



Registration of a Charge

Company name: **BOREALIS MARITIME LIMITED**

Company number: **07128049**



X9IH1KWO

Received for Electronic Filing: **24/11/2020**

Details of Charge

Date of creation: **19/11/2020**

Charge code: **0712 8049 0027**

Persons entitled: **M.M. WARBURG & CO (AG & CO.) KOMMANDITGESELLSCHAFT AUF AKTIEN (AS SECURITY TRUSTEE)**

Brief description:

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.**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 7128049

Charge code: 0712 8049 0027

The Registrar of Companies for England and Wales hereby certifies that a charge dated 19th November 2020 and created by BOREALIS MARITIME LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 24th November 2020 .

Given at Companies House, Cardiff on 25th November 2020

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



Companies House



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

MANAGER'S UNDERTAKING

To: **M.M.WARBURG & CO (AG & CO.) KOMMANDITGESELLSCHAFT AUF AKTIEN**
Ferdinandstr. 75
20095 Hamburg, Germany

From: **Borealis Maritime Limited**
55 Brompton Road
London SW3 1DP
United Kingdom

19 November 2020

Dear Sirs

m.v. "BOMAR JUNO" (the "Vessel")

1 BACKGROUND

1.1 Entry into Loan Agreement

- (a) We understand from Bomar Nine LLC (the "**Owner**") that you have entered into a Loan Agreement (the "**Loan Agreement**") dated 19 May 2020 and made between, amongst others, (i) the Owner and four other ship owning companies as joint and several borrowers (the "**Borrowers**"), (ii) the persons named in the Loan Agreement as Lenders (the "**Lenders**"), (iii) yourselves as Facility Agent (the "**Facility Agent**") and (iv) yourselves as Security Trustee (the "**Security Trustee**").
- (b) We confirm this Letter of Undertaking is effective as of 29 May 2020.

1.2 Advance of loan

We further understand from the Owner that subject to and upon the terms of the Loan Agreement the Lenders have made available to the Borrowers a Loan (the "**Loan**") of up to the lower of USD 12,000,000.00 and 40 % of the total Fair Market Value of the Vessels in five Tranches for the purpose of, amongst others, partially refinancing existing debt relating to the Vessels.

1.3 Entry into Letter of Undertaking

We have been advised by the Owner that one of the conditions to the continued availability of the Loan is that we enter into this Letter of Undertaking in favour of yourselves in your capacity as Facility Agent and Security Trustee in respect of the Vessel which is owned by the Owner.

2 DEFINITIONS

Defined expressions in the Loan Agreement shall have the same meanings when used in this Letter of Undertaking unless the context otherwise requires or unless otherwise defined in this Letter of Undertaking.

3 CONFIRMATION OF APPOINTMENT, ETC.

3.1 Confirmation of appointment

We confirm that we have been appointed by the Owner as the manager of the Vessel on the terms of a management agreement dated 24 April 2014 (as amended from time to time, the "**Management Agreement**") a copy of which is attached to this Letter of Undertaking.

3.2 Certification

We certify that the attached copy of the Management Agreement is correct, complete and in full force and effect and that no addenda or supplements to it exist as at the date of this Letter of Undertaking.

4 UNDERTAKINGS

4.1 General

In consideration of the Facility Agent granting its approval to our appointment as the manager of the Vessel, we irrevocably and unconditionally undertake with the Facility Agent for so long as any amounts remain outstanding pursuant to the Loan Agreement or any other Finance Document as follows in this Clause 4 (*Undertakings*), unless the Facility Agent may otherwise permit in writing, such consent not to be unreasonably withheld.

4.2 No amendments or supplements

We shall not amend or supplement the Management Agreement.

4.3 Subordination of claims

All claims of whatsoever nature which we have or may at any time after the date of this Letter of Undertaking have against or in connection with the Vessel, its Earnings, its Insurances or any Requisition Compensation or against the Owner shall rank after and be in all respects subordinate to all of the rights and claims of all the Finance Parties.

4.4 No exercise of rights

We shall not take any step to exercise or enforce any right or remedy which we now or at any later time have under the Management Agreement or under any applicable law against the Owner or the Vessel, its Earnings, its Insurances or any Requisition Compensation.

4.5 No legal proceedings

We shall not institute any legal or administration action or any quasi-legal proceedings under any applicable law at any time after the date of this Letter of Undertaking against the Vessel, its Earnings, its Insurances or any Requisition Compensation or against the Owner in any capacity.

4.6 Non-compete

We shall not compete with any of the Finance Parties in a liquidation or other winding-up or bankruptcy of the Owner or in any legal or administration action or any quasi legal proceedings in connection with the Vessel, its Earnings, its Insurances or any Requisition Compensation.

4.7 Delivery of documents

We shall upon the Facility Agent's first written request deliver without undue delay to the Facility Agent all documents of whatever nature which we hold in connection with the Owner, the Vessel, its Earnings, its Insurances or any Requisition Compensation.

4.8 Continuation of management

We shall continue to act as manager of the Vessel pursuant to the terms and conditions of the Management Agreement for as long as the Vessel remains in the ownership of the Owner and any Secured Liabilities remain outstanding pursuant to the Finance Documents.

4.9 Restriction on incompatible actions

We shall not do or omit to do or cause anything to be done or omitted which might be contrary to or incompatible with the obligations undertaken by the Owner under the Loan Agreement and the Finance Documents.

4.10 Execution of necessary insurance consents

We shall sign any consent required by any approved broker and/or any approved underwriters so that you can collect or recover any moneys payable in respect of the obligatory insurances.

5 INSURANCES

5.1 General

Notwithstanding that we are or may be named as an assured under any obligatory insurances, we confirm that our interest is limited as follows in this Clause 5 (*Insurances*).

5.2 Hull and machinery and war risks

In respect of any obligatory insurances for hull and machinery and war risks our interest is limited:

- (a) to any provable out-of-pocket expenses that we have incurred and which form part of any recoverable claim on underwriters; and
- (b) to any third party liability claims where cover for such claims is provided by the policy and then only in respect of discharge of any claims made against us.

5.3 Protection and indemnity risks

In respect of any obligatory insurances for protection and indemnity risks, our interest is limited to any recoveries we are entitled to make by way of reimbursement following discharge of any third party liability claims made specifically against us.

5.4 Deductibles

We agree that any deductible shall be apportioned between us and the Owner (and/or you where you are named insured) in proportion to the gross claims made or paid by each party.

6 ASSIGNMENT OF INSURANCES

6.1 Assignment of Insurances

As continuing security for the due and punctual payment by the Owner of the Outstanding Indebtedness and the observation and performance of our obligations under this Letter of Undertaking, we, with full title guarantee, assign to the Security Trustee absolutely, subject to a proviso for re-assignment on redemption, all rights and interests of every kind which we now or at any later time have to, in or in connection with the Insurances.

6.2 Continuing and additional security

- (a) This Letter of Undertaking shall remain in force until the end of the Security Period as a continuing security and, in particular:
- (i) the Security Interest created by Clause 6.1 (*Assignment of Insurances*) will extend to the ultimate balance of all sums payable by the Owner under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part;
 - (ii) the Security Interest created by Clause 6.1 (*Assignment of Insurances*), and the rights of the Security Trustee under this Letter of Undertaking, are only capable of being extinguished, limited or otherwise adversely affected by an express and specific term in a document signed by or on behalf of the Security Trustee; and
 - (iii) no failure or delay by or on behalf of the Security Trustee to enforce or exercise a Security created by Clause 6.1 (*Assignment of Insurances*) or a right of the Security Trustee under this Letter of Undertaking, and no act, course of conduct, acquiescence or failure to act (or to prevent the Owner or us from taking certain action) which is inconsistent with such a Security Interest or such a right or with such a Security Interest being a fixed security shall preclude or estop the Security Trustee (either permanently or temporarily) from enforcing or exercising it or result in a Security Interest expressed to be a fixed security taking effect as a floating security.
- (b) This Letter of Undertaking is in addition to and is not in any way prejudiced by, and shall not prejudice any guarantee or other Security Interest or any other right of recourse now or subsequently held by any Finance Party or any right of set-off or netting or rights to combine accounts in connection with the Finance Documents.

6.3 Notice of assignment

- (a) We shall promptly upon the written request of the Security Trustee from time to time, give written notice of the assignment contained in Clause 6.1 (*Assignment of Insurances*) to any insurers of the Vessel as advised by the Security Trustee or the Owner.
- (b) A notice given in accordance with paragraph **Error! Reference source not found.** above shall be in form set out in Schedule 1 (*Notice of Assignment*) with a loss payable clause to be endorsed on each policy in the form set out in Schedule 2 (*Loss Payable Clause*) (or in such other form as the Security Trustee shall require).
- (c) We understand that the Owner shall procure that such notice is promptly endorsed on all policies and entries in respect of the Insurances, and we agree promptly to authorise and/or instruct any broker, insurer or association with or through whom any of the Insurances may be effected, details of which shall be advised by the Security Trustee or the Owner, to endorse

the notice on any policy or entry or otherwise to give effect to such loss payable clause as may be stipulated by yourselves.

- (d) At the end of the Security Period, you shall, at our request and cost, re-assign (without any warranty, representation, covenant or other recourse) to us such rights as you then have to, in or in connection with, the Insurances as assigned to you under this Letter of Undertaking.

6.4 Negative pledge

We shall not create or permit to subsist any Security Interest over our rights and interests to, in or in connection with, the Insurances, without the prior consent of the Security Trustee.

6.5 Disposals

We shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, transfer or otherwise dispose of our rights and interests to, in or in connection with, the Insurances, without the prior consent of the Security Trustee.

6.6 Protection of Security Trustee's interests

We shall not enter into any transaction, nor do anything, which is contrary to, or which may adversely affect, your rights under this Letter of Undertaking or any Finance Party's interest in those rights, without the prior consent of the Security Trustee.

7 POWER OF ATTORNEY

7.1 Appointment

We, by way of security for the performance of our obligations under this Letter of Undertaking, irrevocably appoint (with full power of substitution) you as our attorney-in-fact:

- (a) to do all acts and execute or sign all documents which we ourselves can do and execute in relation to our rights to, in or in connection with, the Insurances including, without limitation, all acts and documents necessary to realise and dispose of our rights to, in or in connection with, the Insurances by such means and on such terms as you may determine; and
- (b) to do all acts and things and execute or sign all documents which we are obliged to do, execute or sign under this Letter of Undertaking and which we have failed so to do, execute or sign immediately upon your first written demand,

provided that the power of attorney constituted by this Clause 7.1 (*Appointment*) shall be exercisable only upon our default under this Letter of Undertaking.

8 GOVERNING LAW

This Letter of Undertaking and any non-contractual obligations arising out of or in connection with it are governed by English law.

9 ENFORCEMENT

9.1 Jurisdiction

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Letter of Undertaking (including a dispute regarding the existence, validity or termination of this Letter of Undertaking or any non-contractual obligation arising out of or in connection with this Letter of Undertaking (a "**Dispute**")).
- (b) We accept that the courts of England are the most appropriate and convenient courts to settle a Dispute and accordingly we will not argue to the contrary.
- (c) This Clause 9 (*Enforcement*) is for your benefit only. As a result you shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law you may take concurrent proceedings in any number of jurisdictions.

9.2 Service of process

If we move our place of business outside of England and Wales we will promptly appoint an agent for service of process on our behalf.

THIS DEED has been executed by or on behalf of the Manger, and has, on the date stated at the beginning of this Deed, been delivered as a deed.

EXECUTED AS A DEED

by BOREALIS MARITIME LIMITED

acting by

in the presence of:

Witness' signature:

Witness' name: *SINONIA JIANU*

Witness' address: *55 BRIMPTON ROAD*

SW3 1DP, LONDON

Christoph Toepfer
Director

SCHEDULE 1

NOTICE OF ASSIGNMENT

(for attachment by way of endorsement to the Policy or Entry in respect of the Vessel)

m.v. "BOMAR JUNO" (the "Vessel")

We, **BOREALIS MARITIME LIMITED** (the "**Manager**") of 55 Brompton Road, London SW3 1DP, United Kingdom, the Manager of the Vessel, **GIVE NOTICE** that by a first priority assignment dated 29 May 2020 made in favour of **M.M.WARBURG & CO (AG & CO.) KOMMANDITGESELLSCHAFT AUF AKTIEN** (the "**Assignee**") of Ferdinandstraße 75, 20095 Hamburg, Germany acting as facility agent and security trustee for and on behalf of itself and certain others, we have assigned absolutely to the Assignee all rights and interests of every kind which we have now or at any later time to, in or in connection with:

- 1 all policies and contracts of insurance, including entries of the Vessel in any protection and indemnity or war risks association, which are effected in respect of the Vessel, its earnings or otherwise in relation to it; whether before, on or after the date of this Notice of Assignment; and
- 2 all rights and other assets relating to, or derived from, any such policies, contracts or entries, including any rights to a return of a premium and any rights in respect of any claim, whether or not the relevant policy, contract of insurance or entry has expired on or before the date of this Notice of Assignment.

Endorsement of this Notice of Assignment on a Policy of insurance or Entry in respect of the Vessel shall be deemed to constitute acceptance by the underwriters or club to the terms of this Notice of Assignment.

BOREALIS MARITIME LIMITED

By:
Name:
Title:

Date: [●] 2020

SCHEDULE 2

LOSS PAYABLE CLAUSE

m.v. "BOMAR JUNO" (the "Vessel")

By a first priority assignment dated 29 May 2020 made by Borealis Maritime Limited (the "Manager") in favour of **M.M.WARBURG & CO (AG & CO.) KOMMANDITGESELLSCHAFT AUF AKTIEN** (the "Assignee"), acting as facility agent and security trustee for and on behalf of itself and certain others, the Manager has assigned to the Assignee all rights and interests of every kind which it has now or at any later time to, in or in connection with, amongst other things, the insurances to which this Policy or Entry relates.

Except as provided below, all sums payable under this Policy or Entry shall be paid to the Assignee.

The exceptions are that, unless and until the Assignee gives written notice to the contrary:

- 1 any sum payable in relation to any provable out-of-pocket expenses that the Manager has incurred shall be paid to the Manager;
- 2 any sum payable in relation to any third party liability claims where those claims have been made against the Manager shall be paid to the Manager; and
- 3 any sum payable under insurances against protection and indemnity risks shall be paid direct to the person to whom was incurred the liability to which such sum relates (or to the Manager in reimbursement to it of moneys expended to discharge that liability).