



## Registration of a Charge

Company Name: **THE DON FISHING COMPANY, LIMITED**

Company Number: **SC005222**



Received for filing in Electronic Format on the: **05/12/2023**

XCHQAPHS

### Details of Charge

Date of creation: **28/11/2023**

Charge code: **SC00 5222 0077**

Persons entitled: **THE ROYAL BANK OF SCOTLAND PLC**

Brief description: **THE VESSEL 'ENTERPRISE III' REGISTERED UNDER THE UNITED KINGDOM FLAG AT BANFF UNDER OFFICIAL NUMBER C21418 AS MORE PARTICULARLY DESCRIBED IN THE INSTRUMENT EVIDENCING THE CHARGE ACCOMPANYING THIS MR01.**

**Contains fixed charge(s).**

**Contains negative pledge.**

### Authentication of Form

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

### Authentication of Instrument

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

Certified by: **BRODIES LLP**



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

Company number: 5222

Charge code: SC00 5222 0077

The Registrar of Companies for Scotland hereby certifies that a charge dated 28th November 2023 and created by THE DON FISHING COMPANY, LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 5th December 2023 .

Given at Companies House, Edinburgh on 6th December 2023

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



**Companies House**



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

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

CERTIFIED A TRUE  
COPY SAVE FOR THE  
MATERIAL REDACTED  
PURSUANT TO S859G  
OF THE COMPANIES  
ACT 2006

*A Johnston*  
BRODIES LLP  
Solicitors

*29 Nov* 20*23*

Ref: *ROY141336*

DEED OF COVENANT

by

The Don Fishing Company, Limited

and

Regentwalk Limited

and

Thornbay Limited

and

The Firm of Enterprise BF1 Partnership

as Owners

in favour of

THE ROYAL BANK OF SCOTLAND PLC

THIS DEED OF COVENANT is dated 28 November 2023 and is made as a deed between:

- (1) **THE DON FISHING COMPANY, LIMITED** (Company Number: SC005222), with their registered office at Blenheim House, Fountainhall Road, Aberdeen, AB15 4DT and having a principal place of business at Bath House, Bath Street, Peterhead, AB42 1DX; **REGENTWALK LIMITED** (Company Number: SC242806), with their registered office at Craigmhor, 60 Reidhaven Street, Whitehills, Banff, Aberdeenshire, Scotland, AB45 2NJ; and **THORNBAY LIMITED** (Company Number: SC242805), with their registered office at Buchraggie House, Boyndie, Banff, Aberdeenshire, Scotland, AB45 2JQ (each a **Partner** and together the **Partners**), each in their own capacity and in their capacity as partners and trustees for the firm of Enterprise BF1 Partnership, a partnership constituted under the laws of Scotland having its place of business at Bath House, Bath Street, Peterhead, AB42 1DX (the **Partnership**) (the **Partners** and the **Partnership** are together the **Owners** and each an **Owner**); and
- (2) **THE ROYAL BANK OF SCOTLAND PLC**, (Company Number: SC083026) having its registered office at 36 St. Andrew Square, Edinburgh, Scotland, EH2 2YB (the **Bank**).

#### BACKGROUND

- (A) The Bank has agreed to provide the Partnership with certain financial facilities.
- (B) It is a condition of those facilities being made available or to continue to be made available that each Partner grants a Mortgage in favour of the Bank over its interests in the Vessel and the Owners enter into a deed of covenant in the form of this Deed.

#### AGREED TERMS

##### 1. Definitions and Interpretation

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

##### 1.1 Incorporation of definitions

In this Deed:

<b>Act</b>	means the Insolvency Act 1986.
<b>Approved Brokers</b>	means the insurance brokers appointed by the Owners as at the date of this Deed or any other insurance brokers appointed by the Owners with the Bank's prior written consent.
<b>Business Day</b>	means a day (other than a Saturday or Sunday) other than a national holiday.

<b>Certificate of Compliance</b>	means the International Fishing Vessel Certificate issued under the provisions of the Fishing Vessels (Codes of Practice) Regulations 2017 and confirming compliance of the Vessel with the provisions of the Council Directive 97/70/EC and Council Directive 2002/35, and with the Fishing Vessels (Codes of Practice) Regulations 2017 under the authority of the Government of the United Kingdom of Great Britain and Northern Ireland by the Maritime and Coastguard Agency.
<b>Charterer</b>	means each counterparty to a Charter from time to time.
<b>Charter</b>	means any time, voyage or bareboat charter that may be entered into in relation to the Vessel from time to time in accordance with the provisions of this Deed and <b>Charters</b> shall be construed accordingly.
<b>Classification Society</b>	Bureau Veritas or such other classification society as may be approved in writing by the Bank.
<b>Compulsory Acquisition</b>	means requisition by any governmental, state or other competent authority for title or other compulsory acquisition (otherwise than by requisition for hire).
<b>Deed</b>	means this Deed of Covenant.
<b>Earnings</b>	means all monies whatsoever from time to time arising out of the use or operation of the Vessel including (but without limiting the generality of the foregoing) all payments due to the Partnership under any Charter from time to time, freight, hire and passage moneys, income arising under pooling arrangements, compensation payable in the event of requisition for hire, Requisition Compensation, remuneration for salvage and towage services, demurrage and detention moneys and damages for breach (or payment for variation or termination) of any Charter or other contract for the employment of the Vessel, and any sums recoverable under any loss of earnings insurance.
<b>Environmental Claim</b>	means (a) any claim, proceeding, formal notice, investigation by, or directive from, any applicable governmental, judicial or other regulatory authority alleging breach of, or non-compliance with, any Environmental Laws or Environmental Permits or otherwise howsoever relating to or arising out of an Environmental Incident or (b) any claim, proceeding, formal notice, investigation by any other third party howsoever relating to or arising out of an Environmental Incident (and, in each such case, claim shall mean a claim for damages, clean-up costs, compliance, remedial action or otherwise);

**Environmental Incident**

means:

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

**Environmental Law**

means any applicable law or regulation which relates to:

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

**Environmental Permits**

means any permit and other authorisation and the filing of any notification, report or assessment required under any Environmental Law (i) for the operation of the Vessel, (ii) for the business of the Partnership, and (iii) in connection with any properties or assets (including the Vessel) owned or used by the Owners for its business.

**Excess Risks**

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

<b>Event of Default</b>	means any event described as such, or as a "Default", or any other event which allows the Bank to accelerate sums due, in a document or agreement relating to the Secured Liabilities.
<b>Flag State</b>	means the United Kingdom and includes the Maritime & Coastguard Agency.
<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>Insurance Policy</b>	means the insurance policy (including hull and machinery, protection and indemnity and war risks Insurance) provided by NorthStandard Limited (trading as Sunderland Marine) in respect of the Vessel with policy number 000435/S/003540.
<b>Insurances</b>	means the Insurance Policy, together with all other policies and contracts of insurance (which expression includes all entries relating to the Vessel in a protection and indemnity or mutual hull or war risks association) or such other insurance arrangements which are from time to time in place or taken out or entered into by or for the benefit of the Owners (whether as assured or co-assured or in respect of any other interest whatsoever) in respect of the Vessel and her Earnings pursuant to clause 9.1 or otherwise and all benefits thereof (including all claims under the policies of whatsoever nature and contracts 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>Licence</b>	means the Licence Number 43283 issued in respect of the Vessel by Marine Scotland and all other fishing licences now attaching to the Vessel or to be attached to the Vessel or any licence or licence entitlement granted or issued by way of replacement, renewal, re-issue, aggregation or substitution of such licence and all fixed quota allocation units attached to such licence and quota allocations, rights and entitlements arising from those quota units, and any quota units allocated at any time for stocks not currently allocated based on the track record of the Vessel or any other vessel or licence used in the licencing of the Vessel and all quota allocations, quota, days at sea, units of effort or other rights issued or allocated in respect of or by reference to the Vessel or such licence.

<b>Loss Payable Clause</b>	means the provisions regulating the manner of payment of sums receivable under the Insurances which are or are to be incorporated in the relevant Insurance Documents, such Loss Payable Clause to be in the form set out in Schedule 2.
<b>Major Casualty</b>	means any casualty to the Vessel or incident (other than a Total Loss).
<b>Material of Environmental Concern</b>	means chemicals, pollutants, contaminants, wastes, toxic or hazardous substances, oil, petroleum, oil and petroleum products and any other polluting substances, the release, discharge, disposal or emission of which into the environment would cause damage to the environment or is regulated, prohibited or penalised by or pursuant to any Environmental Law.
<b>Mortgages</b>	means the first statutory mortgages granted by the Partners to the Bank in respect of the Vessel or any shares in the Vessel dated on or around the date of this Deed and the term <b>Mortgage</b> shall be construed accordingly.
<b>Party</b>	means a party to this Deed.
<b>Protection and Indemnity Risks</b>	means the usual risks covered by a protection and indemnity association which is a member of the International Group of P & I Clubs including (but not limited to) the proportion (if any) not otherwise recoverable in the case of collision under the ordinary running-down clause, liability for third party risks and pollution liability.
<b>Requisition Compensation</b>	means all compensation or other money which may from time to time be payable to the Owners (or any of them) as a result of requisition for title or other compulsory acquisition of the Vessel by any governmental, state or other competent authority (other than by way of requisition for hire).
<b>Schedule</b>	means a schedule to this Deed.
<b>Secured Assets</b>	means all or any part of or interest in the undertaking, property, rights and assets of the Owners (or any of them) which now or at any time hereafter are or are expressed to be the subject of any Security Right created or purported to be created by or pursuant to this Deed and/or the Mortgages.



**Secured Liabilities**

means all or any money and liabilities which shall from time to time (and whether on or at any time after demand) be due, owing or incurred in whatsoever manner to the Bank by the Partnership, whether actually or contingently, solely or jointly and whether as principal, guarantor, cautioner or surety including any money and liabilities of the Partnership to a third party which have been assigned or novated to or otherwise vested in the Bank, and including interest, discount, commission and other lawful charges or expenses which the Bank may in the course of its business charge or incur in respect of any of those matters or for keeping the Partnership's account or accounts, and so that interest shall be computed and compounded according to the usual rates and practice of the Bank as well after as before any demand made or decree obtained under or in relation to this Deed.

**Security**

means all or any of the Security Rights now or at any time hereafter created by or pursuant to this Deed and/or the Mortgages.

**Security Document**

means a document entered into or to be entered into between the Bank and the Owners (or any of them) from time to time in terms of which an Owner grants in favour of the Bank Security Rights in respect of the Secured Liabilities and **Security Documents** shall be construed accordingly.

**Security Period**

means the period commencing on the date of this Deed and ending on the date on which the Secured Liabilities are paid in full to the satisfaction of the Bank.

**Security Rights**

means any mortgage, charge, standard security, right in security, security, pledge, lien, right of set-off, right to retention of title or other encumbrance, whether fixed or floating, over any present or future property, assets or undertaking.

**Total Loss**

means, in relation to the Vessel:

- (a) an actual, constructive, arranged, agreed or compromised total loss;
- (b) a Compulsory Acquisition;
- (c) the capture, seizure, arrest, detention or confiscation by any government or persons acting or purporting to act on behalf of any government, unless the Vessel is released to the Owners within one month (or such longer period as may be agreed by the Bank) of such capture, seizure, arrest, detention or confiscation; or

- (d) any hijacking, theft, confiscation, condemnation, capture, restraint, disappearance or loss of possession of the Vessel, unless the Vessel is released to the Owners within one month (or such longer period as may be agreed by the Bank) of such hijacking, theft, confiscation, condemnation, capture, restraint, disappearance or loss of possession of the Vessel.

**Vessel**

means the vessel 'Enterprise III' registered on the UK Ship Register with Official Number: C21418 in the name of the Partners at the port of Banff including all and any shares or interest therein and the hull, machinery, equipment, outfit, fuel, consumable and stores whether now owned or hereafter acquired by the Owners and all additions, improvements and replacements hereafter made in or to the Vessel whether on board or offshore or any part thereof and/or the said equipment.

**War Risks**

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

**1.2 Interpretation**

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

- 1.2.1.1 any of the Parties to this Deed or any other person shall be construed so as to include its successors in title, permitted assigns or assignees and permitted transferees;
- 1.2.1.2 **assets** includes present and future properties, revenues and rights of every description;
- 1.2.1.3 this **Deed**, any **Mortgage** or any other deed, document, agreement or instrument is a reference to this Deed, that Mortgage or other deed, document, agreement or instrument as amended, novated, supplemented, extended, restated or replaced in whole or in part from time to time;
- 1.2.1.4 **indebtedness** includes any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.1.5 a **person** includes any person, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- 1.2.1.6 a **receiver** shall include references to joint receivers and any reference to the appointment of a person as receiver shall include a reference to the appointment of two or more persons as joint receivers;

- 1.2.1.7 a **company** includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.1.8 one gender shall include reference to the other gender;
- 1.2.1.9 a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- 1.2.1.10 a provision of law is a reference to that provision as amended or re-enacted;
- 1.2.1.11 **document** includes any agreement, deed, instrument (including negotiable instrument) or other document of any kind;
- 1.2.1.12 a time of day is a reference to London time;
- 1.2.1.13 **writing** or **written** includes faxes but not e-mail;
- 1.2.1.14 any words following the terms **including**, **include**, **in particular**, or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.1.15 **disposal** includes a sale, transfer, assignation, grant, lease or other disposal, whether voluntary or involuntary (and **dispose** shall be construed accordingly);
- 1.2.1.16 the **winding up**, **dissolution**, or **administration** of a person shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such person is incorporated or established, or any jurisdiction in which such person carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, administration, bankruptcy, sequestration, arrangement, adjustment, protection or relief of debtors; and
- 1.2.1.17 clauses are to the clauses of this Deed.
- 1.2.2 The liability of the Owners under this Deed shall be joint and several.
- 1.2.3 Headings and sub-headings of this Deed are inserted for convenience only and do not affect the interpretation of this Deed.
- 1.2.4 Unless the context otherwise requires, words in the singular shall include the plural and *vice versa*.
- 1.2.5 Words defined in the Companies Act 1985 (as amended) or the Companies Act 2006, have the same meanings in this Deed.
- 1.2.6 Any obligation of the Parties not to do something shall include an obligation not knowingly to permit, suffer or allow the same.
- 1.2.7 An Event of Default is continuing if it has not been waived by the Bank in writing.

## 2. Payment obligation

### 2.1 Covenant to pay

The Owners shall on demand in writing made to them (or any of them) pay or discharge the Secured Liabilities to the Bank when the same are due and payable.

### 2.2 Interest

2.2.1 The Owners shall pay interest to the Bank after as well as before judgment or decree or the liquidation, administration, sequestration or bankruptcy of the Owners, at the rate charged by the Bank on the Secured Liabilities on all sums due from the Owners under this Deed from the date such amount becomes due until such amount is irrevocably discharged and paid in full.

2.2.2 Interest under clause 2.2.1 shall accrue on a daily basis and compounded according to agreement, or, in the absence of agreement, quarterly on the days selected by the Bank.

## 3. Mortgage, assignment and security

### 3.1 Mortgage and assignment

As a continuing security for the payment and discharge of the Secured Liabilities and the performance and discharge of the relevant Owners' obligations under the Mortgages and this Deed, the Owners, as sole legal and beneficial owners with full title guarantee, each hereby:

3.1.1 mortgages and charges all its right, title and interest present and future in and to the Vessel to the Bank;

3.1.2 assigns and agrees to assign absolutely to the Bank all its rights, title and interest in and to the Earnings, the Insurances and the Requisition Compensation in relation to the Vessel and all its benefits and interest present and future therein; and

3.1.3 covenants and agrees that the Vessel shall be held subject to the Mortgages as security for the payment of the Secured Liabilities so that the mortgages thereby and hereby created shall be a continuing security, but this Deed shall continue in full force and effect notwithstanding the discharge of the Mortgages until the Secured Liabilities have been paid in full.

### 3.2 Use of Secured Assets

#### 3.2.1 Earnings

The Bank agrees and the Owners acknowledge and covenant (where appropriate) that the Earnings shall be payable to the Owners until such time as the Bank, in its sole discretion, shall direct in writing to the contrary whereupon the Owners shall forthwith, and the Bank may at any time thereafter, instruct the Owners or the persons from whom the Earnings are then payable to pay the same to the Bank or as it may direct and any Earnings then in the hands of the Owners' brokers, bankers or other agents shall be deemed to have been received by them on trust, for the use and on behalf of, the Bank.

### 3.2.2 Insurances

The Parties to this Deed accept, agree and acknowledge that all claims and/or other moneys payable under the Insurances (or any one of them or part thereof) shall be payable to the Bank in accordance with the terms of the relevant Loss Payable Clause and shall be applied in accordance with clause 5.5 below.

## 3.3 Notices

3.3.1 The Owners covenant with the Bank that, immediately upon execution of this Deed and upon entering into any new Insurances after the date of this Deed, they will give notice of assignment of the Insurances to the Insurers or the Approved Brokers in the relevant form set out in Schedule 1 and to procure that a notice of assignment of the Bank's interest in terms thereof and the relevant Loss Payable Clause in the form of Schedule 2 (as may be relevant) or such other form as may be agreed between the Owners and the Bank is endorsed upon or attached to the Insurance Documents.

3.3.2 The Owners covenant with the Bank that, when so directed by the Bank, they will give notice of the assignment of the Earnings to the Charterer under that Charter in the form of Schedule 3 and obtain an acknowledgement thereof addressed to the Bank in the form of Schedule 3 or such other form as may be agreed between the Owners and the Bank.

3.3.3 In the event of Compulsory Acquisition, the Owners undertake to execute any further assignment or notice that the Bank may request in relation to any Requisition Compensation and if received by the Owners to immediately pay such Requisition Compensation to the Bank. All Requisition Compensation received by the Bank shall be applied in accordance with clause 5.5 below.

## 4. Protection of Security

### 4.1 Continuing security

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

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

### 4.2 No obligation to take other enforcement proceedings

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

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

- 4.2.1.2 to resort to any guarantee or enforce any Security Right, or exercise any right of compensation or set-off or other means of payment, or to obtain or enforce any judgement, decree or order in any court against the Owners (or any of them) or any other person now or hereafter held by or available to it for payment and discharge of the Secured Liabilities;
- 4.2.1.3 to account for any money or other property received or recovered in consequence of any enforcement or realisation of any agreement relating to the Secured Liabilities, guarantee or other means of payment; or
- 4.2.1.4 to make or file any claim or prove in a winding up, liquidation, administration or other insolvency proceedings of the Owners (or any of them) or any other person.

4.2.2 For the avoidance of any doubt this Deed, the Mortgages and the Security shall operate to secure any new, additional or increased facilities provided by the Bank to the Partnership from time to time.

#### 4.3 Waiver of defences

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

- 4.3.1 any variation, extension, discharge, compromise, dealing with, exchange or renewal of, any Security Right or right or remedy which the Bank may now or after the date of this Deed have from or against the Owners (or any of them) or any other person in connection with any of the Secured Liabilities;
- 4.3.2 any failure, act or omission by the Bank or any other person in taking up, perfecting or enforcing any Security Right, indemnity, or guarantee from or against the Owners (or any of them) or any other person in respect of the Secured Liabilities;
- 4.3.3 any increase in or waiver or discharge of the Secured Liabilities or any termination, amendment, variation, novation, supplement, extension, restatement or replacement of any other document or agreement relating to the Secured Liabilities (in each case, however fundamental and whether or not more onerous) including, without prejudice to the foregoing generality, any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any document or Security Right and any fees, costs and/or expenses associated with any of the foregoing;
- 4.3.4 any grant of time, indulgence, waiver or concession to the Owners (or any of them) or any other person;
- 4.3.5 any insolvency, bankruptcy, liquidation, administration, winding up, incapacity, limitation, disability, the discharge by operation of law, or any change in the constitution, name or style of the Owners (or any of them) or any other person;

- 4.3.6 any invalidity, illegality, unenforceability, irregularity or frustration of any actual or purported obligation of, or Security Right held from, the Owners (or any of them) or any other person in connection with the Secured Liabilities;
- 4.3.7 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Owners (or any of them) or any other person;
- 4.3.8 any claim or enforcement of payment from the Owners (or any of them) or any other person; or
- 4.3.9 any other act or omission by the Bank or any other person which but for this provision might operate to exonerate or discharge the Owners (or any of them) or otherwise reduce, impair, extinguish or affect its liability or obligations under this Deed, the Mortgages or the Security or any of the rights, powers or remedies conferred upon the Bank by this Deed, the Mortgages, the Security, any other document or agreement relating to the Secured Liabilities or by law.

#### 4.4 No waiver

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

#### 4.5 No prejudice

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

#### 4.6 Further assurance

The Owners shall, on demand and at their own expense, execute, deliver and perfect such documents or do any act or thing which the Bank may require to:

- 4.6.1 perfect or protect this Deed and the Security created or intended to be created by this Deed and the Mortgages or their priority or any Security Right in favour of the Bank given or arising pursuant to this Deed;
- 4.6.2 facilitate the realisation or application of the Secured Assets and the exercise of the rights, powers and discretions conferred on the Bank under this Deed, the Mortgages, the Security or by law; and/or
- 4.6.3 confer Security Rights on the Bank over the Vessel located in any jurisdiction outside of the United Kingdom equivalent or similar to the Security intended to be conferred by or pursuant to this Deed, the Mortgages or by law.

#### 4.7 New accounts

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

#### 5. Enforcement

##### 5.1 Enforceable

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

- 5.1.1 an Event of Default has occurred which is continuing; or
- 5.1.2 the Owners (or any of them) have failed to pay all or any of the Secured Liabilities on the date specified for payment thereof, or, following a demand for payment by the Bank; or
- 5.1.3 the Vessel is arrested or any execution, diligence, distress or other legal process is levied or threatened to be levied against the Vessel (other than any such action which is frivolous or vexatious in nature and which is discharged, ceased, revoked or stayed within 14 days of commencement); or
- 5.1.4 the Vessel is abandoned, lost, destroyed, captured, confiscated or the subject of Compulsory Acquisition; or
- 5.1.5 the Vessel shall lose the class (or the equivalent with another Classification Society) which she had on the execution of this Deed and/or the Mortgage; or
- 5.1.6 following a survey or inspection of the Vessel, the Bank shall discover any defect in the Vessel and the Bank calls upon the Owners to repair and restore the same and the Owners fail to do so to the satisfaction of the Bank within two months of such request; or
- 5.1.7 the Vessel becomes a Total Loss;



- 5.1.8 the Partnership is unable or admits inability to pay its debts as they fall due or by reason of actual or anticipated financial difficulties commences negotiations with one or more of its creditors to reschedule any of its indebtedness, or steps are taken to appoint a receiver, liquidator or administrator to any Owner or towards the winding up of any Owner; or
- 5.1.9 the Owners (or any of them) breach any of the provisions of this Deed or the Mortgages; or
- 5.1.10 it becomes impossible or unlawful for any Owner to perform or observe any of the covenants, undertakings or obligations contained in a Security Document or for the Bank to exercise any rights or powers vested in it; or
- 5.1.11 anything is done or suffered to be done by any Owner, whether in connection with the Secured Assets or otherwise, which in the opinion of the Bank may imperil the Security Rights created by the Security Documents.

## 5.2 Powers of enforcement

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

- 5.2.1 take possession of the Vessel and exercise all the rights and powers of a mortgagee in law or otherwise provided that if the Bank takes possession of the Vessel, the Bank shall not be liable for any default or omission for which a mortgagee-in-possession would be liable;
- 5.2.2 institute legal proceedings to recover judgment against the Owners (or any of them) for the Secured Liabilities;
- 5.2.3 take over, commence or defend (using the Owners' names if necessary) any claims or legal or arbitration proceedings and to abandon, release or settle in any way any such claims or proceedings;
- 5.2.4 employ professional advisers and appoint agents;
- 5.2.5 appoint a person from time to time to act as a receiver of the Vessel subject to the provisions of clause 6 whereupon the receiver shall become a receiver of the Vessel upon such terms as to remuneration and otherwise as the Bank shall think fit and to remove a person so appointed and appoint another person in its place;
- 5.2.6 order the Vessel to proceed forthwith at the Owners' risk and expense to a port or place nominated by the Bank and, if the Owners fail to give the necessary instructions to the master of the Vessel for any reason whatsoever, the Bank shall have the right to give such instructions direct to the master;
- 5.2.7 sell, scrap, decommission or otherwise dispose of the Vessel or any shares therein (whether as a mortgagee, attorney-in-fact for the Owners or otherwise) either by public auction or private contract and, if the Bank considers it appropriate, on deferred terms of payment, the Bank having power to make any such special conditions as it shall consider appropriate;

- 5.2.8 pending the sale of the Vessel, insure, manage, maintain, navigate, repair, demise, charter, operate, employ, lay up or otherwise use the Vessel for such time and upon such terms as the Bank may consider as being to its advantage;
- 5.2.9 require all Earnings to be paid to the Bank or as it may direct;
- 5.2.10 require all Insurance Documents and all claims, correspondence and documents to be delivered to the Bank or to the broker or adjuster nominated by it and to collect, recover, compromise and give a good discharge in respect of all claims outstanding or arising under the Insurances and to take over or to institute (if necessary in the name of the Bank) all proceedings in connection therewith as the Bank shall in its absolute discretion think fit;
- 5.2.11 defend, discharge, compound, release or compromise all claims against the Owners (or any of them) in respect of the Secured Assets or any part thereof and/or the Requisition Compensation including (but not limited to) those which have given or may give rise to any charge or lien on the Secured Assets or any part thereof or which are or may be enforceable by proceedings against the Secured Assets or any part thereof;
- 5.2.12 recover, institute, pursue, discharge, compound, release or compromise all claims by the Owners (or any of them) in respect of the Vessel, the Earnings, the Insurances and/or the Requisition Compensation against the Insurers, any Charterer or any other third party whatsoever;
- 5.2.13 generally enter into any transaction or arrangement of any kind and to do anything in relation to the Secured Assets which the Bank may think fit;
- 5.2.14 recover from the Owners (or any of them) on demand all losses, expenses, payments and disbursements whatsoever incurred by the Bank in or about or incidental to the exercise by it of any of the rights and powers aforesaid; and
- 5.2.15 require the Owners to deliver to the Bank or as it may direct the original Licence which the Owners may then hold or transfer to itself or take such other action as the Bank may require including the completion, execution and submission of application or transfer forms to procure that the benefit of the Licence (which expression includes the quota units) will be made available to the Bank or any purchaser or transferee of the Vessel.

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

### 5.3 The Bank's rights of intervention

- 5.3.1 The Bank 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 Mortgages and this Deed and the Owners shall pay to the Bank on demand all amounts paid by the Bank in providing such protection of the Security.

5.3.2 Without prejudice to the generality of clause 5.3.1:

5.3.2.1 in the event of a default in compliance with the provisions of clause 9.1, the Bank shall have the right to insure the Vessel as provided in clause 9.1 and to pay any unpaid premiums or calls then outstanding;

5.3.2.2 in the event of a default in compliance with clause 10.2.4, clause 10.2.7 or clause 10.2.8, the Bank shall have the right to pay and discharge all such debts and liabilities and to take such action as it considers necessary for the purpose of securing the release of the Vessel;

5.3.2.3 in the event of a default in compliance with clauses 10.3.1 and 10.3.2, the Bank shall have the right to effect such surveys and repairs as it considers necessary.

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

5.4 The Bank's right to issue guarantees

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

5.5 Application of proceeds

All monies realised by the Bank and/or a receiver under this Deed or otherwise arising from the enforcement of the Security shall (subject always to clause 5.6 (*Monies on suspense account*) and clause 11 (*Discharge*); the claims of creditors ranking in priority to or *pari passu* with the claims of the Bank under this Deed; and the terms of Section 60 of the Act) be applied in the following order of priority:

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

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

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

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

#### 5.6 Monies on suspense account

All monies received, recovered or realised by the Bank or any receiver under this Deed, the Mortgages or the Security (including the proceeds of any conversion of currency) may in the discretion of the Bank be credited to any interest bearing suspense or impersonal account or accounts maintained with any bank, building society or financial institution as it considers appropriate and may be held in such account for so long as the Bank may think fit pending their application from time to time (as the Bank is entitled to do in its discretion) in or towards the discharge of any of the Secured Liabilities provided that if the aggregate of such monies so placed to the credit of such suspense or impersonal account or accounts shall equal or exceed the Secured Liabilities, the Bank shall, subject always to clause 11 (*Discharge*), forthwith apply the same towards settlement of the Secured Liabilities and the Owners will not be entitled to withdraw any amount at any time standing to the credit of any suspense or impersonal account referred to above.

#### 5.7 Liability of the Bank

5.7.1 The Bank shall not in any circumstances be liable to the Owners (or any of them) or any other person for any losses, damages, liabilities or expenses arising from or in connection with the application or enforcement of this Deed, the Mortgages or the Security or any realisation, appropriation or application of the Secured Assets or from any act, default or omission of the Bank, or the Owners (or any of them) or any officers, employees or agents of the Owners (or any of them) in relation to the Secured Assets or otherwise in connection with this Deed, the Mortgages or the Security.

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

#### 5.8 Third parties

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

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

#### 5.9 Protection of Bank's interest

Neither the security created by, nor any security interest constituted pursuant to, this Deed, the Mortgages, nor the rights, powers, discretions and remedies conferred upon the Bank by this Deed or by law shall be discharged, impaired or otherwise affected by reason of:-

- 5.9.1 any present or future security, guarantee, indemnity or other right or remedy held by or available to the Bank being or becoming wholly or in part void, voidable or unenforceable on any ground whatsoever or by the Bank from time to time exchanging, varying, realising, releasing or failing to perfect or enforce any of the same; or
- 5.9.2 the Bank compounding with, discharging or releasing or varying the liability of or granting any time, indulgence or concession to, the Owners (or any of them), or any other person or renewing, determining, varying or increasing any accommodation or transaction in any manner whatsoever or concurring in accepting or varying any compromise, arrangement or settlement or omitting to claim or enforce payment from the Owners (or any of them) or any other person; or
- 5.9.3 any invalidity, illegality, unenforceability, irregularity or frustration of any actual or purported obligation of, or security held from the Owners (or any of them) or any other person in connection with the Secured Liabilities; or
- 5.9.4 any act or omission which would not have discharged or affected the liability of the Owners (or any of them) had they been a principal debtor instead of a guarantor or indemnifier or by anything done or omitted by any person which, but for this provision, might operate to exonerate or discharge the Owners (or any of them) from their liabilities or obligations under this Deed, the Mortgages or the Security.

#### 5.10 Amendment to principal liabilities

The Bank may, without the consent of or notice to the Owners (or any of them) and without releasing or reducing the liability of the Owners (or any of them) under this Deed and/or the Mortgages, do any of the following:

- 5.10.1 provide any new or increased facility to the Owners (or any of them);
- 5.10.2 accept any intermediate payment, settlement of account or discharge in whole or in part of the Secured Liabilities;
- 5.10.3 renew, vary, amend, restate, supplement, terminate, release, transfer or refrain from taking up, perfecting or enforcing any security, indemnity or guarantee from the Owners (or any of them) or any other person; or
- 5.10.4 terminate, amend, vary, novate or supplement any of the Secured Liabilities.

#### 5.11 Prior proceedings

The Bank shall not be obliged, before exercising any of the rights, powers or remedies conferred upon it by or pursuant to this Deed or by law, to:-

- 5.11.1 take any action or obtain judgement or decree in any court against any other person; or

- 5.11.2 make or file any claim to rank in a winding-up, liquidation or bankruptcy of any person; or
- 5.11.3 enforce or seek to enforce any other security taken, or exercise any right or plea available to the Bank, in respect of any of the Owners' or Owner's obligations to the Bank.

## **6. Appointment of a receiver**

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

- 6.1 The receiver shall be the agent of each Owner and the Owners alone shall be responsible for its acts, defaults and remuneration.
- 6.2 Neither the Bank nor any receiver shall be liable to account as a mortgagee in possession of the Vessel and neither the Bank nor any receiver shall be liable for any loss arising from or in connection with the realisation of the Vessel or otherwise for any act, neglect, default or omission for which a mortgagee in possession might be liable as such.
- 6.3 A receiver shall have the same powers as are conferred upon the Bank by clause 5.2 and to take any indemnity from the Owners from and against all actions, claims, expenses, demands and liabilities (whether arising out of contract or of tort or in any other way whatsoever) incurred for anything done or omitted to be done in the exercise or purported exercise of his powers under this Deed PROVIDED ALWAYS that nothing herein contained shall make the Bank liable to any such receiver as aforesaid in respect of his remuneration costs, charges or expenses or otherwise.
- 6.4 The foregoing provisions shall take effect by way of variation and extension of Section 101 and 104 to 109 (inclusive) of the Law of Property Act 1925 and the provisions of these sections and the powers conferred on a mortgagee or receiver by these sections as so varied and extended shall apply to and be exercisable by any such receiver as aforesaid as far as applicable.

## **7. Power of attorney**

### **7.1 Appointment**

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

## 7.2 Ratification

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

## 7.3 Exercise of power

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

## 8. Representations and warranties

### 8.1 Representations and warranties

The Owners each represent and warrant to the Bank that:

8.1.1 the partners, together, are the sole legal and beneficial owners of the Vessel and the shares in the Vessel are legally owned as follows:

8.1.1.1 The Don Fishing Company, Limited – 16 shares;

8.1.1.2 Regentwalk Limited – 16 shares; and

8.1.1.3 Thornbay Limited – 32 shares.

8.1.2 the Vessel is not subject to any Charter or other contract for her letting or to any agreement to enter into any such Charter or contract which, if entered into after the date of this Deed, would have required the consent of the Bank, or to any agreement or arrangement whereby the Earnings in respect of the Vessel may be shared with any other person;

8.1.3 the flag of the Vessel is the United Kingdom and the port of the Vessel is Banff;

8.1.4 this Deed creates those first priority security interests it purports to create and is not liable to be avoided or otherwise set aside on its liquidation, administration, bankruptcy, sequestration or otherwise;

8.1.5 the Owners have complied with the provisions of all Environmental Laws relevant to his operation of the Vessel;

8.1.6 the Owners have obtained all Environmental Permits and are in compliance with all such Environmental Permits;

8.1.7 the Owners have received no notice of any Environmental Claim that alleges that the Owners are not in compliance with any Environmental Law or any Environmental Permit;

8.1.8 there is no Environmental Claim pending against the Owners and/or the Vessel;

- 8.1.9 no Environmental Incident which could or might give rise to any Environmental Claim has occurred;
- 8.1.10 it has, at all times, complied with all legal requirements whether imposed by international convention, statute, regulation, common law, the Insurances or otherwise (including, without limitation, all Flag State requirements) in relation to the operation of the Vessel, and has on board the Vessel as and when legally required valid certificates showing compliance with such requirements;
- 8.1.11 it has, at all times, complied with all legal requirements whether imposed by international convention, statute, regulation, common law, the Insurances or otherwise (including, without limitation, all Flag State requirements) in relation to the operation of the Vessel, and has on board the Vessel as and when legally required valid certificates showing compliance with such requirements; and
- 8.1.12 all Insurances are in full force and effect, and to the best of each Owner's knowledge and belief having made due and careful enquiries, no event or circumstance has occurred, nor has there been any omission to disclose a fact, which would in either case entitle any Insurer to avoid its liability or otherwise reduce its liability.

## 8.2 Repetition of representations and warranties

The representations and warranties set out in clause 8.1 (*Representations and warranties*) shall be given on the date on which the Owners execute this Deed and the Mortgages and shall be deemed to be repeated on and as of each day from the date of this Deed until all the Secured Liabilities have been repaid and discharged in full in each case by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

## 9. Insurances

### 9.1 Insurance policies

- 9.1.1 The Owners hereby covenant with the Bank during the Security Period that they will insure and keep the Vessel insured free of cost and expense to the Bank in the name of the Owners, or, if so required by the Bank, in the joint names of the Owners and the Bank (but without liability on the part of the Bank for premiums or calls):
  - 9.1.1.1 the hull and machinery of the Vessel against fire and all usual marine risks (including Excess Risks) and War Risks, on an agreed value basis, in an amount not less than the full market value of the Vessel for the time being or such other amount as the Bank may reasonably specify;
  - 9.1.1.2 against Protection and Indemnity Risks in respect of the operation of the Vessel (as approved in writing by the Bank) and on such terms as shall from time to time be approved in writing by the Bank;
  - 9.1.1.3 with mortgagee's interest insurance for the Bank in an amount as the Bank may reasonably specify;
  - 9.1.1.4 against liability for claims in connection with any persons on board the Vessel at any time;



- 9.1.1.5 against general third party risks;
- 9.1.1.6 for employers liability to the extent required of any employer in the United Kingdom;
- 9.1.1.7 against Environmental Incidents; and
- 9.1.1.8 If (notwithstanding the provisions of clause 9.1.1.7 of this Deed) the Vessel enters the territorial waters of the United States of America (or any other jurisdiction having legislation similar to the US Oil Pollution Act 1990), against such risks as may be necessary in order to obtain a Certificate of Financial Responsibility from the United States Coastguard or the equivalent certificate required by the relevant authority of such other jurisdiction,

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

- 9.1.1.9 for such levels and on such terms acceptable to the Bank having regard to the insurances as would usually be maintained by prudent businesses carrying on the same or substantially similar activities as the Owners and for vessels of the same or substantially the same type, size and nature as the Vessel and operating in the same jurisdictions as the Vessel, and as are deemed adequate for the business of the Owners and the Vessel by a reputable firm of insurance brokers acceptable to the Bank; and
- 9.1.1.10 subject to any statutory provisions relating to the provision of such insurances by which Insurers are bound.

## 9.2 Insurance covenants

The Owners further covenant with the Bank during the Security Period that they will:

- 9.2.1 effect the Insurances in pounds sterling or such other currency as the Bank may approve in writing from time to time;
- 9.2.2 effect the Insurances through the Approved Brokers in such amounts, upon such terms with such Insurers as shall from time to time be approved in writing by the Bank provided, however, that the insurances against War Risks and Protection and Indemnity Risks may be effected by the entry of the Vessel with such war risks and protection and indemnity risks associations or other underwriters as shall from time to time be approved in writing by the Bank;
- 9.2.3 arrange renewal of each of the Insurances at least 10 Business Days before it expires and to procure that the Approved Brokers or the Insurers promptly confirm in writing to the Bank as and when each such renewal is effected;
- 9.2.4 punctually to pay all premiums, calls, contributions or other amounts payable in respect of the Insurances and to produce all relevant receipts or other evidence thereof when so required in writing by the Bank;

- 9.2.5 arrange for the execution of such guarantees or other documents as may from time to time be required by the protection and indemnity or war risks association in connection with the Insurances or any underwriters or insurers for, or for the continuance of, cover;
- 9.2.6 procure that the Insurance Documents are deposited with the Approved Brokers and that such brokers provide the Bank with certified copies thereof and use its best endeavours to procure that such brokers issue to the Bank a letter or letters of undertaking in such form as the Bank may request;
- 9.2.7 procure that the protection and indemnity and/or war risks associations or underwriters in which the Vessel is entered or with which it is insured provide the Bank with a copy of the certificate of entry and use its best endeavours to procure that such associations provide the Bank with a letter or letters of undertaking in such form as the Bank may request;
- 9.2.8 procure that the Insurance Documents provide that any lien or set-off for unpaid premiums or calls that the Approved Brokers or the Insurers may have is limited to the premiums or calls due in relation to the Insurances on the Vessel;
- 9.2.9 not employ the Vessel or suffer the Vessel to be employed otherwise than in conformity with the terms of the Insurances (including any rules, instructions and warranties express or implied therein) without first obtaining the consent of the insurers and the Bank to such employment and complying with such requirements as to extra premium or otherwise as the Insurers may prescribe;
- 9.2.10 procure that the interest of the Bank is endorsed or noted on all Insurance Documents (whether effected through Approved Brokers or not) and that the Loss Payable Clause and notice of assignment in such form as shall from time to time be approved by the Bank is incorporated/attached to such Insurance Documents, and that the Bank is furnished with certified copies thereof;
- 9.2.11 procure that any protection and indemnity and/or war risks associations or underwriters in which the Vessel is for the time being entered or with which it is insured shall endorse the Loss Payable Clause on the relevant certificate of entry or policy;
- 9.2.12 use best endeavours to procure that the Insurers and/or the Approved Brokers undertake to give:
  - 9.2.12.1 written notice to the Bank immediately of any material change in the terms and conditions of the Insurances or any suspension, cancellation or termination of the Insurances;
  - 9.2.12.2 in the event of the non-payment of the premiums or calls the right for the Bank to pay the unpaid premium or calls within a reasonable time; and
  - 9.2.12.3 10 Business Days' prior written notice to the Bank in the event of the non-renewal of the Insurances;
- 9.2.13 promptly to provide the Bank with full information regarding any casualties or damage to the Vessel as a result of which the Vessel has become or may become a Total Loss;

- 9.2.14 If and when so requested by the Bank (but no more frequently than annually), at the cost of the Owners, furnish the Bank with a detailed report prepared by an independent firm of marine insurance brokers skilled and experienced in marine insurance for vessels such as the Vessel appointed by the Bank on the adequacy of the Insurances maintained on the Vessel and stating the opinion of marine insurance brokers as to the adequacy thereof;
- 9.2.15 not do any act nor permit any act to be done as a result of which any Insurance shall or may be withdrawn, cancelled, imperilled, prejudiced, suspended or avoided in any way whatsoever and not to permit the Vessel to engage in any voyage nor to carry any cargo not permitted under the Insurances in effect without first placing insurances on the Vessel in the amount stated in clause 9.1 in terms satisfactory to the Bank for such voyage or the carriage or such cargo;
- 9.2.16 (without limitation to the generality of the foregoing) not permit the Vessel to enter or trade to any zone which is declared a war zone by the Vessel's War Risks Insurers unless the Bank shall first have given its consent in writing and the Owners shall have given notice to the War Risks Insurers and paid any additional premium in order to maintain the Insurances on the Vessel whilst trading in such war zone; and
- 9.2.17 should the Vessel be laid up for any period in excess of 10 Business Days, to arrange "lay-up" insurances for the Vessel during such period, at the Owners' own cost and upon such terms and conditions, in such amounts and with such Insurers as shall from time to time be approved in writing by the Bank.

### 9.3 Insurance claims

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

- 9.3.3 If the Owners receive any insurance monies paid under the Insurances, the Owners will forthwith pay such sums to the Bank.

## 10. Owners' covenants

### 10.1 General

The Owners covenant with the Bank and undertake not to represent that the Bank is in any way concerned in the operation of the Vessel, the carriage of passengers or goods therein, or any other use to which the Vessel may be put and not to pledge the credit of the Bank for any purpose whatsoever.

### 10.2 Registration and security

The Owners covenant with the Bank that during the Security Period they will:

- 10.2.1 make application to licence the Vessel, and to make application when necessary to renew the Licence, and make application to permanently attach the quota units to the Licence and promptly to supply the Bank with certified true copies of the Licence, schedule of the quota units issued by Fisheries Departments and quota allocation documents relating to the Licence as the same may be issued from time to time and to notify the Bank forthwith in writing of any material variation to the terms or cancellation of any of the same and not to apply to have the Licence issued to any other vessel or person or the quota units attached to any other licence or person nor to take or omit to take any action whereby the master, owner or Charterer may be in breach of the rules of any producers organisation of which it is a member or may be guilty of an offence under United Kingdom or any other applicable fisheries legislation whereby the Owners of the Vessel are or may be denied the benefit of the Licence nor to employ the Vessel or permit her employment in any manner, trade or business which may lead to the forfeiture, revocation or non-renewal of the Licence or any other licences, quotas or authorities necessary for the Vessel to continue to fish for profit in the United Kingdom or any other applicable waters or any other waters for which licences are required.
- 10.2.2 keep the Vessel registered with full registration in the name and in the ownership of the Partners (in the shares as at the date of this Deed) as a British vessel in the United Kingdom at Banff or such other UK port as the Bank may approve in writing (such approval not to be unreasonably withheld or delayed) and not do or permit to be done anything whereby such registration may be forfeited or imperilled and to procure the renewal of such registration of the Vessel as a British vessel in the United Kingdom with full registration at least 1 (one) month before the same shall expire;
- 10.2.3 maintain the corporate existence of the Owners (as applicable) under the laws of Scotland and comply with all relevant legislation applicable to the Owners;
- 10.2.4 pay when due and payable all taxes, assessments, levies, governmental charges, fines and penalties lawfully imposed on or enforceable against the Vessel;
- 10.2.5 not sell, transfer, mortgage, charge, hypothecate, abandon (save in the case of maritime necessity) or otherwise dispose of the Vessel or any share or interest therein nor assign the Earnings, Insurances or Requisition Compensation in respect of the Vessel to any third party without the prior written consent of the Bank, which it shall have full power to withhold;

- 10.2.6 ensure that the Vessel is operated by a person who is suitably qualified to do so and that the Vessel is operated by such person in accordance with all applicable laws and the Insurances;
- 10.2.7 not create or permit to be created or continued any lien or encumbrance (except the Mortgages and this Deed) whatsoever on the Vessel, the Earnings, the Insurances or the Requisition Compensation in respect of the Vessel and discharge or satisfy all claims and demands which if unpaid might in law or by statute or otherwise create a lien or encumbrance on the Vessel other than a lien for salvage charges, or repair, or collision, or a lien for crew's wages earned on the voyage then in progress;
- 10.2.8 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 Bank thereof by e-mail confirmed by letter and as soon as practicably possible and thereafter cause the Vessel to be released and all liens or encumbrances thereon (except for the Mortgages and this Deed) to be discharged;
- 10.2.9 ensure that, and on the written request of the Bank, provide satisfactory evidence that the master and crew of the Vessel have entered into a fisherman's work agreement and are being paid wages and any other remuneration due to them in accordance with such agreement; that fishermen are working on the Vessel under the provisions of International Labour Organisation's Work in Fishing Convention (ILO 188) and all relevant regulations; that all deductions from the remuneration of the master and crew in respect of any tax liability (including PAYE) and national insurance contributions are being made and accounted for to the relevant authority, and that the master has no claim for disbursements other than those properly incurred by the Owners in the ordinary trading of the Vessel on the voyage then in progress;
- 10.2.10 not without the prior written consent of the Bank, charter the Vessel or let the Vessel on charter for any period whatsoever;
- 10.2.11 if the Bank so requires at any time and from time to time, procure that the Vessel shall be valued in pounds sterling by two firms of shipbrokers, one nominated by the Bank and the other nominated by the Owners with the Bank's prior approval (not to be unreasonably withheld), such valuations to be made without physical inspection (unless otherwise required by the Bank) and on the basis of an arm's-length purchase by a willing buyer from a willing seller and without taking into account any Charter; the fees of the firms of shipbrokers appointed to give such valuations and all other costs arising in connection with the obtaining of any such valuations shall be paid by the Owners; and the value of the Vessel shall be deemed to be the average of the two valuations so obtained;
- 10.2.12 in the event of requisition of the Vessel by any government authority or other competent authority, execute any assignment or assignation that the Bank may request in relation to any Requisition Compensation and, if received by the Owners (or any of them), pay such Requisition Compensation immediately to the Bank;
- 10.2.13 execute and deliver to the Bank such documents of transfer as the Bank may require in the event of sale of the Vessel pursuant to any power of sale contained in this Deed or which the Bank may have in law;

- 10.2.14 execute any further document or documents as the Bank may require in order to complete and give effect to the security created by the Mortgages and this Deed;
- 10.2.15 in the event that any term or condition of this Deed is rendered or declared invalid or unenforceable in whole or in part by any statute, rule or regulation or any decision of any court or tribunal of competent jurisdiction, which determination or declaration shall not affect the validity of any other term or condition of this Deed which will remain in full force and effect, (in addition to the duties imposed by clause 10.2.14) to execute such further document or documents as the Bank may require to complete and give effect to the security created by this Deed;
- 10.2.16 on request by the Bank, provide the Bank with a schedule setting out the details of all Charters in place for the Vessel; and
- 10.2.17 not without the prior written consent of the Bank, to enter into any agreement or arrangement whereby the Earnings in relation to the Vessel may be shared with any other person (excluding chartering commission and/or management fees).

### 10.3 Operational covenants

The Owners further covenant with the Bank that during the Security Period they will:

- 10.3.1 at all times, at their own expense, maintain and operate the Vessel in a good, seaworthy condition and in all respects in good running order and to maintain, service, repair and overhaul the Vessel and to make such alterations, repairs, modifications and improvements as may be required in accordance with first-class ship ownership and ship management practice and so as to maintain her registration with the Flag State free from outstanding recommendations or notations and so as to comply with the provisions of The Merchant Shipping Act 1995 and all other statutes, regulations, codes and guidance (whether statutory or otherwise) from time to time applicable to the Vessel under English law or of any other jurisdiction into which the Vessel may come and at the written request of the Bank provide the Bank with copies of all registration and trading certificates as the Bank may request in writing;
- 10.3.2 submit the Vessel regularly to such periodical or other surveys as may be required for Flag State and classification purposes or other purposes to enable the Vessel to operate as a fishing vessel in the United Kingdom and, if so requested by the Bank in writing, provide the Bank with copies of all survey reports issued as a result;
- 10.3.3 notify the Bank immediately of any recommendation or requirement imposed by the Flag State, the Classification Society, the Insurers or any other competent authority that is not complied with in accordance with its terms;
- 10.3.4 permit the Bank by surveyors or other persons appointed by it for such purpose to board the Vessel at all reasonable times for the purpose of inspecting her and to afford all proper facilities for such inspections;

- 10.3.5 forthwith on demand reimburse to the Bank all costs, charges and expenses incurred by the Bank for the purposes of ascertaining the condition of the Vessel. If on making any such inspection as aforesaid the Bank shall discover any defect in the Vessel, the Bank may call upon the Owners to repair and restore the same and if within two months such defect is not repaired or restored to the Bank's satisfaction then the Bank shall have the right (but not be obliged) to repair or restore such defect or to employ others to carry out such work and all sums so expended by the Bank shall be paid by the Owners to the Bank on demand;
- 10.3.6 not without the prior written consent of the Bank deliver the Vessel into the possession of a shipyard for effecting repairs or renewals to the Vessel the cost of which will exceed the amount of £25,000 or the equivalent in any other currency for the Vessel unless such shipyard shall have given a written undertaking to the Bank not to exercise any lien or right of detention on the Vessel in respect of the cost of such repairs or renewals;
- 10.3.7 not remove or permit the removal of any part of the Vessel or any equipment belonging to the Vessel, nor make or permit to be made any alteration in the structure, type or speed of the Vessel which materially reduces the value of the Vessel (unless such removal or alteration is required by statute or by the relevant Classification Society) without the prior written consent of the Bank;
- 10.3.8 not without the prior written consent of the Bank install or commence installation on the Vessel any equipment owned by a third party which cannot be removed without cost and without damage to the structure or fabric of the Vessel or impairing its fitness for hire or employment by charterers such as the relevant Charterer and so as not to diminish the value of the Vessel other than in the normal course of operation and not to alter or allow to be altered the structure, type or performance characteristics of the Vessel;
- 10.3.9 at all reasonable times when the Vessel is in port, permit the Bank or its authorised representative full and complete access to the Vessel for the purpose of inspecting the state and condition of the Vessel and its documentation and, if so requested by the Bank, deliver for inspection copies of any and all contracts and documents relating to the Vessel whether on board or not;
- 10.3.10 promptly provide the Bank with any information requested by the Bank concerning the Secured Assets or any part thereof as the Bank shall request including certification, condition, insurance, employment and the position of the Vessel;
- 10.3.11 at all times comply with all legal requirements whether imposed by international convention, statute, regulation, common law, the Insurances or otherwise (including, without limitation, all Flag State and classification requirements) in relation to the operation of the Vessel, and have on board the Vessel as and when legally required valid certificates showing compliance with such requirements;
- 10.3.12 comply with, and use best endeavours to procure that all servants and agents of the Owners comply with, all Environmental Laws relating to the use, operation and/or management of the Vessel and to immediately notify the Bank of any breach or alleged breach of any Environmental Laws or any claim being made as a consequence of such a breach or alleged breach;
- 10.3.13 not appoint a manager of the Vessel other than any of the Owners, without the Bank's prior written consent;

10.3.14 duly perform and discharge all duties and liabilities imposed on the Owners under each of the Charters and any other charter, bill of lading or contract relating to the Vessel;

10.3.15 comply, or use best endeavours to ensure that any Charterer or sub-charterer or any other person having control of the Vessel from time to time complies in material respects with all Environmental Laws relating to the Vessel including, without limitation, any requirements of such laws relating to manning and establishment of financial responsibility to the extent that breach of any such Environmental Laws could or might materially affect the interests of the Bank and obtain and comply with, and use best endeavours to procure that, any Charterer or sub-charterer and any other person having control of the Vessel from time to time obtains and complies in material respects with all Environmental Laws;

10.3.16 notify the Bank forthwith of:

10.3.16.1 any Environmental Claim against the Owners (or any of them), any Charterer or sub-charterer and/or any other person having control of the Vessel; and

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

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

10.3.17 without prejudice to the generality of clause 10.3.11 comply, or use best endeavours to procure that any Charterer or sub-charterer and/or any person having control of the Vessel from time to time will comply, with all regulations and requirements (statutory or otherwise) from time to time applicable to the Vessel and, without prejudice to the generality of the foregoing, at all times:

10.3.17.1 upon request by the Bank, provide the Bank with copies of any such Certificate of Compliance as soon as the same are issued;

10.3.17.2 keep, or use best endeavours to procure, as appropriate, that there is kept, on board the Vessel the original of any such Certificate of Compliance; and

10.3.17.3 inform the Bank immediately should the Certificate of Compliance be cancelled, rescinded, suspended or amended in any material way;

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



10.3.19 notify the Bank forthwith of:

- 10.3.19.1 any damage to the Vessel requiring repairs the cost of which will qualify it as a Major Casualty;
- 10.3.19.2 any occurrence in consequence of which the Vessel has or may become a Total Loss;
- 10.3.19.3 any requisition of the Vessel for hire;
- 10.3.19.4 any change to the Vessel's Flag State whether proposed or effected; or
- 10.3.19.5 any arrest or detention of the Vessel or any exercise or purported exercise of a lien or other claim on the Vessel or any part thereof;

10.3.20 promptly pay all tolls, dues and other outgoings whatsoever in respect of the Vessel and keep proper books of account in respect of the Vessel and, as and when the Bank may so require, make such books available for inspection on behalf of the Bank and furnish satisfactory evidence that the wages and allotments and the insurance and pension contributions of the master and crew are being promptly and regularly paid and that all deductions from crew's wages in respect of tax liability are being properly accounted for and that master has no claim for disbursements other than those incurred by him in the ordinary course of trading on the voyage then in progress; and

10.3.21 at all times carry on board the Vessel a duly certified copy of this Deed and the Mortgage (which shall form part of the Vessel's documents) and cause the same to be shown to any person having business with the Vessel which might create or imply any commitment or encumbrance whatsoever on the Vessel and place and maintain in a conspicuous place in the navigation room and in the cabin of the captain of the Vessel a printed notice in the following form:

"NOTICE OF MORTGAGE"

This Vessel is mortgaged by the Owners in favour of The Royal Bank of Scotland plc by a first priority Mortgage and a Deed of Covenant, certified copies of which are preserved with the Vessel's papers.

Under the said Mortgage and Deed of Covenant neither the Owners nor the captain of this Vessel has any power, right or authority whatsoever to create, incur or permit the imposition on the Vessel of any commitments or encumbrances except for crew's wages or salvage."

10.4 Charters

Throughout the period of each Charter, the Owners will:

- 10.4.1 do and permit to be done every act or thing which the Bank may from time to time lawfully require to be done for the purpose of enforcing the Bank's rights under the assignment contained in clause 3.1.2 and will allow the Owners' name to be used as and when required by the Bank for that purpose;
- 10.4.2 procure that all Earnings are paid into an account of the Owners with the Bank; and

10.4.3 not without the prior written consent of the Bank:

- 10.4.3.1 assign or otherwise dispose of the Owners' rights and obligations under the relevant Charter;
- 10.4.3.2 enter into any agreement or arrangement whereby any Earnings may be shared with any other person (excluding brokers commission and management fees);
- 10.4.3.3 agree to any material variation of the relevant Charter or grant any consent, in respect of any material matters under the relevant charter, which may be required from the Owners under the relevant Charter;
- 10.4.3.4 release any Charterer from any of its material obligations under the relevant Charter or waive any breach of such material obligations or consent to any act or omission of the relevant Charterer which would otherwise constitute such a breach; or
- 10.4.3.5 terminate any Charter for any reason whatsoever, provided always that any termination of a Charter by the Owners after such consent is given shall (as the Owners hereby acknowledge) be without responsibility on the part of the Bank who shall be under no liability whatsoever if such termination is subsequently judged to constitute a repudiation of the Charter by the Owners.

## 11. Discharge

### 11.1 Discharge

When the Secured Liabilities have been irrevocably paid or discharged in full to the satisfaction of the Bank and the Bank has no further obligation to provide credit facilities or other accommodation to the Partnership or, if the Bank so agrees, at any other time, the Bank shall, subject to the provisions of clause 11.3 (*Avoidance of payments*), at the request and cost of the Owners, execute such documents as may be required to discharge this Deed and the Mortgages and discharge, re-transfer and/or re-assign any other Security created over the Secured Assets (or any of them) by this Deed or the Mortgages.

### 11.2 Retention of Deed

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

### 11.3 Avoidance of payments

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

## 12. Miscellaneous

### 12.1 Non compliance by Owners

12.1.1 If the Owners (or any of them) fail to make any payment or fulfil any obligation due by it under or pursuant to this Deed, the Bank shall be entitled to do so on the Owners' behalf and in the Owners' name (or in their own names as it considers expedient) and/or to take such action to remedy or mitigate the consequences of such failure as it considers expedient, and the amount of any such payment and/or the costs incurred in fulfilling such obligation or mitigating the consequences of such failure, shall be repayable by the Owners on demand, together with interest at the default interest rate charged by the Bank as provided for in any agreement or document constituting the obligation from the date of demand until settlement and shall constitute Secured Liabilities.

12.1.2 the Bank shall not be obliged to exercise any rights given to them under clause 12.1.1 above.

### 12.2 Currency conversion

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

### 12.3 Payments

12.3.1 All sums payable by the Owners under this Deed, the Mortgages or the Security shall be paid in full to the Bank in the currency in which the Secured Liabilities are payable:

12.3.1.1 without any set-off, condition or counterclaim whatsoever; and

12.3.1.2 free and clear of any deductions or withholdings whatsoever except as may be required by law or regulation which is binding on the Owners (or any of them).

12.3.2 If any deduction or withholding is required by any law or regulation in respect of any payment to be made by the Owners, the amount of the payment due from the Owners shall be increased to an amount which (after making any deduction or withholding) leaves an amount equal to the payment which would have been due if no deduction or withholding had been required.

12.3.3 The Owners shall promptly deliver or procure delivery to the Bank of all receipts issued to it evidencing each deduction or withholding which it has made.

12.3.4 The Owners shall not and may not direct the application by the Bank of any sums received by the Bank from the Owners under, or pursuant to, any of the terms of this Deed or the Mortgages.

#### 12.4 Set-off

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

12.4.2 The Bank shall not be obliged to exercise any rights given to it under clause 12.4.1 above.

#### 12.5 Assignment/Transfer

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

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

#### 12.6 Evidence of amounts and certificates

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

#### 12.7 Waivers, amendments and consents

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

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

#### 12.8 Contracts (Rights of Third Parties) Act 1999

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

#### 12.9 Counterparts

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

#### 12.10 Law of Property Act 1925

Neither Section 93 nor Section 103 of the Law of Property Act 1925 or any re-enactment thereof shall apply to this Deed, the Mortgages or to the security thereby created and the Bank shall have the right to consolidate. The statutory power of sale conferred on the Bank shall be exercisable forthwith on the occurrence of an Event of Default.

### 13. Costs and expenses

#### 13.1 The Owners shall on a full indemnity basis pay to the Bank on demand the amount of all costs and expenses (including legal and out-of-pocket expenses and together with any applicable value added tax) which the Bank incurs in connection with:

13.1.1 the preparation, negotiation, execution and delivery of this Deed, the Mortgages and the Security;

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

13.1.3 any discharge or release of this Deed, the Mortgages or the Security;

13.1.4 any stamping or registration of this Deed or the Mortgages; and

13.1.5 the preservation or exercise and enforcement, of any rights under or in connection with, this Deed, the Mortgages or the Security or any attempt so to do.

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

#### **14. Severance**

- 14.1 The provisions of this Deed and the Mortgages shall be severable and distinct from one another and the invalidity, unenforceability or illegality of any provision (or part of a provision) of this Deed or the Mortgages under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions.
- 14.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties.

#### **15. Notices**

- 15.1 All consents, notices and demands must be in writing.
- 15.2 The Bank may deliver a notice or demand to the Owners at their registered offices or at the contact details last known to the Bank.
- 15.3 The address of the Bank for any communication or document to be made or delivered under this Deed is The Royal Bank of Scotland plc, FAO: Emma Cowie, 6-8 George Street, Edinburgh, EH2 2PF or any substitute address that the Bank may notify to the Owners (or any of them) on not less than five Business Days' notice.
- 15.4 A notice or demand signed by an official of the Bank will be effective at the time of personal delivery; on the second Business Day after posting; or, if by fax, at the time of sending, if sent before 6.00 p.m. on a Business Day, or otherwise on the next Business Day.
- 15.5 A notice from the Owners to the Bank will be effective on receipt.

#### **16. Governing law and jurisdiction**

- 16.1 English law applies to this Deed and the English courts have jurisdiction in respect of any disputes arising out of or in connection with this Deed.
- 16.2 For the benefit of the Bank, the Owners irrevocably submit to the jurisdiction of the English courts and irrevocably agree that a judgment or ruling in any proceedings in connection with this Deed in those courts will be conclusive and binding on the Owners and may be enforced against the Owners in the courts of any other jurisdiction.
- 16.3 The Owners agree that the courts of England are appropriate and convenient courts to settle any dispute or claim and accordingly no Owner will argue to the contrary.
- 16.4 Nothing in this clause 16 shall limit the right of the Bank to take proceedings against the Owners or the Vessel, including the arrestment or other judicial detention of the Vessel, in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

**17. Effect as a Deed**

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

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

**SCHEDULE 1**  
**Notices of Assignment of Insurances**

**Form of Notice of Assignment of Insurances**

To:

Dated: 2023

Dear Sirs

Re: 'Enterprise III' (Official Number: C21418)

We, (1) The Don Fishing Company, Limited (Company Number: SC005222), with our registered office at Blenheim House, Fountainhall Road, Aberdeen, AB15 4DT and our principal place of business at Bath House, Bath Street, Peterhead, AB42 1DX; (2) Regentwalk Limited (Company Number: SC242806), with our registered office at Craigmhor 60 Reidhaven Street, Whitehills, Banff, Aberdeenshire, AB45 2NJ; and (3) Thornbay Limited (Company Number: SC242805), with our registered office at Buchraggie House, Boyndie, Banff, Aberdeenshire, AB45 2JQ, each in our own capacity and in our capacity as partners and trustees for the firm of Enterprise BF1 Partnership, a partnership constituted under the laws of Scotland and having its principal place of business at Bath House, Bath Street, Peterhead, AB42 1DX, are jointly the owners of the Vessel (the **Owners**), and we hereby give you notice that by a deed of covenant dated 2023 by us, each in our own capacity and in our capacity as partners and trustees for the firm of Enterprise BF1 Partnership in favour of The Royal Bank of Scotland plc (the **Bank**), we have assigned to the Bank, as first mortgagee, all our right, title and interest in the insurances in respect of the Vessel and all amounts payable thereunder, including return of premiums etc. including the following polic[y][ies] (the **Polic[y][ies]**):

**Hull and Machinery / Gear and Equipment and everything connected therewith including Protection & Indemnity Insurance**

**Policy Number**

We further notify you that:

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

Please sign and return the enclosed duplicate notice with acknowledgement to the Bank at The Royal Bank of Scotland plc, FAO: Emma Cowie, 6-8 George Street, Edinburgh, EH2 2PF, (with a copy to us) by way of confirmation that:

- a. you agree to the terms set out in this notice and to act in accordance with its provisions;



- b. you have noted the Bank's interest as first mortgagee on the Polic[y][ies] and endorsed the Polic[y][ies] with the form of loss payable wording attached;
- c. after receipt of written notice in accordance with paragraph 2 above, you will pay all monies to which we are entitled under the Polic[y][ies] direct to the Bank (and not to us) unless the Bank otherwise agrees in writing;
- d. you will not cancel or otherwise allow the Polic[y][ies] to lapse without giving the Bank not less than 10 Business Days' written notice where reasonably practicable (acting in good faith);
- e. you have not received notice that we have assigned our rights under the Polic[y][ies] to a third party or created any other interest (whether by way of security or otherwise) in the Polic[y][ies] in favour of a third party; and
- f. you have not claimed or exercised nor do you have any outstanding right to claim or exercise against us, any right of set-off, counter-claim or other right relating to the Polic[y][ies].

The provisions of this notice are governed by English law.

Yours faithfully

.....  
 Director, for and on behalf of The Don Fishing Company, Limited (in its own capacity and in its capacity as a partner and trustee of the firm of Enterprise BF1 Partnership)

.....  
 Director, for and on behalf of Regentwalk Limited (in its own capacity and in its capacity as a partner and trustee of the firm of Enterprise BF1 Partnership)

.....  
 Director, for and on behalf of Thornbay Limited (in its own capacity and in its capacity as a partner and trustee of the firm of Enterprise BF1 Partnership)

.....  
 For and on behalf of the firm of Enterprise BF1 Partnership

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

.....  
 for and on behalf of  
 [Insurer/Broker]

**SCHEDULE 2****Form of Loss Payable Clause****"Enterprise III"**

Official Number: C21418

It is noted that The Royal Bank of Scotland plc of 36 St. Andrew Square, Edinburgh, Scotland, EH2 2YB is interested as first mortgagee and assignee in the subject matter of this insurance. All claims (whether in respect of actual constructive arranged or compromised total loss or otherwise) shall be payable to The Royal Bank of Scotland plc.

### SCHEDULE 3

#### Notice of Assignment – Earnings

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

Dated: [ ]

Dear Sirs

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

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

We further notify you that:

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

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

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

The provisions of this notice are governed by English law.

Yours faithfully

.....  
 Director, for and on behalf of The Don Fishing Company, Limited (in its own capacity and in its capacity as a partner and trustee of the firm of Enterprise BF1 Partnership)

.....  
 Director, for and on behalf of Regentwalk Limited (in its own capacity and in its capacity as a partner and trustee of the firm of Enterprise BF1 Partnership)

.....  
 Director, for and on behalf of Thornbay Limited (in its own capacity and in its capacity as a partner and trustee of the firm of Enterprise BF1 Partnership)

**[On acknowledgement copy]**

To: The Royal Bank of Scotland plc  
 FAO: Emma Cowie, Edinburgh Credit Delivery, 6-8 George Street, Edinburgh, EH2 2PF.

Copy to: (1) The Don Fishing Company, Limited (Company Number: SC005222)  
 Blenheim House,  
 Fountainhall Road,  
 Aberdeen,  
 AB15 4DT

(2) Regentwalk Limited (Company Number: SC242806)  
 Craigmhor  
 60 Reidhaven Street  
 Whitehills  
 Banff  
 Aberdeenshire  
 Scotland  
 AB45 2NJ; and

(3) Thornbay Limited (Company Number: SC242805)  
 Buchraggie House  
 Boyndie  
 Banff  
 Aberdeenshire  
 Scotland  
 AB45 2JQ.

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

.....  
 for and on behalf of  
**[insert name of counterparty / charterer]**

## SIGNATURES

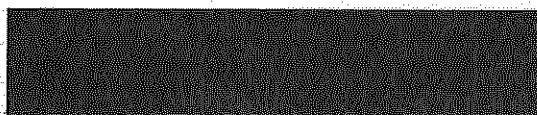
EXECUTED as a DEED for and on behalf of

**THE DON FISHING COMPANY, LIMITED**(in its own capacity and in its capacity as a partner and trustee of the firm of Enterprise BF1 Partnership)  
acting by

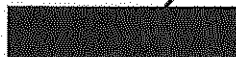
signature of witness

DAVID JOHN McROBBIE

full name of above (print)



address of witness



signature of director

WILLIAM MCKENZIE

full name of above (print)

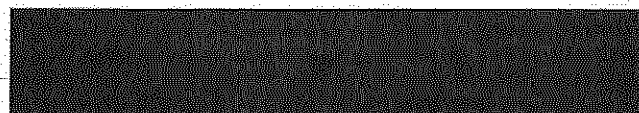
EXECUTED as a DEED for and on behalf of

**REGENTWALK LIMITED**(in its own capacity and in its capacity as a partner and trustee of the firm of Enterprise BF1 Partnership)  
acting by

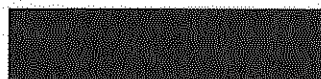
signature of witness

DAVID JOHN McROBBIE

full name of above (print)



address of witness



signature of director

JAMES LONG SNR

full name of above (print)

EXECUTED as a DEED for and on behalf of  
**THORNBAY LIMITED**

(in its own capacity and in its capacity as a partner and trustee of the firm of Enterprise BF1 Partnership)  
 acting by



signature of witness

DAVID JOHN McROBBIE

full name of above (print)

49 FRASER CRESENT

INVERALLOCHY

FRASERBURGH, UK AB43 5YG

address of witness



signature of director

JAMES WILLIAM LOVIE INC

full name of above (print)

EXECUTED as a DEED for and on behalf of the firm of  
**ENTERPRISE BF1 PARTNERSHIP**



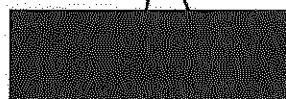
signature of witness

DAVID JOHN McROBBIE

full name of above (print)



address of witness



signature of WILLIAM MCKENZIE, a director of  
 The Don Fishing Company, Limited, a partner and  
 trustee for the firm of Enterprise BF1 Partnership

WILLIAM MCKENZIE

full name of above (print)

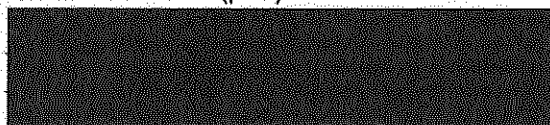
EXECUTED as a DEED for and on behalf of  
THE ROYAL BANK OF SCOTLAND PLC  
acting by



signature of witness

JAMES BOOTH

full name of above (print)



address of witness



signature of attorney

MATTHEW WARD

full name of above (print)