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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

INTERNATIONAL SHIPHOLDING
CORPORATION, *et al.*,¹

Debtors.

)
)
) Chapter 11
)

) Case No. 16-12220 (SMB)
)

) Jointly Administered
)

**DEBTORS' EXPEDITED MOTION FOR ENTRY OF AN ORDER
AUTHORIZING THE DEBTORS TO (I) CONSUMMATE THE SALE OF
THE GREEN DALE, (II) REJECT THE TIME CHARTER, AND (III) PAY JACQ.
PIEROT JR. & SONS, INC. AND H CLARKSON & COMPANY LIMITED
COMPENSATION FOR PROFESSIONAL SERVICES RENDERED AND
REIMBURSEMENT OF ACTUAL AND NECESSARY EXPENSES INCURRED**

The above-captioned debtors and debtors in possession (collectively, the "Debtors") file
this motion for entry of an order, substantially in the form annexed hereto as Exhibit A (the

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: International Shipholding Corporation (9662); Enterprise Ship Co. (9059); Sulphur Carriers, Inc. (8965); Central Gulf Lines, Inc. (8979); Coastal Carriers, Inc. (6278); Waterman Steamship Corporation (0640); N.W. Johnsen & Co., Inc. (8006); LMS Shipmanagement, Inc. (0660); U.S. United Ocean Services, LLC (1160); Mary Ann Hudson, LLC (8478); Sheila McDevitt, LLC (8380); Tower LLC (6755); Frascati Shops, Inc. (7875); Gulf South Shipping PTE LTD (8628); LCI Shipholdings, Inc. (8094); and Marco Shipping Company PTE LTD (4570). The service address for each of the above Debtors is 601 Poydras Street, Pan American Building, Suite 1850, New Orleans, Louisiana 70130.

“Proposed Order”), authorizing the Debtors to (i) consummate the sale of its vessel known as the “Green Dale” free of clear of all liens, claims, and encumbrances; (ii) reject a certain time charter upon the transfer of the Green Dale, and (iii) remit payment to Jacq. Pierot Jr. & Sons, Inc. and H Clarkson & Company Limited for fees and any reimbursable expenses authorized pursuant to the order approving their retention to effectuate the sale of the Green Dale. In support of the motion, the Debtors submit the *Declaration of Manuel Estrada in Support of the Debtors’ Expedited Motion for Entry of an Order Authorizing the Debtors to (I) Consummate the Sale of the Green Dale, (II) Reject the Time Charter, and (III) Pay Jacq. Pierot Jr. & Sons, Inc. and H Clarkson & Company Limited Compensation for Professional Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred* (the “Estrada Declaration”) attached hereto as Exhibit C, the *Declaration of James Rogers, Director of H Clarkson Co. Limited, in Support of the Debtors’ Expedited Motion for Entry of an Order Authorizing the Debtors to (I) Consummate the Sale of the Green Dale, (II) Reject the Time Charter, and (III) Pay Jacq. Pierot Jr. & Sons, Inc. and H Clarkson & Company Limited Compensation for Professional Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred* (the “Rogers Declaration”) attached hereto as Exhibit D, and the *Declaration of F. R. Christiaan Pierot, President, Jacq. Pierot Jr. & Sons, Inc., in Support of the Debtors’ Expedited Motion for Entry of an Order Authorizing the Debtors to (I) Consummate the Sale of the Green Dale, (II) Reject the Time Charter, and (III) Pay Jacq. Pierot Jr. & Sons, Inc. and H Clarkson & Company Limited and Compensation for Professional Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred, and (III) Grant Related Relief* (the “Pierot Declaration”) attached hereto as Exhibit E. In further support of the motion, the Debtors respectfully state as follows:

PRELIMINARY STATEMENT

1. By this motion, the Debtors seek the authority to sell their vessel, the Green Dale (IMO: 9181376). As the Court is aware, the Debtors have made significant progress toward bringing these chapter 11 cases to a successful resolution, including the implementation of a competitive sale process for one segment of their business (the “Specialty Business Sale”) and the confirmation of a chapter 11 plan reorganization (the “Plan”) for the remaining business segments. The Debtors’ confirmed Plan provides for the sale of assets, including the Green Dale, which is pledged to Citizens Asset Finance, Inc. (f/k/a RBS Asset Finance, Inc.) (“Citizens”). As the result of ongoing marketing efforts related to this anticipated disposition of the Green Dale, the Debtors have obtained an offer from Sallalum Lines SAL (the “Buyer”) to purchase the Green Dale for \$6.8 million. The Debtors believe that the immediate sale of the Green Dale pursuant to this offer is in the best interests of their estates, and is entirely consistent with the terms of their confirmed Plan. The Debtors have conferred with Citizens, the secured lender with a pre-petition secured interest in the Green Dale, and with SEACOR Capital Corp. (“SEACOR”), the agent under the Debtors’ post-petition facility (the “DIP Agent”), and have offered each party the opportunity to credit bid for the vessel. Both parties have declined to credit bid for the Green Dale, and each of Citizens and the DIP Agent have advised that they have no objection to the proposed sale. The Debtors intend to place the proceeds of the sale in a segregated account, subject to payment of the fees and expenses of the brokers retained to effectuate the sale of the vessel, and distribute the funds in accordance with the terms of the Plan following the Plan effective date (the “Effective Date”). Accordingly, and for all the reasons set forth more fully herein, the Debtors seek the entry of an order authorizing the Debtors to sell the Green Dale to the Buyer for \$6.8 million.

2. The Green Dale is subject to a certain time charter (the “Time Charter”) dated August 5, 1999, as amended, supplemented, or modified from time to time, between LCI as owner and Nippon Yusen Kaisha (“NYK”) as the time charterer. Pursuant to the Plan, the Time Charter will be rejected as of the Effective Date. To increase the scheduling flexibility of the various transactions and effectuate the expedient sale of the Green Dale, the Debtors seek an order authorizing the rejection of the Time Charter upon the transfer of the Green Dale to the Buyer. The Debtors have discussed this with NYK and have been advised that NYK does not object to the modified rejection date.

3. Additionally, pursuant to the *Order (I) Authorizing the Employment and Retention of (a) H Clarkson & Company Limited and (b) Jacq. Pierot Jr. & Sons Inc. as Brokers for the Debtors and Debtors in Possession, (II) Waiving Certain Time-Keeping Requirements Pursuant to Local Rule 2016-1, and (III) Granting Related Relief* [ECF No. 567] (the “Brokers Retention Order”) entered on January 23, 2017, authorizing the Debtors to retain H Clarkson & Company Limited (“Clarksons Platou”) and Jacq. Pierot Jr. & Sons, Inc. (“Pierot” and together with Clarksons Platou, the “Brokers”) as brokers to effectuate the sale of the Green Dale and approving compensation pursuant to section 328(a) of title 11 of the United States Code (the “Bankruptcy Code”), the Debtors also seek the authority to pay the Brokers compensation for professional services rendered for reimbursement of necessary expenses incurred consistent with the Brokers Retention Order. Pursuant to the Brokers Retention Order, the broker successful in negotiating the sale is entitled to 1% of the gross sales price and the other broker entitled to 0.5% of the gross sales price as fees. The Brokers are also entitled to reimbursement of reasonable, documented, travel and hotel expenses incurred in connection with the Brokers’ provision of testimony regarding their retention. Consistent with the Debtors’ application to retain the

Brokers, and subject to additional fees incurred in connection with this motion, the Debtors seek entry of an order authorizing the Debtors to pay Pierot \$34,000 on account of professional fees and \$0 on account of reimbursable expenses and pay Clarksons Platou \$68,000 on account of professional fees and \$0 on account of reimbursable expenses, such amounts to be paid from the proceeds of the sale at closing.

JURISDICTION

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

5. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The bases for the relief requested herein are sections 105(a), 328, 330, 363, and 365 of title 11 of the United States Code (the “Bankruptcy Code”), rules 2002, 2016, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), rule 6004-1 of the Local Rules (the “Local Bankruptcy Rules”) for the United States Bankruptcy Court for the Southern District of New York, and the Guidelines for the Conduct of Assets Sales promulgated by the Amended Guidelines for the Conduct of Asset Sales, General Order M-383 (the “Sale Guidelines”).

BACKGROUND

A. General Background

7. On July 31, 2016 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

8. The Debtors are continuing in the possession of their respective properties and the management of their respective businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108. These chapter 11 cases have been consolidated for procedural purposes only. No trustee or examiner has been appointed in the chapter 11 cases. On September 1, 2016,

the Office of the United States Trustee for Region 2 (the “U.S. Trustee”) appointed the statutory committee of unsecured creditors (the “Committee”) [ECF No. 125]. On September 22, 2016, the U.S. Trustee amended the Committee’s appointment [ECF No. 185].

9. The events leading up to the Petition Date and the facts and circumstances supporting the relief requested herein are set forth in the *Declaration of Erik L. Johnsen, President and Chief Executive Officer, Pursuant to Local Bankruptcy Rule 1007-2 and in Support of First Day Filings* [ECF No. 7] (the “First Day Declaration”), and are incorporated herein by reference.

10. On March 2, 2017, the Court entered an order confirming the Debtors’ *First Amended Modified Joint Chapter 11 Plan of Reorganization for International Shipholding Corporation and Its Affiliated Debtors* [ECF No. 671]. As described below, the Plan contemplates the sale of the Green Dale for the benefit of Citizens.

B. Sale of the Green Dale

(i) Debtors Contemplate Selling Certain Vessels to Effectuate Restructuring

11. As the Court is aware, the Debtors are nearing completion of their two-pronged approach in these chapter 11 cases in order to maximize the value of the Debtors’ estates: (1) execute the sale process for the majority of the assets contained in one of their four business segments, the “Specialty Business Segment,”² and (2) obtain confirmation of the Plan with a plan sponsor to reorganize the Debtors’ remaining three business segments. The Court approved the Specialty Business Sale to J Line Corporation on the record at the hearing on December 20, 2016, and entered an order approving the sale on December 30, 2016 [ECF No. 487].

² The “Specialty Business Segment” assets sold to J Line Corporation include the various “Acquired Assets” as defined in the Asset Purchase Agreement between the Debtors and J Line Corporation.

12. With respect to the remainder of the Debtors' business segments, the Debtors entered into a restructuring support agreement (the "Restructuring Support Agreement") with the sponsor of the Plan as approved by the Court on November 21, 2016 [ECF No. 376]. The Plan involves, among other things, (i) the issuance of new equity in the reorganized Debtors to SEACOR in exchange for a \$10.5 million cash infusion from SEACOR, which amount may, under certain circumstances be increased to \$13.5 million, and the conversion of 100% of the Debtors' \$18.1 million outstanding debtor-in-possession financing claims,³ (ii) \$25 million in a new senior debt exit facility, a substantial majority of which will be used to satisfy creditor claims under the Plan, (iii) the purchase and transfer by the Company of two leased pure car/truck carrier vessels, together with the transfer of additional pure car/truck carrier vessels currently owned by the Debtors, to NYK Group Americas Inc. (or its nominee), (iv) the sale of certain vessels not being transferred to SEACOR, such as the Green Dale, and (v) assumption of certain of the Debtors' key pre-petition contracts.

13. Specifically, the Plan provides in section 3.3.5 that Citizens will receive on the Effective Date or as reasonably practicable thereafter, in full satisfaction, settlement, and release of, and in exchange for Citizens' allowed claim against the Debtors, delivery of the Green Dale or, in the event of any disposition of the Green Dale, the proceeds of the generated by such disposition. According to the Plan, the delivery or sale of the Green Dale is at the option of the applicable Debtor, with the consent of SEACOR, or the applicable Reorganized Debtor. Based on discussions with Citizens and SEACOR, the Debtors have continued to market the Green Dale for sale and have obtained the agreement of the Buyer to purchase the vessel as described herein.

³ The Plan sponsor funded a portion of the debtor-in-possession financing and, pursuant to the restructuring support agreement, has committed to purchasing the remainder of this post-petition financing provided by another lender in connection with the implementation of the Plan.

(ii) *The Green Dale*

14. The Green Dale is a pure car/truck carrier (“PCTC”) that is owned by Debtor LCI Shipholdings, Inc. (“LCI”) and flagged in the Marshall Islands. The vessel has a 16,000-ton capacity with twelve car decks and is capable of carrying approximately 5,000 standard size vehicles. Three of the twelve car decks are hoistable, affording the vessel the ability to carry approximately 340 heavy trucks. As more fully described below, the Green Dale is currently operating pursuant to the Time Charter with NYK.

15. The Green Dale is collateral under that certain Loan Agreement (the “Citizens Facility”) dated as of August 25, 2014, as amended, supplemented or modified from time to time, by and among LCI, as borrower, International Shipholding Corporation (“ISH” and, together with its debtor and non-debtor subsidiaries and affiliates, “International Shipholding”), as guarantor, and Citizens, as lender.⁴ The vessel secures Citizens’ claim of \$16,809,658 against LCI in these chapter 11 cases.

16. Further, under the *Final Order (1) Authorizing Debtors to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, and (C) Grant Certain Protections to Prepetition Lenders and (2) Granting Certain Related Relief* [ECF No. 180] (the “Final DIP Order”), DVB Bank SE and the DIP Agent (the “DIP Lenders”), hold a first priority, senior security interest of up to \$6.0 million against the Green Dale and a junior security interest in the Debtors’ encumbered property, including the Green Dale.

(iii) *The Debtors’ Marketing Efforts*

17. As described in the First Day Declaration, since 2014, International Shipholding has encountered certain challenges related to complying with debt covenants and overall liquidity restraints. In an attempt to strengthen International Shipholding’s financial position, on

⁴ Citizens was known as RBS Asset Finance, Inc., when the Citizens Facility was entered into by the parties thereto.

October 21, 2015, the Board of Directors of ISH approved a plan (the “Strategic Plan”) to restructure International Shipholding by focusing on its three (3) core segments—the Jones Act,⁵ PCTC,⁶ and Rail-Ferry⁷ segments—with the objective to reduce debt to more manageable levels and to increase liquidity. Since that date, International Shipholding has modified the Strategic Plan in response to new developments, including efforts to sell assets and ongoing discussions with its lenders, lessors, directors, and others. The Debtors did not extensively market the Green Dale for sale prior to the Petition Date, but engaged in certain negotiations regarding the sale of the Green Dale to NYK that did not result in an agreement.

18. The Green Dale, along with the other assets related to the Debtors’ PCTC business segment, was extensively marketed prior to the Debtors’ entry into the Restructuring Support Agreement. Blackhill and the Debtors developed a list of potential buyers and plan sponsors consisting of strategic and financial investors including distressed private equity firms, direct competitors, and vertically integrated firms that might find some or all of the Debtors’ assets attractive. In total, sixty-eight (68) firms were contacted regarding their interest in purchasing segment assets, the whole company, or becoming a plan sponsor.

⁵ The Merchant Marine Act of 1920 (better known as the Jones Act) requires that all goods transported by water between U.S. ports must, subject to certain limited exceptions, be carried aboard U.S. flag vessels that are constructed in the U.S., owned predominantly by U.S. citizens, and crewed by U.S. citizens. Under its Jones Act segment, International Shipholding currently deploys two (2) bulk carriers, one (1) integrated tug-barge unit, one (1) articulated tug-barge unit, and one (1) vessel that transports molten sulphur. Vessels deployed under the Jones Act segment serve primarily in the Gulf of Mexico and operate as the primary marine transporter of coal, sulphur, and phosphate rock. Petroleum coke and fertilizer are the other principal cargoes carried by the Jones Act vessels.

⁶ The PCTC business segment currently includes five (5) vessels, four (4) of which are U.S. flag vessels and one (1) of which is an international flag vessel. The PCTC vessels transport all types of vehicles from fully assembled passenger cars to construction machinery and equipment in large number on multiple internal decks.

⁷ The Rail-Ferry segment currently uses two (2) double-deck roll-on/roll-off rail ferries, which carry rail cars between the U.S. Gulf Coast and Mexico in regularly scheduled waterborne service. The service provides departures every four (4) days from Mexico and the U.S. Gulf Coast, respectively, for a three (3) day transit between ports. Since 2007, International Shipholding has conducted these operations out of its terminal in Mobile, Alabama and a terminal in Coatzacoalcos, Mexico. Trade for this segment is primarily driven by commodities such as forest products, sugar, metals, minerals, plastics and chemicals. In August 2012, ISH acquired two (2) related businesses that own and operate a certified rail-car repair facility near the port of Mobile, Alabama.

19. On January 10, 2017, the Debtors' filed an application to employ Clarksons Platou and Pierot as brokers to effectuate the sale of the Green Dale. The Court entered an order approving the retention of the Brokers on January 23, 2017.

20. Since their retention, the Brokers have diligently marketed the Green Dale. Clarksons Platou identified and contacted approximately thirty (30) car carrying companies as well as Clarksons Platou's distribution list, and Pierot identified and contacted approximately 15-20 car carrying companies and/or their favored brokers, and approximately 600 ship brokers, and 100 ship owners of all types from Pierot's distribution list, providing vessel specifications and general information to each. Three (3) of these parties conducted surveys or indicated that they would review third party surveys, resulting in one (1) offer.

(iv) The Buyer's Offer to Purchase the Green Dale

21. Buyer is an international car carrier specializing in roll-on/roll-off cargo shipping for cars, vans, trucks, and heavy equipment from Europe and the United States to West African destinations. The Buyer is not an insider as that term is defined in Bankruptcy Code section 101(31). After ongoing, arm's-length negotiations, and considering the market for the Green Dale, the Debtors determined that the offer from the Buyer reflected in the Memorandum of Agreement attached hereto as Exhibit B (the "MOA") to be the highest and best offer and otherwise appropriate under the circumstances.

22. Although the Debtors did not conduct a formal auction process to market the Green Dale, their Brokers and their other professionals retained in these chapter 11 cases did conduct a marketing process consistent with the process used to sell a similar vessel outside of chapter 11. The Debtors also discussed the proposal with Citizens and SEACOR. As the result of this inquiry, the Debtors have determined that the Buyer's offer is higher than any offer that

the Debtors could reasonably expect to obtain after additional marketing or establishing auction procedures.

23. Due the difficulties facing the global shipping industry, the secondary vessel market is weak and has only declined since the filing of the Debtors' cases. Additionally, many car carrying companies have excess capacity and PCTC vessels that are younger than the Green Dale remain idled. The Debtors do not believe it likely that they would obtain a higher price by continuing to market the Green Dale—the marketing efforts of Clarksons Platou and Pierot were sufficient to uncover any likely potential buyers. Rather, delay in effectuating the sale of the Green Dale would incur the risk of further weakening of the secondary vessel market and diminution in value of the Green Dale, ultimately reducing the recovery of creditors in these chapter 11 cases.

24. Given the marketing of the Green Dale, the current condition of the Green Dale, and the state of the secondary vessel market, and the notice of the Debtors' intention to liquidate the Green Dale contained in the Plan, the Debtors do not believe that they have a realistic chance of obtaining a better offer than the offer reflected in the MOA. The Buyer's offer reflected in the MOA was the only offer the Debtors received for the Green Dale. The Debtors believe that the MOA would provide a greater recovery for the Debtors' estates than would be provided by any other available Alternative. The Debtors therefore believe, in exercise of their business judgment consistent with their fiduciary duties, that it is in the best interests of their estates and creditors to enter into the MOA with the Buyer.

C. Rejection of the Time Charter

25. The Time Charter was originally entered into between Waterman Steamship Corporation and NYK for a term of twelve years firm (1999-2011), plus options for NYK to extend the Time Charter for subsequent periods of four years (2011-2015), two years (2015-

2017), and two years (2017-2019). On August 18, 2013, the Green Dale was sold by Debtor Waterman Steamship Corporation to LCI, and LCI became party to the Time Charter in the place of Waterman Steamship Corporation. NYK exercised its options to extend the Time Charter through September 2017, but has not elected to extend the Time Charter through 2019.

26. Under the Time Charter, LCI manages and operates the Green Dale at the direction of NYK in exchange for, among other things, a fee of \$15,325 per day. The Time Charter also provides for certain indemnities, security interests in cargo, and apportions other rights and responsibilities between LCI and NYK related to the operation of the Green Dale.

27. In conjunction with the sale of the Green Dale and the disposition of assets contemplated by the Debtors' confirmed Plan, the Debtors have determined, in consultation with SEACOR, that rejecting the Time Charter is in the best interests of their estates. The Plan provides that, as soon as reasonable practicable after the Effective Date, the Green Dale or the proceeds from the sale of the Green Dale are to be delivered to Citizens in satisfaction of Citizens' claims. The Debtors will therefore be unable to perform under the Time Charter. Additionally, the Time Charter can only be performed by the owner or possessor of the Green Dale and the MOA expressly calls for the sale order to provide that the Green Dale be delivered free from all charters, which provision was actively negotiated by the Debtors and Buyer. Therefore, the Debtors listed the Time Charter on their Schedule of Rejected Executory Contracts and Unexpired Leases. Pursuant to the Debtors' confirmed Plan, the Time Charter will be rejected on the Effective Date of the Plan.

28. The Plan's Effective Date will occur on the first business day on which all of the conditions set forth in section 10.2 of the Plan have been satisfied or waived, provided that such

satisfaction or waiver occurs on or before May 31, 2017. Pursuant to the MOA, the last date by which the Green Dale may be made ready for delivery is June 1, 2017.

29. To the extent that the Debtors close under the MOA prior to the Plan's Effective Date, the Debtors seek the authority to reject the Time Charter as of date of the closing under the MOA. The Debtors believe that this additional flexibility will aid in completion of the multiple transactions contemplated under the Plan and accrue to the benefit of their creditors. NYK has consented to this relief.

D. Payment of the Brokers' Fees

(i) Retention of the Brokers Pursuant to the Brokers Retention Order

30. As more fully described in the *Debtors' Application for Entry of an Order (I) Authorizing the Employment and Retention of (a) H Clarkson & Company Limited and (b) Jacq. Pierot Jr. & Sons Inc. as Brokers for the Debtors and Debtors in Possession, (II) Waiving Certain Time-Keeping Requirements Pursuant to Local Rule 2016-1, and (III) Granting Related Relief* [ECF No. 522] (the "Brokers Retention Application"), the Debtors retained Clarksons Platou and Pierot to effectuate the sale of the Green Dale. The Debtors sought the retention of the Brokers on the strength of their individual qualifications and the potential of joint representation to leverage the Brokers' relative strengths and separate networks to receive a higher and better offer than otherwise possible.

31. The Brokers Retention Order approved compensation for Clarksons Platou and Pierot according to Bankruptcy Code section 328(a) on the terms and conditions set forth in the agreement annexed to the order as Exhibit 1 thereto (the "Brokerage Agreement") and as set forth in the Brokers Retention Application. Section 2.8 of the Brokerage Agreement provides:

In relation to the sale of the Vessel the Company shall, subject to the approval by the Bankruptcy Court, pay Clarksons Platou and Pierot a total commission of One and One Half per cent (1.50%) of

the gross sale price in immediately available funds within three (3) banking days in New York following payment of the sale price under the MOA (the "Fee"), which Fee shall be paid in way of 1.0% to the Broker successful in negotiating the Sale of the Vessel with the remaining 0.50% being payable to the other Broker.

Additionally, the Brokerage Agreement provides for reimbursement of “reasonable, documented, travel and hotel expenses” of the Brokers in connection with the provision of testimony or other evidence regarding the services provided under the Brokerage Agreement. As described in paragraph 19 of the Brokers Retention Application, such payments were to be requested through any subsequent motion for authority to sell the Green Dale.

32. The Brokers Retention Order (i) obviated the requirement for the Brokers to maintain or provide detailed time records in accordance with Bankruptcy Rule 2016(a), Local Bankruptcy Rule 2016-1, and the United States Trustee Fee Guidelines and (ii) provided that the Brokers’ compensation would be subject to the standard of review provided in Bankruptcy Code section 328(a) and, except upon the objection of the U.S. Trustee, not subject to any other standard of review under Bankruptcy Code section 330.

(ii) *Pierot’s Efforts to Effectuate the Sale of the Green Dale*

33. Pierot identified and contacted approximately 20 car carrying companies and approximately 600 ship brokers and 100 ship owners of all types from Pierot’s existing professional network as potential buyers for the Green Dale. Pierot contacted all such parties through emails containing an outline of the Green Dale, the availability of the vessel for survey, and additional descriptive material providing in-depth technical specifications of the vessel, its capabilities, and its features. Additionally, Pierot contacted certain parties that Pierot evaluated to be particularly likely to have an interest in the vessel via telephone regarding the Green Dale. Pierot provided all contacted parties periodic updates regarding the Green Dale’s availability and itinerary for inspection.

34. As the result of these efforts, Pierot received communications from eleven (11) potential buyers regarding the Green Dale, including the Buyer, which had already been contacted previously by Clarksons Platou and ultimately made the offer for the Green Dale reflected in the MOA. Among the other potential buyers with which Pierot established communications, (a) one potential buyer indicated an intent to review a survey prepared by a third party, but ultimately decided not to make an offer; (b) one potential buyer continues to evaluate the Green Dale's suitability for conversion; (c) two potential buyers remain interested in purchasing the vessel for recycling value but did not make an offer pending other sale efforts; and (d) six potential purchasers determined that the Green Dale did not suit their purposes after expressing varying levels of initial interest. Pierot has kept the buyers and brokers who showed any potential interest in the vessels fully apprised of the Green Dale's movements and overall commercial status.

35. In addition to marketing the Green Dale, and the efforts of Clarksons Platou, Pierot professionals assisted the Debtors in the negotiation of the MOA. Pierot provided comments on each term of the negotiations as well as detailed written suggestions regarding essential business terms of the agreement. Throughout the negotiation process, Pierot professionals maintained frequent communication with the Debtors to obtain the highest purchase price for the Green Dale at the most favorable terms attainable.

36. Although, pursuant to the Brokers Retention Order, Pierot has not maintained detailed time records related to its provision of services under the Brokerage Agreement, as set forth in the Pierot Declaration, Pierot professionals expended considerable time and effort to effectuate the sale of the Green Dale.

(iii) *Clarksons Platou's Efforts to Effectuate the Sale of the Green Dale*

37. Clarksons Platou identified and contacted in excess of 30 owners, operators and charterers actively involved in the car carrier market, as well as the ship owners, operators and brokers on Clarksons Platou's distribution lists. Clarksons Platou contacted all such parties through emails containing an outline of the Green Dale and the availability of the vessel for survey, with a note that further details were available on request. Additionally, Clarksons Platou conducted meetings and discussions with owners, operators, and charterers, including during trips to Japan, Korea, and China.

38. As the result of these efforts, Clarksons Platou received various indications of interest which led to two (2) surveys of the vessel arranged by the Clarksons Platou, including by the Buyer. The Buyer's interest ultimately led to the offer reflected in the MOA.

39. At the direction of the Debtors, Clarksons Platou took primary responsibility for negotiating the MOA. In fulfilling this role, Clarksons Platou was the primary channel of communication between the Debtors and the Buyer and advised the Debtors of the business terms of the MOA. The Debtors therefore believe that Clarksons Platou is the broker successful in negotiating the Sale of the Green Dale under the Brokerage Agreement.

(iv) *The Compensation Owed Pursuant to the Brokerage Agreement*

40. Both Pierot and Clarksons Platou engaged in significant marketing efforts aimed at effectuating the sale of the Green Dale at the highest attainable price and under the most favorable terms, ultimately resulting in successfully negotiating the sale of the Green Dale under the terms of the MOA. Pursuant to the Brokers Retention Order and the Brokerage Agreement, the Debtors believe that Pierot will be entitled to \$34,000 in professional fees and \$0 in expenses (collectively, the "Pierot Compensation") and Clarksons Platou will be entitled to \$68,000 in professional fees and \$0 in expenses (collectively, the "Clarksons Platou Compensation") within

three (3) days of the closing under the MOA. To the extent that additional expenses are incurred in connection with a hearing on this motion, the Debtors will provide notice of such amounts at or prior to such hearing.

41. The Debtors believe that the Brokerage Agreement has proven provident and that the professional fees thereunder are reasonable in light of the services provided by the Brokers, the customary compensation charged by vessel brokers, and the results obtained. Further, the Debtors believe that any expenses under the Brokerage Agreement incurred in connection with providing testimony at the hearing on this motion will be actual and necessary.

(v) *Additional Disclosures of Clarksons Platou and Pierot*

42. During the course of negotiating the MOA, Pierot offered to act as the escrow agent (the "Escrow Agent") for the good-faith deposit to be provided by the Buyers when the Debtors and the Buyer could not agree on a suitable alternative. Eventually, the Debtors and the Buyer agreed for Pierot to serve as Escrow Agent as described in the MOA, and that Pierot's fees in connection with the services provided as Escrow Agent would be equally divided between the Debtors and the Buyer. Pierot's fees for serving as Escrow Agent will total \$10,000, of which \$5,000 will be paid by the Debtors as a cost of closing under the MOA.

43. As attested in the Rogers Declaration and Pierot Declaration, no payments have been promised or made to Clarksons Platou or Pierot in connection with these chapter 11 cases other than those contemplated in the Brokerage Agreement and described above. Further, neither Clarksons Platou nor Pierot have any agreement or understanding for the sharing of compensation to be received in connection with these cases, other than the Brokerage Agreement.

PROPOSED MEMORANDUM OF AGREEMENT

A. Summary of Proposed MOA

44. A summary of the principal terms of the proposed MOA, a complete copy of which is attached hereto as Exhibit B, is as follows:⁸

	Description of Provision
Asset	Green Dale
Purchaser	Sallaum Lines SAL
Debtor Seller	LCI Shipholdings, Inc.
Purchase Price	\$6.8 million
Extraordinary Provisions of MOA / Sale Order	1. The Debtors do not intend on holding an auction. 2. The Debtors seek shortened notice on this motion. 3. The Proposed Order provides that the Brokers' Fees will be paid from the proceeds of the sale. 4. Order seeks relief from Bankruptcy Rule 6004(h).
Releases	Sale "as is, where is"
Other	1. The Buyer will provide a 10% good faith deposit. 2. Certain equipment owned by NYK currently used by the Green Dale will also be transferred to the Buyer pursuant to the MOA. 3. The MOA is based on NSF 2012, one of the commonly used forms for the sale and purchase of commercial vessels.

45. In addition to the transfer of the Debtors' interests in the Green Dale, and after extensive negotiations, the Buyer would also acquire certain related assets owned by NYK pursuant to the MOA. In particular, the MOA provides that the Buyer will acquire certain parts related to the "super slow steaming"⁹ equipment installed on the Green Dale and lashing

⁸ The following summary is qualified in its entirety by reference to the provisions of the MOA. In the event of any inconsistencies between the provisions of the MOA and the terms herein, the terms of the MOA shall govern.

⁹ "Super slow steaming" refers to operating a vessel at speeds below a certain threshold to reduce fuel costs.

materials. The Buyer will pay an additional \$37,391 to be delivered to NYK to acquire the super slow steaming equipment, which amount will not be included in the purchase price for purposes of calculating the fees owed to the Brokers. The lashing materials will be acquired from NYK in exchange for \$32,609 to be paid from the purchase price.

46. The Debtors have discussed the sale of the Green Dale pursuant to the MOA with Citizens, the DIP Agent, NYK, and the Committee. Citizens, the DIP Agent, and NYK have consented to the proposed sale. The Committee has taken no position.

B. Extraordinary Provisions in the MOA

47. The proposed Sale Order and the MOA contain the following items that may be considered Extraordinary Provisions under the Sale Guidelines:

- Private Sale/No Competitive Bidding: The sale of the Green Dale pursuant to the MOA does not contemplate an auction or other further competitive bidding process. As described in more detail herein, the Debtors believe that an expedited sale of the Green Dale to the Buyer provides the best opportunity to maximize value, particularly given the extensive marketing efforts the Brokers provided to secure the highest and best offer possible. The Debtors believe that any delay resulting from an auction or further bidding process risks losing the committed Buyer, would incur additional legal expenses, increasing transaction fees, and would be unlikely to achieve a higher or better offer for the Green Dale from any other potential purchaser.
- Deadlines that Effectively Limit Notice: The Debtors seek to have a hearing on this motion on shortened notice. As set forth herein, the Debtors believe that good cause exists to shorten notice so that the Buyer continues with the transaction. If the Buyer does not continue with the transaction contemplated by the MOA, the Debtors believe that they will be forced to accept a lower offer for the Green Dale.
- Use of Proceeds: The Proposed Order provides that the professional fees due and owing to the Brokers pursuant to the Brokers Retention Order will be paid from the proceeds of the sale. Citizens has consented to this treatment.
- Relief from Bankruptcy Rule 6004(h): The Debtors seek relief from the fourteen-day stay imposed by Bankruptcy Rule 6004(h) to enable closing as quickly as possible if the sale is approved.

RELIEF REQUESTED

48. By this motion, the Debtors request entry of the Proposed Order authorizing the Debtors to (i) consummate the sale of the Green Dale pursuant to the MOA free of clear of all liens, claims, and encumbrances, (ii) reject the Time Charter upon the transfer of the Green Dale to the Buyer in the event that such transfer occurs prior to the Effective Date, and (iii) pay the Clarkson Platou Compensation and the Pierot Compensation from the proceeds of the sale.

SUPPORTING AUTHORITY

A. Approval of the Sale Transaction is Warranted Pursuant to Bankruptcy Code Section 363(b)

49. The Debtors submit that application of Bankruptcy Code section 363(b) standard to sales outside of the ordinary course of a debtor's business is met here. This Court's power under Bankruptcy Code section 363 is supplemented by Bankruptcy Code section 105(a), which provides in relevant part: "[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). As set forth below, the Debtors submit they have satisfied the requirements of Bankruptcy Code sections 105 and 363 as those sections have been construed by courts in the Second Circuit.

(i) The Debtors Have a Sound Business Reason for the Sale Transaction

50. Bankruptcy Code section 363(b)(1) provides, in relevant part, that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). The use, sale, or lease of property of the estate, other than in the ordinary course of business, is authorized when there is an "articulated business justification" for the action to be taken. *See Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991) (citation omitted). When a valid business justification exists, the law vests a debtor's decision to use property out of the ordinary course of business with a strong

presumption that “in making a business decision the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the company.” *See Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (citation omitted).

51. Furthermore, Bankruptcy Code section 363(b) applies to private sales consummated in the absence of competitive bidding. *See, e.g., In re Wieboldt Stores, Inc.*, 92 B.R. 309, 312 (N.D. Ill. 1988) (“Section 363(b) is not limited to sales involving competitive bidding. Bankruptcy Rule 6004, which sets forth procedures for Section 363(b) transfers, expressly provides for private sales.”). In this District, the Sale Guidelines require that, if a debtor moves to sell assets in the absence of an auction, or if the debtor has not otherwise sought higher or better offers, the movant must state and explain why such sale is likely to maximize the sale price. *See* Sale Guidelines at ¶ I.D.3. Nonetheless, the Sale Guidelines expressly state that “[w]ith the exception of providing for such disclosure, these Guidelines do not express a preference for public over private sales as a means to maximize the sale price.” *Id.* at n.2.

52. The Debtors have articulated a clear business justification for entering into the sale transaction for the Green Dale. The Plan, which has been confirmed but has not yet been declared effective, directs the Debtors to (i) sell the Green Dale and deliver the proceeds from such sale to Citizens or (ii) deliver the Green Dale to Citizens. According to the Plan, this distribution is in full satisfaction, settlement, and release of, and in exchange for Citizens’ claim against the Debtors. To that end, the Debtors have secured, after good-faith, arm’s-length negotiations, an offer from the Buyer for the Green Dale. To date, as set forth in greater detail above, the Debtors and their professionals have engaged in sale and marketing efforts with respect to the Green Dale since the Petition Date, and concentrated on these efforts since the

retention of the Brokers. Thus the Debtors have entered into the MOA after a deliberate effort to market the Green Dale and are confident that the sale price is fair and reasonable.

53. The Debtors and the Buyer both have the relevant industry experience to competently and proficiently engage in a fair and arm's-length negotiation of the MOA. In addition, based on relevant industry knowledge, it is the Debtors' belief that there is no higher value or better use for the Green Dale than the sale to the Buyer pursuant to the MOA. The sale transaction reflected in the MOA is an implementation of the overall restructuring scheme contemplated by the Plan. The Debtors business judgment that formed the basis for the Plan, which Citizens voted in support of and the Court ultimately confirmed, forms the business judgment for the selling the Green Dale. Accordingly, it is a valid exercise of the Debtors' business judgment to seek the relief requested in the Proposed Order.

54. Moreover, Bankruptcy Rule 6004(f)(1) explicitly permits a debtor to enter into transactions outside of the ordinary course of business through private sales. As discussed above, the sale to the Buyer provides the Debtors with the best—and perhaps only—opportunity to maximize the sale price of the Green Dale and prevent the value loss associated with losing the Buyer and being forced to sell the Green Dale for a lower value. Furthermore, the Debtors believe that an auction is not warranted on account of the cost and time to conduct an auction process for the Green Dale compared to the value of the Green Dale and the current state of the secondary vessel market.

55. Courts in this District have previously approved private sales in accordance with the Sale Guidelines where the benefit of the private sale outweighs the delay and expense of conducting a public auction. *See In re Hawker Beechcraft, Inc.*, Case No. 12-11873 (SMB) (Bankr. S.D.N.Y. Nov. 29, 2012) [ECF No. 857] (authorizing private sale under Rule 6004(f)(1))

where public auction would require estate to incur substantial additional costs, but would result in no additional value to the estate); *In re Dewey & Leboeuf LLP*, 2012 Bankr. LEXIS 5116 at *17-18 (Bankr. S.D.N.Y. Nov. 1, 2012) (finding good business reason to sell assets pursuant to private sale where public sale would be more costly); *In re Chemtura Corp.*, Case No. 09-11233 (REG), 2010 Bankr. LEXIS 5349 (Bankr. S.D.N.Y. July 23, 2010) (approving private sale of debtor's business pursuant to asset purchase agreement where prior purchase right would stifle third-party interest in the business and purchaser was uniquely positioned to operate the business); *In re Sonix Med. Res. Inc.*, Case No. 09-77781 (DTE), 2010 Bankr. LEXIS 5471 (Bankr. E.D.N.Y. March 19, 2010) (authorizing private sale of debtors' assets and approving asset purchase agreement where there was substantial risk that value of assets would deteriorate if sale was not consummated and purchase agreement was best opportunity to realize value of assets on going-concern basis and avoid decline and devaluation of debtors' business); *see also In re Wieboldt Stores, Inc.*, 92 B.R. 309, 312 (N.D. Ill. 1988) ("Section 363(b) is not limited to sales involving competitive bidding. Bankruptcy Rule 6004, which sets forth procedures for Section 363(b) transfers, expressly provides for private sales."); *Palermo v. Pritam Realty, Inc. (In re Pritam Realty, Inc.)*, 233 B.R. 619 (D.P.R. 1999) (upholding bankruptcy court order approving private sale by debtor).

56. Completing the sale of the Green Dale to the Buyer pursuant to the MOA is an exercise of the Debtors sound business judgment, is permitted by the Bankruptcy Code and Bankruptcy Rules, and is in the best interests of the Debtors' estates and creditors.

(ii) *The Proposed Sale Transaction Satisfies the Requirements of Bankruptcy Code Section 363(f) for a Sale Free and Clear*

57. Bankruptcy Code section 363(f) permits a debtor to sell property free and clear of another party's interest in the property if: (a) applicable non-bankruptcy law permits such a free

and clear sale; (b) the holder of the interest consents; (c) the interest is a lien and the sale price of the property exceeds the value of all liens on the property; (d) the interest is in bona fide dispute; or (e) the holder of the interest could be compelled in a legal or equitable proceeding to accept a monetary satisfaction of its interest. *See* 11 U.S.C. § 363(f). Because Bankruptcy Code section 363(f) is stated in the disjunctive, satisfaction of any one of its five requirements will suffice to warrant approval of the proposed sale. *See Scherer v. Fed. Nat'l Mortg. Ass'n (In re Terrace Chalet Apartments, Ltd.)*, 159 B.R. 821, 825 (N.D. Ill. 1993) (holding that a sale extinguishes liens under section 363(f) as long as one of the five specified exceptions applies). The sale of the Green Dale to the Buyer free and clear of liens or other interests pursuant to the MOA is appropriate under Bankruptcy Code section 363(f).

58. The Debtors may sell the Green Dale free and clear of the interests of the DIP Lenders and Citizens pursuant to Bankruptcy Code section 363(f)(2), which provides that property of the estate may be sold free and clear of an entity's interest in the property if such entity consents. The Debtors propose to sell the Green Dale in a commercially reasonable manner and expect that the value of the proceeds from such sale will fairly reflect the value of the property sold and the DIP Agent and Citizens have consented to the sale contemplated by the MOA and the Proposed Order.

59. In addition, the Debtors may sell the Green Dale free and clear of the interests of Citizens pursuant to Bankruptcy Code section 363(f)(5), which provides that property of the estate may be sold free and clear of an entity's interest in the property if such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. Judicial or non-judicial foreclosure and enforcement actions can satisfy Bankruptcy Code section 363(f)(5) where the junior lienholder may be required to accept less than full payment on the

debt secured by the collateral. *In re Boston Generating, LLC*, 440 B.R. 302, 333 (Bankr. S.D.N.Y. 2010). In addition to any applicable state law remedies, with respect to ship mortgages and maritime liens such as the one Citizens holds against the Green Dale, 46 U.S.C. § 31326(a) provides that “when a vessel is sold by order of a district court in a civil action in rem brought to enforce a preferred mortgage lien or a maritime lien, any claim in the vessel existing on the date of sale is terminated . . . and the vessel is sold free of all those claims.” Citizens’ interest is therefore one that may therefore be satisfied by monetary satisfaction.

60. The Debtors are not aware of any entities other than Citizens and the DIP Lenders that hold a lien or other interest in the Green Dale. Nonetheless, to the extent that any other lienholder declines to object to the proposed sale transaction, that entity should be deemed to have consented to the relief sought herein, thereby satisfying Bankruptcy Code section 363(f)(2). Any entity holding liens, claims, or encumbrances on the Green Dale will receive notice of this motion and the hearing on the motion. Accordingly, all parties in interest will be given sufficient opportunity to object to the relief requested herein. Failure to object should be deemed consent. *See Futuresource LLC v. Reuters Ltd.*, 312 F.3d 281, 285-86 (7th Cir. 2002) (“It is true that the Bankruptcy Code limits the conditions under which an interest can be extinguished by a bankruptcy sale, but one of those conditions is the consent of the interest holder, and lack of objection (provided of course there is notice) counts as consent. It could not be otherwise; transaction costs would be prohibitive if everyone who might have an interest in the bankrupt’s assets had to execute a formal consent before they could be sold.”) (internal citations omitted)).

61. Furthermore, any party with an interest in the Green Dale pursuant to this motion will have the opportunity to assert a corresponding security interest in the sale proceeds received by the Debtors therefrom (with all of the Debtors’ claims, defenses and objections with respect to

the amount, validity, or priority of each such interest and the underlying liabilities expressly preserved). *See MacArthur Co. v. Johns-Manville Corp.*, 837 F.2d 89, 94 (2d Cir. 1988) (“It has long been recognized that when a debtor’s assets are disposed of free and clear of third-party interests, the third party is adequately protected if his interest is assertable against the proceeds of the disposition.”).

62. Therefore, any lienholders are adequately protected and have either consented to the sale, have the opportunity to object, or could be compelled to accept a monetary satisfaction of their interest. As such, the requirements of Bankruptcy Code section 363(f) would be satisfied for a sale of the Green Dale free and clear of all liens, claims, and encumbrances.

(iii) *The Buyer Should be Entitled to the Protections of Bankruptcy Code Section 363(m).*

63. Bankruptcy Code section 363(m) provides in relevant part that the reversal or modification on appeal of an authorization under section 363(b) of a sale or lease of property does not affect the validity of a sale or lease under such authorization to a purchaser who bought or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal. *See* 11 U.S.C. § 363(m). “Although the Bankruptcy Code does not define the meaning of ‘good-faith purchaser,’ . . . most courts have adopted a traditional equitable definition: ‘one who purchases the assets for value, in good faith and without notice of adverse claims.’” *In re Gucci*, 126 F.3d at 390 (citation omitted). The Third Circuit has held that: “[t]he requirement that a purchaser act in good faith . . . speaks to the integrity of [purchaser’s] conduct in the course of the sale proceedings.” *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 147 (3d Cir. 1986) (citation omitted). Typically, the misconduct that would destroy a purchaser’s good faith status involves “‘fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take

grossly unfair advantage of other bidders.”” *Hoese Corp. v. Vetter Corp. (In re Vetter Corp.)*, 724 F.2d 52, 56 (7th Cir. 1983) (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978) (interpreting Bankruptcy Rule 805, the precursor to section 363(m)). In addition, section 363(m) protection applies in the context of private sales. *See In re Wieboldt Stores, Inc.*, 92 B.R. at 312.

64. The Debtors submit that the sale contemplated in the MOA is an arm’s-length transaction entitled to the protections of Bankruptcy Code section 363(m). Further, the Debtors are aware of nothing suggesting fraud, collusion, or attempts to take advantage of other potential purchasers in Buyer’s offer to purchase the Green Dale.

(iv) *The Purchase Price Constitutes Reasonably Equivalent Value for the Assets Transferred.*

65. A debtor receives reasonably equivalent consideration when “the debtor’s net worth has been preserved” following a transfer of its assets. *Harrison v. N.J. Cmty. Bank (In re Jesup & Lamont, Inc.)*, 507 B.R. 452, 472 (Bankr. S.D.N.Y. 2014); *see also Mellon Bank, N.A. v. Metro Commc’ns, Inc.*, 945 F.2d 635, 646-47 (3d Cir. 1991) (“The touchstone is whether the transaction conferred realizable commercial value on the debtor reasonably equivalent to the realizable commercial value of the assets transferred.”). A finding of reasonably equivalent value does not require an exact equivalent exchange of consideration, but the benefits that a debtor receives from the transfer should approximate its costs. *Harrison*, 507 B.R. at 472 (“[I]f [the value received] approximates the value of what the debtor transferred, there will be reasonably equivalent value[.]”). Further, transactions between a debtor and a third-party on an arm’s-length basis are presumptively for reasonably equivalent value. *See Mishkin v. Ensminger (In re Adler, Coleman Clearing Corp.)*, 247 B.R. 51, 109 (Bankr. S.D.N.Y. 1999) (“[W]hen there is an arm’s-length transaction by parties that have equal knowledge, a court should not

substitute its own view of a fair market price.”) (citing *Cooper v. Ashley Comm., Inc., (In re Morris Communications NC, Inc.)*, 914 F.2d 458, 465, 474-75 (4th Cir. 1990)).

66. Here, the sale of the Green Dale constitutes an arm’s-length transaction between the Debtors and an unaffiliated third party. As set forth herein, the Debtors believe that the sale proceeds represent reasonably equivalent value for the Green Dale. The Debtors have kept Citizens, the DIP Agent, and the Committee apprised of the negotiations and analysis regarding the sale of the Green Dale.

B. The Court Should Authorize the Rejection of the Time Charter

67. Bankruptcy Code section 365(a) provides that a debtor may, subject to court approval, “reject an executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). “This provision allows a [debtor] to relieve the bankruptcy estate of burdensome agreements which have not been completely performed.” See *Stewart Title Guar. Co. v. Old Republic Nat’l Title Ins. Co.*, 83 F.3d 735, 741 (5th Cir. 1996) (citing *In re Murexco Petroleum, Inc.*, 15 F.3d 60, 62 (5th Cir. 1994)).

68. A debtor’s rejection of an executory contract or unexpired lease is governed by the business judgment standard. See *In re Old Carco LLC*, 406 B.R. 180, 193 (Bankr. S.D.N.Y. 2009) (“[T]he scope of the Court’s inquiry is limited. Under the business judgment standard, the Court must determine whether rejection will benefit the Debtors’ estates. As part of this determination, the Court must determine whether the Debtors made their decisions rationally.”); *In re Enron Corp.*, 2006 WL 898033, at *4 (Bankr. S.D.N.Y. Mar. 24, 2006) (“In determining whether to approve a [debtor’s] decision to reject such lease or contract, a court applies the ‘business judgment’ test which is met if the rejection is beneficial to the estate.”); *In re Ames Dep’t Stores, Inc.*, 306 B.R. 43, 51 (Bankr. S.D.N.Y. 2004) (“When the exercise of business judgment makes such advisable, the estate can, by rejection, be relieved of the duty of continuing

post-petition performance on a contract, and the landlord's claim for any damages arising from the rejection is a pre-petition claim for breach of contract.”). Accordingly, rejection of the Rejected Lease is appropriate if, in the Debtors’ business judgment, rejection would benefit their stakeholders and their estates. *See COR Route 5 Company, LLC v. Penn Traffic Company*, (In re Penn Traffic Co.), 524 F.3d 373, 383 (2d Cir. 2008) (“This standard rather obviously presupposes that the estate will assume a contract only where doing so will be to its economic advantage and will reject contracts whose performance would benefit the counterparty at the expense of the estate.”); *In re Stable Mews Assocs., Inc.*, 41 B.R. 594, 596 (Bankr. S.D.N.Y. 1984) (“The business judgment test provides considerably more flexibility to a [debtor]. It requires only that the [debtor] demonstrate that rejection of the [agreement] will benefit the estate.”).

69. The Debtors’ decision to reject to the Time Charter reflects the Debtors exercise of sound business judgment. The rejection of the Time Charter is an essential element of the Debtors’ proposed sale of the Green Dale and is contemplated by the Debtors’ Plan. The Debtors seek the authority to reject the Time Charter upon Closing under the MOA if such closing occurs prior to the Effective Date merely to increase the scheduling flexibility of the various transactions contemplated by the Plan.

C. The Court should Authorize the Payment of the Brokers’ Fees and Brokers Expenses upon the Closing of the MOA.

70. Bankruptcy Code section 328(a) provides, in relevant part, that debtors “with the court’s approval, may employ or authorize the employment of a professional person under section 327 . . . on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis.” 11 U.S.C. § 328(a). As noted above, the Brokers Retention Order approved compensation for Clarksons

Platou and Pierot according to Bankruptcy Code section 328(a) and on the terms and conditions set forth Brokerage Agreement and the Brokers Retention Application. The Brokers Retention Order also obviated the requirement for the brokers to maintain or provide detailed time records in accordance with Bankruptcy Rule 2016(a), Local Bankruptcy Rule 2016-1, and the United States Trustee Fee Guidelines.

71. Section 2.8 of the Brokerage Agreement provides for a total fee of 1.5% of the gross sales price of the Green Dale, with the broker successful in negotiating the sale entitled to 1% of the gross sales price and the other broker entitled to 0.5% of the gross sales price. Such payment is due within three (3) banking days after the Debtors receive the purchase price. Further, the Brokerage Agreement provides for reimbursement of “reasonable, documented, travel and hotel expenses” of the Brokers in connection with the provision of testimony or other evidence regarding the services provided under the Brokerage Agreement. As described in paragraph 19 of the Brokers Retention Application, such payments were to be requested through any subsequent motion for authority to sell the Green Dale.

72. Clarkson Platou and Pierot engaged in extensive efforts to market the Green Dale, including contacting various car carrying companies and several hundred other potential purchasers. Despite the weak secondary vessel market, these efforts, combined with the professional networks leveraged by Clarksons Platou and Pierot resulted in the Buyer’s offer reflected in the MOA with a purchase price of \$6.8 million.

73. Buyer was initially contacted by Clarksons Platou and Clarksons Platou was primarily responsible for negotiating the MOA. Pursuant to the Brokers Retention Order and the Brokerage Agreement, Clarksons Platou will therefore entitled to \$68,000 and Pierot will be entitled to \$34,000 in fees.

74. As of the date of this motion, neither Clarksons Platou nor Pierot have incurred any reimbursable expenses in connection with the Brokerage Agreement. If reimbursable expenses are incurred in connection with a hearing on this motion, the Debtors will provide evidence of such at or before such hearing.

WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h)

75. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h). Bankruptcy Rule 6004(h) provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). Time is of the essence in consummating the sale, and the Debtors and the Buyer intend to close on the sale transaction as soon as reasonably practicable. Accordingly, the Debtors respectfully request that the Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

NOTICE

76. No trustee or examiner has been appointed in the Debtors’ chapter 11 cases. The Debtors have caused notice of this application to be provided by electronic mail, facsimile, regular or overnight mail, and/or hand delivery to: (i) the U.S. Trustee; (ii) the agent under the Debtors’ post-petition debtor-in-possession financing and its counsel; (iii) the Committee and its counsel; (iv) counsel to the agents and lenders under the Debtors’ pre-petition credit facilities; (v) the U.S. Attorney’s Office for the Southern District of New York; (vi) the Internal Revenue Service; (vii) the United States Securities and Exchange Commission; (ix) all parties that have filed a request to receive service of pursuant to Bankruptcy Rule 2002; and ; (x) any party claiming an interest in the Green Dale; and (xi) all other parties on the master service list prepared and maintained pursuant to the *Order Establishing Certain Notice, Case Management,*

and Administrative Procedures [ECF No. 178]. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court (a) enter an order, substantially in the form of the Proposed Order, granting the relief requested herein, and (b) grant such other and further relief as may be just and proper.

Dated: New York, New York
April 13, 2017

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Counsel to Debtors and Debtors in Possession

EXHIBIT A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

INTERNATIONAL SHIPHOLDING
CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 16-12220 (SMB)

Jointly Administered

**ORDER AUTHORIZING THE DEBTORS TO (I) CONSUMMATE THE SALE
OF THE GREEN DALE, (II) REJECT THE TIME CHARTER, AND (III) PAY JACQ.
PIEROT JR. & SONS, INC. AND H CLARKSON & COMPANY LIMITED
COMPENSATION FOR PROFESSIONAL SERVICES RENDERED AND
REIMBURSEMENT OF ACTUAL AND NECESSARY EXPENSES INCURRED**

Upon the motion of the above-captioned debtors and debtors in possession (collectively, the “Debtors”)² for entry of this Order authorizing the Debtors to (i) consummate the sale of the Green Dale pursuant to the Memorandum of Agreement (the “MOA”) dated as of April 7, 2017, between LCI Shipholdings, Inc., and Sallaum Lines SAL free of clear of all liens, claims, and encumbrances, (ii) the Time Charter upon the transfer of the Green Dale; and (iii) remit payment to Jacq. Pierot Jr. & Sons, Inc. and H Clarkson & Company Limited for fees and any reimbursable expenses authorized pursuant to the order approving their retention to effectuate the sale of the Green Dale; and the Court having jurisdiction to consider the motion and the relief requested therein in accordance with 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the United States Southern District of New York, dated as of January 31, 2012;

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: International Shipholding Corporation (9662); Enterprise Ship Co. (9059); Sulphur Carriers, Inc. (8965); Central Gulf Lines, Inc. (8979); Coastal Carriers, Inc. (6278); Waterman Steamship Corporation (0640); N.W. Johnsen & Co., Inc. (8006); LMS Shipmanagement, Inc. (0660); U.S. United Ocean Services, LLC (1160); Mary Ann Hudson, LLC (8478); Sheila McDevitt, LLC (8380); Tower LLC (6755); Frascati Shops, Inc. (7875); Gulf South Shipping PTE LTD (8628); LCI Shipholdings, Inc. (8094); and Marco Shipping Company PTE LTD (4570). The service address for each of the above Debtors is 601 Poydras Street, Pan American Building, Suite 1850, New Orleans, Louisiana 70130.

² Capitalized terms used but not otherwise defined herein have the meanings set forth in the motion.

and consideration of the motion and the relief requested therein being a core proceeding in accordance with 28 U.S.C. §§ 157(b)(2); and venue being proper in this jurisdiction pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the motion being adequate and appropriate under the particular circumstances; and a hearing having been held to consider the relief requested in the motion; and upon the Estrada Declaration, the Pierot Declaration, the Rogers Declaration, the record of the hearing and all proceedings had before the Court; and the Court having found and determined that the relief sought in the motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest, and that the legal and factual bases set forth in the motion establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby **FOUND AND DETERMINED THAT:**

A. The transaction contemplated by the MOA constitutes the highest and best offer for the Green Dale, and will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. The Debtors' determination that the MOA constitutes the highest and best offer constitutes a valid and sound exercise of the Debtors' business judgment.

B. The MOA represents a fair and reasonable offer to purchase the Green Dale under the circumstances of these chapter 11 cases. No other person or entity or group of entities has offered to purchase the Green Dale for greater value to the Debtors' estates than the Buyer.

C. Approval of the motion and the MOA and the consummation of the transactions contemplated thereby are in the best interests of the Debtors, their creditors, their estates, and other parties in interest.

D. The terms of the MOA and the sale transaction contemplated therein are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, are the best available to the Debtors under the circumstances.

E. LCI Shipholdings, Inc., may sell the Green Dale free and clear of all liens, claims, and encumbrances because, in each case, the party asserting an interest could be compelled, in a legal or equitable proceeding, to accept money satisfaction for its interests or has consented to such sale.

F. The Debtors' decision to reject the Time Charter effective as of the closing of the MOA is an exercise of the Debtors' business judgment.

G. Jacq. Pierot Jr. & Sons, Inc. and H Clarkson & Company Limited were retained pursuant to Bankruptcy Code section 328(a) according to the terms of the Brokers Retention Order and the Brokerage Agreement, and the terms and conditions of such retention have not proven improvident in light of developments not capable of being anticipated at the time of the retention.

H. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052. To the extent that any findings of fact constitute conclusions of law, they are adopted as such. To the extent any conclusions of law constitute findings of fact, they are adopted as such.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The motion is granted to the extent set forth herein.
2. The Time Charter shall be rejected at the earlier of (i) the transfer of the Green Dale in accordance with the MOA or (ii) the Effective Date. Any party asserting a claim arising

from the rejection of the Time Charter must file proof of such within thirty (30) days of the later of (i) the transfer of the Green Dale or (ii) the Effective Date to file proof of such claim.

3. Subject to paragraph 7 of this Order, notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in this Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim against the Debtors, the creation of an administrative priority claim on account of the pre-petition obligations sought to be paid, or the assumption or adoption of any contract or agreement under Bankruptcy Code section 365.

4. The MOA, and all of the terms and conditions thereof, is hereby approved.

5. Pursuant to Bankruptcy Code sections 105(a), 363(b), and 363(f), the Debtors are authorized, and empowered to take any and all actions necessary or appropriate to consummate the sale transaction of the Green Dale with the Buyer upon the terms and subject to the conditions set forth in the MOA and this Order, without further application to, or order of, the Court.

6. Upon closing under the MOA, the Buyer shall take title to and possession of the Green Dale free and clear of all liens, claims, and encumbrances pursuant to Bankruptcy Code section 363(f).

7. Subject to paragraph 8 of this Order, and notwithstanding anything contained in the Motion, the MOA, or any other sale documents, the sale proceeds of the Green Dale transaction, less closing costs and the fees and expenses owed to H Clarkson & Company Limited and Jacq. Pierot Jr. & Sons, Inc. pursuant to the Brokerage Agreement (the “Brokers’ Compensation”), shall be held in a segregated account of the Debtors, and any and all liens and/or security interests against the Green Dale shall attach to such proceeds in the same priority

as the liens and/or security interests against the Green Dale (including, for the avoidance of doubt, as such priority is set forth in the Final DIP Order), and such proceeds shall only be released (i) pursuant to the terms of the Plan or (ii) upon further order of the Bankruptcy Court authorizing the withdrawal of such funds, free and clear of all liens and encumbrances.

8. The Debtors admit, acknowledge, stipulate and agree that upon closing of the MOA, Citizens will have a valid, perfected, binding, non-avoidable, and enforceable first priority security interest in, and liens on, the proceeds from the sale transaction contemplated under the MOA, subject only to the priming lien of the DIP Lenders and the payment of the Brokers' Compensation.

9. Except as expressly permitted or otherwise specifically provided in this Order, all persons or entities holding liens, claims, or encumbrances on all or any portion of the Green Dale arising under or out of, in connection with, or in any way relating to the Debtors, the Green Dale, the operation of the Debtors' business prior to the closing of the Green Dale sale transaction, or the transfer of the Green Dale to the Buyer, hereby are forever barred, estopped, and permanently enjoined from asserting against the Buyer, its successors or assigns, or their property, such persons' or entities' liens, claims, and encumbrances in and to the Green Dale.

10. The provisions of this Order authorizing the sale of the Green Dale by the Debtors free and clear of liens, claims, and encumbrances shall be self-executing, and none of the Debtors, the Buyer, or any other party shall be required to execute or file releases, termination statements, assignments, cancellations, consents or other instruments to effectuate, consummate, and/or implement the provisions hereof with respect to the sale; *provided, however*, that this paragraph shall not excuse such parties from performing any and all of their respective obligations under the MOA or as otherwise set forth in this Order or requested by Buyer.

11. Without limiting the foregoing, upon consummation of the transactions set forth in the MOA, the Buyer shall be authorized to file termination statements or lien terminations in any required jurisdiction to remove any record, notice filing, or financing statement recorded to attach, perfect, or otherwise notice any lien or encumbrance with respect to the Green Dale (but not the proceeds thereof) that is extinguished or otherwise released pursuant to this Order under section 363 and the related provisions of the Bankruptcy Code. A certified copy of this Order may be filed with the appropriate clerk and/or recorded to act to cancel any of the liens, claims, and encumbrances on the Green Dale of record.

12. This Order is and shall be binding upon and govern the acts of all persons and entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials and all other persons or entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by MOA; provided that nothing herein shall relieve any entity of the obligation to pay filing fees required to be paid under non-bankruptcy law.

13. If any person or entity which has filed statements or other documents or agreements evidencing liens, claims, and encumbrances on, interests in, all or a portion of the Green Dale shall not have delivered to the Debtors prior to the closing of the MOA, in proper form for filing and executed by appropriate parties, termination statements, instruments of

satisfaction, releases of liens and easements, and any other documents necessary or desirable to the Buyer for the purpose of documenting the release of all liens, claims, and encumbrances on the Green Dale, which the person or entity has or may assert with respect to all or any portion of the Green Dale, the Debtors are hereby authorized and directed, and the Buyer is hereby authorized, to execute and file such statements, instruments, releases, and other documents on behalf of such person or entity with respect to the Green Dale.

14. The Buyer is purchasing the Green Dale in good faith and is a good faith buyer within the meaning of Bankruptcy Code section 363(m), and is therefore entitled to the full protection of that provision, and otherwise has proceeded in good faith in all respects in connection with this proceeding in that, *inter alia*: (i) all agreements or arrangements entered into by the Buyer in connection with the sale transaction have been disclosed; (ii) the Buyer has not violated Bankruptcy Code section 363(n) by any action or inaction; and (iii) the negotiation and execution of the MOA was at arms' length and in good faith.

15. In the absence of a stay pending appeal, the Buyer will be acting in good faith pursuant to Bankruptcy Code section 363(m) in closing the transaction contemplated by the MOA, at any time on or after entry of this Order in accordance with the MOA.

16. Upon closing under the MOA, the Debtors are authorized to pay from the proceeds of the sale (i) Jacq. Pierot Jr. & Sons, Inc. \$34,000 in fees and \$0 in expenses and (ii) H Clarkson & Company Limited \$68,000 in fees and \$0 in expenses.

17. Notice of the motion as provided herein was good and sufficient and such notice satisfies the requirements of Bankruptcy Rules 6004(a) and 6006(c) and the Local Bankruptcy Rules.

18. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), this order shall be immediately effective and enforceable upon its entry.

19. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this order.

20. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this order.

New York, New York

Dated: _____, 2017

United States Bankruptcy Judge

EXHIBIT B

Memorandum of Agreement

MEMORANDUM OF AGREEMENT

Norwegian Shipbrokers' Association's
Memorandum of Agreement for sale and
purchase of ships. Adopted by BIMCO in 1966.
Code-name
SALEFORM 2012
Revised 1966, 1983 and 1986/87, 1993 and 2012

Dated: 7th April 2017 1

LCI Shipholdings, Inc., Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall 2
Islands MH 96960 (Name of sellers), hereinafter called the "Sellers", have agreed to sell, and
Sallaum Lines SAL or nominee (nominee to be fully owned entity controlled by the Sallaum Group of 3
companies) (Name of buyers), hereinafter called the "Buyers", have agreed to buy:
Name of vessel: M/V Green Dale 4
IMO Number: 9181376 5
Classification Society: ABS 6
Class Notation: A1, AMS, ACCU 7
Year of Build: 1999 Builder/Yard: Kanasashi Co. Ltd. Toyohashi Works 8
Flag: Marshall Island Place of Registration: Majuro GT/NT/LDT: 50,087/15,027/13,298 (see Appendix 9
No.1 & Appendix No.2)

hereinafter called the "Vessel", on the following terms and conditions: 10

Definitions 11

"Banking Days" are days on which banks are open both in the country of the currency stipulated for 12
the Purchase Price in Clause 1 (Purchase Price) and in the place of closing stipulated in Clause 8 13
(Documentation) and **Switzerland, Lebanon, Dubai** (add additional jurisdictions as appropriate). 14

"Buyers' Nominated Flag State" means **Panama** (state flag state). 15

"Class" means the class notation referred to above. 16

"Classification Society" means the Society referred to above. 17

"Deposit" shall have the meaning given in Clause 2 (Deposit) 18

"Deposit Holder" means **JACQ. PIEROT JR. & SONS, INC. New York as Escrow Agent** (state name and 19
location of Deposit Holder) or, if left blank, the
Sellers' Bank, which shall hold and release the Deposit in accordance with this Agreement. 20

"In writing" or "written" means a letter handed over from the Sellers to the Buyers or vice versa, a 21
registered letter, e-mail or telefax. 22

"Parties" means the Sellers and the Buyers. 23

"Purchase Price" means the price for the Vessel as stated in Clause 1 (Purchase Price). 24

"Sellers' Account" means **SWIFT: UPNBUS44; ABA: 062005690; Account: 0114791080** (state details of 25
bank account) at the Sellers' Bank.

"Sellers' Bank" means **Regions Bank** (state name of bank, branch and details) or, if left blank, the bank 26
notified by the Sellers to the Buyers for receipt of the balance of the Purchase Price. 27

1. Purchase Price 28
The Purchase Price is **USD 6,800,000 (United States Dollars Six Million Eight Hundred Thousand** 29
(state currency and amount both in words and figures).

2. Deposit 30
As security for the correct fulfilment of this Agreement the Buyers shall lodge a deposit of 31
10% (ten per cent) or, if left blank, 40% (ten per cent), of the Purchase Price (the 32
"Deposit") in an interest bearing account for the Parties with the Deposit Holder within three (3) 33
Banking Days after the date that: 34

(i) this Agreement has been signed by the Parties and exchanged in original or by 35
e-mail or telefax; and 36

(ii) the Deposit Holder has confirmed in writing to the Parties that the account has been 37

This document is a computer generated SALEFORM 2012 form printed by authority of the Norwegian Shipbrokers' Association. Any insertion or deletion to the form must be clearly visible. In the event of any modification made to the pre-printed text of this document which is not clearly visible, the text of the original approved document shall apply. BIMCO and the Norwegian Shipbrokers' Association assume no responsibility for any loss, damage or expense as a result of discrepancies between the original approved document and this computer generated document.

Handwritten signature

Handwritten signature

Explanatory Notes for SALEFORM 2012 are available from BIMCO at www.bimco.org

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Published by Norwegian Shipbrokers' Association, Oslo and BIMCO, Copenhagen

- opened. 38
- The Deposit shall be released in accordance with joint written instructions of the Parties. 39
Interest, if any, shall be credited to the Buyers. Any fee charged for holding and releasing the 40
Deposit shall be borne equally by the Parties. The Parties shall provide to the Deposit Holder 41
all necessary documentation to open and maintain the account without delay. 42
3. **Payment** 43
- On delivery of the Vessel, but not later than three (3) Banking Days after the date that Notice of 44
Readiness has been given in accordance with Clause 5 (Time and place of delivery and 45
notices): 46
- (i) the Deposit shall be released to the Sellers; and 47
- (ii) the balance of the Purchase Price and all other sums payable on delivery by the Buyers 48
to the Sellers under this Agreement shall be paid in full free of bank charges to the 49
Sellers' Account. 50
4. **Inspection** 51
- (a)* The Buyers have inspected and accepted the Vessel's classification records. The Buyers 52
have also inspected the Vessel at/in **Freeport, Bahamas** (state place) on **8th February 2017** (state 53
date) and have 54
accepted the Vessel following this inspection and the sale is outright and definite, subject only 55
to the terms and conditions of this Agreement.
- ~~(b)* The Buyers shall have the right to inspect the Vessel's classification records and declare 56
whether same are accepted or not within _____ (state date/period). 57~~
- ~~The Sellers shall make the Vessel available for inspection at/in _____ (state place/range) within 58
_____ (state date/period). 59~~
- ~~The Buyers shall undertake the inspection without undue delay to the Vessel. Should the 60
Buyers cause undue delay they shall compensate the Sellers for the losses thereby incurred. 61~~
- ~~The Buyers shall inspect the Vessel without opening up and without cost to the Sellers. 62~~
- ~~During the inspection, the Vessel's deck and engine log books shall be made available for 63
examination by the Buyers. 64~~
- ~~The sale shall become outright and definite, subject only to the terms and conditions of this 65
Agreement, provided that the Sellers receive written notice of acceptance of the Vessel from 66
the Buyers within seventy-two (72) hours after completion of such inspection or after the 67
date/last day of the period stated in Line 59, whichever is earlier. 68~~
- ~~Should the Buyers fail to undertake the inspection as scheduled and/or notice of acceptance of 69
the Vessel's classification records and/or of the Vessel not be received by the Sellers as 70
aforesaid, the Deposit together with interest earned, if any, shall be released immediately to the 71
Buyers, whereafter this Agreement shall be null and void. 72~~
- ~~*4(a) and 4(b) are alternatives; delete whichever is not applicable. In the absence of deletions, 73
alternative 4(a) shall apply. 74~~
5. **Time and place of delivery and notices** 75
- (a) The Vessel shall be delivered and taken over safely afloat at a safe and accessible berth or 76
anchorage at/in **Jacksonville, Florida** (state place/range) in the Sellers' option. 77
- Notice of Readiness shall not be tendered before: **1st April 2017** (date) 78
- Cancelling Date (see Clauses 5(c), 6 (a)(i), 6 (a) (iii) and 14): **1st June 2017** 79
- (b) The Sellers shall keep the Buyers well informed of the Vessel's itinerary and shall 80
provide the Buyers with **thirty (30) days approximate notice** and twenty (20), ten (10), five (5) and 81
three (3) days' notice of the date the 82
Sellers intend to tender Notice of Readiness and of the intended place of delivery.
- When the Vessel is at the place of delivery and physically ready for delivery in accordance with 83
this Agreement, the Sellers shall give the Buyers a written Notice of Readiness for delivery. 84
- (c) If the Sellers anticipate that, notwithstanding the exercise of due diligence by them, the 85
Vessel will not be ready for delivery by the Cancelling Date they may notify the Buyers in writing 86
stating the date when they anticipate that the Vessel will be ready for delivery and proposing a 87
new Cancelling Date. Upon receipt of such notification the Buyers shall have the option of 88
either cancelling this Agreement in accordance with Clause 14 (Sellers' Default) within three (3) 89

Banking Days of receipt of the notice or of accepting the new date as the new Cancelling Date.	90
If the Buyers have not declared their option within three (3) Banking Days of receipt of the	91
Sellers' notification or if the Buyers accept the new date, the date proposed in the Sellers'	92
notification shall be deemed to be the new Cancelling Date and shall be substituted for the	93
Cancelling Date stipulated in <u>line 79</u> .	94
If this Agreement is maintained with the new Cancelling Date all other terms and conditions	95
hereof including those contained in <u>Clauses 5(b)</u> and <u>5(d)</u> shall remain unaltered and in full	96
force and effect.	97
(d) Cancellation, failure to cancel or acceptance of the new Cancelling Date shall be entirely	98
without prejudice to any claim for damages the Buyers may have under <u>Clause 14</u> (Sellers'	99
Default) for the Vessel not being ready by the original Cancelling Date.	100
(e) Should the Vessel become an actual, constructive or compromised total loss before delivery	101
the Deposit together with interest earned, if any, shall be released immediately to the Buyers	102
net of any bank fees, whereafter this Agreement shall be null and void.	103
6. Divers Inspection / Drydocking	104
(a)*	105
(i) The Buyers shall have the option at their cost and expense to arrange for an underwater	106
inspection by a diver approved by the Classification Society prior to the delivery of the	107
Vessel. Such option shall be declared latest nine (9) days prior to the Vessel's intended	108
date of readiness for delivery as notified by the Sellers pursuant to <u>Clause 5(b)</u> of this	109
Agreement. The Sellers shall at their cost and expense make the Vessel available for	110
such inspection. This inspection shall be carried out without undue delay and in the	111
presence of a Classification Society surveyor arranged for by the Sellers and paid for by	112
the Buyers. The Buyers' representative(s) shall have the right to be present at the diver's	113
inspection as observer(s) only without interfering with the work or decisions of the	114
Classification Society surveyor. The extent of the inspection and the conditions under	115
which it is performed shall be to the satisfaction of the Classification Society. If the	116
conditions at the place of delivery are unsuitable for such inspection, the Sellers shall at	117
their cost and expense make the Vessel available at a suitable alternative place near to	118
the delivery port, in which event the Cancelling Date shall be extended by the additional	119
time required for such positioning and the subsequent re-positioning. The Sellers may	120
not tender Notice of Readiness prior to completion of the underwater inspection.	121
(ii) If the rudder, propeller, bottom or other underwater parts below the deepest load line are	122
found broken, damaged or defective so as to affect the Vessel's class, then (1) unless	123
repairs can be carried out afloat to the satisfaction of the Classification Society, the	124
Sellers shall arrange for the Vessel to be drydocked at their expense for inspection by	125
the Classification Society of the Vessel's underwater parts below the deepest load line,	126
the extent of the inspection being in accordance with the Classification Society's rules (2)	127
such defects shall be made good by the Sellers at their cost and expense to the	128
satisfaction of the Classification Society without condition/recommendation** and (3) the	129
Sellers shall pay for the underwater inspection and the Classification Society's	130
attendance.	131
Notwithstanding anything to the contrary in this Agreement, if the Classification Society	132
do not require the aforementioned defects to be rectified before the next class	133
drydocking survey, the Sellers shall be entitled to deliver the Vessel with these defects	134
against a deduction from the Purchase Price of the estimated direct cost (of labour and	135
materials) of carrying out the repairs to the satisfaction of the Classification Society,	136
whereafter the Buyers shall have no further rights whatsoever in respect of the defects	137
and/or repairs. The estimated direct cost of the repairs shall be the average of quotes	138
for the repair work obtained from two reputable independent shipyards at or in the	139
vicinity of the port of delivery, one to be obtained by each of the Parties within two (2)	140
Banking Days from the date of the imposition of the condition/recommendation, unless	141
the Parties agree otherwise. Should either of the Parties fail to obtain such a quote within	142
the stipulated time then the quote duly obtained by the other Party shall be the sole basis	143
for the estimate of the direct repair costs. The Sellers may not tender Notice of	144
Readiness prior to such estimate having been established.	145
(iii) If the Vessel is to be drydocked pursuant to <u>Clause 5(a)(ii)</u> and no suitable dry-docking	146
facilities are available at the port of delivery, the Sellers shall take the Vessel to a port	147
where suitable drydocking facilities are available, whether within or outside the delivery	148
range as per <u>Clause 5(a)</u> . Once drydocking has taken place the Sellers shall deliver the	149
Vessel at a port within the delivery range as per <u>Clause 5(a)</u> which shall, for the purpose	150
of this Clause, become the new port of delivery. In such event the Cancelling Date shall	151

- be extended by the additional time required for the drydocking and extra steaming, but limited to a maximum of fourteen (14) days.
- (b)* The Sellers shall place the Vessel in drydock at the port of delivery for inspection by the Classification Society of the Vessel's underwater parts below the deepest load line, the extent of the inspection being in accordance with the Classification Society's rules. If the rudder, propeller, bottom or other underwater parts below the deepest load line are found broken, damaged or defective so as to affect the Vessel's class, such defects shall be made good at the Sellers' cost and expense to the satisfaction of the Classification Society without condition/recommendation**. In such event the Sellers are also to pay for the costs and expenses in connection with putting the Vessel in and taking her out of drydock, including the drydock dues and the Classification Society's fees. The Sellers shall also pay for these costs and expenses if parts of the tailshaft system are condemned or found defective or broken so as to affect the Vessel's class. In all other cases, the Buyers shall pay the aforesaid costs and expenses, dues and fees.
- (c) If the Vessel is drydocked pursuant to Clause 6 (a)(ii) or 6 (b) above:
- (i) The Classification Society may require survey of the tailshaft system, the extent of the survey being to the satisfaction of the Classification surveyor. If such survey is not required by the Classification Society, the Buyers shall have the option to require the tailshaft to be drawn and surveyed by the Classification Society, the extent of the survey being in accordance with the Classification Society's rules for tailshaft survey and consistent with the current stage of the Vessel's survey cycle. The Buyers shall declare whether they require the tailshaft to be drawn and surveyed not later than by the completion of the inspection by the Classification Society. The drawing and refitting of the tailshaft shall be arranged by the Sellers. Should any parts of the tailshaft system be condemned or found defective so as to affect the Vessel's class, those parts shall be renewed or made good at the Sellers' cost and expense to the satisfaction of Classification Society without condition/recommendation**.
- (ii) The costs and expenses relating to the survey of the tailshaft system shall be borne by the Buyers unless the Classification Society requires such survey to be carried out or if parts of the system are condemned or found defective or broken so as to affect the Vessel's class, in which case the Sellers shall pay these costs and expenses.
- (iii) The Buyers' representative(s) shall have the right to be present in the drydock, as observer(s) only without interfering with the work or decisions of the Classification Society surveyor.
- (iv) The Buyers shall have the right to have the underwater parts of the Vessel cleaned and painted at their risk, cost and expense without interfering with the Sellers' or the Classification Society surveyor's work, if any, and without affecting the Vessel's timely delivery. If, however, the Buyers' work in drydock is still in progress when the Sellers have completed the work which the Sellers are required to do, the additional docking time needed to complete the Buyers' work shall be for the Buyers' risk, cost and expense. In the event that the Buyers' work requires such additional time, the Sellers may upon completion of the Sellers' work tender Notice of Readiness for delivery whilst the Vessel is still in drydock and, notwithstanding Clause 5(a), the Buyers shall be obliged to take delivery in accordance with Clause 3 (Payment), whether the Vessel is in drydock or not.
- *6 (a) and 6 (b) are alternatives; delete whichever is not applicable. In the absence of deletions, alternative 6 (a) shall apply.
- **Notes or memoranda, if any, in the surveyor's report which are accepted by the Classification Society without condition/recommendation are not to be taken into account.
- 7. Spares, bunkers and other items**
- The Sellers shall deliver the Vessel to the Buyers with everything belonging to her on board and on shore. All spare parts and spare equipment including spare tail-end shaft(s) and/or spare propeller(s)/propeller blade(s), if any, belonging to the Vessel at the time of inspection used or unused, whether on board or not shall become the Buyers' property, but spares on order are excluded. Forwarding charges, if any, shall be for the Buyers' account. The Sellers are not required to replace spare parts including spare tail-end shaft(s) and spare propeller(s)/propeller blade(s) which are taken out of spare and used as replacement prior to delivery, but the replaced items shall be the property of the Buyers. Unused stores and provisions shall be included in the sale and be taken over by the Buyers without extra payment.
- Library and forms exclusively for use in the Sellers' vessel(s) and captain's, officers' and crew's personal belongings including the slop chest are excluded from the sale without compensation.

26

19

as well as the following additional items: _____ (include list) 213

Items on board which are on hire or owned by third parties, listed as follows, are excluded from the sale without compensation: (include list) 214
215

Gas bottles Unitor

O-5 6 cyl

A-5 5 cyl

O-40 5 cyl

A-40 3 cyl

N-50 1 cyl

R-56 6 cyl

R-12 2 cyl

Life rafts Viking (4 x 25DK) + (1 x 6DK).

FBB equipment Stratos - Sailor FB500 1 unit

On board training videos Videotel 1 unit.

Manuals as listed in Appendix No.3 are not included in the sale.

The super slow steaming equipment (blowers and valves) belonging to NYK shall be included in the sale at an additional cost of Usd USD 37,391.

Lashing material as listed in Appendix No.4 is included in the sale at no additional cost.

Items on board at the time of inspection which are on hire or owned by third parties, not listed above, shall be replaced or procured by the Sellers prior to delivery at their cost and expense. 216
217

The Buyers shall take over remaining bunkers and unused lubricating and hydraulic oils and greases in storage tanks and unopened drums and pay either: 218
219

(a) *the actual net price (excluding barging expenses) as evidenced by invoices or vouchers; or 220

(b) *the current net market price (excluding barging expenses) at the port and date of delivery of the Vessel or, if unavailable, at the nearest bunkering port. 221
222

for the quantities taken over. 223

Payment under this Clause shall be made at the same time and place and in the same currency as the Purchase Price, except minor differences between estimated and actual bunkers on board on delivery (in favour of Sellers or Buyers) to be adjusted within 5 banking days after closing. 224
225

"inspection" in this Clause 7, shall mean the Buyers' inspection according to Clause 4(a) or 4(b) (Inspection), if applicable. If the Vessel is taken over without inspection, the date of this Agreement shall be the relevant date. 226
227
228

~~*(a) and (b) are alternatives, delete whichever is not applicable. In the absence of deletions alternative (a) shall apply.~~ 229
230

8. Documentation 231

The place of closing: New York 232

(a) In exchange for payment of the Purchase Price the Sellers shall provide the Buyers with the following delivery documents: 233
234

(i) Legal Bill(s) of Sale in a form recordable in the Buyers' Nominated Flag State, transferring title of the Vessel and acknowledging that in accordance with the Sale Order, stating that the Vessel is free from all mortgages, encumbrances and maritime liens or any other debts whatsoever, duly notarially attested and legalised or apostilled, as required by the Buyers' Nominated Flag State; 235
236
237
238

(ii) Evidence that all necessary corporate, shareholder and other action has been taken by the Sellers to authorise the execution, delivery and performance of this Agreement; 239
240

(iii) Power of Attorney of the Sellers appointing one or more representatives to act on behalf of the Sellers in the performance of this Agreement, duly notarially attested and legalised or apostilled (as appropriate); 241
242
243

(iv) Certificate or Transcript of Registry issued by the competent authorities of the flag state on the date of delivery evidencing the Sellers' ownership of the Vessel and that the Vessel is free from registered encumbrances and mortgages, to be faxed or e-mailed by 244
245
246

such authority to the closing meeting with the original to be sent to the Buyers as soon as possible after delivery of the Vessel;	247 248
(v) Declaration of Class or (depending on the Classification Society) a Class Maintenance Certificate issued within three (3) Banking Days prior to delivery confirming that the Vessel is in Class free of condition/recommendation;	249 250 251
(vi) Certificate of Deletion of the Vessel from the Vessel's registry or other official evidence of deletion appropriate to the Vessel's registry at the time of delivery, or, in the event that the registry does not as a matter of practice issue such documentation immediately, a written undertaking by the Sellers to effect deletion from the Vessel's registry forthwith and provide a certificate or other official evidence of deletion to the Buyers promptly and latest within four (4) weeks after the Purchase Price has been paid and the Vessel has been delivered;	252 253 254 255 256 257 258
(vii) A copy of the Vessel's Continuous Synopsis Record certifying the date on which the Vessel ceased to be registered with the Vessel's registry, or, in the event that the registry does not as a matter of practice issue such certificate immediately, a written undertaking from the Sellers to provide the copy of this certificate promptly upon it being issued together with evidence of submission by the Sellers of a duly executed Form 2 stating the date on which the Vessel shall cease to be registered with the Vessel's registry;	259 260 261 262 263 264
(viii) Commercial Invoice for the Vessel;	265
(ix) Commercial Invoice(s) for bunkers, lubricating and hydraulic oils and greases; and super slow steaming equipment.	266
(x) A copy of the Sellers' letter to their satellite communication provider cancelling the Vessel's communications contract which is to be sent immediately after delivery of the Vessel;	267 268 269
(xi) Any additional documents as may reasonably be required by the competent authorities of the Buyers' Nominated Flag State for the purpose of registering the Vessel, provided the Buyers notify the Sellers of any such documents as soon as possible after the date of this Agreement; and	270 271 272 273
(xii) The Sellers' letter of confirmation that to the best of their knowledge, the Vessel is not black listed by any nation or international organisation.	274 275
(b) At the time of delivery the Buyers shall provide the Sellers with:	276
(i) Evidence that all necessary corporate, shareholder and other action has been taken by the Buyers to authorise the execution, delivery and performance of this Agreement; and	277 278
(ii) Power of Attorney of the Buyers appointing one or more representatives to act on behalf of the Buyers in the performance of this Agreement, duly notarially attested and legalised or apostilled (as appropriate).	279 280 281
(c) If any of the documents listed in Sub-clauses (a) and (b) above are not in the English language they shall be accompanied by an English translation by an authorised translator or certified by a lawyer qualified to practice in the country of the translated language.	282 283 284
(d) The Parties shall to the extent possible exchange copies, drafts or samples of the documents listed in Sub-clause (a) and Sub-clause (b) above for review and comment by the other party not later than _____ (state number of days), or if left blank, nine (9) days prior to the Vessel's intended date of readiness for delivery as notified by the Sellers pursuant to <u>Clause 5(b)</u> of this Agreement.	285 286 287 288 289
(e) Concurrent with the exchange of documents in Sub-clause (a) and Sub-clause (b) above, the Sellers shall also hand to the Buyers the classification certificate(s) as well as all plans, drawings and manuals, (excluding ISM/ISPS manuals), which are on board the Vessel. Other certificates which are on board the Vessel shall also be handed over to the Buyers unless the Sellers are required to retain same, in which case the Buyers have the right to take copies.	290 291 292 293 294
(f) Other technical documentation which may be in the Sellers' possession shall promptly after delivery be forwarded to the Buyers at their expense, if they so request. The Sellers may keep the Vessel's log books but the Buyers have the right to take copies of same.	295 296 297
(g) The Parties shall sign and deliver to each other a Protocol of Delivery and Acceptance confirming the date and time of delivery of the Vessel from the Sellers to the Buyers.	298 299
9. Encumbrances	300

The Sellers "Sale Order" shall provide warrant that the Vessel, at the time of delivery, is free from all 301
charters,
encumbrances, mortgages and maritime liens or any other debts whatsoever, and is not subject 302
to Port State or other administrative detentions or any claim. The Sellers hereby undertake to indemnify 303
the
Buyers against all consequences of claims made against the Vessel which have been incurred 304
prior to the time of delivery. 305

10. Taxes, fees and expenses 306

Any taxes, fees and expenses in connection with the purchase and registration in the Buyers' 307
Nominated Flag State shall be for the Buyers' account, whereas similar charges in connection 308
with the closing of the Sellers' register shall be for the Sellers' account. 309

11. Condition on delivery 310

The Vessel with everything belonging to her shall be at the Sellers' risk and expense until she is 311
delivered to the Buyers, but subject to the terms and conditions of this Agreement she shall be 312
delivered and taken over as she was at the time of inspection, fair wear and tear excepted. 313

However, the Vessel shall be delivered free of cargo and free of stowaways with her Class 314
maintained without condition/recommendation*, free of average damage affecting the Vessel's 315
class, and with her classification certificates and national certificates, as well as all other 316
certificates the Vessel had at the time of inspection, valid and unextended without 317
condition/recommendation* by the Classification Society or the relevant authorities at the time 318
of delivery. 319

"inspection" in this Clause 11, shall mean the Buyers' inspection according to Clause 4(a) or 320
4(b) (Inspections), if applicable. If the Vessel is taken over without inspection, the date of this 321
Agreement shall be the relevant date. 322

**Notes and memoranda, if any, in the surveyor's report which are accepted by the Classification 323
Society without condition/recommendation are not to be taken into account. 324*

12. Name/markings 325

Upon delivery the Buyers undertake to change the name of the Vessel and alter funnel 326
markings. 327

13. Buyers' default 328

Should the Deposit not be lodged in accordance with Clause 2 (Deposit), the Sellers have the 329
right to cancel this Agreement, and they shall be entitled to claim compensation for their losses 330
and for all expenses incurred together with interest. 331

Should the Purchase Price not be paid in accordance with Clause 3 (Payment), the Sellers 332
have the right to cancel this Agreement, in which case the Deposit together with interest 333
earned, if any, shall be released to the Sellers. If the Deposit does not cover their loss, the 334
Sellers shall be entitled to claim further compensation for their losses and for all expenses 335
incurred together with interest. 336

14. Sellers' default 337

Should the Sellers fail to give Notice of Readiness in accordance with Clause 5(b) or fail to be 338
ready to validly complete a legal transfer by the Cancelling Date the Buyers shall have the 339
option of cancelling this Agreement. If after Notice of Readiness has been given but before 340
the Buyers have taken delivery, the Vessel ceases to be physically ready for delivery and is not 341
made physically ready again by the Cancelling Date and new Notice of Readiness given, the 342
Buyers shall retain their option to cancel. In the event that the Buyers elect to cancel this 343
Agreement, the Deposit together with interest earned, if any, shall be released to them 344
immediately. 345

Should the Sellers fail to give Notice of Readiness by the Cancelling Date or fail to be ready to 346
validly complete a legal transfer as aforesaid they shall make due compensation to the Buyers 347
for their loss and for all expenses together with interest if their failure is due to proven 348
negligence and whether or not the Buyers cancel this Agreement. 349

In the event that approval of the Bankruptcy Court is not given and the Sale Order not provided
as per Clause 19 herein by 31st May 2017, the Deposit shall be returned to the Buyers net of any
bank fees within three (3) banking days after either the Bankruptcy Court's decision or 31st May
2017, whatever the earlier case may be.

15. Buyers' representatives 350

After this Agreement has been signed by the Parties and the Deposit has been lodged, the 351
Buyers have the right to place two (2) representatives on board the Vessel at their sole risk and 352

- expense. 353
- These representatives are on board for the purpose of familiarisation and in the capacity of observers only, and they shall not interfere in any respect with the operation of the Vessel. The Buyers and the Buyers' representatives shall sign the Sellers' P&I Club's standard letter of indemnity prior to their embarkation. 354
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16. Law and Arbitration 358
- (a) ~~*This Agreement shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.~~ 359
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- The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced. 363
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- The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within fourteen (14) calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the fourteen (14) days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both Parties as if the sole arbitrator had been appointed by agreement. 366
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- In cases where neither the claim nor any counterclaim exceeds the sum of US\$100,000 the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced. 376
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- (b) ~~*This Agreement shall be governed by and construed in accordance with Title 9 of the United States Code and the substantive law (not including the choice of law rules) of the State of New York and any dispute arising out of or in connection with this Agreement shall be referred to three (3) persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgment may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.~~ 379
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- In cases where neither the claim nor any counterclaim exceeds the sum of US\$ 100,000 the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. 387
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- (c) ~~This Agreement shall be governed by and construed in accordance with the laws of _____ (state place) and any dispute arising out of or in connection with this Agreement shall be referred to arbitration at _____ (state place), subject to the procedures applicable there.~~ 390
391
392
- ~~*16(a), 16(b) and 16(c) are alternatives; delete whichever is not applicable. In the absence of deletions, alternative 16(a) shall apply.~~ 393
394
17. Notices 395
- All notices to be provided under this Agreement shall be in writing. 396
- Contact details for recipients of notices are as follows: 397
- For the Buyers: Sallau Lines Germany GmbH, Grosse Baeckerstrasse 3, 20095 Hamburg, Germany / Email: md@sallaulines.de / PIC: Kay Lemcke. 398
- For the Sellers: Brooke Y. Grehan, LCI Shipholdings, Inc, email: grehanby@intship.com. 399
18. Entire Agreement 400
- The written terms of this Agreement comprise the entire agreement between the Buyers and the Sellers in relation to the sale and purchase of the Vessel and supersede all previous agreements whether oral or written between the Parties in relation thereto, with the exception of any commission agreement between the Parties and their brokers. 401
402
403
- Each of the Parties acknowledges that in entering into this Agreement it has not relied on and shall have no right or remedy in respect of any statement, representation, assurance or warranty (whether or not made negligently) other than as is expressly set out in this Agreement. 404
405
406
- Any terms implied into this Agreement by any applicable statute or law are hereby excluded to 407

This document is a computer generated SALEFORM 2012 form printed by authority of the Norwegian Shipbrokers' Association. Any insertion or deletion to the form must be clearly visible. In the event of any modification made to the pre-printed text of this document which is not clearly visible, the text of the original approved document shall apply. BIMCO and the Norwegian Shipbrokers' Association assume no responsibility for any loss, damage or expense as a result of discrepancies between the original approved document and this computer generated document.

the extent that such exclusion can legally be made. Nothing in this Clause shall limit or exclude
any liability for fraud.

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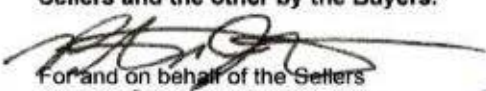
19. Approval of the Bankruptcy Court

On July 31, 2016, the Seller filed voluntary petitions pursuant to Title 11 of Chapter 11 of the United States Bankruptcy Code. The Sellers case is pending before the United States Bankruptcy Court for the Southern District of New York (the Bankruptcy Court). The sale of the Vessel is expressly contingent upon the entry of an order (the Sale Order) from the Bankruptcy Court approving the sale of the Vessel to the Buyer free and clear of all liens, claims and encumbrances.

20. Commission

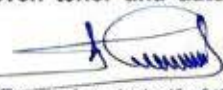
An address commission of 2% of the purchase price is payable to the Buyers, which may be paid by way of deduction from the purchase price.

This agreement is drawn in two originals of even tenor and date, one to be retained by the Sellers and the other by the Buyers.


For and on behalf of the Sellers

Name: PETER M. JOHNSTON

Title: E.V.P.


For and on behalf of the Buyers

Name: Haytham Hammond

Title: G.M.

10/04/2017

EXHIBIT C

Estrada Declaration

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

INTERNATIONAL SHIPHOLDING
CORPORATION, *et al.*,¹

Debtors.

)
)
) Chapter 11
)

) Case No. 16-12220 (SMB)
)

) Jointly Administered
)

**DECLARATION OF MANUEL G. ESTRADA IN SUPPORT OF THE DEBTORS’
EXPEDITED MOTION FOR ENTRY OF AN ORDER AUTHORIZING
THE DEBTORS TO (I) CONSUMMATE THE SALE OF THE GREEN
DALE, (II) REJECT THE TIME CHARTER, AND (III) PAY JACQ. PIEROT JR.
& SONS, INC. AND H CLARKSON & COMPANY LIMITED AND
COMPENSATION FOR PROFESSIONAL SERVICES RENDERED AND
REIMBURSEMENT OF ACTUAL AND NECESSARY EXPENSES INCURRED**

I, Manuel G. Estrada, declare as follows under penalty of perjury:

1. I am the Vice President and Chief Financial Officer (“CFO”) of International Shipholding Corporation (“International Shipholding” and, together with its affiliated debtors and debtors in possession, the “Debtors”). In my capacity as Vice President and CFO, I am familiar with the Debtors’ day-to-day operations, business, financial affairs, and books and records. I am directly involved in supervising the Debtors’ accounting staff, which monitors and maintains records regarding the financials of the Debtors. These financial records include invoices and other documentation of accounts payable of the Debtors as well as records of payment in satisfaction of the Debtors’ accounts payable.

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: International Shipholding Corporation (9662); Enterprise Ship Co. (9059); Sulphur Carriers, Inc. (8965); Central Gulf Lines, Inc. (8979); Coastal Carriers, Inc. (6278); Waterman Steamship Corporation (0640); N.W. Johnsen & Co., Inc. (8006); LMS Shipmanagement, Inc. (0660); U.S. United Ocean Services, LLC (1160); Mary Ann Hudson, LLC (8478); Sheila McDevitt, LLC (8380); Tower LLC (6755); Frascati Shops, Inc. (7875); Gulf South Shipping PTE LTD (8628); LCI Shipholdings, Inc. (8094); and Marco Shipping Company PTE LTD (4570). The service address for each of the above Debtors is 601 Poydras Street, Pan American Building, Suite 1850, New Orleans, Louisiana 70130.

2. I submit this declaration in support of the *Debtors' Expedited Motion for Entry of an Order Authorizing the Debtors to (I) Consummate the Sale of the Green Dale, (II) Reject the Time Charter, and (III) Pay Jacq. Pierot Jr. & Sons, Inc. and H Clarkson & Company Limited Compensation For Professional Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred* (the "Motion").

3. Except as otherwise indicated, all facts set forth herein are based on my personal knowledge, my discussions with other members of the Debtors' staff and senior management and the Debtors' advisors, my review of relevant documents, or my opinion based upon experience, knowledge, and information concerning the Debtors' operations and financial affairs. If called upon to testify, I would testify competently to the facts set forth in this declaration. I am authorized to submit this Declaration on behalf of the Debtors.

A. General Background

4. On July 31, 2016 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

5. The Debtors are continuing in the possession of their respective properties and the management of their respective businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108. These chapter 11 cases have been consolidated for procedural purposes only. No trustee or examiner has been appointed in the chapter 11 cases. On September 1, 2016, the Office of the United States Trustee for Region 2 (the "U.S. Trustee") appointed the statutory committee of unsecured creditors (the "Committee") [ECF No. 125]. On September 22, 2016, the U.S. Trustee amended the Committee's appointment [ECF No. 185].

6. On March 2, 2017, the Court entered an order confirming the Debtors' First Amended Modified Joint Chapter 11 Plan of Reorganization for International Shipholding Corporation and Its Affiliated Debtors [ECF No. 671]. As described below, the Plan contemplates the sale of the Green Dale for the benefit of Citizens.

B. Debtors Contemplate Selling Certain Vessels to Effectuate Restructuring

7. As the Court is aware, the Debtors are nearing completion of their two-pronged approach in these chapter 11 cases in order to maximize the value of the Debtors' estates: (1) execute the sale process for the majority of the assets contained in one of their four business segments, the "Specialty Business Segment," and (2) obtain confirmation of the Plan with a plan sponsor to reorganize the Debtors' remaining three business segments. The Court approved the Specialty Business Sale to J Line Corporation on the record at the hearing on December 20, 2016, and entered an order approving the sale on December 30, 2016 [ECF No. 487].

8. With respect to the remainder of the Debtors' business segments, the Debtors entered into a restructuring support agreement (the "Restructuring Support Agreement") with the sponsor of the Plan as approved by the Court on November 21, 2016 [ECF No. 376]. The Plan involves, among other things, (i) the issuance of new equity in the reorganized Debtors to SEACOR in exchange for a \$10.5 million cash infusion from SEACOR, which amount may, under certain circumstances be increased to \$13.5 million, and the conversion of 100% of the Debtors' \$18.1 million outstanding debtor-in-possession financing claims, (ii) \$25 million in a new senior debt exit facility, a substantial majority of which will be used to satisfy creditor claims under the Plan, (iii) the purchase and transfer by the Company of two leased pure car/truck carrier vessels, together with the transfer of additional pure car/truck carrier vessels

currently owned by the Debtors, to NYK Group Americas Inc. (or its nominee), (iv) the sale of certain vessels not being transferred to SEACOR, such as the Green Dale, and (v) assumption of certain of the Debtors' key pre-petition contracts.

9. Specifically, the Plan provides in section 3.3.5 that Citizens will receive on the Plan's Effective Date or as reasonably practicable thereafter, in full satisfaction, settlement, and release of, and in exchange for Citizens' allowed claim against the Debtors, delivery of the Green Dale or, in the event of any disposition of the Green Dale, the proceeds of the generated by such disposition. According to the Plan, the delivery or sale of the Green Dale is at the option of the applicable Debtor, with the consent of SEACOR, or the applicable Reorganized Debtor. Based on discussions with Citizens and SEACOR, the Debtors have continued to market the Green Dale for sale and have obtained the agreement of the Buyer to purchase the vessel as described herein.

C. The Green Dale

10. The Green Dale is a pure car/truck carrier ("PCTC") that is owned by Debtor LCI Shipholdings, Inc. ("LCI") and flagged in the Marshall Islands. The vessel has a 16,000-ton capacity with twelve car decks and is capable of carrying approximately 5,000 standard size vehicles. Three of the twelve car decks are hoistable, affording the vessel the ability to carry approximately 340 heavy trucks. As more fully described below, the Green Dale is currently operating pursuant to a time charter (the "Time Charter") dated August 5, 1999, as amended, supplemented, or modified from time to time, between LCI as owner and Nippon Yusen Kaisha ("NYK") as the time charterer.

11. The Green Dale is collateral under that certain Loan Agreement (the “Citizens Facility”) dated as of August 25, 2014, as amended, supplemented or modified from time to time, by and among LCI, as borrower, International Shipholding Corporation (“ISH” and, together with its debtor and non-debtor subsidiaries and affiliates, “International Shipholding”), as guarantor, and Citizens, as lender.² The vessel secures Citizens’ claim of \$16,809,658 against LCI in these chapter 11 cases.

12. Further, under the Final Order (1) Authorizing Debtors to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, and (C) Grant Certain Protections to Prepetition Lenders and (2) Granting Certain Related Relief [ECF No. 180] (the “Final DIP Order”), DVB Bank SE and the DIP Agent (the “DIP Lenders”), hold a first priority, senior security interest of up to \$6.0 million against the Green Dale and a junior security interest in the Debtors’ encumbered property, including the Green Dale.

D. The Debtors’ Marketing Efforts

13. As described in the First Day Declaration, since 2014, International Shipholding has encountered certain challenges related to complying with debt covenants and overall liquidity restraints. In an attempt to strengthen International Shipholding’s financial position, on October 21, 2015, the Board of Directors of ISH approved a plan (the “Strategic Plan”) to restructure International Shipholding by focusing on its three (3) core segments—the Jones Act,³

² Citizens was known as RBS Asset Finance, Inc., when the Citizens Facility was entered into by the parties thereto.

³ The Merchant Marine Act of 1920 (better known as the Jones Act) requires that all goods transported by water between U.S. ports must, subject to certain limited exceptions, be carried aboard U.S. flag vessels that are constructed in the U.S., owned predominantly by U.S. citizens, and crewed by U.S. citizens. Under its Jones Act segment, International Shipholding currently deploys two (2) bulk carriers, one (1) integrated tug-barge unit, one (1) articulated tug-barge unit, and one (1) vessel that transports molten sulphur. Vessels deployed under the Jones Act segment serve primarily in the Gulf of Mexico and operate as the primary marine transporter of coal, sulphur, and phosphate rock. Petroleum coke and fertilizer are the other principal cargoes carried by the Jones Act vessels.

PCTC,⁴ and Rail-Ferry⁵ segments—with the objective to reduce debt to more manageable levels and to increase liquidity. Since that date, International Shipholding has modified the Strategic Plan in response to new developments, including efforts to sell assets and ongoing discussions with its lenders, lessors, directors, and others. The Debtors did not extensively market the Green Dale for sale prior to the Petition Date, but engaged in certain negotiations regarding the sale of the Green Dale to NYK that did not result in an agreement.

14. The Green Dale, along with the other assets related to the Debtors' PCTC business segment, was extensively marketed prior to the Debtors' entry into the Restructuring Support Agreement. Blackhill and the Debtors developed a list of potential buyers and plan sponsors consisting of strategic and financial investors including distressed private equity firms, direct competitors, and vertically integrated firms that might find some or all of the Debtors' assets attractive. In total, sixty-eight (68) firms were contacted regarding their interest in purchasing segment assets, the whole company, or becoming a plan sponsor.

15. On January 10, 2017, the Debtors' filed an application to employ H Clarkson & Company Limited ("Clarksons Platou") and Jacq. Pierot Jr. & Sons, Inc. ("Pierot") and together with Clarksons Platou, the "Brokers") as brokers to effectuate the sale of the Green Dale. The Court entered an order approving the retention of the Brokers on January 23, 2017.

⁴ The PCTC business segment currently includes five (5) vessels, four (4) of which are U.S. flag vessels and one (1) of which is an international flag vessel. The PCTC vessels transport all types of vehicles from fully assembled passenger cars to construction machinery and equipment in large number on multiple internal decks.

⁵ The Rail-Ferry segment currently uses two (2) double-deck roll-on/roll-off rail ferries, which carry rail cars between the U.S. Gulf Coast and Mexico in regularly scheduled waterborne service. The service provides departures every four (4) days from Mexico and the U.S. Gulf Coast, respectively, for a three (3) day transit between ports. Since 2007, International Shipholding has conducted these operations out of its terminal in Mobile, Alabama and a terminal in Coatzacoalcas, Mexico. Trade for this segment is primarily driven by commodities such as forest products, sugar, metals, minerals, plastics and chemicals. In August 2012, ISH acquired two (2) related businesses that own and operate a certified rail-car repair facility near the port of Mobile, Alabama.

16. Based upon the representations of Clarksons Platou and Pierot, and their communications with the Debtors' employees overseeing the sale process, I believe that the Brokers have diligently marketed the Green Dale since their retention. Clarksons Platou identified and contacted approximately thirty (30) car carrying companies as well as Clarksons Platou's distribution list, and Pierot identified and contacted approximately 20 car carrying companies and approximately 600 ship brokers and 100 ship owners from Pierot's distribution list, providing vessel specifications and general information to each. Three (3) of these parties conducted surveys or indicated that they would review third party surveys, resulting in one (1) offer. The Brokers were in frequent communication with the Debtors regarding the marketing strategy and indications of interest from potential buyers.

E. The Buyer's Offer to Purchase the Green Dale

17. Buyer is an international car carrier specializing in roll-on/roll-off cargo shipping for cars, vans, trucks, and heavy equipment from Europe and the United States to West African destinations. The Buyer is not a (i) director, officer, general partner, or person in control of any of the Debtors; (ii) relative of a general partner, director, officer or person in control of any of the Debtors; or (iii) partnership in which any of the Debtors is a general partner. After ongoing, arm's-length negotiations, and considering the market for the Green Dale, the Debtors determined that the offer from the Buyer reflected in the Memorandum of Agreement attached to the Motion as Exhibit B (the "MOA") to be the highest and best offer and otherwise appropriate under the circumstances.

18. Although the Debtors did not conduct a formal auction process to market the Green Dale, their Brokers and their other professionals retained in these chapter 11 cases did

conduct a marketing process consistent with the process used to seal a similar vessel outside of chapter 11. The Debtors also discussed the proposal with Citizens and SEACOR. As the result of this inquiry, the Debtors have determined that the Buyer's offer is higher than any offer that the Debtors could reasonably expect to obtain after additional marketing or establishing auction procedures.

19. Due the difficulties facing the global shipping industry, the secondary vessel market is weak and has only declined since the filing of the Debtors' cases. Additionally, according to the representations of F. R. Christiaan Pierot, many car carrying companies have excess capacity and PCTC vessels that are younger than the Green Dale remain idled. The Debtors do not believe it likely that they would obtain a higher price by continuing to market the Green Dale—the marketing efforts of Clarksons Platou and Pierot were sufficient to uncover any likely potential buyers. Rather, the Debtors believe that delay in effectuating the sale of the Green Dale would incur the risk of further weakening of the secondary vessel market and diminution in value of the Green Dale, ultimately reducing the recovery of creditors in these chapter 11 cases.

20. Given the marketing of the Green Dale, the current condition of the Green Dale, and the state of the secondary vessel market, and the notice of the Debtors intention to liquidate the Green Dale contained in the Plan, the Debtors and their management do not believe that they have a realistic chance of obtaining a better offer than the offer reflected in the MOA. The Buyer's offer reflected in the MOA was the only offer the Debtors received for the Green Dale. The Debtors believe that the MOA represents a fair and reasonable offer to purchase the Green Dale under the circumstances of these chapter 11 cases and that the sale pursuant to the MOA

would provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. The Debtors therefore believe, in exercise of their business judgment consistent with their fiduciary duties, that it is in the best interests of their estates and creditors to enter into the MOA with the Buyer.

21. I believe that all parties involved in the negotiations and resulting MOA have acted in good faith. The Debtors believe that the Buyer's offer was made in good faith and there has been no indication of any collusion on behalf of the Buyer to affect the price of the Green Dale. The Debtors' are not attempting to bypass any provisions of the Bankruptcy Code through the sale process but rather seek to effectuate the terms of their confirmed Plan as expediently as practicable for the benefit of the creditors of their estates consistent with their fiduciary obligations.

F. Rejection of the Time Charter

22. The Time Charter was originally entered into between Waterman Steamship Corporation and NYK for a term of twelve years firm (1999-2011), plus options for NYK to extend the Time Charter for subsequent periods of four years (2011-2015), two years (2015-2017), and two years (2017-2019). On August 18, 2013, the Green Dale was sold by Debtor Waterman Steamship Corporation to LCI, and LCI became party to the Time Charter in the place of Waterman Steamship Corporation. NYK exercised its options to extend the Time Charter through September 2017, but has not elected to extend the Time Charter through 2019.

23. Under the Time Charter, LCI manages and operates the Green Dale at the direction of NYK in exchange for, among other things, a fee of \$15,325 per day. The Time

Charter also provides for certain indemnities, security interests in cargo, and apportions other rights and responsibilities between LCI and NYK related to the operation of the Green Dale.

24. In conjunction with the sale of the Green Dale and the disposition of assets contemplated by the Debtors' confirmed Plan, the Debtors have determined, in consultation with SEACOR, that rejecting the Time Charter is in the best interests of their estates. The Plan provides that, as soon as reasonable practicable after the Plan's Effective Date, the Green Dale or the proceeds from the sale of the Green Dale are to be delivered to Citizens in satisfaction of Citizens' claims. The Debtors will therefore be unable to perform under the Time Charter. Additionally, the Time Charter can only be performed by the owner or possessor of the Green Dale and the MOA expressly calls for the sale order to provide that the Green Dale be delivered free from all charters, which provision was actively negotiated by the Debtors and the Buyer. Therefore, the Debtors listed the Time Charter on their Schedule of Rejected Executory Contracts and Unexpired Leases. Pursuant to the Debtors' confirmed Plan, the Time Charter will be rejected on the Effective Date of the Plan.

25. The Plan's Effective Date will occur on the first business day on which all of the conditions set forth in section 10.2 of the Plan have been satisfied or waived, provided that such satisfaction or waiver occurs on or before May 31, 2017. Pursuant to the MOA, the last date by which the Green Dale may be made ready for delivery is June 1, 2017.

26. To the extent that the Debtors close under the MOA prior to the Plan's Effective Date, the Debtors seek the authority to reject the Time Charter as of date of the closing under the MOA. The Debtors, in their sound business judgment, believe that this additional flexibility will

aid in completion of the multiple transactions contemplated under the Plan and accrue to the benefit of their creditors.

G. Payment of the Brokers' Fees

(i) Retention of the Brokers Pursuant to the Brokers Retention Order

27. As more fully described in the *Debtors' Application for Entry of an Order (I) Authorizing the Employment and Retention of (a) H Clarkson & Company Limited and (b) Jacq. Pierot Jr. & Sons Inc. as Brokers for the Debtors and Debtors in Possession, (II) Waiving Certain Time-Keeping Requirements Pursuant to Local Rule 2016-1, and (III) Granting Related Relief* [ECF No. 522] (the "Brokers Retention Application"), the Debtors retained Clarksons Platou and Pierot to effectuate the sale of the Green Dale. The Debtors sought the retention of the Brokers on the strength of their individual qualifications and the potential of joint representation to leverage the Brokers' relative strengths and separate networks to receive a higher and better offer than otherwise possible.

28. The Brokers Retention Order approved compensation for Clarksons Platou and Pierot according to Bankruptcy Code section 328(a) on the terms and conditions set forth in the agreement annexed to the order as Exhibit 1 thereto (the "Brokerage Agreement") and as set forth in the Brokers Retention Application. Section 2.8 of the Brokerage Agreement provides:

In relation to the sale of the Vessel the Company shall, subject to the approval by the Bankruptcy Court, pay Clarksons Platou and Pierot a total commission of One and One Half per cent (1.50%) of the gross sale price in immediately available funds within three (3) banking days in New York following payment of the sale price under the MOA (the "Fee"), which Fee shall be paid in way of 1.0% to the Broker successful in negotiating the Sale of the Vessel with the remaining 0.50% being payable to the other Broker.

Additionally, the Brokerage Agreement provides for reimbursement of “reasonable, documented, travel and hotel expenses” of the Brokers in connection with the provision of testimony or other evidence regarding the services provided under the Brokerage Agreement. As described in paragraph 19 of the Brokers Retention Application, such payments were to be requested through any subsequent motion for authority to sell the Green Dale.

29. The Brokers Retention Order (i) obviated the requirement for the Brokers to maintain or provide detailed time records in accordance with Bankruptcy Rule 2016(a), Local Bankruptcy Rule 2016-1, and the United States Trustee Fee Guidelines and (ii) provided that the Brokers’ compensation would be subject to the standard of review provided in Bankruptcy Code section 328(a) and, except upon the objection of the U.S. Trustee, not subject to any other standard of review under Bankruptcy Code section 330.

30. Based upon the representations of Pierot, and its communications with the Debtors’ employees overseeing the sale process, it is my understanding that:

- Pierot identified and contacted approximately 15-20 car carrying companies and/or their favored brokers, approximately 600 ship brokers, and 100 ship owners of all types from Pierot’s existing professional network as potential buyers for the Green Dale.
- Pierot contacted all such parties through emails containing an outline of the Green Dale, the availability of the vessel for survey, and additional descriptive material providing in-depth technical specifications of the vessel, its capabilities, and its features.
- Additionally, Pierot contacted certain parties that Pierot evaluated to be particularly likely to have an interest in the vessel via telephone regarding the Green Dale.
- Pierot provided all contacted parties periodic updates regarding the Green Dale’s availability and itinerary for inspection.

- As the result of these efforts, Pierot received communications from eleven (11) potential buyers regarding the Green Dale, including the Buyer, which had already been contacted previously by Clarksons Platou and ultimately made the offer for the Green Dale reflected in the MOA.
- Among the other potential buyers with which Pierot established communications, (a) one potential buyer indicated an intent to review a survey prepared by a third party, but ultimately decided not to make an offer; (b) one potential buyer continues to evaluate the Green Dale's suitability for conversion; (c) two potential buyers remain interested in purchasing the vessel for recycling value but did not make an offer pending other sale efforts; and (d) six potential purchasers determined that the Green Dale did not suit their purposes after expressing varying levels of initial interest.
- Pierot has kept the buyers and brokers who showed any potential interest in the vessels fully apprised of the Green Dale's movements and overall commercial status.

31. In addition to marketing the Green Dale, and the efforts of Clarksons Platou, Pierot professionals assisted the Debtors in the negotiation of the MOA. Pierot provided comments on each term of the negotiations as well as detailed written suggestions regarding essential business terms of the agreement. Throughout the negotiation process, Pierot professionals maintained frequent communication with the Debtors to obtain the highest purchase price for the Green Dale at the most favorable terms attainable. It is my belief that Pierot professionals expended considerable time and effort to effectuate the sale of the Green Dale.

32. Based upon the representations of Clarksons Platou, and its communications with the Debtors' employees overseeing the sale process, it is my understanding that:

- Clarksons Platou identified and contacted in excess of 30 owners, operators and charterers actively involved in the car carrier market, as well as the ship owners, operators and brokers on Clarksons Platou's distribution lists.

- Clarksons Platou contacted all such parties through emails containing an outline of the Green Dale and the availability of the vessel for survey, with a note that further details were available on request.
- Additionally, Clarksons Platou conducted meetings and discussions with owners, operators, and charterers, including during trips to Japan, Korea, and China.
- As the result of these efforts, Clarksons Platou received various indications of interest which led to two (2) surveys of the vessel arranged by the Clarksons Platou, including by the Buyer. The Buyer's interest ultimately led to the offer reflected in the MOA.

33. At the direction of the Debtors, Clarksons Platou took primary responsibility for negotiating the MOA. In fulfilling this role, Clarksons Platou was the primary channel of communication between the Debtors and the Buyer and advised the Debtors of the business terms of the MOA. The Debtors therefore believe that Clarksons Platou is the broker successful in negotiating the Sale of the Green Dale under the Brokerage Agreement. It is my belief that Clarksons Platou professionals expended considerable time and effort to effectuate the sale of the Green Dale.

(ii) The Compensation Owed Pursuant to the Brokerage Agreement

34. Pursuant to the Brokers Retention Order and the Brokerage Agreement, the Debtors believe that Pierot will be entitled to \$34,000 in professional fees and \$0 in expenses (collectively, the "Pierot Compensation") and Clarksons Platou will be entitled to \$68,000 in professional fees and \$0 in expenses (collectively, the "Clarksons Platou Compensation") within three (3) days of the closing under the MOA. To the extent that additional expenses are incurred in connection with a hearing on the Motion, the Debtors will provide notice of such amounts at or prior to such hearing.

35. The Debtors believe that the Brokerage Agreement has proven provident and that the professional fees thereunder are reasonable in light of the services provided by the Brokers, the customary compensation charged by vessel brokers, and the results obtained. Without the marketing efforts of the Brokers, the Debtors do not believe they would have obtained as high of a value for the Green Dale. Further, the Debtors believe that any expenses under the Brokerage Agreement incurred in connection with providing testimony at the hearing on the Motion will be actual and necessary.

H. The Memorandum of Agreement

(i) Pierot Retained as Escrow Agent

36. During the course of negotiating the MOA, Pierot offered to act as the escrow agent (the “Escrow Agent”) for the \$680,000 good-faith deposit to be provided by the Buyers when the Debtors and the Buyer could not agree on a suitable alternative. Eventually, the Debtors and the Buyer agreed for Pierot to serve as Escrow Agent as described in the MOA, and that Pierot’s fees in connection with the services provided as Escrow Agent would be equally divided between the Debtors and the Buyer. Pierot’s fees for serving as Escrow Agent will total \$10,000, of which \$5,000 will be paid by the Debtors as a cost of closing under the MOA.

(ii) Transfer of Certain NYK Assets Pursuant to the MOA

37. In addition to the transfer of the Debtors’ interests in the Green Dale, and after extensive negotiations, the Buyer would also acquire certain related assets owned by NYK pursuant to the MOA. In particular, the MOA provides that the Buyer will acquire certain parts related to the “super slow steaming” equipment installed on the Green Dale and lashing materials. The Buyer will pay an additional \$37,391 to be delivered to NYK to acquire the super slow steaming equipment, which amount will not be included in the purchase price for purposes

of calculating the fees owed to the Brokers. The lashing materials will be acquired from NYK in exchange for \$32,609 to be paid from the purchase price.

(iii) Consent to the Relief Requested by the Motion

38. It is my understanding, based on my communications with the Debtors' professionals retained in these cases that Citizens, SEACOR, and NYK have consented to: (i) the proposed sale, (ii) the rejection of the Time Charter prior to the Plan's Effective Date, and/or (iii) the payment of the Clarksons Platou Compensation and Pierot Compensation from the proceeds of the sale of the Green Dale. The Committee has expressed no opinion on the relief requested in the Motion.

Executed on this 13th day of April 2017.

/s/ Manuel G. Estrada
Manuel G. Estrada
Chief Financial Officer
International Shipholding Corporation

EXHIBIT D

Rogers Declaration

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

INTERNATIONAL SHIPHOLDING
CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 16-12220 (SMB)

Jointly Administered

**DECLARATION OF JAMES ROGERS, DIRECTOR OF H CLARKSON
CO. LIMITED, IN SUPPORT OF THE DEBTORS' EXPEDITED MOTION
FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTORS TO (I) CONSUMMATE
THE SALE OF THE GREEN DALE, (II) REJECT THE TIME CHARTER, AND (III)
PAY JACQ. PIEROT JR. & SONS, INC. AND H CLARKSON & COMPANY LIMITED
AND COMPENSATION FOR PROFESSIONAL SERVICES RENDERED AND
REIMBURSEMENT OF ACTUAL AND NECESSARY EXPENSES INCURRED,**

I, James Rogers, declare as follows:

1. I am a Director of H Clarkson & Company Limited (“Clarksons Platou”) and am duly authorized to execute this declaration (the “Declaration”) on behalf of Clarksons Platou. Clarksons Platou maintains an office at Commodity Quay, St. Katherine Docks, London E1W1BF, England. I am familiar with the matters set forth herein and, if called as a witness, I could and would testify competently thereto.

2. I make this Declaration in support of the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: International Shipholding Corporation (9662); Enterprise Ship Co. (9059); Sulphur Carriers, Inc. (8965); Central Gulf Lines, Inc. (8979); Coastal Carriers, Inc. (6278); Waterman Steamship Corporation (0640); N.W. Johnsen & Co., Inc. (8006); LMS Shipmanagement, Inc. (0660); U.S. United Ocean Services, LLC (1160); Mary Ann Hudson, LLC (8478); Sheila McDevitt, LLC (8380); Tower LLC (6755); Frascati Shops, Inc. (7875); Gulf South Shipping PTE LTD (8628); LCI Shipholdings, Inc. (8094); and Marco Shipping Company PTE LTD (4570). The service address for each of the above Debtors is 601 Poydras Street, Pan American Building, Suite 1850, New Orleans, Louisiana 70130.

² Unless otherwise defined, all capitalized terms used herein have the meanings ascribed to them in the Motion.

authorizing the Debtors to (i) consummate the sale of its vessel known as the “Green Dale” free and clear of all liens, claims, and encumbrances, (ii) reject a certain time charter upon the transfer of the Green Dale, and (iii) remit payment to Jacq. Pierot Jr. & Sons, Inc. and H Clarkson & Company Limited for fees and any reimbursable expenses authorized pursuant to the order approving their retention to effectuate the sale of the Green Dale. This Declaration is also submitted as the statement required by rule 2016(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

A. Clarkson Platou’s Efforts to Effectuate the Sale of the Green Dale

3. Clarksons Platou was retained in these chapter 11 cases pursuant to the *Order (I) Authorizing the Employment and Retention of (a) H Clarkson & Company Limited and (b) Jacq. Pierot Jr. & Sons Inc. as Brokers for the Debtors and Debtors in Possession, (II) Waiving Certain Time-Keeping Requirements Pursuant to Local Rule 2016-1, and (III) Granting Related Relief* [ECF No. 567] (the “Brokers Retention Order”) entered on January 23, 2017. The Green Dale was marketed jointly by both Clarksons Platou and Jacq. Pierot Jr. & Sons, Inc. to their respective lists of clients and brokers. Thereafter, each broker dealt independently with the interested parties with whom they had initiated contact by providing information to the potential buyers and otherwise attempting to elicit offers to purchase the Green Dale.

4. Clarksons Platou identified and contacted in excess of 30 owners, operators and charterers actively involved in the car carrier market, as well as the ship owners, operators and brokers on Clarksons Platou’s distribution lists. Clarksons Platou contacted all such parties through emails containing an outline of the Green Dale and the availability of the vessel for survey, with a note that further details were available on request. Additionally, Clarksons Platou conducted meetings and discussions with owners, operators, and charterers, including during trips to Japan, Korea, and China.

5. As the result of these efforts, Clarksons Platou received six (6) indications of interest which led to two (2) surveys of the vessel arranged by the Clarksons Platou, including by the Buyer. Clarksons Platou arranged for the Buyer to survey the vessel while it was in Freeport, Bahamas. The Buyer's interest ultimately led to the offer reflected in the MOA.

6. At the direction of the Debtors, Clarksons Platou took primary responsibility for negotiating the MOA. In fulfilling this role, Clarksons Platou was the primary channel of communication between the Debtors and the Buyer and advised the Debtors of the business terms of the MOA.

7. I am not aware of any collusion or agreements among potential purchasers of the Green Dale to affect the sale price for the Green Dale. Clarksons Platou was not party to any such collusion.

B. Additional Disclosures Regarding Compensation


8. No payments or promises of payments have been made to Clarksons Platou for services rendered or to be rendered in connection with these chapter 11 cases, except the promise of payment reflected in the Brokerage Agreement.

9. Clarksons Platou is not party to any agreement or understanding for the sharing of compensation to be received in connection with these chapter 11 cases, except as set forth in the Brokers Retention Order.

10. Clarksons Platou asserts that it is the broker that was successful in obtaining the Buyer and thus Clarksons Platou is authorized under the Brokers Retention Order to receive a fee equal to 1% of the purchase price, totaling \$68,000. Clarksons Platou has not incurred any expenses that are reimbursable under the Brokers Retention Order, but it may incur such expenses in connection with a hearing regarding the Motion. If any reimbursable expenses are incurred, documentation of such expenses will be provided at or prior to the hearing.

11. Upon information and belief, the Debtors, through Manuel Estrada, the Chief Financial Officer of International Shipholding Corporation, has reviewed and consented to the fees requested to be paid to Clarkson Platou pursuant to the Proposed Order.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on this 11th day of April, 2017.



James Rogers
Director
H Clarkson & Company Limited

EXHIBIT E


Pierot Declaration

of clear of all liens, claims, and encumbrances; (ii) reject a certain time charter upon the transfer of the Green Dale, and (iii) remit payment to Jacq. Pierot Jr. & Sons, Inc. and H Clarkson & Company Limited and for fees and any reimbursable expenses authorized pursuant to the order approving their retention to effectuate the sale of the Green Dale. This Declaration is also submitted as the statement required by rule 2016(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

A. Pierot's Efforts to Effectuate the Green Dale

3. Pierot was retained in these chapter 11 cases pursuant to the *Order (I) Authorizing the Employment and Retention of (a) H Clarkson & Company Limited and (b) Jacq. Pierot Jr. & Sons Inc. as Brokers for the Debtors and Debtors in Possession, (II) Waiving Certain Time-Keeping Requirements Pursuant to Local Rule 2016-1, and (III) Granting Related Relief* [ECF No. 567] (the "Brokers Retention Order") entered on January 23, 2017. The Green Dale was marketed jointly by Pierot and H Clarkson & Company Limited ("Clarksons Platou") and to their respective lists of clients and brokers. Thereafter, each broker dealt independently with the interested parties with whom they had initiated contact by providing information to the potential buyers and otherwise attempting to elicit offers to purchase the Green Dale

4. Pursuant to its engagement, Pierot identified and contacted approximately 15-20 car carrying companies and/or their favored brokers, approximately 600 ship brokers, and 100 ship owners of all types from Pierot's existing professional network as potential buyers for the Green Dale. These parties were sent emails containing an outline of the Green Dale, the availability of the vessel for survey, and additional descriptive materials providing in-depth technical specifications of the vessel, its capabilities, and its features. Certain parties evaluated to be particularly likely to have an interest in the vessel were contacted via telephone.



5. Pierot provided reminders regarding the Green Dale to all contacted parties approximately every 10-14 days. The buyers and brokers showing even the slightest potential interest in the Green Dale were kept fully apprised of the vessels movements and overall commercial status.

6. As the result of these efforts, Pierot received communications from eleven (11) potential buyers regarding the Green Dale. One of these parties was the Buyer, which had been contacted previously by Clarksons Platou and thus firmly committed to negotiating with Clarksons Platou. Among the other potential buyers with whom Pierot communicated, (a) one potential buyer indicated an intent to review a survey prepared by a third party, but ultimately decided not to make an offer;³ (b) one potential buyer continues to evaluate the Green Dale's suitability for conversion; (c) two potential buyers remain interested in purchasing the vessel for recycling value but did not make an offer pending other sale efforts; and (d) six potential purchasers determined that the Green Dale did not suite their purposes after varying levels of initial interest.

7. In addition to marketing the Green Dale, Pierot professionals assisted the Debtors in the negotiation of the MOA. Pierot has provided comments on each term of the negotiations as well as detailed written suggestions regarding essential business terms of the agreement.

8. Although Pierot's professionals did not keep detailed time records, I personally worked on the engagement at least 15-30 minutes each working day as well as occasional longer periods when needed. In addition to coordinating the marketing efforts described above, this

³ I am unaware whether the potential buyer that indicated its intent to review the survey conducted by a third party ultimately reviewed the survey. We communicated with this potential buyer through a U.K. broker, and believe that the interest was predicated on securing a time charter from an end-user that never materialized

time included phone conversations with potential buyers and brokers and daily phone calls with Brooke Grehan, Vice President of LCI Shipholdings, Inc., regarding marketing strategies and comments regarding the negotiations with the Buyer. Pierot also offered to act as escrow agent for the security deposit on the sale to the Buyer if it would help facilitate the transaction.

9. It is my belief that the level of interest for the Green Dale reflected the state of the secondary vessel market for PCTC vessels. Many car carrying companies have excess capacity and are not currently in the market for additional vessels. Further, there are newer vessels that currently remain idle that are also on the market. Newer model PCTCs have additional hoistable decks and a higher overall deck height, allowing for the transport of more large military cargoes and/or commercial trucks than the Green Dale is able to carry. The availability of these newer vessels limited the number of potential purchasers for the Green Dale and reduced the attainable purchase price.

B. Additional Disclosures Regarding Compensation

10. During the course of negotiating the MOA, Pierot offered to act as the escrow agent (the "Escrow Agent") for the good-faith deposit to be provided by the Buyers when the Sellers and the Buyers could not agree on a suitable alternative. Eventually, the Debtors and the Buyer agreed for Pierot to serve as Escrow Agent as described in the MOA, and that Pierot's fees in connection with the services provided as Escrow Agent would be equally divided between the Debtors and the Buyer. Pierot's fees for serving as Escrow Agent will total \$10,000, of which \$5,000 will be paid by the Debtors as a cost of closing under the MOA.

11. No payments or promises of payments have been made to Pierot for services rendered or to be rendered in connection with these chapter 11 cases, except pursuant to Pierot's role as Escrow Agent described above and the promise of payment reflected in the Brokerage Agreement.



12. Pierot is not party to any agreement or understanding for the sharing of compensation to be received in connection with these chapter 11 cases, except as set forth in the Brokers Retention Order.

13. Pierot is not the broker that was successful in obtaining the Buyer and thus Pierot is authorized under the Brokers Retention Order to receive a fee equal to 0.5% of the purchase price, totaling \$34,000. Pierot has not incurred any expenses that are reimbursable under the Brokers Retention Order, but it may incur such expenses in connection with a hearing regarding the Motion. If any reimbursable expenses are incurred, documentation of such expenses will be provided at or prior to the hearing.

14. Upon information and belief, the Debtors, through Manuel Estrada, the Chief Financial Officer of International Shipholding Corporation, has reviewed and consented to the fees requested to be paid to Pierot pursuant to the Proposed Order.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on this 10th day of April, 2017.



F. R. Christiaan Pierot
President
Jacq. Pierot Jr. & Sons, Inc.