

**EARTHTRACE LIMITED**  
**SEA SHEPHERD CONSERVATION SOCIETY**

---

**DEMISE CHARTER PARTY AGREEMENT**

---

THIS AGREEMENT is made this 24<sup>th</sup> day of November 2009 by and between **EARTHTRACE LIMITED** a duly incorporated company having its registered office at 470 Manukau Road, Epsom, Auckland and **SEA SHEPHERD CONSERVATION SOCIETY** of PO Box 2616, Friday Harbor WA 98250, USA.

## WHEREAS

**EARTHTRACE LIMITED** (hereinafter called the "Owner") owner of the Motor Vessel *Ady Gil* (formerly known as *Earthrace*). Registration number NZ 1271 designed by Craig Loomes Design Group Ltd built by Calibre Boats Ltd being an ultra slender trimaran now lying at the Maritime Museum, Viaduct Harbour, Auckland, NZ (hereinafter called the "Vessel" and, **SEA SHEPHERD CONSERVATION SOCIETY** (hereinafter called the "Charterer") desire to hire the Vessel for a specified period.

**NOW THEREFORE** the parties agree as follows:

## AGREEMENT TO LET

1. The Owner agrees to let and the Charterer agrees to hire the Vessel on a bareboat basis for the Term of one year from 24 November 2009. The Charterer shall pay a Charter Fee of One US Dollar (US\$1).
2. The Charter Fee does not include any running costs, charges of a captain and crew, the cost of fuel or any other operating expenses, insurance, liability insurance, boarding, embarkation and/or disembarkation and/or fees, if any; and food, beverage and/or catering services consumed during the Charter Term, all of which are expressly acknowledged to be the sole responsibility of the Charterer.
3. The Charterer may renew this agreement for a further period of one year and otherwise on the same terms and conditions of this agreement by notice in writing to the owner prior to the expiration of the term referred to in clause 1 above.

## INSPECTION AND DELIVERY

4. The Charterer accepts the Vessel in its condition as inspected and approved prior to the date of this agreement.
5. The Charterer shall have the right, but not the obligation, to haul and survey the Vessel at the conclusion of the Charter Term, provided however, the cost of same shall be paid entirely by the Charterer.
6. The Owner or its designated agent agrees to make ready the Vessel for departure from the Port of Auckland on or before the commencement date of the charter.

## INTELLECTUAL PROPERTY

7. For the period of the Charter Term and any renewal thereof the Owner assigns and transfers all right title and interest in and to any design patents, design

patent applications, copyrights and other intellectual property (collectively "I P Rights") in the Vessel and the design of the vessel including but not limited to all rights to make, have made, or import, for sale or for use in trade, any useful article embodying that design, and sell or distribute for sale or for use in trade any useful article embodying that design.

#### **INDEMNIFICATION**

8. The Charterer agrees to accept liability for and indemnify the Owner against any and all liability, claims, loss, damage, injury, proceedings, costs, legal costs and other expenses of any nature whatsoever, arising directly or indirectly out of the use of the Vessel during the Charter Term or any renewal of the Charter Term.
9. The provisions of clause 8 do not apply in relation to damage to or loss of the Vessel during the Charter Term or any renewal thereof. Clauses 11 and 12 apply to these events.

#### **INSURANCE; DAMAGE TO VESSEL; LOSS OF VESSEL**

10. The Owner and the Charterer acknowledge and agree that the Vessel may not be insured against Fire, Marine and Collision nor any other risks for the term of this Charter. In case of any accident or disaster the Charterer shall give the Owner prompt notice of same.
11. The Charterer shall not be liable for damage to the Vessel unless the cost of repairs to the Vessel exceeds USD1,000,000 in which case the Charterer's liability shall be USD500,000 or the amount of the excess over USD1million whichever is the less and the amount of such liability shall be paid to the Owner. **PROVIDED**, where the shares in the Owner are subject to a certain specified security agreement between Peter James Bethune as Lender and Ady Gil as Debtor dated the same day as this agreement, any liability outlined above shall be paid to the Lender under such agreement whose receipt shall be full and sufficient discharge.
12. If the Vessel is lost or destroyed the liability of the Charterer shall be limited to USD500,000 which shall be paid to the Lender under the specified security agreement referred to in clause 11 or to the extent that the amount secured to the Lender is less than USD500,000 then as to the amount of such liability to the Lender and the balance to the Vendor.

#### **LIENS**

13. The Charterer, its agents and employees have no right or power to permit or suffer the creation of any maritime liens against the Vessel. The Charterer agrees to indemnify the Owner for any charges or losses in connection therewith, including reasonable attorney's fees.

## **DRUG RESTRICTION AND TERRORIST ACTIVITIES**

14. Charterer agrees that no illegal substances will be used or allowed on board the Vessel during the Charter.
15. If the Charterer is declared to be a terrorist organisation by the government of the United States of America or by another foreign state (but in the latter case only if such declaration is endorsed by the government of the United States of America) the Owner may cancel this agreement but without releasing the Charterer from any liability under this agreement which has accrued at the date of cancellation. Clause 17 of this agreement shall then become operative.

## **OPTION TO ACQUIRE VESSEL**

16. If this agreement is terminated for any reason before the expiry of the Charter Term or any renewal of the Charter Term (including in the circumstances referred to in clause 15) or if not so terminated then at the end of the Charter Term or any renewal of the Charter Term the Owner hereby grants the Charterer the option to direct the Owner to transfer the vessel to the Charterer or its nominee without compensation or other payment **SUBJECT HOWEVER** to the Charterer assuming liability for the amount secured under the specified security agreement referred to in clause 11 **AND** if the option is exercised by the Charterer, Peter James Bethune as Lender and Ady Gil as Debtor consent to the novation (so that Ady Gil is released from all liability under such agreement and such liability is assumed by the Charterer) of such specified security agreement (as testified by their signatures to this agreement) .

## **REDELIVERY**

17. Except as otherwise provided in this agreement the Charterer agrees to redeliver the Vessel, her equipment, and furnishings, free and clear of any indebtedness incurred for Charterer's account, at the expiration of this Charter Term, to the Owner at such port as shall be mutually agreed or failing agreement at the Port of Auckland.
18. If this agreement is terminated under clause 15 the Captain of the Vessel, as the agent of the Owner, shall deliver the vessel at the Charterer's expense to the nearest port as soon as conveniently and safely possible, and the Captain's judgment as to when and how this will occur shall be final.

## **NON ASSIGNMENT**

19. The Charterer agrees not to assign this Agreement or sub-charter the Vessel without the written consent of the Owner.

## **CHARTERER'S AUTHORITY OVER CREW**

20. It is mutually agreed that full authority regarding the operation and management of the Vessel is hereby transferred to the Charterer for the term thereof.

In the event, however, that the Charterer wishes to utilize the services of a Captain and/or crew members in connection with the operation and management of the Vessel, it is agreed that said Captain and/or crew members are agents and employees of the Charterer and not the Owner, with the exception of Clause 18 in which case the Captain would act as an agent of the Owner.

21. The Captain shall receive and obey orders from the Charterer as to ports to be called at and the general course of the voyage, but the Captain shall be responsible for the safe navigation of the Vessel, and the Charterer shall abide by his judgment as to sailing, weather, anchorages, and matters of safety. The Charterer assumes total control and liability (as outlined in Clauses 11 and 12) as if the Charterer were the owner of the Vessel during the term of the Charter.

The Charterer further agrees that it will not allow the Vessel to be operated by any person not qualified during the term of the Charter.

#### **CHARTERER'S NAME AND LOGOS**

22. On the termination of this agreement for any reason, including expiry of the Charter Term or any renewal, the Charterer's logos and all other visual material relating to the Charterer must be removed from the Vessel or permanently painted over, unless the Charterer expressly consents in writing to their retention on the Vessel via a licensing agreement or some similar mechanism.

#### **ARBITRATION**

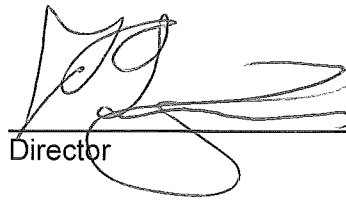
23. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the Rules of the American Arbitration Association, said arbitration to be held in the City of Annapolis, Maryland, unless another place is mutually agreed upon. Judgment upon any award reached by the Arbitrator(s) may be entered in any Court of said State having jurisdiction thereof.

To the true and faithful performances of the foregoing Agreement, the said parties hereto bind themselves, their heirs, executors, administrators, and assigns, each to the other.

24. This deed may be executed in any number of counterparts, (including facsimile or electronic copies) which when taken together shall constitute one and the same instrument, and any of the parties hereto may execute this deed by signing any such counterpart.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands and seals the day and year first above written.

**SIGNED** on behalf of **EARTHTRACE LIMITED**  
by its sole director in the presence of:

  
\_\_\_\_\_  
Director

\_\_\_\_\_  
Witness Signature

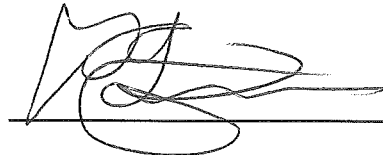
\_\_\_\_\_  
Witness Name **WILLIAM MALCOM PATTERSON**  
**SOLICITOR**  
**AUCKLAND**

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**SIGNED** on behalf of **SEA SHEPHERD CONSERVATION**  
**SOCIETY** by two authorised officers: \_\_\_\_\_

**SIGNED** by **PETER JAMES BETHUNE**  
for the purpose of clause 16:

\_\_\_\_\_  
  
\_\_\_\_\_

**SIGNED** by **ADY GIL** for the  
purposes of clause 16:

  
\_\_\_\_\_

**SIGNED** on behalf of **EARTHTRACE LIMITED**  
by its sole director in the presence of:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**SIGNED** on behalf of **SEA SHEPHERD CONSERVATION SOCIETY** by two authorised officers:

*SMW*

\_\_\_\_\_  
Stephen Roest  
Chief Executive Officer

*Alex S. Earl*

\_\_\_\_\_  
Alex S. Earl  
Associate Director

**SIGNED** by **PETER JAMES BETHUNE**  
for the purpose of clause 16:

\_\_\_\_\_

**SIGNED** by **ADY GIL** for the  
purposes of clause 16:

\_\_\_\_\_