



**Registration of a Charge**

Company name: **CLYDE MARINE SERVICES LIMITED**

Company number: **SC034707**



X962Z21D

Received for Electronic Filing: **29/05/2020**

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**Details of Charge**

Date of creation: **29/05/2020**

Charge code: **SC03 4707 0026**

Persons entitled: **CLYDESDALE BANK PLC**

Brief description: **THE DAMEN ASD TUG 2009 REGISTERED IN THE NAME OF THE COMPANY UNDER THE UNITED KINGDOM FLAG WITH THE NAME "CMS WRESTLER" AND WITH OFFICIAL NUMBER 924246 AND INCLUDES ANY SHARE IN IT AND ITS ENGINES, INCLUDING THE HULL, ENGINE, MACHINERY, FUEL, LUBRICATING OIL AND STORES ON BOARD THE VESSEL AND EVERY OTHER ITEM OF EQUIPMENT ON BOARD WHETHER OWNED AT PRESENT BY THE COMPANY OR ACQUIRED AFTERWARDS AND ALL ADDITIONS, IMPROVEMENTS AND REPLACEMENTS MADE TO THE VESSEL**

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

Certification statement: **WE 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: **MORTON FRASER LLP**



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 34707

Charge code: SC03 4707 0026

The Registrar of Companies for Scotland hereby certifies that a charge dated 29th May 2020 and created by CLYDE MARINE SERVICES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 29th May 2020 .

Given at Companies House, Edinburgh on 1st 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

# **DEED OF COVENANTS**

between

**CLYDE MARINE SERVICES LIMITED**

and

**CLYDESDALE BANK PLC**

**re: CMS Wrestler (Official Number 924246)**

Date of Delivery: 29 May 2020

**MORTON FRASER**  
SOLICITORS

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THIS DEED OF COVENANTS ("this Deed") is made between:

- (1) **Clyde Marine Services Limited**, a company incorporated in Scotland (company number SC034707) and having its registered office at Victoria Harbour, Greenock PA15 1HW (the "Owner"); and
- (2) **Clydesdale Bank PLC**, a company incorporated under the Companies Acts in Scotland (company number SC001111) and having its registered office at 30 St Vincent Place, Glasgow, G1 2HL (the "Lender")

WHEREAS:-

- (A) The definitions used in this Deed and the rules relating to the construction of this Deed are set out in clause 1 below;
- (B) Pursuant to the Facility Letter, the Lender has agreed to provide the Facilities to the Owner and the Owner has agreed to grant the Mortgage on the Vessel and to enter into this Deed, which is collateral to the Mortgage, to secure the due repayment of the Indebtedness.

NOW THEREFORE IT IS HEREBY AGREED as follows:-

## **1 Definitions and Interpretation**

All terms not specifically defined in this Deed shall have the same meaning as in the Facility Letter.

1.1 In this Deed, the following defined terms shall have the following meanings:-

**"Additional Risks"** means all further risks or perils against which the Lender requires the Owner to insure the Vessel;

**"Approved Brokers"** means the marine insurance brokers approved in writing by the Lender (acting reasonably) and appointed by the Owner to place the Insurances;

**"Assigned Property"** means all of the Owner's rights and interest at any time to or in connection with the Insurances and the Requisition Compensation;

**"Business Day"** means a day (not being a Saturday or Sunday) on which banks are open for general business in London;

**"Classification Society"** means the Bureau Veritas or such other classification society as may be approved by the Lender in writing (acting reasonably);

**"Environmental Requirements"** means all requirements relating to the avoidance of pollution or contamination, and the protection of the environment imposed on the Owner or operator of the Vessel by law, regulation or international convention;

**"Event of Default"** means any of the following: (i) a failure by the Owner to pay any amount (whether in respect of principal, interest or otherwise) due and payable by the Owner to the Lender under the Facility Letter, this Deed or the Mortgage on the due date unless such non-payment is due solely to a technical error and is remedied within 2 Business Days; (ii) a default by the Owner in the due performance and discharge of any of its duties or liabilities under the Facility Letter, this Deed or the Mortgage which default (in the opinion of the Lender) is not capable of remedy, or any such default occurs which (in the opinion of the Lender) is capable of remedy and is not remedied within 10 Business Days after written notice of such default has

been given to the Owner by the Lender; or (iii) the Events of Default listed in clause 10.1 of the Existing Loan Agreement;

**"Existing Loan Agreement"** means the loan agreement dated 27 January 2016 between the Owner and the Lender in terms of which the Lender made a loan of TWO MILLION, TWO HUNDRED AND THIRTY THOUSAND AND TEN POUNDS STERLING (£2,230,010) available to the Owner;

**"Excess Risks"** means the proportion of claims for general average and salvage charges which is not recoverable because the valuation of the Vessel for the purposes of such claims exceeds its insured value;

**"Facility Letter"** means the facility letter dated on or around the date hereof between the Lender and the Owner under which the Lender has agreed to make the Facilities available to the Owner;

**"Indebtedness"** means the aggregate of all amounts whether principal, interest or otherwise which may from time to time be or become due and owing actually or contingently from the Owner (whether as principal, surety or otherwise) to the Lender under the Loan Agreements and the Security Documents or under any other agreement, arrangement or account between the Owner and the Lender and without limitation in any other manner or way (without double counting);

**"Insurance Documents"** means all slips, cover notes, contracts, policies, certificates of entry or other documents evidencing or constituting the Insurances;

**"Insurances"** means all claims and return of premiums but excluding any insurance policies taken out by the Lender under clause 4.3;

**"Insurers"** means the underwriters, insurance companies and mutual insurance associations with or by which the Insurances are placed;

**"Lender's Exchange Rate"** means the rate (including all premiums and costs) at which the Lender is able to purchase the currency due under this Deed with another currency on the relevant date in accordance with normal practice;

**"Loan Agreements"** means each of (i) the Existing Loan Agreement (ii) the Facility Letter and (iii) any other facility agreement entered into between the Lender and the Owner in terms of which the Lender provides finance to the Borrower, as the same may have been amended, novated, varied, extended, supplemented or replaced from time to time;

**"Loss Payable Clause"** means one of the loss payable clauses set out in Schedule 2;

**"Mortgage"** means the first priority statutory mortgage on the Vessel in the Registry's standard form granted by the Owner to the Lender on or around the date hereof;

**"Marine Risks"** means the risks and perils set out in clause 2 of the International Hull Clauses 2003;

**"Pollution Risks"** means the risks referred to in clause 5 of the International Hull Clauses 2003;

**"P&I Risks"** means the usual third party and liability risks covered by protection and indemnity associations including but not limited to the proportion if any not covered by the hull and machinery policies in the case of collision clause 6.1 International Hull Clauses 2003;

**"Registry"** means the Registry of Shipping and Seamen, Cardiff CF24 5XR;

**"Requisition Compensation"** means all compensation payable as a result of requisition for title or other compulsory acquisition of the Vessel by any government, state or other competent authority, other than requisition for hire;

**"Security Documents"** means the Existing Security Documents, the Mortgage, this Deed of Covenants and all other documents executed as security for or evidencing the Indebtedness or any part thereof;

**"Security Interest"** means any mortgage, charge, pledge, maritime or other lien, hypothecation, encumbrance, security assignment, trust arrangement, title retention or other security interest or arrangement of any kind whatsoever having the effect of conferring security in respect of any obligation of any person, and the security rights of a claimant in an action in rem;

**"Security Period"** means the period commencing on the date hereof and ending on the date on which the Indebtedness is repaid in full to the Lender;

**"Total Loss"** means (a) the actual or constructive or compromised or agreed total loss of the Vessel, (b) the requisition for title or other compulsory acquisition of the Vessel other than requisition for hire, or (c) the capture, seizure, arrest, detention or confiscation of the Vessel by any government, state or competent authority from which the Vessel is not released or discharged within 30 days after the occurrence thereof;

**"Vessel"** means the Damen ASD Tug 2009 registered in the name of the Owner under the United Kingdom flag with the name "CMS Wrestler" and with official number 924246 and includes any share in it and its engines, including the hull, engine, machinery, fuel, lubricating oil and stores on board the Vessel and every other item of equipment on board whether owned at present by the Owner or acquired afterwards and all additions, improvements and replacements made to the Vessel; and

**"War Risks"** means all risks excluded from the hull and machinery marine risks policies by clauses 29, 30 and 31 of the International Hull Clauses 2003;

1.2 In this Deed, unless otherwise expressly provided, references to:

1.2.1 the "Lender", the "Owner" or any "party" shall be construed so as to include its successors in title, permitted assignees and permitted transferees;

1.2.2 "assets" includes present and future properties, revenues and rights of every description;

1.2.3 a "Security Document" or any other agreement or instrument is a reference to that Security Document or other agreement or instrument as amended or novated;

1.2.4 a "person" includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;

1.2.5 a "regulation" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;



- 1.2.6 a provision of law is a reference to that provision as amended or re-enacted;
- 1.2.7 words importing the singular shall include the plural and vice versa;
- 1.2.8 the liquidation, winding-up or dissolution of a company or body corporate or any of its assets shall be construed so as to include any equivalent or analogous proceedings or event under the law of the jurisdiction in which it carries on business or has assets or liabilities;
- 1.2.9 a time of day is a reference to London time; and
- 1.2.10 section, clause and schedule headings are for ease of reference only.
- 1.3 An Event of Default is "continuing" if it has not been remedied or waived.
- 1.4 This Deed shall be read together with the Loan Agreements and the other Security Documents, but if there is any conflict between the Loan Agreements and this Deed, the provisions of the Loan Agreements shall prevail.

## **2 Repayment and Security**

### **2.1 Repayment of the Indebtedness**

The Owner undertakes to pay the Indebtedness to the Lender in accordance with, and otherwise to observe and perform its obligations under and comply with, the terms of the Loan Agreements.

### **2.2 Security**

2.2.1 In order to secure the payment of the Indebtedness to the Lender and the due performance of the Owner's obligations to the Lender under the Loan Agreements and the Security Documents, the Owner has granted the Mortgage to the Lender and by this Deed with full title guarantee and with first priority mortgages and charges the Vessel to the Lender and hereby assigns and agrees to assign to the Lender all of its rights and interest in and to the Assigned Property.

2.2.2 Each Security Interest created by this Deed is a separate and independent fixed charge. Should any Security Interest be construed as a floating charge, that classification shall not affect any other Security Interest. The Insolvency Act 1986 Schedule B1 paragraph 14 applies to any Security Interest created by this Deed which is construed as a floating charge.

2.2.3 The security created by the Mortgage and this Deed shall be a continuing security for the payment of the Indebtedness and the due performance of the Owner's obligations to the Lender and shall not be satisfied or discharged by any intermediate or partial payment of the Indebtedness or the insolvency, liquidation, administration or bankruptcy of the Owner.

2.2.4 Section 93 of the Law of Property Act 1925 (restrictions on consolidation) or any equivalent provision of another jurisdiction shall not apply to the security created by the Mortgage or this Deed.

2.2.5 At the expiry of the Security Period or on (i) the sale of the Vessel and receipt of the proceeds or (ii) if the Owner grants additional security pursuant to clause 7.1.2 of the Existing Loan Agreement the Lender shall at the request of the Owner and at the Owner's cost discharge the

Mortgage and reassign to the Owner (or its order) (without any title guarantee or other warranty, representation or covenant and without any recourse whatsoever) the Lender's interest in the Vessel and the Assigned Property provided that any such discharge and reassignment shall be subject to the condition that the payment of the Indebtedness or any part thereof to the Lender whether by the Owner or any other person shall not be avoided or set aside or be ordered to be repaid under any statute, law or regulation relating to insolvency, liquidation, administration or bankruptcy for the time being in force including but not limited to sections 238 to 245 of the Insolvency Act 1986 and if at any time the Lender is ordered to repay any such amount then the Lender shall have the right to recover from the Owner an amount equal to the amount so repaid and the discharge of the Mortgage and this Deed and the reassignment of the Lender's interest in the Assigned Property shall be void and of no effect and the Lender may enforce the security created by the Mortgage and/or this Deed as if no such payment have been made.

2.2.6 The security created by the Mortgage and this Deed shall be in addition to and shall not in any way be prejudiced or affected by any of the other Security Documents and the Lender shall be under no duty to enforce any of the other Security Documents before enforcing the security created by the Mortgage and this Deed.

2.2.7 Without prejudice to paragraph 10 of Schedule 1 of the Merchant Shipping Act 1995 the Owner shall remain liable to perform all obligations connected with the Vessel and the Assigned Property and the Lender shall not, in any circumstances, have or incur any obligation of any kind in connection with the Vessel and the Assigned Property.

2.2.8 Save as provided in this Deed, the Owner shall not sell, create any Security Interest over or otherwise dispose of the Vessel or the Assigned Property or any right to or interest in the Vessel or the Assigned Property.

## 2.3 Protection of Security

Without prejudice to the provisions of clauses 6.1.1 and 6.1.2, the Lender may take any action which it may think fit for the purpose of protecting or maintaining the Security Interest created by this Deed or for any similar or related purpose.

## 3 Representations and Warranties; Undertakings

### 3.1 Representations and Warranties

The Owner represents and warrants to the Lender as follows:

3.1.1 the representations and warranties made by the Owner in the Loan Agreements shall remain true and would not be misleading if repeated at the date of this Deed with reference to the circumstances now existing;

3.1.2 the Owner is the sole legal and beneficial owner of the Vessel and the Assigned Property; and

3.1.3 the Owner has the right to create the Security Interests which it purports to create in this Deed without the consent or authority of any other person and no third party has any right, title, or claim over or in relation to any Security Interest.

### 3.2 Undertakings

The undertakings in this clause 3.2 remain in force during the Security Period. The Owner undertakes to comply with the undertakings set out in the Loan Agreements and furthermore undertakes with the Lender as follows:

- 3.2.1 save as permitted by the Loan Agreements it shall not sell or agree to sell the Vessel or any share or interest therein or grant any mortgage, charge or encumbrance on the Vessel (otherwise than to the Lender) and it shall not sell, transfer or otherwise dispose of any of the Assigned Property;
- 3.2.2 it shall not create or permit to subsist any Security Interest (other than as created by the Mortgage and this Deed) over the Vessel or any part of the Assigned Property and in particular it will not create or permit to be created or continued any lien or encumbrance on the Vessel (except the Mortgage and this Deed) and shall discharge or satisfy all claims and demands which if unpaid might create a lien for salvage or a lien for crew wages earned on the voyage then in progress;
- 3.2.3 it shall register the Vessel with the Register of Ships in the United Kingdom and it shall not do or permit anything to be done which could result in the cancellation of such registration;
- 3.2.4 it shall remain in good standing and maintain its corporate existence as a private limited company under the laws of Scotland and comply with all relevant legislation applicable to the Owner;
- 3.2.5 it shall pay when due all taxes, assessments, levies, fines and penalties payable by the Owner or enforceable against the Vessel unless these are disputed by the Owner in good faith and the Owner if required by the Lender (acting reasonably) maintains adequate reserves in respect of any amount in dispute provided always that such dispute does not impact on the Lender's security over the Vessel or have a Material Adverse Effect;
- 3.2.6 it shall not cause or permit the Vessel to be operated or used in any unlawful manner or trade or to carry any cargo which may expose the Vessel to penalty, capture or forfeiture;
- 3.2.7 if any claim or proceeding shall be issued against the Vessel or if the Vessel shall otherwise be attached, arrested or detained by any proceeding in any court, tribunal or administrative or governmental authority, it shall immediately notify the Lender and take all action it is able to take to release the Vessel as soon as practicably possible and shall discharge the liability or lien in respect of which the claim or proceeding was issued;
- 3.2.8 if the Vessel is requisitioned by any government or other competent authority, it shall execute any further document which the Lender may request assigning the Requisition Compensation to the Lender and if any Requisition Compensation is paid directly to the Owner it shall hold it in trust for the Lender and immediately pay to the Lender all amounts so received.

## 4 Insurances

### 4.1 Insurance Documents

The Owner undertakes with the Lender during the Security Period as follows:

- 4.1.1 it shall insure the Vessel in Sterling at its own expense for the full insurable value of the Vessel but in no event for an amount less than £2,800,000 or such other amount as the Lender and the Owner may agree in writing, against Marine Risks including Excess Risks, War Risks, Pollution Risks, Additional Risks, P&I Risks and it shall place such insurances through the Approved Brokers in such amounts and currencies, with such underwriters and on such terms as shall have been approved in writing by the Lender, provided that in relation to the P&I Risks and War Risks the Owner may enter the Vessel in a mutual protection and indemnity association or war risks association approved in writing by the Lender;
- 4.1.2 it shall insure the Vessel at its own expense against all oil pollution liability and contamination risks as the Lender may require with such insurers and on such terms as the Lender may approve;
- 4.1.3 it shall pay when due all premiums taking account of any grace periods, calls, contributions and other amounts payable in respect of the Insurances and produce evidence of payment to the Lender when so reasonably requested;
- 4.1.4 it shall renew each of the Insurances on or before the expiry date and arrange for the Approved Brokers or the Insurers to confirm to the Lender that such Insurance has been renewed, the terms of the renewal and when each renewal is effected;
- 4.1.5 it shall give notice of assignment of the Insurances to the Insurers in the form set out in Schedule 1 and procure that a notice of assignment is endorsed on or attached to the Insurance Documents;
- 4.1.6 it shall procure that a Loss Payable Clause in the form set out in Schedule 2 (or such other form as the Lender may approve in writing) is endorsed on or attached to the Insurance Documents;
- 4.1.7 it shall procure that the Insurance Documents are held by the Owner and it shall provide the Lender with certified copies of them on reasonable request;
- 4.1.8 it shall arrange for the execution of such guarantees as may from time to time be required by the protection and indemnity or war risks association in connection with the Insurances;
- 4.1.9 if the Vessel is entered in a mutual association for War Risks and/or P&I Risks, it shall procure that the mutual association provides the Lender with a copy of the certificate of entry or policy in such form as the Lender may request;
- 4.1.10 it shall procure that the Approved Brokers and any mutual insurance association in which the Vessel is entered issues a letter of undertaking to the Lender in such form as the Lender may require, in which they agree :
- 4.1.10.1 to give written notice to the Lender of any change in the terms and conditions of the Insurances;
- 4.1.10.2 to give the Lender an opportunity to pay any unpaid premiums or calls within a reasonable time if the Owner has failed to pay them;

- 4.1.10.3 to give notice to the Lender if the Owner has failed to renew the Insurances 14 days prior to the relevant renewal date;
- 4.1.10.4 not to exercise or purport to exercise any lien or set off against amounts payable under the Insurances in respect of unpaid premiums or calls relating to other vessels owned or managed by the Owner;
- 4.1.10.5 to pay all claims collected by them under the Insurances in accordance with the Loss Payable Clause attached to the Insurance Documents.

#### 4.2 Owner's insurance undertakings

The Owner further undertakes with the Lender during the Security Period as follows:

- 4.2.1 it shall ensure all amounts payable under the Insurances are paid in accordance with the Loss Payable Clause and it shall apply all other amounts received by it in respect of claims under the Insurances in repair of the damage or discharge of the liability in respect of which the claim was made;
- 4.2.2 it shall promptly provide the Lender with full information regarding any casualty or damage to the Vessel involving an amount in excess of £200,000 or as a result of which the Vessel has become or may become a Total Loss;
- 4.2.3 it shall notify the Lender immediately of any requirement imposed by the Insurers under any of the Insurances;
- 4.2.4 it shall not do or permit to be done an act or fail to take any action as a result of which any of the Insurances shall or may be suspended, avoided or cancelled;
- 4.2.5 it shall not permit the Vessel to go on any voyage nor to carry any cargo which is not permitted under the Insurances;
- 4.2.6 it shall not permit the Vessel to enter any area which has been declared a war zone by any government or by the Insurers unless the Owner shall have first paid any additional premium required by the War Risks Insurers in order to maintain the War Risks Cover when trading or operating in such war zone;
- 4.2.7 should the Vessel be laid up for any period, it shall arrange "lay-up" insurances for the Vessel during such period at the Owner's own cost and upon such terms and conditions, in such amounts and with such Insurers as shall from time to time be approved in writing by the Lender.

#### 4.3 Mortgagee's Interest Insurance

The Owner undertakes to pay to the Lender on demand all premiums and other amounts payable by the Lender in placing and maintaining a mortgagee's interest insurance policy on such terms and in such amounts as the Lender shall consider appropriate.

## **5 Maintenance and Other Vessel Undertakings**

5.1 The Owner undertakes with the Lender during the Security Period as follows:

- 5.1.1 it shall promptly provide the Lender with any information or documents requested by the Lender acting reasonably concerning the employment, use or position of the Vessel;
- 5.1.2 it shall duly perform all the obligations undertaken or imposed on the Owner in any charter, bill of lading or other contract relating to the use or employment of the Vessel.

5.2 Maintenance and other Vessel undertakings

The Owner further undertakes with the Lender, during the Security Period as follows:

- 5.2.1 it shall maintain the Vessel at all times in a seaworthy condition and in good repair in accordance with the best ship management practice;
- 5.2.2 it shall not cause or permit the Vessel to be operated in any manner contrary to law or regulation and not to engage in any unlawful trade or cargo or carry any cargo that will expose the Vessel to penalty, forfeiture or capture and in the event of hostilities in any part of the world (whether a war be declared or not) shall not employ the Vessel, or permit its employment, in carrying any contraband goods;
- 5.2.3 it shall maintain the classification notation 1\* Hull Mach tug unrestricted navigation AUT-UMS and MCA Cat 2 or its equivalent with the Classification Society free of requirements;
- 5.2.4 it shall submit the Vessel to such periodical surveys and inspections as may be required by the rules of the Classification Society or by applicable laws or regulations and provide the Lender on reasonable request with copies of all survey reports issued as a result thereof;
- 5.2.5 it shall provide to the Lender on its reasonable request copies of all certificates issued by the Classification Society relating to the classification of the Vessel which the Lender may request;
- 5.2.6 it shall notify the Lender promptly of any requirement which is imposed by the Classification Society (or the insurers or any other competent authority) on the Vessel and shall authorise the Classification Society and all other regulatory authorities to disclose to the Lender any information or documents requested by the Lender relating to the classification, repair, maintenance or seaworthiness of the Vessel;
- 5.2.7 it shall permit the Lender or its authorised representative full and complete access to the Vessel at reasonable times for the purpose of inspecting the state and condition of the Vessel and papers provided that the Lender shall have given reasonable notice to the Owner of its intention to inspect the Vessel;
- 5.2.8 it shall not make or permit to be made any alteration in the structure, type or speed of the Vessel or remove or permit the removal of any equipment or machinery installed on the Vessel which will have an adverse effect on the value or classification of the Vessel without the prior consent of the Lender which it shall have full power to withhold;

- 5.2.9 it shall comply with all legal requirements whether imposed by statute, regulation, common law or otherwise applicable to the Vessel and retain valid certificates evidencing compliance with such requirements;
- 5.2.10 without prejudice to the preceding clause 5.2.9 it shall to the extent required by the relevant codes, comply with the requirements of the Domestic Safety Management Code (DSM) and hold a valid certificate of compliance and procure that the Vessel has a valid safety management certificate and in the event the Vessel is used for any purpose falling out with the DSM, it shall comply with the requirements of the IMO International Safety Management Code where required by the Maritime Regulatory Bodies of the countries where the Vessel will be operating;
- 5.2.11 it shall comply with and procure that its servants and agents comply with all Environmental Requirements relating to the use, operation and management of the Vessel and immediately notify the Lender of any breach or alleged breach of any Environmental Requirement or any claim being made as a consequence of such a breach or alleged breach;
- 5.2.12 it shall not deliver the Vessel to any shipyard for repairs or renewals to the Vessel the estimated cost of which exceeds £200,000 without the prior written consent of the Lender (which it shall have full power to withhold) unless the shipyard shall have given a written undertaking to the Lender not to exercise any lien or right of detention on the Vessel for the cost of the repairs or renewals or the cost of the repairs or renewals is payable by the Insurers under the Insurances and the Insurers have approved the proposed repairs or renewals in terms satisfactory to the Bank;

## **6 Events of Default, Intervention, Enforcement and Receivers**

### **6.1 Powers of Intervention**

At any time after the occurrence of an Event of Default which is continuing the Lender shall have the power to take such action as it considers necessary to protect the security created by the Security Documents. In particular, and without limitation of the foregoing powers:

- 6.1.1 if the Owner fails to insure the Vessel in accordance with the requirements of clause 4, the Lender shall have the power to insure the Vessel and pay any unpaid premiums or calls; or
- 6.1.2 if the Owner fails to pay any debts and liabilities of the Vessel, the Lender may pay all amounts claimed due in order to discharge any lien on the Vessel or to procure the release of the Vessel from arrest or detention; or
- 6.1.3 if the Owner fails to arrange for all necessary surveys, maintenance and repairs to the Vessel to be carried out at the relevant time the Lender may arrange for such surveys, maintenance and repairs to be carried out.

### **6.2 Powers of Enforcement – Events of Default**

On the happening of an Event of Default which is continuing and without the necessity for any court order to the effect that an Event of Default has occurred or that the security constituted by the Mortgage and this Deed has become enforceable, and irrespective of whether a notice of default has been served under

any Loan Agreement, the security constituted by the Mortgage and this Deed shall immediately become enforceable for all purposes (including the Insolvency Act 1986 Schedule B1, paragraph 14) and the Lender shall be entitled to:

- 6.2.1 exercise all the powers and rights given to it by this Deed, the other Security Documents, by law, in equity or otherwise and at any time or times to exercise the powers conferred on it as a creditor, a person with a Security Interest or an assignee, by English or Scots law or the law of any country or territory in which the Vessel or the Assigned Property is situated;
- 6.2.2 take possession of the Vessel;
- 6.2.3 direct the Owner to order the Vessel, or if the Owner fails to do so to order the master of the Vessel, to proceed immediately at the Owner's risk and expense to a port or place nominated by the Lender;
- 6.2.4 sell the Vessel or any share in it, whether as mortgagee in possession, attorney in fact for the Owner or the Lender having the power to agree deferred terms of payment or other special conditions if it considers it appropriate;
- 6.2.5 until the Vessel is sold-insure, manage, maintain, repair, charter, operate, lay-up or otherwise use the Vessel for such time and on such terms as it considers appropriate;
- 6.2.6 require that all Insurance Documents and all claims correspondence and documents are delivered to the Lender or the broker or adjuster nominated by it;
- 6.2.7 combine and consolidate all the Owner's accounts with the Lender without prior notice to the Owner and to set off and apply any amounts standing to the credit of any of the Owner's accounts with the Lender in or towards payment of the Indebtedness. If denominated in a currency other than the currency in which the Indebtedness is denominated the Lender shall have the right to convert the said credit balances to the currency due at the Lender's Exchange Rate;
- 6.2.8 recover, institute, continue, release or compromise all claims by the Owner relating to the Vessel or the Assigned Property, against the Insurers, any charterer or any other person;
- 6.2.9 defend, continue, release or compromise all claims against the Owner relating to the Vessel or the Assigned Property including but not limited to those which have or may give rise to a Security Interest in the Vessel.

### 6.3 Receivers

On the occurrence of an Event of Default, the Lender may appoint a receiver or manager (or joint receivers or managers) of the Vessel and the Assigned Property, and the following shall apply:

- 6.3.1 the Lender may exercise any of the powers conferred by this Deed while a receiver or manager is in office and is acting;
- 6.3.2 an appointment of a receiver or manager shall be by deed or, at the Lender's option, by a document signed by any of its officers and an appointment in respect of the Vessel and some only of the Assigned



Property may later be extended to the Vessel and all or any part of the remaining Assigned Property;

6.3.3 the remuneration of a receiver or manager shall be fixed by the Lender;

6.3.4 to the fullest extent permitted by law, a receiver or manager shall be the Owner's agent, and the Owner shall be responsible, to the exclusion of any liability on the part of the Lender, for its remuneration and for its contracts, acts and defaults;

6.3.5 a receiver or manager shall have all the powers conferred on the Lender by this Deed and all the powers conferred on a receiver by the law;

6.3.6 the Owner irrevocably and by way of security appoints every receiver as its attorney on its behalf and in its name or otherwise to execute or sign any document and do any act or thing which that receiver or manager considers necessary or desirable with a view to or in connection with any exercise or proposed exercise of any of its powers;

6.3.7 a receiver or manager may delegate to any person or persons any of the powers (including the discretions) conferred on it by, or pursuant to, this Deed and may do so on terms authorising successive sub-delegations;

6.3.8 in the case of joint receivers or managers, any of the powers (including the discretions) conferred by this Deed or by law may be exercised by any one or more of them, unless their appointment specifically states the contrary;

6.3.9 the Lender may remove a receiver or manager, with or without appointing another, such a removal may be effected by a document signed by any of the Lender's officers;

6.3.10 the Lender may appoint a receiver or manager to replace a receiver or manager who has resigned or for any other reason ceased to hold office; and

6.3.11 a receiver or manager shall be entitled to retain out of any money received by it such amounts in respect of its expenses (or to cover estimated future expenses) as it may from time to time agree with the Lender.

#### 6.4 Administrator

Should the Owner be construed as the holder of a qualifying floating charge for the purposes of the Insolvency Act 1986, the Lender shall have the power to appoint an administrator of, or to apply for an administration order in respect of, the Owner.

#### 6.5 Lender's Powers

6.5.1 The Lender may exercise its powers and rights under this Deed in such a manner and at such times as the Lender in its absolute discretion may decide and the Lender shall in no circumstances be liable for any loss or damage resulting from the exercise of such powers and rights or from any delay in exercising them. Further, any liability which the Lender may incur in law or equity solely by reason of being a mortgagee in possession is hereby expressly excluded.

6.5.2 When exercising its powers under this clause 6, any person dealing with the Lender shall not be concerned as to whether the Indebtedness has become payable or whether any power which the Lender is purporting to exercise has become exercisable and sections 104 and 107 of the Law of Property Act 1925 shall apply to any such person dealing with the Lender.

6.5.3 The Lender's powers and rights under the Mortgage and this Deed are cumulative and not exclusive of any powers and rights provided by law and may be exercised from time to time as and when the Lender considers it appropriate or necessary.

6.5.4 A certificate issued by the Lender as to the amounts due from the Owner to the Lender under the Security Document shall be conclusive and binding on the Owner.

6.5.5 The provisions of section 103 of the Law of Property Act 1925 (regulation of exercise of power of sale), or any equivalent provision in another jurisdiction, shall not apply to this Deed.

#### 6.6 Proceeds of Enforcement

After the occurrence of an Event of Default any moneys or other property which the Lender (or any person on its behalf) or any receiver, administrator or manager of the Owner receives or recovers in connection with the Vessel and the Assigned Property (including, without limiting the generality of the foregoing, any property directly or indirectly represented by, accrued on or derived from the Vessel and the Assigned Property and any recovery under the Insurances) shall be applied as follows:

6.6.1 First: in payment of all damages, losses, expenses, payments and disbursements (together with interest due thereon in accordance with the Loan Agreements) incurred by the Lender or a receiver in or incidental to the exercise of its powers and rights set out in this Deed;

6.6.2 Second: in payment of any Security Interest ranking in priority to the Mortgage and this Deed; and

6.6.3 Third: in repayment of the Indebtedness in accordance with the Loan Agreements.

#### 6.7 Power of Attorney

The Owner appoints the Lender (acting in its own interest) as its attorney (with full power of substitution and delegation) so that after the occurrence of an Event of Default the Lender shall have power in the name of the Owner to do all such acts and to sign all documents relating to the Vessel or the Assigned Property as the Lender considers appropriate. The Owner agrees to ratify and confirm anything that the Lender (or its substitute or delegate) may lawfully do or purport to do as attorney for the Owner in relation to the Vessel or the Assigned Property and the Owner further confirms that the Lender is authorised to execute any such ratification on behalf of the Owner.

#### 6.8 Indemnity

6.8.1 The Owner undertakes to indemnify the Lender against all amounts paid and all liabilities incurred by the Lender reasonably and in good faith at any time in the exercise of any of its powers and rights under this Deed or otherwise in relation to the Vessel or the Assigned Property.

6.8.2 If under any applicable law or regulation or under any judgment or order made against the Owner or because of the liquidation of the Owner or for any other reason any payment due under this Deed or any of the Security Documents is made in a currency other than the currency in which such payment is expressed to be due under this Deed or any of the Security Documents, then to the extent that the amount actually received by the Lender when converted into the currency due at the Lender's Exchange Rate is less than the amount payable under this Deed, the Owner as a separate and independent liability shall pay to the Lender the amount of such difference.

6.9 Waiver

6.9.1 No delay or omission by the Lender in exercising any power, right or remedy under the Mortgage or this Deed shall limit or restrict that power, right or remedy or operate as a waiver of it nor shall any partial exercise of such power, right or remedy preclude any further exercise thereof.

6.9.2 Any waiver by the Lender of any terms of the Mortgage and this Deed or any consent or approval given by the Lender under the Mortgage and this Deed shall only be effective if given in writing and then only for the purpose and on any terms and conditions on which it is given.

6.10 Exclusion

Nothing in this Deed shall be taken to exclude or restrict any power, right or remedy which the Lender may have at any time at law or under any Loan Agreement or any other Security Document.

**7 Total Loss**

If the Vessel shall become a Total Loss, all insurance proceeds from such Total Loss shall be paid to the Lender. The Lender shall apply all moneys received in respect of Total Loss in or towards the repayment of the Indebtedness in the manner set out herein and otherwise as in the Loan Agreements and, upon payment of all moneys owed to the Lender, the balance (if any) shall be paid to the Owner or to such other person as the Owner shall direct by notice in writing.

**8 Further Assurances**

The Owner shall execute and deliver any document, effect any registration, give any notice or take any other step which the Lender may reasonably specify for any of the following purposes or for any similar or related purpose:

8.1 to create any Security Interest or right of any kind which the Lender intended should be created by or pursuant to this Deed or any other Security Document;

8.2 to create a specific mortgage or assignment of the Vessel or any particular Assigned Property or otherwise to vest in the Lender the title to any particular Assigned Property;

8.3 to protect the priority, or increase the effectiveness, in any jurisdiction of any Security Interest which is created, or which the Lender intended should be created, by or pursuant to the Mortgage and this Deed or any other Security Document;

- 8.4 to enable or assist the Lender or a receiver to sell or to transfer title to, or grant any interest or right relating to the Vessel or any Assigned Property or to exercise any power which is referred to in this Deed or another Security Document;
- 8.5 to enable or assist the Lender to enter into any transaction to comment, defend or conduct any proceedings and/or to take any other action relating to the Vessel or any Assigned Property in any country or under the law of any country;
- 8.6 to give effect to the security created or intended to be created by this Deed; and/or
- 8.7 to complete or otherwise give effect to any whole or partial assignment, transfer or novation of any of the Lender's rights and interests under the Mortgage or this Deed and any such assignment transfer or novation of the Lenders rights shall be at the cost of the Lender provided no Event of Default has occurred and is continuing in which case such costs shall be for the account of the Owner.

## **9 Enforceability, Partial Invalidity**

- 9.1 Any provision of this Deed which is or becomes invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without invalidating the remaining provisions hereof, and any such invalidity, illegality or unenforceability shall not render such provision invalid, illegal or unenforceable in any other jurisdiction.
- 9.2 If any term or provision of this Deed or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Deed or the application of such term or provision to persons or circumstances other than those as to which it is already invalid or unenforceable shall not be affected thereby and each term and provision of this Deed shall be valid and shall be enforceable to the fullest extent permitted by law.

## **10 Amendment**

Any amendment of this Deed must be made in writing and duly executed by the parties hereto which failing it shall be null and void.

## **11 Assignment**

- 11.1 This Deed shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assignees.
- 11.2 The Owner may not assign any or all of its rights or transfer (or purport to transfer) any or all of its obligations under or pursuant to this Deed or in respect of the Vessel without the prior written consent of the Lender (which the Lender shall have full power to withhold).
- 11.3 The Lender shall be entitled to assign or transfer all or any of its rights under this Deed to any third party. Further, the Lender shall have the right to disclose to any intending assignee, transferee or sub participant such information about the Owner, the Vessel and the Assigned Property as the Lender considers appropriate. The Lender will advise the Owner in the event that it exercises its rights under this clause.
- 11.4 Any assignee or transferee which acquires an interest or, as the case may be, a part of an interest under this Deed in accordance with this clause 11 shall acquire such interest or, as the case may be, such part of an interest in the same manner and to the same extent as that person from whom it acquired such interest or, as the case may be, such part of an interest.

## **12 Preservation of Indemnities**

The indemnities in favour of the Lender contained in this Deed shall continue in full force and effect in accordance with their terms notwithstanding any breach by the Lender and notwithstanding repayment of the Indebtedness in full.

## **13 Language**

All notices or communications under or in connection with this Deed shall be in English or, if in any other language, accompanied by a translation into English certified as the Lender may require. In the event of any conflict between the English text and the text in any other language, the English text shall prevail.

## **14 Notices**

Any notice, demand, consent, record, election or account to be given under this Deed shall be in writing and be sent by prepaid international courier or by prepaid first class letter post or to be delivered by hand to the following address:

### **14.1 if to the Owner to:**

Address: Victoria Harbour, Greenock, PA15 1HW

FAO: Gillian Baker / Hamish Munro

### **14.2 if to the Lender to:**

Address: Commercial Banking, Clydesdale Bank Plc, 23 Bank Street, Airdrie, ML6 6AD

FAO: Karen Perriman

or to such other person or address as any party may notify in writing to the other parties hereto for that purpose.

### **14.3 Any such notice shall be deemed to have been received (i) in the case of notice given by international courier, at the expiration of 3 days after collection by the international courier or confirmation of delivery by said courier (whichever is the earlier); or (ii) in the case of notice given by prepaid first class letter post, at the expiration of 5 days after being put in the post; or (iii) if such notice is delivered by hand, at the moment of delivery thereof.**

## **15 Counterparts**

### **15.1 This Deed may be executed in any number of counterparts and by each of the parties on separate counterparts, but all counterparts shall together constitute one and the same instrument, all as permitted by The Legal Writings (Counterparts and Delivery) (Scotland) Act 2015.**

### **15.2 If executed in counterparts:**

#### **15.2.1 this Deed will not take effect until each of the counterparts has been delivered;**

15.2.2 each counterpart of this Deed will be held as undelivered until the parties agree a date on which all of the counterparts are to be treated as delivered;

15.2.3 the date of delivery of this Deed may be inserted on the front page of this Deed in the blank provided for the delivery date.

**16 Governing Law and Jurisdiction**

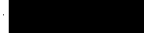
- 16.1 This Deed shall be governed by and construed in accordance with Scots law.
- 16.2 The Owner irrevocably agrees for the exclusive benefit of the Lender that the courts of Scotland shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Deed and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- 16.3 Nothing contained in this clause 16 shall limit the right of the Lender to take proceedings against the Owner in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 16.4 The Owner irrevocably waives any objection which it may have now or in the future to the courts of Scotland being nominated for the purpose of this clause 16 and agrees not to claim that any such court is not a convenient or appropriate forum.

IN WITNESS WHEREOF these presents consisting of this and the preceding 17 pages and including the Schedules have been executed as follows:-

SUBSCRIBED for and on behalf of  
CLYDE MARINE SERVICES LIMITED:

at GREENOCK

on 28 May 2020

by  Hamish Munro and Gillian Baker

  
\_\_\_\_\_  
Director

  
\_\_\_\_\_  
Director/Secretary


SUBSCRIBED for and on behalf of  
CLYDESDALE BANK PLC

at Morton Fraser Glasgow

on 28th May 2020

by KAREN PERRIMAN

in the presence of:-



Authorised Signatory

Witness



Full Name

Bernadette Galloway

Address

145 St Vincent St

Glasgow



# SCHEDULE 1

to the foregoing Deed of Covenant  
between Clydesdale Bank PLC (the "Lender") and Clyde Marine Services Limited (the "Owner")

## NOTICE OF ASSIGNMENT OF INSURANCES

To: [name & address of insurers]

cc.

Date: [\*\*]

We, (i) Clyde Marine Services Limited, the owner (the "Owner") of the CMS Wrestler with official number 924246 (the "Vessel") and (ii) Clydesdale Bank PLC, the mortgagee in respect of the Vessel, hereby give notice that by a deed of covenants dated , the Owner has assigned to Clydesdale Bank plc as first priority mortgagee, all the insurances in respect of the Vessel (including the insurance constituted by the policy on which this notice endorsed) and all amounts payable thereunder, including return of premiums.

Yours faithfully,

Signed for and on behalf of  
[ ] Limited

**On Duplicate:** We acknowledge receipt of the Notice of Assignment of which this is a duplicate.

Yours faithfully,

Signed for and on behalf of  
[INSURER]

**SCHEDULE 2**

to the foregoing Deed of Covenant  
between Clydesdale Bank PLC (the "Lender") and Clyde Marine Services Limited (the "Owner")

**LOSS PAYABLE CLAUSE**

With effect from [ ] it is noted that by a deed of covenant dated [ ] Clyde Marine Services Ltd (the "Owner") has assigned to Clydesdale Bank PLC, 30 St Vincent Place, Glasgow (the "Bank") all the Owners rights, title and interest in the subject matter of this Insurance in so far as it pertains to the vessel [ ] (the "Vessel") and accordingly:

- (a) All claims whether in respect of actual or constructive or compromised or arranged total loss and all claims in respect of a major casualty (that is to say any casualty the claim in respect of which exceeds 10% of the value of the Vessel inclusive of any deductible) shall be paid in full to the Bank.
- (b) All other claims hereunder shall be paid to the Owner or to his order, unless up until notice in writing that the Owners are in default under the First Statutory Mortgage has been received whereupon all such claims shall be paid to the Bank or to its order.
- (c) Clauses a) and b) shall not apply to any deduction of excess (deductible) as set out in the Policy Conditions and under the Collision and Protection and Indemnity clauses or the excess layers thereof where claims shall be negotiated and agreed between the Insurers and the Third Party involved direct and any payment which shall have been agreed to be paid shall be paid by the Insurer direct to the Third Party.

### SCHEDULE 3

to the foregoing Deed of Covenant  
between Clydesdale Bank PLC (the "Lender") and Clyde Marine Services Limited (the "Owner")

#### LETTER OF UNDERTAKING – HULL BROKERS

To:

Date: [\*\*]

"Dear Sirs

We confirm that we have effected insurance for the account of Clyde Marine Services Ltd, Victoria Harbour, Greenock, PA15 1HW (the Owner) as set out in Schedule 1 hereto.

Pursuant to instructions received from the Owner and in consideration of your approving our appointment as Underwriting Agent in connection with the insurances covered by this letter, we hereby undertake to:

- 1 Hold the Insurance Slips or Contracts, the Policies, when issued, and any renewals of such Policies or new Policies or any Policies substituted therefore and the benefit of the insurances thereunder to your order in accordance with the terms of the Loss Payable Clause set out in Schedule 2 hereto; and
- 2 Arrange for the said Loss Payable Clause to be included on the Policies when issued; and
- 3 Have endorsed on each and every Policy as and when the same is issued a Notice of Assignment in the form set out in Schedule 3 hereto dated and signed by the Owners and acknowledged by Underwriters in accordance with Market practice; and
- 4 Advise you immediately of any material changes which are proposed to be made in the terms of the insurances or if we cease to be the Owners Underwriting Agent for all purposes connected with the aforesaid insurances; and
- 5 Advise you not later than 14 days prior to the cancellation of any of the insurances aforesaid or within the terms of the policy if applicable.

Our above undertakings are given subject to our lien on the Policies for premiums due in respect of the insurances on the vessels shown in Schedule 1 and subject to our right of cancellation on default in payment of such premiums but we undertake to advise you immediately if any premiums are not paid to us by the due date and not to exercise such rights of cancellation without giving you fourteen days notice in writing, either by letter, facsimile or email and a reasonable opportunity of paying any premiums outstanding.

Notwithstanding the terms of the said Loss Payable Clause and the said Notice of Assignment, unless and until we receive notice from you to the contrary, we shall be empowered to arrange for a collision and/or salvage Guarantee to be given in the event of bail being required in order to prevent the arrest of the vessel or to secure the release of the vessel from arrest following a casualty. Where a Guarantee has been given as aforesaid and the guarantor has paid any sum under the Guarantee in respect of such claim, there shall be payable directly to the guarantor out of the proceeds of the said Policies a sum equal to the sum so paid.

Finally it is understood that all claims shall be collected through us as Underwriting Agent.

**SCHEDULE 1**

See copy of Marine Craft Policy enclosed in respect of [       ]

**SCHEDULE 2**

See Loss Payable Clause attached

**SCHEDULE 3**

See Notice of Assignment attached

Yours faithfully

