pledge

We shall not create or permit to subsist any Security Interests over our rights and interests to, in or in connection with, the Insurances.

6.5 Disposal

We shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, transfer or otherwise dispose of our rights and interests to, in or in connection with, the Insurances.

6.6 Protection of Security Trustee's interests

We shall not enter into any transaction, nor do anything, which is contrary to, or which may adversely affect, your rights under this Letter of Undertaking or any Creditor Party's interest in those rights.

7 POWER OF ATTORNEY

7.1 Appointment

We, by way of security for the performance of our obligations under this Letter of Undertaking, irrevocably appoint (with full power of substitution) you as our attorney-in-fact:

- (a) to do all acts and execute or sign all documents which we ourselves can do and execute in relation to our rights to, in or in connection with, the Insurances including, without limitation, all acts and documents necessary to realise and dispose of our rights to, in or in connection with, the Insurances by such means and on such terms as you may determine; and
- (b) to do all acts and things and execute or sign all documents which we are obliged to do, execute or sign under this Letter of Undertaking and which we have failed so to do, execute or sign immediately upon your first written demand,

Provided that the power constituted by Clause 7.1(a) shall not be exercised until the occurrence of an Event of Default.

8 GOVERNING LAW

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

9 ENFORCEMENT

9.1 Jurisdiction

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Letter of Undertaking (including a dispute regarding the existence, validity or termination of this Letter of Undertaking or any non-contractual obligation arising out of or in connection with this Letter of Undertaking (a "**Dispute**")).
- (b) We accept that the courts of England are the most appropriate and convenient courts to settle a Dispute and accordingly we will not argue to the contrary.
- (c) This Clause 6 (*Enforcement*) is for your benefit only. As a result you shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law you may take concurrent proceedings in any number of jurisdictions.

9.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law we:
 - (i) irrevocably appoint ourselves at our registered office for the time being, presently at 2nd Floor Marlborough House, 298 Regents Park Road, London N3 2JX England as our agent for service of process in relation to any proceedings before the English courts in connection with this Letter of Undertaking; and
 - (ii) agree that failure by a process agent to notify us of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, we shall immediately (and in any event within 5 days of such event taking place) appoint another agent on terms acceptable to you. Failing this, you may appoint another agent for this purpose.

This Letter of Undertaking is executed and delivered as a deed.

APPROVED MANAGER

EXECUTED as a DEED
By OCEAN AGENCIES LIMITED
acting by PAVEL SOKHIAN
as an attorney-in-fact

in the presence of: John Chapman

Witness' signature:

Witness' name:

Witness' address:

JOHN CHAPMAN

AGENT

(for and on behalf of all Creditor Parties other than the Security Trustee)

EXECUTED as a DEED
for and on behalf of
HAMBURG COMMERCIAL BANK AG
acting by

in the presence of:

Witness' signature:

Witness' name:

Witness' address:

SECURITY TRUSTEE

EXECUTED as a DEED
for and on behalf of
HAMBURG COMMERCIAL BANK AG
acting by

in the presence of:

Witness' signature:

Witness' name:

Witness' address:

This Letter of Undertaking is executed and delivered as a deed.

APPROVED MANAGER

EXECUTED as a DEED
By OCEAN AGENCIES LIMITED
acting by
as an attorney-in-fact

in the presence of:

Witness' signature:
Witness' name:
Witness' address:

AGENT

(for and on behalf of all Creditor Parties other than the Security Trustee)

EXECUTED as a DEED
for and on behalf of
HAMBURG COMMERCIAL BANK AG
acting by *Vasiliki Gima*

in the presence of:

Witness' signature:
Witness' name: *Marianna Iobachava*
Witness' address:

CON-FARLEY & WILLIAMS
340 SYNGROU AVENUE
KALLITHEA 176 74
ATHENS - GREECE

SECURITY TRUSTEE

EXECUTED as a DEED
for and on behalf of
HAMBURG COMMERCIAL BANK AG
acting by *Vasiliki Gima*

in the presence of:

Witness' signature:
Witness' name: *Marianna Iobachava*
Witness' address:

CON-FARLEY & WILLIAMS
340 SYNGROU AVENUE
KALLITHEA 176 74
ATHENS - GREECE

SCHEDULE 1

NOTICE OF ASSIGNMENT

(for attachment by way of endorsement to the Policy or Entry in respect of the Ship)

m.v. "ARCOLA" (the "Ship")

We, **OCEAN AGENCIES LIMITED** (the "**Manager**") of Marlborough House, 298 Regents Park Road, London N3 2JX England, the Manager of the Ship, **GIVE NOTICE** that by a first priority assignment dated ____ March 2022 made in favour of **HAMBURG COMMERCIAL BANK AG** (the "**Assignee**") of Gerhart-Hauptmann-Platz 50, 20095 Hamburg, Germany acting as agent and security trustee for and on behalf of itself and certain others, we have assigned absolutely to the Assignee all rights and interests of every kind which we have now or at any later time to, in or in connection with:

- 1 all policies and contracts of insurance (including, without limitation, any loss of hire insurance) and any reinsurance, policies or contracts, including entries of the Ship in any protection and indemnity or war risks association, which are effected in respect of the Ship, its earnings or otherwise in relation to it; whether before, on or after the date of this Notice of Assignment; and
- 2 all rights (including, without limitation, any and all rights or claims which the Manager may have under or in connection with any cut-through clause relative to any reinsurance contract relating to the aforesaid policies or contracts of insurance) and other assets relating to, or derived from, any of the foregoing, including any rights to a return of a premium and any rights in respect of any claim, whether or not the relevant policy, contract of insurance or entry has expired on or before the date of this Notice of Assignment.

Endorsement of this Notice of Assignment on a Policy of insurance or Entry in respect of the Ship shall be deemed to constitute acceptance by the underwriters or club to the terms of this Notice of Assignment.

OCEAN AGENCIES LIMITED

By:

Name:

Title:

Date: ____ March 2022

SCHEDULE 2

LOSS PAYABLE CLAUSE

m.v. "ARCOLA" (the "Ship")

By a first priority assignment dated ____ March 2022 made by **OCEAN AGENCIES LIMITED** (the "**Manager**") of Marlborough House, 298 Regents Park Road, London N3 2JX England in favour of **HAMBURG COMMERCIAL BANK AG** (the "**Assignee**") of Gerhart-Hauptmann-Platz 50, 20095 Hamburg, Germany, acting as agent and security trustee for and on behalf of itself and certain others, the Manager has assigned to the Assignee all rights and interests of every kind which it has now or at any later time to, in or in connection with, amongst other things, the insurances to which this Policy or Entry relates.

Except as provided below, all sums payable under this Policy or Entry shall be paid to the Assignee.

The exceptions are that, unless and until the Assignee gives written notice to the contrary:

- 1 any sum payable in relation to any provable out-of-pocket expenses that the Manager has incurred shall be paid to the Manager;
- 2 any sum payable in relation to any third party liability claims where those claims have been made against the Manager shall be paid to the Manager; and
- 3 any sum payable under insurances against protection and indemnity risks shall be paid direct to the person to whom was incurred the liability to which such sum relates (or to the Manager in reimbursement to it of moneys expended to discharge that liability).