



Registration of a Charge

Company name: **ARKSEN LIMITED**

Company number: **11055912**



X96YSFQJ

Received for Electronic Filing: **11/06/2020**

Details of Charge

Date of creation: **09/06/2020**

Charge code: **1105 5912 0001**

Persons entitled: **PETER MORTON**

Brief description: **ALL TANGIBLE ASSETS COMPRISING THE SUBJECT OF A
CONSTRUCTION AGREEMENT FOR THE CONSTRUCTION OF ONE
ARKSEN 85 EXPLORER VESSEL**

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 THE ELECTRONIC COPY INSTRUMENT
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **RUPERT ROHAN**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 11055912

Charge code: 1105 5912 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 9th June 2020 and created by ARKSEN LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 11th June 2020 .

Given at Companies House, Cardiff on 12th June 2020

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

Assignment and charge

(1) ARKSEN LIMITED

and

(2) PETER MORTON

DATED : 9th JUNE 2020

THIS DEED is made on 7th June 2020

PARTIES

- (1) **ARKSEN LIMITED**, a company incorporated in England and Wales (with registered number 11055912) whose registered office is at Aberdeen House, South Road, Haywards Heath, RH16 4NG (the **Chargor**); and
- (2) **PETER MORTON** of 3 Baring Road, Cowes PO31 8DB (the **Lender**).

RECITALS:

- A The Lender has agreed to make available a loan facility to Vala Capital Ltd (the **Borrower**) on the terms and conditions set out in the Loan Agreement in order to assist the Borrower with the its funding of the Chargor's purchase of a vessel under the Construction Agreement. Under the Loan Agreement the Chargor guarantees the Indebtedness.
- B It is a condition precedent to the availability of the loan facility that the Chargor enters into this Deed for the purpose of providing security in favour of the Lender in respect of the Indebtedness and Guarantee Liabilities (as defined below).

IT IS AGREED as follows:

1 Definitions and interpretation

1.1 Definitions

In this Deed, unless otherwise provided:

Construction Agreement	means an agreement entered or to be entered into between the Chargor, as purchaser, and the Builder for the construction of one Arksen 85 Explorer Vessel;
Escrow Agreement	has the meaning given in the Loan Agreement;
Guarantee Liabilities	means all present and future obligations and liabilities (whether actual or contingent, whether incurred alone, jointly or severally, whether as principal or surety and/or in any other capacity whatsoever and regardless of how they arise) owed by the Chargor to the Lender under or in connection with the Loan Agreement;
Loan Agreement	means the loan agreement entered into on or about the date of this Deed between (among others) the Borrower, the Chargor (as

	Corporate Guarantor) and the Lender;
Party	means a party to this Deed;
Receiver	means any receiver appointed under this Deed or pursuant to any applicable law, whether alone or jointly, and includes a receiver and/or manager and an administrative receiver (if the Lender is permitted to appoint an administrative receiver);
Relevant Agreements	means the Construction Agreement, the Escrow Agreement and each other agreement designated as such by the Lender and the Chargor from time to time;
Indebtedness	has the meaning given in the Loan Agreement;
Insurance Policies	means all contracts or policies of insurance in respect of the Secured Assets effected or to be effected and maintained by the Builder or the Chargor (whether pursuant to clause 10 (<i>Insurances</i>) of the Construction Agreement or otherwise);
Secured Assets	means all tangible assets comprising the subject matter of the Construction Agreement (including any component parts of those assets from time to time held by, or by the Builder for, the Chargor (whether or not attached to those assets)), together with all additions, alterations, substitutions, replacements, renewals or modifications of and to those assets from time to time, and all accessories to those assets from time to time;
Security Interest	means any charge, pledge, mortgage, lien or other security interest securing any obligations of any person or any other arrangement of any type whatsoever having the effect of conferring security or a similar effect;
Secured Obligations	means the Indebtedness and the Guarantee Liabilities;

Security Period

means the period beginning on the date of this Deed and ending on the date in which the Lender is satisfied that the Secured Obligations have been unconditionally and irrevocably discharged in full and are not capable of being outstanding.

1.2 Incorporation of Loan Agreement definitions

Unless defined otherwise in the Deed, or the context requires otherwise, all words and expressions defined in the Loan Agreement have the same meaning in this Deed.

1.3 Incorporation of Loan Agreement terms

Clauses 1.2 to 1.5 of the Loan Agreement apply *mutatis mutandis* to this Deed and shall be treated as if they were expressly incorporated into and set out in full in this Deed.

1.4 Third party rights

- 1.4.1 Except as expressly provided for in this Deed, a person who is not a Party (other than a Receiver or any of its delegates or sub-delegates) shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of this Deed.
- 1.4.2 The Parties may terminate or rescind this Deed, or agree to any variation, waiver or settlement in connection with it, without the consent of any third party, whether or not it extinguishes or alters any entitlement they may have to enforce any of the provisions of this Deed.

2 Covenant to pay

The Chargor covenants with the Lender that it shall, on written demand by the Lender, pay and discharge the Secured Obligations when due.

3 Security**3.1 Legal mortgage**

As continuing security for the payment of the Secured Obligations, the Chargor with full title guarantee charges to the Lender by way of legal mortgage all its present and future rights and interest in the Secured Assets.

3.2 Fixed charges

As a continuing security for the payment and discharge of the Secured Obligations, the Chargor with full title guarantee charges to the Lender by way of first fixed charge:

3.2.1 the Secured Assets not effectively mortgaged or charged under the preceding provisions of this Clause 3; and

3.2.2 all of its rights in respect of each Relevant Agreement and all other agreements, instruments and rights relating to the Secured Assets, to the extent not effectively assigned under Clause 3.3.

3.3 Assignment

As a continuing security for the payment and discharge of the Secured Obligations, the Chargor with full title guarantee assigns to the Lender absolutely, subject to a proviso for the reassignment on irrevocable discharge in full of the Secured Obligations, all rights, title, benefit and interests whatsoever and howsoever arising under, out of or in connection with each Relevant Agreement and the benefit of all other agreements, instruments and rights relating to the Secured Assets.

4 Representations and warranties

4.1 The Chargor makes the following representations and warranties to and for the benefit of the Lender on the date of this Deed and acknowledges that the Lender has entered into the Loan Agreement in reliance on such representations and warranties:

4.1.1 General

save as otherwise set out in this Deed, no third party consents are required to ensure the effective creation of the Security Interests envisaged by this Deed.

4.1.2 Secured Assets

- (a) no Security Interest subsists over any of the Secured Assets except for the Security Interests (i) created by this Deed or (ii) in favour of the Builder or (iii) otherwise expressly permitted by the Lender.
- (b) it is the sole legal and beneficial owner of all of the Secured Assets and on it acquiring any property forming part of the Secured Assets, it will be the sole legal and beneficial owner of that property;

4.1.3 Relevant Agreements

- (a) it has taken all the necessary corporate action to allow it to enter and perform its obligations under the Relevant Agreements;
- (b) the Chargor's rights, title and interest under the Relevant Agreements are not subject to any rights of set-off or counterclaim by any other person; and
- (c) the Chargor has no knowledge of any fact that would or might prejudice or affect any right, power or ability of the Lender to enforce any of the Relevant Agreements or any term of condition under them.

4.2 The representations contained in this Clause 4 (Representations and warranties) are deemed to be repeated by the Chargor by reference to the facts and circumstances then existing on each day during the Security Period.

- 4.3 To the extent (if any) that the consent of the Builder is required to the creation of the Security Interests envisaged by this Deed, the Lender agrees to procure that the Builder provides such consent at not cost to the Chargor.

5 Undertakings

The undertakings in this Clause 5 (Undertakings) remain in effect throughout the Security Period.

5.1 Secured Assets

5.1.1 The Chargor must not:

- (a) create or permit to subsist any Security Interest over any of the Secured Assets other than any Security Interest (i) created by this Deed or (ii) in favour of the Builder or (iii) otherwise expressly permitted by the Lender; or
- (b) either in a single transaction or in a series of transactions sell, transfer, licence, lease, grant any option in respect of or otherwise dispose of all or any part of the Secured Assets or agree or attempt to do so.

5.1.2 The Chargor:

- (a) shall, if so requested by the Lender, affix or request the Builder to affix and maintain on each item of the Secured Assets in a conspicuous place, a clearly legible identification plate containing the following wording:
'NOTICE OF CHARGE
This [*describe item*] and all additions to it are subject to a fixed charge dated [*insert date*] in favour of [*insert name of Lender*']; and
- (b) shall not, and shall not permit any person to, conceal, obscure, alter or remove any plate affixed in accordance with this Clause.

5.2 Relevant Agreements

- 5.2.1 The Chargor must take all action necessary to procure that all moneys from time to time payable to the Chargor under or in connection with the Relevant Agreements are paid directly to the Lender.

- 5.2.2 The Chargor must not without the Lender's prior written consent (except in relation to the Construction Agreement):

- (a) amend or waive any of its rights under any of the Relevant Agreements;
- (b) release any other party to any of the Relevant Agreements from any of its obligations thereunder or allow such party to exercise any right of set-off; or
- (c) waive any breach by such other party of, or agree to accept termination of such other party's obligations under any of the Relevant Agreements.

5.3 Insurances

5.3.1 The Chargor must:

- (a) (if the Lender so requests) procure the noting of this Deed and the Lender's interest on each Insurance Policy and that the Lender is first loss payee under each Insurance Policy;
- (b) ensure that all proceeds of any of the Insurance Policies (unless payable direct to the Builder or its subcontractors to make good damage to the Secured Assets) will be paid to the Lender and applied towards the discharge of the Secured Obligations; and
- (c) pay all money it may receive in respect of any Insurance Policy to the Lender immediately on receipt and, pending such payment, hold all money so received upon trust for the Lender.

5.3.2 The Chargor must not do any act or commit any default by which any Insurance Policy may become void, voidable, treated as if it had been entered into on different terms or subject to any suspension, restriction, limitation or an increased premium or which could entitle the insurer to reduce the amount to be paid on a claim or prevent the Lender from receiving any money payable under any Insurance Policy.

6 Perfection of security

6.1 Title documents

The Chargor must at any time after the execution of this Deed, deposit with the Lender any deeds, title documents, certificates and other documents constituting or evidencing title to the Secured Assets, promptly upon coming into possession of any of them.

6.2 Document delivery and other steps to perfect security

6.2.1 The Chargor must, immediately upon the execution of this Deed (and promptly upon the acquisition of any Secured Assets after the date of this Deed), execute and deliver to the Lender (at the Chargor's expense) in such form and substance as the Lender may reasonably require:

- (a) all documents required to perfect the Security Interests created, or purported to be created, by or pursuant to this Deed (including any documents required in connection with any registration formalities); and
- (b) any notices to any third party of any of the charges or assignments contained in this Deed.

6.2.2 The Chargor must take all such other action as is available to it as may be necessary or as may reasonably be requested by the Lender to create, perfect, protect or maintain any of the Security Interests created, or purported to be created, by or pursuant to this Deed or to vest title to the Secured Assets in the Lender or its nominee or any purchaser, or to facilitate the realisation of the Secured Assets under this Deed or the exercise of any of the rights, powers and remedies of the Lender provided by or

pursuant to this Deed or by law, including making all filings and registrations with and paying all taxes and duties to the appropriate authorities (including Companies House).

6.3 Notices of assignment or charge

The Chargor must give notices of assignment or charge to each of the relevant counterparties in relation to the Secured Assets and the Relevant Agreements, in such form and as otherwise required by the Lender.

7 Further assurance

7.1 The Chargor must, if requested by the Lender, execute in favour of the Lender (or as the Lender directs) such further legal or other assignments or mortgages of, charges on or transfers of the Secured Assets as the Lender requires to secure the payment and discharge of the Secured Obligations.

7.2 The assignments, mortgages, charges or transfers shall be prepared by or on behalf of the Lender at the cost of the Chargor, and shall contain such provisions as the Lender may require.

8 Enforcement

8.1 The Security Interests created by or pursuant to this Deed shall become immediately enforceable at any time after the occurrence of an Event of Default which is continuing.

8.2 After the Security Interests created by or pursuant to this Deed have become enforceable, the Lender may in its absolute discretion enforce all or any part of this Deed in any manner it sees fit.

9 Appointment and powers of a Receiver

9.1 Appointment of a Receiver

At any time:

9.1.1 after the Security Interests created by or pursuant to this Deed have become enforceable; or

9.1.2 if so requested by the Chargor,

the Lender may appoint by writing any person to be a Receiver of all or any part of the Secured Assets.

9.2 Powers of Receivers joint and several

Where more than one Receiver is appointed, they shall have power to act separately unless the Lender in the appointment specifies to the contrary.

9.3 Remuneration of Receiver

The Lender may from time to time determine the remuneration of the Receiver.

9.4 Power of the Lender to remove Receiver

The Lender may, subject to section 45 of the Insolvency Act 1986, remove the Receiver from the assets of which it is Receiver.

9.5 Further appointment

The appointment of a Receiver shall not preclude:

- 9.5.1 the Lender from making any subsequent appointment of a Receiver over all or any of the Secured Assets over which a Receiver has not previously been appointed or has ceased to act; or
- 9.5.2 a Receiver, while continuing to act, consenting to the appointment of an additional Receiver to act with it.

9.6 Status of Receiver as agent

A Receiver shall be the agent of the Chargor and the Chargor shall be solely liable for the Receiver's acts, defaults and remuneration, unless and until the Chargor goes into liquidation, after which the Receiver shall act as principal and shall not become the agent of the Lender.

9.7 Powers of Receiver

A Receiver shall have and be entitled to exercise in relation to the Chargor all the powers set out in Schedule 1 to the Insolvency Act 1986.

9.8 Limitation on Lender's liability

Neither the Lender nor any Receiver shall be liable:

- 9.8.1 for any loss, however caused, arising out of:
 - (a) any sale or other disposal of the Secured Assets and whether or not a better price could or might have been obtained by deferring or advancing the date of such sale or other disposal; or
 - (b) the exercise of or failure to exercise any of the Lender's powers under this Deed; or
- 9.8.2 to account as mortgagee in possession for the Secured Assets.

9.9 Section 109 of the LPA 1925

Section 109 of the LPA 1925 shall not apply to this Deed.

10 Power of attorney

10.1 Power of attorney

The Chargor, by way of security, irrevocably appoints the Lender (whether or not a Receiver has been appointed) and any Receiver separately, to be the attorney of the Chargor with full power to appoint substitutes and to delegate, for the Chargor in its name and on its behalf, and as its act and deed or otherwise, to execute, deliver and otherwise perfect any document, or perform any act:

10.1.1 that may be required of the Chargor under this Deed; or

10.1.2 that may be deemed by the attorney necessary or desirable for any purpose of this Deed (including, after the Security Interests created by or pursuant to this Deed have become enforceable, to transfer legal ownership of the Secured Assets).

10.2 Ratification

Without prejudice to the generality of Clause 10.1 (Power of attorney), the Chargor covenants with the Lender and separately with any Receiver to ratify:

10.2.1 all transactions entered into by any attorney in the proper exercise of its powers in accordance with this Deed; and

10.2.2 all transactions entered into by any attorney in signing, sealing or delivering any deed, assurance or document, perfecting any Security Interest or performing any act, in each case in the proper exercise of its powers in accordance with this Deed.

11 Other powers exercisable by the Lender

11.1 Lender may exercise Receiver's powers

All powers of a Receiver conferred by this Deed may be exercised by the Lender after the Security Interests created by or pursuant to this Deed have become enforceable, whether as attorney of the Chargor or otherwise, and whether or not a Receiver has been appointed.

11.2 Lender has no obligation under the Insurance Policies or Relevant Agreements

The Lender shall have no obligation under the Insurance Policies or the Relevant Agreements arising out of or in connection with this Deed and shall have no liability in the event of failure by the Chargor to perform its obligations under the Insurance Policies or the Relevant Agreements.

12 Statutory power of sale to arise on execution

Section 103 of the LPA 1925 shall not apply to this Deed, but the statutory power of sale shall, as between the Lender and a purchaser from the Lender, arise on, and be exercisable at any time after, the execution of this Deed. However, the Lender shall not exercise such

power of sale until the Security Interests created by or pursuant to this Deed become enforceable, or a Receiver has been appointed, but this provision shall not affect a purchaser or require a purchaser to ask whether a demand or appointment has been made.

13 Protection of third parties

No person (including a purchaser) dealing with the Lender or any Receiver or any of their respective nominees or agents, shall be concerned to enquire:

- 13.1 whether the Security Interests created by or pursuant to this Deed have become enforceable;
- 13.2 whether any Receiver is validly appointed or acting within its powers;
- 13.3 whether any power exercised or purported to be exercised has become exercisable;
- 13.4 whether any of the Secured Obligations remain due;
- 13.5 as to the necessity or expediency of any stipulations or conditions subject to which the sale of the Secured Assets is made, or otherwise as to the propriety or regularity of the sale of the Secured Assets; or
- 13.6 how any money paid to the Lender or a Receiver, or their respective nominees or agents, is applied.

14 Rights of Lender or Receiver to remedy breach

If the Chargor defaults in its performance of any of the undertakings under Clause 5 (Undertakings) or other obligations in this Deed, the Lender or any Receiver may (but shall not be obliged to) do whatever may be necessary to rectify the default or protect the Lender's interest under this Deed at the expense of the Chargor.

15 Application of money received by the Lender or a Receiver

Any money received under this Deed shall, subject to the discharge of any prior-ranking claims, be paid or applied in the following order of priority:

- 15.1 in payment of the remuneration of the Receiver and the costs of realisation incurred by the Lender and/or the Receiver including all costs, charges and expenses of or incidental to any exercise of any power conferred by this Deed;
- 15.2 in or towards the payment of any debts or other amounts which are by statute made payable in preference to the Secured Obligations, to the extent that such debts or other amounts are made so payable;
- 15.3 in or towards satisfaction of the Secured Obligations in such order as the Lender determines, in its absolute discretion; and

15.4 as to the surplus, if any, to the Chargor or to any other person or persons entitled to it.

16 Credit to a suspense account

The Lender may, in its absolute discretion on or at any time or times after demand and pending the payment to the Lender of the whole of the Secured Obligations, place and keep to the credit of an interest-bearing separate or suspense account any money received, recovered or realised by the Lender under or in connection with this Deed for so long and in such manner as the Lender may determine without any intermediate obligation on its part to apply the same or any part of such money in or towards the discharge of any of the Secured Obligations.

17 Transfers

17.1 Right of Lender to transfer

The Lender is entitled at any time to assign its rights or otherwise transfer all or any part of its rights or obligations under this Deed or any notice and/or acknowledgement referred to in Clause 6.3 (Notices of charge and/or assignment) to any party to whom it has assigned its rights or otherwise transferred its rights or obligations under the Loan Agreement.

17.2 No right of Chargor to transfer

The Chargor is not entitled to assign its rights or otherwise transfer all or any part of its rights or obligations under this Deed.

18 Notices

The provisions of clause 17 (Notices) of the Loan Agreement shall apply *mutatis mutandis* to this Deed.

19 Amendments

No amendment, waiver or variation of any of the terms of this Deed will be valid or effective unless made in writing and executed by or on behalf of the Parties.

20 Remedies and waivers

20.1 No failure, delay or omission by the Lender in exercising any right, power or remedy provided by law or under this Deed shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

20.2 No single or partial exercise of any right, power or remedy provided by law or under this Deed shall prevent any future exercise of it or the exercise of any other right, power or remedy.

20.3 The Lender's rights, powers and remedies under this Deed are cumulative and they do not exclude any rights or remedies that arise by law.

20.4 Any release, waiver or discharge of the whole or any part of the Secured Obligations or any consent, approval or waiver given by the Lender in relation to this Deed shall only be effective for that specific purpose and for the terms and conditions upon which it was granted.

21 Continuing and additional security

21.1 This Deed is a continuing security for the Secured Obligations in favour of the Lender, notwithstanding any intermediate payment or settlement of account (whether in whole or in part) or any other matter whatever.

21.2 The Security Interests constituted by this Deed are in addition to and do not prejudice, nor are they in any way prejudiced by, any other Security Interest, guarantee or right of set-off, combination or other rights exercisable by the Lender against the Chargor.

22 No prejudice

22.1 The Security Interests created, or intended to be created, by or pursuant to this Deed shall not be prejudiced by any unenforceability or invalidity of any other agreement or document.

22.2 The Lender may in its discretion grant time or other indulgence or make any other arrangement, variation or release with any person who is not a Party without prejudicing, affecting or impairing the Security Interests created by or pursuant to it, or any of the powers, rights or remedies of the Lender under this Deed or the exercise of any one of them or other obligation or liability of the Chargor to the Lender.

23 Redemption of security and releases

Subject to and without prejudice to Clause 24 (Conditional discharge), on the irrevocable and unconditional payment and discharge in full of the Secured Obligations, the Lender shall, at the request and cost of the Chargor:

23.1 take whatever action is necessary to release and cancel the Security Interests created by or pursuant to this Deed;

23.2 procure the reassignment to the Chargor of the property and assets assigned to the Lender pursuant to this Deed; and

23.3 return all deeds, account mandates, signing authorities and other documents of title delivered to the Lender under this Deed,

in each case without recourse to, or any representation or warranty by, the Lender or any of its nominees.

24 Conditional discharge

- 24.1 Any release, settlement or discharge between the Lender and the Chargor will be conditional upon no security, disposition or payment to the Lender by the Chargor or any other person in respect of the Secured Obligations being avoided, set aside, reduced or ordered to be refunded by virtue of any statutory provision relating to insolvency or liquidation or for any reason whatsoever.
- 24.2 If any such release, settlement or discharge is so avoided, set aside, reduced or ordered to be refunded, the liability of the Chargor under this Deed shall continue or be reinstated and the Lender shall be entitled to recover the value or amount of any such security, disposition or payment from the Chargor as if the release, settlement or discharge had not occurred.
- 24.3 Subject to Clauses 24.1 and 24.2, the Lender shall be entitled to retain this Deed after as well as before payment of all the Secured Obligations for such period as the Lender may determine.

25 Partial invalidity

- 25.1 If any provision of this Deed (or part of any provision of this Deed) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Deed (or other part of that provision of this Deed) shall not be affected.

26 Counterparts

- 26.1 This Deed may be executed in any number of separate counterparts and this has the same effect as if the signatures on those counterparts were on a single copy of this Deed.
- 26.2 Each Party may evidence their execution of this Deed by emailing an executed signature page of this Deed in PDF format together with the final version of this Deed in PDF or Word format, which shall constitute an original executed counterpart of this Deed. Each Party adopting this method of execution will, following circulation by email, provide the original, hard copy executed signature page to the other Party as soon as reasonably practicable.



27 Governing law and jurisdiction

- 27.1 This Deed and any dispute or claim arising out of, or in connection with it, its subject matter or formation shall be governed by, and construed in accordance with, the laws of England and Wales.
- 27.2 The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Deed, its subject matter or formation.

THIS DEED has been executed and delivered as a deed and is intended to take effect as a deed by the Parties on the date written at the beginning of this Deed.

EXECUTION PAGE – ASSIGNMENT AND CHARGE

THE CHARGOR

Executed as a deed by Arksen Limited acting by Jasper Dominic Christian Smith, director, and Sophie Damman, director	 Director
	 Director

The Lender

Signed by **Peter Morton**

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