

TOGUT, SEGAL & SEGAL LLP  
One Penn Plaza  
Suite 3335  
New York, New York 10119  
(212) 594-5000  
Frank A. Oswald  
Kyle J. Ortiz  
Brian F. Moore

*Counsel to the Debtors and  
Debtors in Possession*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	Chapter 11
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TOISA LIMITED, <i>et al.</i> ,	:	Case No. 17-10184 (SCC)
	:	
Debtors. <sup>1</sup>	:	(Jointly Administered)
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**DEBTORS' MOTION FOR (I) AN ORDER APPROVING  
(A) PROCEDURES REGARDING THE SOLICITATION OF  
OFFERS IN CONNECTION WITH THE SALE OF CERTAIN OF THE  
DEBTORS' OFFSHORE VESSELS, SUBJECT TO BANKRUPTCY COURT  
APPROVAL, (B) THE FORM OF NOTICES REGARDING THE SALES AND (C) THE  
FORM OF PURCHASE AND SALE AGREEMENT; AND (II) ORDERS  
(A) APPROVING EACH OF THE SALES FREE AND CLEAR OF LIENS, CLAIMS,  
ENCUMBRANCES AND OTHER INTERESTS AND (B) AUTHORIZING PAYMENT  
OF BROKER COMMISSIONS FROM SALE PROCEEDS**

TO THE HONORABLE SHELLEY C. CHAPMAN  
UNITED STATES BANKRUPTCY JUDGE:

Toisa Limited ("Toisa") and certain of its affiliates, as debtors and debtors  
in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases,  
hereby make this motion (the "Motion"), pursuant to sections 105(a), 363(b), 363(f), and

<sup>1</sup> The Debtors in these chapter 11 cases are as follows: Trade Prosperity, Inc.; Toisa Limited; United Courage, Inc.; Trade Vision, Inc.; United Journey, Inc.; United Kalavryta, Inc.; Trade Sky, Inc.; Trade Industrial Development Corporation; United Honor, Inc.; Trade Will, Inc.; United Leadership Inc.; United Seas, Inc.; United Dynamic, Inc.; United Emblem, Inc.; United Ideal Inc.; Trade Unity, Inc.; Trade Quest, Inc.; Trade Spirit, Inc.; Trade Resource, Inc.; United Ambassador, Inc.; Edgewater Offshore Shipping, Ltd.; United Banner, Inc.; Toisa Horizon, Inc.; and Trade and Transport Inc.



363(m) of Title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004 and 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Rule 6004-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Southern District of New York (the “Local Rules”) and the *Amended Guidelines for the Conduct of Asset Sales for the United States Bankruptcy Court for the Southern District of New York* (the “Sale Guidelines”) for: (i) an order, substantially in the form attached hereto as Exhibit A (the “Sale Procedures Order”) approving (a) procedures (the “Sale Procedures”) to govern the solicitation and bidding in connection with the proposed sale (each, a “Sale” and, collectively, the “Sales”) of certain of the Debtors’ Offshore Vessels (as defined below), (b) the form of notices regarding the Sales and (c) the form of Purchase and Sale Agreement to be utilized in connection with the Sales attached hereto as Exhibit B (the “Purchase Agreement”); and (ii) orders, substantially in the form attached hereto as Exhibit C (each, a “Sale Order”), approving (a) the Sale of each of the Offshore Vessels free and clear of liens, claims, encumbrances, and other interests (collectively, “Liens”) and (b) authorizing payment of commissions, if any, to the Broker (as defined below) from the proceeds of the applicable Sale (each, a “Broker Commission” and, collectively, the “Broker Commissions”). In support of this Motion, the Debtors respectfully state:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Motion and the relief requested herein pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to such term in the Ongoing Procedures Motion (defined below).

2. The statutory predicates for the relief requested herein are sections 105(a) and 363(b), (f), and (m) of the Bankruptcy Code, Bankruptcy Rules 2002, 6004 and 9006 of the Bankruptcy Rules, Local Rule 6004-1 and the Sale Guidelines.

### **BACKGROUND**

#### **A. The Chapter 11 Cases.**

3. The Debtors are a diversified shipping business hauling both wet goods with their fleet of tankers and dry goods with their fleet of bulkers. The Debtors also own a fleet of offshore support vessels that provide marine transportation, construction and support services to companies in the oil and gas industry that conduct offshore exploration, production, and subsea construction activities. The Debtors have also serviced the subsea fiber optic cable installation market. The Debtors' current fleet consists of twenty-six (26) offshore support vessels (collectively, the "Offshore Vessels").

4. On January 29, 2017 (the "Petition Date"), the Debtors each commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. The Debtors' chapter 11 cases (the "Chapter 11 Cases") have been consolidated for procedural purposes only and are being jointly administered.

5. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

6. On May 18, 2017, the United States Trustee for the Southern District of New York appointed the Official Committee of Unsecured Creditors (the "Creditors' Committee"). On June 12, 2017, the United States Trustee filed an amended *Notice of Appointment of Official Committee of Unsecured Creditors* [Docket No. 199], and on February 7, 2018, the United States Trustee filed the Third Amended Notice of

Appointment of Official Committee of Unsecured Creditors [Docket No. 474]. No trustee or examiner has been appointed in the Debtors' Chapter 11 Cases.

7. An Informal Committee of Secured Lenders (the "Informal Committee") and each member of the Informal Committee, a "Secured Lender") was formed consisting of the following lenders: BNP Paribas S.A.; Citibank Europe plc UK Branch; Citibank N.A. London Branch; Commerzbank AG; Commonwealth Bank of Australia; Credit Agricole Corporate and Investment Bank; Danish Ship Finance A/S; DNB (UK) Limited; DVB Bank America N.V.; Export-Import Bank of China; HSH Nordbank AG; ING Bank N.V., London Branch; National Bank of Greece S.A.; Royal Bank of Scotland plc; and Unicredit Bank AG.

**B. Oceangoing Sales and Retention of H. Clarkson & Company.**

8. On March 15, 2018, the Debtors filed the *Motion for (I) an Order Approving (A) Procedures Regarding the Solicitation of Offers in Connection with the Sale of Certain of the Debtors' Vessels and Newbuild Contracts, Subject to Bankruptcy Court Approval, (B) the Form of Notices Regarding the Sales and (C) the Form of Purchase and Sale Agreement; and (II) Orders (A) Approving Each of the Sales Free and Clear of Liens, Claims, Encumbrances, and Other Interests and (B) Authorizing Payment of Broker Commissions from Sale Proceeds* [Docket No. 507] (the "Oceangoing Procedures Motion"). With the Oceangoing Procedures Motion, the Debtors sought, among other things, an order approving procedures regarding the solicitation of offers in connection with the sale of their tankers and bulkers (collectively, the "Oceangoing Vessels"), as well as the assignment of the Debtors' contracts for the construction of six (6) new tankers (collectively, the "Newbuild Contracts").

9. Also on March 15, 2018, the Debtors filed an application to retain H. Clarkson & Company Ltd. (the "Broker") as their shipbroker in these Chapter 11 Cases

[Docket No. 506] (the “Broker Application”) to market and sell their Oceangoing Vessels and assign their Newbuild Contracts (collectively, the “Oceangoing Sales”).

10. On March 30, 2018, the Court entered the *Order Approving (A) Procedures Regarding the Solicitation of Offers in Connection with the Sale of Certain of the Debtors’ Vessels and Newbuild Contracts, Subject to Bankruptcy Court Approval, (B) the Form of Notices Regarding the Sales and (C) the Form of Purchase and Sale Agreement* [Docket No. 526] (the “Oceangoing Procedures Order”).

11. On April 5, 2018, the Court entered the *Order Authorizing the Retention and Employment of H. Clarkson & Company as Prober for the Debtors Nunc Pro Tunc to February 26, 2018* [Docket No. 536] (the “Broker Retention Order”).

**C. The Offshore Vessels and Expanded Clarkson Retention.**

12. Having considered various restructuring alternatives, the Debtors, in consultation with the Informal Committee and the Creditors’ Committee, have determined to sell certain of their Offshore Vessels pursuant to the Sale Procedures, which are designed to maximize the value of the Offshore Vessels.<sup>3</sup>

13. Contemporaneously herewith, the Debtors have filed an application (the “Expanded Broker Application”) to expand the scope of the Broker’s retention to include brokerage services related to the Sales of the Offshore Vessels on the terms set forth in the Brokerage Agreement dated May 25, 2018 (the “Offshore Vessel Brokerage Agreement”). A hearing to consider the Expanded Broker Application is currently scheduled for June 25, 2018 at 11:00 am. (ET).

14. The Expanded Broker Application contemplates that the Broker will provide brokerage services with respect to certain enumerated Offshore Vessels, but

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<sup>3</sup> Toisa directly owns certain of the Offshore Vessels, while others are wholly owned by separate, direct subsidiaries of Toisa (together with Toisa, each, an “Offshore Vessel Owner” and, collectively, the “Offshore Vessel Owners”).

that additional Offshore Vessels may be added to the scope of the Broker's expanded retention in accordance with the terms of the Offshore Vessel Brokerage Agreement. Specifically, if the Sale Procedures Order is entered and the Expanded Broker Application is approved: (i) all Offshore Vessels included in the definition of "Vessel" in the Offshore Vessel Brokerage Agreement will be marketed by the Broker in accordance with the Sale Procedures; (ii) solely with the prior written consent of the applicable Secured Lender, the applicable Offshore Vessel Owner may add Offshore Vessels to the definition of "Vessel" in the Offshore Vessel Brokerage Agreement by providing written notice to the Broker of such additional ships; and (iii) notwithstanding the foregoing subsection (ii), each Secured Lender may direct in its sole and absolute discretion (provided such direction is received on or before a date to be determined by agreement among the Debtors, the Informal Committee, and the Creditors' Committee)<sup>4</sup> the applicable Offshore Vessel Owner to add one or more Offshore Vessels to the definition of "Vessel" in the Offshore Vessel Brokerage Agreement by providing written notice to the Broker of such additional Offshore Vessels.

#### **RELIEF REQUESTED**

15. The Debtors seek entry of the Sale Procedures Order approving, among other things: (a) the Sale Procedures; (b) the form of notices regarding the Sales; and (c) the form of Purchase Agreement for the Sales. Following entry of the Sale Procedures Order, the Broker will serve a notice, substantially in the form attached to the Sale Procedures Order as Exhibit 1 (the "Bidding Notice"), for each Offshore Vessel on the parties identified in the Sale Procedures (collectively, the "Bidding Notice Parties"). The Bidding Notice will provide parties in interest with notice of the Offshore

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<sup>4</sup> The parties will reach an agreement regarding the deadline set forth in Paragraph 14 of this Motion prior to the hearing to consider the Sale Procedures.

Vessel being sold, and of the opportunity to inspect the Offshore Vessel, perform other due diligence and make a bid.

16. Following the expiration of the Bid Deadline (as defined in the Sale Procedures) for each Offshore Vessel, the Debtors' review of the bids submitted, and negotiation and subsequent selection (with the consent of the applicable Secured Lender and in consultation with the Informal Committee and the Creditors' Committee) of a highest or best bid for each Offshore Vessel (each, a "Successful Bid" and the person or entity making such Successful Bid shall be referred to herein as the "Successful Bidder" or "Purchaser"), if any, the Debtors will file a notice, substantially in the form attached to the Sale Procedures Order as Exhibit 2 (the "Sale Notice"), for the Sale of each Offshore Vessel for which a Successful Bidder is selected describing, among other things, the identity of the Successful Bidder, the key terms of the Sale, the deadline for parties in interest to file and serve an objection to the proposed Sale and, in the event such an objection is timely filed, the time, date and place for a hearing to consider the proposed Sale.

17. Notwithstanding the Court's approval of the Sale Procedures, the Debtors submit that they, with the consent of the applicable Secured Lender and in consultation with the Informal Committee and the Creditors' Committee, may seek approval of an alternative transaction regarding an Offshore Vessel, which may include negotiated bid protections with a prospective purchaser if the Debtors, in their business judgment and with the consent of the applicable Secured Lender and in consultation with the Informal Committee and the Creditors' Committee, deem it appropriate to include such bid protections without further order of the Court.

18. At the conclusion of the Sale Hearing or, if no objection to the proposed Sale is timely filed, following the expiration of the Objection Deadline (each as defined in the Sale Procedures) for the applicable Sale, the Debtors will seek entry of

a Sale Order for each Sale approving, among other things: (i) the Sale of the applicable Offshore Vessel to the applicable Purchaser free and clear of all Liens under sections 363(b) and (f) of the Bankruptcy Code; (ii) payment of the Broker Commission, if any, regarding the Sale, unless the Purchaser is the Secured Lender that credit bid for the Offshore Vessel (subject to the conditions set forth in the Offshore Vessel Brokerage Agreement); and (iii) a waiver of the fourteen (14) day stay required by Bankruptcy Rule 6004(h).

### **THE PROPOSED SALE PROCEDURES<sup>5</sup>**

19. The Sale Procedures are substantially similar to the sale procedures approved by this Court in connection with the Oceangoing Sales, particularly with regard to, among other things, the form and content of the Bidding Notice and Sale Notice, inspections, the requirements of a qualified bid for an Offshore Vessel (as defined in the Sale Procedures, a “Qualified Bid”) and a credit bid, and the procedures for handling multiple Qualified Bids and selection of a Successful Bidder, if any.

### **EXTRAORDINARY PROVISIONS OF PROPOSED SALE**

20. Pursuant to the Sale Guidelines, the Debtors are required to highlight any “extraordinary provisions.” The extraordinary provisions here, as in the Oceangoing Procedures Motion, are as follows:

#### **Use of Proceeds**

- The proceeds from each Sale will be used to pay the costs of the Sale, including the applicable Broker Commission, if any, and the remaining proceeds (including any cash deposit made by the Purchaser) generated from the Sale shall be (i) deposited directly into the relevant vessel account for the applicable Secured Lender and (ii) used solely in accordance with the applicable cash collateral order; provided, however, that notwithstanding the terms of the applicable cash collateral order, the applicable Secured Lender shall apply such cash proceeds and any other cash in the vessel account to permanently

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<sup>5</sup> In the event of a conflict between the Sale Procedures described in this Motion (including the exhibits thereto) and the Sale Procedures Order, the terms of the Sale Procedures Order shall control.



reduce the outstanding principal amount of the prepetition obligations owed to the applicable Secured Lender in accordance with a closing memorandum (the "Closing Memorandum") to be delivered by the Debtors to the applicable Secured Lender as soon as reasonably practicable prior to the expected date of the closing of the Sale (the "Closing Date"), but in no event later than five (5) business days prior to the expected Closing Date, and agreed between the applicable Secured Lender and the Debtors (in consultation with the Informal Committee and the Creditors' Committee) in accordance with the terms of the applicable Sale Order. In the event that no such agreement regarding the Closing Memorandum is reached prior to the Closing Date, only the portion of the cash proceeds relating to disputed payments or reserves (the "Disputed Amounts") shall continue to be held in the relevant vessel account for the applicable Secured Lender in accordance with the applicable Cash Collateral Order, and upon the closing of the Sale the remainder of the cash proceeds and any other cash in the relevant vessel account for the applicable Secured Lender shall be applied to permanently reduce the outstanding principal amount of the prepetition obligations owed to the applicable Secured Lender. If the Debtors and the applicable Secured Lender are unable to resolve their dispute with respect to the payment of, or reserve for, the Disputed Amounts within fourteen (14) days from the Closing Date, the Debtors shall file with this Court and serve upon the applicable Secured Lender a motion, on at least ten (10) days' prior written notice to the applicable Secured Lender of any hearing on such motion, requesting authority to pay or reserve for such Disputed Amounts from the cash proceeds of the Sale, and no disbursements of the Disputed Amounts from the relevant vessel account for the applicable Secured Lender shall be made without further order of this Court. All of the applicable Secured Lender's rights to object to any such motion are reserved. If the Debtors do not file a motion within fourteen (14) days from the Closing Date, the Disputed Amounts shall be applied to permanently reduce the outstanding principal amount of the prepetition obligations owed to the applicable Secured Lender. The Debtors shall work in good faith with their advisors to timely prepare the Closing Memorandum prior to the closing of each Sale.

#### No Deposit

- The Debtors have determined, in consultation with the Broker, that requiring bidders to post a deposit in connection with making a Qualified Bid would likely chill bidding for the Offshore Vessels. As such, the Debtors are not requiring that a bid contain a deposit in order to constitute a Qualified Bid.

**BASIS FOR RELIEF**

**A. The Sale Procedures Should Be Approved.**

21. The Debtors worked with the Broker, who has extensive experience marketing and selling commercial vessels similar to those owned by the Debtors, to formulate the Sale Procedures. The Sale Procedures are designed to ensure the Debtors' estates receive the greatest benefit available from the Sale of the Offshore Vessels, while providing for expeditious closings.

22. The Sale Procedures provide first for broad dissemination of each Bidding Notice to, among others, all persons and entities that have expressed an interest in acquiring the applicable Offshore Vessel (or that the Broker anticipates might have such an interest), as well as publication of the same in appropriate periodicals in the Broker's discretion. This will ensure that the Debtors reach the widest possible market of potential bidders to ensure that any party that may be interested in purchasing one or more Offshore Vessels is notified that such Offshore Vessels are available for purchase and apprised of the opportunity to inspect the Offshore Vessels, otherwise perform due diligence, and submit a bid.

23. Following expiration of the Bid Deadline and selection of a Successful Bidder for each Offshore Vessel, the Debtors will serve each Sale Notice on the Sale Notice Parties (each as defined in the Sale Procedures) setting forth the pertinent information regarding each Sale to afford such parties an opportunity to review the proposed Sale terms and to object to entry of a Sale Order approving such Sale if any such party deems the Sale objectionable in any respect. Thus, the Sale Procedures are designed to provide for an efficient process, while providing parties in interest with detailed information regarding each Sale and affording them a reasonable opportunity to object.

24. The Debtors submit that the Sale Procedures are fair and open, and are not designed to unfairly benefit any particular purchaser. Moreover, the Sale Procedures set out a timeframe that will allow potential purchasers sufficient time to conduct any additional diligence and submit informed competing bids, while still providing for the prompt Sale of the Offshore Vessels.

25. The Debtors respectfully submit the Sale Procedures are reasonably designed to ensure the Debtors' estates receive the highest or best purchase price for the Offshore Vessels, and, therefore, warrant Court approval.

**B. The Bidding Notice and Sale Notice Should Both Be Approved.**

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26. Bankruptcy Rule 6004(a) provides notice of a proposed sale of property of the estate, other than in the ordinary course of business, shall be given to all known creditors and parties-in-interest pursuant to Bankruptcy Rule 2002(a)(2), (c)(1), (i) and (k).

27. Bankruptcy Rule 2002(a) requires "the clerk, or some other person as the court may direct," give "the debtor, the trustee, all creditors and indenture trustees at least 21 days notice by mail of: a proposed use, sale, or lease of property of the estates other than in the ordinary course of business...." Fed. R. Bankr. P. 2002(a). Bankruptcy Rule 2002(c) requires this notice include "the time and place of any public sale, the terms and conditions of any private sale and the time fixed for filing objections." Fed. R. Bankr. P. 2002(c).

28. Bankruptcy Rule 6004(c) requires a motion pursuant to section 363(f) of the Bankruptcy Code for authority to sell property free and clear of liens or other interests "shall be served on the parties who have liens or other interest in the property to be sold." Fed. R. Bankr. P. 6004(c).

29. The Debtors request notice of the Sale and Bid Deadline for each Offshore Vessel and related relief be deemed sufficient if each Bidding Notice is served

on the applicable Bidding Notice Parties at least fourteen (14) calendar days prior to the Inspection Date (as defined in the Sale Procedures) for the applicable Offshore Vessel.

30. Additionally, the Debtors request that notice of the Sale of each Offshore Vessel, as applicable, to the applicable Purchaser, the applicable Objection Deadline, and the Sale Hearing, if any, be sufficient if each Sale Notice is served on the applicable Sale Notice Parties at least seven (7) days prior to the Objection Deadline for the applicable Sale.

31. As described above, the Bidding Notice and Sale Notice contain the necessary information to apprise parties in interest of pertinent information regarding the Sale of each of the Offshore Vessels, including: (i) the property of the estate being sold by the Debtors; (ii) the Sale Procedures; (iii) the Bid Deadline; (iv) the Objection Deadline; (v) and the time, date, and location of the Sale Hearing, if any.

32. The Debtors submit all of these notice procedures satisfy the requirements of Bankruptcy Rules 2002 and 6004 and Local Rule 6004-1, and respectfully request the Court approve them.

**C. The Form of Purchase Agreement Should Be Approved.**

33. The Purchase Agreement is a standard form used in the shipping industry for the purchase and sale of vessels, except to the extent it has been modified to suit the circumstances of these Chapter 11 Cases (*e.g.*, each Sale is subject to Bankruptcy Court approval, each Sale is free and clear of Liens with any such Liens to attach to the proceeds of the applicable Sale as set forth in greater detail below, and the applicable Offshore Vessel Owner makes no representations or warranties regarding the applicable Offshore Vessel, except as expressly stated in the Purchase Agreement). As such, the Debtors respectfully request that the Purchase Agreement be approved as

the form of purchase agreement to be used in soliciting bids for, and consummating the Sale of, each Offshore Vessel.

**D. The Sale of the Offshore Vessels Is an  
Exercise of the Debtors' Sound Business Judgment.**

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34. Section 363(b) of the Bankruptcy Code governs transactions outside the ordinary course of business involving property of the Debtors' estates and provides, in relevant part, "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estates...." 11 U.S.C. § 363(b).

35. A debtor's sale or use of property of the estate outside the ordinary course of business should be approved by the Court if the debtor can demonstrate a sound business justification for the proposed transaction. *See In re Chrysler LLC*, 576 F.3d 108, 117-18 (2d Cir. 2009) (citing *In re Iridium Operating LLC*, 478 F.3d 452, 466 (2d Cir. 2007) ("In this Circuit, the sale of an asset of the estates under § 363(b) is permissible if the 'judge determining [the] § 363(b) application expressly find[s] from the evidence presented before [him or her] at the hearing [that there is] a good business reason to grant such an application.'").

36. The Offshore Vessels are property of the Debtors' estates. The Debtors, in consultation with the Creditors' Committee, the Informal Committee, and their Secured Lenders, have determined in their business judgment that selling certain of the Offshore Vessels pursuant to the Sale Procedures is in the best interests of the Debtors' estates.

37. As noted above, following the expiration of the Bid Deadline for each Offshore Vessel, the Debtors, with the consent of the applicable Secured Lender and in consultation with the Informal Committee and the Creditors' Committee may select the highest or best offer for the applicable Offshore Vessel, if any. In the event a Successful Bidder is selected, the Debtors will file and serve the Sale Notice, which will

contain: (a) a proposed Sale Order for the applicable Sale; (b) a declaration from the Broker in support of the Sale describing the marketing efforts undertaken by the Broker and explaining the reasons why the Successful Bid is the highest or best Qualified Bid for the applicable Offshore Vessel (a “Broker Declaration”); and (c) a declaration from an officer of the Debtors containing factual support sufficient for the Court to find that: (i) the Sale constitutes a prudent exercise of the Debtors’ business judgment; (ii) the Sale may be consummated free and clear of all Liens under section 363(f) of the Bankruptcy Code; and (iii) the Successful Bidder is a good faith purchaser entitled to the protections of section 363(m) of the Bankruptcy Code (a “Debtor Declaration” and, together with the Broker Declaration, the “Supporting Declarations”). Accordingly, the Debtors respectfully submit that the Court should approve any Sale conducted pursuant to the Sale Procedures following the Court’s review of the Supporting Declarations for each Sale.

**E. The Offshore Vessels Should Be Sold Free and Clear of Liens, Claims, Encumbrances and Interests.**

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38. Pursuant to section 363(f) of the Bankruptcy Code, a trustee may sell property under section 363(b) of the Bankruptcy Code free and clear of liens, claims and encumbrances if one of the following conditions is satisfied:

- (i) applicable nonbankruptcy law permits the sale of the property free and clear of such interest;
- (ii) the entity holding the lien, claim or encumbrance consents to the sale;
- (iii) the interest is a lien and the price at which such property to be sold is greater than the aggregate value of all liens on the property;
- (iv) the interest is in bona fide dispute; or
- (v) the entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of its interest.

11 U.S.C. § 363(f); *see In re Smart World Tech., LLC*, 423 F.3d 166, 169 n. 3 (2d Cir. 2005)

(“Section 363 permits sales of assets free and clear of claims and interests. It thus allows

Stalking Horse Purchaser ... to acquire assets [from a debtor] without any accompanying liabilities.”); *In re Dundee Equity Corp.*, No. 89-B-10233, 1992 WL 53743, at \*3 (Bankr. S.D.N.Y. Mar. 6, 1992) (“Section 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met”).

39. For the reasons discussed more fully below, and based upon the facts that will be set forth in the Supporting Declarations filed with respect to the Sale of each Offshore Vessel, the Debtors believe that the requirements will be met and cause will exist to authorize the Sale of the Offshore Vessels pursuant to the Sale Procedures free and clear of all Liens, with all such Liens attaching to the proceeds of the applicable Sale with the same force, validity, priority and effect as they currently exist.

40. Section 363(f)(2). All parties in interest will be given sufficient opportunity to object to the relief requested by the Debtors, and any such entity that does not object to a Sale should be deemed to have consented to same. *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); *Hargrave v. Township of Pemberton (In re Tabone, Inc.)*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (failure to object to sale free and clear of liens, claims and encumbrances satisfies section 363(f)(2)); *Citicorp Homeowners Serv., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (same). Courts in this district have applied the same principle. *See In re Enron Corp.*, 2004 WL 5361245 at \*2 (Bankr. S.D.N.Y. 2004); *In re Enron Corp.*, 2003 WL 21755006 at \*2 (AJG) (Bankr. S.D.N.Y. 2003)

(order deeming all parties who did not object to proposed sale to have consented under section 363(f)(2)).

41. Section 363(f)(3). A Sale can be made free and clear of any liens pursuant to section 363(f)(3) so long as the purchase price exceeds “the aggregate value of all liens on such property.” As discussed above, the Offshore Vessels are each subject to a mortgage. In the event the Debtors obtain a purchase price for one or more Offshore Vessels that is greater than the aggregate value of known Liens asserted against such Offshore Vessel, the Court should approve the Sale of such Vessel(s) free and clear of such Liens.

42. Section 363(f)(5). The Debtors believe that section 363(f)(5) will be satisfied by the Sales because: (i) any entity holding a Lien against the applicable Offshore Vessel could be compelled to accept a monetary satisfaction of its Lien; and (ii) the Debtors propose that any Lien against an Offshore Vessel will attach to the net proceeds of the Sale of the applicable Offshore Vessel, subject to all claims and defenses the Debtors and their estates may possess with respect thereto, with the same force, validity, priority and effect as they currently exist. As a result, the Debtors believe that the Sale of the Offshore Vessels free and clear of all Liens will satisfy section 363(f)(5) of the Bankruptcy Code.

43. Additionally, as noted above, the Debtor Declaration filed with respect to the Sale of each Offshore Vessel will contain additional support for selling such Offshore Vessel free and clear of all Liens.

44. Based upon the foregoing, the Debtors believe that sufficient cause will exist for the Sale of the Offshore Vessels free and clear of all of the Liens, with the Liens to attach to the proceeds of the Sale with the same force, validity, priority and effect as they currently exist.



**F. The Purchasers Should Be Afforded All Protections Under Section 363(m) as a Good Faith Purchaser.**

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45. Section 363(m) of the Bankruptcy Code protects a good faith purchaser's interest in property purchased from the estate notwithstanding the sale conducted under section 363(b) may later be reversed or modified on appeal.

Specifically, section 363(m) states:

The reversal or modification on appeal of an authorization under [section 363(b)] ... does not affect the validity of a sale ... to an entity that purchased ... such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale ... were stayed pending appeal.

11 U.S.C. § 363(m); *see also Allstate Ins. Co. v. Hughes*, 174 B.R. 884, 888 (S.D.N.Y. 1994) ("Section 363(m) ... provides that good faith transfers of property will not be affected by the reversal or modification on appeal of an unstayed order, whether or not the transferee knew of the pendency of the appeal"); *In re Stein & Day, Inc.*, 113 B.R. 157, 162 (Bankr. S.D.N.Y. 1990) ("pursuant to 11 U.S.C. § 363(m), good faith purchasers are protected from the reversal of a sale on appeal unless there is a stay pending appeal").

46. The Second Circuit has indicated a party would have to show fraud or collusion between a buyer and the debtor-in-possession or trustee in order to demonstrate a lack of good faith. *See Kabro Assocs. of West Islip, LLC, v. Colony Hill Assocs. (In re Colony Hill Assocs.)*, 111 F.3d 269, 276, (2d Cir. 1997) ("[t]ypically, the misconduct that would destroy a [purchaser's] good faith status at a judicial sale involves fraud, collusion between the [buyer] and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders"); *see also In re Angelika Films 57<sup>th</sup>, Inc.*, Nos. 97 Civ. 2239 (MBM), 97 Civ. 2241 (MBM), 1997 WL 283412, at \*7 (S.D.N.Y. 1997); *In re Bakalis*, 220 B.R. 525, 537 (Bankr. E.D.N.Y. 1998).

47. Here, the Debtors expect that each Purchaser will satisfy the requirements of Section 363(m) and, as noted above, the Debtor Declaration to be filed

following the Debtors' selection of the Successful Bidder for each of the Offshore Vessels will contain information relevant to the Court's evaluation of whether the Purchaser is a "good faith" purchaser within the meaning of section 363(m) of the Bankruptcy Code and entitled to the protections thereof. Parties in interest will have the opportunity to review the Supporting Declarations and all materials filed in connection with the proposed Sale and submit to the Court any objections such parties may have to the Court entering an order finding that the Purchaser is entitled to the protections of section 363(m) of the Bankruptcy Code. The Debtors believe that any purchase agreement between the Debtors and the Purchaser will be the result of arms'-length, good-faith negotiations between the Debtors and the applicable Purchaser, and each of them will have been represented by their respective professionals in the course of consummating the Sale. Accordingly, the Debtors will request that the Court make a finding that the Purchaser is entitled to the protections of section 363(m) of the Bankruptcy Code in the applicable Sale Order, following the Court's review of, among other things, the Supporting Declarations with respect to each Sale.

**G. The Broker Commissions Should Be Allowed and Paid.**

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48. As set forth more fully in the Expanded Broker Application, and assuming the Broker's expanded retention is approved by this Court, the Broker will be entitled to a Broker Commission equal a portion of the gross cash purchase price payable by the relevant Purchaser pursuant to the Sale Procedures. Accordingly, to the extent the Broker earns a Broker Commission pursuant to the terms of the Offshore Vessel Brokerage Agreement, the Debtors should be authorized to pay such Broker Commission out of the applicable Sale proceeds.

**WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h)**

49. The Debtors also respectfully request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provided 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). The Debtors have an immediate need to close on the Sales of certain Offshore Vessels to avoid the continuing accrual of administrative expenses associated with maintenance of same. In light of the notice of this Motion being provided, and the fact that any valid Liens will attach to the proceeds of the applicable Sale, the Debtors submit that no party will be prejudiced by waiver of the stay imposed by Bankruptcy Rule 6004(h).

**NOTICE**

50. Notice of this Motion has been given to (a) the United States Trustee; (b) counsel for the Informal Committee; (c) the Secured Lenders; (d) counsel for the Creditors’ Committee; (e) all parties in interest under Bankruptcy Rule 2002; and (f) any other party entitled to notice pursuant to Local Bankruptcy Rule 9013-1(b) and which has filed a notice of appearance in these Chapter 11 Cases. The Debtors submit that no other or further notice need be provided, except as provided for in the Sale Procedures.

*[Concluded on the following page]*

**RESERVATION OF RIGHTS**

51. The Debtors reserve the right to file additional documents and present such further information or evidence to the Court as may be appropriate in support of the relief requested herein.

**NO PRIOR REQUEST**

52. No prior motion for the relief requested herein has been made to this or any other Court.

**CONCLUSION**

**WHEREFORE**, the Debtors respectfully requests entry of the Sale Procedures Order and, following the expiration of the Bid Deadline for the applicable Offshore Vessel and the Debtors' compliance with the Sale Procedures as to each Sale, the Sale Orders authorizing the relief requested herein and such other and further relief as is just and proper.

Dated: New York, New York  
June 11, 2018

TOISA LIMITED, *et al.*,  
*Debtors and Debtors in Possession*  
By Their Counsel  
TOGUT, SEGAL & SEGAL LLP,  
By:

/s/ Frank A. Oswald  
FRANK A. OSWALD  
KYLE J. ORTIZ  
BRIAN F. MOORE  
One Penn Plaza, Suite 3335  
New York, New York 10119  
(212) 594-5000

## **EXHIBIT "A"**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
In re: : Chapter 11  
: :  
TOISA LIMITED, *et al.*, : Case No. 17-10184 (SCC)  
: :  
Debtors.<sup>1</sup> : (Jointly Administered)  
----- x

**ORDER APPROVING (A) PROCEDURES REGARDING  
THE SOLICITATION OF OFFERS IN CONNECTION WITH THE  
SALE OF CERTAIN OF THE DEBTORS' OFFSHORE VESSELS, SUBJECT TO  
BANKRUPTCY COURT APPROVAL, (B) THE FORM OF NOTICES REGARDING  
THE SALES AND (C) THE FORM OF PURCHASE AND SALE AGREEMENT**

Upon the motion (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of an order pursuant to sections 105(a), 363(b), 363(f), and 363(m) of Title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, and 9006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Rule 6004-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Southern District of New York (the "Local Rules") and the *Amended Guidelines for the Conduct of Asset Sales for the United States Bankruptcy Court for the Southern District of New York* (the "Sale Guidelines") approving (i) procedures (the "Sale Procedures") to be utilized in connection with the proposed sale or assignment, as applicable (each, a "Sale" and, collectively, the "Sales"), of certain of the Debtors' offshore vessels (collectively, the "Offshore Vessels") and (ii) the form of notices

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<sup>1</sup> The Debtors in these chapter 11 cases are as follows: Trade Prosperity, Inc.; Toisa Limited; United Courage, Inc.; Trade Vision, Inc.; United Journey, Inc.; United Kalavryta, Inc.; Trade Sky, Inc.; Trade Industrial Development Corporation; United Honor, Inc.; Trade Will, Inc.; United Leadership Inc.; United Seas, Inc.; United Dynamic, Inc.; United Emblem, Inc.; United Ideal Inc.; Trade Unity, Inc.; Trade Quest, Inc.; Trade Spirit, Inc.; Trade Resource, Inc.; United Ambassador, Inc.; Edgewater Offshore Shipping, Ltd.; United Banner, Inc.; Toisa Horizon, Inc.; and Trade and Transport Inc.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to such term in the Motion.

regarding the Sales; and this Court having found that proper and adequate notice of the Motion and the relief requested therein (as related to the Sale Procedures aspects of the Motion) has been provided in accordance with the Bankruptcy Rules, Local Rules and any applicable orders entered in these Chapter 11 Cases, and no other or further notice is necessary; and any objections to the aspects of the Motion relating to the Sale Procedures having been withdrawn or overruled on the merits; and this Court having heard the Debtors, by their attorneys, and other parties in attendance at a hearing conducted on June 25, 2018 (the "Offshore Procedures Hearing"); and based on the Motion and the record of the Offshore Procedures Hearing, it appearing that the portion of the relief requested in the Motion relating to the Sale Procedures considered at the Offshore Procedures Hearing is in the best interests of the Debtors' estates and all parties in interest; and after due deliberation thereon and good cause appearing therefor, it is hereby:

**FOUND AND DETERMINED THAT:<sup>3</sup>**

A. This Court has jurisdiction over the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Motion and the relief requested therein is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Good and sufficient notice of the relief sought in the Motion (as related to the Sale Procedures) has been given and no other or further notice is required. A reasonable opportunity to object or be heard regarding the relief requested in the Motion relating to the Sale Procedures has been afforded to all interested persons and entities. Specifically, as evidenced by the Affidavit of Service filed at Docket No. \_\_\_, a

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<sup>3</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact, when appropriate. *See* Fed. R. Bankr. P. 7052.

copy of the Motion, with exhibits, was served on: (a) the United States Trustee; (b) counsel for the Informal Committee; (c) the Debtors' Secured Lenders; (d) counsel for the Creditors' Committee; (e) all parties in interest under Bankruptcy Rule 2002; and (f) any other party entitled to notice pursuant to Local Bankruptcy Rule 9013-1(b) and which has filed a notice of appearance in these Chapter 11 Cases.

C. The proposed form and method of notice of the Sales, the Sale Procedures, the Bid Deadline, the Objection Deadline and the Sale Hearing (if any), as set forth in the Motion, is good, appropriate, sufficient and is reasonably calculated to provide all interested parties with timely and proper notice of the Sales, the Sale Procedures, the Bid Deadline, the Objection Deadline and the Sale Hearing (if any), and no other or further notice of the Sales, the Sale Procedures, the Bid Deadline, the Objection Deadline and the Sale Hearing (if any) is required.

D. The Debtors have articulated good and sufficient cause for this Court to grant the relief requested in the Motion relating to the Sale Procedures, including this Court's (i) approval of the Sale Procedures set forth herein; and (ii) approval of the form and manner of service of the Bidding Notice, substantially in the form attached hereto as Exhibit "1" and the Sale Notice, substantially in the form attached hereto as Exhibit "2" (collectively, the "Notices").

E. The Debtors have articulated good and sufficient cause for, and that the best interests of the Debtors' estates will be served by, this Court scheduling a subsequent hearing to consider whether to grant the remainder of the relief requested in the Motion, including approval of (i) the proposed Sales, in accordance with the applicable Purchase Agreement for the applicable Offshore Vessel by and between the applicable Offshore Vessel Owner and the applicable Successful Bidder free and clear of, liens, claims, encumbrances and other interests (collectively, "Liens"), with all Liens on or against the applicable Offshore Vessel and related assets being sold attaching to



the consideration received by the Debtors under the Purchase Agreement, with the same force, validity, priority and effect as they currently exist, pursuant to section 363(f) of the Bankruptcy Code, as well as (ii) payment of the Broker Commission(s), if any, from the proceeds of the applicable Sale(s) pursuant to the applicable Sale Order(s).

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED solely to the extent provided in this Order.
2. All objections to entry of this Order or to the relief provided herein that have not been withdrawn, waived, resolved, or settled are hereby denied and overruled in their entirety.

**THE SALE PROCEDURES**

3. The below Sale Procedures, which are approved in all respects, shall be utilized for the Sale of Offshore Vessels:

(a) **Bidding Notice.** The Broker shall serve a copy of each Bidding Notice on: (a) the United States Trustee; (b) counsel to the Informal Committee; (c) counsel to the Creditors' Committee; (d) the applicable Secured Lender and its counsel; (e) the United States Attorney's Office for the Southern District of New York; (f) all persons and entities known to have asserted a Lien on the applicable Offshore Vessel; (g) all parties that filed a notice of appearance in these Chapter 11 Cases; (h) all persons and entities that have expressed an interest in acquiring the Offshore Vessel (or that the Broker anticipates might have such an interest); (i) any vendor of the Debtors or the Managing Agent that has an outstanding account receivable for the provision of goods or services in connection with the applicable Offshore Vessel; and (j) any additional person or entity entitled to notice under Local Rule 9013-1(b) (collectively, the "Bidding Notice Parties") at least fourteen (14) calendar days prior to the Inspection Date (as defined below) for the applicable Offshore Vessel. The Bidding Notice shall contain the following information for each Offshore Vessel: (i) a description of the Offshore Vessel; (ii) the date, time and place where the Offshore Vessel may be inspected by interested bidders; (iii) the procedures for obtaining access to the Data Room; (iv) the deadline to submit a bid for the Offshore Vessel (for each Offshore Vessel, the "Bid Deadline"); and (v) the requirements for such bid to constitute a "Qualified Bid" (as defined below). The Broker may, in its sole discretion, publish a copy of all or a portion of the Bidding Notices in one or more appropriate publications. The Broker may, in its discretion, and in consultation with the Debtors, the Creditors' Committee, the Informal

Committee and the applicable Secured Lender, transmit, publish, or otherwise disseminate additional notices, advertisements or other communications to solicit offers for all or a portion of the Offshore Vessels.

- (b) **Inspections**. Each Offshore Vessel sold pursuant to these Sale Procedures must be available for inspection for at least two (2) consecutive days (the last such day shall be referred to as the “Inspection Date”). The Debtors shall use their reasonable best efforts to obtain the cooperation of the Managing Agent<sup>4</sup> to ensure that timely access (including for inspection purposes) and accurate information is provided to the Debtors and prospective purchasers of each of the Offshore Vessels. The Debtors shall provide updates to the Informal Committee, the Creditors’ Committee and the applicable Secured Lender regarding the status of each inspection upon reasonable request and, in the event the Debtors fail to obtain the cooperation of the Managing Agent as set forth above, immediately upon learning of such failure.
- (c) **Qualified Bidders**. In order to be considered a potential Purchaser (as defined below) of an Offshore Vessel, a bidder must first deliver to the Debtors a Qualified Bid (as defined below). A bidder that delivers a Qualified Bid shall be referred to herein as a “Qualified Bidder.” Each Secured Lender shall be deemed a “Qualified Bidder” without satisfying any of the requirements in paragraph (d) below in respect of the Offshore Vessel(s) for which such Secured Lender provided financing.
- (d) **Qualified Bid**. A qualified bid for an Offshore Vessel(s) (a “Qualified Bid”) must (i) be irrevocable through the earlier of the closing date for the applicable Sale (the “Closing Date”) and ten (10) days after the entry of the applicable Sale Order; provided, however, that if the Qualified Bid becomes the Successful Bid (as defined below), such bid shall be irrevocable through the Closing Date or such earlier date as the applicable Purchase Agreement may be terminated in accordance with its terms; (ii) be submitted to counsel for the Debtors, Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, NY 10119, Attn: Frank A. Oswald, Esq. and Kyle J. Ortiz, Esq.<sup>6</sup> and the Broker, Clarksons Platou Shipbroking, Commodity Quay, St. Katherine Docks, London, E1W 1BF, United Kingdom, prior to the applicable Bid Deadline; and (iii) satisfy the following requirements:

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<sup>4</sup> The Debtors’ Managing Agents include Sealion Do Brasil Navegação Ltda and Sealion Shipping, Ltd. (collectively, the “Managing Agents”).

<sup>5</sup> In the event a potential bidder seeks to bid on multiple Offshore Vessels “en bloc,” such bidder shall allocate the purchase price for each such Offshore Vessel that forms such bidder’s bloc bid, and each Offshore Vessel shall be the subject of a separate Purchase Agreement that, upon execution and subject to Bankruptcy Court approval, is binding and enforceable against such bidder and the seller.

<sup>6</sup> Upon receipt of a bid the Debtors shall promptly share such bid with the Informal Committee, the Creditors’ Committee and the applicable Secured Lender(s).

- (1) The bid must be in writing in a form substantially similar to the Purchase Agreement marked to show any changes made thereto, which changes shall be no less favorable to the seller as those set forth in the Purchase Agreement;
  - (2) To the extent an Offshore Vessel is subject to a charter agreement, the bid for such Offshore Vessel must indicate whether the bidder intends to purchase such Offshore Vessel subject to, or free and clear of, the applicable charter agreement;
  - (3) The Debtors may, in their discretion (and in consultation with the Informal Committee, the Creditors' Committee and the applicable Secured Lender), request evidence demonstrating the bidder's financial ability to timely consummate the purchase of the applicable Offshore Vessel(s), and a binding, unconditional commitment letter for financing, if applicable;
  - (4) The bid must disclose the identity of the entity or entities bidding for the applicable Offshore Vessel(s) or otherwise participating in such bid;<sup>7</sup> and
  - (5) The bid must be firm and unconditional, on an as-is, where-is basis, and not subject to any financing or other contingencies.
- (e) **Bid Deadline.** All bids for the applicable Offshore Vessel must be received by the Debtors by the deadline stated in the applicable Bidding Notice (each, a "Bid Deadline"). The Bid Deadline shall be at least seven (7) calendar days after the Inspection Date for the applicable Offshore Vessel. Upon expiration of the applicable Bid Deadline, the Debtors shall transmit a copy of all bids received for the applicable Offshore Vessel to: (i) counsel for the Informal Committee; (ii) counsel for the Creditors' Committee; and (iii) the applicable Secured Lender and its counsel.
- (f) **Credit Bid.** On or before the date that is three (3) business days following the expiration of the Bid Deadline for the applicable Offshore Vessel (the "Credit Bid Deadline"), the applicable Secured Lender, or its assignee, shall be permitted, in accordance with the terms of the Cash Collateral Orders, to submit a credit bid under section 363(k) of the Bankruptcy Code for the Offshore Vessel on which it has a Lien in any amount up to the aggregate amount of its Claim<sup>8</sup> against the relevant selling Offshore

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<sup>7</sup> The Debtors (in consultation with the Informal Committee, the Creditors' Committee and the applicable Secured Lender) may, in their discretion, request additional information from any bidder (including, for the avoidance of doubt, a Secured Lender making a credit bid) regarding the identity of such bidder and the relationship such bidder may have with parties in interest in these Chapter 11 Cases or any other bidder for the Offshore Vessel(s).

<sup>8</sup> A Secured Lender's "Claim" as used in these Sale Procedures is inclusive of any unpaid principal and interest (including as applicable default interest) and fees, costs, legal expenses and other amounts

Vessel Owner. For the avoidance of doubt, a Secured Lender shall be permitted to submit a bid with cash and credit components and the credit component shall constitute the equivalent of cash for the purposes of evaluating bids. Once a Secured Lender submits a credit bid, it shall no longer be entitled to consultation rights with respect to the applicable Sale of its Offshore Vessel. Any rights that the Debtors, Secured Lenders, or the Creditors' Committee (as applicable) may have to object to the Debtors' selection of Successful Bid(s) or to object to the consummation of the sale transaction represented by such bid are preserved. The Debtors and the Creditors' Committee acknowledge and agree that they shall not object to a Secured Lender's credit bid submitted in accordance with section 363(k) of the Bankruptcy Code or the consummation of the sale transaction represented by such credit bid.

- (g) **Procedures for Handling Multiple Qualified Bids.** In the event multiple Qualified Bids (including any credit bid submitted in accordance with subsection (f) above) for the same Offshore Vessel are received on or before the Bid Deadline or the Credit Bid Deadline, as applicable, the Broker shall be authorized to contact such Qualified Bidders to induce such bidders to increase their bid, as directed by the Debtors (the "Sale Process"). The Broker shall regularly update the Debtors, the Informal Committee, the Creditors' Committee and the applicable Secured Lender regarding the Sale Process, including the amount and status of overbids (if any) (unless the applicable Secured Lender has submitted a credit bid for an Offshore Vessel, in which case it shall not receive updates except (i) as provided to other bidders for the applicable Offshore Vessel and (ii) to notify the applicable Secured Lender of any material changes to the Purchase Agreement).
- (h) **Successful Bid.** Following the expiration of the Credit Bid Deadline and conclusion of the Sale Process, if any, described in subsection (g) above, for each Offshore Vessel, the Debtors, with the consent of the applicable Secured Lender, and in consultation with the Informal Committee and the Creditors' Committee, may select, subject to Court approval, a bid as the highest or best bid for the applicable Offshore Vessel (the "Successful Bid"), if any. The Qualified Bidder submitting the Successful Bid shall be the "Successful Bidder" or "Purchaser." In determining whether a bid is the Successful Bid for the applicable Offshore Vessel, the Debtors may consider, without limitation, the likelihood that the Qualified Bidder will be able to expeditiously close the Sale and any other factor deemed

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that are owing to such Secured Lender in accordance with the Bankruptcy Code and applicable bankruptcy and non-bankruptcy law, and the terms of the relevant Prepetition Facility Document (as such term is defined in the "Informal Committee Cash Collateral Order", entered on July 18, 2017 [Docket No. 246]) or Offshore Vessel Facility Document (as such term is defined in the "Credit Agricole Corporate and Investment Bank Cash Collateral Order", entered on March 29, 2017 [Docket No. 91]). The Informal Committee Cash Collateral Order and the Credit Agricole Corporate and Investment Bank Cash Collateral Order, as they may be amended or extended from time to time, are collectively referred to herein as the "Cash Collateral Orders."

relevant to the Debtors in evaluating the bid, in consultation with the Informal Committee, the Creditors' Committee and the applicable Secured Lender. As soon as practicable, the Debtors shall notify the Successful Bidder that it has been selected as the Successful Bidder, and within three (3) business days of such notice, the Successful Bidder shall provide a cash deposit in an amount equal to at least ten-percent (10%) of the purchase price for the applicable Offshore Vessel, which must be in the form of a certified check or cash deposit, and the deposit shall be non-refundable in the event such bid is approved by the Court (except as otherwise provided in the Purchase Agreement or the Sale Procedures Order); *provided, however*, that a Secured Lender shall not be required to provide a deposit on any portion of its credit bid.

- (i) **Sale Notice.** No less than seven (7) calendar days before the Objection Deadline (as defined below) for the applicable Sale of an Offshore Vessel, the Debtors shall serve a copy of the applicable Sale Notice on: (a) the United States Trustee; (b) counsel to the Informal Committee; (c) counsel to the Creditors' Committee; (d) the applicable Secured Lender and its counsel; (e) the United States Attorney's Office for the Southern District of New York; (f) all persons and entities known to have asserted a Lien on the applicable Offshore Vessel; (g) all parties that filed a notice of appearance in these Chapter 11 Cases; and (h) any additional person or entity entitled to notice under Local Rule 9013-1(b) (collectively, the "Sale Notice Parties"). The Sale Notice shall provide the following information for each Sale, among other things: (a) identification of the Offshore Vessel being sold; (b) identification of the Offshore Vessel Owner that directly owns such Offshore Vessel; (c) identification of the Purchaser of the Offshore Vessel, any relationship of that party with the Debtors (if any) (including whether the Purchaser is directly or indirectly owned or controlled by any of the Debtors' current or former shareholders, officers, directors or employees), and confirmation that the Purchaser negotiated and entered into the applicable Purchase Agreement on an arms'-length basis with advice of counsel; (d) the purchase price and terms of payment to be paid by the Purchaser; (e) the material terms of the sale agreement; (f) a copy of the sale agreement evidencing the Sale, if available; (g) the material terms of any marketing or sales process undertaken with respect to the applicable Offshore Vessel, including any Broker Commission to be paid to the Broker in connection with the Sale and Bid Protections, if any; (h) a statement regarding any known Liens against or with respect to the applicable Offshore Vessel; (i) the identities of any known parties holding or asserting Liens against or with respect to the relevant Offshore Vessel; (j) a statement regarding whether the Debtors seek relief under Bankruptcy Code sections 363(f) or 363(m) in connection with the applicable Sale and, if so, a statement that all Liens on or against the applicable Offshore Vessel and related assets being sold shall attach to the consideration received by the Debtors under the Purchase Agreement, with the same force, validity, priority and effect as they currently exist; (k) the Objection Deadline (as defined below) for the applicable Sale; and (l) the date, time, and place of the Sale Hearing (as defined below) in the event an objection to the Sale is timely filed and served on the Objection Notice Parties (as defined below).

- (j) **Proposed Sale Order.** The Debtors shall attach to each Sale Notice or Assignment Notice, as applicable, a proposed form of Sale Order for the Sale of the applicable Offshore Vessel.
- (k) **Supplemental Declarations.** The Debtors shall attach to each Sale Notice, as applicable, (a) a supplemental declaration from the Broker in support of the Sale describing the marketing efforts undertaken by the Broker and explaining the reasons why the Successful Bid is the highest or best Qualified Bid and (b) a declaration from an officer of the Debtors containing factual support sufficient for the Court to find that: (i) the Sale constitutes a prudent exercise of the Debtors' business judgment; (ii) the Sale may be consummated free and clear of all Liens under section 363(f) of the Bankruptcy Code; and (iii) the Purchaser is a good faith purchaser entitled to the protections of section 363(m) of the Bankruptcy Code.
- (l) **Objection Deadline.** Objections, if any, to a Sale must be filed with this Court and served on: (a) counsel for the Debtors; (b) the United States Trustee; (c) counsel to the Informal Committee; (d) counsel to the Creditors' Committee; (e) the applicable Secured Lender and its counsel; and (f) all parties that filed a notice of appearance in these Chapter 11 Cases (collectively, the "Objection Notice Parties") so as to be **actually received** on or before the date that is seven (7) calendar days following the date that the applicable Sale Notice is filed with the Bankruptcy Court and served on the Sale Notice Parties (the "Objection Deadline"). If no written objection is filed with the Court and served on the Objection Notice Parties on or before the Objection Deadline, the Sale Order for the applicable Sale may be entered by the Court without the need for a Sale Hearing (as defined below).
- (m) **As Is, Where Is.** The Sale of the Offshore Vessels pursuant to these Sale Procedures shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtors, their agents or their estates, except as provided in any agreement with respect to the Sale approved by the Court.
- (n) **Sale Hearing.** In the event an objection to a Sale is filed and served so as to be received by the Objection Notice Parties on or before the Objection Deadline, a hearing to consider the applicable Sale (the "Sale Hearing") shall be held at a date and time established by the Court and set forth in the applicable Sale Notice. At the Sale Hearing, the Debtors will seek entry of the Sale Order for the applicable Sale.
- (o) **Use of Proceeds.** Each Sale Order will provide that all cash proceeds generated from the sale of any Offshore Vessel shall be applied first, to satisfy payment of the Broker Commission, if any, and the remaining proceeds (including any cash deposit made by the Purchaser) generated from the Sale shall be (i) deposited directly into the relevant vessel account for the applicable Secured Lender and (ii) used solely in accordance with the applicable Cash Collateral Order; provided, however, that notwithstanding the terms of the applicable Cash Collateral Order,

the applicable Secured Lender shall apply such cash proceeds and any other cash in the vessel account to permanently reduce the outstanding principal amount of the prepetition obligations owed to the applicable Secured Lender in accordance with a closing memorandum (the "Closing Memorandum") to be delivered by the Debtors to the applicable Secured Lender as soon as reasonably practicable prior to the expected Closing Date, but in no event later than five (5) business days prior to the expected Closing Date, and agreed between the applicable Secured Lender and the Debtors (in consultation with the Informal Committee and the Creditors' Committee) in accordance with the terms of the applicable Sale Order. In the event that no such agreement regarding the Closing Memorandum is reached prior to the Closing Date, only the portion of the cash proceeds relating to disputed payments or reserves (the "Disputed Amounts") shall continue to be held in the relevant vessel account for the applicable Secured Lender in accordance with the applicable Cash Collateral Order, and upon the closing of the Sale the remainder of the cash proceeds and any other cash in the relevant vessel account for the applicable Secured Lender shall be applied to permanently reduce the outstanding principal amount of the prepetition obligations owed to the applicable Secured Lender.. If the Debtors and the applicable Secured Lender are unable to resolve their dispute with respect to the payment of, or reserve for, the Disputed Amounts within fourteen (14) days from the Closing Date, the Debtors shall file with this Court and serve upon the applicable Secured Lender a motion, on at least ten (10) days' prior written notice to the applicable Secured Lender of any hearing on such motion, requesting authority to pay or reserve for such Disputed Amounts from the cash proceeds of the Sale, and no disbursements of the Disputed Amounts from the relevant vessel account for the applicable Secured Lender shall be made without further order of this Court. All of the applicable Secured Lender's rights to object to any such motion are reserved. If the Debtors do not file a motion within fourteen (14) days from the Closing Date, the Disputed Amounts shall be applied to permanently reduce the outstanding principal amount of the prepetition obligations owed to the applicable Secured Lender.. The Debtors shall work in good faith with their advisors to timely prepare the Closing Memorandum prior to the closing of each Sale.

4. Any party that obtains information from the Debtors or the Broker regarding the Sale of any Offshore Vessel (including, without limitation any list of interested parties) shall use its reasonable best efforts to keep such information strictly confidential.

5. The Debtors (in consultation with the Informal Committee, the Creditors' Committee and the applicable Secured Lender) are authorized to extend the deadlines set forth in this Order or adjourn, continue or suspend the Sale Hearing, if any, for any

reason, without further order of this Court, by filing a notice with this Court and serving such notice on all applicable Sale Notice Parties.

6. All Offshore Vessels included in the definition of “Vessel” in the Offshore Vessel Brokerage Agreement shall be marketed by the Broker pursuant to the Sale Procedures set forth herein and in accordance with the terms and conditions set forth in the Offshore Vessel Brokerage Agreement. Solely with the prior written consent of the applicable Secured Lender, the applicable Offshore Vessel Owner may add Offshore Vessels to the definition of “Vessel” in the Offshore Vessel Brokerage Agreement by providing written notice to the Broker of such additional ships. Each Secured Lender may direct in its sole and absolute discretion (provided such direction is received on or before a date to be determined by agreement among the Debtors, the Informal Committee, and the Creditors’ Committee) the applicable Offshore Vessel Owner to add one or more Offshore Vessels to the definition of “Vessel” in the Offshore Vessel Brokerage Agreement by providing written notice to the Broker of such additional Offshore Vessels.

7. Notwithstanding the Court’s approval of the Sale Procedures, the Debtors with the consent of the applicable Secured Lender and in consultation with the Informal Committee and the Creditors’ Committee may seek approval of an alternative transaction regarding an Offshore Vessel, which may include negotiated bid protections with a prospective purchaser if the Debtors in their business judgment and after consultation with the Informal Committee, the Creditors’ Committee and the applicable Secured Lender deem it appropriate to include such bid protections. The Debtors are authorized to provide such bid protections without further Order of this Court.

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<sup>9</sup> The parties will reach an agreement regarding the deadline set forth in Paragraph 6 of this Order prior to the hearing to consider the Sale Procedures.



8. Notwithstanding the procedures for submitting a Qualified Bid, the Debtors may, in the exercise of their business judgment (and in consultation with the Informal Committee, the Creditors' Committee and the applicable Secured Lender), entertain bids that contain bid protections or do not conform to one or more of the requirements set forth in paragraph 3(d) hereof.

9. The Debtors and the Broker are authorized to take any and all actions necessary or appropriate to implement the Sale Procedures.

### NOTICE

10. The Notices substantially in the form attached hereto as Exhibit "1" and Exhibit "2" are hereby approved.

11. The notice as set forth herein shall constitute good and sufficient notice of the Motion, the Sales, the Bid Deadline, the Objection Deadline, the Sale Hearing (if any) and the proposed Sale Orders, and no other or further notice of the Motion, the Sales, the Bid Deadline, the Objection Deadline, the Sale Hearing (if any) and the proposed Sale Orders shall be necessary or required.

### OBJECTIONS TO THE SALES

12. Only timely filed and served responses, objections, and other pleadings shall be considered by this Court at the Sale Hearing, if any.

13. The failure of any person or entity to file and serve an objection to the Motion so as to be actually received on or before the Objection Deadline shall forever bar any such objection to the Motion or the relief requested therein, or to the consummation of the Sale or to any portion of the Debtors' agreement with the Successful Bidder, including the transfer of the applicable Offshore Vessel(s) free and clear of Liens (with all Liens on or against the applicable Offshore Vessel and related assets being sold attaching to the consideration received by the Debtors under the Purchase Agreement, with the same force, validity, priority and effect as they currently

exist), other than permitted exceptions as expressly set forth in the applicable Purchase Agreement.

### **SALE HEARING**

14. In the event an objection to the Sale of one or more Offshore Vessels is filed and served in accordance with the Sale Procedures so as to be received on or before the applicable Objection Deadline, the Sale Hearing for the applicable Offshore Vessel(s) shall be held before the Honorable Shelley C. Chapman, United States Bankruptcy Judge for the Southern District of New York, on the date and time set forth in the applicable Sale Notice at the United States Bankruptcy Court, Courtroom 623, One Bowling Green, New York, New York 10004, at which time this Court shall consider: (i) approval of the Sale to the Successful Bidder; (ii) entry of the proposed Sale Order for the applicable Offshore Vessel (each, a "Sale Order"); (iii) approval and payment of Broker Commissions payable to the Broker on account of the Sales; (iv) any other issues or objections that are timely interposed by any parties; and (v) the granting of such other or further relief as this Court deems just and proper. In the event no objection to the Sale of one or more Offshore Vessels is filed and served in accordance with the Sale Procedures so as to be received on or before the applicable Objection Deadline, the Court shall proceed to approve the Sale to the Successful Bidder(s) for such Offshore Vessel(s) without conducting a Sale Hearing regarding such Offshore Vessel(s).

### **ADDITIONAL PROVISIONS**

15. The form of Purchase Agreement is hereby approved as the form of purchase agreement to be used in soliciting bids for, and consummating the Sale of, each Offshore Vessel.

16. The Debtors and the Broker are authorized and empowered to take such steps, incur and pay such costs and expenses, and do such things as may be reasonably necessary to fulfill the notice requirements established by this Order.

17. To the extent that there may be any inconsistency between the terms of the Motion or the Purchase Agreement, on the one hand, and this Order, on the other hand, the terms of this Order shall govern.

18. This Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

DATED: New York, New York  
\_\_\_\_\_, 2018

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HONORABLE SHELLEY C. CHAPMAN  
UNITED STATES BANKRUPTCY JUDGE

## **EXHIBIT "1"**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
In re: : Chapter 11  
TOISA LIMITED, *et al.*, : Case No. 17-10184 (SCC)  
Debtors. : (Jointly Administered)  
----- x

**H Clarkson & Co. Ltd. has been appointed by the  
United States Bankruptcy Court for the Southern District of New York  
as exclusive Sellers broker to develop for sale the following Vessel**

*[Vessel(s) description]*

**Inspection positions and dates:** [Vessel] will be available for inspection at [location] between xth and xth of [month] inclusive. Following completion of inspection, offers will then be invited [5-7] business days later. Parties may obtain access to the virtual data room for the Vessel by contacting H. Clarkson and Co. Ltd. as set forth below. Please note that any inspection provided in the data room is a third party report and is provided for the convenience of interested bidders. No representations or warranties regarding the Vessel are being made, and the Vessel will be sold on an **"as is, where is"** basis.

All Offers must be submitted to: (i) counsel for Seller, Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, New York 10119 (Attn: Frank A. Oswald, Esq. and Kyle J. Ortiz, Esq.); and (ii) H Clarkson and Co. Ltd., Commodity Quay, St Katharine Docks, London. E1W 1BF on or before 1800 hrs London Time on \_\_\_\_\_, 2018. All bids for the Vessel must comply with the following:

1. The bid must be in writing in a form substantially similar to the Purchase Agreement (a copy of which may be obtained by contacting H. Clarkson and Co. Ltd. as set forth below) marked to show any changes made thereto, which changes shall be no less favorable to the seller as those set forth in the Purchase Agreement;
2. The bid must indicate whether the bidder intends to purchase the Vessel subject to, or free and clear of, the applicable charter agreement (a copy of which may be obtained by contacting H. Clarkson and Co. Ltd. as set forth below);
3. The Debtors may, in their discretion, request additional information from the relevant bidder regarding its wherewithal to consummate a transaction for the Vessel, including a binding, unconditional commitment letter for financing, if applicable;
4. The bid must disclose the identity of the entity or entities bidding for the Vessel or otherwise participating in such bid; and
5. The bid must be firm and unconditional, on an as-is, where-is basis, and not subject to any financing or other contingencies.

**Interested parties should make the necessary application to (all details given in good faith and for information only, without guarantee/prejudice):**

**H Clarkson and Co. Ltd.,**  
Commodity Quay, St Katharine Docks, London. E1W 1BF  
Email: rtoisa.offshore@clarksons.com Telephone: (44)2073345444

## **EXHIBIT "2"**

TOGUT, SEGAL & SEGAL LLP  
One Penn Plaza  
Suite 3335  
New York, New York 10119  
(212) 594-5000  
Albert Togut  
Frank A. Oswald  
Brian F. Moore

*Counsel to the Debtors and  
Debtors in Possession*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	x	
	:	
In re:	:	Chapter 11
	:	
TOISA LIMITED, <i>et al.</i> ,	:	Case No. 17-10184 (SCC)
	:	
Debtors. <sup>1</sup>	:	(Jointly Administered)
	:	
-----	x	

**NOTICE OF: (I) SELECTION OF SUCCESSFUL BID AND PROPOSED SALE OF  
\_\_\_\_\_; (II) FILING OF DECLARATION OF [JONATHAN MINON  
FAWTHROP] IN SUPPORT OF THE SALE; (III) FILING OF DECLARATION OF  
JONATHAN MITCHELL IN SUPPORT OF THE SALE;  
AND (IV) FILING OF PROPOSED SALE ORDER**

**PLEASE TAKE NOTICE** that, on January 29, 2017 (the "Petition Date"), Toisa Limited ("Toisa") and certain of its affiliates (each a "Debtor," and collectively, the "Debtors") commenced voluntary cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court").

**PLEASE TAKE FURTHER NOTICE** that, on \_\_\_\_\_, 2018, the Bankruptcy Court entered the *Order Approving (A) Procedures Regarding the Solicitation of Offers in Connection with the Sale of Certain of the Debtors' Offshore Vessels, Subject to Bankruptcy Court Approval, (B) the Form of Notices Regarding the Sales and (C) the Form of Purchase and*

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<sup>1</sup> The Debtors in these chapter 11 cases are as follows: Trade Prosperity, Inc.; Toisa Limited; United Courage, Inc.; Trade Vision, Inc.; United Journey, Inc.; United Kalavryta, Inc.; Trade Sky, Inc.; Trade Industrial Development Corporation; United Honor, Inc.; Trade Will, Inc.; United Leadership Inc.; United Seas, Inc.; United Dynamic, Inc.; United Emblem, Inc.; United Ideal Inc.; Trade Unity, Inc.; Trade Quest, Inc.; Trade Spirit, Inc.; Trade Resource, Inc.; United Ambassador, Inc.; Edgewater Offshore Shipping, Ltd.; United Banner, Inc.; Toisa Horizon, Inc.; and Trade and Transport Inc.

*Sale Agreement* [Docket No. \_\_] (the “Offshore Sale Procedures Order”),<sup>2</sup> authorizing the Debtors to sell certain of their offshore vessels (collectively, the “Vessels”), pursuant to the procedures set forth in the Offshore Sale Procedures Order.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Offshore Sale Procedures Order, the Debtors propose to enter into the transaction (the “Sale”) described below, which involves the sale or transfer of \_\_\_\_\_ (the “Vessel”) pursuant to the purchase and sale agreement attached to the Sale Order (as defined below) as Exhibit 1 (the “Purchase Agreement”). Below is a summary of the material terms of the Purchase Agreement:

- **Vessel Being Sold:**
- **Seller:**
- **Purchaser (including whether the Purchaser is directly or indirectly owned or controlled by any of the Debtors’ current or former shareholders, officers, directors or employees):**
- **Purchase Price:**
- **Conditions to Closing:**
- **Terms of Payment:**
- **Known Liens:**
- **Secured Vessel Lender and other parties holding or asserting Liens against the Vessel:**
- **Marketing Efforts:**
- **Broker Commission:**
- **Other Material Transaction Terms:**

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Offshore Sale Procedures Order, the Debtors intend to seek entry of an order substantially in the form attached to this Notice as Exhibit A (the “Sale Order”) authorizing the consummation of the Sale and granting relief pursuant to sections 363(f) and 363(m) of the Bankruptcy Code.

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<sup>2</sup> Capitalized terms used, but not otherwise defined herein, shall take the meanings ascribed to them in the Offshore Sale Procedures Order.



**PLEASE TAKE FURTHER NOTICE** that, in support of the Sale Order and the relief set forth therein, the Debtors submit the Declaration of [Jonathan Minon Fawthrop], attached to this Notice as Exhibit B (the “Fawthrop Declaration”) and the Declaration of Jonathan Mitchell, the Debtors’ Chief Restructuring Officer, attached to this Notice as Exhibit C (the “Mitchell Declaration”) and, together with the Fawthrop Declaration, the “Supporting Declarations”) setting forth the factual basis for the relief requested in the Sale Order.

**PLEASE TAKE FURTHER NOTICE** that, consistent with the Offshore Sale Procedures Order and the Supporting Declarations, if the Bankruptcy Court enters an order granting relief pursuant to section 363(f) of the Bankruptcy Code, upon closing, the Vessel and related assets being sold shall be transferred pursuant to the Sale free and clear of all liens, claims, encumbrances and other interests (collectively, “Liens”), with such Liens attaching to the consideration received by the Debtors under the Purchase Agreement with the same force, validity, priority and effect as they currently exist immediately prior to such Sale.

**PLEASE TAKE FURTHER NOTICE** that objections, if any, to the Sale must be filed with this Court and served on: (a) counsel for the Debtors, Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, New York 10119 (Attn: Frank A. Oswald, Esq.); (b) the Office of the United States Trustee, 201 Varick Street, Room 1006, New York, New York 10014 (Attn: Paul K. Schwartzberg, Esq.); (c) counsel to the Informal Committee, Cadwalader, Wickersham & Taft LLP, 200 Liberty Street, New York, New York 10281 (Attn: Gregory M. Petrick, Esq. and Michele C. Maman, Esq.); (d) counsel to the Creditors’ Committee, Sheppard, Mullin, Richter & Hampton LLP, 30 Rockefeller Plaza, New York, New York 10112 (Attn: Craig A. Wolfe, Esq. and Jason R. Alderson, Esq.); (e) counsel to the Secured Lender, \_\_\_\_\_; and (f) all parties that filed a notice of appearance in these Chapter 11 Cases (collectively, the “Objection Notice Parties”), so as to be **actually received** on or before the date that is seven (7) calendar days following the date of this Notice (the “Objection Deadline”). If no written objection is filed with this Court and served on the Objection Notice Parties on or before the Objection Deadline, the Sale Order may be entered without the need for a Sale Hearing (as defined below), as provided for in the Offshore Sale Procedures Order.

*[Concluded on the following page]*

**PLEASE TAKE FURTHER NOTICE** that, in the event an objection to the Sale is timely filed and served in accordance with the above paragraph, a hearing to consider the Sale (the "Sale Hearing") shall be held before the Honorable Shelley C. Chapman, United States Bankruptcy Judge for the Southern District of New York, at the United States Bankruptcy Court, Courtroom 623, One Bowling Green, New York, New York 10004, at a date and time to be determined by the Court.

Dated: New York, New York  
\_\_\_\_\_, 2018

Toisa Limited, *et al.*  
Debtors and Debtors in Possession  
By their Counsel  
TOGUT, SEGAL & SEGAL LLP  
By:

---

FRANK A. OSWALD  
BRIAN F. MOORE  
One Penn Plaza, Suite 3335  
New York, New York 10119  
Telephone: (212) 594-5000

**EXHIBIT "B"**

**[TO BE FILED]**

## **EXHIBIT "C"**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
In re: : Chapter 11  
TOISA LIMITED, *et al.*, : Case No. 17-10184 (SCC)  
Debtors.<sup>1</sup> : (Jointly Administered)  
----- x

**ORDER AUTHORIZING AND APPROVING  
SALE OF \_\_\_\_\_ FREE AND CLEAR OF LIENS, CLAIMS AND  
ENCUMBRANCES IN ACCORDANCE WITH THE SALE PROCEDURES ORDER**

Upon the Notice of Presentment of the Order Authorizing and Approving the Sale of \_\_\_\_\_ Free and Clear of Liens, Claims and Encumbrances in accordance with the Sale Procedures Order (the “Notice of Presentment”) and the adjoining Declaration of Jonathan M. Fawthrop attached to the Notice of Presentment as Exhibit C (the “Fawthrop Declaration”) and the Declaration of Jonathan Mitchell attached to the Notice of Presentment as Exhibit D (the “Mitchell Declaration” and, together with the Fawthrop Declaration, the “Declarations”) in support of entry of an order (this “Order”) authorizing the sale (the “Sale”) of \_\_\_\_\_ (the “Vessel”) to \_\_\_\_\_ (the “Buyer”), pursuant to this Court’s *Order Approving (A) Procedures Regarding the Solicitation of Offers in Connection with the Sale of Certain of the Debtors’ Offshore Vessels, Subject to Bankruptcy Court Approval, (B) the Form of*

<sup>1</sup> The Debtors in these chapter 11 cases are as follows: Trade Prosperity, Inc.; Toisa Limited; United Courage, Inc.; Trade Vision, Inc.; United Journey, Inc.; United Kalavryta, Inc.; Trade Sky, Inc.; Trade Industrial Development Corporation; United Honor, Inc.; Trade Will, Inc.; United Leadership Inc.; United Seas, Inc.; United Dynamic, Inc.; United Emblem, Inc.; United Ideal Inc.; Trade Unity, Inc.; Trade Quest, Inc.; Trade Spirit, Inc.; Trade Resource, Inc.; United Ambassador, Inc.; Edgewater Offshore Shipping, Ltd.; United Banner, Inc.; Toisa Horizon, Inc.; and Trade and Transport Inc.

<sup>2</sup> Capitalized terms not otherwise defined herein have the meanings ascribed to them in the applicable Declaration.

*Notices Regarding the Sales and (C) the Form of Purchase and Sale Agreement* [Docket No. \_\_\_\_] (the “Offshore Sale Procedures Order”); and sufficient notice of the Sale having been provided to all parties with an interest in the Vessel in accordance with the Offshore Sale Procedures Order; and the Court having reviewed and considered the Declarations; and it appearing that the Sale is in the best interests of the Debtors, their estates, their creditors, their stakeholders, and other parties in interest; and after due deliberation thereon; and sufficient cause appearing therefor;

**IT IS HEREBY FOUND AND DETERMINED THAT:**

A. This Court has jurisdiction over the Sale pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and the Sale in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. The legal predicates for the relief sought in the Notice of Presentment and the Declarations are sections 105(a), 363(b), 363(f), 363(m), and 541(a) of Title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, and 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Rule 6004-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”) and the *Amended Guidelines for the Conduct of Asset Sales for the United States Bankruptcy Court for the Southern District of New York* (the “Sale Guidelines”).

C. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h), 6006(d) and 7062, and to the extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Order and expressly directs entry of this Order as set forth herein.

D. As evidenced by the Fawthrop Declaration (i) proper, timely,

adequate, and sufficient notice of the Sale has been provided in accordance with the Offshore Sale Procedures Order to each party entitled to such notice, including but not limited to all persons and entities known to have asserted a lien, claim, encumbrance or other interest (collectively, "Liens") on the applicable Vessel, (ii) such notice was good, sufficient, and appropriate under the particular circumstances, (iii) such notice provided a fair and reasonable opportunity to object or be heard with respect to the Sale to all parties entitled to notice, and (iv) no other or further notice of the Sale is or shall be required.

E. All interested persons and entities have been afforded a reasonable opportunity to object and to be heard with respect to the Sale.

F. The Debtors have articulated good and sufficient reasons for this Court to grant the relief requested. The disclosures made by the Debtors in the Declarations and in the motion for entry of the Offshore Sale Procedures Order and at the hearing to consider entry of the Offshore Sale Procedures Order were good, complete and adequate.

G. The Debtors have demonstrated both (a) good, sufficient, and sound business purposes and justifications for approving the Purchase Agreement and (b) compelling circumstances for the sale outside the ordinary course of business, pursuant to section 363(b) of the Bankruptcy Code before, and outside of, a plan of reorganization, in that, among other things, the immediate consummation of the Sale to the Buyer is necessary and appropriate to maximize the value of the Debtors' estates, and the Sale will provide the means for the Debtors to maximize distributions to creditors.

H. The Debtors have shown that the Sale of the Vessel to the Buyer is a reasonable exercise of the Debtors' business judgment and is in the best interests of the

Debtors' estates, their creditors and other parties in interest. Sound business reasons exist for the Sale.

I. As set forth in the Declarations, the Debtors and their advisors marketed the Vessel to secure the highest and best offer.

J. The Buyer is a good faith purchaser for value and, as such, is entitled to all of the protections afforded under section 363(m) of the Bankruptcy Code and has otherwise acted in good faith in connection with the Sale. Specifically, (i) the Buyer is not an "insider" of the Debtors, as that term is defined in the Bankruptcy Code; (ii) the Sale was negotiated at arm's-length and in good faith; (iii) the Buyer did not in any way induce or cause the filing of the Chapter 11 Cases; (iv) the consideration provided to the Debtors pursuant to the Sale is fair and reasonable; (v) the Sale is not the result of fraud or collusion; (f) the Sale constitutes the highest or best offer made for the Vessel; and (g) the Buyer is not a successor to the Debtors. Neither the Debtors nor the Buyer has engaged in any conduct that would cause or permit the Sale to be avoided or result in the imposition of any costs or damages under section 363(n) of the Bankruptcy Code.

K. No party has objected to the Sale or the Purchase Agreement on the grounds of fraud or collusion.

L. The terms and conditions of the Purchase Agreement are fair and reasonable. The consideration provided by the Buyer for the Vessel pursuant to the Purchase Agreement (i) was negotiated at arm's length and is fair and reasonable, (ii) is the highest or best offer for the Vessel, (iii) will provide a greater recovery for the Debtors' creditors than would be provided by any other practical available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and applicable non-bankruptcy law.



M. The transfer of the Vessel by the Debtors to the Buyer will be a legal, valid, and effective transfer of the Vessel, and will vest the Buyer with all right, title, and interest of the Debtors in and to the Vessel free and clear of all Liens, and all Liens on or against the Vessel and related assets being sold shall attach to the consideration received by the Debtors under the Purchase Agreement, with the same force, validity, priority and effect as they currently exist. After the closing of the Sale under the Purchase Agreement, the Buyer shall have no liability for any claims asserted against or liabilities of the Debtors or their estates, except as may be provided for herein.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:**

1. The relief sought by the Debtors in the portion of their motion for entry of the Offshore Sale Procedures Order approving the sale of the Vessel is hereby granted as set forth herein. All objections to entry of this Order that have not been withdrawn, waived or settled by announcement to the Court during any hearing or stipulation filed with the Court, including, without limitation, any and all reservations of rights included in such objections or otherwise, are hereby denied and overruled on the merits with prejudice. Entities with an interest in the Vessel and related assets being sold pursuant to the Purchase Agreement that did not object or withdrew their objections to the entry of this Order are deemed to have consented to the Sale pursuant to section 363(f)(2) of the Bankruptcy Code.

2. This Order shall be binding in all respects upon all creditors of and holders of equity interests in the Debtors (whether known or unknown), agents, trustee and collateral trustees, holders of Liens on the Vessel, or any portion thereof, all counterparties to contracts with the Debtors (whether or not assigned), all successors and assigns of the Debtors, and any subsequent trustees appointed in these bankruptcy

cases or upon a conversion of these bankruptcy cases to one or more cases under chapter 7 of the Bankruptcy Code and shall not be subject to rejection or unwinding. Nothing in any chapter 11 plan confirmed in these bankruptcy cases, the order confirming any such chapter 11 plan, any order approving the wind down or dismissal of these bankruptcy cases, or any order entered upon the conversion of these bankruptcy cases to one or more cases under chapter 7 of the Bankruptcy Code or otherwise shall conflict with or derogate from the provisions of the Purchase Agreement or this Order.

3. The findings of fact set forth above and conclusions of law set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this case pursuant to Bankruptcy Rule 9014. To the extent any finding of fact later shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law later shall be determined to be a finding of fact, it shall be so deemed.

4. Except as otherwise provided herein, all parties are enjoined from taking any action against the Buyer or any other purchaser of the Vessel, their affiliates or any agent of the foregoing to recover any claim which such person or entity has solely against the Debtors or their estates.

5. Pursuant to sections 363(b) and 363(f) of the Bankruptcy Code, the Debtors are authorized, empowered and directed to take any and all actions necessary or appropriate to transfer the Vessel to the Buyer pursuant to the terms and conditions set forth in the Purchase Agreement. The Sale, including all of the terms and conditions and transactions contemplated by the Purchase Agreement and all other ancillary documents, is hereby approved, and the Debtors are authorized and directed to take all

actions necessary to consummate the Sale and to perform under the Purchase Agreement.

6. Upon sale and transfer of the Vessel, all of the Debtors' right, title and interest in the Vessel shall be immediately vested in the Buyer pursuant to sections 105(a), 363(b), and 363(f) of the Bankruptcy Code free and clear of any and all Liens, and all Liens on or against the Vessel and related assets being sold shall attach to the consideration received by the Debtors under the Purchase Agreement, with the same force, validity, priority and effect as they currently exist. Such Sale shall constitute a legal, valid, binding, and effective transfer of such Vessel and shall vest the Buyer with good and marketable title to the Vessel.

7. The Debtors are authorized and directed to execute and deliver, and empowered to perform under, consummate, and implement the Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary, convenient or desirable to implement the Purchase Agreement and consummate the Sale pursuant thereto and effectuate the provisions of this Order and the transactions approved hereby, and to take all other actions as may be necessary for the purpose of assigning, transferring, granting, conveying and conferring to the Purchaser, the Vessel, as may be necessary or appropriate to the performance of the obligations as contemplated by the Purchase Agreement and this Order.

8. The Buyer is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code. The Sale was undertaken by the Buyer without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code and the Buyer is entitled to the full protections under section 363(m) of the

Bankruptcy Code. Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale, unless such authorization and consummation of the Sale is duly and properly stayed pending such appeal.

9. The cash proceeds generated from the Sale shall be applied first to satisfy payment of the Broker Commission, if any, to the Broker. The remaining cash proceeds (including any cash deposit made by the Purchaser) generated from the Sale shall be (i) deposited directly into the relevant vessel account for the applicable Secured Lender and (ii) used solely in accordance with the applicable cash collateral order; provided, however, that notwithstanding the terms of the applicable cash collateral order, the applicable Secured Lender shall apply such cash proceeds and any other cash in the vessel account to permanently reduce the outstanding principal amount of the prepetition obligations owed to the applicable Secured Lender in accordance with a closing memorandum (the "Closing Memorandum") to be delivered by the Debtors to the applicable Secured Lender as soon as reasonably practicable prior to the expected date of the closing of the Sale (the "Closing Date"), but in no event later than five (5) business days prior to the expected Closing Date, and agreed between the applicable Secured Lender and the Debtors (in consultation with the Informal Committee and the Creditors' Committee) in accordance with the terms of the applicable Sale Order. In the event that no such agreement regarding the Closing Memorandum is reached prior to

the Closing Date, only the portion of the cash proceeds relating to disputed payments or reserves (the “Disputed Amounts”) shall continue to be held in the relevant vessel account for the applicable Secured Lender in accordance with the applicable Cash Collateral Order, and upon the closing of the Sale the remainder of the cash proceeds and any other cash in the relevant vessel account for the applicable Secured Lender shall be applied to permanently reduce the outstanding principal amount of the prepetition obligations owed to the applicable Secured Lender. If the Debtors and the applicable Secured Lender are unable to resolve their dispute with respect to the payment of, or reserve for, the Disputed Amounts within fourteen (14) days from the Closing Date, the Debtors shall file with this Court and serve upon the applicable Secured Lender a motion, on at least ten (10) days’ prior written notice to the applicable Secured Lender of any hearing on such motion, requesting authority to pay or reserve for such Disputed Amounts from the cash proceeds of the Sale, and no disbursements of the Disputed Amounts from the relevant vessel account for the applicable Secured Lender shall be made without further order of this Court. All of the applicable Secured Lender’s rights to object to any such motion are reserved. If the Debtors do not file a motion within fourteen (14) days from the Closing Date, the Disputed Amounts shall be applied to permanently reduce the outstanding principal amount of the prepetition obligations owed to the applicable Secured Lender. The Debtors shall work in good

faith with their advisors to timely prepare the Closing Memorandum prior to the closing of each Sale.

10. Except as otherwise set forth in this Order, nothing in the Notice, the Purchase Agreement, or the Declarations shall be deemed to constitute the postpetition assumption of any agreement under Bankruptcy Code section 365.

11. Notwithstanding Bankruptcy Rules 6004(h), 6006(d), 7062, or 9014 or any other Bankruptcy Rule, Local Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution of this Order.

12. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: New York, New York  
\_\_\_\_\_, 2018

HONORABLE SHELLEY C. CHAPMAN  
UNITED STATES BANKRUPTCY JUDGE

Hearing Date: June 25, 2018 at 11:00 a.m. (Prevailing Eastern Time)  
Objection Deadline: June 18, 2018 at 4:00 p.m. (Prevailing Eastern Time)

TOGUT, SEGAL & SEGAL LLP  
One Penn Plaza  
Suite 3335  
New York, New York 10119  
(212) 594-5000  
Albert Togut  
Frank A. Oswald  
Kyle J. Ortiz  
Brian F. Moore

*Counsel to the Debtors and  
Debtors in Possession*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re: : Chapter 11  
TOISA LIMITED, *et al.*, : Case No. 17-10184 (SCC)  
Debtors.<sup>1</sup> : (Jointly Administered)  
-----X

**NOTICE OF HEARING OF THE DEBTORS' MOTION FOR (I) AN ORDER  
APPROVING (A) PROCEDURES REGARDING THE SOLICITATION OF  
OFFERS IN CONNECTION WITH THE SALE OF CERTAIN OF THE  
DEBTORS' OFFSHORE VESSELS, SUBJECT TO BANKRUPTCY COURT  
APPROVAL, (B) THE FORM OF NOTICES REGARDING THE SALES AND (C)  
THE FORM OF PURCHASE AND SALE AGREEMENT; AND (II) ORDERS  
(A) APPROVING EACH OF THE SALES FREE AND CLEAR OF LIENS, CLAIMS,  
ENCUMBRANCES AND OTHER INTERESTS AND (B) AUTHORIZING  
PAYMENT OF BROKER COMMISSIONS FROM SALE PROCEEDS**

PLEASE TAKE NOTICE that, on June 11, 2018, Toisa Limited and certain  
of its affiliates, as debtors and debtors in possession in the above-captioned cases  
(collectively, the "Debtors"), filed the *Debtors' Motion for (I) an Order Approving (A)  
Procedures Regarding the Solicitation of Offers in Connection with the Sale of Certain of the*

<sup>1</sup> The Debtors in these Chapter 11 Cases are as follows: Trade Prosperity, Inc.; Toisa Limited; United Courage, Inc.; Trade Vision, Inc.; United Journey, Inc.; United Kalavryta, Inc.; Trade Sky, Inc.; Trade Industrial Development Corporation; United Honor, Inc.; Trade Will, Inc.; United Leadership Inc.; United Seas, Inc.; United Dynamic, Inc.; United Emblem, Inc.; United Ideal Inc.; Trade Unity, Inc.; Trade Quest, Inc.; Trade Spirit, Inc.; Trade Resource, Inc.; United Ambassador, Inc.; Edgewater Offshore Shipping, Ltd.; United Banner, Inc.; Toisa Horizon, Inc.; and Trade and Transport Inc.

*Debtors' Offshore Vessels, Subject to Bankruptcy Court Approval, (B) the Form of Notices Regarding the Sales and (C) the Form of Purchase and Sale Agreement; and (II) Orders (A) Approving Each of the Sales Free and Clear of Liens, Claims, Encumbrances and Other Interests and (B) Authorizing Payment of Broker Commissions from Sale Proceeds (the "Motion").*<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE** that objections, if any, to the Motion must be made in writing, stating in detail the reasons therefor, and must be filed with the Clerk of the Bankruptcy Court, so as to be actually received by: (i) Togut, Segal & Segal LLP, bankruptcy counsel for the Debtors and Debtors in Possession, One Penn Plaza, Suite 3335, New York, New York 10119, Attn: Frank A. Oswald, Esq. (frankoswald@teamtogut.com) and Kyle J. Ortiz, Esq. ([kortiz@teamtogut.com](mailto:kortiz@teamtogut.com)); and (ii) the Office of the United States Trustee for Region 2, Attn: Paul Schwartzberg, Esq. ([Paul.Schwartzberg@usdoj.gov](mailto:Paul.Schwartzberg@usdoj.gov)), U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014, no later than **4:00 p.m. on June 18, 2018** (the "Objection Deadline").

**PLEASE TAKE FURTHER NOTICE** that a hearing to consider the Motion will be held before the Honorable Shelley C. Chapman, United States Bankruptcy Judge, on June 25, 2018 at 11:00 a.m. Eastern Time in Room 623 of the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), One Bowling Green, New York, New York 10004-1408, or as soon thereafter as counsel may be heard.

**PLEASE TAKE FURTHER NOTICE** that unless a written objection to the Motion, with proof of service, is timely filed and served by the Objection Deadline,

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to such term in the Motion.



the Bankruptcy Court may enter the proposed Order, substantially in the form attached to the Motion, without a hearing.

DATED: New York, New York  
June 11, 2018

TOGUT, SEGAL & SEGAL LLP,  
*Counsel to the Debtors and Debtors in Possession*  
TOISA LIMITED, *et al.*,  
By:

/s/ Frank A. Oswald  
ALBERT TOGUT  
FRANK A. OSWALD  
KYLE J. ORTIZ  
BRIAN F. MOORE  
One Penn Plaza, Suite 3335  
New York, New York 10119  
(212) 594-5000