

DATED May 2018

**€7,000,000 SECURED CREDIT FACILITY AGREEMENT  
RELATING TO YACHT CHARTER SERVICES**

**M.Y. "CHAKRA"**

between

**SILVER WINDOW FOR CONTRACTING**

(as Lender)

- and -

**ROYALTON INVESTMENT LIMITED**

(as Borrower)

- and -

**SUPER MARITIME LTD**

(as Owner and Corporate Guarantor)

- and -

**SSH MARITIME MANAGEMENT LTD**

(as Manager and Corporate Guarantor)

- and -

**JAMES GERASSIMOS FRANGI**

(as Personal Guarantor)

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**THIS AGREEMENT** is made this                      day of    May 2018

**PARTIES**

- (1) **SILVER WINDOW FOR CONTRACTING** , a company incorporated according to the laws of Saudi Arabia with registered offices at PO Box 59117, Riyadh 11525, Saudi Arabia and registered number CR 1010364815 (the “**Lender**”);
- (2) **ROYALTON INVESTMENT LIMITED** a company incorporated according to the laws of Malta with its registered offices at 84 St. Francis Street, Balzan, BZN 1424, Malta (the “**Borrower**”);
- (3) **SUPER MARITIME LTD**, a company incorporated according to the laws of the British Virgin Islands with its registered office at Vanterpool Plaza, 2nd Floor, Wickhams Cay I, Road Town, Tortola, British Virgin Islands (as the “**Owner**” and a “**Corporate Guarantor**”);
- (4) **SSH MARITIME MANAGEMENT LTD**, a company incorporated according to the laws of the Hellenic Republic with its registered office at No. 2A Areos Street & Thisseos, 16671, Vouliagmeni, Attiki, Greece (as the “**Manager**” and a “**Corporate Guarantor**”); and
- (5) **JAMES GERASSIMOS FRANGI** of Apartment 30, The Tower, 1 St. George Wharf, London, SW8 2BW with USA passport number 444830849 and Greek passport number AK2107765 (the “**Personal Guarantor**”).

**BACKGROUND**

- (A) The Borrower is the beneficial owner of the Yacht.
- (B) The Yacht is registered under the St. Vincent & Grenadines Flag in the name of the Owner.
- (C) The Lender has agreed to advance to the Borrower an aggregate amount not exceeding seven million euro (€7,000,000) for working capital purposes on the terms of this Agreement and in return for the use of the Yacht (i.e. m.y. “CHAKRA”), the m.y. “O’MEGA”, the m.y. “SERENITY” and the m.y. “GRAND OCEAN” as set out in this Agreement and the Charter Terms (defined herein).

**AGREED TERMS**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

The definitions and rules of interpretation in this Clause 1 apply in this Agreement:

**Approved Valuers**                      means, for the purpose of ascertaining the value of the Yacht, independent ship sale and purchase brokers of international good repute to be appointed by the Lender from time to time.

**Assignment**                                means the general deed of assignment of the Insurances, Earnings and Requisition Compensation to be executed by the Owner in respect of the Yacht in such form as the Lender may approve or require to secure the liability of the Borrower to the

Lender hereunder.

<b>August Charter</b>	means, each period of charter during the August Charter Period, during which Yacht Charter Services are to be provided to the Lender in accordance with this Agreement and the Charter Terms.
<b>Annual Charter Fixing Date</b>	means 15 <sup>th</sup> June in each year.
<b>August Charter Period</b>	means 1 <sup>st</sup> August to 31 <sup>st</sup> August (inclusive) in each year.
<b>Availability Termination Date</b>	means 14 <sup>th</sup> June 2018 or such later date as the Lender may in its discretion agree.
<b>Business Day</b>	means a day on which banks are open for the transaction of business of the nature contemplated by this Agreement (and not authorised by law to close) in London, England and any other financial centre which the Lender may consider appropriate for the operation of the provisions of this Agreement.
<b>Charter Fee</b>	means the charter fee(s) payable in accordance with the Charter Terms.
<b>Charter Terms</b>	means the standard MYBA charter terms (also known as MYBA Charter Agreement) annexed hereto at Annex 2 under which the Yacht Charter Services shall be provided and which shall be signed and delivered to the Lender prior to each August Charter Period in accordance with Clause 4.4.
<b>Company</b>	means, at any given time, the company responsible for the Yacht's compliance with the ISM Code pursuant to paragraph 1.1.2 of the ISM Code.
<b>Corporate Guarantors</b>	means the Owner and the Manager (each being severally liable as a " <b>Corporate Guarantor</b> ").
<b>Currency of Account</b>	means, Euros (€).
<b>Default Rate</b>	means fifteen percent (15%) per annum.
<b>DOC</b>	means a valid Document of Compliance issued for the Company pursuant to paragraph 13.2 of the ISM Code.
<b>Drawdown Date</b>	means the date on which the Loan is advanced by the Lender to the Borrower pursuant to Clause 2.
<b>Drawdown Notice</b>	means a notice complying with Clause 2.2 substantially in the form annexed hereto at Annex 1.
<b>Earnings</b>	means all hires, charter, pool income and other sums payable to or for the account of the Owner or any other Security Party in

respect of the Yacht, including (without limitation) all remuneration for salvage and towage services, demurrage and detention moneys, contributions in general average, compensation in respect of any requisition for hire, and damages and other payments (whether awarded by any court or arbitral tribunal or by agreement or otherwise) for breach, termination or variation of any contract for the operation, employment or use of the Yacht.

- Encumbrance** means any mortgage, charge (fixed or floating), pledge, lien, assignment, hypothecation, preferential right, option, title retention or trust arrangement or any other agreement or arrangement which has the effect of creating security or payment priority.
- Environmental Claim** means any and all enforcement, clean up, removal or other governmental or regulatory actions or orders instituted or completed pursuant to any Environmental Law or any environmental approval together with claims made by any third party relating to damage, contribution, loss or injury, resulting from any actual or threatened emission, spill, release or discharge from the Yacht.
- Environmental Laws** means all national, international and state laws, rules, regulations, treaties and conventions applicable to the Yacht pertaining to the pollution or protection of human health or the environment including, without limitation, the carriage of Materials of Environmental Concern and actual or threatened emissions, spills, releases or discharges of Materials of Environmental Concern.
- Euros and €** means each available and easily transferable and convertible funds in the lawful currency of the European Union.
- Event of Default** means any of the events set out in Clause 14.2.
- Facility** means the credit facility to be provided out on the terms set out herein.
- Facility Period** means the period beginning on the date of this Agreement and ending on the date when the whole of the Indebtedness has been repaid in full and all Yacht Charter Services which the Security Parties have undertaken to provide to the Lender or the Lender's Nominee under this Agreement and/or the Charter Terms have been completed to the Lender's satisfaction and the Security Parties have ceased to be under any further actual or contingent liability to the Lender or the Lender's Nominee under and/or in connection with the Security Documents.
- Final Maturity Date** means the third (3<sup>rd</sup>) anniversary of the Drawdown Date, or such later date as the Lender and Borrower may agree in writing in accordance with Clause 5.4.

<b>First Preferred Mortgage</b>	means the first preferred mortgage to be executed and registered over the Yacht in such form as the Lender may approve or require.
<b>Guarantor(s)</b>	means the Corporate Guarantors and/or the Personal Guarantor.
<b>Indebtedness</b>	means the Loan; all other sums of any nature which from time to time may be payable by the Borrower to the Lender pursuant to this Agreement and the other Security Documents; any damages payable as a result of any breach by the Borrower of any of the Security Documents; and any damages or other sums payable as a result of any of the obligations of the Borrower under or pursuant to any of the Security Documents being disclaimed by a liquidator or any other person, or, where the context permits, the amount thereof for the time being outstanding.
<b>Insurances</b>	means all policies and contracts of insurance (including all entries in protection and indemnity or war risks associations or clubs) which are, from time to time, taken out or entered into in respect of or in connection with the Yacht or her increased value or the Earnings and (where the context permits) all benefits thereof, including all claims of any nature and returns of premium.
<b>ISM Code</b>	means the International Safety Management Code (including the guidelines on its implementation), adopted by the International Maritime Organisation, as the same may be amended or supplemented from time to time (and the terms “safety management system”, “Safety Management Certificate” and “Document of Compliance” have the same meanings as are given to them in the ISM Code).
<b>ISPS Code</b>	means the International Ship and Port Facility Security Code, as adopted by the International Maritime Organisation (IMO), as the same may be amended or supplemented from time to time.
<b>ISSC</b>	means a valid and current International Ship Security Certificate issued under the ISPS Code.
<b>Law</b>	means any law, statute, treaty, convention, regulation, instrument or other subordinate legislation or other legislative or quasi-legislative rule or measure, or any order or decree of any government or, judicial body or authority, or any directive, issued by any competent authority or agency relating to the operation of the Yacht, the Borrower or the Security Documents.
<b>Lender’s Nominee</b>	means Dr Ali Hassan Dayekh or such other party (or parties) as may be nominated to the Borrower in writing from time to time by him or the Lender.
<b>Loan</b>	means the aggregate amount from time to time advanced by the Lender to the Borrower pursuant to Clause 2 or, where the

context permits, the amount advanced and for the time being outstanding.

**Managers** means the Manager or such other commercial and/or technical managers of the Yacht nominated by the Owner, as the Lender may, in its discretion and acting reasonably, have approved in writing.

**Managers' Waiver** means the waiver to be provided by the Managers in accordance with Clause 15.1.

**Maximum Loan Amount** means seven million Euros (€7,000,000.00).

**Minimum Specified Ratio** means the ratio between the Security Value and the Indebtedness of not less than 150 (Security Value) : 100 (Indebtedness) at any time.

**Mortgagees' Insurances** means all policies and contracts of mortgagees' interest insurance and any other insurance from time to time taken out by the Lender in relation to the Yacht.

**m.y. "O'MEGA"** means the m.y. "**O'MEGA**" registered under the Greek flag in the ownership of Duchess Yachting M.C.P.Y. with the following particulars and everything now or in the future belonging to her on board and ashore:

Registration Number: 11280

IMO Number: 8503151

Name: M/Y O'MEGA (ex "KIMA")

Gross Tonnage: 1809 tons

Net Registered Tonnage: 543 tons

IMO Call Sign: SVJN

Flag: Greek

**m.y. "GRAND OCEAN"** means the m.y. "**GRAND OCEAN**" registered under the British flag in the ownership of Punmore Capital Ltd with the following particulars and everything now or in the future belonging to her on board and ashore:

Official Number: 715327

IMO Number: 1001881

Name: M/Y "GRAND OCEAN" (ex "GOLDEN ODYSSEY II")

Year of Build: 1990

Gross Tonnage: 1864 tons

Net Registered Tonnage: 559 tons

<b>Pledged Shares</b>	means 100% of the issued share capital of the Owner.
<b>Proceedings</b>	means any suit, action or proceedings commenced by the Lender arising out of and/or in connection with this Agreement or any other Security Documents.
<b>Requisition Compensation</b>	means all compensation or other money which may, from time to time, be payable to the Owner as a result of the Yacht being requisitioned for title or in any other way compulsorily acquired (other than by way of requisition for hire).
<b>Security Documents</b>	means: <ul style="list-style-type: none"><li>(i) this Agreement;</li><li>(ii) the First Preferred Mortgage;</li><li>(iii) the Share Pledge;</li><li>(iv) the Assignment;</li><li>(v) any Charter Terms executed during the Facility Period in connection with each August Charter Period;</li><li>(vi) the Manager's Waiver; and</li><li>(vii) any other agreement or document which may at any time be executed by any person as security for the payment of all or any part of the Indebtedness.</li></ul>
<b>Security Parties</b>	means the Borrower, the Owner, each Corporate Guarantor, the Personal Guarantor and any other person or company who may, at any time during the Facility Period, become a party to this Agreement and/or any of the Security Documents or be liable for, or provide security for, all or any part of the Indebtedness, and " <b>Security Party</b> " means any one of them.
<b>Security Value</b>	means the value of the Yacht calculated in accordance with Clause 12.1.
<b>m.y. "SERENITY"</b>	means the m.y. " <b>SERENITY</b> " registered under the Greek flag in the ownership of RICCI MARINE MCPY with the following particulars and everything now or in the future belonging to her on board and ashore:

Official Number: 12217



IMO Number: 9267510

Name: M/Y "SERENITY" (ex "TU MOANA")

Year of Build: 2003

Gross Tonnage: 1724 tons

Net Registered Tonnage: 559 tons

Call Sign: SVAH4

<b>Share Pledge</b>	means the first priority share pledge of the entire issued share capital of the Owner to be executed by the Borrower in accordance with the laws of the British Virgin Islands in such form as the Lender may approve or require, including the deposit with the Lender of all the share certificates relating to the pledged shares.
<b>SMC</b>	means a valid safety management certificate issued for the Yacht pursuant to paragraph 13.4 of the ISM Code.
<b>SMS</b>	means a safety management system for the Yacht, developed and implemented in accordance with the ISM Code and including the functional requirements, duties and obligations required by the ISM Code.
<b>Taxes</b>	means all taxes, levies, imposts, duties, charges, fees, deductions and withholdings (including any related interest, fines, surcharges and penalties) and any restrictions or conditions resulting in any charge, other than taxes on the overall net income of the Lender, and " <b>Tax</b> " and " <b>Taxation</b> " shall be interpreted accordingly.
<b>Total Loss</b>	means: <ul style="list-style-type: none"><li>(a) an actual, constructive, arranged, agreed or compromised total loss of the Yacht;</li><li>(b) the requisition for title or compulsory acquisition of the Yacht by any government or by any person purporting to act on behalf of any government by or on behalf of any government or other authority (other than by way of requisition for hire); or</li><li>(c) the capture, seizure, arrest, detention or confiscation of the Yacht, unless the Yacht is released and returned to the possession of the Borrower within two months after the capture, seizure, arrest, detention or confiscation in question.</li></ul>
<b>Yacht</b>	means the m.y. " <b>CHAKRA</b> " registered under the St. Vincent & Grenadines flag in the ownership of the Owner with the following

particulars and everything now or in the future belonging to her on board and ashore:

Official Number: 41049

IMO Number: 5402863

Name: M/Y "CHAKRA" (ex "SALEM")

Year of Build: 1962

Gross Tonnage: 2083 tons

Net Registered Tonnage: 624 tons

Call Sign: J8Y4579

**Yachts** means m.y. "CHAKRA", m.y. "GRAND OCEAN", m.y. "O'MEGA" and m.y. "SERENITY".

**Yacht Charter Services** means the services relating to the exclusive use of the Yachts in Mediterranean and/or European waters to be provided to the Lender and/or the Lender's Nominee in accordance with this Agreement and the Charter Terms in consideration for the Lender making the Loan available to the Borrower.

## 1.2 Interpretation

In this Agreement:

- (a) words denoting the plural number include the singular and vice versa;
- (b) words denoting persons include corporations, partnerships, associations of persons (whether incorporated or not) or governmental or quasi-governmental bodies or authorities and vice versa;
- (c) references to Recitals, Clauses and Annexes are references to recitals and clauses of, and annexes to, this Agreement;
- (d) references to this Agreement include the Recitals and the Annexes;
- (e) the headings and contents page(s) are for the purpose of reference only, have no legal or other significance, and shall be ignored in the interpretation of this Agreement;
- (f) references to any document (including, without limitation, to all or any of the Security Documents) are, unless the context otherwise requires, references to that document as amended, supplemented, novated or replaced from time to time;
- (g) references to statutes or provisions of statutes are references to those statutes, or those provisions, as from time to time amended, replaced or re-enacted;
- (h) references to the Lender include its successors, transferees and assignees;

- (i) references to times of day are to London (United Kingdom) time;
- (j) “month” or “months” means a period beginning in one calendar month and ending in the relevant later calendar month on the day numerically corresponding to the day of the calendar month in which it started, provided that (i) if the period started on the last Business Day in a calendar month or if there is no such numerically corresponding day, it shall end on the last Business Day in such later calendar month and (ii) if such numerically corresponding day is not a Business Day, the period shall end on the next following Business Day in such later calendar month but if there is no such Business Day it shall end on the preceding Business Day and “monthly” shall be construed accordingly.

1.3 This Agreement supersedes the terms and conditions contained in any correspondence (whether written or verbal) relating to the subject matter of this Agreement exchanged between the Lender and the Borrower or their representatives prior to the date of this Agreement.

1.4 Anyone who is not a party to this Agreement, except the Lender’s Nominee, shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

## **2. PURPOSE AND AVAILABILITY**

### **2.1 Loan**

2.1.1 Subject to the terms and conditions of this Agreement, and in reliance on each of the representations and warranties made or to be made in or in accordance with each of the Security Documents, and subject to Clause 2.1.2 below, the Lender agrees to advance to the Borrower an amount not exceeding the Maximum Loan Amount to be used by the Borrower for the purposes referred to in Recital (C).

2.1.2 At any time prior to the Availability Termination Date the Lender may, by written notice to the Borrower, cancel the availability of the Loan, whereupon the Lender shall be under no obligation to advance any part of the Loan and any sums already advanced must be immediately repaid to the Lender.

### **2.2 Drawdown**

2.2.1 Subject to satisfaction by the Borrower of the conditions set out in Clause 3.1, and provided the Lender has not given notice under Clause 2.1.2 above, the Loan shall be advanced to the Borrower in one amount by such method of funds transfer as the Lender and the Borrower shall agree. The Loan shall be advanced in Euros, on a Business Day, provided that the Security Parties shall have given to the Lender not more than ten (10) days and not fewer than three (3) Business Days’ notice in writing materially in the form set out in Annex 1 of the relevant Drawdown Date.

2.2.2 Once given, the Drawdown Notice shall be irrevocable and shall constitute a warranty by the Borrower that:

- (i) all conditions precedent for the advance of the Loan requested have been satisfied;

- (ii) no Event of Default has occurred or will result from the advance of the Loan, as requested; and
- (iii) there has been no material adverse change in the business, affairs or financial condition of any of the Security Parties from that pertaining at the date of this Agreement.

## **2.3 Availability Termination Date**

- 2.3.1 The Lender shall be under no obligation to advance any part of the Loan if it has given notice under Clause 2.1.2 above or after the Availability Termination Date.

## **2.4 Application of Loan**

- 2.4.1 The Lender shall not be obliged to concern itself with the application of the Loan by the Borrower but may request that the Borrower provides details of such application and any such details, if so requested, shall be provided to the Lender by the Borrower without undue delay.

## **3. CONDITIONS PRECEDENT AND SUBSEQUENT**

### **3.1 Conditions precedent**

- 3.1.1 Before the Lender shall have any obligation to advance the Loan, the Borrower shall deliver or cause to be delivered to or to the order of the Lender, the following documents and evidence:
  - (i) **Evidence of incorporation** - such evidence as the Lender may reasonably require evidencing that each Security Party was duly incorporated in its country of incorporation and remains in existence and, where appropriate, in good standing, with power to enter into, and perform its obligations under those of the Security Documents to which it is, or is intended to be, a party, including (without limitation) a copy, certified by a director or the secretary of the Security Party in question as true, complete, accurate and unamended, of all documents establishing or limiting the constitution of each Security Party;
  - (ii) **Corporate authorities** - a copy, certified by a director or the secretary of the Security Party in question as true, complete, accurate and neither amended nor revoked, of a resolution of each of the shareholders and directors of each Security Party (together, where appropriate, with signed waivers of notice of any directors' meetings) approving, and authorising or ratifying the execution of, those of the Security Documents to which that Security Party is or is intended to be a party and all matters incidental thereto;
  - (iii) **Officer's certificate** - a certificate signed by a duly authorised officer of each of the Security Parties setting out the names of the directors and officers of that Security Party and containing specimens of their signatures;

- (iv) **Power of attorney** - power of attorney of each of the Security Parties under which any documents are to be executed or transactions are to be undertaken by that Security Party;
- (v) **Legal opinion** - confirmation satisfactory to the Lender (acting reasonably) that any and all legal opinions required by the Lender (acting reasonably) will be given substantially in the form required by the Lender and that any and all recommendations set out therein will be satisfied on or before the Drawdown Date;
- (vi) **Process agent** - written acceptance from the process agent specified in Clause 24.5 of its appointment hereunder and under the Security Documents on behalf of each Security Party in a form acceptable to the Lender;
- (vii) **Management Agreements** - photocopies, certified as true, accurate and complete by a director or the secretary of the Borrower, of each of the management agreements between the Borrower and the Managers relating to the Yacht, in each case together with all addenda, amendments or supplements (if any);
- (viii) **Evidence of ownership & encumbrances** - certificate(s) of ownership and encumbrance(s) (or equivalent) issued by the Registrar of Ships (or the equivalent official) at the Yacht's port of registry confirming that the Yacht is on the Drawdown Date owned by the Owner and free of registered Encumbrances and evidence to the satisfaction of the Lender that, contemporaneously with the Drawdown Date, the First Preferred Mortgage in favour of the Lender will be registered against the Yacht;
- (ix) **Evidence of insurance** - evidence that the Yacht is, or will from the Drawdown Date be, insured in the manner required by the Security Documents (including, for the avoidance of doubt, Mortgagees Interest Insurance in accordance with Clause 11.13) and that letters of undertaking will be issued in the manner required by Clause 11.5 together with (if required by the Lender) the written approval of the Insurances by an insurance adviser appointed by the Lender;
- (x) **Confirmation of class** - a full certificate of confirmation of class for hull and machinery, confirming that the Yacht is classed with the highest class applicable to yachts of her type with a classification society being a member of International Association of Classification Societies (IACS) and acceptable to the Lender, and remains free from any overdue recommendations, notations or damage affecting class;
- (xi) **Security Documents** - the Security Documents, together with all notices and other documents required by any of them, duly executed and where required or considered desirable by the Lender (acting reasonably) duly registered on any suitable register wherever located. The First Preferred Mortgage, shall be in a form capable of immediate registration with first priority through the Registrar of Ships (or equivalent official) at the Yacht's port of registry;

- (xii) **Pledged Shares** - the deposit with the Lender of the original share certificates representing the entire share capital of the Owner subject to the terms of the Share Pledge;
- (xiii) **Drawdown Notice** - the Drawdown Notice in respect of the Loan;
- (xiv) **Evidence of registration** - evidence to the reasonable satisfaction of the Lender that the First Preferred Mortgage (with first priority) will be registered contemporaneously with drawdown with the Registrar of Ships (or equivalent official) at the Yacht's port of registry;
- (xv) **Manager's Waiver** - duly executed waiver(s) on terms acceptable to the Lender of any and all rights the Managers may have against the Yacht and appropriate subrogation of all such rights;
- (xvi) **Letters of Undertaking** - letters of undertaking from the Insurers as required by Clause 10.5 in form and substance acceptable to the Lender;
- (xvii) **Fees** - payment to the Lender of all fees payable by the Security Parties in relation to the preparation execution and registration of the Security Documents in accordance with Clause 19 below.

## **3.2 Conditions Precedent & Subsequent**

### **3.2.1 No waiver**

If the Lender in its sole discretion agrees to advance the Loan to the Borrower before all of the documents and evidence required by Clauses 3.1 and/or 3.2 have been delivered to or to the order of the Lender, the Borrower undertakes to deliver all outstanding documents and evidence to or to the order of the Lender no later than the date specified by the Lender, and the Lender's advance of the Loan shall not be taken as a waiver of its right to require production of all the documents and evidence required by Clauses 3.1 and/or 3.2.

### **3.2.2 Form and content**

All documents and evidence delivered to the Lender pursuant to this clause shall:

- (i) be in form and substance acceptable to the Lender;
- (ii) be accompanied, if required by the Lender, by translations into the English language, certified in a manner acceptable to the Lender;
- (iii) if required by the Lender, be certified, notarised, legalised or attested in a manner acceptable to the Lender.

### **3.2.3 Event of Default**

The Lender shall be under no obligation to advance the Loan nor to act on any Drawdown Notice if, at the date of the Drawdown Notice or at the date on which the advance of the part of the Loan is requested in the Drawdown Notice, an Event of Default shall have occurred, or if an Event of Default would result from the advance of the Loan.

## **4. INTEREST/CHARTER FEES**

### **4.1 Charter Fee in lieu of Interest**

In consideration for advancing the Loan and in lieu of the payment of interest, the Borrower shall procure the provision of, and the Security Parties undertake to provide, throughout the Facility Period, the Yacht Charter Services to the Lender and/or the Lender's Nominee on the Charter Terms but without the further payment of the Charter Fee stated in the Charter Terms.

The Lender's entitlement to Yacht Charter Services during each August Charter Period in each year shall accrue in advance on the Drawdown Date and thereafter on each anniversary of the Drawdown Date. For the avoidance of doubt, if the Borrower prepays or repays the Loan and Yacht Charter Services have already been utilised as an advance, the Lender shall not under any circumstances be required to make a payment to the Borrower in respect of such utilised Yacht Charter Services.

Unless otherwise agreed by the parties, the Lender will in accordance with the Charter Terms, be responsible for paying all other fees and costs associated with the provision of the Yacht Charter Services, including but not limited to, Advance Provisioning Allowance (as defined within the Charter Terms), the cost of fuel and any marina fees.

### **4.2 Yacht Charter Services**

The Yacht Charter Services to be provided to the Lender and/or the Lender's Nominee during the Facility Period shall be finalised and scheduled in accordance with Clause 4.3 below and shall be as follows:

4.2.1 **Annual August Charter** - the uninterrupted exclusive use, throughout the August Charter Period, by the Lender and/or the Lender's Nominee, of

- (i) the Yacht for a minimum of 17 consecutive days; and
- (ii) the m.y. "OMEGA" or m.y. "GRAND OCEAN" or m.y. "SERENITY" for a minimum of 14 consecutive days,

all in accordance with the terms of this Agreement and agreed Charter Terms. The Borrower and Manager will deliver the yachts (up to 30 hours' motoring to the delivery location) to ensure a direct transfer between Yachts during the August Charter Period.

The Lender acknowledges and agrees that if any of the Yachts is unavailable, it may be substituted by one of the other Yachts, but the Lender shall never be required to accept charters of less than 17 and 14 consecutive days during an August Charter Period.

### **4.3 Charter Fixing**

No later than 30 days prior to each Annual Charter Fixing Date the Borrower shall confirm the availability and the scheduling of the Yachts for the forthcoming August Charter Period and confirm in writing the agreed scheduling and/or transfer arrangements for the forthcoming August Charter Period.

### **4.4 Charter Terms & Fees**

- 4.4.1 No later than each Annual Charter Fixing Date, the Borrower and Security Parties shall sign and forward to the Lender the original Charter Terms for the Yacht Charter Services to be provided during the next August Charter Period. The Charter Terms shall be substantially on the terms set out and annexed hereto (please refer to Annex 2) and shall include the Charter Fee agreed in accordance with Clause 4.4.2 below. In the event of any conflict between the Charter Terms and this Agreement, the terms of this Agreement shall prevail.
- 4.4.2 There shall be no fees payable by the Lender in relation to any yacht's positioning or delivery prior to, or at the conclusion of, any August Charter Period.
- 4.4.3 No Charter Fees or security deposits shall be payable by the Lender in respect of the Yacht Charter Services to be provided during any August Charter Period. However, each year, prior to each Annual Charter Fixing Date, the Lender shall review the anticipated annual cost to the Lender of providing the Loan to the Borrower and shall confirm this cost in writing to the Borrower. After due consideration of this cost and the then market value of the Yacht Charter Services to be provided, the charter rate applicable for the next August Charter Period shall then be agreed between the Lender and the Borrower and shall be included in the Charter Terms. Such rate shall be a maximum amount of €100,000 for each August Charter Period. If, for any reason, the Borrower and Lender have not agreed by any Annual Charter Fixing Date the rate which is to be applied during the next August Charter Period, the Lender is authorised by the Security Parties to fix such rate (subject to the aforementioned cap of € 100,000) and include it in the Charter Terms. The Charter Terms, duly signed by the Borrower and Security Parties, shall be accompanied by a receipted invoice from the Owner confirming discharge in full of the Charter Fees set out in the Charter Terms for the relevant August Charter Period.

#### **4.5 Failure to provide the Yacht Charter Services**

- 4.5.1 Notwithstanding any Charter Terms executed between the parties, if, for any reason, the Borrower and/or any other Security Party either:
- (i) fails to sign and deliver to the Lender the Charter Terms for the August Charter Period before the Annual Charter Fixing Date in any year or otherwise fails comply with the provisions of Clauses 4.2, 4.3 or 4.4 above; and/or
  - (ii) after agreeing and signing the Charter Terms for any August Charter Period, fails to provide the Yacht Charter Services in accordance with the terms of this Agreement and any agreed Charter Terms,

the Borrower and Security Parties shall be jointly and severally liable to pay liquidated damages to the Lender of one million five hundred thousand Euros (€1,500,000) in respect of such failure.

If the Yacht Charter Services have been provided in part during any August Charter Period then the liquidated damages set out above shall be reduced pro rata (at the rate of €48,387 per day) to reflect the Yacht Charter Services which have been provided in part. The Borrower and other Security Parties acknowledge and accept



that the above damages are a realistic pre-estimate of the loss and damage the Lender would suffer as a result of such a failure to provide the Yacht Charter Services for the period to which they relate.

- 4.5.2 The above damages relate to the loss of the Yacht Charter Services for the next August Charter Period only and are payable in addition to any other damages, indemnities or interest (Default Rate or otherwise) payable in connection with any failure by the Security Parties to provide future Yacht Charter Services hereunder and/or failure to repay any of the Indebtedness on its due date.

#### **4.6 Default Rate**

- 4.6.1 If an Event of Default occurs and the Lender declares (in writing) the Indebtedness to be immediately due and payable, the whole of the Indebtedness shall, from the date of the occurrence of the Event of Default, bear interest up to the date of actual payment (both before and after judgment) at the Default Rate, compounded quarterly at such other intervals as the Lender shall, in its discretion, determine, which interest shall be payable from time to time by the Borrower to the Lender on demand.

#### **4.7 Determinations conclusive**

Any determination of an interest rate made by the Lender in accordance with this Clause 4 shall (save in the case of manifest error or on any question of law) be final and conclusive.

### **5. REPAYMENT**

- 5.1 On each anniversary of the Drawdown Date during the Facility Period, the Lender may give six (6) months written notice to the Borrower, demanding repayment to the Lender in full of the Indebtedness. If, however, the Lender serves such written notice, the Yacht Charter Services to be provided during the following August Charter Period shall be reduced by 50%.
- 5.2 If, following an Event of Default or a demand for repayment as contemplated by Clause 5.1, the Borrower fails to repay the Indebtedness in full within twelve (12) months of such Event of Default or demand, the Borrower and other Security Parties shall be jointly and severally liable to pay liquidated damages to the Lender of one million five hundred thousand Euros (€1,500,000) in respect of such default or failure. The Borrower and other Security Parties acknowledge and accept that these damages are a realistic pre-estimate of the loss and damage the Lender would suffer as a result of the loss of the Yacht Charter Services arising from such Event of Default and are payable in addition to repayment of the Indebtedness and any other damages, indemnities or interest (Default Rate or otherwise) payable in connection with the failure to repay the Indebtedness on its due date.
- 5.3 Upon satisfaction by the Security Parties' of all their obligations and liabilities to the Lender pursuant to this Agreement and the other Security Documents (and any mortgage(s) which may be subsequently registered in favour of the Lender) the security shall be released and/or shall cease to be effective as the case may be.

#### **5.4 Final maturity**

In the absence of any demand for repayment under Clause 5.1 above, the Indebtedness shall, in any event, be repaid in full by the Borrower to the Lender no later than the Final Maturity Date.

## **5.5 Extension of Final Maturity Date**

If the Lender agrees to extend the Final Maturity Date, it shall notify the Borrower in writing no later than four (4) weeks prior to the Final Maturity Date. The Lender is under no obligation to extend the Final Maturity Date and, in the absence of any such notification in writing from the Lender, the Final Maturity Date shall not be extended.

## **6. PREPAYMENT**

### **6.1 Prepayment**

6.1.1 The Borrower may not prepay the Loan before completion of the Yacht Charter Services for the 2018 August Charter Period and, for the avoidance of doubt, irrespective of any repayment or prepayment, the Yacht Charter Services for the 2018 August Charter Period shall be provided.

6.1.2 After completion of the Yacht Charter Services for the 2018 Yacht Charter Period, the Borrower may prepay the Loan during the Facility Period, provided:

6.1.2.1 the prepayment discharges the Indebtedness in full;

6.1.2.2 the Borrower has given the Lender one (1) month's prior written notice of such prepayment, stating the proposed prepayment date;

6.1.2.3 all Yacht Charter Services have been provided up to the time of the proposed prepayment in accordance with this Agreement and the Security Parties shall have agreed and signed Charter Terms for the Yacht Charter Services in respect of the next August Charter Period which will have accrued to the Lender up to the date of prepayment; and

6.1.2.4 the provisions of Clause 6.1.3 are met and, prior to such prepayment, the Security Parties have agreed and entered into Charter Terms relating to any Yacht Charter Services applicable under Clause 6.1.3.

6.1.3 In addition to the provisions of Clauses 6.1.1 and 6.1.2, if the prepayment is to be made during any August Charter Period, the Yacht Charter Services for that August Charter Period must be completed in full in accordance with the Charter Terms agreed for that period; and

6.1.4 Any notice of prepayment, once given by the Borrower, shall be irrevocable and shall oblige the Borrower to make the prepayment referred to in the notice on the date specified in the notice.

6.1.5 If the Borrower informs the Lender that the proposed prepayment to be made by the Borrower in accordance with this clause relates to a sale of the Yacht, the Lender will consider in good faith reasonable proposals from the Borrower to continue the Loan on the terms of this Agreement, subject to the provision of suitable equivalent alternative security. If, however, no such alternative proposals are agreed and prepayment is to be made in accordance with the terms of this Agreement and the First Preferred Mortgage, the Lender will cooperate with the Borrower to ensure its security over the Yacht can be released in exchange for such prepayment and simultaneously with completion of the proposed sale.

## **6.2 Prepayment indemnity**

If, notwithstanding the terms agreed under Clause 6.1 above, the Borrower seeks to make a prepayment other than in accordance with Clause 6.1 above, in respect of the whole or any part of the Loan, the Borrower shall, in addition to the amount prepaid to the Lender pay to the Lender the liquidated damages agreed in accordance with Clause 4.5.1 in respect of the next August Charter Period following such prepayment; and pay to the Lender any further amount which the Lender may certify is necessary to compensate the Lender for the losses incurred by the Lender as a result of the making of the prepayment in question other than in accordance with Clause 6.1.

## **6.3 No Re-borrowing**

No amount repaid or prepaid pursuant to this Agreement may in any circumstances be re-borrowed.

## **7. PAYMENTS**

### **7.1 Payments**

All amounts payable by any Security Party under or pursuant to any of the Security Documents shall be paid to the order of the Lender to such beneficiary accounts at such banks as the Lender may from time to time direct to the Borrower, and shall be paid in Euros in same day funds (or such funds as are required by the Lender for settlement of international payments for immediate value). Payments shall be deemed to have been received by the Lender on the date on which the Lender receives authenticated advice of receipt, unless that advice is received by the Lender on a day other than a Business Day or at a time of day (whether on a Business Day or not) when the Lender in its discretion considers that it is impossible or impracticable for the Lender to utilise the amount received for value that same day, in which event the payment in question shall be deemed to have been received by the Lender on the Business Day next following the date of receipt of advice by the Lender.

### **7.2 No deductions or withholdings**

All payments (whether of principal or interest or otherwise) to be made by any Security Party pursuant to the Security Documents shall, subject only to Clause 7.3, be made free and clear of and without deduction for or on account of any Taxes or other deductions, withholdings, restrictions, conditions or counterclaims of any nature.

### **7.3 Grossing-up**

If, at any time, any law requires (or is interpreted to require) any Security Party to make any deduction or withholding from any payment, or to change the rate or manner in which any required deduction or withholding is made, that Security Party will promptly notify the Lender and, simultaneously with making that payment, will pay to the Lender whatever additional amount (after taking into account any additional Taxes on, or deductions or withholdings from, or restrictions or conditions on, that additional amount) is necessary to ensure that, after making the deduction or withholding, the Lender receives a net sum equal to the sum which it would have received had no deduction or withholding been made.

#### **7.4 Evidence of deductions**

If, at any time, any Security Party is required by any law to make any deduction or withholding from any payment to be made pursuant to any of the Security Documents, the Security Party will pay the amount required to be deducted or withheld to the relevant authority within the time allowed under the applicable law and will, no later than thirty (30) days after making that payment, deliver to the Lender an original receipt issued by the relevant authority, or other evidence acceptable to the Lender, evidencing the payment to that authority of all amounts required to be deducted or withheld.

#### **7.5 Adjustment of due dates**

If any payment or transfer of funds to be made under any of the Security Documents, shall be due on a day which is not a Business Day, that payment shall be made on the next succeeding Business Day (unless the next succeeding Business Day falls in the next calendar month in which event the payment shall be made on the next preceding Business Day). Any such variation of time shall be taken into account in computing any interest in respect of that payment.

#### **7.6 Application**

In the case of a partial payment by any Security Party, the Lender may appropriate such payment towards such of the obligations under the Security Documents as the Lender may decide. The Borrower waives any right to make an appropriation in respect of a partial payment. Any appropriation by the Lender shall apply to the exclusion of any actual or purported appropriation by any Security Party.

### **8. REPRESENTATIONS AND WARRANTIES**

**8.1** The Security Parties each represent and warrant to the Lender at the date of this Agreement and, (by reference to the facts and circumstances then pertaining) at the date of the Drawdown Notice, at each Drawdown Date, at each Annual Charter Fixing Date and on each Business Day during the Facility Period as follows:

**8.1.1 Incorporation and Capacity** - Other than the Personal Guarantor, each of the Security Parties is a body corporate duly constituted and existing and (where applicable) in good standing under the law of its country of incorporation, in each case with perpetual corporate existence and the power to sue and be sued, to own its assets and to carry on its business.

**8.1.2 Corporate Authorisation** - None of the documents and evidence delivered to or to the order of the Lender pursuant to Clause 3.1.1 (i),(ii) and (iii) have been modified, amended or revoked since their delivery to or to the order of the Lender.

- 8.1.3 **Solvency** - None of the Security Parties is bankrupt, insolvent or in liquidation or administration or subject to any other insolvency procedure, and no receiver, administrative receiver, administrator, liquidator, trustee or analogous officer has been appointed in respect of any of the Security Parties or all or any part of their assets.
- 8.1.4 **Binding Obligations** - The Security Documents when duly executed and delivered will constitute the legal, valid and binding obligations of the Security Parties enforceable in accordance with their respective terms.
- 8.1.5 **Satisfaction of Conditions** - All acts, conditions and things required to be done and satisfied and to have happened prior to the execution and delivery of the Security Documents, in order to ensure the Security Documents constitute the legal, valid and binding obligations of the Security Parties in accordance with their respective terms have been done, satisfied and have happened in compliance with all applicable laws.
- 8.1.6 **Registrations and Consents** - All (if any) consents, licences, approvals and authorisations of, or registrations with or declarations to, any governmental authority, bureau or agency which may be required in connection with the execution, delivery, performance, validity or enforceability of the Security Documents have been obtained or made and remain in full force and effect and the Borrower is not aware of any event or circumstance which could reasonably be expected adversely to affect the right of any of the Security Parties to hold and/or obtain renewal of any such consents, licences, approvals or authorisations.
- 8.1.7 **Disclosure of material facts** - The Security Parties are not aware of any material facts or circumstances which have not been disclosed to the Lender and which might, if disclosed, have adversely affected the decision of a person considering whether or not to make credit facilities of the nature contemplated by this Agreement available to the Borrower.
- 8.1.8 **No material litigation** - There is no action, suit, arbitration or administrative proceeding (including action relating to any alleged or actual breach of the ISM Code or the ISPS Code) pending or to the knowledge of the Security Parties about to be pursued before any court, tribunal or governmental or other authority which would, or would be likely to, have a materially adverse effect on the business, assets, financial condition or creditworthiness of any of the Security Parties.
- 8.1.9 **No breach of law or contract** - The execution, delivery and performance of the Security Documents will not contravene any contractual restriction or any law binding on any of the Security Parties or on any shareholder (whether legal or beneficial) of any of the Security Parties, or the constitutional documents of any of the Security Parties, nor result in the creation of, nor oblige any of the Security Parties to create, any Encumbrance over all or any of its assets, with the exception of the Encumbrances created by or pursuant to the Security Documents.
- 8.1.10 **No deductions** - No Security Party is required to make any deduction or withholding from any payment which it may be obliged to make to the Lender under or pursuant to the Security Documents.

- 8.1.11 **Information** - All financial and other information and documentation furnished by the Borrower and any other Security Party to the Lender in connection with any Security Document is correct in all material respects and does not omit to state any fact thereby rendering misleading any statement therein contained.
- 8.1.12 **Security** - There are no Encumbrances affecting the Owner's title to the Yacht.
- 8.1.13 **ISM Code compliance and ISPS Code compliance** - The Owner, the Manager and the Yacht are in full compliance with the ISM Code and ISPS Code.
- 8.1.14 **Immunity** - None of the Security Parties nor any of their assets enjoys, under the laws of its jurisdiction of incorporation any right of immunity from service of process, jurisdiction, suit, judgment, execution, attachment or other legal claim in respect of any of the obligations under the Security Documents.
- 8.1.15 **Jurisdiction/governing law** - The Security Parties' irrevocable submission under this Agreement to the jurisdiction of the courts of England and agreement that this Agreement is governed by English law are legal, valid and binding under the laws of its jurisdiction of incorporation and any judgment obtained in England will be recognised and enforceable by the courts of its jurisdiction of incorporation.
- 8.1.16 **Private and commercial acts** - The execution of the Security Documents by the Security Parties and the exercise of rights and performance of obligations by the Security Parties thereunder will constitute private and commercial acts done and performed for private and commercial purposes.
- 8.1.17 **Event of Default** - No Event of Default has occurred or is subsisting.
- 8.1.18 **Use of Loan** - The Loan will be used for the purposes specified in Recital (C).
- 8.2** The representations made or to be made by the Security Parties under this Clause 8 are joint and several.
- 9. COVENANTS**
- 9.1 Positive covenants**

- 9.1.1 **Registration of Yacht** - The Security Parties each undertake to maintain the registration of the Yacht under the flag referred to in Recital (A) or such other flag as may be acceptable to the Lender in its discretion for the duration of the Facility Period.
- 9.1.2 **Insurances report** - The Lender may, from time to time, appoint an insurance advisor to prepare a report in respect of the Insurances which shall be in form and substance acceptable to the Lender. If, for any reason, the insurances report is not satisfactory to the Lender, the Borrower shall, at its own expense, make such amendments and/or modifications to the Insurances as are reasonably required by the Lender promptly upon the Lender's request to do so, in order to remedy those matters set out in the insurances report which are not to the Lender's satisfaction.
- 9.1.3 **Provision of Information** - The Security Parties undertake promptly to supply the Lender and any insurance advisor appointed by the Lender pursuant to Clause 9.1.2 with such information concerning the Yacht, its condition and the Insurances as the Lender and/or the insurance advisor may reasonably require.
- 9.1.4 **Cost of reports** - The Borrower shall be liable for all reasonable costs and expenses incurred by the Lender in obtaining any reports from time to time required pursuant to Clause 9.1.2 and shall reimburse the Lender in respect of all such costs and expenses from time to time on demand. The Borrower shall not be liable for the costs and expenses incurred in the provision of a report on the Insurances for the Yacht more than once in each consecutive period of twelve (12) months following the Drawdown Date unless an Event of Default shall have occurred and be continuing, in which event, the Borrower shall be liable for the cost of obtaining all reports from time to time required by the Lender.
- 9.1.5 **Financial Information** - The Security Parties will, and will procure that the Managers will, promptly supply to the Lender copies of all financial and other information from time to time in relation to the business of the Borrower's yacht division, as the Lender may reasonably require, and such other information and explanations, as the Lender may from time to time require, in connection with the operation of the Yacht.
- 9.1.6 **Evidence of current ISM Code compliance and ISPS Code compliance** - The Owner will, from time to time, on the request of the Lender, provide the Lender with such evidence as the Lender may reasonably require that the Yacht is in compliance with the ISM Code and ISPS Code.
- 9.1.7 **Valuation** - The Borrower undertakes either:
- (i) to provide the Lender with a copy of the valuation used to agree the annual insurance renewal; or
  - (ii) to arrange for certificates of the value of the Yacht to be issued and delivered to the Lender by Approved Valuer(s) in accordance with Clause 12.3 below
- at least once during each period of twelve (12) months commencing with the date of this Agreement.

- 9.1.8 **ISM Code and ISPS Code compliance** - The Owner will comply, or procure the Yacht's compliance with the ISM Code and the ISPS Code, all Environmental Laws and all other laws or regulations relating to the Yacht, its ownership, operation and management and shall:
- (i) procure that the Yacht remains for the duration of the Facility Period subject to a SMS;
  - (ii) maintain a valid and current SMC for the Yacht throughout the Facility Period;
  - (iii) if not itself the Company, procure that the Company maintains a valid and current DOC throughout the Facility Period;
  - (iv) immediately notify the Lender in writing of any actual or threatened withdrawal, suspension, cancellation or material modification of the Yacht's SMC or of the Company's DOC;
  - (v) immediately notify the Lender in writing of any "accident" or "major non-conformity" affecting the Yacht, as each of those terms is defined in the Guidelines on the Implementation of the ISM Code by Administrations adopted by the Assembly of the International Maritime Organisation pursuant to Resolution A.788 (19), and of the steps being taken to remedy the situation; and
  - (vi) not without the prior written consent of the Lender (which will not be unreasonably withheld), **change** the identity of the Company in respect of the Yacht.
- 9.1.9 **Notification of Event of Default** - Each Security Party will without undue delay notify the Lender in writing of the occurrence of any Event of Default.
- 9.1.10 **Classification** - The Security Parties will procure that, for the duration of the Facility Period, the Yacht will be in class with an internationally recognised classification society, free of all overdue recommendations of that classification society.
- 9.1.11 **Maintenance of status** - The Security Parties will maintain the Owner's corporate existence as a single purpose company in good standing under the laws of its jurisdiction of incorporation.



## 9.2 Negative covenant

9.2.1 The Security Parties will not, without the Lender's prior written consent (such consent not to be unreasonably withheld or delayed):

- (i) **disposals or third party rights** - dispose of or create or permit to arise or continue any Encumbrance or other third party right on or over all or any part of its present or future assets or undertaking including but not limited to the Yacht, by way of security without the prior written consent of the Lender; nor
- (ii) **other business** – allow or otherwise permit the Owner to engage in any business other than the ownership of the Yacht; nor
- (iii) **sale of the Yacht** - sell or otherwise dispose of the Yacht or any shares in the Yacht nor agree to do so; nor
- (iv) **chartering after an Event of Default** - following the occurrence and during the continuation of an Event of Default, renew or extend any charter or any other contract of employment of the Yacht (nor agree to do so); nor
- (v) **change in flag** - move the registration of the Yacht to a flag which is different from that referred to in Recital (A) or which has previously been approved by the Lender as required by Clause 9.1.1 above; nor
- (vi) **change in class** - permit the change of the classification society of the Yacht; nor
- (vii) **change in management** - appoint anyone other than the Managers as commercial or technical managers of the Yacht, nor terminate or materially vary the arrangements for the commercial or technical management of the Yacht, nor permit the Managers to sub-contract or delegate the commercial or technical management of the Yacht to any third party; nor
- (viii) **change in ownership or control** - permit any change in its beneficial ownership and control from that at the date of this Agreement; nor
- (ix) **liabilities** - make any loans or grant any credit, or make or hold any investments otherwise than in the course of its business referred to in Clause 9.2.1(ii) above; nor
- (x) **dividends** – after an Event of Default has occurred, declare or pay dividends or make any other distribution to shareholders or redeem any of its shares other than in accordance with the terms of the Share Pledge; nor
- (xi) **charters** - let the Yacht on any demise charter or on any time charter, consecutive voyage charter or other contract of employment which (inclusive of any extension option) would (i) interfere with the Yacht Charter Services which are to be provided to the Lender or (ii) which is capable of exceeding twelve (12) months or (iii) employ the Yacht in any way which might impair the security created by the Security Documents; nor

- (xii) **amendment / termination of approved charters** - terminate or materially amend the terms of any charter for the Yacht which has previously been approved by the Lender.

## **10. Guarantee and Indemnity**

10.1 Each Guarantor, irrevocably and unconditionally:

10.1.1 as principal obligor, guarantees to the Lender punctual performance by the Borrower of all its obligations under the Security Documents;

10.1.2 undertakes with the Lender that whenever the Borrower does not pay any amount when due under the Facility, the Guarantor shall, on demand, pay that amount as if the Guarantor, instead of the Borrower, were expressed to be the principal obligor; and

10.1.3 indemnifies the Lender on demand against any loss or liability suffered by the Lender if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal.

10.2 This guarantee is a continuing guarantee and will extend to the ultimate balance of all sums due and payable by the Borrower under the Security Documents in relation to the Facility, regardless of any intermediate payment or partial or whole discharge.

10.3 Where any discharge (whether in respect of the obligations of the Borrower or any security for those obligations or otherwise) is made by the Lender in whole or in part or any arrangement is made on the faith of any payment, security or other disposition which is avoided or must be restored on insolvency, liquidation or otherwise without limitation, the liability of the Guarantor shall continue as if the discharge or arrangement had not occurred.

10.4 The obligations of each Guarantor under this Clause 10 will not be affected by any act, omission, matter or thing which, but for this provision, would reduce, release or prejudice any of its obligations under this Clause 10 or prejudice or diminish those obligations in whole or in part, including (whether or not known to it or the Lender):

10.4.1 any time or waiver granted to, or composition with, the Borrower or other person, except if the purpose of any waiver is to release or discharge the Borrower of any of its obligations (in part or as a whole) under this Agreement and then only to the extent of such release or discharge;

10.4.2 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up, enforce or exercise diligence in respect of any rights against, or security over assets of the Borrower or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

10.4.3 any incapacity or lack of powers, authority or legal personality of, or dissolution or change in the members or status of the Borrower or any other person;

- 10.4.4 any variation (however fundamental) or replacement of a Security Document or any other document or security, except if the purpose of such variation or replacement is to release or discharge the Borrower of any of its obligations (in part or as a whole) under this Agreement and then only to the extent of such release or discharge;
  - 10.4.5 any unenforceability, illegality or invalidity of any obligation of any person under any Security Document or any other document or security, to the intent that the Guarantor's obligations under this Clause 10 shall remain in full force and its guarantee be construed accordingly, as if there were no such unenforceability, illegality or invalidity;
  - 10.4.6 any postponement, discharge, reduction, non-provability, or other similar circumstance affecting any obligation of the Borrower under a Security Document resulting from any insolvency, liquidation or dissolution proceedings or from any law, regulation or order so that each such obligation shall, for the purposes of the Guarantor's obligations under this Clause 10 be construed as if there were no such circumstance; or
  - 10.4.7 the release of the Borrower or any other person under the terms of any composition or arrangement with any creditor.
- 10.5 Without prejudice to the generality of this Clause 10, each Guarantor expressly confirms that it intends that the guarantee and indemnity contained in this Clause 10 shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Security Documents and/or any facility or amount made available under any of the Security Documents.
- 10.6 Each Guarantor waives any right it may have of first requiring the Lender (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Guarantor.
- 10.7 Until all amounts which may be or become due and payable by the Borrower under or in connection with the Security Documents have been irrevocably paid in full, each Guarantor shall not, after a claim has been made or by virtue of any payment or performance by it under the Security Documents:
- 10.7.1 be subrogated to any rights, security or moneys held, received or receivable by the Lender or be entitled to any right of contribution or indemnity in respect of any payment made or moneys received on account of the Guarantor's liability under this Clause 10;
  - 10.7.2 claim, rank, prove or vote, as a creditor of the Borrower or its estate, in competition with the Lender; or
  - 10.7.3 receive, claim or have the benefit of any payment, distribution or security from or on account of the Borrower, or exercise any right of set-off as against the Borrower.

- 10.8 Each Guarantor shall hold in trust for and forthwith pay or transfer to the Lender any payment or distribution or benefit of security received by it by virtue of any payment made by it under this Agreement that is contrary to this Clause 10.8.
- 10.9 Each Guarantor's obligations hereunder are several and each Guarantor agrees to be bound by this Guarantee notwithstanding that any other Guarantor intended to sign or to be bound may not do so or be effectually bound and notwithstanding that any terms may be determined or become invalid or unenforceable against any other Guarantor. The Lender may release any one or more of the Guarantors from this Guarantee and compound with or otherwise vary or agree to vary the liability of or to grant time or indulgence to or make other arrangements with any one or more of the Guarantors or any other person without prejudicing or affecting the rights and remedies of the Lender against another Guarantor.
- 10.10 Each of the provisions of this Guarantee is severable and distinct from the others and if, at any time, one or more of such provisions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.
- 10.11 This Guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or hereafter held by the Lender.

## **11. INSURANCE**

### **11.1 Maintenance of obligatory insurances**

11.1.1 The Security Parties shall keep the Yacht insured at their expense against:

- (i) fire and usual marine risks (including hull and machinery and excess risks);
- (ii) war risks;
- (iii) protection and indemnity risks; and
- (iv) any other risks against which the Lender considers, having regard to practices and other circumstances prevailing at the relevant time, it would in the opinion of the Lender, be reasonable to insure and which are specified by the Lender by notice to the Borrower.

### **11.2 Terms of obligatory insurance**

11.2.1 The Security Parties shall effect such Insurances:

- (i) in Euros;
- (ii) in the case of fire and usual marine risks and war risks, in an amount on an agreed value basis which is the greater of 150% of (i) the Loan or (ii) the market value of the Yacht ;
- (iii) in relation to protection and indemnity risks, in respect of the full tonnage of the Yacht;

- (iv) on approved terms; and
- (v) through approved brokers and with approved insurance companies and/or underwriters or, in the case of war risks and protection and indemnity risks, in approved war risks and protection and indemnity risk associations.

### 11.3 Further protections for the Lender

11.3.1 In addition to the terms set out in Clause 11.2, the Security Parties shall procure that the obligatory Insurances shall:

- (i) name (or be amended to name) the Lender as additional named assured for its rights and interests, but without the Lender thereby being liable to pay (but having the right to pay) premiums, calls or other assessments in respect of such insurance;
- (ii) name the Lender as sole loss payee for (and with such directions for payment of) an amount constituting the outstanding Indebtedness (from time to time) as the Lender may specify;
- (iii) provide that all payments by or on behalf of the insurers under the obligatory Insurances to the Lender shall be made without set-off, counterclaim or deductions or condition whatsoever;
- (iv) provide that the Lender may, forthwith upon giving the Borrower notice thereof, make proof of loss if any Security Party fails to do so; and
- (v) provide that if any obligatory insurance is cancelled, or if any substantial change is made in the coverage which adversely affects the interest of the Lender, or if any obligatory insurance is allowed to lapse for non-payment of premium, such cancellation, charge or lapse shall not be effective with respect to the Lender for fourteen (14) days (or seven (7) days in the case of war risks) after receipt by the Lender of prior written notice from the insurers of such cancellation or lapse.

### 11.4 Renewal of Obligatory Insurances

11.4.1 The Security Parties shall:

- (i) at least fourteen (14) days before the expiry of any obligatory insurance notify the Lender of the brokers (or other insurers) and any protection and indemnity or war risks association through or with whom the Security Parties propose to renew that insurance and of the proposed terms of renewal;
- (ii) at least seven (7) days before the expiry of any obligatory insurance, renew the insurance in accordance with the Lender's approval; and
- (iii) procure that the approved brokers and/or the war risks and protection and indemnity associations with which such a renewal is effected shall promptly after the renewal notify the Lender in writing of the terms and conditions of the renewal.

### 11.5 Copies of policies; Letters of undertaking

11.5.1 The Security Parties shall procure that all approved brokers provide the Lender with pro forma copies of all policies relating to the obligatory Insurances which they are to effect or renew and with a letter or letters of undertaking in a form reasonably required by the Lender and including undertakings by the approved brokers that:

- (i) they will have endorsed on each policy, immediately upon issue, a loss payable clause and a notice of assignment complying with the provisions of the Security Documents;
- (ii) they will hold such policies, and the benefit of such Insurances, to the order of the Lender in accordance with the said loss payable clause;
- (iii) they will advise the Lender immediately of any material change to the terms of the obligatory Insurances;
- (iv) they will notify the Lender, not less than fourteen (14) days before the expiry of the obligatory Insurances, in the event of their not having received notice of renewal instructions from the Security Parties or their agents and, in the event of their receiving instructions to renew, they will promptly notify the Lender of the terms of the instructions;
- (v) they will not set-off against any sum recoverable in respect of a claim relating to the Yacht under such obligatory Insurances, any premiums or other amounts due to them or any other person other than in respect of the Yacht; and
- (vi) they waive any lien on the policies or, any sums received under them, which they might have in respect of such premiums or other amounts, and they will not cancel such obligatory insurances by reason of non-payment of such premiums or other amounts, and will arrange for a separate policy to be issued in respect of the Yacht forthwith upon being so requested by the Lender.

#### 11.6 **Copies of certificates of entry**

11.6.1 The Borrower shall ensure that any protection and indemnity and/or war risks associations in which the Yacht is entered provides the Lender with: -

- (i) certified copy of the certificate of entry for the Yacht;
- (ii) a letter or letters of undertaking in such forms as may be required by the Lender (acting reasonably); and
- (iii) where applicable, a certificate of financial responsibility for pollution by oil or other environmentally sensitive material issued by the relevant certifying authority in relation to the Yacht.

#### 11.7 **Deposit of original policies**

11.7.1 The Security Parties shall ensure that all policies relating to obligatory Insurances are deposited with the approved brokers through which the insurances are effected or renewed.

## 11.8 **Payment of premiums**

11.8.1 The Security Parties shall punctually pay all premiums or other sums payable in respect of the obligatory insurances (unless disputed in good faith) and produce all relevant receipts when so required by the Lender.

## 11.9 **Restrictions on employment**

11.9.1 The Security Parties shall not employ the Yacht, nor permit her to be employed, outside the cover provided by any obligatory insurances without first obtaining the consent of the insurers and complying with any requirements (as to extra premium or otherwise) which the insurers specify.

## 11.10 **Compliance with terms of insurance**

11.10.1 The Security Parties shall not do or omit to do (nor permit to be done or not to be done) any act or thing which would or might render any obligatory insurance invalid, void, voidable or unenforceable or render any sum payable thereunder repayable in whole or in part; and, in particular:

- (i) the Security Parties shall take all necessary action and comply with all requirements which may from time to time be applicable to the obligatory insurances, and ensure that the obligatory insurances are not made subject to any exclusions or qualifications to which the Lender has not given its prior approval;
- (ii) the Security Parties shall not make any changes relating to the classification or classification society or manager or operator of the Yacht owned by it which are not approved by the underwriters of the obligatory insurances; and
- (iii) the Security Parties shall not employ the Yacht, nor allow it to be employed, otherwise than in conformity with the terms and conditions of the obligatory Insurances, without first obtaining the consent of the insurers and complying with any requirements (as to extra premium or otherwise) which the insurers specify.

## 11.11 **Alteration to terms of insurances**

11.11.1 The Security Parties shall not make nor agree to any material alteration to the terms of any obligatory insurance nor waive any right relating to any obligatory insurance.

## 11.12 **Settlement of claims**

11.12.1 The Security Parties shall not settle, compromise or abandon any claim under any obligatory insurance for Total Loss and shall do all things necessary and provide all documents, evidence and information to enable the Lender to collect or recover any moneys which, at any time, become payable in respect of the obligatory insurances

## 11.13 **Mortgagee's Interest insurances**

11.13.1 The Lender shall be entitled, from time to time, to effect, maintain and renew in an amount and on such terms, through such insurers and generally in such manner as the Lender may from time to time reasonably consider appropriate:

- (i) a mortgagee's interest marine insurance in respect of the Yacht providing for the indemnification of the Lender for any losses under or in connection with any Security Document which directly or indirectly result from loss of or damage to the Yacht or a liability of any Security Party, being a loss or damage which is prima facie covered by an obligatory insurance but in respect of which there is a non-payment (or reduced payment) by the underwriters by reason of or on the basis of an allegation concerning:
  - (a) any act or omission on the part of the owner of the Yacht, of any operator, charterer, manager or sub-manager of the Yacht or of any officer, employee or agent of the owner or of any such person, including any breach of warranty or condition or any non-disclosure relating to such obligatory insurance;
  - (b) any act or omission, whether deliberate, negligent or accidental, or any knowledge or privity of the Security Parties (or any charterer, as the case may be), any other person referred to in Clause 11.13.1(i)(a) above, or of any officer, employee or agent of that Security Parties or of such a person including the casting away or damaging of the Yacht being unseaworthy; and/or
  - (c) any other matter capable of being insured against under a mortgagee's interest marine insurance policy whether or not similar to the foregoing.

11.13.2 The Security Parties shall, upon demand, fully indemnify the Lender in respect of all premiums and other expenses which are incurred in connection with or with a view to effecting, maintaining or renewing any such insurance or dealing with, or considering, any matter arising out of any such insurance.

## **12. VALUE OF THE YACHT AS SECURITY (TOP-UP CLAUSE)**

### **12.1 Security Value**

12.1.1 The Borrower will ensure that, so long as any monies are owing under this Agreement and the other Security Documents, the Security Value shall exceed the Indebtedness by not less than the Minimum Specified Ratio.

### **12.2 Deficiency**

12.2.1 If the Security Value is, at any time, less than that required by Clause 12.1 above, the Lender shall notify the Borrower of the deficiency and the Security Parties shall, within twenty (20) days of such notification:-



(i) furnish the Lender with such other security as may be acceptable to the Lender; or

(ii) prepay part of the Loan,

in any such case, in such amount as may be necessary to restore the Security Value to that required by Clause 12.1.

### 12.3 **Valuations**

12.3.1 The value of the Yacht shall be determined for the purposes of this clause at least once in each period of twelve (12) months in accordance with Clause 9.1.6.

### 12.4 **Costs of Valuations**

12.4.1 The Borrower shall pay, forthwith on demand by the Lender, any costs incurred by the Lender in connection with any valuation made pursuant to this Agreement on a full indemnity basis save that, in the absence of a declared Event of Default, the Borrower shall only be liable to reimburse the Lender the costs of valuation once in any twelve (12) month period.

## 13. **SALE AND TOTAL LOSS**

In the event of a sale or Total Loss of the Yacht at any time during the Facility Period, the Security Parties shall, procure that the whole of the net sale or net insurance proceeds in respect of the Yacht up to the then outstanding Indebtedness shall promptly be paid to the Lender and shall be applied in accordance with Clause 6 in prepayment of the Indebtedness.

## 14. **EVENTS OF DEFAULT**

### 14.1 **The Lender's Rights**

If any of the events set out in Clause 14.2 occurs, the Lender may, at its discretion by notice to the Borrower, declare itself to be under no further obligation to the Borrower to advance funds or to maintain the Loan under or pursuant to this Agreement and may declare all or any part of the Indebtedness, to be immediately payable, in which event the Indebtedness (or the part of the Indebtedness referred to in the Lender's notice) shall immediately become due and payable without any further demand or notice of any kind. Any such notice and/or declaration shall be without prejudice to the Lender's right to receive accrued Yacht Charter Services or Yacht Charter Services which the Security Parties (or any one of them) have, at that time undertaken to provide pursuant to agreed and executed Charter Terms.

Notwithstanding anything to the contrary in this Agreement, the Borrower shall have seven (7) days to remedy any Default or breach of this Agreement before it incurs any liability to pay liquidated damages hereunder.

## 14.2 Events of Default

14.2.1 The events referred to in Clause 14.1 are:

- (i) **Payment default** - if the Borrower defaults in the payment of any part of the Indebtedness when due and payable;
- (ii) **Yacht Charter Services** - if the Borrower and/or any other Security Party fails to comply with the provisions of Clauses 4.2, 4.3 or 4.4 above and/or fails, for any reason, to provide the Yacht Charter Services in accordance with the terms of this Agreement and/or any agreed Charter Terms;
- (iii) **Other default** - if any of the Security Parties fails, within seven (7) days of notice from the Lender, to observe or perform any of the covenants, conditions, undertakings, agreements or obligations (not covered under 14.2.1(i) and (ii) above) on its part contained in any of the Security Documents or shall in any other way be in breach of or do or cause to be done any act repudiating any of the Security Documents;
- (iv) **Cross default** - if upon seven (7) days' notice from the Lender, any Indebtedness of any Security Party is not paid when due or any indebtedness of any Security Party becomes (whether by declaration or automatically in accordance with the relevant agreement or instrument) due and payable prior to the date when it would otherwise have become due (unless as a result of the exercise by the Security Party of a voluntary right of prepayment) or any creditor of any Security Party becomes entitled to declare any such indebtedness due and payable or any facility or commitment available to any Security Party relating to indebtedness is withdrawn, suspended or cancelled by reason of any default (however described) of the person concerned;
- (v) **Misrepresentation or breach of warranty** - if any representation or warranty made or repeated, or any other information given, by any of the Security Parties to the Lender in or leading up to or during the currency of any of the Security Documents, or in or pursuant to any notice or other document delivered to the Lender under or pursuant to any of the Security Documents, is false or incorrect or misleading in any respect which the Lender in its reasonable discretion considers to be material;
- (vi) **Execution** - if a distress or execution or other process of a court or authority is levied on any of the property of any of the Security Parties before or after final judgment or by order of any competent court or authority and is not satisfied within twenty one (21) days of levy;
- (vii) **Insolvency events** - if any of the Security Parties:
  - (a) resolves to appoint, or applies for or consents to the appointment of, a receiver, administrative receiver, trustee, administrator or liquidator of itself or of all or part of its assets;
  - (b) is unable or admits its inability to pay its debts as they fall due;
  - (c) makes a general assignment for the benefit of creditors or enters into a moratorium on payment of any of its indebtedness; or
  - (d) ceases trading or threatens to cease trading;

- (viii) **Insolvency proceedings** - if any proceedings are commenced or any order or judgment is given by any court, for the bankruptcy, liquidation, winding up, administration or re-organisation of any of the Security Parties or for the appointment of a receiver, administrative receiver, administrator, liquidator or trustee of any of the Security Parties or of all or part of the assets of any of the Security Parties, or if any person appoints or purports to appoint such receiver, administrative receiver, administrator, liquidator or trustee;
- (ix) **Impossibility or illegality or fraud** - if any event occurs which would render performance of any of the Security Documents by any of the Security Parties impossible, unlawful or unenforceable by the Lender or any event which constitutes fraud;
- (x) **Conditions Precedent and Subsequent** - if any of the conditions set out in Clause 3.1 and/or 3.2 is not satisfied within the time required by the Lender as set out in Clause 3.1 and/or 3.2;
- (xi) **Revocation or modification of consents** - if any consent, licence, approval, authorisation, filing, registration or other requirement of any governmental, judicial or other public body or authority which is now, or which at any time during the Facility Period becomes, necessary to enable any of the Security Parties to comply with any of their obligations in or pursuant to any of the Security Documents is not obtained or is revoked, suspended, withdrawn or withheld, or is modified in a manner which the Lender considers is, prejudicial to its interests, or ceases to remain in full force and effect;
- (xii) **Curtailement of business** - if the business of any of the Security Parties is wholly or partially curtailed or suspended by any intervention by or under authority of any government (and such curtailment or suspension does not cease within five (5) Business Days), or if all or a substantial part of the undertaking, property or assets of any of the Security Parties is seized, nationalised, expropriated or compulsorily acquired by or under authority of any government;
- (xiii) **Loss of Yacht** - if the Yacht is destroyed, abandoned, confiscated, forfeited, condemned as prize or becomes a Total Loss;
- (xiv) **Challenge to registration** - if the registration of the Yacht or the First Preferred Mortgage is contested or becomes void or voidable or liable to cancellation or termination, or if the validity or priority of the First Preferred Mortgage is contested;
- (xv) **War** - if the country of registration of the Yacht becomes involved in war (whether or not declared) or civil war or is occupied by any other power and the Lender in its discretion (exercised reasonably) considers that, as a result, the security conferred by the Security Documents is materially prejudiced;
- (xvi) **Environmental Laws and Approvals** - if the Borrower fails to comply with any Environmental Laws or any environmental approval or the Yacht is

involved in any incident which gives rise or may give rise to an Environmental Claim if, in any such case, such non-compliance or incident or the consequences could, in the opinion of the Lender, reasonably be expected to have a material adverse effect on the business, assets, operations, property or financial condition of the Borrower or any other Security Party or on the security created by any of the Security Documents;

- (xvii) **Material adverse change** - if anything is done or permitted or omitted to be done by any of the Security Parties which in the reasonable opinion of the Lender materially jeopardises or imperils the rights conferred on the Lender by the Security Documents, or if there occurs (in the opinion of the Lender) any material adverse change in the business, affairs or financial condition of any of the Security Parties from that pertaining at the date of this Agreement;
- (xviii) **Charters** - if, any Security Party enters into terms of any charter for the Yacht in breach of Clause 9.2; or
- (xix) **Analogous events** - if any event which (in the reasonable opinion of the Lender) is analogous to any of the events set out above shall occur.

## 15. SECURITY DOCUMENTS

15.1 As security for the repayment of the Indebtedness, the Borrower shall execute and deliver to the Lender or cause to be executed and delivered to the Lender, on or before the Drawdown Date the following Security Documents in such form and containing such terms and conditions as the Lender shall approve or require:

15.1.1 **First Preferred Mortgage** - first preferred mortgage over the Yacht;

15.1.2 **Assignment** - deed of assignment of the Insurances, Earnings and Requisition Compensation in respect of the Yacht;

15.1.3 **Share Pledge** - the share pledge over the entire share capital of the Owner and the deposit with the Lender of the original share certificates representing such share capital;

15.1.4 **Charter Terms** - for the August Charter following the Drawdown Date;

15.1.5 **Manager's Waiver** - the Managers' Waiver duly executed and, if required, registered with the necessary authorities.

### 15.2 No oral variations

No variation or amendment of any of the Security Documents shall be valid unless in writing and signed on behalf of the Lender.

### 15.3 Severability

If at any time any provision of any of the Security Documents is or becomes invalid, illegal or unenforceable in any respect that provision shall be severed from the remainder and the

validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way.

**15.4 Successors**

The Security Documents shall be binding on the Security Parties and on their successors and permitted transferees and assignees, and shall inure to the benefit of the Lender and its successors, transferees and assignees.

**15.5 Further assurance**

If any provision of the Security Documents shall be invalid or unenforceable in whole or in part by reason of any present or future law or any decision of any court, then the Security Parties will promptly, on demand by the Lender, execute or procure the execution of such further documents as shall remedy the invalidity or enforceability.

**15.6 Delegation**

The Lender may at any time and from time to time delegate to any person any its rights, powers, discretions and remedies pursuant to the Security Documents on such terms as it may consider appropriate (including the power to sub-delegate).

**15.7 Rights cumulative**

Every right, power, discretion and remedy conferred on the Lender under or pursuant to the Security Documents shall be cumulative and in addition to every other right, power, discretion or remedy to which it may at any time be entitled to by law or in equity. The Lender may exercise each of its rights, powers, discretions and remedies as often and in such order as it deems appropriate. The exercise or the beginning of the exercise of any right, power, discretion or remedy shall not be interpreted as a waiver of the right to exercise that or any other right, power, discretion or remedy either simultaneously or subsequently.

**15.8 Continuing security**

The security constituted by the Security Documents shall be continuing and shall not be satisfied by any intermediate payment or satisfaction until the Indebtedness shall have been repaid in full and the Lender shall be under no further actual or contingent liability to any third party in relation to the Yacht, the Insurances, Earnings or Requisition Compensation or any other matter referred to in the Security Documents.

## **16. SET-OFF AND LIEN**

### **16.1 Set-off**

16.1.1 Each of the Security Parties irrevocably authorises the Lender at any time after all or any part of the Indebtedness shall have become due and payable to set off without prior notice (but providing subsequent notice) any liability of any Security Party to the Lender (whether present or future, actual or contingent) against any credit balance from time to time owed by the Lender to any Security Party (including, without limitation, converting or exchanging any currency) and execute all documents which may be required to effect such application.

### **16.2 Lien**

16.2.1 The Lender shall have a lien on and be entitled to retain and realise as additional security for the repayment of the Indebtedness any drafts, bills, notes or negotiable or non-negotiable instruments and any stocks, shares or marketable or other securities and property of any kind of any Security Party from time to time held by the Lender, whether for safe custody or otherwise.

### **16.3 Application**

16.3.1 The Security Parties irrevocably authorise the Lender to apply all sums which the Lender may receive:

- (i) pursuant to a sale or other disposition of the Yacht or any right, title or interest in the Yacht;
- (ii) by way of payment to the Lender of any sum in respect of the Insurances, Earnings or Requisition Compensation; or
- (iii) otherwise arising under or in connection with any of the Security Documents,

in or towards satisfaction of the Indebtedness.

## **17. CURRENCY INDEMNITY**

In the event of the Lender receiving or recovering any amount payable under any of the Security Documents in a currency other than the Currency of Account, and if the amount received or recovered is insufficient when converted into the Currency of Account at the date of receipt to satisfy in full the amount due, the Security Parties shall, on the Lender's written demand, pay to the Lender such further amount in the Currency of Account as is sufficient to satisfy in full the amount due and that further amount shall be due to the Lender as a separate debt under this Agreement.

## **18. WAIVER**

No failure or delay on the part of the Lender in exercising any right, power, discretion or remedy under or pursuant to any of the Security Documents, nor any actual or alleged course of dealing between the Lender and the Security Parties, shall operate as a waiver of, or acquiescence in, any default on the part of any Security Party, unless expressly agreed to do so in writing by the Lender, nor shall any single or partial exercise by the Lender of any right, power, discretion or remedy preclude any other or further exercise of

that right, power, discretion or remedy, or the exercise by the Lender of any other right, power, discretion or remedy.

## **19. FEES AND EXPENSES**

### **19.1 Fees and expenses**

19.1.1 If Drawdown does not occur by the Availability Termination Date, the Borrower will (save where an absence of Drawdown arises from the Lender having given notice cancelling the availability of the Loan pursuant to Clause 2.1.2), within fourteen (14) days of the Lender's written demand, reimburse the Lender for all reasonable legal and other costs and expenses (including Value Added Tax or any similar or replacement tax if applicable) of and incidental to the negotiation, preparation, execution and registration of the Security Documents (whether or not any of the Security Documents are actually registered and whether or not all or any part of the Loan is advanced) which were incurred after 23<sup>rd</sup> December 2017.

19.1.2 The Borrower will, within fourteen (14) days of the Lender's written demand, reimburse the Lender for all reasonable legal and other costs and expenses (including Value Added Tax or any similar or replacement tax if applicable) of and incidental to the exercise of the rights, powers, discretions and remedies of the Lender under or pursuant to the Security Documents.

### **19.2 Events of Default**

The Security Parties shall indemnify the Lender from time to time on demand against all reasonable losses and costs incurred or sustained by the Lender as a consequence of any Event of Default.

### **19.3 Protection and enforcement**

The Security Parties shall indemnify the Lender from time to time on demand against all losses, costs and liabilities which the Lender may from time to time reasonably sustain, incur or become liable for in or about the protection, maintenance or enforcement of the rights conferred on the Lender by the Security Documents or in or about the exercise or purported exercise by the Lender of any of the rights, powers, discretions or remedies vested in it under or arising out of the Security Documents, including (without limitation) any losses, costs and liabilities which the Lender may from time to time reasonably sustain, incur or become liable for by reason of the Lender being mortgagee of the Yacht and/or a lender to the Borrower, or by reason of the Lender being deemed by any court or authority to be an operator or controller, or in any way concerned in the operation or control, of the Yacht.

## **20. ASSIGNMENT**

### **20.1 Right to Assign**

The Lender may assign or transfer all or any of its rights under or pursuant to the Security Documents to the Lender's Nominee or otherwise but the Security Parties may not assign or transfer any of their rights or obligations under or pursuant to the Security Documents to any party without the prior written consent of the Lender.

## **21. NOTICES**

## 21.1 Method

21.1.1 Any communication may be given, delivered, made or served (as the case may be) under or in relation to the Security Documents shall be in the English language and sent addressed:

- (i) in the case of the Lender, to the Lender at its address at Silver Window for Contracting, PO Box 57117, Riyadh 11525, Saudi Arabia marked for the attention of: Dr Ali Dayekh; and
- (ii) in the case of the Borrower or any Security Party to [james.jaffa@gateleyplc.com](mailto:james.jaffa@gateleyplc.com) or such address or email as the Borrower has last used to communicate or which it has designated for itself to the Lender,

or to such other address or email addresses as the Lender or the Borrower may have communicated from time to time.

## 22. JOINT AND SEVERAL LIABILITY

22.1 The liabilities and obligations of each of the Security Parties under this Agreement and under all the other Security Documents shall be joint and several throughout.

22.2 Each of the Security Parties guarantees the repayment on demand to the Lender of the liabilities of the other Security Parties and the punctual performance by the other Security Parties of their obligations to the Lender under the Security Documents.

22.3 Each of the Security Parties agrees to be bound by the terms of the Security Documents to which it is a party notwithstanding that any other Security Party which was to sign or be bound may not do so or be effectively bound and notwithstanding that any Security Document may become invalid or unenforceable against any one or more of such persons whether or not the deficiency is known to the Lender. The Lender may release one or more of the Security Parties from obligations under the Security Documents and compound with or otherwise vary or agree to vary the liability of or to grant time or indulgence to or make other arrangements with any one or more of the Security Parties or any other person without prejudicing or affecting the rights and remedies of the Lender against the other of the Security Parties

## 23. MISCELLANEOUS

### 23.1 Certificates

Any certificate or statement signed by an authorised signatory of the Lender purporting to show the amount of the Indebtedness (or any part of the Indebtedness) or any other amount referred to in any of the Security Documents shall, save for manifest error or on any question of law, be conclusive evidence as against the Borrower of that amount.

### 23.2 Counterparts

This Agreement may be executed in any number of counterparts each of which shall be original but which shall together constitute the same instrument.



## **24. LAW AND JURISDICTION**

### **24.1 Governing law**

This Agreement shall, in all respects, be governed by and interpreted in accordance with English law.

### **24.2 Jurisdiction**

The parties to this Agreement irrevocably agree that the courts of England have jurisdiction to settle any disputes (whether contractual or non-contractual) which may arise out of or in connection with this Agreement and that any Proceedings may be brought in those courts.

### **24.3 Alternative jurisdictions**

Nothing contained in this Clause 24 shall limit the right of the Lender to commence any Proceedings against any Security Party in any other court of competent jurisdiction nor shall the commencement of any Proceedings against the any Security Party in one or more jurisdictions preclude the commencement of any Proceedings in any other jurisdiction, whether concurrently or not.

### **24.4 Waiver of objections**

The Security Parties irrevocably waive any objection which they may, now or in the future, have to the laying of the venue of any Proceedings in any court referred to in this clause, and any claim that those Proceedings have been brought in an inconvenient or inappropriate forum, and irrevocably agrees that a judgment in any Proceedings commenced in any such court shall be conclusive and binding on it and may be enforced in the courts of any other jurisdiction.

### **24.5 Service of process**

Without prejudice to the right of the Lender to use any other method of service permitted by law, the Security Parties each irrevocably agree that any writ, notice, judgment or other legal process shall be sufficiently served on it if addressed to it and left at or sent by post to Gateley Plc (FAO James Jaffa) at 1 Paternoster Square, London, EC4M 7DX and in that event shall be conclusively deemed to have been served at the time of leaving or, if posted, at 9.00 a.m. on the second (2nd) Business Day after posting by prepaid first class post.

IN WITNESS of which the parties to this Agreement have executed this Agreement the day and year first before written.

SIGNED by \_\_\_\_\_ )  
duly authorised for and on behalf \_\_\_\_\_ )  
of **SILVER WINDOW FOR CONTRACTING** \_\_\_\_\_ )  
(as Lender)

Witness Name: \_\_\_\_\_  
Address \_\_\_\_\_  
Occupation: \_\_\_\_\_

SIGNED by *J.G. FRANCO* \_\_\_\_\_ )  
duly authorised for and on behalf \_\_\_\_\_ )  
of **ROYALTON INVESTMENT LTD** \_\_\_\_\_ )  
(as Borrower)



Witness Name: *GIANNIS G. MARKOGIANNIS*  
Address: *26, ISIDOU STREET, 10674, ATHENS, GREECE*  
Occupation: *ATTORNEY AT LAW*

*Giannis G. Markogiannis*  
Attorney at Law  
26, Isidou Str.  
Athens 106 74 - Greece  
Athens Bar Association Nr 15523

SIGNED by \_\_\_\_\_ )  
duly authorised for and on behalf \_\_\_\_\_ )  
of **SUPER MARITIME LTD** \_\_\_\_\_ )  
(as Owner & Corporate Guarantor)



Witness Name: *CHRISTIANA ZAFIRI*  
Address: *10, PAPHOS, CYPRUS*  
Occupation: *LAWYER*

**CHRISTIANA ZAFIRI  
ADVOCATE**

SIGNED by )  
duly authorised for and on behalf )  
of SSH MARITIME MANAGEMENT LTD )  
(as Manager & Corporate Guarantor)

SSH MARITIME MANAGEMENT LTD  
AEPOLONG TRISSEOS STR.  
VOULIAGMENI - GREECE - 16674  
TEL: 210 9971030 FAX: 210 9964533

Witness Name:  
Address:

*[Signature]*  
GIANNIS MARKOGIANNIS  
26 ISIDOU STREET 16674  
ATHENS, GREECE

Occupation:

ATTORNEY AT LAW

I, JAMES GERASSIMOS FRANGI OF APARTMENT 30, THE TOWER, 1 ST. GEORGE WHARF,  
LONDON, SW8 2BW, CONFIRM I HAVE TAKEN INDEPENDENT LEGAL ADVICE BEFORE  
ENTERING INTO THIS AGREEMENT AND ANY OTHER SECURITY DOCUMENTS TO WHICH I  
AM A PARTY.

SIGNED by JAMES GERASSIMOS FRANGI )  
(as Personal Guarantor)

Witness Name:  
Address:

GIANNIS MARKOGIANNIS  
26 ISIDOU STREET 16674  
ATHENS, GREECE

Occupation:

ATTORNEY AT LAW

Giannis G. Markogiannis  
Attorney at Law  
26, Isidou Str.  
Athens 106 74 - Greece  
Athens Bar Association Nr 15523

**Annex 1**  
**FORM OF DRAWDOWN NOTICE**

**DRAWDOWN NOTICE**

To: **LENDER**

[•] 2018

Dear Sirs,

Drawdown Notice

We refer to the Loan Agreement dated [•] made between ourselves and yourselves (the “**Agreement**”).

Words and phrases defined in the Agreement have the same meaning when used in this Drawdown Notice.

Pursuant to Clause 2.2 of the Agreement, we irrevocably request that you advance the sum of [•] ([•]) to us which is a Business Day, by paying the amount of the Loan to [•]

We warrant that the representations and warranties contained in Clause 8 of the Agreement are true and correct at the date of this Drawdown Notice and will be true and correct on the requested Drawdown Date; that no Event of Default has occurred and is continuing, and that no Event of Default will result from the advance of the Loan requested in this Drawdown Notice.

Yours faithfully,

**SIGNED** by )  
duly authorised for and on behalf )  
of **ROYALTON INVESTMENT LTD** )  
(as Borrower)

**SIGNED** by )  
duly authorised for and on behalf )  
of **SSH MARITIME MANAGEMENT LTD** )  
(as Manager & Corporate Guarantor)

**SIGNED** by )  
duly authorised for and on behalf )  
of **SUPER MARITIME LTD** )  
(as Owner & Corporate Guarantor)

**SIGNED** by )  
**JAMES GERASSIMOS FRANGI** )  
(as Personal Guarantor)

**Annex 2**  
**CHARTER TERMS**

# MYBA CHARTER AGREEMENT -



NAME OF VESSEL:

Type:

Port of Registry:

Flag:

Length:

This Date

and Place

Between the Undersigned Parties it has been Agreed as Follows:

OWNER:  
ADDRESS:

CHARTERER:  
ADDRESS:

Broker:

MYBA ID:

Stakeholder:

MYBA ID:

## CHARTER PARTICULARS

CHARTER PERIOD: From \_\_\_\_\_ Hrs on the  
To \_\_\_\_\_ Hrs on the

PLACE OF DELIVERY: \_\_\_\_\_ PLACE OF RE-DELIVERY: \_\_\_\_\_

Cruising Area:

Maximum Number of Guests Sleeping ( ) and Cruising ( ) on Board

Crew Consisting of:

CHARTER FEE:

Plus: Advance Provisioning Allowance (A.P.A.) (see Clause 8):

Delivery/Re-delivery Fees:

Security Deposit (see Clauses 16 & 17):

To be paid as follows:

FIRST INSTALMENT:

SECOND INSTALMENT:

To the following Broker's Clients' Account and it shall be deemed paid only when cleared:

## SPECIAL CONDITIONS

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## SIGNATURES

The OWNER and CHAR TERER accept that Clauses 1- 25, inclusive, form part of this Agreement which consists of six pages plus any Conditions shown above or Addenda attached. Signed and legible facsimile copies of this Agreement shall be binding.

OWNER .....  
FOR AND ON BEHALF OF

DATE .....

CHARTERER .....  
FOR AND ON BEHALF OF

DATE .....

FULL NAME OF SIGNA TORY .....

FULL NAME OF SIGNA TORY .....

STAKEHOLDER .....  
FOR AND ON BEHALF OF

DATE .....

BROKER .....  
FOR AND ON BEHALF OF

DATE .....



## CLAUSE 1 AGREEMENT TO LET AND HIRE

The OWNER agrees to let the Vessel to the CHARTERER and not to enter into any other Agreement for the Charter of the Vessel for the same period.

The CHARTERER agrees to hire the Vessel and shall pay the Charter Fee, the Advance Provisioning Allowance, the Delivery/Re-delivery Fee, the Security Deposit and any other agreed charges, in cleared funds, no later than the dates and to the Account specified in this Agreement.

## CLAUSE 2 DELIVERY

The OWNER, shall at the beginning of the Charter Period deliver the Vessel free of encumbrance to the Place of Delivery in compliance with its flag state requirements and the CHARTERER shall take delivery in full commission and working order. The Vessel shall be insured, seaworthy, clean, in good condition throughout and ready for service, with full equipment, including up-to-date safety and life-saving equipment (including life-jackets for children if any are carried in the CHARTERER's Party), as required by the Vessel's registration authority and fitted out as appropriate for a Vessel of her size and type and enabling the CHARTERER to use the Vessel as set out in Clause 13. The OWNER does not warrant her use and comfort in bad weather conditions for all cruises or passages within the Cruising Area.

## CLAUSE 3 RE-DELIVERY

The CHARTERER shall re-deliver the Vessel to the OWNER at the Place of Re-Delivery free of any debts incurred for the CHARTERER's account during the Charter Period and in as good a condition as when delivery was taken, except for fair wear and tear arising from ordinary use. The CHARTERER may, if he wishes, re-deliver the Vessel to the Place of Re-Delivery and disembark prior to the end of the Charter Period but such early re-delivery shall not entitle the CHARTERER to any refund of the Charter Fee.

## CLAUSE 4 CRUISING AREA

- a) The CHARTERER shall restrict the cruising of the Vessel to within the Cruising Area and to within regions in the Cruising Area in which the Vessel is legally permitted to cruise. The CHARTERER shall also restrict time under way to an average of six (6) hours per day, unless the Captain, at his sole discretion, agrees to exceed this time.
- b) While the Captain and/or Broker will make all reasonable efforts to accommodate the CHARTERER's request for a berth; it is understood that the Captain and/or Broker and/or Stakeholder (if applicable) cannot be held liable for the non-allocation of the berth.

## CLAUSE 5 MAXIMUM NUMBER OF PERSONS - RESPONSIBILITY FOR CHILDREN - HEALTH OF THE CHARTERER'S PARTY

- a) The CHARTERER shall not at any time during the Charter Period permit more than the Maximum Number of Guests Sleeping or Cruising on Board plus, at the sole discretion of the Captain, a reasonable number of visitors whilst the Vessel is securely moored in port or at anchor, or as permitted by the appropriate authority.
- b) If children are taken on board, the CHARTERER shall be fully responsible for their conduct and entertainment and no member of the crew shall be held responsible for their conduct or entertainment.
- c) The nature of a charter may render it unsuitable for anybody with physical disability or under going medical treatment. By signature of this Agreement the CHARTERER warrants the medical fitness of all members of the CHARTERER's Party for the voyage contemplated by this Agreement. The CHARTERER and his party undertake to have all necessary visas and vaccinations for the countries to be visited.

## CLAUSE 6 CREW

- a) The OWNER shall provide a Captain qualified in accordance with the Vessel's flag state requirements and acceptable to the insurers of the Vessel. He shall also provide a suitably qualified and properly trained Crew. No member of the Crew shall carry or use any illegal drugs on board the Vessel or keep any firearms on board (other than those declared on the manifest) and the Captain and Crew shall comply with the laws and regulations of any country into whose waters the Vessel shall enter during the course of this Agreement.
- b) It is understood that the Crew are entitled to a minimum amount of rest in accordance with the Vessel's Code of Practice.
- c) The Captain and Crew are bound at all times to keep all information related to this Charter, the OWNER, the CHARTERER, and all Guests as confidential and no information is to be disclosed to any third party without prior permission in writing.

## CLAUSE 7 CAPTAIN'S AUTHORITY AND RESPONSIBILITIES

- a) The OWNER shall ensure that the Captain shows the CHARTERER the same attention as if the CHARTERER were the OWNER. The Captain shall comply with all reasonable orders given to him by the CHARTERER regarding the management, operation and movement of the Vessel, wind, weather and other circumstances permitting. The Captain shall not, however, be bound to comply with any order which might result in the Vessel moving to any port or place that is not safe and proper, or might result in the CHARTERER failing to re-deliver the Vessel upon the expiration of the Charter Period, or would, in the reasonable opinion of the Captain, cause a breach of Clause 13 and/or any other clause of this Agreement. Further, without prejudice to any other remedy of the OWNER, if, in the reasonable opinion of the Captain, the CHARTERER or any of his Guests fail to observe any of the provisions in Clause 13 and if such failure continues after the Captain has given due and specific warning to the CHARTERER in writing in respect of the same, the Captain shall inform the OWNER, the Broker and the Stakeholder, and the OWNER may terminate the Charter forthwith or instruct the Captain to return the Vessel to the Place of Re-Delivery and upon such return the Charter Period shall be terminated. The CHARTERER and his Guests shall disembark, the CHARTERER having settled all outstanding expenses with the Captain beforehand and the CHARTERER shall not be entitled to any refund of the Charter Fee.
- b) With particular regard to the use of watersports equipment, the Captain shall have the authority to exclude the CHARTERER or any or all of his Guests from use of any particular watersports equipment if they are unsafe, or behaving in an irresponsible manner, or are under the influence of alcohol, or are failing to show due concern for other persons or property when operating this equipment.

## NOTIFICATIONS BY THE CAPTAIN

The Captain shall immediately notify the Broker and Stakeholder of any breakdowns, disablements, crew changes, accidents, or other significant incidents that occur during the Charter Period.

PLEASE INITIAL:- OWNER:

CHAR TERER:

## CLAUSE 8 OPERATING COSTS

The Charter Fee includes the charter of the Vessel with all its equipment in working order; tools; stores; cleaning materials and basic consumable stores for engine room, deck, galley and cabins; laundry of ship's linen; the crew's wages, uniforms and food; the insurance of the Vessel and crew as per Clause 16. The CHARTERER will pay, at cost, for all other expenses. These include, but are not limited to, shoreside transport; fuel for the main engines and generators; fuel for tenders and water sports equipment; food and all beverages for the Charter Party; berthing dues and other harbour charges including pilots' fees, local taxes, divers' fees, customs formalities and any charges for waste disposal, charges for water and electricity taken from shore; ships' agents' fees where applicable; personal laundry; Charter Party communications and internet use; and hire or purchase costs of any special equipment placed on board at the CHARTERER's request.

Payment for extraordinary expenses such as special requirements or equipment, shoreside transport or excursions or any other expenses not customarily considered part of the Vessel's operating costs may be required to be paid, via the Broker's account in advance or to the Captain on boarding, in addition to the APA.

Having paid the Advance Provisioning Allowance (APA) via the Broker's Account, the CHARTERER shall be advised by the Captain, at intervals, as to the disbursement of the APA and shall, if the balance remaining becomes insufficient in the light of current expenditure, pay to the Captain a sufficient sum to maintain an adequate credit balance. The OWNER shall ensure the Captain will exercise due diligence in the expenditure of the APA. Any charges or fees related to the transfer of the APA to the Vessel are for the CHARTERER's account. Exchange rates, if applicable, cannot be guaranteed.

Prior to disembarkation at the end of the Charter Period, the Captain shall present to the CHARTERER a detailed account of expenditure, with as many supporting receipts as possible, and the CHARTERER shall pay to the Captain the balance of the expenses or the Captain shall repay to the CHARTERER any balance overpaid, as the case may be.

Payment by cheque, credit card or other negotiable instrument is not normally acceptable due to the itinerant nature of the Vessel's seasonal schedule and the CHARTERER should therefore ensure that he has sufficient funds available to cover all foreseeable expenses or arrange to deposit additional funds with the Broker .

## CLAUSE 9 DELAY IN DELIVERY

- a) If, by reason of force majeure (as defined in Clause 18 (a)), the OWNER fails to deliver the Vessel to the CHARTERER at the Place of Delivery at the commencement of the Charter Period and delivery is made within forty-eight (48) hours of the scheduled commencement date, or within one tenth (1/10th) of the Charter Period, whichever period is the shorter, the OWNER shall pay to the CHARTERER a refund of the Charter Fee at a pro rata daily rate or if it be mutually agreed the OWNER shall allow a pro rata extension of the Charter Period.

### FAILURE TO DELIVER

- b) If by reason of force majeure the OWNER fails to deliver the Vessel within forty-eight (48) hours or a period equivalent to one-tenth (1/10th) of the Charter Period, to the Place of Delivery, whichever period is the shorter from the due time of delivery, the CHARTERER shall be entitled to treat this Agreement as terminated. The CHARTERER's exclusive remedy will be to receive immediate repayment without interest of the full amount of all payments made by him under the terms of this Agreement. Alternatively, if the parties mutually agree, the Charter Period shall be extended by a time equivalent to the delay or postponed to a mutually agreed time.
- c) If the OWNER fails to deliver the Vessel at the Place of Delivery at the commencement of the Charter Period other than by reason of force majeure; the CHARTERER shall be entitled to treat this Agreement as repudiated by the OWNER. The CHARTERER will be entitled to immediate repayment without interest of the full amount of all payments made by him under the terms of this Agreement and shall in addition be paid by the OWNER liquidated damages of an amount equivalent to fifty per cent (50%) of the Charter Fee.

### CANCELLATION BY OWNER

- d) If prior to the commencement of the Charter Period as set out in Page One of this Agreement, the OWNER tenders notice of cancellation via the Broker and if the cancellation is by reason of force majeure, the remedy in (b) above shall apply.
- e) If the cancellation is for any reason, other than force majeure, the CHARTERER shall be entitled to immediate repayment without interest of the full amount of all payments made by him under the terms of this Agreement and shall in addition be entitled to liquidated damages from the OWNER to be calculated and paid forthwith on the following scale:
- i) thirty (30) days or more before commencement of the Charter Period, an amount equivalent to twenty five percent (25%) of the Charter Fee.
  - ii) more than fourteen (14) days but less than thirty (30) days before commencement of the Charter Period, an amount equivalent to thirty five percent (35%) of the Charter Fee.
  - iii) fourteen (14) days or less before commencement of the Charter Period, an amount equivalent to fifty percent (50%) of the Charter Fee.

## CLAUSE 10 DELAY IN RE-DELIVERY

- a) If re-delivery of the Vessel is delayed by reason of force majeure, re-delivery shall be effected as soon as possible thereafter and in the meantime the conditions of this Agreement shall remain in force but without penalty or additional charge against the CHARTERER.
- b) If the CHARTERER fails to re-deliver the Vessel to the OWNER at the Place of Re-Delivery due to intentional delay or change of itinerary against the Captain's advice, then the CHARTERER shall pay forthwith to the OWNER via the Broker/Stakeholder's Account demurrage at the daily rate plus fifty per cent (50%) of the daily rate. The CHARTERER shall be liable for all operating costs as per Clause 8 and indemnify the OWNER for any loss or damage which the OWNER shall suffer by reason of deprivation of use of the Vessel or cancellation of, or delay in delivery under any subsequent Charter of the Vessel.

PLEASE INITIAL:- OWNER:

CHAR TERER:



## CLAUSE 11 CANCELLATION BY CHARTERER & CONSEQUENCES OF NON-PAYMENT

- a) i) Should the CHARTERER give notice of cancellation of this Agreement on or at any time before the commencement of the Charter Period, some or all of the Charter Fee may be retained by the OWNER determined as follows:
- After this Agreement is signed but before the final instalment is due to be paid, the OWNER shall be entitled to retain the first instalment.
  - After any subsequent instalments are due to be paid, the OWNER shall be entitled to retain the first instalment and any subsequent instalments due.
- If any of the instalments are due to be paid but have not been paid then the OWNER shall have a claim against the CHARTERER for the amount so due.
- ii) **DEFAULT OF PAYMENT OR FAILURE TO PAY**
- Should the CHARTERER fail to pay, after having been given written notice by the OWNER, any amount due under this Agreement, the OWNER reserves the right to treat this Agreement as having been repudiated by the CHARTERER and to retain the full amount of all payments and to recover all sums unpaid and due up to the date of the repudiation.
- iii) Notwithstanding the OWNER's right to receive or retain all payments referred to above, the OWNER shall be under a duty to mitigate the CHARTERER's loss and in the event that the OWNER is able to re-let the Vessel for all or part of the Charter Period under this Agreement, the OWNER will give credit for the net amount of charter hire arising from such re-letting after deduction of all commissions and other consequential expenses arising from such re-letting. The intention is that the OWNER shall receive the same in net proceeds from any re-letting as would have been received under this Agreement had it not been cancelled or repudiated, so that the OWNER shall reimburse or forgive payments received or due from the CHARTERER only to the extent that the net proceeds from any re-letting which correspond to part or all of the Charter Period exceed the amounts which would have been received under this Agreement. The OWNER shall use his best endeavours to re-let the Vessel and shall not unreasonably withhold his agreement to re-let, although charters which may reasonably be considered detrimental to the Vessel, its reputation, its Crew or its schedule may be refused.
- iv) If, prior to the date of cancellation, the Vessel has taken on provisions for the Charter, or has utilised the Delivery/Re-delivery Fee as set out on Page One of this Agreement, then the CHARTERER shall pay for these expenses unless all or part can be either refunded by the supplier or transferred to the next Charter, in which case they shall be adjusted accordingly. The Captain and OWNER shall be under a duty to mitigate these expenses where possible.
- b) If, after signature of this Agreement, the OWNER is adjudged bankrupt or, in the case of a company, a liquidator, receiver or administrator is appointed over all or part of the OWNER's assets, the CHARTERER shall be entitled to cancel the Charter and all monies paid to the OWNER, his agent or the Stakeholder pursuant to this Agreement shall be refunded without further deduction.

## CLAUSE 12 BREAKDOWN OR DISABLEMENT

If after delivery the Vessel shall at any time be disabled by breakdown of machinery, grounding, collision or other cause so as to prevent reasonable use of the Vessel by the CHARTERER for a period between twelve (12) and forty-eight (48) consecutive hours or one tenth (1/10<sup>th</sup>) of the Charter Period, whichever is the shorter (and the disablement has not been brought about by any act or default of the CHARTERER) the OWNER shall make a pro rata refund of the Charter Fee for the period of the disablement or, if mutually agreed, allow a pro rata extension of the Charter Period corresponding with the period of disablement. If the CHARTERER wishes to invoke this clause he shall give immediate notice to the Captain directly, (or via the Broker). The CHARTERER shall not be liable for extra costs relating to the immobilisation of the Vessel but will remain liable for normal expenses during the period of disablement.

In the event of the actual or constructive total loss of the Vessel or if the Vessel is disabled as aforesaid for a consecutive period of more than forty-eight (48) hours or one tenth (1/10<sup>th</sup>) of the Charter Period, whichever is shorter, the CHARTERER may terminate this Agreement by notice in writing to the OWNER via the Brokers or to the Captain if no means of communication is available. Within two (2) working days after such termination, the Charter Fee shall be repaid by the OWNER pro rata without interest for that proportion of the Charter Period outstanding after the date and time on which the loss or disablement occurred. In the event of such termination the CHARTERER may effect re-delivery by giving up possession of the Vessel where she lies. The CHARTERER shall be entitled to recover from the OWNER the reasonable cost of returning the CHARTERER and his Guests to the Place of Re-Delivery together with reasonable accommodation expenses incurred.

Alternatively, after a consecutive period of disablement of more than forty-eight (48) hours or one tenth (1/10<sup>th</sup>) of the Charter Period, whichever is the shorter, and dependent on the nature and seriousness of the disablement, by mutual agreement the CHARTERER may elect to remain on board for the duration of the Charter Period and the CHARTERER will then have no further or additional claim against the OWNER.

## CLAUSE 13 USE OF THE VESSEL

The CHARTERER shall comply, and shall ensure that the Guests comply, with the laws and regulations of any country into whose waters the Vessel shall enter during the course of this Agreement.

The CHARTERER shall ensure that no pets or other animals are brought on board the Vessel without the consent in writing of the OWNER. The CHARTERER shall ensure that the behaviour of the CHARTERER and his Guests shall not cause a nuisance to any person or bring the Vessel into disrepute. The Vessel is not to be used for commercial photo or film shoots of any nature, unless by written permission from the OWNER.

The CHARTERER and Guests shall afford the Crew due respect at all times. No Crew member shall be subjected to any type of harassment, sexual or otherwise, by the CHARTERER or Guests at any time during the Charter Period.

Unless otherwise agreed, smoking shall be restricted to the exterior areas of the Vessel designated by the Captain.

The Captain shall promptly draw the CHARTERER's attention to any infringement of these terms by himself or his Guests, and if such behaviour continues after this warning, the Captain shall inform the OWNER or Stakeholder, and the OWNER may, by notice in writing given to the CHARTERER, terminate this Agreement in accordance with Clause 7.

If the CHARTERER or any of the Guests shall commit any offence contrary to the laws and regulations of any country which results in any member of the Crew of the Vessel being detained, fined or imprisoned, or the Vessel being detained, arrested, seized or fined, the CHARTERER shall indemnify the OWNER against all loss, damage and expense incurred by the OWNER as a result, and the OWNER may, by notice to the CHARTERER, terminate this Agreement forthwith.

The Vessel operates a zero tolerance policy and the possession or use of any illegal drugs or any weapons (including firearms) is strictly prohibited on board the Vessel. Failure to comply shall be sufficient reason for the OWNER to terminate the Charter forthwith without refund or recourse against the OWNER, Stakeholder or Broker.

PLEASE INITIAL:- OWNER:

CHAR TERER:

## CLAUSE 14 NON-ASSIGNMENT

The CHARTERER shall not assign this Agreement, sub-let the Vessel or part with control of the Vessel without the consent in writing of the OWNER, which consent may be on such terms as the OWNER thinks fit.

## CLAUSE 15 SALE OF THE VESSEL

- a) The OWNER agrees not to sell the Vessel during the Charter Period as set out on Page One of this Agreement.
- b) Should the OWNER agree to sell the Vessel after the signing of this Charter Agreement, but before delivery to the CHARTERER, the OWNER shall immediately, upon entering into an agreement for the sale of the Vessel, give notice of such sale in writing to the CHARTERER via the Broker. This information shall be kept in strict confidence by all parties to the Agreements.
- c) Should the Vessel be sold one of the following provisions will apply:
  - i) The OWNER shall arrange for the Buyer to perform the Charter on the same terms and conditions by signature of a tri-partite Novation Agreement.  
  
Where the Charter is taken over by the Buyer on the same terms and conditions there shall be no penalty against the OWNER and no additional commission due to the Broker.
  - ii) If the Buyer is unwilling or unable to fulfil the Charter Agreement then this Charter Agreement shall be considered as having been cancelled by the OWNER in accordance with Clause 9. All payments made by the CHARTERER shall be promptly repaid in full to him without deduction, and in addition liquidated damages calculated in accordance with Clause 9 (e), i, ii or iii, as appropriate, shall be paid. The Broker and Stakeholder shall be paid by the OWNER the full commission due on this original Agreement no later than seventy-two (72) hours after formal cancellation.

## CLAUSE 16 INSURANCE

- a) Throughout the period of this Agreement the OWNER shall insure the Vessel with first-class insurers against all customary risks for a Vessel of her size, value, and type on cover no less than is provided under Institute Yacht Clauses 1.11.85 or other recognised terms extended to provide Permission to Charter and to cover Third Party liability, Water Skiers liabilities together with liabilities arising from the use by the CHARTERER and other competent person(s) authorized by him of personal water craft, including jet skis, wave runners and other similar powered craft as well as windsurfers, dinghies, catamarans or other water sports equipment carried by the Vessel. The insurance shall also cover War, Strikes, Pollution and include insurance of Crew against injuries and/or Third Party liabilities incurred during the course of their employment. The CHARTERER shall remain liable for any loss, damage or liabilities arising from any act or negligence of the CHARTERER or his Guests and not recoverable by the OWNER under his insurance.
- b) All such insurances shall be on such terms and subject to such excess (deductible) as are customary for a vessel of this size, value, and type. Copies of all relevant insurance documentation shall be available on request for inspection by the CHARTERER prior to the Charter on reasonable notice to the OWNER, and shall be carried on board the Vessel.
- c) The CHARTERER should carry independent insurance for Personal Effects whilst on board or ashore and for any Medical or Accident expenses (including emergency transport evacuation) incurred.
- d) The CHARTERER should be aware that neither Charterer's Liability Insurance nor Cancellation and Curtailment Insurance are included in this Agreement.

## CLAUSE 17 SECURITY DEPOSIT

Unless otherwise provided on Page One of this Agreement, the Security Deposit shall be held by the Stakeholder on the OWNER's behalf and may be used in, or towards, discharging any damage or liability that the CHARTERER may incur under any of the provisions of this Agreement. If not required, as confirmed by the Captain in writing to the Stakeholder, the Security Deposit shall be refunded without interest to the CHARTERER on the first working day after the end of the Charter Period, or after settlement of all outstanding questions, whichever is the later.

## CLAUSE 18 DEFINITIONS

- a) **FORCE MAJEURE**  
In this Agreement 'force majeure' means any cause directly attributable to acts, events, non-happenings, omissions, accidents or Acts of God beyond the reasonable control of the OWNER, the Crew, or the CHARTERER (including, but not limited to, strikes, lock-outs or other labour disputes, civil commotion, riots, acts of terrorism, blockade, invasion, war, fire, explosion, sabotage, storm, collision, grounding, fog, governmental act or regulation, contaminated fuel, major mechanical or electrical breakdown beyond the Crew's control and not caused by lack of maintenance and/or OWNER's or Crew's negligence). Crew changes and shipyard delays not attributable to the aforementioned causes, do not constitute force majeure.
- b) **OWNER, CHARTERER, BROKER AND STAKEHOLDER**  
Throughout this Agreement, the terms OWNER, CHARTERER, Broker, and Stakeholder and corresponding pronouns shall be construed to apply whether the OWNER, CHARTERER, Broker or Stakeholder is male, female, corporate, singular or plural, as the case may be.

## CLAUSE 19 SALVAGE

During the period of the Charter, the benefits, if any, from all derelicts, salvages and towages, after paying the salvage Crew's proportion, and any hire for the relevant period and expenses, shall be shared equally between the OWNER and the CHARTERER.

## CLAUSE 20 PAYMENT OF CHARTER FEES AND OTHER MONIES TO THE OWNERS

All funds received by the Broker against this Agreement shall be transferred immediately upon receipt to the Stakeholder (if the Broker is not the Stakeholder) and then held by the Stakeholder in a designated Account in the currency of this Agreement. Fifty per cent (50%) of the Charter Fee shall be paid to the OWNER by the Stakeholder after deduction of the full commission by Bank Transfer on the date of commencement of the Charter Period or on the first working day thereafter. The Advance Provisioning Allowance (A.P.A.) shall be paid by the Stakeholder, to the Captain, or to the OWNER for onward transmission to the Captain prior to embarkation, by Bank Transfer. The Delivery and/or Re-delivery fees (if applicable) and any extraordinary expenses shall either be paid with the first payment to the OWNER or directly to the Captain. The balance of the Charter Fee shall be paid to the OWNER on the first working day following completion of the Charter Period.

PLEASE INITIAL:- OWNER:                      CHAR      TERER:

## CLAUSE 21 COMPLAINTS

The CHARTERER shall give notice of any complaint in the first instance to the Captain on board and note shall be taken of the time, date and nature of the complaint. The Captain shall inform the Broker and Stakeholder as soon as practicable.

If, however, this complaint cannot be resolved on board the Vessel then the CHARTERER shall give notice to the OWNER or to the Broker within twenty-four (24) hours of the event or occurrence unless it is impracticable due to failure or non-availability of communications equipment. The complaint may be made verbally in the first instance, but shall be confirmed as soon as possible in writing specifying the precise nature of the complaint.

## CLAUSE 22 FORCE MAJEURE

When force majeure is invoked in relation to breakdown or disablement, the Owner will instruct the Captain or Owner's representative to submit a detailed technical report, a copy of the vessel's maintenance log, if applicable, and all relevant supporting documentation to the Charterer or Charterer's representative.

## CLAUSE 23 ARBITRATION & LAW

Unless otherwise specified in the appropriate space on Page One of this Agreement, any dispute in connection with the interpretation and fulfilment of this Agreement shall be decided by arbitration in London and in accordance with the laws of England. The dispute shall be referred to a single Arbitrator to be appointed by the parties hereto.

If the parties cannot agree upon the appointment of a single Arbitrator, the dispute shall be settled by three Arbitrators, each party appointing one Arbitrator, the third being appointed by the current President of MYBA - The Worldwide Yacht Brokers Association or the American Yacht Charter Association.

Appointment of Arbitrators, or substitution of Arbitrators who are not available, shall be made within two (2) weeks of written notice by the other party, failing which the President of the Association appointing the third Arbitrator shall also appoint an Arbitrator on behalf of the party who fails to appoint one.

The award rendered by the Arbitration shall be final and binding upon both parties and may if necessary be enforced by the Court or any other competent authority in the same manner as a judgement in High Court.

If notice of arbitration proceedings is given by either party, the Stakeholder, after receiving notification of such proceedings, shall not deal with those monies held by them without the agreement of both parties or in accordance with the order of the Arbitrators or their final award. The monies should be held in a designated client account. This account should be interest bearing where national banking rules permit. The Stakeholder may, with the agreement of both parties, pay the monies into an Escrow Account jointly controlled by the accredited legal representatives of both parties pending the result of the Arbitration.

## CLAUSE 24 BROKERS

a) The commission shall be deemed to be earned by the Broker and the Stakeholder upon the signature of this Agreement by the OWNER and CHARTERER and payment of deposit funds by CHARTERER and be payable by the OWNER on the full Charter Fee plus the Delivery/Re-delivery Fee, if applicable, but excluding running expenses, according to Clause 20 on previous page, whether or not he defaults for any reason including force majeure. In the event of Cancellation by the CHARTERER, the commission shall be deducted as an expense from the deposit.

b) If the CHARTERER should extend this Charter, the OWNER shall pay commission on the gross Charter Fee for the extension, on the same basis as provided in 24a.

c) If the CHARTERER should Re-Charter the Vessel from the OWNER, his Agent or the Stakeholder, within two (2) years from the date of completion of this Charter, whether or not on the same terms, then the Broker shall be entitled to, and shall be paid by the OWNER, commission on the gross Charter Fee paid for that further Charter upon the same basis as provided herein.

However, if the CHARTERER should choose to re-charter the Vessel within this two-year period via another Broker to whom the commission is being paid, the OWNER shall pay a commission once only on the first Charter within that period of one-third (1/3rd) of the full rate to the original Broker and two-thirds (2/3rds) to the new Broker.

d) If any Agreement should be reached directly between the CHARTERER and the OWNER for the purchase of the Vessel within two (2) years from the date of commencement of this Charter, then the Broker shall be entitled to and be paid by the OWNER a sales commission. However, should the CHARTERER purchase the Vessel from the OWNER via a Sales Broker to whom the commission is being paid, then the OWNER shall pay, or shall ensure that the Sales Broker shall pay, a sum equivalent to not less than fifteen (15%) percent of the gross sales commission. It is the responsibility of the OWNER to advise any future Sales Broker of this liability. This only applies following the free choice of the CHARTERER and is not relevant if the change of Broker is suggested or solicited by the OWNER, his agent, Captain or representative. Any dispute under this Clause may be separately arbitrated.

e) The Broker and Stakeholder in this Agreement shall have no responsibility for any loss, damage or injury to the person or property of the OWNER or CHARTERER or any of their Guests, servants or agents, and further, the Broker and Stakeholder shall be under no liability for any errors of judgement or description or otherwise, of whatsoever nature and howsoever arising, and shall be under no further obligation, duty or responsibility to the OWNER or the CHARTERER save as set out herein. The OWNER and the CHARTERER shall jointly and severally indemnify and hold harmless the Broker and Stakeholder for any loss or damage sustained by them as a result of any liability by the Broker and Stakeholder to any Third Party (person, firm, company or authority) arising from promoting or introducing this Charter, assisting in the performance of this Agreement or performing the duty of Stakeholder.

f) For the purposes of this Clause, the terms OWNER and CHARTERER shall be understood to mean the named company or individual, or any company owned or controlled by them including companies owned indirectly or via Trustees, any Director of such a company, Beneficial Owner, Nominee, Agent or Charterer's Guest.

## CLAUSE 25 NOTICES

Any notice given or required to be given by either Party to this Agreement shall be communicated in any form of writing and shall be deemed to have been properly given if proved to have been dispatched pre-paid and properly addressed by mail or courier service or by fax in the case of the OWNER, to him or to the Broker at their addresses as per this Agreement or, in the case of the CHARTERER, to his address as per this Agreement or, where appropriate, to him on board the Vessel.

PLEASE INITIAL:- OWNER:

CHAR TERER: