



Registration of a Charge

Company name: **KAMES FISH FARMING LIMITED**

Company number: **SC051158**

Received for Electronic Filing: **22/05/2020**



X95KFMOB

Details of Charge

Date of creation: **20/05/2020**

Charge code: **SC05 1158 0022**

Persons entitled: **BANK OF SCOTLAND PLC**

Brief description: **THE VESSEL 'HEATHER OF MELFORT' REGISTERED WITH THE REGISTRY OF SHIPPING AND SEAMEN IN CARDIFF, OFFICIAL NUMBER: 923315 REGISTERED IN THE NAME OF KAMES FISH FARMING LIMITED AT THE PORT OF GLASGOW. FOR MORE DETAILS PLEASE REFER TO THE INSTRUMENT.**

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:

BRODIES LLP



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 51158

Charge code: SC05 1158 0022

The Registrar of Companies for Scotland hereby certifies that a charge dated 20th May 2020 and created by KAMES FISH FARMING LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 22nd May 2020 .

Given at Companies House, Edinburgh on 26th May 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**

THIS DOCUMENT HAS BEEN PREPARED BY BRODIES LLP ON THE INSTRUCTIONS OF BANK OF SCOTLAND PLC. YOUR SIGNATURE ON THIS DOCUMENT MAY HAVE CERTAIN LEGAL CONSEQUENCES AND YOU SHOULD SEEK INDEPENDENT LEGAL ADVICE BEFORE SIGNING THIS DOCUMENT.

DEED OF COVENANT

by

KAMES FISH FARMING LIMITED

as Owner

in favour of

BANK OF SCOTLAND PLC

Certified a true copy save for the material redacted pursuant to s859G of the Companies Act 2006


Brodies LLP

Solicitors

22 May 2020

THIS DEED OF COVENANT is dated 20 MAY 2020 and is made as a deed between:

- (1) **KAMES FISH FARMING LIMITED**, (Company Number: SC051158), having its registered office at Kilmelford, By Oban, Argyll, PA34 4XA (the **Owner**); and
- (2) **BANK OF SCOTLAND PLC**, (Company Number SC327000) having its registered office at The Mound, Edinburgh EH1 1YZ (**BoS**).

BACKGROUND

- (A) BoS has agreed to provide the Owner with certain financial facilities.
- (B) It is a condition of those facilities being made available or to continue to be made available that the Owner grants a Mortgage in favour of BoS over the Vessel and enters into a deed of covenant in the form of this Deed.

AGREED TERMS

1. Definitions and interpretation

The definitions and rules of interpretation in this clause 1 apply in this Deed.

1.1 Incorporation of definitions

In this Deed:

Act	means the Insolvency Act 1986.
Approved Brokers	means the insurance brokers appointed by the Owner as at the date of this Deed or any other insurance brokers appointed by the Owner with BoS' prior written consent.
Business Day	means a day (other than a Saturday or Sunday) when the branch of BoS at which the Owner's account is located in the United Kingdom is open for business.
Charter	means any charter that may be entered into in relation to the Vessel from time to time in accordance with the provisions of this Deed and Charters shall be construed accordingly.
Charterer	means each counterparty to a Charter from time to time being.
Classification Society	Lloyds Register or such other classification society as may be approved in writing by BoS.
Compulsory Acquisition	means requisition by any governmental, state or other competent authority of title or other compulsory acquisition (otherwise than by requisition for hire).
Deed	means this Deed of Covenant.

Earnings

means all monies whatsoever from time to time arising out of the use or operation of the Vessel including (but without limiting the generality of the foregoing) all payments due to the Owner under any Charter from time to time, freight, hire and passage moneys, income arising under pooling arrangements, compensation payable in the event of requisition for hire, Requisition Compensation, remuneration for salvage and towage services, demurrage and detention moneys and damages for breach (or payment for variation or termination) of any Charter or other contract for the employment of the Vessel, and any sums recoverable under any loss of earnings insurance.

Environmental Claim

means (a) any claim by, or directive from, any applicable governmental, judicial or other regulatory authority alleging breach of, or non-compliance with, any Environmental Laws or Environmental Permits or otherwise howsoever relating to or arising out of an Environmental Incident or (b) any claim by any other third party howsoever relating to or arising out of an Environmental Incident (and, in each such case, **claim** shall mean a claim for damages, clean-up costs, compliance, remedial action or otherwise);

Environmental Incident

means:

- (a) any release, discharge, disposal or emission of Material of Environmental Concern by or from the Vessel;
- (b) any incident in which Material of Environmental Concern is released, discharged, disposed of, or emitted by or from a vessel other than the Vessel and which involves collision between the Vessel and such other vessel or some other incident of navigation or operation, in either case, where the Vessel, the Owner, any other person having control of the Vessel and/or any charterer or sub-charterer of the Vessel from time to time is or are actually or allegedly at fault or otherwise liable (in whole or in part); or
- (c) any incident in which Material of Environmental Concern is released, discharged, disposed of, or emitted by or from a vessel other than the Vessel and where the Vessel is actually or potentially liable to be arrested as a result and/or where the Owner, any other person having control of the Vessel and/or any charterer or sub-charterer of the Vessel from time to time is or are actually or

allegedly at fault or otherwise liable.

Environmental Law

means any applicable law or regulation which relates to:

- (a) the pollution or protection of the environment;
- (b) the conditions of a workplace; or
- (c) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to persons or the environment, including, without limitation, any waste.

Environmental Permits

means any permit and other authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the Vessel or the business of the Owner conducted on or from the properties or the Vessel owned or used by the Owner or the operation of the Vessel.

Event of Default

has the meaning given to such term in the relevant Facility Document.

Excess Risks

means the proportion (if any) of claims for general average, salvage and salvage charges not recoverable in consequence of the value at which the Vessel is assessed for the purpose of such claims exceeding her insured value.

Facility Document

means any facility letter, facility agreement, loan agreement or similar document entered into or to be entered into between BoS and the Owner documenting or evidencing the Secured Liabilities from time to time and **Facility Documents** shall be construed accordingly.

Flag State

means the United Kingdom or such other state or territory acceptable to and designated in writing by BoS, at the request of the Owner, as being the "Flag State" of the Vessel for the purposes of the Security Documents.

Insurance Documents

means all slips, cover notes, contracts, policies, certificates of entry or other insurance documents evidencing or constituting the Insurances from time to time in effect.

Insurance Policy

means, in respect of the Vessel the hull and machinery and protection and indemnity insurance policy (with policy number M005397) provided by Everard Insurance Brokers Ltd to the Owner.

Insurances

means the Insurance Policy, together with all other policies and contracts of insurance (which expression includes all entries relating to the Vessel in a protection

and indemnity or mutual hull or war risks association) or such other insurance arrangements which are from time to time in place or taken out or entered into by or for the benefit of the Owner in respect of the Vessel and her respective Earnings pursuant to clause 10.1 or otherwise and all benefits thereof (including all claims under the policies or whatsoever nature and contracts and return of premiums).

Insurers	means the underwriters, insurance companies, mutual insurance associations or other associations or companies with or by which the Insurances are effected.
ISM Code	means the International Safety Management Code for the Safe Operation of Vessels and for Pollution Prevention adopted by the International Maritime Organisation or any replacement of the said Code and any national enactment thereof.
ISPS Code	means the International Ship and Port Facility Security Code or any replacement of the said Code and any national enactment thereof.
ISSC	means a valid International Ship Security Certificate for the Vessel issued under the ISPS Code.
Loss Payable Clause	means the provisions regulating the manner of payment of sums receivable under the Insurances which are or are to be incorporated in the relevant Insurance Documents, such Loss Payable Clause to be in the form set out in Schedule 2.
Major Casualty	means any casualty to the Vessel or incident (other than a Total Loss) in respect of which the claim or the aggregate of the claims in respect of hull and machinery and war risks, before adjustment for any deductible exceeds £20,000 or the equivalent in any other currency.
Material of Environmental Concern	means chemicals, pollutants, contaminants, wastes, toxic or hazardous substances, oil, petroleum, oil and petroleum products and any other polluting substances, the release, discharge, disposal or emission of which into the environment would cause damage to the environment or is regulated, prohibited or penalised by or pursuant to any Environmental Law.
Mortgage	means the first statutory mortgage granted by the Owner to BoS in respect of the Vessel dated on or around the date of this Deed.
Party	means a party to this Deed.
Protection and Indemnity	means the usual risks covered by a protection and indemnity association which is a member of the

Risks	International Group of P & I Clubs including (but not limited to) the proportion (if any) not otherwise recoverable in the case of collision under the ordinary running-down clause, liability for third party risks and pollution liability.
Receiver	means an administrative receiver, receiver and manager or other receiver appointed pursuant to this Deed in respect of the Owner or over all or any of the assets mortgaged, charged or assigned by or pursuant to this Deed.
Requisition Compensation	means all compensation or other money which may from time to time be payable to the Owner as a result of requisition for title or other compulsory acquisition of the Vessel by any governmental, state or other competent authority (other than by way of requisition for hire).
Schedule	means the schedules to this Deed.
Secured Assets	means all or any part of or interest in the undertaking, property, rights and assets of the Owner which now or at any time hereafter are or are expressed to be the subject of any Security Right created or purported to be created by or pursuant to this Deed and/or the Mortgage.
Secured Liabilities	means all or any money and liabilities which shall from time to time (and whether on or at any time after demand) be due, owing or incurred in whatsoever manner to BoS by the Owner, whether actually or contingently, solely or jointly and whether as principal, guarantor, cautioner or surety including any money and liabilities of the Owner to a third party which have been assigned or novated to or otherwise vested in BoS, and including interest, discount, commission and other lawful charges or expenses which BoS may in the course of its business charge or incur in respect of any of those matters or for keeping the Owner's account, and so that interest shall be computed and compounded according to the usual BoS rates and practice as well after as before any demand made or decree obtained under or in relation to this Deed.
Security	means all or any of the Security Rights now or at any time hereafter created by or pursuant to this Deed and/or the Mortgage.
Security Document	means a document entered into or to be entered into between BoS and the Owner from time to time in terms of which the Owner grants Security Rights in favour of BoS and Security Documents shall be construed accordingly.

Security Period	means the period commencing on the date of this Deed and ending on the date on which the Secured Liabilities are paid in full to the satisfaction of BoS and BoS has no further obligation to provide credit facilities or other accommodation to the Owner.
Security Rights	means any mortgage, charge, standard security, right in security, security, pledge, lien, right of set-off, right to retention of title or other encumbrance, whether fixed or floating, over any present or future property, assets or undertaking.
SMC	means a valid Safety Management Certificate issued in respect of the Vessel under the ISM Code.
SMS	means the Safety Management System required in respect of the Vessel under the ISM Code.
Tonnage Certificate	means the tonnage certificate issued by or on behalf of the relevant authorities in the Flag State in respect of the Vessel.
Total Loss	<p>means, in relation to the Vessel:</p> <ul style="list-style-type: none"> (a) an actual, arranged, agreed, compromised or constructive total loss; (b) a Compulsory Acquisition; (c) the capture, seizure, arrest, detention or confiscation by any government or persons acting or purporting to act on behalf of any government, unless the Vessel be released to the Owner within one month (or such longer period as may be agreed by BoS) of such capture, seizure, arrest, detention or confiscation; or (d) any hijacking, theft, confiscation, condemnation, capture, restraint, disappearance or loss of possession of the Vessel, unless the Vessel be released to the Owner within one month (or such longer period as may be agreed by BoS) of such hijacking, theft, confiscation, condemnation, capture, restraint, disappearance or loss of possession of the Vessel.
Vessel	means the vessel currently know as "Ebbsfleet 1" and to be renamed by the Owner as "Heather of Melfort" registered on the UK Ship Register with Official Number: 923315 in the name of the Owner at the port of Glasgow, including all and any shares or interest therein and the hull, machinery, equipment, outfit, fuel, consumable and stores whether now owned or hereafter acquired by the Owner and all additions, improvements and

replacements hereafter made in or to the Vessel whether on board or offshore or any part thereof and/or the said equipment.

War Risks

means all risks excluded from hull and machinery marine risks policies by clause 24 of the Institute Time Clauses – Hulls (1.11.1995).

1.2 Interpretation

1.2.1 Unless a contrary indication appears, a reference in this Deed to:

- 1.2.1.1 any of the Parties to this Deed or any other person shall be construed so as to include its successors in title, permitted assigns or assignees and permitted transferees;
- 1.2.1.2 **assets** includes present and future properties, revenues and rights of every description;
- 1.2.1.3 this **Deed**, any **Mortgage**, the **Facility Documents** or any other deed, document, agreement or instrument is a reference to this Deed, that Mortgage, that Facility Document or other deed, document, agreement or instrument as amended, novated, supplemented, extended, restated or replaced in whole or in part;
- 1.2.1.4 **indebtedness** includes any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.1.5 a **person** includes any person, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- 1.2.1.6 a **Receiver** shall include references to joint receivers and any reference to the appointment of a person as receiver shall include a reference to the appointment of two or more persons as joint receivers;
- 1.2.1.7 a **company** includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.1.8 one gender shall include reference to the other gender;
- 1.2.1.9 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 of any regulatory, self-regulatory or other authority or organisation;
- 1.2.1.10 a provision of law is a reference to that provision as amended or re-enacted;
- 1.2.1.11 **document** includes any agreement, deed, instrument (including negotiable instrument) or other document of any kind;

- 1.2.1.12 a time of day is a reference to London time;
- 1.2.1.13 **writing** or **written** includes faxes but not e-mail;
- 1.2.1.14 any words following the terms **including**, **include**, **in particular**, or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.1.15 **disposal** includes a sale, transfer, assignation, grant, lease or other disposal, whether voluntary or involuntary (and **dispose** shall be construed accordingly);
- 1.2.1.16 the **winding up**, **dissolution**, or **administration** of a person shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such person is incorporated or established, or any jurisdiction in which such person carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, administration, arrangement, adjustment, protection or relief of debtors; and
- 1.2.1.17 clauses are to the clauses of this Deed.
- 1.2.2 Headings and sub-headings of this Deed are inserted for convenience only and do not affect the interpretation of this Deed.
- 1.2.3 Unless the context otherwise requires, words in the singular shall include the plural and *vice versa*.
- 1.2.4 Words defined in the Companies Act 1985 (as amended) or the Companies Act 2006, have the same meanings in this Deed.
- 1.2.5 Any obligation of the Parties not to do something shall include an obligation not knowingly to permit, suffer or allow the same.
- 1.2.6 An Event of Default is continuing if it has not been waived by BoS in writing.

2. Payment obligation

2.1 Covenant to pay

The Owner shall on demand in writing made to it pay or discharge the Secured Liabilities to BoS when the same are due and payable.

2.2 Interest

- 2.2.1 The Owner shall pay interest to BoS after as well as before judgment or decree or the liquidation or administration of the Owner, at the annual rate which is 2% above the rate otherwise payable in respect of the Secured Liabilities on all sums due by it under this Deed from the date such amount becomes due until such amount is irrevocably discharged and paid in full.

- 2.2.2 Interest under clause 2.2.1 shall accrue on a daily basis calculated by BoS upon such terms as BoS may from time to time determine and shall be compounded on the last Business Day of each month.

3. Mortgage, assignment and security

3.1 Mortgage and assignment

As a continuing security for the payment and discharge of the Secured Liabilities and the performance and discharge of the Owner's obligations under the Mortgage and this Deed, the Owner, as sole legal and beneficial owner with full title guarantee, hereby:

- 3.1.1 mortgages and charges all its right, title and interest present and future in and to the Vessel to BoS;
- 3.1.2 assigns and agrees to assign absolutely to BoS all its rights, title and interest in and to the Earnings, the Insurances and the Requisition Compensation in relation to the Vessel and all its benefits and interest present and future therein; and
- 3.1.3 covenants and agrees that the Vessel shall be held subject to the Mortgage as security for the payment of the Secured Liabilities so that the Mortgage thereby and hereby created shall be a continuing security, but this Deed shall continue in full force and effect notwithstanding the discharge of the Mortgage until the Secured Liabilities have been paid in full.

3.2 Use of Secured Assets

3.2.1 Earnings

- 3.2.1.1 BoS agrees and the Owner acknowledges that the Owner shall be entitled to receive the Earnings and may apply the Earnings received by it as it may decide in its discretion until such time as BoS (acting reasonably, in its sole discretion) serves a written notice on the Owner (a "Payment Notice") requiring the Earnings to be paid to it and/or otherwise as it may specify in the Payment Notice.
- 3.2.1.2 The Owner covenants with BoS, immediately upon receipt of a Payment Notice served in accordance with the terms of this Deed, to pay and/or procure the payment of the Earnings (without deduction or set-off) to such account as the Lender may specify in the Payment Notice, and covenants separately to serve such further written notice on any person from whom the Earnings are then payable as may be required to achieve same.
- 3.2.1.3 The Parties to this Deed accept, agree and acknowledge that any and all Earnings in the hands of the Owner's brokers, bankers or other agents as at the date of a Payment Notice shall be deemed to have been received by them on trust for, for the use of and on behalf of BoS.

3.2.2 Insurances

The Parties to this Deed accept, agree and acknowledge that:

3.2.2.1 unless and until an Event of Default shall occur, all claims and/or other moneys payable under the Insurances (or any one of them) shall be applied as follows:

- (a) all moneys payable under the Insurances, other than any moneys payable under any loss of earnings insurance, shall be payable in accordance with the terms of the relevant Loss Payable Clause; and
- (b) any moneys payable under any loss of earnings insurance shall be payable in accordance with the provisions of this Clause 3 as shall apply to Earnings.

BoS hereby agrees that, until such time as an Event of Default occurs, it will not give any notification to the Insurers (or any one of them) contrary to the terms of the relevant Loss Payable Clause.

3.2.2.2 Upon the occurrence of an Event of Default:

- (a) all claims and/or other moneys payable under the Insurances (or any one or part thereof) shall be payable to BoS and shall be applied in accordance with clause 5.5 below; and
- (b) BoS shall be entitled, but shall not be obliged, to serve a notice on the Insurers intimating the Event of Default and its rights and entitlements under this Clause 3.2.2.2.

3.3 Notices

- 3.3.1 The Owner covenants with BoS that, immediately upon execution of this Deed, it will give notice of assignment of the Insurances to the Insurers or the Approved Brokers in the relevant form set out in Schedule 1 and to procure that a notice of assignment and the relevant Loss Payable Clauses in the form of Schedule 2 are endorsed upon or attached to the Insurance Documents.
- 3.3.2 The Owner covenants with BoS that, upon entering into any new Insurances after the date of this Deed, it will give notice of assignment of those Insurances to the Insurers or the Approved Brokers in the relevant form set out in Schedule 1 and to procure that a notice of assignment and Loss Payable Clauses in the form of Schedule 2 (as may be relevant) or such other form as may be agreed between the Owner and BoS is endorsed upon or attached to the Insurance Documents.
- 3.3.3 The Owner covenants with BoS that, when so directed by BoS, it will give notice of the assignment of the Earnings to the Charterer under that Charter in the form of Schedule 3 and obtain an acknowledgement thereof addressed to BoS in the form of Schedule 3 or such other form as may be agreed between the Owner and BoS.
- 3.3.4 In the event of Compulsory Acquisition, the Owner undertakes to execute any further assignment or notice that BoS may request in relation to any Requisition Compensation and if received by the Owner to immediately pay such Requisition Compensation to BoS. All Requisition Compensation received by BoS shall be applied in accordance with clause 5.5 below.

4. Protection of Security

4.1 Continuing security

4.1.1 The Security is, and shall at all times be, a continuing security and shall secure the ultimate balance from time to time in respect of the Secured Liabilities and will remain in full force and effect until released or discharged in writing by BoS.

4.1.2 The Security will not be considered satisfied or discharged by any intermediate payment, discharge or satisfaction of the whole or any part of the Secured Liabilities.

4.2 No obligation to take other enforcement proceedings

4.2.1 BoS shall not be obliged before exercising any of the rights conferred on it by this Deed, the Mortgage or the Security or by law:

4.2.1.1 to make any claim or demand for payment and discharge of the Secured Liabilities on the Owner or any other person liable;

4.2.1.2 to resort to any guarantee or enforce any Security Right, or exercise any right of compensation or set-off or other means of payment, or to obtain or enforce any judgement, decree or order in any court against the Owner or any other person now or hereafter held by or available to it for payment and discharge of the Secured Liabilities;

4.2.1.3 to account for any money or other property received or recovered in consequence of any enforcement or realisation of any agreement relating to the Secured Liabilities, guarantee or other means of payment; or

4.2.1.4 to make or file any claim or prove in a winding up, liquidation, administration or other insolvency proceedings of the Owner or any other person.

4.2.2 For the avoidance of any doubt this Deed, the Mortgage and the Security shall operate to secure any new, additional, supplemental, amended or increased facilities provided by BoS to the Owner from time to time.

4.3 Waiver of defences

None of the liabilities and obligations of the Owner nor any of the rights, powers and discretions conferred upon BoS by this Deed, the Mortgage, any Facility Document, any Security Document or by law shall be reduced, discharged or otherwise adversely affected by any act, omission or circumstances which, but for this clause 4.3, might operate to release, reduce, discharge, impair or otherwise adversely affect such liabilities, obligations, rights, powers and discretions in whole or in part including (but without limitation) and whether or not known to the Owner or BoS:

4.3.1 any variation, extension, discharge, compromise, dealing with, exchange or renewal of, any Security Right or right or remedy which BoS may now or after the date of this Deed have from or against the Owner or any other person in connection with any of the Secured Liabilities;

- 4.3.2 any failure, act or omission by BoS or any other person in taking up, perfecting or enforcing any Security Right, indemnity, or guarantee from or against the Owner or any other person in respect of the Secured Liabilities;
- 4.3.3 any increase in or waiver or discharge of the Secured Liabilities or any termination, amendment, variation, novation, supplement, extension, restatement or replacement of any Facility Document or any other document or agreement relating to the Secured Liabilities (in each case, however fundamental and whether or not more onerous) including, without prejudice to the foregoing generality, any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any document or Security Right and any fees, costs and/or expenses associated with any of the foregoing;
- 4.3.4 any grant of time, indulgence, waiver or concession to the Owner or any other person;
- 4.3.5 any insolvency, bankruptcy, liquidation, administration, winding up, incapacity, limitation, disability, the discharge by operation of law, or any change in the constitution, name or style of the Owner or any other person;
- 4.3.6 any invalidity, illegality, unenforceability, irregularity or frustration of any actual or purported obligation of, or Security Right held from, the Owner or any other person in connection with the Secured Liabilities;
- 4.3.7 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Owner or any other person;
- 4.3.8 any claim or enforcement of payment from the Owner or any other person; or
- 4.3.9 any other act or omission by BoS or any other person which but for this provision might operate to exonerate or discharge the Owner or otherwise reduce, impair, extinguish or affect its liability or obligations under this Deed, the Mortgage or the Security or any of the rights, powers or remedies conferred upon BoS by this Deed, the Mortgage, the Security, any Facility Document or by law.

4.4 No waiver

Failure or delay on the part of BoS in exercising any right, power or discretion under or pursuant to this Deed or the Mortgage shall not operate as a waiver thereof, nor will any single or partial exercise of any such right, power or discretion preclude any other or further exercise thereof. The rights, powers and discretions contained in this Deed are in addition to and not in substitution for any right of set-off, compensation, retention, combination of accounts, lien or other right or remedy provided by law.

4.5 No prejudice

The Security constituted by this Deed and the Mortgage is in addition to and independent of and shall not affect nor be affected by or merge with or in any way prejudice or be prejudiced by any other judgment, Security Right, right or remedy obtained or held by BoS from time to time for the discharge and performance by the Owner of the Secured Liabilities and may be enforced independently of any such other Security Right.

4.6 Further assurance

The Owner shall, on demand and at its own expense, execute, deliver and perfect such documents or do any act or thing which BoS may reasonably require to:

- 4.6.1 perfect or protect this Deed and the Security created or intended to be created by this Deed and the Mortgage or its priority or any Security Right in favour of BoS given or arising pursuant to this Deed;
- 4.6.2 facilitate the realisation or application of the Secured Assets and the exercise of the rights, powers and discretions conferred on BoS under this Deed, the Mortgage, the Security or by law;
- 4.6.3 confer Security Rights on BoS over the Vessel located in any jurisdiction outside of the United Kingdom equivalent or similar to the Security intended to be conferred by or pursuant to this Deed, the Mortgage or by law; and/or
- 4.6.4 after the Security created by this Deed and the Mortgage has become enforceable pursuant to clause 5.1 (*Enforceable*), facilitate the realisation of the Secured Assets.

4.7 New accounts

- 4.7.1 At any time after BoS has received or is deemed to be affected by notice (whether actual or constructive) of the creation of any subsequent Security Right or other like interest, matter, event or transaction affecting any part of the Secured Assets or the proceeds of realisation, or this Deed, the Mortgage or the Security otherwise ceases for any reason whatsoever to be continuing, BoS may open a new account or accounts for the Owner in its books.
- 4.7.2 If BoS does not open a new account or accounts it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received such notice or at the time that the Security ceased to be continuing whether by termination, calling in or otherwise.
- 4.7.3 As from that time of opening or deemed opening of a new account or accounts, all payments made to BoS by or on behalf of the Owner shall be credited or be treated as having been credited to the new account or accounts and shall not operate to reduce the Secured Liabilities nor shall the liability of the Owner under this Deed, the Mortgage or the Security in any manner be reduced or affected by any subsequent transactions, receipts or payments.

5. Enforcement

5.1 Enforceable

The Security created by this Deed and the Mortgage shall be immediately enforceable (without notice) upon, or at any time after:

- 5.1.1 an Event of Default has occurred which is continuing; or
- 5.1.2 the Owner has failed to pay all or any of the Secured Liabilities on the date specified for payment thereof, or, following a demand for payment by BoS; or

- 5.1.3 the Vessel is arrested or any execution, diligence, distress or other legal process is levied or threatened to be levied against the Vessel; or
- 5.1.4 the Vessel is abandoned, lost, destroyed, captured, confiscated or the subject of Compulsory Acquisition; or
- 5.1.5 the Vessel shall lose the class which she had on the execution of this Deed and/or the Mortgage; or
- 5.1.6 following a survey or inspection of the Vessel, BoS shall discover any defect in the Vessel and BoS calls upon the Owner to repair and restore the same and the Owner fails to do so to the satisfaction of BoS within two months of such request; or
- 5.1.7 the Vessel becomes a Total Loss;
- 5.1.8 the Owner requesting the appointment of a Receiver, liquidator or administrator; or
- 5.1.9 the Owner breaches any of the provisions of this Deed or the Mortgage.

5.2 Powers of enforcement

At any time after the Security constituted by this Deed and/or the Mortgage has become enforceable, BoS shall have the right and power to put into force and exercise all rights, powers, discretions and remedies possessed by BoS pursuant to the terms of this Deed and which arise according to law as mortgagee of the Vessel and in particular (but without limitation) to:

- 5.2.1 take possession of the Vessel and exercise all the rights and powers of a mortgagee in law or otherwise provided that if BoS takes possession of the Vessel, BoS shall not be liable for any default or omission for which a mortgagee-in-possession would be liable;
- 5.2.2 institute legal proceedings to recover judgment against the Owner for the Secured Liabilities;
- 5.2.3 take over, commence or defend (using the Owner's name if necessary) any claims or legal or arbitration proceedings and to abandon, release or settle in any way any such claims or proceedings;
- 5.2.4 employ professional advisers and appoint agents;
- 5.2.5 appoint a person from time to time to act as a Receiver of the Vessel subject to the provisions of clause 6 whereupon the Receiver shall become a Receiver of the Vessel upon such terms as to remuneration and otherwise as BoS shall think fit and to remove a person so appointed and appoint another person in his place;
- 5.2.6 order the Vessel to proceed forthwith at the Owner's risk and expense to a port or place nominated by BoS and, if the Owner fails to give the necessary instructions to the master of the Vessel for any reason whatsoever, BoS shall have the right to give such instructions direct to the master;
- 5.2.7 sell, scrap, decommission or otherwise dispose of the Vessel or any shares therein (whether as a mortgagee, attorney-in-fact for the Owner or otherwise)

either by public auction or private contract and, if BoS considers it appropriate, on deferred terms of payment, BoS having power to make any such special conditions as it shall consider appropriate;

- 5.2.8 pending the sale of the Vessel, insure, manage, maintain, navigate, repair, demise, charter, operate, employ, lay up or otherwise use the Vessel for such time and upon such terms as BoS may consider as being to its advantage;
- 5.2.9 require all Earnings to be paid to BoS or as it may direct;
- 5.2.10 require all Insurance Documents and all claims correspondence and documents to be delivered to BoS or to the broker or adjuster nominated by it;
- 5.2.11 defend, discharge, compound, release or compromise all claims against the Owner in respect of the Secured Assets or any part thereof and/or the Requisition Compensation including (but not limited to) those which have given or may give rise to any charge or lien on the Secured Assets or any part thereof or which are or may be enforceable by proceedings against the Secured Assets or any part thereof;
- 5.2.12 recover, institute, pursue, discharge, compound, release or compromise all claims by the Owner in respect of the Vessel, the Earnings, the Insurances and/or the Requisition Compensation against the Insurers, any charterer or any other third party whatsoever;
- 5.2.13 generally enter into any transaction or arrangement of any kind and to do anything in relation to the Secured Assets which BoS may think fit; and
- 5.2.14 recover from the Owner on demand all losses, expenses and disbursements incurred by BoS in or about or incidental to the exercise by it of any of the rights and powers aforesaid.

BoS may exercise its rights and powers hereunder in such manner and at such times as BoS in its absolute discretion may decide and BoS shall not be answerable for any loss or damage occasioned by the exercise of such powers or resulting from any postponement thereof, except to the extent caused by wilful neglect or default or fraud of BoS or its officers, employees or agents.

5.3 BoS' rights of intervention

- 5.3.1 BoS shall without prejudice to its other rights and powers hereunder have the right (but be under no duty) at any time to take such action as it considers necessary for the purpose of protecting the Security created by the Mortgage and this Deed and the Owner shall pay to BoS on demand all amounts paid by BoS in providing such protection of the Security.
- 5.3.2 Without prejudice to the generality of clause 5.3.1:
 - 5.3.2.1 in the event of a default in compliance with the provisions of clause 10.1, BoS shall have the right to insure the Vessel as provided in clause 10.1 and to pay any unpaid premiums or calls then outstanding;
 - 5.3.2.2 in the event of a default in compliance with clause 11.1.3, clause 11.1.6 or clause 11.1.7, BoS shall have the right to pay and discharge all such

debts and liabilities and to take such action as it considers necessary for the purpose of securing the release of the Vessel;

5.3.2.3 in the event of a default in compliance with clauses 11.2.1 and 11.2.2, BoS shall have the right to effect such surveys and repairs as it considers necessary.

5.3.3 For the avoidance of doubt, in no circumstances whatsoever will BoS be under any liability to the Owner or any third party to pay any amount referred to in this clause 5.3 or otherwise (including unpaid premiums or calls) unless it has specifically agreed so to do in writing.

5.4 BoS' right to issue guarantees

BoS shall have the right (but be under no duty) at any time to issue a guarantee in respect of any liability of the Owner in relation to the Vessel and the Insurances and the Owner shall indemnify BoS on demand against all amounts actually or contingently due under any such guarantee.

5.5 Application of proceeds

All monies realised by BoS and/or a Receiver under this Deed or otherwise arising from the enforcement of the Security shall, subject always to clause 5.6 (*Monies on suspense account*) and clause 12 (*Discharge*), the claims of creditors ranking in priority to or *pari passu* with the claims of BoS under this Deed, and the terms of Section 60 of the Act, be applied in the following order of priority:

5.5.1 in or towards payment of all costs, charges, expenses, outgoings and remuneration of, and incidental to the appointment of, a Receiver or incurred by a Receiver in or about or in pursuance or purported pursuance of the exercise by a Receiver of its rights, powers and remedies under this Deed;

5.5.2 in or towards payment of or provision for all costs and expenses (including legal fees and any fees, costs and expenses arising from any actual or alleged breach by any person of any law or regulation, whether relating to the environment or otherwise) incurred by BoS under or in connection with this Deed, the Mortgage or the Security;

5.5.3 in or towards settlement of or provision for the Secured Liabilities in any order or manner which BoS may determine; and

5.5.4 following the irrevocable and unconditional repayment or satisfaction of the Secured Liabilities, in payment of the surplus (if any) to the Owner or any other person entitled to it.

5.6 Monies on suspense account

All monies received, recovered or realised by BoS or any Receiver under this Deed, the Mortgage or the Security (including the proceeds of any conversion of currency) may in the discretion of BoS be credited to any interest bearing suspense or impersonal account or accounts maintained with any bank, building society or financial institution as it considers appropriate and may be held in such account for so long as BoS may think fit pending their application from time to time (as BoS is entitled to do in its discretion) in or towards the discharge of any of the Secured Liabilities provided that if the aggregate of such monies so

placed to the credit of such suspense or impersonal account or accounts shall equal or exceed the Secured Liabilities, BoS shall, subject always to clause 12 (*Discharge*), forthwith apply the same towards settlement of the Secured Liabilities and save as provided herein, no Party will be entitled to withdraw any amount at any time standing to the credit of any suspense or impersonal account referred to above.

5.7 Liability of BoS

5.7.1 BoS shall not in any circumstances be liable to the Owner or any other person for any losses, damages, liabilities or expenses arising from or in connection with the application or enforcement of this Deed, the Mortgage or the Security or any realisation, appropriation or application of the Secured Assets or from any act, default or omission of BoS, or his or its officers, employees or agents in relation to the Secured Assets or otherwise in connection with this Deed, the Mortgage or the Security except to the extent caused by the gross negligence or wilful default of BoS or his or its officers, employees or agents.

5.7.2 Without prejudice to clause 5.7.1 above, if BoS enters into possession of the Secured Assets, it will not be liable to account as creditor in possession and may at any time at its discretion go out of such possession.

5.8 Third parties

5.8.1 No purchaser from or other person dealing with BoS or a Receiver in relation to the Secured Assets shall be concerned to enquire whether any of the powers exercised or purported to be exercised by BoS or a Receiver under this Deed, the Mortgage or the Security has become exercisable, whether any of the Secured Liabilities remains outstanding, or generally as to the propriety or validity of the exercise or purported exercise of any power hereunder and all protection afforded to purchasers by sections 104 and 107 of the Law of Property Act 1925 shall apply to any such person dealing with BoS or such receiver under this Deed.

5.8.2 The receipt or discharge of BoS shall be an absolute and conclusive discharge to any purchaser or other person dealing with BoS in relation to the Secured Assets and any such purchaser or third party shall not have any obligation to enquire after or see to the application of any payments made by it to BoS or at its direction.

6. Appointment of a Receiver

The appointment of any Receiver pursuant to clause 5 shall be deemed to be subject to the following provisions.

6.1 The Receiver shall be the Owner's agent and the Owner alone shall be responsible for his acts, defaults and remuneration.

6.2 Neither BoS nor any Receiver shall be liable to account as a mortgagee in possession of the Vessel and neither BoS nor any Receiver shall be liable for any loss arising from or in connection with the realisation of the Vessel or otherwise for any act, neglect, default or omission for which a mortgagee in possession might be liable as such.

6.3 Any Receiver so appointed shall be the Owner's agent for all purposes and shall have power:-

6.3.1 to take possession of the Vessel;

- 6.3.2 to sell the Vessel or dispose of her or concur in so doing or otherwise deal therewith on such terms in BoS' interest as he shall think fit. Any sale or disposal may be for cash or on hire purchase or credit sale terms or for such other terms as BoS may determine;
- 6.3.3 to carry any such sale or disposal into effect by delivering, conveying or assuring the Vessel sold in the Owner's name and on the Owner's behalf; and
- 6.3.4 to make arrangements or compromise which he shall think expedient;

PROVIDED ALWAYS that nothing herein contained shall make BoS liable to any such Receiver as aforesaid in respect of his remuneration costs, charges or expenses or otherwise.

- 6.4 The foregoing provisions shall take effect by way of variation and extension of Section 101 and 104 to 109 (inclusive) of the Law of Property Act 1925 and the provisions of these sections and the powers conferred on a mortgagee or Receiver by these sections as so varied and extended shall apply to and be exercisable by any such Receiver as aforesaid as far as applicable.

7. Power of attorney

7.1 Appointment

By way of security for the obligations of the Owner under this Deed and the Mortgage, the Owner irrevocably appoints BoS, any Receiver appointed pursuant to this Deed and any person nominated by BoS, to be its attorney on its behalf or in its name or otherwise, at such times and in such a manner as the attorney may think fit to execute and do all such assurances, acts and things which the Owner is required to do under this Deed or the Mortgage and generally in its name and on its behalf to exercise all or any of the rights, powers and discretions conferred by or pursuant to this Deed or the Mortgage or by statute on BoS and to sign, execute, seal and deliver and otherwise perfect any deed, assurance, agreement, instrument or act which it or he may reasonably deem proper in or for the purpose of exercising any such powers, authorities and discretions.

7.2 Ratification

The Owner hereby ratifies and confirms and agrees to ratify and confirm whatever any such attorney appointed under clause 7.1 (*Appointment*) shall do or purport to do in the exercise or purported exercise of all or any of the powers, authorities and discretions referred to in such clause.

7.3 Exercise of power

The appointment effected under clause 7.1 (*Appointment*) shall take effect immediately, but the powers conferred shall only become exercisable upon this Deed becoming enforceable or if the Owner does not fulfil any of its obligations under clause 4.6 (*Further Assurance*) within 5 Business Days of notice from BoS to do so.

8. Redemption of prior security

8.1 Redemption

BoS shall be entitled at any time:

- 8.1.1 to redeem any prior Security Right over the Secured Assets; and/or
- 8.1.2 to procure the transfer of such Security Right to itself or its nominee; and/or
- 8.1.3 to settle and pass the accounts of the party or parties entitled to any such prior Security Right and any accounts so settled and passed shall, save for manifest error, be conclusive and binding on the Owner.

8.2 Costs and expenses

The Owner shall pay BoS, immediately on demand, the costs and expenses properly and reasonably incurred by BoS in connection with any such redemption and/or transfer, including the payment of any principal or interest, and these shall be Secured Liabilities.

9. Representations and warranties

9.1 Representations and warranties

The Owner represents and warrants to BoS that:

- 9.1.1 it is the sole legal and beneficial owner of the Vessel;
- 9.1.2 the Vessel is not subject to any Charter or other contract for her letting or to any agreement to enter into any such Charter or contract which, if entered into after the date of this Deed, would have required the consent of BoS, or to any agreement or arrangement whereby the Earnings in respect of the Vessel may be shared with any other person;
- 9.1.3 the flag of the Vessel is United Kingdom and the port of the Vessel is Glasgow;
- 9.1.4 this Deed creates those first priority security interests it purports to create and is not liable to be avoided or otherwise set aside on its liquidation or administration or otherwise;
- 9.1.5 the Owner has complied with the provisions of all Environmental Laws relevant to its operation of the Vessel;
- 9.1.6 the Owner has obtained all Environmental Permits and is in compliance with all such Environmental Permits;
- 9.1.7 save as disclosed in writing to BoS, the Owner has received no notice of any Environmental Claim that alleges that the Owner is not in compliance with any Environmental Law or any Environmental Permit;
- 9.1.8 save as disclosed in writing to BoS, there is no Environmental Claim pending against the Owner and/or the Vessel;
- 9.1.9 save as disclosed in writing to BoS, no Environmental Incident which could or might give rise to any Environmental Claim has occurred;
- 9.1.10 the Owner has complied with the requirements of the ISM Code and the ISPS Code in respect of itself and the Vessel;

- 9.1.11 the Owner, or any manager, charterer, sub-charterer of, and/or any person operating, the Vessel from time to time holds a valid Document of Compliance (if applicable) and a valid SMC has been duly issued to the Vessel pursuant to the ISM Code and a valid ISSC has been duly issued to the Vessel pursuant to the ISPS Code;
- 9.1.12 a copy of the relevant Document(s) of Compliance (if applicable) and the original relevant Safety Management Certificate are kept on board the Vessel; and
- 9.1.13 all Insurances are in full force and effect, and to the best of the Owner's knowledge and belief, no event or circumstance has occurred, nor has there been any omission to disclose a fact, which would in either case entitle any Insurer to avoid its liability or otherwise reduce its liability.

9.2 Repetition of representations and warranties

The representations and warranties set out in clause 9.1 (*Representations and warranties*) shall be given on the date on which the Owner executes this Deed and the Mortgage and shall be deemed to be repeated on and as of each day from the date of this Deed until all the Secured Liabilities have been repaid and discharged in full in each case by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

10. Insurances

10.1 Insurance policies

- 10.1.1 The Owner hereby covenants with BoS during the Security Period that it will insure and keep the Vessel insured free of cost and expense to BoS in the name of the Owner or, if so required by BoS, in the joint names of the Owner and BoS (but without liability on the part of BoS for premiums or calls):
 - 10.1.1.1 the hull and machinery of the Vessel against fire and all usual marine hull and machinery risks and perils (including Excess Risks) and War Risks, on an agreed value basis, in an amount not less than the full market value of the Vessel for the time being or such other amount as BoS may specify (acting reasonably);
 - 10.1.1.2 against usual Protection and Indemnity Risks in respect of the operation of the Vessel and against loss of earnings (as approved in writing by BoS) and on such terms as shall from time to time be approved in writing by BoS;
 - 10.1.1.3 with mortgagee's interest insurance for BoS in an amount as BoS may specify (acting reasonably);
 - 10.1.1.4 against liability for claims in connection with any persons on board the Vessel at any time;
 - 10.1.1.5 against general third party risks;
 - 10.1.1.6 for employers liability to the extent required of any employer in the United Kingdom;

10.1.1.7 against Environmental Incidents; and

10.1.1.8 if (notwithstanding the provisions of clause 10.1.1.7 of this Deed) the Vessel enters the territorial waters of the United States of America (or any other jurisdiction having legislation similar to the US Oil Pollution Act 1990), against such risks as may be necessary in order to obtain a Certificate of Financial Responsibility from the United States Coastguard or the equivalent certificate required by the relevant authority of such other jurisdiction,

or such other or additional Insurances as BoS may reasonably deem to be necessary or advisable from time to time, acting upon the advice of an insurance broker skilled and experienced in marine insurance for vessels such as the Vessel, in each case:

10.1.1.9 for such levels and on such terms acceptable to BoS having regard to the insurances as would usually be maintained by prudent businesses carrying on the same or substantially similar activities as the Owner and for vessels of the same or substantially the same type, size and nature as the Vessel and operating in the same jurisdictions as the Vessel, and as are deemed adequate for the business of the Owner and the Vessel by a reputable firm of insurance brokers acceptable to BoS; and

10.1.1.10 subject to any statutory provisions relating to the provision of such insurances by which Insurers are bound.

10.2 Insurance covenants

The Owner further covenants with BoS during the Security Period that it will:

10.2.1 effect the Insurances in pounds sterling or such other currency as BoS may approve in writing from time to time;

10.2.2 effect the Insurances through the Approved Brokers in such amounts, upon such terms with such Insurers as shall from time to time be approved in writing by BoS provided, however, that the insurances against War Risks and Protection and Indemnity Risks may be effected by the entry of the Vessel with such War Risks and Protection and Indemnity Risks associations (or other underwriters) as shall from time to time be approved in writing by BoS;

10.2.3 arrange renewal of each of the Insurances at least 10 Business Days before it expires and to procure that the Approved Brokers or the Insurers promptly confirm in writing to BoS (with the relevant renewal details) as and when each such renewal is effected;

10.2.4 punctually to pay all premiums, calls, contributions or other amounts payable in respect of the Insurances and to produce all relevant receipts or other evidence when so required in writing by BoS;

10.2.5 arrange for the execution of such guarantees or other documents as may from time to time be required by the protection and indemnity or war risks association in connection with the Insurances or any underwriters or insurers for, or for the continuance of, cover;

- 10.2.6 procure that the Insurance Documents are deposited with the Approved Brokers and that such brokers provide BoS with certified copies thereof and use its best endeavours to procure that such brokers issue to BoS a letter or letters of undertaking in such form as BoS may reasonably request;
- 10.2.7 procure that the protection and indemnity and/or war risks associations or underwriters in which the Vessel is entered or with which it is insured provide BoS with a copy of the certificate of entry and use its best endeavours to procure that such associations provide BoS with a letter or letters of undertaking in such form as BoS may reasonably request;
- 10.2.8 procure that the Insurance Documents provide that any lien or set-off for unpaid premiums or calls that the Approved Brokers or the Insurers may have is limited to the premiums or calls due in relation to the Insurances on the Vessel;
- 10.2.9 not employ the Vessel or suffer the Vessel to be employed otherwise than in conformity with the terms of the Insurances (including any rules, instructions and warranties express or implied therein) without first obtaining the consent of the insurers and BoS to such employment and complying with such requirements as to extra premium or otherwise as the Insurers may prescribe;
- 10.2.10 procure that the interest of BoS is endorsed or noted on all Insurance Documents (whether effected through Approved Brokers or not) and that the Loss Payable Clauses and notice of assignment in such form as shall from time to time be approved by BoS is incorporated/attached, and that BoS is furnished with certified copies thereof;
- 10.2.11 procure that any protection and indemnity and/or war risks associations or underwriters in which the Vessel is for the time being entered or with which it is insured shall endorse the Loss Payable Clauses on the relevant certificate of entry or policy;
- 10.2.12 use best endeavours to procure that the Insurers and/or the Approved Brokers undertake to give:
 - 10.2.12.1 written notice to BoS immediately of any material change in the terms and conditions of the Insurances or any suspension, cancellation or termination of the Insurances;
 - 10.2.12.2 in the event of the non-payment of the premiums or calls the right for BoS to pay the unpaid premium or calls within a reasonable time; and
 - 10.2.12.3 10 Business Days' prior written notice to BoS in the event of the non-renewal of the Insurances;
- 10.2.13 promptly to provide BoS with full information regarding any casualties or damage to the Vessel as a result of which the Vessel has become or may become a Total Loss;
- 10.2.14 if and when so requested by BoS (but no more frequently than annually), at the cost of the Owner, furnish BoS with a detailed report prepared by an independent firm of marine insurance brokers skilled and experienced in marine insurance for vessels such as the Vessel appointed by BoS on the adequacy of the insurances maintained on the Vessel and stating the opinion of marine insurance brokers as to the adequacy thereof;

- 10.2.15 not do any act nor permit any act to be done as a result of which any Insurance shall or may be withdrawn, cancelled, imperilled, prejudiced, suspended or avoided in any way whatsoever and not to permit the Vessel to engage in any voyage nor to carry any cargo not permitted under the Insurances in effect without first placing insurances on the Vessel in the amount stated in clause 10.1 in terms satisfactory to BoS for such voyage or the carriage or such cargo;
- 10.2.16 (without limitation to the generality of the foregoing) not permit the Vessel to enter or trade to any zone which is declared a war zone by the Vessel's War Risks Insurers unless BoS shall first have given its consent in writing and the Owner shall have given notice to the War Risks Insurers and paid any additional premium in order to maintain the Insurances on the Vessel whilst trading in such war zone; and
- 10.2.17 should the Vessel be laid up for any period in excess of 10 Business Days, to 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 BoS.

10.3 Insurance claims

- 9.3.1 The Owner hereby authorises BoS to collect, sue for recovery and give good discharge for all or any of the claims under the Insurances and Insurance Documents and to compromise any such claim or otherwise deal with such claims on such terms as BoS shall deem appropriate.
- 10.3.2 Any sums received by BoS in respect of any such claim or claims shall after deducting commissions, brokerage fees and any other costs or charges legal or otherwise incurred in the recovery of such monies be applied as follows;
 - 10.3.2.1 any monies payable in respect of an actual or constructive or compromised or arranged Total Loss shall be received by BoS and applied in accordance with clause 5.5. If such monies are insufficient to discharge the total amount due hereunder then the Owner will forthwith pay to BoS the difference between the total amount due in respect of the Secured Liabilities and the amount of the insurance monies received by BoS; and
 - 10.3.2.2 any monies payable in respect of any loss or damage not amounting to a Total Loss shall be received by BoS and shall if no Event of Default has been made by the Owner under any Facility Document be handed over to the Owner as and when the Vessel has been properly restored to her former condition to BoS' satisfaction and all costs and charges of such restoration have been fully paid by the Owner but otherwise such amount shall be retained by BoS. Any shortfall of such funds shall be made up from the Owner's own resources.
- 10.3.3 If the Owner receives any insurance monies paid under the Insurances, the Owner will forthwith pay such sums to BoS.

11. Owner's covenants

11.1 Registration and security

The Owner covenants with BoS that during the Security Period it will:

- 11.1.1 keep the Vessel registered with full registration in the name and in the ownership of the Owner as a British vessel in the United Kingdom at Glasgow or such other UK port as BoS may approve in writing (such approval not to be unreasonably withheld or delayed) and not do or permit to be done anything whereby such registration may be forfeited or imperilled and to procure the renewal of such registration of the Vessel as a British vessel in the United Kingdom with full registration at least 1 (one) month before the same shall expire;
- 11.1.2 maintain the corporate existence of the Owner under the laws of Scotland and comply with all relevant legislation applicable to the Owner;
- 11.1.3 pay when due and payable all taxes, assessments, levies, governmental charges, fines and penalties lawfully imposed on or enforceable against the Vessel;
- 11.1.4 not sell, transfer, mortgage, charge, hypothecate, abandon (save in the case of maritime necessity) or otherwise dispose of the Vessel or any share or interest therein nor assign the Earnings, Insurances or Requisition Compensation in respect of the Vessel to any third party without the prior written consent of BoS, which it shall have full power to withhold;
- 11.1.5 not cause or permit the Vessel to be operated in any manner not covered by the Insurances and contrary to law and procure that any company or person who is operator of the Vessel is a qualified person within the meaning of The Merchant Shipping Act 1995 contrary to law and not to engage in any unlawful trade or carry any cargo that will expose the Vessel or its cargo to penalty, forfeiture or capture and in the event of hostilities in any part of the world (whether a war be declared or not) not employ the Vessel or permit its employment in carrying any contraband goods;
- 11.1.6 not create or permit to be created or continued any lien or encumbrance (except the Mortgage and this Deed or as permitted by the terms of the Facility Documents) whatsoever on the Vessel, the Earnings, the Insurances or the Requisition Compensation in respect of the Vessel and discharge or satisfy all claims and demands which if unpaid might in law or by statute or otherwise create a lien or encumbrance on the Vessel other than a lien for salvage charges, or repair, or collision, or a lien for crew's wages earned on the voyage then in progress;
- 11.1.7 if any writ or proceedings shall be issued against the Vessel or if the Vessel shall be otherwise attached, arrested or detained by any proceeding in any court or tribunal or by any government or other authority, immediately notify BoS thereof by telex, e-mail or facsimile confirmed by letter and as soon as practicably possible and thereafter cause the Vessel to be released and all liens or encumbrances thereon (except for the Mortgage and this Deed or as permitted by the terms of a Facility Document) to be discharged;
- 11.1.8 on the written request of BoS, provide satisfactory evidence that the wages, allotments, insurance and pension contributions of the master and crew of the Vessel are being paid in accordance with the articles or agreement relating to the Vessel and the relevant regulations, and that all deductions from the remuneration of the master and crew in respect of any tax liability (including PAYE) and national insurance contributions are being made and accounted for to the relevant authority and that the master has no claim for disbursements other than those properly

incurred by him in the ordinary trading of the Vessel on the voyage then in progress;

- 11.1.9 not without the prior written consent of BoS (such consent not to be unreasonably withheld) voyage or time charter the Vessel or arrange that the Vessel be placed under contract for employment for any period which, when aggregated with any optional periods or extensions contained in the said charter, would exceed 12 months or be at a hire or freight rate below the market rate;
- 11.1.10 not without the prior written consent of BoS demise charter the Vessel for any period whatsoever;
- 11.1.11 if BoS reasonably so requires at any time and from time to time, procure that the Vessel shall be valued in pounds sterling by two firms of shipbrokers, one nominated by BoS and the other nominated by the Owner with BoS' prior approval (not to be unreasonably withheld), such valuations to be made without physical inspection (unless otherwise reasonably required by BoS) and on the basis of an arm's-length purchase by a willing buyer from a willing seller and without taking into account any charterparty; the fees of the firms of shipbrokers appointed to give such valuations and all other costs arising in connection with the obtaining of any such valuations shall be paid by the Owner but no more than one per year or if an Event of Default is continuing or BoS reasonably suspects that an Event of Default is continuing; and the value of the Vessel shall be deemed to be the average of the two valuations so obtained;
- 11.1.12 in the event of requisition of the Vessel by any government authority or other competent authority, execute any assignment or assignation that BoS may request in relation to any Requisition Compensation and, if received by the Owner, pay such Requisition Compensation immediately to BoS;
- 11.1.13 execute and deliver to BoS such documents of transfer as BoS may require in the event of sale of the Vessel pursuant to any power of sale contained in this Deed or which BoS may have in law;
- 11.1.14 execute any further document or documents as BoS may require in order to complete and give effect to the security created by the Mortgage and this Deed;
- 11.1.15 in the event that any term or condition of this Deed is rendered or declared invalid or unenforceable in whole or in part by any statute, rule or regulation or any decision of any court or tribunal of competent jurisdiction, which determination or declaration shall not affect the validity of any other term or condition of this Deed which will remain in full force and effect, (in addition to the duties imposed by clause 11.1.14) to execute such further document or documents as BoS may reasonably require to complete and give effect to the security created by this Deed;
- 11.1.16 on request by BoS, provide BoS with a schedule setting out the details of all charters in place for the Vessel; and
- 11.1.17 not without the prior written consent of BoS, to enter into any agreement or arrangement whereby the Earnings in relation to the Vessel may be shared with any other person (excluding chartering commission and/or management fees).

11.2 Operational covenants

The Owner further covenants with BoS that during the Security Period it will:

- 11.2.1 at all times at its own expense maintain and operate the Vessel in a seaworthy condition and in good running order and repair in accordance with first-class ship ownership and ship management practice and keep the Vessel in such condition as will entitle it to the appropriate classification with the relevant Classification Society free from outstanding recommendations or notations and at the written request of BoS provide BoS with a certificate issued by the relevant Classification Society confirming that such classification is maintained and with copies of all other classification and international trading certificates as BoS may request in writing;
- 11.2.2 submit the Vessel regularly to such periodical or other surveys as may be required for classification and Flag State purposes and, if so requested by BoS in writing, provide BoS with copies of all survey reports issued as a result;
- 11.2.3 notify BoS immediately upon becoming aware of same, by telex, e-mail or facsimile confirmed by letter of any recommendation or requirement imposed by any Classification Society, the Insurers or any other competent authority that is not complied with in accordance with its terms;
- 11.2.4 permit BoS by surveyors or other persons appointed by it for such purpose to board the Vessel at all reasonable times for the purpose of inspecting her and to afford all proper facilities for such inspections and for this purpose give BoS reasonable advance notice, except in the case of emergency, when notice shall be given as soon as reasonably practicable, of any intended drydocking or underwater survey of the Vessel (whether for the purpose of classification, survey or otherwise) including details of any budget, costing, tender and expenses incurred or likely to be incurred thereby;
- 11.2.5 forthwith on demand reimburse to BoS all costs, charges and expenses incurred by BoS for the purposes of ascertaining the condition of the Vessel. If on making any such inspection as aforesaid BoS shall discover any defect in the Vessel, BoS may call upon the Owner to repair and restore the same and if within two months such defect is not repaired or restored to BoS' satisfaction then BoS shall have the right (but not be obliged) to repair or restore such defect or to employ others to carry out such work and all sums so expended by BoS shall be paid by the Owner to BoS on demand;
- 11.2.6 not without notice to BoS deliver the Vessel into the possession of a shipyard for effecting repairs or renewals to the Vessel;
- 11.2.7 not remove or permit the removal of any part of the Vessel or any equipment belonging to the Vessel, nor make or permit to be made any alteration in the structure, type or speed of the Vessel which materially reduces the value of the Vessel (unless such removal or alteration is required by statute or by the relevant Classification Society) without the prior written consent of BoS, such consent not to be unreasonably withheld or delayed;
- 11.2.8 not initiate or commence installation on the Vessel any equipment owned by a third party which cannot be removed without cost and without damage to the structure or fabric of that Vessel or impairing its fitness for hire or employment by charterers such as the relevant Charterer;

- 11.2.9 at all reasonable times when the Vessel is in port, permit BoS or its authorised representative full and complete access to the Vessel for the purpose of inspecting the state and condition of the Vessel and its cargo and papers and, if so requested by BoS, deliver for inspection copies of any and all contracts and documents relating to the Vessel whether on board or not;
- 11.2.10 promptly provide BoS with any information requested by BoS concerning the classification, condition, insurance, employment and the position of the Vessel;
- 11.2.11 at all times comply with all legal requirements whether imposed by international convention, statute, regulation, common law, the Insurances or otherwise (including without limitation all Flag State and classification requirements) in relation to the operation of the Vessel and have on board the Vessel as and when legally required valid certificates showing compliance with such requirements;
- 11.2.12 comply with, and use best endeavours to ensure that all servants and agents of the Owner comply with, all Environmental Laws relating to the use, operation and/or management of the Vessel and to immediately notify BoS of any breach or alleged breach of any Environmental Laws coming to the attention of the Owner or any claim being made as a consequence of such a breach or alleged breach;
- 11.2.13 maintain in force and in date all certificates, licences and other permissions and systems necessary for the Vessel to maintain the Insurances and to secure employment and to be employed by charterers such as the Charterers including, without limitation, safety construction, safety radio and safety equipment certificates, SMS, SMC and the ISSC, Tonnage Certificate, and any and all other such documents, certificates and licences;
- 11.2.14 without prejudice to clause 11.2.11, comply with the requirements of the ISM Code and ensure that the Vessel is operated by the Owner in accordance with a valid document of compliance (if applicable) and ensure that the Vessel is in possession of a valid SMC;
- 11.2.15 not appoint a manager of the Vessel other than the Owner, without BoS' prior written consent;
- 11.2.16 duly perform and discharge all duties and liabilities imposed on the Owner under each of the Charters and any other charter, bill of lading or contract relating to the Vessel;
- 11.2.17 comply, or use best endeavours to procure that any charterer or sub-charterer or any other person having control of the Vessel from time to time complies in material respects with all Environmental Laws relating to the Vessel including, without limitation, any requirements of such laws relating to manning and establishment of financial responsibility to the extent that breach of any such Environmental Laws could or might materially affect the interests of BoS and obtain and comply with, and use best endeavours to procure that, any charterer or sub-charterer and any other person having control of the Vessel from time to time obtains and complies in material respects, with, all Environmental Laws;
- 11.2.18 notify BoS forthwith upon the Owner becoming aware of:
 - 11.2.18.1 any Environmental Claim against the Owner, any charterer or sub-charterer and/or any other person having control of the Vessel; and

11.2.18.2 any Environmental Incident occurring which may give rise to an Environmental Claim,

and keep BoS advised in writing on such regular basis and in such detail as BoS shall reasonably require of the nature of such Environmental Claim or Environmental Incident and the proposed and actual response of the Owner, any charterer or sub-charterer or any other person having control of the Vessel from time to time;

11.2.19 without prejudice to the generality of clause 11.2.11 comply, or use best endeavours to procure that any charterer or sub-charterer and/or any person having control of the Vessel from time to time will comply, with the ISM Code and the ISPS Code and, without prejudice to the generality of the foregoing, at all times:

11.2.19.1 procure that an SMS is properly maintained on the Vessel;

11.2.19.2 hold, or procure that any charterer or sub-charterer and/or any person having control of the Vessel from time to time holds, a valid document of compliance (if applicable) duly issued to the Owner or (as the case may be) any charterer or sub-charterer and/or any person having control of the Vessel from time to time and a valid SMC is duly issued to the Vessel pursuant to the ISM Code;

11.2.19.3 upon request by BoS, provide BoS with copies of any such document of compliance and SMC as soon as the same are issued;

11.2.19.4 keep, or use best endeavours to procure, as appropriate, that there is kept, on board the Vessel a copy of any such document of compliance and the original of any such Safety Management Certificate;

11.2.19.5 hold, or use best endeavours to procure that any charterer or sub-charterer and/or any person having control of the Vessel from time to time holds, a valid and current ISSC and, upon written request, provide a copy to BoS; and

11.2.19.6 inform BoS immediately upon the Owner becoming aware should the document of compliance and/or SMC and/or ISSC be cancelled, rescinded, suspended or amended in any material way;

11.2.20 promptly pay and discharge all debts, damages, liabilities and outgoings whatsoever which have given or may give rise to maritime, statutory or possessory liens on, or claims enforceable against the Vessel, or any part thereof and, in the event of a writ or libel being filed against the Vessel or any part thereof and, or of any of the same being arrested, attached or levied upon pursuant to legal process or purported legal process or in the event of detention of the Vessel in exercise or purported exercise of any such lien or claim as aforesaid, procure the release of that Vessel from such arrest, detention attachment or levy or, as the case may be, the discharge of the writ or libel forthwith upon receiving notice thereof by providing bail or procuring the provision of security or otherwise as the circumstances may require;

- 11.2.21 furnish BoS promptly with all such information as it may from time to time reasonably require regarding the Vessel, her employment, position and engagements, particulars of all towages and salvages and copies of all charters and other contracts for her employment or otherwise howsoever concerning her;
- 11.2.22 notify BoS forthwith of:
 - 11.2.22.1 any damage to the Vessel requiring repairs the cost of which will or might exceed the Major Casualty figure or the equivalent in any other currency;
 - 11.2.22.2 any occurrence in consequence of which the Vessel has or may become a Total Loss;
 - 11.2.22.3 any requisition of the Vessel for hire;
 - 11.2.22.4 any change to the Vessel's classification whether proposed or effected; or
 - 11.2.22.5 any arrest or detention of the Vessel or any exercise or purported exercise of a lien or other claim on the Vessel or any part thereof; and
- 11.2.23 promptly pay all tolls, dues and other outgoings whatsoever in respect of the Vessel and keep proper books of account in respect of the Vessel and, as and when BoS may so require, make such books available for inspection on behalf of BoS and furnish satisfactory evidence that the wages and allotments and the insurance and pension contributions of the master and crew are being promptly and regularly paid and that all deductions from crew's wages in respect of tax liability are being properly accounted for and that master has no claim for disbursements other than those incurred by him in the ordinary course of trading on the voyage then in progress.

11.3 Charters

Throughout the period of each Charter, the Owner will:

- 11.3.1 do and permit to be done every act or thing which BoS may from time to time lawfully require to be done for the purpose of enforcing BoS' rights under the assignment contained in clause 3.1.2 and will allow the Owner's name to be used as and when required by BoS for that purpose;
- 11.3.2 procure that all Earnings are paid into an account of the Owner with BoS; and
- 11.3.3 not without the prior written consent of BoS:
 - 11.3.3.1 assign or otherwise dispose of the Owner's rights and obligations under the relevant Charter;
 - 11.3.3.2 enter into any agreement or arrangement whereby any Earnings may be shared with any other person (excluding brokers commission and management fees);

- 11.3.3.3 agree to any material variation of the relevant Charter or grant any consent, in respect of any material matters under the relevant charter, which may be required from the Owner under the relevant Charter;
- 11.3.3.4 release any Charterer from any of its material obligations under the relevant Charter or waive any breach of such material obligations or consent to any act or omission of the relevant Charterer which would otherwise constitute such a breach; or
- 11.3.3.5 terminate any Charter for any reason whatsoever, provided always that any termination of a Charter by the Owner after such consent is given shall (as the Owner hereby acknowledges) be without responsibility on the part of BoS who shall be under no liability whatsoever if such termination is subsequently judged to constitute a repudiation of the Charter by the Owner.

12. Discharge

12.1 Discharge

When the Secured Liabilities have been irrevocably paid or discharged in full to the satisfaction of BoS and BoS has no further obligation to provide credit facilities or other accommodation to the Owner or, if BoS so agrees, at any other time, BoS shall, subject to the provisions of clause 12.3 (*Avoidance of payments*), at the request and cost of the Owner, execute such documents as may be required to discharge this Deed and the Mortgage and discharge, re-transfer and/or re-assign any other Security created over the Secured Assets (or any of them) by this Deed or the Mortgage.

12.2 Retention of Deed

Any payment or realisation in respect of the Secured Liabilities which, in the reasonable opinion of BoS, is liable to be avoided or otherwise invalidated or adjusted by law, including any enactment or rule of law relating to insolvency, shall not be regarded as having been irrevocably settled or discharged until the expiry of the period during which it may be challenged on any such ground and BoS shall be entitled to retain this Deed, the Mortgage and the Security undischarged and shall not be obliged to re-transfer or re-assign the Secured Assets until the expiry of the period during which it may be challenged on any such ground.

12.3 Avoidance of payments

No assurance, security or payment which may be avoided or adjusted under the law, including under any statute relating to bankruptcy or insolvency and no release, settlement, discharge, re-transfer or re-assignment given or made by BoS on the faith of any such assurance, security or payment, shall prejudice or affect the right of BoS to recover the Secured Liabilities from the Owner (including any monies which BoS may be compelled to pay or refund under the provisions of the Act and any costs payable by it pursuant to or otherwise incurred in connection therewith) or to enforce the Security contained in this Deed and the Mortgage to the full extent of the Secured Liabilities.

13. Miscellaneous

13.1 Non compliance by Owner

- 13.1.1 If the Owner fails to make any payment or fulfil any obligation due by it under or pursuant to this Deed, BoS shall be entitled to do so on the Owner's behalf and in the Owner's name (or in its own name as it considers expedient) and/or to take such action to remedy or mitigate the consequences of such failure as it considers expedient, and the amount of any such payment and/or the costs incurred in fulfilling such obligation or mitigating the consequences of such failure, shall be repayable by the Owner on demand, together with interest at 2% per annum over the rate otherwise payable in respect of the Secured Liabilities from the date of demand until settlement and shall constitute Secured Liabilities.
- 13.1.2 BoS shall not be obliged to exercise any rights given to them under clause 13.1.1 above.

13.2 Currency conversion

Irrespective of the currency (whether Sterling or otherwise) in which the Secured Liabilities or the Secured Assets from time to time are expressed, BoS shall be entitled at any time and without prior notification to the Owner to convert any amount into such other currency (whether Sterling or otherwise) as BoS may from time to time consider appropriate. Any such conversion shall be effected at the spot market rate of BoS prevailing at the time of such conversion.

13.3 Payments

- 13.3.1 All sums payable by the Owner under this Deed, the Mortgage or the Security shall be paid in full to BoS in the currency in which the Secured Liabilities are payable:
- 13.3.1.1 without any set-off, condition or counterclaim whatsoever; and
- 13.3.1.2 free and clear of any deductions or withholdings whatsoever except as may be required by law or regulation which is binding on the Owner.
- 13.3.2 If any deduction or withholding is required by any law or regulation in respect of any payment to be made by the Owner, the amount of the payment due from the Owner shall be increased to an amount which (after making any deduction or withholding) leaves an amount equal to the payment which would have been due if no deduction or withholding had been required.
- 13.3.3 The Owner shall promptly deliver or procure delivery to BoS of all receipts issued to it evidencing each deduction or withholding which it has made.
- 13.3.4 The Owner shall not and may not direct the application by BoS of any sums received by BoS from the Owner under, or pursuant to, any of the terms of this Deed or the Mortgage.

13.4 Set-off

- 13.4.1 BoS may set-off any matured obligation due from the Owner to BoS against any matured obligation owed by BoS to the Owner, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, BoS may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

13.4.2 BoS shall not be obliged to exercise any rights given to it under clause 13.4.1 above.

13.5 Assignment/Transfer

13.5.1 BoS may at any time (without notice or consent) assign and transfer all or any of its rights and obligations under this Deed, the Mortgage or the Security to any person. BoS shall be entitled to disclose such information concerning the Owner as BoS considers appropriate to any actual or proposed direct or indirect successor or to any person to whom information may be required to be disclosed by any applicable law.

13.5.2 The Owner may not assign, transfer or otherwise deal with any of its rights and obligations under this Deed, the Mortgage or the Security or enter into any transaction which would result in any of those rights or obligations passing to another person.

13.6 Evidence of amounts and certificates

Any certificate, determination or notification by any duly authorised officer of BoS as to a rate or any amount payable under this Deed is (in the absence of manifest error) conclusive evidence of the matter to which it relates, binding on the Owner, and shall contain reasonable details of the basis of determination.

13.7 Waivers, amendments and consents

13.7.1 No amendment or variation of this Deed or the Mortgage shall be effective unless it is in writing and signed by or on behalf of each of the Parties.

13.7.2 Any waiver of any right or consent given under this Deed or the Mortgage is only effective if it is in writing and signed by the waiving or consenting Party, and applies only in the circumstances for which it is given and shall not prevent the Party giving it from subsequently relying on the relevant provision.

13.8 Contracts (Rights of Third Parties) Act 1999

BoS, any Receiver and their respective officers, employees and agents may enforce any term of this Deed which purports to confer a benefit on that person, but no other person who is not a party to this Deed has any right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed.

13.9 Counterparts

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

13.10 Law of Property Act 1925

Neither Section 93 nor Section 103 of the Law of Property Act 1925 shall apply to this Deed, the Mortgage or to the security thereby created and the statutory power of sale conferred on BoS shall be exercisable forthwith on the occurrence of an Event of Default.

14. Costs and expenses

14.1 The Owner shall on a full indemnity basis pay to BoS on demand the amount of all costs and expenses (including legal and out-of-pocket expenses and together with any applicable valued added tax) which BoS reasonably and properly incurs in connection with:

14.1.1 the preparation, negotiation, execution and delivery of this Deed, the Mortgage and the Security;

14.1.2 any actual or proposed amendment, variation, supplement, waiver or consent under or in connection with this Deed, the Mortgage or the Security;

14.1.3 any discharge or release of this Deed, the Mortgage or the Security; and

14.1.4 any stamping or registration of this Deed or the Mortgage.

14.2 The Owner shall on a full indemnity basis pay to BoS on demand the amount of all costs and expenses (including legal and out-of-pocket expenses and together with any applicable valued added tax) which BoS incurs in connection with the preservation or exercise and enforcement, of any rights under or in connection with, this Deed, the Mortgage or the Security or any attempt so to do.

14.3 The Owner shall indemnify BoS and each Receiver from and against all losses, costs, expenses, claims, demands and liabilities whether in contract, delict, tort or otherwise (together with any applicable value added tax) incurred by BoS or Receiver or by any employee, agent or delegate of BoS or Receiver in connection with anything done or omitted under this Deed or the Mortgage or any other document relating to it, or incurred as a result of or in connection with any Environmental Claim being made against BoS or otherwise howsoever arising out of any Environmental Incident, or in the exercise or attempted or purported exercise of the powers contained in this Deed or the Mortgage or occasioned by any breach by the Owner of any undertakings or other obligations to BoS, or in consequence of any payment in respect of the Secured Liabilities (whether made by the Owner or a third person) being declared void or impeached for any reason, save for any losses arising from the gross negligence or wilful misconduct of either BoS or the Receiver.

15. Severance

15.1 The provisions of this Deed and the Mortgage shall be severable and distinct from one another and the invalidity, unenforceability or illegality of any provision (or part of a provision) of this Deed or the Mortgage under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions.

15.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties.

16. Notices

16.1 Any communication to be made under or in connection with this Deed shall be made in writing and, unless otherwise stated, may be made by letter.

16.2 The address of BoS for any communication or document to be made or delivered under or in connection with this Deed is Bank of Scotland plc, The Mound, Edinburgh, EH1 1YZ or any

substitute address as BoS may notify to the Owner by not less than five Business Days' notice.

- 16.3 The address of the Owner for any communication or document under or in connection with this Deed is its registered office at the time such communication or document is made or delivered.
- 16.4 Subject to clause 16.5, any communication made or document made or delivered by one person to another under or in connection with this Deed will only be effective when it has been delivered to the relevant address or two Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address.
- 16.5 Any communication or document to be made or delivered to BoS will be effective only when actually received by BoS.

17. Governing law and jurisdiction

- 17.1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England.
- 17.2 The courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims and disputes regarding the existence, validity or termination of this Deed).
- 17.3 The Parties agree that the courts of England are the most appropriate and convenient courts to settle any dispute or claim and accordingly no Party will argue to the contrary.
- 17.4 Nothing in this clause 17 shall limit the right of BoS to take proceedings against the Owner in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

18. Effect as a Deed

It is intended that this document takes effect as a deed notwithstanding the fact that a Party may only execute this document under hand.

IN WITNESS WHEREOF this Deed has been executed as a deed and delivered by the Parties on the date appearing at the beginning of this Deed:

SCHEDULE 1
Notices of Assignment of Insurances

Form of notice to insurers

To:

Dated: [] 2020

Dear Sirs

Re: Heather of Melfort (formerly known as Ebbsfleet 1) (Official Number: 923315)

We, Kames Fish Farming Limited (Company Number: SC051158), the owner of the Vessel (the **Owner**), hereby give you notice that by a deed of covenant dated [] between the Owner and Bank of Scotland plc (**BoS**), we have assigned to BoS, as first mortgagee, all our right, title and interest in the insurances in respect of the Vessel and all amounts payable thereunder, including return of premiums etc. including the following policies (the **Policies**):

[Hull and Machinery / Protection & Indemnity Insurance Policy Number []]

We further notify you that:

1. we may not agree to amend or terminate the Policies without the prior written consent of BoS;
2. you may continue to deal with us in relation to the Policies until you receive written notice to the contrary from BoS. Thereafter we will cease to have any right to deal with you in relation to the Policies and therefore from that time you should deal only with BoS;
3. you are authorised to disclose information in relation to the Policies to BoS on request; and
4. the provisions of this notice may only be revoked with the written consent of BoS.

Please sign and return the enclosed duplicate notice with acknowledgement to BoS at New Ueberior House, 11 Earl Grey Street, Edinburgh EH3 9BN (with a copy to us) by way of confirmation that:

- (a) you agree to act in accordance with the provisions of this notice;
- (b) you have noted BoS' interest as first chargee on the Policies and endorsed the Policies with the form of loss payable wording attached;
- (c) after receipt of written notice in accordance with paragraph 2 above, you will pay all monies to which we are entitled under the Policies direct to BoS (and not to us) unless BoS otherwise agrees in writing;
- (d) you will not cancel or otherwise allow the Policies to lapse without giving BoS not less than 10 Business Days' written notice where reasonably practicable (acting in good faith);
- (e) you have not received notice that we have assigned our rights under the Policies to a third party or created any other interest (whether by way of security or otherwise) in the Policies in favour of a third party; and

- (f) you have not claimed or exercised nor do you have any outstanding right to claim or exercise against us, any right of set-off, counter-claim or other right relating to the Policies.

The provisions of this notice are governed by English law.

Yours faithfully

.....
Director, for and on behalf of Kames Fish Farming Limited

SCHEDULE 2

Form of Loss Payable Clauses

1. Hull and Machinery (Marine and War Risks)

- 1.1 It is noted that, by a deed of covenant dated [] (the **Deed of Covenant**) between Kames Fish Farming Limited (Company Number: SC051158), having its registered office at Kilmelford, By Oban, Argyll, PA34 4XA (the **Owner**) and Bank of Scotland plc (**BoS**), the Owner has assigned absolutely to BoS, as first mortgagee, its right, title and interest in the insurances on the vessel Heather of Melfort (formerly known as Ebbsfleet 1) (Official Number: 923315) (the **Vessel**), including all claims of any nature (including return of premiums) under this policy.

It has been agreed between the parties concerned that unless the underwriters shall have received notice from BoS to the contrary, in which event all claims payable under the policy of insurance shall be payable direct to BoS, all claims shall be payable as follows:

- 1.1 there shall be paid to BoS any and every amount receivable in respect of a total loss (including an actual or constructive or compromised or arranged total loss) or of a major casualty (that is to say any casualty (other than a total loss) in respect of which the claim or the aggregate of the claims exceeds £20,000, inclusive of any deductible); and
- 1.2 every other amount receivable in respect of this policy of insurance shall be paid to the Owner and shall be applied by them for the purpose of the repair of all the damage, the reparation of the loss and the discharge of the liability in respect of which such amount shall have been paid.

2. War Risks

It is noted that Bank of Scotland plc (**BoS**) is interested as mortgagee in the subject matter of this insurance. Save as hereinafter provided, all claims (whether in respect of actual, constructive, arranged or compromised total loss or otherwise) which, but for this Loss Payable Clause, would be payable to Kames Fish Farming Limited (Company Number: SC051158), having its registered office at Kilmelford, By Oban, Argyll, PA34 4XA, the owner of the vessel Heather of Melfort (formerly known as Ebbsfleet 1) (Official Number: 923315) (the **Owner**), shall be payable to BoS, provided always that unless and until notice in writing to the contrary has been received by the insurers, claims (other than total loss claims) not exceeding £20,000 (subject to confirmation) in respect of any one claim or an aggregate of claims in relation to the same incident shall be paid direct to the Owner or to its order.

3. Protection and Indemnity Risks

Payment of any recovery Kames Fish Farming Limited (Company Number: SC051158), having its registered office at Kilmelford, By Oban, Argyll, PA34 4XA, the owner of the vessel Heather of Melfort (formerly known as 'Ebbsfleet 1) (Official Number: 923315) (the **Owner**) is entitled to make out of the funds of the insurers in respect of any liability, costs or expenses incurred by him shall be made to the Owner to his order unless and until the insurers receive notice from Bank of Scotland plc (as first Mortgagee, the **Mortgagee**) that the Owner is in default under the Mortgage (or any other finance documents in place between the Owner and the Mortgagee from time to time), in which event all recoveries shall thereafter be paid to the Mortgagee or their order, provided always that no liability whatsoever shall attach to the insurers, its Managers or their Agents for failure to comply with the latter obligation until after the expiry of two clear business days from the receipt of such notice.

SCHEDULE 3

Notice of Assignment – Earnings

To: [] *[insert name and address of counterparty]*

Dated: []

Dear Sirs

Re: *[here identify the relevant counterparty / charterparty]* (the Counterparty)

We refer to the [charterparty / contract] dated [] between us and yourselves (the **Contract**) and hereby give you notice that by a deed of covenant dated [] we have, *inter alia*, assigned to Bank of Scotland plc (**BoS**) all our right, title and interest in and to the Earnings (as defined in the said Deed of Covenant).

We further notify you that:

1. you are hereby irrevocably authorised and instructed to pay all hire and other amounts payable by you to us under the Contract to [] at account number [], sort code [] for the account of BoS;
2. you are authorised to disclose information in relation to the Contract to BoS on request;
3. the provisions of this notice may only be revoked or varied with the written consent of BoS.

Please sign and return the enclosed copy of this notice to BoS (with a copy to us) by way of confirmation that:

- (a) you agree to the terms set out in this notice and to act in accordance with its provisions;
- (b) have not received notice that we have assigned its rights under the Contract to a third party or created any other interest (whether by way of security or otherwise) in the agreement in favour of a third party; and
- (c) you have not claimed or exercised, nor do you have any outstanding right to claim or exercise against us any right of set-off, counter-claim or other right relating to the Contract.

The provisions of this notice are governed by English law.

Yours faithfully

.....
for and on behalf of
Director, For and on behalf of
Kames Fish Farming Limited

[On acknowledgement copy]

To: Bank of Scotland plc

[]

Copy to: Kames Fish Farming Limited (Company Number: SC051158), Kilmelford, By Oban,
Argyll, PA34 4XA

We acknowledge receipt of the above notice and confirm the matters set out in paragraphs (a) to (c) above.

.....
for and on behalf of

[insert name of counterparty / charterer]

SIGNATURES

EXECUTED as a DEED for and on behalf of
KAMES FISH FARMING LIMITED
 acting by

signature of
 witness

GREG HOLEMAN
 full name of above (print)

address of witness

signature of
 director

STUART GEOFFREY CANNON.
 full name of above (print)

EXECUTED as a DEED for and on behalf of
BANK OF SCOTLAND PLC
 acting by

signature of
 witness

full name of above (print)

address of witness

signature of
 attorney

full name of above (print)

SIGNATURES

EXECUTED as a DEED for and on behalf of
KAMES FISH FARMING LIMITED
 acting by

 signature of
 witness

 signature of
 director

 full name of above (print)

 full name of above (print)

 address of witness

EXECUTED as a DEED for and on behalf of
BANK OF SCOTLAND PLC
 acting by


 signature of
 witness


 signature of
 attorney

LINDSAY MACLEOD
 full name of above (print)

ALAN BODD
 full name of above (print)


 address of witness