



**Registration of a Charge**

Company name: **THE PORTSMOUTH HARBOUR FERRY COMPANY LIMITED**  
Company number: **00018751**



X46BRTHV

Received for Electronic Filing: **29/04/2015**

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**Details of Charge**

Date of creation: **23/04/2015**  
Charge code: **0001 8751 0028**  
Persons entitled: **HSBC ASSET FINANCE (UK) LIMITED**  
Brief description: **THE VESSEL "HARBOUR SPIRIT", ALL POLICIES AND CONTRACTS OF INSURANCE IN CONNECTION WITH THE VESSEL "HARBOUR SPIRIT" AND ALL COMPENSATION PAYABLE BY REASON OF ANY REQUISITION OR COMPULSORY AQUISITION OF THE VESSEL "HARBOUR SPIRIT".**  
**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**  
Certified by: **W G R KELLY**



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

Company number: 18751

Charge code: 0001 8751 0028

The Registrar of Companies for England and Wales hereby certifies that a charge dated 23rd April 2015 and created by THE PORTSMOUTH HARBOUR FERRY COMPANY LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 29th April 2015 .

Given at Companies House, Cardiff on 30th April 2015

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



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

DATED

23 APRIL

2015

(1) THE PORTSMOUTH HARBOUR FERRY COMPANY LIMITED

(2) HSBC ASSET FINANCE (UK) LIMITED

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**DEED OF COVENANTS**

**SUPPLEMENTAL TO A MORTGAGE OF A SHIP**

**“ HARBOUR SPIRIT ”**

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Schedule 1 Financial Agreement

DATE: 23 APRIL 2015

## PARTIES:

- (1) **THE PORTSMOUTH HARBOUR FERRY COMPANY LIMITED** (company number 00018751) of South Street, Gosport Hampshire, PO12 1EP ("**the Owner**"); and
- (2) **HSBC ASSET FINANCE (UK) LIMITED** a private company limited by shares incorporated in England and Wales under number 229341 whose registered office is at 8 Canada Square, London, E14 5HQ ("**the Lender**").

## 1. PURPOSE

The Lender and the Owner have entered into the Financial Agreement pursuant to which the Lender has agreed to make a loan of two million, three hundred and ninety thousand pounds (£2,390,000.00) available to the Owner to fund the refinancing of the vessel "**HARBOUR SPIRIT**". In order to secure the due payment of the Indebtedness to the Lender, the Owner as the absolute, beneficial and unencumbered Owner of all the shares in the Vessel has agreed (*inter alia*) to grant to the Lender the Mortgage and to enter into this Deed which is collateral thereto.

## 2. DEFINITIONS

- 2.1. In this Deed the following terms shall have the following meanings (unless the context otherwise requires):

"Approved Brokers"	means the insurance brokers appointed by the Owner with the Lender's prior approval;
"Business Days"	means a day other than a Saturday, Sunday or public holiday on which banks in England and Wales are open for business;
"Environmental Approvals"	means all approvals, consents, licences, permits, certifications, exemptions or authorisations required under applicable Environmental Laws;
"Environmental Laws"	means all laws, regulations, conventions and agreements whatsoever relating to the pollution, contamination or protection of the environment;
"Event of Default"	means the events referred to in clause 9;
"Excess Risks"	means the proportion of claims for general average and salvage charges and under the ordinary running-down clause which is not recoverable in consequence of the value at which the Vessel is assessed for the purpose of such claims exceeding her insured value;
"Financial Agreement"	means the loan agreement dated 23 April 2015 between the Lender and the Owner pursuant to which the Lender has agreed to make available a loan of two million, three hundred and ninety thousand pounds (£2,390,000.00) to the Owner to refinance the Vessel (a copy of which is attached in Schedule 1);
"Indebtedness"	means the aggregate of all amounts whatsoever whether principal, interest or otherwise which may from time to time or at any time be or become due and owing actually

	or contingently from the Owner (whether as principal, surety or otherwise) to the Lender under the Security Documents or under any other agreement, arrangement or account between the Owner and the Lender;
<b>"Insurance Documents"</b>	means all slips, cover notes, contracts, policies, certificates of entry or other insurance documents evidencing or constituting the Insurances from time to time in effect;
<b>"Insurances"</b>	means all policies and contracts of insurance (which expressions includes all entries of the Vessel in a protection and indemnity or mutual hull or war risks association) or such other arrangements by way of insurance which are from time to time taken out or entered into in respect of or in connection with the Vessel pursuant to clause 6 and including all benefits thereof and all claims of whatsoever nature and return of premiums;
<b>"Insurers"</b>	means the underwriters, insurance companies, mutual insurance associations or other associations or companies with or by which the Insurances are effected;
<b>"Registry"</b>	The Registry of Shipping and Seamen;
<b>"Interest Rate"</b>	means the interest rate specified in the Financial Agreement and if more than one the higher of such rates;
<b>"Requisition Compensation"</b>	means all compensation payable by reason of requisition for title or other compulsory acquisition of the Vessel other than requisition for hire;
<b>"Security Documents"</b>	means the Financial Agreement, the Mortgage, this Deed of Covenants, and all other documents executed as security for the Indebtedness or any part thereof whether pursuant to clause 7.1.28 of this Deed or otherwise;
<b>"Security Period"</b>	means the period commencing on the date hereof and ending on the date on which the Indebtedness is repaid in full to the Lender;
<b>"Vessel"</b>	means the vessel <b>"HARBOUR SPIRIT"</b> registered in the name of the Owner at the Registry with Official Registered No. 920475 and including any share or interest therein and the hull, machinery, equipment, fuel and stores thereof whether now owned or hereafter acquired and all additions, improvements and replacements hereafter made in or to the Vessel or any part thereof and/or the said machinery and equipment;
<b>"Mortgage"</b>	means the statutory mortgage of the Vessel executed by the Owner in favour of the Lender and dated the same date as this Deed;
<b>"Sterling"</b>	means the lawful currency of the United Kingdom from time to time;
<b>"Total Loss"</b>	means <ul style="list-style-type: none"> <li>(a) the actual or constructive or compromised or arranged or agreed total loss of the Vessel; and/or</li> </ul>

- (b) the requisition for title or other compulsory acquisition of the Vessel other than requisition for hire; and/or
- (c) the capture, seizure, arrest, detention or confiscation of the Vessel by any government or by a person acting or purporting to act on behalf of any government where the Vessel is not released or discharged within thirty (30) days after the occurrence thereof;

**"War Risks"**

means the risk of mines and all risks excluded from hull and machinery marine risks policies by clause 29 of the International Hull Clauses (1.11.2002).

**2.2.**

- 2.2.1. clause headings are inserted for ease of reference only and are not to affect the interpretation of this Deed;
- 2.2.2. words importing the singular number shall include the plural and vice versa and words of the male gender shall include the female gender and vice versa;
- 2.2.3. references to a person are to be construed to include corporations, firms, companies, partnerships, individuals, associations, states and administrative and governmental and other entities whether or not a separate legal entity;
- 2.2.4. any reference to a document is a reference to that document as the same may have been and may from time to time hereafter be amended, supplemented, replaced or novated;
- 2.2.5. references to clauses, paragraphs and schedules are to the clauses, paragraphs and schedules to this Deed;
- 2.2.6. any reference to a statute or statutory instrument or regulation is a reference to that statute, statutory instrument or regulation as the same may have been and may from time to time hereafter be modified, amended or re-enacted;
- 2.2.7. fees, costs and expenses shall be exclusive of any value added tax or similar tax; and
- 2.2.8. the liquidation, winding up or dissolution of a company or body corporate and the appointment of a receiver, manager or administrator of a company or body corporate or any of its assets shall be construed so as to include any equivalent or analogous proceedings or event under the law of the jurisdiction in which it is incorporated or any jurisdiction in which it carries on business or has assets or liabilities.

**3. CHARGE AND ASSIGNMENT BY OWNER**

- 3.1. In consideration of the premises and in order to secure the payment of the Indebtedness to the Lender the Owner with full title guarantee has mortgaged and charged the Vessel in favour of the Lender and hereby:
  - 3.1.1. assigns absolutely to the Lender, the Insurances and the Requisition Compensation; and
  - 3.1.2. covenants and agrees that the Vessel shall be held subject to the Mortgage which shall be held by the Lender for the payment of the Indebtedness so that the charge thereby created shall be a continuing security, but this Deed shall continue in full force and effect notwithstanding the discharge of the Mortgage until the Indebtedness has been paid to the Lender in full.

#### **4. PAYMENT BY OWNER**

- 4.1. The Owner hereby covenants to pay the Indebtedness to the Lender in accordance with the terms of the Financial Agreement and this Deed.
- 4.2. All payments to be made by the Owner under this Deed shall be made in full, without any set-off or counterclaim whatsoever and free and clear of any deductions or withholdings, in immediately available freely transferable cleared funds in the relevant currency not later than 11 a.m. on the due date.

#### **5. WARRANTY**

- 5.1. The Owner warrants to the Lender that prior to the execution of the Mortgage and this Deed it has not assigned, transferred, pledged or charged or otherwise disposed of the Insurances and/or the Requisition Compensation and further undertakes with the Lender that it will not do so during the Security Period without the prior written consent of the Lender which it shall have full power to withhold.
- 5.2. The Owner represents and warrants to the Lender that it is a private limited company duly incorporated and validly existing under the laws of England and Wales and has power to carry on its business and to own its property and other assets;
- 5.3. The Owner represents and warrants to the Lender that it has power and authority to execute, deliver and perform its obligations under the Security Documents; all necessary action has been taken (and not revoked) to authorise the execution, delivery and performance of the Security Documents and the Security Documents constitute, or when executed and delivered will be, its valid and legally binding obligation enforceable in accordance with the terms thereof.
- 5.4. The Owner represents and warrants to the Lender that the execution, delivery and performance of the Security Documents do not and will not contravene any law, regulation, directive, judgment or order to which it is subject; or
  - 5.4.1 result in any actual or potential breach of or default under any obligation, agreement, instrument or consent to which it is a party or by which it is bound or which it requires to carry on its business; or
  - 5.4.2 contravene any provision of its memorandum and articles of association and/or statutes and/or constitutional documents; or
  - 5.4.3 result in any limitation on its powers to borrow or incur debt being exceeded.
- 5.5. The Owner represents and warrants to the Lender that no Event of Default has occurred and is continuing.

#### **6. INSURANCE**

- 6.1. The Owner hereby covenants with the Lender:
  - 6.1.1. to insure and keep the Vessel insured during the Security Period, in Sterling or such other currency as may be approved in writing by the Lender, at its own expense in the full insurable value of the Vessel but in no event for an amount less than seven hundred and thirty five thousand pounds or such other figure as the Lender may approve against fire, marine and other risks (including Excess Risks) and War Risks covered by hull and machinery policies;
  - 6.1.2. to effect such additional Insurances as shall (in the reasonable opinion of the Lender) be necessary or advisable.
- 6.2. The Owner further covenants with the Lender during the Security Period:



- 6.2.1. to effect the Insurances in such amounts and upon such terms as shall from time to time be approved in writing by the Lender and through the Approved Brokers and with such Insurers as shall from time to time be approved in writing by the Lender;
- 6.2.2. to renew the Insurances at least fourteen (14) days before the relevant Insurances expire and to procure that the Approved Brokers shall promptly confirm in writing to the Lender as and when each such renewal is effected;
- 6.2.3. punctually to pay all premiums, calls, contributions or other sums payable in respect of the Insurances and to produce all relevant receipts when so required in writing by the Lender;
- 6.2.4. to pay to the Lender on demand all premiums and other amounts payable by the Lender in effecting and maintaining in such amounts and with such insurers as the Lender shall consider appropriate a mortgagees' interest insurance (including additional perils) policy in the name of the Lender;
- 6.2.5. to arrange for the execution of such guarantees as may from time to time be required by any war risks association;
- 6.2.6. to procure that the Insurance Documents shall be deposited with the Approved Brokers and that such brokers shall provide the Lender with certified copies thereof and/or the Insurers shall issue to the Lender a letter or letters of undertaking in such form as the Lender may request;
- 6.2.7. to procure that the war risks associations in which the Vessel is entered shall provide the Lender with a letter or letters of undertaking (in such form as the Lender may request) and shall provide the Lender with a copy of the certificate of entry;
- 6.2.8. to procure that the Insurance Documents shall provide that the lien or set off for unpaid premiums or calls shall be limited to only the premiums or calls due in relation to the Insurances on the Vessel and for twenty eight (28) days prior written notice to be given to the Lender by the Insurers (such notice to be given even if the Insurers have not received an appropriate enquiry from the Lender) in the event of non-renewal, cancellation or termination of the Insurances and in the event of the non-payment of the premium or calls the right to pay the said premium or calls within a reasonable time;
- 6.2.9. promptly to provide the Lender with full information regarding any casualties or damage to the Vessel in any amount in excess of 15% of the value of the vessel or in consequence whereof the Vessel has become or may become a Total Loss;
- 6.2.10. at the written request of the Lender, to provide the Lender with a detailed report issued by a firm of marine insurance brokers or consultants appointed by the Lender in relation to the Insurances at the cost of the Owner;
- 6.2.11. not to do any act nor voluntarily suffer nor permit any act to be done whereby any Insurance shall or may be suspended or avoided and not to suffer nor permit the Vessel to engage in any voyage not permitted under the Insurances in effect without first covering the Vessel to the amount herein provided for with insurance satisfactory to the Lender for such voyage;
- 6.2.12. (without limitation to the generality of the foregoing) in particular not to permit the Vessel to enter any zone which is declared a war zone by any government or by the Vessel's War Risks Insurers unless the Lender shall first have been given its consent thereto in writing and there shall have been effected by the Owner and at their expense such special insurance as the Lender may require;
- 6.2.13. to procure that all amounts payable under the Insurances are paid to the Lender in accordance with this Deed and to apply all amounts as are paid to the Owner to the repair of the damage and the reparation of the loss in respect of which the said amounts shall have been received.

## 7. OWNER'S COVENANTS

7.1. The Owner hereby further covenants with the Lender that during the Security Period the Owner will:

- 7.1.1. keep the Vessel registered as a British ship at the Registry (or under such other registration to which the Lender may agree) and not do or suffer to be done anything whereby such registration may be forfeited or imperilled;
- 7.1.2. maintain the corporate existence of the Owner under the laws of England and Wales and comply with all relevant legislation applicable to the Owner;
- 7.1.3. pay when due and payable all taxes, assessments, levies, governmental charges, fines and penalties lawfully imposed on and enforceable against the Vessel unless contested in good faith by the Owner by the appropriate proceedings;
- 7.1.4. not sell, transfer, mortgage, charge, pledge or abandon (save in the case of maritime necessity) the Vessel or any share or interest therein nor assign the Insurances without the prior written consent of the Lender which it shall have full power to withhold;
- 7.1.5. not cause or permit the Vessel to be operated in any manner contrary to law or that will expose the Vessel to penalty, forfeiture or capture and in the event of hostilities in any part of the world (whether a war be declared or not) not employ the Vessel or voluntarily suffer its employment in carrying any contraband goods;
- 7.1.6. not create or permit to be created or continued any lien or encumbrances (except the Mortgage and this Deed and any other security as may be approved in writing by the Lender) whatsoever on the Vessel and/or the Insurances (other than any lien on the Vessel as a result of any necessary salvage or arising in the ordinary course of operation of the Vessel) and in the ordinary course of business discharge and/or satisfy all claims and demands which if unpaid might in law or by statute or otherwise create a lien or encumbrance on the Vessel;
- 7.1.7. on the written request of the Lender provide satisfactory evidence that the wages, insurance and pension contributions of the Captain and crew of the Vessel are being paid in accordance with their contracts of employment and the relevant regulations, and that all deductions from the remuneration of the Captain and crew in respect of any tax liability (including PAYE) and national insurance contributions are being made and accounted for to the relevant authority and that the Captain has no claim for disbursements other than those properly incurred by him in the ordinary operation of the Vessel on the voyage then in progress;
- 7.1.8. if any writ or proceedings shall be issued against the Vessel or if the Vessel shall be otherwise attached, arrested or detained by any proceeding in any court or tribunal or by any government or other authority, immediately notify the Lender thereof by facsimile confirmed by letter and as soon as practicably possible thereafter cause the Vessel to be released and all liens or encumbrances thereon (except for the Mortgage and this Deed) to be discharged;
- 7.1.9. not without the prior written consent of the Lender (which it shall have full power to withhold) to charter the Vessel on any basis for any period whatsoever;
- 7.1.10. not without the prior written consent of the Lender (which it shall have full power to withhold) deliver the Vessel into the possession of any person or persons for effecting repairs or renewals to the Vessel the cost of which will exceed 15% of the value of the vessel unless either such person or persons shall have given a written undertaking to the Lender not to exercise any lien or right of detention on the Vessel in respect of the cost of such repairs or renewals;

- 7.1.11. at all times and at its own expense maintain the Vessel in a seaworthy condition and in good running order and repair;
- 7.1.12. notify the Lender immediately by e-mail of any recommendation or requirement imposed by the Insurers or any other competent authority that is not complied with in accordance with its terms;
- 7.1.13. give the Lender prior notice of any proposed dry docking or any underwater survey so that the Lender (if it so desires) can arrange for a representative to be present;
- 7.1.14. at all times comply with all legal requirements whether imposed by enactment, regulation, common law or otherwise (including, without limitation, all port state control requirements) and have on board the Vessel as and when legally required valid certificates showing compliance therewith;
- 7.1.15. comply with, and procure that all servants and agents of the Owner comply with, all Environmental Laws in relation to the Vessel;
- 7.1.16. obtain, comply with and procure that all servants and agents of the Owner comply with all Environmental Approvals in relation to the operation and/or management of the Vessel;
- 7.1.17. duly perform and discharge all duties and liabilities imposed on the Owner under any contract relating to the Vessel;
- 7.1.18. not remove or permit the removal of any part of the Vessel or any equipment belonging thereto, nor make or permit to be made any alteration in the structure type or speed of the Vessel which materially reduces the value of the Vessel (unless such removal or alteration is required by statute) without the prior written consent of the Lender which it shall have full power to withhold;
- 7.1.19. at all reasonable times permit the Lender or its authorised representative full and complete access to the Vessel for the purpose of inspecting the state and condition of the Vessel and papers and at the written request of the Lender deliver for inspection copies of any and all contracts and documents relating to the Vessel whether on board or not;
- 7.1.20. promptly provide the Lender with information concerning the status and insurance of the Vessel and the use and the position of the Vessel;
- 7.1.21. when so requested by the Lender (but not more often than once every twelve (12) months) provide the Lender with a valuation of the Vessel in Sterling (or such other currency as may be approved in writing by the Lender) such valuation to be made without physical inspection (unless otherwise required by the Lender) and on the basis of an arm's-length purchase by a willing buyer from a willing seller, the valuations to be carried out by a broker approved by the Lender at the cost of the Owner;
- 7.1.22. in the event of requisition of the Vessel by any government authority or other competent authority, execute any assignment that the Lender may request in relation to any and all amounts which such government authority shall be liable to pay as compensation for the Vessel or for her use and if received by the Owner to pay such amounts immediately to the Lender, provided that if such requisition applies only to the use of the Vessel the provisions of this clause 7.1.23 shall not apply if there has been no Event of Default;
- 7.1.23. not appoint a manager of the Vessel without the Lender's prior written consent;
- 7.1.24. not occupy the Vessel as their full or part-time residence and will not allow any third party to do the same;
- 7.1.25. comply with the carving and marking requirements and all other requirements of the Registry in order for the Vessel to be and remain registered at the Registry;

- 7.1.26. execute and deliver to the Lender such documents of transfer as the Lender may require in the event of sale of the Vessel pursuant to any power of sale contained in this Deed or which the Lender may have in law;
- 7.1.27. execute any further document or documents required by the Lender in order to perfect or complete the security created by the Security Documents.

## **8. PROTECTION OF SECURITY**

- 8.1. The Lender shall without prejudice to its other rights and powers hereunder have the right but be under no duty at any time to take such action as it considers necessary for the purpose of protecting the security created by the Security Documents and the Owner shall pay to the Lender on demand all amounts paid by the Lender in providing such protection of the security with interest at the Interest Rate from the date of payment of the said amounts by the Lender until the date of repayment by the Owner to the Lender whether before or after judgement.
- 8.2. Without prejudice to the generality of clause 8.1:
  - 8.2.1. in the event of a default in compliance with the provisions of clause 6 the Lender shall have the right to insure the Vessel as provided in clause 6 and to pay any unpaid premiums or calls then outstanding;
  - 8.2.2. in the event of a default in surveys and compliance with clause 7.1.12 the Lender shall have the right to effect such repairs as it considers necessary;
  - 8.2.3. in the event of a default in compliance with clauses 7.1.3, 7.1.6 and/or 7.1.8 the Lender shall have the right to pay and discharge all such debts and liabilities and to take such action as it considers necessary for the purpose of securing the release of the Vessel.
- 8.3. For the avoidance of doubt in no circumstances whatsoever will the Lender be under any liability to the Owner or any third party to pay any amount referred to in clause 8.2 or otherwise (including unpaid premiums or calls) unless it has specifically agreed so to do in writing.

## **9. EVENTS OF DEFAULT**

- 9.1. If any one or more of the following events shall occur then the Lender shall have the rights provided in clause 10:
  - 9.1.1. the Owner fails to pay any amount (whether in respect of principal, interest or otherwise) due and payable by the Owner to the Lender under the Security Documents on the due date;
  - 9.1.2. the Owner defaults in the due performance and discharge of any of its duties or liabilities under the Security Documents which default (in the opinion of the Lender) is not capable of remedy and is not remedied within five Business Days after written notice of such default has been given to the Owner by the Lender;
  - 9.1.3. any licence, consent or approval of any public, governmental or judicial authority or agency at any time necessary to enable the Owner to perform and discharge its duties and liabilities under the Mortgage and this Deed or to make the Mortgage and this Deed legal, valid, binding, enforceable or admissible in evidence shall be revoked or withheld or materially (in the opinion of the Lender) modified or shall otherwise not remain in full force and effect;
  - 9.1.4. any representation, warranty or statement made or implied by the Owner in this Deed or otherwise given by the Owner to the Lender or any notice, certificate, statement or opinion referred to, delivered or made under or in connection with the Security Documents shall be incorrect or inaccurate when made in any material respect;

- 9.1.5. any other monetary obligation incurred by the Owner as principal, surety or otherwise is not paid when due or is capable of being declared due and payable prior to its stated maturity by reason of a default under the agreement or charge pursuant to which monetary obligation was incurred;
- 9.1.6. the Owner shall admit their inability to pay their debts as soon as they fall due or in full, or shall enter into any composition or other arrangements with their creditors generally or shall declare a general moratorium on the payment of their debts generally;
- 9.1.7. any order shall be made by any competent court or other competent authority or a resolution shall be passed by the Owner, for the appointment of a liquidator of, or otherwise for the winding-up or dissolution of the Owner, except for the purpose of amalgamation or re-organisation (not involving or arising out of insolvency) the terms of which shall have received the prior written approval of the Lender;
- 9.1.8. a meeting of the Owner is convened for the purpose of considering any resolution for (or to petition for) its winding-up, administration or dissolution or any such resolution is passed;
- 9.1.9. any person presents a petition for the winding-up, administration or dissolution of the Owner (save where such petition is frivolous or vexatious or is not set aside before the petition is advertised and in any event within twenty-one days after presentation);
- 9.1.10. an application to appoint or a notice of intention to appoint an administrator of the Owner is made or filed, or any other step is taken to appoint an administrator of the Owner;
- 9.1.11. any distress or execution is levied or enforced against any of the assets and undertaking of the Owner;
- 9.1.12. the Owner ceases or threatens to cease to carry on business or (without the prior written consent of the Lender) disposes or threatens to dispose of a substantial (in the opinion of the Lender) part of its assets or undertaking otherwise than for full value and for a cash payment;
- 9.1.13. a substantial part (in the opinion of the Lender) of the assets or undertaking of the Owner is seized, expropriated or compulsorily acquired by or under the authority of any government;
- 9.1.14. it becomes impossible or unlawful for the Owner to perform and discharge any of its duties and liabilities contained in the Security Documents or for the Lender to exercise any of its rights and powers under the Security Documents;
- 9.1.15. a material adverse change occurs in the financial condition of the Owner which, in the opinion of the Lender, may result in the Owner being unable to perform and discharge any of its duties and liabilities under the Security Documents;
- 9.1.16. anything is done or omitted to be done by the Owner which in the reasonable opinion of the Lender prejudices the security created by the Security Documents;
- 9.1.17. the Vessel becomes a Total Loss and the Lender shall not have received within ninety (90) days following the occurrence of such Total Loss (or such earlier date as the Total Loss claim is paid by the Insurers) the Indebtedness; or
- 9.1.18. any event of default occurs under the Financial Agreement.

## 10. **POWERS OF SALE ETC**

- 10.1. If any one or more Event of Default shall occur then the Lender shall have the right and power to:
  - 10.1.1. take possession of the Vessel and exercise all the rights and powers of a mortgagee;

- 10.1.2. institute legal proceedings to recover judgement against the Owner for the Indebtedness;
  - 10.1.3. order the Vessel to proceed forthwith at the Owner's risk and expense to a port or place nominated by the Lender: the Owner shall give the necessary instructions to the master of the Vessel to comply with any such order of the Lender and if the Owner fails to give such instructions for any reason whatsoever the Lender shall have the right and power to give such instructions direct to the master;
  - 10.1.4. sell the Vessel or any shares therein (whether as mortgagee, attorney-in-fact for the Owner or otherwise) either by public auction or private contract and whether or not on deferred terms of payment with the power to the Lender to make any such special or other stipulations as it shall deem proper and/or to postpone the sale without being liable for any loss occasioned thereby. The Lender shall give the Owner prior written notice of any proposed sale and in the case of a public auction the time, date and place of such auction;
  - 10.1.5. pending the sale of the Vessel, insure, manage, maintain and repair the Vessel and operate or employ or lay up the Vessel or otherwise use the Vessel for such time and upon such terms as it may consider to its advantage without being responsible for any loss or damage thereto and accounting only for the net profits if any arising from such use;
  - 10.1.6. recover from the Owner on demand all losses, expenses, payments and disbursements incurred by the Lender in or about or incidental to the exercise by it of any of the powers aforesaid together with interest thereon at the Interest Rate from the date when such losses, expenses, payments or disbursements were incurred or made by the Lender until the date of reimbursement whether before or after judgement;
  - 10.1.7. require all Insurance Documents and all claims correspondence to be delivered to the Lender or to the broker or adjuster nominated by it;
  - 10.1.8. defend, discharge, compound, release or compromise all claims against the Owner in respect of the Vessel and/or the Insurances and/or the Requisition Compensation including (but not limited to) those which have given or may give rise to any charge or lien on the Vessel or which are or may be enforceable by proceedings against the Vessel;
  - 10.1.9. recover, institute, pursue, discharge, compound, release or compromise all claims by the Owner in respect of the Vessel and/or the Insurances and/or the Requisition Compensation against the Insurers or any other third party whatsoever; and
  - 10.1.10. pay all amounts as the Lender considers appropriate in order to maintain and enforce its rights and powers under the Security Documents.
- 10.2. Sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Deed.

## **11. PROCEEDS OF SALE ETC**

- 11.1. The proceeds of a sale of the Vessel, the net earnings of any operation or other use of the Vessel by the Lender under any of the rights or powers herein specified, all other amounts including insurance recoveries in respect of a Total Loss received by the Lender pursuant to or under the terms hereof or in any proceedings hereunder the application of which has not elsewhere herein been specifically provided for shall be applied in the following order:
  - FIRST in payment of all damages, losses, expenses, payments and disbursements whatsoever (together with interest thereon as previously provided for) incurred by the Lender in or about or incidental to the exercise by the Lender of the powers specified or otherwise referred to in clause 10 hereof or any of them;
  - SECOND in payment of the Indebtedness;

THIRD in payment of the balance (if any) to the Owner or to whomsoever shall be entitled thereto.

In the event that the proceeds are insufficient to pay the amounts specified in paragraphs FIRST and SECOND above the Lender shall be entitled to collect and recover the balance from the Owner or any other person liable therefore.

## 12. INDEMNITY

12.1. The Owner hereby undertakes to indemnify the Lender against all liabilities whatsoever which the Lender may incur reasonably and in good faith at any time in relation to the Vessel or otherwise in relation to the security created by the Security Documents.

12.2. Without prejudice to the generality of clause 12.1 the Lender shall have the power (but be under no duty) at any time to issue guarantees in respect of any liability of the Owner in relation to the Vessel and the Insurances, and the Lender shall have the right to demand payment from the Owner of all amounts actually or contingently due under any such guarantee, the amount so payable being secured by the security created by the Security Documents.

## 13. INVALIDITY

In the event that any term or condition of the Mortgage or this Deed is rendered or declared invalid or unenforceable in whole or in part by any statute, rule or regulation or any decision of any court or tribunal of competent jurisdiction then such determination or declaration shall not affect the validity of any other term or condition of the Mortgage or this Deed which (save as aforesaid) will remain in full force and effect and the Owner undertakes (in addition to the duties imposed by clause 7.1.27) to execute such further document or documents as the Lender may reasonably require to complete and give effect to the security constituted by the Mortgage and this Deed.

## 14. PROTECTION OF THIRD PARTIES

No purchaser, assignee or other person dealing with the Lender shall be concerned to enquire whether the Indebtedness has become payable or whether any power which it is purporting to exercise has become exercisable or whether any amount is due under the Mortgage and this Deed or as to the application of any amount paid or borrowed or as to the regularity of any sale by or other dealing with the Lender. All the protection to purchasers contained in ss 104 and 107 of the Law of Property Act 1925 shall apply to any person purchasing from or dealing with the Lender as if the Indebtedness had become due and the power of sale in relation to the Vessel had arisen on the date of this Deed.

## 15. POWER OF ATTORNEY

15.1. The Owner by way of security irrevocably appoints jointly and severally the Lender and each and every receiver appointed by the Lender under the provisions of this Deed to be the attorney of the Owner (with full powers of substitution and delegation) for the Owner and in its name or otherwise and on its behalf and as its act and deed to sign, seal, execute and deliver and do all instruments, transfers, notices, documents and acts which the Owner may or ought to do under the terms contained in the Mortgage and this Deed and generally in its name and on its behalf to exercise all or any of the powers, authorities and discretions conferred by or pursuant to the Mortgage and this Deed or by the Law of Property Act 1925 on the Lender or such receiver and to execute and deliver any document, agreement or do any act which it may deem proper in the exercise of all or any of the powers, authorities or discretions conferred on the Lender or such receiver pursuant to the Mortgage and this Deed.



- 15.2. The Owner ratifies and confirms and agrees to ratify and confirm anything such attorney shall lawfully and properly do or purport to do under clause 15.1 and all amounts expended by any such attorney shall be deemed to be expenses incurred by the Lender under this Deed.

**16. RECEIVER, ETC**

- 16.1. The Lender shall have the power at any time after an Event of Default or when requested by the Owner to appoint any one or more persons to be a receiver and manager whose powers shall include (but not be limited to) those provided in Schedule 1 of the Insolvency Act 1986 and all powers given to the Lender under this Deed (including without limitation those detailed in Clause 10), all powers granted to a receiver by the Law of Property Act 1925 and the following additional powers:-
- 16.1.1. to borrow from the Lender or others such moneys as he may require on the security of the Vessel or otherwise upon such terms as he may in his absolute discretion think fit;
  - 16.1.2. to carry on any business carried on by the Owner;
  - 16.1.3. to appoint managers, officers, contractors and agents to assist him in the performance of his functions upon such terms as to remuneration or otherwise as he may determine;
  - 16.1.4. to do all such other acts and things as may be considered to be incidental or conducive to any of the matters or powers aforesaid and which he lawfully may or can do.
- 16.2. A receiver so appointed shall be deemed to be the agent of the Owner and the Owner shall be solely responsible for his costs, defaults and remuneration.
- 16.3. The Lender shall have the right at any time and as often as it considers appropriate to delegate all or any of the rights and powers granted to it by this Deed on such terms, in such manner and to such persons as the Lender considers appropriate.

**17. DISCHARGE OF SECURITY**

- 17.1. The security constituted by the Mortgage and this Deed shall be continuing and shall not be considered as satisfied or discharged by any intermediate payment or settlement of the whole or any part of the Indebtedness or any other event including the insolvency, liquidation or administration of the Owner and shall be binding until all the Indebtedness has been unconditionally and irrevocably paid and discharged in full.
- 17.2. Upon the irrevocable payment or discharge in full of the Indebtedness the Lender will at the request and cost of the Owner release and discharge the Mortgage and this Deed and transfer and reassign to the Owner all the Lender's right, title and interest in the Insurances and any Requisition Compensation.

**18. AVOIDANCE OF PAYMENTS**

No assignment, security or payment which may be avoided or adjusted under any statute relating to bankruptcy or insolvency or under ss 339-343 of the Insolvency Act 1986 or similar legislation binding on the Owner in a jurisdiction other than England and Wales and no release, settlement or discharge given or made by the Lender in reliance on any such assignment, security or payment shall prejudice or affect the right of the Lender to recover the Indebtedness from the Owner (including the right to recover any amounts which it may have been compelled by due process of law to refund under the provisions of the Insolvency Act 1986 and any costs payable by it pursuant to or otherwise incurred in connection with such process) or to enforce the security created by or pursuant to the Mortgage and this Deed to the full extent of the Indebtedness.



## 19. COSTS

19.1. The Owner shall on demand and on a full indemnity basis pay to the Lender the amount of all costs and expenses and other liabilities (including legal and out-of-pocket expenses and any value added tax on such costs and expenses) which the Lender incurs in connection with:

- 19.1.1. the preparation, negotiation, execution and delivery of the Mortgage and this Deed;
- 19.1.2. the payment of stamp duty or stamp duty reserve tax or the registration of the Mortgage and this Deed or any transfer of the Vessel pursuant to the Mortgage or this Deed;
- 19.1.3. any actual or proposed amendment of or waiver or consent under or in connection with the Mortgage and this Deed;
- 19.1.4. any discharge or release of the Mortgage and this Deed;
- 19.1.5. the maintenance or exercise (or attempted maintenance or exercise) of any rights and powers under or in connection with and the enforcement (or attempted enforcement) of the Mortgage and this Deed including (but not limited to) the sale or transfer of the Vessel; or
- 19.1.6. dealing with or obtaining advice about any other matter or question arising out of or in connection with the Mortgage and this Deed;

together with interest thereon at the Interest Rate from the date of payment by the Lender until the date of the payment by the Owner whether before or after judgement.

## 20. SET-OFF

20.1. Following an Event of Default, the Lender may without notice to the Owner combine or consolidate all or any amounts standing to the credit of the Owner's accounts with the Lender with the Indebtedness and/or set-off or transfer any such amounts in or towards the satisfaction of the Indebtedness, and may do so notwithstanding that the balances on such accounts and such liabilities may not be expressed in the same currency, and for the purpose of exercising any rights under this clause 20.1 or rights under the general law the Lender is authorised to effect any necessary conversions at the Lender's own rate of exchange then prevailing.

20.2. The Owner irrevocably authorises the Lender in its name and at its expense to perform such acts and sign such documents as may be required to give effect to any set-off or transfer pursuant to clause 20.1, including the purchase with the amount standing to the credit of any such account of such other currencies as may be necessary to effect such set-off or transfer.

20.3. In this clause "**rights under the general law**" means any right of set-off, combination or consolidation of accounts, lien or similar right which the Lender has under any applicable law.

## 21. NOTICES

21.1. Every notice, demand or other communication under the Mortgage and this Deed shall be in writing and may be delivered personally or by letter despatched in each case to the address of the intended recipient as follows

- |   |                  |   |   |
|---|------------------|---|---|
| - | Owner's address  | - | South Street, Gosport Hampshire, PO12 1EP   |
| - | Lender's address | - | HSBC Asset Finance (UK) Limited, 12 Calthorpe Road, Edgbaston, Birmingham B15 1QD marked for the attention of the Technical Services Team |

or to such other address as may be notified in accordance with this clause by either party to this Deed to the other for such purpose.

21.2. Every notice, demand or other communication shall be deemed to have been received (if sent by post) forty-eight hours after being posted first class postage prepaid (if posted from and to an

address within the UK) and (if delivered personally or sent by facsimile transmission subject to receiving confirmation from the facsimile machine sending the facsimile that the facsimile has been sent)) at the time of delivery or sending if during normal business hours in the place of intended receipt on a Business Day and otherwise at the opening of business in that place on the next succeeding such Business Day.

## 22. CURRENCY INDEMNITY

If under any applicable law or regulation or pursuant to a judgement or order being made or registered against the Owner or the liquidation of the Owner or without limitation for any other reason any payment under or in connection with the Mortgage and this Deed is made or falls to be satisfied in a currency ("**the payment currency**") other than the currency in which such payment is expressed to be due under or in connection with the Mortgage and this Deed ("**the contractual currency**") then to the extent that the amount of such payment actually received by the Lender when converted into the contractual currency at the rate of exchange falls short of the amount due under or in connection with the Mortgage and this Deed the Owner as a separate and independent liability shall indemnify and hold harmless the Lender against the amount of such shortfall. For the purposes of this clause "**rate of exchange**" means the rate at which the Lender is able on or about the date of such payment to purchase, in accordance with its normal practice, the contractual currency with the payment currency and shall take into account (and the Owner shall be liable for) any premium and other costs of exchange including any taxes or duties incurred by reason of any such exchange.

## 23. WAIVER ETC

- 23.1. No delay or omission on the part of the Lender in exercising any right, power or remedy under the Mortgage and/or this Deed shall impair that right, power or remedy or operate as or be taken to be a waiver of it nor shall any single partial or defective exercise of any such right, power or remedy preclude any other further exercise under the Mortgage and/or this Deed of that or any other right, power or remedy.
- 23.2. The Lender's rights under the Mortgage and this Deed are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Lender deems expedient.
- 23.3. Any waiver by the Lender of any terms of the Mortgage and this Deed or any consent or approval given by the Lender under it shall only be effective if given in writing and then only for the purpose and upon the terms and conditions if any on which it is given.
- 23.4. The security constituted by the Mortgage and this Deed shall be in addition to and shall not be prejudiced, determined or affected by or operate so as in any way to prejudice, determine or affect any security which the Lender may now or at any time in the future hold for or in respect of the Indebtedness or any part of it and shall not be prejudiced by time or indulgence granted to any person or any abstention by the Lender in perfecting or enforcing any remedies, securities, guarantees or rights it may now or in the future have from or against the Owner or any other person or any waiver, release, variation, act, omission, forbearance, unenforceability, indulgence or invalidity of any such remedy, security, guarantee or right.
- 23.5. Any statement, certificate or determination of the Lender as to the Indebtedness or without limitation any other matter provided for in the Mortgage and this Deed shall in the absence of manifest error be conclusive and binding on the Owner.
- 23.6. The provisions of this Deed shall be severable and if at any time one or more of such provisions or part of such a provision is or becomes invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions shall not in any way be impaired.

24. **NEW ACCOUNT**

If the Lender receives notice of any subsequent mortgage or interest affecting the Vessel, the Insurances or the Requisition Compensation, the Lender may open a new account or accounts for the Owner in its books and if the Lender does not do so then unless the Lender gives express written notice to the contrary to the Owner as from the time of receipt of such notice by the Lender all payments made by the Owner to the Lender in the absence of any express appropriation by the Owner to the contrary shall be treated as having been credited to a new account of the Owner and not as having been applied in reduction of the Indebtedness at the time when it received such notice.

25. **REDEMPTION OF PRIOR ENCUMBRANCES**

At any time after this Deed shall have become enforceable or after any powers conferred by an encumbrance having priority to this Deed shall have become exercisable the Lender may redeem such or any other prior encumbrance or procure the transfer thereof to itself and may settle and pass the accounts of the encumbrancer and any account so settled and passed shall be conclusive and binding on the Owner and all monies paid by the Lender to the encumbrancer in accordance with such accounts shall as from such payment be due from the Owner to the Lender on current account and shall bear interest at the Interest Rate and be secured as part of the Indebtedness.

26. **PROPER LAW AND JURISDICTION**

- 26.1. This Deed is governed by and shall be construed in accordance with the law of England and Wales, excluding and without giving effect to any conflict of law rules or principles that might refer the matter to another jurisdiction.
- 26.2. The Owner irrevocably agrees for the exclusive benefit of the Lender that the courts of England and Wales shall have jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of or in connection with this Deed and for such purposes irrevocably submits to the jurisdiction of such courts.
- 26.3. Nothing contained in this clause shall limit the right of the Lender to take in rem proceedings against the Vessel or proceedings against the Owner in any other court of competent jurisdiction nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction whether concurrently or not (unless precluded by applicable law).
- 26.4. The Owner irrevocably waives any objection which it may have now or in the future to the courts of England and Wales being nominated for the purpose of this clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

**SCHEDULE 1**

**Financial Agreement**

10/20/2017 10:00 AM

IN WITNESS whereof the Owner has duly executed and delivered this Deed of Covenants as a deed the day and year first above written

EXECUTED as a Deed (but not delivered  
until the date hereof) by **THE PORTSMOUTH  
HARBOUR FERRY COMPANY LIMITED**

acting by two  
Directors or a director and the secretary

Director

Director/Secretary

**FOR LENDER ONLY**

**THIS DEED of RELEASE and RE-ASSIGNMENT**

In this Deed the words used have the meanings given to them in the Deed of Covenants. The Lender hereby releases, re-assigns and transfers (as appropriate) to the Vessel, Insurances and Requisition Compensation now comprised in the Deed of Covenants

SIGNED as a Deed and delivered this )  
day of 20 )  
by )  
as the attorney and on behalf of )  
**HSBC ASSET FINANCE (UK) LIMITED** )  
in the presence of: )

Signature of Witness .....

Name of Witness .....

Address .....

.....

Occupation.....