



The Phoenician, LLC

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91-573 MALAKOLE ROAD

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VESSEL REPAIR WORK ORDER TERMS AND CONDITIONS

This Agreement consists of the attached Vessel Repair Work Order Request and Authorization (“WORA”) and the following Vessel Repair Work Order Terms and Conditions which are entered into between THE PHOENICIAN, LLC (“Contractor”) and the Owner and Vessel (owner) identified on the WORA:

1. Work.

Contractor agrees to perform the scope of work set forth in the WORA (“work”). Owner (also referred to using the nongender term “it”) has specifically agreed that it has requested and authorized the work and may inspect the progress of the work from time to time as it deems necessary.

2. Subcontractors.

Owner hereby acknowledges that the Contractor may, in its sole discretion and consistent with the work to be performed, subcontract certain work to be performed. Owner acknowledges that the Contractor is entitled to charge a markup for any such subcontractor work and materials performed and/or provided by the subcontractor while on the premises of the Contractor’s shipyard.

3. Owner Contracted Party.

With the expressed written consent of Contractor, Owner may directly contract with other third parties or subcontractors to perform work on the Vessel (“Owner Contracted Party”) at the Contractor’s shipyard facilities. Owner specifically agrees that Contractor is not responsible in any way for any work performed and shall be held harmless by Owner for all work performed by such Owner Contracted Party or Parties. Owner agrees that Contractor does not warrant or is in any way responsible for work performed by any Owner Contracted Party or for any injuries or damage caused by such Owner Contracted Party.

4. Estimated Start and Completion Dates.

The work shall commence and be completed on or about the estimated dates set forth in the WORA (“work period”). This estimated work period is subject to change as may be described herein.

5. Contract Price.

The price for the work set forth in the WORA (“Contract Price”) is only an estimate and is subject to price adjustments by either the conditions described in Paragraphs 2, 3, 6 and 7

herein and (b) whenever prices are quoted as a “Price Per Unit” or “Price Per Day” basis, by the “Number of Units” or “Days That Are Actually Used”. The Contract Price is payable without any deduction or setoff at the Contractor’s above business address.

Layday and other daily charges will continue to accrue through the day that the Vessel departs the Contractor’s facilities. Any item(s) other than the Vessel not removed from the Contractor’s premises within 14 calendar days after the work is completed will be deemed to be abandoned by the Owner and will be sold or disposed of by Contractor without payment or notice to Owner.

6. Change Orders.

Owner may request changes to the scope of work (“change order”). Owner acknowledges that any such change order(s) may result in additions, deletions or other revisions to the contract price and may change the scope of and time for the work. The amount of any adjustment to the Contract Price for any agreed change order(s) will be determined by the Contractor. Owner shall submit The Phoenician, LLC Change Order form for all changes requested of the Contractor prior to performance of the changer order items. In the event circumstances make it impractical for the Owner to execute the required Change Order Form and the Contractor performs the requested change order and a dispute arises over the charges for the change order, the Contractor shall, at a minimum, be entitled to an equitable adjustment in the Contract Price and an adjustment to the Work Period (including the Estimated Start Date, if appropriate). Any unresolved dispute under this paragraph will be determined via Arbitration under paragraph 19.

7. Delays and Extension of Time.

If the Contractor is delayed at any time in the progress of the work by any act, omission or neglect of the Owner or any act, omission or neglect of any representative of the Owner or by any act, omission or neglect of an Owner Contracted Party, or by any Change Orders in the work, Acts of God, labor disputes, fire, riot or civil commotion, criminal acts by third parties, illness of subcontractors, equipment failure, delay in transportation or shipment of materials or equipment, priorities or allocation of the United States Government, acts of third-parties, work scheduling conflicts or any causes beyond the control of the Contractor, then the Work Period (and Estimated Start Date if appropriate) shall be extended for a period co-extensive with the period of any such delay. Owner agrees that Contractor shall not be liable for any consequential loss caused by such delay.

Owner, with reasonable notice to the Contractor, reserve the right to cancel any of the work affected by such delay set forth above. However, in the event of such cancellation by the Owner, Contractor shall be compensated for all work performed to the date of such cancellation and for all work in progress as of the date of cancellation and for all cost of materials procured and already ordered as of the date of cancellation. Owner shall also be responsible for any vessel area cleanup, equipment removal and time associated with cancellation of such work.

8. Limited Warranty.

Contractor provides a limited warranty that the work performed under this agreement shall be in conformity with local standards in the industry, performed in a workmanlike manner and in accordance with any provided manufacturers specifications. The duration of this Limited Warranty is 30 days from the date of completion of the work. If any such warranty items appear within this 30 day period, Owner must promptly notify Contractor in writing in order to allow a reasonable time for Contractor to investigate any nonconformity. In no event shall this Limited Warranty apply to any notification received by Contractor later than 45 days from the date the work is completed. If an item is subject to the Limited Warranty, Contractor will repair or replace the defective material or workmanship. Contractor shall have the sole discretion in determining the appropriate method of repairing or correcting any nonconformity in materials and/or workmanship. Contractor shall bear the cost of repairing a nonconformity under this Limited Warranty. All warranty service shall be performed by the Contractor at its facility or at a site designated by the Contractor. If the Contractor is unable to repair or cure the nonconforming item covered by this Limited Warranty, Contractor will provide Owner with a refund of the Contract Price for that item. These remedies are Owner's exclusive remedies for any breach of this Limited Warranty.

a. What Is Not Covered.

Contractor does not warrant (1) any product, material or equipment not manufactured by the Contractor, (2) any work not listed in the WORA, (3) any work performed by Owner or its agents or representatives or by any Owner Contracted Party, (4) any work not performed by the Contractor, (5) any damage caused by failure of the Owner to properly maintain or use the vessel, (6) any unauthorized repairs to the vessel, (7) any use or abuse of the Vessel or the warranted item by the Owner or any of its representatives and (8) for any consequential loss which may be caused as a result of repairs or corrections which come under the Limited Warranty.

b. Disclaimer of Warranty.

Except for the Limited Warranty set forth above, Contractor makes no other express or implied warranties of any kind and disclaims any and all implied, express or conditional warranties of any nature whatsoever. Owner agrees that Contractor shall not be liable for any incidental, special or consequential damages of any nature whatsoever and that Contractor shall not be responsible for any delay or loss of use of the Vessel including without limitation, lost revenues or profits from its use.

9. Limitation of Liability.

- a. Owner agrees that any claims for breach of contract, negligence, strict liability or any other claim shall be invalid against the Contractor unless such claim is presented in writing to the Contractor within the warranty period or, if the matter cannot be resolved, written notice of Arbitration must be brought within six (6) months after the

date of completion of the work or redelivery of the Vessel to the Owner, whichever date is earlier. It is also agreed that the Contractor's aggregate liability, if any, to the Owner or anyone acting through the Owner shall not exceed one-half of the Contract Price or One Hundred Thousand Dollars (\$100,000.00) whichever is lower.

- b. Contractor shall not be responsible for any loss or damage or injury or death or delay or failure in performing this contract arising or resulting from any Act of God, Act of any Government Authority, stoppage or restraint of labor from whatsoever cause, riot or civil commotion, criminal acts of third-parties, fire or any other cause of any nature whatsoever beyond the control of the Contractor.

10. Owner's Assumption of Risk.

Owner accepts certain risks associated with the haul out, and/or scope of work provided by the Contractor. Owner agrees to purchase and maintain insurance against any such risks of loss and agrees to look only to such insurance for compensation or damages related to any loss involving its Vessel regardless of the legal and physical responsibility thereof. Furthermore, Owner accepts the risk of the work to be performed and Contractor shall have no liability whatsoever under any circumstances for the tortuous or criminal acts of any third-party including, but not limited to, theft, conversion and malicious mischief.

11. Insurance.

At Owners sole cost and expense, prior to commencement of the work, the Owner shall maintain the following insurance policies in full force at all time during the work period and any extension thereof with an insurance carrier acceptable to the Contractor.

- Hull and Machinery Insurance (Port Risk, if available) in an amount equal to the full actual value of the vessel;
- Protection and Indemnity Insurance or comparable liability coverage insuring Owners' interest in the vessel, for third-party claims arising from personal injury or death or from loss of or damage to property with a minimum limit of \$1,000,000 applicable to any one accident or occurrence;
- Automobile liability covering all owned, leased or hired automobiles with the combined single limit of not less than \$1,000,000 for any such automobile on the Contractor's premises.

In addition, prior to commencement of the work, the Owner shall maintain or cause the Owner Contracted party to maintain the following insurance policies in force at all times during the work period and any extension thereof with an insurance carrier acceptable to Contractor:

- Comprehensive general liability with limits of not less than \$1,000,000 each occurrence and \$1,000,000 annual aggregate.
- Workers compensation and USLH insurance where applicable and employer's liability insurance with limits of not less than \$1,000,000.
- Automobile liability covering all owners, leased or hired automobiles with a combined single limit of not less than \$1,000,000.

Any deductible on the required policies shall not exceed \$10,000 and shall be the sole responsibility of Owner. Each of the required policies shall waive subrogation against Contractor and its affiliates, members, agents and employees and shall name Contractor as an additional assured and loss payee. Owner shall provide proof of such required insurance in the form of a certificate of insurance or other proof of insurance as may be required by Contractor.

12. Indemnity.

Owner hereby agrees to indemnify Contractor for any and all claims by all persons, including Owner's agents or employees or third-parties claiming under Owner or through Owner Contracted Party(s) from all liability (including any claim, loss, costs, expenses and attorneys' fees) incurred by Contractor in defending against any such liability or in enforcing this indemnity provision. Owner agrees to indemnify Contractor for any claims arising out of or connected with (a) intention or negligent acts or omissions of the Owner, its agents and employees or Owner Contracted Party, (b) the failure of Owner or Owner Contracted Party to perform or satisfy any covenant or condition of this agreement, (c) any injury to or death of the Owner, its agents, employees and/or Owner Contracted Party while on the Contractor's premises or (d) any violation of environmental pollution, statutes or regulations attributed to the vessel, unless such violation is deemed to be caused by the sole negligence of the Contractor while the vessel was on the Contractor's premises.

13. Delinquent Payments.

All payment for work shall be made as set forth in paragraph 5 above and also according to the terms of the WORA. If any amount is not paid by Owner to Contractor when due, Owner agrees (without waiver of any legal remedy available to the Contractor) to pay Contractor interest at the rate of 12% per annum or the maximum legal rate permissible for Contracts, whichever is higher. In addition, Owner agrees to pay for any expenses or fees that may be incurred by the Contractor in the collection of any payment due for the work and for any accrued interest.

14. Remedies and Liens.

Owner expressly agrees that Contractor shall have the right to seize, hold or otherwise detain the Vessel or any other property of the Owner in Contractor's possession without judicial process until such time as all sums due under this Agreement have been paid and Contractor shall not be liable for any damages suffered or claimed to have been suffered as a result of any such seizure, holding or detention. Contractor also reserves all rights including maritime liens against the Vessel and any personal claims against the Owner in the event of breach of any provision of this Agreement by the Owner. Nothing in this Agreement or the conduct of the Contractor shall be construed as a waiver by the Contractor of its maritime lien on the Vessel arising from the work performed or the materials furnished under this Agreement.

15. Use of Contractor's Premises.

Unless authorized by Contractor to do so, Owner and its agents, employees, invitees and Owner contracted party are not permitted to enter areas of Contractor's facilities where Vessel repairs are performed or perform any maintenance or repairs to the Vessel while it is in the Contractor's facilities. In the event, Contractor authorizes Owner and its agents, employees, invitees and Owner Contracted Party to enter Vessel repair areas or perform maintenance or repairs, Owner shall comply with all conditions imposed by Contractor in granting the authorization (in addition to the terms set forth herein), these conditions include compliance with safety, drug and alcohol statutes and regulations as well as vehicle use and parking, hazardous materials containment and disposition and other policies the Contractor has issued or may issue as the work progresses or as may be required by State or Federal statutes, rules or regulations.

16. Unclaimed Vessels and Personal Property.

Owner agrees that the vessel will be removed from the Contractor's facility promptly after the work by Contractor has been performed and payment made. Owner also agrees to remove all replaced parts of the vessel which Owner wishes to retain. Contractor will not store replaced parts as such may be a safety hazard. Any such parts or personal property left on Contractor's property shall be considered abandoned and removed, sold or otherwise disposed of by Contractor without notice to Owner.

17. Surveys of Vessel While At Contractor's Facility.

Owner agrees that a copy of any survey of the vessel performed while such vessel is located at the Contractor's shipyard facility will be provided to Contractor at Contractor's request. Contractor agrees to reimburse Owner for all reasonable copying charges and photograph reprints associated with such a survey.

18. Contractor's Affiliates.

All limitations of and exemptions from liability and entitlement to indemnity applicable to Contractor by law or by the terms of this Agreement shall apply to Contractor and its affiliates and all officers, members, directors, employees and agents of the Contractor and its affiliates.

19. Complete Agreement.

This Agreement is the complete and exclusive statement of all the terms and agreements between the Contractor, the Owner and the Vessel and shall not be varied, supplemented, qualified or interpreted by any course of dealing between the parties or by any prior representations or by any usage of trade. All prior or contemporaneous agreements, understandings and representations are merged into this agreement. The Contractor has no duty or liability to Owner or the Vessel except as expressly set forth in this Agreement. Whenever there is a conflict between this Agreement and any other instrument or document, even if issued or signed on a later date, the provisions of this Agreement shall govern. The Agreement may not be amended except by a written amendment signed by the parties and identified as an amendment hereto.

20. Applicable Law and Jurisdiction.

This Agreement shall be governed by the laws of the State of Hawaii. The captions used in this Agreement and pronouns are for convenience of reference only and shall have no force or effect in construing or enforcing this Agreement. If the foregoing provision regarding Arbitration is deemed inapplicable, any action or proceeding brought by either party to enforce any terms or provision of this Agreement shall be commenced in the First Circuit Court of the State of Hawaii or the United States District Court for the District of Hawaii as appropriate. The prevailing party in any such action or proceeding shall be entitled to recover its costs and expenses of suit and attorneys' fees.

21. Arbitration

Any dispute arising out of this Agreement which remains unresolved fifteen (15) days after written notice of the dispute has been given by one party to another which does not involve a monetary liability in excess of Twenty Thousand No/100 Dollars (\$20,000.00) exclusive of attorneys' fees and costs, shall be referred to Binding Arbitration, Honolulu, Hawaii by a single Arbitrator under the rules of Dispute Prevention and Resolution, Honolulu, Hawaii. The award of the Arbitrator shall be final and may be confirmed in accordance with Chapter 658, Hawaii Revised Statutes.

22. Warranty of Persons Signing.

The person signing this Agreement and the WORA warrants that (a) he/she is the Owner of the Vessel or the corporate representative authorized to execute this Agreement on behalf of the Owner and Vessel and (b) that he/she has read, understood and agreed to the terms and conditions of this Agreement and the WORA.

OWNER /AUTHORIZED OWNER'S REPRESENTATIVE

\_\_\_\_\_  
Signature

\_\_\_\_\_  
DATE

AGREED & EXECUTED FOR THE PHOENICIAN, LLC BY:

\_\_\_\_\_  
Its:

\_\_\_\_\_  
DATE

The Phoenician, LLC