



Registration of a Charge

Company name: **5 WEST LIMITED**

Company number: **04856467**

Received for Electronic Filing: **28/09/2018**



X7FH06A0

Details of Charge

Date of creation: **28/09/2018**

Charge code: **0485 6467 0007**

Persons entitled: **CLOSE BROTHERS LIMITED**

Brief description: **A IMCOA 60 YACHT VESSEL BEARING HULL IDENTIFICATION NUMBER 228-07-15 TOGETHER WITH ONE (1) LOMBARDINI LDW1404 ENGINE BEARING ENGINE SERIAL NUMBER 4801201552 (THE "VESSEL") AND HER EARNINGS, INSURANCES AND REQUISITION COMPENSATION.**

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION**

**FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL
INSTRUMENT.**

Certified by:

LAUREN BROWNE



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 4856467

Charge code: 0485 6467 0007

The Registrar of Companies for England and Wales hereby certifies that a charge dated 28th September 2018 and created by 5 WEST LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 28th September 2018 .

Given at Companies House, Cardiff on 1st October 2018

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

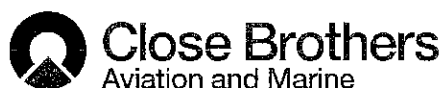


**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**

DATED 28th September 2018

(1) 5 WEST LIMITED

(2) CLOSE BROTHERS LIMITED



DEED OF COVENANTS

Important Notice:

This is an important deed which affects your rights. Among other things, if you fail to comply with the terms of this deed, you may lose your right to your vessel. Also under the terms of this deed your vessel will stand as security not just for your obligations under the deed but also for any other obligations you may now or in the future have to Close Brothers Limited or any associated company of Close Brothers Group Plc either alone or jointly and/or severally with any other person and we refer you to the definition of "Secured Liabilities" in this deed.

You are therefore strongly advised to obtain independent legal advice before signing this deed. Your signature will be confirmation by you that you have read and understand and are willing to abide by all of the terms of this deed and the mortgage.

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Schedule

One	Parties and Vessel Details
Two	Notice of Assignment (Insurances)
Three	Loss Payable Clause
Execution	

THIS DEED is executed on

25 September 2018

BETWEEN:-

- (1) The Owner described in Schedule One hereto ("the Owner"); and
- (2) **CLOSE BROTHERS LIMITED** of 10 Crown Place, London, EC2A 4FT ("the Mortgagee" which expression shall include the successors and assigns of the Mortgagee).

WHEREAS:-

- (A) The Owner is the sole legal and beneficial Owner of 64/64^{ths} of the shares in the Vessel.
- (B) The Owner has, on the date of this Deed, executed and delivered to the Mortgagee a first priority statutory mortgage in account current form over all the shares in the Vessel.
- (C) The Owner has opened and keeps an Account Current with the Mortgagee.
- (D) This Deed is supplemental to the Mortgage and the security created by it.

NOW IT IS AGREED as follows:-

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed and the Mortgage, except when it is inconsistent with the context:-

"**Account Current**" shall mean the Secured Liabilities;

"**Charter Assignment**" means the assignment of a bareboat charter entered into between the Owner and a Charterer of a Commercial Vessel on or about the date hereof;

"**Charter Guarantee Assignment**" means the assignment of any guarantee granted to the Owner in respect of any charter of a Commercial Vessel;

"**Commercial Vessel**" means a Vessel registered as a commercial vessel as set out in Schedule 1;

"**Designated Base**" means the location set out in Schedule One;

"**Encumbrance**" means any mortgage, pledge, lien (maritime or otherwise including but not limited to any crew lien), charge, assignment, hypothecation, security interest, title retention, preferential rights or trust agreement or other arrangement or agreement the effect of which is the creation of security or a priority in right of payment;

"**Estimated Market Value**" means the market value of the Vessel as determined by the Mortgagee's surveyor from time to time;

"**Event of Loss**" means:-

- (a) the actual, constructive, compromised or arranged total loss of the Vessel; or
- (b) the compulsory acquisition of the Vessel, or
- (c) the hijacking, theft, condemnation, capture, seizure, arrest, detention or confiscation of such Vessel (other than where the same amounts to the compulsory acquisition of the Vessel by any government entity, or by persons acting or purporting to act on behalf of any government entity) unless the Vessel be released and restored to the Mortgagee and/or the Owner from such hijacking, theft, condemnation, capture, seizure, arrest, detention or confiscation within thirty (30) days after the occurrence thereof;

"**Fishing Vessel**" means a Vessel registered as a fishing vessel as set out in Schedule 1;

"**Guarantee and Indemnity**" means any guarantee or indemnity given or to be given by the Guarantor in favour of the Mortgagee;

"**Guarantor**" means any person or company giving the Guarantee;

"**Insurances**" means all contracts and policies of insurance which are from time to time, or are required to be, effected and maintained under

this Mortgage;

"**Insurers**" means any persons with, or through whom, Insurances are effected;

"**Licence**" means in relation to a Fishing Vessel any licence or consent or approval required in respect of the Vessel's fishing operations;

"**Loan Agreement**" means any loan agreement entered into or to be entered into between the Owner or any third party and the Mortgagee;

"**MCA**" means the Maritime and Coastguard Agency of the United Kingdom and/or any other person or authority from time to time having supervision, control or jurisdiction over the Vessel or its operation;

"**Mortgage**" means the first priority statutory mortgage on the MCA form MSF 4736 referred to in recital (B) in the form set out in Schedule Two;

"**MSF**" means the form MSF used by the MCA and includes any replacement thereof;

"**Obligatory Insurances**" means any Insurances effected pursuant to Clause 8.1;

"**Owner**" includes for the purposes of Clause 13 only, any subsidiary or holding company of the Owner or any subsidiary of any such holding company from time to time within the meaning of s.1159 of the Companies Act 2006 (as amended);

"**Permitted Waters**" means the territorial waters of England, Wales and Scotland;

"**Pleasure Vessel**" means a Vessel registered as a pleasure vessel as set out in Schedule 1;

"**Receiver**" means any receiver and/or manager appointed pursuant to this Deed and the Mortgage;

"**Requisition Compensation**" includes all monies or other compensation payable by reason of requisition for title or other compulsory acquisition of the Vessel;

"**Security Assets**" means the Vessel, the Insurances, Requisition Compensation and all other assets the subject of this security;

"**Security Document**" means this Agreement, the Guarantee and Indemnity, the Mortgage, the Loan Agreement and where applicable any Charter Assignment and Charter Guarantee Assignment as amended and/or supplemented or substituted and any other documents that may from time to time be executed as security for any sums due, owing or incurred hereunder;

"**Secured Liabilities**" means all monies whether principal, interest or otherwise and all obligations and liabilities whatsoever whether present, future, actual or contingent which are or may become payable or owing to the Mortgagee or any associated company of Close Brothers Group Plc by the Owner either alone or jointly and/or severally with any other person (including under or in connection with this Deed and the Mortgage) or by any person under the Loan Agreement;

"**Security Period**" means the period beginning on the date of this Deed and the Mortgage and ending on the date upon which all the Secured Liabilities have been fully and irrevocably paid and discharged to the satisfaction of the Mortgagee;

"**Taxes**" includes all present and future income and other taxes, levies, imposts, duties, deductions, charges, fees and withholdings together with any applicable interest and penalties;

"**UK Ship Register**" means the central ship register of the MCA as established under the Merchant Shipping Act 1995; and"

"**Vessel**" means the vessel described in Schedule One and everything in the future belonging to her on board and ashore without limitation (including all equipment, and if applicable tenders, tackle, pots, nets and appurtenances).

1.2

In this Deed and the Mortgage, except when it is inconsistent with the context:-

1.2.1 any reference to the plural includes the singular and vice versa;

1.2.2 any reference to one gender includes all genders;

1.2.3 any reference to a person includes natural persons, corporate bodies, limited liability partnerships, partnerships, firms, unincorporated bodies and all legal persons whatsoever;

1.2.4 any reference to a "corporate entity" shall include, within its

meaning limited liability partnerships;

1.2.5 headings, including those in the Index, are given for convenience only and shall not affect interpretation;

1.2.6 any reference to a clause, sub-clause or schedule is a reference to a clause, sub-clause or Schedule in or to this Deed and the Mortgage;

1.2.7 any reference to a particular statute includes all orders, regulations and subordinate legislation from time to time made under or with respect to that statute and to it or them as from time to time modified or re-enacted (whether before or after the date of this Deed and the Mortgage) and any reference to a particular section of a statute includes any section of a later statute which modifies, replaces or re-enacts that section;

1.2.8 any reference to the Mortgagee includes a reference to its successors and assigns and persons deriving title under or through them; and

1.2.9 any reference to any document (including this Deed and the Mortgage) includes such document as from time to time varied or supplemented.

2 REPRESENTATIONS AND WARRANTIES

2.1 The Owner hereby represents and warrants to the Mortgagee that:-

2.1.1 It is the sole, absolute, legal and beneficial owner of the Security Assets including in particular the Vessel;

2.1.2 the Vessel is validly registered in (a) Part I of the UK Ship Register where the Vessel is a Pleasure Vessel or a Commercial Vessel and (b) Part 2 of the Ship Register where the Vessel is a Fishing Vessel, in the name of the Owner as owner;

2.1.3 neither the Security Assets nor any part thereof are or is subject to any Encumbrance, save for this Deed and the Mortgage;

2.1.4 this Deed and the Mortgage has been duly executed by the Owner and constitutes the legal, valid and binding obligations of the Owner and creates a valid and enforceable first priority mortgage over the Security Assets including in particular the Vessel;

2.1.5 at the time of execution (and also, in the case of the Mortgage, registration) of this Deed and the Mortgage, the Vessel is located in UK territorial waters;

2.1.6 the Security Assets do not constitute a private residence and are not occupied at any time by the Owner as such, nor are they let or licensed or used by any third party on that basis. The Security Assets are not residential premises within the meaning of the Protection from Eviction Act 1977 and the Owner will take all necessary steps to remove any third parties located on or in the Security Assets on the written request of the Mortgagee;

2.1.7 the Vessel is in a fully seaworthy condition and maintained, serviced and repaired in accordance with Clause 10 below;

2.1.8 the Vessel records are full complete and accurate since the date of manufacture of the Vessel and the Vessel has suffered no accident damage or serious incident since manufacture;

2.1.9 the Owner, if an individual, or the beneficial owners and any directors, if a company, have no existing criminal record (other than, if appropriate in respect of any minor road traffic offences) in any jurisdiction;

2.1.10 the Owner, if an individual, or the beneficial owners and any directors, if a company has not been subject to an order or decree prohibiting him to be a director of or office holder of any company or corporation in any jurisdiction;

2.1.11 there is no litigation (civil or criminal) ongoing, pending or otherwise proposed against the Owner, or if appropriate any of its directors or any controlling shareholder;

2.1.12 if a body corporate, limited liability partnership or partnership, it shall preserve its minimum net worth as at a level contained in the last signed audited financial accounts;

2.1.13 all information supplied to the Mortgagee or any associated company of Close Brothers Group Plc in connection with the indirect, direct and beneficial ownership of the Vessel is true and complete;

2.1.14 the execution and delivery of this Deed and the other Security Documents and their performance according to their respective terms do not and will not result in a breach of, or default under, any agreement, instrument or arrangement to which the Owner is party or which is binding upon him or any of his assets; or cause to arise, or oblige the Owner to create, any Encumbrance (other than as contemplated by this Agreement) over all or any part of his assets, undertaking, rights or revenues;

2.1.15 the Owner is not, and the Owner shall procure that the Guarantor is not in breach of, nor in material default under, any agreement or arrangement to which he is a party;

2.1.16 the Owner has, and the Owner shall procure that the Guarantor has filed or caused to be filed all requisite tax returns and has paid all taxes shown to be due and payable on such returns or on any assessments made against him;

2.1.17 such financial information as has been given to the Mortgagee (whether orally or in writing) by or on behalf of the Owner or Guarantor in connection with this Agreement was, and at the date of execution of this Agreement is, correct in all respects and any further information so submitted during the currency of this Deed and the Mortgage is and shall be true and correct and no such information is or shall be misleading by reason of omissions;

2.1.18 on drawdown of the Loan the Vessel will be:-

2.1.18.1 registered in the name of the Owner as on the UK Ship Register;

2.1.18.2 insured as required by this Deed and the Mortgage; and

2.1.18.3 operationally seaworthy;

2.1.19 all serial numbers displayed on the Vessel, including the hull identification number, are genuine and correct;

2.1.20 the document evidencing registration of the Vessel at the MCA will be valid at all times during the Security Period;

2.1.21 the Owner holds legal and beneficial title to 64/64^{ths} of the Vessel; and

2.1.22 in relation to a Fishing Vessel the Owner has the appropriate Licence for its activities and is in compliance with all conditions contained in that Licence

2.2 The representations and warranties contained in Clause 2.1 shall be deemed to be repeated on each day during the Security Period as if made with reference to the facts and circumstances existing on each such day.

3 ACCOUNT CURRENT

The Owner hereby irrevocably authorises the Mortgagee to debit the Account Current with all sums from time to time payable by the Owner to the Mortgagee under the Security Documents.

4 MORTGAGE

4.1 As security for payment of the Secured Liabilities the Owner hereby mortgages the Vessel with full title guarantee to the Mortgagee by way of first priority fixed mortgage.

4.2 The security hereby created shall be discharged upon the request of the Owner after the end of the Security Period provided that where any discharge is made 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 repaid on bankruptcy, liquidation or otherwise howsoever, this security and the liability of the Owner under this Deed and the Mortgage shall continue as if there has been no such discharge or arrangement.

5 ASSIGNMENT

5.1 The Owner hereby assigns absolutely to the Mortgagee with full title guarantee all its rights, title and interest in or to the Insurances, the Requisition Compensation, the Licence where applicable (insofar as assignable) and all monies payable in respect of an Event of Loss and all the benefits of the Owner under any agreements for the purchase, repair, overhaul or servicing of the Vessel including without limitation all benefits under all warranties provided to the Owner (including without limitation engine and major component warranties) or indemnity provisions and all claims for damages.

5.2 The Owner will do or procure the doing of all such things and the execution of all such documents as the Mortgagee may from time to time require to ensure the payment to the Mortgagee of the items assigned by Sub-clause 5.1. In particular (without limitation) the Owner shall forthwith give notice to its insurance brokers in the form set out in Schedule Two and cause its insurance

	brokers to give notice to the insurers of the assignment of the Insurances and shall procure that its insurance brokers shall acknowledge such notice to the Mortgagee in a form satisfactory to the Mortgagee.		
5.3	If, for any reason whatsoever, the Owner receives full or partial payment of any Insurances or Requisition Compensation (other than in respect of minor casualties as per paragraph 2 of Schedule Three) the Owner will promptly pay the amounts so received by it (except to the extent they exceed the amount of the Secured Liabilities) to the Mortgagee or as the Mortgagee may direct and, until such time, the Owner shall hold the proceeds in trust for the Mortgagee, segregated from any other monies held by or on behalf of the Owner.		
5.4	The Owner undertakes, upon first request by the Mortgagee, to assign absolutely with full title guarantee and as security for the Secured Indebtedness all its benefits under any charter or contract of carriage relating to the Vessel and any earnings whatsoever under such charters or contracts, and shall assign such benefits in respect of any such charter to which the Mortgagee has consented pursuant to Clause 11 as a condition of such consent.		
6	<u>CONTINUING SECURITY AND OTHER SECURITIES</u>		
6.1	The security given by this Deed and the Mortgage shall be continuing and not satisfied or affected by any intermediate payment or satisfaction of the whole or any part of the Secured Liabilities, but shall secure the ultimate balance of the Secured Liabilities. The security given by this Deed and the Mortgage shall be in addition to and shall not be affected by or affect any other Encumbrance now or hereafter held by the Mortgagee for all or any of the Secured Liabilities or any other agreement between the Owner and the Mortgagee (with or without other parties). All of the rights, powers and remedies vested in the Mortgagee by this Deed and the Mortgage may be exercised from time to time and as often as the Mortgagee shall in its absolute discretion deem expedient and shall be cumulative and not exclusive of each other or other rights and remedies.	8.1	The Owner shall at all times throughout the Security Period:
6.2	Time shall be of the essence of the Mortgage and this Deed and of all matters relating thereto and hereto but no failure or delay by the Mortgagee or any Receiver in exercising any right, remedy or power shall operate as a waiver thereof; nor shall any single or partial exercise or waiver of any right, remedy or power preclude its further exercise or the exercise of any other right, remedy or power; nor shall any required consent given by the Mortgagee preclude the Mortgagee giving, withholding or revoking such consent or any other or subsequently required consent.	8.1.1	keep the Vessel insured for at least the Estimated Market Value against all risks as the Mortgagee may from time to time require including but not limited to marine perils, hull and machinery risks, war risks and third party liability risks;
6.3	All the rights, powers and remedies conferred on the Mortgagee and any Receiver hereunder shall be cumulative and in addition to, and not a limitation of, every other right, power or remedy conferred on the Mortgagee and any Receiver by the Loan Agreement, the Mortgage, this Deed, the other Security Documents or by law; and each right, power or remedy may be exercised from time to time and as often and in such order as the Mortgagee or any Receiver may in its/his absolute discretion think fit and without prior recourse to any other security or person.	8.1.2	place all Obligatory Insurances through such brokers and with such Insurers as the Mortgagee shall from time to time approve and on such terms as the Mortgagee shall from time to time require;
7	<u>GENERAL COVENANTS</u>	8.1.3	punctually pay when due all premiums, calls, contributions or other sums payable by the Owner in respect of Obligatory Insurances;
	The Owner hereby covenants with the Mortgagee by way of primary obligations and not merely by way of guarantee that throughout the Security Period it will:-	8.1.4	reimburse to the Mortgagee on demand the cost of the Mortgagee effecting and keeping in effect in the Mortgagee's name mortgagee's interest insurance on the Vessel the Estimated Market Value from time to time; such mortgagee's interest insurance shall be placed by the Mortgagee in such manner and on such terms as the Mortgagee may in its absolute discretion require;
7.1	pay, on demand, the Secured Liabilities to the Mortgagee and to pay interest on each amount comprised in the Secured Liabilities from the date it is demanded or if earlier the date it falls due until payment to the Mortgagee; and	8.1.5	renew, or procure the renewal of, all Obligatory Insurances at least 14 days before the same expire;
7.2	comply at all times with the terms (express or implied) of this Deed and the Mortgage and the Loan Agreement; and	8.1.6	not without the Mortgagee's prior written consent alter, supplement, substitute or cancel any Insurances nor cause or permit any Insurances to lapse or otherwise terminate; nor do or permit any act or omission whereby any Insurances are, or are capable of, becoming wholly or partly, invalid, void, voidable, unenforceable or suspended or whereby any sum paid under any Insurances is, or is capable of becoming, wholly or partly repayable or an increased premium or other payment is payable to Insurers thereunder or whereby the Mortgagee may be hindered or prevented from receiving any moneys payable thereunder;
7.3	not create or permit to subsist any Encumbrance upon all or any part of the Security Assets except for the Mortgage; and	8.1.7	make full disclosure to Insurers of all relevant facts in respect of all Insurances;
7.4	not do, or permit to be done, any act or thing which might jeopardise the rights and interest of the Mortgagee in the Security Assets and/or omit or permit to be omitted any act which might prevent those rights and interests from being jeopardised; and	8.1.8	procure that (except in the case of mortgagee's interest insurance and protection and indemnity risks) the interest of the Mortgagee is endorsed on all slips, cover notes, policies or other instruments of insurance by means of the loss payable clause set out in Schedule Three.
7.5	not pledge the credit of the Mortgagee for any purpose or in any manner whatsoever; and	8.1.9	apply all sums paid to the Owner in accordance with the loss payable clause attached at Schedule Three in repairing all damage and/or discharging the liability in respect of which such sums shall have been received and if the Owner receives payment of any sums payable in respect of any Insurances other than in accordance with any such loss payable clause the Owner will immediately pay over such sums to the Mortgagee and until paid over such sums shall be held by the Owner on trust for the Mortgagee;
7.6	not assign, sell, transfer or otherwise dispose of or abandon all or any part of the Security Assets; and	8.1.10	procure that all insurance brokers or insurers concerned with the Vessel and the Insurances (other than mortgagee's interest insurers) shall issue to the Mortgagee letters of undertaking in form satisfactory to the Mortgagee, such letters of undertaking to state, inter alia, that the relevant brokers or insurers shall not be entitled to exercise any lien on the policies that they may have if they fail to inform the Mortgagee of any non-payment of premiums, contributions or calls relating to the Vessel.
7.7	use all endeavours to prevent, and not do or omit to be done, any act which could result in the Vessel being arrested, confiscated, seized, forfeited or impounded; and	8.2	If the Owner fails to effect and maintain any Insurances in accordance with this Clause 8, the Mortgagee, at the Owner's expense, may, but shall not be obliged to, effect and maintain such Insurances and pay any unpaid premiums, contributions or calls.
7.8	inform the Mortgagee in the event that any associated companies or shareholder of the Owner is subject to an event of liquidation or insolvency.	8.3	All sums receivable by the Mortgagee in respect of any Insurances shall be paid to the Mortgagee and until the occurrence of an event under Clause 13 shall be paid over to the Owner who shall apply them towards the liability or damage concerned. After an event under Clause 13, the Mortgagee may, in its absolute discretion, apply them towards the liability or damage concerned or as provided in Clause 16.
8	<u>INSURANCES</u>	8.4	The Owner hereby authorises the Mortgagee at any time and in such manner as the Mortgagee may in its absolute discretion think fit (whether in the Mortgagee's name or the Owner's name) to take, submit to arbitration or institute any other proceedings for any claim under any Insurances and to collect, compromise and give a good discharge for the same.
		9	<u>INSURANCE COVENANTS</u>
			Throughout the Security Period the Owner will:-
		9.1	not without the prior consent of the Mortgagee alter any of the Insurances or do or permit any act or omission which would or might render any of the Insurances invalid, void, voidable or unenforceable or render any sum paid out thereunder repayable in whole or in part;
		9.2	not cause or permit the Vessel to be operated in any manner or place or for any purpose not permitted by, outside the cover provided by or inconsistent with the Insurances;

9.3	provide to the Mortgagee copies of all communications to or from the insurers and shall permit the Mortgagee to communicate directly with the insurers;		course of maintenance or repair and that any engine or equipment so removed is properly and safely stored and as soon as possible re-installed or replaced by another engine or other equipment, as the case may be, of substantially the same type, value and utility in good operating condition and beneficially owned by the Owner free from Encumbrances.
9.4	duly pay all premiums, calls, contributions or other sums of money from time to time payable in respect of the Insurances;	10.3	<u>Operation</u>
9.5	commence renewal negotiations for each of the Insurances not less than 30 days prior to the expiration date; not less than 10 business days before the expiration date give a status report to the Mortgagee; prior to the expiration date confirm to the Mortgagee in writing that such insurance has been renewed; and within 7 days of the renewal date furnish the renewal certificate of insurance to the Mortgagee;	10.3.1	promptly submit the Vessel to all periodical or other surveys which may be required by law for safety purposes;
9.6	forthwith upon the effecting of any of the Insurances, give written notice thereof to the Mortgagee stating the full particulars thereof, and on request produce the receipts for each sum paid by it pursuant to Sub-clause 9.4;	10.3.2	not cause or permit the Vessel to be engaged for any purpose forbidden by any applicable law or in carrying illicit or prohibited goods;
9.7	inform the Mortgagee about any claims or events which may give rise to claims under the Insurances forthwith in reasonable detail and not without the prior written consent of the Mortgagee and the insurers settle any such claims;	10.3.3	not cause or permit the Vessel to enter or remain in any zone which has been declared a war zone by any government, the insurers or any other person, nor cause or permit the Vessel to enter or remain in any zone or port which shall have been the subject of any warning by any international body or other authority unless the Mortgagee's prior written consent is obtained and the Owner shall have effected at the Owner's expense such special Insurances as the Mortgagee shall require;
9.8	whenever the Owner receives payment of any money hereby assigned, save as provided herein, forthwith pay over such money to the Mortgagee and until such time hold such money in trust for the Mortgagee;	10.3.4	ensure that the Vessel shall not make any deviation during any voyage which would cause any Insurances to become wholly or partly invalid, void or voidable;
9.9	comply with all requirements from time to time regarding insurance in connection with the Vessel imposed by the state of registration of the Vessel and any state to which it sails;	10.3.5	in relation to Pleasure Vessels only, not engage in any commercial operation without the prior written consent of the Mortgagee;
9.10	disclose this Agreement to insurers and upon request shall provide the Mortgagee with copies of each policy for the insurances and receipt for premiums for them upon reasonable request and shall provide information about the progress of renewals; and	10.3.6	promptly and duly perform any contracts or arrangements relating to the Vessel;
9.11	comply with all requirements from time to time regarding insurance in connection with the transport of the Vessel by road, rail, air or ferry including loading and unloading.	10.3.7	pay and discharge when due all obligations and liabilities whatsoever which have given, or may give rise to, liens on, or rights or claims exercisable against the Vessel or the Insurances or any part thereof, including without limitation to the foregoing payment in full of all crew and master's wages or other remuneration when due (which payment shall be evidenced to the Mortgagee on request);
10	<u>COVENANTS CONCERNING THE VESSEL</u>	10.3.8	take all necessary steps to prevent any arrest or detention of the Vessel or any legal or other proceedings arising in respect of the Vessel, Insurances or any part thereof and, if the same be arrested, detained or subject to any injunction or like process, take immediate steps at the Owner's expense, whether by providing bail or other security or otherwise, to have the same released within three (3) days and, if any such legal or other proceedings arise, take immediate steps at the Owner's expense to defend or compromise the same in whatever manner and on whatever terms as the Mortgagee may require;
	Throughout the Security Period the Owner will at its own cost:-		
10.1	<u>Registration</u>	10.3.9	if the Vessel is requisitioned for title or hire or is otherwise compulsorily acquired, promptly take all lawful steps to recover possession and/or title to the Vessel;
10.1.1	ensure that the Vessel is permanently registered on the UK Ship Register and provide evidence of such registration to the Mortgagee and shall not allow any act to be done by which such registration would or might be forfeited or imperilled and shall renew the registration as often as may be necessary to ensure continuous registration and shall not change the name or port of choice of the Vessel without the prior written consent of the Mortgagee;	10.3.10	keep the Vessel when not in use within the Designated Base and not to leave or stay out or be moved out of the Permitted Waters for more than 15 consecutive days without the prior written consent of the Mortgagee;
10.1.2	obtain and maintain in full force and effect all certificates, licences, permits and authorisations necessary or desirable in connection with the use and operation of the Vessel including in particular (without limitation):	10.3.11	permit the Mortgagee or its representatives to supervise any conversion or repair of the Vessel and to produce to the Mortgagee within fourteen (14) days after demand evidence that the costs thereof have been fully paid;
10.1.3	all customs and import documentation,	10.3.12	ensure the Vessel will sail only within the operating area permitted by the Insurances, and (where the operating areas of the Insurances are not co-extensive with the Permitted Waters) will sail only within the Permitted Waters;
10.1.4	a certificate of coding,	10.3.13	punctually pay all costs, expenses, duties, charges, levies, fees, fines, penalties, rent, rates, Taxes, assessments and other expenditure payable in respect of the Vessel its use or operation (including in particular, without limitation, mooring fees and any which give or may give rise to any Encumbrance or claim enforceable against the Vessel) and on demand produce to the Mortgagee the receipts for all such payments;
10.1.5	certificates of compliance with either the MCA's (a) Small Commercial Vessel and Pilot Boat Code of Practice ("SCV Code"), (b) Code of Practice for the Safety of Small Fishing Vessels as applicable ("Fishing Vessel Code"), or such other codes of practice as may be relevant, and	10.3.14	ensure that the Vessel is not operated in any manner or place or for any purpose which would or might render it liable to confiscation, forfeiture, seizure, destruction or condemnation;
10.1.6	class certificates and all applicable certificates of maintenance;	10.3.15	not represent or hold out the Mortgagee as carrying goods or passengers or being in any way associated or connected with any operation of the Vessel;
10.2	<u>Maintenance</u>	10.3.16	permit and grant access to the Mortgagee to inspect the Vessel at any time;
10.2.1	not without the prior written consent of the Mortgagee cause or permit to be made any substantial change in the structure, type or performance characteristics of the Vessel or remove any item of equipment which will decrease the value of the Vessel;	10.3.17	permit the Mortgagee to hold all original documents of title deemed necessary by the Mortgagee at all times during the Security Period; and
10.2.2	keep the Vessel in good working order and repair and in good operating condition so that the Vessel is in every respect seaworthy and procure that all repairs to, or replacements of, any damaged, worn or lost parts or equipment are effected in conformity with all applicable regulations, in compliance with each applicable manufacturer's warranty and in such manner (both as regards workmanship and quality of materials) as not to diminish its value.	10.3.18	not more frequently than annually permit Mortgagee to appoint representatives to inspect, review and value the Vessel at Owner's cost;
10.2.3	keep the Vessel in such condition as will entitle her to the level of certification required for the Vessel and so to comply with the requirements of the UK Ship Register;	10.3.19	use its best endeavours to ensure that the Vessel is operated in accordance with best environmental practice and in such a manner as to minimise the risk of an environmental accident occurring or an environmental claim being made and to ensure that the Vessel complies in all respects and at all times with all environmental laws and regulations relevant and applicable to the Vessel and to provide the Mortgagee with documentary evidence of such compliance if so requested and to immediately notify the Mortgagee by fax, confirmed forthwith by letter, of any environmental claim made against the Owner or in connection with the Vessel or any environmental incident.
10.2.4	ensure that no engine or equipment is removed except in the ordinary		

11	<u>LEASING AND CHARTERING</u>	12.13	at its own expense, if requested by the Mortgagee, provide the Mortgagee annually with a report on the adequacy of the Insurances by an independent insurance consultant nominated by the Mortgagee;
11.1	Throughout the Security Period the Owner will not without the Mortgagee's prior written consent lease, charter, hire or otherwise part with possession or operational control of the Vessel except for:	12.14	at its own expense, if requested by the Mortgagee, provide the Mortgagee annually with a valuation and survey of the Vessel from a surveyor nominated by the Mortgagee;
11.1.1	the purposes of maintenance or repair, provided that the Owner will first have obtained an undertaking from the person taking possession not to exercise any lien on the Vessel,	12.15	provide any consultants or surveyors nominated by the Mortgagee under Clauses 12.13 and 12.14 with all information which they may require in order to make the reports, valuations or surveys.
11.1.2	in relation to Pleasure Vessels only, periods less than 30 days provided all necessary consents and licences are obtained; or	13	<u>ENFORCEABILITY OF SECURITY</u>
11.1.3	periods less than 30 days on a time or voyage charter basis.		For the purposes of Section 101 of the Law of Property Act 1925, the Secured Liabilities shall be deemed to have become due for discharge and payment on the day following the execution of this Deed. The Mortgagee may immediately, without notice, enforce the security created by this Deed and the Mortgage if (whether or not caused by any reason whatsoever outside the control of the Owner or any other person):-
11.2	Notwithstanding clause 11.1 above, in relation to Commercial Vessels only the Mortgagee will agree to any long term charter (i.e. a charter of more than 6 months duration) presented to the Owner by a major European wind farm owner or operator at a market rate provided that the Mortgagee receives an assignment of such charter and any associated charter guarantee.	13.1	the Owner fails to pay on the due date any amount payable by it under this Deed and the Mortgage or the Owner or any other person fails to pay on the due date any amount payable under the Loan Agreement or the Guarantor fails to pay on the due date any amount payable by it under the Guarantee; or
12	<u>NOTIFICATION, INFORMATION AND ACCESS</u>	13.2	any representation or warranty in any document or otherwise given or made to the Mortgagee in connection with this Deed and the Mortgage, is or becomes untrue in any respect; or
	Throughout the Security Period the Owner will:-	13.3	the Owner fails to comply with any other provision of this Deed and the Mortgage or of any other agreement from time to time subsisting between the Owner and the Mortgagee or any associated company of the Mortgagee or fellow subsidiary of Close Brothers Group Plc (with or without other parties) or the Guarantor fails to comply with any terms of the Guarantee; or
12.1	immediately notify the Mortgagee (by fax) of any distress on the Vessel or its arrest, capture, detention, seizure, condemnation, compulsory acquisition or requisition or if any such action is threatened;	13.4	any other indebtedness of the Owner or the Guarantor becomes due and payable prior to the stated due date or the person to whom such indebtedness is owed becomes entitled to declare any such indebtedness due and payable prior to such due date, or any event of default in respect thereof occurs, or any such indebtedness is not paid when due; or
12.2	immediately notify the Mortgagee (by fax) of the occurrence of any accident or other event which has resulted in or may result in a Event of Loss or in damage which requires repair;	13.5	the Owner or the Guarantor becomes or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or becomes unable to pay its debts as they fall due, or otherwise becomes insolvent, or suspends making payment with respect to all or any of its debts or announces any intention to do so; or
12.3	immediately notify the Mortgagee (by fax) of the occurrence or impending or likely occurrence of any event referred to in Clause 13;	13.6	an application or petition or notice is presented for an administration order in relation to the Owner or the Guarantor is presented or any meeting of the Owner or the Guarantor is convened for the purpose of considering any resolution to present a notice, application or petition for such an order; or
12.4	immediately notify the Mortgagee (by fax) of any change in the address at which the Vessel is ordinarily kept and of any address where it may temporarily be kept;	13.7	a notice of appointment or a notice of intention of appointment of an administrator under Schedule B1 of the insolvency Act 1986 is issued by the Owner or the Guarantor or by the directors or member of either of them or by the holder of a qualifying floating charge (as defined in the said schedule); or
12.5	give the Mortgagee upon request copies of all material documents and all reasonable information regarding the Vessel (including, without limitation, regarding its location, operation, use, insurance, maintenance and condition);	13.8	any steps are taken to obtain a moratorium with a view to proposing (under any enactment or otherwise) any kind of composition, scheme of arrangement, compromise or arrangement involving the Owner or the Guarantor and its creditors generally (or any class of them); or
12.6	permit the Mortgagee and/or its agents and representatives reasonable access to the Vessel for the purpose of inspection or survey and ensure that they are all afforded all reasonable facilities;	13.9	any administrative or other receiver or any manager of the Owner or the Guarantor or any of its property is appointed or the directors of the Owner or the Guarantor request any person to appoint such a receiver or manager, or any other steps are taken to enforce any Encumbrance over any of the Owner's or the Guarantor's property or to repossess any goods in the possession of but not absolutely owned by the Owner or the Guarantor, or any steps are taken with a view to putting in force any kind of attachment, sequestration, distress or execution against the property of the Owner or the Guarantor; or
12.7	provide the Mortgagee at not more than six monthly intervals and whenever reasonably requested by the Mortgagee with a status report on the Vessel;	13.10	a meeting of the Owner or the Guarantor is convened for the purpose of considering any resolution for, or to petition for, winding-up, or the Owner or the Guarantor passes such a resolution, or an order for winding up the Owner or the Guarantor is made on the petition of any of its creditors; or
12.8	provide the Mortgagee with copies (and on the Mortgagee's request, with the originals) of all policies, cover notes, certificates of entry and, on the Mortgagee's request, with all relevant receipts or other evidence of payment of all premiums, calls, contributions or other sums payable in respect of any Insurances and procure that confirmation of renewal of any Insurances is promptly notified to the Mortgagee and provide all such other information relating to the Insurances as the Mortgagee may from time to time request;	13.11	any steps are taken with a view to the dissolution of the Owner or the Guarantor; or
12.9	provide the Mortgagee on request with an inventory of the Vessel's belongings and keep the inventory up to its full complement as to quality and quantity;	13.12	the Owner or the Guarantor ceases or threatens to cease all or a substantial part of its operations, or transfers or disposes of (otherwise than in the ordinary course of trading) all or a substantial part of its assets whether by one or a series of transactions related or not; or
12.10	notify the Mortgagee immediately and give full details of:-	13.13	any authorisation, approval, licence, insurance, registration or other requirement necessary to enable the Owner to comply with any of its obligations under this Deed and the Mortgage is modified, revoked or does not remain in full force and effect; or
12.10.1	any damage to the Vessel;	13.14	an Event of Loss occurs with respect to the Vessel; or
12.10.2	any occurrence which is or may become an Event of Loss;	13.15	the Vessel is disposed of, arrested, detained, seized, forfeited, condemned or becomes the subject of compulsory acquisition or requisition or maritime lien,
12.10.3	any requisition of the Vessel for hire;		
12.10.4	any arrest or detention of the Vessel or any legal or other proceedings arising in respect of the Vessel, the earnings or Insurances or any part thereof;		
12.10.5	any requirement or recommendation made by any Insurers or any competent authority;		
12.11	provide the Mortgagee with copies of all certificates relating to the Vessel and all periodic, damage or survey reports on the Vessel;		
12.12	(without prejudice to the foregoing provisions of this Clause 12) provide the Mortgagee on reasonable request with any document within the Owner's possession, custody or control and/or assist the Mortgagee in obtaining any documents or information relating to the Vessel, the earnings or Insurances which the Mortgagee may require for the purposes of making any claim or taking any action in connection with the Vessel, the earnings or Insurances;		

	or is requisitioned for hire by any government or governmental authority or agency (unless the Owner proves to the Mortgagee's satisfaction that the Mortgagee's security is not prejudiced), or any such action is threatened, or the Mortgagee reasonably considers any such action is likely to be taken; or		14.1.1	arrest and/or take possession of the Vessel and for this purpose enter into any premises belonging to or in the occupation or under the control of the Owner where the Vessel may be located; and
13.16	it becomes impossible or unlawful for the Owner to fulfil any of the terms of this Deed and the Mortgage or for the Mortgagee to exercise any right or power given to it by this Mortgagee; or		14.1.2	recover and collect all Insurances and Requisition Compensation; and
13.17	there occurs, in the opinion of the Mortgagee, a material adverse change in the financial condition or control of the Owner or the Guarantor; or		14.1.3	take over or institute all such proceedings in connection with all or any of the Security Assets as the Mortgagee in its absolute discretion thinks fit and discharge, compound, release or compromise any of the Security Assets or claims in respect thereof including without limitation claims which have given or may give rise to any charge or lien on or arrest of the Vessel or which are or may be enforceable by proceedings against the Vessel; and
13.18	without prejudice the generality of Clause 13.5 above, the Owner or Guarantor being an individual dies or becomes insolvent or suspends payment of, or is unable to, or admits inability to, or appears to be unable to pay, or has no reasonable prospect of being able to pay, an unsecured debt or debts of an individual value in excess of £5,000, which is or are for a liquidated sum due immediately or at some future certain time, or is adjudicated or found bankrupt or insolvent, or enters into, or applies to any court or other tribunal for, any composition or other arrangement with his creditors generally or a suspension or adjustment of payments proceeding or enters into dealings with his creditors with a view to avoiding insolvency or any similar process or proceeding is instituted under the laws of any jurisdiction or he becomes of unsound mind or a patient for the purposes of any statute referring to mental health; or		14.1.4	sell all or any part of the Security Assets (either with or without taking possession and with or without the benefit of any lease, charter or other contract) by public auction or private contract, at such place and upon such terms as the Mortgagee in its absolute discretion may determine with power to postpone any such sale and without being answerable for any loss occasioned by such sale or resulting from the postponement thereof; and
13.19	without prejudice the generality of Clause 13.5 above, the Owner or Guarantor being or trading as a partnership and one individual partner dies or a partner or the partnership becomes insolvent or suspends payment of, or is unable to, or admits inability to, or appears to be unable to pay, or has no reasonable prospect of being able to pay, an unsecured debt or debts of an individual value in excess of £5,000, which is or are for a liquidated sum due immediately or at some future certain time, or is adjudicated or found bankrupt or insolvent, or enters into, or applies to any court or other tribunal for, any composition or other arrangement with his creditors generally or a suspension or adjustment of payments proceeding or enters into dealings with his creditors with a view to avoiding insolvency or any similar process or proceeding is instituted under the laws of any jurisdiction or the partnership is dissolved or an individual partner becomes of unsound mind or a patient for the purposes of any statute referring to mental health; or in the case of a partnership proceedings are commenced to wind up the partnership under the provisions of Part V at the Insolvency Act 1986; or		14.1.5	repair and maintain and keep in repair the Vessel; and
			14.1.6	insure the Vessel upon such terms as the Mortgagee may in its absolute discretion determine; and
			14.1.7	manage, lease, charter, operate or otherwise use the Vessel in such manner and for such period as the Mortgagee deems necessary and generally do all such things as an owner of the Vessel could do in relation thereto, accounting only for the net proceeds (if any) of such use; and
			14.1.8	set-off any monies comprised in the Security Assets against any of the Secured Liabilities.
		15	RECEIVER	
		15.1	At any time after the security created by this Deed and the Mortgage shall have become enforceable the Mortgagee shall be entitled (but not bound) to appoint in writing a Receiver of all or any part of the Security Assets (with power to authorise any joint receiver and/or manager to exercise any power independently of any joint receiver/manager) and remove any Receiver so appointed and appoint another in his place.	
13.20	without prejudice the generality of Clause 13.5 above, the Owner or Guarantor being a limited liability partnership and one of its members dies or a member becomes insolvent or suspends payment of, or is unable to, or admits inability to, or appears to be unable to pay, or has no reasonable prospect of being able to pay, an unsecured debt or debts of an individual value in excess of £5,000, which is or are for a liquidated sum due immediately or at some future certain time, or is adjudicated or found bankrupt or insolvent, or enters into, or applies to any court or other tribunal for, any composition or other arrangement with its creditors generally or a suspension or adjustment of payments proceeding or enters into dealings with his creditors with a view to avoiding insolvency or any similar process or proceeding is instituted under the laws of any jurisdiction or an individual member becomes of unsound mind or a patient for the purposes of any statute referring to mental health; or	15.2	The Receiver may exercise all or any of the rights, powers and discretions of the Mortgagee given to it by this Deed and the Mortgage. Such Receiver shall have all the powers conferred by the Law of Property Act 1925, but without the restrictions contained in Sections 93 and 103 of that Act.	
		15.3	Any Receiver shall be entitled to remuneration appropriate to his work and shall be entitled to charge in accordance with the normal practice of his firm without being limited to the maximum rate specified in Section 109(6) of the Law of Property Act 1925.	
		15.4	The Mortgagee shall not be responsible for misconduct or negligence on the part of such Receiver.	
		15.5	Such Receiver shall be the agent of the Owner and the Owner shall be responsible for his acts, defaults and remuneration and liable on any contracts made by him.	
13.21	any event occurs which is analogous to those events set out in Clauses 13.5 to 13.11 or 13.18 or 13.20 in any other jurisdiction; or	16	APPLICATION OF PROCEEDS	
13.22	any single person, or group of persons acquire control of the Owner or the Guarantor without the prior consent in writing of the Mortgagee or there is a material change in the share ownership or ownership of the Owner or the Guarantor (either by way of legal, beneficial ownership or by grant of an option) without the consent in writing of the Mortgagee; or	16.1	All monies received by the Mortgagee or any Receiver in respect of the Security Assets shall be applied by the Mortgagee in or towards payment of the Secured Liabilities in the following order (but without prejudice to the right of the Mortgagee to recover any shortfall from the Owner):-	
13.23	if the Owner is a limited liability partnership, any member of the Owner ceases to be a member of the limited liability partnership or there is a material change to the limited liability partnership agreement or any other agreement between the members of the Owner without the content in writing of the Mortgagee; or	16.1.1	firstly, in or towards payment of all costs and expenses whatsoever incurred or to be incurred by the Mortgagee in connection with such enforcement including (without limitation) all costs of recovery, maintenance, repair, insurance, storage, sale or other dealing;	
13.24	any circumstances arise which might in the reasonable opinion of the Mortgagee imperil the security created by this Deed and the Mortgage or the ability or willingness of the Owner to perform its obligations under this Deed and the Mortgage.	16.1.2	secondly, in or towards payment to the Mortgagee, in such order as the Mortgagee may in its sole discretion decide, of all amounts which are or may become owing by the Owner to the Mortgagee under this Deed and the Mortgage;	
14	ENFORCEMENT OF SECURITY	16.1.3	thirdly, after all amounts payable or which may become payable under this Deed and the Mortgage have been paid in full and this Deed and the Mortgage has been discharged, in or towards payments of moneys owing, if any, to the Owner or other persons entitled thereto.	
14.1	When and at any time after the security created by this Deed and the Mortgage becomes enforceable and the Mortgagee determines to enforce the same, it may without notice immediately put into force and exercise all the powers and remedies possessed by it according to law as mortgagee and chargee of the Security Assets as and when it may see fit (so that Sections 93 and 103 of the Law of Property Act 1925 shall not apply to this security) and in particular (without limitation) the Mortgagee may:-	17	POWER OF ATTORNEY	
			The Owner hereby irrevocably appoints and constitutes the Mortgagee and any Receiver appointed by the Mortgagee jointly and severally, with full power to delegate, as its true and lawful attorney(s) (which appointment is coupled with a security interest) with full power (in the name of the Owner or otherwise)	

to ask, require, demand, receive, compound and give acquittance for any and all moneys and claims for monies due or to become due to endorse any cheque or other instrument or orders in connection therewith to execute any document to do any act or thing and to file any claims or take any action or institute any proceedings which the Mortgagee or any Receiver may deem to be necessary or advisable and otherwise to do any and all things which the Owner itself could do in relation to the Security Assets or in connection with the matters provided for in this Deed and the Mortgage and the Owner undertakes to ratify all such acts of the Mortgagee and or any Receiver.

18 PROTECTION OF THIRD PARTIES

No purchaser or other person dealing with the Mortgagee or any Receiver appointed by it or with its or his attorneys or agents shall be concerned to enquire whether the power exercised or purported to be exercised by it or him has become exercisable or; whether any money remains due on the security hereby created or otherwise; as to the propriety or regularity of any of his, its or their actions, or as to the application of any money paid to him, it or them. All the protections afforded to purchasers by Sections 104 and 107 of the Law of Property Act 1925 shall apply to any such person dealing with the Mortgagee or Receiver. In this clause a "purchaser" includes any person acquiring, for money or money's worth, any lease of, or security interest over, or any other interest or right whatsoever in the Security Assets.

19 POWERS OF MORTGAGEE

19.1 The Mortgagee shall be entitled (but not bound) to take any such action as it may in its discretion think fit for the purpose of protecting the security created by this Deed and the Mortgage, and in particular (without limitation) may effect and maintain Insurances, arrange for the carrying out of repairs to and/or surveys of the Vessel and discharge obligations and liabilities in connection with the Vessel.

19.2 The Mortgagee may at any time or times delegate to any person(s) all or any of its rights, powers and discretions hereunder and/or employ agents, managers, employees, advisers and others on such terms as the Mortgagee sees fit for any of the purposes set out in this Deed and the Mortgage.

19.3 Every power and remedy given to the Mortgagee hereunder shall be cumulative and not alternative and in addition to and not exclusive of any other power or remedy given to the Mortgagee either by this Deed and the Mortgage or by law and all such powers and remedies may be exercised whenever and as often as the Mortgagee may deem expedient.

20 FURTHER ASSURANCE

The Owner shall at its own expense from time to time execute all such deeds and documents and do all such acts and things as the Mortgagee may reasonably require for the purpose of protecting or perfecting the security intended to be created by this Deed and the Mortgage.

21 INDEMNITY AND LIABILITY

21.1 THE OWNER WILL INDEMNIFY AND KEEP INDEMNIFIED THE MORTGAGEE AND EVERY RECEIVER OR AGENT APPOINTED PURSUANT HERETO IN RESPECT (BUT NOT LIMITED TO) ALL ACTIONS, CLAIMS, DEMANDS, PROCEEDINGS, COSTS, EXPENSES, FINES, PENALTIES, TAXES, LOSSES AND LIABILITIES WHATSOEVER INCURRED BY IT, HIM OR THEM IN GOOD FAITH IN THE EXECUTION OR PURPORTED EXECUTION OF ANY RIGHTS, POWERS OR DISCRETIONS GIVEN TO IT, HIM OR THEM BY THIS DEED AND THE MORTGAGE OR ARISING IN ANY MANNER WHATSOEVER OUT OF THE MANAGEMENT, CONTROL, USE OR OPERATION OF THE VESSEL OR OUT OF NON-COMPLIANCE BY THE OWNER WITH ANY OF ITS OBLIGATIONS UNDER THIS DEED AND THE MORTGAGE.

21.2 THE MORTGAGEE SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER FOR ANY LOSSES OR DAMAGE WHATSOEVER ARISING IN CONNECTION WITH THE EXERCISE OR PURPORTED EXERCISE OF ANY OF ITS RIGHTS, POWERS AND DISCRETIONS IN GOOD FAITH HEREUNDER AND IN PARTICULAR WITHOUT LIMITATION THE MORTGAGEE AND ANY RECEIVER IN POSSESSION SHALL NOT BE LIABLE TO ACCOUNT AS MORTGAGEE IN POSSESSION OR FOR ANYTHING EXCEPT ACTUAL RECEIPTS.

21.3 NOTHING IN THIS CLAUSE SHALL EXCLUDE ANY LIABILITY OF THE MORTGAGEE OR ANY RECEIVER FOR FRAUD.

22 MORTGAGEES RIGHT OF RETENTION AND SET-OFF

22.1 The Owner hereby agrees that the Mortgagee may at any time without notice :-

22.1.1 retain any sums that would otherwise be payable to the Owner to cover any liabilities of the Owner to the Mortgagee on any other account; and/or

22.1.2 combine or consolidate all or any of its then existing accounts, including accounts in the name of the Mortgagee or of the Owner jointly with others and set off or transfer any sum standing to the credit of any one or more such accounts in or towards satisfaction of any moneys, obligations or liabilities of the Owner to the Mortgagee.

22.2 Where such combination, set-off or transfer requires the conversion of one currency into another such conversion shall be calculated at the then prevailing spot rate of exchange of the Mortgagee (as conclusively determined by the Mortgagee) for purchasing the currency for which the Owner is liable with the existing currency so converted.

22.3 For the purpose of this clause "accounts" includes all forms of account, wheresoever situate, whether current, deposit, loan or of any other nature whatsoever, whether subject to notice or not and whether in sterling or in any other currency and "liabilities" includes all forms of liability, whether present, future, actual, contingent, primary, collateral, several, joint or joint and several.

23 COSTS AND INTEREST

23.1 The Owner shall pay to the Mortgagee or to its order on demand all costs and expenses whatsoever (including, without limitation, legal costs, registration fees, sales commissions (including but not limited to those which the Mortgagee or any associated company of Close Brothers Group Plc may be entitled to using its own resources) management time, VAT and stamp duties) incurred by the Mortgagee in connection with the negotiation, preparation, completion, registration and perfection of this Deed and the Mortgage and the maintenance, protection and enforcement of the security created by or intended to be created by or pursuant to this Deed and the Mortgage or any of the Mortgagee's rights whatsoever hereunder.

23.2 All amounts due from the Owner to the Mortgagee under this Deed and the Mortgage including, but not limited to, such costs and expenses in Clause 23.1 above shall bear interest at the rate of 1.50% per month from the date on which they were incurred by the Mortgagee, until the date of actual payment (both before and after judgment) calculated from day to day.

24 GENERAL

24.1 This Deed constitutes the entire agreement between the parties in relation to its subject matter and no addition to or variation of it shall have any effect unless in writing and signed by the Mortgagee. Each party acknowledges that in entering into this Deed it does not rely on any statement, representation or warranty of any person whether a party to this Deed or not, otherwise than expressly set out in this Deed.

24.2 This Deed may be executed in counterpart and all such counterparts taken together shall be deemed to constitute one and the same instrument.

24.3 Any part of this Deed found by any court or other competent authority to be unenforceable shall be considered severable so as not in any way to affect the remainder of this Deed.

24.4 No delay in exercising or omission by the Mortgagee to exercise any right or power given to it by this Deed shall impair such right or power or be construed as a waiver of or as an acquiescence in any default by the Owner and in the event of the Mortgagee on any occasion agreeing to waive any such right or power, such waiver shall not in any way prejudice or affect the right of the Mortgagee afterwards to act strictly in accordance with the powers given to it by this Deed.

24.5 A certificate of the Mortgagee as to the amount at any time due from the Owner hereunder or the amount which, but for any of the obligations of the Owner hereunder being or becoming void, voidable, unenforceable or ineffective, at any time would have been due from the Owner hereunder shall, in the absence of manifest error, be conclusive.

24.6 The Owner may not assign, transfer, delegate or otherwise deal with any of its rights or obligations under this Deed. The Mortgagee may, without notice, assign all or part of its rights or benefits or transfer or delegate all or any part of its rights or obligations under this Deed. Where appropriate, the Owner shall enter into all documents specified by the Mortgagee to be necessary to give effect to any such transfer, assignment or delegation.

24.7 The parties to this Deed do not intend by this Deed to confer any rights whatsoever on any other person. Accordingly, the parties hereby expressly exclude the provisions of Contracts (Rights of Third Parties) Act 1999 (or any or re-enactment thereof).

24.8 The Owner hereby acknowledges that any associated company of Close Brothers Group plc may act as agent for the Mortgagee and that disclosure to any associated company of Close Brothers Group plc of any information of whatsoever nature is deemed to be received and relied upon by the Mortgagee.

24.9 Notwithstanding any provision of this Deed, the Owner acknowledges and agrees that neither it nor any of its respective affiliates will seek before any court or government agency to have any of the directors of the Mortgagee from time to time, in their capacity as directors and officers of the Mortgagee, held liable for any actions or inactions of the Mortgagee or any Receiver or any obligations of the Mortgagee under this Deed.

25 **NOTICES**

All notices and other communications under this Agreement (unless otherwise expressly contemplated herein) shall:

- 25.1 in the case of an owner comprising more than one individual and/or organisation, be deemed valid notice to all those individual(s) and/or organisation(s) which collectively comprise the Owner if delivered in accordance with Clause 25.2 below; and
- 25.2 be in writing, in English, and either delivered by hand or sent by fax or first class post (airmail if overseas) in each case to the address of the intended recipient:-

The Owner at its address or fax number set out in Schedule One.

The Mortgagee

Address: Wimbledon Bridge House, 1 Hartfield Road,
London, SW19 3RU
Telephone: (+44) 0208 390 9444
Fax: (+44) 0208 390 8211

(or any other address, fax number notified by it from time to time for such purposes) and shall be considered served and received:-

- 25.2.1 in the case of delivery by hand, upon delivery or upon refusal on presentation;
- 25.2.2 in the case of fax, upon sending provided the addressee does not within 24 hours notify the sender that it has been transmitted illegibly or incorrectly;
- 25.2.3 in the case of post, 24 hours after posting.

26 **LAW AND JURISDICTION**

- 26.1 This Deed and any dispute arising from or connected with it or its subject matter shall be governed by and construed in accordance with English law.
- 26.2 The parties agree that the English courts have exclusive jurisdiction to adjudicate any dispute which arises in connection with this Deed and any dispute arising from or connected with it or its subject matter save that, as such agreement conferring jurisdiction is for the benefit of the Mortgagee only, the Mortgagee shall retain the right to bring proceedings against the Owner or in respect of the Security Assets in any other court which has jurisdiction.
- 26.3 The Owner irrevocably waives (and irrevocably agrees not to raise) any objection which it may have, now or subsequently, to the laying of the venue of any proceedings in any court referred to in this Clause 26 and any claim that any such proceedings have been brought in an inconvenient forum and, further, irrevocably agrees that a judgement in any proceedings brought in any such court shall be conclusive and binding upon the Owner and may be enforced in the courts of any other jurisdiction.
- 26.4 If the Owner is incorporated or resides outside England and Wales it shall appoint the agent in England or Wales satisfactory to the Mortgagee whose details are set out in Schedule One to receive on its behalf service of proceedings issued out of the English Courts in any action or proceedings arising out of or in connection with this Agreement and agrees that failure by such agent to notify it of such service shall not adversely affect the validity of any service or any judgment based on it.

27 **DELIVERY**

The parties have executed this Deed as a deed on the condition that it shall not be created, for the purposes of section 860 of the Companies Act 2006 (as amended), nor delivered, for the purposes of sections 44(2)(b) and 46 of that Act, until it is dated by or on behalf of the parties.

IN WITNESS whereof the parties have executed this Deed as a deed on the date and year first before written.

Schedule One

THE OWNER

Owner Name : 5 West Limited
Place of Incorporation : England
Company Number : 04856467
Owner Address : Unit 12, Haslar Marina,
Haslar Road, Gosport,
Hampshire, PO12 1NU

Telephone : 02392 524343
Facsimile : 02392 524646

VESSEL

Name : Rockcliffe Bill II
Manufacturer : Green Marine Limited
Type or Model : Imoca 60 Yacht
Hull Identification Number : 228-07-15
Engine Type : Lombardini LDW1404
Engine Serial number(s) : ~~4513901892~~ 4801201552
Official Number : 920951
Designated Base : Gosport
Registered as : Commercial

Schedule Two
Notice of Assignment (Insurances)

Imoca 60 Yacht named "Rockcliffe Bill II" with HIN 228-07-15

To:

Dated: 28 September 2018

We, 5 West Limited (the "**Owner**") hereby give notice that by a Deed of Covenants dated 28 September 2018 between us and **CLOSE BROTHERS LIMITED** (the "**Mortgagee**"), the Owner has assigned to the Mortgagee, as first priority mortgagee, all the insurances in respect of the Imoca 60 Yacht named "Rockcliffe Bill II" with HIN 228-07-15 (including the insurance constituted by the policy on which this notice is endorsed) and all amounts payable thereunder, including return of premiums, etc.

Ras DANIEL.

For and on behalf of
5 West Limited

Dated 28 September 2018

DUPLICATE

We acknowledge receipt of the Notice of Assignment of which this is a duplicate.

Schedule Three
Loss Payable Clause
Marine and War Risks

Imoca 60 Yacht named "Rockcliffe Bill II" with HIN 228-07-15

It is noted that by a Deed of Covenants dated 28 September 2018 between 5 West Limited (the "**Owner**") and **CLOSE BROTHERS LIMITED** (the "Mortgagee") the Owner has assigned to the Mortgagee, as first priority mortgagee, its right, title, and interest in the insurances (including this policy). It has nevertheless been agreed between the parties concerned that unless underwriters shall have received notice from the Mortgagee to the contrary in which event all claims payable under the policy of insurance shall be payable direct to the Mortgagee, all other claims shall be payable as follows:

- 1 there shall be paid to the Mortgagee any and every amount receivable in respect of a total loss (including an actual or constructive or compromised or arranged total loss) or of a major casualty (that is to say any casualty (other than a total loss) in respect of which the claim or the aggregate of the claims exceeds 8% of the sum insured inclusive of any deductible);
- 2 all other amounts receivable in respect of this policy of insurance shall be paid to the Owner and shall be applied by it for the purposes of the repair of all the damage and the reparation of the loss in respect of which the said amounts shall have been received.

EXECUTION

EXECUTED AND DELIVERED

as a deed by 5 West Limited

acting by Stewart Wilson a director

ector)

in the presence of:

Signature:

Name:

AMANDA SPRINGATE

Address:

HAYLER MARINA

HAYLER ROAD

GOSPORT BORSTOWN

Occupation:

CHARTERED ACCOUNTANT

SIGNED by CAROLINE CLIFF

as attorney for **CLOSE BROTHERS LIMITED**

under a power of attorney dated 13/9/18

Attc

in the presence of:

Witness:

Signature

Name

MEUSSA WEICH

Address

c/o Wimbledon Bridge House

1 Hartfield Road

London

SW19 3RU

Occupation:

BUSINESS SUPPORT