**CONSOLIDATED AGREEMENT**

**(Consolidation of Commitment to Guarantee, Security, Escrow, Chapter 537 Reserve Fund,**

**Depository and Financial Agreements of the Federal Ship Financing Program)**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | | | | | | | |
| *Name of Shipowner* | | | | | | | |
|  | | |  | MA - | |  |  | |
| *Street Address for Notices* | | |  | *Contract No.* | | *FFB Note Identifier No.* | |
|  |  |  |  |  | | | |
| *City* | *State* | *Zip Code* |  | *Organizational Form (e.g., corporation, limited liability company, partnership)* | | | |
|  | | |  |  | | | |
| *Name of Contact Person to Receive Notices* | | |  | *Jurisdiction of Organization* | | | |
|  | | |  |  |  |  | |
| *Email Address* | | |  | *Closing Date* |  | *Maximum Principal Amount of Guarantee* | |

**THIS CONSOLIDATED AGREEMENT** (this “***Agreement***”) is made as of the Closing Date set forth above between THE UNITED STATES OF AMERICA (the “***United States***”), represented by the Maritime Administrator (the “***Administrator****”*) of the Maritime Administration (“***MARAD***”), pursuant to Chapter 537 of Title 46 of the United States Code (“***Chapter 537***”), and the Shipowner named above (the “***Shipowner***”), an entity existing under the laws of the Jurisdiction of Organization in the Organizational Form both as stated above. Capitalized terms used herein, unless otherwise noted, have the respective meanings set forth in Annex B.

**RECITALS:**

1. The Administrator is authorized, pursuant to the Chapter 537, to guarantee obligations that meet the requirements of Chapter 537;
2. FFB is authorized, under Section 6(a) of the FFB Act, to make commitments to purchase, and to purchase on terms and conditions determined by FFB, any obligation that is issued, sold, or guaranteed by an agency of the United States;
3. Pursuant to the FFB Act, FFB and the Administrator entered into the Program Financing Agreement, dated January 19, 2017, as amended as of the date hereof, with the Administrator setting forth the commitment of FFB to enter into agreements to purchase Notes issued by entities designated by the Administrator when those Notes have been guaranteed by the United States, and the commitment of the Administrator to guarantee those Notes;
4. The Shipowner desires to participate in MARAD’s Federal Ship Financing Program as established by Chapter 537;
5. In furtherance thereof, the Shipowner submitted an application on the Application Date to the Administrator for the Guarantee of the obligations under the Note for Financing pursuant to Chapter 537 to finance a portion of the cost of constructing, reconstructing or reconditioning the Vessels, which application was previously deemed complete by the Administrator;
6. The Shipowner is the sole owner of the Vessels constructed pursuant to the Construction Contract with the Shipyard or has entered into the Construction Contract with the Shipyard for the Construction of the Vessels;
7. After review of such application, the Administrator determined that:

(1) pursuant to Section 53707(a) of Chapter 537, the Shipowner is responsible and possesses the ability, experience, financial resources and other qualifications necessary to the adequate operation and maintenance of the Vessels;

(2) pursuant to Section 53709(b)(1) of Chapter 537, the aggregate of the Depreciated Actual Cost or Actual Cost of the Vessels, as the case may be, is set forth on Annex A of this Agreement and the maximum principal amount of the Note will not exceed the Applicable Guarantee Percentage of the Depreciated Actual Cost or the Actual Cost, as the case may be, set forth on Annex A of this Agreement;

(3) pursuant to Sections 53710(a)(1), 53710(a)(2) and 53710(a)(3) of Chapter 537 (i) payments of principal required by the Note are satisfactory, (ii) the Approved Interest Rate to be borne by Advances under the Note to be issued on the Closing Date is reasonable, and (iii) the Stated Maturity Date of the Note is satisfactory;

(4) pursuant to 46 C.F.R. § 298.33(b)(2)(iii), the Shipowner has demonstrated its ability to pay the Required Equity Amount; and

(5) pursuant to Section 53708(a) of Chapter 537, the proposed use of the Vessels by the Shipowner will be economically sound;

1. Based upon such determinations, the Administrator (1) issued the Letter Commitment on the Letter Commitment Date, pursuant to which the Administrator stated its commitment to execute the Guarantee, subject to compliance with the terms and conditions set forth in the Letter Commitment; and (2) pursuant to the Program Financing Agreement, delivered to FFB and the Shipowner a Designation Notice (as defined in the Program Financing Agreement) designating the Shipowner to be a “***Borrower***” for purposes of the Program Financing Agreement;
2. To aid in the Financing of the Vessels, FFB, the Shipowner and the Administrator have executed and delivered the Note Purchase Agreement providing for the sale and delivery of the Note having the Stated Maturity Date and Approved Interest Rate to be determined with respect to each Advance as set forth on Annex A of this Agreement;
3. Pursuant to this Agreement, the Administrator is executing, and the Shipowner is accepting, the Commitment to Guarantee with respect to the Note in the maximum principal amount equal to the Applicable Guarantee Percentage of the Depreciated Actual Cost or the Actual Cost of the Vessels, as the case may be, on the Closing Date, set forth in Table A of Annex A of this Agreement;
4. Pursuant to this Agreement, the Shipowner is issuing and delivering the Administrator’s Note to the Administrator on the date hereof;
5. Pursuant to this Agreement, as security for the due and timely payment of the Administrator’s Note and for the issuance of the Guarantee, the Shipowner is executing and delivering a first preferred mortgage on the Vessels to the Administrator on the date hereof or the Delivery Date, whichever is later, and granting a security interest to the Administrator in the Collateral, including without limitation the Chapter 537 Reserve Fund, the Late Charges Reserve Subfund, the No-Call Prepayment Fund and the Interest Escrow Fund;
6. Pursuant to Section 53716 of Chapter 537, the Administrator may hold on account at Treasury funds in the Chapter 537 Reserve Fund, the Late Charges Reserve Subfund, the No-Call Prepayment Fund and the Interest Escrow Fund as collateral for the Guarantee of the Note;
7. As further security for the due and timely payment of the Administrator’s Note and for the issuance of the Guarantee, (1) the Shipyard has executed and delivered the Consent of Shipyard to the assignment of the Construction Contract to the Administrator or, in the case of Construction Period Financing, the Consent and Agreement of Shipowner and Shipyard to the Assignment of the Construction Contract to the Administrator and the modification of the Construction Contract; (2) the Affiliate Guarantor has executed and delivered this Agreement and the Affiliate Guaranty to the Administrator; and (3) the Shipowner has executed and delivered the Assignment of Construction Contract, the Assignment of Earnings and the Assignment of Insurances to the Administrator, and, in the case of Construction Period Financing, the Consent and Agreement of Shipowner and Shipyard; and
8. It is the intention of the parties that the security interests of the Administrator in the Collateral be perfected by: (1) the execution and delivery of this Agreement and the Mortgage; (2) the Administrator’s possession of the Chapter 537 Reserve Fund and the Interest Escrow Fund in accounts at Treasury, and all other sums, moneys, securities and proceeds thereof; and (3) the filing of appropriate financing statements to record the Administrator’s security interests in the Collateral.

***NOW, THEREFORE,*** under the provisions of Chapter 537, and in consideration of the premises and the mutual covenants herein contained and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the parties hereby agree that this Agreement consists of this introduction and signature page and the following attached parts, all of which together constitute the entire agreement of the Administrator and the Shipowner with respect to the subject matter hereof, superseding all prior written and oral agreements and understandings between the parties with respect to such subject matter:

(continued on next page)

|  |  |
| --- | --- |
| *Annex A:* Information Specific to the Shipowner, the Affiliate Guarantor and the Guarantee Transaction  *Annex B:* Definitions  *Annex C:* General Terms and Conditions  *Annex D:* Disclosure Schedule  *Annex E:* Form of Administrator’s Note  *Annex F:* Form of First Preferred [Fleet/Ship] Mortgage (with Form Supplement to Mortgage and Form Opinion of Counsel to Mortgagor)  *Annex G:* Form Assignment of Construction Contract (including copy of Construction Contract)  *Annex H-1:*Form of Consent of Shipyard  *Annex H-2:*Form of Consent and Agreement of Shipyard and Shipowner (including Construction Contract and Modifications)  *Annex I:* Form of Assignment of Earnings  *Annex J:* Form of Assignment of Insurances | *Annex K :* Form of Affiliate Guaranty  *Annex L:* Form of Annual No Default and Vessel Re-Certification  *Annex M-1:* Form of Annual Financial Statement Certification  *Annex M-2:* Form of Quarterly Financial Statement Certification  *Annex N:* Form of Computation of Reserve Fund Net Income, Total Deposits or No Deposits and Accountant’s Statement  *Annex O:* Form of Opinion of Shipowner’s [Shipyard’s] [and Affiliate Guarantor’s] Counsel  *Annex P:* Form of Equity Interest Subordination Agreement  *Annex X:* Special Provisions |

In the event of any conflict, or inconsistency between the provisions of Annex A (Information Specific to the Shipowner, the Affiliate Guarantor and the Guarantee Transaction) and Annex C (General Terms and Conditions), the provisions of Annex A of this Agreement shall control.

*(SIGNATURE PAGE ON FOLLOWING PAGE)*

***IN WITNESS WHEREOF***, this Agreement has been duly executed and delivered by the duly authorized representatives of the parties hereto as of the Closing Date.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| (SEAL)  Attest: | |  | SHIPOWNER | |
| By: |  |  | By: |  |
| Name: |  |  | Name: |  |
| Title: |  |  | Title: |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| (SEAL)  Attest: | |  | UNITED STATES OF AMERICA,  MARITIME ADMINISTRATOR | |
| By: |  |  | By: |  |
| Name: |  |  | Name: |  |
| Title: | Assistant Secretary, Maritime Administration |  | Title: | Secretary, Maritime Administration |

**With respect to Annex A, Annex B, and Sections 2.03(b), (c), (g), (h), (l), (m) and (n), 3.04(c), 9.01, 9.02, 10.01, 10.02, 10.03, 10.04, 10.05, 10.06, 10.07, 10.10, 10.11, 10.12, 10.15, 10.16, 10.17, 10.18, 10.19, 10.20, 10.21, 10.22, 10.23, 10.24, 12.02, 12.03(h), 13.02, 13.04, 13.05, 13.15, 14.01, 14.02, 14.06, 18.01, 18.05, 18.06, 18.07, 18.08, 18.09, 18.10, 18.11, 18.12 and 18.14 of Annex C,** this Agreement has been duly executed and delivered by the duly authorized representatives of the Affiliate Guarantor as of the Closing Date.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| (SEAL)  Attest: | |  | AFFILIATE GUARANTOR | |
| By: |  |  | By: |  |
| Name: |  |  | Name: |  |
| Title: |  |  | Title: |  |

[Signature Page – Consolidated Agreement – [Insert Name of Shipowner]]

**ANNEX A**

**INFORMATION SPECIFIC TO THE SHIPOWNER, THE AFFILIATE GUARANTOR AND THE GUARANTEE TRANSACTION**

|  |  |
| --- | --- |
| **Actual Cost (*See* Section 8.01 of Annex C of this Agreement):** | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (*See* Table A below for Calculation and Itemization) |
| **Administrator’s Address for Notices:** | MARITIME ADMINISTRATOR  Maritime Administration  1200 New Jersey Avenue, S.E. Washington, D.C. 20590  ATTN: Office of Marine Financing  Telephone Number: (202) 366-5737  Email Address: marinefinancing@dot.gov |
| **Affiliate Guarantor(s):** | Name:  Organizational Form:  Jurisdiction of Organization:  □ None |
| **Affiliate Guarantor(s)’ Address for Notices:** | Street Address:  Name of Contact:  Telephone Number:  Email Address:  □ Not Applicable |
| **Aggregate Original Equity Investment (*See* Section 6.04 of Annex C of this Agreement):** | Name of Vessels/Aggregate Original Equity Investment:  1.  2.  3.  4. |
| **Amount of the Administrator’s Guarantee (*See* Section 2.01 of Annex C of this Agreement):** | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (plus interest to the date of payment) |
| **Amount of Administrator’s Note (*See* Section 3.01 of Annex C and Annex E of this Agreement):** | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

|  |  |
| --- | --- |
| **Applicable Guarantee Percentage:** | □ Not more than 75 % of the Depreciated Actual Cost or the Actual Cost of the Vessels  □ Not more than 87.5 % of the Depreciated Actual Cost or the Actual Cost of the Vessels  (*See* Table A of Annex A below for itemization and calculation) |
| **Application Date (*See* Recital E of Introduction of this Agreement):** | [Insert date of Shipowner’s Application for Financing to MARAD] |
| **Approved Interest Rate (*See* Section 14.02 of Annex C and Annex E of this Agreement):** | For each deemed Advance under the Administrator’s Note, the basic interest rate per annum applicable to the corresponding Advance under the Note plus, in the event the Shipowner elects a Par Prepayment/Refinancing Privilege with respect to such Advance under such Note, a fee (expressed in terms of a basis point incremental to the applicable interest rate) determined by FFB on the basis set forth in the Note. |
| **Charter Hire and Rent Limitation (*See* Section 12.02(i) of Annex C of this Agreement):** | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Construction Contract (*See* Section 2.03(a) and other Sections of Annex C of this Agreement):** | [Insert description and date of Construction Contract] |
| **Depreciated Actual Cost (*See* Recital G(2) of Introduction to this Agreement and Table A of Annex A):** | □ $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (*See* Table A below for Calculation and Itemization)  □ Not Applicable |
| **FFB Address for Notices:** | Federal Financing Bank  Main Treasury Building  1500 Pennsylvania Avenue, N.W.  Washington, D.C. 20220  Attention: Chief Financial Officer  Telephone Number: (202) 622-2470  Facsimile Number: (202) 622-0707 |
| **Financial Information of Affiliate Guarantors on Closing Date (*See* Section 13.02 of Annex C of this Agreement)** | 1. Working Capital $\_\_\_\_ 2. Net Worth $\_\_\_\_\_ 3. Long Term Debt to Net Worth \_\_:\_\_\_ 4. Liquidity $\_\_\_\_\_\_\_\_ |
| **Financial Information of Shipowner on Closing Date (*See* Section 13.01 of Annex C of this Agreement)** | 1. Working Capital $\_\_\_\_ 2. Net Worth $\_\_\_\_\_ 3. Long Term Debt to Net Worth \_\_:\_\_ |
| **Financing (*See* Article I of Annex C of this Agreement):** | □ Mortgage Period Financing  □ Construction Period Financing |
| **First Principal Payment Date (*See* Annex E of this Agreement):** | \_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_ |
| **Foreign Item Waivers (*See* Table A of Annex A of this Agreement):** | □ Specify: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  □ None |
| **Governing Law State (*See* Section 18.10(a) of Annex C of this Agreement):** | [Insert name of state] law to be applied absent applicable federal law, including federal common law |
| **Guarantee Fee (*See* Section 2.03(p) of Annex C of this Agreement):** | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  □ Shipowner Election to Include Guarantee Fee as Item of Actual Cost of Vessels |
| **Insurance Requirements (*See* Section 11.10(e) of Annex C of this Agreement):** | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ per occurrence and $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in the aggregate |
| **Interest Escrow Fund Deposit (*See* Sections 2.03(q) and 5.01 of Annex C of this Agreement):** | □ Six Months Interest Payment of $\_\_\_\_\_\_\_\_\_\_\_\_\_  □ Waived |
| **Investigation Fee (*See* Section 2.03(p) of Annex C of this Agreement):** | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Jurisdiction State/City (*See* Section 18.10(b) of Annex C of this Agreement):** | Washington, D.C. |
| **Late Charges Reserve Subfund Deposit (*See* Section 6.09 of Annex C of this Agreement):** | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Letter Commitment Date (*See* Recital H of Introduction of this Agreement):** | [Insert date of Letter Commitment] |
| **Mandatory Progress Prepayment Amount (*See* Section 3.02 of Annex C of this Agreement):** | □ \_\_\_\_% of Reserve Fund Net Income over Mandatory Progress Prepayment Threshold  □ Not Applicable |
| **Mandatory Progress Prepayment Threshold (*See* Section 3.02 of Annex C of this Agreement)** | □ Reserve Fund Net Income > $\_\_\_\_\_\_\_  □ Not Applicable |
| **Maximum Payment Amount of Losses Directly to Shipowner (*See* Section 11.10(c) of Annex C of this Agreement):** | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Maximum Self-Insurance Amount (*See* Section 11.10(e) of Annex C of this Agreement):** | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Note (*See* Article I of Annex C of this Agreement):** | The future advance promissory note of Shipowner to FFB in the Maximum Principal Amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Note Identifier: \_\_\_\_\_\_\_\_\_\_\_\_ |
| **Note Purchase Agreement (*See* Article I of Annex C of this Agreement):** | Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Payment Dates:** | □ Semi Annual Payment Dates: \_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_ of each year; or  □ Quarterly Payment Dates: \_\_\_\_\_\_\_, \_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_ and \_\_\_\_\_\_ of each year |
| **Qualifying Financial Covenants of Affiliate Guarantor(s) (*See* Section 13.02 of Annex C of this Agreement):** | (i) Working Capital ≥ $\_\_\_\_\_  (ii) Net Worth ≥ $\_\_\_\_\_\_\_\_\_  (iii) Long-Term Debt to Net Worth ≤ \_\_:\_\_  (iv) $\_\_\_\_\_\_\_\_\_\_\_ Minimum Liquidity  (v) Other:  □ None |
| **Qualifying Financial Covenants of Shipowner (*See* Section 13.01 of Annex C of this Agreement):** | (i) Working Capital ≥ $\_\_\_\_\_  (ii) Net Worth ≥ $\_\_\_\_\_\_\_\_\_  (iii) Long-Term Debt to Net Worth ≤ \_\_:\_\_  (iv) Other: |
| **Required Equity Amount (*See* Section 8.03(a) of Annex C of this Agreement):** | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Shipyard:** | [Insert name of shipyard constructing Vessel(s)] |
| **Shipyard Project (*See* Section 6.06 of Annex C of this Agreement):** | □ [Insert description and location of Shipyard Project]  □ Not Applicable |
| **Special Provisions (*See* Annex X of this Agreement)** | □ Applicable  □ Not Applicable |
| **Special Security Default (*See* Section 14.01(b)(9) of Annex C of this Agreement):** | □ [Insert deal Special Security Default terms]  □ Not Applicable |
| **Special Subordinated Liens (*See* Annex B definition of Permitted Liens):** | [Insert description of any Liens permitted by the Administrator to be subordinate to the Mortgage and to any other Lien granted to the Administrator] |
| **Stated Maturity Date (*See* Sections 7.08 and 13.13 of Annex C of this Agreement and Annex E):** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, the date set forth in the Note as the “Maturity Date”  □ Twenty (20) years from Closing Date  □ Twenty-Five (25) years from Closing Date  □ Other: \_\_\_\_\_\_\_\_ years from Closing Date |
| **Supplemental Financial Covenants of Affiliate Guarantor(s) (*See* Section 12.02 of Annex C of this Agreement):** | (i) Working Capital ≥ $\_\_\_\_\_  (ii) Net Worth ≥  □ $\_\_\_\_\_\_\_\_\_  □ Other: \_[formula] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (iii) Long-Term Debt to Net Worth ≤ \_\_:1  (iv) Minimum Liquidity ≥ $\_\_\_\_\_\_\_\_\_\_\_  (v) Other:  □ None |
| **Supplemental Financial Covenants of Shipowner (*See* Section 12.02 of Annex C of this Agreement):** | (i) Working Capital ≥ $\_\_\_\_\_  (ii) Net Worth ≥  □ $\_\_\_\_\_\_\_\_\_  □ Other: \_[formula] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (iii) Long-Term Debt to Net Worth ≤ \_\_:1  (iv) Other:  □ None |
| **UCC State (*See* Section 2.03(g) of Annex C of this Agreement):** | [Insert UCC State] |
| **Vessels (*See* Section 2.03(d) of Annex C of this Agreement):** | Type:  Number of Vessels:\_\_\_\_\_  Hull Identification Number, if available, Name, if available, and USCG Documentation Number, if applicable:  1.  2.  3.  4. |

**TABLE A**

As determined by the Administrator, (a) the aggregate Actual Cost of the Vessels is $\_\_\_\_\_\_\_\_ representing (1) the amounts paid by or for the account of the Shipowner as of the date hereof for the Construction of the Vessels plus (2) the amount which the Shipowner is on the date hereof obligated to pay under the Construction Contract or is otherwise from time to time hereafter obligated to pay for the Construction of the Vessels; and (b) the aggregate Depreciated Actual Cost of the Vessels is $\_\_\_\_\_\_\_\_\_\_ representing (1) the aggregate Actual Cost of the Vessels as of the date hereof less (2) the depreciation of the Vessels as of the date hereof, both calculated and itemized for [each Vessel/the Vessels] as follows:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Item of Cost**  [1] | **Amount Paid**  [2] | **Amount Obligated to be Paid**  [3] | **Total**  [4] |
| [A] | Shipyard Contract Price |  |  | **$** |
| [B] | Contract Changes and Extras |  |  |  |
| [C] | Owner Furnished Items |  |  |  |
| [D] | Design, Engineering and Inspection |  |  |  |
| [E] | Foreign Items Exclusions (unless Foreign Item Waivers applicable) |  |  | **(\_\_\_\_\_\_\_\_\_\_\_\_\_\_)** |
| [F] | Subtotal  ([4A] + [4B] + [4C] + [4D] - [4E]) = [4F]) |  |  | **$** |
| [G] | Estimated Guarantee Fee |  |  |  |
| [H] | Construction Period Interest |  |  |  |
| [I] | Approved Construction Contract Escalation |  |  |  |
| [J] | **Total Actual Cost**  ([4F] + [4G] + [4H] + [4I] = [4J]) |  |  | **$** |
| [K] | Depreciation Recognized from Vessel Delivery Date to Closing Date |  |  | **(\_\_\_\_\_\_\_\_\_\_\_\_\_\_)** |
| [L] | **Total Depreciated Actual Cost**  ([4J] – [4K]) = [4L]) |  |  | **$** |

(End of Annex A)