

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the "Agreement") is entered into by and between CERTAIN UNDERWRITERS AT LLOYD'S, LONDON (collectively "Underwriters") subscribing to marine insurance policy number B0823PA1402209 (the "Policy") and the MATANUSKA-SUSITNA BOROUGH (the "Assured," and collectively with Underwriters, the "Parties"). The subject of this agreement is disputed claims arising from or related to the water ingress, in approximately January 2015, into the main engines of the of the M/V SUSITNA, a SWATH Ro-Ro Passenger Ferry with IMO No. 9577721, built in 2010 (the "Vessel"), which dispute is the subject of the pending action *MATANUSKA-SUSITNA BOROUGH, ALASKA vs. CERTAIN UNDERWRITERS AT LLOYD'S LONDON SUBSCRIBING TO POLICY NO. B0823PA1402209*, in the Court of Common Pleas, Summit County, Ohio, with Case No. CV-2018-02-0809 (the "Action").

WHEREAS, on or about August 28, 2014, Underwriters issued the Policy to the Assured, which provided, *inter alia*, hull and machinery coverage for the Vessel; and

WHEREAS, the Policy provides for a deductible in the amount of \$250,000; and

WHEREAS, in approximately January 2015, while the Vessel was alongside at Ketchikan, Alaska, rainwater entered the main engines through the Vessel's uncovered exhaust stacks, which was discovered by the crew during an attempted start of the engines on or about January 22, 2015, and that, to a degree and duration which are disputed by the Parties, resulted in damage to all of the Vessel's main engines (the "Loss"); and

WHEREAS, the Assured arranged for repairs of the Vessel at Foss Shipyard beginning on or about March 15, 2016, in Seattle, Washington, with project oversight from Associated Maritime Providers, following which the Vessel underwent sea trials on June 23, 2016, and was sold to the Philippine Red Cross on or about June 30, 2016; and

WHEREAS, in April 2015, the Assured notified the Underwriters of a claim for the costs of repairing the Vessel, and submitted its claim to Underwriters by letter dated July 21, 2017. A dispute arose between the Parties as to whether the Loss and certain claimed repair costs resulted from want of due diligence on the part of the Assured and/or the Vessel's manager, and as such were not covered by the Policy, as well as whether certain crew labor costs, and other claimed repair costs for which the Underwriters' surveyor requested further support, are covered under the Policy (the "Dispute"); and

WHEREAS, the Dispute is the subject of the Action, which was filed on February 21, 2018;

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, for good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties agree, without admission of liability or wrongdoing by any party, as follows:

1. Payment to Assured. In consideration of the releases and promises by the Assured made herein Underwriters agree to resolve the Action for \$2,500,000, less the amount of the deductible listed in the Policy. Accordingly, Underwriters agree to pay \$2,250,000 to the Assured (the "Settlement Funds"), by wire transfer into an attorney escrow account maintained by counsel for the Assured, Brouse McDowell, on or before sixty days from the date on which the last counterpart of this Agreement is executed (the "Effective Date"). The Settlement Funds shall be held in the escrow account until the Action has been dismissed pursuant to the provisions of Paragraph 4 below.

2. Release of the Underwriters. In consideration of the payment by the Underwriters of the Settlement Funds, the Assured agrees that such payment is made in full and final settlement of any and all claims made, to be made, or which could be made as against Underwriters under, or related to, the Policy, the Loss and/or the Dispute, and hereby forever releases, acquits and discharges the Underwriters and their successors, assigns, predecessors, former, present and future subsidiaries, affiliates, divisions, parent companies, holding companies, directors, officers, administrators, employees, agents, representatives, trustees in bankruptcy, run-off managers, liquidators and/or rehabilitators with respect to any demand, claim, or cause of action whatsoever concerning any claim, whether asserted or not, arising under or related to the Policy, the Loss or the Dispute, at law, or otherwise, from the beginning of the world to the Effective Date.
  
3. Indemnification of the Underwriters by the Assured. The Assured warrants that it is the party entitled to settle the Dispute and release any claims related to the Loss and the Policy in exchange for payment of the Settlement Funds by Underwriters, and in further consideration of said payments hereby agrees to indemnify and hold harmless the Underwriters, their successors, assigns, predecessors, former, present and future subsidiaries, affiliates, divisions, parent companies, holding companies, directors, officers, administrators, employees, agents, representatives, trustees in bankruptcy, run-off managers, liquidators and/or rehabilitators from and against any claims, demands, suits or actions made or brought against them by any other third parties arising from the Loss or the Dispute that are the subject

of the release granted in consideration of the payment of the Settlement Funds.

The indemnification provided shall in no event exceed \$2,250,000.

4. Dismissal of the Action. The Parties agree that immediately upon payment of the Settlement Funds in accordance with Paragraph 1 above, the Assured will file a notice of voluntary dismissal in the Action, with prejudice and without an award of attorneys' fees or costs to either party. Upon dismissal of the Action by the Assured, the Settlement Funds may be released from the escrow account.
5. Forbearance. The Assured agrees to refrain immediately from further activity in the Action, except that the Assured agrees to take those actions required to dismiss the Action as provided in Paragraph 4, and to defer all existing deadlines, including those for responsive pleadings, until the voluntary dismissal is filed.
6. Loss Payees. The Assured warrants that there is no loss payee who is, or may be, entitled to payment under the Policy and/or of the Settlement Funds, other than the Assured.
7. Governing Law and Jurisdiction. This Agreement shall be subject to Ohio law. Any issues relating to the construction, validity or performance of this Agreement shall be governed by, read and construed in accordance with the laws of the State of Ohio, without giving effect to principles of conflicts of laws thereunder. To the fullest extent permitted by applicable law, each of the Parties hereby: (i) irrevocably consents and agrees that any legal or equitable action or proceeding in connection with enforcing the terms and conditions of this Agreement shall be brought exclusively in the United States District Court for the Northern District of Ohio or, if required due to a lack of subject matter jurisdiction by that court, the

Cuyahoga County Common Pleas Court; and (ii) by execution of this Agreement, irrevocably submits to and accepts, with respect to any such action or proceeding, for themselves and in respect of their properties and assets, for the purposes of this Agreement, the jurisdiction of the aforesaid courts, and irrevocably waives any objection to venue in such courts.

8. No Other Insurance. The Assured hereby confirms and warrants that it has no interest in any other policy of insurance covering the Loss, and is not in a position to recover compensation for all or any part of such Loss from any other insurer.
9. Execution in Multiple Counterparts. This Agreement may be executed by way of counterparts and as executed shall constitute an enforceable agreement, binding on all Parties to this Agreement. Together, the counterparts shall constitute one and the same Agreement. The Parties agree that a signed copy of this Agreement may be delivered by facsimile or other electronic means, and that the delivery of such signatures and signed Agreement shall have the same force and effect as the delivery of original, inked signatures. Notwithstanding the foregoing, the Parties agree to exchange the original, signed counterparts of the agreement promptly after signing.
10. Requirement to Act. Any obligation in this Agreement that is expressed to be undertaken or assumed by any party to this Agreement is to be construed as requiring the party concerned to act (whether directly or indirectly) where necessary in order to secure performance of the obligation.

11. Binding Nature of Agreement. Unless a contrary indication appears, any reference in this Agreement to any party, person or entity shall be construed to include its successors in title, permitted assigns and permitted transferees.
12. All Parties Participated in Drafting Agreement. All Parties to this Agreement participated in the drafting of the Agreement and agree that in any action involving the interpretation of this Agreement, the language and terms of the Agreement should not be construed against any party to this Agreement by reason of that party having drafted its terms.
13. Entire Agreement and Modification. This Agreement constitutes a single integrated written contract that expresses the entire agreement and understanding between the Parties with regard to its subject matter and supersedes all prior communications, settlements and understandings of any kind and nature between the Parties and their representatives regarding the matters addressed by this Agreement. Except as explicitly set forth in this Agreement, there are no representations, warranties, promises or inducements, whether oral, written, expressed or implied, that in any way affect or condition the validity of this Agreement or alter its terms. None of the Parties to this Agreement has relied upon any statement, warranty or representation made by or on behalf of the others in entering into this Agreement and agreeing to its terms other than as contained in this Agreement. Any statements, promises or inducements, whether made by any party or by any agents of any party, that are not contained in this Agreement shall not be valid or binding. This Agreement may not be enlarged, modified or altered except by a written agreement signed by all of the Parties hereto.

14. Authorized Signatories. Each signatory hereto warrants that he or she is competent and authorized to enter into this Agreement on behalf of the party for which such signatory purports to sign. Each signatory represents that he or she has read and understands the terms hereof after opportunity to consult with counsel.
15. Attorneys' Fees and Costs. Each of the Parties to this Agreement shall bear all of its own attorneys' fees and costs.
16. Severability. If any provision of this Agreement shall for any reason be held invalid or unenforceable, then the remainder of the Agreement shall be unaffected thereby, and remain in full force and effect.
17. Waiver. No breach of any provision of this Agreement shall be deemed waived unless it is waived in writing. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or any other provision of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered by their representatives duly authorized as of the dates indicated below.

CERTAIN UNDERWRITERS AT LLOYD'S, LONDON  
SUBSCRIBING TO MARINE INSURANCE  
POLICY NUMBER B0823PA1402209

By: John M Woods

Title: attorney-in-fact

Dated: April 5, 2018

MATANUSKA-SUSITNA BOROUGH

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

Title: BOROUGH MANAGER

Dated: 04.01.2018