RECORDATION NO. W171 FILED

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SURFACE TRANSPORTATION BOARD

BOLTNAGI PC
ATTORNEYS AT LAW

5600 ROYAL DANE MALL, SUITE 21
ST. THOMAS, U.S. VIRGIN ISLANDS 00802-6410

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November 4, 2015

Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street S.W.
Washington, DC 20423-0001

Re: LETTER OF TRANSMITTAL – Dolphin Water Shuttle, LLC and Merchants Commercial Bank Vessel Security Agreement

Dear Section Chief:

I have enclosed an original and one copy of the Vessel Security Agreement ("Security Agreement") described below to be recorded with Section 11301 of Title 49 of the U.S. Code.

The Vessel Security Agreement is a security agreement/mortgage, a primary document dated October 20, 2015.

The name and address of the parties to the Security Agreement are as follows:

Debtor:

Dolphin Water Shuttle, LLC
16843 Huntington Path
Lakeville, Minnesota 55044

Secured Party:

Merchants Commercial Bank
4608 Tutu Park Mall, Suite 100
St. Thomas, U.S. Virgin Islands 00802-1816

A description of the equipment covered by the Security Agreement follows:

Two (2) vessels described as:

| | |
|---|---|
| Name: | "TRIXY" |
| Make: | Destago |
| Hull Identification No.: | DPDZ0224D000 |
| Year Built: | 2000 |
| Virgin Islands Registration No.: | VI 0693-TC |

| | |
|---|---|
| Name: | "SPONGE BOB" |
| Make: | Destago |
| Hull Identification No.: | DQD22224D000 |
| Year Built: | 2000 |
| Virgin Islands Registration No.: | VI 0694-TC |

A fee of Forty-Three and 00/100 Dollars ($43.00) is enclosed. Please return the original and any extra copies not needed by the Board for recordation to:

Steven K. Hardy
BoltNagi PC
5600 Royal Dane Mall, Suite 21
St. Thomas, U.S. Virgin Islands 00802-6410.

A short summary of the Security Agreement to appear in the index followd:

Vessel Security Agreement between Dolphin Water Shuttle, LLC of 16843 Huntington Path, Lakeville, Minnesota 55044, as Debtor, and Merchants Commercial Bank of 4608 Tutu Park Mall, Suite 100, St. Thomas, U.S. Virgin Islands 00802-1816, as Secured Party, covering two (2) vessels described as (a) Name: "TRIXY", Make: Destago, Hull Identification No.: DPDZ0224D000, Virgin Islands Registration No.: VI 0693-TC; and (b) Name: "SPONGE BOB", Make: Destago, Hull Identification No.: DQD22224D000, Virgin Islands Registration No.: VI 0694-TC.

Very truly yours,

BoltNagi,PC
Attorneys for the Secured Party

Steven K. Hardy
Associate Attorney

SKH: rt

RECORDATION NO. 21171 FILED

NOV 10 2015 -2:40 PM

SURFACE TRANSPORTATION BOARD

# VESSEL SECURITY AGREEMENT

**THIS VESSEL SECURITY AGREEMENT** is made on this 20th day of October, 2015, under the laws of the United States Virgin Islands, by and between **DOLPHIN WATER SHUTTLE, LLC**, a U.S. Virgin Islands limited liability company (the "Debtor"), whose address is 16843 Huntington Path, Lakeville, Minnesota 55044, and **MERCHANTS COMMERCIAL BANK**, a bank organized under the laws of the United States Virgin Islands having its principal office at 4608 Tutu Park Mall, Suite 100, St. Thomas, U.S. Virgin Islands 00802-1816 (the "Secured Party").

1. **GRANT**. To secure an indebtedness in the principal amount of up to **SIXTY THOUSAND AND 00/100THS DOLLARS ($60,000.00)** with interest thereon, payable in accordance with the terms and conditions of that certain Promissory Note of even date herewith executed by Debtor in favor of Secured Party (the "Note"), and also to secure any other indebtedness or liability of the Debtor to the Secured Party direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, including all future advances or loans which may be made at the option of the Secured Party (collectively, the "Debt"), Debtor hereby grants to Secured Party a continuing security interest in those certain vessels described as:

| | |
|---|---|
| **Name:** | **"TRIXY"** |
| **Make:** | **Destago** |
| **Hull Identification No.:** | **DPDZ0224D000** |
| **Year Built:** | **2000** |
| **Virgin Islands Registration No.:** | **VI 0693-TC** |

| | |
|---|---|
| **Name:** | **"SPONGE BOB"** |
| **Make:** | **Destago** |
| **Hull Identification No.:** | **DQD22224D000** |
| **Year Built:** | **2000** |
| **Virgin Islands Registration No.:** | **VI 0694-TC** |

wherever located, and all accessories, parts, and equipment now or hereafter affixed thereto or used in connection therewith (collectively, the "Collateral").

2. **DEBTOR'S OBLIGATIONS**. The Debtor warrants and represents to the Secured Party as follows:

A. The Debtor is duly-licensed and organized in the United States Virgin Islands and shall remain duly-licensed and organized during the term of this Agreement.

B. The Collateral is owned by Debtor and is free and clear of any other security interest, preferred ship mortgage, lien, claim, or encumbrance, of any kind or nature whatsoever, and Debtor will keep the Collateral free and clear of any such security interest, except the one herein granted, and free and clear of any lien, claim, preferred ship mortgage or other encumbrance of any kind including federal, state, territorial or local taxes until such time as the Note has been paid and the Collateral released in

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writing by the Secured Party.

C. The Collateral does not comprise any documented vessel under any United States laws, codes, or regulations and Debtor will not document any of the vessels granted as Collateral during the term of this Agreement.

D. The vessel granted at Collateral is currently and will remain registered with the Virgin Islands Department of Planning and Natural Resources, Division of Enforcement, during the term of this Agreement.

E. The Collateral will not be misused or abused, waster or allowed to deteriorate, except for the ordinary wear and tear resulting from its intended use.

F. The Debtor shall maintain Protection and Indemnity Marine Insurance and Secured Party shall be named as an Additional Insured on Debtor's Protection and Indemnity policy of insurance. Debtor shall indemnify and hold harmless, including defense costs, the Secured Party on any claim arising out of Debtor's ownership and use of the Collateral. Such policies of insurance shall expressly provide that the requisite insurance cannot be altered or canceled by the insurance carrier without at least thirty (30) days prior written notice to the Secured Party and shall insure the Secured Party notwithstanding the act or neglect of the Debtor. Upon Secured Party's demand, the Debtor shall furnish the insurance as herein provided or the Debtor's failure to pay any premium therefor, the Secured Party may, at its option, obtain such insurance and the Debtor shall pay to the Secured Party, on demand, the cost thereof. Proceeds, if any, of any insurance policy maintained by Debtor may be applied by the Secured Party to reduce the Debt or to repair or replace Collateral, all in the Secured Party's sole discretion.

G. The Collateral will be kept in St. Thomas, United States Virgin Islands and operated no more than seventy-five (75) miles therefrom where Secured Party may inspect the Collateral at any time upon forty-eight (48) hours' prior written notice.

H. The Collateral will not be sold, offered to be sold, transferred, disposed of, encumbered or allowed to be or made subject to any charge, including taxes or any subsequent security interest of a third party created or suffered by Debtor, voluntary or involuntary, unless Secured Party consents in writing to such charge, transfer or disposition.

I. Secured Party is entitled to file a financing statement and any document required by Secured Party to perfect this security interest, with any state or federal agency or department.

J. Debtor will reimburse Secured Party for any reasonable costs incurred by Secured Party in any action to remedy default under this Agreement, including reasonable attorney fees.

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3. **DEFAULT**. The following shall constitute an "Event of Default" by Debtor:

A. Failure by the Debtor to pay the principal, any installment of principal, interest or late payment fee when due under the Note following receipt of ten (10)-day written notice of such default and the opportunity to cure such default given by Secured Party to Debtor.

B. Bankruptcy or insolvency proceedings are instituted by or against the Debtor or if Debtor makes an assignment for the benefit of creditors. Prepayment of the principal amount due under the Note shall not constitute a default.

C. Failure by the Debtor to maintain any policy of insurance herein.

D. Misrepresentation or any misstatement in connection with, noncompliance with or nonperformance of any of Debtor's obligations or representation or warranties herein contained or to provided hereafter.

E. Failure by the Debtor to perform any if its other obligations under this Agreement following a ten (10)-day written notice of default by Secured Party given to Debtor and Debtor's failure to cure the same.

F. An uninsured material loss, theft, damage, or destruction to any of the Collateral costing Twenty-Five Thousand and 00/100ths Dollars ($25,000.00) or more to repair or replace.

G. The entry of any judgment against the Debtor or any lien against the making of any levy, seizure or attachment of or on the Collateral.

H. The failure of the Secured Party to have a perfected first priority security interest in the Collateral.

I. Any indication or evidence received by the Secured Party that the Debtor may have directly or indirectly been engaged in any type of activity which, in the Secured Party's discretion, might result in the forfeiture of any property of the Debtor including the Collateral to any government entity, federal, state, territorial or local.

J. Failure by the Debtor to pay any federal, state, territorial or local taxes which otherwise may be a lien on the Collateral or the failure to keep the Collateral free and clear of any and all liens or other charges throughout the term of this Agreement.

4. **SECURED PARTY'S RIGHTS AND REMEDIES**.

A. Secured Party may assign this Agreement. If Secured Party does assign this Agreement, the assignee shall be entitled, upon notifying the Debtor, to performance of all Debtor's obligations and agreement, and assignee shall be entitled to all of the rights and remedies of Secured Party under this Agreement. Debtor will assert no

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claims or defenses it may have against Secured Party in law or in equity against Secured Party's assignee except those expressly granted, if any, in this Agreement, the Debtor herein agreeing that Debtor has no claims or defenses and if so, herein waives the same.

B. Upon and Event of Default and upon ten (10) days written notice by Secured Party to Debtor to cure such Event of Default and such Event of Default having not been cured, Secured Party shall have all rights set forth under the laws of the United States Virgin Islands, including Title 11A, Virgin Islands Code ("UCC"), or any other law of the United States. In addition to the above rights and up ten (10) days written notice by Secured Party to Debtor to cure such Event of Default and such Event of Default having not been cured, the Secured Party may, as Secured Party's discretion:

(i) Accelerate the entire amount of unpaid principal and interest then outstanding and declare all Debt secured hereby immediately due and payable in full and shall have, in addition to any remedies provided herein or by any applicable law or in equity, all the remedies of a secured party under the UCC. The Secured Party's remedies include, but are not limited to, to the extent permitted by law, the right to (a) peaceably by its own means or with judicial assistance enter the Debtor's premises and take possession of the Collateral without prior notice or any bond or security to the Debtor or the opportunity for a hearing, (b) render the Collateral unusable, (c) dispose of the Collateral on the Debtor's premises, and (d) waive any default or remedy without waiving any other prior to subsequent default. All expenses of retaking, holding preparing for sale, selling or the like, together with the Secured Party's reasonable attorney's fees and legal expenses, incurred or expended by the Secured Party to enforce any payment due it under the Debt either as against the Debtor, or in the prosecution or defense of any action, or concerning an matter growing out of or connection with the subject matter of this Security Agreement and the Collateral pledged hereunder shall be paid by the Debtor. The Debtor waives any claim to have the Collateral appraised as well as any claim of exemption.

(ii) Discharge taxes, liens, security interests or such other encumbrances as may attached to the Collateral; pay for required insurance on the Collateral; and pay for the maintenance, appraisal or reappraisal, and preservation of the Collateral, as determined by the Secured Party to be necessary. The Debtor will reimburse the Secured Party on demand for any payment so made or any expense so incurred by the Secured Party pursuant to the foregoing authorization, and the Collateral also will secure any advances or payments so made or expenses so incurred by the Secured party, including reasonable attorney's fees. Failure of the Debtor to make any such payment to the Secured Party shall be an Event of Default hereunder.

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## 5. ADDITIONAL AGREEMENTS AND AFFIRMATIONS.

A. The undersigned executing this Agreement on behalf of Debtor represents and warrants that he has full power and authority to execute and deliver this Agreement on behalf of Debtor.

B. "Debtor" and "Secured Party", as used in this Agreement, include the heirs, administrators, successors and assigns of those parties.

C. All notices, consents, requests, and demands to or upon the respective parties hereto shall be in writing (including by electronic mail), and shall be deemed to have been given or made when delivered in person to those persons on the signature pages herein or when deposited in the U.S. mail, postage prepaid, with a copy sent by electronic mail as described, or, with the overnight courier services when delivered to the overnight courier service, or in the case electronic mail notice, when sent, verification received, in each case addressed as set forth on the signature pages, or such other address as either party may designate by notice to the other.

D. The law and venue governing this Agreement shall be that of the United States Virgin Islands.

E. This Agreement does not waive or modify Secured Party's rights under any other agreement that Debtor has signed with Secured Party, including the Note.

F. If any one of more provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

G. No modification, amendment, or waiver of any provision of this Agreement nor consent to any departure by the Debtor therefrom will be effective unless made in a writing signed by the Secured Party, and then such waiver or consent shall be effective only in the specific instance and for the purpose which given. No notice to or demand on the Debtor in any case will entitle the Debtor to any other or further notice or demand in the same, similar or other circumstance.

H. This Agreement may be executed in separate counterparts, and such counterparts when executed and delivered shall be an original.

[ SIGNATURE AND ACKNOWLEDGMENT PAGES FOLLOW ]

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**IN WITNESS WHEREOF**, the Debtor has signed this Vessel Security Agreement the day and year first above written.

**WITNESS:**

_____

_____

**DEBTOR:**

_____
**DOLPHIN WATER SHUTTLE, LLC**
By: Greg Aberle
Title: Manager

**STATE OF MINNESOTA** )
) **ACKNOWLEDGEMENT**
**COUNTY OF DAKOTA** )

On this 20th day of October, 2015 before me personally appeared Greg Aberle, to me personally known, who being by me duly sworn, says that he is the Manager of Dolphin Water Shuttle, LLC, that the foregoing Vessel Security Agreement was signed on behalf of said limited liability company, that he was authorized to executed said instrument, that he had obtained all necessary consents and resolutions needed to executed said instrument, and that he acknowledged that the execution of said instrument was the free act and deed of said limited liability company.

BRYAN JOSEPH LAFRANCE
NOTARY PUBLIC - MINNESOTA
My Commission Expires Jan. 31, 2018

_____
**NOTARY PUBLIC**
My Commission Expires: 1/31/2018

[ ADDITIONAL SIGNATURE AND ACKNOWLEDGMENT PAGE FOLLOWS ]

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**IN WITNESS WHEREOF**, the Secured Party has signed this Vessel Security Agreement the day and year first above written.

**WITNESS:**

**SECURED PARTY:**

**MERCHANTS COMMERCIAL BANK**
By: Rohit L. Khiani
Title: Vice President and
Chief Lending Officer

**TERRITORY OF THE U.S. VIRGIN ISLANDS** )
) **ACKNOWLEDGEMENT**
**DISTRICT OF ST. THOMAS-ST. JOHN** )

On this 20th day of October, 2015 before me personally appeared Rohit L. Khiani, to me personally known, who being by me duly sworn, says that he is the Vice President and Chief Lending Officer of Merchants Commercial Bank, that the foregoing Vessel Security Agreement was signed on behalf of bank, that he was authorized to executed said instrument, that he had obtained all necessary consents and resolutions needed to executed said instrument, and that he acknowledged that the execution of said instrument was the free act and deed of said bank.

**NOTARY PUBLIC** NP 91-13
My Commission Expires: 11/7/2017

**CERTIFICATE AND AFFIDAVIT OF IDENTICAL COPY**

COMES NOW, **STEVEN K. HARDY**, being of lawful age and being first duly sworn under oath and, in compliance with 49 C.F.R. § 1177.3(b), do certify and declare under penalty of perjury the following:

1. I am an attorney with BoltNagi PC, counsel for Merchants Commercial Bank, the Secured Party under that certain Vessel Security Agreement, dated October 20, 2015, between Dolphin Water Shuttle, LLC and Merchants Commercial Bank (the "Security Agreement");
2. I have inspected the original Security Agreement, have compared it to the attached copy of the Security Agreement, and have found the attached copy of the Security Agreement to be complete and identifical in all respects to the original Security Agreement.

**STEVEN K. HARDY**, Affiant

**TERRITORY OF THE U.S. VIRGIN ISLANDS** )
) **SS:**
**DISTRICT OF ST. THOMAS-ST. JOHN** )

SUBSCRIBED AND SWORN to before me this 4th day of November, 2015.

NOTARY PUBLIC
My Commission Expires: 12/12/2016

Carrie DeLight De Leon
Notary Public
St. Thomas - St. John, USVI
NP - 108-12
Comm. Exp. 12/12/2016