**ANNEX I**

**FORM OF ASSIGNMENT OF EARNINGS**

**ASSIGNMENT OF EARNINGS**

**THIS ASSIGNMENT OF EARNINGS** (this “***Assignment***”) is made as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, by\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a (the "***Shipowner***"), to and in favor of the United States of America (the "***United States***"), represented by the Maritime Administrator of the Maritime Administration (the "***Administrator***"), pursuant to Chapter 537 of Title 46 of the United States Code (“***Chapter 537***”).

***RECITALS:***

A. The Shipowner and the Administrator are parties to that certain Consolidated Agreement, Contract No. MA-\_\_\_\_\_\_, dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_ (the “***Agreement***”);

B. The Shipowner intends to issue the Administrator’s Note pursuant to the Agreement;

C. The Agreement requires the Shipowner to secure the payment of the Administrator’s Notes by Liens on, among other things, the Collateral (as herein defined), including the Earnings (as herein defined); and

D. This Assignment sets forth the terms on which the Shipowner grants an assignment of and a Lien on the Collateral in favor of the Administrator as collateral security for the Obligations.

***NOW, THEREFORE,*** in consideration of the premises herein and to induce the Administrator to issue the Guarantee, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

***ARTICLE I***

***DEFINITIONS***

**SECTION 1.01.** **Definitions.** As used herein:

(a) Unless otherwise defined herein, capitalized terms used herein have the respective meanings set forth in the Agreement;

(b) Unless otherwise defined herein, with respect to Uniform Commercial Code (“UCC”) terms, all other capitalized terms contained in this Assignment and not otherwise defined herein shall have, when the context so indicates, the meanings provided for by the UCC, as adopted in the UCC State, to the extent the same are used or defined therein; and

(c) Except as otherwise specified herein or as the context may otherwise require, the following terms have the respective meanings set forth below for all purposes of this Assignment:

*“Collateral”* has the meaning set forth in Section 2.01 of this Assignment.

*“Contract”* means each rental agreement, lease, charter, exchange, transfer or sale agreement relating to any Vessel.

*“Earnings”* means: (a) all the Shipowner’s right, title and interest to and in whatever is received (whether voluntary or involuntary, whether cash or non cash, including proceeds of insurance and condemnation awards, rental or lease payments, accounts, chattel paper, instruments, documents, contract rights, general intangibles, equipment and/or inventory) upon the lease, sale, charter, exchange, transfer, or other disposition of any of the Vessels; (b) all claims for damages for any breach by any charterer or other party thereto of any bareboat or time charter, or lease of any Vessel; and (c) all remuneration payable by or on behalf of a governmental authority in respect of any detention of any Vessel, and all insurance proceeds payable to Shipowner for any loss of or damage to all or any part of any Vessel.

*“Obligations”* means all of the obligations and liabilities of the Shipowner under the Agreement, the Administrator's Note, the Mortgage and the other Transaction Documents and as collateral security for and with respect to the Guarantee whether now made or hereafter entered into.

*“Proceeds"* means (A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of Collateral; (B) whatever is collected on, or distributed on account of, Collateral; (C) rights arising out of Collateral; (D) to the extent of the value of Collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the Collateral; or (E) to the extent of the value of Collateral and to the extent payable to the Shipowner or the Administrator, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the Collateral.

*“Vessels”* means the vessels described in Exhibit A.

***ARTICLE II***

***ASSIGNMENT***

**SECTION 2.01. Assignment.** As collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Obligations, the Shipowner does hereby assign, transfer and convey to the Administrator, its successors and assigns, and does hereby grant to the Administrator, its successors and assigns, a first priority continuing security interest in, lien on and right of setoff against, all of the following, wherever located, whether now owned or at any time hereafter acquired by the Shipowner or in which the Shipowner now has or at any time in the future may acquire any right, title or interest (collectively, the “Collateral”):

(a) the Earnings of the Vessels from any source;

(b) all moneys or other compensation payable by reason of requisition of title or for hire or other compulsory acquisition of any Vessel or any Vessel’s capture, seizure, arrest, detention or confiscation by any governmental authority or Persons acting on behalf of any governmental authority; and

(c) all Proceeds and products of the foregoing.

Upon the occurrence and continuation of a Default, the Shipowner hereby authorizes and directs any party to a Contract and their respective successors and assigns to treat and regard the Administrator as the party entitled, in the Shipowner’s place and stead, to receive said Proceeds and amounts and to exercise all rights of the Shipowner with respect thereto; and said parties shall be fully protected in so treating and regarding the Administrator and shall be under no obligation to see to the application by the Administrator of any such Proceeds received by it. In addition to the rights granted to the Administrator hereunder, the Shipowner hereby further transfers and assigns to the Administrator by way of security any and all such Liens, financing statements or similar interests of the Shipowner attributable to its interest in the Collateral arising under or created by any statutory provision, judicial decision or otherwise.

**SECTION 2.02. Account Debtors.** No Person making payments to the Administrator at its request under the assignment contained herein shall have any responsibility to see to the application of any of such funds, and any party paying or delivering Proceeds or amounts to the Administrator under such assignment shall be released thereby from any and all liability to the Administrator and the Shipowner to the full extent and amount of all payments or Proceeds so delivered. **THE SHIPOWNER AGREES TO INDEMNIFY AND HOLD HARMLESS ANY AND ALL PARTIES (INCLUDING FOR SUCH PERSONS’ OWN ORDINARY NEGLIGENCE) MAKING PAYMENTS TO THE ADMINISTRATOR AT THE ADMINISTRATOR’S REQUEST UNDER THE ASSIGNMENT CONTAINED HEREIN, AGAINST ANY AND ALL LIABILITIES, ACTIONS, CLAIMS, JUDGMENTS, COSTS, CHARGES AND ATTORNEYS’ FEES RESULTING FROM THE DELIVERY OF SUCH PAYMENTS TO THE ADMINISTRATOR, AND ALL SUCH AMOUNTS TOGETHER WITH SUCH INTEREST THEREON SHALL BE PART OF THE OBLIGATIONS. THE INDEMNITY AGREEMENT CONTAINED IN THE PREVIOUS SENTENCE IS MADE FOR THE DIRECT BENEFIT OF AND SHALL BE ENFORCEABLE BY ALL SUCH PERSONS.** Should the Administrator bring suit against any third party for collection of any amount or sums included within this Assignment (and the Administrator shall have the right to bring any such suit), it may sue either in its own name or in the name of the Shipowner, or both.

**SECTION 2.03. Performance under Charters; No Duty of Inquiry.** The Shipowner hereby undertakes that it shall punctually perform all of its obligations under all Contracts to which it is a party. It is hereby expressly agreed that, anything contained herein to the contrary notwithstanding, the Shipowner shall remain liable under all Contracts to perform the obligations assumed by it thereunder, and the Administrator shall have no obligation or liability of any nature whatsoever under any Contract by reason of, or arising out of, this Assignment, nor shall the Administrator be required to assume or be obligated in any manner to perform or fulfill any obligation of the Shipowner under or pursuant to any Contract. Nothing in this Assignment shall be deemed or construed to create a delegation to or assumption by the Administrator, of the duties and obligations of the Shipowner under any Contract. All of the parties to any Contract shall continue to look to the Shipowner for performance of all covenants and other obligations and the satisfaction of all representations and warranties of the Shipowner thereunder, notwithstanding the rights granted to the Administrator hereunder and the assignment herein made or the exercise by the Administrator of any such rights hereunder or under applicable law. The Administrator shall not be required to make any payment or make any inquiry as to the nature or sufficiency of any payment received by the Administrator, or, unless and until indemnified to its satisfaction, to present or file any claim, or to take any other action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled hereunder or pursuant hereto at any time or times.

**SECTION 2.04. No Modification of Obligations.** Nothing herein contained shall modify or otherwise alter the obligation of the Shipowner to make prompt payment of all Obligations, including principal and interest owing thereon, when and as the same become due regardless of whether the Collateral is sufficient to pay the same and the rights provided in accordance with the foregoing assignment provision shall be cumulative of all other security of any and every character now or hereafter existing to secure payment of the Obligations. Nothing in this Assignment is intended to be an acceptance of collateral in satisfaction of or in discharge of the Obligations.

**SECTION 2.05. Affirmative Covenants.** Until all of the Obligations have been fully and finally paid and the Agreement and the other Transactions Documents have been terminated, the Shipowner hereby covenants and agrees with the Administrator to:

(a) promptly notify the Administrator in writing of the commencement and termination of any period during which any Vessel is requisitioned; and

(b) during the continuance of a Default, use its best efforts to cause any party for any Contract to execute a Consent and Agreement to this Assignment in substantially the form attached hereto as Exhibit B and deliver such Consent and Agreement to the Administrator.

**SECTION 2.06. Negative Pledge.** The Shipowner does hereby warrant and represent that it has not assigned or pledged, and hereby covenants that it will not assign or pledge so long as this Assignment shall remain in effect, any of its right, title or interest in the whole or any part of the Collateral hereby assigned to anyone other than the Administrator, and it will not take or omit to take any action, the taking or omission of which might result in an alteration or impairment of the rights hereby assigned or any of the rights created in this Assignment.

**SECTION 2.07. Attorney-in-Fact.** The Administrator shall not be liable for any delay, neglect, or failure to effect collection of any Proceeds or to take any other action in connection therewith or hereunder; but the Administrator shall have the right, at its election, in the name of the Shipowner or otherwise, to prosecute and defend any and all actions or legal proceedings deemed advisable by the Administrator in order to collect such Proceeds and to protect the interests of the Administrator, and/or the Shipowner, with all costs, expenses and attorneys’ fees incurred in connection therewith being paid by the Shipowner. The Shipowner does hereby irrevocably appoint and constitute the Administrator as the Shipowner’s true and lawful attorney-in-fact with full power (in the name of the Shipowner or otherwise), to ask, require, demand, receive, compound, and give acquittance for any and all Proceeds, to endorse any checks or other instruments or orders in connection therewith, to file any claims or take any action or institute any proceedings which the Administrator may deem to be necessary or advisable in the premises, and to file, without the signature of the Shipowner, any and all financing statements or similar documents, other instruments, documents or agreements or renewals thereof arising from this Assignment which the Administrator may deem to be reasonably necessary or advisable in order to perfect or maintain the security interest granted hereby; provided, however, the Administrator shall not take any action pursuant to the power granted by this Section unless a Default shall have occurred and be continuing. Such appointment of the Administrator as attorney-in-fact is irrevocable and is coupled with an interest. The parties agree that the grant of the power of attorney set forth in this Section shall not be deemed to create any obligation on the part of the Administrator to take any one or more of the actions described herein.

**SECTION 2.08. Application of Proceeds.** All Proceeds collected or received by the Administrator pursuant to this Assignment shall be applied as provided in Section 14.04 of Annex C of the Agreement.

**SECTION 2.09. Remedies Cumulative and Not Exclusive; No Waiver**. Each and every right, power and remedy given herein, in the Agreement and the other Transaction Documents to the Administrator shall be cumulative and shall be in addition to every other right, power and remedy of the Administrator now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy, whether herein given or otherwise existing, may be exercised from time to time, in whole or in part, and as often and in such order as may be deemed expedient by the Administrator, and the exercise or the commencement of the exercise of any right, power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy. Without limitation of the foregoing, during the continuation of a Default, the Administrator shall have the rights and remedies of a secured party under the UCC. No delay or omission by the Administrator in the exercise of any right or power in the pursuance of any remedy accruing upon any breach or default by the Shipowner shall impair any such right, power or remedy or be construed to be a waiver of any such right, power or remedy or to be an acquiescence therein; nor shall the acceptance by the Administrator of any security or of any payment of or on account of any of the amounts due from the Shipowner to the Administrator and maturing after any breach or default or of any payment on account of any past breach or default be construed to be a waiver of any right to take advantage of any future breach or default or of any past breach or default not completely cured thereby.

**SECTION 2.10. Invalidity.** If any provision of this Assignment shall at any time for any reason be declared or decided to be invalid, void or otherwise inoperative by a court of competent jurisdiction, such declaration or decision shall not affect the validity of any other provision or provisions of this Assignment, or the validity of this Assignment as a whole. In the event that by reason of any law or regulation in force or to become in force, or by reason of a ruling of any court of competent jurisdiction, or by any other reason whatsoever, this Assignment is rendered either wholly or partly defective, the Shipowner shall furnish the Administrator with an alternative assignment or security and do all such other acts as are reasonably required in order to ensure and give effect to the full intent of this Assignment.

**SECTION 2.11. Continued Security.** It is declared and agreed that the security created by this Assignment shall be held by the Administrator as a continuing security for the payment of all moneys which may at any time and from time to time be or become payable by the Shipowner in connection with the Obligations and that the security so created shall not be satisfied by any intermediate payment or satisfaction of any part of the amount hereby secured and that the security so created shall be in addition to and shall not in any way be prejudiced or affected by any collateral or other security now or hereafter held by the Administrator for all or any part of the moneys hereby secured.

**SECTION 2.12. Termination.** The Administrator shall terminate this Assignment and release the Collateral subject to the provisions of Article XVI of Annex C of the Agreement and the relevant provisions of this Assignment. Except as may be expressly applicable pursuant to Section 9-620 of the UCC, no action taken or omission to act by the Administrator shall be deemed to constitute a retention of the Collateral in satisfaction of the Obligations or otherwise to be in full satisfaction of the Obligations, and the Obligations shall remain in full force and effect, until the Administrator and the Holder(s) shall have applied payments (including, without limitation, collections from Collateral) towards the Obligations in the full amount then outstanding or until such subsequent time as is provided in the Agreement. If this Assignment has terminated and any payment actually received by the Administrator is subsequently invalidated, rescinded, declared to be fraudulent or preferential or set aside and is required to be repaid under any bankruptcy or other similar law, then this Assignment shall be reinstated and its provisions will continue in effect for the benefit of the Administrator and the holder(s) of the Administrator’s Note until such amounts are fully and finally paid in cash.

**SECTION 2.13. Notices.** Any notices or communications hereunder shall be made in accordance with Section 18.03 of Annex C of the Agreement.

**SECTION 2.14. Waiver; Amendment.** No amendment, modification, or waiver of any provision of this Assignment, and no consent with respect to any departure of the Shipowner therefrom, shall be effective unless the same is in writing executed by the Shipowner and the Administrator.

**SECTION 2.15. Further Assurances.** The Shipowner agrees that at any time and from time to time, upon the written request of the Administrator, the Shipowner will promptly and duly execute and deliver any and all such further instruments and documents as the Administrator may deem desirable in obtaining the full benefits of this Assignment (including, without limitation, in connection with the perfection of the security interest created hereby) and of the rights and powers herein granted.

**SECTION 2.16. Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the United States of America, including federal common law, and, absent applicable federal law, the laws of the Governing Law State, notwithstanding its conflict of laws rules.

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*(SIGNATURE PAGE ON FOLLOWING PAGE)*

***IN WITNESS WHEREOF***, the Shipowner has caused this Assignment to be executed as of the day and year first above written.

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

**EXHIBIT A**

**TO ASSIGNMENT OF EARNINGS**

**Vessels**

|  |  |  |
| --- | --- | --- |
|  |  |  |
| **Vessel**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | **Official No.**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  | |
|  |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  | |
|  |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  | |
| All of the foregoing are United States flag Vessels. |  |  |

**EXHIBIT B**

**TO ASSIGNMENT OF EARNINGS**

**CONSENT AND AGREEMENT**

The undersigned, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a counterparty to a contract (“Contract”) with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Shipowner”) to which the Notice of Assignment delivered pursuant to the foregoing Assignment refers (terms defined in the Assignment are used herein with the same meaning), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby acknowledges notice of and consents and agrees to the Assignment and to all of the terms thereof, and agrees that: (1) it will make payment directly to the account of the Administrator, at [                                ], of all moneys due and to become due from it under the Contract until receipt of written notice from the Administrator that all obligations to it secured by said Assignment have been paid in full; and (2) any such payment shall be final and the undersigned will not seek to recover from the Administrator for any reason whatsoever any moneys paid by the undersigned to the Administrator by virtue of the foregoing Assignment and this Consent and Agreement but this shall not prevent the set off or credit against or deduction from any moneys payable to the Administrator by virtue of said Assignment of amounts owing to the undersigned by the Shipowner under the Contract.

The undersigned, as a counterparty to the Contract, confirms and agrees that the Contract is in full force and effect and is enforceable in accordance with its terms and the Shipowner is not in default thereunder.

This Consent and Agreement shall be governed by and construed in accordance with the laws of the Governing Law State.

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_ [NAME]

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(End of Annex I)